

# Informal Value Transfer



**For Compliance Officers**

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April 5, 2022

# Terminal Learning Objectives

By the end of the training, the learner will be able to:

- Identify I-526 petitions where the Petitioner utilizes a third-party exchanger to facilitate a transfer of funds to the New Commercial Enterprise (NCE).
- Understand how to apply deference to informal value transfer (IVT) scenarios encountered in the course of I-829 adjudications.
- Understand how to use and reasons to use the IVT Tracker.

# Enabling Learning Objectives

- The student will understand and define terms “informal value transfer” “exchanger” and “hawala.”
- The student will understand eligibility requirements that are impacted when IVT is present.
- The student will identify a fact pattern where IVT is present in a petition, including use of:
  - A licensed exchanger
  - An informal exchanger.
- The student will be able to apply relevant eligibility requirements to the facts.
- The student will be able to evaluate the evidence for IVT based on each eligibility scenario.

## Enabling Learning Objectives (continued)

- The student will learn the proper approach to the adjudication of cases with IVT issues.
- The student will be able to identify common IVT scenarios.
- The student will become familiar with the **IVT Tracker**, and the information captured in the IVT Tracker.

# Overview

1. IVT: Fraud and program integrity
2. Definitions of “IVT” and “exchanger” and “hawala”
3. Identifying IVT scenarios
4. Eligibility requirements impacted by IVT issues:
  1. Has the Petitioner satisfied the burden to establish that the capital belongs to the Petitioner (path of funds)
  2. Has the Petitioner satisfied the burden to show that funds were lawfully derived (source of funds)
5. Evaluating the evidence
6. Other considerations in IVT adjudications

## Identifying IVT: Break in Path of Funds

To prove that the capital was his or her own, the petitioner must document the path of funds from the petitioner to the NCE. See *Matter of Izummi*, p. 195; see also *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm. 1998): Interpreting 8 C.F.R. § 204.6(e) as requiring that a petitioner establish the funds invested are his or her own.

- This requires review of the Petitioner's documentation and explanation regarding how the capital amount used for the investment was obtained. See 8 CFR 204.6(j)(3)(i)-(iv).

## IVT: Fraud and Program Integrity

- At the I-829 stage, Adjudications Officers (AOs) should be able to identify an IVT scenario from the previously approved Form I-526 or other evidence in the record to ensure that relevant data is captured to assist FDNS and the IVT Committee in identifying patterns that may indicate money laundering or other fraud.
- Over the last several years, IPO and the IVT Committee have developed a relationship with FinCEN, HSI, FBI, IRS, and DOS. FinCEN is interested in currency exchangers operating in our program, as some may meet applicable statutory definitions of financial institutions, and/or money services businesses (MSBs).

## **IVT: Fraud and Program Integrity (continued)**

- Congress has given FinCEN certain duties and responsibilities for the central collection, analysis, and dissemination of data reported under FinCEN's regulations and other related data in support of government and financial industry partners at the federal, state, local, and international levels.
- FinCEN regulates financial institutions and MSBs, and as the Financial Intelligence Unit (FIU) of the United States, it is responsible for combating money laundering, terrorism financing, and other crimes, as well as coordinating with other FIUs around the world.



## IVT: Fraud and Program Integrity (continued)

- The IPO IVT Committee collaborates closely with law enforcement and regulatory agencies, and TECS is a means of communication with our federal and local partners. TECS allows us to notify external agencies, and other USCIS offices, of subjects and entities of interest, and creates an opening for dialogue and information sharing.
- Use of IVTs can present a vulnerability to the IPO program, and the IVT Committee is dedicated to ensuring that criminals do not use the program to further their illicit enterprises.

## IVT: Fraud and Program Integrity (continued)

- Currency exchangers who appear to be violating federal laws, including those regulating financial institutions and MSBs, may be referred to the appropriate law enforcement or regulatory agencies.
- Federal law enforcement agencies have expressed an interest in investigating currency exchangers to evaluate possible violations of money laundering laws, and their predicate offenses: wire fraud, mail fraud, structuring, and bulk cash smuggling.

# Definitions

- **IVT:** FinCEN defines IVT systems as “any system, mechanism, or network of people that receives money for the purpose of making the funds, or an equivalent value, payable to a third party in another geographic location, whether or not in the same form.” (<https://www.fincen.gov/sites/default/files/advisory/advis33.pdf> (last visited on April 5, 2022))
- **Exchanger:** The individual or entity (formal or informal) who exchanges (or “swaps”) the Petitioner’s currency for foreign currency of the same value (e.g. RMB to USD, or VND to USD).

