October 15, 2009

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW.
Washington, DC 20552

Attn: OTS – 2009-0015

Robert E. Feldman
Executive Secretary
Attn: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

Re: Notice of Proposed Rulemaking and Request for Public Comment OTS RIN 1550-AC36; FDIC RIN 3064-AD48

Ladies and Gentlemen:

On June 12, 2009, the Financial Accounting Standards Board (the "FASB") adopted Statement of Financial Accounting Standards Nos. 166 and 167. FAS 166 and 167 amend Statements of Financial Accounting Standards No. 140 ("FAS 140") and FASB Interpretation No. 46R "FIN 46R" and will cause assets sold by a depository institution in a securitization transaction using qualified special purpose entities ("QSPEs") to be consolidated on the institution's balance sheet. These modifications to generally accepted accounting principles (referred to in the referenced Notice of Proposed Rulemaking as the "2009 GAAP modifications") will become effective on January 1, 2010. The federal bank regulatory agencies explain that the 2009 GAAP modifications will increase an affected depository institution's risk-weighted assets, which will result in an increase in its risk-based capital requirements. The agencies have asked for comments to certain questions and for other comments.

USAA Federal Savings Bank ("USAA") appreciates the opportunity to provide comments concerning the referenced Notice of Proposed Rulemaking (the "NPR"). USAA concluded that the 2009 GAAP modifications require it to consolidate the entire outstanding balances of the USAA auto owner trusts and credit card conduits on its balance sheet beginning January 1, 2010. Consequently, on January 1, 2010, USAA's balance sheet will show significant increases in assets and the debt associated with those assets. For this reason, USAA has a recommendation regarding the capital treatment and reporting of the consolidated assets and an observation about the unintended consequences of the 2009 GAAP modifications on the consumer loan limit for federal savings associations. Following these issues, USAA addresses each of the questions presented by your agencies.

USAA Urges Presentation of Securitized Assets without Assigned Regulatory Capital. Although the 2009 GAAP modifications eliminate QSPEs, USAA's securitizations use legal trusts to transfer financial assets to entities and isolate them from USAA and its creditors (i.e., bankruptcy remote entities and the so-called "isolation test"). The portion held by third parties (through beneficial interests of the related securities) does not subject USAA to the same market risks (*e.g.,* interest rate, liquidity and credit) as portfolio loans or loans that are not sold to a QSPE and isolated in a securitization transaction. These risks are borne by the holders of the securities backed by the assets in the trusts. USAA only is subject to the credit risks associated with owning the retained and residual interests in the trusts.

USAA recommends that all assets in QSPEs that have met the isolation test, along with the corresponding amounts payable to security holders (excluding the credit loss reserve), should be excluded from the regulatory capital requirements.

Regulatory capital should be maintained only for those assets for which the financial institution retains a residual or retained interest and those that are subject to claims of creditors in a receivership.

Unintended Consequences and the 35% Consumer Loan Limit. Federal savings associations are subject to a statutory requirement limiting the amount of consumer loans to 35% of the amount of total assets. The 2009 GAAP modifications will cause a federal savings association to consolidate on its balance sheet all the outstanding consumer loans that support a securitization. As a result, a federal savings association that had sold a substantial amount of consumer loans relative to total assets may exceed the statutory limitation if it retains the servicing. In this event, the institution cannot sell the assets, and avoid consolidation, because the assets already have been sold. USAA believes that these assets should not be included in calculation of the limitation. Otherwise, the 35% limitation would limit the amount of auto and other consumer loans we are able to offer to our members. Clearly, this was not intended when the FASB adopted these accounting changes.

Question 1. *Which types of VIEs will banking organizations have to consolidate onto their balance sheets due to the 2009 GAAP modifications, which types are not expected to be subject to consolidation, and why? Which types are likely to be restructured to avoid consolidation?*

USAA Response: Banking organizations will be required to consolidate: (i) revolving securitizations structured as master trusts that are used to securitize credit card assets originated by the depository institution when the originating depository institution retains subordinate notes, residual interests, and servicing responsibilities and (ii) term loan securitizations structured as owner trusts or grantor trusts that are used to securitize automobile or other consumer loans originated by the depository institution when the originating institution retains subordinate notes, residual interests, and servicing responsibilities.

