Federal Reserve Launches TALF, Removes Executive Compensation Limits and Revises Terms

On March 3, the Federal Reserve launched the Term Asset-Backed Securities Loan Facility (TALF) by announcing that the first loan subscription date will be March 17, removing previously announced executive compensation restrictions, and providing revised terms and conditions for the TALF. The TALF was originally announced on November 25, 2008, has been revised through an interactive process, and is intended to help consumers and small businesses obtain credit by promoting the issuance of asset-backed securities (ABS). Currently, these ABS must be backed by student loans (federally guaranteed, including consolidation, or private), auto loans and leases (cars, light trucks, motorcycles or RVs, but not yet including rental fleet leases), credit card receivables and certain small business loans. On February 10, the Treasury Department announced that the TALF will later be expanded as part of a Consumer Business Lending Initiative from its current $200 billion size to an up to $1 trillion program and that additional types of ABS will be eligible. In the white paper released on March 3, the Treasury Department and Federal Reserve state that they are currently analyzing the appropriate terms and conditions for ABS backed by various types of commercial mortgage loans; that the April TALF funding will include ABS backed by small ticket equipment, heavy equipment and agricultural equipment loans and leases, and rental, commercial and government vehicle fleet leases; and that eventually the TALF may include ABS backed by non-agency residential mortgage loans, collateralized loan and debt obligations, and other floorplan and dealer inventory loans.

The Federal Reserve Bank of New York (FRBNY) will make its initial TALF loans on March 25 and will stop making new loans on December 31, 2009, unless the Federal Reserve Board agrees to extend the facility. Going forward, monthly subscriptions will be scheduled on the first Tuesday of each month. Based on experience with the initial loan subscription, the Federal Reserve will review the term announcement and loan settlement timeframes and announce a more detailed future TALF schedule. In addition to a revised term sheet,[1] the Federal Reserve Board released a revised frequently asked questions document[2] and white paper[3] detailing the changes.

Highlights of New TALF Terms

The following are certain highlights of the newest changes and clarifications to the TALF:

- Borrowers will be able to request an unlimited number of loans per month.
- The executive compensation restrictions have been removed.
- Collateral that has a market value above par can qualify as eligible collateral.

1 See http://www.newyorkfed.org/markets/talf_terms.html.

2 See http://www.newyorkfed.org/markets/talf_faq.html.

3 See http://www.ustreas.gov/press/releases/reports/talf_white_paper.pdf.

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- The haircuts and interest rates have been decreased for student loans and small business loans backed by government guarantees.
- An average life calculation has been provided for purposes of determining the maturity dates of the collateral.
- Definitions of "Prime" and "Subprime" are provided.
- Primary dealers, issuers, sponsors and their respective affiliates are prohibited from entering into hedging transactions specific to securities purchased with TALF financing. However, the prohibition does not extend to portfolio-wide hedging transactions, which may include securities purchased with TALF loans.

Summary of Revised Program

Under the TALF, the FRBNY in conjunction with the Treasury Department will lend up to $1 trillion (as noted, expanded by the Financial Stability Plan from the original $200 billion amount specified in the FRBNY's term sheet) on a non-recourse basis to holders of certain "eligible collateral" (as defined below). On the first Tuesday of each month, borrowers will be able to request one or more non-recourse three-year TALF loans in a principal amount of a minimum of $10 million. The principal amount of each TALF loan for collateral that has a par value greater than or equal to its market value will be equal to the lesser of the par value or market value of the eligible collateral pledged minus a haircut established for each class of eligible collateral and based on the price volatility for that class of collateral. The principal amount of each TALF loan for collateral pledged that has a market value above par value will be equal to the market value of the collateral, subject to a cap of 110% of par value, minus the applicable class haircut. For loans above par value, borrowers will periodically prepay a portion of the loans to adjust for the expected reversion of market value to par value as the collateral matures.

Borrowers will be able to request either fixed rate or floating rate loans. For TALF loans funded in March 2009, interest rates on TALF loans secured by collateral that does not benefit from government guarantees will be a per annum rate equal to the three-year LIBOR swap rate plus 100 bp for fixed rate loans, and the one-month LIBOR plus 100 bp for floating rate loans, and interest rates on other TALF loans will be as follows: (i) 50 bps over one-month LIBOR for collateral that is backed by federally guaranteed student loans; (ii) 75 bps over the federal funds target rate for collateral backed by SBA Pool Certificates; and (iii) 50 bps over the three-year LIBOR swap rate for collateral that is backed by SBA Development Company Participation Certificates. Interest rates for future TALF loans will be set on the subscription date for such loans. In addition to the interest rate, there will be a 5 bp administrative fee on all TALF loans.

