



# More Arbitrariness and Capriciousness with DOL's Fiduciary Rule

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Early this morning nine plaintiffs filed suit against the Department of Labor (DOL) alleging that [DOL's fiduciary rule](#) violates the First Amendment and the Administrative Procedures Act (APA) by “overstep[ing] the Department’s authority, creat[ing] unwarranted burdens and liabilities, and undermin[ing] the interests of retirement savers.” Specifically, the plaintiffs argued that DOL violated the APA “[b]y adopting a Rule that will [have severe and disruptive effects](#) on the financial services and insurance industries, small businesses, [and retirement savers](#) without fairly addressing comments relating to the legality and effectiveness of the rule,” and that DOL’s rulemaking was “arbitrary, capricious, and otherwise not in accordance with law.”

If the APA and “[arbitrary and capricious](#)” sound familiar, it’s because they are. MetLife’s recent court victory against the Financial Stability Oversight Council (FSOC), which overturned their systemically important financial institution (SIFI) designation, was premised on the APA and FSOC’s designation being arbitrary and capricious. [In its decision, the Court said](#) that “[b]ecause FSOC refused to consider cost as part of its calculus, it is impossible to know whether its designation ‘does significantly more harm than good...That renders the Final Determination arbitrary and capricious.’”

Similarly, in the lawsuit seeking to vacate the fiduciary rule, the plaintiffs argue that DOL failed to appropriately consider costs in its analyses and did not satisfy its statutory obligations as a result of “fail[ing] to consider important record evidence, ignor[ing] the public’s comments (and those of an SEC commissioner), and adopt[ing] a rule that will impose unjustifiable costs on customers, small businesses, financial professionals, financial firms, and insurance institutions,” and therefore, “[t]he Rule exceeds the Department’s statutory authority and is arbitrary, capricious, and contrary to law.”

This case has a long way to go before the Court will make any decision affecting the rule (although in the interim, it could enter a stay, effectively vacating the rule until a decision is made), but there is no doubt that DOL’s fiduciary rule is misguided and overreaching and will make retirement saving harder and more expensive for consumers and small businesses. As AAF has long documented, the fiduciary rule will raise costs for investors – [as much as \\$1500](#), and, even worse, will knock many retirement savers out of the market entirely by requiring their investment advisers to undertake such high compliance costs, making many smaller-dollar [retirement accounts no longer profitable](#). Not only that, it’s the most expensive rule proposed in 2016 thus far, by DOL’s own conservative estimates [costing over \\$31.5 billion](#) and requiring nearly 57,000 paperwork burden hours. Unfortunately, although DOL attempted to make parts of the rule more workable in its final version, the exceptions still remain burdensome and will drive many of the lowest income retirement savers out of the investment advice market entirely.