

RDSP & HOMEOWNERSHIP SOLUTIONS LAB MARKET & TECHNICAL ANALYSIS

OCTOBER 2019



myHome
myCommunity

This report was produced as part of My Home My Community, a national initiative of the Canadian Association of Community Living and People First of Canada.

The Canadian Association for Community Living is a national federation of 13 provincial-territorial associations and over 300 local associations working to advance the full inclusion and human rights of people with an intellectual disability and their families. CACL is dedicated to attaining full participation in community life, ending exclusion and discrimination on the basis of intellectual disability, promoting respect for diversity, and advancing human rights to ensure equality for all Canadians. CACL leads the way in building a more inclusive Canada for people with an intellectual disability by strengthening families, defending rights, and transforming communities into places where everyone belongs.

www.cacl.ca

People First of Canada is the national voice for people who have been labeled with an intellectual disability. We believe in the right to freedom, choice, and equality for all. We support each other to reclaim our right to be recognized as full citizens through peer support, sharing our stories, developing leadership skills, advocating for our right to choose where and with whom we live, and by ensuring that our voices are heard and respected. We work together to educate and influence communities and government to ensure that all persons with intellectual disabilities are fully included and supported to live as equal citizens in Canada.

www.peoplefirstofcanada.ca

My Home My Community is a national partnership initiative that is opening doors to inclusive affordable housing for people with developmental disabilities. My Home My Community is driving innovation in housing development and community supports to ensure all persons with developmental disabilities have a home that offers choice and affordability, recognizes rights, addresses support needs, and fosters social inclusion in the community.

www.myhomemycommunity.ca

How to reference this report:

Canadian Association for Community Living (2019). *My Home My Community: RDSP & Homeownership Solutions Lab Market and Technical Analysis*.

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My Home My Community Registered Disability Savings Plans & Homeownership Solutions Lab received funding from the National Housing Strategy under the NHS Solutions Lab to produce this work. The views expressed within are solely of the Canadian Association for Community Living, together with project partners where expressly stated. Canada Mortgage and Housing Corporation (CMHC) accepts no responsibility for the views expressed within.

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ACRONYMS AND ABBREVIATIONS

AHA	Assistance Holdback Amount
BPD	Benefit Programs Directorate, Canada Revenue Agency
CDSA	Canada Disability Savings Act
CDSB	Canada Disability Savings Bonds
CDSG	Canada Disability Savings Grants
CDSP	Canada Disability Savings Program
CESP	Canada Education Savings Program
CMHC	Canada Mortgage and Housing Corporation
CPP	Canada Pension Plan
CRA	Canada Revenue Agency
DAP	Disability Assistance Payment
DTC	Disability Tax Credit
ESDC	Employment and Social Development Canada
FMV	Fair Market Value
Holder	Related qualifying person to a beneficiary who holds the RDSP on one's behalf
HOS	Homeownership Strategy
Issuer	Licensed trust company that issues the RDSP (i.e. chartered bank, credit union)
ITA	Income Tax Act
LDAP	Lifetime Disability Assistance Payment
OAS	Old Age Security
ODI	Office of Disability Issues, Employment and Social Development Canada
ODSP	Ontario Disability Support Program
PGAP	Primarily Government Assisted Plan
Plan	Registered Disability Savings Plan

QFM Qualified Family Member

RDSP Registered Disability Savings Plan

Regulations Canada Disability Savings Regulations, under the Canada Disability Savings Act

RESP Registered Education Savings Plan

RPD Registered Plans Directorate, Canada Revenue Agency

RRIF Registered Retirement Income Fund

RRSP Registered Retirement Savings Plan

Trustee Licensed trust company that issues the RDSP (i.e. chartered bank, credit union)

I. Introduction

i. Purpose of the Report

The purpose of this report is to provide a detailed overview of the Registered Disability Savings Plan (the “**RDSP**” or the “**Plan**”). The overview will include both a market and technical analysis within the framework of current government policy and legislation in respect of the RDSP.

ii. MHMC/Solutions Lab

The RDSP & Homeownership Solutions Lab is a Canada Mortgage and Housing Corporation (“**CMHC**”) funded project that explores options for individuals with a developmental disability to utilize their RDSPs in order to access homeownership.

iii. RDSP Overview

The RDSP is a long-term savings plan designed to benefit people who have a disability. It was introduced by the Federal Government of Canada (the “**Federal Government**”) in 2008 and is a unique savings vehicle that is meant to promote future financial security, especially for those who may not have access to income from retirement savings plans, private pension plans, or the Canada Pension Plan as they grow older.

In order to benefit from an RDSP, the beneficiary of the Plan must qualify for the Disability Tax Credit Certificate. RDSPs can then be opened as a registered account at a financial institution. Both government and personal contributions can be made to the RDSP, and those monies can be invested with any income from the investment being earned on a tax-deferred basis.

Government contributions are in the form of both matching grants (depending on the amount of private contributions) and disability bonds (depending on the income of the adult beneficiary or family income of a minor beneficiary). There are rules that govern the timing and quantum of withdrawals which promote long-term savings; however, these rules may result in funds being tied for up to thirty (30) years for some beneficiaries.

To date, approximately 168,000 RDSPs have been opened which have attracted \$2.6 Billion in government contributions and \$1.25 Billion in private contributions.

iv. Scope of the Analysis

The goal of the Solutions Lab is to improve housing options for people with developmental disabilities by exploring and developing mechanisms that would allow people with a developmental disability to access capital through RDSPs to make homeownership an attainable option.

This report will include the following:

- A. A Policy Review that includes an overview of the role of the federal government and its departments and agencies in administering the RDSP.
- B. A Statistical Review that includes current market data with respect to the RDSP and demographics data of beneficiaries.
- C. A Legislative Review that includes an analysis in respect of the RDSP and its limitations, and current barriers to accessing funds for homeownership.

v. Methodology

To establish the legislative framework of the RDSP, reference is made to the *Income Tax Act* ("ITA"), particularly paragraph 146.4, which outlines specific provisions related to the RDSP, as well as to the *Canada Disability Savings Act* ("CDSA"), which governs federal contributions.

The overall policy framework and technical analysis were derived using information from the departments and agencies involved in the administration of the RDSP, namely the Department of Finance, Canada Revenue Agency ("CRA") and Employment and Social Development Canada ("ESDC"). Of particular use was the ESDC's "RDSP Provider User Guide"¹ which contains technical information intended for RDSP issuers. In addition, a practical perspective was applied to this report as both the authors, Brendon Pooran of PooranLaw Professional Corporation and Tom O'Dwyer of Ability Tax & Trust, have extensive experience in the administration of the RDSP from the user's standpoint.

Unless otherwise stated, data for the statistical tables used in the market analysis was derived from Statistics Canada, Canadian Survey on Disability, 2017²; the ESDC, Canada Disability Savings Program – Annual Statistical Review 2017³; and the Senate of Canada, Breaking Down Barriers: A critical analysis of the Disability Tax Credit and the Registered Disability Savings Plan report (2018).⁴

¹ <https://www.canada.ca/en/employment-social-development/programs/disability/savings/issuers/user-guide.html>

² <https://www150.statcan.gc.ca/n1/daily-quotidien/181128/dq181128a-eng.htm>

³ <https://www.canada.ca/en/employment-social-development/programs/disability-savings/reports/statistical-review-2017.html>

⁴ <https://sencanada.ca/en/info-page/parl-42-1/soci-breaking-down-barriers/>

II. Executive Summary

There are more than 1.6 million people in Canada who identify as having a severe disability. In reality, since the RDSP program was started in 2008, there have been just over 168,000 plans opened in Canada⁵, with an average value of a little less than \$25,000. The numbers demonstrate that there is more room for the RDSP program to grow across Canada, given the large number of RDSP eligible individuals who have yet to open a Plan. There also exists significant scope for access to current and potential capital through RDSPs as a vehicle for homeownership for people with disabilities.

What is the RDSP?

The RDSP was developed by the Federal Government in 2008 in order to provide an instrument for long-term savings for people with disabilities. It is administered through three governing bodies – the Department of Finance, the CRA and ESDC.

The Department of Finance is responsible for the ITA which provides the legislative framework for the RDSP. Second, as the CRA leads all programs and activities related to the ITA, it is involved in the registration and monitoring of RDSPs. The CRA provides support to financial institutions and the public in respect of the RDSP. ESDC oversees and administers the CDSA which governs government grants and bonds that provide complementary funding to the RDSP, in addition to personal contributions made by individuals or family members.

How does the RDSP work?

Eligibility for the RDSP is determined through the Disability Tax Credit ("**DTC**"), which certifies that the individual has a disability in the eyes of the CRA. Plans are opened by the individual, or if the individual is 'incapable', a related qualifying person to the beneficiary (a Plan "**Holder**"), with an RDSP Issuer, usually a chartered bank or credit union. The RDSP is ultimately a trust arrangement between the Issuer and the beneficiary or the Plan Holder.

RDSP Issuers must be approved by the CRA and enter into contracts with ESDC in order to administer federal grants and bonds. Issuers are required to limit RDSP investments to "qualified investments" as outlined in the ITA.

Personal contributions to the RDSP can be made by the Holder, or other entity with written permission. Personal contributions may be made into the RDSP up to the end

⁵ 168,567 RDSPs have been opened in Canada from 2008 to 2017.

of the calendar year in which the beneficiary turns 59. The total lifetime of all personal contributions made into an RDSP must not exceed \$200,000.

Matching grants or bonds are paid into the RDSP by the Federal Government through the Canada Disability Savings Program, depending on the beneficiary's income. The maximum grant amount is \$3,500 per year, with a limit of \$70,000 over a lifetime. The maximum bond amount is \$1,000 per year, with a lifetime limit of \$20,000. Carry-forward provisions allow individuals to access unused grant or bond entitlements from the preceding ten years.

Payments to the beneficiary from the RDSP typically begin when the beneficiary turn 60 (known as "Lifetime Disability Assistance Payments" or "**LDAP**"). Withdrawals (known as "Disability Assistance Payments" or "**DAP**"), however, may be made at any time, subject to specific penalties which are intended to discourage the early withdrawal of funds from the RDSP. There is a designated "holdback" period in which the beneficiary must wait ten years from the date of the government's last contribution to make a withdrawal, without experiencing a penalty. If the withdrawal is made before then ten-year period is over, the beneficiary must repay the Federal Government for any grants or bonds that they have received within that period.

An RDSP may be closed in the event a beneficiary becomes ineligible for the DTC, the beneficiary passes away or the beneficiary becomes bankrupt.

Analysis/Takeaways

i. Impact on Provincial Law

Although the RDSP is administered by the Federal Government, there are aspects of the Plan that create implications for provincial/territorial jurisdictions. If a beneficiary is deemed 'incapable' of opening an RDSP, they may be required to appoint a legal authority to act as Plan Holder on their behalf, resulting in the stripping away of decision-making rights. This is inconsistent with current developments in law and policy in Canada, particularly Canada's ratification of the United Nations Convention on the Rights of Persons with Disabilities, which supports empowering people with disabilities in employing any capabilities in the decision-making process, rather than relying on substitute decision-makers to make decisions on their behalf.

