

Guaranty Federal Bancshares

July 23, 2019

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments Regarding Proposed Amendments to the Accelerated Filer and Large Accelerated Filer Definitions; File No. S7-06-19

Dear Ms. Countryman:

Guaranty Federal Bancshares, Inc. (“**GFED**”) appreciates the opportunity to comment on the proposal by the Securities and Exchange Commission (the “**SEC**”) to amend the definitions of “Accelerated Filer” and “Large Accelerated Filer” as used in the SEC’s rules and regulations pursuant to Release No. 34-85814 (the “**Proposing Release**”). I am the President and Chief Executive Officer of GFED. I am also the past Chairman of the Board of the Missouri Bankers Association, having previously served as Chairman of the Legislative Affairs Committee and Chairman of the Audit Committee. I served a three-year term ending in 2018 on the Federal Reserve Bank of St. Louis’ Community Depository Institutions Advisory Council and served from 2014 to 2017 on the Community Bankers Council of the American Bankers Council. I am writing this letter on behalf of GFED only, but I do have years of experience in the banking industry working in various executive positions with community banks.

GFED became a bank holding company registered under the Bank Holding Company Act of 1956, as amended, in 2003. The primary activity of GFED is to oversee its investment in Guaranty Bank. Guaranty Bank is a Missouri state-chartered trust company with banking powers in Missouri. GFED has a December 31 fiscal year end. For purposes of this letter, “**FY 2019**” means the fiscal year ended December 31, 2019, “**FY 2018**” means the fiscal year ended December 31, 2018 and “**FY 2017**” means the fiscal year ended December 31, 2017.

GFED is registered under Section 12(b) of the Securities Exchange Act of 1934 as amended (the “**Exchange Act**”), the common stock of which is listed on the Nasdaq Global Market. Annual revenues were under \$50 million for FY 2018. It would not be reasonable to expect GFED’s revenues to exceed \$100 million for FY 2019. Its total assets were \$965.1 million at December 31, 2018. GFED became an Accelerated Filer in 2018 when, as of June 30, 2018 the value of its common stock held by non-affiliates was \$76.9 million, thereby coming within the parameters of the current definition of Accelerated Filer. GFED also

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remained a Smaller Reporting Company (“SRC”) because the public float exceeded \$75 million and its annual revenues were less than \$100 million.

If the definition of Accelerated Filer is amended as set forth in the Proposing Release, GFED would transition to Non-accelerated Filer status such that it would no longer be subject to the requirement that the independent public accounting firm that prepares or issues its financial statement audit report also attest to, and report on, management’s assessment of the effectiveness of its internal controls over financial reporting (“ICFR”). The aforementioned attestation requirement is referred to hereinafter as the “**Auditor Attestation Requirement**”. GFED also would no longer be subject to the accelerated filing deadlines for its periodic reports under the Exchange Act.

GFED supports the adoption of the proposed amendment in the form set forth in the Proposing Release for the reasons in the remainder of this letter, which include the following:

- (1) the reduced compliance costs for small businesses by eliminating the Auditor Attestation Requirement;**
- (2) the more simplified approach to determining an issuer’s filer status and therefore its periodic reporting requirements that will result when there is a clear separation between the definition of SRC and Accelerated Filer;**
- (3) the elimination of the Auditor Attestation Requirement would not adversely affect investors’ ability to make an informed investment decision;**
- (4) community banks are already subject to a review of internal controls under banking regulations;**
- (5) the diversion of the attention of management of smaller companies from operating performance that unavoidably and inevitably results from being subject to the Auditor Attestation Requirement; and**
- (6) the numerous practical reasons that the proposed amendments to the definition of Accelerated Filer may not practically reduce disclosure.**

First, the amendments proposed in the Proposing Release would reduce compliance costs by eliminating the Auditor Attestation Requirement. SRCs that move to Accelerated Filer status incur substantially more in audit fees attributable to the Auditor Attestation Requirement than when they were SRCs and therefore not subject to the Auditor Attestation Requirement. As an Accelerated Filer for the first time in FY 2018, GFED’s audit fees increased 118% to \$370,005 for FY 2018 from \$169,475 for FY 2017 when it was still a SRC.

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This is well above the Ge *et al.* 2017 Study¹ cited by the SEC in the Proposing Release, which found an increase of about 35% for issuers that newly entered Accelerated Filer Status. Further, GFED's accounting fees and expenses attributable to or arising from preparing for and complying with the Auditor Attestation Requirement accounted for \$167,745 or 45% of GFED's total audit fees for FY 2018, which is consistent with the Ge *et al.* 2017 Study. GFED concurs with many of the commenters that responded to the SEC's proposing release in connection with the amendments to the definition of Smaller Reporting Company (Release No. 33-10107) that the independent auditor attestation of ICFR is the most costly aspect of being an Accelerated Filer. We also agree with the SEC's conclusion, as it is consistent with our experience, that there are some fixed costs that do not scale proportionately with size and therefore, disproportionately burden smaller revenue issuers, like GFED.

