

# Real-Time ACH vs Wires

**Stop going to the Bank to Wire Money  
(domestic and international)**

**[ GOODFUNDS GATEWAY – THE NEW WAY TO TRANSMIT GOOD FUNDS ]**

# Real-Time ACH vs Wires

## Table of Contents

	Page
<b>Summary</b> .....	<b>3</b>
<b>Introduction</b> .....	<b>4</b>
<b>Real-Time ACH</b>	
<b>Definition</b> .....	<b>4</b>
<b>Discussion</b> .....	<b>5</b>
<b>“Wire” Definition</b> .....	<b>7</b>
<b>“Good Funds”</b>	
<b>Definition</b> .....	<b>11</b>
<b>Discussion</b> .....	<b>11</b>
<b>Conclusion</b> .....	<b>13</b>
<b>Definitions, Regulations &amp; Government Agencies</b> .....	<b>14</b>
<b>Frequently Asked Questions</b> .....	<b>21</b>
<b>Appendix</b> .....	<b>22</b>

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## Summary

**The current “issue”**~ whether or not non-FedWire® payments are, or soon will be, considered “Good Funds” in Real Estate Transactions are addressed here. Although [Good Funds](#) applies to numerous industries, this paper is specifically targeted at Real Estate related transactions for Buyers, Sellers, Brokers, Agents, Transaction Coordinators, Escrow, Title, Closing, Legal, Property Management and Lending.

Payments and their propriety elements are governed by the U.S. Federal Government or agencies while Real Estate Transactions are generally governed by each of the 50 states. When non-FedWire® payments are fully accepted by all U.S. based financial institutions each state’s Department of Real Estate, Department of Insurance and Department of Corporation still will have to codify the permissible use of such.

This paper provides the information as to the distinction between electronic funds transfers that are considered “good funds” and those that are not when conducting a real estate transaction and closing. All 50 states consider Funds “Wired” via FedWire®, CHIPS® and SWIFT® as irrevocable once accepted by the recipient’s bank, both under the UCC and as held in court opinions.

Real-Time payments clear and settle individually in real time with immediate finality. [Same-Day ACH](#) payments are cleared in batches and finally settle after the payments clear and are not “Good Funds”.

## Introduction

The “*Faster Payment Initiatives*” are becoming a reality in the United States. This is an exciting time in the payments industry. These new initiatives, brought by differing governmental and non-governmental entities are not yet complete but, nonetheless, need to be addressed and bring light to the confusion in the marketplace. Soon, “*Faster Payments*” nomenclature will be replaced with “*Fastest Payments*.”

## Real-Time ACH Definition

The [NACHA Operating Rules](#) dictate bank-to-bank rights and responsibilities for ACH payments. The ACH Network is a batch processing system in which financial institutions accumulate ACH transactions throughout the day for later batch processing. NACHA requires the use of [Standard Entry Class Codes](#) (“SEC Codes”) for each transaction settled, both one-time and recurring, through the ACH. Each code identifies what type of transaction occurred to create the item. In addition to NACHA’s Operating Rules, transactions are also primarily governed pursuant to [Regulation E](#) and UCC 4A (as codified by each state). Real-Time ACH necessitates obviation of accumulated payments by financial institutions. Batching can still occur when transmitting a group of credit payments to one or more receivers. Transmission and settlement must occur 24/7. A real-time payments system is a synchronous messaging system with request and response capabilities that operates between financial institutions, third parties, gateways and directly connected businesses in real time. Prior to the initiation of payment instructions to the receiver’s financial institution or third party, good funds are confirmed, and with this certainty of settlement, there is immediate debiting and crediting of the sender’s and receiver’s accounts at their respective financial institution/third party. A proxy database that allows users to make a real-time payment without the sender or receiver knowing the other’s banking information is assumed, as is the ability to send or receive payments 24/7.

The RTP® (Real-Time Payment) network, the real-time payments system from [The Clearing House](#), is the first new core payments infrastructure in the U.S. in more than 40 years. RTP® is not Real-Time ACH. The RTP® network, currently NACHA’s choice for delivering Real-Time Payments, from The Clearing House (the “other” Automated Clearing House system) is a real-time payments platform that all federally insured U.S. depository institutions can use for payments innovation. Financial institutions are using the new RTP® network to clear and settle payments in real-time. The Clearing House has Operating Rules and Participation Rules for RTP® transactions, but a series of Service Level Agreements might exist between partners to the transaction and other regulations including Regulation E.

The [characteristics](#) of a real-time payment on the RTP® network are:

1. **24/7** – The RTP network is live and operates 24/7, which allows financial institutions to send or receive payments at any time.
2. **Immediate Availability** – Recipients receive the payment within seconds of the sending bank initiating the transaction; the RTP receiving financial institution is required to make funds available immediately, except where necessary for risk management or legal compliance purposes.
3. **Payment Certainty** – Sending financial institutions (FI) are not able to revoke or recall a payment once it has been authorized and submitted to the RTP network. However, there is a process to facilitate FI-to-FI communication around return of funds sent in error.
4. **Ubiquity** – All federally insured depository institutions can be RTP network participants, regardless of size.
5. **Extensibility** – Rich, flexible messaging functionality is included to support value-added products. For example, the RTP network provides messaging that enables a request for payment of a bill or invoice.
6. **Convenience** – Customers of RTP financial institution participants are able to initiate payments from their existing accounts.
7. **Cash Flow Control** – The ability to send and receive immediate payments gives customers more control over cash flow, which may be particularly important for cash-constrained small businesses and consumers.
8. **Adaptability** – The RTP network has a flexible architecture to adapt to changing market needs.

