



# Borrower-In-Custody (BIC)

## PROGRAM OVERVIEW

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## Introduction

The Borrower-In-Custody (BIC) program is a collateral arrangement that allows for collateral to be maintained at the pledging institution rather than delivered to the Federal Reserve Bank (FRB) or a third-party custodian. Establishing BIC arrangements allow participating institutions to electronically pledge approved and eligible loans to FRB Atlanta. BIC arrangements are only permitted for financially sound institutions that demonstrate satisfactory internal controls, safekeeping procedures, and records retention standards.

Assets held in a BIC arrangement may be pledged to the FRB for discount window lending and/or payment system risk (PSR) collateral requirements. In some situations, residential mortgage loans, commercial loans, and agricultural loans may be pledged to the U.S. Treasury for Treasury Tax and Loan (TT&L) purposes under the Treasury Department's Special Direct Investment (SDI) program. In these arrangements, FRB will serve as fiscal agent for the U.S. Treasury.

The purpose of the BIC program is to provide participating depository institutions the flexibility to increase pledged collateral for purposes of discount window lending while avoiding the inconvenience and cost of transporting loans and supporting documentation to FRB.

## General Qualifications

To participate in a BIC arrangement, your institution must meet the following qualifications:

- Be in acceptable financial condition as determined by FRB.
- Have no substantive supervisory actions proposed or in place.
- Be at least adequately capitalized.
- Have adequate internal controls in place, particularly in the area of loan administration and processing as determined by the FRB.

Approval for the program is contingent upon our evaluation of your institution, responses to the BIC collateral certification, inspection of loan documents, and assessment of operational controls for intended collateral.

## OC-10 Legal Documents

Certain legal agreements are required to establish access to the FRB's discount window. These agreements are found in [Federal Reserve Operating Circular No. 10, "Lending"](#) located at [OC-10 Agreements \(frbdiscountwindow.org\)](#). Please contact the discount window for any questions and submit legal documents to the discount window for processing at [atl.discountwindow@atl.frb.org](mailto:atl.discountwindow@atl.frb.org). Legal documents must be in place to gain access and borrow from the discount window. It is the pledging institution's responsibility to notify the FRB of any changes requiring the submission of revised legal agreements.

## **Operating Circular No. 10 Documents**

All institutions interested in access to the Federal Reserve Discount Window must complete the Operating Circular No. 10 (OC-10) agreements listed below.

### **Form Letter of Agreement**

A letter binding your institution to the provisions of Operating Circular No. 10. The letter of agreement must be signed by an individual listed on the Form of Authorizing Resolutions for Borrowers (Authorizing Resolutions). If two individuals are required by the Authorizing Resolutions for Borrowers to execute documents, two authorized individuals must sign the letter. (form available online [here](#))

### **Form of Certificate**

A document certifying the official name, jurisdiction, and organizational number (if applicable) of your institution. The form of certificate must be signed by an individual listed on the Form of Authorizing Resolutions for Borrowers (Authorizing Resolutions). If two individuals are required by the Authorizing Resolutions for Borrowers to execute documents, two authorized individuals must sign the certificate.. FRB Atlanta will allow an Auditor or Compliance Official to sign in lieu of legal counsel. A total of three signatures are required if two authorized officers are required by the Authorizing Resolution for Borrowers. (form available online [here](#))

### **Form of Authorizing Resolutions for Borrowers**

This document certifies that your institution's board of directors has provided authority to borrow from the FRB. It also identifies, by title, those officers authorized to send in the Official OC-10 Authorization List described below. Please reference the comment under Certifying Official on page 3 of the Authorizing Resolutions for Borrowers for appropriate signature. (form available online [here](#))

### **Official OC-10 Authorization List**

A list of names, titles, telephone numbers, email addresses, and signatures of those individuals with authority to borrow and/or pledge assets to the FRB. It must be signed by authorized officer(s) as specified in Item 2 of the Authorizing Resolutions for Borrowers and your institution's Secretary of the Board. Use two pages if necessary. (form available online [here](#))

### **Form of Letter of Agreement to Correspondent Credit and Payment Agreement (if applicable)**

The Letter of Agreement to Correspondent Credit and Payment Agreement should be completed only if your institution desires discount window activity to settle at a correspondent. This document is a letter binding your institution and your correspondent to the provisions of Operating Circular No. 10. Page five must be signed by individuals listed on the Form of Authorizing Resolutions for Borrowers (Authorizing Resolutions). If two individuals are required by the Authorizing Resolutions to execute documents, two authorized individuals must sign the agreement. Page six of the document must be completed and signed by the correspondent institution. (form available online [here](#))

## **Additional Documents for Branches and Agencies of Non-U.S. Borrowers Only ([Appendix 4 of Operating Circular No. 10](#))**

