UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of	)	
	)	Order No.: MWR-04-25
GUARANTY BANK	)	
Austin, Texas	)	Date: December 22, 2004
OTS Docket No. 08534	)	

STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, the Office of Thrift Supervision (OTS), based upon information derived from the exercise of its regulatory responsibilities, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against **GUARANTY BANK, Austin, Texas** (Bank), OTS Docket No. 08534, pursuant to 12 U.S.C. § 1818(b)[1], and

WHEREAS, the Bank desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, or the Findings of Fact or opinions and conclusions of the OTS, except as to Jurisdiction, Paragraph 1, below, which is admitted, hereby stipulates and agrees to the following:

1. **Jurisdiction**

   A. The Bank is a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, it is a "depository institution" as that term is defined in 12 U.S.C. § 1813(c).

   B. Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal Banking agency" to maintain an administrative cease and desist proceeding against such savings association. Therefore, the Bank is subject to the jurisdiction of OTS to initiate and maintain cease and desist proceedings against it pursuant to 12 U.S.C. § 1818(b). The Deputy Director of the OTS, pursuant to delegated authority from the Director of OTS, has delegated to the OTS Midwest Regional Director (Regional Director) the authority to issue cease and desist orders where the Association has consented to the issuance of the orders.

[1] All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

2. **OTS Findings of Fact**

The OTS finds that the Bank, directly or through Guaranty Residential Lending, Inc. (GRL). a wholly owned operating subsidiary of the Bank, has engaged in violations of:

A. 12 C.F.R. § 203.4 (regarding compilation of loan data);

B. 12 C.F.R. § 203.5 (regarding disclosure and reporting pertaining to Home Mortgage Disclosure);

C. 12 C.F.R. § 560.170 (regarding records for lending transactions);

D. 12 C.F.R. § 563.170(c) (regarding establishment and maintenance of records);

E. 12 C.F.R. § 563.180(d) (regarding Suspicious Activity Reports);

F. The guidelines of Section II.A of the Interagency Guidelines Establishing Standards for Safety and Soundness, Appendix A to 12 C.F.R. Part 570 (regarding internal controls and information systems); and

G. 31 C.F.R. § 103.18 (regarding reports of suspicious transactions).

3. **Consent**

The Bank consents to the issuance by the OTS of the accompanying Consent Order to Cease and Desist for Affirmative Relief (Order). It further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. **Finality**

The Order is issued under 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director, it shall be a final order, effective and fully enforceable by OTS under the provisions of 12 U.S.C. § 1818(i).

5. **Waivers**

The Bank waives the following:

A. the right to be served with a written notice of OTS's charges against it as provided by 12 U.S.C. § 1818(b);

B. the right to an administrative hearing of OTS's charges against it as provided by 12 U.S.C. § 1818(b);

C. the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;

D. any and all claims against OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412; and

E. the right to assert this proceeding, its consent to the issuance of the Order, the issuance of the Order, the payment of any monies or the provision of any other financial relief as contemplated by the Order as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. **Other Governmental Actions Not Affected**

A. The Bank acknowledges and agrees that its consent to the issuance of the Order does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or any other proceeding that may be or has been brought by the OTS or another governmental entity against the Bank or any institution-affiliated party thereof.

B. The Bank acknowledges that the OTS reserves the right to bring such additional action(s), charge(s), or proceeding(s) arising from or related in any way to the facts set forth in Paragraph 2, "OTS Findings of Fact", or any other matter, as the OTS deems appropriate, in its sole discretion.

7. **Miscellaneous**

A. The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America.

B. In case any provision of the Stipulation or Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.

C. All references to the OTS or the Bank in this Stipulation and the Order shall also mean any of the OTS's or Bank's predecessors, successors, and assigns.

D. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the construction hereof.

E. The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters.

F. This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Deputy Director, Regional Director or other authorized representative.

8. **Signature of Directors**

Each Director of the Bank's Board of Directors signing this Stipulation attests that he/she voted in favor of a resolution authorizing the execution of the Stipulation. A copy of the resolution of the Board of Directors of Guaranty Bank, authorizing execution of this Stipulation, shall be delivered to OTS, along with the executed original of this Stipulation.

