

SECTION 1

STATE BANK DEPARTMENT - GENERAL PROVISIONS

46-101.3 - CONFIDENTIAL OR NON-CONFIDENTIAL STATUS OF BANK DEPARTMENT RECORDS (Reference A.C.A. § 23-46-101)

- A. The names of **stockholders of a bank or bank holding company** will not be regarded as confidential. The stockholder's list of a bank or bank holding company will not be regarded as confidential.
- B. **Articles of Agreement and Incorporation** and all amendments are not confidential.
- C. **Stock Transfers.** A one-page request form submitted to the Commissioner requesting a transfer of bank stock from one stockholder to another. **However, any information submitted to the Commissioner**, including any personal financial statements, along with the request will be regarded as confidential and is not subject to disclosure.
- D. **Applications.** All applications submitted to the Commissioner may be disclosed to anyone with the exception that personal financial statements submitted in support of such applications shall be regarded as confidential and are not subject to disclosure.
- E. **Examination Reports.** Examination reports are highly confidential and are not subject to public disclosure. Such examination reports are regularly submitted to the federal regulatory authorities and/or other state financial institution regulatory authorities, as well as to the examined bank as a matter of regulatory process. However, the examination reports remain the property of the Department and, as such, the report, as well as all correspondence between regulatory authorities and the examined bank in respect to the examination report, is confidential, A.C.A. § 23-46-101.
- F. **Investigation Reports.** An investigation made by a bank examiner assigned to investigate the merits of an application, or other bank matter, is generally considered as confidential. The exception being that the Commissioner, in his/her discretion, reserves the right to permit an investigation on the merits of an application to be reviewed by the applicant and an official protestant to an application and permit introduction into evidence, by a party to the proceeding, those portions of the investigation which may be necessary and relevant to that proceeding.
- G. **Corporate "File".** A bank's corporate file contains the following: Articles of Incorporation, Amendments to Articles of Incorporation, Oaths of Directors, list of stockholders. The file is subject to disclosure with the exception of any information in support of a petition for a stock transfer since such supportive information is confidential.
- H. **Financial Statements.** Personal financial statements shall not be exhibited to the public.

PROPOSED REGULATION

47-101.2 - INCIDENTAL POWERS (Reference A.C.A. 23-47-101)

A.C.A. §23-47-101(b) reads: "In addition to the foregoing, a bank may exercise any other powers which are incidental to the business of banking." This statutory reference to incidental powers is very similar to the National Banking Act. The Commissioner and the Banking Board may give consideration to the interpretations of similar words in the National Bank Act by the Comptroller of the Currency, but shall not utilize this section to permit the exercise of any power or performance of any activity which is beyond the reasonable progression of the business of banking as authorized in the Arkansas Code.

GIFT CARDS

47-101.2(a) Gift Card Disclosures (Reference OCC Bulletin 2006-34).

The State Banking Board, pursuant to Act 304 of 2007, adopts the following guidance on disclosure and marketing issues for the sale of gift cards issued by the Office of the Comptroller of the Currency, August 14, 2006:

PURPOSE AND SCOPE

This bulletin is intended to provide guidance to national banks on a number of disclosure and marketing issues presented by gift cards, so that national banks that issue gift cards do so in a manner in which both purchasers and recipients of gift cards are fully informed of the terms and conditions of the product.¹

BACKGROUND

A gift card is a type of prepaid or stored value card that is designed to be purchased by one consumer (purchaser) and presented as a gift to a second consumer (recipient).² The terms and conditions of different gift card products can vary significantly, but gift cards are generally divided into two main categories: retail gift cards and bank-issued gift cards. A retail gift card is typically offered by a major retail, entertainment, or food service company, to be used at establishments owned and operated by that company. A bank-issued gift card is typically issued by a financial institution, carries the logo of a payment card network such as VISA, MasterCard,

¹ This bulletin is limited to particular disclosure matters relating to bank-issued gift cards. It does not address other supervisory issues relating to these products or to other types of "prepaid" or "stored value" card products.

