



STATE OF NEW YORK 2016 MWBE DISPARITY STUDY

PERSONAL NET WORTH FINAL REPORT

JUNE 2017



Mason Tillman
Associates, Ltd.



Empire State
Development

VOLUME III



FOREWORD

The State of New York 2016 MWBE Disparity Study (Study) determined if a statistically significant disparity existed between the number of Minority and Woman-owned Business Enterprises (MWBE) that are ready, willing, and able to provide the goods and services that the State of New York (State) procures and the number of available market area MWBEs. The Study contains four volumes:

- I. Disparity Study
- II. Policy Review
- III. Personal Net Worth Review
- IV. Workforce Study

I. Disparity Study

Volume I of the Study analyzed the statistical significance of underutilized MWBEs at the prime contract and subcontract levels. The Disparity Study examined four industries: construction, construction-related services, non-construction related services, and commodities and other services. The prime contracts reviewed were awarded during the study period of April 1, 2010, to March 31, 2015. The prime contract and subcontract disparity findings are presented below by industry, ethnicity, and gender.

A. Prime Contract Disparity Findings

**Table 1: Construction Prime Contract Dollars,
April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Construction Contracts Valued \$50,000 to \$1,400,000	Construction Contracts Valued Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Subcontinent Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans or Alaskan Native Americans	----	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

(----) denotes an underutilized group with too few available firms to test statistical significance.



**Table 2: Construction-Related Services Prime Contract Dollars,
April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Contracts Valued \$50,000 to \$2,000,000	Contracts Valued Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	No Disparity
Asian-Indian Subcontinent Americans	<i>Disparity</i>	No Disparity
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans or Alaskan Native Americans	----	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

(----) denotes an underutilized group with too few available firms to test statistical significance.

Table 3: Non-Construction Related Services Prime Contract Dollars, April 1, 2010, to March 31, 2015

Ethnicity/Gender	Non-Construction Related Services Contracts Valued \$50,000 to \$500,000	Non-Construction Related Services Contracts Valued Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Subcontinent Americans	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans or Alaskan Native Americans	----	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

(----) denotes an underutilized group with too few available firms to test statistical significance.



**Table 4: Commodities and Other Services Prime Contract Dollars,
April 1, 2010, to March 31, 2015**

Ethnicity/Gender	Commodities and Other Services Contracts Valued \$50,000 to \$275,000	Commodities and Other Services Contracts Valued Between \$25,000 and \$50,000
Black Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Subcontinent Americans	<i>Disparity</i>	<i>Disparity</i>
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>
Native Americans or Alaskan Native Americans	----	----
Caucasian Females	<i>Disparity</i>	<i>Disparity</i>

(----) denotes an underutilized group with too few available firms to test statistical significance.

B. Subcontract Disparity Findings

Prime contracts valued over \$250,000 were reviewed for the subcontracts awarded during the study period of April 1, 2010 to March 31, 2015. The disparity findings for construction, construction-related services, and non-construction related services subcontracts are presented below.

**Table 5: Subcontract Disparity Summary,
April 1, 2010, to March 31, 2015**

Ethnicity/ Gender	Construction	Construction-Related Services	Non-Construction Related Services
Black Americans	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
Asian-Pacific Americans	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
Asian-Indian Subcontinent Americans	<i>Disparity</i>	No Disparity	No Disparity
Hispanic Americans	<i>Disparity</i>	<i>Disparity</i>	<i>Disparity</i>
Native Americans	No Disparity	----	----
Caucasian Females	<i>Underutilization</i>	<i>Disparity</i>	<i>Disparity</i>

(----) denotes an underutilized group with too few available firms to test statistical significance.

C. Recommendations

Proposed race and gender-conscious remedies are presented in *Chapter 10: Recommendations and Remedies*. The recommendations are narrowly tailored to the ethnic and gender groups with a documented disparity. The race and gender-conscious remedies include: 1) bid discounts for construction and commodities and other services prime contracts; and 2) evaluation credits for construction-related and non-construction related prime contracts. Subcontract MWBE goals are recommended for the ethnic and gender



groups with a documented disparity. Race and gender-neutral recommendations are described in the *Volume II: Policy Review Report*.

II. Policy Review Report

Volume II: Policy Review Report, provides race and gender-neutral recommendations to mitigate the disparities in MWBE participation on State contracts as documented in the Disparity Study. The *Policy Review Report* assesses: 1) the legality of contract goals, set-asides, price preferences, and mentor-protégé programs; 2) the MWBE Program mandated by Article 15-A; 3) the State's procurement methods that could unintentionally create barriers for MWBE participation; and 4) best management practices implemented by other states.

III. Personal Net Worth Review

Volume III: Personal Net Worth Review, assesses the legal precedent for using personal net worth (PNW) as a criterion in the State's MWBE Program's certification requirements. The report reviews 1) the legislative history of PNW; 2) the precedent for application of PNW by state and municipal governments; and 3) a literature review analyzing the relationship between PNW, race, and access to capital.

The assessment revealed that PNW is a measure of credit worthiness and a determinant of access to capital for business growth and capacity building. However, the PNW certification criterion is excessive and requires the applicant to provide a disproportionate amount of information to demonstrate his or her net worth. The PNW criterion can limit the growth of a business, which would affect the business' ability to achieve financing and bonding resources needed to support the large contracts awarded by the State. The State's PNW criterion should be simplified and streamlined to lessen the burden on applicants who seek MWBE certification. Minimally, the life insurance, pension benefits, stock investments, and other personal property requirements should be removed from the PNW criterion.

IV. Workforce Study

Volume IV: Workforce Study, assesses the employment of minorities and Caucasian females on contracts awarded by the State from January 1, 2016 to December 31, 2016. The purpose of the *Workforce Study* is to 1) assess the level of minority and Caucasian female employment on State contracts; 2) determine the availability of minorities and Caucasian females by Equal Employment Opportunity (EEO) category, as recorded in the United States Census Bureau, *2012 American Community Survey*; and 3) compare the prime contractor and subcontractor incumbent workforce to the percent of available minority and Caucasian female workers in the State by EEO category.

A number of recommendations are offered to remedy the documented disparity, including minority and Caucasian female construction employment goals. Collaboration with



existing pre-apprentice programs to provide recruitment and training opportunities to retain minorities and Caucasian females in the construction trades is also recommended. Post-employment retention strategies are offered to assist the State's contractors in meeting the workforce policy objectives. The *Workforce Study* also includes enhanced monitoring and compliance standards to produce quarterly workforce utilization reports electronically and to assess penalties for non-compliant contractors.



