

**A. LYSA SIMON**  
**ATTORNEY AT LAW**  
9846 White Oak Avenue  
Suite 205  
Northridge, CA 91325

AREA CODE (818)  
701-5200

AREA CODE  
(818) 701-5200

December 13, 2017

Committee on Rules of Practice and Procedure  
Attn: Advisory Committee on Bankruptcy Rules  
Forms Subcommittee

VIA EMAIL  
Rules\_Support@ao.uscourts.gov

Re: Service of Adversary Matters and Contested Matters on Credit Unions Rules  
of Bankruptcy Procedure Rule 7004(h)

Dear Committee Members:

The purpose of this letter is to bring to your attention a problem in the Rules of Bankruptcy Procedure (hereafter "RBP") Rule 7004(h), which deals with the service of a notice in contested matters and adversary matters in a bankruptcy on banks but fails to include credit unions. Said provision states as follows:

"(h) Service of Process on an Insured Depository Institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless-

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service."

It appears from the title that subpart (h) is intended to address how to effect service on process on an "insured depository institution." One would anticipate that credit unions, given that most are federally insured financial institutions, would be included in the definition of "insured depository institution." However, the term, "insured depository institution" is limited to being only an institution insured under the Federal Deposit Insurance Act, in other words a "bank" or a "savings and loan." A copy of said section of the Federal Deposit Insurance Act is enclosed herewith for your convenience.

Committee on Rules of Practice and Procedure  
Attn: Advisory Committee on Bankruptcy Rules  
Forms Subcommittee  
December 13, 2017  
Page 2

VIA EMAIL  
Rules\_Support@ao.uscourts.gov

I suspect the intent of the subsection was to ensure that governmental entities and governmentally insured institutions, i.e., financial institutions, actually receive notice of actions that can negatively impact them. If that is the case, then federal and state chartered credit unions should have been included in the definition.

There is no apparent reason as to why credit unions are not within the definition of an "insured depository institution," especially given that most credit unions are insured by the federal government through the National Credit Union Administration (hereafter the "NCUA"). The NCUA also issues regulations which affect state and federally chartered credit unions, which are federally insured by the NCUA. The NCUA is similar to the Federal Deposit Insurance Commission (hereafter the "FDIC").

We acknowledge that there are differences between credit unions and banks, not the least of which is the fact that credit unions typically try to work with their members, are non-profit or not-for-profit financial institutions, and are a benefit to American society in general and consumers in particular.

Unfortunately, as a result of credit unions not being included in the narrow definition set forth in RBP Rule 7004(h) for an insured depository institution, even though the vast majority are federally insured financial deposit institutions, and they are all financial deposit institutions, they do not receive the benefit of said subsection, which requires a debtor to take steps to insure a credit union actually receives service of adversary actions and contested matters, which have the ability to impact the credit union's rights.

It is not fair that a bank, which is no more a federally insured financial depository institution than a credit union, is entitled to service by certified mail, and a credit union is not.

Credit unions have an additional problem which banks do not have. The names of credit unions still often include the name of their largest membership common bond. Said membership common bond is often related to a particular employer, whose employees make up the membership of the credit union.

All too often when mail is sent to a credit union, it is mistakenly believed to be intended to belong to the credit union's sponsor, i.e., the employer whose employees make up the common membership bond of the credit union. An example of this involves one of my larger clients, Farmers Insurance Group Federal Credit Union. Its members are the insurance agents, district managers, employees, and their family members of Farmers Insurance Group of Companies. (The Credit Union also has other small employee groups, but they are not reflected in the name.)

Committee on Rules of Practice and Procedure  
Attn: Advisory Committee on Bankruptcy Rules  
Forms Subcommittee  
December 13, 2017  
Page 3

VIA EMAIL  
Rules\_Support@ao.uscourts.gov

In addition, Farmers Insurance Group Federal Credit Union has many of its branches inside buildings owned (or leased) by Farmers Insurance Group of Companies. Also, Farmers Insurance Group Federal Credit Union's corporate headquarters are near Farmers Insurance Group of Companies' corporate headquarters. They each have post office boxes at the same local post office.