TALF loans will be prepayable by the borrower, but substitution of collateral will not be permitted. Interest will be payable monthly. Any principal remitted on the eligible collateral will be used immediately to reduce the principal of the TALF loan in proportion to the loan's original LTV ratio. TALF loans will not be subject to mark-to-market or re-margining requirements. At the end of the three-year term the borrower must repay the loan in full, arrange for the sale of the collateral, or, if the collateral value is less than the outstanding loan amount, surrender the collateral to the FRBNY.

Eligible Borrowers

TALF loans may be obtained by any U.S. companies that own eligible collateral and that have an account relationship with a primary dealer.[4] An entity is a "U.S. company" for purposes of the TALF if it is (i) a business entity or institution that is organized under the laws of the United States or a political subdivision or territory thereof (U.S.-organized) and conducts significant operations or activities in the United States (regardless of whether any such entity has a parent company that is not U.S.-organized), including any U.S.-organized subsidiary of such an entity; (ii) a U.S. branch or agency of a foreign bank (other than a foreign central bank) that maintains reserves with a Federal Reserve Bank; or (iii) an investment fund that is U.S.-organized and managed by an investment manager that has its principal place of business in the United States. Notwithstanding the foregoing, a U.S. company excludes any entity that is controlled by a foreign government or is managed by an investment manager controlled by a foreign government. An "investment fund" is any type of pooled investment vehicle, including a hedge fund, a private equity fund and a mutual fund, or any vehicle that primarily or exclusively invests in eligible collateral and borrows from the TALF. An eligible investment fund includes funds that only invest in TALF-eligible ABS and only borrow from the TALF, as well as funds that invest in a mix of TALF-eligible ABS and other assets. Newly formed investment funds may borrow from the TALF as long as their collateral meets the collateral eligibility requirements. To enhance certainty of TALF financing, primary dealers may submit names of prospective TALF borrowers for a pre-certification review to be conducted by the FRBNY in advance of the subscription date.

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4 A borrower may request loans through more than one primary dealer as long as the borrower delivers the collateral for each loan through the respective primary dealer (unless the collateral is a new issuance delivered by the underwriter/other syndicate desk).

Eligible Collateral

TALF loans may only be secured by "eligible collateral," which are ABS that are:

- public or privately placed U.S. dollar-denominated cash (not synthetic) ABS with a long-term credit rating of AAA or its equivalent from two or more of Standard & Poor's, Moody's Investors Service or Fitch Ratings (TALF-NRSROs)[5] and which do not have a long-term rating below AAA or its equivalent from any TALF NRSRO;
- cleared through the Depository Trust Company;
- not reliant on third party guarantees for ratings and that have not been placed on review or watch for downgrade by any TALF NRSRO;
- originated on or after January 1, 2009, and can be either credit card or auto dealer floorplan ABS with an average life of no more than five years that is issued to refinance existing credit card or auto dealer floorplan ABS, as applicable, maturing in 2009 in amounts no greater than the amount of maturing ABS,[6] or backed by:
  - retail loans or leases relating to cars, light trucks, motorcycles or RVs (except auto dealer floorplan loans) in each case, with respect to a principal amount equal to at least 85% of the principal amount of the ABS, that were originated on or after October 1, 2007 (commercial, government and rental fleet leases of cars, trucks and light trucks will not be eligible);
  - federally guaranteed student loans (including consolidation loans) or private student loans, in each case, with respect to a principal amount equal to at least 85% of the principal amount of the ABS, with a first disbursement date on or after May 1, 2007;
  - small business loans guaranteed by the U.S. Small Business Administration originated on or after January 1, 2008;[7] or
  - commercial mortgage loans (no specifics yet with respect to dates of origination or other requirements, and not included in the initial TALF loan offering).
- backed by underlying credit exposures, with respect to a principal amount equal to at least 95% of the principal amount of the ABS, that were made to U.S. domiciled obligors;
- not backed by underlying credit exposures that include exposures that are themselves cash or synthetic ABS (i.e., no resecuritizations or CDOs); and
- for any particular borrower, not backed by loans originated or securitized by that borrower or any of its affiliates.

