

# FDIC Advisory Committee on Community Banking

October 5, 2023

Supervision and Policy Updates



# FDIC Advisory Committee on Community Banking

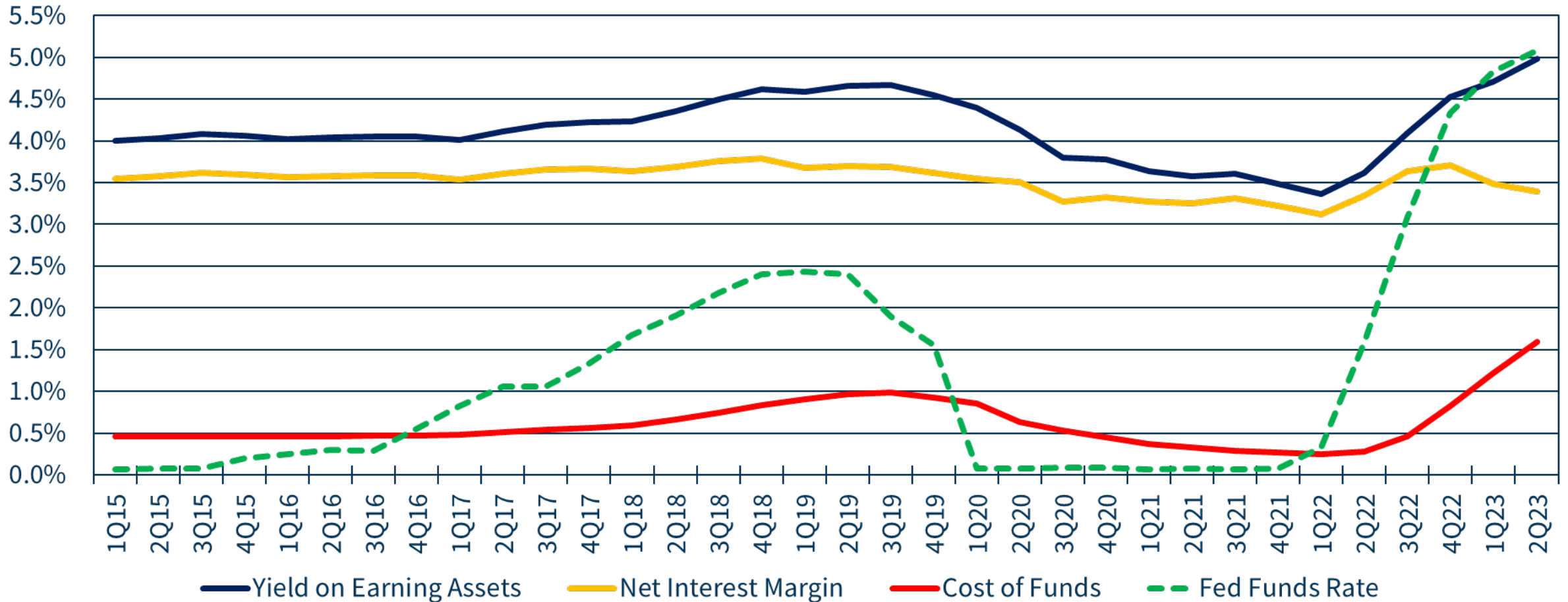
October 5, 2023

Asset-Liability Management



# The Effects of Rising Interest Rates on Earnings

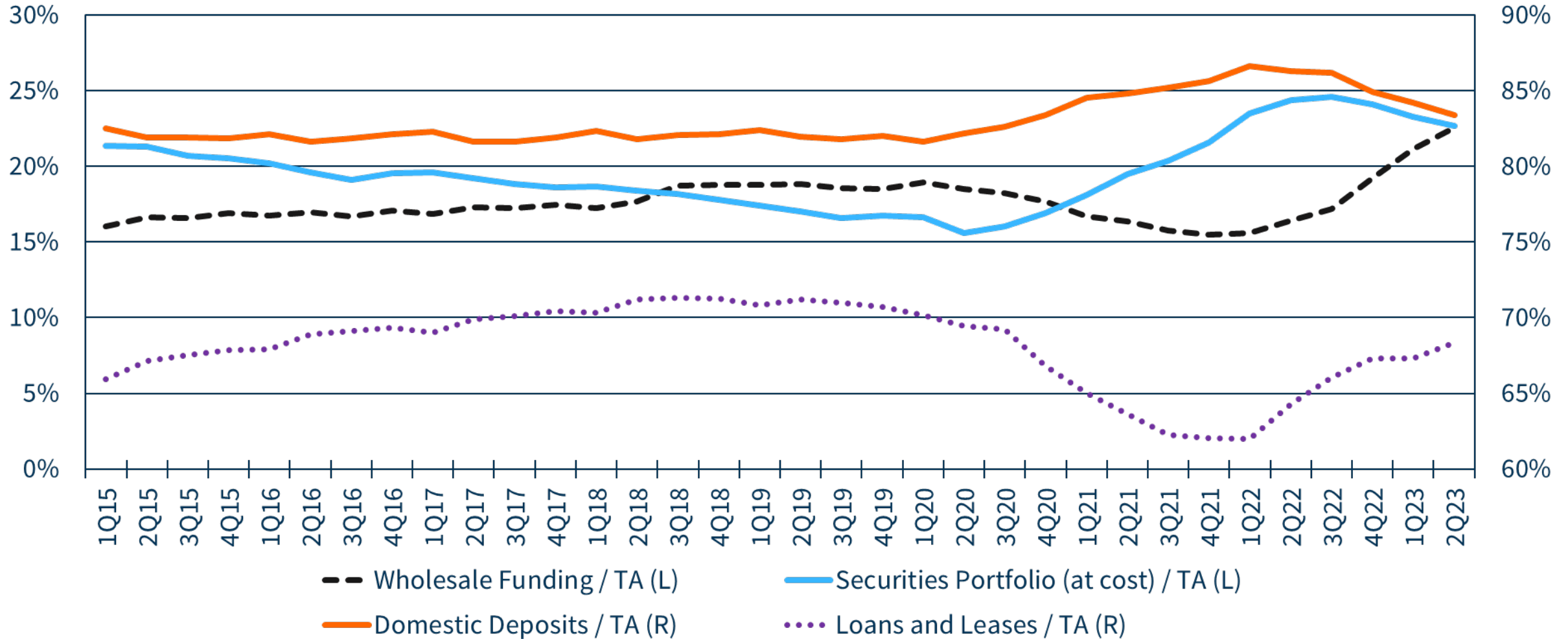
