MICROLOANS AS A COMMUNITY REINVESTMENT ACT COMPLIANCE STRATEGY

EMILY BERKMAN*

As the poverty remediation strategy of microfinance continues to develop throughout the world, it has become clear that its best hope for success in reaching the maximum number of clients and acquiring permanence on the financial landscape lies in sustainability. Commercial (impliedly, sustainable) microfinance has not yet emigrated to the United States, but banking regulators can use their powers under the Community Reinvestment Act ("CRA") to encourage such investment. Microfinance and the CRA tackle the same problem: giving low-income individuals access to banking services otherwise denied them. Since sustainability can help ensure continued microcredit over the long run, achieving it is in CRA regulators' interest. Moreover, banks would do well to consider microfinance as part of their CRA compliance strategy, because it would exceed the profitability of their existing strategy of providing grants to nonprofit microlenders.

It is time for domestic microfinance to take the leap towards sustainability that has been taken abroad. CRA regulators can pave the way. This Note recommends that they do so.

I. SUSTAINABLE MICROFINANCE ABROAD

Microloans, which developed overseas, are loans directed at poor people for the initial capitalization of small businesses.[1] These loans are very small. For example, in 2004 ACCIÓN International cited the average microloan balance in Latin America and the Caribbean as $634 and in Africa as

* J.D. 2006, New York University School of Law; L.L.M. (Taxation) Candidate 2007, New York University School of Law. Thanks to Professor Michael Barr for comments upon an early draft of this Note.

1. Lewis D. Solomon, *Microenterprise: Human Reconstruction in America's Inner Cities*, 15 HARV. J. L. & PUB. POL'Y 191, 194 (1992). *See* Kenneth Anderson, *Microcredit: Fulfilling or Belying The Universalist Morality of Globalizing Markets?*, 5 YALE HUM. RTS. & DEV. L.J. 85, 90-91 (2002).

$594.[2] A leading goal in providing these loans is mitigation of the consequences of poverty, although some organizations also focus on female empowerment.[3]

But various adherents of microcredit may have different strategies or even visions of what poverty alleviation means.[4] *Sustainable* microcredit produces net profits after costs and future development needs (such as product development).[5] Note that cost of capital (opportunity cost)[6] is not always incorporated into such definitions.[7] This is problematic as opportunity cost (keeping in mind equal risk levels) is a standard component of planning calculations.[8] It is possible that meeting the cost of capital is not a realistic goal for microlending,[9] and this needs to be recognized as a type of subsidy. However, given the existence of the (mandatory) CRA, opportunity cost

---

2. ACCIÓN INTERNATIONAL, KEY STATISTICS (2004), *available at* http://accion.org/about_key_stats.asp [hereinafter ACCIÓN International, *Key Statistics*]. ACCIÓN International figures prominently among microfinance programs. Anderson, *supra* note 2, at 103 n.55.

3. *See* Anderson, *supra* note 1, at 92, 94; Solomon, *supra* note 1, at 193.

4. Anderson, *supra* note 1, at 119.

5. Jay Rosengard, *Banking on Social Entrepreneurship: The Commercialization of Microfinance*, 32 MONDES EN DEVELOPPEMENT 25, 28 (2004), *available at* http://www.ksg.harvard.edu/cbg/asia/rosengard_banking-on-social.pdf. The concept of sustainability is further discussed *infra* notes 25-50 and associated text. Sustainability is a slippery term; it sometimes also means merely that incoming revenue including grants exceeds expenses! The Global Development Research Center, *Microcredit and Microfinance Glossary, available at* http://gdrc.org/icm/glossary/index.html#S. It is often difficult to tell how a given publication is using the term. Consequently, it is used fairly loosely in this Note to denote where client-generated revenues exceed costs, but this may or may not include the cost of capital at a given moment. This is less relevant than it might sound because, as discussed below, CRA lending has not always been held to a cost-of-capital standard. *See infra* note 10 and associated text.

6. JOHN DOWNES & JORDAN ELLIOT GOODMAN, BARON'S FINANCIAL GUIDES: DICTIONARY OF FINANCE & INVESTMENT TERMS 123 (5th ed. 1998) [hereinafter DICTIONARY OF FINANCE & INVESTMENT TERMS].

7. *See* Rosengard, *supra* note 5, at 28; Helms & Reille, *infra* note 16, at 3. *But see* Anderson, *supra* note 1, at 100 (noting that disproportionate transaction costs place unsustainable stress on a microloan cost-of-capital analysis for banks); The Consultative Group to Assist the Poor, *Making Sense of Microcredit Interest Rates*, Donor Brief No. 6 (2002), *available at* http://www.cgap.org/docs/DonorBrief_06.pdf (interest revenue must factor in the cost of capital).

8. DICTIONARY OF FINANCE & INVESTMENT TERMS, *supra* note 6, at 416.

9. Anderson, *supra* note 1, at 100.

takes on a different light – *e.g.*, microloans need only be as profitable as the next best CRA alternative. Indeed, sometimes CRA loans have not been held to a cost-of-capital standard.[10]

Two alternate conceptions of microcredit's function are of interest. One is that the role of microcredit is to "graduate" borrowers so that they no longer need special programs.[11] Microcredit need not generate revenues in excess of its costs so long as the microloan program fulfills its function of moving a borrower from the initial state (no access to credit) to the improved state (ability to access traditional forms of credit).[12] A less optimistic theory questions the value of microcredit if borrowers are a static group whose need for subsidy is perpetual rather than one-shot,[13] but microloans may still be justified to encourage borrowers' fiscal responsibility, or because providing welfare benefits is less costly when done

10. *See* Edward M. Gramlich, Governor, Fed. Reserve Bd., Examining Community Reinvestment, Remarks at Widener University, Chester, Pennsylvania (November 6, 1998), *available at* http://www.federalreserve.gov/Boarddocs/Speeches/1998/19981106.htm; *but see* PERFORMANCE AND PROFITABILITY, *infra* note 129, at 58 (96% profitability for CRA small business lending programs). The same report, however, notes that 13% of institutions have CRA small business lending which is *less* profitable than its non-CRA counterpart. *Id.* Assuming away market exhaustion, this supports the hypothesis that cost of capital with regards to CRA lending need only take into account the universe of potential CRA loans.

11. Anderson, *supra* note 1, at 117.

12. *See* Anderson, *supra* note 1, at 103, 119. *Cf.* Rosengard, *supra* note 5, at 33 ("It is essential to match the appropriate model with the organization's mission . . . If the activity is very high risk, for example targeting extremely marginalized populations or microenterprise start-ups, a subsidized NGO might be the most suitable institutional model.").

