NEW YORK STATE BAR ASSOCIATION INTERNATIONAL SECTION

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Summary of the "Microfinance and Microenterprise Enhancement Act of 2011"

The Microfinance and Microenterprise Enhancement Act of 2011 (the **Bill**) aims "to improve microfinance and microenterprises". It was introduced by Sens. Michael Bennet (D- CO) and John Boozman (R-AR) to the Senate on December 17, 2011 and was referred to the Committee on Foreign Relations. On March 8, 2012 Sen. Ron Wyden (D-OR) joined by co-sponsoring the Bill.

Executive Summary

The Bill is a bipartisan initiative which aims to direct current resources (rather than asking for additional funding) in the most efficient way to ensure increased access of the poorest populations (especially poor women) to financial services. The Bill provides for the creation of a financial access and microenterprise innovation challenge fund (the **Fund**) (see 5 below), for this purpose, which will effectively ring-fence up to 1% of USAID's existing budget. It is proposed that the poverty assessment tools (**PAT**s) currently used by USAID's partner organizations to report to USAID be modified and alternatives be certified by USAID.

1. Background Findings

The Bill presents the following findings:

(a) Where income gaps are small, growth translates into poverty reduction more quickly and efficiently;

(b) Microenterprises contribute significantly to employment generation, food security and family financial stability;

(c) Microfinance institutions have helped enable micro-entrepreneurs graduate from extreme poverty to sustainable living patterns through the use of financial services including micro-credit, micro-insurance, skills development, business mentoring and other tools;

(d) Microcredit alone is insufficient to sustainably reduce poverty and poor households need access to savings tools as well as credit. Keeping up with global technology is essential, as assisting poor households to contribute to and benefit from economic growth in their countries; and

(e) Congress has already demonstrated its support for microfinance through the Microenterprise for Self-Reliance Act of 2000 and the Microenterprise Results and Accountability Act of 2004 and in fiscal year 2010, USAID provided some $ 262,000,000 in funding for microenterprise development in at least 64 countries.

2. Targeted Programming

The Bill states that USAID should continue and expand programs in microfinance on the following principles:

(a) Advancing access to economic opportunities for very poor and vulnerable populations, including vulnerable children, those affected by HIV/AIDS, regional conflict or food insecurity and placing special emphasis on poor women;

(b) Setting clear country or regional funding targets based on need and striving to fill a gap in unmet demand by the very poor for financial services;

(c) Taking steps to protect microfinance clients from potentially harmful financial products and support equitable treatment;

(d) Encouraging providers of microfinance to make progress to full sustainability;

(e) Striving to increase access to financial services to the poor by identifying and supporting a range of financial intermediaries such as NGOs, savings banks and member-owned community organizations; and

(f) Promoting and making use of technologies (e.g. smart phones and point of sale devices) for lowering costs, managing risks and rapidly scaling up access to financial products.

3. Expanded Integrated Approaches

The Bill states that the next generation of microfinance and microenterprise development should advance holistic, integrated strategies that focus on the myriad of financial and non-financial needs including nutrition, health and education of households.

The above goal will be advanced by USAID promoting and supporting:

(a) Responsible financial services for cash flow management including savings, remittance and money transfer services;

(b) Tools that aggregate risks, mitigate shocks and smooth consumption such as insurance and savings deposit services;

(c) Organizations that link social protection programs (e.g. food assistance, livelihood skills development) with microfinance services;

(d) Development of financial products adapted to the needs of microenterprises; and

(e) Microfinance institutions using agriculture specific tools (such as crop analysis, land mapping, linking farmers to clients, etc.).

4. Measuring impact

The PATs are short, country-specific household surveys used by USAID's partner organizations to measure and report on the poverty level of their clients. The Bill mandates USAID to modify the PATs and to identify and approve alternatives within a year. The aim is to identify an alternative tool that not only facilitates reporting of program statistics to USAID, but also enables organizations to measure the impact of their programs and to monitor progress of poverty reduction. Options include tools commonly used within the industry and development community, some of which enable assessments and evaluations of clients' poverty status over time.

5. The Fund

The Bill authorizes USAID to utilize up to one percent of the agency's development assistance budget for years 2013 - 2017 for the creation of a Fund. The Fund will be able to make grants to organization (including those interested in commercialization) but may require such organizations to invest their own funds, if appropriate. The Fund shall be used to:

(a) support innovative products that improve the delivery of financial services to the poor;

(b) support new microfinance products, services and delivery systems that show potential to become cost-effective at a large scale; and

(c) help transition microfinance methods and technologies to a widespread adoption.

Commentary

Currently, the Bill is being reviewed by the Senate Committee on Foreign Relations. The committee chair determines whether a bill will move past the committee stage. The current Congress has often been characterized as unproductive, as a strikingly low percentage of bills proposed in the period 2008 - 2012 have been enacted into law. Nevertheless, it is helpful that the Bill has at least one co-sponsor from the majority (Republican) party and one co-sponsor outside of the majority (Democrat) party.

The Bill has been welcomed by NGOs active in the field of microfinance as an important step toward promoting a new generation of programming in microfinance. The Bill has been welcomed by NGOs active in the field of microfinance as an important step toward promoting a new generation of programming in microfinance. In particular, the U.S. Microenterprise Coalition, an advocacy group made up largely of U.S. private voluntary organizations that implement microenterprise programs worldwide, advocates for USAID to implement the tools and approaches to be legislated in the Bill. The Coalition supports USAID's modification of its Poverty Assessment Tools so that partner organizations can use them for expanded data management purposes and align household-level interventions with interventions that link the poor to expanding economic opportunities. The focus of the Bill is consistent with the current global approach to microfinance, such as AusAID's focus on extending microfinance to the most vulnerable and excluded, the UK DFID's "Pro-poor Growth Programme" in Zimbabwe, which promotes access to financial and business services for enterprises working in agriculture, and the World Bank's initiatives to deliver financial services through innovative and low cost technology.

These materials were prepared by a team of Reed Smith LLP lawyers, and edited by NYSBA lawyers, for the inaugural event of the NYSBA International Section Committee on International Microfinance and Financial Inclusion. For more information about the Committee, please contact Azish Filabi at Azish.Filabi@ny.frb.org or Julee Milham at julee@milhamLaw.com.

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Annex – Legislative History

1. **Foreign Assistance Act** of 1961 (the Foreign Assistance Act)

   An Act designed to reorganize the structure of US foreign assistance programs, separate military from non-military aid, and create a U.S. agency, the United States Agency for International Development (**USAID**) to administer non-military, economic assistance programs. The Act was enacted on November 3, 1961 after being signed by President John F. Kennedy, who issued Executive Order 10973, detailing the reorganization.

2. **The Microenterprise for Self-Reliance Act** of 2000 (title I of Public Law 106-309; 114 Stat. 1082)

   An Act designed to establish a program to provide assistance for programs of credit and other financial services for microenterprises in developing countries, and for other purposes. Introduced on March 17, 1999 by Rep. Benjamin Gilman [R-NY20, 1993-2002], it was enacted after being signed by the President on October 17, 2000 as Title I of Public Law 106 – 309.

3. **Microenterprise Results and Accountability Act** of 2004

   An Act designed to amend the Foreign Assistance Act to improve the results and accountability of microenterprise development assistance programs, and for other purposes. Sponsored by Rep. Christopher Smith [R-NJ4], the Act was introduced on February 24, 2004 and enacted after being signed by the President in December 2004.