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| **Federal Reserve Bank of Atlanta**  **BORROWER-IN-CUSTODY (BIC) CERTIFICATION**  **Appendix C – Electronic Collateral Addendum** |

# Introduction

Electronic collateral” is not a defined term under Article 9 of the Uniform Commercial Code (“UCC”), which governs security interests. Electronic collateral is generally understood by the Reserve Banks to mean loan and lease collateral with transaction documents in electronic form. For purposes of this document, “electronic collateral” consists of loans and leases that are created and exist in the following manner:

1. Signed with a digital signature and stored electronically and not on paper (“E-Signed”), or
2. Signed on paper and then imaged and stored electronically with the paper original destroyed (“Imaged and Destroyed”).

**Part I: Electronic Loan Collateral Categories**

Instructions for completing the table in this Part:

**Step #1**: Mark the box next to the Reserve Bank Loan Categories for the loans that the Institution intends to pledge.

**Step #2**: Indicate whether the Payment Documents are signed with a digital signature (**ES**), signed on paper and then imaged and destroyed (**IM**) or both (**Both**). The **Payment Document** is the loan document where the underlying debtor promises to pay the Institution (i.e., the payment obligation), usually the promissory note, loan agreement or lease agreement.

**Step #3**:

* + - * 1. Check the box next to “**ECP**” if the electronic loan collateral in such Reserve Bank Loan Category contains electronic chattel paper. Electronic chattel paper consists of loans or leases secured by specific goods such as equipment, vehicles and fixtures. See Section 9-102(a)(31) of the Uniform Commercial Code (UCC) for a definition of electronic chattel paper. Complete Part III of this Questionnaire if the Institution intends to pledge any ECP.
        2. Check the box next to “**EMN**” if the electronic loan collateral in such Reserve Bank Loan Category contains electronic mortgage notes. Electronic mortgage notes consist of promissory notes secured by real estate. Complete Parts IV and V if the Institution intends to pledge any EMN.

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| **Step #1** | | **Step #2** | **Step #3** |
| **Reserve Bank Loan Category[[1]](#footnote-1)** | | **Form of Payment Document** | **Special Category** |
|  | Consumer Loans: Auto, Marine | Choose an item. | ECP |
|  | Consumer Leases—Other | Choose an item. | ECP |
|  | Consumer Loans (revolving credit plans, single payment and installment loans) | Choose an item. | ECP |
|  | Commercial Real Estate Loans (nonfarm nonresidential) | Choose an item. | EMN |
|  | Home Equity Loans or Lines secured by residential property | Choose an item. | EMN |
|  | Agricultural Loans Secured by Farmland | Choose an item. | EMN |
|  | Construction Loans (1-4 family construction, and other construction loans) | Choose an item. | EMN |
|  | 1-4 Family Residential Mortgage Loans | Choose an item. | EMN |
|  | 5+ Family Residential Mortgage Loans | Choose an item. | EMN |
|  | Owner Occupied Nonfarm Nonresidential CRE | Choose an item. | EMN |
|  | Raw Land Loans (land development and other land loans) | Choose an item. | EMN |
|  | Guaranteed portion of U.S. Agency Loans | Choose an item. | ECP  EMN |
|  | Non-Guaranteed portion of U.S. Agency Loans | Choose an item. | ECP  EMN |
|  | Agricultural Production Loans | Choose an item. | ECP |
|  | Commercial and Industrial Loans and Leases | Choose an item. | ECP |
|  | Student Loans | Choose an item. |  |
|  | Obligations of states and political subdivisions (Municipalities) | Choose an item. | ECP  EMN |
|  | Credit Card Receivables | Choose an item. |  |

**PART II: QUESTIONS FOR ALL CATEGORIES OF ELECTRONIC LOAN COLLATERAL**

1. Can Institution’s loan system add a label or flag within the loan system to each pledged e-loan that states, “Pledged to FRB Atlanta” or otherwise indicates that FRB Atlanta is the secured party? If so, please provide a screenshot of this language. Note, this is a separate labeling requirement from the labeling for electronic loans stored in eVaults for Electronic Chattel Paper and Electronic Mortgage Notes discussed later in this questionnaire.

☐ Yes ☐ No

If “No” explain why not:

1. Are any of the Payment Documents signed with digital signatures (i.e., marked as “ES” in the table above)?

☐ Yes ☐ No

If “Yes”, complete the questions below; if “No” skip to question 3.