In addition, eligibility requirements for social assistance that impose limitations on income and assets may differ according to provincial/territorial jurisdiction. Most provincial/territorial jurisdictions have provided for a full exemption of RDSP income, but there are limits on these exemptions in certain provinces in eastern Canada. All provincial/territorial jurisdictions allow the RDSP to be treated as an exempt asset for the purpose of qualifying for social assistance benefits.

ii. RDSP and Homeownership – Barriers and Limitations to Consider

The RDSP presents certain challenges when accessing funds for the purpose of homeownership. First, the rules governing the types of qualified investments allowed to be held into an RDSP are specific and may not allow for investments related to housing. If an investment is not listed as a qualified investment, a legislative amendment to the ITA may be required. Furthermore, it is at the discretion of Issuers whether certain investments will be allowed to be held in the RDSP.

Second, access to the considerable funds in RDSPs may be limited in accordance with the holdback rules and LDAP calculation. This is problematic given that disability-related factors, such as life expectancy, are not taken into account and there is a significant portion of people with intellectual disabilities who are living in poverty and of homeless people with a disability.

Third, individuals who are deemed to be incapable of opening an RDSP may lose out on any potential access to homeownership or may be prevented from signing contracts associated with homeownership. Finally, given that the current average value of an RDSP is less than \$25,000, people with disabilities will require significant contributions from other sources in order to own a home.

III. RDSP Program Analysis

A. POLICY OVERVIEW

i. Introduction

The RDSP was established by the Federal Government with the policy objective of providing long-term financial security to persons with disabilities, as well as encouraging self-sufficiency through a contributory benefit structure.⁶ Under the RDSP, a beneficiary of the Plan may be eligible for the Canada Disability Savings Grant (the “**CDSG**” or “**grants**”) and/or the Canada Disability Savings Bond (the “**CDSB**” or “**bonds**”), paid for by the Federal Government. The combination of the RDSP, CDSG and CDSB is referred to as the Canada Disability Savings Program (the “**CDSP**”).

ii. Administration

Roles and Responsibilities of Governing Bodies

The key partners in the Federal Government that are responsible for administering the CDSP are the Department of Finance, the CRA and ESDC, in partnership with financial institutions (issuers of the RDSP). The roles of these partners are described as follows.

Department of Finance

The Department of Finance is a department of the Federal Government that implements economic, fiscal, tax, and social policies and programs. It reports to the Minister of Finance. The department is responsible for the ITA, which provides the legislative framework for the RDSP. It oversees the policy and fiscal impact of the CDSP and is responsible for setting the overall income policy parameters through the ITA.

Canada Revenue Agency (CRA)

The CRA is an agency of the Federal Government that administers tax, benefits, and related programs and ensures compliance on behalf of governments across Canada. The CRA reports to the Minister of National Revenue. It is responsible for the administration of the ITA.

The CRA's Registered Plans Directorate (“**RPD**”) is responsible for all program activities related to the provisions in the ITA, including the registration and monitoring of RDSPs. The RPD creates policies, ensures compliance and provides support to financial institutions and the public, specifically with respect to paragraph 146.4 of the ITA⁷. The CRA's Benefit

⁶ LCO report <https://www.lco-cdo.org/en/our-current-projects/capacity-and-legal-representation-for-the-federal-rdsp/capacity-of-adults-with-mental-disabilities-and-the-federal-rdsp-discussion-paper/executive-summary-18/>

⁷ This section of the ITA contains provisions specifically related to RDSP.

Programs Directorate (“**BPD**”) provides support to financial institutions and the public with respect to eligibility for the DTC, an eligibility requirement of the RDSP.

Employment and Social Development Canada (ESDC)

ESDC is an agency of the Government of Canada which is responsible for developing, managing and delivering social programs and services. It falls under the purview of four Ministries: (1) Families, Children and Social Development; (2) Employment, Workforce Development and Labour; (3) Public Services Procurement and Accessibility; and (4) Seniors. The mission of the ESDC is to build a stronger and more inclusive Canada, to support Canadians in helping them live productive and rewarding lives, and to improve Canadians' quality of life. ESDC delivers a range of programs and services, including well-known federal programs such as the Canada Pension Plan (“**CPP**”), Old Age Security (“**OAS**”), Canada Education Savings Program (the “**CESP**”) and the CDSP.

ESDC is responsible for administering the CDSG and CDSB⁸ under the CDSA and *Canada Disability Savings Regulations* (the “**Regulations**”). The policy and program authority for the CDSP is ESDC's Office for Disability Issues (the “**ODI**”). The ODI provides policy and oversight of the CDSP through the interpretation of the CDSA and its Regulations. It also develops and updates the content of Issuer Agreements⁹, as well as the forms used to administer the grant and bond in compliance with legislative requirements.

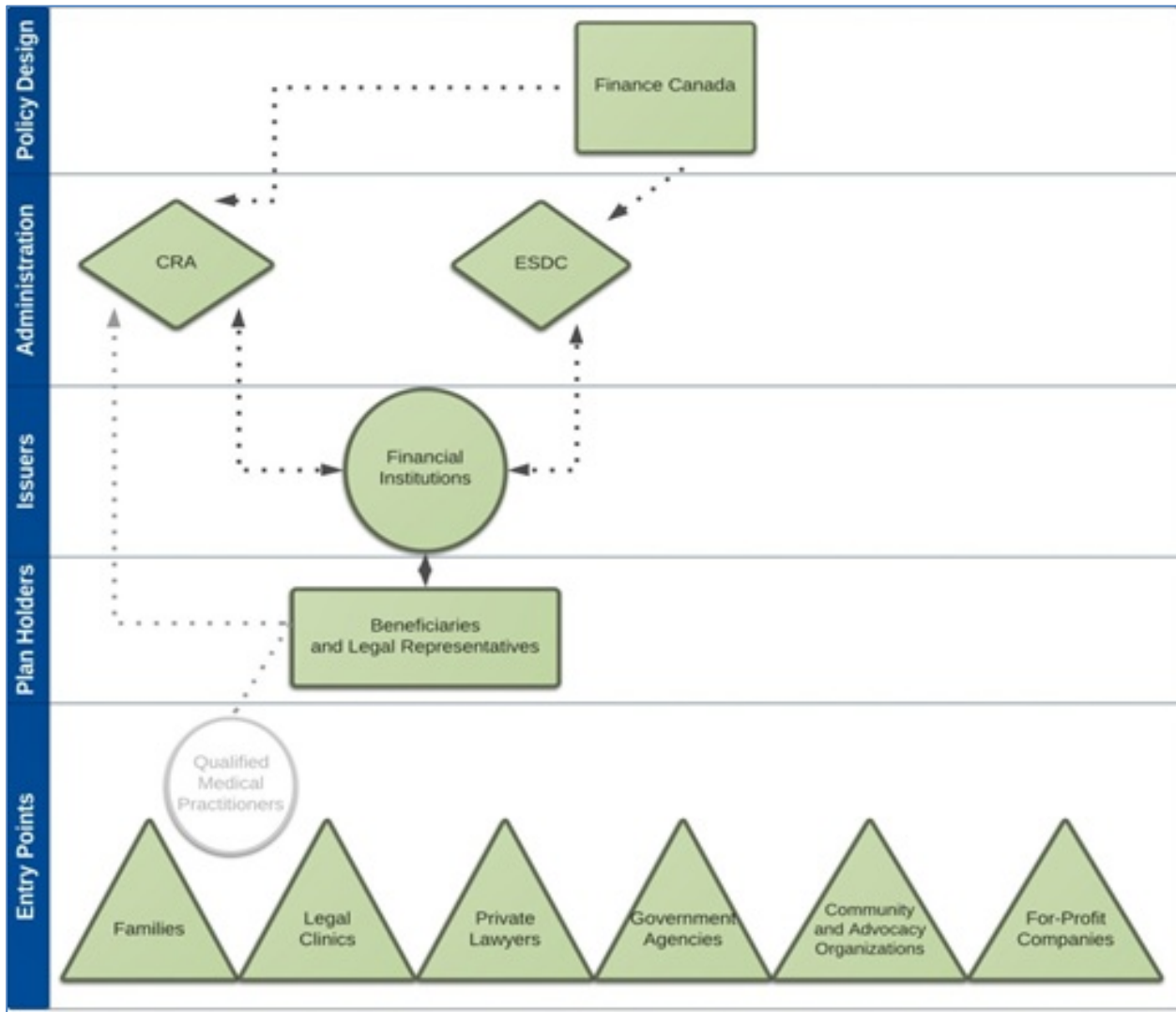
For 2019-20, ESDC has gross planned expenditures on programs and services of \$138.3 billion. Of that amount, \$131.0 billion will directly benefit Canadians through statutory transfer payment programs such as Employment Insurance, CPP, OAS, the Canada Student Loans Program and Canada Apprentice Loans, the CESP and the CDSP. The CDSP will receive \$767.3 million in statutory transfer payments in 2019-20.¹⁰

⁸ For more on the CDSG and CDSB, see (3) *RDSP Legislative Overview – (c) Contributions – (ii) Government*.

⁹ Financial institutions sign an Issuer Agreement with ESDC in order to offer the RDSP to the public and administer the grant and the bond.

¹⁰ Employment and Social Development Canada 2019-20 Departmental Plan, p. 61-62.

The following diagram demonstrates the interplay between the federal departments, financial institutions, the public and other entities:



Source: Law Commission of Ontario¹¹

Evaluation of the CDSP

In April 2019, the Federal Government released a summative evaluation of the CDSP to address the effectiveness of the program and its results for an 8-year period (2009 to 2017). The evaluation found that the CDSP is making progress towards its long-term goal of improving the financial security of people with disabilities. More Canadians are aware of and are accessing the RDSP, CDSP and CDSB, and the value of RDSPs has increased every year, totalling over \$4 billion as of December 2017.

¹¹ <https://www.lco-cdo.org/en/our-current-projects/capacity-and-legal-representation-for-the-federal-rdsp/capacity-of-adults-with-mental-disabilities-and-the-federal-rdsp-discussion-paper/ii-accessing-the-rdsp-and-issues-of-capacity-for-ontarians-with-mental-disabilities/>

There are, however, challenges that are still being faced by the program, such as raising awareness among lower-income Canadians, addressing knowledge gaps among financial institutions/issuer partners and the public, barriers faced by beneficiaries considered to lack contractual capacity, and enhancing the service experience of people with disabilities who attempt to open, maintain, invest or withdraw funds from an RDSP.¹²¹³

B. STATISTICAL OVERVIEW

i. Disability in Canada

As demonstrated in the table below, the 2017 Canadian Survey on Disability estimates that 22% of Canadians had at least one disability that limits them in basic daily activities. Of that group, 4 in 10 individuals classified their disability as either 'severe' or 'very severe'. As one of the eligibility criteria for the RDSP is that an individual has a 'severe restriction', the pool of potential RDSP beneficiaries is quite large, at more than 1.6 million.

