



The Real Estate Roundtable

Reauthorizing Federal Terrorism Insurance

Capital and Credit

Summary

Today, the risk of terrorism remains as strong as ever. According to the Office of the Director of National Intelligence (ODNI) 2026 Annual Threat Assessment (ATA), a range of terrorist groups, especially those motivated by Islamist ideology, continue to pose threats to freedom and American lives here at home and abroad. In addition, state and nonstate actors have the capability to directly strike the homeland. Addressing these complex and evolving threats is a priority for the commercial facilities sector and the commercial property industry in particular.

For more than two decades, the national terrorism insurance program established by the Terrorism Risk Insurance Act (TRIA) has made it possible for businesses to purchase the terrorism risk coverage that the private market alone cannot provide. RER supports a long-term reauthorization of TRIA and urges prompt congressional action to renew this critical program in advance of its expiration on Dec. 31, 2027.

Key Takeaways

- Terrorism risk is a national security challenge that requires a federal solution.
- TRIA has successfully maintained market stability for over 20 years at minimal taxpayer cost.
- Without TRIA, terrorism risk coverage would become scarce or unaffordable, threatening economic resilience and recovery.
- Should a terrorist attack occur without adequate coverage in place, underinsured businesses will face the risk of ruin, with potentially catastrophic local economic effects, and the federal government will face significant pressure to hastily assemble financial assistance to underinsured victims.
- Early reauthorization will ensure continued business confidence and prevent market disruption as the program approaches its 2027 expiration.
- To that end, the *TRIA Program Reauthorization Act of 2026* (H.R. 7128) was advanced by the House Financial Services Committee on Jan. 22, 2026, with an overwhelming 51–2 bipartisan vote. The bill was officially reported to the full House for consideration on March 19, 2026. On April 27, 2026, a broad bipartisan group led by Sens. Dave McCormick (R-PA), Tina Smith (D-MN), Thom Tillis (R-NC), and Ruben Gallego (D-AZ) introduced the companion Senate version. Both bills aim to extend the Terrorism Risk Insurance Program for an additional seven years, moving the expiration date from Dec. 31, 2027, to Dec. 31, 2034.

Background

Terrorism Risk Requires a Federal Insurance Backstop

- The nation's federal terrorism risk insurance program, established by TRIA and its subsequent extensions, is scheduled to sunset at the end of 2027. Because a viable private sector marketplace for this coverage does not yet fully exist, the program's expiration would leave policyholders and taxpayers exposed and unprotected—just as they were after 9/11.
- In the aftermath of 9/11, it was virtually impossible for commercial policyholders to secure coverage against terrorism risk; however, banks and other capital providers would not provide financing without it. According to an RER survey, over \$15 billion in real estate-related transactions were stalled or even canceled because of a lack of terrorism risk insurance in the 14 months between 9/11 and TRIA's enactment.
- In 2002, RER helped establish the Coalition to Insure Against Terrorism (CIAT), a broad coalition of commercial insurance consumers formed immediately after 9/11.
- CIAT's diverse membership represents key elements of the commercial facilities sector, including



Reauthorizing Federal Terrorism Insurance

The Real Estate Roundtable

commercial real estate, banking, energy, construction, hotel and hospitality, higher education, manufacturing, transportation, entertainment, the major league sports and racing, as well as public sector buyers of insurance.

