

INDIPAY+ **Ability to Pay**

Elisabeth Freed

Beata Gruszecka

Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance



INDIPAY Model

- A screening tool to assist in the evaluation of an individual's ability to pay cleanup costs and/or civil penalties
- Consists of a two-phased analysis:
 - ✓ Initial determination of an individual's financial health AND/OR
 - ✓ Quantifies ability to afford cleanup or penalty amount based on
 - cash flow and
 - debt capacity
- Uses two sources of data:
 - ✓ Financial Data Request Form (FDRF) AND
 - ✓ Tax Returns (primary source)
- Assets/income result based on a tax-adjusted basis value
- Assumes a single payment



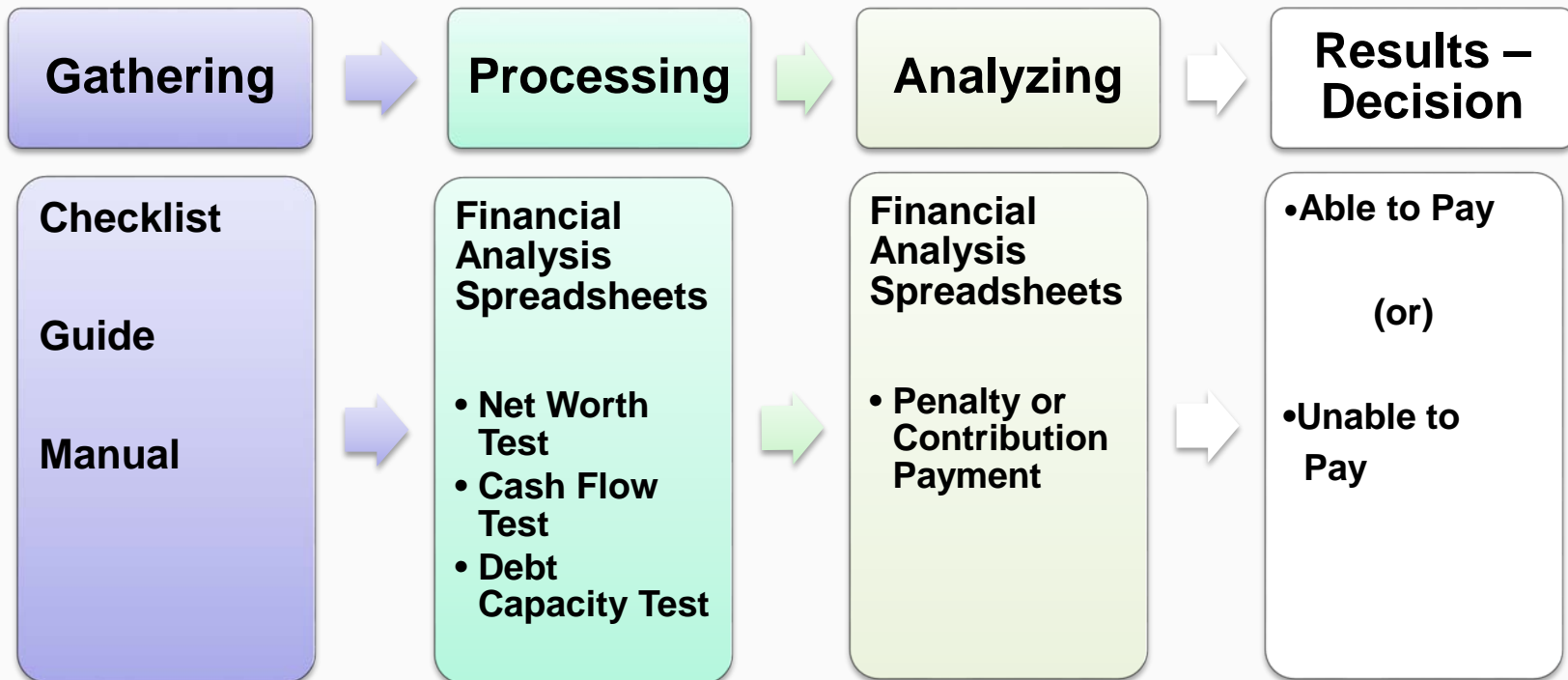
What is INDIPAY+?

