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M/WBE Capital and Credit Discrimination in New York

“Discrimination in the credit market against minority-owned small businesses can have a devastating effect on the success of such businesses, and even prevent them from opening in the first place.” **- 2010 New York State Disparity Study**

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“…a firm is more likely to be denied credit when it is minority owned by an order of magnitude.” **- United States Small Business Administration Office of Advocacy, 2014**

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Executive Summary

Since The Black Institute's first report on disparities related to M/WBEs in April, 2015, and the subsequent series of citywide town hall forums hosted by The Black Institute and The New York City Council Women's Caucus, there has been a significantly increased focus on the plight of New York M/WBEs. However, while reform measures being introduced in New York City and New York State seek to address disparities in public contracting, there is a more fundamental inequality: access to capital. Hedge funds are not investing in M/WBEs, venture capital firms not are knocking on M/WBE's doors, and depository banks not are giving M/WBEs fair loans.

It's been clear for decades that M/WBEs face incredible discrimination in credit and capital markets. The 2010 New York Disparity Study commissioned by Empire State Development found that many M/WBE firms "face serious obstacles in obtaining credit that are unrelated to their creditworthiness, industry, or geographic location," and concluded that "the evidence is strong that African-American-owned firms and often other M/WBE firms as well face large and statistically significant disadvantages in the market for small business credit." A 2014 analysis of the national Survey of Small Business Finances found that "a firm is more likely to be denied credit when it is minority owned by an order of magnitude." A 2012 survey by the National Federation of Independent Businesses revealed that 19% of small business owners fund their business through the proceeds from a mortgage. Hispanic and African-American owned firms are more likely than any other business to rely on owner equity, such as mortgages, for start-up capital, while women-owned businesses are half as likely as male-owned ones to successfully obtain business loans from banks. Women and minority-owned firms are significantly more likely to need to finance their businesses with personal credit cards. These issues regularly drive M/WBEs to bankruptcy.

The purpose of this report is to assess the need for capital investment in New York minority- and women-owned businesses, demonstrate the ability and responsibility of New York State and New York City to address capital discrimination towards New York M/WBEs, and recommend policies and practices that would end discriminatory capital. The Black Institute is demanding policies that will:

1.) Direct 1% of New York City Pension Fund investment towards M/WBEs in New York City.

2.) Direct 1% of New York State Pension Fund investments towards M/WBEs across New York State.

3.) Create $1.6 Billion dollars of fair-rate loans to M/WBEs from New York Depository Banks.

4.) Diversify New York City and State depository institutions.

5.) Establish M/WBE requirements in state and federal Community Reinvestment Acts

6.) Establish a New York State Public Bank.

What are M/WBEs?

Minority and women-owned business enterprises, or M/WBEs, are a category of businesses that are addressed in various laws and regulations at the Federal, State, and City level. Although many firms qualify as both minority and women-owned, and they are generally addressed by the same laws and face similar challenges, the term M/WBE represents two distinct designations, MBEs and WBEs.

Broadly speaking, minority-owned business enterprises, or MBEs, are registered businesses that are more than 51% owned by members of ethnic or racial minority groups. However, there is some variance in the definition of minority from jurisdiction to jurisdiction. The United States Census Bureau defines minority owned businesses as firms or businesses in which 51% or more of the equity, interest, or stock is owned by “Hispanics, Blacks or African Americans, American Indians and Alaska Natives, Asians, Native Hawaiians and Other Pacific Islanders, and/or… some other race not classified as ‘White non-Hispanic’.”[1] For the purposes of administering targeted economic programs, New York State further restricts the definition, to “(a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.”[2] For the purposes of city-wide economic programs, New York

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[1] "Definitions of Common Terms." *Survey of Business Owners.* United States Census Bureau, n.d. Web.

[2] New York State Executive Law Article 15-A

City local law defines minorities as "Black Americans; Asian Americans, and Hispanic Americans," although there is significant regulatory discretion to add groups.[3] Functionally, any racial or ethnic group recognized by New York State as eligible for MBE certification is also considered to be eligible for New York City MBE certification.

> ***"…there is no expiration date for bigotry and no dollar threshold for discrimination."***

Women-owned business enterprises, or WBEs, are firms in which 51% or more of the equity, interest, or stock is owned and controlled by women. The United States Small Business Administration, or SBA, adds the additional requirement that the firm in question must be primarily managed by one or more women.[4] That requirement is not explicitly mirrored in the laws of New York City and New York State.

MBEs and WBEs are often addressed jointly in laws, because they face a similar set of economic challenges related to historic and ongoing patterns of discrimination. These challenges include lack of administrative support, systemic exclusion from public bids, and, most crucially, a lack of access to capital.[5]

Although many M/WBE programs nationwide are restricted either by the size, the age, or the value of the company in question, The Black Institute has chosen to focus on minority and women-owned businesses regardless of

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[3]Administrative Code of the City of New York, § 6-29 (c)

[4]"Women Owned Small Business Program." *SBA.Gov*. United States Small Business Administration, 7 Oct. 2010. Web.

[5] For more information regarding the non-capital challenges faced by M/WBEs, see The Black Institute's August 2015 report, "We're Serious, and We're Not Alone". https://www.theblackinstitute.org

certification status. This decision comes down to two factors: one of practicality and one of principle. As a practical matter, collected economic datasets tend to track race, ethnicity, and gender independently of any state or local M/WBE certification. As a mater of principle, The Black Institute believes that there is no expiration date for bigotry and no dollar threshold for discrimination.

The Capital Gap

During The Black Institute's 2015 M/WBE New York Town Hall Series, participants repeatedly mentioned raising capital as a challenge to the success of their business.[6] These concerns are far from isolated. Surveys since 1993 have consistently recorded the fact that minority and women-owned firms are more troubled by "financing and interest rates" than those owned by non-minority members and men. As the 2010 New York Disparity Study commissioned by Empire State Development commented, "Discrimination in the credit market against minority-owned small businesses can have a devastating effect on the success of such businesses, and even prevent them from opening in the first place."[7]

There is significant statistical evidence for claims of credit discrimination. The same 2010 analysis of business disparity found that many M/WBE firms "face serious obstacles in obtaining credit that are unrelated to their creditworthiness,

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[6] Lockman, Martin, and Michael Thomas. We're Serious, and We're Not Alone. Rep. The Black Institute, n.d. Web.

[7] *The State of Minority- and Woman- Owned Business Enterprise: Evidence from New York.* Rep. N.p.: NERA Economic Consulting, 2010. *Empire State Development.* New York State Department of Economic Development, 29 Apr. 2010. Web.

industry, or geographic location."[8] NERA Economic Consulting, the group responsible for conducting the survey, concluded that "the evidence is strong that African-American-owned firms and often other M/WBE firms as well face large and statistically significant disadvantages in the market for small business credit."[9][10] A 2014 analysis of the national Survey of Small Business Finances found that "a firm is more likely to be denied credit when it is minority owned by an order of magnitude," and concluded that "minority-owned firms are disproportionately denied credit when they need and apply for additional credit."[11]

These real and perceived liquidity issues are significant obstacles to the growth and longevity of M/WBEs, and place significant financial strain on the owners of these companies. As a 2014 study of the City of Seattle's contracting noted, discriminatory lending practices make M/WBEs even more vulnerable to the late payments and nonpayments that plague small businesses.[12] Additionally, restricted working capital likely contributes to the systemic lack of administrative and technical support that cripple minority business growth.[13] A 2012 survey by the National Federation of Independent Businesses revealed that 19% of small

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[8] *The State of Minority- and Woman- Owned Business Enterprise: Evidence from New York.* Rep. N.p.: NERA Economic Consulting, 2010. *Empire State Development.* New York State Department of Economic Development, 29 Apr. 2010. Web.

[9] *The State of Minority- and Woman- Owned Business Enterprise: Evidence from New York.* Rep. N.p.: NERA Economic Consulting, 2010. *Empire State Development.* New York State Department of Economic Development, 29 Apr. 2010. Web.

[10]For a more in-depth review of statistical disparities in capital markets, we direct you to the full text of NERA Economic Consulting's 2010 New York Disparity Study.

[11] Cole, Rebel A. *Credit Scores and Credit Market Outcomes: Evidence from the Survey of Small Business Finances and the Kauffman Firm Survey.* Rep. United States Small Business Administration Office of Advocacy, Jan. 2014. Web.

