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Microenterprise Through Microfinance and Microlending: The Missing Piece in the Overall Tribal Economic Development Puzzle

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MICROENTERPRISE THROUGH MICROFINANCE AND MICROLENDING: THE MISSING PIECE IN THE OVERALL TRIBAL ECONOMIC DEVELOPMENT PUZZLE

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Give a man a fish; he'll eat for today. Teach a man how to fish; and he'll eat for a lifetime. Teach a man to sell fish and he eats steak.

— Author Unknown

I. Introduction

Economic and social development among American Indian tribes has long been a topic of discussion for academics and tribal leaders alike.[1] However, this discussion has often remained in the theoretical "big picture" and has rarely been brought down to the practical "hands on" realm that is needed in order to see real changes and positive growth in the movement.[2] Certainly, there is a place for the theoretical discussions. Without them we would not have a context in which we can now propose viable economic solutions to the current problems facing the tribes and citizens alike. However, there needs to be a renewed focus in academia on creating feasible solutions to these economic deficiencies.

The purpose of this comment is to look at one of the many factors contributing to lethargic economic development among American Indian tribes. Rather than focusing on bringing in outside businesses or suggesting that the government create jobs as a form of economic development, this comment advocates a means for empowering tribal citizens through helping

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1. *See, e.g.*, Frank Pommersheim, *Economic Development in Indian Country: What Are the Questions?*, 12 AM. INDIAN L. REV. 195 (1987); STEPHEN CORNELL & JOSEPH P. KALT, WHAT CAN TRIBES DO? STRATEGIES AND INSTITUTIONS IN AMERICAN INDIAN ECONOMIC DEVELOPMENT (1992).

2. For an example of "hands on" suggestions, see Symposium, *Securing Economic Sovereignty Through Agreement*, 37 NEW ENG. L. REV. 523 (2003) (advocating the establishment of effective economic agreements as a way to gain economic sovereignty); Dao Lee Bernardi-Boyle, *State Corporations for Indian Reservations*, 26 AM. INDIAN L. REV. 41 (2001-2002) (discussing a "hands on" solution for problems arising from tribal contractual relationships).

them create viable, sustainable small businesses in order to facilitate substantial and cognizable economic growth. Tribes have generally focused on fostering business development with other corporations and the government; however, they have failed to provide the necessary support to American Indian entrepreneurs.

In looking for financing opportunities for American Indian entrepreneurs who wanted to start a small business, research revealed many governmental programs that help already established small minority businesses or small minority businesses with sufficient financial backing.[3] However, there are far too few programs to help individuals with ideas but absolutely no start-up capital, a history of bad credit, or insufficient collateral to secure a conventional commercial loan.[4] Further research revealed governmental programs that give guaranteed contracts to minority owned businesses, commonly referred to as "8(a) corporations," and lending opportunities to creditworthy debtors.[5] However, there were many obstacles and qualification prerequisites, which require an existing base of capital and extensive strategic business planning.[6]

These programs, while designed to help "small businesses,"[7] require that an individual have sufficient knowledge, capital and expertise in order to see their idea near the certainty of success. In the alternative, these programs help the already established businesses by giving them the opportunity to develop growth strategies, gain extra investment capital and develop strategic partnerships with governmental or other business entities.

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3. United States Minority Business Development Association, United States Small Business Administration (SBA), and Registered 8(a) Corporations.

4. There are over 100 community development banks in America. However, many of them are precluded from helping American Indians because of location, distance from tribal lands and specific ethnic, living or other conditions which by definition American Indians cannot meet. *See generally* Rochelle E. Lento, *Community Development Banking Strategy for Revitalizing Our Communities*, 27 U. MICH. J.L. REFORM 773 (1994).

5. *See* 15 U.S.C. § 636 (m) (2000 & Supp. II 2002).

6. *See* U.S. Small Bus. Admin., *SBA Financing — Eligibility & Preparation: Basic Requirements, at* http://www.sba.gov/financing/preparation/requirements.html (last visited Oct. 20, 2003).

7. SBA defines a "small business" as "one that is independently owned and operated and not dominant in its field." Only small businesses that meet certain employment or sales standards set forth by SBA are eligible for SBA assistance. Standards employed in eligibility determinations differ, depending on whether the business operates as a manufacturing or wholesale company. U.S. Small Bus. Admin., *SBA — Financing: Eligibility & Preparation: Eligibility Size Standards, at* http://www.sba.gov/financing/preparation/eligibility.html (last visited Dec. 3, 2003).