It is unlikely these securitization structures can be restructured to avoid consolidation without giving up the ability to service the loans. USAA does not intend to release the ability to service its loans because it values the unique relationships with its member customers. This relationship contributes to our below industry averages for delinquency and charge-offs. Even if USAA wanted to release the servicing, it may not be feasible or practical under the present securitization structures. If an institution is unable to raise extra capital to support the consolidation of the assets, it may be forced to fire sell the retained and residual assets related to the securitized loans that will be consolidated on its balance sheet to avoid consolidation under the 2009 GAAP modifications.

Question 2. *Are there features and characteristics of securitization transactions or other transactions with VIEs, other SPEs, or other entities that are more or less likely to elicit banking organizations' provision of non-contractual (implicit) support under stressed or other circumstances due to reputational risk, business model, or other reasons? Commenters should describe such features and characteristics and the methods of support that may be provided. The agencies are particularly interested in comments regarding credit card securitizations, structured investment vehicles, money market funds, hedge funds, and other entities that are likely beneficiaries of non-contractual support.*

USAA Response: There are no particular features or characteristics that make it more or less likely that the depository institution sponsoring the securitization will provide non-contractual support (*i.e.,* implicit recourse) under stressed or other circumstances. The recent instances of non-contractual support described in the proposal involved revolving securitization structures and occurred in during a time of virtually unprecedented economic turmoil and uncertainty. USAA is not aware of any incidents of non-contractual support provided for term securitizations.

The bank regulatory agencies propose that assets sold by a depository institution in a securitization, when consolidated on the balance sheet of a depository institution as a result of the 2009 GAAP modifications, immediately become subject to risk weighted capital requirements. This proposal is based upon the assumption that the institution will provide non-contractual support to the securitization under stressed or other circumstances. As described in the response to Question 3 below, the assumption will lead to unintended adverse consequences, including a dramatic increase in the cost of capital and a decrease in the ability to lend to consumers.

The bank regulatory agencies should adopt an objective standard to determine when it is probable that a particular depository institution will need to provide non-contractual support to the structure. The agencies could require the institution to provide risk-based capital for the securitized assets consolidated on the institution's balance sheet when that standard is met. Objective standards for the financial condition of a particular securitization structure exist. For example, the amount of excess cash flow[1] is measured and reported in monthly statements prepared by the servicer. Working with the rating agencies, the federal banking agencies could establish monthly excess cash flow thresholds that, if not met, would trigger risk-weighting of the securitized assets and resulting additional capital requirements. The federal banking agencies could also impose risk-weighting and capital requirements if senior or subordinate securities issued in a securitization are significantly downgraded by rating agencies.

Question 3. *What effect will the 2009 GAAP modifications have on banking organizations' financial positions, lending, and activities? How will the modifications impact lending typically financed by securitization and lending in general? How may the modifications affect the financial markets? What proportion of the impact is related to regulatory capital requirements? Commenters should provide specific responses and supporting data.*

[1] Excess cash flow is the cash available after the monthly servicing and other expenses of the securitization and the monthly interest and principal payments due on debt issued in the securitization are paid.

USAA Response: The agencies propose that securitized loans consolidated pursuant to the 2009 GAAP modifications be included in the determination of the institution's risk-based capital requirements, at the 100% risk weighting, without regard to the structural or contractual credit or liquidity support provided by the securitization structure. The 2009 GAAP modifications also will force a depository institution to establish loan loss reserves for the consolidated loans. The increase in capital and loss reserves will create an increased demand for available capital and likely will increase the cost of the capital. This proposal will significantly impact a depository institution's financial condition, lending, and other activities because it will significantly increase capital and loan loss requirements.

