AMERICAN BANKRUPTCY INSTITUTE

Central States Bankruptcy Workshop 2021

Covid's Disruption of the Insolvency World

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COVID's Disruption of the Insolvency World

Dan Dooley – Morris Anderson - Chicago
Tom Beckett – Parsons Behle & Latimer - Salt Lake City
Pilar Tarry – Alix Partners - Chicago
Hon. LaShonda Hunt – Bankruptcy Judge – Chicago

Key Takeaways:

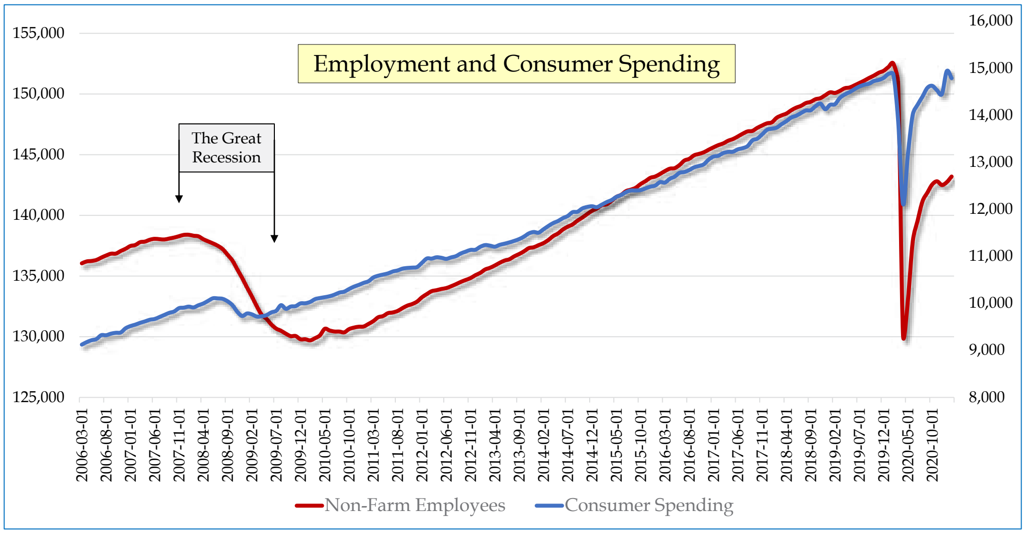
Our economy got whacked but is recovering: The pandemic recession was more damaging than the great recession. But it will recover faster. Employment rates, consumer spending and GDP have rebounded strongly because of stimulus. Consumer confidence is improving with rising vaccination saturation. Businesses and consumers have set aside enormous sums of cash, which, when spent, will accelerate the recovery.

Delinquencies are down: Despite the economic havoc wrought by the pandemic, both consumer and business delinquencies are down. Consumer delinquencies are down because of stimulus and moratoria. Business delinquencies are down because of stimulus and COVID surges. COVID surges increased uncertainty, which fomented a "wait-and-see" attitude resulting in a wave of forbearances.

Bankruptcies are down: As delinquencies are down, bankruptcy filings are also down. While the great recession resulted in a wave of filings, business bankruptcy rates are presently well below average and consumer bankruptcy rates are running even further behind.

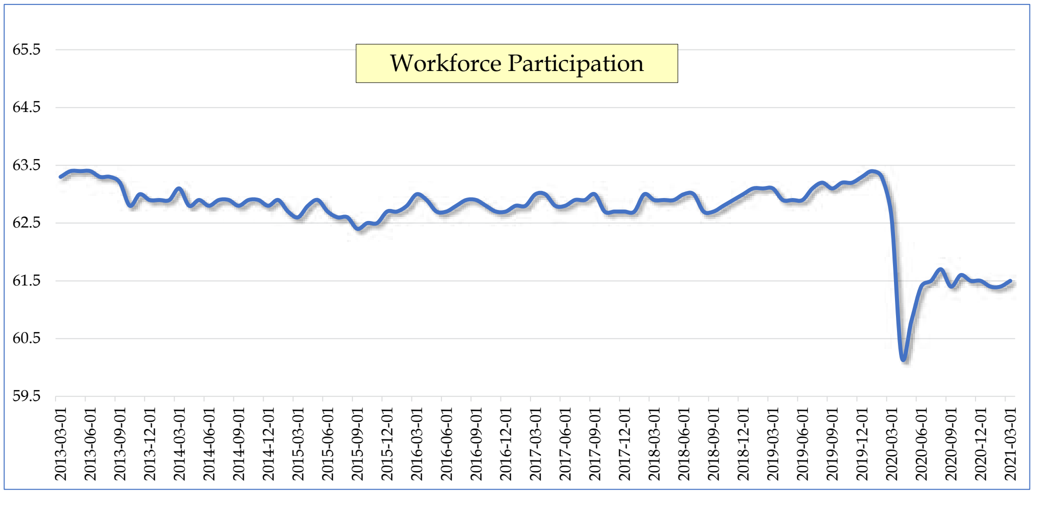
How has the pandemic changed the practice of bankruptcy law? Many businesses and consumers have been damaged by the pandemic. Will they eventually file bankruptcy? The economy is recovering, but it will be different than before. Will that start battles that cause an increase in bankruptcies? Overall, how has the pandemic changed the practice of bankruptcy law?

