n. Section 3.40 introductory text
o. Section 3.40(b)

3. In 8 CFR part 3 remove the words ''Immigration Judge office'' and add, in their place, the words ''Immigration Court'' in the following place: Section 3.11.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

4. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

5. In 8 CFR part 103 remove the words ''Office of the Immigration Judge'' and add, in their place, the words ''Immigration Court'' in the following place: Section 103.7(a).

PART 204—IMMIGRANT PETITIONS

6. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

7. In 8 CFR part 204 remove the words ''Office of the Immigration Judge'' and add, in their place, the words ''Immigration Court'' in the following place: Section 204.2(a)(1)(iii)(A)(*2*).

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

8. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 31 U.S.C. 9701; 8 CFR part 2.

9. In 8 CFR part 208 remove the words ''Office of the Immigration Judge'' and ''Offices of Immigration Judges'' each time they appear and add, in their place, the words ''Immigration Court'' in the following places:

a. Section 208.2(b)
b. Section 208.3(a)
c. Section 208.4(c) introductory text, (c)(1), (c)(2), (c)(3)
d. Section 208.7(c)(2)
e. Section 208.19(b)(2)

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

10. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

11. In 8 CFR part 212 remove the words ''Office of the Immigration Judge'' and add, in their place, the words ''Immigration Court'' in the following places: Section 212.3(a)(2).

PART 236—EXCLUSION OF ALIENS

12. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

13. In 8 CFR part 236 remove the words ''Office of the Immigration Judge'' and add, in their place, the words ''Immigration Court'' in the following place: Section 236.3(b).

PART 240—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

14. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254a, 1254a note.

15. In 8 CFR part 240 remove the words ''Office of the Immigration Judge'' and add, in their place, the words ''Immigration Court'' in the following places:

a. Section 240.10 (d)(2) and (d)(3)
b. Section 240.18 (b) and (c)

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

16. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

17. In 8 CFR part 242 remove the words ''Office of the Immigration Judge'' each time they appear and add, in their place, the words ''Immigration Court'' in the following places:

a. Section 242.1 (a) introductory text and (b)
b. Section 242.2(i)
c. Section 242.17(c)(3)

18. In addition to the previous amendment, § 242.1(a) introductory text, as revised at 59 FR 42414, August 17, 1994 is amended by removing the words ''Office of the Immigration Judge'' and adding, in their place, the words ''Immigration Court'', effective August 17, 1995.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

19. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

20. In 8 CFR part 245 remove the words ''Office of the Immigration Judge'' and add, in their place, the words ''Immigration Court'' in the following place: Section 245.1(c)(7)(i)(B).

PART 292—REPRESENTATION AND APPEARANCES

21. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

22. In 8 CFR part 292 remove the words ''office of the Immigration Judge'' and add in their place, the words ''Immigration Court'' in the following place: Section 292.3(b)(1)(vi).

Dated: June 21, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–16046 Filed 6–29–95; 8:45 am]

BILLING CODE 4410–01–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 618, and 620

RIN 3052–AB43

Organization; General Provisions; Disclosure to Shareholders; Technical Assistance and Financially Related Services; Member Insurance

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency), by the Farm Credit Administration Board (Board), issues a final regulation governing Technical Assistance and Financially Related Services and Member Insurance. Subpart A of the final regulation defines technical assistance, financial assistance and financially related services and clarifies what types of services the Farm Credit System (System or FCS) institutions are authorized to provide. The final regulation maintains the FCA's ability to regulate safety and soundness risks while allowing FCS institutions greater flexibility to exercise statutory authorities. The existing prior approval requirement is replaced with a list of authorized services, a post-review process for all services that have been authorized by the FCA, and a procedure for obtaining FCA authorization to offer a new service that has not been previously reviewed and authorized. The final rule replaces the FCA Board Policy Statement on Out-Of-Territory Financially Related Services (FCA–PS–50 BM–10–June-93–03) and the FCA Bookletter on Out-Of-Territory Financially Related Services dated

September 3, 1993. The final Member Insurance regulation clarifies existing rules and reduces regulatory burdens wherever possible.

EFFECTIVE DATE: The final regulation shall become effective upon the expiration of 30 days after publication in the **Federal Register**, during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:
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or
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SUPPLEMENTARY INFORMATION: On October 31, 1994, the FCA proposed amendments to its regulation on financially related services and member insurance. 59 FR 54399. Under title I, section 1.12; title II, sections 2.5 and 2.12 (15); and title III, section 3.7 of the Farm Credit Act of 1971, as amended (the Act), the FCA is responsible for promulgating regulations governing the offering and administering of technical assistance, financial assistance, and financially related services (hereinafter referred to as ''related services'') by banks and associations.

Farm Credit System institutions have expressed a desire to serve the evolving needs of farmers and ranchers more effectively through their statutory authority for providing related services. The FCA understands the System's desire to offer the fullest range of related services allowable under statutory authorities, as long as safety and soundness risks can be managed.

The FCA has concluded that, under most circumstances, it is appropriate to replace the current prior approval requirement with specific regulatory criteria for determining which services can be offered and under what circumstances. However, in its role as a safety and soundness regulator, the FCA will continue to review new services in order to ensure that they are legally authorized and do not present excessive risk to the System. The FCA believes this is a reasonable approach and that it is impracticable to prescribe specific regulations for new services that have yet to be offered by the System. Consistent with the FCA's role as an arm's-length regulator, the final rule requires an institution offering a service to assume primary responsibility for the related services it provides. The FCA will ensure safety and soundness and compliance primarily through use of its examination and supervisory powers.

I. Regulatory Burden

The final regulation accomplishes a significant reduction in regulatory burden for System institutions and reduces the FCA's administrative costs of assuring compliance with the regulation. It replaces an outdated prior approval requirement with regulatory guidance that holds individual institutions more accountable for their activities. The remaining regulatory costs are justified in order to meet statutory requirements and address safety and soundness concerns.

II. Public Comments

The comment period on the proposed regulation at § 618.8000 closed on December 30, 1994. The FCA received a total of 116 comment letters from the public. These included 111 letters from System institutions in addition to the letters from the Farm Credit Council (FCC) on behalf of its membership; the American Bankers Association (ABA); the Independent Bankers Association of America (IBAA); the Savings and Community Bankers Association (SCBA); and Minnesota Mutual Insurance Corporation (Minnesota Mutual). Prior to finalizing its comments, the FCC received input and concurrence on its comments from its membership and a work group established by System institutions to study related services. The comments received from System institutions included letters from directors/stockholders and employees of the institutions.

Two additional letters were received after the comment period closed, one from the Kentucky Bankers Association (KBA) and one from an FCS association. Because the KBA's comments were essentially the same as those made by the ABA, the responses to the ABA comments address the comments made by the KBA. The FCS association's comments were essentially the same as the majority of those received from other System institutions and are similarly addressed.

With a few exceptions, the comments from System institutions and the FCC were overwhelmingly supportive. They concluded that the FCA has achieved an appropriate balance between its statutory responsibility to focus on safety and soundness issues and the need to remove unnecessary regulatory burdens. They identified the reduction in prior approval requirements as an example of significantly reducing regulatory burden. The exceptions include disagreement with the proposed rule on out-of-territory related services, and 11 System institutions suggested additional revisions to the process, the eligibility criteria, and the insurance issues.

The trade industry groups were more critical of the proposed regulation. They expressed concerns that it exceeds the System's statutory authorities, that it may create possible competitive disadvantages for commercial banks, and that it may pose safety and soundness risks by reducing involvement by the FCA and System banks. The trade industry groups also commented on a number of specific points in the proposed regulation.

The following narrative summarizes general concerns raised by the trade industry groups (ABA, IBAA, TBA, and SCBA) about the proposed regulation, addresses specific comments received on the various sections of the regulation during the comment period, and responds to those comments.

III. General Comments

The trade industry groups are concerned that the proposed regulation would allow System institutions to exceed existing statutory authorities; they believe any expansion of authorities would be more appropriately addressed through legislative means. They further believe the proposed rule allows System institutions greater latitude to provide services that are not justified by the needs of the borrowers. The IBAA also believes that elements of the proposed rule may increase safety and soundness risks or allow a System institution to compete unfairly against private corporations. It concludes that these changes would cause the FCA to give up much of its mandated regulatory oversight and power to control abuses of these functions. Finally, the trade industry groups suggest that, with this proposal, the FCA is not only permitting but also encouraging the System to violate the statute.

