

TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 9 REQUIREMENTS GOVERNING THE CHILD CARE FACILITY LOAN ACT

8.9.3.1 ISSUING AGENCY: Early Childhood Education and Care Department (ECECD).
[8.16.9.1 NMAC - Rp, 8.9.9.1 NMAC, 12/23/2024]

8.9.9.2 SCOPE: The Child Care Facility Loan Act fund program regulations shall apply to the use of funds by eligible applicants available pursuant to the Child Care Facility Loan Act, Sections 24-24-1 to 24-24-4 NMSA 1978.
[8.16.3.2 NMAC - Rp, 8.9.9.2 NMAC, 12/23/2024]

8.9.9.3 STATUTORY AUTHORITY: The regulations (rules) set forth herein, have been promulgated by the secretary of the New Mexico Early Childhood Education and Care Department, by authority of the Early Childhood Education and Care Department Act, Sections 9-29-1 to 9-29-13 NMSA 1978, and the Child Care Facility Loan Act, Sections 24-24-1 to 24-24-4 NMSA 1978, in conjunction with the New Mexico Finance Authority.
[8.16.3.3 NMAC – Rp, 8.9.9.3 NMAC, 12/23/2024]

8.9.9.4 DURATION: Permanent.
[8.16.3.4 NMAC - Rp, 8.9.9.4 NMAC, 12/23/2024]

8.9.9.5 EFFECTIVE DATE: December 23, 2024, unless a later date is cited at the end of a section.
[8.16.3.5 NMAC - Rp, 8.9.9.5 NMAC, 12/23/2024]

8.9.9.6 OBJECTIVE:

A. The objective of 8.9.9 NMAC is to establish standards and procedures for administering loans under the Child Care Facility Loan Act. The Child Care Facility Loan Act directs the early childhood education and care department (the department) in conjunction with the New Mexico finance authority (the authority) to adopt rules to administer and implement the Child Care Facility Loan Act.

B. The Child Care Facility Loan Act creates the child care facility revolving loan fund in the authority to provide long-term, low-interest funding for loans to providers to make health and safety improvements in their facilities, expand their facilities, create new facilities, for operating capital and to contract with the department for the provision of services to repay the loan. The purpose of act is to support the physical improvement, repair, safety and maintenance of licensed child care facilities throughout New Mexico to ensure the availability of healthy and safe teaching environments.

C. These rules establish eligibility guidelines, loan application requirements and evaluation procedures for loan applications. The authority will adopt a separate policy governing the structuring and parameters (including interest rates and terms), and financial monitoring of loans from the child care facility revolving loan fund.
[8.16.3.6 NMAC - Rp, 8.9.9.6 NMAC, 12/23/2024; A, 8/26/2025]

8.9.9.7 DEFINITIONS:

A. “**Act**” means the Child Care Facilities Loan Act (Sections 24-24-1 to 24-24-4 NMSA 1978).

B. “**Agreement**” means the document or documents signed by the Authority and the eligible applicant that specifies the terms and conditions of a loan provided under the program.

C. “**Applicant**” means a private provider, who is not governed, owned, or managed by a federal, state, or local government entity (including school districts and charter schools) and has filed an application for a loan with the department and the authority.

D. “**Application**” means a written document filed with the department and the authority by an applicant for the purpose of obtaining a loan. An application may include a form prescribed by the department and the authority, written responses to requests for information by the department and the authority, or another format as determined by the department and the authority.

E. “**Authority**” means the New Mexico finance authority.

F. “Authorized representative” means one or more individuals authorized by the governing body of an applicant to act on behalf of the applicant in connection with its application. An authorized representative may act on behalf of the applicant to the extent provided by law.

G. “Board” means the New Mexico finance authority board of directors as created by the New Mexico Finance Authority Act, Sections 6-21-1 to 6-21-31 NMSA 1978.

