



**Technology, Pricing,
and the Consumer
Experience: Navigating
New Risks and
Expectations**

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Technology, Pricing, and the Consumer Experience: Navigating New Risks and Expectations

Curtis Dubay

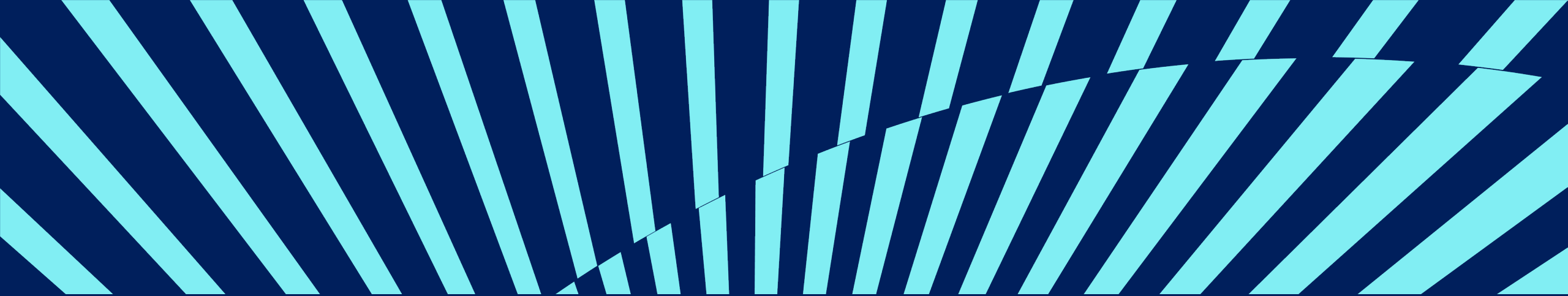
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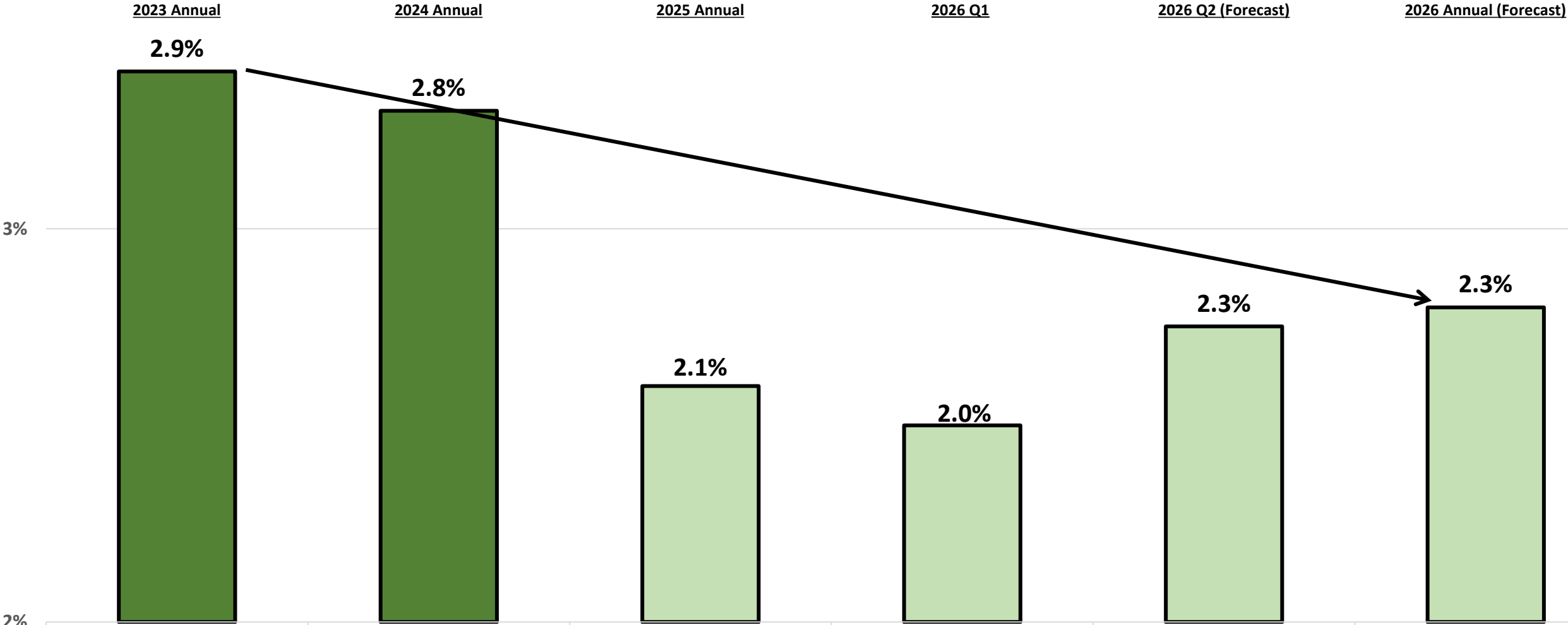
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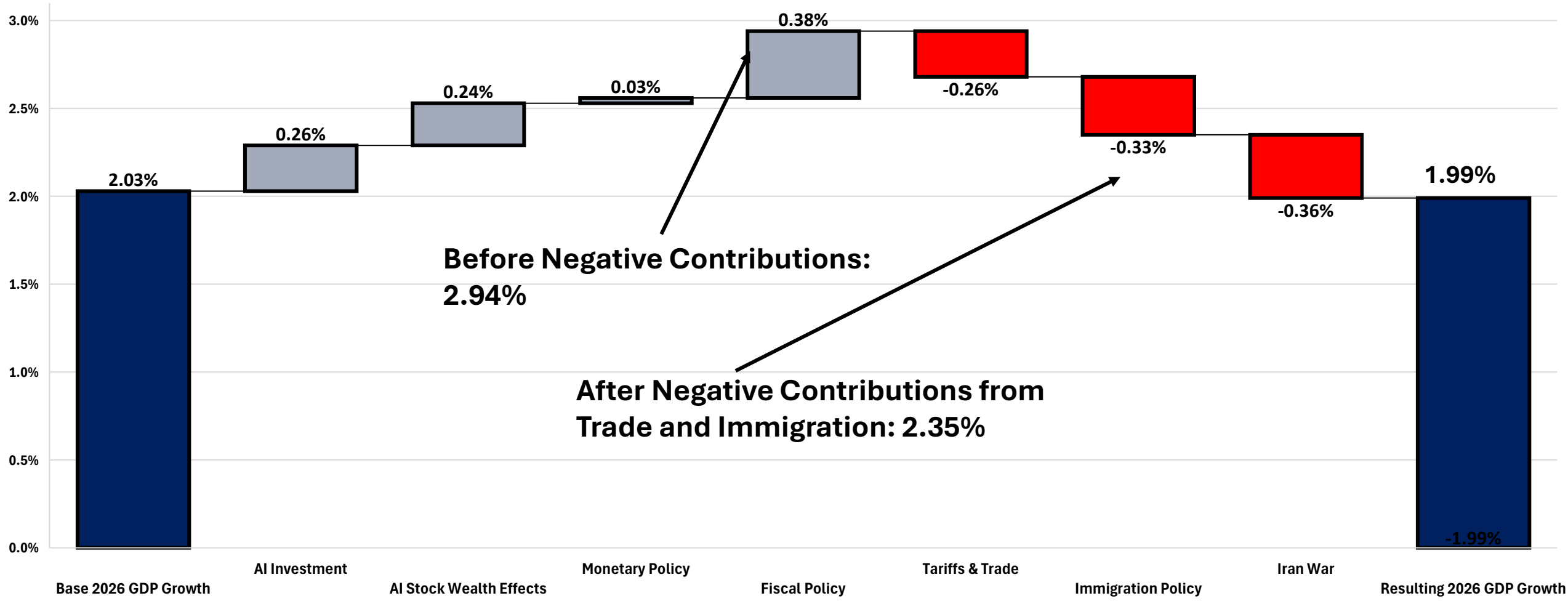
Growth is Steady, but Slower than in 2023 and 2024



