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From: Ackroyd, Jeff (DeepGreen Bank) [Jeff.Ackroyd@DeepGreenBank.com]
Sent: Thursday, September 05, 2002 4:50 PM
To: 'regs.comments@ots.treas.gov'
Cc: Ackroyd, Jeff (DeepGreen Bank)
Subject: Attention: 2002-27 Customer Identification Joint NPRM

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September 5, 2002

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

Submitted via electronic mail.

RE: Attention # 2002-27

Dear Sir or Madam,

This letter is submitted on behalf of DeepGreen Bank. DeepGreen Bank appreciates the opportunity to comment on the joint proposed regulation to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.

DeepGreen Bank is a federally chartered and insured savings bank operating on the Internet. We are an affiliate of Third Federal Savings and Loan Association; the nation's largest mutually owned savings and loan association. In 2001, we originated more than \$1 billion in home equity lines of credit to customers nationwide. In addition, we have deposits of over \$400 million in time deposit accounts.

DeepGreen Bank applauds increased diligence in an effort to combat terrorism and other financial-related criminal activity. While the majority of the provisions in the proposed regulations are workable and sound, we feel that there are some items that may be problematic.

§103.121(a)(3) Customer. The proposed regulation defines customer as any person seeking to open a new account, and calls for identification procedures to apply to any customer. This is a sound and practical process in the case of a deposit account, however this definition should not extend to all loan account applicants. DeepGreen Bank feels that it would be unduly burdensome if this definition were extended to all persons seeking to apply for a loan product. Instead, the definition should be clarified to

cover all persons seeking to open a deposit account and all approved loan applicants seeking to close a loan.

§ 103.121(b)(1) General Rule. The proposed rule calls for a Customer Identification Program (CIP) that is, among other things, appropriate for a bank's type of business. DeepGreen Bank applauds the foresight of the joint rulemaking committee in eschewing a one-size-fits all approach. As a non-traditional banking institution, we appreciate the fact that a CIP should be specifically tailored to the unique business model of each institution.

§ 103.121(b)(2) Identity Verification Procedures. Similarly, DeepGreen Bank commends the joint rulemaking committee in specifying that an institution's CIP should be risk-based. As an institution with a limited product offering, we recognize that some products (such as certificates of deposit) inherently carry less risk for money laundering and terrorist financing than others (for example demand deposit accounts). In addition we recognize that current practices intended to thwart other illegal activity such as identity theft will further reduce the risks for terrorist funding threats.

§ 103.121(b)(3) Recordkeeping. Sound record keeping practices can certainly be an important part of a comprehensive risk management program. However, there is one provision of this section that DeepGreen Bank finds to be especially problematic, namely the requirement to collect and retain a photocopy of any document used to positively identify a customer. This portion of the proposal is problematic for to the following reasons:

* The proposed rules claim to be based on practices that are customary and usual in the banking environment. We assert that retaining a copy of a customer's license is neither a customary or usual practice in the banking industry, particularly for secured lending activities. In fact, this practice has been frowned upon in the past because it could, in the event of an unscrupulous lender, lead to Equal Credit Opportunity Act violations. As a result, we feel that this is not something that our customers are accustomed to, and could potentially have a negative impact on our ability to close loans.

* This requirement seems to be a one-size-fits-all approach that is inconsistent with the institution-specific and risk-based spirit that characterizes other sections of the proposal. For example, our loan closings take place in the borrower's home and are facilitated by a registered notary agent. Therefore, in our business model, this requirement is both impractical since few borrowers own photocopy machines, and unnecessary since the borrowers signature is subsequently notarized.

* The effectiveness of this approach can be seen as questionable at best. Presumably the photocopy requirement is in place as an aid in post-incident investigations for any alleged terrorist activity. It is our contention that in such a case the identification document itself

is likely to be fraudulent, and therefore of little or no value in an investigation. Additionally, many documents contain mechanisms and/or security features specifically intended to prevent replication, which can

render a photocopy illegible.

* This portion of a well-meaning proposal may actually lead to unintended results. The proposed rules rightly claim that increased scrutiny of customer identification will result in a reduction in identity theft as a beneficial side effect. However, it seems evident that increased photocopying of actual customer identification documents could instead lead to greatly increased opportunity for dishonest individuals to conduct identity theft fraud using the information and/or the images from the copies of the customer documents. This process may also unintentionally build credibility behind fraudulent documents and/or accounts through the implied endorsement of identity through retained photocopied documentation.

* Lastly, it is our understanding that several states currently prohibit the copying of driver's licenses. Based on these concerns, we feel that the photocopy requirement should be excluded from the final rules. It is our conviction that a detailed description of the customer identification document i.e., drivers license or passport number with expiration date, would provide the benefits required for research and investigation while avoiding the drawbacks noted above.

Again, DeepGreen Bank appreciates the opportunity to comment on these proposals, and is confident that feedback provided during the comment period will lead to the optimal solution for all financial institutions.

Sincerely,

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