

have also stated that the CRA examination process encourages them to generate excessive paperwork at the expense of providing loans, services, and investments to their communities.

Community, consumer, and other groups have agreed with the industry that there are inconsistencies in CRA evaluations and that current examinations overemphasize process and underemphasize performance. Community and consumer groups also have criticized the agencies for failing aggressively to penalize banks and thrifts for poor performance.

Noting that the CRA examination process could be improved, President Clinton requested in July 1993 that the Federal financial supervisory agencies reform the CRA regulatory system. The President asked the agencies to consult with the banking and thrift industries, Congressional leaders, and leaders of community-based organizations across the country to develop new CRA regulations and examination procedures that "replace paperwork and uncertainty with greater performance, clarity, and objectivity."

Specifically, the President asked the agencies to refocus the CRA examination system on more objective, performance-based assessment standards that minimize compliance burden while stimulating improved performance. He also asked the agencies to develop a well-trained corps of examiners who would specialize in CRA examinations. The President requested that the agencies promote consistency and even-handedness, improve CRA performance evaluations, and institute more effective sanctions against institutions with consistently poor performance.

To implement the President's initiative, the four agencies held a series of seven public hearings across the country in 1993. At those hearings, the agencies heard from over 250 witnesses. Nearly 50 others submitted written statements. The preamble to the 1993 proposal reviewed the results of those hearings.

#### **The 1993 Proposal**

The agencies published proposed revisions to their CRA regulations on December 21, 1993. The 1993 proposal (58 FR 67466) would have eliminated the twelve assessment factors in the present CRA regulations and substituted a more performance-based evaluation system. Under the 1993 proposal, the agencies would have evaluated institutions based on their actual lending, service, and investment performance rather than on how well they conducted their needs assessments,

documented their community outreach, and implemented other procedural requirements of the existing regulations.

Generally, large retail institutions would have been evaluated based on some combination of lending, service, and investment tests. Institutions would have been required to report data on the basis of the geographic distribution of applications, denials, originations, and purchases of loans. Small banks and thrifts could have elected to be evaluated under a streamlined method that would not have required them to report this data. Every institution also could have elected to have its performance evaluated on the basis of a pre-approved strategic plan.

All banks and thrifts would have been assigned one of four statutorily mandated CRA ratings (12 U.S.C. 2906(b)(2)). However, five ratings would have been used for the lending, service, and investment tests, with the satisfactory category split into low satisfactory and high satisfactory.

Collectively, the agencies received over 6,700 comment letters on the 1993 proposal. As a general matter, the vast majority of commenters expressed support for the agencies' goal of developing more objective, performance-based assessment standards that minimize burden while stimulating improved performance. However, many expressed concern over aspects of the 1993 proposal that they viewed as allocating credit to particular kinds of borrowers. After considering the comments, the agencies published a second proposal on October 7, 1994, which responded to many of the suggestions in the comments on the 1993 proposal, including concerns about credit allocation, while preserving the 1993 proposal's goal of emphasizing performance over process.

#### **The 1994 Proposal**

The 1994 proposal (59 FR 51232) retained the principles and structure underlying the 1993 proposal but made significant changes to the details in order to respond to many of the specific concerns raised in the comment letters. As in the 1993 proposal, the 1994 proposal would have replaced the existing regulations' twelve assessment factors with a performance-based evaluation system. The 1994 proposal retained, but modified, the lending, investment, and service tests for large retail institutions; the streamlined evaluation for small institutions; an alternative evaluation for limited purpose and wholesale institutions; and the pre-approved strategic plan option available to all institutions.

The 1993 proposal had been criticized because of certain objective criteria in the proposal (including market share, a presumptively reasonable loan to deposit ratio, loan mix, investment to capital ratios, and the number of branches readily accessible to low- and moderate-income geographies) which were intended to respond to concerns about the need for more objective standards for evaluating compliance with CRA requirements. Many commenters viewed these criteria as calling for credit allocation, although the agencies did not intend this result. The 1994 proposal removed these criteria from the regulatory language and substituted a broader range of qualitative and quantitative criteria. A system for evaluating compliance with CRA should not eliminate examiner judgment, even if completely objective criteria consistently applied were achievable. Preservation of examiner judgment to take into account the unique characteristics and needs of an institution's community and the institution's own capacity and relevant constraints are essential for a workable rule.

At the same time, consistency in evaluations, reduction in the burden of compliance, and emphasis on performance are fully consistent with assuring a measure of examiner judgment. The 1994 proposal would have provided a balance between objective analysis and subjective judgment through a series of examiner decisions relying on detailed data measuring an institution's actual lending, service and investment performance. In order to minimize unnecessary subjectivity, the agencies provided guidance as to the standards that examiners would have applied in making the required judgments.

Compared to the 1993 proposal, the 1994 proposal would have reduced data reporting burdens by streamlining reporting requirements. The one significant new reporting requirement was the collection and reporting of information on the race and gender of small business and farm borrowers. The agencies proposed this provision to respond to concerns that the 1993 proposal did not give enough weight to the fair lending aspect of an institution's CRA performance.

In order to take into account community characteristics and needs, the 1994 proposal would have made explicit the context in which the tests and standards would have been applied to individual institutions. In a specific effort to reduce burden, the preamble indicated that the agencies, rather than institutions, would have collected and