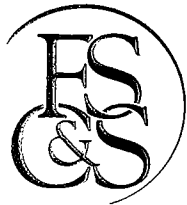


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Reply To: Lansing

May 30, 2007

Atten: Room 135, Document Processing
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Dear Clerk:

Re: RealComp II, Ltd., Docket No. 9320

Enclosed for filing are the original and two copies of:

1. Respondent Realcomp II, Ltd.'s Answer Opposing Counsel's Motion *In Limine* to Bar Lay Opinion Testimony Regarding Justifications for Realcomp's Rules and Policies;
2. Respondent Realcomp II, Ltd.'s Answer Opposing Counsel's Motion *In Limine* to Bar Lay Opinion Testimony Regarding Comparisons of Southeastern Michigan with Other Locales; and
3. Respondent Realcomp II, Ltd.'s Answer Opposing Counsel's Motion *In Limine* Requesting An Order to Preclude Lay Witness Testimony Regarding Certain Hypothetical Legal Issues.

Very truly yours,

FOSTER, SWIFT, COLLINS & SMITH, P.C.


Stephen J. Rhodes

SJR:LR
Enclosures
cc w/enc:

Sean P. Gates, Esq.
Hon. Stephen J. McGuire (two copies) (*via Federal Express*)

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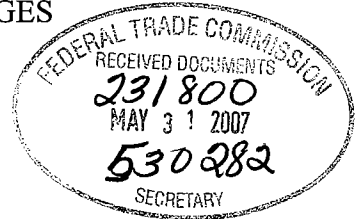
Via Federal Express



ORIGINAL

PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES



_____)
)
In the Matter of)
)
REALCOMP II LTD.,)
)
Respondent.)
_____)

Docket No. 9320

Chief Administrative Law Judge
Stephen J. McGuire

RESPONDENT REALCOMP II, LTD'S ANSWER OPPOSING COMPLAINT
COUNSEL'S MOTION IN LIMINE TO BAR LAY OPINION TESTIMONY
REGARDING COMPARISONS OF SOUTHEASTERN
MICHIGAN WITH OTHER LOCALES

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Dated: May 30, 2007

INTRODUCTION

On May 18, 2007, Complaint Counsel filed a "motion in limine to bar lay opinion testimony regarding supposed comparisons of Southeastern Michigan with other locales" (for simplicity, "Comparison Motion"). Complaint Counsel assert that Respondent Realcomp II, Ltd ("Realcomp") has indicated that it expects four of its lay witnesses (Douglas Hardy, Dale Smith, Kelly Sweeney, and Doug Whitehouse) to offer testimony that would not have an adequate foundation in the witnesses' personal knowledge. Realcomp submits this answer explaining that Complaint Counsel's motion lacks merit and should be denied.

ARGUMENT

I. LAY WITNESSES MAY PRESENT TESTIMONY, INCLUDING OPINIONS AND INFERENCES, BASED ON THEIR EXPERIENCE.

Paragraphs 20 and 21 of the Scheduling Order refer to F.R.E. 602 and F.R.E. 701, which state:

Rule 602: Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

Rule 701: Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Complaint Counsel's motion is based on the premise that under F.R.E. 602, lay testimony must be based on "direct, personal knowledge" (Comparison Motion, p 2). Complaint Counsel's premise is overstated because, for example, such a limitation would preclude every witness from answering questions like: How old are you? and What is your birthday? Nobody has "direct, personal knowledge" of when they were born, yet lay witnesses are uniquely qualified, and allowed, to answer such questions. More specific to this case, a lay witness's personal knowledge includes the witness's experience. See, for example, *United States v Pavia*, 892 F.2d 148, 157 (1st Cir. 1989) ("The individual experience and knowledge of a lay witness may establish his or her competence, without qualification as an expert, to express an opinion on a particular subject outside the realm of common knowledge."); *United States v Thompson*, 559 F.2d 552 (9th Cir. 1977) (recognizing that a restaurant manager had ample personal knowledge to testify about restaurant procedures).

With respect to F.R.E. 701, Complaint Counsel acknowledge that a lay witness may testify in the form of opinions or inferences that are rationally based on the perception of the witness (Comparison Motion, p 2). Realcomp's witnesses have substantial knowledge of, and experience in, the real estate industry. Industry knowledge and experience provide a sufficient foundation for lay opinion testimony. *Agro Air Assocs., Inc. v. Houston Casualty Co.*, 128 F.3d 1452, 1455 (11th Cir. 1997) (affirming the admission of lay witness opinion testimony "based on the witnesses' personal observations and knowledge of, and experience in, the aviation industry"); *Burlington Northern R. Co. v. State of Neb.*, 802 F.2d 994, 1004 (8th Cir. 1977) ("personal knowledge or perception acquired through review of records prepared in the ordinary course of business, or perceptions based on industry experience, is a sufficient foundation for lay opinion testimony").

Moreover, Complaint Counsel seek to damage Realcomp's business model, so Realcomp's witnesses' testimony is admissible under well-established authority allowing lay witness testimony on damages to a business. *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1175 (3rd Cir. 1993) ("In any event, given [the witness's] knowledge and participation in the day-to-day affairs of his business, his partial reliance on the report, even if prepared by an outsider, does not render his testimony beyond the scope of Rule 701. As the district court noted, '[i]t is logical that in preparing a damages report the author may incorporate documents that were prepared by others, while still possessing the requisite personal knowledge or foundation to render his lay opinion admissible under Fed. R. Evid. 701"); *Securitron Manalock Corp. v. Schnabolk*, 65 F.3d 256, 265 (2d. Cir. 1995), cert. denied 516 U.S. 1114 (1996) ("Accordingly, a president of a company, such as [the witness], has 'personal knowledge of his business . . . sufficient to make . . . [him] eligible under Rule 701 to testify as to how lost profits could be calculated.');" *Burlington N. R.R. Co. v. Nebraska*, 812 F.2d 994, 1004-05 (8th Cir. 1986) ("The opinion testimony of an officer of a business as to value or projected profits or as to damage to the business, without qualifying the officer as an expert, 'is admitted not because of experience, training or specialized knowledge within the realm of an expert, but because of the particularized knowledge that the witness has by virtue of his or her position in the business.' Fed.R.Evid. 701, advisory committee's note (2000)").

II. COMPLAINT COUNSEL HAVE NO VALID OBJECTION TO REALCOMP'S LAY WITNESSES TESTIFYING ABOUT THEIR OPINIONS BASED ON EXPERIENCE, NOR TO COMPARISONS BASED ON COMMON KNOWLEDGE AND EVIDENCE IN THE RECORD.

Complaint Counsel make a two-pronged attempt to limit Realcomp's witnesses' testimony regarding the real estate industry in Southeastern Michigan. First, Complaint Counsel take an overly-restrictive position on the witnesses' personal knowledge, which is overstated and

inapplicable as explained above. Second, Complaint Counsel assert a hearsay objection to testimony on the real estate market beyond Southeastern Michigan.

Complaint Counsel specifically challenge only Mr. Smith's testimony. Realcomp has indicated that it expects that Mr. Smith's testimony will be presented by deposition, and "That testimony is expected to concern Mr. Smith's description of Southeastern Michigan residential real estate market as being unique due to its economy and that this, in turn, has made the market very competitive." (Realcomp's Final Proposed Witness List, p 5, copy attached to Comparison Motion).

Complaint Counsel do not assert that any of Mr. Smith's deposition testimony is untrue, but instead assert three challenges to Realcomp's ability to present that deposition testimony. First, Complaint Counsel assert that Mr. Smith has "no personal knowledge of the real estate market outside Michigan" (Comparison Motion, p 3). Complaint Counsel's assertion is incorrect. Mr. Smith has been the CEO of the New Orleans Metropolitan Association of Realtors; the president of the Gulf States Real Estate Information Network System; the CEO of Mississippi and Louisiana CCIM Commercial Group; CEO of the Rockford Area Association of Realtors in Rockford, Illinois; and the CEO of the Greater Aurora Association of Realtors, where he also served as the administrator of an MLS and the corporate secretary of a regional MLS (Smith Dep. at 6:12 – 7:4, attached at Tab 3 to Comparison Motion).

Second, Complaint Counsel assert that Mr. Smith's "opinions on market conditions outside of Michigan are hearsay." (Comparison Motion, p 4). Complaint Counsel's assertion misses the mark because Mr. Smith developed his beliefs through his perceptions and experience. He can testify that he perceived something and that he believes something based on that perception without raising any issue about hearsay or expert opinion testimony. *Indemnity*

Insurance Company of North America v. American Eurocopter LLC, 227 F.R.D. 421, 424 (D. N.C. 2005) ("a person with specialized training does not testify as an expert by giving first-hand participant testimony, even though it appears to be expert testimony"). To the extent that a hearsay issue would arise at all, it would just involve an offer of evidence to prove the truth of the matter asserted by an out-of-court declarant. F.R.E. 801(c).

Complaint Counsel quotes Mr. Smith's deposition testimony where he said that he believed, based on information received through his job, that unemployment in Southeastern Michigan is higher than in most areas, and housing stays on the market longer. (Comparison Motion, p 4). Lay witnesses may testify based on common knowledge. *United States v. Trenton Potteries Co.*, 273 U.S. 392, 407, 47 S.Ct. 377, 383, 71 L.Ed. 700 (1927) ("A certain latitude may rightly be given the Court in permitting a witness on direct examination to testify as to his conclusions, based on common knowledge or experience.")

If Complaint Counsel wishes to pursue a hearsay objection to the market conditions in Southeastern Michigan, however, then Realcomp may establish them by another method. *Trenton Potteries, supra*. For example, public records and reports are admissible as a hearsay exception under F.R.E. 803(8). On May 18, 2007, the United States Department of Labor, Bureau of Labor Statistics released Regional and State Employment and Unemployment information for April 2007 (attached at Tab 1). The Bureau of Labor Statistics relevantly reported:

In April, Michigan and Mississippi reported the highest unemployment rates, 7.1 and 6.8 percent, respectively.

* * *

In April, Illinois and Michigan registered the largest unemployment rate increases from a month earlier (+0.6 percentage point each).

* * *

Over the year, 34 states and the District of Columbia posted statistically significant changes in employment. The only significant over-the-year loss in employment occurred in Michigan (-41,600)." (Tab 1, p 2)

With respect to housing staying on the market longer in Southeastern Michigan, even Complaint Counsel's expert, Stephen Murray, acknowledged that for the past three years Southeastern Michigan has probably been the worst housing market in the country in terms of the decline in sales and increase in inventory (Murray Dep. at 34:25-35:11, attached at Tab 2). Thus, unemployment and housing inventory in Michigan can be recognized as a matter of common knowledge and public record, or they can be proven, as necessary. In any event, Complaint Counsel have no valid objection to Mr. Smith's testimony, since a lay witness may present opinion testimony regarding his or her beliefs based on personal knowledge, and including a comparison of that knowledge to evidence in the record. Even Complaint Counsel's cited authority recognizes that a lay opinion based on hearsay is permitted under F.R.E. 701 if the hearsay is admissible. *K.W. Plastics v. U.S. Can Co*, 131 F. Supp. 2d 1265, 1273, n 13 (M.D. Ala. 2001). More recently in Southeastern Michigan, see *Greenfield v. Sears, Roebuck and Co*, Case No. 04-71086, 2006 WL 2927546 at 12-13 (E.D. Mich. Oct 12, 2006) (Borman, J.) (unpublished, attached at Tab 3) (denying motion in limine to preclude the plaintiff from comparing his qualifications to those of a person whom the defendant hired instead of the plaintiff.).

Finally, Complaint Counsel challenge Mr. Smith's ability to testify on the residential real estate market in Southeastern Michigan, asserting "even Mr. Smith's knowledge of the Southeastern Michigan real estate market is based on hearsay." (Comparison Motion, p 4).

Complaint Counsel's position lacks merit because Mr. Smith is the executive vice president of the Western Wayne Oakland County Association of Realtors (Smith Dep. at 6:10-11, attached at Tab 3 to Comparison Motion). Complaint Counsel suggest that Mr. Smith should not listen to brokers. But of course he listens to brokers. That is part of his job. He is qualified to offer his opinion based on his experience, which includes listening to brokers complain about economic conditions.

With respect to Mssrs. Hardy, Sweeney and Whitehouse, Realcomp indicated that they are "expected to offer testimony concerning the residential real estate market in Southeastern Michigan and how that compares to other markets." (Realcomp's Final Proposed Witness List, pp 2-3). Complaint Counsel acknowledge that "all of [these witnesses] are active real estate practitioners" in Southeastern Michigan (Comparison Motion, p 5). Complaint Counsel generally objects to any testimony that these witnesses may present regarding the real estate market beyond Southeastern Michigan, but no specific testimony is cited as objectionable. Thus, Complaint Counsel's attempt to limit any such testimony is premature. Complaint Counsel's motion also fails because it is based on the inaccurate premise that the witnesses' testimony would be unfounded. As discussed above, these real estate professionals are qualified to present testimony, including opinions, based on their business experience.

III. THERE IS NO MERIT IN COMPLAINT COUNSEL'S ATTEMPT TO PRECLUDE REALCOMP FROM PRESENTING A RESPONSIVE CASE.

Complaint Counsel seek a procedural advantage by attempting to limit the ability of Realcomp's witnesses to testify about what they are doing, or what would happen if Realcomp was forced to change its business model as Complaint Counsel proposes. Realcomp's witnesses are uniquely qualified by their knowledge and experience to respond to these issues, as indicated

above. Moreover, as a matter of fundamental due process, Realcomp has a right to respond to Complaint Counsel's accusations and proposals.

Realcomp intends to offer the testimony of lay witnesses who, because of their knowledge and experience, could be qualified as experts in certain matters. *Farner v. Paccar, Inc*, 562 F.2d 518, 529 (8th Cir. 1977) (recognizing that the mere fact that the witness, by virtue of his education, training, or experience, is capable of being qualified as an expert, does not serve as a valid objection to his expression of lay opinion testimony). Realcomp submits that it properly designated these witnesses as lay witnesses under the Scheduling Order,¹ Any opinion testimony that they may offer would be admissible under the F.R.E. 701. Complaint Counsel seeks extreme and overbroad relief in attempting to completely preclude such testimony.

Complaint Counsel also ignore the Commission's expertise and seek to impair the Commission's search for the truth. Realcomp presents its testimony to assist the Commission in understanding relevant market conditions in the Realcomp Service Area. The Commission can decide how much weight to give that testimony, but should not refuse to hear it. To the extent Complaint Counsel believes that certain testimony is unfounded or wrong, then Complaint Counsel can explore it on cross examination, or present contrary evidence.

¹ In contrast, for example, both Complaint Counsel and Realcomp identified expert witnesses who have produced lengthy reports. See generally, F.R.C.P. 26 (a)(2)(B).


RELIEF

Realcomp respectfully requests that Complaint Counsel's Motion in Limine to Bar Lay Opinion Testimony Regarding Supposed Comparisons of Southeastern Michigan with Other Locales be denied.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Dated: May 30, 2007

By: 

Steven H. Lasher (P28785)
Scott L. Mandel (P33453)
Stephen J. Rhodes (P40112)

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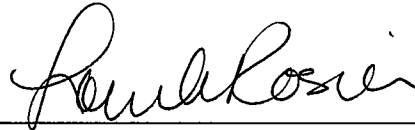
CERTIFICATE OF SERVICE

This is to certify that on May 30, 2007, I caused a copy of the attached Respondent Realcomp II, Ltd.'s Answer Opposing Complaint Counsel's Motion *In Limine* to Bar Lay Opinion Testimony Regarding Comparisons of Southeastern Michigan with Other Locales to be served upon the following persons by Electronic Transmission and First Class Mail:

Sean P. Gates, Esq.
601 New Jersey Ave., N.W.
Rm. NJ-6219
Washington, DC 20001

And two copies of same hand delivered by overnight courier to:

Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580



Lorri A. Rosier

News

United States
Department
of Labor



Bureau of Labor Statistics

Washington, D.C. 20212

Technical information:

Employment:	(202) 691-6559	USDL 07-0713
	http://www.bls.gov/sae/	
Unemployment:	691-6392	
	http://www.bls.gov/lau/	For release: 10:00 A.M. EDT
Media contact:	691-5902	Friday, May 18, 2007

REGIONAL AND STATE EMPLOYMENT AND UNEMPLOYMENT: APRIL 2007

Regional and state unemployment rates were little changed or slightly higher in April. Overall, 33 states and the District of Columbia recorded over-the-month unemployment rate increases, 13 states registered decreases, and 4 states had no changes, the Bureau of Labor Statistics of the U.S. Department of Labor reported today. Over the year, jobless rates were down in 29 states and the District of Columbia, up in 19 states, and unchanged in 2 states. The national unemployment rate was essentially unchanged in April at 4.5 percent, but was down from 4.7 percent a year earlier.

Nonfarm payroll employment increased in 26 states and the District of Columbia and decreased in 22 states. Two states, South Dakota and Vermont, reported no change in over-the-month employment. The largest employment gains occurred in Texas (+23,500), Georgia (+14,300), Florida (+11,100), Virginia (+7,800), and California (+7,400). Montana experienced the largest percentage increase in employment (+0.7 percent), followed by the District of Columbia, Rhode Island, and Utah (+0.4 percent each) and Georgia, New Hampshire, and Oregon (+0.3 percent each). The largest over-the-month decreases in employment were reported in Tennessee (-8,300), Ohio (-5,800), and Kentucky (-5,100). The largest over-the-month percentage losses in employment were in Wyoming (-0.7 percent), Hawaii (-0.6 percent), Idaho (-0.4 percent), and Kentucky and Tennessee (-0.3 percent each). Over the year, nonfarm employment increased in 48 states and the District of Columbia and decreased in 2 states (Michigan and Ohio). The largest over-the-year percentage gains in employment were reported in Utah (+4.6 percent), Arizona and Louisiana (+3.8 percent each), Wyoming (+3.6 percent), and Montana (+3.2 percent).

Regional Unemployment (Seasonally Adjusted)

In April, the Northeast and South again registered the lowest unemployment rates among the four regions, 4.2 percent each. The Midwest continued to report the highest rate, 5.1 percent. The Midwest recorded the only regional statistically significant jobless rate change from March (+0.4 percentage point). The Northeast and South posted the only significant over-the-year unemployment rate changes (-0.5 and -0.3 percentage point, respectively). (See table 1.)

Among the nine geographic divisions, the Mountain continued to report the lowest jobless rate, 3.5 percent in April. The divisions recording the next lowest rates were the South Atlantic at 4.0 percent and the Middle Atlantic and West North Central at 4.1 percent each. The East North Central again posted the highest unemployment rate, 5.5 percent. This division also registered the only statistically significant rate change from March (+0.5 percentage point). Four of the nine divisions reported significant unemployment rate

changes, all declines, from a year earlier: the Middle Atlantic (-0.7 percentage point), East South Central and West South Central (-0.6 point each), and Mountain (-0.5 point).

State Unemployment (Seasonally Adjusted)

Montana again recorded the lowest unemployment rate, 2.2 percent in April. The states with the next lowest rates were Hawaii at 2.4 percent and Utah at 2.5 percent. Three states posted the lowest jobless rates in their series—Alaska (5.8 percent), Texas (4.2 percent), and Washington (4.4 percent). (All state series begin in 1976.) In April, Michigan and Mississippi reported the highest unemployment rates, 7.1 and 6.8 percent, respectively. Overall, 16 states registered unemployment rates that were significantly below the U.S. rate, 8 states and the District of Columbia recorded measurably higher rates, and 26 states had rates that were statistically little different from that of the nation. (See tables A and 3 and chart 1.)

In April, Illinois and Michigan registered the largest unemployment rate increases from a month earlier (+0.6 percentage point each). Ten other states also reported statistically significant over-the-month jobless rate increases: Ohio (+0.5 percentage point); California, Delaware, Georgia, North Carolina, Pennsylvania, Rhode Island, South Dakota, and Wisconsin (+0.3 point each); and Iowa (+0.2 point). The remaining 38 states and the District of Columbia recorded April unemployment rates that were not appreciably different from those of March, even though some had changes that were at least as large numerically as those with statistically significant changes.

Montana reported the largest over-the-year jobless rate decrease from April 2006 (-1.1 percentage points), followed by Alaska (-1.0 point). Fourteen additional states had smaller, but also statistically significant, rate decreases. Six states recorded statistically significant over-the-year rate increases. The largest of these increases occurred in New Hampshire and Vermont (+0.6 percentage point each) and Minnesota and Wisconsin (+0.5 point each). The remaining 28 states and the District of Columbia recorded April 2007 unemployment rates that were not appreciably different from those of a year earlier. (See table B.)

