October 26, 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) Rules: October 6, 2026 Interim Draft

Dear Attorney General Weiser,

On behalf of the American Financial Services Association (AFSA)[1], thank you for the opportunity to comment on the interim draft rules implementing the Colorado Automated Decision-Making Technology Act, published October 6, 2026. This letter supplements our July and September comments and addresses those provisions of the interim draft that remain of greatest concern to our members.

We thank the Department for the substantial changes reflected in the interim draft. The Department adopted a De Minimis Factor definition built on whether a factor is "not a substantial factor," paired it with an open list of rebuttal evidence, any one item of which may suffice, that includes consistently applied cut-offs, and confirmed that tools used only to summarize, organize, or present information are not considered ADMT. It removed the requirement to treat a consumer's bare assertion of inaccuracy as conclusive, deleted both stays, and replaced the twenty-four-hour and "immediate" response requirements. It removed the requirements to disclose principal reasons, inferences, and scores in the Adverse Outcome disclosure, recognized the creditor's choice between an ECOA adverse action notice and a notice of incompleteness, and allowed Colorado content to accompany a federal notice in a separate supplement. It also gave Deployers flexibility to staff Meaningful Human Review from existing functions, added fraud, cybersecurity, and financial crimes protection, and clarified responsibility in multiparty arrangements. We appreciate each of these changes.

The comments below concern what remains. The Attorney General's authority under the Act is to clarify and implement its requirements, and in several places the interim draft still extends the statute's reach or imposes obligations the statute does not contain. We also respond directly to the two questions the Department posed in its cover letter: a proposed definition of "Financial or Lending Service" (Section 1) and an alternative to the rebuttable presumption of Material Influence (Section 3). Rule references follow the interim draft's numbering.

[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 direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

1. Financial or Lending Service: Proposed Definition (Rule 2.2)

The Department has said it is open to an alternative definition of "Financial or Lending Service" and invited stakeholders to propose one. We respectfully propose the following:

> *"Financial or Lending Service" as used in section 6-1-1701(6)(d), C.R.S., means the extension of credit or a loan or the provision of deposit or checking accounts, in each case offered to a Consumer primarily for personal, family, or household purposes. "Financial or Lending Service" does not include: (a) an extension of credit, retail installment sale, lease, or payment plan offered by a seller or lessor of goods or services, or by an affiliate of that seller or lessor, to facilitate a Consumer's acquisition of that seller's or lessor's own non-financial goods, equipment, or services, whether the arrangement is held by the seller or lessor or by its assignee, whether or not the arrangement carries a finance charge, and whether or not a credit check is used in connection with it; (b) a repayment, settlement, hardship, or workout arrangement for an existing obligation; (c) the servicing of an existing extension of credit, loan, or account; or (d) a decision about a Consumer's eligibility for, or the price or terms of, non-financial goods or services, including a deposit, prepayment, or spending limit required as a condition of service.*

The proposed definition adds a primary-purpose standard, narrows the enumerated services, and excludes several categories of arrangements and decisions. Each change brings the term closer to what the General Assembly is likely to have understood a financial or lending service to be.

The Colorado Consumer Protection Act, the Colorado Uniform Consumer Credit Code, and Regulation P each define consumer financial products and services by reference to a personal, family, or household purpose. Using the same standard here promotes consistent interpretation across the regimes our members already comply with and confirms that commercial and business-purpose credit is outside the definition.

The proposed definition removes "transmitting or exchanging funds" and "check cashing" because, when these transactions are declined, the reason is most often insufficient funds or a fraud or security screen, not a judgment about the consumer's eligibility for a service. Screening of that kind is better addressed through the fraud and security protections in section 6-1-1704(7), C.R.S., than through the Adverse Outcome and Meaningful Human Review framework.

