



NCSL COVID-19 WEBINAR SERIES

Mortgage and Foreclosure Issues

JULY 8, 2020





- July 8 | Mortgage & Foreclosure Issues
- July 15 | Lending to American Consumers
- July 29 | Consumer Credit & Data

July 8 | MORTGAGE & FORECLOSURE ISSUES

The National Conference of State Legislatures is the country's most trusted bipartisan organization serving legislators and staff. We promote policy innovation, create opportunities for lawmakers to share knowledge and ensure state legislatures have a strong, cohesive voice in the federal system. We do this because we believe in the importance of the legislative institution and know when states are strong, our nation is strong.



COVID-19 WEB PAGE

Information on state policies and responses related to continuity of government, education, fiscal, elections, criminal justice and more.

Go to [ncsl.org](https://www.ncsl.org)



NATIONAL CONFERENCE OF STATE LEGISLATURES



- American Bankers Association
- National Consumer Law Center
- America's Credit Unions

July 8 | MORTGAGE & FORECLOSURE ISSUES

Rod Alba

senior vice president, mortgage finance & regulatory counsel

American Bankers Association



ABA Perspectives

- Unified Approach to Mortgage Relief During Pandemic
 - Objective: Quickly and efficiently respond to needs of affected households with uniform program that is simple and streamlined.
 - Assistance: The mortgage industry committed to ensuring that households in need receive immediate help via payment forbearance that could extend from 90-360 days.
 - Long-Term Solutions: Appropriate loan modification, with programs that allow consumers to resume previous mortgage payments, without additional costs/penalties, complemented by programs that provide substantial payment relief through changes to rate and term of the mortgages, as necessary.

(Letter, March 22, 2020)

CARES Act

- The Coronavirus Aid Relief and Economic Security Act (CARES Act) established two important protections for homeowners:
 - A 60-day foreclosure moratorium, which began on March 18, 2020.
 - A right to forbearance for borrowers who attest to experiencing a financial hardship due to the COVID-19 emergency.

CARES Act

- Establishes that borrowers may request, and servicers must offer, forbearance of mortgage payments—
 - Applies to borrowers with “Federally backed mortgage loans”
 - Borrower must be experiencing a hardship related to COVID-19
 - Borrowers only required to request forbearance and affirm the hardship-- Servicers may not require any additional information from the borrower
- “[F]orbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower”
 - The initial or extended period may be shortened upon the borrower’s request
 - Fees, penalties, and additional interest are prohibited
 - Establishes credit reporting guidelines

