

## How Data Center Accounting May Draw Enforcement Scrutiny

By **Grant Nichols, Yelena Kotlarsky and Alex Blumberg** (May 1, 2026, 4:00 PM EDT)

To no surprise, the growth of the data center industry has accelerated,[1] and as a result, enforcement actions involving data centers — particularly those focused on export controls[2] — have started to emerge and public scrutiny has intensified.

We previously discussed this projected enforcement activity in a July 2025 guest article.[3]

Indeed, in December 2025, Sen. Elizabeth Warren, D-Mass., and other lawmakers informed a wide range of tech companies that they were opening an investigation into the "extent to which big tech data centers are driving up consumers' electricity costs." [4]

Data centers are also attracting legislative attention at the state level. In early 2026, Maine advanced legislation to become the first state to temporarily ban new large data centers — though it was **vetoed** by Gov. Janet Mills on April 24 — with similar moratorium proposals introduced in other states, including New York, South Carolina, Oklahoma and Vermont.[5]

We expect enforcement activity and public scrutiny to continue building through 2026 and beyond.

In this article, we highlight a specific and unique risk area for data centers that has just started to attract media and investor attention: accounting and securities risks. Due in part to the capital-intensive nature of data center buildouts, industry leaders have turned to various methods of financing the significant debt associated with data center development.[6]

For example, asset-backed securitizations — through which operators pool long-term lease revenues into tranches of debt securities sold to capital markets investors — and commercial mortgage-backed securitizations, through which lenders pool mortgage loans secured by the data center properties themselves into tranches of rated securities sold to fixed-income investors, have become common financing tools for data centers.[7] But other interesting financing methods are being leveraged as well.

In all, these relatively novel maneuvers carry distinct accounting and enforcement risks, and could



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attract enforcement attention given the increasing scrutiny of the industry as a whole, as shown in the two examples below.

### **Off-Balance Sheet Buildouts Through Joint Ventures and Variable Interest Entities**

Because of the increasing demand for powering artificial intelligence and cloud computing, among existing infrastructure needs, some larger tech companies are funding their own multibillion-dollar data center buildouts. But, in order to avoid increasing liabilities on their books to the detriment of their financial statements, these companies have turned to structured finance to leverage creative accounting mechanisms.

The appeal is clear: Use outside capital, secure long-term capacity and keep reported lease liabilities lower on financial statements.

To achieve this, companies are leveraging joint ventures or other legal structures such as variable interest entities. The variable interest entity mechanism, in particular, could attract legal scrutiny from regulators.

At a high level, tech companies are moving data center projects into joint ventures that are majority-owned by institutional investors. The tech company then keeps a minority stake and signs some form of a lease agreement that keeps open a renewal option that allows the tech company to continue the lease for a longer time horizon. Under such an arrangement, these companies are then positioned to rent the data center under an operating lease, which indicates that the company does not own or control the asset.

While these types of agreements may comply with accounting and securities requirements at a technical level, one concern — especially considering the current media scrutiny swirling around data centers — is that government regulators or enforcement actors take the position that these accounting maneuvers are misleading. That is, regulators or enforcement entities could allege that by keeping significant data center buildout costs and associated debt off their primary financial statements, companies are obscuring the true extent of their financial commitments and risks.

This alleged lack of transparency could be held out in some circumstances to be a misrepresentation of the project's financial health, particularly if the associated debt becomes problematic in the event of a collapse of what many have speculated could be an AI bubble.[8]

While there is, of course, further nuance on the accounting and structured finance considerations at play in these agreements, the point here is that this type of maneuvering could attract interest from the U.S. Department of Justice, state attorneys general, the U.S. Securities and Exchange Commission, and other government agencies.

For companies considering or already implementing similar structures, aside from remaining cognizant of the potential for an enforcement inquiry or action, there are some practical considerations.

First, decisions about control and consolidation should be well supported — if a company clearly drives key decisions, bears cost-overrun risk and controls performance, nonconsolidation will be harder to defend.

Second, lease classifications and lease-term judgments should line up with credit supports. In other

words, companies should avoid setting up a situation where renewals of a lease term are essentially automatic or expected, or are considered in isolation from other factors that would normally inform a renewal decision.

Third, disclosure controls should aim to make clear how the project is financed, what guarantees could require payment and how lease liabilities could change if renewals become likely.

These issues also connect back to our first article, where we provided that extra precautions should be taken to avoid any potential misstatements to government entities.

### **GPUs as Collateral**

Another area that could lead to enforcement activity in the near future is the use of the data center's computing equipment — especially high-end GPUs — as collateral for construction and operating debt.

In one sense, this arrangement makes clear sense: GPUs drive the value of AI-focused campuses, and lenders prefer collateral that they can resell. But the same features that make GPUs valuable also make them potentially unstable collateral.

The state-of-the-art GPUs are coveted due to their ability to handle the intensive workloads demanded by data centers and AI in particular. However, they have an uncertain lifespan and could become obsolete in a matter of months or years — and predicting the depreciation rate of GPUs is inherently difficult given the rate at which new technical developments transform the industry.

Depending on the cost and speed at which new GPU technology overtakes these assets, a market disruption could leave lenders empty-handed. Indeed, the faster the technology cycle, the wider the gap can become between book value and what the hardware would actually fetch on the open market.

Observers have compared these dynamics to the 2008 mortgage-backed securities crisis.[9] The analogy is particularly apt given the data center industry's increasing reliance on the methods referenced earlier — asset-backed securitizations and commercial mortgage-backed securities.