In looking at this situation, a few obvious questions arise. How does one get to the point where he/she qualifies for one of these aforementioned programs? How does a credit deficient entrepreneur with a dream make that dream a reality? What good is it to have programs like these if most individuals cannot qualify for them? The answer to these questions is provided by the rapidly growing social economic philosophy of microenterprise development through microfinance and microlending.[8]

The field of microfinance and its affect on microenterprise has been a prominent topic of discussion in the area of social and economic development for scholars and political leaders for the past three decades. Its terms are often used loosely to describe similar but different topics.[9] One of these topics is the so-called venture capital arm of the microenterprise industry, referred to as microlending or microfinance. The focus of this comment is not to discuss the development of a traditional commercial banking institution, but rather to suggest that all tribes set up full service microfinance institutions (MFIs) that will help nurture and develop independent entrepreneurs.[10] In so doing, tribes will certainly see a surge in the overall wealth and economic self-sufficiency of their members.

Part II of this comment discusses microfinance and microlending in general, providing both foreign and domestic examples of successful MFIs and explaining the different models of microlending. Part III proposes a hybrid model of microlending which is tailored to tribal institutions and is feasible, relatively simple and extremely practical. This final section also discusses the positive effect a hybrid model could have on economic development on reservation land.

II. Background

Before discussing the proposed model as a solution to the missing piece in the overall economic development puzzle, it is imperative to discuss the history of microenterprise and address what has made it successful historically in other countries and even recently in the United States of America. Many of the examples given in this comment are taken from the plethora of

8. Microenterprise refers to the actual business itself. *See* discussion *infra* Part II.A.2. Although this article discusses microenterprise, its specific focus will be on the function of microfinance and microlending and the other services that make up a microfinance institution.

9. *See* discussion *infra* Part II.A.

10. The Cherokee Nation of Oklahoma already has such a program in place. *See* Cherokee Nation, *Micro-Enterprise Development Program*, *at* http://www.cherokee.org/Services/CommerceService.asp?ID=170 (last visited Oct. 12, 2004).

academic writing involving economic development through microfinance in the inner-cities of America as well as the rural and aboriginal areas of foreign countries, specifically Third World countries. This section examines how microenterprise, and specifically microlending, has evolved and what components of the overall structure of microfinance make microlending such a successful tool in fighting poverty and economic deficiency.[11]

A. Microfinance in General

Within the economic and social development rubric is a very helpful component which furthers economic development by using microfinance. This cog in the wheel of development is relatively young and has taken on many different forms;[12] however, the basic concept remains the same regardless of the form — to aid individuals otherwise deemed helpless in increasing their personal and family wealth in order to no longer be classified as impoverished. Many academic pieces have been written about this topic in one form or another;[13] however, each author uses his or her own terms to loosely define the same topics. In order to fully understand these concepts it is imperative to understand the terms and the context in which they will be used.

1. Microfinance Theory Defined and Explained

Microfinance (also referred to as microcredit), *as a theory*, seeks to foster economic development by providing the opportunity through small, usually collateral-free loans, for the poorest of the poor to create viable, sustainable self-employment business enterprises.[14] The theory revolves around the idea

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11. *See* Muhammad Yunus, *Poverty Alleviation: Is Economics Any Help? Lessons from the Grameen Bank Experience*, 52 J. INT'L AFFAIRS 47, 49 (1998).

12. *See* discussion *infra* Part II.B.

13. *E.g.*, Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195 (1997) (discussing American Community Economic Development Clinics and their impact on the community); Yoko Miyashita, *Microfinance and Poverty Alleviation: Lessons from Indonesia's Village Banking System*, 10 PAC. RIM L. & POL'Y J. 147 (2000) (providing an in depth glimpse of microfinance in Eastern Pacific countries); Christopher Jordan Heisen, Comment, *Community Development Lite: An Economic Analysis of the Community Development Financial Institutions Act*, 39 HOW. L.J. 337 (1995) (discussing Congress' attempt at microfinance in the Community Development Financial Institutions Act). *But see* Keith N. Hylton, *Banks and Inner Cities: Market and Regulatory Obstacles to Development Lending*, 17 YALE J. ON REG. 197 (2000) (providing a caution against using microfinance in inner city economic development).

14. Louise A. Howells, *The Dimensions of Microenterprise: A Critical Look at*

that, instead of relying on others or the government to cultivate the job market and force individuals to rely on others for their sole means of income, individuals should be given the opportunity to start their own "smaller than small business"[15] and be able to live out the American dream — taking an idea and seeing it through to a profitable fruition.

2. Microenterprise Defined and Explained

A "microenterprise" refers to an individual business that consists of less than five employees and is generally organized as a sole proprietorship or family business.[16] It is often funded by a microfinance institution (MFI) and its owner is considered a microentrepreneur. Microentrepreneurs generally fall into one of three distinct categories (Groups) of small business owners found in America today.

"Group One" small businesses are started by individuals who have attained a high school diploma or have acquired some form of higher education,[17] and who are experienced workers in a particular field who ultimately decide to branch out and start their own business.[18] These individuals have sufficient assets and net worth along with appealing credit status to obtain capital through conventional measures. It is because of this status that they are generally able to go to traditional commercial lending institutions and obtain traditional small business loans.

