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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

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| NATIONAL ASSOCIATION OF INDUSTRIAL BANKERS, ONLINE LENDERS ALLIANCE, and AMERICAN FINANCIAL SERVICES ASSOCIATION,<br><br>Plaintiffs,<br><br>v.<br><br>SEAN O'DAY, in his official capacity as Director of Oregon Department of Consumer and Business Services,<br><br>Defendant. | Case No.: 6:26-cv-01201-AA<br><br>FEDERAL DEPOSIT INSURANCE CORPORATION'S MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE TO SUBMIT A MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION |

* Counsel specially admitted per Or. R. 83-4 (Special Admissions – Government Attorneys).

## CORPORATE DISCLOSURE STATEMENT

The Federal Deposit Insurance Corporation is a federal corporation established under 12 U.S.C. § 1811. It has no parent corporation and no publicly held corporation owns 10 percent or more of its stock.

Dated: July 28, 2026

/s/ Michael K. Morelli
Michael K. Morelli
*Counsel for Amicus Curiae*
*Federal Deposit Insurance*
*Corporation*

## CONFERRAL CERTIFICATION

On July 24, 2026, counsel for the Federal Deposit Insurance Corporation ("FDIC") conferred in good faith about this motion with counsel for all parties by separate emails. The FDIC also offered to discuss the motion over the phone at the parties' respective convenience. D. Or. R. 7-1(a)(1). On July 24, 2026, Plaintiffs consented to the FDIC's motion via email. On July 27, 2026, Defendant expressed no position on the FDIC's motion via email.

## MOTION

The FDIC respectfully moves for leave to appear as amicus curiae in this matter for the purpose of filing a memorandum in support of Plaintiffs' Motion for Preliminary Injunction ("Motion"). The proposed memorandum is filed together with this motion.

The FDIC filed this motion in accordance with this Court's July 14, 2026, Scheduling Order noting that amicus briefs in support of Plaintiffs' Motion are due by July 28, 2026. Dkt. No. 22.

## STATEMENT OF INTEREST OF AMICUS CURIAE

The FDIC is a federal agency of the United States established under the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811-1833e ("FDI Act"), and serves as the primary federal regulator for over 2,700 state-chartered insured banks that are not members of the Federal Reserve System. *See* 12 U.S.C. §§ 1817(a), 1819, 1820(b). The FDIC's mission includes maintaining stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex financial institutions resolvable, and managing receiverships. Consistent with these duties, the FDIC routinely acts to encourage and preserve a strong, vibrant, and resilient dual-banking system—a system whose continued success depends on preserving a level playing field between state-chartered and national banks.

The FDIC's responsibilities include administering and enforcing the FDI Act. 12 U.S.C. § 1819(a)(Tenth). This case bears on those responsibilities because Or. Rev. Stat. § 725.015(3) affects the nationwide application of DIDMCA Sections 521 and 525, which have been incorporated into the FDI Act. Because these two provisions lie at the heart of this lawsuit, the FDIC has a substantial interest in helping this Court resolve interpretive disputes about them; especially so when those disputes carry serious and imminent implications for thousands of banks and consumers across the country and unduly frustrate state-chartered banks' ability to "co-exist and compete" with their national counterparts. *See Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 209-10 (2024). Similarly, Plaintiffs' Motion for Preliminary Injunction cites extensively to past FDIC statements regarding Section 525's scope. The attached memorandum supplements Plaintiffs' discussion of these historical materials and contextualizes them within the current dispute.

Therefore, the FDIC seeks leave to appear as amicus curiae to file a memorandum that offers its unique perspective on DIDMCA's statutory interpretation, structure, and application, that supplements the efforts of counsel by drawing attention to DIDMCA's regulatory history, and that assists the Court in understanding and analyzing the effects that Oregon's opt-out endeavor will impose on state banks chartered outside the state but nevertheless subject to the FDIC's regulatory and supervisory authority. *See Funbus Sys., Inc. v. State of Cal. Pub. Util. Comm'n*, 801 F.2d 1120, 1125 (9th Cir. 1986) (observing that amici can help courts by "assisting in a case of general public interest, supplementing the assisting in a case of general public interest, supplementing the efforts of counsel, and drawing attention to law that might otherwise escape consideration" (citation omitted)); *Linthicum v. Wagner*, No. 6:23-cv-01624-AA, 2023 WL 8602152, at *1 (D. Or. Dec. 12, 2023) ("Amicus briefs are frequently welcome . . . concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." (quotation omitted)).