WHEREFORE, Guaranty Bank, Austin, Texas, by a majority of its directors, executes this Stipulation and Consent to the issuance of an Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION

By: /s/ Effective Date: 12-22-04
Frederick R. Casteel
Regional Director

GUARANTY BANK, AUSTIN, TEXAS
Accepted by a Majority of its Directors

/s/
Kenneth M. Jastrow, II, Chairman and Director

/s/
Kenneth R. Dubuque, President, Chief Executive Officer, and Director

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In the Matter of	)	
	)	Order No.: MWR-04-25
GUARANTY BANK	)	
Austin, Texas	)	Date: December 22, 2004
OTS Docket No. 08534	)	

CONSENT ORDER TO
CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, Guaranty Bank, Austin, Texas (Bank) (OTS Docket No. 08534), by and through its Board of Directors (Board), has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief (Stipulation); and

WHEREAS, the Bank, by execution of this Stipulation, has consented and agreed to the issuance of this Consent Order to Cease and Desist for Affirmative Relief (Order) by the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1818(b).[1]

WHEREAS, the Deputy Director of the OTS has delegated to the Regional Directors of OTS the authority to issue Orders to Cease and Desist on behalf of OTS where a savings association has consented to the issuance of the Order.

NOW THEREFORE, IT IS ORDERED THAT:

1. **Compliance with Laws and Regulations**

   A. The Bank; the Bank's directors, officers, and employees; the Bank's subsidiaries; and the directors, officers, and employees, of its subsidiaries shall cease and desist from any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, aiding or abetting of any unsafe or unsound practice or any violation of:

      1. 12 C.F.R. § 203.4 (regarding compilation of loan data);

      2. 12 C.F.R. § 203.5 (regarding disclosure and reporting pertaining to Home Mortgage Disclosure);

      3. 12 C.F.R. § 560.170 (regarding records for lending transactions);

[1] All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

4. 12 C.F.R. § 563.170(c) (regarding establishment and maintenance of records);

5. 12 C.F.R. § 563.180(d) (regarding Suspicious Activity Reports (SARs));

6. The guidelines of Section II.A of the Interagency Guidelines Establishing Standards for Safety and Soundness, Appendix A to 12 C.F.R. Part 570 (regarding internal controls and information systems); and

7. 31 C.F.R. § 103.18 (regarding reports of suspicious transactions).

B. The Bank and its subsidiaries will take all necessary steps to ensure that agents involved in deposit and lending functions, internal audit, quality control, and responsibilities related to the Bank Secrecy Act or the Bank Protection Act comply with applicable regulations and restrictions for their work performed for the Bank or its subsidiaries.

IT IS FURTHER ORDERED THAT:

CORRECTIVE PROVISIONS

2. **Strategic Business Plan and Resolution of Mortgage Banking Operations**

A. By March 15, 2005, the Bank shall submit to the Regional Director of the Midwest Region of OTS or his/her designee (Regional Director) a written Strategic Business Plan for the calendar years 2005 through 2007 that is acceptable to the Regional Director. That written Strategic Business Plan shall include quarterly financial projections reflecting the expected impact of (1) the actual and anticipated restructuring of the operations of Guaranty Residential Lending, Inc. (GRL) on the Bank's earnings and (2) the anticipated transfer, if any, of the remaining lending operations of GRL to the Bank or other subsidiaries of the Bank. The Bank shall comply with the Strategic Business Plan except as otherwise expressly authorized by a written notice of non-objection by the Regional Director.

B. By the fifteenth (15th) calendar day following each regularly scheduled Board meeting after March 1, 2005, the Board shall submit to the Regional Director a report for the 90-day period before that regularly scheduled Board meeting addressing variances, if any, of the Bank from its Strategic Business Plan.

C. By the fifteenth (15th) day following each regularly scheduled Board meeting, the Board shall submit to the Regional Director the GRL Corrective Action Plan Status Report that documents corrections of deficiencies noted at GRL.

3. **Risk Assessment**

By March 15, 2005, the Board shall (a) conduct a risk assessment of the mortgage lending operations of the Bank and its subsidiaries, including an assessment of risks related to fraud

and non-compliance with applicable laws and regulations, and (b) submit to the Regional Director a written and detailed report of the findings of that risk assessment.