- Form of Legal Opinion of Foreign Outside Counsel
- Form of Legal Opinion of United States Outside Counsel
  - (all appendix 4 forms available [here](#))

### **UCC Filing: Perfection of Security Interest**

FRB's policy is to perfect its security interest in collateral pledged for the discount window, payment system risk and TT&L programs. To ensure that FRB maintains a first priority security interest in pledged collateral, FRB files a UCC-1 filing statement and performs lien searches to ensure no other entities or creditors hold a lien on collateral type pledged or intended type to be pledged to FRB. If a conflicting UCC-1 filing is identified, FRB will request institutions contact the lienholder of for updated comfort/release letter, intercreditor agreement, or subordination agreement. FRB will not assign collateral value to pledged collateral until a completed UCC-1 financing statement and if applicable, updated agreements are on file. The UCC-1 filing, and search costs will be absorbed by FRB Atlanta.

Institutions should be aware that if institutions are also a member of a Federal Home Loan Bank (FHLB) or a corporate credit union, a blanket lien may already be placed on assets. Contact your lienholder to discuss with them the types of assets that will be withdrawn in order to pledge to FRB. The collateral and legal teams at FHLB have very specific instructions and actions in place as a result of their *Advance Agreement* enforced with your institution. A Comfort/Release Letter, Intercreditor Agreement, or Subordination Agreement is required to ensure all creditors establish priority and perfection by loan collateral type.

FRB Atlanta's UCC filing language is below and establishes a lien on specific assets pledged to the Reserve Bank as reported in BIC submission pledging documents.

#### **Appendix 1: Financing Statement Collateral Description**

*"All accounts, chattel paper, inventory, equipment, instruments, investment property, general intangibles, documents, and all assets, now owned or hereafter acquired, that are identified, from time to time, by Debtor to Secured Party in writing, by electronic means (including CD-ROM) or by any other means agreed by the parties, as collateral securing the obligations of Debtor to Secured Party under a written agreement between the parties, and all proceeds thereof; and all collateral, guarantees, letters of credit, surety bonds and other supporting obligations pertaining to the foregoing, and all proceeds thereof."*

## Loan Eligibility Requirements

Loans pledged to the FRB must be owned by the pledging institution. Institutions must provide FRB with sample loan documentation for each type of asset intended for pledge. FRB will use this information to determine eligibility.

## Eligible Loan Types

Loans must be in readily negotiable, transferable, or assignable form and not subject to any adverse legal, environmental, or other action. [The Federal Reserve Collateral Guidelines](#) lists the various types of assets accepted as collateral as well as at [Collateral Valuation and Types](#).

- Participation loans: Loans originated by another institution, such as an acquired or affiliated company, and then acquired by or sold to your organization must have proper endorsements and/or assignments to your financial institution. Only those portions of the participation loans that are owned by your institution are able to be pledged as collateral to the FRB. Participation loans that require permission of the originating institution or other institutions participating in the deal to pledge or transfer a security interest in the loans are not eligible for pledge.
- Syndication loans: Due to the restrictive language present in many syndicated loan deals (including, but not limited to, requiring consent of various parties to pledge, assign, or sell the loan), the FRB will only accept loans that meet all of the following criteria, typically found in the Successors and Assigns section of the credit agreement:
  - Allows for pledge or assignment of a Lender's security interest to a Federal Reserve Bank
  - Dictates that no requirements in the Successors or Assigns section would apply to any such pledge or assignment to a Federal Reserve Bank
  - Ensures that no obligations of the Lender are able to be transferred to a Federal Reserve Bank through such pledge or assignment (e.g., the requirement to fund advances under a line of credit)

Sample of acceptable language for syndicated loans:

*Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such a Lender as a party hereto.*

- FRB Atlanta accepts certain types of electronic collateral, defined as loan and lease collateral with transaction documents in electronic form that are:

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

Institutions are required to complete the Electronic Collateral Addendum (online form [here](#)) in order to pledge electronic collateral.

Assets defined as accounts, general (or payment) intangibles, electronic chattel paper, and e-signed mortgage notes are generally eligible, subject to proper labeling as defined in the E-Collateral Addendum. For imaged and destroyed loans, some restrictions may apply to pledges of loans that qualify as negotiable instruments.

## Treasury Tax and Loan (TT&L)

See the Bureau of Public Debt website for a complete list of eligible TT&L collateral for the various types of TT&L programs at [Treasury Collateral Services](#).

