

GUIDE TO THE 2020 TERM ASSET-BACKED SECURITIES LOAN FACILITY (TALF) PROGRAM

As of September 3, 2020

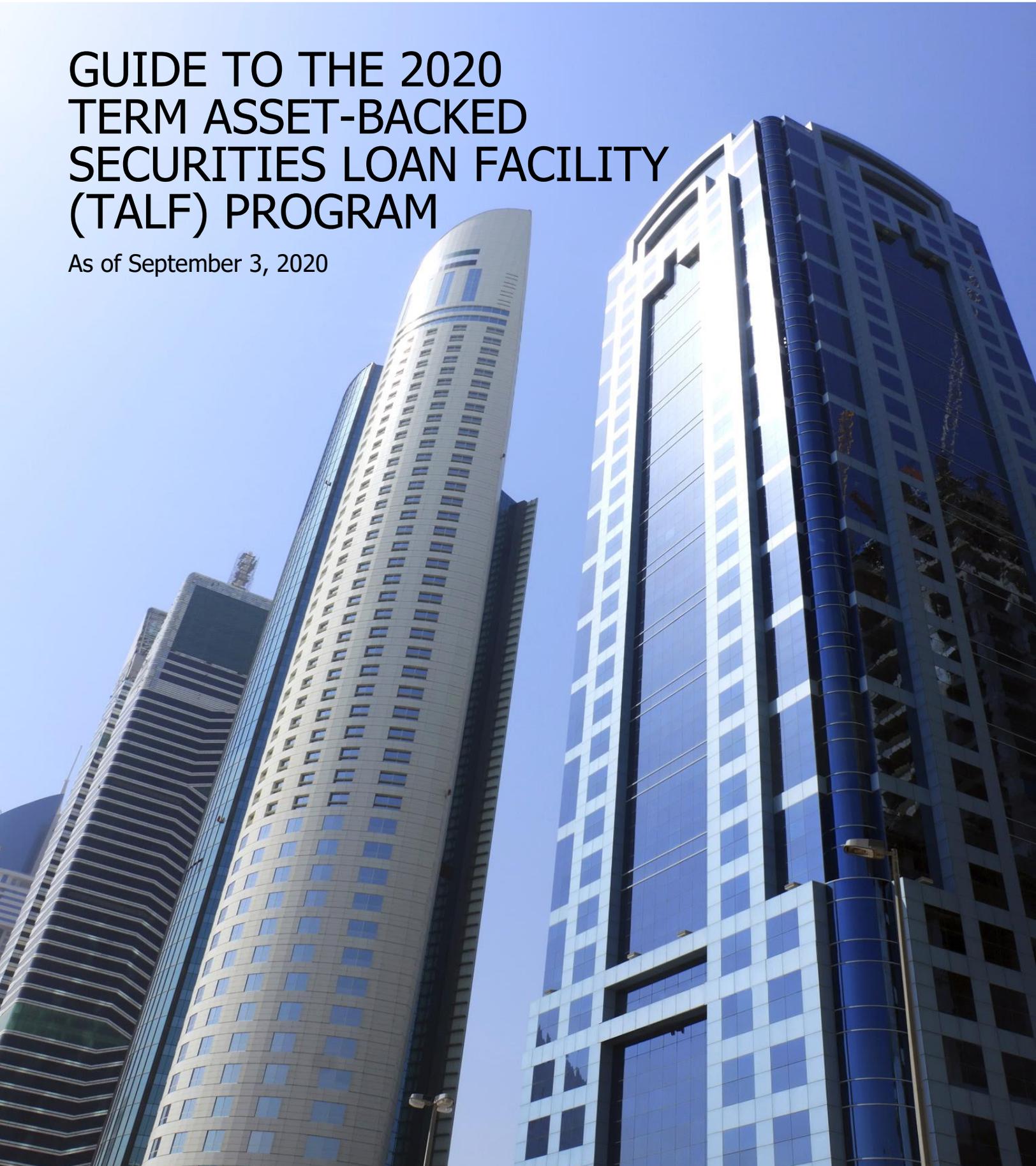


TABLE OF CONTENTS

	Page
GUIDE TO THE 2020 TERM ASSET-BACKED SECURITIES LOAN FACILITY (TALF) PROGRAM	1
Borrower Eligibility Requirements	2
US Organization, Employees and Operations Test	2
Prohibition on Foreign Governments as Material Investors	2
Customer Agreement with TALF Agent	2
CARES Act Borrower Restrictions	3
Insolvency and "Adequate Credit Accommodations"	3
Public Disclosure of TALF Information, Including Material Investors, Control Persons and Loan Information	4
Continuous Eligibility Representation	4
Credit Hedging Prohibition	4
Collateral Eligibility Requirements	4
Eligible Asset Classes	4
Credit Ratings and Seniority	6
New Issue ABS	6
US Originators and Obligors of Pool Assets	6
Newly Issued Receivables	7
Borrower Affiliation with the ABS	7
Borrowing Against Portfolio ABS	8
Borrowing Against New Issue SBA ABS	8
Other ABS Eligibility Requirements	8
Additional CLO Requirements	9
Additional CMBS Requirements	10
Other Reasons for Rejection	10
TALF Loan Terms	10
Average Life	12
Determination of Prime or Subprime Status	13
Interest Rates	13
Maturity and Prepayment	14
Collateral Substitution	14
Fees	14
Issuer and Sponsor Requirements	14
Information Provided to NRSROs	14
CUSIP and Prospectus or Other Offering Document	15

TABLE OF CONTENTS
(continued)

	Page
Issuer and Sponsor Certification (and Sponsor Indemnity Undertaking).....	15
Auditor Attestation or AUP Report(s).....	15
Other Required Disclosures in Prospectus or Other Offering Document.....	16
Special Requirements for SBA Securities.....	16
Special Requirements for ABS Issued on or After March 23, 2020 and Before May 22, 2020	16
Special Requirements for ABS Priced More Than Two Business Days Before Subscription Date.....	17
Loan Subscription and Settlement Process	17
Loan Subscription and Settlement Dates.....	17
Loan Subscription Considerations.....	17
Loan Settlement Considerations	17
Special Subscription and Settlement Considerations for New Issue ABS Closing on Settlement Date.....	18
Loan Payment and Other Post-Closing Considerations	18
Payments of Principal and Interest on TALF Loan.....	18
Payment of TALF Loan at Maturity	19
Sale of Collateral ABS and Assignment of TALF Loan	19
TALF Agent Considerations.....	19
TALF Agent General Responsibilities.....	19
TALF Agent Underwriter Responsibilities.....	20
TALF Agent Due Diligence Responsibilities.....	20
TALF Agent Conflicts of Interest Plan	20
Section 11(d)(1) Exemption.....	21
EXHIBIT A – TALF BORROWING TIMELINE.....	22
CONTACTS	26

GUIDE TO THE 2020 TERM ASSET-BACKED SECURITIES LOAN FACILITY (TALF) PROGRAM

As of September 3, 2020

The US Treasury Department and the Federal Reserve Bank of New York (the New York Fed) have announced the complete terms of a new Term Asset-Backed Securities Loan Facility (TALF) program, which is intended to address the liquidity crisis caused by the coronavirus (COVID-19) global pandemic through non-recourse lending collateralized by issuances of eligible asset-backed securities (ABS).

The purpose of the 2020 TALF program is to encourage new consumer and small business lending by supporting issuance of eligible ABS. As noted by the agencies:

[T]he securitization markets, along with all other financial markets, have been under considerable strain as a result of the disruptions associated with the coronavirus. This disruption has resulted in a significant increase in the interest rate spreads on these securities and a near halt of new issuance in many sectors. The continued disruption of these markets could further squeeze the liquidity and balance sheet capacity of financial institutions, thereby significantly limiting the flow of credit to households and businesses of all sizes and amplifying the current economic disruption.

The agencies launched the 2020 TALF program to address these issues, pursuant to Section 13(3) of the Federal Reserve Act. The 2020 TALF program was first announced on March 23, 2020, and the complete terms of the program were announced on May 20, 2020.¹ Its terms have undergone several revisions and clarifications since the initial announcement.²

The 2020 TALF program is modeled after the prior TALF program that was announced in 2008 and in effect from 2009 to 2010, which addressed ABS market dislocations that occurred as a result of the financial crisis.³ Under the new TALF program, the New York Fed will lend to a special purpose vehicle (TALF SPV), which will provide funding secured by eligible collateral to eligible borrowers. On scheduled dates each month, borrowers will be able to request one or more three-year TALF loans. Loan proceeds will be disbursed to the borrower, contingent on receipt by The Bank of New York Mellon, as the TALF SPV's custodian, of the eligible collateral, an administrative fee, and margin, if applicable. TALF loans will be non-recourse except for breaches of representations, warranties and covenants, so if the borrower does not repay the loan, the TALF SPV will enforce its rights in the collateral. The first TALF loan subscription date will be June 17, 2020, and the first TALF loan closing date will be June 25, 2020.

This guide discusses the most important features of the 2020 TALF program, including:

- Borrower eligibility requirements;
- Collateral eligibility requirements;
- TALF loan terms;
- Issuer and sponsor requirements;
- The loan subscription and settlement process; and

¹ See [the 2020 TALF program website](#), which includes links to the current versions of the term sheet, the FAQs, and the remainder of the program documentation.

