

— 11th Annual Utah Fall
Employment Seminar

November 16, 2022

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— Housekeeping

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- To receive CLE, SHRM, or HRCI credits, be sure to sign in at the registration desk. Your certificate of attendance will be emailed to you.
- You can download today's materials at:
<https://www.ballardspahr.com/Insights/Events/2022/11/11th-Annual-Utah-Fall-Employment-Seminar>
- Wifi log-in instructions are on your table.
- Parking validations are available at the registration desk.

Employment Law Refreshers and Revisions, and Issues to Watch (part 1)

Jay A. Zweig

November 16, 2022

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Employment Agreements

Pros and Cons of Employment Agreements

- Advantages:
 - Protect business interests
 - Describes employee’s position and expectations in detail
 - Can look to agreement to resolve disputes over terms of employment
 - Ease employment transition and limit disruption
- Disadvantages:
 - Rids of “at-will” employment
 - Restricts flexibility of employer-employee relationship
 - Administrative burdens and costs
 - Legal ramifications of a “bad faith” breach

Employment Agreement Drafting Pitfalls

- Failing to update agreements
- Failing to account for regulations/laws
- Failing to adequately protect business interests
- Failing to ensure restrictive covenants are reasonable
- Failing to include requisite carve outs from non-disclosure/confidentiality provisions
- Failing to ensure agreement is signed prior to the first day of work
- Drafting without legal advice
- Misclassifying employees

Independent Contractor Classification Overview and Agreements

Current Independent Contractor Rule

- “Economic reality” test:
 - *The nature and degree of control by the principal*
 - *The alleged contractor's opportunities for profit and loss*
 - The extent to which the services rendered are an integral part of the principal's business
 - The permanency of the relationship
 - The amount of the alleged contractor's investment in facilities and equipment
 - The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor
 - The degree of independent business organization and operation
- The right of an employer to control the work remains a central consideration in the economic reality test, but the economic reality test covers situations where the worker is not directed or controlled by the employer but, nevertheless, as a matter of economic reality, depends on the employer.
- Easier for companies to classify workers as independent contractors

Changes in Independent Contractor Rule on the Horizon

- A new independent contractor rule published in the Federal Registrar by the Biden administration on October 13, 2022
- “Totality of the circumstances” economic realities test that considers all of the following factors equally:
 - Nature and degree of the worker’s control over the work
 - Worker’s opportunity for profit or loss based on personal initiative or investment
 - Investments by the worker and the employer
 - Degree of permanence of the working relationship
 - Extent to which the work performed is an integral part of the employer’s business
 - Degree of skill and initiative exhibited by the worker
- May consider “additional factors” beyond those six, if they indicate the worker may be in business for themselves
- Applies to all industries
- Significant impact on gig economy

Severance/ Separation Agreements

Severance/Separation Agreement Drafting Pitfalls and Considerations

- State-specific agreements
- Severance/separation pay, timing, method of paying, and clawbacks
- Age Discrimination in Employment Act/Older Workers Benefit Protection Act disclosures
- Non-disclosure and confidentiality provisions, and requisite carve outs
- Restrictive covenants

Severance/Separation Agreement

Drafting Pitfalls and Considerations cont.

- “No re-hire” provision
- Waiver of claims and restrictions
- Group layoff considerations
- Advise in writing to consult an attorney
- Dispute resolution

Arbitration Agreements

Advantages of Arbitration Agreements

- Efficient/flexible
- Cost
- No jury
- Informality
- Impartiality
- Privacy
- Control
- Finality
- Class action waivers

Disadvantages of Arbitration Agreements

- Finality/inability to appeal
- Lack of formal discovery
- Discretion of the arbitrator
- Unpredictability
- Increasing arbitrator fees
- Questionable fairness
 - Mandatory arbitration
 - Subjective Arbitrator
 - Unbalanced
 - “Arbitrarily” following the law
 - No jury
 - Lack of transparency

Arbitration Agreement Drafting Considerations and Pitfalls

- Impose an obligation to arbitrate disputes
- Define the disputes to be arbitrated
- Governing law of the arbitration agreement
- Place of arbitration
- Address the qualifications and appointment of arbitrator(s), including the number of arbitrators
- Choice of rules
- Language of arbitration
- Obligations of confidentiality
- Consolidation and joinder
- Entry of judgment on award

Non-Compete and Non-Solicitation Agreements Update

-
- Takeaway: Enforceable, But Under Substantial Scrutiny
 - Takeaway: Old Agreements Should be Updated

Non-Competes: Disfavored

But – what is the legitimate proprietary interest?

Non-Solicitation Agreements

- Give the employer time to refuse
- Protect customer and employee relationships
- Litigated damages

Non-Solicitation Agreements

- Time, Geography and What is “the Business”?
- Strictly Construed Who Solicited Whom?

Plain English and What are You Seeking to Accomplish?

- Enforcement
- Deterrent effect
- Immediate, irreparable harm

Utah Restrictive Covenants

What are They and are They Enforceable?

- Yes, but...
- Expressly agreed on by the parties in a proper contract
- May place “no greater restraint” than is “reasonably necessary” to secure protection of an employer’s “legitimate interests.”

What are They and are They Enforceable?

- *Kasco Servs. Corp. v. Benson*: A court is required to enforce a non-compete/non-solicitation agreement if:
 - There was no “bad faith” in negotiations
 - The agreement was “supported by consideration
 - The agreement was “necessary to protect the goodwill of the business”
 - It was “reasonable in its restrictions in terms of time and geographic area.”
- Utah Code 34-51-201: Post-employment restrictive covenant limited to one year from the day on which the employee is no longer employed by the employer.



— 5 minute break

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Employment Law Refreshers and Revisions, and Issues to Watch (part 2)

Laura G. Sandman

November 16, 2022

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COVID-19: Where Are We At?

Remote Work Issues

- State wage and hour laws
- Enforceability of existing agreements, including restrictive covenants
- State/local leave laws
- Pay/reimbursement for at-home expenses and equipment
- Workers' Compensation and health and safety issues
- Privacy and data security
- Taxes and registering to do business
- Remote work policies
- What else?

Recent Revisions to EEOC COVID-19 Guidance

- Mandatory vaccination policies
- Returning to the workplace after COVID-19 diagnosis
- Administering viral vs. antibody tests

Stress and Mental Health in the Workplace

Is Work-Related Stress a Workplace Hazard?

- OSHA released a Safety and Health Topics bulletin addressing workplace stress and mental health hazards
- No current regulations addressing workplace stress and mental health
- Future regulations?

Pay Transparency

How We Talk About Pay is Changing

- Marked shift toward pay transparency in employee recruitment
- Localities with pay transparency laws
- Pay discrimination lawsuits
- Do the bare minimum or embrace the inevitable?

Electronic Surveillance of Employees

Employee Monitoring

- Employers' use of “intrusive or abusive electronic monitoring and automated management practices” interferes with employees' rights under Section 7 of the National Labor Relations Act
- New framework to protect employees' Section 7 rights
- Implications for employers

WARN Act

WARN Requirements

- Employers with 100 or more full-time employees must provide at least 60 calendar days advance written notice of a plant closing and/or mass layoff affecting 50 or more employees at a single site of employment
- Notice requirements
- Payment in lieu of notice
- Severance agreements and the ADEA

Elon's WARNing

- Twitter locked close to 3,700 employees out of their accounts on November 3, signaling that they will soon lose their jobs
- Proposed class actions for violations of federal and California WARN Acts
- 3 months severance pay?
- Don't call it a comeback

**Arbitration of Sexual Harassment
and Assault Claims Be Gone**

Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act

- Amends Federal Arbitration Act to prohibit enforcement of **pre-dispute** agreements mandating arbitration of sexual assault and harassment claims
- Applies to a case that “relates to the sexual assault dispute or the sexual harassment dispute”
- Option to invalidate waivers of joint, class, or collective action proceedings
- Applies only to disputes or claims that arise or accrue on or after March 3, 2022

Speak Out Act

Validity of Non-disclosure Agreements Where Employees Allege Sexual Harassment and Assault

- House to vote next week on validity of non-disclosure agreements in instances where employees allege sexual harassment and assault
 - Senate passed bill under unanimous consent in September
- Would apply only to nondisclosure agreements signed **before** a dispute arises

ADA: Title III: Accessibility

Accessibility and the ADA

- **ADA, Title III**: 42 U.S.C. 12182 – Applies to places of “public accommodation”
 - No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

Does the ADA Apply to Websites?

- Websites are not “brick and mortar” places of public accommodation
- Is there an accessibility obligation?
- September, 2018: DOJ confirmed ADA applies to websites even though not “brick and mortar” places of public accommodation

Accessible Websites: Circuit Split

- Is a nexus between the website and a physical structure required?
 - **Yes:** Courts within the Third, Sixth, Ninth and Eleventh Circuits
 - **No:** Courts within the First, Second and Seventh Circuits



Website Accessibility

- What is the issue?
 - Access to the content and functionality of websites and mobile applications
 - Limitations on the usability of websites and mobile applications even if accessibility tools are being used
- What makes a website inaccessible?

What Makes a Website Inaccessible?

- What challenges do websites and mobile apps present?
 - Visual; Auditory; Mobility; Cognitive
- Examples:
 - Unlabeled graphics
 - Lack of keyboard access for navigation and interactive elements
 - Videos without closed captions
 - Untagged/non-searchable pdfs
 - Color Contrast
 - Dynamic text not compatible with screen reading technology

- **Digital access litigation:** thousands of cases filed each year based on websites
- **Physical accessibility:** parking lots (“drive by” lawsuits), slope of ramps, sink height
- **Transgender access:** restrooms, changing facilities
- **Service, support animals:** access to facilities, services

Are You Truly Highly Compensated?

Hewitt v. Helix Energy Sols. Grp.

- The Fair Labor Standards Act requires that employers pay employees time-and-a-half for all hours worked over 40 in a workweek *unless an exception applies*
- Highly-compensated employee exemption
 - \$684/week
 - Paid on a salary basis
- Is a daily pay structure a “salary”?
 - SCOTUS will decide

“Know Your Rights”

New EEOC Poster

- Replaces the EEOC's "EEO is the Law" poster
- What has changed?
- Posting requirements
- Penalties for non-compliance

— 15 minute break

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Employment Law Year in Review

Jason D. Boren
Jacqueline Mabatah

November 16, 2022

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— Agenda

1. Utah Legislature
2. Utah Appellate Courts
3. 10th Circuit
4. U.S. Supreme Court

Utah Legislature

Workplace Covid-19 Provisions

Utah Code Section 34-56-201 et seq.

Employee Vaccination, Recordkeeping and Testing Provisions.

- Vaccinations.
 - If employer requires employee or prospective employee to receive or show proof of vaccination, must allow exemption if employee submits to the employer:
 1. A statement that vaccine would:
 - a. Be injurious to the health and well-being of the employee;
 - b. Conflict with a sincerely held religious belief, practice or observance of the employee; or
 - c. Conflict with a sincerely held personal belief of the employee; or
 2. A letter from a primary care provider stating the employee was previously infected by COVID-19.



Workplace Covid-19 Provisions

Utah Code Section 34-56-201 et seq.

- Vaccinations
 - Employer can require if it establishes a nexus between the requirement and the assigned duties; or
 - An external requirement exists relating to duties; and reassignment is not practical.

- Recordkeeping.

Employer may not keep or maintain a record or copy of an employee's test results, unless otherwise required by law.

- Testing.

Employer must pay for all testing as a condition of the employee's presence at the workplace.



Limits Employer Liability for Negligent Hiring,

Senate Bill 95, Utah Code 78B-4-518

Effective 5/4/22



- Addresses liability of an employer (automotive, construction, culinary arts, manufacturing, oil, gas, mining, retail sale of goods or services or transportation by commercial vehicle) for negligently hiring an employee that has been previously convicted of an offense.
- Provides that a cause of action may not be brought against an employer for negligently hiring an employee based solely on evidence that the employee has been previously convicted of an offense.
- Exceptions: Protections do not apply for cause of action concerning the misuse of funds and employee is placed in a position that would involve managing funds or property.

Paid Leave Modifications

Senate Bill 100, effective 7/1/22

- Requires certain state employers to offer paid parental leave.
- For birth of child, adoption of minor child, or the appointment of legal guardianship of a minor child or incapacitated adult, post partum recovery.
- Up to 3 weeks paid benefit.



Bereavement Leave Modifications

House Bill 449, Effective 5/4/22

- Requires certain public entities to provide bereavement leave for employees who are affected by a miscarriage or stillbirth.
- 3 Days Leave Time.
- Requires Utah Board of Higher Education and the human resource bodies of state, county, and municipal governments to implement rules that provide for bereavement leave.



S.B. 008 State Agency and Higher Education Compensation Appropriations –Effective 7/1/22

- Provides funding for a 3.5% labor market increase for state employees.
- Provides funding for performance-based discretionary, targeted, and directed salary increases for state employees.
- Provides funding for a 5.75% labor market and performance-based increase for higher education employees.
- Provides funding for step and lane increases for employees of the Utah Schools for the Deaf and the Blind.
- Provides funding for an average 6.7% increase in health insurance benefits rates and 1% increase in dental insurance benefits.



Senate Bill 39, Mobile Workforce Income Tax Amendments, Effective 1/1/23

- Creates an exemption from income tax if a nonresident individual works in the state for 20 or fewer days during a taxable year.
- Modifies the employer's withholding obligations, including penalties, for a nonresident individual whose wages are exempt from income tax.



Utah Appellate Courts

Duty of Care

- Boynton v. Kennecott Utah Copper, LLC: The Supreme Court of Utah found that premises operators owe a duty of care to workers' co-habitants with respect to take-home exposure to asbestos.
- During the 1960s and 1970s, an employee was exposed to asbestos at numerous job sites. He alleged that his wife was exposed to asbestos from the fibers and dust he carried home from these sites. The employee's wife was diagnosed with mesothelioma in 2016 and died one month later. The employee sued three premises operators of sites he worked at where he had been exposed to asbestos.
- The Court found that the premises operators had taken affirmative acts that introduced asbestos into the workplace and created a foreseeable risk of harm to the co-habitants of workers exposed to asbestos dust.

Worker's Comp.-Pre-existing Condition

JBS Carriers v. Utah Labor Commission

- After 9 hour drive, truck driver experienced swelling in leg and ultimately pulmonary embolism.
- He sought Workers Comp. Company disputed claim arguing injuries were actually caused by his severe obesity, which was a pre-existing condition.
- Utah Supreme Court ruled that the employment activity (driving 9 hours) contributed something substantial to increase risk already faced in every day life due to pre-existing condition (employment activity was unusual or extraordinary).

Independent Contractor v. Employee

Jensen Tech Services v. Labor Commission, 2022 UT App 18

- Issue of whether an individual was entitled to worker's compensation benefits when he fell off a ladder while working to install IT system.
- Worker had signed a contract stating he was an independent contractor.
- Worked on various installations for more than one contractor.
- Used his own vehicle and tools, but installed cables and other hardware that were supplied to him by the contractor.
- There were times when Jensen Tech Services provided him with so much work that he could not work for anyone else. He received a 1099, had no withholding, and contractually disavowed any employer-employee relationship.

Independent Contractor v. Employee

- BUT, agreement had non-compete provision.
- ALJ found that he was a contractor. On appeal, Labor Commission found he was an employee, entitled to workers comp.
- Utah Court of Appeals remanded stating that Commission's analysis fell short.
- Lesson: Lots of confusion on this issue. Make sure:
 - A written contract;
 - No non-compete;
 - No control over means and methods;
 - Payment on a per job basis; and
 - Responsibility with worker for insurance, equipment, transportation, and safety.

— 10th Circuit

Failure to Accommodate

Hermann v. Salt Lake City Corp., 10th Cir., No. 20-04063

- SLC may have failed to accommodate court clerk when it refused to reassign her to different position and denied her leave.
- Her clinical social worker recommended that she avoid any work related to domestic violence cases because it triggered PTSD.
- Further evidence on question of whether her leave could have been accommodated needed to be considered by court.

— Federal Contractor's Minimum Wage

Bradford et al. v. U.S. Department of Labor

- 10th Cir. Blocked government from enforcing rule raising federal contractor employees' minimum wage to \$15/hour against seasonal recreational companies.
- Recreational companies were not federal service contractors, as they only hold permits to use federal land, and the minimum wage requirement does not align with their per-trip payment model for guides and will hurt their business.

Discrimination

Handy v. Maximus

- 10th Cir. revived a worker's section 1981 lawsuit claiming the call center she worked for illegally terminated her because she is white and a victim of domestic violence.
- She was terminated a few days after her husband showed up at work with a gun looking for her.
- She claimed she was treated differently from her non-white co-workers who had been in similar situations and were not punished.

Retaliation

Reznik v. inContact

- Employee received internal complaints about racial slurs in workplace from two native Filipino employees who worked in company's Manila office.
- Ms. Reznik relayed complaints to immediate supervisor. A few days later, she shared complaints with HR.
- A few weeks later, Ms. Reznik was terminated. Her supervisors respectively commented only that Ms. Reznik was "not a good culture fit" and "not a good fit."
- The district court dismissed claims because conduct she complained about did not violate Title VII as its protections do not extend to aliens.
- Court ruled that Ms. Reznik only needed establish a reasonable belief that she opposed unlawful conduct under Title VII.

— No Liability For Termination by Independent Decision Maker

Thompson v. Little America

- 10th Cir. affirmed dismissal of claims based on alleged discrimination based on national origin in violation of 42 U.S.C. section 2000e-2(a)(1)
- No reasonable jury could find that termination was a pretext because when a third party decides to terminate an employee based on an independent review of the employee's actions, that decision cannot be attributed to a subordinate's bias.

— No Liability For Termination by Independent Decision Maker

Parker v. United Airlines

- Retaliation entails a causal link between an employee's use of FMLA leave and the firing. That causal link is broken when an independent decision maker conducts her own investigation and decides to fire the employee.
- Customer service employee routinely left customers on hold and failed to hang up after calls while she chatted about personal matters.



— U.S. Supreme Court

Dobbs v. Jackson

Abortion Pre-Dobbs

- **Roe v. Wade** – The Due Process Clause of the Fourteenth Amendment provides a fundamental “right to privacy” that protects a pregnant person’s choice to have an abortion.
- First Trimester – no state regulation on abortion.
- Second Trimester - state may impose regulations on abortion that are reasonably related to maternal health.
- Third Trimester - a state may regulate abortions or prohibit them entirely once the fetus reaches the point of “viability,” so long as the laws contain exceptions for cases when abortion is necessary to save the life or health of the mother.
- “Viability” - the ability of a developing fetus to survive independent of a pregnant person's womb.

Pre-Dobbs

- ***Planned Parenthood of Southeastern Pennsylvania v. Casey*** – The Supreme Court reaffirmed Roe and developed a new standard to review laws restricting abortions.
- *Casey Standard* - Does a state abortion regulation have the purpose or effect of imposing an “undue burden”?
- “Undue Burden” - which is defined as a “substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.”

Dobbs v. Jackson Women's Health Organization

- **Facts** – In 2018, Mississippi passed the Gestational Age Act which prohibits abortions if the “probable gestational age” of the fetus is greater than fifteen (15) weeks. Jackson Women's Health Organization (an abortion facility) and one of its doctors filed a lawsuit to challenge the law.
- **Question(s) Presented** – Whether all pre-viability prohibitions on elective abortions are unconstitutional; whether the Constitution grants a right to obtain an abortion.
- **Ruling** - The Constitution does not grant a right to abortion. *Roe* and *Casey* are overruled.