General Disability Statistics (Canada) as of December 31, 2017						
Age Group	0 to 4	5 to 14	15 to 24	25 to 44	45-49	50 to 59
Population	1,944,406	3,968,774	4,155,440	8,940,410	2,417,457	5,359,968
Disability Rate	2%	4.8%	13.10%	15.30%	24.30%	24.30%
People with a Disability	38,888	190,501	544,363	1,367,883	587,442	1,302,472

'Severity' of Disability	
'Severe'	19.5%
'Very Severe'	20.9%
Total Persons with a 'Severe' or 'Very Severe' Disability (age 0 to 59)	1,669,061

¹² Executive Summary, Evaluation of the Canada Disability Savings Program – Phase II, April 2019, ESDC

¹³ See Legal Capacity on p. 41 and 45.

ii. RDSP Summary Statistics

The table that follows provides the cumulative key statistics for the RDSP program from 2008 to 2017. There are a total of 168,567 plans open in Canada, with an average value of just less than \$25,000. Government matching grants and bonds payable to beneficiaries account for approximately 64% of the amount in the RDSPs. Partially due to the restrictive nature of withdrawals, beneficiaries have accessed relatively very low amounts from their RDSPs.

RDSP Program Statistics (Cumulative) 2008-2017	
Total Number of Plan	168,567
Government Matching Grants	\$ 1.8 Billion
Government Disability Bonds	\$ 838 Million
Personal Contributions	\$ 1.24 Billion
Total Assets	\$ 4.1 Billion
Average value of a Plan	\$25,400
RDSP Plan Holders	
Parent(s)	40%
Beneficiary	38%
Legal Guardian	15%
Public Departments	7%
RDSP Account and Beneficiaries	
Disability Grant Amount Only	18.2%
Disability Bond Amount Only	18.2%
Both Bond and Grant Amount	58.4%
No Bond or Grant	7.0%
Payments from the RDSP	
Repayments (AHA)	\$ 76 Million
DAP Payments	\$ 100 Million
LDAP Payments	\$7.6 Million
Average RDSP PLAN Composition	
Government Contributions	\$ 15,650
<i>As a percentage</i>	64%
Personal Contributions	\$ 8,673
<i>As a percentage</i>	36%

iii. Profile of Beneficiaries

The tables below demonstrate the profile of the beneficiaries who have opened the RDSP as a percentage of the number of RDSP eligible beneficiaries, according to province of residence and age. For example, in the province of Ontario, only 29% of RDSP eligible beneficiaries age 35 to 49 have opened an RDSP. The table clearly indicates the ability for the RDSP program to grow quickly across Canada, given the large number of RDSP eligible individuals yet to open an RDSP.

2017 RDSP Beneficiary Profile											
AGE	TERRITORIES	BC	AB	SK	MB	ON	QC	PEI	NB	NS	NL
0-18	21%	25%	27%	24%	20%	26%	23%	22%	24%	22%	22%
19-34	41%	31%	33%	33%	32%	32%	33%	33%	30%	33%	31%
35-49	28%	27%	27%	29%	31%	29%	33%	33%	34%	34%	37%
50-59	10%	14%	12%	13%	16%	13%	12%	12%	12%	12%	10%
60+	4%	6%	6%	2%	2%	8%	2%	2%	1%	1%	0%
TOTAL RDSP BENEFICIARIES	262	29,199	18,807	4,636	7,523	70,375	24,891	901	2,899	4,694	2,327

CANADA, BY AGE	Beneficiaries
0-18	23%
19-34	32%
35-49	30%
50-59	12%
60+	3%

The tables below describe the average RDSP amount per province of residency of the beneficiary, and by the age of the beneficiary. Alberta-based RDSPs hold the highest average provincial amounts in Canada and RDSP beneficiaries age 35-49 hold the highest average RDSP amount in Canada.

2017 RDSP Beneficiary Average Plan Asset Amount By Province											
	TERRITORIES	BC	AB	SK	MB	ON	QC	PEI	NB	NS	NL
\$ AMOUNT	\$ 21,189	\$24,301	\$25,972	\$23,690	\$21,341	\$23,335	\$17,360	\$18,830	\$18,990	\$19,291	\$19,455

2017 Rdsp Beneficiary Average Plan Asset Amount By Age			
AGE	# Beneficiaries	Average RDSP Account	Total RDSP Assets
0-18	34,815	\$ 18,511	\$ 644 Million
19-34	46,504	\$ 30,616	\$ 1.43 Billion
35-49	41,449	\$ 31,687	\$ 1.32 Billion
50+	22,185	\$ 24,105	\$ 535 Million

C. LEGISLATIVE OVERVIEW

i. Eligibility

In order to be eligible as a beneficiary of the RDSP, the person with a disability must meet four criteria. The individual must:

1. Be a resident in Canada when the plan is entered into and when each contribution is made to the plan;
2. Open an RDSP on or before December 31st of the year in which they turn 59¹⁴;
3. Have a valid social insurance number¹⁵; and
4. Must be eligible for the DTC.

The Disability Tax Credit (DTC)

The DTC is a “gatekeeper” certificate for the RDSP. In order to be eligible for the DTC, an individual must fill out Form T2201, the Disability Tax Credit Certificate, which certifies that the individual has a disability and, among other benefits, is eligible to receive a non-refundable tax credit in recognition of that disability.

The primary credit, referred to as the Disability Amount, may be transferred to a spouse or common-law partner. The disability must be confirmed by a medical practitioner¹⁶ as one that is a severe and prolonged impairment in physical or mental functions and/or one that “markedly restricts” the basic activity of daily living. As established in paragraph 118.3 of the ITA, the DTC may be claimed where:

- (i) The individual has one or more severe and prolonged¹⁷ impairments in physical or mental functions;
- (ii) The effects of the impairments must be such that the individual’s ability to perform more than a basic activity of daily living is “markedly restricted”¹⁸; and
- (iii) A medical practitioner must certify, on behalf of the individual, that both of the above conditions exist.

¹⁴ Note that there is no minimum requirement for a person to be an eligible beneficiary of the RDSP.

¹⁵ If the individual is working or receiving any form of government benefits, they will likely already have a social insurance number in place.

¹⁶ Can be a medical doctor, nurse practitioner, optometrist, audiologist, occupational therapist, physiotherapist, psychologist or speech-language pathologist, depending on the circumstances.

¹⁷ Where the individual’s impairment has lasted or can be reasonably expected to last for a continuous period of at least 12 months.

¹⁸ An individual’s ability to perform a basic activity of daily living is considered to be markedly restricted only if the individual is either blind or unable to perform a basic activity of daily living all or substantially all of the time, even with therapy, the use of appropriate medical devices, and medication.

Eligibility for the DTC is determined by CRA, which recognizes that certain people with disabilities may not fit into the above-stated categories. As a result, CRA has established a number of additional tests to determine whether these individuals may gain access to the DTC, such as:

- **The “Cumulative Effects” Test:** The cumulative effect of significant restrictions by individuals suffering from impairments in more than one activity of daily living is considered equivalent to a single marked restriction of an activity of daily living.
- **The “Life-Sustaining Therapy” Test:** The individual will be eligible to claim the DTC if they need therapy to support a vital function at least three times per week for an average of 14 hours per week.

What does this mean? In simple terms, an individual with a disability that requires longer to perform an activity of daily living (i.e. walking, dressing, mental functions necessary for everyday life) than an individual without a disability would qualify for the DTC if their disability has lasted for longer than twelve (12) months and a medical practitioner provides certification.

In addition to the RDSP, eligibility for the DTC allows for access to other tax credits and benefits, such as a home accessibility credit and child disability benefits. The T2201 form must be approved by the CRA before claiming the DTC on an income tax return, which may take a few months' time. In 2019, the combined federal and provincial DTC amount in Ontario will result in tax savings of \$1,694.

RDSP Eligible Beneficiaries with the DTC

In the table below, for individuals age-eligible for government disability grants and bonds (i.e. individuals 49 years of age or less), a total of 466,060 individuals are qualified for the disability tax credit and eligible to open an RDSP. As of December 31, 2017, only 145,250 of these individuals have opened an RDSP. This means that there are approximately 321,000 individuals that are eligible to open an RDSP and receive government matching grants and disability bonds but have not opened an account.

Qualified RDSP Eligible Beneficiaries With Disability Tax Credit (Dtc) As Of December 31, 2017			
AGE	TOTAL DTC-RDSP eligible individuals	# DTC-RDSP eligible individuals who opened an RDSP	% of DTC-RDSP eligible individuals that have an RDSP
0 to 18	211,626	41,987	19.84%
19 to 34	134,283	54,073	40.27%
35 to 49	120,151	49,190	40.94%
TOTAL	466,060	145,250	

ii. Plan Opening

1. Trustees of the Plan

The RDSP is a disability savings plan that meets the conditions in paragraph 146.4(4) of the ITA. It is a trust arrangement between a licensed trust company (the “**Issuer**” or “**Trustee**”) and the beneficiary of the RDSP or a related qualifying person to the beneficiary (the “**Holder(s)**”).

In general, the RDSP Issuers are owned by a chartered bank or a credit union that typically contract with the bank to provide RDSP administrative services. These services include (i) the administration of contributions, rollovers, and transfers, (ii) the completion of application forms for disability grants and bonds, (iii) the processing and depositing of grants and bonds to the RDSP, and (iv) the distributions to eligible beneficiaries.

In order to be an Issuer, the Issuer must first submit a RDSP specimen plan¹⁹ to the RPD of the CRA. The RPD will review the submission and if it meets the requirements under the conditions in paragraph 146.4(4), the RPD will provide its written approval to the Issuer. In addition to its submission to the RPD, the Issuer must enter into a contract with ESDC to administer disability grants and bonds.

Conditions required of an RDSP include that the plan (i) is operated exclusively for the benefit of the beneficiary, (ii) must have at least one plan holder, (iii) prohibits contributions in respect of non-DTC eligible individuals or if the beneficiary is over the age of 59 years old, (iv) provides payments only for disability assistance payments, transfers to another RDSP, or the repayment of disability grants and bonds, and (v) on the passing of a beneficiary, amounts remaining in the plan are to be paid to the beneficiary's estate.

Keep in mind that the RDSP specimen plan of an Issuer must include the minimum requirements under paragraph 146.4(4). However, an Issuer may have additional conditions in their specimen plans. For example, an Issuer may require the plan must have at least two plan holders. As well, the types of qualified investments held in the RDSP are regulated under the ITA, but the Issuer has discretion as to the type of investments it will allow to hold in the RDSP as the Issuer is ultimately responsible for the administration of the RDSP.

