

March 22, 2020

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

***Re: Term Asset-Backed Securities Loan Facility 2020:
Proposed Expansions & Improvements to TALF 2008***

Dear Chairman Powell:

The American Financial Services Association (AFSA)¹ and the MarketPlace Lending Association (MLA)² appreciate your rapid response to COVID-19. The pandemic has disrupted daily life across the country. Just as devastating is the economic uncertainty the virus has engendered. Specifically, the virus has significantly disrupted the normal functioning of credit markets, limiting the ability of non-bank lenders to serve their core customers: hard-working Americans and small businesses across the country drawing on or seeking to draw on access to credit. These groups have credit needs that are not well-served by traditional banks, but are well-served by vehicle finance companies, retail installment sales finance companies, consumer installment lenders, marketplace lenders, student lenders, and financial technology companies. Our customers are using these loans for a number of purposes including debt consolidation, medical bills, emergency expenses, auto purchase and repair, and home improvement.

An updated Term-Asset Backed Securities Loan Facility (TALF) program (which we are calling TALF 2020) – with credit support from the Treasury and modest changes to reflect the evolution of our economy and markets since 2008 – will help the economy withstand the necessary but difficult measures needed to halt the spread of COVID-19, and emerge intact and poised for a strong recovery.

Below, we outline why TALF 2020 is needed to help us serve our customers in their time of need and what changes we suggest to the program.

I. Background – Why We Need TALF 2020

Americans rely on non-bank credit to make ends meet, finance major purchases, and for emergency expenses. Non-bank lenders in turn rely on the capital markets to fund loans and continue to extend credit. We sell asset-backed securities to the world's largest investors and money managers to raise funds to lend to everyday Americans and small businesses. According to the Federal Reserve, non-bank lenders held over \$600 billion in consumer credit, not including mortgages, at the end of 2019.

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

² MLA represents the online marketplace lending industry. The Association's goal is to promote a transparent, efficient, and customer-friendly financial system by supporting the responsible growth of marketplace lending, fostering innovation in financial technology, and encouraging sound public policy.

Unfortunately, the economic uncertainty of the partial shutdown of the economy in order to protect America from COVID-19 is impacting the capital markets and impeding the regular flow of capital from global investors and money managers to non-bank lenders and ultimately to everyday Americans. American families seeking credit for necessary expenditures are among the groups most affected by this credit market dislocation.

A new TALF will help American consumers. The original TALF was announced by the Federal Reserve Bank of New York (FRBNY) in November 2008 with the goal of unfreezing the previously functioning capital markets for consumer and small business credit. While the specific challenges facing the U.S. economy are very different during the current crisis, it is instructive to review the success of TALF during the global financial crisis. The program provided \$200 billion in non-recourse financing to investors in the AAA-rated tranches of asset-backed securities (ABS) to create additional liquidity in a market that was impacted by widespread doubts on the underwriting quality of the underlying loan collateral.

This financing helped make credit more available to consumers and small businesses on more favorable terms by providing liquidity to the market and improving market conditions for ABS more generally. The FRBNY extended loans in an amount equal to the market value of the ABS less a haircut and these loans were secured at all times by the ABS. TALF began operations in March 2009 and operated for new ABS issuance until June 2010. Over the life of the program, all TALF loans were repaid in full at or before their respective maturity dates. The FRBNY did not incur a loss on any TALF loans. As all TALF loans were repaid in full, no TALF collateral was surrendered to the FRBNY, and TALF LLC acquired no such assets during its existence.

The proposed Coronavirus Aid, Relief, and Economic Security Act (CARES Act) contains significant support and loan guarantees to support America's small businesses, but it is critical that the Federal Reserve ensures that any future TALF program provides liquidity support to the market for consumer credit and that Congress legislates funding through the Treasury for credit support of a TALF 2020 program.

II. Suggestions for TALF 2020

Many non-bank lenders would be precluded from participating in TALF if it is relaunched on the same terms and conditions as the 2008 program. Due to the evolving market for consumer and small business credit since the financial crisis, consumer installment loans³ play a much more vital role in the economy than they did at that time. Any new TALF program should include unsecured consumer loans as eligible collateral and should include investment-grade securities.

In the bullet points below, we outline key changes to allow lenders with securitization platforms to participate in TALF and continue to provide credit to consumers during this public-health crisis. It is critical to recognize that the problems of the past crisis (widespread distrust of ABS and the underwriting of the underlying loans) are not the problems of today.

