STATE OF NEW YORK

2520

2019-2020 Regular Sessions

IN SENATE

January 25, 2019

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT establishing the federal shutdown affected employees loan program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Definitions. As used in this act, the following terms shall have the following meanings:

(a) "Affected employee" means a federal employee who, during the shutdown, is (i) a resident of this state, and (ii) required to work as a federal employee without pay or furloughed as a federal employee without pay;

(b) "Bank" means a bank as such term is defined in subdivision 1 of section 2 of the banking law;

(c) "Credit union" means a credit union as such term is defined in subdivision 9 of section 2 of the banking law;

(d) "Department" means the department of financial services;

(e) "Eligible financial institution" means a bank or credit union that has a physical presence in this state and is in good standing;

(f) "Grace period" means the ninety-day period after an affected employee's federal agency is funded; and

(g) "Shutdown" means the federal fiscal year 2019 partial government shutdown that began on December 22, 2018.

§ 2. Federal shutdown affected employee loan program. (a) The department shall administer a federal shutdown affected employee loan program to guarantee the repayment of loans made by an eligible financial institution to an eligible affected employee pursuant to this act. Subject to the cessation of new claim approvals under subdivision (d) of section five of this act, the department shall submit all approved claims to the comptroller, who shall pay from the general fund any and all claims submitted by the department.

(b) Any bank or credit union may apply to the department to participate in the loan guarantee program. Not later than one business day after receiving the application, the department shall determine whether the financial institution is an eligible financial institution and imme-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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diately notify the bank or credit union of such determination. Any eligible financial institution may make loans to affected employees in accordance with this act.

(c) Each eligible financial institution that makes a loan pursuant to this act, shall notify the department in writing not later than one business day after making the loan, specifying such information about the borrower as the department may request.

§ 3. Loan eligibility. An eligible financial institution may make a loan to an affected employee, provided:

(a) The affected employee has provided to the eligible financial institution (i) proof of the employee's status, income and residence in this state, and (ii) the amount of unemployment compensation benefits the employee has received and has been deemed eligible to receive during the shutdown. Such proof may include a paystub or bank statement, a federal employee identification card, the federal tax identification number of the employee's employer and a sworn affidavit from such employee indicating that such employee (A) is currently a federal employee residing in this state, (B) may be eligible to receive back-pay when the shutdown ends, and (C) is not receiving a loan from any other financial institution pursuant to this act.

(b) The amount of the loan shall not exceed (i) the lesser of (A) five thousand dollars, or (B) the affected employee's most recent monthly after-tax pay, (ii) less four times the amount, if any, the affected employee has reported to the eligible financial institution under subdivision (a) of this section related to any weekly unemployment compensation benefits the employee has received or has been deemed eligible to receive during the shutdown.

(c) The loan is made in accordance with the eligible financial institution's underwriting policy and standards, provided further that the affected employee's creditworthiness shall not be a factor used for the purposes of determining eligibility.

(d) The loan agreement shall not (i) require repayment during the grace period, or (ii) charge interest on the principal amount before or during the grace period or for one hundred eighty days after the grace period, provided after such one hundred eighty-day period, the eligible financial institution may charge interest or fees in accordance with such financial institution's lending policy and the terms of the underlying loan agreement.

(e) The loan agreement shall require that the affected employee repay the loan in full not later than one hundred eighty days after the end of the grace period by making at least three, and no more than six, equal installment payments. The loan agreement shall not contain a fee or penalty for the prepayment or early payment of the loan.

(f) The eligible financial institution shall offer credit counseling services or refer such employee to nonprofit credit counselors.

§ 4. Additional loans. An affected employee who has received a loan pursuant to this act may apply to the same eligible financial institution for an additional loan for each thirty-day period such employee remains an affected employee, provided no affected employee may receive more than three loans under the program, and each such employee shall be required to update the eligible financial institution as to the amount of unemployment compensation benefits the employee has received and has been deemed eligible to receive during the shutdown. Each additional loan shall be made in accordance with section three of this act.

§ 5. Collection of loans. (a) On and after one hundred eighty days from the end of the grace period, an eligible financial institution that

has made a good-faith effort to collect the outstanding principal from a loan issued pursuant to this act may make a claim to the department for recovery of an amount equal to the outstanding principal for such loan. Prior to the department's approving and submitting a claim to the comptroller, such eligible financial institution shall demonstrate to the satisfaction of the department that the eligible financial institution has made a good-faith effort to collect the outstanding principal from the eligible employee in accordance with such financial institution's loan servicing and collection policies. Upon payment of a claim, the loan shall be assigned to the state, and the department shall have the right to continue collection efforts on the loan.

(b) The department shall maintain records in the regular course of administration of the loan guarantee program, including a record of loans issued and of payments made to honor loan guarantees issued under this section. The department shall regularly review such records to determine total loans issued and identify duplicative applications. The department shall report to the department of labor the names of the affected employees who have received a loan under the program, and the department of labor shall provide to the department information concerning such employees' unemployment compensation benefits. If the department determines that an affected employee misrepresented unemployment compensation benefits, the affected employee may be deemed ineligible for additional loans under this act.

(c) The department may terminate any loan guarantee if the eligible financial institution misrepresents any information pertaining to the guarantee or fails to comply with any requirements of this section in connection with the guarantee of the underlying loan.

(d) If the amounts expended to honor loan guarantees under the program exceed ten percent of total loans issued, the department shall immediately cease to approve claims and shall notify the comptroller and each eligible financial institution of the total amount of payments made and that the department has ceased honoring loan guarantees.

(e) Any interest deferred or not charged related to a loan issued pursuant to this act shall be exempt from all state taxes that may be applicable to such interest amounts as they relate to an affected employee. Eligible financial institutions shall disclose to affected employee borrowers in the signed affidavit or loan documents that there may be federal tax consequences to the program loans.

(f) No new loan applications shall be submitted under the program after the shutdown ends. The program shall expire upon the repayment of all loans made under the program and, for all loans in default, the repayment of claims made under the program, or the cessation of new claim approvals under subdivision (d) of this section.

§ 6. Unemployment benefits. Upon the passage of federal legislation or the issuance of federal guidance from the United States department of labor or another federal agency which allows an affected employee to receive benefits, such affected employee may be eligible for unemployment benefits pursuant to such federal legislation or guidance during the period of the shutdown. If the shutdown ends and an affected employee is paid by the federal government for any period of time the affected employee worked without pay during the shutdown, the affected employee shall reimburse the unemployment insurance fund in an amount equal to the unemployment benefits the affected employee received for the period of the shutdown.

§ 7. This act shall take effect immediately.