

**Commerce Bancshares, Inc.**

1000 Walnut Street  
Kansas City, MO 64106

*Electronic:* <http://www.regulations.gov>

December 22, 2014

Robert deV.Frierson,  
Secretary,  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue NW,  
Washington, DC 20551

RE: Docket No. R-1498 RIN 7100 -AE22: 12 CFR Part 208 – Loans in Areas Having Special Flood Hazards

Dear Mr. Frierson:

Commerce Bancshares, Inc. ("CBI") is a regional bank holding company with one bank subsidiary, Commerce Bank, ("Commerce"), and total assets of \$22.7 billion as of September 30, 2014. Commerce is a full-service bank, with approximately 350 banking locations in Missouri, Kansas, Illinois, Oklahoma, and Colorado. A full line of banking services, including investment management and securities brokerage, is offered. CBI also has operating subsidiaries involved in mortgage banking, credit related insurance, and private equity activities.

We appreciate the opportunity to comment on the proposed changes that implement certain provisions of the Homeowner Flood Insurance Affordability Act ("HFIAA") of 2014. We believe that the proposed changes provide some much needed clarity regarding requirements with respect to the escrow of flood insurance payments as well as the exemption for certain detached structures from the mandatory flood insurance purchase requirement. That being said, we believe further guidance would be beneficial.

**Escrow Requirement**

The proposal generally requires regulated lending institutions to escrow premiums and fees for flood insurance for any loans secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016. We interpret this part of the regulation to require a triggering event (made, increased, extended, or renewed) in order for an institution to be required to escrow. Therefore, for an existing loan, it is our interpretation that if a flood map change causes a property to be located in a special flood hazard area and the map change occurs after January 1, 2016, then escrow would not be required for the existing loan as no triggering event occurred. We seek guidance on whether this interpretation is correct.

**Escrow Requirement Exception**

Section 102(d) of the Flood Disaster Protection Act, as amended by section 25 of the HFIAA, includes an exception to the mandatory flood escrow requirement for a loan in a junior or subordinate position to a

senior lien secured by the same property, for which flood insurance already is being provided at the time of loan origination. We interpret this exception to the escrow requirement to apply to the loan at the time of origination. For example, if a lender makes a loan on January 10, 2016, that is in a junior position and it is exempt from the escrow requirement. On March 1, 2016, however, the superior lien is extinguished elevating the junior lien into first position. Our interpretation is that this loan would not be subject to the mandatory escrow requirements as the loan was originated with a junior lien position and thus meets the escrow exception. We seek guidance on whether this interpretation is correct.

### **Notice Requirement**

Section 25(b) of HFIAA requires regulated lending institutions to “offer and make available” to a borrower the option to escrow flood insurance premiums and fees for loans that are outstanding as of January 1, 2016. The agencies propose to implement this provision by requiring that for outstanding loans, a lender, or its servicer, mail or deliver a notice informing borrowers of the option to escrow by March 31, 2016. We seek clarification regarding what loans are included in the definition of “outstanding loans” and thus subject to the notice requirement. Our interpretation is that we must send a onetime notice by March 31, 2016, for only the outstanding loans that we would be required to escrow for flood insurance after January 1, 2016. We seek guidance on whether this interpretation is correct. We also would like to thank the agencies for providing a model clause to facilitate compliance with the notice requirement.

### **Mandatory Flood Insurance Exemption**

Consistent with the HFIAA, the Agencies’ proposal also includes a new exemption to the general mandatory flood insurance requirement for detached nonresidential structures. Specifically, the exemption applies for any structure that is part of any “residential property” but is detached from the primary residential structure of such property and does not serve as a “residence.” We believe that this exemption should be clarified. The term “residence” can have different meanings and in order for the exemption to be used consistently there must be a clear, concise definition. Also, the exemption states that it only applies to “residential property.” Much like the term “residence” the term “residential property” can be interpreted in a number of different ways. Does “residential property” refer to the type of property securing the loan or does it refer to the purpose of the loan? Does an agriculture loan that has a farmhouse with a detached garage qualify under the exemption? We encourage the agencies to provide a specific definition for both terms.

Again, we appreciate the opportunity to comment on the proposed changes to the various flood regulations. Please feel free to contact me with any questions.

Sincerely,

Taylor J. Reid, J.D.  
Asst. Vice President  
Compliance Department  
Commerce Bancshares, Inc  
922 Walnut Street, 12<sup>th</sup> Floor (TB12-1)  
Kansas City, MO 64106