COLORADO MORTGAGE
LENDERS ASSOCIATION

MBa

MORTGAGE BANKERS ASSOCIATION

July 13, 2026

Honorable Phil Weiser
Attorney General of the State of Colorado
Office of the Attorney General
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203

RE: Colorado Automated Decision-Making Technology & Chatbot Safety Rulemaking

Dear Attorney General Weiser,

The Colorado Mortgage Lenders Association[1] (CMLA) and the Mortgage Bankers Association[2] (MBA) appreciate the opportunity to provide input to the Colorado Department of Law (the Department) on its Request for Information (RFI) related to the recently enacted Automated Decision-Making Technology Act (ADMT Act). This comment serves as a review of CMLA and MBA's concerns as it relates to the ADMT Act and how the Attorney General (AG) can engage in rulemaking to provide regulatory clarity to covered entities. We welcome any discussion with the Department to determine how these concerns can be ameliorated through rulemaking.

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[1] The Colorado Mortgage Lenders Association (CMLA) was founded in 1956 as the representative voice of mortgage lending in Colorado. CMLA is classified as a 501(c) 6 Not-for-Profit Trade Association. Since its inception, CMLA members have accounted for the vast majority of the mortgage lending in Colorado. Members include residential and commercial mortgage banking companies, individual mortgage loan originators, mortgage brokers, wholesale lenders, savings & loan associations, commercial banks, credit unions, government agencies, non-profit organizations and companies that provide affiliated services to mortgage lenders. CMLA's mission is to use the power of Advocacy, Education, Connection and Community to support our industry in making a positive and sustainable impact on responsible homeownership.

[2] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 275,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,000 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

Many of the issues for the industry are caused by the broad definition of ADMTs under the ADMT Act. The definition of ADMT is so broad that the Legislature was required to explicitly exempt everyday uses of "ADMTs", including calculators and spreadsheets, from this definition. This definition of ADMT is much broader than other laws which regulate similar technology. For example, the regulations implementing the California Privacy Rights Act define ADMT according to its use to replace human decisionmaking rather than aid human decisionmaking.[3] The ADMTs Act definition is far broader and may cause compliance issues given its breadth.

The mortgage industry is reliant on decades-old algorithmic-based systems. These systems include Automated Underwriting Systems (AUSs) and Credit Scoring Models (CSMs) that have been ingrained into the financial services industry and may be required to originate a loan that is eligible to be securitized or guaranteed by the federal government. AUSs used by creditors are developed by Fannie Mae and Freddie Mac (the Government Sponsored Enterprises or "GSEs"), or approved/authorized by the federal government, including the Federal Housing Administration (FHA) and Department of Veterans Affairs (VA). AUSs have been in use in the industry for nearly three decades under the supervision of the Federal Housing Finance Agency (FHFA), FHA, VA, and state agencies for lender use. These are largely tools used to ensure a loan may be securitized by the GSEs, insured by FHA, or guaranteed by VA. Additionally, while these tools may be a major factor in a decision, the lender ultimately decides whether credit is extended or whether the borrower will ultimately benefit from an alternative product prior to a final decision. Any regulations should ensure that creditors can continue to use these tools with minimal disruption.

Our associations request clarifying guidance and regulations to resolve the following industry concerns:

- Ensure that deployers do not need to send duplicate Equal Credit Opportunity Act (ECOA) or Fair Credit Reporting Act (FCRA) and Colorado adverse action notices.
- Create clear guidance for meaningful human review, including an explanation of when providing meaningful human review is not commercially feasible.
- Provide a model pre-decision notice with an attached safe harbor. And,
- Define a strict distinction between developers and deployers and avoiding a situation where a deployer becomes a developer by providing feedback to a model's development.

1. Avoid Requiring Duplicate Adverse Action Disclosures

The RFI asks what sort of sector-specific guidance or illustrative examples would be useful for housing and lending and what guidance would be useful to address how the disclosure requirements interact with federal or state laws.

[3] Cal. Code Regs. tit. 11, § 7001(e) (2026) ("Automated decisionmaking technology" or "ADMT" means any technology that processes personal information and uses computation to replace human decisionmaking or substantially replace human decisionmaking.)

The Department should promulgate regulations stating that for creditors subject to ECOA or FCRA, providing notices pursuant to those laws satisfies the requirements under the ADMT Act and thus that creditors do not need to provide post-decision disclosures.[4] The ADMT Act requires deployers to send a disclosure within thirty days of a decision if the decision was adverse to the consumer. However, lenders are already required to send similar notices to consumers in the form of adverse action notices under ECOA and notices that provide consumers with the opportunity to correct inaccurate information on their consumer credit reports under FCRA.[5] Note that the CO AG has the authority to enforce both ECOA and FCRA.[6] Sending two sets of very similar disclosures will impose undue costs on lenders and lead to consumer confusion.

