NATIONAL BANKRUPTCY CONFERENCE
A Voluntary Organization Composed of Persons Interested in the Improvement of the Bankruptcy Code and Its Administration

July 18, 2014

Advisory Committee on Bankruptcy Rules
c/o Jonathan C. Rose, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

Re: Proposed Amendments to Federal Rules of Bankruptcy Procedure

To Members of the Advisory Committee:

I write on behalf of the National Bankruptcy Conference to recommend amendments to the Federal Rules of Bankruptcy Procedure.[1] A description of the Conference is attached.

The Conference's Committee on Individual Debtors prepared a report on the issues that have arisen with service of process in individual debtor cases and recommended amendments to the Rules, which the Conference has approved. I attach a copy. The Conference requests the consideration by the Advisory Committee on Bankruptcy Rules of the proposals.

The Conference remains available to answer any questions the Committee may have.

Very truly yours,

s/ Richard Levin

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[1] The views expressed in this letter are those of the Conference, on whose behalf this letter is being written, and do not necessarily reflect either my personal views or those of my law firm, Cravath, Swaine & Moore LLP.

National Bankruptcy Conference

A non-profit, non-partisan, self-supporting organization of approximately sixty lawyers, law professors and bankruptcy judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws and any proposed changes to those laws.

History. The National Bankruptcy Conference (NBC) was formed from a nucleus of the nation's leading bankruptcy scholars and practitioners, who gathered informally in the 1930's at the request of Congress to assist in the drafting of major Depression-era bankruptcy law amendments, ultimately resulting in the Chandler Act of 1938. The NBC was formalized in the 1940's and has been a resource to Congress on every significant piece of bankruptcy legislation since that time. Members of the NBC formed the core of the Commission on the Bankruptcy Laws of the United States, which in 1973 proposed the overhaul of our bankruptcy laws that led to enactment of the Bankruptcy Code in 1978, and were heavily involved in the work of the National Bankruptcy Review Commission (NBRC), whose 1997 report initiated the process that led to significant amendments to the Bankruptcy Code in 2005.

Current Members. Membership in the NBC is by invitation only. Among the NBC's 60 active members are leading bankruptcy scholars at major law schools, as well as current and former judges from eleven different judicial districts and practitioners from leading law firms throughout the country who have been involved in most of the major corporate reorganization cases of the last three decades. The NBC includes leading consumer bankruptcy experts and experts on commercial, employment, pension, mass tort and tax related bankruptcy issues. It also includes former members of the congressional staff who participated in drafting the Bankruptcy Code as originally passed in 1978 and former members and staff of the NBRC. The current members of the NBC and their affiliations are set forth on the second page of this fact sheet.

Policy Positions. The Conference regularly takes substantive positions on issues implicating bankruptcy law and policy. It does not, however, take positions on behalf of any organization or interest group. Instead, the NBC seeks to reach a consensus of its members - who represent a broad spectrum of political and economic perspectives - based on their knowledge and experience as practitioners, judges and scholars. The Conference's positions are considered in light of the stated goals of our bankruptcy system: debtor rehabilitation, equal treatment of similarly situated creditors, preservation of jobs, prevention of fraud and abuse, and economical insolvency administration. Conferees are always mindful of their mutual pledge to "leave their clients at the door" when they participate in the deliberations of the Conference.

Technical and Advisory Services to Congress. To facilitate the work of Congress, the NBC offers members of Congress, Congressional Committees and their staffs the services of its Conferees as non-partisan technical advisors. These services are offered without regard to any substantive positions the NBC may take on matters of bankruptcy law and policy.

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Rule 7004 and Service of Process Proposals

Bankruptcy Rule 7004(h) requires that service of process on an insured depository institution in a contested matter or adversary proceeding be made by certified mail addressed to an officer of the institution. If the party to be served is a corporation or partnership but not an insured depository institution, service must be made pursuant to Rule 7004(b)(3), which provides that first-class mail may be used and addressed 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 …."