The proposed definition also removes "installment payment plans" as a freestanding category. Any installment plan that extends credit is already captured by "the extension of credit or a loan," so the separate term adds only arrangements that are not credit at all, such as layaway, pay-over-time terms for merchandise, equipment payment plans billed alongside a monthly service charge, and plans to repay an obligation the consumer already owes.

The exclusions address arrangements that are not financial or lending services offered to the consumer as products in their own right. Financing that a seller or lessor provides for its own non-financial goods and services is a term of sale. Sellers routinely assign these contracts, and

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

the exclusion applies whether the contract is held by the seller or its assignee, consistent with how the Colorado Uniform Consumer Credit Code treats a consumer credit sale (C.R.S. § 5-1-301(11)(a)). It also reaches a retailer that sells the goods and originates the contract in its own name before assigning it. The exclusion also should not turn on corporate structure. Many sellers offer this financing through an affiliated entity that holds the required state licenses or registrations, and the consumer experiences a single purchase either way. Repayment, settlement, hardship, and workout arrangements help a consumer resolve an obligation they already have. Treating an offer of a payment plan or hardship relief as a covered Consequential Decision would discourage creditors from offering that relief at scale, which would harm the consumers the Act is meant to help. For the reasons discussed in Section 2, the servicing of an existing extension of credit, loan, or account should likewise be excluded, because servicing administers a product the consumer already holds rather than determining the consumer's access to it. The final exclusion confirms that a seller's decisions about its own non-financial goods and services, such as a deposit required to open a service account, do not become Financial or Lending Service decisions because they consider the consumer's payment history.

We note that some have argued the current definition should be kept because it tracks California's. The same words reach much further in Colorado because of how the Act scopes Consequential Decisions: its Adverse Outcome trigger extends to materially less favorable pricing or terms, not only to the provision or denial of a service. A narrower definition is therefore needed to produce comparable scope. AFSA would also support other primary-purpose formulations in the record that draw the line by the nature of the transaction.

2. Account Servicing, Collections, and the Collections Example (Rule 7.5(D)(1))

Rule 7.5(D)(1) continues to use a bank's referral of a delinquent credit card account to collections as an example of an Adverse Outcome. We reiterate our request that the Department remove it. A collections referral is not a decision about the consumer's access to any enumerated Financial or Lending Service; it is the recovery of a debt the consumer already owes, a foreseeable consequence of default disclosed in the underlying credit agreement. Automated referral models are typically used to reduce, not expand, the number of accounts referred, and treating them as Covered ADMT gives creditors a reason to refer every delinquent account as soon as it becomes eligible.

Moreover, by the time an account becomes delinquent and eligible for referral to collections, any restriction on the consumer's access to credit has resulted from the consumer's default or a separate account-management decision, not from the subsequent collections referral. The referral itself does not deny, terminate, or materially restrict access to a Financial or Lending Service that the consumer otherwise continues to possess. Treating the referral itself as the Adverse Outcome therefore attributes the asserted restriction to the wrong decision.

The example also reflects a broader question that the interim draft leaves open: whether decisions about an account the consumer already holds are Consequential Decisions at all. Section 6-1-1701(3)(b)(I), C.R.S., excludes low-stakes and routine decisions and business processes, including administrative routing and workflow management. Without clarification, the

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

rules could be interpreted to cover 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. Payment extensions illustrate the problem. A creditor's staff decide which segments of customers qualify for an extension and should be offered one, and those human-determined rules are then applied automatically so that every eligible customer is treated the same way. Read together with the presumption in Rule 6.1, the interim draft suggests that because technology executes those rules at scale, each customer is entitled to an Adverse Outcome disclosure and Meaningful Human Review.

The same concern applies to automated decisions designed to benefit consumers, including proactive credit line increases, promotional rate offers, and the use of cash-flow data to extend credit to consumers with thin credit files. Each could trigger the same obligations that apply to an adverse decision and would give creditors reason to pull back from automation that expands access to credit.

