

## NAICS Codes Selections for YOUR Regional Center's I-924A

Does **YOUR RC** itself *facilitates the formation* of EB-5 investor Limited Partnerships (LPs)?  
Has YOUR RC taken on the *primary role of matching* those EB-5 LPs' funds to **others**?

Is it the case that those **others** with whom YOUR RC partners are found among the following?

- 1.) an intermediary lender who will in turn make loans to project developers who in turn will construct facilities for use by the owners/operators of *job-creating commercial enterprises*; or
- 2.) an intermediary lender who will make loans directly to owners/operators of *job-creating commercial enterprises*; or
- 3.) the project developers who construct, expand, or remodel/refurbish a facility for the owners/operators of *job-creating commercial enterprises*; or
- 4.) the owners of job-creating commercial enterprises directly.

No matter how it happens, ultimately what USCIS really wants to know about are the actual *job-creating commercial enterprises* who actually report back their successes for the EB-5 investors to prove EB-5 job creation to USCIS. This is the information that USCIS seeks to collect on the I-924A. There is an extra question to consider for pre-I-924 Regional Centers that did not previously identify any NAICS Codes. Which of YOUR Regional Center's approved "target industries/categories" gained or are in the process of gaining new jobs and how do your approved "target industries/categories" translate into NAICS Codes? Incorrect NAICS code selections may cause unwanted, pointless, & costly problems.

So, like a great many RCs, you think of yourself as being in the business of *Construction Lending*. Wrong answer! The crux of the matter is what is being constructed such as to cause the RC project financed by EB-5 investors to be closely associated with new jobs created in an approved "target industries/categories" as listed on YOUR RC's Approval Notice? Pay attention.

**NAICS Code 522292 Real Estate Credit** (& does include *Construction Lending*)

- "This U.S. industry comprises establishments primarily engaged in lending funds with real estate as collateral." The EB-5 LPs may not be described by this code.

### **8 CFR § 204.6 Petitions for employment creation aliens.**

(e) **Definitions**. As used in this section:

**Capital means** cash, equipment, inventory, other tangible property, cash equivalents, and **indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur 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 shall be valued at fair market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.

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**Invest means to contribute capital.** .....

**[Disqualify Circumstance:]** A contribution of capital in exchange for a *note, bond, convertible debt, obligation*, or any other *debt arrangement* between the alien entrepreneur and the new commercial enterprise **does not constitute** a contribution of capital for the purposes of this part.

The **prohibited debt arrangements** included as disqualifiers in the definition of *Invest* might be best understood by comparative examples.

- Suppose the EB-5 alien *loans* money to a delivery service in order to increase its delivery vehicle fleet with the *proviso* that: **if** the commercial enterprise who *borrowed* the money fails to make payments, **then** the alien reserves the right to take possession of the vehicles (*or anything else owned by the commercial enterprise*). That debt arrangement does not qualify because *the debt is secured with the assets of the commercial enterprise*.
- On the other hand, if the alien merely loans the money to, or even accepts an ownership interest in, the commercial enterprise, and said commercial enterprise happens to use the invested capital to expand its fleet and the alien has *no direct claim on the vehicles* then that's OK.

Additional disqualifying instruments include: a *note, bond, convertible debt*, or some other *obligation*. The underlying concern here is the requirement that the alien's "capital investment" is really an "at-risk" investment and not some bogus arrangement merely pretending to be an investment in order to get a green-card.

- For instance, an alien might own a large piece of very expensive heavy industrial equipment (a crane, a combine, a cement truck, an aircraft or ocean-going vessel) which the commercial enterprise needs to do or expand business. Suppose that the alien provides that "equipment" to the new commercial enterprise as an "investment". If the alien retains exclusive ownership of the equipment, is in a position to repossess the equipment, or obtains a "promissory note" in exchange for it (even if the note is not due well into the future after conditions are lifted from LPR status), then that is not a qualifying investment. Such an arrangement hidden in terms to make it part of an "exit strategy" will not cure the underlying disqualifying nature of the debt arrangement.
- Another situation might involve an alien purchasing property (real estate) which he contributes as his investment. If he hands over title to the commercial enterprise in exchange for a *proportional ownership interest in the commercial enterprise*, then it can serve as his valid EB-5 investment. If, on the other hand, he retains title to the property

(real estate) in exchange for a mortgage from that commercial enterprise (upon which he could foreclose in the future), then it cannot serve as his valid EB-5 investment.

