



*How the EB-5 Reform  
and Integrity*

# Act Has Reshaped Capital Formation



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Since the passage of the EB-5 Reform and Integrity Act of 2022 (RIA), the industry has largely focused on new filing requirements and expanded compliance obligations. However, the RIA has had a more practical effect: it has changed how market participants share risk and accountability across the EB-5 ecosystem.

In the post-RIA environment, capital formation increasingly emphasizes disciplined processes, clear disclosures, and closer attention to investor suitability.

Project sponsors must more carefully examine their offerings before going to market, as they now face closer scrutiny and must manage investor expectations over extended time horizons.

These changes reflect the cumulative impact of increased regulatory oversight, longer adjudication timelines in a transparent global capital environment. At the same time, EB-5 investors have become more sophisticated and attentive to both immigration outcomes and capital risk.

How participants raise, vet, and deploy capital directly influences which projects successfully secure funding. The RIA has brought these mechanics into clearer view, raising the bar for how offerings are structured and reviewed. Understanding these changes is essential for regional centers and developers seeking greater clarity and predictability in the post-RIA environment.

## I. EXPANDING ACCOUNTABILITY IN POST-RIA OVERSIGHT

Many view the RIA as merely imposing additional oversight on a regulated program. More fundamentally, the RIA redistributed accountability among market participants.

Under earlier frameworks, compliance often relied on generalized disclosures. Sponsors and promoters emphasized broad risk disclosures, placing limited focus on investor comprehension or the realism of project assumptions.

The post-RIA reality is different. Developers face expanded reporting obligations; regional centers carry enhanced supervisory duties; and foreign migration agents operating in connection with U.S. offerings face heightened scrutiny under applicable U.S. securities laws. There is now a greater emphasis on clarity and investor understanding. Participants must communicate material risks and their potential impact, elevating the importance of structured diligence and suitability review, particularly for offerings that rely on Regulation S.

As accountability has broadened across the EB-5 ecosystem, market participants have naturally sought ways to manage their responsibilities more effectively.

## II. CAPITAL FLOW AND THE ROLE OF REGULATED INTERMEDIARIES

As risk allocation has shifted, capital formation has followed a predictable path. Capital increasingly gravitates toward intermediaries capable of imposing process discipline, conducting structured diligence, and operating within defined supervisory frameworks.

This shift is less about marketing reach and more about risk management.

For registered broker-dealers participating in EB-5 offerings, Regulation Best Interest (Reg BI) has reinforced the need to align the investor profile with project risk, capital structure, and the quality of disclosures. In practice, this has widened the gap between projects that attract investor interest and projects that can move forward.

That distinction is not merely semantic. A financeable project can withstand structured review and due diligence across multiple factors, including capital stack integrity, timeline realism, job creation methodology, and disclosure coherence. These elements are now evaluated together rather than in isolation. Weaknesses in one area can affect the overall assessment, even when investor demand exists.

As a result, capital formation has become more iterative. Project sponsors often refine transaction details through multiple rounds of review before being introduced to investors. While this process can extend time to market, it also reduces the likelihood of downstream issues driven by misaligned expectations or incomplete disclosure.

### Oversight Mechanisms: Fund Administrators and Audits

Another significant development shaping post-RIA capital formation is the expanded role of independent financial oversight mechanisms mandated by statute.

Section 203(b)(5)(Q) of the RIA amended the Immigration and Nationality Act to require that new commercial enterprises either engage a third-party fund administrator or undergo annual independent financial audits. This requirement reflects a broader policy objective: oversight of EB-5 capital is no longer limited to disclosure alone.

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The RIA introduces two distinct oversight pathways: (i) retrospective verification through independent financial audits and (ii) proactive monitoring using third-party fund administrators.

Where a fund administrator is engaged, the statute requires that the fund administrator monitor the flow of funds and, in most cases, act as a co-signatory on escrow and operating accounts, with authority over disbursements. In practice, this function complements the role of escrow agents, who typically oversee the inbound phase of investor funds. Fund administrators, by contrast, provide oversight during the outbound phase, after capital leaves escrow and enters the project.

While some service providers can offer both escrow and fund administration functions, the statute requires a fund administrator to serve as a co-signatory on operating accounts. For projects that choose not to use a fund administrator, the RIA permits annual independent audits as the alternative compliance path. Audits are retrospective in nature, while fund administration introduces proactive controls designed to prevent improper disbursements before they occur. In practice, some market participants can choose to employ both forms of oversight, using audits to provide additional retrospective verification alongside ongoing fund administration. Although not mandated by the RIA, this approach reflects a broader trend toward layered oversight in response to longer investment timelines and heightened sensitivity to capital preservation.

### Impact on Capital Structures and Market Discipline

Beyond compliance, these oversight mechanisms have had a secondary effect on capital formation practices. Fund administrators, escrow agents, and auditors who work across multiple EB-5 transactions develop visibility into capital structures across the market. Over time, this visibility allows them to identify outlier capital stacks that may present heightened risk to investors, such as excessive leverage or minimal developer equity.

While securities counsel appropriately disclose these risks in offering documents, financial oversight professionals play a different role. By conditioning or authorizing the movement of funds, they introduce an additional layer of discipline that reinforces transparency and consistency. As a result, capital structures have gradually become more standardized and more conservative, benefiting investors while also strengthening overall market integrity.