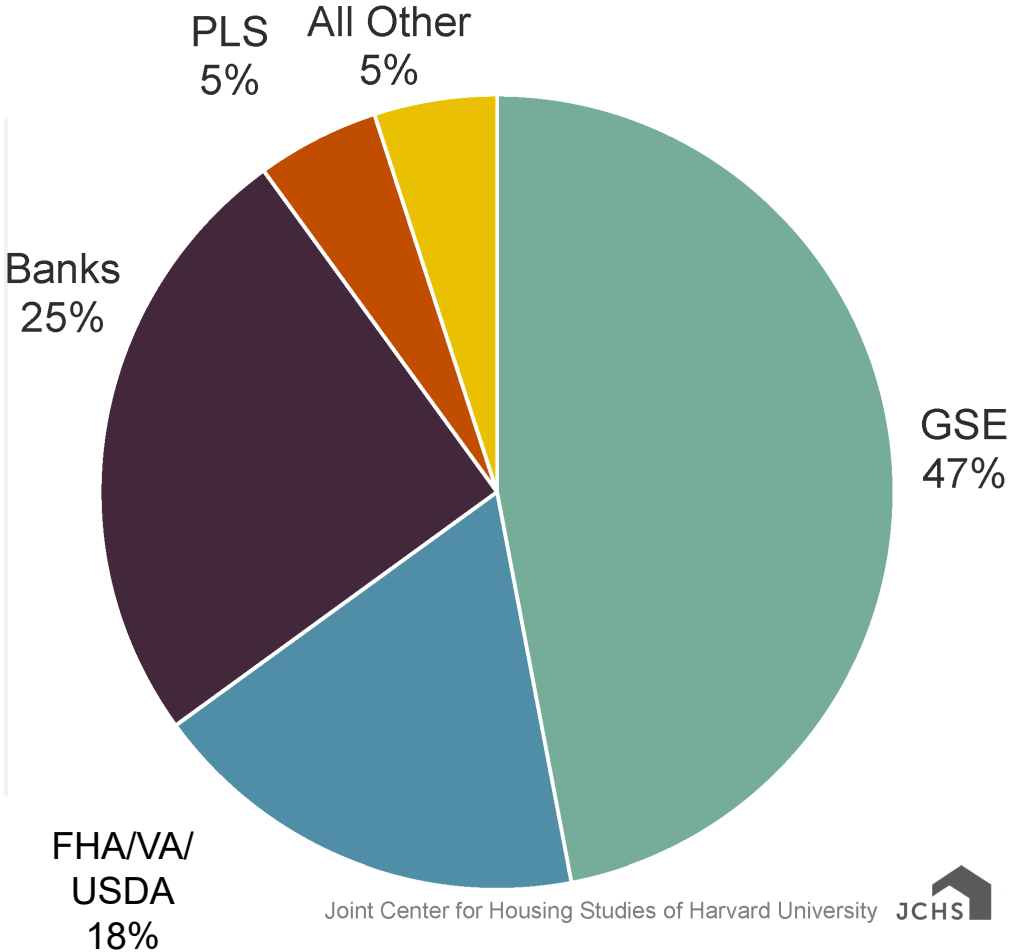
ABA: Looking Ahead

- Essentials to assure assistance:
 - Consistent & reliable universal program guidance from the government-sponsored enterprises and government agencies.
 - Relaxation of some policies and practices that that may add unnecessary delay and friction.
 - Streamlined approaches to customer notification or documentation to make it as efficient as possible to receive relief.
 - Producing a single model forbearance program that produces the same outcomes for consumers across lending programs.
 - Develop uniform messaging and materials that could be used industry-wide, to ensure that customers know what to do and how to access the services available, should they find themselves in difficulty.
 - Stay alert to COVID resurgence

Geoffry Walsh
staff attorney
National Consumer Law Center



What is a “Federally-Backed Mortgage Loan?”



COVID-19 Loss Mitigation

- Common approaches for “federally-backed loans” (GSEs, FHA, VA, RHS)
- Forbearance
- Post-Forbearance relief (reinstatement)
- Streamlined applications & blind offers
- Minimal reliance on borrower documentation

Rules for Federally-Backed Loans (GSE, FHA, VA, USDA)

- Forbearance
 - Must approve for impacted borrowers
 - Generally up to 12 mos. at borrower option
- Post-Forbearance relief
 - No lump sum demand at end of forbearance
 - Non-interest-bearing lien for forborne payments, or
 - Consider for modification, can be blind offer for GSE loans

Moratoria on Foreclosures

- Many states imposed moratoria on foreclosure activity
 - Typically tied to declaration of emergency and period thereafter
- CARES Act (federally backed loans)
 - Moratorium expired May 17, 2020
- Federal servicing guidelines (GSEs, FHA, VA, USDA)
 - No foreclosure sales, evictions to August 31, 2020
- RESPA mortgage servicing rule 12 C.F.R. § 1024.41(f)(1)
 - Borrower must be 120 days delinquent before servicer may initiate foreclosure

State COVID-19 Actions

- Oversight/regulation of forbearances
 - Voluntary programs
- Requiring forbearance and post-forbearance relief
 - Massachusetts law broad application
 - H.B. 4647, Chapter 65 Acts of 2020 (4/20/20)
 - D.C. law application to limited entities
 - D.C. Act 23-286 (4/10/20)
 - N.Y. law application to limited entities
 - SB 8428 (6/17/20)

State Actions – Constitutional Limits

- **Contracts Clause:**
 - If state law imposes substantial impairment to contractual expectations, it must be reasonable means to legitimate state purpose. *Sveen v Melin*, 138 S.Ct.1822 (2018)
 - Significant precedent on mortgage relief, *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934)
- **Takings Clause (regulatory taking):**
 - Depends on degree of interference with distinct “investment-backed expectations”
 - Considers character/purpose of governmental action. *Penn Central Trans. Co. v City of NY*, 438 U.S. 104 (1978)
 - Look at preservation of lien, retention of right to foreclose upon future default

