

## CLIENT ALERT

### FEDERAL RESERVE EXPANDS ELIGIBLE CMBS COLLATERAL FOR TALF LOANS

On May 19, 2009, the Federal Reserve Bank (FRB) broadened the eligibility requirements for loan collateral under the Term Asset-Backed Securities Loan Facility (TALF) to include Commercial Mortgage-Backed Securities (CMBS) issued before January 1, 2009. By making older CMBS eligible collateral for TALF loans, the FRB hopes to increase liquidity in a credit sector that represented about 20 percent of outstanding commercial mortgage lending before mid-2008. The initial subscription dates for pre-2009 CMBS and CMBS issued in 2009 will be in late July (the exact date to be announced shortly) and June 16, respectively.

#### CMBS QUALIFICATIONS

The qualifications for pre-2009 CMBS are the same as those for CMBS issued on or after January 1, 2009, as announced by FRB on May 1, 2009—and described in our May 4, 2009 client alert, [“Federal Reserve Extends Maturity of Certain TALF Loans”](#)—except as follows:

- At least 95 percent of the mortgaged properties (determined by the principal balances of the related loans) must be located in the United States or one of its territories.
- The origination dates of the underlying mortgage loans are not restricted to a particular time period.
- The average life may be more than 10 years.
- The dollar purchase price may not be less than its base dollar haircut.
- In assessing risk, the New York FRB will look at whether the applicable mortgage pool has large losses historically, has concentrations of loans that are delinquent, has been referred to a special servicer or is on a servicer watch list and has concentrations of subordinate-priority mortgage loans.

Sponsors of newly issued CMBS will be required to engage a nationally recognized certified public accounting firm registered with the Public Company Accounting Oversight Board to provide assurance that a CMBS is eligible for purchase with TALF proceeds. The FRB has not yet announced the form and level of the required assurances.

## ELIGIBLE RATING AGENCIES

To qualify for purchase with TALF proceeds, CMBS must have current credit ratings in the highest long-term investment-grade rating category from at least two eligible rating agencies. For CMBS ratings only, DBRS, Inc. and Realpoint LLC have been approved to issue ratings, in addition to Fitch Ratings, Moody's Investors Service and Standard & Poor's. However, the FRB intends periodically to review its use of national credit rating agencies with respect to all asset based securities.

## EXECUTIVE COMPENSATION AND U.S. EMPLOYMENT PROVISIONS

Reversing original program terms, the FRB has decided that executive compensation restrictions will not apply to sponsors, underwriters and borrowers based on their participation in TALF. The Employ American Workers Act will apply, however, to all TALF borrowers and to any entity that owns or controls 25 percent or more of the borrower's total equity.

## OTHER CMBS REQUIREMENTS UNDER FRB REVIEW

The New York FRB is expected to announce shortly whether it will limit the volume of TALF loans that may be secured by pre-2009 CMBS and, if so, how it will allocate such loans (i.e., by auction or another procedure). It is working on requirements to prohibit the use of TALF loans to purchase CMBS from related entities. The New York FRB may implement a price validation process for secondary market transactions, as well as required adjustments when determining the weighted average life of pre-2009 CMBS, such as taking default-related circumstances into account.

## CONTACT INFORMATION

We also invite you to visit the firm's [Economic Recovery Resource Center](#) for news and analysis concerning the government's economic recovery programs and their impact on business and the law.

If you have any questions concerning this alert, please contact—

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