The FCA believes the Act clearly authorizes System institutions to offer a variety of related services, subject to regulation by the FCA for safety and soundness concerns. Further, the Supreme Court has recently confirmed that a bank regulator is to be given great deference in interpreting the statute it is charged to enforce.[1] The statute clearly

[1] *See, Nations Bank* v. *Variable Annuity Life Insurance Company,* 786 F. Supp. 6639 (SD Tex. 1991), rev'd 998 F. 2d 1295 (5th Cir. 1993), rev'd U.S. Dkt. No. 93–1612 (Jan. 8, 1995).

authorizes System institutions to provide financial and technical assistance to borrowers, applicants, and members and to make available to them related services appropriate to their on-farm and aquatic operations under regulations prescribed by the FCA. Therefore, the FCA believes it is well within its authority to define by regulation such related services, the conditions under which they can be offered, and to whom they can be offered. Furthermore, the FCA believes that its interpretation of these statutory authorities must take into account changing conditions in the agricultural and financial sectors. The FCA's role as a safety and soundness regulator requires that it openly recognize changing conditions and respond accordingly.

The IBAA commented that it has long opposed measures to expand the powers granted to System institutions and objected to the publication of the proposed rule prior to a new congressional session. The FCA disagrees and points out that the final rule is well within the FCA's statutory authority and, like the statute, the proposed regulation limits authorized services to the on-farm operations of persons or entities eligible to borrow from the System. Further, farm related businesses and rural home borrowers were specifically not included as eligible recipients for related services.

The trade industry groups also commented that the proposed rule would lead to, or encourage, predatory loan pricing by System institutions. However, much of the comment by the ABA is not relevant to the regulation being promulgated because the objection deals directly with loan pricing, not related services. They also objected to a statement in the preamble suggesting that the rule would allow related services even if priced at cost or at a slight loss in order to increase customer satisfaction or attract new customers. The ABA contends that this aspect of the proposed rule encourages the bundling of below-cost services with loans in such a manner that loan packages would be priced below market rates. Contrary to this assertion, the proposed and final rule discourage such packaging. For example, § 618.8015 retains the existing requirement to disclose separately the cost of any related service from loan fees and, if the service is required as a condition of the loan, to inform the recipient that purchasing the service from a System institution is optional. Thus, the regulation does not encourage related services to be bundled with loans. In addition, in most cases there is no requirement that the purchaser have a lending relationship in order to receive a related service.

The IBAA claims that for safety and soundness reasons below-market pricing of services should not be allowed and that the FCA should oversee the pricing of such products. The FCA believes that the feasibility analysis required by § 618.8020 will ensure that the pricing of each related service is justified. Each institution offering such a service must conduct a feasibility analysis, which includes pricing and an evaluation of the market. Related service programs will also be examined by the Agency to ensure they are being operated in a safe and sound manner.

A. Section-by-Section Analysis of Comments Received

1. Section 618.8000—Definitions

The FCA received several comments on the definition of related services in proposed § 618.8000(b). The ABA believes the definition exceeds what is contemplated by the statute because it contains the phrase ''pertains to'' the recipient's on-farm operations rather than the phrase ''appropriate to'' that is used in the existing regulation and the statute. The ABA contends that ''appropriate to'' is narrower and more carefully tailored than ''pertains to'' and requires a considerably stronger nexus between the farm operation and the related service. The FCA did not intend for the definition of related services, as proposed, to expand the types of services that may be provided under the statute, but believed that the proposed rule defined related services using a more common term. In order to be responsive to the commenters and alleviate any concerns that the definition of related services has expanded System institutions' authorities beyond those granted in the statute, the definition in the final rule has been modified to mirror the wording in the statute.

The IBAA commented that although the proposed regulation defines the term ''related services'' to include, but not be limited to, technical assistance, financial assistance, financially related services, and insurance, it did not specify what types of activities these terms might encompass. Further, the IBAA is opposed to the addition of ''financial assistance'' as a related service because it believes financial assistance should be addressed through regulations governing lending or similar functions. The FCA noted in the proposed regulation that several terms are used in the statute to describe a category of non-lending type activities in which System institutions are authorized to engage. Financial assistance and technical assistance are two such terms used in section 3.7(b) of the Act to describe the non-lending services banks for cooperatives are authorized to provide to their customers. For the purpose of this regulation, financial assistance does not include making loans or leases or any other type of lending activity. Confusion over these terms is the primary reason that the FCA proposed using a single term to reference the types of services that may be provided by the different types of System institutions. In fact, the IBAA's comment further supports the need for one general term rather than continuing to use several terms, such as financial assistance, that could have different meanings. The IBAA's arguments for change were not convincing; therefore, the final regulation remains as proposed in this regard.

The FCC agreed with the FCA's statement in the proposed preamble that related services should be broadly construed. The FCC also agreed that the definition should not include advertising or purely promotional activities, but it suggested that services provided by third parties (with the cooperation of a System entity), which present little, if any, risk of financial liability to the System entity, should likewise not be considered ''related services.''

The FCA confirms its statement in the preamble to the proposed rule that advertising and purely promotional activities are not intended to be included within the definition of related services. The FCA further acknowledges that the distinction between promotional activities and related services can be unclear. Although it is easy to conclude that passing out pens with a Farm Credit logo is a purely promotional activity, and that providing farm recordkeeping for eligible borrowers is a related service, there are many activities that will fall in between.

The FCA also recognizes that System institutions participate in various business arrangements through third parties, and it is often difficult to determine whether an institution is, in fact, offering a related service by cooperating with a third party provider. Assisting individual borrowers in preparing their tax returns is clearly a related service, whereas renting out an association conference room for a 4–H Club lecture is not a related service. However, when the service is provided by a third party in cooperation with a System institution, the line between

what is or is not a related service will often be more difficult to draw.

The FCA concludes that neither advertising and promotional activities, nor services provided by third parties, should be automatically excluded from the definition of related service in the final rule. Rather, a case-by-case evaluation must be made for the activities based on a number of factors. The level of risk in a particular service, even if provided by a third party, is not the sole deciding factor as to whether a proposed service meets the definition of a related service. Likewise, the mere existence of a third party as the service provider is not determinative as to whether an activity is or is not a related service. In addition, the lack of profitability is not necessarily determinative when evaluating whether promotional activities are related services. Various factors (such as the nature of the activity, who provides the service, and the level of involvement and responsibility of both parties) should be used in evaluating whether an activity is properly considered a ''related service.'' The statute requires that related services provide assistance to eligible borrowers in managing their on-farm operations and should always be used as a guide when questions arise.

Four associations commented that the FCA should define related services in such a way as to eliminate activities that are necessarily incidental to lending or leasing activities (such as appraisal services) and are reasonably and customarily performed in the business of rural or agricultural lending and leasing. These associations contend that such an exclusion from the definition of related services would eliminate unnecessary regulatory burdens such as the need for approving the feasibility of activities that are inherently feasible because they are normal and customary activities of institutions in their primary business of lending and leasing.

The FCA addressed this issue in the preamble to the proposed regulation. *See* 59 FR 54402, October 31, 1994. The commenters have provided no information that would cause the FCA to resolve this issue in a different manner. The fact that an institution customarily performs a service as part of its lending function does not automatically mean that the service, when provided on an independent fee basis, would not be a related service. Nor does it necessarily follow that establishing a program to provide a service on a fee basis will always make good business sense for an institution. Each activity must be evaluated to determine the statutory authority that enables the institution to engage in the activity and what statutory restraints exist on the exercise of that authority. As discussed in the preceding paragraph, there is no bright-line test or absolute standard that the Agency could adopt in the regulation to categorically exclude certain types of activities. The FCA is not convinced that it is necessary to exclude certain activities from the definition of related services; thus, the definition has been adopted as proposed.

