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## U.S. Supreme Court Overturns *Chevron* Decision, Banks May Benefit from Ruling Giving Judicial Branch More Power Over Federal Agencies\*

The debate over the extent to which judicial deference should be applied to federal agency decisions has persisted since the first federal agencies were created. For the last 40 years, the touchstone for judicial deference has been the U.S. Supreme Court's decision in *Chevron U.S.A., Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837 (*Chevron*). On June 28, 2024, the U.S. Supreme Court overturned the *Chevron* precedent with its decision in *Loper Bright Enterprises v. Raimondo et al. (Loper)*, marking a significant shift. In *Loper*, the Court held that judicial deference towards federal agency interpretations of the law is not mandatory in cases where the underlying text of the statute at hand is ambiguous.

In the *Chevron* case, the U.S. Supreme Court established a precedent that courts must give deference to federal regulatory agency actions by applying a two-part test (*Chevron* test). The *Chevron* test required courts to assess the agency's actions as follows:

(1) First, the court was required to assess whether the statute at issue plainly addressed the issue before the court. Pursuant to *Chevron*, if the statute was clear on the issue at hand, the court was required to follow Congress's intent.

(2) Second, if the statute was either unclear or did not address the issue before the court, *Chevron* required the court to defer to the agency's interpretation, even if the court's interpretation of the statute differed from that of the agency, as long as the agency's interpretation could be deemed reasonable.

In *Loper*, the Court essentially overturned the second prong of the *Chevron* test. In a 6-3 ruling, the Court held that *Chevron* conflicted with applicable provisions of the Administrative Procedure Act (APA) because "under the APA, it . . . remains the responsibility of the court to decide whether the law means what the agency says."

*Loper* unwinds *Chevron*'s directive to courts to give automatic deference to a federal agency's interpretation of an ambiguous federal statute. Instead, in cases of ambiguity, *Loper* instructs courts to follow *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944) (*Skidmore*). In *Skidmore*, the U.S. Supreme Court held that judicial deference to an administrative agency's interpretative rules

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should be determined on a case-by-case basis, taking in to account certain factors. These factors include the thoroughness of the agency's investigation, the validity of its reasoning, the consistency of its interpretation over time, and the extent of the agency's persuasiveness.

By overturning *Chevron's* automatic deference and falling back on the "case-by-case" test established by *Skidmore*, some pundits have characterized *Loper* as the Supreme Court returning interpretative authority of ambiguous federal statutes back to the judicial branch. Previously, this authority was vested in administrative agencies charged with promulgating rules pursuant to those statutes. The Court's ruling may have handed a soft victory to financial institutions, which have long been subject to the rulemaking whims of their federal banking regulators.

Because *Loper* is a brand new ruling, the exact extent to which it will impact agency rulemaking and interpretive powers remains to be seen. Stay tuned for further developments. BCG will be presenting a more detailed discussion of *Loper* and the potential impact to financial institutions during its next Monthly Telephone Briefing on July 19 at noon. For questions regarding the impact of the Supreme Court's recent decision, contact Tricia Engelhardt at **[TEngelhardt@ABLAWYERS.COM](mailto:TEngelhardt@ABLAWYERS.COM)**.