

OPEN LETTER

December 8, 2020

The Hon. Chrystia Freeland  
Minister of Finance  
Department of Finance Canada  
90 Elgin Street  
Ottawa, Ontario K1A 0G5

**Subject: Gaps in the Canada Emergency Rent Subsidy preventing businesses from accessing much needed relief**

Dear Minister Freeland:

As you know, the Canadian Federation of Independent Business (CFIB) is a non-partisan business association representing 110,000 small- and mid-sized enterprises (SMEs) across Canada. Today, we are writing to highlight problems our members have identified with the Canada Emergency Rent Subsidy (CERS) and propose fixes.

CFIB appreciates the federal government has implemented a much-improved rent relief program that addresses many of the gaps left by the previous Canada Emergency Commercial Rent Assistance (CECRA). However, it has become apparent there are still gaps in the CERS that leave some businesses without support.

With many provinces once again implementing new public health restrictions and shutdowns, many small business owners are once again feeling panicked and unsure about how they will fulfill their rent obligations. While nearly two-thirds (62%) of businesses are now fully open, only 29 per cent have returned to normal sales and many expect reduced capacity to continue well into the new year.<sup>1</sup> It is crucial the federal government address the following problems identified in CERS to get rent support to businesses that desperately need it.

**Non-Arm's Length Expenses**

Under CECRA, rent between non-arm's length entities was considered eligible if there was a formalized rental agreement, at fair market value, in place between two entities. Under the new CERS, eligible expenses include only those paid or payable to arm's-length parties, which has left out non-arm's

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<sup>1</sup> CFIB, COVID-19 Recovery Survey – November 2020, Preliminary Results, November 20–30, 2020, n=4,577.

length entities from accessing CERS. While we are aware there may be an election to help businesses in this scenario, it is confusing, costly and time consuming for businesses to figure out. Many entrepreneurs own their property or building in a holding company while also owning their small business in an operating company, which means they are non-arm's length. For example, a restaurateur in Hamilton owns his restaurant in an operating company and the building in a holding company and is therefore ineligible for CERS (unless the election is an option, but as previously noted, this is extremely unclear and confusing). **CFIB recommends eligible rent expenses include those paid or payable to non-arm's length parties.** This should be done in a simple way, such as the approach taken under CECRA.

### **New Businesses**

New businesses not operational prior to March 2020 do not qualify for CERS because they do not have baseline revenues in January or February for comparison. Additionally, those that do not have a CRA Business Number prior to September 27, 2020, also do not qualify. For example, a new restaurant in Banff signed a lease, incorporated, and even filed a tax return in 2019. The owners invested \$200,000 by mid-March when the shutdowns and restrictions began. They started their payroll in July with 20 staff. Despite their struggles and significant investment, they cannot access CERS (or CEWS) for support to survive. **CFIB recommends new businesses without January or February revenues be able to elect to use provincial sector averages in those months for comparison to access both CERS and CEWS. We further recommend there be no cut-off date for having a CRA Business Number.**

### **New Seasonal Businesses**

New seasonal businesses that had revenues in January and February are not able to access much support from CERS because these two months typically bring in the least revenue for the year. For example, a Dairy Queen franchisee started their business with minimal revenues in January 2019 to prepare for the busy summer months. Due to COVID-19 and business restrictions, their business has not picked up as expected and operational costs have increased. They are now struggling to stay afloat and are not able to access much CERS because they are required to compare their current revenue to their January and February revenues. **CFIB recommends new seasonal businesses be able to elect to use provincial sector averages as their baseline revenue to access both CERS and CEWS.**

### **Challenges with the Revenue Drop Criteria**

The current revenue drop criteria for CERS is calculated at the entity level. This can be problematic for businesses with multiple locations or businesses that expanded at the beginning of the pandemic. For example, a small health food store owner in Vancouver has multiple retail locations downtown and in the suburbs. Retail locations in the downtown area are really struggling as there is less traffic due to an absence of people commuting in for work. New locations in the suburbs have increased their revenues in comparison to the previous year. As a result of this situation, none of the locations are eligible for CERS because the overall entity level revenues have increased despite experiencing significant revenue losses at several locations. **CFIB recommends the revenue drop be calculated at the location level, as opposed to the entity level.**

