

April 14, 2026

The Honorable Senator Robert Britto  
Chair, Senate Committee on Commerce  
State of Rhode Island General Assembly

Re: 2026 -- S 2206 (regarding opt out of the provisions of DIDMCA)

Chair Britto and Members of the Committee:

On behalf of the National Association of Industrial Bankers (“NAIB”), we thank you for the opportunity to comment and express opposition to S 2206, regarding opting out of the Depository Institutions and Monetary Control Act of 1980 (DIDMCA).

NAIB represents industrial banks, also known as industrial loan companies (ILCs). Industrial banks play a crucial role in providing innovative financial services and expanding Americans' access to credit. Established in 1910, ILCs were created to offer financial services to working Americans who lacked access to traditional banking. For more than a century, ILCs and, later, industrial banks have increased access to affordable, reliable credit for specific audiences served through affiliate or parent-company relationships. Industrial banks are depository institutions regulated by the Federal Deposit Insurance Corporation (FDIC) and chartered under state law.

Industrial banks are among the safest and soundest banks in the U.S. system and do not create systemic risk. (A comprehensive list of studies documenting the strength of industrial banks and the successful supervision of them by federal and state agencies can be found at <https://www.industrialbankers.org/resources>.) They are subject to all banking regulations, including safety and soundness, data privacy, operational risk, and consumer protection. NAIB champions the innovative financial services provided by its members, expanding access to credit for consumers in Rhode Island and across the country.

Our position of opposition to S 2260 is grounded in our ongoing legal challenge to a similar law enacted in Colorado in 2023 (Colo. Rev. Stat. § 5-13-106), which, like S 2206, “opts-out” from DIDMCA. That challenge, *National Association of Industrial Bankers, et al v. Weiser, et al*, seeks to correct Colorado’s misapplication of what “opting-out” of DIDMCA means.

Like Rhode Island, 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. 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 DMCA-granted rights of *other states'* chartered banks. It simply allows a state to reassert 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, and they are the predominant lenders in Rhode Island.

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

AFSA, AFC and NAIB 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 was 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).

On April 2, 2026, the 10<sup>th</sup> Circuit Court of Appeals issued the following in *National Association of Industrial Bankers, et al v. Weiser, et al*: "The Petition for rehearing En Banc is GRANTED, the court's November 10, 2025 judgment is VACATED, the issuance of the mandate is stayed, and this matter is REOPENED." We believe the briefing will conclude in June, and a hearing may be held in July or August of this year.

The 10<sup>th</sup> Circuit rarely issues a rehearing En Banc. Thus, their decision is significant in signaling that our concerns about the Colorado legislation warrant serious consideration.

If the Tenth Circuit does not ultimately 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 the current legislative session. Colorado is spending substantial resources defending the opt-out in litigation. Therefore, NAIB respectfully requests the Committee to hold further consideration of S 2260 until the appeals process resulting from Colorado's law is completed.

Thank you for your careful consideration of this matter. We are providing quick facts and summary points regarding Interstate Banking and the Colorado DIDMCA opt-out litigation, and links to key legal filings.

Sincerely,



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### **Interstate Banking and DIDMCA**

*Interstate banking rules under the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA)*

#### **A cornerstone of the U.S. banking system**

For more than 40 years, DIDMCA has been an integral part of the U.S. banking system, allowing state-chartered banks to lend nationwide under a single, uniform federal framework, just as national banks do. As Congress intended, this system benefits consumers by expanding choice, increasing competition, and maintaining credit availability and affordability.

Recent actions by the state of Colorado – and similar proposals elsewhere – threaten to undermine the interstate banking system. In 2023, Colorado enacted a law (HB23-1229) exercising its authority to opt itself and its state-chartered financial institutions out of the federal Depository Institutions Deregulation and Monetary Control Act (DIDMCA) of 1980. In doing so, Colorado reasserted its authority over its own state-chartered banks and credit unions as provided. Going forward, Colorado can regulate the interest rates and fees its state-chartered financial institutions may offer to borrowers, wherever those borrowers reside.

However, Colorado has taken the position that its opt-out also allows it to enforce its state-level interest rates and fee caps on loans made by out-of-state, state-chartered institutions to Colorado residents. This directly conflicts with federal interstate banking rules under DIDMCA as well as 40+ years of federal case law authority and regulatory guidance.