"Group Two" small businesses are started by individuals who are not as educated as Group One entrepreneurs. Group Two entrepreneurs are "somewhat" educated individuals who may have obtained their education through either book learning or through hands-on work experience. These individuals may have specific "know how," but may lack a credit rating sufficient to access financing loans through traditional commercial lending institutions.[19] A Group Two entrepreneur may be considered a

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Microenterprise as a Tool to Alleviate Poverty, 9 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 161, 164 (2000).

15. Smaller business than the typical small business as defined by SBA. *See supra* note 7 (definition of "small business").

16. ASS'N FOR ECONOMIC OPPORTUNITY & MICROENTERPRISE FUND FOR INNOVATION, EFFECTIVENESS, LEARNING & DISSEMINATION AT THE ASPEN INST., MICROENTERPRISE FACT SHEET SERIES NO. 1, MICROENTERPRISE DEVELOPMENT IN THE UNITED STATES: AN OVERVIEW 5 (2000) [hereinafter MICROENTERPRISE FACT SHEET] (copy on file with author).

17. *Id.* at 3.

18. *Id.*

19. Credit ratings are graded on an alphabetical scale from A to D with A being the best and having a FICO (Fair Isaacs) credit score of 620 or better. A poor credit rating of D generally

microentrepreneur depending on the size, nature and feasibility of the business.[20] As previously addressed, there are sufficient financing opportunities in America for individuals in this class of entrepreneurs.

"Group Three" small businesses are the epitome of microenterprise and seem to have been forgotten by most American lending and governmental institutions. These microentrepreneurs are generally referred to as the poorest of the poor.[21] They are individuals with ideas and some skills, but they have absolutely no possible way of obtaining start up capital. Due to their low net worth and lack of collateral, these individuals are undoubtedly termed credit risks by commercial lending institutions and often fall through the cracks when it comes to microfinance programs in America. They are often times classified as impoverished, and generally their potential to be successful in the American economy is disregarded. This lack of faith and lack of opportunity has made it virtually impossible for Group Three microentrepreneurs to pull themselves from the vicious cycle of poverty. This comment focuses on Group Three microentrepreneurs and hopefully provides some hope and insight into the possible resources that are available or should be available to them.

Combined, these three groups comprise an estimated two million microentrepreneurs in America.[22] Studies show that a 78% of the microentrepreneurs are women,[23] 62% are minority[24] and 58% have some post high school education.[25] Group One makes up the majority of microentrepreneurs and therefore a majority of development is focused towards these individuals. However, this focus seems to be a shift from the original concept of microenterprise — assistance to the poorest of the poor.

In order for microenterprise to work on the tribal level, there will need to be at least an initial focus on the poorest of the poor, the Group Three individuals. The answer to the social and economic development problem comes from providing assistance to Group Three individuals, thereby allowing them to move into Group Two. Then the focus can shift towards moving

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has a FICO credit score of 550 or less. *See* A to Z Financial Services, http://www.atozfinancial.com/creditratings.html (last visited Dec. 3, 2003).

20. A microentrepreneur is defined as "one who owns a microenterprise." MICROENTERPRISE FACT SHEET, *supra* note 16, at 5.

21. Yunus, *supra* note 11, at 49.

22. MICROENTERPRISE FACT SHEET, *supra* note 16, at 1.

23. *Id.* at 3.

24. *Id.*

25. *Id.*

individuals from Group Two to Group One and finally into a successful business.

3. Historical Perspective

Modern day microenterprise theory was conceived in 1976 in the mind of Mohammed Yunus, an American-educated Professor of Economics who noticed the need to provide minuscule loans to poverty-stricken individuals in his home country of Bangladesh, in order to help them become independent, successful people.[26] In the late 1980s, it came to America as a crude form of credit opportunity for rural and inner city America.[27] During this time a substantial number of programs were developed to cultivate microfinance in targeted areas for targeted genders and races.[28]

Today, it is estimated that there are over six hundred microenterprise programs in all fifty states of the union.[29] These programs are funded and run by a wide variety of groups (both governmental and nongovernmental, both nonprofit and for-profit).[30] These programs not only provide lending services but also legal advice, business training, health insurance and an abundance of other necessary services to their clients.[31]

These programs are generally offered to a target group or to the entire nation. Surprisingly, research revealed only one entity aimed specifically at American Indian microentrepreneurs, the Cherokee Nation Micro-Enterprise Development Program.[32] As for resources provided by the larger microenterprise development programs, their primary focus on Group One does not provide any assistance for the Group Three microentrepreneur. There must be something done in order to help facilitate the microenterprise industry amongst American Indians in all three groups.

With a basic but functional understanding of microenterprise theory, it is now necessary to shift the discussion to the venture capital arm of this invaluable economic development machine.

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26. *See* Yunus, *supra* note 11, at 49-52.

27. Howells, *supra* note 14, at 163.

28. *Id.*

29. *Highlights from the 2002 Directory*, 2002 DIRECTORY OF U.S. MICROENTERPRISE PROGRAMS 1 [hereinafter *2002 Directory*] (Aspen Inst., Washington, D.C.).