### **Verbal Agreements**

Under CERS, it is a requirement to have a formalized rent agreement in place before October 9, 2020. Many small businesses have a verbal agreement while other have expired written agreements and have since gone month to month. Under CECRA, businesses without a formal agreement that could prove a pattern of regular rent payments were deemed eligible. **CFIB recommends businesses that do not have a formal lease but can provide evidence of regular rent payments be eligible for CERS.**

### **Base Subsidy & Top-Up Subsidy**

We are grateful the CERS provides a top-up for businesses closed due to a public health order. However, many businesses facing extreme hardship are excluded from the top-up. For example, most travel agencies are not facing closures due to a public health order, but because of international travel restrictions their revenues have been reduced to essentially nothing. Additionally, businesses in provinces like Alberta and Nova Scotia are subject to significant capacity limitations and face a similar situation. While these businesses are not closed and are therefore not eligible for the top-up, their revenues are being significantly impacted and they need support to make their rent obligations. **CFIB recommends hard-hit sectors affected by mandated capacity limitations or travel restrictions resulting in near-total revenue losses also be eligible for the top-up. CFIB also recommends the government increase the CERS base subsidy to 75 per cent to align with the CEWS to support businesses facing restrictions other than closures.**

### **No support for those left out of CECRA**

No retroactive pathway has been established for businesses that qualified for CECRA from April through September but did not receive the support because their landlord chose not to participate. Many small firms in this category are facing tens of thousands of dollars in deferred or unpaid rent bills and current revenues do not allow businesses to cover this debt. **CFIB recommends the government use CERS or another pathway to get the government portion (50%) of CECRA to businesses that could not access CECRA due to lack of landlord participation.**

### **Recommendations & Conclusion**

In summary, CFIB recommends:

1. **Eligible rent expenses include those paid or payable to non-arm's length parties.**
2. **New businesses without January or February revenues be able to elect to use provincial sector averages in those months for comparison to access both CERS and CEWS. CFIB further recommends there be no cut-off date for having a CRA Business Number.**
3. **New seasonal businesses be able to elect to use provincial sector averages as their baseline revenue to access both CERS and CEWS.**
4. **The CERS revenue drop be calculated at the location level, as opposed to the entity level.**
5. **Businesses that do not have a formal lease but can provide evidence of regular rent payments be eligible for CERS.**
6. **Hard-hit sectors affected by mandated capacity limitations, including travel restrictions that result in near-total revenue losses, also be eligible for the top-up. CFIB also recommends the government increase the CERS base subsidy to 75 per cent to align with the CEWS to support businesses facing restrictions other than closures.**

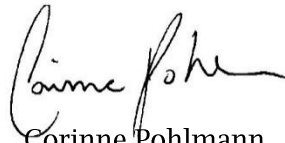
**7. The government use CERS or another pathway to get the government portion (50%) of CECRA to businesses that could not access CECRA due to lack of landlord participation.**

Thank you for your attention. We would also like to recognize the staff at CRA for their willingness to work with us to get answers to Canada's small business owners. On behalf of our affected members, we want to underscore how critical it is these gaps are addressed so all struggling small businesses can access the rent relief they need during these difficult times. If you have any questions, we would be happy to discuss this further. We can be reached at [laura.jones@cfib.ca](mailto:laura.jones@cfib.ca) or [corinne.pohlmann@cfib.ca](mailto:corinne.pohlmann@cfib.ca). We look forward to your government's response.

Sincerely,



Laura Jones  
Executive Vice-President



Corinne Pohlmann  
Senior Vice-President, National Affairs

CC: Diane Lebouthiller  
Minister of National Revenue