[12]Herrera, Lucero E., Saba Waheed, Tia Koonse, and Clarine Ovando-Lacroux. "Exploring Targeted Hire: An Assessment of Best Practices in the Construction Industry." Issue brief. UCLA Labor Center, (March 2014) Web. July 2015.

[13]Thomas D. Boston. *Leading Issues in Black Political Economy,* Transaction Publishers, 2002, p. 496

business owners fund their business through the proceeds from a mortgage.[14] Hispanic and African-American owned firms are more likely than any other business to rely on owner equity, such as mortgages, for start-up capital, while women-owned businesses are half as likely as male-owned ones to obtain business loans from banks. Women and minority-owned firms are significantly more likely to need to finance their businesses with personal credit cards.[15]

All of these issues combine to create a business environment that is actively hostile and discriminatory towards minority- and women-owned businesses.

Capital Demands and Capital Discrimination in New York

In 2012, the United States Survey of Business Owners identified more than 1.1 million minority- and women-owned firms in New York State, totaling more than $185 billion of annual sales and receipts. This number almost certainly is a low estimate - between 2012 and 2016 there has been a significant growth of new business in the W/MBE sphere. However, an increasing body of evidence shows that these businesses are fundamentally underfunded.

[14] *Small Business, Credit Access, and a Lingering Recession*. Rep. National Federation of Independent Business Research Foundation, Jan. 2012. Web.

[15] "Frequently Asked Questions: Small Business Financing." *United States Small Business Administration.* United States Small Business Administration Office of Advocacy, Feb. 2014. Web.

The New York M/WBE Marketplace		
M/WBE Category	**Number of Firms in New York State**	**Annual Sales, Receipts, or value of Shipments**
Minority-owned Businesses*	709,021	$99,557,288,000
Minority-owned/Male-owned	356,570	$73,394,732,000
Minority-owned/Woman-owned	330,048	$19,050,699,000
Nonminority-owned/ Woman-owned	394,553	$85,763,335,000
Total M/WBE	**1,103,574**	**$185,320,623,000**
2012 Census Survey of Business Owners. 15 Dec. 2015. Raw data. N.p.		
**Due to incomplete survey answers and the number of firms that have shared male/female ownership, numbers for minority-owned/male-owned and minority-owned/woman-owned firms do not represent 100% of minority-owned businesses.*		

Many analyses substitute small business data for M/WBE data. This can often be a useful assumption - the overwhelming majority of M/WBEs are small businesses (as, for that matter, are the majority of non-M/WBEs), and any enumerated list of challenges faced by small businesses will overlap significantly with challenges faced by M/WBEs. However, minority- and women-owned businesses at every stage of growth have structurally different relationships to credit and capital than non-minority businesses. The "small business model" fails to plan for the growth and success of minority- and women-owned businesses, by ignoring these fundamental demographic differences.

A 2013 Small Business Administration study of the capital profiles of growing companies shows the deep gaps in capital access across demographic groups. In the study, black and hispanic firms attract half as much outside equity investment as those owned by white men. Woman-owned companies attract only a quarter as much outside equity investment as their male-owned counterparts, and those firms are almost twice as reliant on debt backed by the personal assets of the business owner than the average firm. Across the board, women and minority-owned businesses are far more reliant on the personal resources of the business owner than non-minority male-owned companies.[16]

In the face of this data, the challenge becomes clear. Targeted investment in minority- and women-owned businesses must be structured to meet the current capital and credit needs of M/WBEs, while in the long term reducing M/WBE entrepreneurs' exposure to personal debt and establishing equity networks to support M/WBEs.

Capital Profiles of M/WBEs

Capital Investments	White	Black/Hispanic	Female	Male
Owner Equity	9.1%	13.1%	12.7%	9.1%
Insider Equity	2.1%	0.5%	0.2%	2.3%
Outsider Equity	11.3%	7.1%	3.0%	12.8%
Owner Debt	4.5%	6.6%	8.0%	4.0%
Insider Debt	8.8%	9.1%	13.6%	8.3%
Outsider Debt	64.1%	63.6%	62.5%	63.5%

* "Insider" in this context refers to funds obtained outside of formal structures - social networks, professional networks; any non-institutional source.

Robb, Alice. *Access to Capital among Young Firms, Minority-owned Firms, Women-owned Firms, and High-tech Firms.* Rep. United States Small Business Administration Office of Advocacy, Apr. 2013. Web.

[16] Robb, Alice. *Access to Capital among Young Firms, Minority-owned Firms, Women-owned Firms, and High-tech Firms.* Rep. United States Small Business Administration Office of Advocacy, Apr. 2013. Web.

New York Small Business Financing (2015)	
Business Financing Instrument	**Application Rate by Financial Product (percent of total applicants)**
Loan/Line of Credit	**85%**
Credit Card	**39%**
Equity Investment	**7%**
Deal-oriented Capital (factoring, trade credit, etc.)	**16%**
Leasing	**10%**
Other	**6%**

2015 Small Business Credit Survey. Rep. The Federal Reserve Bank, Mar. 2016. Web. 6 Mar. 2016.

Depository Banks

> ***"If the banks are so friendly, how come they chain down the pens?"* - Alan King, Comedian**

It is impossible to discuss access to credit and capital for any entity without discussing depository banks. Private banks play a significant role in the management of public dollars as taxpayer funds circulate through private financial institutions. Banks hold government deposits and provide services such as investment, financing and credit card transactions. These responsibilities are the purview of a few well-established banks, know as depository banks.

The delegation of public funds to private banks is an important component of economic policy. By their decisions on where to deposit their funds and entrust their investments, governments can influence banks' behavior and induce them to comply with certain requirements and public policy goals, such as investing in community development or lending to disadvantaged businesses.

Diversification of depository institutions and requirements for M/WBE lending fairness have been consistently overlooked by New York State and the federal government. Even though there are 51 minority-owned banks in the United States (six of them in New York) and 169 minority depository institutions (13 of them in New York), no minority-owned bank has contracts with the City or the State.[17] While all commercial banks are regulated by either the federal and state Community Reinvestment Acts, neither monitors lending to minority and women-owned business enterprises.

Even though there are 51 minority-owned banks in the United States (six of them in New York) and 169 minority depository institutions (13 of them in New York), no minority-owned bank has contracts with the City or the State.

[17] "Minority Depository Institution Program." *Minority Depository Institutions*. Federal Deposit Insurance Corporation, 2015. Web.

New York State Depository Funds

New York State's depository banks are designated single-handedly by the Comptroller, at the request of individual agencies. In FY2014, the State's cash deposits amounted to $10 billion, $4 billion of which were invested in the short-term investment pool (STIP). State agencies currently have 202 active unexpired contracts with 42 banks, for a total of $13.7 billion. Of these, 51 contract for a total of $291 million are classified "revenue generating." Wells Fargo Bank NA has the largest amount of State contracts, for a total of more than $599 million.[18]

Although the State Comptroller is the sole designator of depository bank status for New York State, such designation is guided by a set of rules and regulations. Depository banks must be commercial banks (barring the exceptions mentioned below), must pledge collateral for all deposits, and must complete a thorough deposit security assessment.[19]

NY State Banking Law Section 96-d authorizes the designation of savings banks and savings and loan associations as depositaries under the "banking development district program."[20] The program is intended "to encourage the establishment of bank branches in geographic locations where there is demonstrated need for banking services." This grant of authority under the Banking Law is scheduled to expire on January 1, 2017.

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[18]The State of New York. Open Book New York. Office of the New York State Comptroller. NYS Active Contracts. *Open Book New York.* Web.

[19] "Community Reinvestment Act Ratings and Performance Evaluation Public Summaries." *Department of Financial Services.* New York State Department of Financial Services, n.d. Web. 2 Feb. 2016.

[20] "Banking Development District Program." Department of Financial Services. New York State, n.d. Web.

Furthermore, GML Sections 10(2)(a)(ii) and 11(2)(a)(2) authorize participation in a deposit placement program in which the local government's monies are redeposited in one or more banking institutions[21].

