



First Hawaiian Bank  
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**Sent via e-mail to: [Comments@FDIC.gov](mailto:Comments@FDIC.gov)**

May 29, 2007

Robert E. Feldman, Executive Secretary  
Attn: Comments  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

**Subject: RIN 3064-AD16; Model Privacy Form**

Dear Mr. Feldman:

Thank you for allowing us the opportunity to comment on the proposed model privacy form. First Hawaiian Bank is a \$12 billion FDIC-regulated institution with 57 branches in Hawaii, 3 in Guam and 2 in Saipan. We offer a full line of banking services including numerous deposit, loan and credit card products.

### **Summary**

While we are in support of providing consumers with clear and understandable information regarding an institution's information sharing practices, we are opposed to the adoption of a new model form. We believe that the proposed model form is not necessarily clearer or more understandable than our current privacy policy and would not justify the substantial burden and increase in costs necessary for its implementation. If, however, a new model privacy form is adopted, we strongly recommend retaining the current safe harbor based on the existing sample clauses to allow those institutions that presently rely on the sample clauses to continue to use their existing policies.

With respect to the proposed model form, we have very serious concerns about the extremely detailed formatting standards provided in the Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act; Proposed Rule (the "Interagency Proposal"). We are especially opposed to the requirement that each page of the model form be printed on a separate piece of paper as this will substantially increase the costs of producing and distributing the form and significantly impact our current operations. We also believe that institutions should be able to include other types of information in the model form as many institutions such as ours currently use their privacy policy to provide other types of relevant and valuable information to their customers.

## **General Comments on the Adoption of the Model Form**

We are fully aware of and support the intent behind the Gramm-Leach-Bliley Act (GLB Act) and other privacy laws and regulations and agree that financial institutions should provide consumers with clear and understandable information regarding the institution's information sharing practices. However, we are strongly opposed to the creation of a new model form because we do not believe it to be an improvement over our existing policy or that it would justify the substantial effort and expense necessary for its implementation.

Like most other financial institutions, First Hawaiian Bank has committed extensive resources toward creating its current privacy policy. We first started to develop and distribute our privacy policy to our customers in 1998, well before financial institutions were required to do so. In the following years and upon the enactment of the GLB Act, we continued to dedicate substantial time, effort and money toward refining our privacy policy to ensure our compliance with legal and regulatory requirements and more importantly, to best provide this valuable information to our customers.

Since then, we have utilized what we believe is already a clear and easily understandable privacy policy for our customers. We have included a copy of our current policy for your reference. We have not received any indication from our customers or from the examiners who have reviewed our policy that it is confusing or inadequate in any way. In addition, our existing policy provides our customers with other information that we feel is appropriate and valuable to them, such as how to protect against identity theft and safeguard their credit information.

While we understand the proposed model form will be a safe harbor and that our use of the form will be optional, our practice is and has long been to conform with any model language or guidance provided by the FDIC whenever reasonably possible. As a practical matter, it would be very difficult for us not to utilize the new model form, if adopted.

The conversion to a new model form at this time will necessitate a repeat of the cost, time and effort already incurred in creating our existing policy and would effectively render our past efforts moot. We would be faced with the daunting task of implementing a new form at a time when our initial efforts were just beginning to pay off. We suspect many other financial institutions will be in a similar situation. Therefore, we are opposed to a new model form and urge you to reconsider its adoption.

If, however, a model form is adopted, we strongly recommend retaining the current safe harbor based on the existing sample clauses. This will allow institutions such as ours to continue to benefit from the significant investment made up to this point and would provide an alternative for those institutions that determine that they are unable to adopt the new model form. Furthermore, we do not believe that the continued usage of the existing sample clauses is inconsistent with the goals behind the creation of a new model form. Section 728 of the Financial Services Regulatory Relief Act, upon which the model is based, merely requires the agencies to "develop a model form which may be used, at the option of the financial institution." It does not call for the elimination of the existing sample clauses as a safe harbor.

## **Content of the Proposed Model Form**

With respect to the model form proposed in the Interagency Proposal, we have some serious concerns which we urge you to consider before finalizing the model privacy form.

1. We are opposed to the limitation preventing institutions from including any other information in the model form. As mentioned above, our existing privacy policy provides our customers with additional important information, such as how to protect against identity theft and safeguard their credit information. We also explain how we share and use our customers' medical information. We believe that this type of information is related to our privacy practices and that its inclusion in our privacy policy is appropriate. If we are unable to include this type of information with our privacy policy, we would not be able provide the information without creating and distributing a separate document. While we wish to continue providing this type of useful information to our customers, it may become cost-prohibitive for us to do so.
2. We are unclear as to what is being requested in section V.A.5 of the Interagency Proposal ("Whether financial institutions should be required to alert consumers to changes in an institution's privacy practices as part of the model form."). As a general matter, however, we do not believe financial institutions should be required to alert customers to changes in the institution's privacy practices as part of the model form beyond that already required by law. We request further clarification before any additional requirements are imposed.
3. We request that guidance or clarification be provided as to whether the model form may be translated into different languages and if so, under what conditions. While we conduct our business in English, many of our customers would prefer to review this type of important information in their own language. We believe that allowing financial institutions to translate such information will enhance its understandability by consumers and we note that financial institutions are presently allowed to translate other types of important information, such as the official sign of the FDIC posted by insured depository institutions.