Table of Contents

STATE OF NEW YORK PERSONAL NET WORTH REVIEW	1
I. INTRODUCTION.....	1
II. HISTORY OF PERSONAL NET WORTH POLICY	2
A. New York State 15-A	2
B. United States Department of Transportation DBE Program	3
C. United States Small Business Administration 8(a) Program.....	4
D. Conclusion.....	5
III. OTHER STATE AND MUNICIPAL GOVERNMENTS’ APPLICATION OF THE PERSONAL NET WORTH CRITERION.....	5
A. Peer Minority and Woman-owned Business Enterprise Programs	5
B. Conclusion.....	8
IV. DISCRIMINATION IN THE CREDIT MARKET.....	8
A. Relevance of Business Size	9
B. History of MWBE Access to Credit.....	9
C. Federal Policy to Facilitate Equitable Access to Credit	12
D. Higher Education and Its Effect on Personal Net Worth	14
E. Conclusion.....	15
V. DISPARITY STUDY RESULTS.....	16
A. Excerpts from the Anecdotal Interviews	16
B. Conclusion.....	19
VI. RECOMMENDATIONS.....	19
APPENDIX A: STATE MWBE PROGRAMS	A-1
APPENDIX B: LARGEST MUNICIPAL MWBE PROGRAMS	B-1
APPENDIX C: PERSONAL NET WORTH ACCOUNT ENTRY COMPARISON	C-1





List of Tables

TABLE 1: STATE MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISE PROGRAMS WITH PERSONAL NET WORTH BENCHMARKS.....	7
TABLE 2: LARGEST MUNICIPALITIES WITH MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISE PROGRAMS AND A PERSONAL NET WORTH BENCHMARK.....	8
TABLE A-1: STATE MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISE PROGRAMS	A-1
TABLE B-1: LARGEST MUNICIPAL MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISE PROGRAMS	B-1
TABLE C-1: COMPARATIVE ANALYSIS OF PERSONAL NET WORTH CRITERIA BY STATE	C-1
TABLE C-2: COMPARATIVE ANALYSIS OF PERSONAL NET WORTH CRITERIA BY CITY.....	C-3



State of New York Personal Net Worth Review

I. Introduction

This Personal Net Worth (PNW) review was commissioned to assess the impact of the PNW requirement on businesses that might be eligible for certification as Minority and Women-owned Business Enterprises (MWBE). PNW is one of several certification criteria for MWBE certification under the State of New York (State) MWBE Program authorized by the New York Executive Law Article 15-A (Article 15-A). Section II of this report reviews the legislative history of PNW in Article 15-A and examines the legal precedent for PNW in public contracting and its application by state and municipal governments. The literature review in Section III analyzes the relationship between PNW, race, and access to credit. Finally, Section IV of this report details the PNW anecdotal interview data compiled by the State of New York 2016 Disparity Study (2016 Study).

PNW as set forth in Article 15-A is the aggregate adjusted net value of the business owner's assets remaining after liabilities and certain excepted assets are deducted. When Article 15-A was originally enacted in 1988, the MWBE program certification requirement did not include a PNW criterion.¹ In 2010, the certification requirement in Article 15-A was amended to include a PNW criterion. The basis for the change was a recommendation in the State's 2010 disparity study, *The State of Minority- and Woman-Owned Business Enterprise: Evidence from New York, 2010* (2010 Study). The 2010 Study recommended a modification to the that eligibility for the State's MWBE Program State's MWBE Program include a PNW criterion. The consultant explained that a PNW provision would enable Article 15-A to sustain a constitutional challenge because it derived from the United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) program regulations.

In Section II, the legislative history of PNW is used to examine the application of PNW in the USDOT DBE program and its genesis in the United States Small Business Administration (SBA) 8-A Program. The SBA 8-A program, the predecessor to the USDOT DBE program, was the first federal agency to incorporate PNW in its eligibility criteria.

Each of the 50 states and the 30 largest municipalities were reviewed to determine if the entities had an M/WBE program, that applied the PNW criterion. Only five states and five of the largest municipalities had an M/WBE program. These 10 M/WBE programs were evaluated for their application of a PNW threshold and the legal predicate for the PNW criterion.

The literature review considers PNW a factor in a business's access to credit. Lending rates and loan terms for minority, woman, and similarly situated Caucasian male business owners were examined to assess the significance of PNW for MWBEs seeking business credit approval.

¹ N.Y. Sess. Law Serv. 261 (1998); *see also* N.Y. Exec. Law §§ 310-318 (1988).

This report establishes that PNW does not correlate with access to credit as would be expected given the general presumption that PNW is an adequate measure of business capacity. However, the review provides evidence that race still has a high adverse impact on an MWBE's access to credit, especially for African American-owned businesses. This Study presents evidence that an unreasonably restrictive PNW criterion may have a constraining effect on MWBE growth and, thus, limit MWBE capacity in capital-intensive industries.

II. History of Personal Net Worth Policy

A statutory analysis of Article 15-A was conducted to determine the basis for the PNW criterion in the 2010 amendment to 15-A. In addition, the legislative history of the PNW criterion in the Disadvantaged Business Enterprise (DBE) regulations of the USDOT and SBA were reviewed.

A. New York State 15-A

In 1988, Governor Mario Cuomo signed Article 15-A to increase the participation of MWBEs on the State's construction and real estate related contracts.² Article 15-A authorized the creation of the Office of Minority and Women's Business Development within the Governor's Office to direct the State's MWBE Program. In 2003, the program oversight of Article 15-A was transferred from the Governor's Office to the Empire State Development Corporation (ESD), Division of Minority and Women's Business Development (DMWBD).

It was 22 years after Article 15-A was signed, when the 2010 amendment modified the MWBE certification requirement to include a PNW criterion.³ The 2010 Study referenced the USDOT DBE program as precedent for applying PNW in the 15-A MWBE program. The 2010 Study stated that PNW "has been critical to the judicial holdings that the [USDOT] DBE Program is constitutional."⁴ As explanation for the recommendation, the 2010 Study stated, "the [USDOT] DBE Program's standards are national, and reflect Congress' judgment about how best to create a uniform approach."⁵ Indeed, the USDOT DBE program is predicated on a congressional finding because the federal DBE programs are not subject to the *Croson* standard.⁶ However, *Croson* requires a finding of statistically significant disparity for a local government to promulgate a race-based preference program for the award of public contracts. The congressional findings are not a proxy for the factual predicate a local government is required to produce as a basis for race-based contracting program. In addition, it is important to recognize that Article 15-A authorized an MWBE program and not a DBE program.

The 2010 Study posits that adopting the USDOT DBE program's certification eligibility standards would assure the State's MWBE Program was narrowly tailored and insulated against a lawsuit.

² *N.Y. Sess. Law Serv. 261 (1998); see also N.Y. Exec. Law §§ 310-318 (1988).*

³ New York State Senate. Governor's Program Bill No. 299 (S.8314). 2010.

⁴ NERA Economic Consulting. *The State of Minority- and Woman-Owned Business Enterprise: Evidence from New York*, 2010.

⁵ *Ibid.*

⁶ *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989).



This supposition is based on the erroneous claim that the courts will uphold a local MWBE program that employs the DBE eligibility standards. A more prudent approach to insulating a MWBE program from a challenge is to predicate the program on the narrowly tailored standard *Croson* requires. Congress established the predicate for the USDOT DBE Program because it is a federal program. Congress formulated the factual predicate for the DBE program without having performed a disparity study. The belief that the legal framework for the USDOT DBE program is equally applicable to *Croson* and its progeny is erroneous. The Disparity Study offers the statistical evidence for an MWBE Program without confusing the *Croson* standard for the narrow tailoring of an MWBE program with the legal framework for the USDOT DBE program.

