

# Community Bank Provisions of the FAST Act

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## **BACKGROUND**

On December 4, 2015, the Fixing America's Surface Transportation Act (the FAST Act) was signed into law. The Act, commonly referred to as "the Highway Bill," contains a number of provisions that affect community banks: regulatory relief, restoration of crop insurance cuts, and a change in the Federal Reserve stock dividend for banks with assets of more than \$10 billion. ICBA and community banks' advocacy made a critical difference in the outcome of this legislation by adamantly opposing the Federal Reserve stock dividend cut and pressing for community bank regulatory relief from ICBA's "[Plan for Prosperity](#)."

Below is practical information community bankers need to begin implementing these provisions. As indicated below, in some cases, agency rulemaking or guidance is needed before community bankers may begin taking full advantage of the new provisions.

### **Privacy Notices**

The Act creates a new exception to the annual privacy notice requirement. Financial institutions will no longer be required to provide annual privacy notices if the following conditions are met:

- The institution has not changed its privacy policies or practices; and
- The institution only shares nonpublic personal information with third party service providers, including those that market the bank's own products or services, or products or services offered pursuant to a joint marketing agreement.

### **Effective Date**

The provision does not specify an effective date. Though the Act does not require an implementing rule, ICBA expects that the CFPB will write a rule to conform existing privacy rules to the new provision. ICBA interprets the statutory language to allow institutions that meet the conditions specified above to cease mailing privacy notices as of December 4, 2015. ICBA is urging the CFPB to confirm this interpretation.

### **Eighteen Month Exam Cycle**

The Act allows insured depository institutions with total assets of less than \$1 billion, a composite condition of outstanding or good (i.e., a CAMELS composite rating of 1 or 2), and that are well capitalized and well managed to be subject to a full-scope on-site exam once every 18 months (rather than 12 months). Under prior law and agency practice, only institutions with assets of less than \$500 million and that met the above described requirements were eligible for the 18-month exam cycle.

### **Effective Date**

Newly eligible institutions must wait for agency regulation before taking advantage of the extended exam cycle. ICBA is urging the agencies to act promptly.

## Mortgage Lenders in Rural and Underserved Areas

As specified below: two provisions of the Act are intended to promote mortgage lending in rural and underserved areas.

### **Qualifying for Rural Mortgage Lender Benefits**

The Act removes the requirement that a “small creditor” lend “predominantly” in rural or underserved areas in order to qualify for certain exceptions to the CFPB’s mortgage rules. (Qualifying lenders will be referred to as “rural lenders.”) The CFPB has interpreted “predominantly” to mean that the creditor has issued more than 50 percent of its first-lien mortgage loans in rural or underserved areas in the preceding calendar year. This loan test has proved very difficult for community banks that serve both rural and non-rural areas.

As noted above, only a “small creditor” may qualify as a “rural lender.” To qualify as a small creditor, a financial institution, together with its mortgage originating affiliates, must have assets of less than \$2 billion as of the end of the last calendar year and must have issued fewer than 2,000 first lien loans, excluding mortgages held in portfolio, during the most recent calendar year.

Small creditors that qualify as rural lenders enjoy three benefits: (i) they may issue balloon loans that meet the definition of “qualified mortgage;” (ii) they may originate high-cost mortgages with balloon payments; and (iii) they are exempt from the escrow requirement that otherwise applies to higher priced mortgages.

**Effective Date:** This provision cannot be implemented until the CFPB issues a rule. It is not clear how the agency will interpret the statutory language absent the “predominantly” requirement. ICBA is urging the CFPB to promptly act on the new law and to remove any rural or underserved lending test.

### **Designation of Rural Areas**

The Act requires the CFPB to establish an application process by which a person who lives or does business in a state may petition for the designation of an area within that state as a “rural area” with respect to the agency’s mortgage rules. The Act sets forth evaluation criteria to be used by the CFPB in making such determinations and a timeline for the publication of applications received, a public comment period, and CFPB decisions with regard to applications. The Act also provides for subsequent applications with regard to areas that have been previously denied rural status. The application process sunsets two years after the enactment of the Act, December 4, 2017.

**Effective Date:** The CFPB must establish the application process 90 days after the enactment of the Act, on March 4, 2016.

## SEC Registration/Deregistration Thresholds for Saving and Loan Holding Companies

The Act modifies the SEC registration and deregistration thresholds that apply to savings and loan holding companies. As under current law, a savings and loan holding company must register with the SEC when it exceeds 2,000 shareholders of record. However, the Act provides that a separate threshold of 500 shareholders who are not accredited investors will no longer apply to savings and loan holding companies.

More significantly, the Act provides that a savings and loan holding company may deregister when the number of its shareholders of record drops below 1,200. The current law deregistration threshold for savings and loan holding companies is 300 shareholders of record.

These provisions create statutory parity between savings and loan holding companies and bank holding companies and correct an oversight of the 2012 JOBS Act. The SEC proposed late last year to correct this oversight through its administrative authority, but its proposal is not yet effective.

**Effective Date:** Effective immediately. Savings and loan holding companies that wish to deregister under the new statutory threshold should await guidance from the SEC.

### Dividends Paid on Federal Reserve Stock

Federal Reserve member banks (including nationally chartered banks) with assets of more than \$10 billion will receive dividends on their Federal Reserve according to a new formula. The dividend rate on Federal Reserve stock will equal the high yield of the 10-year Treasury note auctioned at the last auction held prior to the payment of the dividend. However, the dividend rate will be capped at 6 percent. The \$10 billion exemption threshold will be adjusted by the Federal Reserve on an annual basis using the Gross Domestic Product Price Index.

Federal Reserve member banks with assets of less than \$10 billion are exempt from any change in the dividend rate paid on Federal Reserve stock and will continue to be paid a dividend of 6 percent.

#### **Effective Date**

This change is effective January 1, 2016 and will apply to dividends paid on or after that date.

### Crop Insurance

The Act restores \$3 billion in recent cuts to the federal crop insurance program which had been included in the recent budget agreement.