

NONPROFIT D&O MANAGEMENT LIABILITY REPORT 2023



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Nonprofit

Many people have viewed 2022 as a year in which we emerged from the COVID-19 pandemic that paralyzed much of the global economy and had ripple effects on business, social norms, personal health and virtually every other aspect of everyday life.

As 2023 unfolds, we are actually now only beginning to understand—COVID-19 is not gone, it has only ebbed. According to Centers for Disease Control and Prevention (CDC) data, more than 500 people have died from COVID-19 each day in the United States in 2023. The impact to global financial markets from the pandemic not only contributed to record-low unemployment in the US, but it has also led to fears of recession that have triggered significant increases in interest rates. The cost of borrowing money has risen quickly and the impact of that increase is being felt in people's personal income and in organizations' financial performance. Nonprofit organizations of all sizes and services are being challenged by these economic headwinds. Trickle-down impacts are seen in employee recruitment and retention challenges along with the reality of dealing with difficult decisions on staffing levels and service levels in order to adjust to these economic headwinds.

Social service organizations, including faith-based religious nonprofits, are only now starting to see increases in donor funding and support that were drastically reduced during COVID-19. Many religious institutions saw radically lower support when closing their doors to worship and ministry, and going to online services. The debt that may have been incurred during the years of reduced support caused some organizations to obtain loans to continue operations. Such loans are now much more costly and in many cases less attainable. The result is reduced services being provided by many nonprofit organizations, services that have never been needed more than now. Mental healthcare providers are strained by the large increase in demand for their services due to the pandemic. Religious organizations that provide vital and irreplaceable ministries to their communities they serve are being forced to reduce their services and in some cases even cease to exist at all. The post-COVID-19 financial stress is being felt perhaps most acutely by organizations providing services to the most vulnerable in our society.

With all of the financial, employment and operational challenges facing nonprofits, it is no wonder that some Directors & Officers (D&O) liability insurers have become more cautious about underwriting and pricing insurance for nonprofit organizations which are experiencing operational and financial challenges. Nonprofit healthcare has continued to see small increases in premiums, as have nonprofit providers of education. The D&O coverage for most insureds in many cases is reduced and restricted, particularly for large organizations with significant numbers of employees.

Not all the news is bad, however. There are some new D&O carriers entering the market, but their appetites are still not broad and their commitment to the third sector is yet to be determined. Over time the saturation of new carriers is believed to drive positive competition which will improve rates and broaden coverage offerings.

The nonprofit sector is widely diverse and the most problematic segments are still higher education, healthcare and religious organizations. The renewals in these sectors lag the more positive renewal results we are seeing for the more simple-operating charity. Some of the more desired D&O risks are actually seeing premium reductions. Public company and private company D&O renewals have been mainly favorable, but there are many new carriers in the market and it's anticipated they will expand their appetites in order to meet their new business goals.



This should lead to a continued downward trend for all D&O renewal premiums in the near term.

Some of the problematic coverage changes we are seeing in the current market are the deletion of antitrust coverage, low sublimits of coverage for defense costs and broad exclusions for molestation, cyber and professional services. The exclusions must be understood and softened as much as possible. It's also important to note that while the primary D&O market is fairly stable, the excess D&O market has become quite competitive. The sheer number of excess carriers vying for the business results in the competition that is required to drive down premiums. As always, start early and present a professional submission which showcases the nonprofit's strengths and successes coming out of the pandemic to the market to get the best results available in the D&O market.

Our Nonprofit and Religious practices specialists are carefully monitoring the dynamics of faith-based and other conservative-oriented organizations whose beliefs and policies may be perceived as contrary to the values of the many public insurance and banking companies. We are seeing some carriers move away from insuring and offering financial services to such institutions and thus we need to continue to identify and align with insurers that value these convictions.



Private and Nonprofit Directors & Officers Liability: A Transitioning Market

By Heidi Roberts

INTRODUCTION

Since the financial condition of the insureds heavily impacts D&O underwriting when looking at our clients' financial conditions, there are three main situations in our economy which resulted from the pandemic:

- Those who operated at a loss, closed their doors or filed for bankruptcy
- Those who were fairly stable
- Those who flourished so much that they acquired other entities and went public

For the first and last categories, there are still far-reaching implications on D&O, since the directors and officers of these entities had major decisions to make, especially when impacted by staffing shortages and supply chain breakdowns.

We've also seen fewer mergers and acquisitions among our clients, with the exception of private equity and venture capital firms that purchased family-owned private companies not passed on to the younger generation.