## Net Interest Margin Compression as Cost of Funds Increases Outpace Earning Asset Yields



Source: Call Report data for community banks as defined in the FDIC's 2020 Community Banking Study

# The Effects of Rising Interest Rates on Liquidity

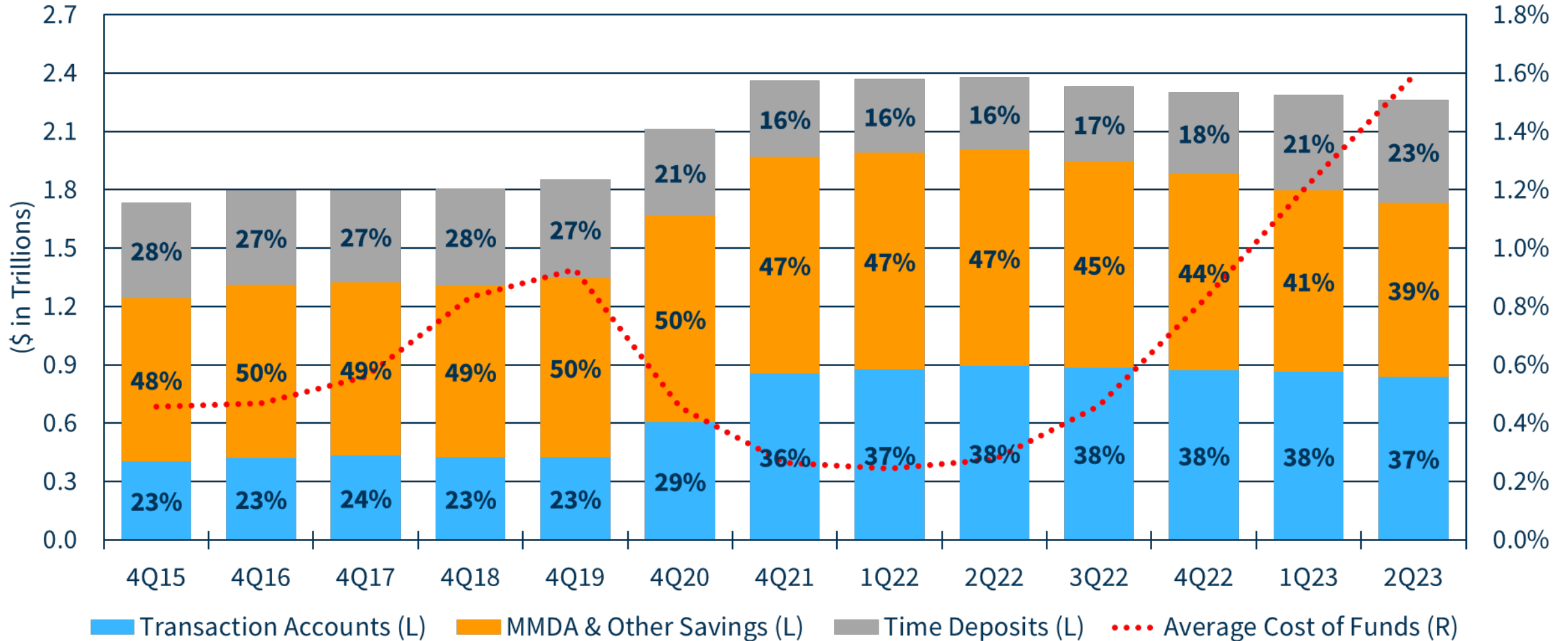
## Deposit Declines offset with Wholesale Funding