- Lastly, the EB-5 investors infuse their funds into a developer or lending institution who turns around and finances a project that will lead to new jobs in one of the Regional Center's approved targets. This is OK and appears to apply. Report it correctly in order to avoid a hassle from USCIS.

#### **NAICS Code 522292 Real Estate Credit (& does include *Construction Lending*)**

- This U.S. industry comprises establishments primarily engaged in **lending funds with real estate as collateral**. **The EB-5 LPs may not be described by this code.**

**Project I, L.P.; Project II, L.P.; and Project III, L.P.** each needs a NAICS Code that reflects the fact that it does not merely make loans that are *secured with the property and/or assets of the job creating projects*. **522292** is not suitable to EB-5 purposes no matter how much is *seems* correct. When USCIS sees the words "lending funds with real estate as collateral" it will cause **YOUR RC** no end of nightmarish pain and suffering.

On the other hand, if the EB-5 LP's funds are handed over to "**Intermediary Lender, Inc.**" who is in the business of lending funds with real estate as collateral, then **it could be described** on the Form I-924A by NAICS Code **522292**. More on that follows below.

Instead I suggest that **YOUR RC** consider using the one of the following NAICS Codes to describe its **EB-5 LPs** in this circumstance.

#### **5222 Nondepository Credit Intermediation**

- This industry group comprises establishments, both public (government-sponsored enterprises) and private, *primarily engaged in extending credit or lending funds raised by credit market borrowing, such as issuing commercial paper* or other debt instruments or by borrowing from other financial intermediaries. Within this group, industries are *defined on the basis of the type of credit* being extended.

#### **5223 Activities Related to Credit Intermediation**

- This industry group comprises *establishments primarily engaged in facilitating credit intermediation* by performing activities, such as *arranging loans by bringing borrowers and lenders together* and clearing checks and credit card transactions.

While I have not seen the Limited Partnership Agreements, I suspect that **YOUR RC** is the General Partner and the EB-5 investors are the Limited Partners in these LPs.

It is likely that YOUR RC's EB-5 money is being invested into (loaned to) "Intermediary Lender, Inc." This only gets YOUR RC part way through I-924A EB-5 Compliance reporting. It is insufficient information. This tells USCIS only the beginning of the EB-5 money's journey that will result eventually result in jobs.

USCIS wants to know **where the jobs have been or will be created** in accordance with the RC's parameters (within the scope of the Regional Center) as identified in your approval notice. Supposing that YOUR RC's Approval Notice predates the Form I-924 and as such, inclusion of NAICS codes was not mandated and nor were they voluntarily identified already. However, a certain number, perhaps nine (9), specific target industries were identified. Of those nine target industries, some could most probably be covered by more than one broadly selected NAICS Code category.

USCIS issued some small amount of guidance in which it has settled for a NAICS Code consisting of only four (4) digits. I agree that this level is sufficient for the dual purposes of *putting USCIS on notice* of intended areas of investment, *i.e.*, the "kinds of commercial enterprises" to receive alien's funds (at the point of the I-924A, this was accomplished previously), yet still allows the desired flexibility to react to the market conditions, flexibility of wiggle room. The previously submitted "**general proposal**" based on "**general predictions**" allowed by the statute [8 USC § 1153 Note] *must have been presented with sufficiently detailed information* "**concerning the kinds of commercial enterprises that will receive capital from aliens**" as allowed and envisioned all in that controlling statute in order to attain approval. There is no need to be more specific than the four digit NAICS Code at this time.

