NEW AMERICA FOUNDATION

Testimony of Ellen Seidman
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Chairman Frank, Ranking Member Bachus and Members of the Committee, thank you very much for the opportunity to testify today about the effectiveness and future of the Community Reinvestment Act, one of the most creative and innovative banking laws on the books today. My name is Ellen Seidman, and I direct the Financial Services and Education Project at the New America Foundation. The New America Foundation is a non-profit, post-partisan public policy institute in Washington DC. As part of our project, we have been focused on the development of what we are calling a new responsibility and accountability agenda for consumer financial services in the 21st century. CRA plays a large role in that agenda.

But my experience with CRA goes beyond studying it. In addition to my position at New America, I am Executive Vice President for National Policy and Partnership Development at ShoreBank Corporation. ShoreBank is the nation's oldest and largest Community Development Financial Institution (CDFI).[1] In the 1970s, ShoreBank's founder and Chairman, Ron Grzywinski, was the only commercial banker to testify in favor of CRA. The commitment is just as strong today as it was then, as evidenced by ShoreBank's ongoing mortgage Rescue Loan Program to assist borrowers in trouble in our Chicago neighborhoods. CRA has been critically important in bringing patient capital to ShoreBank as well as to other Community Development Financial Institutions whose mission—and record—is to provide well-designed, responsible credit and other financial products and services to lower income communities, businesses and consumers.[2]

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[1] Since its founding in 1973, ShoreBank has made cumulative mission investments of more than $3 billion, including financing of more than 50,000 affordable housing units. The bank consistently receives an Outstanding CRA rating.

[2] In addition to my work with ShoreBank, I sit on the boards of two large and effective CDFIs, Coastal Enterprises, Inc., and the Low Income Investment Fund. Over its 29-year history, CEI has directly financed $286 million for business, housing and development in rural northern New England, leveraging an additional $1 billion from banks and other partners During the past 23 years, LIIF has directly financed almost $700 million of low-income housing, charter schools and child care facilities, resulting in 54,000 units of affordable housing, 47,000 child care spaces and 38,000 charter school seats. Like all CDFIs, both CEI and LIIF have multiple sources of revenue and support. However, direct funding from, participation in lending with and service on boards and committees by representatives of banks and thrifts (who are motivated at least in part by CRA), is extremely important to the survival and effectiveness of both institutions.

I have also had experience on the other side of the fence. From October 1997 to December 2001, I was the Director of the Office of Thrift Supervision. As OTS Director, one of my strong priorities was to make certain that the institutions we regulated understood the importance of meeting both the letter and the spirit of the Community Reinvestment Act. I also was eager to make certain they appreciated the benefits their business as community bankers could reap by paying attention, responsibly, to the needs of all customers and communities in their service areas.

Thirty Years of CRA

In 1977, concerned about the denial of credit to lower income communities—both minority and white—Congress enacted the Community Reinvestment Act (CRA). CRA states that "regulated financial institutions have [a] continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered." The statute goes on to require that federal bank regulators both "assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of such an institution" and "take such record into account in its evaluation of an application for a deposit facility by such institution."[3] Institutions are given one of four ratings, from Outstanding to Substantial Noncompliance, and examination reports (called Public Evaluations) are made public.

In the 30 years since its enactment, CRA has generated major changes in the manner in which banks and thrifts view and serve low- and moderate-income communities and consumers. Billions, perhaps trillions, of dollars of credit and investment has come into these communities spurred, incented, or directed by the Act and collateral laws such as the Home Mortgage Disclosure Act (HMDA),[4] various anti-discrimination statutes, and obligations placed on Fannie Mae and Freddie Mac.[5] And while there was a time when those subject to CRA complained bitterly about it, in general that time has passed.

[3] 12 USC 2901.

[4] 12 USC 2801. HMDA was enacted in 1975, and requires virtually all institutions making residential mortgage loans to maintain records concerning applications, denials, income, race, gender, location, use and, since 2004 for certain loans, price of individual loan transactions, and to report this information to the federal banking regulatory agencies or the Department of Housing and Urban Development. The Federal Financial Institutions Examination Council makes the information for individual institutions as well as for geographies available to the public in paper and electronic form, and individual institutions are required to have their information available to the public at their offices.