The [FedWire® Funds Service](#) owned and controlled by the U.S. Federal Reserve banks. The Fedwire Funds Service is an RTGS (real-time gross settlement) system owned and operated by the Reserve Banks that enables participants to make final payments in central bank money (i.e. US Dollars). The FedWire® Funds Service is a safe and efficient payment and settlement system that has worked for over 40 years and is in the best interest of the public and vital to the U.S. economy, and the Federal Reserve plays important roles in helping maintain the integrity of that system. Core central banking functions stem from the Federal Reserve's unique ability to transfer balances that are free of counterparty credit risk and provide certainty that payments between banks are complete. The Federal Reserve Banks provide the Fedwire® Funds Service, a real-time gross settlement system that enables participants to initiate funds transfer that are immediate, final, and irrevocable once processed. The Fedwire® Funds Service is a credit transfer service. The Fedwire® Funds Service offers the certainty that each qualifying payment order is processed in real time as it is received.

The [National Settlement Service \(NSS\)](#) is a multilateral settlement service owned and operated by the Federal Reserve Banks. The service is offered to depository institutions that settle for participants in private-sector clearing and/or settlement arrangements. The settlement agent designated by the settling participants within the arrangement, electronically submits settlement files to the Federal Reserve Banks. Files are

processed upon receipt with debit and credit entries posted to the settling participants' designated Federal Reserve Bank master account. These entries are final and irrevocable when made – i.e. Good Funds.

The [FedACH® Services](#) product suite provides efficient, low-cost batched payment services to help optimize your Automated Clearing House (ACH) services.

## Real-Time ACH Discussion

### ACH Debit

The Receiver initiates an authorized payment order through its Originating Depositing Financial Institution (ODFI), either directly or through an authorized third party processor, through the ACH system to “debit” (charge) the payee’s bank account at its Receiving Depository Financial Institution (RDFI). As of this writing, no “open-loop” systems allow for a Real-Time debit.

### ACH Credit

The Payee initiates a payment order through its Originating Depositing Financial Institution (ODFI), either directly or through an authorized third party processor, through the ACH system to “credit” (send) the payor’s bank account at its Receiving Depository Financial Institution (RDFI). Currently, most Real-Time Payment transactions are ["Credit Push" versus "Debit Pull."](#)

“Real-Time ACH” credit transactions necessarily provide the following benefits:

- [Authentication](#) - Owners and/or authorized persons will be properly identified to mitigate risk and loss.
- [Authorization](#) - Authorization includes both the initiation of payment instructions by the sender, and the real-time acceptance by the sending and receiving financial institutions of the payment request via a real-time messaging.
- [Verification](#) - Providing a real time verification of what the current balance in checking/savings account of the individual or business and the current account status.
- [Settlement](#) - transaction(s) will receive Real-time gross settlement (where each transaction is settled individually in real time).
- [Posting](#) - Immediate Posting (recordation / reporting) by both the sending and receiving financial institution.
- [Notification](#) - Real-time messages to all the parties involved throughout all levels of the transaction(s), including Authentication, Authorization, Verification, etc.

Authentication and Authorization in Real-Time ACH processing platforms are such that all participants, both senders and receivers, should have confidence in the veracity, timeliness and “almost irrevocability” of the funds transferred. These (near) real-time payment systems provide advancements over the legacy systems, e.g.; the Sender does not need to know the bank account number of the recipient, the Confirmation of “Real-Time ACH” is made at the initiation of the payment, the Sender and Receiver receive timely notification that the payment has been made and accepted, and Funds are debited from the Payer and made available in (near) real-time to the payee. Real-Time ACH platforms allow for real-time digital payments that are immediate, almost irrevocable\*, intra-bank and/or interbank account-to-account (A2A) transfers that utilize a real-time messaging system connected to every transaction participant through all US-based financial institutions. Funds are available for use by the receiver and real-time confirmation is provided to both the Sender and Receiver in seconds.

\*But for the following; Duplication of funds transferred, Erroneous deposit account number, Erroneous amount, Unauthorized Payment Order. In practice, the beneficiary’s bank will not permit revocation of a “Credit Push” Real-Time ACH once the funds have been deposited/settled into the Receiver’s/Beneficiary’s account.

Real-Time ACH will be available for international / cross-border transactions and will evolve technically when common standards and protocols are in place to provide messaging (e.g. PCI, OFAC, KYC, DBO, ISO 20022) for all parties involved in the transaction.

## “Wire” Definition

### *History of Wires*

The term “wire transfer” came from the first commercial use of the service by Western Union in 1871 on its existing communications telegraph network. A telegraph operator in one office would “wire” money that had been paid to that office to another office to be paid on to another customer. The “Credit Push” was created! Even though communication is no longer sent via “physical wires” Americans still cling to the word “wire” to describe interbank account-to-account (A2A) transfers that utilize a real-time messaging system.

Just as Western Union did almost 150 years ago, Good Funds payment platforms are the new disruptive newcomers changing the landscape of money, where “Wires” are currently associated with banks, a new payments industry is burgeoning. The breakthrough in 1871, and now in 2018, is the communications technology providing huge value-add to users.

**Interesting note:** the term “Wire” is found nowhere in the **UCC (Uniform Commercial Code) § 4A**. The legal term is: **“Payment Order”**. Persons have used the term “Wire” when referring to a “Payment Order” transaction.

Payment Orders sent through the Federal Reserve’s “FedWire®” system are real-time intra-bank / interbank single payments defined and used for, “Wires” / “Payment Orders” as defined in **UCC § 4A** and are not ACH transactions.

