

Legal Update

TALF 2020 Update: MLSA, Revised FAQs and Related Program Materials

On May 20, 2020, the Federal Reserve Bank of New York ("FRBNY" or the "Fed") announced the first subscription date, June 17, 2020, in connection with the Term Asset-Backed Securities Loan Facility ("TALF 2020"). The Fed also issued revised Frequently Asked Questions ("FAQs")¹ and the new Master Loan and Security Agreement ("MLSA")² for the program, along with other updated forms and documents. On May 26, 2020, the Fed again released revised FAQs and a revised issuer/sponsor certification, as further discussed below.

This Legal Update replaces our prior Legal Update published May 18, 2020, and provides a comprehensive summary of the current FAQs, MLSA and related TALF 2020 materials released to date.

Key Highlights in Recent Fed Releases

- The first TALF loan subscription date will be June 17, 2020, with a settlement date of June 25, 2020;
- Going forward, the Fed expects to provide two subscription dates per month, each available to all eligible asset classes;
- Eligible NRSROs have been expanded to include DBRS and Kroll, as long as at least one qualifying rating is received from S&P, Moody's or Fitch;
- The forms for TALF borrower certifications as to inadequate credit accommodations, solvency and conflicts of interest have been provided on the TALF website, with further guidance in the FAQs;
- Details on collateral review, issuer/sponsor certifications, auditor assurances and SBA loan documentation have been provided in the FAQs and in related forms on the TALF website;
- The Fed updated its Borrower Due Diligence Policy and Conflicts of Interest Policy with specific guidelines and requirements, including with respect to due diligence on Material Investors and Control Persons of Borrowers, as well as the required contents of Conflicts of Interest Plans; and
- Operational subscription and closing mechanics have been provided, including detailed timing and delivery requirements for all parties.

Overview

TALF 2020 was established by FRBNY pursuant to Section 13(3) of the Federal Reserve Act, and was approved by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. The program is designed to facilitate the issuance of asset-backed securities ("ABS") and support the availability of credit to households and businesses. The TALF 2020 program was initially announced on March 23, 2020, in the wake of considerable strain on the securitization markets associated with the coronavirus pandemic. A similar initiative ("Original TALF") was instituted by the Fed in 2009 to restart primary issuance in the ABS markets following the 2008 financial crisis.

Under TALF 2020, a special purpose entity ("TALF II LLC" or the "Lender") will make loans available to borrowers as described in more detail below. Any such loans will have a three-year term, be fully secured by eligible ABS and will be non-recourse to borrowers. To support this facility, the Fed has committed to lend up to \$100 billion to TALF II LLC on a recourse basis, and the US Department of Treasury will make an equity investment of \$10 billion in TALF II LLC from funds appropriated to the Exchange Stabilization Fund under Section 4027 of the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"). The Lender will initially make up to \$100 billion of loans available. On fixed days expected to occur twice each month, borrowers will be able to request one or more TALF loans, the proceeds of which will be disbursed to such borrowers (contingent on receipt by the TALF custodian of eligible collateral, an administration fee and margin, if applicable).

GENERAL TERMS AND CONDITIONS

The first TALF 2020 subscription date on which borrowers may request loans under the TALF program will be June 17, 2020, and the related loan settlement date will be June 25, 2020. The Lender will not extend loans under TALF 2020 after September 30, 2020 (the "TALF Termination Date"), unless such date is extended by the Board and the Department of the Treasury.

Borrowers may prepay TALF loans in whole or in part at any time. Substitution of collateral during the term of the loan is generally not permitted. Under the term sheet and FAQs, TALF borrowers will be required to certify as to their eligibility to participate in the program (as further discussed below), and will be subject to the conflicts of interest requirements of section 4019 of the CARES Act, which prohibits certain federal government affiliations.

During the operation of TALF 2020, the Fed will publicly disclose certain information on a monthly basis, including the identity of each borrower and each other participant in the facility, each Material Investor of a borrower, the amount borrowed by each borrower and corresponding interest rate paid, the types and amounts of collateral pledged for each loan, and overall costs, revenues and fees for the program. A "Material Investor" for purposes of the TALF 2020 program is a person who owns, directly or indirectly, 10% or more of any outstanding class of securities of an entity. This information was not publicly disclosed in such a manner by FRBNY in connection with the Original TALF program.

The Secretary of the Treasury and the Board may make adjustments to the terms and conditions applicable to TALF 2020 at any time during the operation of the program, with any such changes to be announced on the Fed's website.

Master Loan and Security Agreement (MLSA)

Borrowers are not able to access the TALF directly and, instead, must rely on primary dealers acting as agents ("TALF Agents") to facilitate TALF Loans. As stated above, on Wednesday, May 20th, the Fed

released the form of Master Loan and Security Agreement (MLSA) for TALF 2020, which was generally based on the MLSA from the Original TALF but which includes material changes to that previous form. The MLSA is an agreement among TALF II LLC, as Lender, The Bank of New York Mellon, as the TALF custodian and administrator appointed by the Fed, and the TALF Agents that become party thereto, each on behalf of itself and its respective TALF borrowers. Each TALF borrower must enter into an individually negotiated agreement (each, a "Customer Agreement") with at least one TALF Agent specifying the parties' responsibilities and obligations under the TALF program. A borrower may (and many likely will) enter into Customer Agreements with multiple TALF Agents. Although a TALF Agent may facilitate a TALF loan secured by eligible collateral issued in a transaction for which that TALF Agent was not an underwriter or initial purchaser, there are practical considerations which may it more likely that the TALF Agent will be an underwriter or initial purchaser, as applicable.³

The MLSA provides a limited number of specific provisions that must be included in each Customer Agreement, such as a provision pursuant to which the borrower authorizes the TALF Agent to execute and deliver the MLSA on behalf of the borrower and to bind the borrower to the terms of the MLSA. The MLSA makes clear that the Lender has no obligation to make any loan or to accept as collateral any ABS. The Lender and the Fed can decide to reject a loan request for any reason. The MLSA also makes clear that the Lender and the Fed may change the MLSA and the TALF loan procedures at any time without any party's consent, and such changes will be posted on the Fed's TALF website and deemed to be effective once posted. Such changes, however, will not affect the rights or obligations of the TALF Agents or borrowers under any TALF loans outstanding prior to the effectiveness of any such change.

As further detailed below, the MLSA generally provides the procedures for submission of loan requests by the TALF Agents on behalf of borrower, and the related settlement date procedures for payment of relevant fees and other amounts by the borrowers, settlement of collateral through DTC and delivery by the Lender of the loan proceeds. The MLSA also provides the methodology and payment dates for payments of interest and principal of each TALF loan (including the methodology applicable when an event of default or early amortization event with respect to the collateral, or a collateral enforcement event with respect to the TALF loan, has occurred and is continuing).

Under the MLSA, a TALF borrower is required to make a number of representations and warranties which are deemed to be continuous (and not just made as of the subscription date or loan closing date) for so long as such borrower has any obligations outstanding under the MLSA. In addition to general corporate representations, the representations and warranties of the borrower include, among others, (1) that the borrower is an "eligible borrower" (determined on the basis of the criteria applicable to eligible borrowers in effect at the time the TALF loan was made or assumed); (2) that the collateral is (to the borrower's knowledge) "eligible collateral"; and (3) that the borrower is unable to secure "adequate credit accommodations" from other banking institutions as of the date of any Loan, is not insolvent, is not a "covered entity" under Section 4019(a)(2) of the CARES Act and is a "US company" for purposes of TALF.

Likewise, each TALF Agent is also required to make a number of representations and warranties which are deemed to be continuous for so long as any of its borrower customers have obligations outstanding under the MLSA. In addition to general corporate representations, a TALF Agent must make representations and warranties, among others, to the effect that (1) each of its borrower customers is an "eligible borrower"; (2) all collateral securing a TALF loan facilitated by that TALF Agent is "eligible collateral"; and (3) the TALF Agent has established and is operating in material compliance with specified due diligence requirements. Additionally, a TALF Agent that acted as an underwriter of the eligible collateral is deemed to make representations as to the accuracy of the information contained in the offering materials for the collateral. A TALF Agent is also

obligated under the MLSA to provide the Fed with all information in its possession concerning each of its borrowers (including all "know your customer" information and assessments), and market price information with respect to any collateral. Additionally, a TALF Agent is required to provide an annual certification to the Lender that it is in material compliance with its representations, warranties and covenants under the MLSA. The MLSA provides for broad indemnity obligations of a borrower in favor of the Lender, the Fed and the TALF custodian and administrator for with any losses incurred by such persons in connection with the MLSA and any TALF loans, other than for any such indemnified party's gross negligence, willful misconduct or fraudulent actions.