## CONCLUSION

The FDIC respectfully requests that this Court grant it leave to file the attached amicus curiae memorandum in support of Plaintiffs' Motion for Preliminary Injunction.

Dated: July 28, 2026

Respectfully submitted,

/s/ Michael K. Morelli
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## CERTIFICATE OF COMPLIANCE

This brief complies with the applicable word-count limitation under Or. R. 7-2(b) because it contains 652 words, including headings, footnotes, and quotations, but excluding the caption, signature block, exhibits, and any certificates of counsel.

/s/ Michael K. Morelli
Michael K. Morelli, MA Bar No. 696214

**CERTIFICATE OF SERVICE**

I certify that on July 28, 2026, I electronically filed the foregoing document with the U.S. District Court for the District of Oregon by using the CM/ECF system. Counsel of record for all parties will be served by the CM/ECF system.

Dated: July 28, 2026

/s/ Michael K. Morelli
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## GLOSSARY

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|---|---|
| DIDMCA | Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, 94 Stat. 132 (1980) |
| FDI Act | Federal Deposit Insurance Act |
| FDIC | Federal Deposit Insurance Corporation |
| OCC | Office of the Comptroller of the Currency |

## INTRODUCTION

Did Congress empower Oregon to enforce its usury rates against state banks chartered, located, and performing their core lending functions outside the state merely because the borrower "resides in or maintains a domicile" within Oregon's borders? *See* Or. Rev. Stat. § 725.015(3) (enacted as Section 1, subsection 3 of Oregon House Bill 4116). Federal statutory text, structure, context, and purpose show it didn't. Legislative history explains why it didn't. And the only federal district court to address this issue held it didn't. Yet despite all this, Oregon now takes the expansive, atextual, and historically anomalous position that it did.

The Federal Deposit Insurance Corporation ("FDIC") submits this amicus memorandum in support of Plaintiffs' motion for a preliminary injunction because Oregon's interpretation of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA") conflicts with the statute's text, contravenes Congressional intent, strays afield from federal regulatory guidance issued close in time to the statute's enactment, and threatens to undermine the country's dual-banking system.

DIDMCA equalized the ability of state banks and national banks to lend at competitive interest rates and expressly preempted contrary state law. Pub. L. No. 96-221, § 521, 94 Stat. 132, 164-65 (1980) ("Section 521") (codified at 12 U.S.C. § 1831d); *see also* 12 U.S.C. § 85 (setting permissible rates for national banks). But DIDMCA also included a narrow exception allowing states to forgo Section 521's parity provision for "loans made in such State." DIDMCA § 525 (reproduced at 12 U.S.C. § 1831d, "Effective Date" note) ("Section 525"). For the next forty-plus years, the national lending market operated on the understanding that the *bank's* location governed where a loan was "made" for purposes of the statute. *See infra* pp. 11-16 (describing the contemporaneous regulatory understanding of Section 525 and similar provisions).

Oregon's focus on the borrower's residence or domicile flips that historical consensus. In effect, Or. Rev. Stat. § 725.015(3) turns Section 525 into a backdoor for applying Oregon's usury provisions nationwide. That interpretation goes beyond what the state could have enforced before DIDMCA's enactment—e.g., by requiring state banks chartered and located outside Oregon to comply with the state's usury rates so long as (a) the borrower resides or is domiciled in the state and (b) takes some attenuated step related to the consumer lending transaction while "physically present" in Oregon. And if accepted, that view would render Section 521 a nullity not only for Oregon-chartered banks doing business in Oregon, but also for myriad state banks chartered *outside* Oregon and performing their core lending functions *outside* the state.

