

## NOTICE OF PRECOMMENT DRAFT AND STAKEHOLDERS WEBINAR

### SML Rulemaking – 7 TAC §76.95 July 27, 2021 Pre-comment Draft

The Department of Savings and Mortgage Lending (SML or the Department) is considering a new rule and the repeal of 7 Texas Administrative Code (TAC) §76.95, concerning Fee for Special Examination or Audit.

The Department will record a stakeholder webinar to discuss the pre-comment draft of the rule changes and post it to the Department's website.

The Department will also accept informal written pre-comments until August 4, 2021 at 5:00 p.m.

The Department plans to present the rules for consideration by the Finance Commission at its August 20, 2021 meeting.

#### **Submission of Informal Pre-comments**

Informal written pre-comments regarding the Department's draft rule amendments may be submitted by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov) or by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294. **Informal pre-comments must be received by 5:00 p.m. on August 4, 2021.**

#### **Overview of Changes: 7 TAC §76.95**

- Changes Concerning Special Examination Fees. During the 87<sup>th</sup> Legislature (Regular Session), Senate Bill 1900 (SB1900) was enacted into law (eff. September 1, 2021) which, among other things, amends Chapter 96 of the Finance Code to provide the Department's commissioner (Commissioner) with examination authority over savings bank holding companies, affiliates, and third-party service providers. The Finance Code, as amended by SB1900 (Tex. Fin. Code §96.0551(c)), authorizes the Commissioner to assess and collect a fee for conducting examinations on savings bank affiliates and third-party service providers. The rule, if adopted, would:
  - clarify the Commissioner's authority to perform examinations of savings bank holding companies, affiliates, and third-party service providers;

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- classify the examination of a savings bank holding company, affiliate, or third-party service provider as a special examination subject to the rule; and
- change the calculation for the fee assessed for a special examination from a *per diem* fee to an hourly fee.

<rule>

**TITLE 7 BANKING AND SECURITIES**

**PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 76 MISCELLANEOUS**

**SUBCHAPTER F FEES AND CHARGES**

**{{Existing §76.95 will be repealed and replaced with new §76.95}}**

**~~§76.95. Fee for Special Examination or Audit.~~**

~~Each savings bank subject to a special examination may be required to pay to the Department an examination fee based upon a daily rate of \$325 for each examiner engaged in the examination of the affairs of such institution. For the purposes of this section, a special examination includes only those examinations which the Commissioner conducts or causes to have conducted after the institution has completed one annual examination or such other additional examinations as the Commissioner deems to be necessary. This special examination fee will not be charged for an institution's annual regular examination.]~~

**§76.95. Fee for Special Examination.**

(1) A special examination is one that is conducted outside the context of a savings bank's annual examination and includes but is not limited to examinations of a savings bank holding company, interstate branches of savings banks in Texas as the host state, and a savings bank's affiliates and third-party service providers. The savings bank or other regulated entity that is the subject of the special examination is subject to a fee and liable for the Department's costs as provided by this section in order to recoup the salary expense of the examiner(s) plus a proportionate share of Department overhead allocable

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to the special examination, and the actual costs by the examiner in conducting the special examination.

(2) The fee for a special examination under this section will be calculated at a rate not to exceed \$75 per examiner per hour. The entity that is the subject of the examination must also pay to the Department an amount for actual travel expenses and costs incurred by the Department's examiner(s), including mileage, public transportation, food, and lodging. The Commissioner, in his or her sole discretion, may lower the applicable rate for the examination fee or waive, in whole or in part, any fees or costs chargeable in accordance with this section.

(3) In connection with an examination under this section, the regulated entity or other legally responsible party (including the savings bank, with respect to affiliates and third-party service providers) must pay the examination fee and costs incurred as provided by this section.