² See the [original term sheet](#) for the new TALF program, the [first updated term sheet](#), and the [second updated term sheet](#). The [original FAQs](#) have undergone numerous revisions after its initial publication.

³ See [this description of the prior TALF program](#).

Morgan Lewis

- TALF agent considerations.

A detailed TALF borrowing timeline, which delineates all of the material borrower and issuer deliverable requirements for TALF eligibility and borrowing in relation to the relevant loan subscription and settlement date, is attached to this guide as Exhibit A.

Borrower Eligibility Requirements

US Organization, Employees and Operations Test

An “eligible borrower” is a business entity created or organized in the United States or under the laws of the United States and that has significant operations and a majority of its employees based in the United States. For borrowers other than investment funds, the US operations and employees tests are applied to the borrower and its consolidated subsidiaries (but not parent or sibling affiliates). For investment funds, US operations and employees tests are applied to the investment manager alone, without taking into account its consolidated subsidiaries.

A borrower (or investment manager of an investment fund borrower) has “significant operations in the United States” if it has more than 50% of its consolidated assets in, annual consolidated net income generated in, annual consolidated net operating revenues generated in, or annual consolidated operating expenses (excluding interest expense and any other expenses associated with debt service) generated in the United States as reflected in its most recent audited financial statements. According to the agencies this is not an exhaustive definition, but since it is specified in the FAQs it should be viewed as a safe harbor.

An “investment fund” is broadly defined to include any type of pooled investment vehicle that is organized as a business entity or institution, including a hedge fund, a private equity fund and a mutual fund, as well as any type of single-investor vehicle that is organized as a business entity or institution. An investment fund may be newly formed, and may either invest primarily in TALF-eligible assets or be a multi-strategy fund.

As a result of the application of these tests, any entity that desires to borrow under the TALF program and does not have its own operations and employees would need to appoint an investment manager that meets the US operations and employees tests.

Prohibition on Foreign Governments as Material Investors

Neither a borrower, nor an investment manager of a borrower that is an investment fund, may have a material investor that is a foreign government. A sovereign wealth fund is considered a foreign government for this purpose. A foreign government is not a material investor of a pension plan established for the benefit of its employees, so long as the foreign government does not own, directly or indirectly, 10% or more of any outstanding class of securities of the plan or any investment manager of the plan.

A “material investor” is any person who owns, directly or indirectly, 10% or more of any outstanding class of securities of an entity. In identifying material investors, TALF agents may use existing processes for identifying beneficial owners under the ownership prong of the customer due diligence requirements set forth in 31 CFR 1010.230. In addition, borrowers and TALF agents may rely on information included in Schedule 13D and 13G filings pursuant to the reporting requirements under Section 13 of the Securities Exchange Act of 1934 to identify five percent beneficial owners of company’s shares.

Customer Agreement with TALF Agent

A borrower must enter into a customer agreement with a financial institution that is a TALF agent. TALF agents are direct parties to the TALF Master Loan and Security Agreement (MLSA), and act as their

Morgan Lewis

borrowers' agents in connection with each applicable TALF loan, performing all actions required on behalf of borrowers. TALF agents have numerous specific responsibilities, which are described further throughout this guide.

The base requirements for a customer agreement are set forth in the MLSA, but they are limited, and it is customary for customer agreements to address a number of related items. The Structured Finance Association (SFA) has promulgated a form of customer agreement that has received input from issuer, bank, and investor members and that is intended to be used as a basis for discussions between TALF agents and their prospective borrowers.

CARES Act Borrower Restrictions

An eligible borrower must comply with the restrictions of Section 4019 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which restricts lending to any business that is directly or indirectly owned by the president, senior executive branch officials, or members of Congress (or certain of their immediate family members).

Insolvency and "Adequate Credit Accommodations"

A borrower will be required to certify that it is not insolvent, and that it is unable to secure "adequate credit accommodations" from other banking institutions.

The adequate credit accommodations requirement ultimately is derived from Section 13(3) of the Federal Reserve Act, the statutory provision under which the TALF was created. The "adequate credit accommodations" requirement was added to Section 13(3) after the termination of the original TALF program, so it is new to the 2020 TALF program. The FAQs contain an extended discussion of the meaning of this requirement in the TALF program:

[T]he Board authorized the establishment of the TALF in response to severe dislocations in the ABS markets. . . . [T]he New York Fed must obtain evidence that participants in the TALF are unable to secure adequate credit accommodations from other banking institutions. While these are not the only factors on which a TALF participant may rely in making this certification, a TALF participant may rely on one or more of the following factors: (i) unusual economic conditions in a sector of the ABS market or ABS markets intended to be addressed by the TALF, such as spreads in the primary or secondary ABS markets that are elevated relative to normal market conditions for the sector that the borrower is seeking to use as collateral for a TALF loan, or (ii) elevated rates or haircuts in the financing market (e.g., repo market) relevant for the collateral that the borrower is seeking to use for a TALF loan. Lack of adequate credit does not mean that no credit is available. Credit may be available, but inadequate in its amount, price, or terms because, for example, ABS spreads are elevated relative to normal market conditions.

One of the interpretive difficulties posed by the FAQs has been the disparity between the purposes of the TALF program and the focus of the adequate credit accommodations certification. While the TALF program is intended to address dislocations in the ABS markets, the certification is required of those who borrow to buy ABS, not the sponsors or issuers of those ABS. The agencies have taken great pains to bridge the gap in the FAQs, making it very clear that either dislocations in the ABS markets or in the markets for financing ABS are sufficient to support the certification. A borrower may have the ability to obtain short-term financing prior to a TALF loan settlement date and still be able to provide the adequate credit accommodations certification.

A TALF agent is not required to conduct additional diligence with respect to a borrower's certification that it is unable to secure adequate credit accommodations.

A borrower also must certify as to the CARES Act Section 4019 requirements described above.

Morgan Lewis

Public Disclosure of TALF Information, Including Material Investors, Control Persons and Loan Information

A borrower must disclose to its TALF agent all material investors and control persons, and must disclose any change in its material investors during the life of the loan. As described above, a “material investor” is any person who owns, directly or indirectly, 10% or more of any outstanding class of securities of an entity. A “control person” is any person that “controls” another. “Control” means the direct or indirect power to direct or cause the direction of the management or policies of a borrower, whether through the ownership of voting securities, by contract or otherwise.

The New York Fed will publicly disclose information on a monthly basis regarding the TALF during the operation of the facility, including information identifying each borrower, its material investors, its investment manager (if it is organized as an investment fund), and loan terms, including loan amounts, interest rates, and the types and amounts of ABS collateral.

Aggregate information regarding initial loan requests will be made available on the TALF website on each loan subscription date, and aggregate information regarding loans settled will be available within one business day of each loan settlement date. Those ABS that the New York Fed determined to be TALF-eligible and those ABS that borrowers proposed as eligible but the New York Fed determined to be ineligible will be available on the TALF website two business days before each loan settlement date. Eligibility determinations will be made available on the TALF website for ABS pledged as part of a loan request, as well as based on information submitted by an issuer and its accounting firm unconnected to a specific loan request.

Investors that desire to keep any of this information confidential are not well suited to borrow under the TALF.

Continuous Eligibility Representation

A TALF borrower must make a continuous representation that it is an eligible borrower. Therefore, a borrower must have internal control procedures to monitor its direct and indirect investors as long as the TALF loan is outstanding. If any entity’s direct or indirect ownership interest in the borrower reaches the material investor threshold, the borrower must escalate it to its TALF agent for due diligence review.

Credit Hedging Prohibition

A TALF borrower must agree that prior to the settlement date and for as long thereafter as it has a TALF loan outstanding, the borrower has not entered and will not enter into a transaction intended to serve as a credit hedge for the collateral ABS posted as security for that loan. For these purposes, a credit hedge is a transaction or series of transactions intended to offset in whole or in part the credit risk associated with the 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 borrower’s broader portfolio (which may include securities purchased with TALF loans), or interest-rate hedges.

Collateral Eligibility Requirements

Eligible Asset Classes

Eligible collateral includes US dollar–denominated ABS in the following asset classes:

Auto loans and leases: Auto receivables include retail loans and leases relating to cars, light trucks, motorcycles and other recreational vehicles; commercial and government fleet leases; and commercial loans secured by vehicles and the related fleet leases of such vehicles to rental car companies. Loans and leases relating to other recreational vehicles include loans and leases for all recreational vehicle types designed for consumer use that have collateralized ABS transactions in the past, such as recreational

Morgan Lewis

vehicles (RVs), boats, trailers and sports vehicles. Commercial, government and rental fleet ABS may include loans and/or leases related to any type of vehicle that have collateralized fleet securitizations in the past. Retail (non-fleet) leases to commercial obligors in amounts not to exceed 15% of the total asset pool may also collateralize prime auto retail lease ABS.

Student loans: Student loan receivables include private student loans, including those that are for the purpose of refinancing existing student loans. Student loan ABS issued by states, state agencies, state authorities or non-profits may be TALF-eligible so long as all eligibility criteria are met.

Credit card receivables: Credit card receivables include both consumer and corporate receivables.

Equipment loans and leases: Equipment receivables include loans and leases relating to business, industrial, and farm equipment. This includes 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 equipment types (other than assets such as aircraft, shipping containers, ships, cell phone towers, locomotives, and railcars) that have collateralized equipment ABS in the past. The pool assets may include a mixture of loans and leases on a mixture of types of equipment.

