

V. FSOC’s Structure And Procedures Violate Due Process And The Separation Of Powers.

A. The Final Designation Violated Due Process Because FSOC Denied MetLife Access To The Record And Introduced New Evidence And Analysis.

FSOC does not dispute that it failed to provide MetLife with access to the administrative record before its designation decision, that it continues to deny MetLife access to nearly a thousand pages of record material, and that it introduced new arguments and analysis in the Final Designation. Instead, FSOC offers assorted arguments intended to shield itself from this Court’s scrutiny and the requirements of due process. Each of FSOC’s contentions is meritless.

First, FSOC asserts that designation “imposes no penalty” and thus that “MetLife has no liberty or property interest in never being designated.” FSOC Opp. 69. This extraordinary argument—which would mean that FSOC could designate companies free from any of the constraints of due process—fails because designation has numerous immediate regulatory consequences for a company. *See supra* Part IV. Designation also triggers the future imposition of prudential standards that could impose considerable additional costs. *See* MetLife Br. 61. Indeed, one designated company is already being dismantled, *id.*, and MetLife has indicated that it could very well be forced to do the same thing in response to its designation, *see* JA 2390-92. Because FSOC’s designation of MetLife imposes substantial costs and regulatory burdens on MetLife—and thereby is impairing its property interests, *see Reeve Aleutian Airways, Inc. v. United States*, 982 F.2d 594, 598 (D.C. Cir. 1993)—the designation must comport with the due process requirements that apply whenever the government impairs constitutionally protected rights. *See Matthews v. Eldridge*, 424 U.S. 319, 333 (1976).

Second, FSOC contends that MetLife was not “entitled to the complete administrative record before the Council issued its final decision.” FSOC Opp. 69. The case law is plainly to the contrary. *See, e.g., Walter O. Boswell Mem’l Hosp.v. Heckler*, 749 F.2d 788, 792 (D.C. Cir.