H. “Contract for services” means an agreement between the authority, the department, and an eligible child care provider in which the provider must meet the following criteria:

- (1) be located in a child care desert;
- (2) provide care during non-traditional hours;
- (3) at least fifty percent of the children served are on child care assistance; and
- (4) the number of children served at the facility has increased by at least ten percent since

loan closing.

Once ECECD verifies that a borrower has met all the above requirements for Contracts for Services, NMFA will abate a predetermined amount of the original loan and modify the debt service schedule accordingly.

I. “Department” means the New Mexico early childhood education and care department.

J. “Entity” means privately owned child care facility, or one owned and managed by a non-profit organization as defined by the United States internal revenue service. This does not include any child care facility owned or managed by a state or local government (including school districts and charter schools). Child care facilities located on tribal lands and managed by tribal governments are considered entities for purposes of these regulations.

K. “Facility” means a child care facility operated by a provider, including both family home-based and center-based programs, licensed by the department to provide care to infants, toddlers, and children.

L. “Fund” means the child care facility revolving loan fund held by the authority pursuant to the act.

M. “Loan” means a loan from the fund.

N. “Operating capital” means funds needed to meet short-term obligations, such as accounts payable, wages, debt servicing, lease and income tax payments in relation to the creation or expansion of a child care facility and provider services.

O. “Project” means health and safety improvements to a child care facility, including physical improvement, repair, maintenance, expansion and operation of a child care facility providing a healthy and safe teaching environment, the creation of a new child care facility, or the receipt of operating capital as provided for in these regulations and the act.

P. “Provider” means a person, entity or employer licensed by the department to provide child care to infants, toddlers and children pursuant to 8.9.4 NMAC, or in receipt of a provisional loan license as set forth in these regulations. Federal, state, and local government entities (including school districts and charter schools) are not considered “providers” for purposes of these regulations other than entities governed, owned, or managed by tribal entities located in New Mexico.

Q. “Provisional loan license” means a license provided for by the department, through its licensing division, to a proposed or renovated child care facility seeking a loan provided for in these regulations and the act. A provisional loan license is only applicable for purposes of the act and these regulations.

R. “Rules” means these Child Care Facility Loan Act fund program regulations.
[8.16.3.7 NMAC - Rp, 8.9.9.7 NMAC, 12/23/2024; A, 8/26/2025]

8.9.9.8 ELIGIBILITY GUIDELINES FOR APPLICANTS AND PROJECTS:

A. An applicant is considered eligible if they meet the following eligibility requirements:

- (1) is a provider as defined by the act and these rules; and is
- (2) is verified as in good standing regarding its licensure by the department; and
- (3) complies with all applicable federal, state and local laws and regulations.

B. A project is considered eligible if it meets the following eligibility requirements:

- (1) is owned by an eligible applicant; and
- (2) the project involves the physical improvement, repair, maintenance, expansion or operation of a facility, the creation of a new child care facility that has received a provisional loan license from the department, or has applied for operating capital, as defined by the act and these rules; and
- (3) involves a facility licensed by the department under 8.9.4.11 NMAC; or in receipt of a provisional loan license as set forth in these rules and
- (4) is verified as supporting healthy and safe teaching environments by the department.

C. The department may give priority to eligible applicants that have facilities serving a proportionately high number of state-subsidized clients and low-income families that are located in communities with high poverty rates and that provide nontraditional-hour child care or based on other programmatic factors determined at discretion of the department.

[8.16.3.8 NMAC - Rp, 8.9.9.8 NMAC, 12/23/2024; A, 8/26/2025]

8.9.9.9 LOAN APPLICATION PROCEDURES:

A. Contingent upon a sufficient balance in the fund, the department and the authority will accept applications and award loans

B. The department and the authority will provide applications. Complete applications must be signed by an authorized representative of the provider. Only applications that are complete will be considered for a loan. The application shall include the following:

- (1) evidence of the eligibility of the applicant and the project;
- (2) proof of applicable licenses, including a provisional loan license, and certifications for the provider and the facility; and
- (3) a detailed description of the circumstances that demonstrate the impact of the project, including a description of the need for child care services in the community in which the project is located, including data on licensed capacity and capacity to serve eligible children in the community.
- (4) a description of how the project will benefit the health and safety of provider's clients; the quality of the provider's program, or the operation of the facility; and number of state subsidized and low-income families and total number of clients served;
- (5) information on the current and proposed services of the applicant to state-subsidized clients and low-income families.
- (6) a detailed description of the project to be financed, including:
 - (a) a description of the scope of work of the project;
 - (b) the estimated cost of the project;
 - (c) the target date for the initiation of the project and the estimated time to completion; and
 - (d) the estimated useful life of the project and selected components;
- (7) a copy of the applicant's formation and governance documents (e.g., articles of incorporation and bylaws);
- (8) identification of the source funds to complete the project if the loan requested is not sufficient to cover the full cost of the project;
- (9) identification of the source of funds for repayment of the loan and the source of funds to operate and maintain the project over its useful life;
- (10) the applicant's financial reports for the most recent three years and federal and state tax returns;
- (11) the applicant's projected cash flows for at least three years;
- (12) the applicant's business plan;
- (13) the written assurance that the project is allowed by the owner of the facility, if the owner is not the applicant;
- (14) any existing licenses or certifications that pertain to the business;
- (15) any insurance documents pertaining to the business;
- (16) a request for a provisional loan license from the department for proposed facilities or new construction;
- (17) The department and the authority may contract for services with an eligible provider to provide child care as reasonably adequate legal consideration for money from the fund if the provider, during the course of the loan, meets the following criteria:
 - (a) be located in a designated child care desert;
 - (b) provides care during non-traditional hours;
 - (c) demonstrates that at least fifty percent of the children that the provider or employer serves are recipients of a child care assistance program expanded or created by the provider;
 - (d) demonstrate that the number of children served by the provider increased by at least ten percent; and
 - (e) satisfies other qualifications as determined by the department and the authority as set forth in the agreement; and

(18) any additional information as requested by the department or authority.
[8.16.3.9 NMAC - Rp, 8.9.9.9 NMAC, 12/23/2024; A, 8/26/2025]

8.9.9.10 EVALUATION OF APPLICANT AND PROJECT:

- A.** Evaluations and determinations by department.
- (1) Once an application is complete, the department will evaluate the applicant and the proposed project for eligibility and make a determination as to eligibility.
- (2) If the department determines that an applicant is eligible, including whether to issue a provisional loan license, the department will determine the programmatic priority for each application.
- (3) Upon completion of its evaluation of eligibility and determination of programmatic priority, the department will refer the applications to the authority.
- B.** Financing approval by the authority.
- (1) Staff at the authority will perform an independent analysis of the financial feasibility of each application as determined by the authority in its policy.
- (2) Restrictions on loans:
- (a) No more than twenty percent of the fund may be loaned to a single provider in a single project.
- (b) Loans from the fund are to be made at an interest rate greater than zero.
- (c) Loans from the fund are to be made for a term that does not exceed the useful life of the project being financed.
- C.** Approval by the authority. Staff of the authority may recommend applications for approval to the board. The board may approve all or part of any application recommended or may disapprove the application and deny funding at its sole discretion.
- [8.16.3.10 NMAC - Rp, 8.9.9.10 NMAC, 12/23/2024; A, 8/26/2025]

