

Interpretation of the Emerging Accounting Issues (E) Working Group**INT 09-08: Accounting for Loans Received
Under the Federal TALF Program****GUIDANCE DETERMINED TO BE NO LONGER RELEVANT****INT 09-08 Dates Discussed**

September 21, 2009; December 5, 2009; March 3, 2012; August 31, 2012; March 24, 2018

INT 09-08 References**Current:**

SSAP No. 64—Offsetting and Netting of Assets and Liabilities

SSAP No. 103R—Transfers and Servicing of Financial Assets and Extinguishments of Liabilities

Superseded:

SSAP No. 91R—Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities

INT 09-08 Issue

1. In November 2008, the Federal Reserve announced the “Term Asset-Backed Securities Lending Facility” (TALF) Program as a means to make credit available to consumers and small businesses on more favorable terms by facilitating the issuance of asset-backed securities (ABS) and improving the market conditions for eligible ABS. (Newly issued ABS backed by commercial mortgage loans (CMBS) are TALF eligible as of June 2009. Legacy CMBS, or securities created prior to January 2009 are eligible as of July 2009.)
2. Under the TALF program, loan proceeds will be disbursed to the borrower, contingent on receipt by the New York Federal Reserve’s custodian bank (custodian) of the eligible collateral, an administrative fee, and margin, if applicable. As the loan is non-recourse, if the borrower does not repay the loan, the New York Federal Reserve Bank will enforce its rights in the collateral and sell the collateral to a special purpose vehicle (SPV) established specifically for the purpose of managing such assets.
3. Unless further extended, issuance of new TALF loans will cease in March 2010, except for CMBS which end in June 2010. (This is an extension from the original end date of December 31, 2009.)
4. The accounting issue is whether TALF loans received and the corresponding collateral provided by the reporting entity shall be reported net within the statutory financial statements.

INT 09-08 Discussion

5. Guidance is included within *SSAP No. 64—Offsetting and Netting Assets and Liabilities* (SSAP No. 64). This guidance indicates that assets and liabilities shall be reported net only when a valid right of setoff exists. Under paragraph 2 of SSAP No. 64, a valid right of setoff exists only when all of the following conditions are met:

- a. Each of the two parties owes the other determinable amounts. An amount shall be considered determinable for purposes of this provision when it is reliably estimable by both parties to the agreement;

- b. The reporting party has the right to setoff the amount owed with the amount owed by the other party;
- c. The reporting party intends to setoff; and
- d. The right of setoff is enforceable by law.

6. Guidance in SSAP No. 64, paragraph 3 indicates that assets and liabilities that meet the criteria for offset shall not be netted when prohibited by specific statements of statutory accounting principles. Paragraph 4 of SSAP No. 64 specifies that the netting of assets and liability for reporting purposes when no valid right of setoff exists shall be allowed only when provided for by specific statements of statutory accounting principles.

7. In reviewing the criteria for setoff within SSAP No. 64, it would appear that the criteria within paragraph 2.a. of SSAP No. 64 is clearly met, as after the receipt of a TALF loan, the borrower and the New York Federal Reserve Bank would owe the other determinable amounts. Further, it would seem that the criteria in paragraph 2.d. of SSAP No. 64 is also met, as if the reporting entity did not repay the loan, the New York Federal Reserve Bank has the ability to enforce its rights in the collateral and sell the collateral to a special purpose vehicle (SPV) established specifically for the purpose of managing such assets.

8. However, the conditions in paragraphs 2.b. and 2.c. of SSAP No. 64 are not considered to be met, and prohibit a net presentation. Paragraph 2.b. requires the reporting entity to have a right to setoff the amount owed. Although a default on the loan repayment will trigger an eventual setoff of the collateral and TALF loan, the ability to default on the loan is not considered a “right to setoff” by the reporting entity. Additionally, it is presumed that a reporting entity enters into these loans with the intention of repaying the loan and recapturing collateral. Thus, the provision of paragraph 2.c., which requires an intent of the reporting party to setoff, is also not met.

9. In considering whether a provision should be incorporated within a specific statutory accounting principle to permit netting, although no valid right of setoff exists, it is noted that guidance for collateral is included within *SSAP No. 103R—Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* (SSAP No. 103R). Pursuant to guidance within this SSAP, unless the transferor defaults on the secured contract, the transferor shall continue to carry the collateral as an asset. It is only after default that the reporting entity would remove the collateral as an asset, with a corresponding reduction to the liability. It is noted that a specific provision for TALF loans would be inconsistent with existing SSAP No. 103R guidance for the reporting of loans and collateral.

10. Pursuant to the existing statutory accounting guidance for offsetting and the reporting of collateral, the Working Group reached a consensus that loans received, and collateral provided, under the TALF program do not meet the SSAP No. 64 criteria for offset. Furthermore, no specific provision shall be established within statutory accounting principles that permit a net reporting presentation for transactions under the TALF program. Loans received and collateral provided under the TALF program shall be reported separately, on a gross basis, until time of default on the received loan. At time of default, the collateral claimed by the New York Federal Reserve Bank shall be removed from the reporting entity’s balance sheet, with a corresponding reduction of the liability established for the TALF loan. For annual statement reporting, asset-backed securities provided as collateral under the TALF program shall continue to be reported in the same category as previously reported and would not be moved to the U.S. Government category. For example, Industrial and Misc. securities would continue to be reported in the industrial and miscellaneous category and not as government securities.

INT 09-08 Status

11. This interpretation is no longer in effect as there are no more loans outstanding under the Accounting for Loans Received Under the Federal TALF Program.