

COME SEE THE MANY SIDES OF "CERS" (CANADA EMERGENCY RENT SUBSIDY): NEW TARGETED GOVERNMENT SUPPORT PROGRAM TO HELP BUSINESSES THROUGH THE PANDEMIC

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Introduction

On November 2, 2020, the Government of Canada introduced Bill C-9, which sets out details of the new rent support program called the Canada Emergency Rent Subsidy ("CERS"), which was previously announced on October 9, 2020. Bill C-9 would serve to amend the *Income Tax Act* (Canada). As of the date of this article, the legislation has yet to receive royal assent and remains subject to change.

The new rent subsidy provides support to qualifying businesses, charities, and non-profits that have suffered a revenue drop as a result of the COVID-19 pandemic. CERS effectively replaces the Canada Emergency Commercial Rent Assistance ("CECRA") program and provides more flexibility and accessibility to both commercial tenants and property owners.

Eligibility

CERS will be available to tenants and property owners (to a lesser degree), including individuals, partnerships, corporations, registered charities and other organizations that meet certain eligibility requirements.

To qualify as eligible for CERS, an entity must meet one of the following requirements:

- Have a payroll account as of March 15, 2020 or have been using a payroll service provider; or
- Have a business number as of September 27, 2020 (and satisfy the CRA that it is a bona fide rent subsidy claim); or
- meet other conditions that may be prescribed in the future.

Note, to qualify as a property owner, the entity must satisfy one of the following conditions:

- It does not use the "qualifying property" (generally, being real property in Canada used by the entity in its ordinary course) primarily to earn rental income; or
- If it does use the qualifying property primarily to earn rental income from a non-arm's length person or partnership, the qualifying property is not used by such other person or partnership to earn rental income.



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Claims Generally

- Operated through the Canada Revenue Agency, CERS is to continue until June 2021 for qualifying entities affected by COVID-19;
- Support under CERS will be provided on the basis of qualifying periods. For example,
 - the period that begins on September 27, 2020 and ends on October 24, 2020;
 - the period that begins on October 25, 2020 and ends on November 21, 2020;
 - the period that begins on November 22, 2020 and ends on December 19, 2020; or
 - a prescribed period that ends no later than June 30, 2021.
- Entities are able to make claims retroactively to cover the gap that followed the expiry of the CECRA program, being the qualifying period from September 27, 2020 to October 24, 2020;
- If an entity meets the qualification requirements for one month, it automatically is qualified for the month immediately after. However, for the following month, it would again have to demonstrate that it meets the revenue decline requirements;
- Up to \$75,000 per period for a single property (cap at \$300,000 for all qualifying properties, including properties of affiliates) in rent, mortgage interest, insurance and property taxes paid by commercial property owners may be partially subsidized per qualifying period;
- CERS will be available to organizations with more than \$20 million in annual revenue and paying in excess of \$50,000 in monthly gross rent. Organizations with revenue or rent obligations beyond these thresholds were previously ineligible for support under CECRA.

Base Rent Subsidy

- As its base rent subsidy, CERS supports eligible entities that have suffered a revenue drop, by subsidizing a percentage of their rent expenses, on a sliding scale, up to a maximum of 65% of eligible expenses.
- Rent expenses include rent or mortgage interest expenses in respect of a qualifying property, net of any amounts received or receivable by the entity from non-arm's length parties.
- For **commercial tenants, rent expenses** per qualifying property would include amounts up to \$75,000 for each qualifying period paid under a written agreement entered into prior to October 9, 2020, **including items such as** (a) gross, net or percentage rent, (b) amounts paid under net leases such as operating costs, insurance, utilities and property taxes and (c) amounts received by the property owner under the CECRA program that were applied during a qualifying period, if those amounts would otherwise be required to be refunded to the tenant.
 - **Exclusions include:** (i) sales taxes, (ii) amounts paid in lieu of or in satisfaction of damages, (iii) amounts paid under a guarantee, security, or similar indemnity or covenant, (iv) payments arising due to default, (v) interest and penalties on unpaid

amounts, (v) fees payable for discrete items or special services and (vi) reconciliation adjustment payments.

- For **commercial property owners**, rent expenses per qualifying property would include amounts up to \$75,000 for each qualifying period paid under a written agreement entered into prior to October 9, 2020, including items such as mortgage interest, insurance costs paid in respect of the qualifying property and property and similar taxes.
- For example, CERS will fund up to 65% of rent expenses for entities that have had a revenue decline of at least 70%. Entities that have had a revenue fall of less than 70% are to receive a gradually decreasing level of support in line with their revenue (calculations as described below).

