TO: **Sen. Kathleen Taylor**
Members of Senate Labor & Business Committee

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RE: **Questions from 2/23 Public Hearing on HB 4116**

February 25, 2026

Chair Taylor and Members of the Committee – there were a few follow-up questions raised at Monday's Public Hearing that time did not allow a full vetting of. We worked with our clients to address as much as we could to help inform the Committee and reiterate our request that the significant number of outstanding questions is exactly why an interim conversation is needed on this policy.

Q1. Why are payment processors like Stripe and Square opposing the legislation? Are they making loans to Oregonians that would be impacted by the bill? How would the legislation impact the small businesses who run their payment systems from these platforms?

- These types of companies are concerned about the downstream effects of an expansive interpretation of DIDMCA opt-out that would be exercised by this legislation. This is very likely going to disrupt the critical bank partners that align with our industry, fintechs and other financial services that connect consumers, entrepreneurs and small businesses with affordable access to credit and capital solutions. Examples of these products and services included small consumer loans, working capital for sole proprietors and small businesses, tailored lending solutions to help small businesses manage cash flow and the many processors that integrate financing and lending solutions into their point of sales systems.

Q2. The Colorado litigation around their legislation was mentioned a lot. What is the actual status of that case? Is the opt-out active? Is the case "over" as one proponent testified? What is the cost of the State of Colorado defending that legislation and has Oregon explored what happens if a similar suit is filed in Oregon?

- Colorado enacted opt-out legislation in 2023, but several organizations sued the State. The opt-out continues to be stayed due to litigation pending in the federal court of appeals for the Tenth Circuit. Whether the appeals court takes the case or not, it is all but certain that it will be appealed to the U.S. Supreme Court – and the injunction preventing its implementation would likely remain in effect throughout that process.

- Only the State of Colorado can address how much money has been spent on defending the opt-out, but according to the testimony of one of the plaintiff's attorneys - they have been litigating intensely with the Colorado Attorney General's Office, and the AG office has had four or five of their staff members devoted to this litigation, working very hard on briefing and argument, which has spanned more than two years already. And in addition to the monetary cost, the AG has directed considerable resources away from other issues.

Q3. If there is legal uncertainty surrounding all this, why wouldn't we wait to see what happens so we know what we are dealing with before we opt out?

- The law surrounding the term "made in" is unsettled, and this question is currently pending before the tenth circuit federal court of appeals in connection with Colorado's similar opt-out legislation adopted in 2023. The injunction prohibiting Colorado from moving forward continues to be in place. If enacted, Oregon's opt-out would also be subject to litigation – and most likely this question will only be fully addressed by the U.S. Supreme Court. With so many unanswered questions, moving prematurely will likely result in significant litigation costs.

Q4. How have other states dealt with similar concerns as expressed by proponents of 4116? Are there other alternatives to consider?

- Minnesota, Rhode Island, and Washington, D.C. have all considered DIDMCA opt-out legislation like HB 4116, but they ultimately did not move forward with passage over concerns about reductions in credit access for their residents and the impact on their state banking system.

Q5. Presenters testified that DIDMCA opt out passed in 7 states but six of them reversed course and opted back in. Why did all these states decide this was a bad idea? Shouldn't we understand this history if we are getting ready to repeat it?

- It is difficult to establish why each state made the decision to opt back in after they opted out, but suffice it to say, each came to the conclusion that they were better off under DIDMCA than not.

Q6. There seems to be a lot of confusion about what credit products would be available to subprime and deep subprime if HB 4116 were to pass. What substantially similar credit options would exist for subprime and deep subprime Oregonians if HB 4116 were enacted (eg. regulated, individually underwritten, no fees, no roll-ups, unsecured, no debt collection)?

- If HB 4116 were to pass, credit options available today will decline for the 17% of Oregonians who are considered nonprime and the 45% of Oregonians who have difficulty paying ordinary household expenses (source).

- When credit options narrow for subprime borrowers, evidence shows that they turn to "inferior substitutes," including overdraft and pawn. There is also an increase in household bills becoming delinquent, which can carry high fees, cause service interruptions, and negatively impact credit scores
- There would also be an increase in payday loan usage.
    - Lenders can offer a small payday loan up to $300, which can have a triple digit all-in APR (with the addition of an origination fee). With recent inflationary pressure, $300 does not go very far for the average consumer. According to a CFPB survey, about 40% of respondents said that they had experienced a major car repair over a 12-month period, with the average expense reaching $5,651.
    - Federally chartered credit unions can provide small dollar loans under the Payday Alternative Loan (PAL) program, which allows them to charge APRs in the triple digits, but only six Oregon-headquartered credit unions offered these products in 2024 (last available full-year of data), and combined, they provided 584 PALs, a 12% decrease from the year before.

Q7. There is a lot of confusion about why a credit deficient Oregonian would choose a fintech loan. Some suggested that consumers are preyed upon or tricked into procuring these loans even when better options exist. How do consumers choose fintech loans over other more traditional loans that may have more favorable terms?

