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The Fight for Fair Investment

Public Investment in New York M/WBEs

Research and Writing by Martin Lockman, Michael Thomas, and Dmitri Glinski

Table of Contents

Executive Summary

Since The Black Institute's first report on disparities related to M/WBEs in April, 2015, and a 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. The policy recommendations produced by The Black Institute's reports have intensified the legislative push for reform. However, while current reform measures being introduced in New York City and New York State seek to address disparities in public contracting, there remains a more fundamental inequality: access to capital. The purpose of this report is to look at ways in which New York City and New York State can address the growing need for fair and equitable capital access for M/WBEs.

In this report, The Black Institute looks at the disposition of New York City and New York State investment funds, and proposes policy interventions on three fronts: the NYC Comptroller, the State Comptroller and the state's depository banks. We advocate for:

1. A $1.6 billion expansion of the New York City Retirement System's Economically Targeted Investment portfolio, focused on investing in minority- and women-owned enterprises.
2. A $1.8 billion investment in socially and economically disadvantaged businesses across New York State from the New York State Common Retirement fund.
3. The establishment of a depository bank funding pool for minority- and women-owned business start-up capital needs,directing 1% of the total amount of annually circulated commercial deposits towards this funding
4. Review by the New York State and New York City legislatures of commercial bank contracting and depository designations to ensure the inclusion of minority- and women-owned financial institutions and community banks.
5. The amendment of New York State and federal Community Reinvestment Acts to include M/WBE lending requirements.
6. The establishment of a state-owned public bank in furtherance of the resolution adopted by the U.S. Conference of Mayors in June 2015.

What are M/WBEs?

Minority and women-owned business enterprises, or M/WBEs, are a category of businesses 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 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.

Women-owned business enterprises, or WBEs, are firms in which 51% or more of the

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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

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

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]

The Credit Gap

The current challenges faced by minority and women owned businesses must be viewed in the context of larger trends tied to de facto and de jure segregation. By the 1960s, a majority of American blacks had migrated north of the Mason-Dixon line to industrial belt cities seeking respite from the crucible of Jim Crow segregation. This exodus coincided with two concurrent shifts: the flight of white Americans to newly constructed suburbs and the loss of hundreds of thousands of entry-level manufacturing jobs in industrial cities. This economic and social shift was directly facilitated by the American government as it diverted funds from cities and increased its investment on highway construction and industrial growth in non-urban areas. Most of the major companies in the manufacturing industries that had propelled the postwar boom began to automate production and relocate into white suburban areas.[6]

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

[5] For more information regarding the specific 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

[6] Sugrue, Thomas J. *The Origins of the Urban Crisis* (Princeton: Princeton UP, 2005), 6-8

The physical relocation of economic growth was driven by discriminatory lending policies that were explicitly supported by the American government. During the Great Depression, the Federal Housing Authority established a loan program that revolutionized the housing market and greatly increased rates of home ownership among white Americans. If a bank offered a loan conforming to FHA criteria it would be assured 90% of the value of the mortgage. However, the FHA was exclusionary by design and practice, and actively worked to prevent African Americans from qualifying for these loans. Until 1951, racially restrictive covenants were institutionalized as part of the FHA loan process. Though the practice was nominally abandoned after an NAACP challenge, the FHA continued the process of exclusion by requiring that a neighborhood be "credit worthy." In a process known as redlining, black neighborhoods were invariably deemed ineligible for FHA loans. Segregation was built into the American urban structure by federal policy.

Institutionalized spatial segregation both facilitated and exacerbated the poverty that was created by urban disinvestment. Segregation was a key feature in the onset of urban blight. With credit and capital access largely determined by existing credit relationships, "creditworthiness", and geographic lending history, minority communities were locked out of the economic growth that the rest of the country was experiencing.

