

[Banking and Finance Law Daily Wrap Up, TOP STORY—Court closes DFS fintech case against OCC, \(Oct. 22, 2019\)](#)

Banking and Finance Law Daily Wrap Up

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By [John M. Pachkowski, J.D.](#)

A Southern District of New York federal court has entered a final judgment in favor of DFS' lawsuit against the OCC regarding the chartering of fintechs.

A challenge by the New York Department of Financial Services against the Office of the Comptroller of the Currency's July 2018 decision to begin accepting applications from, and grant special-purpose national bank charters to, fintech companies—including companies that do not accept deposits has reached a final judgment in a federal court for the Southern District of New York.

DFS had filed a lawsuit against the OCC in September 2018, alleging that the OCC's decision exceeded its authority under the National Bank Act (NBA) and violated the Tenth Amendment to the Constitution. In addition, the DFS maintained that the OCC's regulation covering special-purpose national banks is null and void because the agency exceeded its authority by defining the "business of banking" to include non-depository institutions (see [Banking and Finance Law Daily](#), Sept. 17, 2018).

Although the court eventually ruled that DFS failed to state a Tenth Amendment claim, it did find that DFS sufficiently established standing to pursue its statutory and constitutional claims against OCC, and that the claims are timely and ripe for decision (see [Banking and Finance Law Daily](#), May 3, 2019).

Subsequently, the parties agreed that the court's May 2019, order resolved the substantive legal issues and "render[ed] the entry of final judgment appropriate." However, the parties were unable to resolve their disagreement over a specific provision "concerning the geographic scope of the court's relief," and agreed that the court should decide whether to include the disputed provision see [Banking and Finance Law Daily](#), Sept. 30, 2019).

In a [letter](#) to the court, DFS argued that the OCC's fintech decision be "set aside with respect to all fintech applicants seeking a national bank charter that do not accept deposits." On the other hand, the OCC argued, in a [letter](#), that its regulation covering special-purpose national banks should be set aside more narrowly "with respect to all fintech applicants seeking a national bank charter that do not accept deposits, and that have a nexus to New York State."

Commenting on the OCC's contention that the final judgment should be limited in geographic scope, the court's [Decision and Order](#) noted that the "OCC has failed to identify a persuasive reason to deviate from ordinary administrative law procedure on this score." Therefore, the [final judgment](#) provides that "[the] OCC's regulation, 5 CFR §5.20(e)(1)(i), is set aside with respect to all fintech applicants seeking a national bank charter that do not accept deposits." The final judgement did provide that the "OCC expressly reserves its appellate rights in this matter."

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