- The *TRIA Program Reauthorization Act of 2026* (H.R. 7128) was introduced by Rep. Mike Flood (R-NE) on Jan. 16, 2026. On Jan. 22, 2026, the House Financial Services Committee voted 51–2 to advance the bill. The committee officially reported the bill to the full House on March 19, 2026 (H. Rept. 119-561).
- Sens. Dave McCormick (R-PA), Tina Smith (D-MN), Thom Tillis (R-NC), Ruben Gallego (D-AZ), and Bill Hagerty (R-TN) are leading the reauthorization of TRIA in the Senate and have introduced companion legislation.
- Through CIAT, RER is actively advocating for a long-term reauthorization of the [Terrorism Risk Insurance Act \(TRIA\)](#), working with Congress and the Department of the Treasury. Our advocacy primarily focuses on ensuring the **long-term stability** and **affordability** of terrorism insurance for commercial policyholders. CIAT submitted comments for the record to the Subcommittee on Housing and Insurance, emphasizing that terrorism continues to pose a "clear and present danger" to the U.S. economy and infrastructure.
- CIAT's [statement](#) to the Subcommittee stressed the importance of enacting a long-term reauthorization well in advance of the sunset date.
- The Government Accountability Office (GAO), President's Working Group on Financial Markets, and other terrorism risk observers have consistently concluded that "acts of terrorism" are uninsurable risks.¹
- The nation's current terrorism risk insurance program provides continuity to the marketplace so that policyholders—American businesses, of all types, both large and small—are able to obtain the insurance coverage they need to manage terrorism risk, grow, create jobs, and protect the workers they employ.
- The program operates at almost no cost to taxpayers while minimizing federal exposure through mandatory recoupment mechanisms.

Recommendations

Reauthorize TRIA: TRIA has been a tremendous success. It is a comprehensive plan to provide for economic continuity and recovery in the wake of a major terrorist attack, while simultaneously protecting taxpayers via a mandatory recoupment mechanism. We urge Congress to promptly enact a long-term reauthorization of this important program.

- **Allowing the program to sunset would threaten economic and homeland security.** Should the program be allowed to sunset, we would expect a period of profound economic slow-down—posing a very real threat to our economic and homeland security. Without the ability to maintain adequate insurance coverage, a business or a property owner's capacity to finance is materially impaired and its liquidity is jeopardized.
- **The absence of terrorism insurance had significant economic and employment impacts.** Due to deferred construction investment, the White House Council of Economic Advisors estimated that there was a direct loss of 300,000 jobs during the 14 months between 9/11 and TRIA's enactment. In short, the lack of availability of terrorism insurance for commercial policyholders had a very real and far-reaching impact on the economy.
- **Federal analysis confirms TRIA's ongoing effectiveness.** RER concurs with the 2024 Department of Treasury Federal Insurance Office's *Report on the Effectiveness of the Terrorism Risk Insurance Program*, which concluded that the current terrorism risk insurance program remains effective and that private reinsurance capacity is insufficient to replace the federal backstop.
- **Letting TRIA lapse would destabilize the market and limit coverage.** Without TRIA in place, the availability of terrorism risk coverage will diminish, or insurers will simply stop offering the coverage altogether. CIAT members have seen evidence of this each time that TRIA has been up for renewal (most recently in 2019).

¹ *Terrorism Risk Insurance: Report of the President's Working Group on Financial Markets*, September 2006, p.12; *Terrorism Insurance: Measuring and Predicting Losses from Unconventional Weapons Is Difficult, but Some Industry Exposure Exists*, United States Government Accountability Office, September 2006, p. 4.

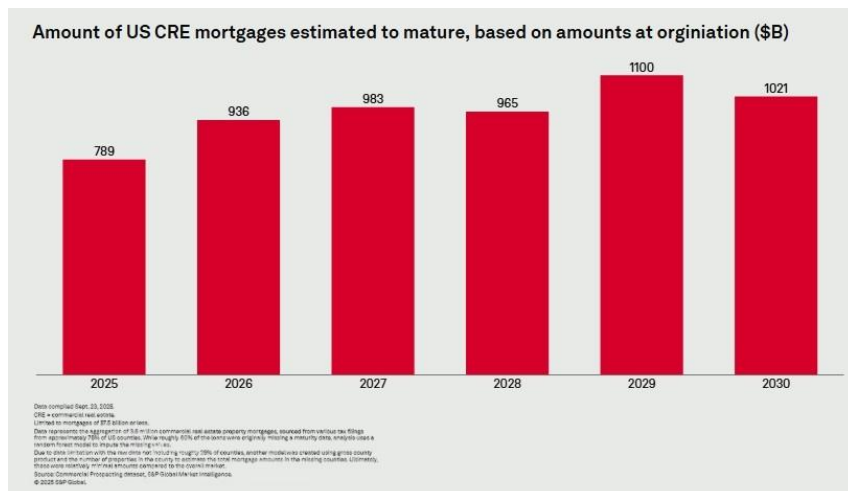


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Addressing the Wave of Maturing CRE Debt and Pro-Cyclical Regulatory Policy

Capital and Credit

Summary



Source: S&P Global

Nearly \$983 billion of U.S. commercial real estate mortgages are estimated to mature in 2027. To help rebalance the wave of maturing loans, it is important to advance measures that will encourage additional capital formation and loan restructuring.