Although the loans made under TALF are generally without recourse to a borrower, the loans become full recourse to the borrower (i) if at any time such borrower is not an eligible borrower under TALF, (ii) upon the inaccuracy of certain of such borrower's representations and warranties, including representations and warranties regarding the accuracy of information provided to the Fed, the collateral being eligible collateral and the certifications provided to the Fed by such borrower being untrue. The Fed also has recourse against a TALF Agent for its gross negligence, willful misconduct and fraudulent actions and for such TALF Agent's failure to comply with its covenants and undertakings in the MLSA, and the failure of any of its representations and warranties to be true and correct in all material respects. We note, however, that the Fed has recourse against a TALF Agent for a breach of certain of its representations and warranties (including those related to the eligibility of the borrower and the collateral to meet requirements under TALF and accuracy of information) only to the extent the TALF Agent failed to exercise reasonable care in confirming the accuracy of the applicable representations and warranties.

Other specific provisions included in the MLSA are discussed in further detail below, in the context of other TALF program considerations as presented in the FAQs.

Borrower Eligibility

To receive funds under the TALF 2020 program, a borrower must be an eligible borrower that owns eligible collateral. As set forth in the FAQs and term sheet, eligible borrowers include businesses⁴ that:

- are created or organized in the United States or under the laws of the United States;
- have significant operations in and a majority of their employees based in the United States; and
- maintain an account relationship with a primary dealer.

CREATED OR ORGANIZED IN THE UNITED STATES

A US subsidiary or US branch or agency of a foreign bank would be considered to be created or organized in the United States or under the laws of the United States for purposes of the borrower eligibility requirements under TALF 2020. However, any borrower (or if such borrower is an investment fund, any investment manager) with a Material Investor that is a foreign government is not an eligible borrower under TALF 2020. Each borrower's Material Investors must be tracked on a continuous basis to support ongoing borrower eligibility representations and covenants and FRBNY's public disclosure identifying Material Investors. The MLSA provides that borrowers must disclose each Material Investor in and Control Person⁵ of such Borrower to its TALF Agent both at the time any loan is made and upon any change in the borrower's Material Investors.

SIGNIFICANT OPERATIONS AND MAJORITY OF EMPLOYEES IN THE UNITED STATES

The first iteration of the TALF 2020 term sheet led market participants to question whether investment funds, which typically do not have employees, could be eligible borrowers under the program. The FAQs

clarify that a borrower may be an investment fund⁶ so long as the related investment manager has significant operations in and a majority of its employees based in the United States. If a borrower is not an investment fund, the borrower, on a consolidated basis (i.e., together with its consolidated subsidiaries but excluding any parent company or sister affiliate) must satisfy this criteria.

The FAQs also provide non-exhaustive examples of what would constitute “significant operations in the United States,” including a borrower (or investment fund manager) with one of the following:

- greater than 50% of its consolidated assets in the United States;
- greater than 50% of its annual consolidated net income generated in the United States;
- greater than 50% of its annual consolidated net operating revenues generated in the United States; or
- greater than 50% of its annual consolidated operating expenses (excluding interest expense and any other expenses associated with debt service) generated in the United States.

Each of these tests will be based on the entity’s most recent audited financial statements.

PRIMARY DEALER

The MLSA requires an eligible borrower to be a customer of a TALF Agent and to enter into a Customer Agreement⁷ that authorizes the TALF Agent to execute the MLSA and otherwise act on behalf of the borrower in connection with the program. Additionally, the borrower must authorize the TALF Agent to receive notices and instructions on behalf of the borrower and agree to provide the TALF Agent with all information required or reasonably requested by the TALF Agent in connection with its Required AML Program and Customer Review Program.

CERTIFICATIONS AND REPRESENTATIONS

Like other participants in CARES Act programs, borrowers under TALF 2020 will be required to provide certain representations and certifications to the Fed. Under the MLSA, each borrower will make a continuous representation that it is an eligible borrower. Each borrower will be expected to monitor its direct and indirect investors for purposes of determining Material Investors as long as its TALF loan remains outstanding, and must escalate any new Material Investors to its TALF Agent for due diligence review. Each borrower must also provide a representation and warranty that it will not engage in any credit hedge⁸ in relation to the collateral so long as any loan is outstanding under TALF.

Prior to the date on which the TALF Agent submits the first request for a TALF loan, the borrower must provide both a “Borrower Solvency and Inadequate Credit Accommodations Certification” (the “Solvency and Credit Certification”)⁹ and a “Borrower Conflicts of Interest Certification” (the “Conflicts Certification”)¹⁰ to the TALF Agent.

In the Solvency and Credit Certification, the MLSA requires each borrower¹¹ to certify that it is unable to secure adequate credit accommodations from other banking institutions and that it is not insolvent. The borrower is also required to notify the TALF Agent immediately if any information in the certification changes. Market participants are particularly focused on the first prong of the Solvency and Credit Certification, asking what support borrowers will need in order to be comfortable with making such certification, and what level of due diligence the TALF Agents will be required to perform on their customers’ certifications. The Fed notes in the revised FAQs that borrowers do not need to determine that no credit is available, and that in making the certification, borrowers may rely on unusual economic conditions in the market intended to be addressed by TALF 2020, such as ABS spreads that are elevated relative to normal market conditions. The Fed points to elevated spreads as a possible reason for credit being available, but inadequate in its amount, price or terms.

The form Solvency and Credit Certification includes an acknowledgment that the Fed may make public disclosures regarding the TALF loan¹² and an acknowledgment that a “knowing material misrepresentation” in the certification will trigger a collateral enforcement event to allow the lender to exercise rights in the collateral and the acceleration of the full loan amount. Additionally, the Fed will refer the matter to appropriate law enforcement authorities for investigation and action in accordance with applicable criminal and civil law.

In the Conflicts Certification, the MLSA requires two officers of each borrower¹³ to certify as to the conflict of interest requirements of section 4019 of the CARES Act, which prohibit certain federal government affiliations. Specifically, the borrower must certify that it is not a Covered Entity (as defined in section 4019(a)(2) of the CARES Act). To support the Conflicts Certification, the borrower must agree to maintain records containing the basis for the certification and make such support available for examination either directly by the Fed and/or by an external auditor that will provide an attestation to the Fed. The borrower must retain such records for 20 years following the termination of the TALF 2020 program.

INVESTMENT FUNDS

The FAQs also clarify that qualifying investment fund borrowers include those that are newly formed. Additionally, both investment funds that invest solely in TALF-eligible ABS and those investing in a mix of TALF-eligible ABS and other assets will be eligible.

LIMITATIONS ON UNDERLYING BORROWER ASSETS

In general, eligible collateral for a particular borrower cannot be backed by loans originated or securitized by the borrower or its affiliates. However, a borrower is not restricted from using certain of its own SBA ABS as collateral for a TALF loan, as long as the borrower has no knowledge that the loans underlying such SBA ABS were originated by it or its affiliates. The FAQs provide that a TALF borrower is also limited in the percentage of pool assets underlying its pledged ABS collateral that may constitute loans or leases made to such TALF borrower or its affiliates as underlying obligors. These pool percentage limitations are set out in the FAQs at 5% for CMBS, 10% for floorplan loan or fleet lease ABS, and 4% for CLOs.^{14 15} This limitation also applies, at 10% of the related pool, to TALF borrowers (and affiliates thereof) who manufacture, produce or sell products (or provide any services, the sale, provision or lease of which is) financed by the loans or leases in such underlying asset pool.

Operational Mechanics: Issuer, Sponsor and Auditor Deliverables for Newly Issued ABS

As part of the overall procedures associated with a TALF borrowing, issuers, sponsors and TALF Agents must comply with a multitude of timing and delivery requirements set forth in greater detail in the MLSA. For a quick reference guide to the required deliverables and related timing, please see our TALF 2020 Deliverables Timeline [here](#). The FAQs also provide some additional guidance on these operational requirements.

NRSRO DATA

As part of the indemnity undertaking that the sponsor must submit to the Fed, the sponsor agrees to provide the Fed with certain data provided to NRSROs.

