



*Established to Research, Document and Facilitate  
Medical Banking Convergence*

# The Medical Banking Project

6th HIPAA Policy Roundtable - WEBCAST

Breakfast Briefing | Managing HIPAA PHI Risks in Banking Relationships

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Produced at:  
THE HIPAA COLLOQUIUM @ HARVARD UNIVERSITY

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The  
Medical Banking **news**  
Project

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***PLEASE STANDBY FOR A NEWS UPDATE***

***PREPARED BY***

**med@banker.tv**  
bridging the e-health/e-finance divide



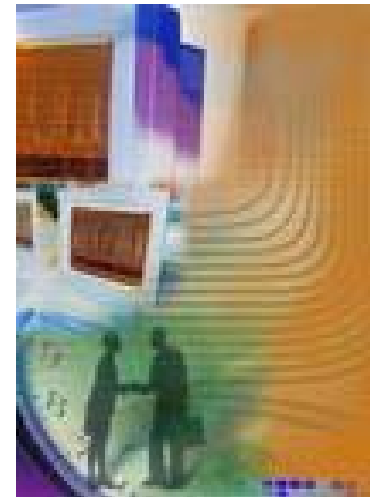
# The Medical Banking Project **news**

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*Debbie Larios, National Healthcare Attorney, comments...*



- Medical consumers becoming much more astute
- Banks have access to PHI
- Consumer actions may result in self-enforcement of HIPAA's Privacy Rule





# The Medical Banking Project **news**

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*Alan Goldberg, Partner with Goulston & Storrs, Adjunct Professor of Law for Suffolk University and University of Maryland School of Law comments...*



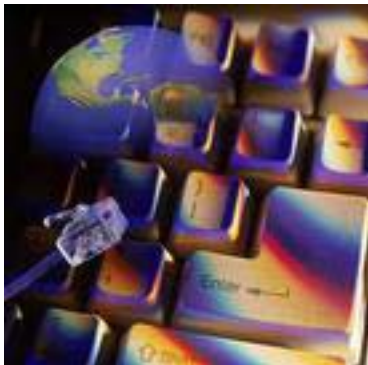
- How to enforce the Rule?
- Focus resources on “ecumenical” cases
- Determine market segments that need correction



# The Medical Banking Project news

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*Tom Gilligan, contract DC lobbyist and Executive Director of AFEHCT adds...*



**A.F.E.H.C.T.**



Association For Electronic Health Care Transactions

- Making a good faith effort?
- Need technical assistance?
- Penalties unlikely in the near future



# The Medical Banking Project news

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- Working proposal to HHS by a group of banking associations:
  - Proposes that “traditional services” between banks and their healthcare customers do not fall under definition of clearinghouse
  - Proposes that editing and supplementing payment data for completeness against X12 835/820 and NACHA standards alone should not constitute clearinghouse





# The Medical Banking Project **news**

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*Dr. William Braithwaite, Director of Healthcare Practice with PwC and former Sr. Advisor for Health Information Policy at HHS...*

**PRICEWATERHOUSECOOPERS** 



- EFT is part of the definition of what constitutes an X12 835
- Filling out EFT in X12 835 constitutes clearinghouse



# The Medical Banking Project **news**

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*John Casillas, Founder of The Medical Banking Project comments...*



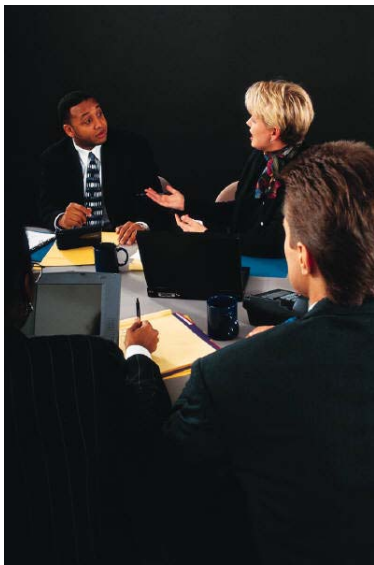
- HIPAA mandated 835 transaction has 3 components:
  - ✓ Table 1 – EFT Segment or Payment Instruction
  - ✓ Table 2 – EOB Information or Remittance Information
  - ✓ Table 3 – Adjustment to current or previous payment