Deposit placement programs allow local governments to authorize their designated depository bank or trust company to arrange for the "redeposit" of the local government's funds in one or more banking institutions. Under this program, an FDIC-insured bank or trust company divides a local government's deposits into multiple deposits, all under the FDIC limit, and then deposits in that amount are made into other FDIC-insured banking institutions, thereby increasing the available FDIC coverage. At the same time, each of the banking institutions into which a piece of the original deposit was made makes a "reciprocal deposit" back into the bank or trust company that holds the local government's original deposit. Local governments are also authorized to use deposit placement programs for investments.[22]

Unlike New York City, the Financial Reporting Department of the Office of the New York State Comptroller does not appear to maintain a centrally approved list of designated depository banks. New York State "maintains approximately 3,000 bank accounts for various purposes at locations throughout the State. Cash deposits in the State Treasury are under the joint custody of the State Comptroller and the Commissioner of Taxation and Finance. Cash balances not required for immediate use are invested in a

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[21] Ibid.

[22] DiNapoli, Thomas. "Deposit Placement Programs." Letter to New York Chief Fiscal Officers. Nov. 2012. Office of the New York State Comptroller. New York State Office of the State Comptroller, n.d. Web.

short-term investment pool (STIP) administered by the State Comptroller or by the fund custodian to maximize interest earnings."[23] In FY2014, the State's cash deposits amounted to $10 billion, $4 billion of which were invested in STIP. The State's main checking account is with Key Bank.[24]

Despite the diversity of New York State funds and accounts, the market is largely dominated by a few large banks. Seventeen designated depository banks have active multi-year contracts with the State of New York.[25] Although these contracts are not strictly limited to financial services, together, public contracts direct more than $840 million dollars a year towards these seventeen depository banks.

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[23]"XVI.4.A Cash and Investments." *Guide to Financial Operations*. Office of the New York State Comptroller, 1 Jan. 2015. Web. <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XVI/4/A.htm>.

[24]DiNapoli, Thomas P. *State of New York Financial Condition Report*. Rep. Office of the New York State Comptroller, 2014. Web. <http://www.osc.state.ny.us/finance/finreports/fcr/2014fcr.pdf>.

[25] Wachovia, the eighteenth bank, is now wholly owned by Wells Fargo as of 2009.

New York State Depository Bank	Number of Active State Multi-year Contracts*	Average Annual Contracted Capital**
Bank of America NA	9	$2,932,000
Citibank NA	10	$324,421,000
TD Bank NA	3	$131,603,000
JP Morgan Chase Bank NA	30	$36,946,000
State Street Bank and Trust Company	4	$38,824,000
Wells Fargo Bank NA	20	$107,086,000
WEX Bank	3	$51,368,000
Manufacturers and Traders Bank	15	$11,761,000
Citizens Bank Rhode Island	2	$20,000
Key Bank NA	4	$359,000
The Bank of New York Mellon	13	$7,566,000
Wachovia Bank NA* **	1	$16,000
Bayerische Landesbank	1	$219,000
Barclays Bank	2	$27,025,000
Royal Bank of Canada	1	$73,765,000
Bank of Montreal	1	$27,534,000
US Bank NA	23	$367,000
TOTAL	**142**	**$841,812,000**

**Includes contracts that have expired in 2015, but have not been paid in full.*

***Contracted capital includes fees for banking services, nonbanking services, and established lines of credit and capital. Estimated annual average is determined by dividing the current contract amount by the term of the contract.*

****As noted elsewhere in this report, Wachovia is now wholly owned by Wells Fargo Bank NA*

New York City Depository Funds

New York City's depository funds and financial management contracts, while more publicly accessible, are no more diverse than those of New York State. In FY 2015, New York City held $6 billion worth of cash deposits in its designated depository banks. The list of those banks is set biennially by the 3-member Banking Commission, which consists of the Mayor, the Comptroller, and the Commissioner of Finance. In practice, 10 banks handle most of the City's operations (which in FY2015 consisted of $90 billion in revenue and the same amount of spending, including $23 billion in payroll and $15 billion in contracts). New York City's bank accounts are managed by the Treasury Division of the Department of Finance, whose employees are charged to "ensure that City funds are deposited only in approved banks with appropriate collateral and manage the City's banking relationships."[26] The City has 121 active multi-year contracts with these banks, including 98 expense contracts (for a total of $753.5 million) and 23 revenue contracts (for a total of $230 million).[27]

Although 21 banks have been designated by the commission (as of May 28th, 2015), only ten have only ten of these 21 banks have active contracts with the city. These 10 banks are Amalgamated; Bank of America N.A.; Citibank, N.A.; HSBC Bank USA; JP Morgan Chase NA; State Street Bank & Trust; TD Bank NA; The Bank of New York Mellon; US Bank

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[26] "Divisions - Department of Finance." *NYC.Gov*. New York City, n.d. Web.

[27] "Contracted Depository Banks." *CheckbookNYC*. Office of the New York City Comptroller, n.d. Web.

New York City Depository Bank	Number of Active City Contracts	Average Annual Fees*
State Street Bank and Trust Company	14	$15,957,000
JP Morgan Chase Bank NA	18	$19,602,000
Wells Fargo Bank NA	11	$11,813,000
Bank of America NA	14	$9,217,000
TD Bank NA	3	$1,279,000
The Bank of New York Mellon	5	$2,327,000
State Street Bank and Trust Company	30	$19,777,000
US Bank NA	2	$2,452,000
HSBC Bank	1	$362,000
Expense Contract Total	**98**	**$82,786,000**
Amalgamated Bank	1	$150,000
State Street Bank and Trust Company	7	$3,895,000
JP Morgan Chase Bank NA	3	$58,000
Wells Fargo Bank NA	11	$12,006,000
Citibank NA	1	$2,000
Revenue Contract Total	**23**	**$16,111,000**
TOTAL	**121**	**$98,897,000**
Estimated annual average is determined by dividing the current contract amount by the length of the contract.		

National Association; and Wells Fargo Bank NA.[28] [29] Together these banks hold more than $900 million of active public contracts, averaging over $82

[28] The City of New York. New York City Banking Commission. *Designated Depository Banks*. New York City Banking Commission, 28 May 2015. Web.

[29] "Contracted Depository Banks." *CheckbookNYC*. Office of the New York City Comptroller, n.d. Web.

million in annual fees from expense contracts and another $16 million in annual fees from revenue contracts.[30]

Part of the reason for the drastically difference in scale between New York State and New York City annual depository fees is the different way in which the value of contracts are calculated. Many New York State contracts include significant lines of credit for the contracted institutions, that can easily reach hundreds of billions of dollars. Although one of the benefits for any depository institution is an increased pool of capital, the publicly stated position of the New York City Department of Finance's Treasury Division (which negotiates contracts with the banks) is that interest rates on government deposits are proprietary information and therefore unavailable to the public. Part of the justification given by the Treasury is that the disclosure of a rate negotiated with one of the banks would negatively affect negotiations with another. However, the total amount of interest revenue on city funds collected from 773 different accounts (almost all of it by the Comptroller's Office) was set in the modified budget for FY 2015 at $8.535 billion.[31] This suggests that there are significant capital incentives for New York City depository banks that go beyond simple contracted fees.

There are 11 designated New York City depository banks that have no active contracts with the City of New York. These include: Capital One N.A., Flushing Bank, HAB Bank, IDB Bank, Modern Bank, MUFG Union Bank, New York Commercial Bank, Popular Community Bank, Santander Bank, Signature Bank, and Victory State Bank.

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[30] "Contracted Depository Banks." *CheckbookNYC*. Office of the New York City Comptroller, n.d. Web.

[31] Stringer, Scott. Comments on New York City's Fiscal Year 2015 Adopted Budget. Rep. Office of the New York City Comptroller, July 2014. Web.

To be designated by the Commission, a bank must submit an application and fulfill a number of regulatory requirements. One of the major requirements for doing business with the city is compliance with the federal and state-level Community Reinvestment Acts (CRA).[32] Alongside CRA compliance, NYC depository banks must meet interest requirements on the City's cash deposits. The relevant regulation regarding interest states that "no bank shall be designated or shall remain designated pursuant to these rules unless … it shall agree to pay into the City treasury interest or to provide the City with equivalent value on the daily balances at a rate which the Banking Commission shall negotiate according to the current rate of interest upon like balances deposited in banks in the City by private persons or corporations."[33]

Predatory Lending and New York Depository Banks

New York State and City depository banks play an enormous role in credit and capital markets. The four largest depository banks for New York State and New York City, JP Morgan Chase, Wells Fargo, Bank of America, and Citibank, jointly control almost $7 trillion in assets. In 2015, their average quarterly commercial and industrial loans topped $500 billion.[34] According to the Federal Reserve's 2015 survey of small business credit, 94% of small businesses credit applicants turned to small or large banks to

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[32]Pub. L. 95-128, 91 Stat. 1147 (1977) (codified as amended at 12 U.S.C. §§ 2901-2908).

