

Title 7, Texas Administrative Code
Part 1, Finance Commission of Texas
Chapter 5. Administration of Finance Agencies
Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

7 TAC, Part 1, Chapter 5

The Finance Commission of Texas (commission) proposes amendments to §5.101 (relating to Employee Training and Education Assistance Programs) and proposes new §§5.100 (relating to Definitions), 5.103 (relating to Alternative Dispute Resolution Policy), and 5.105 (relating to Negotiated Rulemaking) in 7 TAC, Chapter 5, concerning Administration of Finance Agencies.

In general, the purpose of the proposed amendments and new rules in 7 TAC, Chapter 5 is to implement provisions related to alternative dispute resolution and negotiated rulemaking required by HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC), and required by SB 614, the Sunset legislation for the Texas Department of Banking (DOB) and the Department of Savings and Mortgage Lending (SML). The Texas Legislature passed HB 1442 and SB 614 in the 2019 legislative session.

Effective September 1, 2019, Texas Finance Code, §§12.113, 13.017, and 14.110 require the commission to develop a policy by rule to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008, and alternative dispute resolution procedures under Texas Government Code, Chapter 2009.

The OCCC, SML, and DOB distributed an early precomment draft of proposed

changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC, SML, and DOB did not receive any informal written precomments on the rule text draft.

Proposed new §5.100 adds a definition of "finance agency" in Chapter 5, in order to allow the term "finance agency" to be used throughout Chapter 5. The proposed amendment to §5.101 repeals the definition of "finance agencies" in Chapter 5, because this definition is being moved to proposed new §5.100.

Proposed new §5.103 implements HB 1442 and SB 614 by encouraging the use of alternative dispute resolution. Subsection (a) explains that it is the policy of the commission to use alternative dispute resolution procedures when reasonable and appropriate. Subsection (b) explains that the procedures for alternative dispute resolution must conform to model guidelines of the State Office of Administrative Hearings. Subsection (c) explains that the finance agencies will coordinate to implement alternative dispute resolution procedures and training. Subsection (d) explains that the finance agencies will collect data concerning the effectiveness of alternative dispute resolution procedures and report to the commission.

Proposed new §5.105 implements HB 1442 and SB 614 by encouraging the use of negotiated rulemaking. Subsection (a) explains that it is the policy of the

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commission to use negotiated rulemaking. Subsection (b) explains that the finance agencies will coordinate to implement negotiated rulemaking and training. Subsection (c) explains that the finance agencies will collect data concerning the effectiveness of negotiated rulemaking and report to the commission.

Christina Cuellar Hoke of the OCCC, Ernest Garcia of the SML, and Catherine Reyer of the DOB, have determined that for the first five-year period the proposed rule changes in Chapter 5 are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments.

Huffman Lewis of the OCCC, Ernest Garcia of the SML, and Catherine Reyer of the DOB, have determined that for each year of the first five years the rule changes in Chapter 5 are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be consistent with legislation recently passed by the legislature.

There is no anticipated cost to persons who are required to comply with the rule changes as proposed. There will be no adverse economic effect on rural communities or small or micro-businesses.

During the first five years the rule changes will be in effect, the rule will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations

to the OCCC, SML, or DOB because they are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes will not require an increase or decrease in fees paid to the agencies. The proposed rule changes create new regulations to move the definition of "finance agency" to new §5.100, to encourage the use of alternative dispute resolution in new §5.103, and to encourage the use of negotiated rulemaking in new §5.105. The proposed rule changes do not expand or repeal an existing regulation. The proposed rule changes limit current §5.101 by moving the definition of "finance agencies" out of this section. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Michael Rigby, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §§12.113, 13.017, and 14.110 (as added by HB 1442 and SB 614), which authorize the commission to adopt rules to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008, and alternative dispute resolution procedures

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under Texas Government Code, Chapter 2009. In addition, Texas Finance Code, §§11.301, 11.302, 11.304, and 11.306 generally authorize the commission to adopt banking rules, rules applicable to state savings associations and savings banks, rules necessary to supervise the consumer credit commissioner, and rules applicable to residential mortgage loan origination.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 12, 13, and 14.