## **Identifying IVT: Break in the Path of Funds**

Is there a break (or breaks) in the path of funds from the Petitioner to the NCE?

- Path of Funds
  - How funds were accumulated or obtained and how funds traveled from the original source all the way to the NCE (or to the NCE's escrow account).
  - Each step of the path must be sufficiently documented.
  - If a step is not documented, an RFE/NOID may be necessary.

## **Identifying IVT: Break in Path of Funds**

- Example: The Petitioner claims he/she derived EB-5 funds through a mortgage loan. The Petitioner received the loan proceeds in his/her bank account in Pakistan. The Petitioner then transferred the funds from his/her account in Pakistan to another individual in order to convert the funds from local currency into U.S. dollars. The third party, in exchange, transferred his/her own U.S. dollars to the NCE.

## Identifying IVT: Licensed Exchanger

If there was a break in the path of funds, did the Petitioner use a third-party exchanger to facilitate transfer of funds to the NCE and was there a currency swap involved?

- Is the exchanger a licensed third-party money exchanger (e.g., a licensed and registered money services business)?

## Identifying IVT: Licensed Exchanger

- Example: Petitioner A transfers funds from his/her bank account in Vietnam to the bank account in Vietnam of a currency exchange broker. Petitioner A and the currency exchange broker agree that the latter will “swap” the value of the transfer by crediting Petitioner A with equivalent funds in the currency exchange broker’s bank account in Hong Kong. The currency exchange broker transfers the funds to Petitioner A’s account in Hong Kong. Petitioner A, then transfers the funds to the NCE’s bank account in the U.S. The Petitioner submits evidence to establish that the currency exchange broker is licensed and registered as a money services business.

## Identifying IVT: Unlicensed Exchanger

If there was a break in the path of funds, did the Petitioner use a third-party exchanger to facilitate the transfer of funds to the NCE and was there a currency swap involved?

- Is the exchanger an unlicensed third-party money exchanger (e.g., the Petitioner's friend)?



## **Identifying IVT: Unlicensed Exchanger**

Example: Petitioner A in China transfers funds from his/her bank account in China to the exchanger's bank account in China. Petitioner A and the exchanger agree that the latter will “swap” the value of the transfer by crediting Petitioner A with equivalent funds in the exchanger's bank account in Hong Kong. The exchanger then transfers funds from the exchanger's Hong Kong account to the NCE's bank account in the U.S.

# Common IVT Scenarios

## Scenario 1

- The Petitioner transfers funds from his/her bank account in Country A to the exchanger's bank account in Country A.
- In exchange, the exchanger transfers U.S. dollars from his/her bank account in Country B into the NCE's U.S. bank account.

# Common IVT Scenarios

## Scenario 2

- The Petitioner transfers funds from his/her bank account in Country A into the exchanger's bank account in Country A.
- In exchange, the exchanger transfers U.S. dollars from his/her bank account in Country B into the Petitioner's bank account in Country B.
- The Petitioner then transfers U.S. dollars from the bank account in Country B to the NCE's U.S. bank account.

# Common IVT Scenarios

## Scenario 3

- The Petitioner transfers funds from his or her bank account in Country A to a third-party's bank account in Country A.
- The exchanger transfers U.S. dollars from a bank account in Country B to a third-party individual's bank account in Country B, who then transfers the funds into the NCE's U.S. bank account.

# Common IVT Scenarios

## Scenario 4

- The Petitioner transfers funds from his/her bank account in Country A to a third-party individual's bank account in Country A.
- In exchange, a company owned by the third-party individual transfers equivalent U.S. dollars from its bank account in Country B into the Petitioner's bank account in Country B.
- The Petitioner then transfers U.S. dollars to the NCE's U.S. bank account.

## IVT Scenarios in Form I-829 Adjudication: Deference

### Deference

- Where USCIS has previously evaluated and approved certain aspects of an investment, USCIS generally defers to that favorable determination at a later stage in the process. Thus, USCIS generally defers to favorable determinations made at the I-526 stage.
- USCIS does not defer to a previously favorable decision in later proceedings when the underlying facts, upon which a favorable decision was made, have materially changed, there is evidence of fraud or misrepresentation, or the previously favorable decision is determined to be legally deficient (i.e., an objective mistake of law or fact).