Forecast Sources of Change in 2026 Real GDP Growth

Source: Moody's Analytics

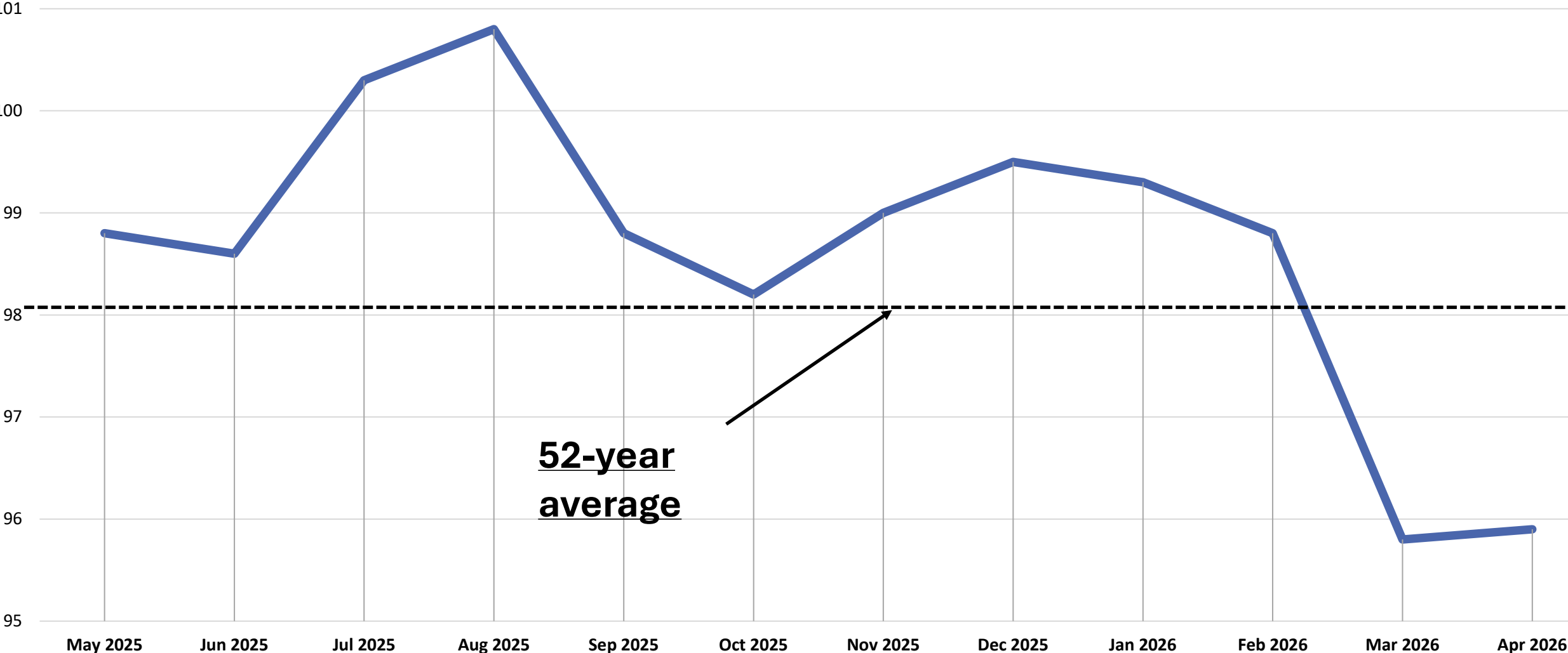
■ Increase ■ Decrease ■ Total



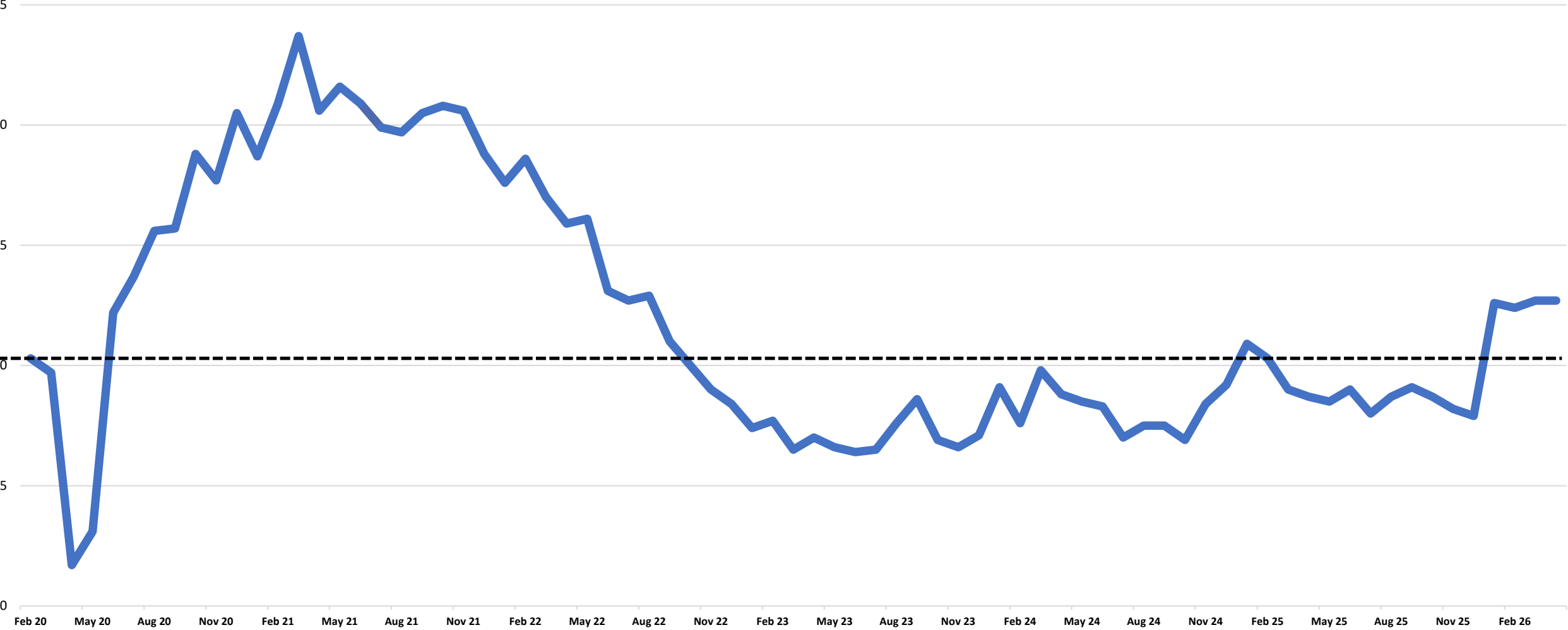
Consumer Sentiment Down Again in May – Lowest on Record



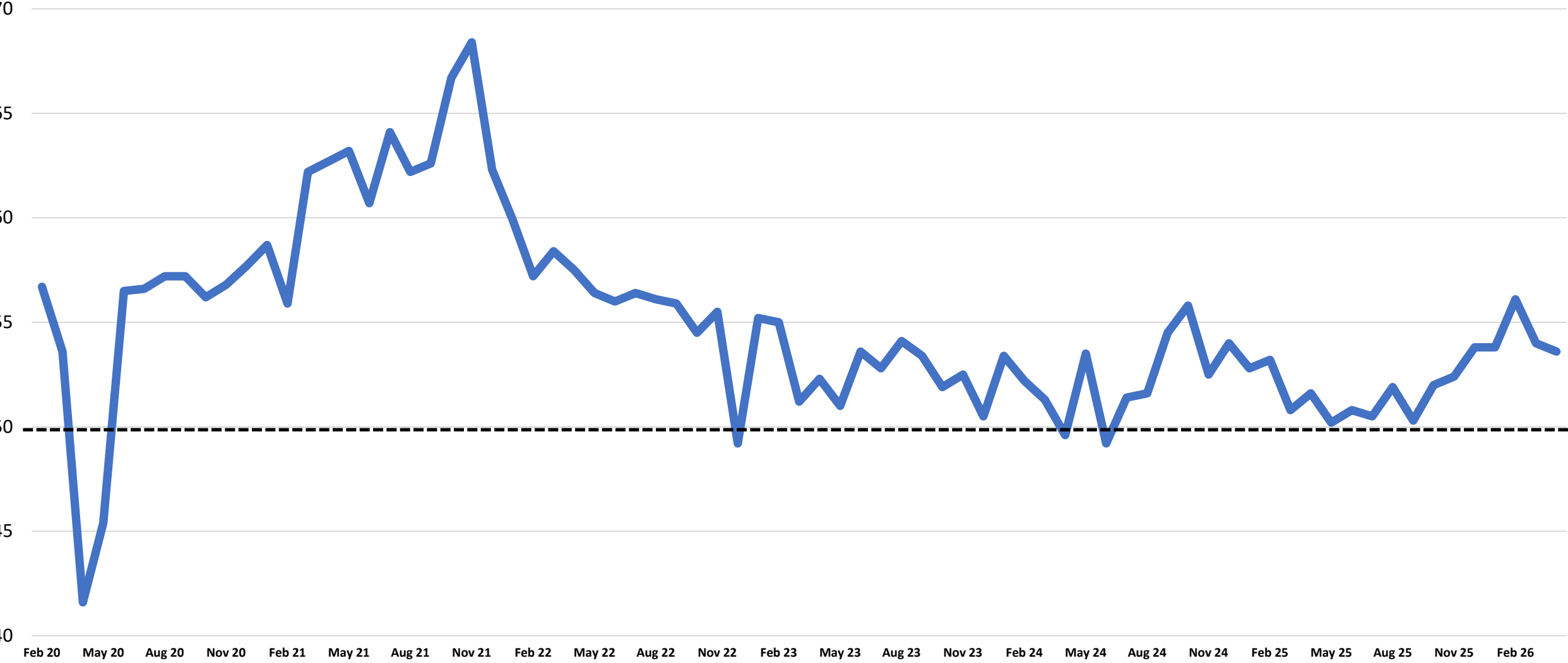
Small Business Optimism Steady in April – Remains Below 52-Year Average



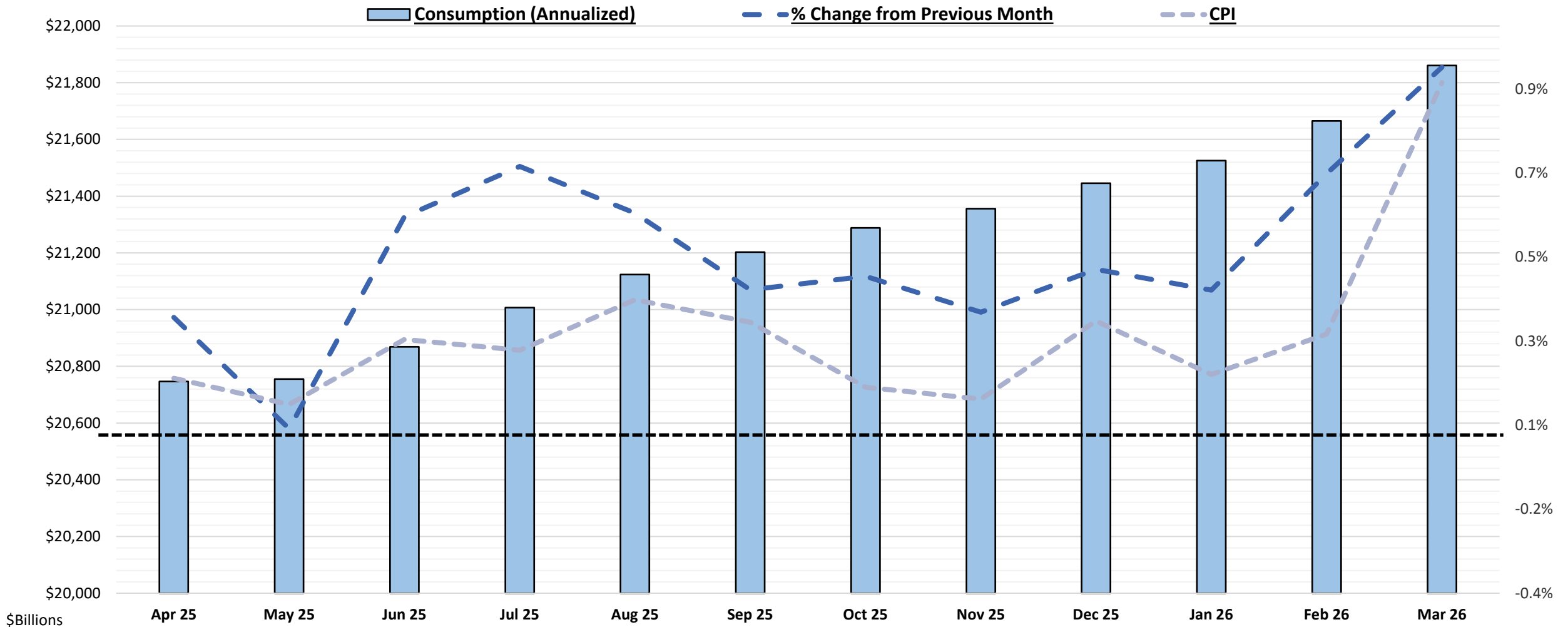
Manufacturing Sentiment Stayed in Growth Territory in April – Fourth Straight Month