Prior to the law's effective date in 2024, NAIB – along with the American Financial Services Association (AFSA) and the American Fintech Council (AFC) – filed a federal lawsuit challenging Colorado's expanded interpretation of the opt-out. The plaintiffs sought to make sure the law was properly enforced and to protect Colorado consumers' access to credit. The litigation is ongoing.

Meanwhile, federal legislation – the [American Lending Fairness Act of 2026](#) – has been introduced to reaffirm the authority of DIDMCA and the ability of state-chartered institutions to operate nationally. [Read NAIB's statements in support of the legislation.](#)

#### **What's at stake?**

This dispute will determine whether Congress’s intent will be preserved and the United States will keep a national credit market that benefits consumers. The alternative is to undermine Congress’s intent and create a fragmented system that raises costs, reduces access to credit, and accelerates consolidation.

### **How will consumers be impacted?**

As policymakers have already heard in debates over proposed interest-rate caps, restricting how credit is priced doesn’t make it cheaper – it makes it less available, especially for consumers who need it most. Because roughly 80 percent of U.S. banks are state-chartered, applying state caps to out-of-state banks would likely accelerate consolidation, with credit migrating to the largest national banks that are not subject to the same constraints.

### **How does DIDMCA work?**

DIDMCA is the legal infrastructure that makes a national credit market possible. Under DIDMCA, loans made by a state-chartered institution follow the rules of the bank’s home state, not the borrower’s state, thus enabling nationwide lending platforms, competitive consumer credit markets, and lower costs through scale and competition.

While DIDMCA allows states to opt out and apply their own rate limits to “loans made in that state,” that phrase has been consistently understood to mean loans made by banks chartered in that state – not loans made by out-of-state banks.

### **What is the Colorado dispute about?**

Colorado has adopted a new and far broader interpretation by claiming authority to regulate any loan to its residents by a state-chartered institution, even when the loan is made by an institution chartered and regulated in another state. Notably, Colorado does not assert such authority over federally chartered institutions, because it has no authority to opt out of the National Bank Act. If allowed to stand, this interpretation would fracture uniform national rules, create a confusing state-by-state patchwork of rate caps, raise compliance costs, and reduce access to credit.

### **Key Milestones & Timeline**

- 1980 – DIDMCA enacted, giving state-chartered institutions parity with national banks for interstate lending.
- 1980–2023 – DIDMCA opt-out understood to apply to loans made by banks chartered in the opting-out state.
- 2023–2024 – Colorado enacts legislation opting out of DIDMCA and attempts to expand it to include loans to Colorado residents made by out-of-state lenders.
- 2024 – National Association of Industrial Bankers, American Financial Services Association, and American Fintech Council challenge Colorado’s law in federal court.
- 2024 - District Court – Plaintiffs obtain a preliminary injunction blocking Colorado from enforcing its erroneously broad interpretation of the opt-out provision against the plaintiffs and their members.
- November 2025 – Tenth Circuit Court of Appeals reverses the injunction in a 2–1 decision, accompanied by a blistering 30 page dissent warning that Colorado’s approach is contrary to federal law, undermines uniform national credit markets, and risks higher costs and reduced access to credit for consumers. NOTE: the preliminary injunction remains in place pending further proceedings.
- December 2025 – Plaintiffs request *En Banc* (full 12 judge) review by the Tenth Circuit.
- *Amicus* briefs filed in support of *En Banc* review:
  - Office of the Comptroller of the Currency (OCC)
  - Federal Deposit Insurance Corporation (FDIC)
  - 20 State Attorneys General

- American Bankers Association and 52 state (and D.C. and Puerto Rico) affiliates
- Bank Policy Institute
- January 2026 – Colorado asks the Tenth Circuit to deny *en banc* review.
- February 2026 – Reps. Davidson and Barr, and Sen. Moreno, respectively, introduce the American Lending Fairness Act to clarify and preserve the limited scope of authority provided to opt-out states under DIDMCA.
- April 2026 – The 10th Circuit grants the plaintiff's request for full En Banc review, with the hearing likely in July 2026.

For more information, including relevant legal filings, visit the American Financial Services Association [DIDMCA Resource page](#).