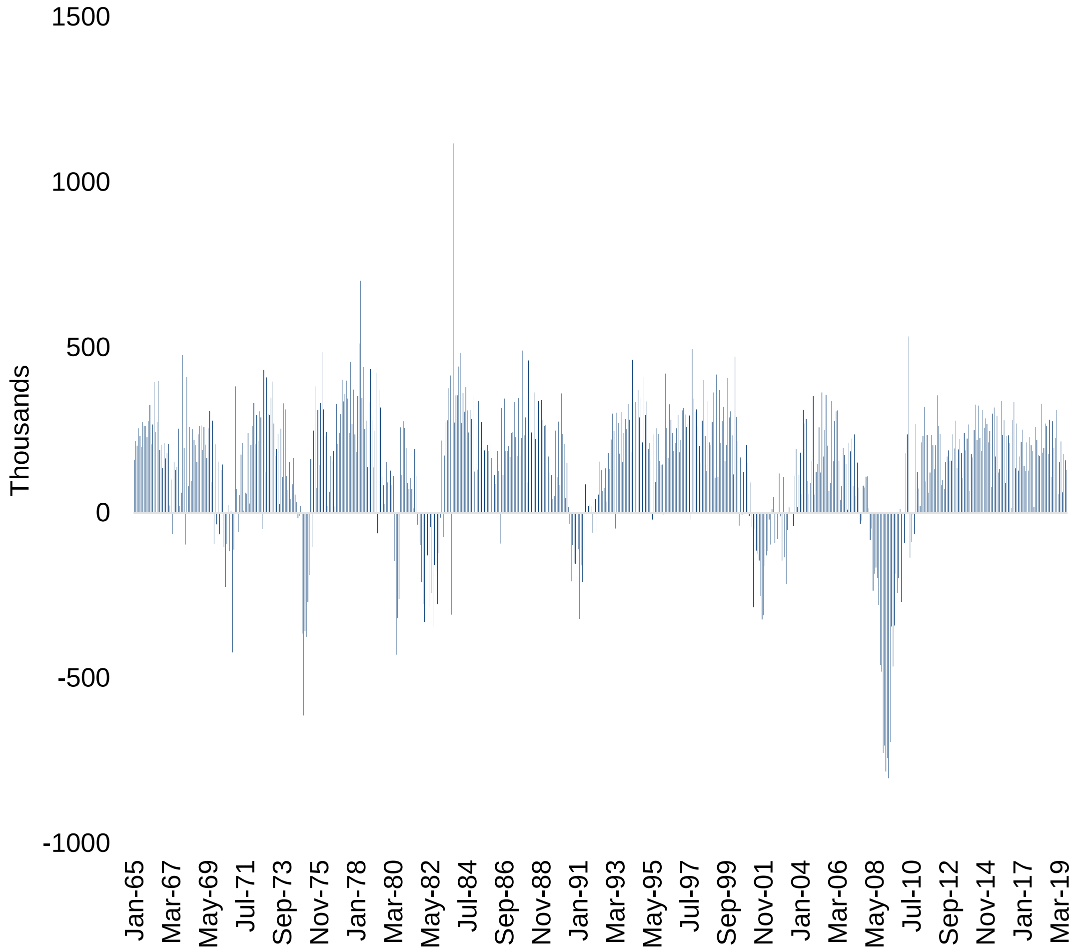
State of the Industry

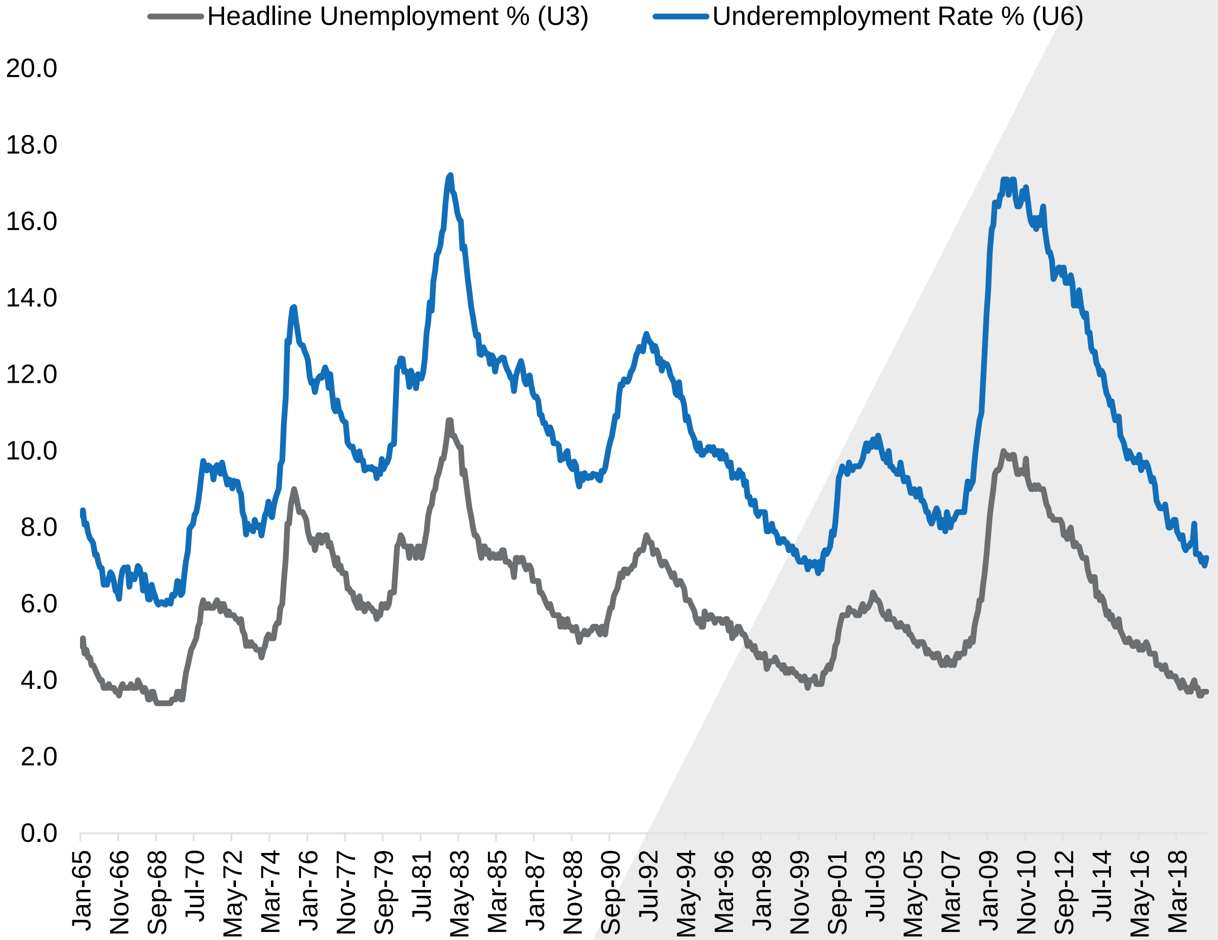
2019 & Beyond

Cox Automotive™

Job Growth Slowing But Labor Market Still Strong

September saw 136k jobs created (161k YTD monthly pace well below 223k last year) but unemployment rate now at 3.5%



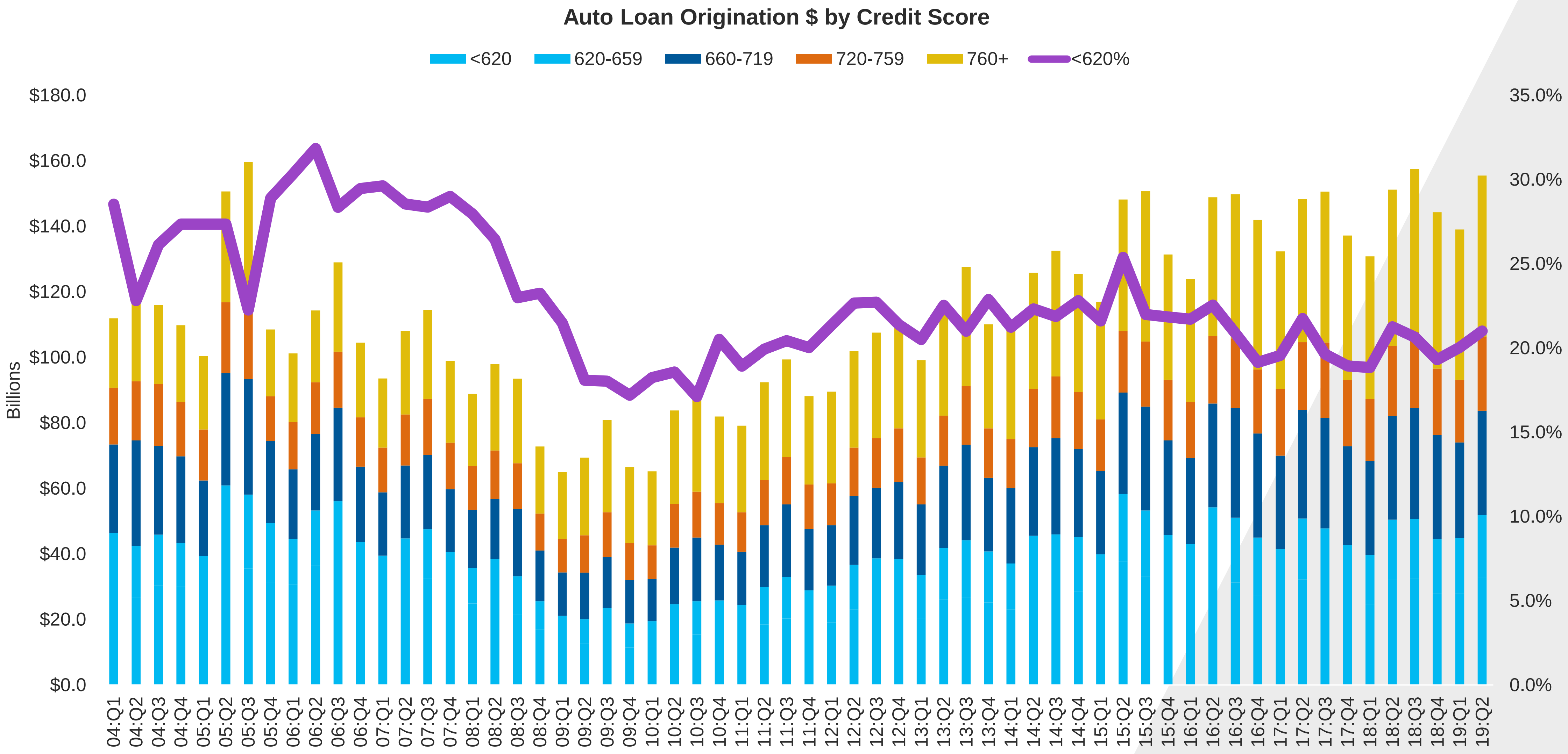


Consumer Confidence Fell 6.8% In September

Plans to purchase an auto have been on a roller coaster ride and declined in September to lowest level in 14 months