2. Holders of the Plan

A holder may be a person or organization that opens and manages the RDSP, and makes decisions about contributions, investments, and payments to and from the RDSP. In order to open an RDSP, the holder must provide the Issuer with their:

- Social Insurance Number;
- full name, date of birth and gender;
- the beneficiary's full name, address, date of birth, gender and social insurance number; and

¹⁹ A specimen plan is a plan text or funding document which must be pre-approved by the RPD of the CRA.

- if the holder is a public department, agency or institution, it must provide the issuer with its business number.

Note that the holder does not need to be a resident of Canada.

Under paragraph 146.4 (1) of the ITA, the “holder” of an RDSP is described as follows:

holder of a disability savings plan at any time means each of the following:

- (a) an entity that has, at that time, rights as an entity with whom the issuer entered into the plan;
- (b) an entity that has, at that time, rights as a successor or assignee of an entity described in paragraph (a) or in this paragraph; and
- (c) the beneficiary if, at that time, the beneficiary is not an entity described in paragraph (a) or (b) and has rights under the plan to make decisions (either alone or with other holders of the plan) concerning the plan, except where the only such right is a right to direct that disability assistance payments be made as provided for in subparagraph (4) (n) (ii).

Once the holder has named the beneficiary of the RDSP, the beneficiary cannot be changed for the duration of the RDSP. A beneficiary may only have one RDSP at any given time. Issuers, however, have the discretion to allow for multiple plan holders of an RDSP, as long as they meet the minimum requirements under paragraph 146.4(4) of the ITA.

Contractual Competency

For beneficiaries that have not attained the age of majority, a parent or legal guardian may be the holder of the RDSP. Once the beneficiary is an adult, the parent or legal guardian may continue to be a holder of the RDSP, transfer the role to the beneficiary, or become joint holders of the plan with the beneficiary (if the Issuer allows).

Adults with disabilities, however, may be deemed to lack the capacity to establish RDSPs on their own. In that case, the holder may be the beneficiary’s guardian or other legal representative. Appropriate legal representation in these cases is determined by the province or territory in which the beneficiary resides. In Ontario, for example, a beneficiary may be represented by an attorney for property (appointed by way of a Continuing Power of Attorney for Property) or a legal guardian of property.

Given that obtaining legal representation can be costly, time-intensive, and raises potential human rights implications, in 2012, the Federal Government introduced a temporary measure in paragraph 146.4(1) of the ITA that allows Qualifying Family Members (“**QFM**”) to become plan holders of the RDSP for an adult who is deemed to lack the capacity to enter into a contract. QFMs may become plan holders of an RDSP if the issuer determines that the beneficiary’s contractual competence is in doubt. They

may only be legal parents, spouses, or common-law partners of the beneficiary. Paragraph 146.4(1) of the ITA defines qualifying family members and qualifying persons as follows:

qualifying family member, in relation to a beneficiary of a disability savings plan, at any time, means an individual who, at that time, is

- (a) a legal parent of the beneficiary; or
- (b) a spouse or common-law partner of the beneficiary who is not living separate and apart from the beneficiary by reason of a breakdown of their marriage or common-law partnership.

qualifying person, in relation to a beneficiary of a disability savings plan, at any time, means

- (a) if the beneficiary has not, at or before that time, attained the age of majority, an entity that is, at that time,
 - (i) a legal parent of the beneficiary,
 - (ii) a guardian, tutor, curator or other individual who is legally authorized to act on behalf of the beneficiary, or
 - (iii) a public department, agency or institution that is legally authorized to act on behalf of the beneficiary;
- (b) if the beneficiary has, at or before that time, attained the age of majority and is not, at that time, contractually competent to enter into a disability savings plan, an entity that is, at that time, an entity described in subparagraph (a)(ii) or (iii); and
- (c) other than for the purposes of subparagraph (4)(b)(iv), an individual who is a qualifying family member in relation to the beneficiary if
 - (i) at or before that time, the beneficiary has attained the age of majority and is not a beneficiary under a disability savings plan,
 - (ii) at that time, no entity described in subparagraph (a)(ii) or (iii) is legally authorized to act on behalf of the beneficiary, and
 - (iii) in the issuer's opinion after reasonable inquiry, the beneficiary's contractual competence to enter into a disability savings plan at that time is in doubt.

Due to recently passed legislation, QFMs may be permitted to open RDSPs until December 31, 2023, after which a QFM will only be able to open an RDSP because they are transferring an existing plan for which they are the holder. It is hoped that a solution will be reached by the provinces prior to 2023 in respect of eligible individuals who may qualify as a plan holder.

RDSP HOLDER		Beneficiary	Legal Parent	Qualifying Family Member (QFM)	Legal Representative
Beneficiary Under Age 18		No	Yes	No	Yes
Adult Beneficiary	Not 'contractually competent'	No	See QFM	Yes (Parents, spouses and common law partners only)	Yes
	'Contractually competent'	Yes	No (except when transferred)	No	No
	'Contractual competence' in doubt	No	No (Yes as QFM)	Yes	Not applicable

Employment and Social Development Canada²⁰

Changes to Holders

There must be a holder of the RDSP at all times. Over the lifetime of an RDSP, the holder may cease to be eligible, and must be replaced with someone who is eligible to be a holder. The new plan holder may only be a beneficiary, QFM (parent, spouse, common-law partner) or legal authority, as described in paragraph 146.4(4)(b) of the ITA:

- (b) the plan allows an entity to acquire rights as a successor or assignee of a holder of the plan only if the entity is
 - (i) the beneficiary,
 - (ii) the beneficiary's estate,
 - (iii) a holder of the plan at the time the rights are acquired,
 - (iv) a qualifying person in relation to the beneficiary at the time the rights are acquired, or
 - (v) an individual who is a legal parent of the beneficiary and was previously a holder of the plan. Note that qualifying persons does not include siblings.

²⁰ <https://www.canada.ca/en/employment-social-development/programs/disability/savings/issuers/user-guide/section2.html#h2.1-h3.3>

iii. Contributions

1. Personal

Personal contributions ("**Personal Contributions**") to an RDSP can be made by the holder (or any entity with written permission of the holder such as family members, friends or corporations). Paragraph 146.4(4)(g) of the ITA establishes that contributions may not be made in the following circumstances:

(g) the plan prohibits a contribution from being made to the plan at any time if

(i) the beneficiary attained the age of 59 years before the calendar year that includes that time,

(ii) the beneficiary is not resident in Canada at that time, or

(iii) the total of the contribution and all other contributions made at or before that time to the plan or to any other registered disability savings plan of the beneficiary would exceed \$200,000.

Contributions may be made into the RDSP up to the end of the calendar year in which the beneficiary turns 59. There is no annual limit on the amount of contributions, but the total lifetime

amount of all contributions made into an RDSP must not exceed \$200,000. Contributions to an RDSP cannot be deducted from taxable income.

Personal Contributions (by age)
The table below demonstrates the number and average amount of personal contributions by age of the RDSP beneficiaries. The older the beneficiary, the higher the average contribution made to the RDSP. Note that any program designed to utilize the RDSP for homeownership should take into consideration the relatively small amount of personal contributions in the RDSPs, as opposed to the larger share of government contributions in the form of grants or bonds (see section below for more on *Government Contributions*.)

2017 RDSP Personal Contributions By Age			
AGE	# Contributors	Average Contribution	\$ TOTAL CONTRIBUTIONS
0-18	25,930	\$ 1,901	\$ 49,292,930
19-34	32,583	\$ 2,472	\$ 80,545,176
35-49	29,151	\$ 2,739	\$ 79,844,589
50+	2,428	\$ 12,317	\$ 29,905,676

2. Government

CANADA DISABILITY SAVINGS PROGRAM

The CDSP was launched alongside the RDSP to enable people with severe and prolonged disabilities to achieve long-term financial security. Through the CDSP, the Federal Government provides complementary funding to RDSPs (“**Government Contributions**”) using two instruments:

- **Canada Disability Savings Grants (“CDSG”)**: an annual grant paid by the Federal Government into an RDSP, that matches contributions to the RDSP by up to 300%, depending on the beneficiary's family income and contribution
- **Canada Disability Savings Bonds (“CDSB”)**: an annual Federal Government contribution to the RDSPs of low- and modest-income Canadians.

Canada Disability Savings Grants

Under subsection 6(1) of the CDSA, the Minister for ESDC (the “**Minister**”) has been granted the authority to pay a CDSG into an RDSP, based on terms and conditions that have been specified between the Minister and the issuer of the RDSP (i.e. a bank, credit union or trust company), as follows:

6 (1) Subject to this Act and the regulations, on application, the Minister may, in respect of any contribution made to a registered disability savings plan of a beneficiary, pay a Canada Disability Savings Grant into the plan. The grant is to be paid on any terms and conditions that the Minister may specify by agreement between the Minister and the issuer of the plan.

Once an individual has an RDSP, they may qualify for a CDSG if they are (i) 49 years old or under; (ii) a Canadian resident; (iii) has a social insurance number; and (iv) is eligible for the DTC.²¹

The Regulations specify that the Minister may pay a grant into an RDSP, in respect of a contribution made to the RDSP, if (i) the RDSP issuer agrees to the terms and conditions set out in the Regulations; (ii) the RDSP issuer submits an application to the Minister on behalf of the RDSP holder; (iii) the beneficiary is less than 49 years of age; (iv) the total of all contributions to the RDSP does not exceed \$200,000; (v) the beneficiary is DTC-eligible; and (vi) the RDSP issuer is in compliance with the Regulations and issuer agreement that applies to the RDSP.

²¹ <https://www.canada.ca/en/employment-social-development/programs/disability/savings/grants-bonds.html#grants>

The requirements for payment of a grant are outlined as follows:

The Minister may pay a grant into an RDSP in respect of a contribution made to and not withdrawn from the RDSP if

- (a) the issuer enters into an issuer agreement with the Minister that applies to the RDSP and includes the terms and conditions set out in section 4;
- (b) the issuer submits, at the request of the holder of the RDSP, an application for the grant to the Minister;
- (c) the beneficiary is less than 49 years of age at the end of the year preceding the year in which the contribution is made;
- (d) the total of the contribution and all other contributions made to an RDSP of the beneficiary does not exceed \$200,000;
- (e) the beneficiary is a DTC-eligible individual in respect of the year in which the contribution is made, and in respect of the year or years to which the contribution is allocated; and
- (f) the issuer complies with the requirements of these Regulations and the terms and conditions of the issuer agreement that applies to the RDSP.

Grants must be applied for through the financial institution (i.e. bank, credit union or trust company) where the individual holds their RDSP. The RDSP holder must submit a completed application form to the financial institution, which then transmits the request through an automated CDSP system to ESDC.