For newly issued ABS, no later than 5:00 p.m. (New York time) three weeks in advance of the applicable TALF subscription date, the sponsor or issuer of such proposed ABS must submit all data on the ABS that the issuer has provided to any NRSRO. The sponsor or issuer must also provide to the Fed at that time a written waiver or consent made by the issuer or sponsor to every NRSRO that received data on the ABS,

permitting such NRSRO (regardless of whether it is a TALF-eligible rating agency or whether it actually issues a rating on the ABS) to share its view of the credit quality of the ABS and its underlying exposures. For ABS issued on or after March 23, 2020 and before May 22, 2020, such information must be submitted to the Fed by 3:00 p.m. (New York time) on June 30, 2020.

The FAQs clarify that the “rating agency book” is intended to be included in the required documents, but that transaction documentation (other than term sheets and offering documents) and oral communications are not included. Additionally, such data includes information provided by or on behalf of the sponsor or issuer relating to the underlying ABS assets (including historical performance and eligibility criteria), the structure of the ABS (including term sheets, cash flow projections, structural diagrams and draft offering documents) and the names of the issuer, sponsor, servicer and originators themselves. The issuer must also submit all other data that the issuer has considered to analyze and certify collateral eligibility criteria (including recent trustee and servicer reports).

The Fed may request further information in connection with its review, and the sponsor and issuer are required to promptly provide additional data provided to any NRSRO. The FAQs clarify that “additional data” includes any updates or changes to the information previously provided to the Fed, and any information related to the items listed in the prior paragraph. The FAQs also make clear that issuers and sponsors are not required to copy the Fed on every email correspondence with the NRSROs or include the Fed in oral conversations, but any substantive information should be provided to the Fed. If the Fed becomes aware of any factors that could adversely affect the eligibility of ABS, the Fed will reach out to the issuer and give the issuer an opportunity to clarify any areas of concern.

OFFERING MATERIALS

On each applicable TALF subscription date, each TALF Agent must deliver to the Fed the CUSIP numbers and, to the extent available to it, the preliminary and/or final offering materials. The FAQs clarify that a final (“black”) offering document is not required on the TALF subscription date and that a preliminary (“red”) offering document may be submitted on the subscription date. If the red is provided, then the black must be provided to the Fed no later than 12:00 p.m. (New York time) three business days prior to the applicable TALF loan settlement date. Offering documents are not required for SBA Pool Certificates.

ISSUER, SPONSOR AND AUDITOR REQUIREMENTS

For newly issued ABS as well as ABS issued on or after March 23, 2020 and before May 22, 2020, each of the sponsor and issuer must include in the final offering documents a signed certification¹⁶ regarding the eligibility of the newly issued ABS collateral. A form of such certification must be included in any preliminary offering documents submitted on the subscription date if the executed certification is not yet available, and the executed certification must be submitted with the black provided on the settlement date. The sponsor (or, if the sponsor is a special purpose vehicle, the sponsor’s direct or indirect ultimate parent) must also submit an indemnity undertaking¹⁷ to the Lender and the Fed, indemnifying them from any losses they may suffer if such eligibility certifications are untrue.

For purposes of the certification and undertaking, the issuer is the party that issues the ABS and the sponsor¹⁸ is the party that organizes and initiates an ABS transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer. For SBA Pool Certificates, a different Form of SBA Collateral Undertaking¹⁹ must be submitted by 5:00 p.m. (New York time) four business days prior to the settlement date.

In addition to the signed certifications and undertakings, an independent accounting firm retained by the issuer must provide to the Fed: (i) an auditor attestation, providing an opinion on the assertion of

management of the issuer and sponsor that the ABS is TALF-eligible or (ii) in the case of CLOs, a report on agreed upon procedures with respect to factual matters related to various TALF eligibility criteria for leveraged loans. Any AUP report delivered during the course of the transaction to the sponsor and the underwriter or initial purchaser must also be delivered to the Fed.

Eligible Collateral

ABS to be funded under TALF 2020 must meet various eligibility requirements, including their date of origination and characteristics of the underlying credit exposures. Additional eligibility criteria are meant to limit the credit risk taken by FRBNY and the Treasury through the TALF 2020 program. The following summary describes the requirements for TALF-eligible ABS collateral.

GENERAL REQUIREMENTS

The subject ABS must be US dollar-denominated cash (that is, not synthetic) ABS, and other than as specified below, must be issued on or after March 23, 2020:

- CMBS issued on or after March 23, 2020 will not be eligible; and
- SBA Pool Certificates and Development Company Participation Certificates must be issued on or after January 1, 2019.

Eligible ABS also needs to be cleared through the Depository Trust Company, and may be publicly issued or privately placed.

CREDIT RATINGS

Except with respect to SBA loans, eligible ABS must have credit ratings in the highest long-term or, if no long-term rating is available, the highest short-term investment-grade rating category from at least two eligible nationally recognized statistical rating organizations (“NRSROs”). At least one of the qualifying ratings must come from one of Fitch, Moody’s or S&P, while the second rating may be provided by any eligible NRSRO, including DBRS and Kroll.²⁰ In addition, the eligible ABS must not have a credit rating below the highest investment grade rating category from any eligible NRSRO. Final credit rating letters must be provided no later than 10:00 a.m. (New York time) on the applicable TALF loan settlement date. The credit ratings must not be based on a third-party guarantee and, other than with respect to CMBS, must not have been placed on review or watch for downgrade. The FAQs make clear that there will be no adverse effects on TALF borrowers should ABS already securing existing TALF loans be downgraded or placed on negative watch. Any such ABS, however, may not be used as collateral for any new TALF loans until it regains its status as eligible collateral.

If a CMBS is downgraded or placed on negative watch after the TALF loan subscription date but before the settlement date, that CMBS will not be deemed ineligible on that basis, but the Fed will incorporate any related declines in the value into its valuation of the CMBS, which may affect the amount of TALF financing ultimately extended against the CMBS.

In the case of SBA ABS, no express rating is required as long as all of the underlying assets, or the ABS themselves, are fully guaranteed as to principal and interest by the full faith and credit of the US government.

PERMITTED TYPES OF UNDERLYING ASSETS

Eligible ABS must be backed by auto loans or leases, student loans, credit card receivables (both consumer and corporate), equipment loans or leases, floorplan loans, premium finance loans for

property or casualty insurance, certain small business loans (SBA Pool Certificates and Development Company Participation Certificates) that are fully guaranteed by the full faith and credit of the US government, leveraged loans or commercial mortgages. The TALF requirements generally applicable to the underlying assets are discussed under the heading “*Eligible Underlying Assets*” below. For purposes of determining the eligibility of the ABS, all or substantially all of the underlying assets must be newly issued (except for CMBS), which is further discussed under the heading “*Eligible Underlying Assets—Requirements Relating to Date of Origination*” herein.

ADDITIONAL CMBS REQUIREMENTS

CMBS may not be backed by a single asset or obligations by only a single borrower (“SASB”). Also, the CMBS must entitle its holders to payments of principal and interest (that is, must not be an interest-only or principal-only security), and the CMBS must bear interest at a pass-through rate that is fixed or based on the weighted average of the underlying fixed mortgage rates. The FAQs clarify that the CMBS must not have been junior to other securities with claims on the same pool of loans, but CMBS that receive principal later (e.g., Class A-2) than the other most senior CMBS classes (e.g., Class A-1) but are otherwise *pari passu* with such other senior CMBS, qualify for TALF financing. The exclusion of “junior” CMBS refers to subordination for credit support, not to a later position in the time tranche sequence.

ADDITIONAL CLO REQUIREMENTS

Only static CLOs will be eligible collateral. The FAQs define a static CLO as a CLO that does not include a period of reinvestment of collateral proceeds, including principal or interest proceeds and proceeds on the sale of defaulted underlying leveraged loans, unless such period of reinvestment begins at least three years after the disbursement date of any TALF loan secured by the pledge of such CLO.²¹

CLO managers are permitted to sell underlying loans that have defaulted in payment of principal and interest. However, proceeds of such sales may not be reinvested and must be used to amortize the CLO. Eligible CLOs may permit loans to be sold for cash at their par amount, plus accrued interest, to a sponsor where the cash proceeds are applied to amortize the CLO.

Finally, the CLO manager must have its principal place of business in the US, and commercial real estate CLOs will not be eligible collateral.

