



Commerce Bancshares, Inc.

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(816) 234-2000

January 25, 2001

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580

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Dear Sir or Madam,

Commerce Bancshares, Inc. is a registered bank holding company with total assets of \$11.1 billion at December 31, 2000, and four bank subsidiaries. Three of these banks are retail banks, with approximately 330 locations in Missouri, Illinois, and Kansas. The other bank is a limited-purpose bank, with one office in Omaha, Nebraska. All of the banks are national banks.

The Federal Trade Commission has requested comments on proposed interpretations of the Fair Credit Reporting Act. Our banks are subject to the enforcement authority of the Office of the Comptroller of the Currency, rather than the Commission. However, because the Commission's proposed interpretations are generally parallel to the regulations proposed by the Federal banking agencies, we are submitting to you the same comments we submitted to the OCC.

Our comments to OCC are applicable to the interpretation proposed by the Commission with one exception. The Commission did not include a section related to the prohibition against discrimination, as found in the OCC's proposed §41.12. We support the Commission's decision not to include that section, as discussed in our comment letter.

Thank you for considering our comments.

Sincerely,

Sherri M. Beam
Assistant Vice President



Commerce Bancshares, Inc.
1000 Walnut P.O. Box 13686
Kansas City, MO 64199-3686

December 4, 2000

Via e-mail to regs.comments@occ.treas.gov

Communications Divisions
Office of the Comptroller of the Currency
250 E Street, SW, Third Floor
Washington, DC 20219

Attention: Docket Number: 00-20

Dear Sir or Madam:

Commerce Bancshares, Inc. is a registered bank holding company with total assets of \$11.0 billion at September 30, 2000, and four bank subsidiaries. Three of these banks are retail banks, with approximately 330 locations in Missouri, Illinois, and Kansas. The other bank is a limited-purpose bank, with one office in Omaha, Nebraska. All of the banks are national banks.

The Office of the Comptroller of the Currency in conjunction with other Regulatory Agencies has proposed regulations implementing the provisions of the Fair Credit Reporting Act (FCRA). Commerce has implemented policies and procedures with regard to the FCRA. Affected bank personnel have been trained in the technical issues associated with the act.

We have some general comments about the proposed rule, followed by comments on the use of plain language, and ending with comments arranged by regulatory citation.

General Comments

Since the requirements of the proposed FCRA regulations are designed to correspond to the requirements of the privacy regulations, we request that the proposed regulations go into effect not before July 1, 2001, the date by which financial institutions are required to send out their first annual privacy notice. Coordinating the effective dates would allow financial institutions to meet the requirements of the privacy regulations and the new FCRA regulations simultaneously.

The Agencies have stated the proposed FCRA regulations would allow financial institutions to combine into one notice the notices they must deliver under FCRA and the privacy regulations. It has also been stated that institutions may combine their consumers' opt out responses into one opt out response. Meeting privacy and FCRA requirements at the same time would be more cost effective for banks and reduce customer confusion. We would ask for prompt delivery of the final FCRA regulations in order to avoid complications in meeting both regulatory deadlines.

Use of Plain Language

In the Supplementary Information, the Agencies state they "have made the FCRA notice guidance parallel to the privacy rule requirements, thus facilitating the delivery of a single notice to consumers." While a single notice may be the Agencies' intent, that is not stated clearly in the regulation. We request that the final FCRA regulation state specifically that the notice and opt-out requirements of FCRA can be met by

providing the privacy notice, if the FCRA portion of that privacy notice satisfies the requirements of §41.5.

41.3(k) Definition of "Opt out information"

We request that the proposed definition of "opt out information" be clarified. FCRA refers to 1) *consumer reports* (communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, etc.); and 2) *other information* (anything other than transaction- or experience-related information). In reading the Supplementary Information, we believe the intent of the Agencies is to create a term in "opt out information" that encompasses both consumer reports and other information. But we are not certain whether the proposed definition satisfies the intent as we understand it.

Because understanding this definition is central to complying with the proposed regulations, we request that the Agencies clarify their intent, and craft a definition that fulfills that intent.

Additionally, the final rule should explicitly state that financial institutions are authorized to share information through other means besides notice and opt out, including through express customer consent, under an agency relationship to service or process a consumer's accounts or transactions, or for fraud control purposes.

41.5 Contents of Opt Out Notice

The Agencies invited comment on whether financial institutions should have to disclose in the notice the length of time a consumer has to respond to the opt out notice before the institution may begin disclosing information about that consumer to its affiliates. We believe stating a deadline for opting out might cause consumers to believe they *must* opt out before the deadline. We do not believe adding a statement that the consumer can opt out at any time is particularly helpful. Not stating a deadline implies that there is not a deadline.

41.6 Reasonable opportunity to opt out

We disagree with the proposed mandatory 30-day waiting period before information may be shared with affiliates. This waiting period would inhibit our ability to satisfy customers' needs in a timely fashion. The reasonable waiting period would vary depending upon the medium used for delivery of the opt out notices. The Agencies should not include the 30-day requirement in the examples.

In addition, we disagree with the requirement in §41.6(a)(3) that the bank must wait 30 days after the date that the "consumer acknowledges receipt" of an electronic notice. The requirement to obtain an acknowledgement is burdensome and inconsistent with the opt out rules in the Privacy regulations, which do not require acknowledgement from the consumer.

If the Agencies retain the 30-day waiting period, they should clarify that they apply only to new customers. Banks and their affiliates may already be sharing information about existing customers, and it would be difficult or impossible to cease sharing information during a 30-day waiting period after the annual privacy notice is issued, or other times the opt out notice may be delivered to existing customers.

41.11 Duration of opt out

We disagree with the requirement of this section that a customer provide either written or electronic revocation of their election to opt out of information sharing. This requirement is not imposed by the FCRA. The proposed regulations allow customers to opt out orally but do not permit them to withdraw that opt out election in the same manner. The final regulation should allow for oral revocation by consumers, either in person or by phone.

41.12 Prohibition against discrimination

This section indicates that if a consumer is an applicant for credit, the financial institution must not discriminate against the consumer if the consumer opts out of the institution's information sharing with affiliates. The Agencies should make clear in the final rule that financial institutions may still provide additional benefits and savings to customers who decide *not* to opt out. Financial institutions should be able to pass on to those customers the cost savings associated with the sharing of information. There would be no such cost savings to pass on to customers who do opt out of affiliate information sharing. This difference in treatment of customers is not, and should not be considered, discriminatory.

Thank you for considering our comments. If you have any questions about them, please do not hesitate to call me at (816) 760-7878, or e-mail me at Lynn.Tankesley@commercebank.com.

Sincerely,

Lynn Tankesley
Compliance Officer