The **“Electronic Funds Transfer” (EFT)** was the evolution of those first wire transfers and is the foundation of payments today. The supporting networks, bank owned and others, infrastructure and technologies have evolved to solve the many challenges which their own utility and roles in modern economies world-wide have helped create. Although Credit Cards, Debit Cards, “regular” ACH and Electronic Checks are considered forms of EFT, they are ignored for this white paper. Although both are considered “Good Funds” we have also ignored any discussion of Cashier’s Checks & Certified Checks.

Wires are Final and Irrevocable transactions. Wires are real-time intra-bank / interbank payments and use “Wires” / “Payment Orders” as defined in **UCC § 4A**, as adopted by all 50 states, and **are not ACH transactions**.

The UCC defines Wire Transfers (gone are the days of the physical telegraph wires), as well as electronic fund transactions, as **Payment Orders**.

**Payment Orders are defined as**, “an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary.” UCC § 4A-103 (2013)

Some provisions of the UCC conflict with provisions of the Electronic Fund Transfer Act (EFTA), limiting application of the UCC to those features of electronic fund transfers not covered under the EFTA. Consequently, states that have adopted the UCC, primarily pertain to wire transfers. Cancelling or revoking a payment order ordinarily requires the originator, or sender, to communicate its decision, “at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.” In practice, the receiving bank “accepts the payment order” when funds are deposited into the account(s) of the receiving beneficiary.

Wire transfers are entirely exempt from the EFTA and Regulation E (both Federal Government mandates) and instead are governed by State law through State enactment of Article 4A of the Uniform Commercial Code. UCC Article 4A primarily governs the rights and responsibilities among the commercial parties for wire transfers, including payment obligations among the parties and allocation of risk of loss for unauthorized or improperly executed payment orders.



UCC Article 4A-108 provides that UCC Article 4A does not apply “to a funds transfer, any part of which is governed by the Electronic Fund Transfer Act” (emphasis added).

## Finality & Irrevocability

UCC § 4A-103 ("Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if: (i) the instruction does not state a condition to payment to the beneficiary other than time of payment;.....

Under Article 4A, "acceptance" by the beneficiary's bank is a central concept leading to the determination of "finality of payment." Subject to specified narrow exceptions, acceptance by the beneficiary's bank is either by (i) payment or advice to the beneficiary, or (ii) by receipt of payment from its sender.

### UCC § 4A-206. TRANSMISSION OF PAYMENT ORDER THROUGH FUNDS-TRANSFER OR OTHER COMMUNICATION SYSTEM.

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank.

### UCC § 4A-209. ACCEPTANCE OF PAYMENT ORDER.

(a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) when the bank (i) pays the beneficiary as stated in Section 4A-405(a) or 4A-405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;.....

### UCC § 4A-402. OBLIGATION OF SENDER TO PAY RECEIVING BANK.

(a) This section is subject to Sections 4A-205 and 4A-207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.....

UCC § 4A-404. OBLIGATION OF BENEFICIARY'S BANK TO PAY AND GIVE NOTICE TO BENEFICIARY.

(a) Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e), if a beneficiary's bank accepts a payment order, **the bank is obliged to pay the amount of the order to the beneficiary of the order** (emphasis added). Payment is due on the payment date of the order.....

UCC § 4A-405. PAYMENT BY BENEFICIARY'S BANK TO BENEFICIARY.

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under Section 4A-404(a) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.....

Under section 4A-405(a), credit posted by the beneficiary's bank to the beneficiary's account constitutes payment by the beneficiary's bank to the beneficiary "when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank." Arguably, crediting the amount to a "final funds" balance will satisfy the third alternative. Under section 4A-405(c), a beneficiary's bank that paid the beneficiary by crediting the beneficiary's account may not recover the payment from the beneficiary, even where the beneficiary's bank ends up not receiving payment from its sender. In fact, this is an application of a broader rule, provided by section 4A-404(a), under which acceptance by the beneficiary's bank binds the latter to the beneficiary. Stated otherwise, payment or unqualified notice to the beneficiary by the beneficiary's bank prior to receipt of payment from its own sender is at the risk of the beneficiary's bank. Notwithstanding settlement failure by the sender to the beneficiary's bank, payment (or even payment obligation) by the beneficiary's bank is thus final and irrevocable. The rule under U.C.C. section 4A-405(c) is often referred to as "receiver finality."

Real-Time ACH transfers should fully comply with applicable law, UCC § 4A or be processed via the Federal Reserve's National Settlement Service for "**Finality & Irrevocability**" of funds received transactions.

**A receiving bank accepts a payment when one of the following has occurred:**

A receiving bank (financial institution) other than the Sender's bank executes a payment order; or

The beneficiary's bank pays the beneficiary (i.e. deposits funds into the Receiver's/Beneficiary's account); or

The beneficiary's bank notifies the beneficiary that it has received the order, or credited the account of the beneficiary, unless the notice indicates that the bank is rejecting the order or that the order's funds may not be withdrawn or used until receipt of the sender's payment; or

The beneficiary's bank receives payment of the entire amount of the originator's order; or

The bank opens the next funds transfer business day following the payment date of the order. Opening the next funds transfer business day is acceptance if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender, or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later.

After a Payment Order is accepted, the sender cannot cancel or amend the order unless the sending bank and the beneficiary's bank agree to permit revocation.

**But for the following; Duplication of funds transferred, Erroneous deposit account number, Erroneous amount, Unauthorized Payment Order, in practice, the beneficiary's bank will not permit revocation once the funds have been deposited into the Receiver's/Beneficiary's account.**

## **“Good Funds” Definition**

Good Funds, is defined simply as: Collected funds in a bank account and usable immediately by the owner of the account.

