

GUIDANCE FOR ACCOUNTING FIRMS IN DETERMINING TALF COLLATERAL ELIGIBILITY FOR ABS

What are the accounting firms required to do?

As a condition to any TALF loan that will be secured by newly-issued ABS, a nationally recognized independent Public Company Accounting Oversight Board (“**PCAOB**”) registered accounting firm must provide the TALF II LLC (“**TALF SPV**”) and the Federal Reserve Bank of New York (“**FRBNY**”) with an Auditor Attestation that opines on the assertion of management of the issuer and sponsor that the securities described in the offering memorandum or prospectus comply with the TALF Underlying Assets Eligibility Criteria, is fairly stated, in all material respects. In order to provide such an opinion, the accounting firm must conduct an engagement sufficient to provide a reasonable level of assurance that the eligibility requirements are met.

An auditor attestation is not required for SBA ABS.

In the case of CLOs, a report on agreed upon procedures is required.

What are the professional standards to be applied in the examination conducted by the accounting firms?

The compliance examinations should be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants (“**AICPA**”). For further reference, see SSAE No. 18. In accordance therewith, AICPA independence standards must be met. There is no expectation for practitioners to comply with the Generally Accepted Government Auditing Standards.

Practitioners must also comply with applicable provisions of the public accountancy law and rules of the jurisdiction in which the practitioner is licensed and where the engagement is conducted.

Will the accounting firms be provided with specific procedures?

No. Neither the TALF SPV nor FRBNY will prescribe specific procedures that each accounting firm must follow. Each accounting firm is expected to use its professional judgment in determining the nature, timing, and extent of procedures necessary to provide its opinion.

What should an accounting firm do if it requires assistance in interpreting the eligibility criteria?

Accounting firms should first refer to the terms and conditions, FAQs or other interpretative material that are posted on the TALF website.¹ If these sources do not provide sufficient guidance, the accounting firms should contact the FRBNY at nytalf@ny.frb.org.

¹ TALF website: <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility>

What source materials should practitioners use to evaluate eligibility criteria?

Practitioners may use sampling and refer to data tapes provided by the issuer or sponsor. The FRBNY and the TALF SPV, however, expect that the accounting firm will inspect loan level documentation to the extent deemed necessary by the accounting firm in its professional judgment. The loan level testing should include an inspection of original loan files or electronic versions thereof; however, it is not anticipated that the accounting firm will need to inspect the underlying collateral for a loan or confirm loan information with the original borrower.

In conducting loan level testing, it would be expected that the accounting firm would select loans using the following general guidelines:

- 1) an attribute sample should be used to estimate the frequency of occurrence of noncompliance with the specified eligibility requirements;
- 2) the sampling unit should be an individual loan; and
- 3) the sample size should be sufficiently large in the practitioner's professional judgment to render an opinion.

If the accounting firm determines that it is appropriate to employ a statistical sampling methodology, what confidence level and error rate should the accounting firm use?²

Because of different risks and controls that may apply to particular issuers/sponsors, specification of a particular confidence level would be inappropriate. Consistent with commonly held views, it is anticipated that the accounting firm will design procedures sufficient to hold overall attestation risk to approximately 5%. The error rate will depend on the criteria being examined and the related requirements thereof.

When must the Auditor Attestation be delivered?

As a condition to any TALF loan that will be secured by newly-issued ABS, the TALF SPV and FRBNY must receive a signed copy of the Auditor Attestation (via nytalf@ny.frb.org), in the form posted on the TALF website, no later than 5 p.m. (New York time) on the same day it is furnished on the issuer's Form ABS-15G.

What constitutes a “nationally recognized independent PCAOB registered accounting firm” acceptable for purposes of the Auditor Attestation?

National recognition is a highly factual determination that could be supported by information such as the firm's presence in a particular market or its prominence across markets. An accounting firm that is subject to annual inspection by the PCAOB would certainly meet this requirement. Where an issuer or sponsor desires to engage an accounting firm not subject to annual inspection by PCAOB, or such an accounting firm would like to be considered for inclusion in the program as a nationally recognized PCAOB accounting firm, the issuer, the

² For the purpose of this guidance, an “error” is a loan considered to be non-compliant with one or more of the specified eligibility requirements. The sample's “error rate” is the number of errors divided by the sample size.

sponsor, or the accounting firm may submit a request to FRBNY (via nytalf@ny.frb.org) and a decision will be rendered on a case-by-case basis.

Who may rely on the Auditor's Attestation?

The opinion contained in the Auditor's Attestation is intended solely for the reliance of the Sponsor, the Issuer, FRBNY, the U.S. Department of the Treasury, and the TALF SPV. It is not intended and should not be relied upon by anyone other than these specified parties. In this regard, participants in the TALF program, such as the primary dealers, who have an independent obligation to confirm that collateral is TALF eligible, and potential TALF borrowers, will not receive nor may they rely upon the Auditor Attestation. Nonetheless, we understand the Auditor Attestation report may be furnished on the issuer's Form ABS-15G in order to comply with the U.S. Securities and Exchange Commission 2014 release No. 34 72936.

What actions should an accounting firm take with respect to fraud or other illegal acts?

If the practitioner becomes aware of suspected or actual fraud related to the TALF collateral eligibility requirements, the practitioner should report the matter to the appropriate level of management and those charged with governance and follow applicable professional standards. The practitioner must also report it timely to the TALF Compliance fraud hotline at 877-52-FRBNY (877-523-7269) or [NY Fed Integrity Hotline](#).³

How should an accounting firm incorporate third-party servicer records or functions?

Sponsors, lenders or custodians may contract with third-party servicers to perform functions and/or maintain records for which they are responsible. Consequently, practitioners may need to gain an understanding of the services provided by third-party service providers, and/or obtain access to third-party servicers in order to perform their examination. In performing examinations, practitioners should consider the nature of the services provided by such third-party service providers in determining the procedures to be performed relating to specific collateral eligibility requirements.

Can an examination report be issued for ABS issued on or after March 23, 2020 and before May 22, 2020?

Yes. Accounting firms should adhere to the same standards and requirements noted above to prepare for an Auditor Attestation for ABS issued on or after March 23, 2020 and before May 22, 2020. The TALF SPV and FRBNY must receive a signed copy of the Auditor Attestation (via nytalf@ny.frb.org) with respect to such ABS, in the form posted on the TALF website, no later than 3 p.m. (New York time) on June 30, 2020 (or, on June 15, 2020, with respect to any loan requests submitted on the June 17, 2020 subscription date only).

³ NY Fed Integrity Hotline: <https://secure.ethicspoint.com/domain/media/en/gui/58813/index.html>