Oregon can't square this result with DIDMCA's text, structure, context, or purpose. While Section 525 of DIDMCA authorizes a state to opt out of Section 521 for loans "made" in that state, Oregon's approach to where a loan is "made" contravenes DIDMCA's operational framework and is unnecessary to achieve the important-but-targeted federalism interests that motivated Section 525's enactment. Therefore, Plaintiffs rightly argue that Section 525's most natural and historically consistent reading reflects a bank-focused view of where a loan is "made."

The central flaw in Oregon's opt-out attempt can be summarized succinctly. Or. Rev. Stat. § 725.015(3) pushes a capacious view of Section 525 that imbues the word "made" with more heft than Congress intended that provision to bear. In its current form, Oregon's opt-out departs from a decades-long understanding of DIDMCA's text, would unduly frustrate state-chartered banks' ability to compete with national banks, and would impose significant financial and operational burdens on out-of-state banks well beyond any that Congress envisioned. For these reasons and the ones that follow, the FDIC therefore supports Plaintiffs' showing that they will likely succeed on the merits of their statutory challenge.[1]

## STATEMENT OF INTEREST

The FDIC is a federal agency of the United States established under the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811-1833e ("FDI Act"), and serves as the primary federal regulator for over 2,700 state-chartered insured banks that are not members of the Federal Reserve System. *See* 12 U.S.C. §§ 1817(a), 1819, 1820(b). The FDIC's mission includes maintaining stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex financial institutions resolvable, and managing receiverships. Consistent with these duties, the FDIC routinely acts to encourage and preserve a strong, vibrant, and resilient dual-banking system—a system whose continued success depends on preserving a level playing field between state-chartered and national banks.

The FDIC's responsibilities include administering and enforcing the FDI Act. 12 U.S.C. § 1819(a)(Tenth).[2] This case bears on those responsibilities because Or. Rev. Stat. § 725.015(3)

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[1] The FDIC expresses no position on Plaintiffs' Constitutional claim or their ability to satisfy other preliminary-injunction factors. The FDIC also expresses no position on Plaintiffs' request to "advance the trial on the merits and consolidate it with the hearing" on the preliminary injunction. Dkt. No. 15 at 1 (quoting Fed. R. Civ. P. 65(a)(2)).

[2] Following the stock-market crash of 1929 and the resulting Great Depression, Congress created a federal deposit insurance system for eligible banks and formed the FDIC to administer it. *See* 12 U.S.C. §§ 1811, 1819. Later legislation expanded the FDIC's role in the regulation and stabilization of banks. *See, e.g.*, Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (1989). Congress has also conferred independent

affects the nationwide application of DIDMCA Sections 521 and 525, which have been incorporated into the FDI Act. Because these two provisions lie at the heart of this lawsuit, the FDIC has a substantial interest in helping this Court resolve interpretive disputes about them; especially so when those disputes carry serious and imminent implications for thousands of banks and consumers across the country and unduly frustrate state-chartered banks' ability to "co-exist and compete" with their national counterparts. *See Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 209-10 (2024).

## STATUTORY BACKGROUND

Soaring inflation rates during the late 1970s forced the Federal Reserve to raise the interest rates that banks paid for loanable funds, causing market interest rates for borrowers to rise in tandem. *See, e.g.*, 125 Cong. Rec. 30,655 (1979). These escalating interest rates left state-chartered banks on the precipice of financial calamity. The relevant usury cap in certain states "constrained . . . the interest" that state-chartered banks located in these states could charge, "often ma[king] loans economically unfeasible" given the institution's own heightened borrowing costs. *Greenwood Tr. Co. v. Massachusetts*, 971 F.2d 818, 826 (1st Cir. 1992).

At the time, national banks could better weather escalating rates because Section 85 of the National Bank Act empowered them to "charge on any loan . . . made, . . . interest at the rate allowed by the laws of the State . . . where the bank is located, or at a rate [1% higher than the federal discount rate], whichever [is] greater." 12 U.S.C. § 85. As a result, Section 85 expressly preempted conflicting state usury caps, endowed national banks with flexibility to choose

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litigating authority on the FDIC to help the agency in performing these responsibilities. 12 U.S.C. § 1819(a)(Fourth).

between the provision's identified rates, and, following a landmark 1978 Supreme Court decision, authorized national banks to export the interest rate permitted by the laws of the state where they were located when lending to borrowers located in another state, irrespective of the state usury limits in the state where the borrowers were located. *Marquette Nat'l Bank v. First of Omaha Serv. Corp.*, 439 U.S. 299, 313-14 (1978) (holding that a bank is "located" for purposes of section 85 in either the state where it is chartered or in the state where it performs its key loan-making functions, but *not* where the borrower resides).