13. Anderson, *supra* note 1, at 118. This need not suggest common defaults. *Id.* at 106. It rather contrasts those borrowers in need of one lucky break, which they can leverage into self-sufficiency/ability to access traditional forms of credit, and those who will require continuing welfare benefits in the form of subsidized credit (whose interest rate revenue will generally not make up for true lending costs) even if they faithfully repay each loan. *Id.* at 103, 106, 117-18. Of course, Professor Anderson's disbelief in the possibility of generalized sustainability underlies his conception of all use of microloans, however long, as involving a subsidy. *See id.* at 103, 117-18, 118 n.85.

through microcredit than when handled in another (more traditional) manner.[14]

Clarifying expectations is an important first step because benchmarks for measuring the success of a microloan program depend upon the goal.[15] Interest rates and profitability are of vital interest to a program attempting sustainability,[16] but perhaps less so or even inhibiting to programs with diverse goals.[17] This goal-setting goes to the heart of what microcredit is and will be – charitable handout, social development, or successful business – and makes clear that sustainable microcredit may be as different from microcredit as microcredit was, initially, from traditional credit.

As a development strategy microcredit has attracted significant praise. The United Nations designated 2005 as the "International Year of Microcredit"[18] declaring "that microcredit programmes have successfully contributed to lifting people out of poverty in many countries around the world."[19] According to the Microfinance Information eXchange,[20] which col-

14. Anderson, *supra* note 1, at 118; Michael Tucker & Gerard Miles, *Financial Performance of Microfinance Institutions: A Comparison to Performance of Regional Commercial Banks by Geographic Regions*, 6 JOURNAL OF MICROFINANCE 41, 53 (2004).

15. *See* Anderson, *supra* note 1, at 118-19.

16. *See* Elizabeth Littlefield & Richard Rosenberg, *Breaking Down the Walls between Microfinance and the Formal Financial System*, at 1, *available at* http://cgap.org/docs/BreakingDownWalls.pdf; Brigit Helms & Xavier Reille, *Interest Rates and Microfinance: The Story So Far*, at 2-3 (CGAP Occasional Paper No. 9, 2004).

17. This does not necessarily have to be the case. For example, ACCION USA has a product called a "credit builder" loan whose goal is to create a positive credit history for the borrower. On a general level, ACCION USA is also actively working towards sustainability. Burrus, *infra* note 51, at 9, 11. The goals are not functionally incompatible; rather, that factors such as profitability matter more towards sustainability than they do towards a goal of building credit histories.

18. United Nations General Assembly, *Resolution Adopted by the General Assembly 53/197 International Year of Microcredit, 2005*, A/RES/53/197 (22 February 1999).

19. United Nations General Assembly, *Resolution Adopted by the General Assembly 53/197 International Year of Microcredit, 2005*, A/RES/53/197 (22 February 1999).

20. Microfinance Information eXchange, *Ten Frequently Asked Questions about Microfinance, available at* http://www.mixmarket.org/en/overview.asp (*cited by* United Nations Capital Development Fund, Basic Facts about Microfinance, *available at* http://www.uncdf.org/english/microfinance/facts.

lects microfinance data, leading international microfinance institutions ("MFIs") produce a return on assets ("ROA") of 2.5%, after accounting for pre-existing program subsidies.[21] An 8-year study of poverty-stricken Bangladeshis who otherwise lacked credit access found that Grameen Bank microcredit resulted in being twelve times more likely to clear the poverty line.[22]

Other analysis is more temperate. Critics claim that microcredit's success in ameliorating poverty is merely a litany of well-cited anecdotes with little supporting empirical data. From the same quarter can nonetheless emerge praise of its ability to achieve other goals like education and health.[23] These are not unrelated issues.[24]

But while many development strategies are necessarily based entirely on subsidies, microloans need not be among them.[25] In fact, there is growing recognition that *to best be effected as a development strategy, microfinance should be self- supporting*.[26] This insight is informed by empirical observation[27] and

---

php) (attributed to CGAP). CGAP and the MIX are closely related: not only did CGAP supervise MIX operations through 2005, but CGAP is also a partner in the MIX itself. Microfinance Information eXchange, *The MIX (Microfinance Information eXchange), available at* http://www.themix.org/en/about_the_mix.html#. The MicroBanking Bulletin, referred to in this paper, is a project of the MIX. *Id.*

21. Among FDIC-insured depository institutions (those subject to regulation by the Community Reinvestment Act), ROA was 1.29% in 2005 (with mergers taken into account); in 2004, this figure was 1.33% (with mergers taken into account). FED. DEPOSIT INS. CORP., THE FDIC QUARTERLY BANKING PROFILE 2 (2005).

22. The Global Development Research Center, *Microfacts: Data Snapshots on Microfinance, available at* http://www.gdrc.org/icm/data/d-snapshot.html (*cited by* United Nations Capital Development Fund, Basic Facts about Microfinance, *available at* http://www.uncdf.org/english/microfinance/facts.php).

23. Isobel Coleman, *Defending Microfinance*, 29 WTR FLETCHER F. WORLD AFF. 181, 181-82 (2005).

24. *See* Id.

25. *See* Signe-Mary McKernan & Henry Chen, *Small Business and Microenterprise as an Opportunity - and Asset-Building Strategy*, at 2 (The Urban Institute Opportunity and Ownership Project No. 3, June 2005), *available at* http://www.urban.org/UploadedPDF/311188_small_business.pdf (discussing microlending in America).

26. Rosengard, *supra* note 5, at 28. This admittedly strong statement should not be taken to mean that there is no place for organizations that cannot achieve this goal. Jay K. Rosengard, *Doing Well by Doing Good: The*

pragmatic considerations. Pragmatic considerations include: (1) microlenders being more stable because continued funding depends only on customer patronage, not donor whims;[28] (2) borrowers will want to avoid default in order to access new loans in the future (default is more attractive if an organization's continued existence is uncertain);[29] and (3) development strategists have grand plans for the reach of microcredit and, given the finite amount of charitable funding, only commercial capital will fully support them.[30]

Notwithstanding these insights, sustainability initially sounds like a pipe dream (although, as will be shown, it is achievable) because microloans are both more expensive and riskier than other types of loans. This is true for at least four reasons. First, loan initiation and maintenance cost approximately the same regardless of loan size, making it increasingly unattractive to make smaller loans.[31] Second, microloans are

---

Future of Microfinance via Regulated Financial Institutions, III Inter-American Forum on Microenterprise, Barcelona, Spain 17-20 October 2000 at 2, *available at* http://www.ksg.harvard.edu/cbg/research/j.rosengard_forum_doing.well.by.doing.well.pdf [hereinafter Doing Well by Doing Good]. It is important to "match the model with the mission," *id.* at 9; inherent risks and expenses involved in lending to some populations may prevent ever reaching sustainability (but nonetheless be socially net positive). *See id.* at 2. But, while Rosengard posits the necessity of these subsidy-requiring organizations' existence, he believes that the lion's share of microlending should be done sustainably. *See Doing Well by Doing Good*, *supra*, at 2, *but see* Tucker & Miles, *supra* note 14, at 48 (suggesting a much larger role for nonsustainable MFIs due to their borrower training objectives).

