

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Commerce/ Credit Union Division

RULE CITATION: 04 NCAC 06C .0708

DEADLINE FOR RECEIPT: Friday, March 8, 2019

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 call our office to inquire concerning the staff recommendation.

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

On the Submission for Permanent Rule form, please complete Box 5. Please note, you can just come to our office to make the change to the form you already filed; you do not have to complete a new one.

In Paragraph (d), Page 2, line 20, I believe this citation should be "14I" (with no space between the "14" and "I").

In (e), line 22, how will the Administrator find this? During an examination?

On line 25, please replace "Rule 06B .0501 of this Chapter" with "04 NCAC 06B .0501." As this is how it was published in the Register, you do not have to show it as a change; simply do it.

In the History Note, please separate the citations as follows:

Authority G.S. 54-109.12; 54-109.21(19); 54-109.21(20);

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 22, 2019

04 NCAC 06C .0708 is adopted as published in 33:12 NCR 1267 as follows:

**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 5 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

1 shall be consistent with this Rule. A credit union's board of directors shall adopt written policies
2 governing the creation, funding, and management of a CDA that are consistent with this Rule,
3 review the policies annually, and may amend them. A CDA agreement and policies shall at a
4 minimum:

5 (A) provide that the CDA will make charitable contributions and donations only to qualified
6 charities;

7 (B) document the investment strategies and risk tolerances the CDA trustee or other manager
8 shall follow in administering the account;

9 (C) provide that a credit union shall account for the CDA, including distributions to charities
10 and liquidation of the CDA, in accordance with generally accepted accounting principles;
11 and

12 (D) state the frequency with which the trustee or manager of the CDA will make distributions
13 to qualified charities that are consistent with Subparagraph (c)(7) of this Rule.

14 (7) Minimum distribution to charities. A credit union shall distribute a minimum of 51 percent of the
15 CDA's total return to one or more qualified charities no less frequently than every 5 years.

16 (d) Upon termination of a CDA, regardless of the length of its term, a minimum of 51 percent of the CDA's total
17 return on assets shall be distributed to one or more qualified charities. Following the distributions to the qualified
18 charities, any remaining assets shall be distributed to the credit union either in cash or shall be distributed to the
19 credit union in kind but only if those assets are permissible investments for State-chartered credit unions as set forth
20 in Rule .1201 of this Subchapter and G.S. 54, Article 14 I.

21 (e) The Administrator may revoke or modify a previously funded investment to the applicable credit union, if the
22 Administrator finds the previously authorized investment is no longer a safe and sound practice, or has become
23 inconsistent with applicable State or federal law. The Administrator shall send written notice of the revocation or
24 modification to the applicable credit union. A credit union may appeal for a final decision by the Administrator as
25 set forth in Rule 06B .0501 of this Chapter.

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