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The One Percent Solution

Unlocking Sources of Capital
for New York's Minority- and
Women-Owned Businesses



THE ONE PERCENT SOLUTION:

Unlocking Sources of Capital

for New York's Minority- and Women-Owned Businesses

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EXECUTIVE SUMMARY

In the two years since the launch, on the steps of New York City Hall, of our Fair Share campaign for minority- and women-owned businesses (M/WBEs), we identified discrimination in lending and other barriers in access to capital as the key constraint that is holding them back. In this third installment in our series of reports on M/WBEs, we seek to identify available sources of capital that can be used to address the lack of access to fair credit and other financial support required to equalize the opportunities for M/WBEs in New York. Specifically, we look into the two sets of institutions over which New York State and City governments have either direct control or influence through business relationships involving public funds. These institutions are, first, public pension systems and the firms to which they entrust their investments; and, second, large banks that serve as depositories of State and City funds.

Private investment firms managing public retirement funds control vast financial resources while also deriving a political advantage that opens further access to large-scale business opportunities. One glaring example is BlackRock, known as the world's largest 'shadow bank.' It is the only firm contracted by the Federal Retirement Thrift Investment Board (FRTIB) to manage *\$254 billion* in the federal Thrift Savings Plan. This is more than all the funds of New York City Retirement Systems and than the entire annual budget of a country like Russia. And while African-Americans comprise *18%* of the federal civilian workforce, according to BlackRock's own reports, just *3.5%* of its employees and *only one* of its 21 executives are Black.

While New York State and City public pensions' investments present a more diverse picture, their managers, as well as investment firms and other contractors reaping huge benefits from the handling of these funds, can and should do significantly more to help close the capital access gap for M/WBEs at large, not just those in the investment business. The two NYS pension funds – Common Retirement Fund and Teachers Retirement Fund – have *\$300 billion* in total investments; of these, just *5.6%* are invested with M/WBE firms. As for New York City, the data provided by the City Government do not disclose the exact amount of funds invested with M/WBE firms, as these numbers are lumped together with data for

the so-called emerging managers (a group that typically includes M/WBEs but is rather loosely defined). Thus, out of the \$191 billion investments by NYC's five public pension funds, the total share of funds invested with M/WBEs as well as with emerging managers is six percent. This number stands in sharp contrast with the demographics of the City workforce of which 61 percent are people of color. Meanwhile, \$830 million of NYS pension funds and close to \$600 million of NYC pension funds are paid "off the top" in fees to consultants, lawyers and other private entities. These numbers put both the City and the State in an unfavorable light - for example, in comparison with the state of Illinois, whose five pension funds taken together report 13 percent of their funds either invested with or managed by M/WBEs, while paying only \$360 million to consultants and other professional services firms for assistance with managing these funds.

Further, both the City and the State pay large sums every year to major banks, for serving as depositories of public funds and for other services. NYC pays these banks \$588 million per year, while the State's annual payments to them amount to \$7 billion. Most of these banks have their reputation tarnished by their overall historical record of credit discrimination and the role that their predatory lending practices played in the onset of the Great Recession, as exposed in the lawsuits filed by the cities of Miami, Los Angeles, Philadelphia, and others. In spite of this, they maintain their privileged business relations with governments, while minority-owned banks remain excluded from this club. The present federal and state Community Reinvestment Acts (CRAs) are not sufficiently robust or thoroughly implemented to compel these banks to practice fair lending to minorities and their businesses. And the Republican Congress' move to repeal the Dodd-Frank Act of 2010 (whose M/WBE-related Section 1071 has not even been implemented) further exacerbates this situation.

In light of these findings, The Black Institute calls upon New York State and New York City Governments to work out what we call a "one-percent solution:" that is, develop policies and make decisions that would allow for one percent of City and State pension fund investments— as well as one percent of City and State payments to banks, consultant firms, and other professional service providers— to be set aside and allocated toward closing the capital gap faced by local M/WBEs. To restore New York's national leadership on the issues

of racial and economic justice, Governor Cuomo, Mayor De Blasio, and other elected officials must act now.



OUR FAIR SHARE CAMPAIGN FOR M/WBES, 2015-2017: AN OVERVIEW

In April 2015, The Black Institute released our first report on the barriers faced by New York’s M/WBES in securing an equitable share of contracts in the public sector.¹ At the time M/WBES’ share of New York City contracts stood at meager four percent (\$690 million) per year, in spite of the much higher overall participation goals set by NYC’s Local Law 1 of 2013. As for the New York State government, even though its officially publicized data at the time showed substantial achievement, with over twenty-five percent (close to \$2 billion) in public contracts allocated to M/WBES, this data was not being presented in a sufficiently transparent, accessible and easily verifiable way.

Our report provided an overview of M/WBES’ share and role in the economy, of the history of legislation on their participation in government contracts, and of the obstacles they continue to face. It noted that the legislation and the political decisions by City and State governments establishing specific M/WBE participation goals in contracting failed to achieve their intended results. A key reason for this is the absence of a legal—mandatory— requirement to ensure specific levels of M/WBE participation in contracting (which is caused in part by past court rulings creating a notion that such a requirement would be unconstitutional). As a result, government agencies have been limiting their responsibilities with regard to M/WBE participation to showing that they were making their ‘best’ or ‘good faith’ efforts to meet the established goals. Additionally, M/WBES have faced other barriers to government contracting, especially in terms of access to capital, coupled with the government’s significant delays in payment for completed work. On top of that, M/WBES’ ability to function as a tool for reducing racial and gender disparities was hampered by inequalities among these firms, including the advantages enjoyed by the firms owned by white women over minority-owned companies, as well as legally questionable practices, exemplified by women fronting for de facto male owners in order for them to take advantage of M/WBE status (the so-called ‘men in skirts’ phenomenon).

¹ Dmitri Daniel Glinski and Bertha M.Lewis, ‘Not Good Enough: The Myth of ‘Good Faith and Best Efforts’ / Report on Minority- and Women Owned Businesses’, [https://d3n8a8pro7vnm.cloudfront.net/theblackinstitute/pages/417/attachments/original/1474574651/Not_Good_Enough_Report_\(1\)_1.pdf?1474574651](https://d3n8a8pro7vnm.cloudfront.net/theblackinstitute/pages/417/attachments/original/1474574651/Not_Good_Enough_Report_(1)_1.pdf?1474574651).

In conclusion, the report set out a list of our Demands for Economic Justice, aimed at narrowing the disparity gap between M/WBEs and the rest of the companies. Specifically, we called for the following changes:

- To establish a more effective government oversight of the implementation of M/WBE-related laws and regulations in New York City, namely, by setting up an M/WBE Advisory Council and a full-time Chief Diversity Officer at the Deputy Mayor level;
- To establish mandatory M/WBE inclusion requirement, instead of ‘aspirational’ goals, in the amount of 35% of NYC total contracting budget;
- To legally require any for-profit company that is granted tax privileges or breaks from city or state government to include M/WBE participation in the subcontracting of any of its projects;
- To amend NYC Local Law 1 of 2013 by establishing M/WBE requirements for all city agencies, authorities, commissions, etc.;
- To amend Chapter 862 of New York State Laws of 1990 and New York City Local Law 1 so as to provide equal access for M/WBEs to ‘sole source’ (also known as ‘specialty’) contracting;
- For the NYS and NYC governments to increase the educational portion of M/WBE assistance programs;
- For New York State and City contracting offices to maximize the openness of the bidding process and access to information about available contracting opportunities at the earliest stage of the process, in order to increase transparency; and to make data and statistics on M/WBE participation also more transparent and easily accessible to the general public;
- To ensure the inclusion of minority- and women-led research institutions in developing city and state M/WBE policies;
- Lastly, for the State’s Division of Minority and Women's Business Development (DMWBD) and NYC Small Business Services (SBS) to provide legal and other assistance to M/WBE contractors whose payments are delayed.



The launch of TBI's 'Not Good Enough' report and M/WBE campaign on the steps of NYC City Hall, April 7, 2015.

With the presentation of this report on the steps of New York City Hall was attended by Congresswoman Yvette Clarke, NYS Assemblyman Michael Blake, NYC Public Advocate Letitia James and other government officials. TBI and allies launched our Fair Share campaign, with specific demands to our city and state authorities in order to achieve economic justice for M/WBEs by securing contracting opportunities for them that would reflect the growing share of racial minorities (over 60 percent) and women (over 50 percent) in New York's population and workforce. We then ramped up our campaign: first, with a series of M/WBE town halls, hosted jointly with the NYC Council's Black Latino and Asian Caucus and held across the five boroughs; and then with the publication (in April 2016) of our second report that highlighted a central aspect of M/WBE's disadvantages – disparity in access to credit and other sources of capital, including

outright discrimination by the banking industry.²

In partnership with the City Council's Women's Caucus, we held a series of town halls/forums in each of the five boroughs. Their purpose was to bring M/WBEs together in sharing their experiences and for TBI to have a more in-depth engagement with them in order to gather first-hand information and stories about their struggles and successes. These events were attended by over 300 M/WBE owners from around the city and the Tri-State area with local elected officials to discuss the issues and potential solutions to them.

The material provided by these discussions went into our second report, titled *We're Serious and We're Not Alone*. On their basis, we developed an expanded list of recommendations and outlined them at the end of this second report. Beyond our "Fair Share Amendments" to Local Law 1, these recommendations also included:

- Securing additional opportunities for M/WBEs under other types of certifications, such as Local Business Enterprise (LBE) and Small Business Enterprise (SBE), where public procurement set-asides can be established and legally enforced;
- Amending the New York State law to allow the inclusion of NYC-certified M/WBEs (in addition to the State-certified) in the City's 'best value' procurements, as well as including M/WBEs as subcontractors or joint venture partners in NYC 'best value' awards to prime contractors;
- Improving the NYC Small Business Services database by making it more up-to-date and comprehensive, including descriptions of specific vendor offering, and more resources for agencies and prime contractors to get to know qualified M/WBE firms;
- Requiring agencies and prime contractors to hire consultants for NYC Public Works projects over \$2 million to help them identify M/WBE partners;
- Including M/WBE contracting goals in Project Labor Agreements;
- Establishing a universal M/WBE certification process in place of separate City and State processes, and consolidate NYC agencies' lists of prequalified M/WBE firms;

² 'Access Denied: M/WBE Capital and Credit Discrimination in New York', https://d3n8a8pro7vhmx.cloudfront.net/theblackinstitute/pages/373/attachments/original/1460475709/Access_Denied_4.12.16_Appendices.pdf?1460475709.

- Raising the standard for “good faith effort,” including through more robust communication and outreach requirements, withholding payments for failure to prove a ‘good faith effort’ to find an M/WBE partner, and consolidating all NYC contracting information in one accessible database;
- Penalizing prime contractors for payment delays, with damages paid directly to the offended party, and the possibility of barring repeat offenders from doing business with the City.

Thus, over the past two years, TBI has built a program of research, publications, and advocacy to address the glaring inequalities facing M/WBEs, while our Fair Share campaign has made significant strides. The recommendations outlined in our two reports were reflected in the draft legislation that was developed by the NYC Council’s Women Caucus in close partnership with the Black Leadership Action Coalition (BLAC), a legislative advocacy and lobbying organization. In total, our recommendations went into six bills that were introduced in December 2015, at the joint hearing of the Council’s three Committees - on Contracts, on Small Business, and on Women’s Issues. The purpose of these bills was to address procurement disparities by:

1. Ensuring transparent and accurate reporting of whether M/WBE goals and requirements are being met by the City;
2. Strengthening oversight by establishing an M/WBE advisory board; and
3. Establishing a full-time City government position to oversee the M/WBE program.

Throughout 2016, the BLAC worked with Council members and staff on these bills. All six were unanimously passed by the Council on September 14 and signed into law by Mayor De Blasio on September 28, 2016. These bills included (see their full text in the attachment). :

1. **Intro. 923-A** (sponsored by Councilwoman Laurie Cumbo) - Requiring NYC Department of Small Business Services to submit an annual report on the Economic Development Corporation (EDC) assessment of whether M/WBE participation goals by recipients of economic development benefits were met (including explanations for the reasons of failure in those instances where they were not met);

2. **Intro. 976-A** (sponsored by NYC Public Advocate Letitia James) – Mandating trainings for agencies’ chief contracting officers and M/WBE officers regarding participation of M/WBEs in city procurement;
3. **Intro. 981-B** (sponsored by Councilwoman Cumbo) - Establishing an M/WBE Advisory Board, with its chair and at least 10 members appointed by the Mayor;
4. **Intro. 1005-A** (sponsored by Councilwoman Elizabeth Crowley) – Requiring the 54 City agencies to post their M/WBE utilization plans online;
5. **Intro. 1019-A** (sponsored by Councilwoman Helen Rosenthal) – Expanding M/WBE reporting requirements, from only the contracts for which M/WBE participation goals were set, to all City contracts;
6. **Intro 1020-A** (sponsored by Councilwoman Rosenthal) – Requiring the annual M/WBE report to provide detailed explanations of the determinations made by the City Chief Procurement Officer with regards to whether to divide proposed contracts over \$10 million into smaller contracts.

On the day when this legislative package was signed into law, Mayor De Blasio also announced his goal of awarding to M/WBEs at least 30 percent of the dollar amount of city contracts by 2021. Together with the new laws, this new commitment represented potentially groundbreaking advancements toward more equal opportunity in City contracting – and thus a victory for TBI and our M/WBE allies. Additionally, new and higher commitments to M/WBE participation in public contracting by NY State Governor Cuomo have been much welcome steps in the right direction.

In June 2017, both houses of New York State legislature passed two significant bills affecting M/WBEs. The first bill, sponsored in the Senate by Labor Committee Chair Marisol Alcantara (IDC)—with Sens. Savino (IDC) and Leroy Comrie (D)— and in the Assembly by Alicia Hyndman (D), amended NYC Charter to allow purchases of goods and services of up to \$150,000 to be made with M/WBEs without a formal competitive process. This bill also requires NYC to submit an annual report to State authority on the availability and utilization of M/WBEs in this category.³ The second bill, sponsored in the Assembly by the Chair of the Subcommittee

³ Bill No. S06513B / A08508-A.

on the Oversight of M/WBEs Rodneyse Bichotte (D) and in the Senate by Patty Ritchie (R), eliminates the cap of \$3,500,000 on the personal net worth of business owners who may obtain M/WBE certification;⁴ their business is still required to be a small business as defined by the State’s Executive Law— that is, a business that has no more than 300 employees and is “not dominant in its field.”⁵

And yet the fight is far from over. The lofty commitments of government officials are still undermined by poor implementation and the lack of transparency and thus are not enough to address the depth of the disparities resulting from systemic discrimination conditioned by the entire history of our country. For example, in its latest report, NYS Empire State Development’s Division of Minority and Women’s Business Development indicates a 25.1 percent of statewide M/WBE utilization, i.e. 1.9 billion in contracts; it still does not provide a breakdown of State contractors by race.⁶ And the Office of State Comptroller’s database of contracts on its Open Book NY website does not identify M/WBE contractors, so the ESD claims are hard to verify. As for New York City, while both the Mayor’s and the Comptroller’s Offices provide much more detailed and accessible data on M/WBE contracting, these numbers indicate a glaring gap between promise and implementation: specifically, in Fiscal Year 2016, the actual data on M/WBE utilization by City agencies indicate that the share of M/WBEs in the City procurement has declined—from 5.3 percent in the previous year to **4.8 percent** of the total. This was the first decline of M/WBE’s share in city contracting since FY2013.⁷ Therefore, there is much more that needs to be done on every level of our government— municipal, state, and federal—to equalize the opportunities, and, specifically, access to credit and other forms of capital for M/WBEs.

In addition, there are still seven outstanding demands of economic justice outlined in our reports that still have to be put into practice:

- 1. The citywide M/WBE participation goals that are “aspirational” under the current laws should be replaced with the requirement of mandatory inclusion at 35% of the**

⁴ Bill No. S03018 / A02819.

⁵ New York State Executive Law Article 15-A, § 310-20.

⁶ <https://cdn.esd.ny.gov/mwbe/Data/2016AnnualReport.pdf>.

⁷ <http://comptroller.nyc.gov/reports/making-the-grade/reports/making-the-grade-2016/>.

total contracting budget. This requirement should apply to all agencies, authorities, and commissions.

- 2. The same mandatory minimum of 35% should also be established for subcontracting by the city's prime vendors.**
- 3. The definition of a 'bidder' in NYC contracting law should be expanded to include any individual or entity submitting a bid or proposal in response to a solicitation or seeking a share of public funding and/or incentives, including tax credits or waivers through which the City forgoes its normal fees. Thus, any for-profit company that is granted tax privileges or breaks from city of state government must be subject to legal requirements of M/WBE participation in the subcontracting of any of its projects.**
- 4. The concept of MBE/WBE/EBE 'graduates' should be removed from the law.**
- 5. The law should provide for equal access for M/WBEs to "sole source/specialty" contracting.**
- 6. Requirements of M/WBE share in a joint venture agreement, for the venture to be qualified for a special status with the city, should increase from 25 to 35 percent of the total value of the contract.**
- 7. Enforcement of M/WBE participation provisions should include such penalties for the violators as termination of any or all of their City contracts, suspension, debarment or determination that they are no longer responsible contractors in the legal sense of the term.**

The incorporation of these remaining Fair Share Amendments from our 2015 report into New York City laws would further advance economic justice by closing the disparity gap in access to public procurement.

