April 20, 2004

VIA EMAIL ONLY

Chief Counsel's Office
Office of Thrift Supervision
1700 G Street NW
Washington, DC 20552
reg.comments@ots.treas.gov

RE: Docket No. 2004-67/Consumer Lending Regulatory Burden Relief

Dear Chief Counsel:

Guaranty Bank is a roughly $2 billion asset federal savings bank headquartered in the Milwaukee Wisconsin area, but with retail bank locations throughout southeast Wisconsin, Northern Illinois, metropolitan Detroit Michigan and Minneapolis Minnesota. Our home mortgage lending operations operate throughout the country, last year originating over $11 billion in first and second lien home mortgage loans. We truly appreciate the opportunity to comment on ways in which our regulatory burden can be improved.

As I noted in my recent comment letter regarding the Federal Reserve's proposal to amend the clear and conspicuous standard for disclosures, we are astonished and somewhat overwhelmed by the pace and burden of the numerous regulatory changes that financial institutions have had to deal with in recent days. Aside from the obvious recent additions such as the Patriot Act, HMDA changes (our people had to work on New Year's Eve to ensure our systems performed correctly) and FCRA (FACT Act), we are also facing huge compliance issues from the states in the predatory lending arena and the securities regulators on corporate governance issues among others. Although apparently on hold for the near future, RESPA reform as originally proposed would pose a monumental business and compliance burden for our institution.

These compliance burdens are far reaching and require careful consideration of numerous aspects of our business and systems. Tremendous amounts of time and effort go into our compliance function with these new laws and regulations and we continue to work hard to keep up with the new additions. Simply put, the regulatory burden as a whole is overwhelming and there needs to be more recognition on the part of those creating the regulations of the costs institutions face to comply along with an evaluation of the effectiveness of the regulation. In the end, the added costs these regulations impose get passed on to consumers, so regulators should be careful to only impose regulations that, on the whole, provide real value to the banking public.

Recently, I attended a trade group meeting where Treasury Assistant Secretary Wayne Abernathy spoke. In his discussion, he described his affinity for the application of an idea borrowed from the original Star Trek series. Mr. Abernathy offered his version of the "Prime Directive" for regulators and regulations in their dealings with the marketplace. To paraphrase, "that regulation should do more good than harm the normal operation of the market". I found his comments right on point with the theme of this letter.

With that in mind, serious consideration needs to be given to determine whether the various consumer lending regulations really serve the purposes for which they were enacted or if they have become nothing more than compliance burdens with no concomitant benefit to the consumers who were supposed to benefit. While legislative change may be necessary to radically alter or eliminate some of the burdens imposed by these regulations, we strongly believe that laws and regulations established 20 or 30 years ago may not have the same relevance in today's marketplace, should be reexamined entirely and not merely assumed to be effective at achieving the result intended.

To be clear, I am not suggesting that consumer regulation is unnecessary. Rather, we need to take a close look at all of the regulation we already have and ask, "is it achieving the results intended or some other important goal(s)?" If a regulation does not serve a useful purpose, we should scrap it and aggressively seek alternatives or determine if a consumer need still exists.

Truth in Lending

I can think of no greater example of a law that no longer serves a useful purpose than the Truth in Lending Act ("TILA") and related regulations. Borne out of the best of intentions, TILA is, nevertheless, a resounding failure. Designed as means by which consumers would be able to compare "apples" to "apples", TILA is now simply a hindsight "gotcha" statute for class action attorneys to perform their rough form of unequal wealth redistribution. The right of rescission was intended to give borrowers an easy out on a loan that they didn't really want: the three days was designed to give them a chance to change their minds at no cost. In my experience, virtually all consumers are extremely frustrated that they have to wait 3 days for their money. When the right of rescission is exercised, it is much more likely used as an opportunity to renege on a fixed rate loan because interest rates have declined than it is to protect the consumer from an unscrupulous lender's strong sales pitch.

Additionally, I defy anyone to explain the APR to a consumer. What costs are in, what costs are not, how the amortization period of the loan changes the APR, etc. If consumers try to compare APR's, games can still be played with costs and loan terms. Advising consumers to shop for the best APR can be disastrous counsel for some consumers. For example, a consumer that gets the lowest APR still may have a loan that is entirely inappropriate for their personal situation; e.g. balloon loan for elderly. Neither APR nor the Amount Financed calculation facilitates meaningful comparison shopping and, more importantly, provides little information on whether the loan is appropriate for

that person's individual circumstances. To be honest, the availability of interest rates on the internet has provided more in terms of real time rate information to consumers than APR ever could. It is time we took a fresh look at TILA and recognized it simply creates a huge compliance burden with little or no real consumer benefit.