Both of these financing mechanisms are structurally similar to the mortgage-backed securities at the center of the 2008 crisis: pooling revenue streams into rated tranches, distributing risk across investor classes, and depending on collateral valuations and market-liquidity assumptions that can deteriorate rapidly if underlying conditions shift.

Additionally, data center loans are increasingly backed by a single, volatile asset class — GPUs; financing structures likely involve borrowing against GPUs to acquire more GPUs; and valuation assumptions can become stale quickly when technology and liquidity conditions shift.

This potential mismatch creates several accounting and disclosure risks, and care should be taken to navigate those risks. From a securities perspective, overstated collateral values and optimistic assumptions about resale markets can potentially support actions premised on material misstatements or omissions. These assumptions create disclosure risks that also extend to statements about the value and ownership of GPUs and related data center assets.

Further, companies that finance GPU acquisitions with structures tied to collateral performance may face additional exposure if loan quality, default risk or recovery expectations are described in ways that

prove misleading.

In projects that benefit from tax incentives; the mix of accelerated depreciation; sales, use and property tax exemptions; and clawbacks can magnify the impact if collateral values fall or assets must be sold. These issues also implicate the adequacy of internal controls over financial reporting, particularly valuation controls and asset verification, including controls over off-balance-sheet arrangements and third-party operators.

From an enforcement perspective, these accounting judgments become high risk if they are used to mask liquidity strain or to prop up borrowing capacity. In short, concentrated exposure to a rapidly evolving asset class — paired with leverage and optimistic market assumptions — creates a profile that enforcement authorities have scrutinized before and are likely to scrutinize again.

## Conclusion

Companies should be mindful of these accounting, disclosure and enforcement risks, as well as media scrutiny that could lead to enforcement inquiries or congressional probes. Arrangements designed to optimize balance-sheet presentation or preserve borrowing capacity could quickly become liabilities when assumptions about control, asset values or market stability no longer hold.

As public and media scrutiny of the data center industry intensifies, regulators, enforcement authorities and Congress are likely to look past formal legal structures and focus instead on economic reality: who truly controls the assets, who bears the downside risk and whether public disclosures accurately reflect those realities. Accounting judgments that rely on aggressive assumptions, opaque financing structures or rapidly evolving collateral classes heighten the risk of investigations and inquiries.

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[1] JLL, 2026 Global Data Center Outlook: Navigating AI Demand, Power Constraints and Global Opportunities in 2026 (last visited January 9, 2026), <https://www.jll.com/en-us/insights/market-outlook/data-center-outlook>.

[2] See, e.g., Department of Justice: Office of Public Affairs, U.S. Authorities Shut Down Major China-Linked AI Tech Smuggling Network (Dec. 8, 2025), Office of Public Affairs | U.S. Authorities Shut Down Major China-Linked AI Tech Smuggling Network | United States Department of Justice."

[3] Grant Nichols, Yelena Kotlarsky, and Alex Blumberg, Navigating Enforcement Risks Facing Data Centers, Law360 (July 8, 2025), <https://www.law360.com/articles/2358788/navigating-enforcement-risks-facing-data-centers> (summarizing anti-corruption, export control, data-handling and FCA risks across the data center life cycle).

[4] <https://www.warren.senate.gov/newsroom/press-releases/senator-warren-lawmakers-open-investigation-into-big-tech-data-centers-role-in-driving-up-families-utility-costs>.

[5] Ella Nilsen, Data centers are spreading around the country. Now, data-center bans are, too, CNN (Apr. 12, 2026), <https://www.cnn.com/2026/04/12/climate/maine-data-center-ban-bill>.

[6] See generally <https://www.mastt.com/guide/data-center-construction>.

[7] See, e.g., Nikit Sawjani, The infrastructure revolution: understanding data center securitization, RBC: Capital Markets (Jan. 13, 2026) ("Two significant trends are reshaping the securitization landscape. First, Asset-Backed Structures (ABS) and Commercial Mortgage-Backed Structures (CMBS) dynamics have shifted. Historically, ABS dominated at roughly 70% of deal volume, with CMBS representing just 30%. However, 2025 has seen this split closer to 50% / 50% as issuers have successfully accessed both markets to finance their growth.").

[8] Some investors have already brought suit involving the lack of transparency with how large companies deal with investments in data centers. See generally Reuters, Oracle sued by bondholders over losses tied to AI buildout (Jan. 14, 2026), <https://www.reuters.com/sustainability/boards-policy-regulation/oracle-sued-by-bondholders-over-losses-tied-ai-buildout-2026-01-14/>.

[9] See e.g., Karen Weise and Eli Tan, How Tech's Biggest Companies Are Offloading the Risks of the A.I. Boom, N.Y. Times (Dec. 15, 2025), <https://www.nytimes.com/2025/12/15/technology/ai-risks-debt.html>; Lucy Raitano, Five debt hotspots in the AI data centre boom, Reuters (Dec. 12, 2025), <https://www.reuters.com/business/finance/five-debt-hotspots-ai-data-centre-boom-2025-12-11/>; Neil Callanan and Paula Seligson, AI Data Center Boom Sparks Fears of Glut Amid Lending Frenzy, Bloomberg (Dec. 12, 2025), <https://www.bloomberg.com/news/articles/2025-12-12/ai-data-center-boom-sparks-fears-of-glut-amid-lending-frenzy>.