Lockdown Support

- In addition to the base rent subsidy, CERS also offers new Lockdown Support, which would provide an additional top-up of 25% to qualifying entities that were forced to temporarily shut down or to significantly limit their main activities (at least 25% of revenues must be derived from the restricted activity) for more than one week due to a mandatory public health order issued in response to the COVID-19 pandemic under the laws of Canada, a province, or territory (including orders made by a municipality or regional health authority under one of those).
- Lockdown Support is limited to \$75,000.00 per qualifying property, but there is no overall cap.
- Combined, this means qualified businesses subject to a lockdown could receive rent support of up to 90% of their qualifying rent expenses.
- Some common circumstances where an entity may be eligible for the Lockdown Support would be restaurants with restrictions on indoor dining with low demand for take-out, the closure of bars, fitness centres and retail stores.

Application Process

- CERS is applied for and provides support directly to tenants, in contrast to the former CECRA program that needed to be applied for by property owners.
- Applications for CERS are due by the later of January 31, 2021, and 180 days after the end of the qualifying period and applicants may revoke or amend their elections on or before the date that the application is due for the first qualifying period of which the election is made.
- The above parameters apply until December 19, 2020, subject to change as needed by the federal government thereafter.

Important Calculations and Formulas Explained

- (a) **Revenue Reduction Percentage:** To determine the amount of support it may receive, an entity must calculate its revenue reduction percentage by using the following formula:

$$[1 - A / B]$$

where

A = qualifying revenue (such as the inflow of cash, receivables, or other consideration from ordinary activities of an entity in Canada) for the current reference period for the qualifying period;

B = qualifying revenue (as described above, which includes revenue generated from the sale of goods, rendering of services, and the use of the entity's resources by others) for the prior reference period for the qualifying period, or, the qualifying entity may elect to compare revenues to the *prior reference period* of January and February 2020 and use the following formula:

$$[0.5 \times C \times (D / E)]$$

where

C = qualifying revenues for the prior reference period;

D = number of days in the prior reference period, and

E = number of days in the prior reference period during which the entity was carrying on business.

Note: The qualifying entity must use the same approach for all qualifying periods. Please see the table below.

Prior reference period:

- for the qualifying period that begins on September 27, 2020 and ends on October 24, 2020, the prior reference period is October, 2019;
- for the qualifying period that begins on October 25, 2020 and ends on November 21, 2020, the prior reference period is November, 2019;
- for the qualifying period that begins on November 22, 2020 and ends on December 19, 2020, the prior reference period is December, 2019.

Current reference period:

- for the qualifying period that begins on September 27, 2020 and ends on October 24, 2020, the current reference period is October, 2020;
- for the qualifying period that begins on October 25, 2020 and ends on November 21, 2020, the current reference period is November, 2020;
- for the qualifying period that begins on November 22, 2020 and ends on December 19, 2020, the current reference period is December, 2020.

| | Qualifying Period | General Approach | Alternative Approach |
|------------------|----------------------------------|--|--|
| Period 8 | September 27 to October 24, 2020 | October 2020 over October 2019 or | October 2020 or September 2020 over average of January and February 2020 |
| Period 9 | October 25 to November 21, 2020 | November 2020 over November 2019 or October 2020 over October 2019 | November 2020 or October 2020 over average of January and February 2020 |
| Period 10 | November 22 to December 19, 2020 | December 2020 over December 2019 or November 2020 over November 2019 | December 2020 or November 2020 over average of January and February 2020 |

As an illustration, consider the following example:

- Entity XYZ wants to apply for the CERS program for the qualifying period that begins on November 22, 2020 and ends on December 19, 2020.
- In November 2020 (current reference period), XYZ made \$100,000 in revenue from the sale of goods (qualifying revenue).
- In November 2019 (prior reference period), it made \$500,000 in revenue from the sale of goods. XYZ's revenue reduction percentage would be calculated as follows:
 - Step 1: [1 — A / B]
 - Step 2: [1 — \$100,000 / \$500,000]
 - Step 3: [1 — 0.2]
 - Result: 0.8 or 80% (0.8 x 100)

- Therefore, XYZ had a revenue reduction of 80% in November 2020 and if approved for CERS, may receive a rent subsidy of up to 65%.
- (b) **Base Subsidy Rate:** In order to determine how much rent subsidy an entity may receive under the CERS program, an entity must follow these steps:
 - **Step 1:** If the qualifying period the entity is applying for is any of following, then proceed to
 - the period that begins on September 27, 2020 and ends on October 24, 2020;
 - the period that begins on October 25, 2020 and ends on November 21, 2020; or
 - the period that begins on November 22, 2020 and ends on December 19, 2020. If the qualifying period is a prescribed period that ends no later than June 30, 2021, then the percentage is determined by regulation and the same must be consulted.
 - **Step 2:** Calculate the entity's revenue reduction percentage, as explained above.
 - **Note:** For any qualifying period, if the qualifying entity's revenue decline was higher in the immediately preceding qualifying period, their base subsidy rate will be determined based on the higher revenue decline experienced during such prior qualifying period.
 - **Step 3:** If the entity's revenue reduction percentage ("**RRP**") is:
 - **70% or higher**, then the entity's rent subsidy percentage is 65%;
 - **between 50 to 69%**, then the rent subsidy percentage is determined by the formula:

$$[40\% + (RRP - 50\%) \times 1.25]$$
 - **less than 50%**, then the rent subsidy percentage is determined by the formula:

$$[0.8 \times RRP]$$

For example, if entity XYZ is applying for the qualifying period that begins from November 22, 2020 and ends on December 19, 2020 and it has a revenue reduction percentage of 65%, then the base subsidy rate is calculated as follows:

- Step 1: $[0.4 + (RRP - 0.5) \times 1.25]$
- Step 2: $[0.4 + (0.65 - 0.5) \times 1.25]$
- Step 3: $[0.4 + (0.15) \times 1.25]$
- Step 4: $[0.4 + 0.188]$
- Result: 0.59 or 59%

Therefore, XYZ would likely receive approximately 59% subsidy on eligible expenses under CERS for that qualifying period.

(c) **Lockdown Support** - For a qualifying period, an entity may receive a top-up percentage of 25%, prorated to the number of days the entity was shut down or limited in its main activities in the qualifying period due to a mandatory public health order. The formula is as follows:

$$[H \times EE \times (I / J)]$$

where

H = 25% or a prescribed percentage;

EE = eligible expenses;

I = number of days in the qualifying period throughout which the qualifying property is subject to a public health restriction;

J = the number of days in the qualifying period.

For example:

- Entity XYZ has received a mandatory public health order that runs from December 9, 2020 to December 19, 2020 (11 days);
- XYZ is applying for the qualifying period that begins on November 22, 2020 and ends on December 19, 2020 (28 days) and has \$100,000.00 in eligible expenses to apply for.
- XYZ's top-up support would be calculated as follows:
 - **Step 1:** [$0.25 \times EE \times (I / J)$]
 - **Step 2:** [$0.25 \times \$100,000 \times (11/28)$]
 - **Step 3:** [$0.25 \times \$100,000 \times (0.39)$]
 - **Result:** \$9,750
 - Therefore, XYZ can expect to receive \$9,750.00 as a top-up subsidy in addition to its basic entitlements under CERS.

Outstanding Issues

- It appears as though qualifying entities will have to make their expense payments prior to receiving funds through CERS. Naturally, this has the potential to be quite difficult for already struggling commercial property owners and tenants.
- It also appears that rent deferral or abatement agreements in place during qualifying periods may limit the level of expenses that may be claimed by qualifying entities. In some cases, it may make sense for commercial property owners and tenants to abstain from entering into rent

deferral or abatement agreements all together during the duration of the CERS program in order to maximize recovery under CERS.

The CEWS and CEBA Program

- In conjunction with the new CERS program, the Government of Canada also has extended the Canada Emergency Wage Subsidy ("**CEWS**") until June 2021, which would continue to protect jobs by helping businesses keep their employees and even re-hire workers that may have been laid-off due to the pandemic. CEWS is retroactive to March 15 and would remain at the current rate of up to a maximum of 65% of eligible wages until December 19, 2020.
- In addition to the announcements above, the Federal Government is now providing an additional Canada Emergency Business Account ("**CEBA**") loan. CEBA is intended to support small businesses that have experienced diminished revenues due to the pandemic but who still face ongoing rent, utilities, insurance, taxes, and employment pay obligations. This additional CEBA loan is a zero-interest, partially forgivable loan of up to \$20,000 in addition to the original \$40,000 CEBA loan. Precisely, if the balance of the loan is repaid by December 31, 2022, half of this additional loan may be forgiven.

Further Updates

Fogler, Rubinoff LLP will continue to monitor developments to the CERS program to help you keep up to date. In the meantime, please contact [Alex Kolandjian](#) or [Steven Cygelfarb](#) if you have any questions about CERS or if you have any additional questions about how COVID-19 affects your lease obligations.

Associated links:

Bill C-9: <https://parl.ca/DocumentViewer/en/43-2/bill/C-9/first-reading>

Government's November 2, 2020 news release: <https://www.canada.ca/en/department-finance/news/2020/11/government-introduces-legislation-for-new-targeted-support-to-help-businesses-through-pandemic.html>

New Lockdown Support - Government Information: <https://www.canada.ca/en/department-finance/news/2020/11/lockdown-support-for-businesses-facing-significant-public-health-restrictions.html>