



APPROVED FORM OF NOTIFICATION OF ADDRESS WHERE ACCOUNTING RECORDS ARE KEPT

Trustees of registrable superannuation entities
and
RSE licensees who are authorised FHSA providers of FHSA trusts

Questions and Answers

1. What are the amendments to the legislation and why is the approved form required to be completed?

Please refer to the following extract of the Explanatory Memorandum to the *Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010* (the Prudential Refinements Act):

The Insurance, Life Insurance, and Superannuation Industry (Supervision) Acts currently contain provisions with respect to the keeping of records by regulated entities. The Banking Act does not contain such provisions. Entities regulated under the Banking Act are, however, subject to the record keeping requirements in the Corporations Act.

The Bill makes amendments to the above-mentioned Acts to harmonise the record keeping provisions for APRA-regulated entities with respect to their accessibility by APRA. In particular, the amendments require that the records are kept in Australia; that APRA is notified, in the approved form, of their location and any change to that location within 28 days; and that the records are kept in English or in a form in which they are readily convertible into writing in English. Each of these requirements, with the exception of the requirement to notify APRA of the location at which records are kept, currently applies to some but not all APRA-regulated entities.

The Bill provides APRA with discretion to approve an entity keeping its records in a country other than Australia. This approval may be given subject to specified conditions and is reviewable on its merits by the Administrative Appeals Tribunal.

The Bill amends the Banking and Life Insurance Acts to make it an offence (penalty 200 penalty units) for a relevant entity to contravene the requirements to keep their records in Australia (or other approved country) and in English or in a form in which they are readily convertible into writing in English. In the case of the Insurance Act and the Superannuation Industry (Supervision) Act, the present offences in sections 49Q and 35A of those respective Acts apply.

To support the notification requirements referred to above, the Bill inserts a definition of 'approved form' into the Banking, Insurance and Life Insurance Act. The term is defined for relevant purposes to mean a form approved, in writing, by APRA. The term is already defined in the Superannuation Industry (Supervision) Acts.



2. When is the approved form required to be submitted to APRA?

For Trustees of RSEs that were registered when the section commenced, the approved form must be submitted to APRA by **8 November 2010**.

For Trustees of RSEs, other than those registered when the section commenced, the approved form must be submitted to APRA within 28 days after the RSE is registered.

RSE licensees who are authorised as FHSA providers of an FHSA trust that existed when the section commenced must submit the approved form to APRA by **8 November 2010**.

RSE licensees who are authorised as FHSA providers of an FHSA trust, other than those that existed when the section commenced, must submit the approved form to APRA within 28 days after the creation of the FHSA trust.

3. Who is required to complete the Approved form?

Trustees¹ of registrable superannuation entities (RSEs) are required under subsection 35A(2B) of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) to notify APRA in the approved form, of the address where the accounting records of the RSE are kept.

RSE licensees who are authorised as FHSA providers of an FHSA trust are required to notify APRA in the approved form, of the address where the accounting records of the FHSA trust are kept. Section 35A of the SIS Act applies to authorised FHSA providers and FHSA trusts by operation of section 114 of the *First Home Saver Accounts Act 2008*.

4. What accounting records does the requirement apply to?

The accounting records which are required to be kept are those described in subsection 35A(1) of the SIS Act.

For RSEs and FHSA trusts, the requirement is to keep accounting records which explain the transactions and financial position of the RSE or FHSA Trust respectively.

It is the responsibility of the Trustee or authorised FHSA provider to determine the scope of its records which fall within the statutory requirement for compliance purposes and to seek professional advice where appropriate.

¹ In this FAQ, the term “Trustee” is used to refer to the trustee of a registrable superannuation entity rather than RSE licensee, as “Trustee” is the term used in section 35A of the SIS Act.



5. What address or addresses must be notified?

Trustees are required to notify APRA of the address where the required records are kept, for each RSE under trusteeship.