# The Medical Banking Project **news**

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*Dr. Bill Braithwaite comments...*

- Banks are covered entities if they perform clearinghouse functions
- Should examine transactional results
- Likely that a translation occurs so bank is a covered entity



# The Medical Banking Project **news**

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*John Casillas, Debbie Larios and Alan Goldberg comment...*

- Business associate obligations for multi-state operators
- Patient PHI expectations
- Possible jurisdiction over state's enforcement authorities



# The Medical Banking Project **news**

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- HIPAA's application to medical banking services
- Proposed guidelines in the working proposal to HHS
- How do recent modifications to the Privacy Rule impact banks and the vendors that serve them?



*Produced by:* medebanker.tv

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*Sound Engineer:* Deardorff Music

*Concept by:* John Casillas

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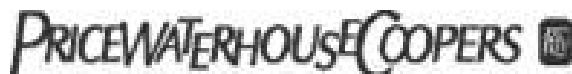
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# The Medical Banking **news** Project

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## eColumns

<i>Lee Barrett</i>	<b>E-Certified!</b>	Certification of medical banking stakeholders
<i>Alan Goldberg</i>	<b>HIPAA Jungle</b>	Regulatory conflict and convergence
<i>Debbie Larios</i>	<b>HIPAAworkers</b>	Operational compliance
<i>Tom Gilligan</i>	<b>CapitalALERT</b>	Legislative news from Capitol Hill
<i>John Casillas</i>	<b>Economedtrics</b>	Interviews with eHealth leaders

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# The Medical Banking Project **framework**

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*MBProject's HIPAA Wizard  
recommends*