27. Rosengard, *supra* note 5, at 28, Helms & Reille, *supra* note 16, at 3 (sustainability equals a sixfold boost in borrower outreach) (citing Blaine Stephens, *Depth of Outreach & Financial Self-Sufficiency* (The MIX Data Brief 1, no. 1, 2004)).

28. *See* Rosengard, *supra* note 5, at 28.

29. Rosengard, *supra* note 5, at 28. Another incentive not to default might be legal action against the borrower. But microloans are often so small as to make costs of such action outweigh benefits. Anderson, *supra* note 1, at 106 (although this may not hold in the United States, where loans are larger, *see* ACCIÓN International, *Key Statistics*, *supra* note 2).

30. Marc de Sousa-Shields, *Foreword: Making the Transition to Private Capital*, 11 MICROBANKING BULLETIN 1 (Aug. 2005).

31. Solomon, *supra* note 1, at 192. Lenders could, of course, scale down such costs to reflect the smaller loan size if they wished. The fact that they do not must be due to the lenders' need for disproportionate monitoring to loan size (informed by the increased riskiness of microborrowers). Anderson, *supra* note 1, at 98, 100.

repaid at more frequent intervals, resulting in *increased* service costs.[32] Third, microloans require additional expenses including identification of borrowers (generally not necessary for "normal" loans) and business-related training.[33] Fourth, collateral is often lacking.[34] Microlenders "use personal contact as a substitute for formal collateral or computerized credit scoring."[35]

While no efficiency can completely offset microcredit's increased costs,[36] sustainable microfinance does exist. To accomplish this feat, providers have both raised revenues and cut costs.[37] On the revenue side this amounts to charging interest that pays for lenders' cost of funds, borrowers' default risk, and administrative costs.[38] Resulting high fees do not stem demand from borrowers who are generally thrilled to receive credit at all.[39] Moreover, even high interest rates may be significantly less expensive than substitute credit sources, either in terms of money, risk or arduousness.[40]

Cost-cutting requires increasing efficiency,[41] which may be accomplished in a variety of ways. One method has been to increase the ratio of clients to loan officers.[42] Another measure is decreasing monitoring costs, provided it does not reduce portfolio quality. Such balance may be attained if borrowers return for additional loans; since their credibility has already been proven, there is less need for monitoring and greater willingness to increase loan size.[43] The developing

---

32. Helms & Reille, *supra* note 16, at 2.

33. Solomon, *supra* note 1, at 195-96, 201; Anderson, *supra* note 1, at 108 & n.69.

34. Solomon, *supra* note 1, at 192.

35. Helms & Reille, *supra* note 16, at 2.

36. *Id.* at 3.

37. *New Actors, infra* note 80, at 2-3. *Cf.* Anderson, *supra* note 1, at 102 (suggesting this path although generally denigrating the possibility of sustainable microfinance).

38. Helms & Reille, *supra* note 16, at 3. Helms and Reille advocate strongly against interest rate ceilings which inhibit lenders' ability to set revenues greater than microlending costs (and therefore result in fewer microloans). *Id.* at 14.

39. *Id.* at 3.

40. *Id.*

41. *Id.*

42. *Id.*

43. *See* Anderson, *supra* note 1, at 100, 118 n.85. Conversely, ACCIÓN USA gradually decreases interest rates for proven borrowers. ACCIÓN USA,

world has also dealt with monitoring costs through "solidarity groups," where borrowers form groups whose loan fates are linked and who therefore engage in reciprocal monitoring.[44] This allows the lender to spend less on such activities.[45],[46]

Microlending has been profitable. In 2002, Bank Rakyat Indonesia's microlending division earned $200 million U.S. in profits,[47] and "USAID reports that nearly half (49%) of the MFIs it assists. . . are fully financially sustainable."[48] One study found that over one-third of reporting microfinance organizations had achieved sustainability, with return on assets of 5.1%.[49] This study cautions against reporting bias (MFIs report their information when they are performing well). It also suggests that sustainability may be being implemented by organizations' abandoning the smallest loans and thus their missions. The study suggests that a portfolio mixing microloans and larger loans would achieve both social and profit objectives.[50]

Frequently Asked Questions Loan Applications, *available at* https://secure.accionusa.org/apply/faq/jsp.

44. Solomon, *supra* note 1, at 196, 198; Mark Schreiner & Gary Woller, *Microenterprise Development Programs in the United States and in the Developing World*, 31 WORLD DEVELOPMENT 1567, 1569 (2003).

45. Schreiner & Woller, *supra* note 44, at 1569.

46. It has also been noted that "savings must play the largest role in the financing of the sector," de Sousa-Shields, *supra* note 30, at 1, although "even successful [microfinance institutions] can find it a struggle to fund significant portions of their portfolios [from] that source." *Id.* at 1 (citing Ann Miles, *Financial Intermediation & Integration of Regulated MFIs*, 11 MICROBANKING BULLETIN 9 (2005)). Commercial banks' ability to utilize savings to fund lending efforts is considered to be one of their advantages in this field. *See* Rosengard, *supra* note 5, at 30.

47. Rosengard, *supra* note 5, at 31.

48. Coleman, supra note 23, at 182 n.5. The scalability of such achievements is, perhaps, uncertain, with claims that sustainability could only be achieved for a small fraction - 5% - of organizations practicing microfinance overall. Id. at 181.

49. Tucker & Miles, *supra* note 14, at 47-48. Note that MFIs may be starting from smaller amounts of equity and/or assets, contributing to the positive results cited in the text. *Id.* at 47.

50. *Id.* at 43, 45, 48-49.