Under the ADMT Act, deployers must provide an adverse action notice to consumers that includes a plain language description of the decision and the role the ADMT played in the decision, information about the specific ADMT, the types and sources of personal information used, and an explanation of the consumer's rights and how to exercise them. These include the rights to correct incorrect information and for meaningful human review of the decision.

This information is either duplicative of federal disclosures or does not provide new information to the consumer.

- While there is no federal requirement for a plain-language description of the consequential decision, ECOA and FCRA notices are sent in response to a consumer request for credit, or when a consumer's credit report is used in a decision. Under ECOA, this includes a statement of the action taken.[7] In these circumstances, the consumer is already aware of the consequential decision because they applied for a mortgage.

- While the role the covered ADMT played in the decision does not need to be disclosed, the standards for using an AUS are set out in federal agency and investor guidelines. Additionally, the pre-decision notice required by other provisions of the ADMT Act inform consumers about the use of ADMTs by the financial institution.

- There are some similar requirements related to how the consumer can request information about the ADMT. Under ECOA's adverse action notice, the lender must provide contact information to the creditor to address consumer concerns or questions about the denial – which could include questions about ADMT use – and

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[4] Note that FCRA contains provisions that may preempt certain state regulations related to adverse action notices. *See* 15 U.S.C. § 1681t(b)(1)(C) ("No requirement or prohibition may be imposed under the laws of any State with respect to any subject matter regulated under subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer.").
[5] 15 U.S.C. § 1691 et. esq., 15 U.S.C. § 1681 et. esq.
[6] 12 U.S.C. § 5552.
[7] 12 C.F.R. § 1002.9(a)(2) ("A notification given to an applicant when adverse action is taken… shall contain a statement of the action taken…").

the relevant regulators for potential consumer complaints. FCRA's adverse action notice requires creditors to provide their contact information as well.

- There are some similar requirements related to how the consumer can request additional information about the information used in the decision. Under ECOA, a consumer is provided the specific reason(s) or is informed of their right to the specific reason(s) for the denial/adverse action taken. The FCRA adverse action notice is provided when a factor of the credit report is included or is the reason for the adverse action/denial. It is important to note that in mortgage lending, decisions are based on personal information largely provided by the consumer or accessible to the consumer. Denial of credit is based on consumer information provided by or disclosed to the consumer through the application. In this context, providing additional information about the information used – when a consumer provided that information – is redundant.

- Consumers already have the right to correct incorrect personal information used in a credit decision. Consumers have the right to dispute and correct the accuracy of the information used in a credit report under FCRA.[8] Additionally, information outside of the credit report used in the decision is recorded in the mortgage application which the consumer attests to at the initial inquiry and prior to closing. This means the consumer can raise concerns over accuracy throughout the process and prior to denial or adverse action.

- While there is no opportunity for meaningful human review and reconsideration of the consequential decision, as explained below, we believe that in most cases a reconsideration for a mortgage is commercially unreasonable given that the terms initially offered to the consumer may no longer be available because of changes in interest rate and the wider market.

Additionally, ECOA and FCRA notices provide information that is specific to the lending context and is not required by the ADMT Act.

- Creditors must specify the reason(s) an applicant was denied credit.[9] For example, that the applicant's income is insufficient for the amount of credit requested. Importantly, this is an actionable item that provides consumers with the information necessary to improve their credit worthiness and qualify in the future. Nothing in Colorado's post-decision notice provides similar insight.

- Creditors must include the name and address of the creditor and the federal agency that administers compliance for that creditor in an ECOA adverse action notice.[10]

[8] 15 U.S.C. § 1681i, *see also* 12 C.F.R. Part 1022, Appendix K (although a credit report is not an ADMT, it is the source of personal information used to make consequential decisions).
[9] 15 U.S.C. § 1691(d), 15 U.S.C. § 1681m(b).
[10] 12 C.F.R. § 1002.9(a)(2).

Given the above, and to avoid consumer confusion and duplicative work by requiring both ECOA and FCRA adverse action notices and ADMT notices, Colorado should leverage existing notification requirements rather than adding to them. The AG is given the authority to determine what should be included in these notices and is instructed to create sector-specific guidance. The considerations above merit the exclusion in this industry. Also, there is a provision allowing deployers to avoid sending duplicate notices if they are required to provide an adverse action notice under ECOA and FCRA and that information also satisfies the disclosure requirements of this law. This provision shows a clear intent of the Legislature to avoid needlessly sending duplicative information to consumers in the lending context.

