

Best Practices: Service on Credit Unions

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Overview

Service of certain requests for relief must comply with [Federal Rule of Bankruptcy Procedure \(“FRBP”\) 7004](#)—for example, to initiate adversary proceedings, for contested matters under FRBP 9014(a), and for claim objections to certain claimants under FRBP 3007(a)(2)(A)(i) and (ii). FRBP 7004 then distinguishes the manner of service required depending on the person or entity receiving service. For most business entities receiving service, FRBP 7004(b)(3) applies. But when that entity is an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (the “FDIA”), FRBP 7004(h) alters the manner of service required.

One type of entity that doesn’t neatly fit the current service rules is the credit union. Put concisely, when FRBP 7004 service is required on a credit union, the manner of service applicable will generally be that under FRBP 7004(b)(3), with one exception: When the underlying motion is an objection to a claim held by a credit union, FRBP 7004(h) service is required on the credit union. But absent congressional action, on December 1, 2021, a rule change will go into effect such that FRBP 7004 service on credit unions will universally fall under FRBP 7004(b)(3).

Differences between FRBP 7004(b)(3) and 7004(h)

FRBP 7004(b)(3) applies to most business entities, and permits service by first-class mail postage prepaid “to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.” Also, under FRBP 7004(b)(8), service on any entity or individual may be accomplished by mailing via first class mail postage prepaid to an agent authorized to receive service of process. Note: Service on an attorney for a party in any separate proceeding, but who has not appeared in the pertinent proceeding, is not a substitute for service on the party.

FRBP 7004(h) provides an exception to FRBP 7004(b)’s permissive service by first class mail where the recipient of service is an “insured depository institution,” discussed below. Where FRBP 7004(h) is applicable, service by first class mail is not sufficient. Instead, service must be by certified mail addressed to an officer of the institution unless any of three exceptions apply. See FRBP 7004(h)(1–3). In addition to requiring service by certified mail instead of first-class mail, FRBP 7004(h) generally excludes the possibility of serving the receiving party by serving its registered agent.

FRBP 7004(h) service is only required for credit unions for claim objections directed at their claims, and only until December 1, 2021.

FRBP 7004(h) applies where service is being made on an “insured depository institution” as defined in section 3 of the Federal Deposit Insurance Act (the “FDIA”). Section 3 of the FDIA states: “The term ‘insured depository institution’ means any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter.” 12 U.S.C. § 1813(c)(2). This definition excludes credit unions. Accordingly, FRBP 7004(h) service is generally not required for credit unions.

But there is currently one exception. When the underlying motion is a claim objection and the claimant is a credit union, FRBP 7004(h) service is required.

For claim objections, the manner of service required to the claimant is governed by FRBP 3007(a)(2)(A), which generally permits service by first-class mail to the person most recently designated on the claimant’s proof of claim to receive notices, at the address so listed in the proof of claim.

There are two exceptions to that rule, which require *additional* service on top of that generally permitted by FRBP 3007(a)(2)(A). Relevant to this discussion is FRBP 3007(a)(2)(A)(ii), which states, “if the objection is to a claim of an insured depository institution, [then service must be] in the manner provided by Rule 7004(h).” So, like FRBP 7004(h), FRBP 3007(a)(2)(A)(ii) sets a special service requirement on an “insured depository institution.” But unlike FRBP 7004(h), FRBP 3007(a)(2)(A)(ii) does not refer to the definition found in section 3 of the FDIA. Because of that distinction, FRBP 3007(a)(2)(A)(ii) is seemingly using the definition of “insured depository institution” as it exists in the rest of the Bankruptcy Code and FRBPs, which pursuant to 11 U.S.C. § 101(35) does include credit unions.

Therefore, even if service under FRBP 7004(h) is not generally required for credit unions, it is required where the underlying motion is a claim objection and the claimant is a credit union—at least until December 1, 2021. On October 20, 2020, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States published a memorandum of rules changes that, absent congressional action, will become effective on December 1, 2021. Among a handful of changes to the FRBPs is a clarification that eliminates the possibility of reading Rule 3007(a)(2)(A)(ii) to require use of Rule 7004(h)’s special service method when the claimant is a credit union rather than a bank.

Accordingly, on December 1, 2021, credit unions will be excluded from requiring FRBP 7004(h) service under all circumstances, including for claim objections. But until then, in addition to service required by FRBP 3007(a)(2)(A), FRBP 7004(h) service is required on a credit union where a claim objection is directed at its claim.