² In this regard, gift cards differ from payroll cards, travel expense cards, and other types of prepaid card products that are not designed to be marketed as a gift from one consumer to another.

or American Express, and can be used at the various locations that accept cards from that network.³

A bank-issued gift card is typically a bank product, and not merely an arrangement through which a third party can facilitate the use of its product in a payment card network. When a gift card is a bank product, the consumer's agreement is with the bank, and the gift card and the related disclosures, the cardholder agreement, and other documentation will specifically identify the bank as the issuer of the card. In addition, the bank generally will establish and impose the fees and other terms associated with the card and control the net proceeds of such fees; will be the party with the financial responsibility to merchants that honor the card; and will hold for its own account, or for the account of the consumer, the pool of funds used to pay merchants when consumers present gift cards to pay for goods or services.⁴

Industry studies and medial reports suggest that the gift card market is growing rapidly, and will continue to do so over the next several years. This rapid growth – together with the diversity of fees and other terms and conditions among different gift card products – shows that it is important for national banks that offer these products to adopt sound disclosure practices to help ensure that consumers understand the gift card products they are purchasing and using.

CONSUMER DISCLOSURES

Because the purchaser and the recipient of a gift card typically are not the same person, gift cards present unique disclosure challenges. In particular, providing disclosures to a gift card purchaser may not be sufficient to avoid compliance and reputation risks related to misunderstanding by a recipient about material costs, terms, and conditions of the gift card. In these circumstances, the OCC expects national bank gift card issuers to take appropriate actions to ensure that critical information is provided in a form that is likely to be readily available to recipients, as well as purchasers, of gift cards. Accordingly, with respect to gift cards that are bank products, the OCC would expect to see the following disclosures:

- Disclosures on Gift Cards. Basic information that is most essential to a gift card recipient's decisions about when and how to use the cards should be provided on the gift card itself, or on a sticker or tape affixed to the gift card. In light of the terms and provisions of most bank gift cards, this information generally will include disclosures relating to the following matters:
 - The expiration date of the card (which, consistent with existing practices for credit and debit cards, should be presented clearly on the front of the card);

³ As in the case of credit cards, bank-issued gift cards may be co-branded and offered through, or jointly with, a retailer or other company such as a retail shopping mall, but these cards generally have the same broad acceptability as other bank cards.

⁴ In connection with the gift card, the bank would be subject to the prohibition against unfair or deceptive acts or practices in the Federal Trade Commission Act, 15 USC 45(a)(1), and to all other requirements applicable to bank products.

- The amount or the existence of any monthly maintenance, dormancy, usage, or similar fees; and
- How consumers may obtain additional information about their cards or other customer service (for example, by providing a toll-free number or Web site address).
- Disclosures Accompanying Gift Cards. Other information that is important to a gift care recipient's decisions and actions should be provided in a form that is designed to be passed on with the card to the recipient, and issuers should encourage card purchasers to provide this information to gift card recipients. For example, the card could be carried in promotional packaging that contains this material information, or inserted into a sleeve that sets forth or is attached to these disclosures. Depending on the terms of the gift card product, this information may include:
 - The name of the bank that issued the card;
 - Any other fees that may apply to the card, including card replacement or reissuance fees, balance inquiry fees, foreign currency conversion fees, and cash redemption fees, and how they will be collected (for example, by debits to the card balance);
 - Whether and how consumers can receive a replacement card in the event that their card is lost or stolen, the information that consumers need to retain in order to do so, and responsibility for unauthorized transactions;
 - Where the card can be used, including, if applicable, suggestions for using the card as gas stations, hotels, restaurants, or other locations that may seek payment authorization in an amount greater than the consumer's actual purchase;
 - The issuer's obligation to authorize transactions through use of the card, and examples of the circumstances under which it may refuse to do so;
 - The importance of tracking the balance remaining on the card;⁵
 - Whether, and if so, how the card may be used in "split payment" transactions (when the card is used in conjunction with another form of payment) and the process for redeeming *de minimis* remaining balances;
 - How consumers can resolve problems and complaints and receive balance and other information about their cards; and
 - When applicable, the issuer's ability to revoke or change the terms of the gift card agreement.

⁵ Some gift card issuers provide a simple card, similar to a checking account register, for gift card recipients to use to track their purchases and remaining balances.

PRACTICES TO AVOID

National bank gift card issuers should take appropriate steps to avoid engaging in marketing or promotional practices that could mislead a reasonable consumer about the terms, conditions, or limitations of the bank gift card product they are offering. For example, issuers should not advertise a gift card as having “no expiration date” if monthly service or maintenance fees, dormancy fees, or similar charges can consume the card balance and thereby have the same practical effect as an expiration date. Similarly, if such fees may consume the card balance before the stated expiration date for the card arrives, disclosures relating to that expiration date (other than the disclosure on the front of the card) should explain that possibility. Issuers also should generally avoid describing gift card products in terms suggesting that they are similar to gift certificates or other payment instruments with which consumers may be more familiar, or as products that carry federal deposit insurance when such insurance does not apply.