B. United States Department of Transportation DBE Program

PNW was incorporated in the federal government certification standard since 1989. USDOT has used PNW as a certification criterion for both its Disadvantaged Business Enterprises (DBE) Program and its Airport Concession/Disadvantaged Business Enterprises (AC/DBE) Program since 1999.⁷ Following the decision in *Adarand Constructors, Inc. v. Peña* 515 U.S. 200 1995 (*Adarand*), the USDOT regulations, 49 CFR Part 23 was amended to incorporate PNW as a certification criterion. The PNW effectively limited the size of a DBE based on the PNW of the business owner. The application of the PNW was President Clinton's effort to mend and not end the USDOT DBE program in response to the Supreme Court's decision in *Adarand*.⁸

Adarand extended the strict scrutiny standard to federal affirmative action initiatives, specifically the USDOT's DBE program. The case lingered in the judicial system for nearly a decade before it was finally adjudicated. Initially, the district court held that the Colorado Department of Transportation's (CDOT) DBE program was constitutional. The Tenth Circuit upheld that ruling two years later in 1994.⁹ The case was remanded to the district court by the Supreme Court to litigate the sole issue of whether the DBE program met the strict scrutiny standard. The court determined that the subcontracting compensation clause did not meet the strict scrutiny standard. Consequently, the Transportation and Equity Act revised the DBE program for the 21st Century (TEA 21).¹⁰

The introduction of PNW as a certification criterion was but one response to *Adarand*. In 2000, the Tenth Circuit ruled that the DBE program met the compelling interest and narrowly tailored requirements. *Adarand* appealed again and the Supreme Court denied that final appeal in 2001.¹¹

The DBE regulations 49 CFR Part 23, drafted pursuant to federal statute, was initially enacted in 1987 when Congress found that there was discrimination in the Department of Transportation's

⁷ Federal Register Vol. 64, No. 21 (1999).

⁸ 790 F. Supp. 240 (D. Colo. 1992).

⁹ *Adarand Constructors Inc. v. Pena*, 16 F.3d 1537 (10th Cir. 1994).

¹⁰ Public Law No. 105-178, 112 Stat. 113 Section 1101(b)(1), (June 9, 1998).

¹¹ *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 (2001).



award of federally funded contracts. Congress did not make a statistical finding of disparity as *Croson* requires of state and local governments to establish its race-based DBE goals.

The USDOT's final amended rule incorporating PNW was published in February 1999. It stated that an individual whose PNW exceeded \$750,000 was not economically disadvantaged and therefore ineligible for the DBE program. The USDOT selected the \$750,000 threshold from the SBA regulation 13 CFR Part 124.3. This CFR regulation references PNW as a "well-established and effective part of the SBA programs." During the rulemaking process, the \$750,000 PNW threshold was considered a reasonable compromise in view of the wide range of comments calling for higher or lower thresholds.¹²

The USDOT regulations define PNW as the net value of the assets of an individual remaining after total liabilities are deducted.¹³ The PNW calculation does not include the business owner's equity in the applicant DBE business or in their primary place of residence. The USDOT also excludes other assets that the individual can verify as necessary for obtaining financing or a franchise agreement for the initiation or expansion of their DBE business to a maximum of \$3 million.¹⁴

C. United States Small Business Administration 8(a) Program

In 1989, PNW was initially incorporated into a federal Small Business Enterprise (SBE) program as a certification criterion through the Small Business Administration's Section 8(a): Business Development Program, published in the *SBA Federal Register Vol. 54, No. 167 (1994)*.¹⁵ As applied by the SBA, the PNW criterion assessed: 1) the individual's relative degree of economic disadvantage; and 2) the individual's potential to capitalize business. According to the SBA rule, an individual is no longer economically disadvantaged after reaching the PNW threshold. The SBA elaborated that at the PNW threshold, the participant businesses have sufficient personal assets and access to sources of financing to conduct business unhindered.¹⁶

To qualify as an economically disadvantaged business under SBA's initial 1989 Business Development Program regulations, the business owner's PNW could not exceed \$250,000. In 1998, SBA raised the business owner's maximum PNW threshold to \$750,000.¹⁷

Currently, the SBA regulations calculate PNW by adjusting the difference between total assets and total liabilities. This adjustment is intended to ensure that small business owners are not unfairly penalized by eligibility evaluations based on non-liquid assets and equity. Furthermore, the SBA excludes a business owner's home and business equity from the PNW calculation, though home

¹² *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 (2001).

¹³ 49 C.F.R. § 26.5 (2014).

¹⁴ 49 C.F.R. § 26.67 (2014).

¹⁵ The SBA established the 8(a) Business Development Program in 1968 under the authority of Section 8(a) of the Small Business Act.

¹⁶ 13 C.F.R. § 124.112 (2016).

¹⁷ 13 C.F.R. § 124.04 (2016).



equity at full market value is requested on the certification application for informational purposes.¹⁸

D. Conclusion

The USDOT DBE Program is the most widely used certification program because it is implemented by every airport, transit agency, and local government that is a recipient of USDOT funding. Thus, every state has a DBE program and a DBE certification process that includes a PNW criterion. Some states have used the DBE program requirements to establish an MWBE program.

It is important to make the distinction between the legally required factual predicate for a federal DBE program and an MBE program. The federal DBE programs define an eligible applicant as an individual who is socially and economically disadvantaged,¹⁹ and the factual basis for the standard was derived from the congressional proceedings. The *Croson* standard applies to state and local MWBE programs and requires each government to derive its factual predicate based on examination of minority groups' access to local government contracts.

Croson addresses the underutilization of minority groups, while DBE programs focus on the inclusion of disadvantaged businesses. DBE program regulations are predicated on congressional findings. A MWBE program requires compliance with the strict scrutiny standard which is more rigorous than the congressional findings which established the DBE programs. Acknowledging the difference in the legal requirements for DBE and MWBE programs is essential when implementing a constitutionally sound MWBE program.

III. Other State and Municipal Governments' Application of the Personal Net Worth Criterion

A. Peer Minority and Woman-owned Business Enterprise Programs

The application of a PNW certification criterion by state and municipal governments was examined by reviewing the websites of the 50 states and the 30 largest municipalities. The State's websites were reviewed to identify those with an MWBE program.²⁰ The five state MWBE programs identified were examined to determine if a certification standard was used for eligibility. MWBE programs with a certification standard were queried for the application of a PNW criterion. Similar steps were followed in reviewing the municipal government websites. MWBE programs were identified in 26 states and 16 cities.



¹⁸ 13 C.F.R. § 124.04 (2016).

¹⁹ 49 C.F.R. § 26.25 (2014).

²⁰ See Appendix 1 and Appendix 2 for list of identified MWBE programs.

1. State Minority and Woman-owned Business Enterprise Programs

The MWBE programs of the 26 states were evaluated and an analysis was performed of the PNW limits and methodologies used to assess applications for MWBE certification.²¹ The complete list of states with an MWBE program can be found in *Appendix 1: State MWBE Programs*.

It was found that only five states—Ohio, Georgia, Maryland, South Carolina, and Mississippi—use PNW as a criterion for MWBE certification. These states' PNW requirements were then compared to ESD's PNW criterion.

Ohio's MBE—Encouraging Diversity, Growth, and Equity (EDGE)—targets socially disadvantaged business enterprise owners (on the basis of race, gender, or disability) with at least 51% control of the business and a PNW of no more than \$250,000.²² This PNW limit increases to \$750,000 after MBE certification is approved. The EDGE program also establishes the goals of Ohio's state agencies for the awarding of contracts in construction, architecture, engineering, information technology services, and professional services.

Maryland's calculation of PNW is similar to New York's ESD Program, including the exemptions for retirement accounts. A notable element of the Maryland program is the annual review of the PNW benchmark. Each year, Maryland's Office of Minority Business Enterprise recalculates the MBE program's annual PNW limit on the basis of the regional Consumer Price Index.²³

Georgia's MWBE program models its PNW thresholds and calculation methods on those of the federal DBE program as set forth in *USDOT 49 CFR 26*, with a 2016 PNW threshold of \$1,320,000. This state operates its DBE program with participation goals distinct from those of their MWBE programs.