Though a bedrock of the federal banking system, Section 85 historically gave "advantages to National banks over their State competitors" because state banks did not have similar federal interest-rate exportation authority and did not enjoy access to an alternative federal interest-rate cap. *Id.* at 314 (citation omitted). During the late 1970s, this competitive disadvantage became more "insuperable" and acute. *Greenwood Tr. Co.*, 971 F.2d at 826. Specifically, several states' constitutions included relatively low usury caps that, in at least some instances, applied to both consumer and business borrowing. *See* Pub. L. No. 93-501, 88 Stat. 1557 (1974). As a result, state banks located in these states were "caught in a pinch" because they had to "pay up to 13% for money bought through the Federal Reserve System" at the "Federal funds" market rate but, because of these state constitutional usury restrictions, could not charge borrowers interest above that rate. S. REP. NO. 93-1120, at 17 (1974). Although many banks in these states "continued to make business loans in anticipation that rates w[ould] go down or that the state would take necessary action," they could not "continue this practice over a period of time and remain solvent." *Id.*

Congress acted by passing several interest-rate preemption statutes. Each statute reflected common features: (a) a provision empowering banks to charge heightened interest rates on certain categories of loans coupled with (b) an opt-out mechanism allowing states, at their discretion, to enact legislation negating the statute's effect for loans "made" within their borders.

*First*, Congress passed the Brock Bill of 1974, which permitted state and national banks to charge a temporarily heightened federal rate on business and agricultural "loan[s] made in any State" between the law's effective date and either (a) the sunset date or (b) "the date . . . on which the State enacts a provision of law which prohibits the charging of interest at the rates provided in the amendments made by this title." Pub. L. No. 93-501, § 206, 88 Stat. 1557, 1558 (1974) (expired).

*Second*, Congress passed the Borrowers Relief Act of 1979, which reinstated the Brock Bill's then-expired heightened federal limit on certain business and agricultural loans for national and state banks located in Arkansas. Pub. L. No. 96-104, 93 Stat. 789, §§ 101-02 (1979) (expired).[3] The Borrowers Relief Act also contained an opt-out mechanism, providing that it would only apply "with respect to loans made in any State" until the earlier of (a) the sunset date or (b) "the date . . . on which such State adopts a law . . . that such State does not want the amendments made by this title and the provisions of this title to apply with respect to loans made in such State[.]" *Id.* §107.[4]

[3] Unlike other states, Arkansas had not amended its constitutional interest-rate restrictions by the time the Brock Bill expired. *See* S. Rep. No. 96-364 at 1-3 (1979). So though the statute did not name Arkansas expressly, Congress limited the Borrowers Relief Act's scope to states with constitutional interest-rate caps identical to Arkansas's 10% cap. Borrowers Relief Act § 301.

[4] *See also State Usury Ceilings, Hearing on H.R. 2515 Before the Subcomm. on Fin. Insts. of the Comm. on Banking, Hous. & Urb. Affs.* 96th Cong. 23 (1979) (statement of Rep. Alexander that the opt-out provision was necessary "to qualify for the constitutionality of a law of this type");

*Third*, Congress extended the Borrowers Relief Act by enacting DIDMCA. Originally, the legislation covered business and agriculture loans in all states. *See* 125 Cong. Rec. S15,257, S15,259 (1979) (testimony of Sen. Cochran). But Arkansas's senators also proposed provisions ensuring that interest-rate parity among state and national banks would apply to business, agricultural, and consumer loans. Ultimately, these efforts resulted in Section 521 of DIDMCA, which mirrored Section 85 of the National Bank Act, put state banks on equal footing with national banks vis-à-vis their interest-rate authority, and expressly preempted contrary state laws. 12 U.S.C. § 1831d(a). And consistent with the Brock Bill and the Borrowers Relief Act, Section 525 of DIDMCA included a narrow federalism-based clause allowing states to opt out of Section 521's interest-rate parity provision and deny their chartered banks access to national bank rates. 12 U.S.C. § 1831d (note) (stating that Section 521 will apply until "the date . . . on which such State adopts a law . . . which states explicitly and by its terms that such State does not want this section to apply with respect to loans made in such state").[5]

