

April 25, 2023

Senator Robert Rodriguez
Chair, Senate Business, Labor, & Technology Committee
200 E Colfax
RM 346
Denver, CO 80203

Re: HB 1229 – Consumer Lending

Dear Chairman Rodriguez:

I write on behalf of the American Financial Services Association (AFSA)¹ to express our continued concerns with House Bill 1229, which would make drastic changes to Colorado’s consumer lending laws. While the amended version of the bill that passed the House is a step in the right direction and a significant improvement over the draft that was introduced, HB 1229’s proposed changes would create an uneven playing field between state and national banks and contribute to existing credit access issues in the state.

In particular, we are concerned about Section 2 of the amended bill, which would opt Colorado out of the rate preemption provision of the federal Depository Institutions Deregulation and Monetary Control Act (DIDMCA). When first enacted in 1980, DIDMCA leveled the playing field between national banks—which charge rates governed by the National Bank Act, not each state’s law—and state-chartered banks subject to each state’s existing rate cap. These changes brought more competitive balance to industry as a result. As amended, HB 1229 would return Colorado to the multi-tiered credit market between national banks and state-chartered banks that existed prior to DIDMCA and undermine that competitive balance that has been in place for decades since.

Shortly after DIDMCA’s passage, Colorado was among a handful of states that opted out of DIDMCA’s rate preemption.² However, Colorado lawmakers realized the negative effects the opt-out had on access to financial services and in 1994 repealed the state’s opt out of the interest rate preemption provisions to restore competitive balance.³ In fact, every state, with one exception, that initially opted out of DIDMCA subsequently opted back in because of the harmful effects of opting out. Leaving certain segments of the market subject to significant restrictions creates an uneven playing field with the rest of the market and would limit competition in the state for certain companies, leaving consumers with fewer choices and worse off as a result. Additionally, the difference could prove

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

² The Federal Deposit Insurance Corporation (FDIC) recently issued regulations clarifying the DIDMCA interest rate preemption and provided a comprehensive historical view of this provision. This summary rules can be found on the Federal Register at <https://www.federalregister.gov/documents/2020/07/22/2020-14114/federal-interest-rate-authority>

³ See [SB 94-176 / Ch. 272](#).

confusing for consumers who may seek credit at multiple types of financial institutions and see drastically different offers.

Importantly, DIDMCA's federal preemption was also intended to alleviate pressure from the high interest rate environment that existed in the late 1970s. Prior to DIDMCA's passage, interest rates were rising, but some rate caps prevented state-chartered banks from adjusting their own interest rates commensurate with their significantly higher cost of funds. DIDMCA's changes provided relief to prevent market disruptions that could have limited credit accessibility. More than 40 years later, we are in another high interest rate environment and the cost of funds for lenders has risen quickly. Opting Colorado out of DIDMCA at this time would limit flexibility at a time when it is crucial for credit markets.

Given that Colorado consumers may already have difficulty obtaining small dollar credit we respectfully request that you not move forward with HB 1229 at this time. Thank you for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at (202) 469-3181 or mkownacki@afsamail.org.

Sincerely,

A handwritten signature in blue ink that reads "Matthew Kownacki".

Matthew Kownacki
Director, State Research and Policy
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517

cc: Members of the Senate Business, Labor, & Technology Committee