Conversely, securitizations increase significantly the availability of funds for consumer lending by increasing an institution's liquidity and eliminating the required capital and loan losses for the securitized loans.

Question 4. *As is generally the case with respect to changes in accounting rules, the 2009 GAAP modifications would immediately affect banking organizations' capital requirements. The agencies specifically request comment on the impact of immediate application of the 2009 GAAP modifications on the regulatory capital requirements of banking organizations that were not included in the SCAP* [Supervisory Capital Assessment Program]. *In light of the potential impact at this point in the economic cycle of the 2009 GAAP modifications on regulatory capital requirements, the agencies solicit comment on whether there are significant costs and burdens (or benefits) associated with immediate application of the 2009 GAAP modifications to regulatory capital requirements. If there are significant costs and burdens, or other relevant considerations, should the agencies consider a phase-in of the capital requirements that would result from the 2009 GAAP modifications? Commenters should provide specific and detailed rationales and supporting evidence and data to support their positions.*

Additionally, if a phase-in of the impact of the GAAP modifications is appropriate, what type of phase-in should be considered? For example, would a phase-in over the course of a four-quarter period, as described below, for transactions entered into on or prior to December 31, 2009, reduce costs or burdens without reducing benefits?

USAA Response: As discussed in the response to Question 2, the agencies should consider alternatives to an automatic 100% risk-weighting of assets consolidated pursuant to the 2009 GAAP modifications. In addition, the agencies should implement a phase-in period for the capital requirements attributable to assets in existing securitization structures that will be consolidated as of January 1, 2010. Further, to avoid significant increases in the cost of consumer credit and reductions in availability, the agencies also should apply the phase-in period to assets originated and securitized after January 2010 for a reasonable period of time.

The proposal suggests a one year phase-in period, which will be applicable only to consolidated assets that are part of existing structures. USAA recommends a three year phase-in period, with no increased capital requirement the first year, a 50% increased capital requirement by the end of the second year and a full 100% increased capital requirement by the end of the phase in period. A three year period will give institutions more time to increase their capital positions and restructure their sources of funding in a prudent, cost effective manner causing less disruption in the credit markets.

Question 5. *The agencies request comment on all aspects of this proposed rule, including the proposal to remove the exclusion of consolidated ABCP* [asset-backed commercial paper] *program assets from risk-weighted assets under the risk-based capital rules, the proposed reservation of authority provisions, and the regulatory capital treatment that would result from the 2009 GAAP modifications absent changes to the agencies' regulatory capital requirements.*

USAA Response: The sponsors of the asset backed commercial paper conduits used by USAA advised us that they expect significant pricing increases after the 2009 GAAP modifications take effect. As a result, we expect reduced liquidity and increased funding costs. The reduced funding and increased capital costs will make consumer lending less available and more expensive.

Question 6. *Does this proposal raise competitive equity concerns with respect to accounting and regulatory capital treatments in other jurisdictions or with respect to international accounting standards?*

USAA Response: Until the differences between GAAP and international accounting standards are eliminated, the proposal will create competitive disadvantages for U.S. depository institutions that are subject to the 2009 GAAP modifications. The three year phase-in period we recommend will provide some more time to reconcile the accounting standards among different jurisdictions.

Question 7. *Among the structures that likely will be consolidated under the 2009 GAAP modifications, for which types, if any, should the agencies consider assessing a different risk-based capital requirement than the capital treatment that will result from the implementation of the modifications? How are commenters' views influenced by proposals for reforming the securitization markets that require securitizers to retain a percentage of the credit risk on any asset that is transferred, sold or conveyed through a securitization? Commenters should provide a detailed explanation and supporting empirical analysis of why the features and characteristics of these structure types merit an alternative treatment, how the risks of the structures should be measured, and what an appropriate alternative capital treatment would be. Responses should also discuss in detail with supporting evidence how such different capital treatment may or may not give rise to capital arbitrage opportunities.*

USAA Response: A typical term securitization of motor vehicle secured consumer loans is structured to support the issuance, at reasonable rates, of senior securities that are protected from credit losses on the loans by: (i) subordinated securities and (ii) a residual interest[2]. This structure enables the senior securities to receive the highest possible rating from rating agencies, which facilitates issuance of those securities at cost effective rates.

