

GUARANTY FEDERAL BANCSHARES INC

Form S-8

June 05, 2015

As filed with the Securities and Exchange Commission on June 5, 2015

Registration No. 333- \_\_\_\_\_

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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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Form S-8

REGISTRATION STATEMENT

UNDER THE SECURITIES ACT OF 1933

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GUARANTY FEDERAL BANCSHARES, INC.

(Exact name of registrant as specified in its charter)

Delaware	43-179217
(State or other jurisdiction of incorporation	(I.R.S. Employer
or organization)	Identification No.)

1341 West Battlefield	65807
Springfield, Missouri	(Zip Code)
(Address of Principal Executive Offices)	

GUARANTY FEDERAL BANCSHARES, INC. 2015 EQUITY PLAN

(Full title of the plan)

**Shaun A. Burke**

**President and Chief Executive Officer**

**Guaranty Federal Bancshares, Inc.**

**1341 West Battlefield**

**Springfield, Missouri 65807**

**(Name and address of agent for service)**

**(417) 520-4333**

**(Telephone number, including area code, of agent for service)**

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**PLEASE SEND COPIES OF COMMUNICATIONS TO:**

**Craig A. Adoor, Esq.**

**Husch Blackwell LLP**

**The Plaza in Clayton Office Tower**

**190 Carondelet Plaza, Suite 600**

**St. Louis, Missouri 63105**

**(314) 480-1500**

**(314) 480-1505 (fax)**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer" "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

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**CALCULATION OF REGISTRATION FEE**

<b>Title of securities to be registered</b>	<b>Amount to be registered (1)</b>	<b>Proposed maximum offering price per share (2)</b>	<b>Proposed maximum aggregate offering price (2)</b>	<b>Amount of registration fee (2)</b>
Common Stock, par value \$0.10 per share	250,000	\$14.36	\$3,590,000	\$417.16

This Registration Statement covers 250,000 shares authorized to be issued under the Guaranty Federal Bancshares, Inc 2015 Equity Plan (the "Plan"). In addition, pursuant to Rule 416(a) under the Securities Act of (1) 1933, as amended (the "Securities Act"), this Registration Statement also covers any additional securities that may be offered or issued pursuant to the Plan as a result of any stock split, stock dividend, recapitalization or other similar transaction.

Estimated solely for the purpose of calculating the amount of the registration fee pursuant to paragraphs (c) and (2)(h) of Rule 457 under the Securities Act. The price per share and aggregate offering price Global Market of The Nasdaq Stock Market on June 3, 2015.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**ITEM 1. PLAN INFORMATION.\***

**ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.\***

The documents containing the information specified in “Item 1. Plan Information” and “Item 2. Registrant Information and Employee Plan Annual Information” of Form S-8 will be sent or given to participants in the Guaranty Federal Bancshares, Inc. 2015 Equity Plan, as specified by Rule 428(b)(1) under the Securities Act. Such documents are not \*required to be, and are not, filed with the Securities and Exchange Commission either as part of this Registration Statement or as a prospectus or prospectus supplement pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

## **PART II**

### **INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

#### **ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.**

The following documents, filed with the Securities and Exchange Commission (the "SEC") by the Company are incorporated herein by reference:\*

The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2014, filed on March 27, 2015.

The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015, filed on May 8, 2015.

The Company's Current Reports on Form 8-K filed on the following dates:

#### **Filed**

March 3, 2015

March 27, 2015

May 28, 2015

\* Other than information that has been furnished to, and not filed with, the SEC, which information is not incorporated into this Registration Statement.

The description of the Common Stock contained in the Company's Registration Statement on Form 8-A dated November 5, 1997 and filed with the SEC on November 5, 1997, and any amendment or report filed for the purpose of updating such description.

Any document which we file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered under the Registration Statement have been sold, or deregistering all securities then remaining unsold (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules), are also incorporated herein by reference and shall be a part hereof from the date of filing

of such documents.

Any statement contained in a document incorporated, or deemed to be incorporated, by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**ITEM 4. DESCRIPTION OF SECURITIES.**

Not applicable.

**ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.**

Not applicable.

**ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.**

As permitted by Section 102(b)(7) of the Delaware General Corporation Law (the “DGCL”), the Company’s Restated Certificate of Incorporation (the “Charter”) includes a provision that eliminates the personal liability of its directors to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability of a director (i) for any breach of the director’s duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not made in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to further eliminate or limit the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

The indemnification provisions in the Company's Charter may be sufficiently broad to indemnify the officers and directors of the Company under certain circumstances from liabilities arising under the Securities Act. As permitted by Section 145 of the DGCL, the Company's Charter provides that in the case of a threatened, pending or completed action or suit by or in the right of the Company against any person who is or was a director or officer of the Company by reason of such person holding such position, the Company shall indemnify such person for expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of the action or suit; provided that such person is successful on the merits or otherwise or such person acted in good faith in the transaction which is the subject of such action or suit, and in the manner such person reasonably believed to be in or not opposed to, the best interest of the Company, including, but not limited to, the taking of any and all actions in connection with the Company's response to any tender offer or any offer or proposal of another party to engage in a Business Combination (as such term is defined in Article XIV of the Charter) not approved by the board of directors. However, such director or officer shall not be indemnified in respect of any claim, issue or matter as to which such person has been adjudged liable to the Company unless (and only to the extent that) the Court of Chancery or the court in which the suit was brought shall determine, upon application, that despite the adjudication, but in view of all the circumstances, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

