

Commercial Leasing Bulletin:

Federal Government Says “Goodbye” to CERS and Announces Follow-Up Rent Subsidy Programs

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On October 19, 2021, the Government of Canada announced that the final claim periods for the Canada Emergency Rent Subsidy (“CERS”) and the Canada Emergency Wage Subsidy (“CEWS”) would be the periods ending October 23, 2021. However, it also [introduced the following two proposed programs](#) that will replace CERS and CEWS on October 24, 2021, and provide continuing rent and wage support to eligible businesses:

1. the Tourism and Hospitality Recovery Program (the “THRP”); and
2. the Hardest-Hit Business Recovery Program (the “HHBRP”).

The THRP will provide support to certain types of businesses operating in the tourism and hospitality industry. The HHBRP will assist other hard-hit organizations. For further clarity, eligible businesses under CERS and CEWS can still apply for past claim periods in accordance with their respective rules.

Although these programs will replace both CERS and CEWS and provide subsidies both in respect of eligible wage and rent expenses (subject to applicable caps), this bulletin focuses on the rent subsidy aspect of these new programs. The Government has not yet released the necessary legislation to implement these programs. Accordingly, we note that the details set out in this bulletin are subject to change until the actual legislation is finalized. We will provide a more detailed bulletin once the legislation is passed.

Claim Periods

The Government has proposed that the initial claim period for both programs will begin on October 24, 2021, the day immediately following the end of the final CERS claim period, and shall continue through at least May 7, 2022. The proposed legislation will grant the Government the authority to further extend these programs through July 2, 2022.

Eligibility for the THRP

The THRP will provide support to organizations in selected sectors of the tourism and hospitality industry that have been deeply affected by the pandemic and continue to struggle financially. Eligible organizations may include, **but are not limited to**: hotels, restaurants, bars, festivals, travel agencies, tour operators, convention centres, and convention and trade show organizers. We expect that the necessary legislation will further clarify the types of businesses that will be eligible for this program.

To qualify for the THRP for a given claim period, an eligible business must also satisfy the following eligibility criteria:

- a. Have experienced a current-month revenue loss of at least 40% from pre-pandemic levels. The existing rules under CERS would continue to apply for this calculation.
- b. Have experienced an average revenue loss of at least 40% over the 12-month period from March 2020 to February 2021,¹ excluding from this calculation any periods in which the eligible business was not carrying on its ordinary operations for reasons other than a public health restriction.

Accordingly, in contrast to CERS, only certain business types will be eligible for the THRP. Those businesses must surpass a much more stringent eligibility threshold to qualify for base subsidies under the THRP.

Eligibility for the HHBRP

Businesses that are not eligible for the THRP may be eligible to receive support under the HHBRP for a given claim period if they satisfy the following criteria:

- a. Have experienced a current month revenue loss of at least 50% from pre-pandemic levels. The existing rules under CERS would continue to apply to calculate the current-month revenue loss.
- b. Have experienced an average revenue loss of at least 50% over the 12-month period from March 2020 to February 2021,² excluding from this calculation any periods in which the eligible business was not carrying on its ordinary operations for reasons other than a public health restriction.

¹ Please note the announcement also states that the 12-month average revenue loss should be calculated based on the first 13 claim periods for CEWS, which appears to correspond to a slightly different period than from March 2020 to February 2021. We expect this to be clarified when further details are made available.

² See above note on calculating the 12-month average revenue loss for the THRP, which similarly applies to the HHBRP.

Note that the threshold to qualify for the HHBRP is higher than the THRP in that both the minimum current-month revenue loss and the minimum 12-month average revenue loss for the HHBRP are required to be at least 50%, in comparison to the 40% benchmarks for eligibility under the THRP.

Base Subsidy Percentages

Similar to CERS, both programs provide a base subsidy in an amount equal to a certain percentage of eligible rent paid or payable by the eligible business (subject to applicable caps). During the period from October 23, 2021, through to March 12, 2022 (corresponding to the first five claim periods under the THRP), the THRP base subsidy percentage will be equal to the applicant’s revenue loss percentage for the relevant claim period up to a maximum base subsidy percentage of 75%.

