

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce/Credit Union Division intends to adopt the rule cited as 04 NCAC 06C .0708.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.nccud.org>

Proposed Effective Date: April 1, 2019

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A public hearing may be demanded by written request to Tony Knox, Deputy Administrator of the North Carolina Department of Commerce/Credit Union Division within 15 days of the publication of the Notice of Text.*

Reason for Proposed Action: 04 NCAC 06C .0708 CHARITABLE CONTRIBUTIONS AND CHARITABLE DONATION ACCOUNTS – proposed for adoption to allow State-chartered credit unions to make charitable contributions and to fund charitable donation accounts.

Comments may be submitted to: Tony Knox, Deputy Administrator, 205 W. Millbrook Road, STE 105, Raleigh, NC 27609, phone (919) 571-4888, fax (919) 420-7919, email tknox@nccud.org

Comment period ends: February 15, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 06 - CREDIT UNION DIVISION

SUBCHAPTER 06C - CREDIT UNIONS

SECTION .0700 - ACCOUNTS

04 NCAC 06C .0708 CHARITABLE CONTRIBUTIONS AND CHARITABLE DONATION ACCOUNTS

(a) A credit union may make charitable contributions and donations or may fund a charitable donation account. The following definitions apply throughout this Rule:

- (1) "Charitable contributions and donations" means gifts provided by credit unions to assist others through contributions of staff, equipment, money, or other resources. This definition includes donations to community groups, nonprofit organizations, other credit unions or credit union affiliated causes, political donations, or donations to create charitable foundations.
- (2) "Charitable donation account" ("CDA") means a hybrid charitable and investment vehicle that a credit union may fund as a means to provide charitable contributions to qualified charities.
- (3) "Qualified charity" means a charitable organization or other non-profit entity that serves either a charitable, social, welfare, or educational purpose, and recognized by section 501(c)(3) of the Internal Revenue Code as tax exempt.
- (4) "Total return" means the actual rate of return on all investments in a CDA over a given period of up to five years, including realized interest, capital gains, dividends, and distributions, but exclusive of account fees and expenses.

(b) A credit union seeking to make charitable contributions and donations shall adopt policies and procedures as approved by its Board of Directors.

(c) A credit union shall be allowed to fund a CDA only after it has satisfied the following:

- (1) Notice. The credit union shall send written notice of the type and amount of initial investment to the Administrator 10 days prior to funding the CDA.
- (2) Rating. The credit union shall be rated a CAMEL 1, 2, or 3.

- (3) Maximum aggregate funding. The total aggregate investment in CDAs shall be limited to five percent of the applicant credit union's net worth for the duration of the CDAs, as measured every quarterly Call Report cycle.
- (4) Segregated account. The assets of a CDA shall be held in a segregated custodial account or special purpose entity and shall be labeled as a CDA.
- (5) Regulatory oversight. If a CDA is established using a trust vehicle, the trust shall be a revocable trust and the trustee shall be an entity regulated by a state financial regulatory agency or a federal regulatory agency. A regulated trustee, other person, or entity that is authorized to make investment decisions for a CDA (manager), other than the credit union itself, shall be either a Registered Investment Adviser with the U.S. Securities and Exchange Commission or regulated by the Office of the Comptroller of the Currency.
- (6) CDA documentation and other written requirements. The parties to the CDA shall document the terms and conditions controlling the CDA in a written agreement. The terms of the agreement shall be consistent with this Rule. A credit union's board of directors shall adopt written policies governing the creation, funding, and management of a CDA that are consistent with this Rule, review the policies annually, and may amend them. A CDA agreement and policies shall at a minimum:
- (A) provide that the CDA will make charitable contributions and donations only to qualified charities;
 - (B) document the investment strategies and risk tolerances the CDA trustee or other manager shall follow in administering the account;
 - (C) provide that a credit union shall account for the CDA, including distributions to charities and liquidation of the CDA, in accordance with generally accepted accounting principles; and
 - (D) state the frequency with which the trustee or manager of the CDA will make distributions to qualified charities that are consistent with Subparagraph (c)(7) of this Rule.
- (7) Minimum distribution to charities. A credit union shall distribute a minimum of 51 percent of the CDA's total return to one or more qualified charities no less frequently than every five years.
- (d) Upon termination of a CDA, regardless of the length of its term, a minimum of 51 percent of the CDA's total return on assets shall be distributed to one or more qualified charities. Following the distributions to the qualified charities, any remaining assets shall be distributed to the credit union either in cash or shall be distributed to the credit union in kind but only if those assets are permissible investments for State-chartered credit unions as set forth in Rule .1201 of this Subchapter and G.S. 54, Article 14 I.
- (e) The Administrator may revoke or modify a previously funded investment to the applicable credit union, if the Administrator finds the previously authorized investment is no longer a safe and sound practice, or has become inconsistent with applicable State or federal law. The Administrator shall send written notice of the revocation or modification to the applicable credit union. A credit union may appeal for a final decision by the Administrator as set forth in 04 NCAC 06B .0501.

History Note: Authority G.S. 54-109.12; 54-109.21 (19) and (20);
Eff. April 1, 2019.