The result in the similarity of their names and the proximity of their locations is that even when the credit union uses its post office box address for its mail, its mail sometimes is delivered to the insurance companies and vice versa. Farmers Insurance Group Federal Credit Union receives notices from the Bankruptcy Courts through Electronic Bankruptcy Noticing program (hereafter "EBN"). However, even said program has had problems. There have been instances when Farmers Insurance Group Federal Credit Union was receiving notices for the insurance companies. When the Credit Union alerted the Courts of the problem, the insurance companies for a period of time received all of the Credit Union's notices. At this point in time the Credit Union usually, but not always, receives its notices through EBN.

Even though a number of credit unions have broken away from using the name associated with their primary field of membership, there are still many credit unions who continue to do so.

In addition, debtors and their attorneys do not always understand the significance of the difference between the credit union and the sponsor's names. They often address documents to credit unions as the name of the sponsor, i.e., "Farmers Insurance" or "Farmers Insurance Group," and leave off "Federal Credit Union" and/or write "CU" or some other designation that is not quite correct.

The result is that the credit union does not receive actual notice of what could be a significant matter, especially if the credit union's collateral is being valued for less than what the Court would determine in a contested matter. However, for the matter to be contested, the credit union would actually need to receive notice or at least be able to prove it did not, because the sponsor's employee signed for it and the credit union did not.

For this reason, we ask that you minimally change service of process on insured depository institutions to read service of insured depository institutions defined in Section 3 of the Federal Deposit Insurance Act, **and Title 12, Chapter 14, Subchapter 1 (12 U.S.C. Section 1752) of the Federal Credit Union Act**, "a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless ..."

Committee on Rules of Practice and Procedure  
Attn: Advisory Committee on Bankruptcy Rules  
Forms Subcommittee  
December 13, 2017  
Page 4

VIA EMAIL  
Rules\_Support@ao.uscourts.gov

It is my humble opinion that whenever there is a taking of some right or remedy from a third party, who has not made an appearance in a matter, unless the third party has waived the right to service by certified mail, the third party should be minimally served by certified mail. It simply is unfair when a creditor has no means to prove it was not the one who received the notice other than to say, "I did not receive notice," and the debtor is not required to have some viable proof to establish the service was effective.

Thank you very much for your consideration of this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "A. Lysa Simon". The signature is stylized and cursive.

A. Lysa Simon

ALS:cq  
Enclosure(s)  
cq.Genl(BKAdvComm).lt2

1000 - Federal Deposit Insurance Act

SEC. 3. DEFINITIONS

As used in this Act--

(a) DEFINITIONS OF BANK AND RELATED TERMS.--

(1) BANK.--The term "bank"--

(A) means any national bank and State bank, and any Federal branch and insured branch; and

(B) includes any former savings association.

(2) STATE BANK.--The term "State bank" means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or **other banking institution which--**

(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

(B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia, including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before August 9, 1989.

(3) STATE.--The term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

[Codified to 12 U.S.C. 1813(a)]

[Source: Section 2[3(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 873), effective September 21, 1950, as amended by section 3(a) of the Act of August 1, 1956 (Pub. L. No. 896; 70 Stat. 908), effective August 1, 1956; section 910(a) of title IX of the Act of December 31, 1970 (Pub. L. No. 91--609; 84 Stat. 1811), effective December 31, 1970; section 103 of title I of the Act of December 26, 1981 (Pub. L. No. 97--110; 95 Stat. 1513), effective December 26, 1981; section 703(a) of title VII of the Act of October 15, 1982 (Pub. L. No. 97--320; 96 Stat. 1538), effective October 15, 1982; and section 204(a) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 190), effective August 9, 1989; section 8(a)(1)(A) of the Act of October 30, 2004 (Pub. L. No. 108-386; 118 Stat. 2231, effective October 30, 2004; section 8(a)(1) of the Act of February 15, 2006 (Pub. L. No. 109--173; 119 Stat. 3610), effective date shall take effect on the day of the merger of the Bank Insurance Fund and the Savings Association Insurance Fund pursuant to the Federal Deposit Insurance Reform Act of 2005; section 123(d) of title I of the Act of October 16, 2006 (Pub. L. No. 109--356; 120 Stat. 2029;

section 725(d) of title VII of the Act of October 13, 2006 (Pub. L. No. 109--351; 120 Stat. 2002]

(b) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERMS.—

(1) SAVINGS ASSOCIATION.--The term "savings association" means--

(A) any Federal savings association;

(B) any State savings association; and

(C) any corporation (other than a bank) that the Board of Directors and the Comptroller of the Currency jointly determine to be operating in substantially the same manner as a savings association.

