AFSA
AMERICAN FINANCIAL SERVICES ASSOCIATION

July 13, 2026

Colorado Department of Law
Office of the Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203

Re: Colorado Automated Decision-Making Technology Act (SB 26-189) Pre-Rulemaking Comments

Dear Attorney General Weiser,

On behalf of the American Financial Services Association (AFSA)[1], we appreciate the opportunity to provide comments in response to the Colorado Attorney General's request for informal stakeholder input regarding implementation of Senate Bill 26-189, the Colorado Automated Decision-Making Technology Act (the law). AFSA supports the Attorney General's goal of implementing regulations that protect consumers while providing businesses with clear, practical compliance obligations. However, as enacted, the Colorado ADMT Act imposes requirements that are substantially broader than analogous frameworks and is not sufficiently tailored to avoid duplicating existing federal consumer protection laws and regulations, creating disproportionate burdens for the financial services industry.

The statute's expansive scope and definitions risk capturing routine, risk-based processes that are already subject to comprehensive federal consumer financial laws and regulations, thus creating unnecessary compliance burdens, regulatory uncertainty, and reduced interoperability with existing legal frameworks. We respectfully urge the Attorney General to adopt regulations that clarify and appropriately narrow the statute's application, promote consistency with established ADMT frameworks such as the California Consumer Privacy Act (CCPA) regulations and the GDPR, and recognize the robust federal regulatory regimes already governing financial institutions.

A review of the Covered Domains, the scope of applicable exemptions, and the anticipated impact of key obligations indicate that the Colorado ADMT Act will affect the financial services industry more extensively than any other sector. With key definitions expanding the scope of the law beyond precedents established under frameworks such as GDPR and CCPA, the statute reaches core risk-based processes that are fundamental to the provision of financial products and services. Absent sector-specific regulatory tailoring that appropriately accounts for existing financial regulatory requirements and risk management practices, the financial services sector will face significant compliance challenges. These challenges are likely to necessitate difficult operational and product decisions, with potential downstream effects on the availability and affordability of financial products and services for Colorado residents.

[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 traditional installment loans, direct and indirect vehicle financing, mortgages, and payment cards. AFSA members include national banks and non-bank state licensed financial institutions. AFSA does not represent payday lenders, title lenders, or credit unions.

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REQUESTED FEEDBACK

The CO ADMT Law presents as an industry-neutral consumer protection and privacy law designed to protect consumers against wholly automated and autonomous consequential decision-making, but the law is neither industry neutral nor is it a true ADMT law.

On the contrary, the law disproportionately applies to and negatively affects a variety of financial institutions and potentially hundreds of financial processes, products, and services (including those in consumer retail) by regulating decision-making tools and processes irrespective of their level of automation or autonomy.

At first glance, the Covered Domains include **Education**, **Employment**, **Real Estate**, **Financial Services**, **Insurance**, **Healthcare**, and **Essential Government Services**. Upon review, what's left is Financial Services.

Consider the following:

- **Education.** Applies narrowly to in-state institutions. ADMT use in the industry is likely low.
- **Employment.** Industry neutral but it's a single, narrow area of application and is easily remedied by not using ADMT for employment purposes in Colorado.
- **Real Estate.** Applies to leasing applications (non-financial services) and mortgage & housing lending (financial services).
- **Insurance.** The law does not exempt the insurance industry outright—it provides certain carveouts rather than a blanket exemption. Even accounting for those carveouts, Insurance's practical footprint as a Covered Domain remains comparatively limited.
- **Healthcare.** The law largely exempts the healthcare industry save for a few narrow applications, including financial assistance. While not as egregious as insurance, the healthcare industry is, in reality, a de minimis Covered Domain.
- **Essential Government Services.** Applies to government entities and their private vendors. The volume of private companies affected is likely small. And we are not sure that the AG's authority to enforce Colorado UDAP law against its fellow government agencies is uncertain.
- **Financial Services.** No exemptions. No exceptions. No reasonable remedies. Compliance efforts will cost millions of dollars and negatively affect consumers, the financial industry, and Colorado. Financial services includes thousands of in-scope financial institutions across dozens of various types of firms (e.g., banks, credit unions, broker-dealers, investment advisers, investment companies, thrifts, mortgage companies, consumer finance lenders, fintechs, crypto companies, money transmitters, credit card issuers, and more), both big and small. The potential scope of financial processes, products, and services include deposit and checking accounts, credit cards, mortgages, online banking, home equity lines of credit, personal loans, construction loans, car loans, boat and RV loans, student loans, credit-builder products, small business loans and financing, rewards programs, tiered programs, trust services, private bank services, children's banking products, AI-based investment services, algorithmic trading, claims processing, and more.

The CO ADMT Law is anything but an industry-neutral ADMT law. It is a broad-based financial services regulation disguised as an ADMT law that will have significant negative consequences for federal and state banking, securities, investment advisory, credit union, and consumer financial services law and regulation.