## **IVT Scenarios in Form I-829 Adjudication: Deference**

The officer adjudicating an I-829 should only re-adjudicate issues relating to the path and source of funds if one of the exceptions to deference applies.

- The mere fact that the Petitioner utilized a third-party exchanger is insufficient.
- However, if the prior determination involved an *objective* mistake of law or fact (e.g., the previous adjudication was based on the wrong legal standard or it applied different facts than are contained in the record), then deference would not apply, and an analysis of lawful source of funds involving the IVT scenario should be done on a Form I-829.

## Eligibility Requirements and Impact When IVT Exists

- Evaluate evidence to determine if the Petitioner has met the burden to satisfy eligibility requirements.
- The Petitioner invested required amount of capital
  - When the officer cannot determine that the capital belongs to the Petitioner based on the path of funds through the exchanger.
  - INA §§ 203(b)(5)(A)(i), (C)(i); 8 C.F.R. §§ 204.6(f)(1), (j)(2): **Petitioner** must generally invest or be actively in the process of investing at least \$1,800,000 of capital in a new commercial enterprise. See also *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm. 1998), *d. Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998), *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm. 1998).



## Eligibility Requirements and Impact When IVT Exists

- Evaluate evidence to determine if the Petitioner has met the burden to satisfy eligibility requirements.
- **Lawful Source of Funds:**
  - When the officer cannot determine that the funds were lawfully derived due to involvement of a third-party exchanger/broker. 8 CFR 204.6(e) (definition of capital); 204.6(j)(3); *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm. 1998), *Matter of Izummi*, 22 I&N Dec. 195 (Assoc. Comm'r 1998).

## Eligibility Requirements and IVT: Examples

### EXAMPLE #1 (required amount of capital issue):

- Petitioner A and an exchanger agree to engage in a currency swap.
- The record contains evidence that the exchanger sent \$900,000 to the NCE on the Petitioner's behalf.
- The record does not contain evidence that Petitioner A sent the equivalent amount in RMB from his/her bank account in China to the exchanger's bank account in China.

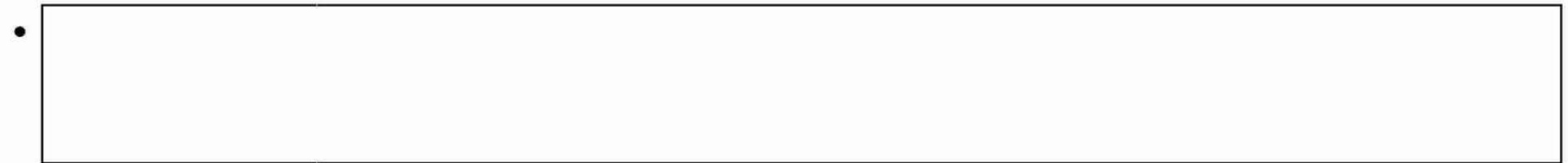
- 

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## Eligibility Requirements and IVT: Examples

### EXAMPLE #2 (lawful source of funds issue):

- Same scenario as Example 1 where Petitioner A and the exchanger agree to engage in a currency swap.
- The record contains evidence that the exchanger sent USD \$900,000 to the NCE on the Petitioner's behalf.
- The record does not contain any evidence of the source of the exchanger's funds.



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## Eligibility Requirements and IVT: Examples

### EXAMPLE #3:

- Petitioner A sends the exchanger RMB 6.1 million (approximately USD \$900,000) to the exchanger's bank account in China.
- The exchanger sends \$900,000 from his/her Hong Kong bank account to Petitioner A's Hong Kong bank account.
- Petitioner A sends \$900,000 to the NCE from his/her Hong Kong account.
- The record does not contain evidence of an agreement between Petitioner A and the exchanger regarding the funds that were deposited into Petitioner A's Hong Kong bank account by the exchanger.

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# Evaluating the Evidence

- **Petitioner Invested Required Amount of Capital**

- If the Petitioner has not provided any evidence relating to the funds transferred from his/her account to the exchanger's account, the officer could request:
  - Bank statements establishing the transfer of funds from the Petitioner to the exchanger.
  - Any other evidence deemed sufficient to establish that the Petitioner is the legal owner of the funds.

# Evaluating the Evidence

- **Petitioner Invested Required Amount of Capital**

- If the Petitioner provided evidence that establishes he/she is the legal owner of the funds transferred from his/her account to exchanger's account, and then the exchanger transferred the funds to the NCE, but there is no evidence that the exchanger did so on behalf of the Petitioner, the officer could request evidence that the petitioner (and not the third party) invested the funds.
- Common types of evidence could include a currency swap agreement.