OTHER CONSIDERATIONS

The FAQs released by the Fed include additional requirements regarding collateral eligibility that relate to the characteristics of the ABS itself and structuring of the transaction. Most notably, the revised FAQs added an eligibility exclusion for ABS issued by or sponsored by (or, in the case of CLOs, with collateral managers which are) U.S. entities that have received specific support pursuant to section 4003(b)(1)-(3) of the CARES Act.

The revised FAQs also added the requirement that only ABS tranches that are not junior to any other class of securities backed by the same pool of assets are eligible for TALF. Also, interest-only or principal-only ABS are not eligible collateral under TALF.

A procedural update was provided in the revised FAQs stating that a borrower may use a TALF loan to fund the acquisition of an ABS issued prior to the TALF loan settlement date, so long as the ABS is purchased up to 30 days before its desired TALF loan subscription date. Borrowers may also acquire ABS in multiple transactions as long as each transaction complies with the requirement in the prior sentence and has proceeds of at least \$1 million. In each case, the borrower’s agreement to purchase the ABS must also be made on an arm’s-length basis and must be for a cash purchase price that does not reflect

any economic arrangement other than the purchase of such ABS. The FAQs provide examples of economic arrangements that should not be reflected in the cash purchase price for the bond, including financing or hedging arrangements. The Fed must also receive a copy of each sales confirmation for the borrower’s purchase.

ABS retained by the sponsor of a securitization or an affiliate of such sponsor to satisfy the credit risk retention requirements are not eligible collateral under TALF 2020.

Floating rate ABS that reference LIBOR can be eligible collateral but the Fed states in the FAQs that it expects any ABS benchmarked to LIBOR to include adequate fallback language, such as that recommended by the Alternative Reference Rates Committee (the “ARRC”), or substantially similar fallback language. ABS with a zero coupon or that provide for prefunding or the retention of issuance proceeds in anticipation of purchasing additional receivables are also ineligible, as are ABS that bear interest payments that step up or step down to predetermined levels on specific dates.

Also, the FAQs specify that newly issued ABS with a redemption option exercisable prior to three years after the disbursement date of any TALF loan secured by such pledged ABS is not eligible, with the exception of redemptions pursuant to a customary clean-up call.²² Additionally, a newly issued ABS cannot permit redemption options during any time when such ABS is owned by the Fed or by TALF II LLC.²³

Eligible Underlying Assets

ELIGIBLE ASSET CATEGORIES

The revised term sheet adds no additional asset classes not already included as eligible underlying exposures in the prior term sheet; however the FAQs provide additional clarification as to the scope of these asset classes. The Fed also indicates in the FAQs that it may add additional underlying asset types in the future.

The categories of eligible asset classes include the following:

ELIGIBLE ASSET CLASSES	DEFINITIONS AND DETAILS
Auto Loans and Leases	<p>The FAQs broadly define auto-related receivables in a manner consistent with the 2010 FAQs for the Original TALF program. Auto-related receivables include:</p> <ul style="list-style-type: none"> • retail loans and leases relating to cars, light trucks, motorcycles and other recreational vehicles (i.e., RVs, boats, trailers and sports vehicles); • commercial and government fleet leases; and • commercial loans secured by vehicles and the related fleet leases of such vehicles to rental car companies. <p>Commercial, government and rental fleet ABS may include non-fleet leases to commercial obligors in amounts not to exceed 15% of the total pool of leases to collateralize prime²⁴ auto retail lease ABS.</p>
Student Loans	Includes private student loans.
Credit Card Receivables	Includes consumer and corporate credit card receivables.

ELIGIBLE ASSET CLASSES	DEFINITIONS AND DETAILS
<p>Equipment Loans and Leases</p>	<p>Includes loans and leases relating to business, industrial, and farm equipment, and may include a mixture of loans and leases on a mixture of types of equipment.</p> <p>Examples of permissible types of equipment include, but are not limited to, agricultural, construction, or manufacturing equipment; trucks other than light trucks; smaller ticket items such as communications, office, and medical equipment, computers, copiers and security systems, and, except as described in the following sentence, equipment types that have collateralized equipment ABS in the past.</p> <p>Eligible equipment specifically excludes assets such as aircraft, shipping containers, ships, cell phone towers, locomotives and railcars.</p>
<p>Floorplan Loans²⁵ (Auto)</p>	<p>Includes revolving lines of credit used to finance dealer inventories of cars, light trucks and motorcycles. Other types of floorplan receivables may be included in an auto floorplan ABS, but only to the extent that such receivables do not exceed, in the aggregate, 5% of the total pool of receivables.</p>
<p>Floorplan Loans (Non-Auto)</p>	<p>Includes revolving lines of credit used to finance dealer inventories of items including, but not limited to, vehicles such as cars and trucks (subject to the limitations described below), recreational vehicles, motorcycles, trailers, boats and sports vehicles; agricultural, construction, or manufacturing equipment; manufactured housing; large appliances; and electronic equipment.</p> <p>The revolving lines of credit for non-auto floorplan ABS may be collateralized by a mixed type of inventory, including any type of inventory that has collateralized securitized floorplan loans in the past.</p> <p>Eligible floorplan loans for non-auto floorplan ABS may also include receivables arising under revolving or non-revolving asset-based lending facilities and loans secured by accounts receivable of the type that have been included in floorplan ABS issued in the past (ABL and AR receivables), subject to the limitations described in the next sentence. Receivables that finance cars and light trucks may be included in non-auto floorplan ABS, but only to the extent that the car and light truck receivables, together with any ABL and AR receivables, do not exceed, in the aggregate, 5% of the total pool of receivables in the securitization.</p>

ELIGIBLE ASSET CLASSES	DEFINITIONS AND DETAILS
<p>Premium Finance Loans</p>	<p>Includes loans used to finance premiums for property and casualty insurance but will not include deferred payment obligations acquired from insurance companies. The issuer of the ABS must acquire ownership of each premium finance loan in its entirety (as opposed to merely a participation or beneficial interest).</p> <p>The securitization must include a back-up servicer obligated to service the loans upon the resignation or termination of the initial servicer.</p>
<p>Certain Small Business Loans Guaranteed by the Small Business Administration</p>	<p>Includes loans, debentures or pools originated under the SBA’s 7(a) and 504 programs, provided they are fully guaranteed as to principal and interest by the full faith and credit of the US government and meet all other TALF 2020 eligibility requirements.</p> <p>SBA Pool Certificates (but not Development Company Participation Certificates) may include PPP loans in the underlying collateral pool.</p>
<p>Leveraged Loans (CLOs)</p>	<p>Eligible leveraged loans underlying CLOs comprise broadly syndicated loans to large corporate borrowers and/or middle market loans as further discussed below.</p> <p>Loans with interest rates tied to LIBOR are generally expected to have adequate fall back language, as further discussed below.</p> <p>For a CLO to be eligible, the underlying leveraged loans must be current on principal and interest, senior secured, and subject to certain additional portfolio limitations as of the subscription date, as further described below.</p>
<p>Commercial Mortgages</p>	<p>Asset Types: Each CMBS must evidence an interest in a trust fund consisting of fully funded mortgage loans and not other CMBS, other securities or interest rate swap or cap instruments or other hedging instruments.</p> <p>A participation or other ownership interest in such a loan will be considered a mortgage loan and not a CMBS or other security if, following a loan default, the ownership interest is senior to or <i>pari passu</i> with all other interests in the same loan in right of payment of principal and interest.</p> <p>Property Types: The security for each mortgage loan must include (or, if payments due under the loan have been defeased, the security for the loan or its predecessor must have previously included) a mortgage or similar instrument on a fee or leasehold interest in one or more income-generating commercial properties.</p>

REQUIREMENTS RELATING TO US ORIGINATION

The prior version of the term sheet required that all or substantially all of the credit exposures underlying eligible ABS must have been originated by a “US company,” defined as “a business that is created or organized in the United States or under the laws of the United States and that has significant operations in and a majority of its employees based in the United States.” This standard raised a few questions from market participants, in particular as to whether US branches and agencies of foreign banks would qualify as issuers and how this standard would be applied in the context of CLOs.

