STATE OF NEW YORK

3406

2021-2022 Regular Sessions

IN SENATE

January 29, 2021

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

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:

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

§ 29-l. State of emergency small business and not-for-profit organization loan program. 1. Definitions. As used in this section, 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 a state of emergency;

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

(c) "Credit union" means a credit union as such term is defined in subdivision nine of section two 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 a state of emergency is over;

(g) "Small business" means a business with not more than fifty employees;

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

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

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

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2. State of emergency small business and not-for-profit organization loan program. (a) The department shall administer a state of emergency 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 section. Subject to the cessation of new claim approvals under paragraph (d) of subdivision five of this section, 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. Claims by affected businesses that were mandatorily closed through phase three, four and five pursuant to executive order 202 of two thousand twenty shall be given priority.

(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 immediately notify the bank or credit union of such determination. Any eligible financial institution may make loans to affected businesses and organizations in accordance with this section.

(c) Each eligible financial institution that makes a loan pursuant to this section, 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 business or organization, provided:

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

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

(c) The loan is made in accordance with the eligible financial institution's underwriting policy and standards, provided further that the affected business or organization'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 business or organization 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 affected business or organization to nonprofit credit counselors.

4. Additional loans. An affected business or organization who has received a loan pursuant to this section may apply to the same eligible financial institution for an additional loan for each thirty-day period such small business or not-for-profit organization remains an affected business or organization, provided no affected business or organization may receive more than three loans under the program. Each additional loan shall be made in accordance with subdivision three of this section.

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 section 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 small business or not-for-profit organization 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.

(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 section shall be exempt from all state taxes that may be applicable to such interest amounts as they relate to an affected business or organization. Eligible financial institutions shall disclose to affected business or organization 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 state of emergency 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 paragraph (d) of this subdivision.

§ 2. This act shall take effect immediately.