

## State Regulators File Second Lawsuit Opposing OCC Fintech Charter

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The Conference of State Bank Supervisors (CSBS) [has filed a second lawsuit](#) in D.C. federal district court to stop the Office of the Comptroller of the Currency (OCC) from issuing special purpose national bank (SPNB) charters to fintech companies. A similar lawsuit was filed last month in a New York federal district court by the New York Department of Financial Services.

[The CSBS](#) and [the DFS](#) had previously filed lawsuits challenging the OCC's authority to grant SPNB charters to fintech companies at a time when the OCC had not yet decided whether it would move forward on its charter proposal. Both lawsuits were dismissed for failing to establish an injury in fact necessary for Article III standing and for lacking ripeness for judicial review. The new lawsuits were filed in response to [the OCC's July 2018 announcement](#) that it would begin accepting applications for SPNB charters from fintech companies. In its complaint, the CSBS alleges that "things have changed substantially since the Court's decision [dismissing the prior CSBS lawsuit]. The issuance of a [SPNB] charter is now clearly imminent." It further alleges that "upon information and belief, multiple pre-qualified candidates have already decided to apply (and may have already applied)."

The CSBS challenges the OCC's SPNB charter plans in the new lawsuit on the following grounds (which generally track those asserted in the first CSBS lawsuit):

- 12 C.F.R. Section 5.20(e)(1), on which the OCC has relied for its authority to charter a bank that performs a single core banking function—receiving deposits, paying checks, or lending money—is inconsistent with the National Bank Act because the NBA does not allow the OCC to charter entities that do not receive deposits unless they are carrying on a special purpose expressly authorized by Congress.
- Because the OCC has indicated that state law would be preempted as to fintech companies that obtain a SPNB charter, the OCC's plans to issue the charters represent a preemption determination to which notice and comment procedures apply.
- The OCC's plans to issue SPNB charters to fintech companies represent a "rule" that was made without compliance with the Administrative Procedure Act and is an arbitrary and capricious action that does not constitute "reasoned decision making" as required by the APA.
- The OCC's plans to issue SPNB charters to fintech companies, by enabling nonbank charter holders to disregard state law, violate the Tenth Amendment of the U.S. Constitution under which states retain the powers not delegated to the federal government, including the police powers necessary to regulate nonbank providers of financial services and protect consumers and the public interest from unsound and abusive financial practices.

For the reasons [discussed in our blog post](#) about the second lawsuit filed by the DFS, we expect the OCC's power to issue an SPNB charter will ultimately be withheld.

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[Alan S. Kaplinsky](#)  
[Consumer Finance Monitor](#)

[Communications, Media & Internet](#)  
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