Before the pandemic, employment and consumer spending were at all-time highs. During the pandemic, both fell immediately, recovered quickly at first, then more slowly.



Parsons Behle & Latimer

Before the pandemic, workforce participation rates were at their highest levels since 2013. During the pandemic, they fell to the lowest rate since 1972, and they have since recovered less than half the loss. Nearly 2% of workers have left and not returned to the workplace.



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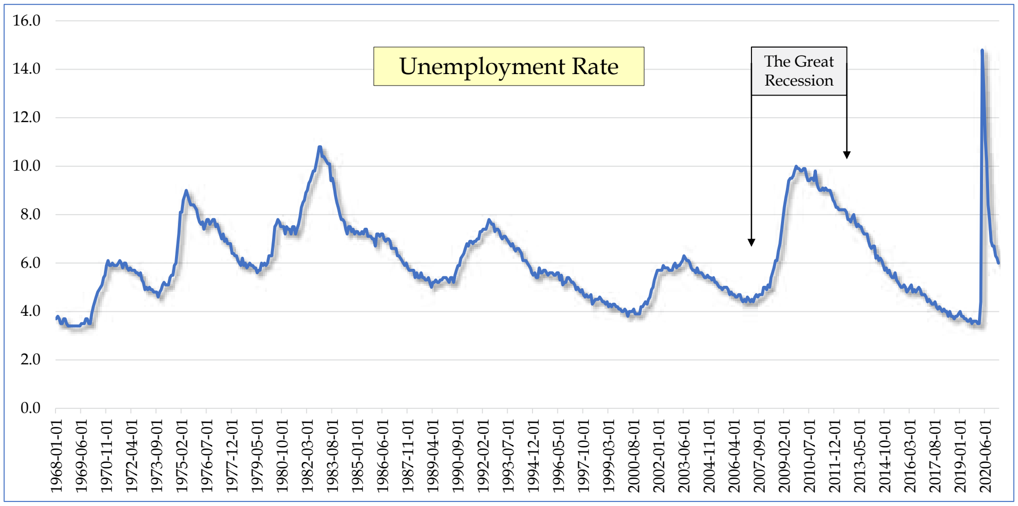
Before the pandemic, the unemployment rate was at its lowest level since 1968. During the pandemic, unemployment briefly peaked at the highest rate since 1936—in the midst of the great depression—but it has since recovered to 2014 levels.



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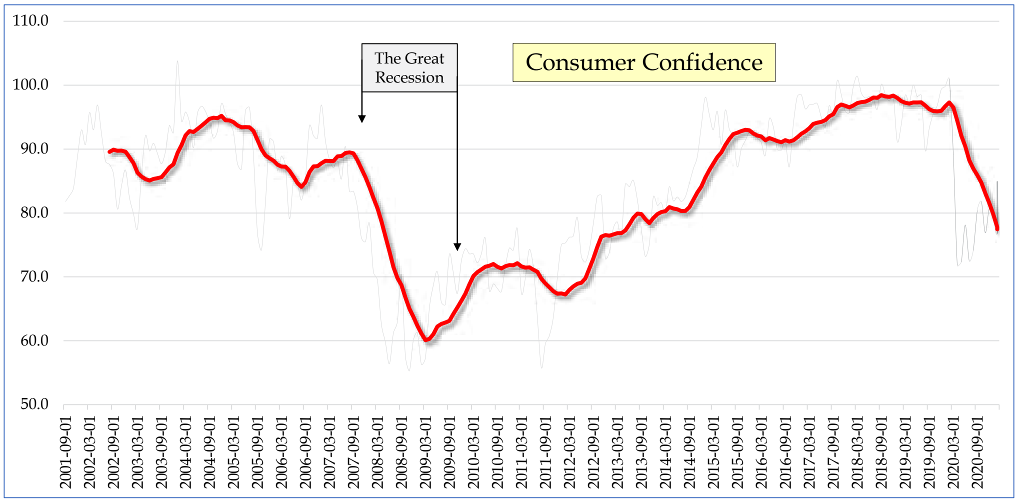
Before the pandemic, consumer confidence was generally higher than it had been since 2003. During the pandemic, it fell to high-end great recession levels, and it has languished there because of the several surges of COVID.