The effects of those longstanding trends and practices persist. Access to investment capital has long been recognized as a hurdle for minority and women-owned businesses. 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.[7] 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.”[8]

Alongside personal stories, 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, industry, or geographic location.”[9] 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.”[10][11]

These real and perceived liquidity issues are significant obstacles to the growth and longevity of M/WBEs. As a 2014 study of the City of Seattle’s contracting noted,

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

[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] Ibid.

1938 Home Owner’s Loan Corporation “Neighborhood security map” of Brooklyn. Areas marked in red denote, among other things, neighborhoods inhabited by minorities and immigrants. Maps like this were used to inform lending practices.

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

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

Publicly Managed Investment Funds

While current investment patterns significantly discriminate against creditworthy minority and women owned businesses, 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. Additionally, the comptrollers manage the disposition of the city and state depository funds. Between them, the city and state funds represent almost $350 billion dollars in investment capital, and the respective comptrollers control more than $100 billion through managed depository accounts. With experience managing significant private equity and real estate investments, and a time horizon

[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

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.

Assets from the New York State Common Retirement Fund (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. All data from New York State's 2015 Annual Comprehensive Financial Report*

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".[14] 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, mortgages for over 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).[15]

The Common Retirement Fund also invests in multiple programs dedicated to socially targeted business investment. 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."[16] During FY 2015, the NYBDC made $19.5 million dollars worth of loans to small businesses.

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[14] 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.

[15] Ibid.

[16] Ibid.

Meanwhile, 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.[17]

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%
All data from New York State's 2015 Annual Comprehensive Financial Report			

[17] 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.

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 comprise approximately $162.9 billion in assets as of the end of Fiscal Year 2015.

Although 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 pattern as the New York State Common Retirement Fund.

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%).[18][19][20]

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

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

[20] http://comptroller.nyc.gov/general-information/pension-funds-asset-allocation/

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 are "designed to address market inefficiencies by providing capital or liquidity to under-served communities and populations City-wide."[21] 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, the AFL-CIO Housing Investment Trust, and the Public-Private Apartment Rehabilitation Program.

The Access Capital Strategies account (ACS) is an investment program designed to produce reasonable returns while protecting low to moderate-income home purchasers from predatory lending practices. The account invests in single-family mortgage backed securities, with the goal of providing fairly priced mortgage loans to borrowers near or below the area

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[21]"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.

median income. The AFL-CIO Housing Investment Trust (HIT) is an investment company that funds union-constructed affordable housing across New York, while the Public-Private Apartment Rehabilitation Program (PPAR) funds new construction and capital improvements on multifamily buildings across New York City.

The ETI 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 sophistication necessary to manage investment in the development of small-scale capital assets for businesses.

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*

Public Depository Funds

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.

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. While banks are required to comply with the federal and state Community Reinvestment Acts, neither includes specific requirements for lending to minority and women-owned business enterprises.

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 $291M are classified "revenue generating." Wells Fargo Bank NA has the largest amount of State contracts, for a total of $519M.

Unlike New York City, the Financial Reporting Department of the Office of State Comptroller (OSC) New York State 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 short-term investment pool (STIP) administered by the State Comptroller or by the fund custodian to maximize interest earnings."[22] 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 KeyBank.[23]

[22]"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>.

[23]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>.

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.” 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. 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” as defined in Banking Law Section 9-r.

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, for the account of the government 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.

New York City Depository Funds

New York City's depository funds and financial management contracts, while more publicly accessible and more 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."

The City has 68 active multi-year contracts with these banks, including 56 expense contracts (for a total of $687.8M) and 12 revenue contracts (for a total of $10M). 12 of expense contracts with five banks, for a total of $56.9M, are managed by the Department of Finance and associated with the City's cash deposits. These include a contract with Citibank for holding the central treasury account; two contracts with Wells Fargo and one with Chase for lockbox services; and one with BoNY Mellon for the use of its ClearTran electronic and online bill payments system.