Floorplan loans: Floorplan loans include both auto and non-auto assets. Auto floorplan ABS are revolving lines of credit used to finance dealer inventories of cars, light trucks and motorcycles. Other types of floorplan receivables may be included, but only if they do not exceed 5% of the asset pool. Non-auto floorplan ABS are revolving lines of credit used to finance dealer inventories of other items, including vehicles such as cars and trucks (subject to certain limitations), RVs, motorcycles, trailers, boats and sports vehicles; agricultural, construction, or manufacturing equipment; manufactured housing; large appliances; and electronic equipment. 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. 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 certain limitations. Car and light truck receivables may be included in a non-auto floorplan ABS, but only to the extent that, together with any ABL and AR receivables, they do not exceed 5% of the asset pool.

Insurance premium finance loans: Premium finance receivables include loans used to finance premiums for property and casualty insurance, but not deferred payment obligations acquired from insurance companies. The issuer must acquire ownership of each premium finance loan in its entirety (as opposed to merely a participation or beneficial interest). The securitization must include a back-up servicer obligated to service the loans upon the resignation or termination of the initial servicer.

Small business loans that are guaranteed by the Small Business Administration (SBA): SBA loans include loans, debentures or pools originated under the SBA's 7(a) loan and 504 loan 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 eligibility requirements.

Leveraged loans (i.e., static CLOs): Eligible leveraged loans underlying collateral loan obligations (CLOs) comprise broadly syndicated loans to large corporate borrowers and/or middle-market loans. There are a number of additional requirements that apply to static CLOs, which are described further below.

Commercial mortgages (i.e., CMBS): CMBS may not be backed by only a single asset or obligations by only a single borrower. The CMBS must entitle its holders to payments of principal and interest – it must not be an interest-only or principal-only security. Each CMBS must bear interest at a pass-through rate that is fixed or based on the weighted average of the underlying fixed mortgage rates. There are several additional requirements that apply to CMBS, which are described further below.

Morgan Lewis

Synthetic ABS are not eligible. Resecuritized ABS, even if they are in eligible asset classes, are not eligible. Intermediate financial assets that represent an interest in or the right to payments or cash flows from another asset pool, such as through a special unit of beneficial interest, collateral certificate, titling trust, or similar intermediate security that does not have independent economic features, are permitted for all eligible ABS.

According to the agencies, “[t]he feasibility of adding other asset classes to the facility or expanding the scope of existing asset classes will be considered in the future.” The agencies initially appeared to be giving serious consideration to the addition of private-label residential mortgage-backed securities (i.e., RMBS) and unsecured personal loans (i.e., marketplace loans), but as of the time of this writing appear to have decided not to include them.

Credit Ratings and Seniority

To be eligible for financing, collateral ABS generally must be rated 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” rating agencies, and must not have a rating below that level from any eligible rating agency. The ratings must not be unsolicited. Further, only ABS tranches that are not junior to any other class of securities backed by the same pool of assets are eligible for TALF (money market eligible tranches for auto loan and equipment loan securitizations are not considered senior to the other AAA-rated securities in those transactions). ABS must not have been junior to other securities with claims on the same pool of loans, in respect of credit support. This exclusion does not apply to ABS that are in a later position in the time tranche sequence but are otherwise *pari passu*.

At the time of this writing, the nationally recognized statistical rating organizations (NRSROs) that are eligible to provide the required ratings for purposes of the TALF program include S&P Global Ratings, Moody’s Investors Service, Inc. and Fitch Ratings, Inc. DBRS, Inc. and Kroll Bond Rating Agency, Inc. also are eligible, but only to the extent that the collateral also has a qualifying rating from S&P, Moody’s or Fitch.

Except as noted below, eligible ABS cannot be on review or watch for downgrade at the time of a TALF loan. A downgrade during the term of a TALF loan does not affect the loan, but the ABS may not be used as collateral for any new TALF loans until it regains the required rating.

CMBS that are downgraded or placed on review or watch for downgrade after the TALF loan subscription date but before the settlement date may still be eligible, though any declines in value may affect the amount of TALF financing that is extended.

New Issue ABS

For all asset classes other than CMBS and SBA Pool Certificates or Development Company Participation Certificates, the collateral ABS must have been issued on or after March 23, 2020. Only legacy CMBS are eligible for TALF financing, which means they must have been issued before March 23, 2020. SBA Pool Certificates or Development Company Participation Certificates must be issued on or after January 1, 2019.

US Originators and Obligors of Pool Assets

All or substantially all of the pool assets underlying newly issued ABS (except for CLOs) must be originated by US-organized entities (including US branches or agencies of foreign banks). For CLOs, all or substantially all of the leveraged 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). For all ABS (including CLOs and CMBS), all or substantially all of the pool assets must have US-domiciled obligors or be with respect to real property located in the United States or one of its territories.

Morgan Lewis

For this purpose, this “all or substantially all” means 95% or more of the dollar amount of the pool assets.

Newly Issued Receivables

“All or substantially all” of the pool assets must be newly issued, other than for legacy CMBS. This requirement has different meanings for different asset classes, but in general, except for master trusts, for this purpose “all or substantially all” means 95% or more of the dollar amount of the pool assets.

For fixed pool securitizations of auto and equipment receivables, 95% or more of the dollar amount of the pool assets must have been originated on or after January 1, 2019.

For fixed pool securitizations of student loans, 95% or more of the dollar amount of the pool assets must have had a first disbursement date (or, for refinance loans, a refinance disbursement date) on or after January 1, 2019.

For SBA loans, there is no restriction on the dates of the underlying receivables so long as they collateralize Pool Certificates and Development Company Participation Certificates that were issued on or after January 1, 2019.

For static CLOs, 95% or more of the dollar amount of the pool assets must have been originated on or after January 1, 2019, including loans that have been refinanced on or after that date.

For new master trusts with respect to auto, credit card, floorplan and premium finance receivables that were established on or after March 23, 2020, 95% or more of the dollar amount of the pool assets must have been originated on or after January 1, 2020.

For legacy master trusts with respect to auto, credit card, floorplan and premium finance receivables that were established before March 23, 2020, eligible ABS must be issued to refinance existing ABS that matured or mature on or after January 1, 2020 and before the TALF program termination date (which, unless further extended, is December 31, 2020) and in amount no greater than those maturing ABS. These tests are applied at the sponsor level, across all of its master trusts. Auto loan ABS issued by a trust with revolving features are not permitted unless the trust is a master trust.

For purposes of the legacy master trust limit, the maturity of a variable funding note (VFN) is its commitment termination date and its amount is its maximum contractual principal balance. For VFNs in controlled amortization periods, only the amount that amortizes prior to the TALF termination date counts toward the limit. For non-VFN ABS with controlled amortization periods, only the amount that amortizes prior to the TALF termination date counts toward the limit. ABS in controlled accumulation periods with bullet maturities after the TALF termination date do not count toward the limit.

Borrower Affiliation with the ABS

With limited exceptions, a borrower may not finance ABS backed by loans originated or securitized by the borrower or an affiliate of the borrower. A borrower is not restricted from financing SBA ABS even if the underlying loans were originated by the borrower or its affiliates, so long as that the borrower has no knowledge of such a relationship. Nor is a borrower restricted from using a broadly syndicated CLO as collateral for its TALF loan even if the loans underlying the CLO were originated by the borrower or its affiliates as part of a syndicate.

An “affiliate” of a borrower is a person or entity that controls, is controlled by or is under common control with the borrower, and as described above, “control” means the direct or indirect power to direct or cause the direction of the management or policies of a borrower, whether through the ownership of voting securities, by contract or otherwise.

Morgan Lewis

A borrower or its affiliates may not be a manufacturer, producer, or seller of products, or provider of services, which are financed by the pool assets, unless they aggregate no more than 10% of the aggregate principal balance of the pool assets. A borrower or its affiliates may not be a borrower under real estate loans backing CMBS unless they aggregate no more than 5% of the aggregate principal balance of the pool assets. A borrower or its affiliates may not be a borrower or lessee under a floorplan loan or fleet lease backing floorplan ABS unless they make up no more than 10% of the aggregate principal balance of the pool assets. A borrower or its affiliates may not be a borrower under leveraged loans backing a CLO unless they aggregate no more than 4% of the principal balance of the pool assets. Each of these tests is applied at the subscription date.

Borrowing Against Portfolio ABS

A borrower may only borrow against ABS that it already owns if they were acquired in arm's-length primary or secondary market transactions within 30 days prior to the loan subscription date. For this purpose, the date of acquisition is the relevant pricing or trade date, and the acquisition must have settled before the loan subscription date. The purchase price must be paid in cash and not reflect any economic arrangement other than the purchase of the ABS, and each acquisition transaction must have proceeds of at least \$1 million. The requirements for new issue SBA ABS differ, as described below.

Borrowing Against New Issue SBA ABS

New issue SBA ABS may be sold on a forward-settling basis, and the issuance and settlement date may be variable. Therefore, the trade date for new issue SBA ABS may occur well in advance of the loan subscription date for the loan settlement date on which a borrower would seek to obtain a TALF loan. In addition, an initial settlement date for issuance of SBA ABS may occur on or before the relevant loan settlement date.