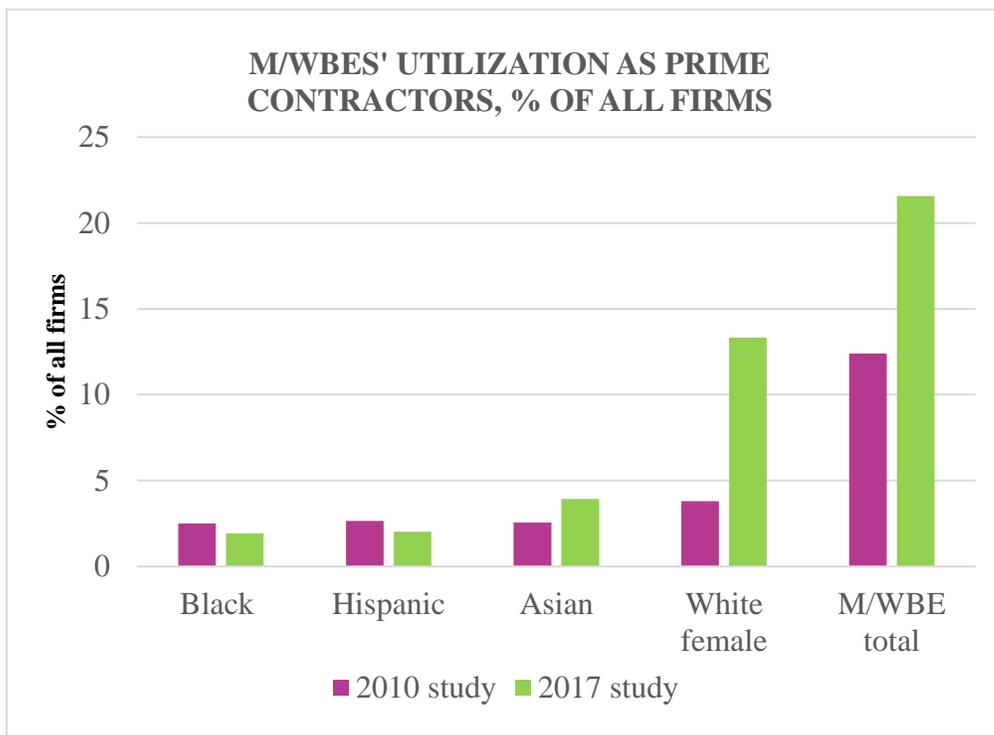
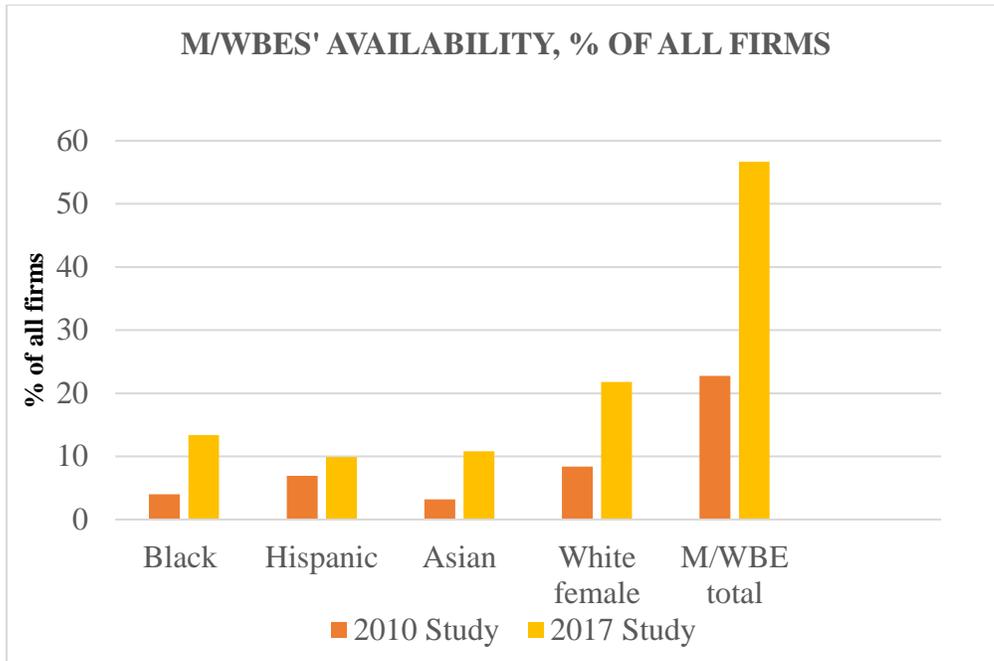
THE NEW YORK STATE DISPARITY STUDY OF 2017: FROM NOT GOOD ENOUGH TO WORSE

In June 2017, NY State Empire State Development released the State’s M/WBE ‘2016 Disparity Study’, the first since 2010, prepared by Mason Tillman Associates.⁸ While the primary purpose of disparity studies is ostensibly to demonstrate the evidence required by court decisions in order to continue M/WBE programs and participation goals, the information it contains also sheds light on the effectiveness of these programs and on the progress made. The 2016 Disparity Study makes no explicit comparison to the 2010 data, and not all of it may be comparable, as the two studies took different approaches to data selection; however, our comparative analysis of the same categories of data from both reports shows that the situation for some M/WBE groups in New York State, especially Black and Hispanic, has in fact deteriorated in recent years. Thus, in construction, while the availability of Black-owned construction firms more than tripled (from 4 to over 13 percent) and the availability of Hispanic-owned companies increased by more than a third (from nearly 7 to nearly 10 percent of the total), their utilization actually declined— from 2.5 percent to less than 2 percent for Black MBEs and from 2.65 to 2 percent for Hispanic MBEs. The series of charts followed by Table 1 below illustrate the results of our comparison between the 2010 and 2016 data:

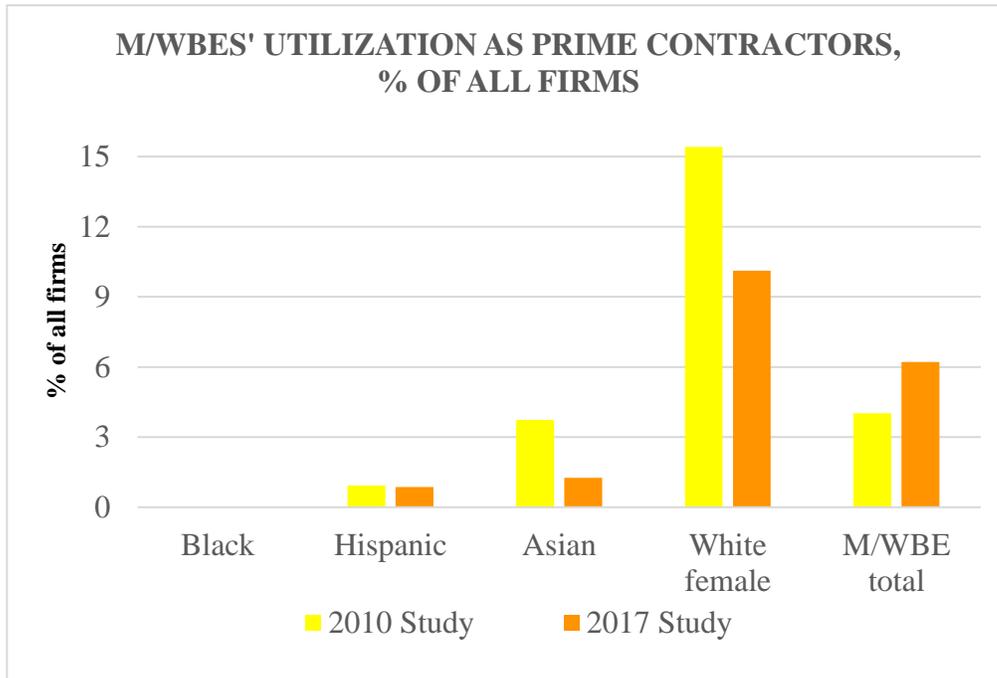
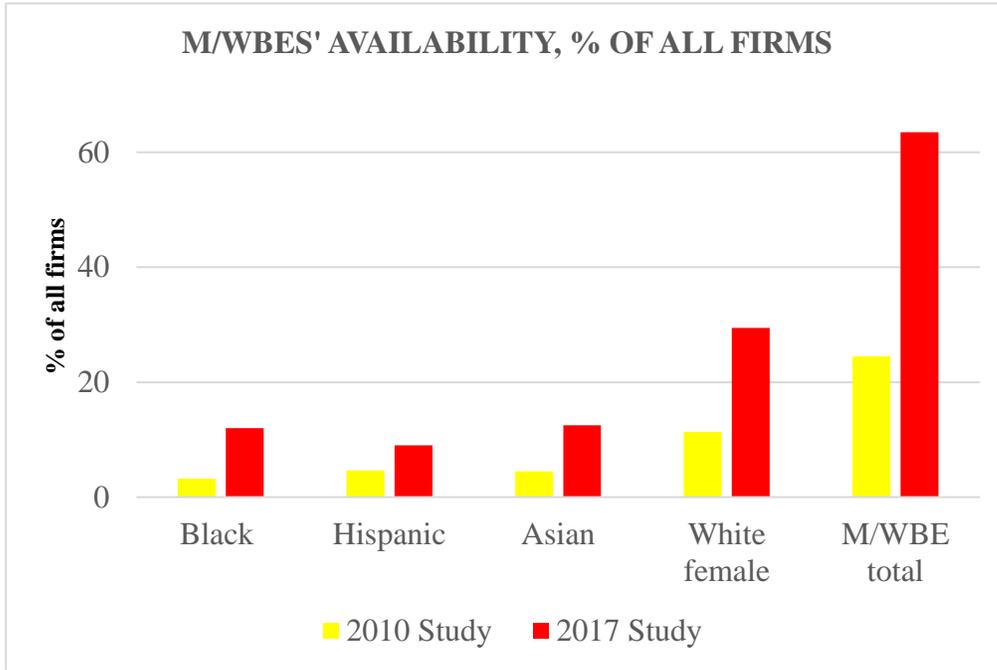
⁸ ‘2016 Disparity Study,’ <https://esd.ny.gov/doing-business-ny/mwbe/mwbe-reports>.

**New York State's 2010 v. 2017 Disparity Studies:
Comparing Data on M/WBEs Availability and Utilization in Contracting**

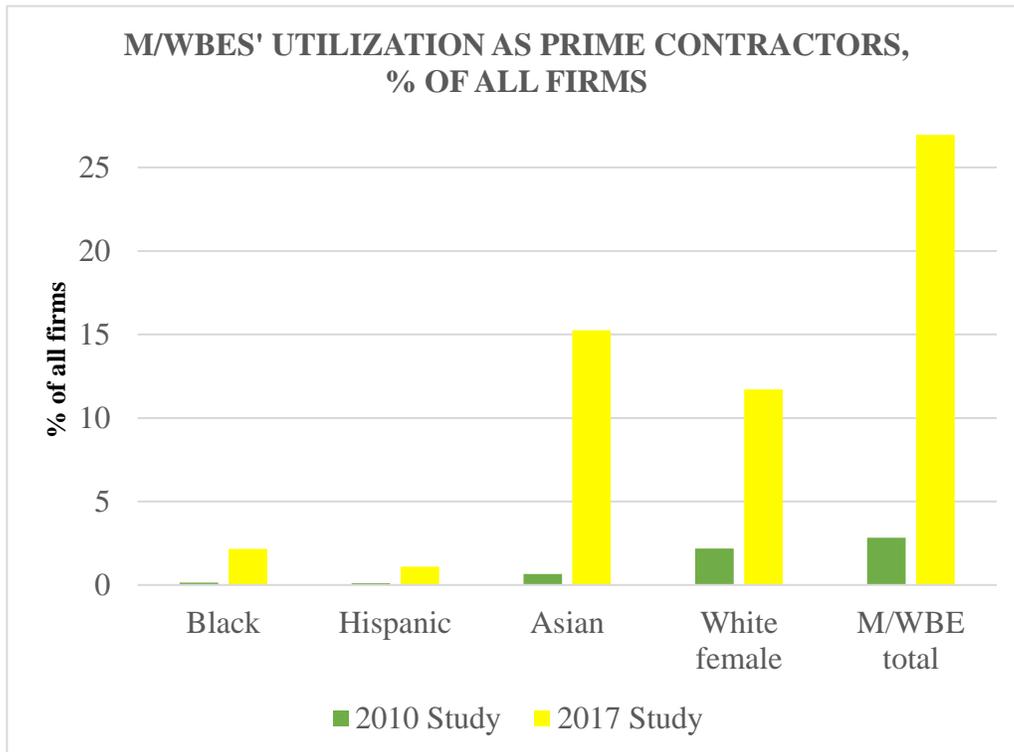
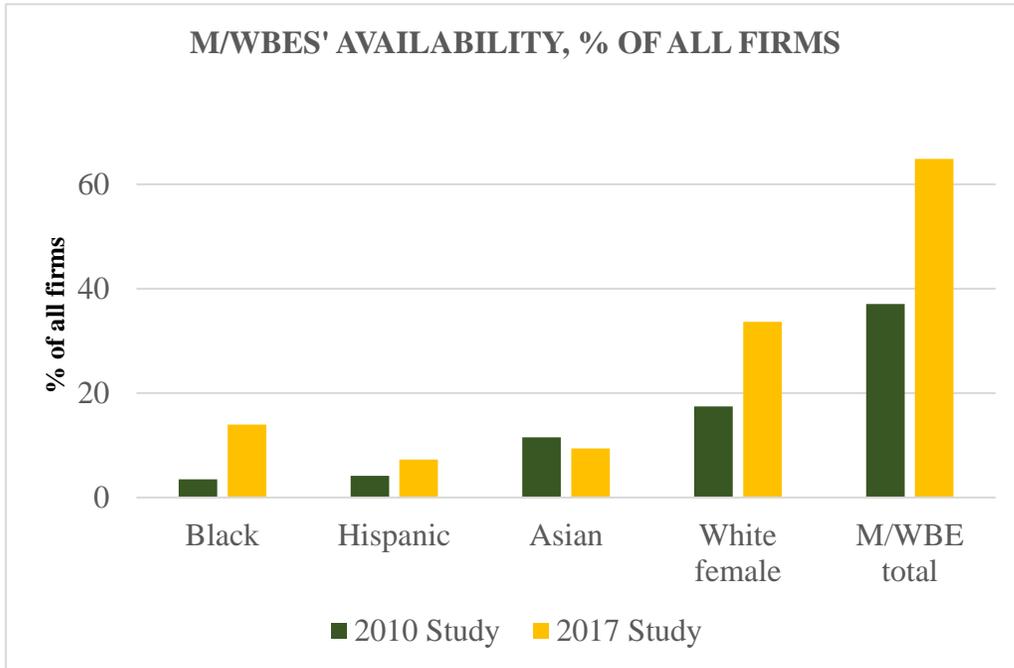
1. Construction



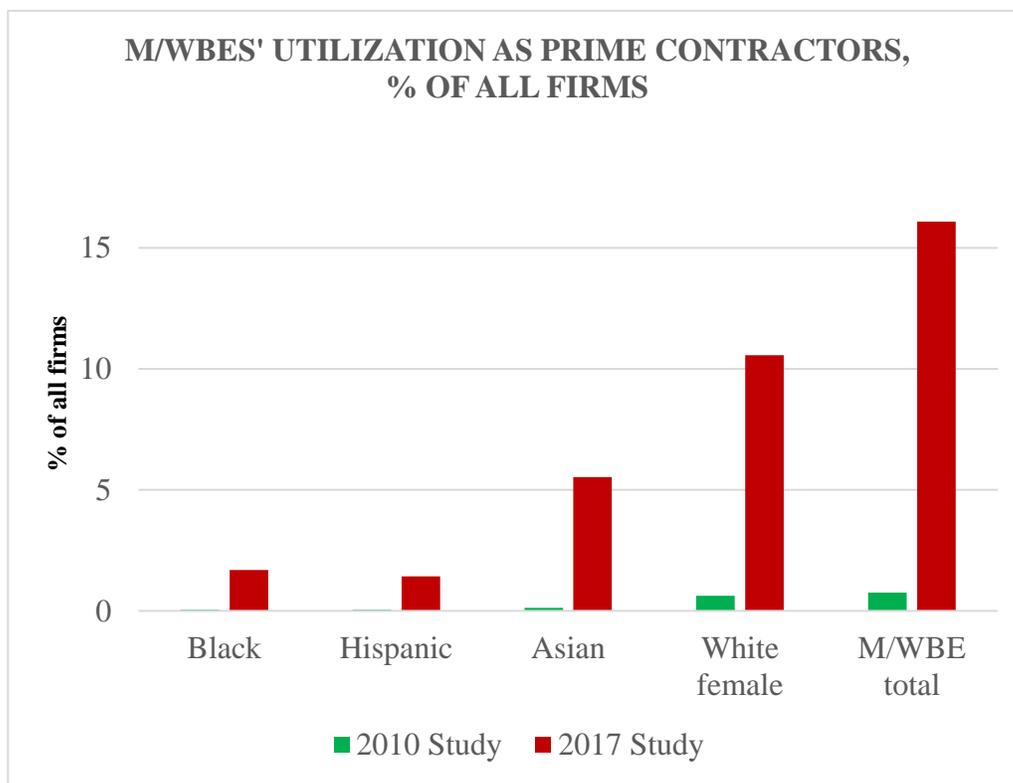
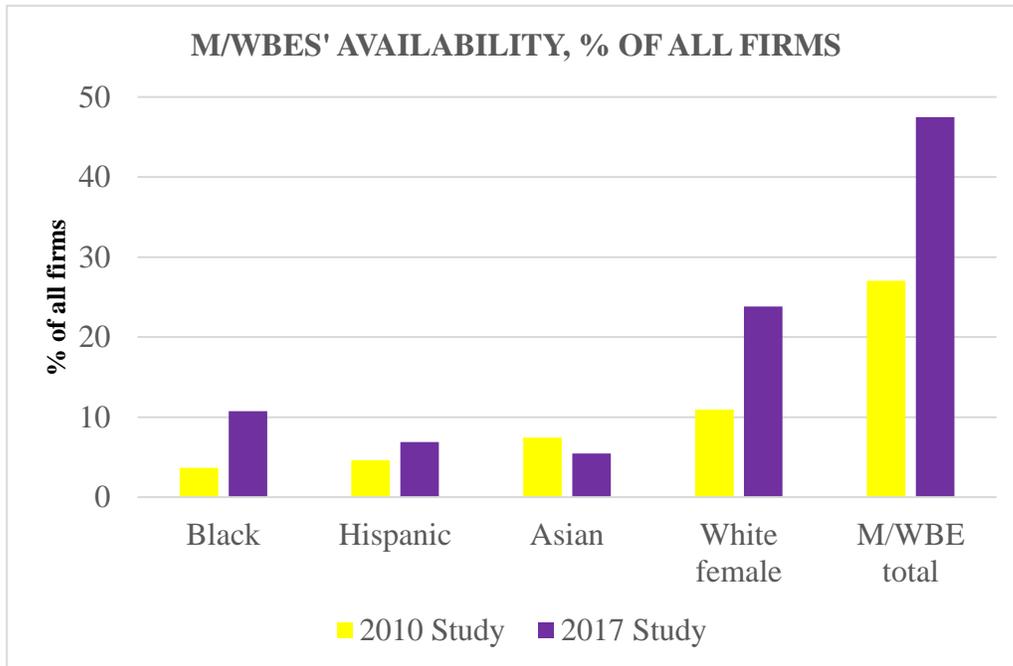
2. Construction-related services



3. Non-construction-related services



4. Commodities and other services



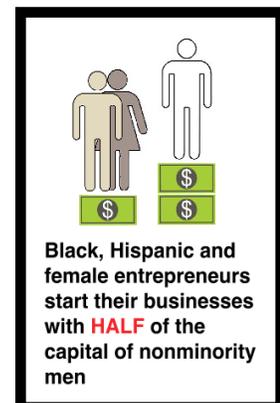
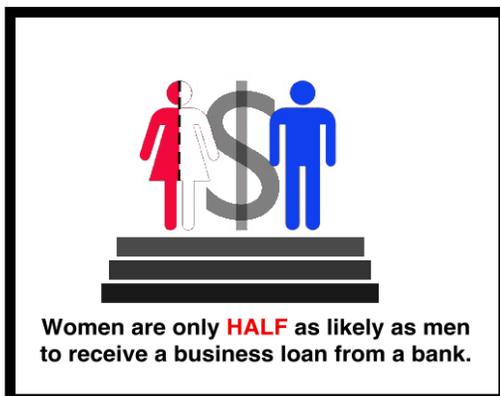
**Table 1. Prime NY State contracts issued between 4/1/2010 and 3/31/2015,
(based on the NYS 2016 Disparity Study)⁹**

<i>Industry</i>		<i>Contracts</i>		<i>Dollars Expended</i>	
		<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>
Construction	Total	10,134	100%	\$27,413,621,369	100%
	Black	196	1.9%	\$101,804,343	0.4%
	Hispanic	206	2%	\$137,477,699	0.5%
	Asian	399	3.9%	\$505,310,657	1.8%
	Caucasian Females	1,350	13.3%	\$1,155,589,272	4.2%
Construction-related Services	Total	2,785	100%	\$6,176,716,644	100%
	Black	24	0.9%	\$18,557,176	0.3%
	Hispanic	35	1.3%	\$185,212,903	3%
	Asian	223	8%	\$266,872,934	4.3%
	Caucasian Females	173	6.2%	\$131,888,900	2.1%
Non-construction Related Services	Total	5,427	100%	\$6,459,274,339	100%
	Black	118	2.2%	\$19,994,625	3%
	Hispanic	59	1%	\$38,037,058	0.6%
	Asian	647	12%	\$496,852,147	7.7%
	Caucasian Females	173	3.2%	\$131,888,900	2%
Commodities and Other Services	Total	37,719	100%	\$23,341,070,587	100%
	Black	838	2.2%	\$228,229,902	1%
	Hispanic	536	1.4%	\$890,574,146	3.8%
	Asian	845	2.2%	\$341,443,402	1.5%
	Caucasian Females	3,982	10.6%	\$122,527,761	0.5%
TOTAL ACROSS THE FOUR CATEGORIES	Total	56,065	100%	\$63,391,070,587	100%
	Black	1,176	2%	\$368,616,446	0.6%
	Hispanic	836	1.5%	\$483,255,421	0.8%
	Asian	2,114	3.8%	\$9,610,470,140	15%
	Caucasian Females	5,678	10.1%	\$2,591,179,754	4%
TOTAL M/WBE		9,804	17.5%	\$13,053,521,761	20.6%

⁹ '2016 Disparity Study,' <https://esd.ny.gov/doing-business-ny/mwbe/mwbe-reports>, pp.3-10 – 3-17.