Majority Opinion

Alito, J.

- The states may regulate abortion.
- “The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision.”
- *Roe* was “egregiously wrong” and failed to ground its decision in history or precedent.
- The *Roe* test resembled the work of a legislature.
- *Dobbs* only concerns abortion and has no influence on cases regarding contraception or same-sex marriage.

First Amendment/Religious Speech

Kennedy v. Bremerton School District

- On June 27, 2022, the U.S. Supreme Court ruled in favor of Washington state public employee who lost job for praying while on-duty.
- high school football coach Joseph Kennedy was suspended, and later not rehired, after he knelt in personal prayer at midfield after several games. Kennedy filed suit in federal court alleging that his public employer Bremerton School District violated the First Amendment's Free Speech and Free Exercise Clauses.
- Writing for the 6-3 majority, Justice Gorsuch explained that “[n]o historically sound understanding of the Establishment Clause begins to make it necessary for government to be hostile to religion in this way.” The court also observed that the coach did “not involve leading prayers with the team” and instead had “knelt at midfield after games to offer a quiet personal prayer.”

- Although Utah employees in the private sector have no free speech or other Constitutional rights, they do have religious liberty protections arising under Utah's Antidiscrimination Act.
- Antidiscrimination Act allows employees to express their “religious or moral beliefs and commitments in the workplace in a reasonable, non-disruptive, and non-harassing way on equal terms with similar types of expression of beliefs or commitments allowed by the employer in the workplace, unless the expression is in direct conflict with the essential business-related interests of the employer.”
- It is possible that a Utah court could draw upon the *Kennedy v. Bremerton School District* decision when applying these statutory religious expression rights.

Students for Fair Admissions, Inc. v. President & Fellows of Harvard College, No. 20-1199;

- Whether institutions of higher education can use race as a factor in admissions.
- Impact on Employers: If the Supreme Court invalidates Harvard and UNC's admissions programs, higher education employers will need to examine admissions to determine whether they require revision and train admissions personnel accordingly.
- Such a decision could have a far-reaching impact and may encourage private sector employers to re-evaluate their diversity, equity, and inclusion measures.

Unclear, Inconsistently Enforced Policy

Hexcel Corp v. Labor Commission

- Employee injured back at work.
- After doctor recommended that he not stand, sit or walk for extended periods, he requested 8 rather than 12 hour shifts.
- Employer denied request because it was short staffed.
- Employee caught sleeping in a company truck during a brief break and was terminated.
- Utah Court of Appeals upheld termination as a pretext as the Sleeping Rule, though in place, was not enforced.



Q&A

— 30 minute lunch break

11th Annual Utah Fall Employment Seminar

November 16, 2022

Keynote: Phil Dean, M.S., M.P.A.

Chief Economist and Public Finance Senior Research Fellow at
The University of Utah, Kem C. Gardner Policy Institute

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Current Economic Conditions & Outlook

*Even with Headwinds, Utah's Economic
Fundamentals Remain Strong*

Ballard Spahr Fall Employment Seminar
November 15, 2022



Setting the Stage

- 1. Utah's Economic Fundamentals Remain Strong, Helping it Through the Business Cycle**
- 2. U.S. Economy – Well-Advertised Risks, Underappreciated Strengths**
 - **Supply-side constraints still limit growth**
 - High inflation spurring rapid & ongoing interest rate increases
 - **Solid demand continues** - but (a) moderating from overheated demand and (b) shifting from goods to services
- 3. Utah Not an Island - Mixed Signals & Muddled National Economic Picture Impact Utah**

Recurring Takeaways

- Prepare for continued **economic re-sorting**
- Structural (long-term) and cyclical (short-term) changes create **pockets of strength and weakness**
- Make your systems highly **adaptable to rapidly changing conditions**

Significant Utah Opportunities and Challenges

Continuing Growth

- Life quality
- Infrastructure investment
- Affordability
- Cost of doing business
- Air quality and water
- Congestion
- Crossroads of the West
- Young, well-educated population
- Declining fertility rate

Structural Changes in Post-Pandemic Reality

- Labor shortages
- Inflation
- Supply chain constraints
- Remote work
- Relative positioning among states

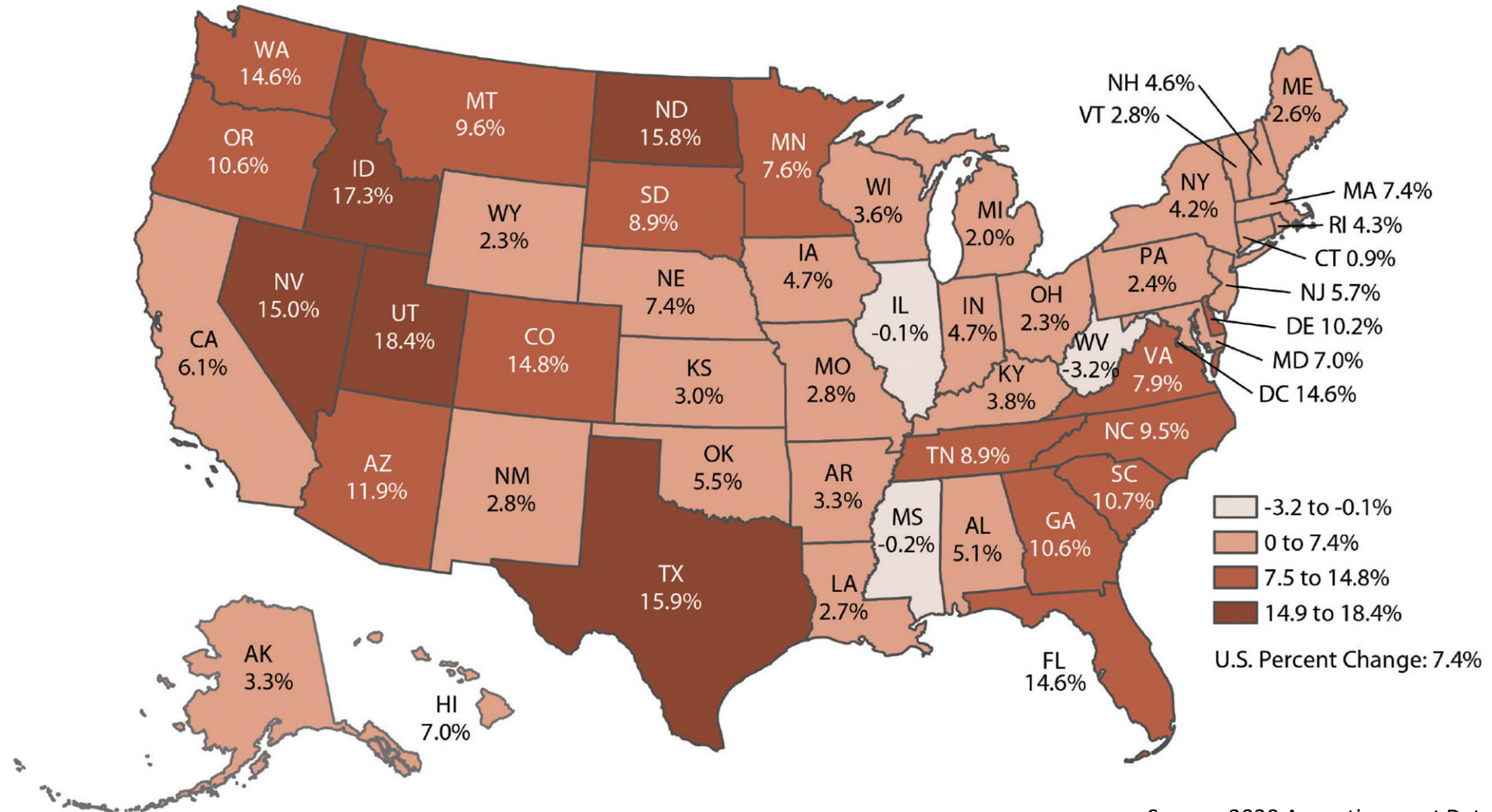
Disadvantaged Utahns

- Intergenerational poverty
- Equitable access to opportunities
- Social mobility
- Massive untapped potential
- Mental health
- Homeless services

Source: Kem C. Gardner Policy Institute

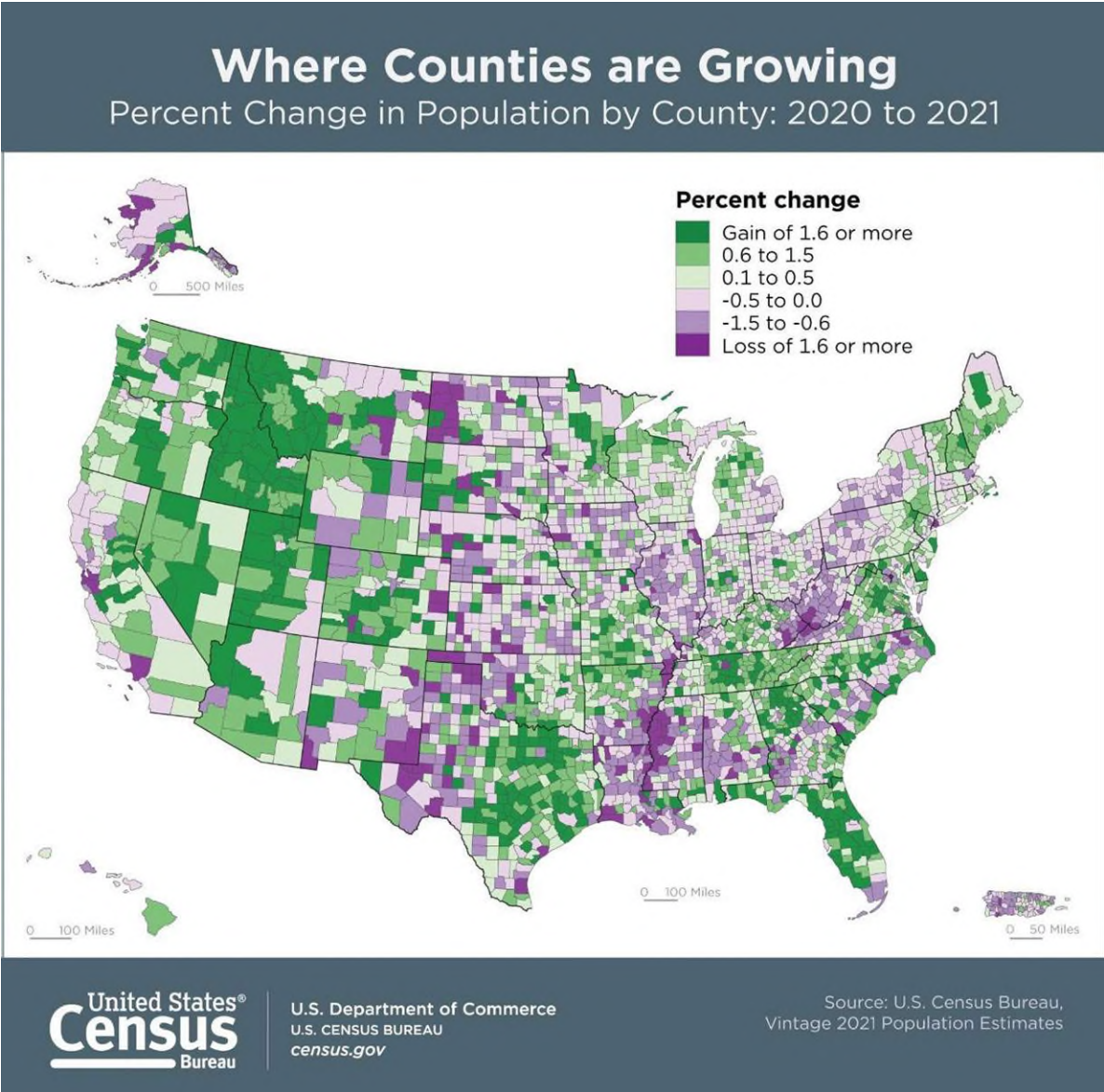
Utah's Population Growth Rate Led the Nation

Percent Change, 2010-2020



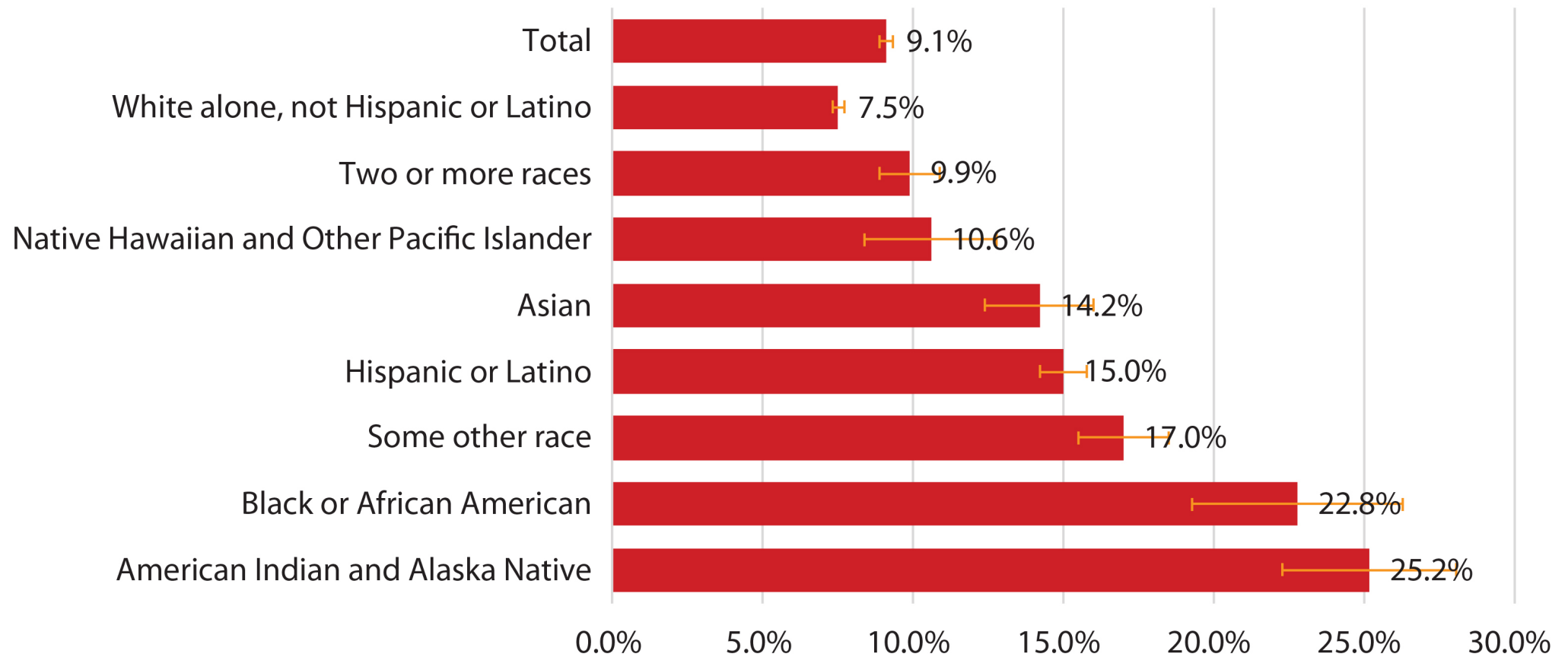
Source: 2020 Apportionment Data, U.S. Census Bureau

Intermountain West and South Continue Growing



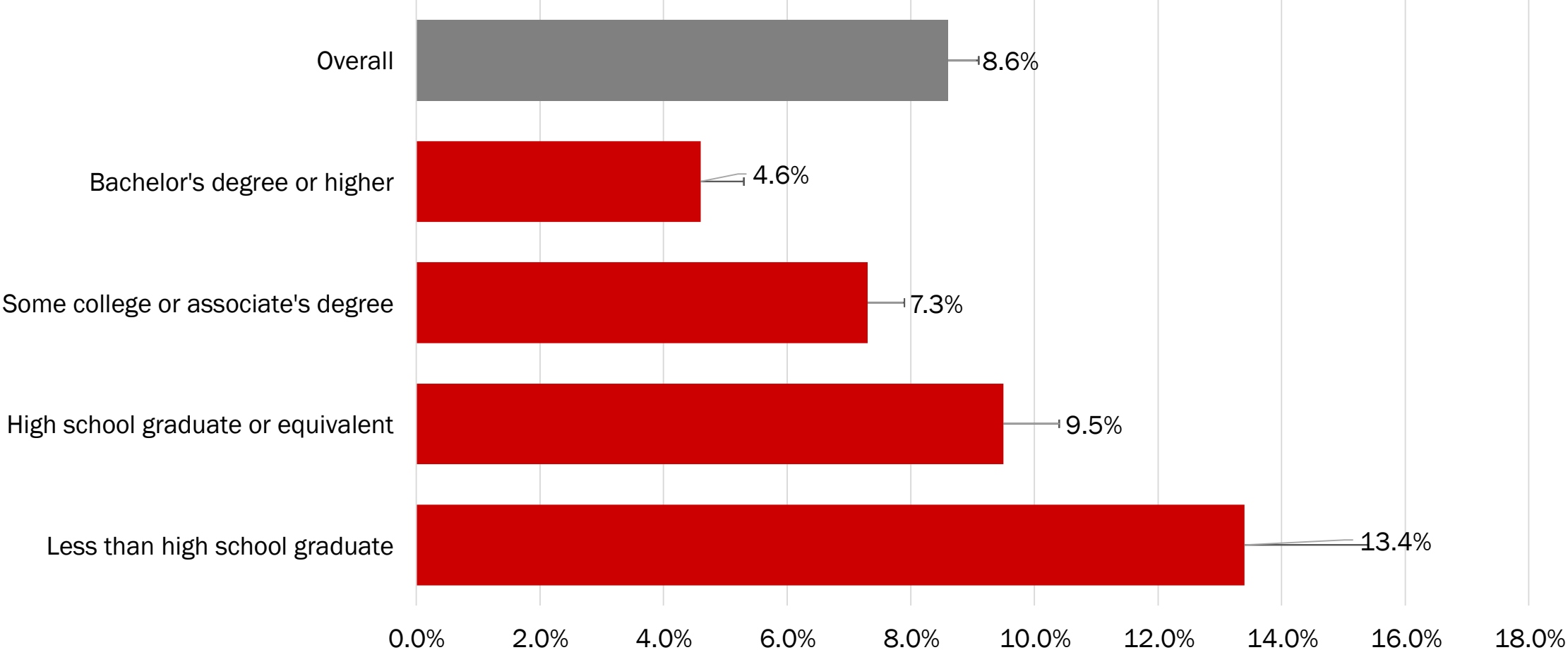
Source: U.S. Census Bureau

Utah Population in Poverty by Race & Ethnicity



Source: U.S. Census Bureau, Population Division

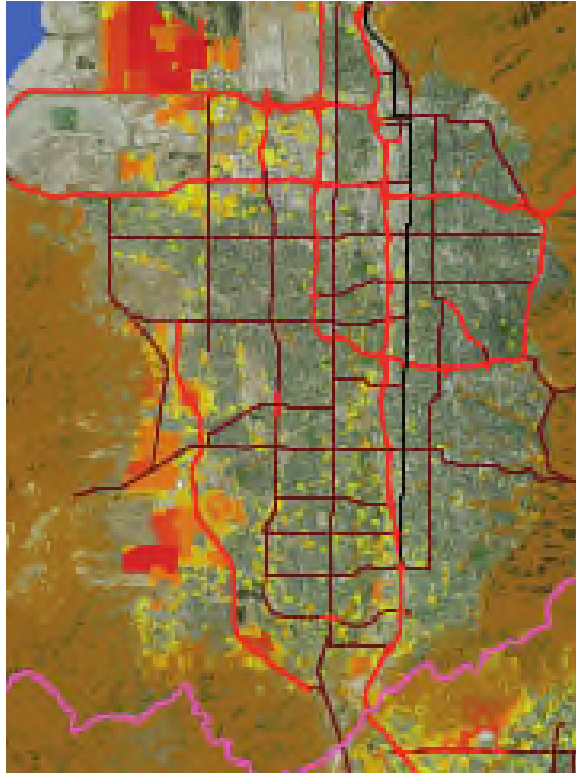
Utah Poverty Rate by Educational Attainment, 2021



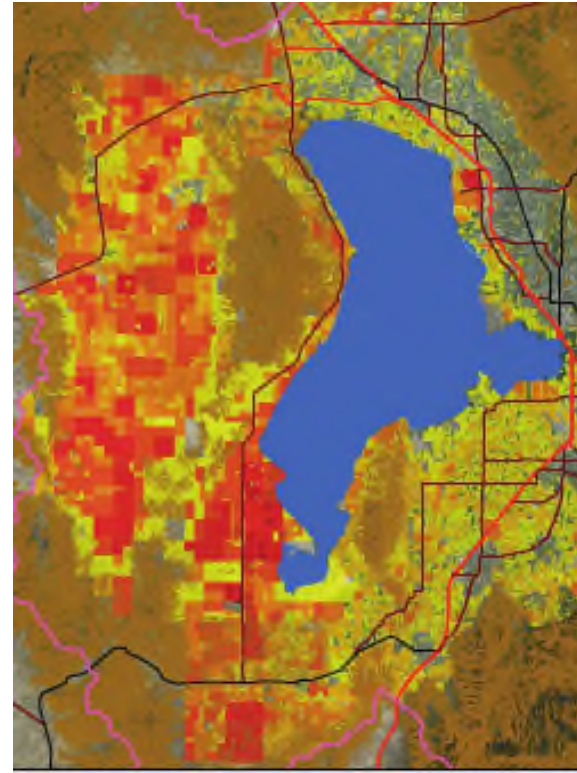
Note: Data are for individuals age 25 and older. These are survey-based estimates subject to sample variation. Each estimate is shown with its 90% confidence interval.