The revised term sheet and FAQs provide the following clarifications regarding the US-origination requirements:

- for newly issued ABS, except CLOs, all or substantially all of the credit exposures (i.e., 95% or more of the dollar amount of the underlying asset) must be originated by US-organized entities (including US branches or agencies of foreign banks);
- for CLOs, all or substantially all of the credit exposures (i.e., 95% or more of the dollar amount of the underlying loans) must have a lead or a co-lead arranger that is a US-organized entity (including a US branch or agency of a foreign bank); and
- for all ABS, (including CLOs and CMBS), all or substantially all of the credit exposures (i.e., 95% or more of the dollar amount of the underlying assets or, for CLOs, underlying loans) must be to US-domiciled obligors (including obligors domiciled in a political subdivision or territory) or with respect to real property located in the United States or one of its territories.

REQUIREMENTS RELATING TO DATE OF ORIGINATION

The prior version of the term sheet provided that all or substantially all of the underlying credit exposures must be newly issued, except for legacy CMBS. The FAQs provide clarification as to what is meant by “newly issued,” applying different requirements regarding date of origination depending on the asset type as described in the following chart. As used in the criteria relating to the date of origination, “all or substantially all” means 95% or more of the principal balance of the underlying assets.

UNDERLYING EXPOSURES	REQUIREMENTS FOR DATE OF ORIGINATION
Auto Receivables (non-revolving) and Equipment Receivables	All or substantially all underlying assets originated on or after January 1, 2019.
Auto Receivables, Credit Card Receivables, Floorplan Receivables and Premium Finance Receivables (existing revolving (or master) trust)²⁶	No requirement regarding origination date of underlying assets; ABS must be issued to refinance existing ABS maturing prior to the TALF 2020 termination date and must be issued in amounts no greater than the amount of the maturing ABS.
Auto Receivables, Credit Card Receivables, Floorplan Receivables and Premium Finance Receivables (master trust established on or after March 23, 2020)	All or substantially all underlying assets originated on or after January 1, 2020.

UNDERLYING EXPOSURES	REQUIREMENTS FOR DATE OF ORIGINATION
SBA Loans	No restriction on the dates of the underlying loans or debenture as long as the loans and debentures collateralize SBA Pool Certificates and Development Company Participation Certificates that were issued on or after January 1, 2019.
Student Loans	All or substantially all of the underlying assets must have had a first disbursement date on or after January 1, 2019. Private student loans that are for the purpose of refinancing existing private student loans or loans guaranteed by the federal government are eligible collateral if the refinanced loan disbursement date is on or after January 1, 2019.
Leveraged Loans	All or substantially all underlying assets originated on or after January 1, 2019. Newly originated leveraged loans may include loans that have been refinanced on or after January 1, 2019.
Commercial Mortgages	No origination date requirements for underlying commercial mortgages; CMBS issued on or after March 23, 2020 are not eligible for the TALF program.

RESTRICTION ON RESECURITIZATIONS

The underlying assets may not be cash or synthetic ABS, although there is a limited exception for credit card, auto lease, floorplan and equipment lease securitizations where the underlying exposure is an “intermediate security” representing an interest in or a right to payments or cash flows from another asset pool, in which case the eligibility criteria for the underlying assets would be applied to the assets underlying the intermediate securities. Collateral certificates issued by older master trusts to new credit card ABS issuing entities, and SUBI certificates and secured notes typically used in auto lease securitizations, are covered by this exception.

ADDITIONAL REQUIREMENTS FOR CLOs

As noted above, the FAQs introduce a requirement with respect to LIBOR fallback language in the loans underlying an eligible CLO. In order for a CLO to be TALF-eligible, underlying loans with interest rates tied to LIBOR “are generally expected to have adequate fallback language.” Loans generally must have either LIBOR fallback language recommended by the ARRC, or “substantially similar fallback language (as prevailing in the relevant market when the loan was originated).” The ARRC’s recommendations for LIBOR fallback language for syndicated loans, which were finalized in April 2019 following a consultation commenced in September 2018, include two sets of recommended fallbacks, one based on an “amendment approach” and the other based on a “hardwired approach.”

As also referenced above, the FRBNY has introduced various portfolio requirements for TALF-eligible CLOs. In addition to the requirement that each loan be senior secured and current on principal and interest, the FAQs include the following portfolio requirements:

- a maximum concentration of second-lien loans of 10%;
- a maximum concentration for debtor-in-possession (DIP) loans of 7.5%;
- a maximum concentration for covenant-lite loans²⁷ of 65% in the case of a broadly syndicated CLO²⁸ and 10% for a middle market CLO;²⁹ and
- a maximum single-obligor concentration of 4%.

Additionally, no more than 4% of the portfolio of a TALF-eligible CLO may consist of loans with an obligor that is either the TALF borrower or an affiliate of the TALF borrower. For purposes of this requirement, the definition of “affiliate” will be as set forth in the MLSA.

In order to be TALF-eligible, a CLO is also required to include at least one overcollateralization test redirecting cash flows to the TALF-eligible senior tranche in the event of deterioration in the underlying loan portfolio of the CLO.

MASTER TRUST CONSIDERATIONS

As noted above under “*Requirements Relating to Date of Origination*,” ABS collateralized by credit card receivables, floorplan receivables, premium finance receivables and auto receivables and issued by an existing master trust are subject to a refinancing test rather than the limitations on date of origination that apply to the underlying assets for most other categories of eligible ABS. Credit card ABS, floorplan ABS, premium finance ABS and some types of auto ABS are supported by constantly changing pools of receivables, rather than a fixed pool of amortizing assets, as is the case for the other eligible asset classes. Eligible ABS in the categories noted above that are issued by revolving master trusts established prior to March 23, 2020, must be issued to refinance existing ABS maturing prior to the TALF Termination Date, and are limited in eligibility to amounts no greater than the amount of the maturing ABS (the “refinancing test”). Such eligible ABS issued by existing master trusts is not required to be issued concurrently with the maturing ABS; however, it must be issued within the period of three months prior to the related maturity or at any time after the related maturity date (but in any event prior to the TALF Termination Date).

A sponsor is able to aggregate maturities across all of its existing master trusts and use this aggregate threshold for the refinancing test. Only funds that are actually paid to noteholders during the specified period, including funds paid to holders of variable funding notes for controlled amortization payments, will count as a maturity for purposes of the refinancing test. In contrast, funds allocated to principal accumulation accounts prior to bullet maturities but not distributed to holders cannot be included for the refinancing test.

Master trusts established on or after March 23, 2020, will be subject to the requirement that all or substantially all of the assets must have been originated on or after January 1, 2020.

The starting date for the specified period of the refinancing test is not clear under the existing FAQs. A number of possible starting dates are plausible given the existing Fed guidance: (i) January 1, 2019 (the earliest possible date that the underlying assets must be originated in other asset classes); (ii) January 1, 2020 (allowing sponsors to look to the start of the calendar year to assess maturity); or (iii) March 23, 2020 (the date of the announcement of the TALF 2020 program).

In the Original TALF FAQs, the Fed provided clear guidance that the starting date for the refinancing test was January 1, 2009, which was both the starting date for the Original TALF program and the date by which substantially all eligible assets needed to have been originated. Because those two dates do not align in TALF 2020, additional guidance is needed from the Fed to clarify this point, with industry participants hoping for the broadest possible specified period for the refinancing test.

Further clarification from the Fed may also be necessary to determine the type of issuer to which the refinancing test applies. The term “revolving (or master) trust” is used in certain provisions throughout the FAQs, while other FAQs refer only to “master trusts.” The term “revolving trusts” could be interpreted to mean ABS issuers that securitize revolving pools of assets, but are not formed for the purpose of issuing more than one series of ABS. In contrast, the term “master trust” typically refers to an ABS issuer that is set up to issue multiple series of notes backed by shared collateral.

Collateral Review

The revised FAQs provide guidance with respect to the Fed’s review of TALF-eligible ABS collateral. In addition to preserving its ability to reject ABS that do not constitute eligible collateral, the Fed has retained the right to reject an ABS for any reason in its sole discretion. In making the determination to reject collateral, the Fed may consider, among other factors, the credit quality, transparency and simplicity of the ABS structure. Additionally, the Fed will not fund a TALF loan if, in the judgment of the Fed, a potential borrower is motivated to request a TALF loan due to the economic interest of such borrower or its affiliates in the underlying loans or leases, or products or services relating to such loans or leases in the underlying pool, and such economic interest would impact the incentive of the borrower to independently assess the risk of an investment in the ABS.

ABS previously pledged as TALF-eligible collateral would be TALF-eligible collateral at future subscription dates so long as the ABS continue to satisfy all collateral eligibility requirements, subject to the right of the Fed to reject ABS for any reason. However, there may be fluctuations in the value of the ABS that would change the amount of TALF financing available for that ABS. If ABS have been previously pledged as TALF-eligible collateral, the issuers of such ABS will not be required to resubmit previously submitted data in connection with additional subscription dates.

