May 4, 2005

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention Docket No. 2003-67

Re: Request for Burden Reduction Recommendations; Money Laundering, Safety and Soundness and Securities Rules; Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA")

Dear Sir or Madam:

USAA Federal Savings Bank ("USAA FSB") appreciates the opportunity to comment on the Interim Rule of the Office of the Thrift Supervision (OTS), implementing regulatory burden reductions under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). We applaud the efforts of the OTS to reduce regulatory burden and remove requirements that are unnecessary for the safe and sound supervision of the institutions it regulates. We believe that eliminating unnecessary regulations and clarifying others will free up funds for thrifts to better serve their customers' financial needs and invest in their communities, and focus scarce regulatory resources where they will be most effective. The purpose of our comments is to further those objectives with respect to certain specific points on which the OTS has solicited comments.

1. Bank Secrecy Act Compliance / Reports of Crimes or Suspected Crimes.

The current system of reporting suspicious activity is not working. Suspicious Activity Report (SAR) filings have increased exponentially since 1996, as financial institutions fear criminal penalties and the associated reputational risk that may result from a supposed "zero tolerance" approach to anti-money laundering (AML) compliance that is held by regulators. Institutions have responded by moving to a defensive SAR filing approach in response to the lack of clear standards for when a SAR should be filed. Although guidelines are in place, these guidelines are not clear and are not consistently applied among examiners.

Financial regulatory agencies need to devise a system in which financial institutions provide quality information that will help FinCEN and law enforcement officials in their efforts to combat money laundering and terrorist financing. In keeping with this, Agencies should develop "safe harbor" regulations that will guide these practices and reduce the need for defensive filings. This safe harbor language would be useful when there is a question by examiners or law enforcement on whether or not a

SAR should have been filed. The safe harbor would create minimum standards, and institutions that follow these standards would be deemed in compliance.

The five year record retention requirement for a SAR and the supporting documentation is excessive and burdensome on institutions. The time period should be shortened to two years as this should be adequate time for matters reported in SARs to come to the attention of law enforcement officials and for prosecution to be initiated, where appropriate. Additionally, the reporting threshold where a suspect can be identified should be increased to $25,000, as the number of reports for matters between $5,000 and $25,000 is very large, the regulatory agencies cannot keep up with the current volume of SARs filings, and law enforcement officials prosecute very few cases for amounts less than $25,000. Moreover, the reporting period in cases where a suspect is identified should be increased from 30 to 60 days, as 60 days is required in all cases to perform an adequate investigation, reach a conclusion whether a SAR is required, prepare the SAR and file it. Regulatory agencies cannot keep up with the current SAR filing volume so the shorter filing timeframe is not resulting in quicker referrals to law enforcement officials and prompt investigation and prosecution.

The current Currency Transaction Report (CTR) threshold of $10,000 should also be increased to $25,000, as it was established almost forty years ago and has not been adjusted for inflation.

2. Frequency of Safety and Soundness Examination.

On-site examinations are a tremendous time commitment and result in significant disruption to the bank. For example, USAA FSB received a 110 page PERK in connection with its most recent safety and soundness/compliance examination. Three people were committed full-time to administer the response to this document (and three others on a part-time basis), and the process took three weeks. 280 person hours were required to administer the response to the PERK, and this does not include the time spent by departments that actually responded to individual questions. Once the on-site examination process begins, it lasts an average of five weeks, and staff must be constantly available to respond to examiner questions. When the time responding to the PERK is combined with the examination time, a total of eight weeks, or one-sixth of the entire year, is consumed by the on-site examination process.

The regulatory agencies should use a risk-based approach when determining examination frequency that results in less frequent on-site examinations for well managed, well capitalized institutions. For example, well managed, well capitalized institutions should only be examined on-site every 18 to 24 months. This frequency will ensure the safety of the FDIC insurance fund while minimizing the inconvenience that is imposed by on-site examinations. Alternatively, the annual examination requirement should be satisfied with a less burdensome, offsite examination process that utilizes information already supplied through existing reporting requirements. For example, an offsite safety and soundness evaluation could be performed utilizing information already supplied in the Thrift Financial Report.

3. Transactions With Affiliates.

The requirement to prove affiliate arrangements are conducted on terms and under circumstances “that are substantially the same as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies” is extremely burdensome. The process of establishing comparable terms and circumstances (hereafter “Comping”) is very difficult in many cases, and even impossible in others. It is often the case that identical services are not offered by third parties. 371c–1 (a)(1)(b) on its face appears

to provide relief where a comparable transaction is not available, however, in practice it offers little relief. 371c–1 (a)(1)(b) requires the thrift to prove that it, in good faith, would pay a non-affiliated third party an equivalent fee for similar services. However, in order to respond to an inquiry concerning a thrift's reliance on a 371c–1 (a)(1)(b), the same amount of supporting documentation on the fees and services would be necessary to prove that the fees are not excessive. This would be the only way to credibly support an assertion that a thrift is prepared to pay a third party an equivalent amount.

In light of this, there should be an exception to the Comping requirement, or alternatively, a reduced burden of proof required if both the parent and the financial institution subsidiary are rated as financially sound, and the bank is CAMELS 1 or 2 rated. If there is minimal risk to the FDIC insurance fund (as would be the case for a sound company), the terms of the affiliate transactions should be irrelevant. Alternatively, institutions should be relieved of the Comping requirement if the total fees paid to the affiliate do not exceed the amount that could be paid to the affiliate in dividends.

4. Lending and Investment – Additional Safety and Soundness Limitations.

The credit enhancement requirement on mortgage and home equity loans that exceed a 90% loan-to-value (LTV) ratio should be eliminated as it create a competitive disadvantage. The cost of the credit enhancement drives customers that qualify for higher LTV loans to lenders that do not have such a requirement and can offer lower-cost products. These non-bank lenders are able to offer customers with superior credit profiles more attractive and more flexible financing options.

The recordkeeping requirement and associated board for loans that exceed certain LTV limits reporting is burdensome and should be eliminated. Additionally, these requirements increase overhead costs which impacts loan pricing and creates a competitive disadvantage. The tracking and reporting requirement is difficult because in practice this information is captured at the account or customer level, and the regulation requires comparison of loans across systems, and aggregation of loans based on collateral. Any safety and soundness concerns created by high LTV loans can be adequately addressed through underwriting policies which ensure that borrowers have the capacity to service such loans.

If you have any further questions or comments on this matter, please do not hesitate to contact me at (210) 498-6001.

Sincerely,

USAA Federal Savings Bank

/s/

Mark A. Ferguson
Assistant Vice President & Compliance Officer