The evolution of “fast payment” is defined as a payment in which the transmission of the payment message and the availability of “final” funds to the payee occur in real time or near-real time on as near to a 24-hour and seven-day (24/7) basis as possible. Other common terms for these services are “instant,” “immediate,” “real-time” or “faster” payments. This definition adopts the perspective that a fast payment ensures a credit of final funds to the payee. For the purposes of this report, final funds are funds received such that the payee has unconditional and irrevocable access to them. [Bank of International Settlements: Real-Time Payments](#)

[GoodFundsLaw.com](#) – State definition for Real Estate Transactions

**Federal Reserve supported commercial (allowing participants who are not financial institutions) Real-Time payments – will be Good Funds if an extension of the current FedWire® system is opened up to non-bank persons or the Federal Reserve’s National Settlement Services is operated 24/7 and opened up to non-bank persons. A Federal Reserve sponsored system will directly compete against The Clearing House RTP® system.**

Most Good Funds transactions are ["Credit Push" versus "Debit Pull."](#) A credit push "payment order" is simply the form of communication that the parties to a funds transfer agree to use. The payment order's salient characteristics are that it calls for an unconditional payment of money from the sender to the beneficiary and that it is transmitted to a receiving bank. [See [UCC Article 4A](#)]

## **“Good Funds” Discussion**

"Good Funds" payments allows for real-time digital payments that are immediate, irrevocable, intra-bank and/or interbank account-to-account (A2A) transfers that utilize a real-time messaging system connected to every transaction participant through all U.S.-based financial institutions. Funds are available for use by the receiver and real-time confirmation is provided to both the sender and receiver in seconds. Most Good Funds transactions are ["Credit Push" versus "Debit Pull."](#)

Some terminology is necessary to follow a funds transfer under Article 4A. A "sender" is any person or entity who sends a "payment order." The first sender is the originator, and subsequent senders are banks participating in the transfer. A sender communicates a "payment order" to a "receiving bank." Receiving banks become senders if they forward "payment orders" to other banks. The last bank in the communications chain is the beneficiary's bank, and it can never be a sender with respect to the specific funds transfer. The "beneficiary" is the entity that the sender intends to pay. A "payment order" is simply the form of communication that the parties to a funds transfer agree to use. The payment order's salient characteristics are that it calls for an unconditional payment of money from the sender to the beneficiary and that it is transmitted to a receiving bank. [See [UCC Article 4A](#)]

[Evaluation Of Finality of Payment Rules:](#) Thus, while "discharge" is concerned with the payor-payee relationship, "final payment" is a matter between the payee and a bank; the latter concept is required to express cash equivalency [Payment Finality and Discharge in Funds Transfers](#)

[Good Funds UCC Article 4A Evolution:](#) Good Funds transactions, through novel processing platforms (funds transfer systems), now exist outside the legacy Fedwire®, CHIPS®, SWIFT® and the National Settlement Service networks both domestically and internationally. Funds transfers on these systems are conducted via a system of interconnected participant banks without using the US Federal Reserve System. Neither

Same-Day ACH (three payment windows in 2016 with added Debits in 2017 and additional payment window in 2020) nor Real-Time ACH (numerous payment windows and final procedures yet to be administered) are to be considered “Good Funds”. ACH transactions are processed via the US Federal Reserve member banks through batch processing.

## **Conclusion – Our predictions for Good Funds in Real Estate Transactions**

“Good Funds” ARE NOT just Wires (i.e. Payment Orders) and Cashier's Checks any longer!

Now payment gateways and “rails” allow for real-time payment, immediate, irrevocable, interbank account-to-account transfer that utilizes a real-time messaging system connected to every end-user through all financial institutions. Funds are available for use by the receiver and real-time confirmation is provided to both to the sender and receiver in seconds.

States, when enacting their “Good Funds” laws and regulations conveniently incorporated language to include “electronic transfers.” (See <http://www.goodfundslaw.com/States/index.html> )

Although not defined in the UCC - ACH credit transactions are evolving into “Good Funds Transactions” with the advent of “Real-Time ACH” “credit-push” transactions. Although a differing core structure (Rail) it is our belief that The Clearing House real-time payment rail will be used interchangeably with the term “Real-time ACH”. TCH RTP® will be acceptable by governments and industry as “Good Funds.” NACHA will introduce 24/7 “credit only” ACH transactions that will fit all the defined elements of “Good Funds”. The Board of Governors of the Federal Reserve System has the existing authority to build a real-time payment system. The Federal Reserve has the capability to create a real-time payment system that, at a minimum, conforms with the principles outlined in the final report of the Faster Payments Task Force of the Federal Reserve System. The Fed will expand either, or both, its FedWire® or National Settlement System systems to a 24/7 processing engine and allow persons outside the banks to access the system. (dated April 1, 2019)

Are assessments were correct. “First, the Federal Reserve Banks (the Reserve Banks) will develop the FedNow<sup>SM</sup> Service, a new interbank 24x7x365 real-time gross settlement (RTGS) service with integrated clearing functionality, to directly support the provision of end-to-end faster payment services by banks (or their agents). Second, the Federal Reserve will explore the expansion of hours for the Fedwire® Funds Service and the National Settlement Service (NSS), up to 24x7x365, subject to further analysis of relevant operational, risk, and policy considerations, to support liquidity management in private-sector RTGS services for faster payments, as well as provide additional benefits to financial markets beyond faster payments. Both of these actions would modernize the Federal Reserve’s payment and settlement services, helping foster the development of faster payment services and improvements to the broader U.S. payment system.” (dated August 5, 2019)

## **Definitions, Regulations & Government Agencies** (See Appendix for additional definitions)

### **Good Funds**

Collected funds in an account and usable immediately by the owner of the account.

### **Payment Order**

An instruction from an account holder to the financial institution where the funds are held.