Nonfarm Payroll Employment (Seasonally Adjusted)

Between March and April, three states reported statistically significant changes in employment. Montana experienced the only statistically significant gain (+2,900), while Hawaii (-3,500) and Wyoming (-1,900) both reported losses. (See tables C and 5.)

Over the year, 34 states and the District of Columbia posted statistically significant changes in employment. The only significant over-the-year loss in employment occurred in Michigan (-41,600). The largest employment gains were in California (+266,300), Texas (+240,800), Florida (+148,600), and Arizona (+100,100). Five states and the District of Columbia recorded statistically significant increases in employment that were less than 15,000: Montana (+13,600), the District of Columbia (+11,400), South Dakota and Wyoming (+9,800 each), Hawaii (+8,500), and North Dakota (+6,500). (See table D.)

The Metropolitan Area Employment and Unemployment release for April is scheduled to be issued on Wednesday, May 30. The Regional and State Employment and Unemployment release for May is scheduled to be issued on Tuesday, June 19.

Hurricane Katrina

For April, BLS and its state partners continued to make modifications to the usual estimation procedures for the LAUS program to reflect the impact of Hurricane Katrina on the labor force statistics in affected areas. These modifications included: (1) modifying the state population controls to account for displacement due to Katrina; (2) developing labor force estimates for the New Orleans-Metairie-Kenner metropolitan area using an alternative to the model-based method; and (3) not publishing labor force estimates for the parishes within the New Orleans-Metairie-Kenner metropolitan area or cities within those parishes where the quality of input data was severely compromised by the hurricane.

For more information on LAUS procedures and estimates for April 2007, see *Hurricane Information: Katrina and Rita* on the BLS Web site at <http://www.bls.gov/Katrina/home.htm> or call (202) 691-6392.

Table A. States with unemployment rates significantly different from that of the U.S., April 2007, seasonally adjusted

State	April 2007 rate
United States.....	4.5
Alabama.....	3.3
Alaska.....	5.8
California.....	5.1
Colorado.....	3.5
Delaware.....	3.7
District of Columbia.....	5.7
Florida.....	3.4
Hawaii.....	2.4
Idaho.....	2.8
Iowa.....	3.4
Kentucky.....	5.3
Maryland.....	3.6
Michigan.....	7.1
Mississippi.....	6.8
Montana.....	2.2
Nebraska.....	2.8
New Mexico.....	3.6
North Dakota.....	3.3
Ohio.....	5.7
South Carolina.....	5.8
South Dakota.....	3.4
Utah.....	2.5
Virginia.....	3.1
Wisconsin.....	5.1
Wyoming.....	2.9

Table B. States with statistically significant unemployment rate changes from April 2006 to April 2007, seasonally adjusted

State	Rate		Over-the-year rate change
	April 2006	April 2007	
Alaska.....	6.8	5.8	-1.0
Colorado.....	4.4	3.5	-.9
Idaho.....	3.5	2.8	-.7
Iowa.....	3.8	3.4	-.4
Minnesota.....	4.0	4.5	.5
Montana.....	3.3	2.2	-1.1
Nebraska.....	3.0	2.8	-.2
Nevada.....	4.1	4.4	.3
New Hampshire.....	3.4	4.0	.6
New Jersey.....	4.8	4.3	-.5
New Mexico.....	4.5	3.6	-.9
New York.....	4.7	4.1	-.6
Pennsylvania.....	4.7	4.1	-.6
Rhode Island.....	5.2	4.5	-.7
South Carolina.....	6.4	5.8	-.6
South Dakota.....	3.2	3.4	.2
Tennessee.....	5.2	4.4	-.8
Texas.....	5.0	4.2	-.8
Utah.....	3.1	2.5	-.6
Vermont.....	3.3	3.9	.6
Washington.....	4.9	4.4	-.5
Wisconsin.....	4.6	5.1	.5

Table C. States with statistically significant employment changes from March 2007 to April 2007, seasonally adjusted

State	March 2007	April 2007 ^p	Over-the-month change ^p
Hawaii	624,800	621,300	-3,500
Montana	442,400	445,300	2,900
Wyoming	286,200	284,300	-1,900

p = preliminary.

Table D. States with statistically significant employment changes from April 2006 to April 2007, seasonally adjusted

State	April 2006	April 2007 ^p	Over-the-year change ^p
Alabama	1,974,500	2,003,500	29,000
Arizona	2,614,500	2,714,600	100,100
California	14,983,900	15,250,200	266,300
Colorado	2,267,800	2,315,000	47,200
Connecticut	1,676,300	1,696,600	20,300
District of Columbia	686,100	697,500	11,400
Florida	7,968,800	8,117,400	148,600
Georgia	4,080,000	4,144,500	64,500
Hawaii	612,800	621,300	8,500
Idaho	634,500	650,500	16,000
Illinois	5,922,400	5,976,700	54,300
Iowa	1,500,800	1,519,200	18,400
Kansas	1,344,600	1,376,200	31,600
Louisiana	1,835,700	1,905,200	69,500
Massachusetts	3,236,800	3,271,300	34,500
Michigan	4,351,500	4,309,900	-41,600
Minnesota	2,747,500	2,781,000	33,500
Mississippi	1,135,700	1,156,500	20,800
Missouri	2,768,400	2,801,500	33,100
Montana	431,700	445,300	13,600
Nebraska	942,100	961,000	18,900
Nevada	1,275,600	1,309,400	33,800
New Mexico	828,500	844,700	16,200
New York	8,598,700	8,668,300	69,600
North Carolina	4,005,100	4,092,900	87,800
North Dakota	351,000	357,500	6,500
Oklahoma	1,541,600	1,563,500	21,900
Oregon	1,696,800	1,723,100	26,300
Pennsylvania	5,749,500	5,796,400	46,900
South Dakota	395,700	405,500	9,800
Texas	9,998,300	10,239,100	240,800
Utah	1,193,700	1,248,600	54,900
Virginia	3,715,800	3,774,200	58,400
Washington	2,842,600	2,902,600	60,000
Wyoming	274,500	284,300	9,800

p = preliminary.

Technical Note

This release presents labor force and unemployment data for census regions and divisions, states, and selected substate areas from the Local Area Unemployment Statistics (LAUS) program (tables 1-4). Also presented are nonfarm payroll employment estimates by state and major industry from the Current Employment Statistics (CES) program (tables 5 and 6). The LAUS and CES programs are both federal-state cooperative endeavors.

Labor force and unemployment—from the LAUS program

Definitions. The labor force and unemployment data are based on the same concepts and definitions as those used for the official national estimates obtained from the Current Population Survey (CPS), a sample survey of households that is conducted for the Bureau of Labor Statistics (BLS) by the U.S. Census Bureau. The labor force includes both the employed and the unemployed. Employed persons are those who did any work at all for pay or profit in the reference week (the week including the 12th of the month) or worked 15 hours or more without pay in a family business or farm, plus those not working who had a job from which they were temporarily absent, whether or not paid, for such reasons as labor-management dispute, illness, or vacation. Unemployed persons are those who did not work at all (in the reference week), had actively looked for a job (sometime in the 4-week period ending with the reference week), and were currently available for work; persons on layoff expecting recall need not be looking for work to be counted as unemployed.

Method of estimation. Estimates for all census divisions, states, the District of Columbia, the Los Angeles-Long Beach-Glendale metropolitan division, and New York City are produced using estimating equations based on regression techniques. This method, which underwent substantial enhancement at the beginning of 2005, utilizes data from several sources, including the CPS, the CES, and state unemployment insurance (UI) data. Estimates for the six other areas contained in this release use a different regression approach. A detailed description of the estimation procedures is available from BLS upon request. Estimates for census regions are obtained by summing the model-based estimates for the component divisions and then calculating the unemployment rate.

Annual revisions. Labor force and unemployment data shown for the prior year reflect adjustments made at the end of each year, usually implemented with January estimates. The adjusted estimates reflect updated population data from the U.S. Census Bureau, any revisions in the other data sources, and model reestimation.

Seasonal adjustment. Seasonal adjustment of census division, state, and substate area model employment and unemployment levels is performed within the modeling

procedure. The model estimation is based on the classical approach to seasonal adjustment, in which the series is decomposed into trend, seasonal, irregular, and survey error. This directly yields seasonally adjusted estimates for employment and unemployment levels with reliability measures. Labor force levels and unemployment rates are calculated from these two estimates. Additionally, measures for the state of California are derived by summing the seasonally adjusted estimates for the Los Angeles-Long Beach-Glendale metropolitan division and the balance of California, and the estimates for the State of New York are the sum of the estimates for New York City and the balance of New York. Labor force estimates for census regions are calculated as the sum of the levels of the component divisions, and the unemployment rate is then calculated. In most years, historical data for the most recent 5 years are revised near the beginning of each calendar year, usually coincident with the release of January estimates.

Area definitions. The substate area data published in this release reflect the standards and definitions established by the U.S. Office of Management and Budget on December 18, 2006. A detailed list of the geographic definitions is available on the Web at <http://www.bls.gov/lau/lausmsa.htm> and also is published annually in the May issue of *Employment and Earnings*.

Employment—from the CES program

Definitions. Employment data refer to persons on establishment payrolls who receive pay for any part of the pay period that includes the 12th of the month. Persons are counted at their place of work rather than at their place of residence; those appearing on more than one payroll are counted on each payroll. Industries are classified on the basis of their principal activity in accordance with the 2002 version of the North American Industry Classification System.

Method of estimation. The employment data are estimated using a "link relative" technique in which a ratio (link relative) of current-month employment to that of the previous month is computed from a sample of establishments reporting for both months. The estimates of employment for the current month are obtained by multiplying the estimates for the previous month by these ratios.

Annual revisions. Employment estimates are adjusted annually to a complete count of jobs, called benchmarks, derived principally from tax reports that are submitted by employers who are covered under state unemployment insurance (UI) laws. The benchmark information is used to adjust the monthly estimates between the new benchmark and the preceding one and also to establish the level of employment for the new benchmark month. Thus, the benchmarking process establishes the level of employment, and the sample is used to measure the month-to-month changes in the level for the subsequent months.

Seasonal adjustment. Payroll employment data are seasonally adjusted at the statewide supersector level. In some states, the seasonally adjusted payroll employment total is computed by aggregating the independently adjusted supersector series. In other states, the seasonally adjusted payroll employment total is independently adjusted. Revisions of historical data for the most recent 5 years are made once a year, coincident with annual benchmark adjustments.

Caution on aggregating state data. State estimation procedures are designed to produce accurate data for each individual state. BLS independently develops a national employment series; state estimates are not forced to sum to national totals. Because each state series is subject to larger sampling and nonsampling errors than the national series, summing them cumulates individual state level errors and can cause significant distortions at an aggregate level. Due to these statistical limitations, BLS does not compile a "sum-of-states" employment series, and cautions users that such a series is subject to a relatively large and volatile error structure.

Reliability of the estimates

The estimates presented in this release are based on sample survey, administrative data, and modeling and, thus, are subject to sampling and other types of errors. Sampling error is a measure of sampling variability—that is, variation that occurs by chance because a sample rather than the entire population is surveyed. Survey data also are subject to nonsampling errors, such as those which can be introduced into the data collection and processing operations. Estimates not directly derived from sample surveys are subject to additional errors resulting from the specific estimation processes used. The sums of individual items may not always equal the totals shown in the same tables because of rounding. With respect to the LAUS program, unemployment rates are computed from unrounded data rather than from data that may be displayed in the tables; differences, however, are generally insignificant.

Use of error measures. In 2005, the Local Area Unemployment Statistics (LAUS) program introduced several improvements to its methodology. Among these was the development of model-based error measures for the monthly estimates and the estimates of over-the-month changes. The introductory section of this release preserves the long-time practice of highlighting the direction of the movements in regional and state unemployment rates and state nonfarm payroll employment regardless of their statistical significance. The remainder of the analysis in the release takes the statistical significance of monthly and annual changes into consideration.

Labor force and unemployment estimates. Model-based error measures for both seasonally adjusted and not seasonally adjusted data, and for over-the-month change, are available on the BLS Web site at <http://www.bls.gov/lau/lastderr.htm>. BLS uses a 90-percent confidence level in determining whether changes in LAUS unemployment rates are statistically significant. The average magnitude of the over-the-month change in a state unemployment rate that is required in order to be statistically significant at the 90-percent confidence level is between 0.3 and 0.4 percentage point. More details can be found on the Web site. Measures of nonsampling error are not available, but additional information on the subject is provided in the BLS monthly periodical, *Employment and Earnings*.

Employment estimates. Measures of sampling error for state CES data at the total nonfarm and supersector level and for metropolitan area CES data at the total nonfarm level are available on the BLS Web site at <http://www.bls.gov/sae/790stderr.htm>. BLS uses a 90-percent confidence level in determining whether changes in CES employment levels are statistically significant. Information on recent benchmark revisions for states is available on the BLS Web site at <http://www.bls.gov/sae/>.

Additional information

More complete information on the technical procedures used to develop these estimates and additional data appear in *Employment and Earnings*, which is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (telephone 202-512-1800), and from the BLS Handbook of Methods, Bulletin 2490, August 1997.

Estimates of labor force and unemployment, as well as nonfarm employment from the CES program, for over 370 metropolitan areas and metropolitan New England City and Town Areas (NECTAs) are available in the news release, *Metropolitan Area Employment and Unemployment*. Estimates of labor force, employment, and unemployment for all states, metropolitan areas, labor market areas, counties, cities with a population of 25,000 or more, and other areas used in the administration of various federal economic assistance programs are available on the BLS Web site at <http://www.bls.gov/lau/>. Employment data from the CES program are available at <http://www.bls.gov/sae/>.

Information in this release will be made available to sensory impaired individuals upon request. Voice phone: 202-691-5200; TDD message referral phone: 1-800-877-8339.

LABOR FORCE DATA

LABOR FORCE DATA

Table 1. Civilian labor force and unemployment by census region and division, seasonally adjusted ¹

(Numbers in thousands)

Census region and division	Civilian labor force				Unemployed							
					Number				Percent of labor force			
	April 2006	Feb. 2007	March 2007	April 2007	April 2006	Feb. 2007	March 2007	April 2007	April 2006	Feb. 2007	March 2007	April 2007
Northeast	27,936.9	27,988.6	27,894.1	27,813.1	1,314.3	1,203.8	1,140.9	1,171.2	4.7	4.3	4.1	4.2
New England	7,611.4	7,676.5	7,676.8	7,654.7	344.3	358.3	324.6	337.6	4.5	4.7	4.2	4.4
Middle Atlantic	20,325.6	20,312.1	20,217.3	20,158.3	970.0	845.5	816.3	833.6	4.8	4.2	4.0	4.1
South	53,715.6	54,650.8	54,802.7	54,667.9	2,422.8	2,317.4	2,270.1	2,292.6	4.5	4.2	4.1	4.2
South Atlantic	28,704.4	29,298.3	29,382.0	29,327.1	1,158.3	1,141.6	1,129.8	1,168.8	4.0	3.9	3.8	4.0
East South Central	8,499.7	8,663.0	8,696.9	8,655.2	449.8	433.8	424.5	409.2	5.3	5.0	4.9	4.7
West South Central	16,511.4	16,689.5	16,723.8	16,685.6	814.8	742.0	715.8	714.7	4.9	4.4	4.3	4.3
Midwest	34,725.1	35,016.8	34,993.0	34,950.7	1,729.4	1,715.4	1,644.4	1,767.3	5.0	4.9	4.7	5.1
East North Central	23,897.6	24,067.9	24,060.3	24,045.1	1,294.7	1,250.7	1,213.4	1,323.5	5.4	5.2	5.0	5.5
West North Central	10,827.5	10,949.0	10,932.6	10,905.6	434.7	464.7	431.0	443.9	4.0	4.2	3.9	4.1
West	34,747.6	35,232.3	35,301.3	35,282.7	1,620.5	1,561.1	1,549.2	1,599.7	4.7	4.4	4.4	4.5
Mountain	10,686.2	10,865.3	10,835.2	10,836.8	427.8	381.7	378.7	379.7	4.0	3.5	3.5	3.5
Pacific	24,061.4	24,367.1	24,466.1	24,445.9	1,192.7	1,179.4	1,170.5	1,220.0	5.0	4.8	4.8	5.0

¹ Census region estimates are derived by summing the Census division model-based estimates.

NOTE: Data refer to place of residence. The States (including the District of Columbia) that compose the various census divisions are: New England: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; Middle Atlantic: New Jersey, New York, and Pennsylvania; South Atlantic: Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, and West Virginia; East South Central: Alabama, Kentucky, Mississippi, and

Tennessee; West South Central: Arkansas, Louisiana, Oklahoma, and Texas; East North Central: Illinois, Indiana, Michigan, Ohio, and Wisconsin; West North Central: Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota; Mountain: Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming; and Pacific: Alaska, California, Hawaii, Oregon, and Washington. Estimates for the current year are subject to revision early in the following calendar year.

Table 2. Civilian labor force and unemployment by census region and division, not seasonally adjusted ¹

(Numbers in thousands)

Census region and division	Civilian labor force				Unemployed							
					Number				Percent of labor force			
	March		April		March		April		March		April	
	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007
Northeast	27,778.9	27,739.0	27,734.2	27,588.3	1,376.5	1,227.2	1,266.5	1,117.7	5.0	4.4	4.6	4.1
New England	7,557.6	7,624.9	7,553.1	7,591.0	366.7	350.5	336.6	328.3	4.9	4.6	4.5	4.3
Middle Atlantic	20,221.3	20,114.1	20,181.1	19,997.4	1,009.9	876.7	929.9	789.4	5.0	4.4	4.6	3.9
South	53,356.3	54,540.1	53,492.5	54,399.9	2,365.2	2,258.0	2,266.9	2,126.3	4.4	4.1	4.2	3.9
South Atlantic	28,526.5	29,264.7	28,596.2	29,194.3	1,119.0	1,116.9	1,086.9	1,094.3	3.9	3.8	3.8	3.7
East South Central	8,424.1	8,636.5	8,439.6	8,586.8	449.9	433.1	416.7	372.3	5.3	5.0	4.9	4.3
West South Central	16,405.7	16,638.9	16,456.7	16,618.8	796.4	708.0	763.3	659.7	4.9	4.3	4.6	4.0
Midwest	34,490.0	34,777.2	34,543.0	34,745.6	1,855.9	1,795.0	1,693.3	1,729.7	5.4	5.2	4.9	5.0
East North Central	23,723.3	23,908.8	23,734.2	23,867.7	1,375.8	1,319.1	1,267.3	1,296.1	5.8	5.5	5.3	5.4
West North Central	10,766.7	10,868.4	10,808.8	10,877.9	480.1	475.9	426.0	433.6	4.5	4.4	3.9	4.0
West	34,536.0	35,179.3	34,581.2	35,095.4	1,665.1	1,632.4	1,584.7	1,558.6	4.8	4.6	4.6	4.4
Mountain	10,560.4	10,773.0	10,634.5	10,777.6	431.4	396.2	418.1	367.4	4.1	3.7	3.9	3.4
Pacific	23,975.6	24,406.3	23,946.7	24,317.8	1,233.7	1,236.2	1,166.6	1,191.1	5.1	5.1	4.9	4.9

¹ Census region estimates are derived by summing the Census division model-based estimates.

NOTE: Data refer to place of residence. The composition of the regions

and divisions is described in table 1. Estimates for the current year are subject to revision early in the following calendar year.

