

STATE OF NEW YORK

10208

IN ASSEMBLY

March 24, 2020

Introduced by M. of A. BUCHWALD -- read once and referred to the Committee on Banks

AN ACT in relation to establishing the coronavirus pandemic small business and not-for-profit organization 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 business or organization" means and includes both a small business and a small not-for-profit organization located within this state during the coronavirus pandemic;

(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 the coronavirus pandemic is over;

(g) "Small business" means a business with not more than one hundred employees that has experienced a loss in sales of 25 percent or more as a result of the coronavirus pandemic;

(h) "Small not-for-profit organization" means a not-for-profit organization with not more than one hundred employees; and

(i) "Coronavirus pandemic" means the period of time during which the presence of coronavirus disease 2019 in this state exists in significant enough numbers for which the threat of the spread of such disease is considered a pandemic.

§ 2. Coronavirus pandemic small business and not-for-profit organization loan program. (a) The department shall administer a coronavirus pandemic small business and not-for-profit loan program to guarantee the repayment of loans made by an eligible financial institution to an eligible affected business or organization pursuant to this act.

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

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1 Subject to the cessation of new claim approvals under subdivision (d) of
2 section five of this act, the department shall submit all approved
3 claims to the comptroller, who shall pay from the general fund any and
4 all claims submitted by the department.

5 (b) Any bank or credit union may apply to the department to partic-
6 ipate in the loan guarantee program. Not later than one business day
7 after receiving the application, the department shall determine whether
8 the financial institution is an eligible financial institution and imme-
9 diately notify the bank or credit union of such determination. Any
10 eligible financial institution may make loans to affected businesses and
11 organizations in accordance with this act.

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

16 § 3. Loan eligibility. An eligible financial institution may make a
17 loan to an affected business or organization, provided:

18 (a) The affected business or organization has provided to the eligible
19 financial institution proof satisfactory to such institution that such
20 affected business or organization is an affected business or organiza-
21 tion located within the state of New York.

22 (b) The amount of the loan shall not exceed seventy-five thousand
23 dollars.

24 (c) The loan is made in accordance with the eligible financial insti-
25 tution's underwriting policy and standards, provided further that the
26 affected business or organization's creditworthiness shall not be a
27 factor used for the purposes of determining eligibility.

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

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

41 (f) The eligible financial institution shall offer credit counseling
42 services or refer such affected business or organization to nonprofit
43 credit counselors.

44 § 4. Additional loans. An affected business or organization who has
45 received a loan pursuant to this act may apply to the same eligible
46 financial institution for an additional loan for each thirty-day period
47 such small business or not-for-profit organization remains an affected
48 business or organization, provided no affected business or organization
49 may receive more than three loans under the program. Each additional
50 loan shall be made in accordance with section three of this act. The
51 total amount of all loans received by an affected business or organiza-
52 tion shall not exceed seventy-five thousand dollars.

53 § 5. Collection of loans. (a) On and after one hundred eighty days
54 from the end of the grace period, an eligible financial institution that
55 has made a good-faith effort to collect the outstanding principal from a
56 loan issued pursuant to this act may make a claim to the department for

1 recovery of an amount equal to the outstanding principal for such loan.
2 Prior to the department's approving and submitting a claim to the comp-
3 troller, such eligible financial institution shall demonstrate to the
4 satisfaction of the department that the eligible financial institution
5 has made a good-faith effort to collect the outstanding principal from
6 the eligible small business or not-for-profit organization employee in
7 accordance with such financial institution's loan servicing and
8 collection policies. Upon payment of a claim, the loan shall be assigned
9 to the state, and the department shall have the right to continue
10 collection efforts on the loan.

11 (b) The department shall maintain records in the regular course of
12 administration of the loan guarantee program, including a record of
13 loans issued and of payments made to honor loan guarantees issued under
14 this act. The department shall regularly review such records to deter-
15 mine total loans issued and identify duplicative applications.

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

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

25 (e) Any interest deferred or not charged related to a loan issued
26 pursuant to this act shall be exempt from all state taxes that may be
27 applicable to such interest amounts as they relate to an affected busi-
28 ness or organization. Eligible financial institutions shall disclose to
29 affected business or organization borrowers in the signed affidavit or
30 loan documents that there may be federal tax consequences to the program
31 loans.

32 (f) No new loan applications shall be submitted under the program
33 after the coronavirus pandemic ends. The program shall expire upon the
34 repayment of all loans made under the program and, for all loans in
35 default, the repayment of claims made under the program, or the cessa-
36 tion of new claim approvals under subdivision (d) of this section.

37 § 6. This act shall take effect immediately.