[33] Rules of the City of New York, Title 22, Banking Commission, §1-03 Designation Requirements

[34] "2015 Filings." Bank Filing Updates. IBankNet, 31 Dec. 2015. Web. 1 Mar. 2016.

supply their need.[35] In 2015, 63% of New York small businesses seeking loans or lines of credit looked to large banks.[36]

Depository Bank Lending - Fiscal Year 2015 (Top Commercial and Industrial)		
Depository Bank	**Total Assets (including assets under management)**	**2015 Quarterly Commercial and Industrial Loans**
1.) Bank of America NA	$2143 Billion	$180.9 Billion
2.) Wells Fargo Bank NA	$1,610.6 Billion	$158.4 Billion
3.) JP Morgan Chase Bank NA	$1,914.7 Billion	$104.2 Billion
4.) US Bank NA	$417.5 Billion	$67.9 Billion
5.) PNC Bank	$348.3 Billion	$65.0 Billion
6.) Citibank NA	$1.299.9 Billion	$56.5 Billion
"2015 Filings." Bank Filing Updates. IBankNet, 31 Dec. 2015. Web. 1 Mar. 2016.		

Given the enormous role that banks like Chase and Wells Fargo play in the commercial and industrial capital market, it is impossible to talk about capital access for M/WBEs without talking about the persistent and wide-spread patterns of discrimination present in New York State and New York City's depository banks.

The 2008 financial crisis and recession exposed a disturbing pattern of systemic discrimination and racism in the lending patterns of many of New York's banks. As the collapse of the sub-prime mortgage market shed light on lending patterns across the country, some of the largest depository institutions in New York City and New York State proved to be among the most discriminatory.

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[35] *2015 Small Business Credit Survey.* Rep. The Federal Reserve Bank, Mar. 2016. Web. 6 Mar. 2016.

[36] Ibid.

Bank of America, the depository bank with the largest commercial and industrial lending portfolio, settled a lawsuit in 2011 for $335 million that alleged that they had discriminated against 200,000 African American and Hispanic borrowers over a four year period.[37] According to then-Attorney General Eric Holder, Bank of America had steered African American and Hispanic borrowers who qualified for Prime Loans into the higher interest rate Subprime Loans in order to extract higher fees.[38] Subsequently, Bank of America was sued by the City of Miami over similar allegations of predatory subprime loan practices in minority community.[39] Wells Fargo, the second largest commercial and industrial lender, settled a similar case in 2012 with the Department of Justice for $175 million, which charged that Wells Fargo had systemically charged qualified African American and Hispanic borrowers higher fees than their white counterparts.[40] JP Morgan Chase is currently fighting a similar suit from the City of Miami, claiming that Chase steered minority homeowners towards predatory loans.[41]

Bank-by-bank data on loans to minority and women-owned businesses is hard to come by. Still, ignoring the obvious fact that many businesses are supported at first by personal credit and equity there is ample

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[37] "Bank of America Settles Discrimination Suit for $335M." CBSNews. CBS Interactive, 21 Dec. 2011. Web. 28 Feb. 2016.

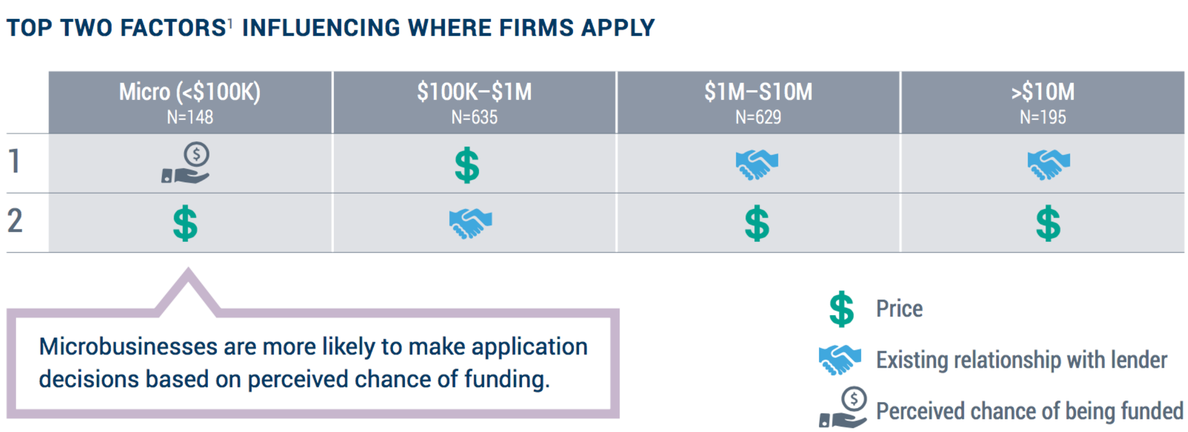
[38] "Bank of America to Pay $335M to Settle Countrywide Case of Alleged Racial Bias." PBS. PBS, 21 Dec. 2011. Web. 10 Mar. 2016.

[39] City of Miami vs. Bank of America Corporation, Bank of America N.A., Et Al. United States Court of Appeals for the Eleventh Circuit. 1 Sept. 2015. *Www.uscourts.gov.* United States Courts, n.d. Web.

[40] "Justice Department Reaches Settlement with Wells Fargo Resulting in More Than $175 Million in Relief for Homeowners to Resolve Fair Lending Claims." *Justice News*. United States Department of Justice, 10 Aug. 2014. Web. 1 Mar. 2016.

[41] City of Miami vs. JP Morgan Chase Bank N.A. United States District Court Southern District of Florida. 13 June 14. *Financial Services Watchblog.* N.p., n.d. Web.

evidence to suggest direct prejudice in commercial and industrial credit markets. A 2013 survey of access to capital by the United States Small Business Administration found that black and hispanic business owners were three times more likely than white business owners to not apply for a loan out of fear that their loan would be denied. Of the business owners who did apply, black and hispanic applicants were half as likely as white applicants to be successful, while acceptance rates for women trailed men across every racial and ethnic group.[42]



2015 Small Business Credit Survey. Rep. The Federal Reserve Bank, Mar. 2016. Web. 6 Mar. 2016.

In the context of broader trends in the business world, an aversion to large bank financing makes sense for minority and women-owned businesses. Overwhelmingly, businesses chose their funding sources based on existing relationships, along with price and the perceived chance of getting funded.[43] Lending institutions with well-documented histories of discrimination and predatory lending will, without real targeted outreach, be

[42] Robb, Alice. *Access to Capital among Young Firms, Minority-owned Firms, Women-owned Firms, and High-tech Firms.* Rep. United States Small Business Administration Office of Advocacy, Apr. 2013. Web.

[43] *2015 Small Business Credit Survey.* Rep. The Federal Reserve Bank, Mar. 2016. Web. 6 Mar.

inherently hostile toward minority borrowers. The predatory nature of New York's large bank commercial and industrial credit markets explains the incredible rates of denial and discouragement for New York businesses. Of surveyed New York companies that didn't seek financing in 2015, 23% refrained because they had been discouraged from doing so; twice the rate of businesses in Connecticut and Pennsylvania. Only 48% of New York businesses who applied to a large bank for financing received it, and 67% received less than they requested - a higher rate of underfunding than any surveyed state except Florida. 30% of those businesses were unable to meet their business expenses because of it, or relied on personal funds to do so.[44]

New York State, to its credit, has recognized the gap that exists between the credit needs of the M/WBE community and the credit market offered by large banks. The Linked Deposit Program (LDP), administered by Empire State Development and funded by private banks and a $560 million commitment from the Office of the State Comptroller, attempts to offer affordable capital through 20-year subsidized term loans, leveraging deposits to secure favorable interest rates from banks. The LDP offers a 2% interest rate reduction to firms below a certain size, and offers an additional 3% reduction to certified M/WBEs, along with other groups, on loans of up to $2 million. However, funding is limited to M/WBEs with state or federal procurement projects.[45]

> ***"In 2014, the last year for which reports have been published by Empire State Development, only two certified M/WBEs received funding through the Linked Deposit program."***

[44] *2015 Small Business Credit Survey.* Rep. The Federal Reserve Bank, Mar. 2016. Web. 6 Mar.