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The Finance Commission of Texas (commission) proposes amendments to §9.82 (relating to Petitions To Initiate Rulemaking Proceedings); proposes new §9.85 (relating to Negotiated Rulemaking); proposes the repeal of §§9.51 (relating to Time Deadlines for Appeal to the Finance Commission Mandatory), 9.52 (relating to Motion for Rehearing), 9.54 relating to Application for Review), 9.55 (relating to Scope of Review) 9.56 (relating to Oral Argument before the Finance Commission), and 9.57 (relating to Interim Appeals); and proposes relettering the titles of Subchapters D and E in 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings.

In general, the purpose of the proposed amendments, repeals, and new rule in 7 TAC, Chapter 9 is to implement provisions related to negotiated rulemaking and finance commission appeals in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC), and SB 614, the Sunset legislation for the Texas Department of Banking (DOB) and the Department of Savings and Mortgage Lending (SML). The

Texas Legislature passed HB 1442 and SB 614 in the 2019 legislative session.

Effective September 1, 2019, Texas Finance Code, §§12.113, 13.017, and 14.110 require the commission to develop a policy by rule to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008.

Effective September 1, 2019, all references to appeals to the commission have been removed from Texas Finance Code, §§14.208, 31.202, 31.204, 35.110, 181.202, 181.204, and 354.005. The proposed repeal of Subchapter C of 7 TAC, Chapter 9 would remove all provisions pertaining to appeals to the commission in conformity with the amendments to the Texas Finance Code found in SB 614 and HB 1442.

The OCCC, SML, and DOB distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC, SML, and DOB did not receive any informal written precomments on the rule text draft.

The proposed repeal of Subchapter C of Chapter 9 implements HB 1442 and SB 614 by eliminating provisions relating to appeals to the commission. The proposed amendments would also reletter Subchapters D and E as a result of the repeal of Subchapter C.

The proposed amendments to §9.82 relate to petitions to initiate rulemaking proceedings. In subsection (a), a proposed amendment would add any request to engage in negotiated rulemaking to the list of items that a petition to initiate rulemaking must include. Proposed new subsection (b)

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explains that an agency receiving a petition will present the petition and a recommendation to the commission. Proposed new subsection (c) explains that the commission will vote to initiate a rulemaking proceeding, or to deny the petition and state the reasons for denial.

Proposed new §9.85 describes to the procedures for negotiated rulemaking. Subsection (a) explains that an agency may propose to engage in negotiated rulemaking if the commission votes to initiate a rulemaking proceeding, or if the agency determines that a proposed rule might benefit from the process. Subsection (b) explains that an agency may appoint a convener to assist in determining whether negotiated rulemaking should proceed, as described by Texas Government Code, §2008.052. Subsection (c) explains that the agency will publish notice of intent to engage in negotiated rulemaking, as described by Texas Government Code, §2008.053. Subsection (d) explains that the agency will appoint a facilitator and committee, as described by Texas Government Code, §2008.056. Subsection (e) explains that the commission may adopt, amend, or refuse to adopt a rule created through negotiated rulemaking.

Christina Cuellar Hoke of the OCCC, Ernest Garcia of the SML, and Catherine Reyer of the DOB, have determined that for the first five-year period the rule changes to Chapter 9 are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments.

Huffman Lewis of the OCCC, Ernest Garcia of the SML, and Catherine Reyer of the DOB, have determined that for each year of the first five years the rule changes to Chapter 9 are in effect, the public benefits

anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be consistent with legislation recently passed by the legislature.

There is no anticipated cost to persons who are required to comply with the rule changes as proposed. There will be no adverse economic effect on rural communities or small or micro-businesses.

During the first five years the proposed rule changes will be in effect, the rule will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, SML, or DOB because they are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes will not require an increase or decrease in fees paid to the agencies. The proposed rule creates a new regulation to encourage the use of negotiated rulemaking under §9.85. The proposed rule expands the current rule at §9.82, relating to a petition to initiate rulemaking, in order to address negotiated rulemaking. The proposed rule changes repeal Subchapter C of Chapter 9 to eliminate provisions relating to appeals to the commission, in accordance with HB 1442 and SB 614. The proposed rule changes do not limit an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

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Comments on the proposal may be submitted in writing to Michael Rigby, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §§12.113, 13.017, and 14.110 (as added by HB 1442 and SB 614), which authorize the commission to adopt rules to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008. In addition, Texas Finance Code, §§11.301, 11.302, 11.304, and 11.306 generally authorize the commission to adopt banking rules, rules applicable to state savings associations and savings banks, rules necessary to supervise the consumer credit commissioner, and rules applicable to residential mortgage loan origination.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 12, 13, 14, 31, 35, 181, and 354.

