



Federal Reserve Announces Term Asset-Backed Securities Loan Facility Details

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On May 12, 2020, the Federal Reserve released a [revised term sheet](#) and [FAQ's](#) for the Term Asset-Backed Securities Loan Facility ("TALF") that was originally announced on March 23, 2020. The Federal Reserve created the TALF to help facilitate the issuance of asset-back securities ("ABS") and stabilize the current pricing disruptions in the securitization markets, which provide credit to consumers and businesses. A similar facility was established by the Federal Reserve during the economic crisis in 2008 to provide support to the securitization markets ("TALF 1.0").

This article will provide a summary of the terms and conditions of the TALF as set forth in the most recent term sheet from the Federal Reserve. Updates regarding the TALF, including additional Q&A guidance, will be made available on the [Federal Reserve Bank of New York's TALF page](#).

Under the TALF, the Federal Reserve Bank of New York will lend funds to a special purpose vehicle ("SPV") on a recourse basis. The SPV will be authorized to make up to \$100 billion of non-recourse loans to eligible borrowers secured by eligible ABS. The Department of the Treasury ("USDT") has committed to making an initial equity investment in the SPV of \$10 billion in funds appropriated under the CARES Act.

June 17, 2020 is the first TALF subscription date and June 25, 2020 is the first TALF loan closing date. The TALF will cease making credit extensions after September 30, 2020 unless extended by the Federal Reserve and the USDT. In 2009, the Federal Reserve and the USDT extended TALF 1.0 for an additional six months for all newly issued ABS and legacy commercial mortgage-backed securities ("CMBS"), with an additional three months for newly issued CMBS.

TALF Terms and Conditions

Eligible Borrowers

- An eligible borrower is any business that is created or organized in, or under the laws of, the U.S., has significant operations in and a majority of their employees based in the U.S., and maintains an account relationship with a TALF agent. The Federal Reserve has provided the current list of [TALF Agents](#).
- Eligible borrowers are subject to the conflicts of interest rules under the CARES Act^[1]. Eligible borrowers must [certify](#) their compliance with the conflicts of interest rules.

Eligible Collateral

- Eligible collateral is U.S. dollar denominated cash ABS with underlying credit exposures either originated by U.S. organized entities (including U.S. branches or agencies of foreign banks) or with a lead or co-lead arranger that is a U.S. organized entity (including U.S. branches or agencies of foreign banks) for collateralized loan obligations ("CLOs").
- 95% or more of the dollar amount of the underlying assets or loans in the ABS must be credit exposures made to U.S. domiciled obligors or with respect to real property located in the U.S. or a U.S. territory.
- The underlying credit exposures of the ABS must be auto loans and leases, student loans, credit card receivables (consumer or corporate), equipment loans and leases, floorplan loans, premium finance loans for property and casualty insurance, certain business loans guaranteed by the Small Business Administration ("SBA"), leveraged loans or commercial mortgages.
- 95% or more of the principal balance of the underlying assets or loans in the ABS must be issued on or after March 23, 2020, except for CMBS, SBA Pool Certificates^[2] and Development Company Participation Certificates^[3]. CMBS must be issued prior to March 23, 2020 to be eligible. SBA Pool Certificates and Development Company Participation Certificates must be issued on or after January 1, 2019 to be eligible.

- The ABS must have a credit rating in the highest long-term investment grade rating category from at least two eligible nationally recognized statistical rating agencies (“NRSRO”), one of which must be from Fitch, Moody’s or S&P. If no long-term rating is available, the credit rating must be the highest short-term investment grade rating from at least two eligible NRSROs. Eligible collateral cannot have a credit rating below the highest investment-grade rating category from any eligible NRSRO.
- Single asset, single borrower CMBS and commercial real estate CLOs are not eligible collateral. Any ABS with interest payments that increase or decrease on specific dates at predetermined levels will not be eligible.

