



Banking (prudential standard) determination No. 11 of 2022

Prudential Standard APS 121 Covered Bonds

Banking Act 1959

I, Renée Roberts, a delegate of APRA:

- (a) under subsection 11AF(3) of the *Banking Act 1959* (the Act) REVOKE Banking (prudential standard) determination No. 1 of 2019, including *Prudential Standard APS 121 Covered Bonds*, made under that determination; and
- (b) under subsection 11AF(1) of the Act DETERMINE *Prudential Standard APS 121 Covered Bonds*, in the form set out in the schedule, which applies to all ADIs to the extent provided in paragraph 2 of the prudential standard.

This instrument commences on 1 January 2023.

Dated: 1 December 2022

[Signed]

Renée Roberts
Executive Director
Policy and Advice Division

Interpretation

In this instrument:

APRA means the Australian Prudential Regulation Authority.

ADI has the meaning given in section 5 of the Act.

Schedule

Prudential Standard APS 121 Covered Bonds comprises the document commencing on the following page.



Prudential Standard APS 121

Covered bonds

Objectives and key requirements of this Prudential Standard

This Prudential Standard sets out requirements for the issuing of covered bonds by authorised deposit-taking institutions (ADIs).

Ultimately, the Board of an ADI is responsible for ensuring that the ADI adopts prudent practices when issuing covered bonds and managing the risks associated with exposure to a covered bond special purpose vehicle.

The key requirements of this Prudential Standard are that an authorised deposit-taking institution must:

- adopt policies and procedures to manage risks relating to its issuance of covered bonds; and
- apply an appropriate capital treatment to exposures associated with covered bond issuance.

This Prudential Standard should be read in conjunction with Division 3A of Part II of the *Banking Act 1959*, which sets out the legislative framework for covered bonds.

Authority

1. This Prudential Standard is made under section 11AF of the *Banking Act 1959* (**Banking Act**).

Application and commencement

2. This Prudential Standard applies to all authorised deposit-taking institutions (**ADIs**), other than a **foreign ADI**.
3. This Prudential Standard commences on 1 January 2023.

Interpretation

4. Terms that are defined in *Prudential Standard APS 001 Definitions* appear in bold the first time they are used in this Prudential Standard.
5. Where this Prudential Standard provides for APRA to exercise a power or discretion, this power or discretion is to be exercised in writing.
6. In this Prudential Standard, unless the contrary intention appears, a reference to an Act, Regulations, Prudential Standard or Reporting Standard is a reference to the Act, Regulations, Prudential Standard or Reporting Standard as in force from time to time.¹

Scope

7. This Prudential Standard does not apply to a bond, note or other debenture, liabilities in relation to which are secured wholly by assets that are not in Australia.
8. A covered bond is not a securitisation for the purposes of *Prudential Standard APS 120 Securitisation* (APS 120).

Definitions

9. The following definition is used in this Prudential Standard:
 - (a) assets in Australia - means assets in Australia calculated in accordance with paragraph 42 of this Prudential Standard.

Adjustments and exclusions

10. APRA may adjust or exclude a specific prudential requirement in this Prudential Standard in relation to one or more specified ADIs.²

¹ A reference to a Reporting Standard includes any reporting form and instructions that form part of the Reporting Standard.

² Refer to subsection 11AF(2) of the Banking Act.

Previous exercise of discretion

11. An ADI must contact APRA if it seeks to place reliance, for the purposes of complying with this Prudential Standard, on a previous exemption or other exercise of discretion by APRA under a previous version of this Prudential Standard.