Table 3. Civilian labor force and unemployment by state and selected area, seasonally adjusted

(Numbers in thousands)

State and area	Civilian labor force				Unemployed							
					Number				Percent of labor force			
	April 2006	Feb. 2007	March 2007	April 2007	April 2006	Feb. 2007	March 2007	April 2007	April 2006	Feb. 2007	March 2007	April 2007
Alabama	2,187.3	2,236.1	2,239.6	2,226.0	77.3	73.6	75.4	72.4	3.5	3.3	3.4	3.3
Alaska	346.0	346.2	346.9	344.9	23.4	21.2	20.5	20.1	6.8	6.1	5.9	5.8
Arizona	2,952.0	3,031.5	3,019.8	3,020.9	122.8	117.3	119.0	119.5	4.2	3.9	3.9	4.0
Arkansas	1,364.5	1,379.4	1,385.0	1,380.3	71.0	69.5	67.5	68.8	5.2	5.0	4.9	5.0
California	17,865.1	18,069.2	18,134.2	18,142.7	893.4	874.1	875.5	933.9	5.0	4.8	4.8	5.1
Los Angeles-Long Beach-Glendale ¹	4,874.8	4,874.9	4,883.6	4,904.1	234.9	223.0	244.7	244.5	4.8	4.6	5.0	5.0
Colorado	2,635.7	2,686.4	2,670.4	2,655.7	116.5	101.1	97.3	92.6	4.4	3.8	3.6	3.5
Connecticut	1,832.4	1,854.6	1,867.6	1,860.9	73.6	77.6	76.8	78.2	4.0	4.2	4.1	4.2
Delaware	439.0	445.1	444.9	444.9	15.9	14.9	15.1	16.6	3.6	3.4	3.4	3.7
District of Columbia	312.9	321.0	321.3	322.0	18.6	18.6	17.8	18.3	5.9	5.8	5.5	5.7
Florida	8,932.6	9,148.1	9,193.7	9,178.7	293.8	301.0	306.3	313.0	3.3	3.3	3.3	3.4
Miami-Miami Beach-Kendall ¹	1,154.8	1,178.4	1,185.6	1,190.2	44.9	38.6	37.6	40.1	3.9	3.3	3.2	3.4
Georgia	4,717.5	4,819.5	4,836.3	4,832.5	217.8	205.7	197.8	212.9	4.6	4.3	4.1	4.4
Hawaii	641.0	649.0	655.5	653.3	16.9	14.8	16.1	15.8	2.6	2.3	2.5	2.4
Idaho	746.2	754.0	752.4	754.8	26.2	21.2	21.4	21.3	3.5	2.8	2.8	2.8
Illinois	6,570.2	6,677.3	6,652.4	6,670.5	307.6	318.9	281.6	318.4	4.7	4.8	4.2	4.8
Chicago-Naperville-Joliet ¹	4,034.8	4,118.3	4,091.7	4,105.6	182.8	192.6	166.0	188.6	4.5	4.7	4.1	4.6
Indiana	3,260.4	3,283.8	3,283.1	3,257.1	159.8	154.2	149.9	156.3	4.9	4.7	4.6	4.8
Iowa	1,662.4	1,659.0	1,656.5	1,653.6	63.3	54.8	52.5	55.7	3.8	3.3	3.2	3.4
Kansas	1,464.6	1,478.8	1,474.9	1,475.9	65.7	65.2	60.2	62.7	4.5	4.4	4.1	4.3
Kentucky	2,032.5	2,069.4	2,072.9	2,067.1	117.7	118.3	111.7	109.8	5.8	5.7	5.4	5.3
Louisiana	1,975.5	1,999.0	2,016.8	2,010.0	74.8	77.6	82.5	86.4	3.8	3.9	4.1	4.3
Maine	708.7	713.5	714.4	714.3	30.5	31.3	30.4	30.4	4.3	4.4	4.3	4.3
Maryland	2,997.5	3,015.2	3,023.7	3,007.6	113.4	115.6	108.2	108.9	3.8	3.8	3.6	3.6
Massachusetts	3,395.5	3,417.8	3,403.8	3,397.8	165.1	181.3	149.4	155.6	4.9	5.3	4.4	4.6
Michigan	5,081.0	5,071.0	5,073.4	5,049.0	343.8	335.2	328.1	357.1	6.8	6.6	6.5	7.1
Detroit-Warren-Livonia ²	2,171.1	2,172.8	2,185.4	2,165.1	154.7	139.9	142.5	156.3	7.1	6.4	6.5	7.2
Minnesota	2,918.0	2,966.8	2,956.4	2,955.0	115.8	133.2	124.5	132.6	4.0	4.5	4.2	4.5
Mississippi	1,299.5	1,319.0	1,331.1	1,324.3	84.8	88.1	92.1	90.2	6.5	6.7	6.9	6.8
Missouri	3,020.1	3,065.1	3,059.8	3,047.7	141.5	153.7	142.4	137.7	4.7	5.0	4.7	4.5
Montana	492.5	498.3	498.8	497.7	16.4	12.7	10.1	10.8	3.3	2.5	2.0	2.2
Nebraska	972.9	976.8	974.7	976.1	29.4	28.1	24.9	27.0	3.0	2.9	2.6	2.8
Nevada	1,281.7	1,334.5	1,336.1	1,336.2	52.9	57.8	57.2	58.2	4.1	4.3	4.3	4.4
New Hampshire	734.8	743.9	745.3	741.3	24.7	27.7	28.5	29.6	3.4	3.7	3.8	4.0
New Jersey	4,511.4	4,520.9	4,499.5	4,488.9	214.8	186.9	193.9	194.5	4.8	4.1	4.3	4.3
New Mexico	932.5	938.5	937.8	938.1	41.6	33.0	34.8	34.1	4.5	3.5	3.7	3.6
New York	9,493.6	9,491.1	9,455.0	9,419.4	441.7	412.9	382.9	388.7	4.7	4.4	4.0	4.1
New York City	3,797.0	3,821.5	3,790.6	3,776.7	192.9	181.8	161.9	167.5	5.1	4.8	4.3	4.4
North Carolina	4,442.7	4,522.9	4,521.0	4,528.4	205.6	201.4	201.7	215.5	4.6	4.5	4.5	4.8
North Dakota	356.8	364.5	365.0	364.0	11.4	11.5	11.3	11.9	3.2	3.2	3.1	3.3
Ohio	5,921.2	5,955.0	5,967.3	5,981.2	319.6	294.9	307.4	338.5	5.4	5.0	5.2	5.7
Cleveland-Elyria-Mentor ²	1,092.7	1,092.2	1,088.1	1,087.1	57.8	58.5	57.7	61.5	5.3	5.4	5.3	5.7
Oklahoma	1,715.8	1,736.9	1,740.5	1,745.0	68.1	68.1	71.0	72.9	4.0	3.9	4.1	4.2
Oregon	1,891.4	1,930.0	1,932.0	1,922.4	101.2	101.4	100.1	98.3	5.4	5.3	5.2	5.1
Pennsylvania	6,295.7	6,308.2	6,257.0	6,255.3	293.7	253.8	238.2	258.0	4.7	4.0	3.8	4.1
Rhode Island	577.8	579.5	577.7	575.7	29.9	25.8	24.0	25.9	5.2	4.4	4.2	4.5
South Carolina	2,120.1	2,157.0	2,163.6	2,153.9	136.6	131.6	128.6	124.5	6.4	6.1	5.9	5.8
South Dakota	428.7	436.2	437.0	437.1	13.6	14.7	13.6	14.8	3.2	3.4	3.1	3.4
Tennessee	2,980.4	3,035.1	3,052.2	3,030.6	156.3	149.8	144.5	131.9	5.2	4.9	4.7	4.4
Texas	11,444.9	11,573.8	11,574.7	11,552.8	570.8	522.9	496.4	489.4	5.0	4.5	4.3	4.2
Utah	1,300.9	1,332.2	1,335.7	1,342.3	40.0	30.0	31.5	33.7	3.1	2.3	2.4	2.5
Vermont	358.9	362.0	362.7	360.4	12.0	14.1	13.8	14.2	3.3	3.9	3.8	3.9
Virginia	3,980.9	4,048.3	4,059.3	4,052.4	118.3	119.3	119.9	123.6	3.0	2.9	3.0	3.1
Washington	3,316.9	3,360.7	3,382.8	3,370.4	163.4	162.3	155.7	149.4	4.9	4.8	4.6	4.4
Seattle-Bellevue-Everett ¹	1,401.5	1,404.8	1,410.9	1,418.1	60.5	61.4	61.6	54.4	4.3	4.4	4.4	3.8
West Virginia	803.2	813.5	814.8	813.9	37.9	34.8	35.1	36.3	4.7	4.3	4.3	4.5
Wisconsin	3,055.0	3,094.6	3,094.0	3,089.8	141.0	154.3	147.2	156.6	4.6	5.0	4.8	5.1
Wyoming	282.6	287.4	288.0	287.7	8.3	6.7	7.6	8.3	2.9	2.3	2.6	2.9
Puerto Rico	1,427.2	1,459.7	1,429.7	1,416.1	137.7	165.8	144.4	142.2	9.7	11.4	10.1	10.0

¹ Metropolitan division.

² Metropolitan statistical area.

NOTE: Data refer to place of residence. Data for Puerto Rico are derived from a monthly household survey similar to the Current Population Survey. Area definitions are based on Office of Management and Budget Bulletin No. 07-01,

dated December 18, 2006, and are available at <http://www.bls.gov/lau/lausmsa.htm> and in the May issue of *Employment and Earnings*. Estimates for the current year are subject to revision early in the following calendar year.

Table 4. Civilian labor force and unemployment by state and selected area, not seasonally adjusted

(Numbers in thousands)

State and area	Civilian labor force				Unemployed							
					Number				Percent of labor force			
	March		April		March		April		March		April	
	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007
Alabama	2,164.8	2,223.8	2,169.4	2,208.3	73.2	72.4	66.3	59.9	3.4	3.3	3.1	2.7
Alaska	341.9	342.8	341.7	340.4	25.8	22.7	24.5	21.3	7.6	6.6	7.2	6.3
Arizona	2,945.3	3,009.7	2,960.9	3,011.4	115.6	115.4	116.2	111.9	3.9	3.8	3.9	3.7
Arkansas	1,359.6	1,380.2	1,367.4	1,381.5	73.3	69.9	72.0	67.0	5.4	5.1	5.3	4.8
California	17,805.8	18,105.1	17,780.8	18,058.0	907.0	917.5	862.3	908.8	5.1	5.1	4.8	5.0
Los Angeles-Long Beach-Glendale ¹	4,878.7	4,881.3	4,850.5	4,880.1	228.0	241.1	219.9	230.4	4.7	4.9	4.5	4.7
Colorado	2,609.5	2,647.5	2,630.5	2,632.9	120.5	105.2	114.4	89.0	4.6	4.0	4.3	3.4
Connecticut	1,823.9	1,857.8	1,823.8	1,851.4	80.2	79.0	72.6	75.7	4.4	4.3	4.0	4.1
Delaware	437.2	444.3	437.7	443.8	18.3	16.0	15.7	16.6	3.7	3.6	3.6	3.7
District of Columbia	311.5	319.1	310.6	319.5	18.2	17.3	17.3	16.6	5.8	5.4	5.6	5.2
Florida	8,881.8	9,169.6	8,883.0	9,133.2	273.3	289.8	270.7	288.9	3.1	3.2	3.0	3.2
Miami-Miami Beach-Kendall ¹	1,138.9	1,174.1	1,146.5	1,183.3	41.9	36.2	41.4	38.4	3.7	3.1	3.6	3.2
Georgia	4,689.9	4,828.2	4,691.6	4,809.0	210.6	194.5	203.5	198.7	4.5	4.0	4.3	4.1
Hawaii	640.4	655.5	641.8	654.1	15.6	15.4	16.6	15.6	2.4	2.4	2.6	2.4
Idaho	741.6	747.6	745.9	750.0	32.0	27.5	28.5	23.3	4.3	3.7	3.8	3.1
Illinois	6,531.3	6,614.8	6,539.0	6,633.0	333.6	298.5	306.5	311.4	5.1	4.5	4.7	4.7
Chicago-Naperville-Joliet ¹	4,018.5	4,078.6	4,013.8	4,084.0	195.8	169.5	185.6	190.6	4.9	4.2	4.6	4.7
Indiana	3,241.6	3,260.6	3,254.4	3,245.8	173.0	163.2	160.4	152.9	5.3	5.0	4.9	4.7
Iowa	1,647.8	1,646.5	1,659.8	1,648.5	71.4	60.8	61.8	55.5	4.3	3.7	3.7	3.4
Kansas	1,454.5	1,468.9	1,460.7	1,470.6	66.5	62.6	60.1	58.2	4.6	4.3	4.1	4.0
Kentucky	2,020.2	2,061.1	2,023.4	2,058.0	129.5	119.3	116.4	105.1	6.4	5.8	5.8	5.1
Louisiana	1,967.5	1,999.6	1,969.5	2,001.2	73.8	75.7	64.9	74.1	3.7	3.8	3.3	3.7
Maine	698.8	705.8	701.2	706.1	35.1	35.4	33.7	32.5	5.0	5.0	4.8	4.6
Maryland	2,969.8	3,005.1	2,974.5	2,982.4	110.8	108.7	108.0	102.4	3.7	3.6	3.6	3.4
Massachusetts	3,374.5	3,385.8	3,369.5	3,369.6	176.9	162.8	161.4	148.1	5.2	4.8	4.8	4.4
Michigan	5,055.0	5,045.5	5,021.2	4,981.6	374.0	361.1	331.5	338.0	7.4	7.2	6.6	6.8
Detroit-Warren-Livonia ²	2,156.2	2,172.2	2,140.8	2,132.1	159.4	149.6	143.6	143.5	7.4	6.9	6.7	6.7
Minnesota	2,918.8	2,937.7	2,911.3	2,942.6	135.7	142.7	117.2	135.6	4.6	4.9	4.0	4.6
Mississippi	1,289.0	1,323.6	1,292.2	1,316.3	83.0	90.7	81.1	84.2	6.4	6.8	6.3	6.4
Missouri	3,003.6	3,051.6	3,020.7	3,043.3	145.8	151.4	133.9	130.9	4.9	5.0	4.4	4.3
Montana	490.0	493.8	494.8	497.3	20.5	13.9	17.0	11.4	4.2	2.8	3.4	2.3
Nebraska	968.0	971.7	973.7	975.7	31.1	28.1	28.3	26.5	3.2	2.9	2.9	2.7
Nevada	1,276.4	1,332.2	1,286.6	1,332.9	52.0	57.7	53.5	58.1	4.1	4.3	4.2	4.4
New Hampshire	731.0	741.9	729.2	734.8	26.9	30.9	25.2	29.6	3.7	4.2	3.5	4.0
New Jersey	4,495.6	4,484.0	4,494.2	4,460.5	220.2	206.3	212.9	184.6	4.9	4.6	4.7	4.1
New Mexico	928.2	931.0	934.1	934.1	40.0	33.9	40.9	32.9	4.3	3.6	4.4	3.5
New York	9,465.7	9,415.1	9,443.6	9,344.7	472.6	406.4	439.4	369.3	5.0	4.3	4.7	4.0
New York City	3,812.3	3,800.4	3,792.7	3,761.1	202.8	166.3	190.5	157.8	5.3	4.4	5.0	4.2
North Carolina	4,394.9	4,497.6	4,417.6	4,506.1	201.9	203.2	193.7	202.9	4.6	4.5	4.4	4.5
North Dakota	350.4	359.8	355.2	361.9	13.9	14.3	12.0	12.7	4.0	4.0	3.4	3.5
Ohio	5,858.9	5,916.0	5,885.8	5,941.8	326.2	325.1	319.0	332.0	5.6	5.5	5.4	5.6
Cleveland-Elyria-Mentor ²	1,081.1	1,079.1	1,087.2	1,082.6	57.8	60.0	54.6	58.7	5.3	5.6	5.0	5.4
Oklahoma	1,703.7	1,732.2	1,710.2	1,739.4	71.8	74.1	64.4	66.9	4.2	4.3	3.8	3.8
Oregon	1,876.1	1,921.7	1,884.9	1,915.1	112.1	111.8	103.0	100.0	6.0	5.8	5.5	5.2
Pennsylvania	6,260.0	6,215.0	6,243.3	6,192.1	317.1	264.1	277.7	235.6	5.1	4.2	4.4	3.8
Rhode Island	571.6	573.0	573.6	572.3	32.8	26.5	29.7	26.5	5.7	4.6	5.2	4.6
South Carolina	2,095.1	2,147.3	2,116.2	2,150.9	129.4	123.8	129.2	116.1	6.2	5.8	6.1	5.4
South Dakota	423.6	432.2	427.5	435.4	15.9	16.1	12.7	14.2	3.7	3.7	3.0	3.3
Tennessee	2,950.0	3,029.1	2,954.6	3,004.1	164.2	150.8	152.9	123.0	5.6	5.0	5.2	4.1
Texas	11,374.9	11,526.8	11,409.7	11,496.8	577.4	488.2	562.0	451.7	5.1	4.2	4.9	3.9
Utah	1,288.6	1,324.7	1,299.5	1,333.2	41.2	33.1	38.4	31.9	3.2	2.5	3.0	2.4
Vermont	357.7	360.5	355.9	356.8	14.8	15.9	14.1	15.9	4.1	4.4	4.0	4.5
Virginia	3,956.5	4,048.4	3,964.9	4,037.9	118.1	123.9	110.3	115.2	3.0	3.1	2.8	2.9
Washington	3,311.4	3,381.1	3,297.5	3,350.2	173.2	168.7	160.2	145.4	5.2	5.0	4.9	4.9
Seattle-Bellevue-Everett ¹	1,406.5	1,420.4	1,396.0	1,417.1	62.7	63.0	55.3	50.6	4.5	4.4	4.0	3.6
West Virginia	789.7	805.0	800.2	811.5	40.4	39.7	38.6	37.0	5.1	4.9	4.8	4.6
Wisconsin	3,036.4	3,071.9	3,033.8	3,065.5	169.0	171.3	149.9	161.8	5.6	5.6	4.9	5.3
Wyoming	280.8	286.5	282.3	285.7	9.7	9.6	9.2	9.1	3.4	3.4	3.3	3.2
Puerto Rico	1,418.7	1,432.1	1,430.5	1,412.1	129.4	143.9	137.8	137.4	9.1	10.0	9.6	9.7

¹ Metropolitan division.

² Metropolitan statistical area.

NOTE: Data refer to place of residence. Data for Puerto Rico are derived from a monthly household survey similar to the Current Population Survey. Area definitions are based on Office of Management and Budget Bulletin No. 07-01,

dated December 18, 2006, and are available at <http://www.bls.gov/lau/lau/msa.htm> and in the May issue of *Employment and Earnings*. Estimates for the current year are subject to revision early in the following calendar year.

