

## A CEO's Guide to The Early Termination of Loss Share

DD&F has developed a unique expertise in failed bank loss share acquisitions and more importantly, in loss share buyouts. Using DD&F's hands-on knowledge of the loss share termination process, we have assisted clients reduce their True-Up liability by a low of \$60,000 up to a high of \$20.0 million. These savings are tangible, comply with GAAP and have been fully acceptable to the FDIC.

If your Bank has one or more Shared Loss Agreements ("Agreements") and is ready to pursue an early termination, we can seamlessly guide you through the termination process by working with your loss share team to analyze your options with the FDIC. Our analysis reviews your historic loss share filings, the status of your indemnification asset and any related True-Up payments that may be due with the termination. We have already terminated loss share for 52 receiverships and have another 26 in the process.

Although the FDIC has identified and contacted certain acquirers as candidates for early termination of loss share, not all banks are aware of the process. To be eligible to terminate your agreements, you should meet two eligibility criteria:

- The acquirers should have Single Family and/or Commercial Shared Loss Agreements that are less than \$200 million each; and
- The estimated consideration for the termination of both Agreements will not exceed \$20 million.

The above criteria do not apply if you are making a payment to the FDIC and may not apply if you have multiple Agreements to terminate.

### **The Process for Your Bank.**

We understand that there are other advisors that are approaching loss share banks and as part of their service, have proposed to evaluate the failed bank's remaining loss share assets to help the loss share bank make a buyout offer to the FDIC. We believe that this step is totally unnecessary and can be quite costly for the banks. At the appropriate time in the process, the FDIC will order its own review and pay for it as we discuss below. The FDIC really does not care what other consultants think. Both DD&F and the FDIC believe that no one understands your portfolio better than your Bank staff who have been working with the assets since the beginning of the loss share. In light of our past experience, we work with your team to evaluate the potential losses and recoveries and set a buyout range.

Once a buyout range is established, we prepare financials that reflect the financial impact of a buyout for management and then work closely with your team to prepare a letter to the FDIC expressing your interest in terminating the Agreements and providing support for your position. The letter provides the FDIC with an estimate of the consideration proposed by your Bank for the termination of the Agreements (the "Termination Amount") which represents the amount the FDIC would pay to your Bank (or your Bank would pay to the FDIC) in satisfaction of all remaining and anticipated payment obligations between the FDIC and your Bank under the Agreements.

Upon receipt of your Bank's proposed Termination Amount, the FDIC will conduct a reasonableness test to determine if the offer merits further consideration by the FDIC. If the FDIC determines that your Bank's proposed Termination Amount is not reasonable, the FDIC will not move forward with the early termination process for your Bank's Agreements and will continue to honor the existing Agreements. In recent months, the FDIC has expedited its initial review and is responding within five to seven days from submission.

### **The FDIC's Process.**

If the proposed Termination Amount is determined to be reasonable, the FDIC will hire a valuation contractor (referred to by the FDIC as Financial Advisor or "FA") to complete an onsite asset valuation review. When the valuation contractor is hired, the FDIC will contact you to make arrangements for the visitation, which would be scheduled as soon as possible depending on resource availability of both your Bank and the valuation contractor.

The asset valuation review (AVR) will:

- Estimate projected cumulative losses over the remaining life of the Agreements; and
- Analyze the estimated future recoveries from charged down or charged-off assets.

The aggregate amount of these analyses will be included in FDIC's termination evaluation analysis. If your Bank's proposed Termination Amount is supported by the AVR and their internal analysis, the FDIC will continue with the early termination process.

At no time will the FDIC disclose the results of its early termination analysis with your Bank, nor will the FDIC negotiate with the Bank towards a mutually acceptable Termination Amount. However, the FDIC may suggest areas your Bank may have overlooked or that you should address in the analysis. It is always up to your Bank as to whether you adjust your Termination Amount. The bottom line though, is that the initial offer and subsequent adjustments provided by your Bank must be acceptable to the FDIC.