As urged by RER, a policy statement—[Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts](#)—issued by regulatory agencies encouraging financial institutions to work constructively with creditworthy borrowers on CRE loan workouts is helping to see loans through the current environment. Many of these loans require additional equity, and borrowers still need time to restructure this debt. Capital formation is vital to help restructure maturing debt and fill the equity gap. It is also important to avoid pro-cyclical regulatory actions.

Key Takeaways

- Providing banks with the flexibility to work constructively with their borrowers during times of economic stress has led to **billions of dollars of loan restructurings and reduced undue stress in bank loan portfolios**.
- The largest U.S. banks' capital and liquidity levels have grown dramatically since the original *Basel III* standards were implemented in 2013 in response to the 2008 Global Financial Crisis. **Since 2009, Tier 1 capital has increased by 56 percent and Common Equity Tier 1 capital has tripled.** Today, as the Federal Reserve recently observed, the U.S. "banking system is sound and resilient, with strong capital and liquidity."²

Background

Basel III Endgame

- The original *Basel III Endgame* proposal would have increased capital requirements for the largest banks by as much as 20 percent—carrying significant economic cost without clear benefits to the economy.

² <https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf>



Addressing the Wave of Maturing CRE Debt and Pro-Cyclical Regulatory Policy

The Real Estate Roundtable

- Based on the resounding opposition to the proposal from industry participants, U.S. banking regulators have formally rescinded the original 2023 *Basel III Endgame* proposal and issued a significantly revamped re-proposal. This new version represents a "Mulligan" that shifts away from broad, punitive capital increases toward a more risk-sensitive framework designed to keep lending within the regulated banking system.
- On March 19, 2026, the Federal Reserve, FDIC, and OCC jointly introduced three new proposals to modernize bank capital rules. While the 2023 version proposed a 16-19 percent increase in capital, the 2026 re-proposal is estimated to actually reduce overall system-wide capital requirements by approximately \$87.7 billion:
 - GSIBs (Category I & II): Estimated ~4.8 percent reduction in Common Equity Tier 1 (CET1) requirements.
 - Large Regional Banks (Category III & IV): Estimated ~5.2 percent reduction.
 - Small Banks: Estimated ~7.8 percent reduction

Recommendations

Take a Balanced Approach to Setting Capital Requirements: The re-proposal is viewed by many industry participants as a "pivotal step" toward a more balanced approach for both residential and commercial sectors.

- The new rules aim to lower the high capital charges originally proposed for CRE loans, which experts previously feared would cause a severe credit squeeze.
- By lowering the "cost of capital" for banks, the rules make it more attractive for them to hold CRE assets on their balance sheets, aiding owners who need to refinance maturing debt.
- For residential real estate, the re-proposal adopts more granular risk weights based on Loan-to-Value (LTV) ratios, lowering capital requirements for many mortgages and encouraging banks to remain active in home lending.
- The requirement to deduct Mortgage Servicing Assets (MSAs) from capital has been removed and replaced with a flat 250 percent risk weight, incentivizing banks to keep mortgage servicing in-house rather than offloading it to non-banks.
- The framework now prioritizes alignment with international standards while tailoring rules to U.S. market realities, such as recognizing private mortgage insurance as a credit enhancement.
- The public comment window is open until June 18, 2026. RER is working on its submission and welcomes member input.

Support Robust Capital Formation: Additional capital is called for to help restructure and transition the ownership and refinancing of commercial real estate from a period of low rates to a time of higher rates. Enacting policies that will encourage robust capital formation is imperative.