Table 5. Employees on nonfarm payrolls by state and selected industry sector, seasonally adjusted

(In thousands)

State	Total ¹				Construction				Manufacturing			
	Apr. 2006	Feb. 2007	Mar. 2007	Apr. 2007 ^P	Apr. 2006	Feb. 2007	Mar. 2007	Apr. 2007 ^P	Apr. 2006	Feb. 2007	Mar. 2007	Apr. 2007 ^P
Alabama	1,974.5	2,001.5	2,004.2	2,003.5	110.3	112.1	112.7	112.9	(2)	(2)	(2)	(2)
Alaska	314.4	317.4	318.5	319.2	18.4	17.9	18.0	18.1	13.3	12.3	12.4	13.0
Arizona	2,614.5	2,709.2	2,714.4	2,714.6	241.5	252.4	249.5	248.2	187.8	187.6	187.4	187.2
Arkansas	1,199.0	1,207.1	1,209.4	1,210.1	56.7	57.2	57.4	57.4	200.9	194.4	193.8	193.4
California	14,983.9	15,225.8	15,242.8	15,250.2	924.0	942.4	944.9	941.9	1,502.5	1,506.1	1,502.6	1,501.9
Colorado	2,267.8	2,308.6	2,311.4	2,315.0	168.4	167.6	167.4	166.7	149.8	149.1	148.3	147.2
Connecticut	1,676.3	1,691.2	1,693.4	1,696.6	66.9	68.6	68.7	68.9	194.2	193.2	193.0	193.2
Delaware ³	436.0	439.0	438.8	439.1	29.5	28.9	28.9	28.7	(2)	(2)	(2)	(2)
District of Columbia ³	686.1	694.5	694.6	697.5	12.5	12.9	12.7	12.3	(2)	(2)	(2)	(2)
Florida	7,968.8	8,085.7	8,106.3	8,117.4	639.4	635.4	633.3	632.8	404.6	400.1	396.0	396.7
Georgia	4,080.0	4,129.0	4,130.2	4,144.5	216.8	225.8	224.7	225.2	451.4	442.2	442.7	443.8
Hawaii ³	612.8	624.6	624.8	621.3	35.2	37.0	37.5	37.4	(2)	(2)	(2)	(2)
Idaho	634.5	652.2	652.8	650.5	51.5	53.1	52.8	51.9	65.7	67.4	66.8	66.0
Illinois	5,922.4	5,972.4	5,980.8	5,976.7	278.4	277.3	279.9	280.9	682.9	679.8	678.0	678.0
Indiana	2,970.4	2,963.4	2,975.5	2,977.0	149.8	143.0	152.1	154.1	569.5	557.4	557.0	558.7
Iowa	1,500.8	1,517.9	1,519.3	1,519.2	74.4	78.2	78.4	76.4	231.7	231.9	232.1	231.9
Kansas	1,344.6	1,375.0	1,376.3	1,376.2	63.5	66.8	66.8	64.5	181.8	185.5	185.0	185.5
Kentucky	1,842.7	1,854.1	1,861.2	1,856.1	83.2	82.5	83.8	84.0	262.4	259.7	258.1	259.6
Louisiana	1,835.7	1,899.3	1,903.2	1,905.2	130.1	135.0	134.9	135.8	150.9	155.9	155.1	153.8
Maine	615.5	615.7	617.1	618.5	31.5	31.8	31.7	32.1	60.6	59.5	59.6	59.7
Maryland ³	2,585.5	2,605.2	2,608.8	2,609.4	191.0	194.0	194.2	194.4	136.7	134.5	134.2	134.4
Massachusetts	3,236.8	3,265.9	3,273.2	3,271.3	142.8	139.3	138.7	138.8	299.9	297.7	298.2	297.8
Michigan	4,351.5	4,306.6	4,314.5	4,309.9	182.6	174.9	174.8	170.4	660.5	632.4	635.1	634.5
Minnesota	2,747.5	2,778.7	2,780.5	2,781.0	129.4	132.2	131.5	129.0	346.1	346.8	345.2	343.2
Mississippi	1,135.7	1,156.6	1,154.3	1,156.5	56.8	59.4	61.0	60.2	176.1	174.6	168.3	171.8
Missouri	2,768.4	2,792.9	2,802.3	2,801.5	148.2	148.1	151.5	151.4	308.0	303.6	303.5	302.6
Montana	431.7	439.4	442.4	445.3	29.0	31.0	32.3	32.4	20.1	20.9	20.6	20.6
Nebraska ³	942.1	960.5	959.8	961.0	48.2	48.5	49.1	49.5	101.7	101.9	101.9	101.3
Nevada	1,275.6	1,310.2	1,310.5	1,309.4	145.2	142.9	142.7	142.3	50.1	51.8	51.8	51.7
New Hampshire	638.4	641.8	642.4	644.2	29.7	28.5	28.6	28.8	77.5	75.1	75.1	75.2
New Jersey	4,067.0	4,085.0	4,089.4	4,085.8	176.8	171.6	173.4	173.8	326.5	320.6	319.7	317.7
New Mexico	828.5	843.3	845.0	844.7	59.0	58.9	59.1	59.1	37.5	38.6	38.3	38.0
New York	8,598.7	8,671.4	8,673.1	8,668.3	336.5	343.6	345.9	345.6	571.6	557.9	556.0	554.2
North Carolina	4,005.1	4,079.0	4,086.5	4,092.9	242.6	248.6	250.1	251.5	555.2	549.1	548.2	549.1
North Dakota	351.0	357.6	357.7	357.5	18.5	19.3	19.7	19.3	26.1	26.1	25.8	26.1
Ohio	5,443.4	5,423.2	5,436.0	5,430.2	233.5	225.9	231.1	231.2	800.9	781.5	782.7	781.5
Oklahoma	1,541.6	1,563.1	1,564.9	1,563.5	70.2	71.8	72.8	71.8	(2)	(2)	(2)	(2)
Oregon	1,696.8	1,715.2	1,717.5	1,723.1	100.2	100.4	100.4	103.2	207.1	202.6	203.0	201.7
Pennsylvania	5,749.5	5,790.6	5,798.5	5,796.4	262.9	265.5	267.1	263.5	673.5	665.2	666.4	665.0
Rhode Island	493.9	496.1	496.6	498.4	22.9	23.5	23.7	24.0	53.3	51.2	51.1	51.5
South Carolina	1,904.5	1,924.1	1,923.7	1,919.1	123.9	126.0	127.6	127.4	254.2	244.7	244.9	241.9
South Dakota	395.7	403.9	405.5	405.5	21.8	21.7	22.0	22.4	41.1	42.3	42.6	42.8
Tennessee	2,776.6	2,793.9	2,806.2	2,797.9	130.4	136.9	139.2	138.4	403.5	393.8	394.5	393.5
Texas	9,998.3	10,196.6	10,215.6	10,239.1	596.1	623.6	625.6	624.7	921.4	928.4	926.2	925.4
Utah	1,193.7	1,235.5	1,244.1	1,248.6	92.5	104.1	105.9	106.7	122.4	126.7	127.5	127.7
Vermont	307.1	307.8	308.2	308.2	17.6	17.1	17.2	17.5	36.3	35.9	35.7	35.7
Virginia	3,715.8	3,753.7	3,766.4	3,774.2	250.1	246.4	249.8	250.2	291.1	286.0	285.7	286.3
Washington	2,842.6	2,899.3	2,899.0	2,902.6	191.5	201.4	201.6	201.3	282.8	292.2	291.4	291.1
West Virginia	753.7	757.9	759.6	758.8	39.1	38.9	39.3	39.7	61.3	59.6	59.6	59.4
Wisconsin	2,860.8	2,859.0	2,859.0	2,861.2	128.2	125.1	125.8	125.0	506.1	495.1	496.4	497.1
Wyoming	274.5	285.3	286.2	284.3	23.3	25.3	25.4	25.2	(2)	(2)	(2)	(2)

See footnotes at end of table.

Table 5. Employees on nonfarm payrolls by state and selected industry sector, seasonally adjusted—Continued

(In thousands)

State	Trade, transportation, and utilities				Financial activities				Professional and business services			
	Apr. 2006	Feb. 2007	Mar. 2007	Apr. 2007P	Apr. 2006	Feb. 2007	Mar. 2007	Apr. 2007P	Apr. 2006	Feb. 2007	Mar. 2007	Apr. 2007P
Alabama	386.0	392.1	392.0	391.4	98.6	98.1	98.0	98.2	212.7	220.2	221.0	220.4
Alaska	63.7	64.0	64.4	64.5	14.9	14.9	15.0	14.9	24.3	24.9	24.9	25.1
Arizona	507.2	521.8	524.4	525.6	181.6	188.2	188.0	187.2	386.5	413.0	414.1	414.7
Arkansas	248.5	250.8	251.9	252.2	52.3	53.4	53.5	53.3	114.4	116.8	117.1	116.8
California	2,863.0	2,899.6	2,902.5	2,906.7	941.4	943.5	942.8	942.1	2,206.6	2,260.7	2,265.4	2,268.8
Colorado	418.4	419.1	420.7	421.2	160.5	161.0	161.2	160.9	327.7	341.2	339.9	342.2
Connecticut	311.3	310.9	311.9	312.4	143.7	144.7	145.2	145.4	204.1	207.6	208.3	209.1
Delaware ³	82.8	83.1	82.9	82.9	44.5	43.4	43.4	42.9	61.5	63.1	62.9	63.7
District of Columbia ³	(2)	(2)	(2)	(2)	29.8	29.8	29.8	29.8	152.2	157.3	157.9	158.9
Florida	1,594.5	1,605.3	1,613.6	1,615.0	545.4	552.7	552.4	552.5	1,324.0	1,359.0	1,365.9	1,360.7
Georgia	869.9	876.7	876.6	883.0	229.8	233.3	231.4	232.5	548.5	556.2	558.1	560.0
Hawaii ³	120.4	121.5	120.2	120.1	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Idaho	126.6	131.1	132.2	132.9	31.6	32.6	32.6	32.9	81.0	82.3	82.6	83.8
Illinois	1,196.6	1,199.3	1,202.8	1,201.4	405.0	409.9	410.6	409.8	850.0	863.6	866.9	865.4
Indiana	584.2	588.6	590.3	589.1	139.9	140.2	140.0	140.1	279.6	280.2	279.3	280.6
Iowa	309.1	311.8	312.3	312.8	100.2	101.4	101.8	101.4	116.2	117.7	118.7	119.5
Kansas	260.4	263.6	264.2	263.6	71.4	72.0	72.2	72.4	137.1	142.4	143.0	143.2
Kentucky	379.7	379.3	381.1	380.2	90.2	91.8	91.8	91.7	177.3	180.7	181.4	180.8
Louisiana	370.9	382.8	382.8	381.1	95.5	97.4	97.1	97.2	190.5	198.3	199.4	199.9
Maine	125.7	125.8	126.6	126.9	33.7	33.4	33.3	33.0	52.1	52.3	52.3	52.8
Maryland ³	475.7	474.1	476.0	475.7	160.2	160.2	159.5	160.1	393.8	402.9	402.3	402.0
Massachusetts	569.9	573.7	575.0	574.3	223.1	223.4	223.6	223.8	469.7	479.9	481.1	480.2
Michigan	797.2	785.6	785.5	784.7	216.4	215.5	215.3	214.3	584.9	589.3	588.2	587.8
Minnesota	528.1	533.8	536.7	538.4	179.8	183.5	183.9	183.9	320.2	328.3	327.9	328.9
Mississippi	226.9	228.6	229.4	228.2	(2)	(2)	(2)	(2)	93.7	94.9	95.5	96.1
Missouri	544.7	551.5	553.5	553.2	165.0	166.0	167.1	166.9	328.7	334.2	336.8	336.3
Montana	88.9	90.3	91.2	91.2	22.2	22.8	22.6	22.6	37.5	40.6	40.2	40.1
Nebraska ³	199.6	204.5	204.7	204.6	65.4	66.3	66.4	66.5	99.7	105.7	104.3	106.1
Nevada	225.3	233.2	234.0	234.1	65.2	66.7	66.5	66.2	156.6	164.4	164.4	163.2
New Hampshire	141.7	142.7	143.3	143.7	39.4	39.6	39.7	39.7	60.9	63.0	62.6	63.0
New Jersey	874.9	874.1	874.7	872.8	280.3	282.5	282.7	282.9	598.3	607.1	606.6	607.9
New Mexico	141.4	143.0	143.7	143.4	35.3	35.3	35.4	35.3	95.9	108.8	108.4	109.0
New York	1,508.1	1,512.1	1,512.9	1,509.2	724.8	731.3	734.1	735.7	1,103.2	1,130.4	1,130.3	1,126.6
North Carolina	753.5	761.3	763.2	765.8	204.0	210.8	210.7	211.3	468.2	485.3	487.1	487.6
North Dakota	76.1	76.7	76.5	76.9	19.1	19.4	19.5	19.7	27.9	30.3	30.6	30.4
Ohio	1,046.5	1,049.3	1,048.4	1,048.3	308.0	304.6	305.5	304.2	655.7	657.9	659.8	659.5
Oklahoma	283.5	285.9	285.1	284.7	84.0	83.4	83.9	83.4	174.0	176.6	176.8	176.2
Oregon	335.2	339.7	342.3	342.4	105.7	105.5	105.6	105.6	192.9	197.9	196.9	198.2
Pennsylvania	1,125.8	1,131.6	1,135.0	1,134.7	336.4	334.4	334.1	333.9	675.2	688.8	687.9	689.8
Rhode Island	80.2	80.1	80.0	80.1	34.7	36.4	36.3	36.0	56.3	57.8	58.0	58.3
South Carolina	369.3	372.4	372.5	371.3	101.0	105.3	104.4	103.8	216.9	218.3	218.7	217.3
South Dakota	79.6	81.6	81.5	81.1	29.3	30.6	30.8	31.1	25.4	26.8	26.7	26.3
Tennessee	607.2	611.7	613.5	612.5	143.9	144.7	144.5	144.2	317.7	317.0	320.4	319.7
Texas	2,041.9	2,058.2	2,064.6	2,068.2	624.0	634.7	635.8	636.2	1,216.5	1,262.3	1,265.9	1,277.6
Utah	232.6	240.9	242.6	241.6	70.8	73.2	73.7	74.6	153.2	160.1	160.9	162.3
Vermont	59.4	59.7	59.7	59.5	13.3	13.3	13.3	13.3	22.2	22.6	22.5	22.4
Virginia	662.1	670.9	674.6	672.2	194.2	197.4	198.6	198.5	623.6	638.6	641.7	650.7
Washington	540.0	548.2	548.3	549.2	157.0	157.1	157.1	156.9	326.6	337.0	336.3	338.7
West Virginia	141.5	144.2	144.1	143.5	30.2	30.4	30.2	30.4	60.1	59.8	60.2	60.4
Wisconsin	544.5	546.8	548.4	548.2	161.0	160.5	160.3	161.7	269.6	272.9	272.4	271.3
Wyoming	51.9	54.4	54.8	54.3	(2)	(2)	(2)	(2)	16.8	17.7	17.8	17.5

See footnotes at end of table.

ESTABLISHMENT DATA
SEASONALLY ADJUSTED

ESTABLISHMENT DATA
SEASONALLY ADJUSTED

Table 5. Employees on nonfarm payrolls by state and selected industry sector, seasonally adjusted—Continued

(In thousands)

State	Education and health services				Leisure and hospitality				Government			
	Apr. 2006	Feb. 2007	Mar. 2007	Apr. 2007P	Apr. 2006	Feb. 2007	Mar. 2007	Apr. 2007P	Apr. 2006	Feb. 2007	Mar. 2007	Apr. 2007P
Alabama	202.2	206.6	206.8	207.5	168.6	174.0	174.8	175.1	368.8	373.6	374.7	375.3
Alaska	36.9	37.7	37.8	38.0	31.1	32.0	32.4	32.0	81.4	81.7	81.6	81.7
Arizona	287.5	296.8	298.4	299.0	264.3	274.8	275.8	276.2	406.4	414.7	416.7	417.5
Arkansas	150.4	153.8	154.2	154.1	97.7	98.1	98.7	99.3	207.4	210.2	210.2	210.6
California	1,606.6	1,647.6	1,649.9	1,650.6	1,509.0	1,541.1	1,546.0	1,549.8	2,435.5	2,472.9	2,475.3	2,481.1
Colorado	229.3	236.7	237.8	238.5	261.8	270.4	270.8	270.8	365.6	372.7	372.8	374.7
Connecticut	277.8	282.8	282.6	283.5	131.5	135.0	135.8	135.8	245.0	246.3	245.5	245.9
Delaware ³	55.5	57.4	57.6	58.2	40.8	42.6	42.3	41.8	60.6	61.1	61.1	61.2
District of Columbia ³	(2)	(2)	(2)	(2)	54.0	54.5	54.8	54.6	232.4	232.4	231.3	234.3
Florida	964.0	990.9	994.9	997.2	898.7	914.4	922.9	925.9	1,091.9	1,111.3	1,115.1	1,117.8
Georgia	435.5	447.9	447.9	449.2	381.3	389.4	391.8	392.7	659.4	670.4	670.4	672.1
Hawaii ³	70.6	71.7	72.1	72.3	107.3	108.3	109.4	109.5	120.0	122.5	122.3	118.5
Idaho	68.9	72.5	72.7	70.2	59.2	62.2	62.2	62.0	116.4	116.9	116.8	116.5
Illinois	757.6	775.3	775.3	777.0	521.2	534.1	536.0	532.0	845.1	846.1	845.2	846.2
Indiana	384.7	387.7	389.3	389.9	279.4	280.5	280.5	279.6	425.1	427.4	428.4	426.6
Iowa	198.2	201.7	201.5	202.2	132.9	134.2	134.5	134.5	246.5	249.1	248.2	248.8
Kansas	164.3	169.6	170.0	170.2	113.5	117.5	117.1	117.9	253.7	256.8	257.2	257.8
Kentucky	237.7	241.0	242.2	240.2	167.5	170.7	171.8	170.7	316.3	318.8	320.2	318.8
Louisiana	229.7	243.2	243.5	244.3	181.9	189.4	191.0	191.3	345.9	351.6	353.5	354.5
Maine	113.7	115.2	115.6	115.9	59.8	60.0	60.3	60.6	105.0	104.4	104.3	104.3
Maryland ³	361.1	366.6	367.2	367.7	228.7	235.8	236.5	235.8	471.0	470.6	472.2	472.0
Massachusetts	601.5	615.2	617.8	617.1	294.7	294.9	295.6	297.3	427.9	433.3	434.6	433.9
Michigan	581.2	588.1	590.4	590.6	407.4	407.9	409.4	415.5	669.1	660.4	663.5	659.8
Minnesota	405.2	411.7	412.4	416.0	243.6	248.4	249.1	247.0	414.3	413.7	413.4	415.0
Mississippi	121.6	125.9	125.9	126.2	116.0	122.4	123.6	122.9	238.4	244.4	244.2	244.6
Missouri	375.9	382.6	383.6	383.0	277.6	286.2	286.1	286.2	432.0	432.6	432.2	433.7
Montana	56.8	57.9	58.3	58.4	57.1	55.7	57.3	58.8	86.9	86.9	86.6	87.6
Nebraska ³	129.7	133.7	133.6	133.6	80.4	82.5	82.7	82.4	162.2	162.0	161.7	161.8
Nevada	86.2	90.0	90.5	90.8	335.8	341.6	341.3	339.2	149.2	155.2	154.7	157.0
New Hampshire	99.2	101.9	102.4	102.4	63.0	63.8	64.0	64.1	91.9	91.9	91.3	91.6
New Jersey	565.5	575.3	576.4	576.2	337.2	339.2	339.8	338.6	647.2	652.6	653.1	653.1
New Mexico	107.1	109.7	109.9	110.0	86.6	87.8	88.0	88.1	202.8	195.5	196.0	195.4
New York	1,562.9	1,591.1	1,592.6	1,593.7	675.2	683.1	684.1	684.4	1,484.3	1,489.1	1,484.4	1,487.5
North Carolina	482.5	500.8	501.5	501.9	370.8	383.5	383.3	382.6	676.6	678.0	680.1	682.1
North Dakota	49.6	50.5	50.5	50.6	31.2	32.2	31.6	31.5	75.4	75.5	75.7	75.6
Ohio	775.5	783.9	787.6	786.4	501.1	501.6	501.2	499.7	799.4	797.6	798.5	799.0
Oklahoma	186.0	188.4	188.7	190.1	135.9	138.2	138.4	136.9	317.0	319.4	319.4	319.9
Oregon	204.4	206.5	207.0	208.5	164.1	170.7	170.7	171.5	285.0	286.9	287.7	287.3
Pennsylvania	1,050.9	1,074.5	1,076.2	1,079.2	491.6	491.6	494.5	492.4	744.6	748.5	747.3	747.5
Rhode Island	96.6	98.4	98.5	98.4	50.3	50.1	50.3	50.9	64.8	64.4	64.1	64.4
South Carolina	192.0	203.9	204.3	205.1	206.2	210.1	207.2	209.3	332.8	331.4	332.1	331.6
South Dakota	58.1	59.0	59.2	59.4	42.1	42.8	43.8	43.2	74.9	75.5	75.1	75.3
Tennessee	337.3	342.7	344.0	343.9	267.5	277.6	279.5	275.7	414.6	413.3	414.1	413.1
Texas	1,210.5	1,228.6	1,232.7	1,235.2	933.6	964.3	968.0	973.0	1,704.2	1,726.1	1,728.9	1,732.7
Utah	133.3	137.0	138.0	138.7	109.2	110.5	111.3	112.5	203.4	205.1	205.2	205.4
Vermont	54.9	55.8	55.8	55.6	33.2	33.1	33.5	33.9	53.6	53.7	53.6	53.6
Virginia	402.0	408.8	409.1	410.4	337.0	344.5	344.4	344.4	672.0	673.7	675.3	676.6
Washington	336.0	342.3	343.8	344.1	269.9	278.3	278.4	278.1	529.2	526.2	525.4	525.8
West Virginia	113.0	113.2	113.7	113.1	69.9	70.9	71.4	71.7	144.3	145.3	145.0	144.8
Wisconsin	388.9	392.7	393.6	396.6	258.3	259.2	257.9	257.2	415.4	414.0	413.8	413.2
Wyoming	(2)	(2)	(2)	(2)	32.3	33.5	33.7	33.1	65.2	66.5	66.1	65.9

¹ Includes natural resources and mining, information, and other services, except public administration, not shown separately.

² This series is not published seasonally adjusted because the seasonal component, which is small relative to the trend-cycle and irregular components, cannot be separated with sufficient precision.

