Grant Thornton

Visit our COVID-19 Hub for information and resources

Canada Emergency Commercial Rent Assistance

As part of the federal government's economic response plan to COVID-19, the Canada Emergency Commercial Rent Assistance (CECRA) is intended to provide rent relief for small businesses. The program offers forgivable loans to eligible commercial property owners for the months of April, May and June.

Overview

The CECRA program is intended to reduce rent by 75% for small businesses who have been severely impacted by the economic downturn caused by COVID-19. The federal government is working with the provinces and territories to both jointly fund and implement the program which will be administered through the Canada Mortgage and Housing Corporation (CMHC), with the application available on their website.

75% rent reduction **for small businesses**

How it works

The CECRA will provide forgivable loans to commercial property owners (landlords) to cover 50% of commercial (gross) rent for the months of April, May and June.

- The amount of the loan is reduced by
  - any federal or provincial government programs (other than CECRA) that provides commercial rent assistance, in response to COVID-19, received by either the landlord or tenant.
- The loan to the landlord will be forgiven if they, in turn, forgive at least 75% of the commercial tenant's (gross) rent. The tenant would pay the remaining 25% of rent (i.e., the amount that is not forgiven).
  - There is no requirement for the tenant to pay the remaining 25% to qualify for the CECRA. The landlord can forgive more than 75% and still qualify.
- The landlord has until August 31, 2020 to apply for the CECRA (meaning landlords don't need to apply during April, May and June 2020; they can apply thereafter). If the landlord does receive the CECRA after the three-month eligibility period, it can either
  - refund the 75% portion of the rent to the tenants for April, May and June, or
  - provide the tenant with a credit, if agreed upon by the tenant and landlord.

- The loan must be repaid on December 31, 2020 unless it is forgiven (i.e., the requirements noted above are met). If the terms and conditions of the program are not met, or if there is false or fraudulent information or misconduct, the loan would become repayable on demand, with interest at 5% per annum from the date of default until the date of full repayment.
- If the landlord discovers that any attestations made by a tenant are false or misleading, it will be required to
  - report the details and adjust the loan amount being applied for, if the landlord discovers the false tenant attestation prior to receiving the loan, or
  - report the details and make efforts to recover the rent from the tenant and repay the amount of the loan pertaining to that tenant.
- If a landlord files for bankruptcy, restructures, reorganizes or dissolves their business, they will be required to repay the loan.
- The landlord must use the funds in the following order:
  - To reimburse tenants for 25% or more of their commercial rent during the eligible period (unless tenant chooses to apply it against future rent,
  - Against any expenses related to the property, including financing, repairs and maintenance, property tax, insurance, utilities, etc.

Monthly gross rent

In calculating monthly gross rent, here is what the CMHC website says to include and exclude:

Included in gross rent*

- Net rent / minimum rent / base rent (in a net lease)
- Regular monthly installments of operating costs (in a net lease)
- Regular monthly installments of property taxes payable to the landlord (in a net lease)
- Regular monthly installments of other additional rent amounts payable to the landlord, for example: maintenance costs, repairs, utilities, management fees, etc. (in a net lease)
- Gross rent (in a gross lease)
- Percentage of sales rent paid (if included in the lease arrangement)

* Canada Mortgage and Housing Corporation, 2020. June 15, 2020, "COVID-19: CECRA for small businesses." Accessed at: https://www.cmhc-schl.gc.ca/en/finance-and-investing/covid19-cecra-small-business

Excluded from gross rent*

- Damages
- Indemnity payments
- Payments arising due to tenant default / landlord enforcement
- Payments arising due to landlord exercise of self-help remedies
- Interest and penalties on unpaid amounts
- Fees payable for discrete items or special services (e.g., fees to the landlord for reviewing plans, supervising work, considering requests for consent, performing exceptional tasks at the tenant's request)
- Reconciliation adjustment payments
- Amounts required under the lease agreement to be paid separately by the tenant to third parties (e.g., property taxes, utilities, insurance)
- Costs of non-monetary obligations (e.g., repairs and maintenance)
- Insurance proceeds or proceeds from other rent subsidy programs
- Sales taxes, including HST

Note: applying for insurance coverage does not make you ineligible for the program, but it may adjust the amounts received if you successfully receive payments from insurance claims or other programs to cover rent.

Example

A commercial tenant normally pays $10,000/month of rent.

The landlord applies for the CECRA and receives 50% of its regular rent, $5,000/month, as a forgivable loan (i.e., $15,000 total for the three months) through the program.

To be eligible for the loan forgiveness, the landlord must reduce the commercial tenant's rent by at least 75%. The tenant now pays $2,500/month in rent.

On a monthly basis, the landlord has received $2,500/month from the commercial tenant and $5,000/month as a forgivable loan. Since the landlord has provided the commercial tenant with the 75% rent savings, the loan would be forgivable. The landlord forgoes the other 25% of monthly rent (i.e., $2,500).

Landlords: Who is eligible?

