

Raising the bar: updated Capital Accumulation Plan Guidelines increase plan sponsor obligations



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Author: [Jonathan Marin](#)

For those organizations that offer their employees defined contribution retirement and/or savings plans, a very noteworthy event occurred in 2024, one which potentially carries significant legal and regulatory implications for plan sponsors and others involved in the governance and administration of such plans.

On September 9, 2024, for the first time in more than 20 years, the Canadian Association of Pension Supervisory Authorities (CAPSA) released a revised [Guideline No. 3 – Guideline for Capital Accumulation Plans](#) (the CAP Guidelines). The revised CAP Guidelines replace the original (2004) version and adopt a much more expansive and prescriptive approach to regulating capital accumulation plans (CAPs).

CAP Guidelines and the regulation of DC plans in Canada

Outside of pension standards legislation, which sets out certain minimum standards applicable to the administration and investment of registered pension plans, most other forms of retirement and savings plans are not subject to this same level or type of regulation.^[1] This Canadian approach to the regulation of defined contribution retirement and savings plans can be contrasted with the highly regulated regime which applies to all defined contribution plans in the United States, under the *Employee Retirement Income Security Act of 1974* (ERISA) ^[2].

To fill this regulatory void, Canadian regulators developed the CAP Guidelines, with extensive input from the industry. The CAP Guidelines outline regulators' views on the responsibilities of plan sponsors, administrators, service providers, and members in relation to CAPs, as well as establishing industry best practices in the maintenance and administration of a CAP, and the information that should be provided to CAP members.

Over time, the CAP Guidelines appear to have served as an effective means of promoting best practices for CAPs, as they have been widely adopted by plan sponsors and service providers, and Canada has not experienced the extensive defined contribution plan litigation that has occurred in the U.S. under ERISA's prescriptive approach to regulating such plans.

The 2024 CAP Guidelines are a "good news/bad news" story for CAP sponsors and service providers. On the one hand, the revised CAP Guidelines create new, expanded and more prescriptive rules that could raise the bar in terms of legal and regulatory obligations on those persons who sponsor or administer CAPs. On the other hand, we think these new

requirements, developed with extensive input from the industry, likely reflect best practices that already have been adopted, at least in part, by many CAP sponsors and their service providers.

Regardless of whether the 2024 CAP Guidelines are characterized as “good news” or “bad news”, there are several significant developments in the revised CAP Guidelines that warrant careful consideration by CAP sponsors.

Scope of the CAP Guidelines

The CAP Guidelines define a “capital accumulation plan” (CAP) as a tax-assisted investment or savings plan or program in which members direct the investment of assets in their individual accounts. This definition hasn’t changed from the original (2004) CAP Guidelines, which provided that CAPs can include a registered pension plan (RPP), a group registered retirement savings plan (RRSP), and a deferred profit-sharing plan (DPSP). The revised (2024) CAP Guidelines add to the list of arrangements considered by the regulators to be CAPs and thus subject to the CAP Guideline to include: voluntary retirement savings plans (VRSPs), life income funds (LIFs), registered retirement income funds (RRIFs), and tax-free savings accounts (TFSAs), to name a few. CAPSA acknowledges that the application of the CAP Guidelines is flexible and will vary depending on the nature of the CAP, with consideration given to the size, complexity and other characteristics of the CAP.

The CAP sponsor is the entity that establishes the CAP and is responsible for the choice of investment options offered to CAP members (typically employers, but also potentially including trade unions, financial institutions, and boards of trustees/pension committees, depending on the type of CAP). Service providers include any provider of services or advice with whom the CAP sponsor has an agreement for the performance of duties relating to the establishment and/or the ongoing operation of a CAP (i.e., record keepers, custodians, and investment managers/advisors). CAP members are individuals who have an individual account under a CAP and can include employees or former employees, as well as their surviving spouses or common law partners.