Today there are no concerns with the underwriting quality of the underlying loans and ABS are performing. The primary concern in the markets is the impact of the economic disruptions from COVID-19 public health measures

³ To be clear, consumer installment loans are distinct from payday loans. Installment loans are safe and affordable loans with fixed-rate, fully-amortized payments. They are radically different from payday loans in the way they are structured, priced, and regulated. Unlike payday lenders, installment lenders do not charge prepayment penalties for early repayment or prepayment and do not require large, one-time balloon payments.

on creditworthy borrowers. We must give these lenders and borrowers a bridge across the income gap resulting from a halt of economic activity related to necessary but difficult steps to stop the spread of the virus.

Lenders and investors must be able to obtain financing for their loans, in order to continue to provide credit during this time. It is also important to note that many unsecured loans to these borrowers are concentrated in the gig economy, or to self-employed borrowers, and may not be eligible for other stimulus programs and employee protections passed or under consideration by Congress, including unemployment benefits which are geared toward W-2 employees.

Key Changes to Allow Lenders with Securitization Platforms to Participate in TALF:

- **Amend Sec. 4003, Emergency Relief and Taxpayer Protections, of the CARE Act.** To ensure that consumers continue to have access to the loans they need, add the italicized language to this section: “(3) that are not used as provided under those paragraphs shall be available to make loans, loan guarantees, and other investments in support of programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, States, or municipalities *or to consumers by—…*”
- **Expand Eligible Collateral to Include Consumer Installment Loans.** Enabling consumer loan ABS to qualify for the program is essential to keep loans flowing to consumers. Non-bank lenders focused on personal loans have grown significantly since 2008 and unlike then, unsecured personal loans exist as an asset class in the securitization market. Installment lenders serve millions of consumers each year. Thus, it is important that any new TALF program specifically include these loans as eligible collateral in order to ensure the supply of new loans to creditworthy borrowers. We would also like to assure that “major NRSRO” under the original TALF program would include all of the rating agencies that regularly rate these transactions.
- **Expand Required Credit Ratings to all Investment Grade Ratings.** Non-bank lenders who sponsor ABS transactions tend to have less than AAA credit ratings on the senior bonds issued in their ABS transactions. Some rating agencies are unwilling as a policy matter to give AAA ratings to consumer loan ABS transactions. Even for lenders who are able to achieve a AAA credit rating on senior bonds, we do not know if this will continue as the economic effects of the pandemic wear on. It is essential for Americans for TALF 2020 to be expanded with required credit ratings that include any investment grade rating with appropriate risk-based haircuts. In addition, only one rating should be required, not two. Not all rating agencies provide ratings on consumer loan ABS.
- **Expedite Operational Start of TALF 2020 by Eliminating Time-consuming Requirements.** It took several months for TALF 2008 to become operational after it was announced. A good deal of the delay was due to the requirement for the ABS sponsor to deliver an attestation opinion, in the form prescribed by the FRBNY, from a nationally recognized independent accounting firm. It would be an entirely new process for marketplace lenders and others to meet this requirement and would significantly slow things down. Further, these opinions were a significant expense for sponsors and thus detracted from the TALF benefits a sponsor could pass on to consumer borrowers. *We believe this requirement should be eliminated due to its heavy burden in this time of urgency, especially since there is no market concern about the underwriting quality of unsecured consumer loans and the lenders' operations are limited to the U.S.* Further, the TALF 2008 program was delayed for a few months for the creation of a customer form to be used by Primary Dealers with their investor customers, then the negotiations of those individual agreements between the Primary

Dealers and those customers. We suggest that to expedite the start of the program, certain TALF-required documents, including TALF-related agreements, could be provided in final, non-negotiable form at the time the new TALF 2020 is announced.

- **Allow Private ABS and Structured Finance Securities to be Eligible for TALF 2020.** TALF 2008 was extended to publicly registered and privately offered ABS. Because the ABS platforms of many non-bank lenders are generally privately offered, usually under 144A or other private exemptions, it is important that TALF 2020 also include privately offered ABS.
- **Allow ABS Investors to Borrow under the TALF After the Closing Date of the ABS Issuance.** Depending on market conditions, non-bank lenders and issuers of ABS may initially retain subordinated notes or residual certificates and later, sometimes several months later, sell those securities to investors. It would be very helpful if TALF 2020 makes it clear that these later acquired securities can still obtain a TALF loan.

We appreciate your attention to this critical need in our credit markets.

Sincerely,

American Financial Services Association
MarketPlace Lending Association