To acknowledge grant requests, the CDSP system sends a Transaction Processing Report to the financial institution at the end of each processing period. When transaction reports are successfully processed, they will indicate the amount of grant to be received and deposited on behalf of a beneficiary into an RDSP. The financial institution receives and distributes the grant payments to the RDSP and provides statements of the account to the holder.

Amount of the Grant

The amount of the grant paid by the Federal Government depends on the beneficiary's family income and the amount contributed into the RDSP and as defined in the ITA.

The beneficiary's family income is defined in the CDSA under subsection 2(1) as follows:

family income means the income determined by the Minister in accordance with the definition *adjusted income* in paragraph 122.6 of the *Income Tax Act* by using the information provided by the Minister of National Revenue for that purpose.

According to paragraph 122.6 of the ITA, *adjusted income* includes the total net income for the individual and of the individual's spouse or common-law partner (i.e. line 236 on the T1 tax form.). The ITA adjusts family net income so that any Canada Child Benefit ("CCB") and RDSP payments are not included in the calculation of income, as follows:

adjusted income, of an individual for a taxation year, means the total of all amounts each of which would be the income for the year of the individual or of the person who was the individual's cohabiting spouse or common-law partner at the end of the year if in computing that income no amount were

- (a) included
 - (i) under paragraph 56(1)(q.1) or subsection 56(6),
 - (ii) in respect of any gain from a disposition of property to which section 79 applies, or
 - (iii) in respect of a gain described in subsection 40(3.21), or
- (b) deductible under paragraph 20(1)(ww) or 60(y) or (z);

The determination of a beneficiary's family income will also differ depending on their age. From birth to the end of the year in which a beneficiary turns 18, a beneficiary's family income is based on income information from the primary caregiver, which is the same income used to determine the CCB. From the ages of 19 to 49, the beneficiary's family income is based on their income plus their spouse's income. If the beneficiary is over the age of majority, they must have filed personal tax returns for the past two years. (If the RDSP holder is an organization, a beneficiary is eligible for the maximum grant if the organization receives a children's special allowance at least one month in the calendar year).

Qualifying income levels are adjusted for inflation each year by CRA. The month of January is used to set the grant matching rate for all contributions made in a given year. For 2019, the income thresholds are as follows²²:

Beneficiary's Family Income	Matching Grant	Grant Equivalent	Maximum Grant Payable per Year
Less than or equal to \$95,259 ²³	On the first \$500	\$3 for every \$1 contributed (equivalent to 300%)	\$1,500
	On the next \$1,000	\$2 for every \$1 contributed (equivalent to 200%)	\$2,000
Greater than \$95,259 ²⁴	On the first \$1,000	\$1 for every \$1 contributed (equivalent to 100%)	\$1,000

²² <https://www.canada.ca/en/employment-social-development/programs/disability/savings/issuers/user-guide/section3.html#h2.2>

²³ Note that these income thresholds are adjusted for inflation each year by the CRA.

²⁴ Or if no income information is available from CRA.

The income data of the second preceding tax year is used to establish the grant matching rate. For example, tax data used in January 2019 will be from 2017.

Matching grants are paid into the RDSP on contributions until December 31st of the year in which the beneficiary turns 49. The maximum grant amount is \$3,500 per year, with a limit of \$70,000 over a lifetime.

In 2017, an RDSP beneficiary received an average grant of \$4,245 from the Federal Government, which includes the \$3,500 maximum annual grant and carry-forward entitlements (the amount of grants to which the beneficiary would have been entitled had they opened the plan sooner.) Altogether, the Federal Government disbursed \$352.6 million in grants to RDSP beneficiaries in 2017, an increase of 7.5% over 2016.²⁵

Carry-forward Provision

If an RDSP was opened in 2008 or later, and less than the maximum amount was contributed to the RDSP, a carry forward provision allows individuals to access unused grant entitlements from the preceding 10 years (starting from 2008, when the RDSP became available.)

The grant matching rate will be the same as in the year in which the grant entitlement was earned. The amount of the grant will depend on family income in the year in which the grant entitlement was earned and how much was contributed to the RDSP. Grants will be paid on unused entitlements up to an annual maximum of \$10,500. (Note that the maximum amount of a grant paid over a lifetime is \$70,000.) Matching rates on RDSP contributions are paid in descending order, with entitlements awarded to the best matching rate available and oldest entitlement first, followed by grant entitlements at lower rates.

For example, if Derrick becomes RDSP eligible in 2017, he has grant entitlements retroactive to 2008. As a result, Derrick would have the following carry forward grant amounts calculated as follows:

1. Matching grant of \$3 to \$1 contribution: 10 years X \$1,500, or **\$15,000**; and
2. Matching grants of \$2 to \$1 contribution: 10 years X \$2,000, or **\$20,000**.

The carry forward provision applies to all RDSPs regardless of when the plans were initially opened or registered. The entitlements, however, do not qualify for any period in which a beneficiary was not eligible for the DTC or was not a resident of Canada. To receive unused grant entitlements, a beneficiary must have been qualified to receive the grant in the years in

²⁵ <https://www.canada.ca/en/employment-social-development/programs/disability-savings/reports/statistical-review-2017.html#6>

which the grant entitlement is sought. The carry forward provision ends at the end of the calendar year in which the beneficiary turns 49.

Balances of unused grant entitlements are determined and maintained by ESDC. No separate application is required to access an unused grant – the entitlements are calculated automatically. Annual statements of available grant entitlements are sent to RDSP holders to show the amount of unused grant entitlement available.

Canada Disability Savings Bonds

Under subsection 7(1) of the CDSA, the Minister has been granted the authority to pay a CDSB into an RDSP once (i) the plan has been entered into and (ii) retroactively for the preceding 10 years, as follows:

7 (1) Subject to this Act and the regulations, on application, the Minister may pay a Canada Disability Savings Bond into a registered disability savings plan of a beneficiary

- (a)** for each year after the year in which the plan is entered into; and
- (b)** for the year in which the plan is entered into and for each of the previous 10 years
 - (i)** that is after 2007,
 - (ii)** during which the beneficiary was resident in Canada, and
 - (iii)** for which a Canada Disability Savings Bond has not previously been paid.

Once an individual has an RDSP, they may qualify for a bond if they are (i) 49 years old or under; (ii) a Canadian resident; (iii) has a social insurance number; and (iv) is eligible for the DTC.²⁶ The CDSA Regulations specify that the Minister may pay a bond into the RDSP if (i) the RDSP issuer agrees to the terms and conditions set out in the Regulations; (ii) the RDSP holder requests that the issuer submit an application for a bond to the Minister, no later than the year in which the beneficiary turns 49 years of age; (iii) the RDSP issuer submits an application to the Minister on behalf of the RDSP holder; (iv) the beneficiary is less than 49 years of age; (v) the beneficiary is DTC-eligible; and (vi) the RDSP issuer is in compliance with the Regulations and issuer agreement that applies to the RDSP.

The requirements for payment of a bond are outlined as follows:

The Minister may pay a bond into an RDSP if

²⁶ <https://www.canada.ca/en/employment-social-development/programs/disability/savings/grants-bonds.html#grants>

- (a) the issuer enters into an issuer agreement with the Minister that applies to the RDSP and includes the terms and conditions set out in section 4;
- (b) the holder requests, no later than December 31 of the year in which the beneficiary attains 49 years of age, that the issuer submit an application for the bond;
- (c) the issuer submits an application for the bond to the Minister;
- (d) the beneficiary is less than 49 years of age at the end of the year preceding the year for which the bond is payable;
- (e) the beneficiary is a DTC-eligible individual in respect of the year for which the bond is payable; and
- (f) the issuer complies with the requirements of these Regulations and the terms and conditions of the issuer agreement that applies to the RDSP.

Similar to CDSGs, CDSBs must be applied for through the financial institution (i.e. bank, credit union or trust company) where the RDSP is held. The RDSP holder must submit a completed application form to the financial institution, which then transmits the request through an automated CDSP system to ESDC. To acknowledge bond requests, the CDSP system sends a Transaction Processing Report to the financial institution at the end of each processing period. When transaction reports are successfully processed, they will indicate the amount of bond to be received and deposited on behalf of a beneficiary into an RDSP. The financial institution receives and distributes the bond payments to the RDSP and provides a statement of the account to the holder.

Amount of the Bond

The amount of the bond paid by the Federal Government depends on the beneficiary's family income, defined in the CDSA under subsection 2(1)²⁷. The determination of family income will differ depending on the beneficiary's age. From birth to the end of the year in which a beneficiary turns 18, a beneficiary's family income is based on income information from the primary caregiver, which is the same income used to determine the CCB. From the ages of 19 to 49, the beneficiary's family income is based on their income plus their spouse's income. If the beneficiary is over the age of majority, they must have filed personal tax returns for the past two years. If the RDSP holder is an organization, a beneficiary is eligible for the maximum bond if the organization receives a children's special allowance at least one month in the calendar year.

²⁷ See *Amount of Grant* above.

Qualifying income levels are adjusted for inflation each year by the CRA. Generally, the month of January is used to set the bond rate in a given year. For 2019, the income thresholds are as follows²⁸:

Beneficiary's Family Income	Bond Entitlement
Less than or equal to \$31,120 ²⁹	\$1,000
Between \$31,120 and \$47,630	A portion of the \$1,000 is paid, calculated using a formula in the CDSA
Greater than \$47,630 ³⁰	None

The income data of the second preceding tax year is used to establish the bond rate. For example, tax data used in January 2019 will be from 2017.

The Federal Government will pay bonds of up to \$1,000 a year into the beneficiary's RDSP, with a lifetime bond limit of \$20,000. Bonds may be paid into an RDSP until the year in which the beneficiary turns 49. *No RDSP contributions are required to receive the bond.*

In 2017, an RDSP beneficiary received an average bond of \$1,683 from the Federal Government, which includes the \$1,000 maximum annual bond and carry-forward entitlements (the bonds to which the beneficiary would have been entitled had they opened the plan sooner.) This represents a decrease from 2016, where an RDSP beneficiary received an average bond of \$2,212. Overall, in 2017, the Federal Government paid \$155 million in bonds to qualified low-to-modest-income RDSP beneficiaries, down from \$182.8 million in 2016.³¹

Carry-forward Provision

If an RDSP was opened in 2008 or later, and less than the maximum amount was contributed to the RDSP, a carry forward provision allows individuals to access unused bond entitlements from the preceding 10 years (starting from 2008, when the RDSP became available.) The amount of the bond entitlement is based on the beneficiary's family income in the year in which the bond entitlement was earned. Bonds will be paid on unused entitlements up to an annual maximum of \$11,000. (Note that the maximum amount of a bond paid over a lifetime is \$20,000.)

²⁸ <https://www.canada.ca/en/employment-social-development/programs/disability/savings/issuers/user-guide/section3.html#h2.2>

²⁹ Note that these income thresholds are adjusted for inflation each year by the CRA.

