

# NEW CRITERIA FOR ELIGIBLE SELF-SECURITISATIONS

April 2023

---

## Contents

1. Overview	1
2. Background	2
3. Draft Eligibility Criteria	3
4. Questions	6
5. Next Steps	7
Appendix A: Annual Certificate Template	8

© Reserve Bank of Australia 2023

Apart from any use as permitted under the *Copyright Act 1968*, and the permissions explicitly granted below, all other rights are reserved in all materials contained in this publication.

All materials contained in this publication, with the exception of any Excluded Material as defined on the RBA website, are provided under a Creative Commons Attribution 4.0 International License. The materials covered by this licence may be used, reproduced, published, communicated to the public and adapted provided that the RBA is properly attributed in the following manner:

Source: Reserve Bank of Australia 2023 OR Source: RBA 2023

For the full copyright and disclaimer provisions which apply to this publication, including those provisions which relate to Excluded Material, see the RBA website

# 1. Overview

---

Self-securitisations are structured pools of assets, such as residential mortgages, created by banks specifically to use as collateral to access liquidity from the Reserve Bank of Australia (RBA). The purpose of this consultation is to seek feedback from industry about proposed updates to the RBA's eligibility criteria for self-securitisations. The consultation paper explains the motivation for updating the eligibility criteria and presents proposed changes to the criteria. These updates to the eligibility criteria will be supplemental to current requirements.

## 2. Background

---

Self-securitisations have been a significant source of eligible collateral for RBA domestic market operations at various stages over the past two decades. The ability of banks to transform illiquid assets (such as mortgages) into liquid assets improves overall liquidity in the financial system and reduces systemic risk. Currently, notes issued from self-securitisations represent a significant share of collateral posted by counterparties under the Term Funding Facility. Self-securitisations may also be considered for use as collateral, on a case-by-case basis, for exceptional liquidity assistance. Looking forward, self-securitisations will remain an important source of contingent liquidity given APRA guidance that ADIs maintain self-securitisations that meet the RBA's eligibility criteria.

Given its large actual and contingent exposures to notes issued from self-securitisations, the RBA seeks to minimise any legal risk associated with self-securitisations. To support this objective, the RBA is proposing additional eligibility criteria that would apply to all self-securitisations. The proposed criteria are outlined in the Draft Eligibility Criteria below. The overriding objectives in establishing these criteria are to:

- Reduce the potential for material mismatches between key terms of eligible self-securitisation transaction documents and prevailing market practice for public securitisations. This is important as many eligible self-securitisations were established during the Global Financial Crisis (GFC), and market practices may have changed since that time (or may change in the future).
- Standardise the approach for transaction document changes and provision of information to the RBA that have the potential to alter the credit risk of self-securitisations.
- Ensure that key legal opinions relating to self-securitisations are in place and remain current.
- Provide greater assurance to the RBA that self-securitisations adhere to the RBA's eligibility criteria on an ongoing basis.

The RBA invites stakeholder feedback on the proposed changes. Feedback is due by **31 August 2023**.

## 3. Draft Eligibility Criteria

---

The RBA proposes to update the eligibility criteria for both existing and new self-securitisations. Changes will apply to *new* self-securitisations from 1 December 2023 and to *existing* self-securitisations from 1 July 2024.

### 3.1 Eligibility Criteria Updates

#### 3.1.1 Market Terms and Conditions

For all self-securitisations, an ADI is required to certify that (except as expressly disclosed otherwise) the key terms of the self-securitisation are substantially similar to the key terms of comparable securitisations under the ADI's public term securitisation programme over the preceding 10 years.<sup>1</sup>

If the ADI has undertaken multiple comparable public securitisation transactions in the preceding 10-year period, the ADI should meet this requirement with respect to the most recent one. If the ADI does not have an established public term securitisation within the 10-year period, this requirement does not apply.

There may be various, good, reasons for differences in key terms with respect to an ADI's self-securitisation and public securitisation programmes, however, it is important that these differences are disclosed to the RBA.

Nonetheless, as a condition of maintaining eligibility status, the RBA may at its discretion require that an ADI update its self-securitisation transaction documents to reflect some or all of the differences in key terms.