Therefore, new issue SBA ABS will be treated as being issued and settled by the borrower on the loan settlement date with the proceeds of the TALF loan, so long as the borrower has entered into a commitment to purchase the SBA ABS in connection with their primary distribution on a trade date on or prior to the first date on which the SBA ABS have been issued and settled in DTC and within 45 days prior to the related loan subscription date (and so long as the delivery of the SBA ABS actually settles to the TALF SPV's account on the TALF loan settlement date). SBA ABS not purchased in connection with their primary distribution will not be considered newly issued regardless of the trade date or settlement date of the acquisition. In all cases, a trade date establishing a purchase price for new issue SBA ABS must occur before the applicable loan subscription date.

Other ABS Eligibility Requirements

Eligible ABS may be offered and sold either in registered public offerings or private placements to qualified institutional buyers under Rule 144A, but in either case they must be traded book-entry in accordance with the procedures of The Depository Trust Company (DTC).

Eligible ABS must entitle their holders to payments of principal and interest (i.e., they must not be an interest-only or principal-only security). Eligible ABS may not bear interest payments that step up or down to predetermined levels on specific dates. Zero coupon ABS are not eligible. Eligible ABS may not have interest rates that are periodically reset by auctions or that have a variable rate demand feature.

A TALF borrower must agree not to exercise, or refrain from exercising, any voting, consent or waiver rights, or any rights to direct, initiate, recommend or approve any action, without the consent of the New York Fed.

There is no minimum maturity limit for TALF-eligible ABS, but if the maturity is shorter than the three-year TALF loan, the TALF loan will mature upon maturity of the ABS.

Morgan Lewis

The average life for credit card, auto, equipment, floorplan, and premium finance ABS must be under five years. The average life for SBA Pool Certificates and private student loan ABS must be under seven years. The average life for Development Company Participation Certificates, CMBS, and CLOs must be under 10 years. The required mechanisms for determining average life are discussed further below.

ABS with prefunding features are not eligible. As of the date of this writing, it is not clear whether non-master trust ABS (other than for auto loan ABS, which are ineligible) with revolving periods are eligible.

Newly issued ABS (other than CLOs) with a redemption option exercisable prior to three years after the disbursement date of any TALF loan, other than pursuant to a customary clean-up call, are not eligible. Additionally, a newly issued ABS (other than CLOs) shall not permit redemption options any time when such ABS is owned by the New York Fed or by the TALF SPV. A "customary clean-up call" 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% (or a higher percentage customarily used by the sponsor in its securitizations that were offered before the TALF program was established) of the original balance of those assets or liabilities.

CLOs with a redemption option exercisable no earlier than one year after issuance are eligible, provided that the pledged CLO notes and any classes *pari passu* to such notes are redeemed at their full outstanding principal amount plus any accrued interest outstanding. For CLOs this option can be exercised even if the notes are owned by the New York Fed or by the TALF SPV.

ABS that are retained by a sponsor (or a majority-owned affiliate) to satisfy the requirements of the US credit risk retention rules are not eligible.

ABS issued by or sponsored by (or, in the case of CLOs, with collateral managers which are) US entities that have received specific support pursuant to Sections 4003(b)(1)-(3) of the CARES Act are not eligible. These programs provide funding for certain transportation related businesses and businesses that are critical to maintaining national security.

Additional CLO Requirements

A CLO manager must have its principal place of business in the United States. CLOs backed by commercial real estate are not eligible collateral.

As noted above, an eligible CLO must be static, not actively managed. This means that it does not include any reinvestment period, unless that period begins at least three years after the disbursement date of any related TALF loan, and does not permit reinvestment of proceeds at any time when the most senior tranche is (or *pari passu* tranches are) owned by the New York Fed or by the TALF SPV.

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. CLO managers may sell loans that have defaulted in payment of principal and/or interest, though proceeds of such sales may not be reinvested and must be used to amortize the CLO.

The CLO pool assets may bear interest at a floating rate that references LIBOR, but if so they are "generally expected" to have adequate fallback language, which may be language recommended by the Alternative Reference Rates Committee (ARRC), substantially similar fallback language, or other language that was prevailing in the relevant market when the loan was originated.

For a CLO to be eligible, the leveraged loans must be current on principal and interest, senior secured, and subject to the following additional portfolio limitations as of the subscription date:

- Maximum second lien loan concentration of 10%;
- Maximum debtor-in-possession (DIP) loan concentration of 7.5%;

Morgan Lewis

- Maximum covenant-lite loan concentration of 65% for broadly syndicated CLOs and 10% for CLOs that are not broadly syndicated; and
- Maximum single underlying obligor concentration of 4%;
- Minimum obligor EBITDA (calculated in accordance with the underlying instrument) of \$10,000,000 for CLOs that are not broadly syndicated; and
- At least one overcollateralization test redirecting cash flow from the equity and subordinated tranches of the securitization to the TALF-eligible senior tranche in the event of deterioration in the portfolio.

A “broadly syndicated CLO” is 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% of the portfolio to be comprised of leveraged loans to obligors with total potential indebtedness of \$150,000,000 to \$250,000,000.

A “covenant-lite loan” is a senior secured loan that does not contain any financial covenants, or does not contain any maintenance covenants (i.e., financial covenants applicable during each reporting period whether or not a borrower has taken any specified action). However, if such a loan contains either a cross-default or cross-acceleration provision to, or is *pari passu* with, another loan of the underlying obligor that requires the underlying obligor to comply with a maintenance covenant or one or more financial covenants that apply only upon the occurrence of certain actions of the underlying obligor, it will be deemed not to be a covenant-lite loan.

Additional CMBS Requirements

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. 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 *pari passu* with all other interests in the same loan in right of payment of principal and interest.

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.

Other Reasons for Rejection

The New York Fed may reject an ABS, for any reason, even if the ABS meets the collateral eligibility requirements, based on the credit quality, transparency, simplicity of structure, and other factors.

The New York Fed will not fund a TALF loan if, in its judgment, a borrower is motivated by a direct or indirect economic interest in the pool assets, or products or services relating to the pool assets, in the pool underlying the ABS, that would affect its incentive to independently assess its investment risk.

TALF Loan Terms

TALF loans have a minimum loan amount of \$5 million, and there is no maximum loan amount.

There is a schedule of specific haircuts that vary by asset class and expected life of the ABS. The following schedule is current as of the date of this writing:

Morgan Lewis

Sector	Subsector	ABS Average Life (Years)									
		0- <1	1- <2	2- <3	3- <4	4- <5	5- <6	6- <7	7- <8	8- <9	9- <10
Auto	Prime retail lease	10%	11%	12%	13%	14%	N/A	N/A	N/A	N/A	N/A
Auto	Prime retail lease	6%	7%	8%	9%	10%	N/A	N/A	N/A	N/A	N/A
Auto	Subprime retail loan	9%	10%	11%	12%	13%	N/A	N/A	N/A	N/A	N/A
Auto	Motorcycle/other recreational vehicles	7%	8%	9%	10%	11%	N/A	N/A	N/A	N/A	N/A
Auto	Commercial and government fleets	9%	10%	11%	12%	13%	N/A	N/A	N/A	N/A	N/A
Auto	Rental fleets	12%	13%	14%	15%	16%	N/A	N/A	N/A	N/A	N/A
Credit Card	Prime	5%	5%	6%	7%	8%	N/A	N/A	N/A	N/A	N/A
Credit Card	Subprime	6%	7%	8%	9%	10%	N/A	N/A	N/A	N/A	N/A
Equipment	Loans and Leases	5%	6%	7%	8%	9%	N/A	N/A	N/A	N/A	N/A
Floorplan	Auto	12%	13%	14%	15%	16%	N/A	N/A	N/A	N/A	N/A
Floorplan	Non-Auto	11%	12%	13%	14%	15%	N/A	N/A	N/A	N/A	N/A
Leveraged Loan	Static	20%	20%	20%	20%	20%	21%	22%	23%	24%	25%
Premium Finance	Property and casualty	5%	6%	7%	8%	9%	N/A	N/A	N/A	N/A	N/A
Small Business	SBA Loans	5%	5%	5%	5%	5%	6%	6%	7%*	7%*	8%*
Student Loan	Private	8%	9%	10%	11%	12%	13%	14%	N/A	N/A	N/A
Commercial Mortgages	Legacy, Conduit	15%	15%	15%	15%	15%	16%	17%	18%	19%	20%

*Applicable to Development Company Participation Certificates only.

Auto, credit card, equipment, floorplan, and premium finance ABS must have an average life under five years. For ABS backed by SBA loans, haircuts will increase one percentage point if the average life reaches the five-year date, and an additional one percentage point for every two additional years of average life beyond the five year date. For other new-issue eligible collateral, haircuts will increase by one percentage point for each additional year of average life beyond the five year date. For legacy CMBS with an average life beyond the five year date, base-dollar haircuts will increase by one percentage point of par for each additional year of average life beyond the five year date. No eligible ABS may have an average life of 10 years or longer.

The FAQs as of the date of this writing contain some inconsistencies as to the calculation of loan amounts and haircuts, but the following appears to be the correct formulation. The haircuts in the table above are applied to the par value of the ABS. However, the loan amount for ABS other than CMBS will equal the base value of the ABS, minus the base dollar haircut.

Base value for seasoned collateral is equal to the least of:

- The dollar purchase price on the applicable trade date;
- The market value as of the subscription date; and
- A value based on the New York Fed's review (or collateral review, in the case of CMBS).

Base value for newly issued collateral is the dollar purchase price on the applicable trade date.