Changes in the consumer credit industry have made compliance with these rules more challenging and costly. Counsel who sincerely attempt to comply are often never certain that proper service has been made and fear that an order may be challenged at some later date. A judgment or order may be declared invalid for failure to comply with these requirements even if the affected party received actual notice.[1]

Although electronic service of process has reduced costs for litigants in civil litigation, service by mail on creditors is still common in bankruptcy cases. A cost-cutting measure under consideration by the judiciary is that the burden of mail process be shifted from the Bankruptcy Noticing Center (BNC) to debtors and their attorneys. More courts have already begun requiring debtor's counsel to serve chapter 13 plans and plan amendments on all creditors. As more service requirements are placed on debtors, and

[1] *See, e.g.*, Jacobo v. BAC Home Loans Servicing, LP, 477 B.R. 533 (D. N.J. 2012); PNC Mortgage v. Rhiel, 2011 WL 1043949 (S.D. Ohio Mar. 18, 2011) (notice in compliance with 7004(h) is required even where the bank actually received the summons and complaint); *In re* Jackson, 2007 WL 4893519 (Bankr. N.D. Ind. Dec. 6, 2007) (actual notice does not remedy inadequate service). *But see In re* Anderton, 2000 WL 33716970 (Bankr. D. Idaho Jan. 11, 2000) (motion to set aside default judgment denied where service was improper under Rule 7004(h), but bank actually received service and could not state how proper service would have made a difference).

postal fees and copying costs increase, mailings will continue to contribute to the increased cost of filing bankruptcy.

Determining if the Named Party is an Insured Depository Institution

There are several obstacles to getting proper service under Rule 7004. The first challenge is determining whether the creditor is an insured depository institution. Even the question of what is an insured depository institution for purposes of the rule is not without controversy. Unlike the definition of an insured depository institution found in the Bankruptcy Code, which includes an insured credit union,[2] Rule 7004(h) applies only to an insured depository institution "as defined in section 3 of the Federal Deposit Insurance Act."[3] Thus, the institution must have deposits that are insured by the FDIC under the Federal Deposit Insurance Act. Although the Rule's definition would thus appear to exclude credit unions, at least one court has concluded otherwise.[4]

To confirm whether a party is an insured depository institution under the Federal Deposit Insurance Act, the most reliable source is the BankFind program on the FDIC's website.[5] In most cases all that must be entered in the program is the name of the institution. However, creditors often have various corporate entities that change, and many financial institutions have subsidiary or affiliated corporations with similar names. For example, entering simply "Citibank" in the FDIC BankFind program will provide 25

[2] 11 U.S.C. § 101(35).
[3] Fed. R. Bankr. P. 7004(h).
[4] *Campare In re* Cornejo, 2010 WL 7892449 (Bankr. D. Alaska Aug. 2, 2010)(Rule 7004(h) does not apply to a federal credit union) *with In re* Fisher, 2008 WL 4280388 (Bankr. N.D. Ala. Sep 12, 2008) (applying definition in 11 U.S.C. § 101(35)(B) and concluding that term "insured depository institution" for purposes of Rule 7004(h) includes an insured credit union).
[5] http://research.fdic.gov/bankfind/.

different insured depository institutions that use "Citibank" in some way in the corporate name. In some cases the entity that has been identified as the creditor may not be an insured depository institution even though there may be other similarly named, separate entities that are insured depository institutions. Faced with this uncertainty and the consequences of improper service, debtor's counsel often elect for the more costly, enhanced service under Rule 7004(h) on various parties even if it may not be required.

Obtaining the Name and Address of an Officer of the Institution

The more difficult task is obtaining a name and address for a current officer of the institution. Courts have wrestled with whether the requirement in Rule 7004(h) that service should be "addressed to an officer of the institution" means that a specific officer must be named, or that service can simply be sent in care of "Officer" or a specific office like "President." Some courts suggest that it is easy to find the names of bank officers through online searches and use that as a basis for requiring named officers for service of process.[6] Even courts that have acknowledged that finding names of officers may not be such an easy task generally conclude that service simply to an "officer" is not sufficient. For example, in *In re Eimers*,[7] despite an affidavit from the debtor's attorney that both he and his assistant had searched but were unable to find the names of officers, the court held that service addressed to "Bank Officer" at the proper address was inadequate because it should have been addressed to a specific office, such as "President."

[6] *See, e.g.*, *In re* Cornejo, 2010 WL 7892449 (Bankr. D. Alaska Aug. 2, 2010); *In re* McCumber, 2012 WL 893061 (Bankr. D. Alaska Mar. 7, 2012).
[7] 2013 WL 1739645 (Bankr. D. Alaska Apr. 23, 2013).