# Evaluating the Evidence

- **Lawful Source of Funds**

- When the Petitioner uses a third party to exchange funds, the Petitioner must still establish by a preponderance of the evidence that the source of the funds invested was derived, directly or indirectly, through lawful means. 8 CFR 204.6(e), (j)(3).
- If the third-party exchanger is a licensed money exchanger/money services business (MSB)/money service operator (MSO)/etc., the officer may wish to request documentation to show that it is a legitimate and/or licensed and registered MSB, or was at the time of the transaction with the Petitioner.

# Evaluating the Evidence

- **Lawful Source of Funds**

- For example, in Hong Kong, the license to conduct foreign currency exchanges is issued to an MSO by the Commissioner of Customs & Excise, Money Service Supervision Bureau, Kowloon, HK  
[https://www.customs.gov.hk/en/whats\\_new/licensing/index.html](https://www.customs.gov.hk/en/whats_new/licensing/index.html) (last visited April 5, 2022)



## Evaluating the Evidence

- **Lawful Source of Funds**

- If the third-party exchanger is not a licensed money exchanger (e.g., a casual acquaintance or friend), the petitioner must establish that the third-party exchanger's funds derive from a lawful source.
- If the record does not provide evidence of the source of the third-party exchanger's funds, then a RFE is appropriate.

# Evaluating the Evidence

## Hawala

- “*Hawala* is an alternative remittance channel that exists outside of traditional banking systems. *Hawala* is a method of transferring money without any actual movement.”
- Transactions between hawala brokers are made without promissory notes because the system is heavily based on trust and the balancing of hawala brokers' books.

<http://www.investopedia.com/terms/h/hawala.asp> (last visited on April 5, 2022)

# Evaluating the Evidence

- **Lawful Source of Funds**

- If the third-party exchange is through the *Hawala* system, the officer may wish to request evidence that the *Hawala* broker:
  - Is registered as a MSB with the financial regulatory agency of the country/countries at the time of the transactions where they conducted business involving the Petitioner's funds.
  - Evidence showing that the *Hawala* broker was a lawful business entity at the time of the transaction(s) where they conducted business involving the Petitioner's funds.
  - The use of *Hawala* systems might require Office of Foreign Assets Control (OFAC) research.

## Other Considerations

- Affidavits alone (submitted in the initial filing or an RFE response) are generally insufficient to establish the source of funds in a third-party exchanger's account after the break in the path. Sufficient evidence to corroborate the source, maintenance, and transfer of funds in the third-party exchanger's account could include:
  - Bank statements
  - Transfer slips
  - Currency swap agreement
  - Etc.


## Other Considerations (continued)

- If the Petitioner claims that the exchanger is not willing to provide the Petitioner with requested documents, this could result in a denial. Simply going on the record without supporting documentary evidence does not satisfy the burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm. 1998).
- If any third-party exchanger funds, after the break in the path of funds, are in the United States, the AO must contact the IVT Committee before proceeding because issues involving U.S. law may be involved.

## IVT Tracker

- The IVT Tracker helps the IVT Committee identify exchange trends, repeat IVT exchangers, etc.
- We use the IVT Tracker if an IVT issue is identified in the I-526 or I-829 filings. The IVT Tracker must be checked to determine if the exchanger's information was captured in the IVT Tracker or not. If not, then the I-829 officer needs to input the data requested in the IVT Tracker.

## Accessing the IVT Tracker

- Navigate to INFACT
- Click “Sign In”
- The INFACT IVT Tracker will be located along the top bar, to the right of PIERS. It looks like this: The image shows a small, light gray rectangular button with the text 'IVT' and a small downward-pointing arrow to its right, indicating a dropdown menu.
- Click on “IVT.” In the drop-down that appears, select “All Exchangers.”

# INFACT IVT Tracker

(b)(7)(E)



Manage Informal Value Transfer (IVT) Exchangers

ADD NEW

EXPORT FILTERS

First Previous 1 2 3 4 5 6 7 8 9 10 Next Last

ACTIVE [REDACTED] (Individual)	EXID: EX000118843	DETAILS
I-526 Cases: 1	NCEs: 0	Bank Account(s): [REDACTED]
ACTIVE [REDACTED] (Individual)	EXID: EX000117438	DETAILS
I-526 Cases: 1	NCEs: 0	Bank Account(s): -

3,147 RECORDS FOUND

We get a list of all existing IVT Exchanger entries. On any of the IVT Tracker entries, click "Details" to view more information on the entry.



