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