³ Natural resources and mining is combined with construction.
P = preliminary.

NOTE: Data are counts of jobs by place of work. Estimates are currently projected from 2006 benchmark levels. Estimates subsequent to the current benchmarks are provisional and will be revised when new information becomes available.

Table 6. Employees on nonfarm payrolls by state and selected industry sector, not seasonally adjusted

(In thousands)

State	Total				Natural resources and mining				Construction				Manufacturing			
	March		April		March		April		March		April		March		April	
	2006	2007	2006	2007 ^P	2006	2007	2006	2007 ^P	2006	2007	2006	2007 ^P	2006	2007	2006	2007 ^P
Alabama	1,974.5	2,004.4	1,979.3	2,010.1	13.1	12.9	13.0	12.9	109.5	112.6	110.3	112.9	305.0	300.6	304.9	300.1
Alaska	302.4	306.5	306.8	310.9	11.5	13.3	12.1	13.4	15.3	14.8	16.5	16.1	12.5	12.2	11.3	10.7
Arizona	2,629.1	2,727.6	2,632.8	2,731.4	9.2	10.8	9.5	11.0	238.7	247.4	240.3	246.8	187.1	187.0	187.5	186.8
Arkansas	1,198.4	1,207.3	1,203.7	1,211.9	6.9	7.9	7.4	8.2	54.8	56.2	56.6	56.9	201.0	193.1	200.5	192.6
California	14,967.4	15,212.0	14,963.1	15,240.5	23.3	24.6	23.3	24.6	914.6	921.2	908.4	924.8	1,503.0	1,495.6	1,495.2	1,495.0
Colorado	2,254.9	2,298.1	2,259.9	2,307.5	19.6	23.4	19.6	23.5	161.9	161.3	164.7	163.8	149.2	147.4	149.1	146.4
Connecticut	1,656.0	1,677.3	1,678.2	1,697.1	.7	.7	.8	.8	61.9	63.2	66.0	67.4	190.9	192.8	194.2	192.9
Delaware	430.5	433.7	434.4	437.8	(¹)	(¹)	(¹)	(¹)	28.3	27.8	29.3	28.5	33.7	32.6	33.4	32.7
District of Columbia	686.2	693.8	686.1	699.0	(¹)	(¹)	(¹)	(¹)	12.4	12.5	12.3	12.4	1.8	1.6	1.8	1.6
Florida	8,042.8	8,156.3	8,020.4	8,163.2	6.7	6.5	6.6	6.5	637.0	630.4	637.1	632.0	406.7	396.7	404.4	396.8
Georgia	4,058.5	4,115.3	4,084.7	4,143.6	12.1	12.3	12.3	12.2	212.5	222.0	215.3	224.3	451.5	441.5	451.5	442.5
Hawaii	615.2	626.7	611.3	621.7	(¹)	(¹)	(¹)	(¹)	34.9	37.2	34.8	37.5	15.2	15.0	14.9	14.9
Idaho	622.6	643.0	631.9	647.2	3.7	3.8	3.5	3.7	47.4	48.9	50.2	50.5	64.8	65.9	65.2	65.5
Illinois	5,845.0	5,900.6	5,905.2	5,960.9	10.0	10.0	10.1	10.3	252.9	255.3	272.7	273.8	679.8	676.9	681.8	677.8
Indiana	2,957.9	2,959.6	2,979.1	2,984.4	6.6	6.6	7.0	6.9	140.9	143.4	148.0	152.9	568.3	556.0	568.3	557.3
Iowa	1,484.8	1,502.6	1,506.4	1,525.2	1.9	1.9	2.2	2.1	67.1	69.4	72.8	75.4	229.8	229.8	231.2	231.1
Kansas	1,344.4	1,372.7	1,348.3	1,381.1	8.4	8.8	8.3	8.9	61.7	64.1	63.0	64.9	181.0	184.4	181.3	185.1
Kentucky	1,836.0	1,848.0	1,844.9	1,857.5	22.7	23.4	22.9	23.5	80.2	80.6	82.2	83.1	262.7	258.6	261.8	259.0
Louisiana	1,839.8	1,907.5	1,843.4	1,909.5	47.3	50.9	47.2	50.9	130.8	135.7	131.9	136.2	149.8	154.4	150.0	153.7
Maine	596.0	598.8	607.1	608.9	2.8	2.9	2.1	2.2	28.0	28.3	30.3	30.6	59.5	58.6	59.9	59.1
Maryland	2,566.9	2,585.8	2,581.1	2,607.5	(¹)	(¹)	(¹)	(¹)	187.3	188.2	189.7	192.2	136.8	133.9	136.5	134.2
Massachusetts	3,189.5	3,227.2	3,233.6	3,266.2	1.7	1.5	1.8	1.7	129.3	127.3	140.1	135.7	299.8	297.1	299.5	296.9
Michigan	4,303.7	4,261.2	4,347.1	4,300.2	7.5	7.5	7.9	7.7	161.7	152.3	174.5	162.0	656.0	629.6	660.8	633.2
Minnesota	2,715.7	2,733.0	2,734.5	2,771.2	5.8	5.6	5.8	5.7	114.2	110.8	120.6	119.9	340.7	340.8	342.9	341.2
Mississippi	1,137.1	1,153.5	1,141.4	1,161.1	9.2	9.5	9.6	9.4	55.6	59.1	56.7	59.6	176.9	168.6	176.4	172.7
Missouri	2,755.6	2,787.3	2,785.0	2,815.3	5.4	5.2	5.4	5.4	143.6	145.5	147.9	150.0	308.6	303.2	308.7	302.7
Montana	423.9	433.6	428.7	441.0	7.9	8.3	7.9	8.3	26.2	29.1	28.2	31.3	19.7	20.2	19.8	20.3
Nebraska	935.8	952.4	942.3	961.1	(¹)	(¹)	(¹)	(¹)	44.9	45.8	47.4	48.8	101.7	101.4	101.4	100.9
Nevada	1,268.0	1,306.0	1,275.4	1,309.8	11.1	12.1	11.3	12.0	141.9	140.3	143.9	141.3	49.5	51.7	50.0	51.4
New Hampshire	630.3	634.0	633.8	639.7	1.0	1.0	1.0	1.0	27.1	26.1	29.0	28.0	78.1	74.8	77.5	74.7
New Jersey	4,029.8	4,046.7	4,053.7	4,075.5	1.7	1.7	1.8	1.7	166.5	162.6	175.3	171.0	326.9	318.3	325.3	316.9
New Mexico	827.1	841.2	828.7	844.7	18.1	19.7	18.3	19.9	58.1	57.3	58.5	58.3	36.9	37.6	37.0	37.6
New York	8,507.8	8,596.7	8,567.6	8,643.9	5.4	5.7	6.1	6.1	308.0	318.1	326.7	334.8	567.7	553.8	568.4	551.4
North Carolina	3,972.7	4,067.5	4,016.0	4,101.2	6.7	6.8	6.7	6.7	236.4	246.6	242.0	251.0	550.5	546.4	554.8	548.3
North Dakota	347.0	353.8	352.2	357.6	4.3	4.8	4.6	4.9	15.2	16.4	17.6	17.7	25.6	25.5	25.8	25.8
Ohio	5,389.7	5,382.5	5,435.0	5,430.4	11.2	10.8	11.6	11.2	215.2	211.3	227.5	225.5	797.7	781.1	799.8	781.2
Oklahoma	1,546.9	1,564.6	1,546.9	1,572.2	40.0	45.6	40.7	45.8	69.7	71.4	69.8	71.7	149.0	149.9	146.5	150.1
Oregon	1,678.0	1,706.9	1,690.4	1,718.4	8.9	8.2	8.9	8.6	94.7	96.2	97.2	99.8	204.4	200.6	204.8	199.9
Pennsylvania	5,697.8	5,752.8	5,756.7	5,803.3	19.7	20.7	20.3	21.3	245.3	246.3	258.3	259.0	669.4	661.5	670.8	661.1
Rhode Island	482.9	488.4	493.8	496.9	.2	.3	.3	.3	20.0	21.2	22.5	23.5	53.2	51.2	53.2	51.4
South Carolina	1,898.8	1,923.7	1,915.4	1,931.2	4.7	4.7	4.7	4.7	122.5	126.4	123.8	126.9	253.8	244.7	254.9	242.2
South Dakota	388.3	397.8	393.4	403.8	.8	.8	.9	.9	19.0	19.4	20.9	21.6	40.7	42.3	41.0	42.7
Tennessee	2,765.3	2,791.9	2,780.7	2,806.2	4.0	4.0	4.0	4.0	127.6	135.8	129.5	137.6	403.4	393.5	403.6	393.6
Texas	9,977.3	10,211.5	10,015.5	10,254.6	177.6	198.8	179.4	198.1	599.8	623.8	595.8	623.2	914.0	924.2	919.1	923.4
Utah	1,182.5	1,236.1	1,193.5	1,247.6	9.4	10.9	9.7	11.2	87.3	100.7	90.5	104.5	121.4	126.1	121.9	126.9
Vermont	306.0	307.4	303.8	305.1	.8	.8	.9	.8	14.7	14.6	16.4	16.3	35.6	35.3	36.0	35.5
Virginia	3,700.7	3,747.3	3,714.0	3,772.2	11.2	11.4	11.0	11.3	246.8	244.8	248.6	247.7	289.4	285.4	290.5	285.7
Washington	2,816.9	2,874.3	2,833.1	2,893.6	8.5	7.7	8.4	7.7	184.2	194.2	187.7	197.4	280.0	280.0	280.7	288.9
West Virginia	750.4	752.4	754.3	758.1	27.7	28.2	27.8	28.4	36.2	36.3	39.1	39.1	61.6	59.3	61.1	59.4
Wisconsin	2,811.8	2,813.3	2,850.0	2,849.3	3.5	3.5	3.9	3.9	113.4	112.2	123.8	120.8	500.3	490.8	501.8	492.7
Wyoming	267.5	277.8	269.7	278.8	25.4	27.3	25.8	27.5	20.6	22.9	22.6	24.0	9.7	9.9	9.8	10.0
Puerto Rico	1,053.1	1,028.6	1,050.4	1,029.7	(¹)	(¹)	(¹)	(¹)	69.8	66.8	69.1	66.8	111.3	103.5	111.3	103.3

See footnotes at end of table.

ESTABLISHMENT DATA
NOT SEASONALLY ADJUSTED

ESTABLISHMENT DATA
NOT SEASONALLY ADJUSTED

Table 6. Employees on nonfarm payrolls by state and selected industry sector, not seasonally adjusted—Continued

(In thousands)

State	Trade, transportation, and utilities				Information				Financial activities				Professional and business services			
	March		April		March		April		March		April		March		April	
	2006	2007	2006	2007P	2006	2007	2006	2007P	2006	2007	2006	2007P	2006	2007	2006	2007P
Alabama	385.0	390.8	383.7	390.4	30.6	30.1	30.5	30.1	98.5	97.5	98.4	97.9	212.1	220.1	213.0	221.0
Alaska	60.0	60.7	61.5	62.3	7.0	7.0	6.9	7.0	14.6	14.6	14.6	14.7	23.3	23.7	23.7	24.2
Arizona	505.9	524.2	505.5	523.2	45.5	42.4	44.7	42.3	180.9	187.9	181.4	187.7	386.6	413.4	389.1	416.0
Arkansas	247.8	249.9	247.3	250.7	19.7	20.3	19.8	20.3	52.0	53.1	52.2	53.2	115.1	116.2	114.4	116.3
California	2,829.4	2,869.5	2,826.9	2,872.0	475.5	476.6	467.6	469.8	940.2	942.5	940.1	941.4	2,196.7	2,256.6	2,201.7	2,262.0
Colorado	411.9	415.3	413.4	417.1	75.8	75.5	75.5	76.5	160.2	161.1	160.0	160.6	321.6	332.8	327.2	339.8
Connecticut	307.3	308.1	308.7	310.1	37.9	37.8	37.7	37.6	142.9	144.6	142.9	144.9	200.8	205.2	204.6	208.9
Delaware	80.9	81.4	81.8	82.0	6.6	6.8	6.6	6.8	44.2	43.1	44.3	42.7	61.5	62.4	61.5	63.6
District of Columbia	27.8	27.9	27.6	27.7	22.2	22.6	22.1	22.7	29.9	29.8	29.3	30.0	150.5	157.1	152.2	158.9
Florida	1,598.0	1,610.6	1,590.7	1,611.1	166.8	165.9	166.5	166.1	545.8	551.3	545.7	553.9	1,341.0	1,368.8	1,336.5	1,366.6
Georgia	857.4	867.1	864.9	876.0	116.9	114.8	116.0	114.6	227.8	230.8	229.6	232.4	543.8	554.2	549.1	557.9
Hawaii	119.8	119.4	119.2	119.1	10.9	10.8	10.1	10.8	29.9	30.1	29.8	30.1	77.2	81.3	76.9	81.4
Idaho	123.7	129.2	125.3	130.9	10.3	10.6	10.5	10.7	31.1	32.2	31.4	32.6	78.8	80.7	80.9	83.3
Illinois	1,179.7	1,184.8	1,185.0	1,188.8	116.2	115.5	116.9	115.7	402.4	407.9	402.7	408.5	830.0	846.3	847.8	865.3
Indiana	577.4	582.4	579.6	585.4	39.8	39.9	39.9	39.9	138.8	139.1	139.0	139.4	274.7	275.0	279.9	279.9
Iowa	303.6	306.7	308.0	311.0	32.6	33.0	32.9	33.1	99.7	101.1	99.9	101.3	114.3	117.1	116.7	119.8
Kansas	257.7	261.4	258.7	262.0	39.0	39.1	38.8	39.2	71.0	72.0	71.2	72.3	136.0	141.1	137.6	143.5
Kentucky	376.5	377.5	377.1	378.2	29.5	30.0	29.6	30.1	90.1	91.4	90.2	91.8	177.0	178.0	176.5	179.7
Louisiana	369.6	382.1	370.3	380.6	29.2	25.5	28.4	26.4	95.4	97.3	94.9	97.2	191.4	200.6	192.5	201.0
Maine	120.3	120.9	121.8	122.4	11.1	11.3	11.1	11.3	33.5	33.0	33.4	32.8	49.6	50.7	52.0	52.6
Maryland	468.9	468.8	469.9	470.1	51.2	49.6	50.7	49.7	159.6	158.7	159.6	159.7	390.4	396.5	393.8	402.0
Massachusetts	558.0	563.6	562.5	566.5	86.5	87.7	86.1	87.5	220.8	221.5	222.5	222.5	458.4	468.4	469.4	479.9
Michigan	780.3	770.6	787.0	776.0	66.3	65.9	66.4	66.0	214.9	213.2	215.7	213.6	571.9	571.6	582.3	582.0
Minnesota	520.5	526.1	522.6	533.3	58.4	56.4	57.7	56.1	180.2	183.5	179.2	183.8	315.3	318.7	317.5	326.7
Mississippi	225.6	228.9	225.9	228.9	13.9	13.6	13.8	13.6	46.3	46.2	46.2	46.3	94.3	95.5	94.9	96.2
Missouri	538.8	547.3	541.3	550.4	63.2	63.2	62.9	62.7	163.3	166.2	164.5	166.7	327.2	333.4	331.6	337.1
Montana	87.1	88.9	88.0	90.2	7.7	7.7	7.7	7.6	21.9	22.4	22.0	22.4	36.6	38.9	37.4	39.9
Nebraska	197.1	202.5	198.0	203.2	19.6	19.4	19.6	19.5	65.2	66.1	65.3	66.1	99.4	103.5	100.3	106.0
Nevada	222.7	231.2	222.9	231.6	14.7	15.4	15.0	15.6	64.8	66.3	64.9	66.0	158.9	163.7	157.3	163.6
New Hampshire	138.3	140.1	139.3	141.3	12.7	12.7	12.7	12.8	39.3	39.6	39.2	39.7	58.8	61.2	61.0	62.8
New Jersey	863.8	862.8	864.2	864.5	99.3	98.9	97.1	98.0	277.4	281.0	278.9	281.7	591.5	599.9	597.4	608.1
New Mexico	139.8	141.8	140.1	141.9	15.9	16.9	15.0	17.0	35.2	35.3	35.2	35.3	95.2	107.3	95.9	108.2
New York	1,477.9	1,487.8	1,483.6	1,489.9	268.5	266.7	267.4	266.6	717.8	730.0	719.7	731.6	1,088.4	1,111.0	1,100.5	1,121.0
North Carolina	740.4	753.9	749.7	760.1	73.9	74.7	73.1	75.1	199.4	208.7	203.7	211.2	463.4	483.1	468.2	488.2
North Dakota	74.6	75.5	76.0	76.6	7.4	7.4	7.4	7.3	19.1	19.4	19.0	19.6	27.5	29.8	27.8	30.1
Ohio	1,029.7	1,032.4	1,035.2	1,038.6	88.7	87.6	88.2	87.3	306.3	303.2	306.6	302.8	644.2	650.6	653.5	660.6
Oklahoma	280.3	283.0	281.8	283.7	30.0	29.6	29.7	29.6	84.0	83.6	83.7	83.3	174.8	175.7	174.4	177.5
Oregon	328.3	336.3	329.7	337.7	34.5	35.7	34.2	36.6	104.3	104.5	105.1	105.1	188.8	193.6	191.4	196.6
Pennsylvania	1,110.7	1,119.9	1,115.8	1,125.1	107.7	107.2	108.1	107.2	334.1	332.2	335.1	332.6	663.8	679.1	674.7	688.7
Rhode Island	78.0	78.3	79.1	78.7	11.0	11.1	11.4	11.3	34.4	36.2	34.5	35.9	53.6	56.1	56.5	58.2
South Carolina	367.8	371.9	367.8	371.6	27.4	27.8	27.5	27.9	100.3	104.0	100.9	103.7	215.1	215.7	218.4	217.5
South Dakota	78.4	79.9	79.0	80.9	6.9	7.0	6.9	7.0	29.2	30.8	29.1	31.0	25.0	26.2	25.4	26.3
Tennessee	602.2	608.0	603.7	609.3	49.4	50.8	49.9	51.4	143.5	143.8	143.5	143.8	314.9	318.2	316.5	319.2
Texas	2,023.3	2,047.7	2,027.0	2,054.3	222.5	220.2	222.5	218.0	621.1	633.3	621.7	634.4	1,210.9	1,260.2	1,218.7	1,276.2
Utah	229.4	238.8	229.7	239.1	31.7	31.9	32.2	32.0	70.1	73.5	70.7	74.1	149.8	158.1	152.5	161.6
Vermont	58.2	58.6	58.4	58.7	6.2	6.1	6.0	6.1	13.2	13.2	13.1	13.1	21.6	21.8	22.1	22.2
Virginia	653.4	665.8	652.9	665.8	91.8	91.5	91.2	91.0	193.6	196.9	193.8	197.8	621.1	638.0	622.0	646.4
Washington	530.4	539.3	531.7	542.3	95.9	102.8	96.2	102.9	155.8	155.8	156.0	156.2	320.6	332.6	325.4	337.7
West Virginia	139.6	141.8	140.3	142.4	11.5	11.5	11.4	11.5	30.0	30.1	30.1	30.3	59.7	59.8	60.0	60.2
Wisconsin	532.7	537.3	536.7	542.0	49.1	49.8	48.9	50.0	159.2	159.6	160.3	160.8	261.6	262.0	269.9	268.8
Wyoming	51.1	53.0	50.9	53.0	4.2	4.2	4.1	4.1	11.0	11.2	11.0	11.3	15.9	17.2	16.7	17.4
Puerto Rico	187.9	181.6	186.4	181.0	22.8	21.3	22.8	21.3	50.0	49.8	49.9	50.2	108.1	104.9	107.3	105.4

See footnotes at end of table.