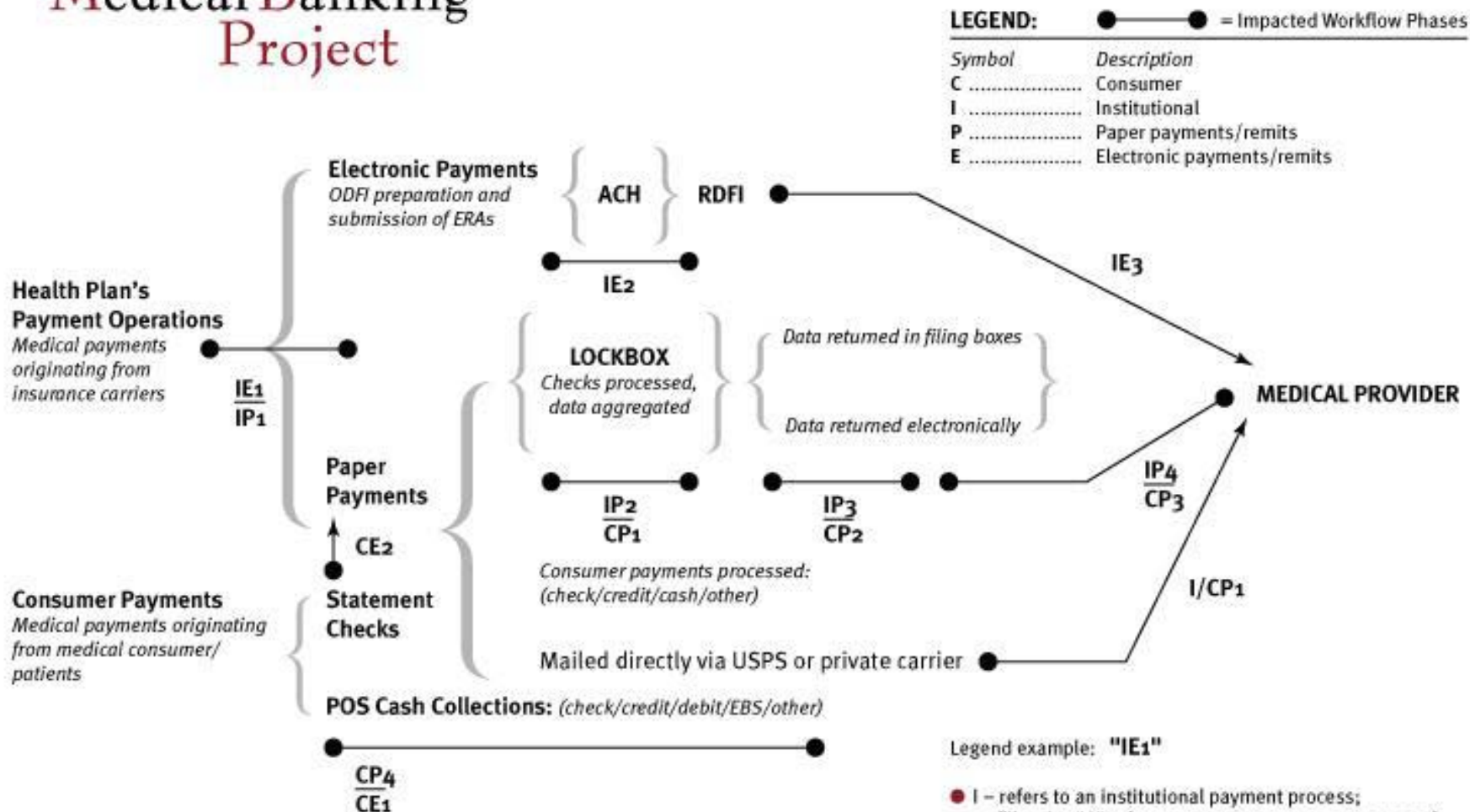


## **ROUNDTABLE FRAMEWORK**

*A typology of medical banking services*

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Legend example: "IE1"

- I – refers to an institutional payment process; (likewise "C" refers to a consumer payment process)
- E – refers to an electronic payment process; (likewise, "P" refers to a paper-based payment process)
- 1 – references a particular aspect of banking and/or financial service operations highlighted for policy discussion

**Banking operations not addressed but impacted:**

- Asset Management: processing medical AR assigned to bank via bankruptcy
- Corporate Credit Management: medical AR funding (including purchase, finance and securitization)
- Other commercial and specialized banking services



# The Medical Banking **framework** Project

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<b>Key Medical Banking Terms</b>	
<b>Business Associate</b>	A business partner that uses or discloses, individually identifiable health information in the services they perform for a covered entity under HIPAA.
<b>Covered Entity / Clearinghouse</b>	An entity that, with respect to the transactions mandated under HIPAA, converts non-standard health information into standard data elements or vice-versa.
<b>Hybrid Entity</b>	An organization whose primary business function is not health care but which maintains a component operation that is a covered entity under HIPAA.
<b>ASC X12N 835 ASC X12N 820</b>	These HIPAA mandated financial transactions are both comprised of three (3) segments: <ol style="list-style-type: none"> <li>1. Table 1: Payment instruction or EFT segment</li> <li>2. Table 2: EOB information or Remittance Information</li> <li>3. Table 3: Provider Adjustment or in the case of the 820, the Trailer</li> </ol>



The  
**Medical Banking** **experts**  
**Project** *Established to Research, Document and Facilitate  
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**6<sup>th</sup> HIPAA Policy Roundtable Speakers**

**Breakfast Briefing** | **Managing HIPAA PHI Risks in Banking Relationships**

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**John Casillas**, Founder of MBProject & Moderator

**Alan Goldberg**, Healthcare Attorney, Goulston & Storrs

**Debbie Larios**, Healthcare Attorney, Waller Lansden Dortch & Davis

**Tom Gilligan**, Veteran DC contract lobbyist & Executive Director, AFEHCT

**Tom Hanks**, Director, HIPAA Consulting Services, PricewaterhouseCoopers



# The Medical Banking **framework** Project

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FOR IMMEDIATE RELEASE: April 14, 2002

## HFMA CALLS ON HEALTHCARE ENTITIES TO ASSESS HIPAA'S IMPACT ON BANKING RELATIONSHIPS

“The role that HIPAA plays in the relationship between banks and healthcare entities has been largely overlooked...providers must take an active role in ensuring that the banks they do business with fully comply with HIPAA’s requirements.”

