

**TERM ASSET-BACKED SECURITIES LOAN FACILITY UPDATE:
WHAT THE BUY-SIDE NEEDS TO KNOW**

The Board of Governors of the Federal Reserve System (the “Board”) recently released additional information about the Term Asset-Backed Securities Loan Facility (“TALF”) that may be important to asset managers, hedge funds and other institutional investors in asset-backed securities (“ABS”).¹ The TALF program provides a means for certain investors to finance the purchase of certain types of newly or recently issued ABS.

This memorandum addresses certain key questions about TALF.

PROGRAM OVERVIEW**What is TALF and what is its purpose?**

TALF is a Federal Reserve credit facility that is designed to increase credit availability and support economic activity by facilitating renewed issuance of ABS collateralized by consumer and small business loans.²

Under TALF, the Federal Reserve Bank of New York (the “Fed”) will make non-recourse loans available to certain eligible holders of AAA-rated debt collateralized by certain eligible newly and recently originated loans,³ as discussed in greater detail below.

¹ Press Releases dated:

November 25, 2008 (<http://www.federalreserve.gov/newsevents/press/monetary/20081125a.htm>) ;
December 19, 2008 (<http://www.federalreserve.gov/newsevents/press/monetary/20081219b.htm>);
February 6, 2009 (<http://www.federalreserve.gov/newsevents/press/monetary/20090206a.htm>); and
February 10, 2009 (<http://www.federalreserve.gov/newsevents/press/monetary/20090210b.htm>).

Terms and Conditions dated:

November 25, 2008 (<http://www.federalreserve.gov/newsevents/press/monetary/monetary20081125a1.pdf>);
December 19, 2008 (http://www.newyorkfed.org/markets/talf_Terms_081219.html); and
February 6, 2009 (http://www.newyorkfed.org/markets/talf_terms.html).

Frequently Asked Questions dated:

December 19, 2008; (http://www.newyorkfed.org/markets/talf_faq_081219.html)
February 6, 2009 (http://www.newyorkfed.org/markets/talf_faq_090206.html) and
February 13, 2009 (http://www.newyorkfed.org/markets/talf_faq.html).

Fact Sheet dated February 10, 2009 (<http://www.financialstability.gov/docs/fact-sheet.pdf>).

Geithner Remarks dated February 10, 2009 (<http://www.ustreas.gov/press/releases/tg18.htm>).

² TALF is authorized under section 13(c) of the Federal Reserve Act.

When is TALF expected to begin and end?

The TALF program is expected to become operational in March 2009, and to make loans through December 31, 2009. The Fed is expected to announce a more detailed schedule soon. The term of each loan will be three years.

What is the size of TALF?

TALF is expected to make up to \$200 billion of loans.⁴

When and how often will TALF loans be made?

Once TALF is operational, eligible borrowers will be able to request up to two loans (one fixed rate, one floating rate) once per month, on a designated date and through a primary dealer.

What is the minimum or maximum amount of each TALF loan?

The minimum amount for each loan is \$10 million; there is no maximum amount.

Will TALF loans be extended to each borrower who requests them?

No, not necessarily. The Fed reserves the right to reject any request for a loan, in whole or in part, in its sole discretion.

What is the interest rate for each TALF loan?

Each loan will have either a fixed interest rate of 100 bps above the 3 year LIBOR swap rate, or a floating interest rate of 100 bps above the 1 month LIBOR rate.

What is the administrative fee for each TALF loan?

The administrative fee will be 5 bps, payable prior to distribution of the loan proceeds.

³ Currently, certain types of auto loans, bank card and retail card loans, student loans, and small business loans guaranteed by the Small Business Administration (“SBA”), as discussed in greater detail herein, are eligible collateral; the program may be expanded to include commercial mortgage-backed securities, non-Agency residential mortgage-backed securities, assets collateralized by corporate debt, and other ABS.

⁴ The program may be expanded to up to \$1 trillion.

What is the margin or haircut for each TALF loan?