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Commercial Insurance Coverage in an Evolving Threat Environment

Capital and Credit

Summary

The proliferation of natural catastrophe threats has raised concerns about commercial insurance coverage for real estate. These concerns have highlighted the lack of—and need for—insurance capacity and various lines of commercial insurance. Risks from natural disasters like floods, hurricanes, wildfires, hail, tornadoes, and drought cost the U.S. billions of dollars each year. Even if policyholders are able to find coverage for these various lines, prices are increasing dramatically. A lack of adequate coverage will lead to economic uncertainty, harm stakeholders, and undermine the growth of communities.

While commercial property rates are finally stabilizing or even decreasing for high-quality risks, casualty and liability lines continue to face significant upward pressure. Average rates are trending downward by 4.6 percent, with some well-maintained portfolios seeing decreases of 10 percent to 20 percent. A dominant driver for liability lines includes jury awards exceeding \$10 million, which have increased by over 300 percent since 2020, particularly affecting the hospitality and real estate sectors.

Spending legislation passed this year has reauthorized the National Flood Insurance Program (NFIP) through Sept. 30, 2026.

RER, along with its industry partners, continues to work constructively with policymakers and stakeholders to address market failure and enact a long-term reauthorization of an **improved NFIP**.

Key Takeaways

- After years of atypical weather patterns and historic losses from natural catastrophes attributed to climate change, economic damages have tripled in cost from just 10 years ago.
- Severe storms have surpassed hurricanes as the costliest insured weather peril.
- Properties previously considered low-risk are now being re-evaluated due to changes in drainage pressure and local infrastructure.
- Due to cumulative construction inflation (up nearly 40 percent since 2020), many properties are currently insured below their actual replacement value.
- Commercial property owners continue to take steps to mitigate the risk of natural disasters and potentially lower their insurance costs.

Background

National Flood Insurance Program (NFIP)

- Floods are the most common, costliest natural peril in the U.S. The NFIP was enacted in 1968 due to a lack of private insurance and increases in federal disaster aid.
- The Program is administered by the Federal Emergency Management Agency (FEMA) and is essential for homeowners, renters, and small businesses in affected areas.
- Under the NFIP, commercial property flood insurance limits are low—\$500,000 per building and \$500,000 for its contents. NFIP has approximately 5 million total properties, and only 6.7 percent are commercial. Nearly 70 percent of NFIP is devoted to single-family homes and 20 percent to condominiums. In the total program, 80 percent pay actuarial sound rates; however, in the commercial space, only 60 percent pay actuarial sound rates.
- NFIP faces long-standing solvency and flood mapping challenges that require structural reform. The unintended negative outcomes generated by the NFIP continue to grow and are now spreading to GSEs (government-sponsored enterprises) Fannie Mae and Freddie Mac.



Commercial Insurance Coverage in an Evolving Threat Environment

The Real Estate Roundtable

- Since 2017, Congress has extended the NFIP's authorization 35 times.
- As policymakers continue to debate potential changes and improvements to the program, their challenge is to find a balance between improving the financial solvency of the program, reducing taxpayer exposure, and addressing affordability concerns.

Recommendations

Enact a Long-Term Reauthorization of NFIP: The level of flood damage from recent storms makes it clear that FEMA needs a holistic plan to prepare the nation for managing the cost of catastrophic flooding under the NFIP.

- RER and its partners support a long-term reauthorization of an improved NFIP that helps property owners and renters prepare for and recover from future flood losses. NFIP is **essential** for residential markets, overall natural catastrophe insurance market capacity, and the broader economy.

Increase Private Market Participation: By permitting certain private issue insurance policies to satisfy the NFIP's "mandatory purchase requirement" for properties in flood plains financed by loans from federally guaranteed institutions, commercial property owners would have the ability to "opt out" of mandatory NFIP commercial coverage if they have adequate private coverage outside the NFIP to cover financed assets.

- Lenders typically require base NFIP coverage, and commercial owners must purchase Supplemental Excess Flood Insurance for coverage above the NFIP limits. The NFIP's low commercial limits make it problematic for most commercial owners.
- As a result, RER has been seeking a **voluntary exemption** for mandatory NFIP coverage if property owners have flood coverage from commercial insurers.



