

Commerce Bancshares, Inc.
Compliance Department, TB12-1
922 Walnut P.O. Box 13686
Kansas City, MO 64199-3686

December 21, 2009

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551

RE: Docket Number R-1377

Dear Madam:

Commerce Bancshares, Inc. is a registered bank holding company with total assets of \$18 billion at September 30, 2009, and one bank subsidiary. The bank is a full-service bank, with approximately 360 branch locations in Missouri, Illinois, Kansas, Oklahoma, and Colorado and card operations in Nebraska. A full line of banking services, including investment management and securities brokerage are offered. The Company also has operating subsidiaries involved in mortgage banking, credit related insurance, and private equity activities.

We appreciate the opportunity to comment on the proposed Gift Card rules.

Preface

Commerce Bank began offering gift cards in our branches in 2005, more as a convenience product for our customers than a revenue generator. We have since expanded our offering to include Corporate and bulk orders and sales via the web. Our returns on gift card sales are marginal, at best. Unlike other financial institutions or gift card vendors who charged the card recipient fees for services such as card activation, balance inquiry or customer service calls, we chose to limit our fees to a monthly maintenance fee and card replacement fees. The CARD Act will change our product's profitability dramatically and will force us to re-examine our fee structure and whether it will be beneficial to the bank to continue to offer this product to our customers. In the long run, it may be that only those who choose to charge exorbitant purchase fees and inactivity fees will remain in the business, which will be a disservice to all consumers who enjoy giving and receiving the product.

Request for Comment - Response

§ 205.20 (b) (2) General-Use Prepaid Card Exclusions

We request clarification of this ruling in order to fully understand the feasibility of offering a network branded general purpose reloadable prepaid card as an alternative to the traditional checking account. It is envisioned that there would be direct deposit and retailer reload capabilities with card access and bill payment features. This product would be designed to reach the underserved segment of the market (unbanked and under banked), with the goal to provide an affordable alternative to check cashing and money order services. We would hope that the ruling would not impede on our progress to deliver a product that provides value to a segment that has limited choice today.

§ 205.20 (b) (3) Loyalty, Award, or Promotional Gift Card Exclusions

This institution is asking for additional clarification on what are deemed to be loyalty, awards, or promotional programs and the definition of cards not marketed to the general public. There seem to be statements regarding this exclusion that are contradictory, and as the proposed rule reads today, we are uncertain as to whether gift cards sold through our program to businesses for loyalty, awards, or

promotional programs are excluded. We suggest that some type of safe harbor be given to financial institutions to legitimize the exclusion when cards are sold to parties who verbally or in writing indicate they are purchasing the card for business purposes. We are requesting this safe harbor because we have no control over how the business distributes the card, and who inevitably receives and uses the card. It is not feasible to monitor the distribution of the cards and/or card usage after the sale.

§ 205.20 (b) (4) Not Marketed to the General Public

Further clarification is also requested with regard to the use of the words “*not marketed to the general public*” as exclusion to the statutory definition. Loyalty, award, or promotional gift cards are marketed by financial institutions to prospective customers which are businesses and the businesses may in turn market the loyalty, award, or promotional gift card to prospective customers or employees. This type of marketing is necessary to announce the availability of this product and service and this type of promotion should not be classified as marketing to the general public.

§ 205.20 (c) (1) Clear and Conspicuous Terms and Conditions

The proposed rule outlines the clear and conspicuous disclosures that must be printed on the card, and suggests that disclosures should include the amount of the fee, the time period after which a card is inactive, terms and conditions for expiration of funds, a toll-free telephone number, and a web address. This is a lot of information to print in the small confines of the gift card itself. We recommend that an explanation of expiration of funds, detailed definitions and examples of inactivity are best shared in the Terms and Conditions rather than printed on the back of the card. If the request is made to distinguish between the expiration of the card versus the expiration of the funds (as part of Alternative B – see below), this should be handled in the disclosure (for the reasons stated above), especially considering it is new terminology to the customer that will have to be further explained in the disclosure.

§ 205.20 (e) (1) Clear and Conspicuous Terms and Conditions of Expiration

If the proposed rules are retroactive to existing Gift Card accounts on our books, then Alternative B is a means of facilitating the transition, but we cannot agree that it is necessarily easier. The introduction of the concept to separate the expiration of the card from the expiration of the funds is a new concept to the industry and the customer, and potentially very confusing even if there is a requirement that the expiration date of the funds accompanies the expiration date of the card (on the front of the card). Furthermore, since most recipients of a gift card do not register the card or update their addresses when they move, it will be difficult if not impossible to contact the gift card holders to notify them of the extended expiration of their funds and/or reissue them a new card. If the existing accounts are not grandfathered under existing regulation, then Alternative B does provide the only means of implementing the change, but it should be considered a transitional solution and not a permanent one. We request clarification on this point, and suggest that re-issuance of cards that do not comply with the proposed ruling be at the customer’s request.

Destroying Existing Card Stock

Although we do not expect our cost to destroy unusable plastic stock after the effective date of August 22, 2010 to be exorbitant, it requires considerable effort to revise and reprint card collateral and other marketing materials, regardless of whether Alternative A or B is chosen. We note that if Alternative A is chosen, those institutions that have invested in an abundance of pre-printed plastic will incur unanticipated and costly expense.

Thank you for the opportunity to comment on the proposed Gift Card rules

Sincerely,

Katherine L O’Keefe
Compliance Officer