Key principles

12. The **Board** and senior management of an issuing ADI must establish and implement policies and procedures relating to:
 - (a) decisions to issue covered bonds and the structuring of covered bond issuance;
 - (b) the ADI's dealings with covered bond special purpose vehicles (including cover pools); and
 - (c) the management of exposures involved in the issuance of covered bonds.
13. The policies and procedures established by an ADI relating to its issuance of covered bonds must include:
 - (a) appropriate risk management systems to identify, measure, monitor and manage the risks associated with the ADI's issuance of covered bonds;
 - (b) how the ADI will monitor the effects of its issuance of covered bonds on its risk profile, including exposures to the covered bond special purpose vehicle;
 - (c) consideration, under stress scenarios, of the impact on the ADI of contractual obligations to maintain collateral levels required for covered bonds;
 - (d) assessment of the effect, including under stress scenarios, of covered bond issuance on the ability of the ADI to raise other sources of funding and the cost of such funding; and
 - (e) how the ADI will ensure that it is meeting the requirements of this Prudential Standard and of Division 3A of Part II of the Banking Act.
14. The documentation associated with a covered bond issuance must clearly set out:
 - (a) the events of default that would enable covered bond holders to access collateral held in the cover pool;
 - (b) that claims by covered bond holders on the covered bond special purpose vehicle are limited to assets in the cover pool;
 - (c) how assets forming part of the cover pool are identified;

- (d) the interests of the issuing ADI in assets held by the covered bond special purpose vehicle and the rights of the ADI to recover such assets;
- (e) the undertakings, if any, given by the issuing ADI in relation to assets transferred to the cover pool and the extent of any mechanisms for ensuring compliance;
- (f) provisions governing the topping up and removal of collateral held in the cover pool by the covered bond special purpose vehicle and any return of collateral to the issuing ADI; and
- (g) the provisions, if any, to ensure the continuance of the covered bond special purpose vehicle beyond any default by the issuing ADI.

Covered bond special purpose vehicle

15. All agreements, rights and obligations between the issuing ADI, covered bond special purpose vehicles and covered bond holders must be formally and legally documented and must set out the full scope of such agreements, rights and obligations. All affected assets must be dealt with in accordance with these agreements.
16. Where assets that have been transferred by the issuing ADI to a covered bond special purpose vehicle are administered by the ADI or an affiliated entity, the assets should, to the maximum extent practicable, continue to be administered consistently with the ADI's policies for similar assets and this requirement should be contained in relevant legal documents.
17. An issuing ADI must maintain an accurate and up-to-date register of assets in the cover pool.³
18. An issuing ADI may maintain a separate, accurate and up-to-date register of assets held by the covered bond special purpose vehicle that do not form part of the cover pool or secure covered bond liabilities.⁴
19. An issuing ADI must be able to report to APRA at any time, upon written request, assets in the registers referred to in paragraphs 17 and 18 above.
20. When determining whether an asset is part of a cover pool, an issuing ADI must have regard to the priority of claims under all possible scenarios, not just under a business-as-usual scenario.
21. Any assets added to the cover pool, or otherwise provided to the cover bond special purpose vehicle, or returned to the issuing ADI, must be clearly identified.

³ Paragraph 30(4)(a) of the Banking Act also requires the keeping of an accurate register of assets in the cover pool by the issuing ADI or covered bond special purpose vehicle concerned.

⁴ If an asset is not part of the cover pool and is not listed on a register pursuant to paragraph 18, then it will fail the test in paragraph 28(a) and will be subject to the minimum risk-weight of 100 per cent in paragraph 30.

22. The issuing ADI must be able to identify, at all times, all derivatives and other transactions outstanding with a covered bond special purpose vehicle.
23. An issuing ADI must ensure that agreements between the ADI, the covered bond special purpose vehicle and covered bond holders:
 - (a) require that all assets not securing covered bond liabilities return to the ADI within one month of a default relating to the covered bond;
 - (b) only permit assets of the covered bond special purpose vehicle to become part of the cover pool or otherwise subject to claims by third parties following an express written instruction to do so by the ADI; and
 - (c) only permit assets of the covered bond special purpose vehicle to be sold, liquidated or otherwise disposed of:
 - (i) after first providing the issuing ADI with a reasonable opportunity to acquire the assets on similar terms; and
 - (ii) if the assets are not acquired by the issuing ADI, then for not less than the asset's market price (if there is one) or otherwise for the best price reasonably obtainable having regard to the circumstances existing when they are sold.
24. Where the issuing ADI has assets in the covered bond special purpose vehicle that:
 - (a) the covered bond special purpose vehicle holds only on trust for the ADI; or
 - (b) the ADI retains a right to freely withdraw from the covered bond special purpose vehicle at any time, including after a default by the ADI or the covered bond special purpose vehicle on the covered bonds;