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Section III: Overarching Questions for Informal Input on the ADMT Act

Overarching Questions in AG Document

- ***How can regulations ensure the law is tailored to both prevent consumer harm and not impose overbroad burdens on businesses?***
  - **Clarify** the scope of the law and the definitions of ADMT, Covered ADMT, Materially Influence, and Consequential Decision. Currently, the scope of the law and these definitions dwarf the scope and reach of all analogous ADMT frameworks, including the CCPA and GDPR. The goal of ADMT regulation should be to regulate the use of wholly automated and autonomous decision-making with consequential impacts to consumers, not to overburden businesses and confuse customers regarding routine automated tasks or to layer unnecessary and onerous regulation on top of activities already subject to robust federal regulations, such as the GLBA, FCRA, and ECOA.
  - ADMT, Covered ADMT, and Materially Influence: The AG should **clarify** that a Covered ADMT is an ADMT that requires both automated and autonomous decision-making (without meaningful human involvement). Currently, the definitions of ADMT, Covered ADMT, and Materially Influence would apply to a highly manual, human review process simply because the process involves a single item involving personal data processing and computation that results in a score, prediction, or ranking that may influence decision-making, even human decision-making, and even if the automation represents a small fraction of the overall analysis.
    - In finalizing the CCPA ADMT Regulations, the CPPA itself narrowed the definition of "significant decision" to a formulation limited to the provision or denial of a covered product or service. The final CCPA rules do not extend to the cost, price, or terms of that product or service, and include no second prong analogous to Colorado's covering differentiated pricing or material terms. The Colorado definition's second prong therefore departs from the narrower scope the CPPA itself adopted after extensive rulemaking—further evidence that Colorado's definition is an outlier, not the norm.
  - Consequential Decision: The AG should **clarify** that the second prong of the definition of Consequential Decision does not apply to risk-based credit or lending decisions, such as those routinely made by financial institutions under federal financial frameworks such as GLBA, FCRA, and ECOA–which already provide robust consumer protections. The Regulations should **clarify** that any resulting differences in pricing based on these risk-based determinations will not be subject to the obligations under the law.
  - **Clarify** the pre-use notice requirements to create **interoperability** with the CCPA ADMT Regs, including permitting a consolidated notice as permissible under the CCPA. The Colorado Attorney General should propose draft regulations that are more consistent with the CCPA approach by:
    - expanding the window within which time Deployers might deliver their notices to include additional points of interaction, before the point of collection of personal information, where the notice will be readily available for consumers to encounter it; and
    - specifically authorizing consolidation of multiple disclosures for multiple purposes into a single ADMT notice.

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- Issue financial services sector-specific regulations or guidance recognizing the robust and mature federal consumer financial protection frameworks under the GLBA, FCRA, and ECOA. The GLBA, FCRA, and ECOA and their implementing regulations and guidance, which are overseen and enforced by multiple federal financial regulators (e.g., OCC, FDIC, FRB, CFPB, FTC, SEC, CFTC, NCUA, and FINRA) regulate and protect consumers' personal financial data, including data used in financial decision-making, such as access to financial products and services and credit and lending products. The purpose for the CO ADMT Act—to promote access to Covered Domains and then mitigate disparate treatment within Covered Domains—is already the subject of meaningful and effective regulation, binding upon financial institutions. For example, FCRA and its implementing regulations regulate the collection, use, and furnishing of consumer report information or credit bureau data, including providing rights to consumers who've been denied access to certain financial products or services based on a consumer report to access their personal data, and to make corrections with the consumer reporting bureaus. Additionally, there are numerous anti-discrimination laws and regulations at the federal and state levels that prohibit making certain decisions based on protected characteristics, including under the federal FCRA and ECOA. Additionally, such sector-specific regulations should distinguish between direct and indirect lending, which presents distinct considerations addressed in greater detail below.

- ***What are potential unintended consequences of the law? Can regulations help minimize those unintended consequences?***
  - This law not only cools innovation, but fails to recognize the current state of an industry that has used ADMTs for decades. Resetting the market on how companies may use ADMTs will create industry uncertainty and disruption that far exceeds the law's intended benefit, ultimately harming Colorado businesses and consumers.
  - As drafted, the scope of the statute is overbroad, onerous, and overly burdensome and could lead to several unintended consequences, such as increased prices for products and services, local economic downturn, loss of new economic activity, decreased investment and **innovation**, disproportional impact on small and medium sized businesses, decreased financial services choices and competition, decreased lending and credit options, increased unemployment or underemployment, and more.
  - Overbroad, onerous, and unnecessary state regulations in the ADMT, privacy, or AI spheres are likely to further embolden and strengthen the efforts by some in the federal government to preempt state AI, ADMT, or privacy regulations, including via legislation, regulation, executive action, guidance, or litigation.
  - Yes, regulations and guidance can help. Without legislative amendments, industry has only AG regulations and guidance to help **clarify** and narrow scope, ensure **interoperability**, and create a reasonable, pragmatic framework. Otherwise, industry compliance will vary greatly and consumers and business will suffer.

