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CLIENT ALERT

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Federal Court Bars Colorado From Imposing Colorado Interest Rates on Loans Made by Out of State Banks

By: Michael C. Flynn

A new Colorado law required all banks and credit unions chartered in any state to charge only Colorado's maximum interest rate, not the interest rates allowed by the lender's state. In an opinion published on June 18, the US District Court for the District of Colorado issued a preliminary injunction staying the application of the Colorado law as to out of state banks not located in Colorado, allowing those states banks to charge Colorado borrowers the interest rate allowed by the lender's state.

Under the1980 Depository Institutions Deregulation and Monetary Control Act, or DIDMCA, out of state banks may apply the interest rate allowed by the laws of the state "where the bank is located." See12 U.S.C. 1831d. Traditionally, under DIDMCA, out of state banks in Colorado have utilized their own state's interest limits, not Colorado's.

DIDMCA allows states to opt out of the provision allowing states to charge interest rates in the state where they are located, by having a law stating that the state "does not want [Section 1831d] to apply with respect to loans made in" that state.

Colorado had asserted that a loan is "made in" both the state where the bank enters into the transaction and the state where the borrower enters into the transaction. But the District Court disagreed. It held that under the wording of DIDMCA, where a loan is made is not determined by where the borrower resides. Instead: "what state a loan is "made in" depends on where the bank is located and performs its loan-making functions and does not depend on the location of the borrower."

Accordingly, the District Court enjoined Colorado's opt-out law to the extent that it applies to loans "made in" states besides Colorado, by lenders who are members of the plaintiff trade associations. Presumably, the court's reasoning would apply to any other out-of-state lender seeking relief. One can expect appeals from this decision.

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