Title 7, Texas Administrative Code

Part 1, Finance Commission of Texas

Chapter 5. Administration of Finance Agencies

§5.100. Definitions.

In this chapter, a "finance agency" means the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

§5.101. Employee Training and Education Assistance Programs.

(a) [~~For purposes of this rule, "finance agencies" means the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.~~] Pursuant to the State Employees Training Act, Chapter 656, Subchapter C of the Texas Government Code, it is the policy and practice of the finance agencies to encourage employees' professional development through training and education programs sponsored or supported by the finance agencies.

(b) The finance agencies may provide assistance for education and training that will enhance an employee's ability to perform current or prospective job duties and will benefit both the respective finance agency and the employee.

(c) Approval to participate in a training or education program is not automatic and is subject to eligibility of individual employees as established in the respective finance agency's policy, and the availability of funds within the respective finance agency's budget.

(d) The employee training and education program for the finance agencies may include one or more of the following:

(1) agency-sponsored training provided in-house or by contract;

(2) seminars and conferences;

(3) technical or professional certifications and licenses; or

(4) reimbursement for tuition, fees and required course materials.

(e) The finance agencies maintain policies for administering the employee training and education program of each respective finance agency. These policies include:

(1) eligibility requirements for participation;

(2) designation of appropriate level of approval for participation; and

(3) obligations of program participants.

(f) Approval to participate in any portion of a finance agency's training and education program will not in any way affect an employee's at-will status.

(g) In order to receive tuition reimbursement for a course offered by an institution of higher education, the employee must successfully complete the course, and the executive head of the finance agency must personally authorize the tuition reimbursement payment.

§5.103. Alternative Dispute Resolution Policy.

(a) Policy. It is the policy of the finance commission to use alternative dispute

resolution procedures where reasonable and appropriate under Texas Government Code, Chapter 2009 to assist in the resolution of internal and external disputes under the jurisdiction of a finance agency.

(b) Model guidelines. The procedures for alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Coordination and training. The finance agencies will coordinate with each other as reasonable to implement the use of appropriate alternative dispute resolution procedures and provide training as needed to implement the use of alternative dispute resolution procedures.

(d) Data collection and reporting. Each finance agency will collect data concerning the effectiveness of alternative dispute resolution procedures, and report to the finance commission its use of alternative dispute resolution procedures.

§5.105. Negotiated Rulemaking.

(a) Policy. It is the policy of the finance commission to use negotiated rulemaking procedures under Texas Government Code, Chapter 2008 and §9.85 of this title (relating to Negotiated Rulemaking).

(b) Coordination and training. The finance agencies will coordinate with each other as reasonable to implement the use of negotiated rulemaking procedures and provide training as needed to implement the use of negotiated rulemaking procedures.

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(c) Data collection and reporting. Each finance agency will collect data concerning the effectiveness of negotiated rulemaking procedures, and report to the finance commission its use of negotiated rulemaking procedures.

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{{Subchapter C of Chapter 9 will be repealed.}}

[Subchapter C. Appeals to Finance Commission]

[\$9.51. Time Deadlines for Appeal to the Finance Commission Mandatory.]

[The administrative law judge does not have authority to grant an extension of the time periods provided for perfecting an appeal to the finance commission.]

[\$9.52. Motion for Rehearing.]

[A motion for rehearing in the manner and within the time required in Government Code, §2001.145, is a prerequisite to an appeal to the finance commission in a contested case, except that a motion for rehearing is not a prerequisite to an appeal of a decision or order that is final and effective on the date rendered. A motion for rehearing must state the claimed error with specificity. Responses to the motion must be filed and the motion must be ruled upon by the agency within the time periods specified in Government Code, §2001.146.]

[\$9.54. Application for Review.]

[~~(a) The application for review must be filed within 30 days of notification that the motion for rehearing has been overruled, or within 30 days of the date that it is overruled by operation of law, or within 30 days of a decision or order that is final and effective on the date rendered.]~~

[~~(b) The application must state the identities of the parties, the action complained of, the interests of the parties, specific objections, the action sought from the finance commission, and also contain any other information and be accompanied by any fees required by statute or administrative regulation.]~~

[\$9.55. Scope of Review.]