We ask the Department to confirm that Consequential Decision and Adverse Outcome reach determinations of eligibility for, or access to, a covered product or service, and do not extend to the ongoing servicing, administration, loss mitigation, or collection of a product or service the consumer has already obtained. We would also urge the Department not to adopt suggestions in the record that any decision to price, restrict, condition, or terminate a service during an existing relationship is a Consequential Decision. If servicing decisions remain in scope, the federal notice accommodation discussed in Section 5 should expressly reach them.

For federally chartered institutions, these concerns have an additional dimension. Nothing in the rules should be construed to impose state-law restrictions that prevent or significantly interfere with the exercise of federally authorized banking powers, including account servicing and collection activities. We therefore ask the Department to make clear that the rules operate subject to applicable federal banking law and preemption principles.

3. Material Influence: An Alternative to the Rebuttable Presumption (Rules 2.2, 6.1, and 6.2)

The Department asked what alternative to the rebuttable presumption would let the parties determine whether an ADMT output was a De Minimis Factor, "outside of the Deployer simply asserting" that it was. Consumer credit offers a practical answer to that question.

The presumption should attach only where the output actually drives the decision. As drafted, Rule 6.1(A) presumes Material Influence whenever an output that "constrains an option set, sets a threshold, or produces a rank, score, classification, recommendation, prediction, or other inference" is reviewed by the decision maker and is consistent with the outcome. Because an accurate tool will generally produce outputs consistent with a correct decision, this trigger would apply most often in cases where the output added the least. We propose:

> *6.1(A). An ADMT output is presumed to Materially Influence a Consequential Decision if it automatically determines eligibility or ineligibility, or otherwise*

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

> *substantially determines the outcome or effectively replaces human judgment in the decision-making process. The fact that an ADMT output is reviewed by the decision maker, is used to screen data made available to the decision maker, or is consistent with the outcome of the Consequential Decision, standing alone, shall not establish a presumption of Material Influence. An ADMT output that applies criteria, thresholds, or rules established in advance by the Deployer, without making an independent automated judgment about the individual, does not establish a presumption of Material Influence.*

The final sentence of this proposal is particularly important for consumer credit. Rule 6.1(B)(2) recognizes a consistently applied cut-off as rebuttal evidence, but only where it reflects "the decision maker's application" of the cut-off. In automated credit decisioning, the cut-off is applied by the system, not a person: a hard delinquency or bankruptcy trigger, or a minimum credit score, that the creditor set in advance. That is a human-determined policy carried out consistently, and it is also the kind of output the Department's own definition of "other inference" in Rule 6.1(C), "any opinion, characterization, or non-objective conclusion reached by the ADMT," does not describe. Rule 6.1(B)(2) should be revised to cover a cut-off or threshold applied by a system as well as by a decision maker, and Rule 6.1(B)(1) should add evidence that the ADMT output did not affect the outcome of the Consequential Decision.

The same principle applies in servicing and collections. Technology that mechanically applies creditor-established delinquency, default, eligibility, routing, or similar objective criteria should not become Covered ADMT merely because the criteria are executed automatically rather than manually. The relevant inquiry is whether the technology generated an independent judgment that affected the outcome, not whether software executed a policy established by the creditor in advance.

Consumer credit also offers a better answer to the self-certification concern than a presumption does. Credit policy is unusually well documented. Written credit policies, model governance and validation records, and decision logs are all available before any individual decision is made, and they show which factors governed an outcome and whether they were applied consistently. A Deployer that relies on that kind of contemporaneous, objective record is not simply asserting that an output was de minimis. We ask the Department to recognize such records expressly as rebuttal evidence.