Source: U.S. Census Bureau American Community Survey, 1-Year Estimates

Topographical Constraints Limit Buildable Land Supply



Salt Lake County
≈ 55,000 Acres Currently
Developable



Utah County
≈ 240,000 Acres Currently
Developable



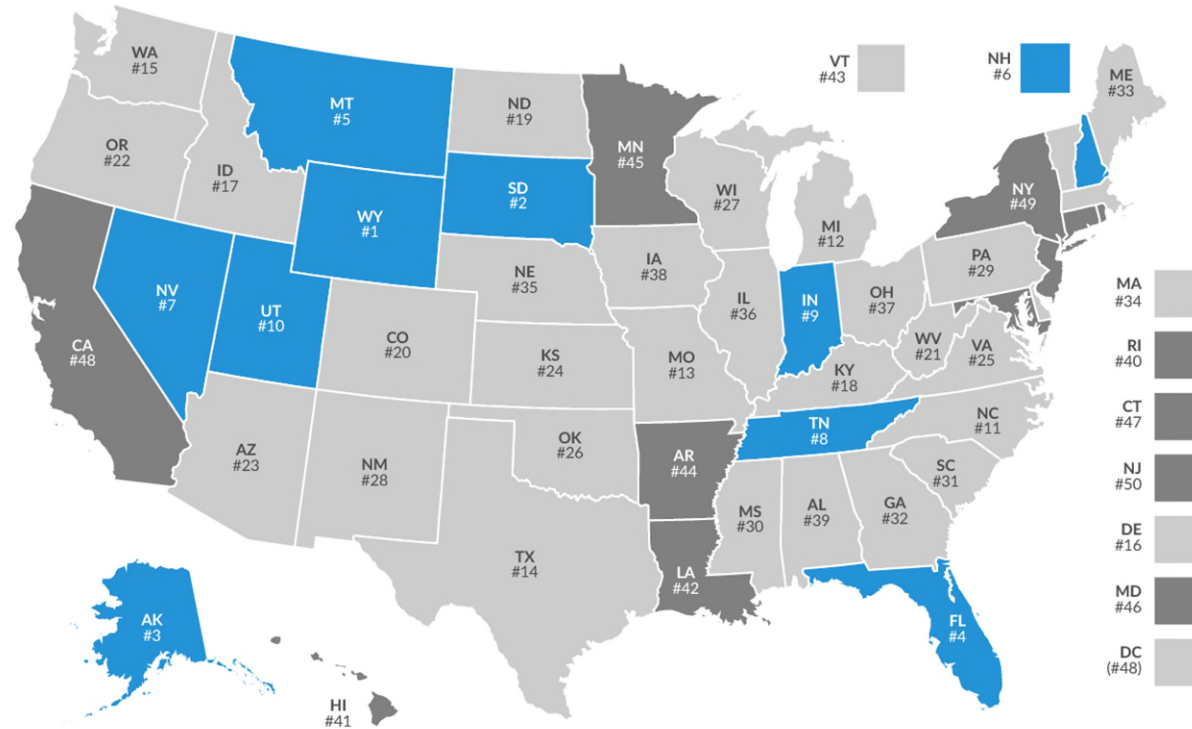
Davis & Weber Counties
≈ 60,000 Acres Currently
Developable

Less Land  More Land  Steep Slope

Source: Envision Utah

Business Friendly Tax Policy

2022 State Business Tax Climate Index



Note: A rank of 1 is best, 50 is worst. D.C.'s score and rank do not affect other states. The report shows tax systems as of July 1, 2021 (the beginning of Fiscal Year 2022). Source: Tax Foundation

- 10 Best Business Tax Climates
- 10 Worst Business Tax Climates

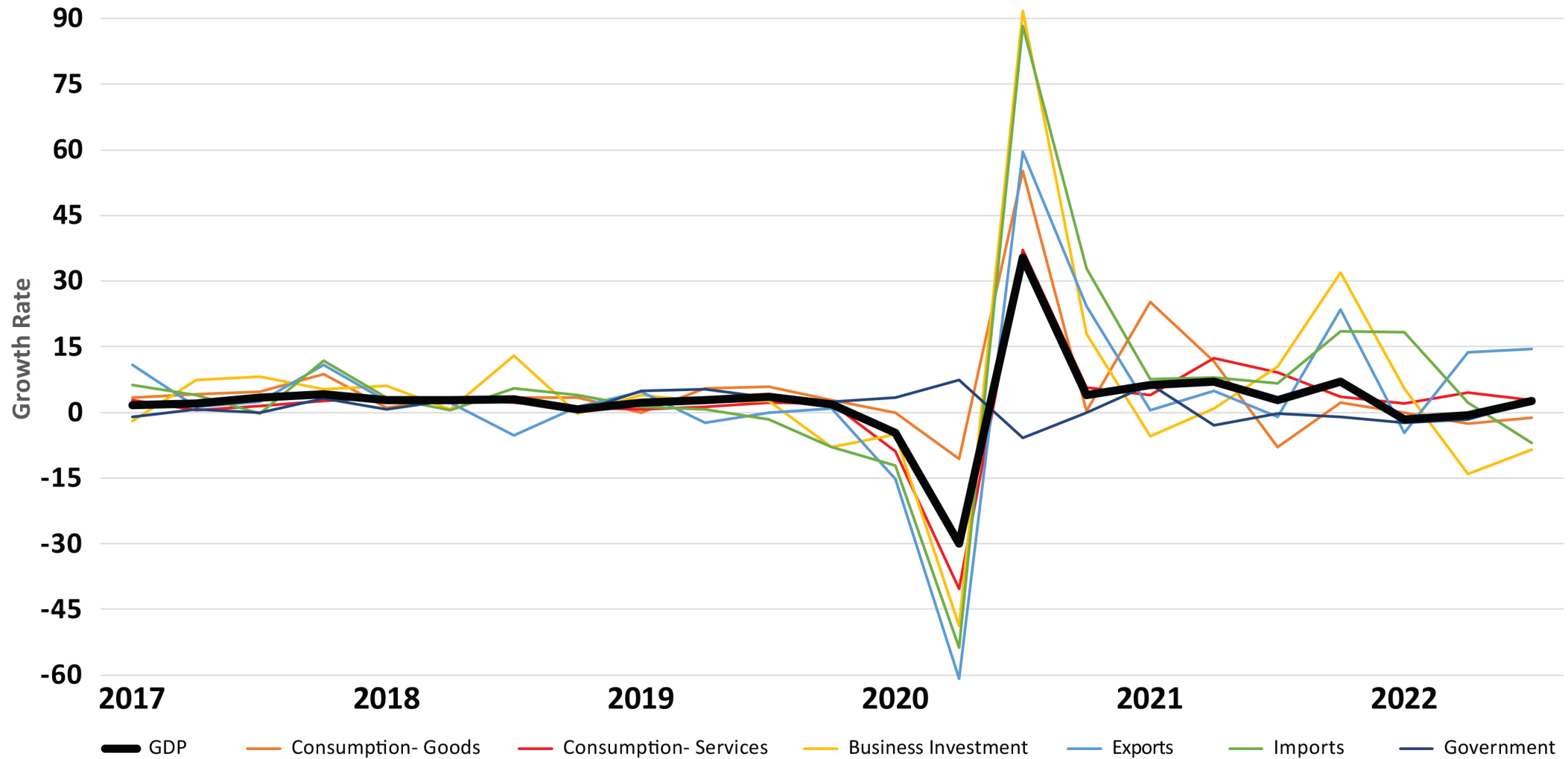
TAX FOUNDATION

@TaxFoundation

Source: Tax Foundation

Even, then Uneven, Components of U.S. GDP 2017-2022

(Bad Graph With A Purpose)



Source: U.S. Bureau of Economic Analysis

Total GDP and Household Consumption 2020-2022



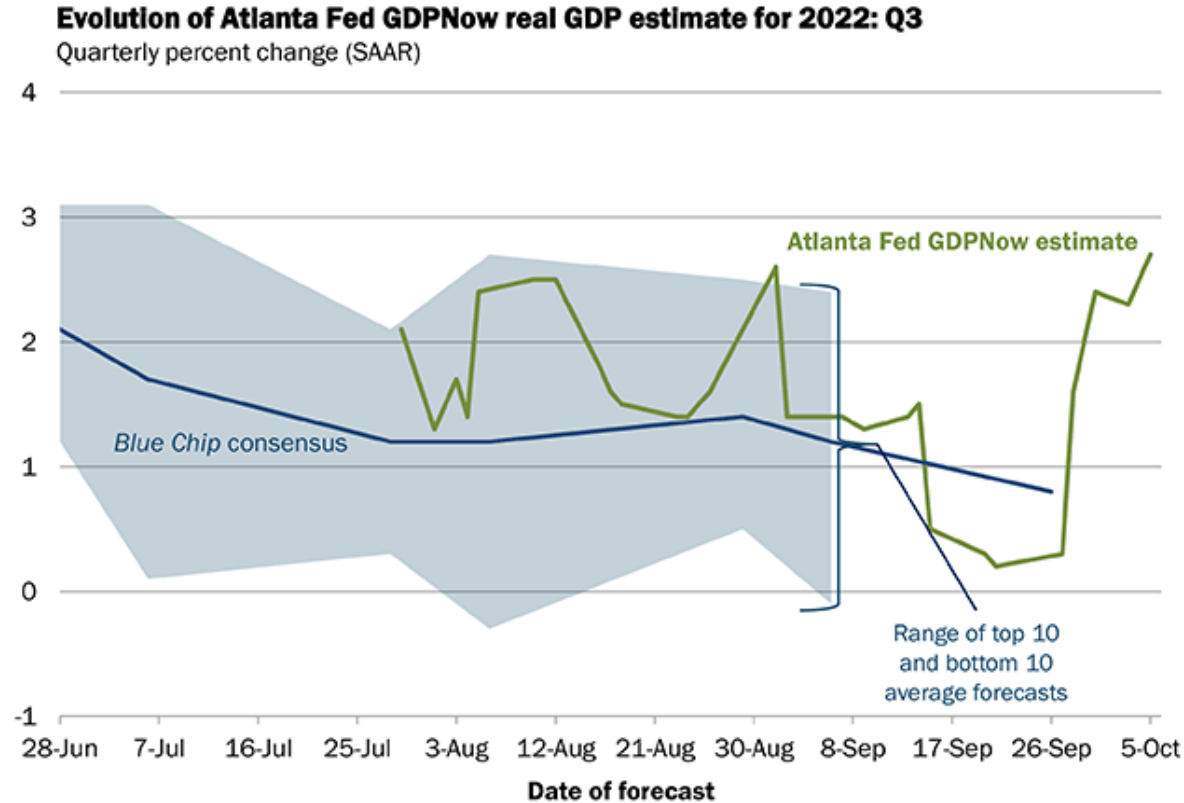
**Real GDP declined
2022 Q1 and Q2,
increased Q3**

**Household
consumption
INCREASED each
quarter in 2022**

**BUT services grew,
goods declined**

Source: U.S. Bureau of Economic Analysis

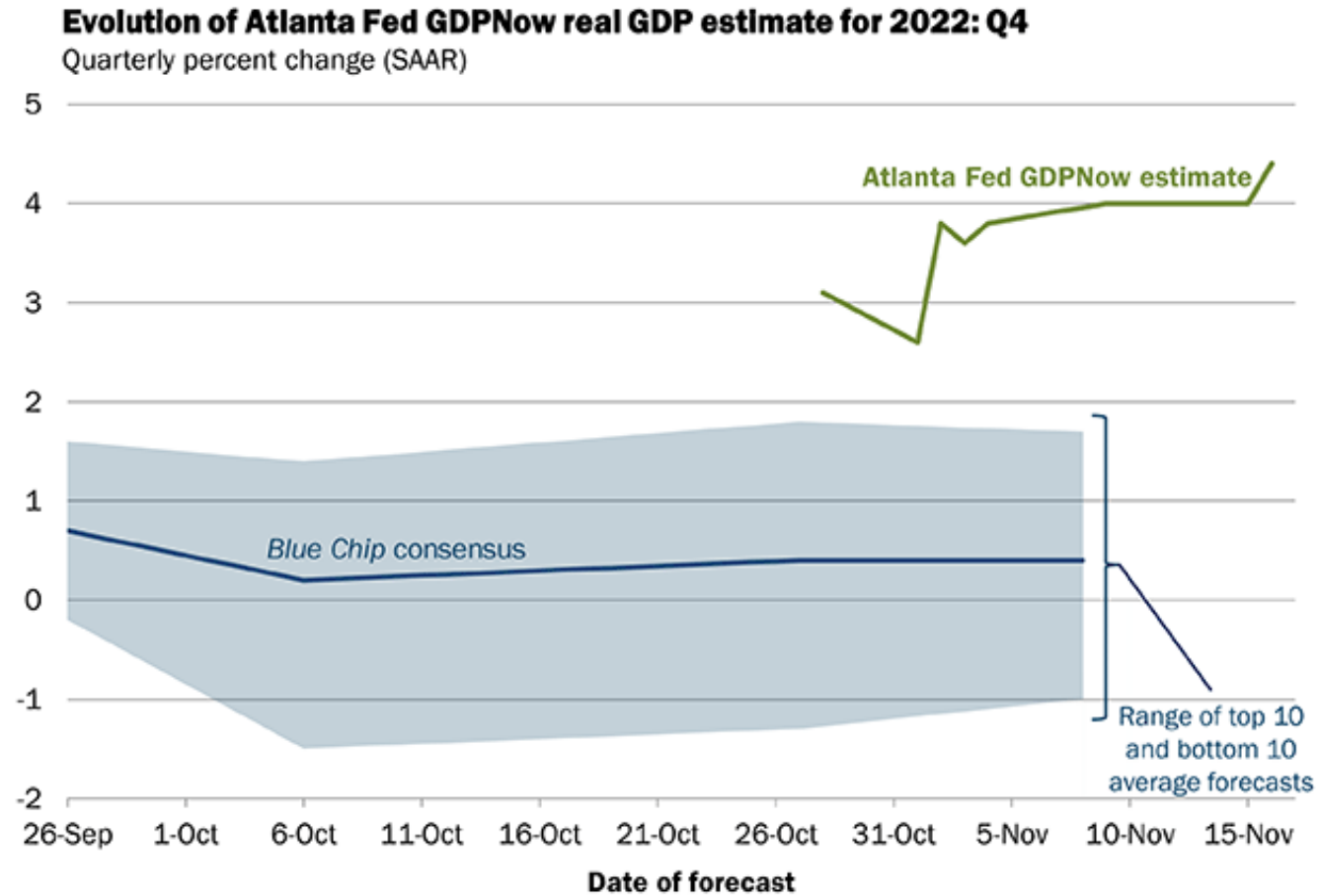
Blue Chip Forecast Average Vastly Underestimated Actual Q3 Real GDP (2.6% Growth)



Sources: Blue Chip Economic Indicators and Blue Chip Financial Forecasts
Note: The top (bottom) 10 average forecast is an average of the highest (lowest) 10 forecasts in the Blue Chip survey.

Source: Federal Reserve Bank of Atlanta

Still Early, but 2022 Q4 Real GDP On Pace for Strong Growth (Far Above Forecasts)



Sources: Blue Chip Economic Indicators and Blue Chip Financial Forecasts

Note: The top (bottom) 10 average forecast is an average of the highest (lowest) 10 forecasts in the Blue Chip survey.