(2) FEDERAL SAVINGS ASSOCIATION.--The term "Federal savings association" means any Federal savings association or Federal savings bank which is chartered under section 1464 of this title.

(3) STATE SAVINGS ASSOCIATION.--The term "State savings association" means--

(A) any building and loan association, savings and loan association, or homestead association; or

(B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2) of this section),

which is organized and operating according to the laws of the State (as defined in subsection (a)(3) of this section) in which it is chartered or organized.

[Codified to 12 U.S.C. 1813(b)]

[Source: Section 2[3(b)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 873), effective September 21, 1950, as amended by section 204(b) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 190), effective August 9, 1989; section 363(1)(A) of title III of the Act of July 21, 2010 (Pub. L. No. 111--203; 124 Stat. 1550), effective July 21, 2010]

(c) DEFINITIONS RELATING TO DEPOSITORY INSTITUTIONS.--

(1) DEPOSITORY INSTITUTION.--The term "depository institution" means any bank or savings association.

(2) INSURED DEPOSITORY INSTITUTION.--The term "insured depository institution" means any bank or savings association the deposits of which are insured by the Corporation pursuant to this Act.

(3) INSTITUTIONS INCLUDED FOR CERTAIN PURPOSES.--The term "insured depository

institution" includes any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank for purposes of section 8 of this Act.

(4) FEDERAL DEPOSITORY INSTITUTION.--The term "Federal depository institution" means any national bank, any Federal savings association, and any Federal branch.

(5) STATE DEPOSITORY INSTITUTION.--The term "State depository institution" means any State bank, any State savings association, and any insured branch which is not a Federal branch.

[Codified to 12 U.S.C. 1813(c)]

[Source: Section 2[3(c)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 873), effective September 21, 1950, as amended by section 204(c) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 191), effective August 9, 1989]

(d) DEFINITIONS RELATING TO MEMBER BANKS.--

(1) NATIONAL MEMBER BANK.--The term "national member bank" means any national bank which is a member of the Federal Reserve System.

(2) STATE MEMBER BANK.--The term "State member bank" means any State bank which is a member of the Federal Reserve System.

[Codified to 12 U.S.C. 1813(d)]

[Source: Section 2[3(d)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 874), effective September 21, 1950, as amended by section 3(b) of the Act of August 1, 1956 (Pub. L. No. 896; 70 Stat. 908), effective August 1, 1956; section 910(b) of title IX of the Act of December 31, 1970 (Pub. L. No. 91--609; 84 Stat. 1811), effective December 31, 1970; and section 204(d) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 191), effective August 9, 1989]

(e) DEFINITIONS RELATING TO NONMEMBER BANKS.--

(1) NATIONAL NONMEMBER BANK.--The term "national nonmember bank" means any national bank which--

(A) is located in any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Northern Mariana Islands; and

(B) is not a member of the Federal Reserve System.

(2) STATE NONMEMBER BANK.--The term "State nonmember bank" means any State bank which is not a member of the Federal Reserve System.

[Codified to 12 U.S.C. 1813(e)]

[Source: Section 2[3(e)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 874), effective September 21, 1950, as amended by section 3(b) of the Act of August 1, 1956 (Pub. L. No. 896; 70 Stat. 908), effective August 1, 1956; section 910(c) of title IX of the Act of December 31, 1970 (Pub. L. No. 91--609; 84 Stat. 1811), effective December 31, 1970; and section 204(e) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 191), effective August 9, 1989]

(f) **MUTUAL SAVINGS BANK.**--The term "mutual savings bank" means a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers.

[Codified to 12 U.S.C. 1813(f)]

[Source: Section 2[3(f)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 874), effective September 21, 1950]

(g) **SAVINGS BANK.**--The term "savings bank" means a bank (including a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business.

[Codified to 12 U.S.C. 1813(g)]

[Source: Section 2[3(g)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 874), effective September 21, 1950, as amended by section 101(g) of title I of the Act of August 10, 1987 (Pub. L. No. 100--86; 101 Stat. 563), effective August 10, 1987]

(h) **INSURED BANK.**--The term "insured bank" means any bank (including a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of this Act; and the term "noninsured bank" means any bank the deposits of which are not so insured.

