

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**.

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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).