New York State Active Multi-year Contracts (As of FY2016)		
Vendor	Number of Contracts	Dollar Amount
Wells Fargo Bank N A	9	$518,900,000
JP Morgan Chase Bank NA	13	$365,100,000
WEX Bank	1	$256,600,000
TD Bank National Assoc	1	$223,600,000
Royal Bank of Canada	1	$221,300,000
Barclays Bank PLC	1	$188,300,000
Citibank NA	7	$138,600,000
State Street Bank and Trust Company	1	$110,700,000
Bank of Montreal	1	$82,600,000
Key Bank NA/KeyBank National Association	11	$29,900,000
PNC Bank NA	1	$19,300,000
Manufacturers & Traders Bank	4	$12,500,000
Bank of America NA Public Sector Banking	4	$8,900,000
The Bank of New York Mellon	6	$7,200,000
Bayerische Landesbank	1	$3,900,000
US Bank National Association	2	$964,208
Wachovia Bank NA	1	$330,000
Citizens Bank Rhode Island	1	$100,000
TOTAL	**66**	**$2,188,794,208**

The list of banks most recently designated by the Commission (on May 28, 2015) is as follows:

1. Amalgamated Bank
2. Bank of America, N.A.
3. Capital One N.A.
4. Citibank, N.A.
5. Flushing Bank
6. HAB Bank
7. HSBC Bank USA
8. IDB Bank
9. JPMorgan Chase Bank
10. Modern Bank
11. MUFG Union Bank
12. New York Commercial Bank
13. Popular Community Bank
14. Santander Bank
15. Signature Bank
16. State Street Bank
17. TD Bank
18. The Bank of New York Mellon
19. U.S. Bank
20. Victory State Bank
21. Wells Fargo Bank

However, 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 National Association; and Wells Fargo Bank NA*.

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).[24] Alongside CRA compliance, NYC depository banks must meet interest

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

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."

The publicly stated position of the Department of Finance' 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.

NYC Department of Finance Contracts (FY2016)		
Vendor	Number of Contracts	Dollar Amount
Wells Fargo Bank N A	6	$27,229,629
Citibank, N.A.	2	$16,769,948
JPMorgan Chase Bank NA	2	$12,049,950
The Bank of New York Mellon	1	$636,362
TD Bank NA	1	$180,000
TOTAL	12	$56,865,889

Office of the Comptroller Contracts (FY2016)			
Vendor	Number of Contracts	Contract Type	Dollar Amount
JP Morgan Chase Bank NA	15	Expense	$311,882,107
Wells Fargo Bank NA	5	Expense	$190,394,195
Bank of America NA	9	Expense	$56,235,569
State Street Bank & Trust	4	Expense	$27,960,764
US Bank National Association	2	Expense	$20,354,923
The Bank of New York Mellon	4	Expense	$11,064,165
TD Bank NA	2	Expense	$11,037,000
HSBC Bank USA	1	Expense	$8,899,096
Subtotal	**42**	**Expense**	**$637,827,820**
State Street Bank & Trust	5	Finance	$7,762,000
JP Morgan Chase Bank NA	1	Finance	$1,200,000
Amalgamated Bank	1	Finance	$450,000
Subtotal	**7**	**Finance**	**$8,412,000**
TOTAL	49		$646,239,820

Community Reinvestment Act and City Regulations

The most powerful checks on depository institutions in New York State 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, small-business financing, activities aimed at revitalizing geographic communities, and activities designed to prevent foreclosures.[25]

New York City attempted to create its own regulatory system for depository banks in 2012 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.[26]

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

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[25] http://www.dfs.ny.gov/banking/crafaqs.htm

[26] Cite this

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.[27]

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."[28] 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."[29] Importantly, comments on a bank's performance submitted by members of the public are supposed to be taken into account as part of the bank's CRA examination.