The FCC commented that the definition of System banks and associations in proposed § 618.8000(c) should be modified to incorporate service corporations in order to eliminate any uncertainty as to whether those entities are authorized to offer related services. In the preamble to the proposed rule, the FCA noted that because section 4.25 of the Act grants service corporations the powers and authorities of Farm Credit banks, they would continue to be authorized to provide related services. In addition, § 611.1136 of this chapter provides that service corporations are subject to the regulations governing banks and associations. Nevertheless, although the FCA does not believe it is required, service corporations have been included in the final definition of ''System banks and associations'' in order to eliminate any uncertainty.

Unless specifically excepted, all provisions of part 618 apply to service corporations, and service corporations may offer those services that System banks are authorized to offer. With regard to eligibility criteria, service corporations are authorized to provide services to entities eligible to borrow from the owners of the service corporation, as prescribed in § 618.8005(d). The FCA notes, however, that certain service corporations may be restricted by charter or the special purposes for which they were created from offering related services or certain types of related services. For example, service corporations are prohibited by section 4.25 of the Act from offering insurance. Service corporation charters may also include special restrictions on the manner in which they can offer related services or on the manner in which certain provisions of part 618 of this chapter apply to their offering of services. Finally, the Related Services List may also contain special conditions that affect how a service corporation can offer a related service.

2. *Section 618.8005—Eligibility*

The IBAA commented that the proposed regulation was not clear as to whether marketers and processors would be eligible for related services regardless of whether they were eligible for borrowing. It further stated that if such entities were eligible for related services, but not eligible for borrowing, then the eligibility criteria were too vague and ambiguous. The IBAA believes that marketers and processors should only be eligible for related services if a debtor-creditor relationship already exists between the entity and a System institution.

In response, the FCA notes that § 618.8005(a) of the proposed regulation provides that Farm Credit banks and associations may offer related services to persons eligible to borrow as defined in § 613.3045 of the regulations, which provides the requirements for on-farm throughput for lending eligibility. Therefore, marketers and processors must be eligible to borrow from a System institution in order to receive related services. On the other hand, the Act does not require that only current borrowers may receive related services (apart from credit life and disability insurance), and the Agency declines to impose such a limitation by regulation. Accordingly, the suggestions regarding the eligibility of marketers and processors were not adopted.

The FCC and two associations recommended that § 618.8005 be revised to enable System banks and associations to provide related services to farm-related businesses and rural homeowners. The FCA believes that a change in the Act is required before farm-related businesses and rural homeowners could be considered eligible recipients of related services. Currently, the Act restricts related services offered by Farm Credit banks and associations to those that are appropriate to on-farm or aquatic operations. Farm-related businesses and rural homeowners who do not have farm or aquatic operations would not be eligible for services that must, by statute, be appropriate to such operations.

Numerous System commenters expressed support for proposed § 618.8005(d), now § 618.8005(e), which authorizes the provision of related services to recipients that would not otherwise meet the requirements of § 618.8005(a) through (c). As proposed, this provision was limited to services provided that were a ''part of or pertained to'' a transaction between an eligible borrower and the recipient of the service. Based on a concern that this language might permit an expansion of related services beyond the Agency's intentions, the language has been modified in the final rule. The rule now states that the service may be provided only if it is ''requested by the eligible

borrower or necessary to the transaction.'' As a result, appraisals, loan servicing, and other services that are necessary to a transaction with an eligible borrower may be provided to any party to the transaction. In situations in which the related service may be useful, but perhaps not necessary, it may be provided to any party to the transaction at the request of the eligible borrower.

The IBAA does not believe that this authority is necessary or justifiable and believes that it constitutes an unwarranted expansion of authorized services. As noted in the preamble to the proposed rule, this provision was included in order to accommodate eligible borrowers who were not able to receive related services directly due to circumstances involving their transactions with non-eligible entities. *See* 59 FR 54402, October 31, 1994. For example, an eligible borrower who needs an appraisal of agricultural real estate in connection with a loan application with a commercial bank or the former Farmers Home Administration (FmHA) is typically precluded from obtaining it, because the commercial bank regulations and FmHA procedures generally require that the eligible borrower's appraisal be procured by the lender. The FCA has determined that the purposes of the Act would be frustrated if eligible borrowers could not receive related services solely because the regulations of other Federal agencies or the transactional requirements with other entities preclude them from directly contracting for the services from System institutions. Further, the FCA has concluded that System institutions are authorized by statute to provide related services for persons eligible to borrow, even if a non-eligible entity is involved in the transaction and may be the party that actually obtains the service on behalf of the person eligible to borrow.

For these reasons, the FCA believes that § 618.8005(e) is necessary in order to ensure that eligible borrowers are able to receive related services and is justified by the Act under factual situations presented to the FCA. The FCA further believes that this provision, as modified in the final rule, ensures that the System will continue to be able to appropriately serve farmers and ranchers as Congress intended.

One of the associations that commented favorably on § 618.8005(e) suggested that this authority could be used in situations in which an intermediary business would be providing a bundle of services that include some offered by System institutions. However, it noted that in some instances it may be difficult if not impossible to trace the end-user of the information and services. Therefore, it urged the FCA to interpret § 618.8005(e) to allow services to be provided to those business entities because the services would ultimately benefit eligible farmers and ranchers and members of the agricultural community. The FCA is unable to interpret § 618.8005(e) to allow related services to be provided in situations in which the transaction and the eligible borrower receiving the services cannot be readily identified as such. Although the FCA recognizes that farmers and agriculture in general may benefit from System institutions being able to provide services to other non-eligible entities that in turn serve agricultural interests, the FCA does not believe that a general benefit to agriculture is sufficient to meet the eligibility requirements of the Act. Therefore, related services may only be provided pursuant to § 618.8005(e) when an identifiable eligible borrower is a party to the same transaction.

In the preamble to the proposed regulation, the FCA noted that banks for cooperatives would continue to be subject to the requirements of section 3.7(b) of the Act and § 613.3120 when providing related services in connection with export and import transactions pursuant to proposed § 618.8005(d), now § 618.8005(e). Subsequent to the approval of the proposed regulation on September 29, 1994, the Farm Credit System Agricultural Export and Risk Management Act (Pub. L. 103–376, October 19, 1994) removed the requirement in section 3.7(b) that a voting stockholder of the bank substantially benefit from services provided in connection with export transactions. The FCC requested that FCA clarify the impact of this statutory amendment in the final rule. The FCA confirms that in light of Pub. L. 103–376, the requirements of 3.7(b) and § 613.3120 of this chapter (that a voting stockholder must substantially benefit from related services) only apply in connection with import transactions.

After considering all of the comments received on § 618.8005, adding new paragraph (d), clarifying the scope of paragraph (e), and addressing legislative amendments, the FCA has adopted § 618.8005 as modified.

3. Section 618.8010—Related Services Authorization Process

Comments and suggestions in this area were received from the ABA, IBAA, SCBA, FCC, and four System associations and included recommendations on the following issues. A large majority of the System institutions commented positively on the changes made to this section, supported the streamlined process, and felt the proposed regulation would reduce regulatory burdens.

The ABA is concerned that the scope of the sample RS List, in *Appendix A* of the proposed rule, exceeds the definition of related services in the proposed regulation. However, it does not reference any specific service or give examples of how it considers the definition to be improperly interpreted. The FCA has concluded that all of the listed related services fall within the definition of related services in proposed and final § 618.8000(b) and within System institutions' statutory authorities.

The ABA also perceived the preamble to the proposed rule as allowing System institutions to provide services that might currently be offered in the System but which had not previously been approved. The FCA did not intend to permit any institution to offer unauthorized services. However, the Agency did not previously approve all types of technical assistance programs which would now come under the definition of related service. Consequently, the proposed regulation included a cautionary statement and a sample list because once the final RS List is published, no service may be offered unless it is on the list. The FCA was not notified during the public comment period of any related service being offered that was not on the sample RS List, thus confirming the Agency's conclusion that all services currently being offered are already on the sample RS List. The only comments received pertaining specifically to the sample RS List focused on how some of the insurance services or special conditions were described on the list. The sample RS List was modified slightly to reflect these suggestions and will be published both as an appendix to the final regulation and in a bookletter subsequent to the finalization of this regulation. (See comments on the RS List at the end of this preamble.)