the existence of such arrangements must be clearly set out in any issue documentation and in any legal documentation involving the ADI, covered bond holders and the covered bond special purpose vehicle. It must be made clear to holders of covered bonds that such assets are unavailable as collateral securing their bond holdings.

25. Where an issuing ADI acquires assets from a covered bond special purpose vehicle, including by way of substituting assets to maintain levels of collateral held by the covered bond special purpose vehicle, the ADI must, to the extent that this has not already occurred, ensure:
 - (a) the returning assets are subject to impairment testing (and provisioning as necessary); or
 - (b) the returning assets are marked to market;

depending on how the acquired assets are to be accounted for by the ADI.

Assets in the cover pool

26. An issuing ADI must deduct from **Common Equity Tier 1 Capital** the aggregate amount of assets in cover pools that do not qualify for treatment as assets of the ADI in accordance with section 31D of the Banking Act.
27. When applying Prudential Standards, assets in cover pools that qualify for treatment as assets of the issuing ADI in accordance with section 31D of the Banking Act will be treated as if they were held directly by the ADI, without reference to the interposed structures.

Assets outside the cover pool

28. An asset held by the covered bond special purpose vehicle must be treated for purposes of applying Prudential Standards, including calculating capital requirements, related-party exposures and large exposures, as an asset of the issuing ADI if:
 - (a) the asset is listed on a register of assets not securing covered bond liabilities in accordance with paragraph 18 above;
 - (b) the issuing ADI has an unconditional authority to deal with the asset, including to require that it be returned to the ADI at any time;
 - (c) the issuing ADI has unequivocal enforcement rights over a mortgaged residential property (including a power of sale and a right to possession) in the event of default by the borrower; and
 - (d) contractual documentation provides for the asset to return to the issuing ADI immediately following a default under the covered bond.
29. For the purposes of paragraph 28, if an issuing ADI retains an interest in collateral that is shared with an asset in the cover pool, it will not be treated as satisfying the test in paragraph 28(c) unless there is a formal second mortgage arrangement in place that meets the requirements of Attachment A of *Prudential Standard APS 112 Capital Adequacy: Standardised Approach to Credit Risk* (APS 112).
30. If an asset held by a covered bond special purpose vehicle:
 - (a) does not form part of the cover pool; and
 - (b) does not meet the criteria set out in paragraphs 28(a) to (d) above,it must be treated as an asset of the issuing ADI for the purposes of applying Prudential Standards, including related-party exposures and large exposures, but such an asset must, for capital adequacy purposes, be risk-weighted at the greater of 100 per cent or the relevant risk-weight detailed in APS 112.

31. APRA may, at its discretion, require an issuing ADI to obtain at the ADI's expense an opinion, from an appropriate independent expert agreed by APRA, on whether an asset meets the requirements of paragraphs 28(a) to (d).
32. Issuing ADIs must ensure that the amount of assets held by their covered bond special purpose vehicles otherwise than as part of a cover pool, is not more than is reasonable for the efficient operation of the ADI's covered bond program.

Liabilities between the ADI and covered bond special purpose vehicle

33. Liabilities of the covered bond special purpose vehicle to the issuing ADI and of the issuing ADI to the covered bond special purpose vehicle (and the associated assets) will be disregarded for the purposes of applying Prudential Standards (other than this Prudential Standard).

Reports

34. Where APRA requests a report from a cover pool monitor pursuant to paragraph 30(4)(d) of the Banking Act, this will be at the expense of the issuing ADI.

Default provisions

35. An issuing ADI must ensure that documentation associated with a covered bond issue does not permit covered bond holders to make a claim on the covered bond special purpose vehicle or the cover pool unless the issuing ADI or the covered bond SPV has defaulted on their obligations to covered bond holders.