MARKET RESPONSE AND UNDERWRITING PROCESS IMPLICATIONS

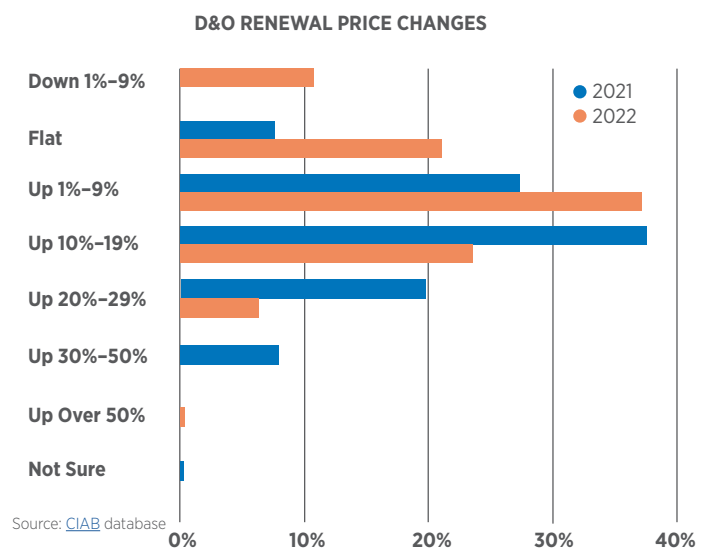
Although underwriting scrutiny is still high, it has lessened since this time last year. We've seen fewer corrective actions overall. There may have been additional questions or changes in limits and retentions, but that was usually due to the client's exposures and not carriers adjusting their portfolios overall. However, we've seen more markets add exclusions, such as security and privacy, antitrust, insolvency and communicable diseases. Although these exclusions may be added to their entire book, some offered carve-backs for defense costs, for example.

We have also seen some new entrants who are writing D&O coverage for private and nonprofit accounts, which can definitely drive competition for our more established markets. Some clients wanted to either increase limits due to increased exposure or reduce limits to save premium due to their financial constraints.

Gallagher has continued to find creative ways to reduce premium and offer alternative options, because this coverage is more important than ever for protecting directors and officers. As always, you should connect with your broker and risk management team to understand the nuances of your business.

CURRENT STATE OF THE MARKET

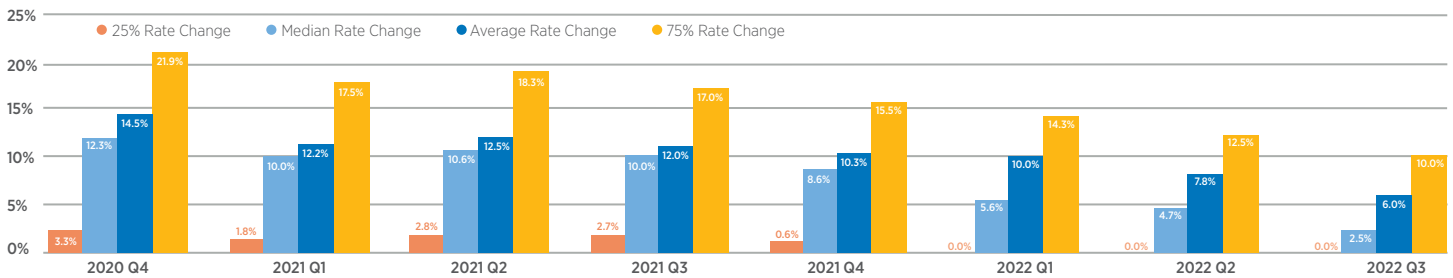
In addition, we generally still saw rate increases, but they weren't as dramatic as what we saw in years past.



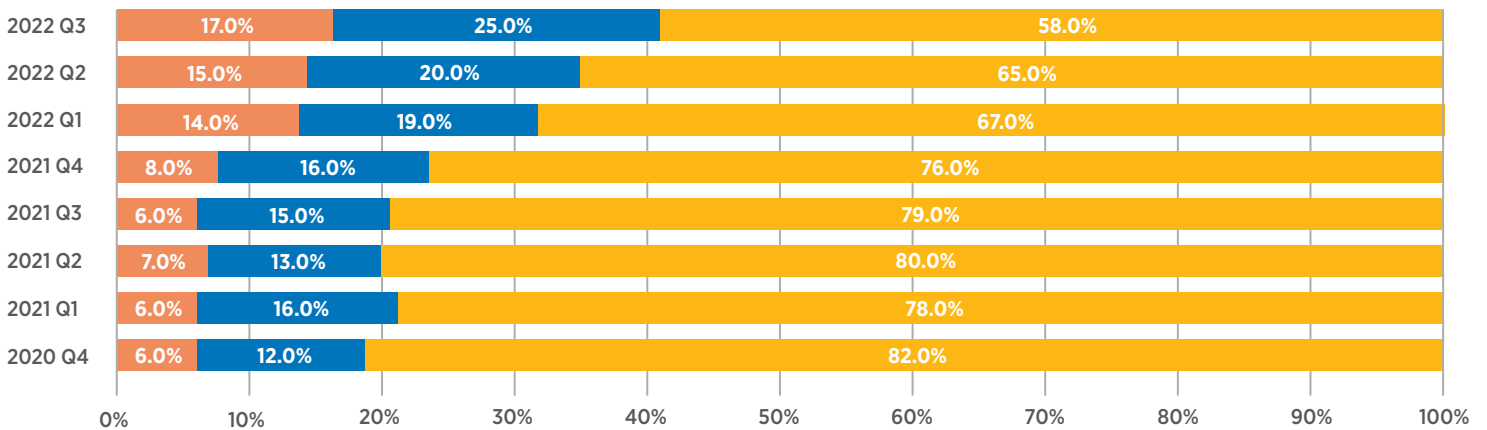
We also have launched Gallagher Drive® for our private D&O clients to better benchmark their coverage against their peer organizations. Utilizing Gallagher Drive®, our proprietary data and analytics platform, our Brokerage team can provide specific rate guidance for your line of coverage, industry and geography. Combined with deep expertise in your particular industry and business, Gallagher can help you navigate today's highly nuanced market.