In addition, as permitted by Section 145 of the DGCL, the Company's Charter provides that in the case of a threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative), other than a suit by or in the right of the Company, against any person who is or was a director or officer of the Company by reason of such person holding such position, the Company shall indemnify such person for amounts actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, including, but not limited to, expenses (including attorneys' fees), amounts paid in settlement, judgments and fines; provided that such person is successful on the merits or otherwise or such person acted in good faith in the transaction which is the subject of such suit, and in the manner such person reasonably believed to be in or not opposed to, the best interest of the Company, including, but not limited to, the taking of any and all actions in connection with the Company's response to any tender offer or any offer or proposal of another party to engage in a Business Combination (as such term is defined in Article XIV of the Charter) not approved by the board of directors, and, with respect to any criminal action or proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. The termination of such suit by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in itself, create a presumption that such officer or director failed to satisfy the standard described above.

The Charter also provides that (i) the Company may pay in advance any expenses (including attorneys' fees) which may become subject to indemnification, but only if the officer or director receiving such payment undertakes in writing to repay the same if it is ultimately determined that such person is not entitled to indemnification by the Company, (ii) if Delaware law is amended to permit further indemnification of directors and officers of the Company, then the Company shall indemnify such persons to the fullest extent permitted by Delaware law, as so amended, (iii) the indemnification and advancement of expenses provided for in the Charter or otherwise granted pursuant to Delaware law shall not be exclusive of any other rights to which a director or officer may be entitled, (iv) any repeal or modification of the applicable provisions of the Charter by the stockholders of the Company shall not adversely affect any right or protection of a director or officer existing at the time of such repeal or modification, and (v) the Company may purchase and maintain insurance on behalf of any person who holds or who has held a director or officer position against any liability asserted against and incurred by such person in any such position, or arising out of his or her status as such, whether or not the Company would have power to indemnify such director or officer



against such liability under the Charter.

In addition to the above and as approved by the Company's board of directors, the Company maintains director and officer liability insurance providing coverage for the directors and officers of the Company regarding certain liabilities incurred by them.

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**ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.**

Not applicable.

**ITEM 8. EXHIBITS.**

**Exhibit**

**Number Description**

- 4.1 Restated Certificate of Incorporation of the Registrant (1)
- 4.2 Certificate of Designations containing the terms of the Registrant's Fixed Rate Cumulative Perpetual Preferred Stock, Series A (2)
- 4.3 Bylaws, as amended, of the Registrant (3)

The Company hereby agrees to furnish the Commission upon request, copies of (i) the instruments defining the rights of the holders of each issue of its junior subordinated debentures and (ii) the repurchase agreements between the Company and Barclay's Capital, Inc. dated September 2007 and January 2008.

- 5.1 Opinion of Husch Blackwell LLP\*
- 10.1 Guaranty Federal Bancshares, Inc. 2015 Equity Plan (4)
- 23.1 Consent of Husch Blackwell LLP (included in Exhibit 5.1)\*
- 23.2 Consent of BKD, LLP\*
- 24.1 Power of Attorney (included in signature page of this Registration Statement)\*

(1) Filed as Exhibit 3(i) to the Registrant's Annual Report on Form 10-K for the fiscal year ended June 30, 1998 (SEC File No. 0-23325) and incorporated herein by reference.

(2) Filed as Exhibit 3.1 to the Current Report on Form 8-K filed by the Registrant on February 3, 2009 and incorporated herein by reference.

(3) Filed as Exhibit 3.1 to the Current Report on Form 8-K filed by the Registrant on December 3, 2007 and incorporated herein by reference.

(4) Filed as Exhibit 10.1 to the Current Report on Form 8-K filed by the Registrant on May 28, 2015 and incorporated herein by reference.

\* Filed herewith.

**ITEM 9. UNDERTAKINGS.**

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

- (iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

Provided, however, that paragraphs (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective (2) amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

That, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where (4) applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant, Guaranty Federal Bancshares, Inc., certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Springfield, State of Missouri, on the 5th day of June, 2015.

**GUARANTY FEDERAL BANCSHARES, INC.**

By: /s/ Shaun A. Burke

**Shaun A. Burke**

**Chief Executive Officer and**

**President**

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Shaun A. Burke and Carter M. Peters, and each of them, with full power to act without the other, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ SHAUN A. BURKE <b>Shaun A. Burke</b>	President, Chief Executive Officer and Director (Principal Executive Officer)	May 28, 2015
/s/ CARTER M. PETERS <b>Carter M. Peters</b>	EVP and Chief Financial Officer (Principal Financial and Accounting Officer)	May 28, 2015
/s/ JOHN F. GRIESEMER <b>John F. Griesemer</b>	Director	May 28, 2015
/s/ TIM ROSENBURY <b>Tim Rosenbury</b>	Director	May 28, 2015
/s/ JAMES R. BATTEN <b>James R. Batten</b>	Director	May 28, 2015
/s/ DON M. GIBSON <b>Don M. Gibson</b>	Chairman of the Board	May 28, 2015
/s/ DAVID T. MOORE <b>David T. Moore</b>	Director	May 28, 2015
/s/ KURT D. HELLWEG	Director	May 28, 2015

**Kurt D. Hellweg**

/s/ JAMES L. SIVILS, III      Director  
**James L. Sivils, III**

May 28, 2015

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## EXHIBIT INDEX

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