

A Rose by Any Other Name: Federal Government Announces New Targeted COVID-19 Rent Support Measures

November 30, 2021

By Robert Eisenberg

(Originally published on November 9, 2021, updated on November 30, 2021)

Please note that all of the information contained herein is based on a bill introduced to Parliament by the Government and is subject to change prior to becoming law.

As the Canada Emergency Rent Subsidy (“CERS”) program ends, the Canadian federal government (the “Government”) recently introduced [Bill C-2](#) to the House of Commons which, if passed, would create new targeted COVID-19 support measures to support commercial tenants: [the Tourism and Hospitality Recovery Program \(the “Tourism Program”\) and the Hardest-Hit Business Recovery Program \(the “Hardest-Hit Program”\)](#). As, many COVID-19 restrictions continue to be lifted, these new programs are aimed at providing support to those businesses that have been most deeply affected by the pandemic. The details of these programs are not finalized; however, Bill C-2 provides an overview of the support that will be available under the proposed measures as well as information on the eligibility requirements for the Tourism Program.

The Government proposes to administer the Tourism Program and the Hardest-Hit Program from October 24, 2021 until May 7, 2022. The Government would also have the authority to extend these programs by regulation until July 2, 2022.

The Tourism Program

The Tourism Program is intended to provide support to eligible organizations in the tourism and hospitality industry, such as hotels, restaurants, bars, festivals, travel agencies, tour operators, convention centres, and convention and trade show organizers.

Eligibility

Under Bill C-2, qualifying tourism and hospitality entities include organizations which earned more than 50% of their pre-pandemic revenues from carrying on one or more of the following activities:

- Operating or managing a facility providing short-term lodging, such as a hotel, a motel, a cottage, a bed and breakfast, or a youth hostel;
- Preparing and serving meals, snacks and beverages made to order for immediate consumption on or off the premises, such as a restaurant, a food truck, a cafeteria, a caterer, a coffee shop, a food concession, a bar, a pub, or a nightclub (this would not include organizations such as supermarkets or convenience stores which are primarily engaged in retailing food and beverage products);

- Operating a travel agency or as a tour operator;
 - Organizing, promoting, hosting, supporting, or participating in events that meet the artistic or cultural interests of their patrons, including live performances or exhibits intended for public viewing;
 - Preserving and exhibiting objects, sites and natural wonders of historical, cultural or educational value, such as the operation of a museum, a historic and heritage site, a zoo, a botanical garden, or a nature park;
 - Organizing, promoting, or supporting scenic and sightseeing tours, such as sightseeing or dinner cruises, steam train excursions, horse-drawn sightseeing rides, air-boat rides, hot-air balloon rides, or charter fishing services;
 - Providing certain charter bus services;
 - Operating or managing an amusement or theme park;
 - Operating or managing a facility or providing services that enable patrons to participate in recreational activities, including for example, fitness and recreational sports centres, but not including golf clubs, country clubs or facilities used primarily by professional sports clubs;
 - Operating or managing serviced or unserviced sites to accommodate campers and their equipment for tents, tent trailers, travel trailers, and recreational vehicles, excluding mobile home sites;
-
- Operating or managing an overnight recreational camp, hunting camp or a fishing camp;
 - Operating or managing a duty-free retail store at a land border crossing where the only exit route is to the United States;
 - Operating or managing a facility that is primarily engaged in exhibiting motion pictures;
 - Operating or managing an amusement arcade;
 - Operating a facility allowing passengers to board and leave a cruise ship;
 - Operating or managing an airport;
 - Operating or managing a casino;
 - Promoting a destination or region in Canada for the purpose of attracting tourism;
 - Organizing, planning, promoting, hosting or supporting:
 - conventions, trade shows or festivals; or
 - weddings, parties, or similar events; and
 - Promoting the interests of the members of an industry organization or association, if the members are primarily engaged in activities described above.

Organizations would also need to demonstrate the following in order to qualify:

- an average monthly revenue reduction of at least 40% over the first 13 qualifying periods of the Canada Emergency Wage Subsidy ("**CEWS**") (i.e., a 12-month revenue decline); and
- a current-month revenue loss of at least 40%.