South Carolina²⁴ and Mississippi²⁵ utilize a \$750,000 PNW threshold enacted by their respective state legislatures. In calculating PNW, these states also limit their exclusions to the applicant's business equity and primary home equity.

It is important to note that none of the state MWBE programs that utilize PNW thresholds based them on a disparity study. Ohio and Mississippi base their PNW thresholds on the United States Small Business Act standards found in *13 C.F.R. Part 121*. Georgia, Maryland, and South Carolina based their PNW standard on the DBE standards found in *49 CFR 26.67*. Table 1 provides a

²¹ Seven additional states were found to have business development programs, but with scopes of operation beyond those of MWBE programs.

²² <http://www.edge.ohio.gov/>

²³ Maryland Department of Transportation. "Personal Net Worth Cap for Certified MBE Firms Increases Effective January 1, 2015." News Information. 2015.

²⁴ South Carolina Procurement Code 19-445-2160. 2014.

²⁵ Mississippi Minority Business Enterprise Act 57-69-3. 2010.



comparison of the PNW benchmarks between New York’s ESD Program and other five state MWBE programs:

Table 1: State Minority and Woman-owned Business Enterprise Programs with Personal Net Worth Benchmarks

Population Rank	State Benchmarks	Program Type	PNW Threshold	Based on a Disparity Study
7	Ohio	MWBE ¹	≤\$250,000; ≤\$750,000 after certification	No
8	Georgia	MBE ²	≤\$1,320,000	No
19	Maryland	MBE	≤\$1,669,419	No
24	South Carolina	MBE	≤\$750,000	No
31	Mississippi	MWBE	≤\$750,000	No

1 - Minority and Woman-owned Business Enterprise
 2 - Minority Business Enterprise

2. Municipal Minority and Woman-owned Business Enterprise Programs

The websites of the 30 largest cities, defined by United States Census population tabulation, were reviewed to identify municipalities with an MWBE program.²⁶ Sixteen municipalities on the list of the 30 largest cities had an MWBE program and all had certification requirements. The application of the PNW criterion in each city’s certification process was examined. The complete list of cities with MWBE programs can be found in *Appendix 2: Largest Municipal MWBE Programs*.

Only four of the 16 cities—Chicago, Austin, Seattle, and Denver—have MWBE programs that have established a PNW certification criterion for eligibility as an MWBE. These MWBE programs utilize various thresholds and standards to measure PNW. In the cities of Chicago, Denver, and Seattle, methods of establishing the PNW benchmark were notably different from those of ESD.

The City of Chicago annually adjusts its PNW threshold based on the previous year’s threshold and the regional Consumer Price Index of the previous two years.²⁷ This adjustment is intended to address yearly inflation or economic change, to provide a more accurate representation of the average owner’s PNW and the cost of doing business in the Chicago region.



²⁶ United States cities were ranked by population based on the 2011 United States Census Annual Estimates of the Resident Population for Incorporated Places over 50,000.

²⁷ 2015 PNW= (2014 PNW Threshold ÷ 2013 CPI) * 2014 CPI.

Denver’s MWBE program has modeled the PNW calculation on the USDOT DBE regulations as promulgated by *USDOT 49 CFR 26*. In calculating business owner PNW, Denver provides exclusions for the applicant’s business equity and primary home equity.

Austin utilizes a PNW threshold enacted by its City Council.²⁸ In calculating business owner’s PNW, Austin provides exclusions for the applicant’s business equity and primary home equity. Table 2 illustrates key features of the four largest municipal MWBE programs evaluated.

It is important to note that only one of the municipal MWBE programs that utilize PNW thresholds based them on a disparity study. The disparity study used as the basis of Austin’s PNW threshold was performed by the consultant that conducted the New York State’s 2010 Study. Chicago bases its PNW thresholds on the United States Small Business Act standards found in *13 C.F.R. Part 121*. Seattle and Denver based their PNW standard on the USDOT DBE standards found in *49 CFR 26.67*.

Table 2: Largest Municipalities with Minority and Woman-owned Business Enterprise Programs and a Personal Net Worth Benchmark

Population Rank	City	Program Type	PNW Threshold	Based on a Disparity Study
3	Chicago, IL	MWBE	≤\$2.25 million	No
4	Austin, TX	M/WBE	≤\$1.45 million	Yes*
22	Seattle, WA	W/MBE	≤\$750,000	No
23	Denver, CO	MWBE	≤ \$1.32 million	No

* Disparity Study performed by same consultant as State of New York 2010 Disparity Study

B. Conclusion

Most of the five states and four municipal governments that include the PNW requirement in their MWBE certification standard derive their program standards from the USDOT DBE regulations. Several programs even shared the same application form. However, there is only Austin has the PNW certification requirement based on a disparity study. This disparity study was conducted by the consultant that recommended that the State of New York include the PNW certification standard in Article 15-A. Moreover, Austin’s disparity study did not recognized the distinction between the *Crosson* standard and the legal framework for the USDOT DBE program.

IV. Discrimination in the Credit Market

Access to credit is a primary consideration in business entry and directly affects business capacity and growth. While business size is a factor effecting access to credit there is compelling evidence that race is an even more significant factor effecting access to credit when controlling for size.



²⁸ Austin City Code § 2-9A-4 (21).

A. Relevance of Business Size

Small businesses have limited access to credit due to their size, lack of borrowing history, and vulnerability to discrimination in the credit market. The Community Reinvestment Act and the Home Mortgage Disclosure Act are federal legislation enacted to combat credit market discrimination and establish lending guidelines to mediate the economic decline in certain geographic regions. Institutional barriers to credit accessibility also underscore the significance of PNW for determining a business's competitiveness. Specifically, PNW reflects the owner's ability to personally guarantee their business credit.

Some industries require sunk costs—a substantial level of initial capital which cannot be recovered before products or services are sold, and which cannot be covered by personal investments without severe financial strain. These industries operate in highly credit-dependent environments that require substantial financing for a business to function properly. The costs of cargo transportation, for example, include those of acquiring trucks and packaging material. Construction like manufacturing requires the purchase or acquisition of real estate, equipment, and their maintenance.

Credit is essential to the payment of operation costs, including labor, materials, and administration costs such as rent, insurance, and taxes. In industries like construction and manufacturing, where business owners are paid in installments or after the order or service has been provided, working capital loans are required to cover their short-term shortfalls. Without access to credit to finance day-to-day expenses, a business risks potential default on its debts, the inability to buy materials or pay employees, and limitations on its capacity to undertake simultaneous projects.

All financial institutions operate under the standards of the Federal Reserve System (FRS). The FRS Bank Holding Company Supervision Manual states that “[a] bank’s [Commercial Real Estate (CRE)] lending policies should reflect the level of risk that is acceptable to its board of directors and should provide clear and measurable underwriting standards that enable the bank’s lending staff to evaluate all relevant credit factors.”²⁹ The broad guidelines of CRE regulations leave lending practices largely to the discretion of the banks. Consequently, the self-governing nature of these lending policies does not protect applicants against being denied their loan on account of unsubstantiated biases and perceived risk. Such bias may result in active and/or implicit bias against minorities and women. Notably, one of the loan application standards that all CRE lending policies must address is a borrower’s PNW.

B. History of MWBE Access to Credit

Public policy applications of PNW commonly presuppose that minority and women business owners have the same access to credit as similarly situated non-minority males. The legislative history of the PNW criterion attests to the presumption that the personal worth of a business owner correlates with their access to business credit and concurrent growth of business wealth. While current research literature and economic studies substantiate this presupposition for the case of Caucasian females, they do not when race is taken into consideration. In actuality, successful



²⁹ Board of Governors of the Federal Reserve System. "Bank Holding Company Supervision Manual." Federal Reserve System. 1996.

