Regulatory Dispatch

Timely news and resources community bankers can use

to better stay on top of a rapidly changing world.

FDIC-Insured Institutions Reported Net Income of $70.8 Billion in Second Quarter 2023

- Net Income Decreased From the Prior Quarter, Driven By Lower Noninterest Income
- The Net Interest Margin Declined for the Second Straight Quarter
- Unrealized Losses on Securities Increased Quarter Over Quarter
- Community Banks Reported Higher Net Income From the Prior Quarter
- Loan Balances Increased From Last Quarter and One Year Ago
- Total Deposits Declined For a Fifth Consecutive Quarter
- Asset Quality Metrics Remained Favorable Despite Modest Deterioration
- The Reserve Ratio for the Deposit Insurance Fund Declined to 1.10 Percent

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"Despite the period of stress earlier this year, the banking industry continues to be resilient. In the second quarter, key banking industry metrics were favorable. Net income remained high by historical measures, asset quality metrics were stable, and the industry remained well capitalized. However, the banking industry still faces significant challenges from the effects of inflation, rising market interest rates, and geopolitical uncertainty. These risks, combined with concerns about commercial real estate fundamentals, especially in office markets, as well as pressure on funding levels and net interest margins, will be matters of continued supervisory attention by the FDIC."

— FDIC Chairman Martin J. Gruenberg

WASHINGTON— Reports from 4,645 commercial banks and savings institutions insured by the Federal Deposit Insurance Corporation (FDIC) reflect aggregate net income of $70.8 billion in second quarter 2023. Though second-quarter net income decreased by $9.0 billion (11.3 percent) from first quarter 2023, after excluding the effects on acquirers' incomes of their acquisition of three failed banks in 2023, quarter-over-quarter net income would have been roughly flat for the second consecutive quarter. Declines in noninterest income, reflecting the accounting treatment of the acquisition of three failed institutions, lower net interest income, and higher provision expenses were the drivers of the decline in net income. These and other financial results for second quarter 2023 are included in the FDIC's latest Quarterly Banking Profile released today.

Comment: Excluding the effects of the acquisitions of Silicon Valley Bank, First Republic Bank and Signature Bank on acquiring banks' incomes, profit would have been about flat from the first quarter.

Community Banker Q & A

Q. Do we need to disclose the pre-pour survey on the Closing Disclosure if the builder is taking care of the fee?

A. A pre-pour survey is typically required by the title company as a condition of issuing a title policy. Because a title policy is required by the lender, the pre-pour survey becomes a charge 'imposed' on the borrower and subject to disclosures regardless of who actual pays for the pre-pour survey.

…snip

"While § 1026.19(e)(3)(i) provides that good faith is determined by whether a closing cost paid by or imposed on the consumer does not exceed the amount originally disclosed on the Loan Estimate, other sections of Regulation Z, including the finance charge definition in § 1026.4(a), are framed in terms of whether the charge is payable by the consumer rather than whether it is paid by or imposed on the consumer. ***The Bureau regards these standards, 'paid by or imposed on the consumer' and 'payable by the consumer,' as interchangeable. For example, existing commentary emphasizes that the term 'payable' includes charges imposed on the consumer, even if the consumer does not pay for such charges at consummation****.[i] Under § 1026.19(e)(3)(i), when a closing cost paid by or imposed on the consumer exceeds the amount disclosed on the Loan Estimate, the amount disclosed on the Loan Estimate was not made in good faith by the creditor. The use of the phrases 'paid by or imposed on the consumer' and 'payable by the consumer' both reflect the same standard. . . ."*

Source link.

If the fee is collected after closing, the bank would have to disclose the fee on an addendum, in accordance with inspection and handling fees as addressed in §1026.37(f) – Comment 3.

The fee would also be considered a finance charge - but not prepaid finance charge - and would have to be factored into the Finance Charge and APR.

It is also worth noting that if the builder is paying for the fee and selects the party performing the pre-pour survey, they are acting as the agent for the borrower and have the ability to shop for the fee and it should be disclosed accordingly.