[45] Annual Report to the Governor and Legislature - 2015. Rep. Empire State Development, 2015. Web. 1 Mar. 2016. <http://esd.ny.gov/businessPrograms/Data/LinkedDeposit/LDP2015AnnualReport.pdf>.

Due to the limited scale of the program and the restrictions on access to the reduced-rate loans, the "dollars-on-the-street" impact of this program on the financial wellbeing of M/WBEs is dubious at best, and illusory at worst. Of the 19 New York State and New York City depository banks with multi-year contracts, only seven currently participate in the linked deposit program: Bank of America, TD Bank, HSBC Bank, CitiBank, Manufacturers & Traders Bank, Key Bank, and Citizens Bank of Rhode Island. The results of this participation have been utterly inadequate. In 2014, the last year for which reports have been published by Empire State Development, only two certified M/WBEs received funding through the Linked Deposit program.[46]

Regulation and CRA Requirements

In New York, the main tools that regulate banking institutions interactions with the communities they ostensibly serve are the federal and New York State Community Reinvestment Acts, or CRAs. These acts provide a framework for assessing and rating a bank's obligation to meet the credit needs of its local community. New York State evaluates the community development performance of its regulated banks, which includes funding of affordable housing for low-and-moderate income families, community services targeted towards low-and-moderate income individuals,

[46] Annual Report to the Governor and Legislature - 2015. Rep. Empire State Development, 2015. Web. 1 Mar. 2016. <http://esd.ny.gov/businessPrograms/Data/LinkedDeposit/LDP2015AnnualReport.pdf>.

small-business financing, activities aimed at revitalizing geographic communities, and activities designed to prevent foreclosures.[47]

Neither the federal government nor New York State have punitive measures included in their CRAs. However, CRA compliance is regularly evaluated in a variety of ways, and poor performance or noncompliance can be used as grounds for denying approval for mergers, opening new branches, or new applications for deposit facilities.[48]

There are significant limits to the New York State CRA. The most glaring gap is the lack of regulatory authority over nationally certified banks. In fact, the New York State CRA only regulates banks chartered within New York. Functionally this means that, of the seventeen[49] banks with active multi-year contracts within the New York State contracting system, only four operate under the New York State CRA: The Bank of New York Mellon, Manufacturers and Traders Bank, Amalgamated Bank, HSBC Bank USA.[50] Manufacturers and Traders Bank received an "outstanding" in its most recent evaluation, while The Bank of New York Mellon and Amalgamated Bank received "satisfactory" evaluations. HSBC Bank USA has never received a New York State CRA rating.[51]

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[47]"FAQs About CRA Exams and Ratings." *Department of Financial Services*. New York State Department of Financial Services, n.d. Web.

[48]"Community Reinvestment Act (CRA)." Federal Reserve Bank. Board of Governors of the Federal Reserve Bank, 11 Feb. 2014. Web.

[49] Although 18 banks hold multi-year contracts within the New York State contracting system, Wachovia was purchased by Wells Fargo in December of 2008, effectively consolidating their contracts.

[50] JP Morgan Chase NA and Citibank NA have branches that are subject to New York CRA regulation. However, neither national association is subject to those requirements, and all outstanding contracts in the New York State contracting systems mark the national associations as vendors.

[51] "Community Reinvestment Act Ratings and Performance Evaluation Public Summaries." *Department of Financial Services.* New York State Department of Financial Services, n.d. Web. 2 Feb. 2016.

In 2012 New York City attempted to create its own regulatory system for depository banks with Local Law 38, also known as the Responsible Banking Act (RBA). The goal of this law was to ensure that city depository banks were responsive to the needs of local small businesses and community organizations. However, New York City was sued by the New York Banker's Association, and in August 2015 the RBA was struck down in its entirety by the U.S. District Court, in a ruling stating that city action on this subject was preempted by federal and state laws.[52]

The federal Community Reinvestment Act provides that "regulated financial institutions have [a] continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered."[53] A federal regulatory agency must "assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods ... and ... take such record into account in its evaluation of an application for a deposit facility by such institution."[54] Comments on a bank's performance submitted by members of the public are taken into account as part of the bank's CRA examination.

Likewise, the New York State CRA (passed in 1978 as §28-b of the New York State Banking Law) provides for an "an assessment, in writing, of the record of performance of the banking institution in helping to meet the credit needs of its

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[52] The New York Bankers Association, Inc., vs. The City of New York. United States District Court Souther District of New York. 7 Aug. 2015. Print.

[53] 12 U.S.C. § 2901(a)(3).

[54]Public Law 95-128, 95th Congress, H.R. 6655 .

entire community, including low and moderate-income neighborhoods."[55] Neither the federal nor the New York State CRA contain any mention of M/WBEs; New York's first-ever M/WBE program was adopted in 1988, ten years after its CRA. The CRA has not since been amended.

Compliance with the CRA is certified by regular examinations. A New York City designated deposit bank must "retain throughout the designation period a minimum state CRA rating of "2" or its equivalent as determined by the New York State Banking Department and a minimum federal CRA rating of "Satisfactory" or its equivalent ..."[56] Federal CRA examinations and ratings are provided by several institutions, including the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS); the uniformity of these examinations and reporting is maintained by the Federal Financial Institutions Examination Council (FFIEC).[57]

Despite widespread recognition of discriminatory business lending patterns, regular examination of loans to and investment in M/WBEs is not included in either the federal or state Community Reinvestment Acts. Although recent disparity studies in the New York State market suggest significant discrimination in business loans, no steps have been taken by the New York State legislature to expand the New York CRA to scrutinize these loans.

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[55] "Adopted Regulations." *NYSBD Selected Regulations.* New York State Department of Financial Services, 7 Jan. 2007. Web.

[56] Community Reinvestment Act Performance Evaluation. Rep. New York State Banking Department, 31 Dec. 2009. Web.

[57] "Interagency CRA Ratings." *FFIEC Interagency CRA Rating Search.* Federal Financial Institutions Examination Council, n.d. Web.

Publicly Managed Investment Funds

Current investment patterns significantly discriminate against creditworthy minority and women owned businesses. However, that discrimination offers a unique opportunity to large, stable investors. New York State controls the third largest pension fund in the United States, with over $184.5 billion in net assets as of the end of Fiscal Year 2015 (July 1st, 2014 to June 31st, 2015). New York City administers five pension funds, with a total investment portfolio valued at $162.9 billion as of the end of Fiscal Year 2015. Between them, the city and state funds represent almost $350 billion in investment capital. With experience managing significant private equity, fixed income, and real estate investments, and a time horizon that allows them to benefit from long-term economic growth as well as direct investments, New York City and New York State are well-positioned to substantially address the credit gap.

While the fundamental responsibilities of the New York City and State Comptrollers as trustees of public pension funds are to ensure the sustainable long-term growth of those funds, those obligations don't preclude socially responsible investment. Indeed, it is the position of The Black Institute that the New York City and State comptrollers have an obligation, as chief fiscal officers, to invest in a way that promotes the long-term economic and social health of New York City and New York State. We believe that by investing significantly in systemically undervalued minority and women-owned business enterprises, New York City and State have the opportunity to not only produce market-rate returns, but to substantially grow the economy of New York in a way that reduces race and gender-based income inequalities.

New York State Investments

New York State controls the third largest pension fund in the United States, with over $184.5 billion in net assets as of the end of Fiscal Year 2015. These pension funds are invested in a variety of ways, with the goal of producing substantial, predictable, and reliable returns in order to enable New York State to meet its pension obligations. The New York State Common Retirement Fund (CRF) currently has an anticipated rate of return of 7%, down from 7.5%. This reflects volatility in the stock market since the end of Fiscal Year 2015, which reduced the total value of the CRF by almost $11 billion as of the end of the second quarter of Fiscal Year 2016. The numbers in this report reflect FY15, the most recent complete set of fiscal data.

