

# WINDOW OF OPPORTUNITY

THE 2022 BANKING LAW SEMINAR



**DICKINSON** LAW

# Agenda



- 9:00 a.m. **Welcome with Attorney Howard Hagen**
- 9:00 - 9:20 Commercial Lending/Loan Documentation: Best Practices for Commitment Letter & Term Sheets with Attorneys Ben Bruner and Jeff Baxter
- 9:20 - 9:40 How You Could Get Sued for Wire Transfers with Attorney John Lande
- 9:40 - 10:00 Chapter 490: Why the Revisions to the Iowa Business Corporation Act Matter to Banks and Bank Holding Companies with Attorney Brad Kruse
- 10:00 - 10:20 **Break & Networking**
- 10:20 - 10:40 Chapter 524: What You Need to Know About the Revisions to the Iowa Banking Act with Attorney Brad Kruse
- 10:40 - 11:00 Responding to Subpoenas with Attorney Mary Zambreno
- 11:00 - 11:45 M&A Panel with Attorneys Amy Plummer, David Repp, and Melissa Schilling. Moderated by Attorney Howard Hagen
- 11:45 - 12:20 **Lunch Break & Networking**
- 12:20 - 1:00 Case Law Updates & Employee Retention Tax Credit with Attorneys Sierra McConnell, Rachel Soderstrum, and Charles Telk
- 1:00 - 2:00 Understanding Uncertain and Evolving Times in Banking - A Perspective with Attorney Howard Hagen



# Disclaimer

- The material presented is designed and intended for general informational purposes only.
- It is not intended and it should not be construed or relied upon as legal advice.



## **Attorneys Jeff Baxter and Ben Bruner**

**Commercial Lending/Loan  
Documentation: Best Practices for  
Commitment Letter & Term Sheets**

# Term Sheets



- **Definition:** A term sheet is a summary of the main business terms and possible options for a prospective financing. It is not a commitment to lend.
  - Term sheets are provided by lenders to prospective borrowers prior to a full underwriting of and credit approval by the lender.
  - The terms are intended to be a starting point under which the lender will consider providing financing to a prospective borrower.
  - Generally, parties are under no financial or legal obligation to each other based on the provisions of the term sheet.

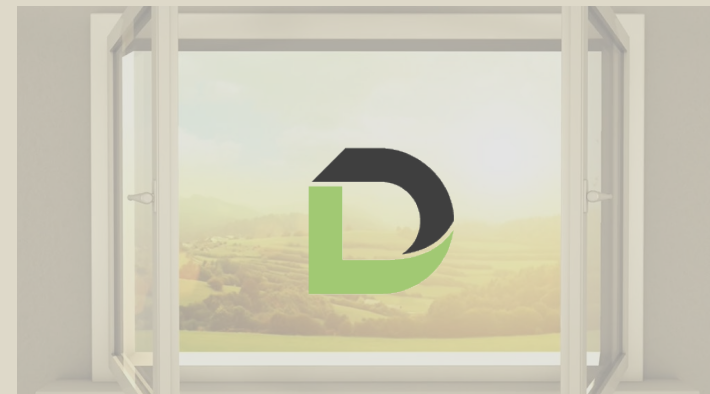


# Important Considerations

- Since term sheets contain only broad deal terms, it is important that lender make clear that in addition to terms set forth, other customary terms and conditions will apply to the final loan.
- It is imperative that a lender issuing a term sheet be careful not to use words like “commit,” “offer” and “extend” which could give the impression of a commitment to lend.

- Ordinarily with a term sheet, no fee or payment is associated with return of an accepted term sheet, although it is permissible to state that the prospective borrower will reimburse the costs and expenses incurred by the lender in conducting its due diligence and to collect an upfront deposit for such third-party costs;
- All further communications after issuance of term sheet should be documented in writing with an appropriate disclaimer in each instance to reiterate that the lender is not bound by the terms being discussed (whether verbally, by email or even by text).

**Important Considerations,  
continued.**





# Common Terms

- Borrower Name;
- Loan Amount;
- Loan Purpose;
- Interest Rate;
- Term/Loan Maturity Date;
- Monthly Payment;
- Collateral;
- Guarantor(s);
- Performance Covenants;
- Items Needed for Closing;
- Closing Date.





# Disclaimer Language

- It is important to include broad disclaimer language in the term sheet. At a minimum, the term sheet should state that: “The terms contained herein are proposals and are subject to change” or “Formal approval is required by Lender before a commitment may issue.”

- SAMPLE LANGUAGE:
- “The financing proposal set forth below has been prepared on the basis of certain information and materials provided by you to [the Lender] and at a time when [the Lender] has not had an opportunity to complete its due diligence investigations. The terms and conditions set forth below are the terms and conditions which the undersigned will present for approval to the appropriate approval authorities within [the Lender]. This proposal is not a commitment by [the Lender] to make a loan or loans on the terms and conditions set forth herein. In addition, the terms contained in this proposal may be subject to change or to additional terms and conditions required in connection with any final commitment which may be made by [the Lender].”

# Commitment Letters



- A letter of commitment is a formal **binding** agreement between a lender and a borrower that outlines the key terms and conditions, and the nature of the prospective loan.
  - Commitment letters are typically provided by lenders to prospective borrowers after a full underwriting of and credit approval by the lender.
  - Commitment letters go beyond a non-binding term sheet, and typically serve as a binding (yet conditional) agreement to provide credit;
  - Commitment letters create certain binding obligations for the parties, which should include certain financial obligations of the borrower.



# Common Material Terms

- Borrower and Guarantor Requirements
- Type of loan
- Loan amount
- Repayment period
- Interest rate
- Date of rate lock expiration
- Collateral Requirements
- Effective date and commitment fees
- Fundamental Representations and Performance Covenants
- Funding Conditions



# Important Considerations

- It is important to be clear and precise in order to detail the fundamental loan terms to avoid misunderstanding or ambiguity by either Borrower or Lender;
- Since loan commitments are enforceable and binding agreements, loan commitments increase a bank's risk by obligating it to issue future credit under terms that it might otherwise refuse due to a change in circumstances or factors affecting the borrower, collateral value or cash flow, or guarantors.
- If the lender does not initially address an important issue in a commitment letter, the lender may not be able to insist upon it in the loan documents.



# Key Conditional Provisions

- A clear description of the conditions precedent to closing (i.e. receipt and approval of appraisals and other due diligence receivables);
- A condition that there has been no material adverse change in the borrower or guarantors' corporate structure or financial condition between the commitment letter date and the loan closing;
- A condition that the borrower may not shop competing financing or disclose the terms of the commitment letter to other lenders; and
- An acceptance and termination date after which the commitment expires.



# Questions?

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## **Attorney John Lande**

### **How You Could Get Sued for Wire Transfers**



# Common Scenarios



- Business opens bank account
- Business:
  - Enables online banking;
  - Enables users who depart;
  - Doesn't enable online banking.
- Fraudsters then:
  - Compromise credentials;
  - Enable dormant account;
  - Setup inactive online banking.



# Rodriguez v. Branch Banking & Trust



- Online banking function was not enabled
- Fraudsters added fraudulent email address to account
- Fraudsters called the bank and provided answers to security questions
- Bank sent secure token to fraudsters
- Fraudsters transferred \$850,000
- Customer was overseas and unable to report loss; agreement required reporting in 30 days

# Issues



- Bank followed security procedures when initiating the transfers by requiring secure token
- Customer did not report loss within 30 days
- Security breach occurred when setting up online account and transfers



# Bank's Liability



- Bank may have followed security procedures, but:
  - Procedures were compromised by the initial account setup
- Customer did not report within 30 days of the loss, but:
  - Uniform Commercial Code Art. 4A prohibits modification of the deadline for reporting a loss, which is 1 year from the date of loss
  - Different from UCC Art. 4, which governs checks
- Procedures for setting up online account were not part of transfer, but:
  - Security procedures surrounding administrator accounts probably are part of the security procedure

# UCC Article 4A



- Applies to non-consumer accounts
- Default: Banks are liable for unauthorized electronic funds transfers
- Banks can shift liability if:
  - Bank and customer agree to use a commercially reasonable security procedure;
  - Bank follows that procedure to validate EFT request;
  - Bank acts in good faith, which means bank (1) is unaware that transfer is not authorized, and (2) transfer meets commercial standards of fair dealing
  - Bank follows instructions

# Issues for Plaintiff Lawyers



- What is the security procedure?
  - Security around account setup
- “Commercial Standards of Fair Dealing”
  - Frequency of prior EFT activity
  - Internal transfers prior to external transfers
  - Beneficiaries
- What does the account agreement say?



# FDIC – 36 Hour Notice Rule



- New Rule requiring notice of “Computer Security Incidents”
- Generally, a major security incident like ransomware or DDoS attack
- Time only starts to run once the bank has determined an incident has occurred
- From the comments: “agencies anticipate that a banking organization would take a reasonable amount of time to determine that it has experienced a notification incident.”
- Requires consideration of legal and technical issues



# Questions?

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## **Attorney Brad Kruse**

Iowa Code 490: Why the Revisions to the Iowa Business Corporation Act Matter to Banks and Bank Holding Companies



# IOWA BUSINESS CORPORATION ACT

- The Iowa legislature enacted substantial revisions to the Business Corporate Act that became effective January 1, 2022.
- Like the existing Act, the new Act is based on the Model Business Corporation Act created by the American Bar Association.
- Culmination of a three-year process in which the Iowa State Bar Association proposed legislation that became the new Act.
- The new Act represents the first comprehensive revision to the Iowa Banking Corporation Act in more than 30 years.

# BANKING HOLDING COMPANIES



- Given the large percentage of Iowa Community Banks that are operated under a bank holding company structure, the new Act significantly impacts Bank Holding Companies.
- And it applies to banks without holding companies, as Iowa Code Chapter 490 applies to banks in the absence of any contrary provisions under Iowa Code Chapter 524.



# SOME STATISTICS

- 85% of commercial banks in the United States are operated through a Bank Holding Company structure.
- Over 75% of small banks with assets of less than \$100 million are owned by Bank Holding Companies.
- The majority of Iowa's Community Banks are owned by Holding Companies.

# BENEFITS OF BANK HOLDING COMPANIES



- Increased ability to generate capital
- Greater flexibility with regulatory capital
- Greater flexibility for restricted stock awards
- Increased ability to facilitate acquisitions
- Greater flexibility regarding bank activities

# REVISIONS TO THE IOWA BUSINESS CORPORATION ACT



- Director duties

- Current Act outlines the duties and standard of conduct and standards of liability for directors, and these are largely unchanged by the new Act.

- Director liability

- New Act allows a corporation to eliminate or limit any duty of a director or officer with respect to offering a business opportunity to the corporation first. Section 490.202(2)(f).

- Officer duties

- New Act requires officers to inform their superiors about the corporation's affairs that are known to the officer within the scope of the officer's functions, including "any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, agent, or employee that the officer believes has occurred or is likely to occur." Section 490.482.

# REVISIONS TO THE IOWA BUSINESS CORPORATION ACT



- Remote Shareholder Meetings

- New Act allows for corporations to conduct remote shareholder meetings via remote communications. Section 490.709.
- Corporations conducting remote shareholder meetings must:
  - Verify each person participating is a shareholder; and
  - Provide shareholders participating remotely with an opportunity to hear, communicate and vote on matters concurrently with the proceedings.

# REVISIONS TO THE IOWA BUSINESS CORPORATION ACT



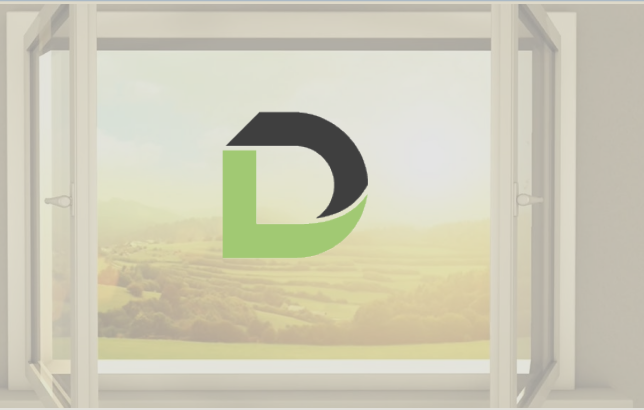
- Forum Selection Provisions

- New Act authorizes corporations to require in Bylaws that internal claims be brought exclusively in any specified courts of Iowa or in any other jurisdiction in which the corporation has a reasonable relationship. Section 490.208.
- Internal Corporate Claim defined broadly to include: a) any claim for breach of duty by a current or former director officer or shareholder; b) derivative actions; and c) any claims based on violations of the corporation's articles or bylaws, or of the Act.
- Goal is to reduce litigation costs.



# REVISIONS TO THE IOWA BUSINESS CORPORATION ACT

(Cont'd)



- Mergers

- New Act now permits a "two-step-merger" without shareholder approval in a transaction providing that for each outstanding share of each class or series of shares that an offeror is offering to buy, the shareholders owning such shares will receive in return the same amount of securities in kind. Section 490.1104.
- The new Act also allows a domestic corporation to use the procedures for a merger if that entity's organic law or rules do not provide for share exchanges.

# REVISIONS TO THE IOWA BUSINESS CORPORATION ACT

(Cont'd)



- Retroactive validation of defective actions
  - The new Act creates a new statutory section for defective corporate actions, providing that defective corporate actions are not void or voidable if ratified or validated pursuant to the process outlined by the statute. Section 490.145-152.
  - This allows Iowa corporations to retroactively validate any defective corporate actions.

# REVISIONS TO THE IOWA BUSINESS CORPORATION ACT

(Cont'd)



- Judicial review of elections and shareholder votes
  - The new Act creates a new subchapter that grants a corporation, record shareholder, director or officer the ability to apply to the district court of the county where the corporation's principal or registered office is located in order to determine the results or validity of corporation actions for or against a director or officer, and regarding the result or validity of any vote by the shareholders. Section 490.749.
  - These actions include the right to serve as a director or officer and the right of a director to membership on a board committee.



# Questions?

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# **BREAK & NETWORKING**



## **Attorney Brad Kruse**

**Iowa Code Chapter 524: What You  
Need to Know About the Revisions  
to the Iowa Banking Act**



# Iowa Code Chapter 524: What you need to know about the revisions to the Iowa Banking Act

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In the 2022 Iowa legislative session Senate File 586 was passed, which provided a comprehensive review and modernization of Iowa Code Chapter 524, the Iowa Banking Act. The provisions of the bill became effective on July 1, 2022. These revisions to the Iowa Banking Act represent the most significant changes to the legal landscape for Iowa banks in a generation.

This presentation covers some of the most significant changes and the impact of these changes on Iowa banks.

# CHANGE IN CONTROL



- Section 524.54 was revised to indicate that "control means owning, controlling, or having power to vote twenty-five percent or more of any class of voting securities of a state bank or having the power, directly or indirectly, to elect the board of directors."
- Previous versions simply defined the term control as the "power, directly or indirectly, to elect the board of directors." Although there was no specific percentage ownership previously stated, this usually meant ownership of fifty percent of the voting shares.
- The goal of this revision was to align with the Federal Reserve Act.
- Two important notes:
  - The IDOB notes that the general definition of control contained in Section 524.103(18) still applies to all other questions of control under the Iowa Banking Act.
  - If there is any doubt as to whether a change in ownership of the outstanding shares is sufficient to result in control thereof or to effect a change in control thereof, such doubt will be resolved in favor of reporting the facts to the Superintendent of Banking. Thus if there is any doubt as to whether a change in control has occurred, banks should report the change to the Superintendent.





# BANK MERGERS

- Sections 524.1401 and 524.1402 of the Iowa Banking Act have been amended to clearly authorize out-of-state banks to merge into Iowa banks and vice versa.
- Additionally further revisions have been added clarifying that out-of-state banks and credit unions chartered under state and federal law, may convert to an Iowa bank under Iowa Code Section 524.1409.
- These revisions recognize that out-of-state banks are active in Iowa's banking and financial services markets.
- Amendments to the criteria for approval of a merger are contained in revised Section 524.1403 to reflect the principles of community banking in Iowa.
  - This section already directs the Superintendent of Banking to consider the convenience and needs of the community to be served;
  - Amendment emphasizes that accepting deposits, lending money, and processing payment in the area primarily to be served by the resulting bank are key elements of such approval.

# REGULATORY RELIEF



The revised Iowa Banking Act makes a number of changes designed to reduce the regulatory burden on Iowa banks.

- State banks are now only required to submit a call report to federal regulators, and will only be required to provide a separate call report to the IDOB or to complete the IDOB call report signature page upon request. Section 524.220.
- Banks are no longer required to submit to the Superintendent a summary of the significant audit findings after the state bank conducts their annual internal audit.
- Iowa banks may now enter into contracts or arrangements with shareholders or any other affiliate to pay for management or financial services without prior approval from the Superintendent.
- The new Act has removed the requirement that a bank officer or office manager be physically present at each bank office during a majority of business hours, reflecting the modern trend and ability of bank officers to effectively oversee offices remotely given advances and developments in technology.
- Similarly, the new Act removes the requirement that the central executive and official business and principle recordkeeping functions be exercised only at the state bank's principal place of business.
- The new Act also removes the requirement that a state bank's principal place of business be located within a municipal corporation, acknowledging and reflecting the need for new approaches to banks seeking to maintain a physical presence in Iowa's small towns and rural communities.



# ABILITY TO ENTER INTO CONTRACTS

- The old Act limited the ability of state banks to enter into contracts only if the other entity would be subject to supervision, regulation, and examination by the Superintendent to the same extent as if such services were being performed by the state bank itself on its own premises.
- To alleviate any confusion with this former provision, the new Act states that whenever a state bank, or any subsidiary or affiliate of a state bank that is subject to examination by the IDOB enters into a contract for a "covered service," then such services are subject to such regulation and examination by the Superintendent.
- Covered services include
  - 1 Data processing services;
  - 2 Activities that support financial services, including lending funds, transfer, payment processing, fiduciary activities, trading activities and deposit taking;
  - 3 Internet related services, including web services and electronic bill payments, mobile applications, system and software development and maintenance and security monitoring; and
  - 4 Activities related to the business of banking.

# FINTECH INVESTMENT



- Pursuant to revised Chapter 524, Iowa banks may now invest in Fintech companies.
- Section 524.901(10) expressly authorizes Iowa banks to invest a maximum of five percent of aggregate capital in "any corporation or other entity which develops or utilizes new or innovative technologies," which are useful in providing banking and financial services.
- These include:
  - Data processing services;
  - Activities that support financial services, including but not limited to lending, funds transfer, payment processing, fiduciary activities, trading activities, and deposit taking;
  - Internet related services including but not limited to web services and electronic bill payments, mobile applications, system and software development and maintenance and security monitoring; and
  - Activities related to the business of banking.
- Superintendent approval is required for making any investments in Fintech companies.
- Banks interested in making such Fintech investments should also consult with their primary federal regulator in advance to insure that the proposed investment is authorized under applicable federal law.



# OTHER PERMISSIBLE INVESTMENTS:

- In real estate for the purpose of economic or community development
  - Iowa Code Section 524.802(13) has been updated and clarified to indicate that state banks no longer are required to obtain prior approval from the Superintendent of Banking with regards to the acquisition, holding and improvement of real estate for the sole purpose of economic or community development.
- Other real estate owned ("OREO")
  - The new Act amends Iowa Code Section 524.910(2) to increase the maximum time for ownership of OREO to ten years from five years, with the result being that the revisions now mirrors federal law.
- Bank-owned life insurance plans ("BOLI")
  - Old Act only permitted investments in cash value life insurance contracts with a limit of contracts purchased from one company not to exceed fifteen percent of aggregate capital purchased and the cumulative total of all such contracts not to exceed twenty-five percent of aggregate capital. Under the provisions of new Section 542.901(9), state banks may invest in annuities contracts, provided they are tied to an employee benefit the bank is obligated to pay.

# LENDING LIMITS



Iowa Code Section 524.904 imposes a lending limit on a bank's lending to individual borrowers to fifteen or twenty-five percent of the bank's aggregate capital depending on the circumstances. Aggregate capital is defined as capital surplus as "capital, surplus, undivided profits, and reserves as of the most recent calculation date."

- The new bill deletes language granting additional borrowing privileges for loans secured by non-negotiable bills of lading, warehouse receipts, or other documents transferring or securing title.



# CORPORATE GOVERNANCE

The new Act incorporates a variety of changes to mirror changes to Iowa Code Chapter 490 in the Iowa legislature's 2021 revisions to the Model Corporations Act. The new Act also adopts various changes based on experience during the Covid-19 pandemic.

- Iowa Code Section 524.532 has been revised to allow for the annual meeting of shareholders to be held outside the State of Iowa.
- Banks are also now allowed to provide shareholders and directors notice of meetings electronically rather than a hard copy.
- Bank directors may now consent to action without a meeting by sending an email indicating consent to the proposed board action.
- Banks wishing to hold shareholder meetings outside the state must permit, either in its Articles of Incorporation or its Bylaws, remote participation by shareholders via telephone or video technology which enables all participants to hear each other simultaneously.
- The new Act amends Section 524.610 and 524.703 to provide that shareholder approval is only required for changes to profit sharing plans that affect benefits, required contributions, or eligibility to participate in the plan. Changes that do not affect these elements require only board approval.



# Questions?

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**Attorney Mary Zambreno**

**Responding to Subpoenas**



**NOW WHAT?...**

# Rule 1.1701 - Subpoena



Every subpoena must:

- (1) State the court from which it issued;
- (2) State the title of the action and its docket number;
- (3) Command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and
- (4) Set out the text of rules 1.1701(4) and 1.1701(5).



- 1) Subpoena for Oral Deposition
- 2) Subpoena to Appear and Testify at a Hearing or Trial
- 3) Subpoena to Produce Books, Documents, Electronically Stored Information, or Tangible Things or to Permit Inspection of Premises

# 1.1701(4) and 1.1701(5)



## **1.1701(4) *Protecting a person subject to a subpoena.***

- a. Avoiding undue burden or expense; sanctions.*
- b. Command to produce materials or permit inspection.*
- c. Attendance.*
- d. Quashing or modifying a subpoena.*

## **1.1701(5) *Duties in responding to a subpoena.***

- a. Producing documents or electronically stored information.*
- b. Claiming privilege or protection.*

# 1.1701(3) - Service.



- 1) Any person who is at least 18 years old and not a party may serve a subpoena.
- 2) Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance and, if demanded, tendering the fees for one day's attendance and traveling fees to and from the court. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party.