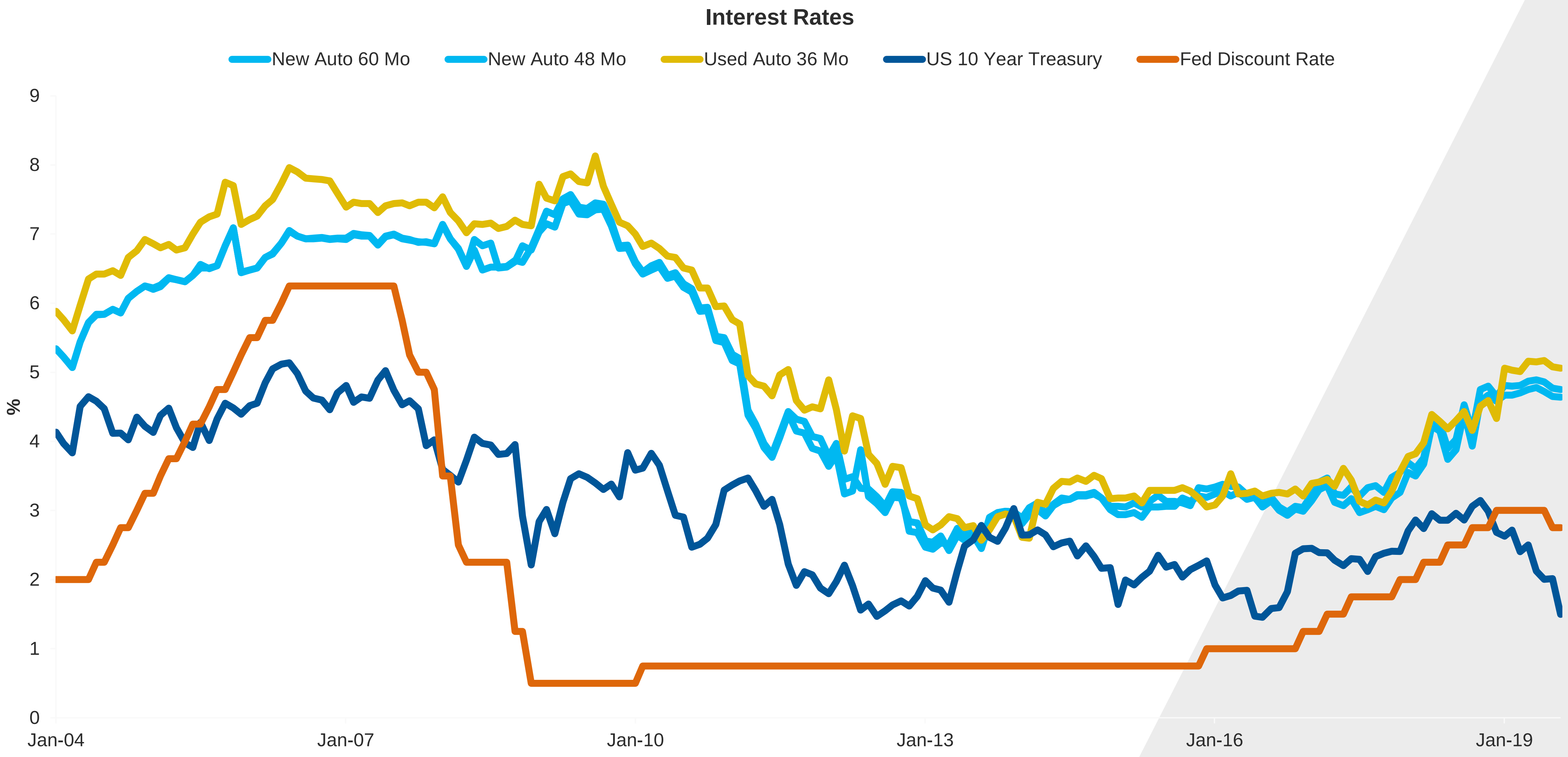
Source: The Conference Board, Moody's Analytics

Easier Lending Supports Growth



Source: Federal Reserve

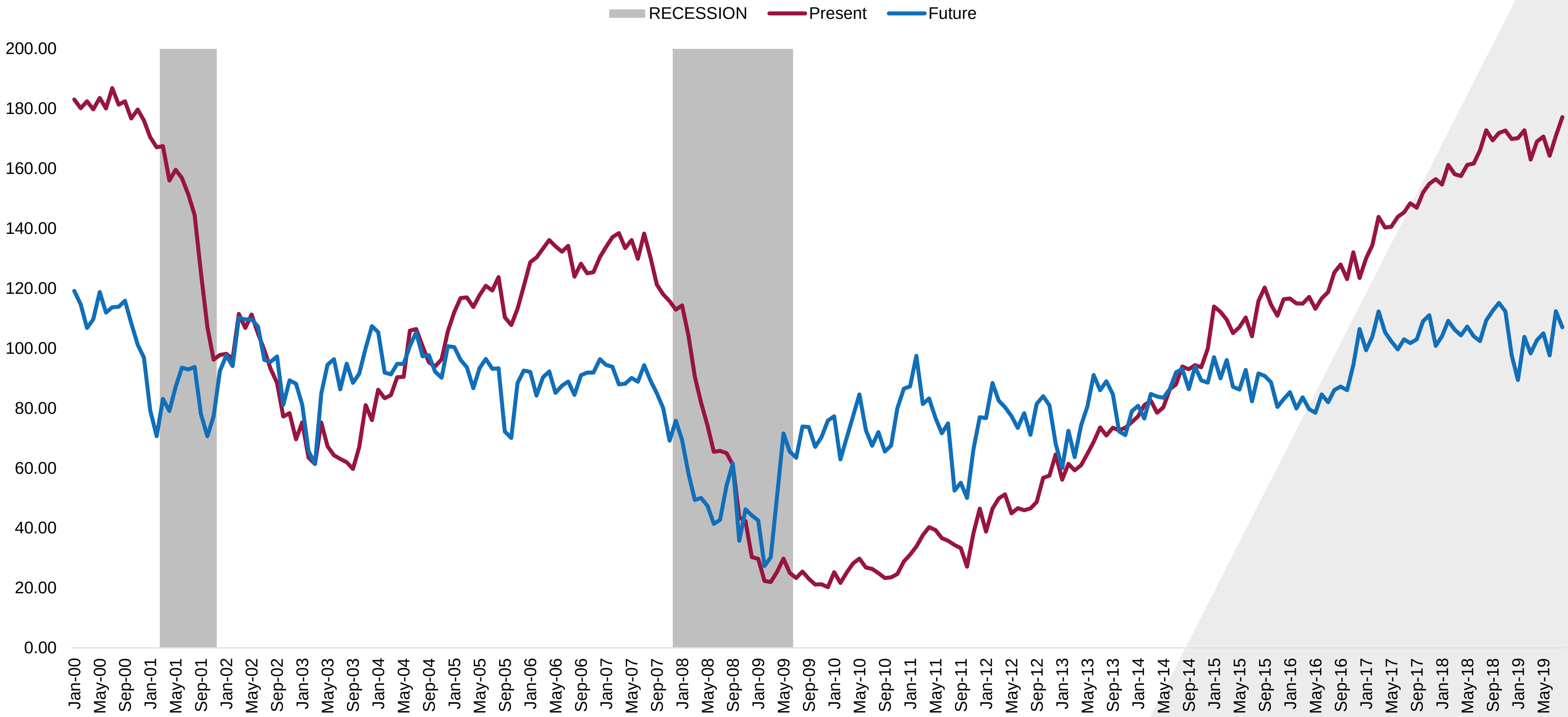
“Best Available” Auto Rates Have Not Declined



Source: Bankrate/Bloomberg

Present-Future Gap In Confidence Does Not Bode Well

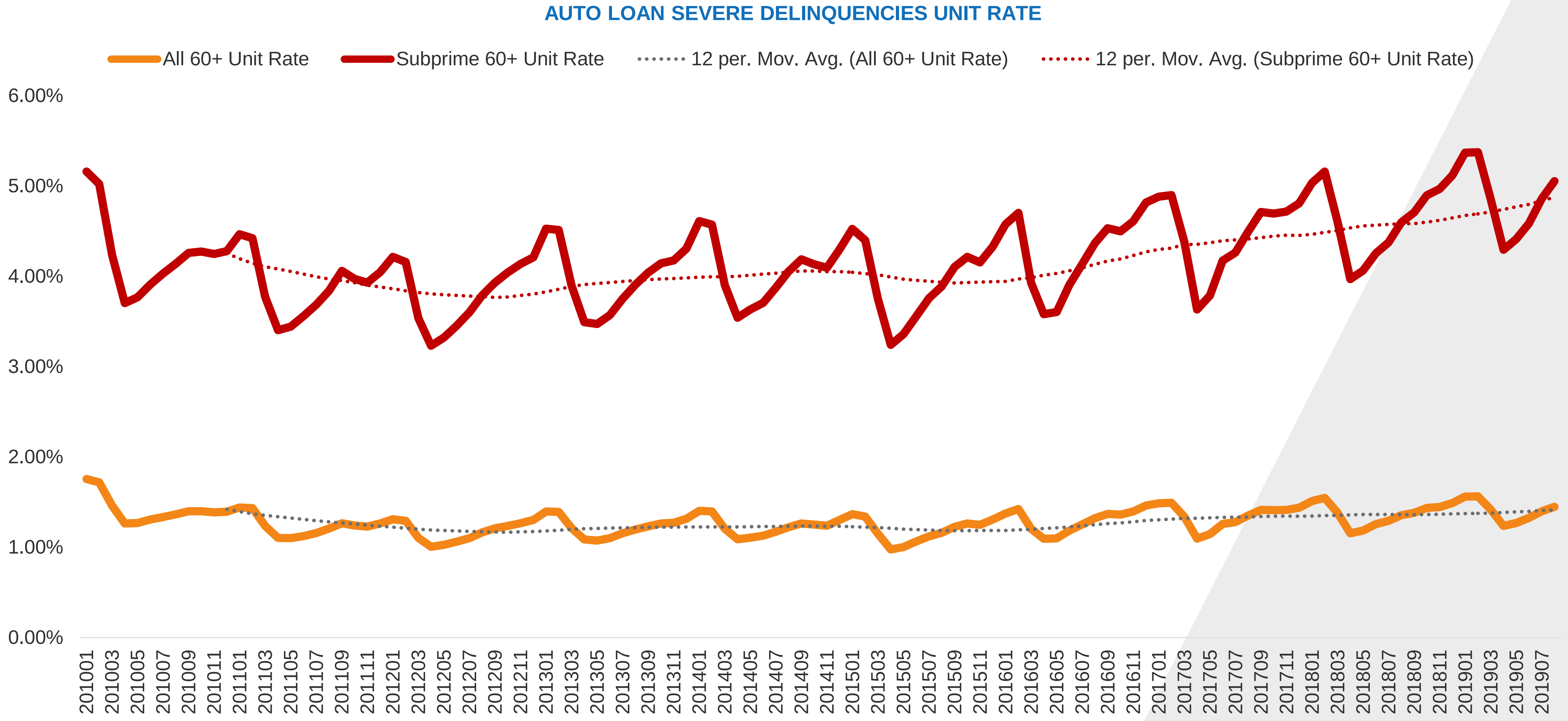
The gap between present and future and the peak in present preceded the last two recessions



Source: The Conference Board

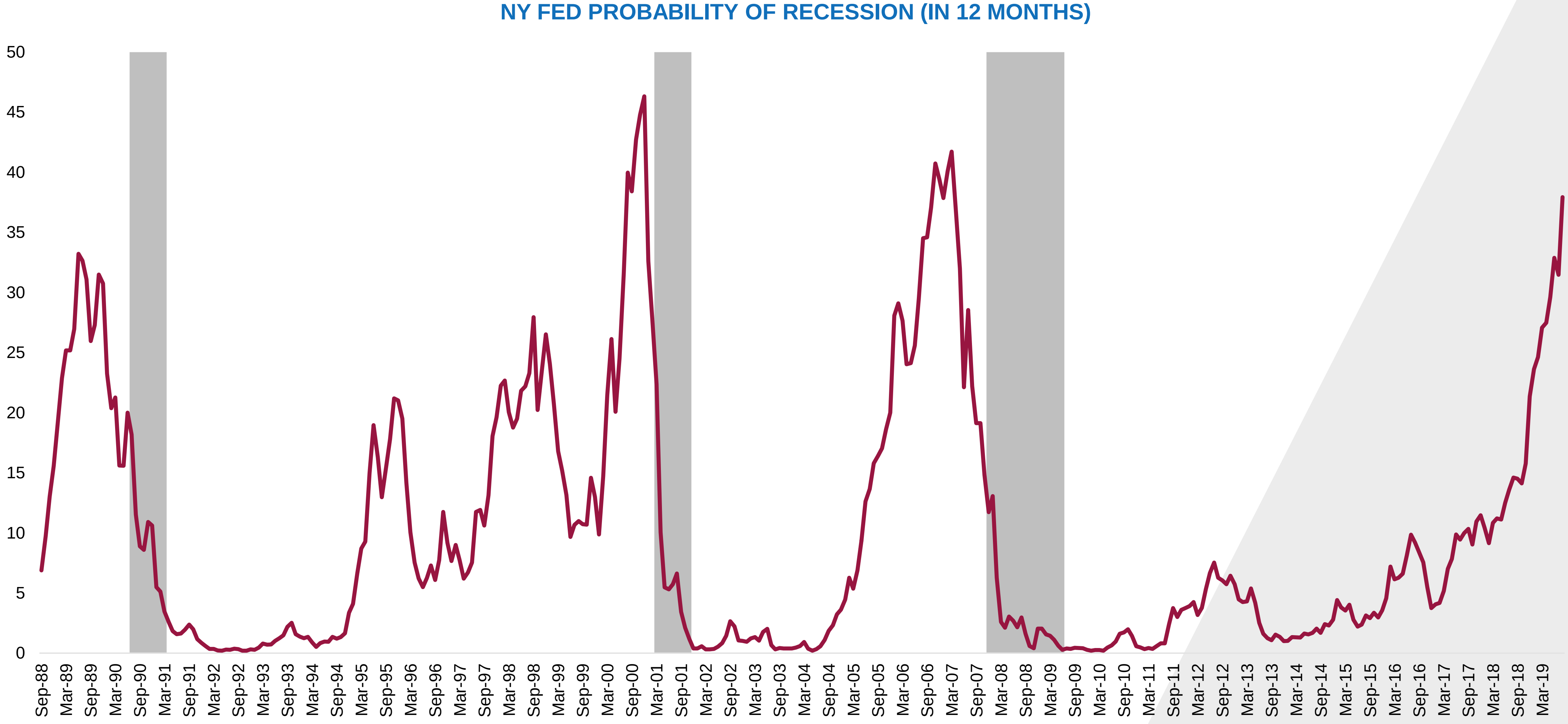
Auto Loans Have Rising Delinquency Rate

Subprime delinquency rate has been problematic for almost a year; now overall delinquency rate also higher y/y