Morgan Lewis

Other than for SBA ABS, the base value may not be more than par. For SBA ABS with a base value above par, there will be a cap of 105% of par value. If the base value is less than the base haircut, the ABS is not eligible collateral.

Because the loan amount is based on base value but the haircut is based on par, the percentage amount of the haircut as compared to base value increases with the size of the base value's discount from par. According to the agencies, this formulation recognizes that large discounts from par generally indicate credit concerns.

Average Life

The average life of collateral ABS is key to determining the applicable haircut, as described above, and also is an important disclosure item for eligible ABS, as described below. For amortizing ABS, average life is the weighted average life to maturity based on the assumptions in the following table, calculated as of the desired TALF loan settlement date.

Sector	Subsector	Prepayment Assumption
Auto	Prime retail lease	100% of prepayment curve
Auto	Prime retail loan	1.3% ABS
Auto	Subprime	1.5% ABS
Auto	Motorcycle/other recreational vehicles	1.5% ABS
Auto	Commercial and government fleets	100% of prepayment curve
Equipment	Loans and leases	8% CPR
Leveraged Loan	Broadly syndicated and middle market loans	10% CPR
Small Business	SBA 7(a) loans	14% CPR
Small Business	SBA 504 loans	7% CPR
Student Loan	Private	8% CPR

CPR (conditional prepayment rate) represents the proportion of the principal of a pool of loans that is assumed to be paid off prematurely in each period. ABS (absolute prepayment speed) represents the percentage of the original number of loans that prepay during a given period.

For ABS with bullet maturities, average life is determined by the expected principal payment date.

For auto rental fleets, the average life is the length of any revolving period plus six months.

For CMBS, the average life will be calculated as of the desired TALF loan settlement date on the basis of:

- The current composition of the mortgage pool, as reflected in recent servicer and trustee reports;
- The entitlement of the CMBS to make distributions (including, if applicable, its position in a time-tranched sequence of classes);
- The assumption that "anticipated repayment dates" are maturity dates; and
- A 0% CPR and the absence of future defaults. For this purpose, loans in default or special servicing will be considered as if they had not defaulted, and previously modified loans will be considered according to their terms as modified.

The average life of any ABS that is pledged as TALF collateral after the issuance date (other than new issue SBA ABS) will be adjusted in accordance with the following formulas:

Morgan Lewis

- Adjusted Average Life for bullet maturities = Original Average Life – [1 X ((Desired TALF Loan Settlement Date – Original Closing Date of Security)/360)]
- Adjusted Average Life for amortizing assets = Original Average Life – [1/2 X ((Desired TALF Loan Settlement Date – Original Closing Date of Security)/360)]

The Original Average Life is the average life reported in the final prospectus or offering document (or, for SBA Pool Certificates, in the required undertaking).

Determination of Prime or Subprime Status

For auto and credit card ABS, pricing depends on whether the ABS are considered “prime” or “subprime.”

Auto 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 may be excluded from this calculation if historic cumulative net losses on these accounts have been the same or lower than those on receivables to individual obligors and this information is available in the prospectus or offering document. In addition, the percentage of commercial receivables in a trust must not exceed 10%. For auto deals where a weighted average FICO score is not disclosed, the subprime haircut schedule will apply.

Credit card ABS are considered prime if at least 70% or more of the receivables have a FICO score greater than 660. FICO scores must reflect performance data within the last 120 days. For credit card trusts where the percentage of receivables with a FICO score of greater than 660 is not disclosed, the subprime haircut schedule will apply.

As described below, issuers generally must publish in the prospectus or other offering document whether the deal is prime or subprime, and if they do not, the ABS will be considered subprime.

Interest Rates

Interest rates will be set one day before the applicable loan subscription date, in accordance with the following table (which is current as of the date of this writing):

Sector	Subsector	Fixed 3 year loan (Average Life, in years)		Floating
		1-<2	>=2	
Auto		2-year OIS rate + 125 bps	3-year OIS rate + 125 bps	N/A
Commercial Mortgage		2-year OIS rate + 125 bps	3-year OIS rate + 125 bps	N/A
Credit Card		2-year OIS rate + 125 bps	3-year OIS rate + 125 bps	N/A
Equipment		2-year OIS rate + 125 bps	3-year OIS rate + 125 bps	N/A
Floorplan		2-year OIS rate + 125 bps	3-year OIS rate + 125 bps	N/A
Leveraged Loan		N/A	N/A	30-day average SOFR + 150 bps
Premium Finance		2-year OIS rate + 125 bps	3-year OIS rate + 125 bps	N/A

Morgan Lewis

Small Business	SBA 7(a) loans	N/A	N/A	Top of Fed Funds Range + 75 bps
Small Business	SBA 504 loans	3-year OIS rate +75 bps		N/A
Student Loan	Private	2-year OIS rate + 125 bps	3-year OIS rate + 125 bps	N/A

Interest is payable monthly for all asset classes other than CLOs, where interest is payable quarterly.

Maturity and Prepayment

All TALF loans have a three-year maturity, unless the collateral ABS's maturity is shorter, in which case the TALF loan will mature at the time that the ABS matures.

TALF loans are prepayable in full or in part, with no penalty, subject to various restrictions set forth in the MLSA including limited repayment dates. A partial prepayment will result in a pro rata release of collateral, taking into account the applicable minimum ABS denominations.

Collateral Substitution

Collateral substitution is not permitted.

Fees

A borrower must pay on the loan settlement date an administrative fee equal to 10 basis points of the loan amount.

Issuer and Sponsor Requirements

The following describes the issuer and sponsor requirements for collateral ABS, generally. There are special rules and timing requirements for SBA securities, for ABS issued on or after March 23, 2020 and before May 22, 2020, and for ABS priced more than two business days before the subscription date which are described in separate sections below.

Information Provided to NRSROs

For newly issued ABS, the sponsor or issuer must provide to the New York Fed, no later than 5:00 p.m. (New York time) three weeks in advance of the applicable TALF subscription date, all data on the ABS or its underlying exposures that the issuer has provided to any NRSRO. By the same deadline, the sponsor or issuer must also provide a written waiver or consent to every NRSRO to which it provided information, authorizing that NRSRO to share its view of the credit quality of the ABS and the pool assets. These requirements apply regardless of whether an NRSRO is TALF eligible or whether it actually issues a rating on the ABS.

The data required to be provided includes the "rating agency book," and any other information provided relating to the pool assets, the structure of the ABS (including term sheets, cash flow projections, structural diagrams, or draft offering documents), and the issuer, sponsor, servicer, or originators. Transaction documents do not need to be provided.

The sponsor or issuer must promptly provide any further information requested by the New York Fed, and must promptly provide any additional data provided to any NRSRO, including updates or changes relating to the collateral pool, the structure of the ABS or the issuer, sponsor, servicer, or originators.

Morgan Lewis

While oral communications need not be provided, and the New York Fed does not expect to be copied on every NRSRO communication, the data provided should include all substantive information relating to the pool assets, the structure of the ABS, and the issuer, sponsor, servicer, and originators.

The New York Fed expects to advise issuers and offer them an opportunity for discussion upon becoming aware of any factors that could adversely affect the TALF eligibility of any ABS.

CUSIP and Prospectus or Other Offering Document

On the subscription date, the TALF agent must provide to the New York Fed the CUSIP numbers and the prospectus or other offering documents of all collateral expected to be pledged against the TALF loans. If the ABS is new issue, the prospectus or offering document submitted may be preliminary (or "red"), but the final (or "black") version must be provided to the New York Fed no later than 12:00 p.m. (New York time) three business days before the settlement date.

Issuer and Sponsor Certification (and Sponsor Indemnity Undertaking)

The prospectus or other offering document must include a signed certification indicating, among other things, that the ABS is "eligible collateral," and that the sponsor has executed and delivered an indemnity undertaking to the TALF SPV and the New York Fed indemnifying them from any losses they may suffer if the certifications are untrue.

Both the issuer and the sponsor must sign the certification. The "issuer" is the issuing entity. As with Regulation AB and the credit risk retention rules, the "sponsor," which is required to sign both the certification and the indemnity undertaking, generally is the entity that organizes and initiates an ABS transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity. For CLOs, the collateral manager is the "sponsor" for these purposes. If the sponsor is a special purpose vehicle, its direct or indirect ultimate parent must also execute the certification and indemnity undertaking.

The required assertions as to TALF eligibility may be made earlier than the date of the final ("black") prospectus or offering document, but the signed issuer and sponsor certification must be included in the black. A form of (or, if available, a signed copy of) the issuer and sponsor certification must be included in the preliminary ("red") prospectus or offering document.

The sponsor indemnity undertaking must be submitted to the New York Fed no later than 5 p.m. (New York time) on the same day the issuer furnishes the required auditor attestation or agreed-upon procedures (AUP) report(s), as described below.

Auditor Attestation or AUP Report(s)

For newly issued ABS other than CLOs, an accounting firm retained by the issuer generally must provide to the New York Fed an auditor attestation, providing an opinion on the assertion of management of the issuer and sponsor that the ABS is TALF eligible.

For CLOs, the accounting firm must provide a report on agreed upon procedures (AUP) with respect to factual matters related to various TALF eligibility criteria for leveraged loans, and also must provide to the New York Fed a copy of any other AUP report that it delivers to the sponsor and the underwriter or initial purchaser.