Source: Federal Reserve Bank of Atlanta

Strong Utah Revenues

Mean Strong Utah Economy

MONTHLY STATE REVENUE SNAPSHOT

FY 2022

based on the Utah State Tax Commission Monthly Revenue Summary (Report TC-23)

General Fund	Projected Growth Rate - February Estimates (Annual)	Actual Growth Rate	Projected Range in Collections Through 12 Months	Actual Collections	Condition	Forecast	22-Feb	22-Mar	22-Apr	22-May	22-Jun
Sales & Use Tax	13.6%	17.5%	\$2,712,000,000 - \$3,315,000,000	\$3,118,781,616	On target	\$2,981,794,549	20.0%	20.3%	19.1%	18.8%	17.5%
All Other Sources	4.8%	27.8%	\$478,000,000 - \$585,000,000	\$648,528,363	Above target range	\$588,939,299	16.6%	17.8%	17.8%	27.1%	27.8%
Subtotal General Fund	12.6%	19.2%		\$3,767,309,979			19.4%	19.8%	18.9%	20.1%	19.2%
Sales & Use Tax Set-Asides	12.4%	19.0%	\$909,000,000 - \$1,111,000,000	\$1,069,394,131	On target	\$1,044,943,971	19.4%	19.3%	19.8%	18.7%	19.0%
Education Fund/Uniform School Fund											
Individual Income Tax	-5.1%	10.8%	\$5,230,000,000 - \$6,392,000,000	\$6,781,887,436	Above target range	\$5,787,974,286	-8.9%	-5.1%	28.7%	12.8%	10.8%
Corporate Tax	-2.8%	26.4%	\$651,000,000 - \$796,000,000	\$940,558,286	Above target range	\$718,915,829	30.1%	34.0%	28.6%	28.7%	26.4%
All Other Sources	3.8%	107.6%	\$27,000,000 - \$32,000,000	\$58,938,956	Above target range	\$58,827,111	174.6%	186.0%	73.1%	136.0%	107.6%
Subtotal Education Fund	-4.6%	12.8%		\$7,781,384,678			-5.2%	-1.1%	28.8%	14.8%	12.8%
Subtotal GF/EF	0.6%	14.3%		\$11,548,694,657			3.0%	6.0%	25.7%	16.0%	14.3%
Transportation Fund											
Motor Fuel Tax	6.0%	4.5%	\$357,000,000 - \$436,000,000	\$390,767,065	On target	\$402,439,824	5.7%	6.5%	5.4%	5.9%	4.5%
Special Fuel Tax	-2.2%	-1.9%	\$144,000,000 - \$176,000,000	\$160,440,407	On target	\$168,105,276	0.0%	1.1%	-2.5%	3.0%	-1.9%
Other	5.1%	5.3%	\$105,000,000 - \$128,000,000	\$116,460,522	On target	\$120,374,120	6.4%	4.9%	7.2%	6.1%	5.3%
Subtotal Transportation Fund	3.7%	3.0%		\$667,667,994			4.4%	4.9%	3.7%	5.2%	3.0%
Total, GF/EF/USF/TF	0.8%	13.6%		\$12,216,362,651			3.1%	5.9%	24.3%	15.3%	13.6%

Source: GOPB & LFA

Strong State Revenues Continue

MONTHLY STATE REVENUE SNAPSHOT OCT 2022

based on the Utah State Tax Commission Monthly Revenue Summary (Report TC-23)

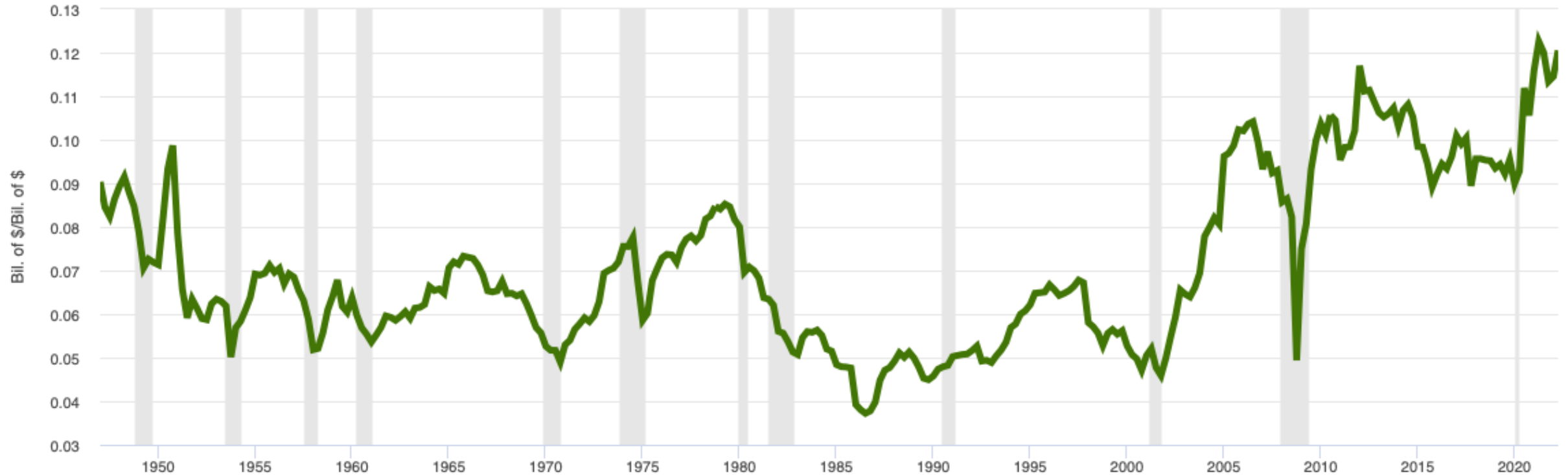
General Fund	Projected Growth Rate - February Estimates (Annual)	YoY Growth Rate	Projected Range in Collections Through 3 Months	Actual Collections	Year-End Forecast	22-Apr	22-May	22-Jun	22-Oct
Sales & Use Tax	-5.0%	13.5%	\$662,000,000 - \$810,000,000	\$881,285,799	\$2,832,961,188	19.1%	18.8%	18.0%	13.5%
All Other Sources	4.8%	33.5%	\$165,000,000 - \$201,000,000	\$176,487,128	\$570,220,105	17.8%	27.1%	27.7%	33.5%
Subtotal General Fund	-4.7%	16.4%		\$1,057,772,927	\$3,403,181,694	18.9%	20.1%	19.7%	16.4%
Sales & Use Tax Set-Asides	-0.9%	10.3%	\$243,000,000 - \$297,000,000	\$268,621,476	\$1,044,943,971	19.8%	18.7%	17.1%	10.3%
Income Tax Fund/Uniform School Fund									
Individual Income Tax	-1.0%	11.1%	\$1,509,000,000 - \$1,844,000,000	\$1,314,000,509	\$5,730,920,399	28.7%	12.8%	10.8%	11.1%
Corporate Tax	-26.4%	-2.6%	\$155,000,000 - \$190,000,000	\$181,894,296	\$529,066,843	28.6%	28.7%	26.2%	-2.6%
All Other Sources	5.1%	107.4%	\$23,000,000 - \$28,000,000	\$15,733,503	\$61,827,082	73.1%	136.0%	192.5%	107.4%
Subtotal Income Tax Fund	-3.7%	9.8%		\$1,511,628,308	\$6,321,814,325	28.8%	14.8%	13.3%	9.8%
Subtotal GF/ITF/USF	-4.1%	11.1%		\$2,569,401,234	\$9,724,996,019	25.7%	16.0%	11.3%	11.1%
Transportation Fund									
Motor Fuel Tax	4.9%	-6.6%	\$94,000,000 - \$115,000,000	\$96,961,521	\$422,319,147	5.4%	5.9%	5.2%	-6.6%
Special Fuel Tax	5.9%	14.0%	\$41,000,000 - \$51,000,000	\$41,635,673	\$177,970,688	-2.5%	3.0%	1.1%	14.0%
Other	5.4%	8.0%	\$29,000,000 - \$35,000,000	\$28,596,423	\$126,874,667	7.2%	6.1%	6.0%	8.0%
Subtotal Transportation Fund	5.2%	0.2%		\$167,193,617	\$727,164,502	3.7%	5.2%	4.3%	0.2%
Total, GF/ITF/USF/TF	-3.5%	10.4%		\$2,736,594,852	\$10,452,160,521	24.3%	15.3%	10.9%	10.4%

Source: GOPB & LFA

Strength Signal: Corporate Profits as % of GDP Near All-Time Highs

FRED

Corporate Profits After Tax (without IVA and CCAdj)/Gross Domestic Product

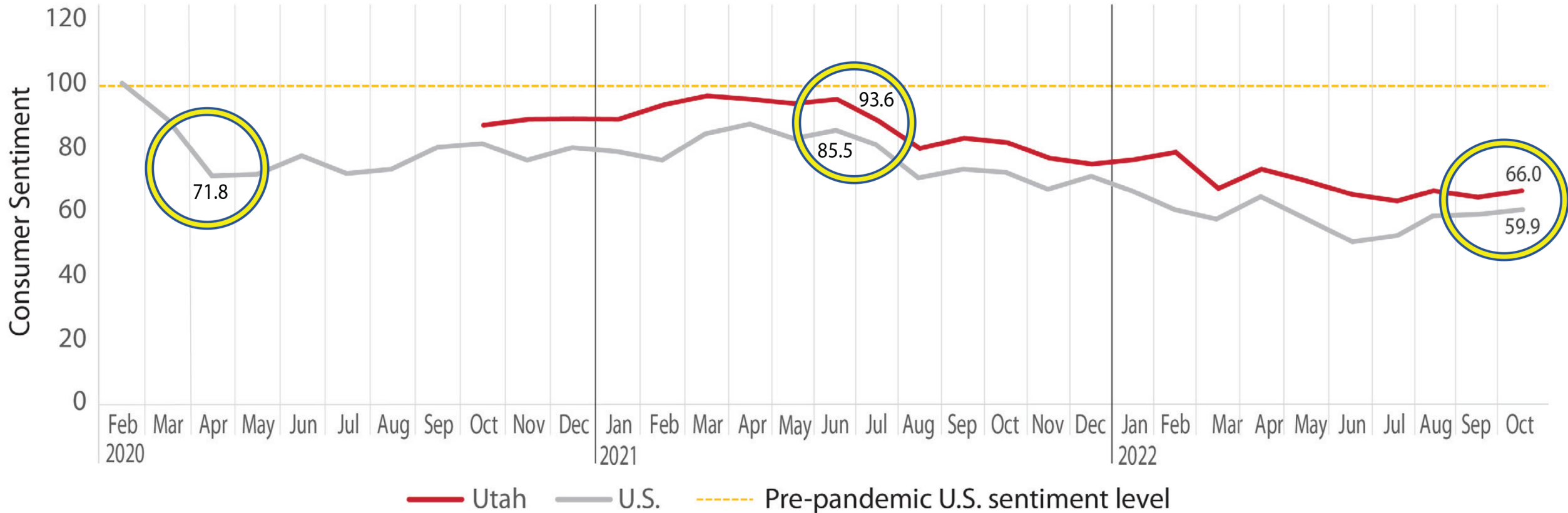


Shaded areas indicate U.S. recessions.

Source: U.S. Bureau of Economic Analysis

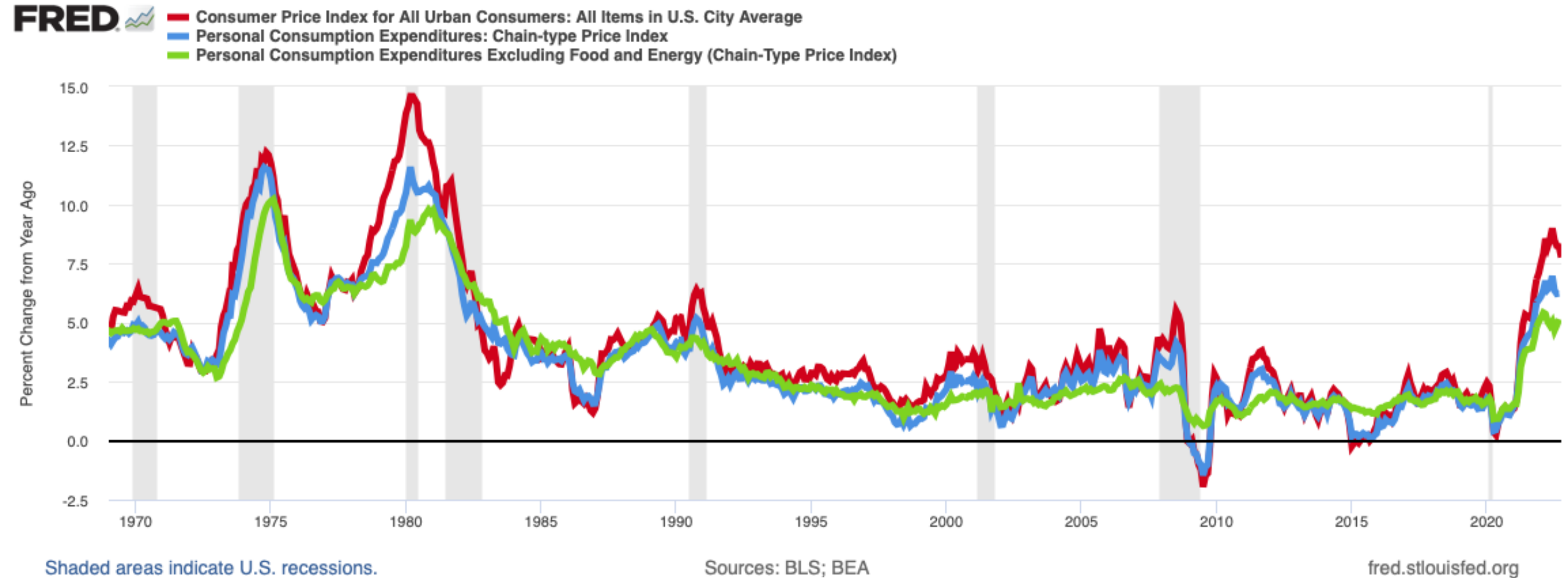
fred.stlouisfed.org

Warning Signal: Low Utah and U.S. Consumer Sentiment



Source: Kem C. Gardner Policy Institute and University of Michigan

Major Warning Signal: The Sting of High Inflation



Source: Bureau of Labor Statistics and Bureau of Economic Analysis via FRED

Slowing Inflation

- **Good News**

- 7.7% Oct (down from 8.2% Sept)

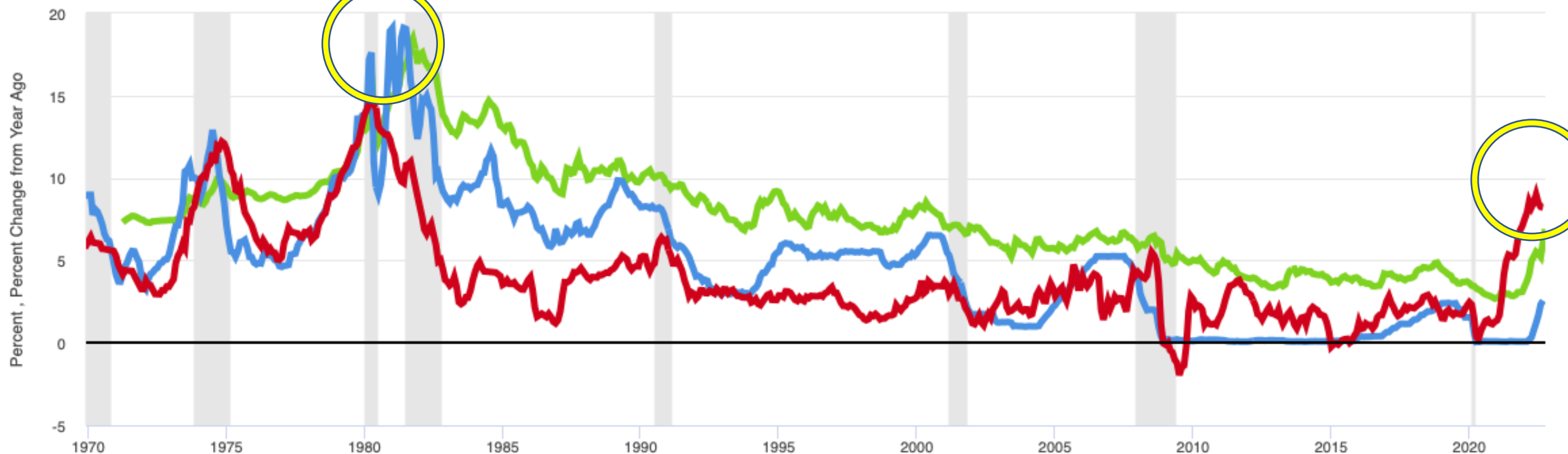
- **Bad News**

- 7.7% is still quite elevated
- Mountain States 9.3% Oct (down from 9.6% Sept)

Warning Signal: Interest Rates Remain Well Below Inflation & Likely to Continue Increasing

FRED

- 30-Year Fixed Rate Mortgage Average in the United States
- Federal Funds Effective Rate
- Consumer Price Index for All Urban Consumers: All Items in U.S. City Average



Shaded areas indicate U.S. recessions.

Sources: FHLMC; Board of Governors; BLS

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Source: Federal Reserve Economic Data

Why Do Interest Rates Matter?

- Interest rates influence goods financed over time

Households

- Homes
- Cars

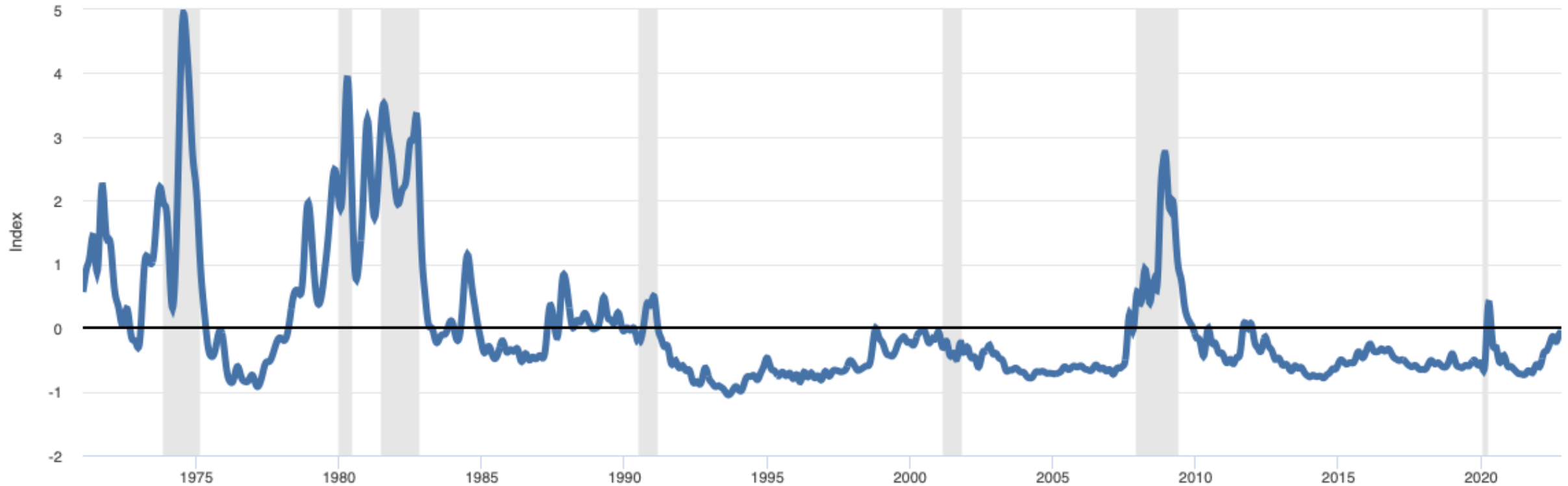
Businesses

- Equipment
- Facilities

- By making financed goods more expensive, higher interest rates moderate economic activity

Neutral Financial Conditions

FRED  — Chicago Fed National Financial Conditions Index



Shaded areas indicate U.S. recessions.

Source: Federal Reserve Bank of Chicago

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Source: Federal Reserve Economic Data

Monetary Policy Behind the Curve

“I think we now understand better how little we understand about inflation.”

Jerome Powell, Chair of the Federal Reserve, June 2022

“We see today that there is a bit of a savings buffer still sitting for households, that may allow them to continue to spend in a way that keeps demand strong. This suggests we may have to keep at this for a while.”

**Esther George, President, Federal Reserve Bank of Kansas City,
November 2022**

Monetary Policy Behind the Curve



Food for Thought -

With continued expansionary fiscal policy, labor shortages, many consumers still flush with cash, and comfortable debt levels, how will monetary policy work?