We also ask the Department to revise the De Minimis Factor definition in Rule 2.2. It should strike "significantly" from "significantly larger role" and recognize that an output is a De Minimis Factor where it did not substantially affect the outcome. It should state that the listed considerations are evaluated under the totality of the circumstances, that no single consideration is dispositive, and that review of an output and consistency between the output and the outcome do not, without more, establish that the output was a substantial factor. It should also remove consideration 6, whether the ADMT processes "a volume, type, or complexity of Personal Data that a decision maker could not reasonably review or replicate independently in the time available." Nearly every credit model meets that description, so the consideration would weigh

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

toward Material Influence in virtually every credit decision regardless of the role the output actually played.

The examples in Rule 6.2 should also be conformed to the standard. The Financial or Lending Services example in Rule 6.2(E)(1) treats a credit union's consistently applied score threshold as Material Influence, which is difficult to reconcile with Rule 6.1(B)(2); at a minimum, it should describe a threshold "set by a human in advance" and explain how the rebuttal applies. The automatic-denial examples in Rule 7.4(B)(2)(d), a felony conviction and a credit score of 580, likewise describe consistently applied cut-offs that the new rebuttal factor would treat as non-material. We ask the Department to add examples confirming that consistently applied objective thresholds, fraud and identity verification screens that precede the decision, and documented independent judgment can establish that an output was a De Minimis Factor. Because Rule 6.2(A) states that the examples "are not intended to serve as the basis for Deployer decisions," we would also ask the Department to give Deployers examples they can rely on.

4. Implementation Timeline (Rule 1.3)

We appreciate the Department's statement that the Attorney General's policy is to "focus on egregious and intentional violations of the law" and to give grace to entities making an effort to comply. A policy statement, however, is not a safe harbor, and it does not give businesses the certainty they need to set priorities, budget, and plan. The final rules are not expected until December 2026, leaving only weeks, and potentially days, between their adoption and a January 1, 2027 effective date. Many Deployers also depend on documentation from Developers to meet their own obligations, and that information will not arrive until Developers know what the final rules require.

We ask the Department to set a compliance date of January 1, 2028 for the rules. If the Department cannot change the effective date, we ask that it commit in writing to a non-enforcement period through that date, and that it codify in Rule 1.3 its stated focus on egregious and intentional violations and the factors it will weigh in deciding whether to pursue a possible violation, including the time between the effective date of a requirement and the possible violation and the business's good faith efforts to comply. This is consistent with the approach California has taken in its privacy regulations.

5. Federal Notices and the Pre-Use Notice (Rule 7.7)

Rules 7.7(A) and (B) now cover adverse action, incompleteness, and risk-based pricing notices and allow Colorado content to be delivered in a supplement with the federal notice. We appreciate this change, which resolves much of our concern about the Regulation B model form. Several issues remain.

The content that the supplement must contain still goes beyond what the statute contemplates. Rule 7.7(A)(1) requires the information in section 6-1-1704(3)(b)-(c), C.R.S., as elaborated in Rule 7.4(C)-(D), including an online request method, an itemized list of the information available, an explanation of each consumer right, and a unified method for exercising them. Section 6-1-1704(6), C.R.S., provides that a creditor that provides notice under the ECOA or the

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

FCRA is not required to provide a separate or duplicative notice. We therefore ask the Department to revise Rule 7.7(A) to provide that a Deployer that provides a compliant ECOA or FCRA adverse action notice or risk-based pricing notice complies with section 6-1-1704(3), C.R.S., and that any supplemental information may be provided in a supplemental disclosure delivered by the same means and at the same time as that notice. At a minimum, the Department should confirm that an unmodified federal notice, delivered with a brief supplement stating that a Covered ADMT was used and explaining how the consumer may obtain additional information and exercise their rights, satisfies section 6-1-1704(3), C.R.S., with no further Colorado content, and that nothing in the rules requires a creditor to add content to a federal notice or model form. The same subsection provides that a creditor is not required to provide a notice or disclosure in a manner prohibited by federal law, and Regulation B limits the disclosures that may appear on the model form. See 12 C.F.R. § 1002.4(d)(1); 12 C.F.R. Part 1002, App. C. A Department-issued model supplement would make the supplemental path easier to use.