[Codified to 12 U.S.C. 1813(h)]

[Source: Section 2[3(h)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 874), effective September 21, 1950, as amended by section 6(c)(2) of the Act of September 17, 1978 (Pub. L. No. 95--369; 92 Stat. 614), effective September 17, 1978]

(i) **NEW DEPOSITORY INSTITUTION AND BRIDGE DEPOSITORY INSTITUTION DEFINED.**—

(1) **NEW DEPOSITORY INSTITUTION.**--The term "new depository institution" means a new national bank or Federal savings association, other than a bridge depository institution, organized



by the Corporation in accordance with section 11(m).

(2) BRIDGE DEPOSITORY INSTITUTION.--The term "bridge depository institution" means a new national bank or Federal savings association organized by the Corporation in accordance with section 11(n).

[Codified to 12 U.S.C. 1813(i)]

[Source: Section 2[3(i)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 874), effective September 21, 1950, as amended by section 503(b) of title V of the Act of August 10, 1987 (Pub. L. No. 100--86; 101 Stat. 632), effective August 10, 1987; section 1606(g)(2) of title XVI of the Act of October 28, 1992 (Pub. L. No. 102--550; 106 Stat. 4089), effective October 28, 1992; section 602(a)(1)(A) of title VI of the Act of September 23, 1994 (Pub. L. No. 103--325; 108 Stat. 2288), effective September 23, 1994; section 1604(b)(1)(A) of title VII of the Act of July 30, 2008 (Pub. L. No. 110--289; 122 Stat. 2829), effective July 30, 2008]

(j) RECEIVER.--The term "receiver" includes a receiver, liquidating agent, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a bank or savings association or of a branch of a foreign bank.

[Codified to 12 U.S.C. 1813(j)]

[Source: Section 2[3(j)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 874), effective September 21, 1950, as amended by section 6(c)(3) of the Act of September 17, 1978 (Pub. L. No. 95--369; 92 Stat. 614), effective September 17, 1978; and section 204(f)(1) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 191), effective August 9, 1989]

(k) BOARD OF DIRECTORS.--The term "Board of Directors" means the Board of Directors of the Corporation.

[Codified to 12 U.S.C. 1813(k)]

[Source: Section 2[3(k)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 874), effective September 21, 1950]

(l) DEPOSIT.--The term "deposit" means--

(1) the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the bank or savings association, or a letter of credit or a traveler's check on which the bank or savings association is primarily liable: Provided, That, without limiting the generality of the term "money or its equivalent", any such account or instrument

must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank or savings association for collection,

(2) trust funds as defined in this Act received or held by such bank or savings association, whether held in the trust department or held or deposited in any other department of such bank or savings association,

(3) money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or savings association, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: Provided, That there shall not be included funds which are received by the bank or savings association for immediate application to the reduction of an indebtedness to the receiving bank or savings association, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness,

(4) outstanding draft (including advice or authorization to charge a bank's or a savings association's balance in another bank or savings association), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including without being limited to those issued in payment for services, dividends, or purchases, and

(5) such other obligations of a bank or savings association as the Board of Directors, after consultation with the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this Act or be included as part of the total deposits or of an insured deposit:

(A) any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless--

(i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and

(ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State;

(B) any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the Board of Governors of the Federal

Reserve System in regulation D or any successor regulation issued by the Board of Governors of the Federal Reserve System; and

(C) any liability of an insured depository institution that arises under an annuity contract, the income of which is tax deferred under section 72 of the Internal Revenue Code of 1986.\*

[Codified to 12 U.S.C. 1813(l)]

[Source: Section 2[3(l)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 874), effective September 21, 1950, as amended by the Act of July 14, 1952 (Pub. L. No. 533; 66 Stat. 605), effective July 14, 1952; section 3(c) of the Act of August 1, 1956 (Pub. L. No. 896; 70 Stat. 908), effective August 1, 1956; section 1 of the Act of July 14, 1960 (Pub. L. No. 86--671; 74 Stat. 546), effective January 1, 1961; section 910(d) of title IX of the Act of December 31, 1970 (Pub. L. No. 91--609; 84 Stat. 1811), effective December 31, 1970; section 102 of title I of the Act of December 26, 1981 (Pub. L. No. 97--110; 95 Stat. 1513), effective December 26, 1981; section 703(b) of title VII of the Act of October 15, 1982 (Pub. L. No. 97--320; 96 Stat. 1539), effective October 15, 1982; section 204(f)(2) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 191), effective August 9, 1989; section 326(b)(2) of title III and section 602(a)(1)(B) of title VI of the Act of September 23, 1994 (Pub. L. No. 103--325; 108 Stat. 2229 and 2288, respectively), effective September 23, 1994; section 2614(a) of title II of the Act of September 30, 1996 (Pub. L. No. 104--208; 110 Stat. 3009--478), effective September 30, 1996; section 363(1)(B) of title III of the Act of July 21, 2010 (Pub. L. No. 111--203; 124 Stat. 1550), effective July 21, 2010]