II. UNITED STATES MICROFINANCE

The United States was late to the party in terms of domestic microfinance: a follower rather than a leader.[51] Microcredit was in its infancy in the U.S. in the 1980's but had been modeled on efforts abroad spearheaded in the 1970s.[52] Definitions of United States microloans are generally capped at $25,000[53] - $35,000.[54] They have been the province of nonprofits, rather than commercial institutions.[55]

Statistics illuminate both progress and continuing challenges. In 2002, microlenders' outstanding balances totaled about $98.5 million – though that is an estimated market penetration of below 1%.[56] ACCIÓN USA claims a 5% default rate;[57] default rates are a core underpinning of sustainability.[58]

---

51. Bill Burrus, President and Chief Executive Officer, Accion USA, *Lessons and Trends of Microcredit in the United States* 1-2, *available at* http://www.accion.org/file_download.asp?f=16.

52. Anderson, *supra* note 1, at 92, The Microenterprise Fund for Innovation, Effectiveness, Learning, & Dissemination & The Association for Enterprise Opportunity, *Business Capital for Microenterpreneurs Providing Microloans*, Microenterprise Fact Sheet Series Issue 3 (2000), *available at* http://fieldus.org/Publications/fact_sheet3.pdf, at 1 [hereinafter *Business Capital*], *see* Burrus, *supra* note 51, at 1.

53. *Business Capital*, *supra* note 52, at 1.

54. United States Small Business Administration, Micro-Loans, available at http://www.sba.gov/financing/sbaloan/microloans.html (describing the SBA MicroLoan Program, which works through nonprofit intermediaries).

55. Burrus, *supra* note 51, at 4.

56. *Id.* at 5-6.

57. ACCIÓN USA, ACCIÓN USA ANNUAL REPORT 2004 5, *available at* http://www.accionusa.org/atf/cf/{94AE2258-7F09-4D1D-843D-1585EF06DE5F}/2004.pdf. *But see* Anderson, *supra* note 1, at 98 n.38 (suggesting, regarding international microfinance, that not only may such glowing default rates be less than accurate, but that poor delinquency rates also cast down the general proposition claimed), *Business Capital*, *supra* note 52, at 7 (denigrating repayment rates as a sample of microlenders showed portfolios-at-risk between 6% and 40%).

58. *Cf.* Helms & Reille, *supra* note 16, at 3 (interest rates must pay for default risk). It is difficult to cast microloan default rates in a comparative light; there is no easy control group. Comparisons to prime loans are inapposite as "conventional sources of business financing are often beyond the reach of microentrepreneurs." Ass'n for Enterprise Opportunity, AEO 2006 Legislative Priorities at 2 (2006), *available at* http://microenterpriseworks.org/services/policy/PolicyAdvocacy/AdvocacyResuorce/Policy-Paper-2006-combnied-web.pdf. Arguably, comparisons to subprime loans could be con-

Microbusinesses generate increased tax receipts and decreased welfare payments.[59] 17.9% of American jobs are in microenterprises.[60] An investment of one dollar in American microbusinesses returns more than two.[61] Despite this progress, such studies and statistics have been criticized as possibly reflecting selection bias in that the programs have targeted entrepreneurs whose success would have occurred regardless.[62] An appropriately-controlled study found that microenterprise assistance has no benefit other than reduced periods of unemployment.[63]

There is demand for more microloans on American soil. Anecdotal evidence is provided by a new ACCIÓN USA branch in Miami, which lent over $754,000 to more than 100

---

sidered aspirational (at this point, subprime loans are part of at least some commercial banks' *modus operandi, see, e.g.*, Kathleen Day, *A Practice That Lends Itself to Trouble*, WASH. POST, Aug. 21, 2001, at E01; Edward M. Gramlich, Remarks at the Financial Services Roundtable Annual Housing Policy Meeting, Chicago, Illinois (May 21, 2004), *available at* http://www.federalreserve.gov/BOARDDOCS/Speeches/2004/20040521/default.htm. If used, it is worth noting that foreclosures related to mortgage subprime loans are also currently pegged at 5%, Vikas Bajaj and Ron Nixon, *For Minorities, Signs of Trouble in Foreclosures*, NEW YORK TIMES, Feb. 22, 2006, at A1. *But see* Gramlich, *supra* (7.36% serious delinquencies with regards to subprime mortgages in 2003, with foreclosure rates of 3.38%). Comparisons with predatory lenders clearly set the bar too low (many such lenders lend with a goal of foreclosure). *See* Abraham B. Putney, *Rules, Standards, and Suitability: Finding the Correct Approach to Predatory Lending*, 71 FORDHAM L. REV. 2102, 2105 (2003).

59. Association for Enterprise Opportunity, *Microenterprise Development in the U.S., Economic Independence through Self-Employment: Overview of a Successful Strategy* (2003), *available at* http://www.microenterpriseworks.org/about/factsheets/NewAEOMicroFactSheet2-Final10-03.pdf [hereinafter *Microenterprise Development in the U.S.*], *see also* Association for Enterprise Opportunity, *Federal Programs Fact Sheet: Key Federal Funding – Economic* Development & Microenterprise, *available at* http://www.microenterpriseworks.org/about/factsheets/FederalProgramsFactSheet.pdf. But see Schreiner & Woller, supra note 44, at 1568 (.1% of welfare recipients attempting self-employment would leave welfare ranks entirely).

60. Jobs that are private and non-farm. ASSOCIATION FOR ENTERPRISE OPPORTUNITY, MICROENTEPRISE EMPLOYMENT STATISTICS, *available at* http://www.microenterpriseworks.org/services/policy/mees/index.htm. Clearly, not every microenterprise is funded by a microloan.

61. *Microenterprise Development in the U.S, supra* note 59.

62. McKernan & Chen, *supra* note 25, at 5.

63. *See Id.*

borrowers the year it opened.[64] Less anecdotally, estimated market penetration of under 1%[65] shows that there is room for banks to move into the microcredit field, increasing credit available to entrepreneurs.

It does not follow, however, that banks could enter this field successfully – even keeping in mind trends from abroad. Microfinance in the United States is a different process. It often does not include peer lending,[66] possibly due to the easy availability of credit cards to those with good credit histories.[67] This difference has two implications. First, the demand for microloans in America may be met entirely through the availability of credit cards[68] (although the existence of a healthy nonprofit microcredit industry suggests that this is not the case). Second, because peer lending groups take over some costs otherwise attributable to lenders (*e.g.*, screening of ideas/borrowers and tracking of repayment), to the extent that U.S. microfinance has not evolved in this direction, its microfinance is either more expensive to the lender or in need of an alternate cost-reduction strategy.[69] Moreover, American borrowers may not be as well prepared for entrepreneurship.[70] Another challenge involves easily-lost welfare benefits if microbusinesses boost borrower assets or income above a very low ceiling.[71] This dampens the desire to grow business, as the lure of increased income is offset by decreased bene-

---

64. ACCIÓN USA, ACCIÓN USA Annual Report 2003 3 (2003), *available at* http://www.accionusa.org/atf/cf/{94AE2258-7F09-4D1D-843D-1585EF06DE5F}/2003.pdf.