**Richard L. Clarke, FHFMA**  
***President & CEO***  
***Healthcare Financial Management Association***

Go to [www.mbproject.org](http://www.mbproject.org) for link to full press release



# The Medical Banking Project framework

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*MBProject's HIPAA Wizard cautions... (H.R. Rep. No. 736, 104th Cong., 2nd Sess. 268-269 (1996))*

*Brackets supplied*

## Legislative History: What do Conferees think?

"The conferees do not intend to exclude the activities of financial institutions or their contractors from compliance with the standards adopted under this part if such activities would be subject to this part.

### [Consumer-Conducted Financial Transactions]

However, conferees intend that this part does not apply to use or disclosure of information when an **individual** utilizes a payment system to make a payment for, or related to, health plan premiums or health care. For example, the exchange of information between participants in a credit card system in connection with processing a credit card payment for health care would not be covered by this part. Similarly sending a checking account statement to an account holder who uses a credit or debit card to pay for health care services, would not be covered by this part.

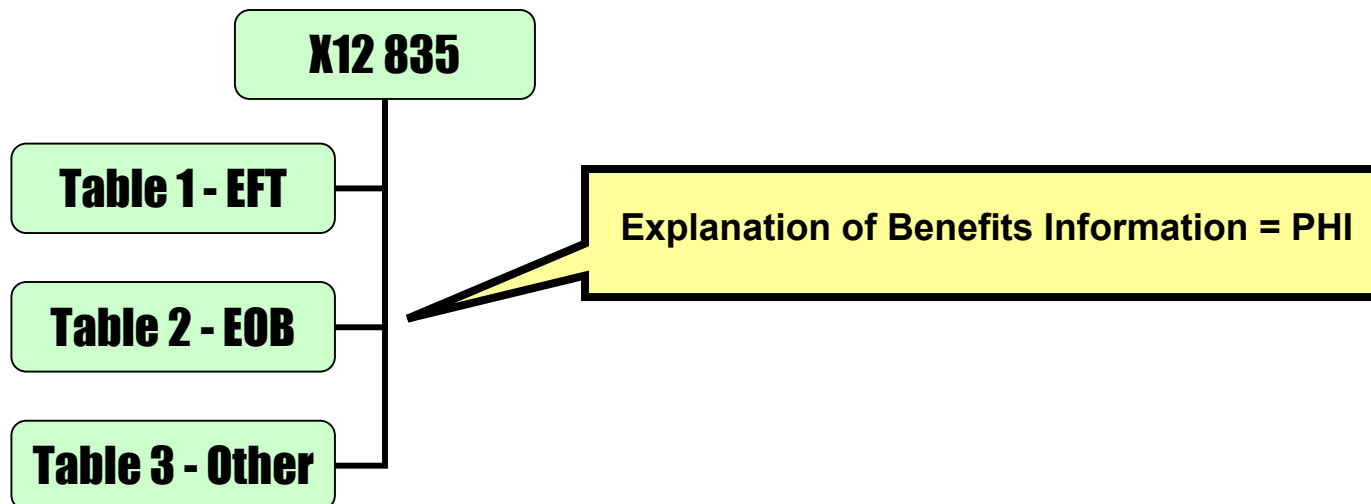
### [Company-Conducted Financial Transactions]

However, this part does apply if a **company** clears health care claims, the health care claims activities remain subject to the requirements of this part."