Recession Becomes More Likely In 1-3 Year Horizon

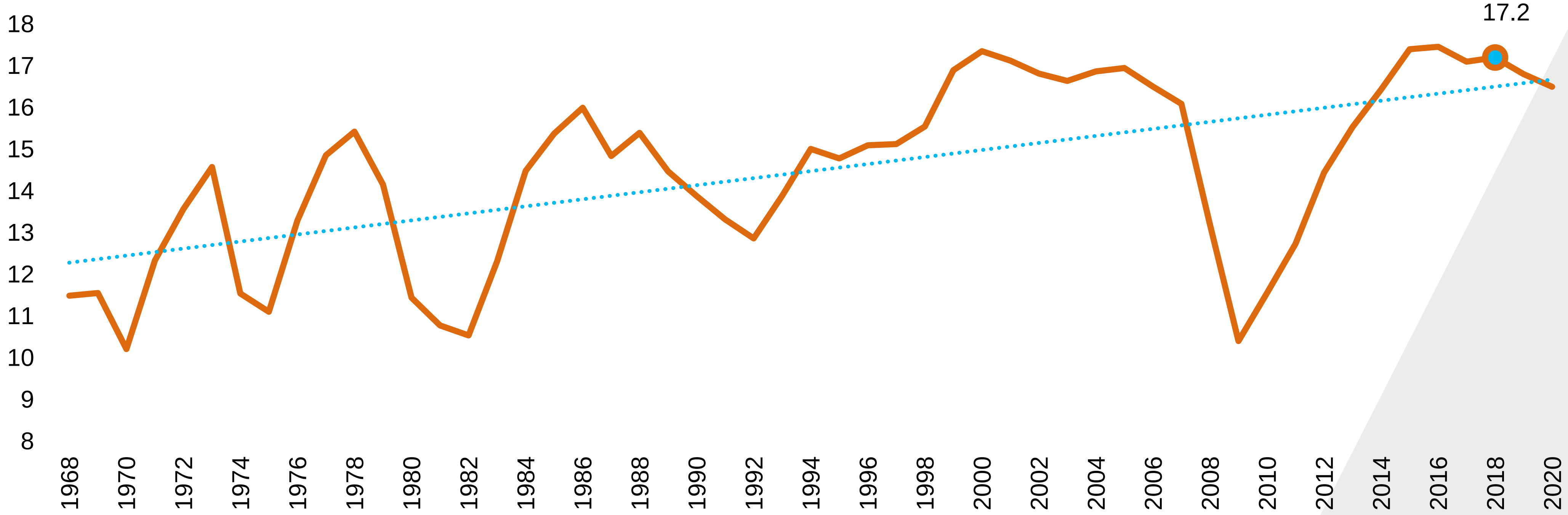
74% of business economists expect a recession to occur by 2021



Source: NY Federal Reserve Bank; National Association of Business Economists

New Vehicle Sales Resume Moderate Decline Trend

NEW VEHICLE SALES OUTLOOK (MILLIONS)

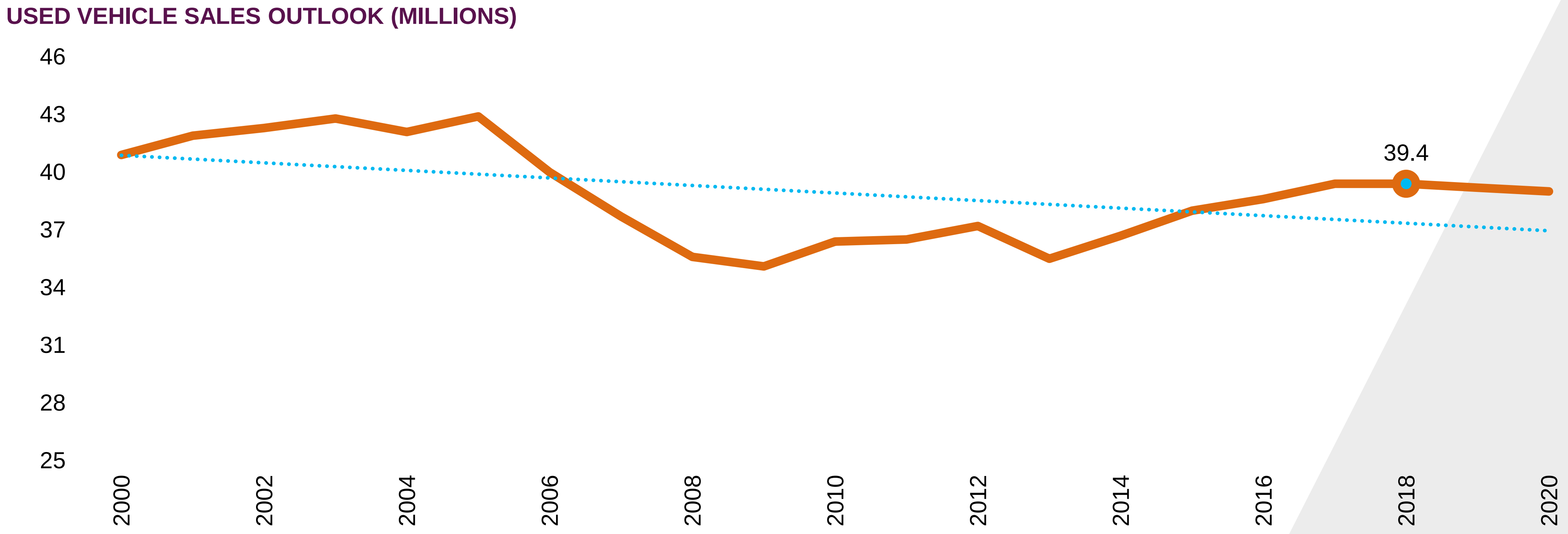


COX AUTOMOTIVE FULL-YEAR FORECASTS	2018	2019	2020*
	17.2	16.8	16.5

COX AUTOMOTIVE™

Source: Cox Automotive

Used Vehicle Sales Plateau

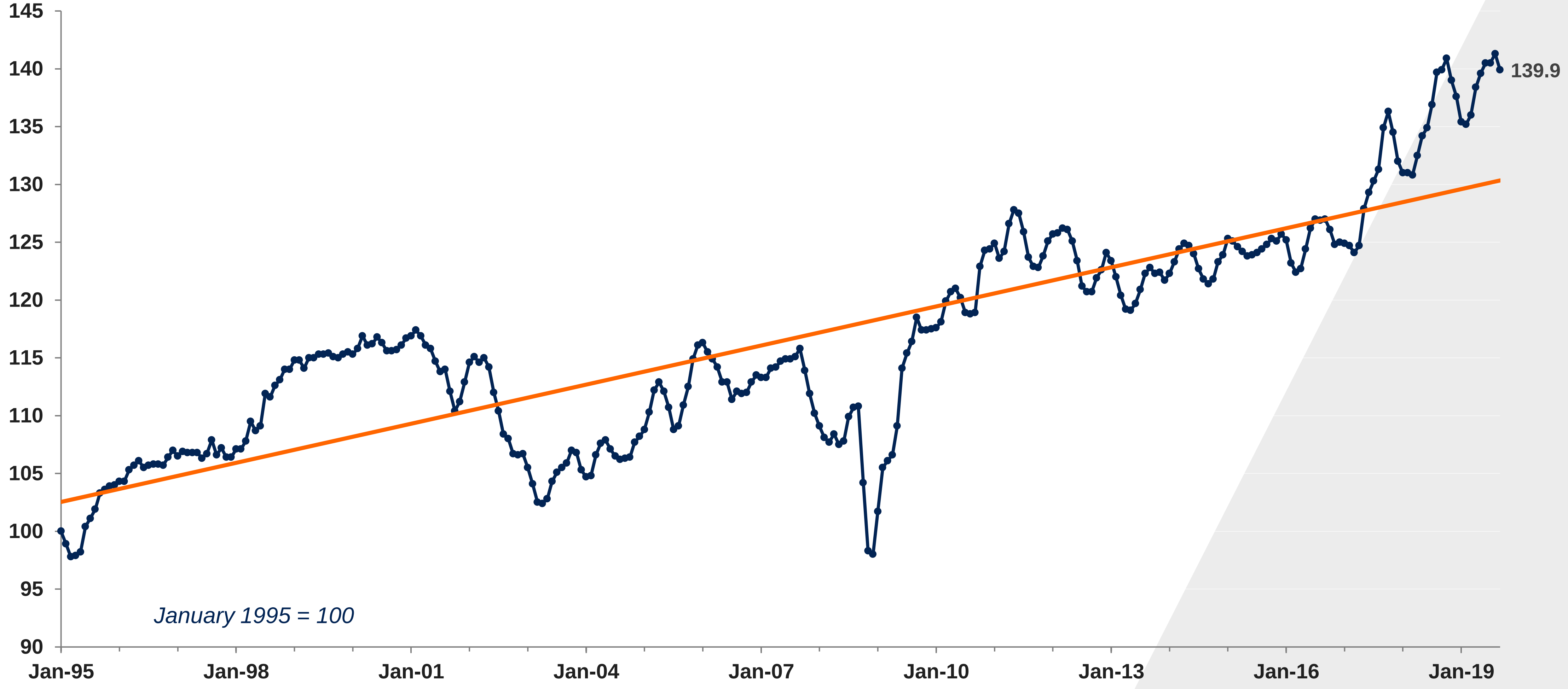


	2018	2019	2020*
COX AUTOMOTIVE FULL-YEAR FORECASTS	39.4	39.2	39.0

	2018	2019	2020*
COX AUTOMOTIVE USED RETAIL FORECASTS	19.5	19.8	20.0

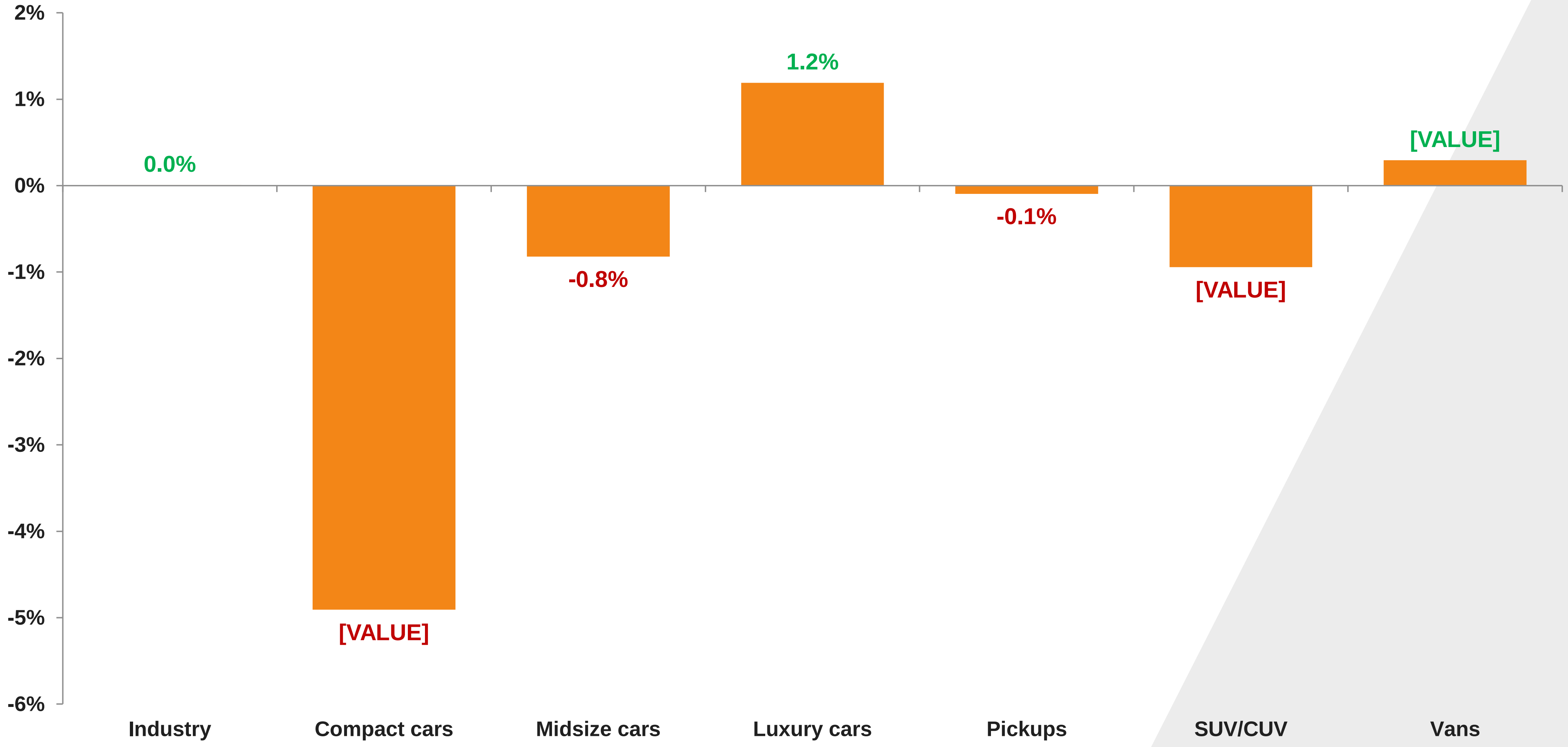
Used Vehicle Values Look Weak Compared To Last Year