Source: Call Report data for community banks as defined in the FDIC's 2020 Community Banking Study

# The Effects of Rising Interest Rates on Liquidity

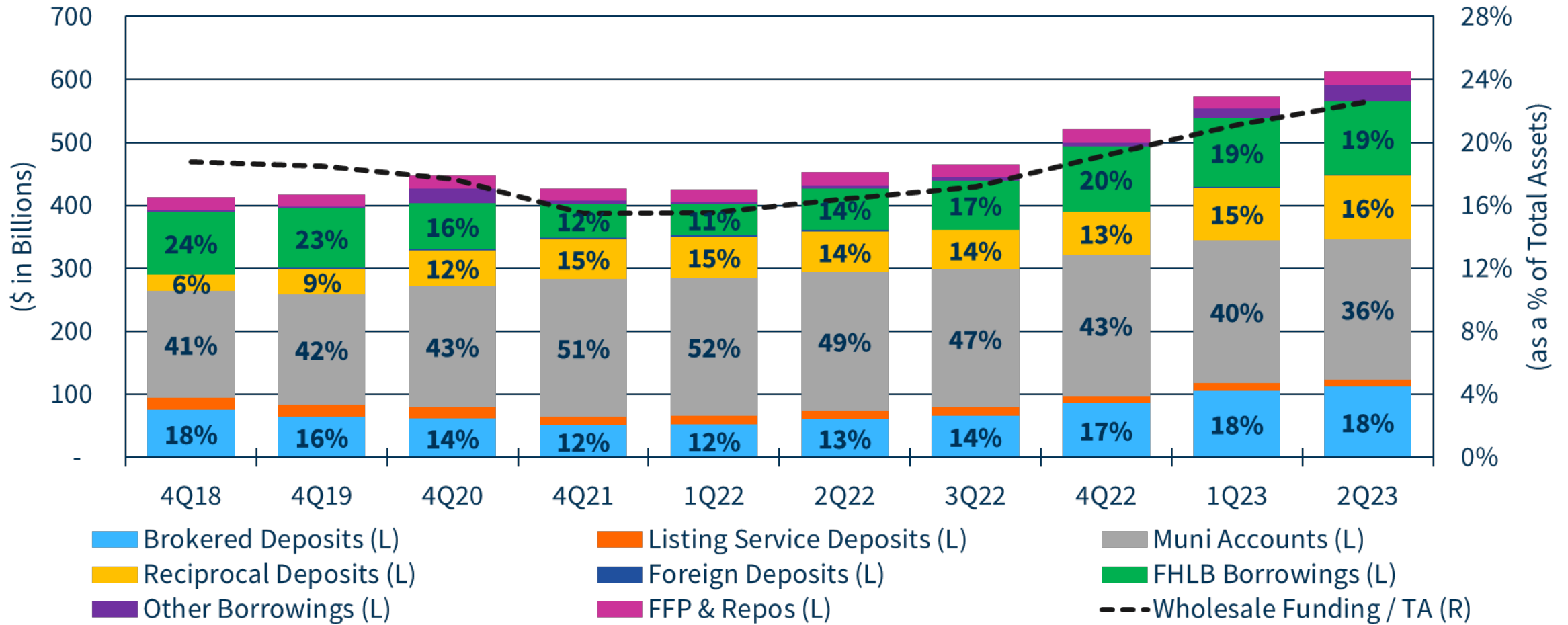
## Rising Deposit Costs due to Increased Market Interest Rates and Deposit Migration