- ***What elements of the law create the greatest uncertainties for stakeholders?***
  - The scope of the law and the definitions of ADMT, Covered ADMT, Materially Influence, and Consequential Decision. Currently, a plain English reading of the scope and these definitions could lead businesses small and large to scope in hundreds or thousands of processes or activities, not considered to be ADMT under analogous laws,

requiring extensive, costly, and resource intensive legal and compliance programs with little to no additional benefit, and possibly harm, to consumers.
  - Unlike the CCPA or GDPR or dozens of other analogues, the CO ADMT Law does not regulate automated decision-making, it regulates "personal data processing" and "computation" that produces information that is used in any measurable degree to assist in decision-making. Where does a business draw the line? Currently, the lines will be drawn in hundreds or thousands of ways based on size, sophistication, risk-tolerance, legal opinions, and more, creating confusion for consumers. The same is not true under the CCPA or GDPR where a business knows that the law regulates automated processing of personal data without human involvement and consequential decision-making.
  - The second prong of the definitions of Consequential Decision and Adverse Outcome deserve specialized attention with regards to financial services because those areas are highly regulated under the GLBA, FCRA, and ECOA.

- ***Which issues would be best addressed through generally applicable regulations vs those best addressed through sector-specific guidance or examples?***
  - Scope and definitions should be addressed through generally applicable regulations.
  - Adverse outcome disclosures and the second prong of the definitions of Consequential Decision and Adverse Outcome deserve specialized attention with regards to financial services because those areas are highly regulated under the GLBA, FCRA, and ECOA.

- ***Is there research or other evidence that would support the need for specific regulations?***
  - The CO ADMT Law has the broadest scope of any law or regulation globally regulating ADMT. This fact alone is enough evidence to support the need for specific regulations to **clarify** and narrow the law, create a reasonable compliance framework, and ensure **interoperability**.

Additional Overarching Feedback

- ***Scope and Definitions***
  - The law's scope and many of its definitions are broader than analogous laws in the US and abroad, including the CCPA ADMT Regs, CT ADMT Law, GDPR ADMT requirements, and the automated profiling/decision-making provisions of dozens of state consumer privacy laws.[2]
  - No other US ADMT law includes data subject to the GLBA or FCRA. The CO law does not exempt GLBA or FCRA data, imposing additional burdens on financial services, leading to additional compliance obligations on the financial services industry in one state out of 50, a lack of **interoperability** with other state and international laws, and potentially decreased **innovation** in Colorado.
  - The definitions of ADMT, Covered ADMT, and Materially Influence are overbroad and diverge from analogous legal definitions.
    - Other laws define *ADMT* to mean wholly automated personal data processing and computational decision-making that makes significant decisions about

[2] The GDPR and several US state comprehensive consumer privacy laws regulate automated decision-making or "profiling," generally defined as the wholly automated personal data processing and decision-making concerning individuals that results in legal or similarly significant effects, such as access to employment.

consumers without meaningful human involvement. In other words, **ADMT = _automation_ _and_ _autonomy_**. CO does not turn on autonomy. The definition requires only personal data processing, computation, and the use of such computation to "assist" decision-making.

- The definition of *Covered ADMT* does little to narrow scope because *Materially Influence* is defined as a "non de minimis" factor in the decision. In other words, an ADMT is not a Covered ADMT if the ADMT is irrelevant and has no influence on the decision. Even given the law's exceptions, the scope of Covered ADMT is overbroad and without explicit regulatory clarification is likely to include nearly any personal data processing involved in decision-making, such as use of a FICO score by a human in a lending decision or use of an HR screening tool that rejects applicants whose applications lack a basic qualifier for the job, such as over 18 years old, has a bachelor's degree, is willing to relocate, etc.

- **REGULATORY OPPORTUNITY |** Definition of "Consequential Decision." The definition of "Consequential Decision" is overbroad and departs from analogous frameworks, which typically focus on decisions that determine whether a consumer is granted or denied access to specified products or services. In contrast, the Colorado definition includes a second prong that may encompass decisions involving differentiated pricing or terms (e.g., a loan approval at a 20% interest rate rather than 15%). This formulation risks capturing core risk-based pricing practices that are fundamental to the provision of financial products and services. Risk-based pricing is a central feature of established federal consumer financial law frameworks, including the FCRA and the ECOA, which regulate how consumer data is used in determining both eligibility and pricing. By extending the definition of "Consequential Decision" to include routine pricing and terms, the statute risks creating duplicative or inconsistent regulatory obligations and may inadvertently discourage practices that enable broader access to credit. *The Colorado Attorney General should propose regulations that clarify that "Consequential Decision" primarily refers to determinations of eligibility for, or access to, a covered product or service, and that differentiated pricing or terms constitute a consequential decision only where they effectively determine or limit a consumer's ability to obtain the product or service. This clarification would align the rule with existing regulatory frameworks while avoiding overinclusive application to routine, risk-based pricing practices.*
- **REGULATORY OPPORTUNITY |** Servicing and Account Administration. The concern is not limited to pricing at the point of access. The definitions of "Consequential Decision" and "Adverse Outcome" as drafted may also be read to reach any decision or action relating to a Covered Domain, including a decision that "terminates, revokes, or materially reduces or restricts" a product or service the consumer has already obtained, or that affects the "material terms" of an existing relationship. Read according to their plain language, these definitions could extend beyond origination and reach the ongoing servicing of accounts. Absent clarification, routine servicing, loss-mitigation, and collections activities could be treated as consequential decisions whenever a score, model, or other computational output informs the outcome, including decisions such as approving or declining a payment deferral or account modification, determining a hardship or workout plan, changing account terms or status, and prioritizing accounts for collections treatment or repossession referral. Each of these is a decision about a product the consumer already holds and does not determine whether the consumer may access a covered product or service in the first instance. No analogous framework, including the