Section 6-1-1703, C.R.S., contemplates a pre-use notice that explains how consumers can obtain the additional information described in section 6-1-1704, C.R.S., but the rules do not address how that notice relates to the Adverse Outcome disclosure. Where a Deployer has already provided that information in its pre-use notice, requiring it again in a supplement to the ECOA notice is redundant. We ask the Department to confirm that information provided in a pre-use notice need not be repeated in the Adverse Outcome disclosure or federal-notice supplement. Relatedly, Rule 7.7(D)(1) refers to the notice requirements of section 6-1-1703, C.R.S., the pre-use notice, where the Adverse Outcome disclosure requirements appear in section 6-1-1704, C.R.S., and should be corrected.

Rule 7.7 also does not expressly reach decisions on credit line increase requests, credit line decreases, and other servicing decisions for which a federal adverse action notice is provided, even though section 6-1-1704(6)(a), C.R.S., refers to decisions involving the servicing of credit. We ask the Department to confirm that the accommodation applies to those decisions.

We further ask the Department to confirm that a creditor that satisfies its risk-based pricing obligation through the FCRA credit score disclosure exception is covered by Rule 7.7(A) to the same extent as one that provides a risk-based pricing notice.

Rule 7.7(C) allows FERPA-subject Deployers to deliver notices through the channels FERPA permits. We ask the Department to extend the same logic to creditors by confirming that a notice and supplement delivered consistent with ECOA or FCRA delivery requirements satisfies Rule 7.2. We also ask the Department to confirm that the Colorado disclosure may be delivered by the same party and through the same channel that federal law permits for the corresponding adverse action notice, including by mail together with that notice.

More broadly, we encourage the Department to interpret and apply the rules consistent with the approach the Colorado Privacy Act and the California Consumer Privacy Act take toward personal data and activities governed by the FCRA and the Gramm-Leach-Bliley Act, so that Deployers already subject to those comprehensive federal frameworks are not subject to duplicative or conflicting state obligations.

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

6. Affiliated Entities (Rule 4.3)

We ask the Department to clarify Rule 4.3 for affiliated entities that share a common credit process. In that case, one entity should be able to provide the disclosures, request methods, and Meaningful Human Review on behalf of its affiliates, so that a consumer is not sent to separate processes based on which affiliate holds a license or registration in the consumer's state.

7. Adverse Outcome Disclosure Content and Delivery (Rules 7.2, 7.3, and 7.4)

Rule 7.4(B)(2)(a) now requires a description of the Covered ADMT's role "with specificity," and provides that a statement that the ADMT was used "to automate a review of the Consumer's Personal Data is insufficient," while "automate a review of credit report information and employment verification information" is sufficient. Drawing on those examples, we propose the following language for credit decisions and ask the Department to confirm that a standardized, category-based description of this kind satisfies the requirement:

> *"An automated system that reviewed credit report information and the information in your application was used to evaluate your credit application."*

We also ask the Department to publish model language for common types of credit decisions, which would promote consistency for consumers and reduce uncertainty for Deployers.

Rule 7.4(B)(2)(d) still requires the disclosure to state that an applicant was automatically denied under the Deployer's standards or practices, and its example ("an applicant's credit score of 580 was an automatic denial factor") implies disclosure of the numeric cut-off. The statute does not address automatic denials, and a denial based on a consistently applied cut-off is, under Rule 6.1(B)(2), evidence that the output did not Materially Influence the decision. We ask the Department to remove the requirement. If it remains, the rule should permit a statement that the application did not meet a minimum credit requirement without disclosing the threshold, since publishing exact cut-offs invites gaming and aids reverse engineering of underwriting models, provides little benefit to consumers, and does not affect whether Meaningful Human Review is available.

