

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