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# Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination

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**Volume VI: The New York Report**

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**December 1999**

**A Report of the United States Commission on Civil Rights**

## **U.S. Commission on Civil Rights**

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices;
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin;
- Submit reports, findings, and recommendations to the President and Congress;
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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Christopher F. Edley, Jr.

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# **Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination**

**Volume VI: The New York Report**

**December 1999**

**A Report of the United States Commission on Civil Rights**



## Letter of Transmittal

The President  
The President of the Senate  
The Speaker of the House of Representatives

Sirs:

The United States Commission on Civil Rights transmits this report to you pursuant to P.L. 103-419. *The New York Report* is the sixth volume of a series of Commission reports on *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination*. The report is based on hearings held in New York City in 1994 and 1995 and significant updates from research and media accounts. This report examines, among other topical areas, immigrants in New York City and low-skill labor markets; the representation of people of color and women in the finance industry; the impact of securities industry rules on people of color and women securities professionals; and the role of community reinvestment in the overall economic development and revitalization of low-income areas. This report is based upon the sworn testimony of numerous hearing witnesses, large volumes of documents submitted to the Commission in compliance with subpoenas *duces tecum*, an expert's breakdown of the statistical data in those documents, and substantial staff research conducted before and after the hearings. The staff research efforts were facilitated, in part, by the cooperative assistance of several Federal agencies and representatives of the securities industry who provided additional information to the staff to update and clarify portions of this report.

The report presents a significant number of findings and recommendations addressing issues of racial tensions, discrimination, and inequality in New York City. The report finds, for example, that workplace exploitation of low- and unskilled immigrants, particularly among undocumented immigrants, is commonly manifested in the form of subminimum wages, overtime work without appropriate pay, unsanitary working conditions, and abuse or harassment. It further finds that there are no targeted actions by Federal and State labor departments to address worker exploitation in the restaurant industry which, in effect, exacerbates the abuse of labor laws.

In looking at the representation of people of color and women in the finance industry, the report finds some promising evidence since the Commission conducted its hearings in New York City, that firms have adopted measures or made commitments to increase the inclusion and advancement of women and people of color in prominent roles in the securities industry. Still, the report recommends that strong measures must continue to be enacted to counteract industry forces that may reduce opportunities for economic equality and diversity in the finance industry which has long been a large, prominent, and well-paying industry. The report also points out that although the obligation to arbitrate is no longer coupled with the duty to register at the exchanges, the goal of providing the most fair and cost-efficient arbitration forum remains important to the resolution of employment discrimination disputes.

The report also examines the important role of capital and lending to community development and considers the specific ways in which the enforcement of the Community Reinvestment Act (CRA) affects the economic revitalization of underserved communities. The report notes that the CRA has played a crucial role in ensuring credit to residents of low- and moderate-income areas and in encouraging banks to open new branches and expand services in these communities. The report finds, however, what appears to be grade inflation by the four CRA regulatory agencies in the CRA composite performance evaluations. It is recommended that because of this possible grade inflation, the CRA regulatory agencies should

delay the awarding of overall "outstanding" ratings until they conduct enough evaluations throughout the industry to determine what a "normal" or "average" CRA evaluation reveals.

The report is replete with significant other findings and recommendations that we urge the executive branch and the Congress to consider in the pursuit of racial and ethnic reconciliation and economic equality in this land of opportunity.

Respectfully,  
For the Commissioners,

A handwritten signature in cursive script that reads "Mary Frances Berry". The signature is fluid and somewhat stylized, with the first letters of each name being capitalized and prominent.

Mary Frances Berry  
*Chairperson*

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## Chapter 1

# Introduction

### Section I. Background

In *Dual City: Restructuring New York*, editors John Mollenkopf and Manuel Castells comment on the “dual city” metaphor, often used to describe New York in the context of current conditions:<sup>1</sup>

Despite the economic slowdown since the stock market crash of October 1987, New York incontestably remains a capital for capital, resplendent with luxury consumption and high society. . . . but New York also symbolizes urban decay, the scourges of crack, AIDS, and homelessness, and the rise of a new underclass. Wall Street may make New York one of the nerve centers of the global capitalist system, but this dominant position has a dark side in the ghettos and barrios, where a growing population of poor people lives.<sup>2</sup>

Not only do neighborhoods such as Washington Heights (Manhattan), Bensonhurst, Crown Heights, and Williamsburg (Brooklyn), Howard Beach (Queens), and Staten Island—sites of racial and ethnic violence and conflict—create an image of a city plagued by increasingly frequent

racial and ethnic conflict;<sup>3</sup> but other areas that have not been recent sites of well-publicized interethnic violence, nevertheless, invoke the mental suggestion of race or ethnicity—Harlem (African Americans) and East Harlem (Latinos) in Northern Manhattan, the Bronx (African Americans), South Bronx (Latinos and African Americans), Bedford Stuyvesant in Brooklyn (African Americans), Forest Hills in Queens (whites), Midtown (whites), Flushing and Elmhurst in Queens (Asian American and Pacific Islanders),<sup>4</sup> and Sunset Park, Brooklyn (Asian American and Pacific Islanders).

This image should be contrasted, however, with the fact that New York has long been the most racially and ethnically diverse city in the United States. According to the New York City Department of City Planning, individuals representing more than 178 countries and 115 primary language backgrounds reside in the city. New York has long been a major port of entry for new immigrants, who have successfully made the transition to become U.S. citizens. The transition has not always been completely smooth,

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<sup>1</sup> In *New York Ascendant*, the report of the city's Commission on the Year 2000, the commission noted that “New York's poverty is not new,” and “today's poor live in neighborhoods segregated by class with few connections to jobs or other opportunities . . . . A city that was accustomed to viewing poverty as a phase in assimilation to the larger society now sees a seemingly rigid cycle of poverty and a permanent underclass divorced from the rest of society.” New York, NY, Commission on the Year 2000, *New York Ascendant: The Report of the Commission on the Year 2000* (New York: Harper & Row, 1988), pp. 51, 53. This theme is also traced in contemporary fiction set in New York. See William Sharpe and Leonard Wallock, “Tales of Two Cities: Gentrification and Displacement in Contemporary New York,” in *Begetting Images: Studies in the Art and Science of Symbol Production*, ed. Mary B. Campbell and Mark Rollins (New York: Peter Lang, 1989), pp. 169–99.

<sup>2</sup> John H. Mollenkopf and Manuel Castells, “Introduction,” in *Dual City: Restructuring New York*, ed. John H. Mollenkopf and Manuel Castells (New York: Russell Sage Foundation, 1991), p. 3 (hereafter cited as Mollenkopf and Castells, “Dual City Introduction”).

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<sup>3</sup> The Howard Beach stampede of a black man to his death on a busy highway, the Central Park “wilding” attack by black youths on a white woman investment banker, and the Bensonhurst murder of a black man by a gang of Italian youth (and an assault on Latino youth in the same area a few days later) occurred almost simultaneously, and persuaded most New Yorkers that race relations were on a downward curve. John H. Mollenkopf, “Political Inequality,” in *Dual City: Restructuring New York*, ed. John H. Mollenkopf and Manuel Castells (New York: Russell Sage Foundation, 1991), p. 350. For background on the Howard Beach and Bensonhurst attacks, see William Kornblum and James Beshers, “White Ethnicity: Ecological Dimensions,” in *Power Culture and Place: Essays on New York City*, ed. John H. Mollenkopf (New York: Russell Sage Foundation, 1988), pp. 201–21.

<sup>4</sup> The term “Asian American and Pacific Islander” is used throughout this report to refer to all persons having origins in any of the original peoples of Asia, Southeast Asia, the Indian Subcontinent, or the Pacific Islands who reside in the U.S. However, this term is not used where the source of the data uses other terms.

but the city and its residents have nonetheless adapted. In short, most New Yorkers somehow manage to coexist peacefully in limited geographic areas, under most circumstances.

In New York, just as race intersects with income inequality in complex ways, so does ethnicity. The terms “minority,” “black,” and “Latino” have become misleading abstractions—particularly in New York—given the number of groups inhabiting the city. The so-called “new immigration” has overwhelmed these categories, dividing them by ethnicity and nativity.<sup>5</sup> Roger Waldinger’s work indicates that the foreign-born segments of the black population, some 15 percent of the total, seem to be doing better on average than their native-born counterparts, a fact incompatible with the notion that class, race, and space intersect only in the form of white prosperity and underclass ghettos.

The U.S. Commission on Civil Rights held a hearing in New York City on September 19–21, 1994, to receive testimony and a documents hearing in the city on July 26, 1995, as part of a multiyear project on “Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination.” The Commission held these hearing to examine issues relating to immigration and economic opportunity in the context of racial and ethnic tensions in the Nation’s largest city. In particular, the purpose of the hearings was to spotlight the impact of immigration on labor markets, the representation of women and people of color in the finance and securities industry, and concerns related to capital investment in low-income communities.

## Section II. Overview of New York City Size and Geography

With a small portion of its land mass in the mainland, New York is a city of islands, covering a total area of 305.5 square miles. The city consists of Manhattan and Staten Island, a part of Long Island, and the southernmost tip of the mainland of New York State. It is situated at the junction of the Hudson and East Rivers with New York Bay, an arm of the Atlantic Ocean.

New York City is composed of five boroughs, each of which constitutes a county of New York

State: the Bronx (Bronx County), Brooklyn (Kings County), Manhattan (New York County), Queens (Queens County), and Staten Island (Richmond County).

### Government Structure

The city of New York is an incorporated municipality with specific governmental powers granted to it by the State of New York under the home-rule provisions of the State constitution and the New York State Municipal Home Rule Law.<sup>6</sup> New York City’s governmental organization is set forth in the city charter<sup>7</sup> and in the city’s administrative code, and exists on two levels, municipal and borough, as discussed below.

New York City has a strong mayor-council form of government, with the mayor serving as the chief executive officer in the city. The current mayor, Rudolph Giuliani, took office in 1994, and is empowered to appoint heads of city departments, members of commissions, judges of the criminal court, and other officers not elected by the people. The mayor has the power to veto local laws passed by the City Council. The council consists of a president, known as the New York City ombudsman, elected on a citywide basis; one council member from each of the council districts lying wholly within the city; and additional council members elected at large, on a boroughwide basis. The president of the City Council chairs council meetings and votes only to break ties. Like the mayor, council members are elected for 4-year terms.<sup>8</sup>

Under the city charter, the 51-member City Council is “vested with the legislative power of

<sup>6</sup> N.Y. Mun. Home Rule Law § 1 *et seq.* (McKinney 1994).

<sup>7</sup> The current charter was most recently revised in 1989, and represents the most sweeping change in New York City government since the five boroughs were consolidated in 1898. The revisions came on the heels of a unanimous United States Supreme Court decision holding that the old Board of Estimate—composed of the mayor, the president of the City Council, and the comptroller (each having four votes), and the five borough presidents (each with two votes, despite disparities in the size of each borough)—and charged with playing a role with the council in adopting the expense and capital budgets, controlling city property, and planning and zoning, violated the constitutional principle of “one person, one vote.” *Board of Estimate of New York v. Morris*, 489 U.S. 688, 689–703 (1989). The Board of Estimate was abolished in 1989, and its fiscal and planning authority transferred to the mayor, City Council, and other city officials. See New York City Charter, ch. 3 (Lenz & Riecker 1997) (hereafter cited as NYC Charter).

<sup>8</sup> NYC Charter § 25a.

<sup>5</sup> Roger Waldinger, “Race and Ethnicity,” in *Setting Municipal Priorities, 1990*, ed. Charles Brecher and Raymond D. Horton (New York: New York University Press, 1989), pp. 50–79.



the city.”<sup>9</sup> As such, the council enacts the city budget<sup>+</sup> and all local laws.<sup>10</sup> It also sets its own rules of procedure, establishes committees, and passes its own budget. The council reviews all city programs and agencies,<sup>11</sup> and possesses advice and consent power over the selection of certain agency heads appointed by the mayor.<sup>12</sup> Its members are elected every 4 years and represent districts of approximately 144,000 people.<sup>13</sup> As a result of changes to the city charter, the members as of December 31, 1991—1 from Manhattan, 8 from the Bronx, and 14 from Queens, 16 from Brooklyn, and 3 from Staten Island—served 2-year terms from January 1, 1992, to December 31, 1993, and those elected to the council in November 1993 began their regular 4-year terms.<sup>14</sup>

Each borough elects a president as its executive officer to a 4-year term.<sup>15</sup> The main function of the borough president is to represent his or her borough in fiscal matters, and to advise on boroughwide planning.<sup>16</sup> Since the county and borough boundaries are coterminous, the same government serves both. Under the city charter, they are authorized to: (1) work with the mayor in preparing the annual executive budget submitted to the City Council, and to propose borough budget priorities directly to the council; (2) review and comment on major land use decisions and propose sites for city facilities within their respective boroughs; (3) monitor and modify the delivery of city services within their boroughs; and (4) engage in strategic planning for their boroughs.<sup>17</sup>

Each borough president appoints a member of the New York City Board of Education and a member of the City Planning Commission. Each borough president sits on the New York City Off-track Betting (OTB) Site Selection Board when the board is considering matters pertinent to

OTB locations within that borough; each also is a trustee of the New York City Employees Retirement System. The borough presidents appoint members to community boards who serve without compensation, and each chairs a borough board.<sup>18</sup>

## Demographics

As of 1990, New York City was home to approximately 7.3 million persons, an increase of 3.5 percent since 1980.<sup>19</sup> This growth occurred because the positive natural increase of the population (number of births minus the number of deaths) outweighed the negative net migration (the number of persons who migrated to the city minus the number of persons who migrated out of the city).<sup>20</sup>

During the 1980s, a decline in the city’s white population,<sup>21</sup> contemporaneous with an increase in its minority populations, resulted in minorities, as a whole, becoming the majority of the population. Fifty-seven percent of New York City residents are minorities, with non-Hispanic whites comprising the remaining 43 percent of the population. African Americans and Hispanics each constitute roughly one-quarter of the population, and Asian American and Pacific Islanders comprise approximately 7 percent of the total population. The Hispanic and Asian American and Pacific Islanders populations each experienced high rates of growth during the 1980s, with the Hispanic population growing by one-quarter, and the Asian American and Pacific Islander population more than doubling.<sup>22</sup>

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<sup>9</sup> *Id.* § 21.

<sup>10</sup> *Id.* §§ 28–31.

<sup>11</sup> *Id.* §§ 28, 29a.2.

<sup>12</sup> *Id.* § 31.

<sup>13</sup> New York, NY, Department of General Services, *The 1993–94 Green Book, the Official Directory of the City of New York*, p. 35.

<sup>14</sup> *Ibid.*

<sup>15</sup> NYC Charter § 81b.

<sup>16</sup> *Id.* § 82.

<sup>17</sup> *Id.*

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<sup>18</sup> *Id.*

<sup>19</sup> This section rests heavily on data from the 1990 census of population. It should be noted that, like all cities with large minority and undocumented populations, New York probably suffered a serious population undercount in the 1990 census. The city’s minority and undocumented residents were the most likely to be undercounted. Therefore, what follows should be read with the awareness that the data most likely do not reflect the entirety of these populations. See table 1.1.

<sup>20</sup> New York City, Department of City Planning, Population Division. “Components of Population Change by Race and Hispanic Origin or Descent, 1980–1990: Population Change, Natural Increase, Net Migration, New York City by Borough,” DCP 1990 #13 (May 10, 1991), table 1.

<sup>21</sup> See table 1.1.

<sup>22</sup> See table 1.1.

**Table 1.1**  
Population of New York City by Race/Ethnicity, 1980 and 1990

	1980		1990		Percent change 1980-1990
	Number	Percent	Number	Percent	
White	3,703,203	52.3	3,178,712	43.2	-14.2
Black	1,694,505	24.0	1,874,892	25.6	10.6
Hispanic	1,406,389	19.9	1,737,927	23.6	23.6
Asian/Pacific Islander	239,338	3.4	494,287	6.8	107.4
Native American	9,907	0.1	15,149	0.2	52.9
Other	18,297	0.3	19,597	0.3	7.1
Total	7,071,639	100.0	7,322,564	100.0	3.5

NOTE: In this table, "White," "Black," "Asian/Pacific Islander," "Native American," and "Other" all refer to persons who are not of Hispanic origin.

SOURCE: 1990: Bureau of the Census, 1990 Census of Population, *Social and Economic Characteristics: New York*, 1990 CP-2-34, sec. 1, table 7; 1980: Bureau of the Census, 1980 Census of Population, *General Social and Economic Characteristics: New York*, PC80-1-C34 N.Y., sec. 1, table 59

**Table 1.2**  
New York City's Asian/Pacific Islander Population by Country of Origin, 1980 and 1990

	1980		1990		Percent change 1980-90
	Number	Percent	Number	Percent	
Chinese	124,372	50.6	240,014	50.0	93.0
Asian Indian	46,708	19.0	88,247	18.4	88.9
Korean	22,073	9.0	71,225	14.8	222.7
Filipino	25,391	10.3	45,645	9.5	79.8
Japanese	13,685	5.6	17,700	3.7	29.3
Vietnamese	2,879	1.2	8,728	1.8	N/A
Cambodian	N/A	N/A	2,473	0.5	N/A
Thai	N/A	N/A	4,217	0.9	N/A
Pacific Islanders	N/A	N/A	2,141	0.4	N/A
Other	10,651	4.3	N/A	N/A	N/A
Total	245,759	100.0	480,390	100.0	107.7

NOTE: In this table, the Asian/Pacific Islander population includes persons of Hispanic origin.

SOURCE: 1990: Bureau of the Census, 1990 Census of Population, *Social and Economic Characteristics: New York*, 1990 CP-2-34, sec. 2, table 189; 1980: Bureau of the Census, 1980 Census of Population, *General Social and Economic Characteristics: New York*, PC80-1-C34 N.Y., sec. 1, table 58

With the exception of the Japanese, each of New York's Asian American and Pacific Islander groups grew considerably during the 1980s.<sup>23</sup> The city's Chinese and Asian Indian populations almost doubled, and the Korean population increased more than threefold.<sup>24</sup>

A salient feature of New York City's demography is its large number of immigrants.<sup>25</sup> Of all

<sup>25</sup> A distinction should be drawn between New York's "new" immigrants and its "old" immigrants. New immigrants are usually considered to be those who have arrived since 1965, in contrast to "old" immigrants, who came in record numbers at the turn of the century. Moreover, old immigrants were overwhelmingly European, whereas today's new arrivals come mainly from the Third World, especially the West Indies, Latin America, and Asia. Nancy Foner, "New Immigrants and Changing Patterns," in *New Immigrants in New York*, ed. Nancy Foner (New York: Columbia University Press, 1987), p. 2 (hereafter cited as Foner, "New Immigrants").

<sup>23</sup> See table 1.2.

<sup>24</sup> Ibid.

**Table 1.3****Immigrants to New York City by Country of Origin, Legal and Undocumented**

	<u>Legal</u>		<u>Undocumented</u>	
	Number	Percent distribution	Number	Percent distribution
Dominican Republic	151,712	16.9	25,600	5.2
Jamaica	87,112	9.7	21,200	4.3
China	79,841	8.9	12,700	2.6
Guyana	67,729	7.5	10,900	2.2
Haiti	48,518	5.4	21,400	4.4
Soviet Union	36,593	4.1	3,900	0.8
Colombia	26,834	3.0	24,500	5.0
India	24,938	2.8	9,900	2.0
Korea	24,361	2.7	1,200	0.2
Ecuador	22,857	2.5	27,100	5.5
Philippines	19,791	2.2	8,100	1.7
Trinidad and Tobago	19,342	2.2	20,500	4.2
Hong Kong	13,727	1.5	2,600	0.5
Poland	12,712	1.4	25,800	5.3
Honduras	11,381	1.3	9,500	1.9
United Kingdom	11,054	1.2	1,700	0.3
Israel	10,073	1.1	13,500	2.8
Peru	9,920	1.1	5,300	1.1
Pakistan	9,803	1.1	14,600	3.0
El Salvador	9,689	1.1	15,300	3.1
All immigrants	898,213	100.0	490,100	100.0

NOTE: "Legal" immigrants are legal immigrants who came to New York City between 1982 and 1991. "Undocumented" immigrants estimated to be residing in New York State in October 1992. Most undocumented immigrants in the State reside in New York City.

SOURCE: New York City Department of City Planning, Population Division, "Estimates of Undocumented Aliens as of October 1992," based on data from the U.S. and Naturalization Service, Sept. 2, 1993, table 2

New York City residents, 28 percent were born outside the United States.<sup>26</sup> Many are recent immigrants: between 1982 and 1991, almost 900,000 legal immigrants, or roughly 12 percent of the city's entire population, came to New York City.<sup>27</sup> In addition, a vast majority of the estimated 500,000 undocumented immigrants estimated by the Immigration and Naturalization Service to be residing in New York State live in New York City.<sup>28</sup> Currently, few cities in the country have a comparable percentage of immigrants, and only one, Miami, markedly surpasses New York in its share of foreign born.<sup>29</sup>

<sup>26</sup> Bureau of the Census, 1990 Census of Population and Housing, *Summary Social, Economic, and Housing Characteristics: New York*, table 2, p. 51.

<sup>27</sup> See table 1.3.

<sup>28</sup> New York, NY, Department of Planning, Population Division, "Estimates of Undocumented Aliens as of October 1992," Sept. 2, 1993.

<sup>29</sup> Ibid.

New York's immigrant population is not only notable for its size but also for its extreme heterogeneity.<sup>30</sup> New York is more ethnically diverse than any other immigrant city in the United States. Moreover, most of the various immigrant groups are represented in quite large numbers. New York draws immigrants from all regions of the world, although a significant share of the city's foreign born come from the Caribbean. Six countries account for one-half of all recent legal immigrants to New York City: the Dominican Republic, Jamaica, China, Guyana, Haiti, and the Soviet Union. In fact, more than one-quarter of all recent immigrants come from the Dominican Republic and Jamaica alone.<sup>31</sup> Conversely, Los Angeles' foreign-born population is overwhelmingly Mexican (41 percent) and Asian American and Pacific Islander (20 per-

<sup>30</sup> Foner, "New Immigrants," p. 6.

<sup>31</sup> See table 1.3.

cent), with a relatively small proportion of Europeans (14 percent total for all Europeans), West Indians (2 percent), and South Americans (3 percent).<sup>32</sup>

New York City's population is distributed across the five boroughs as follows: the Bronx, 16.4 percent; Brooklyn, 31.4 percent; Manhattan, 20.3 percent; Queens, 26.7 percent; and Staten Island, 5.2 percent.<sup>33</sup> However, the city's minorities are not evenly distributed across the boroughs: African Americans are concentrated in Brooklyn, which is home to more than 40 percent of African Americans in the city but only 31 percent of all city residents. Hispanics are concentrated in the Bronx, where they constitute 44 percent of all residents, almost double their percentage in the city as a whole. Almost one-half of all Asian American and Pacific Islanders live in Queens, in comparison to about one-quarter of all city residents. Whites are overrepresented in Staten Island, where they make up four-fifths of the population, and underrepresented in the Bronx.<sup>34</sup>

Similarly, immigrants are not distributed across New York's boroughs in proportion to the city's general population. Immigrants are one-third more likely than the average city resident to live in Queens, where immigrants make up 36 percent of the population. Immigrants are also overrepresented in Manhattan, the Bronx, and Staten Island, while they are underrepresented in Brooklyn.

### Socioeconomic Characteristics

In New York City, income varies considerably across boroughs. The poorest borough is the Bronx, with a median family income of just over \$25,000. The wealthiest borough is Staten Island, with an average income of over \$50,000. Brooklyn, Manhattan, and Queens have median family incomes of approximately \$30,000, \$35,000, and \$40,000, respectively.<sup>35</sup>

Based on data obtained from the 1990 census of population, by most measures, white and Asian American and Pacific Islanders have attained, on average, higher levels of socioeconomic status than blacks and Hispanics.<sup>36</sup> White and Asian American and Pacific Islanders also have the highest levels of educational attainment. About one-third of adults in each of these groups are college graduates, compared with roughly one-tenth of blacks and Hispanics. Younger white and Asian American and Pacific Islanders are also more likely to be enrolled in college than blacks and Hispanics. Similarly, white and Asian American and Pacific Islanders have higher rates of adult male and female employment, lower rates of adult and teenage unemployment, and higher median family incomes than blacks or Hispanics.<sup>37</sup> Whites and Asian American and Pacific Islanders are very close to each other in all these measures except for median family income, which is much higher for whites (\$47,015) than for Asian American and Pacific Islanders (\$33,445).<sup>38</sup>

High average levels of socioeconomic status are not attained by all of the Asian American and Pacific Islander population. For instance, 10.6 percent of Asian American and Pacific Islander adults have not completed a fifth-grade education. Similarly, one in five Asian American and Pacific Islander families has a family income below \$15,000, and one in seven persons lives below the poverty level.<sup>39</sup>

Although blacks and Hispanics both appear to occupy lower socioeconomic status generally than white and Asian American and Pacific Islanders, there are several significant socioeconomic differences between the two groups. First, black New Yorkers have considerably higher educational attainment than Hispanics. Almost two-thirds of black adults have graduated from high school, in comparison to less than one-half of Hispanics. The percentage of black adults with less than a fifth-grade education is less than one-half the percentage for Hispanics.

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<sup>32</sup> Foner, "New Immigrants," p. 6; Ellen Percy Kraly, "US Immigration Policy and the Immigrant Populations of New York," in *New Immigrants in New York*, ed. Nancy Foner (New York: Columbia University Press, 1987), p. 62.

<sup>33</sup> Bureau of the Census, 1990 Census of Population and Housing, *Summary Population and Housing Characteristics: New York*, table 4, p. 107.

<sup>34</sup> *Ibid.*

<sup>35</sup> Foner, "New Immigrants," p. 24.

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<sup>36</sup> Since the numbers of Native Americans in New York City are relatively small, measures of their socioeconomic status will not be discussed in this section. For the interested reader, however, comparable numbers for Native Americans do appear in table 1.4.

<sup>37</sup> See table 1.4.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

**Table 1.4**  
**Socioeconomic Characteristics of New York City Residents by Race/Ethnicity**

	White	Black	Hispanic	Asian/ Pacific Islander	Native American
<b>Educational attainment</b>					
Percent 25+ less than 5th grade education	2.7	4.3	11.2	10.6	7.5
Percent 25+ high school graduates	77.8	64.1	47.9	68.2	63.6
Percent 25+ college graduates	32.3	12.4	8.2	33.4	18.4
<b>School enrollment</b>					
Percent 18–24 enrolled in college	41.7	29.7	25.3	50.3	32.4
Percent 16–19 not enrolled, not high school graduate	7.7	15.1	20.4	5.6	17.8
<b>Labor force status</b>					
<b>Males 25–54</b>					
Employed	86.2	70.4	74.2	85.8	77.4
Unemployed	4.5	10.4	8.7	4.8	6.0
Out of labor force	8.7	19.1	16.8	9.3	16.3
<b>Females 25–54</b>					
Employed	69.9	65.8	48.2	68.5	62.8
Unemployed	3.6	6.8	7.2	4.0	6.4
Out of labor force	26.4	27.2	44.5	27.8	30.8
<b>Unemployment rate</b>					
Males 16–19	7.7	12.8	12.8	6.2	7.9
Males 20–24	7.8	16.2	14.1	5.9	14.0
<b>Income</b>					
Median family income	\$47,015	\$27,371	\$21,255	\$33,445	\$23,892
Percent households with income below \$15,000	11.8	28.0	38.3	19.5	30.8
Percent households with income above \$75,000	24.8	7.6	4.1	12.8	5.9
<b>Poverty</b>					
Percent persons below poverty line	9.6	25.3	33.2	16.1	24.6
<b>English language ability</b>					
Percent do not speak English very well	–	–	46.3	53.1	22.1
<b>Nativity and citizenship status</b>					
Percent foreign born	19.3	26.6	35.4	79.5	35.6
Percent of foreign born not U.S. citizens	37.4	64.5	71.3	64.6	65.9
<b>Family status</b>					
Percent married couple families	80.5	44.4	50.0	81.3	49.0

NOTE: In this table, "White" refers to non-Hispanic white; "Black," "Asian/Pacific Islander," and "Native American" include those of Hispanic origin.

SOURCE: 1990 Census of Population, Social and Economic Characteristics: New York, 1990 CP-2-34, sec. 2, tables 180, 181, 183, 184, 186, 187

Younger blacks are more likely to attempt to complete their high school education or enroll in college than their Hispanic counterparts. Second, blacks have higher average family incomes and a lower percentage of individuals living below the poverty level than Hispanics. Finally, while adult black males have only slightly lower employment rates than Hispanic males, adult black females are considerably more likely to be working than their Hispanic counterparts.<sup>40</sup>

For instance, Cubans and Central and South Americans have poverty rates below that of black New Yorkers, whereas Puerto Ricans and Dominicans each have poverty rates approaching 40 percent, far exceeding the 25 percent rate for black city residents.<sup>41</sup>

Table 1.6 shows a similar degree of diversity among Asian American and Pacific Islander subgroups. As just one example, the percentage of adults who are college graduates varies from a

**Table 1.5**  
Socioeconomic Characteristics of Hispanics in New York City by Country of Origin

	Puerto Rican	Dominican	Cuban	Central American	South American
<b>Educational attainment</b>					
Percent 25+ less than 5th grade education	10.7	16.4	8.9	9.9	7.4
Percent 25+ high school graduates	45.9	38.5	55.4	53.3	59.0
Percent 25+ college graduates	6.1	6.2	18.4	8.8	7.4
<b>School enrollment</b>					
Percent 18–24 enrolled in college	22.3	27.1	40.3	27.1	33.3
Percent 16–19 not enrolled, not high school graduate	22.0	17.4	16.3	17.4	11.8
<b>Income</b>					
Median family income	\$18,667	\$17,276	\$32,675	\$25,669	\$28,527
Percent households with income below \$15,000	46.1	44.2	32.7	27.4	24.8
Percent households with income above \$75,000	3.2	2.6	8.9	5.3	6.0
<b>Poverty</b>					
Percent persons below poverty line	38.6	37.9	19.4	22.2	17.5
<b>English language ability</b>					
Percent do not speak English very well	36.7	63.2	46.1	50.3	59.0
<b>Nativity and citizenship status</b>					
Percent foreign born	1.5	71.3	69.2	77.8	78.8
Percent of foreign born not U.S. citizens	58.9	74.3	40.6	68.2	75.6
<b>Family status</b>					
Percent married couple families	45.1	44.3	67.3	56.0	64.7

SOURCE: 1990 Census of Population, *Social and Economic Characteristics: New York*, 1990 CP-2-34, sec. 2, tables 192, 194

The Hispanic and Asian American and Pacific Islander populations are diverse groupings. Tables 1.5 and 1.6 show the socioeconomic characteristics of selected Hispanic and Asian subgroups, respectively. Table 1.5 reveals a considerable degree of variation across Hispanic subgroups, with Puerto Ricans and Dominicans generally at the lower end of the socioeconomic spectrum and Central and South Americans—and especially Cubans—faring somewhat better.

low of 15 percent of Vietnamese—which is close to the percentage for blacks—to a high of 63 percent for Filipinos—which is almost twice the percentage for non-Hispanic whites. Japanese<sup>42</sup>

<sup>41</sup> See tables 1.4 and 1.5.

<sup>42</sup> The high percentage of Japanese who are foreign born (74 percent) suggests that many of the Japanese living in New York are not Japanese Americans (persons of Japanese descent who were either born here or who came to America with the intention of remaining here permanently), since most Japanese Americans are born here in families that have been in the United States for several generations.

<sup>40</sup> Ibid.

and Asian Indians also show high degrees of educational attainment, while Chinese had the highest percentage (17 percent) of adults with less than a fifth-grade education. Poverty rates also varied considerably across subgroups, ranging from a low of 6.5 percent for Filipinos to a high of 39 percent for Vietnamese.<sup>43</sup>

county region contains another 8 million jobs, producing a gross city product of \$150 billion and a gross regional product of \$425 billion in 1985.<sup>44</sup> The 1977–1987 boom in New York City generated substantial gains in real income and wealth for many of its residents. Despite the halt to the growth in employment after 1987, earn-

**Table 1.6**  
**Socioeconomic Characteristics of Asian Americans and Pacific Islanders in New York City**  
**by Country of Origin**

	Chinese	Asian/ Indian	Korean	Filipino	Vietnamese	Japanese
<b>Educational attainment</b>						
Percent 25+ less than 5th grade education	16.7	5.3	5.9	2.0	10.8	1.5
Percent 25+ high school graduates	55.4	75.0	80.9	90.6	51.9	93.8
Percent 25+ college graduates	24.5	38.2	34.3	62.9	15.3	53.7
<b>School enrollment</b>						
Percent 18–24 enrolled in college	53.0	44.9	54.9	50.5	36.7	62.0
Percent 16–19 not enrolled, not high school graduate	5.1	5.8	5.8	3.7	4.8	1.1
<b>Income</b>						
Median family income	\$30,479	\$37,819	\$29,453	\$52,227	\$19,799	\$48,393
Percent households with income below \$15,000	25.6	15.9	26.2	9.5	40.5	22.5
Percent households with income above \$75,000	10.9	13.4	7.2	19.8	7.0	19.2
<b>Poverty</b>						
Percent persons below poverty line	17.0	13.2	17.2	6.5	39.2	15.3
<b>English language ability</b>						
Percent do not speak English very well	65.0	25.9	68.2	25.0	68.6	47.0
<b>Nativity and citizenship status</b>						
Percent foreign born	77.8	82.4	85.5	80.1	83.6	73.5
Percent of foreign born not U.S. citizens	55.6	71.2	75.3	61.1	63.0	90.3
<b>Family status</b>						
Percent married couple families	83.1	83.2	85.8	71.2	61.7	86.9

SOURCE: 1990 Census of Population, *Social and Economic Characteristics: New York, 1990 CP-2-34, sec. 2, tables 190, 191*

### Overall Economy of the City

At the core of the New York economic picture is the Manhattan central business district, where 2 million people work in 500 million square feet of office space. The surrounding 30-

ings continued to rise. Nevertheless, the distribution of these income gains was highly unequal across the different population deciles between 1977 and 1986.

For the bottom 20 percent of the city's households, conditions worsened in absolute as well as

Rather, a large proportion of New York's residents reporting that they are Japanese are probably Japanese citizens temporarily residing in the United States. Thus it is difficult to interpret table 1.6's data on Japanese as reflecting the characteristics of Japanese Americans.

<sup>43</sup> See table 1.6.

<sup>44</sup> Mollenkopf and Castells, "Dual City Introduction," p. 6 (citing Regional Plan Association, "New York in the Global Economy: Studying the Facts and the Issues" (paper presented to World Association of Major Metropolises meeting, Mexico City, April 1987), p. 1).

relative terms, while the top 10 percent of the population experienced a real income gain of more than 20 percent. Although the national income distribution also became more unequal, New York City's trend was worse. The ratio of total income received by the top 10th to that received by the bottom 10th increased from 14.5 to 19.5.<sup>45</sup> Put differently, the top 10th of the population gained almost a third of all income gains, and the top 20 percent of the population gained half. At the same time, the bottom 20 percent lost, not only relative to better off people, but absolutely compared with what they had a decade earlier.

If prosperity for the upper fifth was one major reason for this growing inequality, the growth of poverty was the other. The total number of persons officially classified as poor climbed from 1.1 million in 1975 to 1.7 million in 1984, and remained at this level in 1987. The number of persons with an income of less than 75 percent of the poverty level climbed even more steeply, from 560,000 to 1.1 million. To place these data in context, consider that in 1950, the poverty rate for New York City (16 percent) was below the national rate (22 percent).<sup>46</sup> Since 1969, however, the poverty rate for New York City has consistently exceeded national rates, and in recent years the margin has widened.<sup>47</sup> By 1989, 23.2 percent of New York City families were living below the poverty line, as opposed to a national rate of 13.5 percent.<sup>48</sup>

The poverty rate for female-headed households in New York City increased from 41 percent in 1969 and 55 percent in 1979, to 63 percent in 1987. In addition, while one out of five New York City children lived in poverty in 1969, by 1987 almost two out of five children were be-

ing reared in poverty, a rate that exceeded the national average.<sup>49</sup>

Since 1977 jobs have increased in white-collar occupations in the public sector, financing, and insurance. However, the retail and manufacturing jobs generally available to the poor have decreased. A 1988 *New York Times* survey reported that 45 percent of the adult population of New York City (aged 16 to 64) did not hold a job.<sup>50</sup> Since the unemployment rate at that time was 4.5 percent, one commentator suggests that approximately 40 percent of the adult population was not in the labor force.<sup>51</sup>

According to demographers Mollenkopf and Castells, the increase of poor female-headed households, low labor force participation rates for virtually all subgroups of the population, and the decline in the real value of transfer payments have contributed to the growth of poverty. Moreover, they argue, blacks and Latinos have been largely excluded from the most rapidly growing and remunerative occupations in the postindustrial economy, and as a result, New York has been transformed from a relatively well-off, blue-collar city, into a more economically divided, multiracial, white-collar city.<sup>52</sup>

### Economic Opportunity for Minorities

The extent to which economic opportunities are open to minorities in New York City can be determined on a macro level by examining changes in economic outcomes, in terms of the absolute or relative incomes of minorities, and by examining job opportunities for minorities within different industries.

There is conflicting evidence as to the extent to which New York City's minority population has progressed economically. Research based on the Current Population Survey suggests that during the decade of the 1980s, economic condi-

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<sup>45</sup> Ibid., p. 11 (citing Philip Weitzman, *Worlds Apart* (New York: Community Service Society, 1989), chap. 2, fig. 5).

<sup>46</sup> Ida Susser, "Separation of Mothers and Children," in *Dual City: Restructuring New York*, ed. John H. Mollenkopf and Manuel Castells (New York: Russell Sage Foundation, 1991), p. 209.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid., p. 221 n. 7 (citing Terry J. Rosenberg, *Poverty in New York: The Crisis Continues* (New York: Community Service Society, 1989), app. table 2). See also E. Tobier, *The Changing Face of Poverty: Trends in New York City's Population in Poverty* (New York: Community Service Society, 1984).

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<sup>49</sup> Susser, "Separation of Mothers and Children," p. 209 (citing Rosenberg, *Poverty in New York*, chap. 6; Tobier, *The Changing Face of Poverty*, p. 8).

<sup>50</sup> *New York Times*, Aug. 3, 1988, p. 1.

<sup>51</sup> Susser, "Separation of Mothers and Children," p. 209.

<sup>52</sup> Mollenkopf and Castells, "Dual City Introduction," p. 8. For a discussion of these trends, see John H. Mollenkopf, "The Post-industrial Transformation of the Political Order in New York City," in *Power, Culture, and Place: Essays on New York City*, ed. John H. Mollenkopf (New York: Russell Sage Foundation, 1988).



tions for New York City's minorities worsened.<sup>53</sup> However, recent analyses based on 1990 census data yield conflicting results. One study found that New York City and Boston were exceptions to the national trends of stagnant real incomes and growing income inequality along racial and ethnic lines. Whereas nationally real family income rose by only 5.6 percent between 1979 and 1989, median family income in New York increased by 21.5 percent, making New York the city with the second highest family income growth (after Boston) of the 16 largest cities in the United States. During the same period, New York's black and Hispanic household incomes rose even faster, by 34 percent and 26 percent, respectively.<sup>54</sup> A similar result was obtained by New York's Department of City Planning, which found that Puerto Rican families made large income gains during the 1980s.<sup>55</sup>

After a period of economic boom in the 1980s, New York, along with the rest of the country, entered a recession in 1990. The unemployment rate for all New Yorkers increased from under 6 percent in May 1989 to 11.5 percent in June 1992. As the Nation began to pull itself out of the recession, New York's unemployment rate fell to 9.4 percent in June 1993.<sup>56</sup> Since swings in the economy generally have larger effects on minorities, the recession and the recovery likely altered the relative circumstances of minorities after the 1990 census was taken.

Nationwide, many have attributed declining economic opportunities for minorities, especially those with low levels of education, to "industrial restructuring," or a decline in the industrial sector and a rise in the financial and services sectors. On average across the United States, industrial-sector jobs provide greater pay to persons with low levels of education than jobs in the financial or service sectors. As the Nation's industrial sector has declined, these high-paying jobs have disappeared, forcing minorities and

others with low levels of education to accept the lower paying, low-skilled jobs available in other sectors of the economy.

According to research by the New York Department of City Planning, however, New York City's experience has not been consistent with the national trend.<sup>57</sup> Because New York City's manufacturing jobs are concentrated in the non-durable manufacturing sector, such as the textile industry, rather than in the higher paying durable manufacturing sector, the manufacturing industry in New York City has not historically produced high-paying jobs for persons with low levels of education. In fact, as of 1980, the most recent year for which data are available, wages for non-high school graduates were only 3 percent higher in New York's nondurable manufacturing industry than in its retail sector. By contrast, workers with high levels of education received much larger wage premiums in New York's manufacturing sector relative to its retail industry.<sup>58</sup>

Other industrial-sector industries (construction, transportation, communications, and public utilities) did have high rates of pay for workers who were not high school graduates, but minorities were underrepresented in these industries. Although whites were only 27 percent of all workers with less than a high school degree, in construction whites were 50 percent of such workers, and in transportation, commutation, and public utilities, whites were 43 percent of such workers.<sup>59</sup> Thus, those industrial-sector jobs that did offer high-paying jobs to persons with low levels of education generally were not filled by minorities.

By 1980 more than half of the jobs for less educated workers were in the nonindustrial services and financial sectors of the economy and in government. Because of its special prominence in New York City, it is instructive to look at job opportunities for minorities in the financial industry.<sup>60</sup> According to research by the New York Department of City Planning, within the city's nonindustrial sector, the financial industry

<sup>53</sup> See, e.g., Terry J. Rosenberg, *Poverty in New York City, 1991: A Research Bulletin* (New York: Community Service Society of New York, 1992).

<sup>54</sup> Matthew P. Drennan, Emanuel Tobier, and Jonathan Lewis, "The Interruption of Income Convergence and Income Growth in Large Cities in the 1980s," 1994, unpublished manuscript.

<sup>55</sup> New York, NY, Department of City Planning, *Puerto Rican New Yorkers in 1990*, Dec. 6, 1993, draft report.

<sup>56</sup> Bureau of Labor Statistics, *Employment and Earnings*, vol. 40, no. 8 (August 1993), p. 139.

<sup>57</sup> New York, NY, Department of City Planning, *Citywide Industry Study: Labor Force Technical Report*, DCP-93-03 (January 1993).

<sup>58</sup> *Ibid.*, p. 25.

<sup>59</sup> *Ibid.*, p. 30.

<sup>60</sup> Here the financial industry refers to the financial (including banking), insurance, and real estate industries.

offered some of the highest paying and most stable jobs for workers with low levels of education.<sup>61</sup> However, as in industrial-sector jobs that paid well at low levels of education, minorities with low levels of education were underrepresented in the financial industry relative to comparable whites. Furthermore, the financial industry had one of the highest gaps between the pay of minorities and whites without a high school degree, with minorities earning only 85 percent as much as whites.<sup>62</sup> Other research suggests that the black-white pay gap in the financial services industry extends to workers with higher levels of education as well.<sup>63</sup>

Traditionally, public-sector jobs have been more open to minorities than jobs in the private sector, and they have allowed many minorities to achieve middle-class status. However, research suggests that minorities, despite increases in their representation in city jobs over time, continue to be clustered in the lowest paying jobs and in the lowest paying city agencies.<sup>64</sup>

### Political Structure

New York City has a varied political geography. The growing but relatively poor black and Latino populations are centered in and around Central and East Harlem, the Lower East Side, the South Bronx, and Bedford-Stuyvesant in Brooklyn. Whites, who tend to have more financial resources, have held onto their East and West Side enclaves in Manhattan. During the 1980s, they entered some minority areas, such as the Lower East Side, and transformed loft factory districts like SoHo and Tribeca. Middle-class Italians and Jews have also formed enclaves on the city's periphery, from Riverdale in the Bronx to Bayside in Queens, around to Canarsie and Bensonhurst and Bay Ridge in Brooklyn. Areas of immigrant influx punctuate this pattern, most notably the Chinese settlements in Chinatown, Flushing, and Elmhurst in

Queens, and Sunset Park, Brooklyn; the West Indian communities of Crown Heights and Flatbush in Brooklyn, and Cambria Heights in Queens; the Dominicans in Washington Heights; and the Latin American zone of Jackson Heights, Queens.<sup>65</sup>

Of approximately 5.2 million voting-age residents, about 3 million are currently registered. Democrats comprise about two-thirds of this number, while the next largest group, those declining to state a party, comprise 15 percent. Republicans enrolled 14 percent, with the Liberal and Conservative parties enrolling less than 1 percent each.

Changes in New York City's political composition have occurred in correlation with patterns of immigration. Beginning in the 1850s, an Irish and German working class sought to displace the English-stock and native-born commercial elite, succeeding by the 1870s. As their numbers increased after the turn of the century, Italian and Jewish immigrants began to challenge Irish-dominated politics in the 1930s, and gained power by the 1950s. After World War II, blacks and Puerto Ricans began to challenge the dominant Italian and Jewish establishment in Harlem, Brooklyn, and later, southeastern Queens.

The process of political succession in New York City has been noted for its torpidity. Although the Irish first arrived in substantial numbers in 1848, an Irish mayor was not elected until the 1880s—despite the fact that Tammany was in Irish hands earlier. Jews and Italians arrived between 1890 and 1920, but did not fully displace Irish leaders from the Democratic party until the 1950s.<sup>66</sup> And, although blacks and Puerto Ricans arrived during and after World War II, a black mayor was first elected only in 1989.<sup>67</sup> To date, no Puerto Rican has held a city-wide elective office in New York City.<sup>68</sup>

Despite that non-Hispanic whites are a minority of the city's population, and despite the city's liberal tradition, New York City's political structure has not changed rapidly in reflection of the city's demographic and social makeup. For

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<sup>61</sup> *Ibid.*, pp. 25–27.

<sup>62</sup> *Ibid.*, p. 30.

<sup>63</sup> Walter Stafford, professor of economics, Wagner Institute for Public Service, New York University, telephone interview, December 1994.

<sup>64</sup> Walter Stafford, "Racial, Ethnic, and Gender Employment Segmentation in New York City Agencies," in *Hispanics in the Labor Force: Issues and Policies*, ed. Edwin Melendez, Rodriguez Clara, and Janis Berry Figueroa (New York: Plenum Press, 1991), pp. 159–80.

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<sup>65</sup> Mollenkopf, "Political Inequality," p. 339.

<sup>66</sup> Fiorello LaGuardia (1934–45), elected to mayor in 1933, was a Republican. The first Jewish Democratic mayor, Abraham D. Beame (1974–77), was not elected until 1973. *1993–94 Green Book*, p. 4.

<sup>67</sup> David N. Dinkins, mayor of New York, NY, 1990–93. *Ibid.*

<sup>68</sup> Mollenkopf, "Political Inequality," pp. 334–35.

example, although a 1987 census study indicated that the city was approximately 46 percent non-Hispanic white, 24 percent non-Hispanic black, 23 percent Hispanic, 4 percent non-Hispanic Asian, and 2 percent other,<sup>69</sup> all citywide officeholders were white until David Dinkins' election in 1989.<sup>70</sup> In addition, in 1989 blacks and Latinos held 26 percent, or 9 of the then 35 seats on the City Council. Finally, although Latinos were almost as numerous as blacks at the beginning of the decade, and now almost outnumber blacks, Latinos have only a third as many elected officials.

This is the political, economic and demographic background for the Commission's examination of the city's racial and ethnic tensions.

### Section III. Origins of Intergroup Conflict

There is little if no disagreement that racial and ethnic tensions are a reality in New York City. The most infamous recent manifestations of such tensions—the alleged sodomizing of a Haitian immigrant by white Brooklyn police officers, Howard Beach, the Central Park “wilding,” and the Tawana Brawley incident—made headlines not only in the city but throughout the Nation and the world.

One significant contributing factor to the tensions and polarization is the struggle of members of diverse ethnic groups for economic opportunities in a period of declining national and local resources.<sup>71</sup> These economic pressures, com-

bined with “cultural misconceptions,”<sup>72</sup> were cited as causes of New York and other American cities' increased tensions. The continued economic decline of cities, resulting in deteriorated housing stock and loss of employment opportunities, has been exacerbated by the loss of Federal dollars for vital services and programs. Deteriorating conditions in New York City and other urban areas also result in a migration of more affluent minority residents from central cities to the suburbs, hastening the areas' already rapid decline.<sup>73</sup> Those individuals who are unable to relocate to more economically stable areas are forced to seek jobs, housing, and schools in urban areas which are less likely to contain the services and resources needed for quality lives.<sup>74</sup> Members of increasingly diverse racial and ethnic groups that remain in New York City are increasingly forced to seek lower paying jobs, inferior schools, and poorer quality housing than are available in the suburbs.

There is evidence that the downsizing of municipal jobs was begun during the administration of Mayor Dinkins.<sup>75</sup> However, testimony at the hearing indicated that in some quarters of minority communities, there is the belief that recent downsizing was initiated by Mayor Giuliani and that it has had a disproportionately negative effect on the city's minority black and Hispanic employees.<sup>76</sup> According to testimony, city civil service jobs have provided one avenue for a better economic life for minority residents.<sup>77</sup> However, as a result of the ever decreasing number of jobs, that avenue to a better life may be a thing of the past. According to a report by the City Council, blacks constituted 43 percent of the employees whose city jobs were eliminated, based on a sampling of 14,000 exiting workers.<sup>78</sup> Moreover, another study found

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<sup>69</sup> Michael Stegman, *Housing and Vacancy Report, New York City 1987* (New York: Department of Housing Preservation and Development, April 1988), p. 4, table 2.3. The table is based on a sample of 22,000 households. A 1988 CUNY survey with a sample of 2,000 households produced comparable results. The March 1988 *Current Population Survey* annual demographic supplement, also with a sample of 2,000 households, found the city population to be 47 percent non-Hispanic white, 22.4 percent non-Hispanic black, 24.5 percent Hispanic, and 6 percent non-Hispanic other. Mollenkopf, “Political Inequality,” pp. 354–55, n. 3.

<sup>70</sup> Mayor Dinkins had been Manhattan borough president since 1985, and a Latino, Fernando Ferrer, became Bronx borough president in 1986, thus giving blacks and Latinos each 1 vote out of 11 on the Board of Estimate. Thus, blacks and Latinos, who made up approximately 47 percent of the city's population, held no citywide influence and only 18 percent of the votes on the Board of Estimate. Mollenkopf, “Political Inequality,” pp. 334–35. The Board of Estimate was abolished in 1989. See note 6.

<sup>71</sup> Grace Yun, director, Inter-Relations Collaborative, testimony (hereafter cited as Yun Testimony), *Hearing Before the U.S. Commission on Civil Rights*, New York, NY, Sept. 19–21, 1994 (hereafter cited as *New York Hearing*), vol. I, p. 377.

<sup>72</sup> *Ibid.*

<sup>73</sup> Inter-Relations Collaborative, *Intergroup Cooperation in Cities: African, Asian and Hispanic American Communities* (New York: Inter-Relations Collaborative, 1993), p. 11.

<sup>74</sup> *Ibid.*

<sup>75</sup> Kirk Johnson, “Downsized Promise—A Special Report; Black Workers Bear Big Burden As Jobs in Government Dwindle,” *New York Times*, Feb. 2, 1997, p. 1.

<sup>76</sup> Roscoe Brown, Jr., director, Center for Urban Education Policy, Graduate School and University Center, CUNY, testimony, *New York Hearing*, vol. I, p. 216 (hereafter cited as Brown Testimony).

<sup>77</sup> *Ibid.*

<sup>78</sup> Johnson, “Downsized Promise,” p. 1.

that most of the employees who had left city employment lived in predominately black neighborhoods, based on a study of 11,000 former employees.<sup>79</sup> Finally, there is evidence that the proportion of blacks in the city work force had declined from 38 to 36 percent during the past 2 years.<sup>80</sup>

In addition to the tensions caused by increased competition among minority groups for fewer resources, including municipal jobs, increased tensions in the city also were attributed to discrimination against people of color by whites. Witnesses testified regarding the continued discrimination that blacks and Hispanics face in the private-sector city job market.<sup>81</sup> Even blacks with outstanding work histories and high levels of education and training find it difficult to move from public- to private-sector employment. According to Bureau of Labor Statistics, as of 1993, blacks held only 11.7 percent and Hispanics 8.8 percent of the city's professional jobs,<sup>82</sup> although they constituted roughly 26 percent and 24 percent, respectively, of the population.<sup>83</sup>

Another employment-related issue that is perceived as a factor contributing to rising racial and ethnic tensions is affirmative action in city jobs. Although the term "affirmative action" was not specifically used, Mayor Giuliani testified that, in his opinion, tensions are increased if selection decisions for the city's police or fire departments are based on factors other than test results and physical examinations of candidates.<sup>84</sup> Other witnesses failed to identify the use of nonquantitative selection criteria as related to an increase in racial and ethnic tensions. It is unclear whether their failure to mention this connection is an indication that they do not consider this as a relevant, significant factor or if they omitted this as a factor because they were not specifically asked.

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<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Luis Miranda, Jr., president, Hispanic Federation of New York City, testimony, *New York Hearing*, vol. I, pp. 329–30 (hereafter cited as Miranda Testimony).

<sup>82</sup> Elaine Rivera, "Affirmative Action—Why it Divides Us," *Newsday*, June 14, 1995, p. 8.

<sup>83</sup> See table 1.1.

<sup>84</sup> Ruldolph Giuliani, mayor of New York, NY, testimony, *New York Hearing*, vol. I, pp. 82–83 (hereafter cited as Giuliani Testimony).

Despite the lack of extensive testimony regarding the effect of race-based employment selection criteria on the level of tensions, there was apparent agreement among the witnesses concerning the effect of immigration on racial and ethnic tensions in the city. Generally, immigration is perceived as increasing the burden on the city's resources and services (e.g., sanitation, police, welfare, traffic, and employment).<sup>85</sup> Because of this perception, immigrants often elicit negative feelings among native-born residents who are not members of the immigrants' particular racial and/or ethnic group. However, according to one witness, problems related to city resources and services are not caused by immigration, but rather are problems of "distribution" and "displacement."<sup>86</sup> Finally, another aspect of immigration that is perceived as related to an increase in tensions is the overall immigration policy which, according to one witness, is viewed by some as discriminating against immigrants who are people of color.<sup>87</sup>

In addition to the aforementioned economic-related reasons for increased tensions, witnesses testified that political and social factors have contributed to heightened racial and ethnic tensions in the city. The factors cited included police conduct, city politics, the media, and the degree of meaningful dialogue between racial/ethnic groups.

### Perceptions of the Police

Hispanic and black city residents, according to several witnesses, view members of law enforcement as perpetrators of violence against people of color.<sup>88</sup> Moreover, oppressive actions by members of the police department are viewed as encouraging violent actions by whites against nonwhites.<sup>89</sup> According to one witness, 69 percent of the city's Latino population believe that

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<sup>85</sup> Giuliani Testimony, p. 52.

<sup>86</sup> Lucas Guttenberg, director, Immigrants' Rights Project, American Civil Liberties Union, testimony, *New York Hearing*, vol. I, p. 119.

<sup>87</sup> Rev. Calvin Butts, III, Abyssinian Baptist Church, testimony, *New York Hearing*, vol. I, p. 107 (hereafter cited as Butts Testimony).

<sup>88</sup> Les Payne, columnist, *New York Newsday-Nassau Division*, testimony, *New York Hearing*, vol. I, pp. 386–87 (hereafter cited as Payne Testimony); Butts Testimony, p. 125–27; Brown Testimony, p. 191.

<sup>89</sup> Butts Testimony, pp. 126–27.

the police discriminate against them.<sup>90</sup> As evidence of the discriminatory and violent acts against people of color by city law enforcement, witnesses recalled incidents where white police officers shot black officers.<sup>91</sup> Also cited was the police investigation into the death of a black male, Gavin Cato, in the Crown Heights area of Brooklyn—an investigation that, according to the hearing testimony, was viewed by many black city residents as inadequate.<sup>92</sup>

### City Politics

The next major political and social factor identified as leading to increased tensions involved the actual or perceived political power of various racial/ethnic groups. The racial and ethnic conflicts that arose during the Koch and Dinkins administrations continued through the 1993 mayoral campaign of David Dinkins and Rudolph Giuliani, according to hearing testimony. In that election, 95 percent of the city's black voters and 67 or 68 percent of its Latino voters cast ballots for Mayor Dinkins.<sup>93</sup> Sixty-eight percent of the Jewish vote, however, went to Giuliani.<sup>94</sup> There also was testimony that one campaign emphasized the alleged special treatment minority groups received during the term of Mayor Dinkins.<sup>95</sup> Whether the unnamed campaign actually made such a claim or not, at a minimum the testimony illustrates that some minority city residents perceived that a Dinkins opponent used a racially offensive appeal to attract votes.

Notwithstanding such perceptions, some actions by the Giuliani administration have contributed to the city's racial polarization, accord-

ing to the evidence received. For example, under an Executive order issued by Mayor Koch, the city's judicial recommendation panel was required to include minorities, gays, and representatives of other historically underrepresented groups. However, Mayor Giuliani changed the procedures for the panel, eliminating the requirement for diversity.<sup>96</sup> In addition, before the Giuliani administration, the city's municipal bond business was reported to have been handled by a black-owned Philadelphia, Pennsylvania, company. The Giuliani administration, however, decided not to have this firm handle the city's bond business. According to one witness, Mayor Giuliani's decision not to visit Harlem, a predominately minority area of the city—after having visited other areas of the city—also contributed to the deteriorating racial climate. So too did the perception that this was at the behest of an advisor who had allegedly also recommended that the city's bond business no longer be handled by the black-owned Philadelphia firm.<sup>97</sup>

### The Media and Intergroup Politics

The media as a whole were criticized by several witnesses who, with rather limited explanations, testified that the volume of media coverage and the nature of that coverage contributed to increased tensions.<sup>98</sup> Specifically, the media's reporting of racial and ethnic issues was characterized as too extensive and, in other instances, as including reports that were substantively biased in content.<sup>99</sup>

The final major political and social cause of a perceived increase in racial/ethnic tensions is the degree to which various racial and ethnic groups establish a dialogue. A lack of dialogue, according to the witnesses, contributes to group polarization which results in a perpetuation of negative racial and ethnic stereotypes.<sup>100</sup> Segregated housing patterns also produce racial polarization, which increases the likelihood of racial and

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<sup>90</sup> Miranda Testimony, p. 328.

<sup>91</sup> Payne Testimony, p. 387; Brown Testimony, p. 191. One witness testified specifically about the "Desmond Robinson" incident in which a black plain clothes police officer was shot in the city subway by a white police officer. The witness stated that from 1970 to 1994, there had been something like 15 black plain clothes police officers shot by white officers, and no shootings of white undercover officers by black officers. Brown Testimony, p. 191.

<sup>92</sup> Butts Testimony, pp. 130–31.

<sup>93</sup> Payne Testimony, p. 414.

<sup>94</sup> Mitchell Moss, "Why Even Ed Koch Will Vote for Giuliani," *Ethnic NewsWatch*, Dec. 20, 1996.

<sup>95</sup> Brown Testimony, p. 190; John Mollenkopf, graduate professor of political science, City University of New York (CUNY) and director, CUNY Data Service, testimony, *New York Hearing*, vol. I, p. 218.

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<sup>96</sup> Payne Testimony, pp. 414–15.

<sup>97</sup> *Ibid.*, pp. 415–16.

<sup>98</sup> Arch Puddington, senior scholar, Freedom House, testimony, *New York Hearing*, vol. I, pp. 394–95; Laura Blackburne, counsel, New York State NAACP, testimony, *New York Hearing*, vol. I, pp. 321–25.

<sup>99</sup> Blackburne Testimony, pp. 321, 325.

<sup>100</sup> Payne Testimony, pp. 414–15.

ethnic tensions among the city's diverse groups.<sup>101</sup>

One of the most unique perspectives on the causes of racial and ethnic tensions in New York City came from a representative of the Anti-Defamation League who testified that the gap in economic resources between ethnic communities is not necessarily a cause of tensions between such groups.<sup>102</sup> He attributed increased tensions to racial incidents on college campuses; the spread of Holocaust denial; propaganda by right wing extremists and others; fewer societal restrictions on anti-Semitic, racist stereotyping; more violent imagery in society; and what he described as the "unabashed, deliberately provocative bigotry of certain demagogues claiming leadership . . .," referring to the Nation of Islam's Minister Louis Farrakhan and Kalid Abdul Muhammad, and Dr. Leonard Jeffries.<sup>103</sup>

#### **Section IV. Recent Manifestations of Racial and Ethnic Tensions**

As noted previously, recent New York City history is replete with examples of racial and ethnic conflict that has evolved into extremely violent confrontations between groups of citizens and/or law enforcement. These incidents include the January 1990 confrontation between a Korean grocer and black customer which resulted in a boycott of a neighborhood grocery store in Brooklyn; the 4 days of violence that occurred in August 1991 following the death of a black child who was struck by a car driven by a Jewish man, the violence resulting in the death of an Hasidic scholar and subsequent trial of a black youth for the death; the December 1993 killing of 5 people and wounding of 19 others on the Long Island Railroad by Colin Ferguson, a black man; the January 1994 clash between police and worshippers at Mohammed's Mosque #7 in West Harlem; and the March 1994 attack on a van carrying Lubaritcher (Hasidic Jewish) students by a Lebanese gunman thought to be a Moslem fundamentalist. One student later died.

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<sup>101</sup> Francisco Rivera-Batiz, director, Institute for Urban and Minority Education, Teachers College, Columbia University, testimony, *New York Hearing*, vol. I, pp. 185-86.

<sup>102</sup> Robert Machleder, chairman of the Regional Board of the Anti-Defamation League, testimony, *New York Hearing*, p. 109 (hereafter cited as Machleder Testimony).

<sup>103</sup> *Ibid.*, p. 95. This witness characterized these incidents as "causes" of tensions rather than "manifestations," which might, indeed, be as likely.

Since the Commission's first New York City hearing in 1994, there have been additional manifestations of racial and ethnic tensions throughout the metropolitan area on an almost weekly basis, including the November 1996 incident at a Queens elementary school where a white teacher was accused of using a racial slur to refer to a fifth-grade student; the subsequent allegations involving the same school and a white teacher's charge that she had been physically threatened by a black parent and the school's black principal's claim that she had been the target of racist hate mail; and the infamous December 1995 burning down of a Jewish-owned clothing store in Harlem, following weeks of street demonstrations against the owner and which resulted in the deaths of eight people including the alleged arsonist, a black man. Following the burning of the store, the city continued to be engulfed in controversy and racial discord involving, among others, Mayor Giuliani, black ministers, and area business people, who accused one another and others of racism and intolerance.

Finally, residents of the metropolitan area, as well as people throughout the Nation, were stunned to learn in August 1997 that a Haitian immigrant had accused members of the New York City Police Department of beating and sodomizing him with a toilet plunger in a Brooklyn station house. The immigrant, Abner Louima, had been arrested following a scuffle outside a Flatbush nightclub. Tensions were aroused even further when shortly after his arrest, Mr. Louima was quoted in the press as having claimed that during the police assault, one or more officers had shouted: "It's Giuliani time." Subsequent street demonstrations followed which were led by residents of the city's Haitian community. Legal proceedings were instituted against the officers and the NYPD. As of the writing of this report, three police officers and a sergeant were on trial in Federal court for violating Mr. Louima's civil rights while in police custody. At trial, Mr. Louima testified that it was "my choice" to follow a supporter's advice to tell a grand jury falsely that one officer said, "[it's] Giuliani time" during the encounter.<sup>104</sup> On May 25, 1999, one officer, Justin Volpe—who for months after the incident had proclaimed his

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<sup>104</sup> Joseph P. Fried, "Officers' Lawyers Interrogate Louima on False Statements," *New York Times*, May 11, 1999, p. B-1.

innocence—pled guilty to the charges.<sup>105</sup> He admitted that he violated Mr. Louima's civil rights and stated, "In the bathroom of the precinct, I sodomized Mr. Abner Louima with a stick, then threatened to kill him if he told anybody."<sup>106</sup> Several weeks later, the jury found another officer, Charles Schwarz, guilty of holding Mr. Louima down in the bathroom while Mr. Volpe sodomized Mr. Louima.<sup>107</sup>

Many manifestations of racial and/or ethnic tensions, like the Harlem clothing store incident, involved economic issues: the attempts by coalition groups of black and Hispanic construction workers to obtain jobs from contractors on construction sites sometimes resulting in the arrests of black workers, beginning in the early 1990s and continuing to the present; and several other incidents throughout the city involving non-black-owned neighborhood stores in predominantly black communities.

Anti-Asian violence, according to one witness, for the most part has involved members of law enforcement who are insensitive to Asian American and Pacific Islander crime victims or who fail to act when Asian American and Pacific Islanders are victims of crime.<sup>108</sup> In its 1994 report on anti-Asian violence, the Asian American and Pacific Islander Movement found an alarming number of incidents of police brutality against Asian American and Pacific Islanders, which it attributed in part to the fact that although the population of New York City is more than 6 percent Asian American and Pacific Islander, the city's police department is less than 1 percent Asian American and Pacific Islander. Regarding anti-Semitic incidents, there was a 23 percent increase in acts of assault and threats and harassment against Jews from 1992 to 1993, ac-

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<sup>105</sup> Josh Getlin, "Officer Pleads Guilty in N.Y. Brutality Case," *New York Times*, May 26, 1999, p. A-4.

<sup>106</sup> *Ibid.*

<sup>107</sup> "The Louima Verdicts," *New York Times*, June 9, 1999, p. A-28. The jury acquitted three other officers on charges of beating Mr. Louima in a squad car and lying to the Federal Bureau of Investigation. However, the verdicts do not end the court action in the Louima case. Mr. Schwarz and two other defendants, Thomas Wiese and Thomas Bruder, still face court charges of obstructing justice and conspiring to cover up the attack, allegations that they deny. *Id.*; Josh Getlin, "Cop Convicted, 3 Cleared in N.Y. Brutality Case," *Los Angeles Times*, June 9, 1999, p. A-1.

<sup>108</sup> Margaret Fung, executive director, Asian American Legal Defense & Education Fund, testimony, *New York Hearing*, p. 101 (hereafter cited as Fung Testimony).

ording to the Anti-Defamation League of B'nai B'rith.<sup>109</sup>

Finally, it is important to note the significant role that even *allegations* of racially motivated attacks and confrontations have on the level of tensions. One of the major incidents of this kind, which occurred just north of the city, was the allegation by Tawana Brawley, a black teenager, that she had been sexually assaulted by several white males, including a police officer, in November 1987. Although the charges were never substantiated and no persons were arrested or tried, the allegations alone resulted in a torrent of media coverage, with charges and counter charges that have endured and are to some extent still unresolved. The allegations in the Brawley incident served to aggravate sentiments in the black community that police officers present the greatest threat to black residents.<sup>110</sup>

## Section V. Resolutions of Racial and Ethnic Tensions

Despite the seemingly endless number of confrontations between New York City's various racial and ethnic groups, there have been many instances where potentially explosive situations have been resolved through the efforts of ordinary citizens, members of organized community groups and city administrators.

Mayor Giuliani testified that in March 1994, in order to reduce the tensions in the community following the Hasidic bus shooting incident, he met with Arab and Jewish leaders.<sup>111</sup> Also present were top New York City officials and the Brooklyn borough president. The mayor also testified that his administration worked with the Caribbean and Jewish communities to resolve potential problems regarding the 1994 Labor Day parade in the Caribbean community in the Crown Heights section of Brooklyn.<sup>112</sup> A conflict arose because the parade coincided with the celebration of the Jewish holiday of Rosh Hashanah.

In addition to the efforts by members of the city administration, community groups and individuals were mentioned as also working to resolve potential conflicts. The city's Black-Korean Mediation Project trains mediators to resolve

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<sup>109</sup> Machleder Testimony, pp. 94-95.

<sup>110</sup> Butts Testimony, p. 107.

<sup>111</sup> Giuliani Testimony, pp. 30-31.

<sup>112</sup> *Ibid.*

potential conflicts between the two groups.<sup>113</sup> An organization known as Concerned Community Adults, which grew out of the efforts of two Le-frak City residents, works to diffuse tensions between blacks and Koreans and in 1991 helped prevent a boycott of a Korean-owned supermarket following an incident in the store involving a black youth.<sup>114</sup>

## Section VI. Preventing Intergroup Conflict

As was the case with responses to conflicts, various groups in the city have initiated measures that they believe will prevent racial and ethnic conflict in the future. According to the mayor, his administration has taken a number of positive steps in this direction. For example, the administration created the position of deputy mayor of community relations, whose duties include informing communities of the administration's activities and advising the administration of the needs within the city's communities.<sup>115</sup> According to the mayor, his administration also has increased the penalties for bias crimes.<sup>116</sup> In addition, the administration has asked that the New York State Legislature pass antidiscrimination legislation based on sexual orientation; the city already has enacted such legislation.<sup>117</sup>

Despite testimony that economic opportunity may not be related to the level of racial and ethnic tensions, Mayor Giuliani's testimony appeared to indicate that he recognized a correlation between economic opportunity and racial/ethnic tensions. He testified regarding economic measures that the city has undertaken in an effort to prevent tensions between ethnic and racial groups, including the Building Blocks Program, initiated in September 1994, and designed to increase the number of homeowners and small businesses. In the program, owners of vacant and sometimes dilapidated housing receive low-cost loans to renovate their buildings.<sup>118</sup> Mayor

Giuliani also testified regarding his administration's budgetary actions to reduce poverty, which he believes will help reduce the level of racial and ethnic tensions. These include his administration's decision not to increase taxes<sup>119</sup> and, in some instances, to reduce taxes, such as the hotel occupancy<sup>120</sup> and commercial rent taxes,<sup>121</sup> and his administration's creation of the Bid-Match system.<sup>122</sup>

Introduced in April 1994, the Bid-Match system is the Giuliani administration's alternative to the earlier city contracting program that a New York court declared to be illegal.<sup>123</sup> Bid-Match was operated as a pilot program from April 1994 to September 1994 in 13 of the city's agencies.<sup>124</sup> Initially, it required that participating agencies forward all purchase requests for goods and services under \$10,000 to a centralized office where certified businesses, which had previously registered with the city, would be crossed matched with the purchase request.<sup>125</sup> Thereafter, the firm was free to respond with a bid. Awarding of contracts would be based solely on the lowest bid. Before Bid-Match, according to the city, individual city agencies were required only to obtain bids from five firms for small purchase orders and there was no mechanism for ensuring that small businesses, including minority- and women-owned businesses, received information on all the goods and service needs of the city.<sup>126</sup> With the new program, these small businesses would receive information on all such needs of the city and, accordingly, would be able to compete for many more city contracts than in previous years. According to the mayor, at the time of the Commission's first hearing in September 1994, 40 percent of the contracts under Bid Match had been awarded to minority- or

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<sup>113</sup> Fung Testimony, p. 112.

<sup>114</sup> Yun Testimony, p. 380.

<sup>115</sup> Giuliani Testimony, p. 33.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*, pp. 33-34. New York City Administrative Code § 8-107 makes unlawful discrimination on the basis of sexual orientation in employment, apprentice training programs, public accommodations, housing, land, commercial space, and lending properties. NYC Adm. Code § 8-107 (Lenz & Riecker 1997).

<sup>118</sup> Giuliani Testimony, pp. 36-37.

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<sup>119</sup> *Ibid.*, pp. 34-36.

<sup>120</sup> *Ibid.*, p. 55.

<sup>121</sup> *Ibid.*, p. 56.

<sup>122</sup> *Ibid.*, pp. 34-36.

<sup>123</sup> *Ibid.*, p. 68.

<sup>124</sup> Rudolph Giuliani, mayor of New York, NY, "Bid-Match System," p. 1, *Documents Hearing Before the United States Commission on Civil Rights*, New York, NY, July 26, 1995 (hereafter cited as *New York Documents Hearing*), subpoena duces tecum document, Exhibit 1(d).

<sup>125</sup> In June 1994, the threshold purchase amount was increased to \$25,000. *Ibid.*

<sup>126</sup> New York, NY, Office of the Mayor, "Mayor Giuliani Announces New 'Bid-Match System,'" *New York Documents Hearing*, subpoena duces tecum document, Exhibit 1(a).



women-owned businesses.<sup>127</sup> However, records reveal that during the pilot program period, April to September 1994, only 32.74 percent (\$489,254) of the contracts under the system (\$1,494,138) were actually awarded to small businesses, some of which were minority- and women-owned.<sup>128</sup> Moreover, when Bid-Match was implemented for the entire city contracting process, the percentage of awards to small businesses declined even further, according to the city's own statistics. From October 1994 through the week ending July 7, 1995, small businesses received only 25.13 percent or \$1,922,467 of the \$7,649,439 in contracts under Bid-Match, a decline of approximately 7 percent from the pilot program period.<sup>129</sup>

Mayor Giuliani also reported that his administration and U.S. Representative Charles Rangel have worked to develop an empowerment zone application that covers Harlem and parts of the South Bronx and Northern Manhattan. In addition, at the time of the Commission's first hearing, his administration was working on a similar program for Central Brooklyn.

As for other administration initiatives to improve the economic conditions of city residents, an increasing number of whom are people of color, candidates for positions in the city's police and fire departments who are city residents now receive extra points in the hiring process.<sup>130</sup> Moreover, the mayor reported that police and fire department recruiting measures have been improved so that there is a more diverse pool of candidates.<sup>131</sup>

Notwithstanding these assertions, based on the city's own statistics, racial and gender equity has not yet been obtained in employment within the police and fire departments. In the police department, the city's minorities are still woefully underrepresented in both the civilian and uniformed employment ranks. As of September 30, 1995, in the combined NYPD civilian and uniformed work force, the racial breakdown was 58.62 percent white; 19.10 percent black; 15.19 percent Hispanic; and 1.40 percent Asian Ameri-

can and Pacific Islander.<sup>132</sup> The disparity between the overall minority population percentages and minority employment within the NYPD is even more acute within the uniformed work force. As of September 30, 1995, the city's uniformed force was 68.2 percent white; 13.9 percent black; 16.6 percent Hispanic; and 1.2 percent Asian American and Pacific Islander.<sup>133</sup>

The city's fire department is virtually a white organization. In a city where whites constitute less than half of the population, as of November 15, 1994, the racial breakdown of the fire department's uniformed forces was 93.87 percent white; 3.40 percent black; 2.53 percent Hispanic; 0.12 percent Asian American and Pacific Islander; and 0.07 percent American Indian.<sup>134</sup>

Mayor Giuliani testified regarding a number of recommended national policy changes that he believes would decrease racial and ethnic tensions by improving economic conditions. The Federal Government should redefine poverty so that regional economic differences are considered, i.e., high-cost and low-cost areas.<sup>135</sup> The mayor also testified that medical reimbursements to States and local governments should be standardized and that the Federal Government should be fairer in its distribution of benefits to large cities.<sup>136</sup>

Few witnesses testified regarding nongovernment initiated measures to reduce poverty and improve economic conditions. There was testimony regarding Brooklyn's St. Paul's Community Baptist Church, a predominately black congregation, and its building of 2200 single family, owner-occupied row houses over the past 10 years.<sup>137</sup>

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<sup>127</sup> Ibid.

<sup>128</sup> *New York Documents Hearing*, Exhibit 1(d).

<sup>129</sup> Ibid.

<sup>130</sup> Ibid., p. 47.

<sup>131</sup> Ibid.

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<sup>132</sup> Anthony P. Coles, deputy counsel to the mayor, letter to Stephanie Y. Moore, general counsel, U.S. Commission on Civil Rights, table 5, New York City Department of Personnel CEEDs System, attachment, Dec. 5, 1995.

<sup>133</sup> Anthony P. Coles, deputy counsel to the mayor, letter to Stephanie Y. Moore, general counsel, U.S. Commission on Civil Rights, attachment, Nov. 15, 1995.

<sup>134</sup> Sherry Ann Kavaler, director, Bureau of Personnel, New York City, letter to Stephanie Y. Moore, acting deputy general counsel, U.S. Commission on Civil Rights, Nov. 16, 1994. The statistics are based solely on the male members of the uniformed forces. The Kavaler letter does not provide the racial/ethnic breakdown for the fire department's uniformed female employees, which as of Nov. 15, 1994, numbered 36.

<sup>135</sup> Ibid., pp. 42-43.

<sup>136</sup> Ibid.

<sup>137</sup> Rev. Johnny Youngblood, pastor, St. Paul's Baptist Church, testimony, *New York Hearing*, vol. I, p. 341.

The church also opened two public high schools with a unique parent-teacher focus, requiring, among other things, that teachers meet parents and that parents work with schools in specific ways.<sup>138</sup>

Many of the community efforts to reduce tensions and promote racial and ethnic harmony, however, involve noneconomic, coalition-building activities. Often these efforts are initiated by religious groups. The Anti-Defamation League (ADL) has sponsored intergroup projects, particularly in the Crown Heights section of Brooklyn. It also has initiated steps to prevent and counter hate crimes and has helped to publicize and identify for the public bigoted messages.<sup>139</sup> The ADL's World of Difference Program has been introduced into New York City schools and has been offered to law enforcement agencies.<sup>140</sup> The League's World of Difference Institute develops programs designed to increase understanding and tolerance among people of diverse racial and ethnic backgrounds. The institute has conducted such programs throughout the country for a variety of public and private entities, including schools, corporations, and public agencies. It has been introduced into New York City schools and offered to law enforcement agencies.<sup>141</sup> In addition, the institute has conducted such programs for numerous city public and private groups, including, the city's fire department, office of personnel, human resource administration and urban fellows; the Brooklyn District Attorneys Office; Columbia University and the Fashion Institute of Technology; and, as of December 1993, 8600 metropolitan area educators. New York City's National Urban League has visited Jewish communities and non-Jewish communities.<sup>142</sup>

There was testimony that in the 5 to 6 years preceding the Commission's 1994 hearing, there was an ongoing African American/Italian dialogue that was supported by the National Commission for Social Justice.<sup>143</sup> This commission

was responsible for the antidefamation work of the Order of the Sons of Italy. In addition, the Italian American group has met with Asian American and Pacific Islanders and Jewish groups as well as with the Latino Coalition.<sup>144</sup>

The Jewish Community Relations Council is an umbrella organization for more than 60 New York area Jewish groups.<sup>145</sup> Its Intergroup Relations and Community Concerns section is designed to serve as an outreach group to uncover significant issues throughout the community at large and from all ethnic groups.<sup>146</sup>

## Section VII. Topical Summary

The myriad of interracial and interethnic conflicts and tensions described in the foregoing discussion is related directly to the universal drive to gain and take advantage of economic opportunities abounding in New York City. However, in seeking these opportunities, inequality and discrimination at all levels arise as unfortunate by-products and barriers. For example, sweatshops so prevalent in the early industrial period seem to have made a comeback. The finance industry remains dominated by white males despite that the majority of the population of New York City is nonwhite. Securities industry rules designed to avoid litigation may not adequately protect civil rights and may adversely affect communities of color and women. Even the access to banking services, capital to start small businesses, and loans for first-time home buyers may be tainted by discrimination. Race/ethnicity and bias still haunt access to the multitude of economic prospects for New York residents.

In calling for the hearings, the Commission sought to delineate the extent of racial and ethnic tensions and how they affect economic opportunity. One of the major issues coming out of the Commission's hearings appears to be that all groups, regardless of racial or ethnic affiliation, seek to maximize their opportunities free from bias and discrimination. They want access to banking services, jobs for which they qualify, capital to build businesses, loans to purchase homes, and freedom to pursue wealth-building possibilities. Minorities and women are particu-

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<sup>138</sup> *Ibid.*, p. 342.

<sup>139</sup> Machleder Testimony, pp. 98–99.

<sup>140</sup> *Ibid.*, p. 136.

<sup>141</sup> *Ibid.*

<sup>142</sup> Dr. Edward Yarney, Bronx borough director, New York Urban League, testimony, *New York Hearing*, pp. 170–72.

<sup>143</sup> Vincent Romano, national vice president, Order Sons of Italy, and Commission for Social Justice, testimony, *New York Hearing*, p. 238.

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<sup>144</sup> *Ibid.*, p. 242.

<sup>145</sup> Robert Kaplan, director of intergroup relations, Jewish Community Relations Center, testimony, *New York Hearing*, pp. 158–59.

<sup>146</sup> *Ibid.*

larly eager to break down barriers preventing access to economic empowerment. Moreover, they hope to eliminate institutions that have historically excluded them, such as major Wall Street banking and securities firms that have been generally viewed as exclusively the province of white men. This report seeks to describe the different levels and contexts of economic progress in New York City and what inroads have been made to address the problem of racial and ethnic tension and what measures have been taken to provide for economic empowerment and equity.

### **Immigrants in New York City and Low-skill Labor Markets**

Chapter 2 presents the immigration component of the hearing. It examines working conditions for low-skilled immigrant workers within New York City's Chinatown restaurant and apparel industries. The chapter presents an analysis of the exploitative working environment within these industries, along with factors that influence exploitation, including immigration policies, labor and immigration law enforcement, and market forces that fuel the demand for undocumented workers. Chapter 2 also examines the impact of low-skilled immigration on wages, jobs, and racial and ethnic tensions, presenting views and studies that either support or reject the value of immigrants on these markets in New York City.

### **Minorities and Women in New York City's Finance Industry**

Chapter 3 looks at the opportunities for economic equality of minorities and women in New York City's finance industry. Because of Wall Street, the Nation's largest exchange, finance has long been a large, prominent, and well-paying industry in the city. After a brief background section, section two examines employment of protected groups—minorities as a whole, blacks, Hispanics, Asian American and Pacific Islanders, and women—in this industry. It contrasts the banking and securities segments and employment in various job classifications—officials and managers, professionals, sales workers, and office and clerical workers. Recent trends in the industry and their effects on the growth or decline of employment of minorities and women are also reviewed. The third section presents information on relevant job qualifications—education, job skills, work experience,

and testing and certification—that may be barriers for minorities and women hoping to obtain jobs in this industry. The fourth section reviews company practices and policies, including hiring and promotion, equal employment opportunity and affirmative action, and recruitment and training programs.

### **Impact of Securities Industry Rules on Minority and Women Securities Professionals**

Chapter 4 studies the effect of two securities industry rules on minorities and women. The first rule is the arbitration requirement. Some securities industry employees who register to trade securities at the exchanges have agreed to submit any potential employment discrimination claims to an arbitration procedure sponsored by the exchanges' self-regulatory organizations. This section examines whether the securities arbitration forums afford employees adequate procedural protections and generate equitable results. The second rule, Rule G-37, applies only to municipal finance professionals. Under the rule, a municipal finance professional may not perform municipal finance work for a municipality if the professional has, within the past 2 years, given a political contribution to an official of that municipality. This section examines the impact of Rule G-37 to determine whether it has had a disparate impact on minority and women securities professionals and political candidates.

### **The Role of Community Reinvestment**

Chapter 5 examines the role that the Federal and State Community Reinvestment Acts play in the overall economic development and revitalization of low-income areas such as the South Bronx. The chapter looks at the impact of decreasing availability of banking services in low-income areas, the role of community development financial institutions, and the role of the Small Business Administration and other lenders in meeting the capital needs of small businesses in the New York metropolitan area. The chapter also examines the role the Community Reinvestment Act plays as a catalyst to home mortgage lending and affordable housing initiatives, including how the Home Mortgage Disclosure Act and low-income housing tax credits can be used by community groups, private lenders, and housing advocates toward their respective goals.

## Chapter 2

# Immigrants in New York City and Low-skill Labor Markets

“New York is the quintessential city of immigrants.”<sup>1</sup> Written by former Mayor Edward Koch, this statement has epitomized New York City from its early days as a Dutch colony through its present role as an international port city on the edge of a new millennium. The city’s lure to immigrants from around the world has meant that New York, from its inception, has always been home to a diverse mixture of color, ethnicity, culture, and language. In the 17th century, the Dutch governor of New York, then known as “Nieuw Amsterdam,” noted that inhabitants of the colony spoke 18 different languages. By 1980, 121 languages were spoken among the city’s 1.7 million foreign-born residents. The waves of immigration to New York City have helped shape the city’s political system, its neighborhoods, and its social and economic institutions. It has also helped to ensure its diversity. According to Mayor Giuliani:

New York is the most diverse city in America. For decades, the five boroughs have been the destination of choice for immigrants from around the world. An unending variation of human endeavor is found in our city, and our diversity is our greatest strength. . . . Our diversity contributes to our economic and cultural vitality, and makes us home to the innovative and the unique. In New York, diversity has been a boon, not a burden, and that’s worth noting.<sup>2</sup>

The proliferation of low-skill jobs, coupled with the city’s ethnic diversity and its tolerance of immigrants, continues to draw newcomers to

New York City, much as these factors did in the earlier waves of immigration at the turn of the century. Yet while New York City owes its vibrancy and international lure to the rich mixture of cultures, energy, and color of its immigrant population, there is also a darker side to the immigration story, characterized by the exploitation of a vulnerable immigrant work force that goes unseen and largely undetected by tourists, consumers, and most of the business world. Across the Nation, and particularly in New York City, there is growing concern over the impact of immigration on segments of the labor force, particularly as stories of widespread exploitation of immigrants held in conditions of indentured servitude continue to surface. This vulnerability of immigrants at the hands of low-wage, low-skill employers, coupled with attitudes about immigrant versus native-born workers, also leads to tensions among native minorities, established immigrants, and newer arrivals for jobs and other resources.<sup>3</sup>

Immigrants arriving in New York at the turn of the century satisfied the need for hard-working, cheap workers to staff labor-intensive production industries. The public’s demand for affordable goods and retailers’ scramble to satisfy these demands led to the creation of sweatshops in many production industries, especially

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<sup>1</sup> Edward I. Koch, mayor of the City of New York, Preface to Elizabeth Bogen, *Immigration in New York* (New York: Praeger, 1987).

<sup>2</sup> Rudolph Giuliani, mayor of the City of New York, testimony (hereafter cited as Giuliani Testimony), *Hearing Before the U.S. Commission on Civil Rights*, New York, NY, Sept. 19–21, 1994, vol. I, pp. 28–29 (hereafter cited as *New York Hearing*).

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<sup>3</sup> Relationships between new immigrants and older immigrants or native minorities are sometimes tinged with conflict. In New York City, tensions between immigrants and native minorities erupt periodically. See section III of this chapter for discussion of tensions among groups. According to Nancy Foner, anthropology professor at the State University of New York: “When ethnic conflicts in New York arise, ethnic group identity and belonging are rarely the major reasons. Rather, these conflicts are typically rooted in inequalities of status, power, and wealth among groups and competition for housing and economic, educational, and government resources.” Nancy Foner, “New Immigrants and Changing Patterns,” in *New Immigrants in New York*, ed. Nancy Foner (New York: Columbia University Press, 1987), pp. 20–21.

apparel. According to one historian, "In the men's clothing industry in New York City, overcrowding and sanitary conditions were probably at their worst in the 1880s. The workers, all immigrants, lived and worked together in large numbers, in a few small, foul, ill-smelling rooms, without ventilation, water, or nearby toilets."<sup>4</sup> Workers worked for little pay until they fell asleep from exhaustion, amidst fire and health hazards, disease, and abuse.<sup>5</sup>

A century later, many unskilled and low-skilled immigrants continue to face abuse, exploitation, and deplorable working conditions in the hands of unscrupulous employers and smugglers, according to witnesses at the hearing and immigration scholars.<sup>6</sup> Accounts of immigrants smuggled into the United States to work as un-

documented workers continue to surface regularly.<sup>7</sup> Like their predecessors, today's sweatshop workers toil for long hours, amid unsafe and exploitative surroundings, often for little pay, and sometimes, without even the ability or freedom to escape their plight.

The economic attractiveness of such a desperate, vulnerable immigrant work force, some have argued, leads to a preference for immigrant workers over the native born, keeps wages in these industries low, and fuels resentment by native-born residents against immigrants. Often, it is the lowest skilled, native-born minority worker searching for work in the city who is most susceptible to the impact of immigrant labor on job availability and wages.

The immigration component of the hearing and this chapter address the impact of immigration on jobs and working conditions in New York City's low-skill labor markets, especially the apparel and restaurant industries, and examines the role of the United States and New York labor departments and the U.S. Immigration and Naturalization Service in targeting sweatshops. Also examined in this chapter is the impact of low-skill immigrant labor on native-born workers and how these factors affect race relations between New York City's immigrants and its native-born population.

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<sup>4</sup> Joel Seidman, *Needle Trades* (New York: Farrar and Rinehart, Inc., 1942), pp. 56–58.

<sup>5</sup> U.S. General Accounting Office (GAO), *"Sweetshops" in the U.S.: Opinions on Their Extent and Possible Enforcement Options* (GAO/HRD-88-130BR, August 1988), pp. 8–9.

<sup>6</sup> Peter Kwong, "The Wages of Fear: Undocumented and Unwanted, Fuzhounese Immigrants are Changing the Face of Chinatown," *The Village Voice*, Apr. 26, 1994, p. 25. In the article, the author describes the life of a typical, undocumented Chinese immigrant working to pay off his \$30,000 "passage fare" to his "snakehead" or smuggler: "Z (name deleted) lives a spartan existence. He left his wife and one daughter in China. Here he shares a one-room apartment with 19 other male bachelors. The small, 300-square-foot space is jammed with double bunk beds, like an army barracks. His 'bedspace' costs him \$90 per month. Some of his roommates rent out their bedspace for a portion of the day to others, to cut down on costs. . . . Z, when not working in a restaurant, survives on eating mantou—northern Chinese-style steamed buns sold by vendors at street corners. They are cheap: only \$1 for 10, which is enough for two days. Z swallows them down with small sugar cube-size pieces of . . . bean curd (\$1 for a jar containing 50 cubes). . . . The debts must be paid, lest the snakeheads hire 'enforcers' to beat them out of the debtors."

See also Wing Lam, executive director, Chinese Staff and Workers Association, interview in New York, Mar. 18, 1994 (hereafter cited as Lam Interview) (In the restaurant industry, workers routinely work long hours for little pay and are forced to turn over a portion of the tips they receive to their managers, according to Mr. Lam. Workers who complain are "black-listed" and are not hired by other restaurants in Chinatown); Pam Galpern, program development coordinator, Lower East Side Workers' Center, testimony, *New York Hearing*, vol. II, pp. 609, 636–37 (hereafter cited as Galpern Testimony) (Low-skill immigrant workers in New York City face nonpayment of wages and payment of subminimum wages because they fear being fired or being turned over to the INS. Calculating how much employers owe such immigrants, "it often comes to thousands and thousands of dollars that the employers are making off of immigrant workers").

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<sup>7</sup> On June 6, 1993, the *Golden Venture*, a ship containing close to 300 undocumented Chinese immigrants, ran aground off the waters of New York City, killing at least 10 of the passengers and leading to the detention of hundreds of others. The immigrants had each paid the equivalent of \$30,000 to be smuggled into the U.S. Most of the immigrants would have likely been forced to work as indentured servants for the smugglers and their network of employers until they had paid their debts to the smugglers. New York State Senate Committee on Cities, *Our Teeming Shore*, by Sen. Frank Padavan, January 1994, p. 1 (hereafter cited as N.Y. State Senate, *Our Teeming Shore*).

In July 1995, a Thai woman escaped from an El Monte, CA, sweatshop through an air conditioning duct and turned to a Buddhist temple in Hollywood for help. Authorities found more than 70 women, all smuggled from Thailand, working up to 19 hours daily, guarded by razor wire, spiked fences, and guards. The women had worked for 6 years under these conditions, earning \$1.60 per hour, under compulsion to pay off their debts to their smugglers. Seven Thai nationals pled guilty to Federal charges, including involuntary servitude, harboring illegal aliens, and kidnapping. In 1997 the case of the deaf Mexican trinket vendors in New York City and that of a young Chinese woman enslaved as a prostitute to pay her \$20,000 debt for her passage also made national news. Martha Moore and Martin Kasindorf, "Enslavement in America: Latest Arrests Highlight Growing National Problem," *USA Today*, July 28, 1997, p. 1–A.

## Immigration in New York City

### Historical Demographics

New York City could well be the optimum forum in which to address immigration issues, not only because of the number of immigrants currently residing there, but also because of the diversity of racial and ethnic groups represented throughout its history. From its days as a newly settled colony, New York has been home to the Dutch and British in the 17th and 18th centuries, the Irish, Germans, and Scandinavians beginning in the 1830s, Italians, Greeks, Czechs, Slovaks, Hungarians, and Russian and Polish Jews starting in the 1880s until the 1920s, and, after World War II, large-scale arrivals of immigrants from Asia and nations of the Western Hemisphere.<sup>8</sup>

In the years during and after World War II, native minorities also began to make their way to New York en masse, drawn by the labor shortage of the war years and by the expanding economy of the postwar era. Puerto Rican migration accelerated during World War II. Between 1950 and 1960, the number of island-born Puerto Ricans living in New York more than doubled, from 190,000 to 430,000. A similar phenomenon occurred among African Americans moving north from the rural South, as they had done during and after World War I. In the years between 1940 and 1960, New York's African American population doubled, from 500,000 to 1 million.<sup>9</sup>

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<sup>8</sup> Bogen, *Immigration in New York*, pp. 5–16; New York, NY, Department of City Planning, *The Newest New Yorkers, 1990–1994: An Analysis of Immigration to New York City in the Early 1990s* (1996), p.155 (hereafter cited as NYDCP, *The Newest New Yorkers, 1990–1994*).

<sup>9</sup> Bogen, *Immigration in New York*, p. 21. Between 1940 and 1960, New York's African American population increased from 6 to 14 percent of the city's population. Relatively few African Americans lived in New York City until well into the 20th century. In 1890, for example, African Americans constituted only 1.6 percent of the population. By 1920 New York City was home to 150,000 African Americans. Although they constituted only 3 percent of the city's population, their community constituted the largest urban concentration of African Americans in the Nation. Poor economic conditions in the South and reduced rates of immigration led to the tripling of New York City's African American population between the years of 1920 and 1940. See Roger Waldinger, *Still the Promised City? African Americans and New Immigrants in Postindustrial New York* (Cambridge: Harvard University Press, 1996), pp. 42–43.

### Present Demographics

The 1990 census revealed that the number of foreign-born persons in New York City rose by almost 25 percent during the 1980s, to 2,082,000 persons. This is the city's highest measured level of foreign-born residents since the 1940 census, when 2.1 million of the city's residents had been born in another country.<sup>10</sup>

The 1990 census recorded New York City's population as being 28.2 percent foreign born.<sup>11</sup> Almost 1 million of these foreign-born residents, 935,000, entered the United States between the 1980 and 1990 censuses, and are 46 percent of all foreign-born residents of New York City.<sup>12</sup> The New York City Department of Planning also reports that between 1990 and 1994, approximately 563,000 immigrants arrived legally in New York City.<sup>13</sup> To date, the average annual immigration into the city has been 32 percent higher in the 1990s than in the 1980s, a decade that itself brought the largest levels of immigration to the city since before the 1940s.<sup>14</sup>

In contrast to national immigration trends, New York City's immigrants are primarily Caribbean and South American. Yet during the 1990s, Europeans raised their representative share to 22 percent of the city's foreign-born population, up from 9 percent in the 1980s.<sup>15</sup> The top Caribbean source countries for New York City immigrants during the 1990s have been Hispanic, while entries from Jamaica and Haiti have fallen.<sup>16</sup> Dominicans represent the largest group of immigrants to the city, with one out of every five immigrants coming from the Domini-

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<sup>10</sup> New York, NY, Department of City Planning, *The Newest New Yorkers: An Analysis of Immigration into New York City During the 1980's* (1992), p. 5 (hereafter cited as NYDCP, *The Newest New Yorkers—During the 1980s*).

<sup>11</sup> *Ibid.*, p. 6.

<sup>12</sup> *Ibid.*, p. 5.

<sup>13</sup> NYDCP, *The Newest New Yorkers 1990–1994*, p. xi.

<sup>14</sup> *Ibid.*, p. xi. See also Celia Dugger, "City of Immigrants Becoming More So in the '90s," *New York Times*, Jan. 9, 1997, p. A-1. During the 1980s, the number of foreign-born persons residing in New York City rose by almost 25 percent to 2,082,000 persons, the highest level since 1940. NYDCP, *The Newest New Yorkers—During the 1980s*, p. 5.

<sup>15</sup> NYDCP, *The Newest New Yorkers 1990–1994*, p. 9. The increase in European immigrants stems from the surge of refugees from the former Soviet Union and a special visa lottery that heavily benefited Irish and Polish immigrants. Dugger, "City of Immigrants."

<sup>16</sup> NYDCP, *The Newest New Yorkers 1990–1994*, pp. 7–9.

can Republic.<sup>17</sup> After the Dominican Republic, the former Soviet Union and China represent the top sources of documented immigration to the city since 1990.<sup>18</sup>

The median age of immigrants settling in New York City is younger than the general population by 7 years.<sup>19</sup> Of immigrants arriving in the 1990s, males share more similar occupational distributions with nonimmigrant New Yorkers than do female immigrants with their nonimmigrant counterparts. The occupational distribution of immigrant males is similar to that of all males in the city in the areas of professional, technical, production and repair, and service occupations. Nevertheless, immigrant males had a higher representation in operator, fabricator, and laborer categories and a smaller representation in sales, administrative, and support jobs than native-born males. Immigrant women have a higher occupational distribution in professional, technical, and service occupations than their native-born counterparts. At the same time, their representation as operators, fabricators, laborers, and service workers declined substantially between the 1980s and the 1990s.<sup>20</sup>

Immigrants are overrepresented in fields requiring high education and in fields requiring little or no education or training. They are least represented in fields requiring an intermediate level of education or training, such as public-sector occupations.<sup>21</sup> Among high education fields, male immigrants predominate over native-born males as college professors and doctors.<sup>22</sup>

The concentration of immigrants is more dramatic in low-education fields. In States with large immigrant populations, like New York, immigrants represent three out of every four tailors, cooks, and textile workers, and they are a majority of all taxicab drivers, domestic service workers, and waiters' assistants.<sup>23</sup> In New York City, immigrants arriving between 1990 and 1994 had greater representation in the fields of operator, fabricator, laborer, and service worker than did the population as a whole.<sup>24</sup>

The majority of immigrants arriving in the city during the 1990s settled in Brooklyn or Queens, although two of the three neighborhoods that attracted the most immigrants,

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*40,000—First Preference Visas.* These visas are reserved for priority workers, including workers of extraordinary ability, outstanding professors or researchers, and certain executives and managers of multinational corporations. No labor certification is required for workers in this category.

*40,000—Second Preference Visas.* These visas are awarded to aliens with advanced degrees in the professional fields or who have exceptional ability in the sciences, arts, or business. Labor certification is required for workers in this category.

*40,000—Third Preference Visas.* These visas are reserved for aliens with a bachelor degree or its equivalent, or otherwise skilled workers capable of performing a job requiring at least 2 years of experience or training. Labor certification is required for workers in this category.

*10,000—Fourth Preference Visas.* These visas are reserved for special immigrants, which includes ministers and religious workers.

*10,000—Fifth Preference Visas.* These visas are reserved for foreign investors who agree to establish a new commercial enterprise, invest at least \$1 million in the enterprise, and employ at least 10 U.S. citizens.

See 8 U.S.C. § 1153(b) (1994).

<sup>23</sup> National Research Council, *The New Americans*, pp. 5–19 to 5–22.

<sup>24</sup> NYDCP, *The New Newest New Yorkers, 1990–1994*, pp. 24–31. Male immigrants in New York City had a higher representation in the lower skilled operator, fabricator, and laborer industries than the male population of the city as a whole (24 versus 16 percent). Male immigrants were underrepresented in the less skilled white-collar occupations of sales (5 versus 11 percent for all male city residents) and administrative support (6 versus 12 percent for male city residents). Compared with the male city population as a whole, male immigrants had comparable occupational distributions in the professional specialty and technical categories (17.6 percent of immigrants, compared with 17.7 percent in the entire population). Citywide female immigrants had significantly higher concentrations in the professional specialty and technical (30 versus 23 percent) and service categories (24 versus 16 percent) than their counterparts as a whole. Female immigrants are underrepresented in the highly skilled executive, administrative, and managerial occupations, and in the lower skilled sales and administrative support fields. Ibid.

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<sup>17</sup> Ibid., p. xi.

<sup>18</sup> Ibid.

<sup>19</sup> The median age of immigrants in New York City is 27 years, compared with 34 years for the general population. Ibid.

<sup>20</sup> Ibid., p. xii.

<sup>21</sup> These include firefighters and law enforcement officers, for example. National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (prepublication copy) (Washington, DC: National Academy Press, 1997), p. 5–21.

<sup>22</sup> The influx of immigrants with high skills is regulated, and therefore shaped, by our immigration laws. The Immigration Act of 1990 established an annual numerical limit of 140,000 for immigrants entering under employment-based visas. Pub. L. No. 101-649, § 101, 104 Stat. 4978, 4982 (codified as amended at 8 U.S.C. § 1151(d) (1994)). Employment-based visas are allocated according to the following categories:

Washington Heights and Chinatown, are in Manhattan.<sup>25</sup> The influx of immigration has bolstered New York City's decreasing population and revitalized neighborhoods that had previously been declining, according to the director of the New York City Department of Planning.<sup>26</sup> The department's report, *The Newest New Yorkers*, estimates that the city's population would have declined 9 percent without the 856,000 immigrants who moved there in the 1980s.<sup>27</sup> As a result of the immigrant influx, the city's population instead rose by 3.5 percent.

The immigration boom has also introduced a different racial dynamic to New York City. According to John Mollenkopf, graduate professor of political science and director of data services at the City University of New York:

Even though the city is getting less white, it's not becoming predominantly native-born black, but rather, more diverse, with Asian American and Pacific Islanders and Latinos being the most rapidly growing groups, and even within the broad racial categories that we usually rely on, black, white, Latino, immigrants and the diversity of countries of origin of the immigrants, are introducing new differences, so that among blacks, the majority . . . are native born of native-born heritage, but roughly a quarter are foreign born, and we have various kinds of tensions between native-born and West Indian black residents of New York City.<sup>28</sup>

## Section I. Working Conditions for Immigrants in Low-skill Industries

For many immigrants, work in low-skill industries is characterized by long hours, low wages, and unsafe working conditions. For immigrants living in large immigrant communities, competition for jobs with native-born residents and undocumented immigrants means that they must accept these conditions if they are to work at all. The Center for Immigrants Rights' former policy director, Frank Velasquez, explained to Commission staff that immigrants are more susceptible to manipulation and exploitation due to

language barriers, lack of knowledge of the laws and their rights, and, most importantly, different work ethics, desperation, and fear of the government.<sup>29</sup>

### The Sweatshop Phenomenon

Despite labor standards laws and the efforts of the departments of labor, many employers continue to subject alien employees, particularly those who are undocumented, to substandard working conditions. These immigrants endure low wages, long hours, unsafe working conditions, and child labor.<sup>30</sup> The U.S. General Accounting Office (GAO) defines businesses that regularly violate one or more State or Federal labor laws governing minimum wage and overtime, child labor, industrial homework, occupational safety and health, workers' compensation, or industry registration, as sweatshops.<sup>31</sup>

In its 1988 report, *"Sweatshops" in the U.S.: Opinions on Their Extent and Possible Enforcement Options*, the GAO identified the garment and restaurant industries as two of the three most likely industries to operate in sweatshop conditions.<sup>32</sup> Among the factors cited by GAO contributing to the existence of sweatshops are the presence of a vulnerable and exploitable immigrant work force; the labor intensiveness and low profit margins of these industries; and the rapid growth of subcontracting, particularly in garment-making and electronics.<sup>33</sup> Certain enforcement-related factors, such as insufficient inspection staff, inadequate penalties for violations, weak labor laws, and limited coordination among enforcement agencies were cited as rea-

<sup>25</sup> The third neighborhood is Brooklyn's Gravesend-Homecrest. NYDCP, *The Newest New Yorkers 1990-1994*, p. xiii.

<sup>26</sup> Dugger, "City of Immigrants."

<sup>27</sup> *Ibid.*

<sup>28</sup> John Mollenkopf, graduate professor of political science and director of data services, City University of New York, testimony, *New York Hearing*, vol. I, p. 175 (hereafter cited as Mollenkopf Testimony).

<sup>29</sup> Frank Velasquez, policy director, Center for Immigrants' Rights, interview in New York City, Jan. 6, 1994 (hereafter cited as Velasquez Interview). The Center for Immigrants' Rights is a New York organization advocating on behalf of immigrants. See also Lora Jo Foo, "The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation," *Yale Law Journal*, vol. 103 (1994), pp. 2179, 2182.

<sup>30</sup> See Susan Headden, "Made in the USA," *U.S. News and World Report*, Nov. 22, 1993, p. 48.

<sup>31</sup> GAO, *Garment Industry: Efforts to Address the Prevalence and Conditions of Sweatshops* (GAO/HEHS-95-29, Nov. 2, 1994), p. 1.

<sup>32</sup> The meat-processing industry is the third. The GAO's study specifically excluded from its scope work done outdoors, such as agriculture and construction, and industrial homework (i.e., manufacturing in the home). GAO, *Sweatshops in the U.S.*, pp. 17, 19-21.

<sup>33</sup> *Ibid.*, pp. 32-35.



sons for the continuing existence of sweatshops.<sup>34</sup>

Most susceptible to abuse are the undocumented, whose fear of deportation makes them an attractive work force for employers in these fiercely competitive, low-profit industries. As the recent case of the Mexican trinket vendors illustrates,<sup>35</sup> aliens smuggled into the country are frequently sent to work in New York City's garment and restaurant businesses and other low-skill concerns to pay off their debts to smugglers. In Chinatown sweatshops, many undocumented Chinese immigrants toil in conditions reminiscent of indentured servitude for low wages, no benefits, under frequent threats of abuse, and in deplorable working conditions until they have paid off their debts to smugglers, a process that usually takes several years.<sup>36</sup>

Immigrant advocates and scholars attribute the proliferation of sweatshops over the past 10 years to the passage of the Immigration and Reform Control Act (IRCA)<sup>37</sup> and weak enforcement of labor laws.<sup>38</sup> These advocates maintain

that, as a result of IRCA's employer sanctions provision,<sup>39</sup> immigrants often work in trades in which detection is difficult, such as the restaurant, garment, or construction industries, where they are paid as little as \$1 an hour, work 80 or more hours per week, and often have their wages withheld for months and their tips stolen by managers.<sup>40</sup> IRCA critics charge that employers are able to operate in violation of the law because labor laws are not enforced effectively, and the ensuing penalties, if assessed, are not severe enough to have a deterrent effect.<sup>41</sup> The combination of IRCA and lax enforcement of labor laws fuels the operation of an underground economy that thrives off exploited workers who are forced to accept any conditions or face black-listing, deportation, or gang retaliation.<sup>42</sup>

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tions of labor laws in many parts of the industry) (hereafter cited as Chishti Testimony).

<sup>39</sup> The "employer sanctions" provision of the Immigration Reform and Control Act, an amendment to the Immigration and Nationality Act, forbids any person or entity from hiring, recruiting, or referring for employment (for a fee), any alien knowing that the alien is ineligible to be employed in the U.S. Employers who violate this provision are subject to a range of sanctions. 8 U.S.C. § 1324a(a)(1) (1994). For a more detailed discussion of IRCA, see the section of this chapter discussing the INS.

<sup>40</sup> A recent example of such exploitation arose out of a case filed by the New York attorney general against Jing Fong restaurant, the largest restaurant in Chinatown. The restaurant agreed to pay more than \$1.1 million to 58 workers who alleged they were underpaid and cheated of tips, because they worked over 60 hours weekly and were paid as little as \$65 a week. David Chen, "Waiters Settle Suit on Wages With Big Chinatown Restaurants," *New York Times*, Oct. 30, 1997, p. A-30.

<sup>41</sup> Velasquez Interview.

<sup>42</sup> Chinese Staff and Workers Association, *CSWA NEWS: The Voice of Chinese American Workers*, vol. 4, issue 1 (fall 1993), p. 6; Lam Interview. Examples of labor law violations by Chinatown restaurants have recently made news. In October 1997, the largest Chinatown restaurant, Jing Fong, agreed to settle a lawsuit brought by the New York State attorney general's office, on behalf of workers alleging that the restaurant had cheated them out of more than \$1.5 million in wages and tips. The settlement represented Chinatown's largest ever settlement over alleged labor law violations. Jing Fong waiters and busboys alleged they were paid as little as \$65 to \$100 a week for workweeks that routinely exceeded 60 hours. Chen, "Waiters Settle Suit on Wages with Big Chinatown Restaurant"; Monte Williams, "Neighborhood Report: Chinatown; Labor Dept. Hears Tales of Sweatshops, Restaurants, and Fear," *New York Times*, Aug. 6, 1995, p. 7. Other Chinatown restaurants have also been assessed penalties for labor law violations. See Mae Cheng, "A Move for Laborers," *Newsday*, Apr. 25, 1997, p. A-43; *CSWA News: The Voice of Chinese American Workers*.

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<sup>34</sup> *Ibid.*, p. 32. See also Foo, *The Vulnerable and Exploitable Immigrant Workforce*, pp. 2179, 2182.

<sup>35</sup> In July 1997, Federal agents discovered groups of deaf Mexicans in New York City and North Carolina who peddled trinkets and turned over their earnings to bosses who allegedly smuggled them into the U.S., kept them in cramped quarters, and abused and threatened them. Moore and Kasindorf, "Enslavement in America."

<sup>36</sup> Kwong, "The Wages of Fear."

<sup>37</sup> Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended at 8 U.S.C. § 1324a *et seq.* (1994)). Prior to passage of IRCA, there was no bar against the employment of undocumented immigrants. IRCA was enacted to address that deficiency. See note 70.

<sup>38</sup> Foo, *The Vulnerable and Exploitable Immigrant Workforce*, pp. 2182-83 ("Since IRCA went into effect, a whole sub-class of workers ripe for exploitation has developed. . . . Many employers readily hire immigrants with false documentation, knowing that these workers will not risk losing a paycheck to report abuses to labor agencies. Employers are shielded from legal penalties merely by claiming that they believed in good faith that the 'green card' appeared authentic. The immigrant worker has no protection. He or she is forced to accept slavery-like conditions under the constant threat of deportation"); Galpern Interview (IRCA's employer sanctions provision encourage violations by allowing employers to coerce employees to work for lower wages, under the excuse that they are taking a chance by hiring them); Muzaffar Chishti, director, Immigration Project, International Ladies Garment Workers' Union, testimony, *New York Hearing*, vol. II, p. 478 (The passage of IRCA has had no effect in controlling the flow of undocumented immigrants, and has caused an increase in the incidence of viola-

This chapter examines the exploitative working conditions of immigrants in New York City's Chinatown restaurants and apparel factories. As the New York City locality with the highest violation rate among garment producers (nearly 90 percent of garment shops were recently found in violation of the monetary provisions of the Fair Labor Standards Act),<sup>43</sup> Chinatown represents a dense microcosm of the worker exploitation problems faced by low-skilled immigrants throughout the rest of the city.

### **The Restaurant Industry**

Although the garment industry is often the focus of discussions on sweatshops, a powerful restaurant industry characterized by harsh working conditions also booms in Chinatown.<sup>44</sup> Intense competition among the more than 200 Chinatown restaurants means that survival requires constant price wars, sustained through cuts in wages across the industry.<sup>45</sup>

Unlike other industries employing immigrants in New York City, the restaurant industry is not widely unionized.<sup>46</sup> Only one restaurant is unionized in Chinatown, and struggles between that restaurant and its employees over existence of the union and wages have persisted over several years.<sup>47</sup>

Worker exploitation in the restaurant industry is also exacerbated by the lack of a concerted

effort by Federal and State labor departments to target that industry, according to New York State elected officials.<sup>48</sup> Whereas abuses in the garment industry have led to specialized task forces in both the Federal and New York departments of labor designed to target violations by apparel producers, there are no equivalent, specialized programs to address violations in the restaurant industry.

According to immigrant advocates in New York's Chinese community, passage of IRCA caused working conditions in Chinatown to regress.<sup>49</sup> Whereas before IRCA many workers had

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<sup>43</sup> U.S. Department of Labor (USDOL), Office of Public Affairs, "U.S. Department of Labor Compliance Survey Finds More Than Half of New York City Garment Shops in Violation of Labor Laws," press release, Oct. 16, 1997.

<sup>44</sup> Jennifer H. Lee, "Chinatown, Jing Fong, and Unfair Labor Practices," *Asian American Policy Review*, vol. VII (1997), p. 146.

<sup>45</sup> *Ibid.*, p. 149.

<sup>46</sup> According to author Elizabeth Bogen, the immigrant work force is generally divided into unionized and nonunionized industries. Health care industry jobs are usually unionized; restaurant jobs generally are not. The garment industry is split between unionized and nonunionized shops. Bogen, *Immigration in New York*, p. 95. In 1980 the Chinese Staff and Workers' Association (CSWA) was formed to organize workers in Chinatown. While the CSWA has never identified itself as a union, it has represented Chinatown workers and has helped unionized workers with contract negotiations. Despite the efforts of the CSWA, only one restaurant in Chinatown is unionized. Lee, "Chinatown, Jing Fong," p. 150.

<sup>47</sup> Rick Bragg, "A Seven-Month Lockout Ends at Chinatown's Only Unionized Restaurant," *New York Times*, Mar. 14, 1994, p. B-3.

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<sup>48</sup> Mae M. Cheng, "A Move for Laborers," *Newsday*, Apr. 25, 1997, p. A-43. At a news conference outside a Chinatown restaurant, elected State officials, including Sen. David Paterson (D-Manhattan), contended that immigrants are exploited by unscrupulous employers because, in part, the New York State Department of Labor fails to monitor aggressively restaurants and factories across the city. *Ibid.*; Wing Lam, executive director, Chinese Staff and Workers' Association, interview in New York City, Mar. 18, 1994 (hereafter cited as Lam Interview). As an example of lacking enforcement resources, although Chinatown is home to the largest concentration of garment factories, the INS' New York office has only one Chinese-speaking agent. Celia W. Dugger, "A Tattered Crackdown on Illegal Workers," *New York Times*, June 3, 1996, p. A-1. The Federal Department of Labor is similarly underresourced to deal with labor violations in Chinatown. As of 1995, USDOL deployed only 14 of its 900 investigators to New York City and none spoke Chinese. Lee, "Chinatown, Jing Fong, and Unfair Labor Practices," p. 156. Yet in response to an investigation-based compliance survey in New York City garment shops, the USDOL's Wage and Hour Division hired 16 additional investigators for the New York City metropolitan area—all with bilingual ability in Chinese or Spanish. USDOL, Office of Public Affairs, "U.S. Department of Labor Compliance Survey Finds More Than Half of New York City Garment Shops in Violation of Labor Laws."