Summary

The Corporate Transparency Act (CTA) requires certain companies to disclose information about their beneficial owners to the Treasury Department's Financial Crimes Enforcement Network (FinCEN). The goal was to create a national directory of beneficial owners to curb illicit finance, drug cartels, terrorist groups, and other harmful activities.

In March 2025, the Treasury Department announced it will suspend enforcement of the CTA for U.S. domestic reporting companies and their beneficial owners, focusing solely on foreign entities. This means U.S. commercial real estate entities are now exempt from providing beneficial ownership information to FinCEN.

FinCEN intends to issue new rules to narrow the scope of the CTA's reporting requirements to only apply to foreign-formed companies that have registered to do business in the U.S.

The Real Estate Roundtable (RER) continues to work with policymakers in support of a balanced approach that would inhibit illicit money laundering activity without the imposition of costly reporting requirements for real estate investors.

Key Takeaways

- Treasury's suspension of CTA enforcement for domestic entities significantly reduces compliance burdens for real estate businesses that rely on LLC structures.

Background

CTA Requirements

- A beneficial owner refers to an individual who owns at least 25 percent of an entity or indirectly exercises "substantial control" over it.
- The CTA amended the Bank Secrecy Act to require corporations, limited liability companies, and similar entities to supply three categories of information: information about the entity, beneficial ownership information (BOI), and information about the company applicants involved in forming the entity.
- The CTA authorizes FinCEN to collect and disclose BOI to authorized government authorities and financial institutions, subject to effective safeguards and controls. The statute requires the submission of regular reports to the federal government that include a litany of sensitive personal identifiers of the owners, senior employees, and/or advisors of covered entities.
- While this disclosure obligation began on Jan. 1, 2024, the U.S. Court of Appeals for the Fifth Circuit vacated the stay on Dec. 26, 2024 and reinstated the nationwide preliminary injunction enjoining enforcement of the CTA and the Reporting Rule, including the impending reporting deadlines.
- On March 2, 2025, the U.S. Treasury Department announced it would suspend enforcement of the CTA against U.S. citizens and domestic reporting companies, and later issued an interim final rule through FinCEN that eliminated their reporting requirements entirely.

Recommendations

Support Measures that Encourage Capital Formation: RER, along with its coalition partners, repeatedly raised concerns about the regulatory burden posed by the CTA and has supported the court challenges to the law. We are pleased by the Treasury's constructive action to exempt domestic reporting companies.

- Although the CTA is intended to provide support for law enforcement investigations into shell companies engaged in money laundering, tax evasion, and terrorism financing, it places many **costs and legal burdens on small businesses**, especially those in the real estate industry.



Beneficial Ownership & Corporate Transparency Act

The Real Estate Roundtable

- RER welcomes the Treasury's action to exempt domestic reporting companies and supports efforts to thwart illegal money laundering in real estate, while encouraging policymakers to find a balanced approach that does not unfairly burden law-abiding businesses and encourages capital formation.



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"Safeguarding Rule" Withdrawal

Capital and Credit

Summary

In 2023, the U.S. Securities and Exchange Commission (SEC) proposed changes to require SEC-registered investment advisers to put all their clients' assets, including all digital assets like Bitcoin and certain physical assets like real estate, with "qualified custodians." The proposal would have required a written agreement between custodians and advisers, expanded the "surprise examination" requirements, and enhanced recordkeeping rules. These rules were originally designed for digital assets. The proposal's "reasonable" safeguarding requirements are ambiguous as applied to real estate. Furthermore, the SEC's release contained an inaccuracy regarding the way deeds evidencing ownership of real estate are recorded. RER opposed the proposed rule on real estate and pushed for an exception for real estate.

Following extensive industry pushback, particularly regarding its application to real estate, digital assets, and the high compliance costs for small firms, the SEC issued a notice on June 12, 2025, withdrawing the proposal.

Key Takeaways

The withdrawal of the SEC's proposed "Safeguarding Rule" in June 2025 is a major relief for the real estate industry. The proposal would have categorized physical real estate as a client "asset" requiring a qualified custodian, a requirement industry groups called "preposterous" and "unworkable."