The ABA commented that no related service should be approved unless the public has at least 60 days to comment on it. Similarly, the IBAA recommended that System institutions be required to file a Notice of Intent, which would state that a related service is going to be offered, in order to allow entities outside the System to object to programs that would place them at a competitive disadvantage. The proposed rule does not require mandatory public comments on all services but allows the FCA to publish new services where appropriate.

While there is no statutory requirement for publication of services or a public notice and comment period, the Agency believes that its evaluation of new services, particularly complex or controversial service proposals, will be aided by public comment. It was for this reason that the FCA published the sample RS List with the proposed regulations. As a result, there is a greater standard of public disclosure than existed previously under the prior approval rule.

However, there may be situations in which public comment is not necessary or beneficial to the safety and soundness of the System and may impose a burden on System institutions while having little, if any, overriding benefit. An example would be a potential service that is very similar to one already on the RS List. Finally, whether or not services are published for comment, the FCA will continue to measure all new service proposals against the statutory authorities and evaluate them based on safety and soundness concerns. Therefore, the proposed regulation was not changed in response to these comments.

Regarding the commenters' desire for public notice of new services and general concerns over competition between System institutions and other banking institutions, Congress authorized such competition when it enacted the related service provisions in 1971. Competition was a major issue at the time the legislation was enacted and one that was thoroughly debated.[2] Public notice and comment requirements were not placed in the Act, and it would not be appropriate for the FCA to limit the offering of related services under the statute simply because offering the service might have a competitive impact on non-System entities. The FCA's mission of ensuring the safety and soundness of System institutions would preclude it from unnecessarily limiting the System's ability to successfully compete with other entities that share its market.

The SCBA is concerned that the regulation permits System institutions to provide services without effective regulatory oversight and congressional scrutiny. It states that the proposal does far more than reduce regulatory burden and is inconsistent with congressional actions dealing with the System, commercial banks, and savings institutions. To the contrary, the FCA believes that the regulation maintains a distinction between determining whether a new service is authorized under the statute and evaluating the feasibility of implementing a particular program at a particular institution. Elimination of the prior approval of each related service program relieves regulatory burden. This does not eliminate the FCA's responsibility for safety and soundness, but merely shifts oversight to the examination and enforcement processes. Determination of statutory authorities continues to be closely controlled in the approval process and, contrary to the SCBA's comment, is not inconsistent with recent congressional actions.

The FCC and four associations expressed concern that System institutions will be precluded from offering a new service because another institution's proposal was previously denied. They asked for clarification on whether the denial or modification of a service proposed by a specific institution is intended to apply to only that institution or to all institutions. While the FCA's intent to consider new services as Systemwide initiatives was clear, they expressed concern that disapproval of a proposed new service would preclude a resubmission that appropriately addresses the reasons for denial. This result was not intended by the Agency. Approvals or denials are not expected to be specific to the institution making the request. Action on new services will generally be based on the *type of service* proposed and not on *how* the service program will be implemented by a given institution. As long as a particular type of service is authorized, it will be put on the RS List, but it could be limited to certain types of institutions or subject to various conditions to address safety and soundness concerns. Notwithstanding this, disapproval of a particular service request does not preclude approval of a different request at another time. The FCA expects, however, that any subsequent request would satisfactorily address the concerns noted in previous disapprovals. There may also be services that either are not authorized under the statute or present so many inherent risks to safety and soundness that it would be inappropriate for any System institution to provide them.

The FCC also commented that if a request for a new service is denied, the notification of denial should include an explanation for the denial. The FCA agrees. While this was intended to be understood in the proposed regulation, proposed § 618.8010(b)(5) has been modified to clarify this point.

The FCC and three associations commented that the process could be improved by requiring the FCA to immediately notify an institution upon receipt of a related service proposal and provide an FCA contact for future reference. Also, once the FCA determines a proposal is complete, the commenters felt the institution should be notified in writing that the 60-day approval process has begun. This suggestion is consistent with existing FCA practices and administrative processes. The FCA intends to provide immediate notification of receipt of a new service proposal, including a preliminary conclusion as to the completeness of the proposal and when the 60-day period begins. If more information is needed later or complex issues arise, such as requesting the charter of a new organization to provide such services, the FCA may choose to extend this period for another 60 days. Because these actions are already a part of FCA's administrative practices, changes were not made to the proposed regulation.

The FCC recommended that the FCA should notify the applying institution of the results of its actions within the 60-day timeframe for acting on proposed new related services. In addition, the FCC suggested that notice of FCA's decision to other System institutions should occur after written notice is given to the requesting institution. The FCA agrees that notification should be included within the 60-day period and that notice to the requesting institution should occur first; § 618.8010(b)(5) has been modified accordingly.

The SCBA and IBAA commented that a well-defined, narrow list of permissible related services should be included in the final rule to prevent unauthorized, and possibly unsound, services from being provided by System institutions. It believes unauthorized services may not be detected in a timely manner through the examination process. They suggested that, at a minimum, institutions should notify the FCA of their intent to offer these services for the first time. The FCA believes that the ''Related Services List'' attached to the final rule is a well-defined list of permissible related services. Proposed § 618.8010(c)(3) would have required institutions to notify the FCA examination team of their intent to offer a service program within 30 days of implementing a related service already on the RS List. The FCA agrees, however, that a prior notification could be beneficial in preventing an unauthorized and possibly unsafe or unsound service program from being implemented because it would give the examiners an opportunity to discuss a proposed service program with the offering institution prior to implementation.

[2] *See*, Pub. L. 92–181 (Dec. 10, 1971) and its legislative history.

Therefore, the final regulation at § 618.8010(c)(3) has been modified to require notification to the FCA 10 business days *before* an institution may begin to offer a service already on the RS List.

The IBAA and the SCBA commented on the elimination of the prior approval of related service programs, the additional elimination of the prior approval of district and bank policies, and the elimination of the requirement for annual bank reviews of association services. The commenters concluded that elimination of these types of oversight activities jeopardizes the safety and soundness of System institutions and weakens the Agency's monitoring and control over System institutions. They further believe that reliance on the examination process alone is inadequate. The IBAA also commented on the removal of the records requirement in the current regulation at § 618.8000(b)(4).

The FCA does not believe that elimination of the FCA prior approval or the annual bank review function creates significant safety and soundness risks, but rather, that the final regulation eliminates duplicative evaluations of authorities to provide new services. Program risks that are incurred by individual institutions offering related services can be adequately controlled by a number of factors, including: (1) Special conditions placed on the RS List for services raising special concerns; (2) mandatory feasibility analysis prior to offering any related service programs; (3) bank oversight and review through feasibility analyses and certain conditions imposed through general financing agreements (GFAs); (4) notification of the appropriate Office of Examination field office before a service is first offered; and (5) periodic examination of program operations and results by the FCA with appropriate follow-up in exercising its supervisory power as warranted. The final regulation and other existing regulations are adequate to address safety and soundness concerns and provide the FCA with appropriate oversight of the process.

4. Section 618.8015—Policy Guidelines

There were no specific comments received on this section of the proposed regulation, and the final regulation is adopted as proposed.

5. Section 618.8020—Feasibility Requirements

Three System commenters stated that the final rule should recognize that the extent of the feasibility analysis required is dependent on whether or not the service is offered for a profit and the overall risks of the service to the institution. The FCA agrees that the extent of the analysis will vary; however, it does not agree that profitability is the sole determining factor. In fact, it is conceivable that a service that is ''low-priced'' or ''free'' to the recipient would still bear a cost to the institution and would require more extensive analysis to justify offering it. The extent of the analysis should be appropriate to the level of institution involvement and the financial and operational risks in a service.

Four other System commenters urged the FCA to explain in its commentary that the final rule could be interpreted as minimizing the regulatory requirements for offering certain types of services. They conclude that services that are normal and customary activities of institutions in their primary business of lending and leasing should be considered inherently feasible and, therefore, not subject to the regulation. The FCA disagrees with the commenters. Although converting a lending-related activity into a fee service will often prove feasible, this will depend on many factors, including market demand, pricing opportunities, and capital position. The cost benefit analysis required by § 618.8020(b) will enable the institution to determine whether offering a fee service will promote its business objectives.