THE GRAPHS BELOW SHOW THAT RATE INCREASES STEADILY DECLINED IN 2021 AND 2022

D&O PRIVATE RATE TREND



D&O PRIVATE RATE CHANGE DISTRIBUTION



Source: Gallagher Drive* ● Decrease ● Flat ● Increase

CLAIM TRENDS

D&O claims have a long tail, with insurance companies still paying losses from claims made during the previous financial downturn. Given the broad entity coverage provided under private and nonprofit policy forms, insurers often find themselves paying more claims and more expensive claims, leading them to be especially concerned with the long tail associated with these claims. We also know that more insolvencies and bankruptcies often result in more D&O claims. This trend is also the case with mergers and acquisitions. So whether a client's business floundered or flourished, claims for these scenarios are more likely.

We've also seen our nonprofit clients—especially social services organizations—tasked with doing even more with even less. Given the legacy risk of alleged negligent oversight from older claims (latent nature of this exposure) and the value of time and resources

to better understand this risk today, nonprofits working with youth and vulnerable populations are targets for further legacy liability. Today, they need to prioritize best-in-class risk management that ultimately has board oversight. So given the market conditions, it's essential for clients with claims to be prepared to let the underwriters know what they've done to decrease their exposure and better their risk mitigation.

Crossover claims are also more prevalent with D&O coverage. As mentioned earlier, many of the exclusions added are due to increased exposure. False advertising D&O claims are still one of the most troubling to the markets, and although it may not be a standard D&O claim, depending on the allegation, the D&O policy is called to respond. We still see this trend with cyber and employment practices liability (EPL) in particular.

Key cyber considerations continue to include the following:

- More discussions are being held with clients regarding the implications of security and privacy liability on D&O, as the frequency of ransomware attacks and cyber liability claims has increased. We also see this trend heightened with more employees continuing to work remotely, even if part time.
- A cyber claim can cross over into D&O when there are allegations that the directors and officers did not put the proper safeguards or coverage into place.
- There are more first-time buyers of D&O due to the heightened awareness of this coverage and the fact that smaller organizations can afford it.

Key EPL considerations include the following:

- Heightened awareness of social issues such as discrimination has increased the likelihood of EPL claims.
- Many companies are still adjusting to the workforce's demands for a hybrid workspace, but hybrid arrangements can get complicated and have implications regarding who is allowed to work where and what company culture is.
- EPL is a distinct and well-established coverage. We can see that decisions directors and officers make about their workforce may be called into question, and their reputation may be damaged because of it.

LOOKING AHEAD

As we adjust to the perhaps post-pandemic era, most marketplace volatility has ended or waned. We project that, on average, there will be flat to 5.0% rate increases for clients with minimal changes to their risk profile.

CONCLUSION

Because of the highly nuanced nature of this market, it's imperative that you are working with an insurance broker who specializes in your particular industry or line of coverage. Gallagher has a vast network of specialists that understand your industry and business, along with the best solutions in the marketplace for your specific challenges.

Please note, a client's risk profile is the primary variable dictating renewal outcomes. Loss of experience, industry, location and individual account nuances will also have a significant impact on these renewals. Many risk characteristics influence these results, such as significant changes in ratable exposure, any type of liquidity or significant debt issues, presence in California and other higher-risk jurisdictions, claims history, nature of operations and size where they can see increases over 50%. That is why it is even more important to have discussions ahead of time, so you can make an educated decision about this crucial coverage.