Should your Bank's offer be acceptable, the FDIC will request its Risk Share Asset Management ("RSAM") Group to complete a final loss share compliance review and ask your Bank to prepare pro forma financial statements that reflect the financial effect of the Agreement termination. The financials must reflect the exclusion of the indemnification asset and the true up and include a schedule reflecting the effect the termination will have on your Bank's classified asset ratio. The FDIC's Risk Management Supervision ("RMS") staff, as well as your primary federal regulator,

will review the pro formas to assess the termination's impact on your Bank's financial condition. RMS approval is required for the termination to proceed.

Notwithstanding the agreement between the parties and the regulatory agreement, the FDIC RSAM group's final compliance review on the covered asset portfolio must be satisfactorily completed and all findings, disputes and issues must be resolved before finalizing the termination.

Should there be no impediments to termination; the FDIC will provide a draft termination agreement for your Bank to review. Upon signature of the termination agreement as provided by the FDIC and the wiring of funds, the Agreements will be terminated.

Experience has shown that the full termination process from start to finish takes months, and may vary greatly depending on the number of issues that arise during the process.

### **In the Meantime.**

During the termination process, your Bank should continue to comply with all requirements of the Agreements, including the submission of any monthly or quarterly loss claim certificates. Once the valuation is completed and the proposed Termination Amount is determined to be acceptable to the FDIC, they will provide you with a draft of the standard termination agreement. From that point we estimate approximately 90 days to complete the process, including regulatory review and approval. However, it could take less or more time depending on the complexity of the termination and issues that arise.

Please note that pursuing early termination is strictly voluntary, and your Bank is under no obligation to participate in an early termination effort. If participation is not elected, all rights and obligations under the Agreements will continue in full effect.

### **The Experience and Knowledge to Help.**

DD&F's experience in failed bank acquisitions and their related shared loss agreements provides us with the expertise needed to guide you through the early termination process. DD&F has:

- Assisted our clients with bidding on over 200 failed institutions;
- Successfully assisted with acquiring 47 failed institutions;
- Completed one of the first Loss Share buyout with the FDIC;
- Subsequently agreed on buyouts on an additional 52 receiverships;
- Documented True-Up savings of over \$107.7 million for 35 receiverships;
- Are in the process of filing buyouts on an additional 26 receiverships.

DD&F has found True-Up savings of over \$107.7 million for 35 receiverships

### **How Do I Move Forward?**

If you would like to explore this opportunity further, simply give us a call. You can contact either **Randy Dennis** or **Bob Fegtly** at **(501) 374-2600**. Or, if you prefer, you can contact us by email at [rdennis@ddfconsulting.com](mailto:rdennis@ddfconsulting.com) or [bfegtly@ddfconsulting.com](mailto:bfegtly@ddfconsulting.com) with any questions about this timely opportunity for your Bank. We are happy to provide references and personally meet to help you understand your options and provide you a no cost, no obligation estimate of how much we can save you on your True-Up liability.

## About Us.

- ❖ **DD&F's team includes multiple professionals with over 30 years of experience serving the financial services industry.**

DD&F Consulting Group is a full-service consulting company for the financial services industry at the state, regional and national level. We offer a wide range of services in the areas of Mergers & Acquisitions, Strategic & Regulatory Services, Risk Management and Bank Performance. Our mission is to make our clients successful and to that end, DD&F is anchored by a team of seasoned bank consultants providing client-focused expertise you can trust. If you have questions about our changing banking environment, it's very likely that DD&F has one or more professionals that can help.

- ❖ **DD&F received the Achievement Award from the Arkansas Institute for Performance Excellence in 2014 and 2015.**

Having progressively implemented principles of performance excellence in the delivery of our services to our clients over the past four years, DD&F was awarded the Achievement Award in 2014 and 2015 by the Arkansas Institute for Performance Excellence. The Arkansas Institute for Performance Excellence administers the Arkansas Governor's Quality Award. Based on the nationally recognized Baldrige Criteria for Performance Excellence, the Achievement Award is awarded to those organizations that have demonstrated significant progress in building sound and notable processes through their commitment and practice of quality principles to achieve performance excellence. In 2015, there were only three organizations in the State of Arkansas that were awarded the Achievement Award.

- ❖ **DD&F was ranked 9<sup>th</sup> nationally by SNL in total acquisitions.**

DD&F ranked as the #9 financial adviser in M&A, both assisted and unassisted, and branch transactions over the past 3 years.