

**CIVIL MONEY PENALTIES COVERAGE  
FOR OFFICERS AND DIRECTORS OF FDIC INSURED FINANCIAL  
INSTITUTIONS**

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Corporate Indemnification Agreements established to protect officers and directors of FDIC insured financial institutions do not extend to Civil Money Penalties imposed on directors or officers by such agencies. Therefore, any related defense costs or resulting Civil Money Penalties imposed cannot be paid by the financial institution on behalf of such officers or directors and must be assumed as a personal liability.

There's one exception to these FDIC regulations that would allow an institution to pay part of an insider's expenses if the enforcement action yields a split result, with the agency finding the individual innocent of some, but not all of the charges. In all other cases, where the agency has found the insider guilty of charges, the cost of defense and any penalties levied against the individual become personal financial obligations with no relief available from the institution or other parties.

Although the FDIC rules thus restrict direct reimbursement of an insured by an institution or holding company, it treats insurance policies much more liberally. As a result, certain insurers that offer Directors and Officers Liability coverage to management of financial institutions have developed endorsements to their policies that provide a limited protection for this otherwise non-indemnifiable exposure.

It should be noted that neither the institution nor its holding company would be allowed to make payment for the cost of the insurance for Civil Money Penalties insurance on behalf of these individuals even if it is available for the Directors and Officers Liability insurer. The cost, which can range from \$25 to \$50 per officer or director depending on the limit of liability purchased, must be borne by the insured individual.

However, the institution or its holding company may include the premium for the D&O policy along with the premiums for the Civil Money Penalties endorsement, however, it's critical that a photocopy or other image of each insured person's personal check for the coverage be maintained in a secured environment in the event a Civil Money Penalties payable loss occurs to prove that the individual paid the premium for this personal coverage. Otherwise, the FDIC has the authority to void the coverage leaving the individual with no insurance for this exposure.

In order to attract and maintain quality outside board membership, it is critical to protect the individual's personal assets from loss relating to their extensive responsibilities as a board member of a FDIC insured institution. With respect to Civil Money Penalties imposed by these authorities, the Civil Money Penalties endorsement is the only allowable relief available to these individuals.