## Policy Analysis

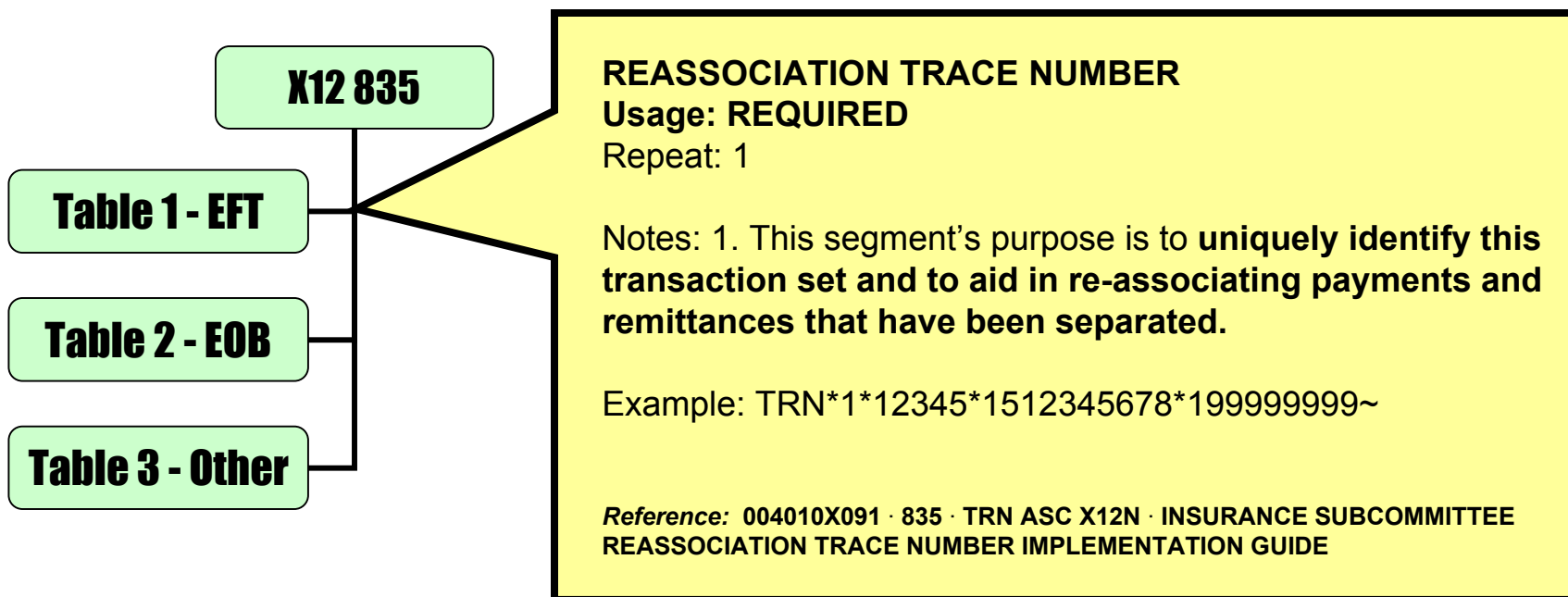
What are the PHI risks associated with the ASC X12N 835 transaction?





