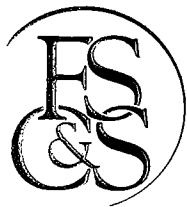


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Reply To: Lansing

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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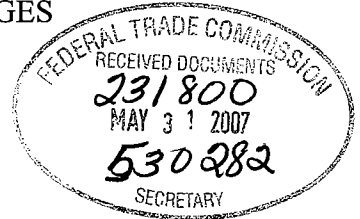
Via Federal Express



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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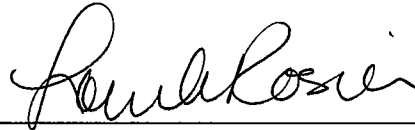
CERTIFICATE OF SERVICE

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.