30. *See* MICROENTERPRISE FACT SHEET, *supra* note 16, at 5.

31. *Id.* at 4-5.

32. *See* discussion *infra* Part II. For information on the Cherokee Nation's program, see the Cherokee Nation's web site: Cherokee Nation, *Micro-Enterprise Development Program*, *at* http://www.cherokee.org/Services/CommerceService.asp?ID=170 (last visited Oct. 12, 2004).

B. Microlending in General

One of the major functions of a microenterprise program is the provision of venture capital to the microentrepreneur seeking to advance herself by advancing her business. This function of the industry is referred to as microlending or microcredit.

1. Microlending Defined

The terms microlending or microcredit are often used interchangeably. They refer to the process by which small loans, usually between $500 and $5000,[33] are distributed to entrepreneurs in a variety of different manners.[34] Microloans (as they are usually called) are generally given collateral-free,[35] depending on the method of distribution. Because of the increased risk incurred by the lending institution, the rates on microloans are typically higher than market interest rates.[36] Generally, microloans involve a short pay back period, and the funds must be used for viable business expenses and not for consumption.[37]

2. Methods of Microlending

Solidarity groups, village banking systems and community banking organizations are different modes in which microlending operates.[38] However, this comment is limited to solidarity groups, also known as peer or group lending. Due to their focus on the liability of the entire group, solidarity groups are an effective risk reducer. Microfinance institutions that employ group lending require debtors to form small groups (usually five to six individuals), each of whom individually apply for a loan.[39] The MFI then

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33. *Microlending Is Latest Trend in Business Assistance*, RURAL CONDITIONS & TRENDS, vol. 10, no. 1, at 19, *available at* http://www.ers.usda.gov/publications/rcat/rcat101/rcat101d.pdf (last visited Nov. 1, 2003) [hereinafter *Microlending*] .

34. *See infra* Part II.B.2.

35. *See* Press Release, Royal Economic Society, Explaining the Widespread Success of Grameen Bank-Style 'Microlending' (July 2000) (on file with author), *available at* http://www.res.org.uk/society/mediabriefings/pdfs/2000/July/ghatak.pdf [hereinafter Press Release, RES].

36. Jameel Jaffer, *Microfinance and the Mechanics of Solidarity Lending: Improving Access to Credit Through Innovations in Contract Structure*, 9 J. TRANSNAT'L L. & POLICY 183, 200 (1999).

37. *Id.*

38. *See generally* Betsy Brill, *Profiles in Microenterprise*, NEW VILLAGE J., issue 2, *at* http://www.newvillage.net/Journal/Issue2/2microlending.html; Press Release, RES, *supra* note 35; Yunus, *supra* note 11.

39. Jaffer, *supra* note 36, at 200.

distributes the loans to each individual in the group; however, the entire group is responsible for the repayment of each loan individually.[40]

By having a group lending structure, the MFI emphasizes the gravity of repaying the unsecured loan. Some commentators have likened peer lending to the function of a third-party guarantee or to the theory of joint and several liability.[41] These analogies are sufficient in explaining the fact that each member of the group guarantees the other members' loans and also that each member of the group is responsible to repay any amount that the individual borrower does not repay. As simple as it seems, peer pressure and the fear of repaying someone else's loan acts as a great tool in the arsenal of the MFI.

Not all solidarity group programs work the same way. In some instances, the MFI distributes only two loans and waits a short time to see how effectively those two individuals are paying back their loans.[42] After these individuals have established a satisfactory level of responsible payment history, the MFI distributes two more loans to two other individuals in the group.[43] Only when all four individuals are making regular payments on their loan will leaders of the group be tendered their money.[44] In other instances, the MFI distributes to each individual in the group the loan that they requested.[45] However, it is still under the auspices of the group's guarantee for each other's loan.

There are many risk-minimizing benefits in the peer lending structure. First and foremost, by requiring individuals to form their own groups, the borrower knows that each individual will be responsible for the other's shortfall in repaying the loan; the MFI uses an extremely effective tool in screening their potential borrowers.[46] The other members of the group unquestionably know their partners better than the institution, as partners willing to share liability most often come from long-term, close personal relationships such as family and close friends. They each know the intent, purpose and direction of the microenterprise. Each also knows how serious the microentrepreneur is about working and about improving his or her way of life. No other test screens prospective borrowers as efficiently as the self-screening mechanisms in peer

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40. *Id.*
41. *Id.* at 201-02.
42. *Id.* at 197-98.
43. *Id.*
44. *Id.*
45. LAURA BRANDT ET AL., LENDING METHODOLOGY MODULE (The Russia Microfinance Project, Doc. No. 53, n.d.), *at* http://depts.washington.edu/mfinance/eng/curriculum/docs/53_LendingMethodology.doc (on file with author).
46. Jaffer, *supra* note 36, at 201.

lending groups. This is undoubtedly one of the secrets to the success of the Grameen Bank and should be remembered when organizing a MFI in America.