<sup>49</sup> Wing Lam, executive director, Chinese Staff and Workers' Association, testimony, *New York Hearing*, vol. II, p. 523 (hereafter cited as Lam Testimony); Peter Kwong, director, Asian American Studies Program, interview in New York City, May 25, 1994 (hereafter cited as Kwong Interview). The impact of IRCA on working conditions in New York City is not limited to Chinatown, however. According to Muzaffar Chishti, director, Immigration Project, International Ladies Garment Workers' Union: "[T]he Immigration Reform and Control Act has had no effect in controlling the flow of illegal aliens into the United States. . . . [I]t has actually had the reverse impact on wages and working conditions, that ironically today, what the law has achieved is the exact opposite of what the framers of the law had in mind. . . . [W]hat employer sanctions have done is that in a very, very subtle way they have segregated the labor market. Before IRCA, a decent U.S. employer was free to hire either a documented or an undocumented worker, because there was fluidity in the labor market. Now, if you have a decent U.S. employer you can only hire authorized workers, and, therefore, the non-authorized workers now are completely diversive [sic] to and

secured collective bargaining or other work force agreements limiting the number of overtime hours worked and protecting wages, IRCA served as a way of releasing many employers out of those commitments, at least with respect to undocumented workers, by allowing them to threaten workers with deportation by turning them over to the Immigration and Naturalization Service.<sup>50</sup> The resulting desperate, undocumented labor force willing to work under extreme conditions has led to reduced wages, longer hours, and deteriorated working conditions for all workers.<sup>51</sup> Wing Lam, executive director of the Chinese Staff and Workers Association, a workers' advocacy organization for New York City's Chinese community, explained to Commission staff that the passage of IRCA set Chinatown workers back to conditions that existed before 1980, when workers at a Chinese restaurant were successful in resolving a dispute with a Chinatown restaurant and formed the first Chinatown restaurant workers union, the 318 Restaurant Workers Union.<sup>52</sup> In response to the worker exploitation that became rampant with the passage of IRCA, the unionized Chinese restaurant sought to revert to preunion working conditions where workers toiled for low wages, had no medical insurance, and were required to turn over a portion of their tips to management. Following 7 months of picketing and a management lockout, management agreed to rehire the workers and allow them to retain their benefits.<sup>53</sup>

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converge into the sweatshop sector, and, therefore, we have now created actually a dichotomy in the labor market, in which the authorized workers now work in the more stable, the more organized sectors of the economy, and the undocumented workers have converged into the sweatshop sector, and I think that is probably an unintended effect of the employer sanctions, but the results in the workplace are evident." Chishti Testimony, pp. 478-82.

<sup>50</sup> Lam Testimony, pp. 523-26; Lam Interview; Kwong Interview. "A major consequence of IRCA is that employees are better equipped to violate basic labor standards. Workers cannot organize because they fear employers will turn them over to the INS for deportation. Employers can use the threat of deportation to deter employees from complaining about working conditions." Lee, "Chinatown, Jing Fong," p. 156.

<sup>51</sup> Kwong Testimony, pp. 512-13; Lam Interview.

<sup>52</sup> Lam Interview.

<sup>53</sup> *Ibid.*; Bragg, "Seven-Month Lockout Ends." Recently, other Chinatown restaurants have also made news over charges of wage and hour violations by employees. See note 42 for discussion of these cases.

Rather than having the desired effect of deterring the employment of undocumented immigrants, the passage of IRCA actually forced management at the restaurant to revert to preunion conditions in order to compete with the other restaurants in Chinatown, which were not unionized and operating more inexpensively by violating labor laws.<sup>54</sup> Advocates suggest this example illustrates how IRCA may encourage previously law-abiding employers to seek out undocumented workers in order to compete with those employers who rely on undocumented labor.

### ***The Apparel Industry***

The apparel industry has long been a mainstay of New York City's manufacturing base. In the early years of the 20th century, the industry relied on immigrants from southern and western Europe. Today, immigrants from China and Latin America constitute the majority of New York City's garment industry work force.<sup>55</sup> The intense competition and low wages that characterize the industry have always made it susceptible to labor violations, and, therefore, to sweatshop conditions.<sup>56</sup> Large-scale attention to the existence of sweatshops was achieved for the first time with the tragedy of the Triangle Shirtwaist Factory fire in 1911. On March 25, 1911, the New York City factory was consumed by fire, killing 146 workers, most of them women and immigrants. Investigation of the fire revealed locked exits and blocked fire escapes that made evacuation impossible.<sup>57</sup>

Sweatshops continue to thrive nationally and in New York City. According to a GAO report, the number of garment sweatshop operations has grown nationally since 1989, although there is conflicting evidence whether the number has grown or remained constant in New York City's

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<sup>54</sup> Bragg, "Seven-Month Lockout Ends."

<sup>55</sup> Bogen, *Immigration in New York*, p. 83.

<sup>56</sup> GAO, *Garment Industry: Efforts to Address the Prevalence and Conditions of Sweatshops*, p. 3 ("Analysts have long identified the labor-intensive U.S. garment industry as one characterized by extreme price competition, low wages, an immigrant workforce, and a vulnerability to sweatshop working conditions").

<sup>57</sup> Robert Reich, U.S. Secretary of Labor, news conference transcript, Federal Document Clearing House (FDCH) Political Transcripts, Mar. 25, 1996, available in LEXIS, News Library, Poltran File.

garment industry.<sup>58</sup> In 1994 an estimated 2,000 of New York City's 6,000 garment shops were believed to be sweatshops.<sup>59</sup>

A 3-month investigation by *US News and World Report* revealed that half of all women's garments made in America are produced in whole or in part by factories that defy labor standards laws.<sup>60</sup> Labor officials in New York City and Los Angeles believe the large number and severity of minimum wage and overtime violations in garment manufacturing may be related to the larger population of undocumented immigrant workers employed by that industry.<sup>61</sup> In addition to labor law violations, the investigation found that State and Federal treasuries lose millions of dollars in tax revenue to garment contractors that pay no taxes. Of the estimated 50,000 sewing contractors in the country, at least one-third are operating with no licenses or permits and pay their workers in cash.<sup>62</sup>

In addition to economic factors that drive competitors to operate in violation of labor laws,

other factors play roles in the sweatshop phenomenon. A 1989 study by the GAO found that sweatshops thrive in New York City because of weaknesses in existing labor laws, lack of coordination among enforcement agencies, and inadequate resources to target violators.<sup>63</sup> Several officials interviewed by Commission staff called for tougher enforcement of labor laws and for repeal of the employer sanctions provision of IRCA as ways of eliminating sweatshops.<sup>64</sup> Ongoing reform of enforcement approaches and increased funding since the hearing have produced some of these suggested changes, yet New York City's apparel industry continues to lead the Nation in sweatshop abusers.

Since January 1996, when the U.S. Department of Labor began issuing quarterly reports on garment industry labor law violations, New York has topped the list of garment industry labor law violators in the first three out of five reports, and was second only to California in the other two reporting periods.<sup>65</sup> According to Louis

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<sup>58</sup> The chief of New York's Apparel Industry Task Force reported that, while sweatshops remain a widespread problem, the severity of the 1990-91 recession forced many of the shops into bankruptcy, significantly reducing the number of sweatshops operating in the city. Officials from USDOL's Wage and Hour Division in New York City believe the problem of sweatshops in New York City's garment industry remains the same as in 1989. GAO, *Garment Industry: Efforts to Address the Prevalence and Conditions of Sweatshops*, p. 5. Yet in an earlier report, GAO reported that sweatshops in the apparel industry were a serious problem that had not improved or had become worse during the 1980s. GAO, *'Sweatshops' in New York City: A Local Example of a Nationwide Problem* (GAO/HRD-89-101 BR, June 1989).

<sup>59</sup> GAO, *Garment Industry: Efforts to Address the Prevalence and Conditions of Sweatshops*, p. 5.

<sup>60</sup> Headden, "Made in the USA," p. 48.

<sup>61</sup> GAO, *Garment Industry: Efforts to Address the Prevalence and Conditions of Sweatshops*, p. 8.

<sup>62</sup> The report also found that many factories consistently violate safety and health regulations, such as blocked fire exits, rodent infestation, and unsanitary bathroom and lunch areas. Headden, "Made in the USA." Small garment industry firms often operate in violation of tax laws due to pressure from retailers and manufacturers to keep costs down. These enterprises' profit margins are so small that "their viability is impinged upon by taxes and other regulations. . . ." To earn a profit, contractors draw from the margin between the amount they receive for the contract, and the low amount they pay workers and underreport as business earnings. Alex Cohen, *Immigrant Entrepreneurship in New York City* (New York: New York City Economic Policy and Marketing Group, Dec. 14, 1993), p. 29.

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<sup>63</sup> GAO, *'Sweatshops' in New York City: A Local Example of a Nationwide Problem*, p. 3.

<sup>64</sup> Lam Interview (Exploitation of workers increased after passage of IRCA by increasing the demand for vulnerable, exploitable workers by unscrupulous employers); Velasquez Interview (Repeal of employer sanctions, stronger enforcement of labor standards laws, and more funding for the departments of labor are needed to eliminate the exploitation of immigrant labor); Louis Vanegas, Wage and Hour Division, U.S. Department of Labor, interview in New York, Feb. 2, 1994 (hereafter cited as Vanegas Interview) (strengthening the "hot goods" provision, creating labor courts to hasten adjudication of labor violation claims, repealing employer sanctions, and adding Federal penalties for violators are needed to address worker exploitation in the apparel industry).

<sup>65</sup> The first report, covering the first half of the 1996 fiscal year, found that New York led the Nation in both rate of violations and in back wages collected. Back wages due by New York firms totaled \$593,327. California firms owed \$447,532 in back wages. USDOL, "Labor Secretary Releases Nationwide Garment Report Revealing Sweatshops Persist in US Apparel Industry," FDCH Federal Department and Agency Documents, May 3, 1996, available in LEXIS, News Library, Feddoc File. The June 1996 report revealed New York as the worst offender, with \$310,347 in back wages recovered, followed by California, with \$67,771 in back wages recovered. USDOL, "Too Many Garment Assembly Firms Break Labor Laws According to New Report Released by Labor Secretary," FDCH Federal Department and Agency Documents, Aug. 23, 1996, available in LEXIS, News Library, Feddoc File. The Sept. 30, 1996, report revealed California as the worst offender for the period, followed by New York. During that period, \$353,686 in back wages were recovered from California apparel companies, while \$342,382 was recovered as wages from New York

Vanegas, apparel industry specialist for the Wage and Hour Division of the U.S. Department of Labor and other Wage and Hour Division sources, more than half of New York City's garment contractors operate in violation of one or more labor laws.<sup>66</sup>

### Government Responses to Sweatshop Problem *INS and Employer Sanctions*

The Immigration and Naturalization Service (INS) is the agency charged with enforcing the employer sanctions provision of the Immigration Reform and Control Act of 1986 (IRCA).<sup>67</sup> The employer sanctions provision, an amendment to the Immigration and Nationality Act, prohibits any person or entity from hiring, recruiting, or referring for employment or continuing to employ any alien known to be unauthorized to work in the United States.<sup>68</sup> Violators are subject to a series of civil fines or, in cases of pattern or prac-

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companies. Greg Johnson, "California Leads Labor Offense List: \$353,686 in Back Wages Recovered Last Quarter from State's Garment Industry," *Los Angeles Times*, Nov. 23, 1996, p. 2-D. The December 1996 report revealed California as the worst offender, with \$479,247 due in back wages, followed by New York, with \$171,160 due in back wages. Carl Fillichio, "Labor Department Releases Garment Enforcement Report," *U.S. Newswire*, Mar. 4, 1997, available in LEXIS, News Library, Usnwr File. The March 1997 report revealed New York as the worst offender, with \$336,602 in back wages recovered, with California coming in second, with \$117,069 in recovered back wages. USDOL, Wage and Hour Division, Garment Enforcement Report, January 1997-March 1997 <<http://www.dol.gov/dol/esa/public/noseat/nosweat.htm>>. The Garment Enforcement Reports were initiated by the Labor Department at the request of retailers, who needed additional information about manufacturers and contractors violating labor laws. USDOL, "Too Many Garment Assembly Firms Break Labor Laws," FDCH Federal Department and Agency Documents, Aug. 23, 1996, available in LEXIS, News Library, Feddoc File.

<sup>66</sup> Zachary Margulis, "Sweatshops Hit for Back Wages," *Daily News*, May 4, 1996, p. 7; USDOL, Office of Public Affairs, "U.S. Department of Labor Compliance Survey Finds More Than Half of New York City Garment Shops in Violation of Labor Laws."

<sup>67</sup> Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended at 8 U.S.C. § 1324a *et seq.* (1994)). In addition to imposing sanctions on employers of undocumented aliens, IRCA also prohibits employment discrimination against persons who are or appear to be foreign born. The antidiscrimination component of IRCA is enforced by the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

<sup>68</sup> Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended at 8 U.S.C. § 1324a *et seq.* (1994)).

tice violations, criminal penalties.<sup>69</sup> Prior to passage of IRCA, there was no bar against the em-

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<sup>69</sup> IRCA imposes civil penalties for violations of the employer sanctions and the document fraud provisions. There are four types of conduct that violate the employer sanctions component: (1) knowingly hiring, recruiting or referring for a fee, unauthorized aliens; (2) knowingly continuing to employ unauthorized aliens; (3) failing to comply with the employment verification requirements for all individuals for employment; and (4) requiring any individual who is hired, recruited or referred for employment to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability or fine.

The document fraud provision of 8 U.S.C. § 1324c prohibits the following activities: "It is unlawful for any person or entity knowingly: (1) to forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this Act (INA), or to obtain a benefit under this Act; (2) to use, attempt to use possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act or to obtain a benefit under this Act; (3) to use or attempt to use or to provide or attempt to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this Act or obtaining a benefit under this Act; (4) to accept or receive or to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of complying with section 274A[1324c] or obtaining a benefit under this Act; or (5) to prepare, file, or assist another in preparing or filing, any application for benefits under this Act, or any document required under this Act, or any document submitted in connection with such application or document, with knowledge or in reckless disregard of the fact that such application or document was falsely made or, in whole or in part, does not relate to the person on whose benefit it was or is being submitted, or (6) to present before boarding a common carrier for the purpose of coming to the United States a document which relates to the alien's eligibility to enter the United States, and to fail to present that document to an immigration officer upon arrival at a United States port of entry." INS Frequently Asked Questions, INS Web site <<http://www.ins.usdoj.gov/>>. See also 8 U.S.C. §§ 1324a, 1324c (1994).

In addition to the provision on employer sanctions, the act also prohibits discrimination against citizens and authorized aliens in hiring. IRCA also gave temporary resident status to aliens who had lived illegally in the United States since before 1982. These aliens could later adjust to permanent resident status under a legalization program created under the act. IRCA also created the Special Agricultural Worker Program, which granted temporary, and later permanent, status to former illegal aliens who worked at least 90 days in seasonal agriculture during the year ending May 1, 1986. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended at 8 U.S.C. § 1324a *et seq.* (1994)). U.S. Department of Justice, Immigration and Naturalization Service, *An Immigrant Nation: United States Regulation of Immigration, 1798-1991* (June 1991), p. 25.

ployment of undocumented immigrants. IRCA was enacted to address that deficiency.<sup>70</sup>

Before the passage of IRCA, Congress heard testimony from groups who were concerned that the threat of sanctions could result in extensive employment discrimination against minorities, especially Asian American and Pacific Islanders and Hispanics, whom employers might be reluctant to hire for fear of violating the law.<sup>71</sup> In response to these concerns, Congress added an antidiscrimination component to the act. The antidiscrimination section protects employees who

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<sup>70</sup> The legislative history of the statute reflects the belief that IRCA would deter employers from relying on undocumented immigrants as cheap sources of labor and, in that manner, diminish the economic magnet of jobs as an inducement for immigrants to enter or remain in the U.S. illegally. A House Judiciary Committee report accompanying IRCA explained: "Employment is the magnet that attracts aliens here illegally or, in the case of nonimmigrants, leads them to accept employment in violation of their status. Employers will be deterred by the penalties in this legislation from hiring unauthorized aliens and this, in turn, will deter aliens from entering illegally or violating their status in search of employment." H.R. Rep. No. 99-682, pt. 1, at 46 (1986), reprinted in 1986 U.S.C.C.A.N. 5649, 5650. Drafters of IRCA also expected the law would help preserve jobs and wages for authorized workers. *Id.* at 47, 52, 58.

<sup>71</sup> See H.R. Conf. Rep. No. 99-682, pt. 1, at 70 (1986), reprinted in 1986 U.S.C.C.A.N. 5649, 5672. In various reports, the Commission also predicted discrimination based on national origin for job applicants who appeared foreign. See U.S. Commission on Civil Rights, *The Tarnished Golden Door* (September 1980), pp. 64, 74 (hereafter cited as USCCR, *The Tarnished Golden Door*);

U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974*, vol. VII, *To Preserve, Protect and Defend the Constitution* (June 1977), pp. 41–42. In its report, *The Tarnished Golden Door*, the Commission found: "[I]ncreased employment discrimination against United States citizens and legal residents who are racially and culturally identifiable with major immigrant groups could be the unintended result of an employer sanctions law. If sanctions against the employment of undocumented workers are enacted, unintentional employment discrimination against current or prospective employees by employers, even when they act in good faith, may not be preventable. Bona fide job applicants who are "foreign looking" or "foreign speaking" may be denied employment because employers are unable to make determinations of lawful immigration status." *The Tarnished Golden Door*, Finding 5.4, p. 74. The Commission warned that creating remedies for anticipated discrimination cannot restore applicants to the status quo: "If employer sanctions legislation will result in increased employment discrimination . . . , any remedy provided for the redress of violations does not erase the primary offense. No after-the-fact remedy is ever adequate to compensate for discrimination that prevents some American citizens or legal resident aliens from the full enjoyment of and participation in our democratic society." *The Tarnished Golden Door*, p. 64.

may face discrimination on the basis of national origin, citizenship status, or the documents they choose to present when establishing their employment eligibility.<sup>72</sup>

IRCA also requires employers to comply with employment eligibility verification requirements.<sup>73</sup> Employers must verify that each person hired is authorized to work in the United States. To satisfy the verification requirement, the law requires each employer to complete an Employment Eligibility Verification Form, called the form I-9, for every new employee hired after November 6, 1986, at the time of hire.<sup>74</sup> For the employer to complete the form I-9, the employee must present document(s) that establish both identity and authorization to work in the United States.<sup>75</sup> A list of acceptable documents for this purpose is set forth in § 1324a and implementing regulations.

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), passed in 1996, creates additional penalties and imposes requirements beyond those found in IRCA. Some of the mandates of IIRIRA are designed to address the issue of undocumented aliens and employment. Among other provisions, the law creates new penalties against immigrant smuggling, establishes a worker verification pilot program, and amends IRCA requirements.<sup>76</sup>

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<sup>72</sup> 8 U.S.C. § 1324b (1994). Allegations of employment discrimination based upon national origin, citizenship status, or refusal to accept certain documents are investigated and prosecuted by the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices. 8 U.S.C. § 1324b(c).

<sup>73</sup> 8 U.S.C. §§ 1324a(a)(1)(B), 1324a(b) (1994).

<sup>74</sup> 8 U.S.C. § 1324a(b) (1994).

<sup>75</sup> Prior to passage of Illegal Immigration Reform and Immigrant Responsibility Act, an employee could produce 1 of a combination of 29 different documents to establish identity and work authorization. The new law reduces the number of documents that can be presented. Pub. L. No. 104-208, § 412(a), 110 Stat. 3009 (codified as amended at 8 U.S.C. § 1324a(b)(1) (1994)). Yet it also authorizes the Attorney General to designate other documents to prove identity and/or work authorization, and the INS issued an interim rule in September 1997 restoring most of the documents deleted by the statute, in order to give the public an additional 6 months to understand the new law. Congress followed with a 6-month reprieve to allow the INS more time to implement the verification changes mandated by IIRIRA. Pub. L. No. 105-543, § 3. See also Stanley Mailman and Stephen Yale-Loehr, "The Complexity of Verifying Work Authorization," *New York Law Journal*, Oct. 27, 1997, p. 3.

<sup>76</sup> IIRIRA treats the smuggled entry of every alien as a separate offense for the smuggler. Before the law, the offense

The Immigration and Nationality Act was also amended by the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) to include new nonimmigrant visa classifications.<sup>77</sup> Among the visa classifications created by the VCCLEA was the S visa classification. A nonimmigrant who possesses critical and reliable information concerning a criminal organization or enterprise and who is willing to provide that information to Federal or State authorities may be eligible for one of the 250 visas granted annually under this classification.<sup>78</sup> These visas have been considered in cases involving large, egregious violations of labor and immigration laws, such as those revealed in the Mexican trinket vendor case and the El Monte case involving Thai workers.<sup>79</sup>

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was linked to the entire smuggling transaction, rather than to each person smuggled. Under the new law, any employer hiring 10 or more aliens who the employer knows are not authorized to be in the U.S. and who were brought into the U.S. illegally is also guilty. IIRIRA also increases penalties for the fraudulent use or alteration of documents establishing work authorization. It increases the maximum prison term for this offense and increases penalties for violations involving involuntary servitude, peonage, and slave trade from a maximum of 5 years, to 10 years. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 203, 211, 110 Stat. 3009 (1996).

The new law also creates three employment eligibility voluntary pilot programs. Employers have the option of participating in the program being tested by the State in which they conduct business. By participating in the program, the employer establishes a rebuttable presumption that it has complied with employment verification procedures. Employers who can show a good faith attempt to comply with the verification requirement are exempted from liability, as long as they cure the violations within 10 days of the date it is discovered. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 411, 110 Stat. 3009 (1996).

<sup>77</sup> Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322, § 130003 (codified as amended at 8 U.S.C. § 1101(a)(15) (1994) (amending the INA by adding § 101(a)(15)).

<sup>78</sup> Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as amended, 61 Fed. Reg. 1837 (Jan. 24, 1996) (to be codified at 22 C.F.R. pt. 41).

<sup>79</sup> Moore and Kasindorf, "Enslavement in America"; Margaret Ramirez, "Video Tie to Mexico Eases Anxiety, For Deaf, Joyful Visit," *Newsday*, Aug. 16, 1997, p. A-7. In the El Monte case, authorities uncovered 72 Thai women confined to an El Monte sweatshop for 6 years, working 17-hour days under threats from the operators. The women had been smuggled from Thailand under a promise of good earnings in the U.S., but were instead kept in the compound, guarded by razor wire, fencing, and barricades to work off their debts to their smugglers. In the case of the Mexican trinket vendors, police discovered 55 deaf immigrants who had been

The employer sanctions provision has been widely criticized for having the opposite effect of inducing unscrupulous employers, especially those in small manufacturing and restaurant industries—industries typically characterized by tight competition and slim profit margins—to seek out undocumented immigrants as cheap, vulnerable sources of labor.<sup>80</sup> According to advocates and scholars, these employers know that undocumented immigrants desperate for work will accept any wage and work under the most deplorable conditions, without recourse. The law has thus sparked a large market for production of falsified work authorization documents.

Yet even for those brazen employers who do not require prospective employees to produce work authorization documents, the prospect of being fined for violations is little incentive to comply with the law. INS officials explained to Commission staff and testified at the hearing that limited resources devoted to the enforcement of employer sanctions has meant that, even when INS finds sufficient evidence of violations and imposes fines, they simply do not have the resources to enforce these penalties in court.<sup>81</sup> Consequently, most penalties are nego-

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smuggled from Mexico and forced with threats and violence to sell trinkets on subways and streets. The immigrants were housed in a hotel in the custody of INS but were later released. Authorities have granted S visas to some of the immigrants, in exchange for their assistance in providing evidence to convict the smugglers. Applications for S visas are pending in other cases.

<sup>80</sup> Chishti Testimony, pp. 478–82; Kwong Testimony, pp. 512–13; Foo, *The Vulnerable and Exploitable Immigrant Workforce*, pp. 2179, 2182–83.

<sup>81</sup> John Shaw, assistant commissioner for investigations, U.S. Immigration and Naturalization Service, interview in Washington, DC, June 24, 1994. Mr. Shaw told Commission staff that the greatest obstacle to full implementation of IRCA is the lack of automated support for the Investigations Division and the lack of human resources to conduct investigations. At the time of the interview, there existed a backlog of 23,000 uninvestigated leads of potential employer sanctions violations nationwide, because INS had the means to investigate only approximately 3,500 of those annually. Thus, few followup investigations were conducted, and "the INS is frequently forced to settle penalties for less than the assessed amount rather than take the case to trial." *Ibid.*

In New York resources are equally limited. Misters McElroy and Malaric explained that the Investigations Branch of INS' New York District Office has 17 agents to investigate all IRCA violations. As a result, the office is able to investigate only 60 of the approximately 1,200 complaints it receives every year. Of the 60, approximately 40 are resolved annually. Of the \$11,840,000 assessed fines since enactment of IRCA, the district office has recovered \$3,800. Edward

tiated down significantly. Employers are aware of these limitations and thus hold an advantage in the negotiations process. Awareness of these budgetary constraints also emboldens employers to violate the law, because they know that the odds of being caught are slight and that any penalty is simply a cost of doing business.<sup>82</sup> For many smaller employers, the response to imposition of penalties is to declare bankruptcy—frequently without paying their employees—and to set up shop as a different corporation.

Beginning October 1995, the New York District INS Office initiated a pilot interagency coordination program with the U.S. Department of Labor (USDOL) to target its enforcement resources on the garment industry.<sup>83</sup> For the pilot program, INS increased the number of agents in New York from 17 to 45, and the headquarters office intends to more than double the number of agents nationally, to 700.<sup>84</sup> According to Doris Meissner, Commissioner, Immigration and Naturalization Service, the FY 96 budget, with its \$63.5 million worksite enforcement initiative, “represents for the first time since the sanctions law passed in 1986 that the INS has received the resources [needed] to enforce employer sanctions vigorously. The new investigations personnel . . .

represent more than a doubling of staff devoted to employer enforcement.”<sup>85</sup>

The INS also initiated its “Anti-Exploitation Task Force” in response to the discovery of smuggled deaf immigrants being forced to work under conditions of indentured servitude as trinket vendors on subway systems in New York City and Chicago.<sup>86</sup> The INS intends to use the task force to consolidate efforts to identify and apprehend those who smuggle or abuse immigrants. As of the date of this report, the program was in its formative stages.<sup>87</sup>

### ***U.S. Department of Labor and Federal Labor Laws***

The USDOL’s Wage and Hour Division (part of the Employment Standards Administration) is responsible for enforcing more than 100 labor standards statutes nationally. The majority of the complaints it receives involve fair labor standards, such as wage and hour and child labor violations. The Division processes more than 70,000 compliance actions per year and recoups millions of dollars of unpaid wages for employees.<sup>88</sup> Typically, employers are cooperative and complaints are settled by negotiation. Few cases result in litigation.

Labor law violations and violations of employer sanctions are governed by several Federal and State statutes, including the Fair Labor Standards Act and Occupational Safety and Health Act at the Federal level, and by the Labor Law Code in New York. The Fair Labor

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McElroy, acting district director, and Dan Molerio, assistant district director for investigations, U.S. Immigration and Naturalization Service, New York Region, telephone interview, June 20, 1994 (hereafter cited as McElroy and Malario Interview). See also Edward McElroy, district director, New York District Office, Immigration and Naturalization Service, testimony, *New York Hcaring*, vol. II, pp. 567–69 (hereafter cited as McElroy Testimony).

<sup>82</sup> McElroy and Malario Interview. Mistery McElroy and Malario explained that no case against an employer has gone to hearing since IRCA has been in effect because the INS does not have adequate funding to prosecute a case. As a result, the INS is forced to settle contested disputes because there are no resources to conduct discovery and try the case. According to Mr. Malario, employers know that your “chances of getting struck by lightning are better than your chances of the INS coming after you.” McElroy and Malario Interview.

<sup>83</sup> “Budget Briefing Remarks with Doris Meissner,” INS Press Releases, INS <<http://www.ins.usdoj.gov/>>. The new enforcement approach will target the worst violators of immigration and employment laws and coordinate investigations with the Department of Labor, increase work site operations to remove unauthorized workers and make jobs available for authorized workers, and test and expand pilot programs to assist employers in complying with the law. *Summary of Priorities for Fiscal Year 96*, INS <<http://www.ins.usdoj.gov/>>.

<sup>84</sup> Dugger, “A Tattered Crackdown.”

<sup>85</sup> “Budget Briefing Remarks with Doris Meissner,” INS Press Releases <<http://www.ins.usdoj.gov/>>. See also “INS Targets Worksites Across Eastern United States,” INS Press Releases <<http://www.ins.usdoj.gov/>>.

<sup>86</sup> Immigration and Naturalization Service’s Doris Meissner News Conference on Immigrant Smuggling in New York City, *Federal News Service*, July 21, 1997, available in LEXIS, News Library, Fednew File.

<sup>87</sup> Announcement by Immigration and Naturalization Service deputy commissioner Chris Sale on Deaf-Mute Mexican Immigrants Removed from Residences in Sanford, North Carolina, *Federal News Service*, July 25, 1997, available in LEXIS, News Library, Fednew File; William Branigan and Blaine Harden, “Deaf Aliens In INS Care: Task Force To Probe Abuse of Immigrants,” *Washington Post*, July 25, 1997, p. A-3.

<sup>88</sup> The Division has two general areas of responsibility: (1) receiving and responding to complaints and (2) directing investigations in areas of likely violation. In receiving and responding to complaints, the Division’s first course of action is determining whether it has jurisdiction. The second step involves investigating the employment situation. The final step is enforcement.



Standards Act (FLSA)<sup>89</sup> protects all covered employees (which the U.S. Supreme Court has interpreted to include undocumented workers) and employers from the economic consequences of subminimum wages and other substandard working conditions.<sup>90</sup> The Occupational Safety and Health Act assures safe working conditions and the protection of workers' health.<sup>91</sup>

The FLSA authorizes USDOL's Wage and Hour Division to seize goods produced by labor contractors in violation of minimum wage requirements, overtime, or child-labor laws. Goods produced in violation of this law may not be shipped across State lines. This provision, more commonly known as the "hot goods" law, bars companies from selling, transporting, delivering, or shipping goods that they know were produced by contractors committing wage and hour violations.<sup>92</sup> Producers who operate in violation of the law may be fined up to \$10,000 and/or imprisoned for not more than 6 months. They are also liable to their employees for all unpaid wages or overtime.<sup>93</sup> The law authorizes district courts to enjoin violations of the provision.<sup>94</sup> Exempt from

the law are purchasers who in good faith and without knowledge of a violation, acquire goods for transport, shipment, delivery, or sale.<sup>95</sup>

In response to criticisms that the USDOL has not done enough to target violations in the apparel industry, the Department's Wage and Hour Division initiated reforms starting in 1993 to strengthen enforcement of labor laws and to target sweatshops.<sup>96</sup> The Wage and Hour Division adopted an antisweatshop program after an examination of wage and hour data showed that the most often mistreated workers tended to be in low-wage industries. As a result of the study, the Division has targeted the garment industry through a strategy that encourages manufacturers and retailers to assist enforcement efforts.<sup>97</sup> The "Eradicating Sweatshops" program seeks to eliminate worker abuse in the U.S. garment industry by conducting enforcement sweeps in garment centers, showcasing retailers and manufacturers that have assumed responsibility over monitoring practices through the Division's Trendsetter List, and disseminating public service announcements designed to create public awareness of worker abuse.<sup>98</sup> Since the start of the program, the Division has collected \$7.3 million in back wages for more than 25,000 workers.<sup>99</sup>

Some critics argue that although the antisweatshop program has helped draw attention to illegal contracting, the underground apparel industry will continue to thrive without more consistent enforcement of wage and hour laws.

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<sup>89</sup> 29 U.S.C. §§ 201–219 (1994).

<sup>90</sup> Undocumented immigrant workers are "covered employees" under these provisions. See, e.g., *Sure-Tan, Inc. v. N.L.R.B.*, 467 U.S. 883 (1984). Millions of undocumented aliens currently hold full-time jobs in the United States. See Neil Friedman, "A Human Rights Approach to the Labor Rights of Undocumented Workers," *California Law Review*, vol. 74 (1986), p. 1715; GAO, *Illegal Aliens: Despite Data Limitations, Current Methods Provide Better Population Estimates* (August 1993).

<sup>91</sup> 29 U.S.C. §§ 651–678 (1994).

<sup>92</sup> 29 U.S.C. § 215 (1994); see also "Echaveste Says 'Hot Goods' Clause of FLSA Will Be Invoked More Frequently," *BNA Daily Labor Report*, Mar. 14, 1994.

<sup>93</sup> Specifically, the law provides: (a) . . . it shall be unlawful for any person—(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 206 or 207 of this title [the minimum wage provisions]. 29 U.S.C. § 215 (1994). . . . (a) Any person who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment for not more than six months, or both. . . . Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. . . . 29 U.S.C. § 216 (1994).

<sup>94</sup> 29 U.S.C. § 217 (1994).

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<sup>95</sup> 29 U.S.C. § 215 (1994) requires the purchaser to have had no notice of any such violation and to have acquired the goods in good faith reliance upon a written assurance from the producer that the goods were produced in compliance with the law.

<sup>96</sup> Donna Mungen, "Maria Echaveste; Help for the Hourly Worker—From Someone Who's Been There," *Los Angeles Times*, Mar. 3, 1996, p. 3.

<sup>97</sup> USDOL, "Labor Secretary Releases Nationwide Garment Report Revealing Sweatshops Persist in U.S. Apparel Industry," Federal Department and Agency Documents, May 3, 1996, available in LEXIS, News Library, Feddoc File.

<sup>98</sup> USDOL, Wage and Hour Division, *Garment Enforcement Report, January 1997–March 1997* <<http://www.dol.gov/dol/esa/public/nosweat/nosweat.htm>>; Frank Swoboda, "Anti-Sweatshop Program Tailored for the Times," *Washington Post*, May 30, 1996, p. A–29.

<sup>99</sup> Swoboda, "Anti-Sweatshop Program Tailored for the Times"; Robert Reich, U.S. Secretary of Labor, news conference transcript, FDCH Political Transcripts, Mar. 25, 1996, available in LEXIS, News Library, Poltran File.

As one apparel contractor explained, "There are some companies that have really cleaned up their sourcing systems, but there are many others who only slow down while the highway patrol officer is directly next to them."<sup>100</sup> Despite efforts of the departments of labor, these agencies have been criticized for failing to do enough to address problems facing employees in low-skill industries. Frank Velasquez, then policy director for the Center for Immigration Reform, asserts that there has been a significant weakening of the enforcement of labor standards and health and safety regulations, and that enforcement efforts rarely reach into the economies of immigrant communities.<sup>101</sup>

A recent survey by USDOL's Wage and Hour Division confirms the critics' concerns. In its first investigation-based compliance survey of garment shops in New York City, Wage and Hour Division investigators found that an alarming 63 percent of the 94 garment contractors investigated were in violation of the minimum wage and overtime provisions of the FLSA. According to Labor Secretary Alexis Herman, "Obviously these results are unacceptable. They show that neither the Department nor the garment industry can become any less diligent. In fact, we must redouble our efforts to seek solutions to the serious problem in New York City."<sup>102</sup>

In response to the survey, the Division instituted a new strategy for targeting manufacturers with a history of contracting with garment sweatshops. The new strategy includes targeting contractors who are repeat violators of labor laws; working with manufacturers to monitor contractors who are repeat violators; more vigorously enforcing the hot goods law; and increasing coordination with other Federal, State, and

local agencies to increase overall enforcement effectiveness.<sup>103</sup>

Several bills designed to target labor violations in the apparel industry have also been introduced in the U.S. Congress and Senate. The bicameral Stop Sweatshops Act of 1997<sup>104</sup> would amend the Fair Labor Standards Act of 1938 to make manufacturers liable to the same extent as contractors for any labor violations of their contractors. Manufacturers would be jointly and severally liable to the employees of contractors found to be in violation of minimum wage laws. The bills would also impose monetary penalties on contractors who failed to keep payroll records or who otherwise falsified such records.

The Child Labor Free Consumer Information Act of 1997<sup>105</sup> would establish a voluntary program for product labels indicating the products were made without the use of child labor. It would also establish a commission of government, business, union, and nonprofit members to create guidelines for use of the label and would levy penalties against fraudulent use.

#### ***New York State Department of Labor***

The New York State Department of Labor has also implemented programs to target labor law violations in New York's garment industry. The Division of Labor Standards administers the State Labor Law concerning minimum wages, work hours, child labor, payment of wages and wage supplements, industrial homework, migrant farm labor, and conditions in the apparel industry.<sup>106</sup> The Apparel Industry Task Force operates within the Division. Created in 1987 by then Governor Mario Cuomo and the New York Legislature, the Apparel Industry Task Force is charged with the enforcement of labor laws in the garment industry through unannounced factory raids, referrals of violations to appropriate agencies, and registration requirements.<sup>107</sup>

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<sup>100</sup> Kathleen DesMarteau, "U.S. Apparel Contractors: Can They Beat the Odds?" *Bobbins*, February 1997, p. 32.

<sup>101</sup> According to Mr. Velasquez: "[E]nforcement of fair labor standards is extremely important, and I think many immigrants themselves make complaints because they believe the government is really not going to step in and do something and, in fact, when they do make complaints sometimes they're waiting years without getting a response. . . ." Franklin Velasquez, policy director, Center for Immigrants' Rights, testimony, *New York Hearing*, vol. II, p. 743 (hereafter cited as Velasquez Testimony). See also Velasquez Interview.

<sup>102</sup> USDOL, Office of Public Affairs, "U.S. Department of Labor Compliance Survey Finds More Than Half of New York City Garment Shops in Violation of Labor Laws."

<sup>103</sup> *Ibid.*

<sup>104</sup> H.R. 23, 105th Cong., 1st Sess. (1997) and S. 626, 105th Cong., 1st Sess. (1997).

<sup>105</sup> H.R. 1301, 105th Cong., 1st Sess. (1997) and S. 554, 105th Cong., 1st Sess. (1997). See also Joyce Barrett, "Sweatshop Bill Would Make Vendors, Retailers Liable for Contractor," *Women's Wear Daily*, Sept. 26, 1996.

<sup>106</sup> New York State, Department of Labor, Functions of the Division of Labor Standards information sheet, n.d., *New York Hearing*, subpoena duces tecum document, Exhibit 3.

<sup>107</sup> New York State Department of Labor, "A Department of Labor Fact Sheet: The Apparel Industry Task Force, F.Y.I."

In response to renewed commitments to target apparel industry labor violations, the State of New York enacted its own hot goods law in 1996. The law makes it unlawful for any manufacturer or contractor in the apparel industry to ship, deliver, or sell any apparel if the manufacturer or contractor knew or should have known the goods were made in violation of labor laws.<sup>108</sup> Like its Federal counterpart, the New York law exempts retailers who acquired the goods in good faith and without knowledge of violations and grants the New York Supreme Court authority to enjoin the transport, shipment, delivery, or sale of goods produced unlawfully.<sup>109</sup>

What is unique about New York and other State hot goods laws is that they target specifically the apparel industry. New York's law is part of its Apparel Industry Task Force code, which authorizes the task force to enforce labor laws affecting employees in the apparel industry.<sup>110</sup> Like New York, New Jersey's hot goods law targets the apparel industry, and authority over its enforcement is vested with its Apparel Industry Unit. New Jersey's hot goods law is tougher than New York's or the FLSA's hot goods laws, however. Amended and strengthened in 1996, the New Jersey law authorizes the Apparel Industry Unit to confiscate equipment and goods *without a court order* from manufacturers who have committed three labor law violations in 3 years. If the violator fails to appeal, the unit may dispose of the goods and equipment.<sup>111</sup>

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n.d., *New York Hearing*, subpoena duces tecum document, Exhibit 3. See also Charles DeSiervo, supervisory labor standards investigator, Garment Industry Task Force, Division of Labor Standards, New York State Department of Labor, testimony, *New York Hearing*, September 1994, vol. II, pp. 562-66.

<sup>108</sup> N.Y. Lab. Law § 345(10) (McKinney's Supp. 1997-98).

<sup>109</sup> *Id.* See also John Furfaro and Maury Josephson, "An Update on 'Hot Goods,'" *New York Law Journal*, Mar. 7, 1997.

<sup>110</sup> The Apparel Industry Task Force is charged with inspecting manufacturers and contractors for compliance with registration requirements, labor laws, and orders assessing civil penalties. N.Y. Lab. Law § 343 (McKinney's Supp. 1997-98).

<sup>111</sup> N.J. Stat. Ann. § 34: 6-151 (West 1998). The New York and Federal hot goods provisions only authorize the freezing of goods found to have been produced in violation of labor laws. California is the only other State with a similar law. Yet unlike New Jersey, California requires labor officials to obtain a court order before confiscating goods or equipment. See Furfaro and Josephson, "An Update on 'Hot Goods'";

In addition to the new hot goods law, the New York State Department of Labor (NYSDOL) is buttressing its enforcement efforts by seeking maximum cooperation among government agencies for better enforcement, and working with the private sector to increase awareness of labor laws.<sup>112</sup> According to Thomas Glubiak, chief, Apparel Industry Task Force, the objective of the task force is to establish compliance through education and to eliminate the unfair competition posed by New York City's estimated 2,500 sweatshops.<sup>113</sup>

### *Interagency Cooperation*

Studies of the USDOL's enforcement effort identify a need for greater interagency coordination among Federal and State agencies. In its report on sweatshops, the GAO found that while USDOL has made progress in combating the growth of sweatshops in the garment industry, better coordination of labor law enforcement continues to be hindered by administrative constraints on Federal agencies and the less vigorous enforcement efforts of the States.<sup>114</sup>

The USDOL has implemented coordination agreements with the New York Department of Labor and INS.<sup>115</sup> USDOL's New York Region

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Arthur Friedman, "New Sweatshop Law in NJ Touted as Toughest in US," *Women's Wear Daily*, Aug. 6, 1996.

<sup>112</sup> Mark Tosh, "New York State: Education Key to Anti-Sweatshop Drive," *Women's Wear Daily*, June 24, 1996, p. 2.

<sup>113</sup> *Ibid.*

<sup>114</sup> GAO, *Garment Industry: Efforts to Address the Prevalence and Conditions of Sweatshops*, pp. 10-13. Constraints on Federal agencies impede interagency cooperation of sweatshop enforcement. For example, USDOL efforts to coordinate with the Internal Revenue Service to expose and target businesses suspected of violating both labor and tax laws is impeded by tax laws that restrict IRS' ability to share tax data. Thus, according to the GAO, "IRS' partners tend to provide much more data than they receive." GAO, *Tax Administration: Data on the Tax Compliance of Sweatshops* (GAO/GGD-94-210FS, September 1994), app. III:5. See also GAO, *Garment Industry: Efforts to Address the Prevalence and Conditions of Sweatshops*, pp. 10-11. The Internal Revenue Code prohibits IRS from sharing tax data under IRC § 6103. USDOL officials report referring garment cases to the IRS and not being able to receive the results of IRS' investigation because of the disclosure law. GAO, *Garment Industry: Efforts to Address the Prevalence and Conditions of Sweatshops*, p. 11.

<sup>115</sup> Doris Wooten, regional administrator, Wage and Hour Division, USDOL, testimony, *New York Hearing*, vol. II, pp. 551-54 (hereafter cited as Wooten Testimony). See also Mungen, "Maria Eschaveste; Help for the Hourly Worker—From Someone Who's Been There," p. 3.

was the first to implement a memorandum of understanding (MOU) with a State department of labor.<sup>116</sup> The MOU establishes methods of exchanging information and coordinating enforcement in handling cases involving the apparel industry.<sup>117</sup> The Regional Office also works with INS in joint investigations and exchanges of information.<sup>118</sup> Charles DeSiervo, a supervisor in the NYSDOL's Garment Industry Task Force, testified that cooperation between the New York and Federal labor departments has increased significantly in the past several years. Nevertheless, instances of crossover still remain between the offices.<sup>119</sup>

The USDOL Regional Office also has an MOU with the INS' New York District Office. The New York District Office of the INS began a program in October 1995 to uncover undocumented workers in New York's garment district. In the first 6 months of the program, INS apprehended 790 garment workers at shops in Manhattan, Queens, and Brooklyn.<sup>120</sup> If a sweep finds suspected labor violations, they are referred to the Labor Department.<sup>121</sup>

According to Maria Eschaveste, former administrator of the USDOL's Wage and Hour Division, the USDOL is working with the INS to ensure that undocumented workers who testify against their employers are not deported. Through INS cooperation, Ms. Eschaveste explained, employers would be prevented "from using deportation as a way to close up shop when things go bad."<sup>122</sup> The new S visa category created by the VCCLEA may be a step in that

direction. As discussed earlier in this chapter, S nonimmigrant visas are awarded to those aliens who the INS determines possess critical and reliable information about a criminal organization or enterprise, who are willing to supply or who have supplied such information to Federal or State law enforcement authorities, and whose presence in the United States is essential to the success of an authorized investigation or prosecution. The availability of the S visa has been very useful in prosecuting various international criminal and terrorist organizations, and in helping law enforcement efforts involving narcotics, terrorists, fraud, immigration violations, and numerous other criminal activities.

There is a concern among immigrant advocates that coordination by Federal and State labor departments with the INS may create a conflict of interest for the labor agencies. The policy director at the Center for Immigrants' Rights, an immigrant advocacy organization, testified that the center sends undocumented immigrants to the NYSDOL, even though the USDOL would respond more quickly, due to concerns that USDOL may turn over the undocumented employee's name to the INS.<sup>123</sup> USDOL cooperation with INS deters immigrants from filing complaints against employers for labor violations, thus frustrating a central mission of the Department to target violators and enforce labor laws. Yet failure to cooperate with the INS by withholding the names of employers suspected of hiring undocumented immigrants could hinder enforcement of IRCA while simultaneously protecting unscrupulous employers from prosecution under the employer sanctions law and shielding undocumented immigrants.

Labor department officials in both the Federal and New York agencies have pondered this conflict and resolved that the potential existence of violations of immigration laws cannot override their own mandate of protecting workers against

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<sup>116</sup> Wooten Testimony, pp. 550-51.

<sup>117</sup> Memorandum of Understanding Between the U.S. Department of Labor Employment and Standards Administration and Occupational Safety and Health Administration and the New York State Department of Labor Division of Labor Standards, *New York Hearing*, subpoena duces tecum document, Exhibit 3; Wooten Testimony, pp. 551-52.

<sup>118</sup> Wooten Testimony, p. 553.

<sup>119</sup> DeSiervo Testimony, pp. 560-61.

<sup>120</sup> Arthur Friedman, "INS Raids New 231 Workers from 14 NY Garment Shops," *Women's Wear Daily*, Apr. 3, 1996, p. 18.

<sup>121</sup> McElroy Testimony, p. 568. According to Mr. McElroy, the INS District Office referred 80 violations to USDOL during 1993-94, and 12 percent of its leads came from USDOL. *Ibid.* See also Friedman, "INS Raids New 231 Workers from 14 NY Garment Shops," p. 18.

<sup>122</sup> "Eschaveste Says 'Hot Goods' Clause of FLSA Will Be Invoked More Frequently," *BNA Daily Labor Report*, Mar. 14, 1994.

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<sup>123</sup> According to Mr. Velasquez: "Currently. . . we're very cautious in terms of who we send . . . to what agency. . . . For instance, if a person comes to us and they are undocumented, we will send them to the State Department of Labor. Now, we know that the United States Department of Labor is faster. We send people there who are permanent residents, but we are seriously concerned about issues of confidentiality. If we send an undocumented to the U.S. Department of Labor . . . , will they in turn contact the INS, and I think that has to be very clear for people that that will not happen." Velasquez Testimony, p. 745.

labor violations. In an interview by National Public Radio published in the *Los Angeles Times*, a former administrator of the USDOL's Wage and Hour Division explained:

We're a nation of laws and we have a right to control our borders. But let's make it very clear, I don't work for the Immigration and Naturalization Service. . . . People come to this country because opportunities are here; but the fact that they break the immigration law does not justify employers exploiting these workers. Whether you are here legally or illegally, you are entitled to protection—because, otherwise, employers would always want undocumented workers. My job is to enforce labor standards, regardless of status.<sup>124</sup>

The New York State Department of Labor operates under a similar policy. In a memorandum from Tom Glubiak, chief labor and standards investigator, New York State Department of Labor, to Richard Polsinello, director, New York State Department of Labor on the labor division's policy on immigrant labor, Mr. Glubiak states:

1. Recognizing the apparel industry as an industry of immigrants we do not ask any employee's or employer's immigration status during our investigations. . . .
4. We do not share information with the INS in regard to the presence of illegal aliens at particular firms or if an individual's alien status becomes known to us we do not reveal that information to the INS.
5. We encourage illegal [undocumented] aliens to come forward and complain to us about illegal treatment without fear that we will divulge their illegal [undocumented] status to the INS.<sup>125</sup>

According to Mr. Glubiak, "Our experience has indicated that by elimination of the fear factor we are in a better position to take action

against sweatshops who violate the Labor Law."<sup>126</sup>

The new immigration and welfare laws, by prohibiting governmental restrictions against cooperation between agencies and the INS,<sup>127</sup> may defeat this mechanism of encouraging all workers, regardless of documented status, to report labor law violations. Undocumented workers, knowing that coming forward to the departments of labor to report violations now means that their names may be turned over to INS, may remain silent about violations, thereby further insulating unscrupulous employers from detection.<sup>128</sup> This point is discussed further in the section about New York City's cooperation policies below.

Legislation introduced in the 105th Congress would require joint efforts by the USDOL and the INS to investigate and enforce violations of labor laws and the employer sanctions provision of IRCA. Under the "Eliminate the Magnet for Illegal Immigration Act of 1997," the investigative staffs of both the INS and USDOL's Employment Standards Administration would be increased to ensure heightened enforcement of labor standards and employer sanctions laws and mandatory joint investigations in target areas suspected of employing high concentrations of undocumented workers.<sup>129</sup> Two other pending bills would repeal the prohibitions in the immigration and welfare laws against government restrictions on communications between State and local agencies and the INS regarding an alien's immigration status, arguably preserving confidentiality against INS disclosure of potential undocumented aliens in both the NYSDOL and New York City services.<sup>130</sup>

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<sup>126</sup> *Ibid.*

<sup>127</sup> Restrictions addressing cooperation among local, State, and Federal agencies and the INS are discussed in greater detail in the "Executive Order 124 and the Immigration and Welfare Reform" section of this chapter.

<sup>128</sup> For additional discussion of noncooperation restrictions, see the section titled "Executive Order 124 and the Immigration and Welfare Reform" in this chapter.

<sup>129</sup> H.R. 470, 105th Cong., 1st Sess. (1997).

<sup>130</sup> See H.R. 850 and S. 145, 105th Cong., 1st Sess. (1997). For a detailed discussion of New York City's policy on communicating information about suspected undocumented aliens, see the section titled "Executive Order 124 and the Immigration and Welfare Reform" in this chapter.

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<sup>124</sup> Mungen, "Maria Eschaveste; Help for the Hourly Worker—From Someone Who's Been There," p. 3.

<sup>125</sup> Tom Glubiak, chief, L.S.I., interoffice memorandum to Richard J. Polsinello, director, New York State Department of Labor, May 31, 1995, *New York Hearing*, subpoena duces tecum document, Exhibit 3 (hereafter cited as Glubiak Memo). The remainder of the memo includes the following two points: "(2) We require all employers to comply with the New York State Labor Law for all employees regardless of their immigration status. (3) We require all employers to document the hours worked and wages paid for all employees regardless of immigration status. All employees must work on the books." *Ibid.*

## Section II. Executive Order 124 and Immigration and Welfare Reform

In 1989 then New York City Mayor Edward Koch signed Executive Order 124, establishing a city policy to protect the confidentiality of aliens seeking city services. The order, adopted by both the Dinkins and Giuliani administrations, prohibits city employees and officers from releasing the names of undocumented aliens who seek city services, such as emergency medical assistance, public education, or police protection, to Federal immigration authorities.<sup>131</sup> Known informally as the "Non-Cooperation Policy," the order authorizes city employees to disclose the names of undocumented aliens only under three circumstances: (1) where the city agency is required by law to make such disclosure, (2) where the alien has authorized such disclosure in writing, or (3) where the alien is suspected of engaging in criminal activity.<sup>132</sup>

Any city employee who suspects an alien of criminal activity is required to turn that information over to a designated officer within the agency, who alone is responsible for determining what action should be taken. City employees are prohibited from reporting the alien to Federal authorities directly.<sup>133</sup>

The order was enacted to ensure that city services were available to all city residents, regardless of citizenship or immigration status. Concerns that aliens residing in the city had not been seeking the protections and benefits of such services for fear of being revealed to immigration authorities spurred passage of the measure. Acknowledging the potential detrimental effect on the public welfare of an immigrant population fearful of requesting assistance from city law enforcement, education, and health care providers, the Koch administration codified the policy that city government had no obligation to report any alien to Federal authorities (with limited exceptions), because Federal law vested exclusive authority for immigration control with the Federal Government.<sup>134</sup>

Executive Order 124 has been subsequently endorsed by former Mayor Dinkins and Mayor

Giuliani. Yet the measure faces an uncertain future, due to welfare and immigration reform legislation passed in 1996. Both laws prohibit States and localities from withholding information about immigrants, documented or undocumented, from Federal immigration enforcement authorities. The welfare reform law, known as the Personal Responsibility and Work Opportunity Reconciliation Act, provides:

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of any alien in the United States.<sup>135</sup>

The immigration law, known as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), also prohibits States and localities from restricting or prohibiting any Federal, State, or local government from sending, receiving, maintaining, or exchanging information with the INS or any other Federal, State, or local government agency regarding any person's immigration status.<sup>136</sup> Section 642 of IIRIRA adds an additional component:

Notwithstanding any other provision of Federal, State or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting such information from, the Immigration and Naturalization Service;
- (2) Maintaining such information; or

<sup>135</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 434, 110 Stat. 2105 (codified at 8 U.S.C. § 1644 (1998)).

<sup>136</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009, § 642 (codified at 8 U.S.C. § 1373 (1998)). The corresponding language in the immigration law varies only slightly. It provides: "Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." Pub. L. No. 104-208, § 642(a), 110 Stat. 3009 (codified at 8 U.S.C. § 1373(a) (1998)).

<sup>131</sup> City of New York, Office of the Mayor, Executive Order No. 124, Aug. 7, 1989.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> See City of New York, Office of the Mayor, Statement of Basis and Purpose of Executive Order No. 124.

- (3) Exchanging such information with any other Federal, State, or local government entity.<sup>137</sup>

New York City opposes measures requiring disclosure of information about noncriminal, undocumented immigrants. According to Mayor Giuliani, turning over the names of undocumented immigrants who seek public education, preventive or emergency medical care, or police protection would not only further backlog already overwhelmed INS offices, but would also discourage undocumented immigrants from sending their children to school, obtaining immunizations or prenatal care, and reporting crimes to the police, with detrimental effects on immigrants, their children, and the population with whom they live.<sup>138</sup> Citing to the importance

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<sup>137</sup> Pub. L. No. 104-208, § 642(b), 110 Stat. 3009 (codified at 8 U.S.C. § 1373(b) (1998)). The Senate Judiciary Committee explained the rationale for sec. 642(b) in its report: "Effective immigration law enforcement requires a cooperative effort between all levels of government. The acquisition, maintenance, and exchange of immigration-related information by State and local agencies is consistent with, and potentially of considerable assistance to, the Federal regulation of immigration and the achieving of the purposes and objective of the Immigration and Nationality Act." S. Rep. No. 104-249, at 19-20 (1996).

<sup>138</sup> Giuliani Testimony, pp. 50-51. In a letter to Senator Alan Simpson, Mayor Giuliani stated: "[I]n the case of aliens who seek emergency health care, attend pre-natal or other public health clinic[s], enroll their children in our schools, or, as victims or witnesses, report crimes to the police, it is not in the interest of public health or safety that they be deterred due to fear of deportation. INS currently cannot handle the number of aliens apprehended for illegal entry, let alone the number of aliens apprehended for violating state and local laws. Rather than flood the INS with cases, . . . the Congress should adequately fund INS to process and deport those aliens who break our laws while visiting or residing in the United States. I believe that requiring local officials to notify INS when an alien is arrested by state or local authorities—and providing adequate support for INS—would be a major improvement over the current level of INS performance. . . . Concentrating on these alien criminal cases alone will keep INS busy, and probably require an increase in its annual budget. Further, it would focus INS on the more important issue of alien crime and its affect on public safety. This first step approach would remove those illegal aliens who cause the most harm while we, as a nation, work to resolve other immigration issues." New York Mayor Rudolph Giuliani, letter to Senator Alan Simpson, July 11, 1994. See also David Firestone, "Giuliani to Sue Over Provision on Welfare," *New York Times*, Sept. 12, 1996, p. B-1.

The recent case of the undocumented deaf aliens smuggled into New York City from Mexico to sell trinkets in the subways illustrates the potential consequences of an inhibited, undocumented immigrant population. Fearing police reprisal, the smuggled immigrants attempted to notify police

of an immigrant populace that does not fear reprisals in coming forward to report a crime, Mayor Giuliani testified at the hearing:

[T]he same person that rapes or mugs an undocumented illegal [alien] doesn't ask for someone's green card before they make the determination as to whether to rape or mug. That's the same predator that's going to act against a person who is here in a legal capacity. So it makes no sense not to say to people who are undocumented and illegal, if you are the victim of a crime, please report it, we need to know that.<sup>139</sup>

Los Angeles and Chicago, two cities with similar policies, voice the same concerns that reporting practices inhibit undocumented immigrants from seeking police and other local services, to the detriment of not only the immigrants, but their children and the rest of society as well.<sup>140</sup>

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several times, but each time left the station for fear of approaching the system. Once finally alerted to the situation, police found dozens of immigrants, including pregnant women and children, living in conditions of indentured servitude in two small apartments, facing physical abuse and squalid conditions. According to an editorial by Garrett Epps, "Restricting the rights of immigrants—whether legal or illegal—creates a population with little recourse against those who subject them to inhuman conditions or even outright slavery." Garrett Epps, "Lessons from Deaf Aliens," *Washington Post*, July 24, 1997, p. A-21. See also Deborah Sontag, "7 Arrested in Abuse of Deaf Immigrants," *New York Times*, July 21, 1997, p. A-1.

The right of undocumented children to receive a public education has been upheld by the U.S. Supreme Court. In *Plyler v. Doe*, 457 U.S. 202 (1982), the Court found that the equal protection clause protects all persons and that all children, regardless of citizenship status, are entitled to a public education. The majority of New Yorkers agree that children of undocumented immigrants should not be barred or intimidated from attending school, according to a survey which found that 70 percent of New Yorkers oppose barring the children of undocumented immigrants from a public education. Richard Behn and Douglas Muzzio, "Empire State Survey: New Yorkers on Immigration" (Empire Foundation and Lehrman Institute, 1994), p. 37.

<sup>139</sup> Giuliani Testimony, p. 53.

<sup>140</sup> Alexandra Marks, "Social Workers Reject Role as INS Agents," *Christian Science Monitor*, Aug. 1, 1997, p. 4. Like New York City, Chicago's policy was enacted in 1989 and prohibits police, school, and other municipal officials from inquiring into the public's immigration status or reporting suspected undocumented immigrants to the INS. Mary Mitchell, "City, State Thumb Nose at Immigration Laws," *Chicago Sun-Times*, Jan. 19, 1997, p. 12. In Los Angeles, both the police department and the sheriff's office have policies against reporting suspected undocumented immigrants to the INS. Special Order 40, adopted in 1979, prohibits

Mayor Giuliani advocated for language prohibiting State or local governments from refusing to cooperate with Federal authorities in turning over information about *criminal* or *suspected criminal* immigrants.<sup>141</sup> According to the mayor:

Our first objective should be to use the resources of the Immigration and Naturalization Service to focus on people who are creating danger[] and difficulties in our society and to try to find a more humane and more sensible solution for the people who happen to be here and it may be that they are not here legally. . . .<sup>142</sup>

New York City arrests more than 4,000 undocumented immigrants yearly and reports each of these persons to the INS. Of these 4,000 reported immigrants, the INS deports on average between 200 and 300 persons annually.<sup>143</sup>

Nevertheless, principal architects of the immigration and welfare reform laws opposed limiting the prohibition against State and local government cooperation to immigrants suspected or charged with criminal activity and included provisions in the new laws barring any prohibition on cooperation.<sup>144</sup>

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LAPD officers from initiating police action "with the objective of discovering the alien status of a person" and prohibits officers from arresting someone suspected only of being in the U.S. illegally. Office of the Chief of Police, *Special Order No. 40: Undocumented Aliens*, pp. 1-2 (Nov. 27, 1979). In a policy statement, the Los Angeles Sheriff's Department declared that "reporting persons to INS who are merely suspected undocumented immigrants prevents those who are victims of crime or who may be witnesses to crimes from coming forward and cooperating with local law enforcement officials." Office of the Sheriff, *Undocumented Immigrants*, Mar. 1, 1996. For a detailed discussion of Los Angeles' policies, see U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Discrimination, and Inequality: The Los Angeles Report* (1999).

<sup>141</sup> Robert Lynch, City of New York, Office of the Mayor, Office of the Criminal Justice Coordinator, memorandum to Ankur Goel, June 22, 1994.

<sup>142</sup> Giuliani Testimony, p. 51.

<sup>143</sup> "NYC Sues to Avoid Turning Aliens In," *Washington Times*, Oct. 14, 1996, p. A-7.

<sup>144</sup> In a letter responding to Mayor Giuliani's concerns, Senator Alan Simpson stated: "While I can sympathize with your concerns about reporting illegal aliens who are victims or witnesses to crime and who can assist law enforcement agencies in criminal prosecutions, I believe it is counterproductive to state or local governments to shield illegal aliens from INS. Several states are suing the federal government for reimbursement of costs which they believe are attributable to illegal aliens, even though they may prohibit their employees from communicating with the INS. This just does

In response to these new provisions, New York City sued the Federal Government, arguing that the provisions violate the 10th amendment, the guarantee clause, and principles of federalism by prohibiting States and localities from engaging in the central sovereign process of passing laws or otherwise determining policy; and usurping States' and localities administration of core functions of government, including the provision of police protection and regulation of their own work forces.<sup>145</sup> The U.S. District Court for the Southern District of New York denied New York City's request for declaratory and injunctive relief, holding that Congress is authorized to regulate in any area of Federal interest, even if that regulation affects States' policies. While Congress cannot require States to regulate, the provisions at issue do not constitute unconstitutional infringements on States' and localities' rights to be free of requirements to regulate.<sup>146</sup> The court emphasized that the provisions merely bar States and localities from prohibiting cooperation but do not require any action:

In this case, Sections 434 and 642 do not require the City to legislate, regulate, enforce, or otherwise implement federal immigration policy. Instead, they direct only that City officials and agencies be allowed, if they so choose, to share information with federal authorities. The statutes do not even require a City official to provide any information to federal authorities. They only prevent the City from interfering with a voluntary exchange of information. Although the statutes can be characterized as interfering with a City policy that prevents its officials from cooperating with federal immigration authorities except in accordance with certain procedures, that effect on local policy is not the type of intrusion that is sufficient to violate the Tenth Amendment or principles of federalism.<sup>147</sup>

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not make sense." U.S. Sen. Alan Simpson, letter to New York Mayor Rudolph Giuliani, Aug. 9, 1994.

<sup>145</sup> Firestone, "Giuliani to Sue Over Provision on Welfare."

<sup>146</sup> *City of New York v. U.S.*, 971 F. Supp. 789 (S.D.N.Y. 1997).

<sup>147</sup> *Id.* at 18. The 10th amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend X.



The city of New York has appealed the decision.<sup>148</sup> In the meantime, New York City will interpret the court's ruling narrowly, according to Mayor Giuliani, and city agencies will be encouraged not to report undocumented aliens to the INS.<sup>149</sup> Nevertheless, the ruling will likely have the effect of discouraging undocumented immigrants from seeking public services, because of uncertainty over whether any particular agency may elect to report an immigrant to the INS.

Two bills have been introduced in the 105th Congress to repeal the cooperation provisions in the new welfare and immigration laws. Senate bill 145, introduced by Senator Moynihan, would repeal the respective sections of the welfare and immigration laws mandating cooperation and H.R. 850, introduced by Representatives Rangel and Gilman, would repeal the cooperation clauses, requiring cooperation only in disclosing information about convicted criminals.<sup>150</sup>

### **Section III. Immigration's Effect on Wages, Jobs, and Racial/Ethnic Tensions**

The debate over immigration frequently turns to the impact of immigration on job availability and wages. In its 1980 report, *The Tarnished Golden Door*, the Commission on Civil Rights noted that those who have examined the economic impact of immigrant workers on the labor markets fall into one of two broad categories: (1) those who conclude that, because some immigrants enter the United States and secure employment, they contribute to the severe economic displacement of U.S. workers, particularly minorities, and to the reduction in wage levels for jobs that would otherwise be attractive to American workers; and (2) those who, while cognizant of the high national unemployment rate, suggest that undocumented workers do not have a significant impact on the domestic labor force

because they take undesirable jobs that Americans do not want.<sup>151</sup>

The current debate over the impact of immigration on native workers continues to generate similar contrasting views, not only among researchers but also among immigration advocates and the minority native-born work force. Those who oppose the current visa allocation system maintain that the policy of awarding 10,000 visas annually to low-skilled workers under the employment-based category of the Immigration and Nationality Act of 1990<sup>152</sup> has a detrimental effect on jobs and wages of the native born, especially those employed in low-skill industries.<sup>153</sup> Low-skilled immigrants accept fewer or no fringe benefits and are willing to work longer hours for lower wages, thus driving compensation to levels that American workers find unacceptable.<sup>154</sup>

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<sup>151</sup> U.S. Commission on Civil Rights, *The Tarnished Golden Door: Civil Rights Issues in Immigration* (September 1980), p. 58.

<sup>152</sup> The Immigration and Nationality Act of 1990 creates a third preference class under employed-based preferences for visa allocation. It provides:

(3) Skilled Workers, Professionals, and Other Workers.

(A) In General. Visas shall be made available, in a number not to exceed 28.6% of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2), to the following classes of aliens who are not described in paragraph (2):

(i) Skilled Workers. Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary seasonal nature, for which qualified workers are not available in the United States.

(ii) Professionals. Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

(iii) Other Workers. Other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the U.S.

(B) Limitation on Other Workers. Not more than 10,000 of the visas made available under this paragraph in any fiscal year may be available for qualified immigrants described in subparagraph (A)(iii).

Immigration and Nationality Act of 1990, Sec. 203(b)(3), 8 U.S.C. § 1153(b)(3) (1994).

<sup>153</sup> A recent study by the Center for Immigration Studies defines low-skill occupations as those "performed on average by workers with no more than a high school degree." Steven A. Camorata, *The Wages of Immigration: The Effect on the Low-Skilled Labor Market* (Washington, DC: Center for Immigration Studies, January 1998), p. 5.

<sup>154</sup> John F. Hudacs, commissioner, New York State Department of Labor, testimony before the New York State Senate Committee on Cities on Sept. 28, 1993 (hereafter cited as

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<sup>148</sup> Thus, information collected by the city currently cannot be shared with the INS, pending the outcome of the appeal. Merle English, "Keeping Well in a New World," *Newsday*, Sept. 28, 1997, p. A-5; Marks, "Social Workers Reject Role as INS Agents," p. 4.

<sup>149</sup> David Firestone, "Mayoral Order on Immigrants is Struck Down," *New York Times*, July 19, 1997, p. 21.

<sup>150</sup> S. 145, 105th Cong., 1st Sess. (1997), and H.R. 850, 105th Cong., 1st Sess. (1997).

Some critics argue that legal and undocumented immigrants compete unfairly for jobs against the most disadvantaged of native-born workers. They reject the position of immigration advocates that immigrants take jobs that native workers would not otherwise want, and posit that by flooding the labor markets in the six cities containing the largest numbers of native minority workers, immigrant labor keeps wages low and causes displacement of native, primarily low-skilled workers.<sup>155</sup> Finally, opponents argue that the immigration policy embodied in the 1990 act (which increased the number of visas awarded for skilled workers and professionals) discourages government efforts to provide job training for native minority workers.<sup>156</sup>

In contrast, immigration advocates point to the benefits of immigration on the labor markets, including immigrants' willingness to work in industries and jobs found unappealing to the native-born population. Without the existence of immigrant labor in low-wage industries, advocates maintain, many of these industries would either cease to exist in the United States or would be forced to raise the price of their products to a level that would put them out of the reach of many consumers.<sup>157</sup> Advocates also cite the job-creating impact of immigrant entrepreneurs.<sup>158</sup>

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New York State Senate Committee on Cities, Hudacs Testimony).

<sup>155</sup> According to Professor Vernon Briggs: "The current wave of immigration has opened up at a time in which there is diminished need for unskilled workers, and those workers who are unskilled in the United States are in the greatest jeopardy of all in terms of the ability of hang on to employment opportunities in labor markets that are diminishing. Nowhere is that more clear than in the labor market of New York. . . . In that environment, our immigration policy has been pumping large numbers of low skilled workers exactly into the labor market that does not need them, and that's where I think there is real tension. . . ." Vernon Briggs, professor, Cornell University, School of Industrial and Labor Relations, testimony, *NY Hearing*, vol. II, pp. 717–19. See also Frank Morris, "Statement for the Record," in *Immigration Impacts: Minority Issues, Minority Views* (Washington, DC: Federation for American Immigration Reform, n.d.), p. 16; Foner, "New Immigrants," p. 24.

<sup>156</sup> Morris, *Immigration Impacts: Minority Issues, Minority Views*, pp. 16–19.

<sup>157</sup> National Research Council, *The New Americans*, p. 5–23. See also Michael Fix and Jeffrey Passel, *Immigration and Immigrants: Setting the Record Straight* (Washington, DC: The Urban Institute, January 1994), p. 45.

<sup>158</sup> Fix and Passel, *Immigration and Immigrants*, p. 45.

## Immigration Factors Affecting Jobs and Wages

The impact of immigration on local job markets and prevailing wages is influenced by various factors, including the skill and education level of arriving immigrants, the type of industry involved, and, according to some studies, the geographic location of immigrant settlement.<sup>159</sup> A recent study by the National Research Council commissioned by the U.S. Commission on Immigration Reform<sup>160</sup> found that immigration does not reduce economic opportunities for African Americans, in the aggregate, due, in part, to the fact that immigrants and African Americans live in different areas of the country. According to the study, 63 percent of blacks live in States other than the six top immigration States. In the remaining 44 States, only 4 percent of the population is composed of immigrants.<sup>161</sup> Yet another recent study conducted by the Center for Immigration Studies dismisses geography as a significant variable in determining the effect of immigration on job markets, and finds instead that "the effect of immigration is national in scope, and is not simply confined to cities or states with large concentrations of immigrants."<sup>162</sup>

## Supporters of Current Immigration Levels

Supporters of immigration cite several reasons why immigrants do not displace native low-skilled workers. First, they argue that immigration does not have a significant impact on the wages of native workers as a whole. While immigration may cause displacement of native low-

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<sup>159</sup> National Research Council, *The New Americans*, pp. 5–22 to 5–30.

<sup>160</sup> The U.S. Commission on Immigration Reform commissioned the National Research Council to examine the effects of immigration on the national economy, government revenues and spending, and on the future makeup of the Nation's population. The report titled *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* was the culmination of that study. National Research Council News <<http://www.nas.edu/new/>>.

<sup>161</sup> National Research Council, *The New Americans*, pp. 5–25 to 5–26. According to the 1990 census, 76 percent of immigrants arriving in the U.S. during the 1980s resided in the following six States: California, New York, Texas, Florida, New Jersey, and Illinois. By and large, these new arrivals have been settling in these same States over the last several decades. *Ibid.*, pp. 2–24 to 2–25 (citing U.S. Immigration and Naturalization Service Statistical Yearbooks, 1974, 1984, and 1994).

<sup>162</sup> Camorata, *The Wages of Immigration*, p. 5.

skilled workers, the evidence in cities with large immigrant populations is that wages of native-born workers are not lower in those areas than in areas with low levels of immigration, suggesting that displaced workers either find other employment or leave those areas altogether.<sup>163</sup> According to these researchers, new waves of immigrants present the greatest level of competition and displacement to older immigrants, who may not have yet mastered English or assimilated into U.S. culture at the level required to find employment in primary-sector jobs.<sup>164</sup> Yet other scholars argue that immigration has harmed the earning potential of low-skilled African Americans and native-born Hispanics.<sup>165</sup> This view is discussed in the section that follows.

Second, supporters argue that the availability of immigrants as low-wage workers in industries undergoing transition helps to ensure continued domestic operation of industries that would otherwise relocate overseas, thereby preserving jobs for other low-skilled native workers in the area.<sup>166</sup> Indeed, some labor researchers maintain that garment manufacturing and health care services in New York City could not survive without immigrant labor.<sup>167</sup>

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<sup>163</sup> National Research Council, *The New Americans*, p. 5–26. According to the National Research Council, African Americans as a whole have not suffered displacement caused by influxes of immigrants because the majority of African Americans do not live in the top six immigrant States. Yet African Americans who reside in States and localities with high immigrant populations have experienced displacement by immigrant workers penetrating low-skill industries, such as the apparel and restaurant sectors. *Ibid.* See also Paul Ong and Abel Valenzuela, Jr., “The Labor Market: Immigrant Effects and Racial Disparities,” in *Ethnic Los Angeles*, ed. Roger Waldinger and Mehdi Bozorgmehr (New York: Russell Sage Foundation, 1996), p. 178. The authors conclude that although emigration of immigrants with low levels of education into Los Angeles has increased joblessness for African Americans, it has had no apparent effect on earnings. *Ibid.*

<sup>164</sup> Gregory DeFreitas, “Fear of Foreigners: Immigrants as Scapegoats for Domestic Woes,” *Dollars and Sense*, January/February 1994, p. 33. See also National Research Council, *The New Americans*, pp. 5–24 to 5–33.

<sup>165</sup> Roger Waldinger, *Still the Promised City? African-Americans and New Immigrants in Postindustrial New York* (Cambridge, MA: Harvard University Press, 1996), p. 173; Gregory DeFreitas, *Inequality at Work: Hispanics in the U.S. Labor Force* (New York: Oxford University Press, 1991), p. 250.

<sup>166</sup> Fix and Passel, *Immigration and Immigrants*, p. 43.

<sup>167</sup> New York State Senate Committee on Cities, Hudacs Testimony, p. 4. According to the National Research Council, industries such as textile could not survive domestically

Finally, limited English proficiency and discrimination can be impediments to economic mobility for immigrants in a number of occupational areas and can encourage self-employment.<sup>168</sup> In particular, spatial concentration of immigrant populations often creates a demand for special products and goods that immigrants are well positioned to supply. In addition to meeting the particularized needs of an immigrant community, persons from developing countries are often able to capitalize on ties with their native countries to develop import-export and related commercial ventures.<sup>169</sup> Thus, a number of recent immigrants have sought opportunities in areas that include retailing and garment subcontracting.<sup>170</sup>

The job-creating impact of immigrant spending has not been precisely quantified, but the effect is estimated to be substantial. Nationwide, total immigrant income (more than \$285 billion in 1989) represents about 8 percent of all reported income, equal to immigrants’ share of the population (7.9 percent). Even recent immigrants with relatively low earnings had an aggregate income in 1989 of \$80 billion.<sup>171</sup> In New York, self-employed immigrants earned over \$2 billion and generated over \$7 billion in 1989.<sup>172</sup> A study by the U.S. Department of Labor in 1989 concluded that “the economic recovery of New York City in the 1980’s . . . [was] fueled by the voluminous increases in small business activity.

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without immigrants. Other nontraded goods sectors would not exist on the same scale without immigrants, and their main economic impact “may well be in the form of lower prices.” National Research Council, *The New Americans*, pp. 5–20 to 5–21.

<sup>168</sup> Cohen, *Immigrant Entrepreneurship in New York City*. But see Robert Fairlie and Bruce Meyer, “Ethnic and Racial Self-Employment Differences and Possible Explanations,” *Journal of Human Resources*, vol. 31 (September 1996), p. 757. The authors dispute the assumption that English proficiency or discrimination are significant motivators toward self-employment. Rather, the primary factors leading to self-employment among immigrants is the expectation of higher earnings, a higher than average education level, immigrant status, time in the country, in addition to language skills.

<sup>169</sup> New York State Senate Committee on Cities, Hudacs Testimony, p. 9.

<sup>170</sup> Cohen, *Immigrant Entrepreneurship in New York City*.

<sup>171</sup> Fix and Passel, *Immigration and Immigrants*, p. 46.

<sup>172</sup> Cohen, *Immigrant Entrepreneurship in New York City*. See also N.Y. State Senate, *Our Teeming Shore*, p. 55 (citing the testimony of James Parrot, chief economist of New York City’s Economic Policy and Marketing Group before the New York State Senate Committee on Cities, Sept. 24, 1993).

Immigrants are directly responsible for a substantial share of this activity."<sup>173</sup>

### **Opponents of Current Immigration Levels**

Those who express concern over current levels of immigrants in the work force, especially in low-skill industries, posit that the influx of immigrants has a disproportionately negative impact on native minorities for several reasons. First, the majority of native minorities are settled in areas with high concentrations of immigrants. This proximity increases competition for scarce jobs and exacerbates tensions between natives and non-natives. Second, low-skilled native minorities are weak substitutes for immigrants, especially the undocumented. Third, the self-employment rate of immigrants leads to domination in certain industries, creating competition with native minorities for market share while effectively shutting out native minorities from the jobs created by relying on ethnic recruiting to fill positions. Finally, immigration policies favoring family reunification lead to larger numbers of low-skilled immigrants competing for jobs with the least educated, lowest skilled native minorities.

**Geographic Distribution of Immigrants and Native Minorities.** Much of the increase in the foreign-born population is concentrated in relatively few major areas where sizable African American populations now reside, according to Dr. Frank Morris, former dean of graduate studies and research at Morgan State University.<sup>174</sup> As a result, African Americans bear a disproportionate share of immigrant competition for jobs and resources.<sup>175</sup> The National Research Council's study, *The New Americans*, finds that, compared with highly skilled immigrants, low-skilled immigrants tend to be more geographi-

cally concentrated in areas with high immigrant densities<sup>176</sup> and that their representation in these localities creates displacement of native-born workers.<sup>177</sup> Yet a recent study by the Center for Immigration Studies dismisses geographic proximity as a reliable determinant of native worker displacement. According to the study:

[T]he movement of labor, capital and goods between cities in the United States spreads the effects of immigration from the areas with large immigrant populations to the rest of the country. . . . The effect of immigration on the wages of natives [thus] is national in scope, and is not simply confined to cities or states with large concentrations of immigrants.<sup>178</sup>

Some scholars maintain that competition for jobs requiring few skills affects African Americans more acutely because low-skilled African Americans, especially men, are weak substitutes for new immigrants. According to Dr. Donald Huddle, a professor of economics at Rice University, large populations of immigrants displace natives in certain job markets by acting as replacements for more expensive natives, against whom wage and hour violations are more likely to be uncovered; instituting informal ethnic recruiting networks that ensure vacancies are filled through word-of-mouth channels; crowding out natives with no prior job experience from low-skill jobs; and causing out-migration of natives to other areas with less competition.<sup>179</sup>

**Substitutability of Native Minorities.** Both racial bias and the desire for cheap labor contribute to discrimination against natives in favor of immigrants.<sup>180</sup> Studies of hiring prac-

<sup>173</sup> USDOL, Bureau of International Labor Affairs, *The Effects of Immigration on the U.S. Economy and Labor Market* (1989), p. 198. See also N.Y. State Senate, *Our Teeming Shore*, p. 48 (citing the testimony of Sandra Lief Garrett, New York Association for New Americans).

<sup>174</sup> Morris, *Immigration Impacts: Minority Issues, Minority Views*, p. 16; N.Y. State Senate, *Our Teeming Shore*, pp. 46–47 (quoting Frank Morris, "Congressional Testimony: The Effects of U.S. Immigration Policy on African American Workers," Mar. 13, 1990); Vernon Briggs, labor economist, Cornell University, School of Industrial and Labor Relations, telephone interview, Feb. 4, 1994.

<sup>175</sup> Morris, *Immigration Impacts: Minority Issues, Minority Views*, p. 17; N.Y. State Senate, *Our Teeming Shore*, pp. 46–47.

<sup>176</sup> National Research Council, *The New Americans*, p. 5–21.

<sup>177</sup> *Ibid.*, p. 5–24. Yet as explained above, the majority of African Americans and immigrants live in different parts of the country. See notes 160–61 and accompanying text.

<sup>178</sup> Camorata, *The Wages of Immigration*, pp. 4–5

<sup>179</sup> N.Y. State Senate, *Our Teeming Shore*, p. 49. See also Roy H. Beck, *The Case Against Immigration* (New York: Norton & Co., 1996), pp. 179–80.

<sup>180</sup> Dr. Vernon Briggs, labor economist, Cornell University, School of Industrial and Labor Relations, testified about the impact of immigration policy on jobs, stating: "There is discrimination against immigrants, . . . but there is also heavy discrimination against [the] native born as a result of our immigration policy . . . Many employers think [that if] they have a choice, [they] would prefer to have an immigrant worker than a native-born worker, especially in the low-wage segment of the labor market. . . ." Briggs Testimony, p. 738.

tices by Chicago employers have found that employers rely on race and its interaction with class and residency in making hiring decisions, and that inner-city, poor African American workers are perceived as less desirable than other groups.<sup>181</sup> In New York City, other researchers have found employers prefer immigrants over natives, citing to low-wage employers in Harlem who hire three Latino and Asian American and Pacific Islander applicants for every one African American applicant.<sup>182</sup> A recent study by sociologists Katherine Newman and Chauncy Lennon revealed that, while immigrants constituted only 11 percent of the job candidates in their test sample of Harlem job seekers, they represented 26.4 percent of those hired by Harlem employers. Moreover, the study found that 41 percent of the immigrants in the sample were able to find employment within a year, in contrast to only 14 percent of the native-born blacks.<sup>183</sup>

Another study of wage stagnation and job displacement indicates that African Americans, while arguably not directly harmed in high-immigration areas, nevertheless fail to enjoy some of the benefits related to residence in high- and medium-immigration labor markets, such as the wage increases experienced by Anglos and

Hispanics in these areas during the 1980s.<sup>184</sup> The author of the study, Maria Enchautegui, interprets this finding to suggest that African Americans are viewed as weak substitutes for, and Anglos strong complements of, immigrant workers, and that Hispanic and Anglo men benefit from immigration over African Americans.<sup>185</sup>

Native minorities also face displacement because of employer preferences for vulnerable—and therefore exploitable—immigrants.<sup>186</sup> As discussed in greater detail in the section on IRCA earlier in section I of this chapter, immigrants' lack of knowledge of labor laws, their lack of English proficiency, and, for the undocumented, their fear of deportation, make them more attractive labor sources for small businesses and unscrupulous employers.

While increased levels of immigration affect joblessness among African Americans, racism also plays a significant role, according to Paul Ong and Abel Valenzuela, faculty members at the Department of Urban Planning at UCLA. Blaming immigration for the discrimination against native-born workers<sup>187</sup> is misguided, according to these scholars:

To focus on immigrants as the only source of disadvantage to African Americans scapegoats an already vulnerable group and misses the point that other fac-

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<sup>181</sup> Joleen Kirchenman and Kathryn Neckerman, "We'd Love to Hire Them, But . . .": The Meaning of Race for Employers," in *The Urban Underclass*, ed. Christopher Jencks and Paul E. Peterson (Washington, DC: The Brookings Institution, 1991), p. 204. According to the authors: "Our interviews at Chicago-area businesses show that employers view inner-city workers, especially black men, as unstable, uncooperative, dishonest, and uneducated. Race is an important factor in hiring decisions. But it is not race alone: rather it is race in a complex interaction with employers' perceptions of class and space, or inner-city residence. Our findings suggest that racial discrimination deserves an important place in analyses of the underclass." Ibid. Peter Kwong also testified about studies showing that "employers in Chicago, particularly smaller businesses, would prefer to hire immigrants, any kinds of immigrants, than native [born] Americans, . . . and in particular try to avoid African American laborers." Kwong Testimony, pp. 528–29.

<sup>182</sup> Katherine S. Newman, "Dead-End Jobs: A Way Out," *The Brookings Review*, fall 1995, pp. 24–27; Katherine S. Newman, "What Scholars Can Tell Politicians About the Poor," *Chronicle of Higher Education*, July 23, 1995, pp. B-1 to B-2.

<sup>183</sup> Camorata, *The Wages of Immigration*, pp. 26–27 (citing Katherine Newman and Chauncy Lennon, "Finding Work in the Inner City: How Hard Is It Now? How Hard Will It Be for AFDC Recipients?" Russell Sage Foundation, working paper #76 (1995)).

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<sup>184</sup> Maria Enchautegui, *The Effects of Immigration on the Wages and Employment of Black Males* (The Urban Institute, May 1993).

<sup>185</sup> Ibid. (citing studies by Gregory DeFreitas, Francisco Rivera-Batiz, and George Borjas that confirm its finding). The study suggests that the large increase in the supply of immigrants, who are generally less skilled, raises the price of relatively scarce, presumably better skilled Anglos. The study's explanation of wage increases enjoyed by native Hispanics is more speculative. The author suggests that the wage increase for Hispanics may be due to native Hispanics taking jobs for which newly arrived Hispanic immigrants may not be qualified.

<sup>186</sup> Frank Morris, "Mass American Immigration and African American Vulnerability," testimony before the Commission on Immigration Reform, Oct. 1, 1993. See also Moore and Kasindorf, "Enslavement in America."

<sup>187</sup> Vernon Briggs testified that U.S. immigration policy leads to increased discrimination against the native born. Briggs Testimony, p. 738. The influx of low-skilled immigrants supported by current immigration policies increases the supply of workers into a segment of the labor market that is already in trouble and keeps wages down. This leads to a preference by employers in favor of immigrants and against native-born workers. This, according to Professor Briggs, leads to "heavy discrimination against [the] native born." Briggs Testimony, pp. 738–39.

tors, such as labor market discrimination and segmentation, are more important in explaining African American inequality. Even worse, focusing solely on immigration brings out a form of nativism that ultimately reinforces racially based prejudices.<sup>188</sup>

*Immigrant Entrepreneurialism and Ethnic Recruiting.* Immigrant-owned businesses, such as Chinese restaurants, Korean grocers, and Indian newsstands dot the New York City landscape. Other immigrant businesses, including those owned by Caribbean or West Indian immigrants, tailor to more specific ethnic communities and clientele.

While immigrants represented 28.4 percent of New York City's population in 1990, approximately 37 percent of all self-employed individuals in 1990 were émigrés.<sup>189</sup> Chinese immigrants were the largest group of immigrant entrepreneurs, representing 8.2 percent of all self-employed immigrants in New York City, followed by Dominicans, representing 6.7 percent, and Koreans, representing 6.1 percent of city's self-employed immigrants.<sup>190</sup>

African Americans and native Hispanics have smaller self-employment rates than immigrants. More than 40 percent of New York City's black-owned firms in 1990 were owned by foreign-born blacks. In 1980, 4.3 percent of foreign-born Hispanic residents in city were self-employed, compared with 2.6 percent of native-born Hispanics. According to a study by the New York City Economic Policy and Marketing Group, these differences are attributable to differences in education and access to capital between immigrant and native groups.<sup>191</sup>

According to Reverend Calvin Butts, head pastor of the Abyssinian Baptist Church, the perceived domination of certain community

businesses by newcomers is a source of conflict between immigrants and native minorities. Native-born residents resent the perceived economic domination by relative newcomers and attribute the rapid establishment of businesses by these immigrants as evidence of discriminatory lending practices in favor of immigrants.<sup>192</sup> Native-born minorities further point to disrespectful treatment by immigrant business proprietors toward the minority community, and the failure of many of these merchants to hire local residents, as conditions that further exacerbate resentment and tensions.<sup>193</sup>

Self employment also creates a level of economic mobility that is not as available to those who work for others, according to John Mollenkopf, graduate professor of political science and director of data services at the City University of New York. Entrepreneurship allows many immigrants to rise faster and higher on the economic ladder than native minorities:

The high rates of labor force participation and the high rates of self-employment among immigrants, are helping those groups make their way upward in New York City faster than some of the native-born minority groups which tend especially among African

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<sup>192</sup> Rev. Calvin O. Butts, pastor, Abyssinian Baptist Church, interview in New York, Feb. 4, 1994 (hereafter cited as Butts Interview); Pyong Gap Min, *Caught in the Middle: Korean Merchants in America's Multiethnic Cities* (Berkeley and Los Angeles: University of California Press, 1996), p. 101.

<sup>193</sup> Butts Interview; Min, *Caught in the Middle*, p. 101. Tensions between native-born minorities and immigrants have arisen from perceived disrespect by immigrant entrepreneurs toward members of the minority community they serve, and have been manifested in large-scale demonstrations. Examples include the 1990 boycott of the Korean Red Apple Market by Flatbush residents following an altercation between Korean American employees of the store and a Haitian American customer. Recounting statements made by persons demonstrating in front of the store, the commanding officer of New York City's 70th Precinct Police Department stated, "Unidentified spokespersons voiced their opposition to the Korean-American treatment of customers in general, indicating that there have been a number of incidents in which customers have been mishandled and there is a lack of respect to all black customers." U.S. Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s*, February 1992, pp. 34-40 (citing commanding officer, 70th Precinct, New York City Police Department, "Chronology of Events Surrounding Haitian Demonstrations on Church Avenue," Feb. 6, 1990, p. 1). Nancy Foner discusses similar accounts involving Korean shopkeepers in Harlem and complaints by residents that the proprietors are rude and resort to violence in dealing with suspected shoplifters. Foner, "New Immigrants," p. 21.

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<sup>188</sup> Paul Ong and Abel Valenzuela, Jr., "The Labor Market," p. 179.

<sup>189</sup> Cohen, *Immigrant Entrepreneurship in New York City*, p. 7.

<sup>190</sup> *Ibid.*, p. 8.

<sup>191</sup> "Inner city residents have limited access to sources of capital that are more available to other groups, such as loans from family and friends and inherited wealth." *Ibid.*, p. 9. According to John Mollenkopf, "[I]mmigrant groups typically have rates of self-employment that might range from 10 to 12 percent of the people in the labor force, whereas the native-born groups would be more in the 6 to 8 percent range, so the immigrant groups tend to have a 50 percent higher rate of self-employment. . . ." Mollenkopf Testimony, p. 207.

Americans, to rely much more heavily on employment in government and the nonprofit social services, hospitals and so forth where oftentimes wages are subject to union agreements and in the past few years have been fairly stagnant.<sup>194</sup>

While many of the tensions between low-skilled natives and immigrants are, in fact, the result of economic conditions, some community tensions arise out of perceptions that are inaccurate. The perception that immigrants are awarded loans and provided greater assistance in setting up businesses by private lending institutions or the Federal Government is one such example, according to a report by the Inter-Relations Collaborative. The success of Korean merchants and grocers has sparked tensions in native minority communities based on these misperceptions. Jerry Sookman Choo, a New York attorney who has represented Korean American business owners, states she has heard "all the misperceptions about where merchants get their money, how much they make, and all the media hype about how successful they are. . . . Most Korean immigrants, even though they have been here for ten years, are not sophisticated enough to go through the banker to finance their stores. . . . [T]his is one of the last myths."<sup>195</sup> In fact, most immigrant businesses rely on nontraditional, alternative sources of financing, including family, friends, foreign lenders, and temporary credit associations or resources pools established among immigrants of the same national origin, according to a study of immigrant entrepreneurship conducted by the New York City Economic Policy and Marketing Group.<sup>196</sup>

Another cited cause of displacement for native minorities, especially African Americans, is ethnic recruiting by employers or employees.<sup>197</sup> Ethnic recruiting is the practice of word-of-

mouth announcement of job openings by workers, usually to their relatives and other acquaintances from their country of origin. This practice, according to some, leads to domination of the workplace by workers of the same or common ethnic backgrounds, thereby shutting out potential employees from other groups who are outside the network circles.<sup>198</sup> According to economist Marcia Freedman, ethnic recruiting is a crucial factor in the success that immigrants have enjoyed in finding work in New York:

Large-scale employment of immigrants requires an economy with many jobs in relatively unstructured settings where firms are small and labor standards poorly enforced. . . . Immigrants do not only find such places, they create them, in small businesses, in trade, construction and provision of services. And it is the network they establish for access and the informal training that takes place in these enterprises that make it possible for them to maintain their foothold in the city's economy.<sup>199</sup>

The rapid growth of the garment industry in Manhattan's Chinatown offers a prime example of the workings of an immigrant job network. A 1983 survey found that the number of garment workers employed in Chinatown doubled between 1969 and 1980. The rapid growth was aided by the social cohesion of the Chinese immigrant work force.<sup>200</sup> According to the survey:

Many young Chinese women took advantage of family and friendships that extended from China to downtown Manhattan to form the core of a new work force in the women's apparel industry. . . . Families and neighbors maintained their ties through the long journey from provinces in China to Chinatown, sometimes comprising nearly the entire workforce in a single shop.<sup>201</sup>

Ethnic recruiting is more pronounced in immigrant-owned firms, according to scholars who cite studies showing that immigrant-owned businesses in New York City are underrepresented by African American employees.<sup>202</sup> Afri-

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<sup>194</sup> Mollenkopf Testimony, pp. 207-08.

<sup>195</sup> Inter-Relations Collaborative, *Intergroup Cooperation in Cities: African, Asian and Hispanic American Communities* (New York: Inter-Relations Collaborative, 1993), p. 19. In fact, the majority of Korean merchants rely on personal savings to finance their initial businesses; only 5 percent of survey respondents reported relying on commercial loans as a main source of startup capital. Min, *Caught in the Middle*, pp. 101-02.

<sup>196</sup> Cohen, *Immigrant Entrepreneurship in New York City*, pp. 25-26.

<sup>197</sup> See sources cited in note 179.

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<sup>198</sup> Beck, *The Case Against Immigration*, p. 184.

<sup>199</sup> Bogen, *Immigration in New York*, p. 87 (quoting Marcia Freedman, "The Labor Market for Immigrants in New York City," *New York Affairs*, vol. 7, no. 4 (1983), p. 96).

<sup>200</sup> *Ibid.*, p. 86.

<sup>201</sup> *Ibid.*

<sup>202</sup> Beck, *The Case Against Immigration*, pp. 184-87. Beck cites several studies that have found bias by immigrant

can American job seekers face greater difficulties in industries increasingly controlled by immigrant entrepreneurs or dominated by immigrants, including grocery stores, textile manufacturing, and contracting jobs.

Redress for the discriminatory effects of these practices is often difficult, as demonstrated by a seventh circuit case brought by the U.S. Equal Employment Opportunity Commission (EEOC). In *EEOC v. Consolidated Service Systems*, the EEOC filed suit against a company owned by a Korean immigrant, charging the company with unlawful discrimination in favor of persons of Korean descent, in violation of title VII of the Civil Rights Act of 1964, by relying on word of mouth to obtain new employees.<sup>203</sup> The district court dismissed the suit for lack of evidence of discrimination, and EEOC appealed to the seventh circuit. The appellate court found no intentional discrimination by Consolidated Services in relying on word of mouth to obtain employees. Word-of-mouth recruitment that produces a largely homogeneous work force is not illegal discrimination. Rather, the court noted, it is nothing more than the cheapest and most efficient method of recruitment.<sup>204</sup> To impute a discriminatory motive to these practices would defeat the purpose of Federal programs designed to protect minorities from discrimination that present barriers to their economic advancement. In strongly worded dicta, the court stated:

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businesses against native minorities, especially African Americans. Among them is a study by Pyong Gap Min, a sociologist at Queen's College, that found only 5 percent of employees of Korean-owned New York City stores are African American, despite that African Americans constitute 25 percent of New York City's population. Min, *Caught in the Middle*. Another account in the *Wall Street Journal* describes an "unwritten law" that immigrant businesses do not hire African Americans. Jonathan Kaufman, "Help Unwanted: Immigrants' Businesses Often Refuse to Hire Blacks in Inner City," *Wall Street Journal*, June 6, 1995, p. A-1. Elizabeth Bogen writes in her book, *Immigration in New York*, that because of ethnic hiring networks and the growing numbers of immigrant-owned small businesses "there are tens of thousands of jobs in New York City for which the native-born are not candidates." Bogen, *Immigration in New York*, p. 91.

<sup>203</sup> Equal Employment Opportunity Commission v. Consolidated Service Systems, 989 F.2d 233 (7th Cir. 1993).

<sup>204</sup> According to the court, "It is not discrimination . . . for an employer to sit back and wait for people willing to work for low wages to apply to him. The fact that they are ethnically or racially uniform does not impose upon him a duty to spend money advertising. . . ." *Id.* at 237.

In a nation of immigrants, this must be reckoned as an ominous case despite its outcome. The United States has many recent immigrants, and today as historically they tend to cluster in their own communities, united by ties of language, culture, and background. Often they form small businesses composed largely of relatives, friends, and other members of their community, and they obtain new employees by word of mouth. These small businesses . . . have been for many immigrant groups, and continue to be, the first rung on the ladder of American success. Derided as clannish, resented for their ambition and hard work, hated or despised for their otherness, recent immigrants are frequent targets of discrimination, some of it violent. It would be a bitter irony if the federal agency dedicated to enforcing the antidiscrimination laws succeeded in using those laws to kick these people off the ladder by compelling them to institute costly systems of hiring. There is equal danger to small black-run businesses in our central cities. Must such businesses undertake in the name of nondiscrimination costly measures to recruit non-black employees?<sup>205</sup>

*Immigration Policy: Family Reunification.* Advocates of low-skilled native workers believe that the family reunification emphasis of immigration policy also contributes to displacement of native minorities. They recommend reforming current immigration policy to shift the primary focus from one of family reunification to one based on economic needs and existing labor market conditions, as reflected by the Canadian and Australian governments.<sup>206</sup> Critics of the emphasis on family reunification maintain that immigration policy must strike a balance between the needs of employers to recruit and retain qualified workers and a guarantee of equal access for U.S. citizens competing for available jobs.<sup>207</sup> Rather than static levels set by statute,

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<sup>205</sup> *Id.* at 237-38.

<sup>206</sup> Ronald Brownstein, "The Great Divide: Immigration in the 1990s," *Los Angeles Times*, Nov. 30, 1993, p. A-20. See also N.Y. State Senate, *Our Teeming Shore*, p. 50. The report blames an immigration policy that has been skewed since passage of the Hart-Cellar Act of 1965 and, especially, since the passage of IRCA, "away from economic concerns in favor of various foreign and domestic policy considerations, most notably the goal of family reunification." *Ibid.*

<sup>207</sup> N.Y. State Senate, *Our Teeming Shore*, p. 50. According to John Hudacs, commissioner, New York State Department of Labor: "Although recent immigration laws increase the number of immigrants allowed into the country, the current policy is centered on family considerations, not economic or labor force factors. . . . [N]ot enough attention [is] given to creating a balance between the need of employers to recruit and retain qualified workers while guaranteeing equal ac-



allotment of immigration visas should be determined administratively to meet present economic needs.<sup>208</sup>

According to Vernon Briggs, a professor at the Cornell University School of Industrial and Labor Relations, U.S. immigration policy since 1970 has been characterized by mass immigration and free trade. Because of free trade expansion, wages have fallen and U.S. industries have shifted from manual labor to service-sector jobs.<sup>209</sup> As a result, the need for illiterate or low-skilled workers has declined, while the need for workers with more advanced skills has risen:

The current wave of immigration has opened up at a time in which there is diminished need for unskilled workers, and those workers who are unskilled in the United States are in the greatest jeopardy of all in terms of the ability to hang on to employment opportunities in labor markets that are diminishing. Nowhere is that more clear than in the labor market of New York.<sup>210</sup>

Professor Briggs argues that only through the simultaneous implementation of both policies (i.e., one that takes into account both economic needs *and* existing labor market conditions nationwide) can the United States avoid a serious decline of job opportunities for low-skilled workers and ease tensions between native and immigrant low-skilled workers.<sup>211</sup>

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cess for U.S. citizens competing for available jobs. The difficulty or ease with which aliens obtain labor certification must be linked to changing economic conditions." Ibid.

<sup>208</sup> Briggs Testimony, pp. 741–42.

<sup>209</sup> Ibid., pp. 715–18. According to Senator Marchi: "In February 1993, manufacturing jobs in New York State dropped below one million for the first time since 1906. In the 1940's we had approximately 2,250,000 manufacturing jobs—we now have approximately one million manufacturing jobs in New York State. Between 1980 and December 1991, New York lost one-third of its manufacturing jobs—440,000 jobs. Over the past decade, New York City alone lost 150,000 manufacturing jobs. Since mid-1990 to mid-1992, New York lost 114,000 jobs." Senator John J. Marchi, vice president pro-tempore, New York State Senate, testimony before New York State Senate Committee on Cities on Sept. 10, 1993, pp. 2–3.

<sup>210</sup> Briggs Testimony, pp. 717–18, 737–38.

<sup>211</sup> Ibid., p. 719 ("In that environment, our immigration policy has been pumping large numbers of low-skilled workers exactly into the labor market that does not need them, and that's where I think there is real tension. . . .") A recent report by the Organization for Economic Cooperation and Development also advocates the globalization of immigration policy to reflect changes in world and domestic economies, citing to the growing trend toward reliance on legal,

Opinions are split, however, on whether a revised immigration policy should strive to admit more high-skilled workers, or whether it should merely set numerical limits according to economic needs, regardless of educational skills or work experience. Advocates of a policy that would exclude unskilled workers or give preference to high-skilled workers argue that most job growth is occurring in occupations requiring job skills and education and that a continued influx of low-skilled, low-educated immigrants will continue to compete more closely with low-skilled native workers for disappearing jobs.<sup>212</sup>

Those who oppose increasing the levels of high-skilled immigrants argue that their entry reduces the incentive to train native workers to perform these jobs. Gregory DeFreitas, professor of economics at Hofstra University, recommends awarding temporary visas to high-skilled immigrant workers to allow them to fill industry needs until *native workers* are trained.<sup>213</sup> "Instead of meeting supposed 'skill shortages' by importing people trained elsewhere, the U.S. should finally commit the resources needed to provide first-class schooling and training for the rising number of less-skilled and underemployed Americans."<sup>214</sup> In response to these concerns, proponents of this view recommend education and training for native workers, to reduce the need for foreign skilled laborers.<sup>215</sup>

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seasonal immigration of workers by the U.S., Canada, and Australia and worker outsourcing programs in countries like Germany and Portugal. "Immigration: OECD Finds No Correlation Between Increased Immigration, Unemployment," *BNA Daily Labor Report*, Aug. 14, 1997, p. A-5 (citing Organization for Economic Cooperation and Development, "Trends in International Migration: Annual Report 1996").

<sup>212</sup> Briggs Testimony, pp. 717–20, 737–38. See also Vernon Briggs, Jr., "Immigration: The Neglected Orphan of Immigration Policy," *Backgrounder*, September 1993.

<sup>213</sup> Interview with Gregory DeFreitas, professor, Hofstra University, in New York City on Mar. 18, 1994.

<sup>214</sup> Gregory DeFreitas, "Fear of Foreigners," *Dollars and Sense*, January/February 1994.

<sup>215</sup> John Sweeney, international president, Service Employees International Union, testimony before House Judiciary Committee on H.R. 2202, Sept. 19, 1995 (hereafter cited as House Judiciary Committee, Sweeney Testimony). According to Mr. Sweeney, "Giving employers the privilege of applying for permanent or temporary visas for workers simply allows them to avoid the expense of retraining resident or citizen workers." Mr. Sweeney also warns about complacency and a growing dependence on workers originally authorized by statute to fill a shortage beyond the time when there is no longer a need. He cites to the H-1A visa program enacted in 1989 to respond to the shortage of

A proposal to fund education and training for native low-skilled workers was in fact recommended by the Chairman of the Subcommittee on Immigration, Refugees, and International Law, former U.S. Representative Bruce A. Morrison, during hearings and debates of the Immigration Act of 1990. As approved and submitted by the House Committee on the Judiciary, that draft legislation of the immigration bill contained a section entitled the Family Unity and Employment Opportunity Immigration Act of 1990, which required employers who were granted labor certification to import foreign workers to pay a fee that would be deposited into a separate account within the general fund of the U.S. Treasury to be used for educational assistance and training of unemployed and underemployed U.S. citizens in fields that had shortages of employees.<sup>216</sup> Funds collected under this system would have been distributed through States for educational grants and training. Distribution factors would have included the location of foreign workers admitted into the United States, the location of individuals in the country requiring educational assistance or training, and the location of unemployed or underemployed individuals. Under the bill, 10 percent of the money in the fund would have been used specifically to provide funding for postsecondary education in the areas of mathematics and the sciences. Eighty-three percent of the remaining funds would have been used to train U.S. workers in fields that have shortages of employees.<sup>217</sup> The provision was deleted by the Committee on Ways and Means prior to passage of the law.

In addition to job training, witnesses at the New York hearing and other experts propose additional measures to reduce the levels of undocumented immigration while simultaneously improving conditions for native minorities and immigrants already in the United States. First, the integrity of our national borders must be en-

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nurses. Although there is no longer a shortage of nurses, employer applications for visas have not declined.

<sup>216</sup> H.R. Rep. No. 101-723, pt. 2 (1990). The bill would have imposed a fee for granting lawful permanent resident status to an alien who qualified for admission on the basis of his extraordinary ability, status as an outstanding professor or researcher, multinational executive or manager, or otherwise possessed business expertise or who satisfied any other employment-based criteria.

<sup>217</sup> *Id.*

sured through appropriate border control.<sup>218</sup> Stemming the flow of undocumented immigration is the first step in reducing the number of low- or unskilled immigrants in the labor markets.<sup>219</sup>

Witnesses at the hearing also agreed that, while controlling the border is an important step in minimizing the number of undocumented immigrants and the consequences they present for native minorities and documented immigrants, once immigrants are in the United States, they deserve the same fundamental protections against exploitation and abuse that all workers enjoy.<sup>220</sup> Consistent, strong enforcement of wage and hour laws and of IRCA is necessary to ensure fair and safe working environments for all workers and to reduce the ease with which unscrupulous employers can exploit immigrants.<sup>221</sup> Ensuring compliance with labor laws also has a derivative, beneficial affect on native workers by sustaining lawful, living wages, reducing the economic attractiveness of unauthorized workers, and eliminating competition by employers who can remain viable only by violating wage, overtime, and safety laws, according to Muzaffar Chishti.<sup>222</sup> Mr. Chishti explained through testimony:

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<sup>218</sup> Ong and Valenzuela, "The Labor Market," p. 180. According to the authors, "Weak enforcement of border policies creates a large undocumented population that is at the heart of the immigration debate." *Ibid.*

<sup>219</sup> *Ibid.*

<sup>220</sup> Peter Salins, a senior fellow at the Manhattan Institute, testified at the hearing that any measures aimed at stemming the tide of undocumented immigrants should be implemented at the point of entry, not after they are already in the country. "But nevertheless, we should not be complacent about illegal immigration because it invites exploitation, increases the resentment of native Americans, rewards queue jumping, and contributes to the further erosion in the public's respect for the law. But the place to stop illegal immigration is before, at or near the point of entry into the United States. Measures aimed at smoking out or punishing illegals once they are settled are both ineffective and unfair." Peter Salins, senior fellow, Manhattan Institute, testimony, *New York Hearing*, vol. II, pp. 710-11 (hereafter cited as Salins Testimony). See also House Judiciary Committee, Sweeney Testimony. Illegal border entry accounts for 60 percent of all undocumented immigrants. Camorata, *The Wages of Immigration*, p. 40.

<sup>221</sup> Chishti Testimony, pp. 482-83; 510-11.

<sup>222</sup> *Ibid.*, pp. 491-93. According to Mr. Chishti, an absolute commitment is needed "to enforce labor laws vigorously without regard to status. . . . If we say that the interests of the society is only to enforce the laws regarding wages and working conditions of U.S. workers, then basically you are saying that the employers are free to set the standards with

[I]f, as a society, we make that the public policy [i.e., eliminating all undocumented immigration], th[en] employer sanctions as a law to achieve that has not been successful at all, and I am suggesting that a better approach to achieving the goal is to have laws which focus on improving wages and working conditions, because I think laws of economic gravity, frankly, operate much more effectively than other laws, and that if you really pay people better, and whatever you do to achieve that, then it's likely that you would have U.S. citizens looking for those jobs and U.S. citizens will take those jobs, and the incentive for foreign workers to move into those jobs, and, by inference, especially the undocumented to move into those jobs would reduce.<sup>223</sup>

Yet the Center for Immigration Studies disagrees that better labor laws will improve wages for native workers. While vigorous enforcement of existing labor laws protects immigrants against exploitation, according to CIS "this approach is likely to have little effect on the wages of natives in low-skilled occupations because it does not change the fact that immigration has significantly increased the supply of low-skilled labor. It is this increase that is causing the troubling decline in wages for workers at the bottom of the labor market."<sup>224</sup>

### Community Responses to Ethnic Diversity

Concern over the impact of immigration on the United States is not rooted exclusively within low-income communities and low-skill jobs. A cultural perspective is also apparent. Some of the recent impetus to curtail immigration stems from white-collar and professional communities who fear the transformation of the Nation from a Eurocentric society to a multicultural one, with whites no longer in the majority. Thomas Muller, in a statement to the Commission on Immigration Reform, concluded that the calls for added restrictions on immigration are more likely generated by the discomfort with ethnic changes in predominantly white areas, than with the more often stated reason relating

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respect to all other workers and, therefore, if you then provide the incentive for the employer to pay any wages that they would like to pay for the unprotected workers, laws of market will tell you quickly that the wages and working conditions of all workers will go down, and that is just not permissible. . . ." Ibid., p. 491. See also Kwong Testimony, pp. 517-20.

<sup>223</sup> Chishti Testimony, p. 510.

<sup>224</sup> Camorata, *The Wages of Immigration*, p. 7.

to the costs of providing services. According to Mr. Muller:

[T]ensions between native and immigrant communities exist at two levels. At the first "gut" level, encountered in inner cities, friction is mostly associated with the competition to attain economic and political advancement among those lacking power. At the second, more abstract level, typically characteristic of middle income residents, anxiety is high among those uncomfortable with ethnic change or those who believe that new immigrants will weaken the sense of national identity.<sup>225</sup>

Other commentators question the ability of multiethnic societies to exist harmoniously. According to Peter Brimelow, a writer for *Forbes* magazine and author of the book *Alien Nation*, U.S. immigration policy has historically imposed immigration "pauses" to ensure assimilation (i.e., "Americanization") of new immigrant waves. Recent immigration policy, by allowing large groups of immigrants of all nationalities and ethnicities to emigrate without emphasizing assimilation, risks the creation of a truly multiethnic, ultimately divided, society.<sup>226</sup>

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<sup>225</sup> Thomas Muller, "Immigration and Community Tensions," prepared testimony for the Commission on Immigration Reform, Oct. 1, 1993, p. 8. "The argument about immigration—what kind of people should come, and in what quantities—is actually two arguments. One is economic, but the more interesting one, is cultural." Behn and Muzzio, "Empire State Survey," p. 5 (quoting George Will).

<sup>226</sup> Peter Brimelow, senior editor, *Forbes* magazine, testimony, *New York Hearing*, vol. II, pp. 688-89 (hereafter cited as Brimelow Testimony); Peter Brimelow, *Alien Nation* (New York: Random House, 1995), pp. 123-29. Mr. Brimelow argues that U.S. immigration policy must do more to ensure the integration of newcomers: "The last time there was a great wave of immigration . . . it was accompanied by what was called an 'Americanization' campaign both public and private, there was a real serious and determined effort to make sure that immigrants assimilated, . . . and, frankly, if the immigration that we see now is going to continue, then obviously we're going to have to pay more attention to Americanization, if the society is going to hold together. . . ." Brimelow Testimony, p. 688. In an article about immigration, Mr. Brimelow questions the impact of multiculturalism as he notes the existence of "another parallel with New York: just as when you leave Park Avenue and descend into the subway, on entering the INS waiting rooms you find yourself in an underworld that is almost entirely colored. . . . Only the incurious could fail to wonder: Where do all these people get off and come to the surface? That is: What impact will they have on America?" Peter Brimelow, "Time to Rethink Immigration," *National Review*, vol. 44, no. 12 (June 22, 1992), p. 30. See also Beck, *The Case Against Immigration*, p. 216. According to Mr. Beck: "To say that the imposition of a foreign culture into an American community is

These concerns over the ethnic diversity of New York's immigrants are not, however, shared by New Yorkers as a whole. According to the *Empire State Survey*, a survey of New Yorkers' attitudes about immigration, New Yorkers are at odds with the rest of the Nation about the perceived role of immigration on American culture. While 55 percent of Americans polled in a national survey believe that the increasing diversity of immigrants threatens American culture, 60 percent of New Yorkers believe that this diversity actually improves it.<sup>227</sup>

Nevertheless, the survey also revealed that New Yorkers believe there is significant tension between the city's racial and ethnic groups, especially among white and black residents, and

that tensions have worsened over the past several years. Tensions between blacks and whites are more pronounced than tensions between natives and immigrants, according to New Yorkers responding to the survey.<sup>228</sup> Multiculturalism also leads to tensions between groups of the same race. According to Walter Stafford, associate professor of urban planning and public policy at the Wagner Graduate School of Public Service, the large population of residents of African descent but of different nationalities has also been a source of tension among New York City blacks.<sup>229</sup> These tensions, like tensions among all groups, could benefit from a multicultural policy that addresses ethnic, racial, and linguistic differences.<sup>230</sup>

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disruptive is not to say there is anything negative about that foreign culture itself. The point is that differing cultures often tend to clash. And no matter how admirable the traits of a foreign culture, it can produce less than admirable results when introduced too rapidly and in too large a dose into the middle of a community." Ibid.