Assets from the CRF are invested in a variety of ways, and reap varying returns. Domestic equities (stock) make up the largest proportion, making up 36.4% of New York State's assets, while international equity and private equity make up another 22.4% combined. Fixed Income assets (mostly treasury securities, bonds, mortgage-backed securities, and similar assets with fixed payment plans) are intended to keep a steady flow of cash to meet monthly pension fund obligations, and make up 25.8% of the CRF assets. 4.5% of assets are invested in Absolute Return Strategies (things like commodity futures, that aim to generate a specific amount of revenue rather than trying to beat the market). 0.7% of the CRF, or about $1.2 billion, is dedicated to opportunistic alternative investments. These are investments that cross between multiple categories, or don't fall under any. 0.2%, the lowest allocation amount, is invested in real assets other than real estate. At the end of FY 2015, real estate made up 6.6% of the pension fund's assets, although current investment plans have a target of 8% allocation. In the last decade, New York State's real estate investments have proven to be one of the most profitable investment classes.

New York State Common Retirement Fund Assets (As of March 31, 2015)		
Asset Type	**Estimated Market Value**	**Percentage of Total Portfolio***
Domestic Equity	$67,219,661,000	36.4%
Global Fixed Income	$47,652,210,000	25.8%
International Equity	$27,073,871,000	14.7%
Private Equity	$14,247,374,000	7.7%
Real Estate	$12,123,440,000	6.6%
Absolute Return Strategy	$8,388,806,000	4.5%
Short-Term Investments	$5,252,486,000	2.9%
Opportunistic Funds	$1,292,161,000	0.7%
Mortgage Loans	$852,955,000	0.5%
Real Assets	$399,080,000	0.2%
Total Investments	**$184,502,044,000**	**100%**

**Percentages may differ slightly from asset allocation figures due to reclassification of certain investments.*

The State of New York. New York State Office of the State Comptroller. Office of the New York State Comptroller. *2015 Comprehensive Annual Financial Report*. By Thomas DiNapoli. New York State Office of the State Comptroller, n.d. Web.

In order to meet its obligations to associated pensioners, the CRF must maintain between a 7% and 8% long-term annualized return. The main drivers of that growth for the last ten years have been the global equity, private equity, and real estate funds. However, the CRF maintains a significant portfolio of Fixed Income and Absolute Return Strategy assets, both to diversify the fund's holdings and to ensure a regular stream of liquid assets.

New York State Common Retirement Fund Rate of Return			
Asset Type	1 Year Annualized	5 Year Annualized	10 Year Annualized
Total Fund	**7.16%**	**10.17%**	**7.12%**
Global Equity	8.16%	11.98%	7.38%
Private Equity	9.18%	13.04%	12.93%
Real Estate	10.41%	16.76%	7.99%
Absolute Return Strategy	5.87%	5.77%	4.59%
Opportunistic Alternatives	6.97%	6.22%	—*
Treasury Inflation-Indexed Securities	3.25%	5.92%	5.13%
Core Fixed Income	5.53%	5.24%	5.65%
Short-term Investments	0.44%	0.39%	1.84%

The State of New York. New York State Office of the State Comptroller. Office of the New York State Comptroller. *2015 Comprehensive Annual Financial Report*. By Thomas DiNapoli. New York State Office of the State Comptroller, n.d. Web.

Economically and Socially Targeted Investment

Beyond the general mandate to produce above-market returns, the New York State Controller has considerable discretion over the disposition of funds. Under the current policies and procedures, significant investment decisions must be approved by a team of people including the Chief Investment Officer and the Comptroller, professional investment staff, and an independent consultant.

However, the Controller is ultimately the sole trustee of the fund, responsible for the investment, oversight, and management of the funds assets.

Socially targeted sector investment is not a new concept for the New York State Common Retirement Fund. In Fiscal Year 2009 the CRF established the Green Strategic Investment Program, with the goal of environmentally-focused investment in areas like clean energy, environmental stewardship, and World Bank green bonds, which fund low-carbon development globally. These investments, which were started with an investment commitment totaling $500 million between 2009 and 2012, were most recently expanded with a $300 million dollar commitment in Fiscal Year 2015 to the "Rockefeller Global Sustainability & Impact Strategy".[58] New York State's real estate and mortgage investments, too, are often designed to affect social change. Under the Affordable Housing and Permanent Loan Program of 1991, New York State recognizes the long-term value of investing in environmentally friendly properties, and many of the properties in the real estate portfolio are LEED certified (Leadership in Energy & Environmental Design, a designation that denotes adherence to environmentally friendly practices in construction and operation).[59]

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[58] The State of New York. New York State Office of the State Comptroller. Office of the New York State Comptroller. *2015 Comprehensive Annual Financial Report.* By Thomas DiNapoli. New York State Office of the State Comptroller, n.d. Web.

[59] Ibid.

The Common Retirement Fund also invests in programs dedicated to targeted business development. The New York State Private Equity Investment Program operates to "expand the availability of capital for New York State Businesses." As of the end of FY 2015, in part thanks to investment commitments to that program, the New York State Common Retirement Fund had $1.2 billion invested in more than 200 New York businesses.[60]

Diversity in the Common Retirement Fund

Under Controller DiNapoli, New York State's commitments to its Emerging Manager program have significantly expanded. Emerging Managers are newer, smaller asset management firms, often minority or women-owned. The New York State Emerging Manager Program invests funds through these managers, which traditionally would be considered too small to compete for state contracts, with the help of intermediary external managers.

While the Emerging Manager program supports diversification among asset managers, and gives M/WBE managers an opportunity to work directly with the CRF, it largely represents a commitment to internal diversity. While New York's Emerging Managers may occasionally invest in minority and women-owned businesses, there's no reason to expect fundamentally different investing styles and strategies from minority managers. In fact, even if Emerging Managers were fully committed to solely investing in M/WBEs, only 28% of investment funds available

[60] The State of New York. New York State Office of the State Comptroller. Office of the New York State Comptroller. *2015 Comprehensive Annual Financial Report.* By Thomas DiNapoli. New York State Office of the State Comptroller, n.d. Web.

to Emerging Managers are allocated in asset classes where M/WBE investment is even possible. The bulk of Emerging Manager funds are directed towards hedge fund investment, domestic equity, and global equity; arenas in which M/WBE investment is nearly impossible.[61]

Commitments to internal diversity and contracting diversity are laudable, but they cannot come at the expense of real investment diversity. Barring funds directed to M/WBEs directly employed by the CRF as asset managers, the New York State Common Retirement Fund has only made minuscule commitments to "dollars-on-the-street" investment in minority- and women-owned businesses.

The only significant policy commitment toward investing in M/WBEs has been the creation of the New York Business Development Corporation, or NYBDC. This organization, created as a partnership between the New York State Common Retirement Fund, the United States Small Business Administration (SBA), and a number of banks and lenders that operate in the New York market. The New York Business Development Corporation, or NYBDC, "underwrites loans to small business in New York State… for working capital, equipment, the acquisition of real property, capital improvements and the refinancing of existing loans." NYBDC loans are, for the most part, guaranteed by the United States Small Business Administration. As of February 2016, rates set by the NYBDC for 20-year Term Loans were 4.78% for loans less than $1 million, and 4.32% for loans greater than $2 million.[62] The New York State Common Retirement Fund has committed $50 million to the program, the vast majority of which goes to male-owned, majority-owned firms. Only 35% of the loans issued by the NYBDC are to

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[61] See Appendix A, "New York State Emerging Managers"

[62] "Loan Information." *NYBDC*. New York Business Development Corporation, n.d. Web. 5 Mar. 2016. <http://www.nybdc.com/>.

minority and/or women owned businesses.[63] This represents a real "dollars-on-the-street" commitment of only $17.5 million to the more than 1.1 million New York minority and women-owned businesses.

New York City Investments

The New York City Retirement System, or NYCRS, is composed of five separate funds: the Teacher's Retirement System, the NYC Employees Retirement System, the Police Pension Fund, the Fire Department Pension Fund, and the Board of Education Retirement System. Together, the funds comprised approximately $162.9 billion in assets as of the end of Fiscal Year 2015.