In construing the similar though arguably less stringent requirement in Rule 7004(b)(3), the Ninth Circuit B.A.P. in *In re Villar*[8] held that sending notice to a post office box number, without specifying either a person or an office, is not sufficient. Although the issue remains unsettled, many courts require that a specific officer of the institution be named in order to comply with Rule 7004(b)(3) and (h).[9] Courts have also held that while service upon a registered agent may satisfy the requirements of Rule 7004(b)(3) with respect to an entity, service upon a registered agent is not service upon an "officer of the institution" for purposes of Rule 7004(h).[10]

Unfortunately the FDIC BankFind search program does not provide the names of officers of insured depository institutions, and it sometimes lists addresses where officers are not located. Thus, various internet search tools and websites must be checked, such as the institution's corporate website, any annual reports that may be available on the

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[8] 317 B.R. 88 (B.A.P. 9th Cir. 2004).

[9] *See In re* Smith, 2012 WL 8436265 (Bankr. E.D. Cal. Aug. 17, 2012) (attempted service on a post office box is insufficient); *In re* Field, 2012 WL 1655602 (Bankr. D. Alaska May 10, 2012) (service not sent by certified mail and addressed only to "Manager or General Agent" was inadequate); *In re* Franchi, 451 B.R. 604, 607 (Bankr. S.D. Fla. 2011) (addressing service "c/o Any Officer Authorized to Accept Service" is inadequate); *In re* Miller, 428 B.R. 791, 794-95 (Bankr. S.D. Ohio 2010) (service sent by regular mail, not addressed to any individual, officer or department, and to varying addresses, was inadequate); *In re* Stassi, 2009 WL 3785570 (Bankr. C.D. Ill. Nov. 12, 2009); *In re* Carlo, 392 B.R. 920, 921-22 (Bankr. S.D. Fla. 2008) (discussing split of authority on Rule 7007(b)(3) requirement and deciding that a named officer must be served); *In re* Faulknor, 2005 WL 102970 (Bankr. N.D. Ga. Jan. 18, 2005) (addressing service to "Attn: President" is inadequate). *See also In re* Gambill, 477 B.R. 753, 761-62 (Bankr. E.D. Ark. 2012) (service was proper where it was addressed to a named CEO and sent by certified mail, even though the named individual was temporarily not serving as CEO, because the state public records still listed him as an officer).

[10] *E.g.,* Hamlett v. Amsouth Bank (*In re* Hamlett), 322 F.3d 342 (4th Cir. 2003); *In re* Teligent Inc., 485 B.R. 62 (Bankr. S.D.N.Y. 2013) ("[s]ervice on an authorized corporate agent without directing the mailing to an officer or appropriate individual agent is insufficient under Rule 7004(b)(3)"); *In re* Stewart, 408 B.R. 215, 217-18 (Bankr. N.D. Ind. 2009).

corporate website, filings made by the institution with the U.S. Securities and Exchange Commission using the EDGAR search engine,[11] and the search engine on the Bloomberg Businessweek website.[12] The problem, however, is that there is no one reliable place to obtain this information, and these various search tools and websites often provide conflicting information. Attempts to obtain service information by calling the larger financial institutions are often as time consuming (navigating the creditor's voicemail system to find an individual authorized to provide this information can be exasperating) and no more reliable than these other methods.

For example, assume the debtor had a 2009 car loan with GMAC Bank and needs to serve a motion to value the creditor's secured claim. Entering "GMAC Bank" on the FDIC website produces four entries: GMAC Automotive Bank, GMAC Bank, GMAC Bank, and GMAC Commercial Mortgage Bank.[13] As for the two "GMAC Bank" entries, one lists a headquarters at 1100 Virginia Drive, Fort Washington, PA, and indicates that the bank was closed on February 26, 2009. The other entry states that GMAC Bank has changed its legal name and is currently doing business as Ally Bank. For Ally Bank, the FDIC website lists the headquarters as 6985 Union Park Center Suite 435, Midvale, UT and a limited service administrative office in Fort Washington, Pennsylvania.[14] The corporate website for Ally Bank directs "general banking correspondence" to a P.O. Box