<sup>227</sup> Behn and Muzzio, "Empire State Survey," p. 5.

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<sup>228</sup> Ibid., p. 17.

<sup>229</sup> Walter Stafford, associate professor of urban planning and public policy, Wagner Graduate School of Public Service, New York University, testimony, *New York Hearing*, vol. II, pp. 627-28.

<sup>230</sup> Ibid., pp. 627-28, 683-84.

# Minorities and Women in New York City's Finance Industry

### Section I. Background of the Study

The Commission on Civil Rights' studies of racial tensions in cities throughout the Nation have repeatedly grappled with minority groups' lack of opportunities for economic equality. In New York City, two aspects suggested that a study of the finance industry, and the representation of minorities and also women in it, would greatly enhance our understanding of economic inequality in reference to these groups. First, as a prominent and well-paying industry in the city, the finance industry could serve as a major source of jobs for minorities and women, thereby increasing their opportunities for economic equality. Second, past research studies as well as current news reports suggested that minorities and women, when compared with their numbers in the population, were not well represented in the finance industry, or at least some segments of it.

A great deal has occurred in the financial industry since the Commission held its 1995 hearings that spotlighted the lack of diversity in the best and highest paying jobs on Wall Street as part of our racial and ethnic tensions hearings. Mergers continue at such a pace that some of the firms we examined no longer exist. Jesse Jackson's Wall Street project and annual meetings with participation from the President and highest Administration officials have further highlighted the need for participation in the investment side of the business and employment on Wall Street. The firms have made efforts to become more inclusive for sound business and other public policy reasons.

In the securities industry, a few people of color have been hired at higher levels, and the "standing" of minority-owned and women-owned investment firms has improved. Seventeen minority-owned and one woman-owned securities firm participated in the underwriting syndicate for the common stock initial public offering in

May 1999 of one of the largest securities firms in the country. The securities industry announced on April 20, 1999, a plan of action to assist firms in increasing the diversity of both their work force and client base. This announcement demonstrates the continued need to increase the representation of women and people of color in the securities industry. The report and plan of action were based in part on a survey sent to 740 firms, of which 95 (or 13 percent) responded. Forty-five of the responding firms are national or international, 26 are regional, and 24 are local. Seventy-four firms (or 10 percent) provided demographic data. "The data," says the industry "can be used as a snapshot against which to analyze trends and compare the degree to which the securities industry employee population has shifted."<sup>1</sup>

The firms are aware of the need to increase the representation of minorities and women in the industry—especially in retail and institutional areas where the higher compensated job opportunities can be found. Many of these firms describe efforts currently underway to recruit and train minorities and contend that committing to diversity programs "is a long term investment in the future of the U.S. economy, the capital markets, securities firms and the U.S. economy."<sup>2</sup>

This chapter does not prove the existence of underrepresentation in the sense that the term is used as showing legally the existence of employment discrimination in the finance industry or at any of the subpoenaed firms. In part, that is because the firms did not provide sufficient information concerning the qualifications of the various jobs.<sup>3</sup> The chapter describes the extent of

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<sup>1</sup> Press Release, Marc Lackritz, president, Securities Industry Association, Apr. 20, 1999.

<sup>2</sup> Ibid.

<sup>3</sup> The firms contend that because, as a matter of business practice, they do not keep such records, they do not have the

the presence of women, African American, Latino, and Asian American and Pacific Islander males in the finance industry based on the subpoenaed materials and EEOC data.

### The Prominence of New York City's Finance Industry

Since the founding of our country, the heart of New York City's and also the Nation's financial district has been located on Wall Street, the address by which the securities marketplace is known. It is here that merchants, agents, and customers of finance buy and sell securities.<sup>4</sup> The New York Stock Exchange (NYSE)—the Nation's largest exchange in which stocks are traded in a two-way auction process—and the U.S. Securities and Exchange Commission—an organization that regulates the securities industry—also reside here.<sup>5</sup> And although Wall Street is most often associated with securities, banking also has a strong presence in this area.

The finance industry includes depository institutions, nondepository credit institutions, holding (but not predominantly operating) companies, other investment companies, brokers and dealers in securities and commodity contracts, and security and commodity exchanges. Insurance and real estate are also included in the finance industry when standard industry divisions are used.<sup>6</sup>

information and cannot supply such information to the Commission.

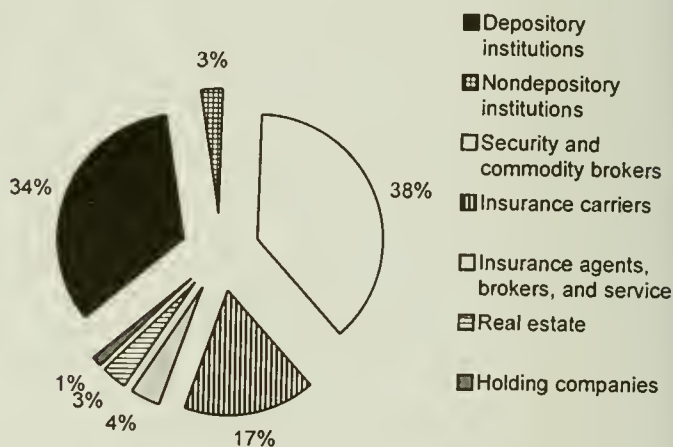
<sup>4</sup> A "security" is any evidence of debt or ownership, especially a stock certificate or bond. The term is defined by the Securities Act of 1933 as: "any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate of subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or any put, call, straddle option, or privilege on any security certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle option or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as 'security,' or in any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing." 15 U.S.C. § 77b(a)(1) (1997).

<sup>5</sup> The principal office of the U.S. Securities and Exchange Commission is in Washington, DC.

<sup>6</sup> Office of Management and Budget, *Standard Industrial Classification Manual* (Springfield, VA: National Technical

Figure 3.1 shows employment in the various segments of New York City's finance industry in 1994. Thirty-eight percent of employees in this industry work in establishments classified as security and commodity brokers. Another 34 percent are employed in depository institutions, which include commercial banks, savings institutions, and credit unions, and which we shall refer to as "banking." Insurance and the remaining segments account for 23 percent of employment in the finance industry. Thus, securities and banking are the largest components of the finance industry.

**Figure 3.1**  
Employment in New York City's Finance Industry, 1994



SOURCE: EEOC data. See appendix B, table B.2.

Compared with other industries in the city, or to financial industries in other cities, New York City's finance industry is large and prominent. Finance, insurance, and real estate, 1 of 10 major industrial groupings, is the second largest industry in New York City, surpassed in the number of persons employed only by the services industry. Of the 1,253,992 workers in private industry in New York City, 22.7 percent were employed in finance in 1991.<sup>7</sup> A much larger

Information Service, No. PB 87-100012) (1987), p. 335. Note that insurance covers carriers of all types of insurance, and insurance agents and brokers. Real estate includes owners, lessors, lessees, buyers, sellers, agents, and developers of real estate. Establishments primarily engaged in the construction of buildings for sale are not included. Ibid.

<sup>7</sup> The services industry employs 36 percent of private industry workers in New York City. Percentages were calculated

percentage of private industry workers are employed in New York City's finance industry than in other cities, including Chicago, Boston, Philadelphia, and Los Angeles, and the United States as a whole.<sup>8</sup> Furthermore, New York City's financial industry accounts for a large proportion of high-status jobs such as officials and managers—35.9 percent of officials and managers throughout the city were in finance, insurance, or real estate in 1991. Apart from the services industry, the finance industry is the major source for professional jobs in New York City—24.8 percent of professionals are in the finance industry. And, a large proportion of office and clerical workers, 38.3 percent, were employed in New York City's finance industry in 1991.<sup>9</sup>

Finally, the finance industry pays well. In 1990 finance, insurance, and real estate accounted for 35 percent of the annual payroll of establishments in New York County (that is, Manhattan) and 40.2 percent of payroll in the first quarter of the year. The payroll exceeded that of the services industry even though the services industry in Manhattan had 1½ times as many employees.<sup>10</sup>

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using figures from Equal Employment Opportunity Commission (EEOC), *Job Patterns for Minorities and Women in Private Industry, 1991* (1992), pp. 362–64. The numbers from this source differ very slightly from the 1991 figures in the analysis below.

<sup>8</sup> Workers in the finance industry were only 11 percent of private industry employees in Chicago, 14 percent in Boston, 11.7 percent in Philadelphia, 10.4 percent in Los Angeles, and 8.2 percent throughout the United States in 1991. Percentages calculated from source. *Ibid.*, pp. 1, 4, 256, 258, 269, 275, 279, 307, 313, 346, 364, 376.

<sup>9</sup> These proportions are also far larger for New York City than for other cities or the United States. In Boston, 19.1 percent of officials and managers employed in private industry are in the finance industry. In Chicago, Philadelphia, and Los Angeles roughly 16 percent employed in the private sector are employed in the finance industry, and throughout the United States 13.4 percent are similarly employed. In Boston and Chicago, about 16 percent of professionals employed in private industry are in the finance industry. That figure is 12.4 percent in Philadelphia and 10 percent in Los Angeles and the United States. In Boston, Philadelphia, and Los Angeles, 28 to 29 percent of office and clerical workers are in the finance industry; in Chicago and the United States, about 25 percent of them are in the finance industry. Percentages were calculated using 1991 figures as above. *Ibid.*

<sup>10</sup> Percentages calculated from figures in U.S. Department of Commerce, *County Business Patterns 1990*, New York, CBP-90-34, October 1992, table 2, pp. 130–39.

## Concerns about Minorities and Women in the Finance Industry

As a major source of employment and well-paid, high-status, and white-collar jobs, the finance industry is an important industrial segment for minorities and women to penetrate in their quest for equal opportunities. As will be shown below, past studies of the representation of minorities and women within industries, particularly the finance industry, have suggested, first, that minorities are generally not employed in New York City industries in the same proportion as their numbers in the population. Second, blacks and Hispanics may have fared better in New York City's finance industry, or at least the banking segment of it, than in other industries. Third, the securities segment of the finance industry has historically employed a lower percentage of minorities and women as compared with the banking industry. Finally, minorities and women may often be confined to lower paying jobs in the finance industry, although perhaps more so in securities than in banking.

Walter Stafford found that in 1982, blacks and Hispanics were tightly segmented in a narrow range of industries in New York City's private sector; that only 4 of 212 specific industries had relatively proportional representation of blacks, Hispanics, and whites; and that blacks and Hispanics were virtually excluded from 130 out of 193 industries in the city's private sector.<sup>11</sup> At the same time, banking and insurance were among the industries in which blacks were concentrated.<sup>12</sup> Commodities and stock savings banks was one of the four industry segments with a relatively proportional representation of blacks, Hispanics, and whites.<sup>13</sup> It employed a relatively large percentage of New York City workers, ranking at or near the top among 212 specific industries.<sup>14</sup> Stafford also found that between 1978 and 1982, the proportion of whites employed in finance, insurance, and real estate, and particularly banking, decreased as whites were replaced by blacks and Hispanics.<sup>15</sup> And

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<sup>11</sup> Walter W. Stafford, *Closed Labor Markets: Underrepresentation of Blacks, Hispanics and Women in New York City's Core Industries and Jobs* (New York, NY: Community Service Society of New York, 1985), pp. vii–ix.

<sup>12</sup> *Ibid.*, p. ix.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, pp. 24–25, 52 (table VII).

<sup>15</sup> *Ibid.*, pp. 57, 58, 60.

finally, while he found that blacks and Hispanics were poorly represented in professional jobs and had few opportunities to be managers in the private sector,<sup>16</sup> “[t]he highest portion of black and Hispanic managers was found in banking, the industry with the highest proportion of managers.”<sup>17</sup>

With respect to the securities industry, a 1974 U.S. Commission on Civil Rights report concluded that this industry had a poor record in the employment of minority group members generally and in the employment of women in positions above the clerical level.<sup>18</sup> Nationwide, minorities represented only 11.3 percent of the employees in the securities industry, and blacks were only 5.8 percent. Minority employees held 56 percent of all blue-collar jobs, 47.1 percent of all laborer jobs, and 62.5 percent of the craft positions, but only 1.7 percent of the sales positions. Blacks filled only 0.4 percent of sales positions and only 1.4 percent of the managerial positions.<sup>19</sup> Women constituted 33.8 percent of the securities industry work force nationwide, but they held only 6.5 percent of the management positions, compared with 56.2 percent of the clerical positions.<sup>20</sup> The report notes that 56 percent of those employed in the securities industry nationwide were employed in the New York City metropolitan area.<sup>21</sup>

In addition to these scientific studies, news reports have suggested that minorities and women have been and are still scarce in high-level positions in the securities industry. But some African Americans are employed in prominent positions on Wall Street. *Black Enterprise* reports having covered “African-Americans on Wall Street for more than 20 years,” and that “[f]inding these bankers and traders wasn’t as difficult as one might think.” They “can be found at the highest levels of responsibility at several of the Nation’s most prestigious Wall Street firms.” But, “African-Americans at the nation’s leading investment banks remain few in num-

ber, especially black women.” Furthermore, the number of black finance professionals being trained is too few to improve the statistics.<sup>22</sup>

News articles further claim that women have found at least one segment of the finance industry, investment banking, quite impenetrable for the past decade. A 1984 *Business Week* article reported that no large, privately held Wall Street investment banking firms had female partners.<sup>23</sup> But the dearth of women extended below the top executive positions. The presence of women in top executive positions in the finance industry has improved over the last decade,<sup>24</sup> perhaps because firms have hired consultants to help increase recruitment of minority and women executives.

Because of these continuing concerns, a careful examination of the presence of minorities and women in the finance industry is overdue. The securities industry warrants particular scrutiny as potentially the worst offending segment of the finance industry, while banking—a sector where minorities have fared better—offers a comparison. Finally, the representation of minorities must be examined by type of job to ensure that minorities and women are not confined to low-paying, low-status jobs.

### Design of the Study

The study focuses on the finance industry, specifically the securities and banking segments, in New York City. It relies upon a variety of data sources, including (1) data on the racial and gender composition of the work force in the finance industry in New York City (EEOC data), (2) data about persons designating certain occupations related to the finance industry in the 1990 U.S. census (1990 census data),<sup>25</sup> and (3)

<sup>16</sup> *Ibid.*, pp. x–xi.

<sup>17</sup> *Ibid.*

<sup>18</sup> U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974*, Volume I, “To Regulate in the Public Interest,” November 1974, p. 191.

<sup>19</sup> *Ibid.*, p. 192.

<sup>20</sup> *Ibid.*, p. 194.

<sup>21</sup> *Ibid.*, p. 193.

<sup>22</sup> Caroline V. Clarke and Frank McCoy, “25 Hottest Blacks on Wall Street,” *Black Enterprise*, October 1992, p. 47.

<sup>23</sup> “Taking a Shot at Another Male Bastion: Investment Banking,” *Business Week*, Aug. 27, 1984, p. 28. Data shown in app. B, table B.1.

<sup>24</sup> See app. B, table B.1.

<sup>25</sup> The 1990 census data were generated by the EEOC and provided to the U.S. Commission on Civil Rights in a series of reports: “Occupation by Industry/Race/Sex,” Dec. 8, 1993, and June 14, 1995 (for United States, New York County, and New York City Metropolitan Area–PMSA); “Occupation by Education/Race/Sex,” Aug. 31, 1994, and Sept. 1, 1994 (for a variety of occupations in the finance industry); “Occupation by Earnings/Race/Sex,” Sept. 1, 1994 (for a variety of occupations in the finance industry).



documents from 31 banks and securities firms obtained through the use of the Commission's subpoena power (subpoenaed documents), as well as statistics from published reports. The EEOC data and the subpoenaed data are described in more detail below.

### **EEOC Data**

Data were obtained from the U.S. Equal Employment Opportunity Commission (EEOC) on the finance industry in the New York City metropolitan area. These data give the racial and gender composition of the work force employed in establishments located in the designated geographic area.<sup>26</sup> In 1994 they included informa-

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<sup>26</sup> The EEOC data were those reported to the EEOC on Standard Form 100, the Employer Information Report (EEO-1). The EEOC collects these data through the authority of title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972. The data were provided to the U.S. Commission on Civil Rights through the authority of the Civil Rights Commission Act of 1983 and the Civil Rights Commission Amendments Act of 1994, which provides that "All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties." 42 U.S.C. §1975b(e) (1994). EEOC's authority to collect these data requires all employers with 15 or more employees to keep employment records as specified by their regulations. EEOC regulations require that certain large employers (typically private employers with 100 or more employees or Federal contractors with more than 50 employees) file the EEO-1 annually. See Equal Employment Opportunity Commission, "Equal Employment Opportunity, Standard Form 100, Rev. 4-89, Employer Information Report EEO-1, 100-116, Instruction Booklet."

The EEO-1 reports distinguish between single-establishment employers, that is, employers doing business at only one establishment in one location, and multiestablishment employers, those doing business at more than one establishment. Single-establishment employers file a single Standard Form 100. Multiestablishment employers must file a separate report for each establishment employing 50 or more persons and a report covering the principal or headquarters office. Multiestablishment employers must also file a consolidated report that includes all employees by race, sex, and job category in establishments with 50 or more employees as well as establishments with fewer than 50 employees.

To simplify the analysis, the sample of establishments was restrained in several ways. First, EEO-1 reports were obtained for establishments located in the New York City Primary Metropolitan Statistical Area (PMSA)—an area covering New York City, White Plains, NY, Newark, and Jersey City, NJ, and certain contiguous areas, including one county of Pennsylvania (a detailed definition is given in app. A). The reports were obtained for single-establishment employers and for establishments of multiestablishments if they were located in the New York City PMSA. Consolidated reports of multiestablishments were not obtained to avoid

tion on 752 establishments. Because many firms had multiple establishments, the data included correspondingly many entries for them. The analysis of the finance industry focuses on 1994 data because it corresponds to the time period of the subpoenaed documents (described below). However, EEOC data were obtained for the years 1987, 1989, and 1991 through 1996, and trends in employment are examined throughout all of these years.

### **Subpoenaed Documents**

On July 26, 1995, the U.S. Commission on Civil Rights held a hearing in New York City during which it used its subpoena power<sup>27</sup> to obtain confidential documents from 35 banks and securities firms.<sup>28</sup>

The sample of banks and firms had been selected from those with establishments in the EEOC data. It was designed to increase the probability of including establishments with either high or low representation of minorities, particularly in managerial positions. Most banks or firms that were foreign owned, those headquartered outside the New York metropolitan area or State, and those with fewer than 200 employees or 30 officials and managers were eliminated.<sup>29</sup> The resulting sample included 17 domestic commercial banks and savings institutions<sup>30</sup> and 18 securities dealers, brokers, and flotation companies.<sup>31</sup>

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any confusion in double counting establishments through the consolidated reports and the separate reports.

The choice of sample has some advantages and some disadvantages. Limiting it to the New York City PMSA focuses it on the city—the site of the Commission hearing. However, when large companies have headquarters offices in cities other than New York, this sample only captures the New York City establishments for those companies.

<sup>27</sup> See 42 U.S.C. §1975a(e)(2) (1994).

<sup>28</sup> As a result of mergers and other factors, the Commission obtained documents from 31 banks and firms.

<sup>29</sup> Note that among the best banks for employing minorities were the Banco Popular de Puerto Rico and foreign banks (such as American branches of Japanese-owned banks), but their success in including minorities reflects circumstances not encountered by the typical American bank. See "New York Hearing: Selection of Financial Institutions for Documents Hearing," U.S. Commission on Civil Rights, memorandum for Stephanie Moore, deputy general counsel, from Eileen E. Rudert, July 5, 1995.

<sup>30</sup> Chemical Bank, Citicorp, Citibank, Chase Manhattan Bank, Bank of NY Co., Inc., Marine Midland Bank, National Westminster Bank, J.P. Morgan & Co., Barclays Bank, Brown Brothers Harriman & Co., National Westminster

The documents subpoenaed included information on the company's position or job titles for positions classified as "officials and managers," "professionals," and "sales workers"; vacancy announcements or other information giving the minimum qualifications for those positions or job titles; and the number of vacancies, the race and gender of applicants, and the race and gender of persons hired for these vacancies. The companies were asked to provide this information for the past 3 years. In addition, they were to provide information on methods used to obtain applicants for these positions or jobs, including administrative policies, regulations, or procedures to obtain minority and female applicants for the positions or jobs, and administrative policies, programs, or practices to increase retention and advancement of minorities and women in and to professional and/or managerial positions. Finally, they were to provide any administrative policies, practices, or requirements regarding tests for professional certification, such as the Series 6 and 7 exams the National Association of Securities Dealers and New York Stock Exchange require of brokers and traders.<sup>32</sup>

With the exception of one, all the banks and firms responded to the subpoena *duces tecum*. If a bank or firm did not provide documents in response to a particular item of the subpoena *duces tecum* at the hearing, an official of the bank or firm was required to testify under oath that no such documents existed and to submit an affidavit to that effect.

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Markets, and U.S. Trust Co. of NY were the domestic commercial banks whose documents were subpoenaed. Amalgamated Bank of NY, Dreyfus Corp., Ridgewood Savings Bank, Independence Savings Bank, and Commodity Exchange, Inc., were the savings institutions receiving subpoenas.

<sup>31</sup> The firms included Prudential Securities, Inc., Smith Barney Shearson, Dean Witter Reynolds, Inc., Paine Webber Inc., Merrill Lynch Pierce Fenner & Smith, Donaldson, Lufkin & Jenrette, Bear Stearns & Co., Fahnestock & Co. Inc., Lehman Bros., Goldman Sachs & Co., Salomon Inc., Morgan Stanley, J & W Seligman & Co., Oppenheimer Mgt. Corp., Newberger & Berman, Scudder Stevens & Clark, Cowen & Co., and Dillon Read & Co., Inc. Note that documents were also subpoenaed from self-regulating organizations in the finance industry, including the American Stock Exchange, National Association of Securities Dealers, Inc., and the New York Stock Exchange.

<sup>32</sup> The full text of the subpoena *duces tecum* sent to the 35 banks and firms is shown in app. C.

## **The Study**

Much of the study is presented in a series of graphs and tables displaying the percentages of racial groups and women employed in the finance industry or various segments of it. Similarly, tables showing education or other relevant characteristics of the work force, called benchmarks in this report, show the percentages of racial groups or women having the particular characteristic. Thus, the percentages presented in this report are a profile of the racial or gender composition of a population, for example, the percentage of persons with a bachelor's degree who are black. These percentages differ from those that are more commonly seen, which, in this example, might be the percentage of blacks who have a bachelor's degree (i.e., an educational profile of blacks, rather than a racial profile of persons with a particular level of education). Note also, that in presenting the racial composition of employees or the benchmarks, the percentages of whites and men have been omitted from the tables. The percentage of whites is the difference between 100 percent and the percentage of minorities. The percentage of men is the difference between 100 percent and the percentage of women.

Section II begins with a brief overview of the finance industry and the banking and securities segments of it. It looks in detail at the employment of protected groups—minorities as a whole, blacks, Hispanics, and Asian American and Pacific Islanders, and women—within the industry segments and within major job classifications in the industry. Section III reviews company policies on hiring and promotion, equal employment opportunity, and affirmative action. It looks at tests used for certification in the securities industry and also examines recruitment and training programs for minorities and women for a small number of firms. Section IV compares gender and race of employees in New York depository institutions and securities firms as presented through data from a subpoena sample and a peer group sample. Section V presents information on relevant job qualifications, including education, job skills, work experience, and testing and certification, that may create barriers for minorities and women moving into the finance industry. Finally, section VI reviews recent trends in the industry and their effects on

the growth or decline of employment of minorities and women.

## Section II. Overview of New York City's Finance Industry

### The Finance Industry's 1994 Employment Profile

EEOC's data on the finance industry in the New York City metropolitan area in 1994 had information on 752 establishments, including multiple establishments for a large number of firms. Together the 752 establishments employed 276,355 employees. Of the establishments, 191 were security and commodity brokers and 258 were depository institutions, employing 105,597 and 93,255 employees, respectively.<sup>33</sup> The figures below were drawn from EEOC data.

### Representation of Minorities and Women

These data suggest that although minorities and women are well represented in the finance industry as a whole, they are concentrated in the lower status, lower paying jobs (job classifications are discussed more fully in sections below). Minorities and women were also less well represented in the securities segment. Figure 3.3 shows that in 1994, roughly 48 percent of the employees in New York City's finance industry were women and 34 percent were minorities (i.e., blacks, Hispanics, Asian American and Pacific Islanders, and American Indians). Looking at individual minority groups, about 17 percent of employees were blacks, 9 percent were Hispanics, and 8 percent were Asian American and Pacific Islanders. However, the percentages of minorities and women varied for different segments of the finance industry. For example, securities firms, the segment with the largest number of employees in New York City, employed only 26 percent minorities and less than 41 percent women. Depository institutions, that is, the banking segment, employed 41 percent minorities and more than 50 percent women. Thus, the securities industry employed much smaller proportions of minorities and women than banking.

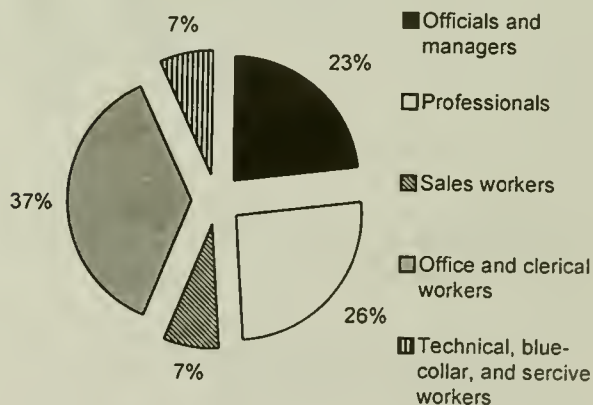
### Employment by Job Classification

In 1994, 93 percent of the jobs in the finance industry fell into four job classifications—officials and managers, professionals, sales

workers, and office and clerical workers. Indeed, half of the jobs fell in the top two classifications—officials and managers and professionals. Another 37 percent were office and clerical workers. The 7 percent of jobs that did not fall in these four primary job classifications were filled by technicians; blue-collar workers such as craft workers, operatives, and laborers; and service workers (see figure 3.2).

The distributions of job classifications in the banking and securities segments did not differ greatly from that shown in figure 3.2. Again, about half of the jobs in both segments were officials and managers and professionals, however, in banking 31 percent fell in the former category, and in securities 31 percent fell in the latter category. Banking had slightly more (about 40 percent) office and clerical workers, which include bank tellers, while securities had slightly fewer (34 percent). Finally, in 1994 securities had 11 percent sales workers, including stock traders, while banking had only 3 percent.<sup>34</sup>

**Figure 3.2**  
Job Classification in New York City's Finance Industry, 1994



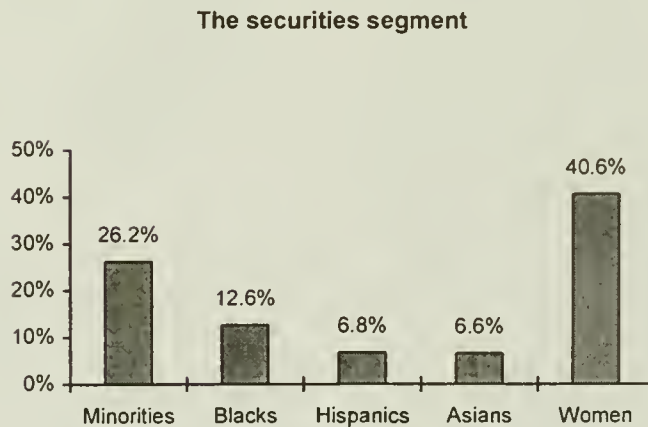
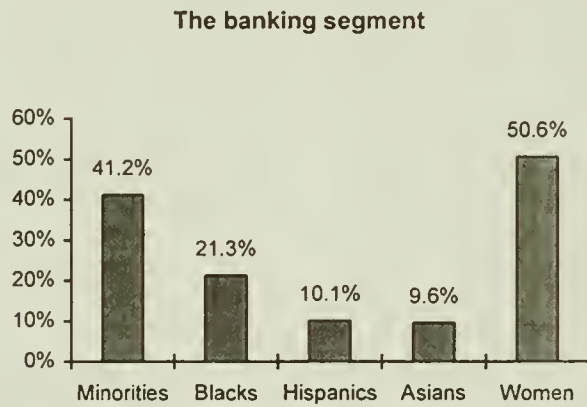
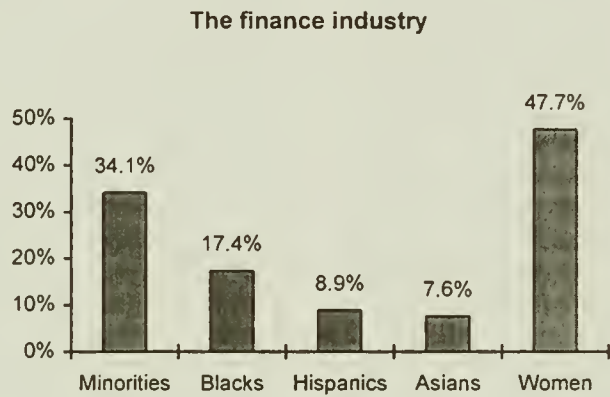
SOURCE: EEOC data. See appendix B, table B.4.

<sup>33</sup> See app. B, table B.2.

<sup>34</sup> Calculated from 1994 EEOC data.

**Figure 3.3**

**Employment of Minorities and Women in New York City's Finance Industry, 1994**



SOURCE: EEOC data. See appendix B, table B.3.

**Figure 3.4**

**Percentage of Protected Groups Employed in the Finance Industry by Job Classification, 1994**



SOURCE: EEOC data. See appendix B, table B.5.

### ***Differences among Job Classifications***

Figure 3.4 shows that women and minorities were concentrated in the lower status, lower paying jobs of office and clerical workers. In banking, 70.9 percent of office and clerical workers were women and 61.4 percent were minorities. Specifically, 36.2 percent were blacks, 15.4 percent were Hispanics, 9.6 percent were Asian American and Pacific Islanders, and a fraction of a percent (included in the "Minorities" bar of all charts but not as a separate bar) were American Indians. Similarly in securities firms, 62.2 percent of office and clerical workers were women and 40.9 percent were minorities. Office and clerical workers in securities were 23.3 percent black, 11.8 percent Hispanic, and 5.6 percent Asian American and Pacific Islander.

Among higher level positions, that is, officials and managers, professionals, and sales workers, the largest percentages of women and minorities were employed as professionals and sales workers in banking, where women were just less than 44 percent of employees and minorities were somewhat less than 31 percent of employees. Ten percent fewer women and 8 percent fewer minorities held a top position as an official or manager than those that held a professional position. But, among sales workers in securities, only 18.3 percent were women and 7.9 percent were minorities. In this industry segment, "sales worker" is the job classification to which stock traders are assigned. For these higher level job classifications, the percentage of blacks roughly ranges between about 3 and 12.5 percent; the percentage of Hispanics roughly ranges between 2 and 9 percent; and the percentage of Asian American and Pacific Islander roughly ranges between 3 and 12 percent (see figure 3.4).

### ***Differences among Industry Segments***

Apart from the stark differences in the percentages of women and minorities employed in the higher level positions versus office and clerical workers, note that like the finance industry as a whole, the racial and gender representation in each job classification is larger for the banking segment than for the securities segment. For example, like banking, the securities segment had minorities and women concentrated in office and clerical positions, but there were proportionally fewer women and minorities in the securities segment. Approximately 62 percent of of-

fice and clerical workers were women in securities firms, compared with about 71 percent in banking (and 70 percent in the finance industry as a whole<sup>35</sup>)—roughly a 10 percent difference. The difference between the banking and securities segments in the percentages of minorities employed as office and clerical workers was roughly 20 percent (i.e., 61 versus 41 percent). Banking institutions employ about 8 percent more women and 8 to 9 percent more minorities as officials and managers and as professionals than securities firms. Finally, among sales workers, the securities segment employs about 25 percent fewer females and 20 percent fewer minorities than the banking segment (see figure 3.4).

These data show stark contrasts in the proportions of minorities and women employed in the banking versus the securities industry segments and among office and clerical workers versus sales workers, professionals, and officials and managers. Whether or not these differences arise from discrimination is not clear, however, without information about the qualified work force. Jobs falling in different job classifications often require different levels of education and job skills. Thus, differences in levels of education and job skills of minority groups and women would result in different proportions of the protected groups being represented in particular job classifications. A later section will relate differences in the representation of minorities and women among these industry segments and job classifications to differences in education levels and job skills.

### ***Dynamism within the Finance Industry***

The finance industry is a very dynamic industry influenced by factors and trends sometimes beyond its control which in turn affect the growth and decline of employment in this industry. Indeed, changes in the banking industry have been so vast that it has been characterized as a fundamentally different industry from what it was only a decade ago.<sup>36</sup> Some changes are reviewed below as a backdrop for understanding

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<sup>35</sup> 1994 EEOC data.

<sup>36</sup> "Remarks by Eugene A. Ludwig, Controller of the Currency, Before the New York State Bankers Association, Lake George, NY," June 17, 1996, Comptroller of the Currency, Administrator of National Banks, Washington, DC 20219, News Release (NR 96-72), p. 4.

the employment trends that will be seen in later sections. The representation of minorities and women as employees in this industry is, then, examined both in terms of the increasing or decreasing numbers and percentages of those employed.

Some of the major trends affecting the finance industry in recent years include the October 1987 drop in the stock market; widespread downsizing in the banking industry from consolidations and mergers as well as increased automation; the growth in diversity of bank products and services, including many traditionally available through securities firms; and the vast technological changes affecting both banking and securities. Last but not least, the demographics of the population of New York City changed between the 1980s and 1990s, possibly affecting the racial composition of the qualified work force for the finance industry as well as other New York City industries.

### ***The 1987 Stock Market Readjustment and After***

On October 19, 1987, a day that became known as Bloody Monday, the stock market crashed. The Dow Jones Industrial Average plummeted more than 500 points, almost 5 times the previous record for a single-day drop (which occurred only the week before). It was a 22.6 percent drop—almost twice the size of the Crash of 1929, and the drop created a full-scale stock market panic.<sup>37</sup> Indeed, the crash itself spurred insecurity and further decline in the market. All told, over the course of 3½ months, the Dow fell nearly 1,000 points.<sup>38</sup>

Employment layoffs had begun to hit Wall Street even before the crash. Just days before the market began plummeting, Salomon, Inc., previously the unrivaled king of Wall Street, announced layoffs of 12 percent of its work force, some 500 workers. Kidder, Peabody & Co. laid off 100 staff a day later. These were just two of the securities firms where several years of market growth had encouraged the expansion of staff until Wall Street simply had too many

commercial and investment bankers.<sup>39</sup> In the turmoil and instability that followed the crash, job cuts were inevitable.

Since the 1987 readjustment, the stock market has generally experienced growth. One analyst states that if someone had bought at the very beginning of the 1987 decline (the worst possible day that year) and held on, he or she would have recouped the loss by July 1989.<sup>40</sup> Furthermore, 1991, 1992, and 1993 were more profitable years than any in the previous history of the U.S. securities industry.<sup>41</sup> Some wariness of the stock market occurred in 1994,<sup>42</sup> but in 1996 analysts were reporting sustained economic growth and a surge in stock prices over the previous 5 years, including 1994.<sup>43</sup> And, from 1989 through December 1995, the Dow Jones Industrial Average had risen 86 percent.<sup>44</sup>

Whether the recent growth in this industry has spawned rapid gains in employment like those that occurred in the previous decade is unclear. Certainly, stockbroker salaries mirrored the growth (and the 1994 decline) in company profits.<sup>45</sup> And, the unprecedented growth in this

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<sup>39</sup> William Glasgall, Sarah Bartlett, and Richard A. Melcher, "Wall Street's New Austerity: A wave of cutbacks shows the global market can be a dangerous place," *Business Week*, Oct. 26, 1987, pp. 28–29; Anthony Bianco, "Can Salomon Grow by Shrinking?" *Business Week*, Oct. 26, 1987, pp. 30–31; David Zigas and Joan Berger, "The Street's retreat will be felt far from the Big Apple," *Business Week*, Oct. 26, 1987, p. 31.

<sup>40</sup> Glassman, "Market history lesson," p. H–1.

<sup>41</sup> Brett D. Fromson, "The golden years; Wall Street's '90s prosperity makes the go-go '80s look small-time," *Washington Post*, July 3, 1994, p. H–1.

<sup>42</sup> Kenneth N. Gilpin, "Making a case for regional banks as an undervalued segment," *New York Times*, Jan. 6, 1994, p. D–6; Glassman, "Market History Lesson," p. H–1.

<sup>43</sup> Tom Petrino, "Market Beat: Your Money; In Earnings, Elements of Hope, Fear—Game Playing," *Los Angeles Times*, Aug. 4, 1996, p. D–1.

<sup>44</sup> Tom Petrino, "Countdown to a new millennium; As 2000 looms, hope and fear court investors," *Los Angeles Times*, Dec. 31, 1995, p. D–1.

<sup>45</sup> Mid-level senior associates and vice presidents often receive base pay of less than \$100,000, but bonuses can bring the total compensation to as much as \$600,000 in a profitable year (Kenneth N. Gilpin, "With profits down, Wall St. braces for pay cuts," *New York Times*, Dec. 8, 1994, p. D–1). With the record high profits in 1991 and 1992, pay and bonuses for well-respected analysts ranged between \$600,000 to \$1 million (Jay Mathews, "Fat is back in Wall St. paychecks; big bonuses mirror brokerages' profits," *Washington Post*, Jan. 16, 1993, p. C–1). Of course, industry averages are much lower, but still quite attractive. The Securities Indus-

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<sup>37</sup> "The Crash of '87; Stocks Plunge 508 Amid Panicky Selling; Percentage decline is far steeper than '29," *Wall Street Journal*, Oct. 20, 1987, p. 1. See also "Sinking Feeling; Trade-Gap News Sends Stock Market Reeling Into a Record Tailspin," *Wall Street Journal*, Oct. 15, 1987, p. 1.

<sup>38</sup> James K. Glassman, "Market History Lesson: In time, the bull wins," *Washington Post*, Aug. 28, 1994, p. H–1.

industry has been accompanied by changes in, and concern about, stockbroker salaries, bonuses, and other benefits.<sup>46</sup> But at least one skeptic suggests that industry growth need not result in a growth in employment. He commented that overseeing a pot of money does not take many people. The more money a firm has under management the greater the economies of scale. Someone managing \$100 million can

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try Association's study reported that, on average, retail brokers earned \$116,510 in 1992. In 1993 their average earnings increased 10 percent, hitting a record \$128,553. Institutional brokers, who earned an average of \$271,495 in 1992, earned \$304,716 in 1993—a 12 percent increase. ("Stockbrokers took home record paychecks last year," *Los Angeles Times*, Aug. 9, 1994, p. D-2; Leslie Eaton, "Brokers' paychecks kept swelling in 1993," *New York Times*, Aug. 9, 1994, p. D-1.) Retail brokers earnings averaged \$117,037 in 1994 and rose 6 percent in 1995, to \$123,839. Institutional brokers earned \$229,598 on average in 1994, and \$289,405 in 1995—a 26 percent rise ("Earnings rise for stockbrokers," *New York Times*, Aug. 7, 1996, p. D-6). However, the setback in average earnings in 1994 compared with earlier years reflects the slump in this industry that year. (See also Kenneth N. Gilpin, "With profits down, Wall St. braces for pay cuts," *New York Times*, Dec. 8, 1994, p. D-1; Stephanie Strom, "Two-tier Wall St.; Epidemic of pay envy as stars get more and others get less," *New York Times*, June 15, 1995, p. D-1.)

<sup>46</sup> Two major changes in how brokers and analysts are paid have occurred in recent years and seem to be the source of a great deal of turmoil among industry officials and employees. First, an industry scandal revealed a conflict of interest between brokers and their clients and brought pressures to pay brokers based upon the assets they manage rather than the number of their transactions. (Robert Nylen, "Curbing Wall Street's seamier side," *New York Times*, Nov. 21, 1993, p. F-13; Scot J. Paltrow, "SEC looking to overhaul pay system for stockbrokers," *Los Angeles Times*, May 20, 1994, p. D-1; "Compensation panel cleared," *New York Times*, Aug. 25, 1994, p. D-6; Scot J. Paltrow and Jube Shiver, Jr., "Panel urges alterations in how brokers are paid," *Los Angeles Times*, Apr. 11, 1995, p. D-1.) Second, companies searched for strategies to attract and keep good employees while employees tried to find the best jobs. Highly profitable years engendered bidding wars for good staff (see Robert Steiner, "Hottest commodity in Asia's markets for securities just might be brokers," *Wall Street Journal*, Apr. 15, 1994, p. B-10A). To avoid losing analysts to higher bidders and to promote corporate loyalty, many firms began paying bonuses in company stock, restricting or deferring the sale of it in some way (Jay Mathews, "Fat is back in Wall St. paychecks; big bonuses mirror brokerages' profits," *Washington Post*, Jan. 16, 1993, p. C-1; Kenneth N. Gilpin, "With profits down, Wall St. braces for pay cuts," *New York Times*, Dec. 8, 1994, p. D-1). In leaner years, corporate efforts to restructure the pay system also caused job hopping among employees (Stephanie Storm, "Two-tier Wall St.; Epidemic of pay envy as stars get more and others get less," *New York Times*, June 15, 1995, p. D-1).

probably do as decent a job with \$500 million.<sup>47</sup> At the very least these changes have resulted in a rapid turnover in staff, if not a growth in employees.

Some Wall Street executives anticipate that securities firms will not be able to sustain the growth and high salaries of the 1990s in the future. Their firms will be facing new competition from banks offering investment services and from technological advances as clients and customers who once relied upon Wall Street obtain information from their own computers.<sup>48</sup> These are some of the trends discussed below.

### **A Major Downsizing in Banking**

While the securities segment of the finance industry was mostly growing through the 1990s, the banking segment was contracting. Legislative changes during the last decade made it possible for banks to operate across State lines. Along with competitive market pressures to cut costs and increase efficiency, this spurred a trend in the 1980s to consolidate the industry and merge banks.<sup>49</sup> This trend has accelerated in the 1990s. By one report, the number of national banks declined an average of 475 branches a year, a 4.2 percent annual decrease, between 1991 and 1995.<sup>50</sup> Furthermore, bank mergers continued in 1995. For example, in mid-summer, First Union Corp. acquired First Fidelity Corp.; PNC Bank Corp. acquired Midlantic Corp.; and First Chicago Corp. merged with NBD Bancorp.<sup>51</sup> By the end of August, three other merg-

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<sup>47</sup> Brett D. Fromson, "The golden years; Wall Street's '90s prosperity makes the go-go '80s look small-time," *Washington Post*, July 3, 1994, p. H-1.

<sup>48</sup> Stephanie Strom, "Two-tier Wall St.; Epidemic of pay envy as stars get more and others get less," *New York Times*, June 15, 1995, p. D-1.

<sup>49</sup> Jeffrey C. Kuster, "Occupational employment in commercial banking, 1987-90," *Monthly Labor Review*, April 1993, pp. 21-25.

<sup>50</sup> "Remarks by Eugene A. Ludwig, Controller of the Currency, Before the New York State Bankers Association, Lake George, NY," June 17, 1996, Comptroller of the Currency, Administrator of National Banks, Washington, DC 20219, News Release (NR 96-72), p. 4. In contrast, mergers and acquisitions in the late 1980s resulted in decreasing numbers of banks, but increasing numbers of bank branches. See Jeffrey C. Kuster, "Occupational employment in commercial banking, 1987-90," *Monthly Labor Review*, April 1993, pp. 21-25.

<sup>51</sup> Timothy L. O'Brien and Steven Lipin, "In Latest Round of Banking Mergers, Even Big Institutions Become Targets," *Wall Street Journal*, July 14, 1995, pp. A-3, A-5.



ers had occurred, including one huge one between Chemical Banking Corp. and Chase Manhattan Corp.<sup>52</sup>

The result of these mergers, according to one report, is that today's average national bank is almost 3 times the size of the average national bank a decade ago.<sup>53</sup> One industry analyst predicted that by the end of the decade, only a handful of gigantic institutions would have a nationwide presence, and only a sprinkling of small local banks with specialized niches would remain along side of them.<sup>54</sup>

The mergers and consolidations resulted in a considerable loss of jobs in the banking industry. Nationwide, the number of people working for banks, savings and loans, and other depository institutions fell by roughly 10 percent (222,000 jobs) between July 1989 and August 1995.<sup>55</sup> In New York City, where the banking industry had been a big source of employment growth in the early 1980s, jobs at commercial banks had plunged from 118,000 in July 1988 to fewer than 75,000 by August 1995, a fall of 36 percent.<sup>56</sup>

The Chase-Chemical merger alone was projected to eliminate 12,000 positions from a combined staff of 75,000 nationwide over a 3-year period.<sup>57</sup> About a third of the lost jobs were to occur in New York City, where plans called for eliminating 100 of the 480 bank branches. The

positions most likely to be eliminated were clerical and technical workers.<sup>58</sup>

Industry experts say, however, that while the big share of job cuts in the banking industry are in low-level jobs, higher level staffing reductions hurt more. Because of the high turnover rate for jobs such as tellers, reductions can be achieved through attrition with a simple hiring freeze. Among senior loan officers and branch managers, the lower rate of turnover is more likely to result in layoffs.<sup>59</sup>

### **Diversification of Bank Services**

At the same time that banks have been downsizing to become more competitive and efficient, market forces have made them diversify the product lines they offer. Indeed, deregulation in the late 1980s enabled banks to engage in new forms of business, such as the limited underwriting of securities and corporate bonds,<sup>60</sup> broadening the diversity of products they could offer. As a result of the increased diversity, the very nature of banks themselves has changed. For example, in the last decade, the percentage of bank lending made up of loans to consumers has increased through home mortgage lending, credit card operations, installment loans, and home equity business. The percentage of bank assets in residential real estate has nearly tripled. Many more banks sell insurance to consumers today than a decade ago. Finally, bank mutual fund sales—products that were not available through banks just over a decade ago—have soared in recent years.<sup>61</sup>

Along with the diversification of bank products and services has come a redefinition of the role of the bank teller. While tellers once needed little more than clerical skills, today they often staff the customer service desk, advising customers about the latest in interest rate changes, IRA accounts or personal loans, and filling posi-

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<sup>52</sup> David R. Francis, "Marriages multiply in banking industry: Chase-Chemical latest," *Christian Science Monitor*, Aug. 29, 1995, sec. 1, p. 3.

<sup>53</sup> "Remarks by Eugene A. Ludwig, Controller of the Currency, Before the New York State Bankers Association, Lake George, NY," June 17, 1996, Comptroller of the Currency, Administrator of National Banks, Washington, DC 20219, News Release (NR 96-72), p. 4.

<sup>54</sup> Timothy L. O'Brien and Steven Lipin, "In Latest Round of Banking Mergers, Even Big Institutions Become Targets," *Wall Street Journal*, July 14, 1995, pp. A-3, A-5.

<sup>55</sup> Leslie Eaton, "Banking's New Giant: The Displaced; Job losses to fall hard in New York City," *New York Times*, Aug. 29, 1995, p. C-5. See also James Aley, "Where the laid-off workers go," *Fortune*, vol. 132, no. 9 (Oct. 30, 1995), p. 45. Aley reports a 9 percent decline from 1990 to 1995. In earlier years (i.e., 1987 to 1990), employment in banking had been increasing slightly. See Jeffrey C. Kuster, "Occupational employment in commercial banking, 1987-90," *Monthly Labor Review*, April 1993, pp. 21-25.

<sup>56</sup> Eaton, "Banking's New Giant," p. C-5.

<sup>57</sup> David R. Francis, "Marriages multiply in banking industry: Chase-Chemical latest," *Christian Science Monitor*, Aug. 29, 1995, sec. 1, p. 3; Leslie Eaton, "Banking's New Giant," p. C-5.

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<sup>58</sup> Eaton, "Banking's New Giant," p. C-5.

<sup>59</sup> James Aley, "Where the laid-off workers go," *Fortune*, vol. 132, no. 9 (Oct. 30, 1995), p. 45.

<sup>60</sup> Jeffrey C. Kuster, "Occupational employment in commercial banking, 1987-90," *Monthly Labor Review*, April 1993, pp. 21-25.

<sup>61</sup> "Remarks by Eugene A. Ludwig, Controller of the Currency, Before the New York State Bankers Association, Lake George, NY," June 17, 1996, Comptroller of the Currency, Administrator of National Banks, Washington, DC 20219, News Release (NR 96-72), p. 2.

tions that may be interchangeable with several others in the bank.<sup>62</sup>

In particular, banks' increase in mutual fund sales has resulted in their employees conducting activities that securities firms typically engage in. With these added functions, regulators became concerned that bank employees selling mutual funds were not professionally licensed or certified like employees in the securities industry. In September 1994, bank regulators reached an informal agreement that bank employees who sell mutual funds and other investments will have to pass certification tests.<sup>63</sup> In December 1996, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Board proposed a rule that bank employees must be certified with the same tests administered to stockbrokers and securities dealers by the National Association of Securities Dealers.<sup>64</sup> The examinations test knowledge of how to sell stocks, bonds, mutual funds, and other investment products. Thus, along with the diversification of bank products and services has come a change in the types of employees banks now have. Indeed, bank employees are now more like those who work in securities firms in both training and skills.

### ***The Revolution in Computer Technology***

In less than a decade, the technology revolution has redefined careers in many fields, including banking, changing the nature of the work employees perform as well as the services provided to customers. Not too many years ago, workers starting in the banking business manually recorded customers' deposits and withdraw-

als on a ledger card.<sup>65</sup> Now the majority of such transactions are handled by automated teller machines.

Although automated teller machines (ATMs) were introduced in the early 1980s or before, their use has exploded in the 1990s. The machines provide bank customers greater accessibility because they are open 7 days a week and can be conveniently located in places people gather, such as shopping malls. Furthermore, ATMs reduce the amount of salaries banks must pay to human tellers, require only a few individuals to stock the boxes with cash and to pick up any deposits, and automatically debit or credit withdrawals and deposits to the appropriate accounts along with service charges. Thus, by using ATMs, banks need fewer workers, pay lower wages to workers servicing ATMs than to tellers, and reduce human error.<sup>66</sup>

The use of ATMs contributed to job losses in the banking industry and was likely an enabling factor for the downsizing that occurred with consolidations and mergers. Declines in the employment of bank tellers are similar in magnitude to decreases in employment industrywide. By one report, there were 484,000 bank tellers nationwide in 1985, but the number had dropped 9 percent, to 441,000, by 1994.<sup>67</sup> Furthermore, job losses due to ATM cards are predicted to continue occurring over the next decade. Some industry experts expect that half of the Nation's bank teller jobs will be eliminated during that time and most of the remaining jobs will be converted to part-time status.<sup>68</sup>

The technological changes occurring in the banking and securities industries are far more vast than the use of ATMs. With the popularity of the home computer, computer networking advancements in telecommunications, and the Internet, a variety of services are, or are becoming, available whereby clients can directly manage their own bank accounts and securities portfolio.

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<sup>62</sup> Robin Greene, "Cutting-edge careers: Technology redefines work roles: Teachers, secretaries and bank workers find computer skills becoming an integral part of their jobs," *Los Angeles Times*, Feb. 26, 1996, pt. D2, p. 17. See also Jonathan D. Glater and Frank Swoboda, "Taking a bite out of bank jobs; in the quest for convenience and lower costs, ATMs eat into services provided by tellers," *Washington Post*, July 10, 1995, p. F-1.

<sup>63</sup> Jonathan D. Glater, "Bank workers to be given NASD exam," *Washington Post*, Sept. 28, 1994, p. F-1; "NASD puts banks to test," *Pittsburgh Post-Gazette*, Sept. 28, 1994, p. D-7; Snigdha Prakash, "Securities Dealers Group Agrees to Certify Employees of Banks," *American Banker*, Apr. 19, 1994, p. 12.

<sup>64</sup> Comptroller of the Currency, "OCC Proposes Rule For Bank Employees Who Recommend or Sell Certain Securities," News Release, Dec. 11, 1996, Washington, DC.

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<sup>65</sup> Greene, "Cutting-edge careers," pt. D2, p. 17.

<sup>66</sup> Thomas R. Ide and Arthur J. Cordell, "Automating work," *Society*, vol. 31, no. 6 (September-October 1994), pp. 65-71.

<sup>67</sup> Greene, "Cutting-edge careers," pt. D2, p. 17. The author was citing figures from the American Banking Association, in Washington, DC.

<sup>68</sup> Jonathan D. Glater and Frank Swoboda, "Taking a bite out of bank jobs; in the quest for convenience and lower costs, ATMs eat into services provided by tellers," *Washington Post*, July 10, 1995, p. F-1.

lios, for example, by making electronic payments, transfers of funds between accounts, and online trades of securities. These changes also reduce the need for tellers, clerks, stock traders, brokers, supervisors, accountants, auditors, and managers.<sup>69</sup>

But while changing technology is reducing the number of workers needed to support the finance industry, it is also affecting the types of jobs that are available. Career counselors are finding that employers are increasingly requiring applicants to be proficient with computers and other forms of technology. Computer skills, once considered a luxury, are now a necessity.<sup>70</sup> Two observers further suggest that a work force with a bimodal set of skills will emerge: highly trained people will design and implement the new technologies while unskilled workers carry out the remaining jobs.<sup>71</sup>

### **Demographic Changes in New York City**

The racial composition of New York City also affects the racial makeup of employees in the finance industry located there. During the 1980s, the city's white population decreased while its minority population increased until the majority of the population was minority. Whites who were 52.3 percent of the city's 7 million population in 1980, were 43.2 percent of it in 1990. African Americans remained a relatively constant proportion of the population, about one-quarter of the city's census counts in both 1980 and 1990. Both the Hispanic and Asian American and Pacific Islander populations increased. Hispanics were roughly 20 percent of the 1980 population in the city and about 24 percent in 1990. The Asian American and Pacific Islander population doubled, from 3.4 percent in 1980 to

6.8 percent in 1990.<sup>72</sup> Very likely these same trends—the decreasing white, increasing Hispanic, and rapidly growing Asian American and Pacific Islander populations—continued during the 1990s.

Except for the 1987 stock market crash and a milder slump in 1994, the securities industry segment was growing through the years, but banking was contracting. Furthermore, advances in technology were changing the very nature of jobs in the finance industry. Although jobs in the past had not required computer skills, such requirements were now commonplace. Also in banking, the diversification of products and services was changing jobs, such as tellers, to include duties traditionally found in securities firms, with the result that bank employees were now being required to meet certain testing requirements of the securities industry. Finally, the demographics of New York City were changing, with the percentage of whites decreasing. Asian American and Pacific Islanders and Hispanics were immigrating to the city and possibly bringing about similar changes in the qualified work force available to the finance industry.

### **Section III. Recruiting and Hiring**

#### **Race and Gender of Applicants and Persons Hired**

The Commission requested data on the gender and race of job applicants and persons hired within three categories of personnel; the data covered the most recent 36-month period. The subpoena specified submission of both quantitative data and qualitative information.

Categories of personnel requested were:

- Officials and managers
- Professionals
- Sales workers

The firms also submitted supporting documents showing the specific position qualifications for each of the three categories. The data were analyzed in two groups: data submitted by

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<sup>69</sup> Thomas R. Ide and Arthur J. Cordell, "Automating work," *Society*, vol. 31, no. 6 (September–October 1994), p. 66. For the effect of the Internet on the securities industry, see Hal Lux, "The Cyberspace Threat: Will the Internet do to Wall Street what Wall Street did to the banks?" [circa August 1996], and "Wall Street Wires Into the Web," [circa July 1995], both at <<http://nestegg.iddis.com/webfinance/brokh123.html>>. Lux reports that on-line brokerage services first became available on the Internet in January 1995. The effect of the Internet on employment in the securities industry is therefore too recent to be observed in the data presented in the section below.

<sup>70</sup> Robin Greene, "Cutting-edge careers," pt. D2, p. 17.

<sup>71</sup> Thomas R. Ide and Arthur J. Cordell, "Automating work," *Society*, vol. 31, no. 6 (September–October 1994), p. 69.

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<sup>72</sup> Bureau of the Census, 1990 Census of Population, *Social and Economic Characteristics: New York*, 1990 CP-2-34, sec. 1, table 7, and Bureau of the Census, 1980 Census of Population, *General Social and Economic Characteristics: New York*, PC80-1-C34, N.Y., sec. 1, table 59.

the banking industry and data submitted by securities firms. Data representing the banking industry were more complete than data submitted by the securities firms.

In fact, only one securities firm submitted the subpoenaed data on the number of job applicants. However, most firms provided hiring data. Many securities firms indicated that applicant data were not available.<sup>73</sup> As stated during the July 1995 New York hearings, this report will not identify an individual firm's submissions. Thus, any analysis of the applicant and hiring data submitted by the one securities firm has been excluded.

Of the 14 banks in the sample, 11 submitted data in the format requested. Further, data for the 36-month time period were not consistent among the banks, varying considerably. Some data reflect the period of 1992 through 1994, and other data reflect a 1993 through 1995 time period. Three banks submitted a single year of data. Table 3.1 displays a summary of the applicant and hiring data for the banking industry. The data are organized by job category and gender.

When the data for applicants and hires are considered together, they give the appearance that there is a significant disparity between males and females. In both the officials and managers and the professionals job categories, the percentage of male applicants and hires is nearly double that of females. In comparison, table 3.2, indicates that the percentage of these applicants that are hired is nearly equal between males and females. In fact, in the officials and managers category, 33 percent of the female applicants were hired and 29 percent of male applicants were hired; an equal percentage of male and female applicants in the sales workers category were hired; an equal percentage of male and female applicants were hired in the professionals category; and 12 percent more female than male applicants in the sales workers category were hired. Therefore, an increase in the number of female applicants could increase the number of female employees in the banking industry.

The data indicate slightly higher percentages of female applicants hired in the officials and managers job classification, the proportion of males to females is equal in the professional classification, and a greater percentage of female sales worker applicants were hired. The data seems to show that increasing the number of female applicants likely results in an increase in the absolute number of female employees in the banking industry.

As discussed above, 19 of the 20 securities firms did not supply data regarding applicants, as they maintained that they do not keep such data. Many did, however, provide data on job hiring. Table 3.3 summarizes that data.

There were more than 2,000 hires reported in the officials and managers job classification and more than 10,000 in the professional job classification. The number of hires in the sales worker job classification was the lowest, at just over 1,750. While these data show that different percentages of males and females were hired, it does not permit any specific conclusions to be drawn regarding the causes of these differences. Given that applicant data were not provided for analyses, it is impossible to ascertain if the hiring pattern simply reflects the applicant pool. In an attempt to better understand these quantitative findings, the qualitative information regarding position qualifications and recruitment avenues will be analyzed in a later section of this chapter.

The next component of the analysis involved stratifying the application and hiring data by gender and race within the job classifications. As part of the subpoena procedure, the sample of New York firms were requested to provide these data. Again, most of the banking peer group sample complied with providing both applicant and hiring data. The securities firms provided only hiring data by both gender and race.

The data on gender-specific hiring were further subdivided into categories according to race. Although the banking peer group sample provided both applicant and hiring data, the securities firms' included only hiring information. However, not all banks submitted information further dividing the applicant and hiring data according to race. Table 3.4, therefore, does not include the same number of banks as table 3.1.

Table 3.4 displays total applicant and hiring data by gender and race from the banking peer

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<sup>73</sup> The firms contend that as a matter of business practice, they do not keep, and thus did not have, such data to provide to the Commission.

**Table 3.1**

**Summary of Applicant and Hiring Data: 11 Subpoenaed Banks,  
Percentage of Total Applicants and Hires by Job Classification and Gender**

Job classification	<u>Applicants</u>		<u>Hires</u>	
	Male	Female	Male	Female
Officials and managers	68%	32%	65%	35%
Professionals	63	37	62	38
Sales workers	81	19	75	25

**Table 3.2**

**Gender-specific Hiring Data: 11 Subpoenaed Banks,  
Percentage of Applicants Hired by Job Classification and Gender**

Job classification	Male	Female
Officials and managers	29%	33%
Professionals	26	26
Sales workers	30	42

**Table 3.3**

**Gender-specific Hiring Data: Securities Firms,  
Percentage of Hires by Job Classification and Gender**

Job classification	Male	Female
Officials and managers	73%	27%
Professionals	64	36
Sales workers	71	29

**Table 3.4**

**Percentage of Total Applicants and Applicants Hired by Gender, Race, and Job Classification:  
Banking Peer Group Sample**

Gender/Race	<u>Officials &amp; managers</u>		<u>Professionals</u>		<u>Sales workers</u>	
	Applicants	Hires	Applicants	Hires	Applicants	Hires
<b>Males</b>						
White	74%	82%	73%	79%	82%	82%
Black	16	7	9	7	6	7
Hispanic	4	5	5	5	5	3
Asian American	6	6	13	9	7	8
Native American/ Pacific Islander	<1	<1	<1	<1	0	0
<b>Females</b>						
White	73	83	67	69	73	76
Black	11	7	14	13	16	15
Hispanic	11	5	5	5	5	4
Asian American	6	5	14	12	6	5
Native American/ Pacific Islander	0	0	<1	<1	0	0

**Table 3.5****Percentage of Total Hires by Gender, Race, and Job Classification: Securities Firms**

<u>Gender/Race</u>	<u>Officials &amp; managers</u>	<u>Professionals</u>	<u>Sales workers</u>
	Hires	Hires	Hires
<b>Males</b>			
White	88%	74%	88%
Black	3	6	4
Hispanic	2	4	3
Asian American	7	16	5
Native American/Pacific Islander	<1	<1	<1
<b>Females</b>			
White	87	80	83
Black	3	5	7
Hispanic	3	0	3
Asian American	7	15	7
Native American/Pacific Islander	<1	<1	<1

group sample. It is important to reiterate that not all banks submitted their applicant and hiring data stratified by gender and race. Thus, this table consists of a smaller number of banks than does table 3.1. Further, the total number of hires was less than 50 percent of the applicants in all job classifications.

This analysis of the banking peer group sample provides some interesting results. Among most job classifications, gender, and racial divisions, the relative proportion of applicants to hires is similar. As can be seen, the proportion of applicants and hires is heavily represented by white males and females. They comprise more than two-thirds of the applicants and almost 70 percent of the hires in all job classifications. Further, the gaps between applicants and those hired may indicate that whites are more likely to be hired over minorities. For example, although white males in the officials and managers classification represented 74 percent of applicants, 82 percent of the hires were white male. In every classification, white males and white females were hired in higher percentages than their applicant percentages.

In comparison, minorities were hired in significantly lower percentages than those that applied. The percentage difference between minority applicants and hires by gender and race is striking. In the officials and managers job classification, black males were 16 percent of the applicants, yet only 7 percent of the hires. Among females, black females were 11 percent of the applicants and 7 percent of the hires. Hispanic

females represented 11 percent of the applicants but only 5 percent of the hires. In the professional job classification, Asian American and Pacific Islander males were 13 percent of the applicants but 9 percent of the hires. At a minimum, the data suggest that these firms do not adequately recruit or hire minorities in relation to their numbers in the applicant pool.

Table 3.5 displays hiring data from the subpoenaed sample representing securities firms. As mentioned earlier, there was no analysis of the applicant pool due to the failure of these firms to provide the requested information. The data show an industry that contains high percentages of white hires in each and every job classification. We cannot infer a discriminatory hiring pattern because the data on the applicant pool were not provided by most of these firms. Juxtaposed with table 3.3, showing summary hiring data regarding gender differences by job classification, the proportion of white males employed in the industry exceeds that in the population at large. These hiring data showed that the percentage of males hired far exceeded the percentage of females hired in each of the three job classifications.

### **Job Qualifications**

The banks and securities firms that received subpoenas were asked to provide a list of job titles and vacancy announcements or other documents setting forth the minimum qualifications of those positions for jobs falling in the classification of officials and managers, professionals, and

sales workers.<sup>74</sup> The job titles provide a better understanding of the types of jobs that are classified as officials and managers, professionals, and sales workers in the finance industry. The request for vacancy announcements and other documents had two purposes. First, to identify the levels of skills, experience, and other job requirements of these positions, so that the qualified labor force for these jobs could be better described. Second, to see if overly stringent qualifications were required for these jobs such that groups whose members tend to have fewer qualifications would tend to be excluded from them.

The job titles that fall in the classifications of officials and managers, professionals, and sales workers covered a wide range. Sales workers included customer service representatives, client service representatives, traders, personal bankers, and, simply, sales workers. Many banks did not have sales workers, as data in earlier sections indicated. Thus, sales workers positions were typically found in securities firms.

The professionals job classification included accountants, auditors, appraisers, underwriters, financial analysts, and credit analysts. It also included human resource specialists, librarians, and a vast array of computer technicians—programmer analyst, systems support specialist, systems engineer, LAN administrator, for example.

Positions in the officials and managers classification included the chairman, president and chief executive officer, senior vice presidents, vice presidents, directors, managers, and supervisors. Not all officials and managers were involved in the substance of finance. The supervi-

sor of building maintenance, director of human resources, supervisor of word processing, and mailroom manager were positions that at least some banks and firms included in this category.

The wide range of job titles in these job classifications, particularly in the officials and managers category, has important implications for interpreting data in later sections. Some officials and managers are in jobs that are not related to finance and are not the highly skilled and high-paying jobs envisioned in this industry. On the one hand, data in the other sections suggest that some minorities and women do have jobs as officials and managers in the finance industry. However, if they are counted as officials and managers because they are supervisors of building maintenance, word processing, and the mailroom, they are not gaining access to the finance industry itself or to the highly lucrative jobs in the industry.

In responding to the subpoena, the banks and firms provided a wide range of documents for these positions, including position descriptions, job requisitions, vacancy announcements, job postings, job advertisements, and recruitment brochures. All of these documents were reviewed to identify the minimum requirements of jobs in the three job classifications. The review looked for specifications with respect to the number of years experience, level of education, specialized finance education, industry certification, and types of computer skills. The coding scheme recorded the lowest requirements of any job in the job classification. The nature of the documents and the coding scheme have a number of implications for how the coded data are interpreted.

First, whether the documents actually stated the minimum qualifications for jobs was sometimes unclear. Some documents gave job requirements as well as optional qualifications that were not required but would enhance candidacy. But many documents listed requirements in less detail or not at all, leaving unclear just what was required. Thus, the requirements of any one job were sometimes difficult to determine. At the same time, companies often used more than one format for the same purpose. More than one format frequently appeared for the same job title. A variety of documents (e.g., job requisitions, vacancy announcements, and recruitment brochures) were often available for the same job title. And sometimes hundreds of

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<sup>74</sup> See the subpoena duces tecum, app. C, items 1 and 2. Note that the job classifications are established by the EEOC for employers to use in reporting employment data. All banks and firms in this sample are required to file annual reports with the EEOC using these job classifications. EEOC provides a *Job Classification Guide* (Washington, DC, 1987) "to assist employers in the correct assignment of employees according to the nine job categories. . . ." The documents contained some evidence that job titles were not always properly classified. For example, some firms classified customer service representatives as sales workers and others classified them as professionals [Exhibit HN]. In fact, the same job title sometimes appeared in more than one job classification within the same firm. In the document review performed in this study, every effort was made to abide by the job classifications of the bank or firm so that the results would correspond to the EEO-1 data that the banks or firms reported to EEOC.

**Table 3.6****Examples of More Qualitative Job Requirements for Selected Job Titles**

<b>Officials and managers</b>	
<b>Manager and vice president</b>	
	<i>Technical qualifications:</i> . . . Familiarity with and working knowledge of: a) Eurodollar Market and US Domestic Money Market; b) Instruments of international settlement; c) Domestic settlement systems in New York; d) Various financing structures (particularly as they become more complex operationally); 3) Balance Sheet appraisal and credit analysis; f) US Economy; g) Finance of Foreign Trade; h) [domestic] Company Law; i) Structure of [the bank], both domestically and internationally. . . . [previous job experience]: 1) Extensive knowledge of business of [the bank or firm] and [foreign] & US banking industries. . . . 3) Involvement with major corporate relationships. 4) Large . . . [bank] Branch experience. 5) Background of international finance, and detailed knowledge of the bank's systems relating to Credit Risk, applications. 6) Comprehensive training. . . . [and knowledge of] 1) New York State Banking Regulations. 2) Federal Reserve Banking Regulations. 3) [Certain foreign country's bank] Regulations. 4) [Internal bank] Action Sheets and Procedures Manuals. 5) Bank policy as communicated via memorandum, circulars, etc. [Exhibit AT]
	<b>Branch manager</b>
	5+ years retail or financial services, with 3+ years managing sales and service. Superior sales, sales mgt. and coaching skills. Working knowledge of financial planning; ability to address financial needs of more sophisticated target customers. General knowledge of security policies and procedures to protect bank's and customer's assets. Knowledge of branch operations. Strong leadership, team-building, and people mgt. Skills. BA/BS or equivalent experience. [Exhibit IK]
	<b>Word processing supervisor</b>
	<i>Duties:</i> Maintain a centralized department for typing of reports, letters, memos, and miscellaneous documents from all areas of the [company] through utilization of computer hardware and software. [Apart from supervisory skills,] [a] demonstrated knowledge of typing, word processing, and personal computer equipment [is] required, [and a] knowledge of English for sentence structure, spelling, punctuation, and letter format. [Exhibit IG]
<b>Professionals</b>	
<b>Accountant</b>	
	<i>Technical qualifications:</i> Knowledge of Foreign Exchange products, extensive knowledge of Lotus & Excel. Demonstrated skills in reconciling financial figures. [Previous job experience in the] [u]se of spreadsheets, graphics and the ability to manipulate raw data into clear, presentable financial reports to be read by senior management. [And, knowledge of ] GAAP (General Accepted Accounting Principals) . . . in the preparation of financials; [and] Internal [company] Audit procedures relating to the preparation of financial data. [Exhibit AT]
	2-3 years public accounting experience. Strong accounting background. Comfortable with Excel and Lotus. Strong interpersonal and analytical skills. Strong accounting skills essential. Experience with reconciliation of accounts, financial statement preparation and analysis required. Detail oriented individual with the ability to manage several tasks simultaneously in order to meet aggressive timeframes. CPA preferred. [Exhibit IK]
	<b>Appraiser</b>
	<i>Review appraiser:</i> Strong appraisal/review appraisal background. Basic knowledge of mortgage originations and underwriting principals required. Must be state licensed or a certified appraiser. Bachelors degree in Economics, Real Estate, Business, related field or equivalent experience. Some computer literacy. [Exhibit IK]
	<b>Auditor</b>
	1-4 years auditing or accounting experience. Basic knowledge of audit techniques, concepts and methods. Knowledge of banking and bank products. PC word-processing skills (spreadsheets a plus). Knowledge of retail banking a plus. Strong written and verbal skills. Ability to make decisions and work independently within a team structure. [Exhibit IK]
	<b>Financial analyst</b>
	<i>Senior financial analyst:</i> Strong background in accounting. Familiar with specialized industry accounting preferable (i.e., banking leasing). Familiarity with spreadsheet applications such as Excel and Lotus. Project management and financial analysis skills. Ability to communicate/interface with business transactors, all levels of management and other departments including Operations. Flexible, independent and well organized with attention to detail, ability to handle pressure situations. [Exhibit IK]
	3-5 years in financial control. Accounting and financial analysis skills. Understanding of spreadsheet analysis, financial modeling, database reporting. Understanding of revenue dynamics for preparation of Annual Plan strategic planning analysis. PC proficient (preferably Mac) and familiarity with database reporting. . . . Strong verbal skills. Ability to work within a team structure. BA/MA in Accounting/Finance or equivalent experience. [Exhibit IK]
	<i>Qualifications:</i> Strong analytical/accounting skills; Knowledge of accrual based accounting entries; Knowledge of foreign exchange pricing; Understanding of yield analysis and valuation involving discounted cash flows; Strong interpersonal skills; Strong personal computer skills; [Experience:] Experience with financial reconciliations and financial reporting; Strong rate/volume and variance analysis; Software usage including Lotus 1-2-3 and Excel; . . . [and knowledge of General Accepted Accounting Principals (GAAP)]. [Exhibit AT]

Continued



**Table 3.6 (Continued)**

	<p>. . . Knowledge of the main frame—PC experience; Lotus 123 and/or any software that is comparable; Financial Presentation skills; Good communications skills . . . Experience in financial services; Experience in month-end closings, preparation of presentations, and financial analyses; [Knowledge of] Generally Accepted Accounting Principles; Internal Audit recommendations. [Exhibit AT]</p>
<b>Credit analyst</b>	
	<p><i>Senior credit analyst:</i> Accounting, finance and credit analysis, PC literate with proficiency in Windows, Word and Excel. Work independently with good interpersonal and communication skills (verbal/written). [Exhibit IK]</p>
	<p>Bachelors degree (MBA and/or CFA preferred); 3 to 5 years credit analysis experience; Computer knowledge (word processing, spreadsheets, &amp; database management); Exceptional oral and written communication skills; Substantial exposure to investment grade industrial debt is preferred. [Exhibit MY]</p>
<b>Senior programmer analyst</b>	
	<p>In-depth knowledge of C, MS/SDK, UNIX, Gupta SQL WINDOWS programming environment, SYBASE and Client/Server design &amp; implementation. Knowledge of C++, Object Orientation design and Novell Net Ware very helpful. Must have systems background in banking, brokerage, accounting. Experience in dealing with design and implementation of security components of large systems a big plus. Excellent communication skills. [Exhibit IK]</p>
	<p>Strong analytical and communication skills. Ability to work under pressure and manage multiple projects simultaneously. In-depth development knowledge of ORACLE C Programming, UNIX VAX-VMS, MS Windows. 3–5 yrs. Experience developing applications in a client/server environment. Knowledge of investment banking products. Experience with network protocols (TCP/IP, IPX, SQL, Windows, Visual Basic) a plus. [Exhibit IK]</p>
	<p>Minimum 4 years COBOL, JCL, VSAM and PROCS; Good knowledge of CICS and DB2; Good analytical skills [varied requirements]. [Exhibit MY]</p>
<b>Programmer</b>	
	<p>Knowledge of C, COBOL, UNIX, NT, CICS, BA degree in computer science or related field or equivalent experience. 2 years experience in application development as a programmer. Ability to pass written test demonstrating aptitude in data processing. [Exhibit IK]</p>
<b>Sales workers</b>	
<b>Customer service representative</b>	
	<p>BA/BS with equivalent exp. And 3–5 yrs. exp. In a customer service/operations capacity with a financial services institution. Good accounting background and familiarity with leasing and financial program documentation. Experience with the Info-lease system a plus. Excellent time management, analytical and interpersonal skills. PC literate with proficiency in Lotus, Excel, WordPerfect or Microsoft Word. [Exhibit IK]</p>
	<p>Good written and oral skills; Knowledge of financial investments preferable. [Exhibit HN]</p>
	<p>[A] minimum of 2 years experience within a branch banking operation and excellent communication skills as well as knowledge of consumer banking products and services. . . . Bachelor's degree preferred. [Exhibit HN]</p>
<b>Client service representative</b>	
	<p>Basic knowledge of database/accounting systems. PC literate with proficiency in Lotus/Excel. Strong mathematical, analytical and accounting skills. Various transactions and business product knowledge. Strong verbal and written communication, organizational, time management and follow through skills. Strong customer relationship/interpersonal skills. Attention to detail and ability to work within a team structure. [Exhibit IK]</p>
<b>Trader</b>	
	<p>[Ability to analyze] individual bonds and credits while providing input as to overall investment strategy in a team setting, [a]ct as principal trader of investment grades corporates, mortgage backed and asset backed debt securities. . . . [t]rade and analyze fixed income credits in the context of yield curve strategy and sector allocation, [r]ecommend specific swap ideas and sector weightings based upon individual institutional portfolio investment guidelines and return objectives, [and understand] the fixed income markets and [be aware] of the interaction of both street salespeople and the portfolio management team; [Certified on the] Series 7, 63 and 65 [examinations;] Ability to learn new portfolio reporting system to create model portfolios for client proposals and to provide backup for the monthly reporting function. [Exhibit MY]</p>
<b>Personal banker</b>	
	<p>2–5+ years retail financial service experience, including 1–2+ years sales exp[erience]. Strong sales/relationship building skills. Understanding of &amp; experience with consumer money mgt. Concepts. Knowledge of consumer . . . products and local competition a plus. Strong knowledge of economic trends/events and their potential effect on customers' finances. Ability to quickly learn security policies/procedures. Proficiency with computer technology. BA/BS or equivalent experience. [Exhibit IK]</p>

documents were provided. Thus, a fairly clear picture of the minimum requirements of frequently occurring jobs emerged along with the minimum requirements of the job classification.

Second, some banks and firms moved in a new direction by stipulating the requirements of jobs. They wrote job qualifications in qualitative terms, listing very specific types of experience and skills that were necessary, rather than specifying college degrees or the number of years of experience. Table 3.6 shows some examples of positions with more qualitative requirements, including some variations within the same bank or firm.

The table shows, for example, that with at least one bank or firm, a manager and vice president position requires a working knowledge of European and domestic money markets, experience in a large bank branch, and knowledge of State and Federal banking regulations. Another bank's or firm's job requirements for an accountant asked for knowledge of generally accepted accounting principles and demonstrated skills in reconciling financial figures. Among these and the many other requirements for these positions, an educational degree or number of years experience are not specified.<sup>75</sup>

The coding scheme used in the review of documents recorded the number of years experience and level of education as "Not Specified" when the requirements were stated only in qualitative terms. Notably, "Not Specified" does not mean there were no minimum requirements for the job. Indeed, there were many stated qualifications. Furthermore, in most cases the relatively easiest way for applicants to obtain these qualitative requirements is through college degrees or specialized education and years of experience in the industry.

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<sup>75</sup> Contrast the requirements for education and years of experience with one bank's or firm's "promotion criteria." To become a vice president, a candidate must be a "[S[enior] Associate with minimum 3.5 years service" and "Graduate degree or equivalent education/experience." To become a Director, a candidate must be a "VP for minimum of 2-3 years" with "5.5 to 7 years in the business." To be a "Managing Director" he or she must have been a "Director for minimum of 2-3 years" and "8.5 to 10 years in the business." In addition to these service requirements, the candidate must meet other criteria in the areas of "Firm Knowledge," "Product Knowledge," "Technical Skills," "Management Skills," "Leadership Skills," "Client Relations," "Commercial Instinct," "Revenue Generation," "Diversity," and "Commitment to Firm" [Exhibit MY].

Third, the wide range of jobs included in the job classifications affected the coding of minimum requirements. The review of the documents captured the lowest requirements of any job within the job classification. With jobs that are not related to finance included in the job classifications, the minimum requirements that were coded were often the requirements of these jobs and not the requirements of finance-related jobs. The minimum requirements thereby represent qualifications necessary to obtain any job of the status of, for example, an official and manager. The minimum requirements of more typical, finance-related jobs could be higher.

Finally, the minimum qualifications coded reflect requirements common to all jobs within the job classification. When the qualifications of jobs varied widely, the job classification was often coded as having no minimum requirements. For example, some jobs in the classification did not require word processing skills, some did not require years of experience, and some did not require educational degrees. Yet some jobs in the classification required very high levels of these or other qualifications. For example, a supervisor of building maintenance does not need word processing skills, and a supervisor of word processing does not need many qualifications other than word processing skills. Thus, individuals lacking word processing skills can get jobs as officials and managers, and persons lacking anything but word processing skills can, too. Again, requirements are not imposed that restrict persons lacking these qualifications from getting such positions. But, the fact that there are no minimum requirements should not be interpreted to mean there are no qualifications for these positions. In short, the lowest qualification of one type, for example, education, may apply to some jobs, while other low qualifications may apply to different jobs in the classification.

### **Job Qualifications, Procedures, and Policies—Subpoenaed Depository Institutions and Securities Firms**

This section focuses on the review and analysis of the data's qualitative component. The purpose was to identify job qualifications, hiring practices, or policies that could influence the gender or race of the employee pool. Both positive and negative influences were sought.

The subpoena specified that each firm provide documents and information regarding personnel and human resource functions. These documents were to include position qualifications, job descriptions, methods for posting jobs, recruitment avenues, training, scholarships, and other employee program offerings for three classifications of jobs. Appendix C contains a copy of the subpoena which details the submissions requested.

An enormous quantity and variety of descriptive documents were provided in response to the subpoena. The review of these documents required design of two special purpose data handling techniques. First, a structured manual review of all documents was designed to organize the information and data. As discussed earlier, not all submissions were responsive to the subpoena and some contained data gaps. Thus, this manual review was intended to determine:

- The presence or absence of specific documents
- If submitted documents contained specific data elements

A set of data recording forms was developed. One set of forms was completed for each subpoenaed organization's submissions. The recording forms allowed one of four coded responses to each item. These coded responses were:

- Yes: the data/information were submitted.
- No: the data/information were not submitted.
- The data/information were not submitted, and there is documentation that the item is applicable.
- The data/information were not submitted, and there is documentation that the item was not submitted.

For example, job descriptions were requested for three job classifications so that the qualifications could be analyzed. These job classifications were:

- Officials and managers
- Professionals
- Sales workers

The initial review procedure was to determine whether or not job descriptions for the three job classifications were submitted. When this screening question was answered positively, the reviewers were instructed to enter one of the coded responses to a set of inquiries. These inquiries covered elements such as:

- Is prior work experience specified?
- Is an educational degree requirement specified?
- Is specialized finance education specified?
- Is industry certification specified?
- Is any technical skill specified?

Similar inquiries were developed for ascertaining whether the documents concerning recruitment included a description of the specific avenues used by an organization. A set of inquiries was developed for training and career development programs, scholarship and internship programs, and for human resource activities such as EEO officers, EEO policies, and diversity training.

The second data technique involved the design of tailored database formats and screens to allow use of computer technology to accomplish data input. The results of the structured manual review of the documents were used as data input guides. That is, if the manual forms showed a "Yes" response to a data inquiry, the staff extracted the data from the document and used computer screen entry to record the data. Staff from the Office of the General Counsel of the U.S. Commission on Civil Rights accomplished both the manual data review and computer input processes.

### ***Qualifications by Job Classifications***

This analysis examined actual position descriptions for the three job classifications. As each organization had an individualized scheme for titling positions, the guidelines<sup>76</sup> that are used in completing Employer Information Reports (form EEO-1) were used to compile the submitted position descriptions into the three job classifications. A few firms also provided job requisitions, vacancy announcements, adver-

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<sup>76</sup> U.S. Equal Employment Opportunity Commission, Office of Program Operations, Program Research and Surveys Division, *Job Classifications Guide*, 1987.

tisements, and recruiting brochures. While these documents provided additional insight into position requirements at these firms, the written descriptions were used to conduct this analysis. Following compilation, specific information was extracted about each bank or securities firm. Thus, for example, the compiled set of officials and managers job descriptions for an individual firm could include positions ranging from a firm's CEO to the director of human resources.

It should be understood that the defined coding procedure did not require that all position descriptions contain all the elements of inquiry. If any job description within a compiled set contained an element, the inquiry was to be coded as "Yes." In addition, some job descriptions contained references to requirements without concrete details. For example, a reference to "strong accounting background" would not be further quantified as meaning an accounting or finance degree or CPA certification. In these cases, the response to this data element was coded as N/S (not specified). This type of referential information was most prevalent within the officials and managers job descriptions.

Further, within a job classification, if any position description was submitted that did not specify an element of inquiry, the firm's data were input to show a "No" (not submitted) response to the element. Thus, the results of this job qualification analysis show the minimum position requirements to hold or to be hired into any job within the classification.

For the purpose of this section, the qualitative results have been segmented into a depository institutions group and a securities firm group. The individual firm data were then arrayed to determine if any patterns existed that described the most frequently defined minimum requirements within each group by job classification.

The number of firms in a group may exceed the number of subpoenaed firms. This is because some firms had an establishment with a Standard Industrial Code (SIC) for a depository institution and an establishment with a SIC for a securities firm, yet both establishments had a common headquarters number. In such cases, the firm is represented in both industry groups.

Tables 3.7–3.9 show a frequency array by element of inquiry for the three depository institutions job classifications. Tables 3.10–3.12 show

similar arrays for the securities firm group. These arrays demonstrate that a position description review is not a meaningful technique to determine if there are gender or racial factors influencing recruitment and hiring. There was no evidence that the firms included in this analysis use inappropriate or overly stringent job qualifications to influence the gender or racial mix of their employees. Nor do position descriptions appear to be a useful tool for aspiring employees to use in comparing their qualifications with a firm's qualifications. It appears that language such as "strong accounting background" could allow an interviewer great latitude in assessing an applicant's skills.

However, this finding is not isolated to the finance industry. Most firms simply use position descriptions to describe job functions and responsibilities in general terms. Job descriptions frequently discuss scope of responsibilities in general terms. Job descriptions frequently discuss scope of responsibility for profit centers, employee supervision, communication skills, and relationships with others. Other job descriptions tend to focus on applicants' abilities to interact within the corporate environment and culture. Position descriptions that detail finite skills tend to be found within highly technical firms, research and design firms, or the computer divisions of other businesses. Most corporate human resource departments are wary of concretely describing position qualifications. There may be a concern that an unsuccessful job applicant could use a concrete specification to charge discrimination.

Scanning the array displayed in table 3.7 indicates that the officials and managers position descriptions, submitted by the depository institution sample, do not contain factors that would disqualify many applicants. First, as many institutions require no prior experience as those that require 3–5 years of experience for an officials and managers position. Second, most of the institutions submitted a description that did not specify any educational attainment. Only a few required at least an undergraduate college degree. Third, most of the finance institutions did not specify any specialized finance education or any industry certifications. Fourth, computer skills appear to be an unnecessary qualification for at least one officials and managers position in most of the sample institutions.

Overall, it appears that for most of these institutions, an applicant could meet their job qualifications with the following background: no prior experience, no formal education, no specialized finance education, and no computer skills. An officials and managers job description for which this unlikely applicant qualified was submitted by most of the sample banks. The data inhibit development of a good qualified pool definition because the firms did not provide sufficient detail of these requirements for certain jobs.

The position description review did not provide any hard evidence to explain the high percentages of white males as officials and managers among depository institutions. However, considering the unrealistic job descriptions submitted by the depository institutions and the wide latitude accorded employers, other factors must be at play here.

The array displayed in table 3.8 shows the position descriptions for professional employees contain some factors that could disqualify applicants. Though at least half of the depository institution sample do not require prior experience for these positions, most of the institutions submitted a description that specified educational attainment. A few required at least an undergraduate college degree. Most only specified high school graduation. Most institutions did not specify any specialized finance education or any industry certifications. Computer skills appear to be a desirable qualification in most of the sample institutions.

The position descriptions do not appear to be a meaningful recruitment and hiring document since they display the bare minimum qualifications necessary to be hired. But in this job classification, they may be more helpful for potential applicants to use in assessing their qualifications for a professional position.

Table 3.9 shows the array of qualifications from the position descriptions for sales workers. Because these employees are a new component in the depository institution's employee pool, the specific qualifications are better delineated. More than half of the depository institution sample mentioned a prior experience qualification for these positions. Almost half wanted at least a year of prior experience. Most of the institutions submitted a sales worker description that did not specify any educational attainment.

Less than 25 percent required high school graduation or greater educational attainment.

Most institutions specified that no specialized finance education or any industry certifications were required. Computer skills did not appear to be a qualification in most of the sample depository institutions. As with the other position descriptions, these do not appear to be meaningful recruitment and hiring documents.

Table 3.10 arrays the results of the review of the submitted position descriptions for officials and managers positions from the subpoenaed securities firms. This review shows that these firms require more specific qualifications than do the depository institutions. For example, more than half require prior experience. Eight of the firms require 3 or more years of prior experience.

Many firms submitted a description that did not specify educational attainment. However, 40 percent of the sample required an undergraduate college degree. Most firms did not specify that any specialized finance education or any industry certifications were required. However, 20 percent of the sample specified both as requirements. In general, computer skills appeared to be an unnecessary qualification for officials and managers positions at most of the sample firms.

Nonetheless, as was found among the depository institutions, an officials and managers applicant in a securities firm could have the following qualifications: no prior experience, a high school education, no specialized finance education, and no computer skills. Similarly, the lack of objective qualifications implies greater emphasis on subjective criteria. The position description review did not provide any hard evidence to explain the dominance of white males as officials and managers among securities firms. As with the depository institutions, other factors may be at play here.

The array displayed in table 3.11 shows a summary of the qualifications for professional employees submitted by the subpoenaed sample of securities firms. At least 50 percent of the securities firm sample do not require prior experience for such positions. Most of the firms submitted a description that did not discuss educational attainment. Some (30 percent) required an undergraduate college degree. Three firms specified that high school graduation could meet the

**Table 3.7****Array of Key Qualifications: Officials and Managers, Depository Institutions, Position Descriptions**

<u>Minimum qualification</u>	<u>Number of banks with specific qualification stated</u>						
	0	1-2	3-4	5-6	7-8	9-10	10+
<b>Years experience</b>							
None specified			x				
0 years				x			
1-2 years		x					
3-5 years				x			
6+ years	x						
<b>Degree requirements</b>							
None specified					x		
High school		x					
College: BA			x				
College: BS		x					
Post-grad degree	x						
<b>Specialized finance education</b>							
Not specified		x					
No							x
Yes		x					
<b>Industry certifications</b>							
Not applicable		x					
Not specified		x					
No						x	
Yes		x					
<b>Computer skills</b>							
<i>Word processing</i>							
Not specified		x					
No							x
Yes		x					
<i>Spread sheet</i>							
Not specified		x					
No							x
Yes		x					
<i>Finance software</i>							
Not specified		x					
No							x
Yes		x					
<i>Programming skills</i>							
Not specified		x					
No							x
Yes		x					
<i>Technical skills</i>							
Not specified		x					
No							x
Yes		x					

**Table 3.8****Array of Key Qualifications: Professionals, Depository Institutions, Position Descriptions**

<u>Minimum qualification</u>	<u>Number of banks with specific qualification stated</u>						
	0	1-2	3-4	5-6	7-8	9-10	10+
<b>Years experience</b>							
None specified		x					
0 years					x		
1-2 years		x					
3-5 years			x				
6+ years	x						
<b>Degree requirements</b>							
None specified		x					
High school				x			
College: BA		x					
College: BS		x					
Post-grad degree	x						
<b>Specialized finance education</b>							
Not specified	x						
No							x
Yes			x				
<b>Industry certifications</b>							
Not applicable		x					
Not specified	x						
No						x	
Yes		x					
<b>Computer skills</b>							
<i>Word processing</i>							
Not specified	x						
No							x
Yes			x				
<i>Spread sheet</i>							
Not specified	x						
No							x
Yes			x				
<i>Finance software</i>							
Not specified	x						
No							x
Yes			x				
<i>Programming skills</i>							
Not specified	x						
No							x
Yes	x						
<i>Technical skills</i>							
Not specified	x						
No							x
Yes		x					

**Table 3.9****Array of Key Qualifications: Sales Workers, Depository Institutions, Position Descriptions**

<u>Minimum qualification</u>	<u>Number of banks with specific qualification stated</u>						
	0	1-2	3-4	5-6	7-8	9-10	10+
<b>Years experience</b>							
None specified			x				
0 years			x				
1-2 years				x			
3-5 years		x					
6+ years	x						
<b>Degree requirements</b>							
None specified							x
High school		x					
College: BA		x					
College: BS	x						
Post-grad degree	x						
<b>Specialized finance education</b>							
Not specified			x				
No						x	
Yes		x					
<b>Industry certifications</b>							
Not applicable	x						
Not specified	x						
No					x		
Yes	x						
<b>Computer skills</b>							
<i>Word processing</i>							
Not specified			x				
No						x	
Yes		x					
<i>Spread sheet</i>							
Not specified			x				
No							x
Yes	x						
<i>Finance software</i>							
Not specified			x				
No							x
Yes	x						
<i>Programming skills</i>							
Not specified			x				
No							x
Yes	x						
<i>Technical skills</i>							
Not specified			x				
No							x
Yes	x						



**Table 3.10****Array of Key Qualifications: Officials and Managers, Securities Firms, Position Descriptions**

<u>Minimum qualification</u>	<u>Number of banks with specific qualification stated</u>						
	0	1-2	3-4	5-6	7-8	9-10	10+
<b>Years experience</b>							
None specified				x			
0 years		x					
1-2 years				x			
3-5 years				x			
6+ years		x					
<b>Degree requirements</b>							
None specified				x			
High school		x					
College: BA					x		
College: BS	x						
Post-grad degree	x						
<b>Specialized finance education</b>							
Not specified					x		
No							x
Yes			x				
<b>Industry certifications</b>							
Not applicable	x						
Not specified				x			
No							x
Yes			x				
<b>Computer skills</b>							
<i>Word processing</i>							
Not specified				x			
No							x
Yes			x				
<i>Spread sheet</i>							
Not specified				x			
No							x
Yes			x				
<i>Finance software</i>							
Not specified				x			
No							x
Yes		x					
<i>Programming skills</i>							
Not specified				x			
No							x
Yes	x						
<i>Technical skills</i>							
Not specified				x			
No							x
Yes		x					

**Table 3.11**  
**Array of Key Qualifications: Professionals, Securities Firms, Position Descriptions**

<u>Minimum qualification</u>	<u>Number of banks with specific qualification stated</u>						
	0	1-2	3-4	5-6	7-8	9-10	10+
<b>Years experience</b>							
None specified				x			
0 years				x			
1-2 years			x				
3-5 years			x				
6+ years	x						
<b>Degree requirements</b>							
None specified						x	
High school			x				
College: BA				x			
College: BS	x						
Post-grad degree	x						
<b>Specialized finance education</b>							
Not specified			x				
No							x
Yes				x			
<b>Industry certifications</b>							
Not applicable	x						
Not specified		x					
No							x
Yes		x					
<b>Computer skills</b>							
<i>Word processing</i>							
Not specified			x				
No							x
Yes			x				
<i>Spread sheet</i>							
Not specified				x			
No							x
Yes			x				
<i>Finance software</i>							
Not specified				x			
No							x
Yes			x				
<i>Programming skills</i>							
Not specified				x			
No							x
Yes		x					
<i>Technical skills</i>							
Not specified				x			
No							x
Yes		x					

**Table 3.12****Array of Key Qualifications: Sales Workers, Securities Firms, Position Descriptions**

<u>Minimum qualification</u>	<u>Number of banks with specific qualification stated</u>						
	0	1-2	3-4	5-6	7-8	9-10	10+
<b>Years experience</b>							
None specified						x	
0 years						x	
1-2 years				x			
3-5 years	x						
6+ years	x						
<b>Degree requirements</b>							
None specified							x
High school			x				
College: BA		x					
College: BS	x						
Post-grad degree	x						
<b>Specialized finance education</b>							
Not specified						x	
No							x
Yes	x						
<b>Industry certifications</b>							
Not applicable	x						
Not specified						x	
No							x
Yes			x				
<b>Computer skills</b>							
<i>Word processing</i>							
Not specified						x	
No							x
Yes	x						
<i>Spread sheet</i>							
Not specified						x	
No							x
Yes	x						
<i>Finance software</i>							
Not specified						x	
No							x
Yes	x						
<i>Programming skills</i>							
Not specified						x	
No							x
Yes	x						
<i>Technical skills</i>							
Not specified				x			
No							x
Yes	x						

firms' educational requirement for a professional position.

Most did not specify any specialized finance education or any industry certifications. A few firms submitted descriptions that specified both qualifications. Computer skills appear to be more desirable among securities firms than among the depository institutions.

Again, the submitted position descriptions do not appear to be a meaningful recruitment and hiring document. But, in this job classification, they do provide more details and can potentially provide applicants with a method for matching their qualifications with the securities firms' qualifications.

Table 3.12 was compiled from the information extracted during the review of the submitted position description for sales workers in securities firms. Prior experience does not appear to be a necessary qualification for such positions. Most of the firms submitted a sales worker description that did not specify educational attainment. Less than 10 percent required college graduation or greater educational attainment.

Most firms did not qualify applicants based on specialized finance education or any industry certification. No firm required computer skills. As with the other position descriptions, these do not appear to be a meaningful description of the skill inventory used by securities firms to select persons for sales worker positions.

### **Industry Testing and Certification**

The New York Stock Exchange (NYSE) provides a marketplace for the trade of securities. However, to ensure that business is conducted in an orderly fashion, the marketplace is available only to the Exchange's members. Members must conform to the rules and regulations of the Exchange to maintain their membership. The Exchange, thereby, regulates Wall Street activities and is known as a self-regulating organization.

Other organizations exert some regulatory control over Wall Street through similar means. Among them are the National Association of Securities Dealers (NASD) and the Municipal Securities Rule Board (MSRB).

The NYSE, NASD, and MSRB require their members to pass examinations demonstrating their knowledge of job functions. The NYSE rule states:

(a) Every applicant for membership or allied membership shall pass a basic examination required by the Exchange unless such examination is waived by the Exchange.

(b) Every applicant . . . shall agree . . . that . . . the applicant will, within three months [after a 6-month conditional membership] . . . without having passed such examination, or upon failure to pass such examination after . . . three attempts, . . . cease to be a member. . . .

(c) No member or allied member shall undertake any active duties as a member or allied member until the appropriate examination requirement is satisfied. . . .<sup>77</sup>

In fact, more than 30 examinations are used in the securities industry. Which examinations are required depend upon the job function. The General Securities Representative Examination (Series 7) qualifies "general securities representatives for the solicitation, purchase and/or sale of corporate securities, municipal securities, options, direct participation programs, investment company products and variable contracts."<sup>78</sup> New NYSE members must pass the Floor Member Examination (Series 15) before they can execute orders on the trading floor. Other NYSE tests qualify individuals for day-to-day compliance responsibilities and for supervisory duties.<sup>79</sup> The MSRB requires the Municipal Securities Representative Examination (Series 52) and the Municipal Securities Principal Examination (Series 53).<sup>80</sup>

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<sup>77</sup> New York Stock Exchange, *Constitution and Rules*, Rule 304 A, ¶ 2304A, p. 3040. A "member" is "a natural person who is a member of the Exchange." (Art. I, Sec. 3, ¶1003, p. 1052.) An "allied member" is:

- (i) a general partner in a member firm, or an employee who controls a member firm, who is not a member of the Exchange and who has become an allied member as provided in the rules of the Exchange, or
- (ii) an employee of a member corporation who is not a member of the Exchange, who has become an allied member as provided in the rules of the Exchange, and who is either:
  - a principal executive officer of such corporation, or
  - a person who controls such corporation.

(Art. I, Sec. 3, ¶1003, p. 1051.)

<sup>78</sup> JoEllen V. Carlson, Ph.D., director of testing-standards, New York Stock Exchange, Inc., "Standards for Qualification Examinations," written testimony provided to the U.S. Commission on Civil Rights, July 26, 1995 (hereafter cited as Carlson written testimony).

<sup>79</sup> *Ibid.*

<sup>80</sup> New York Stock Exchange, "Confidential Excerpts From Procedures Manual for the Testing Standards Section," (1993).

The Investment Company Products/Variable Contract Limited Representative Examination (Series 6), the General Securities Representative Examination (Series 7), the Uniform Securities Agent State Law Examination (Series 63), and Uniform Investment Adviser Law Examination (Series 65) are the most frequently taken examinations. In 1994 they were taken by 64,654, 58,699, 93,657, and 19,538 individuals, respectively.<sup>81</sup> The Series 6 and 65 examinations are required by NASD. The Series 63 is required by some States. The Series 7 examination is required by both NASD and the NYSE, and is a prerequisite for several other tests, including some required by MSRB. The Series 7 examination will be described in more detail after a general overview of how tests are developed and validated.

### General Test Development and Validation

Psychological tests have been used throughout this century to measure knowledge, skills, abilities, and achievement. Concerns about the accuracy, fairness, and use of test results have led to the development of various procedures and standards for test development and use. Interpretations of these in case law have further refined what is regarded as accepted practice in test development and use today. These provide a background for understanding how tests in the securities industry are developed.

As a professional association whose members include test developers, the American Psychological Association (APA) was the first group to issue standards in 1954 and, as part of a joint committee with other professional organizations, has issued several revisions since then.<sup>82</sup> The Standards for Educational and Psychological

Tests, in 1974,<sup>83</sup> were influential because they became the basis of Federal regulatory code which has been in place since 1978.<sup>84</sup> Revised standards were issued in 1985.<sup>85</sup>

The purpose of the APA standards was to provide a set of technical guidelines for the evaluation of tests, testing practices, and the effects of test use. They addressed the topics of test construction, evaluation, scoring and administration, the rights of test takers, and special concerns with linguistic minorities and those with handicapping conditions. The standards treated the topic of test validation, that is, whether a test measures what it is supposed to measure, and described various forms of validation.<sup>86</sup> The APA standards were a summary of the state of knowledge in the field of psychological testing and were ideals of what test developers should strive to achieve. They were not intended as a set of minimum standards that must be met by all tests.

In 1978 the EEOC, Civil Service Commission, and the Departments of Labor and Justice issued the "Uniform Guidelines on Employee Selection Procedures," which remain current today.<sup>87</sup> These guidelines were to establish a uniform set of principles on selection procedures and the proper use of tests and to aid compliance with the requirements of Federal law prohibiting employment practices that discriminate on grounds of race, color, religion, sex, and national origin.<sup>88</sup> Among the topics covered were definitions of discrimination and adverse impact, standards for validity studies and the acceptable types of validity, generalizing validity studies across race and sex, fairness, and the policy of affirmative action.<sup>89</sup>

The Uniform Guidelines were intended to be consistent with the 1974 APA standards, but

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<sup>81</sup> Derek W. Linden, director, Member Services Operations and Legal Counsel, National Association of Securities Dealers, Inc., letter to Michelle N. Yu, Office of General Counsel, U.S. Commission on Civil Rights, July 25, 1995; Exhibit 8, "1994 Test Volume and Pass Rate Statistics (Monthly Candidate Volume and Pass Rates for Series 2 Through 65 Examinations)."

<sup>82</sup> See American Psychological Association, *Technical Recommendations for Psychological Tests and Diagnostic Techniques* (Washington, DC, 1954) (providing an example of early standards). See also American Educational Research Association, American Psychological Association, and National Council on Measurement in Education, *Standards for Educational and Psychological Tests and Manuals* (Washington, DC, 1966) (providing an example of revision of early standard).

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<sup>83</sup> American Educational Research Association, American Psychological Association, and National Council on Measurement in Education (Washington, DC, 1974).

<sup>84</sup> Uniform Guidelines on Employee Selection Procedures (1978), 29 C.F.R. 1607 (1991).

<sup>85</sup> American Educational Research Association, American Psychological Association, and National Council on Measurement in Education, *Standards for Educational and Psychological Testing* (Washington, DC, 1985).

<sup>86</sup> *Ibid.*

<sup>87</sup> 29 CFR § 1607 (1997).

<sup>88</sup> 41 CFR § 60-3.1(B) (1998).

<sup>89</sup> *Ibid.*

they treated the idealistic procedures of the APA standards as though they were minimum requirements.<sup>90</sup> Employers were troubled by their inability to meet these idealistic levels, which revolved around several types of validation.<sup>91</sup> At the same time, case law has been emphasizing primarily only one form of validation for test development procedures in the employment area—job relatedness.

In *Griggs v. Duke Power Company*,<sup>92</sup> the Supreme Court faced the issue of whether an employer is prohibited by title VII of the Civil Rights Act of 1964 from requiring a high school diploma or passing of a standardized intelligence test as a condition of employment or transfer of jobs when (a) neither standard is shown to be significantly related to job performance, (b) both requirements operate to disqualify blacks at a substantially higher rate than whites, and (c) the jobs in question had been formerly filled by white employees because of longstanding preferences given to whites.<sup>93</sup> In resolving the issue, the Court noted that, under the act, practices, procedures or tests, though neutral on their face and neutral in terms of intent, cannot be maintained if they freeze the status quo of prior discriminatory employment practices.<sup>94</sup> The ultimate standard enunciated in *Griggs* is that such procedures, practices, or tests for employment or promotion violate the act unless they are demonstrably a reasonable measure of job performance.<sup>95</sup> A later case delineated the burdens of proof placed on the plaintiff employee and defendant employer.

In *Albermarle Paper Company v. Moody*, the Supreme Court dealt with, among other issues, what an employer must show to establish that preemployment tests that are discriminatory in effect, but not in intent, are sufficiently job related to survive a title VII challenge.<sup>96</sup> In reaching its decision, the Supreme Court relied

upon *Griggs* and EEOC guidelines.<sup>97</sup> The Court restated the three-pronged standard now commonly used in employment test litigation.<sup>98</sup> First, the plaintiff must establish a prima facie case of discrimination. Next, if the plaintiff meets his or her initial burden, the burden shifts to the defendant employer to prove that the tests are job related. If the employer meets its burden, the plaintiff must show the tests are merely a pretext for discrimination.<sup>99</sup> *Albermarle* dealt with the second of three prongs, the job relatedness component. In construing this prong of the test, the Court noted that the message of the EEOC guidelines is the same as *Griggs*: "Discriminatory tests are impermissible unless shown by professionally acceptable methods, to be predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated."<sup>100</sup> In other words, the test must be sufficiently related to a position's work duties to be valid.

With the emphasis on the relationship of the test to the job, a series of procedures known as job analysis has emerged. A job analysis involves conducting a survey of job incumbents to identify job functions, their importance to performing the job successfully, and the amount of time spent performing each. Test questions are then written for the various functions and are incorporated into the test in proportion to their importance among the functions.

This last procedure, known as balancing the content of the test, evolved from a concern with achievement tests some years ago.<sup>101</sup> Males typically outscored females on these tests until test developers discovered that males perform better than females on test items concerned with scientific, mechanical, business, practical affairs, or

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<sup>90</sup> U.S. Commission on Civil Rights, *The Validity of Testing in Education and Employment* (May 1993).

<sup>91</sup> *Ibid.*

<sup>92</sup> *Griggs v. Duke Power Co.*, 401 U.S. 424 (1981).

<sup>93</sup> *Id.* at 425.

<sup>94</sup> *Id.* at 430.

<sup>95</sup> *Id.* at 436.

<sup>96</sup> *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 408 (1975).

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<sup>97</sup> *Id.* at 425–36. The EEOC's "Guidelines on Employee Selection Procedures," published in 1970, were a precursor to the current "Uniform Guidelines," jointly issued by the EEOC and other agencies.

<sup>98</sup> *Id.* at 425.

<sup>99</sup> Indeed, Congress codified the three-prong standard with the passage of the Civil Rights Act of 1991. Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991) (burden of proof in disparate impact cases codified as 42 U.S.C. §2000e-2(k) (1994)).

<sup>100</sup> *Albermarle Paper Co.*, 422 U.S. 405 at 431 (citing 29 C.F.R. § 1607.4(c)).

<sup>101</sup> Carol A. Dwyer, "Test Content and Sex Differences in Reading," *The Reading Teacher*, May 1976, pp. 753–57.

mathematical content. The tests were then balanced with test items having human relations or arts and humanities content where females do better than males.<sup>102</sup> Thus, the relation of the test to the job is established by linking both the content of the test questions and the proportional representation of various types of content to what persons actually do in that job.

Whether test content is job related appears to be the legally accepted and widely practiced means of validating employment tests. Yet other validation procedures exist and have been recommended as additional procedures. Because some of these methods examine differences in performance according to race and gender, they seem particularly appropriate where bias and discrimination are concerns.

### Test Development and Validation of Securities Industry Examinations

The General Securities Registered Representative Examination (Series 7) is an industrywide qualification examination for persons seeking registration as general securities representatives.<sup>103</sup> The Series 7 qualification is required under the rules of the self-regulatory organizations for persons who are engaged in the solicitation, purchase, and/or sale of securities for the accounts of customers. First created in 1974, its content was last revised in 1993. The test is 6 hours long and has 250 multiple choice questions.<sup>104</sup>

The NYSE has a number of procedures in place to develop and maintain this test and ensure that it is related to the job. In fact, the test development procedures are the same for many of the securities industry examinations. The director of testing standards of the NYSE, JoEllen V. Carlson, stated, "In the development, administration and evaluation of its examinations, the NYSE aims to reflect the Standards for Educational and Psychological Testing . . . and other professionally accepted psychometric standards and practices."<sup>105</sup> Every effort is made to empha-

size job relatedness. Ms. Carlson asserted, "Of primary concern is that each examination maintain a regulatory focus and that its content and passing standards reflect the basic knowledge required to perform the job function and to protect the investing public."<sup>106</sup>

A study booklet sent to persons taking the Series 7 examination emphasizes the job relatedness of the test. "[The Series 7 exam] poses one and only one question about you: Do you have the competence to be a Registered Representative in the securities industry?"<sup>107</sup> The test's content, questions, and passing standards are determined by industry professionals who are either successful incumbents of the job for which the test is required or trainers of job incumbents:

In the initial development of a qualification examination, the NYSE establishes a committee of incumbents who currently perform the job function and other experts on the function and its requirements. This committee works with NYSE staff to oversee and participate in (1) a job/task analysis to identify the specific tasks of a person performing the function, and to determine the knowledge, skills, and abilities required to carry out those tasks; (2) the development of an outline of the domain of knowledge required to perform the tasks (examination content outline); and (3) the determination of the emphasis to be placed on each aspect of the knowledge domain (examination specifications).<sup>108</sup>

For example, the Series 7 examination covers three broad subject areas: securities instruments (84 questions), markets and regulation (53 questions), and account management (113 questions).<sup>109</sup> Each of these areas is broken into about a dozen other categories covered by the test questions. To name a few, securities instruments includes questions on equities, U.S. treasuries, government agencies, corporate bonds, municipal securities, mutual funds, and money market instruments. Markets and regula-

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<sup>102</sup> Ibid.

<sup>103</sup> James E. Buck, senior vice president and secretary, New York Stock Exchange, to Sandra Sciole, special counsel, Division of Market Regulation, Securities and Exchange Commission, June 29, 1994.

<sup>104</sup> Ibid.

<sup>105</sup> Carlson written testimony, p. 2.

<sup>106</sup> Ibid.

<sup>107</sup> New York Stock Exchange, *The Series 7 Study System, Booklet One*, 1987, "Purpose."

<sup>108</sup> Carlson written testimony, p. 2.

<sup>109</sup> New York Stock Exchange, *The Series 7 Study System, Booklet One*, 1987, "Content." See also James E. Buck, senior vice president and secretary, New York Stock Exchange, to Sandra Sciole, special counsel, Division of Market Regulation, Securities and Exchange Commission, June 29, 1994.

tion has questions about underwriting stocks and corporate bonds, State regulations, major Federal securities acts, the Security Exchange Commission's regulations, and rules of the self-regulatory organizations. Account management has questions on opening and closing accounts, margin accounts, short sales, securities analysis, portfolio management, and taxation.<sup>110</sup>

As the NYSE explains to test takers:

Some categories mentioned above get allotted more questions than others. For instance, you'll find more questions on options strategies than on preferred securities. This difference in emphasis reflects the findings of our research into what kind of knowledge is more important than other kinds for performing effectively as [a registered representative].<sup>111</sup>

A job analysis survey was used to balance the test content in a way that is related to the job. A 1993 survey for the Series 7 examination had two sections. The first section asked respondents to rate 36 job tasks according to (1) how much time a typical entry-level registered representative spends performing the task and (2) how important it is for an entry-level registered representative to be able to perform the task competently at the time of registration or how serious the outcome would be for the client or firm if the registered representative did not perform the task competently. The second section listed 50 types of knowledge and asked how important an understanding of this knowledge was for an entry-level registered representative in order to serve and protect the best interests of the client. NYSE obtained responses from a sample of 523 entry-level registered representatives (i.e., those who were within the first 3 years of registration) who were identified through broker-dealer organizations. Of the survey's respondents, 91.8 percent were white, 0.8 percent were black, 3.1 percent were Hispanic, 2.7 percent were Asian American and Pacific Islander, and 13.2 percent were women.<sup>112</sup>

With respect to developing test questions:

[T]he NYSE establishes committees to develop questions for the examinations. The members of these committees are familiar with the requirements of the function because they have performed or have supervised and/or trained individuals performing the function. These question-writing and review committees are given orientation regarding sound question-writing principles, guidance as to appropriate types of questions, and assignments of topic areas for which to write questions. They then write and review questions, from which forms of the examination are drawn to meet the specifications.<sup>113</sup>

For the Series 7 examination, committee members hold the Series 7 registration and fill a variety of related functions.<sup>114</sup> They represent firms of various sizes and types, and they meet three or four times a year.<sup>115</sup> Three committees write and review questions, and questions go through at least two reviews. Questions are pre-tested on examinations 850 times where they do not contribute to candidates' scores, then analyzed for their measurement and statistical properties and subjected to another content review before being scored on examinations.<sup>116</sup> Certified staff continuously monitor questions to ensure that they remain current in the face of regulatory changes, recent financial publications, sales practices, and so forth.<sup>117</sup> Industry committees also determine the passing standard for the test. They are instructed to set passing standards at the minimum acceptable competency to perform the functions of the job.<sup>118</sup>

For the Series 7 test, the NYSE draws upon professional expertise through various self-regulating organizations. The American Stock Exchange, the Chicago Board Options Exchange (CBOE), the MSRB, NASD, and the Philadelphia Exchange participated in the development of the test's content outline and other specifications. The CBOE, the MSRB, and NASD participate in

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<sup>110</sup> Ibid.

<sup>111</sup> New York Stock Exchange, *The Series 7 Study System, Booklet One*, 1987, "Content."

<sup>112</sup> New York Stock Exchange, General Securities Registered Representative Job Analysis Survey, August 1993. See also New York Stock Exchange, General Securities Registered Representative Job Analysis Survey, August 1993, Summary of Responses (1993).