## Ineligible Loan Types

- Participation loans without original documentation or without proper permission to pledge or transfer, if required.
- Loans with transfer or pledge restriction that haven't been addressed
- Off-balance sheet commitments (e.g., commercial letters of credit, standby letters of credit, loan commitments, futures/forward/standby contracts for securities, foreign exchange commitments, swaps)
- Insider loans (loans to a director, officer or bank agent)<sup>1</sup>
- Loans collateralized by stock of any depository institution or affiliate
- Loans to any depository institution or affiliate
- Loans secured by CDs issued by another depository institution
- Loans issued to an affiliated employee stock ownership plan (ESOP) or secured by stock held by an affiliated ESOP
- Loans already pledged under a specific or blanket lien (e.g., held by the FHLB or corporate credit union) unless expressly subordinated to the FRB
- Loans not denominated in U.S. dollars to foreign or domestic entities and loans that are not domiciled in the United States (i.e., no foreign obligor loans)
- Loans classified as watch; other loans especially mentioned; substandard, doubtful, or loss; or otherwise identified for management's special attention
- Loans in which the origination or renewal process has not been completed

## Additional BIC Program Restrictions on Collateral

The following loans are not acceptable as collateral under the BIC Program:

- Commercial, commercial real estate, and agricultural loans more than 30 days delinquent
- Residential mortgage and consumer loans more than 60 days delinquent

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<sup>1</sup> Bank employee loans are acceptable.

- Loans on nonaccrual status or loans receiving adverse comment from your institution's loan review function
- Loans subject to classification by regulators
- Any other loan in an impaired status (i.e., bankruptcy<sup>2</sup>, etc.)

## Credit Quality Standards

Loans must meet credit quality standards established by the FRB. FRB will determine whether individual assets meet those standards by one of the following three methods. Any loans that fall below acceptable credit-quality standards or otherwise become unacceptable must be immediately withdrawn from the pledge by your institution.

### 1. Validating and relying on the DI's internal risk rating system

If acceptable, FRB will rely on the internal risk rating assigned by the pledged institution to determine the acceptability of the pledged loans. Your institution must meet the following criteria:

- Meet all BIC arrangement qualifications as described above.
- Have acceptable asset quality and overall acceptable financial condition as determined by the FRB.
- Have internal risk ratings approved by the FRB.

FRB will determine whether your institution's loan rating system is acceptable. To begin the process, provide FRB with a copy of your institution's loan review policy, including a description and definition of the ratings assigned to loans of various credit qualities. FRB will use these descriptions and definitions to map your institution's internal risk ratings to its own credit-quality standards.

In order to assess the integrity of your loan rating system, FRB may rely on examination reports and/or discussions with your institution's regulator. FRB may validate your institution's loan rating system by reviewing a sample of loans and comparing credit quality to each loan's assigned internal risk rating.

The BIC acceptance letter will identify those internal risk ratings that are acceptable to pledge provided that your institution's internal risk rating system is acceptable and your institution meets all other criteria under the BIC Program. Your internal risk ratings will be mapped to FRB credit-quality standards used in valuing collateral. After the initial acceptance of your institution's internal risk ratings, it is the institution's responsibility to inform FRB of any changes and provide updated documentation of your internal risk ratings.

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<sup>2</sup> Loans pledged to the BIC program may not be in bankruptcy or otherwise show impaired capacity. However, loans in which the borrower had previously declared bankruptcy but later reaffirmed the loans, with a written reaffirmation agreement, may be pledged if the borrower has paid as agreed for at least six months. The loans must also meet all other BIC program eligibility requirements.



## 2. Relying on reviews of individual assets considered by examiners to be “pass” credits.

Loans classified as Special Mention, Substandard, Doubtful or Loss, are ineligible to be pledged under the BIC program.

## 3. Performing its own credit analysis, using financial statements and other information provided by the pledging institution.

This method is used only in those cases where an institution’s internal risk rating system cannot be validated as acceptable and whose notes selected for pledging have not been reviewed by examiners and given a “pass.”

### **Custody and Control Standards**

Assets pledged under a BIC arrangement must be clearly displayed by labeling the loans as pledged to the Federal Reserve Bank of Atlanta (FRB). This may be done by one of three ways as noted below:

- Placing notations on the electronic trial loan ledgers and balance sheets identifying loans that are pledged to the FRB.
- Physically segregating the loans.
- Individually stamping each loan file to indicate that the loan is pledged to the FRB.

These procedures are designed to ensure that internal staff within your institution are aware that loans are pledged as collateral to FRB and to prevent these loans from being sold on the secondary market while pledged to FRB. Regardless of the identification method chosen, a sign indicating that “some loans are pledged to the Federal Reserve Bank of Atlanta” must be posted in the collateral storage area. Collateral must also be adequately secured and controlled. Original promissory notes and other legal documents should be stored in a fireproof vault or another secure enclosure with limited access.