[11] http://www.sec.gov/edgar.shtml.
[12] http://investing.businessweek.com/research/common/symbollookup/symbollookup.asp
[13] http://research.fdic.gov/bankfind/results.html?name=GMAC+BANK&fdic=&address=&city=&state=&zip=
[14] http://research.fdic.gov/bankfind/detail.html?bank=57803&name=Ally%20Bank&searchName=ALLY%20BANK&searchFdic=&city=&state=&zip=&address=&tabId=1#

in Horsham, Pennsylvania.[15] Two Chief Executive Officers are listed on the corporate website, one for Ally Financial Inc. (Michael Carpenter) and one for Ally Bank (Barbara A. Yastine).[16] An annual report is provided on the corporate website for Ally Financial Inc. which indicates that Ally Bank is an indirect wholly owned subsidiary of Ally Financial Inc. The SEC website has no listing for Ally Bank but filings for Ally Financial Inc. provide "200 Renaissance Center, P.O. Box 200, Detroit, Michigan 48265-2000" as the "address of principal executive offices."[17] Bloomberg Businessweek lists Barbara A. Yastine as CEO of Ally Bank and indicates that the corporate headquarters are located at 717 Fifth Avenue, New York, New York 10022.[18] Should the debtor serve the motion on the CEO at the Utah headquarters listed on the FDIC website, the New York headquarters listed on the Bloomberg website, or one of the three other addresses? Faced with this uncertainty, many debtors' counsel will serve the motion by certified mail at all of these addresses and hope that at least one will comply with Rule 7004(h).

Legislative History for Rule 7004(h) Suggests that Its Purpose is No Longer Being Fulfilled

Rule 7004(h) is unusual in that it was not adopted under the Rules Enabling Act procedure. Rather, it was mandated by a federal statute enacted in 1994.[19] A sponsor of the bill that ultimately became Rule 7004(h), the late Senator Jesse Helms of North Carolina, stated that the existing process—sending a letter by first class mail to a

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[15] *See* www.ally.com, under the link "contact us."
[16] http://media.ally.com/index.php?s=20316.
[17] http://www.ally.com/about/investor/sec-filings/index.html for July 31, 2013.
[18] http://investing.businessweek.com/research/stocks/private/person.asp?personId=3573934&privcapId=39089461&previousCapId=8748185&previousTitle=Symphony-Metreo,%20Inc.
[19] *See* § 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106.

managing agent—"automatically puts a bank at a disadvantage" because banks, especially those with multiple branches, receive a high volume of mail, and there is nothing to differentiate legal process from everyday correspondence.[20] According to Senator Helms, "the person at the bank to whom the letter is addressed often does not have sufficient authority to ensure a response within the time period required."[21]

Senator Helms introduced into the record a letter from a lawyer to a bank president, responding to a request for arguments supporting a different service of process for banks.[22] The lawyer expressed the concern "that such service of process … may not be addressed to a person of specific enough authority to insure a prompt response."[23] He proposed that service be made "to a specifically named officer" because "banks are inherently large institutions with" many employees and locations, and therefore "cannot be compared … [to] the typical corporation."[24] He stated that this complicated business model means that traditional service of process "contains a great potential of error,"[25] and the trend in bank organizational systems is for this to get even more complicated over time.[26]

In responding to a letter opposing the use of service by certified mail from Robert E. Keeton, Chairman of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, to then Senator Joseph Biden (who was serving as Chair

[20] 139 Cong. Rec. S708-10 (daily ed. Jan. 26, 1993).
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.* at S709.

of the Committee on the Judiciary),[27] the same lawyer submitted another letter stating that "bank addresses and locations of business are well defined, highly visible, well known and virtually permanent," and argues that "a rather loose requirement that the summons be delivered by certified mail … to any officer of the bank can be easily accomplished at virtually any branch office and presents no impediment, delay or additional cost to the judicial process."[28]

The lawyer was correct on one point—the organizational structure of financial institutions has become more complicated over time. In fact, changes in the banking industry since 1994 have rendered much of Rule 7004(h) irrelevant and anachronistic. Much of the credit that consumer debtors obtain is from financial institutions that do not maintain branch offices in the consumer's state. In order to obtain a federal bank charter (and the benefits of federal preemption of state consumer laws), many larger financial institutions open only one branch office for deposits, such as in Utah, South Dakota, Virginia, or Delaware. For example, the credit card lender Discover Bank has only one full service brick and mortar office, located in Delaware. The large auto, mortgage and credit card lender, Capital One Bank, has only one full service office in the U.S., located in Virginia. Contrary to the opinion expressed in the letter of support for the bill that became Rule 7004(h), officers of large banks are no longer found in branch offices, and even branch offices do not exist in most states for the major providers of consumer credit.