The deadline for providing these materials is 5:00 p.m. (New York time) on the same day the issuer furnishes them on Form ABS-15G. Because the auditor attestation relates to information in the prospectus or other offering document, and the deadline for furnishing a Form ABS-15G is five business days before pricing, this requirement may have the effect of accelerating the preparation of the prospectus or other offering materials.

Morgan Lewis

The accounting firm must be a nationally recognized certified public accounting firm that is registered with the Public Company Accounting Oversight Board.

Other Required Disclosures in Prospectus or Other Offering Document

The prospectus or other offering document must contain the ABS's average life, calculated as described above. For amortizing assets, the issuer must make a representation in the prospectus or offering document that the weighted average life to maturity for each applicable tranche was calculated in accordance with the required prepayment assumptions. Issuers are encouraged to base weighted average life to maturity calculations on a loan-by-loan analysis, but if the analysis is based on representative pools, the pools must fairly and accurately model the actual characteristics of collateral underlying TALF-eligible securities.

For applicable asset classes, the prospectus or other offering document must disclose whether the deal is prime or subprime, and if it does not do so, the ABS will be considered subprime.

Special Requirements for SBA Securities

No issuer certification, indemnity or offering document is required for SBA Pool Certificates. No issuer certification, indemnity or undertaking is required for Development Company Participation Certificates.

For SBA Pool Certificates, an SBA-approved pool assembler must execute an undertaking in connection with each SBA Pool Certificate CUSIP addressed to the TALF SPV and the New York Fed. The pool assembler may be either the entity that assembled the pool or the pool assembler that is the seller in a TALF-financed transaction. For pools assembled jointly between two or more pool assemblers, any one of them may execute the undertaking. The undertaking must be delivered to the New York Fed no later than four business days prior to the TALF loan settlement date.

For Development Company Participation Certificates, offering documents that either contain the security's weighted average life or include a supplement disclosing the security's weighted average life must be delivered to the New York Fed on the loan subscription date. If the securities are a new issuance, the offering document submitted may be preliminary, but the final offering documents must be provided to the New York Fed no later than 12 p.m. (New York time) three business days prior to the applicable TALF loan settlement date.

Special Requirements for ABS Issued on or After March 23, 2020 and Before May 22, 2020

For ABS issued on or after March 23, 2020 and before May 22, 2020, the sponsor or issuer must provide an issuer and sponsor certification, a sponsor indemnity undertaking, and an auditor attestation or AUP report(s), as applicable, the forms of which are substantially similar to the forms required for newly issued ABS. The issuer and the sponsor may rely on a previously issued certification made at the time of ABS issuance and conduct additional due diligence, as appropriate, to certify that the ABS is TALF eligible as of the date of the issuer and sponsor certification.

The sponsor or issuer must submit to the New York Fed all data submitted to any NRSRO, a copy of the final prospectus or offering document, and all other data that the issuer has considered to analyze and certify collateral eligibility criteria (including recent trustee and servicer reports). The sponsor or issuer must also provide a written waiver or consent (in a form acceptable to the New York Fed) to every NRSRO to which such sponsor or issuer provided data on the ABS or its underlying exposures, permitting such NRSRO to share its view of the credit quality of the ABS and its underlying exposures with the New York Fed.

All of this documentation must have been submitted to the New York Fed no later than 3:00 p.m. (New York time) on June 30, 2020.

Morgan Lewis

The final prospectus or offering document need not specify whether the deal is prime or subprime or include the weighted average life calculations described above.

Special Requirements for ABS Priced More Than Two Business Days Before Subscription Date

For new issue ABS (other than SBA securities) to be considered for a subscription date, such ABS must be priced no earlier than two business days before, and no later than, such subscription date. If such ABS is priced earlier than two business days before such subscription date, loan requests for such ABS cannot be submitted for such subscription date, but may be submitted on subscription dates subsequent to such subscription date. For new issue ABS, all documents must be delivered within the time frame for the subscription date that immediately follows pricing, even if the issuer does not anticipate any borrowers to submit loan requests on such subscription date.

The foregoing sets a “go to the back of the line” rule that raises timing concerns. If an ABS prices more than two business days before a subscription date, it is likely to close before the loan settlement date associated with the subscription date that follows such subscription date. A borrower wishing to finance such ABS would also be subject to the requirement that the ABS has been acquired in an arm’s-length transaction within 30 days prior to the relevant loan subscription date, leaving a very limited window for such a borrower purchasing in a primary market transaction to use TALF to finance its purchase.

Loan Subscription and Settlement Process

Loan Subscription and Settlement Dates

The announced loan subscription dates and associated settlement dates through the current end of the TALF program are as follows: June 17/June 25, 2020, July 6/July 15, 2020, July 21/July 30, 2020, August 4/August 13, 2020, August 19/August 28, 2020, September 3/September 15, 2020, and September 18/September 29, 2020. Subsequent loan subscription and settlement dates have not yet been announced.

Loan Subscription Considerations

Each TALF agent must submit its borrowing requests for a subscription date by the time on that date that is specified by the New York Fed.

There is no limit on how many loans a borrower may request. A borrower may request loans through multiple TALF agents.

A loan request may be revised only if the borrower is allocated less than the expected amount of a newly issued ABS. In this case, according to the MLSA, 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.

Loan Settlement Considerations

A sales confirmation, which may take the form of a Rule 10b-10 confirmation or other writing that contains the required pricing information and is customarily provided by many broker-dealers prior to mailing of a Rule 10b-10 confirmation, must be provided by the TALF agent no later than 12:00 noon on the fifth business day prior to each scheduled closing date.

Each TALF agent must submit the ABS collateral backing all of its eligible loans, the related administrative fee, and the applicable margin on the settlement date.

There is no penalty for a borrower’s failure to settle with regard to any particular ABS, though the related administrative fee will not be refunded.

Morgan Lewis

If a borrower becomes ineligible between the subscription date and the settlement date, the borrower's TALF agent may instead borrow the requested loan, so long as the amount borrowed is equal to the loan amount that the ineligible borrower requested, and the borrowing is not used for a transaction underwritten by the TALF agent that contains assets that the TALF agent, any of its affiliates, or any entity under direct or indirect control of the TALF agent, originated.

Special Subscription and Settlement Considerations for New Issue ABS Closing on Settlement Date

At the time of the loan subscription, the borrower must identify the counterparty that will deliver the ABS on the settlement date. When the borrower's TALF agent receives the confirmation of the loan and its details from the TALF custodian two business days prior to the loan settlement date, the TALF agent can extract the pertinent information to generate and forward a trade confirmation to the borrower's delivering counterparty. The delivering counterparty can be the lead underwriter or co-manager of the newly issued ABS, other syndicate member, or the TALF agent of the borrower.

The borrower must always remit the margin to its TALF agent. If the TALF agent is not the delivering counterparty, the TALF agent will forward the margin to the TALF SPV's account at the TALF custodian in order for the issuer to receive the full purchase price for the security. The delivering counterparty will deliver the ABS collateral to the TALF custodian against payment.

Loan Payment and Other Post-Closing Considerations

Payments of Principal and Interest on TALF Loan

In general, any remittance of principal on collateral ABS will be used to reduce the principal amount of the TALF loan in proportion to the haircut, and payments of net interest on collateral ABS will be used to pay accrued but unpaid principal on the TALF loan.

However, the borrower is responsible for all interest and principal payments on a TALF loan. Therefore, if a TALF-financed ABS incurs a principal loss, the borrower would be required to make those payments, or the New York Fed will enforce its rights to the collateral. A borrower has a grace period of 30 days to pay interest on a TALF loan if the net interest on the pledged ABS is not sufficient to cover the interest payment, but if the loan remains delinquent after the grace period, the New York Fed will enforce its rights to the collateral. A timing difference between the interest payments on the pledged ABS and the interest on the TALF loan is not considered a delinquency for this purpose.

In some circumstances, all cash flow received on collateral ABS must be applied to the payment of the accrued interest on and outstanding principal amount of the TALF loan:

- For a master trust, the occurrence of an early amortization or similar event, if as a result principal payments on such ABS commence (or, if principal payments have already commenced due to the termination of the revolving period, the amount of such principal payments is adjusted);
- For any ABS, the occurrence and continuation of an event of default under the governing agreements (to the extent the event or circumstance is not waived); and
- For CMBS, the depletion of credit support, which will be deemed to exist if (and for as long as) the aggregate outstanding principal balance of the classes of securities that provide credit support, minus the aggregate amount of "appraisal reduction amounts" in effect with respect to the pool assets, is less than or equal to zero.

Morgan Lewis

Payment of TALF Loan at Maturity

If the collateral ABS matures after the TALF loan matures, the borrower may either repay the TALF loan with same-day funds, upon which the collateral ABS will be returned, or arrange for the sale of the collateral and the pledged ABS will be delivered to the purchaser versus payment in an amount sufficient for the repayment of the TALF loan. In the latter case, if the sale proceeds will be insufficient to repay the TALF loan in full, the borrower first must deliver same-day funds to make up any shortfall. Any excess sale proceeds will be remitted back to the borrower.

A borrower may at the maturity of the TALF loan decide to surrender the collateral ABS in lieu of repaying the outstanding principal and interest on a TALF loan, by delivering a collateral surrender notice in the required form through its TALF agent by the loan maturity date.

Sale of Collateral ABS and Assignment of TALF Loan

A borrower may assign all of its obligations with respect to a TALF loan to another eligible borrower with the consent of the New York Fed by delivering an assignment and assumption in the required form, so long as the collateral ABS remains eligible at that time. No assignments will be consented to after December 31, 2020, unless that date is extended.