Generally, the CAP sponsor is responsible for maintaining a CAP, including functions such as setting up the CAP, determining key features of the CAP (including automatic features, if any), selecting investment options, maintaining records, providing education, decision-making tools, and communications to CAP members, maintaining oversight of the CAP, including reviewing fees and expenses, and ultimately terminating the CAP. While it is quite common for CAP sponsors to engage third party service providers to perform some of these functions, the CAP Guidelines stipulate that the CAP sponsor retains ultimate responsibility for overseeing the CAP. Nonetheless, to the extent that a service provider agrees to perform certain tasks or functions, the service provider should follow the CAP Guidelines.

Revised (2024) CAP Guidelines — significant changes

The revised CAP Guidelines adopt changes in five areas that have significant implications for CAP sponsors: governance of the CAP; oversight of service providers; fees and expenses; member communications; investment advice and decision-making tools.

Governance framework

The revised CAP Guidelines provide that CAP sponsors should establish and document a governance framework for the plan, a new obligation that was never contemplated in the original CAP Guidelines. While governance frameworks are common for registered pension

plans (and in some jurisdictions, are legislatively required), this new requirement would extend such practices to sponsors of other types of CAPs, such as group RRSPs or VRSPs.

The revised CAP Guidelines indicate that this governance framework should include the following:

- a description of the roles, responsibilities and accountabilities of any stakeholders or parties involved in the governance of the plan, notably employers/sponsors and service providers
- a communication process, including a process for addressing member complaints
- a code of conduct (including a policy to manage conflicts of interest)
- a risk management framework
- a framework for regular review of service provider performance
- a process for the regular review of the governance process itself

While the revised CAP Guidelines acknowledge that the framework should be proportional to the size and complexity of the CAP, CAPSA has expressed the view that all CAPs should establish a written governance framework, taking into account the items set out above.

Certain CAP sponsors may already have processes in place that satisfy these requirements, but have not yet documented these processes in written governance policies for the CAP. For some other CAP sponsors, incorporating these recommendations from the revised CAP Guidelines may require more extensive changes to current governance processes. Either way, putting in place a governance framework which takes into account the items set out in the revised CAP Guidelines is something all CAP sponsors should now be contemplating.

Third-party service providers

The CAP Guidelines specify obligations of CAP sponsors in relation to the selection and monitoring of service providers. For example, sponsors are urged to establish criteria for selecting service providers. While the recommended criteria that a CAP sponsor should consider when selecting service providers are largely consistent with the original CAP Guidelines, it is noteworthy that the revised CAP Guidelines advise sponsors to also consider the following new factors in their selection criteria: conflicts of interest, reputation, and whether controls are in place to secure members' data.

The revised CAP Guidelines appear to adopt a “pension model” of responsibility^[3] for CAPs, with the CAP sponsor being ultimately responsible for prudently selecting and monitoring service providers. However, this is not without controversy as the legislative underpinning for this model in pension legislation does not exist in relation to many CAPs. Nevertheless, CAP sponsors would be well served to assess their current processes to ensure alignment with the revised CAP Guidelines in light of these heightened regulatory expectations.

Fees and expenses

The concept of transparency and oversight of fees and expenses borne by CAP members is a common theme in the revised CAP Guidelines, infiltrating its way into almost every aspect of the guidelines. This is especially true with respect to new rules applicable to maintaining oversight of a CAP.

The revised CAP Guidelines provide an entirely new subsection devoted to the CAP sponsor's responsibility for reviewing fees and expenses borne by members. While the 2004 version of

the CAP Guidelines provides recommendations of a general nature regarding fees and expenses, the revised CAP Guidelines now contain a stand-alone section with specific requirements for sponsors in relation to fees and expenses. Specifically, the CAP Guidelines recommend that the CAP sponsor periodically review all member-borne fees and expenses for reasonability and competitiveness. In doing so, the CAP Guidelines state that the sponsor should consider the following:

- requesting a description and breakdown of different fee categories
- comparing fees and expenses across service providers
- looking for opportunities to leverage possible economies of scale
- assessing the impact fees and expenses have over the long-term on CAP members' savings and retirement income
- assessing whether fees and expenses provide value for plan members

The revised CAP Guidelines also note that, while low costs are important, so too are the services, member education tools, and investment strategies that accompany higher cost options. In other words, the low-cost option may not necessarily be the most prudent course of action, which is precisely why the CAP Guidelines encourage the review of fees and expenses for *reasonability*, having regard to various factors as outlined above.