Key terms are taken to mean those that would typically be regarded by third-party stakeholders in securitisations, such as investors and rating agencies, as being vital to the structural integrity and robustness of the self-securitisation as a whole. These include (but are not necessarily limited to) the following:

- what constitutes the events of default (or similar) under the transaction documents;
- what constitutes the servicer termination events (or similar) under the transaction documents;
- what constitutes the trust manager termination events (or similar) under the transaction documents;
- what constitutes the title perfection events (or similar) under the transaction documents;

---

<sup>1</sup> A comparable securitisation is one where the type of loans held in the public securitisation are of a substantially similar type as those held in the self-securitisation. For example, if a public securitisation held only residential mortgage loans, then it would likely be comparable to a self-securitisation that held only residential mortgage loans. Conversely, if a public securitisation held personal loans or commercial mortgage loans, then it would not be comparable to a self-securitisation that held only residential mortgage loans.

- what constitutes liquidity support (such as liquidity draws and/or principal draws) under the transaction documents; and
- a requirement for the issuer to have given first ranking security over the assets of the issuer in favour of an independent security trustee (together with a requirement that the security trustee must enforce the security, if directed, in accordance with the transaction documents, by the relevant secured creditors following the occurrence of an event of default).

### 3.1.2 Transaction Changes and Documents

All ADIs are required to notify the RBA at least 10 business days prior to any self-securitisation transaction changes becoming effective.<sup>2</sup>

For this purpose, a self-securitisation transaction change would include:

- Amendments to transaction documents
- Entering into new transaction documents
- Waivers of breach of obligation or representation (including compliance with loan eligibility criteria)
- Extensions of grace periods applicable to certain key events
- Waivers of the occurrence of certain key events (such as an event of default, servicer termination event, manager termination event or title perfection event)
- Releases of parties from some (or all) of their obligations
- Changes to the parties to the transaction documents
- The self-securitisation becoming, or ceasing to be, a member of a tax consolidated group.

Additionally, the transaction documents of the self-securitisation will be required to disapply the voting power of the ADI in circumstances where the relevant transaction change relates to the waiver of an event of default, servicer termination event or title perfection event and, at that time, the RBA is a holder of relevant securities. That is, if a transaction change to effect a waiver of these events would otherwise only occur with the approval of the holders of the relevant securities, the ADI will not be entitled to exercise any such approval rights, thereby effectively requiring the waiver to be approved by the RBA.

### 3.1.3 Information Provision

ADIs are required to ensure that notices or information that is required to be provided to a rating agency or to the holders of securities in the self-securitisation is also copied to the RBA, irrespective of whether the RBA is a holder of such securities at the relevant time.

---

<sup>2</sup> If the transaction change is not being implemented at the request of the ADI and is not within the control of the ADI, the ADI must still notify the RBA immediately on becoming aware that the transaction change has occurred (or is to occur).

The ADI should also promptly inform the RBA if it becomes aware of the occurrence of any of the following events (or similar), irrespective of any notification requirements under the transaction documents:

- an event of default (or similar);
- a servicer termination event (or similar);
- a manager termination event (or similar);
- a title perfection event (or similar).

If the ADI becomes aware that any information or documentation previously provided to the RBA in connection with the self-securitisation (including loan level information) is incorrect, misleading or deceptive, the ADI is required to promptly inform the RBA and, as soon as reasonably practicable thereafter, provide the RBA with the corrected information or documentation.

### 3.1.4 Legal Opinions

For all self-securitisations, the RBA requires an annual certification (see Appendix A) that the key legal opinions for the self-securitisation have been issued.

The key legal opinions are defined as:

- a transaction opinion prepared by external counsel, covering matters such as the enforceability of obligations of key transaction parties, the authorisations required by the relevant ADI and its related bodies and the effectiveness of the sale of the relevant securitised loans by the seller to the self-securitisation;
- a tax opinion prepared by external counsel addressing issues relating to the tax neutrality of the self-securitisation; and
- a trustee opinion prepared by external counsel which covers matters such as the authorisations required by the trustee and security trustee (to enter into and perform their obligations under the relevant transaction documents).

The RBA may, at its discretion and on a case by case basis, require that a copy of one or more of the key legal opinions is delivered to the RBA (on a non-reliance basis) or that one or more of the key legal opinions is refreshed (including, for example, a refresh of a transaction opinion in the event of a material amendment to the transaction document(s) for a self-securitisation or following a material change in applicable law).

## 3.2 Annual Certificate

For each individual eligible self-securitisation, ADIs are required to complete and provide the RBA with an annual certificate to confirm their ongoing compliance with the Eligibility Criteria of the RBA (see Appendix A). The certificate must be provided within 30 days of the annual anniversary date on which the security was approved for eligibility, and be signed off by a senior officer of the ADI (i.e. Chief Financial Officer, Group Treasurer or equivalent).