Source: Call Report data for community banks as defined in the FDIC's 2020 Community Banking Study

# The Effects of Rising Interest Rates on Liquidity

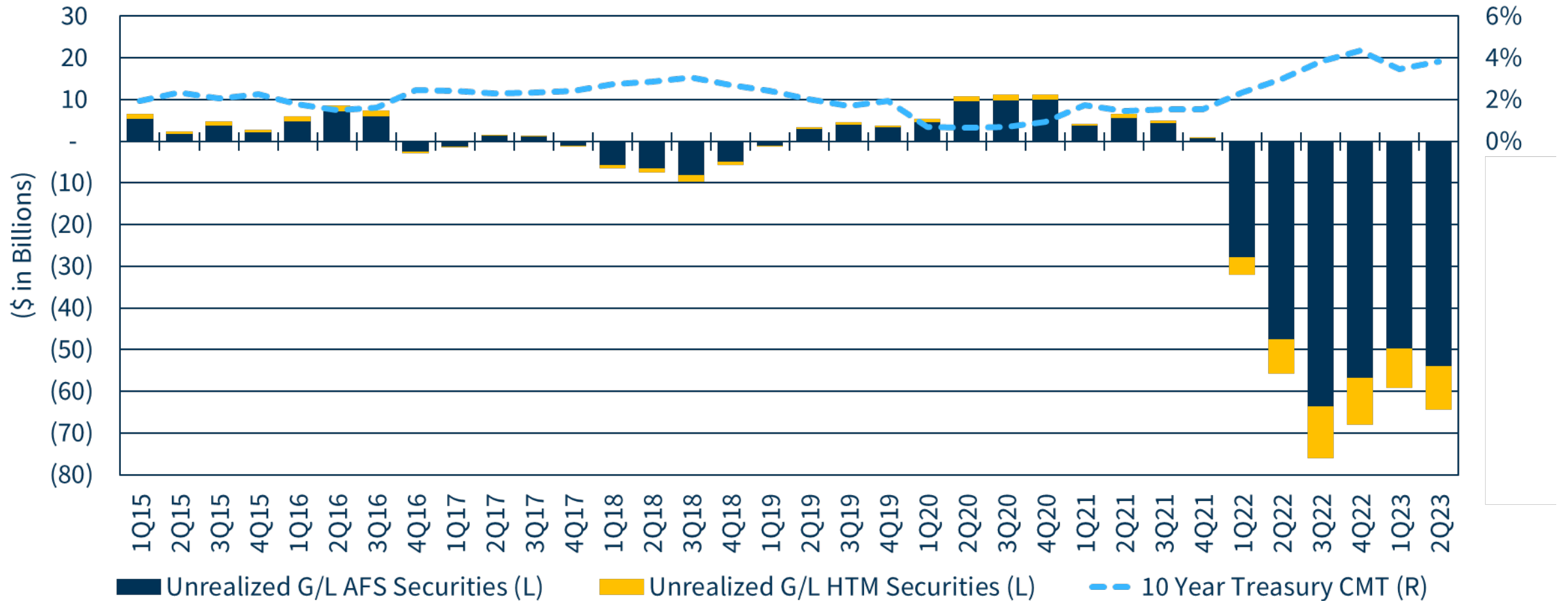
## Recent Uptick in Wholesale Funding Primarily due to Borrowings, Reciprocals, and Brokered Deposits



Source: Call Report data for community banks as defined in the FDIC's 2020 Community Banking Study

# The Effects of Rising Interest Rates on Liquidity

Higher Rates Caused Long-Term Bond Values to Decline, Potentially Impacting Capital and Liquidity



Source: Call Report data for community banks as defined in the FDIC's 2020 Community Banking Study and <https://fred.stlouisfed.org/series/DGS10#0>

# Interagency Policy Statement

## Interagency Policy Statement on Funding and Liquidity Risk Management on the Importance of Contingency Funding Planning issued July 2023

