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Sequence Number: 02-21-10  
 Rule ID(s): 4642  
 File Date: 02/22/2010  
 Effective Date: 07/29/2010

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

<b>Agency/Board/Commission:</b>	Economic and Community Development
<b>Division:</b>	Grants and Loans
<b>Contact Person:</b>	Stephanie Tisdale, ECD General Counsel
<b>Address:</b>	312 Rosa L. Parks Ave., 11 <sup>th</sup> floor, Nashville, TN
<b>Zip:</b>	37243
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)**

Chapter Number	Chapter Title
0500-04-01	Child Care Facilities Program
Rule Number	Rule Title
0500-04-01-.01	Authority
0500-04-01-.02	Purpose
0500-04-01-.03	Definitions
0500-04-01-.04	Eligibility
0500-04-01-.05	Application Forms
0500-04-01-.06	Eligible Uses
0500-04-01-.07	Direct Loan and Loan Guarantee Terms and Requirements
0500-04-01-.08	Loan Documents
0500-04-01-.09	Maximum Guarantee Amount
0500-04-01-.10	Grant Terms and Requirements
0500-04-01-.11	Regulatory Compliance
0500-04-01-.12	Premium to Defray costs
0500-04-01-.13	Approval of Applications
0500-04-01-.14	Nondiscrimination
0500-04-01-.15	Obligation of the Corporation

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

#### Chapter 0500-4-1 Child Care Facilities Program

Copy of present rules under this chapter attached.

#### Repeal

Chapter 0500-4-1 includes rules and guidelines for the Tennessee Child Care Facilities Corporation, a nonprofit corporation created under the act whose purpose was to create new child care slots in Tennessee by assisting in the start-up and expansion of child care facilities through grants, direct loans, and the guaranteeing of loans from the private sector which otherwise would not be made in an effort to expand quality child care, increase employment and promote economic development in the State of Tennessee. This program and these responsibilities were transferred to the Department of Human Services in 1998.

Authority: T.C.A. § 4-3-702 (c)

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of Economic and Community Development on 7/21/2009 (date as mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: July 21, 2009

Signature: *Matthew Kisber*

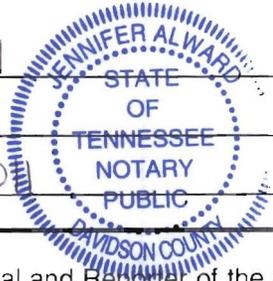
Name of Officer: Matthew Kisber

Title of Officer: Commissioner, Dept. of Economic and Community Development

Subscribed and sworn to before me on: July 21, 2009

Notary Public Signature: *Jennifer Alward*

My commission expires on: March 7, 2011



All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

*Robert E. Cooper, Jr.*  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
2-14-10  
 Date

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Filed with the Department of State on: 2/22/10  
 Effective on: 7/29/10

*Tre Hargett*  
 Tre Hargett  
 Secretary of State

**Regulatory Flexibility Addendum**

Pursuant to § T.C.A. 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

N/A

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Chapter 0500-4-1 of the Rules of the Department of Economic and Community Development contains the guidelines and criteria for the Child Care Facilities Program. This rule created a non-profit corporation whose main purpose was to assist with start-up and/or expansion of quality child care facilities in the State through grants and loans guaranteed by the private sector. The corporation also had the goal of increasing employment in the state as well as promoting economic development. This program was transferred to the Department of Human Services in 1998.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 4-3-702 (c) provides authority for promulgation of rules. T.C.A. § 4-37-101 et seq. provides the authority for these rules as well as guidelines for the Child Care Facilities Program.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Repeal of these rules would not directly affect any parties, since this program was transferred to the Department of Human Services in 1998.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

We are unaware of any attorney general opinions or judicial rulings made that directly relate to this rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rule change (repeal) would not have any effect on state or local government revenues or expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Lamont Price, ECD's Internal Auditor, has limited knowledge of this rule. There are no present ECD employees who have substantial knowledge of this rule, as this program has not been administered by ECD in over ten (10) years.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Lamont Price, ECD Internal Auditor

(H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Lamont Price, 312 Rosa L. Parks Ave., 11<sup>th</sup> floor, Nashville, TN 37243; 615-253-1760

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

**RULES  
OF  
THE TENNESSEE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT  
CHAPTER 0500-4-1  
CHILD CARE FACILITIES PROGRAM  
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**0500 4 1 01 AUTHORITY.** Pursuant to the provision of T.C.A. §§4-37-102(e) and 4-5-217 et seq., the Corporation may promulgate rules and regulations necessary for the regulation of its affairs and the conduct of its business.

