

April 6, 2023

The Honorable Julie McCluskie
Speaker of the House
200 E Colfax
RM 307
Denver, CO 80203

Re: HB 1229 – Consumer Lending

Dear Speaker McCluskie:

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 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 prematurely disrupt ongoing efforts by stakeholders to work directly with the state on credit access issues.

Colorado already has some of the lowest allowed rates in the nation for small dollar loans, and these existing low rates have created credit access issues for borrowers in lower credit tiers. In 2021, the General Assembly authorized the state Attorney General’s Office to study the availability of safe and affordable credit by non-bank creditors in Colorado. In January 2023, the AG’s office released the troubling findings.² The study looked at credit availability in Colorado versus several states without usury limits and found that “for subprime and deep subprime consumers and those with insufficient credit history to generate a credit score, reported small-dollar loans appear to be less available for such consumers in Colorado” than the other states. The study also identified this effect in larger loans and noted: “for consumers in higher-risk credit tiers seeking larger installment loans—credit may be less available in Colorado than it is in states without usury limits.” The loan size may differ, but the similar effect is clear: lower rates mean less credit availability for consumers in lower credit tiers.

AFSA members have been working with the AG’s office to address credit accessibility in the state. These conversations pre-date the release of the study, but the results of the study demonstrate that there is more work to be done and how crucial this work will be for Coloradans. While AFSA members would not likely be directly affected by the changes to alternative charges for loans under one thousand dollars proposed in Section 1 of the amended bill, we cannot support these changes given the existing

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 Financial Health Network, *The Availability of Safe and Affordable Credit From NonDepositories in Colorado*, available at <https://coag.gov/app/uploads/2023/01/Consumer-lending-study-Jan.-2023.pdf>.

credit access issues already present in the state and that this bill would largely shut down stakeholder engagement while progress clearly still needs to be made.

Additionally, 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. 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 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-charted 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, and stakeholders are currently working to address the access issues, we respectfully request that you not move forward with HB 1229 at this time. We believe a six-month hold on the bill would allow more time for stakeholder engagement to generate solutions that ensure there are crucial future sources of non-bank small dollar credit for Colorado borrowers.

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,



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cc:

The Honorable Mike Weissman
The Honorable Javier Mabrey