[The finance commission shall consider the questions raised by the application for review and may also consider such additional matters pertinent to the appeal as it may determine, whether or not included in the application. Decisions by the finance commission must be based on testimony and other evidence in the record. The finance commission may adopt or decline to adopt the agency head's decision and the underlying findings of fact and conclusions of law in whole or in part. The finance commission may remand the proceeding for further consideration by the agency head with or without reopening the hearing. The finance commission may take any other action it considers to be just and reasonable, as permitted by law.]

[\$9.56. Oral Argument before the Finance Commission.]

[A party may request oral argument to the finance commission by separate pleading or include a request for oral argument in its review application. The finance commission,

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~~in its discretion, may grant or deny the request. If granted, the amount of time allotted and the issues on which oral argument is allowed are within the finance commission's discretion. The finance commission may deny the request for oral argument but request that the parties be present at the meeting at which the case is to be considered to address any questions that finance commission members may have.]~~

~~[\$9.57. Interim Appeals.]~~

~~[A party may not make an interim appeal to the finance commission except as specifically provided for by statute or by rule adopted by the finance commission.]~~

~~Subchapter [D] C. Court Appeals~~

~~Subchapter [E] D. Rulemaking~~

~~§9.82. Petitions To Initiate Rulemaking Proceedings.~~

~~(a) Petitions to initiate rulemaking proceedings pursuant to Texas Government Code, §2001.021, must be submitted to the agency in writing. A petition must include:~~

~~(1) a brief explanation of the proposed rule;~~

~~(2) the full text of the proposed rule, and, if the petition is to modify an existing rule, the text of the proposed rule prepared in the same manner as an amendment to legislation that clearly identifies any words to be added or deleted from the existing text by underlining new language and striking through language to be deleted;~~

(3) a concise explanation of the legal authority to adopt the proposed rule, including a specific reference to the particular statute or other authority that authorizes it;

(4) an explanation of how the public would be benefitted by the adoption of the proposed rule;

(5) all available data or information showing a need for the proposed rule; ~~[and]~~

(6) any request to engage in negotiated rulemaking under §9.85 of this title (relating to Negotiated Rulemaking); and

(7) ~~[(6)]~~ such other or additional information as the agency may request.

(b) An agency receiving a petition under subsection (a) of this section will present to the finance commission the petition and the agency's recommendation.

(c) The finance commission will vote to initiate a rulemaking proceeding, or to deny the petition and state the reasons for the denial.

§9.85 Negotiated Rulemaking

(a) Initiation of process. An agency may propose to engage in negotiated rulemaking process pursuant to Texas Government Code, Chapter 2008 if:

(1) the finance commission votes to initiate a rulemaking proceeding under §9.82 of this title (relating to Petitions To Initiate Rulemaking) that includes negotiated rulemaking; or

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(2) the agency determines that drafting the proposed rule might benefit from the negotiated rulemaking process.

(b) Appointment of a convener. Upon proposing a negotiated rulemaking process under subsection (a) of this section, the agency will appoint a convener to assist in determining whether it is advisable to proceed with negotiated rulemaking. The convener will be appointed pursuant to, and perform the duties described by, Texas Government Code, §2008.052.

(c) Notice of negotiated rulemaking. If the agency decides to engage in negotiated rulemaking after considering the convener's recommendation and report, then the agency will publish timely notice of its intent on its website and with the secretary of state for publication in the Texas Register in compliance with Texas Government Code, §2008.053.

(d) Appointment of facilitator and committee. The agency will appoint a facilitator and members of the negotiated rulemaking committee to carry out the duties described in Texas Government Code, §2008.056.

(e) Adoption of rule. The finance commission may adopt, amend, or refuse to adopt a rule created through the negotiated rulemaking process in its sole discretion.

Issued in Austin, Texas on October 18, 2019.

Michael Rigby
General Counsel
Office of Consumer Credit Commissioner

Ernest Garcia
General Counsel
Department of Savings and Mortgage Lending

Catherine Reyer
General Counsel
Texas Department of Banking

Certification

These agencies hereby certify that the proposal has been reviewed by legal counsel and found to be within the agencies' legal authority to adopt.