Ongoing communications to CAP members

The revised CAP Guidelines stipulate that the sponsor should provide members with a statement of their CAP account at least annually or as prescribed in legislation. The CAP Guidelines also identify various items that should be included in a member statement, including a summary of investments and investment activity, the allocation of contributions, the member's personal rate of return and, most notably, information regarding the total level of fees and expenses payable by the member in respect of each investment option elected by the member.

For CAPs that are registered pension plans, these recommended disclosures may, in certain cases, be more extensive than what is required to be included in annual or other periodic member statements under applicable pension standards legislation (e.g., fee-related disclosures). The revised CAP Guidelines also recommend that, for a CAP with a retirement focus, member statements should help members understand their level of savings and projected income in retirement.

Investment advice and CAP decision-making tools

The revised CAP Guidelines place greater emphasis on the importance of providing CAP members with investment information and decision-making tools. This is largely in response to changed practices over the last 20 years, whereby making investment advice available to CAP members and/or the use of technology to provide projection tools, is now much more prevalent.

The revised CAP Guidelines place obligations on CAP sponsors by setting out examples of the types of investment information and decision-making tools that CAP sponsors should provide to assist CAP members in making investment decisions. Notably, CAP sponsors should provide a description of the default investment option, as well as the fees and expenses associated with each investment option. CAP sponsors should also consider providing access to calculator and projection tools to help members assess the impact of investment returns and the level of fees and expenses (among other things) on their potential account balances.

The revised CAP Guidelines recommend that CAP sponsors (or their service providers) ensure the process for setting the assumptions used in such tools is prudent and periodically reviewed for reasonability. In practice, this has the potential to pose challenges where tools maintained by third-party providers are leveraged if there is an inability to customize assumptions (or, if doing so, would have significant cost implications). The CAP Guidelines also recommend that CAP sponsors (or their service providers) disclose assumptions to CAP members. This reflects the increased adoption of such tools by the industry and is an attempt to ensure members are not misled by the information produced in such modelling tools.

In addition, the revised CAP Guidelines note that CAP sponsors may partner with qualified service providers who can offer investment or financial planning advice to CAP members. If the CAP sponsor enters into an agreement with a service provider, the CAP sponsor should clearly communicate to CAP members the nature of the advice from the service provider, how the advisor is compensated and who is paying for their services. When selecting service providers to provide investment or financial planning advice, the revised CAP Guidelines highlight various factors that CAP sponsors should consider, including the level and competitiveness of fees charged for services provided (and which fees are paid by the member), the requirement to protect the security of CAP members' data, and the availability of an asset allocation or financial planning model. The process for ensuring the ongoing reasonableness of the model's underlying assumptions also should be considered.

What should plan sponsors do?

Given that the CAP sponsor retains ultimate responsibility for governance and oversight of the CAP, the robust and detailed requirements contained in the revised CAP Guidelines are an indication that CAP sponsors should be planning to review and assess the effectiveness of their CAP policies, oversight practices, and governance structure more generally. Given the significant and extensive changes in the revised CAP Guidelines, CAP sponsors should consider an independent review of the CAP for compliance with the revised CAP Guidelines as a tool both to mitigate any associated legal/regulatory risks, and to maximize the effectiveness of the CAP for its members.

[1] To obtain beneficial tax treatment, many of these types of plans must be registered under the *Income Tax Act* (Canada) (the ITA), but the ITA rules applicable to such plans (e.g., RRSPs) are focused on matters such as the tax treatment of these plans. Pension plans, on the other hand, are subject to a more comprehensive set of regulations that govern funding, investments, benefit standards, administration and governance to protect the collective interests of plan members.

[2] 29 U.S.C. §§1001 et seq.

[3] For example, the *Pension Benefits Act* (Ontario) provides that the administrator of a pension plan who employs an agent must select (and be satisfied with the agent's suitability), as well as supervise the agent as is prudent and reasonable.