The ABA commented that it believes that the FCA's approach to meeting the statute's feasibility requirement is flawed because the proposed regulatory language does not offer a definition of feasibility but instead states that feasibility is a function of an overall cost/benefit analysis based on the evaluation of the market, pricing, competition, expected financial returns, operational risks, financial liability and conflicts of interest. The commenter further states that the proposed rule does not address issues of managerial and financial capability to provide a related service, i.e., management structure, employee qualifications, and capital position. Lastly, the commenter recommended that a detailed and specific feasibility determination be required from each institution for each related service to be offered. The IBAA also believes that the feasibility criteria are too loose, but it did not elaborate.

The FCA agrees with the commenters that managerial and financial capabilities ought to be addressed in the feasibility analysis. Although the proposed rule contains various managerial and financial assessments, § 618.8020(b)(1) has been modified to include a specific requirement for an evaluation of the consistency of the program with the institution's capital plan. Section 618.8020(b)(3)(i) continues to require ''[a]n evaluation of the operational costs and risks involved in offering the program, such as management and personnel requirements, training requirements, and capital outlays.'' The recommendation for a detailed and specific feasibility determination is also already reflected in the rule. Section 618.8020 begins with a requirement that an institution document program feasibility for every related service program it provides.

Regarding the criticism that the proposed rule offers no definition of feasibility, the FCA believes that the approach taken is comprehensive and will be effective. The final rule specifies the cost and benefit criteria by which feasibility must be determined. It requires an institution to analyze the program against an array of business factors and to document its conclusion that this analysis demonstrates the program's feasibility.

The IBAA urged that the feasibility analysis include a demonstration that a need for the service exists. The FCA believes that a prudent feasibility analysis would necessarily include an evaluation of the market and a discussion of the need for a particular service. In fact, § 618.8020(b)(2) specifically requires an evaluation of market, pricing and competition issues.

6. Section 618.8025—Feasibility Reviews

The proposed rule reduces the role of the bank when an association is offering a related service. The IBAA believes that more oversight should be maintained because association activity ultimately places the bank and, therefore, the taxpayer at risk.[3] In particular, the commenter believes that there is a danger of a bank simply ''rubber stamping'' programs without giving adequate review of feasibility and, therefore, the proposed rule does not meet the statutory requirement. The FCA disagrees with this conclusion. The statute requires the bank to determine the feasibility of each related service offered by an institution, but it is silent regarding who must do the actual feasibility analysis. The most appropriate persons to do the analysis are the persons who will be providing the service. The bank will then fulfill its oversight duties by verifying that the

[3] The FCA notes that pursuant to section 4.4 and other sections of the Act, the United States is not liable for obligations of System institutions. Thus, there is no direct risk to the taxpayers.

analysis is complete and that the analysis establishes the feasibility of the service. The bank also has considerable supervisory control through regulatory and funding mechanisms such as its GFAs. Furthermore, the FCA will be scrutinizing the banks' reviews and general oversight of association and service corporation operations as a part of the examination function.

The IBAA also believes that the FCA should review the feasibility of programs offered by individual associations to ensure safety and soundness. The FCA agrees with this comment and believes that the proposed and final rules do not indicate otherwise. In fact, the preamble to the proposed rule states that the examination function will evaluate compliance, performance, and safety and soundness. The FCA firmly believes that the ongoing examination function is fully capable of protecting the public and the investor.

One System institution proposed that association boards of directors, rather than the district bank, be given the authority to verify and certify the adequacy of program feasibility and concluded that the FCA could issue a cease and desist order if it later determines that the feasibility analysis for a service is incomplete. The FCA clarifies that association boards already have the authority to verify feasibility. In fact, they are expected to approve the offering of all related services and, by doing so, approve the adequacy of the feasibility analysis. In addition, the FCA does not believe that the commenters suggested approach would fulfill the statutory requirement for bank determination of feasibility.

Three System commenters asked for clarification regarding the feasibility analysis for those services that are currently being offered at the time the final rule becomes effective. They also concluded that if a bank review is only needed on a first-time service, then an institution need not resubmit a feasibility analysis for a service that was previously offered.

The FCA agrees that for those services that are being offered prior to the effective date of the final rule, an institution does not need to resubmit a feasibility analysis. However, for those situations where an institution formerly offered a particular service, but is not currently offering it, § 618.8025 has been modified to require bank review of feasibility for any service that an institution did not offer during the most recently completed business cycle (generally 1 year). In other words, in addition to services never offered before, previously offered but currently inactive services will require bank review of the feasibility analysis.

In summary, proposed § 618.8025(a) was modified to require bank review for any service that an institution will be offering that it did not offer during the most recently completed business cycle. Because service corporations are referenced in the definition of ''System banks and associations,'' § 618.8025(b) has been added to require that, prior to offering a related service for the first time, a service corporation's feasibility analysis must be verified by the owners of the service corporation. If the owners all agree, any one bank with significant ownership interest can be delegated this responsibility.

7. Section 618.8030—Out-of-Territory Related Services

One Farm Credit Bank and two affiliated associations raised concerns about providing related services outside of an institution's chartered lending territory. The proposed regulation at § 618.8030 allows System institutions to provide related services outside of their chartered territories, provided they obtain the consent of at least one FCS bank or association authorized to lend (i.e., direct lender) in that territory. Further, the proposed rule does not distinguish between an institution having the right to invite a third party service provider into its territory or consenting to an unsolicited request to offer out-of-territory services.

The commenters are concerned about the competitive implications of allowing such activities and feel the FCA should impose additional conditions beyond simply receiving the consent of at least one institution. They believe the competition will result because most related services will be purchased in conjunction with a lending relationship, and an institution's opportunity to offer out-of-territory services will be broader than the authority to extend credit out-of-territory. While the bank agrees that requiring the consent of all institutions chartered to serve a given territory could interfere with an institution's right to determine what services it wishes to provide its members, it also believes that the related service regulation should not create an unlevel playing field for System institutions sharing the same geographic territory.

The commenters suggest requiring System institutions that want to offer out-of-territory services to offer such services to all institutions sharing the same territory on the same or equitable terms and conditions. They argue that concern for the System's future well-being justifies this additional burden, which they perceive as minimal. The bank suggests that having authority to offer services outside of a chartered lending territory could have a significant impact. The commenter's suggestion would provide each institution with an equal opportunity to negotiate for a service to be provided in its territory. Institutions could decline to authorize another institution to provide services to its customers on its behalf, but no one institution would be in a position to prevent any other FCS institutions from reaching agreements and providing services to their customers.

The FCA understands the commenter's concerns regarding intra-System competition, but it also notes that related services differ from lending and that services are not always offered in the same manner as loan products. While some intra-System competition for loans exists, System institutions are limited by charter to providing specific types of loans for certain purposes (i.e., short-, intermediate-, or long-term loans). By contrast, intra-System competition is inherent in the way eligibility for related services is determined, because related services can be provided to an entity that is ''eligible to borrow'' from an institution. Thus, for example, both PCAs and FLBAs are authorized to provide services to the same borrowers in their chartered territories.

The Agency has concluded that the commenters proposal does not solve many of the problems associated with the additional competition created by out-of-territory related services. Under the commenter's proposal, the requirement for an opportunity to negotiate for the service could lead to cumbersome, protracted negotiations, could pose more than a minimal burden on System institutions, and would still result in only one institution being required to give its consent for an out-of-territory institution to compete with another institution in the territory.

Notwithstanding that some competition inherently exists in providing related services in a given territory, the Agency recognizes that the provision of related services out-of-territory creates the potential for additional intra-System competition. Thus, the Agency believes that the proposed rule should be modified to address some of the issues raised by the commenters. The final regulation has been modified to limit competition without consent in situations where services are already being provided to borrowers. Final § 618.8030(a) provides that an out-of-territory institution must obtain the consent of all chartered institutions currently offering the same

service in the territory in which the service will be provided.

Consent must be obtained regardless of whether the institution is offering the service itself or through an out-of-territory System institution or a third party. If no institution in the territory is offering the same service that the out-of-territory institution wishes to offer, the out-of-territory institution need only obtain the consent of any one direct lender chartered to serve the territory.

The Agency believes that the final regulation balances the territorial rights of institutions, the rights of institutions to control the manner in which they conduct their business, and the needs of borrowers for related services. If borrowers in a territory already have access to a particular related service, there is no compelling need to allow additional competition from an out-of-territory institution without the consent of the institutions currently offering the same services. Although the Agency believes that this is the most appropriate resolution of the out-of-territory issue, the Agency welcomes additional comments on § 618.8030.