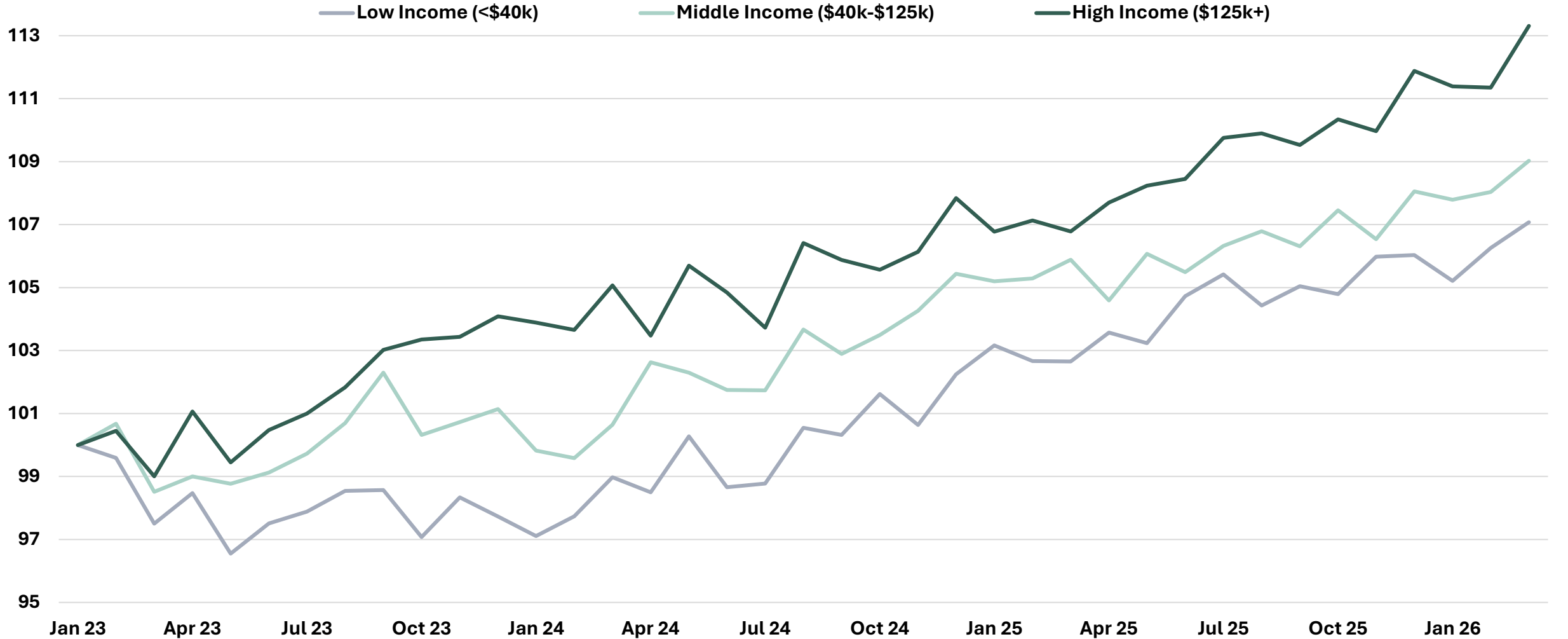
Services Optimism Down Slightly in April– Still in Growth Territory



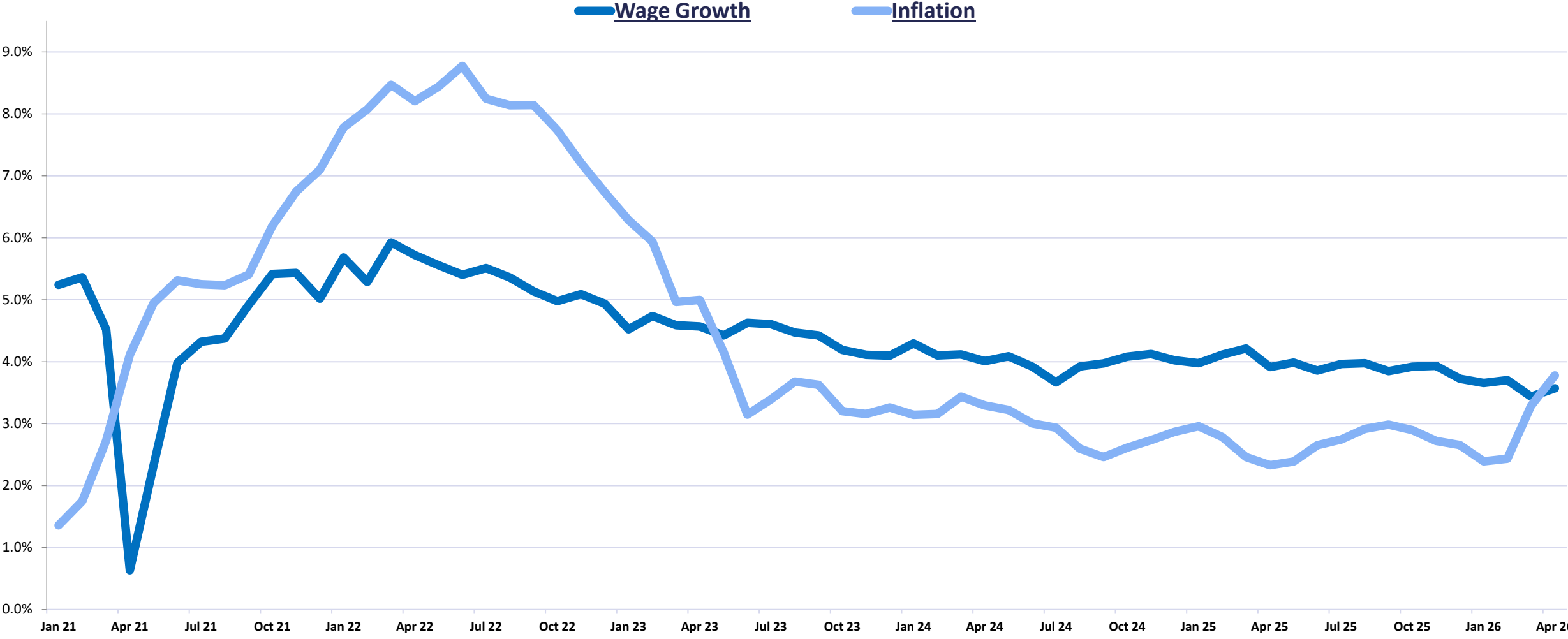
Consumer Spending Up in March, Above High Inflation



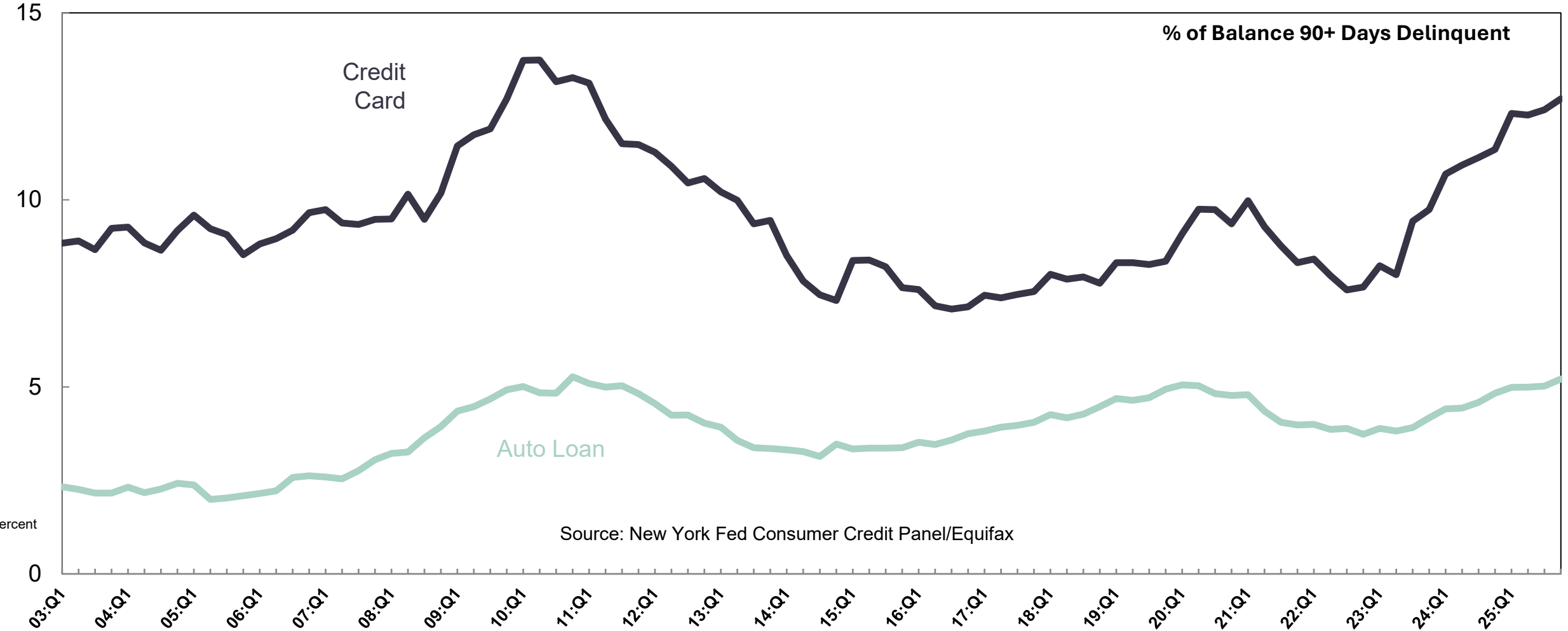
High Income Earners Spending Rising Faster than Middle and Low-Income Consumers



