

CSBS To Oppose OCC Fintech Charter (Again)

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On September 12th, the Conference of State Bank Supervisors (CSBS) [announced](#) that it would again pursue litigation in opposition to the Office of the Comptroller of the Currency? ([OCC](#))'s [recent decision](#) to accept applications from non-depository financial technology firms for a special purpose national bank (SPNB) charter.

While it announced that its Board of Directors had approved renewing litigation against the OCC at an August 28 meeting, the CSBS did not indicate when it plans to file the lawsuit. The lawsuit would represent the second time that the CSBS has pursued litigation challenging the OCC's authority to issue a SPNB charter to fintech companies. On April 30, 2018, a D.C. federal district court [dismissed the first lawsuit](#) filed by the CSBS challenging the OCC's authority to grant SPNB charters on the grounds that the CSBS had failed to establish any injury in fact necessary for Article III standing and that the case was not ripe for judicial review. In its initial filing, the CSBS argued that the OCC's 2017 proposal to issue SBNB charters to fintech companies exceeded the authority granted to the OCC by Congress under the National Bank Act (NBA) and other federal banking laws to charter institutions that engage in the "business of banking." The CSBS argued that to engage in the "business of banking," the NBA requires an institution, at a minimum, to receive deposits.

The New York Department of Financial Services (DFS) also previously filed a lawsuit challenging the OCC's authority to issue SPNB charters. That lawsuit, which was filed in a New York federal district court, was [dismissed](#) in December 2017 on similar grounds. While the DFS has not announced whether it will renew its litigation against the OCC, DFS Superintendent Maria Vullo stated in a [July 31 press release](#) that "DFS believes that this [OCC] endeavor, which is also wrongly supported by the Treasury Department, is clearly not authorized under the National Bank Act. As DFS has noted since the OCC's proposal, a national fintech charter will impose an entirely unjustified federal regulatory scheme on an already fully functional and deeply rooted state regulatory landscape."

We recently [blogged](#) about the announcement by Varo Bank, N.A., a fintech bank, that it had received preliminary approval from the OCC of its application for a full-service national bank charter. We do not expect the CSBS or the DFS to challenge the preliminary approval since there would not appear to be any basis to challenge the OCC's authority to issue a full-service national bank charter to Varo assuming it satisfies the standard conditions for obtaining such a charter.

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