LEGAL UPDATES

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# Oregon Passes Bill to Opt Out of Federal Rate Exportation

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The Oregon legislature has passed a bill to limit an out-of-state bank's ability to rely on federal interest rate exportation in connection with certain consumer loans. H.B. 4116 is on the Governor's desk. If the bill is not vetoed, Oregon's DIDMCA opt out would apply to loans made in Oregon on or after the effective date, which is projected for early June. Oregon will be the second state to opt out of federal rate preemption in recent years, following Colorado's footsteps in June 2023.

Oregon's opt out under Section 525 of the Depository Institutions Deregulation and Monetary Control Act (DIDMCA) applies to "consumer finance loans" made in Oregon. Consumer finance loans include secured and unsecured consumer loans or lines of credit of $50,000 or less with terms longer than 60 days. H.B. 4116 also clarifies when the Consumer Finance Act applies to consumer finance loans and lenders, agents, brokers, or facilitators acting with respect to consumer finance loans.

If H.B. 4116 becomes effective, out-of-state banks may be required to follow rate and fee limitations under Oregon law when making consumer finance loans to Oregon residents. Oregon's DIDMCA opt out, unlike Colorado's, does not specifically exclude any specific consumer credit products. The DIDMCA opt out does not affect national banks lending in Oregon.

Oregon's looming DIDMCA opt-out adds to the growing concern that other states will follow Colorado's lead and pass a similar bill to limit state banks' federal powers to "export" interest rates from the bank's home state. Notably, Oregon was not one of the original states to opt out of federal rate exportation in the early 1980s, when DIDMCA opt outs first became available to states.

The passing of the Oregon DIDMCA opt-out bill heightens the importance of the Tenth Circuit granting a petition for rehearing en banc in the Colorado

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DIDMCA opt-out litigation. The court has an opportunity to clarify what "loan made" in a state means under Section 525 of DIDMCA and thus whether loans to in-state residents are subject to a state's opt out. A divided Tenth Circuit panel concluded that the phrase "loan made" in a state under Section 525 includes any loans made to a borrower located in an opt-out state. Such interpretation broadens the reach of a state's opt out. The outcome of the Colorado DIDMCA opt-out litigation could guide the interpretation of the scope of the Oregon DIDMCA opt out.

The scope of the Oregon DIDMCA opt out could also be impacted by federal legislation (S.B. 3889) introduced in the U.S. Congress that aims to clarify where a loan is made for purposes of Section 525 of DIDMCA. As introduced in February, a state's DIDMCA opt out would only apply to loans made by institutions chartered by the opt-out state. If Congress passes S.B. 3889 in its current form, the Oregon's DIDMCA opt out would only apply to Oregon-chartered depository institutions.

Regardless of these ongoing developments, the Oregon DIDMCA opt-out bill adds to the growing list of challenges state banks face when making consumer loans in other states.

**Contact us**

We regularly advise banks and Fintechs on federal bank preemption questions. If you have questions about Oregon's DIDMCA opt out or banks' interest rate preemption authority, please contact Susan Seaman, Becky Bavlsik, or your Husch Blackwell attorney.

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