



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

WASHINGTON, D.C. 20551

DIVISION OF SUPERVISION
AND REGULATION

SR 19-12

July 23, 2019

TO THE OFFICER IN CHARGE OF SUPERVISION AT EACH FEDERAL RESERVE BANK AND TO FINANCIAL INSTITUTIONS SUPERVISED BY THE FEDERAL RESERVE

SUBJECT: Statement Regarding Insurance Policies for Directors and Officers

Applicability: This letter applies to state member banks, bank holding companies, and savings and loan holding companies, regardless of asset size.

The purpose of this letter is to make state member banks, bank holding companies, and savings and loan holding companies (collectively, “covered financial institutions”) and Reserve Bank staff aware that insurance policies offering indemnification for directors and officers may include exclusionary provisions that potentially limit coverage and leave institution affiliated parties (IAPs)¹ of covered financial institutions liable for excluded claims.² This letter is not intended to create new requirements on or examination issues for covered financial institutions offering such insurance policies to their directors and officers. The sole purpose of this letter is to inform covered financial institutions of the risks associated with such exclusionary provisions similar to the advisory statement issued by the Federal Deposit Insurance Corporation (FDIC) on this issue.³

Policy Considerations for Indemnification Insurance Policies

In accordance with the FDIC’s regulations, a covered financial institution’s director and officer liability insurance policies (referred to as “D&O policies”) must exclude from coverage a prohibited indemnification payment. However, there has been an increase in terms or provisions contained in these policies that exclude from coverage a wide range of other types of director and officer liabilities. These expansive exclusionary terms may adversely affect the recruitment and retention of well-qualified individuals. When such exclusions apply, directors and officers may

¹ The term “institution-affiliated party” includes any officer, director, employee, and controlling stockholder, as well as others who participate in the affairs of a financial institution. See 12 U.S.C. 1813(u).

² For more information on indemnification agreements and payments, see SR letter 02-17, “Guidance Regarding Indemnification Agreements and Payments,” which initially applied to state member banks and bank holding companies. The applicability of SR 02-17 was extended to savings and loan holding companies, see SR letter 14-9, “Incorporation of Federal Reserve Policies into the Savings and Loan Holding Company Supervision Program.”

³ See FDIC (2013), “Director and Officer Liability Insurance Policies, Exclusions, and Indemnification for Civil Money Penalties,” Financial Institution Letter (FIL)-47-2013 (Oct. 10), <https://www.fdic.gov/news/news/financial/2013/fil13047.pdf>.

not have insurance coverage and may be personally liable for damages arising out of civil suits relating to their decisions and actions. In some cases, directors and officers may not be fully aware of the addition or significance of such exclusionary language.

The board of directors' choice of coverage in a D&O policy should be based on a well-informed analysis of costs and benefits, and an important consideration is the potential effect to directors and officers that could result from exclusions. The Federal Reserve urges each board member and executive officer to understand fully the answers to the following questions regarding a D&O policy's coverage, specifically when considering renewals and amendments of existing policies:

- What protections do I want from my institution's D&O policy?
- What exclusions exist in my institution's D&O policy?
- Are any of the exclusions new and, if so, how do they change my coverage?
- What is my potential personal financial exposure arising from each policy exclusion?

In summary, D&O policies are an important risk mitigation tool for financial institutions, and it is vital for directors and senior executives to understand fully the protections and limitations provided by such policies.

Reserve Banks should distribute this letter to all covered financial institutions in their districts and to appropriate supervisory staff. Questions regarding this letter should be directed to: Conni L. Allen, Special Counsel/Manager, Division of Supervision and Regulation at (202) 912-4334 or Jason Gonzalez, Senior Special Counsel, Legal Division at (202) 452-3274. In addition, questions may be sent via the Board's public website.⁴

Jennifer Burns
Deputy Director

Cross references to:

- SR letter 14-9, "Incorporation of Federal Reserve Policies into the Savings and Loan Holding Company Supervision Program"
- SR letter 02-17, "Guidance Regarding Indemnification Agreements and Payments"

⁴ See <https://www.federalreserve.gov/apps/contactus/feedback.aspx>.