- **Avoidance of Impossible Custody:** Real estate assets cannot be physically "held" in a bank vault or brokerage account. Ownership is instead maintained through deeds and mortgages recorded at local government offices. The withdrawal prevents a conflict where advisers would have been required to place these physical assets with custodians who were often unwilling or unable to accept them.
- **No Mandatory Independent Verification for Every Transaction:** The proposed rule would have required an independent public accountant to verify **every purchase, sale, or transfer** of a real estate asset within one business day. This would have introduced significant delays and high costs to real estate closings.
- **Preservation of Existing Safeguards:** Real estate remains governed by the original 2015 Custody Rule, which generally does not apply to a real estate partnership's physical assets unless the partnership itself is an advisory client. Existing state and local laws for recording deeds and mortgages continue to serve as the primary protection against misappropriation.
- **Reduced Compliance Costs for Smaller Advisers:** Smaller real estate investment firms avoided the "death by a thousand cuts" described by the RER, including expensive new surprise audits and written custodial agreements that would have been required under the expanded scope.
- Capital formation is vital when credit markets tighten to restructure maturing debt.

Background

Current Regulatory Status

- The SEC has shifted toward its **"ACT" (Advance, Clarify, Transform) framework**, which prioritizes clear, workable rules over the broad "catch-all" approach of the withdrawn safeguarding proposal. For real estate advisers, this means a return to traditional fiduciary duties and standard bookkeeping without the specialized custodial mandates originally proposed in 2023.
- The **SEC Custody Rule (Rule 206(4)-2)**, as established in its 2015-compliant framework, applies to any Registered Investment Adviser (RIA) that has "custody" of client funds or securities. For **Real Estate Investment Trusts (REITs)** and their advisers, compliance primarily centers on how the entity is structured—specifically whether it is treated as a **pooled investment vehicle**.



Summary

On Sept. 19, 2025, the White House released an [Executive Order](#), [fact sheet](#), and [website](#) announcing Gold and Platinum "Trump Cards." The program is intended to grant permanent residency in the U.S. for immigrants with high net worth. The administration's announcement directs the Secretaries of Commerce, State, and Homeland Security to coordinate and establish a program that expedites "green cards" issued under the EB-1 and EB-2 visa categories for foreign nationals who make a "significant financial gift to the Nation."

This new green card program raises important questions:

- Will Trump Cards appeal to overseas investors and American employers as viable options for permanent residency in the U.S.?
- Will Trump Cards impact the separate EB-5 "regional center" program, which confers green cards on foreign investors who make capital commitments to finance job-creating projects in the U.S.?
- Will Trump Cards speed up backlogs for visas—particularly in markets like China, India, and other countries—where investors must wait years to advance in the process to get a green card?

Key Takeaways

- The new Trump Cards and the EB-5 visa program provide separate visa pathways to **attract global capital and top-tier talent**.
 - Trump Cards do not and legally cannot replace EB-5 visas.
 - The EB-5 program is the established, statutorily authorized pathway to attract foreign investors to the U.S. It has delivered **\$350 billion in economic impact and created over 1.5 million American jobs—at no cost to taxpayers—and should continue to be fully supported by Congress and the administration**.
 - **Congress should permanently authorize the EB-5 program**. It should give the foreign investment market stability by authorizing regional centers in 2026, ahead of their scheduled expiration in 2027.
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Background

The EB-5 Visa Program

- The EB-5 visa is a job creation program that attracts overseas investors to provide capital for economic development projects in the U.S.
- EB-5 requires \$800,000 investments in targeted employment area (TEA) projects (i.e., infrastructure, rural, high unemployment census tracts)—or \$1.05 million investments in projects not within favored TEA categories.
- In 2022, Congress modernized the investor visa through the EB-5 Reform and Integrity Act. These reforms have helped improve the program's transparency and accountability. **They should be made permanent.**

The "Trump Card" Program

- According to the Sept. 19 Executive Order:
 - **Cost:** Gold Cards will require \$1 million payments from individuals, and \$2 million payments from companies. Platinum Cards will require \$5 million payments. The \$2 million Corporate Gold Card is "per employee." That is, the company (not the employee) "owns" the Corporate Gold Card, and it is portable to other workers.