ACCESS TO FAIR CREDIT: BARRIERS AND SOLUTIONS

Access to capital, i.e. primarily to fair-rate loans, has been identified in all our reports as the major constraint that is holding M/WBEs back from competing on equal terms for public contracts. It was repeatedly mentioned by the participants of our 2015 town hall series as well as by many surveys from 1993 until today. As noted in the latest completed New York State Disparity Study of 2010 (commissioned by the Empire State Development), “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.” Across the country, a minority-owned firm is more likely to be denied credit than a white-owned firm by an order of magnitude. A business owned by a woman is only half as likely as one owned by a man to obtain a bank loan. A 2012 survey by the National Federation of Independent Businesses revealed that 19% of small business owners funded their businesses through the proceeds from their mortgages. Hispanic- and Black-owned firms were more likely than any other business to rely on owner equity, such as mortgages, for start-up capital. And in 2013, a study of the capital profiles of growing companies conducted by the federal Small Business Administration quantified the inequality in capital access across demographic groups. As shown in the study, Black and Hispanic firms attract just half as much of outside equity investment as those owned by white men; As for women-owned companies, they attract only a quarter of the amount of outside investment attracted by their male-owned counterparts. Compared to the average white male owned company, MWBEs rely more on the personal resources of the business owner and almost twice as much on debt backed by his or her personal assets.



M/WBEs are not faring well in terms of access to loans even within the category of small business borrowers, whose loans are guaranteed by the U.S. Small Business Administration (SBA). The 2017 report on the state of the Black world, authored by Rev. Dennis Dillon and published by *Christian Times*, indicates that of the entire pool of \$304 million in SBA loans issued by the top 12 lenders, M/WBEs receive less than a quarter (\$15 million for Latino-owned, \$16.5 for Black-owned and \$44 million for Asian-owned businesses).¹⁰

Thus, access to capital became the focal point of our M/WBE campaign in the course of 2016. Our research sought to identify the causes of the disparity among M/WBEs with regard to access to capital and affordable credit as well as to develop solutions for this disparity. We outlined these causes and our recommendations in *Access Denied*.

Following its publication, TBI, along with M/WBEs from around New York State, initiated a public hearing by the New York State Senate's Banking Committee. The hearing took place in Albany on June 1, 2016, with TBI and BLAC participation, and was presided by the committee chair Sen. Diane Savino. The hearing was divided into four panels: one comprised of representatives of the banking industry; a second, of M/WBEs; a third, of representatives from the credit unions; and a fourth, of TBI. The Committee ended the hearing with a call for New York's depository lending institutions to work more closely with M/WBEs to close the disparity gap; and a commitment from Senator Savino to work on the legislation to address these issues.

After the hearing, TBI and BLAC have continued to be on the forefront of this issue, taking part in many discussion panels and finance industry events to spread awareness and engage with M/WBEs from around the country. In the fall of 2016, TBI, in partnership with the Black Latino and Asian Caucus of the New York City Council, held a series of town forum events across each of the five boroughs to hear directly from M/WBEs about their difficulties of gaining access to credit and capital to either start or grow their businesses. These stories helped us gain a better understanding of how this issue was affecting M/WBEs on the ground.

¹⁰ Rev. Dennis A. Dillon et al., 'The Economic State of the Black World 2017,' *Christian Times*, p. 26.

Since TBI started raising the capital access issue in our reports, there have been some notable moves in this regard by government agencies, particularly in New York City. Thus, in August 2016, NYC Economic Development Corp. committed \$10 million to its new ***Emerging Developer Loan Fund*** (created jointly with its lending partner Basis Management Group, LLC, an M/WBE real estate financing firm which also acts as the fund's manager). The fund is intended provide pre-development and land acquisition loans between \$100,000 and \$2.5 million to developers of mixed-income and mixed-use residential, industrial and commercial projects under \$30 million. In September 2016, Mayor de Blasio announced his plans for a City-financed \$10 million revolving loan fund for M/WBEs. In March 2017, it was launched as the ***Contract Financing Loan Fund*** under the Small Business Services Department. This fund provides loans of up to \$500,000 to the city's eligible prime and subcontractors at the 3% annual interest rate, with flexible repayment schedules, timed to align with City contract payments. The fund was set up in partnership with Excelsior Growth Fund, TruFund Financial Services and BOC Capital. (BOC Capital also manages NYCEDC's ***Kick-Start Loan Program*** that has been providing six to nine-month loans of up to \$150,000 to M/W/DBE prime and subcontractors of NYCEDC.) Further, in June of this year, the City introduced a \$10 million for M/WBEs and small businesses, enabling those struggling to access surety bonds required for City construction to obtain them in the amount of up to \$500,000, or 50 percent of the contract amount, whichever is lesser. The above commitments on the part of the City now exceed those offered by the State, which provides bridge loans of only up to \$200,000 for up to 24 months (through ESD's "Bridge to Success" program, with the help of the State's \$2.73 million Loan Loss Reserve Fund) and guarantees only up to 30 percent on a bond line or individual contract through the Surety Bond Assistance Program.

Yet these efforts, however substantial, are simply not enough given the extent of the capital crunch faced by M/WBEs. Toward the end of *Access Denied*, we outlined our solution to closing this gap. On the issue of access to capital investments, we suggested an allocation of one percent of New York Common Retirement Systems (NYCRS) funds be combined with one percent of the New York State and Local Retirement System funds to create a targeted investment program for New York's M/WBEs. We also made a call for both New York Governor Cuomo and New York City Mayor de Blasio to convene the depository institutions (who charge over \$1 billion in fees to service City and State funds) and host a banking summit where they apply pressure to these firms to create an affordable business loan program for M/WBEs.

In the rest of this report, we focus in more detail on these two broad areas where, in our analysis, solutions to M/WBEs' capital crunch are to be found. One of them is the system of public retirement funds – federal, state, and municipal – whose commitment to contractor and employee diversity in the broad sense as well as to investment in M/WBE firms must be deepened and expanded. We will take a closer look at the New York City and State pension systems to see how they are structured, as well as how much each fund is paying in fees to investment managers, consultants, lawyers and advisors. Both pension systems pay over half a million dollars per year to these outside parties. Meanwhile, NYC invested only **7.2 percent** of its pension plans with M/WBE firms, as compared, for example, to **17 and 25 percent** invested by the two pension funds of the State of Illinois. These numbers demonstrate the ability as well as the responsibility of both New York State Comptroller DiNapoli and New York City Comptroller Stringer to redirect some of the funds currently paid to outside parties toward addressing the discrimination against M/WBEs in access to capital.

Another area is in New York State and City governments' leverage over two dozen of large, established banks that serve as depositories for these governments' funds. In both of these areas, we shall scrutinize the track record of key institutional actors in terms of their commitment to diversity and identify the opportunities for the solutions that we propose to the capital access challenge. We also reiterate our demands for both the Mayor and Governor to hold public banking summits to help close the disparity gap in access to capital M/WBEs currently face.

I. PUBLIC PENSION FUNDS AND CAPITAL ACCESS DISPARITIES

Public employee retirement systems in the U.S.—federal, state, and municipal taken together—currently cover more than 20 million employees around the country. According to the latest annual Survey of Public Pensions produced by the U.S. Census, in 2016 there were 299 state-administered and 5,977 municipal pension systems, holding nearly \$4 trillion in assets.¹¹ By way of comparison, the total amount of all US pension funds in 2016, both public and private, based on the preliminary data of the Organization for International Cooperation and Development (OECD) was \$15.04 trillion, or 81 percent of the nation’s GDP, and grew by 5.6 percent over the year.¹²

Diversifying the investment practices of public pension funds is far from a new issue on the public agenda. In fact, some see a national trend in a growing involvement of public pensions both with the so-called “emerging managers” (a term widely used to cover a variety of investment management firms, including small, local, M/WBE etc.) and M/WBEs. On the other side of the equation, public retirement systems are increasingly recognized as a significant source of capital for M/WBEs. A fresh report produced by Bella Research Group with participation of Harvard Business School’s Professor Josh Lerner,¹³ which identified 127 women-owned and 107 minority-owned investment firms managing mutual funds in the amount of \$406 billion and \$160 billion respectively, also found that, *for an average M/WBE firm, investments from public funds made up a larger share of its assets than for an average white male-owned firm*¹³ - *23 percent for women-owned and 32 percent for minority-owned* as compared to 11 percent for all other funds.¹⁴ Specifically, “the average women-owned fund has nearly \$540 million” in assets under management from corporate clients and \$200 million from public funds. “The average minority-owned fund has \$168 million in [assets under management] from public funds and \$97 million

¹¹ ‘Survey of Public Pensions: State- and Locally-Administered Defined Benefit Data,’ <https://www.census.gov/govs/retire/>. Lynne Marek at *Crain’s Chicago Business* (‘Public pensions have a ton of leverage. They should use it,’ December 10, 2016, <http://www.chicagobusiness.com/article/20161210/ISSUE01/312109993?template=printart>) puts the size of US public pension assets at \$40 trillion, but does not explain the source of this number.

¹² ‘Pension Funds in Figures,’ May 2017, <http://www.oecd.org/daf/fin/private-pensions/Pension-Funds-in-Figures-2017.pdf>.

¹³ ‘Diverse Asset Management Project Firm Assessment,’ Final Report, May 2017, Bella Research Group, <http://bellaresearch.com/diversity-report.pdf>, p. 27.

¹⁴ *Ibid.*, p. 42.

from corporate clients.”¹⁵ According to the same report, there are six to seven public pension funds (but only two to three private pension funds) invested with each M/WBE private equity firm *on average*; public pensions constitute 39% of all institutional investments in an average woman-owned firm.

Let us now take a closer look at how this overall picture plays out in the specific cases of federal as well as New York State and City public retirement systems.

Federal Employees Retirement System

The Federal Retirement Program is administered by the U.S. Office of Personnel Management (OPM). It is the world’s fourth-largest retirement system. As of 2016, it covered **2.7 million active employees and 2.6 million retired beneficiaries**. The program’s central element is the Civil Service Retirement and Disability Fund (CSDRF) – a trust fund financed through agencies’ and employees’ contributions, as well as payments from the U.S. General Fund. These payments are transferred to CSDRF annually by the Treasury to decrease the shortfall in agencies’ and employees’ contributions. CSDRF’s total assets in FY2016 stood at \$895 billion, of which \$887 billion constituted investments.¹⁶

By law, OPM can invest CSDRF money only in government-guaranteed securities. Over 90 percent of these funds are invested in U.S. Treasury-issued special securities (initially, in the so-called Certificates of Indebtedness, which are redeemed on an ongoing basis to cover expenses; and at the end of the financial year on June 30, outstanding Certificates are rolled over into Government Account Series – GAS – securities that mature over a 15-year period). Most of the remainder of CSDRF funds are invested in the securities issued by the Federal Financing Bank – FFB (which do not count toward the U.S. debt limit).¹⁷ While some, including Heritage Foundation, advocate for changing the law to allow federal pension funds to be invested in the

¹⁵ Ibid. p. 40.

¹⁶ <https://www.opm.gov/about-us/budget-performance/other-reports/fy-2016-csrdf-annual-report.pdf>, p. 4.

¹⁷ <https://www.opm.gov/about-us/budget-performance/other-reports/fy-2016-csrdf-annual-report.pdf>, p. 13.

private sector, there are strong objections to such a change, on the grounds of higher investment risk as well as the appropriateness of federal agencies such as pension funds owning private-sector securities.

As reported by OPM in November 2016, its pension liability – defined as “an estimate of the future cost to provide ... benefits to current employees and annuitants” – amounted to \$1.8 trillion. The pensions (annuities) that are financed and operated by CSDRF are paid out via two separate pension plans, each covering its own category of beneficiaries: 1) Civil Service Retirement System (CSRS), which covers most of individuals hired before 1984 and is closed to new participants; and 2) Federal Employees’ Retirement System (FERS), covering most of those who entered civil service after 1983. The total amount of annuities paid out through these two systems in FY2016 was **\$82 billion**.¹⁸

One of the most widely acknowledged weaknesses of OPM’s internal controls consists of improper pension payments, often to dead recipients whose deaths remained unbeknownst to OPM. In the period between 2011 and 2014, OPM, according to its own Inspector General report, paid \$430 million to deceased people. In FY2016, the total amount of pension overpayments stood at \$237 million; nearly a half of them consisted of payments to dead people, but slightly over a half, by OPM’s admission, could not be traced to actual root causes and were classified as “Other Reason” in its annual financial report.

The most senior officer responsible for the Federal Retirement System is OPM Associate Director for Retirement Services. This position has been held since 2011 by Kenneth Zawodny, Jr. Mr. Zawodny is a career civil servant, with professional background in the field of investigations and personnel security, who, as a Senior Special Agent, was for 21 years in charge of the U.S. Army criminal investigations worldwide, and also served for the U.S. Customs and Border Protection, as well as the Department of Homeland Security.¹⁹

¹⁸ <https://www.opm.gov/about-us/budget-performance/other-reports/fy-2016-csrdf-annual-report.pdf>, p. 5.

¹⁹ <https://www.opm.gov/about-us/our-people-organization/senior-staff-bios/kenneth-zawodny/>.

OPM employs contractors in a wide variety of roles (in FY2016, of the total \$187 billion in spending, it spent close to \$55 billion on payments to contractors, which included, according to official data, close to \$300 million, or 31% of all eligible dollars spent with small businesses, including \$107 million with disadvantaged businesses²⁰). But it does not seem to need them for those pension plans that are entirely invested with government securities.²¹ The website list of OPM's largest programs in terms of contract dollars spent includes the program of modernization of its retirement system; however, no further details are provided on that program. In terms of contractor diversity, OPM maintains a Small Business Program, as well as an Office on Small and Disadvantaged Business Utilization (OSDBU). The office is currently directed by Desmond Brown, a procurement officer with background in minority businesses and prior experience working for the IRS, U.S. Small Business Administration, U.S. Department of Transportation, and Lockheed Martin. According to Federal Government data, under Brown's directorship at OSDBU, small businesses won over \$980 million in contracts from OPM, and the agency's 'small business scorecard' (that is issued annually to federal agencies by the U.S. Small Business Administration²²) improved from a rating of D to an A+.²³

The only other federal retirement plan that is independent of OPM is that of the Department of Defense. It was established by the Congress to cover military retirees for service rendered after October 1, 1984. The DoD's Military Retirement Fund has close to **\$660 billion** in assets and also

²⁰ https://www.fpds.gov/downloads/top_requests/FPDSNG_SB_Goaling_FY_2016.pdf.

²¹ <https://www.opm.gov/about-us/budget-performance/other-reports/fy-2016-csrd-annual-report.pdf>, p. 104.

²² "The annual Scorecard is an assessment tool to (1) measure how well federal agencies reach their small business and socio-economic prime contracting and subcontracting goals, (2) provide accurate and transparent contracting data and (3) report agency-specific progress. The prime and subcontracting component goals include goals for small businesses, small businesses owned by women, small disadvantaged businesses, service-disabled veteran-owned small businesses, and small businesses located in Historically Underutilized Business Zones (HUBZones).

Every two years, the SBA works with each agency to set their prime and subcontracting goals and their grades are based on the agreed upon goals. Each federal agency has a different small business contracting goal, negotiated biannually in consultation with SBA. SBA ensures that the sum total of all of the goals exceeds the 23 percent target established by law." <https://www.sba.gov/contracting/finding-government-customers/see-agency-small-business-scorecards>.

²³ <https://energy.gov/osdbu/smallbusinessconference/2016-federal-osdbu-directors-panel>; https://www.sba.gov/sites/default/files/aboutsbaarticle/FY16_OPM_SB_Procurement_Scorecard_Final.pdf.

invests by law strictly in government securities. In FY2015, it paid **\$56 million** in benefits to about **2.6 million** individuals.

Both the OPM's FERS system and the DoD plan also include, in addition to their defined benefit parts, a voluntary Thrift Savings Plan (TSP). This pension plan, similar to 401(k) in the private sector, controls nearly **\$470 billion** in assets. It is the largest defined contribution retirement plan in America, covering more than **4.9 million** individuals. The TSP investment options include two fixed income funds, three stock funds and five lifecycle funds. TSP is administered separately, not by OPM but by the Federal Retirement Thrift Investment Board (FRTIB), founded in 1986. FRTIB Board members are appointed by the President of the United States.

Federal Retirement Thrift Investment Board (FRTIB) and Thrift Savings Plan (TSP) Board



*Michael Kennedy
Chairman*



*Dana K. Bilyeu
Executive Director, National
Association of State Retirement
Administrators (NASRA)*



*William (Bill) Jasien
CEO and Managing Director,
StoneHedge Global Partners*



*David A. Jones
D.A.Jones LLC, an independent
consulting firm
(No photo available)*



*Ron McCray
private investor and corporate
director*



*Ravindra Deo
Acting Executive Director, FRTIB*

BLACKROCK: THE ‘SHADOW BANK’ CASTING TOO LONG OF A SHADOW?

To manage all of its TSP funds other than U.S. Government securities, FRTIB employs only one investment firm - BlackRock Institutional Trust Company. The total amount of TSP funds under BlackRock management is **\$254 billion** (which is more than the total amount of all New York State’s Common Retirement Fund investments or than an annual budget of a country like Russia). Headquartered

Managing more investments than any other entity in the world – \$6.3 trillion total as of the end of 2017, including \$254 billion of U.S. federal pension funds - BlackRock has only one Black member of its governance board and only 3.5% of its employees are Black. Meanwhile, the federal civilian workforce is 18 percent Black.

in NYC and with 70 offices staffed with over 13,000 employees in 30 countries, managing **\$6.3 trillion** as of the end of 2017 (the equivalent of a quarter of U.S. Gross Domestic Product, or more than the GDP of Japan), BlackRock has been the largest asset management firm in the world since 2009, when it acquired Barclays. BlackRock has been managing TSP funds also since 2009, winning contract renewals every year. FRTIB financial statements show the total amount of investment management fees for FY2015 to be \$34 million.²⁴

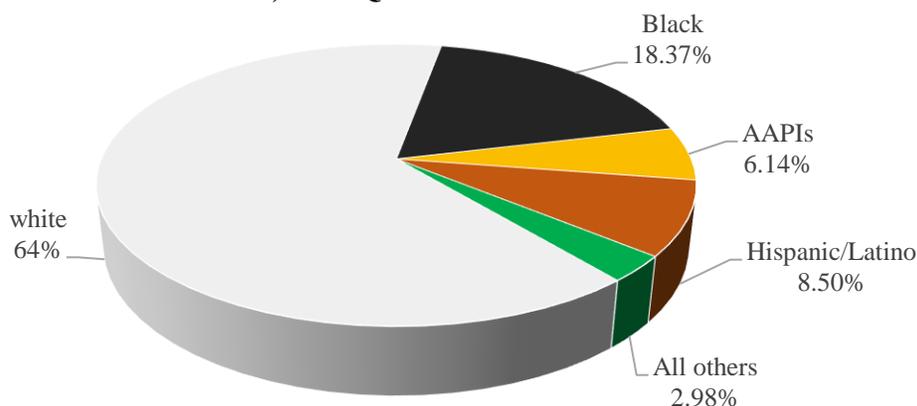
By coincidence, 2009 was the same year in which, to quote *Vanity Fair*, “through an array of government contracts, BlackRock has effectively become the leading manager of Washington’s bailout of Wall Street.”²⁵ Many of these contracts were apparently awarded without competitive bidding and in secrecy, which was justified by then-Treasury Secretary Geithner by the lack of time to solicit bids from other companies. By now, BlackRock has become known as the world’s largest ‘shadow bank’. Its assets are larger than those of the world’s largest actual bank, the Industrial and Commercial Bank of China.²⁶ In BlackRock’s own words, proudly displayed at the top of its website, it “is trusted to manage more money than any investment manager in the world.”

²⁴ An article in *International Business Times* in October 2016 claimed that TSP was paying about \$106 million per year in expenses for BlackRock-managed funds, but there is no public source to confirm this number.

²⁵ <http://www.vanityfair.com/news/2010/04/fink-201004#gotopage5>.

²⁶ <http://www.economist.com/news/special-report/21601621-banks-retreat-wake-financial-crisis-shadow-banks-are-taking-growing>.

