

## TALF 2020 Update

By **Jonathan C. Wishnia** and **Sarah Bridges**

On May 12, 2020, the Federal Reserve Bank of New York (the Federal Reserve) announced further updates to the 2020 Term Asset-Backed Securities Loan Facility (TALF 2020), including an updated term sheet and its release of the first TALF 2020 FAQs (FAQs). The FAQs clarify key terms of TALF 2020 and detail the operational mechanics of obtaining a TALF loan. The Federal Reserve previously indicated that the TALF 2020 FAQs would be based on the TALF 2008 FAQs; however, there are significant deviations.

The FAQs clarify who is an “eligible borrower” under TALF by providing that an investment fund can qualify so long as the investment manager of such fund has “significant operations in and a majority of its employees based in the United States.” The FAQs include some examples of what would qualify as such significant operations including a borrower (or an investment manager in the case of investment funds) with greater than 50 percent of its consolidated assets in, annual consolidated net income generated in, or annual consolidated operating expenses (excluding debt service expenses) generated in the United States as reflected in its most recent audited financial statements. Additionally, the FAQs clarified that a United States business with any “Material Investor” (any person who owns, directly or indirectly, 10 percent or more of any outstanding class of securities), or any investment manager of any investment fund, that is a foreign government is not eligible to borrow under TALF. The Federal Reserve also announced in the FAQs that it plans to publicly disclose identifying information regarding each TALF borrower, each “Material Investor,” and other TALF participants on a monthly basis.

Another significant deviation from the TALF 2008 FAQs is the requirement that TALF borrowers certify that they are “unable to secure

adequate credit accommodations from other banking institutions.” This certification was not required under the prior iteration of TALF in 2008 as the program was created for the purpose of providing liquidity to an otherwise illiquid asset-backed securities market, much like today.

The rationale for requiring this certification is unclear, but it may be a matter of consistency with other programs under the CAREs Act that require similar certifications. Additional detailed instructions on this certification are promised from the Federal Reserve, but in the interim, they note that the certification may be based on unusual economic conditions in the markets intended to be addressed by TALF and that a complete lack of credit is not necessary. Rather, credit may be shown to be at prices or on conditions that are inconsistent with a normal, well-functioning market.

The Federal Reserve noted that they will be providing additional information regarding TALF before it becomes operational but provided no timeframe for when that information, or when the first subscription date, will be made available.

The revised TALF term sheet is [available here](#).

The FAQs are available [here](#).

We will be updating this article periodically as new developments occur in the structured finance market with respect to the response to the COVID-19 pandemic.

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# Contacts

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