[5] See Joint Center for Housing Studies, "The 25th Anniversary of the Community Reinvestment Act: Access to Capital in an Evolving Financial Services System," March 2002 (at www.jchs.harvard.edu/research/crareport.html) ("CRA has expanded access to mortgage credit; CRA-regulated lenders originate more home purchase loans to lower-income people and communities than they would if CRA did not exist"); Remarks of Eugene A. Ludwig, Comptroller of the Currency, July 15, 1997 (at www.occ.treas.gov/ftp/release/97-65.txt) ("Since CRA became law in 1977, we have witnessed more than $215 billion of loan commitments for low and moderate income lending. . . . Since 1993 . . . home mortgage loans to low and moderate income census tracts have risen by 22 percent, more than twice as fast as the rate of growth in all home mortgage loans. In the past four years, banks have invested four times as much in community development projects as they did in the whole previous thirty years."); Remarks of Senator Levin, quoting Chairman Alan Greenspan, 145 Cong. Rec. S4775-76 (1999) ("CRA has 'very significantly increased the amount of credit in communities' and the changes have been 'quite profound.' In 1997 alone, almost 2,000 banks and thrifts reported $64 billion in CRA loans, including 525,000 small business loans worth $34 billion; 213,000 small farm loans worth $11 billion; and 25,000 community development loans totaling $19 billion.").

That same period has also seen major changes in the United States financial system. On the institutional side, both non-bank financial institutions and the capital markets have far greater impact on the financial and economic lives of low- and moderate-income consumers and communities than they did in 1977. From the consumer's perspective, the need for transactional services, savings and investment opportunities that are easy to access and use, and for credit that is high quality and fairly priced have outstripped the simple need for access to credit. From the community perspective, both branch closures and the consolidation of the banking industry have left many communities with more limited access to bank services and decision makers and to the talents and leadership of local bankers in meeting community economic development needs. At the same time, however, community based organizations, including community development corporations, Community Development Financial Institutions, loan funds, counseling agencies, advocates and others, have grown to serve these communities directly and leverage the efforts of banks and thrifts operating under CRA.

During the early 1990s, there were unsuccessful attempts to repeal CRA. However, the Clinton Administration's strong support for the statute; the Riegle-Neal Act of 1994,[6] which allowed interstate banking and branching and precipitated a series of major bank mergers; increased advocacy by community-based organizations; and revisions to the regulations in 1995,[7] ushered in a period of intense activity under CRA. That period largely came to an end by 2001, as a new Administration revised priorities, merger activity slowed down substantially, and the far larger banks that emerged largely focused on their home towns and on national goals, rather than the more local focus that smaller or sub-regional institutions had provided.[8] In 2005 and 2007, bank regulators issued new regulations that vastly reduced the number of banks evaluated for all three of lending, services and investments in low- and moderate-income communities and established a new "intermediate small bank test" that focused on lending and community development activities for institutions with $250 million to $1 billion in assets.[9]

It is time to engage in some fresh thinking about both the credit discrimination issues that resulted in CRA's enactment and how to meet the broader financial services needs of low- and moderate-income consumers. We need to consider both how the banking and thrift industries can be encouraged to better serve lower income consumers and communities and how that obligation can be extended to other providers of essential financial services. The task is made especially difficult by the fact that the industry includes firms regulated at the federal level in a manner different than banks and thrifts (such as securities firms); firms regulated primarily by states in a relatively uniform fashion (such as insurance companies); firms regulated in highly variable fashion primarily by states (such as independent mortgage bankers and money transfer agents); and firms and individuals often subject only to laws of general applicability (such as mortgage brokers).

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[6] Pub. L. No. 103--328; 108 Stat. 2338 (1994)

[7] The 1995 regulations established the three part lending, service and investment test for institutions with more than $250 million in assets, and a lending-only test for smaller institutions, unless they were part of a larger holding company. 60 FR 22156 (May 4, 1995)

[8] See Joint Center, op. cit. page 135 (". . . this report documents that the impact of CRA on mortgage lending has waned in recent years, as dramatic changes in the banking and broader financial services industries have weakened the link between mortgage lending and smaller branch-based deposit gathering organizations on which CRA was based.")

