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## THE TOP 10 D&O INSURANCE POLICY EXCLUSIONS KEEPING BANK EXECUTIVES UP AT NIGHT

*As litigation risks and regulatory scrutiny intensify for banks and other financial institutions, it is more important than ever for those financial-sector companies and their executives to assess the protection offered by their directors and officers liability insurance policies. Seemingly small variations in policy language, especially exclusions, can lead to significant gaps in coverage, potentially leaving executives exposed and personally liable. This article examines 10 common D&O policy exclusions that could materially affect banks' and executives' financial exposure and highlights the importance of understanding the finer details of placing and negotiating appropriate D&O insurance programs.*

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In the past year, banks have faced adverse rulings in securities litigation challenging DEI initiatives, putative class action lawsuits alleging mismanagement of employee health insurance plans, and even eight-figure indemnification demands for legal costs incurred in the fallout from the 2008 global financial crisis. State and federal regulators have also been pursuing claims at a record clip, with the Consumer Financial Protection Bureau setting records for fair-lending enforcement actions and Department of Justice referrals.<sup>1</sup> Other regulators like the Office of the Comptroller of the

Currency (OCC) and the Federal Reserve are also laser-focused on banks, with the OCC announcing four new enforcement actions in October 2024 alone. And while the reelection of President Trump may change regulatory enforcement priorities, banks and other financial institutions are still likely to face diverse and potentially significant claims going forward.

These and many other risks rise straight to the board room, making directors and officers (“D&O”) liability insurance a crucial safeguard for banks and financial institutions of all sizes. But the fine print in these policies can sometimes lead to unexpected claim outcomes that materially limit, if not eliminate, insurance coverage. In this article, we explore 10 common D&O insurance policy exclusions and steps banks can take to try to minimize their impact.

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<sup>1</sup> Kate Berry, *CFPB sets record for fair lending enforcement actions and DOJ referrals*, American Banker (June 26, 2024), <https://www.americanbanker.com/news/cfpb-sets-record-for-fair-lending-enforcement-actions-and-doj-referrals>.

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