- A comprehensive tool that provides a more accurate and complete evaluation of an individual's financial ability to pay his or her environmental obligations without financial hardship
- Four components:
 - (1) Financial Analysis Spreadsheets
 - (2) Checklist
 - (3) Guide
 - (4) Reference Manual
- Consists of a four-phased analysis:
 - ✓ Net Worth
 - ✓ Current and Future Cash Flow
 - ✓ Debt Capacity
 - ✓ Unused debt capacity (financial flexibility)





Steps of INDIPAY+





INDIPAY+ Tool 1: Financial Analysis Spreadsheets

- INDIPAY+ main and most important tool
- Excel spreadsheets with built-in calculations that use the financial information to determine the individual ability to pay off the environmental obligations



INDIPAY+ Tool 2: Checklist

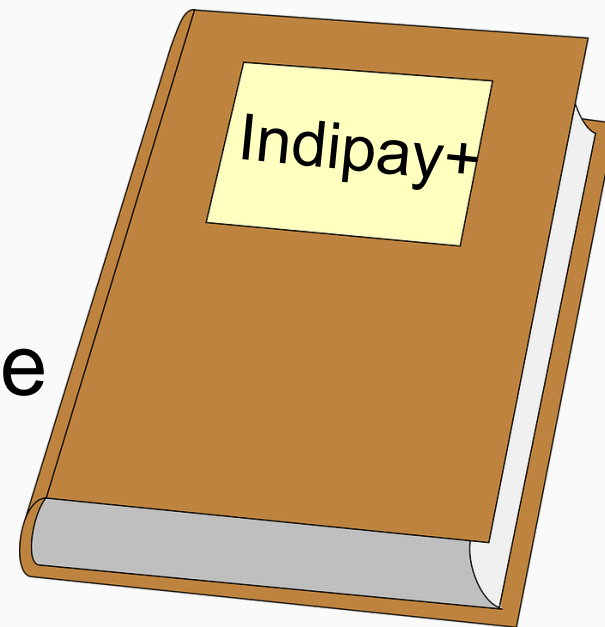
- Lists the sources of financial information available to the INDIPAY+ user
- Describes the information required to conduct the ATP analysis
- Provides tips on how to interpret certain facts/data and what financial information to request as follow up





INDIPAY+ Tool 3: Guide

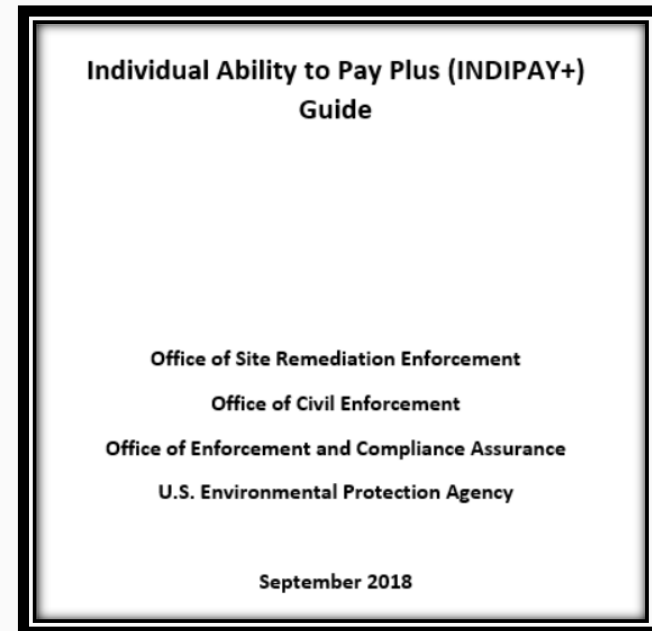
- Walks the user through the ATP analysis steps
- Explains how to use the component tools to complete the financial analysis of an individual