# 1.1701(3) - Service.



Permissible place of service. A subpoena may be served at any place: (1) Within the state of Iowa; (2) That the court authorizes on motion and for good cause, if a statute so provides.

Proof of service. Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of persons served.

# 1.1702 – Uniform interstate depositions and discovery



To obtain issuance of a subpoena under this rule, a party to a proceeding in a foreign jurisdiction must either:

- (1) request a signed, blank subpoena from the clerk of an Iowa court in the county in which discovery is to be conducted; or
- (2) arrange for an attorney who is retained by that party and who is licensed or otherwise authorized to practice law in Iowa to issue and sign the subpoena as an officer of the court.



# Gramm-Leach-Bliley



SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION § 6801. Protection of nonpublic personal information.

It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.



# Questions?

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**M&A Panel:**  
**Attorneys Amy Plummer, David Repp,**  
**and Melissa Schilling**  
**Moderated by Attorney Howard Hagen**



# Questions?

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**LUNCH BREAK  
&  
NETWORKING**



**Attorneys Sierra McConnell  
and Rachel Soderstrum**

**Case Law Updates**

# Payment Company Hit with Proposed Class Action



## *Salinas et al v. Block, Inc. et al*

- Former employee allegedly downloaded reports causing 8.2 million customers' personally identifiable information to be publicly exposed.
- Customers were not notified until four months after the breach.



SOPA Images/Getty Images



# State Banks can Engage in Electronic Activities



<https://www.cbionline.org/>

- Bank must maintain adequate systems to identify, measure, monitor, and control the risks associated with its electronic activities.
- Policies, procedures, internal controls, and management information systems are required.



# Mandatory Reporting of Beneficial Owners

## Corporate Transparency Act

- Beneficial owners of businesses will be required to file a report with the Financial Crimes Enforcement Network (FinCEN).
- Financial institutions will have access to these reports to conduct their due diligence requirements.





***Borst Brothers Construction, Inc.  
v. Finance of America Commercial,  
LLC, 975 N.W.2d 690 (Iowa 2022).***

- Facts
  - Priority dispute between two subcontractors and commercial lender
  - Subcontractors began work in July 2017 and September 2017
  - Commercial lender first mortgage was filed November 13, 2017
    - Iowa Code Sections 572.13A and 573.13B
- Issue
  - Validity and priority of subcontractors mechanics liens when Notice of Commencement of Work is not filed until several months following work being done?



***Borst Brothers Construction, Inc.  
v. Finance of America Commercial,  
LLC, 975 N.W.2d 690 (Iowa 2022).***  
*(Cont'd)*

- Holding
  - Iowa Code 572.13A is to incentivize contractors and owner-builders to promptly post Notice of Commencement of Work to activate the MNLIR for the jobs being managed, not to penalize subcontractors that were not in a position to post that Notice of Commencement until sometime later.
  - Mechanics liens' take priority according to Iowa Code Section 572.18.
- Dissent and Response
- Takeaway



# Questions?

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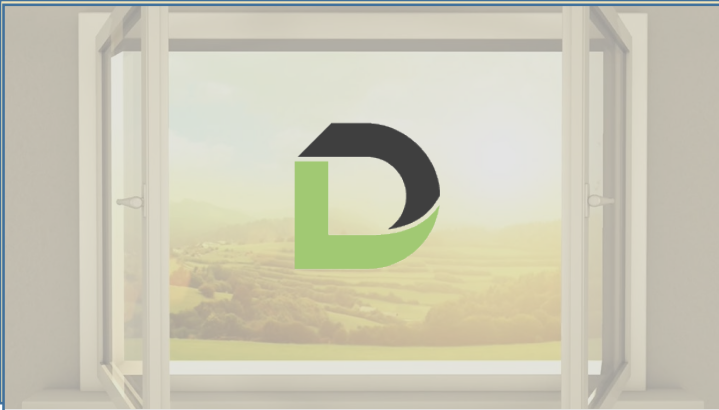
**Attorney Charles Telk III**  
**JD, MBA, CPA**

Employee Retention Tax Credit

# What is it?



- The Employee Retention Tax Credit (ERC) is a Covid-19 relief program that has been expanded and restricted several times since its inception in 2020.
- The program was originally meant to provide assistance to those who didn't qualify for PPP loan forgiveness. The original ERC program expressly excluded organizations which had received PPP loan forgiveness from participation in the program, causing many to write off the program at its inception.
- The program shifted in purpose to provide more broad relief for businesses that suffered as a result of Covid-related orders. The original rule precluding participation if a business received PPP loan forgiveness has since been rescinded, allowing for much larger applicability that many are unaware of.



# How does it work?

- The credit is available for the last three quarters of 2020 and the first three for 2021. The ERC allows a credit to be taken against certain payroll taxes reported on a company's Form 941.
- Up to \$10,000 of wages/employee may qualify in 2020. The credit is equal to 50% of qualifying wages per employee and is completely refundable. For most companies, payroll taxes for 2020 have already been paid, meaning the entire credit of (up to) \$5,000/employee could be paid out in cash.
- Up to \$10,000 of wages/employee/quarter may qualify in 2021. The credit for 2021 is equal to 70% of qualifying wages *in each quarter* (for the first three quarters). The total potential credit, then, for 2021 could be \$21,000/employee. Again, this is completely refundable, so to the extent that a company has no payroll tax liability for the applicable quarter, that company will receive the difference as a tax refund, similar to how they would on their personal income tax return.

- This is where the lines start to get grey. An employer may qualify through one of two tests:
  - The gross receipts test, or
  - The partial suspension test.
- The gross receipts test looks at each quarter and compares a business's gross receipts for that quarter to the same quarter in 2019. If they have decreased by a certain amount, the business qualifies. The amounts are different for 2020 than they are for 2021.
- The partial suspension test looks to whether a business had a complete or partial suspension of operations due to a government order related to Covid. Here is where we have seen the most confusion amongst businesses. Many believe that they need to have shut down or meet both the suspension *and* the revenue test. Neither is correct, however, and the determination of what qualifies as a "partial suspension" is likely worth consulting a tax professional about.
- Unfortunately, many professionals have not kept up-to-date with the changes and are still giving out advice based on that. If you were originally told you didn't qualify for the ERC in 2020, be sure to check the updated rules as you





# Questions?

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# Attorney Howard O. Hagen

Understanding Uncertain and  
Evolving Times in Banking -  
A Perspective



The future always outwits our certitudes expressed.

-Arthur Schlesinger



Don't listen to the person who has the answer;  
listen to the person who has the questions.

-Albert Einstein



Beware when a lawyer says, that is an interesting issue.



Remember –  
A Fish Cannot  
See The Water Unless It  
Jumps Out Of The Bowl

-Chinese Proverb

So Let's Jump Out of the Bowl!



To Begin With

All Bankers Should Be T'd Off!

Time

Talent

Technology

Territory

Key Issues to Be Mindful of Going Forward As Bankers



What A World We Are Going Forward In

Let's Recognize It!

We Are Living in Absolutely Unique Times





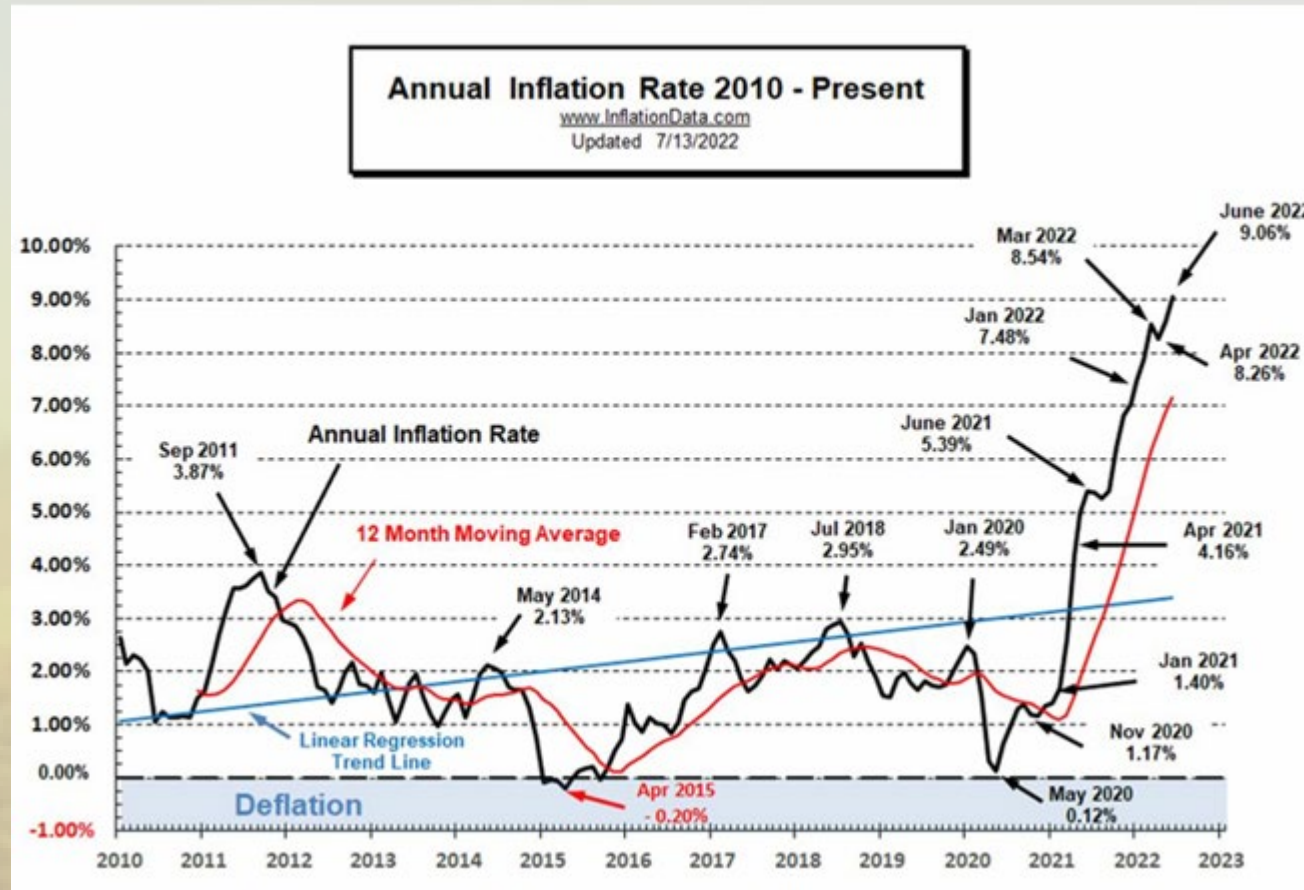






	<b>Critical</b>	<b>Important</b>	<b>Not important</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Cyberterrorism, the use of computers to cause disruption or fear in society	82	16	2
Development of nuclear weapons by North Korea	78	19	2
Development of nuclear weapons by Iran	76	19	4
International terrorism	71	25	3
Domestic terrorism	68	26	6
The military power of China	67	29	4
The spread of infectious diseases throughout the world	64	31	5
The military power of Russia	59	35	6
The economic power of China	57	34	8
Global warming or climate change	55	25	20
The conflict between Russia and Ukraine	52	37	11
Large numbers of immigrants entering the United States illegally	48	30	22
The conflict between the Israelis and the Palestinians	35	50	13

GALLUP, FEB. 1-17, 2022



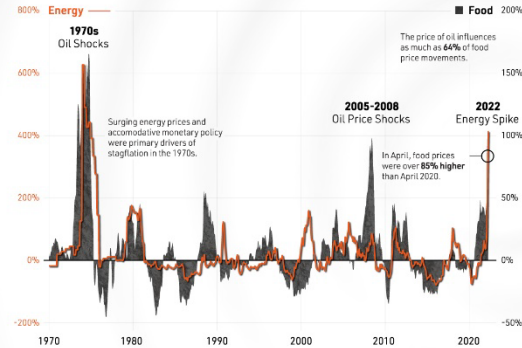


# THE INFLATION FACTOR

## How Rising Energy and Food Prices Impact the Economy

Energy prices are forecasted to rise an average 50% this year. How does 2022 compare to previous energy price shocks?

### Energy and Food Price Shocks



Percent change in monthly energy and food price indexes over a 24-month period. Before 1970, the energy price change is measured using the oil price change.

The energy price spike seen in 2022 is the second-highest since the oil shocks of the 1970s. Why?

Today, the oil industry is contending with the following challenges:

**Supply disruptions from Russia's invasion of Ukraine**

**Rising energy demand that could ramp up into the winter**

**Low spare oil capacity**

Sustained energy price shocks could lead to harmful consequences that go beyond the price of energy and food.

### THREE RIPPLE EFFECTS

Oil feeds into practically everything—from clothing to smartphones. Here's how energy and food price shocks could affect the world economy looking ahead:

#### 01 Rising Global Inflation

The vast majority of countries worldwide could see higher levels of inflation.

Countries With Inflation Above Target

- Advanced economies
- Emerging markets and developing economies

#### 02 Slower Global Growth

Growth prospects around the world could face greater headwinds.

Global Growth Scenarios

- Baseline
- Including Fed tightening
- Including Energy price spike
- Including China COVID-19

#### 03 Rising Food Insecurity and Social Unrest

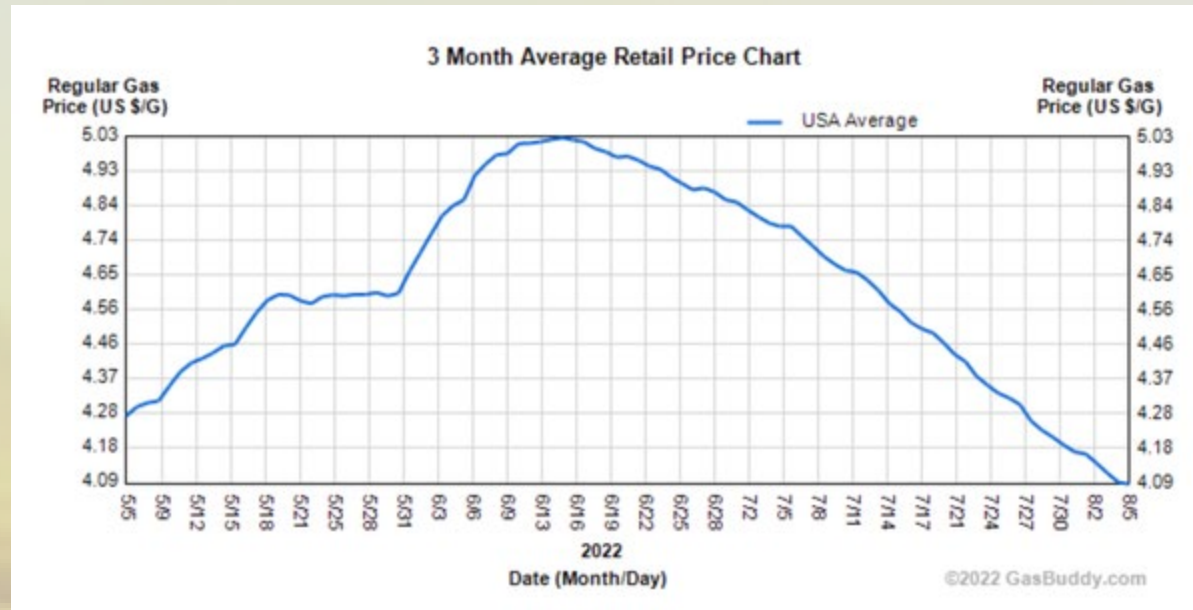
High energy costs could increase food insecurity and social unrest which was already increasing before the war began.

Global Food Insecurity Number of People

Region	2020	2021
Sub-Saharan Africa	96.6M	118.9M
Middle East and North Africa	30.2M	37M
South Asia	15.6M	28.8M
Latin America and the Caribbean	11.8M	12.8M

Sources: World Bank (2022), Energy Policy (2018)

Source: Visual Capitalist, September 1, 2022





Times They Are A Changing

Worldwide We Are Entering Uncharted Times

How So?





Prior to 2021  
Long Term Inflation  
Was Held In Check For a Decade  
By  
Digitization  
Globalization  
Concentration  
Shrinkflation

The Great Disruptors of Covid and  
Ukraine and Nationalization Have Set  
This Back For Now



Ukraine is just the latest tailwind for an emerging historical cycle, decentralization, localization and supply chain redundancy.



## **75 Years of Globalization and Relative Stability Is Over**

New World of Deglobalization  
Supply Chain Disruptions  
Political Conflicts  
Geopolitical Shocks  
Weather Instability  
Doomsday Icebergs  
Energy Wars

This Results In  
Inflation Continuing  
Much More Volatility and Instability With The  
U.S. and North America in Very Strong Position With  
Food, Fuel, Fiber, Fossils and Financial



## **Old Geography**

Governments, States and Empires  
Being Stable Physical Territories for Centuries  
**= There**

## **New Geography**

Virtual  
Networks & Aps  
Aggregating v. Disaggregating  
Without Physical Boundaries (Except for Data)  
**= No There**



Then We Add the Covid Times Into This Mix (Mess)

It Has Been An Accelerant for Massive Change

We Have Adjusted and Adapted

However, We Are Tired and Exhausted

Let's Review Some Developments



## 17 Pandemic Innovations That Are Here To Stay

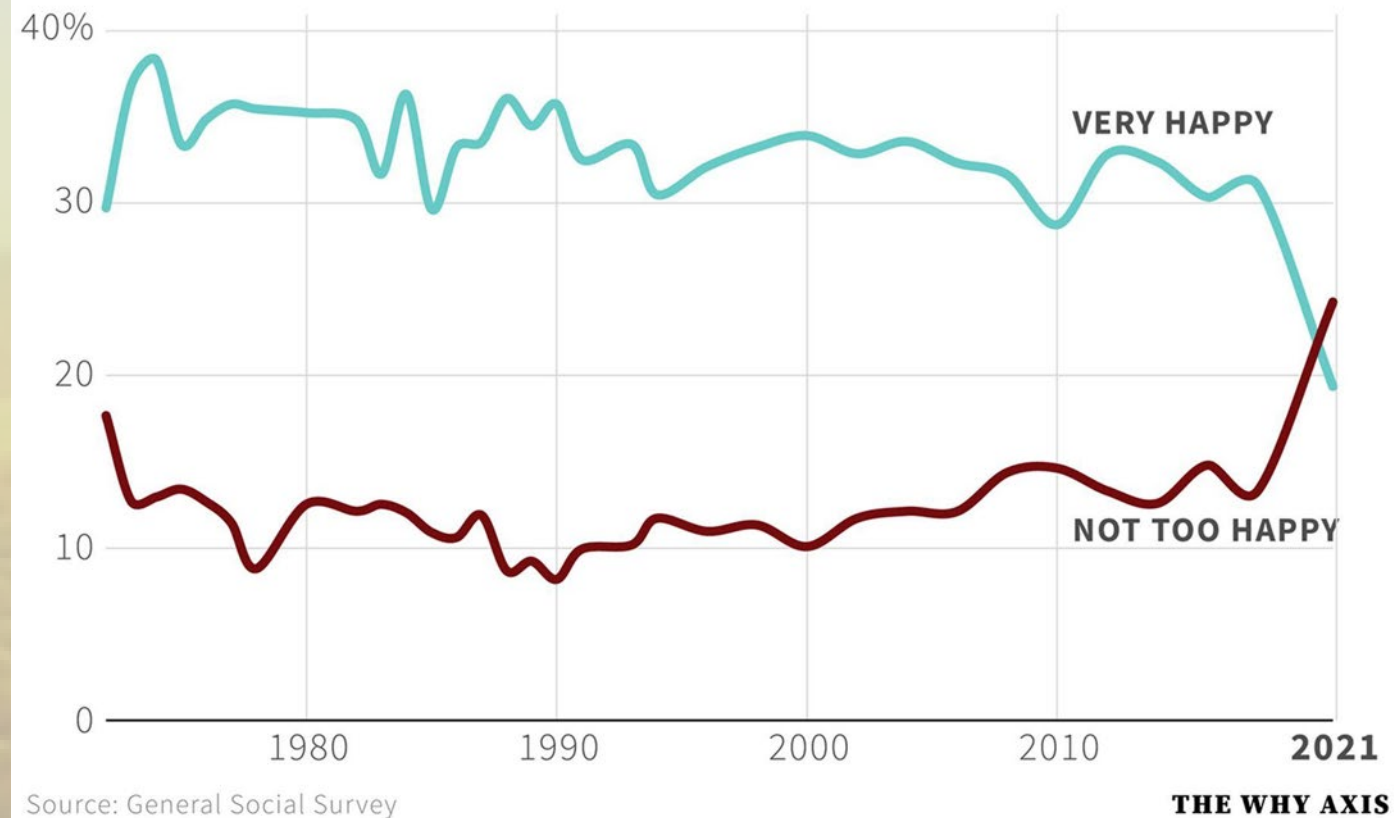
Cocktails-to-go  
Making cannabis essential  
Telehealth  
Hotels to housing  
mRNA vaccines  
Robot deliveries  
Optional college exams  
Direct cash assistance  
Online education  
QR codes everywhere  
“Warp Speed” government investing  
Free school meals – for everyone  
Netflix for jobs  
“Streeteries”  
Voting by mail  
Zooming  
“Silent” restaurant service



