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February 3, 2026

Oregon House Committee on Commerce and Consumer Protection  
State of Oregon General Assembly

Re: House Bill 4116; Position: Oppose | Update Regarding Lawsuit Challenging Colorado's DIDMCA Opt-Out Law

Mr. Chair and members of the Committee:

The American Financial Services Association (AFSA) and the American Fintech Council (AFC) are testifying at today's hearing on House Bill 4116, and have each separately submitted written testimony. Outside counsel for AFSA is also testifying at the hearing to inform the Committee about AFSA's, AFC's and the National Association of Industrial Bankers's (NAIB) ongoing legal challenge to a similar law enacted in Colorado in 2023 (Colo. Rev. Stat. § 5-13-106), which, like HB 4116, "opts-out" from the Depository Institutions and Monetary Control Act of 1980 (DIDMCA).

That challenge seeks to correct Colorado's misunderstanding of what "opting-out" of DIDMCA means. Like Oregon, Colorado assumed that opting out of DIDMCA meant that Colorado could impose its state-legislated interest rate caps on loans made by out-of-state, state-chartered banks received by Colorado consumers.<sup>1</sup> In the lawsuit, our members urge the courts to recognize that is *not* what Congress intended when it permitted states to "opt-out" of DIDMCA for loans "made in" an opting-out state. Rather, Congress enacted DIDMCA to ensure state-chartered banks could charge the same interest rates as national banks. Congress provided the "opt-out" because Congress recognized that allowing a state-chartered bank to avoid the interest-rate laws of the state that chartered it conflicted with that state's traditional regulatory authority over *its own* chartered banks. A state opt-out cannot take away the DIDMCA-granted rights of *other states'* chartered banks. It simply allows a state to re-assert control over the interest rates its own banks may charge. Nor does a DIDMCA opt-out have any effect on the interest rates national banks charge.

Of the four judges to have reviewed Colorado's opt-out so far, two agree with the plaintiffs, and two agree with Colorado. In a June 18, 2024 decision, the Colorado federal district court agreed with AFSA, AFC and NAIB, and enjoined Colorado's law. Colorado appealed the decision to a three-judge panel of the United States Court of Appeals for the Tenth Circuit. In a 2-1 decision, the Tenth Circuit in November 2025 held that the opt-out *did* apply to

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<sup>1</sup> Oregon's bill appears to take this assumption further, applying the opt-out to loans made or received in *any* state (not just to residents of Oregon, or consumers physically present in Oregon), if an Oregon bank account is debited to make payment on that loan.

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any loans involving Colorado residents. The dissenting judge agreed with the district court, and emphasized that her colleagues' decision would "produce a level of disuniformity" in interest rate regulation that "Congress never intended."

AFSA, AFC and NAIB have asked the Tenth Circuit to reconsider its decision, and on December 9, 2025, filed a petition for the case to be heard *en banc* (that is, by all of the judges on the court). That petition is supported by the attorneys general of twenty states, industry trade groups including the American Bankers Association and 52 state bankers associations, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC). If the Tenth Circuit does not reverse its decision, an appeal to the United States Supreme Court is likely. Colorado's law remains enjoined while the appeals process plays out in the Tenth Circuit, and will likely remain enjoined pending Supreme Court review.

The legal uncertainty surrounding the viability of Colorado's interpretation of its DIDMCA opt-out rights will surely continue beyond when the current legislative sessions ends. It will take at least another year, but likely longer, until the appeal process finally concludes. Colorado has already spent and will likely continue to spend substantial resources (including taxpayer dollars) defending its opt-out in court, diverting those resources from more legally-sound consumer protection efforts.

To avoid saddling Oregon regulators, the Attorney General's office, and Oregon taxpayers with the burden and cost of defending a similar legal challenge, and resulting protracted litigation, we urge caution, and for the Committee to at the very least wait for the appeals process resulting from Colorado's law to play out before moving forward with HB 4116.

**Along with this letter, we provide quick facts and summary points regarding the Colorado DIDMCA opt-out litigation, as well as key legal filings.**

Sincerely,

American Financial Services Association  
American Fintech Council  
National Association of Industrial Bankers

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## **Legal Challenge to Colorado's DIDMCA Opt-Out: Quick Facts**

### **DIDMCA**

- In 1980, Congress enacted the Depository Institutions and Monetary Control Act of 1980 (DIDMCA), which authorizes state-chartered banks to lend nationwide at their home state rates—the same as national banks could already do.
- Congress also authorized states to “opt out” of DIDMCA.
  - “Opting out” meant that states could continue to regulate the interest charged by *their own state-chartered banks*. It did not mean that opting-out states could regulate the rates charged by *other states' banks*, even if those banks loaned money to consumers residing in opting-out states.