NON-SEASONAL FULL-TIME FEDERAL PERMANENT EMPLOYEES, 4TH QUARTER OF 2015



From the time of its founding in 1988, BlackRock has been chaired by Larry Fink, who created it with a team of his colleagues from the now-defunct First Boston investment bank. Fink's latest pay package was in the amount of \$25.5 million (a 1 to 2 percent cut from 2015, following a 5 percent decline in BlackRock's net income).²⁷ Officially, BlackRock is led by its Global Executive Committee as well as by a separate Board of Directors, both under Fink's chairmanship. Of the 21 Global Executive Committee members, 20 are white and 18 are males.²⁸ Of the 17 Board members, 16 are white and 13 are males. TSP 2014 annual report provides a fairly detailed breakdown of BlackRock's employee diversity: out of the total of over 6,300 employees, 219 (3.5 percent) were identified as Black and 1,504 (24 percent) as Asian Americans; no data on the number of Hispanic employees were provided.²⁹ (For the sake of comparison, the present-day federal civilian workforce – according to OPM report, which does not include USPS workers – is 18 percent Black, 8.5% Hispanic and 6% Asian.³⁰)

Beside federal pension funds, BlackRock also has contracts with New York State and City authorities. At the state level, its subsidiary, BlackRock Financial Management, has a

²⁷ <https://www.bloomberg.com/news/articles/2017-04-13/blackrock-pays-ceo-fink-25-5-million-as-assets-top-5-trillion>. Also see <http://nypost.com/2017/04/14/blackrock-modestly-cuts-ceo-larry-finks-2016-pay/>.

²⁸ <https://www.blackrock.com/corporate/en-us/about-us/leadership>.

²⁹ https://www.frtib.gov/ReadingRoom/Congress/TSP-Annual-Report_2014.pdf, p. 4.

³⁰ <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/profile-of-federal-civilian-non-postal-employees/>.

currently active contract with the Deferred Compensation Board, a three-member regulatory authority for all public sector 457 plans, i.e. deferred-compensation retirement plans in the state. As a consultant to the Board for a 10-year period (2013-2023), BlackRock is expected to earn a total of \$3.7 million. Meanwhile, it also made \$15.6 million last year in management fees managing New York State and Local Retirement System’s 12.5 billion in global equity and \$2 billion in the fixed income portfolio. At the city level, BlackRock Financial Management has two contracts with the Comptroller’s office, both of them to act as a fixed income management consultant for a 3-year period (2015-2018); one of these contracts is counted as a revenue contract for the city, and is for \$12.3 million, while the other one is counted as an expense contract and is for \$1.2 million.

NYS & NYC PENSION FUNDS INVESTMENTS WITH BLACKROCK, FY2016

NYS Common Retirement Fund

<i>Asset Class</i>	<i>\$ Amount</i>	<i>% of the Class Total</i>	<i>Management Fee Category</i>	<i>Fee \$ Amount</i>	<i>% of Class Total</i>
<i>Fixed Income- Externally Managed funds</i>	\$ 1,997,256,000	5.7%	<i>Domestic Equity</i>	\$99,170	0.2%
			<i>International Equity</i>	\$4,230,124	5.2%
<i>Global Equity</i>	\$ 12,513,300,000	13.4%	<i>Global Fixed Income</i>	\$11,350,162	80%
TOTAL (of all classes)	\$ 14,510,556,000	14.9%	TOTAL	\$15,679,456	11%

NYS Teachers Retirement Fund

<i>Asset Class</i>	<i>\$ Amount</i>	<i>% of the Class Total</i>	<i>Management Fee Category</i>	<i>Fee \$ Amount</i>	<i>% of Class Total</i>
<i>International Equities</i>	\$7,152,000,000	40.5%	<i>International Equities</i>	\$2,162,000	9.6%
<i>Mortgages</i>	\$ 527,400,000	34%	<i>Domestic Fixed Income Securities</i>	\$937,000	32.9%
<i>Commingled Funds (Asia II, III, Europe III, Europe)</i>	\$ 83,600,000	2.1%			

<i>Parallel II, Granite Property)</i>					
TOTAL (of all classes)	\$7,763,000,000	33.6%	TOTAL	\$3,135,000	1.3%

NYC Teachers Retirement System

Assets under Blackrock management, by class and total– not published

Management fees paid to BlackRock by asset class:

- International Fund:	\$6,638,994
- Fixed income:	\$1,370,108
- Domestic equity:	\$385,939
- Treasury inflation-protected securities (TIPS) MTA:	\$234,485
- Diversified Equity Fund and International Equity Fund:	\$177,083
TOTAL (of all classes)	\$8,806,609 / 3.8% of all investment expenses

NYC Employees Retirement System

<i>Asset Class</i>	<i>\$ Amount</i>	<i>% of the Class Total</i>	<i>Fee \$ Amount</i>	<i>% of the Class Total</i>
<i>Fixed Income</i>	\$ 2,555,980,000	22%	\$1,259,335	7.9%
<i>Domestic Equity</i>	\$ 5,468,004,000	30%	\$ 368,146	2.3%
<i>International Equity</i>	\$ 1,572,328,000	17%	\$ 829,092	2.5%
<i>Treasury Inflation Protected Securities (TIPS)</i>	\$ 600,227,000	24.5%	\$ 297,592	45%
<i>Mutual Fund – Domestic Equity</i>	\$ 264,307,000	100%	\$ 20,167	100%
TOTAL (of all classes)	\$10,460,846,000	20.3%	\$2,774,332	1.7%

NYC Police Pension Fund

<i>Asset Class</i>	<i>\$ Amount</i>	<i>% of the Class Total</i>	<i>Fee \$ Amount</i>	<i>% of the Class Total</i>
<i>U.S. Equities</i>	\$5,803,110,000	48.4%	\$223,065	3.1%
<i>EAFE Market Equities</i>	\$855,700,000	15.9%	\$428,554	2.6%
<i>Fixed Income Structured Program Government Treas/Agency Sector</i>	\$247,570,000	76.4%	\$98,803	100%
<i>Mortgages</i>	\$724,510,000	43.3%	\$293,893	25%

<i>Investment Grade Credit Sector</i>	\$619,200,000	29.6%	\$335,043	17%
<i>Treasury Inflation Protected Securities (TIPS)</i>	\$375,910,000	25%	\$156,992	79.5%
TOTAL (of all classes)	\$8,626,000,000	26.2%	\$1,536,350	1.2%

NYC Fire Pension Fund

<i>Asset Class</i>	<i>\$ Amount</i>	<i>% of the Class Total</i>	<i>Fee \$ Amount</i>	<i>% of the Class Total</i>
<i>U.S. Equities</i>	\$1,736,920,000	51.3%	\$65,732	2.1%
<i>Fixed Income (Mortgages, Credit, TIPS)</i>	\$611,480,000	18.7%	\$296,463	8.4%
TOTAL (of all classes)	\$2,348,400,000	21.8%	\$362,195	0.9%

NYC Board of Education Retirement System

Assets under Blackrock management, by class and total– not published
 Management fees paid to BlackRock by asset class:

- Equity: \$2,377
 - Fixed Income: \$112,859
 - Mutual Fund Equity: 55,369
- TOTAL: \$170,605 (1.3% of total investment expenses by fund manager)**

BLACKROCK’S TOTAL ASSETS UNDER MANAGEMENT AND FEES FROM NYS AND NYC PENSIONS

	<i>Assets managed</i>	<i>Fees</i>
NYS	\$22,273,556,000	\$18,814,426
NYC	\$21,435,246,000 (based on data from 3 funds only)	\$13,650,091
Total	\$43,708,802,000	\$32,464,517

New York State Retirement System

The New York State and Local Retirement System (NYSLRS) controls the third largest pension fund in the U.S, with over 643,000 members and over 430,000 retirees and beneficiaries. More than 3,000 state and local public employers participate in the system. In fiscal year 2015-2016, NYSLRS paid an estimated \$10.9 billion in benefits. NYSLRS comprises the New York State and Local Employees' Retirement System (ERS) and the New York State and Local Police and Fire Retirement System (PFRS); these two are served by the Common Retirement Fund (CRF). The State's Teachers' Retirement System (NYSTRS) is managed separately.

Both NYSLRS and NYSTRS investments with M/WBEs are covered by a state law passed in 2010.³¹ The law covers four fiduciary controlled entities in the state: the CRF, the TRS, the NY Insurance Fund (NYSIF), and the NY Deferred Compensation Plan (NYSDCP). It authorizes the trustees of each of these entities – the State Comptroller in the case of CRF, the Retirement Board in the case of TRS, Commissioners of NYSIF and the Deferred Compensation Board – to establish an “MWBE asset management and financial institution strategy.” The law further specifies that such a strategy “shall include, but shall not be limited to” 1) investing assets with MWBE asset managers; 2) employing MWBE financial firms to conducting trades of public equity and fixed-income securities; 3) allocating investments either directly in the equities and debt securities of M/WBEs or “indirectly through special programs involving MWBE asset managers”; and 4) “awarding contracts for accounting, banking, financial advisory, insurance, legal, research, valuation and other financial and professional services to MWBE financial institutions and other MWBE professional service firms.”

³¹ Laws of New York 2010, Chapter 171, <https://nysosc9.osc.state.ny.us/product/mbrdoc.nsf/0f9d113765ae06b58525666700653b6d/c4e1ed50f9041358852577730045ca4f?OpenDocument>. The bills were sponsored by Sen. Ruth Hassell-Thompson and Assemblywoman Crystal Peoples-Stokes.

1. Common Retirement Fund (CRF)

The assets of ERS and PFRS are placed in the state's Common Retirement Fund (CRF). This is the third largest public pension fund in the US that holds assets in trust for more than one million former and current workers of the State government, local governments, school districts (except for the teachers covered by the NYSTRS that we discuss in the next section), and some public authorities. In 2016, the value of the Fund's invested assets was **\$178.1 billion**. These funds are managed and invested by the Division of Pension Investment and Cash Management in the Office of the State Comptroller, who is the sole trustee of the Fund. Last year, the rate of return on its investments was 11 percent.

According to Comptroller DiNapoli's latest report, under his tenure which started in 2007, CRF has invested about \$9 billion with M/WBEs³² and currently has \$13.8 billion "invested with or committed to" them³³ (whatever 'committed' means in this particular case). The fund's relationship with M/WBEs has so far developed within three interrelated frameworks: 1) the lending partnership with the New York Business Development Corporation (NYBDC), which dates back to 1987; 2) the Emerging Manager Program, launched in 1994; and 3) the State Comptroller's "M/WBE Asset Management and Financial Institution Strategy," based on a state law adopted in 2010.

The CRF-NYBDC lending program has had a general focus on providing capital for small business loans around the state. The loans can be used to acquire property and equipment. Since its inception in 1987, the program has loaned \$362 million to over 1,000 small businesses.³⁴ In 2010, Comptroller DiNapoli committed an additional \$100 million to this program. NYBDC's annual report of 2016 says that 40% of its loans have been made to M/WBEs; unfortunately, the report includes no other figures or more detailed information on these loans.³⁵

³² http://www.osc.state.ny.us/retire/word_and_pdf_documents/publications/cafr/cafr_16.pdf, p. 12.

³³ New York State Common Retirement Fund, 'MWBE Strategy Report', May 2017, https://www.osc.state.ny.us/pension/mwbe_report.pdf.

³⁴ <http://www.nyretirementnews.com/the-common-retirement-fund-invested-in-new-york/>.

³⁵ <http://www.nybdc.com/img/uploads/file/NYBDC-Annual-Report-2016.pdf>.

The Emerging Manager Program started with a \$49 million allocation to Progress Investment Management Company, an M/WBE investment firm. As of March 31, 2016, its investment portfolio had a market value of close to \$950 million (according to the NYSLRS Comprehensive Annual Financial Report of 2016).³⁶ These funds are, in turn, invested with “emerging managers” (EMs) – described on the NYS Comptroller’s website as “newer, smaller and diverse” firms. These include certified M/WBE companies as well as other firms “owned or operated by minorities or women.” CRF utilizes ten “emerging manager platforms” through which these managers invest in the public equity, private equity, hedge fund, and real estate asset classes.³⁷ The latest report by the Comptroller’s Office indicates that at the end of FY2017 EMs managed an “estimated” \$5.7 billion (\$0.1 billion more than in the previous year).³⁸ In total, CRF reports to be currently working with 121 EMs, 57 percent of them M/WBEs.³⁹ The program aims to ‘graduate’ EMs from the program to become direct managers of the Fund’s core portfolio; over the past 20 years, at least 14 EMs (nine of them M/WBE firms) have been “transitioned” into the core portfolio.

Outside of the Emerging Managers Program, the Fund uses M/WBE brokers when trading internally managed assets that are not included in the NY State law requirements regarding M/WBE investment strategy. The 2016 report states that these brokers made about 37 percent of the total commissions (\$822,000 out of \$2.2 million total). Overall, the CRF has 42 approved brokerage firms to execute trades in the long-term and short-term fixed-income portfolios. According to the report, M/WBE traders accounted for fourteen percent of these firms, while making five percent of all long-term and five-percent of all short-term trades.

³⁶ http://www.osc.state.ny.us/retire/word_and_pdf_documents/publications/cafr/cafr_16.pdf.

³⁷ In addition to Progress Investment Management, these platforms are managed by FIS Group, Leading Edge Investment Advisors, HarbourVest Horizons, Muller and Monroe, Farol Asset Management, Artemis Real Estate Partners, The Rock Creek Group, Stepstone Group, JPMorgan and Pine Street Alternative Asset Management. New York State Common Retirement Fund, ‘MWBE Strategy Report’, May 2017, https://www.osc.state.ny.us/pension/mwbe_report.pdf, p. 52.

³⁸ Ibid.

³⁹ Ibid., p. 9.

New York State’s Common Retirement Fund, the third largest public pension fund in the country with current estimated value of \$192 billion, reports to have invested about \$9 billion with M/WBEs since 2007, or circa \$1 billion per year.

Adding the Emerging Managers Program and direct allocations together, CRF had \$9.7 billion invested in FY16 with certified M/WBEs or with “firms substantially owned or operated by minorities or women” (this second category includes companies with at least 25 percent minority or women ownership). The latest report issued by the Comptroller’s Office in May 2017

shows \$13.8 billion “invested with or committed to” MWBEs at the end of FY2017 (a more than 41% increase from FY2016). This represents 7.2% of the total assets, and 18.5% of active/externally managed assets that fall under the Comptroller’s Office M/WBE Strategy.⁴⁰ The highest level of M/WBE participation in absolute numbers has been in the public equities class, with over \$6.1 billion total. In percentage terms, the most significant level is in the opportunistic funds class, where M/WBEs reportedly manage more than half – 58.6%, or, in absolute, terms, \$1.2 billion. Further M/WBE broker/dealers earned \$1.3 million, or 34% of the total commissions for trading internally managed assets.

Arguably, these levels of M/WBE utilization by the CRF represent a significant achievement (even though it is not quite clear how much of these funds are actually invested with M/WBEs as opposed to being “committed” to them). However, this does not eliminate the need for a more active and substantial role that New York State pension funds and their investment managers (including M/WBEs) can and should play in facilitating access to capital for M/WBE firms outside of the financial sector. NYSLRS has a substantial amount of resources to play such a role, as evidenced by the amount in fees it pays to its investment managers, consultants, and advisors for investment services, both M/WBE and non-M/WBE. Thus, in FY2016, the NYSLRS paid ***over \$587 million*** in those fees (there is no public information available as to whether any, or how many, of these contractors were M/WBEs). As will be discussed in the next section, the New York City Retirement System paid even more of those fees in the same period.

2. NYS Teachers Retirement Fund (NYSTRS)

⁴⁰ Ibid., p.7.

The Teachers' Retirement Fund has a more broadly representative management system, with ten Retirement Board members, only three of whom are government appointees – one from the State Comptroller's Office and two from the Education Commissioner. Of the remaining seven, three are elected by the Board of Regents, three by NYS Teachers' Retirement System delegates, and one from the retirees. The current composition of the Board is as follows:



*David P. Keefe
President,
retired teacher, elected to the
Board by NYSTRS retirees*



*Michael J. Masse
Vice President,
bank executive elected to the
Board by the Board of Regents*



*Jolene T. DiBrango
teacher member
elected by NYSTRS delegates*



*Paul J. Farfaglia
teacher member
elected by NYSTRS delegates*



*Stephen P. Feehan
insurance executive
elected by Board of Regents*



*Dr. Phyllis S. Harrington
school administrator
appointed by Commissioner of
Education*



*Daniel J. Hogarty Jr.
bank executive
elected by Board of Regents*



*Dr. L. Oliver Robinson
school administrator
appointed by Commissioner of
Education*



*Nicholas Smirensky
Representative of the State
Comptroller*

NYSTRS' total investments currently stand at **\$105 billion**. Of these, \$38.5 billion are

reported to be externally managed. M/WBE managers are overseeing **\$2.8 billion** in assets, i.e. **7.2%** of those externally managed, but only **2.7% of the total**. The fund's Emerging Manager partners – a category that also includes M/WBEs - are managing \$1.3 billion in domestic and international equities and \$459 million in real estate, for a total of \$1.7 billion.

New York City Retirement System

Currently, the New York City Retirement System (NYCRS) is a system of five separate funds, with a total of \$191 billion invested in a wide range of asset classes. These five funds include: 1) NYC Teachers Retirement System; 2) New York City Employees Retirement System; 3) NYC Police Pension Fund; 4) NYC Fire Pension Fund; and 5) Board of Education Retirement System. Each individual fund has a Board of Trustees who make decisions about their respective fund and the overall NYCRS. New York City Comptroller Scott Stringer and the Bureau of Asset Management oversee the NYCRS to ensure that it is operating efficiently and fulfilling its fiduciary responsibility to the employee members of the fund.

NYCRS and the boards of the individual funds that comprise the system entrust pension funds into the hands of a very large group of investment houses that specialize in finding quality investments within a designated asset class. Each of the five pension boards also has a group of consultants to provide advisement over investments made by the fund. Consultants may be used for advisement over one or more individual asset classes. At the head of the list of consultants is the so-called “General Consultant,” who advises over the entirety of the pension. The annual financial reports issued by each individual fund indicate that many of the consultants used by these funds are the same. This lack of consultant diversity may be an additional roadblock for M/WBE investment managers to gain access to capital investments of the NYCRS, especially if the consultants in that closed circle are not performing a systematic outreach to M/WBE investment firms.

For their services to the pension fund, consultants receive a fee “off the top,” i.e. taken directly from the fund itself. In most cases it is unclear from the reporting available which consultants are used for what purpose or how their fee structure is determined. Furthermore, *it is not disclosed which consulting firms serve as the general consultant for each board.*

Legal services to the fund are also provided by various law firms, often for undisclosed purposes. Much like with consultants, law firms receive a fee taken directly “off the top” of the fund assets. Fees for the law firms generally hover in the thousands to tens of thousands range; but similar to consultants, the fee structure and the process of their determination are also undisclosed.

NYC PUBLIC PENSION FUNDS'

PAYMENTS TO SELECT CONSULTANTS AND LAWYERS IN FY2016

Payments to Consultants

	T Teachers' Fund	Employees' Fund (NYCERS)	Police Fund	Fire Fund	Board of Education Fund	TOTAL
Courtland Partners LTD	\$83,032	\$94,715	\$109,010	\$25,147	\$10,250	\$322,154
Stepstone Group LP	\$136,000	\$1,630,500	\$904,750	\$552,572	\$10,000	\$3,233,822
The Townsend Group	\$445,892	\$402,018	\$246,444	\$71,970	\$27,869	\$1,194,193

Payments to Law Firms

	Teachers' Fund	Employees' Fund (NYCERS)	Police Fund	Fire Fund	Board of Education n Fund	TOTAL
Foster Pepper PLLC	\$67,066	\$75,105	\$28,231	\$3,131	\$12,561	\$186,093
Morgan, Lewis & Bockius LLP	\$30,276	\$17,694	\$49,366	\$14,419	\$4,869	\$116,624

Nixon Peabody LLP	\$35,955	\$34,123	\$20,138	\$48,669	\$1,438	\$140,323
Pillsbury Winthrop Shaw Pittman LLP	\$299	\$32,987	\$74,985	\$12,258	\$990	\$121,519
Reinhart Boerner Van Deuren	\$31,333	\$45,437	\$23,941	\$3,868	\$4,343	\$108,923

In 2016, NYCERS paid *close to \$600 million* in fees to investment managers, consultants, and law firms. The public deserves transparency on services being provided that justifies millions of dollars per year in fees to these firms. Such transparency in the reporting of fees and fee structures would provide invaluable information to both M/WBEs and the employee participants of the pension fund. Below is a brief breakdown of how much in fees each fund paid in 2016.