Rules 7004(h) also no longer fulfills (if it ever did) its intended purpose of getting service to the individual at the institution responsible for responding to the legal process. Most consumer loans are no longer serviced by personnel located in local branch offices

[27] I*d*.
[28] I*d*. at S709.

or corporate headquarters. Large lenders typically have centralized servicing and bankruptcy departments in one or more locations, or they outsource these functions to third-party vendors. These servicing and bankruptcy departments are often not located in the same building, state, or even nation as the corporate headquarters where the CEO or other officers of the financial institution are found. Service made in accordance with Rule 7004(h) will inevitably involve a re-routing of the process from the corporate headquarters to some other division or department within the institution. It would also seem unlikely that large financial institutions appreciate having staff in their corporate executive suites dealing with claim objections and lien stripping motions in bankruptcy cases. Rule 7004(h) was also enacted at a time when CM/ECF did not exist, which has bought efficiencies to creditors through the filing and receiving of court filings in an electronic format.

Proposals for Rule Amendments

Rule 7004(h) cannot be amended without Congressional action. However, the there are potential amendments to other Bankruptcy Rules that are consistent with Rule 7004(h) and that would address the problems described above. In addition to easing some of the burdens placed on parties by Rule 7004, these proposed changes could provide more effective service upon creditors and further the legislative goals of Rule 7004(h). The following are several suggested proposals:

1) An amendment to Rule 3001 could require that a creditor identify on the proof of claim form (Official Form 10) the name and address of the person responsible for receiving notices under the Code. If the creditor is a corporation, the claimant would be

required to list the name and address of an officer or agent for purposes of Rule 7004(b)(3). If the creditor is an insured depository institution, the amended rule could also require a creditor to state on the proof of claim the name and address of an officer of the institution for service under Rule 7004. Alternatively, the creditor may indicate that it would prefer that service be made in some other manner that would more quickly and efficiently deliver the process to the responsible individual or department. This is permissible under Rule 7004(h)(3), which authorizes the waiving of an institution's entitlement to service upon an officer by certified mail.

There are several limitations to this approach. Creditors do not file claims in the vast majority of individual chapter 7 cases, because they are no-asset cases. However, such cases typically have far fewer contested matters and adversary proceedings brought by debtors than in chapter 13 cases. Some secured creditors also fail to file claims in chapter 13 cases. This may change in the future as a proposed amendment to Rule 3002 has been published for comment that would require secured creditors to file claims in chapter 13 cases. Finally, debtor's counsel will need to attempt to verify that the name and address listed on the claim is still current at the time service is made. Still, having reliable information as of the date the claim is filed would be extremely helpful.

The following is suggested language to amend Rule 3001(c)(2):

Rule 3001. Proof of Claim

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(2) *Additional Requirements in an Individual Debtor Case: Sanctions for Failure to Comply*. In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

(D) If the holder of a claim or its authorized agent is a corporation, the proof of claim shall include the name and address of an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process on behalf of the corporation. If the holder of a claim is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), the proof of claim shall state whether the holder has waived its entitlement under Rule 7004(h) to service by certified mail in contested matters and adversary proceedings and, if such entitlement is not waived, the name and address of an officer to receive service by certified mail.

(E) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions: (i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

2. Another proposal focuses on access to the database of preferred creditor addresses that is maintained by the BNC. A BAPCPA amendment found at 11 U.S.C. § 342(f) permits creditors to file with any bankruptcy court an address to be used by all or particular bankruptcy courts to provide notice to such creditors in chapter 7 and 13 cases. Creditors may provide their preferred addresses to the BNC's National Creditor Registration Service. These addresses are used by the BNC for the mailings it sends to creditors and are used to supplement and correct the addresses that are listed on the mailing matrix prepared by the debtor under Rule 1007(a)(1). If there is a match between the creditor name provided on the debtor's mailing matrix and a name contained on the

National Creditor Registration Service database, and the address provided by the debtor is different from the address in the database, the mailing is redirected to the creditor's preferred address. However, the database of preferred addresses is not accessible by debtor's counsel. Having access to the preferred addresses would reduce the costs of preparing a mailing matrix and ensure more reliable service to creditors. This change could be implemented administratively by the AOUSC by providing access to this information to registrants of the CM/ECF system.

