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Some Appraiser E&O; Policies Now Exclude FDIC or Other Regulatory Agency Claims

By Peter C

Note: this post has been updated since it first appeared. Appraiser E&O policies are changing rapidly in the present litigation environment and an appraiser's policy terms may change from policy year to year. This may be the first year that some appraisers see an FDIC exclusion in the policies they purchase. At this time, no policies issued by LIA contain FDIC exclusions and I believe no policies from Intercorp and FREA contain such exclusions either. Here are a few examples of what to look for with respect to FDIC exclusions in various policies:

The exclusion below is found within the main policy text of the **Five Star/Lloyd's** policies I have seen in 2011. It excludes:

- U. Any "Claim" arising out of appraisals, for or on behalf of the Federal Deposit Insurance Corporation or any other Governmental entity having regulatory authority over a Bank or Credit Union or Savings and Loan Association.

General Star has indicated it will apply the following endorsement to E&O policies issued after June 1, 2011 to appraisers with prior acts before August 1, 2008:

EXCLUSION – REGULATORY ACTION

This endorsement modifies insurance provided under the following:

REAL ESTATE APPRAISERS ERRORS AND OMISSIONS INSURANCE POLICY

In consideration of the ANNUAL PREMIUM shown in the DECLARATIONS PAGE of this Policy, **SECTION VI – EXCLUSIONS** is amended to include the following:

The Company has no obligation under this policy to pay **Damages or Claims Expenses**, or to provide a defense, in connection with any **Claim**:

- A. Brought by or on behalf of the Federal Deposit Insurance Corporation, Securities Investor Protection Corporation, the Federal Housing Finance Agency or any similar entity or organization, whether such entity or organization is government sponsored or industry sponsored.
 - 1. This exclusion applies to any "similar entity or organization" whose mission is to:
 - a. Regulate, supervise, examine or manage receiverships of financial or depository institutions; or
 - b. Insure deposits, shares, stocks or any financial instrument of customers of financial or depository institutions.

The following "regulatory claims" endorsement is added to policies issued by **Navigators Insurance Company** in some states (I believe the states are: Arizona, California, Florida, Georgia, Illinois, Michigan, Nevada, and Washington):

REGULATORY CLAIMS SUBLIMIT - CLAIM EXPENSES ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

REAL ESTATE APPRAISERS ERRORS AND OMISSIONS INSURANCE POLICY

In consideration of the premium charged, it is agreed that the following is added to Section IV, EXCLUSIONS of the policy:

Q. Based on or arising out of any claim made by, or on behalf of, the Federal Deposit Insurance Corporation or any similar federal or state regulatory agency (a "Regulatory Claim").

It is further agreed that the following is added to Section II, LIMITS OF LIABILITY AND DEDUCTIBLE of the policy:

K. Regulatory Claims Sublimit

Notwithstanding Exclusion Q., the Company will pay on behalf of the Named Insured, claim expenses incurred by the Named Insured in defense of a Regulatory Claim otherwise covered under this policy, subject to an aggregate maximum sublimit of liability of \$100,000 for all such Regulatory Claims (the "Regulatory Claims Sublimit". The Regulatory Claims Sublimit shall be part of, and not in addition to, the amount shown in Item 4D. in the Declarations as the "Claim expenses Limit of Liability - Policy Aggregate."

All other provisions of this policy remain unchanged.

The exclusion below is contained in endorsements to some E&O policies sold by **CNA** to appraisers (it is not clear how often the endorsement is applied):

**ERRORS AND OMISSIONS COVERAGE FORM
REGULATORY EXCLUSION ENDORSEMENT**

It is agreed that the following exclusion is added to Section V., EXCLUSIONS:

This Policy does not apply to any claim made against the Insured by or on behalf of the Bank Insurance Fund, The National Credit Union Share Insurance Fund, the National Credit Union Administration, the Office of Thrift Supervision, the Federal Housing Finance Board, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank, The Federal Reserve System or any other federal, state or local regulatory agency or office, whether any such claim action or proceeding is brought in the name of such regulatory agency or office or by or on behalf of such regulatory agency or office or in the name of any other entity.

This exclusion does not apply to any claims based upon professional real estate services rendered by the Insured directly for any such regulatory agency or office who is a direct client of the Insured where such claim relates solely to such professional real estate services.