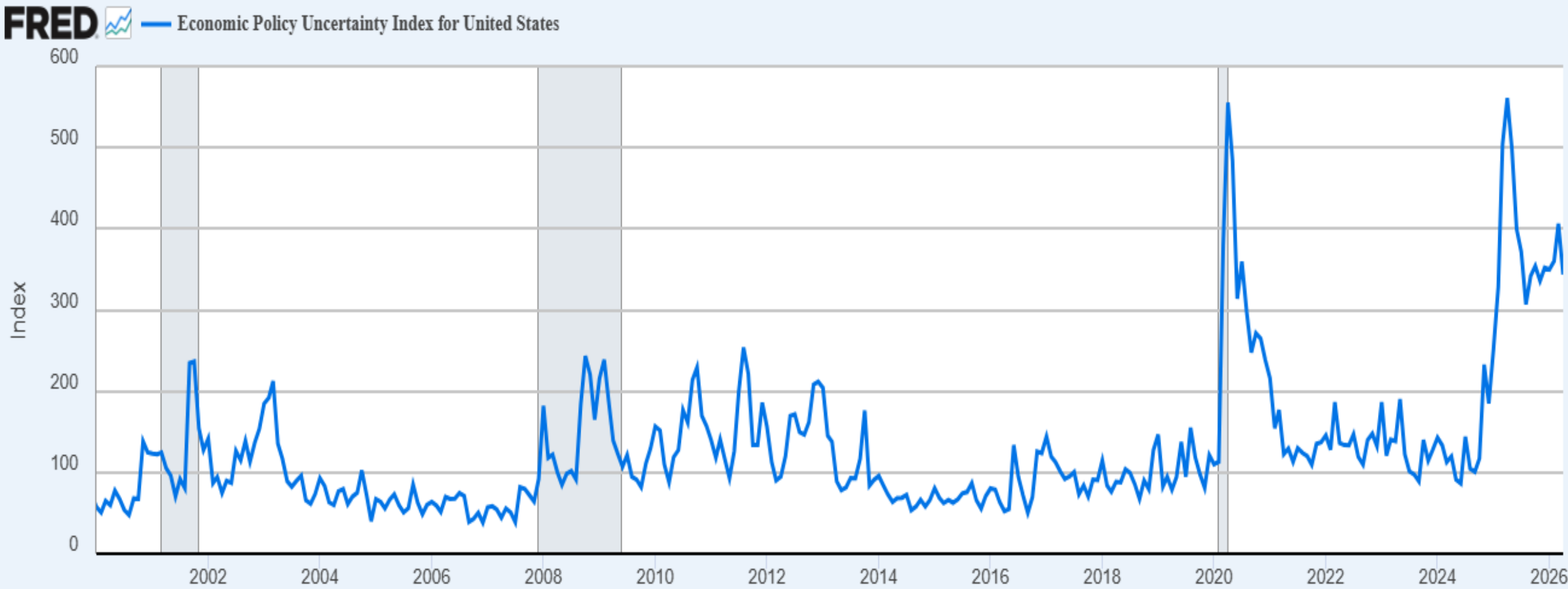
Wages were Growing Faster than Inflation



Credit Card and Auto Loan Delinquencies Rising



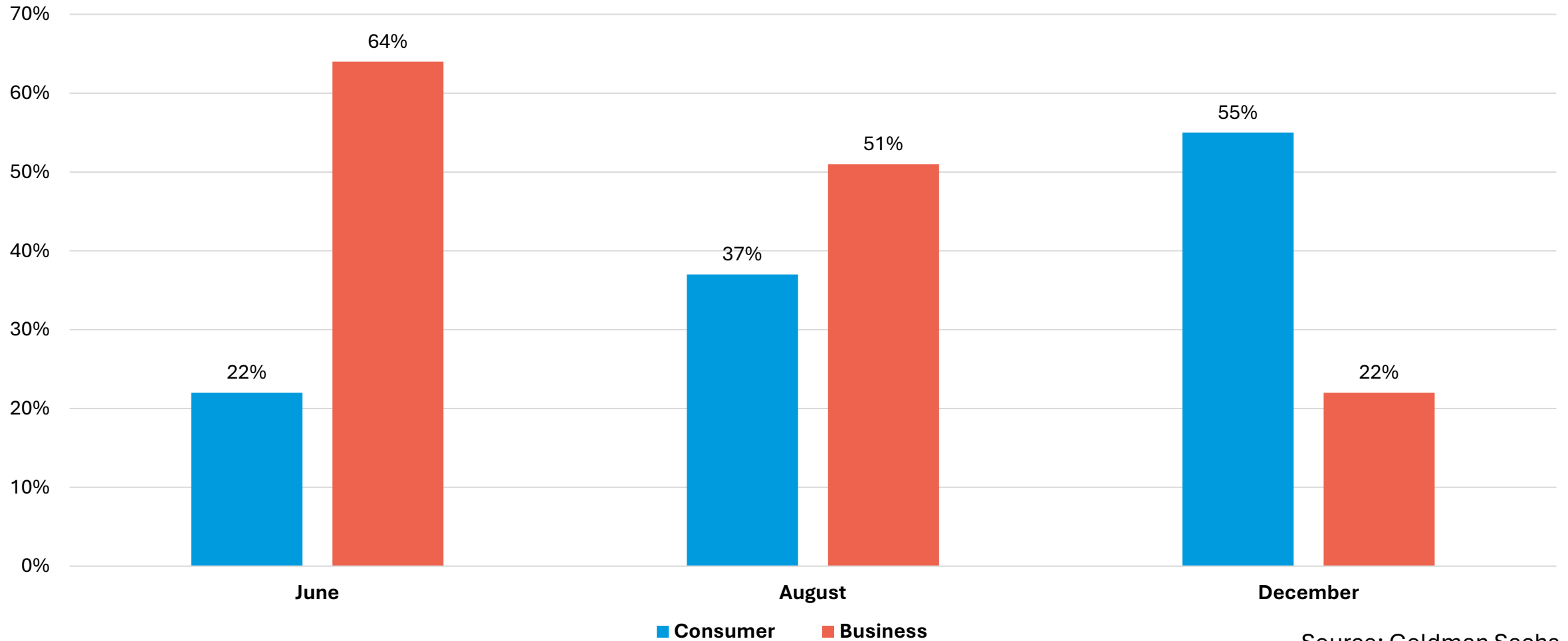
Economic Policy Uncertainty at Financial Crisis and Covid Levels



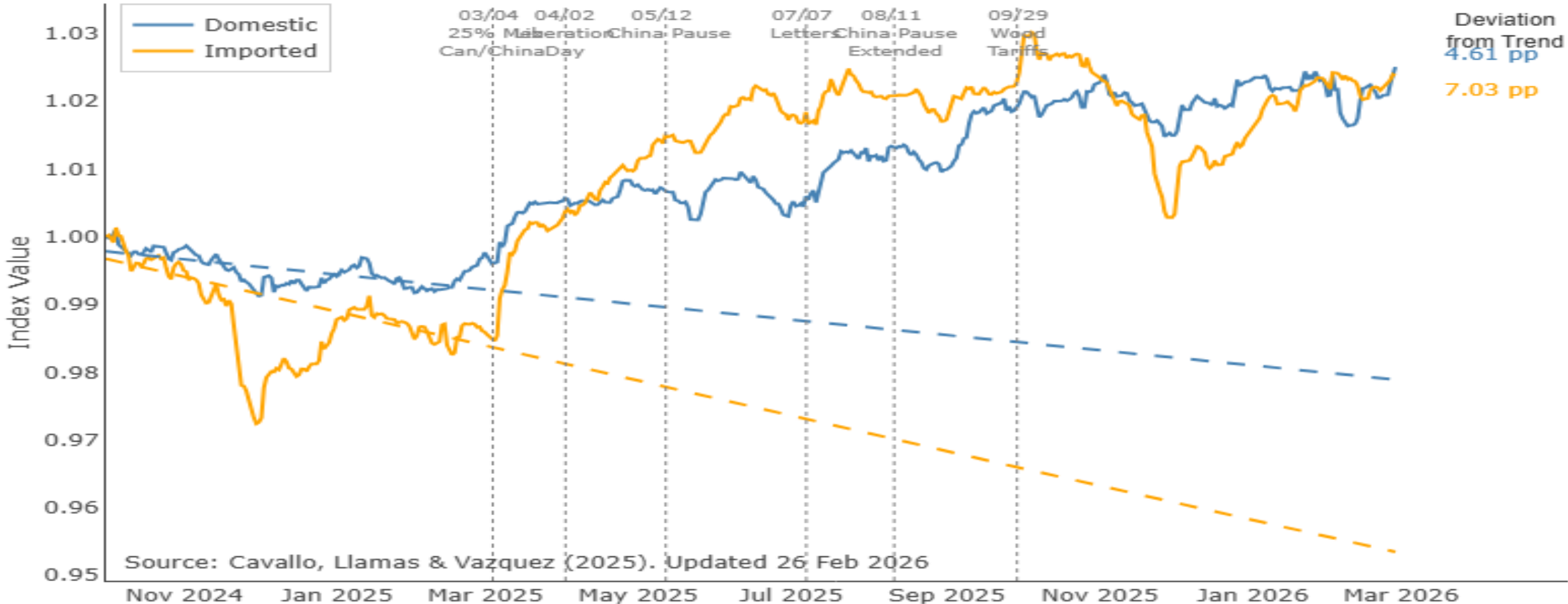
Sources: Baker, Scott R.; Bloom, Nick; Davis, Steven J. via FRED®
Shaded areas indicate U.S. recessions.

