

Insights

Redefining Regulatory Oversight: U.S. Supreme Court Ends Chevron Deference and its Impact on Banking Regulations

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With the pace of regulatory rulemaking and overall regulatory burden facing the financial services industry, it would be understandable if the significance of a U.S. Supreme Court decision about the number of observers on a fishing vessel required under a regulation from the National Marine Fisheries Association wasn't high on the list of issues to watch for your institution. However, the decision issued this week in the consolidated cases of ***Loper Bright Enterprises v. Raimondo***, No. 22-451 and ***Relentless, Inc., et al. v. Department of Commerce, et al.***, No. 22-1219 (collectively, "*Loper Bright*") is required reading for all regulated financial institutions due to its potential to significantly impact the enforcement of banking regulations.

Why Does This Case Matter to Financial Institutions

With legal challenges filed by the financial services industry against administrative rules by the Consumer Financial Protection Bureau ("CFPB"), the Federal Deposit Insurance Corporation ("FDIC"), The Board of Governors of the Federal Reserve System (the "Board"), and other prudential regulators on rules impacting everything from credit card late fees to small business lending, to unofficial guidance on permissible fees for non-sufficient funds, any reduction in judicial deference to agency interpretation of law when promulgating rules will benefit the industry.

Chevron deference arose from the 1984 Supreme Court decision in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) in which the Court ruled that courts must set aside their own independent judgment as to the best interpretation of ambiguous statutes administered by federal agencies. *Chevron* required that when evaluating an agency rule, a court must first employ traditional tools of statutory construction to determine whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, then the court must enforce the clear meaning. However, if the statute is silent or ambiguous on the question at issue, then the court must defer to the agencies interpretation of the rule provided it reflects a permissible construction of the statute. In a subsequent case applying *Chevron*,^[1] the Court further clarified that a court must defer to an agency interpretation of an agency rule even if the court had already adopted a different interpretation without applying *Chevron*.

Under *Chevron*, industry legal challenges against CFPB, FDIC and Board administrative rules faced an uphill battle.

The Decision

In a 6-3 majority opinion authored by Chief Justice Roberts, the Court in *Loper Bright* left behind 40 years of *Chevron* deference, concluding it was the "antithesis of the time-honored approach the APA prescribes." "As relevant here, Section 706 directs that "[t]o the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. . . . It further requires courts to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . not in accordance with law." §706(2)(A). . . [a]t best, *Chevron* has been a distraction from the question that matters: Does the statute authorize the challenged agency

action? And at worst, it has required courts to violate the APA by yielding to an agency the express responsibility, vested in “the reviewing court,” to “decide all relevant questions of law” and “interpret . . . statutory provisions.”

In overruling *Chevron*, the Court preserved the legal concept of “Skidmore deference,”^[2] declaring “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.”

Perhaps as important as the overturning of *Chevron*, the Court also held that by leaving *Chevron* behind, they were **not** calling into question prior decisions reliant on the *Chevron* framework, ensuring the financial services industry can still rely upon prior decisions impacting its operations.

What's Next?

While this decision won't immediately impact your financial institution, the potential for perceived regulatory overreach to be curtailed via legal challenge is significant. What that will mean for the many legal challenges to CFPB, FDIC, Board, and other agency rules remains to be seen, but at the very least it is expected to further prolong them. Further, *Loper Bright* is likely to slow future rulemaking efforts by the financial services regulators, who will now be forced to ensure any rulemaking is within the delegated authority provided by its authorizing statute.

Krieg DeVault's Financial Institutions attorneys are actively monitoring developments in the law impacting your financial institution and would be pleased to answer any questions you may have about these developments.

Disclaimer: The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.

[1] *National Cable & Telecommunications Association v. Brand X Internet Services*, 545 U.S. 967 (2005)

[2] *Skidmore v. Swift & Co.*, 323 U. S. 134, 140 (1944)