## Policy Analysis

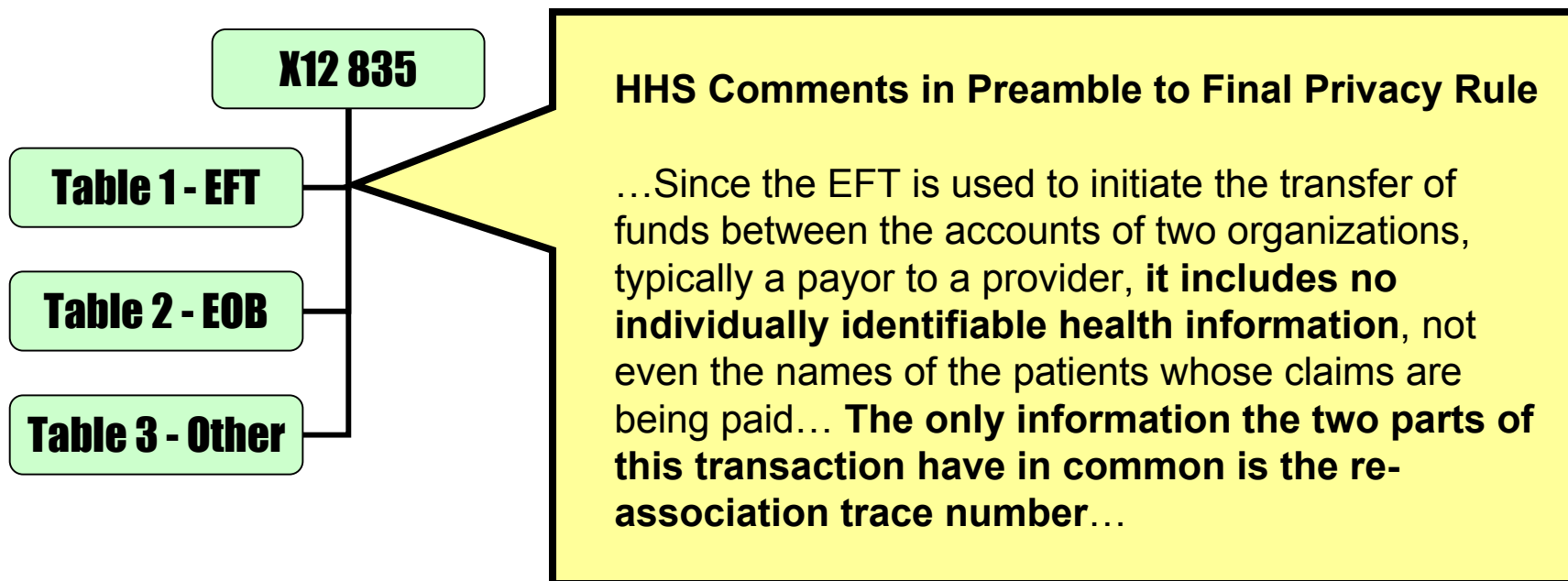
What are the PHI risks associated with the ASC X12N 835 transaction?





## Policy Analysis

What are the PHI risks associated with the ASC X12N 835 transaction?







## Policy Analysis

What are the PHI risks associated with the ASC X12N 835 transaction?

X12 835		The 835 "Trace Number" – Does it pass the Privacy Rule's De-identification Standard?		
		Does the Standard apply?	Yes	No
Table 1 - EFT	<p>"(6) INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.--The term 'individually identifiable health information' means any information, including demographic information collected from an individual, that--</p> <p>"(A) <b>is created or received by</b> a health care provider, health plan, employer, or <b>health care clearinghouse</b>; and</p> <p>"(B) <b>relates to</b> the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or <b>the past, present, or future payment for the provision of health care to an individual</b>, and—</p> <p>"(i) identifies the individual; or</p> <p>"(ii) <b>with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.</b>"</p>	X		
Table 2 - EOB		X		
Table 3 - Other			X	
		X		
45 CFR 160-164 Standards for Privacy of Individually Identifiable Health Information				



## Policy Analysis

What are the PHI risks associated with the ASC X12N 835 transaction?

**X12 835**

**Table 1 - EFT**

**Table 2 - EOB**

**Table 3 - Other**

The 835 "Trace Number" – Does it pass the Privacy Rule's De-identification Standard?		
<i>Is the Trace Number Protected Health Information?</i>	Yes	No
Section 164.502(d) - Creation of De-identified Information ...de-identified information created in accordance with our procedures is not subject to the requirements of these privacy rules unless it is re-identified. <b>Disclosure of a key or mechanism that could be used to re-identify such information [de-identified] is also defined to be disclosure of protected health information.</b>	X	
§ 164.514(a) .... Two methods for creating "de-identified" health information:		
1. Safe Harbor – If all 19 specified items of information are removed, the covered entity is presumed to have created de-identified information. Exceptions: <ul style="list-style-type: none"> <li>▪ The covered entity has no reason to believe that the information can be used to identify the subject of the information</li> </ul>	X	
<ul style="list-style-type: none"> <li>▪ Alone or in combination with other information</li> </ul>	X	
2. Covered entity with sufficient statistical expertise can: <ul style="list-style-type: none"> <li>▪ Remove or encrypt a combination of information different from the enumerated list</li> </ul>	n/a	
<ul style="list-style-type: none"> <li>▪ Can include information from the enumerated list if:               <ul style="list-style-type: none"> <li>(1) probability of re-identification is very low, and</li> </ul> </li> </ul>	X	
<ul style="list-style-type: none"> <li>(2) removed additional information if reasonable basis to believe that resulting information can be used to re-identify someone</li> </ul>	X	