³⁰ Or if no income information is available from CRA

³¹ <https://www.canada.ca/en/employment-social-development/programs/disability-savings/reports/statistical-review-2017.html#6>

The carry forward provision applies to all RDSPs regardless of when the plans were initially opened or registered. The entitlements, however, do not qualify for any period in which a beneficiary was not eligible for the DTC or was not a resident of Canada. To receive unused bond entitlements, a beneficiary must have been qualified to receive the bond in the years in which the bond entitlement is sought. The carry forward provision ends at the end of the calendar year in which the beneficiary turns 49.

Consider the example of Derrick above and his eligibility for the RDSP retroactive for the past 10 years. If his income was below \$20,000 in each of the prior 10 years, he would be eligible for a carry forward of the disability bonds in the amount of 10 years X \$1,000, or \$10,000.

Balances of available unused bond entitlements are determined and maintained by ESDC. No separate application is required to access unused bond entitlements – the entitlements are calculated automatically.

Restrictions

In addition to the above rules in respect of personal contributions, the ITA imposes additional restrictions on contributions that are eligible for matching disability savings grants. Contributions paid into an RDSP under a “designated provincial program” or under a program similar to a “designated provincial program” that is funded directly or indirectly by a province are not eligible for the matching disability savings grants.

A designated provincial program is a program that is established under the laws of a province that supports savings in an RDSP. This effectively prohibits provinces to either directly fund contributions to an RDSP or provide funds to any program that contributes to an RDSP in order to attract matching disability savings grants.

Grant and Bond Contributions (by province)

The table below describes the average amount of government grant and bond contributions to the RDSP by the province of residency of the beneficiary. With reference to the tables above, one can see that grant and bond contributions make up a significant portion of the contributions to the RDSP. As such, the current holdback rules will greatly impact any withdrawals for homeownership, absent any legislative change to the rules.

2017 RDSP Average Grant And Bond Payments Per Beneficiary By Province											
	TERRITORIES	BC	AB	SK	MB	ON	QC	PEI	NB	NS	NL
\$ GRANT AMOUNT	\$ 4,483	\$ 4,229	\$ 4,330	\$ 4,112	\$ 3,968	\$ 4,225	\$ 4,526	\$ 4,075	\$ 3,900	\$ 4,087	\$ 3,769
\$ BOND AMOUNT	\$ 1,466	\$ 1,583	\$ 1,684	\$ 1,632	\$ 1,667	\$ 1,728	\$ 1,809	\$ 1,594	\$ 1,866	\$ 1,948	\$ 2,030
TOTAL AVERAGE GRANT & BOND AMOUNT PER BENEFICIARY	\$ 5,949	\$ 5,812	\$ 6,014	\$ 5,744	\$ 5,635	\$ 5,953	\$ 6,335	\$ 5,669	\$ 5,766	\$ 6,035	\$ 5,799

iv. Investments

RDSPs are required to limit their investments to (i) qualified investments described in section 204 of the ITA under the definition of “qualified investments”, (ii) certain contracts for an annuity issued by a licensed provider (including locked-in life annuity contracts), and (iii) prescribed investments under Regulations 4900 to the ITA. There are punitive penalties under the ITA if an RDSP holds non-qualified investments.

The common qualified investments include cash, guaranteed investment certificates, securities (i.e. shares of corporations, warrants and options) listed on a designated stock exchange, mutual and segregated funds, investment grade debt obligations, Canada (and Provincial) Savings Bonds, and insured mortgages.

Qualified investments eligible to be held in an RDSP that are not so common include bonds and shares of credit unions, shares of a mortgage investment corporation, a mortgage certificate, certain small business investments, and shares of small business corporations.

From a practical standpoint, an RDSP Issuer is not required to allow every type of qualified investment to be held in its plans. It is likely that the Issuer will limit the type of investments in its RDSPs to the common qualified investments given its responsibility as the administrator of the RDSP.

Given the above, any type of an alternative investment (i.e. homeownership instrument) will need to be approved not only by the CRA and its RPD but the Issuers as well.

v. Withdrawals

The withdrawal rules specific to the RDSP are structured to promote savings and deter early withdrawals. As such, there are rules in place to discourage a beneficiary from receiving payments from the RDSP too early on, particularly in the years after the government has deposited contributions into the plan. Withdrawals are, however, permitted in certain circumstances and upon the beneficiary reaching a certain age.

1. Holdback

Issuers are responsible for identifying situations that require the repayment of grants and bonds to the Federal Government in light of “triggering” events, which include withdrawals from an RDSP. Under subsection 5.3(1) of the Regulations, a withdrawal requires the RDSP issuer to repay the lower of the withdrawal penalty, fair market value (“**FMV**”) of the property held by the RDSP, or “assistance holdback amount” (“**AHA**”) as follows:

5.3 (1) Subject to section 5.4, if a disability assistance payment is made, the issuer of the RDSP shall repay to the Minister, within the period set out in the issuer agreement, the least of the following amounts:

- (a) \$3 for every \$1 of disability assistance payment made,
- (b) the fair market value, immediately before the making of the disability assistance payment, of the property held by the RDSP, and
- (c) the assistance holdback amount of the RDSP immediately before the making of the disability assistance payment.

Both the withdrawal penalty and AHA are subject to the ten-year rule ("**10-Year Rule**"), where the penalty or the AHA must be paid if a withdrawal is made from the RDSP within a ten-year period following a payment of a grant and/or bond into the RDSP by the Federal Government.

Subject to subsection 5.3(2) of the Regulations, a withdrawal penalty must be repaid when:

5.3 (2) An issuer that repays the amount referred to in paragraph (1)(a) is to do so from the grants and bonds that were paid into the RDSP within the 10-year period preceding the making of the disability assistance payment, in the order in which they were paid into it.

Under section 1 of the Regulations, an AHA is defined as:

assistance holdback amount means, at a particular time,

- (a) in the case of an RDSP that is, at the particular time, a specified disability savings plan, nil; and
- (b) in any other case, the total amount of bonds and grants paid into an RDSP within the 10-year period before the particular time, less any amount of bond or grant paid in that 10-year period that has been repaid to the Minister.

This means that if the Federal Government has paid grants or bonds into an RDSP, there is a "holdback" period in which the beneficiary must wait ten years from the date of the government's last contribution in order to make a withdrawal from the RDSP without a penalty. If a withdrawal is made before the ten-year period is over, the beneficiary must repay the Federal Government for the grants and bonds that they have received within that period.

For example, if the government contributed to John's RDSP until 2025 because it had paid the maximum Grant and Bond amounts of \$70,000 and \$20,000, respectively, John would have to wait until 2035 to make a withdrawal from the RDSP in order to avoid an early withdrawal penalty.

Likewise, if the Government contributed to Jane's RDSP until 2019, at which time she had turned 49 years old, she would be eligible to withdraw funds from the RDSP in 2029.

In most cases, the government makes its last contribution before the beneficiary turns 50. Therefore, in most cases, a beneficiary must wait until they are 60 to withdraw funds from the RDSP without penalty.

2. Types of Withdrawals

RDSP withdrawals may take the form of Disability Assistance Payments ("**DAPs**") or Lifetime Disability Assistance Payments ("**LDAPs**"). DAPs may be paid to the beneficiary at any time and for any purpose. LDAPs are payments that are made to the beneficiary no later than the year in which they turn 60. Once started, LDAPs are payable at least annually over the course of the beneficiary's lifetime.

A holder can request a DAP or LDAP at any time, within the maximum limits. However, in the year where the RDSP is considered to be a primarily government assisted plan ("**PGAP**"), where the total amount of Government Contributions are greater than the total amount of Personal Contributions, a beneficiary³² may request DAPs and LDAPs without the holder's consent, up to the maximum amount.

Lifetime Disability Assistance Payment (LDAP)

Under paragraph 146.4(1) of the ITA, an LDAP is described as follows:

lifetime disability assistance payments under a disability savings plan of a beneficiary means disability assistance payments that are identified under the terms of the plan as lifetime disability assistance payments and that, after they begin to be paid, are payable at least annually until the earlier of the day on which the beneficiary dies and the day on which the plan is terminated.

LDAPs are paid to the beneficiary at least annually until the plan is terminated or the beneficiary passes away. The payments must begin no later than the end of the calendar year in which the beneficiary turns 60, as per paragraph 146.4(4)(k) of the ITA. LDAPs are determined by a formula that takes into account the FMV of the RDSP and the beneficiary's age at the time of withdrawal. The formula (the "**LDAP Formula**"), as described in paragraph 146.4(4)(l) of the ITA, is as follows:

FMV/(80 + 3 – Beneficiary's Age)

For example, if Alysha is 60 years old at the time of the withdrawal and has \$200,000 in her RDSP.

The total amount of her LDAP would be calculated as follows:

$$\$200,000 / (80 + 3 - 60) = \$10,000$$

³² The beneficiary must be between 27 and 58 years of age, inclusive.

Disability Assistance Payment (DAP)

Under paragraph 146.4(1) of the ITA, a DAP is described as follows:

disability assistance payment, in relation to a disability savings plan of a beneficiary, means any payment made from the plan to the beneficiary or to the beneficiary's estate.

DAPs are discretionary payments made from an RDSP to a beneficiary or a beneficiary's estate. They usually occur when the beneficiary would like to make a lump sum withdrawal, for the down payment on a house or a vacation, for example, without triggering the LDAP.

DAPs must be permitted by the Issuer and the maximum amount of the withdrawal is based on the makeup of the plan. As per the definitions under paragraph 146.4(1) of the ITA:

specified maximum amount, for a calendar year in respect of a disability savings plan, means the amount that is the greater of

(a) the amount determined by the formula set out in paragraph (4)(l) in respect of the plan for the calendar year, and

(b) the amount determined by the formula

$$\mathbf{A + B}$$

where

A is 10% of the fair market value of the property held by the plan trust at the beginning of the calendar year (other than annuity contracts held by the plan trust that, at the beginning of the calendar year, are not described in paragraph (b) of the definition **qualified investment**), and

B is the total of all amounts each of which is

(i) a periodic payment under an annuity contract held by the plan trust at the beginning of the calendar year (other than an annuity contract described at the beginning of the calendar year in paragraph (b) of the definition **qualified investment**) that is paid to the plan trust in the calendar year, or

(ii) if the periodic payment under such an annuity contract is not made to the plan trust because the plan trust disposed of the right to that payment in the calendar year, a reasonable estimate of that payment on the assumption that the annuity contract had been held throughout the calendar year and no rights under the contract were disposed of in the calendar year.