Prices in September decreased 1.04% versus August 2019 and were flat compared to September 2018



Source: Manheim

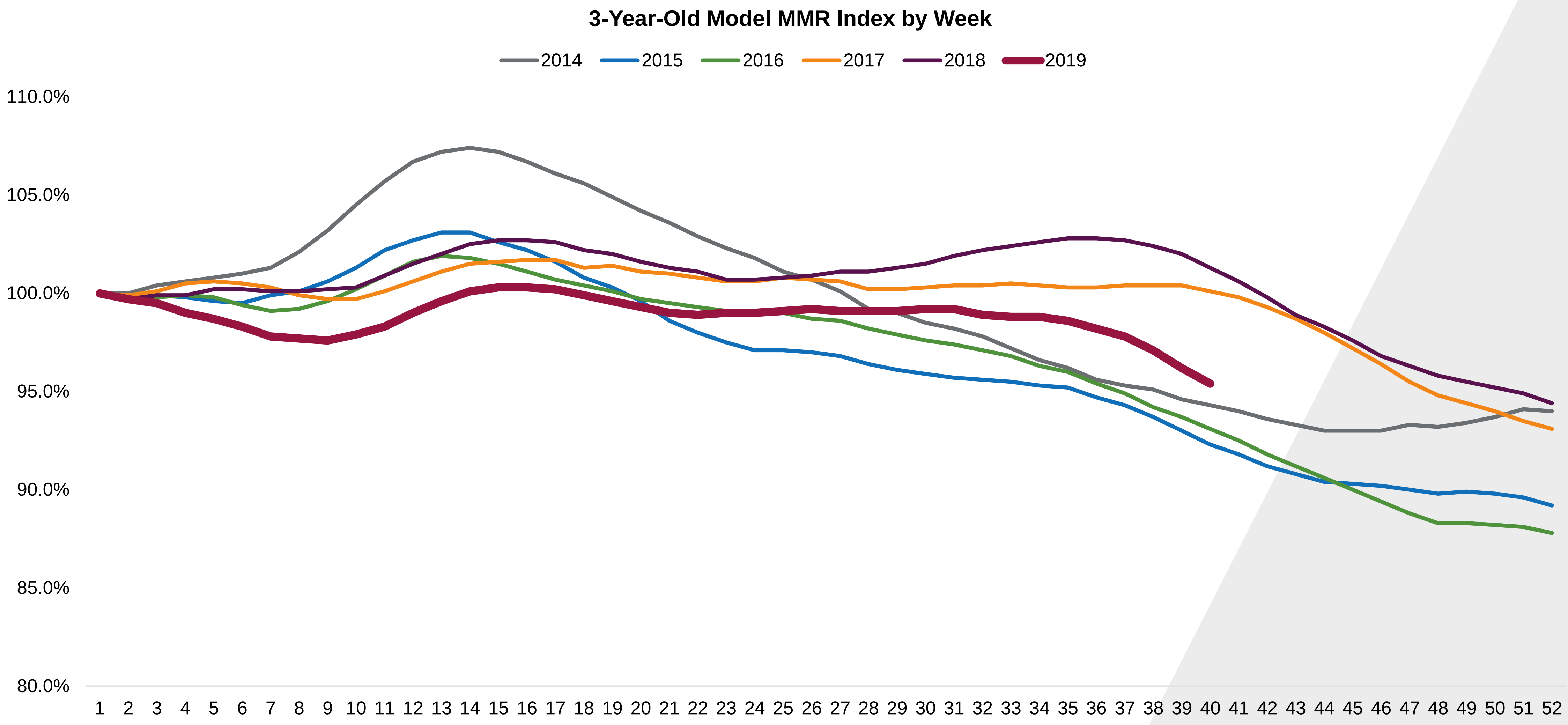
Percent Change in Wholesale Prices in September for Major Market Segments



Source: Manheim

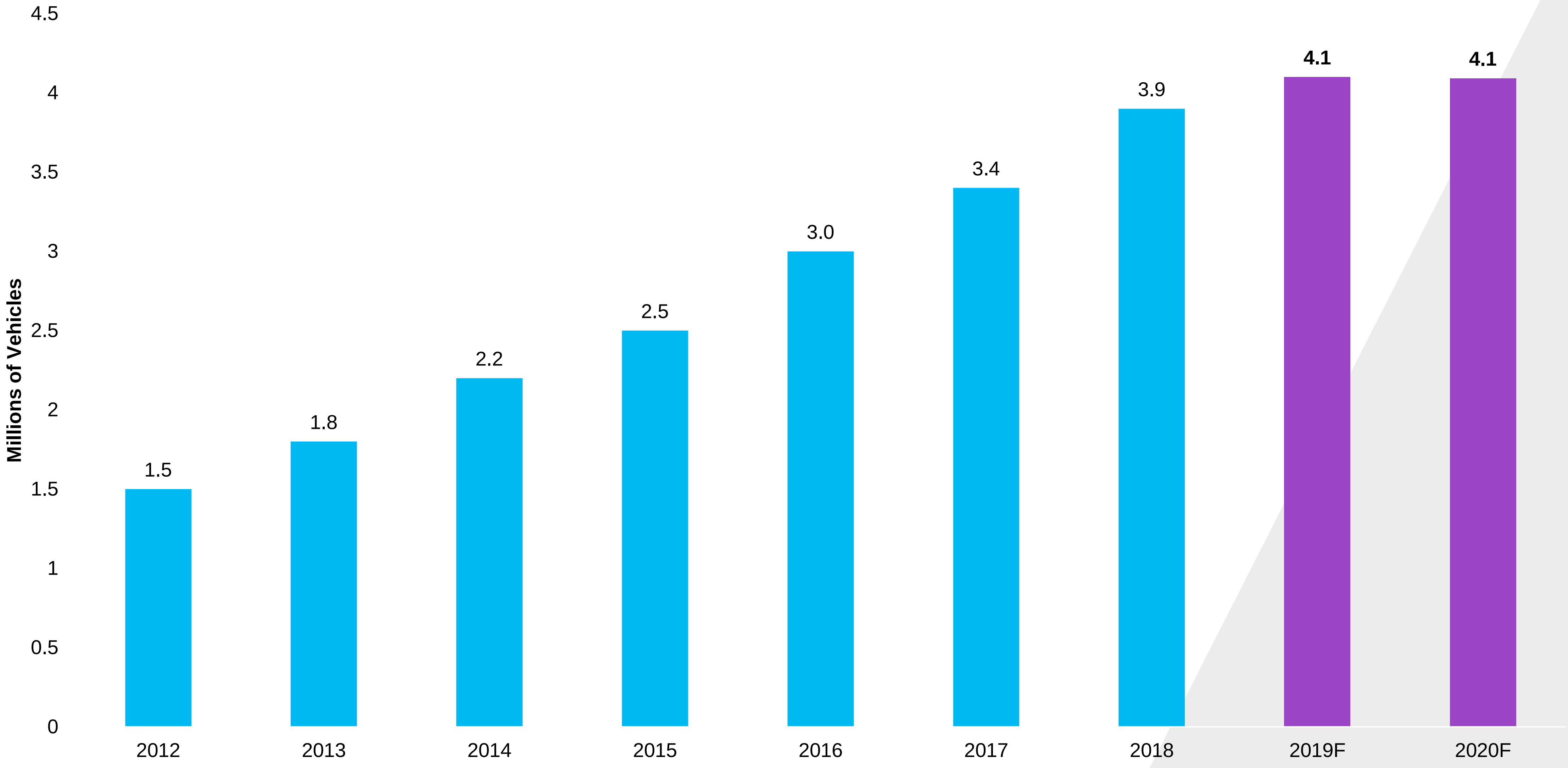
2019 Weekly Price Trend Looking Less Like Last Two Years

Another strong spring and summer, but summer and fall trend not like last two years as depreciation picks up



Used Vehicle Market

Off-Lease Volume Reaching Peak



Source: Cox Automotive

Thank You

Zo Rahim

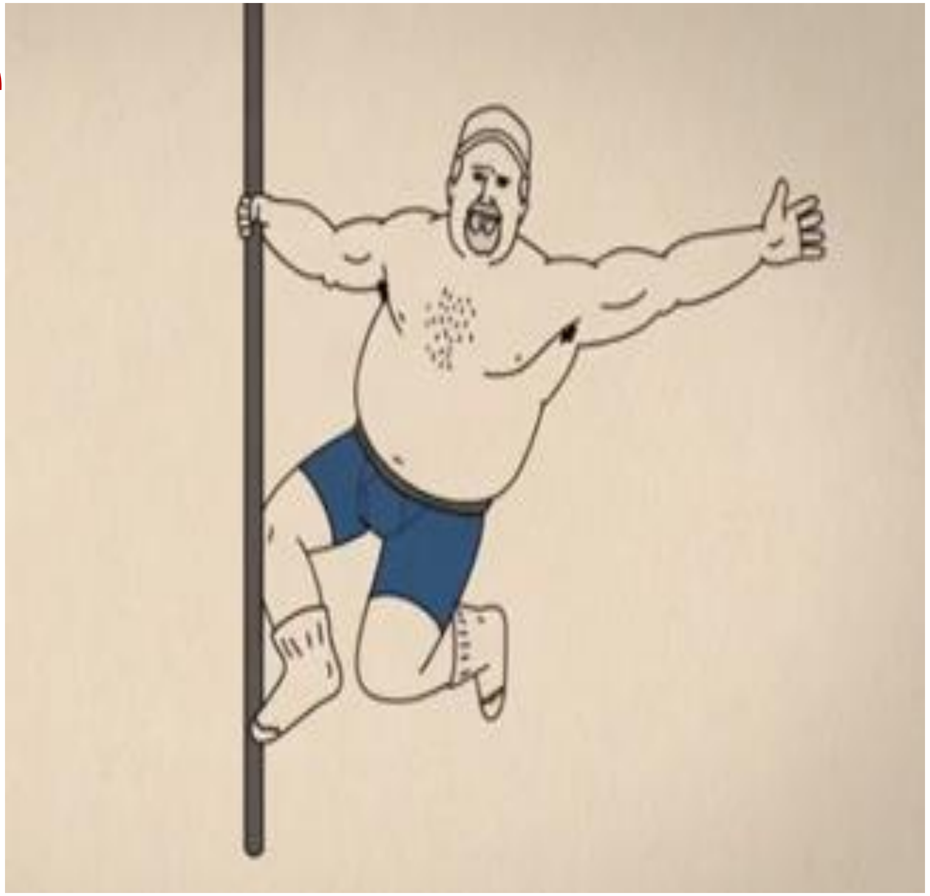
Economic Industry Insights

CFPB Update:
The Good, the Bad and the Scary!

