



On the OCC's Draft Licensing Supplement: Evaluating Charter Applications From Financial Technology Companies

Submitted by mlongacre@csbs.org on Fri, 04/14/2017 - 15:09

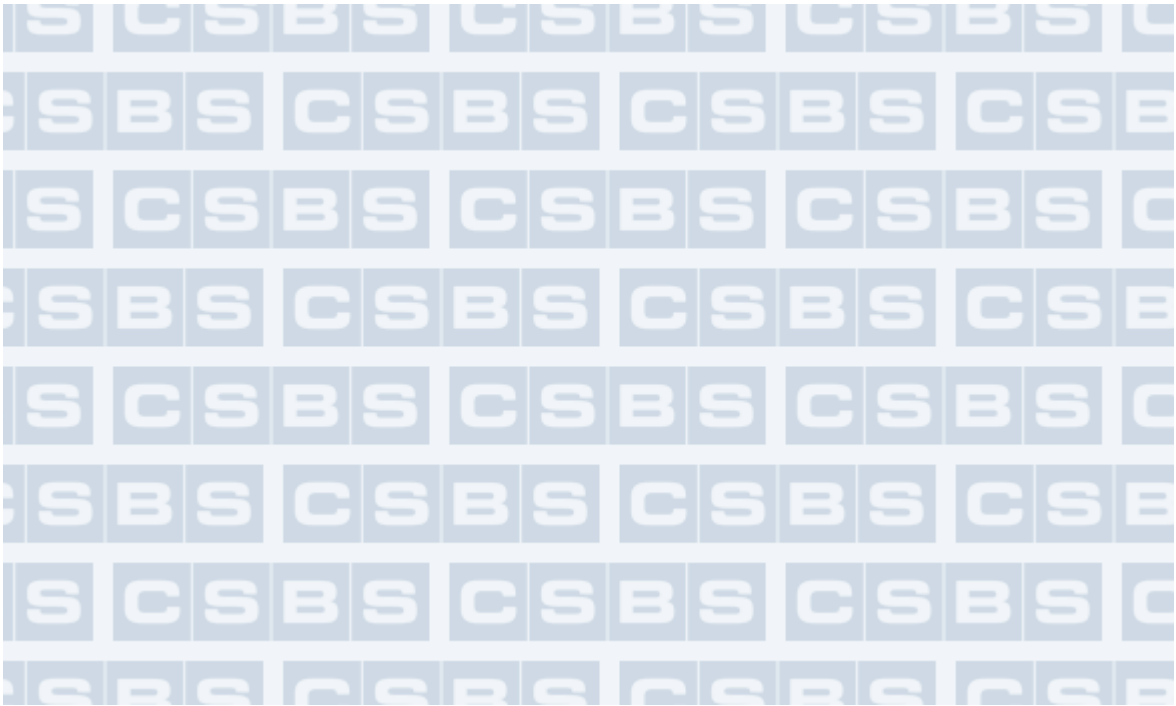
State regulators remain firmly opposed to the Comptroller's unprecedented, unlawful expansion of its chartering authority to create a national nonbank charter. As we have discussed at length in previous comment letters, the OCC lacks the requisite authority to issue the proposed nonbank charter. Courts have long held and Congress has long since affirmed that a national bank must possess and exercise the power to receive deposits to carry on "the business of banking"—the purpose for which national banks are chartered. Unless an institution can be chartered for a special purpose expressly authorized by Congress— as are trust banks, bankers' banks and credit card banks—the failure of the institution to possess and exercise the power to receive deposits precludes the institution from carrying on the business of banking and renders its charter unlawful and invalid.

In addition to the OCC's manifest lack of authority to approve nonbank charters, the OCC's approval of such charters would inflict enormous harms on our economy and citizens and would also undermine the carefully-designed regulatory and supervisory frameworks that Congress has established for our banking and financial systems. As shown below, the OCC's nonbank chartering proposal, if implemented, would:

- create tremendous distortions in the nondepository financial services industry through inconsistent and ad hoc regulatory treatment for recipients of the proposed nonbank charters;
- create an unlevel playing field to the advantage of recipients of the proposed nonbank charters and to the disadvantage of traditional, full-service banks;
- erode and potentially destroy the congressionally-mandated policy of separating banking and commerce; and
- create significant consumer harm by allowing recipients of nonbank charters to assert that they are entitled to preemption of vital state consumer protection laws.

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