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CCPA, treats these account-administration decisions as consequential. *The Colorado Attorney General should propose regulations clarifying that "Consequential Decision" and "Adverse Outcome" are limited to determinations of eligibility for, or access to, a covered product or service, and do not extend to decisions concerning the ongoing servicing, administration, loss mitigation, or collections of a product or service the consumer has already obtained.*

- AFSA also requests that the Attorney General clarify that "financial or lending service" (and, relatedly, "consumer") is limited to products and services obtained primarily for personal, family, or household purposes, rather than for a business, investment, or commercial purpose. The Act's definition of "consumer" references only subsection (a) of Section 6-1-1303(6), and it is unclear whether that partial reference includes individuals applying for commercial loans; Section 6-1-1303(6) read as a whole would exclude all commercial contexts. This partial cross-reference risks confusion for businesses trying to comply with the law. Reading "consumer" in the financial context to mean personal, family, or household use would also align with other Colorado and federal "consumer" definitions and reduce the risk of inconsistent application—for example, the Colorado Consumer Credit Code's definitions of "consumer lease" and "consumer loan," and Regulation P's definition of a consumer as an individual who obtains a financial product or service to be used primarily for personal, family, or household purposes.
- Although the financial or lending-service category would be most impactful to financial services, the employment category could create problems as well. AFSA requests that the Attorney General clarify that "employment opportunity" under Section 6-1-1701(6)(b) does not include routine operational, administrative, or workplace management decisions that do not materially affect employment status, compensation, benefits, or eligibility for promotion.

- ***Indirect Auto Finance—Sector-Specific Considerations***
    - The underlying law expressly includes leases or purchases of real property as a Covered Domain, but the finance or lease of personal property is not similarly included. Because the law does not define "financial or lending services," AFSA submits that the Attorney General has the authority to narrowly construe that undefined term to exclude indirect auto finance transactions from the Covered Domains in their entirety.
    - **REGULATORY OPPORTUNITY** | Disclosure Obligations Should Rest with the Dealer, Not the Assignee. To the extent indirect auto finance remains within scope, AFSA submits that the better reading of the notice provisions is that disclosure obligations relating to credit access, pricing, and underwriting should rest with the dealer rather than a subsequent assignee.
        - Analogous to the Risk-Based Pricing Rule under FCRA, the dealer—as the party that interacts with the consumer, receives the credit application, communicates the proposed credit terms, and consummates the retail installment sale—is similarly in the best position to provide, at a minimum, the pre-use notice to consumers under the Act.
        - It would be anomalous for Colorado to accommodate federal notice regimes that place disclosure responsibility on the originating creditor while simultaneously requiring an assignee to provide a separate AI disclosure concerning the same credit decision—precisely the duplicative, potentially confusing disclosure regime that the ECOA/FCRA accommodation in the Act was intended to avoid.

        - From a policy standpoint, where the statutory objective is meaningful consumer notice at the point where credit availability and pricing are established, the dealer is the entity best positioned—and, under analogous federal regimes, already obligated—to provide the pre-use notice at the point where financial and lending services are offered.
        - Because dealers often submit credit applications to multiple assignees, requiring every assignee to provide a pre-use notice could leave a consumer with multiple, overlapping notices—none of which explain the dealer's decision to place the contract with a given assignee—creating more consumer confusion, not less. A similar, if somewhat less pronounced, concern applies to post-adverse-outcome notices provided by assignees.
    - For federally regulated entities, traditional underwriting models that would otherwise qualify as ADMT are already subject to supervision and oversight under existing model risk management guidance—see, e.g., SR 26-2 (issued April 17, 2026 by the Federal Reserve Board, OCC, and FDIC regarding revised Model Risk Management guidance), which replaced SR 11-7 (issued April 4, 2011).
    - With respect to the obligations under Section 6-1-1705, to the extent traditional underwriting models are in scope, it is difficult to see what additional consumer protection purpose is served by layering new notice obligations on top of decades of ECOA- and FCRA-compliant notices. Nothing in the Act suggests the General Assembly found those existing notices deficient.
- ***Pre-Use Notice and Delivery Considerations***
    - AFSA notes, however, that the CCPA's own applicability to financial services is narrowed considerably by its GLBA and FCRA exemptions. The CCPA ADMT Regulations are therefore a useful reference point, but an imperfect analog, and AFSA does not intend the interoperability arguments below to suggest that Colorado's notice regime should mirror the CCPA's in every respect.
    - The Colorado Attorney General requests feedback intended to **promote harmony** and **facilitate interoperability** between the CO ADMT Act and other privacy law frameworks. Accordingly, consideration of California's CCPA ADMT Regulations, and an evaluation of the similarities and differences (and impacts of the same) is appropriate. Moreover, such an analysis will inform opportunities to design regulations that both **promote consumer rights** AND **facilitate efficient and expeditious compliance**. Finally, such an analysis reveals opportunities (and informs solutions) to **clarify ambiguities**.
    - <u>CA CCPA ADMT Regulations</u>. The CCPA ADMT Regulations are broad and flexible with respect to potential implementation given their acknowledgement of the various operational considerations that may effect delivery and contents of the Pre-Use Notice. While the Pre-Use Notice under the CCPA must "be presented prominently and conspicuously to the consumer,"[3] that presentation of the Pre-Use Notice may occur at any time "at or before the point when the business collects the consumer's personal information that the business plans to process using ADMT."[4] For instance, "a business may provide a Pre-Use Notice in its Notice at Collection,"[5] though such presentation is