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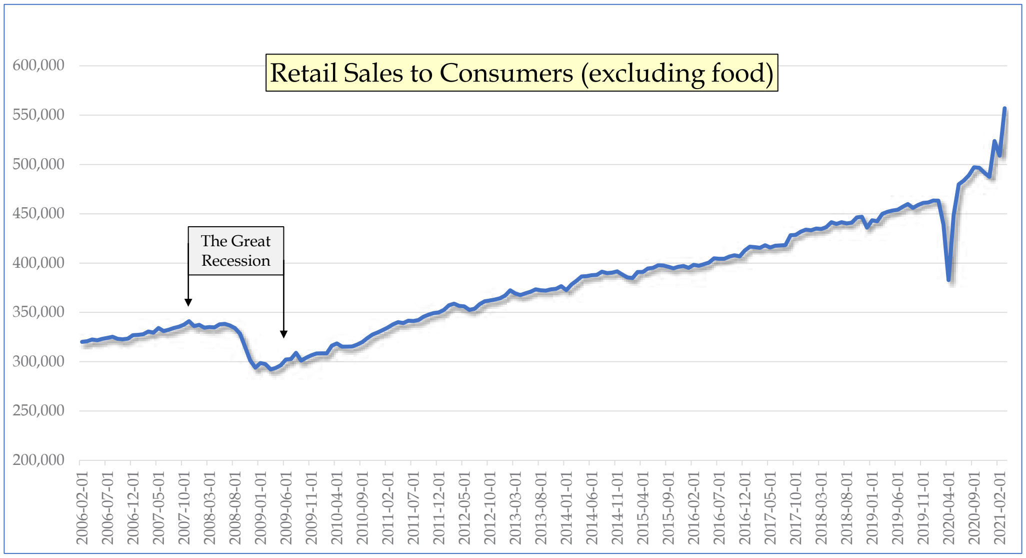
Retail sales in the pandemic recovered faster than in the great recession, because of stimulus.



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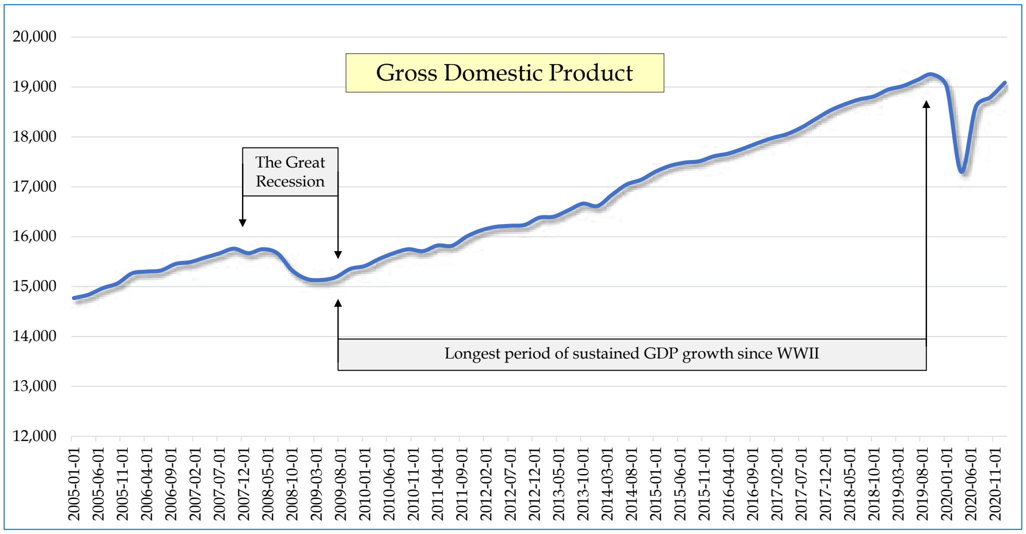
Before the pandemic, real GDP was at historic highs. During the pandemic, it fell to 2015 levels before quickly rebounding to 2019 levels.



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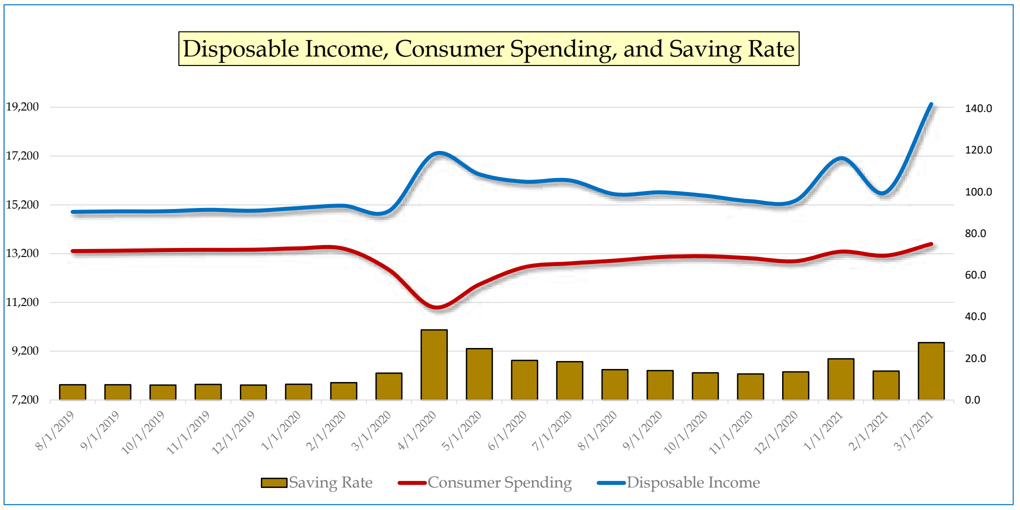
During the pandemic, disposable income spiked three times with a total of $5 trillion of stimulus injections in April 2020 and January and March 2021. Before the pandemic, the average saving rate was 7%. During the pandemic, it was 18%.



