Borrower-In-Custody Program
Overview & Instructions
Borrower-In-Custody Program 2020

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Introduction
The Borrower-In-Custody (BIC) of collateral arrangement allows collateral to be maintained at the pledging institution rather than being delivered to the Federal Reserve Bank (FRB) or a third-party custodian. Typically, BIC arrangements are used to facilitate pledging large volumes of loans evidenced by instruments. BIC arrangements are only permitted for financially sound institutions that demonstrate satisfactory internal control, safekeeping and records retention standards.

Assets held in a BIC arrangement may be pledged to the FRB for discount window or payment system risk (PSR) purposes; however, collateral pledged will service both purposes. 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 this instance, the FRB will act as agent for the Treasury.

The purpose of the BIC arrangement is to provide flexibility to depository institutions so they may increase their pool of pledged collateral while avoiding the inconvenience and cost of transporting loans and supporting documentation to the FRB or another custodian.

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

- Be in acceptable financial condition as determined by the 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, on-site inspections of loan documents, and controls over the proposed collateral.

Legal Documents to Execute
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 http://www.frbdiscountwindow.org/ under Agreements, Required Agreements. Please contact the discount window if you have questions completing any of these documents. Additional instructions are available to assist you in completing the legal agreements. These must be in place before an institution may borrow from the discount window, and preferably be in place before implementing the BIC process or at least be in conjunction with the BIC set-up.

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 should be executed on your institution’s letterhead and 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 of Certificate
A document certifying the official name, jurisdiction, and organizational number (if applicable) of your institution. Please reference the footnotes for those authorized to sign this document. FRB Atlanta will allow the Secretary of the Board of Directors 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 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 follow the instructions in footnote 3 of the Authorizing Resolutions for Borrowers when completing the signature block on page 2.

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 Resolution for Borrowers and your institution’s Secretary of the Board. Use two pages if necessary. This document must also be notarized.

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 one of the letter of agreement should be prepared on your institution’s letterhead and 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 letter. The second page of the document must be completed and signed by the correspondent institution.
Additional Documents for Branches and Agencies of Non-U.S. Borrowers Only (Appendix 4 of Operating Circular No. 10)

- Form of Authorizing Resolution for Borrowers
- Form of Opinion of Foreign Outside Counsel
- Form of Opinion of United States Outside Counsel

**Additional BIC Program Documents**

**Assignment**

The Assignment is a collateral document used to perfect the FRB’s interest in the collateral being pledged.

**UCC Filing: Perfection of Security Interest**

The FRB’s policy is to perfect its security interest in collateral pledged for the discount window, payment system risk and TT&L programs whenever possible. To ensure that the FRB will continue to have a first priority security interest in pledged collateral, the FRB completes a UCC-1 financing statement as well as a UCC-11 search to ensure no other entities hold a lien over the same collateral. If a conflicting UCC-1 filing is discovered, the FRB will seek to secure subordination agreements from the lien holder. The FRB cannot assign a collateral value until a completed UCC-1 financing statement is received for your depository institution. The UCC-1 filling and search charges will be absorbed by FRB Atlanta. More information can be obtained by contacting the risk administration team.

Your institution should also be aware that if you are a member of a Federal Home Loan Bank (FHLB) or a corporate credit union, a blanket lien may already be filed your institution’s assets. In most instances, we ask that you contact your lien-holder to discuss with them the types of assets you are planning to pledge to the FRB versus what is already pledged. The collateral and legal staffs at the FHLB have very specific instructions and actions they take as a result of their Advance Agreement in force with your institution. A Comfort/Release Letter, Intercreditor Agreement, or Subordination Agreement may be needed as a result and will need to be addressed by both the appropriate FHLB and FRB. In some cases, the FHLB has documents out on their website addressing this issue.

**Loan Eligibility Requirements**

The loans pledged to the FRB must be owned by your financial institution. You must furnish the FRB with sample loan documentation for each type of asset your institution would like to pledge. The FRB will use this information to determine whether the BIC arrangement would be appropriate or whether other programs may be more suitable.
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.

- 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.*

Treasury Tax and Loan (TT&L)

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)\(^1\)
• 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 no 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 be 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
• 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\(^2\), etc.)

**Credit Quality Standards**

Loans must meet credit quality standards established by the FRB. The 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

\(^1\) Bank employee loans are acceptable.
\(^2\) 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.
If determined to be acceptable, the FRB can 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.

The FRB must determine whether your institution’s loan rating system is acceptable. To begin the process, you must furnish a copy of your institution’s loan review policy, including a description of the ratings assigned to loans of various credit qualities, to the FRB. The FRB will use these descriptions to map your institution’s internal risk ratings to its own credit-quality measures.