State Actions – Preemption by National Bank Act (“NBA”)

- Dodd-Frank Act expressly rejected NBA field preemption
- Conflict preemption is the standard
- State law may not prevent or significantly interfere with exercise of national bank’s statutory powers
 - Barnett Bank v. Nelson, 517 U.S. 25 (1996)
- Question of authority of OCC to issue broad preemptive regulations (e.g. 12 C.F.R. § 34.4)

NBA Preemption cont'd

- Finding NBA preemption of a state law
- By OCC
 - OCC must follow specific procedures to find state law preempted. 12 U.S.C. § 25b(b)
- By court
 - Who can bring judicial preemption challenge: originator, assignee, servicer?

Minimizing Federal Conflicts

- Focus on transparency in evaluation of options for federally-backed loans
- Regulate unfair and deceptive practices – UDAP authority
- Regulate conduct of foreclosures
 - Mandatory settlement conferences, mediations, dispute resolution

NCLC Resources

- COVID-19 and mortgage issues
- <https://www.nclc.org/special-projects/covid-19-consumer-protections.html>
- Look under “Housing”
- Summary list of state actions
- Outlines, webinars, links for COVID-19 mortgage relief programs

Mike Schnek
deputy chief advocacy officer and chief economist
America's Credit Unions



COVID-19: Mortgage and Foreclosure Issues

An Economist's Perspective

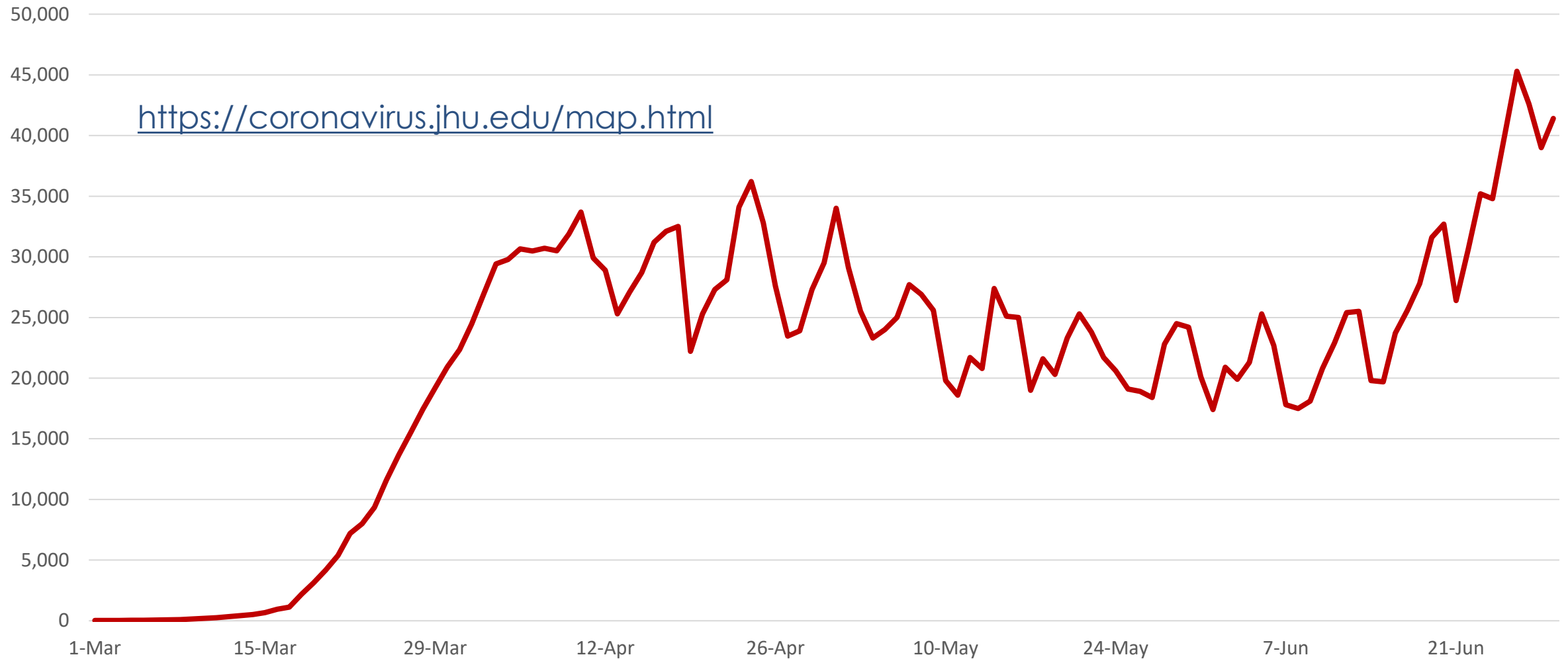
NCSL. July 8th, 2020

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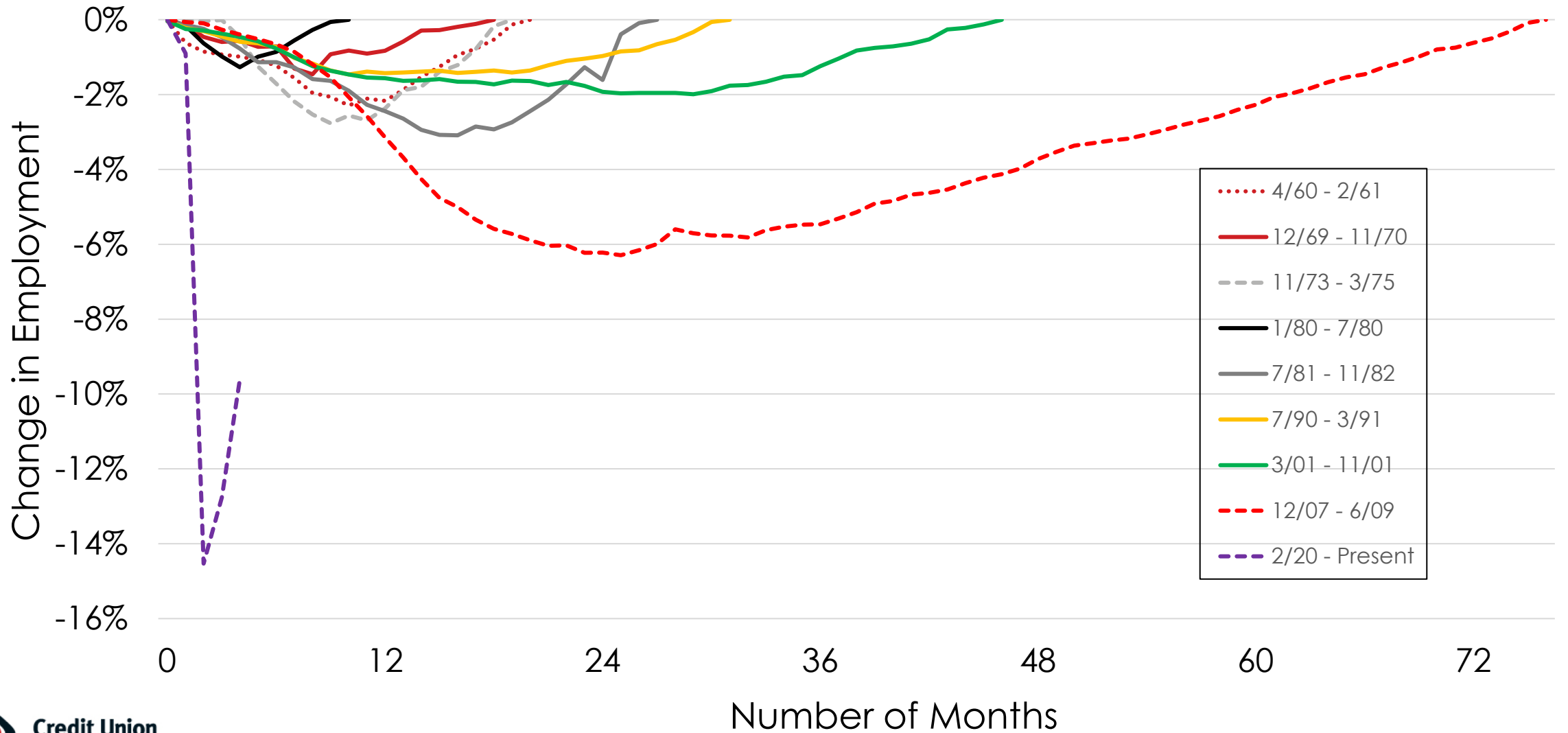
Daily Change in Number of U.S. Confirmed COVID Cases

