The following is meant for general instruction and is neither intended to be nor may it be cited as authority in any case or proceeding. Any determination concerning due process and service compliance will be made only by reference to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of this court, and controlling or otherwise pertinent case law.

Guideline for the Northeastern Division Regarding Service of Chapter 13 Plans as Required by Local Rule 3015-1(c)

E.D. Tenn. LBR 3015-1.
(c) Service Required by Fed. R. Bankr. P. 7004. When a chapter 13 plan includes a request to determine the amount of a creditor's secured claim under **Fed. R. Bankr. P. 3012(b)** or provides for the partial or entire avoidance of a creditor's lien under **Fed. R. Bankr. P. 4003(d)**, the debtor must file with the plan a certificate evidencing service of the plan upon the affected creditors by first class mail in the manner required by **Fed. R. Bankr. P. 7004(b)** or by certified mail in the manner required by **Fed. R. Bankr. P. 7004(h)** if a creditor is an insured depository institution.

I. When must a chapter 13 plan be served to satisfy the requirements of this Rule?

Does the plan have a creditor listed in Section 3.2 (Request for Valuation of Security, Payment of Fully Secured Claims, and Modification of Undersecured Claims), Section 3.4 (Lien Avoidance), or Section 8.1 (Nonstandard Provisions)?

If the answer is "**NO**," the plan does not have to be served.

Section 3.2
If the answer is "**YES**," there is a creditor listed in Section 3.2, does the debtor propose to pay the creditor's claim as fully secured and use language such as "pay in full" for the "Secured Amount" such that the amount listed by the secured creditor in its proof of claim will be determinative of what the creditor must receive under the plan? If the answer is "**YES**," the plan does not have to be served on that creditor. With the foregoing exception, the plan must be served on all creditors listed in Section 3.2.

Section 3.4
If the answer is "**YES**," there is a creditor listed in Section 3.4, the creditor must be served with the plan. Without exception, the plan must be served on all creditors listed in Section 3.4.

Section 8.1
If the answer is "**YES**," there is a creditor listed in Section 8.1, does the debtor's proposed treatment of the creditor's claim fall within the scope of a request made pursuant to Fed. R. Bankr. P. 3012(b) or Fed. R. Bankr. P. 4003(d)? If the answer is "**YES**," the plan must be served on that creditor. With the foregoing exception, the plan does not have to be served on creditors listed in Section 8.1.

II. How may a chapter 13 plan be served to satisfy the requirements of this Rule?

Is the creditor "an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act)" as stated in **Fed. R. Bankr. P. 7004(h)**?

If the answer is "**NO**," only service by regular mail is required.

If the answer is "**YES**," the creditor must be served "by certified mail addressed to an officer of the institution." **Fed. R. Bankr. P. 7004(h)**.

A search at the FDIC's BankFind Suite will provide the names and main office locations of depository institutions insured by the FDIC. **https://banks.data.fdic.gov/bankfind-suite/bankfind**

If the creditor is an individual, service may be made by mailing the plan to the "individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." **Fed. R. Bankr. P. 7004(b)(1)**.

Subdivision (i) of **Fed. R. Bankr. P. 7004** states that when serving an officer of a FDIC-insured depository institution creditor as required in **subdivision (h)**, the "officer or agent need not be correctly named in the address—or even named—if the envelope is addressed to the [creditor's] proper address and directed to the attention of the officer's or agent's position or title." **Fed. R. Bankr. P. 7004(i)**.

If the creditor is a corporation or partnership (other than a FDIC-insured depository institution or governmental entity), service may be made by mailing the plan "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." **Fed. R. Bankr. P. 7004(b)(3)**. When serving an officer or a managing or general agent, the "officer or agent need not be correctly named in the address—or even named—if the envelope is addressed to the [creditor's] proper address and directed to the attention of the officer's or agent's position or title." **Fed. R. Bankr. P. 7004(i)**.

For entities registered with the Tennessee Secretary of State, a search by the entity's name will provide the address for the principal office and the name and address of the registered agent for service of process. **https://tnbear.tn.gov/Ecommerce/FilingSearch.aspx**

FAQs

Why do I have to serve the plan when the creditors are receiving it from the Bankruptcy Noticing Center?

Although the BNC will send the plan to all scheduled creditors if the plan is filed with the petition, service by the BNC may not meet the requirement of Fed. R. Bankr. P. 7004(b) (that the creditor be served by first class mail) because the creditor may have signed up with the BNC to receive all bankruptcy notices electronically. Service by the BNC will never meet the requirement of Fed. R. Bankr. P. 7004(h) (that the FDIC-insured depository institution creditor be served by certified mail).

How should I direct the service of a plan if I decide to serve an officer or a managing or general agent? What about if I decide to serve the registered agent?