MWBEs have historically encountered barriers to being as competitive as their Caucasian male-owned business enterprise (non-MWBE) counterparts. The literature clearly and consistently indicates that minority business owners, particularly those of African American descent, experience discrimination in the credit market regardless of their PNW. Thus, a business owner with assets exceeding the PNW criterion for the State's MWBE certification may still be disadvantaged in the credit market and in more credit-dependent enterprises, rendering them unable to fund contracts that, for example, Caucasian males with a PNW of \$3.5 million could fund. Without the same returning benefits of business credit afforded by PNW, the MWBE owner attains a financial glass ceiling, only to fall back upon the personal assets which had disqualified them from government certification and contracting opportunities. Such institutional discriminatory conditions disadvantage MWBEs and undermines the State's efforts under Article 15-A to remove business barriers to business growth and development.

There has been extensive discourse on the subject of minority access to business credit. Discussions underscore the importance of PNW to a minority business owner's ability to succeed as an entrepreneur, especially given the evidence of discrimination in the small business lending market. PNW is a significant factor of credit worthiness, which is clearly affected by race. This disparity in credit benefits afforded by PNW exacerbates existing difficulties of MWBE business entry and development.

Business entry costs, specifically human and financial-capital, can be split into low and high-barrier industries. The classification is defined by the requisite education, experience, and capital necessary to enter the industry.³⁰ Low-barrier industries include construction, transportation, retail, repair services, and food services. High-barrier industries include business services, manufacturing, wholesale trade, architecture, engineering, finance, insurance, and real estate. Though low-barrier industries do not come with a high human or financial cost of entry, survival and success is still dependent on credit.³¹

Some low-barrier industries, like construction and repair services, require a substantial inventory and uninterrupted access to working capital credit to maintain operations. Timothy Bates, in the *Institute for the Study of Labor's Discussion Paper No. 6103*, found that businesses entering low-barrier industries possessed significantly lower PNW overall than those entering high barrier industries. This finding indicates that an entrepreneur's PNW affects the industry they can realistically enter. Having a higher net worth allows entrepreneurs to more easily afford sunk costs associated with business formation, and their greater collateral assets improve the likelihood of loan approval. For MWBEs in a discriminatory small business lending market, sufficient PNW for investment and potential collateral is especially crucial to business formation and expansion.

Minorities, particularly African Americans, have a significantly different experience accessing credit compared to similarly situated Caucasian males.³² Cavalluzzo and Cavalluzzo used data



³⁰ Lofstrom, Magnus, Timothy Bates, and Simon C. Parker. "Transitions to entrepreneurship and industry-specific barriers." (2011).

³¹ *Ibid.*

³² David G. Blanchflower & Phillip B. Levine & David J. Zimmerman, 2003. "Discrimination in the Small-Business Credit Market," *The Review of Economics and Statistics*, MIT Press, vol. 85(4).

from the 1988-1989 National Survey of Small Business Finances to analyze the differences in application and denial rates by race and gender. They found that there was not a significant difference for Caucasian females, but a large discrepancy in credit access—that could not be explained by other business characteristics—existed between MBEs and non-MBEs.³³

The Federal Reserve Bank of Boston conducted a similar study in 1996 to find economically relevant data that might predict the approval of a loan application.³⁴ The raw data showed that African Americans were 18% more likely than Caucasian males to have their loan applications rejected. When the study controlled for borrower credit-worthiness variables, such as debt amount, debt-to-income ratio, credit history, and loan characteristics, African Americans were still 8% less likely to be granted a loan.³⁵

Blanchflower's 2002 study examining the results of the 1993 and 1998 National Survey of Small Business Finances drew similar conclusions, finding that minority-owned businesses were more frequently denied loans and charged higher interest rates than those of their Caucasian male peers.³⁶ African Americans were the most adversely affected group and nearly twice as likely as their Caucasian male counterparts to have a loan application rejected—65.9% compared to 26.9% in 1993, and 62.3% compared to 28.8% in 1998. African Americans were also charged an average of 1% higher interest rates--9.7% compared to 8.7%.³⁷ Some of the high loan rejection rates were accounted for by credit-worthiness factors. African Americans were found to have newer and smaller businesses and lacked the borrowing history of their Caucasian male counterparts. They were also generally found to be at higher risk of default, with worse credit ratings and more frequently delinquent payment histories. However, even after accounting for such economic factors, African Americans were identified as 28% more likely than Caucasian males to be denied a business loan. By contrast, Hispanic, Asian, and Caucasian female business owners were denied business loans at a 16% higher rate than Caucasian males prior to economic adjustments, after which the difference becomes insignificant.

Blanchflower's study of the 1998 National Survey of Small Business Finances data also indicated that African American business owners generally have less PNW available for business loan collateral.³⁸ According to Blanchflower's loan denial prediction analysis, PNW was shown to have minimal impact on the estimated disadvantage that African American business owners faced in the credit market, hardly affecting their loan approval rate. While higher PNW does minimize credit

³³ Cavalluzzo, K.S. and L.C. Cavalluzzo, (1998). "Market Structure and Discrimination: The Case of Small Businesses." *Journal of Money, Credit, and Banking*. November, 30(4).

³⁴ Munnell, A.G., M.B Tootell, L.E. Browne and J. McEneaney (1996). "Mortgage lending in Boston: interpreting HMDA data", *American Economic Review*, March, 86(1).

³⁵ Blanchflower, David G., Levine, Phillip B., and Zimmerman, David J. "Discrimination in the Small Business Credit Market." p.3, August 2002.

³⁶ *Ibid.*

³⁷ *Ibid at p. 5-6.*

³⁸ David G. Blanchflower & Phillip B. Levine & David J. Zimmerman, 2003. "Discrimination in the Small-Business Credit Market," *The Review of Economics and Statistics*, MIT Press, vol. 85(4).



reliance and provide a crucial source of loan collateral, for MWBEs, it fails to translate into favorable lending terms and the associated business development benefits of creditworthiness.

Within the banking industry, general economic conditions of small business lending have further exacerbated this disparity. The bank consolidations, acquisitions, and takeovers of the past three decades have resulted in the closure of many small community banks with a history of providing credit to small businesses.³⁹ Larger banks are less likely to make loans to small businesses seeking smaller, less profitable loans whose risk is also difficult to assess, since small businesses lack much of the publicly available and transparent financial information reviewed. As the internal cost of processing a \$50,000 loan becomes the same as that of processing one for \$1 million, some banks have significantly reduced or eliminated loans below a certain threshold, especially those for amounts under \$250,000.⁴⁰ Creating higher threshold limits reduces the time and resources lenders spend on loan applications. This is particularly problematic because more than 50% of small businesses are seeking loans under \$100,000. Consequently, a significant gap in the small business loan market has developed.⁴¹

Another contributing issue is the adoption of more asset-based lending policies by leading financial institutions, disadvantaging those with lower levels of PNW and less discretionary liquidity. This means that loans are denied to prospective borrowers who lack the collateral to offset “moral hazard concerns,”⁴² which arise when one party takes on more risk than the other party in the transaction. As smaller businesses often lack established borrowing histories, larger banks consider them at greater risk to late payments and loan defaults, which makes them less likely to be approved without additional and often financially encumbering loan term considerations. These considerations may include smaller loan amounts, shorter payback terms, higher interest rates, or more stringent covenant conditions, such as the maintenance of a lower debt-to-equity ratio, higher working capital requirements, or more frequent submissions of financial statements and guarantees of personal collateral.