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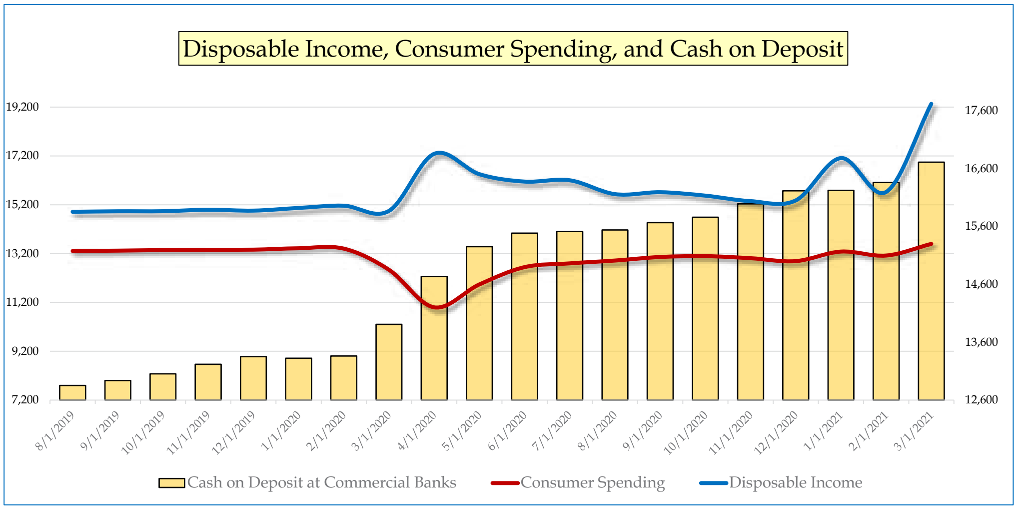
The higher saving rates resulted in an additional $3 trillion of cash on deposit at banks. That cash, when spent, will accelerate the recovery.



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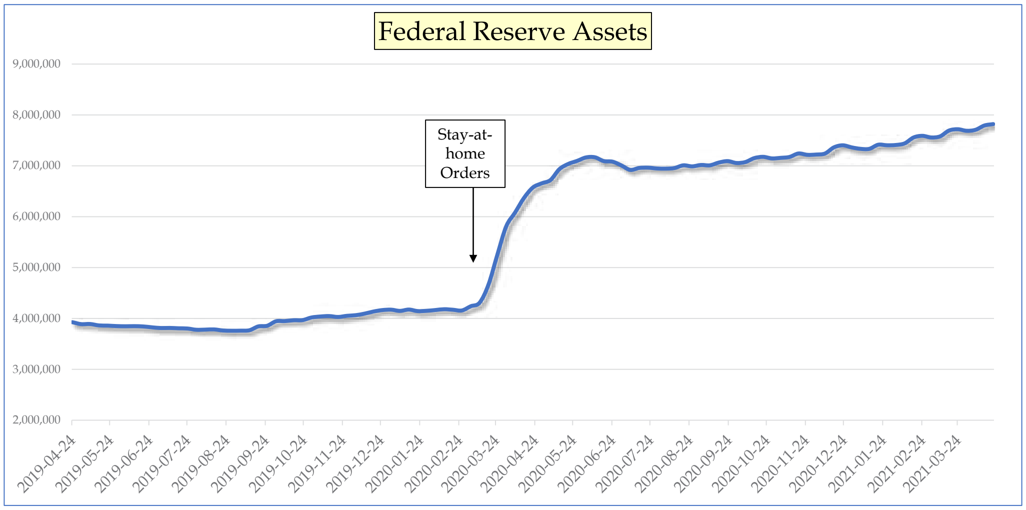
During the pandemic, the Federal Reserve increased the asset side of its balance sheet by $3.5 billion. Its expenditures to purchase those assets did not go directly into consumer pockets. These expenditures did, however, maintain credit markets and keep interest rates low.



