

Does the Recent Attempt by Congressional GOP to Overturn Labor ESG Rule Portend Congressional Scrutiny of Progressive Corporate Policies?

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On March 20, President Biden vetoed a Republican-led effort to overturn a Department of Labor rule on environmental, social, and governance (ESG) guidelines for retirement accounts. The Department of Labor rule will allow ERISA retirement plan managers to consider various ESG factors when making investment decisions, including corporate policies relating to climate change. Earlier in March, the Senate voted 50 to 46 to disapprove of the rule under the *Congressional Review Act*, with Senators Joe Manchin (D-WV) and Jon Tester (D-MT) joining Senate Republicans. Senate disapproval of the rule followed a largely party-line vote in the House of Representatives, with just one Democratic joining House Republicans.

Generally deriding public and private sector ESG initiatives as antithetical to free market values and politically motivated, linking corporate ESG initiatives to progressive policy priorities, House and Senate Republicans lack support to override President Biden's veto. However, Democratic defections to support the ESG resolution may embolden House and Senate Republicans to take additional congressional action on ESG initiatives, with a focus on oversight and investigations. House Republicans have, for example, already formed a Republican ESG working group to coordinate response to recent ESG proposals by private sector companies, led by Financial Services Oversight Subcommittee Chair Bill Huizenga (R-MI). The ESG working group builds on ongoing congressional scrutiny of private sector companies, including oversight of so-called "Big Tech" platforms and companies with ties to China and the Chinese Communist Party.

Whether the Republican ESG working group will serve as a bellwether for future House and Senate investigations and legislation on ESG initiatives or other corporate initiatives, including those relating to diversity, equity, and inclusion (DEI), climate change, human rights, etc., warrants attention. While the ESG working group is comprised of Republican Financial Services Committee members and led by a subcommittee chairman, the working group itself is informal. However, the establishment of the Republican ESG working group reflects a notable trend in Republican attitudes towards private industry—specifically, a willingness to criticize and oppose companies or industries whose corporate policies are unaligned with Republican economic or social priorities. As a result, these new areas of focus for the Republican ESG working group may foreshadow congressional scrutiny of private

companies and their initiatives by the Financial Services Committee or House Republicans more generally.

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