

Commercial Leasing Bulletin:

Federal Budget Extends Canada Emergency Rent Subsidy Program through September 25, 2021

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On April 19, 2021, the Federal Government unveiled their proposed 2021 Federal Budget, entitled [A Recovery Plan for Jobs, Growth, and Resilience](#) (the “Budget”). The Budget focuses on the nation’s continued economic recovery in the wake of the COVID-19 pandemic. To this end, the Federal Government is budgeting \$1.29 billion for an extension of the Canada Emergency Rent Subsidy (“CERS”) that will make it available to eligible businesses until September 25, 2021. The CERS program involves both a base subsidy, calculated based on a revenue decline (the “Base Subsidy”), and an additional top-up subsidy that is available to eligible businesses that are subject to a lockdown (the “Lockdown Support”). You can review [our previous bulletins on CERS](#) for a more detailed refresher on the program.

Before the Budget announcement, CERS was set to end on June 5, 2021. Although the program has been extended in the past, the legislation only allowed it to be extended until June 30, 2021. The Budget proposes to: (1) extend CERS until September 25, 2021 (the “Extended Claim Periods”); and (2) modify certain aspects of the program for a portion of the Extended Claim Periods. The Budget includes **draft** legislation that is intended to implement modifications to the program addressed in this bulletin. However, it is important to note that this draft legislation could be modified as it goes through the legislative process in the House of Commons and the Senate of Canada.

This bulletin summarizes important aspects of CERS, as currently outlined in the Budget, including the draft legislation.

Extended Claim Periods

CERS is being extended for four additional Extended Claim Periods (Periods 10-13) for which qualifying businesses can apply for both the Base Subsidy and Lockdown Support, as follows:

- **Claim Period 10:** June 6, 2021 to July 3, 2021
- **Claim Period 11:** July 4, 2021 to July 31, 2021
- **Claim Period 12:** August 1, 2021 to August 28, 2021
- **Claim Period 13:** August 29, 2021 to September 25, 2021

The Budget provides the Federal Government with legislative authority to further extend CERS until November 20, 2021, if the Federal Government so desires.

Refresher: Base Subsidy Rates and Lockdown Support for Existing Claim Periods

The following table illustrates the Base Subsidy and Lockdown Support rates for the existing claim periods **up to June 5, 2021**:

Revenue Decline (“RD”)	CERS Base Subsidy	Lockdown Support (if applicable)	Total Subsidy if Eligible for Lockdown Support
70% or more	65%	Up to 25%	90%
50-69%	40% + $((RD - 50\%) \times 1.25)$	Up to 25%	$((RD - 50\%) \times 1.25)$ + up to 65%
Less than 50%	$RD \times 0.8$	Up to 25%	Up to 25% + $(RD \times 0.8)$

Base Subsidy and Lockdown Support for Extended Claim Periods

The Budget identifies the CERS extension as a necessary tool and hopes it will bridge Canadians through the rest of this crisis to recovery. The Budget proposes incremental decreases to the Base Subsidy rates over the last three Extended Claim Periods (Periods 11-13) **starting on July 4, 2021**, with the purpose of gradually phasing out the program as Canada’s economy hopefully re-vitalizes. The following table illustrates the changing methods of calculating the Base Subsidy rate over the course of the Extended Claim Periods:

Revenue Decline (“RD”)	Period 10	Period 11	Period 12	Period 13
Period	June 6, 2021 to July 3, 2021	July 4, 2021 to July 31, 2021	August 1, 2021 to August 28, 2021	August 29, 2021 to September 25, 2021
70% or more	65%	60%	40%	20%
50-69%	40% + $((RD - 50\%) \times 1.25)$	35% + $((RD - 50\%) \times 1.25)$	25% + $((RD - 50\%) \times 0.75)$	10% + $((RD - 50\%) \times 0.5)$
>10-49%	RD x 0.8	$(RD - 10\%) \times 0.875$	$(RD - 10\%) \times 0.625$	$(RD - 10\%) \times 0.25$
0-10%	RD x 0.8	0%	0%	0%

There are a number of important things to note about the Budget’s proposal for the CERS extension.

First, starting with the second Extended Claim Period (Period 11, beginning on **July 4, 2021**), businesses with a revenue decline of 10% or less will **not** be eligible for the Base Subsidy. This will also impact eligibility for the Lockdown Support as businesses can only qualify for the Lockdown Support if they are entitled to a Base Subsidy for that claim period. Accordingly, for the Extended Claim Periods (Periods 11-13) **starting on or after July 4, 2021**, a business would not be eligible for the Lockdown Support unless it shows a revenue decline of more than 10%.

Second, the Budget does **not** propose to change the Lockdown Support rate. Accordingly, this rate will continue to be **up to** 25% of eligible expenses for each of the Extended Claim Periods.

Third, since the adverse financial consequences of COVID-19 had already exerted their full force on businesses by June of 2020, the Federal Government is using corresponding months from 2019 as the **default** prior reference periods for the Extended Claim Periods. This means that, as a default, revenue decline for June of 2021 will be calculated in comparison to June of 2019. The existing CERS legislation also provides as follows:

- (i) a business can use an alternative prior reference period of **January and February 2020** to calculate revenue decline, but only so long as the business uses such alternative prior reference period for all CERS claim periods; and
- (ii) for any current claim period, if a business has a lower revenue decline than the revenue decline it had for the immediately preceding claim period, then the revenue decline for



the current claim period will be deemed to be equal to the higher revenue decline for the immediately preceding claim period

The draft legislation does not modify these existing provisions and, therefore, should continue to apply during the Extended Claim Periods.

Last, the Budget does not propose to remove the existing caps under the program; therefore, the Base Subsidy and Lockdown Support will continue to only subsidize up to a maximum of \$75,000.00 of eligible expenses for **any single location** in respect of any Extended Claim Period. For example, if a tenant pays gross rent at one location in the amount of \$85,000 per month and qualifies for a 65% Base Subsidy rate, its Base Subsidy for that location would be \$48,750. Additionally, the Base Subsidy will continue to only subsidize up to a maximum of \$300,000 of eligible expenses for **all locations**, including any eligible expenses claimed by affiliated entities. This cap for all locations **does not** apply to the Lockdown Support.

We will continue to provide updates on the implementation of the CERS program. 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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