

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Department of Commerce - Credit Union Division

RULE CITATION: 04 NCAC 06C .0205

DEADLINE FOR RECEIPT: August 8, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Line 13: Unless it changes the agency's intention, place a comma after "guarantor".

Page 1, Lines 12-16: Consider whether "including limits of credit cards" in Line 16 would be better placed in Line 12 such that "A loan or line of credit, including limits of credit cards, extended to an official..."

Page 1, Line 18: Consider changing "the current loan" to "the loan subject to review".

Page 1, Line 19: When the agency states "outstanding balances of loans", does it mean any loan to the official or only creditor's loans to the official?

Page 1 Lines 19: When the agency states "lines of credit", does it mean any lines of credit to the official or only creditor's lines of credit to the official?

Page 1, Line 31: RRC Counsel recognizes that the change made was in response to the pre-review; however, by using the word "includes" the agency implies that there may be other items not listed in the Rule. "Shall consist of" without "at least" is definite.

Page 2, Lines 5-6: Strike "including". Replace "as well as" with "and". How is the agency defining "domestic partners"?

Page 2, Lines 12: There seems to be a word missing after "credit". Maybe "offered", "extended" or "provided"?

Page 2, Lines 18-25. Can you identify any statute or rule that makes the two listed activities "unlawful" or is the intent of the rule prohibit those activities? If the later, consider re-writing this part. As written, it is unclear and ambiguous. Consider, for example, "No official or employee shall have any interest in nor derive any benefit from the extension of credit, or the sale of credit union real or personal property, unless and until the terms of the loan or sale have been disclosed to and approved by the Board of

William W. Peaslee
Commission Counsel

Date submitted to agency: July 25, 2022

Directors by a two-thirds vote.” And “The purchase by a director or employee from the credit union of any savings account or evidence of indebtedness for less than face value is prohibited.” To be clear, RRC counsel is not requiring this language but rather offering it as a possibility if the language fulfills the agency’s intention.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: July 25, 2022

1 04 NCAC 06C 0205 is amended as published in 36:22 NCR 1776 as follows:
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3 **04 NCAC 06C .0205 LOANS TO CREDIT UNION OFFICIALS**

4 (a) Officials. For purposes of this Rule, an "official" is a member of the board of directors, ~~Board of Directors~~,
5 credit committee, or supervisory committee. ~~committee; the President, Chief Executive Officer, Chief Financial~~
6 ~~Officer, Comptroller, General Manager, Treasurer/Manager, or Executive Vice President; and Outside Attorneys~~
7 ~~and Outside Accountants of the credit union. For the purpose of this Paragraph, the following definitions apply:~~

8 (1) ~~"Outside Attorneys" means independent attorneys or law firms that are retained to provide 25~~
9 ~~percent or more of the legal services for the credit union, based on the annual legal expense; and~~

10 (2) ~~"Outside Accountants" means independent accountants or accounting firms that are retained to~~
11 ~~provide accounting or audit services for the credit union.~~

12 (b) Loans to Officials. A loan or line of credit extended to an official as the borrower, direct obligor, endorser,
13 cosigner, or guarantor with direct or indirect pecuniary interest in the loan shall be reviewed by the board of
14 directors, ~~Board of Directors~~ or a duly appointed committee thereof, as provided in Paragraph (c) of this Rule, at the
15 next regular meeting following the date of such extension of credit, provided the following computation produces a
16 total amount in excess of fifty thousand dollars (\$50,000) including limits of credit cards; ~~cards~~.

17 (1) Add:

18 (A) the loan amount extended for the current loan;

19 (B) the outstanding balances of loans, including the used portion of an approved line of
20 credit, extended to or endorsed, cosigned or guaranteed by the official; and

21 (C) the total unused portion of approved lines of credit extended to or endorsed, cosigned, or
22 guaranteed by the official.

23 (2) Subtract from the above total:

24 (A) the amount of shares pledged by the official on loans or lines of credit extended to, or
25 endorsed, cosigned, or guaranteed by the official; and

26 (B) the amount of shares pledged by the official on the current loan or line of credit.

27 (c) Review of Loans to Officials by Duly Appointed Committee. The board of directors ~~Board of Directors~~ may
28 also appoint a committee to review and report on loans made to officials. All members of the committee shall be on
29 the board of directors. ~~Board of Directors~~. The committee shall meet before the regular monthly board meeting to
30 review all officials' loans that have been approved since the previous meeting. The committee shall make a report to
31 the board that shall include ~~consist of at least~~ the official's loan number, his or her title or position, the amount of the
32 loan, purpose of the loan, aggregate amount of indebtedness to the credit union, and a statement regarding
33 compliance with loan policies. Each credit union's board of directors ~~Board of Directors~~ shall review this loan
34 approval report on a monthly basis. This review shall be done at the regular monthly board meeting. In the event
35 the board does not meet monthly, ~~a procedure shall be established whereby~~ the manager of the credit union or their
36 designee shall send a written report to each director on a monthly basis. ~~a written report shall be sent to each~~
37 ~~director on a monthly basis.~~

1 (d) ~~Non-preferential~~ ~~Non-preferential~~ treatment. The rates, terms, and conditions on a loan or line of credit made to
2 or endorsed, co-signed, or guaranteed by:

- 3 (1) an official;
- 4 (2) an immediate family member of an official. For the purpose of this Rule, "immediate family
5 member" means immediate blood relatives and members attained by marriage, including spouses,
6 biological children, adopted children, and step-children, as well as domestic partners; a spouse or
7 other family member living in the same household; or
- 8 (3) any individual having a common ownership, investments, or other pecuniary interest in a business
9 enterprise with an official or with an immediate family member of an official; ~~official, shall not be~~
10 ~~more favorable than the rates, terms and conditions for comparable loans or lines of credit to other~~
11 ~~credit union members.~~

12 shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit
13 union members.

14 ~~(e) Avoidance of conflicts. No official or any employee of the credit union shall in any manner, directly or~~
15 ~~indirectly, participate in the deliberation upon or the determination of any question affecting his or her pecuniary~~
16 ~~interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which~~
17 ~~he or she is directly or indirectly interested.~~

18 ~~(f)~~ (e) Indirect Benefits. It shall be unlawful for an official or employee to:

- 19 (1) have any interest or to benefit in any manner in the proceeds of a loan or from the sale by the
20 credit union of any real or personal property unless the official or employee has disclosed to the
21 board of directors ~~Board of Directors~~ of the credit union the nature and extent of the benefit that
22 may be received and the loan or sale, regardless of the amount of money involved, has been
23 approved by a vote of at least two thirds of the directors of the credit union; or
- 24 (2) have any interest direct or indirect, in the purchase at less than face value of any savings account
25 or evidence of indebtedness issued by a credit union.

26 (g) Penalty. A violation of the provisions of this Rule shall be sufficient basis for removal of any official or
27 employee by ~~the~~ the Administrator, as set forth in G.S. 54-109.19.

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29 *History Note: Authority G.S. 54-109.12; 54-109.19; 54-109.35; 54-109.39;*
30 *Eff. February 1, 1976;*
31 *Readopted Eff. April 4, 1978;*
32 *Amended Eff. March 1, 2015; August 1, 1998; October 1, 1983;*
33 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September*
34 *6, 2016.*
35 *Amended Eff. September 1, 2022.*
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