[9] 70 FR 44256 (August 2, 2005); 72 FR 13249 (March 22, 2007)

What have we learned from CRA?

What have we learned from thirty years of experience under CRA? First, we have learned that what is measured gets done. The two strongest areas of activity under CRA have been residential lending and investments such as affordable multifamily housing, community facilities and support for community development corporations and Community Development Financial Institutions. These are two areas where measurement is relatively straight-forward (HMDA makes measurement of residential lending particularly easy), and regulators and outside forces have kept up a steady stream of questions about “how much are you doing, where and for whom?”.

Second, especially in the past 10 years as computers have improved and the internet has become a widespread means of communication, we have learned that the regulatory system can be significantly leveraged—with enhanced intensity and frequency of attention—by information made directly available to the public. The homeownership successes under the CRA have resulted from the combination of CRA and its companion statute, HMDA. Especially since 1990, when HMDA data was vastly increased and made more generally available, the public, advocacy groups, and the media have been able to use the data to generate change in the activities and policies of financial institutions. Moreover, the institutions themselves have been able to use the data to compare their performance to that of their peers, and to know outside of an examination where improvements are needed.

Third, CRA has generated a fair amount of innovation, in an industry that is—or certainly was—not especially known for innovation, especially with respect to entry into new markets. In the investment area, this has included the “CRA MBS,” the “EQ2,” and effective use of the low-income housing and new markets tax credits. In lending, expanded underwriting for both prime and non-prime loans was encouraged by the opportunity for CRA credit. Recently, CRA service credit has probably had an impact in encouraging banks to explore better ways to serve “underbanked” consumers. CRA changed the hurdle rate for new products, services and markets, encouraging banks and thrifts to look for investments and products for which a part of the return was in CRA credit, rather than dollars. Once these initiatives were started, many have proven to be sustainable in purely financial terms.

Fourth, CRA’s implicit requirement that banks enter new markets where gaining trust, getting business and making a profit were not familiar has required partnership and collaboration with a wide variety of more community-oriented institutions. Partners include social service agencies, religious entities, credit counseling agencies and governmental units. But perhaps more importantly, CRA has also led to partnerships with community development corporations and with community-based financial institutions, including Community Development Financial Institutions and non-profit loan funds, often generating significant opportunities to leverage scarce philanthropic and government funds and develop innovative products and strategies.

While these features of CRA have been, on the whole, positive, other experiences with the statute suggest areas for caution and improvement.

First, CRA applies only to banks and thrifts. The myriad of other types of organizations, ranging from credit unions through mortgage bankers, securities firms and insurance companies to check cashers, payday lenders, pawn shops and mortgage brokers, who provide some or all of the same types of financial services to some or all of the people and places CRA was designed to assist, remain uncovered. While some of these entities have, either in general (e.g., credit unions) or in specific locations (e.g., insurance companies in Massachusetts), other types of obligations to provide service broadly, and still others (e.g., securities brokers) have customer service standards, the requirements are not uniform in intent, coverage or method of enforcement. For lower income consumers and those in lower income communities this difference has been exacerbated, as alternative providers have expanded their presence while regulated entities have either continued to stay away or reduced service.

Second, CRA has become a complex regulatory regime, especially with respect to the service and investment tests. The question of "what counts" is the subject of endless, and frequently frustratingly unpredictable, discussion, debate and guesswork. Regulatory enhancements are an extremely long process (the most recent started in 2001 and ended in 2007), and development of the questions and answers that provide a practical gloss on the regulations can take almost as long. Moreover, the complexity focuses largely on inputs (e.g., how many branches, how many loans) rather than outcomes (e.g., how many lower-income people served) or—admittedly more difficult—impacts (e.g., how have their lives been improved). The "bean counting" feature of the lending test, especially for residential loans, has resulted not only in excessive focus on home loans, but also on a press for quantity with limited (and only recent) attention paid to quality.

