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Insights

The FAST Act: Regulatory Relief for Financial Institutions

December 13, 2015

On December 4, 2015, President Obama signed a highway bill, the "Fixing America's Surface Transportation Act" (the FAST Act). Tacked onto this bill were numerous amendments to banking, securities, and housing laws that are intended to provide "regulatory relief to facilitate capital formation, [and] ensure greater consumer access to financial products and services." This Alert addresses the key banking amendments.

To fund the transportation and infrastructure spending, the FAST Act's creative and unprecedented approach:

- **Reduces dividends** payable on the Federal Reserve stock that member banks are required to hold from a rate of 6% to the lesser of (i) the yield on the 10-year Treasury note (currently around 2.2%) or (ii) 6%. This applies to banks with over $10 billion in assets. Banks below $10 billion in assets will keep the 6% rate.
- **Caps the Federal Reserve surplus account** at $10 billion (media reports are that the balance of the Federal Reserve's surplus account is currently about $29 billion). Amounts over the cap will be transferred to the Treasury's general fund to be spent on transportation and infrastructure.

To provide the promised regulatory relief, the FAST Act:

- **Eliminates the requirement to send annual privacy notices** unless a financial institution has changed its disclosure policies or shares information with third parties for marketing purposes.
- **Makes more banks eligible for the 18-month onsite examination cycle** by increasing the qualifying asset threshold from $500 million to $1 billion.
- **Expands lending in rural communities** by:
  - requiring the CFPB to create a petition process for applying to have an area designated "rural" for purposes of federal consumer financial law. This petition process sunsets two years after enactment of the FAST Act; and
  - specifying the criteria the CFPB must consider when evaluating a petition, which must be included in the grant or denial that is to be published in the Federal Register.
- **Enables more lenders operating in rural or underserved areas to originate Qualified Mortgages with a balloon feature and Higher-Priced Mortgage Loans** that do not require an escrow account. The FAST Act also changes the CFPB's definition of "rural or underserved."
- **Increases Mortgage Loan Originator Licensing Efficiency** by directing the U.S. Attorney General to provide criminal history information to state officials performing background checks for mortgage loan originator license applications.
- **Expands Federal Home Loan Bank Membership** by permitting a privately insured credit union to join a Federal Home Loan Bank subject to:
  - obtaining a certification from its state supervisor stating that it is eligible to apply for federal deposit insurance;

- providing a copy of the credit union's annual audit report to the National Credit Union Administration (NCUA) and the Federal Housing Finance Agency; and
- a state supervisor providing to the NCUA upon request the results of any examination and reports concerning a private insurer of credit unions licensed in the state.