**Authority:** T.C.A. §4-37-102(e); *Administrative History:* Original rule filed July 18, 1990; effective October 29, 1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.

**0500 4 1 02 PURPOSE.** The purpose of the corporation shall be to create new child care slots in Tennessee by assisting in the start-up and expansion of child care facilities through grants, direct loans, and the guaranteeing of loans from the private sector which otherwise would not be made, and thereby to expand quality child care, promote economic development and increase employment in Tennessee.

**Authority:** T.C.A. §4-37-104; *Administrative History:* Original rule filed July 18, 1990; effective October 29, 1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.

**0500 4 1 03 DEFINITIONS.** The following definitions shall apply to these rules:

(1) *Act* means T.C.A. §4-37-101 et seq., as the same may be amended from time to time.

(2) *Applicant* means any individual, business firm, unit of county or local government, not for profit or tax exempt organization, or local education agency.

(3) *Board* means the board of directors of the corporation.

(4) *Borrower* means an applicant that has received a direct loan or a loan guarantee.

(5) *Child Care Facilities or Child Care Facility* means a duly licensed and accredited day care center, group day care home, or family day care home in the state that provides child care slots for children.

(6) *Corporation* means the Tennessee Child Care Facilities Corporation, a non-profit corporation created under the act.

(7) *Direct Loan* means a loan made by the corporation to a borrower under the program for the purpose of providing financial assistance to the borrower's child care facilities.

(8) *Executive Director* means the Executive Director of the corporation.

(Rule 0500 4-1.03, continued)

(9) *Financial Assistance* means grants, direct loans, or loan guarantees provided by the corporation:

(10) *Grant Application* means information required of an applicant by the corporation upon which the grant request may be considered.

(11) *Grant Documents* means the state contract and other financial conveyance procedures that may be required by the Department of Finance and Administration.

(12) *Grantee* means a local government or local education agency that has received a grant from the corporation.

(13) *Guarantee* means the corporation's guarantee of a loan.

(14) *Lender* means a duly licensed and chartered private sector lending institution approved by the corporation to make loans to borrowers.

(15) *Local Education Agencies* means public education school systems.

(16) *Local Governments* means municipal and county governments.

(17) *Loan Documents* means the borrower's application submitted to the corporation, the direct loan and loan guarantee and all loan applications, notes, security agreements, deeds of trust, etc., executed between the borrower and the lender and the corporation in conjunction with the loan.

(18) *Loan* means a loan made by a lender to a borrower for the purpose of providing financial assistance to the borrower's child care facilities.

(19) *Loan Guarantee* means a loan that is guaranteed by the corporation pursuant to the program.

(20) *Origination Fees* means the premiums charged to the applicant by the corporation for the purpose of defraying the cost of administration of the program.

(21) *Program* means the child care facilities program established by the act and the rules and regulations of the board.

(22) *Project* means the activities involved in the development of a child care facility as provided in the loan documents.

(23) *State* means the state of Tennessee.

(24) \_\_\_\_\_

*Authority:* T.C.A. § 37-102(c). *Administrative History:* Original rule filed July 18, 1990, effective October 29, 1990. Repealed and new chapter filed December 30, 1992, effective March 31, 1993.

**0500 4-1.04 ELIGIBILITY.** In order to be considered for financial assistance under the program, the applicant must meet the following requirements and must establish that the financial assistance will be used to finance the expansion, development, or child care facilities:

(1) Applicants for financial assistance must meet all of the following criteria:

(a) Be an applicant in good standing and qualify to do business in the state.

