

Preface

Payment System Compliance for Credit Unions explains the legal, compliance, and operational aspects of all major payment systems that are used by credit unions today. The book is intended to help the credit union professional, be it a compliance officer, security officer, electronic fund transfer (EFT) manager, payment system manager, operations personnel, or senior management, to understand different types of payment systems and how these systems affect the day-to-day operation of the credit union. We have attempted to draft a practical guide that can assist you in operating your institution on a day-to-day basis. The book emphasizes regulatory compliance throughout. Law, regulations, and industry procedures are explained from a credit union perspective, and some leading judicial decisions are described with an emphasis on practical guidance rather than in-depth analysis.

The book is filled with practical tips, compliance strategies, drafting suggestions, and checklists. The book also contains an appendix, which reproduces many of the key laws and regulations governing payment systems.

In our first chapter, we explain the basics of various payment systems. We also discuss the most elementary payment system — “currency” and “legal tender” — for the payment of debts. This chapter also analyzes the closely related concept of bona fide purchaser, which is essential to an understanding of currency. Throughout the book, the term “bank check” appears. We use this term because it is an industry standard. Where there are unique issues regarding share drafts, these distinctions are clearly made. Chapters 2 through 6 deal with various aspects of bank checks. Even though futurists wish to claim that the “checkless society” is just around the corner, the fact is that there are more bank checks in circulation today than ever before. Chapter 2 is a primer on negotiable instruments law, including the parties to checks, the concept of holders in due course, and the relationship of a check to the underlying debt it represents. Chapter 3 looks at the relationship between the drawer of a check and the drawee bank, focusing on overdrafts, wrongful dishonor, stop orders, problems involving joint accounts, and the duty of confidentiality regarding a customer’s account. The chapter ends with a checklist of deposit agreement provisions. Chapter 4 explores topics like indorsement problems, the duties of collecting banks, notice of breach of fiduciary duty, charge-back, and compliance with the funds availability rules of Regulation CC. Chapter 5 deals with final payment of checks and the midnight deadline, as well as return duties under Regulation CC. Chapter 6 discusses various aspects of check fraud, which continues to run rampant throughout the land. We identify and suggest strategies to combat the most common types of check fraud: kiting, forged and counterfeit checks, altered checks, forged indorsements, and MICR fraud.

Chapter 7 deals with remittance instruments, a specialized type of payment system utilizing bank-backed items such as cashier’s checks, certified checks, teller’s checks, and money orders. Chapter 8 focuses on credit union share drafts, particularly the ways in which they differ from standard bank checks. Chapter 9 discusses the payable-through draft, with emphasis on duties of the bank through which the item is payable. Chapter 10 explains documentary drafts, a payment system used extensively in international sales of goods. This chapter puts special emphasis on compliance with ICC Collection Rule No. 522. Closely related to documentary drafts are letters of credit, which are discussed in Chapter 11. We look at the distinction between commercial and standby letters, the various parties to letters of credit, the documentary compliance principle, and the independence principle. Chapter 12 deals with credit cards, including the various agreements that govern credit card transactions, consumer credit compliance issues,

and securitization. Chapter 13 addresses debit cards and ATM cards, both of which have become very popular payment systems. The key compliance issues here revolve around the Electronic Fund Transfer Act and Regulation E.

Chapter 14 provides an overview of ACH networks, including both “push” and “pull” transactions, the impact of Regulation E, and NACHA Operating Rules. Chapter 15 discusses wire transfers, with a focus on key areas of compliance concern, including unauthorized and erroneous payment orders. Chapter 16 deals with smart cards and other stored-value products, with emphasis on key legal issues surrounding this newfangled payment system. Finally, Chapter 17 deals with the newest payment systems of them all — Internet transactions and home banking.

We hope that this book will serve as a useful guide for all those who deal with the multitude of payment systems now available. We have tried to keep the style of the book as straightforward as possible, focusing on the practical needs of the reader.

We want to give particular thanks to Catherine Dillon, our editor, whose technical and stylistic work on the book was simply outstanding.

Barkley Clark
Barbara Clark
Mark Hargrave