Items of Interest

Bank Management

FRB The Federal Reserve's Role in Supporting Responsible Innovation - Vice Chair for Supervision Michael S. Barr (09/08/2023) - *Now let me turn my attention to recent actions by the Federal Reserve that are aimed at promoting responsible innovation in financial services more broadly. Last month, the Federal Reserve announced that it has created a novel activities supervision program to focus on the supervision of risks posed by novel, technology-driven activities at banks.1 At present, these activities include those involving crypto-assets, distributed ledger technology, and complex technology-driven bank partnerships with nonbank fintechs. That said, this program will grow as new technologies emerge. By dedicating a team of supervisory experts to the oversight of novel, technology-driven activities, our aim is to provide clarity as well as timely and relevant feedback to the institutions we supervise. We want them to continue to work to take advantage of innovations, while also supporting their ongoing safety and soundness.*

One innovation that crosses both payments provision and bank safety and soundness issues is stablecoins, which can also be described as digital tokens that aim to maintain a stable value relative to a government-issued currency, such as the U.S. dollar. When an asset is pegged to a government-issued currency, it is a form of private money. When that asset is also used as a means of payment and a store of value, it borrows the trust of the central bank. So, the Federal Reserve has a strong interest in ensuring that any stablecoin offerings operate within an appropriate federal prudential oversight framework, so they do not threaten financial stability or payments system integrity.

To provide clarity for banks interested in engaging with these assets, we recently issued guidance on the process by which a Fed-supervised bank can seek to obtain a supervisory non-objection before issuing, holding, or transacting in "dollar tokens."2 As the Board of Governors announced in January, before those banks engage in these activities, they are advised to obtain a written supervisory non-objection from the Fed verifying that they have appropriate risk management and systems in place to identify and control potential risks, such as those related to cybersecurity and compliance with anti-money-laundering laws.

FRB Beige Book (09/06/2023) - Overall Economic Activity
Contacts from most Districts indicated economic growth was modest during July and August. Consumer spending on tourism was stronger than expected, surging during what most contacts considered the last stage of pent-up demand for leisure travel from the pandemic era. But other retail spending continued to slow, especially on non-essential items. Some Districts highlighted reports suggesting consumers may have exhausted their savings and are relying more on borrowing to support spending. New auto sales did expand in many Districts, but contacts noted this had more to do with better availability of inventory rather than increased consumer demand. Manufacturing contacts in several Districts also noted that supply chain delays improved, and that they were better able to meet existing orders. New orders were stable or declined in most Districts, and backlogs shortened as demand for manufactured goods waned. One sector where supply did not become more available was single-family housing. Nearly all Districts reported the

	inventory of homes for sale remained constrained. Accordingly, new construction activity picked up for single-family housing. But multiple Districts noted that construction of affordable housing units was increasingly challenged by higher financing costs and rising insurance premiums. Bankers from different Districts had mixed experiences with growth in loan demand. Most indicated that consumer loan balances rose, and some Districts reported higher delinquencies on consumer credit lines. Agriculture conditions were somewhat mixed, but reports of drought and higher input costs were widespread. Energy activity was mostly unchanged during the final months of the summer. Labor Markets Job growth was subdued across the nation. Though hiring slowed, most Districts indicated imbalances persisted in the labor market as the availability of skilled workers and the number of applicants remained constrained. Worker retention improved in several Districts, but only in certain sectors such as manufacturing and transportation. Many contacts suggested "the second half of the year will be different" when describing wage growth. Growth in labor cost pressures was elevated in most Districts, often exceeding expectations during the first half of the year. But nearly all Districts indicated businesses renewed their previously unfulfilled expectations that wage growth will slow broadly in the near term. Prices Most Districts reported price growth slowed overall, decelerating faster in manufacturing and consumer-goods sectors. However, contacts in several Districts highlighted sharp increases in property insurance costs during the past few months. Contacts in several Districts indicated input price growth slowed less than selling prices, as businesses struggled to pass along cost pressures. As a result, profit margins reportedly fell in several Districts.
	FDIC Announcing FDICconnect's Banker Engagement Site for Consumer Compliance and CRA Examination Activities (09/05/2023) - In September 2023, the Federal Deposit Insurance Corporation (FDIC) is launching a new Banker Engagement Site (BES) through FDICconnect. BES provides a secure and efficient portal to exchange documents, information, and communications for consumer compliance and Community Reinvestment Act (CRA) examinations. Specifically, BES provides a financial institution's authorized staff the ability to communicate with FDIC examination staff and to respond to the information and document requests made throughout the supervisory process.
	OCC Hosts Compliance and Credit Risk Workshops in Syracuse (09/05/2023) - WASHINGTON—The Office of the Comptroller of the Currency (OCC) will host two workshops in Syracuse on October 17-18 for directors, senior management, and other key executives of national community banks and federal savings associations. The Compliance Risk: Understanding the Rules workshop on October 17 focuses on the critical elements of an effective compliance risk management program. Participants will review major compliance risks and critical regulations, identify compliance red flags, and learn about common OCC examination findings related to compliance risk.