Tariff Costs Continue to Move to Consumers

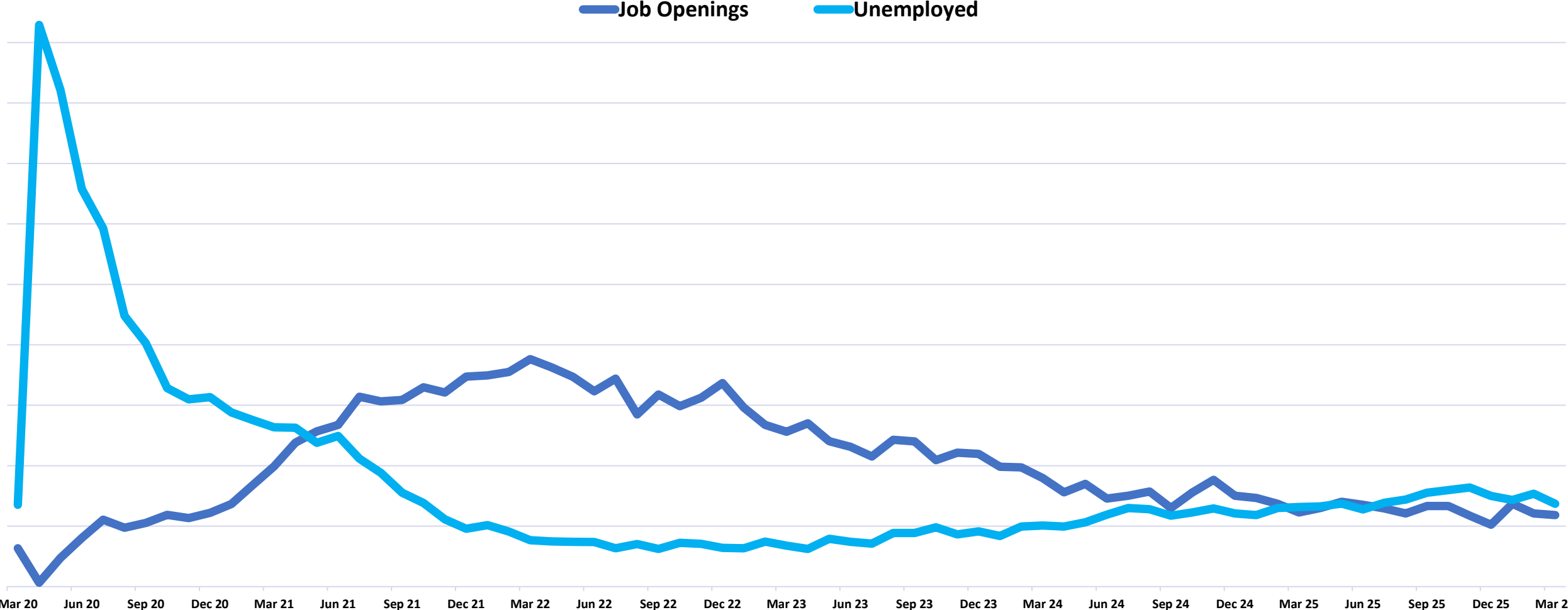
Division of Tariff Costs



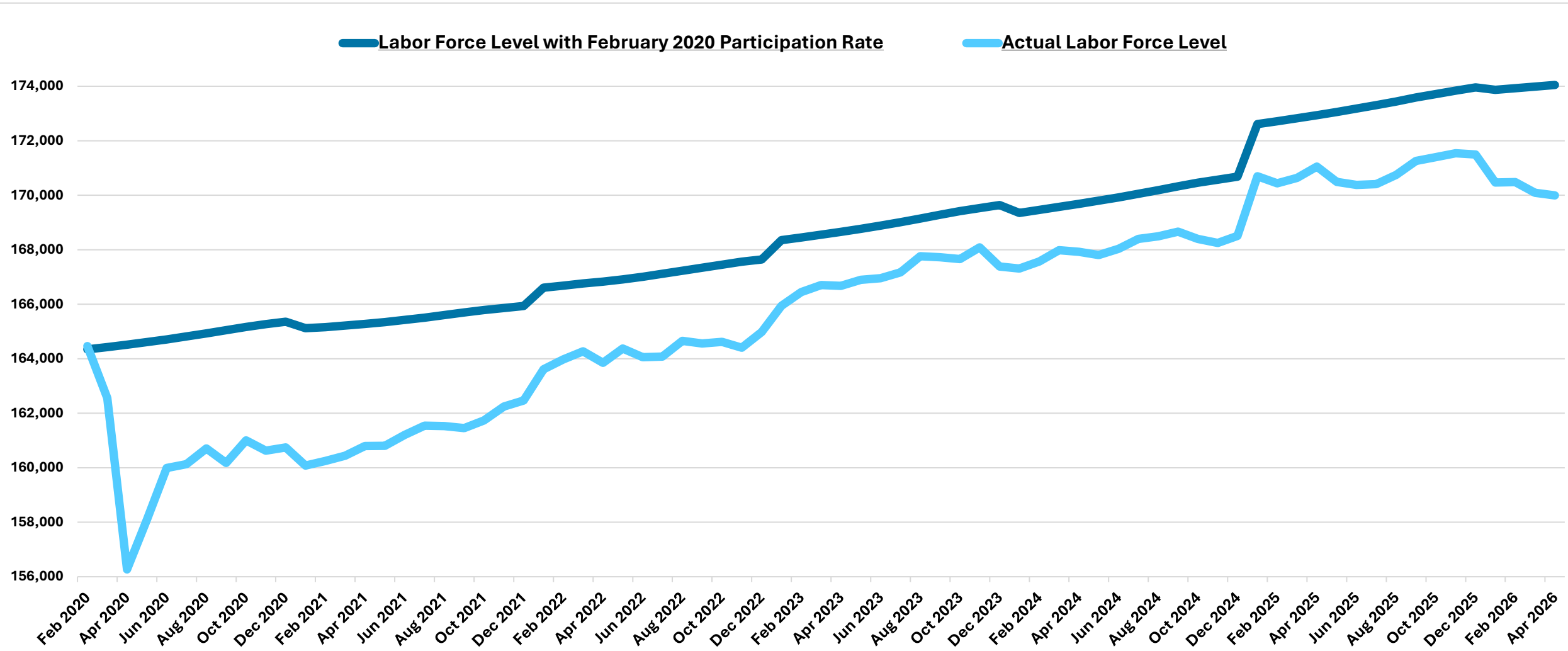
Tariffs are Raising the Prices of Imported and Domestic Goods



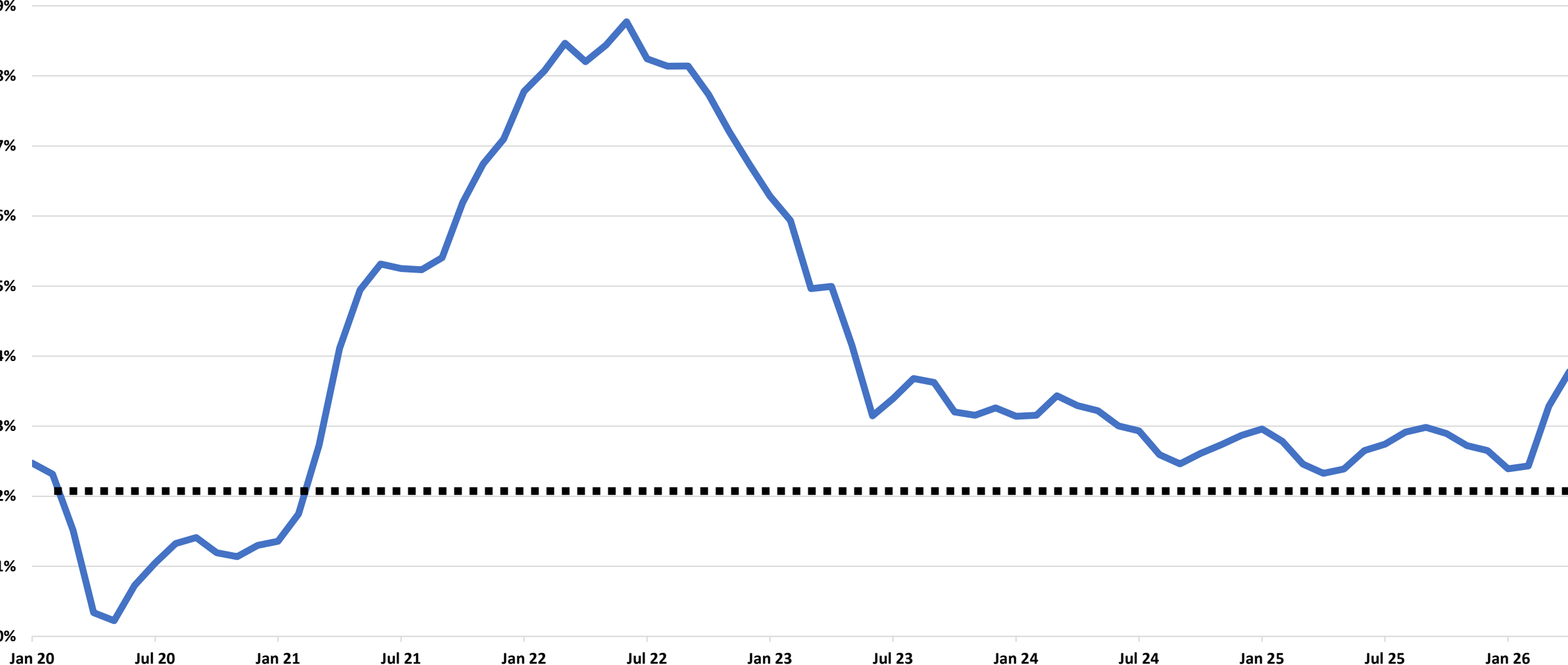
There were 373,000 More Unemployed Workers than Job Openings in March



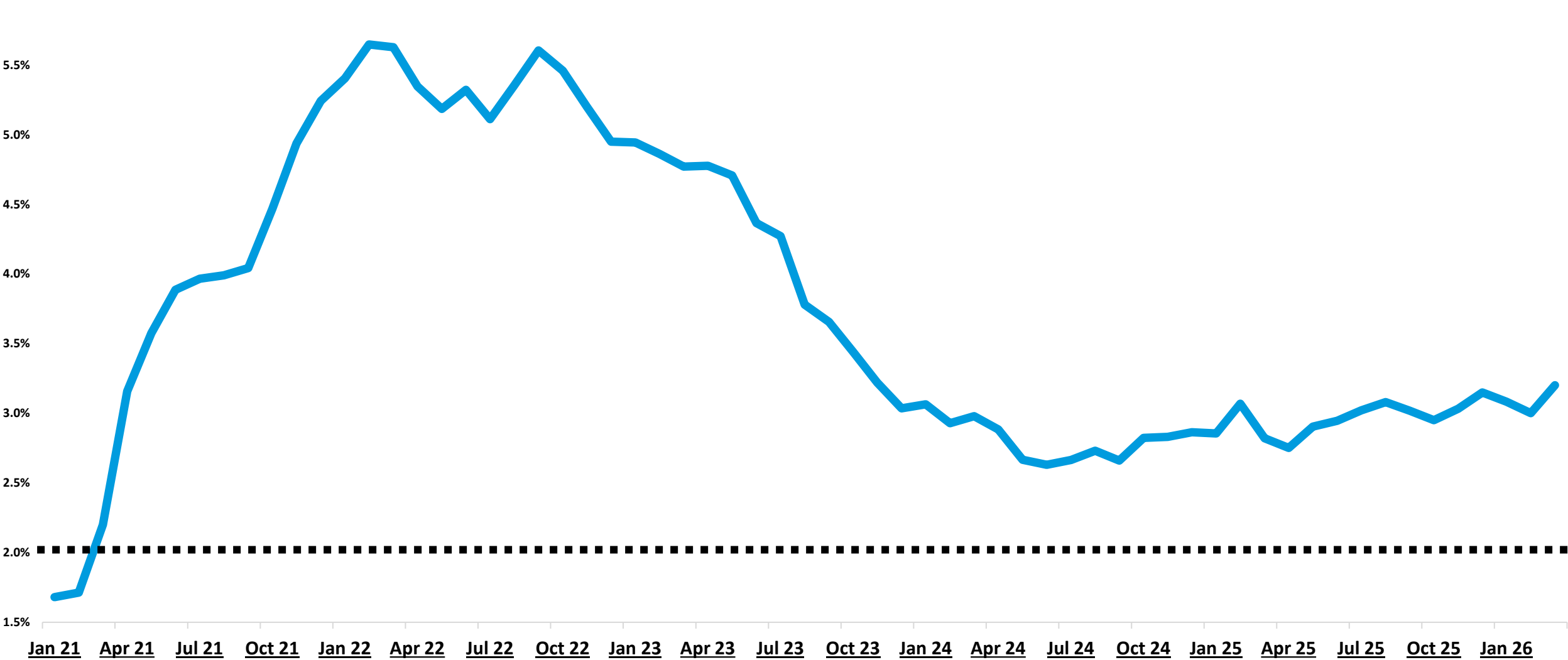
We are Short more than 4 Million Workers From Population Factors



