

# STATE OF NEW YORK

10212

## IN ASSEMBLY

March 24, 2020

Introduced by M. of A. OTIS -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to establishing the state of emergency 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:

1 Section 1. The executive law is amended by adding a new section 29-1  
2 to read as follows:

3 § 29-1. State of emergency small business and not-for-profit organiza-  
4 tion loan program. 1. Definitions. As used in this section, the follow-  
5 ing terms shall have the following meanings:

6 (a) "Affected business or organization" means and includes both a  
7 small business and a small not-for-profit organization located within  
8 this state during a state of emergency;

9 (b) "Bank" means a bank as such term is defined in subdivision one of  
10 section two of the banking law;

11 (c) "Credit union" means a credit union as such term is defined in  
12 subdivision nine of section two of the banking law;

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

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

16 (f) "Grace period" means the ninety-day period after a state of emer-  
17 gency is over;

18 (g) "Small business" means a business with not more than fifty employ-  
19 ees;

20 (h) "Small not-for-profit organization" means a not-for-profit organ-  
21 ization with not more than fifty employees; and

22 (i) "State of emergency" means the period beginning with a declaration  
23 by the governor that a state of emergency exists.

24 2. State of emergency small business and not-for-profit organization  
25 loan program. (a) The department shall administer a state of emergency  
26 small business and not-for-profit loan program to guarantee the repay-  
27 ment of loans made by an eligible financial institution to an eligible

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

LBD08858-08-0

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

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

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

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

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

23 (b) The amount of the loan shall not exceed five thousand 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 section 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 subdivision three of this section.

51 5. Collection of loans. (a) On and after one hundred eighty days from  
52 the end of the grace period, an eligible financial institution that has  
53 made a good-faith effort to collect the outstanding principal from a  
54 loan issued pursuant to this section may make a claim to the department  
55 for recovery of an amount equal to the outstanding principal for such  
56 loan. Prior to the department's approving and submitting a claim to the

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

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

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

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

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

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

35 § 2. This act shall take effect immediately.