8.9.9.11 RECONSIDERATION OF DECISIONS BY DEPARTMENT AND THE AUTHORITY:

- A.** Decision by department as to eligibility. An applicant may request reconsideration of a contrary decision by the department as to whether it is an eligible applicant under these regulations. Notice must be given to the department in writing within ten working days of receipt of the department's decision as to eligibility. A request for reconsideration not timely or properly made will be barred. The department's secretary or designee will promptly review each timely request for reconsideration. The decision of the department secretary or designee as to eligibility is final.
- B.** Decision by the authority as to financing. An applicant may request reconsideration of a decision by the authority denying a loan to an applicant by notifying the chief executive officer of the authority in writing within fifteen days of the date on which notice of an adverse decision is given by the authority to an applicant. The authority's chief executive officer will promptly review each timely request for reconsideration. The authority's chief executive officer will either consider the request for reconsideration or reject the appeal. The authority's chief executive officer will provide the applicant written notice of the rejection of a request for reconsideration within five business days following such decision. An applicant may appeal the authority's chief executive officer's decision by submitting a notice of appeal to the authority's board within ten business days following receipt of the notice of that decision, which notice of appeal must include any reasons and documentation supporting the applicant's position. An applicant's appeal to the authority's board will be considered by the authority's board at its next regular meeting. The decision of the authority's board is final.
- [8.16.3.11 NMAC - Rp, 8.9.9.11 NMAC, 12/23/2024; A, 8/26/2025]

8.9.9.12 LOAN AGREEMENTS:

- A.** The authority and the eligible applicant will enter into an agreement and any other applicable documentation to establish the terms and conditions of the loan from the authority. The agreement will include the terms of repayment and sanctions available to the authority in the event of a default.
- B.** The agreement will contain provisions that require loan recipients to comply with all applicable federal, state and local laws and regulations.
- C.** The agreement will contain a provision that the eligible applicant agrees that any contract or subcontract executed for the completion of any project shall contain a provision that there shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin. The authority shall not be responsible for monitoring the contracts or subcontracts for inclusion of that provision or compliance with it.

D. The authority will monitor the financial and reporting covenants of the agreement and will enforce all terms and conditions thereof, including prompt notice and collection. The authority will take actions as necessary to ensure loan repayment and the integrity of the fund.

E. The department will monitor the performance of an eligible applicant under department licensure requirements and for programmatic requirements and will make the necessary site visits. The authority will not monitor the performance of an eligible applicant under department licensure requirements nor for programmatic requirements and will not make site visits. The authority will not be responsible for any act or omission of the applicant upon which any claim, by or on behalf of any person, firm, corporation or other legal entity, may be made, arising from the loan or any establishment or modification of the project or otherwise. The department will monitor any approved applicants who are on a contract for services to determine if the approved applicant is complying with all requirements of the contract for services. The department will promptly notify the authority if a loan recipient falls out of compliance with any licensure or programmatic requirements.

F. In the event the loan recipient defaults, the authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and federal law.

G. If an eligible applicant that has received a loan ceases to maintain its provider status or ceases to provide child care to infants, toddlers and children, the state shall have the following remedies available to it:

(1) the acceleration of the loan requiring the immediate repayment of all amounts due, including all accrued and unpaid interest;

(2) any other remedies available at law or in equity.

[8.16.3.12 NMAC - Rp, 8.9.9.12 NMAC, 12/23/2024; A, 8/26/2025]

8.9.9.13 ADMINISTRATION OF THE FUND:

A. The fund is created in the authority consisting of appropriations, gifts, grants and donations to the fund, which shall be invested as provided in the New Mexico Finance Authority Act.

B. Money in the fund shall not revert.

C. Administrative costs of the authority may be paid from the fund.

D. The fund shall be administered by the authority as a separate account, but may consist of such sub-accounts as the authority deems necessary to carry out the purposes of the fund.

E. Money from repayments of loans or payments on securities held by the authority for projects authorized specifically by law shall be deposited in the fund. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of financing projects authorized specifically by law.

[8.16.3.13 NMAC - Rp, 8.9.9.13 NMAC, 12/23/2024]

HISTORY OF 8.16.3 NMAC:

History of Repealed Material:

8.16.3 NMAC, Requirements Governing the Child Care Facility Loan Act, filed 2/15/2005 - Repealed effective 10/17/2005.

8.16.3 NMAC, Requirements Governing the Child Care Facility Loan Act, filed 10/3/2005 - Repealed effective 9/14/2007.

8.16.3 NMAC, Requirements Governing the Child Care Facility Loan Act, filed 10/3/2005 - Repealed effective 12/23/2024.