TALF Agent Considerations

TALF Agent General Responsibilities

The duties of a TALF agent are specified in the MLSA, the Borrower Due Diligence Policy for TALF Agents (Due Diligence Policy), and the Conflicts of Interest Policy for TALF Agents (Conflicts of Interest Policy). Among other things, a TALF agent is responsible for:

- Collecting the amount of each borrower's loan requests, the CUSIPs of the ABS the borrower expects to pledge, and the prospectuses or other offering documents for newly issued ABS;
- Submitting aggregate loan request amounts on behalf of its customers;
- On the subscription date, submitting a file to the custodian containing a detailed breakdown of the loan requests, which will include the identity of the individual borrowers, the amount of each borrower's loan request and the other information collected as noted above;
- Working with its customers to resolve any discrepancies identified by the custodian;
- Collecting from its customers and delivering to the custodian the administrative fee and any applicable margin required to be delivered to the custodian on the loan settlement date;
- Periodically receiving from the custodian the portion of the distributions on the collateral that are to be paid to its customers and disbursing such payments in accordance with the instruction of its customers and provide any applicable tax report to its customers;
- Receiving, or forwarding, notices on behalf of its customers;
- Managing any tax withholding and reporting obligations for its customers;
- Conducting know-your-customer due diligence so as to be able to identify, verify, and review information needed to satisfy its borrower eligibility obligations (i.e., diligence sufficient to form a reasonable basis for concluding that the borrower is eligible); and
- Implementing policies and procedures to identify, manage, and mitigate potential conflicts of interest.

Morgan Lewis

TALF Agent Underwriter Responsibilities

A TALF agent that acts as underwriter for a collateral ABS issue represents in the MLSA that no information contained in the ABS's offering materials furnished by it is untrue as to any material fact, or omits any material fact. This representation, taken together with the "reasonable care" standard of liability under the MLSA, is intended to impose a duty coextensive with the underwriter's legal obligations under the federal securities laws. In this regard, the TALF agent is expected to have reviewed the relevant offering materials and, except in the case of SBA collateral, separately confirmed that the ratings currently applicable to the collateral meet the eligibility criteria.

TALF Agent Due Diligence Responsibilities

In meeting its due diligence responsibilities under the MLSA and the Due Diligence Policy, a TALF agent is expected to use judgment and the standards of its own customer review programs to determine the level of verification to apply to information provided by its borrowers. TALF agents are not expected to conduct a *de novo* review of facts certified by borrowers, but on the other hand are expected to exercise reasonable care that goes beyond collection of and reliance on borrower certifications and information. A TALF agent is expected to consider the entirety and consistency of all information received and identified, and not to simply rely on a borrower certification if it has information that raises material doubts about the certification's accuracy. No additional diligence is required with respect to a TALF borrower's certification that it is unable to secure adequate credit accommodations.

There are no prescribed requirements as to how a TALF agent should identify, verify, and screen material investors in and control persons of borrowers (and, to the extent applicable, their investment managers). A TALF agent may use a risk-based approach consistent with its customer review program (as defined in the TALF Due Diligence Policy) to identify and verify Covered Persons, though it is required to screen all material investors and control persons for negative or adverse information.

A TALF agent is not required to verify the identity of any material investor of an investment manager of an investment fund borrower.

TALF Agent Conflicts of Interest Plan

A TALF agent must have a conflicts of interest plan that meets the requirements of the Conflicts of Interest Policy for TALF Agents. This plan is expected to meet the following requirements:

- The plan must be tailored specifically to TALF. This does not mean that TALF agents cannot use existing policies and procedures around conflicts as a foundation, but they should not rely on them alone.
- A TALF agent should have the ability to identify conflicts across various business units, with the goal of facilitating awareness of the multiple possible roles the organization might play with regard to collateral to be financed through TALF and the relationships it might have with borrowers and their material investors.
- A TALF agent should identify staff within the organization in positions relevant to conflicts and provide them with TALF-specific training.
- A TALF agent should consider and implement, as appropriate, tailored monitoring and surveillance around their specific TALF-related conflicts.
- A TALF agent should document which individuals and committees are responsible for making conflicts-related determinations, and implement and document governance and recordkeeping around such decision-making.

Morgan Lewis

- A TALF agent should maintain a log to track TALF-related conflicts of interest issues and decisions to evidence work done.

A TALF agent is required to escalate conflicts of interest and its plans to mitigate them. However, to the extent that the plan mitigates the risk that the integrity of its due diligence processes will be compromised, the borrower's loan request will not be denied just because of the escalation.

Section 11(d)(1) Exemption

The SEC has granted a limited exemption from the prohibition on arranging certain credit under Section 11(d)(1) of the Securities Exchange Act of 1934 for those TALF agents arranging TALF financing on new issues of non-exempted securities where they may have been within the preceding 30 days a "member of a selling syndicate or group" in respect of the distribution of the new issue.⁴

This guide was authored by Charles A. Sweet, Reed D. Auerbach and Sam Park.

⁴ See [the SEC's order](#).

EXHIBIT A – TALF BORROWING TIMELINE

Deadline	Requirement
<p>For ABS issued on or after 3/23/2020 and before 5/22/2020: June 30, 2020, by 3:00 p.m.⁵</p> <p>For newly issued ABS: At least three weeks prior to loan subscription date, by 5:00 p.m.</p>	<ul style="list-style-type: none"> • Sponsor or issuer delivers all data on ABS and pool assets that have been provided to any NRSRO (regardless of whether it is a TALF-eligible NRSRO) and, to the extent available, a copy of the final prospectus or offering document and recent trustee/servicer reports to the New York Fed at nytalf@ny.frb.org and nytalfnewissue@ny.frb.org. • Sponsor or issuer provides written waiver or consent to every NRSRO (regardless of whether it is a TALF-eligible NRSRO) to which it provided data on ABS or pool assets, permitting NRSRO to share its view on credit quality thereof, and a copy thereof to the New York Fed at nytalf@ny.frb.org and nytalfnewissue@ny.frb.org. • <i>Solely for ABS issued on or after 3/23/2020 and before 5/22/2020.</i> The AUP reports/auditor attestation (each as applicable), indemnity undertaking, and issuer/sponsor certification are also due at this time. See below for additional details regarding these deliverables.
<p>Prior to loan subscription date⁶</p>	<ul style="list-style-type: none"> • Borrower executes a customer agreement authorizing TALF agent to execute MLSA⁷ as its agent, in the form of Appendix 2A of the MLSA. • Borrower delivers to TALF agent a certification regarding Borrower’s solvency and inadequate credit accommodations, in the form of Appendix 2B of the MLSA. • Borrower delivers to TALF agent a certification regarding Borrower’s conflicts of interest, in the form of Appendix 2C of the MLSA. • TALF agent delivers to TALF custodian a copy of the letter of agreement pursuant to which it became a party to the MLSA. • TALF agent collects from prospective eligible borrowers all required information needed to complete loan request.⁸ • <i>Not required for SBA Pool Certificates.</i>⁹ TALF agent collects from prospective eligible borrowers preliminary or final offering materials.¹⁰

⁵ All time references are to New York time.

⁶ The [New York Fed will announce loan subscription dates](#) from time to time to correspond to the related loan settlement date.

⁷ [MLSA](#).

⁸ [Form of loan request \(with instructions\)](#).

⁹ Securities fully guaranteed as to principal and interest by the SBA, backed by loans made pursuant to Section 7(a) of the Small Business Act.

¹⁰ Offering materials include the prospectuses, offering memoranda or other offering documents for the collateral ABS.

Morgan Lewis

Deadline	Requirement
	<ul style="list-style-type: none"> • <i>Not required for Development Company Participation Certificates,¹¹ SBA Pool Certificates, or CMBS.</i> All offering materials must contain, among other things, a certification that (i) the ABS is TALF “eligible collateral” and (ii) the sponsor (or, if the sponsor is a special purpose vehicle, the sponsor’s direct or indirect ultimate parent)¹² has executed and delivered an indemnity undertaking to TALF lender and New York Fed indemnifying them from any losses they may suffer if such certifications are untrue. Preliminary offering materials must satisfy this requirement by including a form (or signed copy, if available) of the issuer/sponsor certification,¹³ and final offering materials must satisfy this requirement by including a signed copy of the issuer/sponsor certification. • Sponsor or issuer promptly provides any additional information requested by the New York Fed, and any other information submitted to any NRSRO (regardless of whether it is a TALF-eligible NRSRO), to the New York Fed at nytalf@ny.frb.org and nytalfnewissue@ny.frb.org.
<p>For ABS issued on or after 3/23/2020 and before 5/22/2020: June 30, 2020 by 3:00 p.m.</p> <p>For ABS issued on or after 5/22/2020: The business day on which Form ABS-15G is filed, by 5:00 p.m. (except that the indemnity undertaking can be delivered later that day after 5:00 p.m.)</p>	<ul style="list-style-type: none"> • <i>Solely for CLOs.</i> Accounting firm¹⁴ delivers an AUP report regarding TALF eligibility¹⁵ and, if available, any other AUP reports to TALF lender and New York Fed. • <i>Not required for SBA securities,¹⁶ CLOs, or CMBS.</i> Accounting firm delivers an auditor attestation¹⁷ to TALF lender and New York Fed. • <i>Not required for SBA securities or CMBS.</i> Sponsor delivers the indemnity undertaking¹⁸ to TALF lender and New York Fed. • <i>Not required for SBA securities or CMBS. For ABS issued on or after 3/23/2020 and before 5/22/2020, since the offering materials would not have included the signed issuer/sponsor certification, the signed issuer/sponsor certification must accompany the indemnity undertaking (for ABS issued during this time window, the final prospectus or offering document need not specify whether the deal is prime or subprime or include the weighted average life calculations based on the prepayment assumptions prescribed in the TALF FAQs.) For ABS issued on or after 5/22/2020, the assertions of the Issuer and Sponsor in the issuer/sponsor certification to be included in the offering materials must be made as of this date.</i>

¹¹ Securities fully guaranteed as to principal and interest by the SBA, backed by loans made pursuant to the Certified Development Company/504 loan program of the SBA.