- Maintain actionable and operationally ready contingency funding plans (CFPs) that are updated to address evolving liquidity risks
- Assess the stability of funding
- Maintain diversified funding sources
- Consider the Discount Window as a contingent funding source
- Understand operational requirements of contingent funding sources and test regularly
- Ensure an appropriate amount of collateral is readily available
- Plan for operational challenges moving and posting collateral
- Review and revise CFPs periodically to address evolving liquidity risks



# FDIC Advisory Committee on Community Banking

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Banking Cannabis-Related Businesses



# Federal vs. State Law

- Federal Law
  - Marijuana is categorized as a Schedule I controlled substance under the Controlled Substances Act (21 U.S.C. § 812).
- State Law
  - The majority of states and the District of Columbia have legalized some form of marijuana use (medical or recreational).

# Statement on Providing Banking Services

- The FDIC encourages insured depository institutions to:
  - serve their communities and recognizes the importance of services they provide; and
  - take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers without regard to the risks presented by an individual customer or the bank's ability to manage the risk.

# FinCEN Guidance & Trends



## Department of the Treasury Financial Crimes Enforcement Network

### Guidance

**FIN-2014-G001**

**Issued:** February 14, 2014

**Subject:** BSA Expectations Regarding Marijuana-Related Businesses

The Financial Crimes Enforcement Network (“FinCEN”) is issuing guidance to clarify Bank Secrecy Act (“BSA”) expectations for financial institutions seeking to provide services to marijuana-related businesses. FinCEN is issuing this guidance in light of recent state initiatives to legalize certain marijuana-related activity and related guidance by the U.S. Department of Justice (“DOJ”) concerning marijuana-related enforcement priorities. This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities. This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.

#### Marijuana Laws and Law Enforcement Priorities

The Controlled Substances Act (“CSA”) makes it illegal under federal law to manufacture, distribute, or dispense marijuana.<sup>1</sup> Many states impose and enforce similar prohibitions. Notwithstanding the federal ban, as of the date of this guidance, 20 states and the District of Columbia have legalized certain marijuana-related activity. In light of these developments, U.S. Department of Justice Deputy Attorney General James M. Cole issued a memorandum (the “Cole Memo”) to all United States Attorneys providing updated guidance to federal prosecutors concerning marijuana enforcement under the CSA.<sup>2</sup> The Cole Memo guidance applies to all of DOJ’s federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

The Cole Memo reiterates Congress’s determination that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Cole Memo notes that DOJ is committed to enforcement of the CSA consistent with those determinations. It also notes that DOJ is committed to using its investigative and prosecutorial resources to address the most

<sup>1</sup> Controlled Substances Act, 21 U.S.C. § 801, *et seq.*

<sup>2</sup> James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement* (August 29, 2013), available at <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

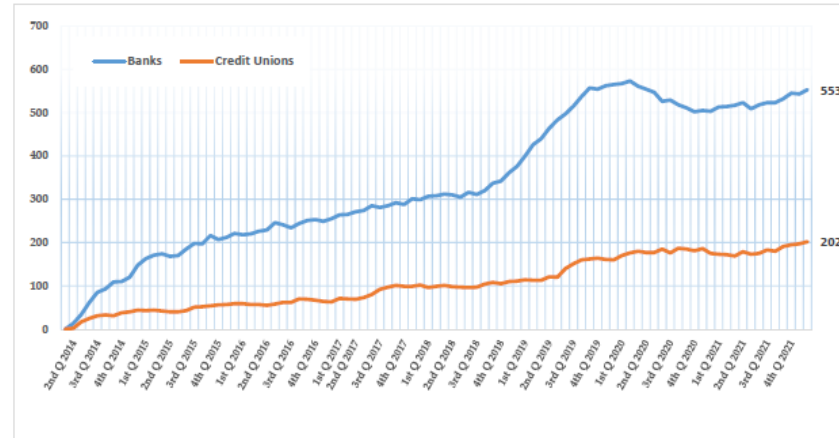


## FinCEN

*Financial Crimes Enforcement Network*

### Marijuana Banking Update

Monthly Count of Depository Institutions (by type)  
Providing Banking Services to Marijuana-Related Businesses<sup>1</sup>  
(SARs filed through 30 September 2021)



Short-term declines in the number of depository institutions actively providing banking services to marijuana-related businesses (MRBs) may be explained by filers exceeding the 90 day follow-on Suspicious Activity Report (SAR) filing timeframe. Several filers take 180 days or more to file a continuing activity report. After 90 days, a depository institution is no longer counted as providing banking services until a new guidance-related SAR is received.