The principal amount of each loan will be based on the amount of collateral posted and a fixed “haircut” which will range from 5% (prime bank-card loans 2 years or less) to 16% (auto-dealer floorplan loans 4-5 years) as set forth below. For ABS with expected lives beyond seven years, haircuts will increase by one percentage point for each additional year of expected life beyond seven years.

Sector	Subsector	ABS Expected Life (years)						
		0-1	1-2	2-3	3-4	4-5	5-6	6-7
Auto	Prime retail lease	10%	11%	12%	13%	14%		
Auto	Prime retail loan	6%	7%	8%	9%	10%		
Auto	Subprime retail loan	9%	10%	11%	12%	13%		
Auto	Floorplan	12%	13%	14%	15%	16%		
Auto	RV/motorcycle	7%	8%	9%	10%	11%		
Bank Card	Prime	5%	5%	6%	7%	8%		
Bank Card	Subprime	6%	7%	8%	9%	10%		
Retail Card	Prime	6%	7%	8%	9%	10%		
Retail Card	Subprime	7%	8%	9%	10%	11%		
Student Loan	Private	8%	9%	10%	11%	12%	13%	14%
Student Loan	Gov’t guaranteed	5%	5%	5%	6%	7%	8%	9%
Small Business	SBA loans	5%	5%	5%	5%	6%	7%	8%

ELIGIBLE BORROWERS**Who is eligible to borrow from the Fed under TALF?**

Under TALF, any “U.S. company” is an eligible borrower; an eligible borrower holding “eligible collateral” and working through a “primary dealer” can borrow under TALF, as described below.

Who is a “U.S. company” under TALF?

An entity is a U.S. company for purposes of TALF if it fits into one or more of the following categories:

- (i) a business entity or institution organized under the laws of the United States or a political subdivision or territory thereof (U.S.-organized) that conducts significant operations or activities in the United States (regardless of whether any such entity has a parent company that is not U.S.-organized), including any U.S.-organized subsidiary of such an entity;
- (ii) a U.S. branch or agency of a foreign bank (other than a foreign central bank) that maintains reserves with a Federal Reserve Bank; or

- (iii) an investment fund (i.e., any type of pooled investment vehicle, including a hedge fund, a private equity fund, and a mutual fund, or any vehicle that primarily invests in eligible collateral and borrows from the TALF, whether newly formed or previously established) that is U.S.-organized and managed by an investment manager that has its principal place of business in the United States.⁵

Can a U.S.-organized operating subsidiary of a foreign entity be a “U.S. company” under TALF?

Yes. A U.S.-organized operating subsidiary of a foreign entity shall be considered a U.S. company so long as:⁶

- (i) the U.S. subsidiary conducts significant operations or activities in the United States; and
- (ii) the U.S. subsidiary is not directly or indirectly controlled by a foreign government.

Can a U.S.-organized investment fund subsidiary of a foreign entity be a “U.S. company” under TALF?

Yes. A U.S.-organized investment fund subsidiary of a foreign entity shall be considered a U.S. company so long as:

- (i) the U.S. subsidiary is managed by an investment manager that has its principal place of business in the United States;
- (ii) the U.S. subsidiary is not directly or indirectly controlled by a foreign government; and
- (iii) the investment manager of the U.S. subsidiary is not directly or indirectly controlled by a foreign government.

⁵ The following example is provided in the Frequently Asked Questions publication dated February 13, 2009:

InvestcoBermuda is a “master” investment fund organized in Bermuda that makes joint investments on behalf of InvestcoUS, a U.S.-organized investment fund, and InvestcoCayman, a Cayman Islands-organized investment fund. InvestcoBermuda, InvestcoUS, and InvestcoCayman are all managed by an investment manager with its principal place of business in the United States.

Only InvestcoUS is an eligible borrower because it is the only investment fund that is U.S.-organized. If, however, InvestcoBermuda establishes Newco, a subsidiary investment fund, in the United States and hires its U.S.-based investment manager to manage Newco, Newco would be an eligible borrower for purposes of TALF.