# Covid Accelerated Mood Changes

## Pandemic misery

Share of Americans saying they're "very happy" or "not too happy," 1972 -- 2021





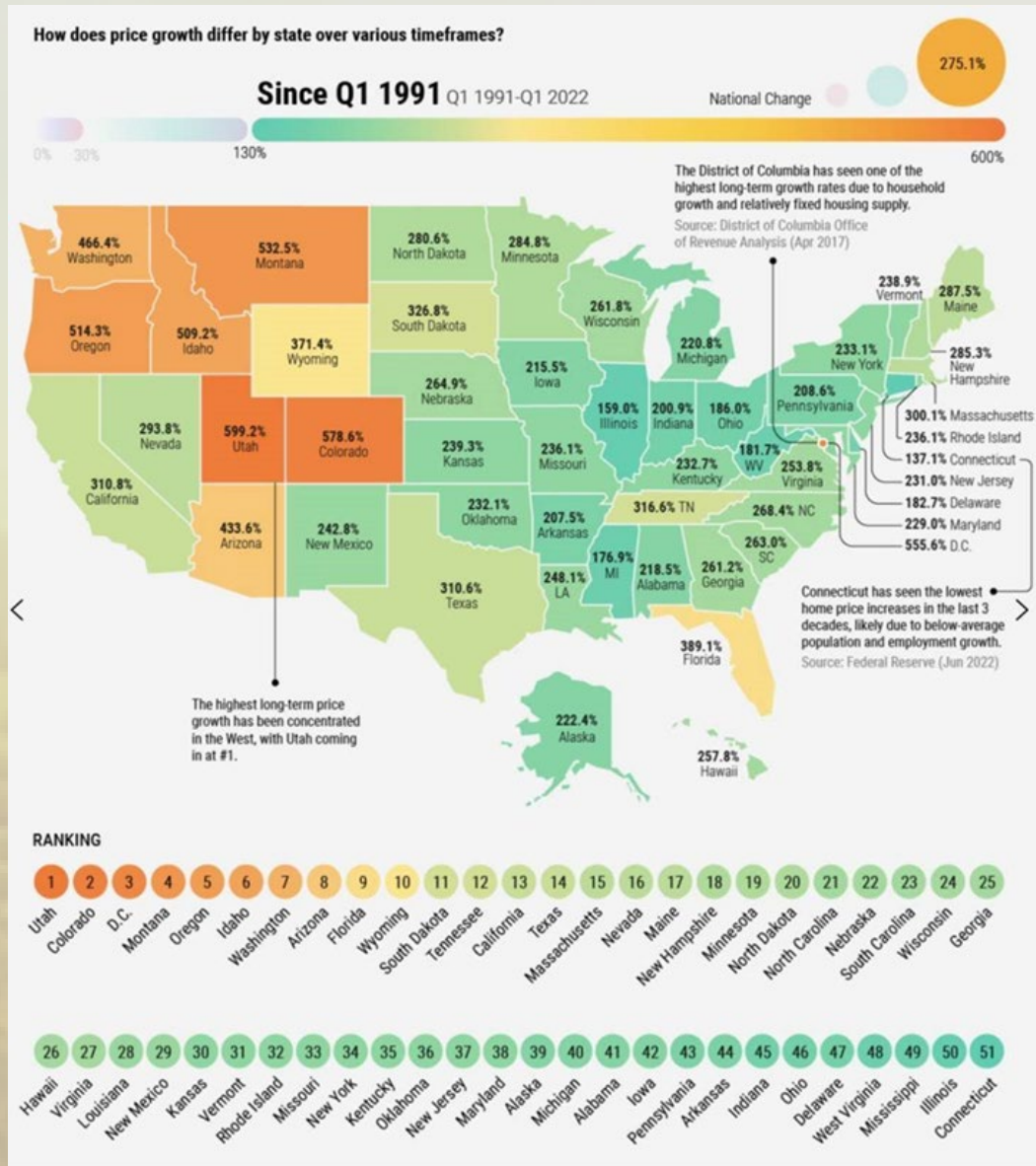
## Supply Shock Continues

China Locks Down Megacity & Industrial Chengdu as Covid Zero Intensifies  
21 Million People, 700 Covid Cases  
Electronics, Automaker Supply Chains at Risk of Disruption

August 31, 2022 Bloomberg

**Staycations Urged!**







# Major Events = Minor Blips

## S&P 500 Response to Geopolitical Events

	Year	Change in S&P 500 at trough	Days to recovery
Attack on Pearl Harbor	1941	-19.8%	307
Iraq invades Kuwait	1990	-16.9	189
N. Korea invades S. Korea	1950	-12.9	82
Tet Offensive	1968	-6.0	65
Munich Olympics	1972	-4.3	57
Gulf of Tonkin incident	1964	-2.2	41
Saudi Aramco drone strike	2019	-4.0	41
North Korea missile crisis	2017	-1.5	36
Terrorist attacks on U.S.	2001	-11.6	31
Madrid bombing	2004	-2.9	20
Bombing of Syria	2017	-1.2	18
Cuban missile crisis	1962	-6.6	18
Boston Marathon bombing	2013	-3.0	15
Yom Kippur War	1973	-0.6	6
Iranian general killed in airstrike	2020	-0.7	5
London subway bombing	2005	0	4
Hungarian Uprising	1956	-0.8	4
Suez Crisis	1956	-1.5	4
U.S. pulls out of Afghanistan	2021	-0.1	3
Attempted assassination of Reagan	1981	-0.3	2
Six-Day War	1967	-1.5	2
Kennedy assassination	1963	-2.8	1

Source: LPL Research, S&P Dow Jones Indices, CFRA



# STOCK MARKET NOT YET TOO TRAUMATIZED



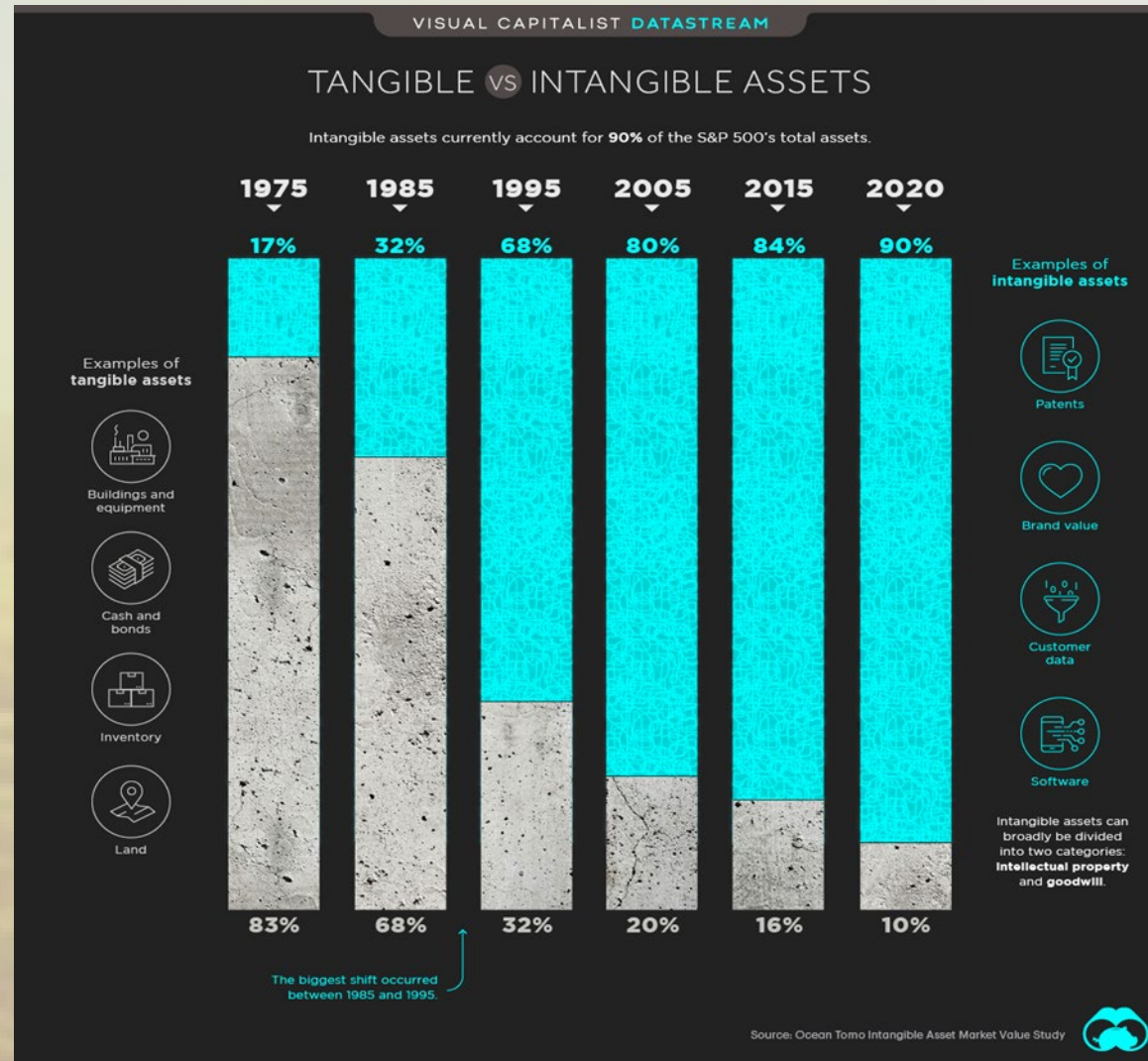
Data from 1/1/2021 - 12/31/2021. Source: ICL, FactSet, Avantis Investors.

Past performance is no guarantee of future results.

1

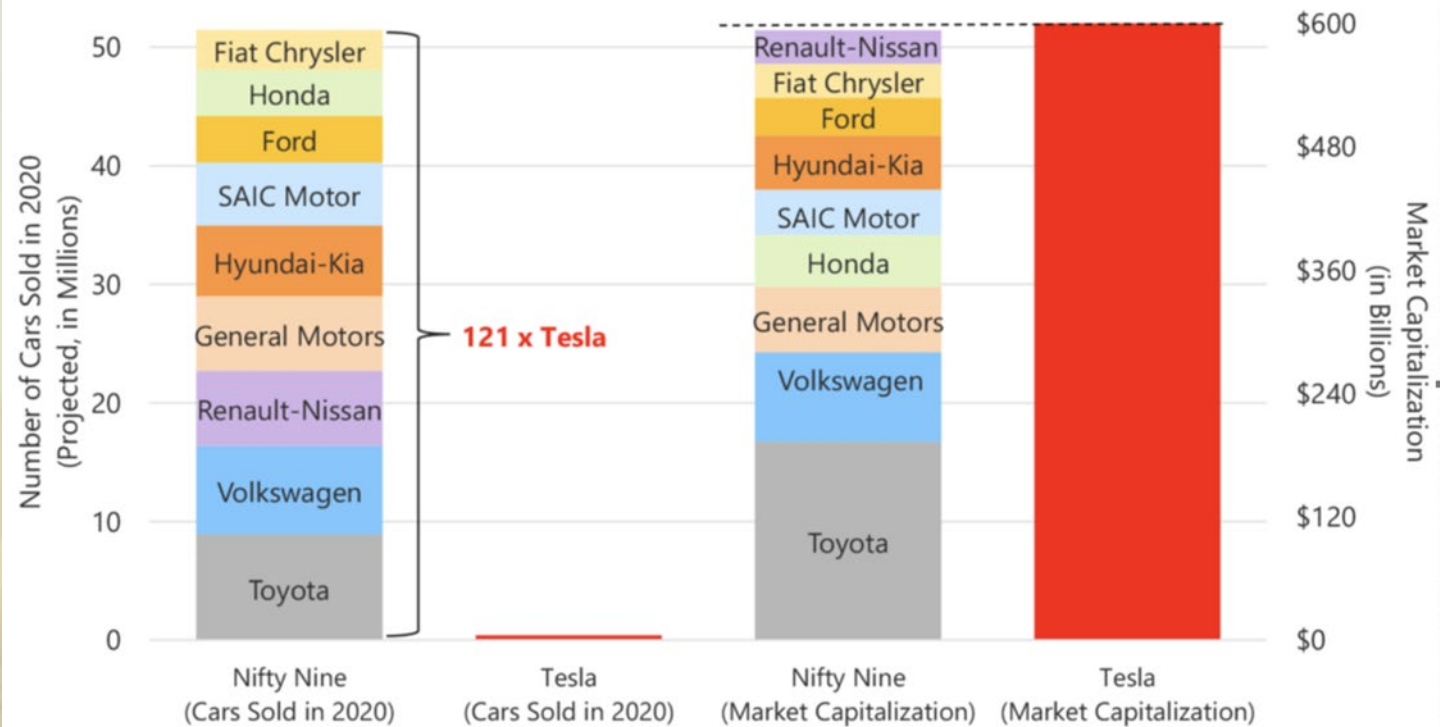


# Major Shift From Tactile to Virtual Assets





### “Nifty Nine” Carmakers, Sales, and Market-Cap Compared to Tesla, as of December 7, 2020



Source: Research Affiliates, LLC, based on data from Yahoo Finance, Ychart, and financial reports published by Tesla, Toyota, Volkswagen, Hyundai Motor Company, General Motors, Ford, Honda, Renault, Nissan, and Fiat Chrysler Automobiles. Market-capitalization numbers from Yahoo Finance and Ychart exclude treasury stock.



## **An Example of the New Reality**

### **People Are Paying Millions For Land in the Metaverse**

Startling amounts of money are being spent on virtual real estate inside Worldwide Webb Land and other metaverses. In June, a metaverse investment firm called Republic Realm spent \$913,000 on a parcel in Decentraland, another metaverse. It was the largest deal of its kind at the time. About six months later, the same firm bought 792 plots in Sandbox, still another metaverse, from video game company Atari for an eye-watering \$4.23 million.

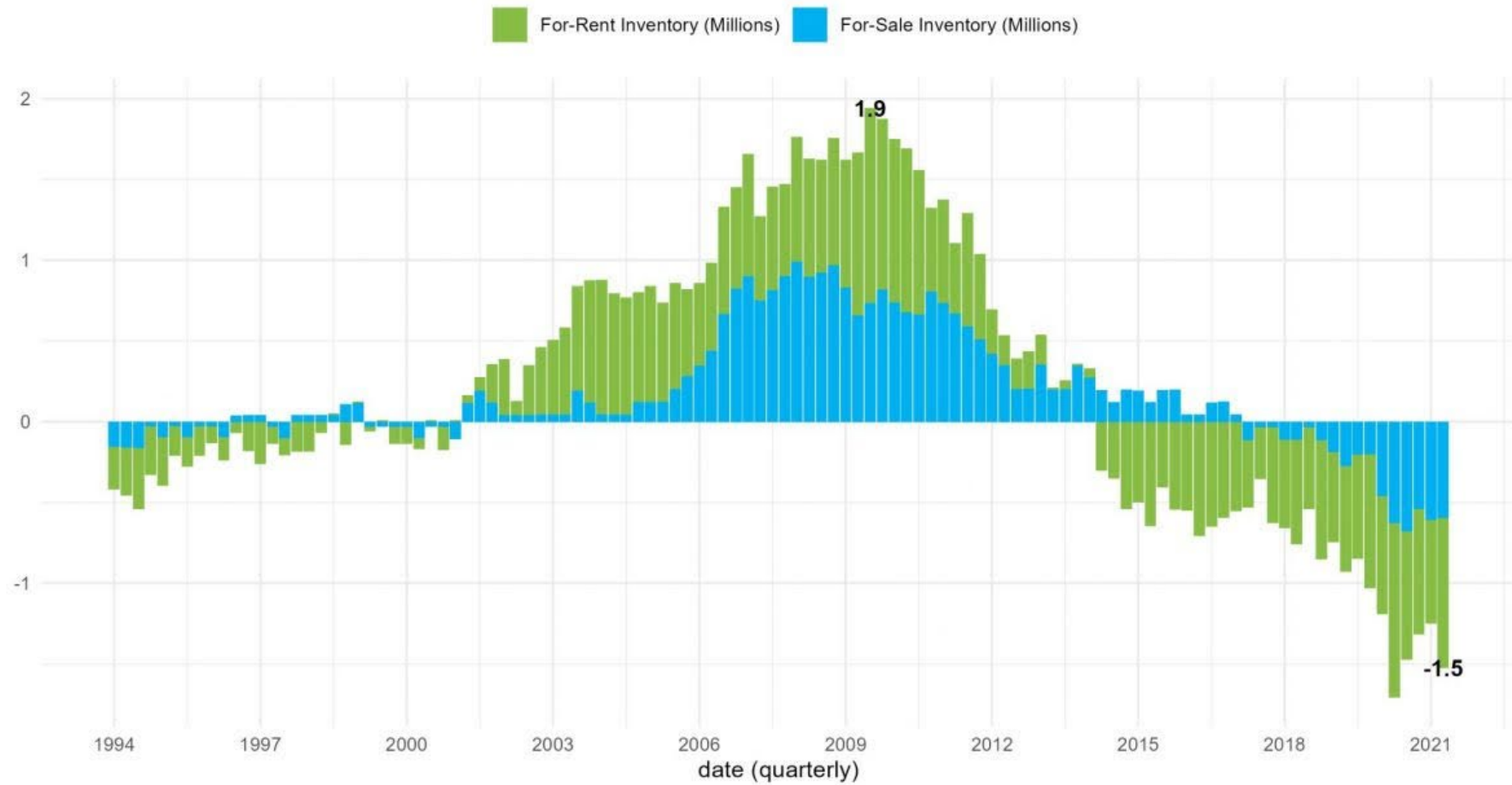
Source: CNet March 24,2022

### **It's All About The Eyeballs**



## U.S. housing has gone from oversupply to undersupply

U.S. vacant housing over/undersupply



@lenkiefer Source: Author's calculation based on US Census Bureau data, negative values reflect undersupply  
The under/oversupply of vacant housing is estimated based on the average vacancy rate from 1994Q1-2003Q4. Data through 2021Q2



## It Remains All Relative

### How Much Living Space Does \$1,500/mth Get You in the U.S?

Average apartment size for a monthly rent of \$1,500 in selected U.S. cities/boroughs in 2022 (in sq. ft.)

Colombus 1,230		Baton Rouge 1,259		El Paso 1,305		Wichita 1,597			
Nashville 799		Orlando 811		Atlanta 821		New Orleans 1,091		Oklahoma 1,431	
Seattle 475		Chicago 540		Denver 681		Las Vegas 934			
Manhattan 262	Brooklyn 357		Los Angeles 454	Philadelphia 679		Dallas 881		Memphis 1,375	
San Francisco 345									

Source: RentCafe/Yardi Matrix

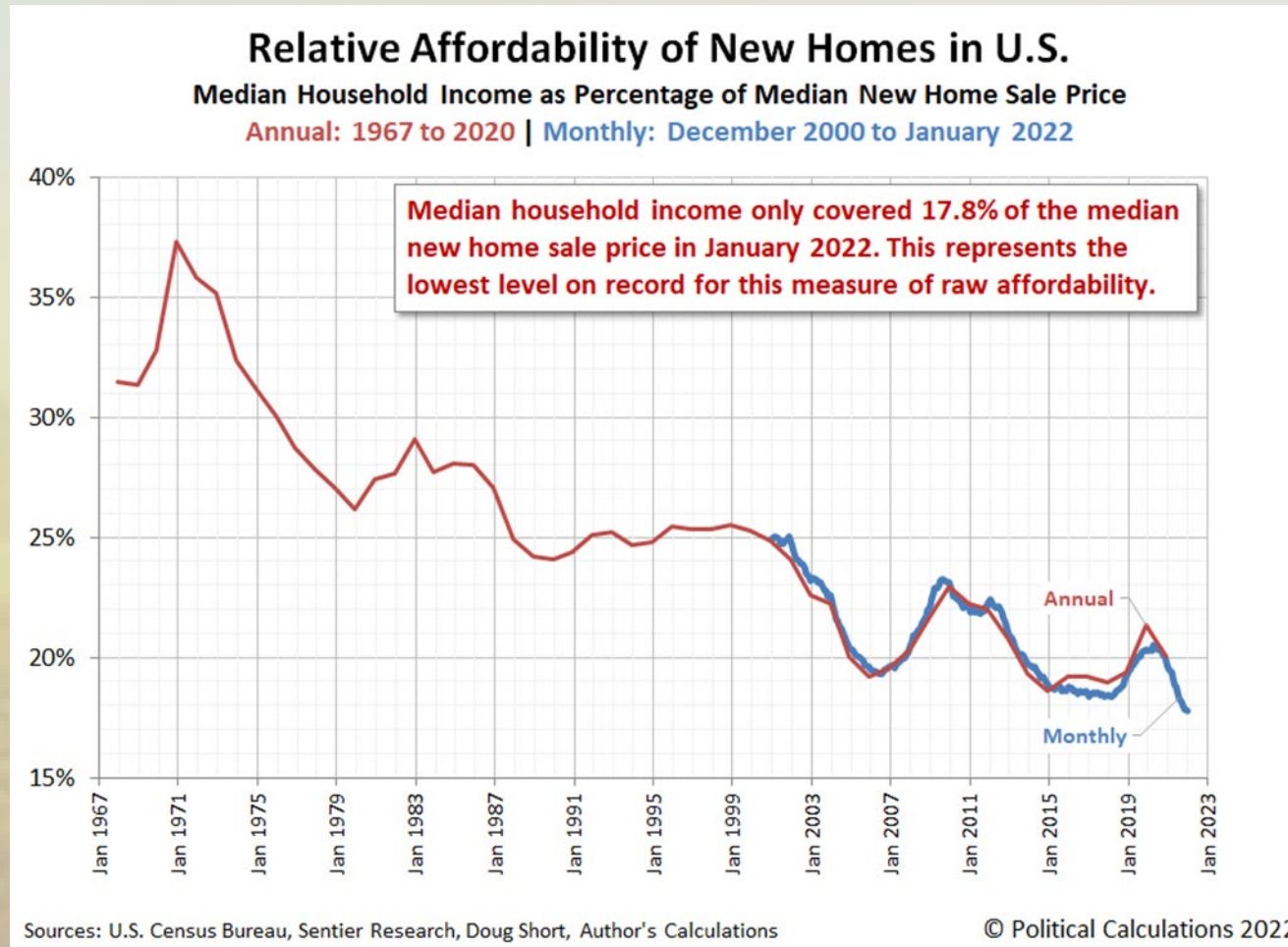


statista





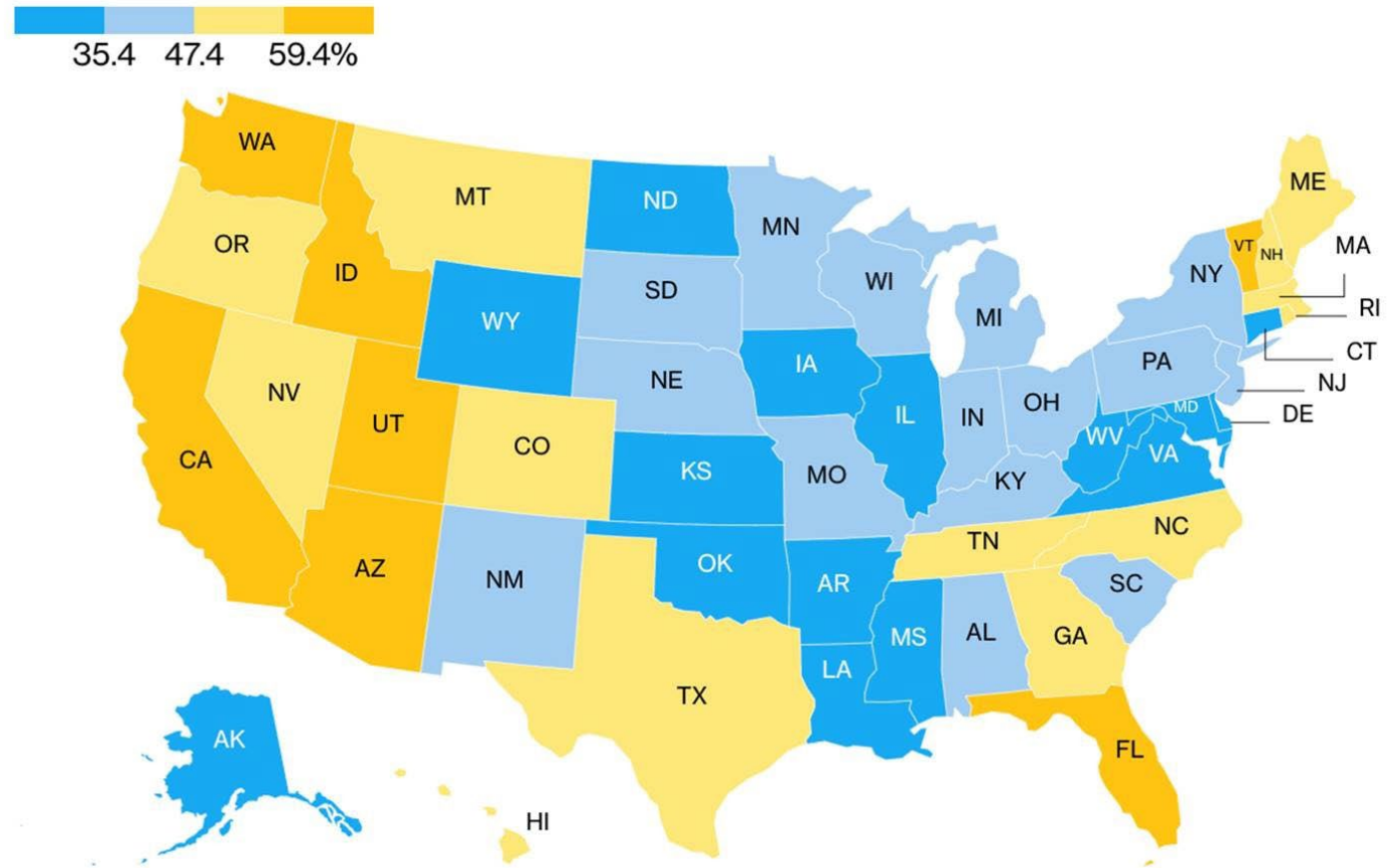
# Increasing Affordability For 50 Years But Now Has Started to Change in 2022