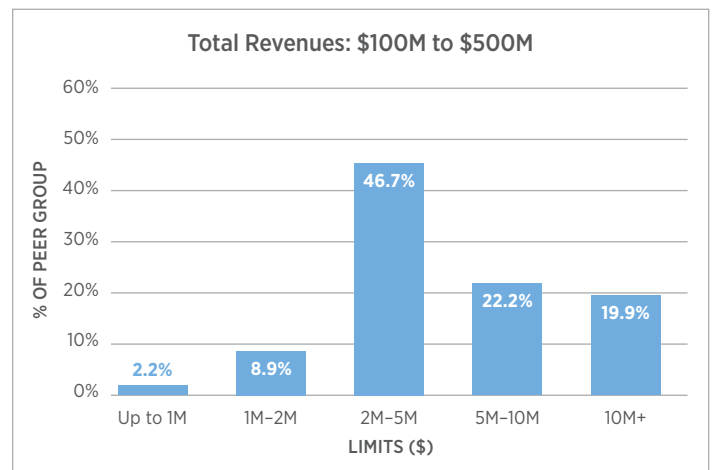
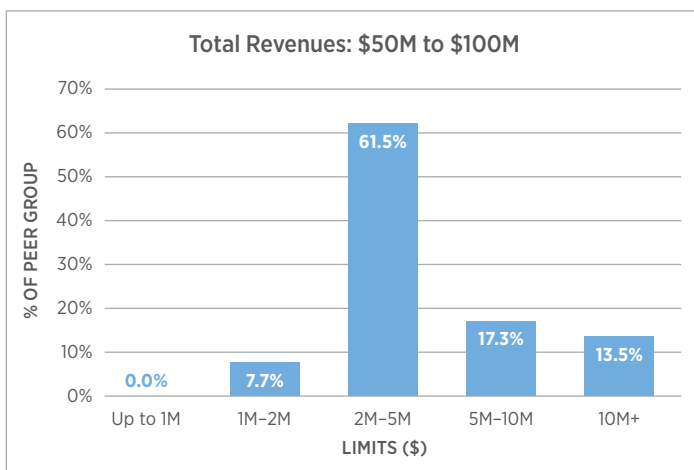
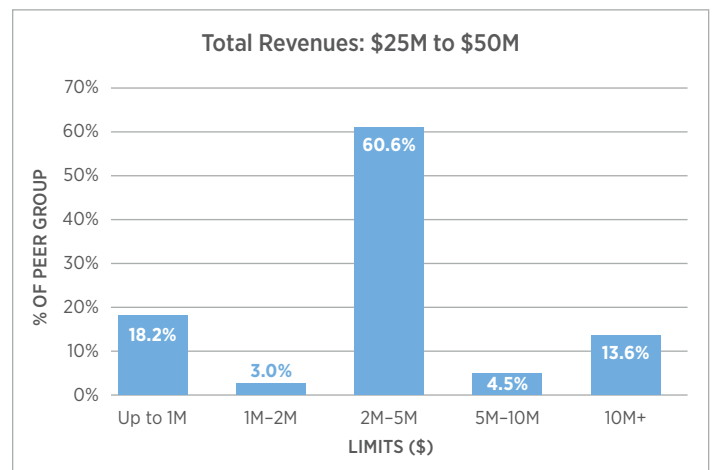
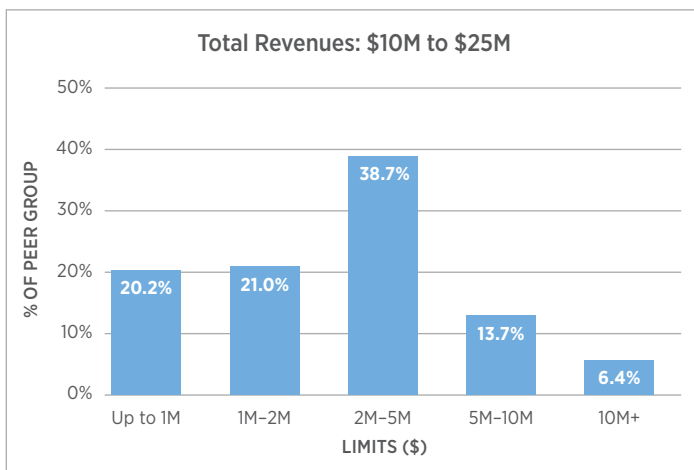
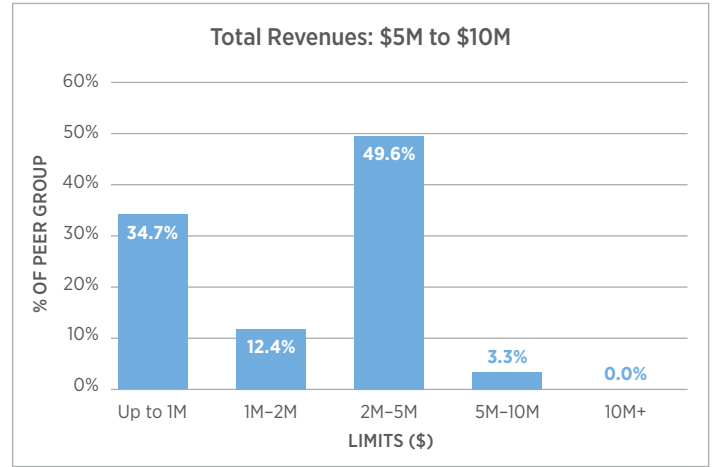
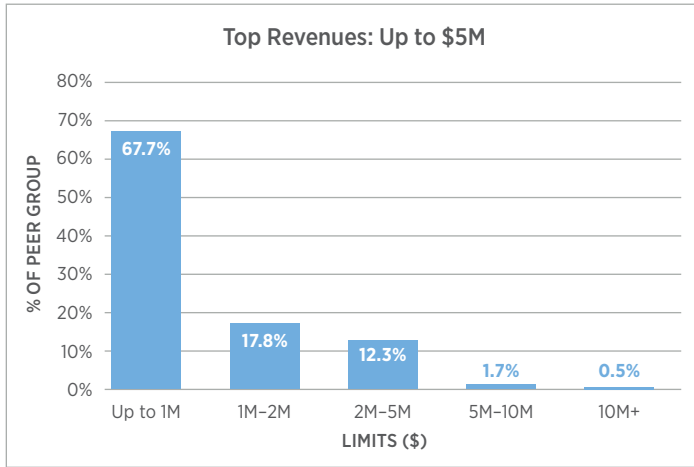
About the Author