Third, although CRA's lack of an explicit enforcement mechanism beyond the publication of ratings and examination results and consideration when an institution is applying to merge with or acquire another institution or open a branch has proven effective during periods of high merger activity and for institutions set on expansion, a broader system of incentives and sanctions is needed. Improvements in the rating system (e.g., a more-than-four-point scale), a public evaluation database more friendly to analysis, and external incentives and sanctions such as linked deposits, restrictions on and opportunities to do business with a jurisdiction, and potentially even increases or reduction in deposit insurance could serve to keep CRA on the front burner during periods of little merger activity or with respect to institutions unlikely to be either acquirers or acquired would be desirable.[10]

Fourth, the spatial origin of CRA has had several negative effects. First, as institutions have spread geographically and become more reliant on the capital markets for funding, and especially as they have engaged in business strategies that place limited reliance on physical presence, the essential underpinning of CRA—that at least a substantial portion of money gathered in a place where the bank is "located" should be reinvested there—has become both less relevant and more difficult to square with business reality. Second, notwithstanding that redlining had its origin in racial discrimination, the statute is "color-blind," which has limited its impact in the many of the communities and populations it was meant to benefit. Third, we have learned that it is important to focus on both people and places; higher-income consumers in low-income or minority places have been disadvantaged, as have lower-income and, especially, minorities, no matter where they live. Fourth, in areas such as Salt Lake City, Utah; Wilmington, Delaware; and New York City,

[10] Recent substantial losses related to participation in unaffordable and unsustainable mortgage lending—whether directly or through investment activity—should serve as irrefutable evidence of the link between safety and soundness, and thus insurance risk, and dealing with consumers fairly and equitably.

where banks have congregated for business reasons, the competition for CRA investments has created an artificial market that drives up prices and siphons investment from other communities. A related concern has been the limited amount of money available for investment in rural areas, in part because of technical issues surrounding the geography of rural census tracts, but also because many rural areas are outside the assessment areas of major financial institutions.

Finally, the “optional” features of CRA have proven the most difficult to implement effectively. These include the strategic plan option and the option whether to include loans and other activities by affiliates in a bank’s CRA analysis. The strategic plan option has been rarely used, in spite of its theoretical utility for institutions with non-traditional business strategies, especially internet banks and others with a limited geographic base. The ability to count affiliate loans, which are often subject to far less regulatory supervision and scrutiny than loans made in the bank, toward meeting CRA goals also raises concerns, especially with respect to lending outside of a bank’s major assessment areas.

This experience suggests six conclusions:

- For lasting impact over a broad range of issues in an industry that changes quickly, a basic statutory scheme that is broadly directive but not overly prescriptive is preferred.
- Some sort of uniformity of requirement across the multitude of industries that provide substantially similar financial services to consumers is highly desirable, even in the face of different regulatory and enforcement schemes.
- The evolving technologies of both analysis and media present enormous opportunities to involve the public, the advocacy community and the media in enforcing a statutory scheme, as long as the public is provided relatively frequent, accurate, reliable and useable information about the facts that demonstrate adherence to the scheme; similarly, technology has vastly reduced the cost to institutions of providing such information.
- The public, the advocacy community and the media cannot operate in a vacuum; regulatory interaction with specific companies is a necessary base on which to lever the public and media effects.
- Things that can be counted in a fairly straight-forward manner generate the most impact, but it is important to count the right things in the right places; ensuring that consumer protection and non-discrimination laws and regulations are part of an analysis of how well an institution is doing is essential.

More broadly, given the strong evidence that serving lower-income consumers and communities does not present itself as a profit-maximizing strategy for financial institutions and the capital markets, both advocacy from and partnerships and collaboration with community-focused institutions for whom these consumers are major stakeholders is essential; the existence, strength and effectiveness of such institutions needs external support from government, philanthropy and the private sector.

<u>People or Place? Both</u>

The language of the CRA statute is focused on communities, and the impetus for its enactment was redlining of entire neighborhoods. Investment in the housing, businesses, facilities and infrastructure of communities is essential to community vitality and a critically important part of CRA’s importance and impact. Nevertheless, the manner in which financial institutions dealt with the people in low- and moderate-income communities—limiting their access to credit, closing branches and moving out—was also at the heart of CRA's origins. Apart from announcements of lending targets and analysis of residential mortgage lending (a function more of HMDA than CRA), however, the people element of CRA has received comparatively less focus. With home mortgage foreclosures hitting record levels with projections to continue increasing at least through 2008, consumer revolving debt breaking records and delinquencies rising quickly, and an estimated 40 million Americans without or not making optimal use of bank accounts, this is a good time to consider how the people aspects of CRA can be improved. And although improving the service test is an element of this, broader reforms are needed. This is the focus of the remainder of my testimony.

