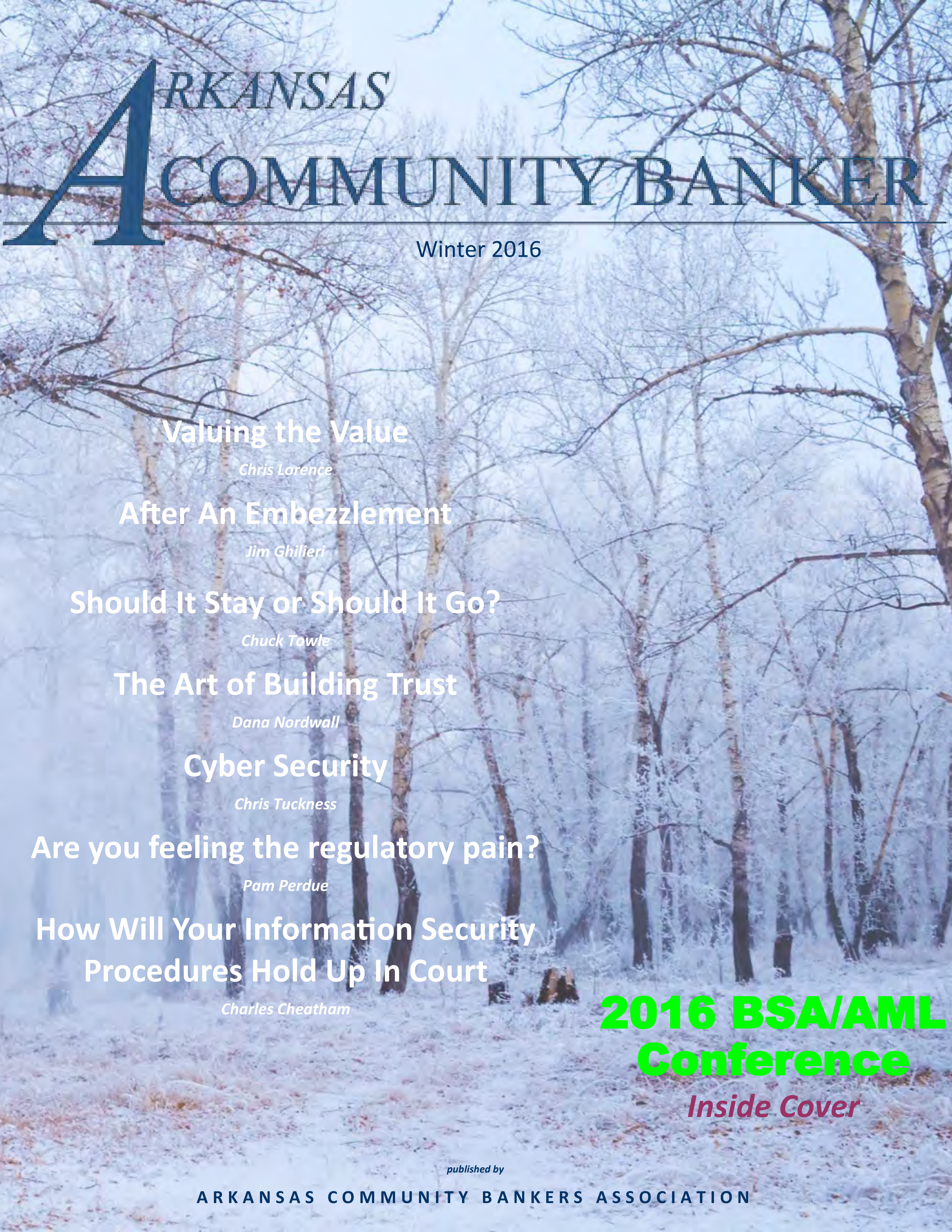

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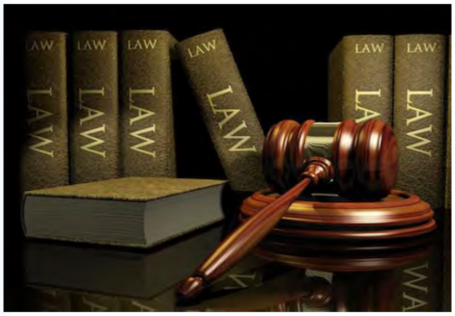

Expanding Qualified Mortgages

BY DANIEL BECK

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On December 4, 2015, the Fixing America's Surface Transportation Act or "FAST Act" was signed into law. The FAST Act provides relief to community banks by allowing small banks to petition the Consumer Financial Protection Bureau ("CFPB") to expand areas that are considered "rural" by the CFPB. The FAST Act may also ease the threshold of mortgage loans that must be originated in rural areas by small banks to qualify for exceptions to qualified mortgages under the Truth in Lending Act ("TILA") depending on how the CFPB interprets the change to TILA.

Petitioning the CFPB

The FAST Act requires the CFPB to establish an application process for banks to request the CFPB to designate an area as "rural", even if the area has been previously designated "nonrural" by other federal agencies. The deadline for establishing the application process is March 4, 2016. Once the CFPB has established the process and applications are received, the CFPB will have 60 days to publish the application, which will be open for public comment for at least 90 days. The CFPB will then have an additional 90 days to grant or deny the application in whole or in part. Currently 48 of the 75 counties in Arkansas are designated as rural by the CFPB.

Revising TILA

Under TILA, a "small creditor" is a financial institution (including its affiliates) that has, in the preceding year, assets of less than $2 billion and has issued less than 2,000 first-lien loans that were transferred to third parties. First-lien loans held by the financial institution will not count as part of the overall 2,000. Small creditors who "predominantly" lend to an area designated as rural or underserved are exempt from the escrow requirement for higher-priced mortgages, can issue balloon loans that meet the definition of a qualified mortgage, provided the term is at least five years and on an amortization schedule of no more than 30 years, and may originate high-cost mortgages with balloon payments. The term "predominantly", as construed by the CFPB, has meant that the small creditor has extended more than 50% of the bank's mortgage loans in rural or underserved areas. The FAST Act has deleted the word "predominantly" from section 129C and 129D of TILA, but the CFPB has not yet changed its regulations to reflect the revision to TILA.

Conclusion

Until the CFPB releases its procedures for petitioning the CFPB for "rural" status of an area, it will be difficult to determine how this new rule will effect banks in Arkansas, especially considering the fact that a large majority of the counties in Arkansas are already considered "rural". What may have a larger impact on banks in Arkansas is the change to TILA that no longer requires small creditors to issue loans in "predominately" rural communities to qualify for the small creditor exceptions for qualified mortgages. While it is clear Congress intended to ease mortgage restrictions on small banks, it is not clear whether the CFPB will open the qualified mortgage exceptions to small banks that do not originate a majority of their mortgage loans in rural communities.