¹² For CLOs, the “sponsor” for this purpose will be the collateral manager.

¹³ [Forms of issuer/sponsor certification and indemnity undertaking.](#)

¹⁴ Each accounting firm referenced must be a nationally recognized certified public accounting firm that is registered with the Public Company Accounting Oversight Board.

¹⁵ [Form of AUP report regarding TALF eligibility.](#)

¹⁶ “SBA securities” refers to SBA Pool Certificates and Development Company Participation Certificates, collectively.

¹⁷ The [form of auditor attestation](#) includes the Report of Management on Compliance to which the auditor must attest.

¹⁸ [Forms of issuer/sponsor certification and indemnity undertaking.](#)

Morgan Lewis

Deadline	Requirement
On loan subscription date, by time specified by the New York Fed on the TALF website	<ul style="list-style-type: none"> TALF agent submits loan request to TALF lender. <i>Not required for SBA Pool Certificates.</i> TALF agent delivers offering materials to TALF custodian to the extent available and not previously delivered. For Development Company Participation Certificates, offering materials submitted at this time must either contain the security's weighted average life or include a supplement disclosing the security's weighted average life.
After loan subscription date	<ul style="list-style-type: none"> <i>Not required for SBA Pool Certificates.</i> TALF agent delivers offering materials to TALF custodian promptly upon availability to the extent not previously delivered.
Fifth business day before loan settlement date, by 12:00 p.m.	<ul style="list-style-type: none"> TALF agent delivers to TALF lender and TALF custodian a sales confirmation. <i>Solely if applicable.</i> TALF agent delivers to TALF lender and TALF custodian a revised loan request reflecting any reduction in the requested amount to reflect any reductions in the amount of New Acquisition Collateral¹⁹ expected to be delivered on the loan settlement date as a result of actual allocations by the underwriters of the ABS.
Fourth business day before loan settlement date, by 5:00 p.m.	<ul style="list-style-type: none"> <i>Not required for SBA Pool Certificates.</i> Final deadline for TALF agent to deliver available preliminary offering materials to TALF lender and New York Fed to the extent not previously delivered. <i>Solely for SBA Pool Certificates.</i> TALF agent delivers SBA collateral undertaking²⁰ to TALF lender and New York Fed.
Third business day before loan settlement date, by 12:00 p.m.	<ul style="list-style-type: none"> <i>Not required for SBA Pool Certificates.</i> TALF agent submits offering materials in final form (including any supplements thereto and updates thereof) to TALF lender and New York Fed to the extent not previously delivered.
Third business day before loan settlement date, by 5:00 p.m.	<ul style="list-style-type: none"> TALF custodian delivers a schedule of eligible collateral to TALF lender.²¹
Second business day before loan settlement date, by 5:00 p.m. (or later as agreed by	<ul style="list-style-type: none"> TALF custodian delivers a confirmation²² to TALF agent.

¹⁹ "New Acquisition Collateral" refers to ABS that will be acquired by a borrower on the loan settlement date using proceeds of the TALF loan.

²⁰ An undertaking, addressed to TALF lender and New York Fed and delivered to TALF lender and New York Fed by (x) the pool assembler with respect to the transaction pursuant to which such SBA securities have been or will be issued or (y) any other pool assembler from which the applicable Borrower will acquire such item of SBA securities on the applicable loan settlement date, in each case in the [available form](#).

²¹ The schedule will (at a minimum) show, for each borrower and each TALF loan, the eligible ABS that borrower intends to deliver, including (i) CUSIP or other unique identifying number, (ii) description, (iii) principal amount, (iv) haircut amount and (v) collateral value.

²² Confirmation includes (i) the amount of loans that will be made to borrowers of the TALF agent, individually and in the aggregate; (ii) the interest rate and term applicable to the loans; (iii) the amount and description (including CUSIP) of the ABS, and the market value and collateral value thereof as of the preceding business day; (iv) with respect to any New Acquisition Collateral, the haircut amount and all other closing amounts (i.e., accrued interest, plus any excess of price to be paid over market value); and (v) the administrative fee for each loan.

Morgan Lewis

Deadline	Requirement
TALF custodian and TALF lender)	
Loan settlement date, by 8:30 a.m.	<ul style="list-style-type: none"> • <i>Solely for New Acquisition Collateral that is not acquired by the Borrower through the TALF agent.</i> TALF agent delivers haircut amount and other closing amounts to master TALF collateral account. • TALF agent delivers administrative fee to master TALF collateral account.
Loan settlement date, by 10:00 a.m.	<ul style="list-style-type: none"> • <i>Solely for New Acquisition Collateral.</i> Sponsor or issuer submits final credit rating letter from each relevant NRSRO, to New York Fed at nytalf@ny.frb.org and nytalfnewissue@ny.frb.org.
Loan settlement date, by DTC settlement cut-off time	<ul style="list-style-type: none"> • TALF agent delivers the ABS collateral to TALF custodian through DTC.
Loan settlement date	<ul style="list-style-type: none"> • TALF lender makes principal amount of loans available to TALF agent in master TALF collateral account. • Collateral received by TALF custodian is settled to master TALF collateral account or the Borrower collateral account with respect to the TALF agent as identified by TALF custodian against payment therefor.
Within one business day of loan settlement date	<ul style="list-style-type: none"> • TALF custodian delivers a revised confirmation to reflect the definitive record (absent manifest error) of the TALF loan and collateral to TALF agent.

Morgan Lewis

CONTACTS

If you have any questions or would like more information on the issues discussed in this White Paper, please contact any of the following Morgan Lewis lawyers:

CHICAGO

Patrick J. Lampe

Partner

+1.312.324.1747

patrick.lampe@morganlewis.com

Philip W. Russell

Partner

+1.312.324.1743

philip.russell@morganlewis.com

Jeffrey D. Weinstein

Partner

+1.312.324.1746

jeff.weinstein@morganlewis.com

LONDON

Lisa Cargill

Partner

+44.20.3201.5588

lisa.cargill@morganlewis.com

Matthew Duncan

Partner

+44.20.3201.5520

matthew.duncan@morganlewis.com

Julian Goodman

Partner

+44.20.3201.5516

julian.goodman@morganlewis.com

Theresa D. Kradjian

Partner

+44.20.3201.5005

theresa.kradjian@morganlewis.com

Paul Matthews

Partner

+44.20.3201.5534

paul.matthews@morganlewis.com

NEW YORK

Reed D. Auerbach

Partner

+1.212.309.6200

reed.auerbach@morganlewis.com

Harlyn D. Bohensky

Partner

+1.212.309.6260

harlyn.bohensky@morganlewis.com

Matthew P. Joseph

Partner

+1.212.309.6770

matthew.joseph@morganlewis.com

Keith L. Krasney

Partner

+1.212.309.6776

keith.krasney@morganlewis.com

Steve Levitan

Partner

+1.212.309.6910

steve.levitan@morganlewis.com

Edmond Seferi

Partner

+1.212.309.6845

edmond.seferi@morganlewis.com

WASHINGTON, DC

Cory E. Barry

Partner

+1.202.739.5022

cory.barry@morganlewis.com

Asa J. Herald

Partner

+1.202.739.5660

asa.herald@moganlewis.com

Connect with us:   

www.morganlewis.com

© 2020 Morgan, Lewis & Bockius LLP

© 2020 Morgan Lewis Stamford LLC

© 2020 Morgan, Lewis & Bockius UK LLP

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. Prior results do not guarantee similar outcomes. Attorney Advertising.

Morgan Lewis

WASHINGTON, DC

(continued)

Jeffrey R. Johnson

Partner

+1.202.739.5645

jeffrey.johnson@morganlewis.com

Mark R. Riccardi

Partner

+1.202.739.5023

mark.riccardi@morganlewis.com

Paul R. St. Lawrence

Partner

+1.202.739.5314

paul.stlawrence@morganlewis.com

Charles A. Sweet

Partner

+1.202.739.5635

charles.sweet@morganlewis.com

ABOUT US

Morgan Lewis is recognized for exceptional client service, legal innovation, and commitment to its communities. Our global depth reaches across North America, Asia, Europe, and the Middle East with the collaboration of more than 2,200 lawyers and specialists who provide elite legal services across industry sectors for multinational corporations to startups around the world. For more information about us, please visit www.morganlewis.com.

Connect with us:   

www.morganlewis.com

© 2020 Morgan, Lewis & Bockius LLP

© 2020 Morgan Lewis Stamford LLC

© 2020 Morgan, Lewis & Bockius UK LLP

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. Prior results do not guarantee similar outcomes. Attorney Advertising.