

Burgos, Alexander N

Subject: FW: [External] Re: 08.2022 Request for Changes DOC 04 NCAC 06C .0205

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Thursday, August 4, 2022 2:27 PM

To: Badwan, Rana <rbadwan@ncdoj.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Knox, Tony <tony.knox@nccud.nc.gov>

Subject: RE: [External] Re: 08.2022 Request for Changes DOC 04 NCAC 06C .0205

Thank you for your email. I intend to recommend approval to my client.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] Re: 08.2022 Request for Changes DOC 04 NCAC 06C .0205
Attachments: 04 NCAC 06c .0205 after technical changes draft 2.doc

From: Badwan, Rana <rbadwan@ncdoj.gov>
Sent: Thursday, August 4, 2022 1:10 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Knox, Tony <tony.knox@nccud.nc.gov>
Subject: Re: [External] Re: 08.2022 Request for Changes DOC 04 NCAC 06C .0205

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Hello Mr. Peaslee,

I am attaching another draft of rule 04 NCAC 06C .0205 with the definition of domestic partners included. Please let me know if this definition is sufficient.

Best regards,

Rana



Rana M. Badwan
Assistant Attorney General
Services to State Agencies Section
Phone: 919-716-6898
Email: rbadwan@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603
P.O. Box 629, Raleigh, NC 27602-0629
ncdoj.gov

Please note messages to or from this address may be public records.

1 04 NCAC 06C 0205 is amended with changes as published in 36:22 NCR 1776 as follows:

2
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 credit, including limits of credit cards, extended to an official as the
13 borrower, direct obligor, endorser, cosigner, or guarantor guarantor, with direct or indirect pecuniary interest in the
14 loan shall be reviewed by the board of directors, ~~Board of Directors~~ or a duly appointed committee thereof, as
15 ~~provided in Paragraph (e) of this Rule~~, at the next regular meeting following the date of such extension of credit,
16 provided the following computation produces a total amount in excess of fifty thousand dollars ~~(\$50,000)~~ (\$50,000):
17 including limits of credit [cards:] cards.

18 (1) Add:

19 (A) the loan amount extended for the current loan; the loan subject to review;

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

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

24 (2) Subtract from the above total:

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

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

28 (c) Review of Loans to Officials by Duly Appointed Committee. The board of directors ~~Board of Directors~~ may
29 also appoint a committee to review and report on loans made to officials. All members of the committee shall be on
30 the board of directors. ~~Board of Directors~~. The committee shall meet before the regular monthly board meeting to
31 review all officials' loans that have been approved since the previous meeting. The committee shall make a report to
32 the board that shall [include] consist of at least the official's loan number, his or her title or position, the amount of
33 the loan, purpose of the loan, aggregate amount of indebtedness to the credit union, and a statement regarding
34 compliance with loan policies. Each credit union's board of directors ~~Board of Directors~~ shall review this loan
35 approval report on a monthly basis. This review shall be done at the regular monthly board meeting. In the event
36 the board does not meet monthly, a procedure shall be established whereby the manager of the credit union or their
37 designee shall send a written report to each director on a monthly basis. ~~a written report shall be sent to each~~
38 ~~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]
6 spouses, biological children, adopted children, [and] step-children, [as well as] and domestic
7 partners. [partners;] a spouse or other family member living in the same household; For the
8 purpose of this Rule, "domestic partners" means non-marital relationship between two adults that
9 live together; or
- 10 (3) any individual having a common ownership, investments, or other pecuniary interest in a business
11 enterprise with an official or with an immediate family member of an official; official, shall not be
12 more favorable than the rates, terms and conditions for comparable loans or lines of credit to other
13 credit union members.

