The late 1970s and early 1980s were watershed years for usury law. As a result of anti-inflation federal monetary policy, short-term commercial market interest rates rose above twenty percent, far above general usury ceilings and many special usury law ceilings. Because lenders themselves borrow the money they lend, lenders’ profits were squeezed as their interest expenses rose. There was a fear that creditors would be understandably reluctant to lend money at rates below their cost of funds and that mortgage loans and other kinds of consumer credit would dry up as creditors cut back on their volume of lending. Legislators and the credit industry agreed that something had to be done about usury laws, and action was taken at both the federal and state levels.

In 1980, in response to the tension between usury ceilings and rising market interest rates, the federal government preempted many, but certainly not all, state usury limitations. Congress allowed all federally insured depository lenders and, temporarily, all creditors issuing business or agricultural credit in excess of $1,000, to operate under a variable interest ceiling, which had previously been reserved for national banks. Congress also preempted all interest ceilings for most major lenders for credit secured by first mortgages on borrowers’ homes, including manufactured homes. Congress did not replace the state usury caps it preempted with a federal usury cap; the federal framework presumed that no credit regulation was good credit regulation. States could “opt out” of any of these preemptions by legislative proclamation. This statutory structure shifted the legislative burden to the proponents of usury laws; if a state failed to adopt new usury provisions or to reenact its old ones, many usury restrictions in the state were, by default, repealed.

Some federal preemption is conditioned on the creditor’s compliance with federal regulations. Failure to comply with the federal regulation means that the state statute is not preempted, and state remedies are available for violating the state statute. Federal preemption also often does not apply to small, individual, hard-money lenders.

Because of the federal usury preemptions, state legislatures were forced to consider what role, if any, usury statutes should play in a modern economy. This was not exactly a new issue, yet there was no consensus on the correct balance between consumer protection and credit availability or if, indeed, there was a necessary tradeoff between those two desirable ends. Most states had in place a fairly complex set of general and special usury statutes, some of which, such as the small loan acts and RISAs, were relatively uncontroversial, and some of which, such as fixed-rate general usury statutes, were clearly unworkable in the face of sizeable fluctuations in market interest rates.

Most states responded by raising their interest ceilings to a point not constricting on traditional lenders. Other states modified their general usury laws so that the ceilings would fluctuate with some published market interest rate. For example, several states set their ceilings to five or six percentage points above the federal discount rate. Some states repealed general usury ceilings completely, allowing parties who were not regulated by special usury statutes to contract for the payment of any agreed rate.

Generally, states retained their special usury statutes, only raising or repealing the statutes’ interest rate ceilings. In retaining the special usury statutes, the states tacitly recognized the need for some regulation of the credit market.

Federal preemption of state consumer regulation was not limited to interest rate caps. Beginning in the 1980s, federal banking regulators aggressively preempted state restrictions on the origination and terms of consumer credit for lenders they regulated, without adopting any meaningful regulatory framework in its place. Commentators warned that the scope of deregulation posed a threat to federalism and the dual banking system and enabled destructive and discriminatory credit practices. The reach of federal deregulation was extended by state parity laws, which treat state-chartered depositories comparably with federally regulated lenders.

### Footnotes

49 [46] See Ch. 3 [1], infra (detailed discussion of federal usury preemption). See also Patricia A. McCoy & Elizabeth Renuart, The Legal Infrastructure of Subprime and Nontraditional Home Mortgages, in Borrowing to Live: Consumer and Mortgage Credit Revisited 110, 112 (Nicolas P. Retsinas & Eric S. Belsky ed. 2008); Cathy Lesser Mansfield, The Road to Subprime “HEL” Was Paved with Good Congressional Intentions: Usury Deregulation and the Subprime Home Equity Market, 51 S.C. L. Rev. 473 (2000); James J. White, The Usury Trompe l’Oeil, 51 S.C. L. Rev. 445 (Spring 2000); Ch. 3 [1], infra.
1.2.5 Deregulation of Usury Law

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52 [49] See § 3.7.2 [2], infra.


54 [51] Cf. In re Coxson, 43 F.3d 189 (5th Cir. 1995) (noting that Texas had abolished usury laws during Reconstruction, but “credit abuses arose in the absence of usury laws,” and they were reintroduced). See generally § 1.2.1 [1], supra (summarizing the evolution of usury regulation in England).


lending by regulated lenders); Ctr. for Responsible Lending, National Bank Regulator Enabled Overdraft Abuses [9] (Feb. 2010), available at www.responsiblelending.org (cataloging abusive features of overdraft loans and Office of Comptroller of the Currency’s failure to address effectively those abuses). See generally Ch. 3 [1], infra.


62 [59] See § 3.6 [10], infra.

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