Likewise, the New York State CRA (passed in 1978 as §28-b of its 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 entire community, including low and moderate-income neighborhoods."[30] 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, but the CRA was never amended since then. And the state Banking Law does not really require the banks to report on the types of loans they have made on a regular basis. Thus, in the section titled 'Reports of lending by banking organizations', it states:

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[27]http://www.federalreserve.gov/communitydev/cra_about.htm

[28] 12 U.S.C. § 2901(a)(3).

[29]https://fraser.stlouisfed.org/scribd/?title_id=1027&filepath=/docs/historical/congressional/community-reinvestment-1977.pdf#scribd-open.

[30]http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:

“The superintendent may require every banking organization to submit from time to time data on its mortgage loans, home improvement loans, or other loans and data on its deposits."[31]

Compliance with CRA is certified by regular examinations. A NYC 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 ..." 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).

Despite widespread recognition of discriminatory business lending patterns, as well as the Loans to or investment in M/WBEs are 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.

Nevertheless, a number of designated depository banks have made individual commitments in this area, however modest. Wells Fargo, which boasts of being one of the leading lenders to women-owned businesses (WBEs), has announced plans to lend them $55 billion by the year 2020 (although this represents a minuscule percentage of its overall portfolio of loans, valued at $800 billion per quarter). The private establishment of such commitment

[31] “§ 36-a.

programs suggests that good actors exist in the private lending sector. The success of established CRA requirements in influencing the practices of private lending institutions proves that public scrutiny of M/WBE lending could be a powerful force in reducing credit discrimination.

Models For Sector 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.[32][33][34] As of the end of fiscal year 2015, New York State has placed $5.4 billion of pension funds into the hands of emerging managers, while investing almost $9.4 billion through M/WBE asset managers.[35] The New York City Retirement Systems (NYCRS) have invested

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[32]"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>.

[33] 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.

[34]"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>.

[35]"Empowering New York's M/WBEs." *Office of the New York State Comptroller*. Office of the New York State Comptroller, July 2015. Web.

$12 billion with Emerging Managers and M/WBE managers.[36] 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 are several existing models for successful and fiscally responsible sector investment that would allow New York City and New York State to encourage the growth of M/WBEs.

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 business 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."[37] As of March 31st, 2015, SBICs managed $24 billion in private capital and SBA leverage.[38]

SBICs operate under a set of regulations that ensure that they invest in multiple small

[36] *Description of the Emerging Manager Program of the New York City Retirement Systems* (2015): n. pag. *Bureau of Asset Management.* Office of the New York City Comptroller, July 2015. Web.

[37] 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>.

[38] Ibid.

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 and Innovation reports that profits from privately managed SBICs compare favorably with industry averages.[39]

While the current SBA program relies on private investment capital backed by public leverage, the retirees of New York would be better served by direct investment of public funds in establishing 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.

[39] Ibid.

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. While equity investment might not be a suitable avenue of capital for many smaller M/WBEs, larger firms could benefit significantly from access to non-discriminatory venture 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 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, which are typically . Barring significant changes to demographic trends exhibited throughout New York State, real estate investment in New York markets . Additionally, investment in physical capital loans to businesses 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%[40]. 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.

Community Reinvestment Act Requirements

Another avenue of investment in M/WBEs is through Community Reinvestment Act requirements. The disposition 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.

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[40] 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.

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 accompany 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 reduce the substantial costs that financial operations place on municipalities across New York State. More importantly, however, it would also establish a controllable and truly neutral lender, which could grant fair and nondiscriminatory loans to businesses across the state.

Conclusion

Longstanding discriminatory practices have created a two-tiered economic system, in which minority and women-owned business enterprises are systemically undercapitalized and undervalued. 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 for the City and State. 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. It is the responsibility of Comptrollers DiNapoli and Stringer to recognize the potential of M/WBEs, and make good on their longstanding commitments to the social and economic future of New York.

Policy Recommendations

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 and their depository banks must set up a funding pool for minority- and women-owned businesses start-up capital needs, directing 1% 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.