Further, under paragraph 146.4(4)(n) of the ITA:

(n) the plan provides that when the total of all amounts paid under the [Canada Disability Savings Act](#) before the beginning of a calendar year to any registered disability savings plan of the beneficiary exceeds the total of all contributions made before the beginning of the calendar year to any registered disability savings plan of the beneficiary,

(i) if the calendar year is not a specified year for the plan, the total amount of disability assistance payments made from the plan to the beneficiary in the calendar year shall not exceed the specified maximum amount for the calendar year, except that, in calculating that total amount, any payment made following a transfer in the calendar year from another plan in accordance with subsection (8) is to be disregarded if it is made

(A) to satisfy an undertaking described in paragraph (8)(d), or

(B) in lieu of a payment that would otherwise have been permitted to be made from the other plan in the calendar year had the transfer not occurred, and

(ii) if the beneficiary attained the age of 27 years, but not the age of 59 years, before the calendar year, the beneficiary has the right to direct that, within the constraints imposed by subparagraph (i) and paragraph (j), one or more disability assistance payments be made from the plan to the beneficiary in the calendar year;

(iii) [Repealed, 2012, c. 31, s. 35]

(n.1) the plan provides that, if the beneficiary attained the age of 59 years before a calendar year, the total amount of disability assistance payments made from the plan to the beneficiary in the calendar year shall not be less than the amount determined by the formula set out in paragraph (l) in respect of the plan for the calendar year (or such lesser amount as is supported by the property of the plan trust);

In summary, as described under paragraphs 146.4(1) and (4)(n) of the ITA:

- If there are more Government Contributions than Personal Contributions in the RDSP (i.e. PGAP), the maximum amount of the withdrawal is the greater of 10% of the FMV or the amount determined by the LDAP Formula.
- If there are more Personal Contributions than Government Contributions in the RDSP (i.e. non-PGAP), there is no maximum limit on the amount of a lump sum withdrawal.

Note that these payments are subject to the 10-year Rule, where the penalty or up to the full amount of the AHA must be paid if a withdrawal is made from the RDSP within a ten-year period following a payment of a grant and/or bond into the RDSP by the Federal Government.

Specified Disability Savings Plan

As per paragraph 146.4 (1.1) of the ITA, beneficiaries with a life expectancy of five years or less will be able to withdraw up to \$10,000 per year in taxable savings from their RDSPs. This amount includes grants, bonds and earnings. The 10-year rule and the LDAP formula do not apply to these withdrawals. In order to qualify, the holder must submit a request to the financial institution, along with a letter from a medical practitioner attesting to the prognosis.

Tax

In paragraph 146.4(6) of the ITA, the taxation of any disability assistance payment is stated as follows:

(6) Where a disability assistance payment is made from a registered disability savings plan of a beneficiary, the amount, if any, by which the amount of the payment exceeds the non-taxable portion of the payment shall be included,

(a) if the beneficiary is alive at the time the payment is made, in computing the beneficiary's income for the beneficiary's taxation year in which the payment is made; and

(b) in any other case, in computing the income of the beneficiary's estate for the estate's taxation year in which the payment is made.

Personal contributions are not tax deductible when they are deposited into an RDSP and not taxed when withdrawn from an RDSP. However, Government Contributions (grants and/or bonds), payments from designated provincial programs and investment income earned within the RDSP are included for tax purposes in the beneficiary's income in the year in which a payment is made (or in the beneficiary's estate for the estate taxation year in which a payment is made.)

Taxable and non-taxable portions of any DAP or LDAP are as follows:

Taxable	Non-taxable
<ul style="list-style-type: none">• Grants• Bonds• Earnings• Payments from designated provincial programs• Rollover of retirement savings proceeds• Rollover of education savings	<ul style="list-style-type: none">• Personal contributions

Note that in the case of a significant plan loss, grants and bonds will count as non-taxable amounts.

For example, if an RDSP is valued at \$100,000, containing \$30,000 in private contributions (30%), \$60,000 in government contributions (60%), and \$10,000 in growth (10%), a total of 70% of any withdrawal would be considered taxable income in the hands of the beneficiary.

Transfers

An RDSP can be transferred to another financial institution under the following conditions:

1. The transfer must be made from a current beneficiary's RDSP to the new RDSP [with the same beneficiary](#); and
2. Transfers require the consent of plan holders of the RDSP.

The tables below describe the total amount of withdrawals from individual RDSPs between 2008 and 2017. These withdrawals are on account of the following:

1. DAP payments;
2. LDAP Payments; and
3. Grant/Bond Repayments.

As a result of being a relatively new program and the restrictive nature (i.e. holdback rules) of the RDSP, a very low percentage of RDSP beneficiaries have made any type of withdrawal over the last 10 years.

Annual and Average Beneficiary Withdrawal Payments 2010 To 2017								
	2010	2011	2012	2013	2014	2015	2016	2017
TYPE OF PAYMENT	(\$ MILLION)	(\$ MILLION)	(\$ MILLION)	(\$ MILLION)	(\$ MILLION)	(\$ MILLION)	(\$ MILLION)	(\$ MILLION)
DAP	\$ 0.6	\$ 5.5	\$ 8.0	\$ 8.3	\$ 12.9	\$ 17.2	\$ 21.9	\$ 25.7
LDAP	\$ -	\$ 0.1	\$ 0.2	\$ 0.4	\$ 0.9	\$ 1.3	\$ 2.0	\$ 2.7
AVERAGE DAP	\$ 3,751	\$ 4,952	\$ 6,073	\$ 6,223	\$ 7,073	\$ 6,077	\$ 6,945	\$ 7,179
AVERAGE LDAP	\$ 488	\$ 1,824	\$ 1,711	\$ 1,526	\$ 2,314	\$ 2,705	\$ 2,864	\$ 3,071
% OF DAP BENEFICIARIES	0.39%	2.11%	2.01%	1.67%	1.84%	2.30%	2.09%	2.12%
% OF LDAP BENEFICIARIES	0.02%	0.09%	0.20%	0.32%	0.37%	0.40%	0.47%	0.52%

Bond and Grant Annual Repayments 2010 To 2017								
	2010	2011	2012	2013	2014	2015	2016	2017
SOURCE	(\$ MILLION)	(\$ MILLION)	(\$ MILLION)	(\$ MILLION)	(\$ MILLION)	(\$ MILLION)	(\$ MILLION)	(\$ MILLION)
BOND	\$ 0.1	\$ 0.9	\$ 1.2	\$ 1.9	\$ 2.6	\$ 5.4	\$ 6.4	\$ 8.7
GRANT	\$ 0.2	\$ 1.9	\$ 2.3	\$ 3.8	\$ 5.4	\$ 9.1	\$ 11.4	\$ 14.2
ANNUAL TOTAL REPAYMENT	\$ 0.3	\$ 2.8	\$ 3.5	\$ 5.7	\$ 8.0	\$ 14.5	\$ 17.8	\$ 22.9
CUMULATIVE TOTAL REPAYMENTS	\$ 0.3	\$ 3.1	\$ 6.6	\$ 12.3	\$ 20.3	\$ 34.8	\$ 52.6	\$ 75.5

vi. Closing

The ultimate goal of the RDSP is to ensure that beneficiaries are able to access all of the funds over the course of their lifetime. There may be situations, however, where the RDSP has to be closed due to certain events, such as:

- The loss of eligibility of the DTC;
- The beneficiary's death; or
- Bankruptcy

Loss of Eligibility

Prior to changes announced in the Federal Government's Budget 2019, if a beneficiary lost eligibility for the DTC, the RDSP would have been closed by the end of the second consecutive year following DTC ineligibility. Any grant or bond received within ten years of the loss of eligibility would have to be paid back to the Federal Government, and all remaining monies (including accrued growth) would have been transferred to the beneficiary and taxed accordingly. Under paragraph 146.4(4.1) of the ITA, however, the plan holder could have elected to keep the RDSP open for up to a period of five years if the beneficiary would likely re-qualify for the DTC in the foreseeable future.

In Budget 2019, however, the Federal Government eliminated the requirement to close an RDSP when the beneficiary no longer qualifies for the DTC, starting in 2021 and for subsequent tax years. Any grants and bonds remaining in the RDSP will not need to be repaid back to the government. The change also eliminates the need to certify that the beneficiary is likely to become DTC-eligible in the future. (A transitional rule will ensure that an RDSP will not be required to close after March 21, 2019 and before 2021 solely because the beneficiary becomes DTC-ineligible.)

For the period that the beneficiary is DTC-ineligible, the operation of the RDSP will be limited to the rules that apply during an election³³, with the following modifications³⁴:

- No contributions can be made to the plan, including the rollover of a Registered Education Savings Plan ("**RESP**") investment income;
 - Note: Rollover of a Registered Retirement Savings Plan ("**RRSP**") or Registered Retirement Income Fund ("**RRIF**") to the RDSP of a financially dependent infirm child or grandchild will be permitted;
- The beneficiary is not eligible to receive grant or bonds, nor will entitlements accrue;

³³ Previously, if the beneficiary became DTC-ineligible, the RDSP would be terminated, unless an election was filed with the Issuer to postpone closing the plan.

³⁴ <https://www.canada.ca/en/employment-social-development/programs/disability/savings/issuers/bulletins/notice-2019-347.html>

- Withdrawals will be permitted, but will trigger repayment of the AHA, requiring that \$3 in grant and bond be repaid for every \$1 withdrawn from the RDSP up to a maximum of the total AHA, over a modified period.³⁵

Plan holders will be allowed to close an RDSP where the beneficiary is DTC-ineligible. Any monies remaining in the RDSP will be paid to the beneficiary, after the repayment of the AHA to the Federal Government.

Death of Beneficiary

If the beneficiary passes away, the RDSP must be closed by the end of the following calendar year. Any grant or bond received within ten years of the beneficiary's death will be paid back to the Federal Government, and all remaining monies (including accrued growth) will be transferred to the beneficiary's estate and taxed accordingly. Any Personal Contributions will remain non-taxable, while Government Contributions and investment income received will be taxed as income to the beneficiary or to their estate.

Paragraph 146.4(4)(p) of the ITA states the following:

(p) the plan provides for any amounts remaining in the plan (after taking into consideration any repayments under the [Canada Disability Savings Act](#) or a designated provincial program) to be paid to the beneficiary or the beneficiary's estate, as the case may be, and for the plan to be terminated, by the end of the calendar year following the earlier of

(i) the calendar year in which the beneficiary dies.

If the beneficiary has a Will in place, the Will identifies who inherits the remaining proceeds. If there is no Will in place, provincial legislation takes over and states that next-of-kin will inherit the funds based on the rules of intestacy.

Bankruptcy

Prior to changes announced in Budget 2019, there was no provision in the *Bankruptcy and Insolvency Act* to protect the totality of funds in an RDSP in the event that the beneficiary filed for bankruptcy. Protection was restricted only to Government Contributions in an RDSP, but not to Personal Contributions.