(b) Demonstrate credit worthiness, financial responsibility and repayment capability to the satisfaction of the corporation, and have a reputation for financial responsibility as determined

from its creditors, employers, and other individuals who have personal knowledge of the applicant;

(e) The applicant's child care facilities are located and operated in the state;

(d) The applicant must have the legal capacity and all necessary legal authorization to receive the financial assistance;

(e) The applicant must demonstrate the capacity to manage the child care facilities and repay the debts of the child care facilities;

(2) Applicants for financial assistance shall be given consideration according to:

(a) Community need;

(b) Geographic distribution; and

(c) Community income, with priority given to those communities with the lowest median family income;

*Authority:* T.C.A. §§ 4-37-106(e), 4-37-108(1), 4-37-108(2) and 4-37-109. *Administrative History:* Original rule filed July 18, 1990; effective October 29, 1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.

**0500-4-1-.05 APPLICATION FORMS.** Applications to the corporation for financial assistance shall be made upon the forms prescribed by the corporation provided, however, that the corporation may accept forms that are acceptable to the corporation. Such forms shall include:

(1) Detailed description of the project, including management's profile;

(2) An itemization of known and estimated costs, including the cost for design professional and building and fire code compliance;

(3) The total amount of investment required to perform the contract and the total amount sought by borrower from lender or corporation for borrower's child care facilities;

(4) The funds available to applicant without the corporation's financial assistance;

(5) The amount and form of financial assistance sought from the corporation;

(6) Information (including pro forma statements) that related to the current financial status of the applicant, including if applicable:

(a) A current audited balance sheet;

(b) A profit and loss statement;

(c) Credit references;

(d) Cash flow statement;

(e) Information pertaining to collateral required by lender or corporation;

(7) Any other relevant information that the corporation requests;

*Authority:* T.C.A. § 4-37-109. *Administrative History:* Original rule filed July 18, 1990; effective October 29, 1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.

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**0500-4-1-.06 ELIGIBLE USES.** The proceeds of financial assistance throughout the corporation may be used for the child care facility for working capital, to purchase real estate, fixtures, equipment or supplies, or to building construction or renovations;

*Authority:* T.C.A. §§ 4-37-104(1) and 4-37-108(2). *Administrative History:* Original rule filed July 18, 1990; effective October 29, 1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.

**0500-4-1-.07 DIRECT LOAN AND LOAN GUARANTEE TERMS AND REQUIREMENTS.** Direct loans and guaranteed loans shall meet the following requirements:

(1) *Interest Rate.* The interest rate to be paid on loans shall be a reasonable rate determined by the lender and/or the corporation;

(2) *Security.* Each direct loan or loan guarantee shall be secured by liens on and security interests in the

child care facility, the personal guarantees of the major owners of the borrower, if any, and other collateral approved by the lender and the corporation.

(3) *Term*. The term of each loan may not exceed 20 years and shall be based upon the borrower's ability to repay:

(4) *Late Charges*. Late charges, as permitted by law, may be imposed.

(5) *Change of Ownership*. If at any time during the term of the direct loan or loan guaranteed the child care facility ceases to be used to provide child care, or the borrower sells, ceases to own, assigns, transfers, or otherwise disposes of all or any part of the child care facility, the corporation may, or may require the lender to take such action in accordance with the terms of the loan documents between the corporation or the lender and the borrower, accelerate the payment of the entire principal and interest due under the direct loan or loan guarantee.

(6) *Title Insurance*. The corporation or the lender may require the borrower to provide an American Land Title Association Loan Policy, or equivalent, issued by a title insurance company acceptable to the corporation, for an amount equal to the maximum principal amount of the loan, insuring the lender and the corporation, evidencing that interest in the property on or in which the day care facility is located on the date of closing and to their properties offered as collateral are vested in the appropriate party, and containing only standard exceptions and encumbrances approved by the corporation. The corporation may require the title insurance policy to be accompanied by a survey, certified in the manner required by the corporation and the title company issuing the title insurance, showing that there are no easements or encroachments upon or other matters pertaining to the property, except those acceptable to the corporation.

(7) *Insurance*. Before providing financial assistance, the corporation may require the borrower or the borrower's owners or key managers to obtain and assign to the corporation life insurance in the amount of the loan. The corporation may also require business interruption insurance, hazard and casualty insurance, flood insurance, homeowner's insurance, and other appropriate forms of insurance.

