

BY AYANNA FERDINAND CATLYN

STRINGS ATTACHED

OTTAWA HAS UNVEILED PANDEMIC FINANCIAL SUPPORT.

That's good news for struggling businesses. But remember: There's no such thing as free money. Pay close attention to your obligations before accepting the help.



AS YOU'VE LIKELY HEARD, the federal government has introduced two programs to help Northerners carry on business through the COVID-19 pandemic. The prospects of financial support in these times is appreciated. No doubt about that. But it's important to remember Ottawa's programs carry important legal obligations for your business. Unfortunately, these obligations are not set out on government or partner websites. For the most part, they are only provided once you submit an application. With that in mind, this article will explore those conditions—which are not widely known—and set out how you will be expected to comply.

The first program is called the Canadian Emergency Business Account—or CEBA, for short. It's available nationwide and provides interest-free loans of up to \$40,000 to small businesses, including sole proprietors and not-for-profits, to enable them to return to providing services and generating employment in their communities as soon as possible. It is implemented by eligible financial institutions—known as “lenders”—in cooperation with Export Development Canada.

AND THEN THERE WERE TWO.

The federal government operates two programs that may help northern businesses weather the COVID-19 financial storm. The first offers interest-free loans, the second offers actual grants.

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To access a CEBA loan, your business must meet five eligibility requirements. First, your company must have been a Canadian operating business since March 1, 2020. It must also have an active chequing or savings account with its primary financial institution, which will be the lender, and it must be in good standing with the lender—meaning the business cannot be more than 90 days in arrears on any borrowing.

In addition, your business must have a federal tax registration and meet one of the following two conditions: You must have an annual payroll between \$20,000 and \$1.5 million; or you must have a Canada Revenue Agency business number, filed a 2018 or 2019 tax return, and have eligible non-deferrable expenses—including rent, property taxes, utilities and insurance—of between \$40,000 and \$1.5 million.

Under CEBA, each lender has its own separate legal agreement and attestation, which is a declaration from you saying that you were truthful on your application, to which your business is bound. I've reviewed several of the lender agreements and spell out the key common obligations here.

The loan is a one-time advance of up to \$40,000—interest-free if paid by Dec. 31, 2022, the "initial term." You may pre-pay the loan in full or in part at any time without penalty. If 75 per cent of the loan is paid before the end of the initial term, the lender will forgive 25 per cent of the entire loan, on condition there is no default on the loan. If the loan is not paid until after Jan. 1, 2023, it converts to a three-year term loan due by Dec. 31, 2025, payable monthly and subject to five per cent interest.

But you have to do more than simply pay the money back. Your business must ensure that it continues to exist and carry on as it previously had, and that it continues to pay taxes. All loan funds must also be used for non-deferrable operating expenses—payroll, rent, utilities, insurance, property tax, regularly scheduled debt service, and so on. You cannot use the funds to refinance or pre-pay existing debt. You also cannot use them for dividend payments, distributions or increases in management compensation. Lastly, applicants must agree to participate in post-funding surveys and ensure they've not used the CEBA program in the past or do so in the future with another lender.

After looking at CERB's details, my advice to anyone interested in applying is this: You must carry on with your business

in accordance with your fiduciary duties and duty of care to the business. Keep your annual filings up-to-date and operate as you did prior to the pandemic in all material respects. Have your company directors pass a resolution approving the loan, and assess your ability to pay it off during the interest-free term—or your ability to carry the interest costs afterwards. Lastly, document how you use the funds.

The second program is the Northern Business Relief Fund, which compliments CEBA with grants ranging from \$2,500 to a maximum of \$100,000. Delivered by the Northern Canada Economic Development Agency, the NBRF targets small and medium-size businesses in the territories, excluding franchises or subsidiaries that get financial support from parent firms.

To qualify, northern businesses must have a demonstrated expenditures-to-revenues deficit from economic disruptions due to COVID-19. They must also be registered in the North, have operated since Oct. 1, 2019, operate in one or more territory, and have a direct impact on the northern economy. And while the program is open to any business with fewer than 100 employees, priority is given to those with fewer than 20.

Additional conditions require companies to be solvent, financially viable, not bankrupt before the onset of the pandemic, and have operated at a loss between April 1 and July 31, 2020.

What are your responsibilities? You must submit a final report with copies of all invoices and ledgers for all eligible expenses. If you spend less than you receive, you must repay the difference. Further, you are not allowed to lay off staff or close your business, and you must use grant funds solely for qualifying expenses, including rent, mortgage payment, debt interest, insurance premiums and utilities. Unlike CEBA, wages are not eligible expenses.

For NBRF, your business must also continue to operate in all material respects as it did before the pandemic. To avoid making repayments of the grant, you must establish a system to track how you used the funds. You must also carefully oversee your employee obligations and operations to keep people employed.

As COVID-19 progresses, the eligibility requirements and terms and conditions for CEBA and NBRF may change. It is essential that you understand these agreements and seek legal advice before accepting their terms and conditions. 