(m) INSURED DEPOSIT.--

(1) IN GENERAL.--Subject to paragraph (2), the term "insured deposit" means the net amount due to any depositor for deposits in an insured depository institution as determined under sections 7(i) and 11(a).

(2) In the case of any deposit in a branch of a foreign bank, the term "insured deposit" means an insured deposit as defined in paragraph (1) of this subsection which--

(A) is payable in the United States to--

(i) an individual who is a citizen or resident of the United States,

(ii) a partnership, corporation, trust, or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State, or

(iii) an individual, partnership, corporation, trust, or other legally cognizable entity which is determined by the Board of Directors in accordance with its regulations to have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this Act; and

(B) meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this Act or to facilitate the administration thereof.

(3) UNINSURED DEPOSITS.--The term "uninsured deposit" means the amount of any deposit of any depositor at any insured depository institution in excess of the amount of the insured deposits of such depositor (if any) at such depository institution.

(4) PREFERRED DEPOSITS.--The term "preferred deposits" means deposits of any public unit (as defined in paragraph (1)) at any insured depository institution which are secured or collateralized as required under State law.

[Codified to 12 U.S.C. 1813(m)]

[Source: Section 2[3(m)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 875), effective September 21, 1950, as amended by section 3(d) of the Act of August 1, 1956 (Pub. L. No. 896; 70 Stat. 908), effective August 1, 1956; sections 301(a) and 303(a) of title III of the Act of October 16, 1966 (Pub. L. No. 89--695; 80 Stat. 1055, 1056), effective October 16, 1966; section 7(a)(1) of title I of the Act of December 23, 1969 (Pub. L. No. 91--151; 83 Stat. 375), effective December 23, 1969; section 910(e) of title IX of the Act of December 31, 1970 (Pub. L. No. 91--609; 84 Stat. 1812), effective December 31, 1970; sections 101(a)(1) and 102(a)(1) of title I of the Act of October 28, 1974 (Pub. L. No. 93--495; 88 Stat. 1500, 1502), effective November 27, 1974; section 6(c)(4) of the Act of September 17, 1978 (Pub. L. No. 95--369; 92 Stat. 614), effective September 17, 1978; section 308 of title III of the Act of March 31, 1980 (Pub. L. No. 96--221; 94 Stat. 147), effective March 31, 1980; section 103 of title I of the Act of December 26, 1981 (Pub. L. No. 97--110; 95 Stat. 1513), effective December 26, 1981; sections 201(a) and 204(f)(3) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 187 and 192), effective August 9, 1989; section 141(f) of title I and section 311(b)(5)(A) of title III of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2278 and 2366, respectively), effective December 19, 1991]

(n) TRANSFERRED DEPOSIT.--The term "transferred deposit" means a deposit in a new bank or other insured depository institution made available to a depositor by the Corporation as payment of the insured deposit of such depositor in a closed bank, and assumed by such new bank or other insured depository institution.

[Codified to 12 U.S.C. 1813(n)]

[Source: Section 2[3(n)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 875), effective September 21, 1950, as amended by section 201(a) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 187), effective August 9, 1989]

(o) DOMESTIC BRANCH.--The term "domestic branch" includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa,

the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money lent. The term "domestic branch" does not include an automated teller machine or a remote service unit. The term "foreign branch" means any office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted.

