



## FROM THE READING ROOM

### Making a Difference: A Role for Lawyers in Economic Development

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*The Legal Guide to Microenterprise Development*

Susan R. Jones

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New York Lawyers for the Public Interest (NYLPI), a nonprofit law office that operates a pro bono clearinghouse to provide free legal assistance for eligible low income individuals and community groups, brokered the relationship between a microenterprise development program and a law firm. Over several years more than 15 attorneys from Debevoise and Plimpton worked with the New York Association for New Americans (NYANA) Microenterprise Development Program which helps immigrant and refugee entrepreneurs learn about the American marketplace and how to apply for a loan to start a business. The law firm has drafted lending documents for NYANA, America's largest not for profit provider of educational, social, legal and business services to refugees and immigrants. The firm's assistance to microbusinesses has included workshops on legal compliance and technical assistance to individual entrepreneurs as well as assisting with a landlord and tenant dispute and representing a microentrepreneur in the purchase of a fast food business.<sup>1</sup>

This is one of many examples from Susan Jones's book *Legal Guide to Microenterprise Development* describing the work that lawyers do in representing microenterprise organizations. Increasingly, entrepreneurship and economic development, not direct government assistance, are being seen as providing the pathway out of poverty. Jones has identified microenterprise development as an area of need where lawyers can play a big role in promoting economic development and makes the case that microenterprise development is an effective mechanism for both job creation and self-employment. She presents the complex issues in the field that require legal expertise and provides a resource guide that addresses the many obstacles lawyers face in doing this work.

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Although the goal of eliminating extreme poverty in the world is far from achieved, microenterprise development has been shown to be a powerful tool in global efforts to alleviate poverty.<sup>2</sup> Yet, it is a tool that has been very much underutilized, both domestically and internationally. Susan Jones's book is an invaluable resource that details the role that lawyers can play in promoting microenterprise development in the United States.

She specifically sets out to

(1) provide legal guidance to attorneys who are not familiar with the microenterprise field and who want to represent microenterprises; (2) assist microenterprise practitioners with understanding the types of legal issues that may arise in their programs and the legal issues that microbusinesses may encounter; (3) provide legal guidance to attorneys who want to represent the small businesses assisted by microenterprise programs; and (4) identify legal resources that support microenterprise programs and microbusinesses.<sup>3</sup>

Microenterprises are very small businesses. Microenterprise organizations are agencies, usually nonprofit, that support microenterprises by extending loans and providing business training and other technical assistance to entrepreneurs. In the first chapter, Jones explains microenterprise development as part of an economic development strategy aimed at alleviating poverty. Historically, microenterprise development was an important economic development tool in developing countries of Africa, Asia, and Latin America that began in the 1970s.<sup>4</sup> In the United States, a variety of affordable housing, job programs, and other types of targeted community development programs have emerged since the 1980s with the aim of creating jobs and alleviating poverty. In fact, microenterprise development can be seen as part of a broader reliance on private market initiatives and business development as a way for low income people to become self sufficient, and as a movement away from reliance on government funded benefit programs.

Lending and technical assistance are major activities of microenterprise organizations. Some make small direct loans while others develop relationships with community lending institutions. Loans range between \$500 and \$35,000, and the technical assistance takes the form of business training, credit development and repair, financial planning, and developing access to new markets.

Jones emphasizes the importance of microenterprise development because it has a great impact "that facilitates poverty reduction and encourages economic self-sufficiency, human dignity, and community empowerment."<sup>5</sup> She points to studies showing that microenterprise development organizations make a significant contribution to the alleviation of poverty.<sup>6</sup>

This introductory chapter also contains definitions of key words and phrases used in the field of microenterprise development<sup>7</sup> and explains the "design elements" used by the various programs, including "entrepreneurial training and technical assistance, access to capital, access to new markets and asset development, and financial planning."<sup>8</sup> Within her dis-

cussion of entrepreneurial training and technical assistance, Jones describes small business development centers (SBDCs), which play a key role in providing assistance "such as accounting, business planning, and related start-up or expansion matters"<sup>9</sup> to small businesses.