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

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

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

- 21 ~~(1) have any interest or to benefit in any manner in the proceeds of a loan or from the sale by the~~
22 ~~credit union of any real or personal property unless the official or employee has disclosed to the~~
23 ~~[board of directors] Board of Directors of the credit union the nature and extent of the benefit that~~
24 ~~may be received and the loan or sale, regardless of the amount of money involved, has been~~
25 ~~approved by a vote of at least two thirds of the directors of the credit union; or~~
- 26 ~~(2) have any interest direct or indirect, in the purchase at less than face value of any savings account~~
27 ~~or evidence of indebtedness issued by a credit union.~~
- 28 ~~(1) No official or employee shall have any interest in nor derive any benefit from the extension of~~
29 ~~credit, or the sale of credit union real or personal property, unless and until the terms of the loan or~~
30 ~~sale have been disclosed to and approved by the Board of Directors by a two-thirds vote.~~
- 31 ~~(2) The purchase by a director or employee from the credit union of any savings account or evidence~~
32 ~~of indebtedness for less than face value is prohibited.~~

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

35
36 *History Note:* Authority G.S. 54-109.12; 54-109.19; 54-109.35; 54-109.39;
37 *Eff. February 1, 1976;*

1 *Readopted Eff. April 4, 1978;*
2 *Amended Eff. March 1, 2015; August 1, 1998; October 1, 1983;*
3 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September*
4 *6, 2016.*
5 *Amended Eff. September 1, 2022.*

Burgos, Alexander N

Subject: FW: [External] Re: 08.2022 Request for Changes DOC 04 NCAC 06C .0205

From: Knox, Tony <tony.knox@nccud.nc.gov>

Sent: Thursday, August 4, 2022 9:42 AM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Badwan, Rana <rbadwan@ncdoj.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] Re: 08.2022 Request for Changes DOC 04 NCAC 06C .0205

Thank you,

Tony Knox

Deputy Administrator

North Carolina Credit Union Division

205 W Millbrook Rd Suite 105

Raleigh, North Carolina 27609

984-275-6733

984-275-6744

Please note my new email address tony.knox@nccud.nc.gov

This message (including attachments) is intended only for the identified Recipient(s) and may contain information that is confidential pursuant N.C.G.S. 54-109.105, 53-244.050(1) and 53.244-120 and or is otherwise privileged. If you are not the intended recipient, you are hereby notified that any use, copying or distribution of this message (including attachments) is unauthorized and prohibited. If you have received this message in error, please notify the sender (tony.knox@nccud.nc.gov) immediately and then delete the message (including attachments) from your computer to the extent that this communication is not otherwise privileged or confidential it may be subject to NC Public Records Law and maybe disclosed to third parties.

Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] Re: 08.2022 Request for Changes DOC 04 NCAC 06C .0205

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Thursday, August 4, 2022 9:21 AM

To: Badwan, Rana <rbadwan@ncdoj.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Knox, Tony <tony.knox@nccud.nc.gov>

Subject: RE: [External] Re: 08.2022 Request for Changes DOC 04 NCAC 06C .0205

Good morning,

As “domestic partner” is not defined in North Carolina law, the term needs to be either deleted or defined to avoid a recommendation to object by RRC counsel.

As always, if you have any questions or concerns, please do not hesitate to contact me.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

Burgos, Alexander N

Subject: FW: [External] Re: 08.2022 Request for Changes DOC 04 NCAC 06C .0205
Attachments: 04 NCAC 06c .0205 after technical changes.doc; 08.2022 Request for Changes DOC 04 NCAC 06C .0205 with NCCUD responses.docx

From: Badwan, Rana <rbadwan@ncdoj.gov>
Sent: Wednesday, August 3, 2022 11:32 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Knox, Tony <tony.knox@nccud.nc.gov>
Subject: [External] Re: 08.2022 Request for Changes DOC 04 NCAC 06C .0205

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Hello Mr. Peaslee,

Thank you for your help. Attached please find the rule 04 NCAC 06C .0205 with the suggested changes. I have also attached the Division's responses to the questions by the RRC staff. Please let me know if you have any further questions or concerns, and if RRC staff will be recommending the rule.

Thank you again for your help.

Best regards,

Rana



Rana M. Badwan
Assistant Attorney General
Services to State Agencies Section
Phone: 919-716-6898
Email: rbadwan@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603
P.O. Box 629, Raleigh, NC 27602-0629
ncdoj.gov

Please note messages to or from this address may be public records.