Allocations across asset types vary by fund. The smaller funds, like the Board of Education Retirement System and the Fire Department Pension Fund, tend to invest more heavily in equities and fixed income investments. Still, they generally reflect the same investment patterns as the NYCRS as a whole.

[63] *Annual Report 2014: Access to Capital for Small Business.* Rep. New York Business Development Corporation, n.d. Web. 2 Mar. 2016. <http://www.nybdc.com/img/uploads/file/NYBDC_2014_AnnualReport_WEB.pdf>.

New York City Retirement System Assets (As of July 31, 2015)		
Asset Type	**Estimated Market Value**	**Percentage of Total Portfolio***
U.S. Equity	$56,579,000,000	34.6%
REITs	$2,503,000,000	1.5%
International Equity	$27,192,000,000	16.6%
Fixed Income	$47,191,000,000	28.9%
Opportunistic Fixed Income	$3,939,000,000	2.4%
Private Equity	$9,943,000,000	6.1%
Real Assets	$6,561,000,000	4%
Hedge Funds	$3,351,000,000	2%
Cash**	$6,282,000,000	3.8%
Total Investments	**$163,539,000,000**	**100%**
**Fixed Income does not include Cash **Cash includes short-term deposits, securities lending, and CD accounts*		

The NYCRS invests 34.6% of its assets in domestic equity, and another 16.6% and 6.1% in international and private equity, respectively. A significant proportion of New York City Retirement Systems' investments are in real estate, either through real estate investment trusts (1.5%) or direct real asset investment (4%). A substantial portion of the account is dedicated to fixed income investments, either standard (28.9%) or opportunistic (2.4%) The remainder is composed of a mix of hedge funds (2%) and cash or short-term securities (3.8%).[64][65][66]

[64] *Performance Overview as of June 30th, 2015*. Rep. Teacher's Retirement System of New York City, n.d. Web.

[65] "Asset Allocations." *NYC Public Pension Funds*. Office of the New York City Comptroller, ND. Web. 1 Nov. 2015.

[66] "NYC Public Pension Funds." Office of the New York City Comptroller Scott M Stringer. Office of the New York City Comptroller, n.d. Web. <http://comptroller.nyc.gov/general-information/pension-funds-asset-allocation/>.

In Fiscal Year 2015, the average return across the New York City Retirement Systems funds was approximately 3.4%. That represents less than half of New York City's target rate of 7.0%. As a result of somewhat lackluster past performances, the NYCRS currently only has 70% of the funds it needs to meet its obligations to its pensioners.

New York City Retirement Systems Returns					
Fiscal Year	**Teachers**	**NYCERS**	**Police**	**Fire**	**Board of Education**
2015	2.78%	3.11%	3.85%	3.29%	3.18%
2014	17.62%	17.04%	17.78%	17.42%	19.47%
2013	11.9%	12.24%	12.28%	11.9%	12.9%
2012	1.85%	1.32%	0.87%	1.1%	0.1%
2011	23.28%	23.12%	23.26%	23.15%	24.19%
Avg. 5 Year	**11.486%**	**11.366%**	**11.608%**	**11.372%**	**11.968%**

"Asset Allocations." *NYC Public Pension Funds*. Office of the New York City Comptroller, ND. Web. 1 Nov. 2015.

Economically and Socially Targeted Investment

New York City has its own targeted investment program, designed to produce returns while also spurring citywide economic growth. The Economically Targeted Investment portfolio, or ETI, is spread across multiple investment types and all five funds, and represents 2% (approx. $3.2 billion, as of the end of Fiscal Year 2015) of the total New York City Retirement Systems investment portfolio. The ETI program is "designed to address market inefficiencies by providing capital or liquidity to under-served communities and populations City-wide."[67] The ETI investment portfolio works to produce market-rate returns while investing in socially and economically desirable programs in New York City. Historically, the program has been focused on funding low-to-middle-income housing in the five boroughs.

The investments of the ETI portfolio, while providing "collateral benefits" to the city in the form of socially and economically advantageous additions to the city's housing market, are also relatively safe. Because the organizations that the ETI portfolio invests in are either building physical structures or providing and buying asset-backed securities (things like mortgages, that are guaranteed by something of tangible value), the investments are relatively safe when compared to things like private equity. Significant ETI investments include the Access Capital Strategies account, an investment program designed to produce reasonable returns while protecting low to moderate-income home purchasers from predatory lending practices by investing in single-family mortgage backed securities, the AFL-CIO Housing Investment Trust, an investment company that funds union-constructed affordable housing across New York, and the Public-Private Apartment Rehabilitation Program, which funds new construction and capital improvements on multifamily buildings across New York City.

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[67]"Economically Targeted Investments - Office of the New York City Comptroller Scott M. Stringer." Office of the New York City Comptroller Scott M Stringer. The City of New York, 04 June 2013. Web. 10 Sept. 2015.

Diversity in the New York City Retirement Systems

The New York City Retirement Systems' commitments to M/WBE inclusion have essentially followed the same pattern set by the New York State CRF, with resources largely committed to a diversification of asset managers. As of the end of Fiscal Year 2015, New York City had 7.6% of the entire NYCRS portfolio, totaling more than $11.7 billion, invested through Emerging Managers across all asset classes. [68] Although the commitment to contracting diversity demonstrated by New York City's Emerging Manager Program is laudable, like that of the CRF, there is no reason to suspect that such a program has any impact on the street-level investments of the NYCRS. In fact, New York City's Emerging Managers are even more constrained than those of the CRF, with the vast majority of funds directed towards Public Equity investments.

Despite an extensive economically targeted investment portfolio and an expressed commitment to diversity, the New York City Retirement Systems have no programs targeted towards investment in minority- and women-owned businesses.

[68] "Description of the Emerging Manager Program of the New York City Retirement Systems." *Office of the New York City Comptroller.* Bureau of Asset Management, 2015. Web.

Models for M/WBE Investment

Given the extensive precedent for socially and macro-economically conscious investment of public pension funds, New York City and State have a variety of tools available to address capital disparities. Both the New York State Comptroller and New York City Comptroller have expressed a commitment to confronting discrimination against women and minority owned businesses, and point to their expanding “Emerging Manager” programs as evidence of that commitment.[69][70][71] However, while efforts to diversify investment managers are commendable, those efforts represent a largely internal commitment to diverse hiring. In focusing on manager diversity, Comptrollers DiNapolli and Stringer have ignored the broader issue of disparate access to capital for M/WBEs statewide.

Despite this reluctance to directly address capital disparities, there is significant evidence that targeted investment in minority and women-owned businesses can be not only practical but profitable. New York City’s Economically Targeted Investment program has consistently produced returns that outpaced its market benchmark, proving that conscientiously-invested targeted programs in the New York City market can successfully generate returns while meeting broader social and economic goals. Additionally, the success Comptroller Stringer has had in managing these investments suggests that New York City has the expertise and

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[69] "Emerging Manager Program." *Office of the New York State Comptroller.* New York State Office of the State Comptroller, n.d. Web. <http://osc.state.ny.us/pension/emerging/index.htm>.

[70] The State of New York. New York State Office of the State Comptroller. Office of the New York State Comptroller. *2015 Comprehensive Annual Financial Report.* By Thomas DiNapoli. New York State Office of the State Comptroller, n.d. Web.

[71] "Description of the Emerging Manager Program of the New York City Retirement Systems." *Office of the New York State Comptroller.* Bureau of Asset Management, n.d. Web. <https://comptroller.nyc.gov/wp-content/uploads/2014/11/NYCRS-EM-Program-Website-Language.pdf>.

sophistication necessary to manage investment in the development of small-scale capital assets for businesses. Multiple models for this type of investment exist, and can be easily and effectively adapted to suit the investment practices of New York City and New York State.

Small Business Investment Companies

One of the easiest and most direct methods for targeted sector investment is the establishment of SBICs. A Small Business Investment Company (SBIC) is a privately owned and operated investment group that is partnered with and licensed through the United States Small Business Administration (SBA). The Federal SBIC program was created in 1958 in response to the challenges faced by small businesses in acquiring capital. The goal of the program was to "stimulate growth in America's small business sector by supplementing the long-term debt and private equity capital available to small businesses."[72] As of March 31st, 2015, SBICs managed $24 billion in private capital and SBA leverage.[73]

SBICs operate under a set of regulations that ensure that they invest in multiple small businesses across a variety of industries. In exchange for following investment regulations designed to promote investment in a broad range of small businesses, SBICs are granted access to SBA leverage (borrowed funds backed by SBA-guaranteed securities). Although performance data for individual SBICs is not public information, the Small Business Administration's Office of Investment

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[72]Askari, Ammar, William Reeves, and Barry Wides. *Small Business Investment Companies: Investment Option for Banks.* Rep. Office of the Comptroller of the Currency, Sept. 2015. Web. <https://www.sba.gov/sites/default/files/article-files/insights-sbic.pdf>.