4. **Internal Controls**

A. By March 31, 2005, the Board shall adopt and submit to the Regional Director a written Internal Controls Program acceptable to the Regional Director that:

1. Sets forth clear and specific lines of responsibility within the Bank and within each of its subsidiaries;

2. Provides for an integrated internal audit process that covers all significant Bank and subsidiary activities;

3. Sets forth general timeframes and a framework for verifying Bank and subsidiary compliance with all applicable laws and regulations, including but not limited to 12 C.F.R. § 563.180(d) and 31 C.F.R. § 103.18, and with all Bank and subsidiary (where appropriate) policies;

4. Requires reports to the Board verifying the adequacy and implementation of (a) systems of the Bank and its subsidiaries to detect, monitor, and report suspicious activity or possible money laundering schemes, (b) the Fraud Management Plan required by Paragraph 6 hereof; and (c) until such time as the requirements of Section 4.B hereof are satisfied, a status report of implementation of procedures required by Section 4.B hereof, and

5. Otherwise incorporates the guidelines set forth in Section II.A of Appendix A to 12 C.F.R. Part 570.

B. By September 30, 2005, the Board shall, in a manner acceptable to the Regional Director, amend the Internal Controls Program to replace that portion required by Section 4.A.3 hereof with clear and specific procedures for verifying Bank and subsidiary compliance with all applicable laws and regulations, including but not limited to 12 C.F.R. § 563.180(d) and 31 C.F.R. § 103.18, and with all Bank and subsidiary (where applicable) policies.

C. The Bank and its subsidiaries shall comply with the Internal Controls Program except in accordance with a written notice of non-objection by the Regional Director.

5. **Suspicious Activity Training**

A. By March 15, 2005, the Board shall adopt and submit to the Regional Director an acceptable written comprehensive training program for the Bank and each subsidiary to ensure that each director and each officer and employee, who is involved in lending and deposit functions, internal audit, quality control, or responsibilities related to Bank Secrecy Act or Bank Protection Act compliance is knowledgeable regarding the detection

and reporting of suspicious activities (SAR Training Program). The SAR Training Program must address the responsibilities of the appropriate agents to detect and report suspicious activities.

B. The SAR Training Program required by subparagraph 5.A. hereof shall (1) address the requirements of 12 C.F.R. § 563.180 and 31 C.F.R. § 103.18, the guidelines of RB 18-6 and the procedures of the Bank or subsidiary regarding referrals, investigations, and reporting of suspicious activities, (2) require testing of each of the aforementioned officers, and employees, for proficiency in compliance with 12 C.F.R. § 563.180 and 31 C.F.R. § 103.18, and (3) set forth frequency of training and attendance requirements. The Bank and each subsidiary shall comply with this SAR Training Program and maintain records to demonstrate compliance with the SAR Training Program.

6. **Fraud Management Program**

A. By March 15, 2005, the Board shall submit to the Regional Director an acceptable written Fraud Management Program that is designed to minimize fraud at the Bank and its subsidiaries and that addresses how actual and suspected fraud at the Bank and its subsidiaries will be treated when identified. The Fraud Management Program shall set forth the specific dates for its implementation.

B. The Fraud Management Program required by subparagraph 6.A. hereof shall require:

1. Comprehensive procedures developed to ensure consistent detection and reporting of suspicious activities and anti-money laundering schemes across all business lines and in transactions involving agents of the Bank and its subsidiaries;

2. The review of transactions that are being evaluated for risk of litigation or loss or loan buyback for possible suspicious activities;

3. An appropriate level of increased due diligence, review and monitoring of business lines or offices where there are increased allegations or instances of suspicious activity;

4. Procedures for documenting decisions not to file SARs;

5. Information systems (IT) to ensure that SARs are filed timely with all of the required information; and

6. The establishment of effective IT in all business lines and in all offices to support suspicious activity reporting and the integration of such reporting across business lines and offices to ensure that all necessary information is readily available, reliable, identifiable, and accessible by staff of the Bank's various compliance functions, including audit, compliance, BSA, security, legal, and fraud management.

C. The Bank, its subsidiaries, and their officers, directors, and employees shall comply with the Fraud Management Program required by subparagraph 6.A.