### [Fedwire®](#)

The Federal Reserve Wire Network (Fedwire®): Fedwire® is a funds transfer service, "that enables participants to initiate funds transfers that are immediate, final, and irrevocable once processed." Fedwire® debits the Federal Reserve Bank account of the sending bank and credits the Federal Reserve Bank account of the receiving bank. Because the Federal Reserve restricts account holders to financial institutions, Fedwire® is only available to financial institutions, such as banks and credit unions, who may make wire transfers on behalf of their banking customers.

### [National Settlement Service](#)

The National Settlement Service provides an automated mechanism for submitting settlement files to the Federal Reserve Banks, improves operational efficiency, and reduces settlement risk to participants by granting settlement finality on settlement day. The National Settlement Service also enables Federal Reserve Banks to manage and limit risk by incorporating risk controls that are as robust as those used in the Fedwire Funds Service.

### [FedNow®](#)

"Everyone deserves the same ability to make and receive payments immediately and securely, and every bank deserves the same opportunity to offer that service to its community," said Federal Reserve Board Governor Lael Brainard. "FedNow will permit banks of every size in every community across the country to provide real-time payments to their customers." Planned launch is no earlier than 2023.

## CHIPS ®

Operated by the Clearing House Payments Company, CHIPS, is “the largest private-sector U.S.-dollar funds-transfer system in the world. CHIPS receives payments from the sending financial institutions and credits accounts of receiving financial institutions throughout the day.

## SWIFT ®

SWIFT’s messaging services are used and trusted by more than 11,000 financial institutions in more than 200 countries and territories around the world.

## EFTA - Electronic Funds Transfers Act

Congress enacted the federal Electronic Funds Transfers Act in 1978 to protect individual consumers who are parties to electronic funds transfers. (see 15 U.S.C. s. 1693 et seq) Under the EFTA, an electronic funds transfer means any transfer of funds initiated through certain electronic means that authorize a financial institution to debit or credit a consumer’s account. Electronic funds transfers include:

- Transfers through automated teller machines (ATMs);
- Point-of-sale (POS) terminals;
- Automated clearinghouse (ACH) systems;
- Telephone bill-payment plans in which periodic or recurring transfers are contemplated;
- Remote banking programs; and
- **Remittance transfers** (emphasis added).

### **Are Debit Card transactions Good Funds?**

A debit card looks like a credit card but works like an electronic check. As an Electronic Check, a debit card transaction therefore, is governed by the EFTA. **Truth in Lending Act** governs credit card transactions. Only UCC covered transactions can be considered “Good Funds”. The federal Electronic Fund Transfer Act (EFTA) protects you from errors, loss or theft of your debit card.

### **Uniform Commercial Code Article 4A and Chapter 670, F.S.**

In 1989, the Uniform Law Commission adopted Uniform Commercial Code (UCC) Article 4A for the states’ enactment, and described it as an essential statutory backdrop to promote uniformity, efficiency, and certainty by governing the rights and obligations among the commercial participants in funds transfers and allocating the risk of loss for unauthorized or improperly executed payment



orders. At the time the original UCC Article 4A was drafted, the intent was to govern large, rapid money transfers, such as wire transfers, between the commercial parties to a funds transfer, keeping in mind that the primary objective of the EFTA is the provision of individual consumer rights.

On the federal level, wire transfers and transfers sent by money transmitters have generally fallen outside of the scope of the EFTA and its implementing rule, Regulation E. Until 2010, no federal consumer protection law directly regulated foreign remittance transfers, which can be sent through depository institutions as well as money transmitters. In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law. Among many changes, Dodd-Frank amended the EFTA to create new compliance requirements for remittance transfers. The rule defines a “remittance transfer” to mean the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider.

In 2012, the Uniform Law Commission proposed an amendment to UCC Article 4. A majority of states have adopted this amendment. (see <http://www.uniformlaws.org/Act.aspx?title=UCC> Article 4A Amendments (2012): last visited Jan. 7, 2016 ). The amendment provides an affirmative statement of the act’s applicability to remittance transfers that are not electronic funds transfers under the EFTA. (see <https://www.flsenate.gov/Session/Bill/2016/0260/Analyses/2016s0260.pre.bi.PDF> )

**Wires & Payment Orders are subject to UCC § 4A** (see Appendix for expanded definitions provided for the reader’s convenience)

## UCC - ARTICLE 4A - FUNDS TRANSFER

- [PART 1. SUBJECT MATTER AND DEFINITIONS](#)
- [PART 2. ISSUE AND ACCEPTANCE OF PAYMENT ORDER](#)
- [PART 3. EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK](#)
- [PART 4. PAYMENT](#)
- [PART 5. MISCELLANEOUS PROVISIONS](#)

## American Land Title Association (ALTA)

“Best Practices” initiative of the American Land Title Association (“ALTA”) to assist settlement service providers to adapt to this new stricter environment of Dodd-Frank Act and the Consumer Financial Protection Bureau (CFPB), (see [www.alta.org/bestpractices](http://www.alta.org/bestpractices)) .

## Consumer Financial Protection Bureau (CFPB)

Dodd-Frank created the CFPB and provided authority for the CFPB to supervise certain types of financial institutions for compliance with federal consumer financial laws. The CFPB administers oversight of banks and their settlement agents. On January 17, 2013, the CFPB issued a final rule to amend Regulation X (78 Fed. Reg. 10695) (February 14, 2013). The final rule implemented certain provisions of Title XIV of the Dodd-Frank Act and included substantive and technical changes to the existing regulations. Substantive changes included ..... The amendments also included new provisions related to escrow payments;.....