[Codified to 12 U.S.C. 1813(o)]

[Source: Section 2[3(o)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 875), effective September 21, 1950, as amended by section 3(b) of the Act of August 1, 1956 (Pub. L. No. 896; 70 Stat. 908), effective August 1, 1956; section 910(f) of title IX of the Act of December 31, 1970 (Pub. L. No. 91--609; 84 Stat. 1812), effective December 31, 1970; section 301(a) of title III of the Act of November 10, 1978 (Pub. L. No. 95--630; 92 Stat. 3675), effective March 10, 1979; section 103 of title I of the Act of December 26, 1981 (Pub. L. No. 97--110; 95 Stat. 1514), effective December 26, 1981; section 2205(b) of title II of the Act of September 30, 1996 (Pub. L. No. 104--208; 110 Stat. 3009--405), effective September 30, 1996]

(p) TRUST FUNDS.--The term "trust funds" means funds held by an insured depository institution in a fiduciary capacity and includes, without being limited to, funds held as trustee, executor, administrator, guardian, or agent.

[Codified to 12 U.S.C. 1813(p)]

[Source: Section 2[3(p)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 875), effective September 21, 1950, as amended by section 201(a) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 187), effective August 9, 1989]

(q) APPROPRIATE FEDERAL BANKING AGENCY.--The term "appropriate Federal banking agency" means--

(1) the Office of the Comptroller of the Currency, in the case of--

(A) any national banking association;

(B) any Federal branch or agency of a foreign bank; and

(C) any Federal savings association;

(2) the Federal Deposit Insurance Corporation, in the case of--

(A) any State nonmember insured bank;

(B) any foreign bank having an insured branch; and

(C) any State savings association;

(3) the Board of Governors of the Federal Reserve System in the case of--

(A) any State member bank;

(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978;

(C) any foreign bank which does not operate an insured branch;

(D) any agency or commercial lending company other than a Federal agency;

(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institution Supervisory Act of 1966;

(F) any bank holding company and any subsidiary (other than a depository institution) of a bank holding company; and

(G) any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution.

[Codified to 12 U.S.C. 1813(q)]

[Source: Section 2[3(q)] of the Act of September 21, 1950 (Pub. L. No. 797), as added by section 201 of title II of the Act of October 16, 1966 (Pub. L. No. 89--695; 80 Stat. 1046), effective October 16, 1966, and as amended by section 6(c)(5) of the Act of September 17, 1978 (Pub. L. No. 95--369; 92 Stat. 615), effective September 17, 1978; section 113(a) of title I of the Act of October 15, 1982 (Pub. L. No. 97--320; 96 Stat. 1473), effective October 15, 1982; sections 201 and 204(f)(4) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 192), effective August 9, 1989; section 602(a)(1)(C) of title VI of the Act of September 23, 1994 (Pub. L. No. 103--325; 108 Stat. 2288), effective September 23, 1994; section 8(a)(1)(C), (D) and (E) of the Act of October 30, 2004 (Pub. L. No. 108-386; 118 Stat. 2231), effective October 30, 2004; section 312(c) of title III of the Act of July 21, 2010 (Pub. L. No. 111--203; 124 Stat. 1522), effective July 21, 2010]

(r) STATE BANK SUPERVISOR.--

(1) IN GENERAL.--The term "State bank supervisor" means any officer, agency, or other entity of any State which has primary regulatory authority over State banks or State savings associations in such State.

(2) INTERSTATE APPLICATION.--The State bank supervisors of more than 1 State may be the appropriate State bank supervisor for any insured depository institution.

[Codified to 12 U.S.C. 1813(r)]

[Source: Section 2[3(r)] of the Act of September 21, 1950 (Pub. L. No. 797), as added by section 6(c)(6) of the Act of September 17, 1978 (Pub. L. No. 95--369; 92 Stat. 615), effective September 17, 1978; as amended at section 1603(b)(2)(B) of title XVI of the Act of October 28, 1992 (Pub. L. No. 102--550; 106 Stat. 4079), effective December 19, 1991]

(s) DEFINITIONS RELATING TO FOREIGN BANKS AND BRANCHES.--

(1) FOREIGN BANK.--The term "foreign bank" has the meaning given to such term by section 1(b)(7) of the International Banking Act of 1978.

(2) FEDERAL BRANCH.--The term "Federal branch" has the meaning given to such term by section 1(b)(6) of the International Banking Act of 1978.

(3) INSURED BRANCH.--The term "insured branch" means any branch (as defined in section 1(b)(3) of the International Banking Act of 1978) of a foreign bank any deposits in which are insured pursuant to this Act.