## Equity Rich

Soaring home prices and large down payments on new loans push share of equity rich in Florida to 60.4% last quarter from 33.4% a year earlier



Source: ATTOM Q2 2022 U.S. Home Equity and Underwater Report

Note: Equity-rich homes are those with a loan to value ratio of 50% or lower, meaning the property owner had at least 50 percent equity.

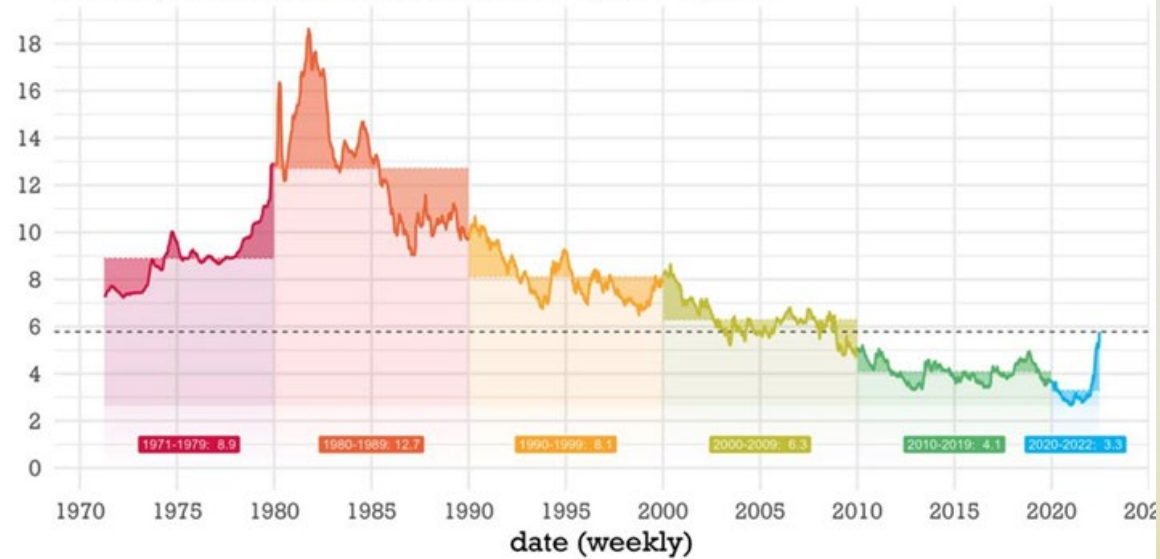


Yet Signs  
Of  
Strain Are Now Clearly Emerging



## Mortgage rates over 5+ decades

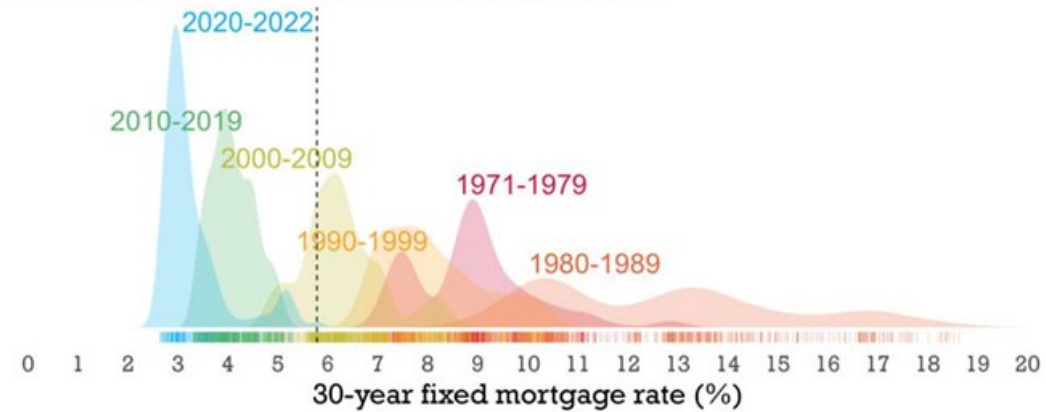
U.S. Weekly Average 30-year fixed mortgage rate April 2, 1971 to June 16, 2022  
Line weekly value, dark shaded area from decade average to weekly value



@lenkiefel Source: Freddie Mac Primary Mortgage Market Survey

## Estimated density over weekly values

Ticks at bottom weekly observations, dotted line value for June 16, 2022





## Tick, Tick, Tick

### **Household Debt Rises to \$16.15 Trillion Amid Growth in Housing and Non-Housing Balances**

Total household debt rose \$312 billion, or 2 percent, in the second quarter of 2022 to reach \$16.15 trillion, according to the latest *Quarterly Report on Household Debt and Credit*. Mortgage balances—the largest component of household debt—climbed \$207 billion and stood at \$11.39 trillion as of June 30. Credit card balances saw their largest year-over-year percentage increase in more than twenty years, while aggregate limits on cards marked their largest increase in over ten years. Transitions into delinquency ticked up but remained very low compared to historical levels. New York Federal Reserve

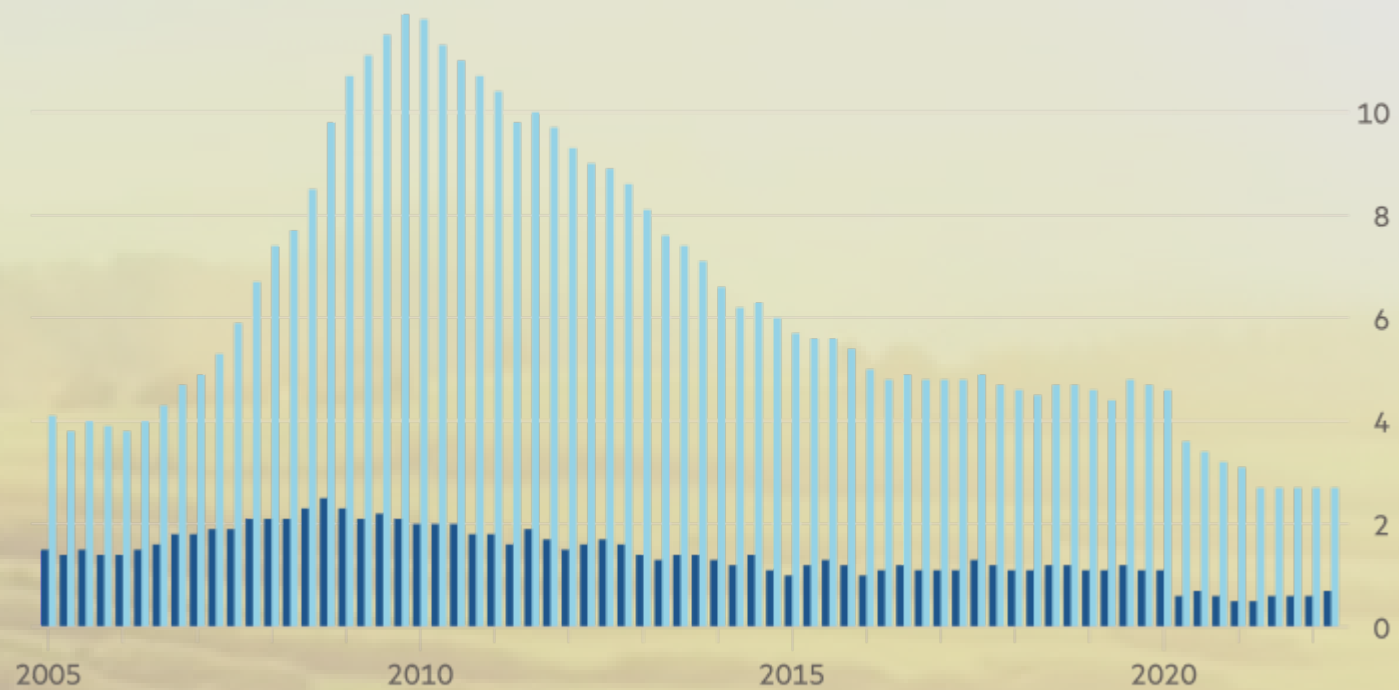


## Recent delinquencies on US consumer loans are ticking up

Quarterly (per cent)

■ 30 days late

■ Total



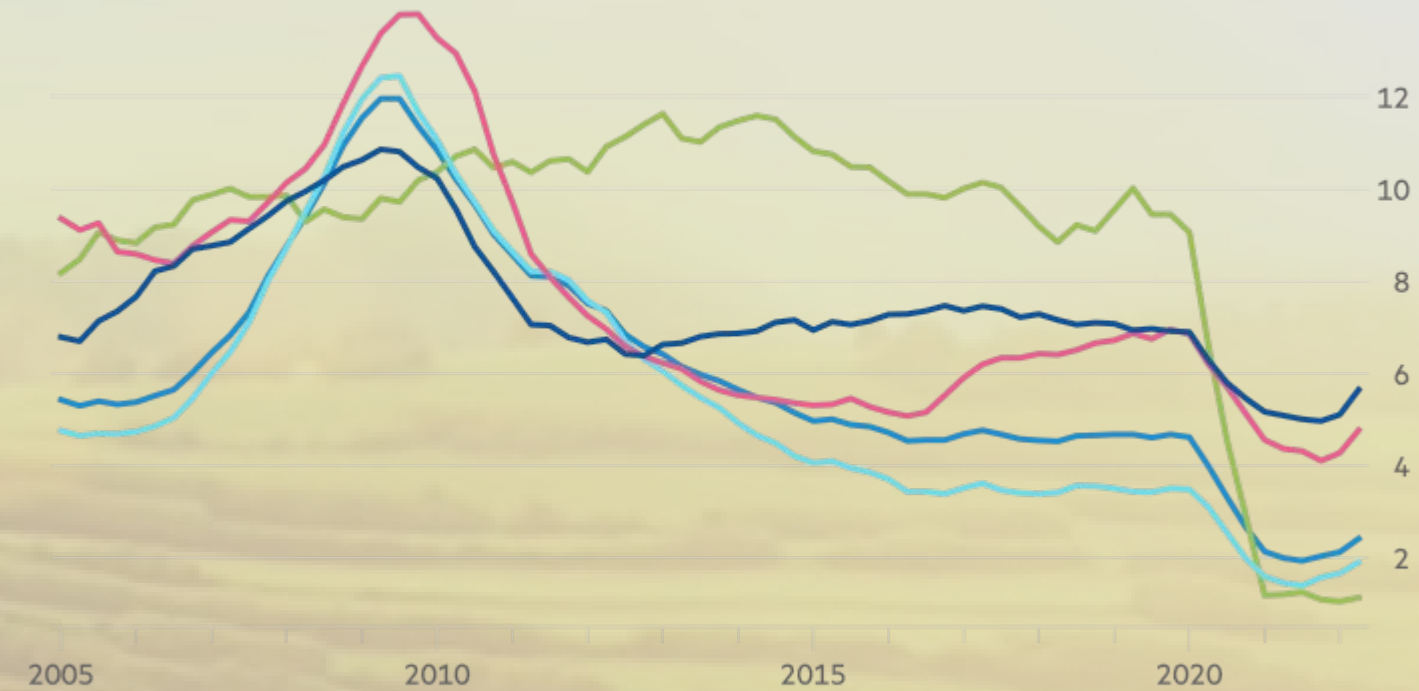
Source: NY Fed  
© FT



## 30+ day delinquent balances by loan type

Quarterly (per cent)

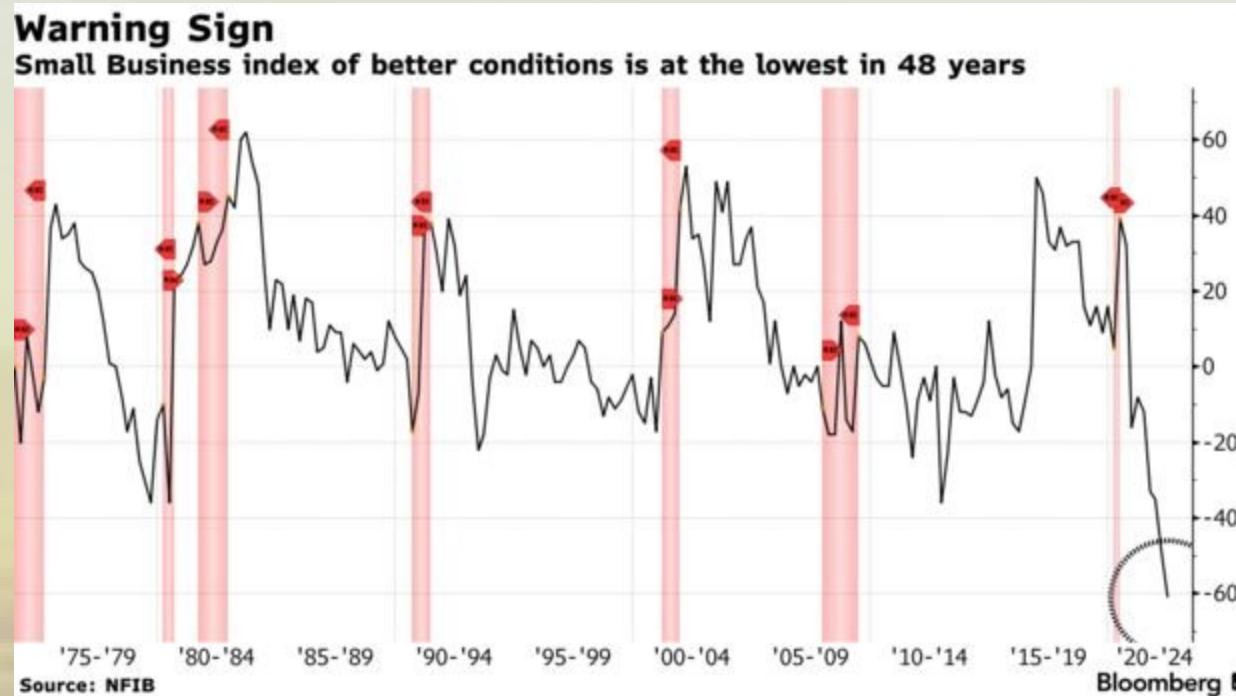
Auto Credit card Mortgage Student loan Total



Source: NY Fed  
© FT



# Moody, We Are





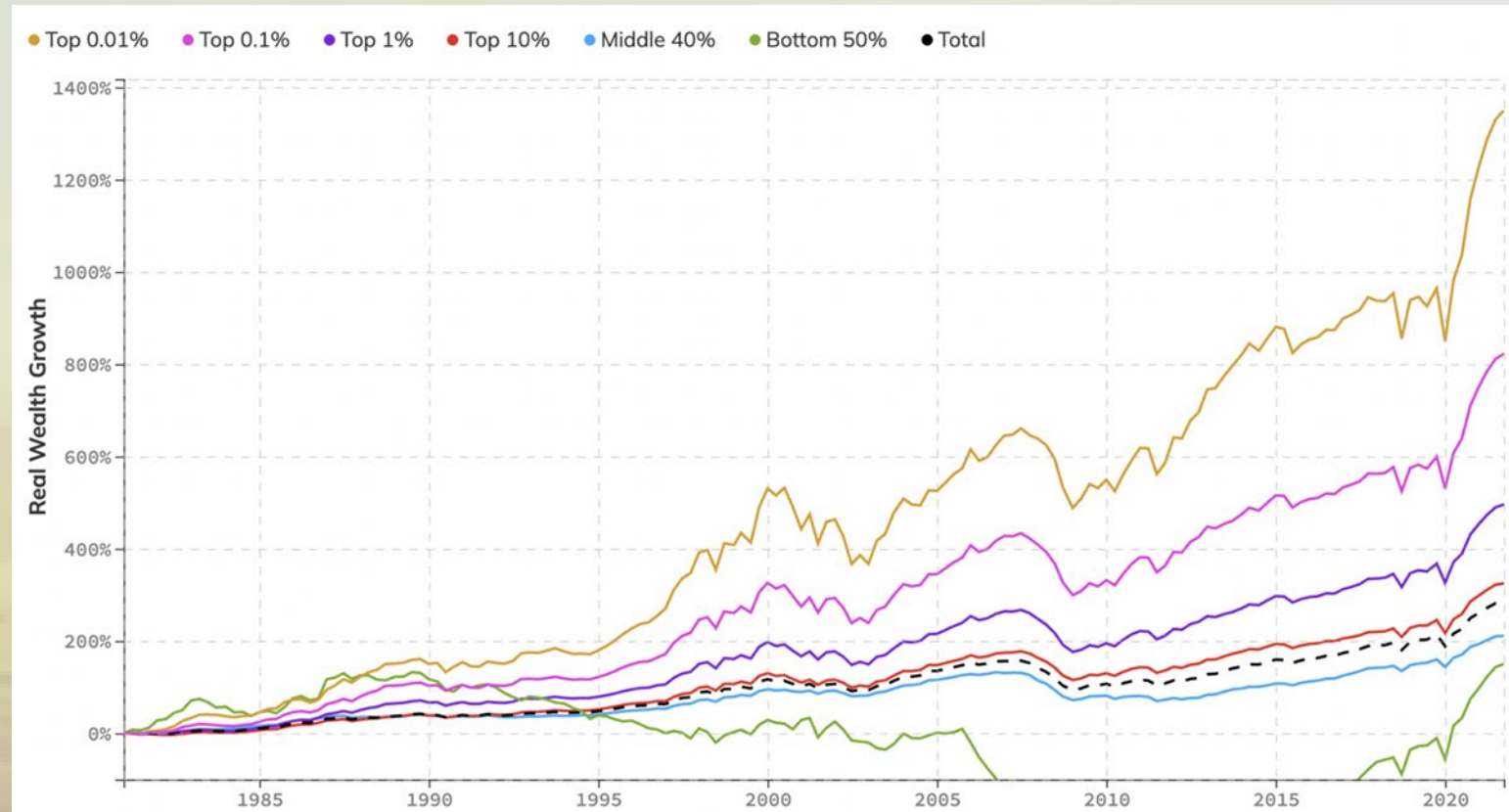


One of the Key Challenges Emerging is  
Talent

Has Work Become a 4 Letter Word

Or Is Time More Valuable than Treasure?