65. Burrus, *supra* note 51, at 6.

66. Estimates of organizations using peer lending in any capacity range from under 17% to 26%. Schreiner & Woller, *supra* note 44, at 1569; Burrus, *supra* note 51, at 4; *Business Capital, supra* note 52, at 4.

67. Schreiner & Woller, *supra* note 44, at 1570. Note that this paper discusses only the formal U.S. banking system, and not the informal one (*e.g.*, ethnic lending, payday lending, loan sharks, etc).

68. The Microenterprise Fund for Innovation, Effectiveness, Learning, & Dissemination (FIELD) has suggested that credit card availability may be inversely related to levels of microborrowing. *Business Capital, supra* note 52, at 4. In the CRA context, increased use of credit cards for small business purposes has also been noted. A BASELINE REPORT, *infra* note 101, at 94.

69. *See* Schreiner & Woller, *supra* note 44, at 1569-70.

70. McKernan & Chen, *supra* note 25, at 1.

71. Schreiner & Woller, *supra* note 44, at 1570; RICHARD P. TAUB, LOST IN TRANSLATION: THE GRAMEEN BANK IN THE UNITED STATES, *available at* http://humdev.uchicago.edu/taubPublications/adaptionAcross.doc.

fits.[72] MFIs are working to address these issues through, for example, lower asset floors to qualify for loans.[73] As yet these differences have not resulted in sustainable or commercialized microfinance domestically.[74],[75] The next Part explores whether such a concept is possible.

III. CAN THE U.S. HAVE SUSTAINABLE MICROFINANCE?

As discussed in Section I, the achievement of sustainable microfinance requires an examination of revenues and costs. Comparisons between the United States and the developing world are useful, but the ultimate question is whether domestic revenues can exceed domestic costs. Since this depends on a confluence of factors, this Section is composed of more questions than answers.

In developing nations, banks who offer microloans are generally interested in profitability, not charity.[76] American banks are similarly profit-driven.[77] Developing-nation bank motives might also include competition and public relations.[78]

[Developing-world] Banks bring several competitive advantages to microfinance, as they: are experienced in managing a number of financial risks, including interest rate, liquidity, maturity, foreign exchange, and credit risks; are used to

---

72. Schreiner & Woller, *supra* note 44, at 1570. *See also* TAUB, *supra* note 71.

73. *Business Capital, supra* note 52, at 5.

74. *See* Burrus, *supra* note 51, at 4, 11; *Microenterprise Development in the U.S., supra* note 59, Microtest, MicroTest FY02 Data Highlights, *available at* http://fieldus.org/MicroTest/MTFY2002Data.pdf (last visited March 27, 2006). *But see* Jim Wyss, *SBA Microloan Program Faces Budgetary Ax,* MIAMI HERALD at 17G, March 6, 2006 (indicating that commercial banks have moved into microlending, albeit in an extremely limited way), *Business Capital, supra* note 52, at 6 (showing two programs at self-sufficiency).

75. This Note did not study institutions such as Southern Development Bancorp or ShoreBank, which self-characterize as development bank holding companies. Both have at least a partial social development bent which is not the primary focus of this Note.

76. Rosengard, supra note 5, at 29; Jennifer Isern & David Porteous, Commercial Banks and Microfinance: Evolving Models of Success at 2 (Focus Note No. 28, CGAP, 2005); Doing Well by Doing Good, supra note 26, at 3.

77. See Schreiner & Woller, supra note 44, at 1578.

78. Isern & Porteous, supra note 76, at 5.

raising their own funds via a combination of savings mobilization, capital market borrowing, and equity contributions; have extensive retail distribution networks of branch offices, sub-offices, and electronic banking outlets; offer a wide range of savings, credit, and payment services; and adhere to prudential norms for sound ownership, governance, and management practices that foster a balance between maintenance of financial soundness and the pursuit of profits.[79]

Two of these characteristics bear special comment. Financing through savings, debt, and equity assures that banks will be more stable and continuing sources of microloans which need not rely on "scarce and volatile donor resources" as nonprofit lenders must do.[80] Also, for-profit banks are set up in such a way that sustainability/profitability is promoted.[81]

Turning to the revenue portion of the sustainability equation, interest rate ceilings exist in the United States.[82] Ceilings severely infringe revenue-raising efforts and, thus, are generally detrimental to sustainability.[83] At least one bank has suggested that abolished ceilings influenced its decision to become involved with microfinance.[84] Even where ceilings are not a factor, excessive interest rates – especially levied on the least well-off – look bad.[85] Both these barriers must be overcome to allow sustainable microfinance on American soil, but it is possible to do so.

Typically, U.S. microentrepreneurs borrow larger amounts than those abroad.[86] This could be positive for sus-

---

79. Rosengard, supra note 5, at 30.

80. See The Consultative Group to Assist the Poor, Commercial Banks in Microfinance: New Actors in the Microfinance World, at 2 (Focus No. 12, 1998), *available at* http://cgap.org/docs/FocusNote_12.pdf [hereinafter New Actors]. But see Anderson, supra note 1, at 104 (fundraising efforts continue notwithstanding self-sufficiency).

81. New Actors, supra note 80, at 2.

82. See generally Amanda Katherine Sadie Hill, State Usury Laws: Are They Effective in a Post-GLBA World?, 6 N.C. BANKING INST. 411 (2002).

83. See MicroTest, MicroTest Measures and Definitions, at 8 (2006), *available at* http://fieldus.org/MicroTest/MTMeasures05.pdf; Helms & Reille, supra note 16, at 1.

84. Isern & Porteous, supra note 76, at 5.

85. *New Actors, supra* note 80, at 3.

