



May 16, 2024

Honorable Jared Polis
Governor of the State of Colorado
State Capitol Building
200 East Colfax Avenue, Room 136
Denver, CO 80203

RE: Protect Access to Affordable Housing and Veto SB24-205

Dear Governor Polis,

Our organizations – the Colorado Mortgage Lenders Association¹ (CMLA) and the national Mortgage Bankers Association² (MBA) – write to express deep concerns regarding the Colorado Senate Bill 24-205, which restricts the use and development of artificial intelligence (AI) systems. CMLA and MBA urge you to veto the bill, because it will unintentionally reduce access to affordable mortgage credit in the state.

Though many state legislatures have this year considered similar proposals, Colorado is the first to send a bill to their governor for consideration. Colorado's passage of this bill in the final hours of the state's legislative session stands in stark contrast to that of the

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

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

Connecticut Legislature which, at the urging of Governor Ned Lamont, refrained from passing a rushed end of session bill based largely on the text of SB 24-205. Connecticut made a difficult choice to study the magnitude of the bill's impact and the need to better understand this policy and its implications on multiple sectors of the state economy.³ Indeed, hearing testimony on the bill from the Connecticut Department of Economic and Community Development's Chief Innovation Officer advised caution:

As you know, AI is rapidly evolving and being adopted in every industry. I urge the legislature to be wary of unintended consequences which may slow the ability of CT businesses to evolve on pace with their competitors.⁴

Unfortunately, the version of SB 24-205 you are considering may very well produce just such unintended consequences, and the language has not had sufficient stakeholder input, legislative hearings, or public debate. CMLA and MBA request that you direct the Legislature to provide greater clarity to avoid any unintended consequences to the accessibility of affordable mortgage credit by sending the bill back to legislators with instructions to make improvements in the next session. If, alternatively, you choose to sign it, we implore you to issue a strongly worded statement directing the Legislature to address the bill's shortcomings before the February 1, 2026 effective date.

SB 24-205 leaves many questions unanswered and would create many unintended consequences. It is no small matter that Colorado would become the first state in the nation to legislate on AI, and that role carries with it important responsibilities especially in the absence of specific national AI standards. That is why last week the Federal Housing Finance Agency (FHFA) – the federal government agency with conservator responsibilities for Fannie Mae and Freddie Mac (the GSEs or government sponsored enterprises) –wrote to you and Colorado legislative leaders about the need to preserve their appropriate role as the regulatory authority of the GSEs. The two agencies serve as the overwhelming sources of affordable mortgage credit for Colorado first-time home buyers and low- and moderate-income (LMI) families. The letter provided by FHFA states:

Between 2020 and 2023, the Enterprises advised FHFA that they purchased over 735,000 single-family mortgage loans in Colorado; of these loans, more than 93% were evaluated by an Enterprise AUS. Together, the Enterprises typically purchase over 70% of all single-family mortgages made in the United States annually.

The rushed pace of this legislation did not allow adequate time for similar letters to be sent by the other federal programs that develop AI tools that our members do not own nor manage but upon which they rely to serve LMI borrowers in the state. The Federal Housing Administration (FHA) of the Department of Housing and Urban Development, the Veterans Administration Loan Guarantee program, and the United States

³ https://www.cga.ct.gov/asp/CGABillStatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB2

⁴ <https://www.cga.ct.gov/2024/gldata/TMY/2024SB-00002-R000229-Keefe,%20Dan,%20Commissioner%20designate-DECD-Opposes-TMY.PDF>

Department of Agriculture's Rural Housing Service all play critical roles in the residential real estate finance system, and it is unclear if their operations are fully exempted given the way the Legislature drafted SB 24-205. As you may know, these are not boutique loan programs. In fact, FHA insured more than 16,000 Colorado home loans in 2022 with an average loan balance of \$375,000 (the most recent year the Consumer Financial Protection Agency's Home Mortgage Disclosure Act Data is available⁵).

Additionally, SB 24-205 would create an unlevel playing field based on the type of mortgage lending institution. The language exempts the majority of the depository institutions operating in the state, however it does not afford the same safe harbor to independent mortgage banks (IMBs) who make up 73% of the residential mortgage market share in Colorado and – 81% of those purchase originations serve LMI borrowers.⁶ SB 24-205 will create unnecessary compliance hurdles for the use of key qualifying factors to make lending decisions, such as credit scoring models. Under this bill, consumers and the Attorney General will have to navigate the disclosure of credit scoring models from the developer, the credit reporting agency, and all 2,905 deployers, or IMBs operating in Colorado.⁷

The number of risk assessments required for one system under this bill would create a confusing landscape for consumers and IMBs. Most credit scoring models are proprietary systems, thus the disclosure from the developer may not provide sufficient information for the IMB to make a satisfactory determination with respect to their risk assessment as a deployer. It is important to note that these systems cannot be changed by our member companies who deploy them in serving LMI borrowers. Additionally, disclosures by IMBs under the federal Fair Credit Reporting Act already include information regarding risk-based pricing notices.⁸ Further, the risk-assessment results on these required - and unchanged - credit scoring models not controlled by an IMB may unfairly result in the IMB lacking confidence that they are complying with these new requirements. Should there be an issue within the risk assessment, or an inability to perform the risk assessment due to the developer's lack of detail – the IMB may be forced to disallow the use of credit scoring and regrettably reduce its use of the much-needed LMI products.

Our organizations fear that without resolving these issues with SB24-205 affordable credit opportunities will be unintentionally reduced for credit worthy borrowers in Colorado. Worse, other states will quickly follow and enact their own laws based on this flawed example by embedding these same challenges in their housing markets. For example, California's legislators have been actively considering their own AI consumer

⁵ <https://www.mba.org/news-and-research/research-and-economics/single-family-research/state-mortgage-market-profile>

⁶ https://www.mba.org/docs/default-source/policy/state-relations/2022-imb-data-sheets/colorado-data-sheet---2022.pdf?sfvrsn=1e8d83cc_1

⁷ The number of deployers is provided by the Conference of State Bank Supervisors (CSBS) (2024), Q4 2023 Mortgage Industry Report [Microsoft Excel spreadsheet]. NMLS Resource Center: CSBS. <https://mortgage.nationwidelicencingsystem.org/about/sitepages/reports.aspx> [accessed May 14, 2024].

⁸ 12 CFR Part 1022 Appendix H.

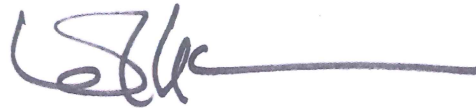
protections and will continue its session through August. It is vital that you communicate that the work on these standards is not complete, and that the unique needs of the real estate finance system – particularly at this difficult time for consumers given a lack of affordable housing supply – need to be fully addressed.

Again, CMLA and MBA respectfully request you veto this legislation and urge the Legislature to fully examine the bill's impact on the affordable housing programs our members use every day to create the dream of home ownership for Colorado families. Thank you for considering our views, should you or your staff have any questions or need further information, please feel free to contact Betty Knecht (betty@cmla.com) at CMLA or Liz Facemire (lfacemire@mba.org) at MBA.

Sincerely,



Kimberly Federspiel
Chairwoman, Board of Governors
Colorado Mortgage Lenders Association



William Kooper
Vice President
State Government Affairs and Industry
Relations