Conflicting Fiscal & Monetary Policy

Fiscal Policy

(Govt Taxing
and Spending)

=

Highly
Expansionary
Policy



Monetary Policy

(Money Supply &
Interest Rates)

=

Moving Toward
(Finally To??)
Contractionary Policy

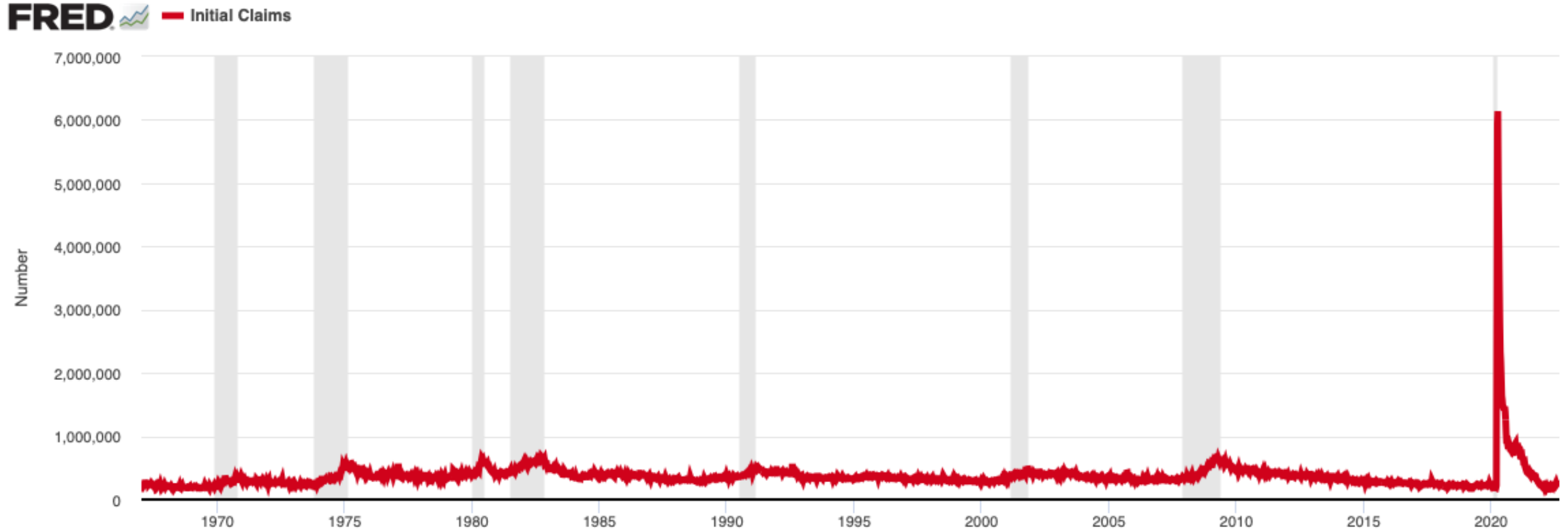


Expansionary Fiscal Policy

- **Pandemic spending**
- **Infrastructure bill**
- **Climate bill**
- **Student loans??**



Early Pandemic – Initial Unemployment Insurance Claims Spiked



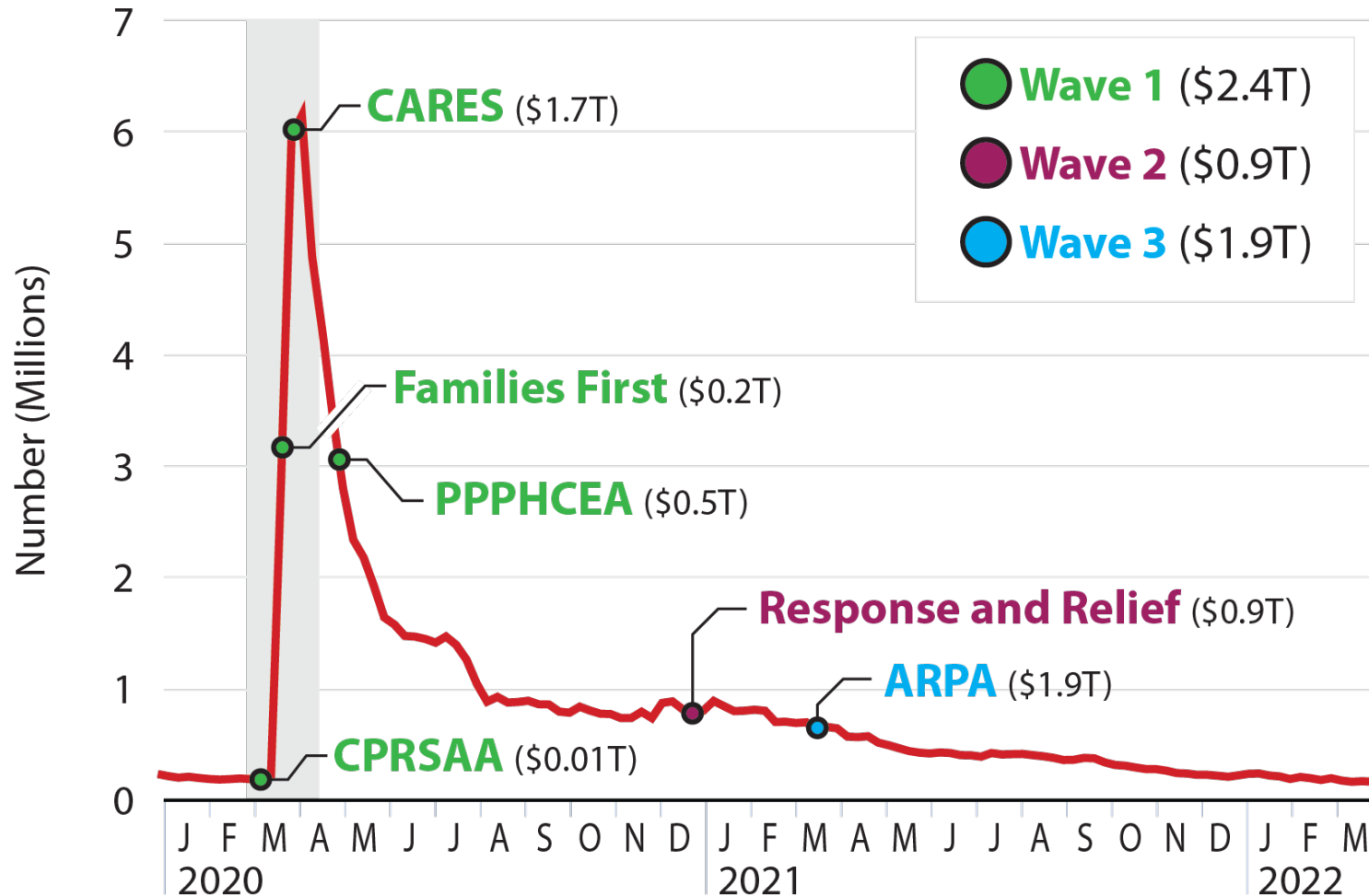
Shaded areas indicate U.S. recessions.

Source: U.S. Employment and Training Administration

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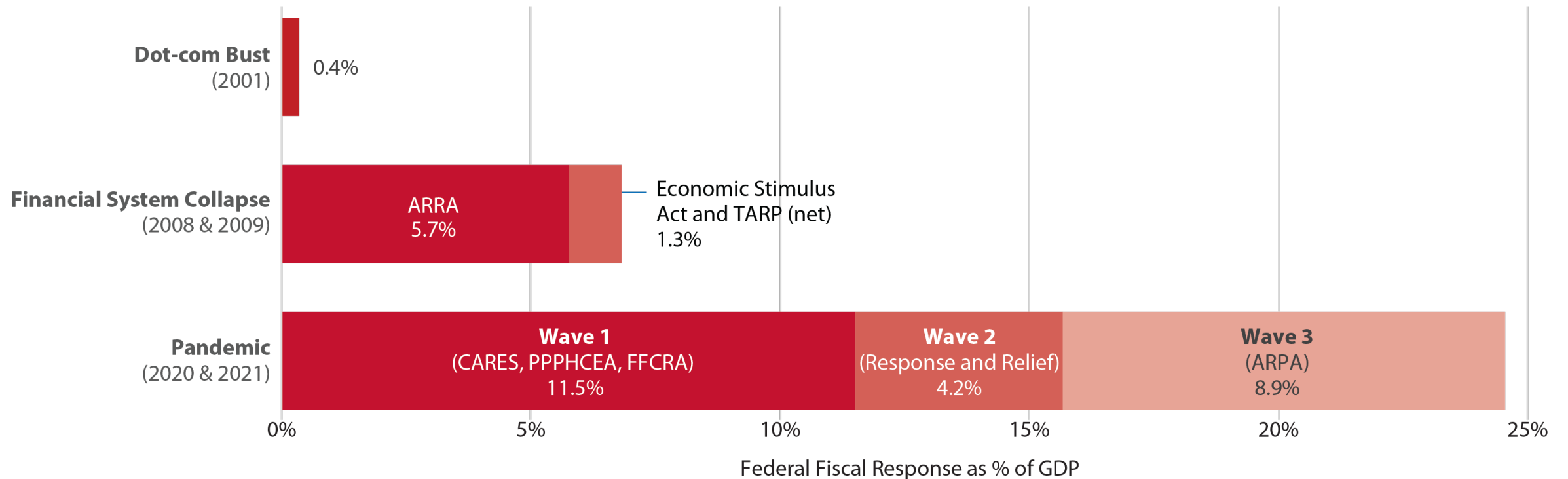
“Unprecedented” Federal Fiscal Support

Massive Fiscal Stimulus Within First Year of Pandemic Beginning



Source: Congressional Budget Office

“Unprecedented” Federal Fiscal Support



Source: Congressional Budget Office and National Bureau of Economic Research

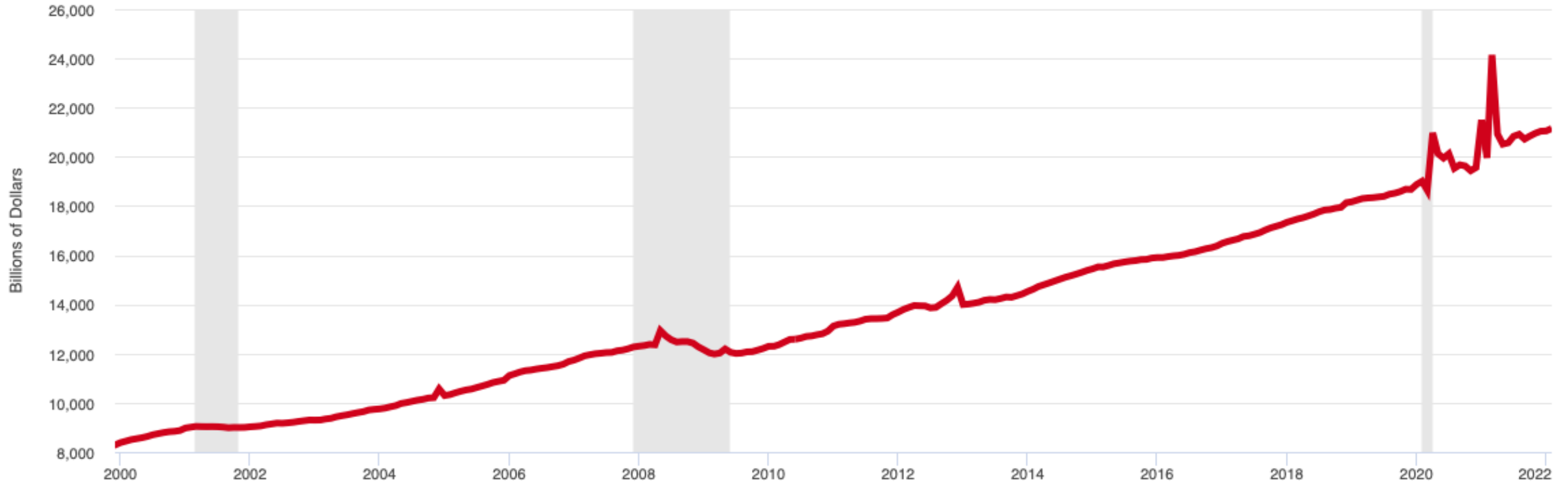
Strength Signals: Household Finances Surprisingly Strong in Aggregate

- 1. High Savings**
- 2. Low Debt Service**
- 3. Consumption Spending Continues**
- 4. Ample Jobs**
- 5. BUT....not everyone is doing well**

Strong Recovery – Transfer Payments Spiked U.S. Personal Income

FRED 

Personal Income



Shaded areas indicate U.S. recessions.

Source: U.S. Bureau of Economic Analysis

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Fiscal Stimulus Impacts – Personal Saving Spiked & Returned

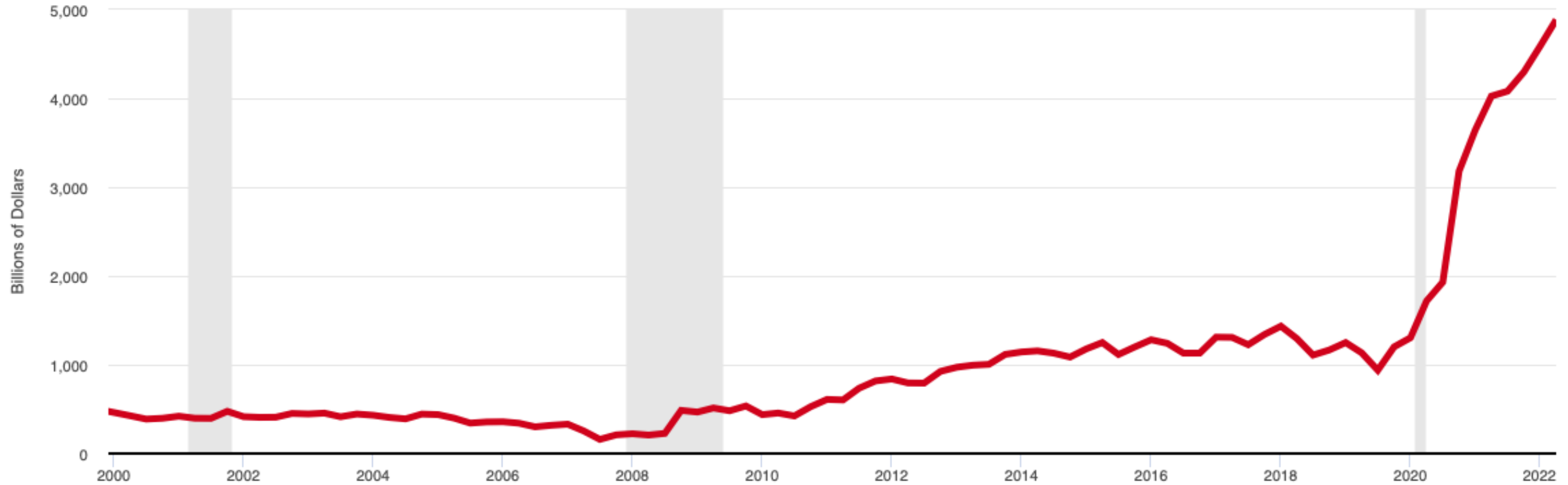


Strength Signal: Lots of Liquidity

Household Reserves High & Growing through 2022Q2

FRED 

— Households and Nonprofit Organizations; Checkable Deposits and Currency; Asset, Level



Shaded areas indicate U.S. recessions.

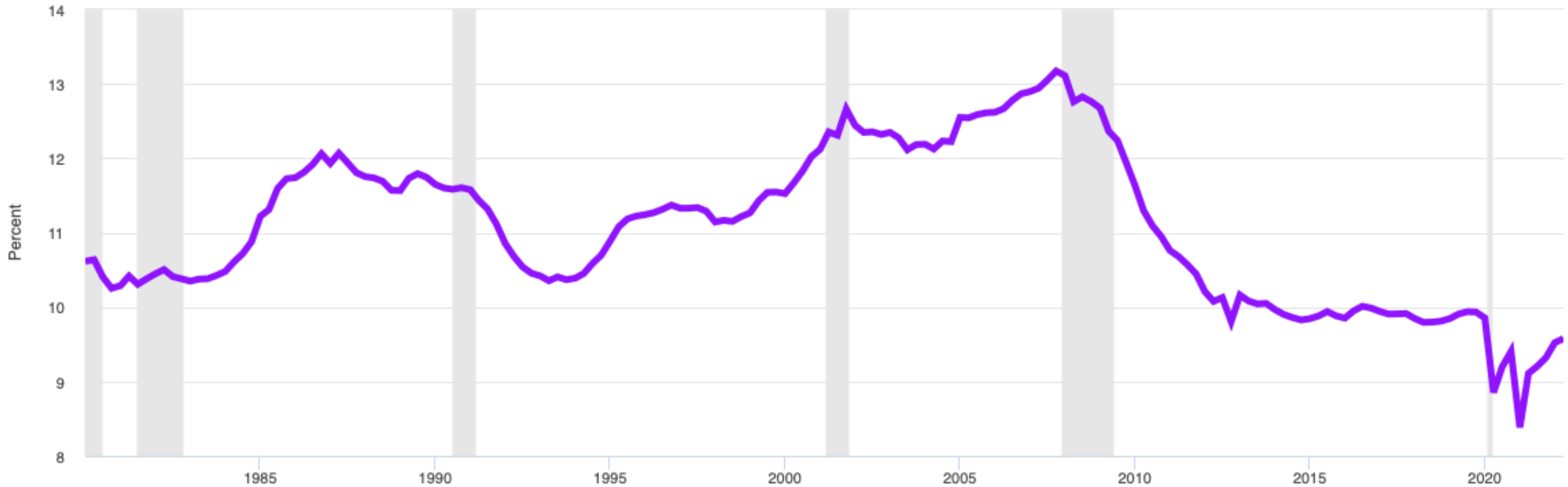
Source: Board of Governors of the Federal Reserve System (US)

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Strength Signal: Low Monthly Debt Service Payments

FRED 

Household Debt Service Payments as a Percent of Disposable Personal Income



Shaded areas indicate U.S. recessions.