1. NYC Teachers Retirement System

The largest of the five branches of NYCERS is the Teachers Retirement System (TRS). With circa 203,650 total participants (active members and retirees/beneficiaries) in 2015, the TRS held the largest financial stake in NYCERS at \$72 billion (or 37.44%). Overseeing the TRS is a board of six trustees. Two of the six trustees on the TRS board are City elected officials (New York City Mayor and Comptroller). The other four are elected by teacher as their representatives elected to the board. Unlike other NYCERS boards, the TRS does not have direct union representation. The current composition of NYCTRS board is as follows:



*John Adler
Chair, Mayor's
appointee*



*Hon. Scott Stringer
NYC Comptroller*



*Raymond Orlando
representing the Panel
for Educational Policy
Chair*



*Thomas Brown
Teacher Member*



*David Kazansky
Teacher Member*



*Debra Penny
Teacher Member*

The participating employers that share the cost of the defined-benefit QPP (Qualified Pension Plan) are the New York City Department of Education (DOE), City University of New York (CUNY), and certain New York City Charter Schools that offer TRS benefits to their employees.

The TRS also pays out more in fees than any other branch of NYCERS. According to their Comprehensive Annual Financial Report (CAFR) for fiscal year 2016, TRS paid out \$209 million in fees to investment managers, consultants, and law firms. Investment managers made up the largest percentage of the fees paid by TRS in 2016— 97% of the overall fee expenses. The fees paid to investment managers, consultants, and law firms by the TRS have been on an upward trend over the past few years.

2. New York City Employees Retirement System

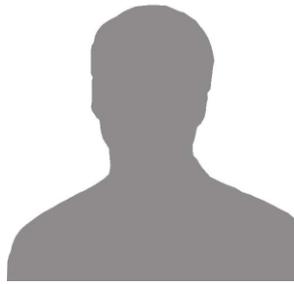
The second largest of the five branches of the NYCRS is the New York City Employees Retirement System (NYCERS). Membership in NYCERS is available to all City employees who are ineligible to participate in any of the other four entities (NYC Teachers' Retirement System, the NYC Police Pension Fund, the NYC Fire Department Pension Fund, or the NYC Board of Education Retirement System). With 325,370 participants, including current employees and retirees/beneficiaries, NYCERS also holds the second largest stake in the overall pension fund, valued at \$55 billion, or 32.35% of the overall fund.

Overseeing the New York City Employees Retirement system is a board of eleven trustees, including all three citywide elected officials and all five borough presidents. The board composition is presented on the next page.

The board of trustees for NYCERS consists of more elected officials than any other board within the NYCRS. Also, the members of the unions represented on the board (Transport Workers Union, Local 100; District Council, Local 37, ASFCME; Teamsters, Local 237) comprise a large portion of the overall employee participation in the fund.

In addition to the various government agencies of the City, members of NYCERS are also employed by the NYC Transit Authority, the Triborough Bridge and Tunnel Authority, the NYC Housing Authority, the NYC Health and Hospitals Corporation, the NYC Housing Development Corporation, the City University of New York, the NYC School Construction Authority, NYC Municipal Water Finance Authority, and certain employees of State agencies that had formerly been City agencies.

Much like with the TRS, NYCERS pays hefty fees to investment managers, consultants, and law firms. In FY2015, NYCERS paid a total of over \$187 million in fees. Investment managers were paid the most, taking away \$183 million.



*NYC Mayor's Representative
(Chairperson of the Board)*



*Hon. Scott Stringer
NYC Comptroller*



*Hon. Letitia (Tish) James
NYC Public Advocate*



*Hon. Gale Brewer
Manhattan Borough President*



*Hon. Eric Adams
Brooklyn Borough President*



*Hon. Ruben Diaz, Jr.
Bronx Borough President*



*Hon. Melinda Katz
Queens Borough President*



*Hon. James Oddo
Staten Island Borough President*



*Henry Garrido
Executive Director,
District Council 37,
AFSCME*



*John Samuelsen
President,
Transport Workers Union,
Local 100*



*Gregory Floyd
President,
International Brotherhood of Teamsters,
Local 237*

Yet unlike the TRS, NYCERS increased its fee payments to consultants and law firms in FY2016, while decreasing its fee payments for investment managers. In FY2016, total fees for NYCERS totaled \$165.6 million. Fees to consultants increased from \$3.5 million in FY2015 to

\$3.7 million last year. NYCERS doubled their fee payments to law firms in FY2016, totaling \$270,285. On the brighter side, NYCERS was able to decrease its fees paid to investment managers in FY2016, with fees paid equaling \$161.8 million, which is a substantial decrease of \$21.5 million.

3. Police Pension Fund

With 79,000 total participants (active members and retirees/beneficiaries) in 2016, the Police Pension Fund holds the third-largest financial stake in NYCERS at nearly \$39 billion (or 20.54 percent of the total). Overseeing the Police Pension Fund is a board of twelve trustees representing the unions that contribute to the fund, as well as both the Mayor and the Comptroller. The unions represented on the board are: Patrolman's Benevolent Association (PBA); Detectives' Endowment Association (DEA); Lieutenants Benevolent Association (LBA); Sergeants Benevolent Association (SBA); and Captains Endowment Association (CEA). The full composition of the board is presented on the next page.

While the Police Pension Fund is significantly smaller compared to TRS and NYCERS, it still pays a significant amount in fees to consultants and investment managers. In FY2015, Police total fees paid to investment managers, consultants, and law firms totaled nearly \$164 million. The bulk of that total went to investment managers, who took home close to \$162 million. Consultants and law firms were paid \$1,868,228.62 and \$221,057.56, respectively. This level of spending on fees is close to the amount spent by NYCERS, despite the fact that NYCERS is nearly double the size of the Police Fund.

In FY2016, the Police Pension Fund was able to dramatically decrease the amount of fees paid for investment expenses, paying a total of \$126.5 million, a decrease of \$37.3 million or 22.8%. Almost all of the savings was due to the decrease in the fees paid to investment managers, down to slightly over \$124 million. On the other hand, fees to consultants increased to over \$2 million; and fees to law firms rose to \$267,580.



*Bill de Blasio
Mayor*



*Scott M. Stringer
Comptroller*



*James P. O'Neill
Police Commissioner*



*Jacques Jiha
Commissioner of
Finance*



*Patrick J. Lynch
President, Patrolmen's
Benevolent Association
(PBA)*



*John Puglissi
1st Vice President,
PBA*



*Mubarak Abdul-Jabbar
2nd Vice President PBA*



*Corey Grable
Chairman, Board of
Trustees, PBA*



*Michael J. Paladino
President, Detectives'
Endowment Association
(DEA)*



*Edward Mullins
President Sergeants
Benevolent
Association (SBA)*



*Lou Turco
President, Lieutenants
Benevolent Association
(LBA)*



*Roy T. Richter
President, Captains
Endowment Association
(CEA)*

4. Fire Pension Fund

The New York Fire Department Pension Fund is the fourth-largest branch of NYCERS, with \$12.7 billion in assets. Like the other branches, the Fund pays a portion of their endowment to cover investment fees accrued during the fiscal year. In FY2015, the Fire pension fund paid \$58.7 million in fees. Of that number, \$57.4 million went to fees for investment managers. Consultants were paid \$1,109,493; and law firms made \$135,647.

Overseeing the Fire Pension Fund endowment is a board of twelve trustees, including several heads of the firefighter organizations who represent members across the branches of the FDNY.⁴¹ These organizations include the Uniformed Firefighters Association of Greater New York; Uniformed Fire Officers' Association of Greater New York; and the Uniformed Pilots' and Marine Engineers' Association of Greater New York. Additionally, the Mayor and the Comptroller also sit on this board. As of June 30, 2016 (the date of the latest comprehensive annual financial report), the composition of the board is shown on the next page.

5. Board of Education Retirement System (BERS)

BERS is the smallest of the five branches of NYCERS. It controls \$4.5 billion (or 2.77 percent) of NYCERS assets. Overseeing the Board of Education Retirement System is a board of sixteen members, including a thirteen-member Panel for Educational Policy (PEP), the Chancellor, and two employees elected by the members. No member on the BERS board of trustees is an elected official. The composition of the BERS Board of Trustees, as of 2016, is presented on page 49.

⁴¹ Technically, the New York Fire Department Pension Funds consist of three individual funds with their own boards of trustees – Qualified Pension Plan (QPP), Firefighters' Valuable Supplements Fund (FFVSF), and Fire Officers' Variable Supplements Fund (FOVSF), but all the members of the latter two board are also members of the QPP board, which can just be viewed, at least for our purposes, as THE Fire Department Pension Funds' board.

Trustees of the Fire Pension Fund



*Bill de Blasio
Mayor*



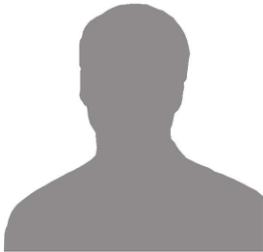
*Scott M. Stringer
Comptroller*



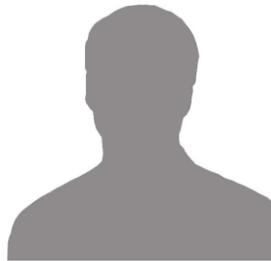
*Daniel A. Nigro
Fire Commissioner*



*Jacques Jiha
Commissioner of
Finance*



*Paul Ferro
Chiefs' Representative of
the Uniformed Fire
Officers' Association of
Greater New York
(UFOA)
(No photo available)*



*John Farina
Captains' Representative,
UFOA
(No photo available)*



*James J. McGowan
Lieutenants'
Representative, UFOA*



*Stephen J. Cassidy
President, Uniformed
Firefighters Association
of Greater New York
(UFA)*



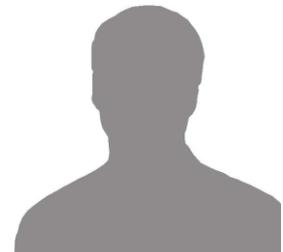
*James M. Slevin
Vice President, UFA*



*Edward Brown
Treasurer, UFA*



*John Kelly
Vice Chairman, UFA*



*Thomas Phelan -
Representative of the
Uniformed Pilots' and
Marine Engineers'
Association of Greater
New York
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Trustees of the Board of Education Retirement System



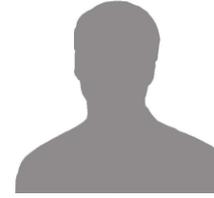
*Peter J. Calandrella
PEP (Staten Island
representative)*



*Isaac Carmignani
Employee-member
(Member, Contracts
Committee)*



*Geneal Chacon
PEP*



*April Chapman
PEP
(No photo available)*



*T.Elzora Cleveland
PEP*



*Deborah Dillingham
PEP (Queens
Representative)*



*Carmen Fariña
Chancellor, NYC
Department of
Education*



Michael Kraft



*Vanessa Leung
PEP*



*Gary Linen
PEP
(Program Director,
College Summit)*



*John Maderich
(No photo available)*



*Donald Nesbit
(Vice President, Local
372)
(No photo available)*



*Raymond Orlando
(Board of
Education's Chief
Financial Officer)
(No photo
available)*



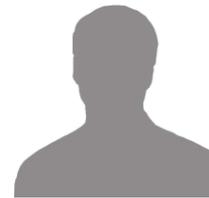
*Lori Podvesker
PEP (Senior
Manager of NYC
Disability and
Education Policy)*



*Benjamin
Shuldiner
PEP (Founder,
High School for
Public Service)*



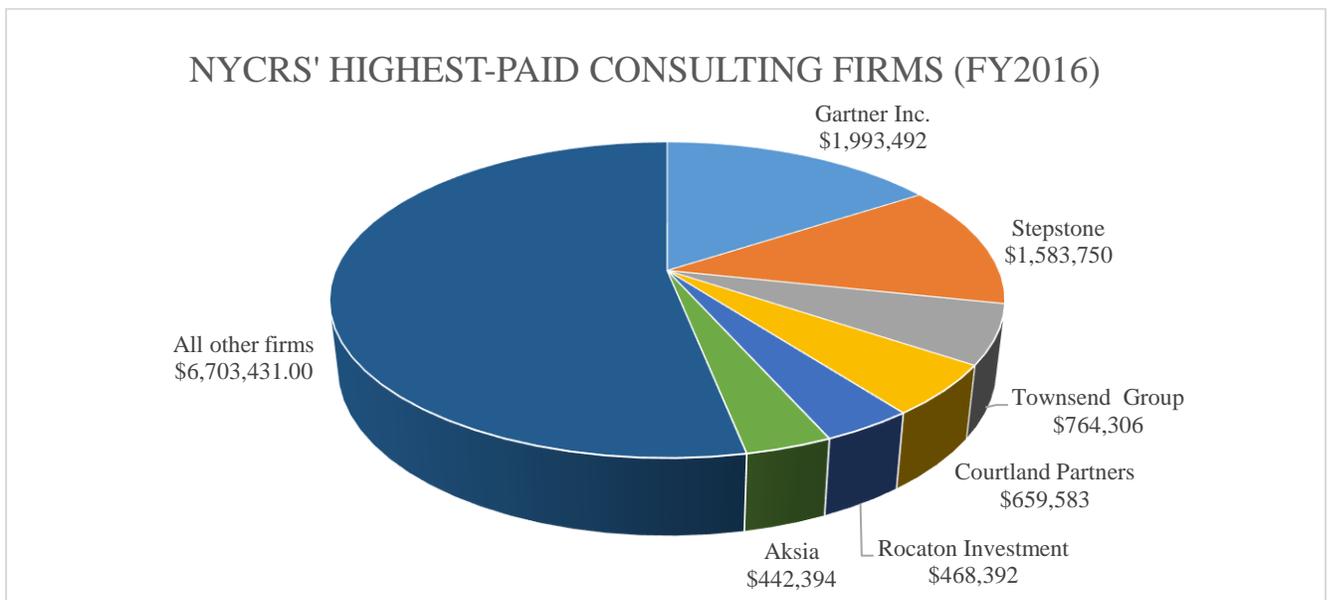
*Stephanie Soto
PEP*



*Miguelina
Zorrilla-Aristy
PEP
(No photo
available)*

With the smallest share of assets of the five NYCERS funds, BERS also pays the lowest amount in fees to investment managers, consultants, and law firms. For FY2014, it paid less than \$11 million in fees, of which investment managers received \$9.2 million. Consultants and law firms were paid \$738,610 and \$20,532 respectively.

In FY2016, BERS’ investment expenses increased to \$14.2 million, of which investment managers received \$13.6 million; consultants, \$571,029; and law firms, \$83,677. This represents an increase of 31% over two years.

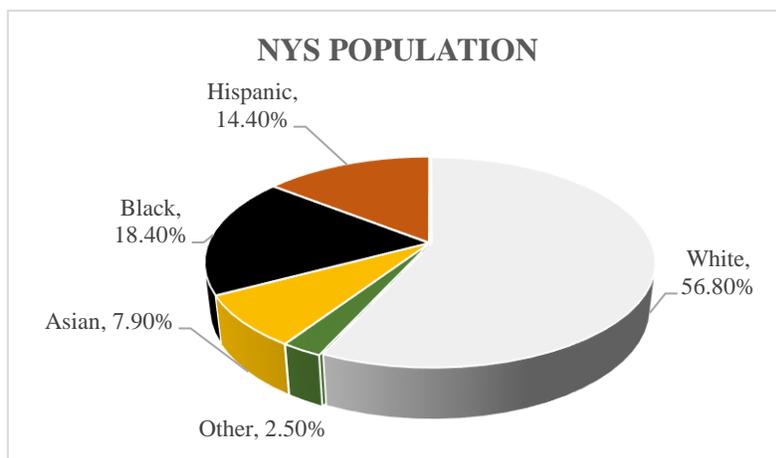


What is the record of these five NYC pension funds with regard to M/WBEs? The only publically available information shows that at the end of 2015, \$12 billion of total NYCERS assets were invested with emerging managers and M/WBE firms combined. This is 7.2 percent of the total fund assets. However, as of October 2017, no further detailed break down of this data is publically available. Thus, it is not clear what share of these funds are invested specifically with M/WBE firms. What is clear, however, is that M/WBE’s share of investments—7.2 percent—is disproportionately low compared to the share of minorities among the retirees served by these pension funds. The latest workforce profile report published by the Department of Citywide Administrative Services (DCAS) shows that as of 2015, 61 percent of the City’s workforce was

non-white, and 58 percent were women.⁴² Assuming that the breakdown of city retirees is somewhere in that range, there is a clear imbalance here between the profile of those whose pensions are invested by the City and the share of minority investment managers.

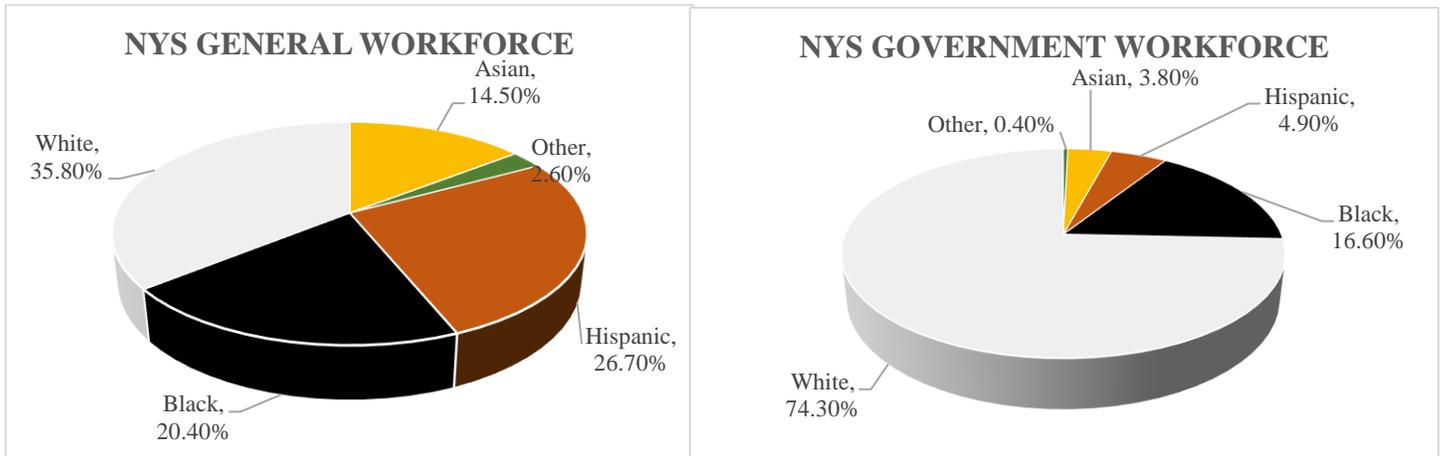
*NY State population, general workforce, and civil servants
by major race and ethnicity⁴³*

Race / Ethnicity	Percent of NY Residents	Percent of NY's Workforce	Percent of NYS Government Workforce
Caucasian	56.8%	60.0%	74.3%
African American	14.4%	13.9%	16.6%
Hispanic	18.4%	16.9%	4.9%
Asian	7.9%	8.2%	3.8%
Other	2.5%	0.8%	0.4%



⁴² http://www.nyc.gov/html/dcas/downloads/pdf/misc/workforce_profile_report_fy_2015.pdf, p. 6.