INDIPAY+ Tool 4: Reference Manual

- In-depth description than the Guide on the process
- Detailed information on financial data
- Financial/accounting definitions and terminology



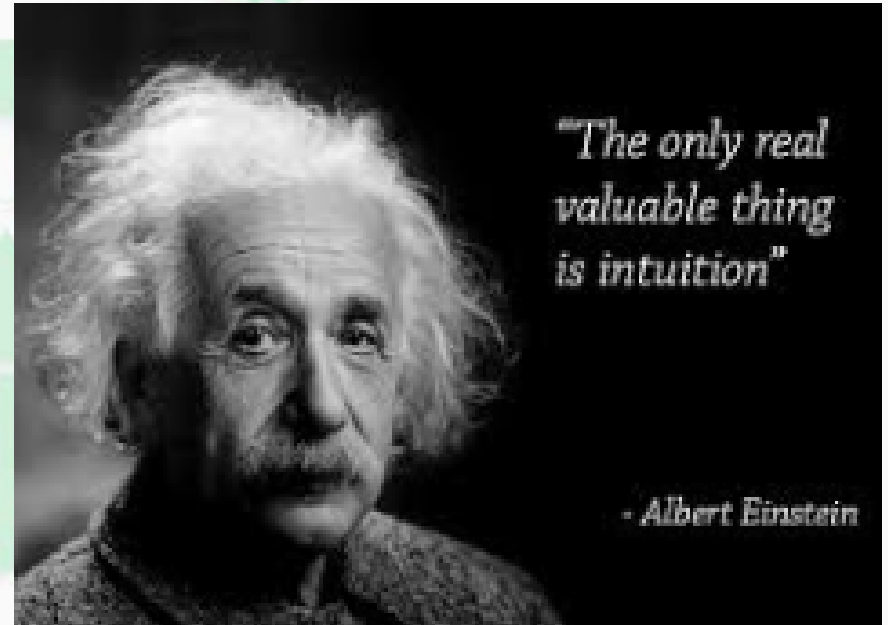
Is INDIPAY the Right Tool?



Why INDIPAY+?

There are situations where the numbers and analysis might appear to be final but they could be questionable and we need to investigate further

INDIPAY+ helps you ask those questions and provides further investigation



Think Outside the Box

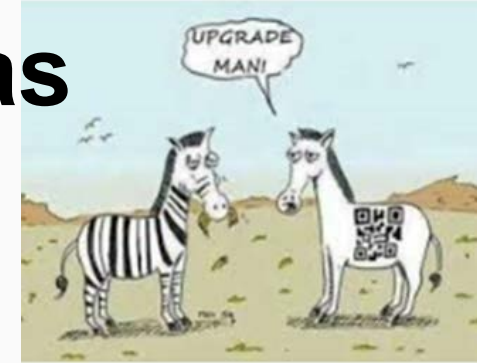
- A **thorough** review by financial analyst and accountant can AND should analyze **EVERYTHING** in many different dimensions
 - historical information, company, financial, industry, geographic and projected trends in the future
- **EVERY** situation is unique, sometimes confusing, sometimes challenging, and INDIPAY+ provides an opportunity to think out of the box to go beyond the analysis



"Now **that's** the kind of 'outside the box' thinking I've been talking about!"

Stereotype Kills Ideas

- Doing the math ... does not end there
- Analyze financial **AND** non-financial data
- Quantify impacts of everything from non-value added activities to purely developmental to the operations themselves
- Hard facts count but the focus should be on the nature of the individual's financials; objective suitability factors rather than on a stereotype which could be at odds with the reality of the particular situation
- This is the responsibility of the financial analyst to bridge the GAP





Traditional Data

Known sources:

Tax Returns, Financial Data Request Form (FDRF), Bank Statements, Credit/ Loan/ Mortgage Agreements, Financial Statements, W-2 Forms

Uses the same financial concepts, formulas

Relies on historical trends

Non-Traditional Data

New sources:

Databases (LexisNexis, CLEAR, D&B, Accurint,..), Social Media (LinkedIn, Facebook, Instagram), Internet Search

