

STATE OF NEW YORK

2520--C

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 -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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;

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

LBD08858-07-0

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

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

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

7 2. State of emergency small business and not-for-profit organization
8 loan program. (a) The department shall administer a state of emergency
9 small business and not-for-profit loan program to guarantee the repay-
10 ment of loans made by an eligible financial institution to an eligible
11 affected business or organization pursuant to this section. Subject to
12 the cessation of new claim approvals under paragraph (d) of subdivision
13 five of this section, the department shall submit all approved claims to
14 the comptroller, who shall pay from the general fund any and all claims
15 submitted by the department.

16 (b) Any bank or credit union may apply to the department to partic-
17 ipate in the loan guarantee program. Not later than one business day
18 after receiving the application, the department shall determine whether
19 the financial institution is an eligible financial institution and imme-
20 diately notify the bank or credit union of such determination. Any
21 eligible financial institution may make loans to affected businesses and
22 organizations in accordance with this section.

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

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

29 (a) The affected business or organization has provided to the eligible
30 financial institution proof satisfactory to such institution that such
31 affected business or organization is an affected business or organiza-
32 tion located within the state of New York.

33 (b) The amount of the loan shall not exceed five thousand dollars.

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

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

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

51 (f) The eligible financial institution shall offer credit counseling
52 services or refer such affected business or organization to nonprofit
53 credit counselors.

54 4. Additional loans. An affected business or organization who has
55 received a loan pursuant to this section may apply to the same eligible
56 financial institution for an additional loan for each thirty-day period

1 such small business or not-for-profit organization remains an affected
2 business or organization, provided no affected business or organization
3 may receive more than three loans under the program. Each additional
4 loan shall be made in accordance with subdivision three of this section.

5 5. Collection of loans. (a) On and after one hundred eighty days from
6 the end of the grace period, an eligible financial institution that has
7 made a good-faith effort to collect the outstanding principal from a
8 loan issued pursuant to this section may make a claim to the department
9 for recovery of an amount equal to the outstanding principal for such
10 loan. Prior to the department's approving and submitting a claim to the
11 comptroller, such eligible financial institution shall demonstrate to
12 the satisfaction of the department that the eligible financial institu-
13 tion has made a good-faith effort to collect the outstanding principal
14 from the eligible small business or not-for-profit organization employee
15 in accordance with such financial institution's loan servicing and
16 collection policies. Upon payment of a claim, the loan shall be assigned
17 to the state, and the department shall have the right to continue
18 collection efforts on the loan.

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

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

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

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

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

45 § 2. This act shall take effect immediately.