Heidi manages the MLP Select team that specializes in advising on, negotiating and placing management liability policies for smaller and middle-market private and nonprofit organizations. Coverage includes D&O liability, EPL, fiduciary liability, crime, kidnap and ransom, errors & omissions, and cyber liability.

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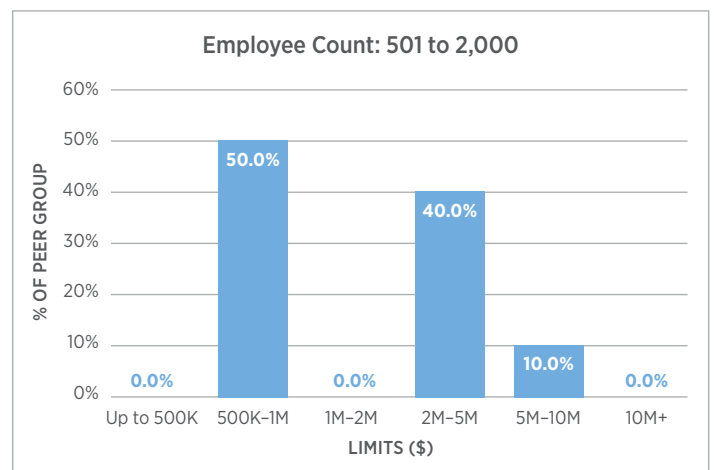
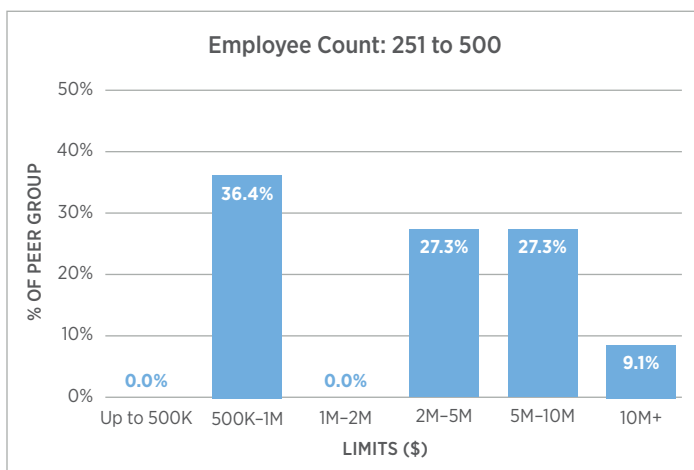
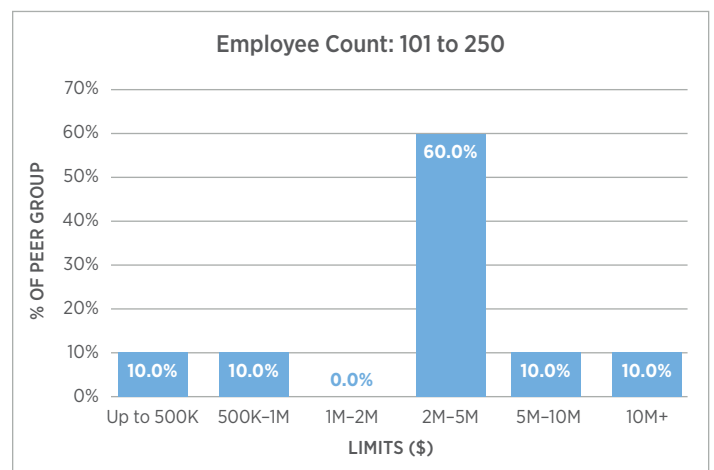
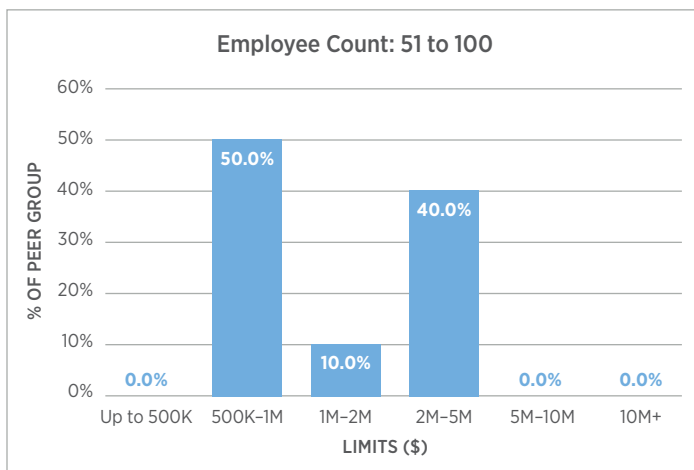
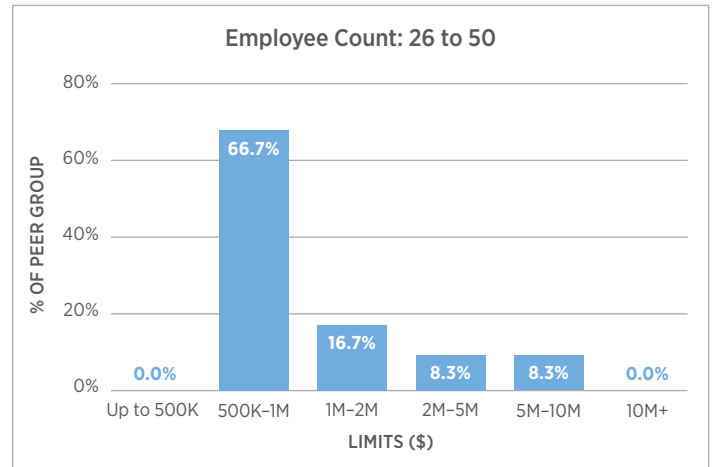
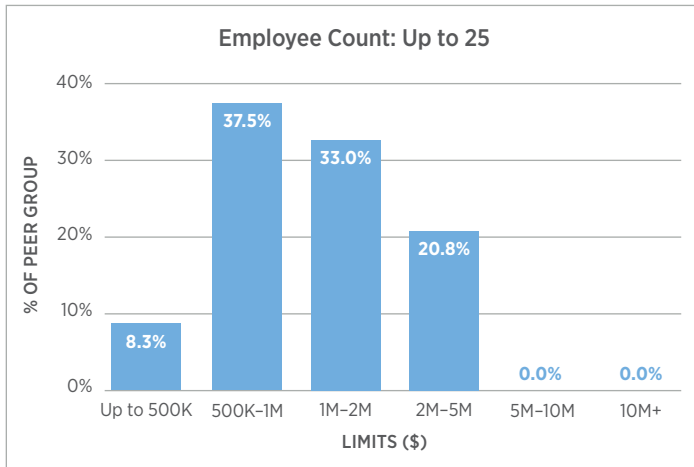
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Nonprofit Company D&O Limits of Liability