Another comment by the IBAA on out-of-territory related services concerned retaining a requirement in the existing rule that the service provided within the offering (out-of-territory) institution's chartered territory remain the primary component of that institution's services. The comment is grounded in terms of cooperative principles in that a key premise for forming a cooperative is to primarily do business with, and for the benefit of, its own members. While the FCA acknowledges this premise, it believes that decisions on business practices are best left to the membership and local boards of directors, rather than the FCA. The restriction advocated by the IBAA could impair the ability of Farm Credit institutions to meet their customers' needs for related services, particularly when the service in question is unique or not widely available from other sources. It should also be noted that a System bank board is free to impose more stringent requirements for their territory (such as is recommended in the three comment letters) than the minimal ones being set forth by the FCA.

Four System associations commented that the proposed relaxation of the limitations on out-of-territory service offerings should be considered in the context of the FCA's proposed policy statement on ''Non-Exclusive Territories'' (59 FR 17543, April 13, 1994). These associations submitted comments on the proposed policy statement earlier in 1994. The FCA considered all of the comments on the proposed policy statement in drafting § 618.8030 and believes the final rule is an appropriate resolution to related service issues at this time. However, the FCA notes that adoption of a final board policy statement on non-exclusive territories may require future changes to the regulation.

The IBAA expressed safety and soundness concerns about permitting System institutions to expand related service programs beyond the boundaries of their chartered lending territories. It stated that the FCA needs to exert oversight in this area if institutions significantly expand programs in large or distant geographic areas. The IBAA believes that allowing institutions to market services nationwide would contradict current statutory language that requires the FCA to charter institutions to serve specific areas.

There are no geographic restrictions in the Act on the ability of the FCA to issue or amend institution charters. *See*, Act, sections 5.17, 1.3, 2.0, and 2.10. In fact, the Agency has the authority to issue nationwide charters or amend an existing charter to authorize nationwide activities. Further, the regulation requires an appropriate feasibility analysis covering an institution's ability to manage its proposed service program operation in all areas where the program is offered. The examination function will ensure that all institution activities, regardless of where conducted, are conducted in a safe and sound manner. Therefore, the FCA does not agree with the IBAA and has made no changes in response to its comments on this issue.

Section 618.8030(d) has been added in order to address service corporations. A service corporation may provide related services outside of its chartered territory (i.e., the chartered territory of its owners) subject to the requirements of § 618.8030(a)–(c). However, service corporations cannot give consent to an out-of-territory institution to offer services in the service corporation's (or its owners) territory.

B. Subpart B—Member Insurance

1. Section 618.8040—Authorized Insurance Services

The IBAA commented that the proposed regulation allows out-of-territory associations to offer credit or term life and credit disability insurance to any individual who has a borrowing relationship with a System institution, but not necessarily with the bank or association selling the insurance. The IBAA is concerned that this will allow a single institution to sell insurance nationwide and believes that such ''expansion'' should not be allowed because System institutions are chartered to serve specific areas and local farmers. As noted earlier, the FCA has the authority to charter institutions to serve specific territories, which may include nationwide charters. Further, the FCA does not agree that this would result in an expansion of insurance services. The proposed and final rule simply permit System institutions to serve their members' needs without obligating each association to have the ability to offer the insurance products itself.

The IBAA disagreed with the FCA's conclusion that the System should be able to sell spouses credit insurance because a spouse may have a contractual liability for the debt by operation of state law. The basis for its disagreement is that the FCA has not established a need for the System to provide such a service. The FCA notes that the insurance would be sold to the borrower, on the life of the spouse, not sold directly to the spouse. There is no statutory requirement that the FCA establish a need for a service before the System is authorized to offer it. However, when an institution decides to offer a particular related service, as a part of its feasibility analysis, it must evaluate the potential market for that service in the areas in which the service will be offered. The FCA directs the commenters to the preamble to the proposed regulation for supporting discussion on this issue (59 FR 54405, October 31, 1994). No change was made to the final regulation in response to this comment.

The IBAA also commented that, by eliminating the requirement that a debtor-creditor relationship exist for System institutions to provide other insurance products, such as crop insurance, and by allowing ''members'' to be eligible to buy crop insurance, the FCA has exceeded congressional intent by allowing the System to provide insurance to non-System borrowers. The FCA notes that the legislative history of section 4.29 of the Act indicates that the debtor-creditor relationship applies only to credit or term life and credit disability insurance (or similar types) in that this insurance must be ''appropriate to protect the loan commitment in the event of death or disability of the debtors.'' *See* 59 FR 54399, October 31, 1994. Therefore, the debtor-creditor requirement for ''other'' insurance was removed in order to allow System institutions to exercise the full authority granted by the Act. As a result, for ''other'' types of insurance, purchasers need only be eligible to borrow (as with other types of related services).

Because section 4.29 of the Act only authorizes borrowers or members to purchase insurance, the Agency felt it was necessary to define ''member'' in the proposed regulation. The FCA did not intend for the definition of member to be interpreted to mean that persons not eligible to borrow could purchase ''other'' insurance from System institutions. In order to clarify this point, the FCA revised the definition of member in § 618.8040(b)(2) of the final rule to include the phrase ''eligible to borrow.''

2. Section 618.8040(b)(6)

Several commenters asked that the 5-percent limitation on compensation for sale of insurance be removed from the final regulation. One association did not object to the 5-percent limitation for full-time loan officers who also sell insurance as a part of their job. However, the commenter felt this limitation was too restrictive for full-time insurance salespersons and those persons involved in direction or management of insurance sales. The association further believes that such a limitation is not needed because the conflict of interest between loan making and insurance is not present, and it argued that such a limitation would restrict its ability to attract and motivate highly qualified insurance personnel.

The FCA continues to believe that unrestricted incentive compensation based on volume of insurance sales may lead to conflicts of interest or coercion in the case of loan officers and other employees involved in the lending operations of an institution. However, the FCA also recognizes that the potential for conflicts of interest or coercion is significantly less with regard to full-time insurance personnel. The FCA also agrees that in the case of full-time insurance sales personnel, such a limitation could impair an institution's ability to attract the best qualified people to these positions. Accordingly, proposed § 618.8040(b)(6) is modified so that, with respect to full-time insurance personnel or full-time managers and supervisors of insurance departments, the 5-percent limitation only applies to the sale of credit life and similar types of insurance (insurance that pays on a loan or mortgage in the event of death or disability of the debtor).

One commenter suggested that the final regulation should include commentary notes stating that insurance is the only service with regulatory restrictions on employee incentive compensation. The FCA does not believe that this is necessary because the regulatory structure and language make it clear that the restriction on employee incentive compensation applies only to insurance.

C. Public Comments Received on the Sample Related Services List

The FCC commented that under Farm Business Consulting and Cooperative Business Consulting Services, the requirement that institutions must have procedures in place to ''ensure conflicts of interest do not occur between the credit and the business consulting functions'' is too burdensome. The FCC suggested that the special condition should require that institution ''policies address and manage conflicts of interest to reduce risk to the entity by avoiding or disclosing certain conflicts as may be appropriate.'' The FCA recognizes that, as stated, the condition could be onerous. The Agency expects institutions to eliminate conflicts of interest whenever possible and operationally feasible. However, there may be instances when such conflicts cannot be eliminated, but with proper operating procedures, can be managed in such a way as to limit the risk posed to the institution to an acceptable level. Language in the attached RS List was modified to more clearly state this requirement.

Minnesota Mutual commented that the sample RS List did not include two types of insurance services, individual term life and mortgage accidental death insurance, currently offered by System institutions. The FCC also commented that ''Group Term Life Insurance'' should be changed to ''Term Life Insurance'' to conform to section 4.29(a)(1) of the Act. Although the FCA intended that these types of insurance be included within those on the RS List, the list has been modified to more accurately reflect these concerns.

The FCC commented that crop hail insurance and multiple-peril crop insurance should be combined into one category of single- and multiple-peril insurance in order to accommodate other types of single-peril crop insurance that may be available or become available in the future. After researching the legislative history of the 1980 amendments to the Act, the FCA believes that it is appropriate to limit the types of crop insurance that the System could sell to hail and multiple-peril crop insurance as is plainly stated in the Act. Accordingly, the FCA did not make this suggested change to the RS List.