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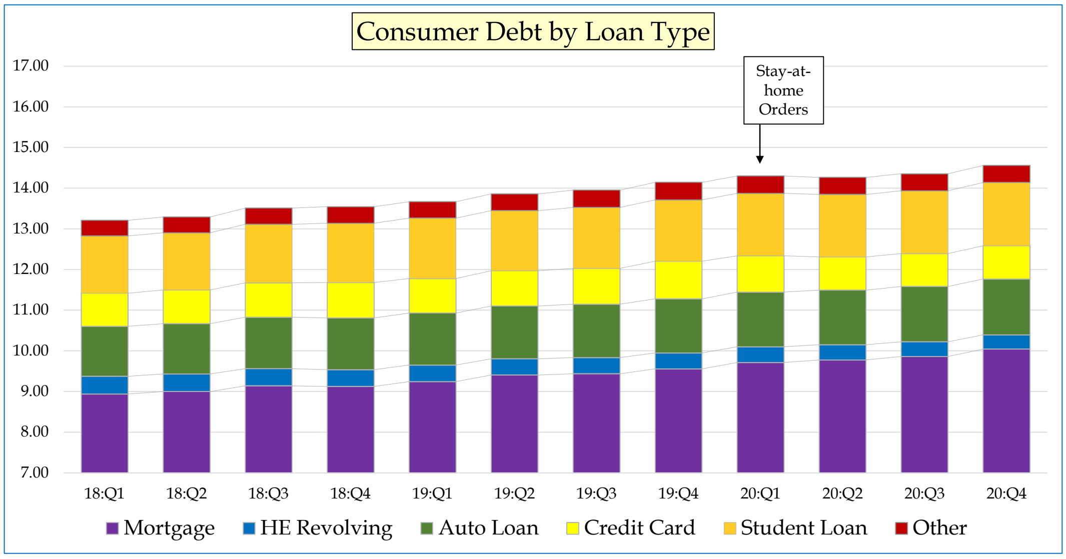
The pandemic had little effect on consumer debt-incurring behavior.



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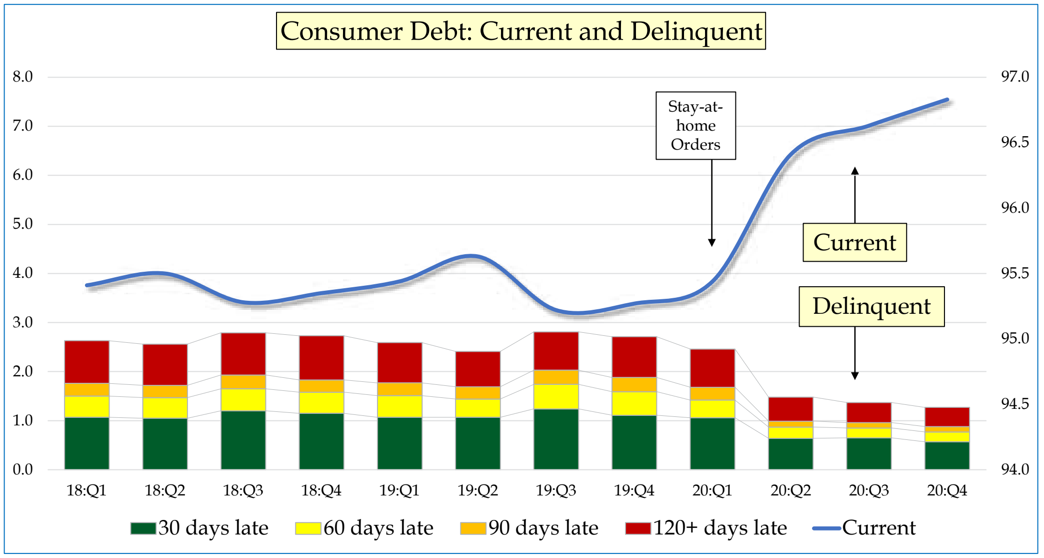
Consumer debt delinquency decreased during the pandemic.



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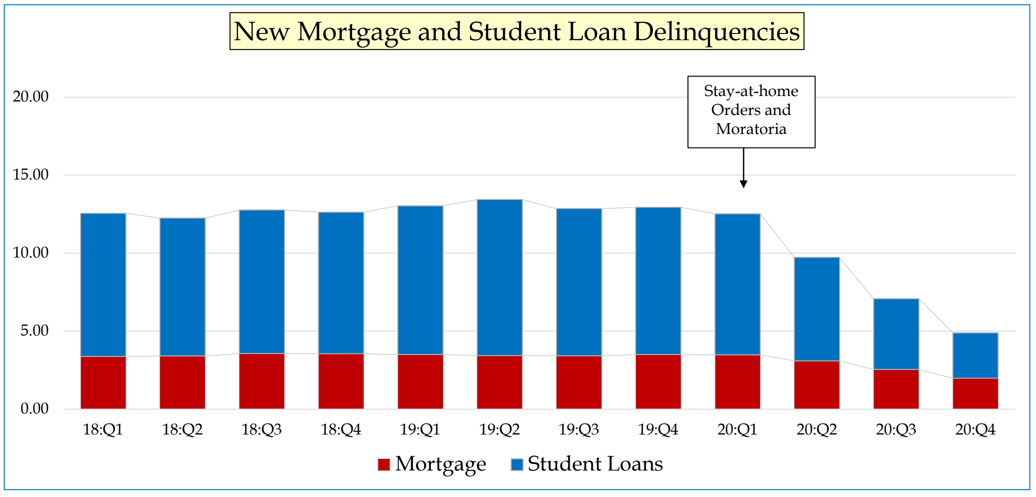
Delinquency decreased because of moratoria relating to mortgages and student loans. The former is 70% of all consumer debt, the latter is 10%. Auto loans and credit cards delinquencies also fell, but not as dramatically. It is uncertain what happens when moratoria are lifted in June 2021.



