State Regulators Withdraw OCC Litigation After Applicant Amends Bank Charter Application

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Washington, D.C. – The Conference of State Bank Supervisors today withdrew its complaint from the U.S. District Court for the District of Columbia challenging the Office of the Comptroller of the Currency's (OCC) nonbank charter program and Figure Technologies' application for an OCC nonbank charter.

CSBS took this voluntary action after Figure amended its application to include seeking FDIC deposit insurance, thus complying with the legal requirement that national banks obtain federal deposit insurance before operating as a bank.

"The federal banking laws are clear. Financial service companies, like Figure, that send and receive customers' money or lend money, must obtain FDIC insurance in order to operate under a federal bank charter," said Margaret Liu, CSBS executive vice president. "State regulators are prepared to revisit this issue should the OCC take any future action to entertain a bank charter application from a company that will not be FDIC-insured."

CSBS's complaint asserted that by creating a national bank charter for nonbank companies, the OCC exceeded the limited authority granted to it by Congress under the National Bank Act and other federal banking laws. Those laws authorize the OCC to only charter institutions that lawfully engage in the "business of banking," which under federal law requires an institution, at minimum, to receive deposits and become FDIC-insured.

Key points

- Many fintechs that do not take deposits operate as nonbank financial service companies licensed at the state level.
- States charter 79% of banks and are the primary supervisor of non-depository financial services, including mortgage, money transmission, consumer finance and debt industries.
- The National Bank Act and other federal banking laws authorize the OCC to charter only institutions that lawfully engage in the "business of banking," which requires an institution to receive deposits and obtain FDIC insurance.
- Congress has not granted the OCC authority to charter uninsured national banks.

Background

- 2020 court complaint and CSBS Statement
- Previous CSBS court complaint and CSBS Statement

Media contact: Catherine Pickels, 202-728-5631, cpickels@csbs.org

Twitter: @CSBSNews

The Conference of State Bank Supervisors (CSBS) is the national organization of bank regulators from all 50 states, American Samoa, District of Columbia, Guam, Puerto Rico and U.S. Virgin Islands. State regulators supervise 79% of all U.S. banks and are the primary supervisor of non-depository financial services. CSBS, on behalf of state regulators, also operates the Nationwide Multistate Licensing System to license and register non-depository financial service providers in the mortgage, money services businesses, consumer finance and debt industries.

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