### Investor Behavior and Issuer Response

Investor behavior reinforces these dynamics. Many EB-5 investors now evaluate opportunities alongside other global residence and investment options. As adjudication timelines lengthen and capital becomes less liquid, investors place greater weight on governance, oversight, and the credibility of the parties involved.

Issuer behavior has evolved in response. Developers and regional centers increasingly engage regulated intermediaries earlier in the structuring process, assisting in project evaluation and refinement before market entry. This approach tends to produce offerings that better align with investor expectations over extended time horizons.

The result is a more selective capital formation environment: fewer projects reach active fundraising stages, but those that do can withstand scrutiny throughout the investment life cycle.

### Investor Profile Shifts and Their Impact on Capital Formation

Recent changes introduced by the RIA have also influenced EB-5 capital formation by reshaping who participates in the program and how investors engage with the market. Provisions such as concurrent filing and visa set-asides for some project categories have expanded access for non-immigrant visa holders already present in the United States. As long as visa availability remains open, these investors can pursue EB-5 while filing for adjustment of status, employment authorization, and travel permission, which has increased participation among specific investor profiles.

In practice, this has led to greater interest from investors, such as students and professionals on temporary visas. These investors often approach EB-5 with a higher degree of familiarity with U.S. regulatory systems and greater expectations around process, documentation, and comparability. As a result, their participation has further accelerated demand for structured intermediation and consistent review standards.

These shifts have also diversified how investors enter the EB-5 marketplace. In some cases, investors conduct independent research and identify projects before engaging with intermediaries. Others rely on international referral networks outside traditional advisory channels. In both scenarios, intermediaries actively verify eligibility, confirm compliance requirements, and ensure the selected investment satisfies program criteria.

The increased participation of these investor groups has, in turn, heightened attention to how investment options are presented and evaluated. Some capital formation models concentrate investor sourcing and project selection within a single organizational framework, while others separate sourcing from evaluation and oversight. These structural differences influence how investors assess choice, independence, and comparability, particularly in a market where timelines are longer, and capital remains at risk for extended periods.

As investor profiles continue to evolve, these dynamics place additional emphasis on clarity of roles and consistency of process. They also help explain why capital formation increasingly favors structures that accommodate investor sophistication, regulatory



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expectations, and longer investment horizons, without relying on informal or relationship-driven decision-making.

### III. FROM LEGACY DISTRIBUTION MODELS TO STRUCTURED OVERSIGHT

These changes have also reshaped traditional distribution models.

Historically, networks of overseas migration agents and third-party promoters raised a significant portion of EB-5 capital, focusing primarily on investor sourcing. While effective at generating interest, these models often operated with limited integration into offering structuring, suitability analysis, or supervisory oversight.

In the post-RIA environment, such arrangements have become more challenging to sustain. As disclosure expectations expand and accountability increases, reliance on distribution channels that lack consistent oversight introduces additional risk for issuers and regional centers.

At the same time, investors have become more cautious. Distribution reach alone is no longer sufficient to maintain confidence. Extended timelines, heightened sources of funds scrutiny, and reduced liquidity have led investors to place greater emphasis on governance and process quality.

What has emerged is not an abrupt displacement, but a gradual recalibration. Global intermediary networks continue to play a significant role in identifying eligible investors. Successful models, however, increasingly separate investor sourcing from project evaluation and capital oversight, integrating overseas reach with regulated diligence and clearly defined accountability.

Another factor contributing to this recalibration is how firms present investment options to prospective investors. In some distribution models, longstanding sponsor relationships tightly link investor sourcing and project selection, which naturally narrows the range of offerings presented. Other models separate sourcing from evaluation, allowing investors to consider multiple projects

that have undergone standardized diligence and review under consistent frameworks. As investors become more sophisticated and timelines lengthen, these structural differences increasingly shape expectations around choice, comparability, and decision-making, and, in turn, influence capital formation outcomes.

Where that integration is absent, capital formation becomes more fragile. Over time, distribution models that cannot adapt to these expectations risk becoming increasingly peripheral.

### IV. PRACTICAL IMPLICATIONS FOR MARKET PARTICIPANTS

For developers, these shifts highlight the importance of incorporating capital formation considerations earlier in project planning. Decisions related to structure, disclosure, and assumptions increasingly shape a project's ability to move forward in today's environment.

For regional centers, the post-RIA framework elevates governance, documentation, and supervisory consistency. The ability to demonstrate disciplined oversight across projects and investor communications has become a meaningful differentiator.

For investors, the evolving framework underscores the importance of understanding not only the underlying project but also the processes and oversight structures that govern capital deployment and ongoing compliance.

More broadly, these developments highlight the importance of alignment across the EB-5 ecosystem. Capital formation outcomes increasingly depend on how well developers, regional centers, intermediaries, and promoters understand their respective roles and responsibilities. Misalignment at any stage can introduce friction, delay fundraising efforts, or elevate regulatory risk.

Across all participants, the common theme is a shift away from volume-driven fundraising toward discipline-driven capital formation.

## CONCLUSION

The RIA has reshaped the program in ways that extend beyond compliance mechanics. By reallocating risk and accountability, it has altered how market participants make capital formation decisions and which projects eventually reach the market.

These changes reflect a broader maturation of the EB-5 ecosystem. As regulatory expectations increase and global capital mobility becomes more constrained, capital formation practices increasingly favor transparency, robust governance, and disciplined processes.

Understanding these dynamics is essential for market participants seeking to navigate the post-RIA environment and align their practices with evolving investor and regulatory expectations. ■