<sup>113</sup> Carlson written testimony, p. 2.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid., p. 3.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid., p. 2. See also "Distribution of Knowledge and Skill," a page "used in standard-setting" that the NYSE submitted to the U.S. Commission on Civil Rights.



writing and reviewing questions for the Series 7 examination.<sup>119</sup>

Provision is also made for public review of test content.<sup>120</sup> The NYSE submits examination content outlines and specifications to the U.S. Securities and Exchange Commission (SEC), which solicits public review and comment on them. Test questions are also submitted, but because they must remain confidential, they are reviewed only by SEC. The NYSE makes any necessary adjustments based upon this review process.<sup>121</sup>

**Table 3.13**  
**Percentages Passing the Series 7 Examination by Race and Gender**

<b>Race</b>	
White	73.4%
Black	44.8
Hispanic	54.5
Asian American	67.0
American Indian	49.3
<b>Gender</b>	
Male	73.9
Female	60.2

SOURCE: National Association of Securities Dealers, "EEO Survey Results" (for the period Nov. 1, 1994–July 20, 1995, including partial results for October 1994), July 21, 1995

Finally, test takers can obtain a study booklet with a sample test to prepare for the examination. The test's purpose and how it was developed are clearly explained. The brief explanation reads:

The Series 7 Exam is developed by trained professionals at the New York Stock Exchange with the active assistance of many industry professionals. . . .

In order to make sure that the exam's definition of a competent [registered representative] is entirely job-related, the New York Stock Exchange has taken the following steps in its development:

Conducted extensive interviews with professionals working at many different locations and for many types of securities firms; Prepared a report on the basis of these interviews that set forth the [registered representative]'s most critical functions and responsibilities; Presented the findings from this report before a committee of securities industry specialists; . . . Set up a system in which all questions are written either by experienced [registered representatives] or by personnel involved in the actual training of [registered representatives].<sup>122</sup>

Thus, the NYSE gave every indication that their procedures tried to ensure the job relatedness of their examinations and followed generally accepted psychometric standards and practices. Yet there was little sign that the Series 7 test, or any of the others, had been examined for adverse impact on minorities and women and ways to reduce that effect. Pass rates appear to be routinely collected and reported for tests,<sup>123</sup> and even for test questions.<sup>124</sup> However, they had apparently not been analyzed by race or gender before the U.S. Commission on Civil Rights' inquiries. Table 3.13 shows the percentage of persons passing the Series 7<sup>125</sup> examination by race and gender. Seventy-three percent of whites who take the test pass it. Only 45 percent of blacks, 49 percent of American Indians, and 54 percent of Hispanics pass. Asian Ameri-

<sup>122</sup> New York Stock Exchange, *The Series 7 Study System, Booklet One*, 1987, "Purpose."

<sup>123</sup> Derek W. Linden, director, Member Services Operations and Legal Counsel, National Association of Securities Dealers, Inc., letter to Michelle N. Yu, Office of General Counsel, U.S. Commission on Civil Rights, July 25, 1995, Exhibit 8, "1994 Test Volume and Pass Rate Statistics." Note that although the NYSE develops the Series 7 examination, NASD handles much of the test administration including arranging appointments for individuals to take the examination, administering the test, and scoring and reporting test results (see Carlson written testimony, p. 1). Therefore, information on the Series 7 examination's results was provided by NASD.

<sup>124</sup> New York Stock Exchange, *The Series 7 Study System, Booklet Two*, 1987.

<sup>125</sup> Apart from the Series 7 examination, the only other test for which pass rates were available by race or gender was the Series 17 test, an examination that qualifies general registered representatives from the United Kingdom to sell securities in the United States. The Series 17 test questions are drawn from the Series 7 examination. See NASD, "EEO Survey Results" (for the period Nov. 1, 1994 to July 20, 1995, including partial results for October 1994), July 21, 1995; New York Stock Exchange, "Confidential Excerpts From Procedures Manual for the Testing Standards Section," 1993.

<sup>119</sup> Carlson written testimony, p. 1.

<sup>120</sup> Ibid., pp. 2–3. See also James E. Buck, senior vice president and secretary, New York Stock Exchange, to Sandra Sciole, special counsel, Division of Market Regulation, Securities and Exchange Commission, June 29, 1994.

<sup>121</sup> Ibid.

can and Pacific Islanders come closest to the white passage rate at 67 percent. Seventy-four percent of men pass but only 60 percent of women. The stark differences in the pass rates suggest that, despite the efforts to ensure that the test is job related, some additional analyses should be performed by the NYSE to determine whether the test contains biases against minorities and women that can be removed.

### ***Policies, Programs, and Activities Promoting Opportunities for Minorities and Women***

The banks and securities firms were asked to provide documents relating to their procedures for obtaining job applicants, any efforts to increase the number of minority and female applicants, and any efforts to increase retention and advancement of minorities and women. These documents are used to give some examples of the procedures these companies use for recruiting, hiring, and promoting staff. Some companies had written policies for equal employment opportunities and affirmative action programs, training programs, career development strategies, mentoring programs, and scholarship programs. Some of these are described, too. A more comprehensive summary of the recruitment practices, training, and scholarship programs of these banks and securities firms follows the examples.

### ***Recruiting, Hiring, and Promoting Staff***

One company's system for recruiting, hiring, and promoting staff is described below. The company in the example was chosen because it was large, had a structured hiring system, and provided extensive documentation about its system.<sup>126</sup> Although other companies did not have the amount of documentation of the one used in this example, the documents they did provide showed that other companies had at least some similarities to the one below.

In the hiring and promotion system of the company used here as an example, several aspects are of interest. First, the company has three different recruitment schemes depending upon the level of the position. Second, except for entry-level and executive positions, the system is designed to fill vacancies and promote candidates strictly from within the company. Third,

executive positions were exempt from the procedures that applied to lower level positions, such as the job-posting system and the promotion of internal candidates. The three recruitment schemes included a set of guidelines for executive recruiting, an internal job-posting system for jobs other than executive and entry-level positions, and a division in charge of entry-level recruiting.

Guidelines for executive recruiting are outlined in the company's human resources manual. The manual lists five alternative sources for seeking external candidates for executive positions: (1) an executive search firm (used for the most senior positions, such as vice presidents); (2) an employment agency (used to fill high-level manager positions); (3) research or market intelligence conducted by a recruitment unit; (4) advertising; and (5) referrals or other nonfee sources generated by the unit with the vacancy.<sup>127</sup>

The internal job-posting system is "designed to communicate job openings to employees and to provide them with an opportunity to bid directly for those jobs for which they are qualified and in which they are interested."<sup>128</sup> This system is for officers (mostly supervisory and managerial positions) as well as nonofficer (i.e., professional, technical, and secretarial) jobs above entry-level grades. However, vacancy postings for officer and nonofficer positions are maintained by different subdivisions of the company's human resources division and are slightly different systems. For nonofficers, the posting system lists vacant positions in the greater New York area. For officers, however, it lists them in different subsidiaries and locations across the United States. With respect to the nonofficer system, the human resources manual notes that employees who have been in their present position for at least a year and who have good performance, attendance, and punctuality records may have up to two active bids on posted jobs.<sup>129</sup>

Company policy calls for filling vacancies with internal candidates when possible.<sup>130</sup> Vacancies in existing positions are filled by select-

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<sup>126</sup> Exhibit HN.

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<sup>127</sup> Exhibit HN, Human Resources Guide, sec. 102, pp. 3-4.

<sup>128</sup> Exhibit HN, Human Resources Guide, sec. 105, p. 1.

<sup>129</sup> Ibid., pp. 1-2.

<sup>130</sup> Exhibit HN, Human Resources Guide, sec. 102, p. 1; sec. 105, p. 1.

ing "someone from within the unit who qualifies for promotion to the job."<sup>131</sup> If there is no qualified candidate within the unit, an employee requisition form is completed, and the human resources division tries to identify and refer potential candidates from elsewhere in the company. The human resources division typically accomplishes its mission by entering information from the Employee Requisition Form into the internal job-posting system. Only if there are no suitable internal candidates does the human resources division begin an external search.<sup>132</sup>

External searches for candidates to fill jobs above the entry level are conducted by the human resources division. But, the human resources guide does not describe any procedures for such a search.<sup>133</sup> Furthermore, the point at which the search for an internal candidate is exhausted is unclear. At least some vacancies were listed in the internal job-posting system for close to a year.<sup>134</sup> Thus, external searches for candidates do not appear to be a much used strategy for vacancies above the entry level. The primary way for outsiders to gain employment in this company is, therefore, through entry-level positions which are obtained by entering a training program.

Most of the companies examined strongly relied on internal recruitment for all but entry-level and executive jobs and generally provided internal employees with an advantage in the hiring process. For example, one company posted jobs internally for 5 days prior to being posted externally. However, this company relied largely on an employee referral system<sup>135</sup>—a method critics claim reproduces the status quo in terms of the racial and gender composition of the work force.

### **Training Programs**

Most of the external hiring by banks and securities firms occurs at entry level by recruiting job candidates into training programs. Many banks and securities firms offer training programs. The training programs target job candidates with different levels of education, but generally at a bachelor's degree or above.<sup>136</sup> For example, there are programs for recent business school graduates with master's degrees (MBAs), summer programs for graduate students who have completed 1 or 2 years of business school, programs for persons with bachelors degrees (BAs), and in some cases, summer or school year programs for undergraduate students. One company's programs, and its success in recruiting minorities and women into them, is examined below.

This company's programs are comprehensive, as suggested above. It has five programs for persons who have completed their MBAs, for example, in corporate finance, real estate finance, investment banking, sales, and trading.<sup>137</sup> Trainees who complete the 4-month MBA programs are offered a job or an assignment in the company. Parallel 10-week long summer programs are available for students enrolled in graduate business programs. Other programs are for college graduates, for example, the financial analyst, credit audit, and human resources associate programs. The program duration of these ranges from 15 months (all training) to nearly 3 years (9 months training and a 2-year assignment).

The company recruits trainees through a variety of sources, including qualified internal candidates identified during a company career fair, offers to return to the previous year's summer interns, a college and university recruitment program, and referrals and inquiries. The

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<sup>131</sup> Exhibit HN, Human Resources Guide, sec. 105, p. 1.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> See Exhibit HN, job postings. The set of job postings received is not complete. Therefore, one cannot always determine the full length of time that jobs were posted. However, as examples, one job (#90025, request #000099) was in the listing from sometime before Dec. 29, 1993, until Aug. 30, 1994; another job (#90028, request #0000SD) was listed from June 8, 1994, until May 12, 1995, or later. These were two randomly selected jobs, not necessarily the ones posted for the longest time.

<sup>135</sup> Exhibit RS.

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<sup>136</sup> See *Minority MBA*, 1994/1995 Edition, for example, the Employment Profiles of "J.P. Morgan," p. 110, "Salomon Brothers," p. 138, and "Smith Barney," p. 140. See also Exhibit HN, "Entry-level Training Programs." In at least one instance, the subpoenaed documents may have described more training programs than were actually operational. Although the documents included a wide array of training programs, a recruitment report on them presented enrollment statistics for only three MBA programs and two BA programs. See Exhibit HN, "Entry-level Training Programs," and "Entry Level Recruitment Report."

<sup>137</sup> Exhibit HN, "Entry-level Training Programs," and ". . . Entry Level Recruitment Report." See also Flyers and miscellaneous other documents.

majority of offers to potential trainees for the MBA programs are made through campus recruitment. Offers to potential trainees for the BA programs may result either from campus recruitment or from referrals or inquiries.<sup>138</sup>

The company's campus efforts included recruitment at some women's colleges (including Wellesley and Bryn Mawr) and some historically black schools (including Howard University, Morehouse College, and Spelman College) among other outstanding colleges and business schools.<sup>139</sup>

The company had not been successful at recruiting minorities and women into its programs.<sup>140</sup> In 1993 to 1994, only 8 percent of the people accepting offers to enter MBA programs were black or Hispanic and only 21 percent were female. Seventeen percent of persons who accepted offers to enroll in the BA programs were black or Hispanic. Thirty-three percent of the BA program enrollees were women.<sup>141</sup> Yet the company was trying to increase the numbers of minorities and women in its programs. A company report states, "[I]n general we want an aggressive mix of male, female and ethnicities based on availability in the college population."<sup>142</sup> It had set goals for recruiting women, African Americans, and Hispanics<sup>143</sup> and was recruiting at historically black and female colleges. The company made only five offers to students from historically black colleges and three to six offers to students at female colleges.<sup>144</sup> The effort to recruit from historically black colleges should not be discounted. Trainees recruited from historically black colleges doubled the number of the African American acceptances in the BA programs (i.e.,

four out of eight enrollees were from these schools).<sup>145</sup>

### Recruiting Diversity

A number of the banks and firms do have certain special procedures in place to aid in the recruitment of minorities and women. Recruiting at women's colleges and historically black schools was one method used by the sample company above. Involvement with national organizations (e.g., the National Society of Hispanic MBA's and the National Black MBA Association), participation in career fairs or forums through the campus organizations of minorities and women, and sponsoring fellowships and scholarships for minorities and women were other ways that this company encouraged minorities and women to seek employment in the finance industry.<sup>146</sup>

Advertising targeted to minorities and women is another method used to raise interest among minorities and women. Advertising no doubt results in many of the candidates who write in to apply for entry-level positions in the finance industry. A number of banks and securities firms advertise in two magazines with a large minority readership of people pursuing business as a career: *Minority MBA* and *Black Enterprise*.

*Minority MBA* is "the career magazine for African American and Hispanic graduate business students." The annual publication features profiles of corporations seeking minority MBAs. The magazine also offers a free resume service sending a respondent's resume to as many as 15 of the featured companies.<sup>147</sup>

The 1994/1995 issue of *Minority MBA* profiled 73 companies including several banks and securities firms, for example, Chase Manhattan Bank, Chemical Banking Corp., J.P. Morgan, Kidder, Peabody & Co., Salomon Brothers, and Smith Barney.<sup>148</sup> Although each of these companies carried profiles and full-page advertisements in this magazine, their emphases differed tremendously. Some could be characterized as company profiles, i.e., reporting the company's size, age, stability, worldwide presence, and

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<sup>138</sup> Exhibit HN, ". . . Entry Level Recruitment Report," pp. 3-6, 9, 12, 15, 19, 21.

<sup>139</sup> Exhibit HN, ". . . Entry Level Recruitment Report," pp. 5, 17-19.

<sup>140</sup> Exhibit HN, ". . . Entry Level Recruitment Report," pp. 3, 9, 12, 15, 19, 21. Percentages were recalculated and differ slightly from those in the original.

<sup>141</sup> Exhibit HN, ". . . Entry Level Recruitment Report," pp. 3, 9, 12, 15, 19, 21. Percentages were recalculated and differ slightly from those in the original.

<sup>142</sup> Exhibit HN, ". . . Entry Level Recruitment Report," p. 1.

<sup>143</sup> Exhibit HN, ". . . Entry Level Recruitment Report," p. 3.

<sup>144</sup> Exhibit HN, ". . . Entry Level Recruitment Report," pp. 5, 17-19, 12, 15, 19, 21. Percentages were recalculated and differ slightly from those in the original.

<sup>145</sup> Ibid.

<sup>146</sup> Exhibit HN, "Action Oriented Programs."

<sup>147</sup> *Minority MBA*, 1994-1995 Edition, p. 16.

<sup>148</sup> Ibid.

number of employees;<sup>149</sup> other profiles were employment-related profiles, either stating characteristics the employer wants in its employees (e.g., “the best and brightest,” “solid analytical thinking,” “smart, energetic,” and/or “leaders”)<sup>150</sup> or describing the office environment (e.g., client-oriented, teamwork, empowerment, nonbureaucratic, and entrepreneurial).<sup>151</sup> The profiles and advertisements also differed in how much space they allotted to describing training programs<sup>152</sup> and career opportunities.<sup>153</sup> Finally, the profiles and advertisements differed in their appeal to minorities.

In a magazine with a minority audience, the extent and types of appeals made to minorities ran the gamut. One firm made no special appeal to minorities in its advertisements.<sup>154</sup> Four of the six firms used popular catch phrases to encourage minority applicants (e.g., “equal opportunity employer”<sup>155</sup> or “diversity”<sup>156</sup>). Three firms had photographs of a minority employee<sup>157</sup> and two included quotes from the person who was pictured. In one of these instances, the quote sug-

gested that the pictured African American found the working environment hospitable;<sup>158</sup> in the other, the quote—a half-page in length—demonstrated that a person who is a minority can be successful. This African American found “significant opportunities for personal development.” He “moved from analyst to project manager” in “six years.” He became “responsible for managing approximately 30 analysts” and for “staffing projects, developing the analysts’ skill base, and analyzing their performance.”<sup>159</sup>

*Black Enterprise* is a monthly publication targeted to African American businessmen. It has an annual careers and business opportunities issue. A number of banks and securities firms have run advertisements in this issue.<sup>160</sup>

The advertisements range in size from a full page to an eighth of a page. Of the seven banks and firms examined more closely, three had full-page advertisements, two had half-page advertisements, and two had quarter-page or smaller advertisements.<sup>161</sup> But even in this reduced format, the advertisements varied from those emphasizing the company and career opportunities to those stressing the employment environ-

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<sup>149</sup> The Chemical Banking Corp. profile contains many of these indicia, as well as the number of stockholders and number and location of U.S. and international branches, subsidiaries, and major divisions. *Minority MBA*, 1994–1995 Edition, p. 82.

<sup>150</sup> See, e.g., the profiles and advertisements of J.P. Morgan, Kidder, Peabody, and Smith Barney. *Minority MBA*, 1994–95 Edition, pp. 110–11, 114–15, 140–41.

<sup>151</sup> See the profiles and advertisements of Chemical Banking Co., J.P. Morgan, and Smith Barney. *Minority MBA*, 1994–95 Edition, pp. 82–83, 110–11, 140–41.

<sup>152</sup> For example, the Salomon Brothers’ profile is entirely devoted to describing its training programs and the experiences gained through them. More typically, references to training programs are brief. *Minority MBA*, 1994–95 Edition, p. 138.

<sup>153</sup> Chase Manhattan has a company profile, but the advertisement accompanying it is fully devoted to portraying a wide range of career options. Most of the profiles have only a short paragraph about career opportunities. *Minority MBA*, 1994–95 Edition, p. 138.

<sup>154</sup> *Minority MBA*, 1994–1995 Edition, pp. 80–81 (discussing Chase Manhattan’s advertising policies).

<sup>155</sup> *Ibid.*, pp. 82, 114 (discussing Chemical Banking Corp. and Kidder, Peabody & Co.). Kidder, Peabody also included the language, “We invite inquiries from minorities, women, . . . disabled individuals and members of other protected group.”

<sup>156</sup> *Ibid.*, pp. 82, 139, 141 (discussing Kidder, Peabody & Co., Salomon Brothers, Smith Barney).

<sup>157</sup> *Ibid.*, pp. 83, 110, 139 (discussing Chemical Banking Corp., J.P. Morgan, and Salomon Brothers).

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<sup>158</sup> *Ibid.*, p. 83 (discussing Chemical Banking Corp.) (“At Chemical, senior managers take an active role in developing and nurturing Associates. They want to make sure that every opportunity is afforded you to grow with the organization. They involve themselves and really take an interest in your needs”).

<sup>159</sup> *Ibid.*, p. 110 (discussing J.P. Morgan).

<sup>160</sup> See *Black Enterprise*, Careers & Business Opportunities Issue, February 1995, pp. 63, 143, 147, 201, 205, 208, 217 (printing job advertisements from Dean Witter, Prudential, J.P. Morgan & Co., Merrill Lynch & Co., Inc., Citibank, Chase Manhattan Bank, and the Securities and Exchange Commission).

<sup>161</sup> Dean Witter, the Prudential, J.P. Morgan & Co., Merrill Lynch & Co., Inc., Citibank, Chase Manhattan Bank, and the Securities and Exchange Commission advertised job opportunities in *Black Enterprise’s* Careers & Business Opportunities Issue. *Ibid.*

Note that in addition to its half-page ad for recruiting employees, Chase Manhattan had a full-page ad for financing black-owned businesses. *Ibid.*, p. 87. The financial services ad features the photograph of an African American businessman who was financed by Chase, along with his very successful business—*Black Enterprise*, itself. Only the half-page ad on career opportunities has been examined in the analysis herein. The financial services ad, however, may create the positive image of minorities succeeding with Chase, even though that image is lacking in the career opportunities ad.

ment.<sup>162</sup> All of the advertisements used language such as “equal opportunity employer,” or “diversity,” or both. Two of the full-page advertisements had photographs of successful minority group members; none of the half-page or smaller advertisements had photographs, although one had a multiracial graphic. Both advertisements with photographs portrayed successful minority employees.<sup>163</sup> Certain aspects made some profiles and advertisements in these magazines more appealing than others. For example, advertisements that described the work environment gave the impression of a company more interested in fulfilling its employees than advertisements that had a company profile or listed traits of desirable job candidates.

Some finance industry employers had become concerned about increasing the numbers of minorities and women in their companies. They were developing comprehensive plans for promoting diversity. The targeted recruiting methods described above, recruiting at historically black colleges and advertising in minority media, were only two of the many strategies that were being incorporated into these diversity plans. A diversity plan developed by the company used as an example here calls for (1) increasing the minority representation in the entry-level professional recruitment programs, (2) increasing the participation of minorities in the recruitment process both on campuses and with interviews at the headquarters office, (3) establishing partnerships with historically black colleges, (4) creating and expanding existing affiliations with professional organizations such as the National Society of Hispanic MBAs, (5) increasing the company's presence at expositions and special events targeted toward minorities, and (6) continuing and increasing participation in summer internship programs through charitable organizations with a minority focus.<sup>164</sup>

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<sup>162</sup> Chase Manhattan's ad is an example of one emphasizing the employment environment. Its ad stresses showing “respect for our colleagues” and recognition of their unique talents and contributions. *Ibid.*, p. 217.

<sup>163</sup> Dean Witter's ad showed a black woman who had advanced from account executive to vice president in 7 years. Prudential's ad showed an African American male who had received “several promotions” and earnings increases. *Ibid.*, pp. 63, 143.

<sup>164</sup> Exhibit HN, “Diversity Advisory Council Update,” chart, pp. 4–5.

Although this company may have been one of the most advanced in developing a comprehensive diversity plan, the plan will have had little effect on the employment statistics in this report. New strategies were only being implemented in 1994 and 1995, and, of course, a number of the strategies, including a minority scholarship program,<sup>165</sup> were preexisting to the development of the plan.

Not all of the banks and firms had made such an effort to target minorities and women. One notable exception was a company that did not have programs targeted to hiring minorities and women, but it had them for people with disabilities, the aging, welfare recipients, and youth.<sup>166</sup>

A company's work force is shaped not just through its hiring procedures but also through the environment it provides in the workplace. The next topic is how equal employment opportunity and affirmative action are instituted and implemented within the company. It is followed by a discussion on diversity training.

### ***Equal Employment Opportunity and Affirmative Action***

As private companies, banks and securities firms are not required to have written policies or any other measures directed toward increasing the numbers of minorities and women they employ.<sup>167</sup> Nonetheless, at least some firms have written equal employment opportunity and affirmative action policies as well as other measures intended to encourage the presence and advancement of minorities and women. Diversity training, designed to make a more hospitable work environment, and career development and mentoring programs are some of the strategies used.

An example of a written equal employment opportunity and affirmative action policy is found in one company's human resources guide. It states the following:

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<sup>165</sup> Exhibit HN, “Media Activity Reports.”

<sup>166</sup> Exhibit RS.

<sup>167</sup> Of course, companies must comply with antidiscrimination laws and may have implemented procedures to ensure that they are not the subject of discrimination suits. Furthermore, companies that have been the subject of a discrimination complaint filed with the EEOC may have, as a condition of settlement of the complaint, implemented and posted an equal employment opportunity policy or practice.

It is [this company's] policy to:

- Provide equal opportunity in all areas of human resources management, including recruitment, employment, promotion, transfer, compensation, benefits, training, education and any other employee programs. No employee shall be discriminated against or harassed because of age, color, disability . . . national origin, . . . race, . . . sex . . .
- Act affirmatively to increase the participation of women, minorities, . . . and persons with disabilities at all levels and in all segments of our workforce and to establish goals as appropriate.<sup>168</sup>

Furthermore, the manual holds all employees accountable for abiding by this policy, spelling out the role of managers and identifying the point at which the human resources division becomes involved. For example, it charges all employees with the responsibility for treating their coworkers and all other company employees with respect.<sup>169</sup> In addition, managers must undertake to support the company's equal opportunity and affirmative action policy; continually inform their subordinates about the policy; "consider women, minorities, persons with disabilities . . . when making hiring, promotional or transfer decisions to help meet . . . affirmative action goals"; assure that employees are not harassed because of their age, color, disability, national origin, race, or sex; be alert to potential problems that may occur in their units; and appropriately refer inquiries and complaints about equal opportunity and affirmative action principles.<sup>170</sup> The human resources division is responsible for preparing any required affirmative action plans and for monitoring their implementation and effectiveness.<sup>171</sup>

Another company has an extensive written instruction on disseminating their equal employment opportunity policy and affirmative action program. The instruction directs the equal employment opportunity administrator of steps to be taken "in order to inform all employees, including management and supervisory staff as well as applicants for employment and others,

that the [company] is an Equal Opportunity Employer and to apprise them of its official policy. . . ."172

Steps for internal and external dissemination are shown in table 3.14. The president's policy statement, meetings of supervisory and managerial staff, meetings between supervisors and managers and their underlings, and company posters are some of the mechanisms through which these policies are communicated internally. Recruiters, employment agencies, contracts, and consumer advertising are external channels.

### **Diversity Training**

A diversity training program was one means that at least one company was using both to help its employees get along better with one another and to make a stronger, broader appeal to its clients.<sup>173</sup> The program began with a forum for executives lasting over a week. During the forum, the executives were to develop a common understanding of the value of effectively managing diversity. This common understanding was then used to develop curricula and conduct diversity training workshops for managers and lower level employees. Workshops for managers and the employee base were 3 days and 1 day, respectively. The curricula sought to help program participants recognize diversity, value it as an enrichment, and for managers, take advantage of a diverse work force to enhance company competitiveness.<sup>174</sup>

### **Career Development Strategies**

Two career development strategies and a mentoring program are among the strategies some companies developed to help minorities and women advance in their careers. One of the career development strategies is a formalized system for identifying career paths and advancing minorities through them; the other is a training program.

One company formed an "Employee Development and Mobility Department" to formalize companywide access to developmental opportu-

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<sup>168</sup> Exhibit HN, *Human Resources Guide*, "Equal Opportunity and Affirmative Action," sec. 101, p. 1.

<sup>169</sup> *Ibid.*, sec. 101, pp. 1-2.

<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*

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<sup>172</sup> Exhibit NG, "Dissemination of Policy."

<sup>173</sup> Exhibit HN, "Diversity Advisory Council Update," p. 1.

<sup>174</sup> Exhibit HN, "Valuing Diversity" workbook.

nities for employees.<sup>175</sup> The department was to establish career paths that target specific positions as developmental assignments. It would also identify the developmental needs of minority employees and develop and maintain a database of "high-potential" minority employees. This department was also responsible for managing support programs for minority employees such as the mentoring program discussed below.<sup>176</sup>

In another career development program, several corporations formed a consortium to design a cost-effective, but high-quality, management training program for women to be offered at a local college. The stated program objectives were to develop skills, broaden perspectives, prepare participants to assume greater responsibility within their organizations, and provide networking opportunities with other professional women.<sup>177</sup>

The core of the training program was a 2-week classroom curriculum.<sup>178</sup> This curriculum was preceded by a preparatory session and followed by a debriefing session. During the preparatory session, the trainee meets with her immediate manager and a human resources professional to develop learning goals related to business issues and her performance, skills, knowledge, and career plans. The proposed classroom training includes 12 days of curricula primarily on corporate, marketing, and global strategies. A 1-day session on managing diversity, and a half-day on career planning, occur midway through the curricula. During the debriefing, the trainee meets again with her immediate manager and a human resources professional to discuss how the information learned in the training session influenced the participant's personal learning goals and action plan.<sup>179</sup>

Program participants were nominated by senior human resource executives. The ideal

candidates were described as high potential second vice presidents or vice presidents who had been in a role of significant responsibility, did not have an MBA, and were strong candidates for a senior management position within the next 5 years.<sup>180</sup> One of the participating corporations anticipated having six to eight employees in the consortium program each year,<sup>181</sup> and expected that the second year of participation would result in a "significant advancement in reaching our goal of breaking the 'glass ceiling.'"<sup>182</sup>

### **Mentoring Program**

At least one company began a 12-month long mentoring program, although it is too recent to influence the representation of minorities and women in the data here.<sup>183</sup> The mentoring program is highly structured, from its stated purpose to the ways in which mentors and mentees were selected and assigned and the activities in which they were required to engage. The program's details, therefore, merit a full understanding.

The stated purpose of the program is "to increase retention and mobility of our highly valued employees"; to "[c]reate a network of contacts . . . that will facilitate individual growth"; to "[f]oster communication and collaboration among . . . employees"; and to "[b]roaden individual and organizational perspective through cross-cultural, cross-gender, and cross-generational interaction."<sup>184</sup>

The program was to focus on racial minorities but not exclude nonminority males and females.<sup>185</sup> It began with 55 mentees and a goal that about 65 percent of them were to be minority candidates. Mentees were to be selected from

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<sup>175</sup> Exhibit HN, "Diversity Advisory Council Update," chart, pp. 2-3. Note that these activities were scheduled for the winter of 1994-95 and therefore were too recent to affect the racial and gender data on employees used here.

<sup>176</sup> See Exhibit HN, "Diversity Plan" and the "John memorandum," which refers to the "Employee Development and Mobility Group."

<sup>177</sup> Exhibit HN, "Smith College Consortium Program, Proposal—January 25, 1995" ("Consortium Proposal," p. 1).

<sup>178</sup> Exhibit HN, "Consortium Proposal."

<sup>179</sup> Ibid.

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<sup>180</sup> Exhibit HN, "1995 Smith College Consortium Program," Mar. 8, 1995 (hereafter cited as "Consortium Memo").

<sup>181</sup> Exhibit HN, "Consortium Memo." The first pilot of this program took place in 1994; a second pilot was scheduled for July 16-28, 1995, concurrent with the U.S. Commission on Rights' hearing that subpoenaed documents on the program.

<sup>182</sup> Exhibit HN, "Consortium Memo."

<sup>183</sup> It began in January 1995. Exhibit HN, "Regional Bank Mentoring Program Plan Roll-Out."

<sup>184</sup> Exhibit HN, "Regional Bank Mentee Guidebook," p. 2, and the "Regional Bank Mentor Guidebook," p. 2 (hereafter cited as "Mentee Guidebook" and "Mentor Guidebook").

<sup>185</sup> Exhibit HN, "Dec. 16, 1995 [sic "1994"], Memorandum Re: Mentoring Program Roll-Out."



**Table 3.14**

**Example of a Written Procedure for Disseminating Equal Employment Opportunity and Affirmative Action Policies**

**Steps for internal dissemination**

- 1 The President's Policy Statement . . . is included in any policy manual and is made available to all present and future employees.
- 2 Special meetings with management and supervisory staff are held to outline and explain Equal Employment Opportunity and Affirmative Action and the [company]'s responsibility for effective implementation of the Affirmative Action Program.
- 3 Managers and supervisors communicate to those under their supervision information regarding the [company]'s policy and program on Equal Employment Opportunity.
- 4 The [company]'s status as an Equal Opportunity Employer is communicated to all prospective employees.
- 5 Articles and pictures related to minority and non-minority men and women . . . are included from time to time in any [company] publication.
- 6 Copies of the Policy Statement and copies of Equal Employment Opportunity posters are posted prominently on bulletin boards at all work sites and at places where employees naturally congregate within the [company].
- 7 . . .
- 8 Suitable portions of the Affirmative Action Program are made available for inspection by applicants and employees on request in the Human Resources Department during working hours.

**Steps for external dissemination**

- 1 Recruitment sources are informed, orally and in writing, of the [company]'s official policy on Equal Employment Opportunity. A letter is mailed to each recruitment source annually. In this letter . . . it is stipulated that recruitment sources are requested to actively recruit and refer females, minorities, . . . for all positions listed.
- 2 When recruiting through employment agencies, the [company] informs such sources that it is committed to using referral sources that refer applicants on a non-discriminatory basis and that referrals of minority and non-minority males and females . . . are expected for jobs at all levels. . . .
- 3 Notices of the [company]'s Equal Employment Opportunity Policy are sent to potential sources for employment of females and minorities.  
. . .
- 6 Written purchase orders include the [company]'s affirmation that it is an equal opportunity employer and state: "The Equal Opportunity and Affirmative Action Clauses, as set forth by the Department of Labor. . . are hereby incorporated. . . ."
- 7 An appropriate Equal Employment Clause is incorporated in all contracts covered by or subject to Executive Order 11246. . . . All vendors, suppliers and subcontractors covered as above are notified in writing of the [company]'s Equal Employment Opportunity Policies and are requested to provide appropriate supportive action. . . .
- 8 Should the [company] engage in any consumer advertising calling for the use of pictures, both minority and non-minority men and women . . . will be featured in varied higher-level and non-traditional jobs, wherever possible.

SOURCE: Exhibit NG

graduates of the entry-level professional training programs, high-potential and "well-functioning" officers and nonofficers, newly hired minorities in mid-career, and candidates from outlying branches.<sup>186</sup> Mentors were nominated by human resource managers. They were to be "solid" performers who had at least 3 years of experience with the company, strong knowledge of the company and its branches, and well developed networks within it.<sup>187</sup>

Not only were mentors and mentees carefully selected, but they were also carefully matched to each other because research had shown that matching increased the success of such a program.<sup>188</sup> The information used for matching was mostly provided by the mentees. It included the mentees' developmental needs; the mentors' strengths; the mentees' views of their ideal mentor in terms of his or her functional area and personal characteristics, such as gender and job level, and the role the mentor would play in the relationship (e.g., role model, counselor, and friend); and personal interests.<sup>189</sup> A mentee could suggest a person to be his or her mentor.

The program included a variety of activities for mentees, mentors, and mentee supervisors (e.g., orientation programs, an informal introduction of mentee and mentor and an opening reception, bimonthly mentee luncheons to encourage networking among mentees, a mentor luncheon 6 months into the program, and, at the end of the program, a closing reception and program evaluations by both mentors and mentees).<sup>190</sup> In addition, mentees were offered the opportunity to attend training sessions on topics in which they expressed an interest during orientation.<sup>191</sup>

Guide books and orientation exercises defined the roles and responsibilities of mentees and mentors.<sup>192</sup> Both mentors and mentees were

asked to clarify expectations for the relationship (i.e., what the mentor could and would do for the mentee).<sup>193</sup> Orientation sessions used team exercises to help do this. During these exercises, mentees were asked to define a mentoring relationship and identify the most important actions or behaviors mentors and mentees could do to ensure the success of the mentoring relationship.<sup>194</sup> Similarly, mentors were asked to identify potential career development activities that could be initiated with the mentee.<sup>195</sup> In another exercise, mentees assessed their career interests, developmental needs and strengths, then suggested developmental activities with which mentoring programs and mentor relationships could help them to enhance their career development.<sup>196</sup> Finally, the guides recommended that mentor and mentee set a meeting schedule of at least every 3 weeks for the first 3 months and monthly thereafter<sup>197</sup> and provided pages for both to keep a journal of the meetings and the issues they discussed. The issues to be discussed at the first meeting were specified in the exercises of the orientation session.<sup>198</sup>

After 8 weeks of the program, a survey showed that 98 percent of the responding mentees reported having face-to-face meetings with their mentors.<sup>199</sup> The mentees averaged 2.5 such meetings. Telephone contact was more frequent, 3.4 times on average, but used by only 72 percent of the mentor-mentee pairs. A small number of mentees, all of whom were male, reported contact with their mentor via e-mail, fax, or memo, with a frequency of 2 to 3 times for each type. Twenty-five percent of the responding mentees had put together a formal development plan; 76 percent set relationship objectives. Minorities rated their relationship high, averaging 8.5 on 10-point scale, and higher than the ratings nonminorities gave their relationship (7.8). The formal program had only reached its 6-

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<sup>186</sup> Exhibit HN, "Regional Bank Mentoring Program," p. 3; "Regional Bank Mentoring Program Plan Roll-Out," p. 1.

<sup>187</sup> Exhibit HN, "Regional Bank Mentoring Program," p. 4; "Regional Bank Mentoring Program Plan Roll-Out," p. 1.

<sup>188</sup> Exhibit HN, Mentee Guide, p. 2.

<sup>189</sup> Exhibit HN, "John Memorandum."

<sup>190</sup> Exhibit HN, "Regional Bank Mentoring Program Plan Roll-Out," pp. 2-4.

<sup>191</sup> Exhibit HN, Memorandum: "Dedicated Managing Your Career Session for Mentees," Mar. 9, 1995.

<sup>192</sup> Exhibit HN, Mentor Guide, pp. 3-4; Mentee Guide, pp. 3-4.

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<sup>193</sup> Exhibit HN, Mentor Guide, p. 5; Mentee Guide, p. 5.

<sup>194</sup> Exhibit HN, Mentee Guide, pp. 6-7.

<sup>195</sup> *Ibid.*

<sup>196</sup> Exhibit HN, Mentee Guide, pp. 10-12; *see also* "1995 Regional Bank Orientation Meeting for Mentees, Annotated Outline."

<sup>197</sup> Exhibit HN, Mentor Guide, p. 5; Mentee Guide, p. 5.

<sup>198</sup> *Ibid.*

<sup>199</sup> Exhibit HN, *See* "Mentoring Program Check-In, Eight-week Mark"

month mark when the Commission subpoenaed the documents. Thus, no further evaluation was available at that time.<sup>200</sup>

At least some of the banks and securities firms in New York City's finance industry have measures in place to encourage the presence of minorities and women among their employees. Written equal employment opportunity and affirmative action policies, recruitment targeted to minorities and women, career development, and other support programs targeted to the advancement of minorities and women were some of the mechanisms used. Unfortunately, not all of the banks and securities firms had policies and programs like the ones described here. The next analysis will examine the extent of such practices.

The documents were examined for evidence of written procedures and policies for hiring and promoting staff, whether the procedures varied for different levels of staff, whether job candidates were recruited externally or from within the organization, when and how the company advertises job vacancies, and whether recruitment procedures target minorities and women (e.g., recruitment at historically black colleges and universities or advertisements in media with large minority audiences).

### **Recruitment, Hiring, and Promotion Techniques**

In this section, the focus is on the methods used to recruit applicants for the three job classifications. After recruitment, it focuses on the methods used to offer promotion and advancement opportunities. Lastly, it examines any programs offered to provide job training or training oriented toward job advancement opportunities. The mechanisms related to provision of opportunities are typically initiated by development of policy statements. These statements formalize goals and objectives as "guideposts." Then, structural components, referred to as procedures and program offerings, are designed to detail how policy-related goals will be achieved and how achievement will be measured.

In response to subpoena items 4, 5, and 6, the firms were requested to submit any and all documents that defined the procedures for recruitment, hiring, and promotion. These items

were intended to elicit evidence that the firms provided opportunities for employment, advancement, and job growth. In response, firms provided a wide variety of material: copies of internal job-posting lists, advertising copy for newspaper classified sections, brochures for distribution on campuses, announcements for receptions at meetings, invitations to hospitality rooms at trade shows, and other similar materials. During the review of the submissions, it was convenient to define recruitment as the process for locating potential employees. Hiring was defined as any policy or procedural technique that could influence applicants or recruits to join a particular firm. Promotion was defined to include methods oriented toward providing job advancement opportunities.

### **Recruiting Personnel**

The review demonstrated that techniques for recruitment vary, as expected, by position type. Tables 3.15 and 3.16 show a summary of the avenues used to recruit employees by job classification and firm type. Five of the sample of 20 securities firms having establishments with SIC 621 or 628 did not provide this information. One of the 14 depository institutions having establishments with SIC 602 or 603 did not submit the data for the sales worker job classification. But this job classification may not have been a valid job classification for this institution.

The data show that depository institutions use multiple avenues in their recruitment efforts. The use of internal recruiters was reported as a frequently used personnel functional area. More than half of the institutions documented use of internal promotion to fill positions. The principal avenues for recruiting officials and managers are internal promotion and local newspaper advertising. More than half of the institutions reported using these sources.

In the professional job category, college placement services and job fairs were reported most frequently (10 firms) as a recruitment source. This was somewhat surprising given that prior data showed only 30 percent of the firms reported a college degree as a job requirement.

The majority of the firms' documents showed that college placement services are used most frequently to recruit sales workers. Although other submitted data did not show a college degree as a positional requirement, the firms may

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<sup>200</sup> The orientation appears to have been scheduled for mid-February 1995. Exhibit HN. See "John memorandum,"

initially try to fill positions with college-educated persons. Local newspaper advertising and job fairs are also used with frequency.

Electronic media were not reported as potential recruitment sources. These media forms included Web sites/services and television and radio advertising. There is a current proliferation of Web service providers for resume distribution. It will be interesting to watch and see if these types of services become recruitment sources in the finance industry.

While the use of internal promotion provides advancement opportunity to the current employee pool, it does not open depository institutions to changes in gender or racial mix.

### ***Hiring and Promoting Personnel***

Hiring was defined as any policy or procedural technique that could influence applicants or recruits to join a particular firm. Such influences included training, mentoring or career development programs, and internships or scholarships. Influences such as salary scales and benefit packages were beyond the scope of this project.

The firms were requested to submit documents that described the type of training and scholarship offerings. These documents were organized by types of job classifications wherever possible. There were programs for recent business school graduates with MBAs and associate programs for undergraduate students. The purpose was to identify candidates qualified to join firms following completion of degree programs. These program offerings were discussed in brochure-type submissions; however, no detail was provided on how many or what types of students participate in such training programs.

Tables 3.17 and 3.18 show summary information regarding training programs. As with other request documents, not all of the subpoenaed firms provided information. Five of the sample of 20 securities firms having establishments with SIC 621 or 628 did not provide information regarding training programs.

Although the information has been shown by firm type, the patterns are similar. The major difference is seen in the general job-related program offerings. The majority of the depository institutions do provide general job-related

training programs in all job classifications. Such training programs are not as prevalent within the securities firm group. Typically such programs are considered as new employee orientation programs rather than as programs designed to allow personal growth and career advancement.

Based on the documents submitted, mentoring is not seen as particularly important in any of the job classifications in either group of firms. Only in the depository institution group and the professional job classification do 50 percent of the firms offer mentoring programs.

Career development programs are also not a common recruitment or retention technique in most of the subpoenaed firms. The professional job classification in depository institutions has the greatest number of such programs, and these programs are offered by less than 40 percent of the institutions. The officials and managers job classification has more total program opportunities than does the sales workers job classification.

In many industries, employer-based mentoring and career development programs are a standard technique for increasing the employment of women and minorities in upper level positions. Such programs are seen as a way to both recruit and retain personnel through promotional opportunities. The submitted documents do not show high use of this technique by the finance industry.

Another significant recruitment program can be internships and corporate-sponsored scholarships. The firms were requested to submit information that discussed their efforts in this area. Information regarding specific internship/scholarship programs and any targeted population was requested. Information was requested on the number of programs rather than on the number of program participants. Very little information was provided in response to this request. Thus, the data are not presented by industry group. And, as with other requests, not all firms provided information.

Table 3.19 summarizes these data for the firms responding to the subpoena request. As these data show, internship and scholarship programs are not prevalent within the subpoenaed firms.

**Table 3.15****Summary of Techniques for Recruiting Employees by Job Classification,  
14\* Depository Institutions with SIC 602 or 603**

Recruitment technique used	<u>Officials &amp; managers</u>		<u>Professionals</u>		<u>Sales workers</u>	
	Yes	No	Yes	No	Yes	No
External recruiters	7	7	5	9	4	9
Internal recruiters	7	7	7	7	4	9
Internal promotion	8	6	9	5	7	6
Web sites/services	0	14	0	14	0	13
Local newspapers	8	6	7	7	7	6
National newspapers	5	9	5	9	5	8
Trade journals	3	11	2	12	1	12
Trade associations	4	10	5	9	2	11
Magazines	0	14	1	13	0	13
Job fairs	8	6	10	4	8	5
College placement service	4	10	10	4	10	3
Television advertising	0	14	0	14	0	13
Radio advertising	0	14	0	14	0	13
Temporary staffing agency	3	11	3	11	2	11

\* One firm reported that sales worker job classification was not applicable to the firm. Thus, the total equals 13 firms for this job classification.

SOURCE: Compiled from documents submitted July 1995

**Table 3.16****Summary of Techniques for Recruiting Employees by Job Classification,  
15 Securities Firms with SIC 621 or 628**

Recruitment technique used	<u>Officials &amp; managers</u>		<u>Professionals</u>		<u>Sales workers</u>	
	Yes	No	Yes	No	Yes	No
External recruiters	2	13	7	8	5	10
Internal recruiters	5	10	1	14	0	15
Internal promotion	11	4	7	8	4	11
Web sites/services	0	15	0	15	0	15
Local newspapers	7	8	8	7	7	8
National newspapers	8	7	8	7	7	8
Trade journals	3	12	3	12	3	12
Trade associations	2	13	2	13	2	13
Magazines	1	14	1	14	1	14
Job fairs	3	12	9	6	5	10
College placement service	3	12	11	4	6	9
Television advertising	0	15	0	15	0	15
Radio advertising	0	15	0	15	0	15
Temporary staffing agency	2	13	4	11	2	13

\* One firm reported that sales worker job classification was not applicable to the firm. Thus, the total equals 13 firms for this job classification.

SOURCE: Compiled from documents submitted July 1995

**Table 3.17****Summary of Training Programs by Job Classification, 14\* Depository Institutions with SIC 602 or 603**

Type of training program	<u>Officials &amp; managers</u>		<u>Professionals</u>		<u>Sales workers</u>	
	Yes	No	Yes	No	Yes	No
General job related	12	2	11	3	9	4
Mentoring	3	11	7	7	2	11
Career development	3	11	5	9	3	10

\* One firm reported that sales worker job classification was not applicable to the firm. Thus, the total equals 13 firms for this job classification.  
SOURCE: Compiled from documents submitted July 1995

**Table 3.18****Summary of Training Programs by Job Classification, 15 Securities Firms with SIC 621 or 628**

Type of training program	<u>Officials &amp; managers</u>		<u>Professionals</u>		<u>Sales workers</u>	
	Yes	No	Yes	No	Yes	No
General job related	7	8	10	5	5	10
Mentoring	4	11	5	10	3	12
Career development	4	11	3	12	2	13

SOURCE: Compiled from documents submitted July 1995

**Table 3.19****Summary of Internship and Scholarship Programs, 23 Firms with Programs**

Number of programs	<u>Internships</u>			<u>Scholarships</u>		
	General	Women	Minority	General	Women	Minority
None	6	10	6	9	10	8
1-5	3	1	5	1	1	3
6-10	0	0	1	0	0	0
11 or more	1	0	0	0	0	0

SOURCE: Compiled from documents submitted July 1995

### **Policy-related Documents**

The firms responding to the request for documents either provided copies of key pages from their "policy and procedure" manuals or submitted entire "human resources guides." These submissions were intended to demonstrate evidence of employment and advancement opportunity for all. A few firms also provided copies of their management meeting minutes to show that the firm saw provision of opportunity as an important corporate responsibility and goal.

The following summary shows the key types of policies submitted by the firms. This summary shows that the firms have installed the "guideposts" to support opportunity for all.

Policy types submitted:

- EEO policy in place
- EEO officer named
- Affirmative action plan in place
- Diversity initiatives prepared
- Targeted recruitment policy developed
- Hiring policy documented
- Promotion policy designed

Given that all the firms are well recognized within the finance industry and are major employers, it would have been surprising if any responded that they did not have such written policies or plans.

However, the efficacy of these documents or adherence to the language could not be assessed. The policies that are more associated with statutory issues (EEO and affirmative action) specifically addressed the hiring of women, minorities, and persons with disabilities. The documents reviewed indicated that the responding institutions and firms have measures in place to encourage the presence of women and minorities among their employee pool. However, the extensive quantitative data displayed in the graphs do not show that these policy-related measures are having a positive effect on increasing the proportions of women and minorities employed in the New York finance industry.

### **Section IV. Dynamics within Banks and Firms**

#### **Employment Patterns within Depository Institutions and Securities Firms**

This section will focus on the quantitative data obtained by subpoena from the sample of

New York depository institutions and securities firms. A peer group sample of New York depository institutions and securities firms was constructed to allow comparisons of actual employee data by gender and race.

The primary purpose of the first part of this section is to discern if the subpoenaed data show any trends with regard to the gender and race of applicants for or those hired into key positions. Then in the second part, trend analyses using actual employment data from EEOC form EEO-1<sup>201</sup> were conducted for the peer group sample and for the subpoenaed sample. These trend analyses also considered gender and race according to four job classifications. Multiple figures have been prepared to display the trends. And finally, the last part of the section examines whether establishment size influences gender or race. Establishment size was based on the total number of employees for both the peer group and the subpoenaed samples.

#### **The Employee Pool: How Does the Subpoenaed Sample Compare with Its Peers?**

The data regarding applicants and hires submitted in response to the subpoena did show some imbalances. This elicited interest in ascertaining how the actual employee data for the subpoenaed sample of banks and securities firms compared with a peer group from the New York finance industry.

To conduct this study, EEOC employment data<sup>202</sup> as reported on Employer Form EEO-1 were reviewed. These data were provided by the EEOC in machine-readable format for the period 1991 to 1996 and for New York PMSA 5600. For the purposes of this analysis, EEOC employment data for the 5-year period 1991 to 1995 were extracted. In this way, the time period would be more consistent with the periodic data requested by subpoena. This analysis of employee data was expanded to include an office and clerical workers classification.

The EEOC employee data were further stratified to construct a peer group database containing only the types of banks and securities firms included in the subpoenaed sample. This

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<sup>201</sup>The EEOC data as reported to the Equal Employment Opportunity Commission (EEOC) on Standard Form 100, the Employer Information Report (EEO-1).

<sup>202</sup> Ibid.

**Table 3.20****Description of Banks and Securities Firms Included in Peer Group Sample**

SIC	Description	<u>Number in sample by year</u>				
		1991	1992	1993	1994	1995
602	<i>Commercial banks</i>					
	Establishments	217	203	201	163	148
	Firms	98	104	101	73	69
603	<i>Savings institutions</i>					
	Establishments	50	35	40	35	40
	Firms	32	25	28	26	27
621	<i>Security brokers, dealers &amp; flotation co.</i>					
	Establishments	130	127	141	150	153
	Firms	67	69	70	77	77
628	<i>Services allied with exchange of securities or commodities</i>					
	Establishments	15	14	20	21	27
	Firms	12	12	17	18	23

SOURCE: EEOC data 1991-95

**Table 3.21****Description of Banks and Securities Firms Included in Subpoena Sample**

SIC	Description	<u>Number in sample by year</u>				
		1991	1992	1993	1994	1995
602	<i>Commercial banks</i>					
	Establishments	87	88	89	81	76
	Firms	10	11	11	12	12
603	<i>Savings institutions</i>					
	Establishments	6	7	7	4	5
	Firms	5	5	4	4	5
621	<i>Security brokers, dealers &amp; flotation co.</i>					
	Establishments	56	56	77	51	54
	Firms	18	18	19	20	21
628	<i>Services allied with exchange of securities or commodities</i>					
	Establishments	0	1	1	7	6
	Firms	0	1	1	5	6

SOURCE: EEOC data 1991-95



stratification was accomplished by use of Standard Industrial Codes.<sup>203</sup> In constructing the two peer group and two subpoenaed firm databases, it was found that an individual firm could be represented in more than one descriptive group. Some firms had establishments with a commercial bank SIC (SIC 602), and also had establishments with a security firm SIC (SIC 628). In these cases, the firm is represented in both descriptive groups in the appropriate database. Table 3.20 shows by year, SIC, and description, the number of establishments and firms contained in the peer group sample.

Table 3.21 displays the number of establishments and firms reported to EEOC by the banks and securities firms included in the subpoenaed sample. As discussed earlier, a firm could be divided in more than one descriptive group. An interesting difference between the two samples is the 30 percent decrease (267 to 188) in the number of depository establishments (SIC 602 and 603) in the peer group sample between 1991 and 1995. The subpoenaed sample only showed a 13 percent decrease in the number of depository establishments over the same time period. What influence do these decreases have on the number of employees by job classification?

In the peer group sample, there has been an 18 percent increase from 1991 to 1995 in the number of establishments coded as securities brokers, dealers, and flotation companies. In the subpoenaed sample, there was a 37 percent increase in the number of establishments between 1991 and 1993, and in 1995 the number of establishments decreased to the 1991 level. This most likely reflects the period of mergers and acquisitions by firms represented in the subpoenaed sample.

In each of the yearly EEOC data files, each establishment carried both a numeric SIC and a unique alphanumeric EEOC identifier titled "Headquarters Number." These two data fields were used to sum employee data for firms with multiple establishments to a single year-specific database record. Using the two peer group and two subpoenaed group databases, the EEOC employment data were examined by job classification and year.

Figure 3.5 displays graphical data from the peer group sample of depository institutions. The figure shows a decrease in the total number of employees in the officials and managers job classification from 1991 to 1994. Then, in 1995 the numbers started to increase. In 1991 the total exceeded 38,000 employees, and in 1995 the number was slightly over 27,700 employees.

However, in all years, this job classification was over 33 percent of the total number of employees. The data for office and clerical workers also show a consistent decrease without any years of increase. There were almost 44,000 employees in 1991. Yet the 1995 data show 28,000 office and clerical worker employees. This equates with a 36 percent decrease in the number of jobs in this classification. If this decrease is related to the 30 percent decrease in the number of depository institutions between 1991 and 1995, we would have expected decreases in all job classifications, unless there is some reason the decrease would disparately affect office and clerical workers. Nonetheless, this job decrease is a reason for concern because office and clerical worker positions frequently provide entry-level opportunity in any industry.

In the professionals job classification, the number of jobs has not shown much change over the 5-year period. In 1995 there were 1,000 more jobs reported than in 1991. However, as the number of office and clerical workers has fallen, the professionals job classification has become a greater proportion of this industry's employee pool. In 1991 professionals were 15 percent of the total pool; this percentage rose to 22 percent in 1995. Sales workers are a small component of the employee pool, and in 1995 totaled less than 3,200 persons. While the figure shows this number increasing, additional years of data are required to ascertain if this is a growth position within the industry.

The major trend seen in figure 3.6 is a decrease in the number of office and clerical workers. In 1991 office and clerical workers were 42 percent of the employees in the four job classifications. In 1995 they accounted for 35 percent of the employees. Further research should be undertaken to determine why the 12 percent decrease in the number of establishments has had a greater impact on this job classification than on others.

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<sup>203</sup> Office of Management and Budget, Standard Industrial Classification Manual (Springfield, VA: National Technical Information Service, No. PB 87-100012) (1987).

The number of sales workers is increasing. In 1991 this job classification was a small (1 percent) component of the employee pool. Although there is an increase seen over time, sales workers in 1995 only accounted for 4 percent of the employees. Is it logical to assume that as depository institutions expand service offerings, this increase will continue? And, if so, can office and clerical workers aspire to these positions?

The number of officials and managers decreased slightly between 1991 and 1994 (41 to 37 percent); but the 1995 data show an increase to the 1991 level. The professionals employee percentage has remained relatively constant since 1992, approximating 20 percent of the examined job classifications.

In summary, these two figures<sup>204</sup> demonstrate that the subpoenaed sample of depository institutions is reasonably representative of the peer group component of the New York finance industry. This fact will become more important as the qualitative review of the subpoenaed information is presented.

Figures 3.7 and 3.8 show increases in each of the four job classifications over the period 1991 to 1995. In the peer group sample, figure 3.7, the most dramatic increase is seen in the professional job classification. The number of these employees increased from 17,000 in 1991 to just over 32,000 in 1995. But, as all job classifications have increased, the professional job classification has only increased its numbers in the total employee pool by 6 percent. Office and clerical workers have shown an increase of approximately 6,000 positions between 1991 and 1995. However, this job classification has decreased from 40 to 33 percent of the total employee pool.

Figure 3.8, the subpoenaed sample, shows increases in the number of employees in all four job classifications over the years. And, as expected, the number of employees in all classifications peaked in 1993. The largest employee classification among this subpoenaed sample of securities firms consists of professionals, which includes accountants, auditors, and computer system personnel. Within the professionals cate-

gory there was a substantial increase from 1992 to 1993.

The sales worker classification, which includes stockbrokers, is the smallest proportion of these employees. In 1995 this job classification was only 10 percent of the total. The data do show an increase in the number of office and clerical workers between 1991 and 1995. There was a sharp increase in 1993, but as a percentage of the total number of employees this classification has decreased during this time period from 38 to 31 percent of the total. Officials and managers were approximately 20 percent of the total in each of the years 1991 to 1994. In 1995 this classification increased to 24 percent of the total.

In summary, figures 3.7 and 3.8 demonstrate that the subpoenaed sample of securities firms only reflects some of the peer group sample accurately, in terms of the distribution of employees by job classification.

The following set of figures further stratifies these job classification data by gender and race. Figures showing identical inclusions are presented sequentially to foster comparison between the peer group sample and the subpoenaed sample.

Figure 3.9 demonstrates that, in the depository institutions peer group sample, officials and managers positions are predominantly held by white males, with the percentage of minorities in these jobs at less than 20 percent in any year. The total number of depository institution officials and managers jobs held by males has decreased fairly steadily over the 5-year period, with a slight increase in 1995. This decrease has affected all racial groups equally. Therefore, there has been no change in any racial groups' representation in the total.

Figure 3.10 shows dramatically that in the subpoenaed sample, male officials and managers in depository institutions are rarely minorities. The 1995 EEOC data showed more than 13,000 males employed in this job classification, more than 11,000 of whom were white. These numbers show that all four minority groups comprise less than 2,000 positions.

The total minority employment has not exceeded 17 percent of the total in any year. Among the minority population, black and Asian American and Pacific Islander males each accounts for less than 7 percent of this classifica-

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<sup>204</sup> In reviewing these figures, note that depository and banking institutions are shrinking with respect to numbers of employees while the labor force in securities firms is growing. Moreover, some sales people, who for the first time have to take the Series 7 test, have moved from the depository or banking institutions to securities firms.

tion's total employees in any year. American Indians account for none of these positions in either the peer group or subpoenaed sample.

Figure 3.11 shows that the vast majority of official and manager positions in the peer group sample securities firms are held by white males, and their percentage of the total has remained in the 90 percent range each year. There has been no shift in the percentages of the jobs among the minority groups. Although the percentages in figure 3.11 are similar to those seen in the depository institutions, the percentages of minorities are lower. The total numbers of employees in the peer group sample of the officials and managers classification in securities firms has increased over the 5-year period covered by these data.

Figure 3.12 shows that the officials and managers classification of securities firms in the subpoena sample is substantially dominated by white males, much the same as with the depository institution data. Among these subpoena sample securities firms, as with the peer group securities firms, some minorities are showing a minimal percentage increase in representation. These changes, however, have not significantly altered the makeup of this employee group.

Figure 3.13 demonstrates that in the depository institution peer group sample female officials and managers classification, white females hold more than 70 percent of the positions. The distribution among minority groups does not show a significant variance in the proportions. Although 70 percent is a very high percentage, it is interesting that the percentage of white women in this category is significantly lower than the percentage of white males. Therefore, the percentage of minority representation in the depository institution is significantly higher than the percentage of minorities among the males.

The numbers of females in the officials and managers classification have decreased by more than 25 percent since 1991; there was a slight increase beginning to show in 1995. A similar decrease was also evident in the male officials and managers classification (figure 3.9).

Figure 3.14 shows the subpoena sample of female officials and managers in depository institutions. The figure shows a job classification consisting largely of white female employees. In 1995 in the subpoena sample, there were more

than 7,000 females employed in this job classification, 74 percent of whom were white. Although this percentage of white female employees is high, it is lower than the percentage of white male employees in the subpoena sample depository institutions officials and managers classification. Correspondingly, the percentage of minority employees in the subpoena sample, much like in the peer sample, is greater among the female officials and managers than among the male officials and managers. Minority females account for 26 percent of this job classification's employees. Continuing the contrast between males and females in this category, a comparison of figures 3.14 and 3.10 shows that there are almost twice as many male officials and managers as there are females in this job classification.

Figure 3.15 shows that white females hold more than 80 percent of all the peer group female officials and managers positions in securities firms. Over the 5-year period there has been a slight increase in minority representation among female officials and managers, and a corresponding decrease in the percentage of white female officials and managers. Although these numbers show an increase in the total number of jobs, females remain one-third of the total numbers of officials and managers positions in securities firms in the peer group. Further, the numbers of females in both the subpoena and the peer group securities firms officials and managers classification are substantially smaller than those found in the depository institutions.

Figure 3.16 shows that among female officials and managers in the subpoena sample of securities firms, employees are 82 percent white. A comparison of figure 3.16 and figure 3.14 shows that there are far fewer female officials and managers in securities firms than in depository institutions. As was found in the peer sample, the percentage of minority employees is greater among females in the officials and managers category than for males in officials and managers group. Minority females account for 18 percent of this job classification's female employees and are showing a slight increase in percentages over the 5-year period.

Figure 3.17 shows the peer group sample for the male professionals category in depository institutions. It is a category composed of 75 percent white males. In the peer group sample the number of males in the depository institutions

professionals category increased from 1991 to 1993 and then decreased through 1995, winding up higher than the initial 1991 numbers. From 1991 to 1995, there has been an increase in percentages of certain minority groups, but the overall ratios of minority employees to white employees has remained fairly constant.

The data in figure 3.18 show that about 75 percent of males in the peer group sample of the depository institutions professionals classification are white. The data also indicate an increase in the total number of males in the professionals classification of the subpoena sample depository institutions. The number increased from 4,200 in 1991 to more than 5,700 in 1995. There has been a corresponding increase in minority representation, but the percentages have still remained within the 25 percent range each year from 1991 to 1995.

Figure 3.19 shows that in the peer group sample securities firms professionals category, positions have predominantly been held by white males. There has also been an almost 85 percent increase since 1991 in the number of males, during which time the number of white males has decreased by 8 percent. There has been an increase among most minority groups' percentages, with Asian American and Pacific Islanders showing the largest percentage gain and American Indians not represented at all.

Figure 3.20 shows that the male professionals category of subpoena sample securities firms is also dominated by white males who constituted 88 percent of the group in 1991 and 78 percent in 1995. Correspondingly, these data show a positive trend of increases in the percentages of minorities from 12 percent in 1991 to 22 percent in 1995. The data also show that the total number of employees in this job classification has increased by almost 100 percent from 1991 to 1995.

Figure 3.21 shows the numbers of females in the professionals classification of depository institutions in the peer group sample. Although this classification is also dominated by white females, it shows a substantial divergence between the number of white female employees and the total number of positions. Minorities make up one of the highest percentages of the total number of positions among all analyzed classifications. The total number of jobs has re-

mained approximately the same, with a slight peak in 1993, and then a decrease.

Figure 3.22 shows the numbers of females employed in the professionals category of depository institutions in the subpoena sample. As has been the case in all categories, white females substantially outnumber minority females. However, there is a significant divergence between the numbers of white females and the total number of female employees. Correspondingly, there is a higher percentage of minority women in this category than in most others. The percentage of minority females employed in this category is also significantly higher than that of minority males employed in the males professionals category of depository institutions in the subpoena sample.

Figure 3.23 shows the numbers of females in the professionals category of the securities firms in the peer group sample. Although white females comprise a substantial majority of this classification, their numbers decreased from 82 percent in 1991 to 75 percent in 1995. Minority women made a corresponding increase in percentages of the total number of professionals in securities firms. The data also show a considerable increase in the total number of female employees from 1991 to 1993 and a lesser increase into 1995. A similar decline in total numbers can be seen in figure 3.19 among white male professionals in the peer group securities firms.

Figure 3.24 shows the numbers of females in the professionals category within the subpoena sample securities firms. Again the percentage of white females far outnumbers the percentages of the minority women. There was a substantial increase in the total number of female employees in this job classification between 1991 and 1993, ending in 1995 with approximately 85 percent more employees than in 1991 despite the decline after 1993. These increases were also reflected in the percentages of minority females.

In each year since 1992, the number of female securities professionals has exceeded the number of females in the professionals category of depository institutions. In 1995 securities firms had 14 percent more females in the professionals classification than did depository institutions.

Figure 3.25 shows the numbers of males in the sales workers classification of the peer group depository institutions. The percentage of white males represented in this category is signifi-

cantly higher than that of the minority males, with whites outnumbering minorities by four to one. However, minority males show continued increasing percentages throughout the 5 years of data. The data also show a 100 percent increase in the total number of male employees in this job classification from 1991 to 1993; the 1995 total was a nearly 300 percent increase over the 1991 numbers. Of the minority groups, Hispanics were the most reflective of this increase.

Figure 3.26 shows the numbers of males in the subpoena sample depository institutions sales workers classification. As has been seen in every other category, the employee pool consists of predominantly white males. Between 1991 and 1995, the data show a dramatic increase in the total numbers in this job classification. In 1991 there were 168 males in the sales workers category; in 1995 there were 1,150. Over the 5 years as the numbers increased, the percentages of minorities also increased, with a parallel decrease in the percentage of white males. The change in services offered by this segment of the finance industry may be a factor contributing to this increase in jobs. Many depository institutions are now providing investment services and using the broker job classification.

Figure 3.27 shows the numbers of male employees in the sales workers classification of the peer group sample securities firms. White males account for at least 93 percent of the total employees each year, and no minority group accounts for more than 3 percent of the total jobs in any year. The total number of employees in this job classification has steadily increased since 1991. The peer group securities firms have shown an increase of more than 3,000 positions between 1991 and 1995. The percentages of minority employees have increased only slightly as the overall number of positions increased.

Figure 3.28 shows the numbers of males in the subpoena sample securities firms sales workers classification. White males account for at least 90 percent of the total employees in each year. The number of employees increased from 1991 to 1993, at which point there was a peak. From 1993 to 1994, the numbers decreased and then increased in 1995 to end slightly higher than the starting point in 1991. The percentages of minorities showed corresponding increases and decreases but have not changed significantly over the 5-year period.

Figure 3.29 shows the numbers of females in the sales workers category of depository institutions in the peer group sample. White females make up a majority of the employees in this classification; however, most minority females have been steadily increasing their numbers from 1991 to 1995. The data also show increases in the total number of female employees in this job classification between 1991 and 1995, which has affected the percentage changes among minority females. As the total numbers continue to increase, the number of white women appears to have remained nearly constant since 1993. Asian American and Pacific Islander females show a steady increase in their percentages, and the number of Hispanic females increased by 10 percent between 1991 and 1995. Black females showed a 5 percent decrease between 1991 and 1993 but have shown a 3 percent increase since 1993. In 1995 the percentage of black female employees is actually lower than in 1991, but minority employees account for 43 percent of the total. Percentages of American Indian females are the only ones that have not changed over the 5-year period.

Figure 3.30 shows the number of females in the sales workers classification in the depository institutions of the subpoena sample. Although white women remain the group with the highest percentage representation, the minority percentage is 41 percent of the total. The data show increases in the total number of female employees in this job classification between 1991 and 1995. Percentages of minority females have correspondingly increased, and the percentage of white females has begun to decrease since 1994. Asian American and Pacific Islander and Hispanic females have shown the greatest increases.

Figure 3.31 shows the numbers of females in the peer group sample securities firms sales workers classification. White females account for at least 88 percent of the total employees in each year. The data show a slow upward trend in the total number of female employees in this job classification, with the percentage of white females matching the increase nearly exactly. In other words, the increased number of positions are being filled by mostly white females. Among the minority groups each year, the proportion of each group has remained small and nearly constant.

Figure 3.32 shows the numbers of females in the sales workers category of securities firms in the subpoena sample. White females in this classification account for at least 85 percent of all employees in each year. The numbers of employees continue to increase from 1991 to 1993, reaching a peak in 1993. From 1993 to 1994, the numbers decreased and then began an upward trend through 1995 to end higher than the initial numbers in 1991. However, the difference between 1991 and the peak year of 1993 is less than 450 employees, and the total increase from 1991 to 1995 is less than 150 employees. Although the numbers of minorities have kept pace with overall changes in the number of employees in this category, there has been little change in the percentages of minority representation.

Figure 3.33 shows the numbers of males in the office and clerical workers classification for the peer group sample depository institutions. This is the first peer group sample job classification in which the sum of the minority percentages exceeds the white percentage, by 57 to 43 percent. American Indians remain the only group representing less than 1 percent of this classification. The data also show a decrease in the total number of employees in this job classification since 1991. The decreasing numbers are equally distributed such that the percentage of each racial group remains consistent over the 5-year period.

Figure 3.34 shows the numbers of males in the subpoena sample depository institutions office and clerical workers classification. As with the peer group sample firms, the sum of the minority percentages exceeds the percentage of white employees by 57 to 43 percent. Further, the percentages of white and black male employees are substantially closer than in any other classification that was analyzed; only 10 percent separates these two groups. The total number of employees in this job classification has been decreasing since 1991 with a slight increase from 1992 to 1993. The decrease in numbers has been occurring equally in all racial groups. The percentages that each racial group contributes to the total number of employees have not changed markedly in any year.

Figure 3.35 shows the numbers of males in the office and clerical workers category of the peer group sample securities firms. White males have the highest percentage representation in

this classification, but the numbers are much closer than in many of the other classifications. White males make up 62 percent of the total employees while minorities are 38 percent. The total number of employees in this job classification has slowly increased since 1991, with the increase distributed reasonably equally among all racial groups. However, there are 20 percent fewer minority males in this peer group sample of securities firms than there were in the depository institutions peer group sample.

Figure 3.36 shows the numbers of males employed in the subpoena sample securities firms office and clerical workers classification. From 1991 to 1993, office and clerical workers in the subpoena sample securities firms were 61 percent white and 39 percent minority; in 1995 the numbers were 63 percent white to 37 percent minority. The total number of employees in this job classification increased from 1991 to 1993, peaking in 1993 before decreasing through 1995. These fluctuations were evenly reflected among the different minority groups, except American Indians whose numbers have remained constant at approximately 0 percent. As was seen in the peer group sample, this subpoenaed sample of securities firms has a smaller percentage of minority males than did the depository institutions in the subpoena sample.

Figure 3.37 shows the numbers of females employed in the office and clerical workers category of the depository institutions in the peer group sample. These data are the first to show minority employees with a substantially higher percentage than white employees. The numbers and percentages of black and white females employed as office and clerical workers in the peer group sample depository institutions are nearly identical. There was, however, a decrease of more than 11,000 in the total number of jobs in this category between 1991 and 1995; this is a 35 percent decrease since 1991. The data show that this decrease has been proportionally distributed among all racial groups as no racial group's percentage has changed significantly.

The peer group sample for depository institutions for males in the office and clerical workers classification (figure 3.34) also showed a decrease in the total number of jobs. That decrease was 16 percent. These decreases create concern because office and clerical worker positions fre-

quently provide entry-level opportunity in an industry.

Figure 3.38 shows the numbers of female employees in the office and clerical workers classification of the depository institutions in the peer group sample. Among female office and clerical workers in the subpoena sample depository institutions, black females are a higher percentage of the total number of employees than are white females. This is the first job classification in which one minority percentage exceeds the white percentage in every year.

The total number of employees in this job classification has shown a slight general decrease since 1991. Although there was a slight increase in 1993, the total numbers in 1995 remained lower than those in 1991. These decreases have been equally distributed among all racial groups. Among the subpoenaed sample of depository institutions, the number of female office and clerical workers is more than twice the number of male office and clerical workers (figure 3.34). Therefore, changes in the total number of employees hired as office and clerical workers would have a disparate impact on females.

Figure 3.39 shows the numbers of female employees in the office and clerical workers category of securities firms in the peer group sample. For each year, white females comprise 60 percent of the total employees in this classification while minorities are 40 percent. The total number of employees in this peer group sample has generally increased since 1991, with a slight decrease between 1994 and 1995. The increase in numbers is fairly equally distributed among all racial groups, with a 2 percent increase in the percentage of Hispanic females between 1991 and 1995. Compared with the depository institutions peer group sample of females in the office and clerical workers classification (figure 3.37), the percentage of white women in this peer group sample is 21 percent greater.

Figure 3.40 shows the numbers of female employees in the office and clerical workers classification of the subpoena sample securities firms. Although white females make up a majority of the employees in this category, minority females constitute a significant percentage of the total number of employees. The total number of employees in this job classification has slowly increased since 1991, peaking in 1993 followed by

a decrease from 1994 to 1995, but ending up with greater numbers of employees than in 1991. The increases and decreases were fairly equally distributed among all racial groups. Compared with female office and clerical workers in the depository institutions subpoena sample (figure 3.38), this category has a greater percentage of white female employees.

### **Establishment Size: Does It Influence Gender or Race of the Employee Pool?**

The trend analysis was conducted to display any difference in gender and race as related to the total number of employees. The databases for this inquiry used 1993 through 1995 EEOC employment data segregated by establishment rather than total employment by firm. The establishment databases were more sensitive to size-related differences in gender or race.

As with prior trend analyses, the figures are organized by peer group establishments and subpoenaed establishments. Each figure displays gender and race in four employee-size classifications. These classifications were based on a frequency analysis that separated the establishments into quartiles. In the peer group database, there were 1,139 establishments. The subpoenaed sample consisted of 458 establishments.

The results of this trend analysis showed that females are the greater percentage of total employees among depository establishments. Moreover, the smaller the establishment, the higher the percentage of female employees. Among the securities establishments, males have much higher percentage representation, particularly among smaller establishments. Racial trends showed all establishments, regardless of group, to consist primarily of white employees. Minority employment did not exceed 25 percent among depository establishments or 18 percent among securities establishments.

The trend by gender shows that in depository establishments in our peer group sample smaller establishments employ a greater percentage of females. As establishment size increases, the gap between females and males begins to narrow.

Regardless of establishment size, the greatest percentage of employees are white. Although minority distributions did vary depending on firm size, such gains or losses were minor and never significantly changed the proportional distribution of whites versus minorities. As estab-

lishment size increased, the percentage of black employees showed a minor increase. The largest percentages of Asian American and Pacific Islander employees are found in establishments of 150 to 324 total employees, but decreased as the establishment size grew. Hispanic numbers grew slightly as the establishment size grew. American Indians were virtually nonexistent in this sample.

Unlike the peer group sample, the percentage of female to male employees in depository establishments does not appear to be establishment-size sensitive until the total is greater than 325 employees. At that point, the percentage of female employees begins to increase with a corresponding decrease in the percentage of male employees.

The disparity between white and minority employment percentages was significantly greater in the subpoena sample than in the peer group sample as seen in figure 3.41. This indicates an overwhelming predominance of whites, particularly white men, in these establishments. Particularly troubling are the numbers with regard to American Indians who are seemingly nonexistent in both samples. It does not appear that the size of securities establishments in our peer group sample affected the proportion of employees based on gender. However, the securities establishments appear to employ more females than males. This is the converse of the trend seen among the depository establishments as shown in figure 3.42.

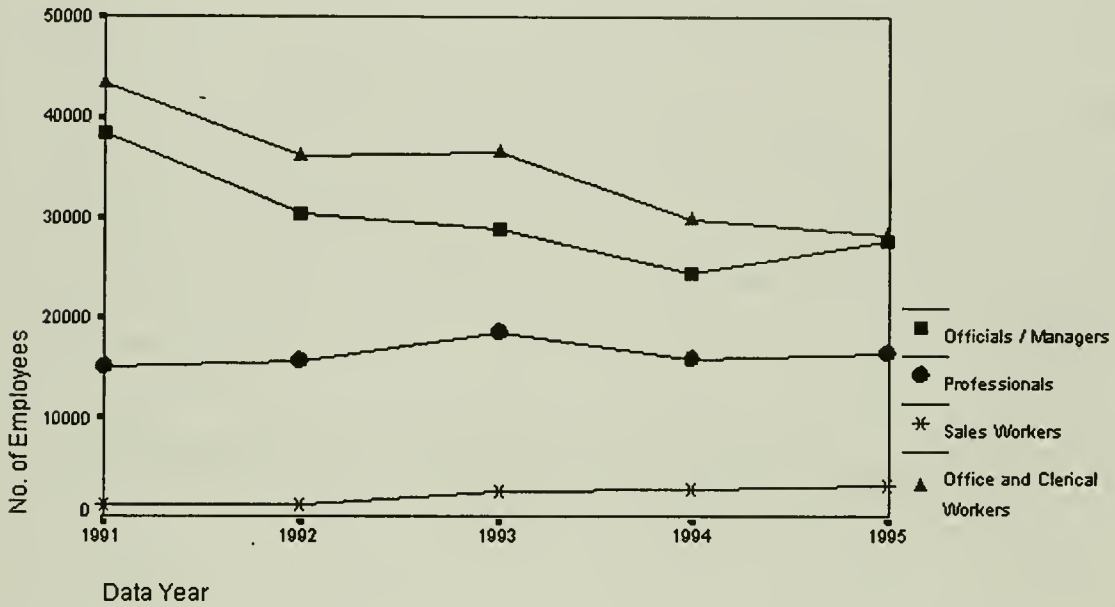
Among racial groups, whites comprised the majority in the securities establishments, as they did in depository establishments, by a wide margin. The closest racial group, blacks, remained flat and then decreased as size increased, recovering slightly at establishments with 325 or more employees. Asian American and Pacific Islanders experienced a modest increase at establishments size 150 to 324 but subsequently decreased as firm size increased. Few American Indians were employed in the securities establishments. In this sample, gender differences by establishment size are evident. As establishments increase the total employee pool, the percentage of female employees also increases.

As seen in the peer group sample, the subpoena sample showed that white males predominated in the industry by a wide margin. The largest gender and racial disparity occurs in establishments having between 80 and 149 employees. As the establishment size increases, the percentages of whites, blacks, and Asian American and Pacific Islanders vary. The percentage of whites increases until the establishment range of 80 to 149 employees, then decreases in larger firms. Conversely, the percentage of blacks and Asian American and Pacific Islanders decreases until the establishment range of 80 to 149, then subsequently increases in larger firms. Again, the percentages of American Indians in these firms were virtually zero.



**Figure 3.5**

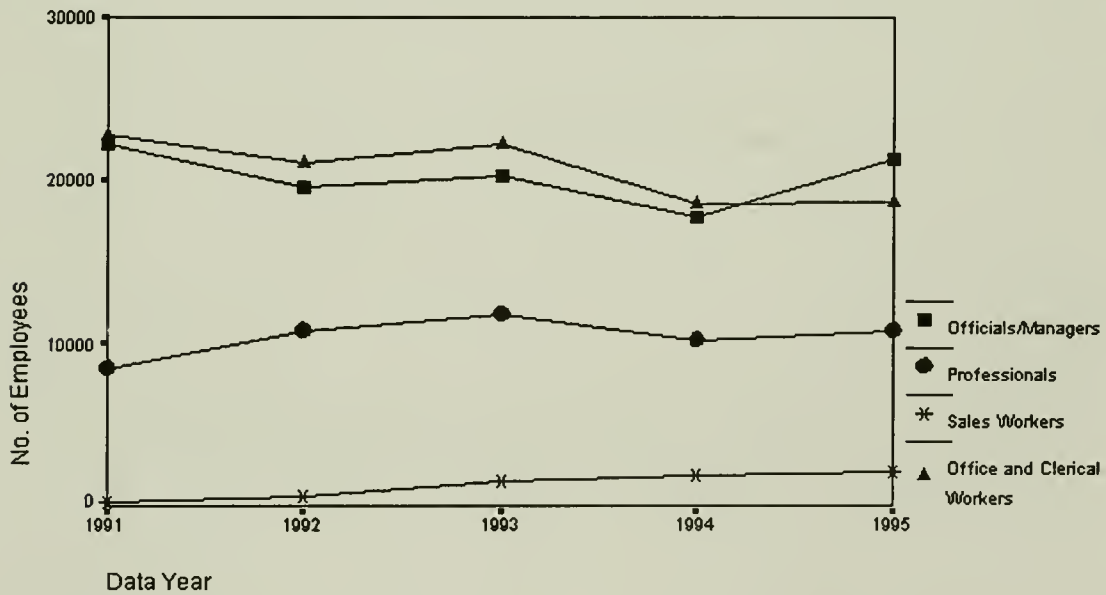
**Peer Group Sample, Depository Institutions, Number of Employees by Job Classification**



SOURCE: EEOC data 1991-95

**Figure 3.6**

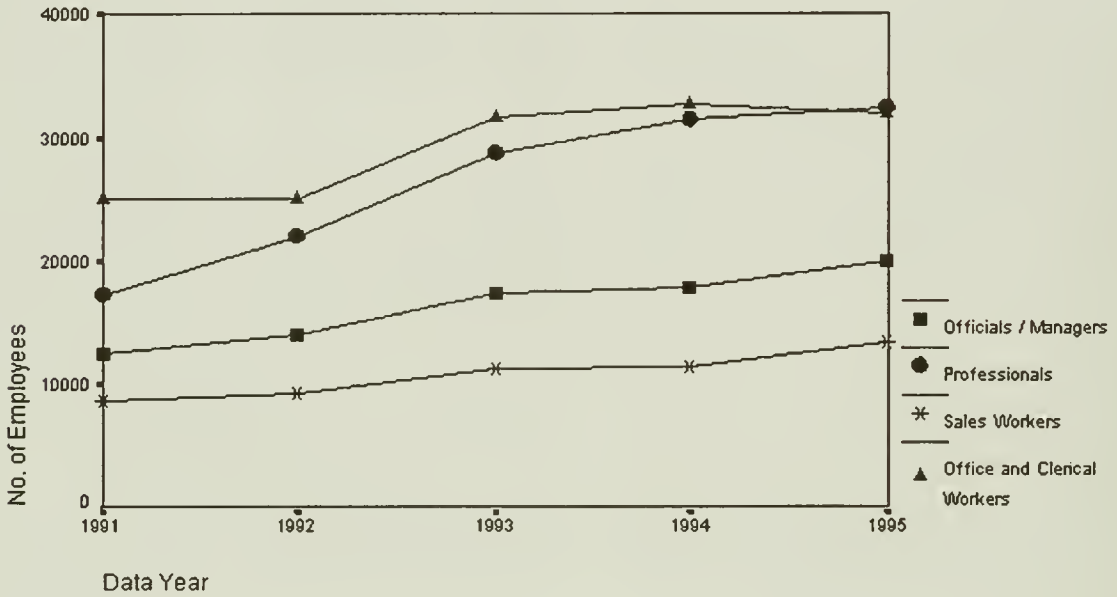
**Subpoena Sample, Depository Institutions, Number of Employees by Job Classification**



SOURCE: EEOC data 1991-95

**Figure 3.7**

**Peer Group Sample, Securities Firms, Number of Employees by Job Classification**



SOURCE: EEOC data 1991-95

**Figure 3.8**

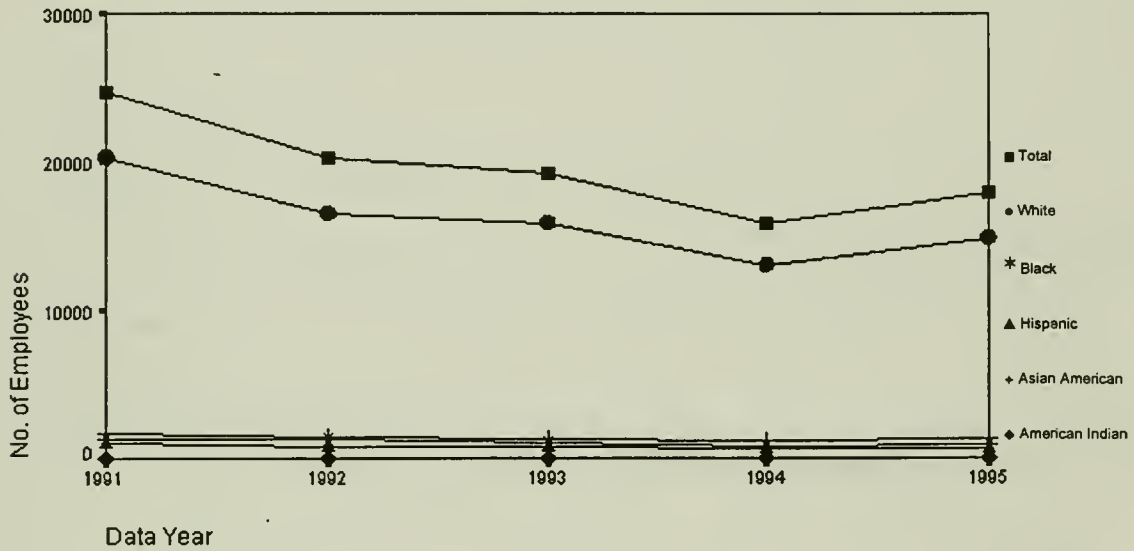
**Subpoena Sample, Securities Firms, Number of Employees by Job Classification**



SOURCE: EEOC data 1991-95

**Figure 3.9**

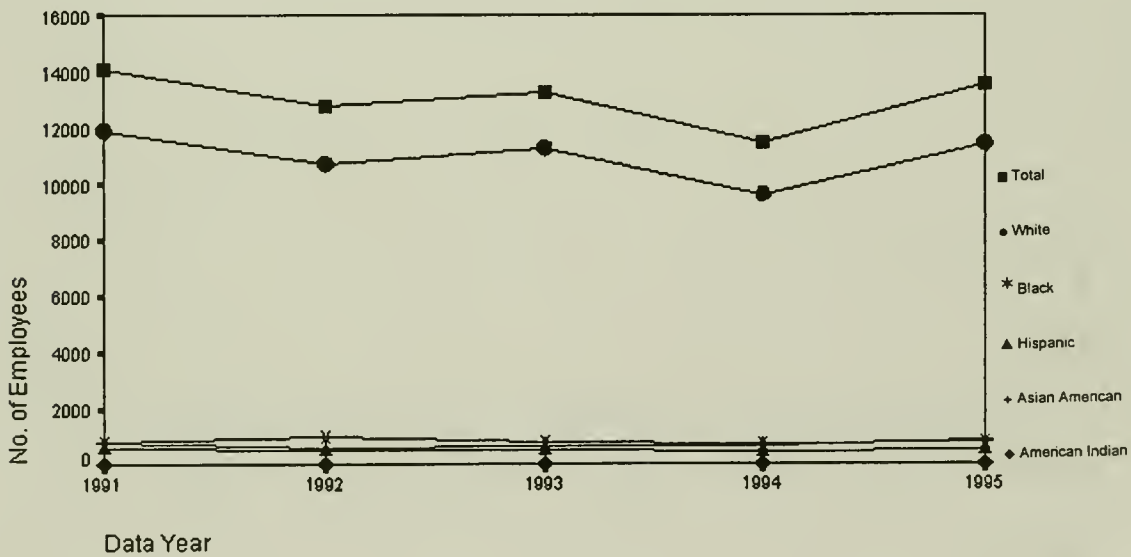
Peer Group Sample, Depository Institutions, Officials and Managers: Males by Race



SOURCE: EEOC data 1991-95

**Figure 3.10**

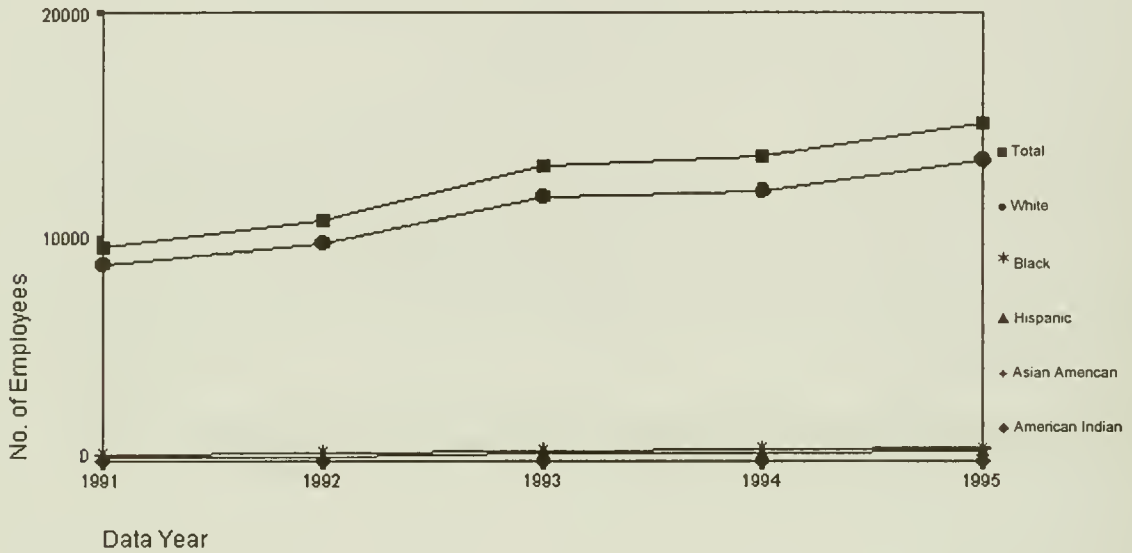
Subpoena Sample, Depository Institutions, Officials and Managers: Males by Race



SOURCE: EEOC data 1991-95

**Figure 3.11**

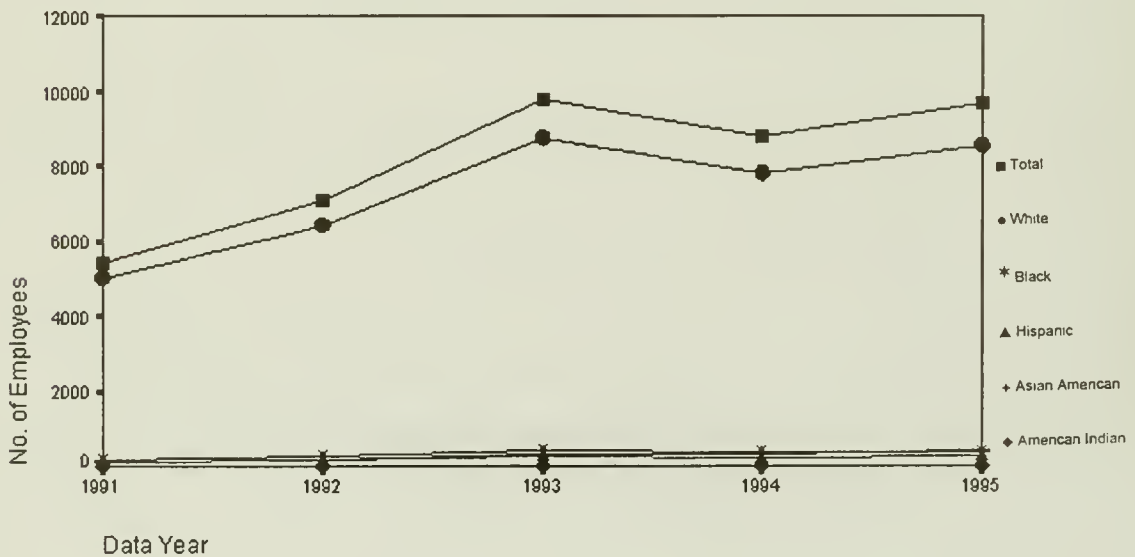
Peer Group Sample, Securities Firms, Officials and Managers: Males by Race



SOURCE: EEOC data 1991-95

**Figure 3.12**

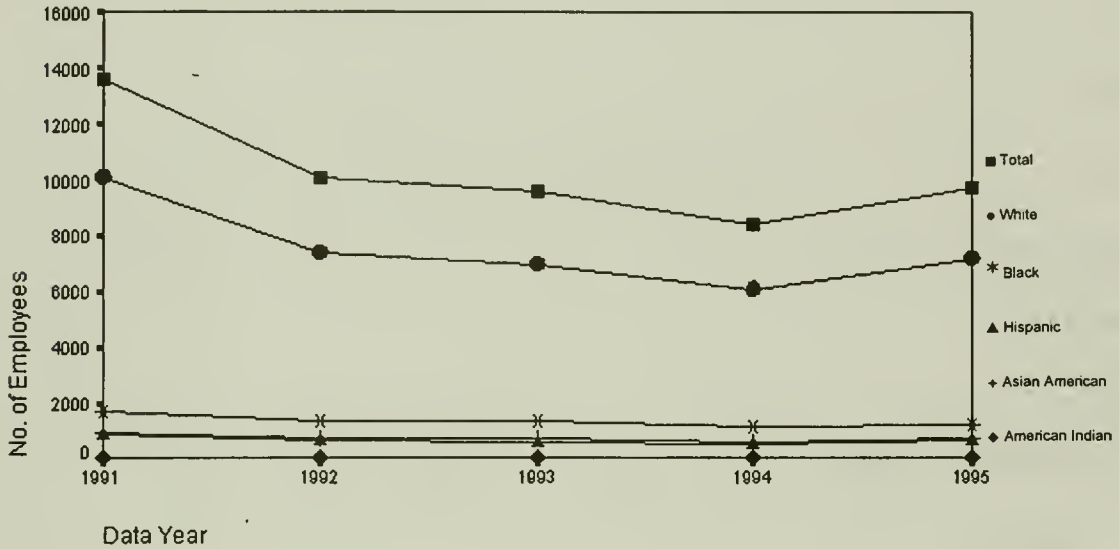
Subpoena Sample, Securities Firms, Officials and Managers: Males by Race



SOURCE: EEOC data 1991-95

**Figure 3.13**

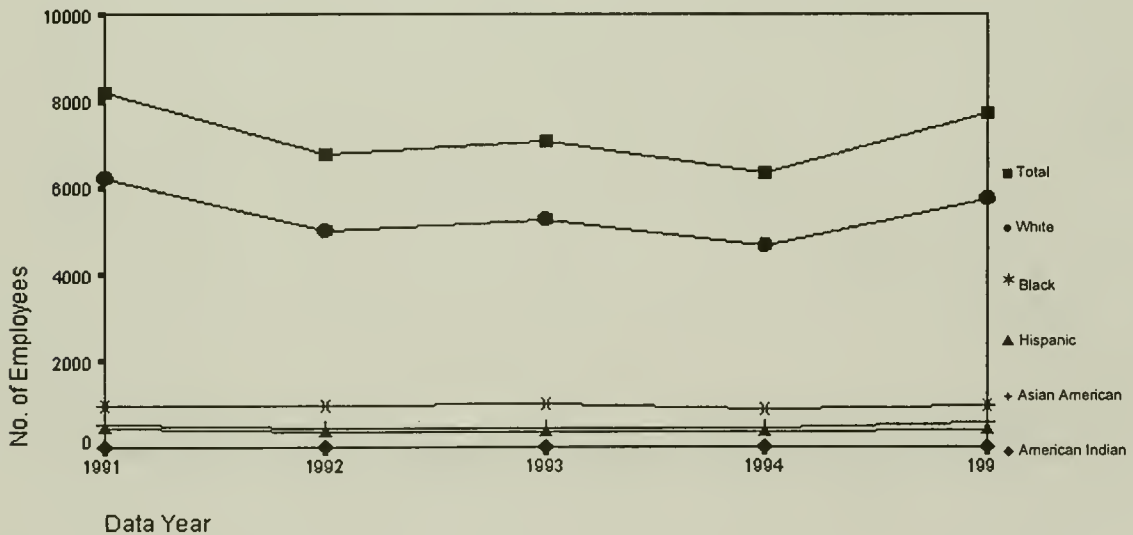
Peer Group Sample, Depository Institutions, Officials and Managers: Females by Race



SOURCE: EEOC data 1991-95

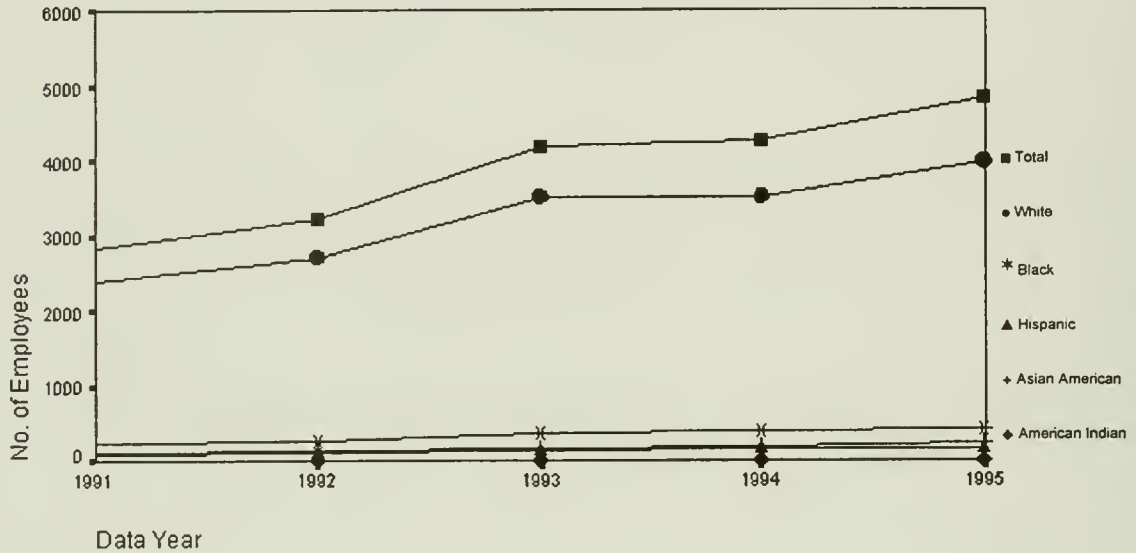
**Figure 3.14**

Subpoena Sample, Depository Institutions, Officials and Managers: Females by Race



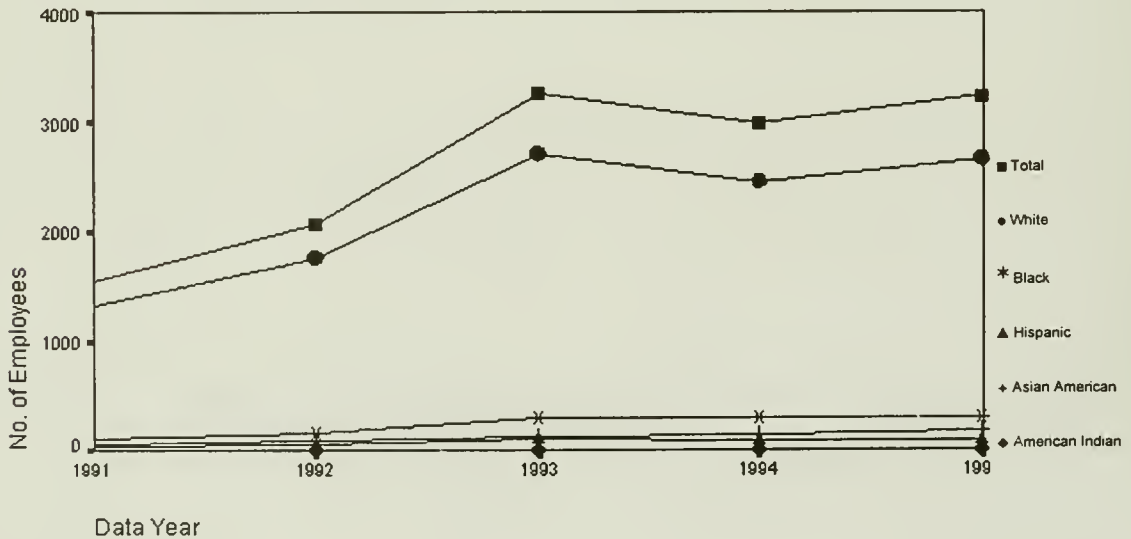
SOURCE: EEOC data 1991-95

**Figure 3.15**  
Peer Group Sample, Securities Firms, Officials and Managers: Females by Race



SOURCE: EEOC data 1991-95

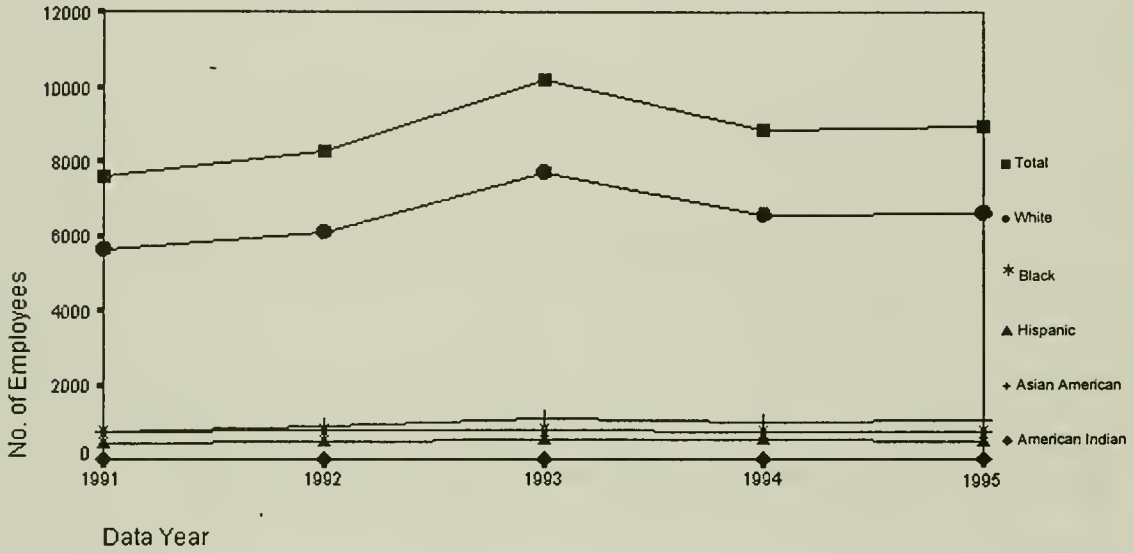
**Figure 3.16**  
Subpoena Sample, Securities Firms, Officials and Managers: Females by Race



SOURCE: EEOC data 1991-95

**Figure 3.17**

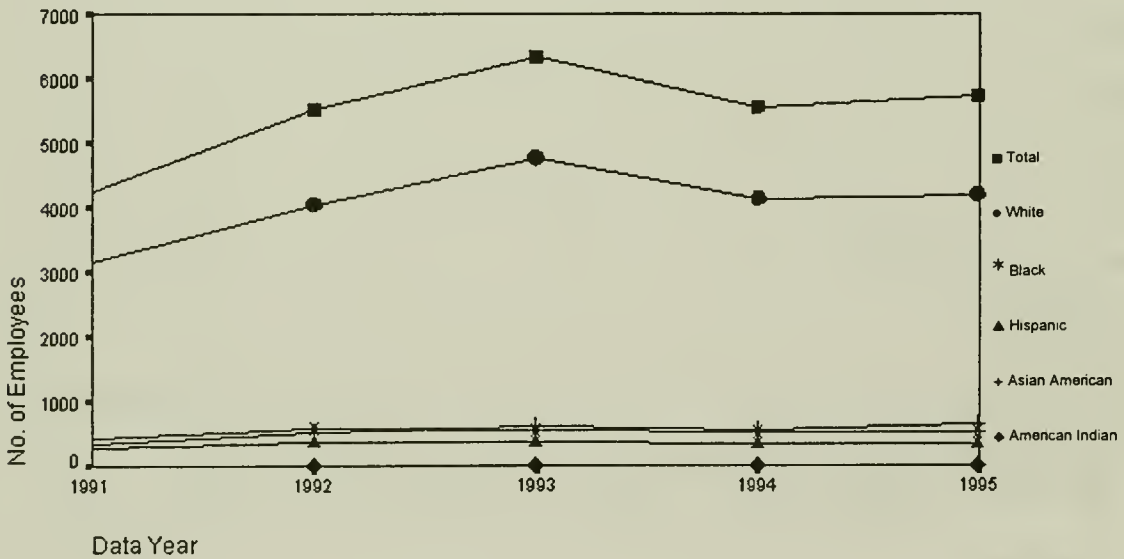
**Peer Group Sample, Depository Institutions, Professionals: Males by Race**



SOURCE: EEOC data 1991-95

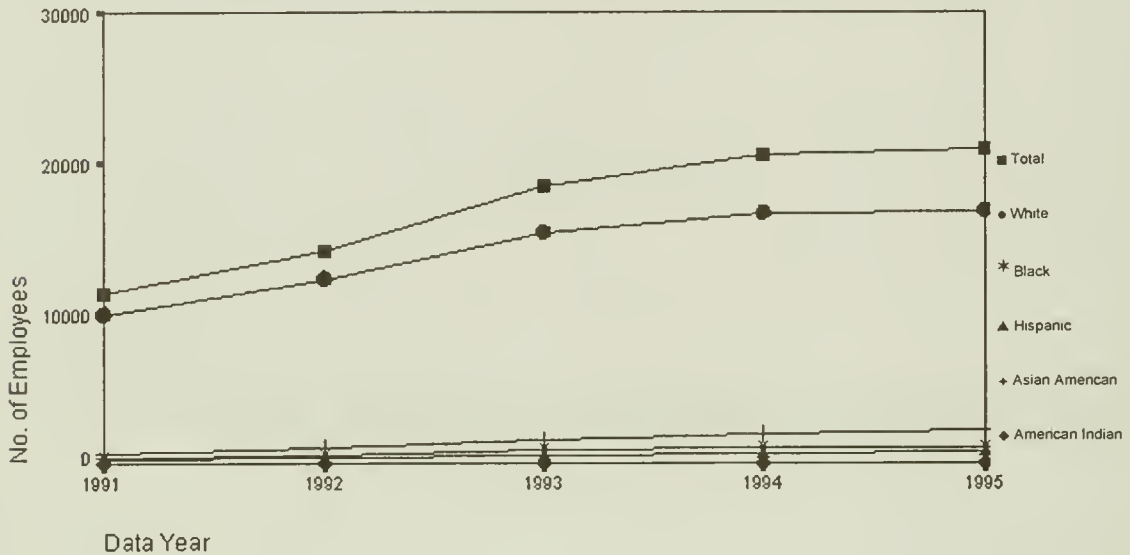
**Figure 3.18**

**Subpoena Sample, Depository Institutions, Professionals: Males by Race**



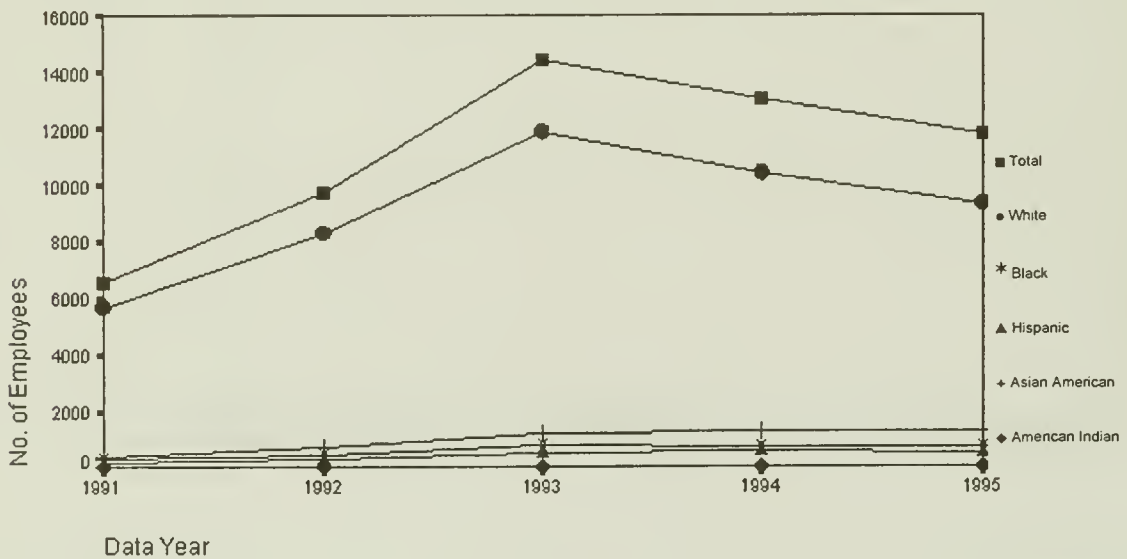
SOURCE: EEOC data 1991-95

**Figure 3.19**  
Peer Group Sample, Securities Firms, Professionals: Males by Race



SOURCE: EEOC data 1991-95

**Figure 3.20**  
Subpoena Sample, Securities Firms, Professionals: Males by Race

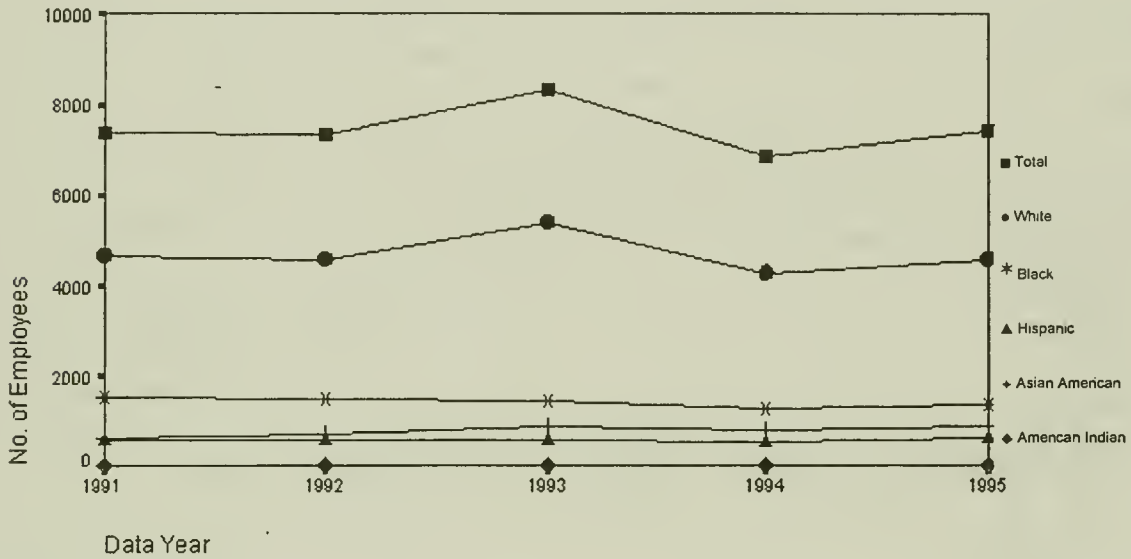


SOURCE: EEOC data 1991-95



**Figure 3.21**

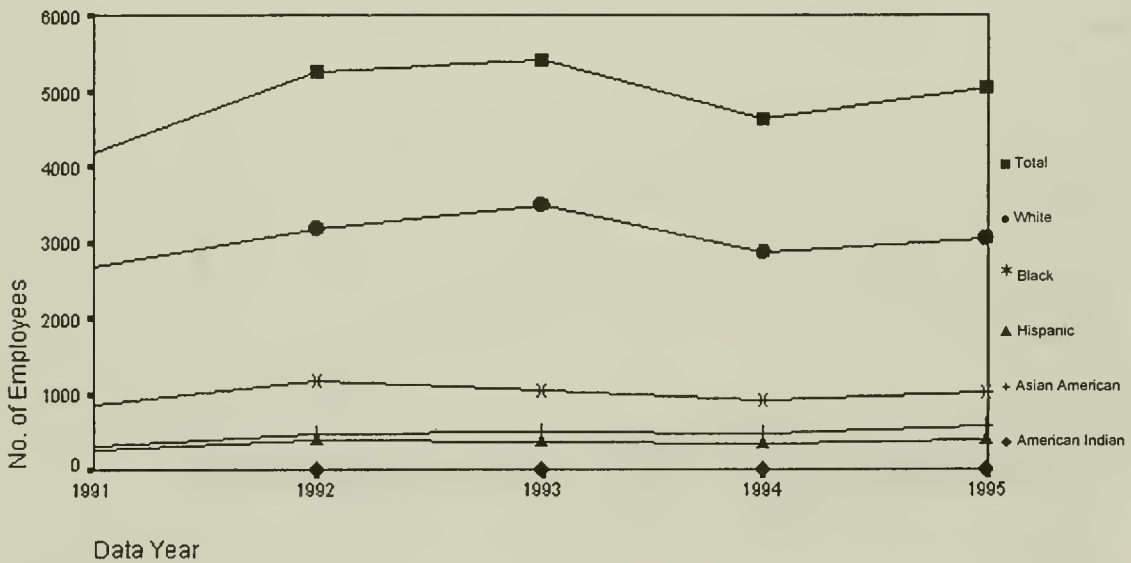
**Peer Group Sample, Depository Institutions, Professionals: Females by Race**