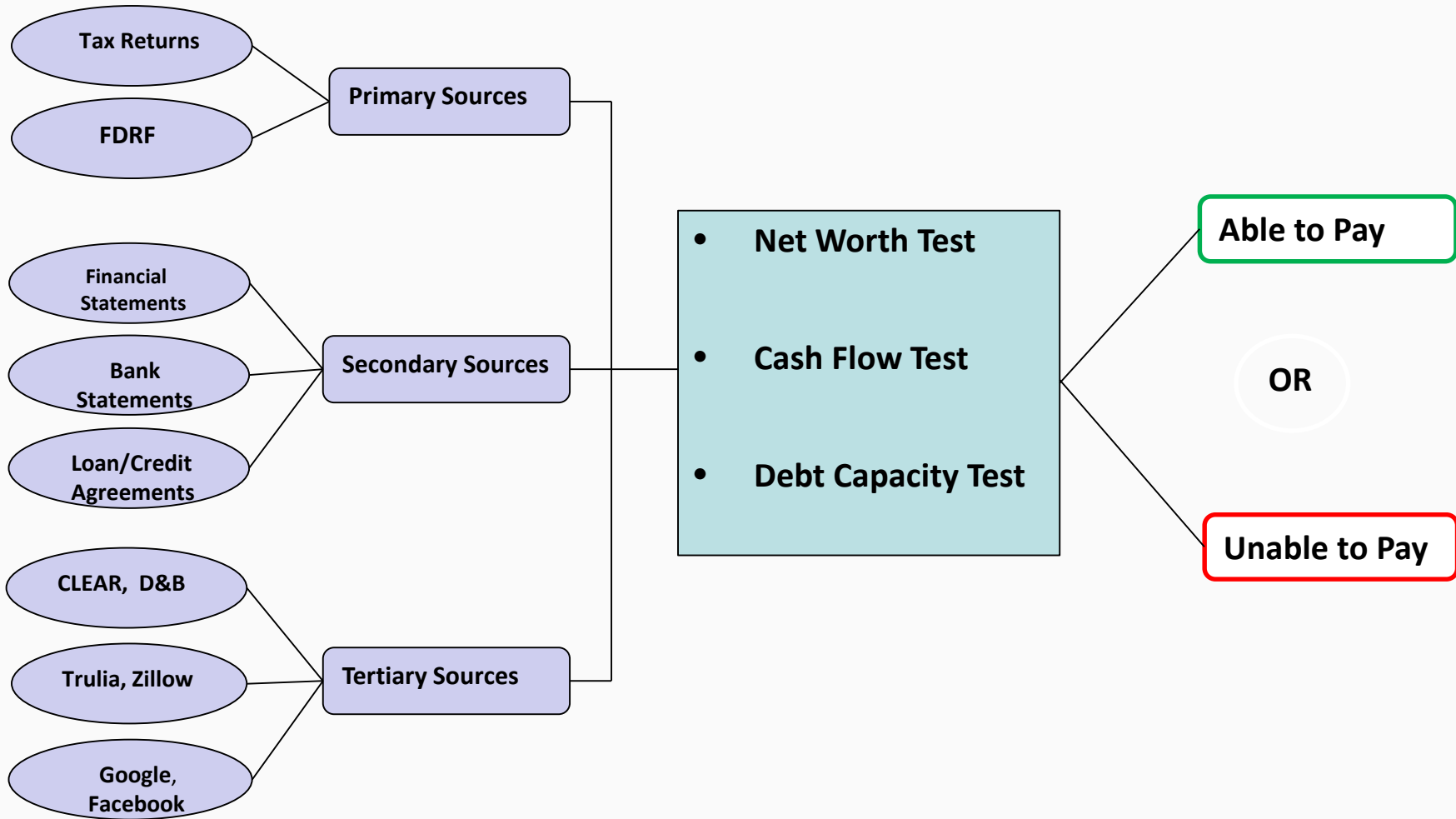
Adds new financial concepts and formulas (financial slack)

Applies and incorporates future expected trends (future income and expenses)



How Does INDIPAY+ Improve the ATP analysis?