For the HHBRP, during this same period, the base subsidy percentage will be between 10% and 50% for each claim period, determined on a straight-line basis subject to the formula included in the table below, based on the revenue loss experienced.

For both programs, during the period from March 13, 2022, to May 7, 2022, the base subsidy percentages will be halved as compared to the initial base subsidy percentages. See the below tables setting out the framework for determining base subsidy percentages under the two new programs.

THRP Base Subsidy Percentages

Revenue Loss (“RL”)	Base Subsidy (October 24, 2021- March 12, 2022)	Base Subsidy (March 13, 2022- May 7, 2022)
75% and over	75%	37.5%
40-74%	Same as RL % Example: A business with a RL of 50% will have a base subsidy percentage of 50%	½ of RL % Example: A business with a RL of 50% will have a base subsidy percentage of 25%
0-39%	Ineligible	Ineligible

HHBRP Base Subsidy Percentages

Revenue Loss (“RL”)	Base Subsidy (October 24, 2021- March 12, 2022)	Base Subsidy (March 13, 2022- May 7, 2022)
75% and over	50%	25%
50-74%	$10\% + ((RL - 50\%) \times 1.6)$ Example - A business with a RL of 60% will be eligible for a base subsidy percentage of 26%: $10\% + ((60\% - 50\%) \times 1.6) =$ $10\% + (10\% \times 1.6) =$ $10\% + 16\% = 26\%$	$5\% + ((RL - 50\%) \times 0.8)$ Example - A business with a RL of 60% will be eligible for a base subsidy percentage of 13%: $5\% + ((60\% - 50\%) \times 0.8) =$ $5\% + (10\% \times 0.8) =$ $5\% + 8\% = 13\%$
0-49%	Ineligible	Ineligible

Lockdown Support

In addition to the base subsidies described above, for both the THRP and HHBRP, lockdown support will continue to be available in accordance with the existing CERS program rules. In other words, eligible businesses can receive up to an additional 25% subsidy during the period of public health restrictions considered a lockdown under the existing CERS program rules.

Furthermore, businesses that are not eligible for THRP or HHBRP would be entitled to modified lockdown support. These businesses would not have to establish a 12-month revenue decline, but would only have to establish a current-month decline of 40% or more. It appears the amount of this lockdown support for parties not eligible for THRP or HHBRP would be equal to the base subsidy under the THRP (e.g., a subsidy percentage equal to the revenue loss of at least 40%, but not to exceed 75%, which percentage would be halved in the last two claim periods of the program). The scope of this lockdown support should be clarified once the legislation is passed.

Aggregate Cap on Monthly Subsidies

As those following CERS closely will recall, the base subsidy actually available to many tenants for a given claim period was far less than what may be assumed from a review of the base subsidy percentages tables. This is because the available subsidy was provided pursuant to a monthly cap on eligible expenses. Under CERS, there were monthly caps of \$75,000 per location and \$300,000 in aggregate across all locations of related entities.

A major change introduced under the new rent subsidy programs is **an increase of the aggregate monthly cap from \$300,000 to \$1,000,000**. It appears that the monthly cap per location will remain unchanged, but we will not be sure until the proposed legislation has been released. The increase in the aggregate cap will be welcome news to large chains that were prevented from benefitting to the same degree as smaller businesses under CERS.

Impact on Ontario's Eviction Moratorium

Please note that even though there will be no more CERS claim periods after October 23, 2021, the existing commercial eviction moratorium in Ontario is still in effect. Moreover, given the eviction moratorium provides 12 weeks protection to tenants from their most recent approval for a specific CERS claim period, and the last possible date to apply for the final CERS claim period is April 21, 2022, there may still be tenants eligible for the moratorium until its stated expiry. As of the date of this bulletin, it is unclear whether the Government of Ontario intends to modify the scope of the moratorium further to address these newly announced programs.

We will continue to provide updates on THRP and HHBRP, as well as commercial leasing topics of interest. If you have any questions or would like to obtain legal advice on any leasing issues or litigation, please contact any lawyer in our Commercial Leasing Group.

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