Haircuts

The initial collateral haircuts are as follows:

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

5 The FRBNY will evaluate the list of NRSROs for the purpose of determining TALF-eligible ABS and may make changes to the list in the future.

6 Eligible auto dealer floorplan ABS may also include ABS issued out of an existing or newly established floorplan master trust, in which all or substantially all of the auto dealer floorplan lines of credit underlying the ABS were originated on or after January 1, 2009.

7 Notwithstanding the rules for other eligible ABS, SBA Pool Certificates or Development Company Participation Certificates must have been issued on or after January 1, 2008, regardless of the dates of the underlying loans or debentures.

8 Auto loan ABS are considered prime if the weighted average FICO score of the receivables is 680 or greater. Receivables without a FICO score are assigned the minimum FICO score of 300 for this calculation. Commercial receivables can be excluded from this calculation if historic cumulative net losses on these accounts have not been greater than non-commercial receivables as shown in the prospectus, but the percentage of commercial receivables in a trust may not exceed 15%. If the weighted average FICO score is not disclosed, the subprime haircut schedule will apply.

9 Credit card ABS are considered prime if at least 70% or more of the receivables have a FICO score greater than 660, and FICO scores must reflect performance data within the last 120 days. If the weighted average FICO score is not disclosed, the subprime haircut schedule will apply.

For ABS with average lives beyond five years that benefit from a substantial government guarantee, haircuts will increase by one percentage point for every two additional years of average life beyond five years. For other ABS with average lives beyond five years, haircuts will increase by one percentage point for each additional year of average life beyond five years. The Federal Reserve Board will periodically review and may at its option adjust the TALF interest rate spread and haircuts for new loans. The average life for ABS with bullet maturities (credit cards and auto dealer floorplans) is determined by the expected principal payment date. The average life of amortizing ABS (auto retail loans and leases, student loans and SBA loans) is defined as the weighted average life to maturity based on the issuer's calculation required to be in the prospectus. Issuers are required to represent in the prospectus that the weighted average life to maturity for each AAA-rated tranche was calculated in accordance with the TALF prepayment assumptions and conventions listed in the table below. Issuers are encouraged to base weighted average life to maturity calculations on a loan-by-loan analysis; however, representative pools that fairly and accurately model the actual collateral characteristics may be used.

Sector	Subsection	Prepayment Assumption
Auto	Prime auto retail lease	75% of prepayment curve
Auto	Prime auto retail loan	1.3% APS
Auto	Subprime retail loan	1.5% APS
Auto	Motorcycle	1.5% APS
Auto	RV	18% CPR
Student Loan	Student Loan Private	4% CPR
Student Loan	Student Loan FFELP	6% CPR
Student Loan Consolidation		50% of CLR curve
Small Business	SBA 7a	14% CPR
Small Business	SBA 504	5% CPR

CPR (Conditional Payment Rate) represents the proportion of the principal of a pool of loans that is assumed to be paid off prematurely in each period.

APS (Absolute Prepayment Speed) represents the percentage of the original number of loans that prepay during a given period.

Disclosure and Certification Requirements

A nationally recognized certified public accounting firm that is registered with the Public Company Accounting Oversight Board and that is retained by the sponsor will be required to provide an attestation (Auditor's Attestation),[10] in the form provided by the FRBNY, indicating that the ABS is TALF eligible. Also, in addition to information required by applicable laws, the issuer and sponsor must ensure that the information included in a prospectus or other offering document of an ABS they represent as eligible collateral under the TALF includes a signed certification in the form provided by the FRBNY[11] indicating that (a) the ABS is TALF eligible, (b) the Auditor's Attestation has been provided, and (c) the sponsor (or if the sponsor is a special purpose vehicle, the sponsor's direct or indirect ultimate parent) has executed and delivered an undertaking (Indemnity Undertaking) to the FRBNY indemnifying it from any losses it may suffer if such certifications are untrue.[12]

Subscription and Settlement Procedures

The FRBNY has published a revised version of a Master Loan and Security Agreement (MLSA)[13] which provides further details on the terms that apply to borrowings under the TALF. Each borrower must execute a customer agreement authorizing its primary dealer to execute the MLSA as its agent and to perform all actions required on its behalf. The following is a summary of the timeline from loan subscription to loan settlement.

10 The form of the Auditor's Attestation can be obtained from the FRBNY at http://www.ny.frb.org/markets/TALFAuditorAttestationForm.pdf.