Institutions that securitize motor vehicle loans usually retain the residual interest because there generally is a lack of a readily available market for such assets. Expected losses on the loans are embedded in the value of the residual interest when it is booked by the institution. Although the valuation of the residual interest means expected losses have already been removed as a risk to the institution, the institution also holds dollar-for-dollar risk-based capital in the amount of the residual interest. If the institution also retains the subordinate securities, they also are appropriately risk-weighted for capital purposes and the weighting will be dependent upon the rating of the subordinate securities.

The agencies should risk-weight the securitized assets that are consolidated pursuant to the 2009 GAAP modifications to recognize the extremely low risk that the consolidated loans represent to the institution. The credit enhancements in the securitization structure that benefit the holders of the senior securities also protect the institution from loss incurred on the underlying loans. If the consolidated assets are to be subject to risk-weighting at all, these assets should be risk-weighted no higher than the risk-weight assigned to the underlying senior securities. The proposed rules could assign a higher risk-weight on these assets only if an objective measurement shows that the risk of the assets increased significantly.

Many institutions sell mortgage loans to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the "GSEs") and retain the right to service these loans. The 2009 GAAP modifications do not

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[2] Residual interests usually exist in the form of a reserve account and the right to receive excess cash flow.

require consolidation of these loans because the selling institution does not retain any credit risk, either in the form of residual interests or subordinate securities. USAA suggests that any proposal requiring a selling institution to retain credit risk on assets sold in securitizations not be applicable to mortgage loans sold to the GSEs.

Question 8. *Servicers of securitized residential mortgages who participate in the Treasury's Making Home Affordable Program (MHAP) receive certain incentive payments in connection with loans modified under the program. If a structure must be consolidated solely due to loan modifications under MHAP, should these assets be included in the leverage and risk-based capital requirements? Commenters should specify the rationale for an alternative treatment and what an appropriate alternative capital requirement would be.*

USAA Response: We have no comments on this question.

Question 9. *Which features and characteristics of transactions that may not be subject to consolidation after the 2009 GAAP modifications become effective should be subject to risk-based capital requirements as if consolidated in order to more appropriately reflect risk?*

USAA Response: USAA is not aware of any such transactions.

Question 10. *Will securitized loans that remain on the balance sheet be subjected to the same ALLL provisioning process, including applicable loss rates, as similar loans that are not securitized? If the answer is no, please explain. If the answer is yes, how would banking organizations reflect the benefits of risk sharing if investors in securitized, on-balance sheet loans absorb realized credit losses? Commenters should provide quantification of such benefits, and any other effects of loss sharing, wherever possible. Additionally, are there policy alternatives to address any unique challenges the pending change in accounting standards present with regard to the ALLL* *provisioning process including, for example, the current constraint on the amount of provisions that are includible in tier 2 capital? Commenters should provide quantification of the effects of the current limits on the includibility of provisions in tier 2 capital and the extent to which the 2009 GAAP modifications and the changes in regulatory capital requirements proposed in this NPR effect those limits.*

USAA Response: There is consensus among auditors and preparers that it will be necessary to establish ALLL for loans consolidated pursuant to the 2009 GAAP modifications. The result will be a charge to the institution's capital for establishing the loan loss reserves. However, the protections against loss that are built into the securitization structure for the consolidated loans make the GAAP requirement for loan loss reserves unnecessary. At a minimum, the agencies should not limit the amount of ALLL that may be counted as Tier 2 capital.

USAA believes that the recommendations set out in this letter will lessen the impact of the capital implications of the 2009 GAAP modifications and provide a mechanism to allow depository institutions to operate with adequate capital to sustain operations and lend. If you have any questions or need additional information, please contact the undersigned at ron.digiacomo@usaa.com.

Sincerely,

Ron DiGiacomo