Another proposal would require that when creditors provide their preferred addresses to the BNC's National Creditor Registration Service, they also provide the name and address of an officer of the institution for purposes of service under Rule 7004.

While some of these changes could be implemented without a rule amendment, the following is suggested language for amending Rule 5003:

Rule 5003. Records Kept By the Clerk

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(e) REGISTERS OF MAILING ADDRESSES OF FEDERAL AND STATE GOVERNMENTAL UNITS, ~~AND~~ CERTAIN TAXING AUTHORITIES AND CERTAIN OTHER ENTITIES. The United States, ~~or~~ the state or territory in which the court is located, and a creditor in a case in which the debtor is an individual may file a statement designating its mailing address. The United States, state, territory, or local governmental unit responsible for collecting taxes within the district in which the case is pending may also file a statement designating an address for service of requests under § 505(b) of the Code, and the designation shall describe where further information concerning additional requirements for filing such requests may be found. A creditor in a case in which the debtor is an individual may file a notice of address to be used to provide notice to such entity under § 342(f)(1) of the Code in all cases under chapter 7 and chapter 13 and the name and address of an officer of the creditor to receive service of process under Rule 7004. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes the mailing addresses designated under the first sentence of this subdivision, ~~and~~ a separate register of the addresses designated for the service of requests under § 505(b) of the Code, and a separate register of the addresses designated under § 342(f)(1) of the Code. The clerk is not required to include in any single register more than one mailing address for each department, agency, or

instrumentality of the United States or the state or territory or for each creditor. If more than one address for a creditor or a department, agency, or instrumentality of the United States, or a state or territory is included in the register, the clerk shall also include information that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year, and the information contained in the register shall be accessible by registered users of the court's electronic filing system. The mailing address in the register is conclusively presumed to be a proper address for the creditor or governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.

3. A change that would bring significant efficiencies to the bankruptcy system would be for large creditors to receive all notices and service, other than process under Rule 7004, by electronic transmission. The BNC permits creditors to register for Electronic Bankruptcy Noticing (EBN), which is described as a "service that allows court notices to be transmitted electronically, delivering them faster and more conveniently."[29] Creditors can receive notice data through EBN by email or as a data stream under an electronic noticing option. The EBN system is currently used only for notices sent by the BNC.

Electronic transmission of documents to be served in a matter or proceeding by the debtor is permitted under current rules only if the party to be served has appeared through its attorney in the particular matter or proceeding.[30] Another change that could be implemented administratively by the AOUSC would be for CM/ECF registrants to have access to the EBN system as a function within CM/ECF (and its successor, NextGen). This would permit users of CM/ECF to provide notice and serve documents

[29] *See* http://ebn.uscourts.gov/.
[30] With respect to adversary proceedings, Rule 7005, which incorporates F.R.Civ. P. Rule 5(b)(2)(E), permits electronic transmission if the person consents in writing. Consent is generally provided as part of the registration for CM/ECF.

electronically through EBN, other than documents served under Rule 7004, when the creditor has not appeared through an attorney.

This change would be most effective if all large creditors participate in EBN. Thus, if participation is not sufficient, another proposal would be to require large creditors to register for electronic noticing. Rule 9036 requires the recipient to request in writing electronic noticing services. This is consistent with Rule 7005 (incorporating F.R. Civ. P. Rule 5(b)(2)(E)) which permits electronic transmission in adversary proceedings if the person consents in writing. In addition to an amendment to Rule 7005, the following proposed amendment to Rule 9036 would compel large creditors to be served by electronic transmission, other than documents served under Rule 7004.

Rule 9036. Notice by Electronic Transmission

(a) Whenever the clerk or some other person as directed by the court is required to send notice by mail and the entity entitled to receive the notice requests in writing or in connection with the entity's registration for the court's electronic case filing system that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission. Notice by electronic means is complete on transmission.

(b) An entity or its authorized agent that has filed or expects to file, in the aggregate, 100 or more proofs of claim in one or more bankruptcy courts in the United States, within any 12-month period, shall register for the electronic filing system in all bankruptcy courts in which the entity or its authorized agent files proofs of claim. Such an entity or its authorized agent shall file all proofs of claim and other documents using the bankruptcy court's electronic filing system and shall receive all notices and service by electronic transmission, instead of notice or service by mail, except with respect to any notice or service of process for which service in accordance with Rule 7004 is required.