## Q&A – Ask the Experts

- The operator is standing by.
- Please provide your first name with first initial.
- You will be announced.

# The Medical Banking Project



*Creation of 835 by health plan or bank as agent.*

HIPAA X12 txn

X12 835

Table 1 - EFT

Table 2 - EOB

Table 3 - Other

NO-SM<ZOC

*Performed by bank (ODFI)*

NACHA txn

CTX / CCD+

EFT

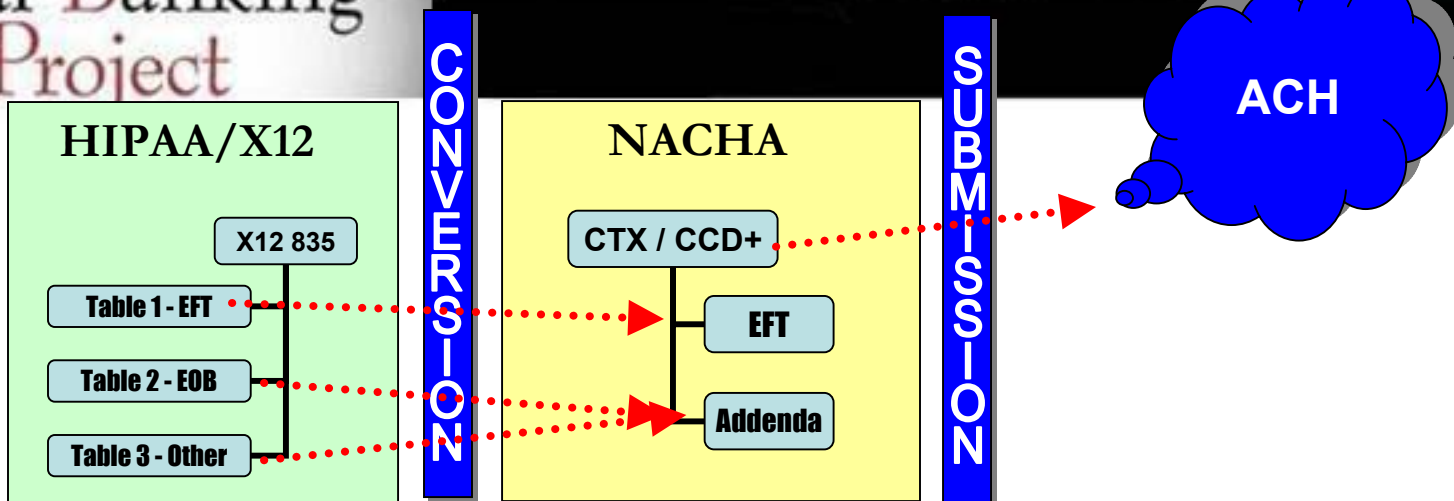
Addenda

NO-SM<ZOC

ACH NETWORK

*A series of financial clearinghouses that effect funds transfer and move remittance data.*