86. ACCIÓN International, *Key Statistics, supra* note 2 (citing average loan balance of $634 in Latin America and the Caribbean, $594 in Africa, and $3,647 in the United States). In the Small Business Association

tainability because one issue with microfinance is the disproportionate costs smaller loans incur.[87] However, the more important comparison is between a domestic microloan's size relative to the domestic banking industry's typical loan size. This is because American banks would likely focus on cost comparisons to existing domestic business rather than microlending in the developing world. The 2004 mean size of CRA small business loans was $36,200;[88] this compares to a Small Business Administration microloan mean of approximately $10,500 (cited on the SBA web site as of March 2006).[89]

Costs associated with microlending have been discussed earlier in this Note. They include the cost of funds, the borrower's default risk, and administrative costs.[90] Note that opportunity cost will be fixed. Again, how these costs might differ from microfinance as practiced in the developing world merely illustrates the broader point. Given that some microfinance organizations abroad have managed to make total revenues exceed total costs, could U.S. banks achieve the same result? Pragmatic experience (that CRA regulators could incentivize) can answer this question.

IV. THE COMMUNITY REINVESTMENT ACT

The CRA was passed in 1977.[91] It is part of the broader Housing and Community Development Act of 1977[92] and covers all FDIC-insured banks.[93] The Conference Report noted the government's inability to sustain other community initiatives (such as those involving housing) without private-sector

---

MicroLoan Program, borrowers generally receive about $10,500. United States Small Business Administration, *Micro-Loans*, *available at* http://www.sba.gov/financing/sbaloan/microloans.html [hereinafter Small Business Administration, *Micro-Loans*] .

87. Solomon, *supra* note 1, at 192; Helms & Reille, *supra* note 16, at 2-3.

88. FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL, REPORTS – FINDINGS FROM ANALYSIS OF NATIONWIDE SUMMARY STATISTICS FOR 2004 COMMUNITY REINVESTMENT ACT DATA FACT SHEET (2005), *available at* http://www.ffiec.gov/hmcrpr/cra_fs04.htm.

89. Small Business Administration, *Micro-Loans*, *supra* note 86.

90. *See supra* note 38 and associated text.

91. 12 U.S.C.A. § 2901.

92. Pub. L. No. 95-128, 1977 HR 6655, 91 Stat 1111.

93. 12 U.S.C.A. §§ 2901, 2902, 1813.

involvement, including that of banks. Social goals were to be achieved through funds from the private and public sectors, working together towards unified goals.[94] The CRA's goal is "to encourage. . . institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions."[95] The CRA seeks to balance a bank's benefits and burdens: banks that profit from community deposits should be encouraged to extend credit to those same communities.[96]

CRA compliance is enforced through examination, but there is no pre-set pass mark and no objective guidance as to how agencies consider various bank actions.[97] A CRA rating of substantial noncompliance need have no immediate legal consequences. A bank's performance on its CRA assessment will be considered by regulators *if* / when the bank attempts to materially change its structure (*e.g.*, some mergers, new branches, etc.).[98] At that time, if regulators are displeased with the bank's CRA performance, the bank can, but will not necessarily, be prevented from taking its proposed action or required to modify its behavior.[99] The decision involves no specific guidelines and is at the regulator's discretion.[100] Additionally, if banks want to utilize powers granted by the Financial Modernization Act (also known as the Gramm-Leach-Bliley Act), at least a "satisfactory" grade on the CRA examination is required.[101]

---

94. H.R. Conf. Rep. 95-634, Pub. L. 95-128, at 76, *reprinted in* 1977 U.S.C.C.A.N. 2965, 2995.

95. 12 U.S.C.A § 2901.

96. 12 U.S.C.A. § 2901.

97. 12 U.S.C.A. § 2903, 12 C.F.R. § 25, App. A. Because the four agencies' regulations are in large part the same for the largest banks, citations to the Comptroller of the Currency regulations (12 C.F.R. § 25.11 *et. seq.*) will stand for all four agencies' regulations unless stated otherwise. Differences in the small/intermediate bank tests will be discussed *infra* at nn. 105-115 and associated text. *Cf.* Richard D. Marsico, *The New Community Reinvestment Act Regulations: An Attempts at Implementing Performance-Based Standards*, 49 CONSUMER FIN. L.Q. REP. 47, 50 (1995) (characterizing some CRA ratings as "failing" – at least, the "substantial noncompliance" rating – but also noting the lack of enforcement authority to sanction such grades).

98. 12 U.S.C.A. §§ 2902, 2903(a).

99. 12 C.F.R. § 25.29(d).

100. 12 C.F.R. § 25.29(d).

101. ROBERT E. LITAN, NICOLAS P. RETSINAS, ERIC S. BELSKY, & SUSAN WHITE HAAG, U.S. DEP'T OF THE TREASURY, THE COMMUNITY REINVESTMENT

Thus, the population of banks who care about the CRA grades are, in some sense, self-selecting.[102] However,

> [B]anks and thrifts *that care about their public reputations* or intend to acquire other institutions may well be motivated to strive for high marks on CRA because no other single measure signals the commitment of a bank or thrift to low-and- moderate income (LMI) borrowers and areas as clearly its CRA grade. Moreover, some government agencies and state and local governments will only place their deposits with banks that have earned high CRA ratings.[103]

Thus, the CRA is not quite as ineffective as it might otherwise seem.[104]

CRA powers are enforced through an analysis of bank activity, the rigor of which depends upon the size of the bank. The largest bank test, which is the most rigorous, applies across all four regulatory agencies to banks whose assets exceed $1 billion.[105] Similarly, the test for small banks applies across the agencies for banks whose assets are under $250 million.[106] For banks whose assets are between $250 million and $1 billion the regulatory analysis varies by agency. The Office of Thrift Supervision treats all organizations with under $1 billion in assets as "small savings associations", subject to the same small bank test as all the agencies use for banks with under $250 million in assets.[107] However, the Comptroller of the Currency, the Federal Reserve, and the Federal Deposit Insurance Corporation classify banks whose assets are between $250 million and $1 billion as "intermediate small banks" subject to the small bank test as well as to an additional commu-

---

ACT AFTER FINANCIAL MODERNIZATION: A BASELINE REPORT 11 (2000) [hereinafter A BASELINE REPORT].

102. *See* ERIC S. BELSKY, MICHAEL SCHILL AND ANTHONY YEZER, JOINT CENTER FOR HOUSING STUDIES, HARVARD UNIVERSITY, THE EFFECT OF THE COMMUNITY REINVESTMENT ACT ON BANK AND THRIFT HOME PURCHASE MORTGAGE LENDING 5 (2001).

103. *Id.* (emphasis added).

104. *Id., See also* Zinman, *infra* note 121, at 6-7 (further specifying costs of delayed/modified applications – whatever the result – including decreased goodwill).