Second, it uses peer pressure to encourage microentrepreneurs to be responsible in paying back their loan, persevering during hard times and maximizing the effectiveness of their business while maintaining the integrity of the group.[47]

Finally, group lending has been very successful in many countries including the United States. Most American solidarity group lending programs are found in the heart of urban, low-income cities.[48] For example, the South Shore Bank is located in the heart of Chicago.[49] There is no reason that this method of lending cannot be brought out of the big cities and onto the reservations and have a positive impact on the lives of tribal citizens.

3. Microlending's Impact on Economic Development

These forms of microlending have focused on economically challenged individuals, which corporate lending institutions would not normally serve.[50] This emphasis on the "little people" has had an enormous impact on their lives and on the economy as a whole.

A recent study by the Aspen Institute's SELP — Self-Employment Learning Project, shows that of the microenterprises that were surveyed over a five year period, 53% had moved out of the poverty range. Additionally, 57% were still economically viable and sustainable after five years[51] — and as such are competitive with the estimated 60%-70% survival rate of SBA small businesses.[52] The average household income had risen by more than $8000 and the average household assets had also increased by approximately $15,000 over the five year period.[53]

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47. *Id.* at 200.

48. *See generally* Lento, *supra* note 4.

49. Heisen, *supra* note 13, at 348-49; *see also* Lento, *supra* note 4, at 784-90.

50. This seems a bit misleading. In many CDB's the loan size is much less than the stated range. However, the SBA defines the loan size as being between $500 and $25,000.

51. MICROENTERPRISE FACT SHEET, *supra* note 16, at 7.

52. *Id.*

53. PEGGY CLARK & AMY KAYS, MICROENTERPRISE AND THE POOR, EXECUTIVE SUMMARY vii (1997) (Aspen Inst., Washington D.C.).

4. *Microfinance Institutions*

Microfinance institutions (MFIs)[54] have taken on many forms here in the United States. Whether it is a Community Development Credit Union (CDCU)[55] or a Community Development Bank (CDB),[56] each institution looks to the community with a proactive, feasible solution to many of the problems facing the community. These institutions have shown that there are many ways to combat poverty and enhance social and economic development within these challenged communities. However, modern trends have seen an emphasis shift from lending to, among other things, development of low-income housing.[57] This shift may be due to the positive economic impact of community banking and lending on Group Three individuals in these inner city areas. However, this shift in focus toward housing cannot take place until there has been a significant decrease in the number of Group Three individuals in the challenged community.

C. Micro-Lending Examples

In order to foster this microenterprise development, many different types of MFIs have been organized in the United States over the past thirty years.[58] Today, there are over 650 microenterprise development programs in the United States.[59] Each institution, unique in its own right, may vary in the types of services provided or advice given; however, each one generally has a division for microlending. It is in this area where "all the magic happens." In order to gain a full understanding of microlending it is prudent to look at the premier MFI in the world and also the only known American Indian MFI in America.

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54. For purposes of this comment, reference to a "microfinance institution" broadly encompasses all entities established to cultivate microenterprise on any scale. The institution may be a for-profit or a nonprofit concern.

55. A Community Development Credit Union is a nonprofit financial cooperative institution owned and controlled by its members. Lento, *supra* note 4, at 777.

56. A Community Development Bank is a federally insured and regulated depository institution with a primary mission to provide capital and to rebuild lower income communities. *Id.* at 776.

57. *See Microlending*, *supra* note 33.

58. *See* Howells, *supra* note 14, at 163. *See generally* BRANDT ET AL., *supra* note 45 (discussing the early history of microlending and its resurgence today).

59. *2002 Directory*, *supra* note ?, at 3; *see also* Howells, *supra* note 14.

1. Grameen Bank

Microlending first became famous through the extraordinary results of the Grameen Bank in Bangladesh. In 1976 Dr. Yunus, Head of Rural Economics Program at the University of Chittagong, embarked upon a research project examining the possibility of developing a system to deliver credit to the extremely poor through banking services.[60] The Grameen focuses on developing the community into financially independent individuals who, in turn, focus on their surroundings to ensure that everyone has the opportunity to be independent and self-sufficient.[61]

The Grameen Bank, through its rigid rules and peer lending structure, has created a system that has seen astounding results. What started as a research project has now become an institution that in 2002 alone dispersed approximately $272 million to over 2.4 million borrowers.[62] Over the last twenty-five-plus years, the Grameen Bank has loaned over $3,800,000,000 and its borrowers have paid back approximately $3,471,000,000 — an astonishing 91% payback rate.[63] This far surpasses a normal payback rate of approximately 40%.[64]

The Grameen's rigid rules and carefully planned system ensure that their mission of providing funding to the poorest of the poor is fulfilled. These rules force the bank to evaluate potential borrowers using strict eligibility requirements in determining whether the borrower is poor enough to receive funding.[65] The Bank has also geared the delivery system to its target audience. By evaluating the borrower and delivering the funds at the doorstep of the borrower, the Bank has brought a system to its constituency who would not have otherwise been able to garner any start-up capital.[66] Dr. Yunus has described the success of Grameen's tough regime as, "Credit without strict discipline is nothing but charity."[67]

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60. *A Short History of Grameen Bank*, *at* http://www.grameen-info.org/bank/hist.html (last visited Nov. 8, 2003).

