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January 30, 2025

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

Re: House Bill 2561; Position: Oppose | Information Regarding Lawsuit Challenging
Colorado's DIDMCA Opt-Out Law

Mr. Chair and members of the Committee:

Both the American Financial Services Association (AFSA) and the American Fintech Council (AFC) testified at the January 28, 2025 hearing on House Bill 2561, and submitted written testimony. Outside counsel for AFSA testified at the hearing specifically to inform the Committee about AFSA's and AFC's successful legal challenge to a similar law enacted in Colorado in 2023, and submitted the Colorado federal district court judge's decision, and a relevant legal brief, to the Committee after the hearing.

We—AFSA, AFC, and the National Association of Industrial Bankers (NAIB)—write to provide the Committee with additional information regarding the legal challenge to Colorado's 2023 law (Colo. Rev. Stat. § 5-13-106), which, like HB 2561, purported to “opt-out” from the Depository Institutions and Monetary Control Act of 1980 (DIDMCA).

Like Oregon, Colorado assumed that opting out of DIDMCA meant that Colorado could impose its interest rate caps on loans made by out-of-state, state-chartered banks received by Colorado consumers. In a June 18, 2024 decision, the Colorado federal district court held that Colorado was wrong. Congress only authorized a state DIDMCA opt-out to affect loans “made in” the opting-out state, that is – loans made by a bank with key lending operations in the opting-out state. As a practical matter, this means that a DIDMCA opt-out likely only affects loans made by banks chartered by the opting-out state. It does *not* extend to all loans received by Colorado—or in this case, Oregon—consumers.

Colorado appealed the decision to the United States Court of Appeals for the Tenth Circuit. Oral argument will be held in March. It seems unlikely that the appeals court will rule before the current legislative sessions ends. To avoid 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 Tenth Circuit's ruling before moving forward with HB 2561.

Along with this letter, we provide quick facts and summary points regarding the Colorado DIDMCA opt-out litigation.

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Sincerely,

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

cc: Dan Rayfield, Attorney General

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—even though this is not what Congress permitted states to do.

Legal challenge to Colorado’s DIDMCA opt-out law:

- **March 25, 2024:** Three trade associations whose members are 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.
- **March 18, 2025:** The state has appealed to the United States Court of Appeals for the Tenth Circuit. That court will hear oral argument on Colorado’s appeal in mid-March.
 - Among others supporting plaintiffs, the state banking associations of all 50 states and the District of Columbia filed an amicus brief in support.

What this means for Oregon’s proposed DIDMCA opt-out (HB 2561):

- 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 recently considered DIDMCA opt-outs have pulled their bills, observing the outcome in Colorado.
- We urge the Committee to proceed with caution and avoid the sort of protracted legal battle Colorado has now been engaged in for almost a year.