[73] Ibid.

and Innovation reports that profits from privately managed SBICs compare favorably with industry averages.[74]

While the current SBA program relies on private investment capital backed by public leverage, New York could directly establish and fund SBICs targeted at M/WBE investment. The ongoing success of SBA registered SBICs demonstrates the potential returns of such investments, while the existence of the state-wide M/WBE certification program simplifies the bureaucratic regulation of SBIC investment policies significantly. Existing commitments to expanding the pool of M/WBE certified companies offers a diverse array of potential businesses with which State-financed SBICs can invest. Additionally, targeted capital investment in M/WBEs will encourage the certification and growth of this class of business, further diversifying the pool of potential investments. Given the latent potential of currently under-capitalized M/WBEs, targeted SBIC investment could produce returns significantly above market averages.

Direct Equity Investment

As an alternative to establishing and funding new investment bodies, New York City and State could encourage its current financial managers to invest directly in suitable M/WBEs. Although the New York City and State M/WBE categorization makes it essentially impossible for a publicly traded company to qualify as an M/WBE, direct investment of publicly managed funds through private equity programs is a reasonable alternative. M/WBE firms at all stages of growth could benefit significantly from access to non-discriminatory venture

[74] Ibid.

capital. Private equity investment programs could help more M/WBEs transition from small business enterprises to large and established companies.

Capital Loan Programs

Another form investment could take is the provision of fair-rate capital loans. The demonstrated success of New York City and New York State's real estate investment portfolios indicates that both retirement systems can successfully manage real asset investment. It would be relatively simple for New York City and State to expand current affordable real estate investment programs to target capital improvements to M/WBEs as well. This is consistent not only with the current (and profitable) investment policies of the NYCRS ETI portfolio, but with the stated goals of the ETI portfolio to address credit disparity and reduce predatory lending.

The main advantage of targeting M/WBE investment through capital loan programs is security. New York City and State have demonstrated significant success in managing asset-backed securities. Additionally, investment in capital improvements for M/WBEs fits in with the New York State Common Retirement Fund's stated Fiscal Year 2016 asset reallocation policies, which call for an increase in real estate investment from 6.6% of the CRF portfolio to 8%[75]. Given the current and historic strength of the New York real estate market, it's hard to argue that such expansion can't be safely made through investments in New York markets. Investment in other types of real asset, while slightly more complicated, provide the same sort of security. Capital investment of any type in M/WBEs would address aspects of the credit disparity while providing relatively safe returns to investors.

[75] The State of New York. New York State Office of the State Comptroller. Office of the New York State Comptroller. *2015 Comprehensive Annual Financial Report.* By Thomas DiNapoli. New York State Office of the State Comptroller, n.d. Web.

Project-oriented Capital

A demonstrated trait of the current M/WBE economy is a low rate of equity investment and, further, a low willingness to immediately seek equity investment. Investment products that direct capital towards building capacity for large-scale projects without an equity stake in the associated M/WBE company offer an opportunity to build wealth and capacity without exposing pension funds to the associated risks of small-scale private equity investment. A small to mid-scale factoring product, which finances the completion of existing contracts and is backed by the value of the contract, would allow many M/WBEs to significantly expand the scope of their operations without taking on long-term debt or surrendering control of their company.

Community Reinvestment Act Requirements

Another avenue of investment in M/WBEs is through Community Reinvestment Act requirements. The allocation of New York State and New York City depository funds is a powerful tool to incentivize private sector action, and current CRA requirements ignore M/WBE lending and diversification entirely. Management of short-term New York City and State deposits can and should be determined by the managing institution's willingness to provide non-discriminatory, fair-rate loans to New Yorkers. Additionally, the loan and investment policies of any banking institution with which New York City or New York State does business should be scrutinized to discourage redlining and predatory lending practices. Directed investment policies and loan incentives would cost taxpayers almost nothing, while providing significant stimulus to New

York-based community banks and the communities they serve. Additionally, the provision of fair-rate loans would establish the type of enduring relationship that would reduce credit discrimination in the long term.

A New York State Public Bank

One of the major hurdles in regulating the action of lending institutions at the city and state level is the complicated legal status of such institutions. The legal preemption and eventual overturning of New York City's Responsible Banking Act is an example of the complications that can accompany direct banking regulations. As an alternative (or accompaniment) to expanded CRA requirements, New York can follow the lead of other states like North Dakota in establishing a public bank for the State of New York. Such an action would reduce the substantial costs that financial operations place on municipalities across New York State. More importantly, it would also establish a controllable and truly neutral lender, which could grant fair and nondiscriminatory loans to businesses across the state.

Conclusion

Pervasive and widespread discriminatory practices have created a two-tiered economic system, in which minority and women-owned business enterprises are systemically undercapitalized and undervalued. Public investment by New York City and New York State has ignored the demonstrated capital needs of M/WBEs, while supporting financial institutions that actively discriminate against minority clients. The exclusive club of New York City and New York State depository banks receives almost $1 billion dollars every year from the taxpayers of New York, while perpetuating predatory and discriminatory lending practices that keep minority and women-owned businesses small, underfunded, and poor.

New York State Comptroller DeNapoli and New York City Comptroller Stringer, together with Governor Cuomo and Mayor DeBlasio, have the ability to end discrimination in New York's credit and capital markets. M/WBEs represent not only a sound financial investment for New York City and State, but a fundamental building block of social wellbeing and economic growth. Expanding the socially and economically targeted investment portfolios of the New York State Common Retirement Fund and the New York City Retirement Systems to integrate M/WBE investment would be a simple commitment to existing goals, and spur growth in some of New York's most vulnerable communities. Demanding commitments to fair-rate credit for M/WBEs, diversifying New York's depository institutions and placing M/WBE requirements in the New York Community Reinvestment Act would spur ongoing private sector investment in minority communities across New York.

It is the responsibility of Comptroller DiNapoli and Comptroller Stringer to recognize the potential of M/WBEs, make good on their longstanding commitments to the social and economic future of New York, and create real and substantial investment in minority and women-owned businesses. It is the responsibility of Governor Cuomo and Mayor DeBlasio to ensure that New York's depository banks treat all of our communities fairly, and commit to the elimination of credit discrimination through targeted fair-rate loans. With targeted investment and fair credit markets, New York can put the final nail in the coffin of discriminatory capital and ensure the growth and prosperity of our communities for generations to come. As the United States grows more diverse, there is a practical and ethical obligation to ensure that minority- and women-owned businesses are no longer held back.

Policy Demands

1.) New York City should expand the Economically Targeted Investment portfolio of the New York City Retirement Systems by 1% (approximately $1.6 billion as of the end of Fiscal Year 2015). New investments in the ETI portfolio should be targeted towards fair-value investment in capital expansion for underserved minority and women-owned businesses across the five boroughs.

2.) New York State should allocate 1% (approximately $1.8 billion as of the end of Fiscal Year 2015) of the New York State Common Retirement Fund to capital and equity investment in minority- and women-owned businesses across the state.

3.) New York City and State governments, through their depository banks must set up a funding pool for minority- and women-owned businesses capital needs, directing $1.6 billion of the total amount of annually circulated commercial deposits towards this funding.

4.) The New York State and New York City legislatures must review the current practices of contracting with commercial banks and designating them as official government depository institutions, to ensure the inclusion of minority- and women-owned financial institutions, as well as community banks, in government contracting for financial services.

5.) New York State and federal Community Reinvestment Acts must be amended to include M/WBE lending requirements to be followed by government contractors in the financial industry.

6.) The New York State legislature should move toward the establishment of a state-owned public bank, along the lines of the Bank of North Dakota, and in furtherance of the resolution adopted by the U.S. Conference of Mayors in June 2015.

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