1. Describe how the Institution attributes the digital signatures to the signers?

(Mark all that apply)

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|  | The Institution uses a digital signature service that collects data from the signer (i.e., DocuSign or similar program). What is the name of the service provider? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | The Institution stores emails from the signer confirming the signature is authentic. |
|  | The Institution records call logs from the signer confirming the signature is authentic. |
|  | Other (explain): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

1. Describe the electronic loan origination process. Include a copy of relevant policies, procedures or guidelines and vendor material which describe the process.
2. Describe how electronic loan documentation is stored, archived, and accessed.
3. Describe how the ability to alter or delete electronic records is controlled and how any such alterations or deletions are tracked.
4. If your institution did not originate the loans (such as indirect loans), describe the valid record of assignment which documents the transfer. Please provide sample assignment records.
5. Describe who has access to the system used to create, maintain and retrieve electronic records, including procedures for granting, monitoring and removing access.
6. Describe the system or product that is used for electronic loan origination and/or storage.
7. Are any of the Payment Documents imaged and destroyed (i.e., marked as “IM” in the table above)?

☐ Yes ☐ No

If “Yes”, describe the process and timing of destroying the paper originals, including any controls for ensuring that destruction occurs (i.e. destruction log or receipts). Please attach any relevant policies or procedures. If “No”, skip to Part IV.

1. Is the process for destroying paper originals subject to your Institution’s existing internal or external auditing process? If yes, please attach the most recent audit.

☐ Yes ☐ No

If no, explain why.

1. Are any Payment Documents stored with a third-party storage provider (TSP)?

Yes  No

If yes, what is the name of the TSP? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. **Provide a copy of the Institution’s agreement with the TSP.**

Mark the box next to each statement that applies:

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|  | The TSP controls who has access to the Payment Documents beyond the initial set-up of the storage service. |
|  | The TSP has a security interest in or lien on the files, loans or leases stored with the TSP. |
|  | If the Institution defaults on its agreement with the TSP, the TSP has the right to delete, take control or restrict access to the Payment Documents. |
|  | The TSP performs the typical duties that a custodian of financial assets would perform for the Institution (e.g., recordkeeping, payments or distributions of the assets, tax reporting and withholding, etc.) and/or the Institution’s agreement with the TSP refers to the TSP as a custodian or bailee of the Payment Documents or grants the TSP any similar custodial rights. |

1. Describe the imaging process, including which documents are imaged, what software is being used, and how these images are verified for accuracy and completeness.
2. Describe who has access to the system used to create, maintain, retrieve, and delete imaged copies, including procedures for granting, monitoring and removing access.
3. Describe how the ability to alter or delete imaged documents is controlled and how any such alterations or deletions are tracked.
4. Please list the address of the physical storage location(s).
5. Describe how the notes are protected from loss, fire, theft, and other damages.
6. Describe the retention period for paper loan documents.
7. Describe how the original paper documents are destroyed.
8. Explain how the destruction process is monitored and verified. For example, is there a log or are destruction receipts generated?
9. Explain how consent is obtained from borrowers before imaging and destroying the original paper form.

**PART III: QUESTIONS FOR ELECTRONIC CHATTEL PAPER**

*\*Required if the Electronic Loan Collateral Category of “ECP” is checked in Part I.*

1. Will any electronic chattel paper Payment Documents be stored in an eVault? An eVault is a system or tool, whether internal or provided by a third party, that enables a secured party or purchaser to establish control of electronic chattel paper under UCC 9-105. eVaults typically allow the user to securely store, manage and transfer the authoritative copies of electronic documents.

☐ Yes ☐ No

If yes, and if the eVault is provided by a third party, what is the name of the eVault vendor and/or tool? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**Provide a copy of the Institution’s agreement with the eVault vendor.**

If electronic chattel paper is stored in an eVault, how does your Institution ensure that it clearly indicates that it is pledged to the Reserve Bank such that potential third-party creditors and/or purchasers would have knowledge of the Reserve Bank’s security interest?

(Mark all that apply)

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|  | The file name of the Payment Document indicates that the loan or lease is pledged to the Reserve Bank. |
|  | A splash screen, pop-up message or some other clearly visible notation appears each time a user accesses the Payment Document that indicates that the loan or lease is pledged to the Reserve Bank. |
|  | The Payment Document contains a legend indicating that the loan or lease is pledged to the Reserve Bank. |
|  | Other (explain): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**PART IV: QUESTIONS FOR E-SIGNED MORTGAGE NOTES**

*\*Required if the Special Category* *of “EMN” is checked in Part I.*

1. Will the Institution pledge any electronic mortgage notes that are considered “transferable records” under the Uniform Electronic Transactions Act (UETA) or the Electronic Signatures in Global and National Commerce Act (E-Sign Act)? An electronic mortgage note may be considered a transferable record if (i) it is signed with a digital signature (not signed on paper and then imaged), (ii) it would be a “negotiable instrument” under Article 3 of the UCC if it were in paper form, and (iii) the borrower expressly agrees that the mortgage note is a transferable record. Consult your Institution’s legal counsel for guidance in determining whether the pledged loans are “transferable records”.