## **Format of the Proposed Model Form**

We have serious concerns regarding the level of detail provided with respect to the format of the model form. We are concerned that overly rigid and inflexible formatting requirements and/or guidance will lead to significant increases in costs and man-hours in producing and distributing the model form. We do not believe that such detailed standards are necessary to ensure the understandability of the model form. Specifically, we have the following concerns:

1. We strongly oppose the proposed requirement that each of the pages of the model form be printed separately and only on one side of an 8.5 by 11 inch piece of paper—effectively requiring a three-page policy for institutions such as ours that intend to incorporate the opt-out for affiliate marketing in the model form.

Our existing policy, which we have enclosed, is comprised of one 8.5 by 14 inch piece of paper with printing on both sides. The change from a one-page policy to a three-page policy will greatly increase the cost of production and distribution. First Hawaiian Bank presently mails over 650,000 policies per year and we anticipate an increase in postage and printing costs of approximately \$200,000 per year. This is in addition to the initial start-up costs relating to creating and producing the new model form.

Furthermore, we anticipate that the three-page form will necessitate significant changes to our current operations and will result in additional increases in "hard" and "soft" costs. For example, each division at our institution is responsible for the distribution of our privacy policy to its respective customers. One of these divisions presently includes the policy with the mailing of an annual statement. The statements are produced and mailed by a third party vendor (over whom we have no control) using a smaller sized envelope. In order to fit the policy in the envelope, we modify the format (but not the content) of these particular policies. This modified policy is printed on one 6.5 by 14 inch page and folded into a brochure. If we no longer have the flexibility to modify these policies and are unable to include the policies with the annual statements, a separate mailing will be required effectively doubling our current costs with respect to these policies.

We strongly believe that the format of our current privacy policy does not compromise its readability, despite the fact that it does not necessarily conform to the proposed model form. To date, we have not had any complaints from our customers or comments from examiners regarding the size, format or readability of our privacy policies. As mentioned above, our existing policy consists of one 8.5 by 14 inch piece of paper with printing on both sides and it is folded into a four-panel brochure. If a model form is adopted, we believe that the proposed text can be clearly displayed using a format similar to our brochure and the pages of the model form can be viewed simultaneously as different panels within the brochure.

In sum, we anticipate that the increase from one-page to three-pages will result in a substantial increase in the expense required to produce and distribute our privacy policy. While these examples are specific to our institution, we expect that many financial institutions will encounter similar types of problems trying to implement the model form if the formatting requirements are too strict. As a result, we believe that such detailed formatting standards will discourage financial institutions from using the model form. Therefore, we strongly urge that the model form allow for greater flexibility in its format, including permitting dual-sided printing and different paper sizes.

2. Similarly, we strongly believe that financial institutions should be allowed to incorporate colors and logos on the proposed model form and do not believe this will hinder the consumers' ability to understand or compare the sharing practices described therein.
3. As a general matter, we believe the guidance with respect to type size, leading, and type style and "x"-height to be far more detailed than necessary. We believe that financial institutions should be allowed greater flexibility in utilizing the model form in order give a distinctive look and feel to their privacy policies beyond just adding the institution's logo and changing the colors for the form. We do not believe that providing such flexibility will compromise the readability of the model form and note that other types of important disclosures, such as the Truth in Lending disclosures, are currently made in an effective manner without such detailed standards. In fact, allowing institutions to brand their privacy forms should make it easier for consumers to associate the sharing practices in the form with the respective institution. In addition, greater flexibility will allow institutions to deal with production and distribution obstacles similar to those described above.

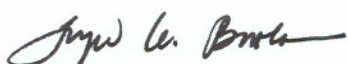
We would not expect greater formatting flexibility to lead to abuses by financial institutions. Institutions will still be subject to a "clear and conspicuous" standard which the regulatory agencies can continue to monitor and enforce when necessary. We also suspect that most institutions such as ours find it in their best interest to communicate this information to their customers and would make every reasonable effort to ensure its understandability.

Although many of the formatting standards are being proposed as guidance, many institutions such as ours attempt to follow such guidance if at all possible and would be opposed to standards that will have a negative effect even where such standards are not mandatory requirements.

Thank you for consideration of our comments. If you have any questions or would like additional information, please feel free to contact the undersigned at 808-844-3663.

Sincerely,

FIRST HAWAIIAN BANK



Joyce W. Borthwick  
Senior Vice President & Chief Compliance Officer  
Corporate Compliance Division