A separate provision of Rule 7.4(B)(2)(d) addresses Adverse Outcomes resulting from insufficient or incomplete information. Where an application is incomplete and the consumer does not supply the missing information, no decision can be made on the merits, and the Covered ADMT's predictive functions play no role in a file being objectively incomplete. We ask the Department to confirm that pausing or declining an application for incompleteness falls within the statutory exceptions for routine decisions and narrow procedural functions. We appreciate that Rule 7.7(B) recognizes the ECOA notice of incompleteness.

Rule 7.4(D)(2) still requires a single, unified method for requesting additional information and exercising consumer rights. Sections 6-1-1704(3)(b) and (c), C.R.S., call for instructions and an explanation, not a combined mechanism, and we renew our request that the requirement be removed.

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

Rule 7.2(A)(1) now requires "at least one method of communication," but also requires delivery "through all channels through which it typically interacts with the Consumer, even if that requires providing the disclosure through more than one method of communication." Most creditors communicate with consumers by mail, e-mail, text message, telephone, and online or mobile platforms, so this standard requires more methods than the two-method rule it replaced. Consumers do not benefit from receiving the same disclosure through every channel at once. We ask the Department to permit delivery through the channel through which the Deployer primarily interacts with the Consumer. For Deployers that offer financing alongside a broader product or service relationship, the relevant channels should be those used for the financing, not every channel used for the underlying goods or services or by an affiliate. We also renew our request that the Department clarify in Rule 7.3 that a mailed disclosure is delivered when it is mailed, consistent with federal adverse action notices.

8. Access to Personal Data, Data Sources, and Third-Party Instructions (Rules 7.6, 8.2, 8.3, and 8.4)

Rule 8.3(B)(2) gives consumers access to the "final rank, score, classification, recommendation, prediction, profiles, or other inferences" about them and "all ADMT inputs," and Rule 7.6(A)(4) treats profiles and inferences as categories of Personal Data that must be disclosed. Section 6-1-1705, C.R.S., provides a right to the consumer's Personal Data used in the decision; it does not require a Deployer to produce the outputs its models derive. Because neither rule contains a trade secret or security limitation, a score a Deployer may withhold from the Adverse Outcome disclosure under Rule 7.4(B)(4) or Rule 7.8(C) could still be obtained through the access right, and with it the information needed to reverse engineer an underwriting or fraud model, without any corresponding benefit to consumers. We ask the Department to limit Rule 8.3(B)(2) to the underlying Personal Data used in the decision or, at a minimum, to apply the Rule 7.4(B)(4) and Rule 7.8(C) protections to Rules 7.6 and 8.3. We also ask that the security protection reach fraud prevention and authentication programs that reflect industry practice, not only those "required by law," since many institutions use models that combine credit-risk and fraud-prevention functions in a single system.

Rule 7.6(A)(5) still requires Deployers to name each source of Personal Data when known, including original and intermediary sources for data obtained from brokers and aggregators, and now presumes the Deployer knows every source a vendor uses to run a Covered ADMT. The statute calls for the types, categories, and sources of Personal Data, not the names of every entity in a data supply chain, and naming fraud, identity, and data vendors in consumer-facing disclosures could help anyone seeking to map and exploit that supply chain. We renew our request that sources be disclosed by category, consistent with the California Consumer Privacy Act, which requires businesses to disclose the categories of sources from which personal information is collected. In the alternative, a Deployer should be required to identify only the source that supplied the information directly to it, which for most credit data is a consumer reporting agency already named in the FCRA notice, and the knowledge presumption should be removed.

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

Rules 8.2(D)(2), 8.3(C), and 8.4(C) now require a Deployer, within fifteen days, to provide a list of third parties that possess or control the consumer's Personal Data, the categories each holds, and instructions for exercising rights under the Colorado Privacy Act against each of them. The ADMT Act gives consumers rights with respect to the Personal Data that a Deployer used in a Consequential Decision. It does not authorize rules requiring Deployers to catalogue third parties' data holdings or to administer rights under a different statute with a different scope, under which many of those third parties and data types are exempt. We ask the Department to remove these provisions. At a minimum, the correction provision should apply only where the consumer alleges that specific data is inaccurate.