As a final note, a small number of technical changes were made to proposed part 618, subparts A and B, in order to enhance the clarity of the regulations. Technical changes were also made to parts 611 and 620 in order to conform with the regulatory changes in part 618.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 618, and 620 of chapter VI, title 12 of the Code of Federal Regulations are amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003 and 1004.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

§ 611.1125 [Amended]

2. Section 611.1125 is amended by removing the word ''financially'' in paragraph (b)(2).

PART 618—GENERAL PROVISIONS

3. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

§ 618.8030 [Redesignated as 618.8040]

4. In subpart B, § 618.8030 is redesignated as new § 618.8040.

5. Subpart A is revised to read as follows:

Subpart A—Related Services

Sec.

618.8000 Definitions.
618.8005 Eligibility.
618.8010 Related services authorization process.
618.8015 Policy guidelines.
618.8020 Feasibility requirements.

618.8025 Feasibility reviews.
618.8030 Out-of-territory related services.

Subpart A—Related Services

§ 618.8000 Definitions.

For the purposes of this subpart, the following definitions shall apply:

(a) *Program* means the method or procedures used to deliver a related service. This distinguishes the particulars of how a related service will be provided from the type of activity or concept.

(b) *Related service* means any service or type of activity provided by a System bank or association that is appropriate to the recipient's on-farm, aquatic, or cooperative operations, including control of related financial matters. The term ''related service'' includes, but is not limited to, technical assistance, financial assistance, financially related services and insurance, but does not include lending or leasing activities.

(c) *System banks and associations* means Farm Credit Banks, agricultural credit banks, banks for cooperatives, agricultural credit associations, production credit associations, Federal land bank associations, Federal land credit associations, and service corporations formed pursuant to section 4.25 of the Act.

§ 618.8005 Eligibility.

(a) Farm Credit Banks and associations may offer related services to persons eligible to borrow as defined in §§ 613.3010, 613.3020 (a)(1), (a)(2), (b), and 613.3045 of this chapter.

(b) Banks for cooperatives may offer related services to entities eligible to borrow as defined in §§ 613.3110 and 613.3120 of this chapter.

(c) Agricultural credit banks may offer related services appropriate to on-farm and aquatic operations of persons eligible to borrow specified in paragraph (a) of this section and may offer related services appropriate to cooperative operations of entities eligible to borrow as specified in paragraph (b) of this section.

(d) Service corporations formed pursuant to section 4.25 of the Act may offer related services to persons eligible to borrow from the owners of the service corporation, pursuant to paragraphs (a), (b), (c), and (e) of this section.

(e) System banks and associations may provide related services to recipients that do not otherwise meet the requirements of this section in connection with loan applications, loan servicing, and other transactions between these recipients and persons eligible to borrow as defined in paragraphs (a), (b), or (c) of this section, as long as the service provided is requested by an eligible borrower or necessary to the transaction between the parties. Such services include, but are not limited to, fee appraisals of agricultural assets provided to any Federal agency, commercial banks, and other lenders.

§ 618.8010 Related services authorization process.

(a) *Authorities.* System banks and associations may only offer related services that meet the criteria specified in this regulation and are authorized by the FCA.

(b) *New service proposals.* (1) A System bank or association that proposes or intends to offer a related service that the FCA has not previously authorized must submit to the FCA, in writing, a proposal that includes a description of the service, a statement of how it meets the regulatory definition of ''related services'' in § 618.8000(b), and the risk analysis cited in § 618.8020(b)(3). The FCA will evaluate the proposed service based on the information submitted, and may also consider whether there are extenuating circumstances or other compelling reasons that justify the proposed service or support a determination that the service is not authorized. This evaluation will focus primarily on Systemwide issues rather than on institution or program-specific factors.

(2) When authorizing a proposed related service, at its discretion, the FCA may impose special conditions or limitations on any related service or program to offer a related service.

(3) At its discretion the FCA may, at any time during its evaluation of a proposed related service, publish the proposed related service in the **Federal Register** for public comment.

(4) Within 60 days of the FCA receiving a completed proposal, including any additional information the FCA may require, the FCA will act on the request to authorize a new service. The FCA shall approve the request, deny the request, or publish the service for public comment in the **Federal Register**. For good cause and prior to the expiration of the 60 days, the FCA may extend this period for an additional 60 days.

(5) Within the time period established in paragraph (b)(4) of this section, the FCA shall notify the requesting institution of its actions. Following notification of the requesting institution, the FCA will notify all System banks and associations of its determination on the proposed service by bookletter or other means. If a service is not authorized, the reasons for denial will be included in the notifications to the System and the requesting institution.

(c) *Previously authorized services.* (1) For related services that have been authorized by the FCA, any System bank or association may develop a program and subsequently offer the related service to eligible recipients, subject to any special conditions or institutional limits placed by the FCA. These programs will be subject to review and evaluation during the examination and enforcement process.

(2) The FCA shall make available to all System banks and associations a list of such related services (''related services list'' or ''list'') and will update the list in accordance with paragraph (b)(5) of this section. The list will contain the following:

(i) A description of each related service; and

(ii) The types of institutions authorized to offer each type of related service;

(iii) Identification of any special conditions on how the related service may be offered. The special conditions and description of the service will be fully detailed in FCA's notice to System institutions under paragraph (b)(5) of this section.

(3) At least 10 business days prior to implementing a related service program already on the list, the System bank or association must notify the FCA Office of Examination field office responsible for examining that institution in writing and provide it with a description of the proposed related service program.

§ 618.8015 Policy guidelines.

(a) The board of directors of each System bank or association providing related services must adopt a policy addressing related services. The policy shall include clearly stated purposes, objectives, and operating parameters for offering related services and a requirement that each service offered be consistent with the institution's business plan and long-term strategic goals. Such policy shall also be subject to review under an appropriate internal control policy.

(b) All related services must be offered to recipients on an optional basis. If the institution requires a related service as a condition to borrow, it must inform the recipient that the related service can be obtained from the institution or from any other person or entity offering the same or similar related services.

(c) All fees for related services must be separately identified from loan interest charges and disclosed to the recipient of the service prior to providing or implementing the service.

§ 618.8020 Feasibility requirements.

For every related service program a System bank or association provides, it must document program feasibility. The feasibility analysis shall include the following:

(a) Support for the determination that the related service is authorized; and

(b) An overall cost-benefit analysis that demonstrates program feasibility, taking into consideration the following items:

(1) An analysis of how the program relates to or promotes the institution's business plan and strategic goals, and whether offering the service is consistent with the long-term goals described in its capital plan;

(2) An analysis of the expected financial returns of the program which, at a minimum, must include an evaluation of market, pricing, competition issues, and expected profitability. This analysis should include an explanation of how the program will contribute to the overall financial health of the institution; and

(3) An analysis of the risk in the program, including:

(i) An evaluation of the operational costs and risks involved in offering the program, such as management and personnel requirements, training requirements, and capital outlays;

(ii) An evaluation of the financial liability that may be incurred as a result of offering the program and any insurance or other measures that are necessary to minimize these risks; and

(iii) An evaluation of the conflicts of interest, whether real or perceived, that may arise as a result of offering the program and any steps that are necessary to eliminate or appropriately manage these conflicts.

§ 618.8025 Feasibility reviews.

(a) Prior to an association offering a related service program for the first time, the board of directors of the funding bank must verify that the association has performed a feasibility analysis pursuant to § 618.8020. The bank review is limited to a determination that the feasibility analysis is complete and that the analysis establishes that it is feasible for the association to provide the program. Any conclusion by the bank that the feasibility analysis is incomplete or fails to demonstrate program feasibility must be fully supported and communicated to the association in writing within 60 days of its submission to the bank.

(b) Prior to a service corporation offering a service for the first time or offering a service that it did not offer during the most recently completed business cycle (generally 1 year), the owners of the service corporation must verify that the service corporation has performed a feasibility analysis pursuant to § 618.8020. If the owners all agree, one bank with a significant ownership interest can be delegated this responsibility.

§ 618.8030 Out-of-territory related services.