61. *See generally* Yunus, *supra* note 11.

62. *Grameen Bank Historical Data Series 1998-2002*, *at* http://www.grameen-info.org/bank/hist2001.html (last visited Nov. 8, 2003).

63. *Id.*

64. Press Release, RES, *supra* note 35, at 1.

65. *See* Yunus, *supra* note 11; *Grameen — Banking for the Poor*, *at* http://www.grameen-info.org (last visited Nov. 8, 2003).

66. Yunus, *supra* note 11, at 52.

67. *Id.* at 55.

What has occurred in Bangladesh is nothing short of phenomenal; in fact, some observers suggest that the Grameen is successful for three main reasons: (1) by its very nature it targets the poorest of the poor, (2) it is geared and suitable for the very poor, and (3) its rigid rules prevent corruption and control by the already wealthy and influential members of the community.[68]

2. Cherokee Nation Micro-Enterprise Development Program

The Cherokee Nation Commerce Division under its Cherokee Nation Credit and Finance Department provides many education and loan programs for both personal and business needs.[69] One such program is specifically relevant to this comment, the Cherokee Nation Micro-Enterprise Development Program.[70] The program offers loans up to $25,000 at the New York Prime Lending Rate for a maximum term of seven years.[71] The loans must be secured in full by sufficient collateral and must be used only for various business costs and not for real estate or personal consumption.[72]

This program, while fostering some of the same social and economic development values that this comment advocates, seems aimed only at the Group Two or better microentrepreneurs. A critical look at the program quickly reveals that one of the first necessities to participate in the program is that the individual seeking the loan must have at least a 25% equity at stake in the enterprise and must have "adequate collateral" to secure the loan.[73] This requirement flies in the face of the Grameen theory. It requires a person to have some sort of valued wealth to offer as collateral in order to obtain funding. While this program plays an important role in the community, it fails to serve Group Three entrepreneurs. In this manner, the program is nothing more than a traditional lender with more stringent eligibility requirements relating to jurisdictional location and tribal status.

A second necessity is that the individual have "good credit history."[74] It is safe to assume that a majority of these possible Group Three microentrepreneurs have insufficient credit. By requiring "good credit" as a

68. *See* Jaffer, *supra* note 36, at 186.

69. *See* Cherokee Nation, *Commerce*, *at* http://www.cherokee.org/Services/Commerce.asp (last visited Nov. 8, 2003).

70. *See* Cherokee Nation, *Micro-Enterprise Development Program*, *at* http://www.cherokee.org/Services/CommerceService.asp?ID=170 (last visited Oct. 12, 2004).

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

basic requirement for the debtor, the institution is again not differentiating itself significantly from a traditional lending institution.

The idea behind the Cherokee Nation providing a microloan program specifically for its citizens should be commended; however, the program is designed in a way that does not facilitate economic development amongst the targeted demographic that microlending was designed to help. While there is a need for this program, there is also a need for a MFI that focuses on Group Three microentrepreneurs and develops them into business owners that can qualify for traditional or current tribal lending services.

III. Proposed Tribal Microfinance Institution

To date, research indicates only one tribe that has seen the vision of the potential impact microfinance could have on their reservation. Having noted that, the proposed Tribal Microfinance Institution (TMFI) in many ways embodies the spirit of the Cherokee Nation Micro-Enterprise Development Program. There are, however, significant differences which make the proposed TMFI more focused on Group Three entrepreneurs rather than on Group Two or better. Also, the proposed model is more of a full service MFI rather than just a microlending institution. This is in order to facilitate success amongst the microentrepreneurs by providing the necessary resources for success.

A. Mission Statement

As with any focused business enterprise, the purpose of the TMFI should be embodied in a mission statement. This mission statement should focus on the economic and social development of the Group Three members of the tribe. It should create an effort to affect the lives of the poorest of the tribe in a positive, feasible way. The goal of the TMFI is not profit maximization, but rather it is patterned after the Grameen Bank and is focused on empowering the individuals in their community.[75] So long as the tribal leaders keep this social consciousness throughout the duration of the program, the needs of the lowest class will be met in an efficient and effective way. Having said this, the mission of the TMFI should identify the target audience (the Group Three microentrepreneur) and should direct the institution to make all policy and technical decisions with this focus in mind.

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75. *See generally* Yunus, *supra* note 11.