CFPB's Vision of Consumer Protection in New Faster Payment Systems "...while we enjoy these robust and nearly ubiquitous payment systems in the U.S., there remains substantial opportunity to improve efficiency, reduce transaction costs for participants, and reduce credit and fraud risks. Improvement in payment systems can aid many users — and consumers, in particular — if accompanied by more robust and timely information about payments and receipt of funds". "Given the potential benefits to consumers, the Consumer Financial Protection Bureau has been advocating for the development of faster and safer consumer payment capabilities in both new and existing payment systems."

Good Faith Estimate (GFE) of Settlement Costs, Uniform Settlement Statement (HUD-1 OR HUD-1A come under the control of the CFPB dealing with "information requirements" and "amount of funds collected" and but for, Timely Payments—12 CFR 1024, not necessarily "funds transfers".

We will provide data on the effects that (CFPB) has had on RESPA (see below) and consumer-initiated remittance transfers. Created in 2010, the (CFPB) is an independent agency of the United States government responsible for consumer protection in the financial sector, which replaced the HUD-1 with the TRID. Dodd-Frank created the Consumer Financial Protection Bureau (CFPB) www.consumerfinance.gov and provided authority for the CFPB to supervise certain types of financial institutions for compliance with federal consumer financial laws.

Defined in section 1002(14) of the Dodd-Frank Act [12 U.S.C. § 5481(14)]; As set forth in the CFPB Bulletin, supervised banks and nonbanks are to conduct due diligence to verify the service provider understands and is capable of complying with these laws...

### • **Real Estate Settlement Procedures Act. (RESPA) .....**

Under Dodd-Frank, providers of financial products or services must comply with applicable consumer financial laws listed in the Act. Providing real estate

settlement services (other than appraisals) to one of the regulated financial institutions is deemed to be providing financial products or services under the Act. As a result, the CFPB can bring enforcement actions directly against a real estate settlement services provider (such as a closing attorney or a title insurance agent) for a violation of a consumer financial protection law.

The CFPB issued a final rule on January 20, 2012 amending [Regulation E \(Reg E\)](#) to add provisions for consumer-initiated remittance transfers to individuals and businesses in foreign countries. The CFPB's Final Rule applies broadly to any transaction in which a consumer sends money overseas, including wire transfers, Automated Clearing House (ACH) transactions, and online bill payments.

The remittance transfer market is fragmented with no end-to-end control of remittances, even in a closed-loop business model (**Good Funds Wires**® system is an open-loop system).

### **CFPB and Issues with UCC Article 4A**

The enactment of Section 1073 caused some difficulties about the way that Uniform Commercial Code (UCC) Article 4A applied to wire transfers. Prior to Dodd-Frank, Article 4A stated that a payment was not a wire transfer subject to Article 4A if any part of that payment was subject to the Electronic Funds Transfer Act (EFTA). Also before Dodd-Frank, EFTA stated that a consumer payment made by means of a wire transfer system was not an electronic funds transfer subject to the EFTA and Regulation E. Section 1073 disrupted this delineation of what EFTA covered and what Article 4A covered. Section 1073 brought consumer-initiated international wire transfers under the coverage of the EFTA, as amended by Dodd-Frank. After 1073, an international wire initiated by a consumer in the United States became a "remittance transfer" subject to the amended EFTA, and the legal consequence was that the entire series of bank-to-bank transfers that occur to complete the consumer-initiated wire were also taken out from under the structure of Article 4A. This was an undesirable legal result, because virtually all of the agreements among U.S. banks for handling international wire transfers assumed that the rights and obligations of the banks with respect to those transfers were defined by Article 4A.

Recognizing the uncertainty around which laws now govern the rights and responsibilities for the interbank piece of the remittance transfer, the industry and regulators have worked hard to provide fixes in Regulation J (which governs Fedwire® transfers) and the Clearing House Interbank Payments System (or CHIPS) rules. **The fixes allow UCC 4A to continue to apply regardless of whether a funds transfer is also a remittance transfer governed by Section 919 of EFTA** (emphasis added). (see <https://www.frbatlanta.org/news/conferences/2012/120906-symposium-1073/summary> )

## Department of Real Estate (DRE)

Most states have DRE, Department of Corporations, Department of Business Oversight, Insurance Commissioners and so on. A common definition of Escrow "...any transaction in which one person, for the purpose of effecting the sale, transfer, encumbering, or leasing of real or personal property to another person, delivers any written instrument, **"money"** (emphasis added), .....

 (see Section 17003(a) of the California Financial Code) Payments integrated in software that assists in Closings, CRM, Transaction Management systems only is governed by DRE's when **"money"** is exchanged.

## [Regulation X - Real Estate Settlement Procedures Act](#)

The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2601 et seq.) (the act) became effective on June 20, 1975. The act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. The Department of Housing and Urban Development (HUD) originally promulgated Regulation X, which implements RESPA. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. 111-203 (July 10, 2010) granted rulemaking authority [under RESPA to the Consumer Financial Protection Bureau \(CFPB\)](#) and, with respect to entities under its jurisdiction, generally granted authority to the CFPB to supervise for and enforce compliance with RESPA.

## [Regulation E – Electronic Funds Transfer Act](#)

Issued by the Federal Reserve Bank pursuant to the Electronic Funds Transfer Act (EFTA), pertains to ACH. The Electronic Fund Transfer Act ("EFTA") was enacted in 1978 to establish the rights and liabilities of consumers as well as the responsibilities of all participants in electronic fund transfer activities. The EFTA is implemented by Regulation E, which sets up the framework that establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. Wire or other similar transfers conducted through Fedwire® or similar wire transfer systems primarily used for transfers between financial institutions or between businesses are also specifically excluded from the definition of "electronic fund transfer." Source: <https://www.federalregister.gov/articles/2013/12/04/2013-28951/definitions-of-transmittal-of-funds-and-funds-transfer>

## [Regulation J](#)

Please be aware that if there is an error in the account number on wiring instructions, banks may not be obligated to check further and the money may be deposited to the wrong account. One example is Regulation J (12 CFR 210), controlling payments involving Federal Reserve Banks, or involving Fedwire.