The price reflected on the sale confirmation for the purchase of ABS will be compared to various market data sources as of the trade date to validate the reasonableness of the price of the ABS. The Fed may use the services of agents to perform a valuation of the ABS under various stress scenarios and reserves the right to determine a different price if the purchase price for an ABS does not reflect then-prevailing market conditions.

Haircuts and Calculation of Weighted Average Life

HAIRCUTS BY CATEGORY OF ELIGIBLE COLLATERAL

The haircuts by category of eligible collateral and weighted average life set forth in the revised term sheet are the same as the haircuts applicable to different categories of eligible collateral included in the prior version of the term sheet:

SECTOR	SUBSECTOR	ABS AVERAGE 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	Motorcycle/Other Recreational Vehicle	7%	8%	9%	10%	11%		
Auto	Commercial and Government Fleets	9%	10%	11%	12%	13%		
Auto	Rental Fleets	12%	13%	14%	15%	16%		
Credit Card	Prime	5%	5%	6%	7%	8%		
Credit Card	Subprime	6%	7%	8%	9%	10%		
Equipment	Loans and Leases	5%	6%	7%	8%	9%		
Floorplan	Auto	12%	13%	14%	15%	16%		
Floorplan	Non-Auto	11%	12%	13%	14%	15%		
Premium Finance	Property and Casualty	5%	6%	7%	8%	9%		
Small Business	SBA Loans	5%	5%	5%	5%	5%	6%	6%
Student Loan	Private	8%	9%	10%	11%	12%	13%	14%
Leveraged Loans	Static	20%	20%	20%	20%	20%	21%	22%
Commercial Mortgages	Legacy, Conduit	15%	15%	15%	15%	15%	16%	17%

The haircuts by category of eligible collateral and weighted average life in the revised term sheet are also the same haircuts applicable to that category of eligible collateral in the Original TALF program (although there are specific categories of eligible collateral for TALF 2020 that were not eligible collateral in the Original TALF program (i.e., leveraged loans and commercial mortgages), and categories of eligible collateral in the Original TALF program that are not eligible for TALF 2020 (i.e., servicing advances)).

The FAQ provides that haircuts are subject to revision should market conditions materially change.

CLASSIFICATION OF ELIGIBLE COLLATERAL AS "PRIME" OR "SUBPRIME"

The haircut schedule for retail auto lease, retail auto loan and credit card ABS contemplates that the eligible collateral will either be classified as "prime" or "subprime." Although retail auto loan ABS has a separate haircut schedule for prime and subprime, the revised term sheet only includes a haircut schedule for prime retail auto lease ABS and not for subprime retail auto lease ABS. The issuer is expected to publish in the offering document for the ABS whether the deal is prime or subprime according to TALF criteria, and an absence of such disclosure will result in the deal being considered subprime. However, the revised FAQs clarified that for ABS issued on or after March 23, 2020 and before March 22, 2020, the related offering

documents need not specify the prime or subprime distinction. The Fed considers representations regarding classification by the issuer of an offering as prime or subprime to be a component of the issuer's representation as to the accuracy of the offering document.

Auto loan and lease ABS are considered prime if the weighted average FICO score of the receivables is 680 or greater, and, in the absence of disclosure of the weighted average FICO score, the subprime haircut schedule will apply. Other than commercial receivables in limited circumstances, receivables without a FICO score are deemed to have a FICO score of 300 for purposes of determining the weighted average FICO. If the historical cumulative net losses for commercial receivables have been the same or lower than receivables with consumer obligors and the disclosure includes such information, then commercial receivables can be excluded from the weighted average FICO calculation. However, the percentage of commercial receivables in a securitized pool may not exceed 10% under TALF 2020; the limitation of commercial receivables in a securitized pool under the Original TALF program was 15%.

Consistent with the Original TALF program, for credit card ABS to be considered prime under TALF 2020, at least 70% of the receivables must have a FICO score greater than 660, as reflected in performance data within the last 120 days. The haircut schedule for subprime credit card ABS will apply in the absence of disclosure of the weighted average FICO score.

APPLICATION OF THE HAIRCUT

The market value of eligible collateral (other than SBA ABS and CMBS) may not exceed par, and for such assets, an eligible borrower may borrow an amount equal to such market value minus the applicable haircut.

For SBA ABS with an initial market value above par, the Fed will lend an amount equal to the lesser of market value and 105% of par value, minus the applicable haircut; the borrower for SBA ABS with a market value above par will then be required to periodically prepay a portion of the loan pursuant to a calculation that adjusts for the expected reduction in the market value toward par value as the ABS mature. The maximum loan amount for CMBS will be determined by taking into account the "base value"³⁰ of the CMBS and the applicable haircut. The FAQs provide that the Fed may reject a TALF loan request if the requested loan amount for CMBS is greater than a stress valuation.

WEIGHTED AVERAGE LIFE LIMITATIONS

There is no minimum maturity limit for ABS that are eligible collateral. To qualify as eligible collateral, the weighted average life of auto, credit card, equipment, floorplan and premium finance ABS, cannot be greater than five years, and the weighted average life of SBA Pool Certificates and private student loan ABS cannot be greater than seven years. For other new-issue eligible collateral and legacy CMBS with average lives beyond five years, haircuts generally increase by one percentage point for each additional year (or portion thereof) of average life beyond five years. However, ABS backed by SBA loans in excess of five years are subject to a haircut increase of only one percentage point for every two additional years. The FAQs specify that the weighted average life of CMBS, CLOs and Development Company Participation Certificates cannot be greater than ten years in order to qualify as eligible collateral.

CALCULATING THE AVERAGE LIFE OF ABS AT ISSUANCE

The calculation methodology for the average life of ABS under the FAQs varies by asset class and structure: (1) the average life for ABS with bullet maturities (e.g., credit card and floorplan) is the expected principal payment date; (2) the average life for auto rental fleets is the length of any revolving period plus 6 months; (3) the average life for CMBS is calculated on the basis of the current composition

of the pool, the entitlement of the CMBS to make distributions, the assumption that “anticipated repayment dates” are maturity dates, a 0% Conditional Prepayment Rate, or “CPR” and the absence of future defaults (with loans in default or special servicing considered as if they had not defaulted); and (4) the average life of other categories of amortizing ABS determined based on specified prepayment assumptions and market conventions (e.g., Absolute Prepayment Speeds, or “ABS”, for retail auto loans, and CPR, for equipment and leveraged loans).

The issuer is expected to publish the security’s average life in the offering document for the ABS, calculated in accordance with the TALF prepayment assumptions. Further, the FAQs provide that issuers are “encouraged” to base weighted average life calculations on a loan-by-loan analysis, and that if representative pools are used instead, then the pools must “fairly and accurately” model the actual characteristics of the underlying collateral.

The Fed considers representations regarding weighted average life to maturity by the issuer in an offering document to be material to the Fed’s determination of the haircuts for TALF loans and the representation as to the accuracy of the offering document contained in the issuer certification would be breached if the weighted average life calculations incorrectly apply the specified prepayment assumptions or are based on assumptions that are not representative of the actual collateral characteristics of the underlying assets.

CALCULATING THE AVERAGE LIFE OF ABS AFTER ISSUANCE

The FAQs provide a formula for determining the average life of ABS pledged as TALF collateral on a date subsequent to the date the ABS was issued that takes into account the original average life of the ABS, the time since issuance and whether the ABS has a bullet maturity or is an amortizing asset.

Other General TALF 2020 Terms

PRICING

For CLOs, the interest rate for loans under TALF 2020 will be 150 basis points over the 30-day average SOFR. Interest on TALF loans financing ABS (other than CLOs) will be payable monthly; interest on TALF loans financing CLOs will be payable quarterly rather than monthly. For SBA Pool Certificates (7(a) loans), the interest rate will be the top of the federal funds target range plus 75 basis points and for SBA Development Company Participation Certificates (504 loans), the interest rate will be 75 basis points over the three-year fed funds overnight index swap (“OIS”) rate. For all other eligible ABS, the interest rate for loans under TALF 2020 will be 125 basis points over the two-year IOS rate for securities with a weighted average life less than two years, or 125 basis points over the three-year OIS rate for securities with a weighted average life of two years or greater.