[3] See Section 7220(b)(2) of the CCPA Regulations.
[4] *Id.*
[5] See Section 7220(a) of the CCPA Regulations.

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not mandated. The CCPA Regulations require only that the Notice at Collection "shall be made readily available where consumers will encounter it at or before the point of collection of any personal information."[6]

- Furthermore, with respect to the contents of the Pre-Use Notice, while the notice must "inform the consumers about the business's use of ADMT and consumers' rights to opt-out of ADMT and to access ADMT,"[7] the CCPA ADMT Regs acknowledge that, from an operational perspective, a business' use of ADMT may be multiple and not just singular; in other words, a business may:
  - use a single ADMT for multiple purposes;
  - use multiple ADMTs for a single purpose; or
  - use multiple ADMTs for multiple purposes.[8]
- Given the above flexibility, a business may provide a Pre-Use Notice at any number of consumer interactions (so long as the notice is provided at or before the collection of personal information) and the business may utilize a single, consolidated Pre-Use Notice to address a variety of uses and circumstances.
- <u>CO ADMT Act – Delivery Requirements</u>. The CO ADMT Act, on the other hand, is not as broad and flexible in terms of the operational implementation of the notice requirements, though the Regulations may present opportunities to build that flexibility, consistent with the CCPA ADMT framework, and in a manner that promotes consumer rights.
- While the CO ADMT Act indicates that the Pre-Use Notice must be "clear and conspicuous"[9] and must be "reasonably accessible at points of consumer interaction,"[10] the Act clarifies that a compliant method of presenting the notice would include presentation of the notice "through a link or posting that is reasonably proximate to the interaction or transaction in which a consequential decision may occur."[11]
- AFSA also requests clarification on how the pre-use notice requirement can operate for indirect lenders that receive credit applications through dealers or other retail sellers. As a practical matter, compliance would likely require either (a) the indirect lender's own website to serve as the point of notice, or (b) the dealer to inform the customer that downstream finance sources may use a Covered ADMT in credit decisioning. AFSA asks the Attorney General to confirm which approach (or approaches) satisfies the notice requirement in the indirect-lending context.
- <u>**REGULATORY OPPORTUNITY** | CO ADMT Regulations – Delivery Requirements</u>. Though not explicitly a "just-in-time" notification requirement, it is worth considering whether the General Assembly intended to forgo the flexibility built into the CCPA Regulations, which allow for delivery of notice not only AT collection, but also BEFORE collection. <u>*There is a clear opportunity for the Colorado Attorney General to propose draft regulations that are more consistent with the CCPA approach by expanding the window within which time Deployers might deliver their notices to include additional*</u>

[6] See Section 7012(c) of the CCPA Regulations.
[7] See Section 7220(a) of the CCPA Regulations.
[8] See Section 7220(e) of the CCPA Regulations.
[9] See Section 6-1-1704(1) of the CO ADMT Act.
[10] See Section 6-1-1704(2) of the CO ADMT Act.
[11] *Id.*

points of interaction, before the point of collection of personal information, where the notice will be readily available for consumers to encounter it. Such an approach would create flexibility in a manner that **builds interoperability** with the CCPA framework, **facilitates efficient and expeditious compliance**, and **promotes transparency to consumers**.

- CO ADMT Act – Content Requirements. Unfortunately, with respect to the contents of the notice, while the CO ADMT Act contemplates contents of the notice similar to that required by California, the CO ADMT Act does not acknowledge the variability of circumstances that businesses face when leveraging ADMT. Accordingly, the CO ADMT Act includes no affirmative reference to consolidated notice delivery, failing to address the multiplicity of uses and purposes as contemplated by the CCPA ADMT Regs.
- **REGULATORY OPPORTUNITY** | CO ADMT Regulations – Content Requirements. The absence of overlap between the two frameworks, with respect to these content considerations, presents an opportunity for regulatory **clarity**. *The Colorado Attorney General should propose regulations that adopt the CCPA's approach to consolidation of disclosures into a single ADMT notice.* As discussed above, such an approach would create flexibility in a manner that **builds interoperability** with the CCPA framework, **facilitates efficient and expeditious compliance**, and **promotes transparency to consumers**.

