

August 6, 2007

Mary Beth M. Wong, Esquire
Ashford & Wriston, LLP
Post Office Box 131
Honolulu, HI 96810

Re: Hawaii Financial Abuse Act.

Dear Ms. Wong:

You have asked if federal law preempts the Hawaii Financial Abuse Act requiring federal credit unions (FCUs) to report suspected financial abuse of an elder. No, it does not. You also asked if federal consumer privacy law permits the disclosures this state law requires. It does.

Hawaii state law requires financial institutions, including FCUs, to report suspected financial abuse against an "elder" or someone age 62 or older. 2007 Haw. Sess. Laws Act 94. An FCU must report the suspected abuse to Hawaii's Department of Human Services (DHS). If the DHS notifies a reporting FCU that it does not have jurisdiction, the FCU must then notify the police.

The Gramm-Leach-Bliley Act (GLBA) privacy provisions and the NCUA's implementing regulation generally prohibit an FCU from disclosing nonpublic personal information about a member to a nonaffiliated third party unless the FCU first provides the member notice and a reasonable opportunity to opt out of the disclosure, and the member does not opt out. Pub. L. 106-102, 113 Stat. 1338 (1999); 12 C.F.R. Part 716. Neither GLBA nor the Federal Credit Union Act permit NCUA to preempt a state law that requires FCUs to disclose nonpublic personal information. To the contrary, the requirement for notice to members and opting out do not apply when FCUs disclose nonpublic personal information to protect against or prevent fraud, unauthorized transactions, claims, other liability, or to comply with state law. Pub. L. 106-102, §§502(e)(3)(B), (8); 12 C.F.R. §§716.15(a)(2)(ii), (7)(i).

If you have any further questions, please feel free to contact Staff Attorney Tonya Green or me at (703) 518-6540.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

OGC/MIG:bhs
07-0745