

NOTICE OF PRECOMMENT DRAFT & STAKEHOLDER MEETING
Alternative Dispute Resolution, Negotiated Rulemaking, and Finance Commission Appeals
Rules Implementing Sunset Legislation (SB 614 and HB 1442)
September 9, 2019 at 3:00 p.m.

The Department of Savings and Mortgage Lending (SML), Office of Consumer Credit Commissioner (OCCC), and Department of Banking (DOB) (collectively “agencies”) will hold a stakeholder meeting on September 9, 2019, at 3:00 p.m. in the Finance Commission Building, third floor hearing room, at 2601 North Lamar Blvd., Austin, Texas 78705.

At the meeting, the agencies will discuss the August 30 precomment draft of rule amendments implementing the Sunset legislation (HB 1442 and SB 614). The agencies invite anyone interested in these rules to participate in this meeting. SML will also accept informal written precomments until 5:00 p.m. on September 16, 2019. The agencies plan to present the Chapters 5 and 9 rules, and SML will present the Chapter 52 rules, for proposal at the Finance Commission’s October 18, 2019 meeting.

Summary of Background and Purpose

The Sunset legislation requires the Finance Commission to adopt rules to encourage the use of negotiated rulemaking and alternative dispute resolution. In addition, the legislation replaces appeals to the Finance Commission with appeals to the district court. To implement these provisions, the draft:

- Adopts a policy to use negotiated rulemaking and alternative dispute resolution.
- Repeals rules relating to appeals to the finance commission.
- Adopts a procedure to request and initiate negotiated rulemaking.
- Adopts rules for SML regarding hearings and appeals.

The agencies invite input from stakeholders about the precomment draft of rules. In particular, the agencies are interested in the following:

- What costs could regulated businesses experience as a result of these rule amendments?
- Are the procedures to request negotiated rulemaking clear?
- Are the SML rules regarding hearings and appeals clear?

Participating in Meeting

Stakeholders are invited to attend the meeting in person at the Finance Commission Building, or to listen and participate through an online webinar. To listen or participate online, please follow the instructions available at: <https://attendee.gotowebinar.com/register/2512358082389345036>

Submission of Informal Precomments

Informal precomments on the agencies’ August 30 draft may be submitted by e-mail to smlinfo@sml.texas.gov, or in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Blvd., Austin, Texas 78705.

Informal precomments on the agencies’ August 30 draft of licensing and administration rules must be received by 5:00 p.m. on September 16, 2019.

**Alternative Dispute Resolution, Negotiated Rulemaking, and Finance Commission Appeals
Rules Implementing SB 614 and HB 1442
8/30/2019 Precomment Draft**

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.

(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.

Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

{{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, 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.]~~

~~[\S9.57. 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

\S9.82. Petitions To Initiate Rulemaking Proceedings.

(a) Petitions to initiate rulemaking proceedings pursuant to Texas Government Code, \S2001.021, 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 \S9.85 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

(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.

Title 7, Texas Administrative Code

Part 4, Department of Savings and Mortgage Lending

Chapter 52. Department Administration

Subchapter B. Hearings and Appeals

§52.20. Appeals, Hearings, and Informal Settlement Conferences.

(a) Alternative resolution of appeal. If enforcement staff determines resolution to an appeal without a hearing is appropriate and possible, enforcement staff may pursue settlement through

negotiation, agreed order, consent order, informal settlement conference, or other appropriate means.

(b) Informal settlement conference. Informal settlement conferences:

- (1) are conducted at the discretion of enforcement staff;
- (2) may not be used as a delay tactic;
- (3) are primarily conducted over the phone and by email; and
- (4) a request for an informal settlement conference does not create any new or additional rights or obligations.

(b) Mediation. Subject to and as applicable under 1 Texas Administrative Code §155.351, the department may, at the discretion of the commissioner, arrange for the services of a qualified mediator or subject matter expert to assist in resolving complaints or other matters.

(c) Hearing. Hearings shall be conducted in accordance with Chapter 9 of this title, with Texas Government Code, Chapter 2001, and may be conducted by the State Office of Administrative Hearings (SOAH).

Subchapter C. Advisory Committees

§52.30. Advisory Committees and Informal Conferences.

(a) Advisory committees. The mortgage industry advisory committee referenced in Texas Finance Code, §§ 157.0024 and 156.104, as well as any advisory committees which may be created under Texas Finance Code, §13.018 shall continue in existence and unless continued further shall be automatically abolished on September 1, 2031.

(b) Informal conferences. Without limiting any mortgage industry advisory committee's ability to advise and assist the commissioner, the commissioner may use committees, informal conferences, and consultations to obtain the opinions and advice of interested persons regarding contemplated rulemaking in accordance with Texas Government Code, §2001.031 or to otherwise advise the department. The power of any committee members appointed by the commissioner is advisory only. Any committees created, unless continued, shall be abolished on September 1, 2031.