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The Real Estate Roundtable

June 1, 2026

Honorable Daniel Aronowitz
Assistant Secretary
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Federal eRulemaking Portal: <http://www.regulations.gov>.

Re: RIN 1210-AC38

Dear Secretary Aronowitz:

The Real Estate Roundtable (“RER”)¹ is grateful for the opportunity to comment on the Employee Benefits Security Administration’s (EBSA) proposed rule on Fiduciary Duties in Selecting Designated Investment Alternatives, implementing Executive Order 14330, Democratizing Access to Alternative Assets for 401(k) Investors.

The RER and its members lead an industry that generates more than 20 percent of America’s gross national product, employs more than 9 million people, and produces nearly two-thirds of the taxes raised by local governments for essential public services. RER members are heavily engaged in the ownership, development, and management of real estate, and thus regularly engage in forming capital to support these investments.

The RER and its members strongly support the proposed rulemaking and urge the Department to finalize the rule.

The proposed rule by the U.S. Department of Labor (DOL) represents a landmark development in democratizing access to alternative assets for 401(k) investors. This proposal aims to make it significantly easier for employers to include private equity, real estate, and private credit in retirement plan listings.

The proposal appropriately identifies and addresses the regulatory ambiguity and litigation risk that have prevented over 90 million Americans who rely on 401(k)-style defined-contribution plans from accessing the same alternative investment opportunities that defined-benefit plan participants have enjoyed for

¹ The Real Estate Roundtable brings together leaders of the nation’s top publicly-held and privately-owned real estate ownership, development, lending, and management firms with the leaders of major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy.

decades. By clarifying the fiduciary standard and establishing a process-based safe harbor, the Department would restore the original intent of ERISA: prudent stewardship of retirement assets without discouraging flexibility and investment choice for plan sponsors and participants alike.

The proposal represents a significant and constructive step toward clarifying the application of ERISA's duty of prudence in the context of modern investment products, including alternative assets, as directed by the August 7, 2025 Executive Order 14330, *Democratizing Access to Alternative Assets for 401(k) Investors (E.O. 14330)*.

While there was no prior express prohibition in these asset classes, the proposal signals a fundamental shift in federal policy regarding access to asset classes previously reserved for institutional investors in defined-benefit plans. 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).

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.

Since the Executive Order was issued in August, Securities & Exchange Commission (SEC) Chair Paul Atkins has affirmed the need for access to retail alternative investments – such as real estate – “within reason,” while Commissioner Mark Uyeda has 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.

The proposed regulation clarifies, and provides a safe harbor for, a fiduciary's duty of prudence under the Employee Retirement Income Security Act of 1974 (ERISA) in connection with the selection of designated investment alternatives for a participant-directed individual account plan, including asset allocation funds that include investments in alternative assets.

The overarching goal of the proposed regulation is to alleviate certain regulatory burdens and litigation risk that interfere with the ability of American workers to achieve, through their retirement accounts, the competitive returns and asset diversification necessary to secure a dignified and comfortable retirement. This goal can be achieved only by clarifying that ERISA gives fiduciaries the discretion and flexibility to determine when designated investment alternatives, including those that contain alternative investments, offer the opportunity for participants to maximize expected risk-adjusted returns on their retirement assets net of fees.

The retirement system has strayed from the segments of the capital markets where a growing share of value creation now occurs. Defined-benefit plans, which have long maintained allocations to private equity and other alternative assets, have

consistently outperformed defined-contribution plans. Meanwhile, most 401(k) participants have been largely confined to publicly traded equity and bond indices, placing them at a structural disadvantage relative to institutional investors who have been deploying capital into private markets for years and have benefited from the compounding returns..

Executive Order

On August 7, 2025, President Trump issued Executive Order [E.O. 14330](#), *Democratizing Access to Alternative Assets for 401(k) Investors*. The Executive Order ([E.O. 14330](#)) pointed out that, currently, many Americans in employer-sponsored defined contribution plans do not have the opportunity to participate in the potential growth and diversification opportunities offered by alternative asset investments. [E.O. 14330](#) cited regulatory burdens and litigation risk as factors that may impede access to these investments. [E.O. 14330](#) stated it is the policy of the United States that “every American preparing for retirement should have access to funds that include investments in alternative assets when the relevant plan fiduciary determines that such access provides an appropriate opportunity for plan participants and beneficiaries to enhance the net risk-adjusted returns on their retirement assets.”

[E.O. 14330](#) contains a definition of alternative assets, of which we are focused on the following:

- Private market investments, including direct and indirect interests in equity, debt, or other financial instruments that are not traded on public exchanges, including those where the managers of such investments, if applicable, seek to take an active role in the management of such companies;
- Direct and indirect interests in real estate, including debt instruments secured by direct or indirect interests in real estate; and
- Direct and indirect interests in projects financing infrastructure development.

Alternative assets are highly varied, as the executive order demonstrates, and alternatives include nearly all investments other than those typically considered to be “traditional” asset classes— *i.e.*, publicly-traded stocks, bonds and cash.

We strongly encourage the Department of Labor to finalize the proposed rule as expeditiously as possible. The rulemaking correctly affirms that ERISA is a process-based statute, that fiduciaries possess maximum discretion to select investments that further the purposes of the plan, and that prudent fiduciary decision-making is entitled to a presumption of deference. By providing a clear safe harbor framework, the Department would significantly reduce the risk of fiduciaries being subject to spurious litigation that have prevented millions of American workers from accessing a broader and more effective investment universe for their retirement savings. This rule would increase investment choice for retirement savers, enhance expected returns and diversification, and fulfill the

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intention of Executive Order 14330 to fully democratize access to alternative assets.

As discussed above, the RER believes that this rulemaking represents an important step toward restoring the principle that retirement savers, not regulators, determine how they invest. This reform will help level the playing field between 401(k) investors and defined-benefit plans that have long benefited from alternative asset allocations. The RER looks forward to continuing to serve as a resource to the U.S. Department of Labor, and all stakeholders to address issues impacting real estate and the economy.

Sincerely

A handwritten signature in black ink, appearing to read "Jeffrey D. DeBoer". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Jeffrey D. DeBoer
President & Chief Executive Officer