Credit Union Collections Professionals

Let's Get These Out of the

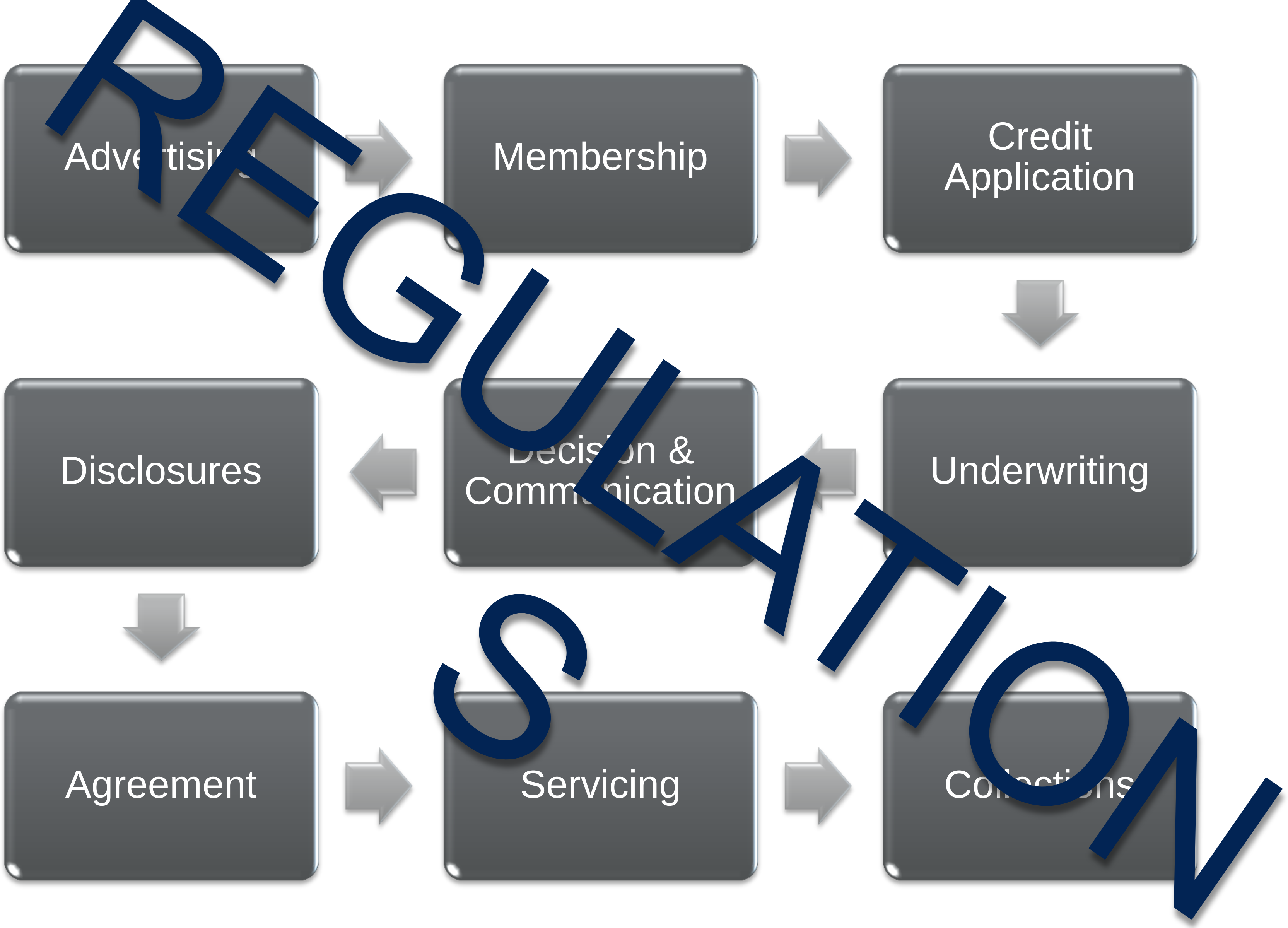
- I look familiar…
- I am an attorney by training, insert your favorite joke here.
- I am NOT in the good news business!



Source: Duluth Trading Company

The Most Feared Words

We're from the government and we're here to help.


Membership
Credit Application
Disclosures
Underwriting
Agreement
Servicing
REGULATIONS

Consumer Financial Protection Bureau

Search

Submit a Complaint

Consumer Tools | Practitioner Resources | Data & Research | Policy & Compliance | About Us

CFPB Has a Unique Charter

- Write rules, supervise companies, and enforce federal consumer financial protection laws
- Restrict unfair, deceptive, or abusive acts or practices
- Take consumer complaints
- Promote financial education
- Research consumer behavior
- Monitor financial markets for new risks to consumers
- Enforce laws that outlaw discrimination and other unfair treatment in consumer finance

Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)

- The impact is in the NAME!
- These powers are in addition to specific consumer protection laws!
- Is this in the eye of the beholder?
- Influence on state attorney general actions and consumer protection litigation……

Standing up for you

We hold companies accountable for illegal practices

$13.2 billion in relief

to consumers from our enforcement actions

35 million+ consumers

will receive relief because of our actions

We listen to consumers and make their voices heard

1.9 million+ complaints

we've handled from consumers

97% of consumers

get timely replies when we send their complaints to companies

CFPB Appointments

Director Kathy Kraninger

- 5 year term
- Appointed December 2018
- Worked for Office of Management and Budget since March 2017
- Worked for Department of Homeland Security
- She halted efforts to make changes related to the name correction, “CFPB” to “BCFP”

- Other senior Bureau appoints have also been made

- Chair: Sean Cahill, President & CEO, TrueSky Credit Union (Oklahoma City, OK)
- Arlene Babwah, VP Risk Management, Coastal Federal Credit Union (Raleigh, NC)
- Teresa Campbell, President & CEO, San Diego County Credit Union (San Diego, CA)
- Rick Durante, VP, Director of Corporate Social Responsibility and Government Affairs, Franklin Mint Federal Credit Union (Chadds Ford, PA)
- Doe Gregersen, Vice President & General Counsel, Landmark Credit Union (New Berlin, WI)
- Brian Holst, General Counsel, Elevations Credit Union (Boulder, CO)
- Racardo McLaughlin, VP Mortgage Originations/Operations (TwinStar Credit Union, Lacey, WA)
- Rick Schmidt, President & CEO, WestStar Credit Union (Las Vegas, NV)

https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-19_092019.pdf

CFPB's Semi-Annual Report to Congress

- Significant problems facing consumers
  - Credit invisibility
  - Mortgage shopping
- Plan for upcoming rules
  - Proposed rule concerning FDCPA communication and disclosure practices
  - Looking at various aspects of HMDA

Primary Amendments

- Makes safe harbor provisions available to a debt collector who unintentionally communicates with a third-party about a debt when attempting to communicate with the consumer via e-mail or text message.
- Requires a debt collector to include in e-mails and text messages an option for the consumer to unsubscribe from future communications.
- Allows the consumer to request a debt collector not communicate through a particular channel, such as a specific e-mail address or mobile phone number.
- Brings electronic communications (cell phones, text messages and e-mail) within the FDCPA’s prohibition on communicating with a consumer before 8am and after 9pm.
- Prohibits a debt collector from communicating with a consumer via an e-mail address that the debt collector knows or should have known is the consumer’s work e-mail address.

Primary Amendments

- Prohibits a debt collector from contacting a consumer through a social media platform except through the use of a private messaging function.
- Clarifies the number of attempted calls permitted to a consumer to avoid classifying the debt collector’s actions as an “intent to harass”, a practice specifically prohibited by the FDCPA.
- Clarifies to whom the debt collector may communicate when attempting to collect on a deceased consumer’s debt.
- Makes changes to the debt validation form required to be provided under the FDCPA.

- The CFPB is a wonderful source of information on a wide variety of regulations.
- There may be some interesting surprises for those who keep up with the CFPB!
- How about some bankruptcy trends?
  - https://files.consumerfinance.gov/f/documents/cfpb_quarterly-consumer-credit-trends_consumer-bankruptcy_2019-08.pdf
- How about FDCPA Examination procedures
  - https://files.consumerfinance.gov/f/documents/201210_cfpb_debt-collection-examination-procedures.pdf

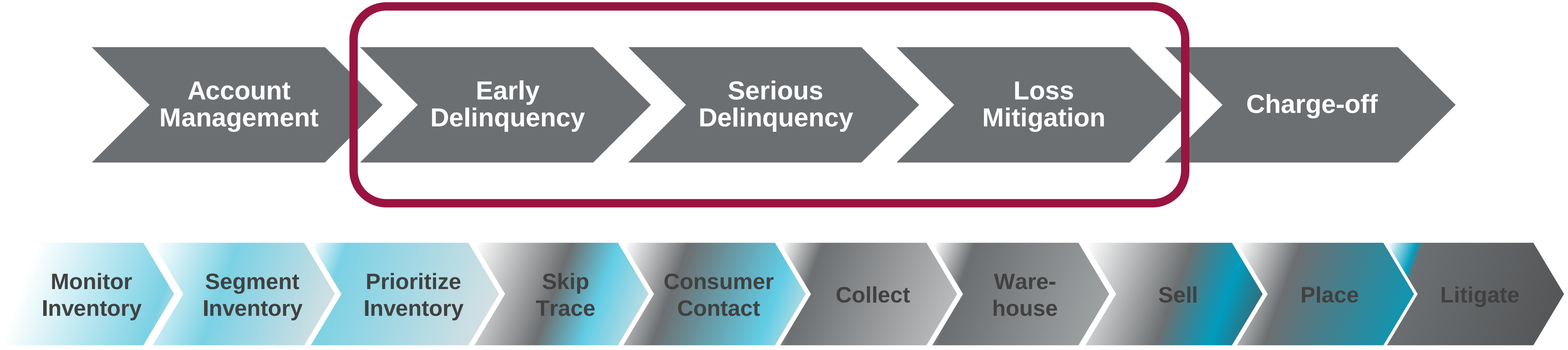
It is what it is,

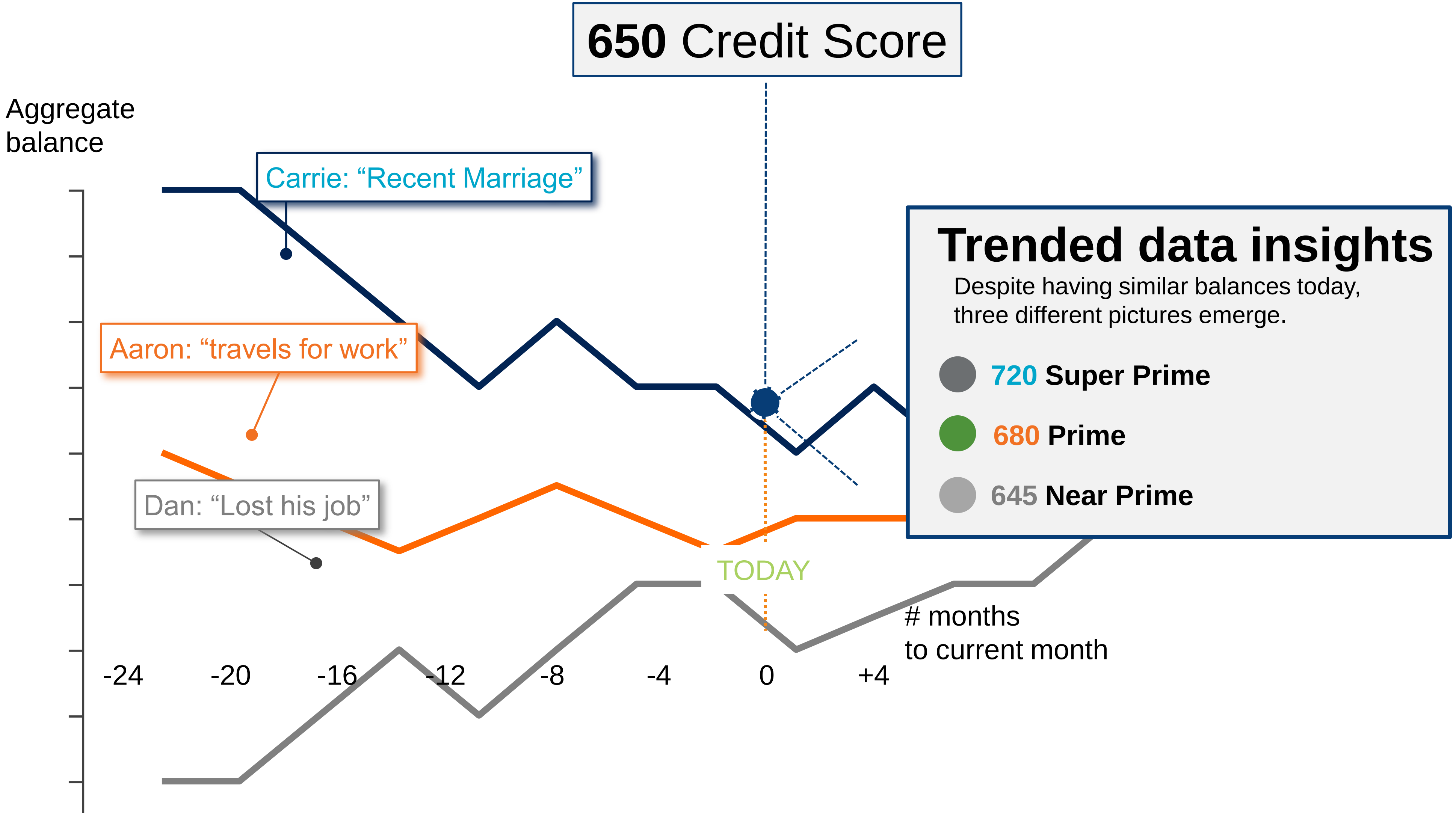
but…

It will become what you make of it!