The number of depository institutions (DIs) banking marijuana-related businesses (MRBs) increased to 755 institutions in September 2021, up from 723 in June 2021.

# Legislation Regarding Hemp

- 2018 Agriculture Improvement Act
  - Excluded hemp with THC level of no more than 0.3% as a controlled substance.
  - Allowed broad hemp cultivation, across state lines, no restrictions on sale, transport or possession.
  - Included regulatory oversight and restrictions.

# Regulatory Guidance - Hemp

Joint Release

Board of Governors of the Federal Reserve System  
Federal Deposit Insurance Corporation  
Financial Crimes Enforcement Network  
Office of the Comptroller of the Currency  
Conference of State Bank Supervisors

For Release at 10:00 a.m. ET

December 3, 2019

## Agencies Clarify Requirements for Providing Financial Services to Hemp-Related Businesses

WASHINGTON—Four federal agencies in conjunction with the state bank regulators today issued a statement clarifying the legal status of hemp growth and production and the relevant requirements under the Bank Secrecy Act (BSA) for banks providing services to hemp-related businesses.

The statement emphasizes that banks are no longer required to file suspicious activity reports (SAR) for customers solely because they are engaged in the growth or cultivation of hemp in accordance with applicable laws and regulations. For hemp-related customers, banks are expected to follow standard SAR procedures, and file a SAR if indicia of suspicious activity warrants.

This statement provides banks with background information on the legal status of hemp, the U.S. Department of Agriculture's (USDA) interim final rule on the production of hemp, and the BSA considerations when providing banking services to hemp-related businesses.

This statement also indicates that the Financial Crimes Enforcement Network (FinCEN) will issue additional guidance after further reviewing and evaluating the USDA interim final rule.

The statement was issued by the Federal Reserve Board, the Federal Deposit Insurance Corporation, FinCEN, the Office of the Comptroller of the Currency and the Conference of State Bank Supervisors. Banks can contact the USDA, state departments of agriculture, and tribal governments with further questions regarding the Agriculture Improvement Act of 2018 (2018 Farm Bill) and its implementing regulations.

###

Attachment: [Joint Guidance on Providing Financial Services to Customers Engaged in Hemp-Related Businesses](#).

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## FinCEN GUIDANCE

FIN-2020-G001

Issued: June 29, 2020

Subject: FinCEN Guidance Regarding Due Diligence Requirements under the Bank Secrecy Act for Hemp-Related Business Customers

The Financial Crimes Enforcement Network (FinCEN) is issuing this guidance to address questions related to Bank Secrecy Act/Anti-Money Laundering (BSA/AML) regulatory requirements for hemp-related business customers. This guidance explains how financial institutions<sup>1</sup> can conduct due diligence for hemp-related businesses, and identifies the type of information and documentation financial institutions can collect from hemp-related businesses to comply with BSA regulatory requirements. This clarification is intended to enhance the availability of financial services for, and the financial transparency of, hemp-related businesses in compliance with federal law. This guidance supplements the December 3, 2019 interagency statement on providing financial services to customers engaged in hemp-related businesses (December Hemp Statement).<sup>2</sup>

This guidance provides financial institutions BSA/AML risk considerations only for hemp-related businesses (i.e., businesses or individuals that grow hemp, and processors and manufacturers who purchase hemp directly from such growers). This guidance does not replace or supersede FinCEN's previous guidance on the BSA expectations regarding marijuana-related businesses (2014 Marijuana Guidance).<sup>3</sup>

### Background

The Agriculture Improvement Act of 2018 (the 2018 Farm Bill)<sup>4</sup> removed hemp from the definition of marijuana in the Controlled Substances Act (CSA)<sup>5</sup> and directed the establishment of a regulatory framework for the legal production of hemp. The 2018 Farm

1. See 31 CFR § 1010.100(t) (defining "financial institutions").
2. See "Providing Financial Services to Customers Engaged in Hemp-Related Businesses," Dec. 3, 2019, available at <https://www.fincen.gov/sites/default/files/2019-12/Hemp%20Guidance%20%28Final%202-3-19%29%20FINAL.pdf>.
3. See FIN-2014-G001, "BSA Expectations Regarding Marijuana-Related Businesses," Feb. 14, 2014, available at <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>.
4. Pub. L. 115-334, 132 Stat. 4500 (2018).
5. The term "marihuana" is defined in the Controlled Substances Act at 21 U.S.C. § 802(16), as amended by section 12619 of the 2018 Farm Bill. Also, "marihuana" refers to the currently used term "marijuana."