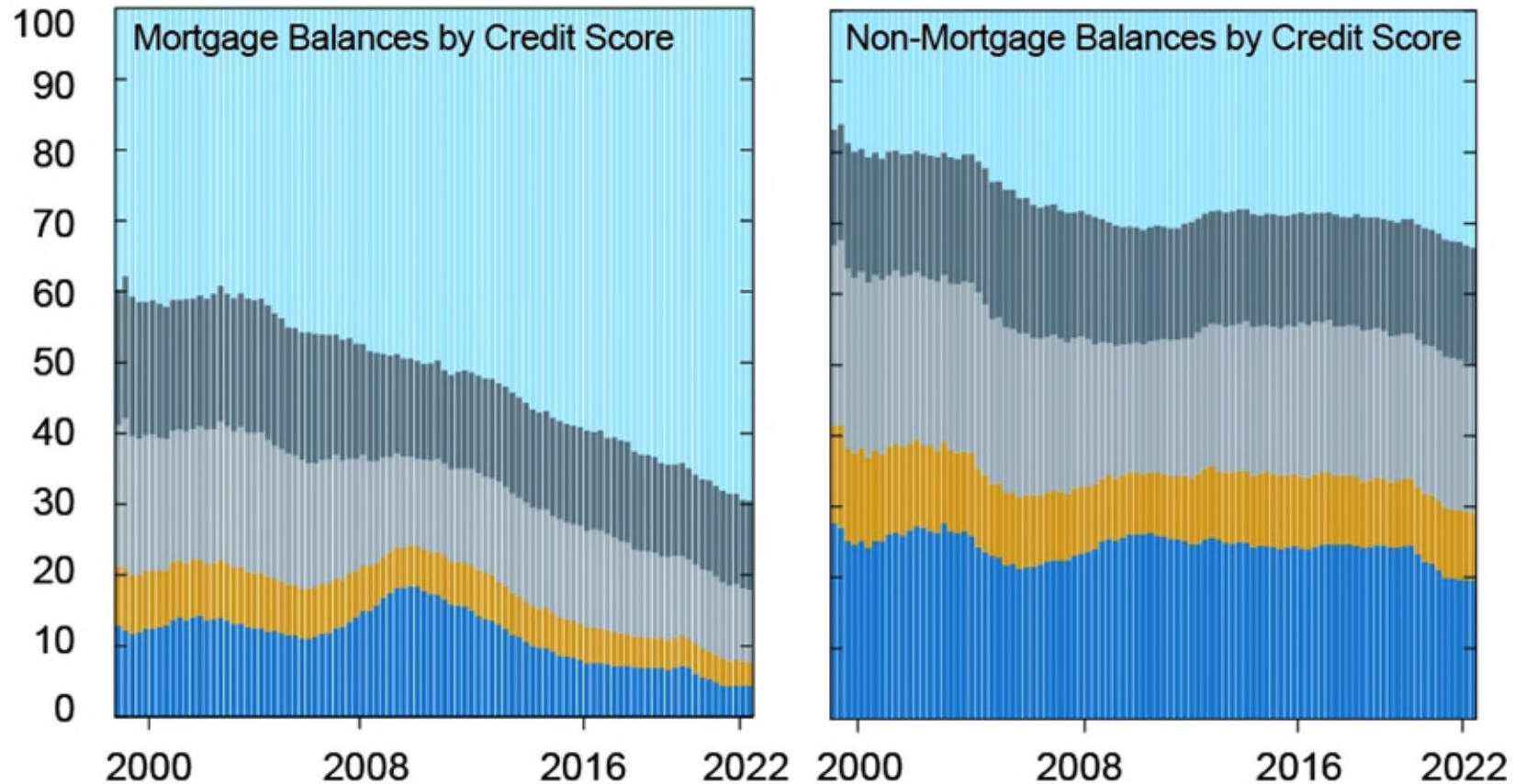
Source: Board of Governors of the Federal Reserve System (US)

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Strength Signal: Most Debt Held by High Credit Score Borrowers

■ <620 ■ 620-659 ■ 660-719 ■ 720-759 ■ 760+

Percent

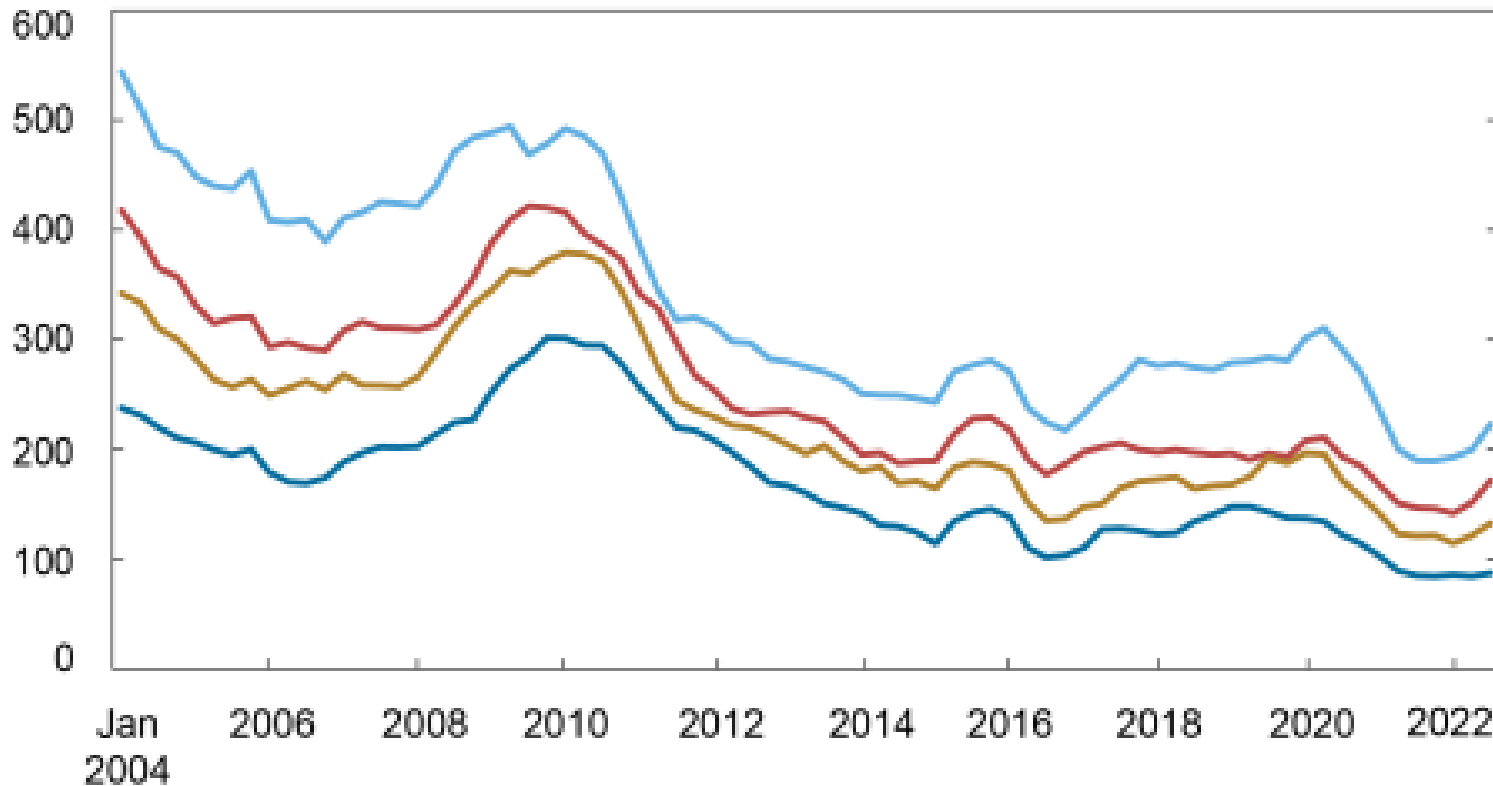


Source: Federal Reserve Bank of New York

Mixed Signal: Increasing Debt & Delinquencies Among Low-Income Households, but Still Low

— Quartile 1 — Quartile 2 — Quartile 3 — Quartile 4

Flow into delinquency by zip code-income (in percent)



Although still well below pre-pandemic levels:

- **Delinquencies increasing, especially among low-income households**
- **Inflation led to increasing household debt in 2022 Q3**

Source: Federal Reserve Bank of New York

The Great Resignation / The Great Rethink

- Utah Sept 2022 year-over job growth 54,000 (3.5%)
- Utah Sept 2022 unemployment rate 2.1%
- About 36,000 unemployed Utahns
- About 65,000 Utah jobs available today

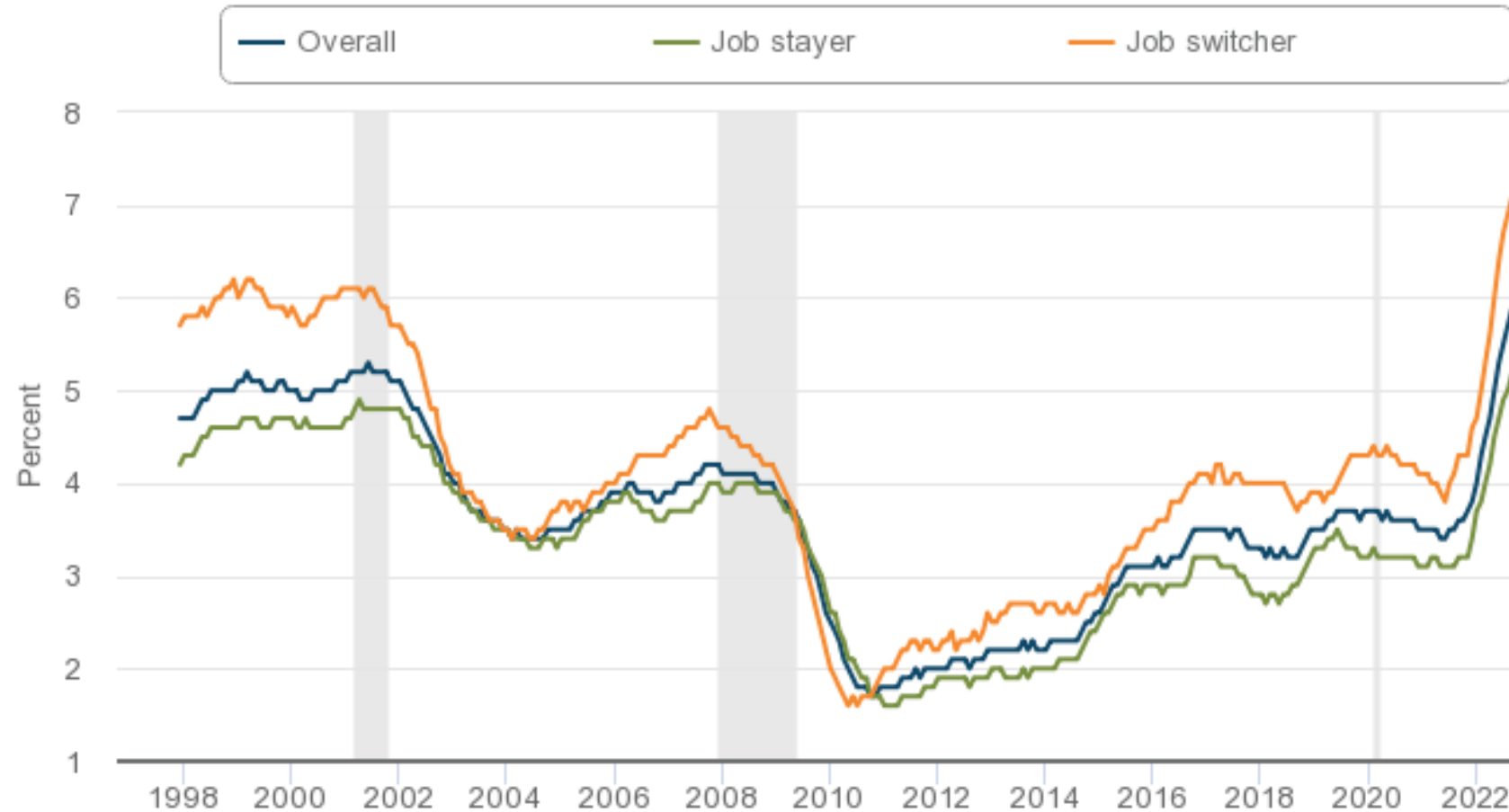


Source: Utah Department of Workforce Services and Indeed.com

Even Though Nominal Wages Increasing...

Wage Growth Tracker by Job Switcher/Stayer

12-month moving average of median wage growth, hourly data



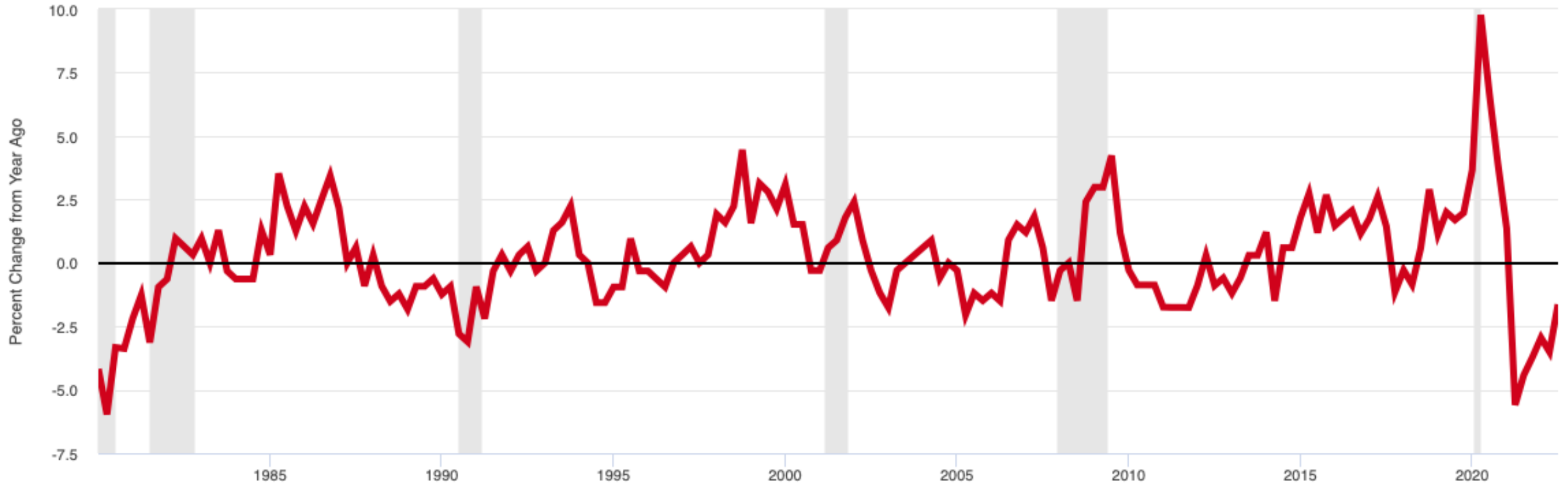
Sources: Current Population Survey, Bureau of Labor Statistics and author's calculations

Source: Federal Reserve Bank of Atlanta

Real (Inflation-Adjusted) Wages Decreasing

FRED 

— Employed full time: Median usual weekly real earnings: Wage and salary workers: 16 years and over



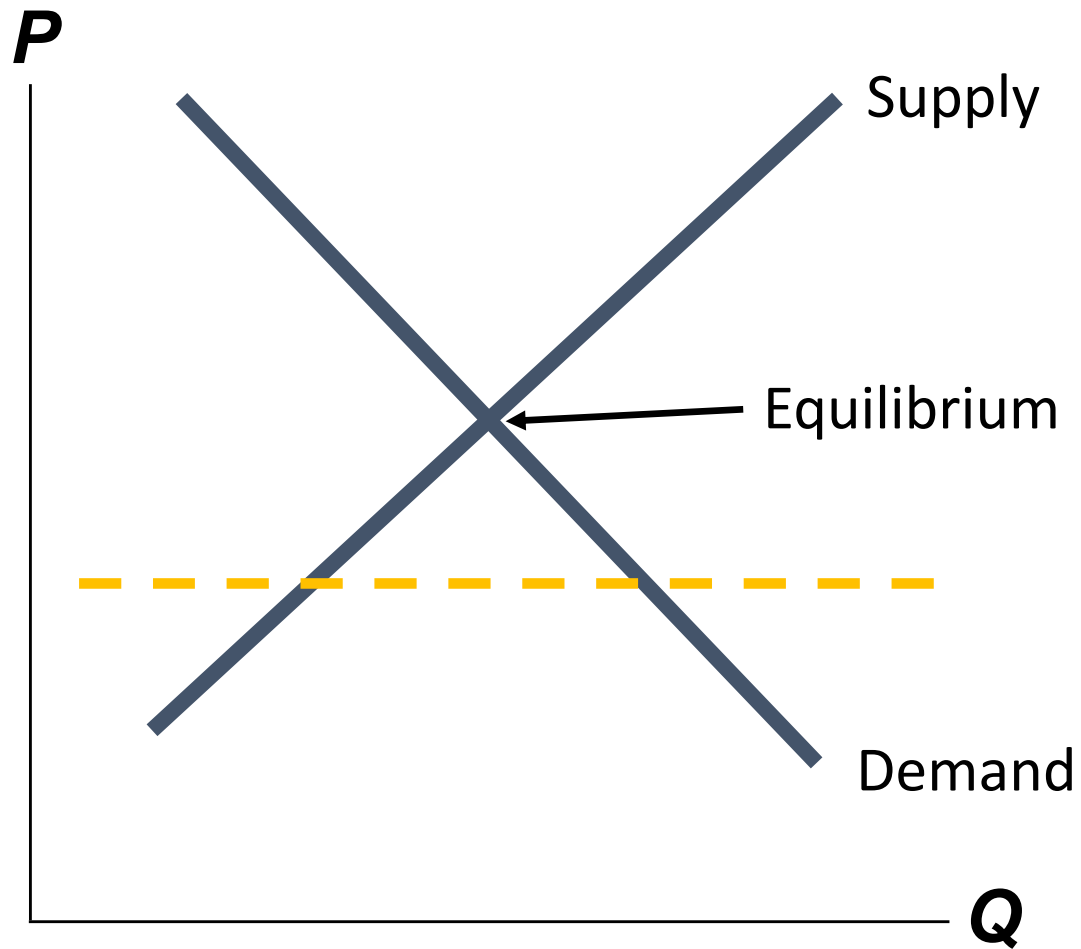
Shaded areas indicate U.S. recessions.