[Codified to 12 U.S.C. 1813(s)]

[Source: Section 2[3(s)] of the Act of September 21, 1950 (Pub. L. No. 797), as added by section 6(c)(6) of the Act of September 17, 1978 (Pub. L. No. 95--369; 92 Stat. 615), effective September 17, 1978; as amended by section 111(e) of title I of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2242), effective December 19, 1991]

(t) INCLUDES, INCLUDING.--

(1) IN GENERAL.--The terms "includes" and "including" shall not be construed more restrictively than the ordinary usage of such terms so as to exclude any other thing not referred to or described.

(2) RULE OF CONSTRUCTION.--Paragraph (1) shall not be construed as creating any inference that the term "includes" or "including" in any other provision of Federal law may be deemed to exclude any other thing not referred to or described.

[Codified to 12 U.S.C. 1813(t)]

[Source: Section 2[3(t)] of the Act of September 21, 1950 (Pub. L. No. 797), as added by section 113(b) of title I of the Act of October 15, 1982 (Pub. L. No. 97--320; 96 Stat. 1473), effective October 15, 1982, and as amended by section 204(f)(5) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 192), effective August 9, 1989]

(u) INSTITUTION-AFFILIATED PARTY.--The term "institution-affiliated party" means--

(1) any director, officer, employee, or controlling stockholder (other than a bank holding company or savings and loan holding company) of, or agent for, an insured depository institution;

(2) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 7(j);

(3) any shareholder (other than a bank holding company or savings and loan holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and

(4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in--

(A) any violation of any law or regulation;

(B) any breach of fiduciary duty; or

(C) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.

[Codified to 12 U.S.C. 1813(u)]

[Source: Section 2[3(u)] of the Act of September 21, 1950 (Pub. L. No. 797), effective September 21, 1950, as added by section 204(f)(6) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 193), effective August 9, 1989; amended by P.L. 111--203, July 21, 2010]

(v) VIOLATION.--The term "violation" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

[Codified to 12 U.S.C. 1813(v)]

[Source: Section 2[3(v)] of the Act of September 21, 1950 (Pub. L. No. 797), effective September 21, 1950, as added by section 204(f)(6) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 193), effective August 9, 1989]

(w) DEFINITIONS RELATING TO AFFILIATES OF DEPOSITORY INSTITUTIONS.--

(1) DEPOSITORY INSTITUTION HOLDING COMPANY.--The term "depository institution



holding company" means a bank holding company or a savings and loan holding company.

(2) BANK HOLDING COMPANY.--The term "bank holding company" has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

(3) SAVINGS AND LOAN HOLDING COMPANY.--The term "savings and loan holding company" has the meaning given to such term in section 10 of the Home Owners' Loan Act.

(4) SUBSIDIARY.--The term "subsidiary"--

(A) means any company which is owned or controlled directly or indirectly by another company; and

(B) includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

(5) CONTROL.--The term "control" has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

(6) AFFILIATE.--The term "affiliate" has the meaning given to such term in section 2(k) of the Bank Holding Company Act of 1956.

(7) COMPANY.--The term "company" has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956.

[Codified to 12 U.S.C. 1813(w)]

[Source: Section 2[3(w)] of the Act of September 21, 1950 (Pub. L. No. 797), effective September 21, 1950, as added by section 204(f)(6) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 193), effective August 9, 1989; as amended by section 161(c) of title I of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2286), effective December 19, 1991; section 19(b)(2) of the Act of December 17, 1993 (Pub. L. No. 103--204; 107 Stat. 2404), effective December 17, 1993]

(x) DEFINITIONS RELATING TO DEFAULT.--

(1) DEFAULT.--The term "default" means, with respect to an insured depository institution, any adjudication or other official determination by any court of competent jurisdiction, the appropriate Federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured depository institution or, in the case of a foreign bank having an insured branch, for such branch.

(2) IN DANGER OF DEFAULT.--The term "in danger of default" means an insured depository institution with respect to which (or in the case of a foreign bank having an insured branch, with respect to such insured branch) the appropriate Federal banking agency or State chartering

authority has advised the Corporation (or, if the appropriate Federal banking agency is the Corporation, the Corporation has determined) that--

(A) in the opinion of such agency or authority--

(i) the depository institution or insured branch is not likely to be able to meet the demands of the institution's or branch's depositors or pay the institution's or branch's obligations in the normal course of business; and

(ii) there is no reasonable prospect that the depository institution or insured branch will be able to meet such demands or pay such obligations without Federal assistance; or

(B) in the opinion of such agency or authority--

(i) the depository institution or insured branch has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(ii) there is no reasonable prospect that the capital of the depository institution or insured branch will be replenished without Federal assistance.