SOURCE: EEOC data 1991-95

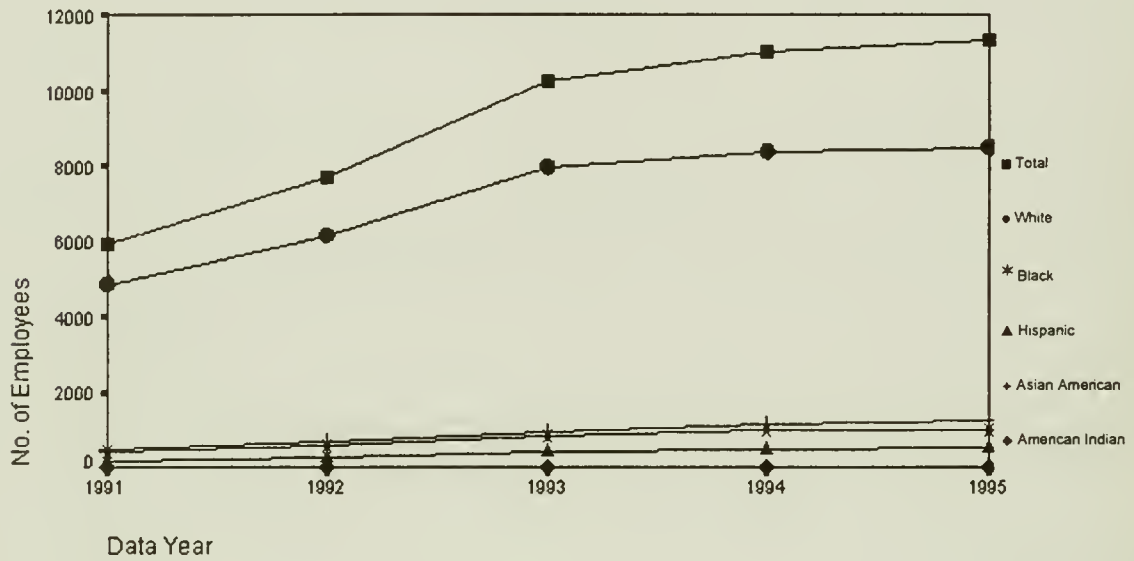
**Figure 3.22**

**Subpoena Sample, Depository Institutions, Professionals: Females by Race**



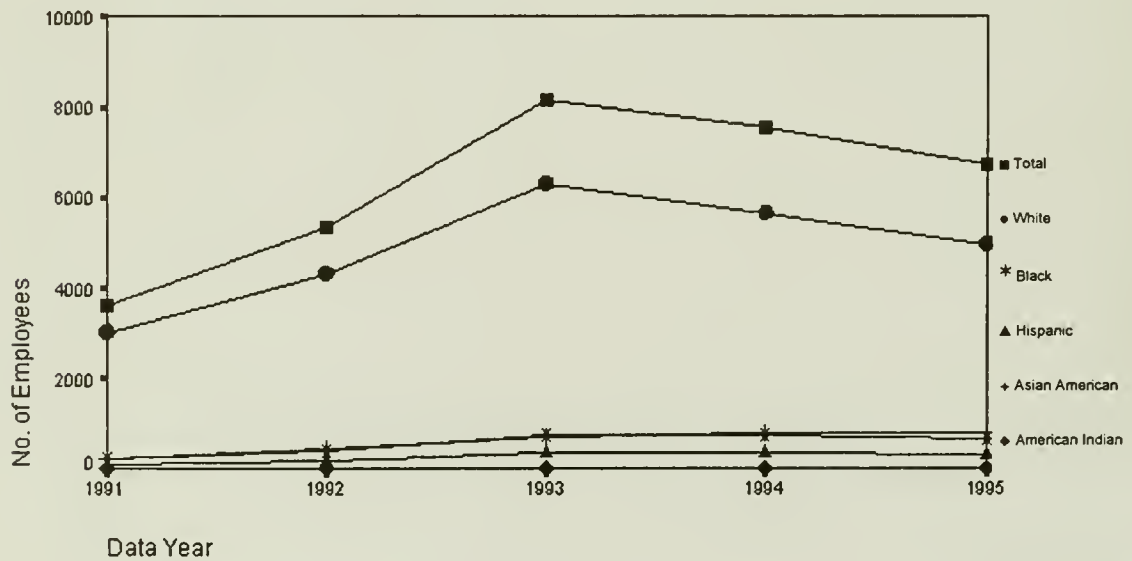
SOURCE: EEOC data 1991-95

**Figure 3.23**  
Peer Group Sample, Securities Firms, Professionals: Females by Race



SOURCE: EEOC data 1991-95

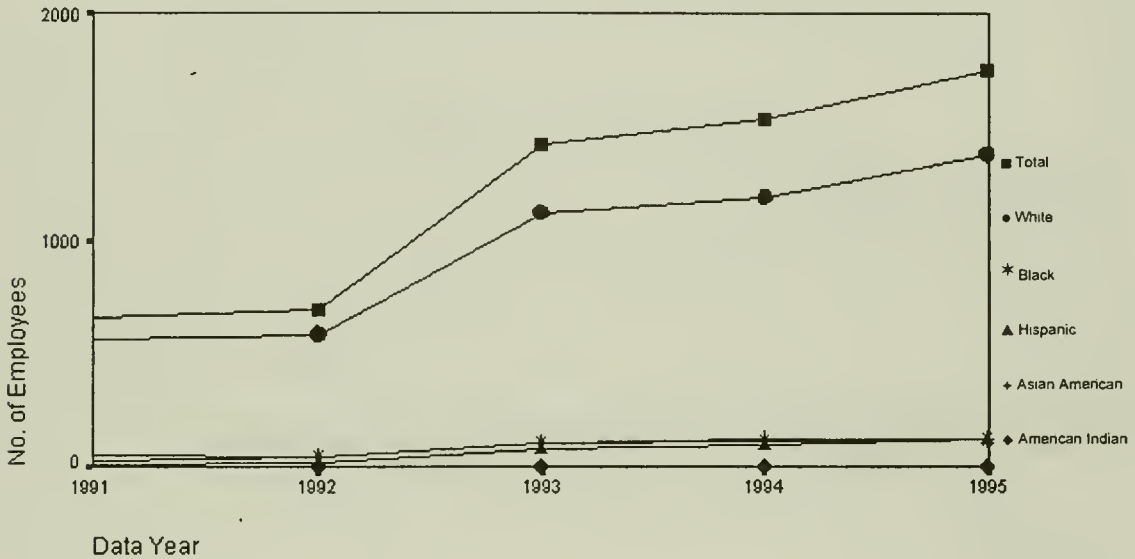
**Figure 3.24**  
Subpoena Sample, Securities Firms, Professionals: Females by Race



SOURCE: EEOC data 1991-95

**Figure 3.25**

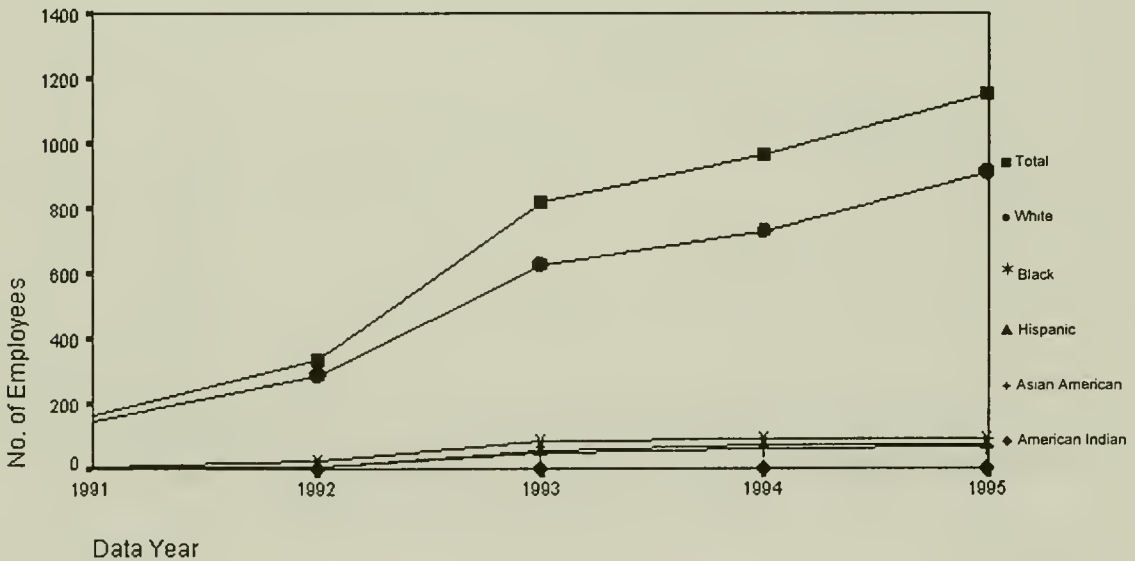
**Peer Group Sample, Depository Institutions, Sales Workers: Males by Race**



SOURCE: EEOC data 1991-95

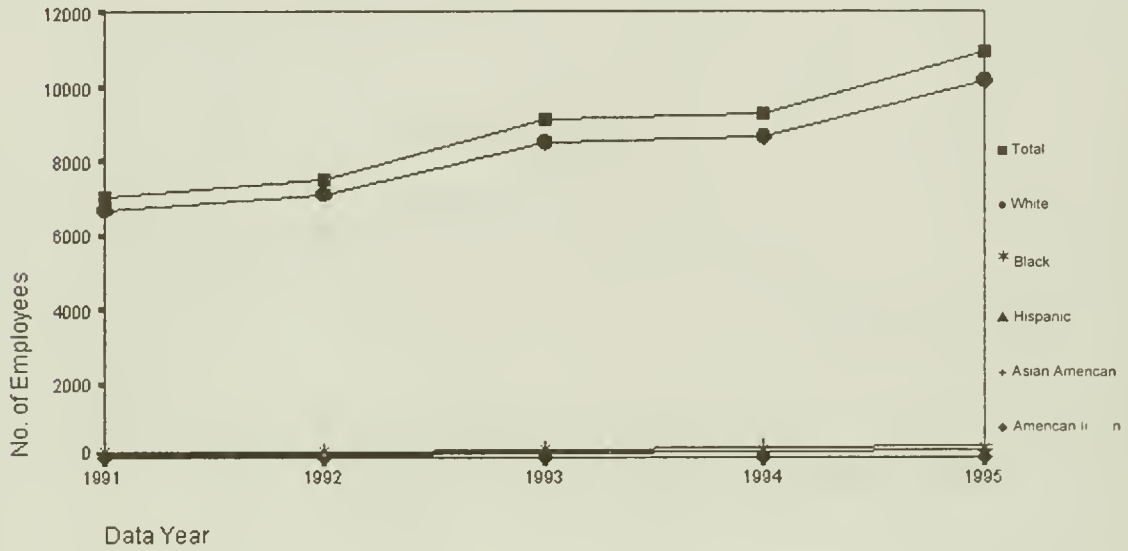
**Figure 3.26**

**Subpoena Sample, Depository Institutions, Sales Workers: Males by Race**



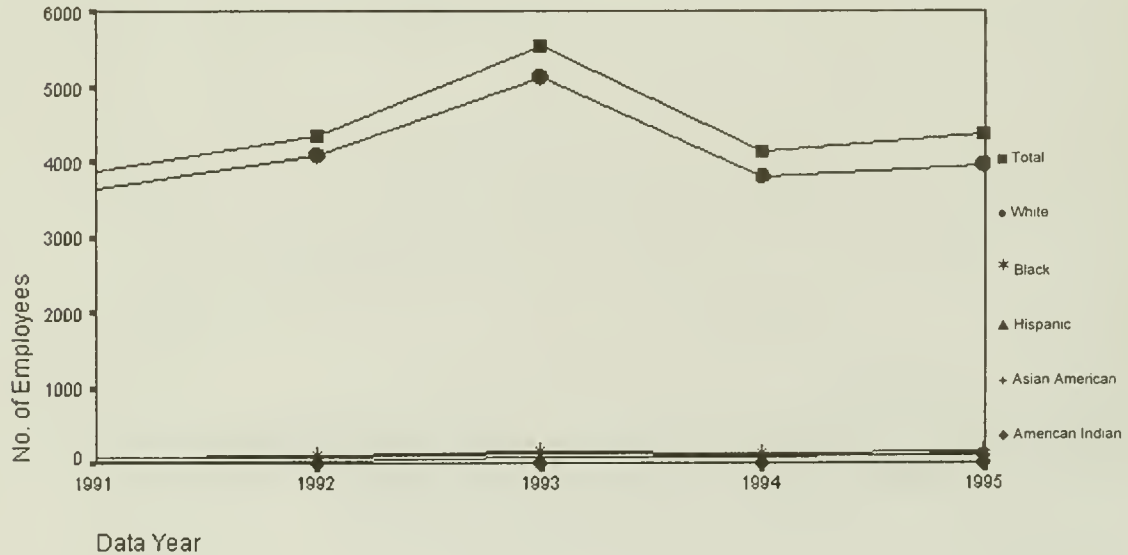
SOURCE: EEOC data 1991-95

**Figure 3.27**  
Peer Group Sample, Securities Firms, Sales Workers: Males by Race



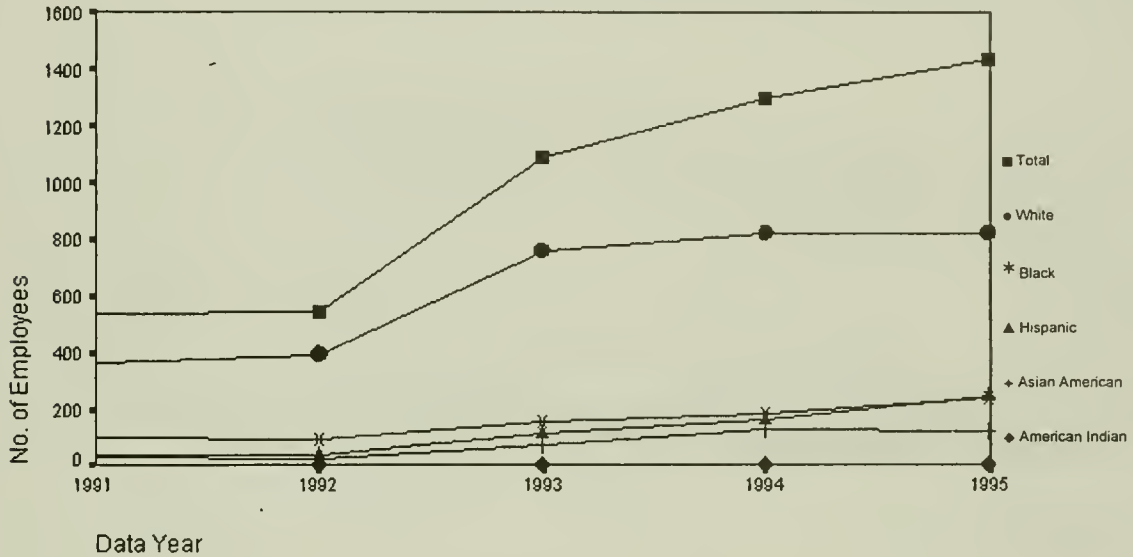
SOURCE: EEOC data 1991-95

**Figure 3.28**  
Subpoena Sample, Securities Firms, Sales Workers: Males by Race



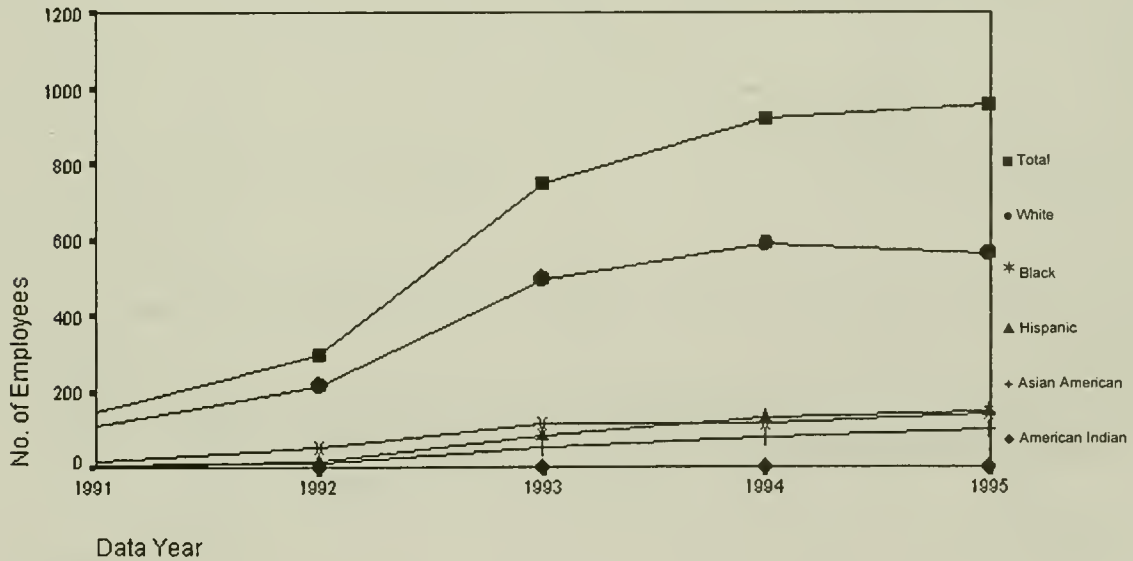
SOURCE: EEOC data 1991-95

**Figure 3.29**  
Peer Group Sample, Depository Institutions, Sales Workers: Females by Race



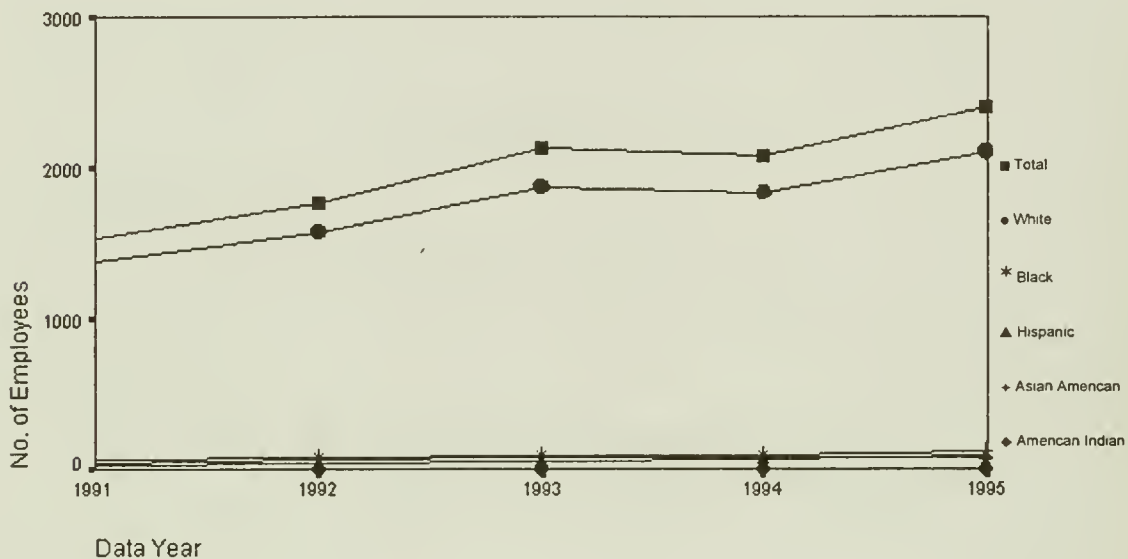
SOURCE: EEOC data 1991-95

**Figure 3.30**  
Subpoena Sample, Depository Institutions, Sales Workers: Females by Race



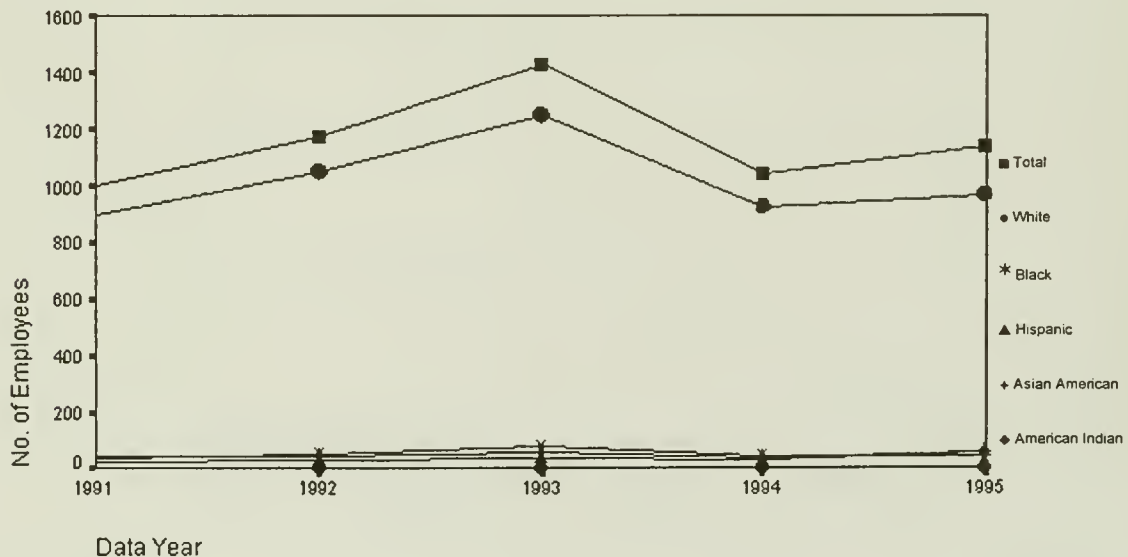
SOURCE: EEOC data 1991-95

**Figure 3.31**  
Peer Group Sample, Securities Firms, Sales Workers: Females by Race



SOURCE: EEOC data 1991-95

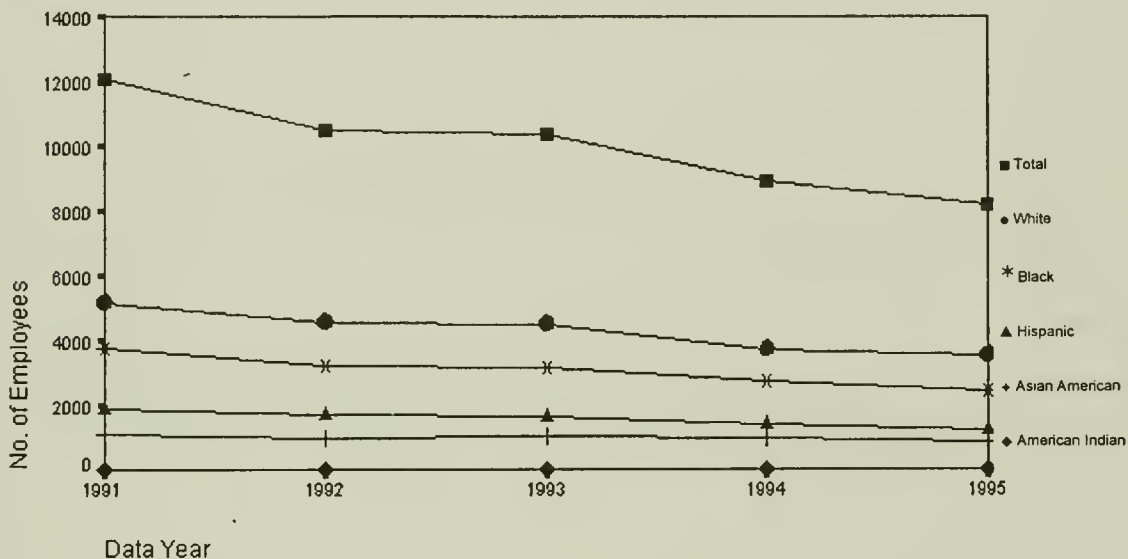
**Figure 3.32**  
Subpoena Sample, Securities Firms, Sales Workers: Females by Race



SOURCE: EEOC data 1991-95

**Figure 3.33**

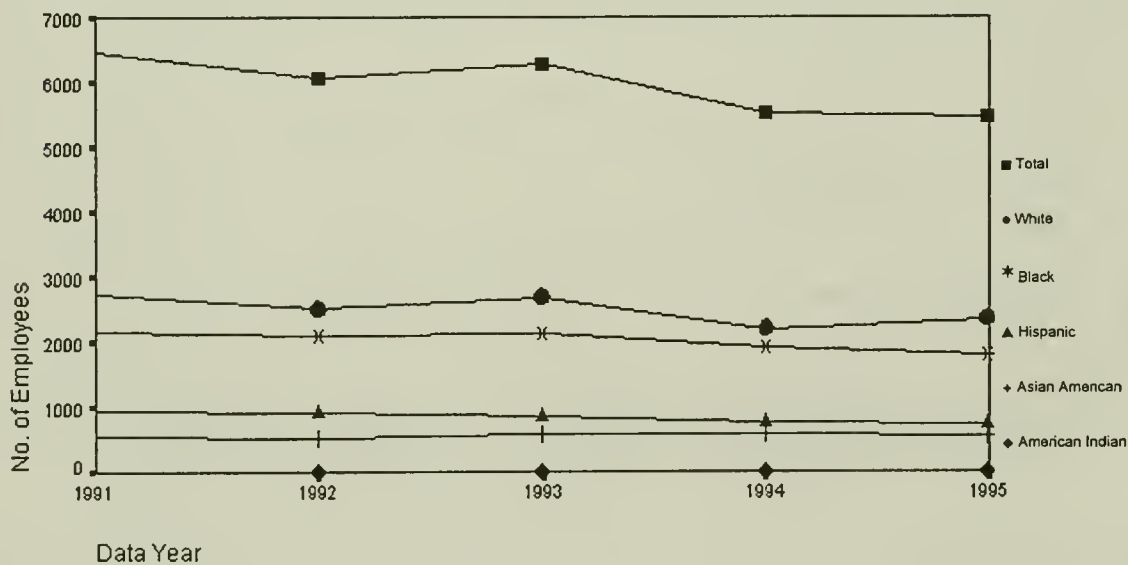
Peer Group Sample, Depository Institutions, Office and Clerical Workers: Males by Race



SOURCE: EEOC data 1991-95

**Figure 3.34**

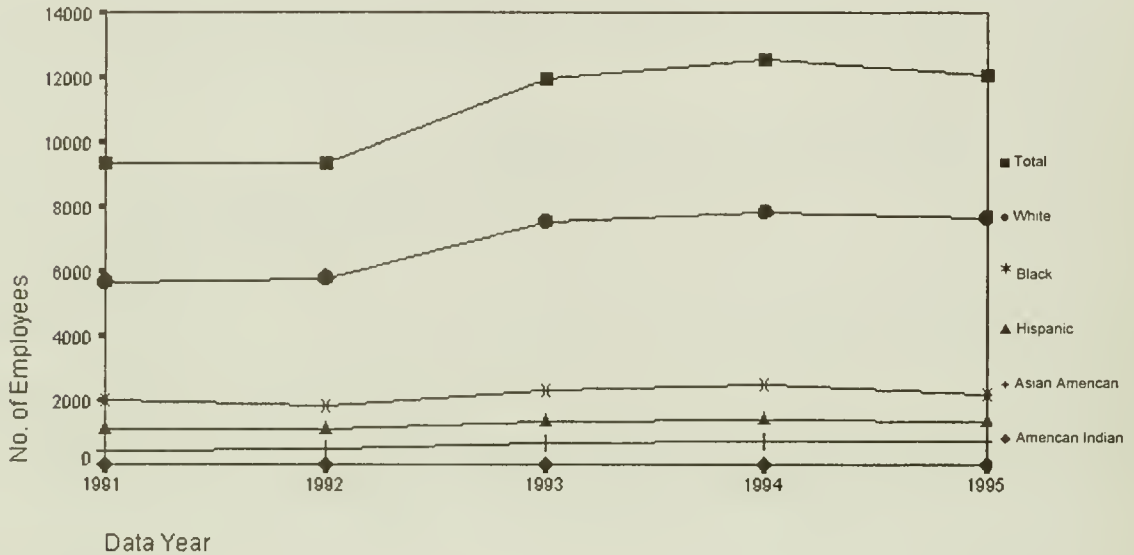
Subpoena Sample, Depository Institutions, Office and Clerical Workers: Males by Race



SOURCE: EEOC data 1991-95

**Figure 3.35**

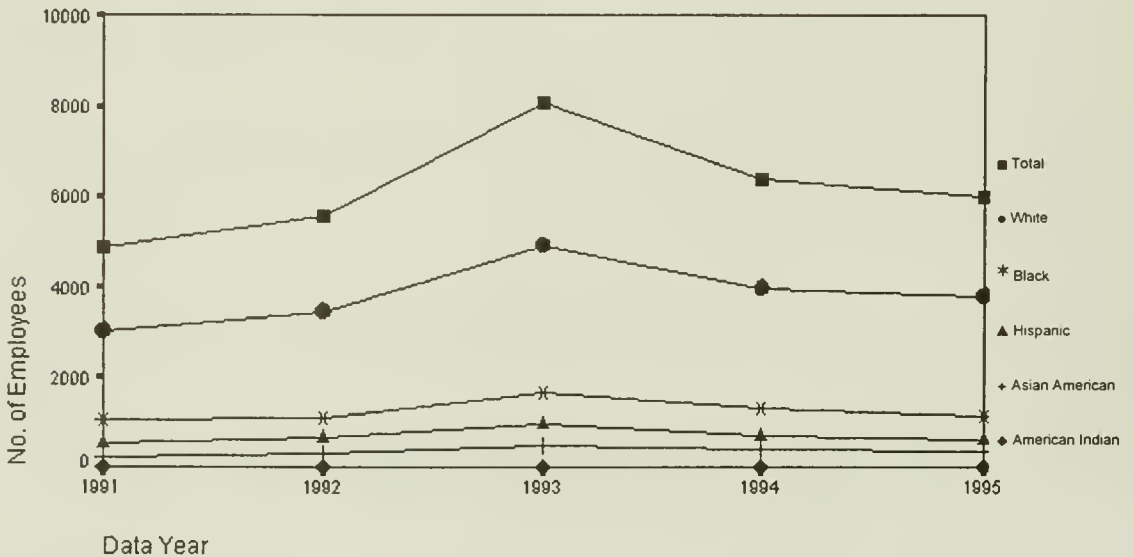
Peer Group Sample, Securities Firms, Office and Clerical Workers: Males by Race



SOURCE: EEOC data 1991-95

**Figure 3.36**

Subpoena Sample, Securities Firms, Office and Clerical Workers: Males by Race

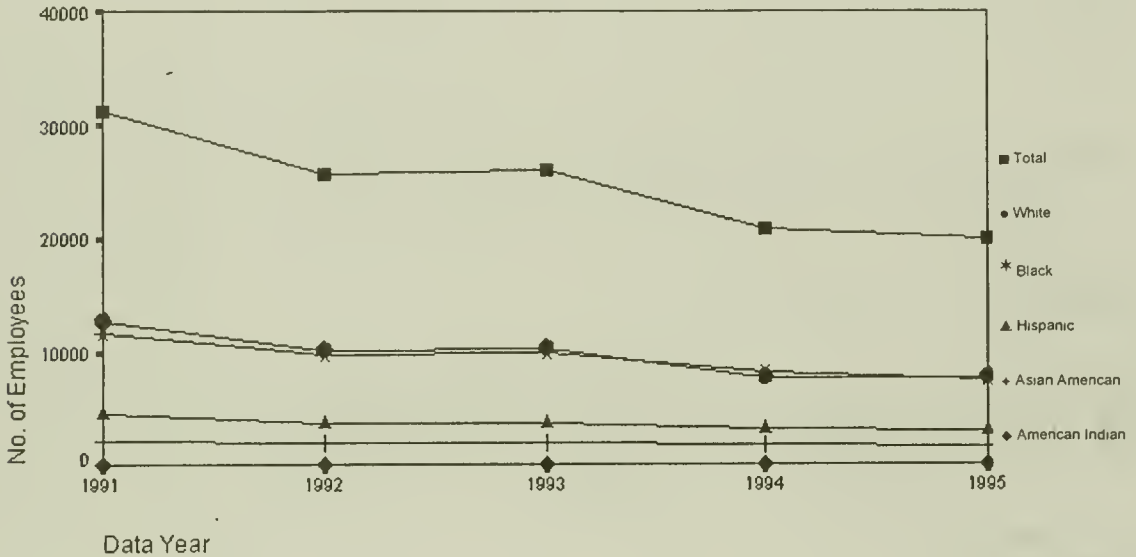


SOURCE: EEOC data 1991-95



**Figure 3.37**

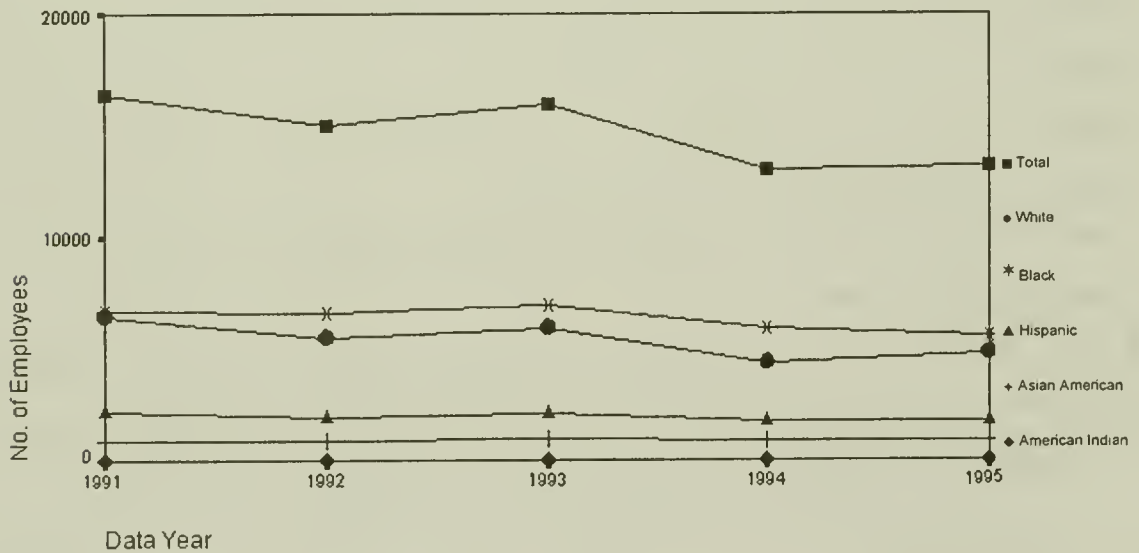
Peer Group Sample, Depository Institutions, Office and Clerical Workers: Females by Race



SOURCE: EEOC data 1991-95

**Figure 3.38**

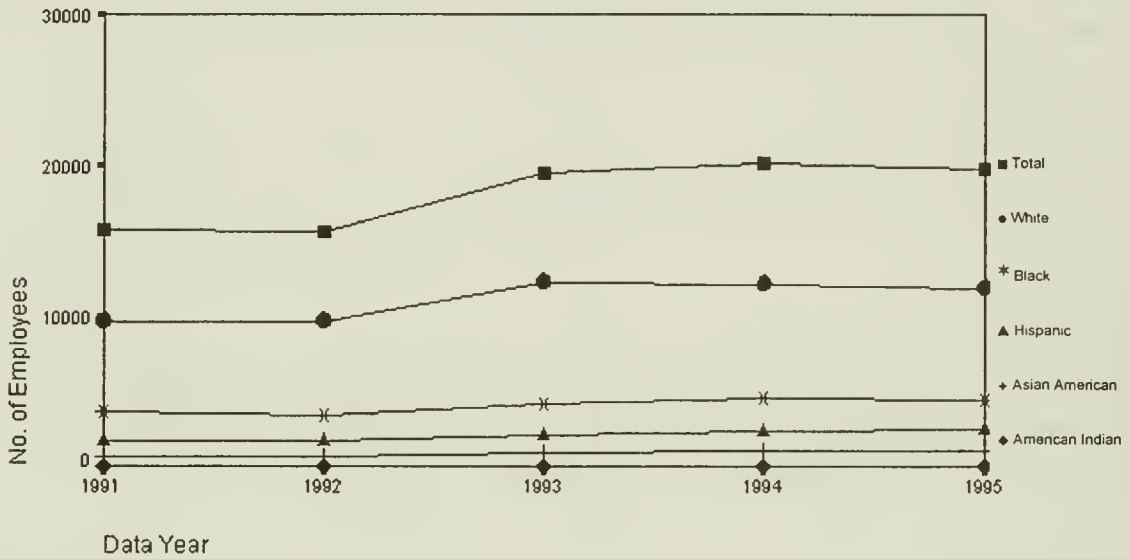
Subpoena Sample, Depository Institutions, Office and Clerical Workers: Females by Race



SOURCE: EEOC data 1991-95

**Figure 3.39**

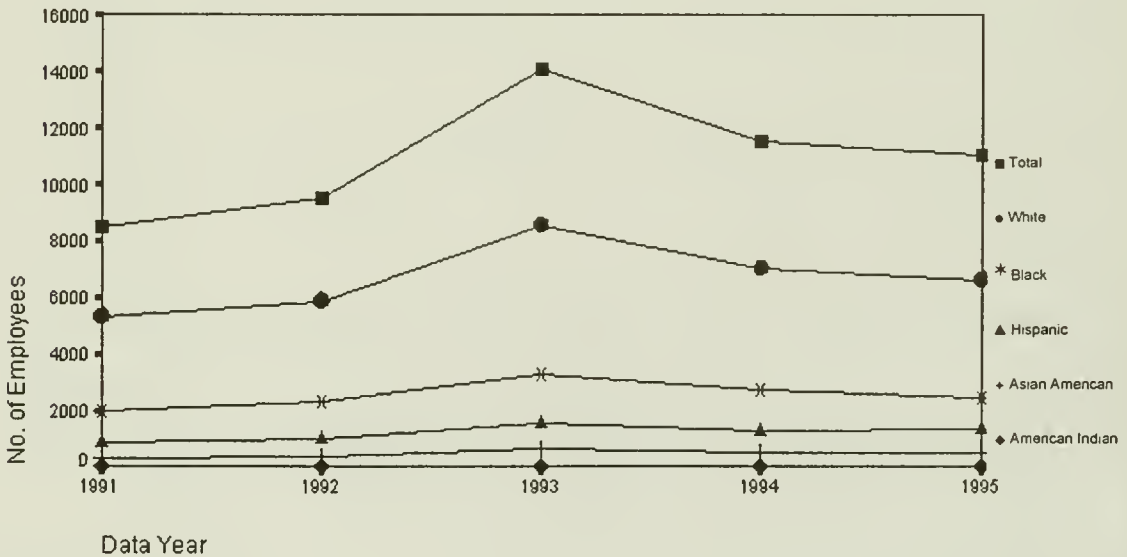
Peer Group Sample, Securities Firms, Office and Clerical Workers: Females by Race



SOURCE: EEOC data 1991-95

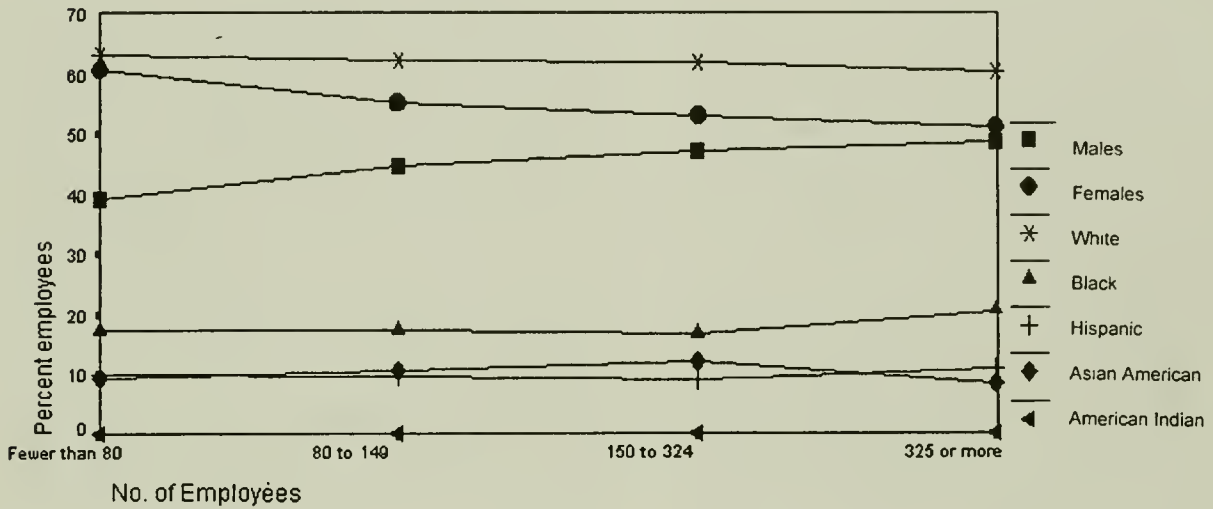
**Figure 3.40**

Subpoena Sample, Securities Firms, Office and Clerical Workers: Females by Race



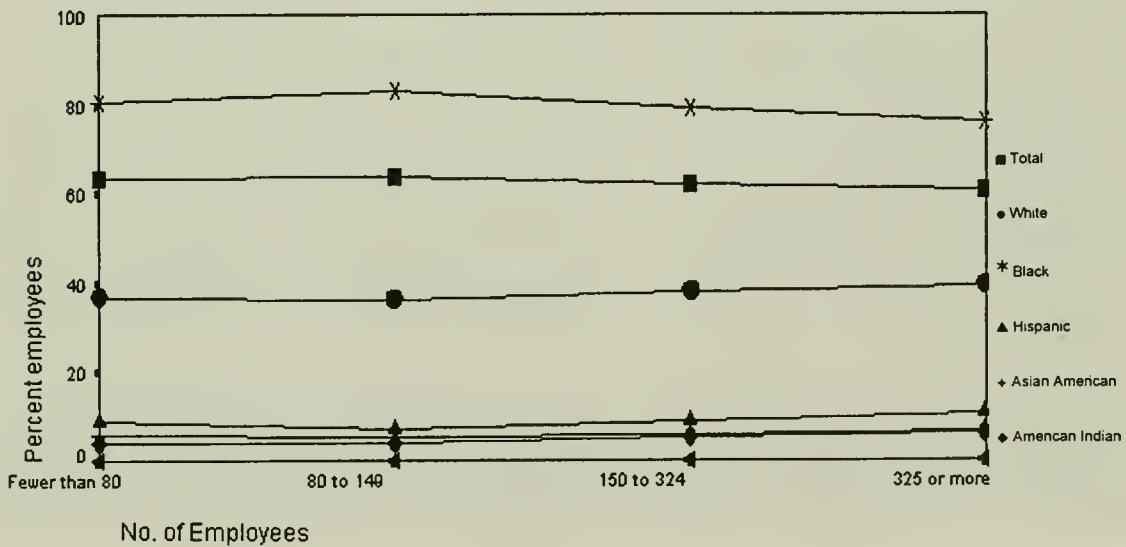
SOURCE: EEOC data 1991-95

**Figure 3.41**  
Peer Group Sample, Depository Establishments



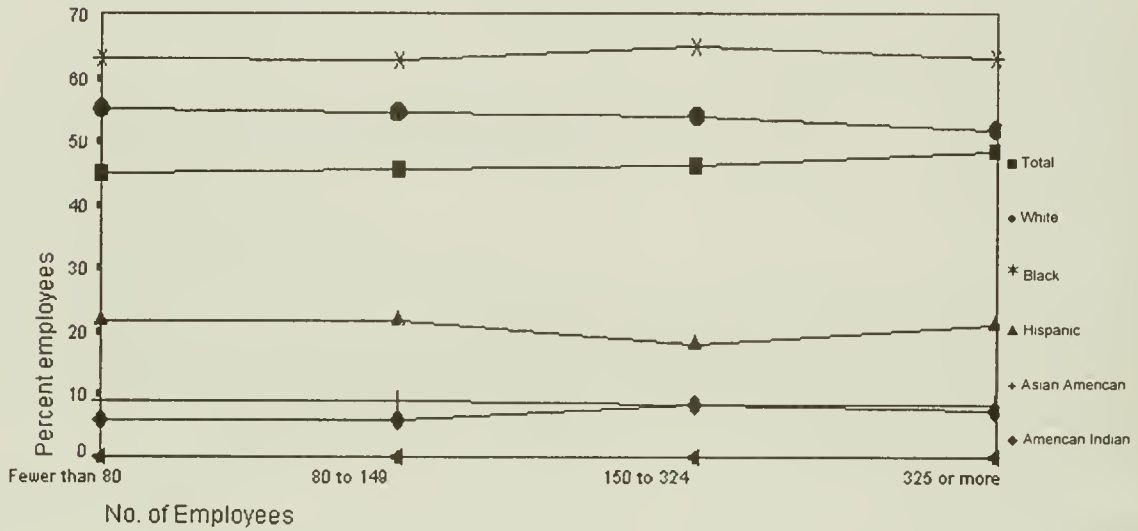
SOURCE: EEOC data 1991-95

**Figure 3.42**  
Subpoena Sample, Depository Establishments



SOURCE: EEOC data 1991-95

**Figure 3.43**  
Peer Group Sample, Securities Establishments



SOURCE: EEOC data 1991-95

**Figure 3.44**  
Subpoena Sample, Securities Establishments



SOURCE: EEOC data 1991-95

## Section V. Determining Representation

This section will address the difficult question of whether the proportional representation of minorities and women is greater or less than one would expect given the qualified work force for these jobs. We will do so despite the absence of data from the firms that describe the qualifications needed for the jobs. We will examine the proportional representation of minorities and women using a variety of criteria that may relate to the skills required by jobs in the finance industry. This examination acknowledges a deficiency in that the data do not permit a conclusion that legal discrimination exists in the finance industry or in the securities firms. The criteria examined include general demographic characteristics of the New York City population as well as various degrees and types of education. These criteria provide a new perspective for judging whether or not protected groups are adequately represented in the finance industry. The last part of this section then tries to relate the level or type of education required by different jobs to these various degrees of education.

Identifying the qualified labor pool for a job has always been difficult. Skills, geographic location, and age of the work force have been pertinent factors in determining whether a measure of the qualified labor pool represents the actual qualified labor pool.

First, the qualified work force must possess the level of skills required by a job. The level of skills may be reflected in the level of education, specialized education, or even licensing or certification requirements. Generally, clerical jobs require fewer skills than technical, professional, or managerial jobs.<sup>205</sup>

Second, the geographic area from which job candidates are recruited can have an enormous effect on the racial composition of the qualified labor pool. Because of the concentration of minority groups in inner cities, jobs that are located in and recruit from central cities should show a larger representation of members of minority groups in their qualified labor pool than jobs that recruit from broader areas that include

the whiter suburbs or rural areas. But the size of the geographic area from which job candidates are recruited varies according to the nature of the job. For low-level, low-paid jobs, candidates may be recruited only from the local commuting area. However, the salaries of higher paid jobs often compensate for a relocation or a longer commute, with the result that job candidates are recruited from a broader area, perhaps even nationwide.

A range of geographic areas are used for some measures of the racial and gender composition of the qualified labor pool presented below. First is New York City, which includes the five boroughs—Manhattan (also known as New York County), Bronx (Bronx County), Brooklyn (Kings County), Queens (Queens County), and Staten Island (Richmond County). Two geographic areas based upon 1990 census definitions are also used. They are the New York City Primary Metropolitan Statistical Area (New York PMSA), which in addition to the city includes Rockland, Westchester, and Putnam Counties in New York, and the New York Consolidated Metropolitan Statistical Area (New York CMSA), which includes the New York PMSA, Long Island (Nassau and Suffolk Counties), Orange County, northern New Jersey, and the southwestern part of Connecticut.<sup>206</sup> Finally, the United States as a whole is included.

The New York PMSA corresponds to the area of the financial institutions for which the employment data were presented earlier. Measures based upon the PMSA would best represent the qualified labor pool if these banks and firms draw their employees solely or mainly from their local areas. If they target their recruitment to the city, the city's residents may better represent the qualified pool. If they draw from a larger commuting area, the CMSA would serve better. And the United States may be the best measure to represent the qualified labor pool for a nationwide job search. Using these measures, the racial and gender composition of the qualified work force might be best estimated from the lo-

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<sup>205</sup> The increasing levels of education required of higher paid, higher status jobs is well documented in a classic sociological work. Peter M. Blau and Tois Dudley Duncan, *The American Occupational Structure* (New York: Wiley, 1967). Data in a later section will show the relationship between education levels and the job classifications used herein.

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<sup>206</sup> See U.S. Department of Commerce, Bureau of the Census, 1990 Census of Population, Social and Economic Characteristics, Metropolitan Areas, 1990 CP-2-1B, sec. 4 of 6, pp. 2766-75. Note that Dutchess County, NY, and Pike County, PA, are not included in the New York, NY-NJ-CT CMSA.

cal community for lower paid jobs and from nationwide data for higher level jobs.

Third, because the education and skills of workers have increased in recent generations,<sup>207</sup> the age and stability of the work force is relevant. If, on the one hand, a firm or industry has been long established with little turnover in its employees, the general population with the appropriate educational attainment provides a useful estimate of the qualified work force because people of all ages—from those approaching retirement to those who have attended school recently—are included. On the other hand, recent graduates may provide a better comparison of the racial and gender composition of the qualified work force when employees are newly hired or when a firm is recently established or has a rapid turnover in employees. Recent graduates also provide a sense of how the racial and gender composition can be changed in the future by affirmative action or other programs directed toward achieving diversity.

### **Benchmarks for the Racial and Gender Composition of the Qualified Work Force**

A variety of measures of the qualified work force are presented below. Because of factors such as skill levels, geography, and age ranges, each measure has advantages and disadvantages in representing the actual qualified work force for various jobs.

#### ***The Civilian Labor Force***

Table 3.22 shows the racial and gender composition of the civilian labor force (aged 16 and over) taken from the 1990 census. The civilian labor force is the most broadly based measure given here. It does not address skill levels but assumes that employees in the finance industry have the same skill levels as workers more generally. On the other hand, the civilian work force is more specific than a measure based upon population figures which would include children, students, and retired and institutionalized persons.<sup>208</sup>

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<sup>207</sup> National Center for Education Statistics, "Digest of Education Statistics 1997," table 8. Also at <<http://www.nces.ed.gov/pubs/digest97/d97t008.html>>.

<sup>208</sup> According to the 1990 census definitions, the civilian labor force consists of persons classified as "employed" or "unemployed." Employed persons are "[a]ll civilians 16 years old and over who were either (1) 'at work'—those who did

The 1990 civilian labor force in New York City was 55 percent minority and 47 percent female (see table 3.22). According to these figures, 26.5 percent, roughly 1 in 4, of participants in the city's labor force were black; 20.1 percent, 1 in 5, were Hispanic; and 7.6 percent, 1 in 13, were Asian/Pacific Islander.

The concentration of minorities in the city is obvious from table 3.22. The percentages of blacks, Hispanics, and Asian American and Pacific Islanders are all higher in New York City's civilian labor force than among the civilian labor forces of the PMSA, the CMSA, or the Nation. Indeed, the percentages of blacks, Hispanics, and Asian American and Pacific Islanders in New York City are about 2½ times what they are in the United States as a whole. The Nation's civilian labor force is only 10.6 percent black, 8.1 percent Hispanic, and 2.9 percent Asian American and Pacific Islander.

#### ***Education***

Education in varying levels is a requirement of many jobs. Indeed, because the educational attainment of many minority groups has been below that of whites, the proportional representation of these groups differs according to level of education. Tables 3.23 and 3.24 show the racial and gender composition of persons achieving

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any work at all during the reference week as paid employees, worked in their own business or profession, worked on their own farm, or worked 15 hours or more as unpaid workers on a family farm or in a family business; or (2) were 'with a job but not at work'—those who did not work during the reference week but had jobs or businesses from which they were temporarily absent due to illness, bad weather, industrial dispute, vacation, or other personal reasons. Excluded from the employed are persons whose only activity consisted of work around the house or unpaid volunteer work for religious, charitable, and similar organizations; also excluded are persons on active duty in the United States Armed Forces." Unemployed persons are "[a]ll civilians 16 years old and over . . . if they (1) were neither 'at work' nor 'with a job but not at work' during the reference week, and (2) were looking for work during the last 4 weeks, and (3) were available to accept a job." Civilians who did not work at all during the reference week and were waiting to be called back to a job from which they had been laid off were included as "unemployed." "[S]tudents, housewives, retired workers, seasonal workers enumerated in an *off* season who were not looking for work, institutionalized persons, and persons doing only incidental unpaid family work (less than 15 hours during the reference week)" were classified as *not* in the labor force. See 1990 Census of Population, *Social and Economic Characteristics: New York*, 1990 CP-2-34, sec. 3, p. B-5.

various levels of education. Table 3.23 shows educational attainment for persons aged 25 and over, in other words, the population as a whole; table 3.24 shows recent graduates.

In table 3.23, part A shows the racial and gender composition of the population surpassing certain levels of education—high school, bachelor's, and graduate or professional degrees. These measures may represent the work force meeting minimum educational qualifications at each level but also include overqualified persons who may not regard themselves as part of the applicant pool for such jobs. Part B shows the composition for the highest level of education achieved, that is, the population attaining one level of education but not the next higher level. Both the measures in the table capture educational attainment of persons of all ages and therefore are best compared to the existing long-term work force.

Table 3.23 also shows the sensitivity of the racial and gender composition to the geographic area. It shows that, as with the civilian labor force, the representation of minorities, including blacks, Hispanics, and Asian American and Pacific Islanders, is greater in New York City than in the PMSA, the CMSA, and the United States for every level of education.<sup>209</sup> This reflects the increasing number of white suburbs that are added in as the size of the geographic area is increased. Thus, the representation of minorities and women in the city and the Nation generally spans the values shown for the PMSA and the CMSA. Also like the civilian labor force, the prevalence of minorities in the city is about 2½ times what it is in the Nation and is sometimes even greater among groups with higher education levels.

The contrast between the New York City and the United States figures illustrates the importance of choosing an appropriate geographic area for the qualified labor pool. If job candidates are recruited only from the local area, then a work

force hired without bias should reflect the racial and gender profile for the appropriate education or skill level of New York City residents. Yet because of the city's vast transit system, many suburban communities inhabited largely by highly educated whites become part of the labor pool, too. Furthermore, high-paying jobs justify nationwide recruitment, where minority groups are far less concentrated than in urban areas. A discussion of which of the four geographic areas best describes the labor pool for particular types of jobs will be held until later. The general range of values for the city and the Nation will be pointed out below.

In part A, the proportion of minorities and women generally dwindles the higher the education level. Asian American and Pacific Islanders, however, do not follow the trend of other minority groups, and are often more prevalent among persons with higher levels of education than among those with lower educational attainment. For example, for New York City residents aged 25 and over with a high school degree or more education, 44.7 percent were minority—about 24 percent were black, 14 percent were Hispanic, and 7 percent were Asian American and Pacific Islanders. More than half, 54.2 percent, were women.

Of New York City residents aged 25 and over with a bachelor's degree or more education, 31.1 percent were minority. They included a larger proportion of Asian American and Pacific Islanders, 10 percent, out smaller proportions of blacks and Hispanics, about 14 and 7 percent, respectively. Almost half, 49.5 percent, were women. Of New York City residents aged 25 and over with a graduate or professional degree, 26 percent were minority—about 11 percent were black, 6 percent Hispanic, and 9 percent Asian American and Pacific Islander. Less than half, about 47 percent, were women.

Among U.S. citizens aged 25 and older, blacks are only about 9 percent of those with high school degrees or more, about 8 percent of those with some college or more, about 6 percent of those with bachelor's degrees or more, 5.6 percent of those with master's degrees or more, and 4 percent of those with doctorate or professional degrees.

Among U.S. citizens aged 25 or older, Hispanics are only about 5 percent of those with high school degrees or more, 4.4 percent of those

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<sup>209</sup> In part A, for example, 23.7 percent of blacks in New York City have a high school degree, or more, compared with 21.3 percent in PMSA, 14 percent in CMSA, and 8.8 percent in the Nation. In part B, 27.4 percent of blacks in New York city have, as their highest level of education, a high school degree or GED, compared with only 9.8 percent in the Nation as a whole. Similar trends occur for Hispanics, Asian Americans, and women. However, American Indians are more prevalent in the Nation than in the New York City metropolitan area in both parts A and B.

with some college or more, about 3 percent of those with a bachelor's degree or more or of those with a master's degree or more, and 4 percent of those with a doctorate or professional degree. Only about 29 percent of U.S. citizens aged 25 and over with doctorate or professional degrees are women.

Assuming that persons who are overeducated for a position are not part of the labor pool, part B of table 3.23 shows the highest level of educational attainment, a measure that excludes persons with too much education as well as too little. The table shows the racial and gender composition of persons whose highest level of education is a high school degree or GED, an associate's degree or some college without a degree, and a bachelor's degree. The figures for those whose highest level of education is a graduate or professional degree are not shown because they are the same as those in part A.

If one identifies the qualified labor pool using minimal education levels as shown in part A, then the representation of blacks and Hispanics is underestimated for jobs requiring lower levels of education. Part B shows that if the qualified labor pool includes only persons with an appropriate level of education and not those with more education, the representation of blacks and Hispanics will be slightly greater than the figures in part A, at least for jobs requiring no more than a bachelor's degree.<sup>210</sup> For the higher levels of education, fewer persons with more education are added into the minimal education attainment measure, thus creating less of a difference between using a measure of minimal education versus highest level of education.

Part B also shows trends similar to those in part A; the proportions of blacks and Hispanics are generally smaller for higher levels of education while the proportions of Asian American and Pacific Islanders are larger. However, in an exception to this general trend, blacks and His-

panics are most prevalent among persons with associate's degrees or some college without a degree. Blacks are 30.6 percent of New York City residents with associate's degrees or some college while Hispanics make up 17.4 percent. Together minorities are 54 percent of New York City residents with associate's degrees. For U.S. citizens, blacks and Hispanics are also more prevalent among those with associate's degrees than among persons with other levels of education, although the effect is not nearly so pronounced. Blacks are 10.1 percent of U.S. citizens with associate's degrees and Hispanics are 5.4 percent.

Table 3.24 shows the racial and gender composition for recent graduates at different levels of education. These numbers best describe recently hired employees or younger work forces, and help project changes in the future. The figures are nationwide in scope and report degrees conferred on U.S. citizens for four recent school years from 1990–91 to 1993–94.

First, the table shows consistent but small increases in the representation of minorities and women among graduates receiving associate's, bachelor's, master's, and doctorate degrees across these recent years. Some of the largest increases were for those receiving bachelor's degrees. Of those receiving bachelor's degrees, the proportion who were black increased from 6.2 percent in 1990–91 to 7.4 percent in 1993–94; the proportion who were Hispanic increased from 3.5 to 4.4 percent; and the proportion who were Asian American and Pacific Islander increased from 4 to 4.9 percent.

For minorities, table 3.24 shows the same tendency as was evident with the measures of education in table 3.23: the representation of blacks and Hispanics dwindles for higher education degrees while the representation of Asian American and Pacific Islanders increases. For example, in 1993–94, 8.8 percent of persons receiving associate's degrees were black; 7.4 percent of persons receiving bachelor's degrees were black; 6.5 percent of persons receiving master's degrees were black; and 4.4 percent of persons receiving doctorate degrees were black. Similarly, in that year 6.1 percent of persons receiving associate's degrees were Hispanic; 4.4 percent of persons receiving bachelor's degrees were Hispanic; 3.5 percent of persons receiving master's degrees were; and 2.9 percent of those re-

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<sup>210</sup> Thus, for example, part A showed that for New York City residents with a high school degree or more, 23.7 percent were black. Part B shows that for New York City residents with a high school degree *but no more education*, slightly more, 27.4 percent, were black. But blacks are proportionally the most prevalent minority group that has had some college or an associate's degree. Among this group of people with more than a high school degree but less than a bachelor's degree, about 31 percent are black, approximately 17 percent are Hispanic, 5.7 percent are Asian, and 54 percent are women (table 3.23, pt. B).



ceiving doctorate degrees were Hispanic. However, 3.5 percent of persons receiving associate's degrees in 1993–94 were Asian American and Pacific Islander; 4.9 percent of persons receiving bachelor's degrees were; and 6.4 percent of persons receiving doctorate degrees were Asian American and Pacific Islander.<sup>211</sup>

Differences in the figures in tables 3.23 and 3.24 can largely be attributed to differences in the ages and generations of the populations represented therein. The majority of recent graduates are young people, attempting to complete their schooling before beginning their careers. For example, in 1992–93, 55 percent of undergraduates were aged 15 to 23, and 46 percent of graduate students and students earning their first professional degrees were under age 30.<sup>212</sup> The populations in table 3.23, however, include not only recent graduates but older persons. The average age of the U.S. residents upon which the table is based is at least 42.<sup>213</sup> Many older people likely completed their education decades ago when attitudes about education were very different from today. And the figures in the table reflect that.

According to the percentages in tables 3.23 and 3.24, there is no consistent trend showing better representation of minorities among recent graduates than among the older, more general population.<sup>214</sup> The magnitude of the minority group figures for recent graduates is fairly consistent with those for U.S. citizens, that is, the

population as a whole, in part B of table 3.23. The similarity of these figures suggests that, at least with respect to the four recent school years shown here, little change has occurred in the proportions of minority groups receiving degrees.

The story for women, however, is somewhat different. The percentages of women among those who were conferred with degrees in recent years also dwindles with higher levels of education. However, women represent larger percentages of the persons receiving degrees than they have in the past, judged by the educational attainment of the Nation's generally older populace. Whereas table 3.23, part B, shows that 53.1 percent of U.S. citizens with associate's degrees are women, in table 3.24 about 59 percent of recent graduates with associate's degrees are women. While 48.1 percent of U.S. citizens with bachelor's degrees are women, about 55 percent of recent recipients of bachelor's degrees are. Further, 47.6 percent of U.S. citizens with master's degrees are women, compared with roughly 57 percent of recent recipients of master's degrees; and 25 percent of citizens with doctorate degrees are women, compared with 43 or 44 percent of recently conferred doctorates.

The difference in representation of women among new graduates versus the older, general population means that one must take greater care in identifying the qualified labor pool. Newer, younger industries are likely to have newer and younger employees that reflect the racial and gender composition of recent degree recipients rather than the population as a whole. Thus, in some industries, the use of the educational attainment of U.S. citizens may underestimate the percentage of women in the qualified labor pool particularly for jobs requiring the highest levels of education. At the same time, the larger pools of women among recent graduates mean that women should be better represented among recently hired employees than they have been in the past.

Three different measures of education were presented in this section, each of them showing generally declining proportions of minorities, particularly blacks and Hispanics, and women for increasingly higher levels of education. Asian American and Pacific Islanders, however, are often better represented among those with higher education than among those with lower education. For all levels of education, the repre-

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<sup>211</sup> Asians are slightly less well represented among persons who receive master's degrees than they are among persons who receive bachelor's and doctorate degrees (table 3.24).

<sup>212</sup> Thomas D. Snyder and Charlene M. Hoffman, *Digest of Education Statistics 1995* (U.S. Department of Education, National Center for Education Statistics, NCES 95-029), table 204—Percent of students enrolled in postsecondary institutions, by disability status and selected student characteristics: 1992–93, p. 212.

<sup>213</sup> Computed from U.S. Department of Commerce, Statistical Abstract of the United States 1995, table 16. Resident Population, by Sex and Age: 1994, p. 16. The figure was computed as the average age of residents between the ages of 25 and 65. Including persons over age 65, as the educational attainment tables herein do, raises the average age of the population of residents over the age of 25.

<sup>214</sup> In the largest difference between these figures, Asians are better represented among persons with doctorate degrees than among recent graduates receiving these degrees. They are 7.6 percent of U.S. citizens holding these degrees, but only 6.4 percent of doctorate recipients in the most recent year shown—1993–94. See table 3.24 and U.S. citizens in part B, table 3.23.

sentation of minorities is much greater for New York City, and even its metropolitan area than for the Nation as a whole. The age of the work force appears to be relevant for women because women are much better represented among recent degree recipients (at all levels of education) than among the same education levels for the older, more general population.

### Specialized Education, Certification, and Experience

Apart from general education, skills may be an important criteria for identifying the qualified labor pool for jobs. Skills are measured here using specialized education, certification, and experience related to the finance industry. The racial and gender compositions of the pool of persons receiving degrees in two fields related to the finance industry are shown in table 3.25. The same breakdowns among persons taking and passing the Series 7, a major examination required for certain occupations in the finance industry, are shown in table 3.26. Those of persons who work as officials and managers in the finance industry are shown in table 3.27.

Table 3.25 shows the racial and gender composition of graduates of programs in business management and administrative services and in computer and information science, two fields that offer good preparation for jobs in the finance industry.<sup>215</sup> The information provided covers two academic years: 1991–92 and 1992–93.

Table 3.24 contains statistics on recent graduates in all fields. The table shows that the percentages of minorities and women dwindled with each successive level of education from associate's to doctoral degrees. Table 3.25 shows a similar trend, but with more pronounced effects. A greater percentage of blacks and Hispanics in the business management and administrative services, and computer and information science fields received associate's and bachelor's degrees than among the general population of people receiving these degrees. Blacks and Hispanics in these two fields also have a smaller percentage of master's and doctoral degrees than among recipients of these degrees in all fields. As a result, the dwindling numbers of African Americans and Hispanics in the two higher degree categories are more pronounced. For example, while 8.5 percent of the persons receiving associate's degrees in 1992–93 were black (table 3.24), 10.9 percent of those receiving associate's degrees in business management and administrative services and 11.8 percent of those receiving associate's degrees in computer information science were black (table 3.25). On the other hand, blacks, who comprised 4.4 percent of all persons receiving doctoral degrees in 1992–93 (table 3.24), were only 3.2 percent of business management and administrative services doctoral recipients, and only 1.4 percent of those receiving computer and information science doctorates.

There is also a greater percentage of female higher education degree recipients within the business management and administrative services, and computer and information science fields than among the general population of degree earners. For example, from 1992 to 1993, women received approximately 59 percent of associate's degrees and 44 percent of doctoral degrees (table 3.24). During the same period, however, women in the business management and administrative services comprised 68.1 percent of recipients of associate's degrees, 47.5 percent of recipients of bachelor's degrees, 36.2 percent of recipients of master's degrees, and 35.6 percent of recipients of doctoral degrees (table 3.25). In the computer science area, women were about

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<sup>215</sup> Of the 34 fields for which the Department of Education reports the race and gender of degree earners, business management and administrative services, and computer and information sciences appear to be the most relevant to finance industry jobs. The other fields are: agriculture and natural resources; architecture and related programs; area, racial, and cultural studies; biological science/life sciences; communications; communications technologies; construction trades; education; engineering; engineering-related technologies; English language and literature/letters; foreign languages and literature; health professions and related sciences; home economics and vocational home economics; law and legal studies; liberal arts and sciences, general studies, and humanities; library science; mathematics; mechanics and repairers; multi-interdisciplinary studies; parks, recreation, leisure and fitness studies; philosophy and religion; physical sciences and science technologies; precision production trades; protective services; psychology; public administration and services; R.O.T.C. and military technologies; social sciences and history; theological studies/religious vocations; transportation and material moving; and visual and performing arts. See Thomas D. Snyder and Charlene M. Hoffman, *Digest of Education Statistics 1995* (U.S. Department of Education, National Center for Educa-

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tion Statistics, NCES 95-029), tables 254, 255, 257, 258, 260, 261, 263, 264, pp. 281–82, 284–85, 287–88, 290–91.

**Table 3.22****Benchmarks of Racial and Gender Composition, Civilian Labor Force (Percentages)****Persons in the labor force (employed or unemployed) who are age 16 and over**

	Black	Hispanic	Asian/Pacific Islander	American Indian	Minority <sup>1</sup>	Women
New York City <sup>2</sup>	26.5	20.1	7.6	0.3	54.6	47.3
New York PMSA <sup>3</sup>	24.2	18.3	7.0	0.3	49.8	47.2
New York CMSA <sup>3</sup>	16.6	13.2	4.9	0.2	35.0	46.2
United States <sup>4</sup>	10.6	8.1	2.9	0.7	22.3	45.8

<sup>1</sup> Blacks, Hispanics, Asian/Pacific Islanders, and American Indians are included in the category "Minorities."

<sup>2</sup> Compiled from 1990 Census of Population, *Social and Economic Characteristics: New York, 1990*, CP-2-34, sec. 2, table 183. Figures here and below are for persons 16 years and older.

<sup>3</sup> Compiled from 1990 Census of Population, *Social and Economic Characteristics: Metropolitan Areas, 1990*, CP-2-1B, sec. 4, table 43, pp. 3234, 3240.

<sup>4</sup> Compiled from 1990 Census of Population, *Social and Economic Characteristics: United States, 1990*, CP-2-1, table 42, p. 44.

**Table 3.23****Benchmarks of Racial and Gender Composition, Levels of Education (Percentages)**

	Black	Hispanic	Asian/ Pacific Islander	American Indian	Minority <sup>1</sup>	Women
<b>Part A. Minimal educational attainment</b>						
<b>New York City residents aged 25 and over<sup>2</sup></b>						
High school degree or more	23.7	14.0	6.8	0.3	44.7	54.2
Some college or more	21.4	11.9	8.0	0.3	41.6	51.3
Bachelor's degree or more	13.7	7.2	10.0	0.2	31.1	49.5
Graduate or professional degree	10.9	6.4	8.6	0.2	26.0	46.9
<b>New York PMSA residents aged 25 and over<sup>3</sup></b>						
High school degree or more	21.3	12.5	6.2	0.2	40.3	54.0
Some college or more	19.0	10.5	7.3	0.2	37.1	51.1
Bachelor's degree or more	12.0	6.4	9.1	0.2	27.7	49.0
Graduate or professional degree						
<b>New York CMSA (NY-NJ-CT) residents aged 25 and over<sup>3</sup></b>						
High school degree or more	14.0	8.6	4.6	0.2	27.4	53.1
Some college or more	12.5	7.4	5.8	0.2	25.8	49.6
Bachelor's degree or more	7.6	4.4	7.1	0.1	19.1	43.5
Graduate or professional degree	7.0	4.3	7.4	0.1	18.9	43.8
<b>U.S. citizens aged 25 and over<sup>4</sup></b>						
High school degree or more	8.8	4.7	2.8	0.6	16.9	52.4
Some college or more	8.2	4.4	3.5	0.5	16.7	49.8
Bachelor's degree or more	5.9	3.2	4.9	0.3	14.3	45.7
Master's degree or more	5.6	3.2	5.2	0.3	14.4	41.3
Doctorate or professional degree	4.0	4.0	5.9	0.3	14.3	29.3

Continued

**Table 3.23 (Continued)**

	Black	Hispanic	Asian/ Pacific Islander	American Indian	Minority <sup>1</sup>	Women
<b>Part B. Highest level of education</b>						
<b>New York City residents aged 25 and over<sup>2</sup></b>						
High school degree or GED	27.4	17.3	4.8	0.2	49.7	58.7
Associate's degree or some college without a degree	30.6	17.4	5.7	0.3	54.0	53.5
Bachelor's degree	15.9	7.8	11.0	0.3	35.0	51.5
<b>New York PMSA Residents Aged 25 and over<sup>3</sup></b>						
High school degree or GED	25.1	15.8	4.4	0.2	45.5	58.9
Associate's degree or some college without a degree	27.7	15.7	5.2	0.3	48.9	53.8
Bachelor's degree	13.9	7.0	10.1	0.2	31.2	51.0
<b>New York CMSA (NY-NJ-CT) residents aged 25 and over<sup>3</sup></b>						
High school degree or GED	16.4	10.7	2.7	0.2	29.9	59.0
Associate's degree or some college without a degree	17.8	10.6	3.5	0.2	32.2	53.1
Bachelor's degree	9.0	4.9	7.7	0.1	21.8	48.9
<b>U.S. citizens aged 25 and over<sup>4</sup></b>						
High school degree or GED	9.8	5.1	1.7	0.7	17.2	56.3
Associate's degree or some college without a degree	10.1	5.4	2.4	0.7	18.7	53.1
Associate's degree	9.0	5.5	3.4	0.7	18.7	55.7
Bachelor's degree	6.0	3.2	4.7	0.3	14.2	48.1
Master's degree	6.5	2.8	4.9	0.3	14.4	47.6
Doctorate degree	4.3	3.2	7.6	0.3	15.4	25.0

<sup>1</sup> Blacks, Hispanics, Asian/Pacific Islanders, and American Indians are included in the category "Minorities."

<sup>2</sup> Compiled from 1990 Census of Population, *Social and Economic Characteristics: New York, 1990*, CP-2-34, sec. 2, table 181. Note: For these and other figures based on the census, those with a high school degree or more include high school graduates, those with high school equivalencies, some college and associate degrees, and those with bachelor's, graduate, or professional degrees. Those with some college or more include those who attended college without obtaining a degree, those who obtained associate degrees, and those with bachelor's, graduate, or professional degrees. Those with a bachelor's degree or more include those with a bachelor's, master's, professional, or doctorate degree.

<sup>3</sup> Compiled from 1990 Census of Population, *Social and Economic Characteristics: Metropolitan Areas, 1990* CP-2-1B, sec. 4, table 41.

<sup>4</sup> Compiled from 1990 Census of Population, *Social and Economic Characteristics: United States, 1990*, CP-2-1, table 42, p. 42. Note: Figures compiled from the census differ slightly from 1993 figures derived from the Current Population Survey. However, the largest differences are only a little more than 1 percent. See National Center for Education Statistics, *Digest of Education Statistics, 1995* (U.S. Department of Education, Office of Educational Research and Improvement, NCES 95-029), table 9, p. 18. Original source: U.S. Department of Commerce, Bureau of the Census, Current Population Survey.

**Table 3.24****Benchmarks of Racial and Gender Composition, Levels of Education, Graduates in Four Recent School Years (Percentages)**

	<u>Degrees conferred on U.S. citizens</u>					
	Black	Hispanic	Asian	American Indian	Minority <sup>1</sup>	Women
<b>Associate's degrees</b>						
1990–91 <sup>2</sup>	8.3	5.3	3.0	0.8	17.4	58.9
1991–92 <sup>3</sup>	8.1	5.5	3.2	0.8	17.7	59.0
1992–93 <sup>3</sup>	8.5	6.0	3.3	0.9	18.7	58.9
1993–94 <sup>7</sup>	8.8	6.1	3.5	0.9	19.3	59.3
<b>Bachelor's degrees</b>						
1990–91 <sup>2</sup>	6.2	3.5	4.0	0.4	14.1	54.5
1991–92 <sup>4</sup>	6.6	3.7	4.2	0.5	15.0	54.6
1992–93 <sup>4</sup>	6.9	4.0	4.6	0.5	16.0	54.6
1993–94 <sup>7</sup>	7.4	4.4	4.9	0.5	17.3	54.8
<b>Master's degrees</b>						
1990–91 <sup>2</sup>	5.5	2.9	3.8	0.4	12.6	56.4
1991–92 <sup>5</sup>	5.8	3.0	4.1	0.4	13.4	56.8
1992–93 <sup>5</sup>	6.1	3.3	4.3	0.4	14.1	56.9
1993–94 <sup>7</sup>	6.5	3.5	4.5	0.5	15.0	57.2
<b>Doctorate degrees</b>						
1990–91 <sup>2</sup>	4.2	2.5	5.1	0.4	12.2	42.5
1991–92 <sup>6</sup>	4.1	2.7	5.3	0.4	12.6	43.0
1992–93 <sup>6</sup>	4.4	2.7	5.2	0.3	12.7	44.2
1993–94 <sup>7</sup>	4.4	2.9	6.4	0.4	14.1	44.1

<sup>1</sup> Blacks, Hispanics, Asians, and American Indians are included in the category "Minorities."

<sup>2</sup> Computed from "Degrees Conferred by Racial and Ethnic Group, 1990–91," p. 17 in *The Chronicle of Higher Education Almanac*, Aug. 25, 1993. Original source: U.S. Department of Education. Percentages are calculated excluding nonresident aliens and persons of unknown race.

<sup>3</sup> Calculated from Thomas D. Snyder and Charlene M. Hoffman, *Digest of Education Statistics 1995* (U.S. Department of Education, National Center for Education Statistics, NCES 95-029), table 254—Associate's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1992–93 and table 255—Associate's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1991–92, pp. 281–82. Percentages are calculated excluding nonresident aliens.

<sup>4</sup> Ibid. Table 257—Bachelor's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1992–93. Table 258—Bachelor's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1991–92, pp. 284–85. Percentages are calculated excluding nonresident aliens.

<sup>5</sup> Ibid. Table 260—Master's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1992–93 and table 261—Master's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1991–92, pp. 287–88. Percentages are calculated excluding nonresident aliens and persons of unknown race.

<sup>6</sup> Ibid. Table 263—Doctor's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1992–93 and table 264—Doctor's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1991–92, pp. 290–91. Percentages are calculated excluding nonresident aliens.

<sup>7</sup> Computed from "Degrees Conferred by Racial and Ethnic Group, 1993–94," p. 22, in *The Chronicle of Higher Education Almanac*, Sept. 2, 1996. Original source: U.S. Department of Education. Percentages are calculated excluding nonresident aliens and persons of unknown race.

**Table 3.25****Benchmarks of Racial and Gender Composition, Specialized Education, Degrees Conferred by Selected Field of Study and Year (Percentages)**

	Black	Hispanic	Asian	American Indian	Minority <sup>1</sup>	Women
<b>Part A. Business management and administrative services</b>						
<b>Associate's degrees<sup>2</sup></b>						
1991-92	10.2	5.7	3.6	0.8	20.3	69.0
1992-93	10.9	6.5	3.6	0.8	21.8	68.1
<b>Bachelor's degrees<sup>3</sup></b>						
1991-92	7.4	3.4	4.3	0.4	15.4	47.5
1992-93	7.8	3.9	4.8	0.4	16.9	47.5
<b>Master's degrees<sup>4</sup></b>						
1991-92	5.3	2.6	4.8	0.3	13.0	36.0
1992-93	5.7	2.9	5.5	0.3	14.5	36.2
<b>Doctorate degrees<sup>5</sup></b>						
1991-92	3.4	1.4	7.8	0.2	12.8	29.6
1992-93	3.2	1.1	5.0	0.3	9.6	35.6
<b>Part B. Computer and information science</b>						
<b>Associate's degrees<sup>2</sup></b>						
1991-92	12.8	6.9	5.6	0.7	26.0	50.9
1992-93	11.8	8.8	5.4	1.2	27.2	50.8
<b>Bachelor's degrees<sup>3</sup></b>						
1991-92	9.5	4.0	9.5	0.4	23.3	28.7
1992-93	10.3	3.9	10.4	0.4	25.0	28.2
<b>Master's degrees<sup>4</sup></b>						
1991-92	5.3	2.5	18.4	0.3	26.4	29.2
1992-93	5.1	2.6	18.3	0.2	26.2	28.0
<b>Doctorate degrees<sup>5</sup></b>						
1991-92	1.2	1.4	10.6	0.2	13.5	17.0
1992-93	1.3	1.5	12.4	0.2	15.5	19.6

<sup>1</sup> Blacks, Hispanics, Asians, and American Indians are included in the category "Minorities." "Blacks" are non-Hispanic blacks. Percentages are calculated excluding nonresident "aliens."

<sup>2</sup> Calculated from Thomas D. Snyder and Charlene M. Hoffman, *Digest of Education Statistics 1995* (U.S. Department of Education, National Center for Education Statistics, NCES 95-029), table 254—Associate degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1992-93 and table 255—Associate degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1991-92, pp. 281-82.

<sup>3</sup> Ibid. Table 257—Bachelor's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1992-93. Table 258—Bachelor's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1991-92, pp. 284-85.

<sup>4</sup> Ibid. Table 260—Master's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1992-93 and table 261—Master's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1991-92, pp. 287-88.

<sup>5</sup> Ibid. Table 263—Doctor's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1992-93 and table 264—Doctor's degrees conferred by institutions of higher education, by racial/ethnic group, major field of study, and sex of student: 1991-92, pp. 290-91.

**Table 3.26****Benchmarks of Racial and Gender Composition, Obtaining Certification in the Finance Industry (Percentages)****Passing the Series 7 exam—General securities registered representative<sup>1</sup>**

	Black	Hispanic	Asian	American Indian	Minority <sup>2</sup>	Women
Persons taking	5.6	5.3	6.2	0.9	17.9	30.2
Persons passing	3.5	4.1	5.9	0.6	14.2	26.0

<sup>1</sup> Percentages are recalculated from the original to exclude persons who did not identify their race/ethnicity or gender. For the series 7 exam, 5.9 percent of test takers did not identify their race or ethnicity and 2.7 percent did not identify their gender. The former group had a passing rate of 64.5 percent (N=2,067); the latter group had a passing rate of 71.3 percent (N=940). Compared with an overall passing rate of 69.8 percent (N=34,845 or 34,929), persons who declined to identify their race had below average test scores and persons who declined to identify their gender scored slightly above average on the test.

<sup>2</sup> Blacks, Hispanics, Asians, and American Indians are included in the category "Minorities."

SOURCE: Attachment to correspondence from National Association of Securities Dealers, to Ms. JoEllen Carlson, director of testing standards, New York Stock Exchange, July 25, 1995.

**Table 3.27****Benchmarks of Racial and Gender Composition, Work Experience, Officials and Managers<sup>1</sup> in the Finance Industry (Percentages)**

	Black	Hispanic	Asian/ Pacific Islander	American Indian	Minority <sup>2</sup>	Women	Number of people
<b>Part A. United States</b>							
<b>Banking and other savings institutions</b>							
Financial managers	6.2	4.7	3.4	0.2	14.6	54.6	259,149
Other financial officers	5.1	4.5	3.4	0.2	13.2	53.9	264,677
<b>Other finance</b>							
Financial managers	3.6	3.8	2.9	0.3	10.6	35.2	65,561
Other financial officers	4.9	4.7	3.1	0.3	12.9	40.5	111,885
<b>Part B. New York PMSA</b>							
<b>Banking and other savings institutions</b>							
Financial managers	16.1	10.2	7.4	0.3	34.1	46.5	19,556
Other financial officers	14.6	10.4	9.4	0.2	34.7	49.3	12,593
<b>Other finance</b>							
Financial managers	8.1	3.7	6.7	0.0	18.5	34.3	5,505
Other financial officers	7.7	6.6	5.2	0.1	19.6	32.4	5,220

<sup>1</sup> Job classifications were assigned using U.S. Equal Employment Opportunity Commission, *Job Classification Guide* (Washington, DC, 1987).

<sup>2</sup> Blacks, Hispanics, Asian/Pacific Islanders, and American Indians are included in the category "Minorities." "Blacks" are non-Hispanic blacks. Percentages are calculated excluding nonresident aliens.

<sup>3</sup> "Other finance" excludes banking and other savings institutions, insurance, and real estate.

SOURCE: Information provided to the U.S. Commission on Civil Rights by the Equal Employment Opportunity Commission, "Report: Occupation by Industry/Race/Sex; Database: 1990 Census; 12/08/93."

51 percent of recipients of associate's degrees, 28.2 percent of recipients of bachelor's and master's degrees, and 19.6 percent of doctoral degrees.

Asian American and Pacific Islanders comprise approximately the same percentage of business management and administrative services degree recipients as they do of all recipients of these degrees (compare table 3.24 and table 3.25, part A). However, Asian American and Pacific Islanders are a greater number of degree recipients in computer and information science, especially among the highest level degrees. For example, Asian American and Pacific Islanders, who were 3.3 percent of associate's degree recipients, 4.3 percent of master's degree recipients, and 5.2 percent of doctoral degree recipients in all fields in 1992-93 (table 3.24), in the computer sciences were 5.4 percent of associate's degree recipients, 10.4 percent of bachelor's degree recipients, 18.3 percent of master's degree recipients, and about 12.4 percent of doctoral degree recipients. Thus, in the computer field, Asian American and Pacific Islanders also have a greater percentage of degree earning than among the general population of degree earners.

Table 3.25 shows percentages of graduates with higher degrees in two areas of study relevant to the finance industry, indicating a labor force—or at least the recent additions to it—with specialized education.<sup>216</sup> The statistics show a general trend of lower percentages of minorities and women in the higher level graduate degrees for which there may be a number of potential causes. However, none of these statistics was

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<sup>216</sup> Note that the number of minorities receiving doctoral degrees in these majors is not large in any one year. For example, although the number of persons receiving doctoral degrees in computer and information science each year was roughly 375, the number of blacks, Hispanics, and American Indians receiving doctoral degrees in this major was only 12 or 14 for each of the 2 years. Thomas D. Snyder and Charlene M. Hoffman, *Digest of Education Statistics 1995* (U.S. Department of Education, National Center for Education Statistics, NCE 95-029), table 254, pp. 281-82. The small numbers of minority applicants with the appropriate higher education makes competition among the approximately 450 banks and securities firms great. EEOC Data, app. B, table B.2. As a result, it is possible that low numbers of minority hires may be an indication of a lack of concerted efforts to recruit such applicants, rather than an overt bias. It is also possible that there may be either overt or covert bias present, or that one could interpret the lack of effort as bias. Differences in the representation of minorities among companies is examined further in the next chapter.

conclusive in determining what were the actual causes.

Many occupations in the finance industry require passing an examination to become certified. Certification is required by self-regulating organizations, including the National Association of Securities Dealers (NASD) and the NYSE. Individuals who solicit, purchase and/or sell securities must pass the Series 6 and/or the Series 7 examinations. The Series 6 test concerns investment securities and securities markets, investment company products, variable annuities, regulation, and handling clients' accounts. It qualifies representatives to function in a limited way. The Series 7 is for general securities registered representatives and qualifies candidates for the solicitation, purchase, and/or sale of corporate securities, municipal securities, options, direct participation programs, investment company products, and variable contracts. The Series 6 and Series 7 are two of the three most frequently administered tests for certification in the finance industry.<sup>217</sup>

Traditionally, these tests have been required by the SEC and regulatory bodies like the NYSE of employees in securities firms so that they could participate in the stock exchanges.<sup>218</sup> However, beginning in September 1994, as bank products diversified, similar requirements were encouraged of bank employees who engage in solicitations, recommendations, purchases, or sales of securities.<sup>219</sup> By December 1996, Federal regulators were implementing requirements for certification using these tests.<sup>220</sup> Thus, as a measure of skills, passage of the Series 6 or 7 exam has been more applicable to the securities

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<sup>217</sup> The third frequently administered test is Series 63, the Uniform Securities Agent State Law Examination. It covers principles of State securities regulation reflected in the Uniform Securities Act. See New York Stock Exchange, Regulatory Affairs Department, "Confidential Excerpts From Procedures Manual for the Testing Standards Section," 1993, p. 17. During 1994 the Series 6 exam was administered roughly 65,000 times; the Series 7, roughly 59,000; and the Series 63, roughly 94,000 times. See National Association of Securities Dealers, "1994 Test Volume and Pass Rate Statistics."

<sup>218</sup> New York Stock Exchange Constitution and Rules, Rule 304A ¶ 2304A, p. 3040.

<sup>219</sup> Glater, "Bank Workers," p. F-1; "NASD Puts Banks to Test," p. D-7; Prakash, "Securities Dealers," p. 12.

<sup>220</sup> Comptroller of the Currency, "OCC Proposes Rule for Bank Employees Who Recommend or Sell Certain Securities," News Release, Dec. 11, 1996, Washington, DC.



segment of the finance industry than to banking. However, in light of these changes it may become a more important measure of skills among bank employees in the future.

The racial and gender composition of persons taking and passing the Series 7 examination is shown in table 3.26. Only about 18 percent of the persons taking the Series 7 exam are minorities and only 30 percent of them are women. However, minorities and women are even less well represented among persons passing the exam. Roughly 14 percent of those passing the exam are minorities and approximately 26 percent women, respectively. Blacks are only 3.5 percent of the persons passing the Series 7 exam; Hispanics are about 4 percent; Asian American and Pacific Islanders are about 6 percent; and American Indians are 0.6 percent. Passing the Series 7 exam has one of the lowest percentages of successful minority candidates among all of the benchmarks.

Work experience in the financial area is one way to acquire the skills necessary for jobs in the finance industry. Here, work experience is measured by persons reporting an occupation in the finance industry for the 1990 census. Tables 3.27 to 3.30 show the racial and gender distribution of workers in a number of occupations. Table 3.27 has the officials and managers job classification, table 3.28 shows professionals, table 3.29 indicates sales workers, and table 3.30 comprises office and clerical workers. Each table shows separate figures for workers in banking and other savings institutions and in "other finance," which includes securities firms, insurance companies, nondepository institutions, real estate companies, and holding companies.<sup>221</sup> Each table also contains information, compiled from the census, presented in the form of one U.S. panel and one New York City PMSA panel.

Table 3.27 shows work experience for officials and managers in the finance industry throughout the United States. The category was compiled based on persons designating financial manager or officer as their occupation on the 1990 census. Table 3.27 shows that 13 to 15 percent of financial managers and officers in banking and savings institutions are minorities. Further, 11 to 13 percent of financial managers and

officers in "other finance," largely including the securities industry, are minorities. Indeed, in both industry segments, Hispanics are 4 to 5 percent of the financial officers and managers, and Asian American and Pacific Islanders are about 3 percent of the financial officers and managers. Blacks are 5 to 6 percent of financial officers and managers in banking and 4 to 5 percent in "other finance." American Indians are 0.2 percent of financial officers and managers and 0.3 percent in "other finance." Women are approximately 54 to 55 percent of the financial officers and managers in banking, but only 35 to 40 percent of those in "other finance."

In earlier analyses we found that there was a 2½ times greater representation of minorities on benchmarks based upon the metropolitan area of New York City than the Nation as a whole. This higher representation is also true here. In the New York PMSA (part B of table 3.27), 34 to 35 percent of financial managers and officers in banking and savings institutions are minorities, and 19 to 20 percent of financial managers and officers in "other finance" are minorities. Notably, the difference between the representation of minorities in banking versus "other finance" is much more pronounced in the New York City metropolitan area than it is in the Nation as a whole.

In the New York PMSA, financial officers and managers in banking and savings institutions are approximately 15 to 16 percent black, about 10 percent Hispanic, approximately 7 to 9 percent Asian American and Pacific Islander, and 0.2 to 0.3 percent American Indian. These officers and managers are approximately 46 to 49 percent women. Financial officers and managers in "other finance" are about 8 percent black, roughly 4 to 7 percent Hispanic, approximately 5 to 7 percent Asian American and Pacific Islander, and 0 to 0.1 percent are American Indian. Thirty-two to 34 percent are women. Note that while minorities were better represented in the finance industry in the New York PMSA than throughout the United States, women were less well represented.

The differences between workers in the industry in the New York metropolitan area and those in the Nation as a whole are subject to a number of possible hypotheses. The greater concentration of minorities in the urban area may have some impact on the higher representation

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<sup>221</sup> U.S. Equal Employment Opportunity Commission, *Job Classification Guide* (Washington, DC, 1987).

of minorities among financial officers and managers in this industry. Further, the differences in representation of minorities in banking and savings institutions versus "other finance" may indicate that New York City's securities industry has greater bias toward minorities and women than elsewhere in the Nation, or that industry firms in New York City require more of the benchmarks on which minorities and women have lower representation. Wall Street, the Nation's foremost market for trading stocks and bonds, is prominent in the city's industry and could raise skill requirements beyond those of the industry in the rest of the Nation which has only a handful of other stock exchanges along with financial institutions in less urban and rural areas. These are just possible explanations for the difference, none is conclusive based on the data.

Table 3.28 shows two occupations that are classified as "professionals" and are pertinent to the securities industry: management analysts and underwriters. The table shows that, throughout the United States, almost 14 percent of management analysts and underwriters in "other finance" are minorities, between 4 and 5 percent of them are black, about 4 percent are Hispanic, almost 5 percent are Asian/Pacific Islander, and less than 1 percent are American Indian. Women are only 37 percent of management analysts in "other finance," but they are 77 percent of the underwriters.

With other benchmarks minorities have typically been far better represented in the New York PMSA than in the Nation as a whole. With this benchmark only some minority groups are better represented. Among persons residing in the New York PMSA who reported "other finance" as the industry in which they worked in 1990, blacks are 0 percent of management analysts, Hispanics are 0 percent of underwriters, and American Indians are 0 percent of both categories. Women are more likely to be management analysts in the PMSA than they are in the Nation (44 to 37 percent), but they are less likely to be underwriters in the PMSA than in the Nation (58 to 77 percent). Clearly black management analysts, Hispanic underwriters, and American Indian management analysts and underwriters are absent from the New York PMSA.

Table 3.29 shows the representation of minorities and women among securities and financial services sales occupations in the United States and the New York PMSA. These include stock traders in the securities industry.<sup>222</sup> The table shows that the percentages of women and minorities employed in the finance industry in both geographic areas are lower than their percentages in the general population. Thus, across the Nation, blacks, Hispanics, and Asian American and Pacific Islanders each comprise approximately 3 percent of the sales workers in securities and financial occupations. American Indians are 0.2 percent and women are 24 percent. In the New York PMSA, blacks, Hispanics, and Asian American and Pacific Islanders are only 5 or 6 percent each of sales workers, and American Indians are 0 percent. Women are 27.8 percent.

Finally, table 3.30 shows race and gender of persons working in a variety of occupations in the classification of office and clerical workers. They are shown for two industry segments—banking and other saving institutions and "other finance" which includes securities firms. They are also shown for residents throughout the Nation, as well as in the New York PMSA.

Table 3.30 shows several interesting patterns. First, there is wide variability in the representation of minorities and women in different occupations within this job classification. For example, the percentages of minorities in these banking occupations throughout the United States range from 20 to nearly 40 percent, from about 13 to 42 percent in "other finance" throughout the United States, from approximately 47 to 78 percent in banking in the PMSA, and from about 27 to 79 percent in "other finance" in the PMSA. Throughout the United States the percentages of blacks in these occupations cover a broad range, from approximately 8 to 22 percent in banking, and from about 10 to 22 percent in "other finance." In the New York PMSA, the percentages of blacks range from approximately 25 to 60 percent in banking and from about 15 to 60 percent in "other finance."

Second, as has been found in previous tables, blacks, Hispanics, and Asian American and Pacific Islanders, are in nearly all instances more

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<sup>222</sup> U.S. Equal Employment Opportunity Commission, *Job Classification Guide* (Washington, DC, 1987).

**Table 3.28****Benchmarks of Racial and Gender Composition, Work Experience, Professionals<sup>1</sup> in the Finance Industry (Percentages)**

	Black	Hispanic	Asian/Pacific Islander	American Indian	Minority <sup>2</sup>	Women	Number of people
<b>Part A. United States</b>							
<b>Other finance</b>							
Management analysts	4.3	3.8	4.7	0.7	13.9	37.5	3,439
Underwriters	5.1	4.0	4.5	0.2	13.7	77.2	5,390
<b>Part B. New York PMSA</b>							
<b>Other finance</b>							
Management analysts	0.0	9.3	8.5	0.0	17.8	44.1	354
Underwriters	10.2	0.0	18.6	0.0	28.8	58.5	118

<sup>1</sup> Job classifications were assigned using U.S. Equal Employment Opportunity Commission, *Job Classification Guide* (Washington, DC, 1987).

<sup>2</sup> Blacks, Hispanics, Asian/Pacific Islanders, and American Indians are included in the category "Minorities." "Blacks" are non-Hispanic blacks. Percentages are calculated excluding nonresident aliens.

<sup>3</sup> "Other finance" excludes banking and other savings institutions, insurance, and real estate.

SOURCE: Information provided to the U.S. Commission on Civil Rights by the U.S. Equal Employment Opportunity Commission, "Report: Occupation by Industry/Race/Sex; Database: 1990 Census; 12/08/93"

**Table 3.29****Benchmarks of Racial and Gender Composition, Work Experience, Sales Workers<sup>1</sup> in the Finance Industry (Percentages)**

	Black	Hispanic	Asian/Pacific Islander	American Indian	Minority <sup>2</sup>	Women	Number of people
<b>Part A. United States</b>							
<b>Other finance</b>							
Securities & financial services sales occupations	3.4	3.1	2.6	0.2	9.3	24.4	266,503
<b>Part B. New York PMSA</b>							
<b>Other finance</b>							
Securities & financial services sales occupations	5.9	4.7	4.9	0.0	15.5	27.8	30,381

<sup>1</sup> Job classifications were assigned using U.S. Equal Employment Opportunity Commission, *Job Classification Guide* (Washington, DC, 1987).

<sup>2</sup> Blacks, Hispanics, Asian/Pacific Islanders, and American Indians are included in the category "Minorities." "Blacks" are non-Hispanic blacks. Percentages are calculated excluding nonresident aliens.

<sup>3</sup> "Other finance" excludes banking and other savings institutions, insurance, and real estate.

SOURCE: Information provided to the U.S. Commission on Civil Rights by the Equal Employment Opportunity Commission, "Report: Occupation by Industry/Race/Sex; Database: 1990 Census; 12/08/93"

**Table 3.30****Benchmarks of Racial and Gender Composition, Work Experience, Office and Clerical Workers<sup>1</sup> in the Finance Industry (Percentages)**

	Black	Hispanic	Asian/ Pacific Islander	American Indian	Minority <sup>2</sup>	Women	Number of people
<b>Part A. United States</b>							
<b>Banking and other savings institutions</b>							
Supervisors, financial records process	8.2	6.2	5.1	0.5	20.2	80.0	5,715
Bank tellers	9.0	7.1	3.8	0.3	20.4	89.9	503,981
Investigators & adjusters, except insurance	11.9	7.6	3.9	0.4	23.8	85.8	138,912
Bookkeepers, accounting & audit clerks	12.9	7.1	4.2	0.3	24.6	86.6	117,256
Bill & account collectors	14.4	8.4	2.1	0.5	25.4	62.8	18,977
Billing, posting, & calculating machine operators	15.2	6.7	6.8	0.5	29.3	90.4	22,539
Statistical clerks	18.7	7.4	5.0	0.2	31.6	68.6	5,650
General office clerks	19.3	10.3	7.4	0.3	37.5	85.0	59,481
Records clerks	14.2	8.8	5.3	0.1	28.5	79.4	13,212
File clerks	21.5	8.9	5.2	0.5	36.3	84.6	14,323
Office machine operators, not elsewhere classified	21.6	7.9	9.0	0.1	39.2	57.9	5,831
<b>Other finance<sup>3</sup></b>							
Supervisors, financial records process	9.7	6.1	3.2	0.3	19.3	54.1	3,857
Bank tellers	10.8	7.5	2.7	0.4	21.5	82.0	5,042
Investigators & adjusters, except insurance	9.6	7.0	3.0	0.4	20.0	79.8	56,578
Bookkeepers, accounting & audit clerks	11.5	7.0	3.8	0.2	22.5	78.4	35,196
Bill & account collectors	10.3	9.2	1.8	0.8	22.2	55.9	12,830
Billing, posting, & calculating machine operators	10.7	10.1	5.4	1.1	27.2	75.2	467
Statistical clerks	10.5	5.5	3.9	0.1	13.0	64.8	3,173
General office clerks	12.8	9.3	4.6	0.3	19.6	75.9	32,744
Records clerks	13.3	6.2	3.8	0.3	23.6	54.8	7,086
File clerks	20.3	9.8	6.3	0.8	37.2	74.2	5,439
Office machine operators, not elsewhere classified	21.5	16.6	1.4	2.1	41.6	52.6	1,302

Continued

**Table 3.30 (Continued)**

	Black	Hispanic	Asian/ Pacific Islander	American Indian	Minority <sup>2</sup>	Women	Number of people
<b>Part B. New York PMSA</b>							
<b>Banking and other savings institutions</b>							
Supervisors, financial records process	25.0	15.0	21.9	0.0	61.9	60.3	360
Bank tellers	32.9	16.8	9.4	0.1	59.3	76.6	17,757
Investigators & adjusters, except insurance	32.4	16.5	5.1	0.3	54.2	75.3	5,962
Bookkeepers, accounting & audit clerks	36.7	17.9	10.8	0.0	66.0	65.2	5,166
Bill & account collectors	53.7	8.9	3.7	0.0	66.3	71.1	460
Billing, posting, & calculating machine operators	57.9	13.0	6.9	0.0	77.8	76.2	492
Statistical clerks	35.7	8.8	10.0	0.0	54.5	38.0	650
General office clerks	38.9	14.2	12.6	0.5	47.5	70.3	7,402
Records clerks	44.3	8.5	6.5	0.0	59.3	61.1	875
File clerks	40.0	18.0	12.5	0.0	70.5	70.8	1,027
Office machine operators, not elsewhere classified	47.3	11.3	8.8	0.0	67.4	51.0	478
<b>Other finance<sup>3</sup></b>							
Supervisors, financial records process	25.0	11.1	9.9	0.0	46.1	49.5	503
Bank tellers	21.9	9.5	0.0	0.0	31.4	53.3	105
Investigators & adjusters, except insurance	27.3	14.1	4.0	0.0	45.9	63.8	1,711
Bookkeepers, accounting & audit clerks	29.2	14.3	5.8	0.0	49.5	59.9	3,657
Bill & account collectors	15.0	9.9	2.6	0.0	27.5	38.6	233
Billing, posting, & calculating machine operators	*	*	*	*	*	*	45
Statistical clerks	13.3	10.7	4.0	0.0	28.1	47.8	577
General office clerks	22.3	13.4	6.3	0.0	42.1	51.5	5,541
Records clerks	23.0	12.8	3.3	0.0	39.1	43.6	1,864
File clerks	44.2	12.7	7.9	0.0	64.8	62.9	762
Office machine operators, not elsewhere classified	60.5	18.4	0.0	0.0	78.9	34.2	114

<sup>1</sup> Occupations classified as office and clerical workers were selected using U.S. Equal Employment Opportunity Commission, *Job Classification Guide* (Washington, DC, 1987).

<sup>2</sup> Blacks, Hispanics, Asian/Pacific Islanders, American Indians and "Other" are included in the category "Minorities." "Blacks" are non-Hispanic blacks.

<sup>3</sup> "Other finance" excludes banking and other savings institutions, insurance, and real estate.

\* Too few for reliable percentages.

SOURCE: Information provided to the U.S. Commission on Civil Rights by the Equal Employment Opportunity Commission, "Report: Occupation by Industry/Race/Sex; Database: 1990 Census; 12/08/93"

highly represented in these occupations in the New York PMSA than they are in the United States population. Third, and not surprising, women predominate among office and clerical workers; this includes occupations in banking and other savings institutions and "other finance" throughout the United States. For example, throughout the United States, the proportion of women in office and clerical positions ranges from about 58 to 90 percent in banking and from approximately 53 to 82 percent in "other finance." Within the New York PMSA, women also dominate most of these occupations. For example, women range from about 38 to 77 percent of census respondents designating these as their occupations in banking in the PMSA, and from 34 to 64 percent of those designating these occupations in "other finance" in the PMSA. Statistical clerk is the only clerical occupation in banking where women are not a majority in the New York PMSA. In the New York PMSA, women are not a majority in several occupations within "other finance," including office machine operator (not elsewhere classified), records clerk, statistical clerk, bill and account collectors and supervisors, and financial records processors.

Notably one of the occupations that is most dominated by women is bank teller. In banking, about 77 percent of the bank tellers in the PMSA and 90 percent of those in the United States are women. Even in "other finance," 82 percent of the bank tellers in the United States are women. But, among persons in "other finance" in the New York PMSA, bank teller is *not* one of the occupations most dominated by women. Only 53 percent of bank tellers in "other finance" are women. Here, occupations like file clerk and investigator and adjuster (except in insurance) have much larger percentages of women (63 and 64 percent).

Several important points are illustrated with table 3.30. First, each job classification includes a large number of occupations (only some of which are shown in the table). The racial and gender composition of persons in each of these occupations varies widely. The racial and gender composition of the job classification depends not only on the percentages of minorities or women in each occupation, but also upon the mixture of different occupations in the job classification. Therefore, changes in the types of jobs in the job

classification could alter the racial and gender composition of the job classification. For example, bank teller is by far the most common occupation in banking. It is also one of the ones most dominated by women. However, if half of the bank teller positions are eliminated as, in fact occurred over time and is shown in the EEOC data examined earlier, then office and clerical workers in banking would include proportionally fewer women simply because of their numbers within this classification. The earlier analysis of EEOC data suggested that fewer minorities and women were employed in the finance industry because of changes among job classifications in the types of jobs in the industry (e.g., a tremendous reduction in office and clerical workers and growth in professionals and sales workers). Table 3.30 suggests that changes over time in the proportions of minorities and women employed in the finance industry could also result from changes in types of jobs within the job classification.

In sum, the preceding data show that disparities do exist in the employment of women and minorities in the finance industry. Whether discrimination has caused, or played a role in, these disparities is inconclusive. What is clear is the following:

1. Women and minorities have better proportional representation in the banking segment of the finance industry than they do in the securities industry. In 1994, overall, 47.7 percent of all employees in the finance industry were women; 50 percent of all employees of the finance industry were women, while 40.6 percent of employees in the securities segment were women. Similarly, 34.1 percent of employees in the finance industry were minority, 41.2 percent of all employees in the banking segment were minority, and 26.2 percent of all employees in the securities segment were minority (figure 3.3).
2. Women and minorities were proportionally best represented in the 1994 office and clerical positions, both in the securities and banking areas (figure 3.4); both enjoyed proportionally better representation in the banking than in the securities industry.
3. From 1987 to 1996, the banking segment underwent changes, including the diversification of products and services and techno-

logical changes. These and other changes resulted in a decrease in the number of employees in the banking area from more than 150,000 workers in 1984 to 90,000 in 1996. As a result of the loss of jobs in the banking segment, the proportions of jobs changed. For example, in 1987, 47 percent of all banking employees were office and clerical workers, where as in 1996 only 33 percent were such employees. The decrease in the percentage was offset by a growth in the percentages of officers and managers, sales workers, and professionals, even though each of these three categories, with the exception of sales workers, lost employees from 1987 to 1996. Similarly, in the securities segment, the proportion of office and clerical worker positions decreased and a corresponding offset in the proportions of officials and managers, sales workers, and professionals occurred. However, unlike the banking segment, the actual numbers of employees in officials and managers and sales workers and professionals increased in the securities segment. Consequently, since the job classification that employed the largest proportions of minorities and women had the greatest numbers of job losses, the proportions of women and minorities in the finance industry decreased.

4. Even in light of the third conclusion above, there is no clear explanation of why women and minorities lost proportionally in other job classifications within the banking industry. For example, the number of employees within the banking sales worker classification doubled from 1987 to 1996, but the representation of women and blacks dropped dramatically.

Tables 3.22 through 3.30 have presented benchmarks that suggest what the racial and gender composition of a qualified work force might look like according to broad measures of education, skills and work experience. A comparison of the numbers of minorities and women acquiring jobs in the industry and attaining various levels of education is presented next.

### **Comparing the Finance Industry's Employment Rates with Benchmarks of the Qualified Work Force**

Having identified a number of benchmarks showing the racial and gender composition of populations with a variety of pertinent qualifications, how do the finance industry's employment rates compare? Tables 3.31 through 3.34 show the racial and gender composition of the finance industry for each of the four job classifications against a selection of these benchmarks. The benchmarks are ordered according to the representation of minorities and women within each one. Benchmarks where more minorities and women are represented are near the tops of the tables, and benchmarks where fewer minorities and women are represented are shown near the bottoms of the tables. The tables suggest that very different selection criteria operate in the banking and securities segments of the finance industry.

Table 3.31 shows the finance industry's office and clerical workers along with benchmarks for residents of both New York City and the New York PMSA. The table shows the labor force, three levels of education, and some work experience criteria.

Minorities, and specifically blacks, employed as office and clerical workers in securities firms seem to be largely New York area residents with at least a high school degree. Larger proportions of minorities, and blacks in particular, are employed in the banking segment, and more women are employed in both the securities and banking segments than are represented in the labor force or educational benchmarks in table 3.31. Not surprisingly, the overall racial and gender composition of the banking segment is largely reflective of the composition of bank tellers and general office clerks employed in the banking industry as reported in the 1990 census; bank tellers and general office clerks comprise a large percentage of the banking industry occupations reported in the census and within the New York PMSA.

Table 3.32 shows the racial and gender composition of the finance industry's sales workers in relation to various benchmarks. The benchmarks included in this table are those representing nationwide populations. The benchmarks in the table include a variety of criteria,

such as work experience, education, specialized education, and industry certification.

Notably, the securities industry employs proportionally fewer minorities and women as sales workers than pass the Series 7 examination, one of the major tests required for certification. In banking, the percentage of black and women sales workers is not very different from their percentages in the labor force throughout the United States. Indeed, requiring an associate's or bachelor's degree for sales workers would have limited the numbers of minorities more than the banking industry has, according to the benchmarks in this table.

Table 3.33 suggests that in hiring professionals, the differences in the proportions of blacks in the securities segment versus the banking industry may revolve around such things as whether bachelor's or associate's degrees are required. The proportions of minorities, and more specifically of blacks, employed as professionals in the securities segment are larger than the proportions passing the Series 7 examination and are larger than the proportions employed in such professional jobs in the finance industry as financial manager and underwriter. Indeed, the percentage of blacks employed in the securities industry matches the percentage of blacks who received bachelor's degrees in 1992–93, and is slightly more than the percentage of blacks who have reached the bachelor's degree level or higher throughout the United States (compare 6.9 and 5.9 percent). The proportion of blacks employed in banking is much higher. It compares better to the proportions of blacks with at least bachelor's degrees in the New York PMSA, or with associate's degrees in specialized educational fields such as computer and information science.

The banking and securities segments employ more Asian/Pacific Islanders as professionals than the application of these educational benchmarks predict. The percentage of minorities is correspondingly higher. Further, the proportion of women employed in both securities and banking is low compared with educational benchmarks at either the associate's or bachelor's degree levels. These disparities could be explained by a number of factors. Because education represents only one potential factor used to determine employability, and its import differs according to both job classification and in-

dustry, it is difficult to extrapolate much from these numbers, and they may or may not represent bias.

Table 3.34 shows that more blacks are employed as officials and managers in the securities industry than one might expect based upon persons taking and passing the Series 7 exam, or persons employed as financial managers or other financial officers in either banking or other finance throughout the United States (compare with figure 3.51). Indeed, the proportions of blacks and other minorities employed as officials and managers in securities firms are similar to the racial composition of recent bachelor's degree recipients. This similarity was noted previously with the proportion of blacks employed as professionals in the securities industry. The racial makeup of professionals and officials and managers classifications are much alike in the securities industry.

Among officials and managers the proportion of minorities employed in banking (22.5 percent) falls far short of the proportions identified among financial managers (34.1 percent) and other financial officers (34.7 percent) in banking using U.S. census data for the PMSA. Minority employment percentages as officials and managers in banking are more similar to financial managers employed in "other finance" in the New York PMSA, or to persons with graduate and professional degrees in the New York PMSA, or to persons who recently earned bachelor's degrees in computer science.

The proportions of women employed as officials and managers in both banking and securities are lower than many of the benchmarks. These proportions, however, compare to the proportion of women passing the Series 7, the proportion of women employed as financial officers and managers in "other finance" either in the New York PMSA or the United States, and the proportion of women earning degrees in certain specialized fields, such as bachelor's degrees in computer science.

Tables 3.31 through 3.34 juxtaposed only a sampling of the benchmarks against the finance industry's employment. The comparisons shown here assumed that the industry's employment rates derive from recruitment strategies and job requirements that are reflected in these benchmarks.



**Table 3.31**

**Benchmarks of Racial and Gender Composition, New York City and New York PMSA, Office and Clerical Workers (Summary of Tables 3.22–3.30) (Percentages)**

	Black	Hispanic	Asian/ Pacific Islander	American Indian	Minority <sup>1</sup>	Women
<b><u>Banking</u></b>	<b>36.2</b>	<b>15.4</b>	<b>9.6</b>	<b>–</b>	<b>61.4</b>	<b>70.9</b>
<b>Reported employment in banking &amp; other savings institutions in 1990 census (NY PMSA)</b>						
Bank tellers	32.9	16.8	9.4	0.1	59.3	76.6
General office clerks	38.9	14.2	12.6	0.5	47.5	70.3
<b>Highest level of education—associate’s degree or some college without a degree</b>						
NYC	30.6	17.4	5.7	0.3	54.0	53.5
NY PMSA	27.7	15.7	5.2	0.3	48.9	53.8
<b>Highest level of education—high school degree or GED</b>						
NYC	27.4	17.3	4.8	0.2	49.7	58.7
NY PMSA	25.1	15.8	4.4	0.2	45.5	58.9
<b>Reported employment in “other finance” in 1990 census (NY PMSA)</b>						
Bookkeepers, accounting & audit clerks	29.2	14.3	5.8	0.0	49.5	59.9
General office clerks	22.3	13.4	6.3	0.0	42.1	51.5
Civilian labor force						
NYC	26.5	20.1	7.6	0.3	54.6	47.3
NY PMSA	24.2	18.3	7.0	0.3	49.8	47.2
<b>Minimal educational attainment—high school degree or more</b>						
NYC residents	23.7	14.0	6.8	0.3	44.7	54.2
NY PMSA residents	21.3	12.5	6.2	0.2	40.3	54.0
<b><u>Securities</u></b>	<b>23.3</b>	<b>11.8</b>	<b>5.6</b>	<b>–</b>	<b>40.9</b>	<b>62.2</b>

<sup>1</sup> Blacks, Hispanics, Asian/Pacific Islanders, and American Indians are included in the category “Minorities.” “Blacks” are non-Hispanic blacks.

**Table 3.32****Benchmarks of Racial and Gender Composition, Sales Workers, United States  
(Summary of Tables 3.22–3.30) (Percentages)**

	Black	Hispanic	Asian/ Pacific Islander	American Indian	Minority <sup>1</sup>	Women
<b>Banking</b>	10.4	8.7	8.5	–	27.7	43.8
<b>Civilian labor force</b>						
United States	10.6	8.1	2.9	0.7	22.3	45.8
<b>Business management and administrative services—associate's degrees conferred by year</b>						
1991–92	10.2	5.7	3.6	0.8	20.3	69.0
1992–93	10.9	6.5	3.6	0.8	21.8	68.1
<b>Highest level of education—U.S. citizens</b>						
Associate's degree or some college	10.1	5.4	2.4	0.7	18.7	53.1
Associate's degree	9.0	5.5	3.4	0.7	18.7	55.7
Bachelor's degree	6.0	3.2	4.7	0.3	14.2	48.1
<b>Minimal educational attainment—U.S. citizens</b>						
Some college or more	8.2	4.4	3.5	0.5	16.7	49.8
Bachelor's degree or more	5.9	3.2	4.9	0.3	14.3	45.7
<b>Passing the Series 7 exam—general securities registered representative</b>						
Persons taking	5.6	5.3	6.2	0.9	17.9	30.2
Persons passing	3.5	4.1	5.9	0.6	14.2	26.0
<b>Reported employment in securities and financial services sales occupations—U.S. census</b>						
"Other finance"	3.4	3.1	2.6	0.2	9.3	24.4
<b>Securities</b>	2.6	2.1	3.2	–	7.9	18.3

<sup>1</sup> Blacks, Hispanics, Asian/Pacific Islanders, and American Indians are included in the category "Minorities." "Blacks" are non-Hispanic blacks. Percentages are calculated excluding nonresident aliens.

**Table 3.33****Benchmarks of Racial and Gender Composition, Professionals (Percentages)**

	Black	Hispanic	Asian/ Pacific Islander	American Indian	Minority <sup>1</sup>	Women
<b>Banking</b>	12.5	6.6	11.6	–	30.8	43.2
<b>Computer and information science—associate's degrees conferred by year</b>						
1991–92	12.8	6.9	5.6	0.7	26.0	50.9
1992–93	11.8	8.8	5.4	1.2	27.2	50.8
<b>Minimal educational attainment—bachelor's degree or more</b>						
NY PMSA	12.0	6.4	9.1	0.2	27.7	49.0
United States	5.9	3.2	4.9	0.3	14.3	45.7
<b>Business management and administrative services—associate's degrees conferred by year</b>						
1991–92	10.2	5.7	3.6	0.8	20.3	69.0
1992–93	10.9	6.5	3.6	0.8	21.8	68.1

Continued

	Black	Hispanic	Asian/ Pacific Islander	American Indian	Minority <sup>1</sup>	Women
<b>Table 3.33 (Continued)</b>						
<b>Degrees conferred on U.S. citizens, 1992–93</b>						
Bachelor's	6.9	4.0	4.6	0.5	16.0	54.6
<b>Securities</b>	<b>6.9</b>	<b>4.1</b>	<b>10.0</b>	<b>–</b>	<b>21.1</b>	<b>35.2</b>
<b>Professionals reporting employment in the finance industry ("other finance")—U.S. census</b>						
Management analysts	4.3	3.8	4.7	0.7	13.9	37.5
Underwriters	5.1	4.0	4.5	0.2	13.7	77.2
<b>Passing the Series 7 exam—general securities registered representative</b>						
Persons taking	5.6	5.3	6.2	0.9	17.9	30.2
Persons passing	3.5	4.1	5.9	0.6	14.2	26.0

<sup>1</sup> Blacks, Hispanics, Asian/Pacific Islanders, and American Indians are included in the category "Minorities." "Blacks" are non-Hispanic blacks. Percentages are calculated excluding nonresident aliens.