Source: U.S. Bureau of Labor Statistics

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Source: Federal Reserve Bank of Atlanta

Labor Shortages (??) – Econ 101

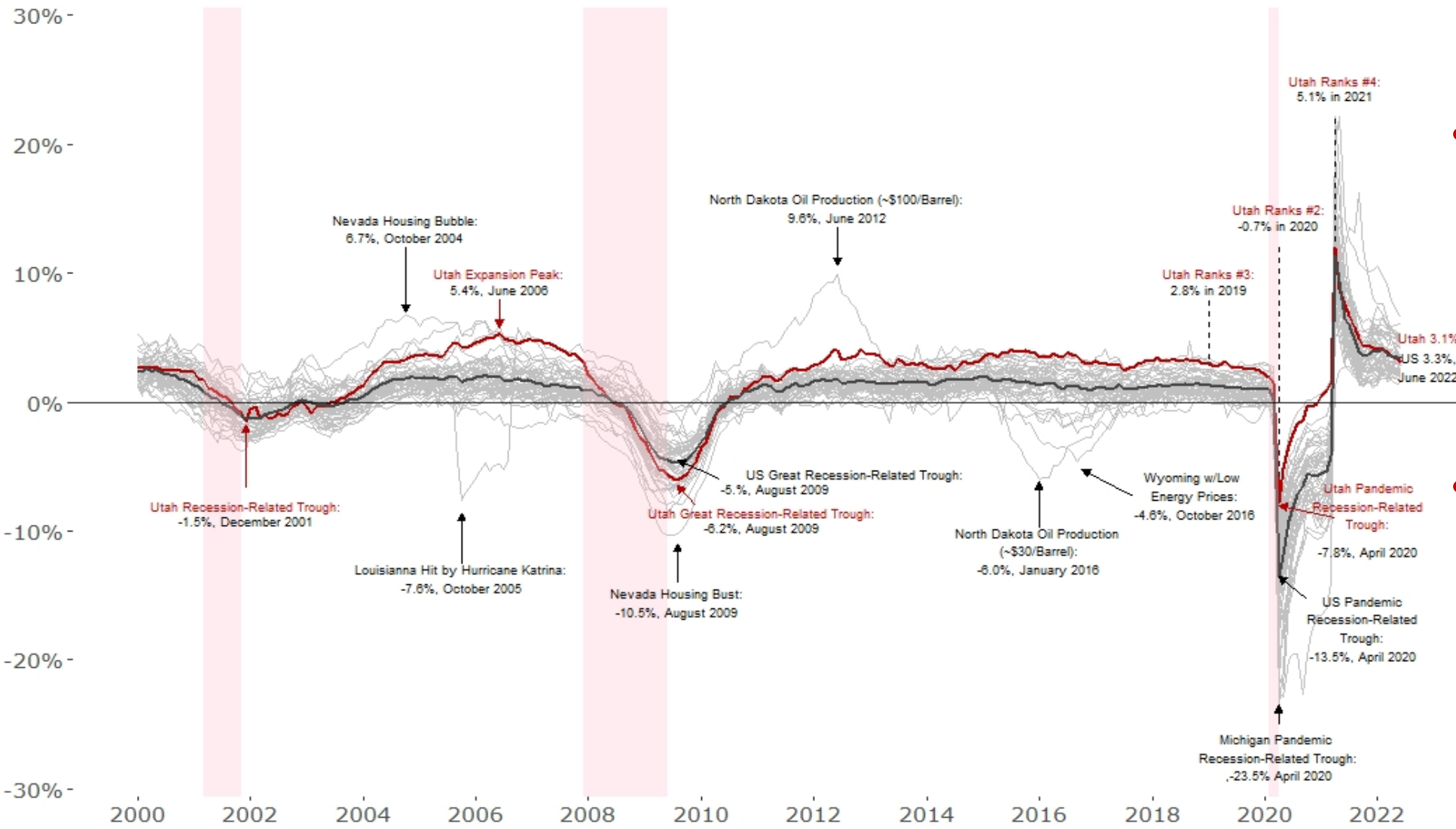


Wages are the price of labor

When prevailing prices fall below the market equilibrium, shortages result

(That is, maybe we have a **WAGE shortage**)

Strength Signal: Utah's Strong Long-Term Job Growth

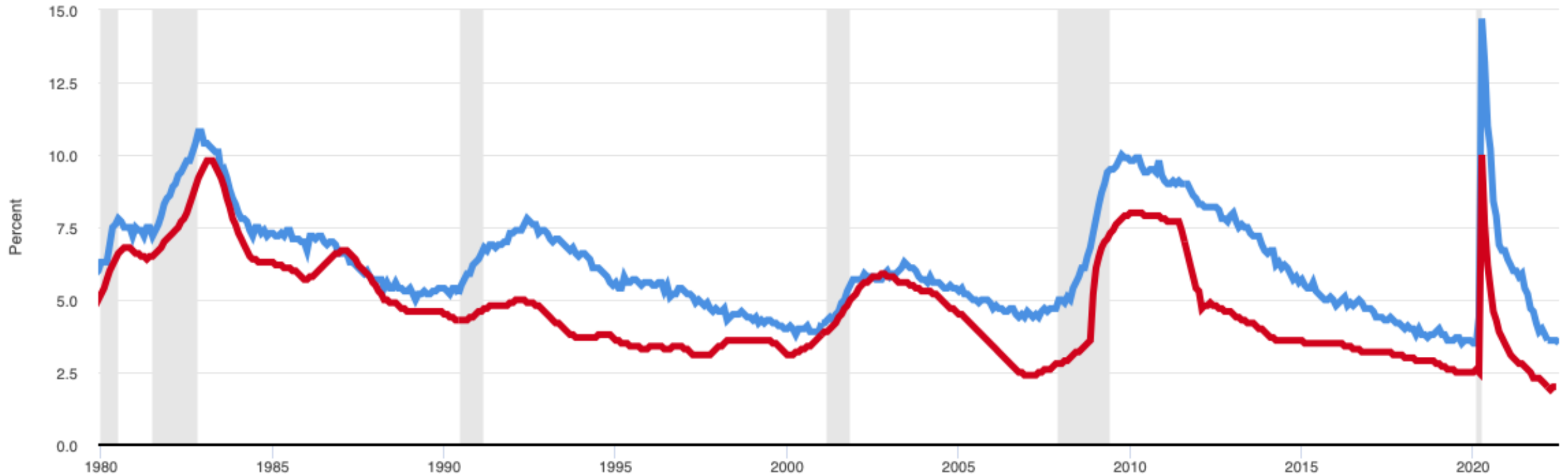


- Utah job growth consistently among highest state growth since Great Recession through pandemic
- Utah's early pandemic recovery obscures recent comparisons

Source: Utah Governor's
Office of Planning and
Budget

Strength Signal: Utah Unemployment Consistently Lower Than U.S.

FRED  Unemployment Rate
Unemployment Rate in Utah



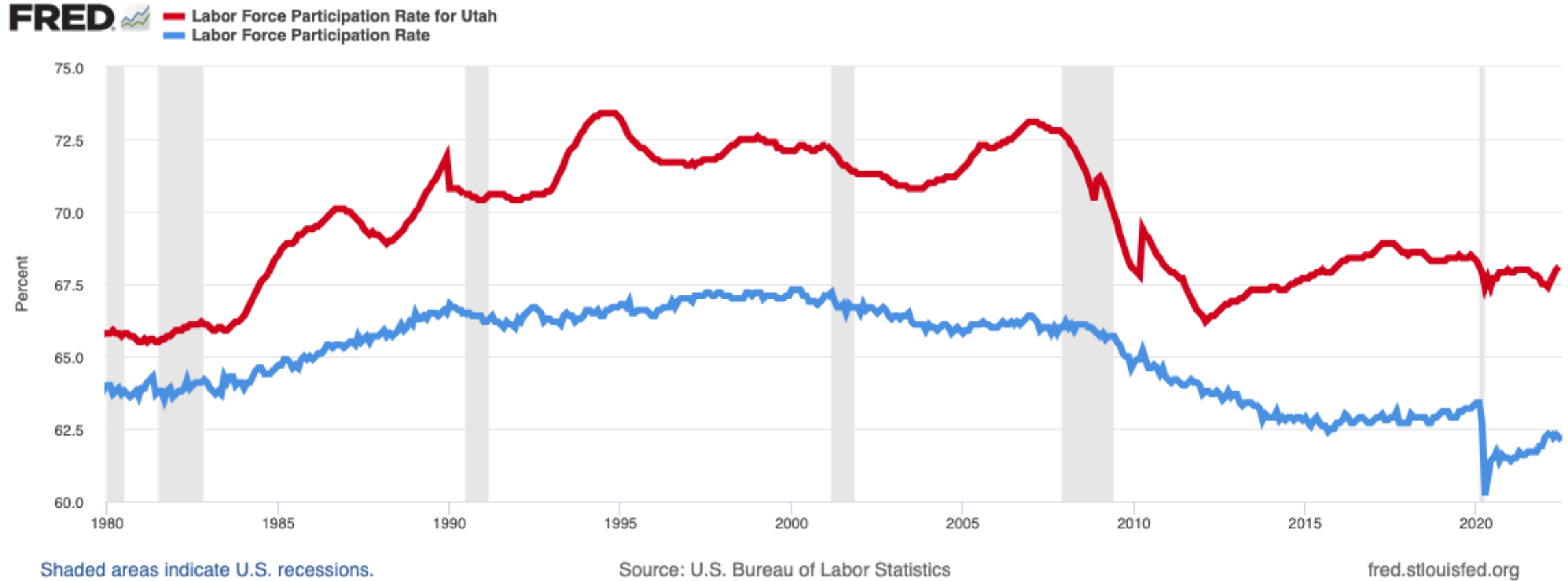
Shaded areas indicate U.S. recessions.

Source: U.S. Bureau of Labor Statistics

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Source: US Bureau of Labor Statistics

Strength Signal: Utah Labor Force Participation Consistently Higher Than U.S. (Think Demographics)



Source: US Bureau of Labor Statistics

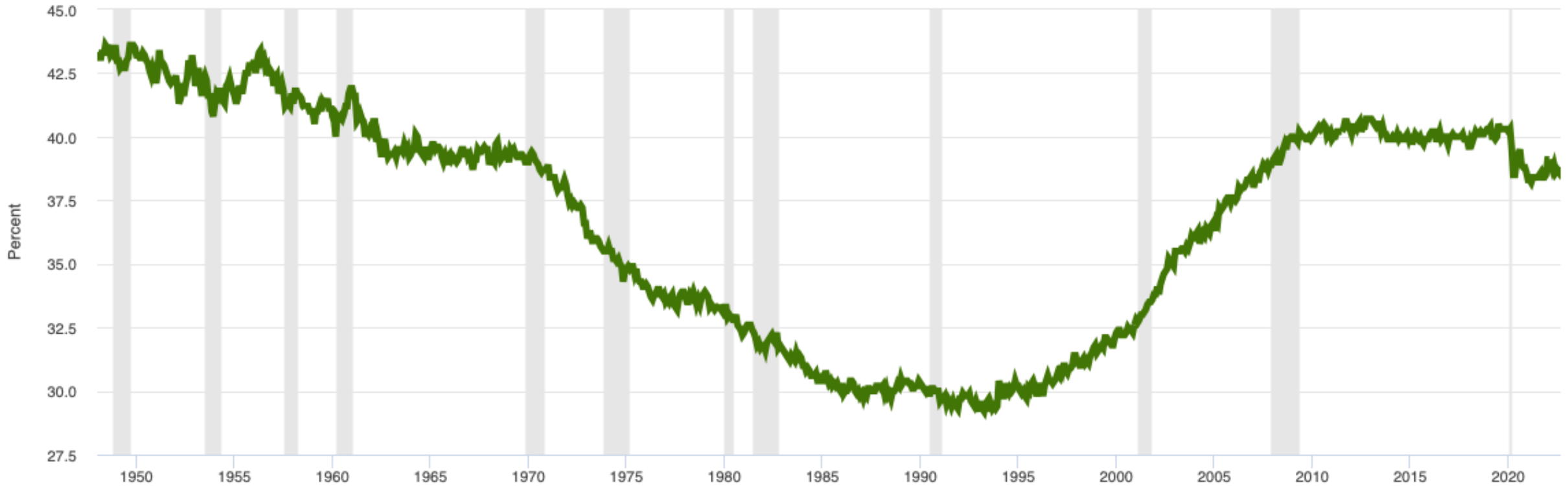
Where Did All the Workers Go?

St. George is the fastest-growing metro in the US again, Census says



Baby Boomer Retirements Heavily Influence Labor Markets

FRED  Labor Force Participation Rate - 55 Yrs. & over



Shaded areas indicate U.S. recessions.

Source: U.S. Bureau of Labor Statistics

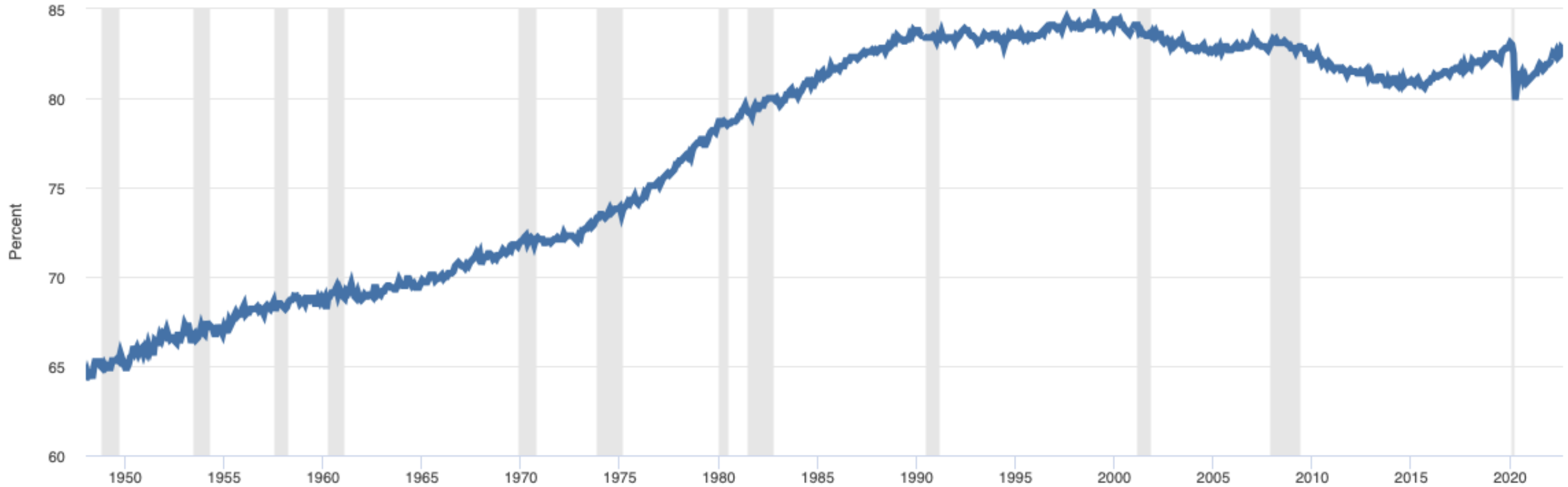
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Source: US Bureau of Labor Statistics

Prime Working-Age Workers Largely Back

FRED

Labor Force Participation Rate - 25-54 Yrs.



Shaded areas indicate U.S. recessions.

Source: U.S. Bureau of Labor Statistics

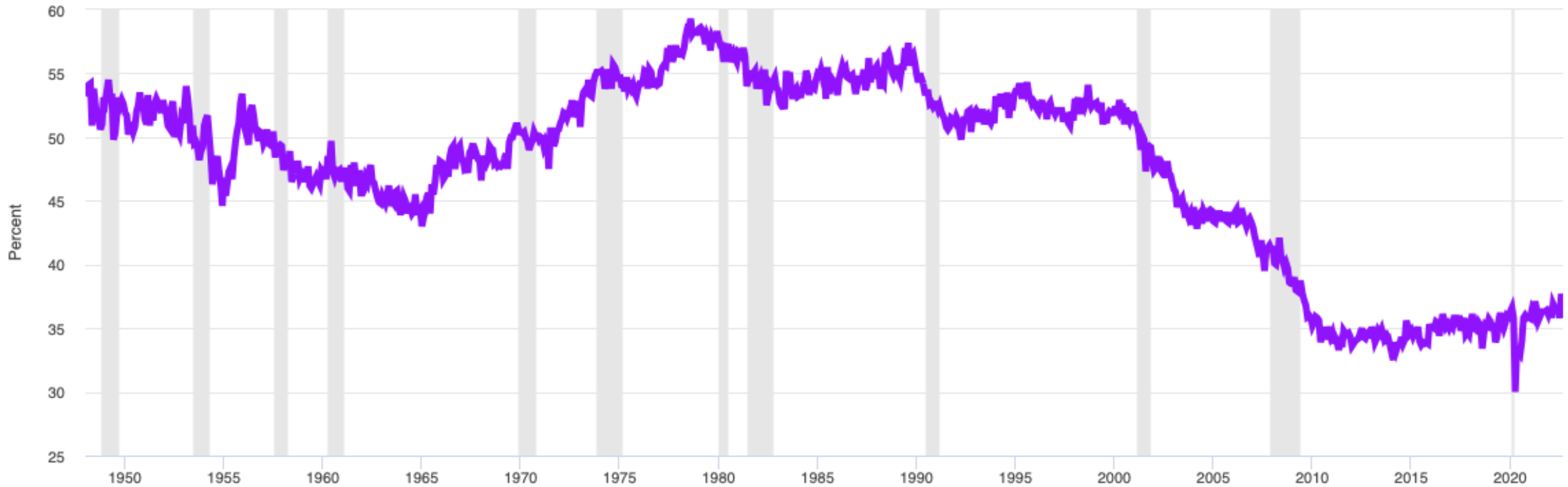
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Source: US Bureau of Labor Statistics

Teenage Workers More Than Back

FRED

Labor Force Participation Rate - 16-19 Yrs.



Shaded areas indicate U.S. recessions.

Source: U.S. Bureau of Labor Statistics

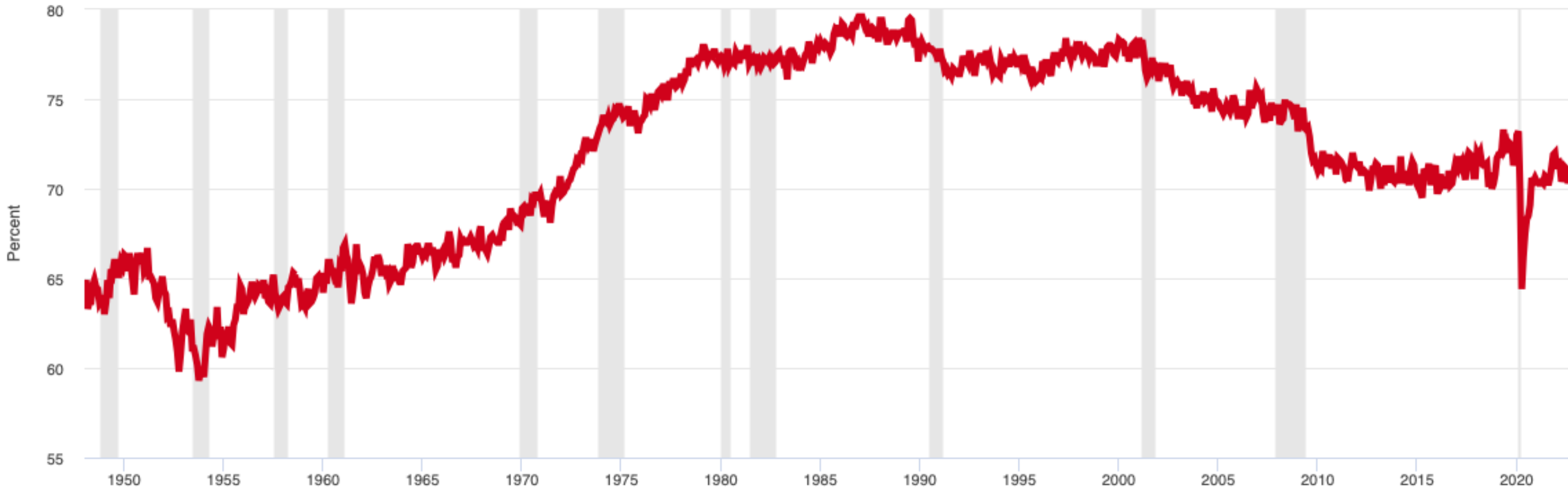
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Source: US Bureau of Labor Statistics

Still Opportunity to Attract College-Age Workers

FRED 

— Labor Force Participation Rate - 20-24 Yrs.