ESTABLISHMENT DATA
NOT SEASONALLY ADJUSTED

ESTABLISHMENT DATA
NOT SEASONALLY ADJUSTED

Table 6. Employees on nonfarm payrolls by state and selected industry sector, not seasonally adjusted—Continued

(In thousands)

State	Education and health services				Leisure and hospitality				Other services				Government			
	March		April		March		April		March		April		March		April	
	2006	2007	2006	2007 ^P	2006	2007	2006	2007 ^P	2006	2007	2006	2007 ^P	2006	2007	2006	2007 ^P
Alabama	202.1	206.8	202.9	208.3	167.6	173.6	170.1	176.5	80.4	81.1	80.3	81.3	370.6	378.3	372.2	378.7
Alaska	37.0	37.8	37.1	38.1	27.2	28.2	28.3	29.2	11.2	11.3	11.3	11.4	82.8	82.9	83.5	83.8
Arizona	288.8	299.5	289.1	300.6	268.9	281.4	271.4	283.8	101.2	106.6	98.1	105.7	416.3	427.0	416.2	427.5
Arkansas	150.6	154.5	151.2	154.7	96.2	97.5	99.1	100.1	43.1	44.1	43.4	44.3	211.2	214.5	211.8	214.6
California	1,618.8	1,662.3	1,617.5	1,664.6	1,491.8	1,532.7	1,505.9	1,549.5	502.5	512.8	503.8	514.7	2,471.6	2,517.6	2,472.7	2,522.1
Colorado	229.3	238.1	229.9	239.0	263.3	272.3	259.2	268.4	90.5	92.6	90.5	92.4	371.6	378.3	370.8	380.0
Connecticut	277.2	283.3	280.8	286.4	124.8	128.2	129.3	133.0	62.4	63.3	63.1	63.9	249.2	250.1	250.1	251.2
Delaware	55.3	57.9	55.7	58.5	37.6	39.0	39.3	40.3	20.3	20.3	20.3	20.3	62.1	62.4	62.2	62.4
District of Columbia	96.4	97.4	96.6	97.6	54.3	54.8	54.6	55.7	59.5	60.5	59.6	60.6	231.4	229.6	230.0	231.8
Florida	968.4	996.4	966.9	998.9	927.2	947.3	920.8	947.5	332.5	346.1	333.8	346.0	1,114.7	1,136.3	1,111.4	1,137.8
Georgia	435.2	447.7	437.4	449.8	377.7	387.4	385.1	395.8	157.5	158.9	159.3	159.5	666.1	678.6	664.2	678.6
Hawaii	70.7	72.4	70.6	72.4	107.8	109.1	107.0	109.0	25.9	26.4	26.0	26.5	122.9	125.0	122.0	120.0
Idaho	69.2	73.2	69.3	70.7	57.2	60.4	58.2	61.0	18.6	18.9	18.8	19.0	117.8	119.2	118.6	119.3
Illinois	758.7	775.9	759.6	777.0	500.7	514.7	518.0	531.1	257.9	258.4	255.8	258.5	856.7	854.9	854.8	854.1
Indiana	389.5	392.1	389.8	393.4	272.6	271.8	279.2	278.6	110.7	111.3	111.4	111.8	438.6	442.0	437.0	438.9
Iowa	201.0	205.0	201.5	205.6	127.3	128.9	132.8	134.6	56.2	56.4	56.6	56.8	251.3	253.3	251.8	254.4
Kansas	165.1	170.0	164.6	170.5	110.7	114.5	113.9	117.6	52.6	52.8	51.8	53.4	261.2	264.5	259.1	263.7
Kentucky	237.3	242.0	237.9	240.4	163.9	167.1	169.6	172.2	76.5	76.7	76.1	76.3	319.6	322.7	321.0	323.2
Louisiana	228.8	244.7	231.5	244.7	181.8	190.5	182.6	192.1	64.6	68.8	64.7	69.2	351.1	357.0	349.4	357.5
Maine	114.2	116.0	114.5	116.6	50.2	50.4	54.5	54.8	19.5	19.1	19.5	19.2	107.3	107.6	108.0	107.3
Maryland	362.4	368.5	361.9	369.1	217.4	223.0	225.1	231.8	116.2	116.7	116.4	117.6	476.7	481.9	477.5	481.1
Massachusetts	609.0	625.4	610.3	626.3	272.1	274.4	286.6	289.0	117.0	117.5	117.8	117.8	436.9	442.2	438.0	442.4
Michigan	585.4	592.2	583.1	594.7	386.9	390.4	401.3	405.3	177.5	177.4	177.2	177.5	695.3	690.5	690.9	682.2
Minnesota	404.4	416.4	407.7	420.5	236.4	235.8	239.9	242.6	117.3	116.8	117.5	117.8	422.5	422.1	423.1	423.6
Mississippi	122.3	126.6	122.6	127.5	114.9	122.6	117.3	123.8	37.0	36.7	37.0	37.2	241.1	246.2	241.0	245.9
Missouri	375.3	383.9	377.4	384.8	266.6	274.2	280.2	287.8	119.0	119.7	120.2	120.7	444.6	445.5	444.9	447.0
Montana	57.3	58.5	57.1	58.5	54.2	54.6	55.1	56.4	16.9	17.0	17.0	17.3	88.4	88.0	88.5	88.8
Nebraska	130.2	133.8	129.9	134.1	78.7	80.6	80.5	82.5	35.5	35.9	35.7	35.6	163.5	163.4	164.2	164.4
Nevada	86.8	90.8	86.4	91.1	333.6	338.9	335.9	339.4	35.0	37.1	35.5	37.3	151.0	158.5	152.3	160.5
New Hampshire	99.8	102.8	99.5	103.0	58.8	59.6	58.3	60.1	21.0	21.3	21.3	21.6	95.4	94.8	95.0	94.7
New Jersey	567.1	578.1	566.4	578.1	319.0	319.1	327.8	328.8	158.2	160.5	160.9	162.1	658.4	663.8	658.6	664.6
New Mexico	108.4	111.2	108.2	111.6	84.6	86.4	86.4	87.9	28.6	28.9	28.7	28.9	206.3	198.8	205.4	198.1
New York	1,582.7	1,613.5	1,584.9	1,615.3	641.7	650.7	656.6	666.6	354.3	357.7	355.1	358.4	1,495.4	1,501.7	1,498.6	1,502.2
North Carolina	482.1	502.5	483.2	504.6	356.5	370.0	370.8	382.2	174.5	179.3	171.3	177.6	688.9	695.5	692.5	696.2
North Dakota	49.7	50.5	49.6	50.6	30.4	30.7	30.9	31.3	15.0	15.4	15.0	15.2	78.2	78.4	78.5	78.5
Ohio	781.0	791.3	780.8	792.4	479.5	478.1	497.0	495.7	222.1	221.9	222.5	222.4	814.1	814.2	812.3	812.7
Oklahoma	186.3	189.5	186.8	191.1	135.6	136.3	137.6	138.3	74.1	74.4	74.0	75.0	323.1	325.6	321.9	326.1
Oregon	205.5	210.3	206.8	211.4	158.4	166.1	162.5	169.4	58.1	60.0	58.6	59.5	292.1	295.4	291.2	293.8
Pennsylvania	1,058.7	1,089.8	1,063.5	1,093.2	466.8	469.6	484.8	485.4	257.3	259.2	259.2	260.6	784.3	767.3	766.1	769.1
Rhode Island	98.6	100.3	99.1	100.4	45.6	45.7	48.7	48.9	22.4	22.8	22.9	23.0	65.9	65.2	65.6	65.3
South Carolina	191.8	205.5	192.7	206.4	200.1	204.3	209.8	212.8	76.2	79.6	76.1	79.5	339.1	339.1	338.8	338.0
South Dakota	58.3	59.8	58.4	59.8	38.8	40.0	40.4	41.6	15.4	15.7	15.5	15.8	75.8	75.9	75.9	76.2
Tennessee	336.5	344.2	338.0	345.5	262.7	271.4	270.0	278.2	100.8	101.5	100.5	101.7	420.3	420.7	421.5	421.9
Texas	1,206.1	1,234.1	1,211.2	1,237.7	924.9	961.4	939.5	978.0	347.1	349.3	349.1	350.2	1,730.0	1,758.5	1,731.5	1,761.1
Utah	134.6	139.9	134.8	140.3	107.8	111.8	109.7	112.7	34.1	35.4	34.1	35.4	206.9	209.0	207.7	209.8
Vermont	55.3	56.2	55.1	56.1	34.8	34.9	30.1	30.4	9.7	9.8	9.8	9.9	55.9	56.1	55.9	56.0
Virginia	406.1	414.7	405.9	415.2	326.7	332.0	335.3	341.7	180.3	183.6	180.7	184.0	680.3	683.2	682.1	685.6
Washington	337.8	345.8	339.1	347.0	262.3	269.5	267.5	274.9	103.2	104.4	103.5	104.9	538.2	534.2	536.9	533.7
West Virginia	113.6	114.1	113.5	113.3	68.7	69.0	69.3	70.9	55.3	55.7	55.3	55.9	146.5	146.6	146.4	146.7
Wisconsin	388.8	394.1	390.0	396.2	243.4	243.4	251.8	251.5	135.2	136.7	135.4	136.6	424.6	423.9	427.5	426.0
Wyoming	22.5	23.0	22.3	23.0	30.2	30.7	29.6	30.4	10.7	11.0	10.8	11.1	66.2	67.4	66.1	67.0
Puerto Rico	105.3	109.4	105.8	109.8	75.2	72.3	75.0	72.3	21.2	22.8	21.4	23.1	301.5	296.2	301.4	296.5

¹ Natural resources and mining is combined with construction.

P = preliminary.

NOTE: Data are counts of jobs by place of work. Estimates are currently projected

from 2006 benchmark levels. Estimates subsequent to the current benchmarks are provisional and will be revised when new information becomes available.

Chart 1. Unemployment rates by state, seasonally adjusted April 2007

(U.S. rate = 4.5 percent)

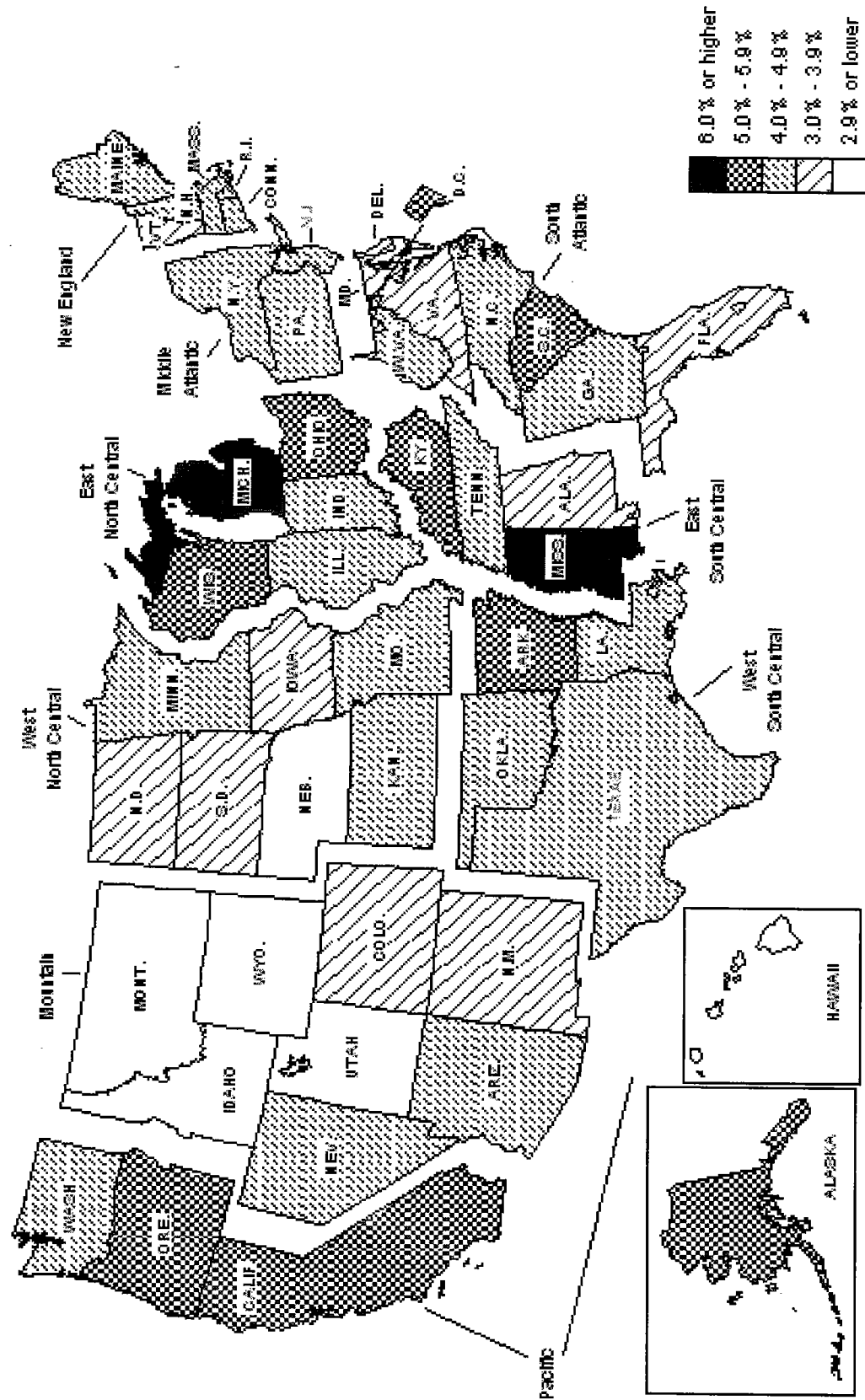
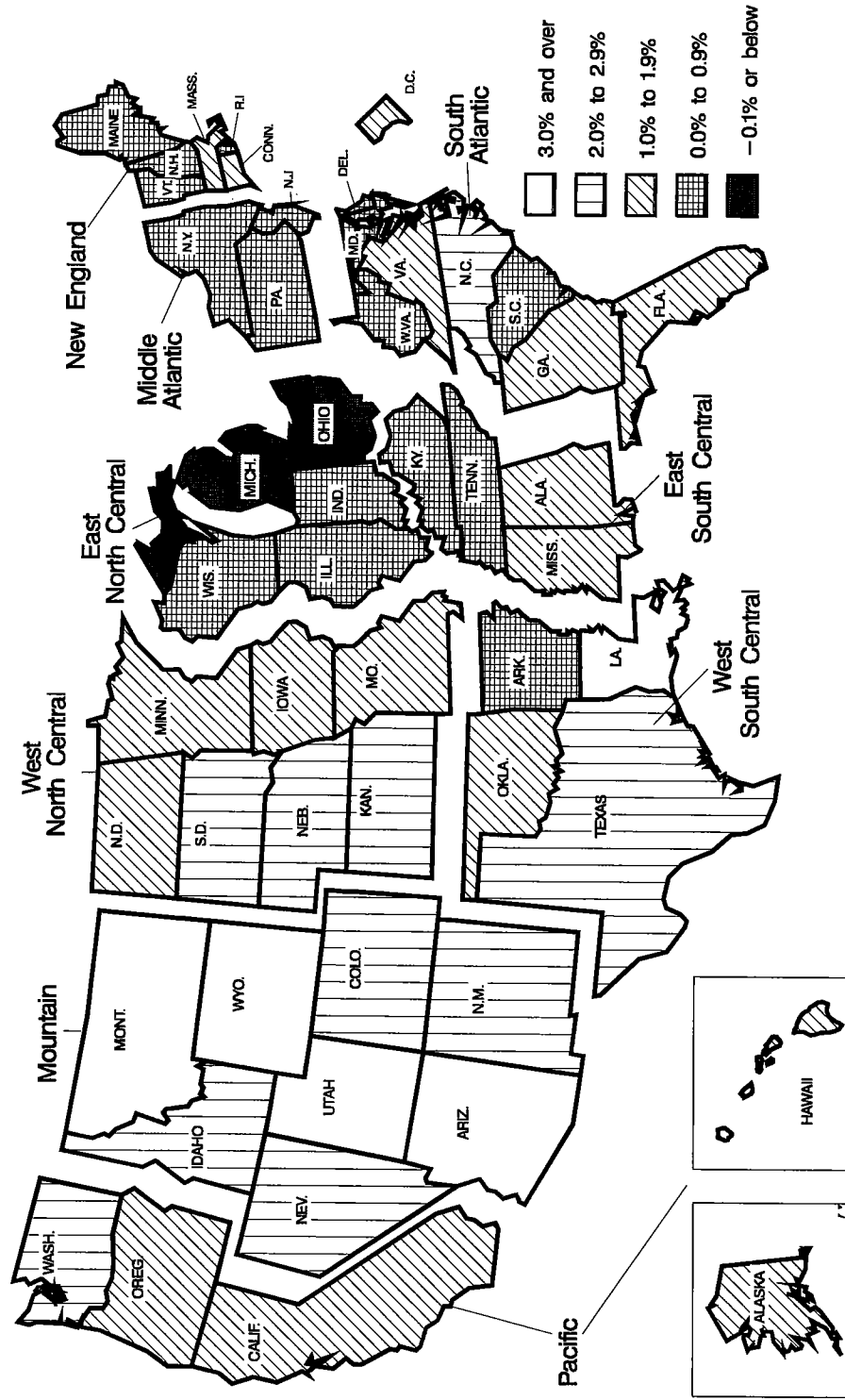


Chart 2. Percentage change in nonfarm employment by state, seasonally adjusted, April 2006 – April 2007



FEDERAL TRADE COMMISSION

I N D E X

WITNESS:	EXAMINATION:	PAGE
STEVE MURRAY	BY MR. MANDEL	4
		101
	BY MS. HOLLERAN	96

EXHIBIT:	DESCRIPTION	FOR ID
Number RX-154	Expert Report of Stephen H. Murray	96

1 point?

2 A. There are other places that are as bad, some
3 that might -- a few that might be worse, but I would
4 consider it as one of the most heavily buyer's market,
5 is perhaps a way to say it.

6 Q. For how long has that been the case in
7 Southeastern Michigan, that it's at least one of the
8 most heavily buyer's market areas of the country?

9 A. My information would say that's been two to
10 three years now.

11 Q. And how many other markets are there across the
12 country that you could have the same statement about,
13 that it's been that long, the last two to three years,
14 that that particular market has been among the most
15 buyer's market areas of the country for residential
16 real estate?

17 A. I believe I know of two or three others. Large
18 metropolitan areas that were in that circumstance.

19 Q. And which ones were they?

20 A. Denver would be one.

21 Indianapolis would be another.

22 Cleveland would be another.

23 I think that's it for now. I'm not certain
24 about others.

25 Q. And for the past two to three years, as far as

1 that break out the types of services, real estate
2 brokerage services, provided in residential real estate
3 transactions; correct?

4 A. Yes.

5 Q. And then if you could take a look at your
6 paragraph 25 of your report.

7 That breaks out the five areas that Realcomp
8 requires in its rules for an exclusive right-to-sell
9 agent to be performing in order to fall within that
10 category; is that correct?

11 A. Yes. That's what this list is.

12 Q. And am I correct that, if you go back to your
13 paragraph 12 as far as just listing the things that
14 brokers do, one of those would be marketing the home
15 through the Internet; correct?

16 A. Yes.

17 Q. In order to qualify as an exclusive
18 right-to-sell agent under Realcomp's rules, if you can
19 look at your paragraph 25, am I correct in
20 understanding that the real estate salesperson, agent
21 or broker is not required to market the home through
22 the Internet?

23 A. That's correct. It is not required under
24 Realcomp's rules that a broker or an agent market the
25 home on the Internet.

1 your opinion is concerned, is Southeastern Michigan even
2 worse than Denver, Indianapolis or Cleveland as far as
3 the predominance of it being a buyer's market during
4 that period of time?

5 A. If we say, for instance, over the last three
6 years?

7 Q. Yes.

8 A. If we take that three-year period of time,
9 Detroit is probably worse off than those other markets I
10 just mentioned, in terms of the decline in sales and the
11 increase in inventory.

12 Q. If you know, do exclusive right-to-sell agents
13 in Southeastern Michigan vary their charges by the
14 amount of service that they provide?

15 A. I don't have any precise information about
16 that.

17 Q. Does that happen in your experience in the
18 real estate industry?

19 A. Yes. Considerably.

20 And I would expect that it takes place in
21 Southeast Michigan as it does throughout the whole
22 country.

23 Q. Would you take a look at your paragraph 12 of
24 your report, RX-154.

25 You have within that paragraph ten subcategories

1 Q. If you can take a look at paragraph 26 of your
2 report.

3 There you use the term "exclusive agency."
4 Do you see that?

5 A. I do.

6 Q. Now, again, I want to make sure we have a
7 definition of terms.

8 When you're using that term in your report, what
9 do you mean by it?

10 A. I mean a listing agreement whereby the seller
11 reserves the right to sell the home directly to a
12 buyer, who may have come any number of ways, maybe a
13 family member or a friend or some other means, and
14 where the seller is not obligated to pay a commission
15 to the listing agency if the seller procures their own
16 buyer.