[Codified to 12 U.S.C. 1813(x)]

[Source: Section 2[3(x)] of the Act of September 21, 1950 (Pub. L. No. 797), effective September 21, 1950, as added by section 204(f)(6) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 193), effective August 9, 1989]

(y) DEFINITIONS RELATING TO DEPOSIT INSURANCE FUND.--(1) "Deposit Insurance Fund" means the Deposit Insurance Fund established under section 11(a)4.

(2) DESIGNATED RESERVE RATIO.--The term "designated reserve ratio" means the reserve ratio designated by the Board of Directors in accordance with section 7(b)(3).

(3) RESERVE RATIO.--The term "reserve ratio", when used with regard to the Deposit Insurance Fund other than in connection with a reference to the designated reserve ratio, means the ratio of the net worth of the Deposit Insurance Fund to the value of the aggregate estimated insured deposits or such comparable percentage of the assessment base set forth in section 7(b)(2)(C).

[Codified to 12 U.S.C. 1813(y)]

[Source: Section 2[3(y)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as added by section 131(c)(3) of title I of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2266), effective December 19, 1992; section 4(a) of the Act of February 15, 2006 (Pub. L. No. 109--173; 119 Stat. 3606), effective date shall take effect on the date that the final regulations required under section 2109(a)(1), of the Federal Deposit

Insurance Reform Act of 2005 take effect; as amended by section 334(b) of title III of the Act of July 21, 2010 (Pub. L. No. 111--203; 124 Stat. 1539), effective July 21, 2010]

(z) FEDERAL BANKING AGENCY.--The term "Federal banking agency" means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

[Codified to 12 U.S.C. 1813(z)]

[Source: Section 2[3(z)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as added by section 305(c) of title III of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2355), effective December 19, 1991; as amended by section 19(b)(1) of the Act of December 17, 1993 (Pub. L. No. 103--204; 107 Stat. 2404), effective December 17, 1993; ; section 363(1)(C) of title III of the Act of July 21, 2010 (Pub. L. No. 111--203; 124 Stat. 1550), effective July 21, 2010]

## NOTES

Derivation. Sections 3(a)-(o) derive from section 12B(c) of the Federal Reserve Act, as added by section 101[12B(c)] of title I of the Act of August 23, 1935 (Pub. L. No. 305; 49 Stat. 684), effective August 23, 1935. By section 1 of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 873) effective September 21, 1950, section 12B of the Federal Reserve Act was withdrawn as a part of that Act and was made a separate act known as the "Federal Deposit Insurance Act."

Section 3(p) was enacted by section 2[3(p)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 875), effective September 21, 1950.

Section 3(q) was added by section 201 of title II of the Act of October 16, 1966 (Pub. L. No. 89-695; 80 Stat. 1046), effective October 16, 1966. It was originally effective only during the period ending at the close of June 30, 1972. It was made "permanent" law by section 908 of title IX of the Act of December 31, 1970 (Pub. L. No. 91--609; 84 Stat. 1811), effective December 31, 1970.

Sections 3(r)-(s) were added by section 6(c)(6) of the Act of September 17, 1978 (Pub. L. No. 95--369; 92 Stat. 615), effective September 17, 1978.

Section 3(t) derives from section 113(b) of the Act of October 15, 1982 (Pub. L. No. 97--320; 96 Stat. 1473), effective October 15, 1982.

Sections 3(u)-(x) were added by section 204(f)(6) of the Act of August 9, 1989, known as the "FIRRE Act", (Pub. L. No. 101--73; 101 Stat. 193), effective August 9, 1989.

Section 3(y) was added by section 131(c)(3) of title I of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2266, effective December 19, 1992, and section 3(z) derives from section 305(c) of title III of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat.

2355), effective December 19, 1991.

\*Editor's Note: Section 2614 of title II of the Act of September 30, 1996 (Pub. L. No. 104--208; 110 Stat. 3009--478) reads as follows:

"(b) EFFECTIVE DATE.--The amendments made by subsection (a) [enactment of this subparagraph (C)] shall apply to any liability of an insured depository that arises under an annuity contract issued on or after the date of the enactment of this Act." Go back to Text