Gold and Platinum "Trump Cards" and the EB-5 Visa

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- **Taxes:** Platinum Card holders can spend up to 270 days in the U.S. without being subject to U.S. taxes on non-U.S. income. Gold Card holders are treated similarly to other permanent residents and citizens.
- **Trump Card holders will not get their money back.** They are making a gift and buying a green card. In contrast, EB-5 investors expect their money back—with a return on their investment.
- **Trump Cards do not create new visa programs or add more visas.** Payments for a Trump Card are considered "evidence" to support green card eligibility under either the EB-1 visa category, for people of "extraordinary" ability, and/or the EB-2 visa category, for professionals with advanced degrees and those with "exceptional" ability.
- **Trump Cards do not replace EB-5 visas.** And, they will not add to or subtract from the number of EB-5 visas available in a given year. However, Section 3(f) of the Executive Order states that the agencies shall "consider... expanding the Gold Card program" to EB-5 visa applicants.

Recommendations

Permanently authorize EB-5 Regional Centers: Give stability to foreign investment markets—and maximize U.S. job growth opportunities—by making permanent the 2022 reforms that have created a fair and workable balance for urban and rural projects.

- EB-5 investment helps finance **housing, grid modernization, infrastructure, and manufacturing plants** to further recent Executive Orders and national priorities.



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Democratizing Access to Alternative Assets for 401(k) Investors

Capital and Credit

Summary

On Aug. 7, 2025, President Trump issued an Executive Order entitled, “Democratizing Access to Alternative Assets for 401(k) Investors,” signaling a fundamental shift in federal policy regarding access to asset classes previously reserved for institutional investors.

The Executive Order aims to allow ordinary workers to invest in alternative assets such as private equity and real estate through their 401(k) plans. The initiative seeks to reduce regulatory obstacles for plan fiduciaries and clarify their duties through ongoing work by the U.S. Department of Labor (DOL) and the U.S. Securities & Exchange Commission (SEC).

The DOL released a proposed rule on advisors’ duties when recommending alternative investments for defined contribution plans on March 30, 2026.

Key Takeaways

- In the August order, President Trump directed the DOL to propose new regulations on alts in retirement plans subject to the Employee Retirement Income Security Act (ERISA) within six months. It also directed the DOL to work with other regulators to determine necessary rule changes to ease alternative investment access in 401(k)s, and for the SEC to help with that effort in participant-directed retirement plans.
- While such alternative investments have long been part of defined-benefit plan portfolios, such as pensions, they are not expressly barred from defined contribution plans. Nonetheless, fiduciary rules make it challenging to include them in 401(k)s.

Background

Action Post-Executive Order

- Since the Executive Order was issued in August, SEC Chair Paul Atkins has affirmed the need for access to retail alternative investments—such as real estate—“within reason,” while Commissioner Mark Uyeda called for litigation reform to protect plan sponsors by making it harder for investors to sue ERISA fiduciaries for offering alts in 401(k) plans.
- While the Executive Order and rescission of DOL guidance demonstrate a change may be on the horizon for 401(k) plans and investors, they do not bring with them any regulatory change; further guidance and rulemaking from the DOL and SEC will clarify what comes next for fund sponsors, general partners, and their institutional investors.
- The latest development in democratizing access to alternative assets for 401(k) investors is the March 30, 2026 release of a landmark proposed rule by DOL. This proposal aims to make it significantly easier for employers to include private equity, cryptocurrency, real estate, and private credit in retirement plan lineups. The guidance specifically includes:
 - Private equity and private debt/credit.
 - Digital assets, including cryptocurrency.
 - Real estate, infrastructure projects, and commodities.

Recommendations



Democratizing Access to Alternative Assets for 401(k) Investors

The Real Estate Roundtable

Prepare for DOL Public Comment and Next Steps: The DOL's Employee Benefits Security Administration released a proposed rule—Fiduciary Duties in Selecting Designated Investment Alternatives—for public comment on March 30, 2026. RER submitted comments in support of the proposed rule.