	The Credit Risk: Recognizing and Responding to Risk workshop on October 18 covers the roles of the board and management, credit risk within the loan portfolio, and how to stay informed of changes in credit risk. The fee for each workshop is $99. Participants receive course materials, supervisory materials, and lunch. To register online and view the schedule and locations of other workshops, visit the OCC's website. For additional questions about the workshops, please contact the OCC Bank Director Workshop Team at (202) 649-6490 or bankdirectorworkshop@occ.treas.gov. ***Comment: Therse workshops are a valuable educational opportunity for national bank directors and senior management.***

BSA / AML

	FinCEN Issues Alert on Prevalent Virtual Currency Investment Scam Commonly Known as "Pig Butchering (09/08/2023) - WASHINGTON—The Financial Crimes Enforcement Network (FinCEN) issued an alert to highlight a prominent virtual currency investment scam known as "pig butchering." Multiple U.S. law enforcement sources estimate victims in the United States have lost billions of dollars to these scams and other virtual currency investment frauds. "This scam came has impacted far too many Americans, which is why FinCEN is sounding the alarm and asking financial institutions to report suspicious activity indicative of this scheme," said Acting Director Himamauli Das. "Suspicious Activity Reports filed by financial institutions will enable law enforcement to both aid victims and track down the perpetrators." "Pig butchering" scams resemble the practice of fattening a hog before slaughter. Victims invest in supposedly legitimate virtual currency investment opportunities before they are conned out of their money. Scammers refer to victims as "pigs," and may leverage fictitious identities, the guise of potential relationships, and elaborate storylines to "fatten up" the victim into believing they are in trusted partnerships before they defraud the victims of their assets—the "butchering." These scams are largely perpetrated by criminal enterprises based in Southeast Asia who use victims of labor trafficking to conduct outreach to millions of unsuspecting individuals around the world. FinCEN's alert explains the scam's methodology; provides behavioral, financial, and technical red flags to help financial institutions identify and report related suspicious activity; and reminds financial institutions of their reporting requirements under the Bank Secrecy Act.

	Comment: A very interesting read – and one all bankers should be aware of and share with their customers. Pig butchering scams have doubled in 2023 compared to 2022, according to one recent report.

Deposit / Retail Operations

	CFPB Report Highlights Role of Big Tech Firms in Mobile Payments (09/08/2023) - The CFPB published a new issue spotlight highlighting the impacts of Big Tech companies' policies and practices that govern tap-to-pay on mobile devices like smartphones and watches. Apple currently forbids banks and payment apps from accessing the tap-to-pay functionality on Apple iOS devices and imposes fees through Apple Pay. Google's Android operating system does not currently have such a policy. The issue spotlight explains how regulations imposed by mobile operating systems can have a significant impact on innovation, consumer choice, and the growth of open and decentralized banking and payments in the U.S. ***Comment: The report found that tap-to-pay options have grown to nearly $300 billion in consumer usage, with some analysts predicting that tap-to-pay transactions will grow by over 150 percent in the next five years. Meanwhile, Regulation E remains a minefield when determining liability for P2P payments using these apps.***
	FDIC Consumer News - September 2023 Edition (09/05/2023) - Fraud Against the Elderly Each year millions of senior citizens are victimized by financial fraud or theft of money, property, or valuable personal information. Often, an adult child or other relative is responsible. Other situations may involve trusted individuals such as caregivers, legal guardians, investment advisors, or new "friends." Since the types of abuse may differ widely, it is important to take a variety of precautions. Here are suggestions for protecting yourself and your loved ones. ***Comment: Worth noting again that Texas is a mandatory reporting state. Additionally, banks should offer training related to the suspected financial exploitation of a senior citizen to specified employees.***

Human Resources

Lending

	CFPB 2024 HMDA Filing Instructions Guide and Supplemental Guide for Quarterly Filers Release (09/07/2023) - The CFPB is pleased to announce that the Filing Instructions Guide

	(FIG) for Home Mortgage Disclosure Act (HMDA) data collected in 2024 is now available. The 2024 FIG is a technical resource to help financial institutions file HMDA data collected in 2024 and reported in 2025. We have also released the Supplemental Guide for Quarterly Filers for 2024, which includes 2024 calendar year quarterly deadlines. This guide will help financial institutions that are required to file HMDA data on a quarterly basis. The 2024 FIG and the Supplemental Guide for Quarterly Filers for 2024 can be accessed at https://ffiec.cfpb.gov under Guides for HMDA Filers. We encourage financial institutions to direct any questions to HMDAHelp@cfpb.gov. ***Comment: Update your resources accordingly.***

Technology / Security

Selected federal rules – proposed

Proposed rules are included only when community banks may want to comment. Date posted may not be the same as the Federal Register Date.

PROPOSED RULE WITH REQUEST FOR PUBLIC COMMENT