A Few Perspectives

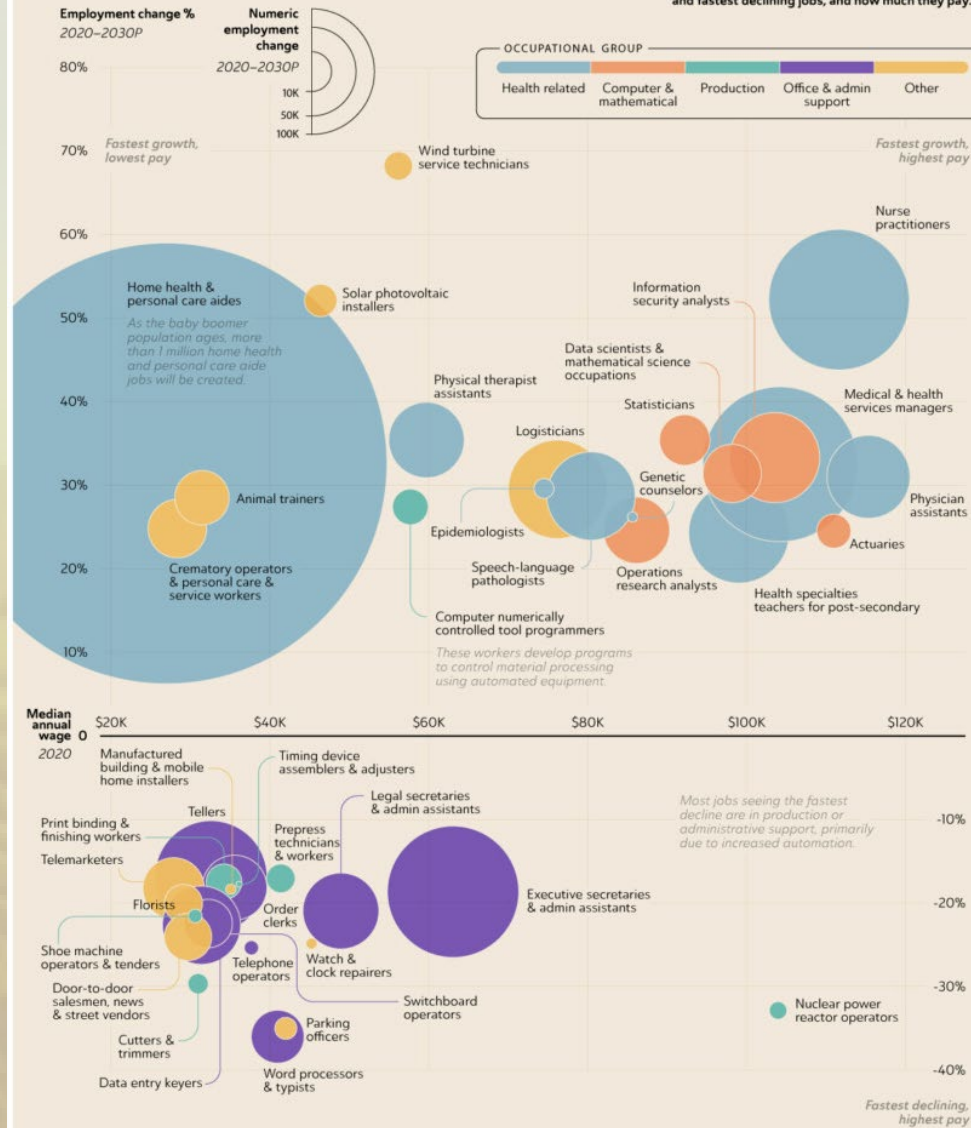


Source: The Big Picture by Barry Ritholtz, February 7, 2022



## OVER THE NEXT DECADE

The U.S. Bureau of Labor Statistics predicts that 11.9 million new jobs will be created from 2020 to 2030—a growth rate of 7.7%. Below, we show the fastest growing and fastest declining jobs, and how much they pay.



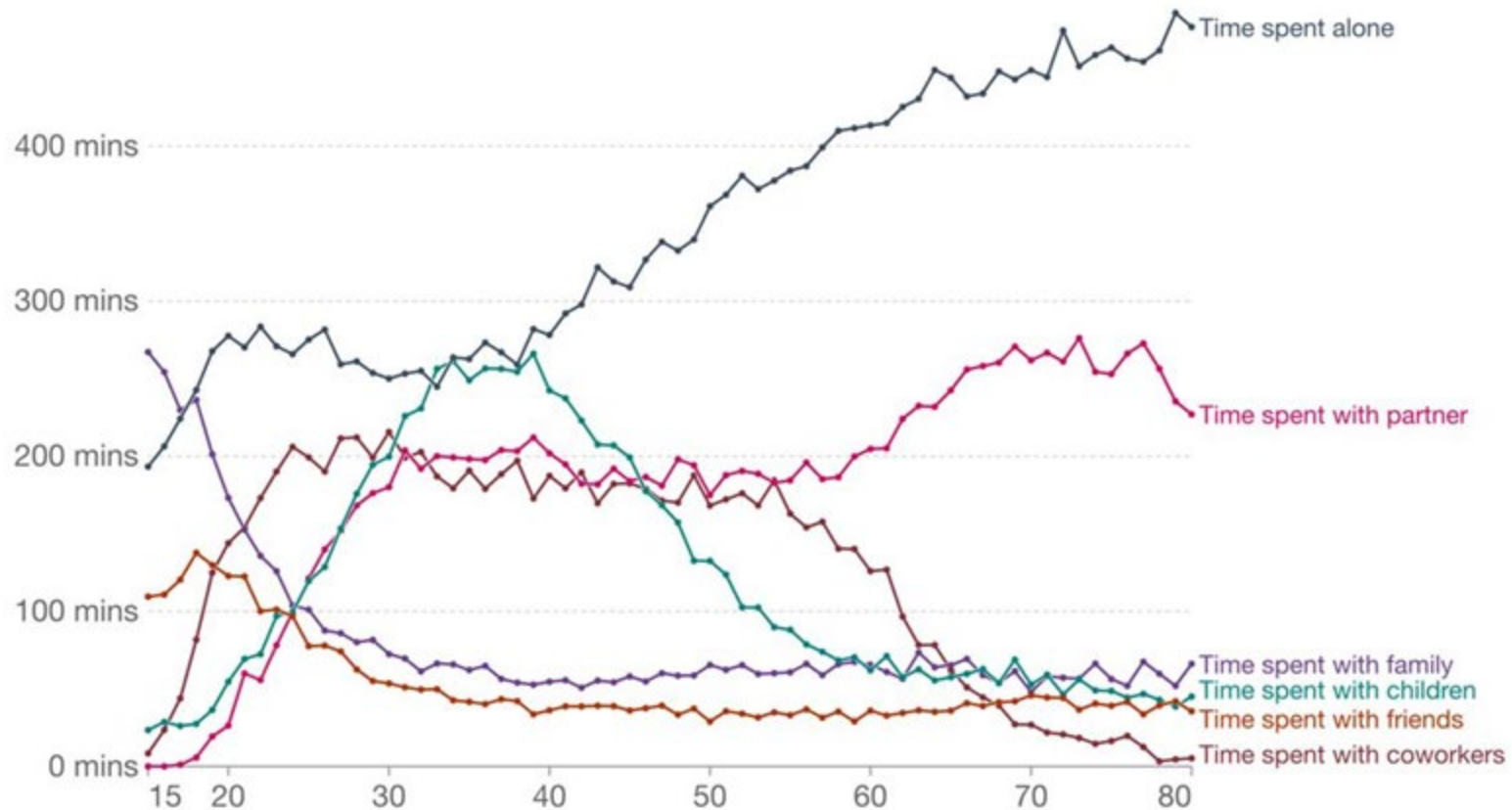
Source: U.S. Bureau of Labor Statistics



## Who Americans spend their time with, by age

Our World  
in Data

Average time spent with others is measured in minutes per day, and recorded by the age of the respondent. This is based on averages from surveys spanning 2009 to 2019.



Source: American Time Use Survey (2009-2019) and Lindberg (2017)

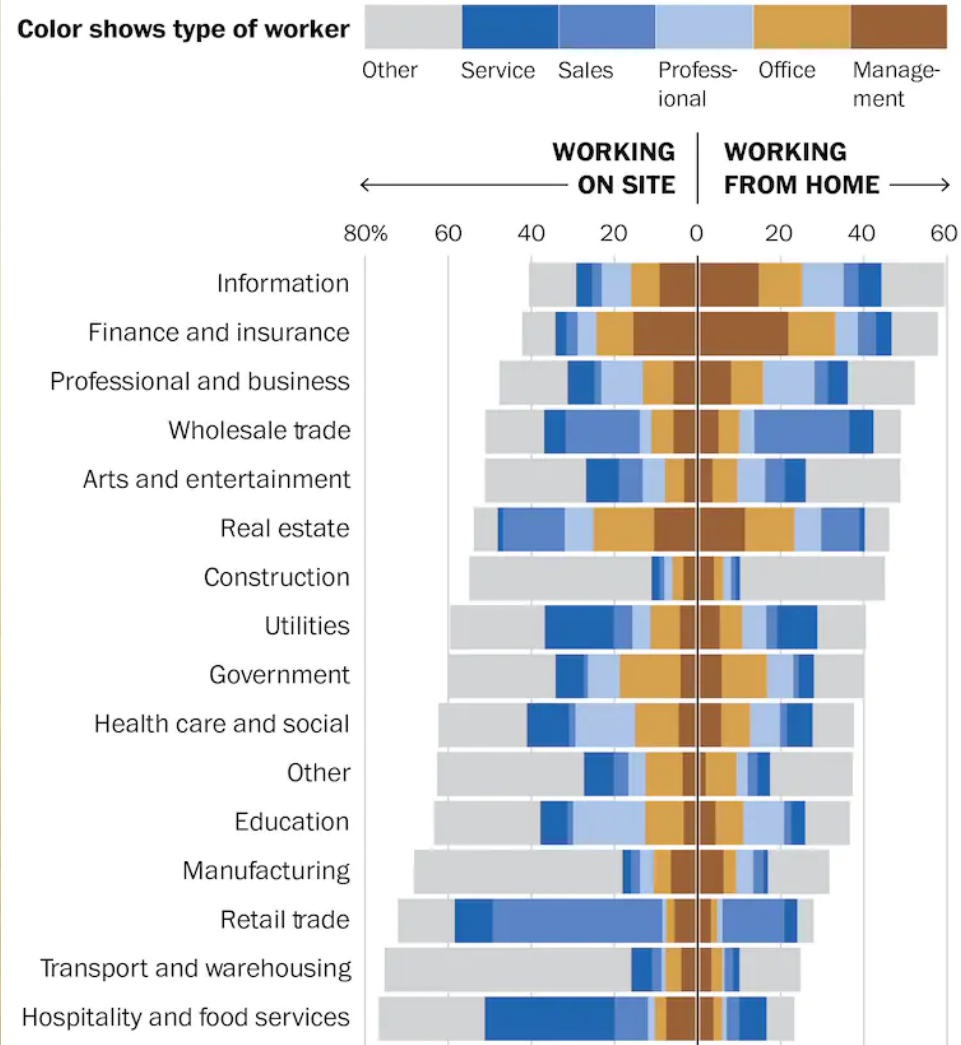
CC BY

Note: Relationships used to categorize people are not exhaustive. Additionally, time spent with multiple people can be counted more than once (e.g. attending a party with friends and spouse counts for both "friends" and "partner")



## White-collar work goes out of office

Share of total days worked from home, by industry and occupation



Note: Based on data from November 2021 to June 2022.

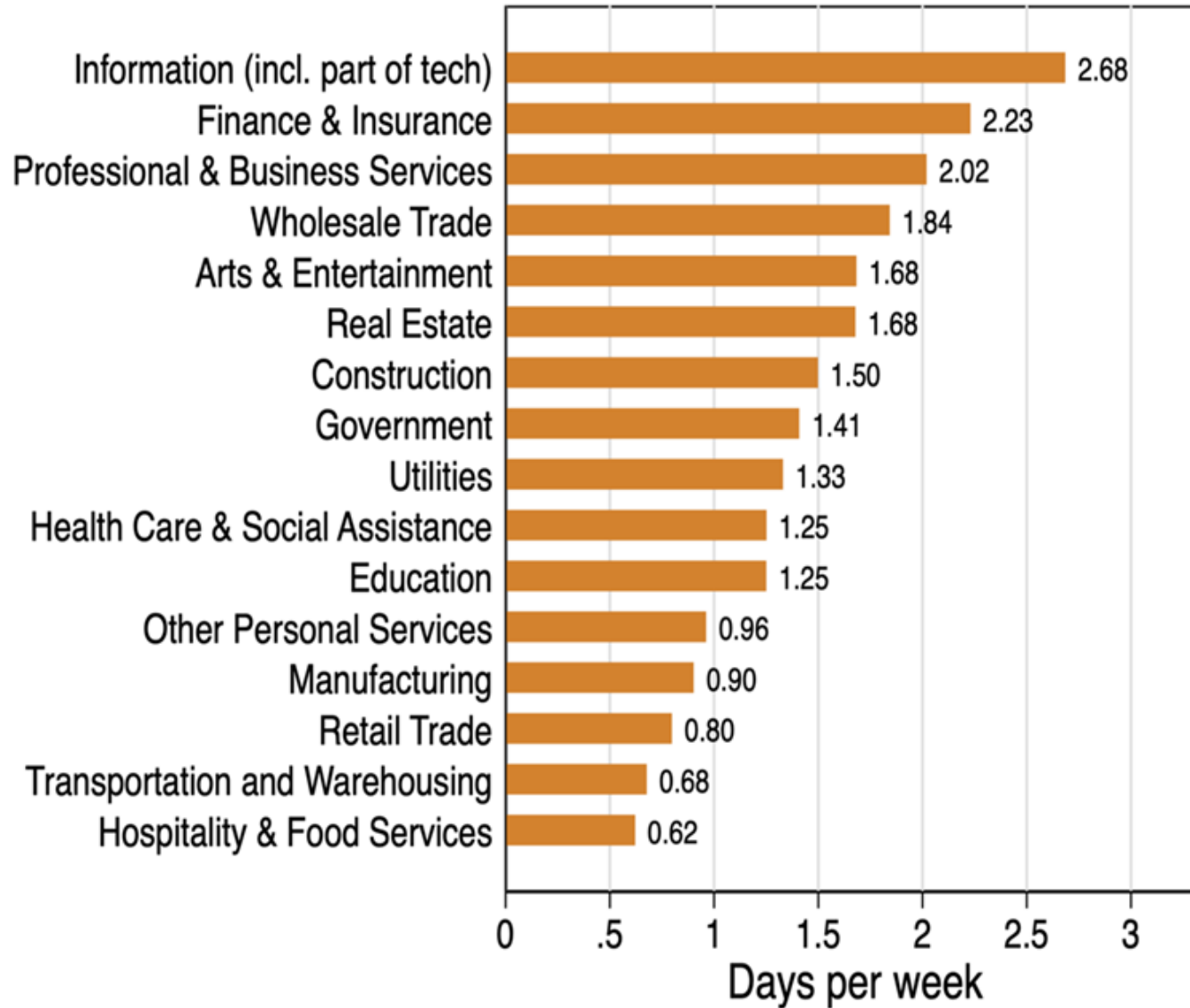
Management includes business and financial.

Source: José María Barrero, Nicholas Bloom and Steven Davis

DEPARTMENT OF DATA / THE WASHINGTON POST



## Current working from home: All wage and salary employees





# Even in Iowa Banking

Significant Expansion of Remote Workers in Banking

Post Covid – Not Returning to the Office

Current Openings in U.S. – 2 Openings for Every Applicant

In Banks – Severe Shortages

Emerging Remedy = Remote Workers

Initially in Specialized Areas – IT, CFO, Ag Lending

Now Arising in the C Suite

Does This Impact Banking Execution?

Expect a Regulatory Response and Guidance



## What steps has your bank taken to build its reputation as an employer of choice in its market(s)?







# TECHNOLOGY

The New Entrenched  
“No There” Virtual World  
Must Be Recognized

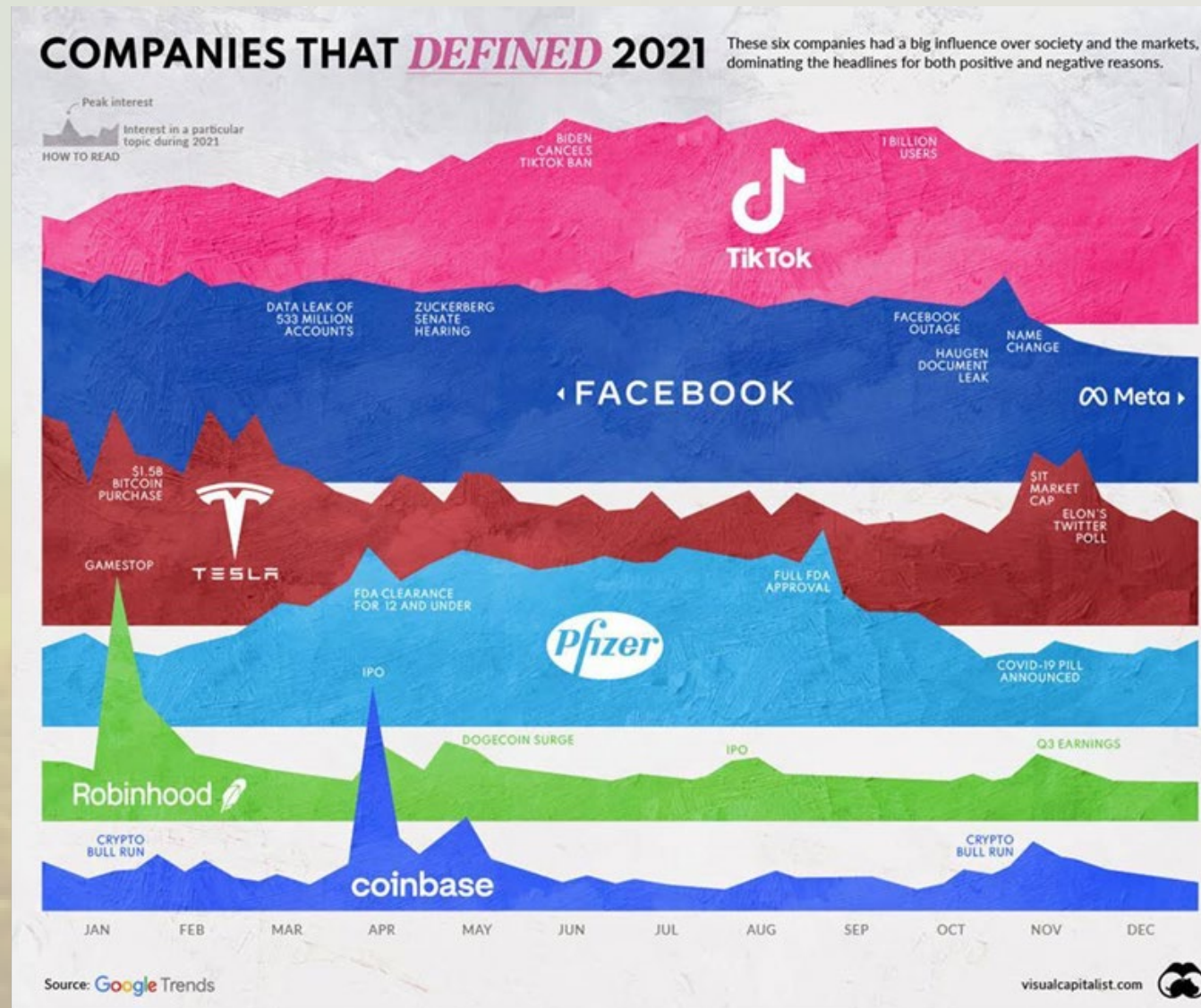


# One Unique Iowa Example of Technology's Virtual Impact on The Business of Banking

Facebook Survives in the Clouds  
Many Clouds in Altoona  
Lots of Water, Green, Energy and No Earthquakes  
Now at 8 with 4 More Buildings  
Each Building = @ \$900,000,000  
Changed Name to Meta  
Meta Bank (Novel Name)  
Facebook Needs Exclusive Rights  
Significant \$ Value In Name Meta  
Done Deal In This New World



# Covid Times





# Ever Present

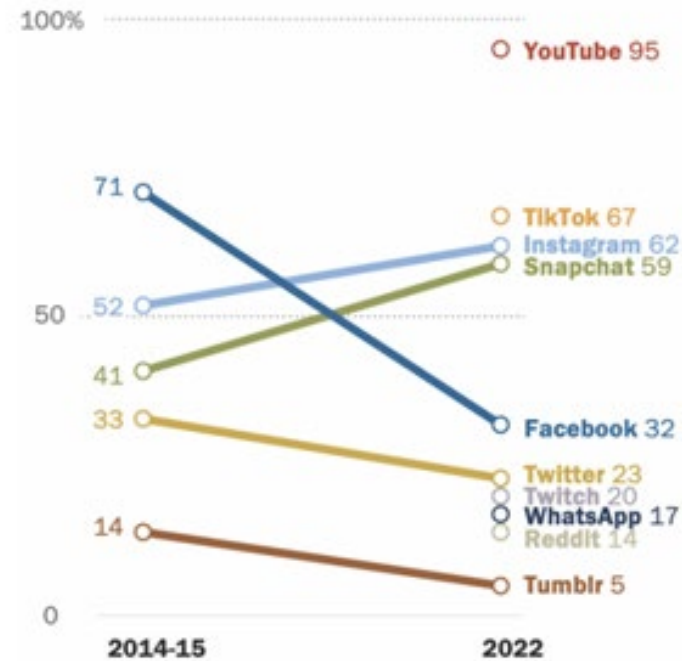




# Evolves Quickly

**Since 2014-15, TikTok has arisen;  
Facebook usage has dropped;  
Instagram, Snapchat have grown**

*% of U.S. teens who say they ever use any of the  
following apps or sites*



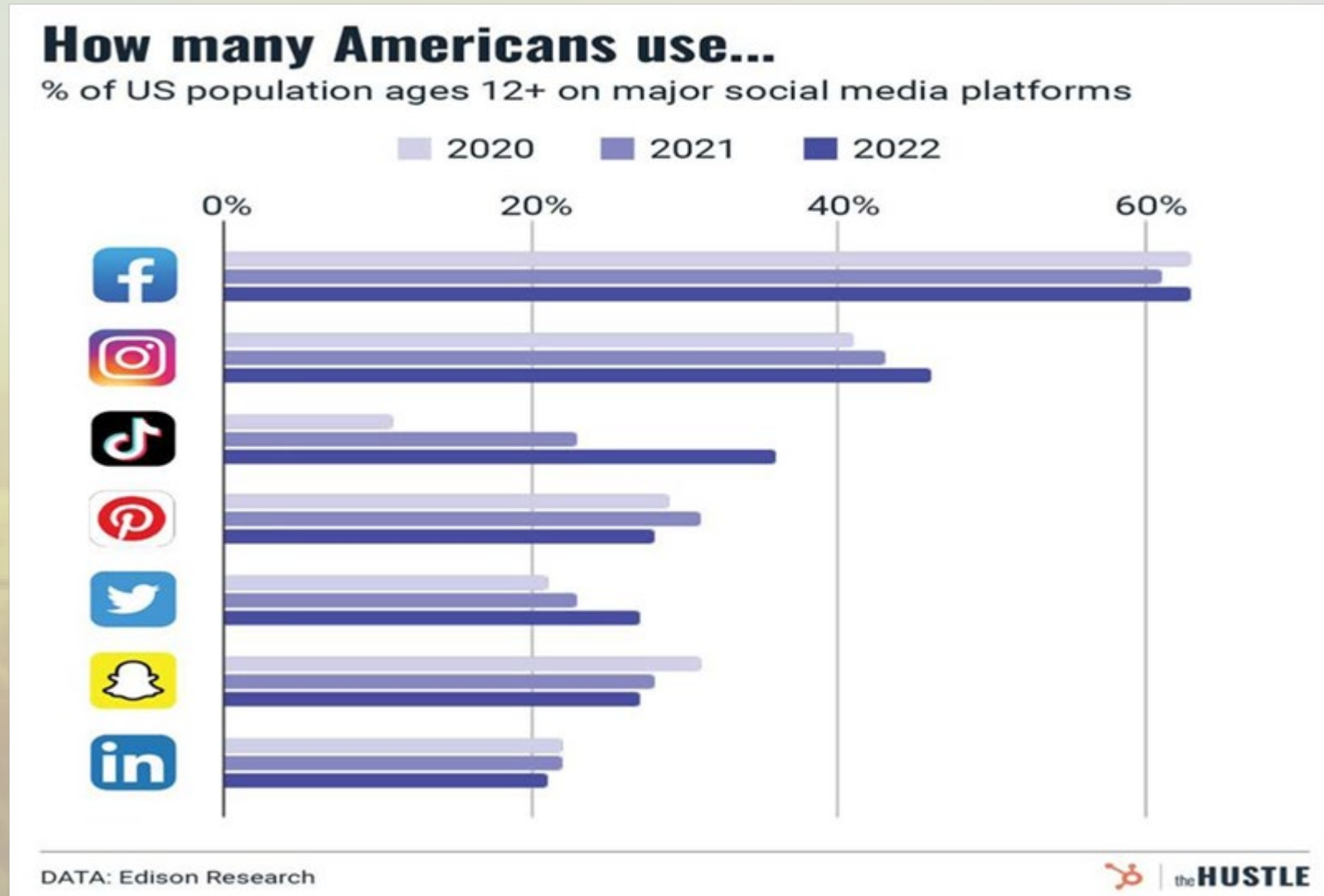
Note: Teens refer to those ages 13 to 17. Those who did not give an answer are not shown. The 2014-15 survey did not ask about YouTube, WhatsApp, Twitch and Reddit. TikTok debuted globally in 2018.