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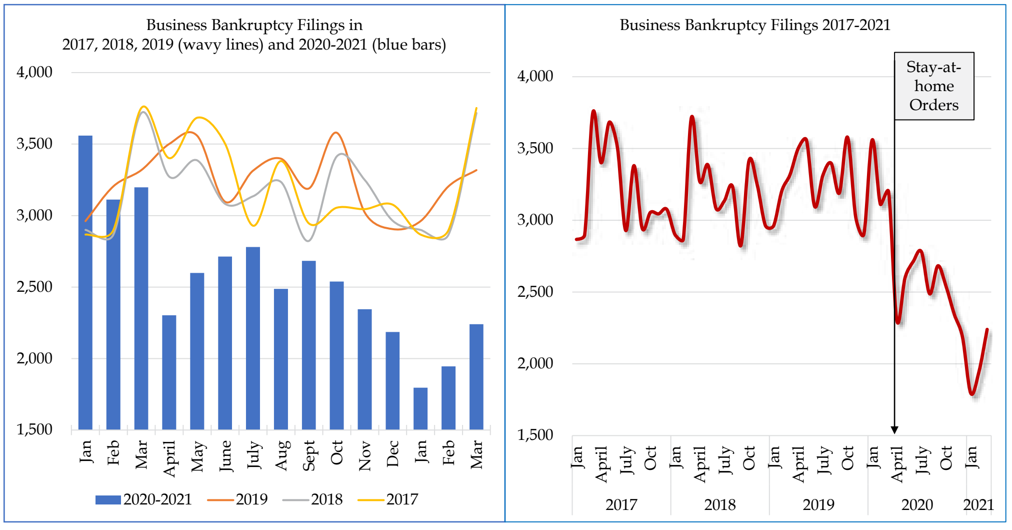
"How did you go bankrupt?" Bill asked.

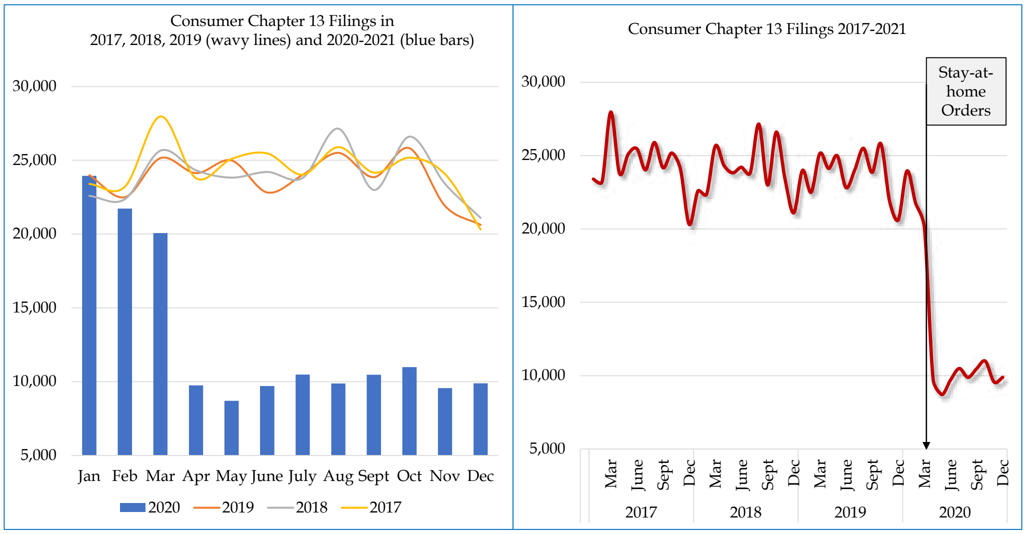
"Two ways," Mike said. "Gradually and then suddenly."

-The Sun Also Rises

During the pandemic, business bankruptcy filings fell substantially and have remained historically low since the first stay-at-home orders.



During the pandemic, consumer bankruptcy filings fell precipitously and have remained historically low since the first stay-at-home orders.



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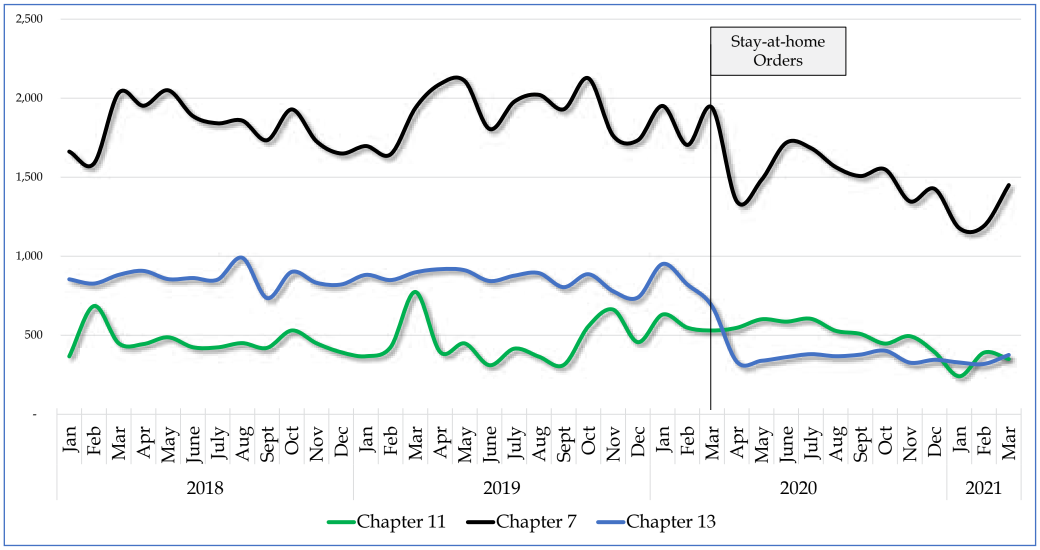
Business chapter 11s were less affected by the pandemic than business chapter 7s and 13s.