B. Initial Funding

The technical discussion of the TMFI must start with the issue of funding. With all of the recent developments in tribal economics on the macro level, it is safe to assume that a majority of the tribes have sufficient funding to be able to enact a TMFI.[76] It is encouraging to see the many economic pursuits being met with a fruitful bounty; however, it is imperative to not forget about microentrepreneurs, who may further increase this advancement. The bottom line is that tribes should be able to funnel sufficient amounts of money into a TMFI in order to foster both the economic and social developments that will naturally flow from this institution.

C. Rigid Rules Structure

The Grameen Bank has proven that a rigid rules structure is imperative to the success of a MFI. Since the mission statement will identify the Group Three microentrepreneur as the targeted consumer, the rules must start with a description of exactly what type of individual falls into this category. The definition given will be a sufficient starting place. It will be necessary for each tribe to modify its eligibility requirements to suit tribally-specific needs. These eligibility requirements include, but are not limited to exact figures for the amount of education allowed/required, and the maximum amount of income an individual can have and still be considered a Group Three consumer. However, the decisions regarding these criteria should be left to the tribal leaders of each TMFI.

There obviously has to be a jurisdictional requirement in the eligibility classifications. For example, to get a microloan from "XYZ" TMFI, that individual must be a member of "XYZ" Tribe and must reside in a town or county located within the reservation boundaries. This restricts the pool of applicants and enables the tribe to focus on its own local members. Also, by restricting the access, the TMFI reduces risk by creating a pool that is located relatively close to each other and has the opportunity to observe and monitor fellow group members. It could be argued that the tribe should allow any citizen of the tribal nation to participate in the TMFI regardless of their

76. *See* Richard J. Ansson, Jr. & Ladine Oravetz, *Tribal Economic Development: What Challenges Lie Ahead for Tribal Nations as They Continue to Strive for Economic Diversity?*, 11 KAN. J.L. & PUB. POL'Y 441 (2002) (including a discussion regarding the Mississippi Band of Choctaws and their industrial development); Kathryn R.L. Rand, *There Are No Pequots on the Plains: Assessing the Success of Indian Gaming*, 5 CHAP. L. REV. 47 (2002) (discussing the success of many tribes in the area of gaming and the available funds due to that industry).

location. While this would encourage participation and assist individuals who would otherwise meet all eligibility requirements except geographical location within the reservation, it would lower risk.

These requirements for participating in the TMFI are designed to ensure that the individuals in charge of the TMFI are constantly reminded of the mission and that they do not lose track of the task of empowering the poorest of the tribe. They are neither exhaustive nor exclusive, but rather a starting point on the issues that must be considered in order to have a successful TMFI.

D. Full Service Microfinance Institution

In order to make the TMFI successful, it is imperative that the institution be a full service, one-stop-reference-shop for microentrepreneurs. It defeats the purpose of the TMFI to force an individual to waste resources jumping through hoops at multiple administrative locations to accomplish their final goal. The TMFI should provide many different services and have experts on hand in the areas of business services and training, legal services, microlending and insurance. By providing these services, the TMFI can help ensure that the microentrepreneur has all the available resources necessary to succeed in their chosen business endeavor. This improves the likelihood of success, lowers risk and allows the TMFI to show its dedication to the social and economic development of the tribe and the reservation.

The idea of creating a microentrepreneur incubator is hardly novel, but it cannot work if the sole function of the institution is to distribute money. The TMFI must have on staff a group of individuals with the talents and capabilities to advise and help the microentrepreneur with all areas of its business. There should be strategic business planning training to help create a vision and direction for the enterprise. Financial advisors should be on the premises, which not only help with the loan application, but also advise the individual about general accounting methods and other necessary bookkeeping items. Also, a person with the capability of helping in the areas of marketing, personnel management, technology services and advertising would help ensure the success of the microenterprise. Because this institution is aimed at Group Three microentrepreneurs, the TMFI should provide "how to" classes on many of the basic business, legal and other functions necessary to operate a successful enterprise.

Some services that need to be provided are both business and law related, for example, tax preparation. It would be beneficial to the microentrepreneur to have a tax advisor on hand to aid in the business-making decisions and tax preparation every year. Along with tax advice there are many other legal services that would help these new business owners. Experts in governmental compliance, qualifications for Federal assistance, corporate structure, contracts and land rights are just a few of the possible legal services that should be offered by the TMFI. The TMFI could easily partner with the Small Business Association's Minority Development Program to help offer many of these services. In the alternative, it is not out of the question to have the TMFI seek guidance from these already existing programs and from many of the available studies: the Aspen Institute has a wealth of information and an entire "how to" series of handbooks specifically aimed at developing quality microenterprises.[77] By creating a system on their own, the TMFI would be able to assist its constituents in qualifying for more of the governmental programs in which they currently could not participate.

One area that does not seem to fit into this discussion but seems vital to the success of the TMFI is the provision of an insurance carrier for the members of the TMFI. This would encourage the welfare-dependant and very low income microentrepreneurs to branch out and attempt success without losing the benefits afforded to them by the United States Government. By providing health and other insurance policies, individuals will be more likely to take the step that will change their lives.