Source: Survey conducted April 14-May 4, 2022.

"Teens, Social Media and Technology 2022"



## Still Dominant Oligarchs





Now Impactful Events Are Virtual

Example of This New Hyper Real World

In 1963 – Assassination of President (Physical)

In 2022 – Now Virtual Assassinations Via Social Media  
(i.e., Cancel Culture)



# Key Evolutions in for Products and Processes

## IT'S AN APP WORLD OUT THERE

THEN	NOW
Cable TV	
Cash payments	
Taxis	
Shopping malls	
Take-out	
Meet through friends	
Traditional networking	
In-person	
Real estate agents	
Radio	
Gyms	
Traditional banks	

APP ECONOMY INSIGHTS

Chart by author. In the chart: Netflix ([NFLX](#)), Alphabet ([GOOG](#)), Disney ([DIS](#)), Apple ([AAPL](#)), PayPal ([PYPL](#)), Square ([SQ](#)), Uber ([UBER](#)), DiDi Global ([DIDI](#)), Lyft ([LYFT](#)), Amazon ([AMZN](#)), Pinterest ([PINS](#)), Etsy ([ETSY](#)), DoorDash ([DASH](#)), GrubHub ([GRUB](#)), Meituan ([OTCPK:MPNGY](#)), Match Group ([MITCH](#)), Bumble ([BMBL](#)), Momo ([MOMO](#)), Twitter ([TWTR](#)), Facebook ([FB](#)), Teladoc ([TDOC](#)), Zoom Video ([ZM](#)), Slack ([WORK](#)), Zillow ([Z](#)), Redfin ([RDFN](#)), Opendoor ([OPEN](#)), Spotify ([SPOT](#)), Peloton ([PTON](#)), SoFi Technologies ([SOFI](#)), Bitcoin ([BTC-USD](#)), Ethereum ([ETH-USD](#)). Source: Seeking Alpha, July





## Key Findings From Bank Director Technology Survey, September 3, 2022

### Hit-or-Miss on Digital Applications

**Nearly half of respondents** say their bank has a fully digital process for opening retail deposit accounts, with larger shares representing banks over \$1 billion reporting as much. Far fewer respondents report a fully digital process for retail loans, small business deposits or loans, or commercial loans.

### Generational Divides

**Just 25% of the directors and executives surveyed** say their bank has the tools it needs to effectively serve Generation Z (16-25 years old), and half believe their institution can effectively serve millennials (26-40). Eighty-five percent say as much about Generation X (41-56), and 93% say this of baby boomers (57-75).

### All-In on the Cloud

**Eighty-eight percent say** their bank uses cloud technology to generate efficiencies internally; 66% use application programming interfaces (APIs), which allow different applications or systems to exchange data. Robotic process automation (32%) and artificial intelligence or machine learning (19%) are far less commonly used.

### New Frontiers

**Three-quarters say their board or leadership team** has discussed risks or opportunities related to cryptocurrency or digital assets in the past 18 months. Sixty-four percent say the same of banking as a service (BaaS), and 69% say that of environmental, social and governance issues. Cannabis, on the minds of 58%, has been more commonly discussed at banks under \$5 billion of assets.

### Views on Collaboration

**More than half of respondents view** technology companies as vendors only, as opposed to collaborating with or investing in these firms. Thirty-nine percent, primarily representing banks over \$1 billion in assets, say their institution has collaborated with technology providers on specific solutions. Twenty percent have participated in a venture fund that invests in technology companies, and 11% have directly invested in one or more of these companies.



There Is, However,  
An Ever Present Key Risk  
Cyber Security

Its Day to Day Battle

Cyber Insurance

More Expensive Less Coverage

Ransomware Attacks

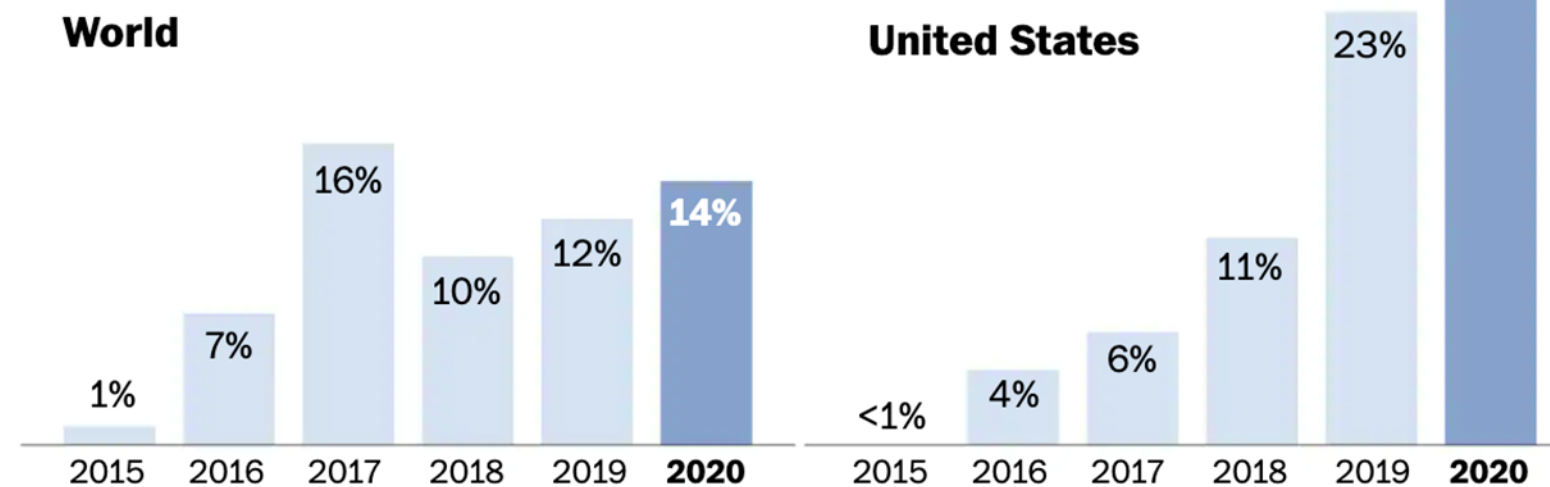
Business Takeover Threats



## Insecure in this Virtual World

### Ransomware attacks are becoming more common in the United States

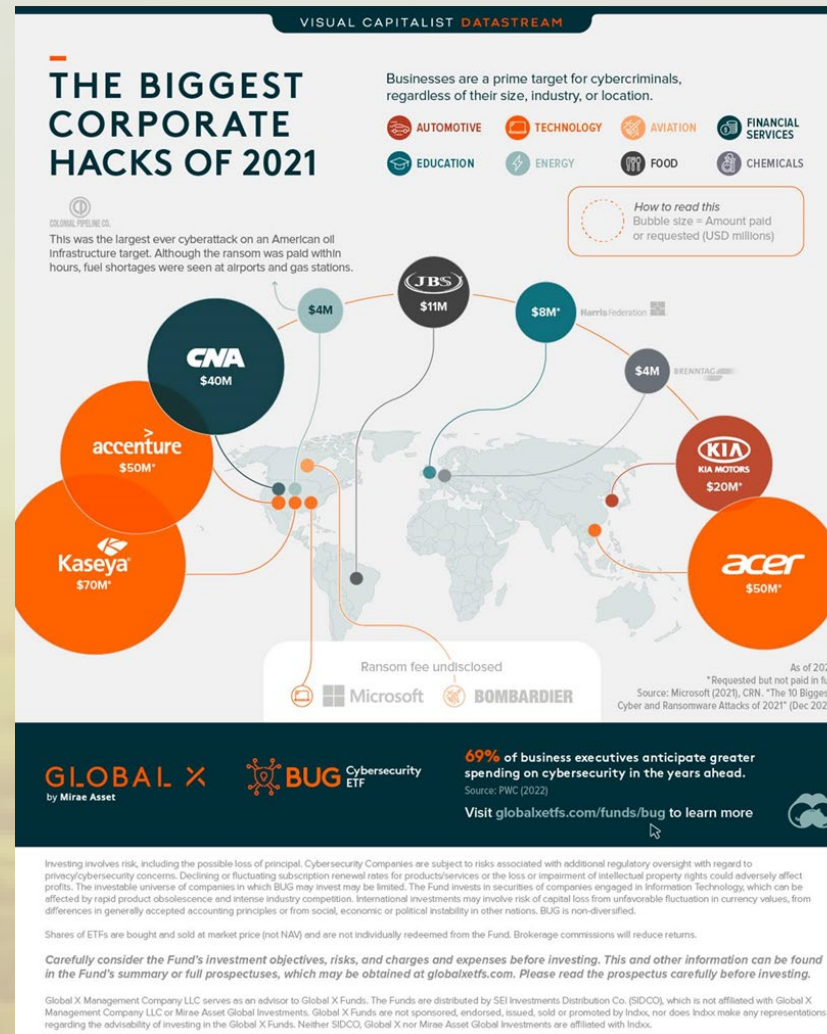
Ransomware accounted for 30% of all U.S.-based cyberattacks reported to and confirmed by Verizon data breach researchers in 2020, more than double the rate for the world.



Source: Verizon 2021 Data Breach Investigations Report



# Even Sophisticated Can Be Breached





## Another Consequence of Technology is A Greater Loss of Control Ahead

TEXAS NEWS

**'Woke up sweating': Some Texans shocked to find their smart thermostats were raised remotely**

This is a Metaphor For Your Vendors' Services



And The More Information We Receive  
The Less Informed or Knowledgeable We Are



Think of Technology and the Internet as a Hammer

**Batter**

They Can Be Used to Control and Dominate a  
Society and Its Citizens and Businesses

**Build**

They Can Be Used for the Enhancement and Improvement  
Of a Society and Its Citizens and Businesses

The Choice is Ours



## Cybercurrency Issues (The Shiny Object)

Not Yet Secure

Too Opaque

Too Volatile

Not Really a Currency

More Like a Security

Government Deciding Who Will Regulate

Ultimately, There Will Be a Governmental Cybercurrency





# Territory An Example

Agriculture Is Moving Off the Terra Firma

An Example of Technology's Impact On  
One of The Oldest Businesses



## Ag Lending Trends

Strong and Subsidized Positions Remain for Now  
Volatility In Pricing, Weather and Demand  
Scale of Farming Outpacing Scale of Bank Capital  
Government Competition = Farm Credit  
Climate Change Regulation Ahead and Reporting  
Individual Entrants Being Priced Out of Land Purchases



## Increasing Technological Sophistication of Production and Products

Agricultural Evolution Will Accelerate

Ag Started With “Planting” Small Fields

Then It Became “Farming” Larger Units

Rapidly Emerging “Digital Agriculture”

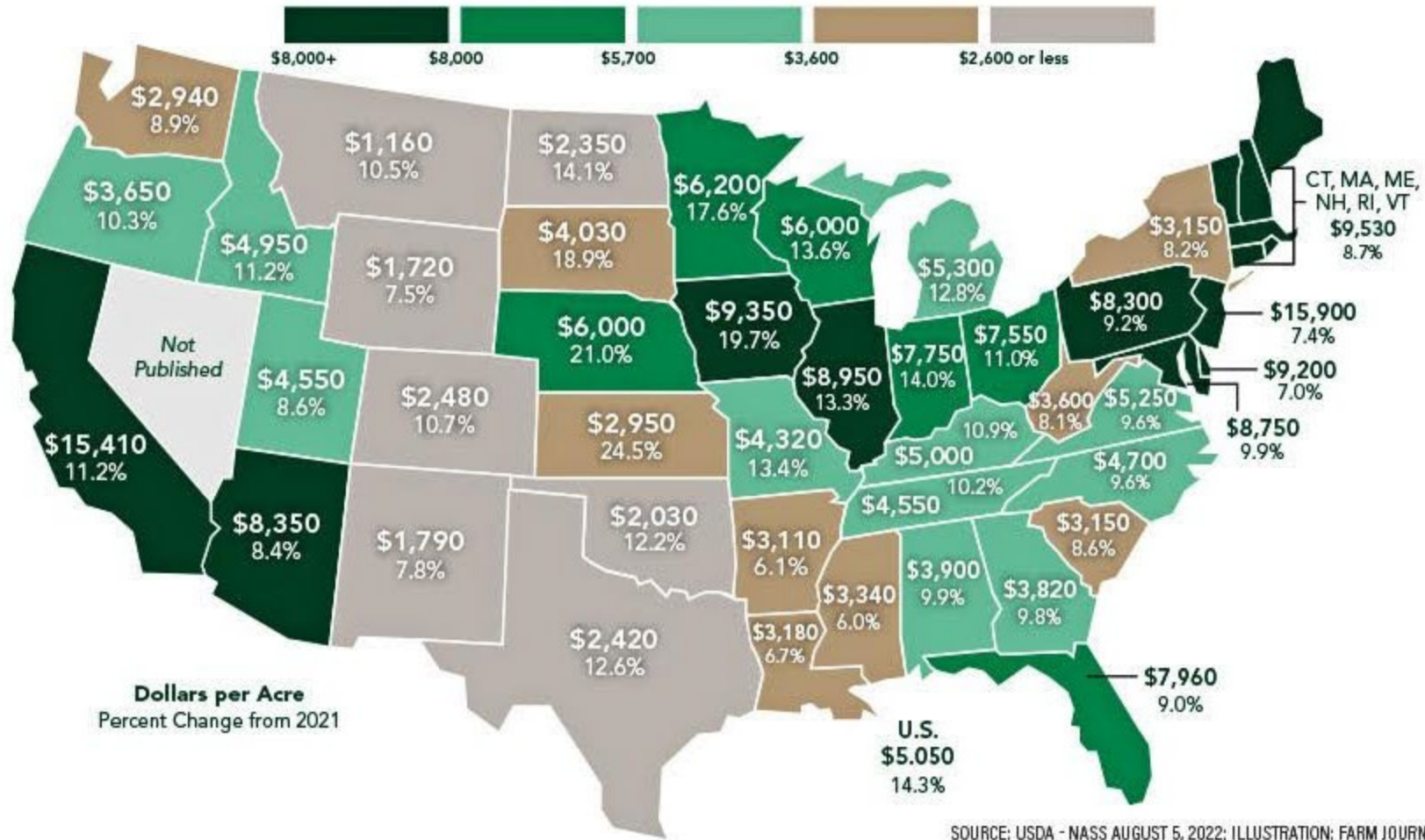
Will Now Evolve Into “Digital Gardens”

Back To The Future

We Go



# 2022 CROPLAND VALUES



SOURCE: USDA - NASS AUGUST 5, 2022; ILLUSTRATION: FARM JOURNAL



## Fifty-three Percent of Iowa Corn Goes to an Ethanol Plant



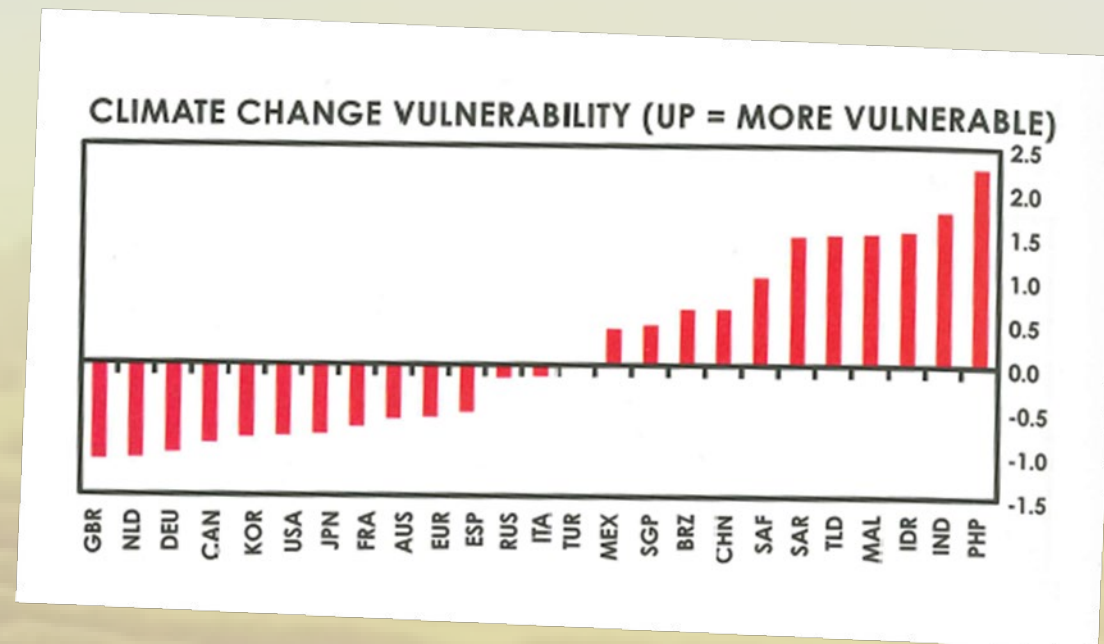
IowaCorn.Org  
June 18, 2019

If this disappears, Iowa Ag may change dramatically  
absent ongoing worldwide shortages

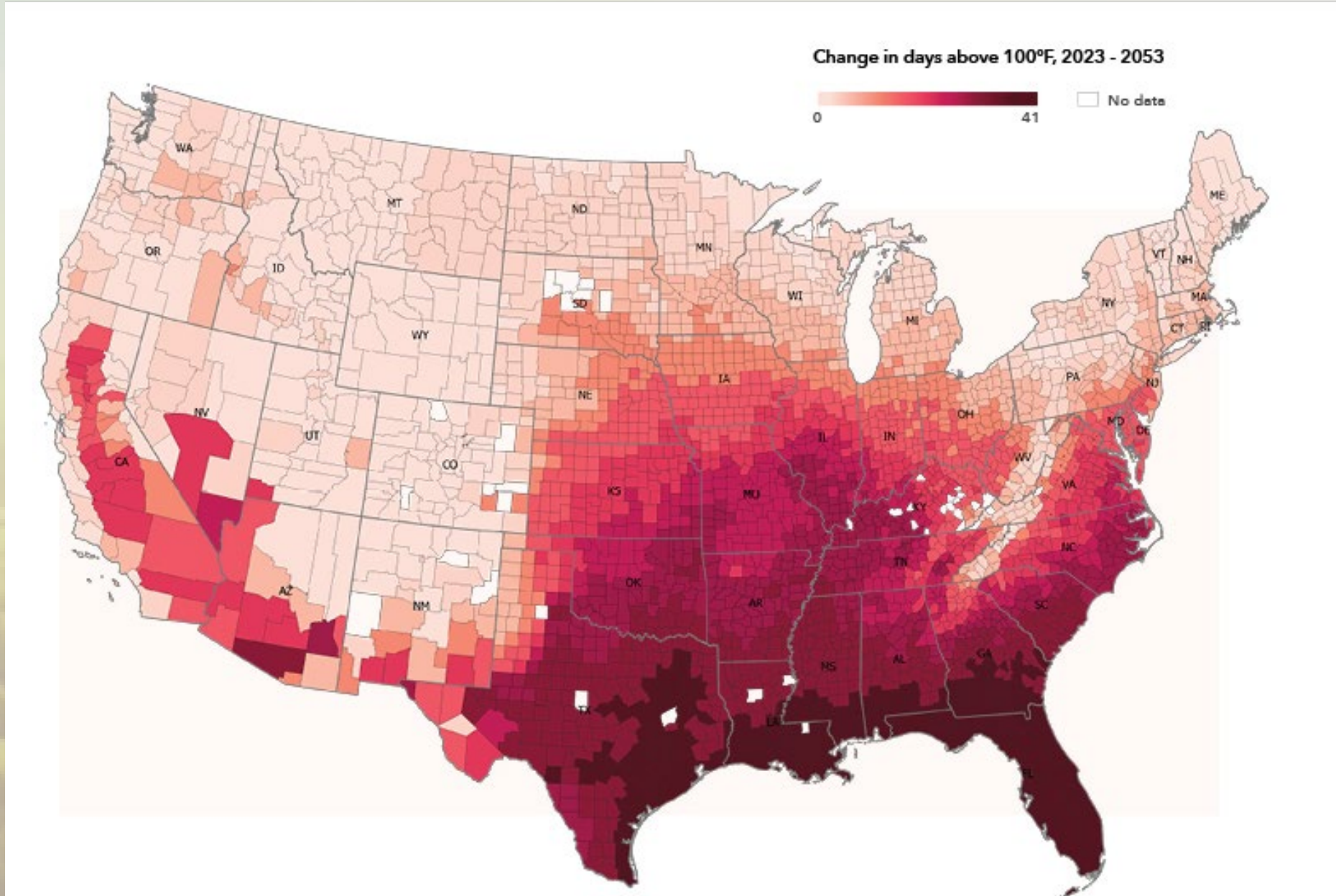


# Climate Change

This is not a black swan but a swan whose feathers are becoming darker and darker.