7. **Quality Control Plan**

By March 31, 2005, the Board shall submit to the Regional Director a mortgage lending Quality Control Plan acceptable to the Regional Director. The Quality Control Plan shall provide for an effective, independent quality review of mortgage loan origination, designed to ensure that loans comply with internal loan policies, applicable regulations, and otherwise reflect safe and sound banking practices.

8. **Compliance Management**

A. By March 31, 2005, the Board shall adopt and submit to the Regional Director an acceptable written, revised Compliance Management Program. This revised Compliance Management Program shall (i) contain the objectives and define the elements as set forth in the SMAART Program outlined in OTS CEO Letter #171; (ii) address enhancements to be made to existing systems, monitoring, auditing, training, and oversight and shall be designed otherwise to correct deficiencies in current operating practices; (iii) establish a system of records to sufficiently document all transactions of the Bank and its subsidiaries and otherwise to ensure compliance with 12 C.F.R. §§ 202.12, 226.25, 560.170, and 563.170(c) and all other applicable documentation requirements; (iv) set forth specific dates of implementation for each factor to be revised or put in place; and (v) institute not less than quarterly reporting on the status of compliance management to the Board.

B. The Bank and its subsidiaries shall comply with the revised Compliance Management Program.

C. By March 15, 2005, the Board shall adopt and submit to the Regional Director a written, acceptable Flexible Pricing Loan Monitoring Program designed to (i) monitor all loans in loan programs of the Bank and its subsidiaries that permit flexible pricing; (ii) ensure that there is adequate documentation of all such loans to demonstrate that all borrowers have been treated fairly and without discrimination on a prohibited basis; and (iii) provide prompt and written reporting to the Board in the case that such documentation does not exist in the case of such loans. The Bank and its subsidiaries shall comply with this Flexible Pricing Loan Monitoring Program.

9. **Home Mortgage Disclosure**

A. By March 1, 2005, the Board shall:

1. Ensure that a thorough review has been made of the loan application register (LAR) for mortgage loans made by the Bank and its subsidiaries in 2004;

2. Provide the Regional Director with a Board certification that such review has been made and that the data reviewed was reliable;

3. Provide the Regional Director with a written report of that review signed by the person who was responsible for that review; and

4. Adopt and submit to the Regional Director an acceptable, written LAR Program designed to ensure that LAR records of the Bank and its subsidiaries are complete, accurate, recorded and otherwise in compliance with 12 C.F.R. § 203.4.

B. By March 1, 2005, and thereafter, the Bank and its subsidiaries shall comply with the LAR Program.

BOARD OF DIRECTORS

10. **Director and Board Responsibility**

Notwithstanding the requirements of this Order that the Board submit various matters to the Regional Director for the purpose of receiving approval, notice of non-objection, or notice of acceptability, such regulatory oversight does not derogate or supplant each individual member's continuing fiduciary duty. The Board shall have the ultimate responsibility for overseeing the safe and sound operation of the Bank and its subsidiaries at all times, including compliance with the determinations of the Regional Director as required by this Order, and shall take all reasonable and prudent actions necessary to satisfy this responsibility.

11. **Compliance with Order**

A. The Board and officers of the Bank shall take immediate action to cause the Bank and its subsidiaries to comply with the terms of this Order and shall take all actions necessary or appropriate thereafter to cause the Bank and its subsidiaries to continue to carry out the provisions of this Order.

B. By the fifteenth (15th) calendar day following each regularly scheduled Board meeting, the Board shall adopt a board resolution (Compliance Resolution), formally resolving that, following a diligent inquiry of relevant information (including reports of management), to the best of its knowledge and belief, during the immediately preceding 90-day period, the Bank (including its subsidiaries) has complied with each provision of this Order currently in effect, except as otherwise stated. The Compliance Resolution shall specify in detail how, if at all, full compliance was found not to exist; and identify all notices of exemption or non-objection issued by the Regional Director that were outstanding as of the date of its adoption.

C. The minutes of the meeting of the Board shall set forth the following information with respect to the adoption of each Compliance Resolution: (i) the identity of each director voting in favor of its adoption; and (ii) the identity of each director voting in opposition

to its adoption or abstaining from voting thereon, setting forth each director's reasoning for opposing or abstaining.