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## ODFI Analysis

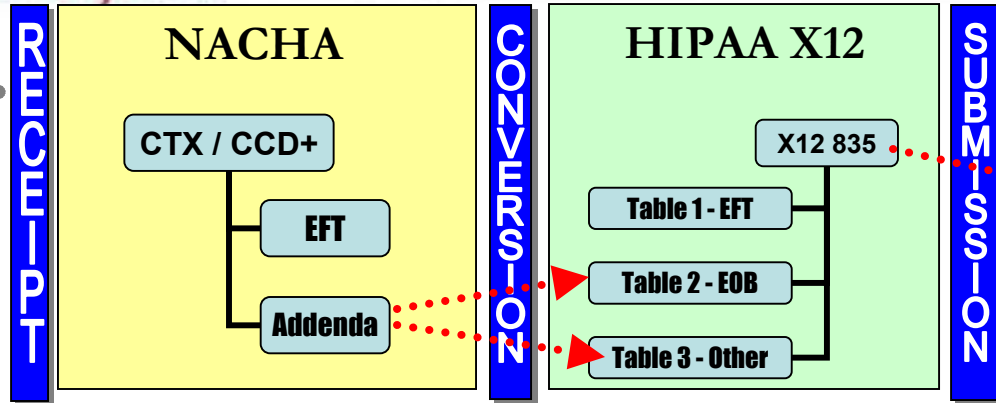
### Analysis Of Proposed Banking Association Guidelines To HHS

	<i>Clearinghouse under HIPAA?</i>	
	Yes	No
<b>ODFIs – Originating Depository Financial Institutions</b>		
ODFI Banks can accept NACHA files with or without HIPAA-compliant remittance data enclosed without being defined as a healthcare clearinghouse.		X
Reformatting from X12 to NACHA for payment processing does not constitute healthcare clearinghouse activity.	X	
Reformatting from a proprietary format to NACHA for payment processing does not constitute healthcare clearinghouse activity.		X
Editing and supplementing payment data for completeness against X12 standards alone does not constitute a healthcare clearinghouse function.	X	
Editing and supplementing payment data for completeness against NACHA standards alone does not constitute a healthcare clearinghouse function.		X

# The Medical Banking Project



RDFI Analysis



## Analysis Of Proposed Banking Association Guidelines To HHS

	<i>Clearinghouse activity under HIPAA?</i>	
	Yes	No
<b>RDFIs – Receiving Depository Financial Institutions</b>		
RDFI Banks can accept NACHA files with or without HIPAA-compliant remittance data enclosed without being defined as a healthcare clearinghouse.		X
Reformatting from NACHA to X12 and routing of remittance data to customers does not constitute healthcare clearinghouse activity.	X	
Reformatting from NACHA to BAI and routing of remittance data to customers does not constitute healthcare clearinghouse activity.		X
Reformatting from NACHA to proprietary formats and routing of remittance data to customers does not constitute healthcare clearinghouse activity.		X
Editing and supplementing data for completeness against X12 standards alone does not constitute a healthcare clearinghouse function.	X	
Editing and supplementing payment data for completeness against NACHA standards alone does not constitute a healthcare clearinghouse function.		X



## Q&A – Ask the Experts

- The operator is standing by.
- Please provide your first name with first initial.
- You will be announced.



## *Certification Authorities*

### **Transactions Only:**

MBProject is arranging a cost-effective venue with a leading authority for banks that require 820 and 835 transaction certification. Special pricing is available for members. Qualifying associations can also take advantage of this program. Contact: 615.794.2009.

### **Clearinghouse Certification:**

MBProject has been asked to coordinate a comprehensive certification program (legal, procedural and technical) in conjunction with Goulston & Storrs and EHNAC. Please call our offices for further information.

### **Certification Resources:**

Please go to our website ([www.mbproject.org](http://www.mbproject.org)) and look under “HIPAA Resources” in our homepage for direct links to certification authorities.





# The Medical Banking Project **next steps**

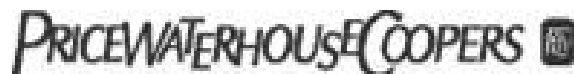
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- Next roundtable in October
- *2001/2 HIPAA Readiness Survey for Financial Institutions* now available for purchase
- SOMBEX Online Directory
- For questions, please contact us at: 615.794.2009
- Roundtable transcripts available in 7 days at [www.mbproject.org](http://www.mbproject.org)



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