In order to assess the integrity of your loan rating system, the FRB may rely on examination reports and/or discussions with your institution’s regulator. The 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 deemed 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 your responsibility to provide updated versions of your internal risk ratings, as necessary.

2. Relying on reviews of individual assets considered by examiners to be “pass” credits
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 indicated by labeling the assets 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 other departments within your institution are aware that the assets are pledged as collateral and to ensure that the assets themselves will not be sold on the secondary market while pledged to the 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.

Imaged Loan Documents
If your institution currently images all loans, please let us know. Further, if original notes and security agreements are not being kept as a result of the image process, please obtain a legal opinion that indicates a comprehensive review was done in all of the states in which an institution has branches or homes offices and demonstrates that electronic documentation is acceptable and allowed in the states in which the institution operates. Instruments secured by real estate and mortgage deeds (or deeds of trust) must maintain original paper documents even if they are later imaged. In addition, if original loan documents are stored somewhere other than your primary location or in a third-party warehouse arrangement, please provide that information as well.

Independent Audit Review
The FRB requires a pledging institution to provide continual independent audits of assets pledged to the FRB. This independent audit may be performed by your institution’s internal audit function provided that function reports outside the normal management chain. The 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 on this issue.

Inspections
At its discretion, the FRB may perform an initial inspection prior to approving a BIC arrangement. The initial inspection would include a review of the assets your institution anticipates pledging as well as an assessment of the internal controls over those assets. In addition, once a BIC arrangement is formalized, the FRB may periodically review the loans pledged as well as operating routines and controls to ensure compliance with all BIC arrangement guidelines.

Periodic Reporting
Unless the FRB requests more frequent updates, your institution will be expected to provide a Collateral Pledge Form and the following information at the time the pledge begins by the 10th of each month thereafter in the form of a collateral schedule:
The collateral schedule should be separated in different MS Excel spreadsheets by pool (e.g., agricultural). Collateral schedules and pledge forms can be submitted via email (secure email is available, please call for details).

Examples of the collateral schedule and pledge form are posted on the FRB Atlanta’s BIC information page where this booklet is also located. It is also available from the FRB in electronic form.

*If the FRB does not receive updated information in a timely fashion, the collateral value of the pledged assets may be reduced to zero.

**Ongoing Maintenance**

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

- BIC Certification (required annually)
- E-Collateral Addendum, if applicable
- Internal risk rating code documents
- OC-10 legal agreements

Your institution will be contacted by an analyst if any of these documents need to be submitted. However, if any changes are made to any of these documents, please submit them to the FRB.

**Additional Reporting for Large Fluctuations in Collateral Values**
Whenever the aggregate value of collateral underlying the pledge (i.e., outstanding principal balance) decreases by 10 percent or more since the latest periodic update was provided to the FRB, the pledging institution must immediately notify the FRB and provide an updated collateral pledge form and schedule as described in the “Periodic Reporting” section above.

Such a change in value may be caused by partial or full paydowns by obligors as well as by voluntary or required withdrawals of collateral from the 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. Please note that the FRB may amend collateral requirements or terminate your institution’s participation in the BIC Program at any time.

**Required Documents**

All documents referenced above and any additional information on participation in the BIC Program may be obtained from the discount window website at [http://www.frbdiscountwindow.org](http://www.frbdiscountwindow.org). Click “Select Your District” → “Atlanta (6th District)” → “Borrower-In-Custody (BIC) Program”.

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 a risk administration analyst at (888) 500-7390.
BIC Application Checklist

Your institution must do the following to be considered for participation in the BIC program:

☐ Complete the necessary OC-10 legal agreements.

☐ Complete the BIC Certification.

☐ Furnish a copy of sample loan documents (promissory note) for each type of asset your institution would like to pledge.

☐ Provide a copy of each type of purchased participation certificate/agreement, if applicable.

☐ Provide a copy of your most recent audit review (internal or external) of relevant loan operations areas.

☐ Provide a preliminary collateral schedule of loans that your institution would like to pledge as collateral along with a Collateral Revaluation Pledge Form.

☐ Furnish a copy of your internal risk rating system, including a description of what qualities constitute each risk rating, if applicable.

☐ Execute an Assignment form, which is posted on FRB Atlanta’s BIC information page.

☐ Note that if your institution has pledged loans to the Federal Home Loan Bank or a corporate credit union that has a blanket lien in place, you will need to request a comfort release letter, intercreditor agreement or subordination agreement in favor of the Federal Reserve Bank of Atlanta.

Submitting Documents

All documents can be sent to the following address:

Credit & Risk Management Department
Federal Reserve Bank of Atlanta
1000 Peachtree Street, NE
Atlanta, GA 30309-4470