Optimize Collection Strategies with Data & Analytics

Chris McNamara,
First Party Collections, Financial Services
TransUnion


Account Management
Early Delinquency
Serious Delinquency
Loss Mitigation
Charge-off
Monitor Inventory
Segment Inventory
Prioritize Inventory
Skip Trace
Consumer Contact
Collect
Ware-house
Sell
Place
Litigate


650 Credit Score
Aggregate balance
Carrie: “Recent Marriage”
Aaron: “travels for work”
Dan: “Lost his job”
TODAY
-24
-20
-16
-12
-8
-4
0
+4
months to current month
Trended data insights
Despite having similar balances today, three different pictures emerge.
720 Super Prime
680 Prime
645 Near Prime

Early Delinquency

1 Early Delinquency Definition & Scope

2 Early Delinquency Strategies and Tactics Overview

3 Session Recap

Borrowers may become delinquent for a number of reasons

- Distraction
- Taking on too much debt
- A sudden, acute situation
  - Accidents
  - Unemployment
  - Unexpected medical bills
  - Divorce


Inventory segmentation
Prioritization
Compliant contact

Early delinquency: Defined as 1-29 days past due, with delinquency buckets varying by lender (e.g. 1-5 DPD, 6-10 DPD)

How to best identify workable accounts while maintaining compliance

- What information is needed to understand if a member requires special handling?
- How is that information maintained and how frequently is it updated?

Determining who will self-cure

- What changes in consumer credit behavior can inform various treatment strategies?
- How can you begin to identify high risk vs low risk accounts for path progression?

The importance of a multi-pronged engagement approach

- What is the consumer’s preferred channel of communication?
- Do you have a digital, self-service engagement strategy?

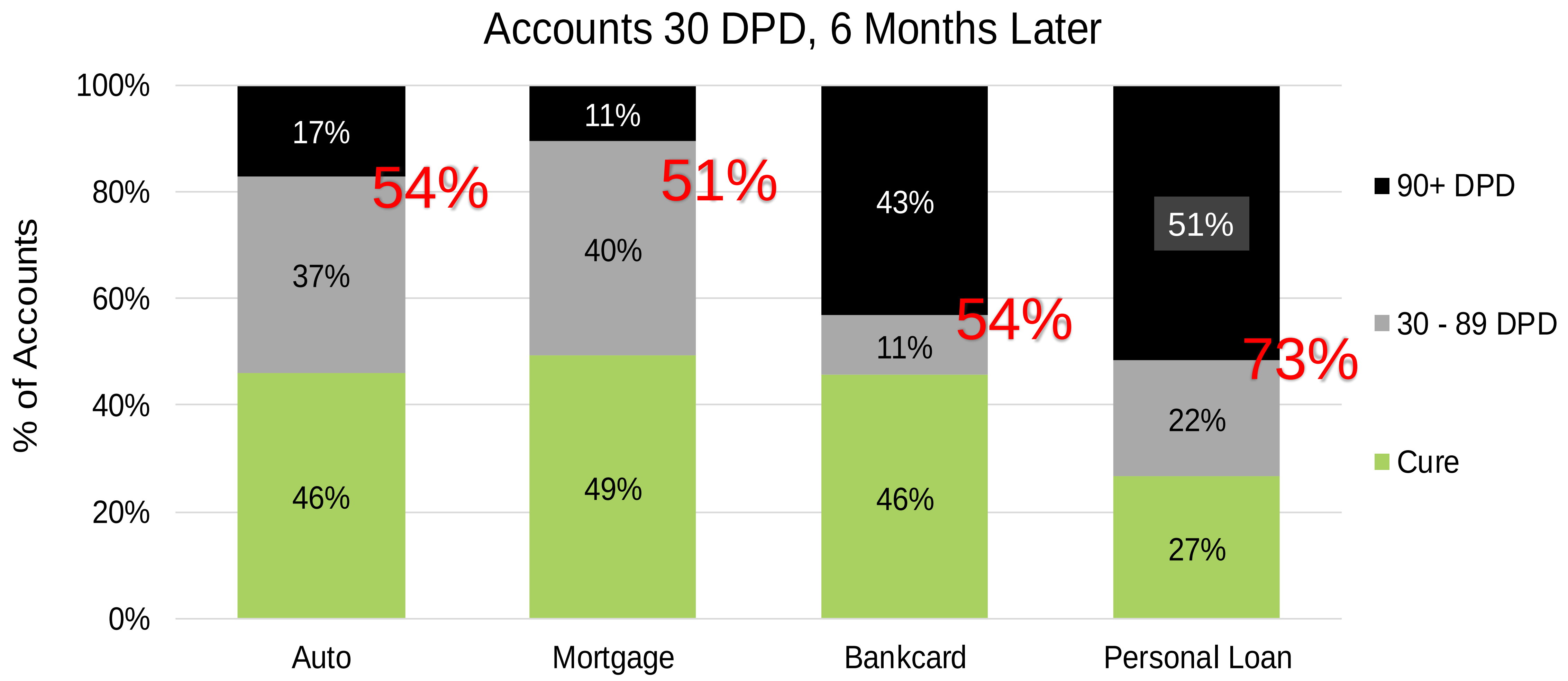
Inventory segmentation is required in order to limit inefficiencies and mitigate unnecessary risk

Collections inefficiences	Pursuing consumers that meet certain protected criteria is a waste of time and resources
Exposure to fines	Fines for illegal collection practices are substantial and significant fines are levied for pursuing protected consumers
Member complaints	Non-compliance issues can prompt member backlash and cause irreversible reputational damage

Tactic 1: Leverage external data sources to identify and continuously monitor specialized inventory queues

- Bankruptcy
- Deceased
- Active Military
- Incarcerated
- Lawsuit History

Early delinquency demands attention given its tendency to worsen but there are several dynamics that warrant consideration



Source: TransUnion consumer credit database

Interpret distracted versus struggling payment behavior to prioritize queues and provide a better customer experience

Distracted payment behavior

- Missing a payment for non-economic reasons
  - on vacation
  - moving
  - having a baby

- Deprioritize distracted queues
- Soften message to distracted

Struggling payment behavior

- Missing a payment due to economic difficulties
  - losing a job
  - slowdown in business
  - over-leveraged

- Prioritize struggling customers into queues
- More aggressive offers to struggling

Payment Behavior

- How do payment trends correlate with balance trends?
- What is the size, frequency and recency of payments?
- Is there any excess payment being made (actual-to-minimum payment due)?

Balance Magnitude

- What is the direction, size, and recency of balance changes?
- Has the consumer been building or paying down balances over time?

Tactic 3: Leverage alternative data for deeper insights into consumer behavior than traditional credit data alone

Alternative data factors	*Alternative lending consumers:*
Deposit accounts	Are more delinquent when they utilize several deposit accounts over time
Address stability	Experience more delinquencies with more moves
Contact information	Are typically higher risks when they have more than two cell phones on file
Regular borrowing	Are less delinquent on traditional products when they're regular short-term loan users
Positive payments	Are less delinquent on traditional products when they've had multiple, positive, short-term loan payments

Once you’ve prioritized your inventory, shift focus to establishing preferred methods of communication

- Understand how the customer originated with you and what channels they’ve leveraged to date
- Text, e-mail, phone, and digital self-service are all viable methods but success requires a cohesive strategy
- Consent is key and customers want engagement options
- Phone, Text and Fax communications are governed by the TCPA and require special handling

Communication challenges persist with existing processes for consumers and lenders

Consumers feel a stigma around collections, question if they can trust their lender, are aware of traditional collection techniques, which are often times abrasive and inconvenient, making consumers quick to disengage

Lenders often rely on the outdated strategy of persistent communication that may also be prone to compliance or legal risks and often lack the insight into consumers' repayment intentions or propensity to repay

Tactic 4: Leverage a digital self-service solution designed to benefit customers and improve collection results

Consumer-Friendly Digital Channel

A non-invasive and convenient channel supporting consumers

Financial Education Tools & Resources

Robust tools & resources to enable consumers to understand their credit health and take action

Improved Financial Results

Increase returns and minimize losses by supporting consumers

Member Retention

Higher member retention driven by increased repayment to enable new future revenue

Scalability & Compliance

A scalable compliant solution available to your consumers 24/7

Consumer Insights

Valuable consumer responses & behavioral data that allow for improvement of treatment strategies and better resource allocation

Early Delinquency: In Review

- Identify customers that may require special handling
- Determine who will self-cure without the need for any additional outreach/effort
- Establish the member’s preferred channel of communication
- Optimize the contact strategy for specific borrower’s to achieve the organization’s overall collection strategy (customer rehabilitation vs recovery)
- Consider your overall digital engagement strategy and where collections may fit

Serious Delinquency

1 Serious Delinquency Definition and Scope

2 Serious Delinquency Strategies and Tactics Overview

3 Session Recap

Collection leaders seek to optimize their collection strategy to minimize risks and maximize recoveries

Insufficient collection practices yield low recoveries which increases losses, and limits member give-back

Ineffective or imprecise collections efforts can result in complaints, member attrition, costly lawsuits, or even NCUA supervisory actions

Inefficient collections processes can impair loan loss reserve forecasts and hinder adherence to CECL reporting requirements

How can credit unions optimize collections efforts at serious delinquency or 30-59 DPD?

While historically labeled as 60+ DPD, serious delinquency begins sooner than you might think

Jun-19

May-19

	Current	30 days	60 days	90 days	120+ days	Charge Off
Current	98.5%	1.3%	0.1%	0.0%	0.0%	0.0%
30 days	19.4%	27.6%	47.4%	1.9%	0.1%	3.6%
60 days	4.6%	3.3%	19.2%	61.8%	1.1%	9.9%
90 days	2.2%	0.6%	1.9%	17.0%	39.4%	38.8%
120+ days	1.0%	0.1%	0.2%	0.5%	70.0%	28.2%

Summary

Cure	5.9%
Roll Back	1.1%
Maintain	28.8%
Roll Forward	64.2%

While historically labeled as 60+ DPD, serious delinquency begins sooner than you might think

Jun-19

May-19	Current	30 days	60 days	90 days	120+ days	Charge Off
Current	99.4%	0.6%	0.0%	0.0%	0.0%	0.0%
30 days	32.5%	8.1%	58.5%	0.0%	0.0%	0.9%
60 days	12.3%	2.4%	7.5%	76.6%	0.0%	1.2%
90 days	6.1%	0.5%	1.7%	5.9%	82.4%	3.3%
120+ days	3.5%	0.1%	0.2%	0.6%	60.8%	34.8%

Summary

Cure	11.4%
Roll Back	0.8%
Maintain	19.3%
Roll Forward	68.5%

Serious Delinquency: Defined as 30-59 days past due, with strategies intensively focused on stopping progression

Contact the member as efficiently as possible

- How can you ensure you have the best contact and locate data?
- How are you optimizing the skip process, ensuring efficient allocation of resources?

Leveraging external data to improve account segmentation & prioritization

- How are you prioritizing your existing inventory for collection efforts?
- Which accounts should receive the most intensive treatment?

Enhanced account treatment strategies to stop progression

- How can you identify accounts that should be prioritized to maximize return?
- How can you ensure you're applying your resources in the most effective manner?

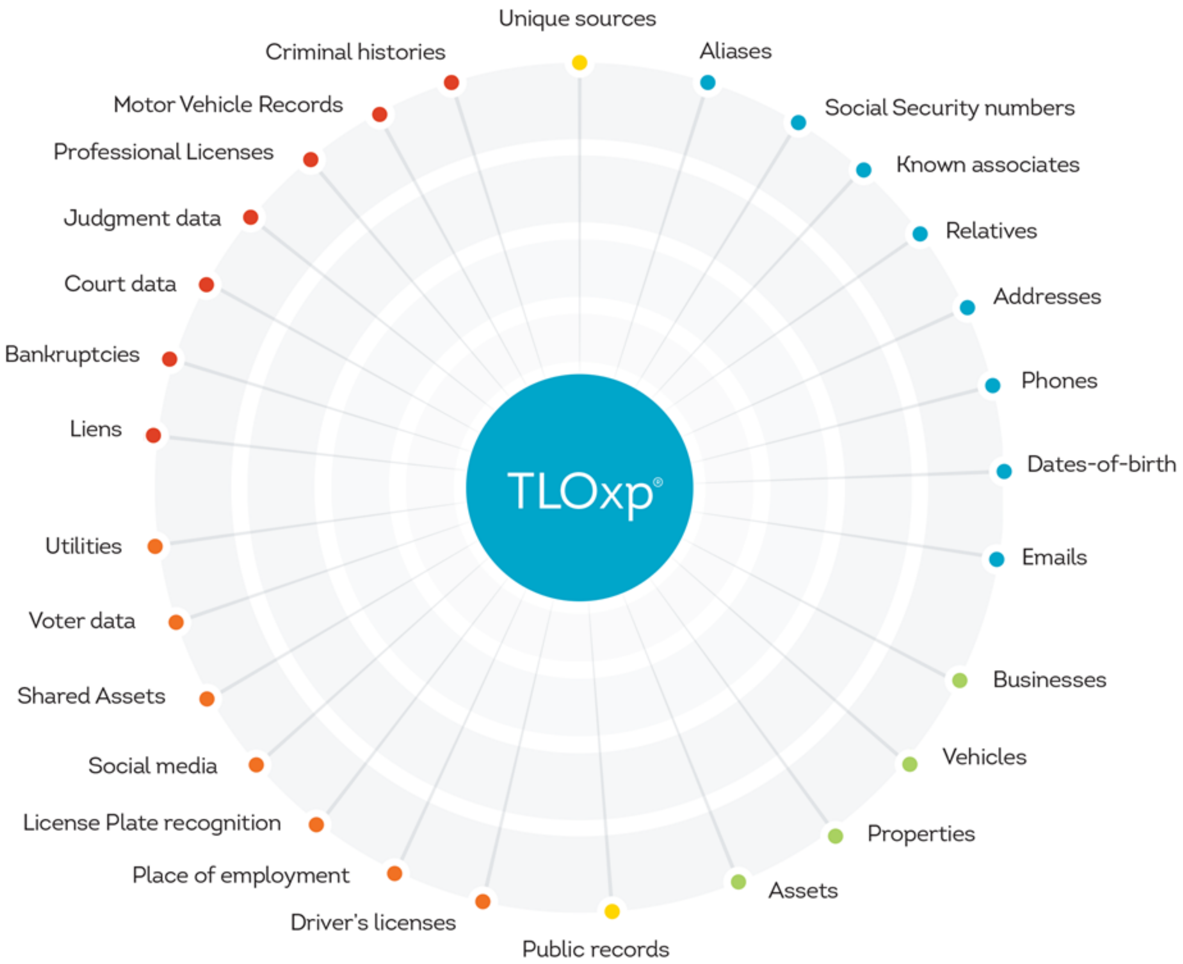
A key contributor to collections inefficiencies is a manual skip trace process, as it is costly and time consuming