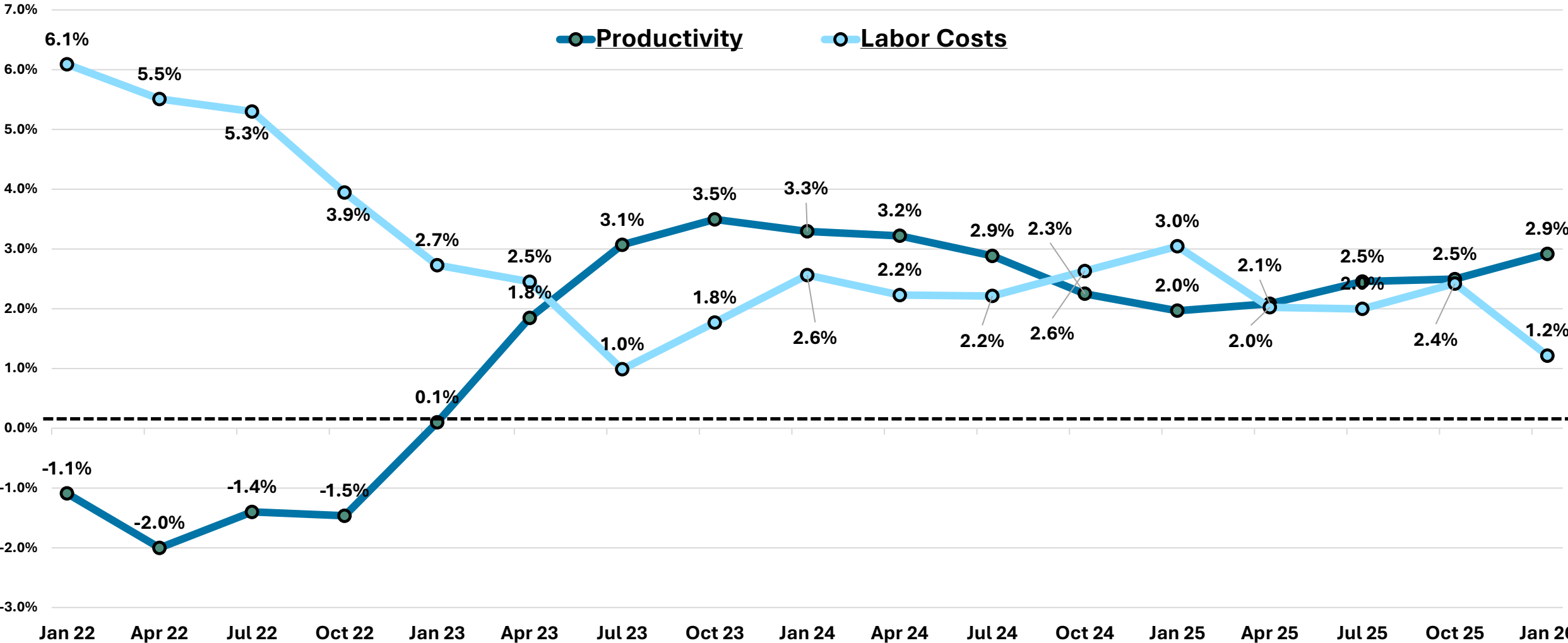
Consumer Prices Rose 3.8% Annually in April – Gas Prices Caused the Spike



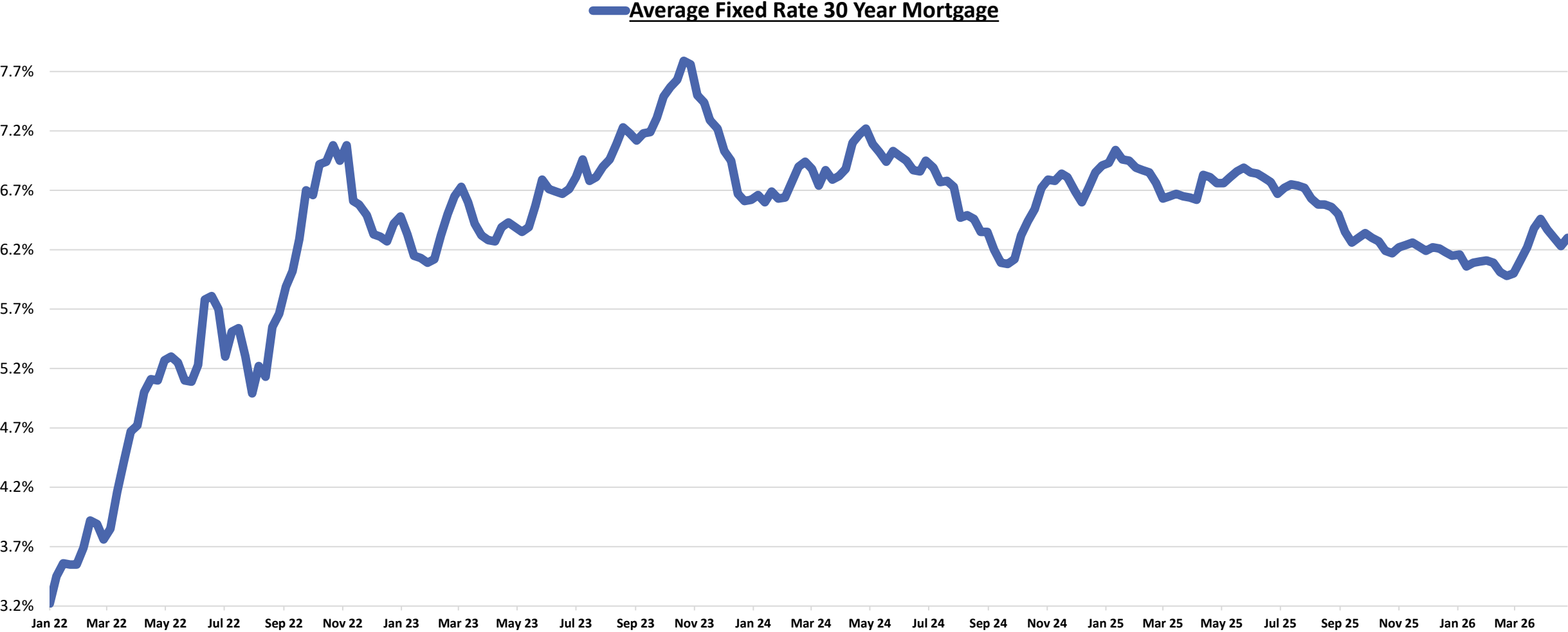
Core PCE Inflation Up in March - Still Well Above Fed's 2% Target



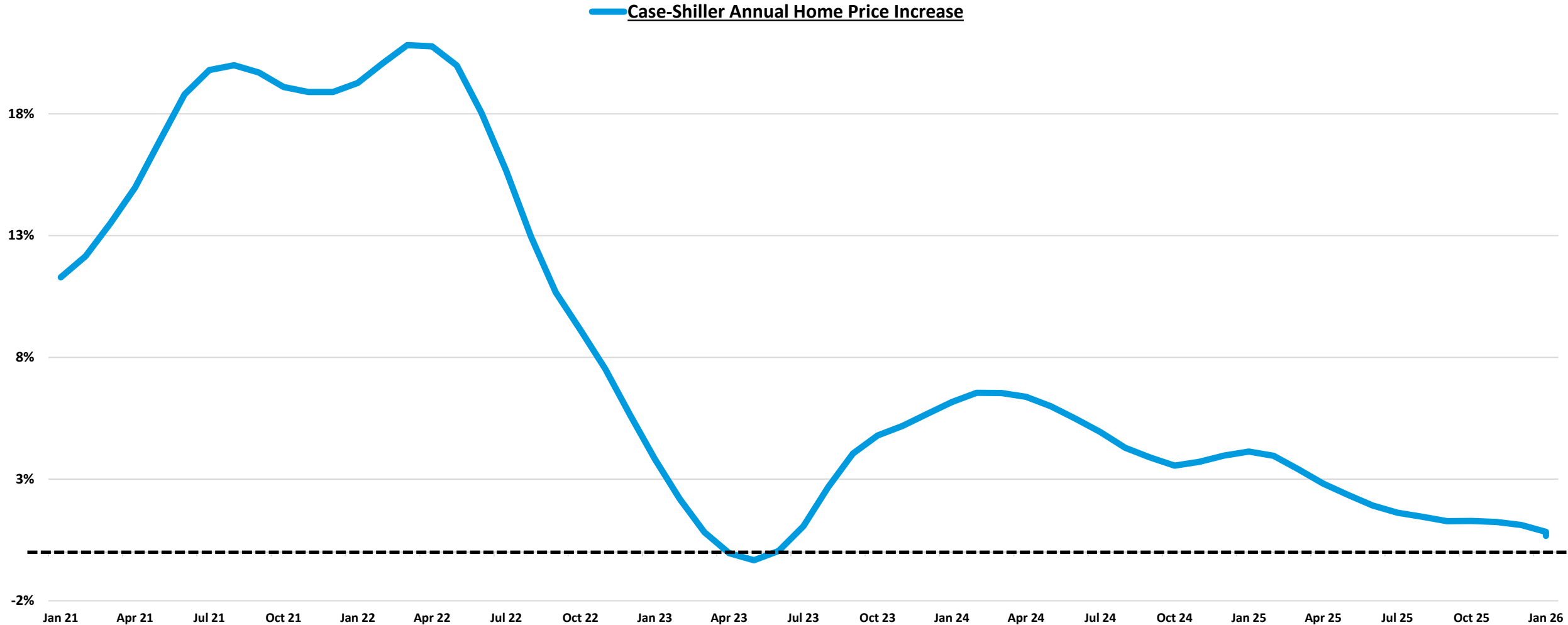
Productivity Growth is Strong- Running Ahead of Rising Labor Costs



Average 30 Year Fixed Mortgage Rate Below Recent Highs (6.3% as of 4/30/26)



Home Prices are Rising – But at a Slower Pace





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Technology and AI in the Franchise Industry

- Rich tradition of embracing technology
 - Variety of applications
- Expansion over time to new tech
 - Inevitably to AI – numerous functions
 - Franchisee recruitment and onboarding
 - Brand consistency/compliance monitoring
 - System-wide analytics and decisions
 - Customer experience transformation
 - AI-powered ordering and voice technology
 - Virtual customer assistants (AI chatbots)
 - Personalized marketing and loyalty programs



Technology and AI in the Franchise Industry

- Operations, inventory and supply chain
 - Predictive inventory management
 - Logistics and delivery optimization
 - IoT-enabled kitchen and equipment management
- Workforce Management, Training and HR
 - AI-enhanced recruitment and onboarding
 - Virtual reality and AI-powered training
 - Performance analytics
- Financial management and business intelligence
 - AI-powered accounting, reporting and monitoring
 - Dynamic pricing
- Others?



