

President Biden Threatens First Veto Over Congressional Nullification of DOL Regulation Enabling Consideration of ESG Factors

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Last fall, the Biden Administration's Department of Labor ("DOL") issued a regulation ("Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights") that, according to a White House press release, "clarifie[d] that retirement plan fiduciaries may consider climate change and other environmental, social, and governance factors in selecting retirement investments and exercising shareholder rights, when those factors are relevant to the risk and return analysis." The White House further stated that this was intended to reverse a regulation by the Trump Administration, which had "issued a rule that had a chilling effect on retirement investment advisers otherwise inclined to consider environmental, social, or governance (ESG) factors when making investment decisions, even if the advisor determined that these factors were material to investment decisions." In short, this DOL rule was in accord with the Biden Administration's broader policy of promoting the consideration of ESG factors in financial disclosures and investing (the premier example of which is the SEC's proposed climate change disclosures).

However, Congress has now passed a Republican-sponsored resolution that seeks to nullify the DOL's rule enabling the consideration of ESG factors. This effort reflects the broader campaign by a number of Republican politicians, on both the federal and state level, to counter the influence of ESG factors in investing and other financial matters. In response, President Biden has threatened to issue the first veto of his administration.

This impending political battle reflects the increasing attention of both Democratic and Republican politicians to the use of ESG factors in financial disclosures and making investments. This particular issue, which may seem fairly esoteric--e.g., what factors an investment manager overseeing a pension fund can consider when evaluating investments--has now become one of the latest wedge issues in the ongoing culture war between the right- and left-wing. Consequently, the political stakes have accordingly increased in any confrontation concerning ESG and financial matters. Such a political dynamic may discourage compromise when both sides perceive their positions on this issue as a useful way to mobilize their respective constituents, and for politicians to signal their loyalty to (or independence from) their party's program.

President Joe Biden will soon be in a position to issue his first veto, after moderate Senate Democrats helped Republicans pass a measure that would undo an environmental and social

investing rule. . . .

Tester and Manchin defied Biden's threat to veto the rollback, which targets a new Labor Department rule that allows retirement plan managers to incorporate climate and social factors into investment decisions. Republicans have criticized the regulation — which itself reversed a Trump-era rule discouraging environmentally and socially focused investing — as a threat to retirement savers because it would allow political forces to take precedence over returns.

<https://www.politico.com/news/2023/03/01/biden-likely-veto-esg-rollback-00084991>

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