

# What the End of the Chevron Doctrine May Mean for ERISA's Fiduciary Provisions

A Practical Guidance® Article by Julie K. Stapel, Morgan, Lewis and Bockius LLP



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In *Loper Bright Enterprises v. Raimondo and Relentless Inc. v. Department of Commerce*, the Supreme Court held that both the United States' constitutional structure and the Administrative Procedure Act preclude a court from deferring to administrative agencies when they interpret ambiguous statutory text. Instead, the court must assess the "best meaning" of the statute using traditional tools of statutory construction.

*Loper Bright* will have an impact on most executive agencies, and a surge of litigation is expected as parties seek to have courts independently examine regulations interpreting federal laws—especially new or recent regulations. Morgan Lewis has formed a task force to guide clients through this important change and how best to position their organization in an altered legal landscape. Our employee benefits practice is reviewing employee benefit plan-related regulations that may be vulnerable in light of *Loper Bright*. Specifically in the ERISA fiduciary area, we are following two recent US Department of Labor (DOL) regulations, both of which are currently being challenged in federal court.

One is the DOL regulation commonly referred to as the "ESG Rule," which went into effect in February 2023. There have been two lawsuits filed to invalidate the ESG rule as arbitrary, capricious, and outside the DOL's authority: *State of Utah v. Su* (currently on remand to the U.S. District Court for the Northern District of Texas) and *Braun v. Walsh* (pending in the U.S. District Court for the Eastern District of Wisconsin). The ESG Rule involves the DOL's interpretation of ERISA's

duties of loyalty and prudence in the context of investment decisions involving environmental, social, or governance factors.

In *State of Utah v. Su*, the federal district court ruled in favor of the DOL and upheld the ESG rule, relying on Chevron deference. The plaintiffs appealed to the U.S. Court of Appeals for the Fifth Circuit, which heard oral arguments in the case on July 9 (11 days after the Supreme Court decision in *Loper Bright*).

On July 18, a mere nine days after the oral argument, the Fifth Circuit remanded the case to the federal district court to reconsider and to apply the district court's "independent judgment" to the issue, rather than defer to the DOL's interpretation.

The other recent DOL regulation currently being challenged is the DOL's Retirement Security Rule, which addresses when a party providing investment advice is an ERISA fiduciary. The Retirement Security Rule was published on April 23, 2024. There were two lawsuits filed in May challenging the Retirement Security Rule—one in the US District Court for the Eastern District of Texas and the other in the US District Court for the Northern District of Texas.

At the end of July, the plaintiffs in each of those cases were successful in obtaining a stay of the Retirement Security Rule's effective date (which was to be September 23), relying in part on the effect of *Loper Bright* on the DOL's likelihood of success on the merits. These cases, like cases that have (successfully) attacked prior iterations of this rule, allege that the DOL exceeded its authority in defining "fiduciary" in the Retirement Security Rule.

The Supreme Court's overturning of *Chevron* also raises the question of what other existing regulations may be ripe for challenge in the new landscape. We will be considering that question in the coming weeks and months.

# Related Content

## Resource Kits

- [Chevron Reversal Impact Resource Kit](#)
- [Environmental, Social, and Governance \(ESG\) Resource Kit](#)

## Statutes & Regulations

- 89 Fed. Reg. 32122 (April 25, 2024)
- 87 Fed. Reg. 73822 (Dec. 1, 2022)

## Cases

- Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024)

- Utah v. Su, 109 F.4th 313 (5th Cir. 2024)
- Fed'n of Ams. for Consumer Choice, Inc. v. United States DOL, No. 6:24-cv-163-JDK, 2024 U.S. Dist. LEXIS 131589 (E.D. Tex. July 25, 2024)Am. Council of Life Insurers v. United States DOL, Civil Action No. 4:24-cv-00482-O, 2024 U.S. Dist. LEXIS 133158 (N.D. Tex. July 26, 2024)Utah v. Walsh, No. 2:23-CV-016-Z, 2023 U.S. Dist. LEXIS 168696 (N.D. Tex. Sep. 21, 2023)
- Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 104 S. Ct. 2778 (1984)

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Julie Stapel provides effective and practical solutions to clients' complex ERISA issues. She proficiently steers plan sponsors and investment managers through ERISA's fiduciary and prohibited transaction rules, and negotiates virtually every type of investment-related agreement with employee benefit plans. Julie uses exceptional communication and interpersonal skills to advise clients on a wide range of ERISA topics, including effective fiduciary governance, risk management, the creation of "white label" investment options, and the application of environmental, social, and governance (ESG) factors in plan investment decisionmaking.

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