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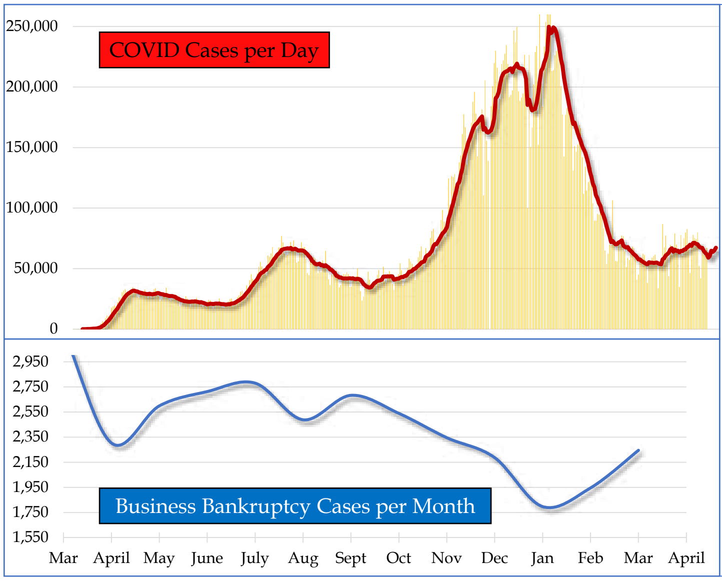

Throughout the pandemic, there has been an inverse correlation between COVID surges and business bankruptcy cases. When COVID cases went up, bankruptcy cases went down, and vice versa.

The correlation was indirect. Bankruptcy filings fell in April because of the chaos initially caused by COVID. They remained low thereafter because of stimulus payments and state and federal moratoriums. They fell after August when COVID surged again as uncertainty fomented an attitude of "wait and see" and a wave of forbearances.

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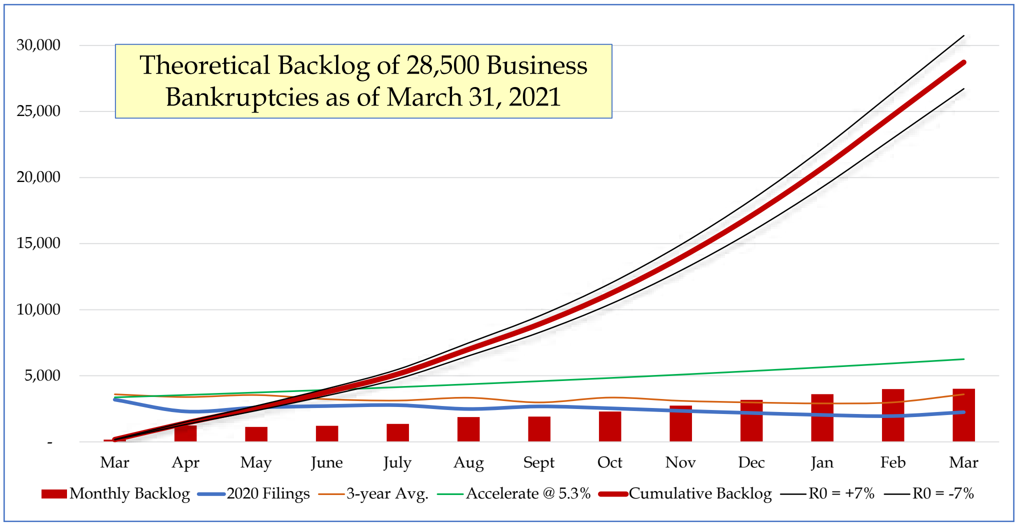
Business filing rates decelerated during the pandemic when we expected them to accelerate—as they did in the great recession—leading some to predict a backlog.



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"We're recovering, but to a different economy."