(a) System banks and associations may offer related services outside their chartered territories subject to the following conditions:

(1) The System bank or association obtains consent from all chartered institutions currently offering the same type of service in the territory in which the service is to be provided; or

(2) If no System bank or association is currently offering the same type of service in the territory, then the out-of-territory institution must obtain the consent of at least one direct lender institution chartered in the territory in which the related service is to be provided.

(3) The consent obtained pursuant to paragraphs (a)(1) and (a)(2) of this section shall be in the form of a written agreement with specific terms and conditions including timeframes.

(b) System banks and associations providing out-of-territory services must fulfill all requirements of subparts A and B of this part 618.

(c) An institution that consents to another bank or association providing a related service in its chartered territory must meet the requirements of this section, but need not comply with the other requirements of subparts A and B of this part 618, unless the program consented to imposes a financial obligation on the consenting institution. If a financial obligation exists, then the consenting institution must comply with §§ 618.8015, 618.8020 and 618.8025.

(d) Service corporations must follow the requirements of this section in offering related services out-of-territory. A service corporation cannot consent to an out-of-territory institution providing services in its chartered territory.

6. Newly designated § 618.8040 is amended by revising paragraph (b)(1); by removing paragraph (b)(10); by redesignating existing paragraphs (b)(2) through (b)(9) as new paragraphs (b)(3) through (b)(10); by adding a new paragraph (b)(2); by removing the reference ''§ 618.8030(b)(3)(i)'' and adding in its place, the reference ''§ 618.8040(b)(4)(i)'' in newly designated paragraph (b)(3); and by revising newly designated (b)(6) to read as follows:

Subpart B—Member Insurance

§ 618.8040 Authorized insurance services.

* * * * *

(b) Bank and association board policies governing the provision of member insurance programs shall be established within the following general guidelines:

(1) A System bank or association may provide credit or term-life or credit-disability insurance only to persons who have a loan or lease with any System bank or association, without regard to whether such institution is the provider. Term-life insurance coverage may continue after the loan has been repaid or the lease terminated, provided the member can reasonably be expected to borrow again within 2 years, and provided the continuation of insurance is not contrary to state law.

(2) A debtor-creditor relationship is not required for the sale of other insurance specified in paragraph (a) of this section, as long as purchasers are members of a System bank or association. For the purposes of this section, ''member'' means someone eligible to borrow who is a stockholder or participation certificate holder and who acquired stock or participation certificates to obtain a loan, for investment purposes, or to qualify for other services of the association or bank.

* * * * *

(6) Bank and association personnel shall not benefit from insurance sales by receipt of commissions or gifts from underwriting insurance companies. However, employees may participate in an incentive plan under which incentive compensation is provided based on the sale of insurance.

(i) In any single year, for all employees except full-time insurance personnel or full-time supervisors or managers of insurance departments, incentive compensation attributable to sales of all types of insurance cannot exceed an amount equivalent to 5 percent of the recipient's annual base salary.

(ii) In any single year, for full-time insurance personnel and full-time supervisors and managers of insurance departments, incentive compensation for sales of credit life and similar types of insurance (i.e. insurance that pays on a loan or mortgage upon the death or disability of the debtor) cannot exceed an amount equivalent to 5 percent of the recipient's annual base salary.

(iii) No incentive compensation limit applies to sales of other insurance (crop, title, etc.) by full-time insurance personnel or full-time supervisors or managers of insurance departments.

* * * * *

PART 620—DISCLOSURE TO SHAREHOLDERS

7. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa-11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

§ 620.5 [Amended]

8. Section 620.5 is amended by removing the word ''financial'' and adding in its place, the word ''related'' each place it appears in paragraph (a)(3).

Dated: June 26, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

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APPENDIX A (TO THE PREAMBLE)--RELATED SERVICES LIST[1]

Authorized Institutions	Type of Service	Description[2]	Special Conditions
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA, SC	Estate Planning Service	Providing information and assistance concerning development of estate plans. Does not include providing legal counsel or advice or executing the estate planning documents.	
ACB, FCB, BC, ACA, PCA, FLBA, FLCA, SC	Fee Appraisal Service	Providing real and personal property appraisals and evaluations. (Note: appraisals done in conjunction with making or servicing System loans are not considered related services for the purpose of this regulation.)	
ACB, FCB, BC, ACA, PCA, FLBA, FLCA, SC	Recordkeeping Service (including Agrifax®)	Providing record keeping systems tailored to recipients' needs.	
ACB, FCB, BC, ACA, PCA, FLBA, FLCA, SC	Tax Planning and Preparation	Preparing tax returns and assisting recipients in understanding tax implications of alternative management decisions and strategies.	
ACB (Title 1 and II), FCB, ACA, PCA, FLBA, FLCA, SC	Farm Business Consulting	Assisting with business planning for on-farm or aquatic operations. Includes such activities as assisting individuals in defining business goals, identifying management problems, and formulating or analyzing alternative strategies for achieving goals. Institution personnel may not be involved in making management decisions.	Institutions must have procedures in place to eliminate or, where appropriate, effectively manage conflicts of interest between the credit and business consulting functions.
ACB (Title III), BC, SC	Cooperative Business Consulting	Providing consulting services to cooperatives or other eligible recipients to assist management and directors in making business decisions. May include educational seminars, development of computer services, business analysis, feasibility studies, and activity coordination (e.g., coordination of activities on mergers or formation of joint ventures). Institution personnel may not be involved in making management decisions.	Institutions must have procedures in place to eliminate or, where appropriate, effectively manage conflicts of interest between the credit and business consulting functions.
ACB (Title III), BC	Foreign Currency Exchange	Providing foreign currency exchange services necessary to individual transactions that may be financed under Title III, section 3.7(b) of the Farm Credit Act of 1971, as amended.	Subject to the criteria under 12 CFR 614.4900.
ACB (Title III), BC	Financial Risk Management for Customers	Providing risk management products that enable customers to hedge interest rate risk inherent in their balance sheets. Limited to the following derivative products: • Interest rate swaps, caps, collars and floors; • Forward rate agreements; and • Exchange-traded and over-the-counter interest rate options on eligible interest rate futures contracts	(1) Interest rate swaps should be included with the borrower's total debt when calculating lending limits under 12 CFR part 614, subpart J. For swaps where the bank keeps an offsetting position, it must include the credit risk of the swaps with the borrower's total debt when calculating lending limits.

APPENDIX A (TO THE PREAMBLE)--RELATED SERVICES LIST[1]

Authorized Institutions	Type of Service	Description[2]	Special Conditions
ACB (Title III), BC	Financial Risk Management for Customers (Cont'd)	(Products may be offered as part of loan packages or as stand-alone hedging tools.)	Credit limits for each counter-party should be determined by reviewing the potential magnitude of adverse payment increases over the life of the swap. (2) Financial risk management programs are subject to annual audits by a Certified Public Accountant.
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Credit Life Insurance, Mortgage Life Insurance, or Mortgage Accidental Death Insurance	Coverage that pays off or reduces an outstanding loan or mortgage in the event of the insured's death.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Term Life Insurance	Group or individual term life insurance coverage that is renewable at the end of the term.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Credit Disability and Accident Insurance or Mortgage Disability Insurance	Insurance that provides for loan or mortgage payments, or some degree of income protection, if the insured is disabled.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Hospital Income Insurance	Insurance that provides a specified amount of income while the insured is hospitalized. A form of credit disability insurance, and subject to the debtor-creditor requirement.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Multiple-Peril Crop Insurance (including insurance provided by the Federal Crop Insurance Corporation)	Insurance covering hazards incident to the growing and storage of crops.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Crop Hail Insurance	Insurance providing protection against damage or loss of crops due to hail or certain other named perils.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Hay (or Other Crop) Fire Insurance	Insurance that covers loss of hay or other crops due to fire.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Title Insurance	Insurance against loss or damage resulting from defects or failure of title or from the enforcement of liens existing against title at the time of the insurance.	

1. The RS List is included as an attachment to this Federal Register document for informational purposes only.

2. For services added to the RS List after the effective date of the attached regulation at 12 CFR part 618, a more detailed explanation of the description and special conditions can be found in the notification to all System institutions required by § 618.8010(b)(5).

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