11 The form of the issuer's certification can be obtained from the FRBNY at http://www.ny.frb.org/markets/Form_Certification_TALF_Eligibility.pdf.

12 SBA Pool Certificates and Development Company Participation Certificates do not require an Auditor's Attestation, an issuer's certification, or an Indemnity Undertaking, but pool assemblers must deliver to the FRBNY an undertaking in connection with SBA Pool Certificates which can be found at http://www.newyorkfed.org/markets/TALF_Undertaking_SBA_ABS.pdf.

13 The revised version of the MLSA, effective March 11, and related documents are available at http://www.ny.frb.org/markets/talf_docs.html.

Loan Subscription Date. Prior to each subscription date, each primary dealer will collect from prospective eligible borrowers the amount of each borrower's loan request(s), the interest rate format corresponding to the type of collateral pledged (that is, fixed or floating), the CUSIPs of the ABS the borrower expects to deliver and pledge to the FRBNY, and the most current version of any prospectuses and/or offering documents of the ABS expected to be pledged. On the subscription date, each primary dealer will submit this information to the FRBNY's custodial agent for review and will also submit to the FRBNY the aggregate loans request amount for all its customers by rate type and asset class.

Four Business Days Prior to Loan Settlement Date. By 5:00 p.m. on the fourth business day prior to each loan settlement date, each primary dealer must deliver, with respect to any expected ABS collateral that is to be acquired by a borrower on the loan settlement date (New Acquisition Collateral),[14] (i) a sales confirmation generated by the broker-dealer through which such collateral was purchased; (ii) the final form of the offering materials relating to the collateral; (iii) the Auditor's Attestation; and (iv) the Indemnity Undertaking.

Three Business Days Prior to Loan Settlement Date. By 5:00 p.m. on the third business day prior to each loan settlement date, the custodian will deliver to the FRBNY a schedule showing the eligible collateral each borrower intends to deliver for each requested loan.

Loan Settlement Date. On the loan settlement date, the borrower or its agent will deliver against payment the ABS collateral, the administrative fee and, with respect to any New Acquisition Collateral (unless the borrower is acquiring the ABS through a broker-dealer that is also the primary dealer with respect to the loan being secured by that ABS), the applicable margin or haircut amount, to the FRBNY's settlement account at the custodian. If any portion of expected 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.