- ***Effective Date and Implementation Timeline***
  - AFSA requests that the Attorney General build a reasonable implementation period into any final regulations. If the AG issues rules in the fall, Deployers will need time to adopt the AG-specified language into pre- and post-decision notices; a phased or delayed effective date would minimize disruption to Colorado businesses and residents alike.
  - AFSA asks the Attorney General to clarify whether it has authority, by rule, to establish a delayed or phased effective date or compliance grace period for these notice requirements.

Section IV: Targeted Questions for Informal Input on the ADMT Act

1. Definitions of "Materially Influence" and Other Terms

- There is little concern that the definitions of ADMT, Covered ADMT, Materially Influence, or Consequential Decision could be interpreted too narrowly. These definitions are the broadest among definitions of similar terms in analogous laws such as the CCPA and GDPR.
- Without clarifying regulations or guidance that purposefully and clearly narrows these definitions, businesses will be left to the plain language of the statutory text and the courts once they are sued or subject to an enforcement action.
- The definition of ADMT does not require the absence of human involvement, which means an ADMT requires neither automation nor autonomy. The current definition of ADMT has no relation to automation or autonomy. ADMT means "technology that processes personal data and uses computation to generate output…that is used to make, guide, or assist a decision, judgment, or determination concerning an individual." If a human processes (via pen and paper) several facts about a consumer, including personal information such as name, address, occupation, annual earnings, debts, and equities, and inputs that information into a computer program that runs

robust, evidence-based, best-in-class, and lawful regression calculations (which could be executed by hand and paper albeit much slower and less accurately) designed to help assess risk in providing the individual a loan, that human has used an ADMT under the CO law. If that human uses the output of those regression analyses in any manner to help make their decision, even if the human consults additional (manually sourced and calculated) data and analyses, the human has used a Covered ADMT. Financial services have used "Covered ADMT" as defined under the CO law since the 1950s to assist in making risk-based credit and lending decisions. And those decisions have been (and remain) subject to rigorous federal regulations under FCRA and ECOA since the 1970s and GLBA since the 1990s. The AG needs to do what it can to align the scope of the law and the definitions of ADMT, Covered ADMT, Materially Influence, and Consequential Decision.

- Regulations should also account for deterministic systems, threshold-based eligibility determinations, and rules-based sorting tools that operate under inflexible, pre-set human rules (e.g., "if A, then B"), where the output is not left to the tool's own judgment. These systems function fundamentally differently from adaptive or predictive models and should not be swept into the same regulatory treatment.
- An "objective indicator" used to determine whether an ADMT Materially Influences a Consequential Decision should be whether the ADMT made the decision automatically and autonomously. In other words, a machine processes personal data, runs calculations, and makes a Consequential Decision without human involvement or oversight.
- The AG should look to the CCPA ADMT Regs, the GDPR, and the automated profiling/decision-making sections of the dozens of US comprehensive consumer privacy laws enacted since the CCPA, and the Colorado Privacy Act AG Regulations concerning profiling, which delineate between solely automated profiling and human involved/reviewed profiling.
- **REGULATORY OPPORTUNITY |** *The Colorado Attorney General should adopt regulations that promote interoperability with existing frameworks, including the CCPA's concept of systems that "substantially replace human decisionmaking," to clarify the meaning of "non-de minimis" within the definition of "Materially Influence."* Specifically, where the CO ADMT Act defines "Materially Influence" to mean that "an ADMT output is a non-de minimis factor that is used in making a consequential decision," the regulations should clarify that an ADMT output is not "non-de minimis" where the output is subject to meaningful human involvement in the decision-making process. For purposes of this clarification, meaningful human involvement should require that a human reviewer:
    - Possesses sufficient understanding of the system's output to interpret its relevance and limitations in the context of the decision, informed by training on the underlying process;
    - Reviews the output and decision together with other relevant information available to the reviewer, without being required to conduct a wholly independent re-adjudication of the decision; and
    - Has the authority to approve, modify, or override the output based on that review, consistent with the CCPA's approach, which does not require that the reviewer actually exercise that authority in every instance.

  Consistent with the above, meaningful human review should not be required where the deployer lacks the authority to review or reconsider the relevant outcome in the first instance, and, where human review is provided, the reviewing methodology need not differ from the methodology underlying the Covered ADMT itself.

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This approach would ensure that the definition of "Materially Influence" appropriately captures decisions that are effectively driven by automated outputs, while excluding processes in which human judgment remains the primary driver of the outcome.

2. Post-Adverse Outcome Disclosure Requirements

AFSA sincerely appreciates the thought the Attorney General has already given to Section 6-1-1704(6), and the clear intent behind it to ease compliance burden for creditors who are already subject to federal adverse-action notice requirements under the ECOA, Regulation B, and, where applicable, the FCRA. We offer the following in that same collaborative spirit, and with genuine gratitude for the opportunity to weigh in before formal rulemaking begins. Our hope is simply that the Regulations make this good intent unmistakably clear in practice. As drafted, Section 6-1-1704(6)(a) allows a creditor's federal notice to satisfy this section's requirements only where that notice "also satisfies" them, and that phrase is not yet defined. We would be grateful if the Attorney General would specify, by regulation, what a federal ECOA/Regulation B or FCRA notice must include to "also satisfy" Section 6-1-1704—so that compliant creditors can rely with confidence on the single, unified notice we believe the Attorney General already intends to permit. Without that additional clarity, we worry creditors will have no reliable way to know, in advance, whether their existing notices qualify, which risks recreating precisely the kind of duplicative, Colorado-specific notice-and-reconsideration process this accommodation appears designed to avoid—along with the additional content, consolidation, human-review, and servicing-scope questions we address throughout the remainder of this letter. We would welcome the chance to discuss this further with your office at your convenience.