<u>A new paradigm for responsibility in consumer financial services</u>

I believe it is time for a new paradigm for consumer financial services, one just as bold as CRA was 30 years ago:

> Any financial institution that provides an essential consumer product must make that product available in a fair and transparent manner to low- and moderate-income consumers in all communities in all broad geographies in which the entity does more than an incidental amount of business in the product.[11]

Fairness and transparency are principles of general applicability in the financial services sector. But there are special reasons to focus on how these principles apply to low- and moderate-income consumers. These include a smaller margin for error and lack of capital on which to base a recovery when something goes wrong; generally lower education levels; less access to quality and timely financial advice; and, especially in the last 15 years, a younger population often with limited experience with the American financial system.

In this context, *fair* means that an entity providing essential consumer financial services to the general public, directly or through agents, abides by the following principles:

- Essential financial services meet the needs and desires of low- and moderate-income consumers, with sufficient market research undertaken to accurately assess those needs.
- Essential financial services are offered at equitable prices and terms, based on cost and an accurate assessment of risk.
- Analysis of potential profitability over time, need for capital and other criteria for investment, is done on a basis that is no less favorable for service to low- and moderate-income consumers than for similar opportunities relating to wealthier consumers.

Transparency has two essential dimensions, one relating to consumers and one to the public:

- Potential and actual customers are provided with quality service and accurate information, delivered in a timely and understandable fashion, about the terms of products, including realistic information about risks

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[11] The paradigm would not explicitly cover financial institutions that do not provide products to consumers directly or through agents, such as investment banks and Fannie Mae and Freddie Mac. However, the responsibilities institutions have in directly serving consumers should carry through to their investment activities. See Letter from Edward B. Kramer, Deputy Superintendent of Banks, State of New York Banking Department, "Due Diligence Recommendations Concerning the Eligibility of Loan Purchases and Investments for Consideration Under the Community Reinvestment Act," July 26, 2001, available at http://www.banking.state.ny.us/lt010726.htm.

- Information about the manner in which firms provide essential consumer financial services is available to the public or, in the case of information that is truly proprietary, a government intermediary. That information is available in a manner, and with sufficient quality, quantity and timeliness, to make it possible for persons outside the firm to accurately assess the extent to which a firm meets its obligations, both during the current period and over time.

This paradigm thus focuses on the effective development, marketing and distribution of well-designed and understandable essential consumer products and services, and a requirement of equity across communities and consumers of all types. It concentrates the attention of business, the public and government on what is important to consumers and uses the market forces generated by consumers with the knowledge and resources to demand high quality financial services to extend the reach of those products and services to the rest of the market.

<u>What types of products and services should be subject to a new responsibility paradigm?</u>
It is important not to pull back on current coverage of CRA. At the same time, it is also clear that not all products, services or financial institutions should be covered. To take an extreme example, it is neither necessary nor an appropriate use of scarce enforcement resources to ensure that hedge fund investment opportunities be available to low- and moderate-income consumers. However coverage should not be excessively limited, or too tied to current economic conditions and financial structures and opportunities.

A useful way to think about product and service coverage is to focus on those financial products and services that are essential to full and active participation in the American middle class. These include products and services to meet transactional, credit, saving and investment, and insurance needs. Products and services should be considered "essential" only if they are broadly used by the public. Although the items included will probably change over time, by defining as much as possible in terms of functionality rather than specific products, we can reduce the need for additions or subtractions.

With respect to transactions, the on-going virtually revolutionary changes occurring with pre-paid cards and the likelihood of major breakthroughs in the use of mobile phones to effect financial services strongly urge a functional approach. Essential functionalities are: (i) converting sources of revenue (especially paychecks and benefits of all sorts) into useable means of payment; and (ii) a means of making timely and secure payments and transfers to savings or investment.