Implications for other obligations

36. Prior to issuing a covered bond, the issuing ADI must identify all existing obligations (whether financial or otherwise) subject to a negative pledge or similar commitment. The ADI will need to assess the impact of any such negative pledge or similar arrangement, including whether the issuing of the covered bonds could expose the ADI to requirements to accelerate payments or offer (or increase) collateral or security against the existing obligations.
37. For each obligation identified under paragraph 36 as potentially exposing the ADI to requirements to accelerate payments or offer (or increase) collateral or security, an ADI must, prior to issuing covered bonds:
 - (a) identify the circumstances in which it could be required to accelerate payments or offer collateral or security against the obligation, and the quantum of collateral that might be involved;
 - (b) assess the implications for its capital, liquidity and borrowing capacity if it were required to provide collateral against the obligation; and

- (c) where relevant, assess whether the provision of collateral against the existing obligation would breach any requirement of the Banking Act or a Prudential Standard.
38. If an issuing ADI identifies an obligation pursuant to paragraph 36, it must consult with APRA prior to issuing covered bonds. APRA may, at its discretion, require the ADI to obtain, at the ADI's expense, an opinion, from an appropriate independent expert agreed by APRA, on any of the matters referred to in paragraph 37.

Notifications

39. An issuing ADI must provide to APRA, as soon as practicable after the issue of a covered bond, a written declaration signed by a responsible person of the ADI certifying that at the time of issue of the covered bond, the combined value of assets in cover pools securing covered bonds issued by the ADI, including the issue undertaken, do not exceed 8 per cent of the value of the ADI's assets in Australia (or such other percentage as may be prescribed in regulations pursuant to section 28 of the Banking Act).
40. An issuing ADI must provide APRA with a copy of all documentation relating to the issue of covered bonds on request.
41. An issuing ADI must notify APRA in writing, as soon as practicable after it becomes aware that the value of assets in cover pools securing covered bonds issued by the ADI exceeds, or will exceed, 8 per cent of the value of the ADI's assets in Australia (or such other percentage as may be prescribed in regulations pursuant to section 28 of the Banking Act). Such notification must include the value of the assets in the cover pool, the amount in excess of the specified percentage, reasons for the excess and an indication of the ADI's plans and a proposed time frame in which assets held in the cover pool may fall below the specified percentage.

Assets in Australia

42. For the purposes of this Prudential Standard, an issuing ADI's assets in Australia (AIA) should be calculated as the ADI's total assets on its domestic books as reported on forms *ARF 720.0A ABS/RBA Statement of Financial Position (Standard)* (ARF 720.0A) or *ARF 720.0B ABS/RBA Statement of Financial Position (Reduced)* (ARF 720.0B) under *Reporting Standard 720.0 ABS/RBA Statement of Financial Position*, adjusted to exclude goodwill, assets in cover pools (and any related loans to a covered bond special purpose vehicle) and double-counting. That is:

$$AIA = A - B - C - D - E$$

where:

- A = Total resident assets on the ADI's domestic books as reported on ARF 720.0A or ARF 720.0B;

- B = the value of any goodwill included in A (item 9.3 on ARF 720.0A or ARF 720.0B);
- C = the value of any interest in assets (or part of assets) in a cover pool for which the ADI is the issuing ADI and which is included in A;
- D = the value of any loan to a covered bond special purpose vehicle that relates to an asset (or part of an asset) in a cover pool for which the ADI is the issuing ADI and which is included in A; and
- E = to the extent of any double-counting, the value of other assets that are effectively double counted when calculating A and not captured by B, C or D.⁵

⁵ Whether double-counting exists should be assessed having regard to the economic substance of the relevant transactions. One situation where double counting would arise is if the amount A includes both assets held by a covered bond, securitisation or other special purpose vehicle and a loan to the special purpose vehicle to fund the purchase of those assets by the special purpose vehicle.