(8) *Appraisals*. The corporation may require appraisals by qualified for each property offered as collateral for the loan:

*Authority: T.C.A. § 4-37-104(i). Administrative History: Original rule filed July 18, 1990; effective October 29, 1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.*

**0500-4-1-08 LOAN DOCUMENTS**. Before the closing of a direct loan or loan guarantee, the lender or borrower shall provide the corporation with copies of relevant loan documents which may include:

(1) A promissory note;

(2) A deed of trust;

(3) A loan and security agreement;

(4) Personal and corporate guarantees;

(5) Assignments of life insurance;

(6) Financing statements;

(7) Any other loan documents required by the corporation.

*Authority: T.C.A. § 4-37-104(i). Administrative History: Original rule filed July 18, 1990; effective October 29, 1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.*

**0500-4-1-09 MAXIMUM GUARANTEE AMOUNT**. The corporation shall not guarantee more than 80% of the loan and the corporation shall not have more than \$250,000 of guaranteed loans with any single borrower.

*Authority: T.C.A. § 4-37-114 and 4-37-115. Administrative History: Original rule filed July 18, 1990; effective October 29, 1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.*

**0500-4-1-10 GRANT TERMS AND REQUIREMENTS**. Grants shall meet the following requirements:

(1) *Grantees*. Eligible grantees shall include local education agencies and local governments;

(2) *Grant Application*. Before the execution of a grant the applicant shall provide information required by

the corporation which may include:

(a) Description of applicant;

(b) Total project budget (start up and operating, 5-year projections amount requested);

(c) Project description;

(d) If project involves property renovation, copies of the property deed, lease agreement which shows renovation is allowable, and a statement from the property owner giving permission to renovate;

(e) Estimated completion time;

(f) Project justification;

(g) Population to be served;

(3) *Grant Amounts*. Grant amounts shall be determined by the corporation. In determining grant amounts the corporation shall be guided by the following considerations:

(a) The amount of assistance requested;

(b) Other funds available to the applicant;

(4) *Grant Documents*. Grant assistance shall be conveyed to grantees through procedures required by the Department of Finance and Administration:

*Authority*: T.C.A. § 4-37-104. *Administrative History*: Original rule filed July 18, 1990; effective

October 29, 1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.

CHILD CARE FACILITIES PROGRAM CHAPTER 0500-4-1

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**0500-4-1-11 REGULATORY COMPLIANCE**. All financial assistance shall be contingent upon the project complying with all applicable federal, state, and local regulations for the operation of child care facilities:

*Authority*: T.C.A. § 4-37-109(1)(8). *Administrative History*: Original rule filed July 18, 1990; effective

October 29, 1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.

**0500-4-1-12 PREMIUM TO DEFRAY COSTS**. The corporation is authorized to charge a premium to the

borrower to help defray the cost of administering the program:

*Authority*: T.C.A. § 4-37-112. *Administrative History*: Original rule filed July 18, 1990; effective

October 29, 1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.

**0500-4-1-13 APPROVAL OF APPLICATIONS**. The corporation shall review the application. If, after

making such review, the corporation determines that the applicant is eligible under the provisions of the act

and

these rules, the corporation is authorized to approve a financial assistance request:

*Authority*: T.C.A. § 4-37-116. *Administrative History*: Original rule filed July 18, 1990; effective

October 29, 1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.

**0500-4-1-14 NONDISCRIMINATION**. The borrower or grantee and its officers, employees, agents, and

servants may not discriminate against any person on the basis of race, color, religion, national origin, sex,

marital

status, physical handicap, or age in any aspect of the program. All borrowers or grantees, their officers,

employees,

agents, and servants shall comply with all applicable federal, state, and local laws and departmental policies

and programs regarding discrimination and equal opportunity in employment, housing and credit practices:

*Authority*: T.C.A. § 4-37-102. *Administrative History*: Original rule filed July 18, 1990; effective

October 29,

1990. Repealed and new chapter filed December 30, 1992; effective March 31, 1993.

corporation

**0500-4-1-15 OBLIGATION OF THE CORPORATION**. Guarantees are an obligation of the

and not the state, and any amounts to be paid pursuant to the loan guarantee are subject to the availability of sufficient funds of the corporation. Lenders may request from the corporation a statement of financial position.  
*Authority: T.C.M. §1-37-108(3). Administrative History: Original rule filed December 30, 1992; effective March 31, 1993.*