The Demise of Chevron

As of June 28, courts will no longer be required to defer to the judgement of the regulatory agencies in terms of applying and interpreting ambiguous laws. This is the outcome of the Supreme Court case Loper Bright Enterprises v. Raimondo. For plan sponsors, the impact of this case is not entirely clear yet – as time will tell – but there are a few potential implications.

Here's What You Really Need to Know:

1. Retirement plans are subject to a variety of sources of rules and guidance, which may have varying weight to which they should apply, including legislation, regulation, and sub-regulatory guidance (among others). As always, plan sponsors – with the help and assistance of qualified partners – must understand how to apply the intersection of these rules.

2. Federal courts, for the past four decades under the Chevron Doctrine, gave the Department of Labor (DOL) (and government agencies, generally) deference to interpret where Congressional intent was ambiguous, but that doctrine was overturned in a June 2024 Supreme Court case. The overturning of the Chevron Doctrine opens the possibility for more litigation related to DOL and other agency regulations.

3. A second case deals with the timing window (also called the statute of limitations) for filing cases that challenge administrative agency rules and regulations. In combination, these decisions are likely to increase the likelihood of litigation regarding agency regulations and interpretations and, in the process, introduce additional uncertainty about adhering to those rules.

Let's Dive In...

Rules that Govern Retirement Plans

Most retirement plans are covered by the Employee Retirement Income Security Act (ERISA), which was passed in 1974 to protect private-sector retirement plans and ensure employees received their promised benefits. ERISA is a law that was made by Congress, but specific provisions have been interpreted by the DOL over time. Beyond that, there are regulations that are issued by federal government agencies to implement the laws passed by Congress. For example, the DOL makes the regulations that apply to ERISA including what is known as the "Fiduciary Rule." In addition, a department of the DOL, the Employee Benefits Security Administration (EBSA), also issues sub-regulatory guidance such as Field Assistance Bulletins.[1] Plan sponsors should keep track of how all these rules – or layers of rules – apply to the retirement plan.

Chevron Background

In 1984, in a case that had nothing to do with retirement plans[2], the United States Supreme Court developed a framework for reviewing a challenged law. The ruling, which became known as the "Chevron Doctrine," said that if a statute is unambiguous as to what Congress intended, then Congress's intent should be followed. However, when a statute is deemed to be ambiguous, then federal agencies may interpret the law and courts are to defer to that interpretation unless the agency rule is "arbitrary or capricious in substance, or manifestly contrary to the statute." We saw this standard applied in prior instances of review from the Fiduciary Rule in 2018 and when the DOL issued regulations related to environmental, social and governance (ESG) investing.

Case Overview

Nearly 40 years after the Chevron Doctrine was established, it made its way to the Supreme Court. The Supreme Court granted certiorari and overruled the Chevron Doctrine in a 6-3 split decision. Again, this is a case that had nothing to do with retirement plans but was focused on an issue of federal government agency regulation. The Court found that the Administrative Procedure Act (APA) "incorporates the traditional understanding of the judicial function, under which courts must exercise independent judgment in determining the meaning of statutory provisions." This means that the prior presumption from the Chevron Doctrine that agencies have the expertise and competency to resolve Congressional ambiguity in the law is no longer the case. Rather, the Supreme Court majority held that it is the responsibility of the courts to resolve issues of legal interpretation (and in fairness, the courts were already in the position of determining whether a statute was "ambiguous").

For plan sponsors, this means that there is a potential for more litigation related to regulations issued by the DOL (and other agencies, including the Securities and Exchange Commission) which are interpretive of Congressional activity. As a practical example, Section 204 of the 2019 SECURE Act added a new, optional safe harbor for the selection of a guaranteed retirement income contract on behalf of an individual account plan. That is a statutory safe harbor – one that was outlined in the law. Prior to that there had been a safe harbor, but it was issued as a regulation from the DOL in 2008, which outlined a series of steps for a plan fiduciary to follow when prudently selecting a benefit distribution annuity provider for an individual account plan. Given the demise of the Chevron Doctrine, when given a choice between a regulatory safe harbor or statutory safe harbor, plan fiduciaries may find more success in court following the terms of a statutory safe harbor.

Combining Forces

Another 6-3 decision, decided on July 1, 2024, combined in effect with the *Loper Bright Enterprises* case seems likely to increase prospects for litigation and uncertainty. The case – which again had nothing to do with retirement plans – involved the acceptance of debit cards as a form of payment and how the Federal Reserve Board handled the reasonableness of fees for such cards. The issue considered by the Supreme Court had to do with the timing window for filing suit – the statute of limitations. Here, the majority held that the timing to bring suit under an APA claim does not begin for purposes of the 6-year statute of limitations until the individual plaintiff bringing suit is injured by final agency action – something that could be (and in the instance of this suit was) years after the rule/regulation was put in place. This seems to greatly expand both the potential statute-of-limitations window to bring suit and as a result the potential for future litigation.

Action Items for Plan Sponsors

For plan sponsors, the immediate action items are less definitive, but the longer-term impacts of these cases may have significant impact on plan design decisions. Plan sponsors should consider:

1. Developing partnerships or programs that can track changes in legislation, regulation, sub-regulatory guidance and other rules that impact the retirement plan and its plan fiduciaries. Working with a knowledgeable retirement plan advisor or consultant as well as other partners will be helpful.

2. Identifying roles and responsibilities internally for development of a fiduciary compliance program such that changes in rules impacting the plan can be readily incorporated and updated as needed/desired.

3. Cultivating a culture of compliance regarding the retirement plan operation and administration focused on adherence to fiduciary best practices.

Separately, retirement plans are also governed by the Internal Revenue Service (IRS), which requires the application of the Internal Revenue Code (the Code).

[2] *Chevron v. Natural Resources Defense Council* was about government regulation of fishing hatcheries. It involved the issuance of a rule that had been challenged by environmentalists as insufficiently aggressive against polluters by the Environmental Protection Agency (EPA).

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