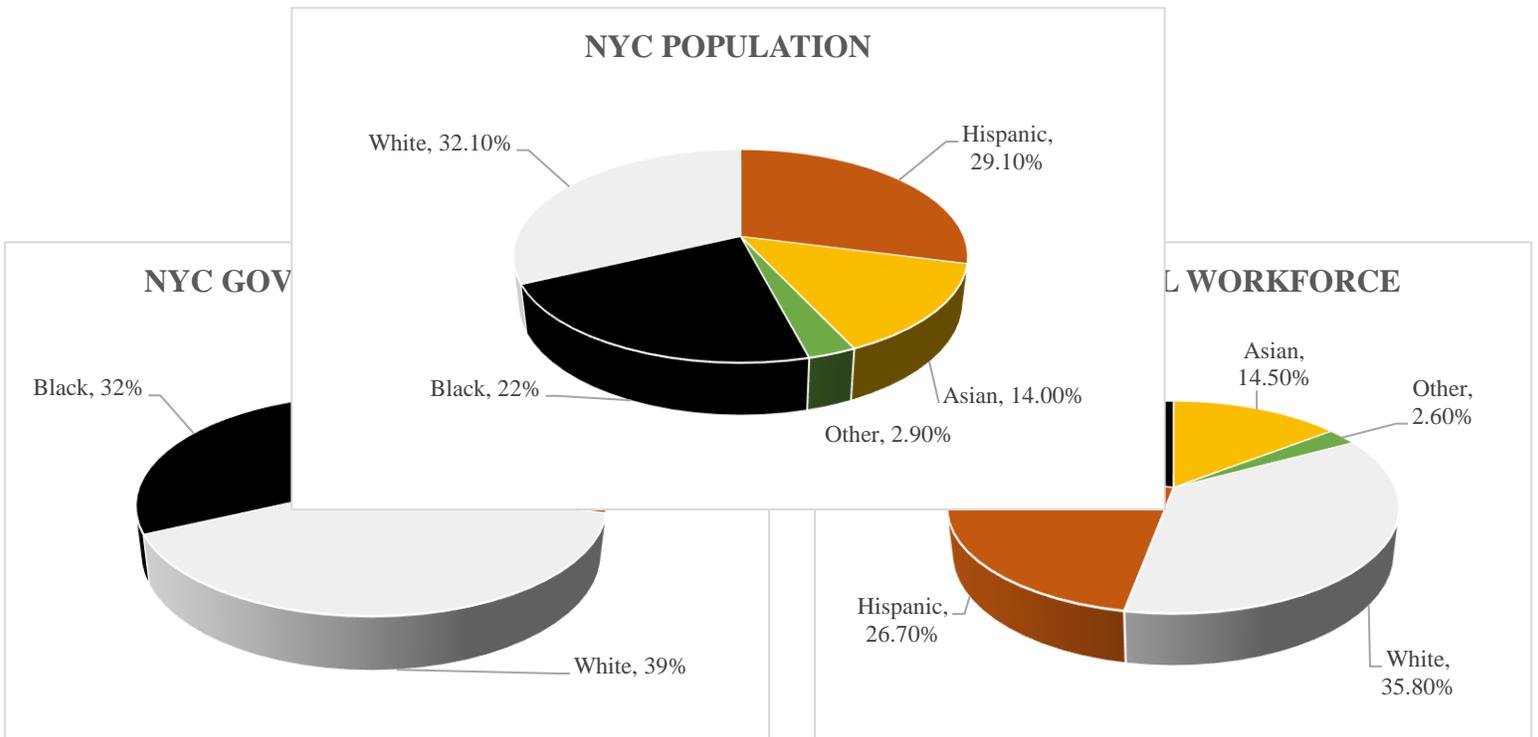
⁴³ <https://www.cs.ny.gov/businesssuite/docs/workforceplans/2016.pdf>.



NYC population, general workforce, and civil servants

by major race and ethnicity

	NYC population	NYC general workforce	NYC government workers
white	32.1%	35.8%	39%
Black	22%	20.4%	32%
Hispanic	29.1%	26.7%	20%
Asian	14.0%	14.5%	9%
Other	2.9%	2.6%	0%



**NEW YORK PUBLIC PENSIONS' INVESTMENT DIVERSITY
IN A COMPARATIVE PERSPECTIVE**

JURISDICTION	PUBLIC PENSION FUND NAME	TOTAL INVESTMENTS (FY2016 unless otherwise indicated)	INVESTMENTS WITH M/WBE FIRMS	EMERGING MANAGER (EM) PROGRAMS	OTHER DIVERSITY INDICATORS	FEES PAID TO CONSULTANTS, INVESTMENT MANAGERS, LAWYERS
Federal	<u>Civil Service Retirement and Disability Fund</u> (administered by the Office of Personnel Management)	\$887 billion (can only be invested in U.S. Treasury securities) ⁴⁴	N/A			
Federal	<u>Military Retirement Fund</u> (non-contributory defined benefit plan; administered by the Department of Defense)	\$659.5 billion (can only be invested in US Treasury securities) ⁴⁵				
Federal	<u>Thrift Savings Fund</u> (defined contribution plan administered by Federal Retirement Thrift Investment Board)	\$470 billion ⁴⁶	None (all stock funds, i.e. except for Government Securities Investment Fund, \$254 billion in total, managed by BlackRock)	None	BlackRock employee diversity: 3.5% Black, 24% Asian (TSP 2014 annual report)	\$19 million (0.004% of total investment)
California ⁴⁷	<u>CalPERS (California Public Employee Retirement System) Public Employee</u>	\$325.15 billion	As of 2013, Of CalPERS 1,103 external managers, 98 voluntarily	As of 2013, of CalPERS 1,103 external managers, 371 or 34% were	As of 2014, CalPERS invested \$4.5 billion (1.5% of its investments)	\$782.894 million (0.24% of total investment)

⁴⁴ <https://www.opm.gov/about-us/budget-performance/other-reports/fy-2016-csrdp-annual-report.pdf>.

⁴⁵ <http://www.dodig.mil/pubs/documents/DODIG-2017-013.pdf>, p. 18; also at http://comptroller.defense.gov/Portals/45/documents/cfs/fy2016/13_Military_Retirement_Fund/MRF_FY_2016_AFR.pdf.

⁴⁶ <https://www.frtib.gov/pdf/minutes/MM-2016Oct-Att8.pdf>.

⁴⁷ California State Law (enacted through passage of Proposition 209 in 1996) prohibits State agencies from granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity or national origin in public contracting.

	<u>Retirement Fund</u>		disclosed that they were M/WBE firms. •M/WBE managers were 9% of external manager relationships and 19% of EM relationships. •On a net asset value basis, about \$7.4 billion or 9% of externally managed capital was invested with M/WBE managers. This included: 65 women-owned managing \$5.9 billion in total net asset value; 32 Asian-American owned managing \$2.2 billion; 13 African-American with \$1.3 billion; and 12 Hispanic-American with \$291 million. ⁴⁸	EMs, i.e. newly formed or small firms. • Of CalPERS total externally managed capital, about \$10.6 billion or 13% of net asset value was invested with EMs.	in M/WBEs and employs 89 women and minority managers, more than twice the number of the next highest peer. ⁴⁹	
California	<u>CalSTRS – California State Teachers’ Retirement System</u>	\$206.5 billion	Of the \$1,704,265 invested with developing managers, 43% is invested in minority-owned firms and 25% in women-owned firms. ⁵⁰	\$1.7 billion (or about 4%) of global equity managed by ‘developing managers’; EMs have \$7.1 billion (about 32%) of the Real Estate portfolio; \$981 million (or about 6%) of the Private Equity Portfolio; \$522 million (i.e. about 10%) of		\$139.041 million ⁵¹

⁴⁸ CalPERS Emerging & Diverse Manager Data Report, March 2013, <https://www.calpers.ca.gov/docs/forms-publications/emerging-diverse-manager-data-report-2013.pdf>.

⁴⁹ <https://www.calpers.ca.gov/docs/forms-publications/emerging-manager-year-two-report.pdf>.

⁵⁰ http://www.calstrs.com/sites/main/files/file-attachments/diversity_in_the_management_of_investments_2017.pdf, p. 34.

⁵¹ <http://www.calstrs.com/sites/main/files/file-attachments/cafr2016.pdf>, p. 88-89.

				Fixed Income assets; \$239 million (or about 12%) of the Inflation Sensitive Portfolio.		
New York State	<u>NYS Common Retirement Fund</u>	<i>\$192 billion (as of 3/31/2017)</i>	<i>\$13.8 billion (7.2% of the total, or 18.5% of active/externally managed assets) “invested with or committed to” M/WBEs⁵²; 14% of approved brokerage firms are M/WBEs</i>	<i>\$5.7 billion</i>	Lending partnership with NY Business Development Corp.	\$587.9 million (0.3% of total investment) ⁵³
New York State	<u>NYS Teachers’ Retirement System</u>	<i>\$107.5 billion⁵⁴</i>	25 of 40 approved brokers (62%) M/WBE certified; received \$173K out of \$571K (30%) in commissions ⁵⁵	<i>\$1.7 billion total; incl. 3 M/WBE EMs (Progress Investment Management Co., Leading Edge Investment Advisors, and FIS Group) manage \$1.3 billion (1.2%) via 21 M/WBE sub-managers</i>		\$240 million (0.2% of total investment)

⁵² http://www.osc.state.ny.us/pension/mwbe_report.pdf, p.7.

⁵³ http://www.osc.state.ny.us/retire/word_and_pdf_documents/publications/cafr/cafr_16.pdf.

⁵⁴ <https://www.nystrs.org/Library/Publications/Annual-Reports/2016CAFR>.

⁵⁵ https://www.nystrs.org/NYSTRS/media/PDF/M/WBE_Report_2016.pdf.

New York City Retirement Systems (NYCRS)	<u>NYC Teachers' Retirement System – TRSNYC</u> (includes Pension Fund, Diversified Equity Fund, Bond Fund, International Equity Fund, Inflation Protection Fund and Socially Responsive Equity Fund)	TOTAL for NYCRS - \$191.4 billion ⁵⁶ , including: Teachers - \$72.4 billion ⁵⁷ NYCERS - \$54.8 billion ⁵⁸ Police - \$38.8 billion ⁵⁹ Fire - \$12.7 billion ⁶⁰ BERS - \$4.5 billion ⁶¹	As of June 30, 2015, NYCRS invested \$12 billion, or 7.2% of total plan assets, with Emerging Managers and M/WBE managers. ⁶² The NYCRS' in-house Private Equity Emerging Manager Program is \$500 million, i.e. 4.8% of NYCRS' total private equity program of \$10.5 billion. ⁶³	\$592.2 million (0.3% of total investment), including: TRS - \$209,422,244 NYCERS – \$165,643,538 Police - \$156,155,288 Fire - \$46,862,173 BERS - \$14.2 million
	<u>NYC Employees Retirement System (NYCERS)</u>			
	<u>Police Pension Fund</u>			
	<u>Fire Pension Fund</u>			
	<u>Board of Education Retirement System (BERS)</u>			

⁵⁶ <https://comptroller.nyc.gov/wp-content/uploads/2016/11/CAFR2016.pdf>, p. 180.

⁵⁷ <https://trsnyc.org/ASPENMemberPro/WebContent/publications/financialReports/CAFR.pdf>.

⁵⁸ [https://www.nycers.org/\(S\(y53rv0yhbybcvenew3v5vtrju\)\)/Pdf/cafr/2016/CAFR2016.pdf](https://www.nycers.org/(S(y53rv0yhbybcvenew3v5vtrju))/Pdf/cafr/2016/CAFR2016.pdf).

⁵⁹ <http://www.nyc.gov/html/nycppf/downloads/pdf/CAFR%202016.pdf>.

⁶⁰ <http://www1.nyc.gov/assets/fdny/downloads/pdf/about/fire-pension-fund-cafr-2016.pdf>.

⁶¹ <https://www.nycbers.org/assets/bers/downloads/pdf/bers-cafr-web.pdf>.

⁶² Office of the New York City Comptroller, Bureau of Asset Management, 'Description of the Emerging Manager Program of the New York City Retirement Systems,' <https://comptroller.nyc.gov/wp-content/uploads/2014/11/NYCRS-EM-Program-Website-Language.pdf>.

⁶³ <https://comptroller.nyc.gov/wp-content/uploads/2016/11/CAFR2016.pdf>, p. xxiii.

Illinois	<p>Five funds, including:</p> <p><u>Teachers' Retirement System</u></p> <p><u>State Universities Retirement System (SURS)</u></p> <p><u>State Employees Retirement System (SERS)</u></p> <p><u>Judges Retirement System (JRS)</u></p> <p><u>General Assembly Retirement System (GARS)</u></p>	<p>Total of \$79 billion</p> <p>TRS - \$44.7 billion</p> <p>SURS – \$18.8 billion</p> <p>SERS - \$14.8 billion</p> <p>JRS – 0.8 billion</p> <p>GARS - \$0.04 billion</p>	<p>TRS: \$8.2 billion (18.7%) overseen by M/WBE investment managers;⁶⁴ in the equity markets, investment commissions to WMBEs totaled \$1.81 million (20.5% of all commissions paid to equity managers).⁶⁵</p> <p>SURS: 19 firms owned by minorities, females, or persons with a disability (MFDB) directly manage \$4.2 billion (24.7%) of the Total Fund</p>	<p>SURS: Progress Investment Mgmt. serves as the manager of EMs; the Progress program includes 12 M/WBE investment managers for a total of \$383 million</p>	<p>TRS: Investment management fees - \$300 million, bank fees – \$1.9 million, consulting - \$2.6 million; total investment expense - \$749.6 million (0.9% of total investment)</p> <p>SURS: Investment management fees - \$57.8 million (0.3% of total)</p> <p>No data available for other funds</p>
Connecticut	<p>Connecticut Retirement Plans and Trust Funds (CRPTF)</p>	<p>\$29 billion</p>	<p>The Connecticut Horizon Fund is a \$1 billion fund-of-funds public market program and also includes a \$155 million private equity allocation and a \$170 million alternative investment allocation (i.e. 4.6% of the CRPTF total). Emerging firms have the largest allocation of its total assets at 75 percent; minority-owned firms - 42 percent (i.e. 1.9% of the total); women-owned firms - 31 percent (i.e. 1.4% of the total). Of 21 private equity sub-managers, 8 are minority-owned, 3 emerging strategies, 1 women-owned. Of 24 alternative investment sub-managers, 21 are emerging strategies, 12 minority-owned, and 4 women-owned. As of 2016, 36 minority-owned, women-owned, Connecticut-based and emerging firms, comprised 28 percent of all firms doing business with the Pension Funds Management Division. They earned fees of \$37.2 million, i.e. nearly 38 percent of all investment advisory fees paid by the Division.⁶⁶</p> <p>The Treasury's Domestic Equity Brokerage Program "encourages" (sic) domestic equity portfolio managers to allocate 25 percent of brokerage commissions to minority and/or women broker-dealers; and 5 percent to emerging broker-dealers, but "does not direct investment managers to do business with any particular firm, nor will it select brokerage firms. Trading decisions will continue to be made by investment managers."⁶⁷</p>		<p>\$80,448,631 (0.27% of total investment)</p>

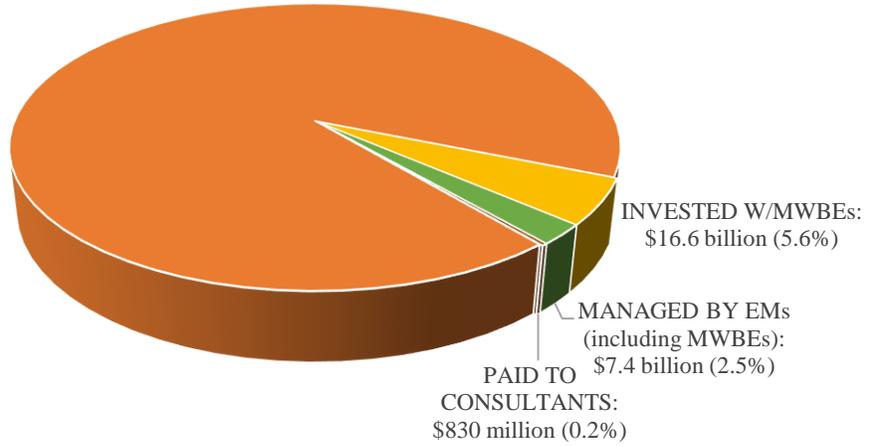
⁶⁴ <http://trs.illinois.gov/pubs/cafr/FY2016/FY16.pdf>.

⁶⁵ <http://trs.illinois.gov/press/2016/2016July6.pdf>.

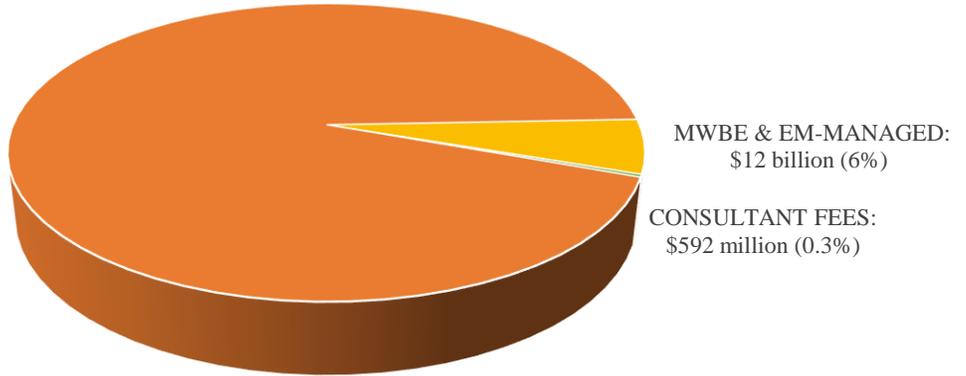
⁶⁶ <http://www.ott.ct.gov/pensiondocs/2016CIFCAmFR.pdf>, p. 51.

⁶⁷ http://www.ott.ct.gov/pension_domesticquityprogram.html.

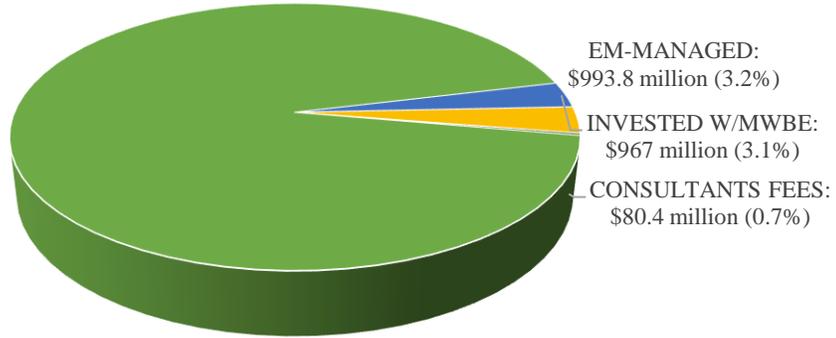
NYS PENSION FUNDS (CRF+TRS)



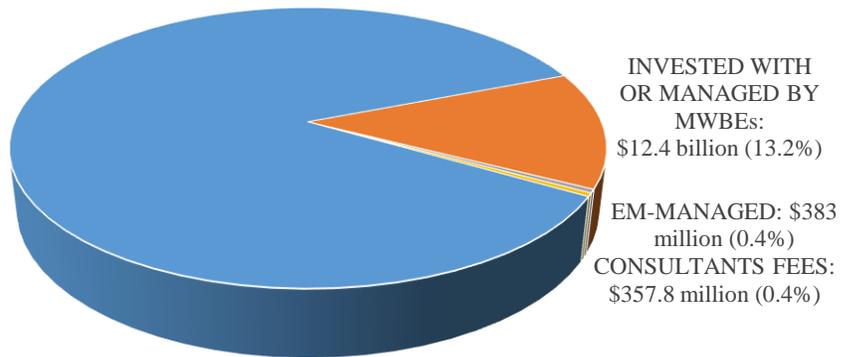
NYC (5 FUNDS)