**Table 3.34**  
**Benchmarks of Racial and Gender Composition, Officials and Managers (Percentages)**

	Black	Hispanic	Asian/ Pacific Islander	American Indian	Minority <sup>1</sup>	Women
<b>Reported employment in banking &amp; other savings institutions in 1990 census (NY PMSA)</b>						
Financial managers	16.1	10.2	7.4	0.3	34.1	46.5
Other financial officers	14.6	10.4	9.4	0.2	34.7	49.3
<b>Degrees conferred in computer and information science, 1991–92</b>						
Bachelor's degree	9.5	4.0	9.5	0.4	23.3	28.7
<b>Highest level of education</b>						
Graduate or professional degree (NY PMSA)	9.7	5.6	7.9	0.2	23.3	46.6
Bachelor's degree (NY CMSA)	9.0	4.9	7.7	0.1	21.8	48.9
<b>Associate's degrees conferred on U.S. citizens by year</b>						
1992–93	8.5	6.0	3.3	0.9	18.7	58.9
1993–94	8.8	6.1	3.5	0.9	19.3	59.3
<b>Banking</b>	<b>8.5</b>	<b>5.3</b>	<b>8.6</b>	<b>–</b>	<b>22.5</b>	<b>34.4</b>
<b>Reported employment in "other finance" in 1990 census (NY PMSA)</b>						
Financial managers	8.1	3.7	6.7	0.0	18.5	34.3
Other financial officers	7.7	6.6	5.2	0.1	19.6	32.4
<b>Degrees conferred on U.S. citizens, 1992–93</b>						
Bachelor's	6.9	4.0	4.6	0.5	16.0	54.6
<b>Securities</b>	<b>6.8</b>	<b>3.4</b>	<b>4.2</b>	<b>–</b>	<b>14.4</b>	<b>25.9</b>
<b>Reported employment in banking &amp; other savings institutions in 1990 census (United States)</b>						
Financial managers	6.2	4.7	3.4	0.2	14.6	54.6
Other financial officers	5.1	4.5	3.4	0.2	13.2	53.9
<b>Passing the Series 7 exam—general securities registered representative</b>						
Persons taking	5.6	5.3	6.2	0.9	17.9	30.2
Persons passing	3.5	4.1	5.9	0.6	14.2	26.0
<b>Reported employment in "other finance" in 1990 census (United States)</b>						
Financial managers	3.6	3.8	2.9	0.3	10.6	35.2
Other financial officers	4.9	4.7	3.1	0.3	12.9	40.5

<sup>1</sup> Blacks, Hispanics, Asian/Pacific Islanders, and American Indians are included in the category "Minorities." "Blacks" are non-Hispanic blacks.

## Education as a Job Qualification

Many of the benchmarks presented earlier in this section were based upon levels of education under the assumption that more education is necessary for higher status jobs, for example, officials and managers versus office and clerical workers. Table 3.35 contains 1990 census data showing the distribution of education among persons in certain occupations found in the finance industry. The educational data are for persons who are employed in these occupations in any industry throughout the United States.

The table shows that officials and managers generally have more education than office and clerical workers. The median years of schooling for persons with the jobs shown in the officials and managers classification is about 14 years. About 30 percent of financial managers have some college education or an associate's degree and another 39 percent have a bachelor's degree. Approximately 34 percent of other financial officers have had some college education or an associate's degree, and about another 35 percent have a bachelor's degree.

Office and clerical workers are more likely to have only a high school degree or some college education. For example, approximately 43 percent of bank tellers have a high school degree, and another 43 percent have had some college education or have an associate's degree. Thirty-eight percent of general office clerks have a high school degree, and about 40 percent have some college education or an associate's degree. The median years of schooling for both bank tellers and general office clerks is 12 years. Supervisors of the financial records process have slightly higher education, a median schooling of 13 years, with 28 percent having a bachelor's degree. File clerks and some machine operators have less schooling, with more than 18 percent of them not graduating from high school. At the same time, not all officials and managers are highly educated. Table 3.35 also shows that almost 14 percent of financial managers and more than 16 percent of other financial officers have only a high school degree.

By how much, if to any appreciable degree, do the numbers of women and minorities in the finance industry fall below their numbers in the general population? This section has presented a series of benchmarks demonstrating that minority representation depends upon a number of

factors and assumptions about the hiring and recruitment process. The benchmarks shown here suggested the effects that these and other job requirements might have on the employment of minorities and women in this industry.

At least some of the benchmarks were comparable to the proportions of minorities and women employed in the finance industry in each of the four job classifications. Of course, many of the benchmarks are subject to bias. The biases of some of them, such as educational achievements, may not be attributable to the finance industry, while the biases of other benchmarks, such as having work experience in the industry, are. However, assuming no bias is present, the benchmarks that would produce the different racial compositions in the banking and securities segments of this industry could yield insight into how recruitment strategies and job requirements may vary. The benchmarks suggest that few, if any, educational requirements are imposed when recruiting office and clerical workers, sales workers, and professionals in banking. However, educational requirements, possibly specialized educational requirements, are used for officials and managers in banking. In securities, educational requirements appear to be used in all four job classifications. And, although certification may be a barrier for sales workers in securities, it may not be for professionals or officials and managers. Proportionally more blacks are employed as professionals and officials and managers in securities than pass the certification tests.

Finally, U.S. census data show that those in the financial officials and managers classifications generally have at least some college, that is, more education than persons in the office and clerical workers classification. However, the amount of education of financial officials and managers covers a wide range, with 14 to 16 percent of them having only a high school degree.

This section has begun to address the ways in which recruitment and job requirements for education and other skills affect the racial and gender composition of the industry's employees. The next section will look in more detail at how these factors have affected employment figures in the finance industry from 1987 to 1996.

**Table 3.35****Educational Levels of Persons in Selected Occupations, United States, 1990**

	Median years of schooling	Not high school graduate	High school graduate (or equivalent)	Some college or associate's degree	Bachelor's degree	Master's degree	Doctoral or professional degree	Number of persons
<b>Officials and managers</b> <sup>1</sup>								
Financial managers	14.2	1.8	13.7	29.7	39.2	14.1	1.5	635,911
Other financial officers	13.9	2.1	16.4	33.7	35.1	10.6	2.0	679,275
<b>Office and clerical workers</b> <sup>1</sup>								
Supervisors, financial records process	13.2	2.8	24.3	39.4	28.2	4.7	0.5	110,386
Bank tellers	12.0	6.4	42.8	43.1	6.9	0.6	0.2	509,023
Investigators & adjusters, except insurance	12.6	5.8	31.1	42.8	17.7	2.2	0.5	581,830
Bookkeepers, accounting & audit clerks	12.2	6.7	37.9	44.1	9.8	1.2	0.3	1,921,952
Bill and account collectors	12.3	8.7	34.3	41.7	13.4	1.3	0.5	163,112
Billing, posting, & calculating machine operators	12.1	8.5	40.2	42.0	7.9	1.1	0.3	53,354
Statistical clerks	12.6	6.5	30.0	42.6	16.0	4.0	0.8	148,578
General office clerks	12.0	10.8	38.4	40.2	8.7	1.4	0.4	1,491,116
Records clerks	12.4	6.8	35.6	39.9	14.4	2.5	0.8	137,972
File clerks	11.8	18.2	36.2	37.7	6.5	1.1	0.3	267,946
Office machine operators, not elsewhere classified	11.4	18.2	44.6	31.0	4.9	0.8	0.4	34,726

<sup>1</sup> Occupations were classified using U.S. Equal Employment Opportunity Commission, Job Classification Guide (Washington, DC, 1987).

SOURCE: Information provided to the U.S. Commission on Civil Rights by the U.S. Equal Employment Opportunity Commission, "Report: Occupation by Education/Race/Sex; Database: 1990 Census; 09/01/94"; and "Median Years of School Completed by Employees in the Financial Industries"

## Section VI. Changes in the Finance Industry's Employment over Time

### Overall Changes in Employment

The EEOC data show an overall decline in the number of employees in the finance industry, but as suggested by a previous section, the banking segment is decreasing while the smaller securities segment is growing. Figure 3.45 shows changes in the total number of employees working in this industry across several years. Data are shown for 1987, largely reported before the precipitous 500-point drop in the stock market that occurred in October of that year, and for 1989, as well as for 1991 through 1996. The top lines in the graphs show the number employed in the finance industry as a whole; the bottom lines show the banking and securities segments.

The marked decline in the number of employees in the finance industry from 1987 to 1989 and continuing thereafter is obvious. In 1987 New York City's finance industry, as reported to EEOC, employed nearly 338,000. This number decreased to 315,000 in 1989, then to 285,000 in 1991. Since 1991 it has fluctuated between about 272,000 and 282,000 (see the top line in figure 3.45). The stock market readjustment thus appears to have been followed by a major reduction in the number of employees lasting for a period of perhaps 3 years before employment in this industry settled into a fairly stable and flat trend lasting through 1996.

The trends shown in the overview section led us to expect that the banking and securities segments of the finance industry would not have the same employment trends over time. Indeed the EEOC data do show the expected effects of the banking industry's consolidations and mergers and replacement of workers with technological devices. The banking segment's work force decreased in size across the period. With more than 150,000 workers in 1987, it had decreased to about 120,000 in 1991 and further to 90,000 in 1996. A small increase in 1995 added only about 2,000 employees to the 1994 work force (middle line, figure 3.45).<sup>223</sup> The securities industry's

work force, on the other hand, decreased only between 1987 and 1991, then grew. The growth was substantial between 1992 and 1993, but has continued more moderately through 1996 (bottom line, figure 3.45). The securities segment of the finance industry had roughly 93,000 workers in 1987, 73,000 in 1991 at its low point, 79,000 in 1992, 98,000 in 1993, 106,000 in 1994, and 110,000 in 1996. Because of these differences in decline and growth, the banking segment, which had accounted for 45 percent of the finance industry's work force in 1987, had only 34 percent of the finance industry's employees by 1994 and only 33 percent in 1996. The securities segment, which had only 28 percent of the industry's employees in 1987, was the largest segment by 1994, with 38 percent of its employees, and had 40 percent of the industry's employees by 1996.<sup>224</sup> Thus, in 1987 banking had been the dominant segment of the finance industry, but by 1994 securities was the segment accounting for the largest proportion of employees, and it had become increasingly dominant by 1996.

The nature of changes in the finance industry is further revealed by the changes across time in the numbers of employees within job classifications. As with the industry segments as a whole, the number of officials and managers employed has generally declined in banking and increased in securities. Indeed, 18,000 fewer officials and managers were employed in banking in 1994 than in 1987. Some growth occurred thereafter, but by 1996 banking had only 2,500 more officials and managers than at its low point in 1994. In securities, 10,000 more officials and managers were employed by 1996 than had been in 1987; three-quarters of them had been added by 1994.<sup>225</sup> Professionals in the securities industry increased dramatically, from about 20,000 in 1987 to about 33,000 in 1994 and 36,000 in 1996.<sup>226</sup> During the same period, office and clerical workers in the banking industry decreased tremendously, from about 71,000 in 1987 to about 37,000 in 1994 and to 30,000 in 1996.<sup>227</sup> The number of sales workers in the banking in-

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<sup>223</sup> The decrease in the number of banking establishments in New York City over time is further evidence of the effect of consolidations and mergers on the decline in employment in this industry. The number of banking establishments in the sample was 339 in 1987, a little over 300 in 1989 and 1991, a little under 300 in 1992 and 1993, 258 in 1994, and below 250 in 1995 and 1996. EEOC data.

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<sup>224</sup> EEOC data. See app. B, table B.2.

<sup>225</sup> These trends will be discussed in more detail below. See fig. 3.50(a).

<sup>226</sup> See fig. 3.51(a).

<sup>227</sup> See fig. 3.53(a).

dustry increased substantially, primarily because there were so few in 1987—about 1,600 which doubled to 3,200 in 1994, and continued to increase to 3,500 in 1996.<sup>228</sup> These changes will be discussed in more detail below as the trends in the finance industry are examined for different effects upon the employment of minorities and women.

### Changes in the Employment of Minorities and Women

What happened to the employment of minorities and women during this period? Figures 3.46 to 3.48 show changes in the numbers and the percentages of minorities and women employed in the finance industry across several years. In part (a) of each graph, the top line repeats the total number employed for a visual comparison of changes in the total number employees against the number of women or minorities.

Figure 3.46(a) shows that the employment of minorities and women largely mimicked the employment trend of the finance industry as a whole; the numbers employed dropped dramatically between 1987 and 1992 and remained fairly stable between 1992 and 1996. However, the number of Asian American and Pacific Islanders employed in the finance industry in New York City gradually increased throughout the entire period, from about 14,000 in 1987 to nearly 16,000 in 1989, 18,000 in 1991 and 1992, 20,000 in 1993, nearly 21,000 in 1994, and about 23,000 in 1995 and 1996.

With the decline in employment, some protected groups did not maintain their proportional representation through this period, at least as far as the finance industry as a whole was concerned. Figure 3.46(b) shows the percentages of women and minorities in the finance industry's work force decreased during the years studied. The most noticeable trend in this chart is one showing that the proportion of women gradually but steadily declined, from 52.2 percent of the work force in 1987 to 47.7 percent in 1994 and 46.7 percent in 1996. With respect to minorities, their percentage of the industry's work force remained about the same throughout, about 33 percent. However, the percentage of blacks, like women, decreased, from 19.6 percent

in 1987 to 17.4 percent in 1994 and 16 percent in 1996. The percentage of Hispanics remained nearly constant, ranging between 8.2 and 8.9 percent. The percentage of Asian American and Pacific Islanders increased, as was obvious even from the raw numbers discussed above, from 4.2 to 7.6 percent in 1994 and 8.4 percent in 1996.

Two major effects were occurring in the finance industry. First, the banking industry has been downsizing, apparently because of a combination of consolidations and mergers and technological changes. The securities industry, on the other hand, has been enlarging its work force, particularly during the period of 1992 to 1994. Second, the banking segment employs a much larger proportion of women and minorities than the securities segment. Together, the decrease in employment in banking, an industry segment with larger percentages of minorities and women, and the expansion of employment in securities, a segment that has much smaller percentages of minority and female workers, would produce an overall industry trend showing a decrease in the representation of minorities and women. However, the underrepresentation of blacks and women was greater than that caused by the industry shift in employment from banking to securities.

Figures 3.47 and 3.48 show changes in the numbers and percentages of employees in banking and securities. The proportions shown in part (b) of the two charts are the more intriguing results. Figure 3.7(b) shows that the percentage of women employed in banking in New York City decreased from 56 percent in 1987 to 51 percent in 1994 and 50 percent in 1995 and 1996. Similarly, the percentage of blacks employed in banking decreased from 24 to 21 percent in 1994 and 20 percent in 1995 and 1996. As with the industry as a whole, the representation of Hispanics in banking remained very stable (at about 10 percent), and that of Asian American and Pacific Islanders doubled, from 5 to 10 percent.

For the securities segment, pictured in figure 3.48(b), women and blacks show only slight decreases in proportional representation from 1987 to 1996. Women are 42 percent of employees in 1987 and 39 percent in 1996; blacks are 12.6 percent in 1987 and 11.3 percent in 1996. The proportion of Hispanic and Asian American and Pacific Islander securities employees increases

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<sup>228</sup> See fig. 3.52(a).

across the period, from 5.7 to 6.9 percent for the former group, and 3.3 to 7.6 percent for the latter.

In recent years, the finance industry as a whole appears to have proportionally fewer black and female employees than in past years partly because the banking segment, which employed larger proportions of them, dwindled in size while the securities segment, which employed smaller proportions of them, grew after the 1987 stock market readjustment. Furthermore, there was an erosion in the proportions of women and blacks employed in the banking segment.

It is possible that the banking segment, where the proportion of blacks and women employed has decreased, is also one where technological change, the use of automated tellers, and a broadening of the products offered to customers may have brought about changes in the *types* of jobs in the industry. Some aspects of the EEOC data do suggest that the nature of banking jobs has changed. However, to the extent to which changes in job types are captured by the broad EEOC job classifications, they do not explain all the dwindling in employment of blacks and women in the banking industry segment.

Indeed, figure 3.49 shows that the types of jobs have changed over time in both banking and securities. In banking, the proportion of professional and sales worker jobs increased, while the proportion of office and clerical workers decreased. In 1987, 14 percent of banking employees in the New York City metropolitan area were professionals, 1 percent were sales workers, and 47 percent were office and clerical workers. In 1994, 21 percent were professionals, 3 percent were sales workers, and about 40 percent were office and clerical workers. By 1996, 22 percent of employees in banking were professionals, 4 percent were sales workers, and only 33 percent were office and clerical workers. The year 1996 also showed a small increase in the percentage of officials and managers in banking over 1994 levels.

In the securities segment, the proportions of officials and managers and professionals increased, while the proportion of office and clerical workers decreased. In 1987, 13 percent of employees in securities were officials and managers, 21 percent were professionals, and about 45 percent were office and clerical workers. By

1994 the percentages of officials and managers and professionals had increased to 19 percent and 31 percent, respectively, while the percentage of office and clerical workers decreased to 34 percent. By 1996 officials and managers and professionals were 20 and 33 percent of the employees, while office and clerical workers were only 30 percent.

Because the largest proportions of blacks and women are employed as office and clerical workers, a decrease in the proportion of such workers could explain why fewer blacks and women are employed. But it does not. Figures presented below show that even though, in 1994 both banking and securities had proportionately fewer office and clerical workers and proportionately more higher level employees—officials and managers or professionals or sales workers—these changes occurred for different reasons in the two industry segments.

Figures 3.50 through 3.53 show side-by-side graphs of trends in employment in the four job classifications over time for the banking and securities industry segments, both by number and percentage. The top line in part (a) of each graph shows the overall employment trend, regardless of race or gender, in each job classification. The lines below that show the trends for women, minorities collectively, and blacks, Hispanics, and Asian American and Pacific Islanders. Part (b) of the figures shows changes in the percentages of women, minorities, blacks, Hispanics, and Asian American and Pacific Islanders employed in the industry segments.

The figures show that the banking industry's dramatic changes in the types of jobs have had major effects on the numbers of blacks and women employed although not always on the proportion employed. For example, in banking, as figure 3.53(a) indicates, the decrease in office and clerical workers was very large. Between 1987 and 1994, the number of office and clerical workers was cut almost in half, not just overall but also for women and blacks. The number of office and clerical workers dropped from about 71,000 to 37,000 overall, from about 52,000 to 26,000 for women, and from about 26,000 to 13,000 for blacks (figure 3.53(a)). Decreases in the number of office and clerical workers employed in banking continued between 1994 and 1996, with the result that by 1996 this industry segment had only 30,000 office and clerical



workers of whom 22,000 were women and 11,000 were blacks.

Apart from office and clerical workers in banking, the number of officials and managers also decreased substantially (figure 3.50(a)); the number of professionals decreased slightly (figure 3.51); and, in contrast, the number of sales workers increased sharply (figure 3.52). But, the changes in these higher level jobs did not affect such large numbers of people. And, because blacks and women were less often employed in such jobs, these changes affected much smaller numbers of blacks and women. For example, following the overall trend for banking jobs as officials and managers, the number of black officials and managers dropped from about 4,500 in 1987 to about 2,500 in 1994 and then increased some thereafter; and the number of women decreased from about 17,000 in 1987 to about 10,000 in 1994 and then increased some (figure 3.50(a)). The number of blacks employed as professionals dropped from about 3,200 in 1987 to about 2,500 in 1994 and remained at that level through 1996 (figure 3.51(a)); the number of women employed as professionals was nearly 11,000 in 1987 and 1989 but only about 8,000 to 9,500 since then (figure 3.51(a)). Figure 3.52(a) shows that although the number of sales workers grew, the number of blacks employed as sales workers in banking was between only 240 and 307 during 1987 to 1992 and only 330 and 476 in 1993 to 1996; the number of women employed as sales workers was between 835 and about 1,100 from 1989 to 1992 and ranged about 1,400 to about 1,700 from 1993 to 1996.

As this industry segment's downsizing dramatically decreased the numbers of women and blacks employed, these groups were generally unable to maintain their proportional representation in the banking work force. Indeed, blacks and women were not as well represented percentage wise in any of the four job classifications in 1994 through 1996 as they had been in 1987 and 1989. However, their losses were greatest among female professionals and black and female sales workers. The proportion of women employed in banking as professionals decreased from 51 or 52 to 43 percent in 1994 with a slight increase thereafter (figure 3.51(b)). The proportion of women employed as sales workers was 52 to 53 percent from 1987 to 1991, 49 to 50 percent in 1992 and 1993, and only 43 to 44 percent from

1994 to 1996 (figure 3.52(b)). Among blacks, from 1987 to 1993, the proportion employed as sales workers was between 14 and 17 percent, but decreased to between 10 and 12 percent in 1994 to 1996 (figure 3.52(b)). Notably, both blacks and women experienced a 5 percent drop in the percentage employed as sales workers between 1993 and 1994, and these drops coincide with the timeframe in which licensing tests were first instituted for bank employees selling securities.

The banking industry's proportional losses occurring among black professionals and among black and female officials and managers and office and clerical workers are smaller but alarming because of their consistency. The proportion of blacks employed as professionals in banking was between 15 and 16 percent from 1987 to 1992, but decreased to 12.5 percent in 1994 through 1996 (figure 3.51(b)). Although blacks were between 8 and 9 percent of officials and managers (figure 3.50(b)) and 35 and 37 percent of office and clerical workers (figure 3.53(b)) throughout the period, in both instances the highest proportion was in 1987 and the lowest in 1995. The proportion of women employed as officials and managers in banking decreased from about 37 to 34 percent in 1994 (figure 3.50(b)); and the proportion employed as office and clerical workers decreased from 74 to 71 percent in 1994 (figure 3.53(b)). The proportions of women increased some after 1994 in both instances.

In the securities segment of the finance industry, figures 3.50(a) through 3.53(a) show that changes in the types of jobs occur not so much through reduction in the numbers of office and clerical workers as from growth in the numbers of professionals and officials and managers. More importantly, perhaps, is that the proportions of blacks and women in each job classification remain fairly stable, or actually increase between 1987 and 1996. In securities, the proportions of blacks employed as officials and managers and as professionals (figures 3.50(b) and 3.51(b)) increased from 4 to 7 percent. (In 1995 and 1996, the proportion of officials and managers who were black had dipped back to 6 percent.) The proportion of blacks employed as sales workers reached the high end of its range between 1.4 and 2.8 percent in 1996 (figure 3.52(b)). The proportion of blacks employed as office and clerical workers increased from 20 to

23 percent from 1987 to 1994 and remained at 22 percent in 1995 and 1996 (figure 3.53(b)). The percentage of women employed as officials and managers increased from 20 to 26 percent (figure 3.50(b)). The percentages employed as professionals and as sales workers were stable, ranging between about 34 and 36 percent for the former (figure 3.51(b)), and about 18 and 20 percent for the latter (figure 3.52(b)). The percentage of women employed as office and clerical workers grew from 59 percent in 1987 to between 61 and 63 percent where it has remained since then (figure 3.53(b)).

The small increases in the proportions of blacks and women along with the general growth in the securities segment resulted in the employment of larger numbers of blacks and women. Among professionals, where the most growth occurred in the securities segment, roughly 800 black and 6,000 to 6,700 women were employed in the early years of the period (figure 3.51(a)). By 1996 more than 2,500 blacks and almost 13,000 women were employed as professionals in securities (figure 3.51(a)). Among officials and managers, about 550 were black and 2,500 were women in 1987, and by 1996 about 1,400 were black and 5,800 were women (figure 3.50(a)). Among sales workers, fewer than 200 blacks and about 1,500 women were employed in 1991, the lowest year, while only about 375 blacks and 2,700 women were employed in 1996, the highest year (figure 3.52(a)). The numbers of blacks and women employed as office and clerical workers fluctuated between 5,750 and about 8,400 for blacks, and between 16,500 and about 24,000 for women, where the highest years were 1987 and 1994 (figure 3.53(a)). Yet despite the fairly substantial growth in the numbers of professionals and officials and managers in the securities segment, the numbers of additional employees are quite small when compared with the reductions in office and clerical workers in the banking segment and the tremendous effect that had on the employment of blacks and women.

This section described employment in the finance industry, particularly the banking and securities segments of it. It has shown that proportionally more minorities and women are employed in the banking than in securities. Not surprisingly, more minorities and women are employed as office and clerical workers than are

employed as officials and managers, professionals, or sales workers. Minorities and women are least likely to be employed as sales workers in the securities industry.

Finance is a dynamic industry. Both banking and securities have been affected by technological, legislative and regulatory, and other changes. The stock market crashed in 1987, causing a major setback for securities firms. Fortunately, the industry has recovered with numerous profitable years since then. In the banking industry, mergers and the use of technology and automated teller machines have resulted in downsizing. At the same time banks have diversified bank products and offered services traditionally available through securities firms. Employment data showed the effects of these changes: between 1987 and 1996, banks were employing fewer people, while securities firms were increasing their numbers of employees. The types of workers employed in each industry segment also changed. Banks were employing many fewer office and clerical workers in 1996 than in 1987, having cut the number of office and clerical workers in half. During the same period, securities firms had increased the number of officers, managers, and professionals.

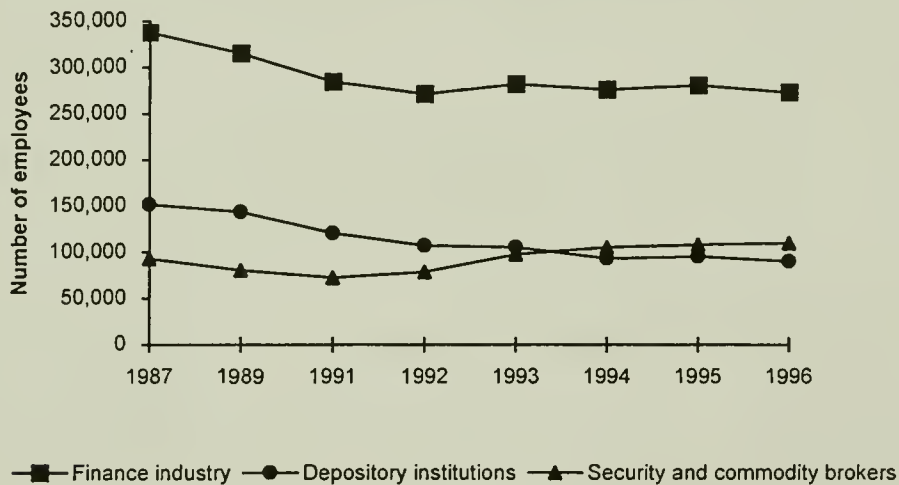
The changes in these industry segments affected the employment of minorities and women. The proportions of Asian American and Pacific Islanders, and sometimes Hispanics, employed in these industries grew between 1987 and 1996. However, the proportions of blacks and women employed in banking decreased. Decreases in the proportions of blacks and women employed in the finance industry occurred largely because employment dropped in banking—a segment of the industry employing larger proportions of minorities and women—and increased in securities where substantially smaller proportions are employed. Further, the proportions of office and clerical workers, the job classification employing the largest percentages of blacks and women, declined tremendously in the banking segment. But these aspects do not entirely explain the decrease in the proportion of women and blacks employed. In 1996 the proportions of blacks and women employed in banking were lower than those of 1987 in all four of the job classifications examined here. The largest of these decreases were a steady decline among female professionals and a sharp decline from 1993 to 1994 among

black and female sales workers. The latter coincided with the time that regulating organizations imposed new licensing requirements on bank employees selling securities.

The changes over time suggest that fairly large decreases in employment of blacks and women in the finance industry result from a shift in the structure of the industry with changes in the different types of jobs in each sector. And, fairly large decreases in employment result from changes in the types of jobs in the industry—a shift in the use of office and clerical workers to sales workers, professionals, or officials and managers. Some remaining decreases appear to result from the employment of slightly

smaller proportions of blacks and women within job classifications. These decreases in employment of women and blacks could be because of discrimination or because of other changes over time in the types of jobs that were not captured here. Here, changes in the types of jobs that banks have were only measured between job classifications, such as office and clerical workers versus sales workers. However, the types of jobs available may also be changing *within* job classifications. Newly imposed requirements for licensing or perhaps computer skills may also affect the racial or gender composition of the applicant pool.<sup>229</sup>

**Figure 3.45**  
Employment in New York City's Finance Industry, 1987–96

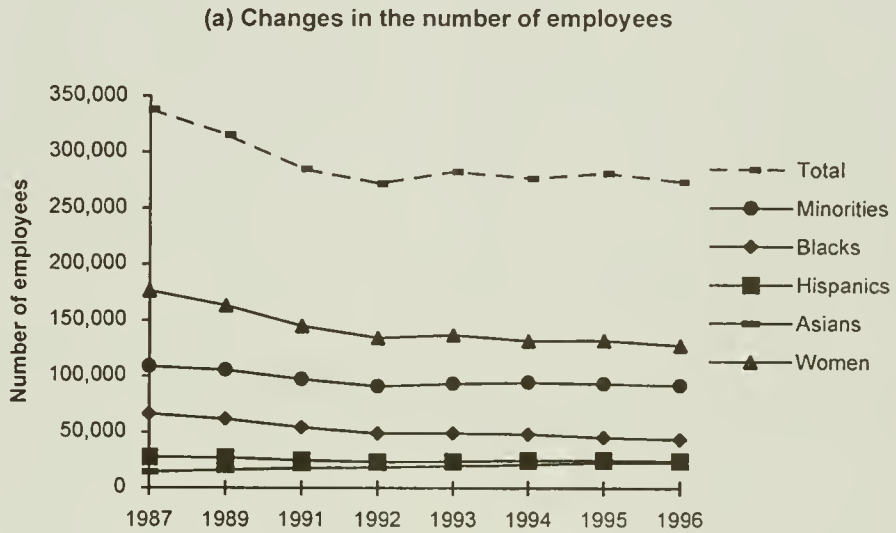


SOURCE: EEOC data. See appendix B, table B.6

<sup>229</sup> See Linda S. Cott Fredson, "Reconsidering Fairness: A Matter of Social and Ethical Priorities," *Journal of Vocational Behavior*, vol. 33 (1988) pp. 293–319.

**Figure 3.46**

Changes over Time in the Employment of Minorities and Women in New York City's Finance Industry, 1987-96

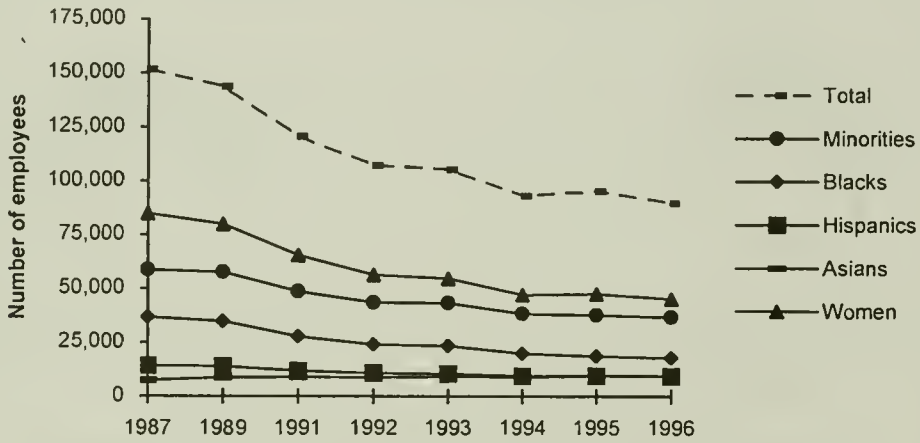


SOURCE: EEOC data. See appendix B, table B.6.

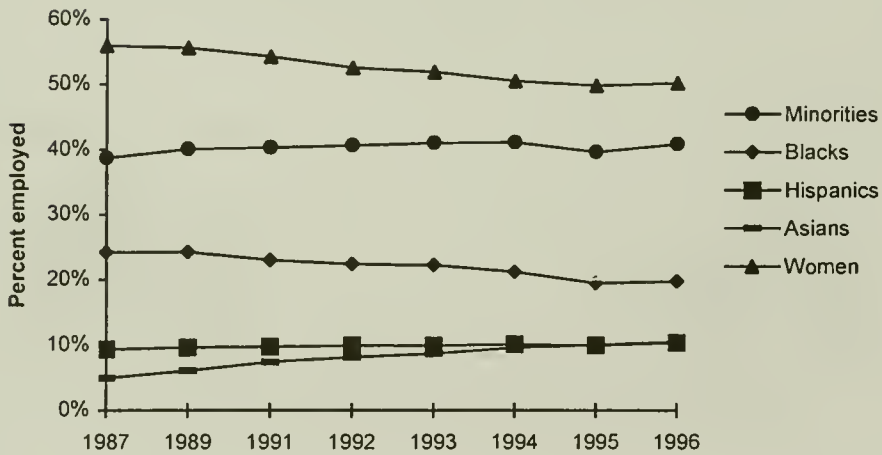
**Figure 3.47**

Changes over Time in the Employment of Minorities and Women in the Banking Segment of New York City's Finance Industry, 1987-96

(a) Changes in the number of employees



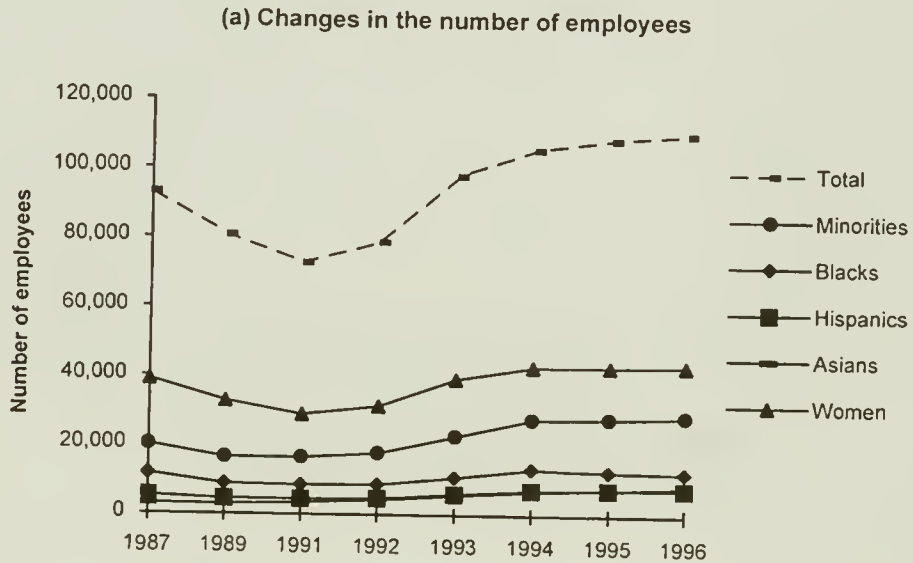
(b) Changes in the percentages of employees who are minorities or women



SOURCE: EEOC data. See appendix B, table B.6.

**Figure 3.48**

Changes over Time in the Employment of Minorities and Women in the Securities Segment of New York City's Finance Industry, 1987-96



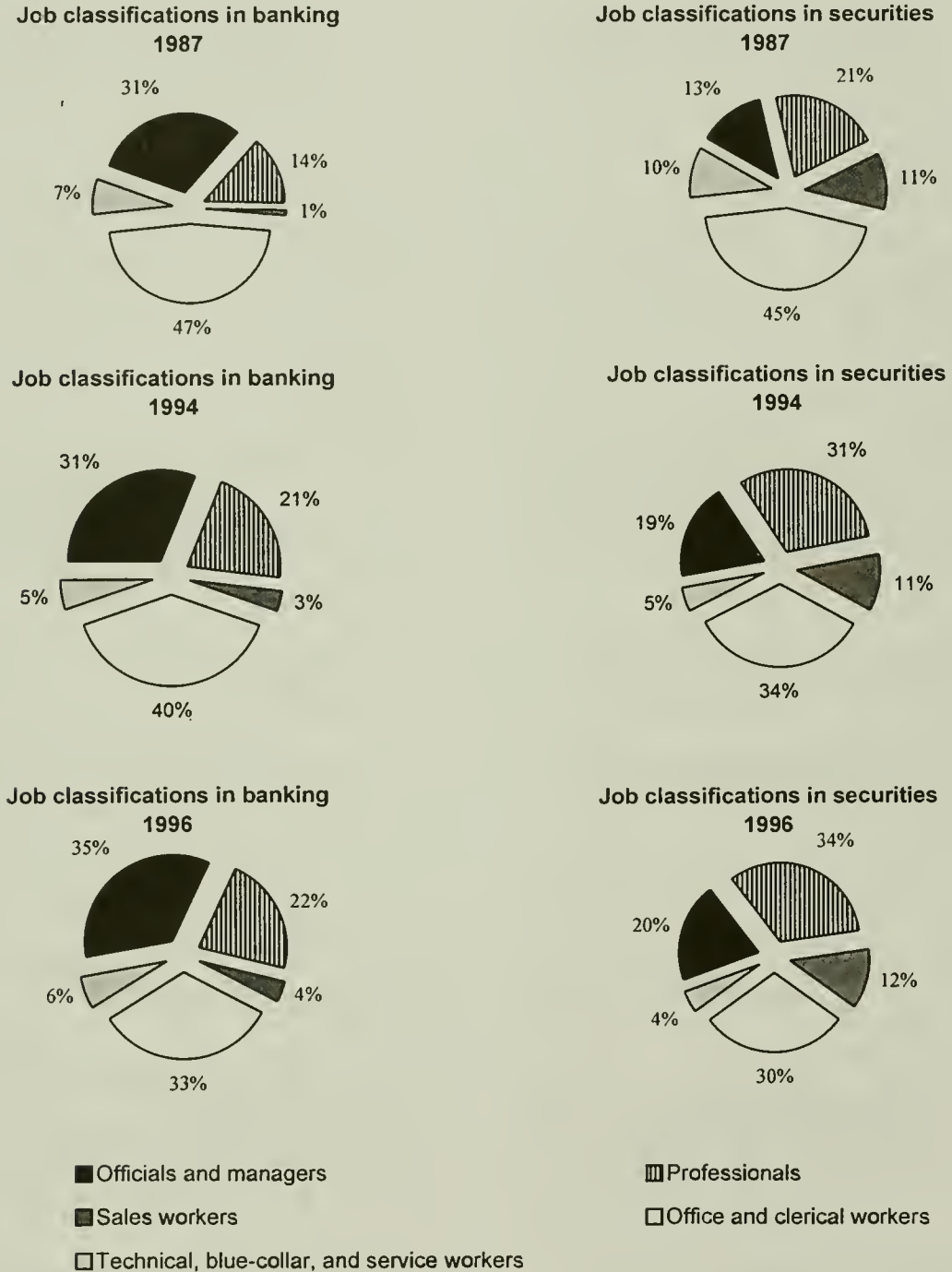
(b) Changes in the percentages of employees who are minorities and women



SOURCE: EEOC data. See appendix B, table B.6.

**Figure 3.49**

**Changes over Time in the Classifications of Jobs in New York City's Banking and Securities Industry Segments, 1987–96**

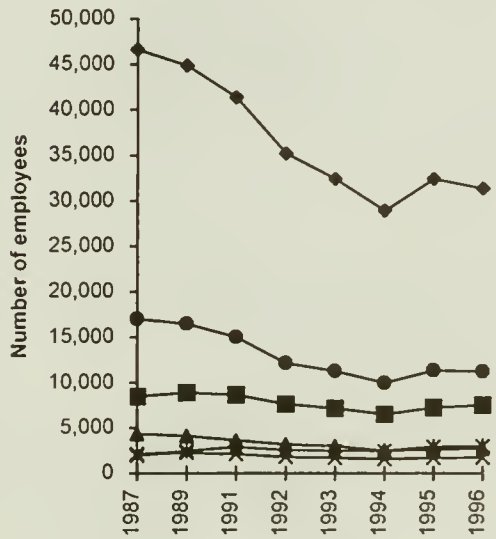


SOURCE: EEOC data. See appendix B, table B.4.

**Figure 3.50**

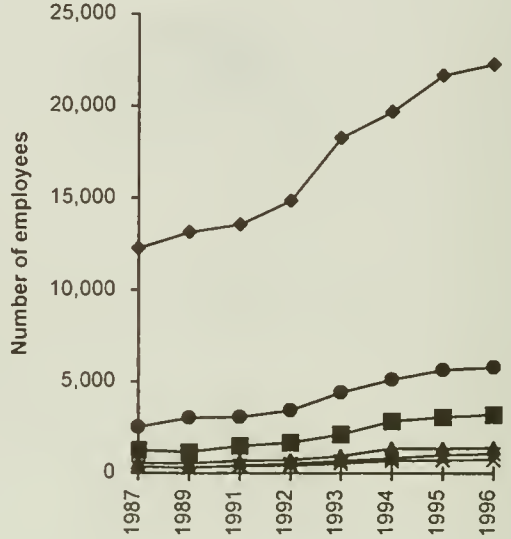
**Changes over Time in the Employment of Protected Groups in the Finance Industry as Officials and Managers, 1987–96**

**Officials and managers in banking  
(a) Changes in number of employees**



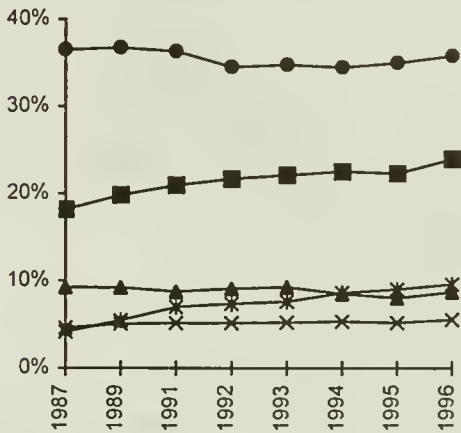
◆ Total    ■ Minorities    ▲ Blacks  
× Hispanics    \* Asians    ● Women

**Officials and managers in securities  
(a) Changes in number of employees**



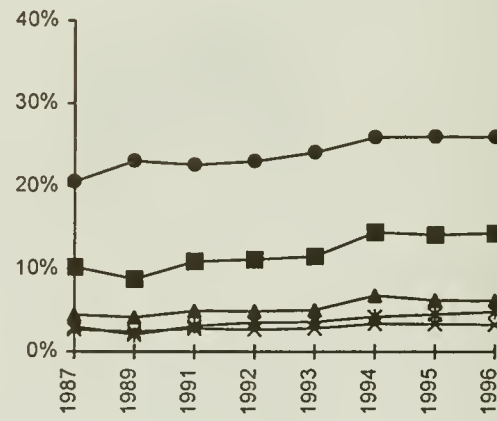
◆ Total    ■ Minorities    ▲ Blacks  
× Hispanics    \* Asians    ● Women

**Officials and managers in banking  
(b) Changes in percent of employees**



■ Minorities    ▲ Blacks    × Hispanics  
\* Asians    ● Women

**Officials and managers in securities  
(b) Changes in percent of employees**



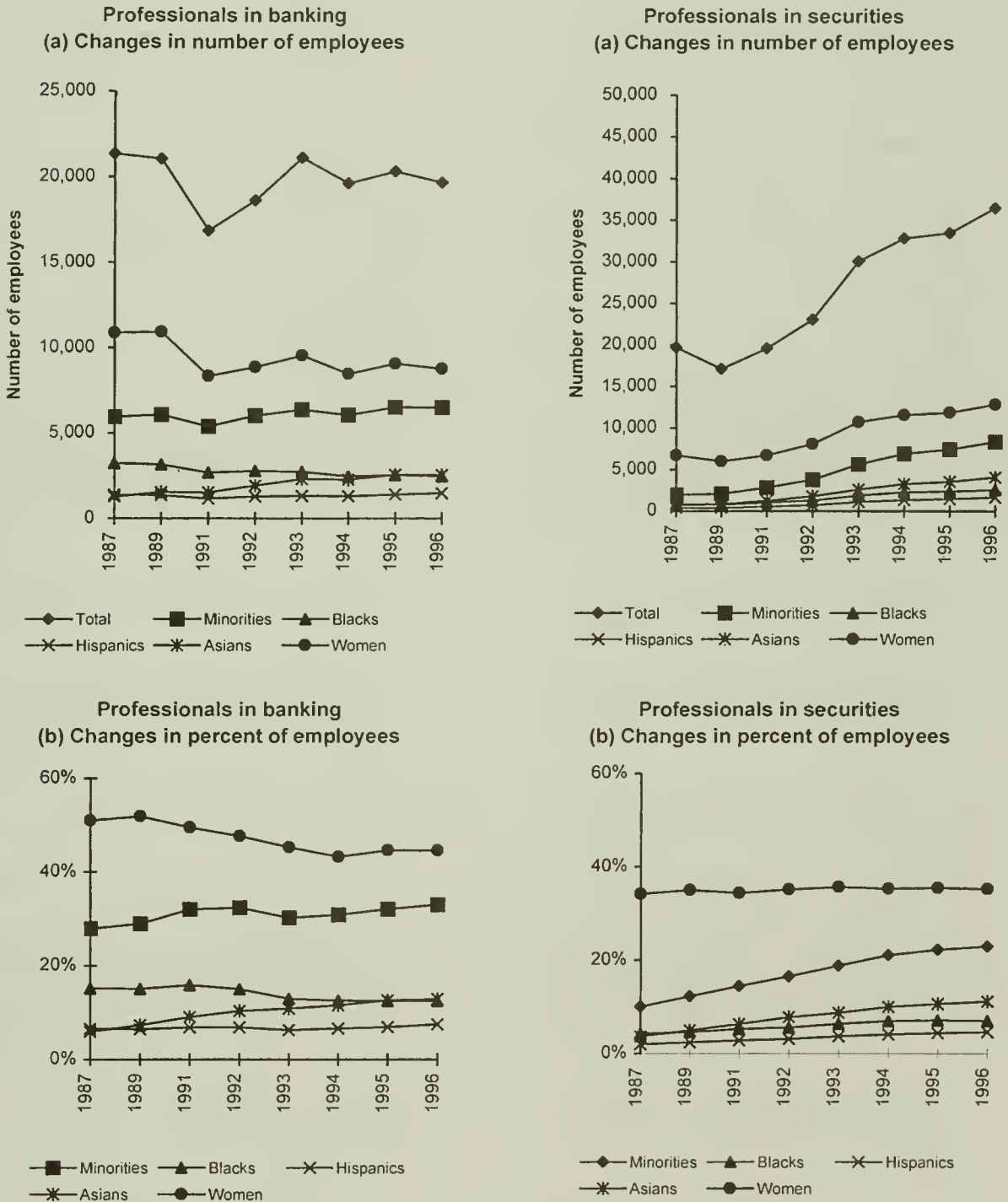
■ Minorities    ▲ Blacks    × Hispanics  
\* Asians    ● Women

SOURCE: EEOC data. See appendix B, table B.8.



**Figure 3.51**

**Changes over Time in Employment of Protected Groups in the Finance Industry as Professionals, 1987–96**

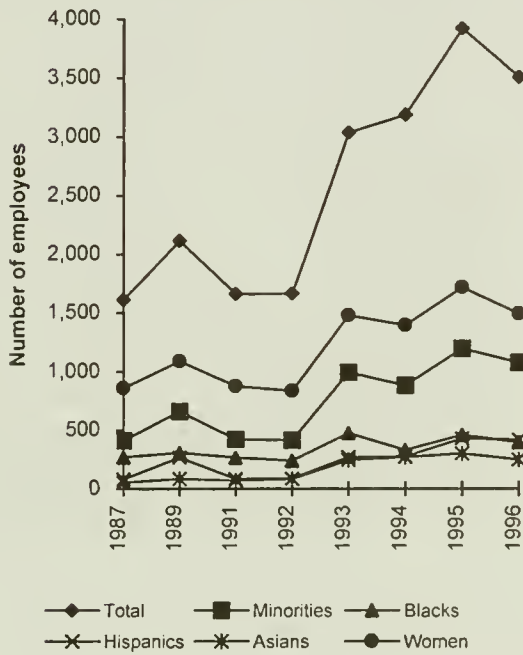


SOURCE: EEOC data. See appendix B, table B.8.

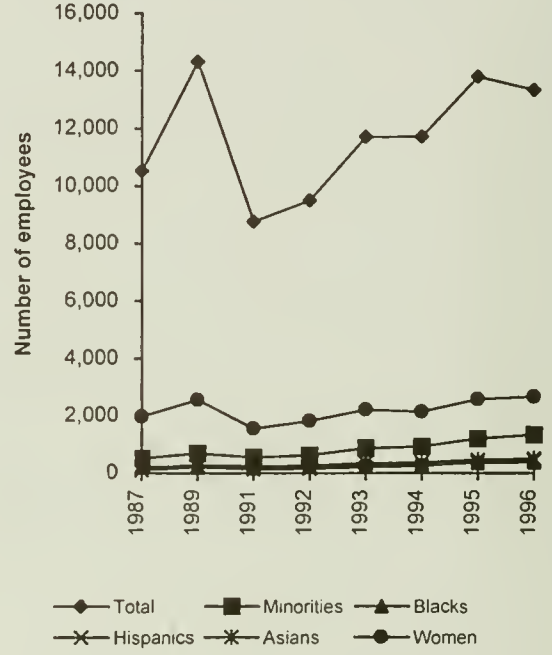
**Figure 3.52**

**Changes over Time in Employment of Protected Groups in the Finance Industry as Sales Workers, 1987-94**

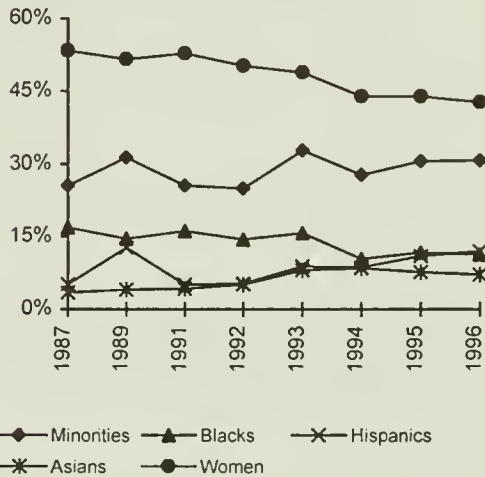
**Sales workers in banking**  
(a) Changes in number of employees



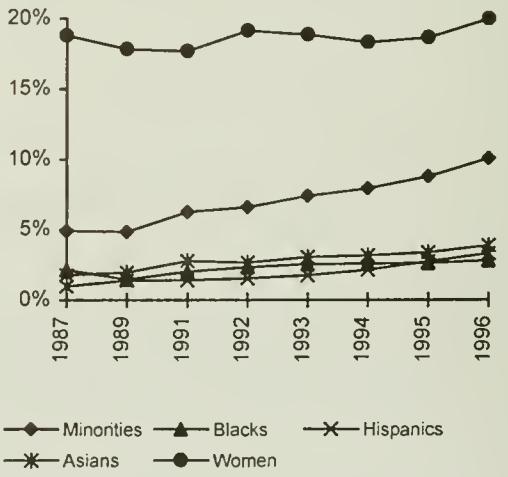
**Sales workers in securities**  
(a) Changes in number of employees



**Sales workers in banking**  
(b) Changes in percent of employees



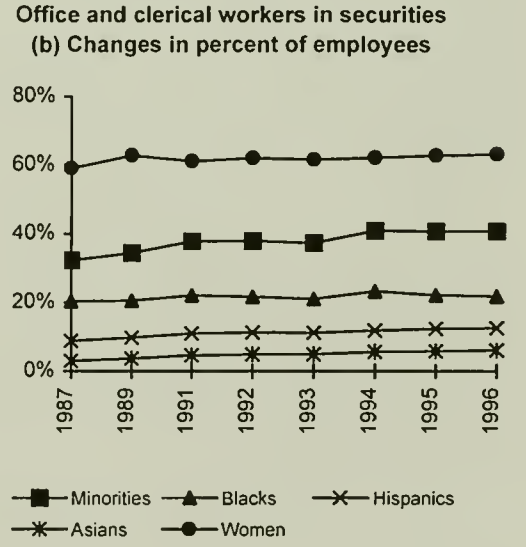
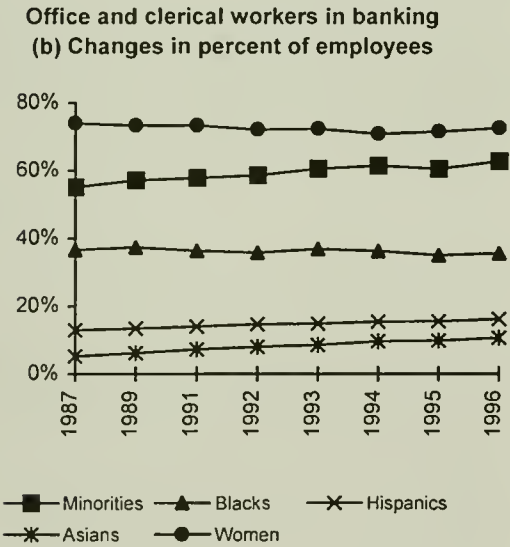
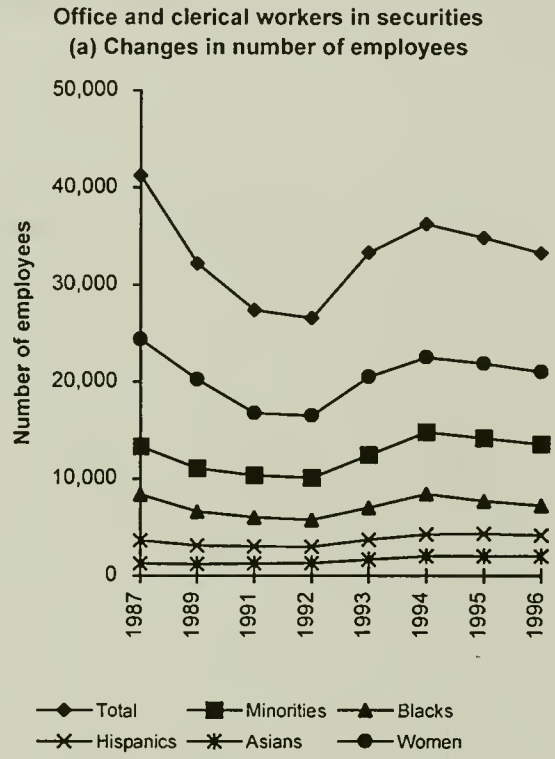
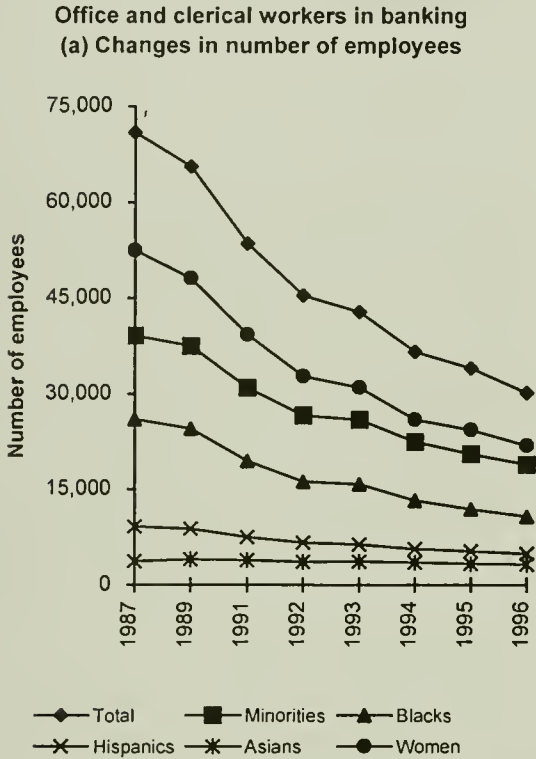
**Sales workers in securities**  
(b) Changes in percent of employees



SOURCE: EEOC data. See appendix B, table B.8.

**Figure 3.53**

**Changes over Time in the Employment of Protected Groups in the Finance Industry as Office and Clerical Workers, 1987-94**



SOURCE: EEOC data. See appendix B, table B.10.

## Chapter 4

# Impact of Securities Industry Rules on Minority and Women Securities Professionals

The underemployment of minorities and women in Wall Street securities firms has been a longstanding problem. More than 25 years ago, in 1972, the United Church of Christ filed a petition asking the Securities and Exchange Commission (SEC) to issue a rule requiring securities firms to adopt affirmative action plans.<sup>1</sup> Although the SEC declined to adopt such a rule,<sup>2</sup> it did agree to begin a campaign against discriminatory employment practices.<sup>3</sup> Thus, in 1976 the SEC's Securities Industry Committee on Equal Employment Opportunity was formed to "ensure equal employment opportunities in the industry."<sup>4</sup> One goal of the new committee was "[t]o increase minority and female employment at all levels in the securities industry."<sup>5</sup>

The issue persisted, and in 1980 Sponsors for Educational Opportunity (SEO) began a program "designed to increase the number of people of color in the investment banking industry."<sup>6</sup>

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<sup>1</sup> Philip H. Savage, director, Equal Employment Opportunity, U.S. Securities and Exchange Commission, "Securities Industry Focuses on Equal Employment," *Human Resources Management Report*, issue #3, (November/December 1977), p. 1 (hereafter cited as Savage, "Equal Employment").

<sup>2</sup> An SEC director stated that the SEC lacks legal authority to regulate employment practices on Wall Street. See Richard H. Walker, director, Northeast Regional Office of the U.S. Securities and Exchange Commission, testimony (hereafter cited as Walker Testimony) before the U.S. Commission on Civil Rights, New York, NY, Sept. 19–21, 1994, vol. III, p. 925 (hereafter cited as *New York Hearing*) ("Although the SEC may lack the force of law on this issue, we do have the powers of persuasion and we are fully committed to using them . . .").

<sup>3</sup> Savage, "Equal Employment," pp. 1–2.

<sup>4</sup> *Ibid.*, p. 3. The SEC-Securities Industry Committee on Equal Employment Opportunity is composed of representatives from securities firms, self-regulatory organizations, and the SEC. *Ibid.*, p. 2.

<sup>5</sup> *Ibid.*, p. 4.

<sup>6</sup> Paul Spivey, executive director, Sponsors for Educational Opportunity, testimony before the U.S. Commission on Civil Rights, New York, NY, Sept. 19–21, 1994, vol. III, p. 860 (hereafter cited as Spivey Testimony).

Paul Spivey, executive director of SEO, testified at the Commission's hearing and stated that the program's administrators grant minority students a total of 200 internships per year with leading investment banking firms.<sup>7</sup> Mr. Spivey added that 75 percent of the interns obtain permanent positions in the securities industry after completing college or business school.<sup>8</sup>

Despite these and other efforts,<sup>9</sup> there remains a prevailing perception that few women and minorities find well-paying jobs in the securities industry. Indeed, Alphonso E. Tindall, Jr., chairman of the National Association of Securities Professionals (NASP), an organization representing the interests of minority and women securities professionals, testified at the Commission's hearing that the number of minorities and women participating in the securities industry has declined over the past 20 years.<sup>10</sup> Moreover, providing a vivid image of employment discrimination on Wall Street, the following statement was made at the Commission's hearing by Jeffrey L. Liddle, an attorney who has represented numerous securities professionals in employment disputes:

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<sup>7</sup> *Ibid.*, pp. 860–61.

<sup>8</sup> *Ibid.*, p. 861.

<sup>9</sup> Similar efforts continue. For example, Reverend Jesse Jackson recently organized a "three-day Wall Street diversity conference" with guest speakers including President Clinton, Charles Gasparino and Joseph N. Boyce, "Jackson, Wall Street Have Their Big Day, But Will It Fuel Minority Opportunities?" *Wall Street Journal*, Jan. 16, 1998, p. C-1. Jackson reportedly intends to continue his efforts to "push the financial industry to address a range of issues from employment practices to opportunities for investment firms owned by women and minorities." *Ibid.*

<sup>10</sup> Alphonso E. Tindall, Jr., chairman, National Association of Securities Professionals, testimony before the U.S. Commission on Civil Rights, hearing, New York, NY, Sept. 19–21, 1994, vol. III, p. 855 (hereafter cited as Tindall Testimony).

Employment discrimination appears . . . to be widespread on Wall Street. Virtually no senior executives in Wall Street firms are females or members of racial minorities, and . . . [with] high income producers, that is, institutional traders, salesmen, investment bankers and the like, 45 years of age is old, and female and minority representation is slight.

For all of these groups, hiring is the first impediment to employment, in the securities business, and even though females and minorities experience discrimination in all aspects of their employment, the hiring process is perhaps the single most problematic area. Only a small proportion of the new professional employees in each firm are females or minorities. . . . After hiring, the problems confronted by females and minority employees multiply. . . .

Minority employees are often the first to be terminated, are held frequently to higher standards than their white counterparts, are allowed to see or work with only certain clients, and in the hurly-burly atmosphere of Wall Street are, like their female counterparts, rarely put into positions of managerial authority. The culture of the industry . . . is young, male, and white.<sup>11</sup>

Because it is perceived that minorities and women continue to be underrepresented in the securities industry, rules and practices that appear to be neutral with regard to race and gender may have a disparate impact on minorities and women employed on Wall Street. This chapter studies the impact on minorities and women of two securities industry rules, the arbitration requirement and Rule G-37, to determine whether these rules are exacerbating inequities.

## Section I. The Mandatory Arbitration Requirement

The mandatory<sup>12</sup> arbitration requirement is an obligation to submit potential future disputes

<sup>11</sup> Jeffrey L. Liddle, Esq., law partner, Liddle, Robinson & Shoemaker, testimony before the U.S. Commission on Civil Rights, hearing, New York, NY, Sept. 19-21, 1994, vol. III, pp. 833-35 (hereafter cited as Liddle Testimony).

<sup>12</sup> The use of the word "mandatory" in this context was aptly explained by an author who wrote the following: "The nature of the pre-dispute arbitration clause has engendered the term 'mandatory arbitration' because the prospective employee usually signs the contract *before* he begins work and before any potential issues arise with the employer. Thus, arbitration becomes 'mandatory' even though not necessarily foreseen. At the moment an employee begins his job, he already has made the weighty decision *not* to look to the federal courts to enforce his civil rights under the myriad laws ensuring their protection." Jennifer N. Manuszak,

to a private decisionmaker, rather than a court, for a binding ruling on the merits.<sup>13</sup> Until recently, the duty to submit any future employment discrimination claims to arbitration was imposed upon all securities professionals who registered to trade at the securities exchanges. As a result, registered securities professionals who eventually sought to pursue employment discrimination claims had to complete the arbitration process and could only obtain limited court review by appealing the award given by the arbitrator.<sup>14</sup> Recently, however, the National Association of Securities Dealers (NASD) and the New York Stock Exchange (NYSE) voted to eliminate their mandatory arbitration rules as they pertain to employment discrimination claims, and the SEC approved these rule changes.<sup>15</sup> The key difference between the NASD

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"Pre-Dispute Civil Rights Arbitration in the Nonunion Sector: The Need for a Tandem Reform Effort at the Contracting, Procedural and Judicial Review Stages," *Ohio State Journal on Dispute Resolution*, vol. 12 (1997), pp. 387, 389 (hereafter cited as Manuszak, "Civil Rights Arbitration").

Arbitration in this context may be described as mandatory also because declining to agree to arbitration may not be a truly viable option for a securities professional. Because the SROs impose the obligation on all representatives who register at the exchanges, the obligation applies to the entire industry. That is, an employee seeking employment as a securities trader for a brokerage firm could not possibly find an employer that would exempt the employee from this requirement. As a result, an employee's "decision" to agree to arbitration by signing the U-4 form appears possibly to be coerced. See Samuel Estreicher, "Predispute Agreements to Arbitrate Statutory Employment Claims," *New York University Law Review*, vol. 72, no. 30 (1997), pp. 1344, 1354 (noting the enhanced likelihood of coercion that arises when all employers in an entire industry condition employment on an agreement to arbitrate).

<sup>13</sup> See *Bluck's Law Dictionary* (5th ed., 1979), p. 96 (explaining that arbitration is "[a]n arrangement for taking and abiding by the judgment of selected persons in some disputed matter, instead of carrying it to established tribunals of justice, and is intended to avoid the formalities, the delay, the expense and vexation of ordinary litigation") (citation omitted); see also United States General Accounting Office, *Employment Discrimination: How Registered Representatives Fare in Discrimination Disputes*, GAO/HEHS-94-17 (March 1994) (hereafter cited as 1994 GAO Report), p. 1 ("Arbitration is the submission of a dispute between parties to a neutral third party—an arbitrator—for resolution").

<sup>14</sup> For a brief discussion of the limitations on court review of arbitration awards, see Mark J. Astarita, *Overview of the Arbitration Process* (visited Feb. 3, 1998) <<http://www.seclaw.com/arbover.htm>> (hereafter cited as Astarita, *Overview*).

<sup>15</sup> In 1997 the NASD voted to eliminate its mandatory arbitration requirement, and the SEC approved the rule change

and the NYSE new rules is that, under the NASD rule, the NASD will still honor a predispute mandatory arbitration agreement entered into between the employee and the employer.<sup>16</sup> The NYSE rules, however, will only honor arbitration agreements entered into by the parties after the employment discrimination claim has arisen.<sup>17</sup> Thus, both the NASD and NYSE no longer require mandatory arbitration agreements for employment discrimination claims as part of registration; however, employers can still condition employment on an employee's predispute agreement to submit to arbitration, and the NASD will provide a forum for such cases.<sup>18</sup>

Industry representatives maintain that these changes have broad support, including from within the securities industry. For example, the Securities Industry Association (SIA) has stated "that it supports 'the rule in its current form and commends the [SEC] staff on its efforts to balance the competing concerns of arbitration critics with those who believe in its efficiency, fair-

ness and propriety for resolving all manner of employment claims."<sup>19</sup>

Civil rights advocates complain that allowing an employer to force an employee to submit his or her claim to a securities industry arbitration violates the purposes of the Federal antidiscrimination statutes.<sup>20</sup> Specifically, advocates raise concerns regarding (1) the informal and lenient discovery procedures followed in the private arbitration context; (2) the race, gender, and professional background of the arbitrators hired to settle disputes; and (3) the failure of the awards to compensate victims of discrimination and, most especially, to deter future wrongdoing.<sup>21</sup> The importance of such procedural<sup>22</sup> concerns was highlighted in a report, written jointly by the U.S. Departments of Labor and Commerce, which stated, "[I]f Congress or the courts have decided that it is in the public interest to guarantee employees certain fundamental rights, this policy judgment must not be evaded or diluted through private procedures that cannot fairly and effectively address employee claims that their rights have been violated."<sup>23</sup>

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in June 1998. The new rule became effective on Jan. 1, 1999. See Order Granting Approval to Proposed Rule Change Relating to the Arbitration of Employment Discrimination Claims, Securities and Exchange Commission Release No. 34-40109, File No. SR-NASD-97-77 (June 22, 1998) (hereafter cited as SEC Order Approving NASD Rule). See also National Association of Securities Dealers, *SEC Approves Rule Change Regarding Arbitration of Statutory Employment Disputes; Effective January 1, 1999* (visited Mar. 9, 1999) <<http://www.nasd.com/notices/9856ntm.txt>>. The NYSE subsequently voted to eliminate its mandatory arbitration requirement and the SEC approved that rule change. See SEC Commission Announcements, *Approval of Proposed Rule Changes* (visited Mar. 13, 1999) <<http://www.sec.gov/news/digests/01-04.txt>>.

<sup>16</sup> "NYSE to Stop Hearing Discrimination Claims," *Securities Week*, Jan. 18, 1999, p. 14.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.* See also "Arbitration; Firms Lose Options in Arb of Discrimination Claims," *Compliance Reporter*, Jan. 4, 1999, p. 7. The NASD rule provides, in part that "a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose." National Association of Securities Dealers, *SEC Approves Rule Change Regarding Arbitration of Statutory Employment Disputes; Effective January 1, 1999* (visited Mar. 9, 1999) <<http://www.nasd.com/notices/9856ntm.txt>>. In contrast, the NYSE rules provide, "A claim alleging employment discrimination, including any sexual harassment claim, in violation of a statute shall be eligible for arbitration only where the parties have agreed to arbitrate the claim after it has arisen." NYSE to Stop Hearing Discrimination Claims," *Securities Week*, Jan. 18, 1999, p. 14.

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<sup>19</sup> Statement of Stuart J. Kaswell, general counsel, Securities Industry Association, before the Senate Committee on Banking, Housing and Urban Affairs, July 31, 1998, p. 1.

<sup>20</sup> See, e.g., *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26-27 (1991) (setting forth plaintiff's argument that mandatory arbitration of a claim under the Age Discrimination in Employment Act (ADEA) is "inconsistent with the statutory framework and purposes of the ADEA"). A claimant can avoid the contractual obligation to arbitrate by demonstrating an "inherent conflict" between arbitration and the underlying purposes of the relevant statute, evidencing congressional intent to preclude waivers of the right to pursue judicial remedies. See *id.* at 26. In *Gilmer* the plaintiff failed to offer sufficient evidence to meet the burden of proof described by the Court. See *id.* at 30-33.

<sup>21</sup> See, e.g., *id.* at 30-32 (discussing plaintiff's claims that arbitration panels are biased, the scope of discovery is too limited, and the lack of public knowledge about arbitration rulings). See also Daniel S. Levine, *Inhuman Relations Dept.: NASD Sheds Mandatory Arbitration For Victims of Discrimination* (last modified Aug. 12, 1997) <<http://www.disgruntled.com/nasdarb897.html>>, p. 2 (citing a 1995 study of arbitration awards in employment disputes in the securities industry).

<sup>22</sup> The Supreme Court has stated, "By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991).

<sup>23</sup> U.S. Department of Labor and U.S. Department of Commerce, *Fact Finding Report: Commission on the Future of Worker-Management Relations* (May 1994), p. 118. Similarly, the American Arbitration Association has emphasized

Industry officials disagree with these complaints. They believe the new rules ensure that an employee's decision to arbitrate is voluntary and that there is no solid evidence to support the claim that agreements to arbitrate are coerced. According to these industry representatives, Congress, in the Federal Arbitration Act, has provided protection against unfair application of mandatory arbitration clauses by incorporating long-established contract defenses into these acts.<sup>24</sup>

In sum, industry representatives emphasize that Congress has expressly endorsed arbitration,<sup>25</sup> and that courts have recognized and enforced Congress' intent to bring civil rights claims within the scope of mandatory arbitration clauses.<sup>26</sup> These concerns, among others, were considered by the Commission at its New York hearing on September 21, 1994.<sup>27</sup>

### Predispute Mandatory Arbitration Requirement

The securities industry is governed by a collection of statutes and regulations intended to protect investors. The Securities and Exchange Act of 1934<sup>28</sup> created the Securities and Ex-

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that "any [alternative dispute resolution] . . . method used in the employment context is most effective when the parties . . . have confidence in the neutrality of the . . . arbitrator and the procedures and the institution under which their case is being administered." American Arbitration Association, *Media Alert: American Arbitration Association Encourages Use of Voluntary Arbitration to Resolve Employment Disputes* (last modified July 9, 1997) <<http://www.adr.org/press/empstatement.html>>.

<sup>24</sup> See 9 U.S.C. § 2 (1994) (Arbitration clauses can be stricken "upon such grounds as exist at law or in equity for the revocation of any contract").

<sup>25</sup> See the Civil Rights Act of 1991, which provides, "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including . . . arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title." Pub. L. No. 102-166, § 18, 105 Stat. 1071, 1081 (1991).

<sup>26</sup> The third circuit, for example, noted, "On its face, the text of Section 118 evinces a clear Congressional intent to encourage arbitration of Title VII and ADEA claims, not to preclude such arbitration. *Seus v. John Nuveen & Co.*, 146 F.3d 175, 182 (1998).

<sup>27</sup> Securities industry representatives report that although they were not invited to testify at the Commission's hearing, later, with the Commission's permission, the Securities Industry Association submitted detailed comments addressing the testimony offered by critics. See Statement of the Securities Industry Association to the U.S. Commission on Civil Rights, Feb. 6, 1995.

<sup>28</sup> 15 U.S.C. §§ 78a-78mm (1997).

change Commission, a Federal agency that regulates the securities exchanges.<sup>29</sup> The industry is also governed by private regulatory organizations, known as "self-regulatory organizations" (SROs), such as the NASD and the NYSE.<sup>30</sup> Each SRO develops rules and regulations, provides a dispute resolution forum, and oversees the conduct of securities professionals for the protection of the investors.<sup>31</sup> The SROs are supervised by the SEC.<sup>32</sup>

A person seeking to engage in trading<sup>33</sup> at an exchange must register with that exchange's SRO by filing a Uniform Application for Securities Industry Registration or Transfer (form U-4).<sup>34</sup> Form U-4 is used by the SROs to collect information regarding each registered professional's current brokerage firm affiliation, residential history, employment history, criminal record, and professional record as a securities dealer.<sup>35</sup> The information is used in the SROs' function of overseeing the conduct of individual professionals.<sup>36</sup> Because the SROs require secu-

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<sup>29</sup> 15 U.S.C. § 78d (1997).

<sup>30</sup> There are 10 SROs: NASD; NYSE; the American Stock Exchange; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Cincinnati Stock Exchange, Inc.; the Midwest Stock Exchange, Inc.; the Philadelphia Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Municipal Securities Rulemaking Board. See John P. Cleary, "Filling Mastrobuono's Order: The NASD Arbitration Policy Task Force Ensures the Enforceability of Punitive Damages Awards in Securities Arbitration," *Business Lawyer*, vol. 52 (November 1996), p. 199.

<sup>31</sup> See "NASD Proposes Eliminating Mandatory Arbitration of Employment Discrimination Claims for Registered Brokers," *Business Wire*, Aug. 7, 1997.

<sup>32</sup> 15 U.S.C. § 78s (1997).

<sup>33</sup> A registered representative is a firm employee who "accept[s] and execute[s] customers' buy-and-sell orders." 1994 GAO Report, p. 1.

<sup>34</sup> See Robert S. Clemente, director of arbitration, New York Stock Exchange, "Arbitration of Discrimination Claims Brought by Registered Representatives," written statement submitted at *New York Hearing*, p. 1; see also National Association of Securities Dealers, Inc., *Manual* (Chicago, IL: CCH, July 1994), ¶ 1785(a); New York Stock Exchange, *Constitution and Rules* (Chicago, IL: CCH, Jan. 1995) (hereafter cited as NYSE Rules), Rule 35, ¶ 2035.

<sup>35</sup> See Form U-4. See also NASD By-Laws, article I, secs. (e), (h), and (ee), as well as the definitions contained in the Securities Exchange Act of 1934, 15 U.S.C. § 78 c.

<sup>36</sup> The form contains the following provision, which binds registered securities professionals to abide by the rules and regulations of the applicable SRO: "2. . . I submit to the authority of the jurisdictions [named elsewhere in the form] and organizations and agree to comply with all provisions, conditions and covenants of the statutes, constitutions, cer-

rities professionals to register in order to engage in trading, filing the form U-4 is a condition of employment with a brokerage firm as a securities professional.<sup>37</sup>

Form U-4 contains a provision requiring the securities professional to arbitrate any dispute "that is required to be arbitrated under the rules" of the exchange where the professional registered.<sup>38</sup> That provision, referred to as the mandatory arbitration clause,<sup>39</sup> was originally drafted with disputes between customers and securities firms in mind.<sup>40</sup> Indeed, the *Code of Arbitration Procedure* for NASD formerly stated that it applied to "the arbitration of any dispute . . . arising out of . . . the business of any member of the Association."<sup>41</sup> Thus, a securities professional would agree that, in the event that a dispute arose between a customer and the firm regarding a transaction performed by the securities professional, the securities professional would agree to have the claim submitted to an arbitrator for resolution.<sup>42</sup>

However, in 1993 the NASD proposed to amend the *Code of Arbitration Procedure* to include among the claims that must be arbitrated, claims "arising out of the employment or termination of employment of associated persons."<sup>43</sup>

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tificates of incorporation, by-laws and rules and regulations of the jurisdictions and organizations as they are or may be adopted, or amended from time to time." *Ibid.*, p. 4.

<sup>37</sup> 1994 GAO Report, p. 4.

<sup>38</sup> The form contains the following language: "I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the organizations . . . [where I am registering] as may be amended from time to time and that any arbitration award rendered against me may be entered as a judgment in any court of competent jurisdiction." Form U-4, p. 4. Although the requirement to register is imposed by the employer, the kinds of disputes that must be arbitrated are determined by the rules of the applicable SRO. Brett D. Fromson, "Bidding to End Mandatory Arbitration of Broker Bias," *Washington Post*, May 11, 1997, p. H-1 (hereafter cited as Fromson, "Bidding").

<sup>39</sup> See note 622.

<sup>40</sup> See Liddle Testimony, *New York Hearing*, vol. III, p. 851.

<sup>41</sup> National Association of Securities Dealers, *Code of Arbitration Procedure* (1992), § 1 (hereafter cited as NASD, *Code of Arbitration Procedure*).

<sup>42</sup> Liddle Testimony, *New York Hearing*, vol. III, p. 851. Apparently, investors who file claims often name the securities professional as a defendant in addition to naming the brokerage firm. *Ibid.*

<sup>43</sup> See NASD, *Code of Arbitration Procedure*, § 1 (1993 amendments).

The SEC accepted the change and allowed the mandatory arbitration requirement to be extended to employment disputes.<sup>44</sup> As a result, all securities professionals who were required to register with NASD had to waive their right to sue in Federal court and agree to submit their potential employment claims to arbitration.<sup>45</sup> Although the NASD and NYSE recently amended their rules to eliminate their mandatory arbitration requirements as they apply to employment discrimination claims,<sup>46</sup> individual employers may still themselves require employees, predispute, to agree to arbitration of such claims.<sup>47</sup> And, as mentioned previously, though

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<sup>44</sup> See Self-Regulatory Organizations, National Association of Securities Dealers, Inc., Order Approving Proposed Rule Change Relating to the Scope of the NASD Arbitration Code of Procedure, Exchange Act Release No. 34-32,802, File No. SR-NASD-92-51, 58 Fed. Reg. 45,932 (Aug. 25, 1993).

<sup>45</sup> The employee is not barred, however, from filing a complaint with the EEOC and requesting that the EEOC pursue an investigation. 1994 GAO Report, p. 5. Moreover, if the EEOC finds "reasonable cause to believe that discrimination has occurred, it may initiate court action." *Ibid.*; however, the employee cannot instigate court action, *ibid.*; And "the EEOC may not seek monetary relief on behalf of claimants who have entered into valid arbitration agreements." *EEOC v. Kidder, Peabody & Co.*, 979 F. Supp. 245, 247 (S.D.N.Y. 1997).

<sup>46</sup> See SEC Order Approving NASD Rule. See also National Association of Securities Dealers, *SEC Approves Rule Change Regarding Arbitration of Statutory Employment Disputes; Effective January 1, 1999* (visited Mar. 9, 1999) <<http://www.nasd.com/notices/9856ntm.txt>>. The NYSE also voted to eliminate its mandatory arbitration requirement and the SEC approved that rule change. See SEC Commission Announcements, *Approval of Proposed Rule Changes* (visited Mar. 13, 1999) <<http://www.sec.gov/news/digests/01-04.txt>>.

<sup>47</sup> Although § 1 of the Federal Arbitration Act, 9 U.S.C. § 1 (1994), states that "nothing herein . . . shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce," a number of United States Courts of Appeal have limited that exclusion to seamen, railroad workers, and other workers actually involved in the interstate transportation of goods. See *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 274 (4th Cir. 1997); *Patterson v. Tenet Healthcare, Inc.*, 113 F.3d 832, 835 (8th Cir. 1997); *Great Western Mortgage Corp. v. Peacock*, 110 F.3d 222, 227 (3d Cir. 1997), *cert. denied*, 118 S. Ct. 299 (1997); *Cole v. Burns Int'l Sec. Servs.*, 105 F.3d 1465, 1471-72 (D.C. Cir. 1997); *Matthews v. Rollins Hudig Hall Co.*, 72 F.3d 50, 53 n.3 (7th Cir. 1995); *Erving v. Virginia Squires Basketball Club*, 468 F.2d 1064, 1069 (2d Cir. 1972). Accordingly, employees in the securities industry who are required to sign individual employment contracts containing agreements to submit potential claims to arbitration can be forced to arbitrate under the Federal Arbitration Act. See *Erving*, 468 F.2d at 1069 (noting that the second circuit had previously "held that the exclusionary clause in



the NYSE will only honor arbitration agreements entered into by the parties after the employment discrimination claim has arisen, NASD will still provide a forum for disputes that fall within the purview of a predispute employer/employee mandatory arbitration agreement.<sup>48</sup> Despite growing opposition against such mandatory arbitration clauses, the United States Supreme Court has upheld their validity.<sup>49</sup>

### SRO Sponsored Arbitration Process

A securities arbitration begins with the filing of a Statement of Claim with the relevant SRO.<sup>50</sup> Upon receiving the claim, the staff of the SRO serve the documents on the named respondent,<sup>51</sup> who then has an opportunity to file an Answer

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Section 1 applied only to those actually in the transportation industry”).

<sup>48</sup> NYSE to Stop Hearing Discrimination Claims,” *Securities Week*, Jan. 18, 1999, p. 14. See also “Arbitration; Firms Lose Options in Arb of Discrimination Claims,” *Compliance Reporter*, Jan. 4, 1999, p. 7. The NASD rule provides, in part that “a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose.” National Association of Securities Dealers, *SEC Approves Rule Change Regarding Arbitration of Statutory Employment Disputes; Effective January 1, 1999* (visited Mar. 9, 1999) <<http://www.nasd.com/notices/9856ntm.txt>>. In contrast, the NYSE rules provide, “A claim alleging employment discrimination, including any sexual harassment claim, in violation of a statute shall be eligible for arbitration only where the parties have agreed to arbitrate the claim after it has arisen.” NYSE to Stop Hearing Discrimination Claims,” *Securities Week*, Jan. 18, 1999, p. 14.

<sup>49</sup> See *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991); see also *Seus v. John Nuveen & Co.*, No. 146 F.3d 175 (3d Cir. 1998). But see *Duffield v. Robertson Stephens & Co.*, 144 F.3d 1182, 1189–90 (9th Cir. 1998) (holding that the Civil Rights Act of 1991, which was enacted almost simultaneously as *Gilmer* was decided, bars imposing mandatory arbitration as a condition of employment). In *Gilmer* the employee argued that mandatory arbitration conflicted with the purposes of the antidiscrimination statute at issue in part because the arbitration procedures followed by the NYSE were inadequate. See 500 U.S. at 30–32. The Supreme Court described *Gilmer*’s claims as “generalized attacks on arbitration” and concluded that *Gilmer* failed to show that the arbitration rules were inadequate. *Id.* at 30–31. The Court added that “the claimed procedural inadequacies . . . [are] best left for resolution in specific cases.” *Id.* at 33. Thus, the Court did not preclude a future complainant from “ris[ing] to the Supreme Court’s challenge” by offering specific evidence about the NYSE arbitration system.

<sup>50</sup> NASD, *Code of Arbitration Procedure*, § 25(a); NYSE Rules, Rule 612(a), ¶ 2612; see also Astarita, *Overview*, p. 2.

<sup>51</sup> NASD, *Code of Arbitration Procedure*, § 25(a); NYSE Rules, Rule 612(a), ¶ 2612; see also Astarita, *Overview*, p. 2.

or Counterclaim.<sup>52</sup> In the past, the director of arbitration for the SRO selected the arbitrator(s) who would decide the case.<sup>53</sup> However, in November 1998, NASD Rule 10308 became effective, allowing the arbitration parties to play a significant role in determining the arbitrators appointed to hear their dispute.<sup>54</sup>

After all claims and answers have been made, the parties may engage in prehearing discovery. Unlike in court proceedings where discovery is very broad, in arbitration the parties are only entitled to engage in limited discovery.<sup>55</sup> The rationale for limiting discovery is that “the intended purpose of arbitration . . . is to provide speedy and cost efficient methods of resolving disputes.”<sup>56</sup> Thus, the Securities Industry Conference on Arbitration’s *Arbitrator’s Manual* states, “The effective use of discovery tools such as depositions rests in the careful exercise of judgment by the arbitrators. Care should be taken to avoid unnecessary expense or burdens to the parties and to avoid unnecessary delay.”<sup>57</sup>

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<sup>52</sup> NASD, *Code of Arbitration Procedure*, § 25(b); NYSE Rules, Rule 612(c), ¶ 2612; see also Astarita, *Overview*, p. 3.

<sup>53</sup> NASD, *Code of Arbitration Procedure*, § 20; NYSE Rules, Rule 608, ¶ 2608.

<sup>54</sup> See Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to proposed Rule Change by the NASD Relating to the Selection of Arbitrators in Arbitrations Involving Public Customers, Securities and Exchange Commission Release No. 34-40555, File No. SR-NASD-98-48 (Oct. 14, 1998) and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by NASD Relating to Extending the Arbitrator List Selection Method to Disputes Involving Members and Associated Persons, Securities and Exchange Commission Release No. 34-40556, File No. SR-NASD-98-64 (Oct. 14, 1998); see also National Association of Securities Dealers, *New Arbitrator List Selection Rules and Monetary Thresholds For Simplified And Single Arbitration Cases Take Effect* <<http://www.nasd.com/notices/9890.txt>>.

<sup>55</sup> Astarita, *Overview*, p. 4. While parties are encouraged to cooperate in the voluntary exchange of documents, there are occasions where the parties ask arbitrators to review and decide discovery disputes. Typically parties file a request for assistance pursuant to NASD Rule 10321(d) or 10321(e). On Apr. 16, 1999, the SEC published for comment the proposed NASD Regulation *Discovery Guide*. If approved, the *Discovery Guide* will streamline the production of essential documents in arbitration.

<sup>56</sup> *Ibid.*

<sup>57</sup> Securities Industry Conference on Arbitration, the *Arbitrator’s Manual* (May 1992) (hereafter cited as *Arbitrator’s Manual*), p. 10. The American Arbitration Association takes a similar approach and provides that arbitrators may order “such discovery . . . as the arbitrator considers necessary to

In the event that disputes arise, a single member of the arbitration panel, appointed to decide discovery disputes, can meet with the parties and make any necessary rulings.<sup>58</sup>

The procedural phases of an arbitration hearing resemble a court trial in many ways.<sup>59</sup> The proceedings are conducted in the following order: each side presents opening statements; the claimant then introduces his or her evidence; the respondent presents his or her case; the claimant has an opportunity to present evidence in rebuttal; and the parties present closing arguments.<sup>60</sup>

As in a trial, during the presentation of evidence at an arbitration hearing, parties take testimony from witnesses through direct and cross examination.<sup>61</sup> In addition, evidence may be admitted in the form of documents.<sup>62</sup> The greatest procedural difference between an arbitration hearing and a court trial is the body of evidentiary rules followed. Indeed, the NASD's *Code of Arbitration Procedure* specifically states that "arbitrators shall determine the materiality and relevance of any evidence proffered and shall not be bound by rules governing the admissibility of evidence."<sup>63</sup> As a result, in an arbitration hearing, the rules of evidence are applied much more

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a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration." American Arbitration Association, *National Rules for the Resolution of Employment Disputes* (1999), reprinted in American Arbitration Association, *Notional Rules for the Resolution of Employment Disputes* (visited Mar. 9, 1999) <[http://www.adr.org/rules/employment\\_rules.html](http://www.adr.org/rules/employment_rules.html)> (hereafter cited as AAA Rules), Rule 7.

<sup>58</sup> NASD, *Code of Arbitration Procedure*, § 32(e); NYSE Rules, Rule 619(e), ¶ 2619; see also Astarita, *Overview*, p. 4. Arbitrators have the power to issue subpoenas or discovery orders requiring parties to disclose certain documents. See NASD, *Code of Arbitration Procedure*, § 32(e); NYSE Rules, Rule 619(f), ¶ 2619; see also *Arbitrator's Manual*, p. 14.

<sup>59</sup> Astarita, *Overview*, p. 5.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.* In arbitration, however, the scope of cross examination is more broad than in court proceedings because it is not limited to the scope of the direct examination. *Ibid.* Another difference is that arbitrators may question the witnesses themselves. *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> NASD, *Code of Arbitration Procedure*, § 34; see also NYSE Rules, Rule 620, ¶ 2620. The American Arbitration Association rules are similar and provide, "The parties may offer such evidence as is relevant and material to the dispute . . . . The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary." AAA Rules, Rule 24.

leniently than in court proceedings.<sup>64</sup> For example, hearsay<sup>65</sup> is often admitted<sup>66</sup> and the rules relating to authenticity are not strictly enforced.<sup>67</sup> In addition, evidence is never excluded based on a Best Evidence Rule objection.<sup>68</sup>

An arbitrator renders his or her decision in the form of an "award."<sup>69</sup> The award must be in writing,<sup>70</sup> but the arbitrator is not required to provide a reason for the conclusion made.<sup>71</sup> In fact, the final conclusion is often merely one sentence long.<sup>72</sup>

It should be noted, however, that there is a potential for review of an award in State or Federal court.<sup>73</sup> Nevertheless, a court is unlikely to overturn the award because courts grant great

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<sup>64</sup> Astarita, *Overview*, p. 6.

<sup>65</sup> "Hearsay evidence is testimony in court of a statement made out of the court, the statement being offered as an assertion to show the truth of matters asserted therein, and thus resting for its value upon the credibility of the out-of-court asserter." *Black's Law Dictionary* (5th ed., 1979), p. 649.

<sup>66</sup> Astarita, *Overview*, pp. 6–7.

<sup>67</sup> *Ibid.*, p. 6. Proving authenticity entails offering evidence "sufficient to support a finding that the matter in question is what its proponent claims" it to be. FED. R. EVID. 901(a).

<sup>68</sup> Astarita, *Overview*, p. 6. The Best Evidence Rule may require, among other things, that the contents of a written document be proven by offering into evidence the document itself rather than by offering indirect proof such as oral testimony describing the document. See FED. R. EVID. 1002.

<sup>69</sup> Astarita, *Overview*, p. 7.

<sup>70</sup> NASD, *Code of Arbitration Procedure*, § 41(a); NYSE Rules, Rule 627(a), ¶ 2627.

<sup>71</sup> NASD, *Code of Arbitration Procedure*, § 41(e); NYSE Rules, Rule 627(e), ¶ 2627. In contrast, the American Arbitration Association rules do require that the award contain a written explanation for the finding. Rule 32 of the AAA Rules states, "The award shall be in writing and shall be signed by a majority of the arbitrators and shall provide the written reasons for the award unless the parties agree otherwise." AAA Rules, Rule 33(c).

The NASD and the NYSE have adopted almost identical language requiring the awards to include the following information: the names of the parties and the attorneys; a summary of the issues; the damages and other relief requested; the damages and other relief awarded; a statement of any other issues resolved; the names of the arbitrators; the dates the claim was filed and the award was rendered; the dates and number of hearing sessions; the location of the hearings; and the signatures of the arbitrators who concurred in the award. NASD, *Code of Arbitration Procedure*, § 41(e); NYSE Rules, Rule 627(e), ¶ 2627. The NYSE rules, however, do not require the arbitrator to include a statement of the amount of damages or other relief sought by the claimant. NYSE Rules, Rule 627(e), ¶ 2627.

<sup>72</sup> Astarita, *Overview*, p. 7.

<sup>73</sup> See 9 U.S.C. §§ 9–10 (1998); Astarita, *Overview*, p. 8.

deference to arbitration awards.<sup>74</sup> Specifically, the Federal Arbitration Act states that a judge may set aside an arbitration award if the judge finds corruption, fraud, or undue means, “evident partiality,” misconduct, or an act that shows the arbitrators exceeded their powers.<sup>75</sup> Moreover, a judge may modify or correct an arbitration award if there was an evident material miscalculation of figures or an evident material mistake in the description of a person, thing, or property referred to in the award; where the arbitrators awarded upon a matter not submitted to them; and where the award is imperfect in matter of form not affecting the merits of the controversy.<sup>76</sup> In addition, the courts have held that a judge may overturn an arbitration award upon finding a “manifest disregard” of the law.<sup>77</sup>

### **Alleged Inadequacies of Discovery Procedures in SRO Sponsored Arbitration**

The limitations on discovery rights are one focus of claimants’ objections to the procedures used in SRO sponsored arbitration. For example, in *Gilmer* the plaintiff argued that because discovery is more limited in arbitration, it is harder for claimants to prove their allegations.<sup>78</sup>

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<sup>74</sup> See, e.g., *DiRussa v. Dean Witter Reynolds, Inc.*, 121 F.3d 818, 822 (2d Cir. 1997), cert. denied, 118 S. Ct. 695 (1998) (upholding award that neglected to grant attorney’s fees, even though attorney’s fees are mandated under the applicable law, on the ground that there was no evidence that the arbitrator intentionally disregarded the law). At least one writer has argued that the courts should be granted broader grounds for vacating arbitration awards. See Manuszak, “Civil Rights Arbitration,” pp. 429–31 (proposing an amendment to the Federal Arbitration Act to allow courts to vacate arbitration awards when “arbitrators have misapplied or misinterpreted applicable law”).

<sup>75</sup> See 9 U.S.C. § 10 (1998).

<sup>76</sup> 9 U.S.C. § 11 (1998).

<sup>77</sup> See *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobber*, 808 F.2d 930, 933 (2d Cir. 1986). The second circuit emphasized the narrow nature of the grounds for review provided by the manifest disregard standard when it stated, “The term ‘disregard’ implies that the arbitrator appreciates the existence of a clearly governing legal principle but decides to ignore or pay no attention to it.” *Id.* at 933.

<sup>78</sup> See *Gilmer*, 500 U.S. at 31. The Supreme Court rejected this assertion and found that the discovery methods permitted, which included document production, depositions, subpoenas, and information requests, were adequate. See *id.* The Court did recognize that discovery is more liberal in Federal court but stated that this fact was counterbalanced by the more flexible evidentiary rules followed in private arbitration. See *id.*

Indeed, Jeffrey Liddle’s testimony at the Commission’s hearing supported this allegation.<sup>79</sup> Mr. Liddle stated at the hearing that even though he has requested disclosure of EEO–1<sup>80</sup> forms on approximately 150 occasions, he has never had an SRO arbitration panel overrule the employers’ objections.<sup>81</sup>

Mr. Liddle explained that, in his opinion, the discovery rules are inadequate for employment discrimination cases because the procedural rules for securities arbitration were written with customer disputes, not employment discrimination disputes, in mind.<sup>82</sup> However, Mr. Liddle did point out that the *Arbitrator’s Manual* does address employment disputes directly.<sup>83</sup> The manual states that in employment cases the following items are often, though not always, disclosed by the employer: the employer’s personnel records, the employee manual, employment contracts, the U–4 form, and the U–5 form.<sup>84</sup> Mr. Liddle stated, however, that the few documents mentioned in the manual are of little assistance to employees making a variety of employment discrimination claims.<sup>85</sup> He asserted that the

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<sup>79</sup> Jeffrey Liddle, a partner at the New York City law firm of Liddle, Robinson & Shoemaker, has represented many securities professionals in employment arbitration. Liddle Testimony, *New York Hearing*, vol. III, pp. 832–33.

<sup>80</sup> EEO–1 forms are used by the Equal Employment Opportunity Commission to collect hiring and other employment data from employers. *Ibid.*, pp. 844–45.

<sup>81</sup> *Ibid.*, p. 845. However, Theodore Rogers, who has served as outside counsel to securities firms, has stated that “[i]n [his] personal experience dealing with discovery disputes, when one side claims that the other side’s requests are too broad or out of bounds, the [New York Stock] Exchange has been, if anything, erring on the side of giving the claimant more information than reasonably could be considered useful.” See “Symposium: New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry,” *Fordham Law Review*, vol. 63 (1995), pp. 1613, 1621 (hereafter cited as NYSE Symposium).

<sup>82</sup> Liddle Testimony, *New York Hearing*, vol. III, p. 865; see also Walker Testimony, *New York Hearing*, vol. III, p. 933 (stating that the arbitration rules have traditionally focused on customer disputes).

<sup>83</sup> Liddle Testimony, *New York Hearing*, vol. III, p. 864.

<sup>84</sup> *Arbitrator’s Manual*, pp. 11–12. The U–5 form sets forth the reason(s) why a registered representative ceased working for a particular investment firm. See National Association of Investment Professionals, *Definitions* (visited Jan. 8, 1998) <<http://www.naip.com/definitions.htm>>.

<sup>85</sup> Liddle Testimony, *New York Hearing*, vol. III, pp. 864–65. Specifically, Mr. Liddle stated that the documents listed would be of no assistance to a “female proceeding under the Equal Pay Act in establishing comparability of job titles and then getting the comparable compensation information. It

body of Federal case law that sets forth principles of relevancy for discrimination cases would be useful for arbitration.<sup>86</sup>

Mr. Liddle added that discovery limitations are exacerbated by employers' "constant effort to suppress and conceal information."<sup>87</sup> He described the typical discovery process by stating that employers defending a claim before an arbitrator:

start out [by] saying, we won't produce any documents. . . . Then, after that's discussed, then [they] say, okay, we have an objection to every one of these documents that has been requested because none of them are relevant. So, you get people who are essentially laymen with regard to their understanding of race discrimination and they hear two arguments and, you know, it's a coin flip. Fifty percent of the time they are going to say, well, I don't want to dump on that guy all the time, so I'll give him half of these things. . . .

[T]hen they say, okay, now that we have to produce just a smidgen of documents that have been requested, we can't possibly produce the whole document, we'll produce only those portions that directly describe race discrimination, so they'll take . . . [a document that originally was about 48 pages long and] . . . they will give you two paragraphs. . . . So, it's a very frustrating process.<sup>88</sup>

These concerns are of grave importance because a successful arbitration forum should allow "a full and fair exploration of the issues in dispute" while safeguarding "the expedited nature of arbitration."<sup>89</sup>

### Composition of Arbitration Panels

Another procedural issue that has raised the concern of employees' advocates is the composition of arbitration panels. One advocate for employees described how she saw the problem when she said:

You know, it really is a perception of fairness as well as the actual fairness. It is very hard to judge fairness. But you are going to feel better if you have an

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does nothing with regard to making pattern and practice claims in a race discrimination case. A substantially greater amount of documentation is necessary." *Ibid.*, p. 865.

<sup>86</sup> *Ibid.*, p. 863.

<sup>87</sup> *Ibid.*, p. 839.

<sup>88</sup> *Ibid.*, pp. 872-73.

<sup>89</sup> AAA Rules, Rule 7.

arbitrator who is prepared to listen to your legal arguments, who is prepared to hear them, who is prepared to act as if he's heard this stuff before. It would go a long way to making you feel, well, "Maybe I'm not in the wrong place after all."<sup>90</sup>

Both the NASD *Code of Arbitration Procedure*<sup>91</sup> and the NYSE rules<sup>92</sup> contain procedures that allow parties to have some input on the ultimate selection of an arbitrator to decide the particular case. Nevertheless, arbitration opponents argue, the apparently homogeneous composition of the pool from which arbitrators are selected limits the ability of these procedures to protect claimants' rights.

### *The Pool from which Arbitrators are Selected*

The two central objections to the makeup of the pool of arbitrators are that the pool lacks diversity and the arbitrators lack sufficient knowledge of employment discrimination law.

***Racial and Gender Composition of the Pool.*** Employees' advocates argue that the homogeneous composition of the pool of arbitrators creates great potential for bias against minority and women employees bringing claims of discrimination.<sup>93</sup> In *Gilmer v. Interstate/Johnson*,<sup>94</sup> the Supreme Court addressed this issue and "decline[d] to indulge the presumption that the parties and arbitral body conducting a proceeding will be unable or unwilling to retain competent, conscientious and impartial arbitrators."<sup>95</sup> In addition, the Court found that the NYSE rules provided adequate safeguards against the evidence of any potential for bias.<sup>96</sup>

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<sup>90</sup> NYSE Symposium, p. 1627.

<sup>91</sup> NASD, *Code of Arbitration Procedure*, § 22.

<sup>92</sup> NYSE Rules, Rule 609, ¶ 2609.

<sup>93</sup> See Evan J. Charkes, "Arbitration Update: Employment Discrimination in the Securities Industry," *New York Law Journal*, May 22, 1997, reprinted in *Law Journal Extra!* (visited Dec. 18, 1997) <<http://www.ljx.com/practice/securities/0522empsecdsc.html>>, p. 2 (citing the arguments made by critics of the securities arbitration process).

<sup>94</sup> 500 U.S. 20 (1991).

<sup>95</sup> *Id.* at 30 (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 634 (1985)).

<sup>96</sup> See *Gilmer*, 500 U.S. at 30-31. The NYSE rules highlighted by the Court were the following: (1) the requirement that the arbitrators submit their employment histories to the parties; (2) the allowance of one preemptory challenge and unlimited challenges for cause to each party; and (3) the mandatory disclosure by the arbitrators of any circumstance

Nevertheless, information presented in the 1994 report written by the U.S. General Accounting Office provides support for the claim that the composition of the pool of arbitrators is unbalanced.<sup>97</sup> For instance, the GAO found that most arbitrators for the NYSE<sup>98</sup> were white males.<sup>99</sup> Specifically, an estimated 89 percent of the NYSE arbitrators were men and approximately 97 percent were white.<sup>100</sup> On the other hand, only 0.9 percent were African American, 0.6 percent were Asian American, and 1 percent were other minorities.<sup>101</sup>

The *Arbitrator's Manual* states that "even an appearance of conflict might render a decision suspect. It cannot be emphasized enough that arbitrators must be free in fact and in appearance from all bias and prejudice."<sup>102</sup> Nevertheless, the Commission staff could find no explicit policy of NASD or NYSE that requires the pool of arbitrators to be diverse.<sup>103</sup> In contrast, the American Arbitration Association explicitly requires that its pool of arbitrators remains balanced. Its *National Rules for the Resolution of Employment Disputes* states, "The roster of available arbitrators will be established on a

non-discriminatory basis, diverse by gender, ethnicity, background and qualifications."<sup>104</sup>

*Professional Background and Knowledge of Arbitrators in the Pool.* Another objection to the composition of the pool from which arbitrators are selected is the assertion that the qualifications needed to become an arbitrator are inadequate. Specifically, employment discrimination plaintiffs complain that the arbitrators lack sufficient knowledge of employment discrimination issues.<sup>105</sup>

An online informational brochure discussing the qualifications necessary to become a securities arbitrator states:

The NASD Regulation Office of Dispute Resolution relies on a roster of neutral, qualified arbitrators to help maintain its fair, impartial, and efficient system of dispute resolution. NASD Regulation arbitrators are carefully selected from a broad cross-section of people, diverse in culture, profession, and background. . . . Our goal is to recruit arbitrators from different backgrounds, such as educators, accountants, lawyers, business and securities professionals, and others. So, if you have at least five years of business, professional, investing, or other related experience, you may qualify.<sup>106</sup>

To apply to become a NASD arbitrator, an applicant must provide NASD with information regarding educational background, work experience, knowledge of the securities industry, and any other qualifications.<sup>107</sup> Based upon the information provided, the NYSE and the NASD decide on a case-by-case basis whether the applicant is initially qualified to serve as an arbitrator.<sup>108</sup>

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that could prevent the arbitrator from rendering a fair decision. See *id.* at 30.

<sup>97</sup> 1994 GAO Report, p. 8.

<sup>98</sup> The GAO report did not list data for the demographic composition of NASD panels but suggests they would be similar to the makeup of the NYSE panels. *Ibid.*, p. 9.

<sup>99</sup> *Ibid.*, p. 8.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> *Arbitrator's Manual*, p. 3.

<sup>103</sup> The only reference to diversity is contained in an informational brochure for potential arbitrators. The brochure states that "NASD Regulation arbitrators are carefully selected from a broad cross-section of people, diverse in culture, profession, and background." NASD Regulation Office of Dispute Resolution, *Become an Arbitrator* (visited Mar. 9, 1999) <<http://www.nasdr.com/pdf-text/arbbro.txt>> (hereafter cited as *NASD, Become an Arbitrator*), p. 1. In May 1997, NASD Regulation hired two recruitment administrators specifically responsible for the national recruitment effort. A primary focus of the recruiters' efforts has been the increase of female and minority arbitrators. Currently, the roster is composed of 5.5 percent minorities and 17.4 percent women. Linda D. Fienberg, executive vice president, Office of Dispute Resolution, and George H. Friedman, senior vice president, Office of Dispute Resolution, NASD Regulation, Inc., Dispute Resolution, to Edward Hailes, deputy general counsel, U.S. Commission on Civil Rights, May 11, 1999, U.S. Commission on Civil Rights files (hereafter cited as *NASD Regulation, Inc.*, letter).

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<sup>104</sup> AAA Rules, Rule 11(a)(iii); see also Lucille M. Ponte, "In the Shadow of *Gilmer*: How Post-*Gilmer* Legal Challenges to Pre-Dispute Arbitration Agreements Point the Way Towards Greater Fairness in Employment Arbitration," *Ohio State Journal on Dispute Resolution*, vol. 12 (1997), pp. 359, 385 (stating that "any fair process should focus on the quality and diversity of the arbitral panel").

<sup>105</sup> Charkes, "Arbitration Update," p. 2; Mark J. Astarita, "Mandatory Arbitration," *Research Magazine*, August 1997, reprinted in *SEC LAW.com* (visited Dec. 18, 1997) <<http://www.seclaw.com/docs/897.htm>>, p. 1.

<sup>106</sup> *NASD, Become an Arbitrator*, p. 1 <<http://www.nasdr.com/arbbro.txt>>.

<sup>107</sup> *NASD Arbitration, Arbitrator Profile* (June 21, 1994) (hereafter cited as *NASD Arbitrator Profile*); see also 1994 GAO Report, p. 5.

<sup>108</sup> 1994 GAO Report, p. 5. NASD Regulation guidelines require an applicant to demonstrate 5 to 8 years of business, professional, investing, or other related experience to be

Robert Clemente, director of arbitration of the NYSE, was asked at the hearing to comment on the requirements to become an arbitrator for the NYSE. Mr. Clemente stated that "there is no requirement [for] arbitrators to be knowledgeable in any particular law when they come into the hearing room."<sup>109</sup> In addition, he said that "a good percentage of [NYSE's] arbitrators are involved in the legal field, probably followed by accounting, other financial areas, but we also include doctors and academicians."<sup>110</sup> Mr. Clemente added that the NYSE has begun "to implement . . . training programs in the area of employment and labor disputes."<sup>111</sup>

The Commission is unaware of any requirement, at the NASD or the NYSE, that the arbitrator pools contain a minimum number of arbitrators with expertise in employment law.<sup>112</sup> In

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accepted into NASD Regulation's pool. Applicants must also disclose their disciplinary history, which NASD Regulation will review to determine if any statutory disqualification standards apply. Recommended applications are then forwarded to the National Arbitration and Mediation Committee's Qualifications Subcommittee, a standing committee of NASD Regulation, for its review and approval. NASD Regulation, Inc., letter.

<sup>109</sup> Robert Clemente, director of arbitration of the NYSE, testimony before the U.S. Commission on Civil Rights, hearing, New York, NY, Sept 19–21, 1994, vol. III, p. 946 (hereafter cited as Clemente Testimony).

<sup>110</sup> *Ibid.*, p. 949.

<sup>111</sup> *Ibid.*, p. 938. One defender of the securities arbitration process argued that arbitrators are no more ill-suited to decide employment discrimination cases than jurors. See NYSE Symposium, p. 1620 ("Those who criticize the supposed lack of legal training by arbitrators ignore the fact that juries have no training in discrimination law, and there is no reason to suppose that a judge's instruction to a jury concerning the law leaves the jury any more informed on these issues than arbitrators who have received some training and have the benefit of the competing arguments and evidence submitted by counsel").

<sup>112</sup> It should be noted that the NASD has proposed some enhancements to the process of arbitrating employment discrimination claims. These proposals have not yet been accepted by the SEC. In regard to employment discrimination disputes, the NASD has proposed that arbitrators selected to serve as single arbitrators, or chairs of three-person panels, should have substantial familiarity with employment law. NASD, Proposed Rule, Rule Filing SR-NASD-99-08 § 10210 (the proposed rule is not yet published in the *Federal Register* and is subject to amendment before it becomes effective). Furthermore, under the proposed rule, arbitrators selected to serve as single arbitrators, or chairs of three-person panels, may not have represented primarily the views of employers or of employees within the last 5 years. *Ibid.* Though not in its proposed rule, the NASD has also announced its intention to develop a specialized em-

contrast, the American Arbitration Association, in its *National Rules for the Resolution of Employment Disputes*, has adopted a requirement that its pool of employment arbitrators have adequate expertise. The AAA rules state, "Arbitrators serving under these rules shall be experienced in the field of employment law."<sup>113</sup>

### **Composition of Individual Arbitration Panels**

Advocates for employees argue that due to the composition of the pool from which arbitrators are selected, the arbitrators chosen to decide individual employment discrimination cases lack adequate training and may even be biased against minorities and women. These advocates recognize that the arbitration procedures contain certain procedural safeguards to protect against bias but assert that the current protections are inadequate.<sup>114</sup>

**Rules Governing the Selection of Arbitrators for Individual Cases.** Under the NYSE arbitration rules, the director of arbitration is to assign an arbitrator to the case after the Statement of Claim has been filed.<sup>115</sup> The NASD im-

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ployment case roster of arbitrators with training and experience in discrimination law. *PR Newswire*, Oct. 8, 1998.

<sup>113</sup> AAA Rules, Rule 11(a)(i).

<sup>114</sup> See, e.g., *Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 995 F. Supp. 190, 210–11 (D. Mass. 1998) *aff'd* 163 F.3d 53 (1st Cir. 1998), *modified by* 1999 U.S. App. LEXIS 3441 (1st Cir. Feb. 24, 1999). In *Rosenberg*, the court stated that the procedural protections "cannot correct the fundamental imbalance in a system in which the entire initial panel and any replacements are appointed by the Director of Arbitration, that is, by an employee of the NYSE," which is "the employer's own trade association." *Id.* The court stated, "Dominance of an arbitral system by one side in the dispute does not comport with any model of arbitral impartiality, especially when that dominance takes the form of selecting the entire arbitrator pool, appointing the individual arbitration panels, and making important procedural and discovery decisions." *Id.* at 211. On appeal, however, the United States Court of Appeals for the First Circuit, though affirming the lower court, disagreed with the district court's rationale. *Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 163 F.3d 53, 56 (1st Cir. 1998), *modified by* 1999 U.S. App. LEXIS 3441 (1st Cir. Feb. 24, 1999). Specifically, the appeals court stated that the district court misinterpreted certain facts about the NYSE's arbitration system and mischaracterized the system. *Id.* at 67 (1st Cir. 1998).

<sup>115</sup> NYSE Rules, Rule 608, ¶ 2608. In contrast, the American Arbitration Association allows the parties to choose an arbitrator from a list of the registered arbitrators in the parties' geographical region. AAA Rules, Rule 12(b). The AAA only reserves the power to appoint the arbitrator in the event that the parties cannot reach an agreement on an acceptable arbitrator to hear the case. AAA Rules, Rule 12(b)(iv).

plemented a new list selection procedure that became effective in November 1998.<sup>116</sup> Under the new policy, parties select arbitrators through a computerized process called the Neutral List Selection System (NLSS). This new system generates lists of arbitrators by sorting or screening arbitrators according to four primary factors: public or nonpublic classification, geographic hearing location, conflict of interest with the parties, and roster rotation. If a party requests that the lists include arbitrators with subject-matter knowledge, such as employment law, NLSS will add this factor when it searches for arbitrators.<sup>117</sup>

In every arbitration case, parties receive a list of up to 15 potential arbitrators. Accompanying that list is a detailed disclosure statement for each arbitrator. These disclosure statements include the arbitrator's educational history, employment background, a list of training programs completed, a narrative description of the arbitrator's experience, plus a history of the arbitrator's case experience. Parties may request copies of prior arbitration decisions of these persons and may ask the arbitrators to provide additional information.<sup>118</sup>

Parties may strike any arbitrator and rank the remaining arbitrators according to the party's preference. NLSS combines the parties' preferences and produces a consolidated list of arbitrators in order of their consolidated rankings. (Any arbitrator stricken from a list by any party does not receive a consolidated ranking.) The director then appoints the arbitrator or arbitration panel based on the consolidated list.<sup>119</sup>

In employment discrimination cases before the NASD,<sup>120</sup> the arbitrator appointed must be a "public" arbitrator, one who is not affiliated with the securities industry.<sup>121</sup> In certain cases, if a

party so requests, the director of arbitration must appoint a panel of three arbitrators, the majority of which must be public arbitrators.<sup>122</sup> The requirement that the arbitrators be public is imposed to avoid an appearance that the panel may be biased in favor of the industry.<sup>123</sup>

**Composition of Individual Panels.** Mr. Liddle testified at the Commission hearing that the chance of an employee obtaining a panel with a female or minority arbitrator is very slim.<sup>124</sup> This is because very few arbitrators in the entire pool of arbitrators are women or members of minority groups.<sup>125</sup> In addition, even if a woman or minority arbitrator is initially appointed to a panel, he or she may not remain on the panel due to peremptory challenges. As a result, almost all arbitration panels are composed entirely of white males.<sup>126</sup>

The Commission is unaware of any rules at the NYSE or the NASD requiring that the panels chosen to decide employment discrimination cases be diverse.