C. Federal Policy to Facilitate Equitable Access to Credit

The apparent lack of available credit at favorable terms to otherwise worthy applicants, including those with high PNW, led to federal regulations such as the Home Mortgage Disclosure Act (HMDA). The HMDA was soon followed by the Community Reinvestment Act (CRA). Both laws sought to alleviate the shortage of credit in economically disadvantaged areas through increased lending transparency and federal oversight of financial institutions.

³⁹ Mills, Karen Gordon and McCarthy, Brayden. “The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game.” pp.6, Cambridge: Harvard Business School, July 22, 2014.

⁴⁰ *Ibid*, p. 28-38.

⁴¹ *Ibid*.

⁴² Bates, Timothy, Lofstrom, Magnus, and Parker, Simon C. “Transitions to Entrepreneurship and Industry-Specific Barriers.” p.6-7, November 2011.



1. The Home Mortgage Disclosure Act

The Home Mortgage Disclosure Act was introduced in 1975 to combat the problem of redlining, as lenders were not granting loans for properties located in poorer or more ethnically diverse areas.⁴³ The law required financial institutions to publicly disclose the geographic location of their mortgage loans. Congress believed that some financial institutions had contributed to the decline of certain geographic regions by failing to provide reasonable loan terms to qualified home financing applicants.⁴⁴ Fewer residents and less disposable income meant fewer dollars circulating in the local economy, hindering the success of local businesses.

Purchasing a home can be a very important milestone for a business owner's entrepreneurial endeavors, especially as the process of qualifying for a home loan is instrumental to that of obtaining business credit. Home loan approvals are easier to receive partly because provision of the home as loan collateral lowers risk to the bank. Buying a home allows potential business owners to build their credit and establish a loan term compliant payment history. It also builds a relationship with the lending institution, to which a business loan application could be submitted. Home ownership can also be a crucial source of equity for business owners. While the equity loan does create a lien on the property, reducing the value of the home, it also may provide either a lump sum or a revolving line of credit to be used towards investments in the owner's business.

2. The Community Reinvestment Act

Passed in 1977, the Community Reinvestment Act (CRA) was based on the 1961 United States Commission on Civil Rights report that described a severe shortage of available credit to residents of low and moderate-income (LMI) neighborhoods.⁴⁵ The report also confirmed that African American borrowers were often required to make higher down payments and to accept faster repayment schedules. The CRA serves as incentive to help meet the credit needs of LMI communities, as federal regulators examine financial institutions' performance every three years with respect to their location, the number and amount of loans processed, and the investments made in community-building initiatives. These investments may take the form of contributing to nonprofit organizations that focus on business or financial development, of conducting financial education workshops, or of making other investments that promote community development. Such investments help business owners better understand their financing needs and familiarize them with what sources are available to provide those services.

CRA tests evaluate services provided in LMI regions on the basis of the average income level of designated census tracts, defined by the Federal Financial Institutions Examination Council (FFIEC).⁴⁶ Financial institutions are given credit for lending to individuals or businesses within



⁴³ David G. Blanchflower & Phillip B. Levine & David J. Zimmerman, 2003. "Discrimination in the Small-Business Credit Market," *The Review of Economics and Statistics*, MIT Press, vol. 85(4), pages 930-943.

⁴⁴ Consumer Financial Protection Bureau. "CFPB Supervision and Examination Manual." (2012).

⁴⁵ 42 U.S.C. Ch. 69 § 5301 et seq. (1994).

⁴⁶ Federal Financial Institutions Examination Council. "FFIEC Census and Demographic Data." <http://www.ffiec.gov/censusproducts.htm>.

these LMI regions regardless of the recipient business's revenue, income, net worth, or owner PNW. This practice lends credence to the fact that a business can be doing well in comparison to surrounding businesses, but still be disadvantaged in the overall business market. For example, a business owner may have a PNW of \$250,000 and be operating in an area where the regional average is \$50,000, but may be competing against businesses with an industry average of \$750,000.

D. Higher Education and Its Effect on Personal Net Worth

Higher education, for its part, does not safeguard a person's PNW from economic conditions. According to a 2015 economic study commissioned by the Federal Reserve Bank of St. Louis (St. Louis Fed), there is a significant racial PNW gap amongst college graduates as well as non-graduates.⁴⁷ The study by the St. Louis Fed claimed that, "[W]hite and Asian college grads do much better than their counterparts without college, while college-grad [and non-graduate] Hispanics and [B]lacks do much worse proportionately." Though college-educated Hispanics and African Americans earn significantly more overall, and are in a better position to accumulate wealth than their non-graduate counterparts, higher education alone does not close the wealth gap between them and their Caucasian male peers.

Although the study by the St. Louis Fed found that the median household PNW of Hispanic and African American college graduates was 3.5 to four times greater than that of their non-graduate counterparts, these graduates struggled significantly during periods of financial trouble. Between 1992 and 2013, the median PNW of African American graduates decreased by 56%; for Hispanics it dropped by 27%. In the same time period, Asian graduate PNW increased by 90% and Caucasian graduate PNW increased by 86%.⁴⁸

One contributor to the decrease in PNW levels was the large amount of debt that African Americans and Hispanics students accumulated. Both groups tend to take on more debt to finance education, and to concentrate their wealth in low-return assets, such as homes.⁴⁹ Asians and non-minorities, on the other hand, accumulated more assets in stocks and bonds. The housing market crash between 2007 and 2013 played a crucial role in lowering the PNW of Hispanic and African American graduates by 72% and 60% respectively, while Caucasian graduates only saw a 16% drop in PNW during the same period.⁵⁰

According to economists at the St. Louis Fed, "[b]orrowing too much to get a piece of an American dream often undermines any hope of sustaining it." Financial choices play a major role in how

⁴⁷ Emmons, William, and Bryan Noeth. "Why Didn't Higher Education Protect Hispanic and African American Wealth?" *In The Balance* 1, no. 12 (2015). Accessed August 24, 2015. <https://www.stlouisfed.org/publications/in-the-balance/issue12-2015/why-didnt-higher-education-protect-hispanic-and-african-american-wealth>.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*



PNW is accumulated and sustained. As Ray Boshara, a Director at the Federal Reserve Bank of St. Louis, said, “[h]ow you finance an asset is just as important as the asset itself.”⁵¹

Other contributors to the instability of the minority PNW are “persistent discrimination and the types of training and jobs [that] minorities [do obtain].” The African American unemployment rate has been consistently twice as high as the rate for non-minorities, even amongst college graduates. “Researchers have repeatedly found discrimination in the job market. When two nearly identical résumés are sent out, it has been documented that the candidate with a white-sounding name receives more callbacks than the applicant with an African American sounding name.”⁵² These findings were confirmed by John Schmitt, Research Director of the Washington Center for Equitable Growth, who commented that “African Americans and Latinos at all education levels, including college and advanced degrees, earn less than their white counterparts, which means lower lifetime earnings and less ability to save.”⁵³

Elevated rates of unemployment for minorities can influence the decision to pursue entrepreneurship. The ability to start a business is contingent on the ability to finance that enterprise. William Darity Jr., Professor at Duke University, notes that “[p]rior family wealth is the key [to shaping] both income-generating opportunities and the capacity to allow wealth to grow more wealth.”⁵⁴ He also confirms that a lack of family wealth and financial support negatively affects minorities pursuing educational and entrepreneurial advancement. Minorities often take on substantial loans to achieve such goals, and these loans can adversely affect one’s PNW and debt-to-income (DTI) ratio. The DTI ratio represents the amount of income that can be saved or used towards creating additional wealth while paying off one’s debts.