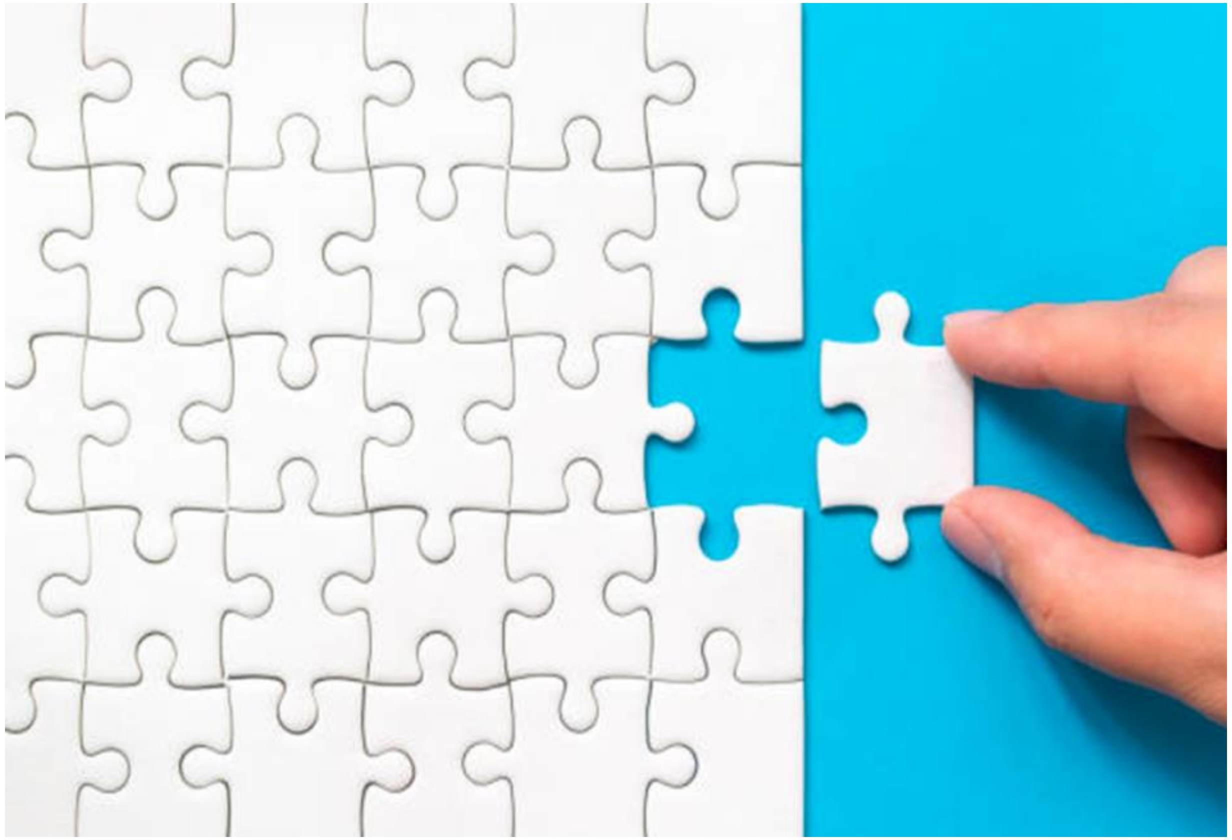
Source: TransUnion survey of collectors, January 2018

Tactic 1: Leverage TransUnion's TLO data via batch or API to automate your skip trace process and increase efficiencies

- Use address, phone, place of employment, social media, email, etc. from TLO to increase right-party contacts

- Minimize manual skip tracing by automating the delivery of member contact data via batch or API, ensuring that your process is optimized in order to maximize returns



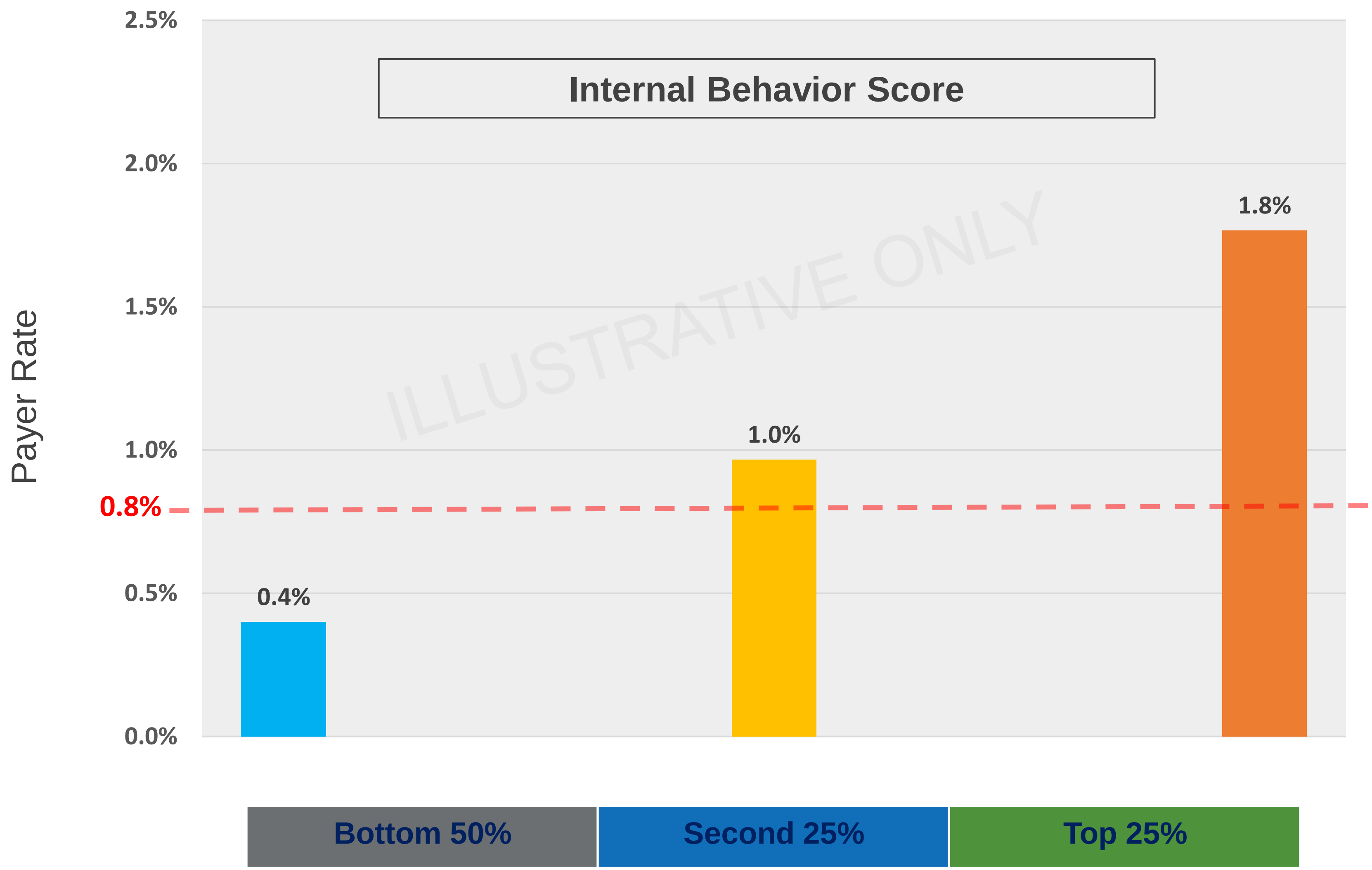


- Internal data including contact preference, payment history, loan balance and behavior scores are key components in a lenders collections strategy
- That information while predictive, does not provide a comprehensive view of the borrower
- Key elements of a borrower’s financial health will be missing unless additional data is captured and incorporated

Tactic 2: Combine collections algorithms with internal scores to enhance existing account prioritization & treatment strategies

Insights	Account Prioritization Questions
Excess Payments on Tradelines	Is the customer demonstrating excess capacity and willingness to pay on debts?
Access to Revolving Credit	Does the customer have access to available credit?
Balance Trajectory	How are balances being managed? Deleveraging? Leveraging up?
Payments	How has the customer managed their payments?

Collection algorithms can identify opportunities to improve treatment strategy effectiveness

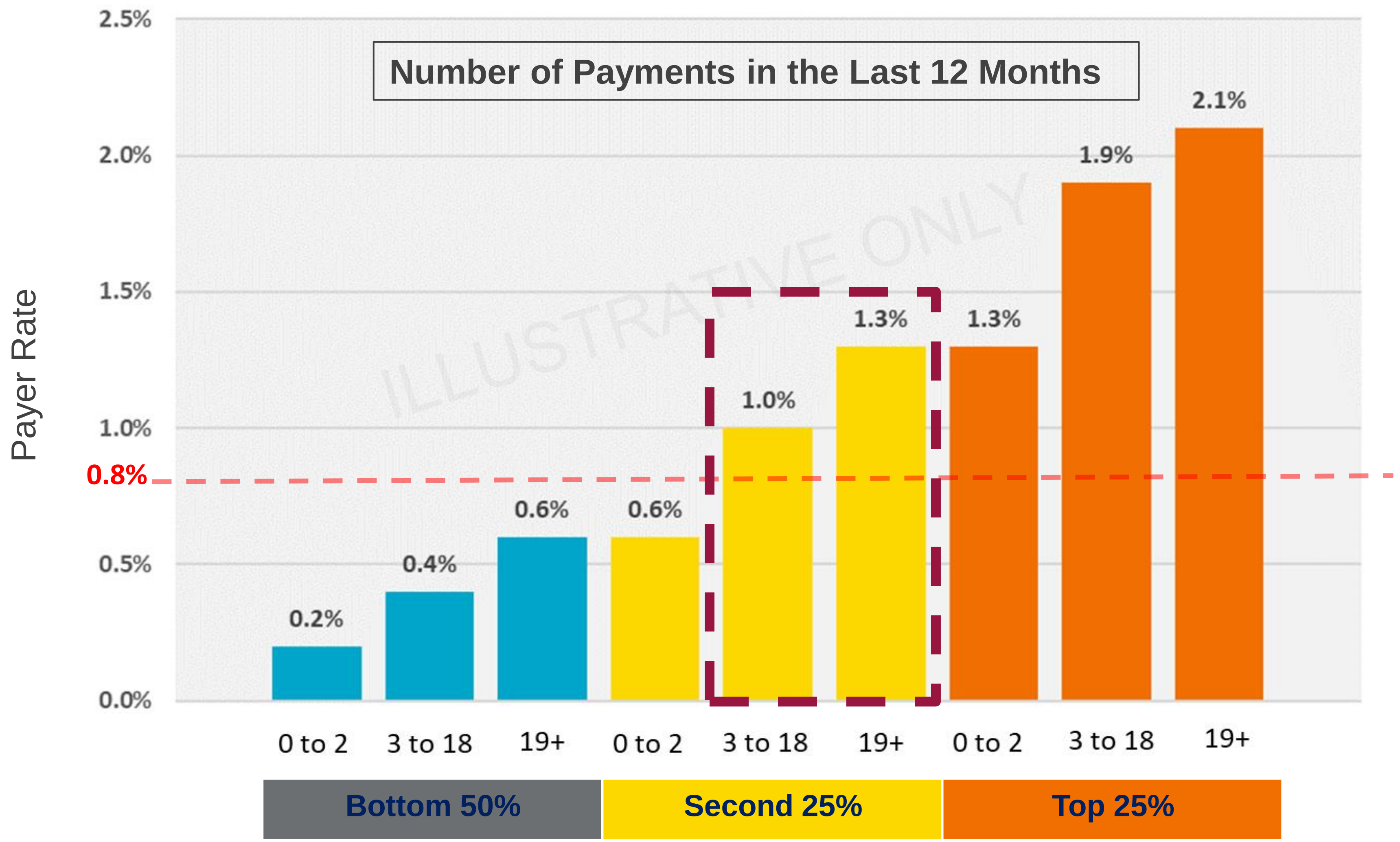


Population: Personal Loans

Score: Internal Behavior Score

Overall Payer Rate: 0.8%

The ‘Number of Payments in the Last 12 Months’ algorithm provides deeper insights into the likelihood of payment



