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MORTGAGE BANKERS ASSOCIATION

October 9, 2023

To: Jessica Fortescue, Washington Mortgage Bankers Association

Fr: Liz Facemire and Gabriel Acosta

Re: Background on Industry Use of AI and Potential Impact of Washington State Bill Draft

Thank you for requesting MBA's views on the draft of proposed legislation you are reviewing for the Washington Mortgage Bankers Association. The bill relates to deployers and developers of automated decision tools and is not focused specifically on real estate finance. However, the bill would create significant compliance challenges for mortgage lenders which MBA believes will increase costs without meaningfully benefiting consumers.

Many lenders deploy third-party artificial intelligence and automated decision tools and may not have the ability to either conduct the required risk assessment or verify the representations made by the developer. Examples of automated decision tools that developers must use but do not control:

- Lenders do not create the automated underwriting systems (AUSs) that they rely on to have a loan guaranteed. These systems are developed by the insurer or investor, including the affordable housing programs the federal government, i.e., the Federal Housing Administration, the Veterans Administration, Fannie Mae, and Freddie Mac. For example, Desktop Underwriter (DU) and Loan Prospector (LP) are developed and controlled by the Fannie Mae/Freddie Mac (GSEs), while the Department of Housing and Urban Development has their own AUS for FHA and VA loan products. However, as the deployer, smaller lenders may not have a big enough sample size of loans to verify the GSE's risk assessment or produce their own assessment. Even if a lender found that DU/LP do not comply with this law, they have little say in how these AUSs are developed. The Federal Housing Finance Agency (FHFA) should remain in charge of regulating DU/LP AUSs as the GSE's prudential regulator. Similarly, FHA and VA should internally continue to regulate their systems.

- Lenders have little if any ability to verify the representations made by credit scoring models developers or conduct risk assessments as the deployer of credit scores. Credit scoring models are produced using a proprietary technology and do not have a comparable product. Credit scores are one of the biggest factors in lending decisions. Non-portfolio lenders like independent mortgage banks do not have a choice in the use of FICO as the GSEs, HUD, and the VA require their use.

- The Dodd-Frank Act and other federal mandates have intentionally distanced the lender from the appraisal process. This proposed legislation may unintentionally reverse these policies and would complicate ongoing efforts at the federal level to standardize

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appraisal practices. Lenders should not have to second guess the appraisal of third-party appraisers, who frequently use automatic valuation models (AVMs). The GSE's mandate appraiser independence requirements that prevent lenders from playing a part in the appraisal process.

Thank you, and please let me know if you have questions or need additional information.