Having said that, I recognize that scrapping TILA may not be immediately feasible. Therefore, I do still have the following specific suggestions to improve our ability to deal with this compliance burden:

1. Eliminate the multiple Notice of Right to Cancel forms and establish one form that could be used for all applicable refinance loans. The current differences between the two model forms is so limited that the undue burden put on lenders in ensuring the right form is utilized is not substantiated by the limited benefit provided to the consumer. One form could serve the purpose intended.
2. For situations in which a customer rescinds their loan, legitimate/actual third party fees paid by the lender in connection with the processing of the loan should not be refundable to the consumer.
3. Eliminate excluded fees from the TIL/APR calculation. The requirement of including all fees in the APR calculation would result in somewhat more valid comparisons between two different loans/terms.
4. Initial TIL's should be required for all refinance applications and not just purchase money transactions. While this may not a reduction in regulatory burden, the inconsistency certainly doesn't make sense. If the initial TIL is a shopping tool, shouldn't the tool also be provided for refinance applications?
5. Under the advertising requirements, eliminate the disclosure of the loan term as a triggering term and as a result eliminate the requirement to include all the additional disclosures that are required when a triggering term is included in the ad. For example, if we make the simply statement that we offer products for 15, 20 and 30 year loans this is considered a triggering term. How is the consumer harmed/deceived/misinformed/confused by the statement that a 30-yr mortgage product is offered?

Home Mortgage Disclosure Act

HMDA is a law that perhaps may serve its original purpose and may offer a tool for dealing with new questions. Nevertheless, the recently implemented APR threshold and preapproval reporting requirements fails the basic requirement that the value created by the regulation should exceed the cost of the compliance burden. Millions of dollars were spent retooling HMDA reporting systems and retraining origination and compliance staff on the new requirements. There needs to be a compelling case (which I have not heard) to impose such significant costs and hardships on an entire industry.

With respect to the APR reporting, the regulation is overly burdensome because a) APR is a poor measure for consumers to compare loan value (see discussion above), b) not all home mortgage loans are HMDA reportable (see discussion below), c) there is no significance to the arbitrary APR reporting level chosen, d) by not including all HMDA

loans it fails to capture a complete picture of the costs of lending and e) compliance is expensive due to the complicated calculations required for determining reportable loans.

The inconsistencies with the processing and handling of pre-approvals is not worth the limited benefit obtained from the reporting of pre-approval denials that do not have any property information. The real value in HMDA is being able to compare and examine the lending performance of home mortgage lenders on a variety of scores. If the information is incomplete, inconsistent or irrelevant, then why collect it at all?

Please also consider making all home mortgage loans HMDA reportable regardless of purpose. Really, what does it matter why the consumer got the loan? This would include all home equity loans, refinances and any other loans that secured by a personal residence. It would simplify reporting for lenders because we would not need to determine loan purpose and we would not have two classes of loans (reportable and not) All home mortgage loans should be reported. Definitions for covered loans should be the same as RESPA and TILA.

Federal Preemption

Lately there has been a spate of state and federal legislation that has significant compliance implications for home mortgage lenders. Having over 50 different standards to apply is entirely too difficult and costly to administer when one federal standard could be created. Examples of these types of laws include:

- Predatory Lending
- Privacy
- Mortgage Insurance Notices and Cancellation requirements
- Do not fax/call/anti-spam measures

Nothing is more complicated in the compliance world than trying to manage multiple standards in different jurisdictions in businesses that operate across state lines. One federal standard is something that can be managed at a much lower cost and error rate.

Disclosure Timing Issues

One particular area that is frustrating is the lack of coordination between the various disclosures required in the home lending process. Elimination of the inconsistencies in the timing and signature requirements for the disclosures that are required to be provided would be a great way to simply the compliance burden. For example: 1) the ARM disclosure needs to be provided at the time an application form is provided the customer or a non-refundable fee is paid, 2) RESPA Servicing Transfer Disclosure needs to be provided at the time of a face-to-face interview if the application is taken in that manner but within three days if taken in another manner and this disclosure is one of the few that needs to be signed by all borrower at/or before closing and 3) any affiliated business arrangement disclosure needs to be provided at the time of referral (how is that determined?). Standardizing that all of the application disclosures need to be provided within 3 business days of taking the application would allow the compliance world to streamline the disclosure area.

Conclusion

No doubt, there is a role for regulation in the home mortgage lending arena, but simply tweaking outdated regulations, some of which create a tremendous burden without meaningful benefit, will just mean more work for our already exhausted compliance staff. Please consider carefully any proposed changes to existing regulation under Mr. Abernathy's "Prime Directive" test.

Feel free to contact me if you have any questions.

Sincerely,

Brian S. Levy
Senior Vice-President, Compliance Officer and General Counsel
Guaranty Bank
4000 W. Brown Deer Road,
Brown Deer WI 53209