Much of the Personal Data used in credit decisions is consumer report information. The FCRA establishes a comprehensive framework for consumers to obtain and dispute that information, including the reinvestigation duties of consumer reporting agencies and the duties of furnishers, and 15 U.S.C. § 1681t(b) preempts state requirements with respect to those subjects. We appreciate that Rule 8.4(B)(2) now allows a Deployer to direct a consumer to the source of third-party data. We ask the Department to confirm that the access and correction provisions apply to consumer report information only in a manner consistent with the FCRA, and that a Deployer satisfies them by directing the consumer to the applicable FCRA process, so that Deployers are not subject to obligations that conflict with federal law.

9. Meaningful Human Review (Rule 8.7)

Many of our members are highly regulated entities that already operate reconsideration, dispute, and complaint processes for credit decisions, as good business practices and because federal law often requires them. Rule 8.8 allows FERPA-subject Deployers to satisfy the review requirement through their existing processes. We ask the Department to extend the same approach to Deployers whose existing reconsideration, dispute, complaint, or regulatory processes provide a reasonable mechanism for reconsideration, rather than requiring a parallel review system.

We appreciate Rule 8.7(C)(5)(a), which confirms that tools that are not ADMT may assist a reviewer. Rule 8.7(C)(5) still provides that ADMT may not assist. We ask the Department to permit reviewers to use decision-support tools, including validated models used to check a reviewer's work, so long as the human independently evaluates the evidence and retains decision authority.

Rule 8.7(E)(2)(b) now considers "whether the Adverse Outcome deprives a Consumer of a basic human need, including food, shelter, or required medical care." We appreciate the deletion of the presumption that previously attached to this term. We ask the Department to confirm that a financial product's relationship to housing does not, on its own, make its denial the denial of a basic human need, and we would oppose proposals to expand the factor beyond food, shelter, and required medical care. We also ask the Department to retain the cost, capacity, feasibility, and reviewer-availability factors, and to confirm that a Deployer may give appropriate weight to technical feasibility, cost, and its existing regulatory controls. Because Rule 8.7(E)(3) places the burden on the Deployer, the rule should also confirm that evidence that review is technically or

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

financially impossible, or could not change the Adverse Outcome, is sufficient to show that review is not commercially reasonable.

The revised example in Rule 8.7(E)(6) no longer addresses the timing of point-of-sale credit. Point-of-sale financing is decided in seconds, often by several finance sources at once, and a business is not in a position to hold a transaction open while review takes place. We ask the Department to confirm that commercial reasonableness does not require a live reviewer at the moment of an instantaneous credit decision, and that a validated, monitored model paired with a process for the consumer to request reconsideration afterward satisfies the standard.

Validated, monitored credit models have been used for decades because they can be tested for disparate impact and applied consistently to similarly situated applicants, and federal regulators have long viewed unstructured judgmental underwriting as a source of fair lending risk. Rules that push Deployers toward routine human override of tested models risk making outcomes less consistent and less auditable. We encourage the Department to apply the review standard in a way that avoids friction with the fair lending and model risk management expectations our members must already meet. For the same reason, we ask the Department to simplify the categories of review in Rule 8.7(D)(2) into a single standard: a qualified reviewer with authority to change the decision considers the relevant evidence and determines whether the outcome should stand.

Rule 8.7(H) now requires "contemporaneous documentation" of each review in addition to the enumerated fields. Financial institutions already document these decisions through complaint management, underwriting review, servicing, audit, and case management systems. We renew our request that existing business records satisfy Rule 8.7(H) where they reasonably demonstrate the review performed and the outcome reached, and we would oppose proposals to require the full record for every covered decision rather than only when review is requested.