### **Colorado's DIDMCA opt-out law:**

- **June 5, 2023:** Colorado enacted H.B. 23-1229 (codified at Colo. Rev. Stat. § 5-13-106), a DIDMCA opt-out, which was to have taken effect on July 1, 2024.
  - Like Oregon, Colorado intended to enforce its opt-out against all out-of-state, state-chartered banks lending to Colorado consumers.

### **Legal challenge to Colorado's DIDMCA opt-out law:**

- **March 25, 2024:** Three trade associations whose members include state banks and other financial institutions serving consumers nationwide—AFSA, AFC, and NAIB—filed a lawsuit in federal district court in Colorado, seeking to block Colorado from applying its DIDMCA opt-out to out-of-state, state chartered banks that do not have key lending operations in Colorado. *NAIB v. Weiser*, 24-cv-00812-DDD-KAS (Dist. Co.).
- **June 18, 2024:** Judge Daniel Domenico issued a **preliminary injunction, blocking application of the law to out-of-state, state-chartered banks** while the litigation proceeds.
- **November 10, 2025:** The United States Court of Appeals for the Tenth Circuit reversed the district court’s decision, in a 2-1 decision, which included a strong dissent supporting AFSA, AFC and NAIB’s position. *NAIB v. Weiser*, 24-1293 (10<sup>th</sup> Circuit).
  - Judge Veronica S. Rossman explained in her dissenting opinion why AFSA, AFC and NAIB’s position best reflects the statute’s meaning, history, and context, and why the majority’s decision presents “a practical problem, too”: “If each opting-out state may apply its own interpretation . . . a single loan could be deemed ‘made in’ multiple states, rendering it unclear which state’s [rate] caps apply.”
- **December 9, 2025:** NAIB, AFSA and AFC petitioned for the case to be re-heard *en banc*—by all of the judges of the Tenth Circuit.
  - The petition for rehearing was supported with amicus briefs filed by the American Bankers Association, 52 state banking associations, 20 state attorneys general, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC).

- No decision has been issued yet on the petition for rehearing (Colorado filed its response to the petition on January 21, 2026).
- The federal district court's **injunction remains in place** pending the outcome of the rehearing petition.

**What this means for Oregon's proposed DIDMCA opt-out (HB 4116):**

- Oregon's opt-out bill is subject to the same legal deficiency as Colorado's: It purports to apply to all loans made to Oregon consumers, not just to loans made by Oregon banks, or banks with key lending operations in Oregon. This is not what Congress authorized.
  - In fact, Oregon's bill goes even further than Colorado's, purporting to apply to any loan if an Oregon-based bank account is used to make a payment on the loan.
- States have largely chosen not to opt-out of DIDMCA for the last forty years (those that did early on, opted back in)—because a DIDMCA opt-out does not accomplish what Oregon and Colorado think it does.
- Other states that in recent years considered DIDMCA opt-outs have pulled their bills, observing the litigation surrounding Colorado's attempt, which has lasted nearly two years, while the law remains enjoined.
- Passing HB 4116 will likely lead to a similarly-protracted and resource-draining parallel legal battle.

**Key legal filings included with this letter:**

AFSA, AFC and NAIB submit the following key legal filings from the Colorado DIDMCA opt out litigation to the Committee:

- The June 18, 2024 Order Granting Motion for Preliminary Injunction of Judge Daniel D. Domenico of the United States District Court for the District of Colorado in *National Association of Industrial Bankers; American Financial Services Association; and American Fintech Council v. Philip J. Weiser and Martha Fulford*, 24-cv-00812-DDD-KAS. This order enjoined Colorado from enforcing its DIDMCA opt-out law against out-of-state, state banks that do not "make loans" in Colorado, that is, that do not have lending operations in the state of Colorado as explained in the judge's order – without regard to where the consumer resides or is physically located.
- The November 15, 2024 Plaintiffs-Appellees' Brief of AFSA, AFC and NAIB, submitted to the United States Court of Appeals for the Tenth Circuit. This brief explains the legislative and regulatory background of DIDMCA and the opt-out, and why Congress did not intend for states to be able to regulate *other states'* banks by opting out.
- The 2-1 November 10, 2025 decision of the United States Court of Appeals for the Tenth Circuit in *NAIB v. Weiser*, 24-1293 (10<sup>th</sup> Circuit).
- The December 9, 2025 Petition for Rehearing En Banc filed by AFSA, AFC and NAIB in the Tenth Circuit Court of Appeals.