17 Q. With respect to these exclusive agency
18 arrangements, am I correct in understanding that one
19 means by which those exclusive agents have been known
20 to charge their customers is on a flat-fee basis?

21 A. Yes. There are some that charge on a flat-fee
22 basis.

23 Q. So whether or not the home sells, at least one
24 form of compensation would be a certain amount is paid
25 up front whether or not the home sells.

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Page 1

Slip Copy, 2006 WL 2927546 (E.D.Mich.)
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Greenfield v. Sears, Roebuck and Co.
E.D.Mich.,2006.
Only the Westlaw citation is currently available.
United States District Court,E.D.
Michigan,Southern Division.
Allen GREENFIELD, an individual, Plaintiffs,
v.
SEARS, ROEBUCK AND CO., a foreign
corporation, Defendant.
No. 04-71086.
Oct. 12, 2006.

Michael L. Pitt, Beth M. Rivers, Pitt, Dowty, Royal
Oak, MI, for Plaintiffs.
Charles C. Dewitt, Jr., Cathleen C. Jansen, Dewitt,
Balke, Detroit, MI, for Defendant.

OPINION AND ORDER:

***(1) GRANTING DEFENDANT'S MOTION IN
LIMINE TO EXCLUDE THE ADMISSION OF
AND TESTIMONY REGARDING THE
ABANDONED AND DISMISSED FAILURE TO
PROMOTE CLAIMS (DKT. NO 35);***

***(2) GRANTING DEFENDANT'S MOTION IN
LIMINE TO EXCLUDE EVIDENCE AND
ARGUMENT REGARDING: (a) ALLEGED
STRAY REMARKS BY MCCURRY AND
CASSAR, (b) PLAINTIFF'S NOTES
REGARDING THOSE ALLEGED STRAY
REMARKS, AND (c) PLAINTIFF'S DISMISSED
RETALIATION CLAIM (DKT. NO. 38);***

***(3) DENYING DEFENDANT'S MOTION IN
LIMINE TO PRECLUDE THE PLAINTIFF
FROM TESTIFYING REGARDING SHAPIRO'S
QUALIFICATIONS (DKT. NO. 37)***

PAUL D. BORMAN, District Judge.

*1 Now before the Court is Defendant Sears' Motions *In Limine* to: (1) Exclude the Admission of and Testimony Regarding the Abandoned and Dismissed Failure to Promote Claims (Docket No. 35); (2) Exclude Evidence and Argument Regarding: (a) Alleged Stray Remarks by McCurry and Cassar; (b) Plaintiff's Notes Regarding Alleged Stray Remarks; and (c) Plaintiff's Dismissed Retaliation Claim (Docket No. 38); and (3) Preclude Plaintiff from Testifying Regarding Shapiro's Qualifications (Docket No. 37). The Court held a motion hearing on September 7, 2006. Having considered the entire record and having held a hearing on this motion, for the reasons that follow, the Court:

(1) GRANTS Defendant's Motion *In Limine* to Exclude the Admission of and Testimony Regarding the Abandoned and Dismissed Failure to Promote Claims;

(2) GRANTS Defendant's Motion *In Limine* to Exclude Evidence and Argument Regarding: (a) Stray Remarks by McCurry and Cassar; (b) Plaintiff's Notes Regarding Alleged Stray Remarks; and (c) Plaintiff's Dismissed Retaliation Claim. Additionally, the Court excludes any of Plaintiff's notes regarding the above remarks or Plaintiff's retaliation claim;

(3) DENIES Defendant's Motion *In Limine* to Preclude Plaintiff from Testifying Regarding Shapiro's Qualifications.

I. FACTS

In this action, Plaintiff filed a four (4) count Original Complaint ^{FN1} on March 24, 2004 alleging age discrimination under Michigan and Ohio state laws. Plaintiff filed his First Amended Complaint two months later. On June 14, 2004, Plaintiff filed a charge of age discrimination with the EEOC. (Second Am. Compl. ¶ 63). The EEOC issued Plaintiff a Right-to-Sue letter on July 9,

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2004. Plaintiff then filed his Second Amended Complaint on September 10, 2004, adding a violation of the ADEA as a fifth count. Defendant filed its Motion for Summary Judgment on September 23, 2005. Plaintiff responded on October 17, 2005. Defendant replied on November 2, 2005.

FN1. Count I: Violation of the Elliot-Larsen Civil Rights Act for Age Discrimination

Count II: Violation of the Ohio Civil Rights Act for Age Discrimination

Count III: Violation of the Elliot-Larsen Civil Rights Act for Retaliation

Count IV: Violation of the Ohio Civil Rights Act for Retaliation

Plaintiff Allen Greenfield ("Plaintiff") is an individual and a resident of the State of Michigan. (Second Am. Compl. ¶ 1). Defendant Sears, Roebuck & Company ("Defendant") is a corporation with its principal place of business in Illinois and incorporated in a state other than Michigan.^{FN2} (*Id.*)

FN2. Though it is not stated in the Second Amended Complaint, Defendant is incorporated in the State of New York.

Plaintiff was born on February 4, 1943. (*Id.* at ¶ 5). He began his employment with Defendant on September 4, 1990 as a District Business Manager ("DBM"). (*Id.*) Plaintiff was twice promoted to other DBM positions: in 1992 and 1994. (Docket No. 15, Def.'s Mem. Supp. Summ. J. 2). Joe McCurry ("McCurry"), the Detroit District General Manager ("Detroit DGM"), and Mary Trinkel, the Regional Human Resources Manager, promoted Plaintiff to the position of Human Resources District Manager ("HRDM") in 1996. (*Id.*) Plaintiff worked as a HRDM for six years. (Second Am. Compl. at ¶ 7). During his tenure as a HRDM, Plaintiff claims McCurry made ageist comments to him. (*Id.* at ¶ 8).

*2 In September of 2001, Walt Crockrel, the Store Manager of the Ann Arbor store retired. (Def.'s Br.

8). After hearing about the vacancy, Plaintiff told McCurry he would like to apply for the job. (Docket No. 20, Pl.'s Resp. Ex. 5, Greenfield's Dep. 56: 18-19). McCurry allegedly informed Plaintiff that he "had limited potential because of [his] age and there were other candidates who had higher potential than [him]." (Docket No. 20, Pl.'s Resp. Ex. 5, Greenfield's Dep. 56: 22-24). The Ann Arbor job was eventually filled by Pam Blanchard, who was 14 years younger than Plaintiff. ((Docket No. 15, Def.'s Mem. Supp. Summ. J. 8). When a vacancy developed in the Novi store a month later, McCurry told Plaintiff not to post for the managers job because of age and his limited potential as a store manager. (Docket No. 20, Pl.'s Resp. 12). Scott Caines, who is 22 years younger than Plaintiff, was placed in the Novi store. ((Docket No. 15, Def.'s Mem. Supp. Summ. J. 9).

Plaintiff also alleges that McCurry stated that "age is always one of those factors to be considered in making promotional decisions" regarding associates. (*Id.*) Further, Plaintiff claims that from the time he became a HRDM, he noticed a continuing pattern of age discrimination by Defendant. (*Id.*)

Plaintiff contends that on October 25, 2001, McCurry made a discriminatory statement regarding Paul Ciaramitaro ("Ciaramitaro") in a staff and store manager meeting. (Second Am. Compl. ¶ 11). McCurry allegedly remarked "that it was Ciaramitaro's age which prevented him from obtaining a favorable job in the reorganization." (*Id.*) Plaintiff claims that "McCurry praised Ciaramitaro as a merchant, but acknowledged his 'age' problem." ^{FN3} (*Id.*) Ciaramitaro relayed McCurry's comments to Plaintiff in his capacity as HRDM, and Plaintiff conducted an investigation and confirmed that McCurry made the statements. (*Id.* at ¶ 12). In November of 2001, Plaintiff wrote a memo to the Regional Human Resources Manager, Merle Grizzell ("Grizzell"), regarding McCurry's ageist statements to Ciaramitaro. (Docket No. 20, Pl.'s Resp. 6). Grizzell did not perform a further investigation because McCurry told him the comments were made in jest and that Plaintiff did not produce any additional evidence of discrimination. (Docket No. 20, Pl.'s Resp. Ex. 7,

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Page 3

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Grizzell Dep. 25, 27). Grizzell only discussed the situation with Greenfield, McCurry and Grizzell's superiors, Mike Reskey and Milt Mooney. Grizzell did not contact or interview any witnesses to McCurry's comments, including Ciaramitaro. (*Id.* at 24:8-22). Grizzell subsequently advised Plaintiff to apologize to McCurry for investigating him without informing him first. (*Id.* at 50:1-18).

FN3. "McCurry [stated] that he wouldn't want to offer Ciaramitaro an opportunity with his 'age and only hard goods background.' McCurry then looked directly at Ciaramitaro and said, 'I guess, Paul, you can now sue me for age discrimination.'" (Second Am. Compl. ¶ 13).

In 2001, Defendant announced that it was undergoing a national reorganization and as a result, it was eliminating the HRDM position. (Second Am. Compl. ¶ 10). The effective date for the elimination of Plaintiff's position was August 31, 2002. ((Docket No. 15, Def.'s Mem. Supp. Summ. J. 2). Upon that date, Plaintiff had to find a new position or he would be terminated. (Docket No. 20, Pl.'s Resp. 1).

*3 In January 2002, McCurry retired and Winfrey Smith ("Smith") became the Detroit DGM. ((Docket No. 15, Def.'s Mem. Supp. Summ. J. 8). Plaintiff has not alleged that Smith discriminated against him. (Docket No. 20, Pl.'s Resp. Ex. 5, Pl.'s Dep. 128: 9-16).

After McCurry's retirement, Plaintiff claims he was discriminated against when Defendant chose younger individuals for the Lincoln Park and Ann Arbor SGM positions. In April and May 2002, Plaintiff was assigned to the Lincoln Park store as an interim store manager. (Docket No. 20, Pl.'s Resp. 7; Pl.'s Resp. Ex. 5, Pl.'s Dep. 126: 12-13). Smith told Plaintiff to stop searching for a job and move his things to the Lincoln Park store. (Docket No. 20, Pl.'s Resp. Ex. 5, Pl.'s Dep. 126:21-23). However, instead of being selected as the SGM, Smith told Plaintiff he would not be the Lincoln Park manager and the position was given to Pam

Blanchard. (Docket No. 20, Pl.'s Resp. Ex. 5, Pl.'s Dep. 126: 17-19; Pl.'s Resp. 7). Plaintiff claims that, according to Smith, he did not get the permanent SGM job at Lincoln Park because Smith could not "sell it" to Teresa Byrd, the Regional Manager. (Docket No. 20, Pl.'s Resp. Ex. 5, Pl.'s Dep. 127: 19-22).

Blanchard's move to the Lincoln Park store in June 2002 created an opening at a lower volume store in Ann Arbor. (*Id.*). Plaintiff immediately applied for the open SGM position in Ann Arbor. (*Id.*). Plaintiff called Larry Cassar ("Cassar"), the Toledo District General Manager ("Toledo DGM"),^{FN4} to express his interest in the Ann Arbor position. (Docket No. 20, Pl.'s Resp. Ex. 5, Pl.'s Dep. 131). Cassar and Plaintiff spoke about Plaintiff's background, of which Cassar, according to Plaintiff, was very complimentary. (*Id.* at 131: 5-6). Cassar told Plaintiff during the conversation that he was a good candidate for the Ann Arbor job. (*Id.* at 131: 6-7).

FN4. The Ann Arbor store was in the Toledo District. (Def.'s Br. 9). Cassar, the District Manager of the Toledo area, was at the same level as Smith, the Detroit District Manager. (Pl.'s Resp. Ex. 5, Pl.'s Dep. 130-31).

Cassar was looking for a candidate who had hard and soft line experience. (Docket No. 20, Pl.'s Resp. 8). Plaintiff, though more experienced in soft lines, had years of experience running large retail stores. (*Id.*). Cassar eventually hired Jay Shapiro ("Shapiro") for the open Ann Arbor position. (*Id.*). According to Plaintiff, Shapiro was younger and less qualified for the job. (*Id.*).

In order to find a position before he was terminated, Plaintiff enlisted the help of Teresa Byrd ("Byrd"), the new regional manager. (Docket No. 20, Pl.'s Resp. 9). Plaintiff sent Byrd a letter and asked to meet with her to discuss his qualifications. (*Id.*). Plaintiff applied and interviewed for a position as store manager in Strongsville, OH, but was not offered the position. (*Id.* at 10). However, Plaintiff received a call from DGM Rob Robinette after the interview, who informed him that an opening was

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created at the Randall Park store and offered Plaintiff the position of store manager. (*Id.*) Plaintiff's store was in an economically depressed area and had staffing and theft problems. (*See* Def.'s Br. Ex. 2, Robinette Dep. 6, 8, 17). As a result, Plaintiff could not "turn the store around." (Docket No. 20, Pl.'s Br. 10). On September 22, 2003, Plaintiff was placed on a performance improvement plan. (*Id.*) A week after Plaintiff was placed on the performance plan, he became emotionally incapable of continuing to work and left the employ of Defendant. (*Id.*)

*4 In its March 2, 2006 Opinion, the Court granted in part and denied in part Defendant's Motion for Summary Judgment. The Court granted Defendant's Motion for Summary Judgment on: (1) Plaintiff's Title VII and ELCRA claims under a theory of direct evidence; (2) Plaintiff's retaliation claim; and (3) Plaintiff's Ohio Civil Rights Act claims for age discrimination and retaliation. The Court denied Defendant's Motion for Summary Judgment on Plaintiff's Title VII and ELCRA claims under a theory of circumstantial evidence.

On March 16, 2006, Defendant timely filed a Motion for Reconsideration. On May 24, 2006, the Court granted in part and denied in part Defendant's Motion for Reconsideration. The Court granted Defendant's motion as to an unplead Title VII claim and Plaintiff's ADEA claim, but denied Defendant's motion as to its pretext and lack of record support arguments.

Defendant filed its motions *in limine* on July 18, 2006.

Defendant's Motion In Limine to Exclude the Admission of and Testimony Regarding the Abandoned and Dismissed Failure to Promote Claims (Docket No. 35)

Defendant argues that Plaintiff abandoned all of his failure to promote claims, except for the Ann Arbor store manager position. Defendant avers that Cassar was the only decisionmaker who had anything to do with Defendant's decision not to promote Plaintiff to the Ann Arbor store manager position. Defendant

contends that McCurry and Vest had nothing to do with the Cassar's decision, and testimony about them is irrelevant and thus inadmissible under Federal Rule of Civil Procedure 401 and 402. Defendant also asserts that if the court decides that the abandoned and dismissed claims are relevant and admissible, the testimony should still be precluded because it is more prejudicial than probative under Federal Rule of Evidence 403.

Plaintiff did not respond to this motion.

II. ANALYSIS

A. Standard

Federal Rule of Evidence 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." "A district court has 'broad discretion to determine matters of relevance.'" *Williams v. Nashville Network*, 132 F.3d 1123 (6th Cir.1997). "Evidence that is not relevant is not admissible." Fed.R.Evid. 402. Federal Rule of Evidence 403 states:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

B. Discussion

Plaintiff's Amended Complaint stated that he was denied five store management positions. The decisionmakers for three of the store management promotions which Plaintiff applied for and did not obtain was DDM Joe McCurry. Randy Vest, the vice-president for The Great Indoors, was the decisionmakers for one of the denied store management positions. Larry Cassar, the TDM, was the decisionmakers for the last store manager

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promotion that Plaintiff did not receive.

*5 Although Plaintiff claimed that he was denied five store management positions, he stated in his Response to Defendant's Motion for Summary Judgment that “[g]iven the vast evidence of discriminatory and retaliatory motive with regard to [the Ann Arbor position under Cassar], Plaintiff will abandon claims regarding other store management positions alleged in his Complaint.” (Docket No. 20, Pl.'s Response to Def.'s Mot. Summ. J. 1 n. 1). As a result, on summary judgment, the Court only ruled on the 2002 Ann Arbor store manager promotion, which Plaintiff did not receive. The denial of this promotion is the scope of the trial.

Because the 2002 Ann Arbor promotion is the issue at trial, the previous positions that Plaintiff originally claimed to have been denied to him due to discrimination are irrelevant to the issue of whether he was denied the Ann Arbor store manager position due to discrimination on the part of Cassar. Further, the only decisionmakers relevant to Plaintiff's denial of the Ann Arbor store manager position was Cassar, who made the ultimate decision.^{FN5}

FN5. The Court previously ruled that McCurry did not make the decision whether to promote Plaintiff to the Ann Arbor position in 2002, indicating that McCurry retired six months before Cassar made the decision to select Jay Shapiro. (Docket No. 25, Opinion and Order 12).

Therefore, Plaintiff's four other failure to promote claims are separate incidents, and no longer before this Court. Accordingly, the Court finds that the abandoned and dismissed claims are irrelevant to the issue at bar, and are thus irrelevant and inadmissible under Federal Rule of Civil Procedure 401 and 402.

III. CONCLUSION

Accordingly, the Court GRANTS Defendant's Motion *In Limine* to Exclude the Admission of and

Testimony Regarding the Abandoned and Dismissed Failure to Promote Claims.^{FN6}

FN6. The Court finds it unnecessary to review Defendant's motion under Rule 403.

Defendant's Motion In Limine to Exclude Evidence and Argument Regarding: (a) Alleged Stray Remarks by McCurry and Cassar; (b) Plaintiff's Notes Regarding Alleged Stray Remarks; and (c) Plaintiff's Dismissed Retaliation Claim (Docket No. 38)

Defendant argues that evidence and argument relating to McCurry's alleged statements, Plaintiff's notes and Plaintiff's retaliation claim, must be precluded. Defendant contends that McCurry retired in January 2002, which was six months before Cassar's decision to select Shapiro over Plaintiff. Defendant argues that the Court already ruled that McCurry's statements were stray remarks which could not be used as direct evidence of discrimination. In light of the Court's prior ruling, Defendant avers that Plaintiff should be precluded from testifying about or offering evidence regarding McCurry's alleged comments, including his notes, because they are irrelevant. Defendant asserts that evidence and testimony of the dismissed retaliation claims should be excluded because it has no bearing on the issue of whether Cassar discriminated against Plaintiff on the basis of his age.

Defendant also argues that since McCurry's comments were stray remarks, Cassar's “echo” of McCurry's remarks are stray remarks as well. Defendant believes that Cassar's statements do not meet the *Cooley* factors.

Defendant contends that even assuming the Court finds that McCurry's comments, or Cassar's “echo” of McCurry's comments, were relevant and admissible, the comments are more prejudicial than probative, and should be excluded under Federal Rule of Evidence 403.

*6 Plaintiff argues that the statements made by McCurry and Cassar, as well as Plaintiff's notes regarding the remarks, are relevant to Plaintiff's

Slip Copy

Page 6

Slip Copy, 2006 WL 2927546 (E.D.Mich.)
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prima facie case of age discrimination and therefore admissible under Rule 401 and 402. Plaintiff avers that the McCurry and Cassar's remarks are admissible when used as circumstantial evidence of discrimination. Plaintiff supports its position by arguing that while McCurry was not the ultimate decisionmakers, his statement and Cassar's echo of McCurry's statement, are indicative of a corporate bias at Defendant. Plaintiff also argues that McCurry's statement should not be excluded simply because it was made before the adverse action. Likewise, Plaintiff avers that the fact that McCurry was a non-decisionmakers does not detract from the admissibility of his remark.

Defendant replies that vague or isolated comments which were made by non-decisionmaker long before the adverse employment decision is made are not probative of discriminatory motivation by an employer. Defendant contends that because the Court already found McCurry's comments to be stray remarks as direct evidence, they are not probative and irrelevant to the issue. Defendant cites *Walker v. DaimlerChrysler*, Case No. 02-74698, Docket No. 185 (E.D.Mich. Oct. 20, 2005) (unpublished).

Defendant also argues that Cassar's echo of McCurry's comments must be excluded because (1) Cassar only repeated the comments made by McCurry; (2) Cassar had no decisionmaking authority relative to Store Manager promotions at the time of the "echo"; (3) Plaintiff has stated that he never heard Cassar say anything discriminatory about him. Defendant asserts that there is no evidence that McCurry influenced or was involved in Cassar's decision to promote Shapiro over Plaintiff. Defendant believes that the cases cited by Plaintiff are not on point.