³⁵ The AHA will be determined as all grants and bonds paid into the RDSP in the ten-year period immediately preceding the time when the beneficiary was no longer DTC eligible, minus any grants and bonds paid into the RDSP during that time that has been repaid to the Federal Government. The reference period for the AHA will remain the ten-year period preceding the time when the beneficiary was no longer DTC-eligible, until the beginning of the year that the beneficiary turns 51, when it will become nine years, decreasing at the beginning of each subsequent year until the beginning of the year the beneficiary turns 60 when it becomes nil. (<https://www.canada.ca/en/employment-social-development/programs/disability/savings/issuers/bulletins/notice-2019-347.html>)

In 2016, the British Columbia Supreme Court ruled in *Alary (Re)* 2016 BCSC 2108 that the funds in an RDSP could not be seized by a trustee-in-bankruptcy to satisfy the claims of creditors. Following the BC Supreme Court decision, the Federal Government amended subsection 67(1)(b.3) of the *Bankruptcy and Insolvency Act* in Budget 2019 to exempt RDSPs from being seized in bankruptcy, with the exception of contributions made in the 12 months before filing. The amendment states:

67 (1) The property of a bankrupt divisible among his creditors shall not comprise

(b.3) without restricting the generality of paragraph (b), property in a *registered retirement savings plan*, a *registered retirement income fund* or a *registered disability savings plan*, as those expressions are defined in the *Income Tax Act*, or in any prescribed plan, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy.

The exemption will come into force on a date to be proclaimed.

vii. Impact of Provincial Law

As previously mentioned, although the RDSP is administered by the Federal Government, there are aspects of the Plan that result in implications on laws that fall within provincial/territorial jurisdiction. In particular, the RDSP's impact on eligibility for social assistance benefits and laws affecting legal capacity (which dictates who can be the holder of a Plan) has led to some law reform in provincial/territorial jurisdictions across the country. While the former has been addressed for some time, law reform has not taken place in several of these jurisdictions in relation to barriers facing adult beneficiaries who may be deemed incapable of signing contracts and therefore managing their own plans.

Legal Capacity

The plan "holder" is responsible for opening up the RDSP, managing the Plan, and making decisions about contributions, investments, and payments from the RDSP. Persons eligible to be the plan holder differ depending on whether the Beneficiary is a minor or an adult.

Amendments to the ITA in 2008 and 2012, which created the RDSP, appear to disqualify some adult beneficiaries who are otherwise eligible to open their own RDSPs from doing so if they are deemed not to be "contractually competent". Paragraph 146.4(1) of the ITA states that an RDSP is an arrangement between the issuer (typically a financial institution) and "one or more of the following":

(A) the beneficiary,

(B) an entity that, at the time the arrangement is entered into, is a qualifying person described in paragraph (a) or (b) of the definition *qualifying person* in relation to the beneficiary,

(B.1) if the arrangement is entered into before 2024, a qualifying family member in relation to the beneficiary who, at the time the arrangement is entered into, is a qualifying person in relation to the beneficiary,

(B.2) a qualifying family member in relation to the beneficiary who, at the time the arrangement is entered into, is not a qualifying person in relation to the beneficiary but is a holder of another arrangement that is a registered disability savings plan of the beneficiary, and

(C) a legal parent of the beneficiary who, at the time the arrangement is entered into, is not a qualifying person in relation to the beneficiary but is a holder of another arrangement that is a registered disability savings plan of the beneficiary.

Note the definitions in ITA of a “qualifying family member” and a “qualifying person” above. Based on the legislation, for beneficiaries under the age of majority, a parent or legal guardian of the child can be the holder of their RDSP. Upon the beneficiary turning the age of majority, the parent can continue to be the holder of the Plan, transfer the role to the Beneficiary, or become joint plan holders with the Beneficiary (if the financial institution allows for joint holders).

For an adult beneficiary who is deemed to not be “contractually competent,” only a parent, spouse, common-law partner, or someone otherwise legally authorized to act on the beneficiary’s behalf can be the plan holder. In some provinces such as Ontario, legal authority generally means that someone appointed by the beneficiary as their attorney for property or a person appointed as the beneficiary’s guardian of property, typically by the courts.

Based on the above, for many people who would otherwise benefit from the Plan, they cannot open an RDSP due to this restriction in relation to legal capacity. The legislative requirements do not reflect developments in law and policy in Canada, in particular Canada’s ratification of the United Nations Convention on the Rights of Persons with Disabilities, that recognize the stigmatizing impact of formally labeling people “incapable”, excluding them from employing whatever capabilities they have in the decision-making process, and officially designating other persons as substitute decision makers on their behalf. In some provincial/territorial jurisdictions, an individual would have to undergo a formal capacity assessment, be found incapable of managing property, give up all of their decision-making rights, and be the subject of a guardianship order in order to benefit from an RDSP. The primary implication of this gap in legislation means that a considerable proportion of the population for which the RDSP was meant to benefit is currently unable access the plan.

Since the RDSP's inception in 2008, individuals that face this barrier have lost out on tens of thousands of dollars of Government Contributions. For those who have since turned 49 years of age, these contributions are permanently gone. For every December 31 that goes by, eligible beneficiaries under the age of the 49, forego over \$20,000 in federal contributions.

Citing this as an issue within provincial jurisdiction, the onus was placed on provincial/territorial jurisdictions, to amend their legislation by the end of 2016. A few years later, the Federal Government extended the temporary provisions to 2018. The extension perpetuated the issue for another couple of years, given that few of the affected provinces had amended their legislation to address to this gap in law and policy. The 2018 Federal Government Budget extended this deadline yet again to 2023.

Social Assistance

Eligibility requirements in relation to social assistance programs for people with disabilities are governed by provincial/territorial jurisdiction. In particular, there are rules that impose limits on the amount of income and assets a person can have in order to qualify for benefits.

In relation to income, generally speaking, a person's household expenses must not exceed their income in order to qualify for benefits. As a recipient of benefits, people are permitted to receive income from other sources; however, the impact on income support benefits will be determined by the amount and source of this income. Provincial and territorial governments have amended the legislation governing social assistance programs to determine how income from RDSPs will be treated. Most provincial/territorial jurisdictions have provided for a full exemption of RDSP income, meaning the payments from RDSPs have no impact on eligibility for benefits. Note, however, that there are limits to these exemptions in certain provinces in eastern Canada.

Social assistance programs also require that recipients disclose information with regards to their assets and impose limits on asset levels in order to qualify for benefits. For example, in order to qualify for the Ontario Disability Support Program ("ODSP") in Ontario, a single recipient's assets cannot exceed \$40,000. Similar to the way in which income is treated, there are certain assets that are not considered when determining eligibility for income support benefits. All provincial/territorial jurisdictions across the country have passed legislation allowing for the RDSP to be treated as an exempt asset for the purpose of qualifying for social assistance benefits.

viii. Analysis: RDSP and Homeownership—Current Barriers and Limitations to Consider

In contemplation of utilizing the RDSP as part of a homeownership strategy (“HOS”), the following is a commentary on some of the challenges that may be faced in accessing RDSP funds:

Rules governing investments

If a proposed HOS is to make an investment from the RDSP (i.e. hold a private mortgage), the rules governing the types of qualified investments allowed to be held in an RDSP are specific, with punitive penalties for non-compliance.

A detailed review of the type of investment of the proposed HOS is required to ensure compliance under the ITA. Otherwise, if the investment is not a listed qualified investment, any investment proposed in the HOS would require a legislative change to the ITA in order for it to be held in the RDSP.

Notwithstanding the above, even if the investment is a qualified investment either as currently listed or upon a change to the ITA, the Issuer is under no obligation to allow the investment to be held in its RDSP. Any proposed HOS that includes an investment should confirm with the Issuer that it is, in fact, willing to hold the investment in the RDSP.

Rules governing withdrawals

The combination of Personal Contributions, Government Contributions and tax deferred growth over time will lead to a considerable amount of funds in the RDSPs once all monies have vested. The issue is that many people will not have the opportunity to access some or all of these funds due to the combined effect of the LDAP Formula³⁶ and the repayment obligation associated with the AHA.

Based on the 10-Year Rule, most beneficiaries will not be able to access funds in their RDSPs without being subjected to a penalty until they are between the ages of 49 to 59. Once beneficiaries are able to withdraw funds, most plans will not permit payments in excess of amounts determined by the LDAP formula.

This is problematic for several reasons. First, disability-related factors are not taken into account when contemplating payment amounts. There are concerns that the life expectancy of beneficiaries may be much shorter than the one used in the LDAP formula, given the nature of certain disabilities. Certain beneficiaries may not be alive to benefit from the funds in their RDSPs. Further, if the beneficiary is deemed incapable of making a will, their assets may be distributed to unintended recipients of their estates upon passing away.

³⁶ LDAPs are regularly scheduled period payments that may begin at any time but must begin by age 60. These payments are subject to the LDAP Formula which uses an effective age of 83 for calculating payments.

Second, 75% of people with an intellectual disability are living in poverty³⁷ and 45% of the homeless population have a disability. While the benefits of tax-deferred growth and the accumulation of assets over one's lifetime are acknowledged, the fact that there are billions of dollars sitting in RDSPs, while three-quarters of this population is living below the poverty line, is counterintuitive.

One recommendation may be to review the 10-Year Rule and the LDAP Withdrawal Formula to balance the intent of encouraging tax-deferred growth over time with the dire financial needs of the disability community today.

Legal Capacity

Homeownership through the use of RDSP funding may be challenging for some adults with developmental disabilities who are deemed to be contractually incompetent, and therefore ineligible to be owners of their own RDSPs. As a result, because some people may not be able to open an RDSP due to the restriction in relation to legal capacity, they may lose out on any potential access to homeownership. In addition, if individuals are deemed to be incapable, established provincial/territorial jurisprudence may prevent them from signing contracts or agreements associated to homeownership, such as an agreement for purchase and sale.

Average RDSP Asset Amount Limitation

Notwithstanding the above, the value of the average RDSP is less than \$25,000. As the median house price in Canada is \$480,000, any HOS strategy will likely require significant contributions from other sources (mortgage, co-ownership, family contribution) in order for beneficiaries to become homeowners.

IV. CONCLUSION

Given that there is considerable capital sitting in the more than 168,000 RDSPs across the country, and potential for more RDSPs to be opened in the future, there is great potential to improve the lives of people with disabilities, particularly those that are homeless or living below the poverty line. First, however, barriers to accessing RDSP funding must be overcome through legislative and policy changes. Once those changes are implemented, RDSPs as a vehicle to homeownership may be a viable and promising option for people with disabilities.

³⁷Canadian Association for Community Living, *Assuring Income Security and Equality for Canadians with Intellectual Disabilities and their Families*:

https://www.ourcommons.ca/Content/Committee/411/FINA/WebDoc/WD6079428/411_FINA_IIC_Briefs/CanadianAssociationforCommunityLivingE.pdf

V. APPENDIX

Please see Income Tax Act paragraph 146.4 and Canada Disability Savings Act for further information as referenced.