**Consideration of Arbitrators' Expertise.** In its 1994 report, the GAO found that "NYSE and NASD do not necessarily consider, as a primary criterion for arbitration panel selections, arbitrators' expertise in the subject matter of the dispute. In fact, NYSE and NASD arbitration staff do not routinely assess the expertise of the members of their arbitrator pools."<sup>127</sup> As a result, GAO recommended that the SEC "direct [the] SROs to . . . assess and maintain information on arbitrators' expertise and use this information when selecting arbitrators to serve on panels, especially those deciding discrimination dis-

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her work to securities industry clients, or is registered pursuant to the Commodity Exchange Act. *Ibid.*, § 19(c); NYSE Rules, Rule 607(a)(2), ¶ 2607. The NYSE rules differ in that an arbitrator is from the industry if he or she has been affiliated with a member firm within the last 5 years. NYSE Rules, Rule 607(a)(2)(ii), ¶ 2607.

<sup>122</sup> NASD, *Code of Arbitration Procedure*, § 19(a); NYSE Rules, Rule 607(a)(1), ¶ 2607.

<sup>123</sup> Megan L. Dunphy, "Comment: Mandatory Arbitration: Stripping Securities Industry Employees of their Civil Rights," *Catholic University Law Review*, vol. 44 (1995), pp. 1169, 1196.

<sup>124</sup> Liddle Testimony, *New York Hearing*, vol. III, pp. 848-49.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*, p. 849.

<sup>127</sup> 1994 GAO Report, p. 12.

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<sup>116</sup> NASD Rule 10308, effective Nov. 17, 1998.

<sup>117</sup> NASD Regulation, Inc., letter.

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> The NYSE rules do not make separate provisions for employment disputes. See NYSE Rules, Rule 630, ¶ 2630 ("The provisions of the Uniform Arbitration Code contained in Rules 600 to 629 shall also apply to controversies between members . . .").

<sup>121</sup> NASD, *Code of Arbitration Procedure*, §§ 9(a), 13(f), 19. An arbitrator is affiliated with the securities industry if he or she is associated with a securities firm or has been within the last 3 years, is retired from a securities firm, is another professional who has devoted at least 20 percent of his or

putes.”<sup>128</sup> The SEC has yet to adopt this recommendation.

Robert Clemente, director of the Arbitration Division for the NYSE, testified at the hearing that the NYSE had begun to address all of the recommendations in the GAO report, including the recommendation that the NYSE use an arbitrator’s knowledge of employment discrimination law as a criterion when determining whether the arbitrator will serve on an employment discrimination panel.<sup>129</sup> In addition, the NYSE had amended its arbitrator profile to include information regarding an arbitrator’s substantive area of expertise.<sup>130</sup>

Mr. Clemente stated that NYSE tries “to select arbitrators that are knowledgeable or have familiarity with the issues involved in the case.”<sup>131</sup> Mr. Clemente added that “[a] number of [NYSE’s] arbitrators are individuals who have become somewhat full-time arbitrator-mediators and are focused in the employment or the labor field, in labor arbitration.”<sup>132</sup>

NASD Regulation guidelines require an applicant to demonstrate 5 to 8 years of business, professional, investing, or other related experience to be accepted into NASD Regulation’s pool of arbitrators. The application form asks for a complete education and employment history, plus a listing of relevant training. Applicants must supply two letters of reference and indicate any experience or expertise related to various securities-related controversies.<sup>133</sup>

## Arbitration Awards in Employment Discrimination Cases

An additional objection to arbitration procedures focuses on the outcomes: some advocates argue that employers are more likely to prevail in SRO sponsored arbitration and that even when employees do prevail, the awards granted are smaller in arbitration than in jury trials.<sup>134</sup> Other advocates, however, argue that employees actually fare better in arbitration than in Federal court.<sup>135</sup> The Commission asked the NASD and the NYSE to provide information on the results of the employment discrimination arbitrations they conducted.

### Awards Finding Employers Liable

Mr. Clemente testified at the hearing that during the period between January 1, 1990, and June 30, 1994, a total of 5,415 arbitrations were conducted at the NYSE.<sup>136</sup> Of those, only 43 contained allegations of discrimination.<sup>137</sup> Most of the discrimination claims alleged gender and age discrimination.<sup>138</sup> Only one claim alleged racial discrimination, and only one claimed discrimination based on national origin.<sup>139</sup>

The NYSE later reported that during the period between January 1, 1990, and December 31, 1994, a total of 58 cases containing allegations of employment discrimination were filed with NYSE.<sup>140</sup> Of those cases, 33 actually completed

<sup>128</sup> *Ibid.*, p. 16.

<sup>129</sup> Clemente Testimony, *New York Hearing*, vol. III, p. 938.

<sup>130</sup> *Ibid.* The June 21, 1994, version of the NASD Arbitrator Profile allows an applicant to indicate whether he or she has expertise in employment discrimination or sexual harassment disputes. See NASD Arbitrator Profile, p. 11.

<sup>131</sup> Clemente Testimony, *New York Hearing*, vol. III, p. 946.

<sup>132</sup> *Ibid.*, p. 950.

<sup>133</sup> NASD Regulation, Inc., letter. In addition, the application form asks arbitrators to indicate any or all of the following employment law areas of expertise: breach of contract, commissions, compensation, age discrimination, disability discrimination, gender discrimination, national origin discrimination, race discrimination, religious discrimination, sexual preference discrimination, partnerships, promissory notes, sexual harassment, training contracts, and wrongful termination. *Ibid.*

<sup>134</sup> See Daniel S. Levine, *Inhuman Relations Dept.: NASD Sheds Mandatory Arbitration For Victims Of Discrimination* (last modified Aug. 12, 1997) <<http://www.disgruntled.com/nasdarb897.html>>, p. 2 (citing a 1995 study of arbitration awards in employment disputes in the securities industry).

<sup>135</sup> See John Coffee, Jr., “Sex and the Securities Industry,” *New York Law Journal*, May 29, 1997, reprinted in *Law Journal Extra!* (visited Dec. 22, 1997) <<http://www.ljx.com/practice/securities/0529sexsec.html>>, p. 3 (citing a study conducted by the Securities Industry Association which found that employees were victorious in 26 percent of cases before NASD and 41 percent of cases before NYSE, compared with 19 percent of cases litigated in the Southern District of New York).

<sup>136</sup> Clemente Testimony, *New York Hearing*, vol. III, p. 954.

<sup>137</sup> *Ibid.* Mr. Clemente testified that only 40 alleged discrimination, but in a subsequent letter to the Commission, Paula R. Union, senior arbitration counsel for the NYSE, corrected the data previously provided. See Paula R. Union to Eileen E. Rudert, Mar. 3, 1995, U.S. Commission on Civil Rights files (hereafter cited as Union Letter).

<sup>138</sup> Clemente Testimony, *New York Hearing*, vol. III, pp. 954–55.

<sup>139</sup> *Ibid.*, p. 955.

<sup>140</sup> Union Letter.



the arbitration process; the others were either settled, withdrawn, or closed for inactivity.<sup>141</sup> NYSE reported that 15 of the 33 cases were dismissed.<sup>142</sup> Of the 18 cases in which awards were granted, 5 cases involved multiple claims, and the discrimination claims were denied.<sup>143</sup> Thus, the information indicates that approximately 20 of the 33 discrimination claims were denied.<sup>144</sup>

NASD records indicate that the total number of arbitration cases closed at NASD during the 5-year period from 1990 through 1994 was 21,319.<sup>145</sup> Of those cases, only 63 alleged discrimination based on "color, race, sex, or national origin."<sup>146</sup> NASD reported that the arbitration process was completed for 19 of the 63 cases.<sup>147</sup> Of the 19 cases that arbitrators decided,

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<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Susie Miao, National Association of Securities Dealers, "Arbitration Department's response to an inquiry by the United States Commission on Civil Rights," July 26, 1995, filed as Exhibit 42 of the Commission's record of the July 26, 1995, Commission Hearing, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination* (hereafter cited as NASD Submission to Commission). Specifically, the report indicated that the number of cases for each year was the following: 1990—4,019; 1991—4,036; 1992—4,375; 1993—4327; 1994—4562. Ibid.

<sup>146</sup> Ibid. NASD records actually indicate that only 60 cases alleged discrimination. Ibid. However, one of the discrimination arbitrations involved the resolution of four separate claims. Ibid. For purposes of reporting the outcomes of the total number of discrimination cases, the single arbitration of four cases is treated here as four separate arbitrations. Since 1994 the number of arbitration claims, and specifically, the number of claims alleging employment discrimination, has increased. NASD reported that in 1996, 109 of its 5,631 arbitrations involved allegations of employment discrimination. National Association of Securities Dealers, *NASD Press Release: NASD Proposes Eliminating Mandatory Arbitration Of Employment Discrimination Claims For Registered Brokers* (last modified Aug. 7, 1997) <[http://www.nasdaqnews.com/news/pr/ne\\_section97\\_52.html](http://www.nasdaqnews.com/news/pr/ne_section97_52.html)> (hereafter cited as *NASD Press Release*), p. 1.

<sup>147</sup> NASD records actually report that 16 arbitrations were completed. NASD Submission to Commission. However, as noted above, one of the cases reported by NASD was a joint Statement of Claim brought by four claimants. Ibid. The arbitrator awarded damages to one of the four claimants and denied the other three claims. Ibid. Because the case involved four separate complainants it is treated here as four separate arbitrations. Of the remaining cases, 9 were withdrawn by the claimants, 32 were settled before the arbitrations were completed, and 3 were terminated for other reasons ("Forum Denied, Case Stayed, and Case Information Deficient"). Ibid.

employers were held liable in 6 cases.<sup>148</sup> In most of the other 13 cases, the claims were simply dismissed.<sup>149</sup>

The above figures indicate that approximately 39 percent of the discrimination claims arbitrated at the NYSE resulted in awards for the claimant. At the NASD, approximately 32 percent of the claimants were victorious.

### **Amounts Awarded to Victorious Claimants**

Jeffrey Liddle, an attorney who has represented a number of employment discrimination plaintiffs in securities arbitration cases, testified at the hearing that plaintiffs who obtain awards usually are only awarded 40 to 60 percent of the amount they sought in their complaints.<sup>150</sup> He characterized the arbitration awards as "lower than normal."<sup>151</sup> Mr. Liddle described what he perceives to be a problem in the determination of the amounts of awards by arbitrators as follows:

[The arbitrators] wrestle probably with the concept of liability and then my impression is that generally they negotiate the amount of damages, whereas in a court it's most likely that once the liability has been established, the amount of damages is measured in accordance with generally accepted legal principles as to how damage has been measured . . . . But in arbitration panels it's more like after you've overcome this major hurdle of liability, you've got a negotiation going on among the panelists and a lower than normal award coming out.<sup>152</sup>

One "leading advocate[ ] of employees in discrimination cases,"<sup>153</sup> Judith Vladeck, has described the arbitration system as follows:

If I take a [claimant] into the federal court who has a legitimate, meritorious case of discrimination, she is entitled to certain protection, she is entitled to a fair hearing, entitled to due process. If she wins, she gets whatever money she's lost in back wages, she gets enough in attorneys' fees so that she nets whatever it is of the damages provided, and if she has suffered emotional distress, under the Act she can get damages for that. Go into arbitration, even if you win they

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<sup>148</sup> Ibid. The awards for two of the cases were not provided to the Commission. Ibid.

<sup>149</sup> Ibid.

<sup>150</sup> Liddle Testimony, *New York Hearing*, vol. III, p. 868.

<sup>151</sup> Ibid., p. 869.

<sup>152</sup> Ibid.

<sup>153</sup> NYSE Symposium, p. 1613.

give you, say, twenty dollars with no explanation, no attorneys' fees, no compensation for emotional distress.<sup>154</sup>

Documents submitted by NYSE indicate that three of the victorious claimants before the NYSE each were awarded \$562,500, \$765,321, and \$240,000.<sup>155</sup> Because the remaining 10 cases involved multiple claims, the NYSE was unable to determine the amounts of the total awards that were attributable to the discrimination claims.<sup>156</sup> Claimants who won their cases at the NASD were awarded amounts ranging from \$8,832.58 to \$380,835.<sup>157</sup> However, because many of the cases involved multiple claims, it is impossible to determine the amounts awarded for the discrimination violations.<sup>158</sup>

The evidence submitted to the Commission does not conclusively prove which parties, employers or employees, fare better in SRO sponsored arbitration. However, if the goals of providing a fair and cost-efficient tribunal are met, both parties should fare better in arbitration than in court.

### Institutional Responses to Concerns

Since the New York hearing, several reforms were proposed and two critical reforms have taken effect.

On January 21, 1997, U.S. Senator Russell Feingold introduced a bill to amend seven major Federal civil rights statutes to prevent the involuntary application of arbitration claims that arise from unlawful discrimination based on race, color, religion, sex, national origin, age, or

disability.<sup>159</sup> U.S. Representative Edward Markey introduced a companion bill in the House on March 6, 1997.<sup>160</sup> The bills would have amended title VII of the Civil Rights Act of 1964,<sup>161</sup> the Age Discrimination in Employment Act,<sup>162</sup> the Rehabilitation Services Act,<sup>163</sup> the Americans with Disabilities Act,<sup>164</sup> section 1981,<sup>165</sup> the equal pay requirement in the Fair Labor Standards Act,<sup>166</sup> and the Family and Medical Leave Act.<sup>167</sup> The bills would have, in effect, prohibited an agreement to arbitrate claims arising under the aforementioned acts when such an agreement is entered into prior to the cause of action arising.<sup>168</sup> An agreement to arbitrate one of these claims that is entered into after the cause of action arose would have been unaffected by these bills. Both bills were referred to committee during the 105th Congress;<sup>169</sup> no floor action was taken on either bill.

NASD also made efforts to understand the issue and implement reform.<sup>170</sup> In the process of

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<sup>159</sup> See Civil Rights Procedures Protection Act of 1997, S. 63, 105th Cong., 1st Sess. (1997).

<sup>160</sup> See Civil Rights Procedures Protection Act of 1997, H.R. 983, 105th Cong., 1st Sess. (1997); 143 Cong. Rec. E407 (daily ed. Mar. 6, 1997) (statement of Rep. Markey).

<sup>161</sup> 42 U.S.C. §§ 2000e-2000e-17 (1994).

<sup>162</sup> 29 U.S.C. §§ 621-634 (1985).

<sup>163</sup> 29 U.S.C. §§ 701-796i (1985).

<sup>164</sup> 42 U.S.C. §§ 12101-12213 (1995).

<sup>165</sup> 42 U.S.C. § 1981 (1994).

<sup>166</sup> 29 U.S.C. § 206(d) (1978).

<sup>167</sup> 29 U.S.C. §§ 2601-2654 (1998).

<sup>168</sup> See Civil Rights Procedures Protection Act of 1997, S. 63, 105th Cong., 1st Sess. (1997); Civil Rights Procedures Protection Act of 1997, H.R. 983, 105th Cong., 1st Sess. (1997).

<sup>169</sup> See 143 Cong. Rec. S160 (daily ed. Jan. 21, 1997); 143 Cong. Rec. H803 (daily ed. Mar. 6, 1997). Both amendments would add the following language to the seven civil rights statutes: "Notwithstanding any Federal statute of general applicability that would modify any of the powers and procedures expressly applicable to a claim arising under this [statute], such powers and procedures shall be the exclusive powers and procedures applicable to such claim unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure." Civil Rights Procedures Protection Act of 1997, S. 63, 105th Cong., 1st Sess. (1997); Civil Rights Procedures Protection Act of 1997, H.R. 983, 105th Cong., 1st Sess. (1997).

<sup>170</sup> In addition, the New York attorney general held a hearing on Jan. 22, 1998, to "elicit testimony from women who have faced sex discrimination daily on the job." Bureau of National Affairs, "New York Attorney General Plans Hearing To Examine Claims in Securities Industry," *Daily Labor Report*, Dec. 2, 1997, p. A-4.

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<sup>154</sup> *Ibid.*, p. 1625.

<sup>155</sup> Union Letter.

<sup>156</sup> *Ibid.* The total award amounts in those cases were \$61,950, \$38,000, \$12,000, \$45,000, \$475,000, \$60,750, \$75,000, \$68,000, \$114,668, and \$34,908.10. *Ibid.*

<sup>157</sup> See NASD Submission to Commission.

<sup>158</sup> *Ibid.* Critics of the arbitration process have argued that the failure of arbitrators to provide written explanations for their findings undermines the enforcement of the antidiscrimination statutes. See, e.g., Equal Employment Opportunity Commission, "EEOC Notice Number 915.002," July 10, 1997, reprinted in *EEOC Notice Number 915.002* (visited Dec. 15, 1997) <<http://www.eeoc.gov/docs/mandarb.txt>> (hereafter cited as EEOC Notice), p. 6. Indeed, as noted above, the American Arbitration Association requires that its arbitrators provide a written explanation of the reasons for each award in employment disputes. AAA Rules, Rule 34(c).

studying the issue, the NASD solicited comments from a variety of resources. The National Association of Investment Professionals, an organization representing the interests of employees, reported that it recommended making participation in the arbitration system optional.<sup>171</sup> The Securities Industry Association, an organization that represents the interests of securities firms,<sup>172</sup> “strongly urge[d]” NASD to keep in place the mandatory arbitration system.<sup>173</sup> NASD’s National Arbitration and Mediation Committee ultimately recommended the elimination of the mandatory arbitration requirement, and the issue was sent to NASD for final resolution.<sup>174</sup>

While the rule change was being considered by NASD, the U.S. Equal Employment Opportunity Commission (EEOC) issued a policy statement denouncing mandatory arbitration agreements.<sup>175</sup> EEOC stated that the mandatory arbitration requirement “[p]rivatizes” [e]nforcement [o]f [t]he Federal [e]mployment [d]iscrimination

[l]aws,” undermining public enforcement, and specifically, the ability of the EEOC to enforce the civil rights laws.<sup>176</sup> EEOC made numerous additional arguments, including the following: the private nature of the proceedings limits the extent to which the forum can be held publicly accountable, arbitration inhibits the development of the law, and the forum contains a structural bias against employees.<sup>177</sup>

The NASD then announced, on August 7, 1997, that it had voted to amend the NASD rules to exempt employment discrimination claims from the mandatory arbitration requirement.<sup>178</sup> In addition, the NASD stressed its commitment to improve the arbitration forum in the hopes that employees would perceive it as fair and voluntarily opt to have their disputes arbitrated.<sup>179</sup> Specifically, NASD stated its intention to increase the diversity of arbitration panels and provide specialized training for arbitrators.<sup>180</sup>

The proposed rule change was submitted to the SEC for approval.<sup>181</sup> In the meantime, in December 1997, Isaac Hunt, a Commissioner for the SEC, reportedly opined that “in all likelihood an industry arbitration panel lacks the background and experience to competently deal with issues of race-based and sex-based discrimination.”<sup>182</sup> Commissioner Hunt added that

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<sup>171</sup> National Association of Investment Professionals, *NAIP Press Releases: NAIP Offers Views on Mandated Arbitration for Discrimination Claims Before NASD Advisory Committee* (last modified June 17, 1997) <<http://www.naip.com/PR061797.htm>>, p. 1.

<sup>172</sup> Securities Industry Association, *SIA Press Releases: SIA Board Member, Firm’s Chief Legal Officer Outlines Employment Arbitration Strengths Before NASD Panel* (last modified June 17, 1997) <<http://www.sia.com/html/pr666.html>>, p. 2.

<sup>173</sup> Stuart J. Kaswell, senior vice president and general counsel, Securities Industry Association, letter to Mary L. Schapiro, president, NASD Regulation, Inc., Mar. 11, 1997, reprinted in *SIA Comment Letters* (visited Jan. 7, 1998) <[http://www.sia.com/legal\\_regulatory/html/nasd97-2.html](http://www.sia.com/legal_regulatory/html/nasd97-2.html)>, p. 5. SIA argued that Congress and the courts have approved of arbitration and that criticisms of the arbitration process are “misplaced.” *Ibid.*, pp. 1–5. Specifically, the SIA argued that the arbitrator training provided is adequate, the SROs ensure that each arbitration panel is “appropriate in all respects,” and employees enjoy “extensive opportunity to collect evidence” through the existing discovery procedures. *Ibid.*, pp. 3–4. However, the SIA did recommend improving the arbitration process by, among other things, increasing arbitrator training requirements, enhancing efforts to ensure that the pool of arbitrators is diverse, and allowing parties to have greater influence on the selection of an arbitrator for individual cases. Stuart J. Kaswell, senior vice president and general counsel, Securities Industry Association, letter to Mary L. Schapiro, president, NASD Regulation, Inc., Apr. 25, 1997, reprinted in *SIA Comment Letters* (visited Jan. 7, 1998) <[http://www.sia.com/legal\\_regulatory/html/nasd97-3.html](http://www.sia.com/legal_regulatory/html/nasd97-3.html)>, p. 7.

<sup>174</sup> See Fromson, “Bidding.”

<sup>175</sup> See EEOC Notice.

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<sup>176</sup> *Ibid.*, pp. 6, 9.

<sup>177</sup> *Ibid.*, pp. 6–9. The EEOC also advanced additional arguments. *Ibid.*

<sup>178</sup> See *NASD Press Release*, p. 1.

<sup>179</sup> *Ibid.*

<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.*

<sup>182</sup> See Fromson, “Bidding” (quoting Commissioner Isaac Hunt). As noted previously, the NASD recently proposed some enhancements to the process of arbitrating employment discrimination claims. These proposals have not yet been accepted by the SEC. In regard to employment discrimination disputes, the NASD has proposed that arbitrators selected to serve as single arbitrators, or chairs of three-person panels, should have substantial familiarity with employment law. NASD, Proposed Rule, Rule Filing SR-NASD-99-08 § 10210 (the proposed rule is not yet published in the *Federal Register* and is subject to amendment before it becomes effective). Furthermore, under the proposed rule, arbitrators selected to serve as single arbitrators, or chairs of three-person panels, may not have represented primarily the views of employers or of employees within the last 5 years. *Ibid.* Though not in their proposed rule, the NASD has also announced its intention to develop a specialized employment case roster of arbitrators with training and experience in discrimination law. *PR Newswire*, Oct. 8, 1998.

ending the mandatory arbitration requirement would be a priority for 1998.<sup>183</sup> The SEC approved NASD's proposed rule change on June 22, 1998.<sup>184</sup>

Finally, subsequent to the NASD's rule change, the NYSE modified its mandatory arbitration rule.<sup>185</sup> The NYSE rule goes one step further than the NASD rule, however, in that it does not permit NYSE arbitration of an employment discrimination claim when the arbitration agreement was entered into prior to the cause of action arising.<sup>186</sup>

### The Future of Mandatory Arbitration

Despite the rule changes approved by the SEC, the potential that employers will include mandatory arbitration clauses in individual employment contracts persists.<sup>187</sup> In fact, some

firms already require employees, as a condition to employment, to agree to mandatory arbitration in their individual employment contracts, and other firms are currently considering amending their contracts to include such a requirement.<sup>188</sup> Because many securities professionals likely will still be required to submit to arbitration, the procedural inadequacies pointed to by employees are important issues for consideration.

Moreover, arbitration "should be encouraged in order to provide expeditious, accessible, inexpensive and fair private enforcement of statutory employment disputes for the . . . members of the work force who might not otherwise have ready, effective access to administrative or judicial relief."<sup>189</sup> Providing a fair and cost-efficient

<sup>183</sup> See "SEC Commissioner to Push for End to Mandatory Arb," *Wall Street Letter*, Dec. 1, 1997, p. 7 (stating that Commissioner Isaac Hunt told the *Wall Street Letter* that "ending the mandatory arbitration of securities industry employment discrimination cases is among his top priorities for 1998"); see also "Fienberg Admits Mandatory Arbitration May Be Abolished," *Wall Street Letter*, May 26, 1997, p. 8 (stating that SEC Commissioners Stephen Wallman and Isaac Hunt were against mandatory arbitration).

<sup>184</sup> See SEC Order Approving NASD Rule.

<sup>185</sup> See SEC Commission Announcements, *Approval of Proposed Rule Changes* (visited Mar. 13, 1999) <<http://www.sec.gov/news/digests/01-04.txt>>.

<sup>186</sup> "NYSE to Stop Hearing Discrimination Claims," *Securities Week*, Jan. 18, 1999, p. 14. See also "Arbitration; Firms Lose Options in Arb of Discrimination Claims," *Compliance Reporter*, Jan. 4, 1999, p. 7. The NASD rule provides, in part that "a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose." National Association of Securities Dealers, *SEC Approves Rule Change Regarding Arbitration of Statutory Employment Disputes; Effective January 1, 1999* (visited Mar. 9, 1999) <<http://www.nasd.com/notices/9856ntm.txt>>. In contrast, the NYSE rules provide, "A claim alleging employment discrimination, including any sexual harassment claim, in violation of a statute shall be eligible for arbitration only where the parties have agreed to arbitrate the claim after it has arisen." NYSE to Stop Hearing Discrimination Claims," *Securities Week*, Jan. 18, 1999, p. 14.

<sup>187</sup> Although § 1 of the Federal Arbitration Act, 9 U.S.C. § 1 (1994), states that "nothing herein . . . shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce," a number of United States Courts of Appeal have limited that exclusion to seamen, railroad workers, and other workers actually involved in the interstate transportation of goods. See *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 274 (4th Cir. 1997); *Patterson v. Tenet Healthcare, Inc.*, 113 F.3d 832, 835 (8th Cir. 1997); *Great Western Mortgage Corp.*

*v. Peacock*, 110 F.3d 222, 227 (3d Cir. 1997), cert. denied, 118 S. Ct. 299 (1997); *Cole v. Burns Int'l Sec. Servs.*, 105 F.3d 1465, 1471-72 (D.C. Cir. 1997); *Matthews v. Rollins Hudig Hall Co.*, 72 F.3d 50, 53 n.3 (7th Cir. 1995); *Erving v. Virginia Squires Basketball Club*, 468 F.2d 1064, 1069 (2d Cir. 1972). Accordingly, employees in the securities industry who are required to sign individual employment contracts containing agreements to submit potential claims to arbitration can be forced to arbitrate under the Federal Arbitration Act. See *Erving*, 468 F.2d at 1069 (noting that the second circuit had previously "held that the exclusionary clause in Section 1 applied only to those actually in the transportation industry").

<sup>188</sup> See Patrick McGeehan and Deborah Lohse, "NASD May Vote Today to Halt Mandated Harassment Arbitration," *Wall Street Journal*, Aug. 7, 1997, p. B-2. However, one firm, Smith Barney, Inc., has agreed, as part of a settlement of a sex discrimination suit brought by 20 current and former employees, to "invest \$15 million over four years in a diversity training program" and to provide an alternative dispute resolution mechanism for its employees. See Timothy Burn, "Settlement at Smith Barney sets new rules," *Washington Times*, Nov. 19, 1997, p. B-7. Under the new system, a claimant would begin the case by submitting her claim to Smith Barney. Peter Truell, "Smith Barney Plaintiffs Agree to Incentives For Settlement," *New York Times*, Nov. 19, 1997, p. D-1. The parties would then attempt to resolve the dispute and arrive at a settlement. *Ibid.* In the event that a settlement could not be reached, the controversy would be submitted to a neutral mediator, chosen from a pool of mediators who all must be experienced in employment discrimination issues. *Ibid.* If a settlement cannot be reached with the assistance of the mediator, the claim must be submitted to a panel of three mediators for a binding decision. *Ibid.* Smith Barney agreed to pay the full cost of mediation and up to \$5,000 of each claimant's own attorney's fees. *Ibid.* This new mediation forum only applies to claims of gender discrimination. Bureau of National Affairs, "Sex Discrimination: Attorneys in Smith Barney Class Action Submit Plan for ADR, Diversity Programs," *Daily Labor Report*, Nov. 19, 1997, p. A-12.

<sup>189</sup> American Arbitration Association, *A Due Process Protocol for Mediation and Arbitration of Statutory Disputes arising*

arbitration forum is, therefore, an important ongoing mission.

## Section II. Rule G-37

In general terms, Rule G-37 prohibits a municipal securities dealer from transacting securities business with a locality within 2 years of making a political contribution to a candidate elected to office in that locality.<sup>190</sup> The purpose of the rule is "to prevent fraudulent and manipulative acts and practices,"<sup>191</sup> such as making political contributions to secure future securities business from the candidate after he or she is elected.<sup>192</sup>

Those who opposed the rule while it was under consideration argued that due to the concentration of minorities and women in the municipal securities business, the rule would have a disparate impact on minority and women securities professionals who had just begun to form a solid presence in the securities market.<sup>193</sup> Opponents specified two ways in which the rule would have a disparate impact: (1) because newer, minority- and women-owned firms depended more on municipal securities business than the traditional firms that had stronger ties to the private securities market, the limits on access to the municipal securities market would impose a disproportionately heavy burden on minority- and women-owned firms;<sup>194</sup> and (2) the limits would prevent many minority and women municipal securities dealers from making certain political contributions, eliminating one important source of campaign revenue used by the affected mi-

nority and women political candidates.<sup>195</sup> These concerns were explored at the Commission's hearing in New York on September 21, 1994.

## Origins of Rule G-37

Because of broad statutory exemptions, the municipal securities market remained virtually unregulated for many years after the Securities and Exchange Act was passed in 1934.<sup>196</sup> Congress ultimately decided that regulation of the municipal securities market was necessary after the SEC accused several municipal securities dealers of improper trading practices in the early 1970s.<sup>197</sup> In the Securities Act Amendments of 1975, Congress for the first time required municipal securities professionals to register with the SEC and created the Municipal Securities Rulemaking Board (MSRB), an SRO with authority to regulate the municipal securities market.<sup>198</sup> The MSRB is charged with the duty of, among other things, "prevent[ing] fraudulent and manipulative acts and practices."<sup>199</sup>

The impetus for Rule G-37 arose in the early 1990s in reaction to numerous allegations that localities were hiring municipal securities professionals based on their records of past political contributions rather than their records as competent dealers in municipal securities.<sup>200</sup> The practice, dubbed "pay to play," specifically refers to municipal securities professionals giving political contributions to candidates in order to secure future securities business after the candidates are eventually elected.<sup>201</sup>

The SEC, in a written statement submitted to the Commission at its New York hearing, described the impact of pay to play practices on the municipal securities market.<sup>202</sup> The SEC explained that when a municipal securities professional undertakes to offer public securities for

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out of the Employment Relationship (visited Jan. 20, 1998) <<http://www.adr.org/protocol.html>>, p. 1.

<sup>190</sup> See Municipal Securities Rulemaking Board, *MSRB Manual* (Chicago: CCH, Apr. 1, 1994) (hereafter cited as *MSRB Manual*), Rule G-37(b), ¶ 5001.

<sup>191</sup> *Ibid.*, Rule G-37(a).

<sup>192</sup> See Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business, Securities Exchange Act Release No. 94-33868, File No. SR-MSRB-94-2, 59 Fed. Reg. 17,621 (Apr. 7, 1994) (hereafter cited as SEC Rule G-37 Approval Order), pp. 3-4.

<sup>193</sup> See Securities and Exchange Commission, "Summary of Comments: File No. SR-MSRB-94-2," pp. 23-25.

<sup>194</sup> See National Association of Securities Professionals, "National Association of Securities Professionals' (NASP) Position on Rule G-37 of the Municipal Securities Rulemaking Board (MSRB) and the Securities and Exchange Commission (SEC)," p. 7.

<sup>195</sup> *Ibid.*, p. 10.

<sup>196</sup> *MSRB Manual*, ¶ 101.

<sup>197</sup> *Ibid.*

<sup>198</sup> 15 U.S.C. § 78o-4(a)-(b) (1997).

<sup>199</sup> 15 U.S.C. § 78o-4(b)(2)(C) (1997).

<sup>200</sup> SEC Rule G-37 Approval Order, pp. 8-11.

<sup>201</sup> *Ibid.*

<sup>202</sup> See Securities and Exchange Commission, "Written Statement of the U.S. Securities and Exchange Commission, Hearings on 'Racial and Ethnic Tensions in America' Before the United States Commission on Civil Rights," written statement submitted at *New York Hearing* (hereafter cited as SEC Written Statement), pp. 17-21.

sale to the investing public, the municipal securities professional must first “investigate the financial condition” of the issuing municipality.<sup>203</sup> Municipal securities professionals perform such “due diligence” investigations to ensure that the information they provide to the public is accurate.<sup>204</sup> The SEC described the impact of political contributions on this process as follows:

When a [ ] [municipal securities professional] . . . is chosen based on its history of contributions or political contacts, the resulting conflict of interest between the [municipal securities professional’s] obligation to its customers and its allegiance to the issuer official who selected the [municipal securities professional], compromises its ability to perform due diligence.<sup>205</sup>

As a result, “public confidence in the integrity of the market” declines.<sup>206</sup> The SEC clarified that the problem does not arise when contracts are issued after a competitive bidding process because the political contributions could not have an impact on the ultimate selection of a municipal securities professional.<sup>207</sup> The problem does arise in “negotiated” contracts, however, because the selection of a municipal securities dealer “may be based on factors unrelated to merit.”<sup>208</sup> Therefore, the SEC concluded that in negotiated offerings “a genuine risk exists that [municipal securities professionals] will be selected on a basis unrelated to the quality of the [municipal securities professional’s] services in distributing the securities.”<sup>209</sup>

In response to the allegations of improper payments, Representatives Markey and Dingell requested that the SEC conduct a study of the municipal securities market.<sup>210</sup> As a result, the

staff of the SEC issued a report indicating, among other things, that it supported a then existing proposal by the MSRB to regulate political contributions.<sup>211</sup> In the meanwhile, the industry responded by adopting a “Statement of Initiative,” which bound its more than 50 voluntary adherents to cease making pay to play political contributions.<sup>212</sup>

The SEC eventually approved the rule, which became effective in April 1994.<sup>213</sup> The rule states the following, in pertinent part:

(b) No . . . municipal securities dealer shall engage in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (i) the . . . municipal securities dealer; (ii) any municipal finance professional associated with such . . . municipal securities dealer; or (iii) any political action committee controlled by the . . . municipal securities dealer or by any municipal finance professional. . . .<sup>214</sup>

A municipal securities dealer also may not solicit contributions for an official of a municipality with which the dealer is seeking to engage in securities business.<sup>215</sup> Finally, a municipal securities dealer may not indirectly do an act that would violate the rule if done by the dealer himself.<sup>216</sup>

Because of the impact of pay to play practices on the municipal securities market, the SEC “concluded that the [rule] . . . was an appropriate investor protection measure.”<sup>217</sup> The SEC stated that the rule was “aimed at preventing fraudulent and manipulative practices, . . . removing impediments to free and open trade, and protecting investors and the public interest.”<sup>218</sup>

<sup>203</sup> *Ibid.*, p. 17.

<sup>204</sup> *Ibid.*

<sup>205</sup> *Ibid.*

<sup>206</sup> *Ibid.*, pp. 17–18.

<sup>207</sup> *Ibid.*, p. 18. When competitive bidding is used, the municipality grants the contract to the municipal securities professional who offers the best bid. See Thomas G. Hilborne, Jr., “Report of the Committee on Public Finance: Rule G–37: The ‘Pay to Play’ Rule and Its Impact on the Municipal Securities Industry,” *Urban Lawyer*, vol. 26 (1994), p. 963.

<sup>208</sup> SEC Written Statement, p. 18.

<sup>209</sup> *Ibid.*

<sup>210</sup> Arthur Levitt, chairman, SEC, letters to Representatives Dingell and Markey, Sept. 3, 1993, reprinted in Division of Market Regulation, U.S. Securities and Exchange Commission, “Staff Report on the Municipal Securities Market,”

September 1993 (hereafter cited as SEC Staff Report); see also SEC Rule G–37 Approval Order, p. 11.

<sup>211</sup> See SEC Staff Report, pp. 32–34; SEC Rule G–37 Approval Order, p. 12.

<sup>212</sup> SEC Rule G–37 Approval Order, pp. 13–14.

<sup>213</sup> *Ibid.*, p. 53.

<sup>214</sup> *MSRB Manual*, Rule G–37(b), ¶ 5001. The rule contains an exception stating that the prohibition does not apply when a municipal securities dealer contributed a total of less than \$250 within the previous 2 years to a candidate for whom the dealer was entitled to vote. *Ibid.*

<sup>215</sup> *Ibid.*, Rule G–37(c).

<sup>216</sup> *Ibid.*, Rule G–37(d).

<sup>217</sup> SEC Written Statement, p. 20.

<sup>218</sup> SEC Rule G–37 Approval Order, p. 15. The rule was challenged on 1st and 10th amendment grounds, and the Court of Appeals for the District of Columbia Circuit found

## The Impact of Rule G-37: Minority- and Women-owned Firms

Before approving the rule, the SEC considered numerous comments that were submitted by a variety of organizations.<sup>219</sup> Specifically, the SEC noted, "Several commentators believe that the proposal will disadvantage small, regional municipal securities firms and firms owned by minorities or women."<sup>220</sup> However, the SEC determined that the rule would not have a disproportionate impact on minority- and women-owned firms, in part because "the [rule] will apply equally to all municipal securities dealers seeking to obtain municipal securities underwriting business."<sup>221</sup>

At the Commission's hearing, Alphonso Tindall, Jr., then chairman of the NASP,<sup>222</sup> de-

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the claims to be meritless. See *Blount v. SEC*, 61 F.3d 938 (D.C. Cir. 1995), cert. denied, 517 U.S. 1119 (1996).

Recent proposals would extend the pay to play prohibitions to lawyers hired by municipalities to assist in the process of issuing bonds. For example, the Association of the Bar of the City of New York proposed a measure that would prohibit lawyers' pay to play practices in the State of New York. Arthur Levitt, "Lawyers and Ethics: The Problem of Pay-to-Play" (speech delivered at the Fixed Income Daily Conference on Municipal Finance, Philadelphia, PA, June 26, 1997), reprinted in *Lawyers and Ethics: The Problem of Pay-to-Play* (last modified June 26, 1997) <<http://www.sec.gov/news/speeches/spch169.txt>>, p. 4. In addition, SEC Chairman Arthur Levitt has urged the American Bar Association to issue a rule asking "bond lawyers to cut the tie between campaign contributions and selection as bond counsel." *Ibid.* Subsequently, the American Bar Association appointed a "Task Force on Pay to Play." American Bar Association, *ABA President Shestack Names "Pay to Play" Panel Members To Study Lawyer Campaign Contributions* (visited Jan. 22, 1998) <<http://www.abanet.org/media/sep97/payplay.html>>. Because the Commission has no evidence that minority or women attorneys are concentrated in bond law practices, the possible effect of such a rule on minority and women attorneys is unknown. However, one bond attorney opined that the measure represents "blatant discrimination of singling out bond lawyers for the ban," when analogous conflicts of interest arise in many other areas of legal practice as well. John L. Kraft, "Don't Make Bond Lawyers the Scapegoats for Larger Problems in the Market," *The Bond Buyer*, June 10, 1997, p. 29.

<sup>219</sup> SEC Rule G-37 Approval Order, pp. 24-52.

<sup>220</sup> *Ibid.*, p. 37.

<sup>221</sup> *Ibid.*, p. 38.

<sup>222</sup> NASP "is a trade organization aimed at promoting professional excellence and equal access to business opportunities for minorities and women in the financial securities industry." "Testimony of Alphonso E. Tindall, Jr., chairman, National Association of Securities Professionals before the U.S. Commission on Civil Rights," written statement submitted at *New York Hearing*, inside cover page (hereafter cited as Tindall Written Statement).

scribed the historical background that led minority and women securities professionals to gravitate toward the municipal securities market. He explained that, in an attempt to offer additional opportunities to minorities and women, many local government entities sought to employ minorities and women to issue municipal bonds.<sup>223</sup> As a result, minorities and women acquired and currently maintain a stronger presence in the municipal securities market than in the private securities market.<sup>224</sup>

On the other hand, most of the larger, traditional firms that engage in municipal securities business also engage in private securities transactions.<sup>225</sup> Mr. Tindall stated that the rule gives these larger firms an "unfair competitive advantage" because the ban against political contributions does not apply to a firm's nonmunicipal finance personnel.<sup>226</sup> Because of this "loophole," the larger firms, which employ numerous securities professionals who do not engage in municipal securities transactions, can "easily direct huge political contributions to any elected officials [they] desire[ ]."<sup>227</sup> Because minority- and women-owned firms are smaller, they are much less likely to employ securities professionals who are not involved in the municipal securities market.<sup>228</sup> As a result, minority- and women-owned firms will be much less able to use this loophole as a means to continue making otherwise prohibited political contributions.<sup>229</sup>

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<sup>223</sup> See Tindall Written Statement, pp. 2-3. According to Mr. Tindall, in Atlanta 30 percent of bond underwriting fees were allocated to African Americans and 3 percent were allocated to women, and in California 15 percent were allocated to minority firms and 3 percent were allocated to women. *Ibid.*, p. 3. Other cities, such as New York, and Dade County, Florida, have made similar efforts without setting specific numerical goals. *Ibid.*

<sup>224</sup> *Ibid.*, p. 3 ("[T]he vast majority of African-American and Hispanic executives in the industry are employed in public or municipal finance as opposed to corporate finance").

<sup>225</sup> *Ibid.*, p. 6.

<sup>226</sup> *Ibid.*

<sup>227</sup> *Ibid.*

<sup>228</sup> *Ibid.*

<sup>229</sup> *Ibid.* The general counsel for the U.S. Securities and Exchange Commission argues that such a "loophole" does not exist, stating: "Paragraph (d) of Rule G-37 prohibits doing indirectly what cannot be done directly. Any firm 'direct[ing] huge [or small] political contributions to any elected officials' by its non-municipal employees, is in clear violation of paragraph (d) of Rule G-37." Harvey Goldschmid, general counsel, U.S. Securities and Exchange Commission, to Stephanie Y. Moore, general counsel, U.S.

In its written statement submitted at the New York hearing, the SEC responded to these concerns by stating that there was “no reason to believe that increased opportunities which firms owned by minorities and women have experienced in recent years in the municipal securities . . . business will be undercut by indirect restrictions aimed at curbing pay-to-play abuses.”<sup>230</sup> The SEC pointed out that “[t]he Rule does not discourage [municipalities] from selecting [minority- and women-owned] firms.”<sup>231</sup>

News accounts in 1997, shortly before the rule’s 3-year anniversary, indicated that the effects of the rule had been felt by municipal securities dealers. The *Bond Buyer* reported that Michael D. McCarthy, vice chairman of the Public Securities Association (now renamed the Bond Mark Association), stated that Rule G-37, along with other rules promulgated by the MSRB, has “become quite a burden to bear and it’s hard to see the real benefits to the investors out there.”<sup>232</sup> McCarthy added that Rule G-37 “has turned into a quagmire of interpretations and questions and (has created) a nearly impossible compliance burden.”<sup>233</sup>

A separate article in the *Bond Buyer* reported, “Minority-owned underwriters’ participation in the municipal bond market fell [in 1997] . . . to its lowest level since 1990.”<sup>234</sup> One CEO of a securities firm indicated that he thought the decline was caused, in part, by the restrictions imposed by Rule G-37.<sup>235</sup> In addition, in 1996

U.S. Senator Carol Moseley-Braun raised concerns about the possibility that the rule was having a disparate impact on minority firms.<sup>236</sup> An aide to Senator Moseley-Braun was quoted as saying, “Just as the minority firms were . . . breaking into the business and following the same rules that everybody else followed, the rules were changed on them . . . . The net result was that it functioned as the equivalent of yet another entry barrier.”<sup>237</sup>

However, not all municipal bond dealers agree that Rule G-37 has made it more difficult to engage in municipal securities business. A member of one firm stated that his firm focuses on maintaining a good reputation, and as a result, a single regulation like Rule G-37 does not hurt its business.<sup>238</sup> Another municipal securities professional stated that the rule has actually “leveled the playing field” by causing municipalities to be more willing to deal with local firms.<sup>239</sup>

### The Impact of Rule G-37: Minority and Women Candidates

At the Commission’s hearing, Mr. Tindall raised the additional concern that “Rule G-37 will have a chilling effect on financial support for minority and female political candidates.”<sup>240</sup> He asserted, “Cutting off access to the financial industry [as a source for political contributions] may therefore reduce their opportunities to raise sufficient campaign funds to successfully compete for important local and state elected offices across America.”<sup>241</sup> The impact on minority and women candidates will, in turn, affect minority- and women-owned securities firms because these firms “are more likely to do substantial business with state and local governments where female and minority elected officials predominate.”<sup>242</sup>

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Commission on Civil Rights, Apr. 19, 1999, U.S. Commission on Civil Rights files (hereafter cited as Goldschmid letter).

<sup>230</sup> SEC Written Statement, p. 25.

<sup>231</sup> *Ibid.*

<sup>232</sup> Lynn Stevens Hume, “PSA Official: Reform Burdens Appear to Outweigh Benefits,” *The Bond Buyer*, Mar. 3, 1997, p. 1 (quoting Mr. McCarthy).

<sup>233</sup> *Ibid.* (quoting Mr. McCarthy).

<sup>234</sup> Mark T. Kuiper, “Minority-Owned Firms Lost Ground In ‘97, But Predict a Comeback This Year,” *The Bond Buyer*, Jan. 22, 1998, p. 1. Another news article reported that, since 1993, underwritings by minority firms had decreased by 42 percent. Ylonda Gault, “Now That The Smoke Has Cleared,” *Ethnic NewsWatch*, vol. 27, no. 11 (June 30, 1997), p. 214.

<sup>235</sup> Kuiper, “Minority-Owned Firms.” The general counsel for the U.S. Securities and Exchange Commission notes, however, that there are “economic pressures applicable to all firms in the municipal market. For example, the Bond Buyer Securities Data Company 1998 Yearbook shows that ‘spreads,’ or revenues from municipal underwriting, have declined substantially over the last decade, citing one market participant’s explanation that there are ‘only a limited

number of deals and too many firms competing for them” (emphasis added). Goldschmid letter.

<sup>236</sup> Lynn Stevens Hume and Niamh Ring, “Levitt, Senator, and Firms Start Talks on Minority Participation,” *The Bond Buyer*, Nov. 15, 1996, p. 4.

<sup>237</sup> *Ibid.*

<sup>238</sup> Tanuja Kanwar and Michael Stanton, “Q & A: Underwriting Strengthens Firm’s Advisory Role,” *The Bond Buyer*, Dec. 5, 1995, p. 26.

<sup>239</sup> Mark T. Kuiper, “The Trading Floor,” *The Bond Buyer*, Dec. 16, 1997, p. 33.

<sup>240</sup> Tindall Written Statement, p. 7.

<sup>241</sup> *Ibid.*

<sup>242</sup> *Ibid.*



In response to this concern, the SEC wrote that the impact of the rule on the success of minority and women political candidates is "uncertain."<sup>243</sup> The SEC emphasized that "the restrictions would affect all candidates equally, regardless of sex or race, with respect to the state or local offices affected."<sup>244</sup>

Shortly after the Commission's hearing, at a meeting of the NASP, participants asserted that minority candidates had already begun to experience greater difficulties raising sufficient campaign funds.<sup>245</sup> Subsequently, in 1996 a municipal securities professional employed by a minority-owned firm opined that "the rule took away from smaller firms the ability to help the type of candidates that favor inclusion, and as such [Rule G-37] . . . probably . . . hit minority firms harder than others."<sup>246</sup>

### SEC Response to Complaints from Industry

In the statement it submitted at the Commission's New York hearing, the SEC addressed complaints about the rule's possible discriminatory impact by stating that opponents of the rule:

fail[ ] to distinguish between the SEC's role in approving MSRB's rules and potential unintended collateral consequences with respect to other legitimate social goals such as anti-discriminatory policies. The SEC is mindful of the importance of such issues, but the controlling statutory framework requires the SEC to give overriding weight to the goals of investor protection and fair markets. The MSRB is not compelled by statute to select the least restrictive alternative in deciding how to address problems.<sup>247</sup>

Nevertheless, Mr. Tindall, in his written statement submitted at the New York hearing, recommended that a study be done to determine the impact of the rule on minority- and women-owned firms.<sup>248</sup> Although the MSRB reportedly conducted a "major review" of Rule G-37 in July 1997,<sup>249</sup> the Commission is unaware of any comprehensive study, commissioned by either the SEC or the MSRB, detailing the impact of the rule on minority securities professionals.<sup>250</sup>

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<sup>247</sup> SEC Written Statement, p. 24. The SEC also reports that although it does not have the statutory and regulatory authority to directly tackle the issue of increasing minority employment in the securities industry, the agency "has been engaged in a public awareness campaign for the last several years. The goal of that campaign has been to use the agency's influence to encourage securities firms to increase opportunities for minorities within the industry." Recent activities of this nature include SEC Chairman Levitt's June 1998 speech before the Detroit conference of the National Association of Securities Professionals (NASP) on "Working Toward Diversity: Progress Through Partnership." Chairman Levitt delivered similar speeches at Reverend Jesse Jackson's first Wall Street Conference in January 1998, at the Boca Raton, Florida, conference of the Securities Industry Association (SIA) in November 1997, and at Reverend Jackson's La Salle Street Project in April 1999. In addition, through his "Diversity Roundtables," Chairman Levitt has encouraged chief operating officers and other senior corporate executives from more than a dozen securities firms based throughout the country to make a personal commitment to diversity. Finally, in 1998 the SEC sponsored a series of symposia in Los Angeles, Chicago, Dallas, and Washington, DC, designed to acquaint minority students with the securities industry and to identify the skills required for a career in the securities field. Goldschmid letter.

<sup>248</sup> See Tindall Written Statement, p. 8.

<sup>249</sup> Lynn Stevens Hume, "G-37 Controversies May Deter PSA From Making Proposals to MSRB," *The Bond Buyer*, June 13, 1997, p. 6.

<sup>250</sup> Press reports indicate that the rule has been invoked in disciplinary proceedings against several municipal securities dealers. Lynn Stevens Hume, "Key Player in Landmark Muni Case Leaves SEC for Merrill Litigation Shop," *The Bond Buyer*, Oct. 9, 1997, p. 1; Christopher McEntee, "Records Show Grigsby Used His Companies to Skirt G-37," *The Bond Buyer*, Sept. 11, 1997, p. 1.

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<sup>243</sup> SEC Written Statement, p. 26.

<sup>244</sup> *Ibid.*

<sup>245</sup> Sharon R. King, "Minority Securities Professionals Criticize G-37 at Conference," *The Bond Buyer*, Oct. 25, 1994, p. 4.

<sup>246</sup> "Minority Firm Looks to Internet to Capture Retail Investors," *The Bond Buyer*, Mar. 14, 1996, p. 27 (quoting an interview between reporter Michael Stanton and Leopold Guzman, chairman and CEO of Guzman & Co.).

## Chapter 5

# The Role of Community Reinvestment

### Section I. Federal and State Community Reinvestment Acts

#### Federal Community Reinvestment Act

The Community Reinvestment Act (CRA) was enacted as title VIII of the Housing and Urban Development Act of 1977. The legislation was passed to encourage federally insured banks and thrifts to help meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices.

The CRA was generally viewed as a congressional response to the problem of “redlining,” which restricts access to credit for homes and small businesses based upon geography rather than on an applicant’s creditworthiness. Financial institutions would outline entire metropolitan geographic zones—oftentimes minority and lower income neighborhoods in central cities—with a red marker to remind lending officers that loans should not be made in those regions.<sup>1</sup> Supporters of the CRA wanted financial institutions to look locally for profitmaking opportuni-

ties in low- and moderate-income communities.<sup>2</sup> They argued that banks<sup>3</sup> were benefiting from millions of dollars in deposits from residents of low- to moderate-income communities while making virtually no loans to these communities.<sup>4</sup>

The CRA has played a crucial role in ensuring credit to residents of low- and moderate-income areas and in encouraging banks to open

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<sup>2</sup> For a definition of low- and moderate-income communities, see Community Reinvestment Act Regulations, 12 C.F.R. § 228.12(n)(1)–(2) (1998).

<sup>3</sup> The term “bank” refers to all relevant financial institutions, which include national banks, State banks, thrifts, and savings and loan associations.

<sup>4</sup> See Robert G. Boehmer, “Mortgage Discrimination: Paperwork and Prohibitions Prove Insufficient—Is It Time for Simplification and Incentives?” *Hofstra Law Review*, vol. 21 (1993), pp. 603, 603, n.2 (“As of the late 1960’s and through the mid 1970’s, redlining was indisputably a common, if not universal, practice among lending institutions in urban areas of the country . . . [R]edlining came to be recognized as a major cause of urban neighborhood decline . . .” (quoting Jane McGrew et al., “Fair Housing: An Agenda for the Washington Lawyer’s Committee for Civil Rights,” *Howard Law Journal*, vol. 27 (1984), pp. 1291, 1304–06).

See also E. L. Baldinucci, “The Community Reinvestment Act: New Standards Provide New Hope,” *Fordham Urb. Law Journal*, vol. 23 (1996), p. 831; Christopher Kui, executive director of Asian Americans for Equality and president of Manhattan Neighborhood Renaissance Local Development Corp., testimony (hereafter cited as Kui Testimony) Hearing Before the U.S. Commission on Civil Rights, New York, NY, Sept. 19–21, 1994, transcript, vol. III, pp. 989, 1006–07, 1010, 1025 (hereafter cited as *New York Hearing*) (stating that while Asian enclaves were “saver communities” who deposited billions of dollars into local banks, residents of those communities had difficulty qualifying for loans from those same banks because they lacked “traditionally defined good credit records” and sometimes lacked complete income documentation. When loans were made to members of the Asian community, the down payment to qualify for the loan was oftentimes very high); Mark Winston Griffith, executive director of Central Brooklyn Partnership and president, Central Brooklyn Federal Credit Union, testimony, *New York Hearing*, p. 1193 (hereafter cited as Griffith Testimony) (stating, “We did a study of bank lending in the [central Brooklyn community] and found that for every dollar that is deposited in banks in our neighborhoods, less than 1 penny is returned in the way of loans . . .”).

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<sup>1</sup> A number of empirical studies completed around the time of the passage of the CRA confirmed the existence of redlining in various communities. See George J. Benston et al., *An Empirical Study of Mortgage Redlining* (1978) (summarizing studies). Regarding the problems addressed by the CRA, Senator Proxmire, the sponsor of the legislation, said: “[F]or more than 2 years the Banking Committee has been studying the problem of redlining and the disinvestment by banks and savings institutions in older urban communities. By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will . . . actually or figuratively draw a red line on a map around the areas of their city, . . . sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.” 123 Cong. Rec. 17,630 (daily ed. June 6, 1977) (statement of Sen. Proxmire).

new branches and expand services in these communities. It has been estimated that the act has directed between \$4 billion and \$6 billion a year to such communities.<sup>5</sup> Moreover, 1997 Home Mortgage Disclosure Act data show that since 1993, home mortgage loans to low- and moderate-income borrowers increased by 45 percent, well above the overall market increase in home mortgage lending.<sup>6</sup>

In enacting the CRA, Congress found that regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business.<sup>7</sup> "Convenience and needs of the communities" refers to deposit and credit services that financial institutions have an affirmative obligation to help provide.<sup>8</sup> The four financial supervisory agencies—the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS)—are responsible for assessing institutions' records in meeting the credit needs of the communities they serve, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institutions.<sup>9</sup>

On May 4, 1995, the Federal banking regulatory agencies published new CRA regulations.<sup>10</sup> This was the culmination of a process that began nearly 2 years earlier, in July 1993, when President Clinton called for a reform of the CRA enforcement regime. The goal was to institute a regulatory scheme that emphasized lending performance over process, that was more objective and less subject to arbitrary interpretation, and that reduced unnecessary paperwork. Overall, the new regulations emphasize a bank's "actual performance," rather than the documented process it used to achieve its performance record.

<sup>5</sup> "Rubin Defends CRA But Backs 'Sensible Regulatory Reform,'" *American Banker*, May 5, 1995, p. 3.

<sup>6</sup> Richard S. Carnell, Assistant Secretary for Financial Institutions, U.S. Department of the Treasury, to Ruby G. Moy, Staff Director, U.S. Commission on Civil Rights, June 1, 1999, U.S. Commission on Civil Rights files (hereafter cited as Carnell letter).

<sup>7</sup> 12 U.S.C. § 2901(a)(1) (1998).

<sup>8</sup> *Id.* § 2901(a)(2), (3).

<sup>9</sup> *Id.* § 2902(1)(a)–(d).

<sup>10</sup> 60 Fed. Reg. 22156 (1995), codified at 12 C.F.R. §§ 25, 228, 345, 563e, and 203 (1998). The CRA can be found at 12 U.S.C. §§ 2901–2906.

The Federal regulators must periodically assess the CRA record of the banks they regulate, issue a public written assessment report, and assign one of four ratings: "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance."<sup>11</sup> Performance of large retail banks—or those with more than \$250 million in assets—is based on the following three tests:<sup>12</sup>

### (1) Lending Test

The five criteria of this test include: (1) the total number and dollar amount of a bank's loans, including home mortgage, small farm, small business, and consumer loans;<sup>13</sup> (2) the geographic distribution of a bank's loans, including the proportion of—and dispersion of—loans in the bank's assessment area, as well as the total number and dollar amount of loans in low-, moderate-, middle-, and upper income census tracts;<sup>14</sup> (3) the income level of the borrowers;<sup>15</sup> (4) the total number and dollar amount of a bank's community development loans as well as the complexity and innovative character of the loans;<sup>16</sup> and (5) any innovative or flexible

<sup>11</sup> 12 U.S.C. §§ 2903(1), 2906(a), (b) (1998).

<sup>12</sup> The regulations implemented by the four agencies, OCC, FRB, FDI, and OTS, can be found at 12 C.F.R. §§ 25, 228, 345, and 563e (1998), respectively. Small banks are subject—effective in January 1996—to the small bank performance test. A small bank is a bank that, in either of the 2 previous years, had total assets of less than \$250 million and is independent, or a bank with less than \$250 million in assets that is an affiliate of a bank holding company with total assets of less than \$1 billion. See 12 C.F.R. § 25.12(t). When evaluating a small bank's record, the regulators will apply five CRA performance criteria: (1) loan-to-deposit ratio, (2) percentage of loans in its assessment area, (3) record of lending to borrowers of different income levels and small businesses and small farms, (4) geographic distribution of loans, and (5) responsiveness to complaints. 12 C.F.R. § 25.26(a)(1)–(5).

<sup>13</sup> 12 C.F.R. § 25.22(b)(1); Further definitions at 12 C.F.R. § 25.12(m), (u), and (v).

<sup>14</sup> 12 C.F.R. § 25.22(b)(2)(i)–(iii). The regulators will consider the performance of similarly situated lenders and the bank's market share. They will not require a bank to lend evenly throughout its service area or to every census tract. However, the bank's lending record should not contain conspicuous geographical gaps that are not explained by the performance context.

<sup>15</sup> *Id.* § 25.22(b)(3).

<sup>16</sup> *Id.* § 25.22(b)(4); A community development loan is a loan that has as its primary purpose affordable housing for low- or moderate-income individuals, community services targeted to low- or moderate-income individuals, activities that promote economic development by financing small businesses or small farms, activities that revitalize or stabilize

lending practices, meaning those that serve low- and moderate-income borrowers in new ways or that serve groups of creditworthy borrowers not previously served.<sup>17</sup>

### (2) Investment Test

Pursuant to the CRA, the regulators will evaluate a retail bank's "qualified investments" in community development projects.<sup>18</sup> The regulations establish the following four criteria to evaluate a bank's investments: (1) the total number and dollar amount of the investments, (2) their innovative character or complexity, (3) their responsiveness to credit and community development needs, and (4) the degree to which the investments are not made by other private investors.<sup>19</sup>

### (3) Service Test

The bank's regulators will evaluate the bank's system for delivering two types of services: retail banking and community development banking.<sup>20</sup>

- *Retail banking:* Four performance criteria are considered: (1) branch distribution among low-, moderate-, middle-, and upper income census tracts; (2) record of opening and closing branches, particularly those located in low- and moderate-income census tracts; (3) the availability and effectiveness of alternative service delivery systems, such

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low- or moderate-income geographies, and loans to community development financial institutions. A community development loan can be outside a low-income area as long as it is intended to benefit low-income people. However, loans not primarily benefiting low-income people or neighborhoods do not qualify. For example, a loan for upper income housing in a low-income area does not count under the lending test. 12 C.F.R. § 25.12(i).

<sup>17</sup> 12 C.F.R. § 25.22(b)(5).

<sup>18</sup> "Qualified investments" include investments, grants, deposits, or shares in or to, among other things, financial intermediaries that facilitate lending in low-income areas; community development financial institutions; affordable housing and small business development projects; and not-for-profit organizations. CRA Regulations, 60 Fed. Reg. at 22,162 n.3 (May 4, 1995).

<sup>19</sup> 12 C.F.R. § 25.23(e)(1)-(4).

<sup>20</sup> Community development banking services include providing technical expertise to not-for-profit entities involved in economic development, serving on a board of directors, credit counseling, or low-cost government check cashing. 60 Fed. Reg. at 22,160 n.2.

as ATMs,<sup>21</sup> to low- and moderate-income census tracts and to low- and moderate-income individuals; and (4) the range of services offered to low-, moderate-, middle-, and upper income individuals.

- *Community development banking:* Two performance criteria are considered: (1) the extent of the services and (2) whether the services are innovative and responsive to community needs.<sup>22</sup>

To arrive at an overall CRA rating, regulators will first assign one of five ratings—"outstanding," "high satisfactory," "low satisfactory," "needs to improve," and "substantial non-compliance"—for each of the three component tests.<sup>23</sup> The regulators will then combine these scores to generate a composite or overall rating for the bank.<sup>24</sup> In addition, the new regulations

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<sup>21</sup> The preamble to the new regulations states that the regulators' emphasis in the service test will be on branches rather than alternative systems for service delivery because "convenient access to full-service branches within a community is an important factor in determining the availability of credit and noncredit services." *Id.* at 22,167.

<sup>22</sup> 12 C.F.R. § 25.24(e)(1)-(2).

<sup>23</sup> 60 Fed. Reg. at 22,168-70.

<sup>24</sup> There has been some suggestion of grade inflation. From 1990 to 1996, the percentage of institutions receiving "satisfactory" or "outstanding" performance ratings rose from 87 to more than 98 percent. During the same time, the percentage of institutions receiving "needs to improve" or "substantial noncompliance" ratings dropped from 14 to 2 percent. This means that out of 4,777 CRA evaluations in 1996, 8 institutions in the country (0.2 percent of those examined) received ratings of "substantial noncompliance" and 84 institutions (1.8 percent of those examined) received "needs to improve" ratings. The charge has also been made that the four regulators charged with tracking lenders' compliance—the Federal Deposit Insurance Corp., the Office of Thrift Supervision, the Federal Reserve Board, and the Comptroller of the Currency—sometimes give high ratings for below-satisfactory performance. A recent study of 23 Milwaukee-area lenders found that those receiving "outstanding" ratings often did no better, and sometimes worse, than "satisfactory" lenders in serving Milwaukee's central city. The lenders were rated between October 1993 and January 1997. Michele Derus, "Lenders' Ratings Inconsistent: Satisfactory Institutions Have Outperformed Outstanding Ones In Some Ways, Study Shows," *Milwaukee Journal Sentinel*, Apr. 6, 1997, p. 1.

One possible reason for the discrepancies is that the reviews changed in 1995 from reviewing procedures to reviewing actual performance by the lenders. Janis L. Smith, senior public affairs specialist for the Comptroller of the Currency, said that before 1995 there was a lack of consistency among regulatory agencies, and performance standards did not provide a good indicator of lending performance. Ms. Smith said, "We now have uniform rules, exam procedures and

list three guidelines that the regulators will follow when assigning an overall CRA rating to a bank. First, if the bank receives an “outstanding” rating on the lending test, it will automatically receive an overall CRA rating of at least “satisfactory.”<sup>25</sup> Second, if the bank receives an “outstanding” rating on the service and investment tests, and at least a “high satisfactory” on the lending test, it will receive an overall CRA performance rating of “outstanding.”<sup>26</sup> Third, no bank may receive an overall rating of “satisfactory” unless it receives a rating of at least “low satisfactory” on the lending test.<sup>27</sup>

In effect, an institution must receive at least a “low satisfactory” on the lending test to attain an overall “satisfactory” rating. This scheme also means that any institution receiving an “outstanding” on the lending test is assured an overall “satisfactory,” even if it receives “substantial noncompliance” on the other two components. One criticism of placing increased emphasis on the lending test is based on the concern that banks are evaluated less harshly on the pivotal lending test, and judged more severely on the service and investment tests, which have less impact on the overall rating. Moreover, one community group’s study states:

The need for minimum required scores on all three tests, at least for the larger institutions, is begged here. Even the semantics argue for such a minimum score; if a bank receives a “Substantial Noncompliance” on any component of its performance evaluation, a “satisfactory” composite score does not seem warranted.<sup>28</sup>

The significance of a CRA performance record is twofold. First, it is a factor considered by the

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standards and rather than looking at policy and procedure, outreach and ads, we’re looking at performance. We have conducted training jointly, so every agency’s examiners are trained identically. We believe the new system will give us accurate and reliable results.” *Ibid.*; see also “Testimony of Daniel Immergluck, vice president of Woodstock Institute, U.S. House Small Business Loan Programs,” *Federal Document Clearing House Congressional Testimony*, Oct. 22, 1997.

<sup>25</sup> 12 C.F.R. § 25.28(b)(1).

<sup>26</sup> *Id.* § (b)(2).

<sup>27</sup> *Id.* § (b)(3).

<sup>28</sup> Daniel Immergluck, “Is CRA Reform for Real? Analyzing the Ratings of Large Banks Opting for Evaluation Under the New CRA Regulations,” Woodstock Institute, Sept. 17, 1997, p. 17.

regulatory agency when a bank applies for permission to change its structure (i.e., branch acquisitions, mergers, and consolidations).<sup>29</sup> Second, a current performance rating is made available for public inspection, along with the bank’s public file.<sup>30</sup> A public file consists of portions of the bank’s application to engage in corporate activities and transactions, supplementary information, and information submitted by interested persons.<sup>31</sup>

The CRA does not strictly prohibit any acts, nor does it establish civil or criminal penalties, damages, or injunctions. The CRA’s sanctions are indirect, including delays or denials of applications requesting permission to engage in various business ventures or bank activities.<sup>32</sup> Since any member of the public may file written comments opposing the bank’s application—known as a “challenge” or “protest”—community groups from low-income areas have successfully used the CRA to obtain significant “agreements” or “settlements.”<sup>33</sup>

Community reinvestment agreements, termed “CRA agreements,” became increasingly common in the 1980s and 1990s. These agreements express a bank’s goals or commitments toward improving its services to minority and low-income neighborhoods. Through 1983, only 16 CRA agreements had been established. However, between 1984 and 1996, more than 310 agreements among lenders and community groups were announced, totaling more than \$200 billion.<sup>34</sup> The proliferation of CRA agreements from the mid-1980s stems largely from the deregulation and rapid restructuring and consolidation of the financial services sector, including the bank and thrift industries.

Since the CRA enables community groups and other organizations to challenge bank mergers and acquisitions as well as applications to

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<sup>29</sup> 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a).

<sup>30</sup> 12 C.F.R. § 4.14(a)(8), (11) (1998).

<sup>31</sup> 12 C.F.R. §§ 5.4(a) and 5.9(b) (1998).

<sup>32</sup> These include five types of applications: (1) a charter for a national bank or Federal savings and loan association, (2) deposit insurance, (3) a new branch, (4) a branch or office relocation, or (5) a merger with or acquisition of the assets or liabilities of another bank. 12 U.S.C. § 2902(3).

<sup>33</sup> Michael E. Shrader, “Competition and Convenience: The Emerging Role of Community Reinvestment,” *Indiana Law Journal*, vol. 67 (1992), pp. 331, 344.

<sup>34</sup> “CRA Dollar Commitments Since 1977,” National Community Reinvestment Coalition, Washington, DC, 1996.

expand interstate banking, the industry's restructuring gave these groups numerous opportunities to negotiate CRA agreements.<sup>35</sup> For example, the number of savings and loans declined by 40 percent from the late 1970s to 1990, and in recent years the number of commercial banks has declined by several hundred annually.<sup>36</sup>

Community reinvestment agreements usually include provisions for home mortgage lending. Additionally, CRA agreements increasingly encompass other areas, such as small business loans, construction loans, mortgages for new housing development, lines of credit for community development corporations, investment in low-income housing financed with low-income housing tax credits, and grants to community-based organizations. Some agreements pledge not to close bank branches (or pledge to open branches in low-income areas), and some set goals for increasing the hiring of women and minorities.

Although the language and appearance of many CRA agreements resemble those of a formal contract,<sup>37</sup> CRA agreements are probably not legally binding.<sup>38</sup> Regulatory agencies responsible for the enforcement of the CRA have not required their examiners to monitor a bank's

compliance with CRA agreements; in fact, examiners are not required to take the agreements into consideration when they assess a bank's performance under the CRA. Despite all this, research suggests that banks with CRA agreements appear to be more responsive than other banks to the credit needs of minority and low-income households and neighborhoods—including having larger market shares of mortgage approvals for disadvantaged households and neighborhoods.<sup>39</sup>

In one recent case, the Second Circuit U.S. Court of Appeals rejected an attempt by plaintiff Inner City Press/Community on the Move to block merger approval of Chase Manhattan Bank, Chemical Bank, and U.S. Trust.<sup>40</sup> The plaintiff accused the defendant banks of falling short on their Community Reinvestment Act obligations, and urged the Federal Reserve Board to deny approval of their merger.

After denying standing to the plaintiff, the court reached several important pronouncements regarding the scope of the CRA, holding that the CRA neither creates a private right of action to enforce any of its terms, nor imposes specific obligations on financial institutions.<sup>41</sup> According to the court, the CRA "is not a directive to undertake any particular program or to provide credit to any particular individual. The statute, rather, is precatory . . ." <sup>42</sup> Moreover, "any attempt to glean substance from the CRA is met with the reality that the statute sets no standards for the evaluation of a bank's contribution to the needs of its community."<sup>43</sup> Paul A. Smith, senior federal counsel at the American Bankers Association, said CRA protests will still delay mergers. "The agencies take these things very seriously, almost no matter what the protest says," he said.<sup>44</sup>

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<sup>35</sup> Because of the continuing quick pace of mergers and acquisitions, approximately one-third of the banks listed in the National Community Reinvestment Coalition (NCRC) "Catalog and Directory of Community Reinvestment Agreements" no longer exist. Thus, just as the rapid pace of mergers gives community reinvestment advocates many opportunities to mount CRA challenges and negotiate CRA agreements, so too does this restructuring make any given agreement vulnerable to subsequent bank mergers and acquisitions. Given this situation, it might be reasonable for future CRA regulations to make it clear that regulatory agencies, when considering merger requests, will take note of whether CRA agreements will be honored by the acquiring institution.

<sup>36</sup> Calvin Bradford and Gale Cincotta, "The Legacy, the Promise, and the Unfinished Agenda," in *From Redlining to Reinvestment: Community Responses to Urban Disinvestment*, ed. Gregory D. Squires (Philadelphia: Temple University Press, 1992).

<sup>37</sup> While some agreements are negotiated, others are voluntary. Negotiated agreements often result from an actual or threatened challenge to a bank merger or acquisition. Banks usually settle the matter before the challenger formally submits a letter of protest with the regulatory agency that must approve the merger or acquisition. Voluntary agreements are announced unilaterally by the banks and do not result from a negotiation process. In some instances a bank will announce an agreement to preempt a CRA challenge.

<sup>38</sup> This remains unknown because, as yet, no financial institution has been taken to court in an attempt to enforce a CRA agreement.

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<sup>39</sup> Alex Schwartz, "Bank Lending to Minority and Low-Income Households and Neighborhoods: Do Community Reinvestment Agreements Make a Difference?" New School for Social Research, New York, January 1998, under review for publication in *Journal of Urban Affairs*.

<sup>40</sup> *Lee v. Board of Governors of the Fed. Reserve Sys.*, 118 F.3d 905 (2nd Cir. 1997).

<sup>41</sup> *Id.* at 913.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*; see also "Court Offers Narrow CRA Definition," *Regulatory Compliance Watch*, Oct. 6, 1997, p. 1.

<sup>44</sup> Jaret Seiberg, "Federal Court Tightens Rules On CRA Challenges to Mergers," *American Banker*, Sept. 24, 1997.

Matthew Lee, the executive director of the Bronx-based Inner City Press/Community on the Move (ICP), the plaintiff group in the case, argued to ensure that the regulatory agencies listen to the affected public, the CRA statute should be amended to designate community groups, such as ICP, as aggrieved parties. This would grant legal standing necessary to ask courts to review regulators' merger approvals. Mr. Lee argued that, as with other public interest statutes—such as the Freedom of Information Act or the Fair Housing Act—the amendment should specify that attorney's fees and costs would be awarded to prevailing community groups.<sup>45</sup>

A CRA agreement was reached in the Chase Manhattan-Chemical Bank merger, whereby Chase pledged \$18.1 billion (\$4.2 billion in New York State alone) for CRA initiatives over the next 5 years, including expanding its presence in the Bronx to 35 facilities, 3 times more than any other bank.<sup>46</sup> The bank's final pledge package resulted from consultations with more than 350 community organizations and government officials.

The major components of Chase's commitment include: (1) \$13.5 billion in affordable mortgages and an expansion of the bank's credit and mortgage counseling programs; (2) \$3.4 billion in loans and investments to assist small businesses and community-based nonprofit organizations; (3) \$1.2 billion in loans and investments for affordable housing and commercial economic development projects; and (4) \$70 million in philanthropic contributions to community-based nonprofit organizations providing

assistance in education, employment, and business management. The agreement also calls for the opening of two new branches in East Harlem and the South Bronx, as well as 46 new ATMs in low- and moderate-income areas.<sup>47</sup>

There are other, smaller examples of CRA agreements. In New York City, many of these cases have involved the aforementioned Matthew Lee and ICP. In 1994 ICP persuaded five banks to make \$65 million in loan commitments and to open four new facilities in the Bronx.<sup>48</sup> In 1997 Mr. Lee signed a deal with Astoria Federal Savings and Loan, a \$7.7 billion-asset thrift in Brooklyn buying Greater New York Savings Bank, whereby he and ICP pledged not to protest the acquisition. For its part, Astoria committed to issue \$25 million in loans over the next 3 years. This credit will be earmarked for low- and moderate-income sections of Brooklyn and Manhattan. The bank also agreed to open two automatic teller machines in Northern Brooklyn, and to expand its reinvestment activities in each of New York City's five boroughs.<sup>49</sup>

However, there are signs that the effectiveness of CRA protests will decrease, given that the regulators are granting faster approvals and offering shorter comment periods for community group input.<sup>50</sup> Moreover, Congress appears to be working to streamline the process further still; pending financial modernization legislation would allow banks to buy insurance companies, securities firms, and industrial companies without requiring an application procedure in which affected communities could participate and comment.

Given the current climate, Matthew Lee believes that other strategies are needed, including innovations from the labor union movement. Mr. Lee suggests that activists probe the business relationships of banks. If a bank provides insuf-

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<sup>45</sup> Mr. Lee argues that this type of language exists in many environmental and administrative law statutes. He cites to the example of the Federal Communications Act, which permits a listener of a radio station to become a party to a station's application for approval, and thus have standing to challenge the FCC's decision. Mr. Lee explains, "It is simply a matter of good government, of checks and balances. An agency's interpretation and implementation of a law passed by Congress must be subject to challenge by those affected." Matthew Lee, "New Strategies for Community Reinvestment in an Era of Mega-Banks, Mega-Mergers, and Fast Deregulation," *Reinvestment Works*, vol. 6, no. 1 (winter 1998), p. 6.

<sup>46</sup> It has opened two branches in the borough since 1994, including a full-service office in University Heights that began accepting customers in the summer of 1997. University Heights had been without a bank for 25 years. See Jaret Seiberg, "N.Y. Activist Changing Strategy to Stay on Course," *American Banker*, July 29, 1997, p. 1.

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<sup>47</sup> "Chase/Chemical Vow Billions for CRA," *Regulatory Compliance Watch*, Nov. 6, 1995, p. 1.

<sup>48</sup> Seiberg "N.Y. Activist," p. 1.

<sup>49</sup> *Ibid.* See also "Astoria Federal Savings and Loan Association and Inner City Press Announce Community Reinvestment Agreement," *PR Newswire*, July 10, 1997.

<sup>50</sup> Moreover, the Congress appears to be working to streamline the process further still; pending financial modernization legislation would allow banks to buy insurance companies, securities firms, and industrial companies without requiring any application procedure in which affected communities could participate and comment. Lee, "New Strategies for Community Reinvestment" p. 2.

ficient service to low-income communities, Mr. Lee urges the activists to inform all the bank's customers (including individual depositors, government agencies with accounts at the bank, institutional pension and trust customers, and syndicated loan customers) of this fact. Mr. Lee says, "While the target bank may be entrenched in its position, its business partners might have a much lower pain threshold for tolerating a protracted and widely publicized slugfest. They may inform the bank, 'Resolve this or we'll end our relationship.'"<sup>51</sup>

### The New York State CRA

New York adopted its own CRA law in 1978. It is 1 of 12 States to have enacted their own CRA statute. Seeking to encourage actual lending rather than paperwork, New York regulators revised the community reinvestment requirements for State-chartered banks. As of December 3, 1997, the New York State Banking Department began grading institutions on their lending, service, and investment in the community, a measure that closely paralleled the recently revised Federal Community Reinvestment Act regulations.

Critics are wary of the new community investment rules because they appear not to meet the needs of the intended beneficiaries, those in low- to moderate-income areas. Banks that operate in parts of New York State with low- to moderate-income housing may earn credit for financing middle-income housing in mid- to high-income areas. State Senator Franz S. Leichter, a Democrat from Manhattan and the Bronx, said the new plan "is guaranteed to result in the siphoning of millions of dollars from low- and moderate-income neighborhoods."<sup>52</sup> Sarah Ludwig, executive director of the Neighborhood Economic Development Advocacy Project in New York City and coordinator of the New York City Community Reinvestment Task Force,<sup>53</sup> agrees: "Middle-income housing is outside the parame-

ters of CRA. If banks aren't providing low and moderate housing assistance, then they are not in compliance with CRA."<sup>54</sup> Ms. Ludwig points to preliminary research data showing that although low-income households constitute more than 45 percent of all households in the New York Metropolitan Statistical Area, lenders in 1995 made only 1.54 percent of all loans to low-income borrowers.<sup>55</sup>

The State banking industry nevertheless supports the new regulations. Michael P. Smith, president of the New York Bankers Association, said the new rules "recognize that even in higher income areas, there can be shortages of credit."<sup>56</sup> Andrew Kelman, director of the community reinvestment monitoring unit of the New York State Department of Banking, also defended the approval of the new CRA regulation, saying that the "CRA was intended to provide housing assistance to all communities, not solely low-income areas. The new regulation recognizes the possible gap between the income of certain geographic areas and the income of the borrowers."<sup>57</sup>

In a letter filed with the State's Department of Banking prior to approval of the new CRA regulation, 80 New York-based organizations and city, State, and Federal public officials expressed strong opposition to key provisions of the proposed CRA regulations, charging that the new regulation would "seriously weaken the

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<sup>51</sup> Ibid.

<sup>52</sup> Olaf de Senerpont Domis and Dean Anason, "Capital Briefs: Critics: New York CRA Proposal Would Hurt Poor," *American Banker*, Oct. 16, 1997, p. 2.

<sup>53</sup> The Community Reinvestment Task Force is a network of community organizations and advocates working for community reinvestment in affordable housing, microenterprise, small business, and community development financial institutions in low-income neighborhoods in New York City.

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<sup>54</sup> Elaine Ringoff, "NY Community Advocacy Groups Accuse Department of Banking of Bowing to Bank Interest," *Credit Union Times*, Dec. 3, 1997, p. 5. See also New York City Community Reinvestment Task Force, letter to Stacey M. Cooper, deputy superintendent of banks, New York State Banking Department, Oct. 22, 1997 (hereafter cited as "Task Force Letter"), arguing that the proposed provision "directly undermines the spirit and letter of the CRA, which is intended to ensure that banks meet the credit needs of low- and moderate-income neighborhoods in their service areas." The letter concludes that the provision "should be based on demonstrated need in communities, not driven by preferences of financial institutions and homeownership intermediaries." Ibid.

<sup>55</sup> Task Force Letter. The letter adds that since most low- and moderate-income people in a high-cost area like New York City live in multifamily rental housing, the State regulations should follow the Federal CRA example by providing "double credit" for multifamily lending. "Emphasis on owner-occupied housing in a high cost area like New York City, where the majority of residents, at all incomes, live in multi-family, rental housing, seems especially misplaced, and insufficiently driven by public interest." Ibid.

<sup>56</sup> Ringoff, "NY Community Advocacy Groups Accuse Dept. of Banking," p. 5.

<sup>57</sup> Ibid.



state's 17 year-old Community Reinvestment Act and let banks get away with considerably less lending to low- and moderate-income New Yorkers."<sup>58</sup> In addition to concern over the provision allowing banks to earn State CRA credit for financing middle-income housing in mid- to high-income areas, the following objections to the proposed regulations were put forth by the signatories:

1. The signatories argued that the Banking Department did not adequately address the issue of loans that "gentrify" or "destabilize" low- and moderate-income neighborhoods. They contended that the issue is "especially important given the Banking Department's proposal for expansive treatment of middle-income lending for owner-occupied housing." Signatories argued the provision could lead to middle-income lending that results in neighborhood destabilization or gentrification.<sup>59</sup>
2. The signatories argued that the Banking Department erred in its decision not to propose formal procedures for processing public comments on banks' community reinvestment performance. They contended that the department should "promulgate clear, written procedures that ensure an open and public process."<sup>60</sup> Written procedures, it was argued, would benefit all parties, putting financial institutions, regulators, and the

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<sup>58</sup> Upon reviewing a draft of this report, counsel for the New York Banking Department said there was no basis for this conclusion, stating: "The regulation specifically states that activities pertaining to middle-income individuals and areas shall be considered in addition to and not in lieu of consideration of activities pertaining to low- and moderate-income individuals and areas." Barbara Kent, assistant counsel, State of New York Banking Department, to Ruby Moy, Staff Director, U.S. Commission on Civil Rights, Apr. 16, 1999, U.S. Commission on Civil Rights files (hereafter cited as Kent letter).

<sup>59</sup> Ringoff, "NY Community Advocacy Groups Accuse Dept. of Banking," p. 5. According to counsel for the New York Banking Department: "At the time the regulation was proposed and continuing to present time, the Department agrees that 'gentrification' loans may not be consistent with the spirit of CRA. However, we do not believe that it is possible to consider this issue with a one-size-fits-all approach. Accordingly, the Department elected not to address this issue in the regulation, but will continue to consider information brought to its attention on a case-by-case basis." Kent letter.

<sup>60</sup> Task Force Letter.

public on notice as to how comments will be addressed, both at the CRA examination stage and when banks submit applications subject to CRA.<sup>61</sup>

3. The signatories argued that the final regulations should place greater emphasis on small business lending in low- and moderate-income neighborhoods.<sup>62</sup>
4. The signatories argued that the final regulations should create explicit incentives for banks' support of community development financial institutions (CDFIs), such as community development credit unions and loan funds.<sup>63</sup>
5. The signatories argued that the proposed CRA examination is inadequate, since all banks would be examined every other year irrespective of their rating. They suggested that exam frequency should be based on banks' ratings, and they argued that a 2-year interval between examinations "is too long for banks that receive less than satisfactory ratings."<sup>64</sup>
6. The signatories argued that the final regulations should clarify criteria for evaluating retail banks' service records, and place emphasis on branch services located in low- and moderate-income neighborhoods. The letter states:

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<sup>61</sup> Ibid. According to counsel for the New York Banking Department, "The Department has not seen the need to adopt formalized procedures relative to the handling of CRA-based comments because it has been successful in its endeavors to assure a full airing of such comments without special regulations covering the same. In addition to expanding to 30 days the comment period on major CRA-sensitive applications, the Department has, as a matter of routine, shared commentators' statements with applicants and applicants' responses to such comments with the particular commentator authoring the same. In this way, we already meet the spirit of the request." Kent letter.

<sup>62</sup> Task Force Letter.

<sup>63</sup> Ibid. According to counsel for the New York Banking Department, "We believed at the time and continue to believe that the regulation does place significant emphasis on small business lending and provides adequate incentives for the support of community development financial institutions." Kent letter.

<sup>64</sup> Task Force Letter. According to counsel for the New York Banking Department, the decision to evaluate every other year rather than yearly "was done in order to use the Department's resources in a manner designed to achieve more comprehensive evaluations and to ultimately provide the public with more informative reports. . . . Reports under the new system are, in fact, more comprehensive and informative." Kent letter.

The proposal would allow the Banking Department to consider banks' distribution of services primarily serving low- or moderate-income individuals, *even if not located in low and moderate income neighborhoods*. The provision undermines incentives for banks to locate in low and moderate income neighborhoods, reinforcing the problem many residents of underserved neighborhoods face of having to travel to higher income communities to do their banking.<sup>65</sup>

The letter called on the Banking Department to hold a public hearing on the proposed amendments, but such a hearing was never held.<sup>66</sup> The State's new CRA laws were formally adopted 1 week after the 14-week comment period ended.<sup>67</sup>

## **Section II. CRA as Catalyst to Economic Development**

### **Economic Development as the Driving Engine**

At a forum in January 1998 entitled "Community Reinvestment and Access to Credit,"<sup>68</sup> Federal Reserve Chairman Alan

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<sup>65</sup> Task Force Letter. According to counsel for the New York Banking Department: "[T]he regulation allows the Department to consider, when evaluating a bank's distribution of services, branches that serve low- and moderate-income individuals even if the branches are not located in a low- or moderate-income neighborhoods, *provided the branches are located adjacent to a low- or moderate-income area*. . . . Since the branch, to be favorably considered, must be in or adjacent to a low- or moderate-income area, the provision does not enable institutions to make claims that distant branches are serving the needs of low- or moderate-income customers." Kent letter (emphasis original).

<sup>66</sup> According to counsel for the New York Banking Department, "The proposal was issued for comment only after a lengthy period of public discussion of CRA at both the state and federal levels. In addition, the proposal was issued for an extended 60 day public comment period that was further extended for an additional two weeks. The great length of the comment period and the publicity attendant thereto were important factors in the Department's determination not to hold public hearings. Prior to the expiration of the comment period, a total of 36 comments were received in response to the proposal, representing a diversity of banking institutions, banking trade groups, community groups, affordable housing developers, community group service providers, legislators and other public officials. . . . Given this extensive input, the Department did not believe that there would be any benefit in having a public hearing." Kent letter.

<sup>67</sup> Ringoff, "NY Community Advocacy Groups Accuse Dept. of Banking," p. 5.

<sup>68</sup> The forum was organized by U.S. Congresswoman Maxine Waters, a House Banking Committee member who has long been critical of the dearth of bank branches and loans made to her South-Central Los Angeles district and other inner cities. See Don Lee, "Greenspan Says," *Buffalo News*, Jan. 13, 1998, p. 6-D.

Greenspan told a gathering of bankers and community activists that curing the economic ills of the inner city requires not more credit or government help, but capital investments that will spur lasting development.<sup>69</sup> Greenspan noted that he was "very dubious of all sorts of government subsidies," and that access to credit has risen sharply in lower income areas in recent years.<sup>70</sup> He cautioned against expanding credit availability, saying that delinquency problems have surfaced and that more credit is not entirely a good thing for lower income areas.<sup>71</sup>

Economist Laurence H. Meyer, a Federal Reserve Board governor and longtime Washington University economics professor, stated at a recent conference<sup>72</sup> that private-public economic development collaborations are the country's best hope for urban revitalization.<sup>73</sup> He argued that while housing has led troubled neighborhoods toward prosperity, only an infusion of small business and commerce will assure it:

Housing is not enough to revitalize distressed communities, reinvigorate neighborhood life and create the kind of economic value that helps sustain revitalization efforts in ways that continue to benefit low- and moderate-income residents. You need a broader based effort: business development to create jobs and commercial development.<sup>74</sup>

Mr. Meyer made a strong case for involving government, stating, "The hallmark of community development today is collaborative partnerships between community non-profits, financial institutions, private-sector organizations, and

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<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*; see Kui Testimony, *New York Hearing*, vol. III, p. 1010. Mr. Kui, executive director, Asian Americans for Equality, argues, "We are not asking for subsidies" but rather for a "standard mechanism to look at lending overall in the minority community" to ensure those communities that save a great deal through bank deposits are given access to a reasonable and fair share of the lending that results from those deposits. *Ibid.*

<sup>71</sup> Lee, "Greenspan Says"; but see Kui Testimony, *New York Hearing*, vol. III, p. 991, where Christopher Kui, states that lack of access to credit "impacts on housing, job creation, small business growth, individual credit needs and a community's overall capacity for development. . . ."

<sup>72</sup> The conference was sponsored by the Urban Studies Program at the University of Wisconsin-Milwaukee in December 1997.

<sup>73</sup> Michele Derus, "Cooperation Called Key To Urban Revitalization," *Milwaukee Journal Sentinel*, Dec. 7, 1997, p. 5.

<sup>74</sup> *Ibid.*

state and local government agencies—partnerships designed to increase the flow of funds into and within low- and moderate-income communities.”<sup>75</sup>

Nicholas Ketcha, Jr., the New York regional director of the FDIC, testified at the New York hearing that such collaborative partnerships are taking place in New York City.<sup>76</sup> The FDIC regional office is part of a large group of private-sector businesses, and city, State, and Federal agencies that come together annually for a “small business financing expo.” The annual event concentrates on bringing together lenders, potential entrepreneurs, and experts in the field. The event includes a large education component, helping to clarify small lending procedures, as well as introducing to potential borrowers some of the lending programs that are available.<sup>77</sup>

Lawrence Toal, chairman and chief executive officer of New York City’s Dime Bancorp, points out the importance of economic development:

I think what has not happened is that there really has not been a coordinated effort, in government, business and the financial sector, in terms of what I call true economic development. There have been housing programs with small business lending, but I think that economic development is important for housing, and it is an important part of education and job creation.<sup>78</sup>

Some people in the banking business believe that to ensure the viability of underserved communities, it is essential that they have sufficient capital available to them. Peter Williams, director of housing and community development, National Urban League, testified at the New York hearing that “capital to a community is like fuel to a car. If you have no capital, the community does not run.”<sup>79</sup> Further, without adequate access to capital, the community is bound to become “socially isolated.” Once capital is withheld from a given community, argued Williams, the

result will be disinvestment, abandonment, and “the erosion of the community.”<sup>80</sup>

Doreen Greenidge, senior economic analyst at the Office of the Manhattan Borough President, suggested at the New York hearing that when people *do* begin investing in low-income communities, such as Northern Manhattan, the residents of the area should be given a “stake” in the new development:

[C]utting through it all for me, the largest and biggest suggestion which came out of speaking to thousands of people. . . and doing studies, is really the distrust which I have encountered on the most basic grass-roots level, the distrust of those, for instance in the Northern Manhattan community, of investors coming in and people taking back and reclaiming and putting dollars back into the community without allowing those there to have a stake in the new renaissance which is underway . . . it’s called stakeholding . . . And it is going to take great communication between financial institutions and investments into that area from both the public sector and from the private. They have to win the trust of the people, bring them in. There is a lot of talent and resources there. . . .<sup>81</sup>

Ms. Greenidge also stated that when financial institutions invest in low-income areas, it is important that they are willing to be more flexible.<sup>82</sup> For example, Greenidge testified, “There are different levels and ways to measure cash flow,” and there are startup businesses that financial institutions have historically deemed

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<sup>80</sup> Ibid.

<sup>81</sup> Doreen Greenidge, testimony, *New York Hearing*, vol. III, pp. 1124–25 (hereafter cited as Greenidge Testimony). See also Harriet Michel, president, National Minority Supplier Development Council, testimony, *New York Hearing*, vol. III, p. 1136 (“Minority businesses are the single greatest job engine in the minority community, the overwhelming number of minority businesses have up to 75 percent or more of their employees are minorities, whether they are located in the minority community or outside of it”); see also Rudolph Bryant, associate director, Pratt Center, Pratt Institute, testimony, *New York Hearing*, vol. III, p. 1187 (“The [low-income] communities are structured such that the ownership is owned by absentee individuals. And that ownership allows for in the first instance a profit off of mortgages, rents . . . that flow directly out of the community. And so if low-income communities are to become better situated with regard to assets and wealth it requires in the first instance a restructure of their ownership base, rent, property and business”).

<sup>82</sup> Greenidge Testimony, *New York Hearing*, p. 1125. Ms. Greenidge states, “You don’t have to jeopardize safety and soundness, just look at it in a different way with looking at the risk factor.” Ibid.

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<sup>75</sup> Ibid.

<sup>76</sup> Nicholas Ketcha, testimony, *New York Hearing*, vol. III, pp. 1102–03 (hereafter cited as Ketcha Testimony).

<sup>77</sup> Ibid., p. 1109.

<sup>78</sup> “Assessing The New Direction of CRA,” *U.S. Banker*, August 1997, p. 44.

<sup>79</sup> Peter Williams, testimony, *New York Hearing*, vol. III, p. 999 (hereafter cited as Williams Testimony).

unworthy of lending money to, such as hair braiding and child care businesses, which can thrive in such communities and return a profit.<sup>83</sup>

A strong commitment by the city of New York is necessary before private dollars will be invested into lower income areas of the city. According to William R. Frey, vice president and director of the Enterprise Foundation in New York:

New York City is leading the private sector into those communities, and giving some security that there is a serious effort to rebuild and revitalize them. This really led to billions of dollars in commitment and investment on behalf of the financial institutions. I think that if you look at stable communities, there is an important lesson to be learned: that a certain amount of private investment follows a strong commitment by the government.<sup>84</sup>

Some experts have hinted that strong government commitment could entail extending the coverage of the CRA to entities other than banks. In June 1997, New York State's insurance commissioner, Neil Levin, called for a "consideration" of transferring the burden of the CRA to insurance companies and their activities, including those pursued by banks.<sup>85</sup> The issue over whether insurance activities should be subject to CRA regulation arose during a meeting of the National Association of Insurance Commissioners on the bank sale of insurance. Mr. Levin cited improvements in bank lending that followed the enactment of the CRA, but questioned the availability of bank investment without the necessary insurance coverage. In Mr. Levin's words, "Bank availability without insurance availability doesn't do any good."<sup>86</sup>

During the New York hearing, Timothy Bates, professor of urban, labor and management affairs at Wayne State University, noted his agreement with Mr. Levin's analysis, stating, "There is the perception that the inner-city minority community is a very, very bad risk. And that's why the insurance companies are hesitant to be there and that compounds with the banks'

limited willingness to lend." Mr. Bates argued that the situation creates a "vicious circle."<sup>87</sup>

In a recent speech, the comptroller of the currency, Eugene Ludwig, explained that banks alone simply cannot meet all the financial needs of low- and moderate-income communities.<sup>88</sup> He stated that reinvestment responsibilities should be shared by all financial institutions. In his opinion, the CRA has not "damaged" the banking industry. In fact, he stated that "the greatest era of CRA activity in history, the last three years, has also seen the highest levels of bank profitability in history."<sup>89</sup>

Moreover, it is clear that banks no longer hold the great majority of assets in the financial industry. Currently, Americans have invested \$4 trillion in mutual funds, while they hold \$3 trillion in bank and thrift deposits. Thus, it could be argued that if the CRA is not allowed to evolve with the evolution of the financial industry, it will cover fewer and fewer assets. It is likely that mergers among depository and nondepository institutions will accelerate, and that the distinctions among products offered by financial institutions will thereby become blurred. For example, mutual funds offer checking accounts that are not regulated by CRA, and insurance companies now want to establish thrifts. If the CRA is not expanded, then bank holding companies may find it very tempting to switch their assets from their CRA-covered subsidiaries (banks and thrifts) into their CRA-exempt affiliates (mortgage companies, insurance companies, etc.) Finally, without an expansion of the CRA, the major lenders in poor communities (banks and thrifts) may no longer have the financial wherewithal to continue increasing access to capital and credit to traditionally underserved communities.

### **Availability of Deposit Facilities and Services in Low-income Areas**

Many low-income communities have a dearth, or a complete absence, of branch facilities for

<sup>83</sup> *Ibid.*, pp. 1125-26.

<sup>84</sup> "Assessing the New Direction of CRA," *U.S. Banker*, August 1997, p. 44.

<sup>85</sup> "New York's Levin Eyes CRA For Insurance," *Bank Mutual Fund Report*, vol. 5, no. 25 (June 23, 1997), p. 1.

<sup>86</sup> *Ibid.*

<sup>87</sup> Timothy Bates, testimony, *New York Hearing*, vol. III, p. 1199 (hereafter cited as Bates Testimony).

<sup>88</sup> "NCRC Celebrates CRA's 20th Birthday: CRA Will Remain the Hope for Neighborhood Renewal Only if It Evolves," *Reinvestment Works*, vol. 6, no. 1 (winter 1998), p. 6.

<sup>89</sup> *Ibid.*

banking.<sup>90</sup> According to a recent Federal Reserve Board study, bank offices declined 21 percent between 1975 and 1995 in low-income neighborhoods.<sup>91</sup> The recent wave of bank mergers has led to an even greater elimination of branch facilities.<sup>92</sup> Testimony at the New York hearing indicated that, in the last decade or so, nearly

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<sup>90</sup> See, e.g., David Dinell, "Capitol Federal Savings Inks Deal for KenMar Site," *Wichita Business Journal*, vol. 12, no. 14 (Mar. 28, 1997), p. 3 ("There is a dearth of financial resources" in the KenMar area, a low-income community, of Wichita); Jonathan D. Epstein, "N.J. Bank, Besieged by Activists, Draws the Line," *American Banker*, July 31, 1995, p. 6 (stating that of its 46 branches, Commerce Bancorp in Cherry Hill, NJ, does not have one branch in a low-income area); Louise Witt, "An Alternative to Banking: Western Union Caters to the Low End; Western Union Corp. Western Union National Payment Network," *Boston Business Journal*, vol. 10, no. 49 (Jan. 28, 1991), p. 15 ("Despite increased CRA efforts, banks are continuing to close branches in low-income neighborhoods"); Robert Guskind, "Thin Red Line," *National Journal*, vol. 21, no. 43 (Oct. 28, 1989), p. 2639 ("[There is] mounting evidence that deregulation of the banking industry had resulted in branch closing or elimination of services in low-income neighborhoods").

Of course, there are other factors besides per capita income of a given area's residents that determine if a branch will be opened in the area. As Chase Manhattan's executive vice president Carol J. Parry points out, people bank where they work, and more than 2 million people work in Manhattan, compared with 300,000 in the Bronx. See Seiberg, "N.Y. Activist," p. 1; Ketcha Testimony, *New York Hearing*, vol. III, p. 1131 ("What you have is almost a 'Catch-22.' There is no financial services in there, so you can't get the new activity; because you don't have the new activity, you can't justify putting a branch in there").

<sup>91</sup> Association of Community Organizations for Reform Now, "Small Business Loans Much More Likely in Wealthy Neighborhoods than Poor," Nov. 25, 1997, Washington, DC (hereafter cited as ACORN, "Small Business Loans More Likely"). Many low-income residents have no relationship with banking institutions, which makes it still more difficult to foster the more complicated relationship required for small business lending. Bankers' unfamiliarity with these communities and borrowers leaves them unable to understand and appreciate the credit needs and business plans of low-income borrowers. This affects lending adversely because bankers are unable to differentiate the more complicated credit needs of low-income borrowers and to design programs and policies to meet these needs. *Ibid.*

<sup>92</sup> Jaret Seiberg, "Fed Called 'Embarrassing Rubber Stamp on Mergers,'" *American Banker*, Mar. 8, 1996, p. 2. Former New York State Senator Franz S. Leichter conducted a study which suggested that when minorities left their neighborhoods to find a bank, some were discriminated against. Some of the banks would institute a "10-block" rule for the bank, meaning potential customers had to reside within 10 blocks of the bank. The Leichter study found that the rule was waived 70 percent of the time for white testers, but only 22 percent of the time for Latino and African American testers. See Williams Testimony, *New York Hearing*, vol. III, p. 1027.

one-third of the bank branches in Central Brooklyn have closed.<sup>93</sup> Many residents are then forced to use public transportation to reach banks in other communities,<sup>94</sup> or to turn to local check-cashing stores.<sup>95</sup>

Check-cashing stores do not provide the traditional banking services that allow people to save money, earn interest, and develop a banking history. Instead, they impose a surcharge for every check cashed.<sup>96</sup> Mark Winston Griffith, executive director of Central Brooklyn Partnership and president of Central Brooklyn Federal Credit Union, stated during testimony at the New York hearing that in Central Brooklyn there are twice as many check-cashing operations as there are banks.<sup>97</sup> In addition, he testified that "most of the people who run these institutions have no other vital connection to the neighborhood but to be there to suck money out of it."<sup>98</sup>

Doreen Greenidge, senior economic analyst, Office of the Manhattan Borough President, conducted—with the help of some community-based organizations—a banking survey in Central Harlem and Washington Heights. The main concern expressed by the nearly 1,500 people interviewed was the lack of affordable banking (i.e., the need for low-fee or no-fee basic banking accounts, which also do not require a minimum balance), and the overcrowding due to the closing of branches in low-income areas.<sup>99</sup>

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<sup>93</sup> Griffith Testimony, *New York Hearing*, vol. III, p. 1193. Mr. Griffith indicated that while the nationwide average is one bank branch per 5,000 people, that number falls to one branch per 23,000 people in Central Brooklyn. *Ibid.* See also Statement of Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System, Community Forum on Community Reinvestment and Access to Credit: California's Challenge, Los Angeles, CA, Jan. 12, 1998, p. 2 (hereafter cited as "Greenspan Community Reinvestment Statement") ("The banking crisis of the late 1980's, plus ongoing consolidation, have reduced the total number of banking organizations by more than a third in the past two decades").

<sup>94</sup> Jacqueline S. Gold, "The South Bronx Is Cheering as Banks Come Back," *American Banker*, Aug. 20, 1997, p. 1.

<sup>95</sup> Griffith Testimony, *New York Hearing*, vol. III, p. 1193

<sup>96</sup> Sarah Smith, "Cut to the Chase: Why the Chemical-Chase Megamerger Doesn't Add Up for Many New Yorkers," *Village Voice*, Jan. 23, 1996, p. 12. See also Bloomberg News Service, "Federal Law Makes Small Business Loans Easier to Get," *Sacramento Bee*, Jan. 15, 1996, p. E-1.

<sup>97</sup> Griffith Testimony, *New York Hearing*, vol. III, p. 1193.

<sup>98</sup> *Ibid.*, pp. 1193-94.

<sup>99</sup> Greenidge Testimony, *New York Hearing*, vol. III, pp. 1098-99. Ms. Greenidge testified that in Northern Manhat-

While many banks have installed offsite ATMs in large-chain supermarkets and department stores, this solution does not meet the needs of low-income customers because most large retail outlets are not located in low-income areas, and many offsite ATMs do not accept deposits. In testimony presented at the New York hearing, it was argued that ATMs should be installed in places that are actually frequented by low-income residents, even if this means unconventional installations, such as in a church.<sup>100</sup> Another suggestion was that banks would be more accessible to certain members of low-income communities if they provided bilingual staffing and access to bilingual banking materials.<sup>101</sup>

One of the newer products to emerge from the banking industry is the stored-value card. This card allows customers to transfer a sum of money onto an electronic card and use it like cash to pay for goods and services.<sup>102</sup> Certain types of stored-value cards can be used in making small-value payments, such as at parking meters, public transport, and fast food restaurants. In addition, Federal and State Governments are testing different types of stored-value cards for making electronic payments to food stamp recipients, and for other purposes.<sup>103</sup> Because the system is relatively new, however, its application is still largely unregulated with respect to security, privacy, and access.

While CRA advocates may be skeptical of these kinds of payment products, presuming that banks have created another cost-saving device at the expense of the poor, representatives of the banking industry argue that such technology extends electronic access to lower income neighborhoods, which lack ATMs and mini-

branches.<sup>104</sup> After describing a very similar system in her testimony at the New York hearing, Doreen Greenidge concluded, “[I]f we had this [available in low-income areas], at least it is something to make up for not having ATM machines to be able to get cash. . . . It is very basic, but the impact is tremendous. And just little minor considerations like that can make a big difference.”<sup>105</sup>

### Community Development Financial Institutions

Community Development Financial Institutions (CDFIs) are community-based and community-controlled financial intermediaries designed to support the credit and technical business needs of their communities. They are specifically established to respond to their community’s needs, and actively seek out the expertise required to fulfill such needs. More importantly, CDFIs provide low-income residents a stake in their own community development.

In New York City, community development corporations—usually small, nonprofit neighborhood groups—have built thousands of homes and apartments for poor people since the 1970s.<sup>106</sup> “These groups are the stabilizing force in their neighborhoods,” said Gary Hattem, director of the Community Development Group at Bankers Trust.<sup>107</sup> Since the community development corporations began their work in the 1970s—typically to fix up a small number of blighted buildings that had become centers of the drug trade—the groups have rehabilitated more than 500 vacant buildings and created more than 20,000 apartments.<sup>108</sup>

Since the mid-1980s, the main source of financing for the groups, and the main source of their close ties to banks and other corporations, has been the Federal Government’s program of corporate housing tax credits, which are limited and divided among the States. The program enables businesses that provide money to the housing groups to recoup their investment,

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tan, the number of customers at some branches has quadrupled due to closings, causing “overcrowding and very poor, unfavorable conditions for people to do banking.” *Ibid.*, pp. 1099–1100.

<sup>100</sup> *Ibid.*, p. 1100. Ms. Greenidge argued during the New York hearing that placing ATMs in churches is simply making banking facilities “more user friendly.” *Ibid.*, pp. 1100, 1127.

<sup>101</sup> *Ibid.*, p. 1100.

<sup>102</sup> Laurence H. Meyer, member, Board of Governors of the Federal Reserve System, statement before the Committee on the Judiciary, U.S. House of Representatives, *Federal Reserve Bulletin*, vol. 84, no. 8 (August 1998), p. 619.

<sup>103</sup> *Ibid.*

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<sup>104</sup> Jeffrey Kutter, “Mondex Draws Sparse Crowd on the Hill,” *American Banker*, Mar. 14, 1996, p. 16.

<sup>105</sup> Greenidge Testimony, *New York Hearing*, vol. III, p. 1128.

<sup>106</sup> Thomas J. Lueck, “\$15 Million In a Fund Will Provide Housing Aid,” *New York Times*, May 22, 1997, p. B-9.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

sometimes with interest, through reductions in their corporate income taxes over 15 years.<sup>109</sup>

Community Development Financial Institutions come in many forms, including community development banks, community development loan funds, and community development credit unions.<sup>110</sup> Ideally, the operations of a CDFI will be a direct reflection of its community's needs. They may engage in a wide variety of lending and business-related activities, such as accounting, financial planning and management, marketing, housing development, and credit counseling. The main goal of a CDFI is not to maximize profits for its shareholders, but to build and rebuild the economic infrastructure of its community.

Although CDFIs are not new to the banking environment, they have proliferated in recent years due in part to the CRA; banks can help satisfy their obligations under the act by investing in the development and maintenance of CDFIs.<sup>111</sup> In addition, based on the findings that economic opportunity was still lacking in many communities, and that CDFIs have proven their

ability to identify and respond to community needs,<sup>112</sup> Congress passed the Community Development Banking and Financial Institutions Act in 1994.<sup>113</sup> The act was intended to help develop a national network of financial institutions dedicated to community development. Its primary purpose was to create a fund to provide financial support in the form of matching loans, grants, investments, and deposits made to CDFIs.<sup>114</sup> Although the fund is too new to predict its success or failure, CDFIs have applied for assistance in record numbers. For fiscal year 1995, 262 applications were submitted requesting more than \$300 million, about 10 times the amount available for actual funding.<sup>115</sup>

President Clinton, speaking on January 15, 1998, in New York City at Jesse Jackson's 3-day Wall Street diversity conference,<sup>116</sup> stated that his 1999 budget would include a proposal to increase funding for Community Development Financial Institutions by 50 percent. The President said he wanted to "help families with good histories of paying their rent to move into homes of their own."<sup>117</sup>

In addition to Federal funding, a group of banks and foundations led by Bankers Trust and J.P. Morgan announced a \$15 million fund to subsidize New York City's community development corporations. The fund is intended to support these community groups at a time when the Federal Section 8 program and other forms of government housing assistance are being cut, thus increasing the demand for the groups' services in poor areas. As an incentive, banks that contributed to the fund received credit under the Community Reinvestment Act.

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<sup>109</sup> In New York City, the tax credit program is administered by two organizations, the Enterprise Foundation and the Local Initiative Support Corporation, both of which have contributed to the \$15 million fund. Executives of both groups said they considered the fund a logical extension of the corporate investments that have already been made, even though contributors will not receive the tax credits that have attracted them in the past. *Ibid.*

<sup>110</sup> In her testimony, Lillian Bent, director of Union Settlement Federal Credit Union, discussed the difference between a credit union and a bank: "[T]here is a personal involvement in your credit union. You have bought a stake of your credit union when you have deposited your money there. Our investors are our depositors. And that is different than the bank. We keep our costs extremely low. We only look to cover our expenses, we don't look to make a profit. The profit we do make is returned to our membership, not to anyone else. So, the members have a very strong affiliation and dedication to their credit union." Lillian M. Bent, testimony, *New York Hearing*, vol. III, pp. 1014-15 (hereafter cited as Bent Testimony); see also Griffith Testimony ("What is structurally unique about a credit union is that again it is owned and operated by its membership and our membership is constituted by those people who live, work, do business, worship, or have any type of vital connection to the Central Brooklyn community"), *New York Hearing*, vol. III, p. 1192.

<sup>111</sup> Richard D. Marsico, "Fighting Poverty Through Community Empowerment and Economic Development: The Role of the Community Reinvestment and Home Mortgage Disclosure Acts," *New York Law School Journal of Human Rights*, vol. 12 (1995), p. 281; see also Rochelle E. Lento, "Community Development Banking Strategy for Revitalizing Our Communities," *University of Michigan Journal of Law Reform*, vol. 27 (1994), p. 773.

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<sup>112</sup> 12 U.S.C. § 4701(a) (1998).

<sup>113</sup> *Id.* §§ 4701-4718.

<sup>114</sup> *Id.* § 4707.

<sup>115</sup> Olaf de Senerpont Domis, "Community Development Program Has \$300M in Applications and \$31M to Spend," *American Banker*, Feb. 6, 1996, p. 4.

<sup>116</sup> See Charles Gasparino and Joseph N. Boyce, "Jackson, Wall Street Have Their Big Day, But Will It Fuel Minority Opportunities?" *Wall Street Journal*, Jan. 16, 1998, p. C-1.

<sup>117</sup> White House Briefing, Remarks by President Clinton at Wall Street Project Conference, World Trade Center, New York City, *Federal News Service*, Jan. 15, 1998.

### Section III. CRA as Catalyst to Small Business Enterprise

#### Small Business Lending

Small businesses have traditionally been an engine of job growth. They have created approximately 65 percent of new jobs nationwide in the 1970–1990 time period. Projections from the Bureau of Labor Statistics and the Small Business Administration suggest that industries dominated by small businesses may generate 68 percent of new, nonfarm jobs through the year 2005.<sup>118</sup>

Unlike large businesses, small businesses cannot obtain necessary capital through the stock or bond markets, and must turn to lenders to help finance startup or expansion costs. When small businesses in low-income neighborhoods have difficulty obtaining needed credit, they are unable to create jobs, increase wages, and expand the base of capital in their neighborhoods. The lack of employment opportunities, in turn, shrinks the local tax base and lowers the quality of life, compelling the financially able working-class families to flee the neighborhood. This leaves behind concentrated pockets of poverty lacking even the most basic and essential businesses such as grocery stores.<sup>119</sup>

In an interview with *U.S. Banker*, Carol Parry, executive vice president at Chase Manhattan Bank, noted the importance of small business lending and stated:

The new CRA regulations look at three types of lending—mortgages, small businesses and community development, construction-type projects. So small business is a big item on the agenda. There is not a bank around . . . that is not doing small business lending and seeing it as an attractive market in general.<sup>120</sup>

Banks are even turning to nonprofit organizations to help them find small business loan prospects. “The key to our success is the not-for-profits, the churches,” said Gregory Garden, Chase Manhattan Corporation’s district manager for the South Bronx and Northern Manhat-

tan.<sup>121</sup> According to Mr. Garden, “They build houses, run bus companies, help supermarkets move to the neighborhood.”<sup>122</sup> Chase, the Nation’s biggest bank and the market-share heavyweight in the Bronx, with 35 branches and \$2.7 billion of deposits, uses its nonprofit organization contacts to find small business loan prospects.<sup>123</sup>

In addition to Chase, Marine Midland Bank, with 10 branches in the Bronx and 7.8 percent of the county’s banking market, also looks to the nonprofits. “Banks need to respond to the community,” said Martin Liebman, Marine’s regional president for New York City, Westchester County, and Long Island. He stated, “We have three people working in our loan production office in the Bronx. They all speak Spanish. They all belong to community groups.”<sup>124</sup>

Such efforts by banks are clearly increasing lending in historically underserved areas. In fact, the banking industry was enthusiastic about the results of a study released by the Federal Financial Institution Examination Council (FFIEC) in September 1997, which found that small business lending patterns generally are comparable to the distribution of census tracts by income. The data showed that 6.5 percent of census tracts that are low-income received 4.6 percent of small business loans. Regarding the FFIEC study, the *American Banker* published a story titled “New Data Back Denials of Industry Redlining Against Small Business,” and some industry representatives concurred, hailing the study as evidence of decreased redlining of small businesses in underserved areas.<sup>125</sup>

<sup>121</sup> Gold, “The South Bronx,” p. 1.

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

<sup>125</sup> ACORN, “Small Business Loans More Likely.” John Taylor, president of the Washington, DC-based National Community Reinvestment Coalition, pointed out regarding the FFIEC data, “Unless you have a full accounting of what is happening, you can’t really draw any conclusions from this. You really need to look at the incomes of the people who are getting the loans and where the money is going. All the data show is simply the need for more detail.” *Ibid.* Mr. Taylor also stressed that important pieces of information are still lacking. First, the CRA regulations do not require that the income levels of the small businesses or the race of the small business owners be reported. Thus, it is difficult to determine whether loans are being received by locally owned businesses or franchises of corporate chains. Second, the data only include loan approvals, not denials. Thus, goes the argument, how can it be known whether small business

<sup>118</sup> “Community Development: A Profitable Market Opportunity,” Office of the Comptroller of the Currency, 1997, p. 13.