105. 12 C.F.R. §§ 25.12, 25.21, 563e.12.

106. 12 C.F.R. §§ 25.12, 25.21, 25.26, 563e.12, § 563e.26.

107. 12 C.F.R. §§ 563e.12, 563e.26, 25.12, 25.26.

nity development test.[108] Agency spheres of control depend on bank type.[109]

Pertinently, the large bank test considers the extent of small business lending (quantity and size of loans) and "[t]he bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies."[110] Community development lending is also considered – that is, loans whose "primary purpose" is, relevantly, funding "activities that promote economic development by financing [small] businesses. . . or activities that revitalize or stabilize low- or moderate-income geographies."[111] Further, large banks are examined as to how their qualified investments, including grants, improve credit to the target populations.[112] Agencies look at the extent of money invested as well as the investments' "innovativeness or complexity[,]. . . responsiveness. . . to credit and community development needs; and. . . [t]he degree to which the qualified investments are not routinely provided by private investors."[113]

Small banks have a simplified test that looks at community development lending and qualified investments to the extent warranted as well as the diversification of lending among variously-sized businesses.[114] Intermediate small banks are subject to an additional community development test which is of no interest save that it more closely focuses on the "number and amount of community development loans [and]. . . qualified investments."[115]

108. 12 C.F.R. §§ 25.12, 25.26, *contra* §§ 563e.12, 563e.26 (with no intermediate small bank category and no community development test).

109. 12 U.S.C.A. § 2902.

110. 12 C.F.R. § 25.22.

111. 12 C.F.R. §§ 25.22, 25.12. Also, all agencies consider as community development those loans whose primary purpose is revitalizing or stabilizing certain "distressed or underserved nonmetropolitan middle-income geographies." 12 C.F.R. § 25.12.

112. 12 C.F.R. §§ 25.21, 25.23, 25.12. The "primary purpose" of such investments must be the same as that of community development lending. 12 C.F.R. § 25.12.

113. 12 C.F.R. § 25.23.

114. 12 C.F.R. §§ 25.21, 25.26, 563e.26.

115. 12 C.F.R. §§ 25.26, *contra* § 563e.26 (having no community development test).

Finally, any bank may design its own test.[116] The bank sets its own goals to better reflect CRA compliance.[117] To avail itself of this option, the bank must receive community input on the plan and gain regulator assent.[118] With regard to substance,

> A bank shall address in its plan all three performance categories [of the large bank test: lending, investment, services] and. . . shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy.[119]

Again, innovation is emphasized, as are loan amounts, diversified across variously-sized businesses. Community development loans and qualified investments are also considered, and a general focus on low- and moderate-income borrowers/locales is encouraged.[120]

The CRA has changed over time. Initially mortgage-focused,[121] new regulations in 1995 diverted its attention to small businesses. The shift sprang partially from a concern that consolidation in the banking industry was tightening credit availability to small businesses generally. The new lending tests made clear reference to the importance of small business lending and political will backed these new directives. CRA drew attention to small business as a target market, and thus provided regulators and watchdogs with new leverage.[122]

With this in mind, we now turn to examining how commercialized microloans might play a part in CRA compliance.

---

116. 12 C.F.R. § 25.21.

117. *See* 12 C.F.R. § 25.27.

118. *Id.*

119. *Id.*

120. *Id.*

121. Jonathan Zinman, *The Efficacy and Efficiency of Credit Market Interventions: Evidence from the Community Reinvestment Act*, at 5 (2002), *available at* http://www.jchs.harvard.edu/publications/governmentprograms/cra02-2_zinman.pdf.

122. *Id.* at 8-9 (citations omitted).

V.
THE CRA AND MICROLOANS

The CRA and microloans have compatible policy goals. Both seek to provide low-income individuals with needed small business loans.[123] Microlending can clearly fit into an effective CRA compliance strategy. Large bank regulations refer to both the "number" as well as the "amount" of loans and encourage "innovative" lending.[124] Thus, the necessarily lower dollar amounts of microloans, which would garner less CRA credit than other alternatives, could be counterbalanced by the positive ways in which microlending could fulfill the CRA's mandate.

That sustainable microlenders find the most success in their development objectives has already been addressed above.[125] Encouraging commercialization, and the implicit expectation of sustainability that accompanies it, would be a boon to the microfinance movement and should be attractive to CRA regulators, whose focus on small business lending could naturally flow to (and arguably, must include) microlending. Microfinance has taken root in the United States,[126] but sustainable and/or commercialized microfinance's place in the U.S. is much more tenuous.[127] CRA policy goals could dictate a role for regulators: utilizing their power to encourage the development of commercial microfinance among American banks.

---

123. 12 U.S.C.A. § 2903, 12 C.F.R. §§ 25.21, 25.22, 25.26, 563e.26. Zinman, *supra* note 121, at 5; Burrus, *supra* note 51, at 2.

124. 12 C.F.R. §§ 25.22. Both small banks' and intermediate small banks' "record of lending to . . . business . . . of different sizes" is considered, 12 C.F.R. §§ 25.26, 563e.26, and strategic plan appraisal includes "[t]he extent and breadth of lending . . . including, as appropriate, the distribution of loans among . . . businesses . . . of different sizes." 12 C.F.R. § 25.27.

125. *See supra* note 26 and associated text.

126. *See supra* note 56 and associated text. In 2002, there were 230 U.S. microlenders (although the field is heavily occupied by a few giants). Burrus, *supra* note 51, at 6.

127. *See* Burrus, *supra* note 51, at 4, 11; Schreiner & Woller, *supra* note 44, at 1577-78; *Business Capital, supra* note 52, at 7. *But see* Jim Wyss, *SBA Microloan Program Faces Budgetary Ax*, MIAMI HERALD, March 6, 2006, at 17G (indicating that commercial banks have moved into microlending, albeit in a limited way – 36,000 such loans were made in FY 2005 utilizing the SBA's 7(a) program).

The CRA is intended to create a win-win situation: community banking that is profitable.[128] An overwhelming majority of banks' small business lending (CRA) programs have achieved this goal.[129] Jonathan Zinman's work demonstrates that the CRA causes, rather than correlates with, higher levels of lending to small businesses.[130] Microlending can fill the same role that small business lending currently fills for CRA-subject banks.

