

## NYDFS Files Opposition to OCC Motion to Dismiss Lawsuit Challenging Fintech Charter

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Thursday, March 21, 2019

The New York Department of Financial Services has filed a [memorandum of law](#) opposing the OCC's motion to dismiss the NYDFS's second lawsuit seeking to block the OCC's issuance of special purpose national bank (SPNB) charters to fintech companies.

In its [motion to dismiss](#), the OCC argued that the court lacks subject matter jurisdiction over the NYDFS's claims because (1) the NYDFS cannot have standing to sue until the OCC approves an application for an SPNB charter because only then could the NYDFS suffer an injury in fact, and (2) the OCC has not yet received an application for an SPNB charter or granted a charter, thus making the matter not ripe for judicial review. The OCC also argued that the NYDFS's claims are time-barred because it can no longer challenge the OCC's regulation (12 C.F.R. section 5.20(e)(1)) interpreting the term "business of banking" in the National Bank Act and that the NYDFS's complaint fails to state a claim because the OCC's regulation is entitled to deference.

### In opposing the motion to dismiss, the NYDFS argues:

- Even if it has not yet suffered actual injury, it has standing because injury to NYDFS is "imminent" as a result of the OCC's decision to accept applications for SPNB charters.
- The OCC's public announcement that it will accept applications for SPNB charters and has taken substantial steps towards issuing such charters makes the matter ripe for judicial review.
- Because the NYDFS is challenging the OCC's July 31, 2018 decision to issue SPNB charters and the OCC has admitted that it has never relied on its regulation to issue national bank charters to non-depository institutions, the NYDFS's action accrued on July 31, 2018 and is not time-barred.
- The OCC's interpretation of the business of banking is not entitled to deference because it constitutes "a manifestly unreasonable interpretation of the NBA."

Based on arguments substantially similar to those it made in moving to dismiss the NYDFS's lawsuit, the OCC also [filed a motion to dismiss](#) the second lawsuit filed by the Conference of State Bank Supervisors (CSBS) to block the OCC from issuing SPNB charters. In addition to filing a brief opposing the OCC's motion to dismiss based on arguments substantially similar to those made by the NYDFS, the CSBS filed [an alternative motion for leave to conduct jurisdictional discovery](#).

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