**ARGUMENT**

Since Congress created the first national banks over 160 years ago, the United States has had a dual-banking system in which banks may choose to be chartered and primarily regulated by either a state or the federal government. *See Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 10

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*see also id.* at 23-24 (statement of Rep. Bethune that his "inspiration" for proposing to amend the legislation to include an opt-out provision stemmed from a federal appellate court decision opining favorably on a similar provision included in the Brock Bill).

[5] At the time, state banks engaged in relatively little interstate lending. *See generally Marquette*, 439 U.S. at 311. For that reason, a state's decision to opt out under Section 525 was generally equivalent to reimposing the state's usury limits on its own state-chartered banks.

(2007). The dual banking system gives each chartering authority the ability to make different policy choices and is a significant contributor to the dynamism of the U.S. banking industry.[6]

Over time, Congress has enacted supplemental-but-essential measures like Section 521 of DIDMCA to ensure that this system endures and that it continues to support competitive equality between national and state-chartered banks. While Section 525 allows a state to opt out of the interest rate parity established by Section 521, Congress limited the opt-out's reach to "loans made in such State." Contrary to the Oregon statute, the historical statutory and regulatory focus on *banks*' activities in the context of interest-rate exportation—buttressed by a common-sense understanding of how loans are "made"—favors reading Section 525 as applying only when the *bank* is located in the opt-out state for purposes of the subject loan.

Allowing a Section 525 opt-out to effectively apply based solely on the borrower's residence or domicile would render the statute's reference to "loans made" so "elastic" and "stretched as to throw into confusion the complex system of modern interstate banking." *Cf. Marquette*, 439 U.S. at 312. It would also contravene the fundamental benefits Congress gave to state-chartered banks located in states that have *not* elected to opt out of Section 521's protections. Most glaringly, Oregon's borrower-focused interpretation would imbue a lone state's opt-out decision with an outsize effect on core operational aspects of the national lending market, e.g., by *curtailing* a non-opt-out state's ability to regulate the interest terms applicable to certain lending arrangements within its historical regulatory authority. DIDMCA intended no

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[6] *See* OCC, National Banks and the Dual Banking System 10 (Sept. 2003), https://www.occ.treas.gov/publications-and-resources/publications/banker-education/files/pub-national-banks-and-the-dual-banking-system.pdf ("[A] separate system of state banks 'allows the states to serve as laboratories for innovation and change.'").

such result; its interest-rate exportation regime sought to keep the national lending market resilient and the dual banking system competitive. *See* 12 U.S.C. § 1831d(a) (establishing interest-rate exportation for banks "[i]n order to prevent discrimination against State-chartered insured depository institutions . . . with respect to interest rates"). As a result, Oregon's Section 525 opt-out would not simply restore the interest-rate regime to the one that would apply in the absence of Section 521; it would effectively override other states' decisions *not* to opt-out of Section 521 for banks located in their borders that lend to Oregon borrowers residing or domiciled in the state. This does not respect federalism, it contravenes it. Therefore, this Court should conclude that plaintiffs will likely succeed on the merits of their statutory challenge.

### I. Statutory Text, Structure, Context, and Purpose All Support Plaintiffs' Interpretation of DIDMCA's Opt-Out Provision.

Section 525 gives states the ability to opt out of Section 521 for "loans made in such State." Pub. L. No. 96-221, 94 Stat. 132 (March 31, 1980). The word "made" is not a term of art in statutory construction and does not have a fixed meaning. *Tyler v. Cain*, 533 U.S. 656, 662 (2001) ("to make" can alternatively mean "to cause to happen," "to cause to exist, occur or appear," "to lay out and construct," and "to cause to act in a certain way"). Accordingly, the term "made" cannot be interpreted "in a vacuum," but must be interpreted in "context" and "with a view to [its] place in the overall statutory scheme." *Id.*