- The landlord must generate rental revenues from a commercial real property located in Canada.
- The landlord is not required to have a mortgage loan on the property as the CECRA is administered undifferentiated for properties with mortgages or other forms of debt or no debt at all.
- There must be a rent reduction agreement in place for April, May and June 2020, providing rent reduction of at least 75% each month. The agreement must also include a moratorium on eviction for the same three months.
- The landlord must have declared rental income on its tax return for 2018 and/or 2019.
  - If the property is newly constructed and, therefore, the landlord has not reported any rental income in 2018 or 2019, the landlord can still qualify for the CECRA, provided a lease with an eligible tenant was entered into prior to April 1, 2020.
- The landlord must agree that it will not attempt to recover the foregone rent after the three-month period is over.
- The landlord will be required to attest that each small business tenant meets the eligibility criteria.
- A landlord and tenant who are not at arm's length can still qualify, provided there is a valid and enforceable lease agreement in place prior to April 1 and rent is equal to or less than market rate.
- Mixed-use properties that have a residential component would also be eligible for the small business tenants only.
- Federal, provincial or municipal-owned properties would not qualify. Some exceptions apply, including:
  - where there are long-term leases to a First Nation or Indigenous organization or government, the First Nation or Indigenous organization or government is eligible as the property owner,
  - where there are long-term commercial leases with third parties to operate the property (e.g. airport), the third party is eligible as the property owner, and
  - post-secondary institutions, hospitals, pension funds and crown corporations with limited appropriations designated as eligible under CECRA for small businesses.

Tenants: Who is eligible?

- Small business tenants that pay $50,000 per month or less in gross rent, per location, as per a valid and legally enforceable rental agreement.
- The small business must have already been open prior to March 1, 2020.
- The small business tenant must have experienced a 70% decrease in pre-COVID-19 revenues.[1]
- The small business tenant must generate no more than $20 million in gross annual revenues, based on the tenant's 2019 fiscal year.
- The $20 million threshold is on a consolidated basis at the ultimate parent level. This means that if the small business tenant or its owner produce consolidated financial statements, then the revenues are based on consolidated revenues for the "group level" of companies.
- NPOs and charities will also be considered. It appears that the same criteria noted above will apply to these organizations as well.[2]
- A tenant would not qualify for this program if
  - it is or is owned by a federal Member of Parliament or Senator,
  - it is or is owned by any person that promotes violence, incites hatred or discriminates on the basis of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered, or,
  - the premises is used for an activity or undertaking that is criminal in nature.
- Small business tenants can also qualify if they are in a sub-tenancy agreement, provided the lease structure meets program criteria.

1 The decline in revenue will be determined by comparing gross revenues for April, May and June 2020 to gross revenues for April, May and June 2019. If the small business was not operating during April – June 2019, they can compare gross revenues for April, May and June 2020 to the average gross revenues for January and February 2020. If June 2020 revenues are not available, forecasted revenues for June can be used. The revenues must be earned from ordinary activities in Canada and be based on the entity's normal accounting methods, and exclude extraordinary items. This method is somewhat similar to how it is determined under the Canada Emergency Wage Subsidy (CEWS). However, some of the elections noted in the CEWS rules are not mentioned (e.g., ability to use cash method).

2 NPOs and charities are required to exclude revenues from non-arm's length persons. Similar to the CEWS rules, these organizations can choose to include or exclude revenue from government sources in their calculation.

- Small businesses that have multiple locations with multiple property owners will be required to work with each property owner to receive the CECRA.
- It should be noted that, although this program is being administered by the CMHC, it may still be subject to an audit (likely by CMHC as they employ auditors). The CMHC's website states that if a tenant provides misleading information in the attestation, the tenant will be responsible to pay the forgiven rent under the terms of the lease. As previously noted, this also means that the landlord would be required to repay the loan, since it would no longer be forgiven.

How to apply

The application is available on the CMHC website.

Once the property owner has registered a new account, they will be able to complete the application through the portal. The application does not need to be completed in one sitting. As the property owner collects the required documents, they can be uploaded to the website.

The application can also be completed by an agent of the property owner, for example an accountant or a lawyer. Separate applications need to be submitted for each property and applications must be complete (i.e. with all required information and forms from tenants and property owner) in order to be submitted.

Provincial bans on evictions

Several provinces have imposed bans on evictions during the months of the CECRA program (i.e., April to June 2020). Generally, property owners that can apply for CECRA but choose not to will be prohibited from evicting their commercial tenants (until July 1, 2020).

The following provinces have adopted this rule thus far. Other provinces—such as Nova Scotia and New Brunswick, have adopted an eviction ban of some sort as well.

BC

Alberta

Sask

Ontario

Quebec

Nova Scotia

New Brunswick

Required documents

The required documents include:

- Tenant or Sub-tenant attestation(s)
- Property owner attestation(s)
- Rent reduction agreement
- Copy of property tax statement for all applicable properties
- Rent roll as of June 1, 2020
- Copy of most recent one-month bank account statement

Once the application has been submitted, the property owner will receive updates to the email address provided in the application. Updates may end up in the Inbox or Junk mail folder.

Once the application is approved, the funds will be deposited into the bank account provided in the application.

The application may also be sent back to the applicant if information is missing. The application could also be denied if CMHC determines that the requirements were not met.

Additional information

Further information is available on the CMHC website.

Alternatively, CMHC has made phone numbers available to call:

General inquiries
+1 800 668 2642

Technical difficulties with registration
+1 833 610 0515

We're here to help

We understand that you want to be agile and responsive as the situation unfolds. Having access to experts, insights and accurate information as quickly as possible is critical—but your resources may be stretched at this time.

We're here to support you as you navigate through the impacts of coronavirus on your business and your investments.

Grant Thornton LLP wants to caution that these rules are still new and continue to evolve as the government continues to re-evaluate the economic impact caused by the COVID-19 pandemic. We may still see changes to these measures—as well as new measures—as the government attempts to address the issues that have been raised by us and the tax community. Therefore, any analysis included herein, reflects our knowledge as of the date and time of this email and may no longer be applicable if changes do occur and you should proceed with caution before making any decisions.

Visit our COVID-19 Hub for timely information and resources and connect with your Grant Thornton advisor to learn more.