Technology and AI in the Franchise Industry

- Potential challenges to adoption and use
 - Franchise governance challenge
 - Cost and return on investment
 - Technical capability and change management
 - Data privacy and security
 - Accuracy and reliability
- Legal and ethical considerations
 - Franchise agreement limitations
 - Employment and labor considerations
 - Algorithmic bias and fairness



State Legislation Regulating AI



- The pace of state AI regulation has accelerated dramatically over a short period
 - In 2023, fewer than 200 bills were introduced across state legislatures addressing AI.
 - In 2024, over 600 AI-related bills were tracked, with nearly 100 enacted into law.
 - In 2025, 1,208 bills were introduced across all 50 states, with 145 enacted.
 - As of March 2026, lawmakers in 45 states had already introduced 1,561 AI-related bills, surpassing the total 2024 volume.

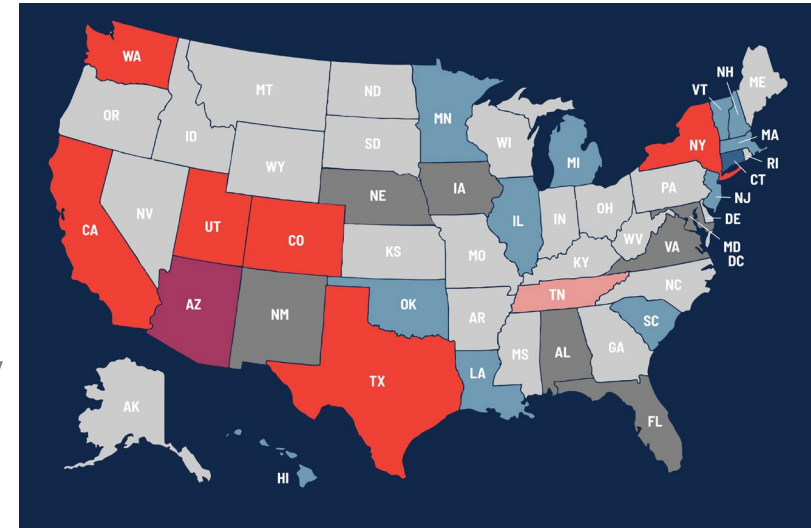
State Legislation Regulating AI - #1

- The most active state, with 24 AI-related laws across the 2024 and 2025 legislative sessions.
 - SB 942 (AI Transparency Act) effective August 2, 2026
 - AB 2013 (Training Data Transparency) effective January 1, 2026
 - SB 53 (Transparency in Frontier AI Act) effective January 1, 2026
 - Cal. Bot Act, B&P Code 17940-17943 (2019)
 - SB 243 (Companion Chatbot Regulation)
 - Deepfakes and Explicit Content



State Legislation Regulating AI - Others

- 38 states with almost 100 AI-related measures, including:
 - Colorado SB 24-205 (CO AI Act) deferred eff. date June 30, 2026
 - Texas HB 149 (Responsible Artificial Intelligence Governance Act)
 - Utah SB 149 (Artificial Intelligence Policy Act) eff. May 1, 2024
 - NY Responsible AI Safety and Education (RAISE) Act eff. Jan. 2027
 - Illinois HB 3773 effective January 1, 2026
 - Tennessee HB 2091 (Ensuring Likeness, Voice, and Image Security (ELVIS)) Act effective July 1, 2024
 - 22 States – Nonconsensual explicit deepfake laws



State Legislation Regulating AI - Antitrust

- Concern: AI-driven pricing tools may facilitate tacit collusion
- California AB 325 & SB 763 effective January 1, 2026 amended Cartwright Act:
 - Prohibits (1) using or distributing common pricing algorithms to collude on pricing and (2) coercing users to adopt algorithmic recommendations
 - Covers any methodology used by two or more persons that uses competitor data to recommend, align, stabilize, set, or influence a price or commercial term
 - No distinction between use of public vs. nonpublic data
 - AB 325 lowers antitrust pleading standards across all violations of Act
 - SB 763 increases maximum criminal penalties: corporate violators from \$1 to \$6 million per violation; individual violators from \$250K to \$1 million
 - New civil penalties of up to \$1 million per violation in cases brought by the California AG or any DA



State Legislation Regulating AI - Antitrust

- New York S.7882 & A. 3008 effective in 2025
 - S. 7882 narrower in scope, targeting only residential rental market
 - Prohibits (1) agreements among residential rental owners or managers not to compete, including where facilitated by algorithms, and (2) residential owners or managers from setting or adjusting rental terms based on algorithmic recommendations that coordinate between owners or managers
 - Requires a level of intent —prohibited actions must be made "knowingly or with reckless disregard"
 - A. 3008 imposes disclosure requirement on use of algorithms to set prices for goods/services based on consumers' personal data
 - Required disclosure: "THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA."



State Legislation Regulating AI - Antitrust

- Connecticut HB 8002 effective January 1, 2026
 - Prohibits revenue management devices using "nonpublic competitor data" for rental housing
 - Explicitly permits use of public data
 - Carveout for "reports that publish existing rental data in an aggregated manner" that do not recommend rental rates or occupancy levels for future leases
- Local laws targeting AI and algorithmic pricing
 - Concentrated overwhelmingly in rental housing sector
 - San Francisco: first to ban sale or use of "algorithmic devices" to set, recommend or advise on rent prices, specifically targeting tools using nonpublic competitor data
 - Philadelphia prohibits rental price-fixing in algorithmic and personal forms
 - About 10 others reported (3 in California)



- Competition in the Age of AI

Federal Antitrust Risks in Algorithmic & Surveillance Pricing

Svetlana S. Gans

Partner, Antitrust & Competition

2026 IFA Legal Symposium | May 2026

GIBSON DUNN

What We'll Cover

01

Federal Enforcement Landscape

Bipartisan, sustained focus on algorithmic pricing — across the Biden and Trump Administrations.

02

Algorithmic Pricing & Sherman Act § 1

The legal framework behind algorithmic pricing.

03

RealPage & the DOJ Settlement

The November 2025 consent decree — the first federal playbook for algorithmic pricing tools.

04

Surveillance Pricing & the 6(b) Study

Definitions, FTC 6(b), House Oversight investigation, and the data-input risk framework.

05

Practical Guidance for Franchisors

Hub-and-spoke risk in a franchise system — and how to mitigate it.

Federal Focus on Algorithmic Pricing Has Been Bipartisan

BIDEN-ERA DOJ & FTC

"Section 1 [of the Sherman Act] prohibits competitors from fixing prices by knowingly sharing their competitive information with, and then relying on pricing decisions from, a common human pricing agent who competitors know analyzes information from multiple competitors.

The same prohibition applies where, as here, the common pricing agent is a common software algorithm."

DOJ & FTC Statement of Interest

Duffy v. Yardi Systems (W.D. Wash., March 2024)

TRANSITION & TRUMP-ERA POSTURE

"Competing companies must make independent pricing decisions, and with the rise of algorithmic and artificial intelligence tools, we will remain at the forefront of vigorous antitrust enforcement."

Abigail Slater, AAG Antitrust (2025–2026)

Announcing the RealPage consent decree, Nov. 24, 2025

CONTINUED ENFORCEMENT IN 2026

"These pricing algorithms can harm consumers by fostering collusion among competitors, thus harming consumers or workers. As these systems become more prevalent across our economy, we anticipate that the number of investigations involving these shared algorithms will grow."

Abigail Slater, AAG Antitrust

Remarks, August 2025

Takeaway: The administration changed; the federal focus on algorithmic pricing did not.

When Does an Algorithm Become an “Agreement”?

SHERMAN ACT § 1

Joint Conduct: The Two Elements

1. AGREEMENT

Express or tacit. Proven directly (e.g., a recording) or indirectly through parallel conduct and “plus factors.”

2. UNREASONABLE RESTRAINT OF TRADE

Per se rule (“naked” price fixing) vs. rule of reason (effects-based analysis).

Two theories used against pricing algorithms:

- Information exchange among competitors via the tool
- “Price fixing” by delegating pricing to a common algorithm

THE “A GUY NAMED BOB” THEORY

Is it ok for a guy named Bob to collect confidential price strategy information from all the participants in a market, and then tell everybody how they should price? If it isn't ok for a guy named Bob to do it, then it probably isn't ok for an algorithm to do it either.

Maureen K. Ohlhausen

Acting Chair (2017–18) and Commissioner, U.S. FTC

RealPage: The Watershed Algorithmic Pricing Case

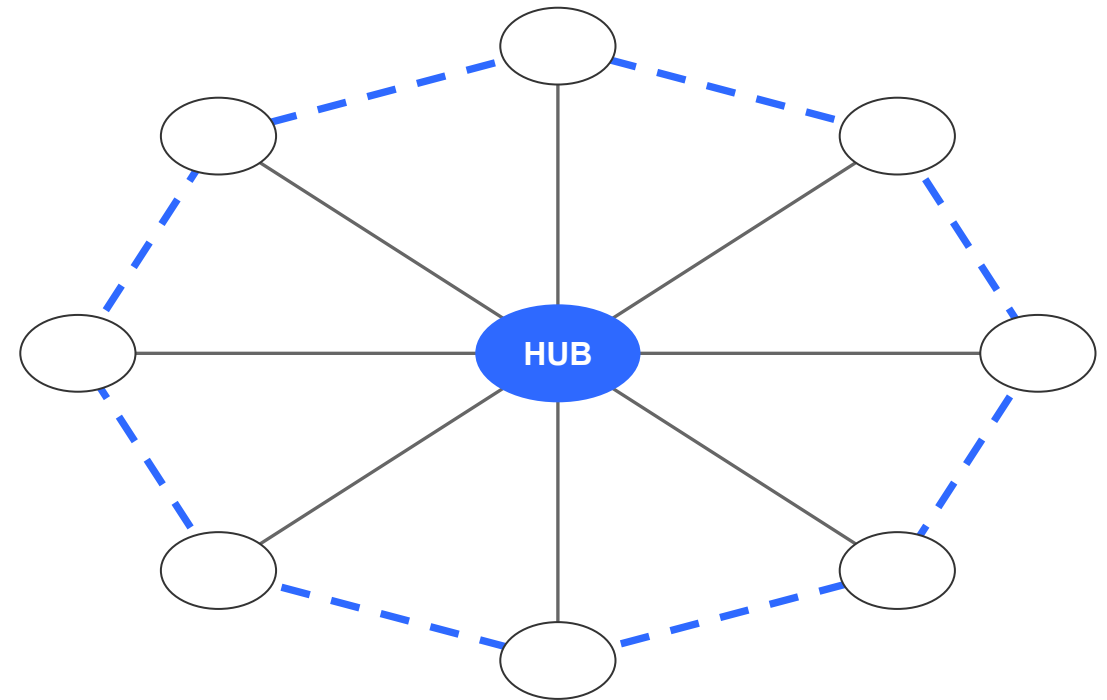
WHAT REALPAGE ALLEGEDLY DID

RealPage's revenue management software (YieldStar, AIRM, LRO) recommended rents to multifamily landlords.