If GFED were able to qualify again as a SRC that does not have to comply with the Auditor Attestation Requirement, the reduction in compliance costs would allow the company to use these funds in other far more productive ways. The additional funds would increase the amount available at the holding company or bank level for capital expenditures to grow the company organically, through acquisitions or to fund or support loan growth at the community bank level. We would have the opportunity to create additional jobs and increase employment in the communities Guaranty Bank serves. Alternatively, we could use the funds saved to better compete with the larger banks or bank holding companies in our market area or even expand to create jobs in new markets. We also would have the option of using the cost savings to further concentrate our efforts on the effectiveness of our internal controls. We firmly believe that as a smaller revenue company, any of these alternatives would result in direct and tangible benefits to our stockholders and our other constituencies. Certainly they would be a higher and better use of our capital than deploying it to pay significantly increased accounting fees and expenses to comply with the Auditor Attestation Requirement that does not result in a benefit to our stockholders commensurate with the cost.

Second, GFED believes that the proposed amendments of the definition of Accelerated Filer should result in a clear separation between that filing status and the filing status of a SRC. There appears to be no advantage for either the investing public or the issuer in a structure (as currently exists) in which an issuer qualifies as both a SRC and an Accelerated Filer. The overlap requires issuers to wade through a complicated analysis to interpret the effect of the regulations and to understand the filing and disclosure obligations when issuers are both a SRC and an Accelerated Filer. SRCs that are also Accelerated Filers have to comply with the Accelerated Filer filing deadlines and auditor attestation requirement but have the option of complying with the SRC scaled disclosure options. In our experience, this complication results in higher professional legal services fees to interpret the disclosure obligations for issuers that are both SRC and Accelerated Filers.

¹ Weili Ge, Allison Koester, & Sarah McVay, *Benefits and Costs of Sarbanes-Oxley Section 404(b) Exemption: Evidence from Small Firms' Internal Control Disclosures*, 63 J. OF ACCT. AND ECON. 358 (2017) (“Ge *et al.* 2017 Study”).

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Along the lines of the above and to further implement the separateness of the filing statuses, we urge the SEC to consider adopting a further amendment to the definition of Accelerated Filer to increase the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of \$250 million from the current floor of \$75 million. The reason we urge the SEC to consider this further amendment is to eliminate another source of the reason there are currently some SRCs (including GFED) that have become both SRCs and Accelerated Filers. We think that the benefits, if any, to leaving the market value at \$75 million in the Accelerated Filer definition, are far outweighed by the confusion that may be caused by not raising the \$75 million in the Accelerate Filer definition to a new floor of \$250 million.

Further, the benefits the SEC sought to achieve when it amended the definition of SRC to increase the public float ceiling from \$75 million to less than \$250 million have been thwarted due to the definition of Accelerated Filer not being amended to increase the floor of the market value of securities held by non-affiliates to \$250 million. The primary reason for scaled disclosure is to remove some of the disclosure burdens from SRCs. However, the Auditor Attestation Requirement applicable to issuers which are both SRCs and Accelerated Filers increases that burden exponentially on issuers that could remain SRCs. As the SEC estimated, audit fees represented 22% of revenues for Accelerated Filers with revenues of less than \$100 million but only 0.5% of revenues for Accelerated Filers above \$100 million in revenues. By not raising the market value in the definition of Accelerated Filer to \$250 million imposes a significant economic burden on these SRCs and is inconsistent with recent actions and mandates by Congress to reduce burdens on new and smaller issuers.

Third, it is unlikely that the elimination of the auditor attestation requirement would affect investors' ability to make informed investment decisions. The independent audit of the financial statements would still involve consideration of an issuer's ICFR. Many issues that may be uncovered by an independent audit of ICFR through its procedures to provide an independent auditor attestation of ICFR may also be uncovered as a part of an independent accounting firm performing an independent audit of a smaller revenue issuer's financial statements. Several studies have found that the supposed benefits of the auditor attestation requirement were limited. For example, one study found that while the attestation requirement was "effective in lowering the risk of financial misstatements for companies" between 2004 and 2006, the effectiveness decreased during the years since 2006.² For smaller revenue issuers, the auditor attestation requirement would seem superfluous and expensive without adding significant value to investors. As summarized above, the funds could be used in numerous alternatives ways to improve the company's operating performance, thereby increasing shareholder value and the benefit to investors.