A higher PNW allows households to finance endeavors like a college education or business, both which can generate additional wealth to withstand financial crises. However, African Americans and Hispanics are more prone than their Caucasian peers to seek bank financing to cover tuition, business costs, and mortgage down payments, since they are also less likely to inherit money or receive help from their parents.⁵⁵ Because minorities have historically had comparatively little access to financing credit, the main source of funding for such startup costs is often the business owner’s PNW.

E. Conclusion

A basic assumption in the legislative history of the PNW criteria is that PNW is a color blind measure of credit worthiness. This assumption results in the theory that the higher the PNW the more equal access MWBEs are presumed to have to business capital sufficient to grow capacity

⁵¹ Cohen, Patricia. "Racial Wealth Gap Persists Despite Degree, Study Says." *New York Times*, August 16, 2015, Economics sec.

⁵² Cohen, Patricia. "Racial Wealth Gap Persists Despite Degree, Study Says." *New York Times*, August 16, 2015, Economics sec.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*



and sustain a higher level of contracting. To the contrary, the data indicates that the evaluation of PNW in determining access to business capital is indeed not colorblind.⁵⁶

Higher PNW represents a lower risk for financial institutions, which should result in better lending terms for the minority or female business owner. However, in practice, it does not reflect better lending terms because discriminatory lending practices persist, especially for African American business owners. Consequently, a PNW criterion for certification in the public sector disadvantages MWBEs, especially African American business owners.

V. Disparity Study Results

During the course of the State's 2016 MWBE Disparity Study, Mason Tillman conducted one-on-one anecdotal interviews. The anecdotal interviews also include a comprehensive list of questions regarding the MWBE certification program, and the interviewees' thoughts on the value of the PNW criterion. The results of the PNW analysis are detailed below.

The State's 2016 Disparity Study presents anecdotal evidence that was analyzed to supplement the statistical findings.⁵⁷ The analysis disclosed both discriminatory and race-neutral barriers that might affect M/WBE's access to the State's construction, construction-related services, non-construction related services, and commodities and other services contracts. The anecdotal evidence was gathered in a fair and equitable manner through in-depth, one-on-one interviews, public comments gathered from 15 business community meetings, and business owner responses to an anecdotal e-survey.

The objective of the in-depth interviews was to question businesses domiciled in the State. The anecdotal questions elicited descriptions of barriers encountered working with or seeking work from the State, positive experiences working with the State and its prime contractors, knowledge of the State's MWBE Program, and recommendations to enhance the program. During the course of the one-on-one interviews, several business owners expressed their opinions regarding the PNW criterion for MWBE certification.

A. Excerpts from the Anecdotal Interviews

Business owners who are familiar with the State's MWBE Program shared their experiences and provided comments on the program's benefits to businesses. Excerpts from the interviewee accounts illustrate how the PNW certification criterion has adversely affected MWBE participation in the State's contracting opportunities.

A Caucasian female owner of a construction business explained why she believes that the PNW is not sufficient for the State's MWBE program, as it hinders growth and capacity limits:

⁵⁶ Blanchflower, David G., Levine, Phillip B., and Zimmerman, David J. "Discrimination in the Small Business Credit Market." p.3, August 2002; David G. Blanchflower & Phillip B. Levine & David J. Zimmerman, 2003. "Discrimination in the Small-Business Credit Market," The Review of Economics and Statistics, MIT Press, vol. 85(4).

⁵⁷ Mason Tillman Associates, Ltd. *The State of New York 2016 MWBE Disparity Study Final Report, Chapter 9. 2017.*



We would like to see, and I don't know how we do that because we don't want to have a challenge to the Disparity Study, but the personal net worth of \$3 million is not sufficient for a construction company... For a construction company who needs to go ahead and get a bond nobody's going to bond a company that doesn't have a personal net worth of \$3 million. They don't want that person. That person is not a person they want to work with because that person probably doesn't have a net worth of a million dollars. So in order for construction companies to grow, they need a higher personal net worth. If they have one, they're out of the program.

A Hispanic male owner of a professional services business believes that business owners with a higher PNW have a positive multiplier effect on the community:

So that, you know, your community can build wealth, your kids, it becomes a multiplier effect in your community. If you're limiting the ability of these individuals either by size or being primes or limiting their net worth, you're limiting the ability to create wealth that would then have that multiplier effect. So, the spirit of these laws is really to help different groups gain wealth, economic wealth. So, anything that starts limiting that from my point of view takes away from the programs.

A Caucasian female owner of a construction business expressed how it is a difficult balance having enough assets to qualify for a sizeable bond but not too much to graduate out of the State's MWBE Program:

To be able to get a sizeable bond, you need to have assets. You need to have money in the bank, but if your personal net worth is too high, then you are not an MWBE; you graduate from the program. So you have this catch-22 where you can't have too much in the way of assets, but if you don't have those assets, you can't get the sizeable bond to do bigger work. So there has to be some kind of balance whether or not this is truly a very small business program or a minority-and-women-owned business program or trying to help because if you limit the personal net worth to the amount of cash assets that a firm or an individual can have, then they are not going to be able to get the bonds that they need because they don't have the assets to back up the bonds.



A Caucasian female owner of a construction business expressed that it is hard to get financing without a good PNW, and that the PNW criterion negatively affects construction companies that need the MWBE program to compete:

I can't get the financing if I don't have net worth to put behind it. Fortunately for me, my company has a good equity value. So that's first and foremost because I wish I was worth \$3.5 but I'm not, but you know when you grow your company and you do well then you're kicked out of the program. And in construction, PNW is a different animal than the vendors, and the suppliers.

A Caucasian female owner of a construction business expressed her belief that the State should not have PNW as component of the MWBE program, as she sees it as an unfair measure:

Well one of the requirements was the net worth of the owner, which I don't believe is a fair barometer, but they put a net worth cap in, and so we were no longer able to recertify in the State of New York.

The same business owner stated that limiting the PNW of MWBEs within the State's program means MWBE do not have the capacity to bid the State's large jobs:

I do not believe that the state should have a cap. First of all, I believe that diverse companies have had a difficult time being able to grow to capacity, whatever that capacity is, and I believe that these programs should let or help these companies grow to their capacity, whatever that is. I don't think that there should be a limit put on it. I also believe that a diverse company, a large diverse company, is a company that is going to help small diverse companies grow, so I believe that it has a ripple effect, and it can level the playing field. Some of the smaller diverse companies don't have the capacity to be able to do the jobs that the state has to do, and if you also remove that person that was the large diverse company that can do that work and help grow the small diverse companies in the state.

A Caucasian male owner of a professional services business expressed that the PNW limit acts as a penalty for MWBEs' success in the construction industry, causing them to cluster in small State contracts:

So DBEs of course are small minority women owned businesses and the problems that they face is it's kind of a catch 22 as far as DBEs being penalized for success. And what I mean by that is once they hit a certain sales threshold which is 22.41 million a year or a salary figure or their personal net worth exceeds a certain amount, they essentially graduate out of the



program. And because of that, DBEs do not provide any of the major components for railcars and buses like the engine and transmission and propulsion and the car body shells, things of that nature. It has nothing to do with race or gender frankly, it has to do with business size. And in order to provide those major systems, your sales would be so high that you would essentially automatically graduate out of the DBE program. So therefore DBEs tend to cluster in these small capital investment areas or work scopes of the vehicles like metal fab machining, electrical supplies, hardware, transportation, training manuals, things of that nature.