In Section 521 and other provisions where Congress used "made" when discussing loans, its focus was on the lender and its location—not the borrower. *See supra* pp. 4-7. This usage tracks the common understanding of how loans are made, which focuses on the bank's actions. As a Colorado district court noted in preliminarily enjoining enforcement of a similar Colorado statute, "nobody thinks of themselves as 'making a loan' when they borrow money from a family member or put a charge on a credit card." *Nat'l Ass'n of Indus. Bankers v. Weiser*, 737 F. Supp. 3d 1113, 1129 (D. Colo. 2024); *see also id.* at 1129-30 (collecting references to the FDI Act and parts of Title 12 of the U.S. Code that "put the focus on where a loan is 'made' . . . on the lender").

Limiting Section 525's reach to situations where the lending bank is located in the opt-out state also aligns with the historical context in which DIDMCA was enacted. DIDMCA was the culmination of a series of legislative fixes to give state banks parity with national banks in their own states. *See supra* pp. 4-7. These measures focused neither on interstate banking nor on consumer protection. Rather, the legislative history shows that Section 525 was intended only to restore the rights of states affected by Section 521's preemption, should they so choose.[7] A state that chooses to opt out could thereby restore its own usury regime, and banks located in that state would not benefit from the parity with national banks that Section 521 grants those banks when making loans in that state.

Oregon's approach goes further than any other opt-out effort to date, aggrandizing the state's rights at the expense of other states that have chosen a different interest-rate regime. By its terms, Or. Rev. Stat. § 725.015 purports to override parity not only for its own banks, but also for banks located in other states that have purposely preserved Section 521's interest-rate regime—even when all core events related to the consumer lending transaction take place in another state. *See infra* pp. 14-15 (applying Or. Rev. Stat. § 725.015(3) to hypothetical facts).

[7] H.R. Conf. Rep. 96-842, 1980 U.S.C.C.A.N. 298, 308-309 (Mar. 21, 1980) (explaining that "[s]tate usury ceilings . . . will be permanently preempted subject to the right of affected states to override at any time . . . . In order for a state to override a federal preemption of state usury laws provided for in this title the override proposal must explicitly and by its terms indicate that the state is overriding the preemption.").

Nothing in DIDMCA's text (or the broader statutory context) suggests that states, "by opting out of Section 521, can discard the policy of competitive equality for their state-chartered banks *and also for out-of-state, state-chartered banks*." *Nat'l Ass'n of Indus. Bankers v. Weiser*, 159 F.4th 694, 732 (10th Cir. 2025) (Rossman, J., dissenting in part) (emphasis in original), *vacated on reh'g en banc*, 171 F.4th 1203 (10th Cir. 2026). Otherwise, Section 525 would no longer exist as a limited exception to Section 521; rather, it would evolve into a means for empowering any state to effectively dictate the mix of usury policies that govern state banks in other states. That outcome would break "not just" with DIDMCA's text, structure, context, and purpose, "but also common sense." *See Koonwaiyou v. Blinken*, 69 F.4th 1004, 1011 (9th Cir. 2023).

## II. Contemporaneous Federal Regulatory Guidance Supports Plaintiffs' Likelihood of Success on the Merits of Their Statutory Claim.

Plaintiffs' Motion for Preliminary Injunction accurately summarizes contemporaneous regulatory guidance regarding Section 525's interpretation. Dkt. No. 15 at 20-23. Rather than reiterate that summary here, the FDIC supplements it in anticipation of points Oregon may raise concerning these materials and explains why this contemporaneous guidance does not support the state's position.

*First*, Oregon may cite two previously filed amicus briefs in another case where the FDIC expressed a different view toward Section 525.[8] But the FDIC subsequently disclaimed these briefs because they did not reflect the most natural reading of the statute and departed from informal positions the agency expressed closer in time to the statute's enactment. *See Loper*

[8] *NAIB v. Weiser*, No. 24-1293 (10th Cir.), Dkt. No. 115 (FDIC Withdrawal Notice). The FDIC submitted an amicus brief consistent with the views expressed herein on rehearing en banc. *Id.* at Dkt. No. 197.

*Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024) (noting that "interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning").