# Exchanger Details



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[Redacted]

I-526 Receipt(s):

[Redacted]

Exchanger Type:

Individual

Company Name:

-

Individual First Name:

[Redacted]

Individual Last Name:

[Redacted]

Date of Birth:

-

Country of Birth:

-

Aliases:

-

Gov. Issued ID No.:

-

Migration Agent:

Profited:

Licensed:

Relationship to Petitioner:

Also captured in the "Exchanger Details" are bank information, associated entities, notes, and history. Note the exchanger ID number ()

# Additional Exchanger Details

(b)(7)(E)

Search...

My Dashboard Cases Entities PTERS **IVT** Search by receipt/file # or entity Jamie Buchinski - IVT Pilot

### BANK INFORMATION

Bank Accounts associated with this Exchanger

Account in US	Bank Name	Bank Account No.	Notes
-	[REDACTED]	[REDACTED]	-
-	[REDACTED]	[REDACTED]	-

### ASSOCIATED ENTITIES

Entities associated with this Exchanger

### NOTES

Leave a note... ADD

### HISTORY

Click a tab to view details INFACT

# Searching



U.S. Citizenship and Immigration Services

My Dashboard

Cases

Entities

PIERS

IVT

Search by receipt/file # or entity

Jamie Buchinski - IVT Pilot

## Manage Informal Value Transfer (IVT) Exchangers

ADD NEW

EXPORT

FILTERS

First Previous 1 2 3 4 5 6 7 8 9 10 Next Last

(b)(6)

ACTIVE

[REDACTED] (Individual)

EXID:

DETAILS

I-526 Cases

1

NCEs

0

Bank Account(s)

[REDACTED]

You also have the ability to search for a specific receipt/file number or entity. As you begin typing, you will see potential matches.

# Searching (continued)

(b)(7)(e)



Convert Select

Case Scanning Portal Enterprise Vault Search PERS EHRI Electronic Official Pe... Consular Consolidated Da... STACKS SMART - Home

INFACT U.S. Citizenship and Immigration Services DID (it)

My Dashboard Cases Entities PERS **IVT**

Search by receipt/file # or entity Q

ABC

Regional Centers

(ID)

New Commercial Enterprises

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EXPORT FILTERS

## Manage Informal Value Transfer (IVT) Exchangers ADD NEW

First Previous **1** 2 3 4 5 6 7 8 9 10 Next Last

<b>ACTIVE</b> [REDACTED] (Individual)	EXID: [REDACTED]	<b>DETAILS</b>
I-526 Cases	NCEs	Bank Account(s)
1	0	[REDACTED]

<b>ACTIVE</b> [REDACTED] (Individual)	EXID: [REDACTED]	<b>DETAILS</b>
I-526 Cases	NCEs	Bank Account(s)
1	0	-

(b)(6)

(b)(6)

3,147 RECORDS FOUND

# Creating a New Exchanger Entry



## Manage Informal Value Transfer (IVT) Exchangers ➤ ADD NEW

EXPORT <sup>†</sup> FILTERS ▾

First Previous **1** 2 3 4 5 6 7 8 9 10 Next Last

(b)(6)

ACTIVE [REDACTED] (Individual) EXID:  DETAILS

I-526 Cases	NCEs	Bank Account(s)
1	0	<span>[REDACTED]</span>

To create a new Exchanger entry, click the “Add New” button near the top of the page.

# Creating a New Exchanger Entry

(b)(7)(E)

1.



2.



# New Exchanger Entry

## Add Exchanger

I-526 Receipt(s):

REQUIRED

Look up or start typing...

Exchanger Type:

REQUIRED

Company



Company Name:

REQUIRED

Individual First Name:

Individual Last Name:

Date of Birth:

Country of Birth:

Aliases:

Gov. Issued ID No.:

Separate multiple names with commas

Here is the top of the form to enter new exchanger information. To input an individual, simply select “Individual” from the ‘Exchanger Type’ drop-down.

