

# STATE OF NEW YORK

1033

2023-2024 Regular Sessions

## IN SENATE

January 9, 2023

Introduced by Sens. JACKSON, PERSAUD -- read twice and ordered printed,  
and when printed to be committed to the Committee on Finance

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:

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

3 (a) "Affected business or organization" means and includes both a  
4 small business and a small not-for-profit organization located within  
5 this state during the coronavirus pandemic;

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

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

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

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

13 (f) "Grace period" means the ninety-day period after the coronavirus  
14 pandemic is over;

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

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

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

24 § 2. Coronavirus pandemic small business and not-for-profit organiza-  
25 tion loan program. (a) The department shall administer a coronavirus

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

LBD03532-01-3

1 pandemic small business and not-for-profit loan program to guarantee the  
2 repayment of loans made by an eligible financial institution to an  
3 eligible affected business or organization pursuant to this act.  
4 Subject to the cessation of new claim approvals under subdivision (d) of  
5 section five of this act, the department shall submit all approved  
6 claims to the comptroller, who shall pay from the general fund any and  
7 all claims submitted by the department.

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

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

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

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

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

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

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

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

44 (f) The eligible financial institution shall offer credit counseling  
45 services or refer such affected business or organization to nonprofit  
46 credit counselors.

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

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

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

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

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

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

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

41     § 6. This act shall take effect immediately.