- In 1983, an FDIC staff attorney advised a state bank that it could "rely on the federal law that incorporates the interest provisions of the state where the bank is located in extending credit to the residents of its state and of other states" in response to a question concerning "loans to citizens of states that have rejected the federal preemption" under Section 525. FDIC Interp. Ltr. No. 83-16, 1983 WL 207393, at *1 (Oct. 20, 1983).
- In 1988, an FDIC Deputy General Counsel opined that while a bank's location alone may not determine where a loan is "made" for purposes of Section 525, the borrower's location is not controlling. FDIC Interp. Ltr. 88-45, 1988 WL 583093, at *2 (June 29, 1988) ("The fact that a state has countermanded under section 525 should not affect the usury preemption of section 521 for a bank not located in that state, so long as the loan is not made in the state that has countermanded."). Similarly, the letter warns that it "would be both confusing and disruptive to the nation's banking system" to force banks to "[r]esort to individual State statutory provisions in order to determine where a loan is made" and would "not result in the equity or the predictability . . . intended when [S]ections 521 and 525 were enacted." *Id.*
- In 1992, the FDIC submitted an amicus brief in *Greenwood Trust Co. v. Massachusetts* opining that "Section 525 clearly does not confer on states that elect to opt out of Section 521 extraterritorial authority to apply their own lending laws to loans made in other states by banks chartered in other states, merely because the borrower happens to be

a resident." FDIC Amicus Br., *Greenwood Tr. Co. v. Massachusetts*, No. 91-2205, 1992 WL 12577410, at *36 (1st Cir. Feb. 27, 1992).

*Second*, Oregon may argue that the relevant regulatory history reveals no consensus regarding Section 525's scope (or that whatever consensus can be discerned merits little persuasive weight). But again, agency interpretations closer to the time of enactment at least have the "power to persuade." *Loper Bright Enters.*, 603 U.S. at 388 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). And contemporaneous regulatory statements from other federal agencies about Section 525 (or other statutes using similar language) align with Plaintiffs' interpretation and the FDIC's historical views:

- In 1986, the Acting General Counsel of the Federal Home Loan Bank Board stated that federally insured savings and loan associations "pursuant to section 522 [an interest-rate provision similar to Section 521], may offer loans to out-of-state customers at interest rates authorized in the state" where they are located, "even if the state where the borrower lives (or where the collateral lies or the loan proceeds are spent) has exercised its 'opt out' authority under section 525, so long as the loan is made in the state where the institution is located." Federal Home Loan Bank Board, Opinion Letter, 1986 WL 290314, at *2 (June 27, 1986).[9]

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[9] In 1989, the Federal Home Loan Bank Board dissolved following passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Pub. L. No. 101-73, 103 Stat. 183 (1989). Congress split the Board's regulatory duties between two new bodies: the Federal Housing Finance Board (now the Federal Housing Finance Agency) and the Office of Thrift Supervision (now merged with the OCC). Presumably, the Federal Home Loan Bank Board's dissolution explains why Westlaw mistakenly attributes the letter to the Office of Thrift Supervision.

- In *Jessup v. Pulaski Bank*, the Eighth Circuit deferred to a 2001 Office of the Comptroller of the Currency ("OCC") opinion letter interpreting Section 731 of the Gramm-Leach-Bliley Financial Modernization Act of 1999 (codified at 12 U.S.C. § 1831u(f)). 327 F.3d 682, 683 (8th Cir. 2003). The statute allowed "an Arkansas bank to charge interest at a rate allowed by the state of any out-of-state bank with a branch office in Arkansas, except when the Arkansas bank has 'made' the loan 'in any State other than [Arkansas].'" *Id.* (quoting 12 U.S.C. § 1831u(f)(2)). The OCC's opinion letter stated that, for purposes of § 1831u(f), "a loan was 'made' by a bank's out-of-state branch if the loan was approved, credit was extended, and loan proceeds were disbursed, out of state." *See id.* at 685. Because the bank discussed in the letter did not operate any branches outside Arkansas, it could charge interest under Alabama's higher and less restrictive interest-rate cap "*without regard to where the borrower reside[d]*." *Id.* (emphasis added).