### The Role of Lawyers

Lawyers who represent microenterprise organizations have responsibilities that are similar in many ways to those of legal counsel to lenders and other business developers. They create loan documents and counsel clients on entity formation. In her chapter on the lawyer's role, Jones lists a wide range of functions that go beyond those of the typical business lawyer, such as serving on boards of organizations in the community or writing articles on entrepreneurship.<sup>10</sup> She makes a convincing case that these added responsibilities are worth the effort in terms of the benefits derived from the work.

In representing microenterprise organizations, the lawyer's goals are broader than just creating a new business or helping the client make a profitable loan. These programs try to develop human capital in the form of job skills, self esteem, and progress toward self sufficiency, none of which can be easily measured on a balance sheet.

By representing individual microbusinesses, lawyers apply their skills in familiar ways. Typical services include structuring business entities; registering trademarks or service marks; obtaining licenses, permits, and variances; handling tax matters; buying, selling, or valuing the business; handling real estate closings or leases; and drafting and reviewing loan documents and other contracts. Jones provides very helpful checklists of business and legal issues that are useful in any type of business practice.<sup>11</sup> In one of her final chapters, Jones summarizes the "Legal and Business Issues for Microbusinesses"<sup>12</sup> and includes thumbnail descriptions of intellectual property considerations, such as copyright, trademark, patents, licenses, and trade secrets.

### Special Considerations for Microenterprise Programs

The heart of Jones's book and its major contribution is the guidance that it provides for lawyers who represent microenterprise programs, those organizations that fund and provide technical assistance to microbusinesses. In organizing a microenterprise program, the lawyer needs to consider the law of nonprofit corporations, taxation, insurance, banking, and bankruptcy, among other issues. The chapter on legal formation issues<sup>13</sup> as well as an extensive appendix of microenterprise resources<sup>14</sup> gives lawyers a head start.

Generally speaking, microenterprise programs are organized as tax-exempt nonprofit corporations. The first step is to incorporate under the nonprofit corporation laws of the state in which the organization operates. With goals of fostering economic development and alleviating poverty, these organizations can qualify for federal tax exemption under Section

501(c)(3) of the Internal Revenue Code. One factor for programs to consider is whether to form a new entity or to operate under the auspices of an existing nonprofit corporation. The decision to form a separate entity is a complex one and requires careful analysis of the relationship between the organizations that are planning to work together.

Even though microenterprise organizations are engaged in business development, they fit within the definition of an entity "organized and operated exclusively for . . . charitable . . . or educational purposes"<sup>15</sup> by virtue of the fact that they involve "relief of the poor and distressed or of the underprivileged, advancement of education, and promotion of social welfare through organizations formed to lessen neighborhood tensions, eliminate prejudice and discrimination, or combat community deterioration or juvenile delinquency."<sup>16</sup>

Other formation issues include obtaining a state tax exemption, making sure appropriate insurance coverage is in place, and ensuring a thorough understanding of lending laws. As lending institutions, microenterprise programs are governed by a complex array of consumer protection laws, including the Truth in Lending Act,<sup>17</sup> the Equal Credit Opportunity Act,<sup>18</sup> the Fair Credit Billing Act,<sup>19</sup> the Fair Debt Collection Practices Act,<sup>20</sup> the Fair Credit Reporting Act,<sup>21</sup> not to mention state and local usury laws.

Lawyers representing microenterprise organizations engaged in lending funds to small businesses will create loan documents and institute debt collection procedures and bankruptcy practices for use by their clients. Microenterprise organizations as well as other "institutions that lend money, such as credit unions, banks, and groups that provide hands-on technical assistance and training to microbusinesses also face risk of being sued. In all instances, the best way to protect against these types of claims may be to obtain insurance."<sup>22</sup> Jones recommends and discusses directors' and officers' coverage and workers' compensation as well as general liability insurance.