Source: Dalio, Ray. *Principles for Dealing with The Changing World Order – Why Nations Succeed and Fail*. Avid Reader Press, 2021





# Future Ag Disruptions Threats or Opportunities?

Fake Meat (Impossible Burger and Beyond Meat)

Lab Grown Meat – Meat Made From Animal Cells and Not Live Animals

Genetic Editing – CRISPR

Battery Storage and Ubiquity

ESG

Ag Twitter Vengeance (Social Media Pitchforks)

Coronavirus and Animal Pandemic (Hogs)

Robotics and Driverless Equipment

Drones

Electric vs. Oil and Ethanol

Methane Reductions

Carbon Farming and Credits

Microbes vs. Pesticides

Unstable Climate Cycle

Massive Data Collection and Precision Usage

Data Analytics and Artificial Intelligence

Hemp/CBD

Sensors and Internet of Things

3D Printing

Virtual Reality

Augmented Reality

Wind Turbines and Solar Energy

Agriculture Residential Communities (Agrihoods)

Land and Water Use Control





## Even With All of the Challenges Iowa Ag Still Has Great Potential

### Iowa Agriculture is a Significant Source of Valuable Data and Image

1. Valuable Ag Data Produced Daily – Own Your Own Data (Private – Tillable)
2. Aggregation and Analysis of Data Will Lead to Greater Production Efficiency (Cropster/Coffee and Precision Farming)
3. Blockchain Will Aid in Verifying Sourcing to Specific Plots
4. Iowa Has a Distinct Reputation and Brand Advantages – Quality, Quantity and Reliability
5. All Those Photos and Innuendos About Iowa Farmers Will Pay Off in Sustainable Marketing and the Green Revolution



# A Few Key Developments For Iowa Bankers to Consider



## Pay Attention To The Global Tensions

In This Virtual Reality  
The Really Big Confrontations Emerging Are

Autocratic vs. Democratic  
Technology vs. Human  
China/Russia vs. U.S.  
Isolation vs. Integration  
Fear vs. Hope



## Federal Banking Developments

Federal Impact Regarding Interest Rates and Quantitative Tightenings

Faster Payment System 2023?

Cybercurrency – Who Will End Up Regulating

Market Definition – Federal Reserve Revisiting

Federal Reserve Focusing on Control Issues

Trusts

Applications

Customer Privacy - Concerted Focus by Regulators

Overdraft Fees - FDIC Exams

Bank Examiner's Current Renewed Focus on Big Picture

Credit Risks

Market Risks

Operational Risks



# Some Iowa Banking Developments

Iowa Banking Code 524 Revised July 1  
Letter From the Superintendent  
Our Blog at [lowabankingblog.com](http://lowabankingblog.com)  
IDOB Open to Input

## Issues to Be Evaluated

Control Definition Now 25%  
Borrowing Groups  
Trust Transactions  
Fintech – 5% Capital Investment

## Credit Unions

Tax Rate Adjustment  
Not Acquiring Banks For Now  
Aggressive in Hiring Talent and Pricing  
Aggressive Loan Growth  
Stress Signs in Loan Portfolios for Sale



# Fintech Collaborations Ahead

Invest in Fintech (5% Capital)

Care Needed Regarding Qualifications and Expertise

Expect Greater Clarification

Rules or Guidelines May Be Issued By IDOB

Fintech Partnerships Will Emerge

Risky

Expertise and Experience Key

Preparation Essential

Contracts and Coverage Key

Do Talk to the Regulators



## Pros and Cons of Banking World in Iowa

### Pros

Most Banks are Doing Just Fine

PPP Program Very Successful Which Created Customer and Community Goodwill

Loan Demand Remains From Solid Customers

Capital Positions Strong

U.S. Economy Endures With Its Food, Fuel, Fiber, Fossils and Financial Positions

### Cons

Employees Very Challenging

Interest Rates, Deposit Pressures and Bonds

Quantitative Tightening's Impact

Post COVID Customers Seem Demanding

Sectors Stressing – Commercial, Builders and Supply Chain Businesses

Challenges Going Forward Due to Increasing Uncertainties in the World



# Basic Challenges Ahead

Employees, Retention and Skills

Inflation May Continue at 4%

Rising Rates and Spreads Compared

Bond Portfolios and The Fed

Increasing Segmentation of Market and Technology Niches

World and U.S. More Unstable

Expect The Unexpected





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# Questions?

Contact me at: [hhagen@dickinsonlaw.com](mailto:hhagen@dickinsonlaw.com)

Disclaimer: The material presented is designed and intended for general informational purposes only. **It is not intended and it should not be construed or relied upon as legal advice.**

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Attorney Howard Hagen has been recognized for more than **25 years as one of the Best Lawyers in America®**. In 2023, he was recognized for his work in the areas of Banking & Finance Law and Financial Services Regulation Law.

Howard leads the Dickinson Banking Law Group and has counseled banks across all counties in Iowa in good times and bad throughout his legal career.

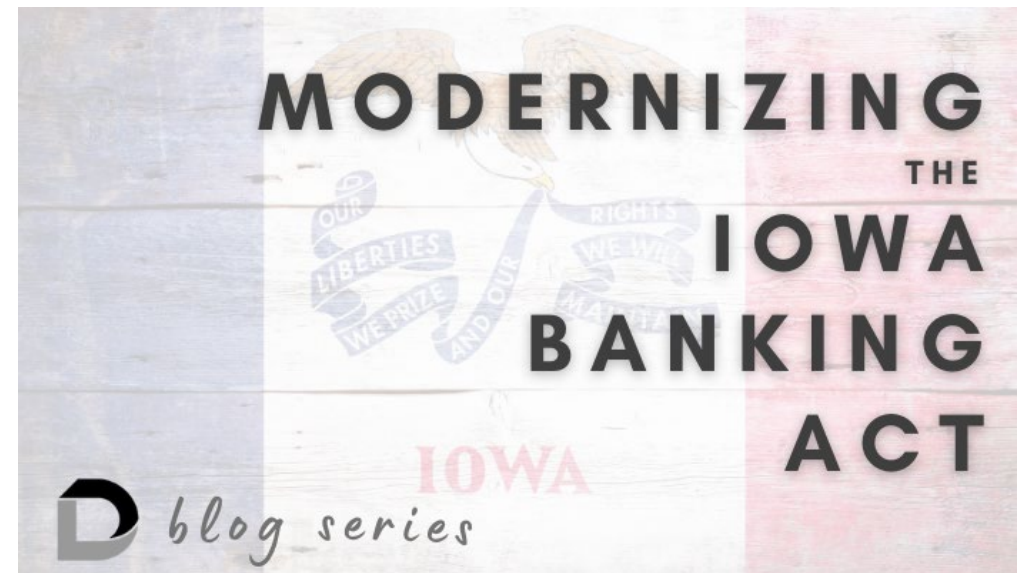


*did you know?*

## **Iowa banks changing their ownership structure have a new definition of what “change in control” means.**

Under the new amendments to the Iowa Code Chapter 524 (the Iowa Banking Act), “control” now means “owning, controlling, or having the power to vote 25% or more of any class of voting securities of a state bank or having the power, directly or indirectly, to elect the board of directors.”

Previously, there was no specific percentage of ownership stated.



Read more on this topic and more in our special blog series at: [iowabankingblog.com](http://iowabankingblog.com).



## JOHN LANDE

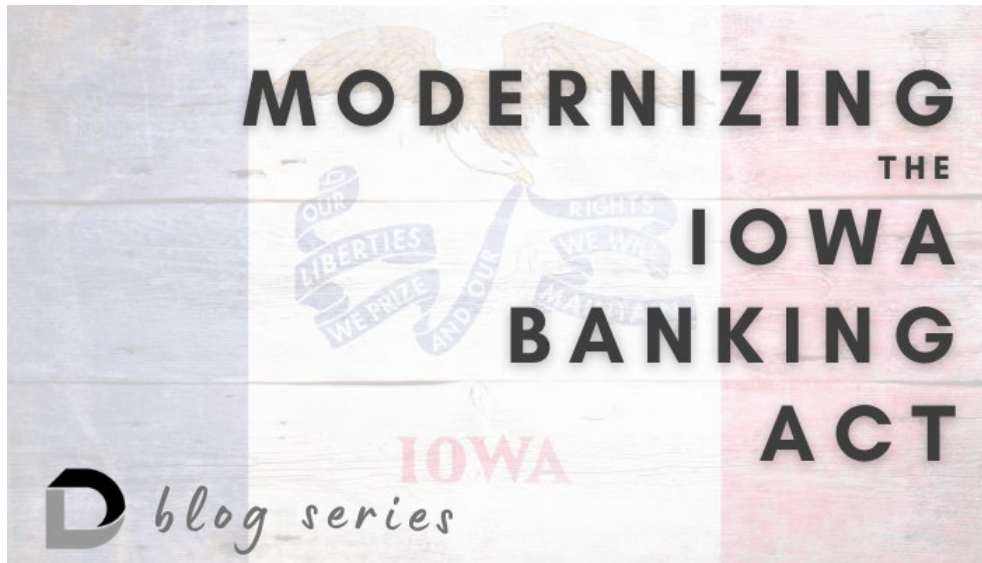
Recognized for:  
Banking and Finance, Commercial Litigation,  
and Privacy and Data Security Law



Attorney John Lande has been recognized as one the **2023 Best Lawyers in America**<sup>®</sup> in the areas of Banking & Finance Law, Commercial Litigation and Privacy & Data Security Law.

John has a banking, civil litigation, and cybersecurity oriented practice. He has extensive experience with matters involving banking and financial services regulation, creditors' rights, agency regulatory actions, and more.

# Prior approval for any change in governance is still being urged under the Iowa Banking Act.



Under the Iowa Code Section 524.544, the Act continues to indicate that “If there is any doubt as to whether a change in the ownership of the outstanding shares is sufficient to result in control thereof, or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the superintendent.”

Read more on this topic and more in our special blog series at [iowabankingblog.com](http://iowabankingblog.com).

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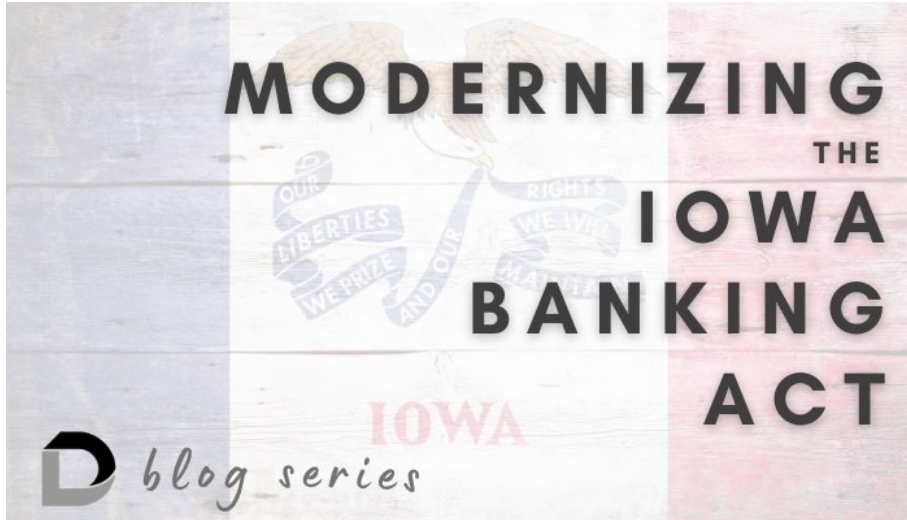
**SIERRA MCCONNELL**

Recognized for:  
Corporate Governance and Compliance Law and  
Privacy and Data Security

Attorney Sierra McConnell has been recognized in the **2023 Edition of Best Lawyers: Ones to Watch** in the areas of Corporate Governance and Compliance Law and Privacy and Data Security.

Sierra's practice focuses on assisting clients with a variety of business and litigation issues including Corporate Governance, Employment & Labor Law, Cybersecurity, Data Breach & Privacy, Business Formation, Startups, and Emerging Technology.





**The laws on interstate banking have been updated.**

*did you know?*

Read more on this topic and more in our special blog series at [iowabankingblog.com](http://iowabankingblog.com).

- Out-of-state banks can now be party to Iowa mergers (and vice versa).
- Out-of-state banks and federally chartered credit unions are among the entities that may convert into a state bank.
- Distinctions between the process of creating a new bank office in state and creating one out of state have been removed.



Attorney Amy Plummer has been named the **2023 Lawyer of the Year in Des Moines by Best Lawyers®** for her work in two areas: Banking & Finance Law and Closely Held Companies & Family Business Law.

She was also recognized Best Lawyers in the areas of Business Organizations (including LLCs and Partnerships) and Corporate Law for 2023.

In her practice, Amy focuses on banking law, corporate and business law, mergers and acquisitions, and business formations. She also assists clients with intellectual property, e-commerce law, and software licensing agreements.



Named a “Best Law Firm” by  
*U.S. News & World Report* in 19 practice areas

Attorney Melissa Schilling has been recognized as one the **2023 Best Lawyers in America**<sup>®</sup> in the areas Education Law, Employment Law - Management and Litigation - Labor and Employment.

In 2022, Melissa was named **Lawyer of the Year in Des Moines** for her work in Litigation – Labor & Employment.

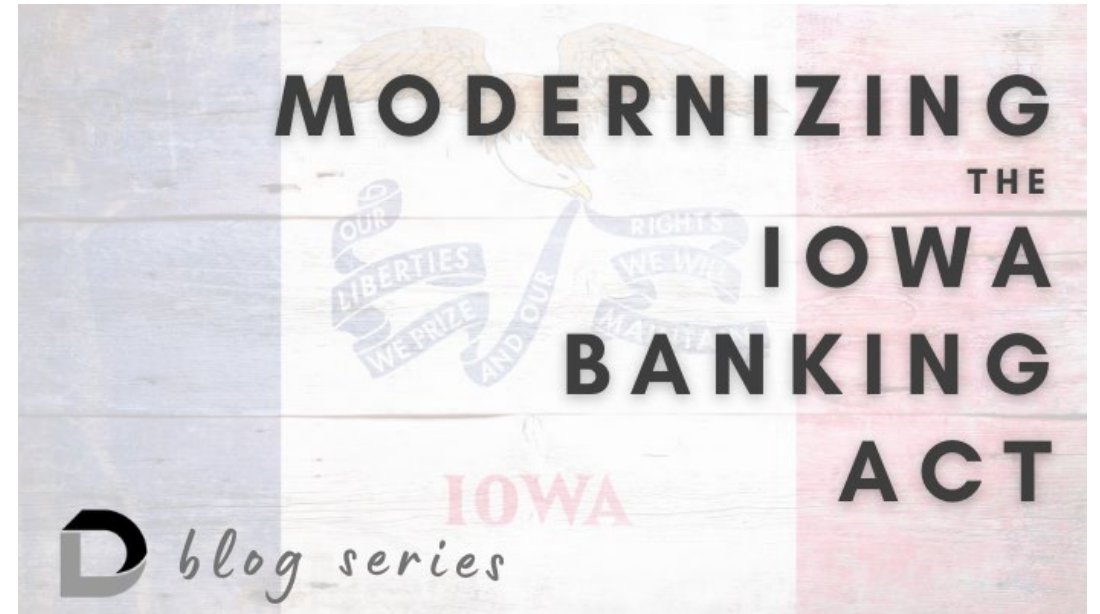
In her legal practice, Melissa represents public and private sector employers in labor and employment matters.



# New criteria for approvals of mergers were created.

Section 524.1403 has always required the Superintendent of Banking to consider “the convenience and needs of the area primarily to be served by the resulting state bank.”

Now, however, its importance is emphasized by the addition of specific criteria, including, “the resulting state bank’s plans to accept deposits from, lend money in, and process payments in the area primarily to be served by the resulting state bank.”



Read more on this topic and more in our special blog series at [iowabankingblog.com](http://iowabankingblog.com).

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Attorney David Repp has been recognized as one of the **2023 Best Lawyers in America**<sup>®</sup> for his work in Nonprofit / Charities Law, Tax Law, and Trusts and Estates Law.

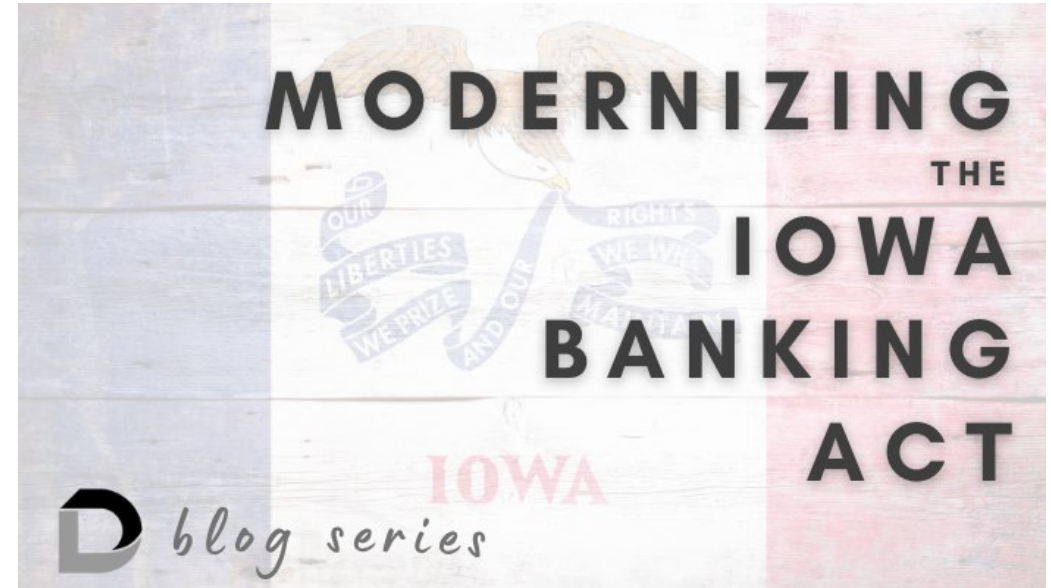
He was also named **Lawyer of the Year** for 2022 for his work in Tax Law in the Des Moines area by Best Lawyers.

David practices primarily in the area of taxation, providing a broad range of tax counsel to small businesses and organizations on topics such as equity structure and mergers, succession planning, federal and state income tax planning, and taxation of employee benefits. He also advises clients with respect to the management of their wealth.



# Some requirements for approvals of mergers have been removed and clarified.

- Mergers and voluntary dissolution no longer require newspaper publication under Chapter 524.
- Banks no longer need to file corporate filings with their country recorder. Instead, the only required filing is the Iowa Secretary of State.
- The process of voluntary dissolution and conversion to a business corporation was clarified: a bank must provide the Superintendent with articles of intent to be subject to chapter 490 immediately upon the adoption of a plan to do so, and the entity ceases to be a bank once the Superintendent of Banking files of the articles of intent.



Read more on this topic and more in our special blog series at [dickinsonlaw.com](http://dickinsonlaw.com).

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Conder



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Edwards



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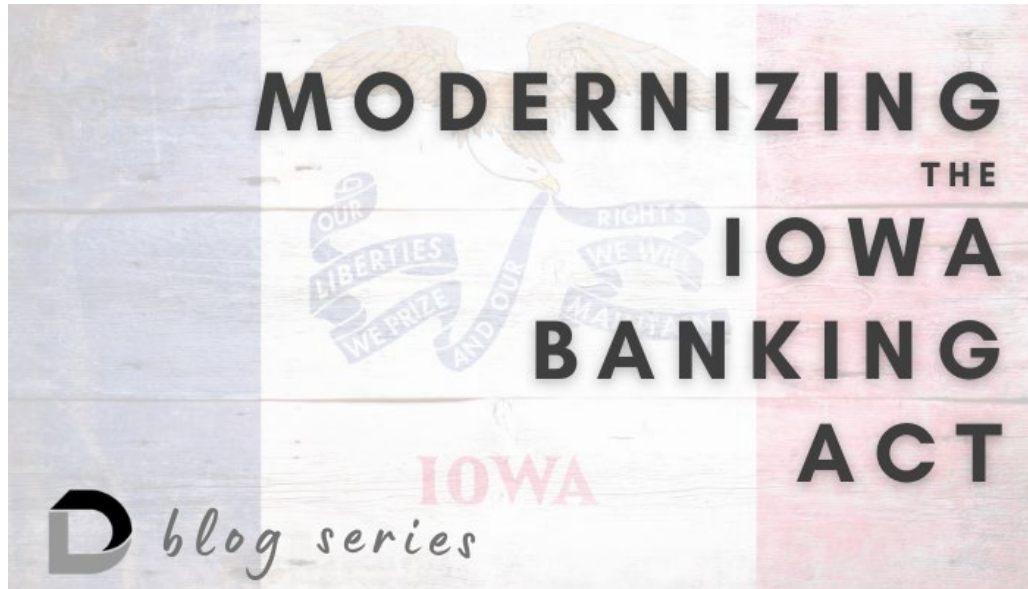


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# The regulatory burden has been reduced.



Read more on this topic and more in our special blog series at [iowabankingblog.com](http://iowabankingblog.com).