# New Exchanger Entry (continued)

(b)(7)(e)

Search... [Icons]

Convert Select  
Case Scanning Portal Enterprise Vault Search PIERS EHRJ Electronic Official Pe... Consular Consolidated Da... STACKS SMART - Home

My Dashboard Cases Entities PIERS **IVT** Search by receipt/file # or entity Jamie Buchinski - IVT Pilot

**Migration Agent:**  **Profited:** REQUIRED Unknown  **Licensed:** REQUIRED Unknown  **Relationship to Petitioner:**

**Additional Information:**

**BANK INFORMATION**

Bank Accounts associated with this Exchanger

Account in US	Bank Name	Bank Account No.	Notes
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

+ ADD ROW

SAVE + ADD NEW

CANCEL

SAVE



## Notes about Exchanger Entry

- You can enter multiple WAC numbers into the I-526 Receipt(s) field, or remove ones you do not need.
- After saving your entry, if you click “Associated Entities,” you will see linked RCs, NCEs, etc. These fields are already in INFACT when you link a receipt number.
- We are linking new fields with information already entered in INFACT.

## IVT Committee

- The current members of the IVT Committee are:

- (b)(7)(c) (b)(6) [Redacted] Compliance (IVT Committee Lead)
- [Redacted] Division 2
- [Redacted] Policy
- [Redacted] FDNS
- [Redacted] Division 2
- [Redacted] Compliance

# IVT Committee Activities

- The IVT Committee serves as a resource for the floor to turn to when they see IVT-related activity in their cases.
- The IVT Committee provides IVT statistical information to IPO Leadership and others, when requested.
- Members of the IVT Committee have provided presentations and briefings to IPO Leadership, divisions, teams, and working groups on IVT-associated topics.
- The IVT Committee works with our law enforcement and regulatory partners on cases and areas of mutual interest.

## IVT Committee Activities (continued)

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- Based on a memo signed by former IPO Chief Kendall in August 2019, exchangers who appear five or more times in the IVT Tracker get referred to  for TECS entry consideration. (b)(7)(e)
- The memo can be found [here](#).
- “Exchanger has performed currency swaps for five or more petitioners, and exhibits fraud indicators. Entering a TECS record would enhance a future FDNS investigation into the person or entity.”

## IVT Committee Activities (continued)

- The IVT Committee maintains a spreadsheet of all exchangers from the IVT Tracker.
- The IVT Committee compares new exchangers entered into the IVT Tracker against this spreadsheet.
- When an exchanger appears five times, the IVT Committee refers that exchanger to the (b)(7)(e)  representatives on the committee.
- The IVT Committee is working to incorporate alerts into the IVT Tracker when exchangers appear in the IVT Tracker four times.

## Some Key Authorities

- INA §§ 203(b)(5)(A)(i), (C)(i); 8 C.F.R. §§ 204.6(f)(1), (j)(2) - The Petitioner must generally invest or be actively in the process of investing at least \$1,800,000 of capital in a new commercial enterprise.
- INA 203(b)(5)(B)(i) – Sets aside visas for qualified immigrants who invest in a new commercial enterprise which will create employment in a targeted employment area (TEA).
- INA 203(b)(5)(C)(ii) – Minimum required amount of capital. Reduced (\$900,000) investment amount if investing in a targeted employment area.
- 8 CFR 204.6(f)(2) – Minimum required amount of capital reduced to \$900,000 if invested in a targeted employment area.
- 8 CFR 204.6 (j)(iii) – Investment in a new commercial enterprise located within a regional center approved for participation in the Immigrant Investor Pilot Program.

## Some Key Authorities

- 8 C.F.R. § 204.6(e): Definition of Capital
  - “Capital” means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the immigrant investor, provided that the immigrant investor is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.
    - All capital invested by an immigrant investor shall be valued at present fair market value in United States dollars.
    - Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital.
- 8 C.F.R. § 204.6(j)(3): Evidentiary requirements for demonstrating that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means.

## Some Key Authorities

- *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm. 1998): A petitioner must show that he or she has placed his or her own capital at risk, i.e., that he or she was the legal owner of the invested capital, and that he or she acquired the legal ownership of the invested capital through lawful means.
- *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm. 1998): Interpreting 8 C.F.R. § 204.6(e) as requiring that a petitioner establish the funds invested are his or her own.



## Some Key Authorities

- *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm. 1998):
  - To show that the capital was his or her own, the Petitioner must document the path of the funds.
  - A petitioner cannot establish the path of the funds merely by submitting bank letters or statements documenting the deposit of funds in the NCE and without showing if the money came from the petitioner's overseas accounts, from his/her U.S. accounts or from some other source.

**Questions?**

# Disclaimer

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