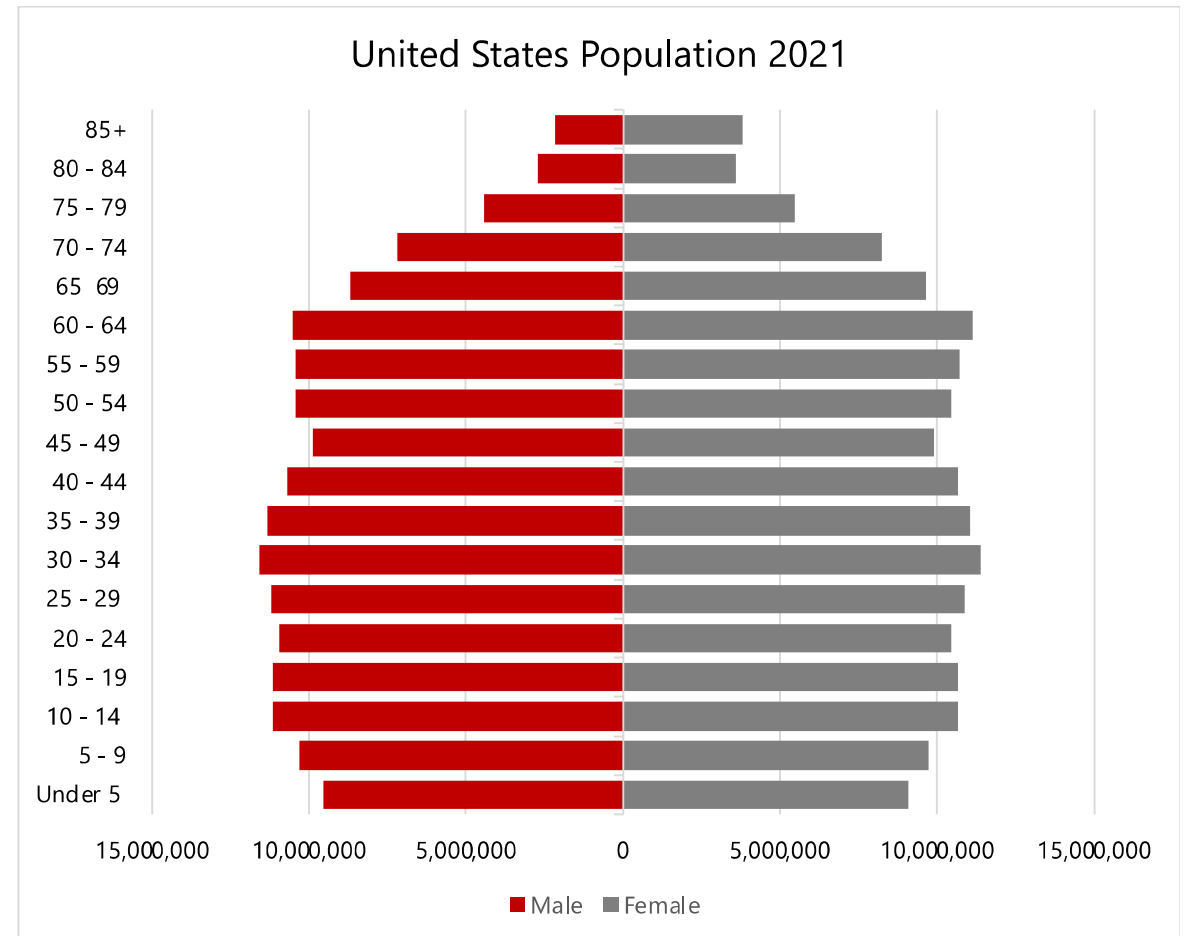
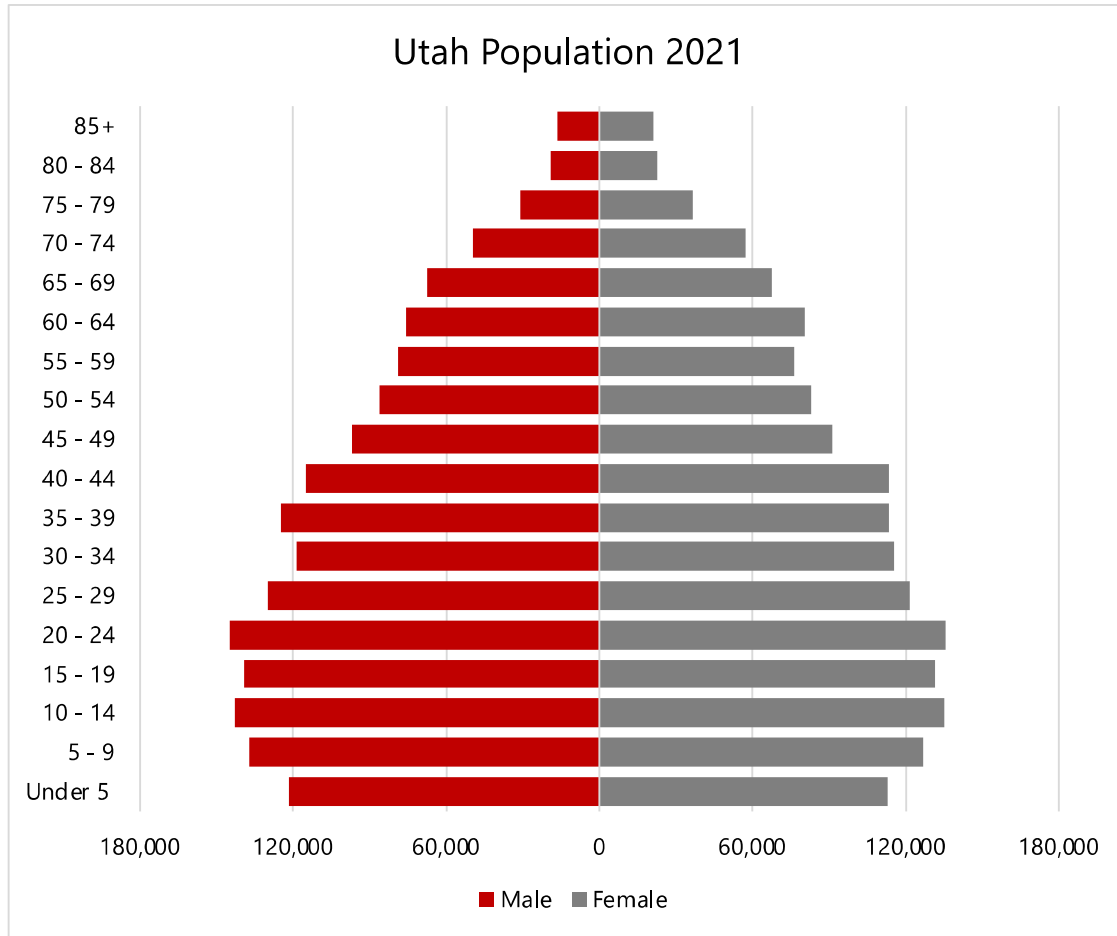
Shaded areas indicate U.S. recessions.

Source: U.S. Bureau of Labor Statistics

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Source: US Bureau of Labor Statistics

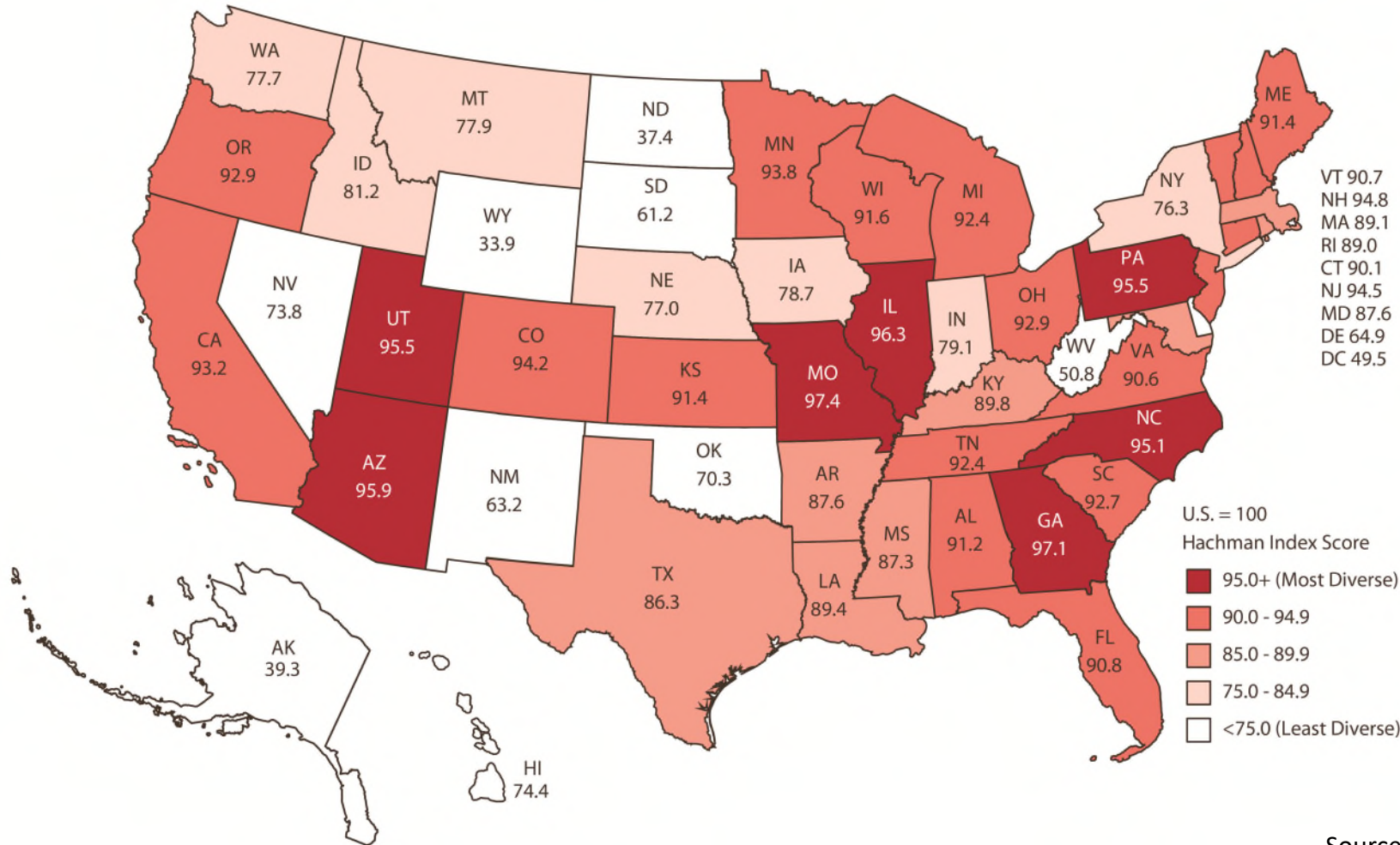
Population Age Pyramid



Source: U.S. Census Bureau

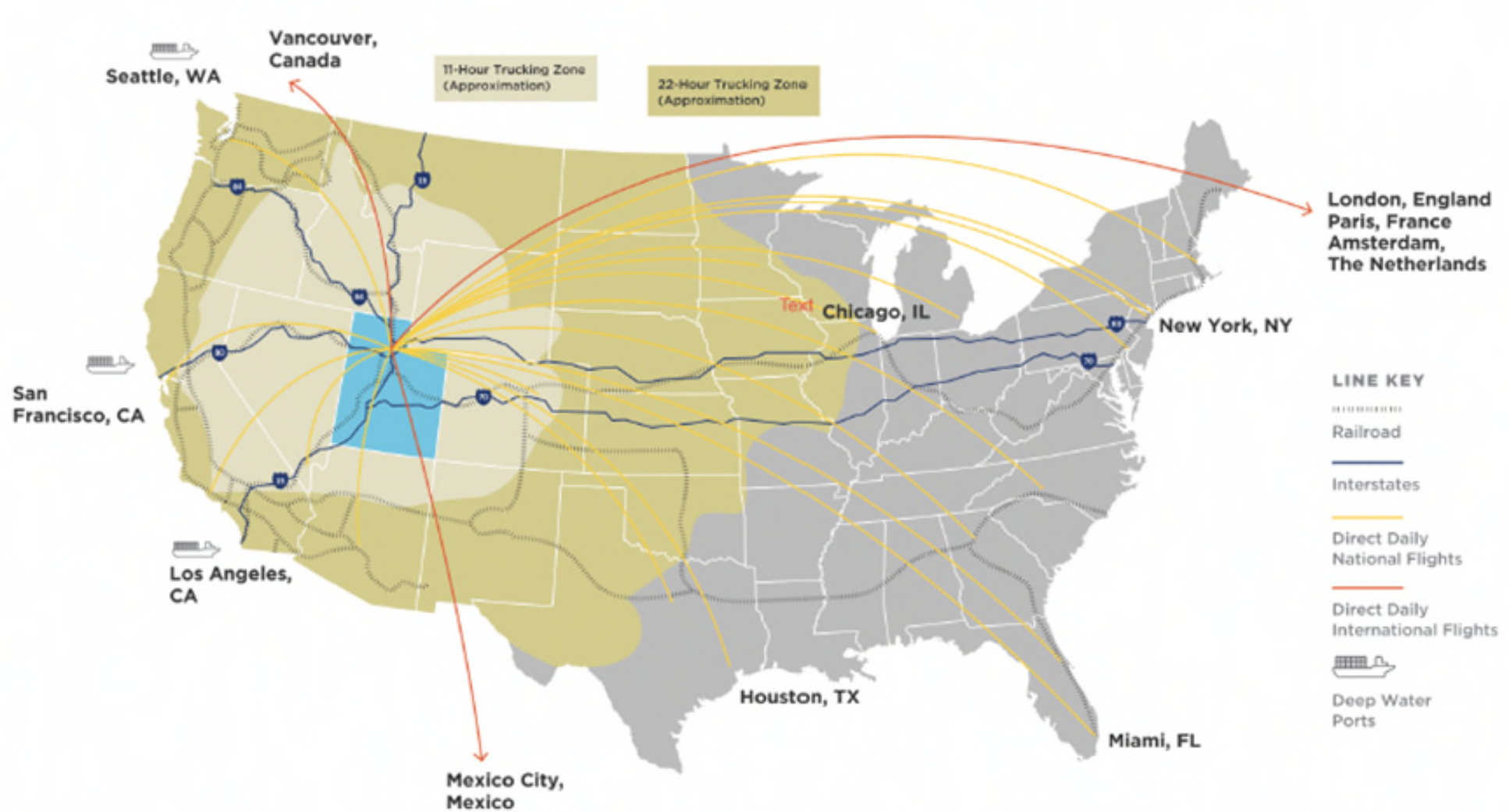
Strength Signal: Utah's Diverse Economy

Hachman Index 2020, 100=Most Diverse



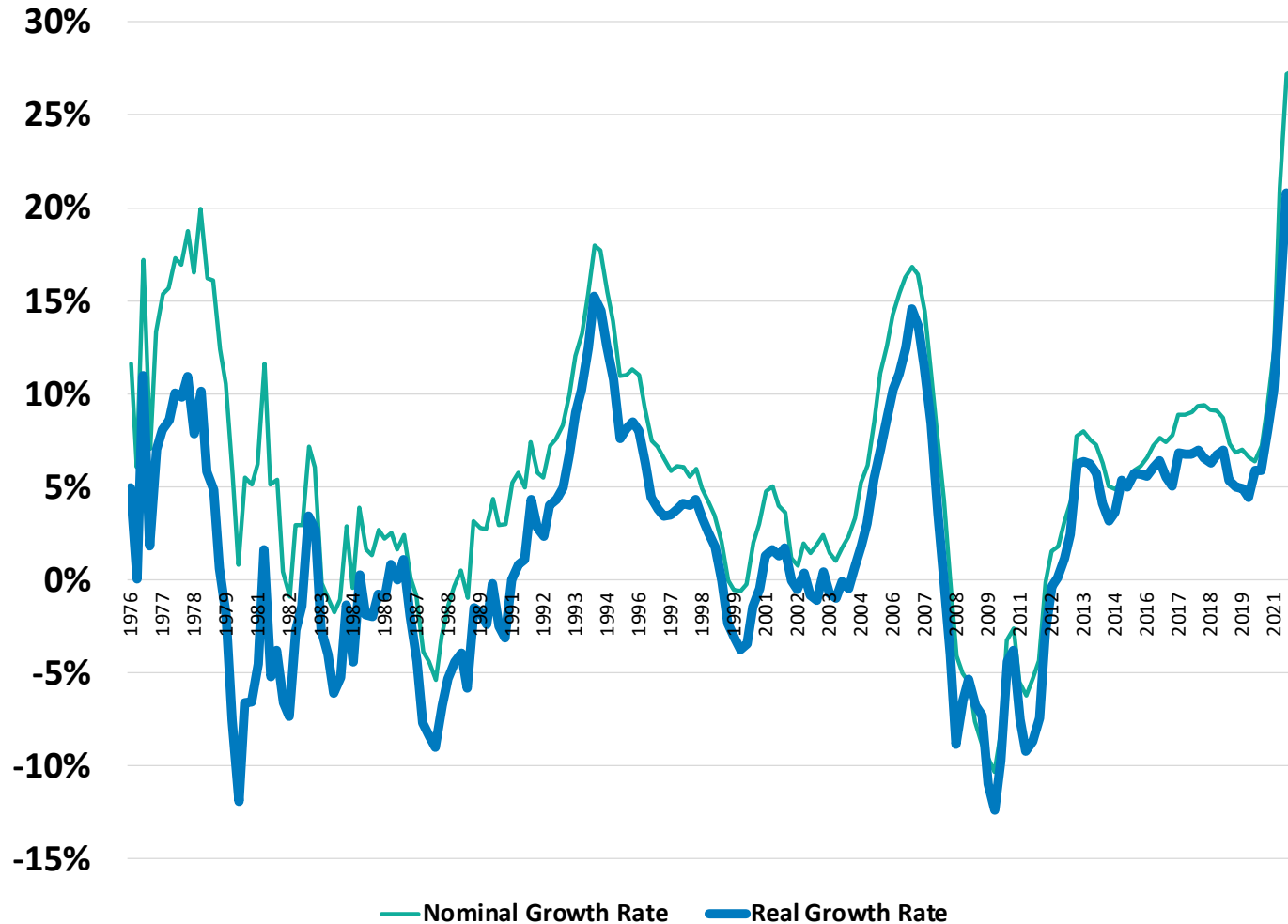
Source: Kem C. Gardner Policy Institute

Strength Signal: Crossroads of the West



Source: EDCU

Warning Signal: Skyrocketing Utah Home Prices



Source: Federal Housing Finance Agency Housing Price Index

Warning Signal: Skyrocketing Rents

Rank	Metro	Percentage change in median rent (2019-2022)	Total change in median rent (2019-2022)	Median rent (2022)	Median rent (2019)
1	Sacramento-Roseville-Folsom, CA	+25.3%	+\$369	\$1,830	\$1,461
2	Las Vegas-Henderson-Paradise, NV	+24.8%	+\$295	\$1,485	\$1,190
3	Salt Lake City, UT	+24.6%	+\$291	\$1,475	\$1,184
4	Phoenix-Mesa-Chandler, AZ	+22.3%	+\$283	\$1,553	\$1,270
5	Jacksonville, FL	+22.0%	+\$255	\$1,414	\$1,159
6	Riverside-San Bernardino-Ontario, CA	+21.6%	+\$327	\$1,842	\$1,515
7	Orlando-Kissimmee-Sanford, FL	+20.3%	+\$281	\$1,663	\$1,382
8	Tampa-St. Petersburg-Clearwater, FL	+20.0%	+\$252	\$1,511	\$1,259
9	Portland-Vancouver-Hillsboro, OR-WA	+19.4%	+\$314	\$1,932	\$1,618
10	Fresno, CA	+19.3%	+\$216	\$1,337	\$1,121

Source: Stessa

Utah's Economy

STRENGTHS


- Young, well-educated population
- Highly diverse economy
- Fiscal and regulatory stability
- Crossroads of the West
- Social cohesion

CHALLENGES

- Housing affordability
- Natural resource limitations (air quality, drought, land availability)
- Tied to U.S. economy with sizable uncertainty

Food For Thought - Build Resiliency

- **Interpreting past and present conditions challenging due to complex and uncertain economic environment. Forecasting future events even harder.**
- **Develop early warning systems**
- **“Just in time” failed. Consider how you need to redesign your systems to enhance resiliency:**
 - (a) **build appropriate protective buffers - financial, personnel, supply chain, stock of supplies, etc.**
 - (b) **reliably deliver value during economy’s ups and downs**
 - (c) **seize opportunities that arise during uncertain times**

A dimly lit office desk with a computer monitor, a bookshelf, and a plant. The monitor is the central focus, displaying a dark screen with a vertical yellow line on the left side. The text "Thank you for joining us today" is overlaid on the screen in a yellow, serif font. The background shows a desk with various items, including a glass of water, a bookshelf with books and a plant, and a desk lamp.

Thank you
for joining us today