Population: Personal Loans

Score: Internal Behavior Score

Overall Payer Rate: 0.8%

Serious Delinquency: In Review

- Establish an efficient and scalable skip trace process
- Utilize non-traditional data sources to get a more accurate and complete view of the consumer
- Continue to monitor high priority accounts for changes in ability to pay
- Supplement internal customer behavior data with trended credit data, algorithms and scores to enhance treatment strategies

Loss Mitigation

1 Loss Mitigation Definition & Scope

2 Loss Mitigation Strategies and Tactics Overview

3 Session Recap

Approaches to mitigating losses at 60+ DPD vary widely

Impact

Common Strategies

	Collection Efforts	Volume	Cost	Efficient? Effective?	DQ Impact
Large Balance Focus	Large balances only	Few	Medium	Low/Low	Elevated until charge off
Cradle to Grave	Collector determined	??	Medium	Low/Low	Controlled
Late Stage	Efforts made by different team	All 60+	Medium	Low/Low	No benefit gained
Early Charge Off	None past 60 DPD	All 60+	No cost. High Gross Charge Offs	High/Low	Low. High Gross Charge Offs

How can credit unions ensure that they have the right loss mitigation strategy?

Loss Mitigation: Defined as 60+ days past due, with a strategic focus on high priority accounts

Continue attempting to contact members as efficiently as possible

- Are you leveraging additional data sources to ensure you have the best contact data?
- Have you automated your skip process and minimized manual efforts?

Leveraging external data to improve prioritization for recovery efforts

- How are you prioritizing your existing inventory based on likelihood to pay?
- How are you identifying high priority accounts for the most intensive treatment?

Focus efforts on high priority accounts to minimize costs

- How can you identify accounts that should be prioritized to maximize return?
- How can you ensure you’re applying your resources in the most effective manner?

With less likelihood of resolving, effective cost allocation becomes imperative at this stage

- Move collectors to work early stage accounts to prevent roll. Only high priority accounts should be actively worked at this stage
- Intensive manual skip efforts should be limited
- All accounts should have a charge-off decision date set based on probability of receiving any payment to minimize charge-off losses
- All accounts should be monitored until their charge-off date
- If there's been no communication with the consumer, any proactive attempts should be limited

- Search for debtors by name, phone number, address, date-of-birth, SSN, bankruptcies and other criteria

- Conduct partial SSN or address searches and phonetic name spelling searches

- Update missing information to improve contact rates

- Batch process phone numbers and other data elements to effectively execute on right party contact strategies

- Make informed decisions about which accounts to charge off based on recovery models which predict which accounts are likely to pay

- Ensure that high priority accounts are given appropriate time to pay, and that other accounts are charged off as uncollectible to maximize return and minimize negative financial impact

Tactic 3: Monitor higher scoring accounts and only engage members if an alert indicates a potential to pay

- Monitor the members external credit data for any new trade lines, paid off lines, inquiries or other changes that may indicate a renewed ability to pay.
- Receive alerts the next business day
- Once an alert is received, the account should be routed back to collectors who are able to quickly reach out and validate any potential ability to repay

Loss Mitigation: In Review

- Recognize the nature of diminishing returns at this stage and adjust your processes accordingly
- Intensify efforts on high priority accounts
- Monitor borrowers for changes that may indicate an ability to repay
- Determine when accounts will be deemed uncollectable and charged-off

Collections Management - Getting Results

Credit Union Collections Professional

Your Speaker

David A. Reed

Attorney at Law

david@reedandjolly.com

(703) 675-9578

Reed & Jolly, PLLC

Fairfax, VA

The BIG Picture

- The Financial Statement
- Delinquencies Impact on Rates and Returns
- NCUA Requirements
  - Safety and Soundness Issues

What Is a Collector's Primary Job?

- Contact the member
- Arrange for payment
- Answer members' questions
- Recover collateral
- Find "lost" members

- Biggest job is to find a <u>solution</u> to the delinquency!

Does It Look Like This?

- Contact members
- Arrange for payment
- Process payments
- Attend meetings
- Modify loans
- Foreclosures
- Placement with agencies and law firms
- Charge off loans
- Investigate card disputes, payment issues and UFO's
- Correct loan set up errors
- Jump start dead batteries

- Garnishments & levies
- Credit reports
- Subpoenas
- Attend meetings
- Returned mail
- Make coffee
- Skip trace
- Prepare DQ reports
- Serve as internal resource
  - The Answer Man
- Attend meetings
- Small claims court
- Member correspondence

Anything that takes you away from member service is a waste of your time!

Who else knows this?

Is everyone in your credit union
trying to update the member profile?

Why not?

What does Collections have to do with Compliance?

Collections Related Regulations

- BSA/AML
- Patriot Act
- TILA
- Privacy
- HMDA
- Electronic Fund Transfer
- Bankruptcy Code
- GLB – Part 748
- Fair Credit/FACTA
- Internet banking guidance
- SAFE Act
- Real Property laws

- TCPA
- UCC
- State Collections laws
- Employment laws
- ADA
- State and Federal Criminal laws
- OSHA regulations
- Disaster and Pandemic Planning
- Lending Laws and Regs
- Accounting Guidelines
- Bylaws

QUESTIONS?

Sorenson Van Leuven

LAW FIRM

Compliance and Collection Communications – Risk v. Reward

Credit Union Collection Professionals

October 11, 2019

Presented by:

James E. Sorenson
Jim@svllaw.com

850-388-0500
SVLLaw.com

- No harassment of the consumer
- No misleading or fraudulent statements
- Protect Personal Financial Information
- Call recording disclosures
- Time limitations on consumer contact
- Limits on communicating with a debtor represented by an attorney
- Need to maintain records of the communication

- Do not harass the debtor or their family.
- Remember: the purpose of collection contacts are not to harass or wear down the Debtor, but to convey information, seek information, and find solutions.
- If you are told to cease communication, get clarification of what the Debtor is asking and notate the system accordingly.
- Do not continue to call or contact once the Debtor has specifically asked you to cease all communications, except:
  - To advise that the collection efforts are being terminated;
  - To notify that certain remedies will be invoked; and
  - To give required legal notification (i.e., right of redemption notice).

- The concerns and issues that the CFPB has focused on are:
  - Information Accuracy:
    - Correct person;
    - Correct amount; and
    - Correct documentation.
  - Informed Consumers:
    - Clear information about the debts; and
    - Adequate information about their legal rights.
  - Communication Tactics:
    - Contact frequency;
    - Contact methods; and
    - Contact claims.

- U.S. Mail
- Telephone Calls
- Email
- Text Messages
- Social Media
- Door Knocks/In-Person Visits
- Drop Voicemail
- Web Chat

- Enacted in 1991 when cell phones were new technology.
- Contains a statutory damage provision of $500 per violation/$1,500 per willful and knowing violation.
- Often a tool of consumer lawyers seeking to establish class action lawsuits.

- The TCPA prohibits making more than one call during a 12-month period to a cell phone using artificial and pre-recorded voice, or Automatic Telephone Dialing System.
  - Exceptions: Emergency purposes or with prior express consent of the called party.

- The TCPA not only governs oral communication, but also text messages sent to a cell phone.
- What is considered Automatic Telephone Dialing Systems (ATDS)?
  - Courts have found this term to cover predictive dialers and equipment that dials the telephone numbers in such a way that no human intervention is necessary.

- What is the definition of "prior express consent?"
  - FCC defines it as consent provided by the consumer during the transaction resulting in the debt.
    - FCC further states that when a consumer lists his or her cell phone number on a credit application that this would constitute consent.
    - However, this is only consent for the creditor and not third-party collectors.

- 2015 FCC Declaratory Ruling:
  - **Automatic telephone dialing system (ATDS)** is equipment that has the capacity to store or produce and dial random or sequential numbers, even if it is not presently used for that purpose, including when the caller is calling a set list of consumers.

- 2015 FCC Declaratory Ruling:
  - Consent may be revoked at any time and through any reasonable means. A caller may not limit the way a revocation may occur.
  - Contract language cannot limit ability to revoke consent by any reasonable means.

- On March 16, 2018, the 2015 FCC Declaratory Ruling was narrowed by the D.C. Circuit Court of Appeals.
- The Court rejected the FCC's expanded definition of an ATDS. The Court did not define an ATDS but sent it back to the FCC to produce a new definition.
- The Court upheld:
  - Consent may be revoked at any time and through any reasonable means.
  - Contract language cannot limit ability to revoke consent by any reasonable means.

- On June 20, 2019, the U.S. Supreme Court declined to resolve whether federal courts have the power to scrutinize agency orders, such as the FCC orders that interpreted the TCPA- PDR Network, LLC v. Carlton Harris Chiropractic, Inc.

- On September 20, 2018, the 9th Circuit Court of Appeals, (Mark v. Crunch San Diego) held that the TCPA's definition of an ATDS includes telephone equipment that can automatically dial phone numbers stored in a list. This decision is at odds with other Circuit courts and consistent with the FCC's 2015 Declaratory Ruling.

Breslow v. Wells Fargo Bank, 11th Circuit (June 9, 2014).

- Issue in the case was that Debtor gave permission to contact him on cell number, but the phone number belonged or was owned by his Mother, Breslow.
- Breslow sued and won.
- Court held that consent had to come from Breslow and fact that lender did not know that borrower did not own the phone number was no defense.

Reyes vs. Lincoln Auto Fin. Servs., 2d Circuit (June 22, 2017).

- Issue in the case was revocation of consent.
- Court held that one party cannot unilaterally modify the terms of a contract and that the consent given in the contract to receive automated calls was binding and could not be revoked.
- This case stands in opposition to the 11th Circuit and 3rd Circuit opinions and the 2015 FCC Declaratory Ruling and the recent ruling by the DC Circuit.

TCPA Recent Case Law (Cont.)

Miceli v. Orange Lake Country Club, Inc., 2015 WL 5081621 (M.D. Fla. August 5, 2017).

- Issue in the case was whether notice from a lawyer that a consumer is represented by a lawyer is sufficient for revocation of consent.
- Court said yes, notice by the lawyer, informing creditor that the consumer was represented, may be sufficient to revoke consent under TCPA.
- This is a factual issue to be determined at an evidentiary hearing.

TCPA Recent Case Law (Cont.)

<u>Schweitzer v. Comenity Bank,</u> 866 F.3d 1273, 11th Circuit (August 10, 2017).

- "Call me maybe" case.
- Issue in the case was whether consumer can partially revoke consent.
- Court held that party can partially revoke consent to receive calls.
- Remanded as a factual issue as to whether Plaintiff partially revoked consent as to receiving calls in the morning and during the workday.

TCPA Recent Case Law (Cont.)

Ellington v. First Premier Bank, M.D. Tenn. (June 26, 2017) (unpublished decision – case #3:17-cv-00403).

- Lawsuit brought by Plaintiff who was not customer of bank and did not give consent for their telephone number to be called.
- Issue in the case was whether Defendant could pursue third-party complaint against consumer who submitted the phone number in an online application.
- Court denied Motion to Dismiss Third Party Complaint and allowed claim to proceed forward.

TCPA Recent Case Law (Cont.)

<u>Golan v. Veritas Entertainment, LLC.,</u> 217 WL 3923162, E.D. Mo. (September 7, 2017).

- Issue in the case was whether damages of $500.00 per call was proper and reasonable.
- Court held that damages of $500.00 per call would have been "disproportionate to the offense" by making it unconstitutional as applied to the facts of the case.
- At $500.00 per call, the aggregate award would be $1,621,246,500. Court reduced it to $32,424,930, which equates to $10.00 per call.

Sanders vs. Duck O'Neal, 2018 WL 3453967, W.D. Mich. (July 16, 2018).

- Issue in the case was whether "direct drop" voicemail is covered by the TCPA (vendor was VoApp).
- Court held that the TCPA covers direct drop voice mail, even though the consumer's telephone does not ring.
- This is the first case to address this issue.

- What Credit Unions should do:
  - Audit;
  - Policy and procedure;
  - Consent language, including indemnification language;
  - Record tracking and retention;
  - Training; and
  - Third-party relationships.

Questions?