² Chan Li, K.K. Raman, Lili Sun & Rong Yang, *The Sox 404 Control Audit and the Effectiveness of Additional Audit Effort in Lowering the Risk of Financial Misstatements*, REVIEW OF QUANTITATIVE FINANCE AND ACCOUNTING, April 17, 2019.

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Fourth, because Guaranty Bank is an FDIC insured commercial bank, it is already subject to internal control reviews by the FDIC and external auditors as part of its annual financial statement audit. In addition, as the SEC noted on pages 45-46 of the Proposing Release and FN 114, certain banks with total assets of \$1 billion or more are required under the Federal Deposit Insurance Corporation rules to have their respective auditors attest to, and report on, management's assessment of the effectiveness of the bank's ICFR and reporting procedures. Many community banks, while having smaller revenues are still obligated to comply with these rules given their asset size and therefore, investors are still protected, even if the bank would not fall under the definition of an Accelerated Filer.³ With respect to findings reported on page 94 of the Proposing Release that smaller revenue issuers are more like to have ineffective ICFR in management reports, GFED notes this should be far less a concern with respect to bank holding companies and community banks because of the federal and state regulatory oversight and internal control audits of community banks described above.

Fifth, in our experience in complying with the auditor attestation for FY 2018, GFED managements' attention was diverted away from the operating performance of GFED. As mentioned in this letter, without the requirement to complete the auditor attestation, GFED could allocate these funds to other more productive uses. In addition, managements' time could have been more productively spent focusing on opportunities to grow the company rather than preparing for the Auditor Attestation Requirement and the complicated process involved. We estimated the amount of time incurred and cost involved for this process through the utilization of our Accounting, Information Technology and Risk Management departments to be 2,340 hours and \$72,000 respectively. Even though the most difficult and time consuming part of complying is in the first year, there will still be elevated ongoing costs internally and increased audit fees making this a very expensive endeavor for GFED. We estimate \$40,000 of personnel and external audit costs annually that are related to the ongoing compliance of the auditor attestation requirement beyond FY 2018.

Finally, there are numerous practical reasons why Accelerated Filers who become Non-accelerated Filers under the changes proposed in the Proposing Release may not actually result in less disclosure by these issuers. Accelerated Filers that will be permitted to transition back to Non-accelerated Filer and SRC status if the proposed amendments to the Accelerated Filer definition are adopted may be constrained by the potential negative impact on investment analysts' coverage of issuers and their investors' interest in potential future offerings to finance growth and acquisitions. The investors in these companies may demand more information. Alternatively, those issuers that do not have an extensive following would have the option to drop back to Non-accelerated Filer and SRC status and provide the more scaled disclosure. Further, issuers may choose to comply with the Auditor

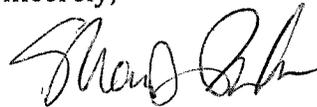
³ Although GFED recognize that the mission of the FDIC is to protect depositors, investors in smaller commercial banks or holding companies that own smaller commercial banks are the indirect beneficiaries of the internal control reviews by the FDIC and do not need the additional auditor attestation of ICFR to protect investors.

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Attestation Requirement and obtain an independent auditor attestation of ICFR if investors demand it or issuers deem it, from their perspectives, to be a good use of their capital resources. Eliminating the requirement of these smaller issuers does not mean that they will not voluntarily choose to provide it for their investors. The SEC indicated in the Proposing Release that one study found that up to about seven percent of exempt issuers voluntarily provided ICFR auditor attestation from 2005 through 2011. The market will dictate the disclosure that it finds beneficial with respect to the level of disclosure and auditor attestation.

For all of the reasons summarized in this letter, GFED fully supports the proposed amendments to the definition of SRC set forth in the Proposing Release, the return of the separation between SRCs and Accelerated Filers and our concept regarding a further proposed amendment to increase the floor of the worldwide market value of equity securities held by non-affiliates to \$250 million. Our experience in FY 2018 as both a SRC and Accelerated Filer has confirmed for us the significance of the increased compliance costs and costs to interpret the more complicated rules and regulations and the detriment to our investors as time and resources were devoted to tasks that, in our experience, do not materially affect our investors' access to information or confidence in our reports. Further, the time and resources could be better spent on more effective uses that would directly benefit our investors and our communities. We strongly believe the costs of compliance far outweigh the benefits. GFED appreciates the opportunity to comment on the proposal and the SEC's thoughtful consideration of these significant issues for smaller reporting companies.

Sincerely,



Shaun A. Burke
President and Chief Executive Officer
Guaranty Federal Bancshares, Inc.