### Targeting Specific Populations

In her chapter on planning issues for microenterprise programs,<sup>23</sup> Jones advises that groups do an assessment of the needs of particular groups in their areas to determine which populations are most in need of services. A thorough needs assessment also will help new programs to avoid duplication of efforts. Depending on the target group that the organization chooses to address, a wide range of legal issues may arise. Some examples of the specialized microenterprise groups that Jones describes include peer lending groups, welfare to work groups, immigrants and refugees, domestic violence survivors, ex-offenders, and others.

Peer lending groups, also known as circle lending or group lending, involve groups that guarantee each other's loans and provide peer support to ensure that payments are made. Jones provides an example of a single mother on welfare who borrowed \$800 from the Women's Self-Employment Project in Chicago to support her sales of lotions, cologne, and perfumes.

She and the other members of the borrowing circle used the funds to purchase inventory and used peer pressure from other members of the group to make sure that loans were paid in a timely fashion.<sup>24</sup>

Jones's discussion of microenterprise development organizations that target welfare recipients is an excellent example of the strategies employed to address the issue of welfare reform. In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act<sup>25</sup> (PRWORA), which replaced Aid to Families with Dependent Children, an income support program that provided cash benefits to needy families with children. Major distinctions between PRWORA and earlier welfare laws were that states could not use federal funds "to assist a family for more than five years ..." and that PRWORA "requires adults to be 'engaged in work' within two years of receiving assistance ..."<sup>26</sup>

Jones describes a major research study supported by the Charles Stewart Mott Foundation and other research organizations "to determine under what circumstances self employment could be a route to economic self sufficiency for recipients of Temporary Assistance for Needy Families (TANF)."<sup>27</sup> She strongly encourages states to include microenterprise development as a significant part of their welfare strategies. Lawyers need to be involved in structuring these programs at the state level. Although TANF dollars can be used to support microenterprise development, the programs need to be carefully designed to comply with the statute and avoid the imposition of penalties.

Jones lists twenty-two recommendations identified by microenterprise advocates and researchers to assist states in maximizing microenterprise development, including ways to utilize state dollars so that they do not count against federal time limits. Another strategy is to define initial microenterprise development as vocational training.<sup>28</sup> She illustrates the benefits of this approach with an example of a welfare recipient with a third-grade reading level who had difficulty applying for jobs or for food stamps because she could not fill out the necessary forms. A microenterprise program taught her how to start her own housecleaning business; she attended literacy classes, has been off welfare for six years, and makes \$48,000 a year operating her business.

Other populations that can benefit from microenterprise development present legal issues that are specific to those populations. For example, some business development programs target immigrants and refugees who are starting their own businesses or creating self employment. Immigration lawyers should be consulted in these cases. Whether it is legal for immigrants to work at all, or to perform certain types of work, will depend on their classification as asylum applicants, lawful permanent residents (green card holders), nonimmigrant students or visitors, temporary workers, or trainees. Navigating the intricacies of the Immigration Law can have a real impact on the rights of clients to remain in the United States.

Collaboration between microenterprise organizations and advocates for domestic violence survivors presents an important opportunity to rebuild

lives. "After exiting an abusive relationship and while healing from the abuse, microenterprise training and its support systems can foster economic independence for the woman and her children."<sup>29</sup> Domestic violence attorneys need to be aware of this available resource for their clients.

Microenterprise programs have reached out to people with physical and mental disabilities. Jones cites an article on the Abilities Fund,<sup>30</sup> a national organization that represents a partnership between the microenterprise industry and the disabled community.

Jones sets out the legal issues that need to be addressed when microenterprise organizations work with ex-offenders; the homeless; arts, crafts, and entertainment businesses; faith-based programs; youth; rural communities; and Native American communities. Each of these populations can benefit from targeted microbusiness development activity, but each requires a degree of specialized legal knowledge, and Jones points out clearly the important role that lawyers can play in this area.

### Funding

In a short chapter on identifying funding sources for microenterprise programs,<sup>31</sup> Jones points out that funding these programs is a major challenge. The growing Socially Responsible Investment movement, which identifies businesses where ethical values are a factor in the investment decision, offers opportunities to support microenterprise programs. Jones urges legal organizations to make loans and long term investments in programs to support microentrepreneurs.