## 4. Questions

---

1. Are there any technical, practical or legal issues that would prevent industry meeting the new eligibility criteria and annual certificate requirements for self-securitisations?
2. Assuming the RBA publishes the updated eligibility criteria by no later than 30 November 2023, is there sufficient time for the industry to implement the changes within the proposed timeframes for new and existing self-securitisations?
3. Are there any other issues related to the updated eligibility criteria or annual certificate requirement for self-securitisations?



## 5. Next Steps

---

This consultation document may be shared with your members and other third parties.

Responses to these questions can be provided in writing and/or a meeting can be organised to discuss any of the above.

Unless a response provides that it is not confidential or has been lawfully made available to the public from a source other than the RBA, responses will be treated by the RBA as confidential. The Reserve Bank of Australia will not publish responses and, except as required by law, will not share responses with other agencies or market participants.

Please respond **by Thursday 31 August 2023** by email to [eligible\\_securities@rba.gov.au](mailto:eligible_securities@rba.gov.au)

# Appendix A: Annual Certificate Template

## Annual Certificate - Repo Eligibility – Self-securitisation

### 1 Compliance with eligible securities criteria

Complete this certificate to confirm to the Reserve Bank of Australia (the **Reserve Bank**) the ongoing compliance, with the Reserve Bank’s criteria for eligible securities, of asset-backed securities issued in connection with a self-securitisation.

The criteria for asset-backed securities issued in connection with a self-securitisation can be found on the Reserve Bank’s website <https://www.rba.gov.au/mkt-operations/resources/tech-notes/eligible-securities.html> (the **Eligibility Criteria**).

Included in the Eligibility Criteria are certain key terms (the **Key Terms**) which, in the case of a self-securitisation, must be assessed against the equivalent terms of public securitisations (if any), which are comparable to the self-securitisation, undertaken most recently by the ADI under its own securitisation programme in the preceding 10 year period.

This certificate must be from a senior officer (Chief Financial Officer, Group Treasurer or equivalent).

This certificate must be provided within 30 days of the annual anniversary of the date on which the securities were approved for inclusion on the Reserve Bank’s eligible securities list.

A separate certificate must be completed for each self-securitisation of the ADI.

### 2 Details of self-securitisation and securities

ADI name (including ABN): [●]

Self-securitisation

- trust name: [●]
- series name (if applicable): [●]
- ISIN of securities: [●]

Most recent comparable term public term securitisation (if applicable)

- trust name: [●]
- series name (if applicable): [●]
- issue date: [●]

### 3 Certification

- (a) I am [a /the] *[insert position]* of *[insert name of relevant ADI]* (the **ADI**) and I am authorised to complete this certificate in the name of the ADI.
- (b) I refer to the self-securitisation (the **Self-securitisation**) and securities listed in paragraph 2 above (the **Securities**).

(c) **Certification**

I certify that, to the best of my knowledge and other than as disclosed below, since the date on which the Securities were approved for inclusion on the Reserve Bank's eligible securities list:

- (i) there has been no change to the structure of the Self-securitisation, including no amendment or other variation to the terms of any transaction document of the Self-securitisation; and
- (ii) no new transaction document has been entered into in connection with the Self-securitisation,

which would cause the Securities to cease to meet the Eligibility Criteria, excluding any structural change, amendment, variation or new transaction document (as applicable) which has been notified to the Reserve Bank by the ADI prior to the date of this certificate.

**Qualifications**

The above certification is qualified by the following disclosures:

[not applicable] / *[insert details of any additional disclosures which are intended to qualify the above certification]*.

(d) **Certification**

[I certify that, to the best of my knowledge and other than as disclosed below, the Key Terms of the transaction documents of the Self-securitisation are, in all material respects, substantially similar to the equivalent Key Terms of the transaction documents of the public term securitisation, which is comparable to the Self-securitisation, undertaken most recently by the ADI under its securitisation programme in the 10 year period preceding the date of this certificate.]

or

[I certify that, to the best of my knowledge, the ADI has not undertaken any public term securitisation, which is comparable to the Self-securitisation, under the ADI's securitisation programme in the 10 year period preceding the date of this certificate.]

**Qualifications**

The above certification is qualified by the following disclosures:

[not applicable] / *[insert details of any additional disclosures which are intended to qualify the above certification]*.

(e) **Certification**

I certify that, to the best of my knowledge and other than as disclosed below, all legal opinions in respect of the Self-securitisation which are required to have been issued in accordance with the Eligibility Criteria have been issued.

**Qualifications**

The above certification is qualified by the following disclosures:

[not applicable] / *[insert details of any additional disclosures which are intended to qualify the above certification]*.

## 4 Signing

Signature .....

Name of signatory [●]

Date of certificate [●]