

## General Information

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<b>Agency</b>	North Carolina Department of the Secretary of State
<b>Rule Title</b>	Sunset Provision
<b>Citation</b>	18 NCAC 06A .2120
<b>Proposed Action</b>	North Carolina Department of the Secretary of State proposes to amend the Sunset Provision by extending the applicable sunset provisions by five years.
<b>Agency Contact</b>	Ann Wall, <a href="mailto:awall@sosnc.gov">awall@sosnc.gov</a> 919-814-5310
<b>Authority</b>	N.C.G.S. §78A-49(a) and N.C.G.S. §78A-17.1(f)
<b>Impact Summary</b>	State Government: No Impact Local Government: No Impact Federal Government: No Impact Private Sector: No Impact <b>Substantial Impact: No Impact</b>
<b>Necessity</b>	This action is necessary to further evaluate that the Local Public Offerings (“LPOs”) rules are meeting the intended purpose and an extended period is necessary to serve the public interest. This is not a significant rule change.

## Summary

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The North Carolina Secretary of State (“NC SOS”) is proposing a rule amendment that will (1) extend the sunset provisions to accept new Form NCE – LPO or other filing related to a new local public offering (“LPO”) by five years and (2) extend the expiration of the rules in Section .2100 by five years. See the Appendix for the text of the proposed rule amendment.

The purpose of the LPO crowdfunding rules is to promote the overall economic health of North Carolina by facilitating responsible and competitive intrastate crowdfunding by North Carolina businesses. Crowdfunding is a way for businesses to raise small amounts of money from a large number of investors. This typically occurs through the use of the internet. North Carolina offers a two-tiered approach to crowdfunding. The first path, the NC Paces Offering (“NCPO”), is similar to federal crowdfunding in that it allows for the solicitation of and communication directly with investors, but only through the internet. This “internet-only” crowdfunding option prohibits general solicitation and advertising. The second path, LPOs, permits advertising and general solicitation of and communication with investors in person. The LPO rules seek to accomplish the objective of providing businesses with a flexible tool for capital formation, but also protect the investing public.

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Under authority of N.C.G.S. §78A-49(a), the NC SOS is charged with making, amending, and rescinding rules the NC SOS finds are necessary or appropriate in the public interest or for the protection of investors and clients. The NC SOS finds there is evidence the LPO rules are meeting the intended purpose. It is, however, necessary to extend the sunset provisions identified in 18 NCAC 06A .2120 by five years to complete further evaluation.

Since the LPO path is an option for businesses and not a program, the proposed rule amendment results in a zero sum opportunity cost for the NC SOS. The NC SOS anticipates continued stability of its workload throughout the proposed 5-year extension. If the Sunset Provision were to expire without an amendment, the NC SOS would continue to use its resources to protect the investing public in the traditional areas of securities oversight.

The extension of the Sunset Provision allows businesses to choose LPOs as an option to raise capital. In review of the proposed rule amendment, there is no impact to state, local, federal, or the private sector. The NC SOS has determined the rule amendment to the Sunset Provision creates a Non-Substantial Economic Impact.

### **Purpose and Description of the Rule Change**

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18 NCAC 06A .2100, “Rules For Local Public Offerings”, concerns LPOs and is designed to promote the overall economic health of North Carolina. The NC SOS is proposing to amend the LPO Sunset Provision, 18 NCAC 06A .2120, by extending the sunset date for (1) accepting any new Form NCE-LPO or other filing related to a new LPO through April 1, 2025, and (2) extending the sunset date for Section 2100 through April 1, 2026.

As we approach the current sunset provision, the NC SOS is encouraged by the positive feedback from the public. The business community has expressed an interest in maintaining LPO option to meet their future capital formation needs. The NC SOS needs additional time to evaluate the LPO tiered approach. The collaboration between the NC SOS and LPO issuers has been productive and there is evidence to support the LPO rules are meeting the intended purpose.

