



February 2, 2021

The Honourable Chrystia Freeland, P.C., M.P.
Deputy Prime Minister and Minister of Finance
House of Commons
Ottawa, Ontario K1A 0A6

The Honourable Jim Carr, P.C., M.P.
Special Representative to the Prairies
House of Commons
Ottawa, Ontario K1A 0A6

Dear Ms. Freeland and Mr. Carr:

Thank you for the opportunity to provide our perspectives on the Canada Emergency Rent Subsidy (CERS) on behalf of the commercial real estate industry. In normal times, landlords, brokers, property managers, and other service providers within the commercial real estate industry collaborate daily with tenants of all sizes and in all sectors, whether it be in hospitality, retail, industrial, health, or other sectors. Since the beginning of the COVID-19 pandemic, the relationship between landlords and tenants has been paramount.

As we have seen throughout this pandemic, the space from which a business operates is a key component of its successful operations, and for many businesses their lease is one of their largest expenses. In this context, landlords and tenants rely on each other as partners in a collective business. This reality has never been as apparent as it is now. Throughout the pandemic and the public health orders, tenants and landlords across Canada have been working together on accessing and advising on government support programs.

Over the past number of weeks, tenants have been applying or trying to apply to CERS, and many property owners and managers are helping them. In this process, we have identified areas where we believe the program can be improved for all parties. We share the government's belief that CERS is essential for protecting businesses and employees across the country. It is in the spirit of constructive feedback and collaboration that we raise the concerns we have been hearing about CERS and offer suggestions to help the program succeed. We share the Federal Government's aims in wanting to facilitate getting the financial assistance into the hands of those that need it and believe the program as presently constructed inhibits the process to some degree. We are therefore offering some relatively easy fixes for your consideration. A few key examples are listed on the following pages.

PROGRAM UPTAKE

Issue

We understand that the federal government's aim is to distribute CERS funds to those in need. This is vital. However, many businesses are not yet aware of the program, misinformed on its new eligibility, or reluctant to apply.

Comments

Tenants simply are not applying, and the number one reason is not because they do not qualify, although that is another issue we address below. Instead, tenants are confused about the rules of the program and qualification requirements, reluctant to apply through the CRA, or are concerned about inadvertently being offside with the CRA (on the required attestation), or in some cases face language or other barriers to application.

Suggestions

Consult with the commercial real estate industry to learn more about what we are hearing, and work with us and other industry associations to remove barriers in CERS. Work with real estate industry to raise awareness of CERS and help us to assist tenants in navigating the program.

TENANT ATTESTATION

Issue

The CERS attestation includes a clause requiring full payment of rent for the relevant period. This precludes tenants who cannot pay 100% of rent but would otherwise qualify from applying for CERS relief.

Comments

The clause in the applicant's attestation that requires payment of "all expenses" means that businesses who are concerned that they may not be able pay their full rent, even with CERS, are choosing not to enter the program for fear of having to violate the attestation to pay all rent within 60 days of receiving the CERS benefits. Further, this clause does not provide the landlord the additional flexibility to be able to agree to different terms, like rent deferral or abatements. Some help from the landlord may be required in addition to CERS benefits for a business to survive.

Suggestions

Clarify that a CERS recipient is only required to pay "all CERS benefits received for a relevant period" as opposed to "all expenses."

RENT REDUCTION

Issue

CERS discourages landlords and tenants from making rent reduction agreements to help each other through.

Comments

Many businesses are unable to pay full rent even with benefits being received from CERS. As structured currently, landlords and tenants are not motivated to enter into formal deferment or abatement agreements as once they are formalized, the "expenses" eligible for the CERS qualification are reduced pro-rata based on the new lower lease terms.

Suggestions

The program should specify that benefit rates will be calculated based on the lease terms in place on September 27, 2020 (the effective date of CERS), or, if applicable, the terms effected upon lease renewal, whichever is later. This will enable the landlord to have the ability to defer or abate an unpaid portion of rent without impacting the tenants' CERS benefit.

MULTI-LOCATION TENANTS

Issue

There is a lot of concern and lack of clarity around the CERS eligibility for multi-location tenants, and the benefits provided.

Comments

In general, there is confusion on how benefits are attributed to individual locations of larger multi-location tenants, who have deductible expenses capped at \$300,000 (effectively, four locations). The previous Canada Emergency Commercial Rent Assistance (CECRA) program allowed multi-tenant locations with individual franchisees to apply individually. CERS does not appear to have this capacity. The \$300,000 cap, as well as the entity level sales test, put these businesses at a disadvantage relative to other eligible businesses, and depending on allocations of benefits to individual locations, may impact access to lockdown benefits (see below). Finally, for the purpose of the base subsidy, expenses for each qualifying period are capped at \$75,000 per location and subject to an overall cap of \$300,000 "that would be shared among affiliated entities". This leaves confusion as to how these benefits are shared among locations and may impact access to lockdown benefits (as locations must qualify for the base subsidy).