Yes  No

If **Yes**, continue to question #2. If **No**, skip to Part V.

1. Will any E-signed mortgage notes be stored in an eVault? An eVault is a system or tool, whether internal or provided by a third party, that enables a secured party or purchaser to establish control of electronic records under Section 16 of the UETA and Section 201 of the E-Sign Act. eVaults typically allow the user to securely store, manage and transfer the authoritative copies of electronic documents.

☐ Yes ☐ No

If yes, and if the eVault is provided by a third party, what is the name of the eVault vendor and/or tool?

**Provide a copy of the Institution’s agreement with the eVault vendor.**

If E-signed mortgage notes are stored in an eVault, how does your Institution ensure that they clearly indicate that they are pledged to the Reserve Bank such that potential third-party creditors and/or purchasers would have knowledge of the Reserve Bank’s security interest?

(Mark all that apply)

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|  | The file name of the note indicates that it is pledged to the Reserve Bank. |
|  | A splash screen, pop-up message or some other clearly visible notation appears each time a user accesses the note that indicates that it is pledged to the Reserve Bank. |
|  | The note contains a legend indicating that it is pledged to the Reserve Bank. |
|  | Other (explain): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**PART V: QUESTIONS FOR IMAGED AND DESTROYED MORTGAGE NOTES**

*\*Required if the Special Category of “EMN” is checked in Part I.*

1. Will any electronic mortgage notes be (i) signed on paper and then imaged and destroyed (not signed with a digital signature), and (ii) considered a “negotiable instrument” under Article 3 of the UCC if it were in paper form? Consult your Institution’s legal counsel for guidance in determining whether the pledged loans are considered “negotiable instruments”.

Yes  No

If **Yes**, continue to question #2. If **No**, skip to Part VI.

1. What is the governing law of the imaged and destroyed mortgage notes? The governing law is usually stated in the transaction documents.

State(s) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Submit an opinion or letter from legal counsel, either internal or external, regarding the enforceability of the imaged and destroyed mortgage notes in the State(s) noted above.

**PART VI: ATTESTATION**

Each of the following statements must be true in order for the Institution to pledge electronic loan collateral to the Reserve Bank. Mark the box next to each statement to attest that it is true. Electronic loan collateral records are defined as the Payment Documents along with all relevant ancillary loan and lease documentation.

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|  | The Institution has policies and procedures for the origination, processing, storage and imaging/destruction (where applicable) of electronic loan collateral records. |
|  | The Institution’s processes and procedures for managing electronic loan collateral records are either (i) included as part of the scope of ongoing internal or external audits or other independent reviews or (ii) will be included upon the Reserve Bank’s approval of the Institution’s request to pledge electronic collateral. |
|  | The Institution has safeguards to protect electronic loan collateral records from unauthorized alterations or deletions. Please provide materials documenting these safeguards. |
|  | The Institution has a contingency plan to prevent the loss of electronic loan collateral records, which includes a regular schedule for replicating/backing-up the records. |
|  | The Institution retains backed-up electronic loan collateral records for a period of time consistent with industry standards and in compliance with applicable federal and state laws. |
|  | All digitally signed (not imaged and destroyed) electronic loan collateral records are enforceable under the E-Sign Act, the UETA adopted by the state in which the signature is applied, and all other applicable federal, state and local laws. |
|  | The Institution is compliant with the Reserve Bank’s existing Borrower-in-Custody program requirements as they generally pertain to electronic loan collateral records. |

By signing below, I attest that all responses to the questionnaire are accurate.

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| **Authorized Officer**  (Must be identified by title in the Institution’s OC-10 Authorizing Resolutions)  By:  Name:  Title: | (If a second signatory is required in the Institution’s OC-10 Authorizing Resolutions)  **Second Authorized Officer**  (Must be identified by title in the Institution’s OC-10 Authorizing Resolutions)  By:  Name:  Title: |

1. Refer to the [Pledging Collateral Guidelines](https://www.frbdiscountwindow.org/pages/collateral/pledging_collateral) for additional information on the Reserve Bank Loan Categories and the corresponding call report codes. Contact the Reserve Bank with any questions. [↑](#footnote-ref-1)