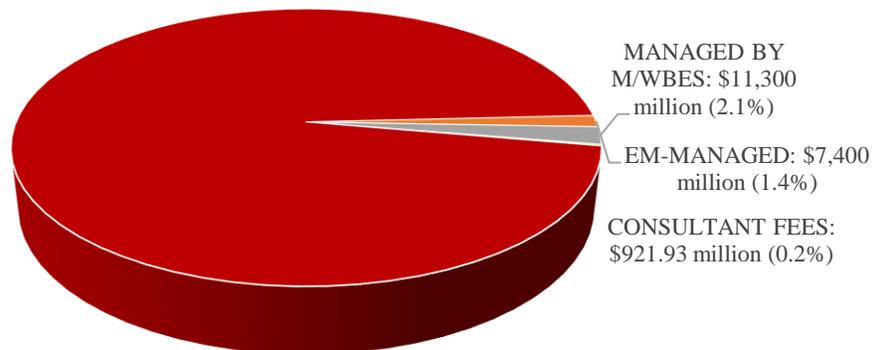
CONNECTICUT PENSION FUNDS



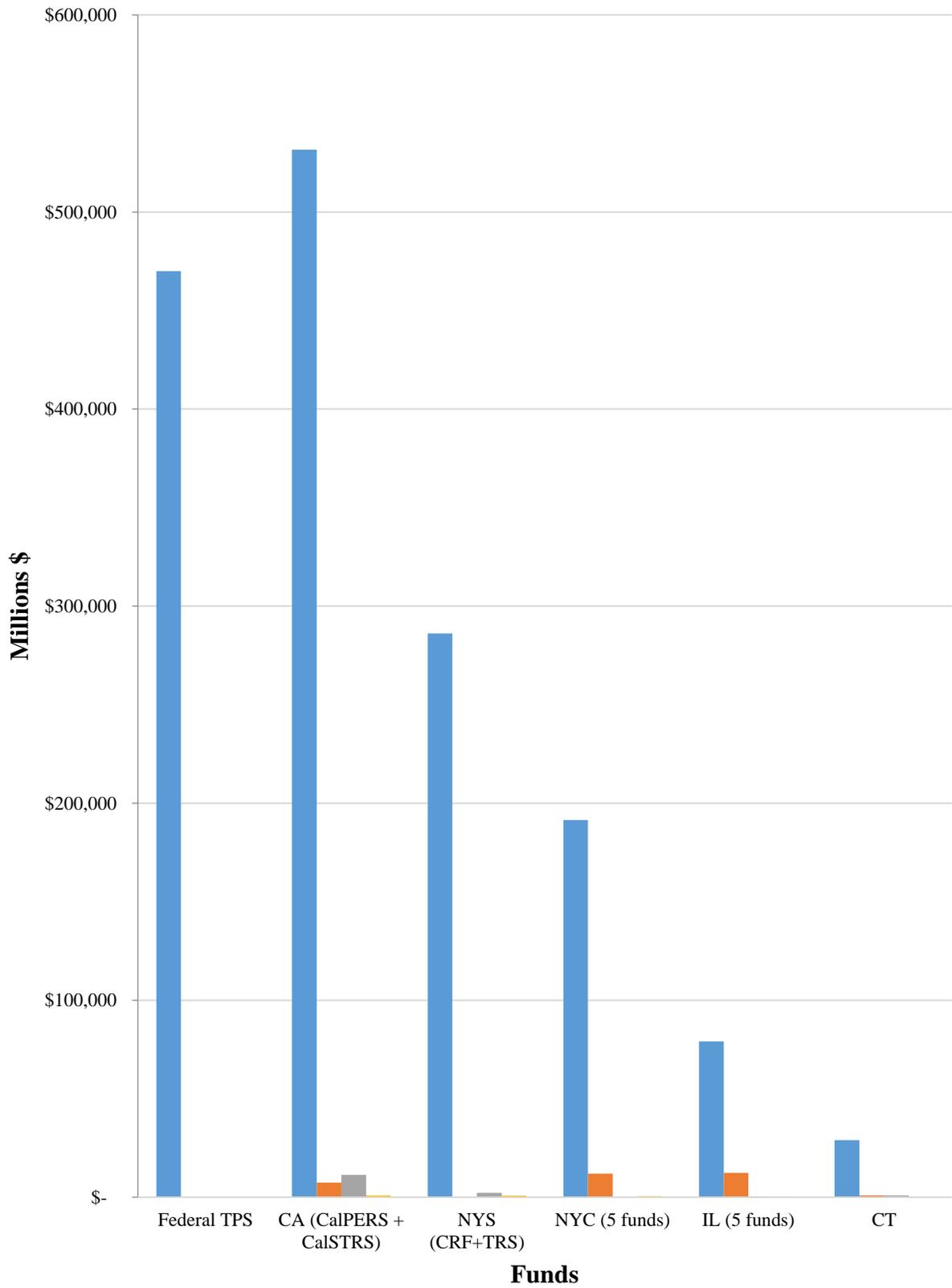
ILLINOIS STATE PENSIONS (5 FUNDS)



CALIFORNIA (CalPERS + CalSTRS)



PENSION FUNDS BREAKDOWNS (IN MILLIONS \$)



NY STATE AND CITY GOVERNMENTS' RESPONSIBILITIES REGARDING ACCESS TO CAPITAL

In total, in 2016 the New York State and New York City Retirement funds took over \$1 billion *off the top* of their assets to pay in fees to investment managers, consultants, advisors, and lawyers. This indicates that they surely can afford to use some funds to increase access to capital for New York's M/WBE community. Our recommendation for both Comptroller DiNapoli and Comptroller Stringer is to develop a solution that will direct *one percent of both the State's \$297.5 billion and the City's \$191.4 billion in pension fund investments* to create a *\$5 billion lending and investment fund targeted at New York's M/WBEs*.

Diversification of investments made by NYCERS cannot continue to begin and end with individual investment managers, as they are not representative of the larger M/WBE community. In order to effect maximum positive impact for M/WBEs, Comptroller Stringer and NYCERS must create a fund in which pension investments can be streamlined to "street-level" M/WBEs via competent investment firms with strong track records of investing in M/WBEs markets. Currently, the Comptroller, the Bureau of Asset Management, and NYCERS have failed to deliver real, tangible change to increase access to capital for M/WBEs, which defies their constant calls for the city to do more to increase access to credit, capital, and procurement opportunities for M/WBEs.

Comptroller Stringer and the New York City Retirement System *must* do more to increase access to capital for M/WBEs through the pension fund. If more than \$600 million can be spent on fees to investors, then there should be enough to invest into a fund that targets investment in M/WBEs. We are proposing the creation of a new fund under the current *Economically Targeted Investments program*, in which 1 percent of the assets of the New York City Employee Retirement Systems (approximately \$1.6 billion) are allocated specifically towards "street-level" investments in M/WBEs.

The ETI's dual mandate to support sustainable growth for New York's economy while generating competitive returns for the NYCERS pensioners makes it a natural partner for this type of undertaking. An allocation of 1 percent of the fund for M/WBE investment would make sense, given that the ETI already manages an allocation of 2 percent of the pension funds towards

investments that promote good-paying jobs and affordable housing. By directing an additional 1 percent towards M/WBEs, we can significantly decrease the gap in credit and capital access for M/WBEs while maintaining an acceptable rate of return for the NYCRS.

II. FROM DISCRIMINATION TO FAIR LENDING:

LEVERAGING GOVERNMENT DEPOSITS TO EQUALIZE CAPITAL ACCESS

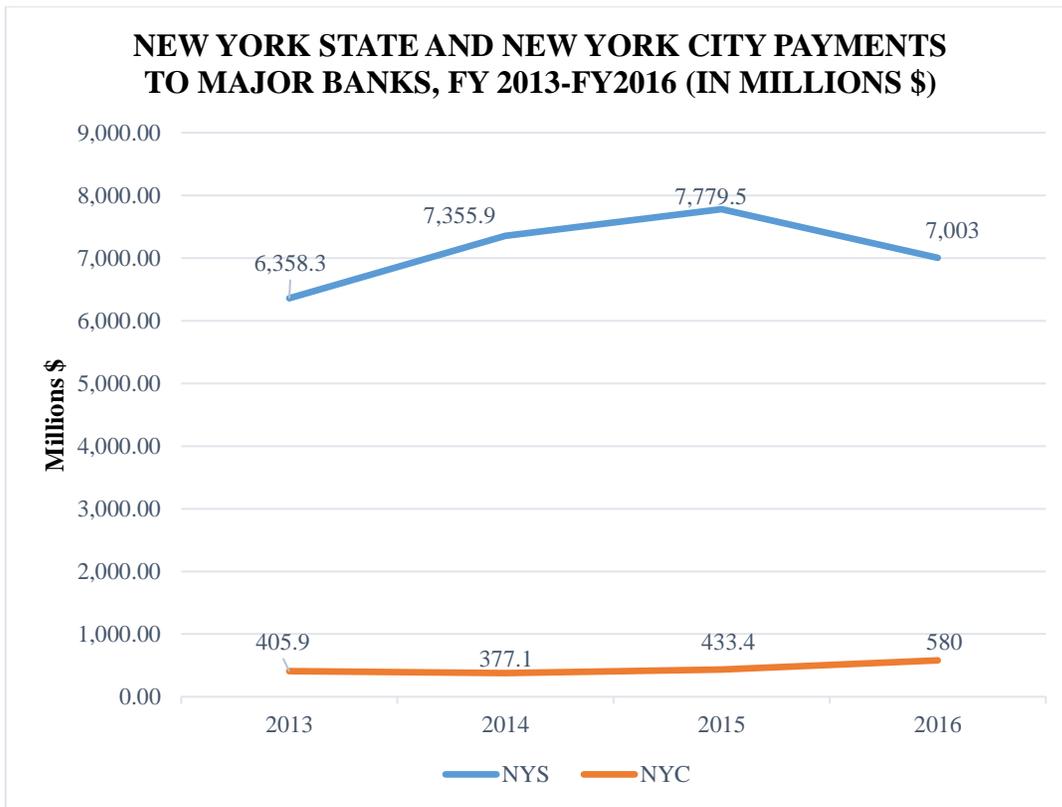
As noted in our previous reports, New York State and City governments maintain special relationships with a select number of well-established private banks in which taxpayers' funds are deposited and invested. In New York State, *depository banks are designated single-handedly by the State Comptroller*, while in NYC it is done (biennially – every odd-numbered year) *by a three-member commission, consisting of the Mayor, the Comptroller, and the Commissioner of Finance*. The list of banks with current NY State and NYC contracts is provided below:

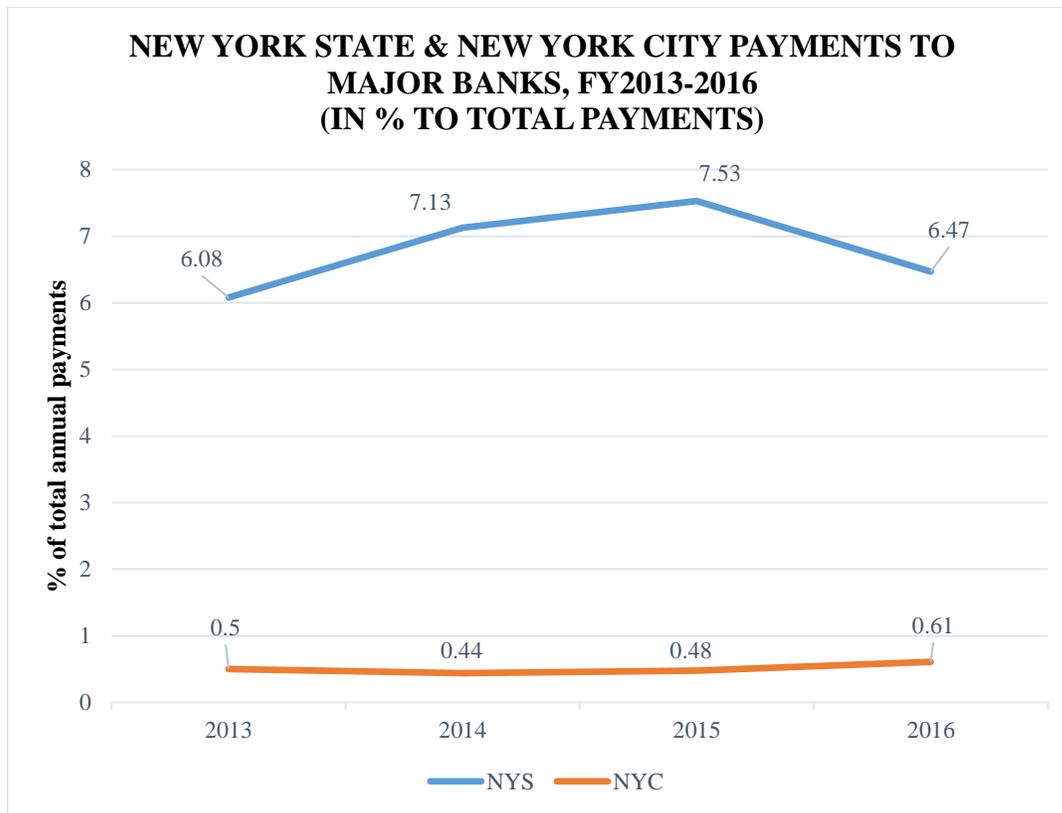
Bank	Total City Contracted Amount (FY 2015)	Total State Contracted Amount (FY 2015)
State Street Bank & Trust	\$16 million	\$38.8 million
JPMorgan Chase Bank NA	\$19.6 million	\$36.9 million
Wells Fargo Bank NA	\$11.8 million	\$107.1 million
Bank of America NA	\$9.2 million	\$2.9 million
TD Bank NA	\$1.3 million	\$131.6 million
The Bank of New York Mellon	\$2.3 million	\$7.6 million
Citibank, NA	\$19.8 million	\$324.4 million
US Bank National Association	\$2.5 million	\$0.4 million
Key Bank NA	-	\$0.4 million
HSBC Bank USA	\$0.4 million	-
	\$82.8 million	\$650.1 million

It is worth noting that contracts with depository banks represent only, so to speak, the tip of the iceberg in government business with the banking industry. Thus, for example, the NY State Comptroller's financial reporting site, Open Book NY, shows that in FY2016, State agencies paid a total of \$7 billion to banks – almost all of it to the nine largest (see table below). But of the 213 payments of \$1 million or over, only 11 have a contract ID listed. For the remaining 202 transactions, the database provides no details on the nature of the payment.

Table 2. *New York State and New York City Governments' Payments to Banks, FY 2016*

	<i>Bank Name</i>	<i>NY State payments, \$</i>	<i>NYC payments, \$</i>	<i>Total \$</i>
1	JPMorgan Chase	3,168M	16.8M	3,184.8M
2	US Bank	1,757M	161.9M	1,918.9M
3	Bank of New York	1,139M	160.8M	1,299.8M
4	Citibank	510M	21.1M	531.1M
5	Bank of New York Mellon	370M	162.7M	532.7M
6	Manufacturers & Traders	31M	-	31M
7	Wex Bank	19.4M	8M	27.4M
8	Wells Fargo	5.4M	22.7M	28.1M
9	Key Bank	2.8M	-	2.8M
10	Bank of America	0.5M	12.5M	13M
11	State Street Bank & Co.	-	13.1M	13.1M
	TOTAL	7,003.1M	587.6M	7,590.7M





Serving as a depository of public funds confers significant tangible as well as indirect benefits – increasing the bank’s political capital and ability to secure other high-powered clients. By their decisions on selecting depository banks, governments can influence banks’ behavior and induce them to comply with certain requirements and public policy goals, including such as better capital access for M/WBEs. In fact, banks vying to be designated as a government depository institution, must meet a number of fairly stringent requirements. One of them is compliance with the state and federal Community Reinvestment Acts (CRAs). Both of these laws, dating back to 1970s, require regulated financial institutions to help meet the credit needs of their local communities. However, as in almost all legislation of this nature, these requirements are stated in a fairly general and “aspirational” manner. As will be discussed further in more detail, neither federal nor NY State CRA in their current form include any requirement specifically related to meeting the credit needs of M/WBEs. Meanwhile, the actual record of most of New York City and State depository banks in terms of equitable lending to M/WBEs is questionable at best. In fact, many have been successfully sued in court for discrimination by minority borrowers as well as

various governments. Coincidentally, several of these banks were also among those proverbial “too big to fail” institutions that benefited from the federal bailout funds in the wake of the Great Recession (as part of the 2008 Emergency Economic Stabilization Act and subsequent measures), even though all of these funds were later repaid to the U.S. Treasury one way or another). Let us review these banks’ track record one by one (we list below not all the banks that are officially designated as NYC or NY State depositories, but only those with active government contracts):

Wells Fargo: Was sued by approximately 4,000 African American and Hispanic borrowers for charging them discriminatory fees or steering and placing them into subprime loans in the period from 2004 through 2009 while issuing prime loans to white borrowers with similar credit. In 2012, the U.S. Department of Justice reached a \$175 million settlement in the case. Wells Fargo has also been sued by the City of Los Angeles for allegedly giving loans to minorities that they could not afford, which led to their defaulting on these loans. However, in July 2015 a federal judge, U.S. District Judge Otis Wright II, dismissed the City of Los Angeles lawsuit and ruled that the alleged claims of bank’s behavior of predatory lending did not violate the law.⁶⁸ Similar case that was filed in Chicago was also dismissed in the same month.⁶⁹

In 2013, the City of Miami sued Wells Fargo, along with Citigroup and the Bank of America, under the Fair Housing Act (FHA) of 1968, for mortgage discrimination and predatory lending resulting in widespread foreclosures in minority neighborhoods, as well as decline in home values, leading to lost property tax revenue and increased city’s spending to upkeep blighted neighborhoods.⁷⁰ However, U.S. District Judge William Dimitrouleas dismissed the lawsuit at the time⁷¹ claiming that cities lacked the standing to sue and that the alleged harm was too remote from the banks' conduct.⁷²

⁶⁸ <http://www.latimes.com/business/la-me-wells-city-suit-20150718-story.html>.

⁶⁹ <http://www.latimes.com/business/la-me-wells-city-suit-20150718-story.html>.

⁷⁰ <http://www.reuters.com/article/usa-housing-discrimination-miami-idUSL2N0PL1WR20140710>.

⁷¹ <http://www.reuters.com/article/usa-housing-discrimination-miami-idUSL2N0PL1WR20140710>.

⁷² <https://www.housingwire.com/articles/34966-mortgage-lawsuits-against-bofa-citigroup-and-wells-fargo-resurrected>.

However, on May 1, 2017, the U. S. Supreme Court ruled that the FHA allows cities to sue financial institutions for predatory lending practices, provided they meet a high standard in proving local governments were actually harmed by these banks.⁷³ Following this decision, the City of Philadelphia filed a lawsuit against Wells Fargo (which was also its depository bank) for pushing minorities, from as early as 2004, into riskier loans with higher rates even when they are qualified for lower-rate loans with their credit profile. Although Wells Fargo denies the allegations and calls itself as a “fair and responsible lender,” statistics have shown that 23.3% of the bank’s loans to minorities were high-risk, compared to 7.6% of risky loans to whites.⁷⁴ The lawsuit also notes Wells Fargo’s ‘history of redlining,’ a practice going back to the 1930s which denies credit to borrowers based on their ethnicity or race.⁷⁵ To meet the high standard of proof, the City of Philadelphia conducted an investigation and assembled evidence showing that “both the resources of the city and the lives of Philadelphia's citizens have been negatively affected by Wells Fargo's discriminatory lending practices.”⁷⁶ The City is seeking unspecified monetary damages from Wells Fargo. Additionally, Philadelphia City Council has recently voted to drop Wells Fargo as its depository bank and move its \$2 billion payroll account to Citizens Bank.⁷⁷

Following Philadelphia, the government of the City of Miami filed another lawsuit against Wells Fargo for predatory lending to minorities.

Recently, Wells Fargo received a Federal CRA rating of ‘needs improvement,’ which placed it below the requisite threshold of ‘satisfactory’ required to serve as NYC depository bank. On May 31, 2017, the day of the biennial meeting of the City Banking Commission, Mayor De Blasio and Comptroller Stringer jointly announced that, pending the increase in the bank’s Federal CRA rating, they will prohibit new contracts for city deposits with Wells Fargo (as well as suspend it, for one year, from its role as the senior book-running manager for NYC General Obligation and

⁷³http://www.slate.com/articles/news_and_politics/jurisprudence/2017/05/in_bank_of_america_v_miami_the_supreme_court_strengthens_the_fair_housing.html.

⁷⁴<http://www.cnbc.com/2017/05/15/philadelphia-takes-on-wells-fargo-lawsuit-over-housing-discrimination.html>.

⁷⁵<http://www.latimes.com/business/la-fi-wells-fargo-philadelphia-20170516-story.html>.

⁷⁶<http://www.cnbc.com/2017/05/15/philadelphia-takes-on-wells-fargo-lawsuit-over-housing-discrimination.html>.

⁷⁷<http://www.cnbc.com/2017/05/02/the-city-of-philadelphia-just-gave-wells-fargo-its-walking-papers.html>.

Transactional Finance Authority bond sales). However, the decision of the City Banking Commission issued on the same date was somewhat different: Wells Fargo remained a “conditionally designated” depository bank of the NYC Government “under the Necessity Exception”. The resolution on this issue noted that “it would be extremely disruptive to the tax and other revenue collection function and cash flow of the City of New York if the Department of Finance were suddenly unable to use the Depository services of Wells Fargo for the annual processing of millions of transactions and billions of dollars of city funds.” At the same time, Santander Bank, whose federal CRA rating had also been downgraded to “Needs to Improve,” was dropped by the NYC Banking Commission from its list of depository banks; and a resolution was passed to withdraw the City’s \$5 million from Santander’s account.