II. ANALYSIS

A. Standard of Review

Federal Rule of Evidence 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to

the determination of the action more probable or less probable than it would be without the evidence." "Evidence that is not relevant is not admissible." Fed. R. Evid. 402. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury ..." Fed.R.Evid. 403. "Situations in this area call for balancing the probative value of and need for the evidence against the harm likely to result from its admission." *Cooley*, 25 F.3d 1325, 1330 (6th Cir.1994). Evidence that has no direct bearing on the issue to be decided and embellishes the circumstantial evidence directed to that issue by adding "smoking gun" type evidence, should be excluded. *Schrand v. Fed. Pacific Elec. Co.*, 851 F.2d 152, 156 (6th Cir.1988). While remarks made by a non-decisionmakers "are not indicative of discriminatory intent, the statements of managerial-level employees who have the ability to influence a personnel decision are relevant." *Johnson v. The Kroger Co.*, 319 F.3d 858, 868 (6th Cir.2003) (concluding in an admittedly close case that a managerial-level employee's comments were relevant when the employee played a significant role in the decisionmaking process and the statement was viewed in connection with the evidence concerning racial slurs and jokes).

B. Discussion

1. Stray Remarks by McCurry

*7 "Unless the statements of conduct of non[-]decisionmaker can be imputed to the ultimate decisionmaker, such statements or conduct '[can not] suffice to satisfy the plaintiff's burden ...' of demonstrating animus." *Nobel v. Brinker Int'l, Inc.*, 391 F.3d 715, 724 (6th Cir.2004) (citing *Bush v. Dictaphone Corp.*, 161 F.3d 363, 369 (6th Cir.1998) ; see also *Smith v. Leggett Wire Co.*, 220 F.3d 752, 759 (6th Cir.2000). It is not demonstrative of discrimination when an isolated discriminatory remark is made by someone who has no managerial authority over the alleged discriminatory decision. *Smith*, 391 F.3d at 760. "Comments made long before the adverse employment action and

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comments” by non-decisionmaker have no probative value in a disparate treatment case. *Shefferly v. Health Alliance Plan of Mich.*, 94 Fed. Appx. 275, 280 (6th Cir.2004) (unpublished); see *Krohn v. Sedgwick James of Mich, Inc.*, 624 N.W.2d 212, 300 (Mich.App.2001) (“[F]ederal courts have consistently held that isolated or vague comments made by non-decisionmaker long before the adverse employment decision is made are not probative of an employers’ discriminatory motivation.”). While remarks made by a nondecisionmakers “are not indicative of discriminatory intent, the statements of managerial-level employees who have the ability to influence a personnel decision are relevant.” *Johnson v. The Kroger Co.*, 319 F.3d 858, 868 (6th Cir.2003).

Plaintiff’s response cites *Abrams v. Lightolier Inc.*, 50 F.3d 1204 (3rd Cir.1995),^{FN7} which found that “discriminatory comments by non-decisionmaker, or statements temporally remote from the decision at issue, may properly be used to build a circumstantial case of discrimination. *Id.* at 1214. In *Abrams*, the defendant argued that admission of evidence of an “ageist” comment was improper because the supervisor was not a decisionmaker for the plaintiff’s termination. *Id.* Nevertheless, the court found that the supervisor was found to be a decisionmaker. *Id.* Additionally, the discriminatory comments by non-decisionmaker that the court was referring to dealt with “ageist” comments made by the same supervisor, regarding other employees in the company. *Id.* Dissimilar to *Abrams*, the comments Plaintiff claims are circumstantial in this motion are not made by the decisionmaker.

FN7. Plaintiff also cites *Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344 (6th Cir.1998), which follows *Abrams*.

In *Cooley*, the defendant appealed a jury verdict in an ADEA action in favor of the Plaintiff. *Id.* at 1327. The defendant argued that the district court had abused its discretion when it admitted testimony regarding the company president’s ageist remarks. *Id.* at 1330. The court reviewed relevant case law and set forth factors to determine the admissibility

of statement if offered to show employment: In age discrimination cases, this court has examined statements allegedly showing employer bias by considering [1] whether the comments were made by a decision maker or by an agent within the scope of his employment; [2] whether they were related to the decision-making process; [3] whether they were more than merely vague, ambiguous, or isolated remarks; [4] and whether they were proximate in time to the act of termination. However, this court has not previously expressly spelled out these considerations as a formal standard. We do so today.

*8 *Id.*

Cooley applies to the case at bar. While it appears that most case law applies the *Cooley* factors for statements brought as direct evidence, there is no case law declining to apply *Cooley* to statements used as circumstantial evidence.^{FN8} Even though the statements are presented as circumstantial evidence, the Court finds that the *Cooley* factors are helpful in the analysis of whether stray remarks are relevant.

FN8. This Court also applied *Cooley* in *Walker v. DaimlerChrysler*, Case No. 02-74698, Docket No. 185 (E.D.Mich. Oct. 20, 2005).

In the instant case, it is undisputed that McCurry was not involved in the decision to demote Plaintiff. Defendant seeks to exclude evidence and testimony of statements made by McCurry. The statements by McCurry at issue are: that “age is always one of those factors to be considered in making promotional decisions”; that a co-worker’s age prevented him from obtaining a favorable job;^{FN9} that Plaintiff “had limited potential because of [his] age and there were other candidates who had higher potential than [him];” and that Plaintiff should not apply for the managers job because of age and his limited potential as a store manager.^{FN10}

FN9. This remark was alleged to have been made at a staff meeting.

Slip Copy

Page 8

Slip Copy, 2006 WL 2927546 (E.D.Mich.)
(Cite as: Slip Copy)

FN10. McCurry is alleged to have made the last two remarks to Plaintiff when he applied for two different store manager positions.

Applying *Cooley*, McCurry was not the decisionmaker in Defendant's decision to place someone other than Plaintiff in the vacant Ann Arbor store manager position. Moreover, McCurry's statements were not related to the decisionmaking process. Though McCurry's statements were more than merely vague, ambiguous, or isolated remarks, his statements were not proximate in time to the act of termination.^{FN11} McCurry also retired in January of 2002, six months before employment decision on the Ann Arbor store manager position.

FN11. McCurry's statements were made prior to a letter sent to Merle Grizzel on November 2, 2001.

As a result, the alleged statements attributed to McCurry tend to be irrelevant under the *Cooley* factors to the determination at issue in this case.

Alternatively, Defendant argues that even if the stray remarks are relevant, their probative value is substantially outweighed by the danger of unfair prejudice, issue confusion or misleading the jury. Plaintiff responds that the remarks provide support to the fact that a corporate bias existed within Defendant.

"The risk of admitting evidence of a biased opinion made by an employee who is unrelated to the decisionmaking process is that, even if the remark is isolated, ambiguous, or remote in time, it unfairly suggests to the jury that the remark and its underlying motivation have the imprimatur of the employer." *Krohn v. Sedgwick James of Michigan, Inc.*, 244 Mich.App. 289, 303 (2001).

The stray comments made by non-decisionmaker in the instant case are unduly prejudicial under Rule 403 because they would confuse the jury as to the actual issue of the case. Although discriminatory statements may reflect a cumulative managerial attitude that has influenced the decisionmaking

process at Defendant, Plaintiff does not provide evidence of other manager's discriminatory statements to support that a corporate bias existed. The comments made by McCurry have no bearing on whether discrimination played a part in the Plaintiff's demotion, and allowing these remarks may mislead the jury as to its importance. Therefore, the Court finds that the stray comments by non-decisionmakers are barred by Rule 403.

2. Stray Remarks by Cassar

*9 Defendant first contends that the *Cooley* factors should be used for determining the relevancy of the statements at issue. In *Cooley*, the defendant appealed a jury verdict in an ADEA action in favor of the Plaintiff. *Id.* at 1327. The defendant argued that the district court had abused its discretion when it admitted testimony regarding the company president's "ageist" remarks. *Id.* at 1330. The president's alleged comments were " 'I don't like to be around old people' and '[e]verybody over 30 years old needs to be put in a pen... [I]f they don't want to be put in a pen, they should be confined to a concentration camp.' " *Id.* at 1329. The court reviewed relevant case law and set forth factors to determine the admissibility of statements when offered to show employment discrimination: In age discrimination cases, this court has examined statements allegedly showing employer bias by considering [1] whether the comments were made by a decision maker or by an agent within the scope of his employment; [2] whether they were related to the decision-making process; [3] whether they were more than merely vague, ambiguous, or isolated remarks; [4] and whether they were proximate in time to the act of termination. However, this court has not previously expressly spelled out these considerations as a formal standard. We do so today.

Id.

Cooley applies to the case at bar. While it appears that most case law applies the *Cooley* factors to statements brought as direct evidence, there is no case law refusing to apply *Cooley* to statements used as circumstantial evidence. Even though the statements are now presented by Plaintiff as

Slip Copy, 2006 WL 2927546 (E.D.Mich.)
(Cite as: Slip Copy)

circumstantial evidence, as stated above, the Court finds that the *Cooley* factors assist in the analysis of whether stray remarks are relevant.

Plaintiff claims that Cassar “echoed” McCurry's sentiments and reiterated that McCurry believed that age should be taken into account. Plaintiff only speaks generally to the comments allegedly made by Cassar. Plaintiff states that he remembers Cassar speaking about a promotional decision made by McCurry and that Cassar told him that McCurry said age has to be taken into consideration when people are promoted. (Greenfield Dep. 133:13-16). Plaintiff also testified that Cassar “echo [d McCurry's] sentiments about age being part of a promotion factor.” (Greenfield Dep. 134:3-4).

Applying *Cooley*, the comments were made by the decisionmakers, though the comments were not related to the adverse employment action. The comments were ambiguous and isolated remarks, having nothing to do with Plaintiff. Neither comment, on their face, strongly suggest that Cassar harbors a bias against older workers. Plaintiff even admits that Cassar was repeating what he had been told by McCurry. Nowhere does Plaintiff allege that Cassar made comments in which he conveyed that he agreed with McCurry's statement. Here, Cassar was merely “echoing,” or repeating, McCurry's statements. Also, Defendant claims, and Plaintiff does not contest, that Cassar was a store manager at the time he “echoed” McCurry's statements. Cassar had no authority at the time to hire or fire store managers.^{FN12} Indeed, on November 2, 2001, seven months before the Ann Arbor store manager decision was made by Cassar, Plaintiff wrote a letter to Merle Grizzell complaining of discriminatory comments. Nowhere in the letter does it mention any negative public or private statements by Cassar regarding age. (See Def.'s Br. Ex. 7, Grizzell Letter). Plaintiff contends that the comments “reflect a cumulative managerial attitude that has influenced Defendant's decision-making process for some time.” (Pl.'s Resp. 9). But, as in the case with McCurry, Plaintiff has not offered specific statements by individual managers other than McCurry to support that a corporate bias or cumulative managerial attitude existed. Therefore, the Court finds that the stray comments by Cassar

are barred.

FN12. Plaintiff's deposition is unclear regarding exactly when Cassar made the comments.

3. Retaliation Claim

*10 Because the Court previously granted summary judgment to Defendant on Plaintiff's retaliation claim-finding that Plaintiff failed to show a causal connection between Grizzell's letter and Defendant's failure to promote-the Court finds that evidence and argument by Plaintiff on this claim is irrelevant to the issues of the case.

III. CONCLUSION

Accordingly, the Court GRANTS Defendant's Motion *In Limine* to Exclude Evidence and Argument Regarding: (a) Stray Remarks by McCurry and Cassar; (b) Plaintiff's Notes Regarding Alleged Stray Remarks; and (c) Plaintiff's Dismissed Retaliation Claim. Additionally, the Court excludes any of Plaintiff's notes regarding the above remarks or Plaintiff's retaliation claim.

Defendant's Motion In Limine to Preclude Plaintiff from Testifying Regarding Shapiro's Qualifications (Docket No. 37)

Defendant argues that Plaintiff's testimony regarding his opinion why Shapiro was promoted is inadmissible under Rule 701. Defendant contends that Plaintiff does not have facts within his personal knowledge Shapiro's qualifications. Defendant also argues that Plaintiff's testimony regarding Shapiro's qualifications is inadmissible hearsay under Federal Rules of Evidence 802 and 803. Defendant asserts that it is an out of court statement being offered to prove the truth of the matter asserted, *i.e.*, that Shapiro was not as qualified as Plaintiff. Defendant further asserts that Plaintiff's testimony regarding Shapiro's qualifications, and Plaintiff's subjective opinion of his own qualifications, is irrelevant under

Slip Copy

Page 10

Slip Copy, 2006 WL 2927546 (E.D.Mich.)
(Cite as: Slip Copy)

Rule 401, and thus inadmissible under Rule 402. Defendant avers that Plaintiff's testimony, even if relevant and admissible, is more prejudicial than probative under Rule 403. Defendant believes that Plaintiff's skewed testimony about Shapiro would unfairly prejudice Defendant because it would confuse the jury. More specifically, Defendant argues that the testimony would place the jury in a position whether to accept Plaintiff's opinion of Shapiro's qualifications, or Cassar's perception of Shapiro's qualifications, when only Cassar's perception matters.

Plaintiff responds that evidence regarding the skills and experience of both Plaintiff and Shapiro are relevant to the issue set for trial. Plaintiff contends that he would not testify about what Shapiro's experience or qualifications actually were, because he lacks personal knowledge about Shapiro. However, Plaintiff asserts that evidence of Shapiro's experience of qualifications would be presented through other witnesses and documents. Plaintiff avers that he then can present his own testimony comparing his opinion of his own qualifications, as compared to Shapiro's qualifications on the record, under Rule 701. Plaintiff argues that his testimony would provide a counterweight to Cassar's testimony and allow the jury to make its own determination. Plaintiff believes that the evidence would not be more prejudicial than probative under Rule 403, because the qualifications of Plaintiff and Shapiro will be on the record and the jury can make its own evaluation of the merits of the two candidates. Plaintiff argues that he is entitled to demonstrate that Defendant's claim that Shapiro was more qualified is unreasonable and unworthy of credence and his testimony comparing qualifications is relevant to this inquiry.

*11 Defendant replies that Plaintiff admits he has no personal knowledge about the qualifications of Shapiro. Thus, Defendant argues that the court should grant its motion on that basis alone. Defendant admits that it has not sought to exclude Plaintiff's testimony about his own qualifications or his testimony regarding what he was told were the qualifications Defendant was seeking in candidates for the store manager position. Defendant asserts that Plaintiff's lay opinion regarding the relative

qualifications of himself and Shapiro are inadmissible under Rule 701 and irrelevant under Rule 401 and 402. Defendant believes Plaintiff cannot make comparison testimony because he has no first-hand knowledge of Shapiro's qualifications. Defendant argues that *Bender v. Hecht's Department Stores*, 455 F.3d 612 (6th Cir.2006), clarified that Plaintiff's opinion regarding Shapiro's qualifications is irrelevant and inadmissible. Defendant avers that Plaintiff is not the factfinder and his subjective opinion comparing his qualifications with Shapiro's has no bearing on the issue presented to the jury.

II. ANALYSIS

A. Standard

Federal Rule of Evidence 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." "A district court has 'broad discretion to determine matters of relevance.'" *Williams v. Nashville Network*, 132 F.3d 1123 (6th Cir.1997). "Evidence that is not relevant is not admissible." FED. R. EVID. 402. Federal Rule of Evidence 403 states:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Opinion testimony by lay witnesses is governed by Federal Rule of Evidence 701: If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Slip Copy

Page 11

Slip Copy, 2006 WL 2927546 (E.D.Mich.)
 (Cite as: Slip Copy)

B. Discussion

Plaintiff concedes that he does not have personal knowledge regarding Shapiro's qualifications. Likewise, Defendant concedes that it has not sought to exclude Plaintiff's testimony about his own qualifications or about the skills needed for the store manager position, as told to him by Defendant. Therefore, the only issue before this court in the instant motion is whether Plaintiff may testify as to his lay opinion regarding his qualifications compared to the evidence of Shapiro's qualifications submitted into evidence by Defendant

*12 Defendant ultimately argues that Plaintiff's perception of the qualifications of the candidates for the promotion is not relevant. Defendant asserts that what is relevant is the Cassar's perception of the qualifications of Plaintiff and Shapiro. Defendant supports its position with *Bender v. Hecht's Department Stores*, 455 F.3d 612 (6th Cir.2006).

In *Hecht's*, the court found that the weight of qualifications evidence differs depending on whether a plaintiff presents other evidence of discrimination. The court found that when other evidence is presented, "that evidence [when paired with the qualifications evidence] might result in the plaintiff surviving summary judgment." *Id.* at 626-27. However, to survive summary judgment when little or no evidence of discrimination is proffered other than qualifications evidence, "the rejected applicant's qualifications must be so significantly better than the successful applicant's qualifications that no reasonable employer would have chosen the latter applicant over the former." *Id.* at 627. The court also held that "if two reasonable decisionmaker could consider the candidates' qualifications and arrive at opposite conclusions as to who is more qualified, then clearly one candidate's qualifications are not significantly better than the other's." *Id.* at 628.

With *Hecht's* in mind, Defendant avers that Plaintiff is not the factfinder and his opinion comparing Shapiro's qualifications with his own has no bearing on the issue decided by the jury. The Court does not find Defendant's argument convincing.

Before the *Hecht's* court was a summary judgment motion. The instant case has passed the summary judgment stage, as the Court denied Defendant's summary judgment on Plaintiff's ELCRA claim on March 2, 2006. Additionally, *Hecht's* was decided on August 1, 2006, five months after this Court's summary judgment opinion. Further, by arguing that Plaintiff should not be allowed to give his opinion comparing Shapiro's qualifications with his own, it appears that Defendant seeks to keep Plaintiff from testifying as to why he believes there was discrimination. The jury will hear why Cassar thought Shapiro more qualified than Plaintiff. Likewise, under Rule 701, Plaintiff can give his lay opinion regarding why he believes he is more qualified than Shapiro. Plaintiff's testimony would be based on his perception of his qualifications and his time spent in retail management, as compared to the qualifications of Shapiro, which will be supported by evidence and testimony at trial.

In its supplemental brief, Defendant argues that *Devries v. Biolife Plasma Services, L.P.*, Case No. 05-684, 2006 WL 2700902 (W.D.Mich. Sept. 19, 2006) (Ensen, J.) (unpublished), an unpublished case out of the Western District of Michigan, supports its argument. However, *Devries* is not on point. In *Devries*, the court ruled on a Motion to Strike Affidavit. The case did not involve an evidentiary ruling on whether a party at trial can compare his own qualification with the qualifications submitted into evidence of another individual. *Devries* found that statements made in an affidavit regarding individuals who committed workplace violations should be stricken, even though the information was taken from undisputed workplace records. *Id.* at 2. The rationale given was that the information is not based on the affiant's personal knowledge and is considered hearsay. *Id.* Here, the information will not be hearsay,^{FN13} but evidence properly admitted at trial. Further, *Devries'* holding that lay witness testimony must be based on the witness's perceptions is not contrary to this opinion. Plaintiff will be testifying to his own qualifications, to which he has personal knowledge, and comparing his qualifications to Shapiro's qualifications submitted into evidence.

Slip Copy

Page 12

Slip Copy, 2006 WL 2927546 (E.D.Mich.)
(Cite as: Slip Copy)

FN13. The Court finds that Plaintiff's testimony is not hearsay because he is not testifying as to Shapiro's qualifications, but testifying to his own qualifications and comparing his qualifications with Shapiro's qualifications put into evidence.

*13 Plaintiff's testimony is not more prejudicial than probative under Rule 403. Plaintiff is entitled to demonstrate why he believes Defendant's proffered reason was pre-textual. The jury is free to evaluate the testimony of both Cassar and Plaintiff, as well as the other evidence and testimony presented. Thus, Plaintiff's testimony does not prejudice Defendant.

Accordingly, the Court finds that Plaintiff may testify to his own qualifications and compare his qualifications with Shapiro's qualifications on the record.

III. CONCLUSION

For the reasons stated above, the Court DENIES Defendant's Motion *In Limine* to Preclude Plaintiff from Testifying Regarding Shapiro's Qualifications.

SO ORDERED.

E.D.Mich.,2006.
Greenfield v. Sears, Roebuck and Co.
Slip Copy, 2006 WL 2927546 (E.D.Mich.)

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