Increasingly financing is available from revolving loan funds, Community Development Financial Institutions, or seed money from foundations. As the legal community becomes more involved with microenterprise development, lawyers can help the business world understand the financing problems as well as the legal issues associated with this type of development.

### Conclusion

Susan Jones has brought to light the important area of microenterprise development, making a strong case for its enormous potential for helping to alleviate poverty. She presents information with abundant examples of how lawyers working in a variety of fields—business, banking, domestic violence, disabilities, civil rights, immigration, and welfare—have contributions to make. Microbusiness is not the solution to the problem of poverty but, for many, it is a way to create jobs or self employment. For microbusinesses to work, the support of microenterprise organizations is needed. For microenterprise organizations to succeed, lawyers must lend their knowledge and expertise to the effort. The extensive list of resources that Susan Jones provides is an excellent place to start.

1. SUSAN R. JONES, *THE LEGAL GUIDE TO MICROENTERPRISE DEVELOPMENT* 53-54 (2004).

2. Lea Uhrinova, *Doing Business with Microfinance*, 33 CORP. EXAMINER 5, 7 (2005) (arguing that commercial banks should be more involved with micro-finance development.)

3. JONES, *supra* note 1, at 12.

4. Of several examples of microenterprise development from the developing world, "[o]ne of the most successful and renowned . . . is the Grameen Bank in Bangladesh," which is described in DAVID BORNSTEIN, *THE PRICE OF A DREAM: THE STORY OF THE GRAMEEN BANK AND THE IDEA THAT IS HELPING THE POOR TO CHANGE THEIR LIVES* (1999). JONES, *supra* note 1, at 1.

5. JONES, *supra* note 1, at 3.

6. *Id.* at 3, 4.

7. *Id.* at 5-7.

8. *Id.* at 8.

9. *Id.* at 8 n.20.

10. *Id.* at 16 (listing "25 Things Lawyers Can Do for Microenterprise Programs").

11. *Id.* at 21-24.

12. *Id.* at 79-87.

13. *Id.* at 25-38.

14. *Id.* at 91-115.

15. I.R.C. § 501(c)(3).

16. JONES, *supra* note 1, at 28-29 (citing Treas. Reg. § 1.501(c)(3)-1(d)(2) (1997)).

17. 15 U.S.C. §§ 1601-1608 (as amended 2000).

18. 15 U.S.C. §§ 1691-1691(f) (as amended 2000).

19. 15 U.S.C. §§ 1666-1666j.

20. 15 U.S.C. §§ 1692-1692o (as amended 2000).

21. 15 U.S.C. §§ 1681-1681v (as amended 2000).

22. JONES, *supra* note 1, at 32-33.

23. *Id.* at 39-73.

24. *Id.* at 41-42.

25. Pub. L. No. 104-193, 110 Stat. 2105 (1996), codified at 42 U.S.C. §§ 601 *et seq.* (2000).

26. JONES, *supra* note 1, at 44.

27. *Id.* at 1 (citing MICROENTERPRISE AS A WELFARE TO WORK STRATEGY: TWO YEAR FINDINGS (Aspen Inst. 2003), available at [www.fieldus.org/publications/WTWRpt3.pdf](http://www.fieldus.org/publications/WTWRpt3.pdf) (last visited Nov. 14, 2005). This three-year study of microenterprise and self employment of welfare recipients concludes that "[w]hile self-employment is not a work option that makes sense for most recipients of . . . TANF, there are reasons to believe that it should be a part of a self-sufficiency strategy for some.").

28. *Id.* at 47-49.

29. *Id.* at 55.

30. *The Abilities Fund Reaches an Overlooked Population*, 4 AEO EXCHANGE, Oct.-Dec. 2001, available at [www.microenterpriseworks.org/newsletter/Oct-Dec2001/Oct-Dec2001Web.pdf](http://www.microenterpriseworks.org/newsletter/Oct-Dec2001/Oct-Dec2001Web.pdf) (last visited Nov. 14, 2005).

31. JONES, *supra* note 1, at 75-78.