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Trump may restrict certain institutional investments in China

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President Donald Trump is directing his administration to review placing restrictions on institutional investors such as pension funds and endowments from making private equity, venture capital and other types of investments in certain Chinese companies.

Trump also said his administration would “restore the highest fiduciary standards as required by the Employee Retirement (Income) Security Act of 1974, seeking to ensure that foreign adversary companies are ineligible for pension plan contributions” in order to “protect the savings of United States investors and channel them into American growth and prosperity.”

The Feb. 21 [executive order](#) titled, “America First Investment Policy,” addresses both inbound and outbound foreign investment policy, and details measures aimed at protecting U.S. national security from adversaries, such as the Chinese government.

On the outbound investing side, Trump said he’s considering expanding upon an executive order signed by President Joe Biden in August 2023 that [limited U.S. investments in Chinese companies](#) involved in the semiconductor and microelectronic, quantum information technology and artificial intelligence sectors.

The new or expanded restrictions on U.S. outbound investment in China could include sectors such as semiconductors, AI, quantum, biotechnology, hypersonics, aerospace, advanced manufacturing, directed energy and other areas associated with the Chinese government’s national military-civil fusion strategy, according to the order.

“As part of the review, my administration will consider applying restrictions on investment types including private equity, venture capital, greenfield investments, corporate expansions, and investments in publicly traded securities, from sources including pension funds, university endowments, and other limited-partner investors,” Trump said in the order. “It is past time for American universities to stop supporting foreign adversaries with their investment decisions, much as they should stop granting university access to supporters of terrorism.”

When it comes to fiduciary standards under ERISA, Andrew Oringer, who heads the Wagner Law Group's New York office and serves as its general counsel, said in an email that the law requires fiduciaries to do what's in the financial best interests of plan participants and beneficiaries.

“The first Trump administration came out strongly against the taking into account of ancillary factors in the context of plan investment and now seems to be seeking to go down that kind of path regarding national security issues,” Oringer said. “Thus, any regulatory effort to restrict a fiduciary's ability to make certain specified types of investments may have to try to find a way to run the gauntlet that emerges from ERISA's general fundamental focus on financial considerations, especially in a world in which courts no longer defer to the regulators as to how statutes are to be interpreted.”

Oringer referenced a decision last year by the U.S. Supreme Court in which it [overturned the Chevron deference](#), a standard set by the Supreme Court 40 years ago that said judges should defer to regulators when laws are ambiguous and unclear.

On the inbound investing side, the executive order said the Committee on Foreign Investment in the United States, or CFIUS, will restrict people affiliated with the Chinese government from investing in U.S. technology, critical infrastructure, healthcare, agriculture, energy, raw materials or other strategic sectors.

In an effort to boost U.S. development of AI and other emerging technologies, the executive order will create an expedited review process for investments from yet-to-be-specified allied and partner sources. “This ‘fast-track’ will apply to investments in advanced technology and ‘other important areas,’ and it will require investors to ‘avoid partnering’ with foreign adversaries,” a Feb. 24 [update from law firm Debevoise and Plimpton](#) noted. In addition, the administration will expedite environmental reviews for any inbound investment over \$1 billion.

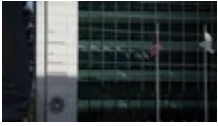
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