- Evaluates the quality of the information
- Recommends and instructs the user to value assets/income using fair market value
- Allows the case team to make adjustments: increase/reduce the settlement amount based on circumstances of the case
- Provides financial flexibility to the individual - incremental payments
- Simplifies and walks the user through the ATP process analysis
- Offers user-friendly, flexible, self-explanatory hands-on tools for any user level (e.g. non-financial analysts-or financial expert)
- Helps a user to go beyond the INDIPAY screening model





Tax Returns vs. Financial Statements

Tax Returns	Financial Statements
Tax code (Internal Revenue Code) is a product of the legislative process	Accounting standards (GAAP) are set by an independent Financial Accounting Standards Board (FASB)

- Both give a financial breakdown of a business for investors, lenders, and shareholders
- **Provide different information and uses**
- Must understand the type of information that is being presented to analyze financial data



Main Differences: Tax Returns and Financial Statements

1. **Cash basis vs. accrual basis:** Tax returns (cash basis or accrual basis), Financial statements (GAAP - accrual basis)
2. **Depreciation of tangible assets:** GAAP requires the depreciation be consistent with the expected wear and tear of the asset (useful life) in a way that truly reflects the use of assets
3. **Treatment of Inventory - LIFO v. FIFO inventory:** Internal Revenue Code requires a business to use LIFO on tax returns. GAAP allows the individual to use either LIFO or FIFO. LIFO has tax advantages for a business (raises costs of goods sold and reduces taxable income)



Different Results: Tax Returns and Financial Statements

Tax Returns	Financial Statements
Tax code intended to generate revenues for the government but also achieve certain public policy goals, thus, producing - different results	GAAP rules promote uniform statements that accurately convey the financial history, health, and prospects of a business



Asset Protection

- An individual's assets can be owned by a variety of legal mechanisms and business entities
- Asset protection mechanisms include trusts, limited liability companies, limited partnerships, corporations, and LLCs
- Many states allow exemptions for specific assets from the claims of creditors (e.g., "protected homestead," cash value of life insurance, a qualified retirement account) but they are subject to limitations with a cap on the maximum value



Is Asset Protection Legal and Ethical?

Diligence and Advocacy

Is the individual

- about to be, or has already been, sued?
- about to, or has already, filed for bankruptcy?
- delinquent in reporting/paying taxes?
- being audited?
- directly or indirectly liable for any loans?
- solvent and remains solvent after property transfers?





Insolvency

- “**Insolvency**” - a “financial condition such that the sum of such entity’s debts is greater than all of such entity’s property, at a ***fair valuation*** [subject to the exclusion of certain property altogether]” *Use proper citation of USC here* Section 101(32) (Bankruptcy Code)
 - Thus, assets are considered at “fair valuation,” but debts do not carry that qualifier, or any qualifier
- “**Debt**” - defined broadly to include “liability on a claim”
- “**Claim**” – defined broadly to include “[a] right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. . . .”

Insolvency = Debt > Assets (Fair Value)