- The Act conditions the right to human review of a consequential decision on what is "commercially reasonable." Section 6-1-1705(1)(a)(II). That qualifier—absent from the definition of "meaningful human review" in Section 6-1-1701(15)—reflects a legislative judgment that the availability and scope of review must track operational reality.

- **Mandating human review can undermine, rather than advance, fair lending.** A validated automated underwriting model can be tested for disparate impact, monitored over time, and applied uniformly to similarly situated applicants—consistency that is itself a core fair-lending safeguard. The statutory definition of meaningful human review, by contrast, requires a reviewer who "does not default to the system output," Section 6-1-1701(15)(c)—that is, who exercises independent, subjective discretion. Unstructured human discretion in credit and pricing decisions is a well-recognized source of disparate treatment under ECOA and the Fair Housing Act and a longstanding focus of fair-lending supervision (see, e.g., the FFIEC Interagency Fair Lending Examination Procedures and the OCC's Fair Lending booklet of the Comptroller's Handbook; see also CFPB Supervisory Highlights, Issue 30 (Summer 2023)). A rule that pushes deployers toward routine human override of tested model outputs risks reintroducing inconsistency and bias, producing outcomes that are less auditable and potentially more discriminatory than the automated process they displace—while expanding deployer exposure under Section 6-1-1707 and existing anti-discrimination law.

- **REGULATORY OPPORTUNITY |** <u>Meaning of "Commercially Reasonable" Human Review.</u> <u>*"Commercially reasonable" should be construed to preserve a deployer's ability to rely on a validated, monitored automated process, not to compel broad, case-by-case re-underwriting each time a consumer requests reconsideration of an adverse decision.*</u> The regulations should provide objective criteria—such as documented model validation, ongoing disparate-impact monitoring, and a defined escalation path for consumers who believe an error occurred—for distinguishing when human review is, and is not, required.

- **Human Review and Reconsideration.** The post-adverse-outcome disclosure must inform consumers of their right to request meaningful human review and reconsideration of the decision. The scope of that review right, and the burden it imposes, is a key area for regulatory clarification; an overbroad scope also risks consumer confusion and unnecessary consumer action. Where an automated output supports a decision already governed by comprehensive anti-discrimination and consumer protection frameworks such as ECOA, FCRA, and their implementing regulations, financial institutions have both a legal obligation and a strong operational incentive to ensure the automated determination reflects the same result a properly trained human reviewer would reach. Conferring a right to request human review and reconsideration of such determinations offers consumers little practical benefit, because human review of the same information will predictably yield the same result. The likely effect is to prompt consumers to expend time and effort pursuing a reconsideration process that does not change outcomes, while diverting attention from the meaningful and well-established rights consumers already hold under federal law, including the right under FCRA to dispute inaccurate consumer report information and the right under ECOA to a statement of specific reasons for an adverse action. The regulations should avoid creating procedural rights that add consumer burden and confusion without a corresponding substantive protection.
- **REGULATORY OPPORTUNITY |** Scope of Meaningful Human Review. The Act's standard for meaningful human review is also demanding for financial services providers at scale, requiring a reviewer with situation-specific knowledge, an understanding of the technology informing the output, and review of the underlying materials sufficient to independently overturn the result. Where automated decisioning is used across a high volume of consumer transactions, even a modest rate of reconsideration requests can generate a substantial number of individualized, judgment-based reviews, each of which must satisfy the Act's elevated standard. Absent a workable limiting principle, this obligation imposes significant and potentially disproportionate operational burden without a corresponding consumer benefit, particularly where the underlying decision is objective and already governed by federal fair lending and consumer protection requirements. The Act limits the availability of human review to the extent "commercially reasonable," but that phrase is undefined and its meaning in the financial-services context is unclear. *The Colorado Attorney General should propose regulations that give the "commercially reasonable" limitation concrete meaning for financial services, accounting for the volume of automated decisions, the rate of reconsideration requests, and the resource demands of the Act's heightened review standard, so that the obligation does not impose disproportionate operational burden on high-volume, objective decisioning processes already subject to federal fair lending oversight.* Clarifying this limitation would promote interoperability with the CCPA framework while preserving the consistency and objectivity that automated decisioning is designed to provide.
- Section 6-1-1704(3)(b) requires deployers to provide "a plain language description of the consequential decision and the role the Covered ADMT played in the consequential decision." AFSA asks the Attorney General to confirm that a generic description of how the Covered ADMT is used within the deployer's process is sufficient to satisfy this requirement, and that the description need not be tailored to the individual consumer.
- Section 6-1-1704(3)(b) further requires deployers to provide "instructions and a simple-to-follow process to request additional information about the Covered ADMT and the inputs," including the name of the Covered ADMT, its version number (if applicable), the Covered ADMT developer, and the types, categories, and sources of personal data used, to the extent the deployer receives that information from the developer under Section 6-1-1702. Because many deployers rely on

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multiple Covered ADMTs and developers that are updated from time to time, itemizing each by name is exceedingly onerous to implement. AFSA requests that post-decision notices be afforded the same consolidation flexibility requested above for pre-decision notices, so that deployers using multiple ADMTs or multiple finance sources are not required to individually name each one.