B. Conclusion

Business owners reported their perception that PNW prevents MWBEs from competing for the State's contracts. Effectively, the PNW criterion limits the growth of a certified business. The limitation would affect the business owners' option to use personal assets to finance State contracts or qualify for funding.

VI. Recommendations

The 2010 Study recommended a PNW requirement to limit the size of the businesses that could participate in the MWBE Program because the study did not establish the legal predicate for the MWBE Program authorized under Article 15-A. Limiting the size of eligible businesses was considered to be a means to avert a legal challenge that might be prompted by the fact that the Study had not met the *Croson* standard. As this Report has shown PNW is a measure of credit worthiness and a determinant of access to credit for business growth and capacity building for some businesses.

However, the PNW certification criterion exacerbates the financial challenges of MWBEs that already experience inequitable access to business credit. The PNW criterion should be simplified and streamlined to lessen the burden on applicants seeking MWBE certification. Minimally, the life insurance, pension benefits, stock investments, and other personal property requirements should be removed from the PNW criterion.



Appendix A: State MWBE Programs

Table A-1: State Minority and Woman-owned Business Enterprise Programs

Population Rank	State	MWBE Program	PNW Threshold
4	New York	MWBE	≤\$3.5 million
3	Florida	MWBE	No
6	Pennsylvania	SDB	No
7	Ohio	EDGE	≤\$250,000; ≤\$750,000 after certification
8	Georgia	MBE	≤\$1,320,000
11	New Jersey	M/WBE	No
12	Virginia	SWAM*	No
13	Washington	MWBE	≤\$750,000
14	Massachusetts	M/WBE	No
16	Indiana	MWBE	No
17	Tennessee	MWBE	No
18	Missouri	MWBE	No
19	Maryland	MWBE	≤\$1,669,419
20	Wisconsin	M/WBE	No
23	Alabama	MBE	No
24	South Carolina	MBE	≤\$750,000
26	Kentucky	MWBE	No
27	Oregon	MWBE	≤\$1,320,000
29	Connecticut	MBE	No
31	Mississippi	MWBE	≤\$750,000
32	Arkansas	MBE	No
34	Kansas	M/WBE	No

Population Rank	State	MWBE Program	PNW Threshold
38	West Virginia	M/W/SBE	No
43	Rhode Island	M/WBE	No
45	Delaware	MWBE	No
47	North Dakota	WBE	No
49	Vermont	M/WBE	No



Appendix B: Largest Municipal MWBE Programs

Table B-1: Largest Municipal Minority and Woman-owned Business Enterprise Programs

Population Rank	City	MWBE Program	PNW Requirement
1	New York, New York	MWBE	No
2	Los Angeles, California	MBE	No
3	Chicago, Illinois	MWBE	≤\$2.25 million
4	Houston, Texas	MWBE	No
9	Dallas, Texas	MWBE	No
11	Austin, Texas	M/WBE	≤\$1.45 million
15	Columbus, Ohio	MWBE	No
16	Fort Worth, Texas	MWBE	No
17	Charlotte, North Carolina	MW/SBE	No
18	Detroit, Michigan	MW/S/LBE	No
20	Memphis, Tennessee	MWBE	No
21	Boston, Massachusetts	MW/SBE	No
22	Seattle, Washington	W/MBE	≤\$750,000
23	Denver, Colorado	MWBE	≤ \$1.32 million
26	Baltimore, Maryland	MWBE	No
28	Portland, Oregon	MWBE	No

Appendix C: Personal Net Worth Account Entry Comparison

Table C-1: Comparative Analysis of Personal Net Worth Criteria by State

	New York	Ohio	Georgia	Washington	Maryland	South Carolina	Oregon	Mississippi
Net Worth Threshold	\$3,500,000	≤\$250,000; ≤\$750,000 after certification	\$1,320,000	\$750,000	\$1,669,419 -2015	\$750,000	\$1,320,000	\$750,000
PNW Requirement Review	No	No	No	No	Yes (Annual Adjustment based on CPI)	No	No	No
Program Type	MWBE	MBE (EDGE*)	MBE	MWBE	MBE	MBE	MWBE	MWBE
Assets								
Cash on Hand and in Banks	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Saving Account	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Retirement Accounts (Present Value - Penalties)	Yes (First \$500k exempt from calculation)	Yes	Yes	Yes	Yes (First \$500k exempt from calculation)	Yes	Yes	Yes
Accounts and Notes Receivable	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Life Insurance (Cash Surrender Value Only)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Stocks & Bonds	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Real Estate	All excluding primary residence	All excluding primary residence	All excluding primary residence	All excluding primary residence	All excluding primary residence	All excluding primary residence	All excluding primary residence	All excluding primary residence
(Market Value)								
Automobile	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
(Market Value)								

	New York	Ohio	Georgia	Washington	Maryland	South Carolina	Oregon	Mississippi
Other Personal Property*	Yes							
Other Assets**	Yes							
Assets								
Ownership interest in applicant business	No							
Liabilities								
Accounts Payable	Yes							
Accounts Payable	Yes							
Notes Payable to Bank and others	Yes							
Installment Account (Auto)	Yes							
Installment Account (Other)	Yes							
Loan on Life Insurance	Yes							
Real Estate Mortgages	Yes (Excluding primary residence)							
Unpaid Taxes	Yes							
Other Liabilities	Yes							



Table C-2: Comparative Analysis of Personal Net Worth Criteria by City

	Chicago, IL	Austin, TX	Seattle, WA	Denver, CO
Net Worth Threshold	\$2,250,599 (2015)	\$1,454,000	\$750,000	\$1,320,000
PNW Requirement Review	Yes (Annual Adjustment based on CPI)	No	No	No
Program Type	MWBE	MWBE	MWBE	MWBE
Cash on Hand and in Banks	Yes	Yes	Yes	Yes
Saving Account	Yes	Yes	Yes	Yes
Retirement Accounts (Present Value - Penalties)	Yes	Yes	Yes	Yes
Accounts and Notes Receivable	Yes	Yes	Yes	Yes
Life Insurance (Cash Surrender Value Only)	Yes	Yes	Yes	Yes
Stocks & Bonds	Yes	Yes	Yes	Yes
Real Estate (Market Value)	All excluding primary residence	All excluding primary residence	All excluding primary residence	All excluding primary residence
Automobile (Market Value)	Yes	Yes	Yes	Yes
Other Personal Property*	Yes	Yes	Yes	Yes
Other Assets**	Yes	Yes	Yes	Yes
Ownership interest in applicant business	No	No	No	No
Accounts Payable	Yes	Yes	Yes	Yes
Accounts Payable	Yes	Yes	Yes	Yes
Notes Payable to Bank and others	Yes	Yes	Yes	Yes
Installment Account (Auto)	Yes	Yes	Yes	Yes
Installment Account (Other)	Yes	Yes	Yes	Yes
Loan on Life Insurance	Yes	Yes	Yes	Yes
Real Estate Mortgages	Yes (Excluding primary residence)	Yes (Excluding primary residence)	Yes (Excluding primary residence)	Yes (Excluding primary residence)
Unpaid Taxes	Yes	Yes	Yes	Yes
Other Liabilities	Yes	Yes	Yes	Yes





MASON TILLMAN
ASSOCIATES, LTD

www.masontillman.com