Suggestions

Allow each franchisee or sub-tenant to apply individually. At a minimum, allow access to lockdown benefits for all individual locations for a corporate entity that qualifies.

LOCKDOWN BENEFITS ---

Issue

We have heard from tenants and landlords that there needs to be more clarity around lockdown benefits and how to calculate eligibility.

Comments

For example, it is unclear if one calculates lockdown benefits based on sales revenue only, or whether other losses can be included. Further, does the tenant have to be fully closed, or are those subjected to restrictions under the public health order also eligible? Lastly, if a tenant does not qualify for the base (up to 65% sales dependant) benefit or does not share in the allocation of a multi-location, entity level base benefit, it is disqualified from receiving a lockdown benefit.

Suggestions

Provide more clarity on what is meant by lockdown (especially because politicians are not using that term anymore and each province approaches “lockdown” differently). Provide clarity on how to calculate eligibility. Provide that for a multi-location corporate entity that qualifies at the entity level for the base subsidy, lockdown benefits are available for all that entity’s individual locations even if that location did not share in the base subsidy.

BUSINESSES OPENED IN MARCH 2020 AND LATER ---

Issue

A business that commenced operations in March 2020 or thereabouts is eligible to apply provided it had a CRA business number by September; however, there is no base rent subsidy for these businesses as sales comparisons are to same period 2019 and the alternative method of calculation uses January and February 2020 as a baseline for the sales decline. If a business

only began operations in March, there is no January and February baseline. These businesses are particularly impacted as a major investment has been made in premises etc., staff may have been hired and the business never operated at normal capacity and in some cases, never operated at all.

Comments

We understand that there are several new businesses, and seasonal businesses who are as a result shut out of the program. Good examples of this can be found in the restaurant, fitness and retail sectors.

Suggestions

These businesses should be eligible for the maximum base (65% sales-based) benefits and associated lockdown benefits (if applicable).

TENANT AND LANDLORD COMMUNICATION ---

Issue

Information about tenant application to CERS is not available to landlords.

Comments

While we appreciate that unlike CECRA, CERS provides relief directly to tenants and requires that they complete the application, the program would benefit from a mechanism that ensured the landlord was aware of a tenant taking advantage of the program and is receiving tenants’ CERS benefits as rent in accordance with tenants’ attestations.

Suggestions

Tenants should be obligated to supply landlords with confirmation of benefits received from CERS so we know how much benefits the landlord should be receiving; CERS should develop a database of applicants for landlords to consult.

SUMMARY

The CECRA program was a genuine attempt to get government, landlords and tenants to collectively provide relief during challenging times. The members we represent include many landlords/building owners that actively participated in CECRA, but the program was publicly criticized as some landlords would not participate and, accordingly, their tenants did not benefit. In the end, there were considerable excess funds in CECRA that did not reach tenants. CERS attempts to solve this by having businesses apply direct. Our fear is that while CERS is also a well-intentioned program, without the fixes made as described above, it will end up in the same place as CECRA. The funds will not flow to the program’s desired extent. Indeed, feedback from our member tenants clearly points to a lack of full subscription to the program being the biggest risk. The fixes described above will go a long way to increasing benefits flow and achieving the aims of the program. In addition, they add to the potential for landlords being part of the solution by being able to facilitate additional targeted rent abatement/deferment to tenants without impacting their benefits available under the program.

We appreciate you taking the time, Ms. Freeland and Mr. Carr, to consider our feedback, and we welcome the opportunity to discuss these and other concerns and ideas in person. For this purpose, we can assemble a small panel of Commercial Real Estate experts experienced in administering tenant relief programs including the CECRA and CERS programs. Please feel free to contact any of the undersigned to initiate that further conversation.

Sincerely,



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About BOMA and NAIOP:

The Building Owners and Managers Association (BOMA) and the National Association of Industrial and Office Properties (NAIOP) chapters of Edmonton and Calgary together represent the full cycle of CRE in Alberta from development, ownership, management, and building maintenance and services. Our membership consists of thousands of companies and professionals throughout Alberta. BOMA Toronto's membership of managers, developers and industry suppliers represents over 80% of the industry in Toronto and the Greater Toronto Area.

About REALPAC:

Founded in 1970, REALPAC is the national leadership association dedicated to advancing the long-term vitality of Canada's real property sector. Our members include publicly-traded real estate companies, real estate investment trusts (REITs), pension funds, private companies, fund managers, asset managers, developers, government real estate agencies, lenders, investment dealers, brokerages, consultants/data providers, large general contractors, and international members. Our members represent all asset classes in Canada – office, retail, industrial, apartment, hotel, seniors residential – from coast, to coast, to coast.