### **Independent Audit Review**

FRB requires pledging institutions to provide independent audits of loans pledged to FRB. This independent audit may be performed by your institution’s internal audit function provided that function is independent of management structure. Auditors should include a review of compliance with all BIC guidelines as part of their regular audit of loan operations areas. A complete audit report of these areas—including any findings, management’s responses and corrective action plans—should be forwarded to the FRB for review. Please contact us if you have any concerns or questions for clarification.

### **Inspections**

FRB will perform an initial inspection as part of the application process prior to approving a BIC arrangement. The initial inspection includes a review of loans intended to be pledged and an

assessment of operational controls to safeguard pledged collateral. In addition, once a BIC arrangement is approved, FRB Atlanta will perform a follow-up in 12 months with a full sample loan review. In addition, FRB will perform ongoing reviews of loans pledged as well as operational controls to ensure compliance with all BIC arrangement guidelines.

## Periodic Reporting

Unless FRB requests more frequent updates, most institutions are required to provide a Collateral Schedule (template available [here](#)) and Collateral Pledge Form no later than the 10<sup>th</sup> of each month or following business day:

The collateral schedule should be separated in different MS Excel spreadsheets or tabs by pool (e.g., agricultural). Collateral schedules and pledge forms will be submitted via secured email. Examples of the collateral schedule and pledge form are posted on the [FRB Atlanta's BIC information page](#).

\*Late submissions of BIC files may result in escalation procedures to include temporarily reducing BIC collateral value to \$0.

"In-scope" institutions are required to provide additional data elements (in-scope definitions [located here](#)). In-scope institutions are also subject to reporting participation/syndication flags for the Commercial & Industrial loan type and subject to periodic validations to assess the veracity of reported data elements.

## Ongoing Program Requirements

### Updated Documents

The FRB will occasionally ask your institution to submit updated versions of the following documents:

- BIC Certification (Form available online [here](#))
- E-Collateral Addendum, if applicable (Form available online [here](#))
- Internal risk rating code documents
- OC-10 legal agreements

Your institution will be contacted by an analyst and will request any or all of the above documents. However, if there are any changes to the collateral type, location, or key operational controls and requires updates to any of these documents, please notify and submit updated documents to FRB.

### Additional Reporting for 10% Decline in Aggregate Outstanding Balances

When the aggregate outstanding principal balance decreases by 10 percent or more since the last file submission, BIC participants must notify FRB within 3 business days of the breach and provide an updated collateral schedule and pledge form.

Declines may be due to partial or full paydowns by obligors, matured loans, or withdrawal of specific loans from FRB collateral pledge. Failure to comply with the interim reporting requirement may result in an escalation of counseling and an additional haircut placed on the collateral for frequent violations.

## Acceptance into the BIC Program

Upon receipt of the required documents, your institution will be contacted by phone or email if additional information is required. If approved, your institution will receive a letter via email from FRB Atlanta identifying specific requirements of your BIC arrangement<sup>3</sup>.

## Required Documents

For your convenience, below is a BIC checklist your institution can use to ensure you submit all required documents for the BIC program to the FRB.

## Contacts

Questions about establishing a BIC arrangement should be directed to the collateral team at [collatera@atl.frb.org](mailto:collatera@atl.frb.org) or by calling 1-888-500-7390, Option 4 to reach a member of the collateral team.

## BIC Application Checklist

Your institution must complete and submit the following to be considered for participation in the BIC program:

- Complete the necessary OC-10 legal agreements.
- Complete the BIC Certification. (form available online [here](#))
- Complete Electronic Collateral Addendum, if applicable (form available online [here](#))
- Provide a copy of your most recent audit review (internal or external) of relevant loan operations areas.
- Provide a copy of your internal risk rating system, including a description of what qualities constitute each risk rating, if applicable.
- If your institution has loans pledged to the Federal Home Loan Bank or a Corporate Credit Union with a blanket lien in place, request a comfort release letter, intercreditor agreement or subordination agreement in favor of the Federal Reserve Bank of Atlanta.

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<sup>3</sup> Please note that the FRB may amend collateral requirements or terminate your institution's participation in the BIC Program at any time.

- Provide a copy of sample loan documents (promissory note) for each type of asset your institution would like to pledge.
- Provide a preliminary collateral schedule of loans (template of collateral schedule available online [here](#)) intended to be pledged and collateral pledge form (form available online [here](#)).

## **Submitting Documents**

Submit all documents securely (Zixcorps) to [collateral@atl.frb.org](mailto:collateral@atl.frb.org)

Other secured platforms are not accepted.

For access to the Zixcorps secured platform please refer to: [FedPayments Reporter Encrypted Email Delivery Overview \(frbservices.org\)](#)