Regulating agencies hold the power. Explicitly encouraging and offering CRA credit for the creation of commercialized microloan programs would create awareness and incentives.[131] Initial investments of time and money are required to learn a new type of business and reap microcredit's potential long-term profits,[132] but the CRA can be used as a carrot to motivate banks to incur these costs. Once having done so, it is to be hoped they would continue, as they would any profit-making activity.[133]

There are existing CRA-specific reasons why banks could benefit from microlending. Banks have traditionally fulfilled

---

128. Community Reinvestment Act Regulations, 60 Fed. Reg. 22,156, 22,163 (May 4, 1995).

129. REPORT BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE PERFORMANCE AND PROFITABILITY OF CRA-RELATED LENDING 58 (2000) (surveying only the nation's 500 largest banks).

130. Zinman, *supra* note 121, at 32.

131. Schreiner & Woller, *supra* note 44, also argue that regulators should motivate banks towards microlending. Their approach essentially rests on a view of nonprofit microfinance as potential creator of an externality. For-profit lenders, in internalizing costs, will be more efficient microlenders. *Id.* at 1577-78. This is probably true. My point, however, is broader. It is not merely that commercialized finance is more likely to be sustainable (with attendant positive consequences to the industry itself, *see supra* note 26 and associated text), nor merely that the CRA, as Schreiner & Woller obliquely refer, can achieve this goal. Schreiner & Woller, *supra* note 44, at 1578. It is that CRA regulators *should* push this goal because best practices for microfinance align well with CRA initial goals, current regulatory focus, and current implementation conditions for banks. *See supra* notes 26, 95-96, 110, 114, 120, 122, and *infra* notes 134-35.

132. Isern & Porteous, *supra* note 76, at 2, 7; *Doing Well by Doing Good*, *supra* note 26, at 9; Rosengard, *supra* note 5, at 30. Although generally positive about commercializing microfinance, Rosengard does point out that attempts often fail where banks have neglected to pay attention to a variety of factors. *See id.* at 31-32; *Doing Well by Doing Good*, *supra* note 26, at 9.

133. *See* Schreiner & Woller, *supra* note 44, at 1577-78.

their CRA obligations through mortgage lending,[134] but according to J.P. Morgan Chase & Co. Executive Vice President Mark Willis, the mortgage market has become saturated because of their large numbers.[135] Mr. Willis also suggested that banks be compelled to turn a profit on their CRA-related activities.[136] Implementation of a direct microlending program could address both of Mr. Willis' concerns. In addition to the potential for profitability discussed previously, direct microlending has advantages over many banks' existing strategy of monetary grants to intermediary microloan nonprofits (that is, nonprofits who go on to lend to individuals).[137] Direct lending would allow a bank to exploit an individual's "graduation" and subsequent ability to utilize traditional forms of credit.[138] Utilizing nonprofit intermediaries may result in borrowers becoming more familiar with the intermediary than the granting bank. If they become capable of accessing traditional financing, they will have no reason to use their prior lending institution (granting bank), having had little contact with it. If a bank conducts its own microloan program, borrowers may be more likely to reuse the bank's services post-graduation due to name recognition and loyalty.[139] This would allow the bank to capitalize on existing knowledge of borrowers who have already proven to be good credit risks. This could be viewed as a

134. *See* Hannah Karp, *DC Speaks: JPM Chase Exec: CRA Model Must Move Beyond Mortgages*, AMERICAN BANKER, April 25, 2003, at 1.

135. *Id.*

136. *Id.*

137. *See* William Burrus, *Microlending: How ACCION USA Partners with Commercial Banks*, *available at* http://www.accion.org/file_download.asp?f=3 [hereinafter *Microlending*] (ACCION has many bank funders). Note that regulating agencies do prescribe certain precautionary measures for a bank whose portfolios are heavily invested in subprime loans. Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, *Expanded Guidance for Subprime Lending Programs* (2001), *available at* http://www.federalreserve.gov/boarddocs/srletters/2001/sr0104a1.pdf. Floors for reserves directly impact microcredit profitability because money otherwise available for lending/ profitmaking is held back from economic use. *New Actors, supra* note 80, at 2.

138. *See supra* notes 11-12 and associated text.

139. *Cf.* Solomon, *supra* note 1, at 217-18 (suggesting the same for banks who work one step removed). However, given that multiple banks might support a nonprofit microlender, *see supra* note 137, I believe these positive synergies could only be gained by direct microlending by banks.

return to banks willing to incur microloan costs (above and beyond interest rates). Conversely, it could be seen as making the microlending program as a whole less expensive (because further loans could be larger, or less-monitored, while maintaining a constant interest rate).[140] Moreover, direct microloans rather than grants to intermediaries allow banks to preserve significantly more capital,[141] and they can also collect loan interest which the intermediary organization would otherwise collect.[142]

Large banks must meet the qualified investments test,[143] and small/intermediate banks also have qualified investments analyzed.[144] These tests are fulfilled by grants, not lending.[145] But if banks could find other recipient organizations to fulfill the qualified investment test, then they would benefit through continued CRA compliance in addition to a new potential lending market.[146] Microlending differs from lending but it is related; moreover, characteristics peculiar to banks, including existing infrastructure, would aid their practice of microcredit.[147]

VI.
CONCLUSION

Increased theory on and practice of sustainable microfinance abroad may have created appropriate conditions for United States banks to be able to fulfill Community Reinvestment Act obligations through microlending programs. Although domestic microfinance has traditionally been carried out by nonprofits, it is within the province of CRA regulators to incentivize a shift. Such action is appropriate because the CRA and microlending both focus on low-income individuals

---

140. *Cf.* Anderson, *supra* note 1, at 118 n.85 (making the same point in the nonprofit context).

141. A BASELINE REPORT, *supra* note 101, at 30.

142. *See* Burrus, *supra* note 51, at 11.

143. 12 C.F.R. §25.23.

144. 12 C.F.R. §§ 25.26, 563e.26.

145. 12 C.F.R. § 25.12.

146. *Cf.* Schreiner & Woller, *supra* note 44, at 1578 (advocating that because of banks' lending expertise, they should be foreclosed from using grants to microfinance organizations to pass the CRA qualified investments test).

147. *See supra* note 79 and associated text.

who have difficulty accessing banking services. Furthermore, sustainability is the key to microcredit's long-term success. Banks could benefit by shifting their CRA compliance in this direction. To remain CRA compliant, the grants banks currently make to microcredit organizations could be replaced by grants to different community development organizations. After all, microlending specifically plays to banks' lending strengths: both those existing and those banks have the potential to develop. CRA regulators should incentivize a movement by banks towards commercialized microfinance. If successful, the CRA and the institutions it regulates could once again combine to have a significant social effect.