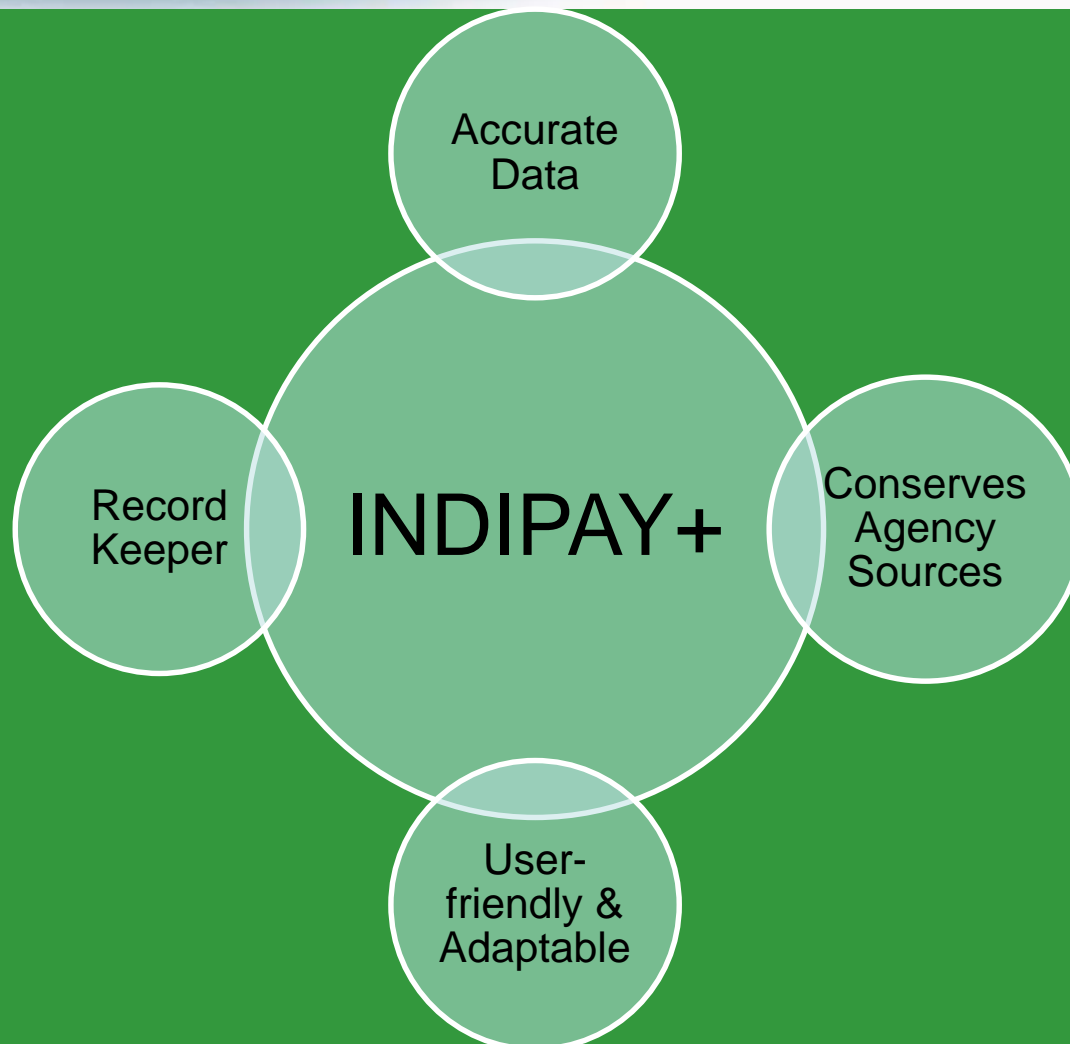
Social Media AND Credit Rating

- In 2017, 81 % of the U.S. population had a social media profile (*Statista*)
- Social media – a factor in credit decision
 - risk before lending = financial data + social media**
- Capture borrowing behavior: Kreditech, Kotak Mahindra, HDFC Bank, Axis Bank
- Kreditech- core markets: Czech Republic, Mexico, Poland, Spain, Russia (gray market of informal lending)



Want a Free Financial Makeover ?

- Financial analysis is a continuous process which evaluates past performance and current financial position of a business/individual.
- Internet and social media has changed the way companies and individuals do business
- Internet and social media are becoming an important element of the accounting information environment
 - Financial information on companies and individual is disseminated through the Internet
- Information environment is increasingly dominated by mobile technologies



A 3D rendered scene of a classroom or computer lab. On the left, a white 3D figure of a teacher stands pointing towards a large blackboard. In the center and right, several white 3D figures of students are seated at desks, each with a laptop. One student in the foreground is raising their hand. The scene is set against a light green background.

Exercises



Questions?

Elisabeth Freed

Freed.Elisabeth@epa.gov

Beata Gruszecka

Gruszecka.beata@epa.gov