

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.<sup>3</sup> 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

<sup>3</sup> 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.