Where Trustees have multiple RSEs under trusteeship:

- if the required records for more than one RSE under trusteeship are held at the same address, the approved form makes provision for the Trustee to complete one form and attach a list of the names of the relevant RSEs and their ABNs; or
- if the required records for any of the RSEs under trusteeship are kept at a different address from the other RSEs under trusteeship, then a separate approved form should be completed which attaches a list of the names of the RSEs whose records are kept at the different address.

For RSE licensees who are authorised FHSA providers, the same requirements as those described above apply in relation to each FHSA trust of which the RSE licensee is the authorised FHSA provider.

The required records must be kept:

- either in writing in English or in a form which is readily accessible and readily convertible to writing in English; and
- in Australia, or where APRA gives approval under the applicable provision, in another country specified in the approval.

APRA will regard records as being ‘kept’ for the purposes of the approved form, where the required records are **readily accessible**. That is, the records can be accessed within a time frame of no more than 24 hours.

This means that if all of the required records are readily accessible at one location in Australia, only the address of that location is required to be notified in the approved form.

If only some of the required records are ‘kept’ at one location and the remaining required records are ‘kept’ at one or more other locations, then the address of all of those locations should be notified.

Where some of the required records are in storage and are readily accessible only at an outsourced service provider of storage facilities, then the principal address for the outsourced service provider should also be notified.

Where a Trustee or authorised FHSA provider has outsourcing arrangements in place which may involve the location of required records overseas (either in hard copy or electronically), then provided all of the required records are readily accessible from one central location in Australia, (or if not at one central location, at more than one location in Australia), then only the address or addresses where the records are readily accessible in Australia need be notified.



Where any part of the required records are only readily accessible at an overseas location, approval should be sought from APRA (see **FAQ 6** below).

The operating standard on outsourcing in regulation 4.16 of the SIS Regulations, requires that Trustees' material outsourcing agreements must provide for access upon written request from APRA or the Trustee, specifying a reasonable place and time, to documents or information in the possession of the outsourced service provider relating to the material outsourcing agreement and the material business activity performed under the agreement.

APRA expects that business continuity risk and access risk would be addressed within a Trustee's risk management strategy and the risk management plan for the RSE.

Prudential Standard FPS 100 for authorised FHSA providers makes corresponding requirements to those contained in the SIS Regulations, for RSE licensees who are authorised FHSA providers of FHSA trusts in the risk management framework and in relation to outsourcing.

6. Where required accounting records are, or are proposed to be, kept outside Australia, how should regulated entities apply for APRA's approval?

Approval will be required where the required records are not readily accessible in Australia. Applications for approval to keep the required records outside Australia should be in writing and sent to APRA for the attention of the regulated entity's supervisor. The application should provide sufficient detail to permit APRA to make an assessment, including but not limited to the following:

- type of records;
- whether the records are kept in hard copy or electronically;
- the relevant address or addresses where the records can be accessed and the form in which the records can be accessed;
- the details of the regulated entity's contractual arrangements with the holder of the records which entitle the regulated entity to access those records; and
- the details of the entity's relevant risk management and business continuity policies and procedures which address relevant risks such as access and counterparty risk.

7. Who is an Authorised Officer?

An Authorised Officer refers to a person/s which the Trustee or authorised FHSA provider has authorised to provide APRA with the required information. APRA would expect this person to be someone of appropriate seniority in the organisation with relevant knowledge of and responsibility for the location of the required records, for example the CFO or CIO or their delegate.



8. What is required if the notified address or addresses change?

The legislation requires that APRA be notified, in the approved form and within 28 days, of a change in address where the required records are kept.

9. When should the section '*If this is a new address since the last notification state 'Yes'...*' be completed?

This section should be completed only on subsequent submissions of this form when an updated address is provided. There is no need to complete this section the first time the form is submitted.

10. Does the form capture current accounting records only?

No. Trustees and authorised FHSA providers are required to keep accounting records for a period of **5 years** after the end of the year of income to which the records relate (see subsection 35A(2)(a) of the SIS Act). Addresses must be provided for the records retained for the relevant period.