<sup>119</sup> ACORN, “Small Business Loans More Likely.”

<sup>120</sup> “Assessing The New Direction of CRA,” *U.S. Banker*, August 1997, p. 44.



However, at least one community organization conducted its own investigation in 30 cities across the country, including New York City, to measure the access that low-income communities have to small business loans. The group—Association of Community Organizations for Reform Now (ACORN), the country's oldest and largest grassroots community organization—analyzed nearly 700,000 loans totaling \$42.2 billion in more than 17,600 census tracts in 1996. The findings were:

1. When controlling for the prevalence of upper income census tracts, 3 times as many loans and 2½ times more money went to upper income neighborhoods than to low-income neighborhoods.
2. 26.7 percent of the census tracts studied were upper income, but those tracts received 36.4 percent of the small business loans and 39.5 percent of the dollars. Low-income neighborhoods made up 10.8 percent of the census tracts but received only 5.1 percent of the loans and 6.3 percent of the dollars.
3. For New York City, 36.8 percent of the census tracts studied were upper income, but those tracts received 56.8 percent of the small business loans and 55.3 percent of the dollars. Low-income neighborhoods made up 12.2 percent of the census tracts but received only 4.6 percent of the loans and 4.7 percent of the dollars.<sup>126</sup>

These data directly contradict the data released in the September 1997 FFIEC study mentioned above. Conflicting data such as these provide ammunition for both sides of any debate on the effectiveness of—and therefore the need to fortify, dismantle, or let stand still—current CRA regulations.

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credit needs in low-income areas are being met if it is not known whether these businesses are being rejected for loans at higher rates than their counterparts in wealthier areas? Third, the data include only a subset of banks. Only those institutions with assets of greater than \$250 million, or those owned by a holding company with assets of \$1 billion or more, must report. This means that only 2,078 lenders, or about one-fifth of all lenders covered by CRA, are small business data reporters. Without data on the performance of all CRA-covered lenders, definitive conclusions cannot be drawn. *Ibid.*; see Jaret Seiberg, "New Data Back Denials of Industry Redlining Against Small Business," *American Banker*, Oct. 1, 1997, p. 2.

<sup>126</sup> *Ibid.*

### **Venture Capital Funds**

New York City has become increasingly dependent on the expansion of the small business sector for its continued vitality and future job growth and tax revenues. To address the shortage of long-term capital available to finance small business and entrepreneurial growth, the New York Community Investment Company (NYCIC)<sup>127</sup> announced that in its first year, it had produced investments and loans of \$3.5 million for five small businesses in New York City.<sup>128</sup> As a result, these companies, a majority of which are owned by women and minorities, can now operate and provide their respective services. Howard Sommer, president, expressed satisfaction with the start of NYCIC's investment portfolio:

These five companies are characteristic of our target market and representative of small business opportunity not adequately serviced by conventional capital sources. They include a start-up business requiring additional capital to support bank credit, a business with insufficient history or equity to attract expansion capital, a rapidly growing technology business previously dependent on family and friends for funding, an early-stage company unable to raise capital without losing ownership control, and a more mature company looking for expansion capital at a reasonable cost. We are particularly pleased that NYCIC's investment created added comfort for banks to participate and leverage our funds by more than one hundred percent.<sup>129</sup>

In short, NYCIC is filling a need ignored by traditional investors and managers of venture capital funds, who pursue larger opportunities.

### **Microlending**

"Microlending" programs typically provide self-employment training and small amounts of credit to groups that are underrepresented in the small business community. For example, 41 percent of U.S. microlending programs target

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<sup>127</sup> Member banks include: Bank of New York, Bankers Trust, Chase, Citibank, EAB, Fleet, Marine Midland, J.P. Morgan, Republic, and U.S. Trust. Member community organizations include: Abyssinian Development Corp., ACCION New York, Bronx Overall Economic Development Corp., and Jamaica Business Resource Center.

<sup>128</sup> "Five Small Businesses in New York City Receive \$3.5 Million from New York Community Investment Company Activities," *PR Newswire*, Feb. 3, 1997.

<sup>129</sup> *Ibid.*

women, and 38 percent target a specific racial or ethnic group. Microenterprise assistance has proliferated in the past decade, and more than 200 programs are now active in the United States.<sup>130</sup>

These programs—in which loans are smaller, typically in the \$2,500 to \$25,000 range—can be implemented with more flexible terms. They are oftentimes administered and funded by banks in conjunction with neighborhood development groups and local governments. Working together, the banks can offer below-market terms (such as below-prime interest rates, longer amortization periods, temporary principal payment deferrals, and relaxed credit standards), and the community development organizations can offer counseling (including business, technical, and financial counseling). By providing small businesses with startup funds and by enabling them to establish credit records, these businesses are able to obtain conventional credit in the future.<sup>131</sup>

Accion International, a private nonprofit based in San Diego, is an example of a microlender that has found a way to make loans to the “unbankable.” One of its clients opened a small salad bar and quickly exhausted his \$16,000 savings in startup costs. To keep the restaurant open, the owner needed a small infusion of capital, approximately \$750, to expand his menu and print advertising flyers. Such a small loan is too small for a bank to make a profit; moreover, the entrepreneur had no credit history and very little to offer as collateral.

Accion International was able to make the loan and, after partial repayment, was able to extend a new loan for \$1,500.<sup>132</sup> Accion Interna-

tional has loaned over \$8 million to more than 1,700 clients in San Diego, San Antonio and El Paso, Texas, New York, Chicago, and Albuquerque, New Mexico. The average loan is \$2,600, and in 1996 the network received one of the first Presidential Awards for Excellence in Microenterprise for its work. Evidence of the program's success is plain: with just three microloans each, more than 200 of the program's clients increased their business assets by an average of 51 percent, business revenue by 37 percent, and take-home income by 40 percent over a 2-year period.<sup>133</sup>

The network's lending methodology is based on the model it developed during the past 20 years while microlending in Latin America, where they have loaned over \$1 billion to more than 1 million people. To overcome the usual requirement of collateral, individuals with no means to guarantee their loans are asked to form “solidarity groups,” in which three or more individuals cross-guarantee one another's loans. The result is, if one member becomes delinquent on a loan, the others must make up the difference.

Currently, program operating costs are covered by donations from banks,<sup>134</sup> corporations, foundations, and individuals. Over time, however, an increasing portion of costs will be covered by direct revenue generated through the interest and fees on the microloans. The ultimate goal for the program is financial self-sufficiency, which half of the program's Latin American affiliates have attained.<sup>135</sup>

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<sup>130</sup> Timothy M. Bates and Lisa J. Servon, “Why Loans Won't Save the Poor,” *Inc.*, April 1996, p. 27.

<sup>131</sup> See Christopher Serb, “Advocacy Group Urging Shift in CRA Focus from Housing to Small Business,” *American Banker*, Nov. 29, 1995, p. 4; Joe Dean, “Development Corporations, Non-Profits Offer Financing,” *Arizona Business Gazette* (Phoenix), Feb. 29, 1996, p. 12; Elaine Chamis, “First-Time Loan Program Succeeds, Borrowers Shunned by Traditional Lenders,” *Knoxville News-Sentinel*, Jan. 23, 1996, p. C-1.

<sup>132</sup> William Burrus, “A Little Credit Can Go A Long Way,” *Credit World*, May/June 1997, pp. 18–20. This is called a “stepped” system of lending, where borrowers begin with a small amount of credit for working capital—as little as \$200—and through prompt repayments work their way up to increasingly larger amounts. Microlenders will also accept nontraditional forms of collateral, such as a television set, a piece of equipment, or a car. *Ibid.*

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<sup>133</sup> *Ibid.* While some argue that microlending is a potential cure for urban poverty, others point out that running a small business in the United States requires a broad range of skills, and most of the people served by such programs have a personal safety net—an education, a support network of family and friends, and experience in their line of business. Microlending programs, then, appear to do more to help those who exist at the margins of the mainstream economy—those who have found themselves jobless, and those who cannot make ends meet from part-time and temporary work—than they do to help those who are completely cut off. See Bates and Servon, “Why Loans Won't Save the Poor,” p. 27.

<sup>134</sup> Banks have an incentive to participate in the partnership because (1) it helps raise a bank's profile with certain minority groups and in communities where the banks often have little presence, (2) many of the borrowers are potential future direct customers for the bank, and (3) partnering with such programs can qualify for credit under the Community Reinvestment Act. See Burrus, “A Little Credit,” pp. 18–20.

<sup>135</sup> *Ibid.*

## *The Role of Immigrants*

Immigrants have been streaming into the New York City area from Latin America, the Caribbean, and Korea, oftentimes bringing with them a strong entrepreneurial bent. This immigration provides a low-cost labor force for startup businesses that need to keep costs under control. Many of these immigrant-owned small businesses operate largely on a cash basis but yearn to do more sophisticated banking.

North Fork Bancorp, which has eight branches in the Bronx, is offering small businesses revolving credit lines under \$50,000 that require no documentation. Many of the banks in the area—especially the smaller banks like Banco Popular, North Fork, and Marine Midland—are attempting to cater to the unique needs of a community where 25 percent of the households do not have telephones or personal computers. “The big banks—they don’t like to touch people, paper, cash . . . We can fill that gap very nicely,” said Joseph E. Vincent, senior vice president at North Fork.<sup>136</sup>

## *Statistical Scoring and Small Business Loans*

According to the Consumer Bankers Association, half of all small business lenders used credit scoring to process loans in 1996. In 1997 the practice spread to two-thirds of the industry.<sup>137</sup> Chemical Banking Corporation uses a statistical scoring technique to assess small business loans of up to \$100,000. The technique, from Fair, Isaac & Company, a pioneer in developing credit scoring systems for consumer lending, assigns greater weight to the financial resources and credit history of the business owner, rather than concentrating strictly on the financial numbers of the business, the past business custom. The scoring system has sped up Chemical’s approval cycle, enabled lenders to spend more time prospecting for new customers, and contributed to a 44 percent increase in small business loan volume.<sup>138</sup>

<sup>136</sup> Gold, “The South Bronx,” p. 1.

<sup>137</sup> ACORN, “Small Business Loans More Likely.”

<sup>138</sup> Jeffrey Zack, “Scoring System Clicks for Chemical’s Small Business Lenders,” *American Banker*, Feb. 12, 1996, p. 12-A. Chemical Banking reports that the time it takes to make a small business loan decision has been cut from 2 or 3 days to less than 24 hours. However, experts note that while the “scoring” technology is an important tool, it is not applicable to all categories of small business loans. Loans that require complex collateral requirements are not an easy

As a result of credit scoring, bank executives say that more companies are qualifying for loans now than before, and credit quality is expected to remain high.<sup>139</sup> In a statement to the Community Forum on Community Reinvestment and Access to Credit, Chairman of the Board of Governors of the Federal Reserve System Alan Greenspan asserted that credit scoring technology has the potential to allow banks located outside local markets to compete against within-market institutions for small business lending.<sup>140</sup>

However, there has been some criticism of the new tool. The National Community Reinvestment Coalition, an umbrella research and lobbying organization representing more than 600 community groups working “to increase fair and equal access to credit and banking services,” claimed that credit scoring “may contain methodological rigidities which may not be able to properly assess nontraditional or limited credit histories of minority or low-income loan applicants.”<sup>141</sup>

To further support this point, ACORN has evidence that the recent trend toward credit scoring and automated underwriting by the lending industry has exacerbated racial disparities in lending. In a recent report, ACORN stated that credit scoring forces lenders to be less flexible in underwriting and less patient in pursuing the more complex lending agreements that lower income areas sometimes require.<sup>142</sup> The report continues: “This cookie-cutter underwriting cannot accurately assess the incomes, credit histories, savings, employment histories, debt ratios and, most importantly, character of low-income borrowers. Consequently, reliable, creditworthy borrowers are denied credit be-

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fit, for example. Another reason is that the scorecard predicts creditworthiness, not actual losses on loans that go bad. It predicts the probability of default, but it does not predict *how much* one may default, or how much damage a bad loan will do to the bank. *Ibid.*

<sup>139</sup> *Ibid.*

<sup>140</sup> “Greenspan Community Reinvestment Statement,” p. 4.

<sup>141</sup> “Lending in America’s Underserved Neighborhoods,” *Reinvestment Works*, vol. 6, no. 1 (winter 1998), p. 11 (hereafter cited as “Lending in America’s,” *Reinvestment Works*).

<sup>142</sup> “Transformation of Lending Industry Benefits Whites at Expense of Minorities,” Association of Community Organizations for Reform Now, Sept. 10, 1997, Washington, DC (hereafter cited as ACORN, “Transformation of Lending Industry”).

cause they are more complex applicants than the credit scoring can handle.”<sup>143</sup>

### Small Business Administration

The more conventional lending programs offered by banks utilize the Small Business Administration (SBA), which guarantees 90 percent of most small business loans (those under \$100,000) made to low-income residents. To obtain SBA backing, the borrower must have fewer than 500 employees, less than \$5 million in revenue, and request a loan less than \$1 million.<sup>144</sup> For the year ending September 30, 1995, the SBA approved \$1.6 billion in guarantees on more than 10,000 loans to minority-owned small businesses, most in low-income areas.<sup>145</sup> “A lot of that has to do with CRA,” said Jerre Glover, chief counsel in the SBA’s advocacy office in Washington.<sup>146</sup>

New York consistently ranks third or fourth nationwide in the number of SBA loans—usually behind cities, such as Minneapolis and San Francisco. It has been suggested that part of the blame for the low New York ranking lies with

the banks, which can be slow to devote resources specifically to SBA lending. During 1995 only eight banks in New York made more than 50 SBA loans each.<sup>147</sup> Given that the key characteristic to getting a SBA-backed loan in New York is being an aggressive bank, the banks need to be more proactive. Audrey Rogers, director of the SBA’s New York district office stated, “A bank has to be organized for SBA lending. An SBA lender is not interchangeable with other lenders, and many banks have not committed enough SBA-type lenders to the task.”<sup>148</sup>

New York banks have historically complained about the onerous paperwork associated with SBA-backed loans, paperwork that slows down the loan approval process.<sup>149</sup> Nonetheless, banks are quick to assert that their small business and SBA lending has increased in the past several years. The introduction of the popular LowDoc loan program has sent SBA lending soaring at several local institutions.

However, some experts point out that New York banks do an unimpressive job of lending to small business in general. During his New York hearing testimony, Timothy Bates, professor of urban, labor, and management affairs at Wayne State University, testified, “In New York City, banks across the board have a really below-average record of small business lending.” His studies indicate that while nationwide, more than 25 percent of all manufacturing startups receive some sort of financing from chartered lending institutions, that number falls to less than 10 percent in New York City.<sup>150</sup>

At the same time, Mr. Bates pointed out that many cities, aside from New York City, fall short in small business lending. “Wherever you’ve got a few huge dominant banks, you tend to get less

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<sup>143</sup> Ibid.

<sup>144</sup> Matt Shulz, “SBA Guarantees Help D.C. Bank Boost Assets—And Its CRA Rating,” *American Banker*, Feb. 29, 1996, p. 5.

<sup>145</sup> Bloomberg News Service, “Federal Law Makes Small Business,” p. E-1. Note that because banks used to reveal very little about their small business lending, statistics were very difficult to compile. However, the new CRA regulations went into effect in July, 1997, and now large banks must report their small business loans by census tract, including the size of the loan and size of the borrower. See 12 C.F.R. §§ 25 (OCC), 228 (FRB), 345 (FDIC), and 563e (OTS) (1998).

Despite that most SBA loans in *low-income areas* go to minority businesses, there is evidence to suggest that, overall, more SBA loans go to affluent areas than to poor areas. The Woodstock Institute, a Chicago-based community research organization, recently reported that an SBA program provides more than twice as many economic development loans to affluent areas than to low-income areas. In comparing lending statistics from various zip codes in the greater Chicago area arranged according to household income, it was found that between 1992 and 1996, upper middle and high-income areas received 67 percent of SBA manufacturing loans while lower middle and low-moderate areas received 33 percent. Likewise, upper middle and high-income areas received 70 percent of retail and wholesale loans, though lower middle and moderate-low income areas received 30 percent. Daniel Immergluck and Erin Mullen, “Economic Development Where It’s Needed: Directing SBA 504 Loans to Lower-Income Communities,” June, 1997, Woodstock Institute, Chicago, IL.

<sup>146</sup> Bloomberg News Service, “Federal Law Makes Small Business,” p. E-1.

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<sup>147</sup> Lisa Goff, “Takeout Small Business; Home-Grown Loans: Banks’ Foot-Dragging and Lax Marketing by Local SBA District Are The Reasons Why New York Lags Other Regions In Making Small Business Loans,” *Crain’s New York Business*, Mar. 11, 1996, p. 19.

<sup>148</sup> Ibid.

<sup>149</sup> Local banks are also discouraged by the promulgation of stricter regulations, as well as the institution of higher fees, that has been coming out of SBA headquarters in Washington, DC.

<sup>150</sup> Bates Testimony, *New York Hearing*, vol. III, p. 1195. Mr. Bates also stated in testimony that while the average loan size, nationwide, for a *black* business startup was \$25,704, that figure climbed to \$55,803 for *nonminority* startups. Ibid., p. 1197.

small business lending,” he said.<sup>151</sup> Another quirk of big cities is a tendency for very small borrowers to end up in local, city-run loan programs instead of at the SBA.<sup>152</sup>

In his testimony, Mr. Bates also suggested that, while it might seem irrational in an economic sense, capital market discrimination does exist:

[I]n 1985, [a] research paper was published show[ing] that the rational investor should be risk averse between a typical minority and a typical nonminority firm or investment if you hold certain things constant. So, . . . there should be no difference in the perception of liquidity. Unfortunately, there is, which gets to what I am saying: There is capital market discrimination.<sup>153</sup>

Several years ago, small business experts complained that SBA lending efforts were on a downward trajectory and had been for the preceding 20 years. Lending support to this notion is Mr. Bates’ testimony that SBA lending levels had dropped to one-fifth of what they had been in the 1970s.<sup>154</sup> However, it is clear that action is being taken to reverse this decades-long trend. Between 1992 and 1997, under the SBA’s largest program, the 7(a) program, loans to African Americans increased by 154 percent nationwide, and loans to Hispanics increased 144 percent nationwide.<sup>155</sup>

As further proof of this reversal, the Small Business Administration has approved the Bronx Overall Economic Development Corporation (BOEDC) as the first certified development company in New York. Therefore, during the next 5 years, the BOEDC will make \$50 million worth of fixed-rate loans to small businesses in the Bronx to help them make the investments in building the machinery they need to succeed.<sup>156</sup>

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid., p. 1207.

<sup>154</sup> Ibid., p. 1201.

<sup>155</sup> Eugene A. Ludwig, comptroller of the currency, statement before Congresswoman Maxine Waters’ Forum on Community Reinvestment and Access to Credit: California’s Challenge, Jan. 12, 1998, p. 3 (hereafter cited as “Ludwig’s Community Reinvestment Statement”).

<sup>156</sup> Transcript of Clinton Remarks to People of the Bronx, *U.S. Newswire*, Dec. 10, 1997. When he made this announcement, President Clinton added that he was going to put “\$45 million more in my [fiscal year 1999] budget to expand the Community Development Financial Bank, so we can make more loans to individuals who can start their own

## Section IV. CRA as Catalyst to Affordable Housing

### Home Mortgage Lending and Affordable Housing Initiatives

Throughout the State of New York, and throughout the country, more and more low-income individuals are securing home mortgages. “The rise in lending is most striking in hard-hit inner-city and rural areas, heavily populated by minorities, that long were underserved by banks and mortgage companies.”<sup>157</sup> Although minorities in New York City are still declined mortgage loans twice as often as whites—even if they have the same income<sup>158</sup>—

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businesses or hire people to create an economy where very often there isn’t one.” Ibid.

<sup>157</sup> John R. Wilke, “Giving Credit: Mortgage Lending to Minorities Shows a Sharp 1994 Increase,” *Wall Street Journal*, Feb. 13, 1996, p. A-1.

<sup>158</sup> “Home Mortgage Redlining Denies American Dream to Minorities,” a study of 48,000 home mortgage applications in New York City, commissioned and released by then U.S. Representative Charles Schumer (D-NY), Oct. 6, 1997. Lenders counter that these and similar statistics cannot be used as evidence of discrimination, because they fail to reflect many key elements of a credit underwriting decision, such as property values, savings rates, and employment and credit histories; *But see* Dennis Glennon and Mitchell Stengel, “An Evaluation of the Federal Reserve Bank of Boston’s Study of Racial Discrimination in Mortgage Lending,” Office of the Comptroller of the Currency, April 1994, in which the authors conclude that “race of the applicant continues to have a large and highly significant effect on the outcome of the lending application process.” The authors state: “[O]ur analysis supports the Boston Fed’s conclusion [in the now well-known study of mortgage lending practices in the Boston Metropolitan Statistical Area] that approximately half the difference in denial rates can be attributed to differences in the financial characteristics of the borrowers and the neighborhood characteristics of the property; the remaining half can be attributed to differences in treatment by race” (emphasis added). Ibid.; *see also* “Lending in America’s, *Reinvestment Works*,” p. 11 (“The denial rate for Blacks surged from 40.5% to 48.8% from 1995 to 1996”); Warren Traiger, “Comment: Mortgage Discrimination: Get to the Bottom of It Now,” *American Banker*, Nov. 4, 1997, p. 4; Andrew LePage, “Mortgage Applications Are Down for Minorities; Hispanics and Blacks Also Had Twice as Many Loan Rejections as Whites,” *Orange County Register*, Nov. 18, 1997, p. C-2; Jim Morgo, “Quiet Revolution in Banking Has Worked,” *Newsday*, Nov. 5, 1997, p. A-45; Williams Testimony, *New York Hearing*, vol. III, p. 998 (In investigating the relationship between lending and building abandonment, “[w]hen we did the race calculation by itself, we . . . found a disparity there. When we look at race and income, we still find a disparity. When we look at race and owner occupancy, we found a disparity . . .”); Karen Phillips, executive director, Abyssinian Development Corporation, testimony, *New York Hearing*, vol. III, pp. 1017-20 (“We must acknowledge the role of discrimination and racism that has

the aggressive targeting of minority borrowers is beginning to change the makeup of the mortgage market.

The surge in credit is also a result of increased enforcement of fair lending laws. For example, before 1993 the Office of the Comptroller of the Currency (OCC) had referred only one fair lending case to the Department of Justice. Since 1993 it has adopted updated fair lending procedures, conducted more than 3,000 fair lending examinations, and referred 25 cases of violations of fair lending law to the Justice Department and the Department of Housing and Urban Development for prosecution.<sup>159</sup>

Data from 1993 to 1996 show increases in mortgage originations for Hispanic Americans and African Americans of 56 percent and 55 percent, respectively, more than 3 times the 14 percent increase for white borrowers.<sup>160</sup> Similarly, the rate of increase for low-income borrowers was more than 1½ times the rate of increase for middle- and upper income borrowers. Further statistics revealed that during this time period, home loans in low- and moderate-income communities increased 33 percent, while gaining only 21 percent in upper income communities.<sup>161</sup>

These statistics lead to record rates of homeownership for minorities, female-headed households, and households with less than median family incomes. Nationwide, blacks bought 350,000 new homes in 1996, a 7.5 percent gain from 1993, and Hispanics bought 460,000, a 16.3 percent increase from 1993.<sup>162</sup> Almost 46 percent of all minority group members in the United States now own their own homes—the highest

level ever.<sup>163</sup> Moreover, a survey taken at the end of 1996 reflected that 95 percent of affordable-mortgage customers—families that would never have received home purchase loans under conventional standards—were meeting their obligations on time and in full.<sup>164</sup>

Despite this seemingly favorable statistical picture of minority homeownership over the past 5 years, ACORN recently released a study that found a sudden “loan slowdown” for minorities for the first time in 5 years. The study found that:

1. From 1995 to 1996, lending to whites increased 19 percent; however, during the same period, the number of loans to African American and Latino borrowers fell 1 percent.
2. The share of loans to African American and Latino borrowers declined between 1995 and 1996, from 6.7 to 5.7 percent for African Americans and from 7 to 6 percent for Latinos.
3. Almost one in three African Americans and one in four Latino applicants were rejected for conventional mortgages in 1996. African Americans were more than twice as likely to be rejected as whites, and Latinos were 70 percent more likely to be rejected.<sup>165</sup>

The president of ACORN, Maude Hurd, concluded, “While the regulators have been busy congratulating themselves over the improvements over the past few years, the lending industry has instituted harsh new lending standards which all but preclude lower income and minority borrowers from securing a home.”<sup>166</sup> The organization’s study suggested that the new underwriting standards and increased reliance on computerized credit scoring has created a rigid measurement of creditworthiness which many minority applicants cannot meet.<sup>167</sup>

Despite ACORN’s conclusion, it is clear that some formerly blighted areas are being revitalized. For example, the Bronx—the borough of New York City that became lodged in the na-

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created this situation. . . . [G]enerally the people who are making those decisions . . . if they are not familiar with the community, the area, . . . they prejudice, which is what prejudice is . . .”; Ketcha Testimony, *New York Hearing*, vol. III, p. 1143 (“Maybe years ago you would have seen more blatant discrimination; now we are finding it is subtle, it is maybe unintended, but we have found it in some of our Fair Lending exams”).

<sup>159</sup> Eugene A. Ludwig, comptroller of the currency, testimony before the Subcommittee on Financial Institutions and Regulatory Relief of the Senate Banking, Housing and Urban Affairs Committee, May 1, 1997. See also Eugene A. Ludwig, comptroller of the currency, remarks before the Neighborhood Housing Services of New York City, Oct. 21, 1997 (hereafter cited as “Ludwig’s Housing Services Remarks”).

<sup>160</sup> “Ludwig’s Community Reinvestment Statement,” p. 23.

<sup>161</sup> “Ludwig’s Housing Services Remarks.”

<sup>162</sup> Morgo, “Quiet Revolution,” p. A-45

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<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

<sup>165</sup> ACORN, “Transformation of Lending Industry.”

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

tional consciousness as the picture of urban blight—is making a comeback, partly due to the increase in the availability of credit. “The South Bronx has changed dramatically in the last 10 years,” said Joseph E. Vincent, senior vice president at North Fork Bancorp, who is responsible for opening the bank’s eight Bronx branches.<sup>168</sup>

While the Bronx is still very poor,<sup>169</sup> nearly 30,000 new and rehabilitated housing units—using more than \$2 billion in State and Federal housing money<sup>170</sup>—have been created in the Bronx since 1987, said Kevin Nunn, president of the Bronx Overall Economic Development Corporation. In the same period, the county has netted 5,500 new private-sector jobs at a time when New York City as a whole has lost 190,000 positions.<sup>171</sup>

The neat single-family houses on Charlotte Street in the South Bronx are a good example of the revitalization that has occurred. Heavily subsidized by public money, the houses sold for \$49,500 in 1985. Started under the city administration of former mayor Edward I. Koch, the project almost died in 1983, after the first 10 houses were built. The city considered cutting off financing, but prodding by the South Bronx Development Organization ceased their efforts, and construction of all 89 houses was completed in 1986. Today, the homes are valued at \$185,000.<sup>172</sup>

### **Home Mortgage Disclosure Act**

Statistical information with regard to home mortgage lending is available because of the Home Mortgage Disclosure Act (HMDA).<sup>173</sup> This act sets forth the type and format of information

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<sup>168</sup> Gold, “The South Bronx,” p. 1.

<sup>169</sup> According to 1990 census data, median annual income hovers at \$16,381 in the Bronx, compared with \$49,197 for Manhattan, home to New York’s biggest banks. Of course, banks can successfully make home loans in some of the most impoverished areas of the country. For example, First Chicago Bank has made loans for new single-family homes in Grand Boulevard, where the median household annual income was \$7,900 in 1990. See Seiberg, “N.Y. Activist,” p. 1; see also Brett Chase, “Chicago Banks Seek, Find Profits in the Inner City,” *American Banker*, July 23, 1997, p. 1 (hereafter cited as Chase, “Chicago Banks”).

<sup>170</sup> Jim Yardley, “Clinton Praises Bronx Renewal As U.S. Model,” *New York Times*, Dec. 11, 1997, p. A-1.

<sup>171</sup> Gold, “The South Bronx,” p. 1.

<sup>172</sup> Yardley, “Clinton Praises Bronx,” p. A-1.

<sup>173</sup> 12 U.S.C. §§ 2801–2810 (repealed 1988).

that lenders must record about lending applications. Lenders must report the number and dollar amount of loans made in each census tract, the number of applications received, and the number denied. An applicant’s race, sex, and income level must be noted. This disclosure law covers all nondepository institutions and those depositories (i.e., banks, savings and loans, and credit unions) with assets of more than \$10 million.<sup>174</sup>

Armed with HMDA data, community-based organizations<sup>175</sup> have been able to file CRA challenges, similar to the bank merger challenges, that have led to settlements, funneling billions of dollars of loans into low-income communities. The process has been described as blackmail by the banking community and as the only way to get a bank’s attention by community activists.<sup>176</sup>

Whatever is thought of the process, market forces might soon work to make community group protests unnecessary. Demand for medium and large mortgages has slowed in growth, and the lower income borrower market is the only market showing significant growth. More importantly, banks are profiting from that market. Thus, although the driving force behind

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<sup>174</sup> 12 U.S.C. § 2808.

<sup>175</sup> In her testimony, Doreen Greenidge stated, “The locally based community network in [New York City] is extremely important. They are the backdrop and the support to help do policies at the grass[roots] level in the trenches; they are there every day to try to make the changes. They see what we conceptualize about, and I applaud this vast network of community-based organizations.” *New York Hearing*, vol. III, p. 1094.

<sup>176</sup> Saul Hansell, “2 Big Banks In Merger Set Aid for Poor,” *New York Times*, Nov. 1, 1995, p. D-1; Jaret Seiberg, “CRA 20th Anniversary: 275-Page Regulation Sprouts from 2-Page Act,” *American Banker*, Oct. 22, 1997. One person who was an aide to Senator William Proxmire in 1977 at the time the CRA was passed into law said the legislation was very controversial because of the notion of credit allocation. She reports that Senator Proxmire “watered down” the bill on its way to becoming law, and that he created legislative history “about how this was not credit allocation and not intended to be burdensome.” The aide blames the banks and regulators for the increase in protests over the years. She argues that banks yielded to community pressure and agreed to make below-market-rate loans, which emboldened activists to protest more banks. She also argues regulators never intervened, urging banks instead to settle disputes rather than force the regulators to decide if the bank had done enough low-income lending. The aide concludes, “This created a tool for the community groups and they used it a lot more skillfully than we intended. Having the protest become a central event was never intended.” *Ibid*.

such lending programs appears to be community lending laws such as CRA, banks are now starting to realize that low-income lending is simply good business. This new realization has led to banks targeting low-income customers through neighborhood advertisements, community development groups, and through other informal settings, such as home fairs and conventions.<sup>177</sup>

The fact that delinquencies for low- to moderate-income home buyers are *lower* than the national averages adds to their profitability. On the other hand, such loans are still not as profitable as those made to more affluent borrowers, because there is more underwriting work to be done—more education with respect to repayment, more counseling, more collection expenses, etc.<sup>178</sup> To keep the home mortgage loan programs operating and the default rates down, nonprofit support organizations have emerged to counsel low-income borrowers. Such groups offer prequalification services to determine whether a prospective borrower is likely to obtain a loan and postpurchase counseling to ensure that borrowers stay abreast of their financial obligations.<sup>179</sup>

Mary Decker, senior vice president for community affairs at First Chicago, the city's largest bank, reported that opening a branch in a low-income area means supporting nonprofit groups, providing community space, entering partnerships, offering education about personal finance and business finance,<sup>180</sup> and adopting area

schools for support programs.<sup>181</sup> The concept of "adopting" a community is one that can lead bank regulators to award extra CRA points.<sup>182</sup> As Ms. Decker put it, "No matter how you feel about banks, the provision of credit is not the single issue."<sup>183</sup>

### **Fair Lending Enforcement by the Department of Justice**

During the summer of 1997, the Department of Justice (DOJ) announced a \$9 million settlement with the New York-based Albank Financial Corporation. DOJ accused Albank of redlining several cities in the State of Connecticut as well as southern Westchester County, New York.<sup>184</sup> According to the complaint filed by DOJ, Albank excluded minority borrowers in the affected communities without considering the borrowers' credit histories; further, it failed to drop the restrictions even when some of the thrift's own brokers asked it to do so. Finally, DOJ alleged that of 203 loan applications taken by Albank in Westchester County from 1992 to 1996, only 7 applications, or 3.4 percent, were from African American or Hispanic borrowers. The DOJ concluded that Albank's policies toward minority borrowers constituted violations of the Fair Housing Act and the Equal Credit Opportunity Act.<sup>185</sup>

To settle the matter, an agreement was reached, whereby Albank agreed to (1) contribute \$700,000 to a homeownership counseling program; (2) make at least \$20 million in below-market loans in the areas of Westchester County, an area with more than 50 percent minority populations; (3) provide fair lending edu-

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<sup>177</sup> Uri Berliner, "Realizing the Dream of Home Ownership," *San Diego Union-Tribune*, Mar. 24, 1996, p. H-1. See also Wilke, "Giving Credit," p. A-1.

<sup>178</sup> Lawrence Toal, chairman and chief executive officer of Dime Bancorp, interview in New York, "Assessing the New Direction of CRA," *U.S. Banker*, August 1997, p. 44.

<sup>179</sup> Wilke, "Giving Credit," p. A-1. But see ACORN, "Transformation of Lending Industry." The study suggested that Fannie Mae and other lenders are dismissing the positive impact high-quality loan counseling has on mortgage applicants. The report states: "The most effective tool for getting minority and low-income borrowers into home ownership has been high quality loan counseling by community organizations, but over the past two years there has been an erosion of lenders' commitment to loan counseling. Lenders, realtors, and the secondary mortgage market rely instead on workbooks, videos, and generalized classroom educational programs. Lenders increasingly are making no distinction between high quality loan counseling and merely filling out the Fannie Mae handbooks or attending two hour mortgage seminars." *Ibid.*

<sup>180</sup> See Williams Testimony, *New York Hearing*, vol. III, p. 1002, where Peter Williams, director of housing and community development, National Urban League, argues for

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increased education with respect to fair lending laws: "The problem is very few people in the public know that CRA files exist. Very few people in the public understand their rights under the Equal Credit Opportunity Act, the [Fair] Housing Act and CRA. So there has to be a mechanism to let people know that they have a right to complain and understand what avenues of redress they have." *Ibid.*

<sup>181</sup> Chase, "Chicago Banks," p. 1.

<sup>182</sup> *Ibid.* Although the "adoption" idea can earn a bank extra CRA points, it cannot substitute for a lack of lending.

<sup>183</sup> *Ibid.*

<sup>184</sup> "Justice Department Accuses Albank of Redlining: Secures \$9 Million Settlement," *Reinvestment Works*, vol. 6, no. 1 (winter 1998), pp. 13-14.

<sup>185</sup> *Ibid.*



cation to employees;<sup>186</sup> and (4) work with community development organizations to promote affordable lending programs.<sup>187</sup>

### **Low-income Housing Tax Credit**

Ninety-four percent of the total affordable units around the country have been developed through the low-income housing tax credit program.<sup>188</sup> President Clinton has proposed expanding the program by 40 percent. It is estimated that such an expansion would create between 150,000 and 180,000 new rental units.<sup>189</sup> Enterprise Foundation<sup>190</sup> estimates that the plan, which has been included in the Administration's fiscal year 1999 budget, would provide an extra \$134 million annually for low-income housing. Under the proposal, States would be

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<sup>186</sup> See testimony of Nicholas Ketcha, Jr., regional director, New York Region Office of the FDIC, who described information his office attempts to convey to loan officers to ensure that "subtleties" do not lead to discrimination against minorities: "If a nonminority comes in and sits down with a loan officer, they may not qualify for the mortgage loan, but there will be some counseling, you know, 'but if you worked on getting this or if you gave us a letter on this, or if you could get somebody from the family to get you a little extra on this you could cure it.' Where if it might be a minority applicant doing the same thing, that level of either trust, comfort or whatever you want, may not get that same counseling, and you don't get the improvement on it. . . . you've got to have a good training program within your institution to be sure that those type of subtleties don't happen . . ." *New York Hearing*, vol. III, p. 1144.

<sup>187</sup> Jerry Seper, "Bank Offers Cut-Rate Mortgages to End Redlining Probe," *Washington Times*, Aug. 14, 1997, p. B-9. Note that despite settling the dispute, Albank stands by its practices and looks at the settlement not as an admission of guilt but as a tool that "will assist in better serving all members of the communities where it funds mortgages through its [brokers]." *Ibid.* Note also that the Albank situation suggests that banker-broker relationships could use more scrutiny. The Department of Justice alleged in its complaint that Albank failed to listen to its own brokers, some of whom apparently saw a promising market that the bank allegedly refused to enter. If actions such as this occur within financial institutions, community development in low-income areas can be hindered.

<sup>188</sup> "Assessing the New Direction of CRA," *U.S. Banker*, August 1997, p. 44.

<sup>189</sup> White House Briefing, Remarks by President Clinton at Wall Street Project Conference, World Trade Center, New York City, *Federal News Service*, Jan. 15, 1998.

<sup>190</sup> Enterprise Foundation administers New York's tax credit program.

allocated \$1.75 per resident in tax credits, up from \$1.25.<sup>191</sup>

President Clinton recently traveled to the South Bronx where he joined representatives of the New York Equity Fund (NYEF) for the announcement of the \$250 million "2000 Fund," a corporate investment fund for affordable housing development. NYEF uses the Federal low-income housing tax credit to raise corporate investments for the development of low-income rental housing provided by nonprofit community development corporations. As of December 1997, NYEF had raised and invested more than \$585 million to create nearly 12,000 homes.<sup>192</sup> The \$250 million raised for the "2000 Fund" will be invested over the next 3 years to build approximately 5,000 new, affordable rental homes. It is the largest single-city equity fund ever assembled.<sup>193</sup>

The innovative HOME program, run through the U.S. Department of Housing and Urban Development, is another vital catalyst for corporate investment in community-based development. President Clinton recently announced the release of \$96 million to help create affordable housing in New York City through the HOME program.<sup>194</sup>

While Federal resources are key, much of the credit for the successes in America's cities lies with State and local governments. In New York City, for example, the Department of Housing Preservation and Development has not only provided community development corporations with abandoned and vacant properties for rehabilitation, but has been an extraordinary financial partner as well, offering access to nearly \$4 billion in crucial low-interest loans.<sup>195</sup> Entire blocks in distressed communities like the South Bronx, Harlem, East New York, and Jamaica have been revitalized as a result of these investments.

Of course, some argue that too much advocacy on behalf of low-income residents toward

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<sup>191</sup> Dean Anason, "Banks Get Round of Praise From Treasury Secretary For Increased CRA Lending," *American Banker*, Jan. 16, 1998, p. 2.

<sup>192</sup> Marilyn Katz, "Clinton Joins Announcement of Fund for NYC Affordable Housing," *U.S. Newswire*, Dec. 11, 1997.

<sup>193</sup> *Ibid.*

<sup>194</sup> Transcript of Clinton Remarks to People of the Bronx, *U.S. Newswire*, Dec. 10, 1997.

<sup>195</sup> "Assessing the New Direction of CRA," *U.S. Banker*, August 1997, p. 44.

the goal of homeownership can result in hardship for certain people. According to Carol Parry, executive vice president at Chase Manhattan Bank in New York:

[T]here is a lot of pressure from advocates to keep pushing the envelope here. I think if you will stand up and say, "Enough, we don't want to push people into foreclosures. Some people aren't ready to become homeowners; they need 100% financing"—that would be helpful to everybody in the marketplace.<sup>196</sup>

## Section V. Conclusion

The continued existence of the CRA is not assured. During the past several years, some members of Congress have tried to implement legislation to curtail the law, including exempting small banks (those with less than \$250 million of assets) from CRA coverage; eliminating or reducing opportunities for public comment with regard to bank mergers, acquisitions, and consolidations; prohibiting the regulatory agencies from collecting bank data on their small business lending; and raising the exemption level from \$10 million to \$50 million for reporting on discriminatory mortgage lending patterns, pursuant to the HMDA.<sup>197</sup>

The congressional sponsors of legislation to alter the CRA argue that the CRA imposes credit allocation similar to a quota, that it promotes regulatory request delays, and that it produces significant financial burdens on banks.<sup>198</sup> Similar views were expressed by William A. Niskanen, chairman of the Cato Institute, when he testified before Congress urging the repeal of the CRA:

The proposed new regulations would be very costly to the economy, to the banking system, and to the communities they serve. Congress should be most critical of proposals to use regulatory powers to reallocate credit, either across neighborhoods or among groups. The primary long term effect of such measures would be to further contract the banking system, increasing the number of neighborhoods dependent on check cashing outlets and pawnshops.<sup>199</sup>

So far, none of the legislation proposed in the Congress to alter the CRA has been passed. Recently, however, Senator Phil Gramm from Texas introduced a Senate bill that would exempt banks with assets of less than \$100 million from their obligations under the act.<sup>200</sup> Democrats opposing the move asserted that it would take a large part of the banking industry out of reach of the community lending law.<sup>201</sup> While many Republicans, such as Senator Gramm, push for an amendment to the CRA, President Clinton has threatened to veto any bank bill that would undermine the current law.<sup>202</sup>

In the meantime, House Banking Chairman Jim Leach and ranking Democrat Representative John J. LaFalce, have crafted a compromise bill<sup>203</sup> that attempts to maintain the status quo on the matter.<sup>204</sup> Their bill attempts to appease

<sup>196</sup> Ibid.

<sup>197</sup> See Economic Growth and Regulatory Paperwork Reduction Act, S. 650, 104th Cong. (1995); Financial Services Holding Company Act, H.R. 2520, 104th Cong. (1995); Credit Opportunity Amendments Act, H.R. 1699, 104th Cong. (1995); Financial Institutions Regulatory Relief Act, H.R. 1858, 104th Cong. (1995); Financial Institutions Regulatory Relief Act, H.R. 1362, 104th Cong. (1995).

<sup>198</sup> 141 Cong. Rec. E1116–17 (daily ed. May 24, 1995) (statement of Rep. McCollum) and 141 Cong. Rec. S4928–29 (daily ed. Mar. 30, 1995) (statements of Senators Shelby and D'Amato). The Independent Bankers Association of America claims community banks spent more than \$1 billion in 1992 complying with CRA. That computes to \$63,448 per institution and represents a third of all compliance costs incurred by community banks, the IBAA said. See Seiberg, "CRA 20th Anniversary," p. 3.

<sup>199</sup> William A. Niskanen, chairman, Cato Institute, testimony before the U.S. Senate Subcomm. on Finan. Institut. and Consumer Credit Comm. on Banking and Finan. Serv., Mar. 8, 1995. Of course, there are those who strongly support the CRA and who vehemently oppose weakening or dismantling the law. In the words of one supporter, "[The CRA] declared that banks are chartered by governments to serve public purposes—including community credit needs. It observed that banks, unlike ordinary businesses, benefit from deposit insurance, access to central bank credit, government examinations, and seals of approval. They exist not just to siphon money out of communities, but to put the money back in." Robert Kuttner, "An Investment in Communities," *Boston Globe*, Nov. 9, 1997, p. D–7. See also Morgo "Quiet Revolution," p. A–45 ("It is not hyperbole to call the reinvestment law the civil rights act for lending that brought about the true democratization of credit").

<sup>200</sup> "Mischief from Mr. Gramm," *New York Times*, Mar. 17, 1999, p. A–20.

<sup>201</sup> Ibid. Opponents of the proposal assert that it would exempt approximately 37 percent of banks and thrifts from CRA. Richard S. Carnell, Assistant Secretary for Financial Institutions, U.S. Department of the Treasury, to Ruby G. Moy, Staff Director, U.S. Commission on Civil Rights, June 1, 1999, U.S. Commission on Civil Rights files.

<sup>202</sup> Bloomberg News, "House GOP Sidesteps Move to Curb CRA in Banking Bill," *Buffalo News*, Mar. 11, 1999, p. 5–E.

<sup>203</sup> H.R. 665 was introduced on Feb. 10, 1999.

<sup>204</sup> Ibid.

conservatives who do not want the law expanded while satisfying a basic demand of President Clinton and Democrats who are opposed to a repeal.

While the future of the CRA is unknown, it is clear that the past 4 years have been unprecedented in the amount of money committed through CRA endeavors. The Office of the Comptroller of the Currency reports that during 1997, pursuant to the Community Reinvestment Act,

banks and thrifts committed \$314 billion to loans and other projects, a sevenfold increase since 1993.<sup>205</sup> Treasury Secretary Robert Rubin, speaking recently in New York at a Rainbow/Push Coalition conference on expanding economic opportunities for minorities and women, stated, "In the last four years, national banks have invested four times as much in community development as they did in the previous 30 years."<sup>206</sup>

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<sup>205</sup> Anason, "Banks Get Round of Praise," p. 2.

<sup>206</sup> *Ibid.*

## Chapter 6

# Findings and Recommendations

### Chapter 2. Immigrants in New York City and Low-skill Labor Markets

#### Exploitation of the Undocumented

##### *Findings*

2.1 Workplace exploitation of low- and unskilled immigrants is commonly manifested in the form of subminimum wages, overtime work without appropriate pay, unsafe and unsanitary working conditions, and abuse or harassment. Most susceptible to such abuses are undocumented immigrants, whose fear of disclosure to the INS makes them an attractive work pool for employers in low-profit industries.

2.2 These extreme working conditions are exacerbated by employers and smugglers who knowingly and willfully profit from a vulnerable and abundant undocumented immigrant work force.

2.3 Labor law violations against the undocumented also affect documented immigrants and competing native-born workers, who often must accept the same or diminished working conditions and wages in order to secure employment in industries that rely on a vulnerable work force.

##### *Recommendations*

- Workplace violations in these industries should be addressed in a multifaceted manner that emphasizes effective border control policies, rigorous enforcement of labor standards laws and the knowing-hire component of the employer sanctions provision, and protections for undocumented employees who turn their violating employers over to proper authorities.
- IRCA enforcement should emphasize compliance of the knowing-hire provision of the law, which prohibits any person or entity from knowingly hiring, recruiting, or referring or employment of any alien who is ineligible for employment in the United States.

- Immigration laws should be amended to ensure protection of all immigrants who come forward to turn in employers who are violating labor laws or IRCA. An assurance against deportation, similar to the S-visa provision of the Immigration and Naturalization Act of 1990, should be given to any undocumented immigrant whose tip or testimony leads to the conviction of an employer found to have violated labor or immigration laws, or to the conviction of a smuggler or other facilitator of illegal entry into the United States.

Encouraging undocumented immigrants to turn over those who violate immigration or labor laws would serve a dual purpose. First, it would reduce the frequency of conflicts of interest by State and Federal departments of labor by relying on the immigrants themselves to uncover employers violating laws. Second, it would provide undocumented workers with some recourse against victimization by employers or smugglers. Over time, immigrant reporting of immigration law violators would discourage reliance on undocumented workers and reduce the number of employers and smugglers willing to trade in undocumented labor.

#### Labor Law Violations in the Restaurant Industry

##### *Finding*

2.4 The lack of a concerted effort by Federal and State labor departments to target worker exploitation in the restaurant industry exacerbates the abuse of labor laws. Whereas abuses in the garment industry have led to specialized task forces in both the Federal and New York departments of labor designed to target violations by apparel producers, there are no equivalent, specialized programs to address violations in the restaurant industry.

### **Recommendation**

- The U.S. Department of Labor should consider the feasibility of specialized task forces to target other industries known to have a high degree of labor law violations, such as the restaurant industry.

### **Cooperation among States and Localities and the Immigration and Naturalization Service**

#### **Findings**

2.5 Both the Personal Responsibility and Work Opportunity Act and the Illegal Immigration Reform and Immigrant Responsibility Act prohibit States and localities from restricting or prohibiting any Federal, State, or local government from sending to or receiving from the Immigration and Naturalization Service, information regarding the immigration status of any immigrant in the United States. At least one court has construed these provisions as attempts simply to vest State and local authorities with *discretion* over whether to turn over the names of suspected undocumented immigrants seeking services by prohibiting blanket statutory and regulatory bars against such cooperation.

2.6 The Federal and New York departments of labor express concerns over the impact of INS intervention on their ability to protect fully and enforce labor laws and standards. Both allude to potential conflicts of interest arising from mandatory disclosure to the INS of undocumented immigrants' identities.

2.7 Provisions granting individual State or local entities authority to disclose information about undocumented immigrants to the INS will likely discourage undocumented immigrants from seeking public services, such as public education for children or police assistance in the event of an emergency, or from reporting violations of laws, including fair labor standards laws. Such a chilling effect on the exercise of individual rights denies this group fundamental protections afforded by law.

#### **Recommendation**

- The provisions in the immigration and welfare laws prohibiting restrictions by States and localities against disclosing information about undocumented immigrants to the INS should be repealed. These provisions should be preserved only for undocumented immigrants convicted of crimes.

### **Immigration Policy's Effect on Wages, Jobs, and Racial and Ethnic Tensions**

#### **Finding**

2.8 Concerns over the award of employment-based visas for skilled aliens center around fears that sustained entry of high-skilled immigrants reduces the incentive to train native and established immigrant workers in these fields. In response to these concerns, proponents recommend targeting native workers for education and training in technical fields that suffer from a shortage of trained workers domestically. An early version of the Immigration Act of 1990 contained a section requiring employers who receive labor certification to import foreign workers to pay a fee. The proposal called for depositing the fee into a separate account within the general fund of the U.S. Treasury and using it to educate and train unemployed or underemployed U.S. citizens in fields experiencing a shortage of employees. The provision was deleted from the final version of the 1990 act.

#### **Recommendation**

- Congress should require employers seeking labor certification for foreign skilled workers to pay a fee upon award of the labor certification. The fee would be used to offset the cost to a potential U.S. employee of obtaining the requisite training or education needed to qualify for the job.

### **Chapter 3. Minorities and Women in New York City's Finance Industry**

#### **Employment of Minorities and Women**

#### **Finding**

3.1 The finance industry is a large, prominent, and well-paying industry in New York City, providing outstanding opportunities for employment. The financial industry has changed since the Commission focused attention on the lack of diversity in the best and highest paying jobs on Wall Street at its racial and ethnic tensions hearing in 1994 and documents hearing in 1995. Firms have changed their structure, consolidations have taken place and minority- and women-owned firms have increased in visibility. A few people of color and women have been hired at higher levels in the industry in recent years. There is some evidence that firms have adopted measures or made commitments to increase the inclusion and advancement of women

and people of color in prominent roles in the securities industry.

#### **Recommendation**

- The finance industry should continue to take strong measures to counteract the industry forces that may reduce the number of people of color and women in this industry.

### **Job Classifications for Equal Employment Opportunity**

#### **Finding**

**3.2** The job classifications the Equal Employment Opportunity Commission (EEOC) uses to track employment of minorities and women include a wide range of jobs. In the finance industry, officials and managers include presidents, vice presidents, managers, and supervisors. But among at least some banks and securities firms, officials and managers also include the director of human resources, supervisor of building maintenance, supervisor of word processing, and mailroom manager. On the one hand, such a range of jobs in the officials and managers classification provides wider opportunities for minorities and women to obtain high status jobs in this industry. On the other hand, some of these jobs are unrelated to the substance of finance and may not carry the lucrative salaries of the industry. The numbers of women and minorities who have access to the finance industry per se may be less than the EEOC data indicate.

#### **Recommendations**

- EEOC should monitor employers' use of the Job Classification Guide to ensure that jobs are properly classified in EEO-1 reports. The EEOC should offer technical assistance to employers on the use of this guide in filing EEO-1 reports.
- EEOC should conduct a study of their EEO-1 reporting system to determine whether it and the job classification scheme are the best means of tracking the employment opportunities of minorities and women.

### **Job Qualifications**

#### **Finding**

**3.3** A review of job requisitions, vacancy announcements, job postings, advertisements, and position descriptions indicated that at least some banks and firms state minimum job qualifica-

tions in terms of the required knowledge and skills rather than specifying required levels of education or years of experience that might unnecessarily exclude otherwise qualified minorities and women. However, other banks and firms did state job requirements for particular levels of education and years of experience.

#### **Recommendation**

- Banks and securities firms should review the job qualifications stated in their job requisitions, vacancy announcements, job postings, advertisements, position descriptions, and other documents. The minimum job requirements should be revised, if necessary, to reflect critical knowledge and skills required for the job.

### **Recruitment, Hiring, and Promotions**

#### **Findings**

**3.4** At least one bank or firm had clearly documented procedures for hiring and promoting staff. A human resources manual outlining guidelines for recruitment was one mechanism for ensuring that searches for candidates were conducted so as to reach minorities and women.

**3.5** Banks and securities firms had systems for hiring and promotion with features that may unfairly exclude minorities and women. Employee referral systems, systems designed to fill vacancies from within the company, or simply to give advantages to internal candidates are some of those features.

**3.6** Recruitment at historically black schools doubled the number of black and Hispanic trainees in one company's programs.

**3.7** Some banks and securities firms are advertising for job candidates through minority media such as the professional magazines *Minority MBA* and *Black Enterprise*. Some of their advertisements were more appealing to minorities than others. The least appealing gave a company profile. The most appealing pictured happy minority employees and included quotes from them describing their success with the company.

**3.8** Not all banks and firms made an effort to direct their recruitment efforts toward minorities or women. One company's proposed strategies for increasing the numbers of minorities included increasing minority representation in summer intern and entry-level training programs; increasing the participation of minorities

in the recruitment process both on campuses and with interviewing candidates at the company; establishing partnerships with historically black colleges; creating and expanding affiliations with professional organizations such as the National Society of Hispanic MBAs; increasing the company's presence at expositions and special events targeted toward minorities; and providing college scholarships to minority students.

#### **Recommendation**

- Banks and security firms should continue to review their procedures for recruiting, hiring, and promoting employees. If in their review firms find certain procedures exclude or discourage minorities and women from applying, these procedures should be discarded. The review should consider strategies for increasing the recruitment of minorities and women including, for example, making job advertisements more appealing to minorities and women and recruiting at historically black, or female, schools and colleges. Procedures should be written and available to human resources staff to ensure continued use of fair practices.

### **Other Policies and Programs**

#### **Finding**

**3.9** Some companies had policies and programs designed to make a more hospitable environment for minorities and women. Written and widely disseminated equal employment opportunity (EEO) policies and affirmative action programs and diversity training were some of the measures to do this. One sample of an EEO policy charged all employees with the responsibility to treat their fellow employees with respect and clearly spelled out the role of managers with respect to disseminating the policy, hiring, promoting and transferring employees, harassment or other problems, and complaints. Another sample gave instructions for disseminating the EEO policy and addressed the president's policy statement; meetings of supervisors, managers and employees; company publications and advertisements; recruitment and employment agencies; and vendors, suppliers, and contractors. One company provided diversity training to all employees with a curricula to help program participants recognize diversity, value it as an enrichment, and, for managers, take advantage of

a diverse work force to enhance company competitiveness.

#### **Recommendation**

- Banks and security firms should examine policies and programs that make their work environment more hospitable for minorities and women. Are EEO and affirmative action policies written and widely disseminated? Do they clearly identify the persons responsible for practicing as well as enforcing these policies? Are procedures in place to ensure that company publications and agents abide by the policy? Have employees been offered training to help them create a compatible work environment? Companies should address these issues.

#### **Finding**

**3.10** Some companies had professional development programs to help minorities and women reach their potential. Examples of these programs are a management training program for women developed through a consortium of corporations and offered at a local college, a career development program for minorities to identify developmental needs and complete assignments in those areas, and a highly structured mentoring program. The mentor program matched mentees to mentors on the basis of the mentees' developmental needs and the mentors' strengths.

#### **Recommendation**

- Banks and securities firms should increase the number of professional development programs designed to help all employees reach their full potential. Management training, career development, and mentoring programs should be considered.

### **Industry Testing and Certification**

#### **Finding**

**3.11** In the securities industry and among banks engaged in investment banking, job requirements for many positions are partly dictated by the organizations that regulate this industry, for example, the New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD). The NYSE and NASD, along with other self-regulating organizations, require that their members pass an examination. In fact, more than 30 examinations are used in this in-

dustry. The NYSE follows professionally accepted standards and practices in developing its tests to ensure that they are job related. Yet prior to the Commission's study, their tests had not been examined for adverse impact on minorities and women. The Series 7 examination, a widely used test to become a general securities registered representative, shows a smaller percentage of people of color and women who pass if the group is measured by the number of people in the group who take the test. For example, from November 1994 to July 1995, 73 percent of whites who took the test passed, but only 45 percent of blacks did. Similarly, 74 percent of men passed, but only 60 percent of women did.

#### **Recommendations**

- Even though the finance industry's examinations are job related, the self-regulating organizations that require and administer these tests should examine them regularly to ensure against biases against people of color and women.
- The Securities Exchange Commission, which currently reviews securities industry examinations, should monitor the impact of these tests and encourage efforts to examine and remove test biases.

### **Chapter 4. Impact of Securities Industry Rules on Minority and Women Securities Professionals**

#### **Arbitration Forums**

##### **Findings**

4.1 Although the obligation to arbitrate is no longer coupled with the duty to register at the exchanges, the mandatory arbitration requirement likely will persist because it can be placed in individual employment contracts. Many securities professionals are still required to agree, as a condition of employment, to arbitrate any employment discrimination disputes that may arise. Thus, the goal of providing the most fair and cost-efficient arbitration forum remains important.

4.2 The SROs' arbitration rules and procedures were written with investor disputes in mind and mostly do not impose separate requirements for the resolution of employment discrimination disputes.

##### **Recommendation**

- The SROs should reassess the arbitration rules used for the resolution of employment discrimination disputes to ensure that the procedures are suitable for employment law cases. Separate rules, specifically tailored for and only applicable to employment discrimination cases, should be written. In crafting new rules, the SROs should follow the American Arbitration Association's National Rules for the Resolution of Employment Disputes.

#### **Arbitration Discovery Procedures**

##### **Findings**

4.3 The securities industry arbitration forum was created to achieve two sometimes conflicting goals: providing a cost-efficient means of resolving disputes and achieving equitable outcomes in individual cases.

4.4 Discovery procedures before arbitration panels are more limited than before courts, and arbitrators are permitted to exercise discretion when determining whether information is relevant to the issues and therefore must be disclosed. Arbitrators are provided with a manual that lists several documents that are often relevant in employment cases. However, the manual does not limit arbitrators' discretion to determine relevancy on a case-by-case basis.

##### **Recommendations**

- The SROs should craft discovery rules for employment discrimination cases that provide arbitrators with intelligible standards to use in determining whether requested information is relevant to the issues involved. Providing a standard, rather than a short list of documents that are often relevant, would assist the arbitrators when faced with unique requests based on particular factual claims.
- Standards used to guide arbitrators handling discovery requests should be derived from the case law that has evolved under the employment discrimination statutes. However, when using case law to craft standards for arbitrations, the cost saving goals of arbitration should be kept in mind. Thus, the discovery rules for arbitration may differ somewhat from the rules found in court cases.



## Arbitration Panels

### *Findings*

4.5 The pool of arbitrators available to decide employment discrimination cases is composed of a disproportionately large number of white males. Few arbitrators are minorities or women.

4.6 The SROs do not require the arbitrators selected for employment discrimination disputes to have knowledge of employment discrimination law.

### *Recommendations*

- The SROs should implement an explicit requirement that its pool of arbitrators available to decide employment discrimination cases remains diverse in gender, race, and ethnicity.
- The SROs should require that all arbitrators chosen to decide employment discrimination cases have knowledge of employment law.

## Arbitration Awards

### *Findings*

4.7 Advocates disagree about whether SRO arbitration awards favor employers or employees. SRO records reveal that between 1990 and 1994, between 32 and 39 percent of employees were victorious. The amounts of the awards given to victorious employees varied and often were not discernible when multiple claims were the subject of a single award.

4.8 Arbitrators are not required to provide written explanations for the outcomes reached and the amounts of any awards given.

### *Recommendations*

- The SEC or the EEOC should implement a study of the arbitration forums on Wall Street to determine whether the outcomes are warranted and the awards fair.
- The SROs should begin requiring the arbitrators to provide written reasons for the outcomes and the methods of arriving at the amounts of the awards. Providing explanations will help alleviate parties' potential concerns that the arbitrators acted improperly or unfairly.
- The SROs should require their arbitrators, in multclaim arbitrations, to allocate the awards among the various claims.

## Rule G-37

### *Findings*

4.9 Minority- and women-owned firms have maintained a stronger presence in the municipal securities market than in the private securities market. In addition, these firms tend to be relatively small and are more likely to participate only in public securities.

4.10 Traditional firms, on the other hand, are larger and more likely to participate in private securities business in addition to any municipal securities services they perform.

4.11 Securities professionals disagree regarding the impact Rule G-37 has had on minority- and women-owned firms. Some opine that these smaller firms have been harmed by the ban against engaging in business with certain municipalities. Others assert that Rule G-37 has had no adverse impact.

4.12 The impact Rule G-37 has had on minority and women politicians seeking office in local municipalities is also uncertain. However, some have opined that the rule has impaired their ability to raise sufficient campaign funds.

4.13 In approving Rule G-37, the SEC considered comments that predicted these very concerns. However, the SEC "gave overriding weight to" its concern for the well-being of the municipal securities market.

### *Recommendations*

- The SEC should commission a study to determine the impact the rule has had on minority and women municipal securities professionals and political candidates. If Rule G-37 is having a disparate impact that could be avoided without undermining the effectiveness of the rule, the SEC should amend the rule.
- In giving "overriding weight to" market considerations, the SEC should not fail to conduct a thorough analysis of every proposed rule to ensure that any unnecessary disparate impact is obviated to the greatest extent possible while still fully achieving the goals of the rule.

## **Chapter 5. The Role of Community Reinvestment**

### **The Federal Community Reinvestment Act**

#### **Finding**

5.1 There appears to be grade inflation in the CRA composite performance evaluations being conducted by the four CRA regulatory agencies. According to one estimate, from 1990 to 1996 the percentage of institutions receiving “satisfactory” or “outstanding” overall performance ratings rose from 87 to over 98 percent. Moreover, of the three test scores that are added together for the composite score (the “lending test” score, the “investment test” score, and the “service test” score), the lending test is currently weighted so heavily that any institution receiving an “outstanding” on that component is assured a composite evaluation of “satisfactory” even if it receives “substantial noncompliance” on the other two tests.

#### **Recommendation**

- Because of possible grade inflation, the CRA regulatory agencies should delay the awarding of overall “outstanding” ratings until they conduct enough evaluations throughout the industry to determine what a “normal” or “average” CRA evaluation reveals. Moreover, to ensure that financial institutions do not entirely neglect the “investment test” and “service test” components of a CRA overall performance evaluation, the regulations should be changed to mandate that institutions receive a minimum grade of “low satisfactory” on all three tests.

#### **Finding**

5.2 Because of the continuing quick pace of mergers and acquisitions, approximately one-third of the banks listed in the Washington, D.C.-based National Community Reinvestment Coalition’s roster of CRA agreements no longer exist. It is clear, then, that current restructuring can make any given agreement, as well as any given branch of an acquired bank, vulnerable. It is sometimes not known during the course of the merger whether a CRA agreement will be honored by the acquiring bank, or whether all of a bank’s branches will be kept open by the acquiring bank.

#### **Recommendation**

- Currently, the Office of the Comptroller of the Currency (OCC) is the only one of the four CRA regulators to: (1) require the surviving bank in a merger to indicate in its application—on the public record—whether it will honor the commitments made by the target bank to community organizations (or similar entities) and if not, to explain the reasons and the impact on the affected communities; and (2) require merger applicants to identify in the application—on the public record—any branches that they know will be closed as a result of the merger, and to describe whether they will discontinue or significantly reduce services to any customers and, if so, to explain the reasons and the impact on the affected communities. The other three CRA regulatory agencies should have these same two requirements. Moreover, if an acquiring bank indicates it does *not* plan to honor the commitments made by the target bank, and/or if an acquiring bank indicates that a branch (or branches) will be closed or services will be discontinued or significantly reduced, then the regulatory agency should remove the application from any “expedited review” process the regulatory agency might employ and investigate the situation more closely.

#### **Finding**

5.3 Recent court rulings make it clear that community groups currently have no legal standing to ask a court of law to review regulators’ bank merger approvals. It is therefore very important that community groups’ views be taken into consideration by CRA regulators when they are reviewing bank merger applications. Currently, with respect to the merger review process of the Federal Reserve Board, it is the policy that when a community group comments on a merger within the official comment period, the Fed directs the bank to submit a response. The Fed, however, will not allow the community group to respond to the bank’s response if the comment period has expired.

#### **Recommendation**

- The CRA comment process of all four Federal regulators should be reformed and modeled on the Federal Communication Commission (FCC) comment process. (When the

FCC receives a protest to an application to transfer a license or buy a station, the agency establishes a pleading cycle: the applicant's response is due 2 weeks after the protest is made, and the protester's reply is due 1 week after that.) With this policy, community groups would have an opportunity to point out any inaccuracies they believe are part of the applicant's response. This could, of course, be extended yet again to give the applicants an additional week to comment on what the community groups have said.

## **Economic Development as the Driving Engine**

### ***Finding***

5.4 Private-public economic development collaborations are the country's best hope for urban revitalization. Although housing has led troubled neighborhoods toward prosperity, it will be assured only with an infusion of capital, commercial development, and small business development to create jobs.

### ***Recommendation***

- To increase the flow of funds into and within low- and moderate-income communities, there must be collaborative partnerships between community nonprofits, financial institutions, private-sector organizations, and Federal, State, and local government agencies. Moreover, the investment must be done in a way to give members of these communities a "stake in the renaissance." This will require financial institutions to be more flexible. For example, they might be willing to accept different ways of measuring cash flow, or they might agree to make loans to startup businesses that can thrive in the area but that the lender has historically deemed unworthy of a loan (e.g., child-care centers or hair-braiding studios). The lender might also establish advisory boards made up of representatives of neighborhood groups, nonprofit housing advocacy and development organizations, and minority organizations to review and evaluate various efforts and opportunities, including CRA-related initiatives. Finally, New York City and New York State have to *lead* the private sector into the low- and moderate-income communities, giving some security that there

is a serious effort underway to rebuild and revitalize these areas. The past few years have clearly demonstrated that the private sector will follow the lead with billions of dollars of their own.

### ***Finding***

5.5 It is clear that banks no longer hold the great majority of assets in the financial industry; currently, Americans have invested \$4 trillion in mutual funds, while they hold \$3 trillion in bank and thrift deposits. Thus, it could be argued that if the CRA is not allowed to evolve with the evolution of the financial industry, it will cover fewer and fewer assets. It is likely that mergers among depository and nondepository institutions will accelerate, and that the distinctions among products offered by financial institutions will thereby become blurred. For example, mutual funds currently offer checking accounts that are not regulated by CRA; and insurance companies now want to establish thrifts. It could be argued that if the CRA is not expanded, then bank holding companies will find it very tempting to switch their assets from their CRA-covered subsidiaries (banks and thrifts) into their CRA-exempt affiliates (mortgage companies, insurance companies, etc.) Without an expansion of CRA, the major lenders in poor communities (banks and thrifts) will no longer have the financial wherewithal to continue increasing access to capital and credit to traditionally underserved communities.

### ***Recommendation***

- Congress should conduct a thorough investigation into the possibility of extending the CRA to all financial services—not just federally insured lenders. Thus, the CRA would apply to the reinvestment performance of banks, savings and loans, mortgage companies, insurance companies, finance companies, mutual funds, credit unions, and stock brokerages; after all, in many respects these entities are now all beginning to merge. It is important that all communities have access to this capital.

## Availability of Deposit Facilities and Services in Low-income Areas

### *Finding*

5.6 Many low-income residents have no relationship at all with banking institutions, which makes it still more difficult to foster the complicated relationship required for small business lending. Bankers' unfamiliarity with these communities and borrowers leaves them unable to appreciate the credit needs and business plans of low-income borrowers.

### *Recommendation*

- Industry should aggressively market its products in low-income areas. Banks should participate in community and faith-based events, which draw many potential borrowers who are currently outside the financial mainstream. Banks could reach more potential small business borrowers by taking such simple steps as reaching out to first-time home buyers and establishing basic banking services. One important step would be to have loan officers who are representative of and can communicate with the members of the low-income community, particularly in terms of culture, race, and language. (This is especially true as more and more ATMs are placed outside bank branches, because those who actually bring their business inside the branch normally do so because it is too complicated for the ATM.) ATMs could be installed in places that are frequented by low-income residents, even if this means unconventional installations like in churches. Banks can also target low-income customers through neighborhood advertisements, community development groups, and other informal settings (e.g., home fairs and conventions).

### *Finding*

5.7 In Central Brooklyn alone, there are twice as many check-cashing operations as there are banks. Such operations, however, do not provide the traditional banking services that allow people to save money, earn interest, and develop a banking history.

### *Recommendation*

- Congress should consider giving more power to—and requiring more accountability from—

the check-cashing businesses that are filling the vacuum left by banks. These enterprises can be enhanced and regulated.

## Small Business Lending

### *Finding*

5.8 Currently, with respect to small business loan requirements, the CRA only requires the disclosure of the number and value of small business originations to each census tract.

### *Recommendation*

- While this new disclosure requirement is an improvement over the nondisclosure policy of the past, it should be further improved to be as comprehensive and valuable as the information provided by the Home Mortgage Disclosure Act (HMDA). For example, HMDA discloses the race and income of applicants, thereby providing information about potentially underserved markets, as well as information that can be used to develop new products to meet legitimate credit demand.

### *Finding*

5.9 In 1997 nearly two-thirds of small business lenders used credit scoring to process loans. The system assigns greater weight to the financial resources and credit history of the business owner, rather than concentrating strictly on the financial numbers of the business as was done in the past. Supporters of the technology say it speeds up the approval cycle, enabling lenders to spend more time prospecting for new customers, and contributes to increased loan volume. They also say it has the potential to allow banks located outside local markets to compete against within-market institutions for small business lending. However, detractors of the new technology argue that it may contain methodological rigidities which make it unable to properly assess nontraditional, or limited, credit histories of minority or low-income loan applicants, thereby denying credit to reliable, creditworthy borrowers and exacerbating racial disparities in lending.

### *Recommendation*

- CRA regulators should investigate credit scoring and automated underwriting to determine if they have a racially disparate impact upon low-income and minority communities. It is not yet clear what impact these

techniques have on lending patterns to lower income and minority borrowers. Moreover, credit scoring and automated underwriting could be tempered with the use of community-based “second look” programs that allow a reassessment of rejected loan applications. These reassessments could be done locally—they might even include onsite visits of the businesses—rather than at a distant office where the evaluation can miss the nuances of an applicant, neighborhood, or business venture.

## **Home Mortgage Disclosure Act**

### ***Finding***

5.10 One of the most effective tools for getting minority and low-income borrowers into homeownership has been high-quality loan counseling by community organizations. However, during the past several years, there has been an erosion of lenders’ commitment to loan counseling. Instead, lenders, Realtors, and the secondary mortgage market are coming to rely more and more on workbooks, videos, and generalized classroom educational programs.

### ***Recommendation***

- Community groups and government agencies must continue to provide high-quality counseling programs to prepare potential borrowers to go through the mortgage application process. This counseling should also continue after the initial purchase is made. Thus, it should include prequalification services to determine whether prospective borrowers are likely to obtain a loan, as well as postpurchase counseling to ensure that borrowers stay abreast of their financial obligations. There has also been success with community groups entering into partnerships

with area banks, whose experts can provide—while earning CRA credit for the bank—seminars and classes on personal finance for present and prospective home buyers.

## **Fair Lending Enforcement by the Department of Justice**

### ***Finding***

5.11 During the summer of 1997, the Department of Justice (DOJ) announced a \$9 million settlement with the New York-based Albank Financial Corporation. DOJ accused Albank of redlining several cities in the State of Connecticut as well as southern Westchester County, New York. The Department of Justice alleged that Albank excluded minority borrowers in the affected communities without considering the borrowers’ credit histories, and that it failed to drop the restrictions when some of the thrift’s own brokers asked it to do so. The matter was settled; Albank continues to stand by its practices.

### ***Recommendation***

- State and Federal fair lending agencies must increase testing programs for all lenders. “Matched pair” testing can identify banks who screen minority and lower income borrowers out of their lending business. Additionally, testing can determine if banks are steering potential borrowers from applying for loans or to alternate lending products. Lenders are required to accept and evaluate all applications, but if a bank discourages some people from submitting applications for a loan, the potential applicant is not disclosed. Testing can uncover this discrimination which is not revealed through Home Mortgage Disclosure Act data.

## **Additional Statement of Chairperson Mary Frances Berry and Vice Chairperson Cruz Reynoso**

This is a carefully reasoned report that provides a great deal of important information regarding immigration, the employment of women and people of color in the finance industry, and capital investment in low-income, people of color communities. The report examines the connection between racial and ethnic tensions and economic opportunity in New York City.

The report has benefited from reviews and additional information provided by securities firms since the 1995 hearing. It applauds the progress that has been made in recent years in the employment of women and people of color on Wall Street. It also identifies areas where disparities continue to exist and offers recommen-

dations to target additional efforts. It does so while avoiding any determination that the underrepresentation and disparities described are evidence of invidious discrimination. In order to make such an assessment, we would need information concerning the qualified applicant pool which the firms did not make available.

We thank the staff, the consultant, experts, and the summer interns—who are always valuable assets in the Commission's work—for the production of this significant report. We hope that this report will provide useful information in the effort to secure equal opportunity in our society.

## Dissenting Statement of Commissioner Russell G. Redenbaugh and Commissioner Carl A. Anderson

It is unfortunate that it has taken the Commission 5 years to produce this report. The 1994 hearing in New York elicited testimony from several witnesses as well as a large volume of subpoenaed documents from 35 selected banking and investment firms. This might have been a good report, but much of the research and statistical work has been conducted by summer interns and outside consultants. It does not reflect the kind of work that our internal staff is capable of producing and it fails to measure up to our standards. As presented here and now in 1999, the report and its data are incomplete and insufficient for gauging either the progress achieved or any problems that remain regarding the recruitment, hiring, and promotion of women and minorities on Wall Street.

The major problem with the report, and the principal reason we voted against it, is that it exaggerates and distorts that which can be concluded from the material presented. The introductory chapter, for example, provides an overreaching and highly politicized characterization of New York City as “a city plagued by increasingly frequent racial and ethnic conflict . . . well-publicized interethnic violence . . . [and] inequality and discrimination at all levels.” The first mention of the finance industry comes at the very end of the overview, which argues that the industry somehow contributes to the myriad of interracial and interethnic conflicts and tensions in New York—an argument that the statistics presented later on in the report simply do not support.

We wish to stress that our dissent by no means signals a belief that there are no problems on Wall Street or that racial and ethnic tensions do not exist in New York City. It is just that this report cannot be the factual basis for the findings and recommendations it provides. Some of the specific concerns we have with the report include the following:

### **Ancient Data and Bogus Conclusions**

For the most part, the sections on the employment of minorities and women in New York City’s finance industry are based on analyses that are old, incomplete, and tortured to reach

conclusions that are not supported by the data we collected. For example, the first section of the analysis of the finance industry jumps back and forth in terms of sources and chronology (research studies, news articles, EEOC and Census data anywhere from 1974 to 1996 and back again) to support the claim that the securities industry is “potentially the worst offending segment of the finance industry” with respect to employment of minorities. The section that immediately follows then proceeds to relay a separate set of data suggesting that “minorities and women are well represented in the finance industry as a whole. . . .”

The report’s fatal flaw is that it rests its claims about “disparities” and “underrepresentation” mainly on the basis of “past research studies as well as current news reports suggest[ing] that minorities and women, *when compared with their numbers in the population* [emphasis added], were not well represented in the finance industry, or at least some segments of it.” However, as Chairperson Berry herself acknowledged during the Commission’s last discussion, “we cannot technically say there is underrepresentation” because the only way we can point to underrepresentation is if we know what the talent pool is and if we measure hiring patterns against the qualified pool of applicants. Yet, undeterred by the lack of factual or statistical support for its claims, the report mixes and jumbles data (most of which are 10 years old) in order to derive an argument that there is underrepresentation. This kind of approach is highly misleading and discredits the entire report.

### **No Statistical Procedure Used**

No valid statistical procedure was used in the report to establish whether the data studied adequately represent the finance industry as a whole. Particularly in regard to the examination of the industry’s employee pool, a statistical test is required to draw a firm conclusion, yet none is presented. As a result, there is no way to determine the extent to which we have or have not captured the industry with the 35 banks and firms that received subpoenas. It is also not clear

to what extent the subpoenaed sample may or may not differ from the rest of the industry.

### Perception as Reality

Because of the lack of a valid statistical procedure, the report frequently must rely on inference, suggestion, and even allegation to try to build its case. For example, long before it gets into any discussion of employment practices on Wall Street, the report cites certain high-profile incidents involving police-community relations, most of which have taken place since the time of the Commission's 1994 hearing. In relating the brutal police beating of Abner Louima in 1997, the report makes much of a claim that the victim was "quoted in the press" as having made at the time of the assault, and then concedes that the claim had been made falsely to the grand jury. By repeating false claims of this nature and in the way it does, the report diminishes the tragic significance of these events, and certainly does a disservice to the public we are supposed to inform.

Inference and implication are also used throughout the discussion of hiring, recruitment, and promotion policies on Wall Street. The report itself concludes we *cannot conclude* that there is discrimination in the finance industry, and it acknowledges that it was unable to produce any valid conclusions as to whether disparities actually exist. At the same time, it states unequivocally that "Race/ethnicity and bias still haunt access to the multitude of economic prospects for New York residents"; and, in referring to the role of the financial institutions, goes so far as to suggest that "industry forces" may actually be *reducing* the number of minorities and women in the industry.

Specific examples of how the report attempts to conclude through inference or conjecture what it is unable to prove through factual or statistical analysis:

- On demographic changes in New York City (chapter 3, section II) — "Asian American and Pacific Islanders and Hispanics were immigrating to the city and possibly bringing about similar changes in the qualified work force available to the finance industry there."
- On job qualifications (chapter 3, section III) — "The position description review did not
- On the General Securities Registered Representative (or "Series 7") Examination (chapter 3, section III) — "The stark differences in the pass rates suggest that, despite the efforts to ensure that the test is job related, some additional analyses should be performed by the NYSE to determine whether the test contains biases against minorities and women that can be removed."
- On "benchmarks" for the racial and gender composition of the qualified work force (chapter 3, section V) — ". . . the differences in representation of minorities in banking and savings institutions versus 'other finance' [securities firms, insurance companies, nondepository institutions, real estate companies, and holding companies] may indicate that New York City's securities industry has greater bias toward minorities and women than elsewhere in the Nation, or that industry firms in New York City require more of the benchmarks on which minorities and women have lower representation."
- On educational "benchmarks" for race and gender (chapter 3, section V) — "Because education represents only one potential factor used to determine employability, and its import differs according to both job classification and industry, it is difficult to extrapolate much from these numbers, and they may or may not represent bias."
- On changes in employment in the finance industry (chapter 3, section VI) — "These decreases in employment of women and blacks could be because of discrimination or because of other changes over time in the types of jobs that were not captured here."
- On efforts to increase employment of women and minorities in the securities industry (chapter 4) — "Despite these and other ef-



forts, there remains a prevailing perception that few women and minorities find well-paying jobs in the securities industry.”

The discussion of arbitration is another major area in which the report presents an unfair picture of reality. Specifically, arbitration agreements are portrayed here as an example of “[s]ecurities industry rules designed to avoid litigation [which] may not adequately protect civil rights and may adversely affect communities of color and women.”

Chapter 4 is devoted almost entirely to arbitration, yet it gives an extremely one-sided and misleading presentation of the issue. First, it centers mainly on the testimony of one witness, a plaintiffs’ attorney, whose criticisms of the arbitration process have been specifically rejected by the courts and Congress. Second, its significance is greatly diminished in light of recent rule changes by both the NYSE and NASD eliminating their mandatory arbitration rules as they pertain to employment discrimination. The report’s apparent acceptance of the notion that arbitration agreements involve a waiver of substantive rights is simply wrong and was refuted by the Supreme Court in its landmark decision, *Gilmer v. Interstate/Johnson Lane* (1991).

### **Compliance with the Subpoena**

The report also contains several troubling references to the response of the firms that the Commission subpoenaed in order to ascertain if the firms’ hiring patterns reflected their applicant pool. Specifically, the report complains about the “absence of data” from the subpoenaed firms regarding the race and gender of applicants for certain positions. The explanation (contained in a footnote) is that “[t]he firms contend that as a matter of business practice, they do not keep, and thus do not have, such data to provide to the Commission.” The issue of the firms’ response is a crucial one, given the argument that is made (in chapter 3) that one reason the report was unable to prove employ-

ment discrimination in the finance industry was because “the firms did not provide sufficient information. . . .”

By framing the complaint the way it does (“Many securities firms indicated that applicant data were not available . . . Given that applicant data were not provided for analyses”. . . , etc.), the report *implies* that there was a failure on the part of the institutions to comply with the subpoena. It suggests that such data exist but were not provided. That is a serious charge, since there is no evidence that the firms’ inability to provide such information was based on any desire to avoid the scope of the subpoena. It appears that the staff refuses to accept the results of its own investigations—i.e., that the existence of discrimination cannot be proven—by implying that information that might prove otherwise is somehow being withheld.

### **Conclusion**

As the report itself acknowledges, much has changed since the time of our hearing in 1994. We trust that, by focusing on this issue, the Commission already has played a role in encouraging some of the positive developments that have occurred in the industry in recent years. At the same time, it is important to recognize that success is far more likely to occur if we rely on market forces rather than on good intentions. The labor shortage in the finance industry is a far more powerful inducement to a diversified work force than a report that is inconclusive at best and, at worst, a distortion of reality.

A more focused report, one based on sound statistical methodology, with findings supported by the data and delivered within 15 months of the hearing, likely could have made a valuable contribution to an area dynamic enough to accommodate a more rapid expansion in employment of minorities and women. What we have instead, however, is a report that can do no more than render a potentially inaccurate history of conditions as they might have existed 7 years before its ultimate publication.

## Appendix A: Definitions

### Major Groups of the Finance Industry

**DEPOSITORY INSTITUTIONS**—Institutions that are engaged in deposit banking or closely related functions, including fiduciary activities: central reserve depository institutions, commercial banks, savings institutions, credit unions, foreign banking and branches and agencies of foreign banks, nondeposit trust companies, and other establishments primarily engaged in functions related to depository banking.

**NONDEPOSITORY CREDIT INSTITUTIONS**—Establishments engaged in extending credit in the form of loans, but not engaged in deposit banking: Federal and federally sponsored credit agencies, personal credit institutions, business credit institutions, mortgage bankers and brokers.

**SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES, AND SERVICES**—Establishments engaged in the underwriting, purchase, sale, or brokerage of securities and other financial contracts on their own account or for the account of others; and exchanges, exchange clearinghouses, and other services allied with the exchange of securities and commodities. Security brokers, dealers and flotation companies, commodity contracts brokers and dealers, security and commodity exchanges, and services allied with the exchange of securities or commodities are included.

**INSURANCE CARRIERS**—Carriers of insurance of all types, including reinsurance. Life insurance; accident and health insurance and medical service plans; fire, marine, and casualty insurance; surety insurance; title insurance; pension, health, and welfare funds; and other insurance carriers. Agents and brokers dealing in insurance and organizations rendering services to insurance carriers or to policyholders are classified in the group below.

**INSURANCE AGENTS, BROKERS, AND SERVICE**—Agents and brokers dealing in insurance, and also organizations offering services to insurance companies and to policyholders.

**REAL ESTATE**—Real estate operators, and owners and lessors of real property, as well as buyers, sellers, developers, agents, and brokers. Title abstract offices and land subdividers are included. Establishments primarily engaged in the construction of buildings for sale (operative builders) are not included.

**HOLDING AND OTHER INVESTMENT OFFICES**—Investment trusts, investment companies, holding companies, and miscellaneous investment offices.

### Job Classifications<sup>1</sup>

**OFFICIALS AND MANAGERS**—Company officers and managers who are exempt from the minimum wage and overtime provisions of the Fair Labor Standard Act, including, for example, bank managers or officers and financial managers.

**PROFESSIONALS**—Employees concerned with the theoretical or practical aspects of such fields as science, art, law, and business relations where substantial postsecondary educational preparation, or

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<sup>1</sup> Office of Program Operations, Program Research and Surveys Division, U.S. Equal Employment Opportunity Commission, "Job Classification Guide to be Used with Employer Information Report EEO-1 (Standard Form 100)," 1987.

equivalent on-the-job training or experience is required. Management support occupations, such as accountants, and subject matter occupations, such as law or systems analysis, are included. Underwriters and management analysts fall in this category.

**SALES**—Cashiers and sales workers including those in securities and financial services sales occupations (e.g., traders), real estate sales occupations, and insurance sales occupations.

**OFFICE AND CLERICAL WORKERS**—Employees performing office clerical tasks, such as typing, filing, computer operating, and personnel, stock, production, and billing recordkeeping. Enumerators and interviewers, such as loan interviewers, and clerical estimators and investigators, such as insurance adjusters and real estate appraisers are included. Bank tellers are in this category.

## **Geographic Area**

**NEW YORK CITY PRIMARY METROPOLITAN STATISTICAL AREA (PMSA)**—An area covering New York City, White Plains, NY, Newark and Jersey City, NJ, and certain contiguous areas. New York counties included are: Bronx, Kings, Queens, Nassau, New York, Putnam, Richmond, Rockland, Suffolk, and Westchester. New Jersey counties included are: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren. Pike County, PA, is also part of the New York City PMSA. *Parts of Connecticut that are well within commuting distance of New York City, such as Stamford and Greenwich, are excluded.*

## **Race/Ethnic Identification**

**BLACK (Not of Hispanic origin)**—All persons having origin in any of the black racial groups of Africa.

**HISPANIC**—All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

**ASIAN AMERICAN AND PACIFIC ISLANDER**—All persons having origins in any of the original peoples of Asia, Southeast Asia, and the Indian Subcontinent. This definition includes aboriginal, indigenous, native peoples of Hawaii and other Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

**AMERICAN INDIAN OR ALASKAN NATIVE**—All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

**MINORITY**—Black, Hispanic, Asian American and Pacific Islander, or American Indian or Alaskan Native.

**WHITE (Not of Hispanic origin)**—All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

## Appendix B: Tables

**Table B.1**  
**Newspaper Reports of the Representation of Women in Selected Wall Street Firms**  
**in 1984 and 1993**

<u>Firm and executive position</u>	1984 <sup>1</sup>			1993 <sup>2</sup>		
	<u>Total</u> #	<u>Women</u> #	%	<u>Total</u> #	<u>Women</u> #	%
<b>Salomon Bros.</b> Managing directors	74	0	0.0%	155	5	3.2%
<b>Bear, Stearns &amp; Co.</b> General partners	50	0	0.0%	—	—	—
<b>Morgan Stanley &amp; Co.</b> Managing directors	75	0	0.0%	195	11	5.6%
<b>Drexel Burnham Lambert Inc.</b> Directors	37	0	0.0%	—	—	—
<b>Goldman, Sachs &amp; Co.</b> Partners, department heads, & regional office managers	75	0	0.0%	161	6	3.7%
Vice presidents	643	55	8.6%	—	—	18.0%
Professionals	1,957	489	25%	—	—	—
<b>Kidder Peabody</b> "Top executive positions"	—	—	—	115	4	3.5%

SOURCES:

<sup>1</sup> "Taking a Shot at Another Male Bastion: Investment Banking," *Business Week*, Aug. 27, 1984, Executive Suite Section, p. 28.

<sup>2</sup> Dottie Enrico and Theodore Spencer, "Goldman, Sachs Suit Raises Issue of Sexism on Wall Street; Pay and promotion disparity asserted," *Newsday*, Nassau and Suffolk Edition, July 18, 1993, Business Section, p. 66; Jay Mathews, "The Street With a Glass Ceiling; Brokerages See Gains. A Fired Goldman Sachs Executive and Other Women See Otherwise." *Washington Post*, Aug. 15, 1993, p. H-1.

Discrepancies occur in the numbers reported in the two articles, which increase the percentage of women by about 0.8 percent in two instances. In one larger difference, the latter article reports that 21 percent of Goldman's vice presidents were women, not 18 percent, and 22 percent of associates were.

**Table B.2****Size and Composition of New York City's Finance Industry over Time, 1987 to 1996**

	1987	1989	1991	1992	1993	1994	1995	1996
<b><u>Number of employees</u></b>								
Depository institutions	151,623	143,736	120,773	107,382	105,532	93,255	95,438	90,179
Nondepository institutions	13,290	13,334	14,095	9,709	8,774	7,256	6,805	6,427
Security and commodity brokers	92,952	80,645	72,642	78,735	97,825	105,597	108,394	110,082
Insurance carriers	62,152	57,835	54,757	52,927	49,064	46,676	44,462	42,661
Insurance agents, brokers, and service	7,450	6,895	10,910	10,373	9,674	10,745	12,571	12,077
Real estate	7,444	9,526	6,979	7,063	6,089	8,994	8,107	7,220
Holding companies	1,846	1,938	4,704	5,474	5,295	3,832	5,218	4,680
Finance Industry	336,757	313,909	284,860	271,663	282,253	276,355	280,995	273,326
<b><u>Percent of industry employment</u></b>								
Depository institutions	44.9	45.6	42.4	39.5	37.4	33.7	34.0	33.0
Nondepository institutions	3.9	4.2	4.9	3.6	3.1	2.6	2.4	2.4
Security and commodity brokers	27.5	25.6	25.5	29.0	34.7	38.2	38.6	40.3
Insurance carriers	18.4	18.3	19.2	19.5	17.4	16.9	15.8	15.6
Insurance agents, brokers, and service	2.2	2.2	3.8	3.8	3.4	3.9	4.5	4.4
Real estate	2.2	3.0	2.4	2.6	2.2	3.3	2.9	2.6
Holding companies	0.5	0.6	1.7	2.0	1.9	1.4	1.9	1.7
<b><u>Number of establishments</u></b>								
Depository institutions	339	312	315	294	288	258	248	245
Nondepository institutions	42	49	56	26	24	28	24	19
Security and commodity brokers	150	135	152	154	179	191	195	205
Insurance carriers	155	166	163	168	152	142	139	143
Insurance agents, brokers, and service	37	39	50	45	39	59	60	59
Real estate	30	36	33	39	34	46	45	42
Holding companies	16	20	23	26	28	28	40	43
Finance Industry	769	757	792	752	744	752	751	756

\* 1987 and 1989 data exclude figures from an industry category no longer used by the EEOC. For 1987, this category comprised 1,075 employees, 0.3 percent of industry employment, and had two establishments. For 1989, this category comprised 1,517 employees, 0.5 percent of industry employment, and had two establishments.

SOURCE: EEOC data

**Table B.3****Employment of Minorities and Women in New York City's Finance Industry, 1994**

	Number of establishments	Total employment	Percent of total employment				
			Minorities	Blacks	Hispanics	Asians	Women
Depository institutions	258	93,255	41.2	21.3	10.1	9.6	50.6
Nondepository institutions	28	7,256	29.7	15.5	8.3	5.7	53.7
Security and commodity brokers	191	105,597	26.2	12.6	6.8	6.6	40.6
Insurance carriers	142	46,676	38.3	21.3	9.4	7.4	57.2
Insurance agents, brokers, and service	59	10,745	25.7	13.9	6.8	4.8	55.5
Real estate	46	8,994	46.3	19.9	20.6	2.9	33.8
Holding companies	28	3,832	31.2	15.1	9.2	6.6	53.3
Finance industry	752	276,355	34.1	17.4	8.9	7.6	47.7

SOURCE: EEOC data

**Table B.4****Employment by Job Classification in New York City's Finance Industry**

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Year	Number							Percent					
	Number of establishments	Officials and managers	Professionals	Sales workers	Office/clerical workers	Technical, blue-collar and service workers	Total employment	Officials and managers	Professionals	Sales workers	Office/clerical workers	Technical, blue-collar and service workers	Total employment
<b>Depository institutions</b>													
1987	339	46,621	21,345	1,612	70,921	11,124	151,623	30.7%	14.1%	1.1%	46.8%	7.3%	100.0%
1994	258	28,894	19,613	3,183	36,606	4,959	93,255	31.0%	21.0%	3.4%	39.3%	5.3%	100.0%
1996	245	31,319	19,664	3,504	30,163	5,529	90,179	34.7%	21.8%	3.9%	33.4%	6.1%	100.0%
<b>Security and commodity brokers</b>													
1987	150	12,258	19,674	10,522	41,251	9,247	92,952	13.2%	21.2%	11.3%	44.4%	9.9%	100.0%
1994	191	19,686	32,819	11,717	36,248	5,127	105,597	18.6%	31.1%	11.1%	34.3%	4.9%	100.0%
1996	205	22,285	36,462	13,341	33,252	4,742	110,082	20.2%	33.1%	21.1%	30.2%	4.3%	100.0%
<b>Finance industry</b>													
1987	771	75,747	63,078	16,540	149,869	32,598	337,832	22.4%	18.7%	4.9%	44.4%	9.6%	100.0%
1994	752	64,840	72,553	18,817	99,460	20,685	276,355	23.5%	26.3%	6.8%	36.0%	7.5%	100.0%
1996	756	69,895	76,197	20,907	87,302	19,025	273,326	25.6%	27.9%	7.6%	31.9%	7.0%	100.0%

SOURCE: EEOC data

**Table B.5****Percentage of Protected Groups Employed in the Finance Industry by Job Classification, 1994**

	Number of employees					Percent of total employees					
	Blacks	Hispanics	Asians	Minorities	Women	Total	Blacks	Hispanics	Asians	Minorities	Women
<b><u>Depository institutions</u></b>											
Officials and managers	2,453	1,538	2,486	6,498	9,952	28,894	8.5%	5.3%	8.6%	22.5%	34.4%
Professionals	2,456	1,295	2,272	6,048	8,473	19,613	12.5%	6.6%	11.6%	30.8%	43.2%
Sales workers	330	276	269	881	1,395	3,183	10.4%	8.7%	8.5%	27.7%	43.8%
Office and clerical workers	13,256	5,624	3,516	22,486	25,959	36,606	36.2%	15.4%	9.6%	61.4%	70.9%
<b><u>Security and commodity brokers</u></b>											
Officials and managers	1,337	661	828	2,837	5,100	19,686	6.8%	3.4%	4.2%	14.4%	25.9%
Professionals	2,276	1,330	3,267	6,912	11,568	32,819	6.9%	4.1%	10.0%	21.1%	35.2%
Sales workers	300	250	371	926	2,144	11,717	2.6%	2.1%	3.2%	7.9%	18.3%
Office and clerical workers	8,434	4,273	2,025	14,829	22,531	36,248	23.3%	11.8%	5.6%	40.9%	62.2%
<b><u>Finance industry</u></b>											
Officials and managers	4,888	2,767	3,950	11,653	20,541	64,840	7.5%	4.3%	6.1%	18.0%	31.7%
Professionals	7,493	3,750	6,954	18,294	30,308	72,553	10.3%	5.2%	9.6%	25.2%	41.8%
Sales workers	1,005	783	985	2,874	4,728	18,817	5.3%	4.2%	5.2%	15.3%	25.1%
Office and clerical workers	30,000	13,632	7,587	51,504	69,548	99,460	30.2%	13.7%	7.6%	51.8%	69.9%

SOURCE: EEOC data

**Table B.6****Employment of Protected Groups in New York City's Finance Industry, 1987 to 1996**

	1987	1989	1991	1992	1993	1994	1995	1996
<b><u>Number of employees</u></b>								
<b>Depository institutions</b>								
Total	151,623	143,736	120,773	107,382	105,532	93,255	95,438	90,179
Minorities	58,713	57,629	48,725	43,693	43,319	38,415	37,869	36,883
Blacks	36,702	34,854	27,839	24,109	23,505	19,819	18,614	17,864
Hispanics	14,155	13,835	11,756	10,686	10,506	9,464	9,510	9,370
Asians	7,515	8,704	8,950	8,744	9,165	8,984	9,597	9,503
Women	84,836	80,017	65,608	56,522	54,877	47,200	47,629	45,359
<b>Security and commodity brokers</b>								
Total	92,952	80,645	72,642	78,735	97,825	105,597	108,394	110,082
Minorities	20,135	16,450	16,443	17,804	22,662	27,696	27,969	28,588
Blacks	11,693	8,838	8,487	8,722	10,826	13,325	12,641	12,426
Hispanics	5,293	4,475	4,415	4,702	6,010	7,219	7,521	7,648
Asians	3,059	2,874	3,456	4,289	5,679	6,990	7,609	8,322
Women	39,023	32,760	28,899	31,347	39,282	42,841	42,928	43,219
<b>Finance industry</b>								
Total	337,832	315,426	284,860	271,663	282,253	276,355	280,995	273,326
Minorities	108,720	105,583	97,098	90,729	93,035	94,290	93,299	91,608
Blacks	66,222	61,505	54,240	48,817	48,907	48,073	45,184	43,610
Hispanics	27,550	27,291	24,734	23,254	23,810	24,600	24,807	24,349
Asians	14,219	15,911	17,641	18,216	19,846	20,886	22,532	23,059
Women	176,347	163,200	144,817	134,248	136,758	131,693	131,847	127,527
<b><u>Percent of total employees</u></b>								
<b>Depository institutions</b>								
Minorities	38.7	40.1	40.3	40.7	41.0	41.2	39.7	40.9
Blacks	24.2	24.2	23.1	22.5	22.3	21.3	19.5	19.8
Hispanics	9.3	9.6	9.7	10.0	10.0	10.1	10.0	10.4
Asians	5.0	6.1	7.4	8.1	8.7	9.6	10.1	10.5
Women	56.0	55.7	54.3	52.6	52.0	50.6	49.9	50.3
<b>Security and commodity brokers</b>								
Minorities	21.7	20.4	22.6	22.6	23.2	26.2	25.8	26.0
Blacks	12.6	11.0	11.7	11.1	11.1	12.6	11.7	11.3
Hispanics	5.7	5.5	6.1	6.0	6.1	6.8	6.9	6.9
Asians	3.3	3.6	4.8	5.4	5.8	6.6	7.0	7.6
Women	42.0	40.6	39.8	39.8	40.2	40.6	39.6	39.3
<b>Finance industry</b>								
Minorities	32.2	33.5	34.1	33.4	33.0	34.1	33.2	33.5
Blacks	19.6	19.5	19.0	18.0	17.3	17.4	16.1	16.0
Hispanics	8.2	8.7	8.7	8.6	8.4	8.9	8.8	8.9
Asians	4.2	5.0	6.2	6.7	7.0	7.6	8.0	8.4
Women	52.2	51.7	50.8	49.4	48.5	47.7	46.9	46.7

SOURCE: EEOC data



**Table B.7****Employment of Protected Groups as Officials and Managers in New York City's Financial Industry, 1987 to 1996**

	1987	1989	1991	1992	1993	1994	1995	1996
<b><u>Number of employees</u></b>								
<b>Depository institutions</b>								
Total	46,621	44,844	41,371	35,180	32,409	28,894	32,404	31,319
Minorities	8,463	8,892	8,652	7,618	7,166	6,498	7,217	7,501
Blacks	4,324	4,136	3,617	3,191	2,998	2,453	2,599	2,733
Hispanics	2,161	2,267	2,122	1,817	1,686	1,538	1,680	1,744
Asians	1,932	2,453	2,895	2,591	2,463	2,486	2,918	3,000
Women	17,012	16,471	15,011	12,132	11,256	9,952	11,328	11,206
<b>Security and commodity brokers</b>								
Total	12,258	13,143	13,564	14,855	18,269	19,686	21,680	22,285
Minorities	1,255	1,149	1,477	1,651	2,106	2,837	3,057	3,189
Blacks	548	546	669	725	924	1,337	1,346	1,377
Hispanics	327	318	381	396	516	661	724	727
Asians	371	272	422	524	656	828	974	1,073
Women	2,517	3,026	3,061	3,417	4,399	5,100	5,631	5,778
<b>Finance industry</b>								
Total	75,747	75,673	74,240	68,238	67,896	64,840	70,946	69,895
Minorities	12,051	12,506	12,922	11,814	11,615	11,653	12,668	13,045
Blacks	6,075	5,886	5,677	5,189	5,049	4,888	5,025	5,149
Hispanics	3,129	3,232	3,205	2,825	2,750	2,767	2,944	3,042
Asians	2,759	3,288	3,991	3,763	3,768	3,950	4,635	4,796
Women	24,781	25,443	24,600	21,606	21,436	20,541	22,867	22,694
<b><u>Percent of total employees</u></b>								
<b>Depository institutions</b>								
Minorities	18.2	19.8	20.9	21.7	22.1	22.5	22.3	24.0
Blacks	9.3	9.2	8.7	9.1	9.3	8.5	8.0	8.7
Hispanics	4.6	5.1	5.1	5.2	5.2	5.3	5.2	5.6
Asians	4.1	5.5	7.0	7.4	7.6	8.6	9.0	9.6
Women	36.5	36.7	36.3	34.5	34.7	34.4	35.0	35.8
<b>Security and commodity brokers</b>								
Minorities	10.2	8.7	10.9	11.1	11.5	14.4	14.1	14.3
Blacks	4.5	4.2	4.9	4.9	5.1	6.8	6.2	6.2
Hispanics	2.7	2.4	2.8	2.7	2.8	3.4	3.3	3.3
Asians	3.0	2.1	3.1	3.5	3.6	4.2	4.5	4.8
Women	20.5	23.0	22.6	23.0	24.1	25.9	26.0	25.9
<b>Finance industry</b>								
Minorities	15.9	16.5	17.4	17.3	17.1	18.0	17.9	18.7
Blacks	8.0	7.8	7.6	7.6	7.4	7.5	7.1	7.4
Hispanics	4.1	4.3	4.3	4.1	4.1	4.3	4.1	4.4
Asians	3.6	4.3	5.4	5.5	5.5	6.1	6.5	6.9
Women	32.7	33.6	33.1	31.7	31.6	31.7	32.2	32.5

SOURCE: EEOC data

**Table B.8****Employment of Protected Groups as Professionals in New York City's Finance Industry, 1987 to 1996**

	1987	1989	1991	1992	1993	1994	1995	1996
<b><u>Number of employees</u></b>								
<b>Depository institutions</b>								
Total	21,345	21,048	16,852	18,610	21,103	19,613	20,322	19,664
Minorities	5,952	6,090	5,391	6,017	6,371	6,048	6,519	6,489
Blacks	3,239	3,163	2,677	2,786	2,731	2,456	2,536	2,456
Hispanics	1,397	1,359	1,155	1,280	1,320	1,295	1,402	1,473
Asians	1,263	1,537	1,530	1,922	2,298	2,272	2,557	2,537
Women	10,882	10,923	8,336	8,859	9,547	8,473	9,062	8,762
<b>Security and commodity brokers</b>								
Total	19,674	17,100	19,580	23,033	30,062	32,819	33,473	36,462
Minorities	1,969	2,097	2,822	3,797	5,638	6,912	7,439	8,347
Blacks	836	773	1,028	1,277	1,906	2,276	2,378	2,560
Hispanics	392	404	547	716	1,100	1,330	1,461	1,675
Asians	724	845	1,229	1,790	2,606	3,267	3,554	4,071
Women	6,719	5,984	6,724	8,085	10,712	11,568	11,872	12,832
<b>Finance industry</b>								
Total	63,078	59,706	60,332	64,949	73,361	72,553	74,748	76,197
Minorities	12,465	12,967	14,221	15,596	17,861	18,294	19,470	20,203
Blacks	6,659	6,519	6,939	7,053	7,646	7,493	7,597	7,650
Hispanics	2,768	2,784	2,893	3,185	3,600	3,750	4,065	4,299
Asians	2,917	3,477	4,277	5,263	6,499	6,954	7,680	8,135
Women	28,405	27,254	27,046	28,693	31,528	30,308	31,543	31,789
<b><u>Percent of total employees</u></b>								
<b>Depository institutions</b>								
Minorities	27.9	28.9	32.0	32.3	30.2	30.8	32.1	33.0
Blacks	15.2	15.0	15.9	15.0	12.9	12.5	12.5	12.5
Hispanics	6.5	6.5	6.9	6.9	6.3	6.6	6.9	7.5
Asians	5.9	7.3	9.1	10.3	10.9	11.6	12.6	12.9
Women	51.0	51.9	49.5	47.6	45.2	43.2	44.6	44.6
<b>Security and commodity brokers</b>								
Minorities	10.0	12.3	14.4	16.5	18.8	21.1	22.2	22.9
Blacks	4.2	4.5	5.3	5.5	6.3	6.9	7.1	7.0
Hispanics	2.0	2.4	2.8	3.1	3.7	4.1	4.4	4.6
Asians	3.7	4.9	6.3	7.8	8.7	10.0	10.6	11.2
Women	34.2	35.0	34.3	35.1	35.6	35.2	35.5	35.2
<b>Finance industry</b>								
Minorities	19.8	21.7	23.6	24.0	24.3	25.2	26.0	26.5
Blacks	10.6	10.9	11.5	10.9	10.4	10.3	10.2	10.0
Hispanics	4.4	4.7	4.8	4.9	4.9	5.2	5.4	5.6
Asians	4.6	5.8	7.1	8.1	8.9	9.6	10.3	10.7
Women	45.0	45.6	44.8	44.2	43.0	41.8	42.2	41.7

SOURCE: EEOC data

**Table B.9****Employment of Protected Groups as Sales Workers in New York City's  
Financial Industry, 1987 to 1996**

	1987	1989	1991	1992	1993	1994	1995	1996
<b><u>Number of employees</u></b>								
<b>Depository institutions</b>								
Total	1,612	2,114	1,662	1,665	3,033	3,183	3,918	3,504
Minorities	411	661	424	414	992	881	1,194	1,074
Blacks	271	307	268	240	476	330	459	396
Hispanics	83	268	85	88	269	276	429	418
Asians	55	85	70	85	245	269	299	249
Women	860	1,090	877	835	1,480	1,395	1,717	1,493
<b>Security and commodity brokers</b>								
Total	10,522	14,311	8,757	9,492	11,709	11,717	13,802	13,341
Minorities	516	695	548	626	867	927	1,210	1,342
Blacks	224	207	177	222	298	300	361	374
Hispanics	104	198	124	146	205	250	377	441
Asians	186	280	244	253	356	371	466	515
Women	1,977	2,551	1,548	1,816	2,206	2,144	2,572	2,664
<b>Finance industry</b>								
Total	16,540	20,096	14,410	15,594	18,672	18,817	24,702	20,907
Minorities	1,716	1,972	1,788	2,052	2,884	2,874	3,513	3,726
Blacks	872	780	781	834	1,130	1,005	1,164	1,197
Hispanics	426	643	414	494	732	783	1,062	1,146
Asians	410	537	589	711	1,002	985	1,196	1,322
Women	4,198	4,517	3,421	3,867	4,836	4,728	5,330	5,497
<b><u>Percent of total employees</u></b>								
<b>Depository institutions</b>								
Minorities	25.5	31.3	25.5	24.9	32.7	27.7	30.5	30.7
Blacks	16.8	14.5	16.1	14.4	15.7	10.4	11.7	11.3
Hispanics	5.1	12.7	5.1	5.3	8.9	8.7	10.9	11.9
Asians	3.4	4.0	4.2	5.1	8.1	8.5	7.6	7.1
Women	53.3	51.6	52.8	50.2	48.8	43.8	43.8	42.6
<b>Security and commodity brokers</b>								
Minorities	4.9	4.9	6.3	6.6	7.4	7.9	8.8	10.1
Blacks	2.1	1.4	2.0	2.3	2.5	2.6	2.6	2.8
Hispanics	1.0	1.4	1.4	1.5	1.8	2.1	2.7	3.3
Asians	1.8	2.0	2.8	2.7	3.0	3.2	3.4	3.9
Women	18.8	17.8	17.7	19.1	18.8	18.3	18.6	20.0
<b>Finance industry</b>								
Minorities	10.4	9.8	12.4	13.2	15.4	15.3	14.2	17.8
Blacks	5.3	3.9	5.4	5.3	6.1	5.3	4.7	5.7
Hispanics	2.6	3.2	2.9	3.2	3.9	4.2	4.3	5.5
Asians	2.5	2.7	4.1	4.6	5.4	5.2	4.8	6.3
Women	25.4	22.5	23.7	24.8	25.9	25.1	21.6	26.3

SOURCE: EEOC data

**Table B.10****Employment of Protected Groups as Office and Clerical Workers in New York City's Finance Industry, 1987 to 1996**

	1987	1989	1991	1992	1993	1994	1995	1996
<b><u>Number of employees</u></b>								
<b>Depository institutions</b>								
Total	70,921	65,589	53,518	45,409	42,830	36,606	34,002	30,163
Minorities	39,111	37,523	30,951	26,617	25,933	22,486	20,585	18,923
Blacks	26,005	24,522	19,450	16,242	15,806	13,256	11,895	10,744
Hispanics	9,173	8,815	7,505	6,657	6,369	5,624	5,279	4,878
Asians	3,723	4,035	3,878	3,623	3,667	3,516	3,320	3,218
Women	52,463	48,106	39,265	32,759	30,986	25,959	24,338	21,896
<b>Security and commodity brokers</b>								
Total	41,251	32,179	27,392	26,552	33,288	36,248	34,849	33,252
Minorities	13,325	11,087	10,362	10,071	12,433	14,829	14,174	13,574
Blacks	8,378	6,621	6,034	5,750	7,000	8,434	7,708	7,257
Hispanics	3,643	3,124	3,018	2,983	3,707	4,273	4,320	4,175
Asians	1,251	1,183	1,255	1,283	1,637	2,025	2,023	2,027
Women	24,385	20,229	16,760	16,491	20,514	22,531	21,902	21,019
<b>Finance industry</b>								
Total	149,869	133,349	115,431	103,030	103,753	99,460	94,524	87,302
Minorities	69,657	65,893	59,393	53,005	52,750	51,504	48,531	45,404
Blacks	45,443	41,843	36,433	31,764	31,338	30,000	27,519	25,498
Hispanics	17,135	16,270	15,220	13,897	13,893	13,632	13,321	12,473
Asians	6,635	7,256	7,467	7,089	7,251	7,587	7,372	7,158
Women	107,333	96,961	83,339	73,885	73,434	69,548	66,499	61,820
<b><u>Percent of total employees</u></b>								
<b>Depository Institutions</b>								
Minorities	55.1	57.2	57.8	58.6	60.5	61.4	60.5	62.7
Blacks	36.7	37.4	36.3	35.8	36.9	36.2	35.0	35.6
Hispanics	12.9	13.4	14.0	14.7	14.9	15.4	15.5	16.2
Asians	5.2	6.2	7.2	8.0	8.6	9.6	9.8	10.7
Women	74.0	73.3	73.4	72.1	72.3	70.9	71.6	72.6
<b>Security and commodity brokers</b>								
Minorities	32.3	34.5	37.8	37.9	37.3	40.9	40.7	40.8
Blacks	20.3	20.6	22.0	21.7	21.0	23.3	22.1	21.8
Hispanics	8.8	9.7	11.0	11.2	11.1	11.8	12.4	12.6
Asians	3.0	3.7	4.6	4.8	4.9	5.6	5.8	6.1
Women	59.1	62.9	61.2	62.1	61.6	62.2	62.8	63.2
<b>Finance industry</b>								
Minorities	46.5	49.4	51.5	51.4	50.8	51.8	51.3	52.0
Blacks	30.3	31.4	31.6	30.8	30.2	30.2	29.1	29.2
Hispanics	11.4	12.2	13.2	13.5	13.4	13.7	14.1	14.3
Asians	4.4	5.4	6.5	6.9	7.0	7.6	7.8	8.2
Women	71.6	72.7	72.2	71.7	70.8	69.9	70.4	70.8

SOURCE: EEOC data

## Appendix C: Subpoena Duces Tecum Used to Obtain Documents from Banks and Securities Firms

### Item

1. Any and all documents, including but not limited to, memoranda, compilations or computer-generated print-outs, or other writings evidencing all position names and/or job titles for the most recent thirty-six (36) month period at [company name] that are classified on the Equal Employment Opportunity Commission's (EEOC's) EEO-1 form as "officials and managers," "professionals" and "sales workers."
2. Any and all documents including, but not limited to vacancy announcements, memoranda, compilations, administrative policies, regulations, or other writings setting forth or relating to the minimum qualifications, if any, for each of the positions/job titles provided in response to item 1 above.
3. Any and all documents, including but not limited to, memoranda, compilations, administrative policies, regulations or other writings evidencing (a) the number of vacancies, if any, for each of the positions/jobs listed in response to item 1 for the most recent thirty six (36) month period for which you have such documents; (b) the race/ethnicity (Hispanic, Asian-American, African-American, or white) and gender of the applicants for these vacancies, and (c) the race/ethnicity and gender of all individuals hired for these positions/jobs.
4. Any and all documents, including but not limited to, memoranda, compilations, administrative policies, regulations, or other writings which relate to procedures used by [company name] to obtain applicants for each of the positions/jobs identified in item 1 above, including but not limited to, recruitment programs.
5. Any and all documents, including but not limited to, memoranda, compilations administrative policies, regulations, or other writings which relate to procedures used by [company name] to obtain minority and female applicants for each of the positions/jobs identified in item 1 above, if any, including, but not limited to recruitment programs.
6. Any and all documents, including but not limited to, memoranda, compilations, administrative policies, regulations, or other writings which relate to the [company name]'s program(s) and/or practices, if any, to increase retention and advancement of minorities and women in and to professional and/or managerial positions, including but not limited to, internal mentoring programs.
7. Any and all documents, including but not limited to, memoranda, compilations, administrative policies, regulations, or other writings which describe [company name]'s current or most recent policy, practice, and/or requirements, if any, for the most recent thirty-six (36) month period regarding the Series 6 and Series 7 examinations and any and all tests governed by the Municipal Securities Rulemaking Board, including but not limited to, employee-employer sponsorship arrangements or financial, leave or other assistance for employees to take the examinations.

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