Additionally, allowing these notices to be combined is not a viable solution. Currently, creditors are provided a safe harbor from enforcement if they use the model forms provided by the Consumer Financial Protection Bureau (CFPB).[11] Combining notices would lead to creditors losing this protection.

2. **Create Clear Parameters for What is Commercially Reasonable Human Review**

The RFI asks what factors should be considered in determining what human review requirements are "commercially reasonable".

The AG should release guidance and define clear parameters explaining in what context a lender can deny a request for human review because it is commercially infeasible. Deployers must provide consumers with the opportunity for meaningful human review of the decision. Meaningful human review means a review by a person who has the authority, ability, and information to make a different consequential decision than the one suggested by the ADMT. Deployers must only provide an opportunity for review if doing so is commercially feasible, which may not be the case under some scenarios. In the lending context, providing human review is often commercially unreasonable because in most cases the terms initially offered to the consumer may no longer be available given changes in interest rate and the wider market. Additionally, the use of AUSs is often required for the underlying loan to be guaranteed or securitized.

When a consumer applies for a mortgage loan, they are offered an interest rate based on the current market rates. A consumer is then offered a "rate lock" which is the option to lock in that interest rate for a certain period of time, typically from thirty to sixty days. That interest rate lock expires once a borrower is denied terms of credit, with no other opportunity to requalify, or when they choose to remove or end their application. If a consumer requested human review decision the lender may not be able to guarantee the same initial rate offered if there was a new way to qualify. While a lender may choose to re-commit to the original rate if there was an erroneous denial, lenders should not be required

[11] Consumer Financial Protection Bureau, Appendix C to Part 1002 — Sample Notification Forms, available here. ("Proper use of Forms C-1 through C-4 will satisfy the requirement of § 1002.9(a)(2)(i).").

to cover the cost of a new rate lock if the consumer chooses to change what product or terms they seek after a denial.

A human review of the output of an AUS may also be commercially unreasonable because originating a loan without these systems may prevent that loan from being securitized or guaranteed. There are comprehensive federal and investor policies regarding the use of AUSs in the secondary market. It may not be possible to provide such a review because a person cannot modify or override the AUS and then sell that loan.

Additionally, there are extensive operational checks throughout the lending process to ensure accuracy, such as underwriting, consumer attestation of the information provided during application and prior to closing, and numerous quality control processes embedded throughout the loan origination process. Thus, the human review requirement in the ADMT Act may be redundant and the associations feel additional measures would be commercially unreasonable. The AG should release guidance that clarifies when a lender may decline to review a decision.

3. Provide a Model Pre-Decision Notice with an Attached Safe Harbor

The RFI asks what form of notice is most useful to consumers to inform them about the used, what level of detail is most useful, and how rulemaking can help to balance detailed notices that remain comprehensible to consumers.

The AG should provide a model pre-decision notice for widely used ADMTs in the mortgage industry and provide a safe harbor from the pre-decision notice requirements if creditors use the notice. Prior to using a covered ADMT to make a consequential decision, deployers must provide a notice to the consumer that the deployer will use an ADMT to make a consequential decision as well as instructions for how to obtain additional information. Providing a model notice, similar to the model notices for ECOA, will ensure that consumers receive consistent information about technology used in the mortgage industry and lower the compliance burden and liability of creditors.[12]

4. Make a Clear Distinction Between Deployers and Developers

The RFI asks whether the definitions of “developer” and “deployer” are sufficient and if there is guidance that would help to determine whether a company is a “developer” or “deployer”.

The AG should create a clear distinction between deployers and developers. The ADMT Act assigns responsibilities to both the developer and deployers of ADMTs. A developer is a person doing business in Colorado that in part develops a component that is used as a covered ADMT or modifies an ADMT such that it becomes a covered ADMT. MBA supports the distinction between developer and deployer responsibilities. However, CMLA and MBA are concerned that a deployer can become a developer by giving feedback to a third-party

[12] *Id.*

developer on their ADMT that the developer then incorporates. Providing feedback on a product to developers is a common business practice and a developer incorporating that feedback should not turn a deployer into a developer.

Conclusion

Again, CMLA and MBA appreciate the opportunity to provide input on behalf of the mortgage industry. Thank you for considering our views. Should you or your staff have any questions or need further information, please feel free to contact Christine Jensen (cjensen@fairwaymc.com) at CMLA or Liz Facemire, CMB, (lfacemire@mba.org) at MBA.

Sincerely,

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