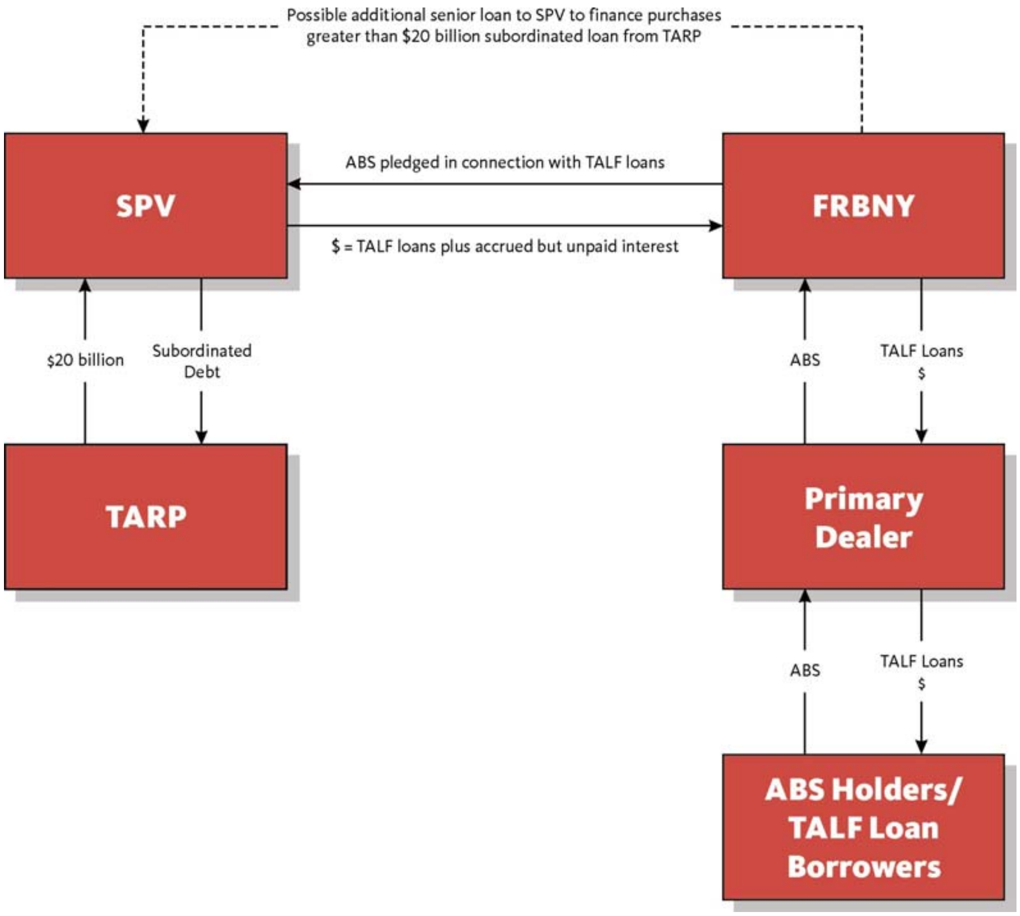
Limitations on Hedging Transactions

Primary dealers and their affiliates are prohibited from entering into any transaction that is designed to hedge against losses specific to securities purchased with TALF financing. This prohibition extends to both direct hedges, such as credit default swaps, and correlative hedges, such as short-selling. However, this prohibition does not extend to hedges on a borrower's broader portfolio, which may include securities purchased with TALF loans. Similarly, issuers and sponsors and their affiliates are prohibited from entering into a transaction designed to hedge against an investor's losses on ABS purchased with TALF financing and securitized by such issuer or sponsor. However, primary dealers are not prohibited from entering into interest rate swaps with ABS trusts intended solely to create floating-rate securities based off of fixed-rate receivables provided the swap agreements are entered into at fair prices.

Treasury Department Credit Enhancement of TALF Loans Through TARP-Funded SPV

The Treasury Department, under the Troubled Asset Relief Program (TARP) of the Emergency Economic Stabilization Act of 2008, will provide up to $100 billion (as noted, expanded by the Financial Stability Plan from the original $20 billion amount specified in the FRBNY's term sheet) of credit protection to the FRBNY in connection with the TALF. As depicted in the flow chart below, the FRBNY will create a special purpose vehicle (SPV) to purchase and manage assets received by the FRBNY in connection with any TALF loans. Pursuant to a forward purchase agreement with the FRBNY, the SPV will commit to purchase all assets securing a TALF loan that are received by the FRBNY at a price equal to the TALF loan amount plus accrued but unpaid interest. The TARP will purchase subordinated debt issued by the SPV to finance the first $100 billion of asset purchases. If more than $100 billion in assets are purchased by the SPV, the FRBNY will lend additional funds to the SPV to finance such additional purchases. The TARP's investment in the SPV will provide $100 billion of credit enhancement for any potential losses on the TALF loans because the FRBNY's loan to the SPV will be secured by all assets of the SPV and will be senior to the TARP subordinated loan. All cash flows from SPV assets will be used first to repay principal and interest on the FRBNY loan until the loan is repaid in full. Next, cash flows from assets will be used to repay principal and interest on the TARP loan until the loan is repaid in full. Residual returns from the SPV will be shared between the FRBNY and the Treasury Department.

14 Acceptable sales confirmations include Rule 10b-10 confirmations or other written sales confirmations, including email confirmations that contain the required pricing information and are customarily provided by many broker-dealers prior to mailing of a Rule 10b-10 confirmation.



Katten's TARP Task Force

Katten Muchin Rosenman LLP's multidisciplinary TARP Task Force advises clients on the U.S. Treasury's Troubled Asset Relief Program created under the Emergency Economic Stabilization Act of 2008. Katten's TARP Task Force advises clients on obtaining TALF loans and issuing and underwriting TALF-eligible ABS. Katten's TARP Task Force also advises clients with respect to all aspects of other TARP-related programs such as (i) the Capital Purchase Program, whereby the U.S. Treasury is purchasing preferred shares in certain publicly traded and privately held financial institutions, (ii) the new Capital Assistance Program providing additional capital in the form of purchase of convertible securities to financial institutions which have been subject to a stress-test, (iii) the new $500 billion to $1 trillion Public-Private Investment Fund in which the government will finance purchases of legacy assets by private sector institutions, and (iv) the new $75 billion Making Home Affordable plan to prevent avoidable foreclosures.

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