- Consumers increasingly shop online for their needs, and that includes financial service needs. The reality is that there are many loan offerings, but not everyone qualifies for every option. Consumers are savvy and seek the lowest price available, but they do not qualify for many options when their credit scores fall below prime.
- The loans under discussion that are impacted by this bill are originated by state-chartered banks (supervised by their state regulator and federal regulators) that work with financial technology firms (licensed by the State of Oregon). Their regulators have the authority to pursue enforcement actions against deceptive practices if they exist.
- While better options (ie lower cost) exist in the marketplace, nonprime consumers often don't qualify for those offerings.
- Financial technology firms can be seen as facilitators, connecting banks with consumers. The banks that work with service providers are regulated by federal agencies, like the FDIC, the Federal Reserve, and their state banking authority. The bank and fintech firm are also required to adhere to applicable federal and state consumer lending laws. This includes the Truth in Lending Act, which requires lenders to include a TILA Box that displays the loan's cost and APR. Lenders not adhering to TILA or violating applicable federal or state consumer lending laws should be held accountable.
- A consumer may choose an alternative loan with higher APRs for a number of reasons, including the fact that it may be their only chance to obtain credit. Fluctuations in income and expenses can be a real problem for Oregonians, making it important for consumers to have the ability to obtain credit to smooth these cycles. If consumers were able to obtain cheaper credit, consumers would do so.

Q8. There appears to be conflicting information about whether high interest loans would continue to be marketed and made to Oregon consumers irrespective of the passage of HB 4116. Is it true that these loans would still be available to Oregon consumers?

- Loans from state-chartered community banks made in conjunction with Oregon licensed fintech service providers would largely disappear should HB 4116 pass. If subprime consumers qualified for lower cost products, they would be using them today.
- Virtually all studies show that when states eliminate credit options, subprime consumers are impacted the most. Typically, they will turn to other available options such as overdraft and pawn - and Oregon would likely see a spike in the use of the payday product. HB 4116 proponents might claim there are other options for some consumers, such as a credit union's PAL loan, or a national bank's personal loan, but if consumers were able to obtain these loans, they would have done so already.

Q9. It has been asserted that fintech loans perpetuate cycles of debt due to balances that can never be paid down. How do fintech loans compare with non-bank lending products with respect to perpetuating debt cycles?

- All loans must comply with the federal Truth in Lending Act (TILA) which provides cost information for borrowers before they take on a loan. Oregon could pursue more detailed disclosures for loans if it felt that consumers would benefit from more information about the loan and its terms and conditions - without eliminating access to these loans altogether. It is important for there to be guardrails protecting consumers. This is why these community banks and financial technology firms must adhere to applicable federal and state consumer lending laws. The Oregon Legislature can consider enacting further guardrails to protect consumers, but eliminating access to credit is not the answer.

Q10. If Oregon opt outs, what is the impact on Oregon state-chartered banks to make or sell loans across state lines? And if this does not apply to Federally-chartered banks, how are we not putting state-chartered banks at a competitive disadvantage?

- Oregon state banks will lose the benefit of the valid-when-made doctrine since it is derived from DIDMCA Section 521. The "valid-when-made" doctrine, provides that if a loan's terms and conditions are legal and enforceable at the time the loan was originated, they remain intact even if the loan is sold or transferred to a different entity in a different state with laws that are more restrictive. If Oregon banks' ability to sell or transfer loans is in question, they will have greater difficulty in managing their balance sheets because purchasers will prefer the certainty of loans originated by national banks and state-charted banks located in states that haven't opted-out. Forced to operate at this disadvantage, significant questions are raised as to why investors would charter a bank in Oregon. Even if they want to locate their bank in Oregon, they would likely pursue a federal charter.

- Outside of the legal uncertainty, there are many questions surrounding the impact on Oregon banks.
- When placed at a competitive disadvantage, a state charter in Oregon becomes far less attractive to investors who may be interested in creating a new bank. Federal charters are exempt from this DIDMCA opt out, and therefore pursuing a federal charter would make the most business sense. Furthermore, Oregon banks may decide to pursue a federal charter in leu of their state charter for the same reasons. It should be noted that the Office of the Comptroller of the Currency (OCC) reports that interest in federal charters is exploding and there are as many charter applications with the OCC this year as there were in the past four years combined.

Q11. If your saying that the banks that are working with these fintechs are engaged in some sort of deception? If they were, wouldn't that be illegal? Have you sent letters to these banks? Have you sent letters to their state regulator? Have you sent a letter to the FDIC?

- Proponents of HB 4116 are rhetorically trying to discredit bank-fintech partnerships by referring to them as "rent-a-bank schemes." By saying this, they are suggesting that banks are "renting" their charters to another party so that party may engage in some sort of deceptive activity. Deceptive practices are prohibited under federal and state law, and regulators at all levels have UDAP authority to pursue those illegal activities. Furthermore, these banks are highly regulated by federal and state authorities that hold them accountable to high standards. If a "rent-a-bank scheme" truly existed, then the OCC, FDIC, Federal Reserve and state banking commissioners would all need to be part of the deceptive plot. This is patently ridiculous on its face.