- **AFSA does not see a carve-out for an adverse outcome where a consumer accepts a counteroffer.** As drafted, this would functionally create a new notice category not required under ECOA. AFSA asks the Attorney General to confirm that no notice is required under the Act where the consumer accepts the counteroffer.
- **REGULATORY OPPORTUNITY |** <u>Clarifying the ECOA/Regulation B Notice Accommodation.</u> Section 6-1-1704(6)(a) provides that a creditor who, with respect to a consequential decision involving the offering, denial, pricing, servicing, or other material terms of credit, provides a notice to a consumer under ECOA and its implementing regulations (including Regulation B), and, where applicable, the FCRA, complies with this section's notice and disclosure requirements for the same decision or adverse outcome, provided the federal notice also satisfies this section's requirements. <u>*AFSA is grateful that Section 6-1-1704(6)(a) already reflects the Attorney General's intent to spare creditors a duplicative notice, and we would very much welcome regulations that give that intent full effect—specifically, by clarifying what it means for a federal notice to "also satisfy" this section's requirements, and by confirming that this same accommodation extends to the accepted-counteroffer scenario described above.*</u>
- For consistency, AFSA also requests that deployers exempted from Section 6-1-1306 of the Colorado Privacy Act likewise be exempted from Section 6-1-1705(1)(a)(I) of the Act.

3. Consumer Rights

- The CO ADMT Law should mirror its consumer rights response time frame requirements with those under the CCPA and CCPA ADMT Regulations to ensure **interoperability**. The CCPA requires a business to send an initial response acknowledging receipt of the request to a consumer who has submitted a consumer rights request related to ADMT within 10 days, and the business must finalize the request within 45 days.
- AFSA requests that regulations allow institutions to broadly construe the "commercially reasonable" exemption to deny opt-out requests where automated decisioning was adopted, in significant part, specifically to exclude subjective, differentiated human decision-making, and has operated that way for decades—contributing to efficiency gains, including faster decisions and lower prices for consumers, in credit markets.

4. Consumer Notice Requirements Prior to Use of Covered ADMT

- Above all, AFSA urges the Attorney General to frame these disclosure requirements around practical usefulness to consumers, rather than technical completeness. A notice that is comprehensive but unreadable serves consumers less well than one that is concise and genuinely informative.
- The Colorado Attorney General should propose draft regulations that are more consistent with the CCPA approach by expanding the window within which time Deployers might deliver their notices to include additional points of interaction, before the point of collection of personal information, where the notice will be readily available for consumers to encounter it.

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- The Colorado Attorney General should propose regulations that adopt the CCPA's approach to consolidation of multiple disclosures for multiple purposes, and multiple finance sources, into a single ADMT notice.
- For indirect-lending transactions involving multiple finance sources, AFSA requests that the regulations permit a third party (such as a dealer or other retail seller) to provide the required notice on behalf of multiple finance sources, consistent with similar third-party notice provisions under Regulation B.
- The AG should recognize that the federal ADA and its implementing regulations and guidance already require businesses to offer online products and services and related information in a format reasonably accessible to individuals with disabilities. The AG should defer to the federal requirements.
- The AG should only require businesses to provide required notices and disclosures in English and in those languages in which the business regularly engages and provides the products or services related to ADMT decision-making in the ordinary course of business. The AG should not mandate a specific list of languages.

5. Miscellaneous Additional Topics

- The AG should **clarify** that the definition of "Developer" means an entity that actually develops or creates an ADMT and provides that ADMT to third parties for use in consequential decision-making. Developers should not include entities that white label or resell ADMT developed or created by another entity. The creating entity should be responsible for the Developer obligations. A white labeled reseller should not be required to provide Developer disclosures on its own. The Developer should remain liable for those disclosures, and the intermediary entity can pass along those disclosures.
- AFSA requests that the Attorney General confirm whether, and to what extent, consumer reporting agencies (CRAs) are within the scope of the Act.

Conclusion

The Colorado ADMT Act presents an important opportunity to establish a thoughtful regulatory framework that protects consumers while allowing businesses to continue responsibly using established technologies to provide financial products and services. By clarifying the statute's scope, narrowing key definitions, promoting interoperability with existing state and international frameworks, and recognizing the comprehensive federal regulatory requirements already applicable to the financial services industry, the Attorney General can significantly reduce unnecessary compliance burdens while preserving the law's consumer protection objectives.

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AFSA appreciates the opportunity to provide these comments and welcomes continued engagement throughout the rulemaking process. Should you have any questions or wish to discuss these recommendations further, please do not hesitate to contact us.

Sincerely,

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