The forty-five-day completion period in Rule 8.7(G) has no extension. We ask the Department to allow an extension for complex requests, modeled on the additional forty-five days available under the Colorado Privacy Act, C.R.S. § 6-1-1306(2)(a), and we would oppose proposals to shorten the review period.

10. Response Timing and Authentication (Rules 7.6 and 8.5)

Replacing the "immediate" and twenty-four-hour requirements was an important change. Rule 7.6(A)(1) now requires a response to a request for additional information within fifteen days, with no extension, and Rules 8.3(C) and 8.4(C) impose the same fifteen-day period for third-party lists. These requests require the Deployer to authenticate the requester where appropriate and assemble decision-specific information, and they involve the same fraud and identity teams that protect against account takeover. We ask the Department to align these periods with the forty-five-day structure used elsewhere in the rules, measured from successful authentication, with an extension for complex requests. We also note that Rule 7.6(A)(6)(a) still describes the required information as "immediately available," which conflicts with the fifteen-day period in Rule 7.6(A)(1) and should be conformed.

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

We also ask the Department to clarify Rule 8.5(G). A Deployer that offers a free authentication method should not be required to reimburse notarization or similar costs when a consumer declines that method and chooses a costlier one.

11. Consumer Communication Standards (Rule 3.2)

Rule 3.2 retains three standards that cannot be applied at scale. Rule 3.2(A)(1) requires communications to consider "the vulnerabilities or unique characteristics" of each individual recipient, which Deployers are not in a position to assess for every consumer. Rule 3.2(A)(3) now requires communications in any language in which the Deployer "has interacted" with a consumer, which would turn a single courtesy interaction in another language into a standing obligation and discourage businesses from offering that courtesy. We ask that the requirement be limited to the languages in which the Deployer provides information in the ordinary course of business. Rule 3.2(A)(5) requires readability "on all devices," which should be replaced with an objective standard that a disclosure be provided in a readable format.

12. Customer Service Chatbots (Rule 9.2(A))

Many of our members use conversational tools to answer account questions, including payment due dates, balances, payoff amounts, and payment arrangements. Rule 9.2(A) names billing questions and purchase status updates as examples of a narrow and discrete topic, but then describes menu-, button-, and rule-based chatbots that "cannot" generate certain outputs, which could be read to mean that a generative tool limited to the same account topics does not qualify. We ask the Department to confirm that a Conversational Artificial Intelligence Service limited by design to account servicing, billing, payment, and transaction questions about a product or service the Consumer holds relates to a narrow and discrete topic, whether or not it uses generative technology, so long as the Operator maintains reasonable controls designed to prevent outputs on the topics described in section 6-1-1710(2)(c) and (2)(d), C.R.S., and on suicidal ideation or self-harm.

Conclusion

AFSA is grateful for the Department's engagement throughout this rulemaking and for the changes already reflected in the interim draft. The recommendations above would complete that effort: adopting a Financial or Lending Service definition that reflects consumer credit as the General Assembly understood it, confirming that servicing and collections are outside the Act, focusing the Material Influence presumption on outputs that actually drive decisions, finishing the federal notice accommodation, clarifying responsibility in point-of-sale financing, keeping derived scores, data supply chains, and third-party obligations within the statute's terms, calibrating Meaningful Human Review to how credit is extended, confirming that account-servicing chatbots address a narrow and discrete topic, and providing a compliance period long enough for businesses to implement the final rules well.

1750 H Street NW, Suite 650, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

AFSA looks forward to testifying at the October 26 hearing. If you have any questions or would like to discuss this further, please do not hesitate to contact me at erayhan@afsamail.org or (805) 501-8873 at your convenience. Thank you for your time and consideration of our comments.



Sincerely,
Elora Rayhan
State Government Affairs
American Financial Services Association
1750 H Street, NW, Suite 650
Washington, DC 20006-5517
erayhan@afsamail.org