For credit, essentiality may be defined in terms of what credit needs are likely to be. This, of course, is the area of initial concern under CRA, and it continues to be critical to provide the leverage for major wealth-building investments such as a home or higher education and to smooth income fluctuations. Thus, essential credit products are: (i) small dollar short-term credit, whether secured or unsecured; (ii) auto credit; (iii) mortgage credit, and (iv) credit for post-secondary education.

Saving and investment are categories that were not part of the initial CRA focus, in part because one of the problems CRA was attempting to respond to was that people in lower income communities were saving by making deposits in local financial institutions, but those savings were not being reinvested in the communities. Our current debt-led economic troubles and negative national personal saving rate demonstrate the need for increased saving. As to investments, in 1977 individual access to investment opportunities was not only limited, but the need for such opportunities was reduced by the prevalence of defined-benefit retirement plans, in which the employer took responsibility for investment decisions and outcomes. This has changed in the intervening period. The new paradigm should cover: (i) non-purpose-limited short-term savings opportunities; (ii) longer-term low-risk savings and investment opportunities (e.g., insured accounts, CDs, and Treasury obligations including savings bonds); and (iii) tax-advantaged investment opportunities such as retirement accounts and section 529 education plans.

Finally, insurance is an essential product in a number of areas and highly desirable in others. In most states, owners of automobiles must be insured, and mortgage creditors demand homeowners insurance. Beyond the requirements, both of these types of insurance are important in protecting the assets that are most important to the financial well-being of most families. It is therefore important to include automobile and homeowners insurance in the new responsibility and accountability regime. Medical insurance, including long-term care coverage, is also highly desirable; recent research has demonstrated that a significant portion of bankruptcies are caused by uninsured medical expenses. However, this is an issue that goes far beyond the financial services sector and requires a much broader solution.

<u>How do these principles relate to current CRA enforcement and interpretation?</u>
To bring CRA more fully in line with both the modern financial services system and the principles and scope proposed, some changes would be desirable. The most important are the following:

- CRA should cover service to low- and moderate-income consumers everywhere a bank or thrift does a significant amount of business in any of the essential products—for that product. If a firm operates nationally, it should be evaluated on how well it serves low- and moderate income consumers nation-wide with the type of product it is offering nationally.
- Effective public disclosure regimes should be added that cover additional essential products, including in particular the types of and use by low- and moderate-income consumers of essential transaction and savings products.
- Any for-profit subsidiary or holding company affiliate that provides any of the essential products should be evaluated in the same manner and at the same time as the largest bank or thrift in the holding company group.
- Consumer protection and fair lending responsibilities must be more firmly embedded in CRA evaluations, extending the 2005 regulatory revisions that explicitly included consideration of such laws and regulations in evaluating lending activities[12] to include transactional, saving and investment offerings and investments where consumer products are implicated.

[12] See 12 CFR 345.28(c) (FDIC); 12 CFR 228.28(c) (Federal Reserve); 12 CFR 25.28(c) (OCC); 12 CFR 563e.28(c) (OTS).

- Incentives should be established that are external to CRA, potentially including reductions in insurance premiums for Outstanding performance. To stimulate better performance and limit grade inflation, the number of Outstanding ratings should be limited, perhaps to a solely increasing percentage above current levels.

Extending the paradigm

Simply extending CRA to other types of financial institutions, placing examination and enforcement responsibility on their regulators to the extent they have them, or surrogates such as the US Department of Housing and Urban Development, is a potential way to extend the paradigm. For credit unions, regulated under a regime similar to banks and thrifts and also the beneficiaries of federal deposit insurance, such extension would appear to be appropriate, perhaps modifying the credit unions' statutory service obligation to take into account enhanced responsibilities under a new regime. However, for other types of financial services entities, operating under different types of—or no—regulatory regime, alternative solutions are probably required. These solutions should take maximum advantage of regulatory systems and responsibilities already in place, aiming to achieve equity in result, rather than complete consistency in regulatory methodology.

A first step should be to ensure that any requirement for public reporting and dissemination of information about credit extended beyond residential lending include all creditors who extend similar types of credit. As HMDA has demonstrated, with uniform reporting requirements, an option to use government-supplied software, and a single entity (in the case of HMDA the Federal Reserve) responsible for cleaning the data, making it publicly available and doing initial analysis, the obligation to report can be extended to institutions that are not subject to general federal regulatory jurisdiction. Although HUD is the initial recipient of mortgage data under HMDA, information about other types of credit could be provided initially to state regulators in the case of entities so regulated or directly to the Federal Reserve.