Under 12 CFR 210.27 the beneficiary's bank (the bank receiving the funds) may rely on the account number in the payment order, even if the owner of that account is different than the beneficiary named in the payment order. Further, the regulation states that a Federal Reserve Bank has no duty to detect any such inconsistency. The bank receiving the funds has relied on Regulation J to deny any responsibility for the error. While including the correct recipient's name on the payment order is important, it is highly recommended all persons involved in processing wire transfer payment orders be made aware of the fact that the name on the order may not control where the funds will ultimately be deposited and that if there is any doubt regarding the account number it should be verified before initiating a wire transfer. Source:

<http://www.virtualunderwriter.com/en/bulletins/2014-6/sls2014009.html>

### **Code of Federal Regulations. 12 C.F.R. §229 Wire Transfer definition**

(II) Wire transfer means an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order, that is transmitted by electronic or other means through Fedwire®, the Clearing House Interbank Payments System, other similar network, between banks, or on the books of a bank. Wire transfer does not include an electronic fund transfer as defined in section 903(6) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(6)).

### **FDIC – Federal Deposit Insurance Corporation**

#### **6500 - Consumer Financial Protection Bureau Supplement I to Part 1005—Official Interpretations**

##### *30(e) Remittance Transfer 3(c)(3) Wire or Other Similar Transfers*

1. *Fedwire® and ACH.* If a financial institution makes a fund transfer to a consumer's account after receiving funds through Fedwire® or a similar network, the transfer by ACH is covered by the regulation even though the Fedwire® or network transfer is exempt.

2. *Article 4A.....* Regulation J of the Board of Governors of the Federal Reserve System (12 CFR part 210) specifies the rules applicable to funds handled by Federal Reserve Banks. To ensure that the rules for all fund transfers through Fedwire® are consistent, the Board of Governors used its preemptive authority under UCC section 4A--107 to determine that subpart B of the Board's Regulation J, including the provisions of Article 4A, applies to all fund transfers through Fedwire®, even if a portion of the fund transfer is governed by the EFTA. The portion of the fund transfer that is governed by the EFTA is not governed by subpart B of the Board's Regulation J.

3. *Examples of remittance transfers.* i. Examples of remittance transfers include:

.....

B. Consumer wire transfers, where a financial institution executes a **payment order** (emphasis added) upon a sender's request to wire money from the sender's account to a designated recipient.....

### [FFIEC - Federal Financial Institutions Examination Council](#)

The Council is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System ([FRB](#)), the Federal Deposit Insurance Corporation ([FDIC](#)), the National Credit Union Administration ([NCUA](#)), the Office of the Comptroller of the Currency ([OCC](#)), and the State Liaison Committee (SLC), and the Consumer Financial Protection Bureau ([CFPB](#)), and to make recommendations to promote uniformity in the supervision of financial institutions.

## Frequently Asked Questions

Fees will be charged to the buyer(s) when sending opening/closing funds and the sellers for “closing overages/refunds”. **Can Settlement agents pass through Good Funds Wires<sup>®</sup> to the parties of a closing?**

Yes, all states have provisions for “pass-through” charges for wire transfer services.

### What if I accidentally send money to the wrong email address or mobile number?

It’s always a good idea to double-check the validity of your contact information before sending a payment with Good Funds Gateway services and their affiliated banks. If, however, you inadvertently send money to a recipient you didn’t intend, there are steps you can take:

As long as the recipient has not yet claimed the money, you can cancel the payment.

If the recipient has already accepted the payment, you can attempt to recoup your money by filing a payment dispute. To do this, call (xxx) xxx-xxx immediately.

### Will I be notified when my receiver gets my payment?

Yes. You will receive an email or text message from U.S. Bank with payment details showing that the transaction has been deposited and fully processed.

### FAQs for TCH RTP<sup>®</sup>

- **What is the RTP<sup>®</sup> network?**
- **What is a real-time payment on the RTP<sup>®</sup> network?**
- **Now that the RTP<sup>®</sup> network is live, who is using it?**
- **Do I have to be a member of The Clearing House to use the RTP<sup>®</sup> network?**
- **Is the RTP<sup>®</sup> network only for P2P (person-to-person) payments?**
- **Will the RTP<sup>®</sup> network permit debits in the future?**
- **Why are RTP<sup>®</sup> payments irrevocable?**
- **Is the RTP<sup>®</sup> network the same as Same Day ACH?**
- **How are transactions on the RTP<sup>®</sup> network priced?**
- **What are my options to connect to the RTP<sup>®</sup> Network?**
- **Does the RTP<sup>®</sup> network meet the criteria established by the Federal Reserve-sponsored Faster Payments Task Force?**
- **What rules govern use of the RTP<sup>®</sup> network?**
- **Are there transaction limits?**
- **How does my institution join the RTP<sup>®</sup> payment revolution?**

# Appendix

## UCC §4A-103. PAYMENT ORDER - DEFINITIONS.

(a) In this Article:

- (1) "**Payment order**" means an instruction of a [sender](#) to a [receiving bank](#), transmitted orally, electronically, or in writing, to pay, or to cause another [bank](#) to pay, a fixed or determinable amount of money to a [beneficiary](#) if:
    - (i) the instruction does not state a condition to payment to the beneficiary other than time of payment,
    - (ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and
    - (iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, [funds-transfer system](#), or communication system for transmittal to the receiving bank.
  - (2) "**Beneficiary**" means the person to be paid by the [beneficiary's bank](#).
  - (3) "**Beneficiary's bank**" means the [bank](#) identified in a [payment order](#) in which an account of the [beneficiary](#) is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.
  - (4) "**Receiving bank**" means the [bank](#) to which the [sender's](#) instruction is addressed.
  - (5) "**Sender**" means the person giving the instruction to the [receiving bank](#).
- (b) If an instruction complying with subsection (a)(1) is to make more than one payment to a [beneficiary](#), the instruction is a separate [payment order](#) with respect to each payment.
- (c) A [payment order](#) is issued when it is sent to the [receiving bank](#).