This rule amendment is designed to extend the time available for the Administrator to accept new Form NCE-LPO or other filing related to new LPOs as of the effective date of the rule amendment through April 1, 2025. The current 18 NCAC 06A.2120(a) of the Sunset Provision restricts the Administrator from accepting any new Form NCE-LPO or other filing related to a new LPO after April 1, 2020. There will be a period of time between April 2, 2020 and the effective date of this rule amendment where the NC SOS will be unable to accept new Form NCE-LPO or other filings related to new LPOs. From April 2, 2020 through the effective date of this rule amendment, the NC SOS will continue to engage with North Carolina businesses interested in the LPO process and provide assistance with pre-filing reviews.

The five-year extension of 18 NCAC 06A.2120(b) would allow the rules in section 2100 to remain effective until April 1, 2026 and continue to meet the needs of North Carolina businesses and investors. Extending the Sunset Provision rule for a five-year period would further the mission of the NC SOS of protecting North Carolina investors while promoting opportunities for North Carolinians to invest in local business.

## **Estimated Impact**

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### **State Government**

LPOs act as one of the capital formation offering options regulated by the NC SOS and available to businesses. The choice of capital formation offerings among the menu of regulated options has no significant impact on the workload of the NC SOS. The extension of the LPO rules does not create an increase in demand for capital formation, but instead provides another option for raising capital. NC SOS will not experience any additional workload for the processing of LPOs, as it is simply an alternative to NCPOs or the sale of securities. NC SOS's oversight of LPOs is a service that continues to fit within the agencies' current two-tiered approach and does not require additional budget resources. It also does not change the distribution or allocation of state funds.

If the Sunset Provision were to expire without an amendment, the NC SOS would continue to use its administrative resources to protect the investing public in the traditional areas of securities oversight. With the proposed amendment to extend the Sunset Provision for five years, the NC SOS will continue to balance the protection of the investing public and the public's desires for choices in the area of capital formation. Since LPOs are not a program, an issuer choosing the LPO option for raising capital does not impact the NC SOS workload. Similarly, the amendment to extend the Sunset Provision extends the availability of the LPO option does not impact the workload of the NC SOS. The proposed Sunset Provision rule amendment does not have a substantial economic impact and will not require the expenditure or change the distribution of any State funds.

### **Local Government**

The proposed rule amendment will not affect local government or local government expenditures.

### **Federal Government**

The proposed rule amendment will not affect the federal government and no federal funds are required.

### **Private Impact**

The Sunset Provision amendment is necessary and appropriate for the public interest of facilitating opportunities for North Carolinians to invest in local businesses, while also protecting North Carolina investors. The proposed Sunset Provision amendment will continue to allow North Carolina businesses to continue to have the LPO path as a capital formation option.

The business community has expressed concern regarding the expirations contained in the current Sunset Provision and are hopeful a rule amendment will allow the LPO option to

remain available in the future. The amendment to the Sunset Provision would allow the business community to continue to assess and choose the LPO option to meet their capital formation needs for an additional five years.

#### Total Impact

The amendment to extend the Sunset Provision will provide North Carolina businesses with the continued option to choose LPOs for their capital formation needs. A business choosing the LPO option does not increase the cost or budget for the NC SOS as the LPO option is simply one of a menu of options available for the sale of securities or capital formation. The amendment to the Sunset Provision will continue to offer North Carolina businesses choice of capital formation options and provide the NC SOS with additional time to further evaluate that the LPO rules are meeting the intended purpose to serve the public interest.

## APPENDIX

18 NCAC 06A .2120 is proposed for amendment as follows:

### **18 NCAC 06A .2120      SUNSET PROVISION**

- (a) The Administrator shall not accept any new Form NCE-LPO or other filing related to a new LPO after April 1, 2025.
- (b) The rules in this Section shall expire on April 1, 2026.

*History Note:*      Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; 78C-30; S.L. 2016-103, s.4.(a);

*Eff. April 1, 2017 to expire on April 1, 2021.*

Amended Eff. July 1, 2020 to expire on April 1, 2026