⁶ Any U.S. subsidiary formed by a non-U.S. entity for purposes of requesting a TALF loan should be able to avoid U.S. federal entity-level tax if it is formed as a pass-through entity (i.e., partnership or disregarded entity for tax purposes). Additionally, interest payments received on the TALF-eligible ABS should be exempt from U.S. withholding taxes as portfolio interest, and the stock and securities trading safe harbor generally should apply to the acquisition of such ABS.

Can an entity controlled by a foreign government, or managed by an investment manager controlled by a foreign government, be a “U.S. company” under TALF?

No. An entity (whether it is a U.S. subsidiary of a foreign entity, an investment fund or another type of entity) is not a U.S. company, and therefore not an eligible borrower, if it is controlled by a foreign government or is managed by an investment manager controlled by a foreign government (“controlled by a foreign government” means the foreign government owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the entity).

PRIMARY DEALERS

How will the primary dealer initially facilitate the TALF loans?

The borrower will enter into an agreement with the primary dealer, granting such dealer the authority to enter into a master loan and security agreement (“MLSA”) with the Fed on the borrower’s behalf. The MLSA will outline additional details regarding the loan. A model MLSA is available online at http://www.newyorkfed.org/markets/TALF_MLSA.pdf.

The primary dealer will collect certain information from the potential borrowers (amount of loan requested, fixed and/or floating rate, CUSIPs and offering documents of ABS collateral). The primary dealer will then deliver aggregated loan requests to the Fed, and provide broken-down borrower-by-borrower information to the Fed’s custodian bank. When the Fed confirms the amounts of loans it will make to each borrower, the primary dealer will deliver this confirmation information to the borrowers.

Before representing a borrower, the primary dealer must apply its internal customer identification program and due diligence procedures (i.e., “Know Your Customer” program) to such borrower and must be able to outline to the Fed the risk assessment methodology for such borrower. The Fed will only make loans to a borrower that the primary dealer represents is eligible for the program.

What is the primary dealer’s ongoing role in the TALF loans?

The primary dealer will act as ongoing intermediary between the Fed and the borrowers. With respect to transfers of funds, the primary dealer will collect administrative fees and margins from the borrowers and deposit them into the Fed’s settlement account at the custodian bank, and will collect distributions on the collateral due to the borrowers and deliver those funds to borrowers along with applicable tax reports. The primary dealer will also resolve any discrepancies identified by the custodian.

A list of primary dealers is available online at http://www.newyorkfed.org/markets/pridealers_current.html.

OPERATIONAL AND PROCEDURAL INFORMATION

What are the conditions precedent to the making of a TALF loan?

The loan proceeds will be distributed upon receipt by the custodian bank of the eligible collateral, the 5 bps administrative fee, and the margin, if applicable; provided, however, that the Fed reserves the right to reject any request for a loan, in whole or in part, in its sole discretion.

Can the TALF loans be prepaid or assigned?

Yes. The loans may be prepaid in part or in full without penalty at any time, and may be assigned, in full, to another eligible borrower at any time prior to December 31, 2009, with the prior consent of the Fed.

What happens if a representation or covenant is breached or the collateral or borrower is found to be ineligible, after the TALF loan has been made?

If at any point the collateral backing a loan, or the borrower of a loan, is found to be ineligible, or the borrower breaches a representation, warranty or covenant of the MLSA,⁷ the loan shall no longer be non-recourse. In the case of ineligible collateral, the borrower will either repay the loan or replace the ineligible collateral with eligible collateral (in no other case shall substitution of collateral be permitted); in the case of an ineligible borrower, the borrower will repay the loan.

Is there any other situation under which new collateral may be substituted for original collateral?

No. If collateral is found to be ineligible, the borrower may substitute eligible collateral (or repay the loan). In no other case will new collateral be substituted for original collateral.

What happens if the borrower fails to repay the TALF loan when due?

If the eligible borrower fails to repay the loan interest or principal when due, the Fed will take possession of the eligible collateral and sell it to a special purpose vehicle (“SPV”) established for managing such collateral in exchange for a fee.⁸

⁷ Under the MLSA, borrower representations include: (i) both the borrower and the collateral (and the substitute collateral, if any is delivered) are eligible; (ii) the borrower has the power to, and has taken all appropriate steps to, authorize its primary dealer to execute the MLSA; and (iii) when the TALF loan is made, the borrower has sufficient rights in the collateral to grant the Fed a security interest without any adverse claims.