## UCC §4A-104. FUNDS TRANSFER - DEFINITIONS.

In this Article:

- (a) "**Funds transfer**" means the series of transactions, beginning with the [originator's payment order](#), made for the purpose of making payment to the [beneficiary](#) of the order. The term includes any payment order issued by the [originator's bank](#) or an [intermediary bank](#) intended to carry out the originator's payment order. A [funds transfer](#) is completed by acceptance by the [beneficiary's bank](#) of a payment order for the benefit of the beneficiary of the originator's payment order.
- (b) "**Intermediary bank**" means a [receiving bank](#) other than the [originator's bank](#) or the [beneficiary's bank](#).
- (c) "**Originator**" means the [sender](#) of the first [payment order](#) in a [funds transfer](#).
- (d) "**Originator's bank**" means (i) the [receiving bank](#) to which the [payment order](#) of the [originator](#) is issued if the originator is not a [bank](#), or (ii) the originator if the originator is a bank.

## UCC §4A-105. OTHER DEFINITIONS.

(a) In this Article:

- (1) "**Authorized account**" means a deposit account of a [customer](#) in a [bank](#) designated by the customer as a source of payment of [payment orders](#) issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an



[authorized account](#) if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "**Bank**" means a person engaged in the business of banking and includes a savings [bank](#), savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(3) "**Customer**" means a person, including a [bank](#), having an account with a bank or from whom a bank has agreed to receive [payment orders](#).

(4) "**Funds-transfer business day**" of a [receiving bank](#) means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of [payment orders](#) and cancellations and amendments of payment orders.

(5) "**Funds-transfer system**" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of [banks](#) through which a [payment order](#) by a bank may be transmitted to the bank to which the order is addressed.

(6) [reserved]

(7) "**Prove**" with respect to a fact means to meet the burden of establishing the fact (Section [1-201\(b\)\(8\)](#)).

(b) Other definitions applying to this Article and the sections in which they appear are:

"**Acceptance**" Section [4A-209](#)

"**Beneficiary**" Section [4A-103](#)

"**Beneficiary's bank**" Section [4A-103](#)

"**Executed**" Section [4A-301](#)

"**Execution date**" Section [4A-301](#)

"**Funds transfer**" Section [4A-104](#)

"**Funds-transfer system rule**" Section [4A-501](#)

"**Intermediary bank**" Section [4A-104](#)

"**Originator**" Section [4A-104](#)

"**Originator's bank**" Section [4A-104](#)

"**Payment by beneficiary's bank to beneficiary**" Section [4A-405](#)

"**Payment by originator to beneficiary**" Section [4A-406](#)

"**Payment by sender to receiving bank**" Section [4A-403](#)

"**Payment date**" Section [4A-401](#)

"**Payment order**" Section [4A-103](#)

"**Receiving bank**" Section [4A-103](#)

"**Security procedure**" Section [4A-201](#)

"**Sender**" Section [4A-103](#)

(c) The following definitions in Article 4 apply to this Article:

"**Clearing house**" Section [4-104](#)

"**Item**" Section [4-104](#)

"**Suspends payments**" Section [4-104](#)

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

## **Other References used for this paper:**

### Documents

[FedWire Funds Service: Real-Time Payments](#)  
[Bank of International Settlements: Real-Time Payments](#)  
[Availability of Funds and Collection of Checks Proposed Rule](#)  
[Bank Of International Settlements](#)  
[Difference Between Remotely Created Checks and ACH](#)  
[European Central Bank Payment Finality](#)  
[Evaluation of Finality of Payment Rules](#)  
[Federal Reserve Remotely Created Checks](#)  
[Federal Trade Commission - Telemarketing Sale Rule - Final Rule](#)  
[Guide to US Anti-Money Laundering](#)  
[International Wire Quick Reference](#)  
[International Wire Via Fed Wire](#)  
[Payment Finality And Discharge In Funds Transfers](#)  
[Remotely Created Checks](#)  
[Regulation CC](#)  
[Regulation E - Electronic Funds Transfer Act](#)  
[Regulation X - Real Estate Settlement Procedures Act](#)  
[RESPA - CFPB Consumer Laws Regulations](#)  
[ACH Standard Entry Class Codes](#)  
[Strategies Improving US Payment System \(part 2\)](#)  
  
[Strategies Improving US Payment System \(part 1\)](#)  
[Trust Funds](#)  
[US Anti-Money Laundering Requirements Guide](#)  
[Real-Time ACH Payments](#)  
[Good Funds Wires - Whitepaper](#)  
[Real-Time Payments via The Clearing House](#)  
[Faster Payments Task Force Final Report \(part 2\)](#)

### Faster Payment Initiatives

[U.S. Payment System: Recommendations for Safe Evolution and Future Improvements](#)  
[Federal Reserve System - Availability of Funds and Collection of Checks: Proposed Rule](#)  
[Federal Reserve - Faster Payments Initiative](#)  
[Federal Reserve Banks](#)  
[NACHA - National Automated Clearing House Association](#)  
[Secure Exchange - Good Funds Network](#)  
[ISO 20022 Real Time Payments](#)  
[Real Time Payments - The Clearing House](#)  
[Real Time Payments using Block Chain and Distributed Database](#)

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