**The question remains, what is actually being built? In which category does it belong?**

Suppose that the pre-I-924 USCIS Approval states:

"The Regional Center for EB-5 Immigrant purposes shall focus investments into new commercial enterprises in the following nine (9) target industry economic clusters:

1. Medical Offices
2. Hotel
3. Restaurant
4. Commercial Offices
5. Retail
6. Residential
7. Entertainment and Recreation Facilities
8. Light Industrial/Warehouse Facilities
9. Conference and Exhibition Center Facilities"

**Which of the nine target industries will see new jobs created? The answer to this question will guide the answers needed on the I-924A.**

IF at this time, only ONE of THREE EB-5 LP has actually invested anything yet, YOUR RC only needs to report on that ONE LP on the current I-924A. It would be quite promising if two more LPs have actually formed but if none of their funds have been handed over to anyone yet, save them for later as that will demonstrate a pattern of growth and will serve to soften the blow that any future “dry spell” may have.

As for Intermediary Lender, Inc., if it is the actual builder or developer, what is it building or developing that falls into one of YOUR RC’s nine approved target industries? The NAICS code selected is somewhat vague and the mere category of “Construction of Buildings” is **not** on the Approval Notice in this example.

The example pre-I-924 USCIS Approval Notice includes: “Light Industrial/Warehouse Facilities”. How would this be translated into NAICS Codes?

### **236 Construction of Buildings**

- The Construction of Buildings subsector comprises establishments primarily responsible for the construction of buildings. The work performed may include new work, additions, alterations, or maintenance and repairs. The on-site assembly of precut, panelized, and prefabricated buildings and construction of temporary buildings are included in this subsector. Part or all of the production work for which the establishments in this subsector have responsibility may be subcontracted to other construction establishments—usually specialty trade contractors.

Establishments in this subsector are classified based on the types of buildings they construct. This classification reflects variations in the requirements of the underlying production processes.

### **2362 Nonresidential Building Construction**

- This industry group comprises establishments primarily responsible for the construction (including new work, additions, alterations, maintenance, and repairs) of nonresidential buildings. This industry group includes nonresidential general contractors, nonresidential operative builders, nonresidential design-build firms, and nonresidential project construction management firms.

### **23621 Industrial Building Construction**

- See industry description for [236210](#).

For example: “Assembly plant construction”

On the other hand:

- 236220 Warehouse construction (e.g., commercial, industrial, manufacturing, private)
- 236220 Warehouse, commercial and institutional, construction
- 236220 Warehouse, industrial, construction

### **236220 Commercial and Institutional Building Construction**

- This industry comprises establishments primarily responsible for the construction (including new work, additions, alterations, maintenance, and repairs) of commercial and institutional buildings and related structures, such as stadiums, grain elevators, and indoor swimming facilities. This industry includes establishments responsible for the on-site assembly of modular or prefabricated commercial and institutional buildings. Included in this industry are commercial and institutional building general contractors, commercial and institutional building operative builders, commercial and institutional building design-build firms, and commercial and institutional building project construction management firms.

Cross-References. Establishments primarily engaged in--

- Constructing structures that are integral parts of utility systems (e.g., storage tanks, pumping stations) or are used to produce products for these systems (e.g., power plants, refineries)--are classified in Industry Group [2371](#), Utility System Construction, based on type of construction project;
- Performing specialized construction work on commercial and institutional buildings, generally on a subcontract basis--are classified in Subsector [238](#), Specialty Trade Contractors; and
- Constructing buildings on their own account for rent or lease--are classified in Industry Group [5311](#), Lessors of Real Estate.

The example Approval Notice also lists the rather vague category of “Medical Offices”. How will that translate into NAICS Codes?

2007 NAICS Key Word Search at:

<http://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2007>

#### **Search results for: medical office**

Number of records found: 6

<a href="#">541611</a> <b>Medical office</b> management consulting services or consultants
<a href="#">561110</a> <b>Medical office</b> management services

621111 MDs' ( <b>medical</b> doctors, except mental health) <b>offices</b> (e.g., centers, clinics)
621111 <b>Medical</b> doctors' (MDs, except mental health) <b>offices</b> (e.g., centers, clinics)
621112 MDs' ( <b>medical</b> doctors), mental health, <b>offices</b> (e.g., centers, clinics)
621112 <b>Medical</b> doctors' (MDs), mental health, <b>offices</b> (e.g. centers, clinics)

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