Interest rates will be set one business day prior to the related loan subscription date, and are subject to revision if market conditions change materially.

FEES

Borrowers will be required to pay the Lender an administrative fee equal to 10 basis points of the loan amount. Such fee will be due and payable on the settlement date for the ABS collateral. If any portion of the ABS collateral is not received on the settlement date, that portion of the loan will be cancelled and the administrative fee will not be refunded.

SUBSCRIPTION AND CLOSING

The Fed anticipates that there will be approximately two TALF loan subscription dates per month, each of which will be open to all eligible asset classes. A borrower must request a minimum of \$5 million for each loan but there is no maximum loan amount. An eligible borrower may request an unlimited number of loans at each subscription date, but if a borrower requests loans through multiple TALF Agents, it must deliver the collateral for each loan through those respective TALF Agents. A borrower may revise its original loan request only if the borrower is allocated less than the expected amount of a newly issued ABS. In such event, the TALF Agent must submit a revised loan request no later than noon (New York time) on the fifth business day prior to the loan settlement date.

A borrower may pledge only a single eligible ABS as collateral for each individual TALF loan. Multiple SBA Pool Certificates can be combined into one TALF loan so long as all the certificates fall into a weighted average life range such that the same haircut percentage is applied consistently and the frequency of the interest rate reset on each certificate is the same.

The TALF Agent will receive confirmation of the TALF Loan two business days prior to the loan settlement date and, for newly issued ABS, can identify another counterparty that is expected to deliver the ABS collateral to the Fed. On the loan settlement date the TALF Agent will deliver the eligible ABS collateral and fees pursuant to the provisions of the MLSA and the Fed will release the proceeds of the TALF Loan to the TALF Agent for further distribution to the borrower. No substitution of ABS collateral is permitted under the TALF Loan.

Post-Closing Issues

REQUIRED PAYMENTS ON THE TALF LOAN

All amounts received on the ABS collateral in respect of interest shall be transferred to an account specified under the MLSA and allocated to pay the interest on the related TALF Loan on the following payment date for the TALF Loan. All amounts received with respect to principal on the ABS collateral in the normal course must be used to immediately reduce the principal amount of the TALF Loan in proportion to the haircut applicable such TALF Loan. Excess interest and principal collections will be released to the applicable TALF Agent for further distribution to the borrower. Upon an event of default, or upon an early amortization event for master trust ABS or the depletion of the credit support for CMBS collateral, all interest and principal collections on the ABS collateral will be used first to pay interest on the TALF Loan and then to reduce the outstanding TALF Loan, without giving effect to the related haircut.

Prepayments of the TALF loan, in full or in part, are permitted without penalty by delivering a prepayment notice at least four business day prior to prepayment; provided that no optional prepayment is permitted to be made during the period beginning on the related loan accrual date and ending on the payment date for such loan.

MATURITY OF THE TALF LOAN

Each TALF Loan must be repaid upon the TALF's loan three-year maturity. The borrower is responsible for the full principal amount of the TALF loan, regardless of whether the ABS eligible collateral incurs a principal loss. If the TALF loan matures prior to the ABS maturity, in order for the Fed to release the ABS collateral, the borrower must repay the TALF loan in full, including accrued interest, in same day available funds, including through a sale of the ABS collateral, with proceeds in a sufficient amount. In lieu of repayment, the borrower may surrender the ABS collateral to the Lender by submitting a Collateral Surrender and Acceptance Notice in the form provided in Appendix 4 to the MLSA. For SBA Certificates, if a borrower elects to surrender the collateral in satisfaction of a TALF loan, the entire pool of collateral

must be surrendered. If the borrower fails to deliver such notice by the TALF loan maturity date, the Fed may exercise full recourse rights against the borrower and require it to repay the TALF loan.

ASSIGNMENTS

On or prior to September 30, 2020, the borrower may assign all of its obligations to another eligible borrower with the prior consent of the Fed.

TALF Agent Risk Management and Compliance

In furtherance of a TALF Agent's role in generally facilitating borrowing requests and assisting with the administration of the TALF program as an intermediary between the borrowers and the Fed, each TALF Agent must adhere to certain risk management requirements as further detailed in the revised FAQs, MLSA and related Fed Borrower Due Diligence Policy and Conflicts of Interest Policy.

DUE DILIGENCE

Prior to the first loan subscription date on which a TALF Agent requests a loan on behalf of a borrower, each such TALF Agent must have in place a Required AML Program³¹ and a Customer Review Program.³² Each borrower, its Material Investors and related Control Persons will be subject to such programs, and the borrower must provide the TALF Agent with all reasonably requested information needed to conduct the required diligence. This diligence must include the application of risk-based policies and procedures for obtaining, verifying and reviewing information provided, as well as applicable information available in the public domain and through the use of commonly-utilized commercial database searches. The diligence should provide a reasonable basis for the TALF Agent to know its customer and other diligenced persons, to identify any problematic information that may have a bearing on the borrower or other person's participation in the TALF program, and provide a basis to satisfy the TALF Agent's related representations, warranties and covenants in the MLSA (including with respect to borrower eligibility).

The reach of such diligence programs extends beyond the borrower itself. Diligence will also be conducted with respect to certain "Covered Persons" as defined in the Borrower Due Diligence Policy, including (i) each Material Investor of the borrower, (ii) at least one individual Control Person³³ exercising managerial control over the borrower, (iii) every Control Person of the borrower that is a legal entity (including the sponsor or ultimate parent), and for each such legal entity, at least one individual exercising managerial control over that entity and, (iv) if the borrower is an investment fund,³⁴ the investment manager and each of its Material Investors and Control Persons. The Borrower Due Diligence Policy provides further details around required escalation procedures for Covered Persons who are considered "Specified Borrowers" that require further scrutiny by the Fed.

The due diligence requirements of TALF Agents apply both at the time a loan is extended to the applicable borrower and on an ongoing basis thereafter. Each TALF Agent will be required to submit a certification to the Fed on each loan subscription date as to its compliance with the Borrower Due Diligence Policy for borrowers requesting loans on that date. In addition, the TALF Agent must certify annually under the MLSA that it is in compliance with certain of its representations, warranties and covenants related to its diligence and conflicts of interest obligations. The TALF Agent must also re-submit existing borrowers to its Customer Review Program before each new loan is requested, and must refresh its diligence review at least annually as long as the relevant borrower has outstanding obligations under TALF.

In addition to its diligence obligations with respect to TALF borrowers, each TALF Agent is expected to review the relevant offering materials for ABS collateral and separately confirm that the applicable ratings meet the eligibility criteria. A TALF Agent's liability for the accuracy of offering materials when such Agent is also the underwriter of the related ABS is not intended, based on the "reasonable care" standard in the MLSA, to impose obligations or liability beyond those of the TALF Agent in its role as underwriter in the applicable federal securities laws.

CONFLICTS OF INTEREST

In addition to conducting the required due diligence with respect to each borrower and its applicable related persons, the TALF Agent must also implement policies and procedures reasonably designed to identify, manage, mitigate and monitor potential or actual conflicts of interest associated with its TALF responsibilities. Each TALF Agent must submit a Conflicts of Interest Plan to the Fed at least two business days prior to submitting an initial loan request, and must update that Plan as required to fully document any additional conflicts identified with respect to any subsequent loan requests.

The Fed notes in its Conflicts of Interest Policy that TALF Agents should take an expansive view of the universe of potentially relevant conflicts in developing a Conflicts of Interest Plan, and lays out certain minimum requirements for such Conflicts of Interest Plans in further detail in the Policy. Those minimum requirements include a listing of potential situations and relationships giving rise to conflicts, the required information to be provided if any such situation or relationship exists, and potential mitigation measures to be described and implemented.

Each TALF Agent must immediately communicate to the Fed any material changes to a previously submitted Conflicts of Interest Plan, and must maintain a log of any actual conflicts identified, to be maintained and provided to the Fed upon request at any time. The Fed also requires that each TALF Agent designate a person or committee to be responsible for oversight and mitigation of any identified conflicts, with sufficient authority and independence to ensure integrity of decision-making in its oversight responsibilities.

TAX REPORTING AND WITHHOLDING

The FAQs provide that TALF Agents are responsible for managing any tax withholding and reporting obligations for their borrower customers in relation to the TALF program. While these responsibilities are generally expected to be minimal, there is little guidance available clarifying the scope of these obligations. TALF Agents are advised to consult with their tax counsel for further guidance.