*Third*, Plaintiffs' interpretation avoids driving an unnecessary wedge between Sections 521 and 525. The FDIC has long stated that a bank's location for purposes of Section 521 aligns with where the bank "makes" the loan. FDIC General Counsel's Op. No. 11, 63 Fed. Reg. 27,282, 27,286 (May 18, 1998) ("FDIC General Counsel's Opinion 11"). For loans by state banks operating interstate branches, the FDIC has defined the circumstances under which a bank may export another state's interest rate even when it operates a branch in the borrower's state. These banks can export that rate unless a bank branch in a single host state performs all "non-ministerial" functions related to a loan. In such cases, the bank "make[s]" the loan in the host state. *Id*. The functions that the FDIC deems relevant for determining where a bank makes a loan in this context are: (1) loan approval ("where the person is located who is charged with making the final judgment of approval or denial of credit"); (2) extension of credit ("the site from which the first communication of final approval of the loan occurs"); and (3) disbursement of loan proceeds ("actual physical disbursal of the proceeds of a loan, as opposed to delivery of previously disbursed funds to the customer"). *Id*. (citing OCC Interp. Ltr. No. 822, 1998 WL 126800). Because these factors determine where a loan is made for purposes of preemptive interest-exportation rights, the same factors should be relevant for determining whether an opt-out under Section 525 applies to avoid that preemption.

Two hypotheticals help show why the bank's location instructs where a loan is "made" and why Congress, in enacting Section 525, avoided using language focused on a borrower's location. Under Or. Rev. Stat. § 725.015(3)(b), a borrower from Pendleton could travel to Washington, negotiate the terms of a consumer finance loan in Washington, get loan approval from the bank in Washington, have credit extended while in Washington, and have the bank disburse funds from Washington—but Oregon would still brand the loan "made" in the state if the borrower agrees to make payment on the loan from an account at an Oregon-based financial institution or trust company. And under Or. Rev. Stat. § 725.015(3)(a), a college student residing in Eugene could start negotiating the terms of a consumer finance loan on their phone in their dorm room, drive home to their parents' house in Idaho to complete the process, have credit extended while in Idaho, have funds disbursed from Idaho, and agree to make payments from their account at an Idaho-based financial institution or trust company—but Oregon would still brand the loan "made" in the state because the negotiation process began in Eugene.

These results defy DIDMCA's text, structure, historical context, and purpose. Section 525 directs that only loans "made" in an opt-out state are subject to the opt-out.

The borrower's "reside[nce]" or "domicile" cannot dictate where a loan is made, even when coupled with some negligible activity related to the lending transaction that happens to involve the borrower. Rather, the primary indicators of where a loan is made turn on the location in which the *bank* performs its core lending-related functions.

*Finally*, Oregon may point to a stray statement in a 2020 FDIC rulemaking that suggested an out-of-state bank could not export interest rates from its home state to a state that has exercised its opt-out right under Section 525. But context shows that the FDIC's statement presumed that it was addressing only loans that had already been deemed "made"—after considering FDIC General Counsel's Opinion's three "non-ministerial" functions—in the opt-out state (versus the bank's home state or some other state where the bank was also located). Fed. Interest Rate Auth., 85 Fed. Reg. 44,146, 44,153 (July 22, 2020); *see generally* FDIC General Counsel's Opinion No. 11, 63 Fed. Reg. at 27,283 (observing that an interstate bank is "located" in both its home state and the states in which it has branches). That rulemaking did not address the factors necessary to determine when a loan is "made" in the opt-out state and did not disturb longstanding FDIC guidance that a bank "makes" a loan where it performs the three non-ministerial functions.

**CONCLUSION**

For these reasons, Plaintiffs are likely to succeed on the merits of their statutory challenge.

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Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with applicable word-count limitations because it contains 4,953 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel, which is less than half of the words allowable under this Court's local rules for non-discovery motions. Or. R. 7-2 (b); *see also* Fed. R. App. P. 29 ("Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief.").

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**CERTIFICATE OF SERVICE**

I certify that on July 28, 2026, I electronically filed the foregoing document with the U.S. District Court for the District of Oregon by using the CM/ECF system. Counsel of record for all parties will be served by the CM/ECF system.

Dated: July 28, 2026

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