*did you know?*

- Banks are now only required to submit a call report to the federal regulators (unless requested by the IDOB).
- The requirement for banks to deliver to the Superintendent a summary of the significant audit findings after the bank conducts their annual internal audit has been abolished. The requirement to complete and retain this audit still remains.
- Banks may now enter into contracts or arrangements with shareholders or any other affiliate to pay for management or financial services without prior approval from the Superintendent.
- The requirement that a bank officer or office manager be physically present at each bank office during a majority of its business hours has been removed.



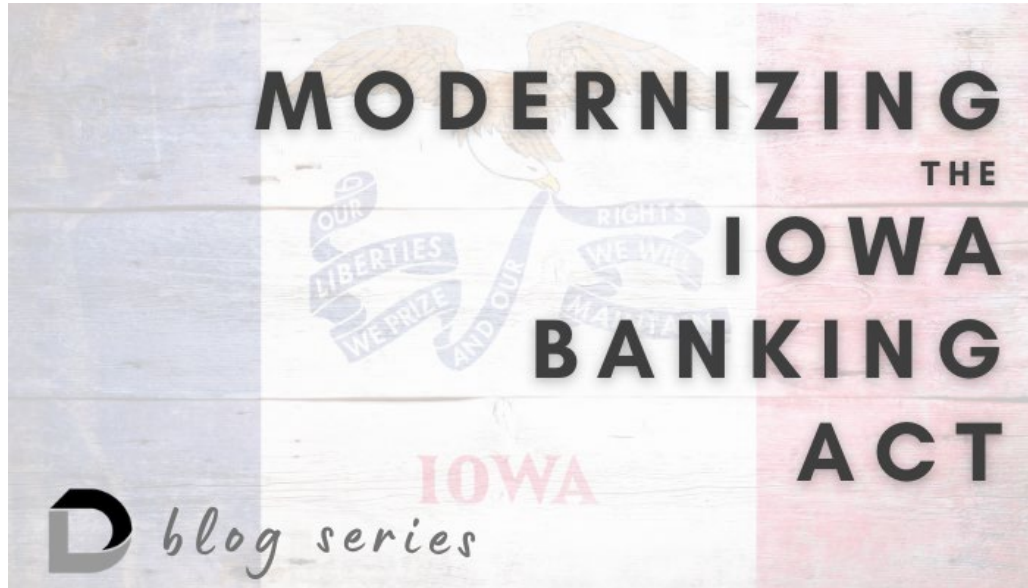
Attorney Mary Zambreno is recognized as one of the **2023 Best Lawyers in America®** for her work in Family Law.

In her practice, Mary serves clients who are either going through divorce or dealing with modifications to decrees after their marriages have been dissolved.

Mary also has extensive trial experience as a member of the firm's Litigation Group and handles other complex banking and business-related litigation, having represented the firm's clients in financial issues related to mortgages, third-party vendor agreements, and compliance.



# The IDOB' authority to regulate / examine banks was updated.



Read more on this topic and more in our special blog series at [iowabankingblog.com](http://iowabankingblog.com).

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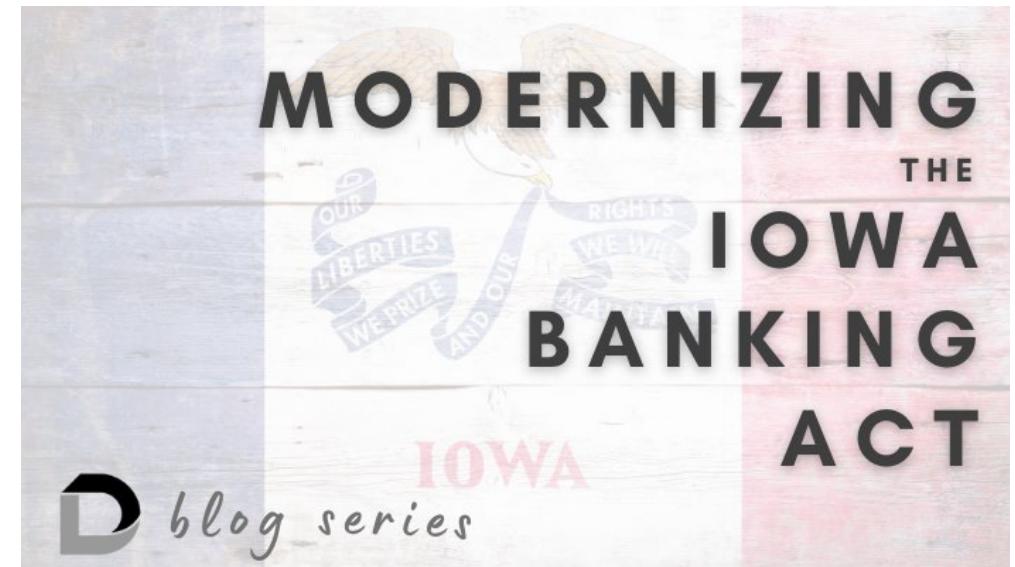
- The Act clarifies types of service providers that are subject to IDOB oversight. This includes “covered services” such as data processing, funds transfer or payment processing, fiduciary activities, trading activities, and deposit taking; internet-related services including web services, electronic bill payments, mobile apps, system/software development/maintenance, and security monitoring; and activities related to the business of banking.
- The Act streamlined the process for when the Superintendent closes a bank. Now the Superintendent can immediately, without prior notice or hearing, order a state bank to cease doing business and appoint the FDIC as receiver in the case.

*did you know?*

## **Prior approval when investing in real estate for economic or community development is no longer needed.**

- Iowa Code Section 524.802 does require notification to the Superintendent via a 30 day prior written notice, however.
- If the Superintendent does not object within 30 days of notice, the bank can move forward.
- The section also provides some clarity in defining community development, including “public welfare investment” – an allowed investment may qualify for Community Reinvestment Act credit as long as it addresses low to moderate income individuals or geographies.

Read more on this topic and more in our special blog series at [iowabankingblog.com](http://iowabankingblog.com).





Attorney Ben Bruner has been recognized as one of the **2023 Best Lawyers in America®** in the areas of Banking and Finance Law, Commercial Transactions / USS Law, Land Use and Zoning Law, Mortgage Banking Foreclosure Law, and Real Estate Law.

Ben has a business-focused practice specializing in the areas of banking and financial services, commercial finance, real estate and corporate law.



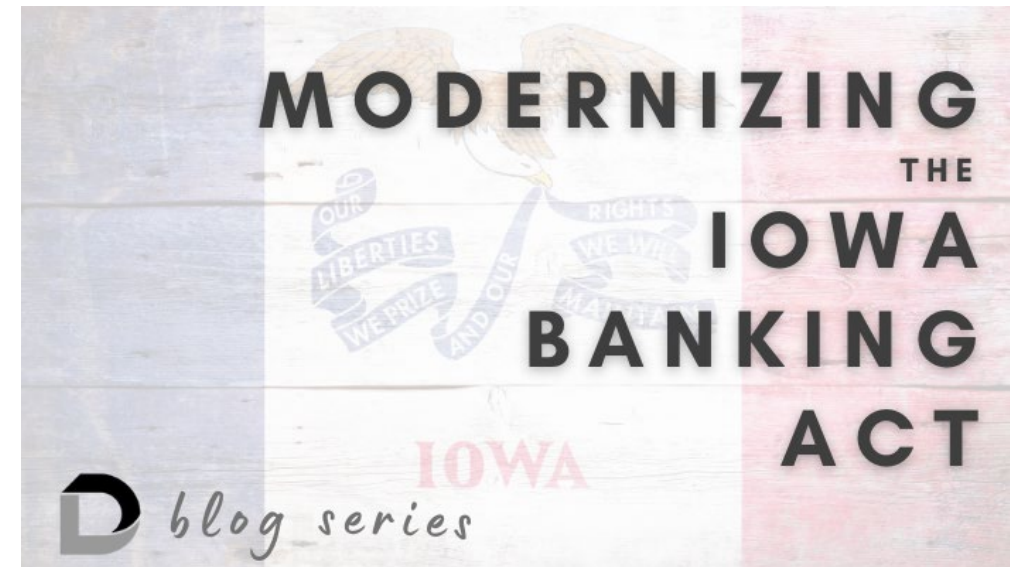
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**A state bank can own Other Real Estate Owned (OREO) for a maximum of 10 years.**

Previously under Section 524.910(2), state banks were allowed to own OREO for only five years.

Additionally, any extension previously required approval from the Superintendent and usually required a charge-off of a percentage on the loan balance.

Read more on this topic and more in our special blog series at [iowabankingblog.com](http://iowabankingblog.com).





**Attorney Brad Kruse** has more than 20 years' experience representing clients in bankruptcy and creditors' rights matters, including Chapter 7, 11, 12 and 13 bankruptcies, receiverships, foreclosures, and collection actions.

He also has extensive experience representing clients in corporate and business law matters, including mergers and acquisitions, corporate governance, contract negotiation and drafting, debt and equity financing, business litigation, shareholder matters, and regulatory compliance.

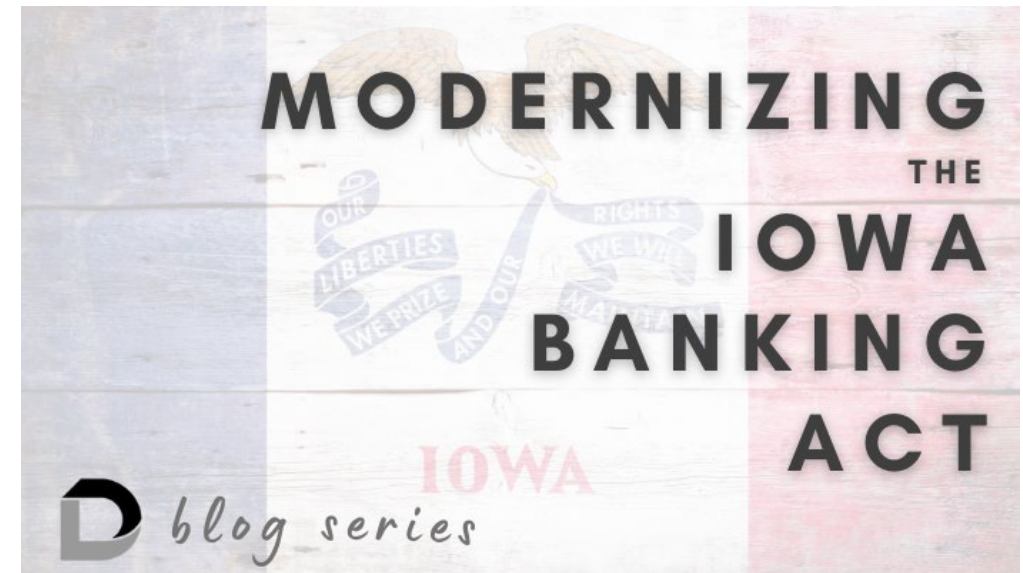




# There is a formal process in place for the Iowa Division of Banking for handling conflicts of interest.

- The Act now includes a process for designating an alternate decision maker for regulated entities that the Superintendent owns, manages, or otherwise has an interest in.
- The Act also updated the chain of succession that designates the IDOB staff who will serve as acting Superintendent if the appointed Superintendent is unavailable, incapable of fulfilling the duties of office, or if the position becomes vacant. First is the chief of the bank bureau, then the chief examiner of the bank bureau, and the last alternate is the chief of the IDOB's finance bureau.

*did you know?*



Read more on this topic and more in our special blog series at: [iowabankingblog.com](http://iowabankingblog.com).

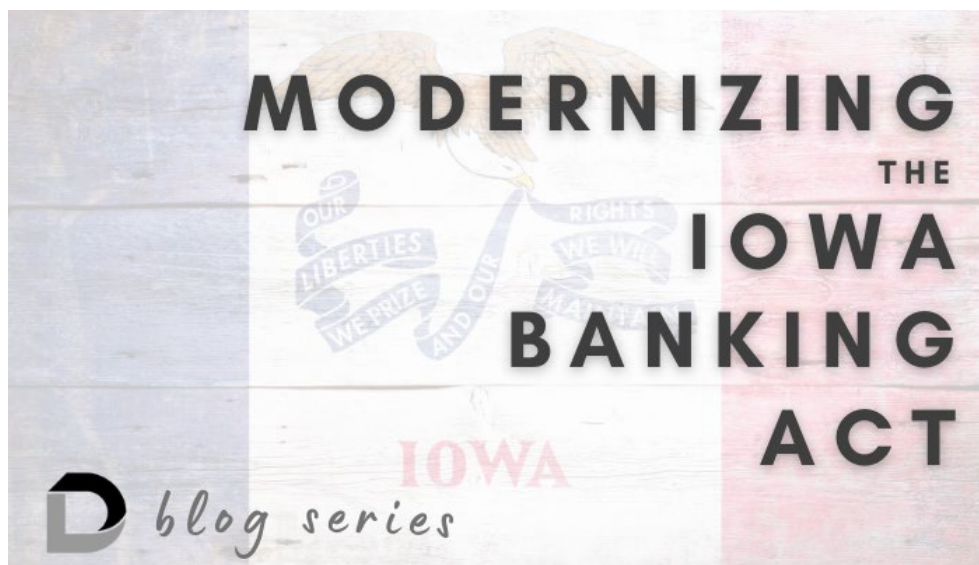


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# The IDOB can use funds to promote financial-related education initiatives.



Occasionally, the IDOB receives funds from multistate settlements with financial services providers like mortgage lenders.

The Division was previously only authorized to use these funds for the purpose of supporting the duties of the IDOB related to financial regulation; this purpose was limited to nonrecurring expenses like equipment purchases.

Read more on this topic and more in our special blog series at: [iowabankingblog.com](http://iowabankingblog.com).

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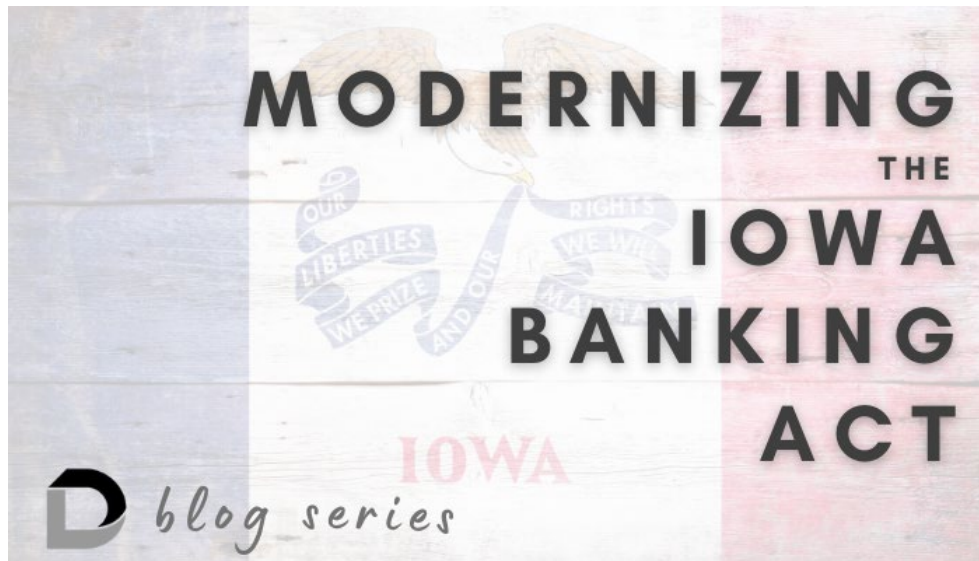


**Attorney Rachel Soderstrum** serves businesses, organizations and individuals in the areas of Employment Law, General Civil Litigation, and Family Law.

She also has collective experience in the areas of insurance defense and general litigation. She obtained her law degree with highest honors from Drake Law School in 2020.



# Examinations: the Superintendent of Banking can contract with other state financial regulators.



This includes the ability to assist, or receive assistance, with respect to both examinations and other supervisory activities like licensing.

This provision also adds in the ability to reimburse the applicable agency that is furnishing assistance to the IDOB.

Read more on this topic and more in our special blog series at: [iowabankingblog.com](http://iowabankingblog.com).

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Attorney Jeff Baxter has been recognized as one of the **2023 Best Lawyers in America®** in the area of Business Organizations including LLCs and Partnerships and Real Estate Law.

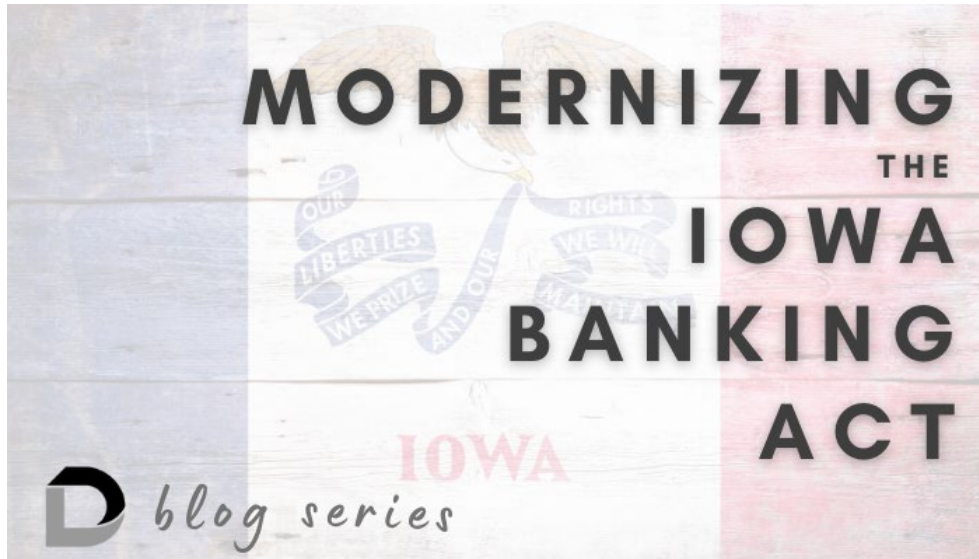
In his practice, Jeff serves clients in a variety of matters such as real estate acquisition and finance, business formation and governance and commercial foreclosure. He also provides advice to banks and organizations in real estate, zoning and land matters.



# Iowa banks can now invest in Fintech companies.

Subject to certain restrictions:

Subsection 524.901(10) allows Iowa banks to invest a max of 5% of aggregate capital (regardless of the number of Fintech companies) in corporations or other entity which develops or utilizes new or innovative technologies.



*did you know?*

Read more on this topic and more in our special blog series at: [iowabankingblog.com](http://iowabankingblog.com).



With nearly 10 years of experience working as an accountant and CPA, **Attorney Charles Telk** has a law practice that provides businesses and individuals with a wide variety of services.

For businesses and financial institutions, his practice includes services ranging from business formation to licensing, administrative law and corporate governance, to contracts and agreements, mergers and acquisitions, compliance, real estate and land use, and a wide variety of taxation law. The taxation side of his practice includes services such as tax collection matters, tax credits and economic incentives, tax disputes, and tax planning.





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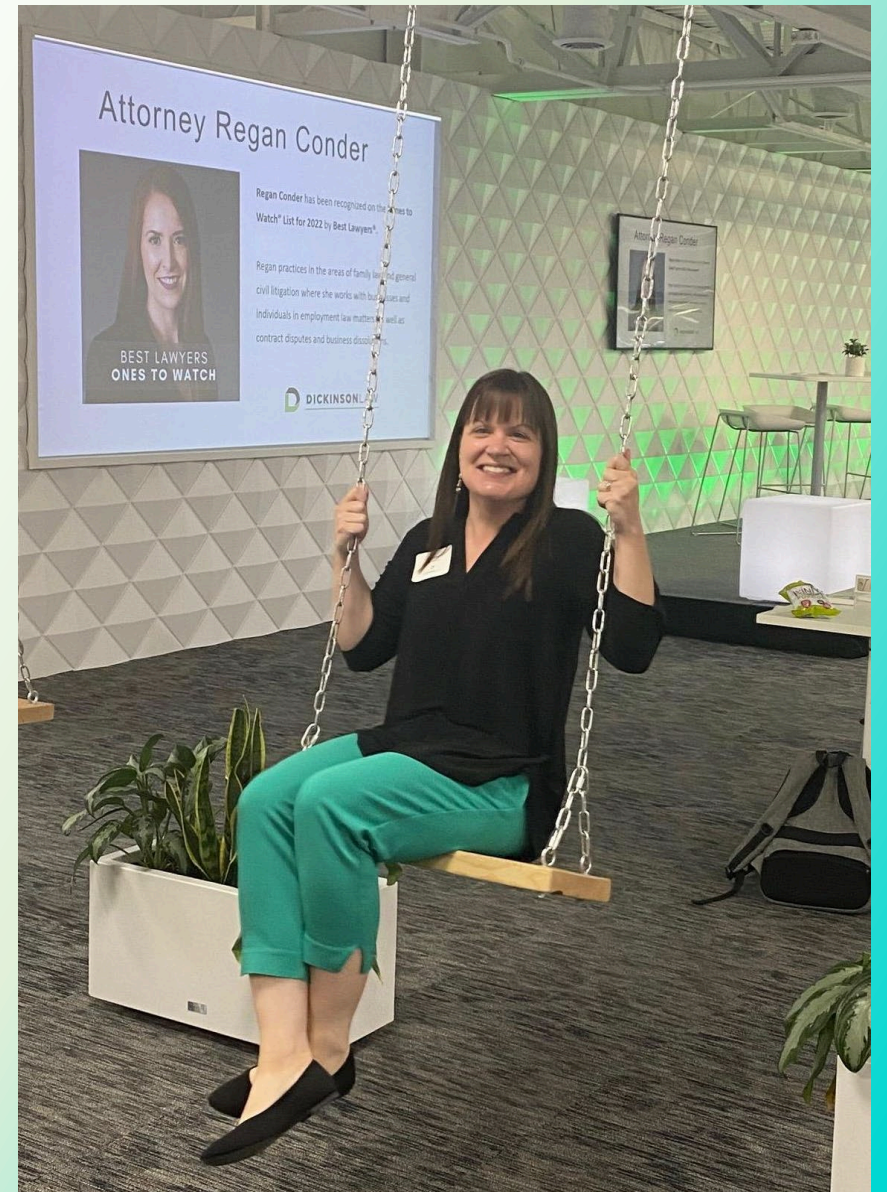
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