D. The Bank shall provide to the Regional Director a certified true copy of each Compliance Resolution as adopted by the Board within fifteen (15) calendar days of the Board meeting at which the Compliance Resolution was adopted. The Board, by virtue of the Bank's submission of a certified true copy of each such Compliance Resolution to the Regional Director, shall be deemed to have certified to the accuracy of the statements set forth in each Compliance Resolution, except as provided below. In the event that one or more Directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the minutes of that board meeting.

E. The Board shall promptly respond to any request from OTS for documents that the OTS requests to demonstrate compliance with this Order.

MISCELLANEOUS

12. **Definitions**

A. All technical words or terms used in this Order and Stipulation for which meanings are not specified or otherwise provided by the provisions of this Order shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, Home Owners' Loan Act (HOLA), Federal Deposit Insurance Act (FDIA) or OTS Publications. Any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, HOLA, FDIA, or OTS Publications shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

B. For purposes of this Order, nothing shall be deemed "acceptable", as that term is used in this Order, unless the Regional Director, or the assigned OTS Regional Deputy Director or Assistant Director, has stated in writing that it is acceptable or has provided a written notice of non-objection to it.

13. **Successor Statutes, Regulations, Guidance, Amendments**

Reference in this Order to provisions of statutes, regulations, and OTS Publications shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date of this Order and references to successor provisions as they become applicable.

14. **Effective Date**

This Order is and shall become effective on the Effective Date, as shown in the caption hereof.

15. **Notices**

A. Except as otherwise provided herein, any request, demand, authorization, directive, notice, consent, waiver or other document provided or permitted by the Order to be made upon, given or furnished to, delivered to, or filed with:

1. The OTS, by the Bank, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid or sent via overnight delivery service or physically delivered, in each case addressed to the Regional Director, Office of Thrift Supervision, Department of the Treasury, 225 East John Carpenter Freeway, Suite 500, Irving, Texas 75062-2326 or telecopied to (972) 277-9501 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address; or

2. The Bank, by the OTS, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, or sent via overnight delivery service or physically delivered, in each case addressed to the Bank, to the attention of the President and Chief Executive Officer, at 1300 South MoPac Expressway, Austin, Texas 78746, with a copy directed to the Bank, to the attention of the General Counsel, at 8333 Douglas Avenue, Suite 900, Dallas, Texas 75225.

B. Notices hereunder shall be effective upon receipt, if by mail, overnight delivery service or telecopy, and upon delivery, if by physical delivery. If there is a dispute about the date on which a written notice has been received by a party to this Order, then, in the event such notice was sent by United States mail, there shall be a presumption that the notice was received two Business Days after the date of the postmark on the envelope in which the notice was enclosed.

16. **Time Limits and Suspension or Termination of Requirements**

Time limitations for compliance with the terms of this Order run from the Effective Date, unless otherwise noted. The Regional Director, or the assigned OTS Regional Deputy Director or Assistant Director, may extend any time limits set forth in this Order by specifically granting that extension in writing. The Regional Director, or the assigned OTS Regional Deputy Director or Assistant Director, further may suspend or terminate any requirement of the Bank through a written notice that expressly provides for such suspension or termination.

17. **No Violations Authorized; OTS Not Restricted**

Nothing in this Order or the Stipulation shall be construed as: (a) allowing the Bank or any of its subsidiaries to violate any law, rule, regulation, or OTS or Federal Deposit Insurance Corporation policy statement to which it is subject, or (b) restricting or estopping the OTS from taking any action(s), including without limitation any actions that it believes are appropriate in fulfilling the responsibilities placed upon it by law.

18. **Effect of Headings**

The Section Headings herein are for convenience only and shall not affect the construction hereof.

19. **Incorporation**

The Stipulation is made a part hereof and is incorporated herein by this reference.

20. **OTS Review of Actions Requested**

The Regional Director, or the assigned OTS Regional Deputy Director or Assistant Director, may provide a written notice of non-objection, acceptability, or objection, or request additional information with respect to any submission to OTS required by this Order.

21. **Duration, Termination, or Suspension of Order**

The Stipulation and the Order shall remain in effect until terminated, modified or suspended in writing by the OTS, acting through its Director, Deputy Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: /s/
Frederick R. Casteel
Midwest Regional Director