In serving the plan under subdivisions (b)(3) and (h) of Fed. R. Bankr. P. 7004, the creditor's "officer or agent need not be correctly named in the address—or even be named—if the envelope is addressed to the [creditor's] proper address and directed to the attention of the officer's or agent's position or title." Fed. R. Bankr. P. 7004(i). The advisory comment to this subdivision states:

> New Rule 7004(i) is intended to reject those cases interpreting Rule 7004(b)(3) and Rule 7004(h) to require service on a named officer, managing or general agent or other agent, rather than use of their titles. Service to a corporation or partnership, unincorporated association or insured depository institution at its proper address directed to the attention of the "Chief Executive Officer," "President," "Officer for Receiving Service of Process," "Managing Agent," "General Agent," "Officer," or "Agent for Receiving Service of Process" (or other similar titles) is sufficient. (Emphasis supplied.)

In serving the registered agent under subdivision (b)(3) of Fed. R. Bankr. P. 7004, you should identify the creditor for which the agent is authorized to accept service. As examples:

Certificate of Service

I certify that the foregoing chapter 13 plan was served on this the ____ day of _____, 202__, on the following by U.S. Mail (USM) or U.S. Certified Mail (USCM) as indicated:

Eastman Credit Union (USM)
Attn: Chief Executive Officer
2021 Meadowview LN
Kingsport, TN 37660

Republic Finance, LLC (USM)
Attn: Chief Executive Officer
7031 Commerce Cir
Baton Rouge, LA 70809

First Horizon Bank (USCM)
Attn: Chief Executive Officer
165 Madison Ave
Memphis, TN 38103

[OR]

[OR]

Matthew Wimberly (USM)
Registered Agent for
Eastman Credit Union
2021 Meadowview LN
Kingsport, TN 37660

CT Corporation System (USM)
Registered Agent for
Republic Finance, LLC
300 Montvue Rd
Knoxville, TN 37919

s/ _____

Is it ok to serve a creditor at any of its locations so long as it is directed to the attention of an officer or a managing or general agent?
Not likely. "Service on a branch office is … risky." *In re Simpson*, No. 21-11179-T7, 2022 WL 2181324, at *6 (Bankr. D.N.M. June 16, 2022) ("[a]lthough Rule 7004(b)(3) does not specify where mail service for a corporation defendant must be sent, the requirement that service by made to the attention of an officer, managing or general agent implies that service must be directed to an address where this individual would receive it") (citation omitted)). The use of the term "proper address" in Fed. R. Bankr. P. 7004(i) implies that the address be the one where an officer or a managing or general agent regularly receives mail.

How do I find the proper address for serving a creditor to the attention of an officer or a managing or general agent?
You could utilize the Tennessee Secretary of State's business search feature to locate the address of the creditor's principal office. "[T]here is no provision in the Federal Rules of Bankruptcy Procedure that requires an officer to be served anywhere other than the corporation's principal office." *In re Gourlay*, 465 B.R. 124, 132 (B.A.P. 6th Cir. 2012). The main office address for a FDIC-insured depository institution may be located by using the search feature of the FDIC's BankFind Suite.

Is it ok if I serve the registered agents for banks and credit unions?
No, for FDIC-insured banks. Yes, for credit unions. It's not ok to serve a registered agent for a FDIC-insured bank because subdivision (h) of Fed. R. Bankr. P. 7004 states that "[s]ervice on an insured depository institution (as defined in section 3 of the Federal Deposit Act) ... shall be made by certified mail addressed to an officer of the institution …." A registered agent is an "agent authorized by appointment … to receive service of process" under subdivision (b)(3) of Fed. R. Bankr. P. 7004. While an officer could also be the registered agent, subdivision (h) makes it clear that the person must be served in his or her capacity as an officer, not as a registered agent. It's ok to serve a registered agent for a credit union because it is not an insured depository institution "as defined in section 3 of the Federal Deposit Act." [*Note*: The definition in subdivision (h) of Fed. R. Bankr. P. 7004 that the term "insured depository institution" means those institutions "as defined in section 3 of the Federal Deposit Act" was added by § 114 of the Bankruptcy Reform Act of 1994, effective October 22, 1994. On the other hand, the definition of the term "insured depository institution" provided by 11 U.S.C. § 101(35) includes "an insured credit union" in addition to "the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act." This broader definition was enacted effective as of November 29, 1990, by Pub. L. 101-647, as a part of the banking law enforcement provisions of the Crime Control Act of 1990. Although Fed. R. Bankr. P. 9001 provides that "the words and phrases in §§ 101 … govern their use in these rules," the more recent enactment of the limiting definition in Fed. R. Bankr. P. 7004(h) indicates that the limited definition is applicable for that rule.]

So, I don't have to serve the plan on a creditor listed in Section 3.1 (Maintenance of payments and cure of default, if Any), Section 3.3 (Secured Claims Excluded from 11 U.S.C. § 506), Section 3.5 (Surrender of Collateral), or Section 3.6 (Secured Claims Paid by Third Party)?
That is correct!