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Prudent CRE Loan Accommodations and Workouts



# Prudent CRE Loan Accommodations and Workouts

- Interagency Policy Statement issued June 29, 2023 (FIL-34-2023)
- Updates and replaces Interagency Policy Statement issued October 30, 2009
- Timely:
  - More than 98% of banks engage in CRE lending
  - Pandemic led to stress in several CRE property types



# Prudent CRE Loan Accommodations and Workouts

- Objectives of the Interagency Policy Statement:
  - Encourages banks to work prudently and constructively with creditworthy borrowers during times of financial stress
  - Adds a new section on short-term loan accommodations
  - Addresses accounting changes on estimating loan losses
  - Provides new and updated examples of how to classify and account for loans modified or affected by loan accommodations or workout activity
- Incorporates feedback from industry

# Prudent CRE Loan Accommodations and Workouts

- Ask the Regulator session held September 14, 2023
- 3,400+ participants
- Questions received:
  - Mostly case-specific questions on workout situations
    - Accrual/Nonaccrual
    - Pass vs. adverse classification
    - A/B Note structures

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Interagency Guidance on Third-Party Relationships:  
Risk Management



# Background

- Prior to 2023, the FDIC, OCC, and Federal Reserve each had separate guidance for managing third party risk (for the FDIC, this was issued via FIL-44-2008).
- In general, the principles conveyed were the same, with some differences in scope, terminology, and level of detail
- Perceived inconsistencies between the agencies' guidance confused some financial institutions and third parties working with, or wanting to work with, financial institutions

# Background

- Agencies collaborated to develop interagency guidance for third-party risk management:
  - Provide clarity and consistency
  - Articulate risk-based principles for third-party risk management
  - Applicable to all types of third-party relationships
  - Furnish examples of considerations useful in identifying and managing risks and complying with applicable laws and regulations during all stages of a third-party relationship

# Interagency Guidance

- Interagency Guidance on Third-Party Relationships: Risk Management
  - Issued June 6, 2023 via FIL-29-2023
- Overview and Risk Management:
  - Highlights importance of effective risk management
  - Reinforces safety and soundness principles, including requirement to comply with applicable laws and regulations
  - Reminds institutions that use of third parties does not diminish Board and management oversight responsibility
  - Promotes tailoring of risk management practices commensurate with risk profile, risk appetite, and the level of risk and complexity of third-party relationships

# Interagency Guidance

- Principles Based:
  - Not mandatory
  - Not intended as a checklist
  - Not a safe harbor provision
- Provides examples of considerations in each stage of the risk management life cycle:
  - Planning
  - Due diligence and third-party selection
  - Contract negotiations
  - Ongoing monitoring
  - Termination

# Interagency Guidance

- Tailoring:
  - Risk management practices tailored to institution and relationship
- Governance:
  - Responsibility of board to ensure risk management processes are commensurate with the institution's risk profile, risk appetite, and the level of risk and complexity of its third-party relationships
- Supervision:
  - Examiners to assess whether activities are conducted in a safe and sound manner in compliance with applicable laws and regulations



# Resources

- Banker Resource Center: [Third-Party Relationships Page](#)
- Interagency Guidelines Establishing Standards for Safety and Soundness (Part 364 Appendix A)
- Interagency Guidelines Establishing Information Security Standards (Part 364 Appendix B)
- Sections 23A and 23B of the Federal Reserve Act apply to affiliate relationships
- [Interagency Guidance on Third-Party Relationships: Risk Management: FIL 29-2023](#)
- [Conducting Due Diligence on Financial Technology Companies: A Guide for Community Banks: FIL-59-2021](#)

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Banker Engagement Site



# Banker Engagement Site

- Secure Portal for Consumer Compliance and CRA Examination Activities
  - Pre-Examination Planning Process
  - Ad-hoc Items
- User Centric Design
  - Banker Usability Tests
  - Transparency and Control
  - Valued Capabilities and Features
  - Responsiveness to Feedback and Opportunities

# Banker Engagement Site

- Communication and Resources
  - [FIL-49-2023](#), Announcing Banker Engagement Site
  - User Guides and Job Aids
  - Briefing to Bankers Associations

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FDIC Return to Banks