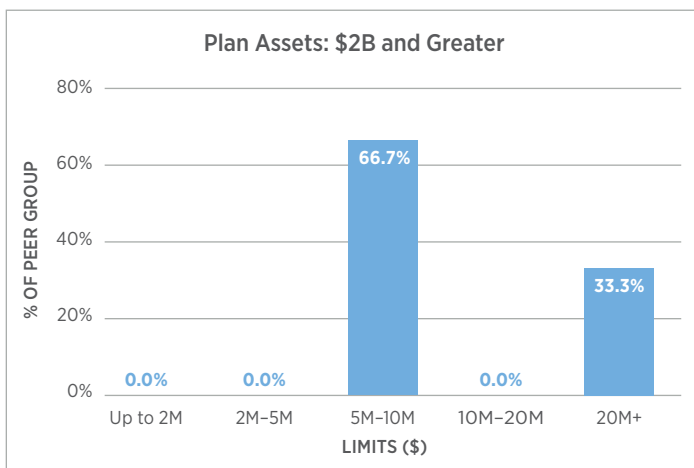
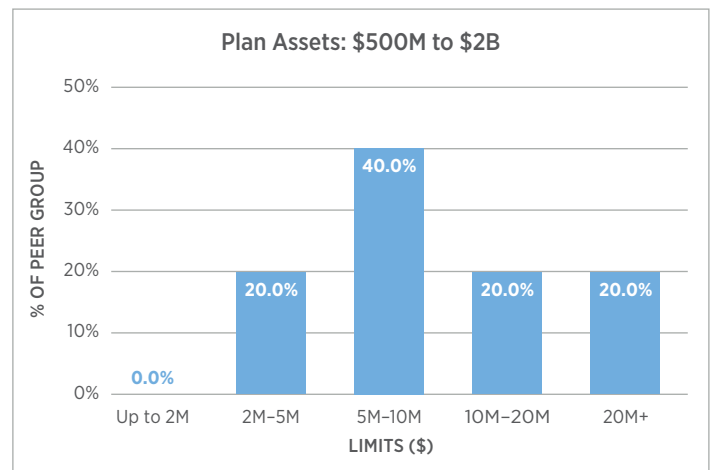
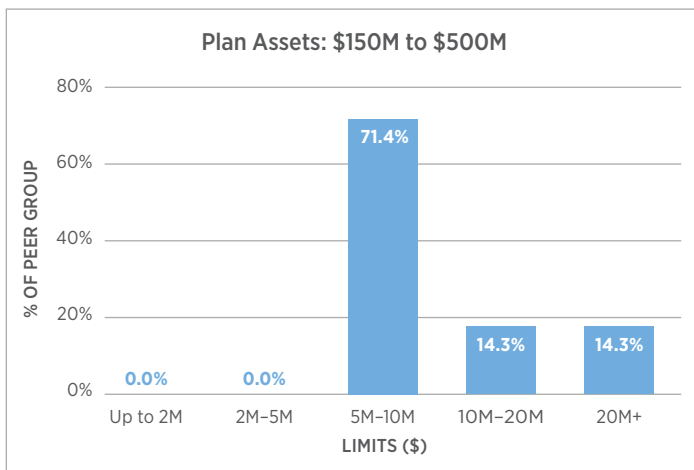
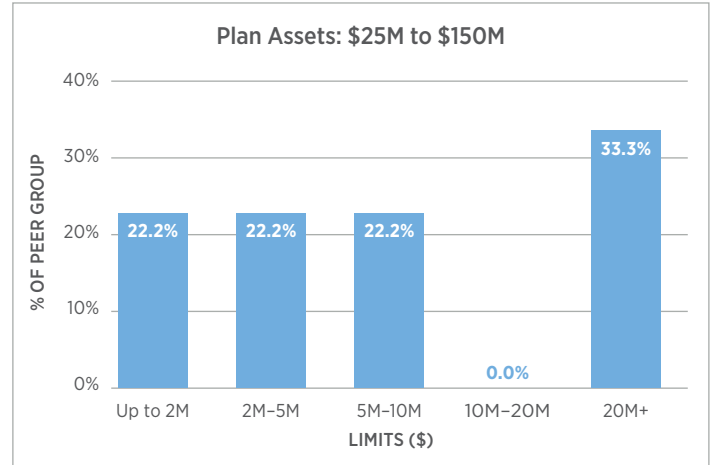
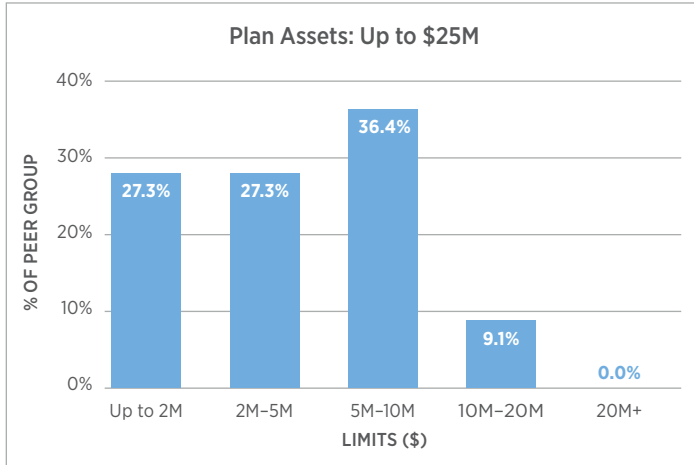
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Nonprofit Company EPL Limits of Liability