⁸ If the net interest on the pledged ABS is not sufficient to cover the interest payment on the TALF loan, the borrower shall have a 30-day grace period to make the payment before the Fed takes possession of the collateral.

How is the U.S. Treasury involved?

The SPV will need financing in order to purchase the eligible collateral, as discussed above. To raise funds, the SPV will issue subordinated debt and the U.S. Treasury's Troubled Assets Relief Program ("TARP") will purchase that debt, in order to finance the first \$20 billion of the SPV's asset purchases.⁹

How will the SPV fund additional asset purchases, beyond the TARP debt?

The Fed will loan to the SPV funds in excess of \$20 billion as required to purchase additional collateral. The Fed's loan to the SPV shall be secured by the SPV's assets and shall be senior to the TARP subordinated loan discussed above.

ELIGIBLE COLLATERAL

What is "eligible collateral" under TALF?

To borrow under TALF, an eligible borrower must hold "eligible collateral." In order to qualify as "eligible collateral," assets must meet the requirements outlined below.

What are the basic requirements for "eligible collateral" under TALF?

The collateral must be:

- U.S. dollar-denominated;
- ABS cash (i.e., not synthetic);
- cleared through the Depository Trust Company; and
- rated in the highest long-term or short-term investment-grade rating category by two or more NRSROs (not taking into account any third-party guarantees) and not on review or negative watch, and not rated below the highest investment-grade rating category by any NRSRO.¹⁰
 - NB: An exception to the highest rating requirement exists for any small business loan ABS that is (or whose underlying credit exposures are) fully guaranteed as to principal and interest by the full faith and credit of the U.S. government.

⁹ The amount of TARP funding may be expanded up to \$100 billion.

¹⁰ NB: If an eligible ABS is later downgraded by an NRSRO, the existing TALF loan will not be affected; however until such ABS regains its status as eligible collateral it may not collateralize any new TALF loans.

What asset class requirements apply to “eligible collateral” under TALF?

The set of permissible underlying credit exposures of ABS includes only the following assets (although it may be expanded over time to include commercial mortgage-backed securities, private-label residential mortgage-backed securities, or other ABS):

- auto loans (including retail loans and leases relating to cars, light trucks, motorcycles and recreational vehicles (RVs), and auto dealer floorplan loans but excluding commercial, government and rental fleet leases of cars, trucks and light trucks);
- student loans (including federally guaranteed, consolidation and private loans);
- credit card loans (including consumer and corporate credit card receivables); and
- small business loans fully guaranteed as to principal and interest by the SBA (including loans, debentures, or pools originated under the SBA’s 7(a) and 504 programs, fully guaranteed as to principal and interest by the U.S. government).
- NB: A borrower may combine eligible ABS as collateral for a single TALF loan (provided that fixed-rate ABS are pledged against a fixed-rate loan and floating-rate ABS are pledged against a floating rate loan).

What additional restrictions apply to “eligible collateral” under TALF?

With respect to all asset classes:

- the ABS must be backed by exposures at least 95% of which, by dollar amount, are to U.S.-domiciled obligors; and
- the ABS may NOT be backed by ABS (i.e., no resecuritizations) or by loans originated or securitized by the TALF borrower or its affiliates.

What asset class specific exposure limits apply to “eligible collateral” under TALF?

The collateral must meet the following asset-class specific credit-exposure criteria:

- auto loan ABS (other than auto dealer floorplan ABS) must be backed by auto loans at least 85% of which, by dollar amount, were originated on or after October 1, 2007;
- student loan ABS must be backed by student loans at least 85% of which, by dollar amount, have a first disbursement date on or after May 1, 2007;
- small business loan ABS (other than SBA Pool Certificates and Development Company Participation Certificates) must be backed by small business loans fully guaranteed as to principal and interest by the SBA and originated on or after January 1, 2008; and

- credit card ABS and auto dealer floorplan ABS must be backed by credit card receivables or auto dealer floorplan loans, respectively; must be refinancing existing credit card ABS or auto dealer floorplan ABS, as applicable, maturing in 2009; and must not exceed the amount of the maturing ABS.