Obviously a TMFI will not be able to operate without a lending division. While all the other services are vital to ensuring the success of the microentrepreneur, the provision of initial capital should be the most important focus of the TMFI.

E. Specifics on Microlending Division of the Institution

In order to make the lending institutional successful, the specifications regarding the terms of the lending agreement have to be very clear and understandable to the targeted audience.

The biggest error in U.S. MFIs is not employing the solidarity group or peer lending structure. This has been one of the keys to the success of not only the Grameen Bank but also other MFIs around the world.[78] By using this system, the lender reduces its risk involved in lending to an individual who would otherwise be a credit risk. The research into the potential borrower's ability to pay back the loan, the borrower's potential for success in business and intentions regarding how to use the capital is all done by the members of the small homogeneous group. As discussed previously, this allows for the

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77. *FIELD Microenterprise*, *at* http://www.fieldus.org (last visited Nov. 8, 2003).

78. *See* Jaffer, *supra* note 36, at 184-85.

institution to be comfortable giving money to otherwise noncreditworthy individuals.[79]

A logical restriction on the lending is to require that the funding only be used for productive capital — working capital, purchase of capital assets, purchase of inventory or other necessary expenditures. This requirement ensures that the loans are not spent on consumption, but rather in furtherance of the individual's microenterprise. This forces the money to be used in activities that will increase the individual's personal and business wealth. The peer lending structure again provides a sufficient monitoring device to ensure that the entrepreneur is using his or her money in the correct manner.

Another requirement of the Grameen Bank that fits precisely into the mission of the TMFI is to require that the borrower put a small percentage of the loan into savings.[80] By doing this, the individual begins to increase their net worth and consequently begins to work their way out of the poverty cellar. By requiring a small percentage to be put back into savings, the TMFI is helping to facilitate healthy financial habits while instilling the virtues of savings and efficient, effective financial planning.

F. Potential Problems with the TMFI

Anytime there is an organization created with the ability to affect peoples' livelihood there is always the fear of things going awry. One of the biggest potentials for problems with the TMFI structure are the politics and favoritism that could occur in the decisions affecting the granting of loan requests. However, this problem could easily be solved by creating a Lending Board within the TMFI consisting not only of TMFI loan officers but also business experts that work for the TMFI and tribal leaders. By employing a cross section of individuals from within the community with a vested interest in the success of the TMFI and keeping in mind the mission of empowering the poor of the tribe to become financially self-sustainable, the board should have little difficulty eliminating the possible corruption factor.

As with any other microfinance program, funding is always a constant concern. However, as long as each tribe keeps a focus on the economic development of their citizens and their business endeavors continue to be profitable, the fear of lack of funding should not be a very strong consideration.

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79. *See supra* Part II.B.2.

80. *See Grameen — Banking for the Poor, at* http://www.grameen-info.org (last visited Nov. 8, 2003).

IV. Conclusion

This proposal is just the tip of the iceberg. There are so many variations that can occur depending on the initial success and focus of the TMFI. A tribe shouldn't limit its thinking to just one TMFI focused on Group Three microentrepreneurs. It should consider developing an overall financial banking corporation which participates in traditional commercial lending services but also keeps the TMFI as a subsidiary of the mother corporation. By doing this, the tribes will be able to maximize their profits by taking advantage of the lucrative banking industry, while at the same time keeping focus on their community and the development of the overall economic structure of the nation itself. The purpose of this proposal is to start a healthy discussion amongst tribal leaders and academia as to the unused financial potential hidden in an often overlooked and often disregarded sector of the nation.

Many of the obstacles addressed in this comment may be overcome. We must recognize the unused human capital present on the reservations and amongst the tribes and develop it into the unique, sustainable businesses they have the potential to become. Further, each tribe has unique characteristics and specialties that add to the overall richness of the American Indian tradition and if there is a system — an institution — with the resources available to help guide these ambitious individuals, then each one will be able to overcome Group Three status. This will allow them to move into more sustainable and autonomous economic growth, which will afford them even more outside opportunity (with the federal government or more Group One or Two focused institutions). This will also improve the quality of life by bringing these individuals out of poverty status and into a working class status with a brighter future.

The lessons learned from successful MFIs both abroad and domestically are vital to the success of the TMFI. In order to make a better life for these microentrepreneurs, the TMFIs must be cognizant of the corollary services that are necessary to cultivate sustainable businesses. TMFIs must provide the requisite lending as well as business, legal, accounting and insurance advice. These services are imperative in allowing the individuals to reduce their risk and will provide them with added incentive to make a more gratifying, self-sustaining life for themselves and their families.

Although a TMFI will not completely solve the social and economic deficiencies facing tribes today, it has the potential to be a strong force in bringing about real change in the financial status of many individuals. If the leaders of each tribe embrace this bottom-up approach, the lives of the economically challenged can and will be changed forever.