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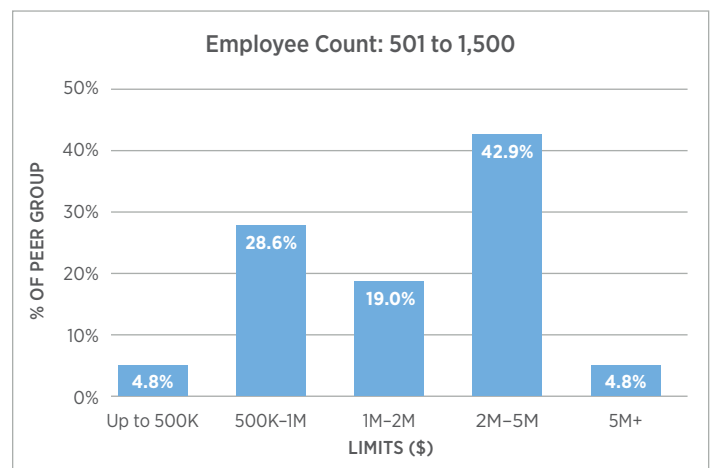
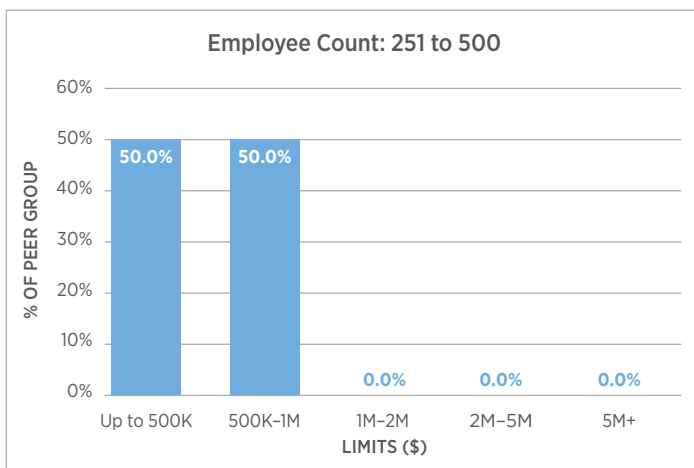
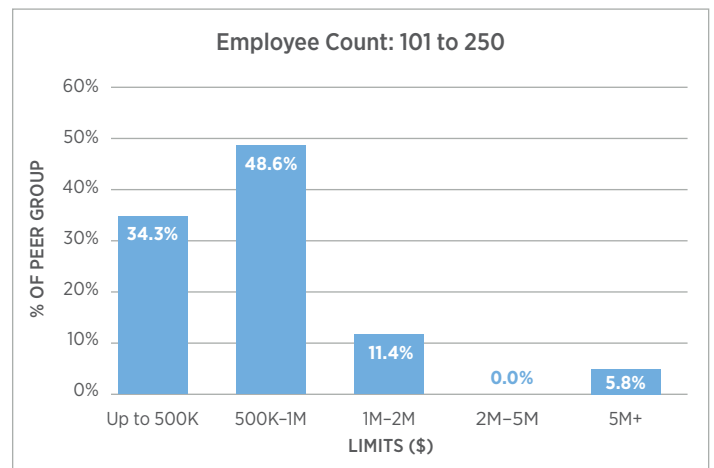
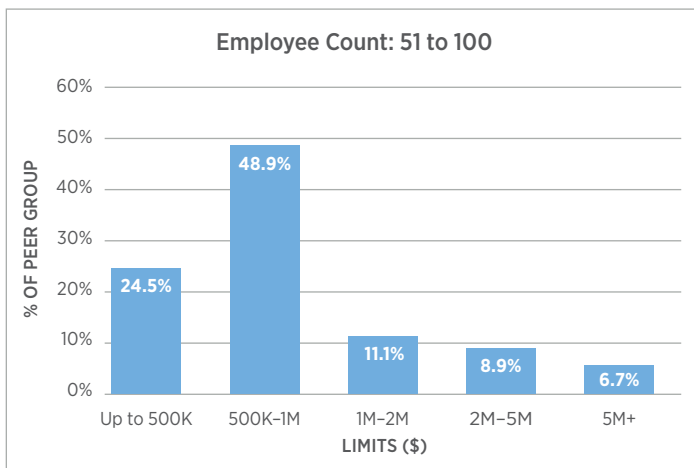
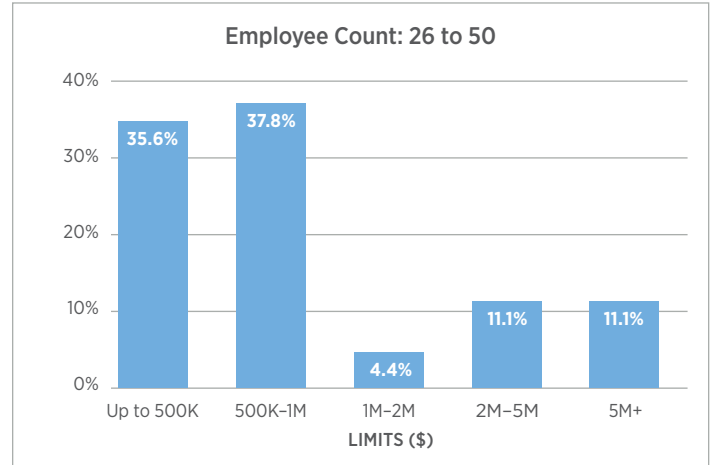
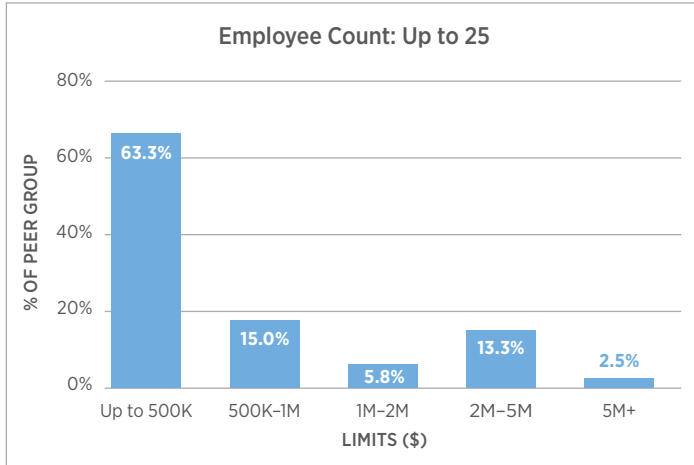
Nonprofit Company Fiduciary Limits of Liability



Based on "All Company Types" due to data size.

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Nonprofit Company Crime Limits of Liability





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