What issuance date/expected life limits apply to “eligible collateral” under TALF?

The collateral must meet the following asset-class specific date of issuance and expected life criteria:

- ABS other than SBA Pool Certificates and Development Company Participation Certificates must have been issued on or after January 1, 2009;
- SBA Pool Certificates and Development Company Participation Certificates must have been issued on or after January 1, 2008, regardless of the dates of the underlying loans or debentures; and
- auto loan ABS and credit card ABS must have an expected life of no more than five years.

What requirements apply to “eligible collateral” under TALF with respect to date of ownership of the ABS by the borrower?

As long as it meets the eligibility criteria discussed above, ABS may qualify as eligible collateral under TALF regardless of whether or not the borrower owns such ABS on the loan request date.

If the borrower does already own the ABS on the date of the loan request, such borrower should pay particular attention to the issuance date requirements, as outlined above.

If the borrower does not yet own the ABS on the request date, such borrower must, on the date of the loan request, provide the primary dealer with the CUSIPs of the ABS to allow the primary dealer and custodian to perform necessary due diligence on the collateral.

If the ABS is a new issuance set to close on the same date as the TALF loan, the margin and administrative fee on such loan will be determined based on the full purchase price the borrower anticipates paying for the ABS as of the loan request date; if the borrower is allocated less of the ABS issuance than was anticipated on the loan request date, the margin and administrative fee will be appropriately adjusted.

COMPENSATION, ACCOUNTING, AND DISCLOSURE REQUIREMENTS

Will borrowers under TALF have to comply with any compensation requirements?

No. As of the release of the February 13, 2009 Frequently Asked Questions publication the Board has indicated that executive compensation requirements will not apply to TALF borrowers.

Will sponsors under TALF have to comply with any compensation requirements?

Yes. In order for any ABS to qualify for TALF, the sponsor thereof (or applicable entity specified in the TALF certification) must be, and must certify annually to the Fed that it is, subject to the executive compensation requirements contained in Section 111(b) of the Emergency Economic Stabilization Act of 2008, or must have agreed to comply with those requirements.

What accounting requirements must sponsors comply with to qualify for TALF?

In order for any ABS to qualify for TALF, the sponsor thereof must retain a nationally recognized certified public accounting firm registered with the Public Company Accounting Oversight Board to attest to the Fed, prior to the first distribution of loan proceeds, and annually thereafter, that (i) the collateral is TALF eligible and (ii) the sponsor is subject to, or has agreed to comply with, Section 111(b). A form of attestation is available online at <http://www.newyorkfed.org/markets/TALFAuditorAttestationForm.pdf>.

What reporting and disclosure requirements are established by TALF?

In order for any ABS to qualify for TALF, the issuer and sponsor thereof must provide that any offering document for such ABS contains a signed certification that (i) the ABS is TALF eligible, (ii) an accounting firm has certified that the ABS is TALF eligible, (iii) the sponsor is subject to or has agreed to comply with Section 111(b), and (iv) the issuer and sponsor have indemnified the Fed from any losses if any such certifications are untrue. A form certification and indemnity undertaking is available online at http://www.newyorkfed.org/markets/Form_Certification_TALF_Eligibility.pdf.

The Fed has indicated that it reserves the right to exercise on-site inspection rights over borrowers, and to review all loan files held by the custodian pertaining to each borrower. Additionally, it has been suggested that MLSAs or other such contracts entered into in connection with TALF loans may be posted on the Treasury Department's website (<http://financialstability.gov/>) within five to ten business days of their execution.

Is there a formal comment submission process, or any other way to reach the Fed with questions and/or comments?

There is no formal comments submission process, but the Fed has indicated that questions and comments can be submitted to the Fed's Public Affairs Department at 212-720-6130 or TALF@ny.frb.org. The rules and regulations regarding TALF are subject to modification, clarification and revision, and the Fed has indicated that it may take comments and questions submitted to the Public Affairs Department into account when making such revisions.

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