Similarly, public reporting on non-credit services should be tailored to the type of service and include all those providing such services as a significant part of their business. For example, while information about income levels of checking and savings account holders of a limited typology of accounts may be the primary focus in understanding whether banks, thrifts and credit unions are meeting a service obligation, for insurance companies the information collected might relate to the characteristics of holders of defined types of policies. Because this information would be industry-specific, it should be gathered and disseminated by industry specific regulators where such exist, under standards developed in coordination with bank regulators. As with credit information, other types of financial services providers could provide information directly to the Federal Reserve.

Public dissemination of information is serves to inform the public and expand the likelihood that high quality service for all consumers will be a competitive advantage. However, to ensure that providers are meeting their obligations, public dissemination of data must be accompanied by a regulatory regime that evaluates compliance and has consequences both directly for the institution and by making the public aware of how an institution is behaving. In the context of an already difficult undertaking, this is the most difficult part. We cannot expect wholesale adoption of the bank regulatory model by other regulatory regimes, and it is unlikely that would even be desirable.

Instead, the principles reflected in the responsibility paradigm should be adopted into various regulatory regimes in a manner that is consistent with the scope and intent of the particular regime, and that is consistent with and builds on existing and improved consumer-oriented obligations and protections. For state-regulated entities, national legislation establishing principles, a regulatory floor, and a back-up regulatory regime should states not move toward adoption of the regulatory minimum would appear to be the appropriate mechanism.

Consistent integration of the principles of the paradigm into disparate regulatory regimes will require consultation and collaboration at both the state and federal levels. Moreover, with respect to financial services companies not currently subject to any federal regulation and limited state regulation, consideration of a combination of enhanced state regulatory authority (and funding), increased responsibility and funding for the Federal Trade Commission and/or creation of statutory responsibilities at the state and federal levels, with private rights of action to enforce them are all appropriate.

Even considered in the context of existing regulatory regimes, the adoption in full of the new responsibility paradigm is a major undertaking. It is, however, possible to stage adoption, and several schemes suggest themselves. One possibility is to start with the products most likely to create major problems for consumers, and with the entities that sell those products. The current situation in the credit markets suggests that credit products should be first on the agenda, followed perhaps by investment products. A second scheme would be to stage implementation based on the lack of availability or accountability for essential products. In this scheme, an initial focus could be on transaction products, where federally regulated depositories are not effectively serving millions of Americans and alternative providers are subject to little scrutiny and public accountability. A third alternative would be to start where existing statutory and regulatory schemes are most developed and where implementation of the principles of the agenda would require relatively modest changes. This suggests that, beyond banks and thrifts, the agenda's principles should be applied first to credit unions, then to insurance companies and their agents and to securities brokers.

Each alternative has benefits and drawbacks, the first two largely related to development of new regulatory regimes and the last to exacerbating the competitive inequality that exists in the current uneven regulatory system. But they do suggest ways to improve, in measured increments, the essential financial products and services consumers need and the manner in which those services are delivered.

Conclusion

Thirty years ago, large swaths of American cities were dying for lack of credit. By enacting CRA, the federal government challenged the banking industry to help those communities and their residents to a better life. Together with related statutes such as HMDA and anti-discrimination and consumer protection laws, CRA has had a substantial and positive impact in bringing credit and other financial services to low- and moderate-income consumers and communities.

However, the thirty years since the statute’s adoption have seen massive changes in the number, complexity and types of financial products consumers use, how they are marketed and accessed, and who provides them. Simultaneously, the increase in homeownership, workforce restructuring, and the decline in employer-provided retirement and health benefits, require consumers to take much greater responsibility for their financial health and stability. Many Americans are not doing well in meeting this new responsibility. The personal savings rate is negative, foreclosures and bankruptcies are at record levels, and debt burdens are overwhelming many more families. The new responsibility paradigm presented here challenges the entire financial services industry—as CRA did thirty years ago—to help American consumers do better.