- Fed Chair Jerome Powell

Faculty

J. Thomas Beckett is a shareholder with Parsons Behle & Latimer in Salt Lake City and heads the firm's bankruptcy practice group. He works in the firm's litigation practice group and practices primarily in commercial litigation. For several years following the Great Recession, Mr. Beckett represented creditors' committees in the bankruptcies of numerous high-end luxury resorts in Utah, Nevada and Montana. Over the length of his career, he has represented a diverse group of clients in chapter 11 bankruptcies: debtors, committees, committee members and committee chairs; trustees and receivers; secured and unsecured creditors; bondholders, equityholders and royaltyholders; asset-acquirers, equipment lessors, Ponzi scheme victims, employees and independent contractors. He has represented clients in all manner of bankruptcy and creditor rights issues, including commercial litigation in state and federal courts, out-of-court workouts, equitable subordination, lift-stays, plan confirmations, secured and unsecured financing, exculpation clauses, case conversion, allegations of bad faith, and alter-ego and nondischargeability. Previously, Mr. Beckett was an associate in the financial workout department of Milbank, Tweed, Hadley & McCloy in New York City. He remains an active member of the New York State Bar Association. Mr. Beckett's work experience includes one year on the staff of the U.S. Senate Judiciary Subcommittee on Constitutional Rights. He also completed three terms as chairman of the board of directors of Clark Planetarium. He currently serves on the Utah Supreme Court's Ethics and Discipline Committee and has maintained a whitewater river guide's license and wilderness first-responder certification for more than 30 years. Mr. Beckett received his B.A. from Brown University in 1979 and his M.B.A. in finance from New York University Stern School of Business Administration in 1986.

Daniel F. Dooley, CTP is a principal and CEO at MorrisAnderson in Chicago, where he manages the firm's distressed business consulting practice. He is an accomplished crisis manager, business operator and debt-restructurer. Mr. Dooley has successfully managed numerous projects for middle-market companies and assumed dozens of interim management positions as CEO, CRO and CFO for client companies nationwide. During his career, he has negotiated numerous transactions involving debt restructuring, supplier accommodations and business sales. Mr. Dooley is experienced in the development and implementation of cost-reduction and restructuring plans, as well as restructuring negotiations between companies and their creditors. He educates company ownership and management on realistic business plans, implementation of cost and liquidity improvements and effective end-game strategies for clients. He also collaborates with management on issues related to turnaround, restructuring plans and business sales, and he specializes in the automotive, aerospace, capital equipment, metals, health care, transportation, food, distribution, oil and gas and real estate industries. Prior to joining Morris Anderson in 1997, Mr. Dooley served as an executive with several Fortune 500 manufacturers in both general-management and financial-management capacities, including Illinois Tool Works, an industrial manufacturer, and Allied Signal, an automotive electronics and aerospace manufacturer. In 2011, he was honored with the Turnaround Management Association's "Turnaround of the Year - Small Company" award for Analytics, Inc., an independent research laboratory in St. Louis, Mo. He has also served on boards of directors and been a key advisor to corporations and nonprofit organizations. Mr. Dooley is a former board member of the Turnaround Management Association and former president of its Chicago chapter, and he sits on ABI's Board of Directors. He is also a contributing author to *The Chief Restructuring Officer's Guide to Bankruptcy: Views fom Leading Insolvency Professionals* (ABI 2013). Mr. Dooley received his B.B.A.

and M.B.A. in finance at the Carlson School of Management from the University of Minnesota in Minneapolis.

Hon. LaShonda A. Hunt is a U.S. Bankruptcy Judge for the Northern District of Illinois in Chicago, appointed on Jan. 6, 2017. She previously served as general counsel of the Illinois Department of Central Management Services, chief legal counsel of the Illinois Department of Corrections, and an assistant U.S. attorney in the Northern District of Illinois. Judge Hunt began her legal career as a litigation associate at a national law firm, followed by service as a staff attorney for the Seventh Circuit Court of Appeals and a clerkship with Hon. William J. Hibbler of the Northern District of Illinois. She also worked in-house in the utility industry overseeing commercial litigation and bankruptcy matters, and later transitioned to regulatory affairs. Judge Hunt was recently appointed by the Chief Justice to a three-year term on the Federal Judicial Center's Bankruptcy Judge Education Advisory Committee. She is an active member of the Black Women Lawyers' Association of Greater Chicago, Inc. and served as its president in 2015, vice president in 2014 and board member at large in 2013. She is also active in the Chicago Bar Association, where she was co-vice chair of the Federal Civil Practice Committee and a member of the Judicial Evaluation Investigations Committee. Judge Hunt is a Leadership Greater Chicago Fellow (Class of 2013). She served on the board of Just the Beginning, a pipeline organization, and chaired Youth Programs for the 2012 Biennial Conference. Judge Hunt is actively involved with the Public Interest Law Initiative (PILI) and a frequent speaker at PILI events, as well as a mentor to many law students. She received her B.S. from the University of Illinois at Urbana-Champaign and her J.D. from the University of Michigan Law School.

Pilar Tarry, CIRA is a managing director with AlixPartners LLP in Southfield, Mich., and helps large and middle-market companies devise and implement complex restructuring solutions both in and out of court. She brings more than 20 years of expertise to bear in helping clients negotiating capital market solutions, contingency planning, liquidity management, vendor management, developing crisis communication plans and case management. She also leads stakeholder management programs and implements restructuring transactions, including M&A and recapitalization transactions. Ms. Tarry holds an M.B.A. in finance from Michigan State University.