Data through July 6th 2020 // Johns Hopkins University





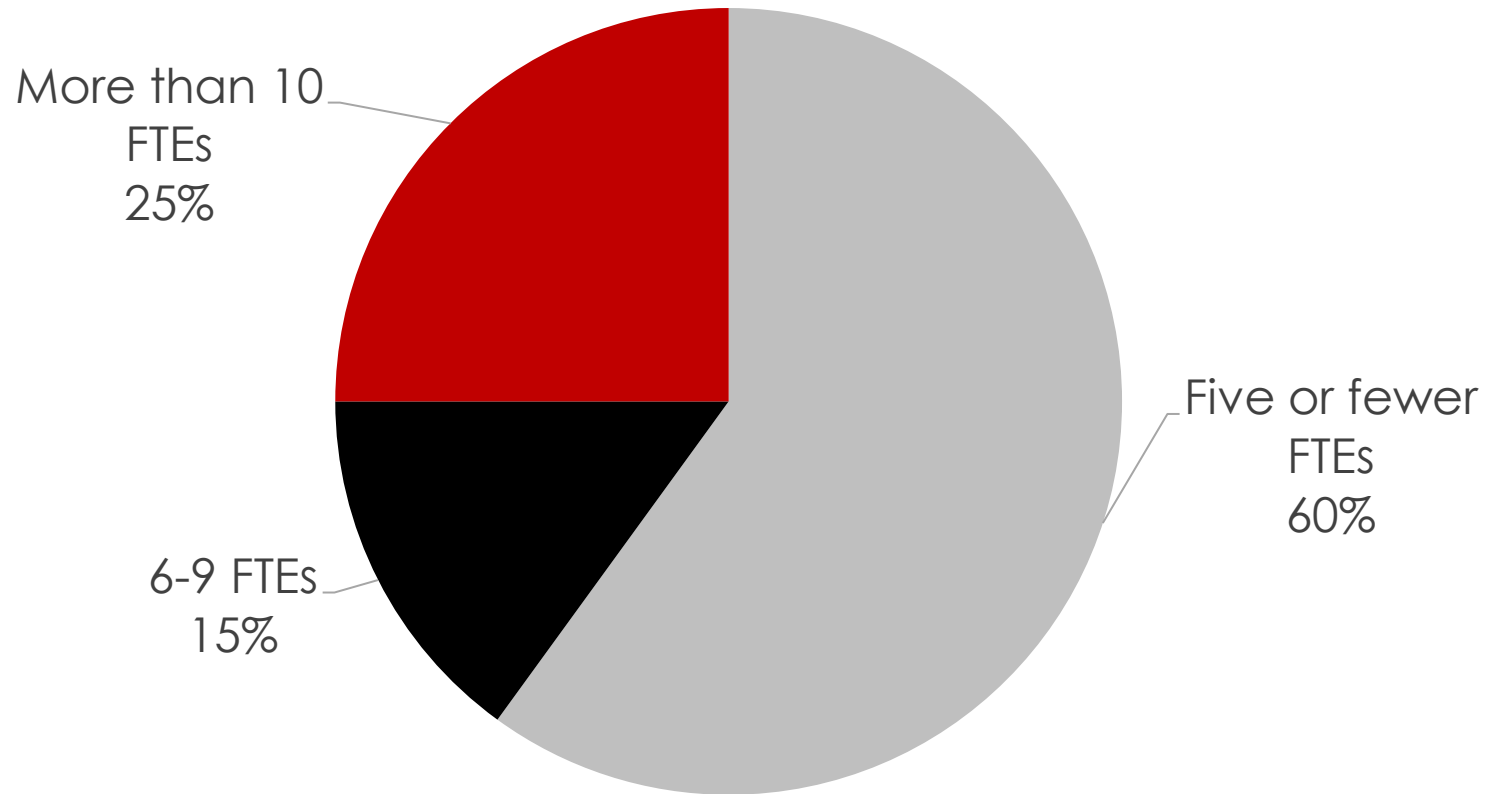
Job Market Declines & Recoveries



Distribution of US Business Establishments by Number of Employees

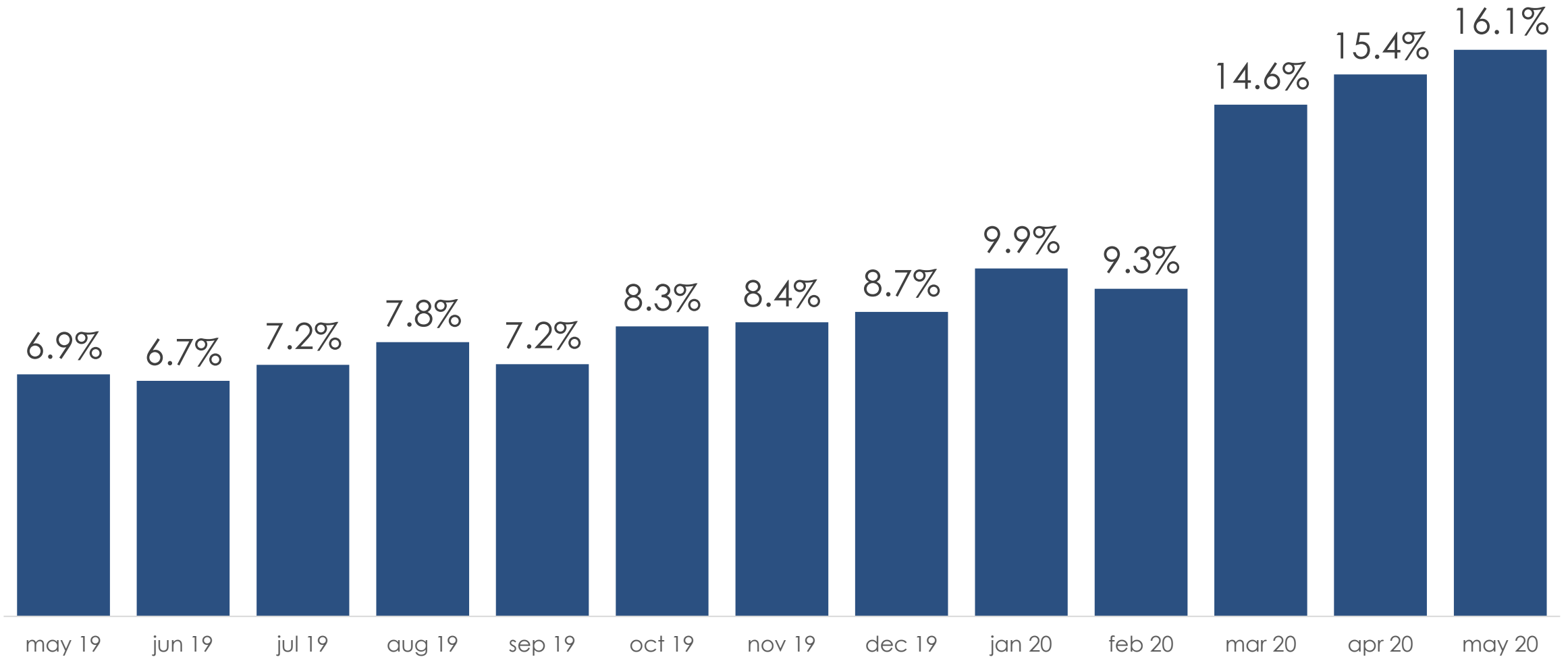
8 Million Establishments Total

Source: Census Bureau



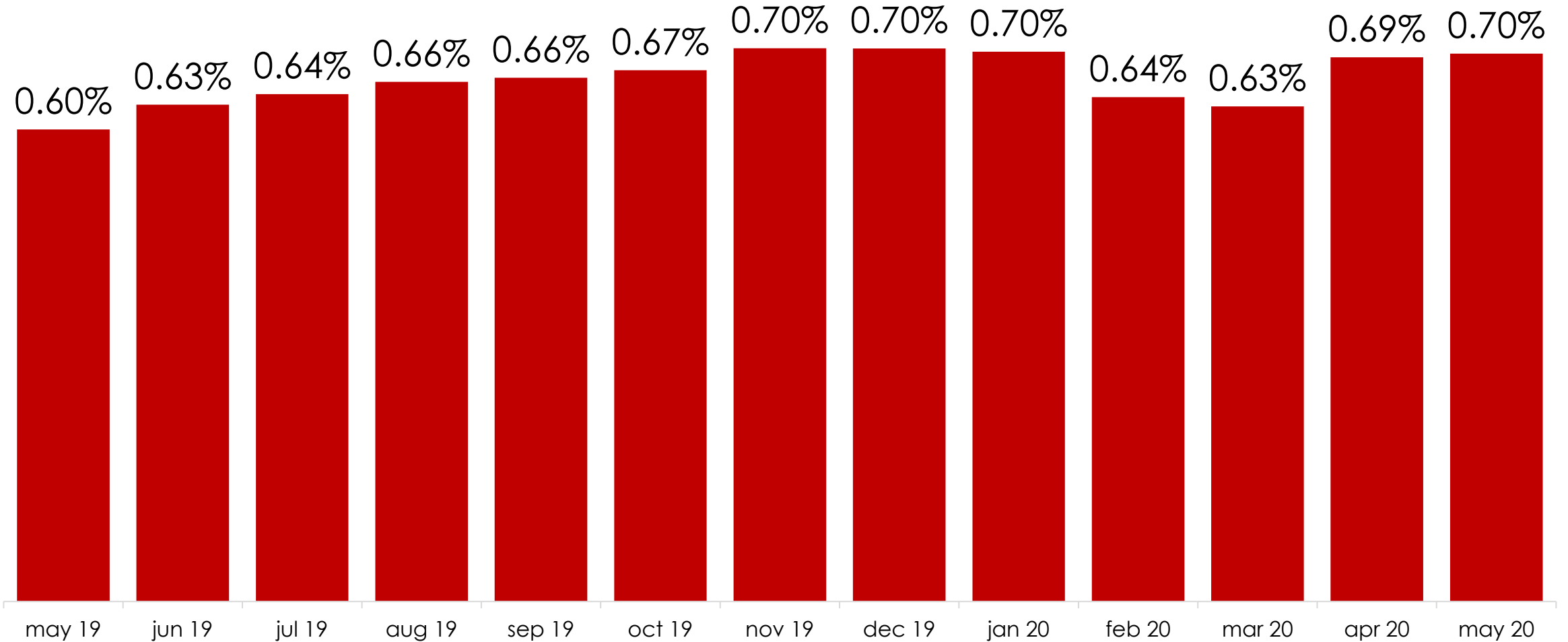
Credit Union First Mortgage Year-over-Year Growth

Source: CUNA Monthly Credit Union Estimates



Credit Union Loan Delinquency Rate

60+ Day – % of total loans // Source: CUNA Monthly Credit Union Estimates



CUNA's Key Hill Asks on this Issue

- **Request 1:** By law or agency action, align §§ 4022 and 4013 of the CARES Act so that lenders are not required to declare modified loans as TDRs when the loans were granted COVID-related forbearances, then subsequently modified at the end of the forbearance period
- **Request 2:** By law or agency action, extend the same protection to portfolio loans so that portfolio loans in COVID-related forbearances, subsequently modified at the end of the forbearance period, are not required to be treated as TDRs
- **Financial impact of TDR recognition in 2021 of loans that went into forbearance in 2020 is SIGNIFICANT**
- **THIS IS AN ISSUE FOR ALL LENDERS – NOT JUST CREDIT UNIONS!**



Questions and Answers

Please type your questions into the chat box in the lower left-hand corner of your screen.

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Go to:

www.ncsl.org or

<https://www.ncsl.org/research/health/ncsl-coronavirus-covid-19-resources.aspx>



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