* **Bank of America:** Forced to pay \$335 million in an out-of-court settlement it reached in 2011 over allegations that it discriminated against 200,000 African American and Hispanic borrowers over a four-year period. According to then-Attorney General Eric Holder, BoA steered African American and Hispanic borrowers into higher-interest subprime loans, even though they qualified for prime loans. BoA was also sued by the Cities of Los Angeles and Chicago over similar allegations of predatory subprime loan practices in minority communities.⁷⁸ The City of Chicago’s lawsuit held BoA responsible for giving borrowers of color more than 95,000 loans with less favorable terms than given to white borrowers under similar circumstances. Furthermore, 60% of these loans were at risk of defaulting.

Similar to Wells Fargo, BoA is also facing charges by the city of Miami under the FHA for targeting minorities, specifically black and Latino homeowners, for risky mortgages with high interest rates and exorbitant fees.

⁷⁸ City of Los Angeles v Bank of America Corp et al, U.S. District Court, Central District of California; and County of Cook v. Bank of America Corp et al, U.S. District Court, Northern District of Illinois, No. 14-02280.

* **JPMorgan Chase:** Was sued in 2014 by both the City of Los Angeles⁷⁹ and the City of Miami⁸⁰ over allegations of predatory lending and discrimination. The LA lawsuit was filed against Citigroup, BoA, and Chase claiming that they targeted minority borrowers with subprime loans up until 2007, and afterwards withheld loans from Black and Hispanic borrowers altogether, regardless of their creditworthiness. A recent-report on the state of the Black world, published by *Christian Times*, notes that JPMorgan Chase issues only 22% (or \$18.8 million) of all its Small Business Administration-guaranteed loans to minorities (including 5% to Blacks, 5% to Hispanics and 12% to Asians).⁸¹

In January 2017, JPMorgan Chase agreed to settle a \$55 million lawsuit against the bank for its discriminatory mortgage practices on thousands of African American and Latino borrowers between 2006 and 2009.⁸² As per U.S. Attorney for the Southern District of New York Preet Bharara, Chase brokers charged Black and Hispanic borrowers higher interest rates for mortgages than white borrowers with similar credit profiles.⁸³ Compared to white borrowers, Hispanic and Black borrowers were additionally charged on average \$968 and \$1,126 respectively for the first five years of the loan.⁸⁴ Bharara found that over the three-year period approximately 53,000 Black and Hispanics were charged “tens of millions” more than white borrowers.⁸⁵ JPMorgan allowed the brokers to vary interest rate based on factors other than creditworthiness such as race and ethnicity, without adequately monitoring their practices. Many brokers charged these fees based on the borrowers’ race and ethnicity even though it was a federal crime – a violation of both the Federal Housing Act and the Equal Credit Opportunity Act.

* **U.S. Bank National Association (US Bank):** Since it acquired more than ninety banks from The Royal Bank of Scotland (RBS) Citizens’ Charter One, US Bank came under scrutiny for

⁷⁹ City of Los Angeles v JPMorgan Chase & Co, case number [2:14-cv-04168](#), in the U.S. District Court for Central District of California.

⁸⁰ City of Miami v JPMorgan Chase & Co, U.S. District Court, Southern District of Florida, No 14-cv-22205.

⁸¹ Rev. Dennis A. Dillon et al., ‘The Economic State of the Black World 2017,’ *Christian Times*, p. 24-25.

⁸² <https://www.usatoday.com/story/money/2017/01/18/us-accuses-jpmorgan-mortgage-discrimination-lawsuit/96710486/>.

⁸³ <https://www.theatlantic.com/business/archive/2017/01/jpmorgan-lawsuit-discrimination/513494/>.

⁸⁴ Ibid.

⁸⁵ Ibid.

attempting to close their branches in lower income neighborhoods, as well as for failing to disclose this information. US Bank has also been accused of discriminatory lending: thus, in Chicago, it is claimed that 87.5% of conventional home loans went to white borrowers, while only 6.3% went to African Americans customers and 6.2% went to Hispanic customers.

In 2014, National Fair Housing Alliance (NFHA) and four of its member organizations filed a federal complaint against U.S. Bank with the HUD for housing discrimination in Washington D.C., Dallas, Hampton Roads, New Haven, and New Orleans⁸⁶ and subsequently in more than 35 cities in 15 metropolitan areas⁸⁷ including Orlando, Minneapolis, Greater Palm Beaches, and Denver.⁸⁸ The complaint claimed the bank had violated the FHA by failing to maintain and market homes based on racial or ethnic composition of the neighborhood.⁸⁹ The quality of foreclosed homes was kept in better quality in white neighborhoods than in African-American and Latino neighborhoods. The neglect of these latter properties contributed to the blighted condition of the neighborhood, creating health and safety risks in communities of color as well as reducing the property value of the neighborhood by millions of dollars.

* **Citigroup:** Was sued in 2013 by the City of Los Angeles over more than 1,200 cases of predatory or unethical lending resulting in foreclosures. The City government claimed that homeowners lost more than \$78 million, caused by more than 200,000 foreclosures in a four-year period (2008-2012), disproportionately concentrated in the communities of color, because Citibank had steered them into loans that they could not afford.⁹⁰ Although Citigroup challenged the lawsuit, claiming that cities do not have the right to sue, U.S District Judge Otis Wright rejected the bank's motion in 2014 claiming that "a loss of tax revenue and increased spending on services in blighted

⁸⁶ <http://www.ctfairhousing.org/wp-content/uploads/US-Bank-News-Release-Draft-20140311-FINAL.pdf>.

⁸⁷ <http://nationalmortgageprofessional.com/news/41873/us-bank-accused-racial-discrimination-and-neglecting-reo-properties>.

⁸⁸ <http://www.ctfairhousing.org/wp-content/uploads/US-Bank-News-Release-Draft-20140311-FINAL.pdf>.

⁸⁹ <http://www.ctfairhousing.org/wp-content/uploads/US-Bank-News-Release-Draft-20140311-FINAL.pdf>.

⁹⁰ City of Los Angeles v. Citigroup Inc., 13-CV-09009, U.S. District Court, Central District of California (Los Angeles).

neighborhoods was a sufficient injury to allow the city to sue.”⁹¹ However, in October 2015, LA dropped the lawsuit against the Citigroup.⁹²

It is widely recognized that minorities and women, including both households and businesses, were among those hardest hit by the Great Recession and the banking crisis at the end of George W. Bush Jr.’s presidency. This situation exacerbated the prior history of lending discrimination against M/WBEs. As part of what was at least initially intended to be a fundamental overhaul of the banking system, *the Dodd-Frank Wall Street Reform and Consumer Protection Act* of 2010 included many significant and useful measures that were supposed to curb the excesses in the banking industry.

While Dodd-Frank (named after its two key co-sponsors, U.S. Senator Christopher Dodd and Representative Barney Frank, both of whom no longer serve in Congress) *does not include—and, for political and constitutional reasons, could not have included—any provisions establishing specific targets, let alone requirements for M/WBE lending*, there were two sections in it that could have played a positive role in redressing the balance. Section 1071 of the Act amended the Equal Credit Opportunity Act (ECOA) to require banks to compile and submit to the Consumer Financial Protection Bureau an extensive record pertaining to every credit application by an M/WBE or a small business. This record was then to be published annually by the CFPB, except for personally identifiable information and other exceptions to be made at the discretion of the Bureau. Further, Section 342 mandated nine federal agencies to establish within them Offices of Minority and Women Inclusion (OMWIs) within six months of the enactment of the law. These Offices would not have any decision-making role in agency procurement, but would instead be in charge of “developing standards” for increased M/WBE participation in agency contracts and of advising agency heads of the impact of their policies on M/WBEs.⁹³

⁹¹ <http://www.reuters.com/article/us-citi-lawsuit-losangeles-idUSKBN0EK22820140609>.

⁹² <http://www.reuters.com/article/us-citigroup-discrimination-lawsuit-idUSKCN0S22T720151008>.

⁹³ <https://www.congress.gov/bill/111th-congress/house-bill/4173/text>. The agencies required to have OMWIs include Department of the Treasury, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, each of the Federal Reserve Banks, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Securities and Exchange Commission and Bureau of Consumer Financial Protection.

The implementation of Section 1071 requires CFPB to adopt rules on the specifics of information collection and reporting. However, this rulemaking process has been significantly delayed. The Bureau’s “Unified Agenda and Regulatory Plan” issued in the fall of 2016 indicated that the rulemaking for Section 1071 was still in the “pre-rule” stage; the Bureau was still planning for the “first stage” which would be focused on “outreach and research and on the potential ways to implement Section 1071, after which the Bureau will begin developing proposed rules concerning the data to be collected and determining the appropriate operational procedures and privacy protections needed for information-gathering and public disclosure.”⁹⁴ In July 2015, thirteen Members of Congress— led by Maxine Waters and including Nydia Velazquez, Carolyn Maloney, Greg Meeks, and Keith Ellison— wrote to CFBR Director Richard Cordray and Federal Reserve Chairwoman Janet Yellen, urging them to start the rulemaking process immediately. ⁹⁵In a report issued in early 2017 during the presidential transition, The Congressional Black Caucus (CBC) also urged the new administration to require CFPB to accelerate its rulemaking on the section.⁹⁶ In contrast some of the stakeholders in the banking industry, including lending officers at credit unions, let it be known that its implementation would further increase their already high costs of regulatory compliance.

The so-called Financial CHOICE Act, passed by the Republican House in June 2017 and intended to dismantle the Dodd-Frank regulations of the banking industry, includes no mention whatsoever of the challenges facing M/WBEs or disadvantaged businesses in access to credit and of the need for fair lending to them.

Meanwhile, within the first months of 2017, the Republican majority in the House proceeded to dismantle the Dodd-Frank regulations. The so-called Financial CHOICE Act⁹⁷, passed by the House on June 8, 2017 and currently in the Senate committee, if it becomes a law, will drastically weaken CFPB powers, taking away much of its

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https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201704_cfpb_Fair_Lending_Report.pdf.

⁹⁵ <https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=399228>.

⁹⁶ “We Have a Lot To Lose / Solutions To Advance Black Families in the 21st Century,” https://cbc.house.gov/uploadedfiles/2017.03.22_cbc_we_have_a_lot_to_lose_v5.pdf, p. 23.

⁹⁷ “An Act to create hope and opportunity for investors, consumers, and entrepreneurs by ending bailouts and Too Big to Fail, holding Washington and Wall Street accountable, eliminating red tape to increase access to capital and credit, and repealing the provisions of the Dodd-Frank Act that make America less

supervisory authority, including the rulemaking power. This bill would also strip the bureau of its power to fine banks for “unfair” and “deceptive” practices—the power that the CFPB used in 2016 to fine Wells Fargo \$100 million for opening 2 million customer accounts without their knowledge. In this context, attempts to proceed with putting Section 1071 into practice get buried under the avalanche of advancing deregulation. It is worth noting that one of the major elements of Republican rhetoric in support of the CHOICE Act is that it would allegedly expand access to capital for small businesses by reducing the regulatory burden on the banks. Needless to say, there is no mention whatsoever of M/WBE credit needs in the Act.

As the political climate in Washington under the Republican administration and Congress essentially precludes any substantial progress in federal legislation or policies to secure more fair lending practices and better access to capital for minority- and women-owned and other disadvantaged businesses, it is up to the state and, to a lesser degree, municipal governments to sustain and advance a progressive agenda in this area. ***It is time for New York State Governor Cuomo and NYS legislature to act on this issue.***

One of the potential solutions would be to strengthen New York State’s Community Reinvestment Act (CRA) and to improve its implementation. As noted in our *Access Denied* report, the CRA is the primary legal framework that regulates the relationships between banking institutions and local communities. The federal and state CRAs are used by government agencies to assess and to rate banks’ performance in terms of meeting the credit needs of these communities. The factors considered in these assessments and ratings include 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.⁹⁸ Specifically, the New York State CRA (passed in 1978 as §28-b of the New York State Banking Law) provides for an “an

prosperous, less stable, and less free, and for other purposes,” <https://www.congress.gov/bill/115th-congress/house-bill/10/text>.

⁹⁸ "FAQs About CRA Exams and Ratings." Department of Financial Services. New York State 4 Department of Financial Services, <http://www.dfs.ny.gov/banking/crafaqs.htm>.

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.”

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 ...”⁹⁹ Poor performance or noncompliance under the CRA can be grounds for denying approval for mergers, opening new branches, or new applications for deposit facilities by the regulatory agencies. Most relevant to this topic is *the power of State and City governments to discipline banks for a poor CRA showing by excluding them, permanently or temporarily, from the approved list of their depository institutions.*

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 banks with active multi-year contracts within the New York State contracting system, only three operate under the New York State CRA: The Bank of New York Mellon, Manufacturers & Traders Bank, and Amalgamated. 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.¹⁰⁰

It has to be noted that, even within their limited scopes, *the CRA laws suffer from poor implementation.* Thus, federal CRA examinations and ratings are under the purview of four different institutions, and there seems to be *no fully functioning website with up-to-date information on all the examinations performed and ratings assigned.* The Federal Deposit Insurance Corp. (FDIC) has not updated their CRA ratings webpage since 2013. NY State

⁹⁹ The Rules of the City of New York, http://www1.nyc.gov/assets/finance/downloads/pdf/treasury/banking_commission/banking-comission-title22.pdf.

¹⁰⁰ "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.

Department of Financial Services has not updated their CRA ratings table on their website since 2014.

A major weakness of the CRA regulations is that *neither the federal nor the New York State CRA contain any mention of M/WBEs*. One of the reasons for this is that New York State's first-ever M/WBE program was adopted in 1988 under Governor Mario Cuomo—ten years after its CRA. The CRA has not since been amended. As a result, in spite of the 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. And so far, no steps have been taken by the New York State legislature to expand the New York CRA to scrutinize these loans.

As for New York City, in 2012 it attempted to create its own regulatory system for depository banks with Local Law 38, also known as the Responsible Banking Act (RBA). This prompted a lawsuit against the city by the New York Banker's Association. 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.¹⁰¹

In light of all of the above, improving M/WBEs' access to capital would be addressed more efficiently and productively through direct and open dialogue between representatives of M/WBEs, the banking industry, and government authorities. For this purpose, *New York State Governor and New York City Mayor should convene a Banking Industry-M/WBEs summit*. The banks called to this summit must be the major City and State depositories such as: Wells Fargo; Bank of America; JPMorgan Chase Bank; Citibank; BNY Mellon; and Amalgamated; as well as large government financial contractors acting as quasi-banks, first and foremost, BlackRock.

Given that these banks collectively invoice our State and City governments over \$800 million in fees for servicing their funds, NY State and NYC governments have a tremendous leverage over these banks' policies. This leverage can—and must—be used to affect the necessary change on the

¹⁰¹ The New York Bankers Association, Inc., vs. The City of New York. United States District Court 52 Southern District of New York. 7 Aug. 2015.

issue of access to capital. To his credit, in 2015, Mayor de Blasio already committed to holding City banking summits, with the express purpose of creating an M/WBE lending program. At the time of this report's writing, nothing has been done in this regard. The time for our government to get serious about changing the dynamic of M/WBEs-banking industry relationship is now. Both the Governor and the Mayor need to act without delay.

OUR DEMANDS TO FEDERAL, STATE, AND CITY GOVERNMENTS

M/WBEs and minority communities cannot afford to wait much longer for action to be taken by our state, local, and federal representatives to reduce the barriers to capital access for these businesses.

At the federal level, the first step toward equal opportunity regarding M/WBEs was taken in 1958, when the Small Business Act, §8a, mandated assistance to “socially and economically disadvantaged” small businesses. In 1969 and 1971, President Nixon’s Executive Orders established the Office of Minority Business Enterprises, requiring federal agencies to assist them. Today, the program has lost a significant amount of funding and currently operates as a shell of its former self. Meanwhile this program has assisted many M/WBEs with becoming successful. Therefore, it is imperative that the Federal Government increase funding for M/WBE-targeted assistance programs.

The United States Small Business Administration’s 8a Development program is designed to help small, disadvantaged business compete in the marketplace. To that end, it gives small businesses owned by socially and economically disadvantaged individuals access to certain sole source public contracts, as well as mentoring and joint venture programs. This program should be expanded to provide fair-rate capital access to these disadvantaged businesses. Additionally, the Federal Government should expand aid to larger minority-owned firms by establishing national M/WBE capacity building programs that build upon the 8a designation.

To address the issue of fair-rate business credit on a national level, the Federal Government *must* re-establish the SBA’s direct loan program. The SBA does not currently make direct loans to small businesses. Rather, SBA sets guidelines for loans programs administered by an amalgam of private sector actors. The SBA attempts to mitigate the risk associated with these loans by acting as guarantors of the loans. Instead, it should be administering these loans directly to small businesses.

Lastly, the Federal Government must encourage the establishment of Chief Diversity Officer positions, along the lines of the New York State and New York City Comptroller’s Office

positions, in other cities and states that have set goals for M/WBE participation. Chief Diversity Officers are needed to supervise M/WBE-related programs, ensure their access to necessary resources, and stay on top of essential M/WBE needs. To maximize efficiency, these officials' duties should be entirely focused on M/WBEs.

Moving to **New York State and City** levels, it is imperative that both Comptrollers, the Governor, and the Mayor take the following action *in the nearest future*:

1. Comptroller Stringer and the New York City Retirement System *must* expand the Economically Targeted Investment portfolio of the New York City Retirement Systems *by 1 percent*. 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. Comptroller DiNapoli *must* allocate *1 percent* 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. Moreover, Governor Cuomo and Mayor de Blasio *must* follow through with their promises made to M/WBEs in 2015 to hold public banking summits at the City and State level in order to call on the depository banks to create a targeted, fair-rate lending program. In spite of this, neither the Governor nor the Mayor have taken steps towards convening a banking summit. Every day that passes without any progress on this issue is another missed day in solving the issue of capital access to M/WBEs.

OUR CONCLUSIONS

As discussed in detail in this report, the disparity faced by M/WBEs in access to credit and capital had not been remedied over the past year. M/WBEs are still saddled with the burden of being denied access from traditional lending institutions and investment houses. This capital crunch is one important reason why the NYC government is currently struggling to fulfill Mayor de Blasio's promise of 20 percent participation for M/WBEs in public contracting; furthermore, their share has in fact declined this year – from 5.3 to 4.8 percent.

When we speak with M/WBE owners, many of them tell us that they eventually “find a way.” But merely “finding a way” is simply “not good enough,” as said the title of our first report on the subject. M/WBEs are a major contributor to the economy of the state of New York, and we should do everything in our power to nurture and grow the community. Furthermore, Comptrollers DiNapoli and Stringer, Mayor Bill de Blasio, and Governor Andrew Cuomo have a duty to protect minority and women business owners by creating avenues for those businesses to thrive. Our City, State and Federal governments *must* do more to help foster growth within the M/WBE community through bridging the gap of access to credit and capital.

In our opinion, the central role in this process must be played by our City and State public retirement funds, as well as by the major banks that have commercial relationships with State and City governments (including by serving as depositories of public funds). While in recent years our City and State authorities have been making efforts to achieve impressive levels of participation for M/WBEs and a broader category of “emerging managers”, the over half-a-billion dollars paid every year to City and State consultants demonstrate that there are resources available to assist M/WBEs with overcoming their capital crunch. The same goes for the largest banks that receive, on average, over seven billion dollars from New York State Government and over half a billion by the city. New York State and City authorities should establish an M/WBE support fund following our proposed *“one percent solution.”*

Although we are all in troubling times under the current administration and congress, we cannot allow ourselves and our elected officials to lose sight of the imperative of economic justice for minority- and women-owned businesses that have been striving so hard over the years to get

their piece of the American dream. With racial and ethnic minorities increasing as a share of the U.S population—especially in NYC where people of color now comprise 68 percent of its residence—government, businesses, and communities must act together to address the economic inequalities that are deeply rooted in our nation’s and our world’s history of conquest, exploitation, and racism. Taking government action toward the ‘one percent solution’ that we propose—i.e. making decisions that will place 1 percent of NYS and NYC pension fund investments and 1 percent of the fees paid by both governments for their banking services into a special M/WBEs lending and investment fund— will be a much-needed step in the right direction.