Terms

- Eligible borrowers will be able to request TALF loans through a TALF agent. The current [TALF Agents](#) are the primary dealers. The Federal Reserve may elect to expand the list of TALF agents in the future.
- The minimum TALF loan amount is \$5 million per loan. There is no maximum loan amount or limit on the number of TALF loans an eligible borrower may obtain.
- The loan amount will be determined by the base value of the underlying ABS, less a pre-determined haircut schedule based upon the underlying collateral sector and ABS average lives. The haircut schedule is included in the [revised term sheet](#).
- The TALF loans will be non-recourse. However, a TALF loan will become fully recourse if at any time the borrower is not an eligible borrower or if the borrower fails to deliver the required collateral surrender and acceptance notice on or prior to the TALF loan maturity date. All obligations that arise pursuant to certain lender reimbursement and repayment rights or arise as a result of an inaccuracy in certain representations and warranties made by the borrower in connection with the TALF loan will be fully recourse to the borrower.

- TALF loans will have a three-year term and be eligible for prepayment in whole or in part prior to the maturity date without penalty. Collateral substitutions will not be permitted.
- The interest rate will be determined by the type of collateral securing the ABS. The interest rate for CLOs will be 150 basis points over the 30-day average secured overnight financing rate. The interest rate for SBA Pool Certificates (7(a) loans) will be the top of the federal funds target range plus 75 basis points and for SBA Development Company Participation Certificates (504 loans) will be 75 basis points over the three-year federal funds overnight index swap ("OIS") rate. The interest rate for all other ABS will be 125 basis points over the two-year OIS rate for securities with a weighted average life less than two years and the three-year OIS rate for securities with a weighted average life of two years or more.

Conditions

- Borrowers will be required to pay an administrative fee equal to 10 basis points of the TALF loan amount.
- Borrowers will be required to certify that they are not insolvent, and that they are unable to secure adequate credit accommodations from other banking institutions. A borrower's inability to secure adequate credit accommodations may be based on unusual economic conditions in the markets intended to be addressed by the TALF. The Federal Reserve provided a form [certification](#).
- TALF loan proceeds will be disbursed to the eligible borrower upon the SPV custodian's receipt of the eligible collateral, the administrative fee and margin (if applicable).
- At all times while the TALF loan is outstanding, borrowers must satisfy the eligibility requirements.

The Federal Reserve may consider adding additional asset classes or expanding the scope of existing asset classes in the future. Commercial real estate market advocates are encouraging an expansion of the scope of asset classes to include commercial real estate CLOs. Advocates for the CMBS market are hopeful the scope of asset classes will be expanded to include new issuance CMBS

and single asset, single borrower CMBS, expansions the Federal Reserve made to the TALF 1.0 after it was established in 2008. The TALF 1.0 asset classes did not initially include CMBS, but were expanded to include legacy CMBS, single asset, single borrower CMBS and new issuance CMBS. Single asset, single borrower CMBS represented approximately 47% of U.S. CMBS issuance in 2019. In a joint letter to the Federal Reserve and the USDT, advocates for the CMBS market noted a single asset, single borrower CMBS transaction was one of the first CMBS transactions during the TALF 1.0 and encouraged CMBS issuers and investors to begin lending and investing in the CMBS market again. CMBS market advocates are hopeful that an expansion of the asset classes to include single asset, single borrower CMBS and new issuance CMBS will help to ease the impact COVID-19 has had on the commercial and multifamily lending markets.

Frost Brown Todd will be continually monitoring the Federal Reserve Bank's actions and will provide additional information as it becomes available. For more information on the Term Asset-Backed Securities Loan Facility please contact [Becky Moore](#), [Amanda England](#), [Devon Callaghan](#) or any attorney in Frost Brown Todd's [Financial Services](#) Industry Team.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

[1] Section 4019(b) prohibits any entity "controlled" by the President, Vice President, head of an Executive Department, or Member of Congress or by any of their immediate family (including son or daughter-in-law) from being eligible as a borrower or lender under the TALF.

[2] SBA Pool Certificates are ABS backed by loans made pursuant to Section 7(a) of the Small Business Act.

[3] Development Company Participation Certificates are ABS backed by loans made pursuant to the Certified Development

Company/504 loan program of the U.S. Small Business Administration.

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