Customers fed RealPage their **non-public, current** lease data. RealPage used that pooled, real-time competitor data to recommend prices back to each landlord.

RealPage also allegedly **convened user groups** of competing landlords to discuss pricing strategy and software parameters.

THE "HUB & SPOKE" THEORY



--- RIM = horizontal agreement among competitors

— SPOKES = each competitor's contract with the algorithm provider

INFORMATION EXCHANGE

Competitors allegedly agreed to share competitively sensitive data through RealPage

PRICE FIXING

Competitors allegedly agreed to delegate pricing to a common algorithm, fixing rents

DOJ–RealPage Settlement (Nov. 24, 2025)

Why this matters: *This is the first federal consent decree directed at an algorithmic pricing tool. It is the clearest available roadmap of where DOJ draws the line.*

WHAT DOJ TARGETED

Alleged **use of nonpublic, current/forward-looking competitor data** in the runtime algorithm (DOJ’s deepest concern).

Allegedly **training models** on active-lease or forward-looking unaffiliated data.

Asymmetric “governors” and one-way ratchets that allegedly propped up prices.

Alleged **auto-accept features** without user-set parameters.

User-group meetings where competitors allegedly discussed pricing strategy or software parameters.

WHAT THE DECREE STILL ALLOWS

Algorithmic pricing itself remains lawful — there was *no judicial finding* that algorithmic pricing violates the Sherman Act.

Training on backward-looking historical data (\geq 12 months old, not price-level, not narrowly geographic) is acceptable.

Independent pricing decisions remain the bedrock principle — users must retain genuine ability to override.

Symmetric guardrails (users can adjust both floors and ceilings) are permitted.

Five Lessons from Algorithmic Pricing Case Law

1

Common software is not, by itself, illegal.

Competitors using the same vendor's tool — without more — does not establish a Sherman §1 agreement.

2

Confidential competitor data is the central red flag.

Courts and DOJ focus on whether the algorithm ingests nonpublic, current, competitively sensitive data from competitor users themselves.

3

Override authority can help — but may not save defendants.

RealPage treated a 10–20% override rate as a reason to apply rule of reason. *Duffy* rejected that approach, applying *per se* treatment — even where lessors "for the most part," but not always, followed recommendations. Deviation room is prudent design, not a doctrinal safe harbor.

4

“Plus factors” fill in the rim of a hub-and-spoke.

Pooling proprietary data with a vendor that aggregates it, vendor-hosted user groups, and mechanisms that enforce adherence have been treated as circumstantial evidence of horizontal agreement.

5

Outcomes depend on the specific factual circumstances of each case.

Gibson, *Cornish-Adebiyi*, and *Dai* were dismissed; *RealPage* (multifamily), *Duffy*, and *MultiPlan* survived. Outcomes turn on factual specifics.

Algorithmic Pricing vs. Surveillance Pricing

WHAT IS “ALGORITHMIC PRICING”?

*Pricing based on **market-level factors** (demand, seasonality, inventory, time of purchase). Not tied to any individual consumer.*

WHAT IS “SURVEILLANCE PRICING”?

*Pricing based on a **consumer’s personal data** (location, browsing, demographics, mouse movements) to set a price tailored to that consumer.*

Inside the FTC 6(b) Order

WHAT FTC REQUESTED

The July 2024 6(b) order required each intermediary to disclose, for every “User Segmentation Solution” or “Targeted Pricing Solution” it offered:

- **Product details** — algorithmic model type, features, intended uses, roadmaps, and promotional materials
- **Data inputs & sources** — complete data map of every field, source, collection method, retention, and consent
- **How pricing is determined** — design docs, segmentation categories, model validation, training frequency, APIs
- **Business customers** — top 10 by volume, contracts, how each uses the solution, same-industry overlap
- **Effects analysis** — internal studies on the solution’s effect on pricing, sales volume, revenue, and targeted consumers

SCOPE & RECIPIENTS

Time period covered: July 19, 2021 through the date of the 6(b) order.

8 recipients (intermediaries): Mastercard, Accenture, McKinsey, PROS, Revionics, Bloomreach, JPMorgan Chase, Task Software.

Key defined terms (FTC order):

- **Targeted Pricing Solution** — any product or service used to set prices for individual consumers based on location, purchase history, browsing behavior, demographics, or other variables.
- **User Segmentation Solution** — any product or service used to categorize or build profiles associated with individual consumers from those same variables.

Surveillance Pricing: The Federal Picture

KEY TAKEAWAY

The FTC's primary lever is Section 5 of the FTC Act (unfair or deceptive practices) — not the Sherman Act. FTC enforcement has paused under Chair Ferguson, but Congress and state AGs have not.

FTC 6(B) STUDY — TIMELINE

July 2024 — FTC opens 6(b) study; orders to 8 intermediaries (Mastercard, Accenture, McKinsey, PROS, Revionics, Bloomreach, JPMorgan Chase, Task Software).

Jan. 2025 — Initial staff findings released 3–2 along party lines; Commissioners Ferguson and Holyoak dissent.

Jan. 2025–present — Comment period closed early under Chair Ferguson; no further FTC enforcement.

Dec. 2025 — FTC issues CID to Instacart on AI-based pricing — first sign of renewed FTC interest.

WHAT THE 6(B) STUDY FOUND

Pervasive use of granular consumer data to set individualized prices — including *location, demographics, browsing and purchase history, mouse movements, and abandoned-cart contents.*

Concrete examples flagged by FTC staff:

- Cosmetics retailer targeting promotions by inferred skin tone
- Higher-priced baby thermometers shown to consumers profiled as new parents whose searches indicate a sick child
- Search-result reordering to surface higher-priced items based on inferred willingness to pay

HOUSE OVERSIGHT INVESTIGATION (MARCH 2026)

On March 5, 2026, the House Committee on Oversight and Government Reform opened a formal investigation into the use of AI and personal data in consumer pricing, sending document requests to major travel, transportation, and delivery companies.

The framing distinguishes two practices:

- **Supports** AI tools that align prices with demand fluctuations, consumer preferences, and operational costs
- **Concerned about** surveillance pricing algorithms coupled with personalized consumer data that “weaponize personal data”

Where Risk Comes From: Data Inputs

1

Market-Level Data **LOWEST RISK**

Aggregate market signals — occupancy, demand, seasonality, inventory, time of purchase. Not tied to any individual consumer. Distinguished from surveillance pricing by legislators and enforcers.

2

First-Party Transaction & Loyalty Data **MODERATE**

Transaction history, loyalty tier, spending levels, purchase frequency. Reaches the “personal data” definitions in most proposed laws. Loyalty exceptions vary widely — most favorable require affirmative enrollment; restrictive ones add uniformity and data-source conditions.

3

Behavioral & Interaction Data **ELEVATED**

Browsing history, search patterns, abandoned carts, app usage, click behavior, device type. Central to the FTC 6(b) findings. Risk increases when used to determine the value or magnitude of an individualized offer, not just eligibility.

4

Inferred & Derived Attributes **HIGH**

Combining non-sensitive data points to generate inferred attributes — income estimates, price sensitivity, propensity to convert, family status. Even where no input is sensitive, the inference may be. Intersects with protected-class proxy concerns.

5

Third-Party & Brokered Data **HIGHEST RISK**

Data purchased or acquired from third-party brokers, data aggregators, or external partners. Multiple proposed federal and state bills now expressly reach third-party data acquisition. Most likely to be viewed by regulators as exceeding reasonable consumer expectations.

Why a Franchise System Is a Hub-and-Spoke Risk Profile

A franchise system is, structurally, a hub with spokes. When the franchisor offers — or mandates — pricing technology that ingests franchisee data and recommends prices back, the antitrust analysis under RealPage maps directly onto franchising.

FRANCHISOR-PROVIDED PRICING TOOL

LOWER RISK

Franchisor uses tool internally; recommendations rely on franchisor's own first-party data (or aged historical data); franchisees freely set prices.

HIGHER RISK

Tool ingests current, nonpublic franchisee-level data; recommends prices back to franchisees in the same system; auto-accept defaults; little practical ability to deviate.

DATA SHARING ACROSS FRANCHISEES

LOWER RISK

Aggregated, lagged benchmarks; franchisor only; data scrubbed of identifying detail; no peer-level disclosure.

HIGHER RISK

Real-time franchisee pricing visible across the system; vendor- or franchisor-hosted forums where franchisees discuss pricing strategy.

SURVEILLANCE/PERSONALIZED PRICING

LOWER RISK

Loyalty offers and discounts disclosed; opt-in personalization; clear consumer notices in jurisdictions that require them.

HIGHER RISK

Individualized pricing using inferred consumer attributes; no disclosure; deployed across franchisees uniformly through a system-mandated platform.

Five Things to Remember

- 01** Algorithmic pricing is not, by itself, illegal — but the federal posture, across administrations, has been firm and is unlikely to soften.
- 02** The bright line is data: nonpublic, current, competitor-sourced data feeding the tool at runtime is the central red flag.
- 03** The DOJ–RealPage consent decree is the closest thing to a federal playbook. Use it as a benchmark when reviewing or adopting a system pricing tool.
- 04** Even with the 6(b) study slowed, the FTC has built a substantial record on algorithmic and AI-driven pricing — that record will shape how the next administration, plaintiffs, and courts approach these tools.
- 05** For franchisors: a system pricing tool is a hub-and-spoke risk profile. Design and contract for it accordingly.

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Questions / Discussion

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