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Endnotes

- ¹ A copy of the Fed's revised TALF 2020 Frequently Asked Questions can be found at <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq>.
- ² A copy of the TALF 2020 Master Loan and Security Agreement can be found at <https://www.newyorkfed.org/medialibrary/media/markets/talfdocs/talf-mlsa.pdf>.
- ³ In recognition of the role of the underwriter or initial purchaser as TALF Agent, the SEC issued an order exempting broker-dealers that are designated as TALF Agent from the requirements of Section 11(d)(1) of the Exchange Act, which generally prohibits a person that is both a broker and a dealer from, among other things, arranging for the extension or maintenance of credit to, or for a customer on any security, that was part of a distribution of a new issue of securities in which the broker-dealer participated as a member of the selling syndicate.
- ⁴ Under the TALF, eligible business entities or institutions include entities organized as limited liability companies, partnerships, banks, corporations and business or other non-personal trusts.
- ⁵ "Control Person" is defined in the MLSA as "any Person with Control over the Borrower's general business and also includes, with respect to a borrower's participation in TALF, any person that has the direct or indirect power to direct or manage, or cause the direction or management of, borrower's participation in TALF." "Control" is defined to mean "the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise."
- ⁶ The FAQs provide that an "investment fund" includes (1) any type of pooled investment vehicle that is organized as a business entity or institution, including without limitation a hedge fund, a private equity fund and a mutual fund, and (2) any type of single-investor vehicle that is organized as a business entity or institution.
- ⁷ Required Customer Agreement terms are set forth in Appendix 2A to the MLSA.
- ⁸ A credit hedge is defined under the MLSA to mean "a transaction or series of transactions that are intended to offset in whole or in part the credit risk associated with collateral, including direct hedges, such as credit default swaps, and correlative hedges, such as short-selling the ABX index. A Credit Hedge does not include hedges on a broader portfolio (which may include an Item of Collateral), nor does it include any interest-rate hedges."
- ⁹ A form of the Solvency Certification is included in Appendix 2B to the MLSA.
- ¹⁰ A form of the Conflicts Certification is included in Appendix 2C to the MLSA.
- ¹¹ The form specifies that the "Chief Executive Officer" or "other authorized officer" must sign the Solvency and Credit Certification.
- ¹² Included in the possible disclosures, the Borrower Solvency Certification contemplates, as a non-exhaustive list, disclosure of the identity of the borrower, the identity of investors in and principals of the borrower, identifying details about the collateral for the loan, the date and amount of the loan and other material terms of the loan.
- ¹³ The form specifies that the "Chief Executive Officer" and "Chief Financial Officer" or "individuals performing similar functions" must sign the Conflicts Certification.
- ¹⁴ For purposes of the requirements described in this paragraph, "affiliate" is defined in the MLSA to mean "when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is under common Control with the Person specified."
- ¹⁵ In the case of leases and leveraged loans, the pool balance limitation refers to the securitization value of the leases or loans in the pool.
- ¹⁶ The Fed's TALF website includes a form of "Issuer and Sponsor Certification as to TALF Eligibility for ABS" at <https://www.newyorkfed.org/medialibrary/media/markets/talfdocs/talf-issuer-sponsor-certification.pdf>.
- ¹⁷ The Fed's TALF website also includes a form of "Sponsor Indemnity Undertaking" as part of the Issuer and Sponsor Certification at <https://www.newyorkfed.org/medialibrary/media/markets/talfdocs/talf-issuer-sponsor-certification.pdf>.
- ¹⁸ The updated FAQs provide that for CLOs, the collateral manager will be the "sponsor." The Fed expressly states that this is the case even if the collateral manager is not the "sponsor" for purposes of the U.S. risk retention rules.
- ¹⁹ The Form of SBA Collateral Undertaking can be found on the Fed's TAF website at <https://www.newyorkfed.org/medialibrary/media/markets/talfdocs/talf-sba-undertaking.pdf>.
- ²⁰ The prior limitation of eligible NRSROs to solely S&P, Moody's and Fitch might have disproportionately impacted certain classes of ABS, such as student loans, that are more typically rated by other NRSROs. The FAQs clarify that unsolicited ratings are not considered for TALF purposes, and no longer provide that the Fed will consider adding other NRSROs in the future.
- ²¹ Additionally, a static CLO may not permit reinvestment of proceeds at any time when the senior-most tranche in priority of payment (or, if the CLO structure includes multiple senior tranches that are *pari passu* in priority of payment, one or more of such senior tranches) is owned by the Fed or by the Lender. The MLSA provides in Section 13 that at maturity of a TALF loan, the

borrower may surrender to the Lender the asset-backed security serving as collateral, in full satisfaction of the borrower's obligations with respect to the TALF loan. See also the FAQs effective May 20, 2020, at "Post-Closing Issues." In addition to surrender, the prohibition on reinvestment described above may also contemplate a scenario where the Lender has foreclosed on the CLO collateral.

²² "Customary clean-up call" is defined in the FAQs as a clean-up call that is exercisable by the servicer or the depositor when the remaining balance of the assets or the liabilities of the issuer is not more than 10 percent of the original balance of such assets or liabilities (or a higher percentage customarily used by the sponsor in its securitizations offered before the TALF program was established).

²³ As stated above, the form of MLSA provides that at maturity of a TALF loan, the borrower may surrender to the Lender the asset-backed security serving as collateral, in full satisfaction of the borrower's obligations with respect to the TALF loan. This restriction with respect to redemption may also contemplate a scenario where the Lender has foreclosed on the ABS collateral. It should be noted that the requirement for a non-call period of at least three years diverges from market standards in the CLO market, where the typical non-call period for a static CLO is not longer than one year.

²⁴ The criteria for classification of eligible collateral as prime or subprime is discussed under "*Haircuts and Calculation of Weighted Average Life—Classification of Eligible Collateral as 'Prime' or 'Subprime'*" herein.

²⁵ The categories of eligible floorplan loans are consistent with the 2010 FAQs for the Original TALF program, and contemplate that a floorplan securitization will meet the eligibility requirements for either an auto floorplan securitization or a non-auto floorplan securitization.

²⁶ Note that ambiguity exists as to whether the Fed intended to distinguish between master trusts and revolving trusts or treat the terms interchangeably, as discussed in more detail under "*Master Trust Considerations*" herein.

²⁷ The FAQs set out a detailed definition of a covenant-lite loan for purposes of TALF 2020.

²⁸ A broadly syndicated CLO is defined in the FAQs as a CLO that does not include leveraged loans of obligors with potential indebtedness of less than \$150,000,000 and permits no more than 10 percent of the portfolio to be comprised of leveraged loans to obligors with total potential indebtedness of \$150,000,000 to \$250,000,000.

²⁹ A middle market CLO is defined in the FAQs as a CLO that is composed of leveraged loans of obligors, all or substantially all of which have potential indebtedness of less than \$250,000,000 but does not permit the portfolio to include leveraged loans of obligors with EBITDA (as calculated in accordance with the underlying instrument) of less than \$10,000,000.

³⁰ For purposes of determining the loan amounts for CMBS under TALF 2020, the "base value" is equal to the least of the purchase price on the applicable trade date, the market price as of the subscription date and a value based on the Fed's collateral review, but in no event greater than par.

³¹ "Required AML Program" is defined in the MLSA as an "anti-money laundering program established by the TALF Agent that is reasonably designed to satisfy such TALF Agent's obligations under applicable law and regulation, including obligations under the Bank Secrecy Act and the regulations issued thereunder, as well as obligations to refrain from doing business with parties subject to sanctions administered by the Office of Foreign Assets Control."

³² "Customer Review Program" is defined in the MLSA as "a program of policies and procedures adopted by the TALF Agent as part of its Required AML Program to enable it to satisfy its legal and regulatory obligations to know its customers, and that is also reasonably designed to permit it to identify, review and report information about the Borrower and other Persons as necessary for it to satisfy its obligations under the Lending Agreement, including those set forth in the FRBNY Due Diligence Policy and the FRBNY Conflicts of Interest Policy."

³³ Control Persons of the borrower may include senior executive management (e.g., CEO, CFO, CIO) and senior Board members.

³⁴ The Borrower Due Diligence Policy notes that if the borrower is a master fund employing a "master/feeder" structure, the TALF Agent must "look through" the master and feeder funds to identify any Material Investors along the ownership chain.

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