Calculating the Subsidy

The calculation of the 12-month revenue decline would take the average of all revenue decline percentages for eligible organizations from Periods 1 through 13 (i.e., March 2020 to February 2021), excluding Period 10 or 11. Periods in which an organization was not carrying on its ordinary operations for reasons other than a public health restriction (e.g., a seasonal shutdown) would be excluded from the calculation as well. The 12-month revenue decline would be calculated using the CEWS rules.

The rent subsidy rates are to be calculated by comparing current-month revenue losses to those of a prior reference period. The rules applicable under CERS and CEWS for calculating the current-month revenue losses would continue to apply. The starting subsidy rate is 40% which increases on a sliding scale as revenue further declines. For example, if an organization's revenue decline is 40%, a 40% subsidy is applicable, and if an organization's revenue decline is 50%, then a 50% subsidy is available. The maximum subsidy for Periods 22 to 26 (i.e., October 24, 2021 to March 12, 2022) is 75%, so once an organization has a revenue decline of 75% or greater,

the applicable subsidy remains 75%. For Periods 27 and 28 (i.e., March 13, 2022 until May 7, 2022), the rent subsidy rates are to be reduced by half.

In addition, additional lockdown support for qualifying rent expenses is to be available at the fixed rate of 25%, pro-rated based on the number of days a particular location is affected by a lockdown.

The Hardest-Hit Program

The Hardest-Hit Program is intended to provide support to organizations that do not qualify for the Tourism Program, but that have been deeply affected since the outset of the pandemic. These organizations would need to meet the following requirements:

- an average monthly revenue reduction of at least 50% over the first 13 qualifying periods of CEWS (i.e., a 12-month revenue decline); and
- a current-month revenue loss of at least 50%.

The same rules apply for calculating the 12-month revenue decline as for the Tourism Program, outlined above.

The subsidy rates are also calculated in a similar way to those under the Tourism Program. However, the sliding scale here has a starting subsidy rate of 10% and a maximum subsidy rate of 50% for Periods 22 to 26 (i.e., October 24, 2021 to March 12, 2022) for eligible organizations with revenue declines of 75% or greater. The rent subsidy rates are again to be reduced by half for Periods 27 and 28 (i.e., March 13, 2022 to May 7, 2022).

The additional lockdown support for qualifying rent expenses available under the Tourism Program would also be available under this program.

Lockdown Support

Businesses that face temporary new local lockdowns will be eligible for support at the subsidy rates as calculated in the Tourism Program, regardless of sector. To be eligible for the subsidies, business must: (1) have one or more locations subject to a public health restriction lasting for at least seven days in the current claim period; and (2) the public health restriction must require the business to cease activities that accounted for at least 25% (approximately) of total revenues of the employer during the prior reference period. Applicants would not need to demonstrate a 12-month revenue decline, but only a current-month decline.

Increasing Monthly Cap on Eligible Expenses

The Government also proposes to make legislative amendments to the monthly cap on eligible expenses that exists under CERS. Under the current rules, there is a monthly cap on eligible expenses that can be claimed under CERS of \$75,000 per business location and \$300,000 in total for all locations (including any amounts claimed by affiliated entities); the Government proposes to increase the aggregate monthly cap from \$300,000 to \$1 million (including any amounts claimed by affiliated entities) starting on October 24, 2021.

This new monthly cap would be available to all eligible employers and organizations that meet the eligibility requirements for the rent subsidy under the Tourism Program and the Hardest-Hit Program.

As Bill C-2 is debated and potentially amended in Parliament, the details of these proposed programs may change. Overall, these programs are welcome news for commercial tenants, and particularly for those in the tourism and hospitality industry which are eligible for the greatest potential subsidies. As COVID-19 restrictions continue to be lifted, so will the financial supports available. The

Government's recent announcements regarding these proposed programs should provide commercial tenants that have been deeply affected by the COVID-19 pandemic some comfort that they may be able to continue to receive rent support, despite the CERS program ending.

Should you have any questions about the new Government support programs or if you would like to discuss how we can help you with your commercial leasing needs, please reach out to Robert Eisenberg at reisenberg@weirfoulds.com or by telephone at 416-619-6287.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

For more information or inquiries:



Robert Eisenberg

Toronto
416.619.6287

Email:
reisenberg@weirfoulds.com

Robert Eisenberg is a property development and commercial leasing lawyer who excels at identifying potential landmines and devising clear, creative, and proactive solutions.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035