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

AGENCY: North Carolina Department of Commerce

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? Only the 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? Only the creditor's loans 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"? Non-marital relationship between two adults that live together as a couple. This term is also used in another rule and it is understood by the Division's regulated public.

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,

William W. Peaslee
Commission Counsel

Date submitted to agency: July 25, 2022

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 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 with changes as published in 36:22 NCR 1776 as follows:

2
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 credit, including limits of credit cards, extended to an official as the
13 borrower, direct obligor, endorser, cosigner, or guarantor guarantor, with direct or indirect pecuniary interest in the
14 loan shall be reviewed by the board of directors, ~~Board of Directors~~ or a duly appointed committee thereof, as
15 ~~provided in Paragraph (e) of this Rule~~, at the next regular meeting following the date of such extension of credit,
16 provided the following computation produces a total amount in excess of fifty thousand dollars ~~(\$50,000)~~ (\$50,000):
17 including limits of credit [cards:] cards.

18 (1) Add:

19 (A) the loan amount extended for the current loan; the loan subject to review;

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

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

24 (2) Subtract from the above total:

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

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

28 (c) Review of Loans to Officials by Duly Appointed Committee. The board of directors ~~Board of Directors~~ may
29 also appoint a committee to review and report on loans made to officials. All members of the committee shall be on
30 the board of directors. ~~Board of Directors~~. The committee shall meet before the regular monthly board meeting to
31 review all officials' loans that have been approved since the previous meeting. The committee shall make a report to
32 the board that shall [include] consist of ~~at least~~ the official's loan number, his or her title or position, the amount of
33 the loan, purpose of the loan, aggregate amount of indebtedness to the credit union, and a statement regarding
34 compliance with loan policies. Each credit union's board of directors ~~Board of Directors~~ shall review this loan
35 approval report on a monthly basis. This review shall be done at the regular monthly board meeting. In the event
36 the board does not meet monthly, ~~a procedure shall be established whereby~~ the manager of the credit union or their
37 designee shall send a written report to each director on a monthly basis. ~~a written report shall be sent to each~~
38 ~~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]
6 spouses, biological children, adopted children, [and] step-children, [as well as] and domestic
7 partners; a spouse or 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 extended to
13 other credit 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 (1) No official or employee shall have any interest in nor derive any benefit from the extension of
27 credit, or the sale of credit union real or personal property, unless and until the terms of the loan or
28 sale have been disclosed to and approved by the Board of Directors by a two-thirds vote.

29 (2) The purchase by a director or employee from the credit union of any savings account or evidence
30 of indebtedness for less than face value is prohibited.

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

33
34 *History Note: Authority G.S. 54-109.12; 54-109.19; 54-109.35; 54-109.39;*
35 *Eff. February 1, 1976;*
36 *Readopted Eff. April 4, 1978;*
37 *Amended Eff. March 1, 2015; August 1, 1998; October 1, 1983;*

1 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September*
2 *6, 2016.*
3 *Amended Eff. September 1, 2022.*

Burgos, Alexander N

Subject: FW: 08.2022 Request for Changes DOC 04 NCAC 06C .0205
Attachments: 08.2022 Request for Changes DOC 04 NCAC 06C .0205.docx

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, August 2, 2022 2:34 PM
To: Badwan, Rana <rbadwan@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Knox, Tony <tony.knox@nccud.nc.gov>
Subject: FW: 08.2022 Request for Changes DOC 04 NCAC 06C .0205

Good afternoon.

In response to your voicemail message, I am forwarding you the email I sent to Tony Knox, the designated rule making coordinator.

As always, if you have any questions or concerns, please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, July 25, 2022 3:54 PM
To: Knox, Tony
Cc: Burgos, Alexander N
Subject: 08.2022 Request for Changes DOC 04 NCAC 06C .0205
Attachments: 08.2022 Request for Changes DOC 04 NCAC 06C .0205.docx

Good morning, Tony,

I'm the attorney who reviewed the Rules submitted by the North Carolina Department of Commerce for the August 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, August 18, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on August 8, 2022.

In the meantime, please let me know if you have any questions or concerns.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.