

Relief for Some: Details on the Canada Emergency Rent Subsidy

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The Government of Canada's new subsidy program, called the Canada Emergency Rent Subsidy (CERS), is billed as providing "direct and easy-to-access" subsidies to a "qualifying renter," which includes both tenants and subtenants, and property owners. Unlike the government's first kick at the can for commercial rent relief under the Canada Emergency Commercial Rent Assistance Program (CECRA), tenants (and subtenants) can apply directly for relief payments under CERS without the need to get landlord cooperation or support. However, there are limitations on what eligible expenses qualify and who may receive the subsidy.

CERS will be available until June 2021 and, presently, qualifying renters will be able to make claims for qualifying periods of roughly one month each, beginning retroactively from September 27, 2020. The amount of subsidy available for a qualifying renter will depend on the amount of eligible expenses that are claimed for a qualifying property, the revenue reduction experienced, and whether the qualifying renter's operations are subject to a public health order.

CERS provides subsidy payments for up to 65% of eligible expenses as a base subsidy. For tenants or subtenants, eligible expenses are base or minimum rent (including percentage rent or other form of rent payments tied to sales or revenue), additional rent (including any amounts payable under a net lease for operating expenses and realty taxes), and any other customary operating expenses paid directly to a third party (such as a utility provider). From a franchising perspective, given sublease arrangements are common between franchisors and franchisees, it is important to note that any revenue earned from a subleasing arrangement to an arm's length entity (such as a franchisee) must be subtracted from the eligible expenses claimed. Other expenses not eligible for the subsidy calculation are sales taxes (e.g., H.S.T.), amounts paid by tenants or subtenants for their own insurance or leasehold improvements, and any expenses payable to a non-arm's length party. The government has clarified that eligible expenses will include upcoming payments (such as future rent) that have not actually been incurred, so long as such expenses will be paid for within 60 days of receipt of the subsidy.

In addition to the base subsidy, the CERS program offers a top-up subsidy (referred to by the government as Lockdown Support) of 25% of eligible expenses for qualifying renters who, as a result of a public health order, are required to close or cease certain activities at a premises (such as indoor dining) for one week or longer.

Unlike CECRA, there is no specific revenue reduction required to be eligible for CERS. Rather, a qualifying renter's revenue reduction will determine the percentage of eligible expenses that will be subsidized¹. Revenue reductions can be calculated either by comparing a qualifying renter's gross revenue for the applicable month to the same period in the prior year, or to the average of its revenues in January and February of 2020.

However, much to the dismay of larger qualifying renters, eligible expenses for each qualifying period are currently capped at \$75,000 per location for both the base subsidy and top-up subsidy. The base subsidy will also be subject to an overall cap of \$300,000 for each monthly qualifying period that would be shared among all affiliated entities of that qualifying renter. Although, there is no overall cap for each qualifying period with respect to the top-up subsidy.

Takeaways and Differences from CECRA

1. The size or overall revenue of a business will not be a factor for eligibility under CERS.
2. Eligible businesses can apply directly for assistance, rather than relying on landlords to do so on their behalf.
3. The support payments provided under the program will be in the form of a subsidy rather than a forgivable loan. As an amendment to the *Income Tax Act*, CERS operates like the Canada Emergency Wage Subsidy (CEWS), whereby the subsidy amount paid to an eligible entity will be deemed an overpayment of tax by the entity under the *Income Tax Act*, such that the entity's tax payable would be reduced or a tax refund would be issued.
4. Commercial rent expenses are subsidized on a sliding scale based on revenue reduction up to the limits of 65% for the base rent subsidy, and another 25% for the top-up subsidy (regardless of revenue reduction amount).
5. For each qualifying period, you can claim eligible expenses up to a maximum of (i) \$75,000.00 per qualifying property (base subsidy and top-up subsidy) and (ii) \$300,000.00 in total for all qualifying properties (including any amounts claimed by affiliated businesses) with respect to the base subsidy only (there is no maximum for the top-up subsidy across all qualifying properties).
6. Applicants can find further program details in our prior article [here](#), and apply for the program online [here](#).

¹ See calculation of rent subsidy rate [here](#).