

# MODERNIZATION OF FINTECH REGULATION: ANALYZING STATE REGULATORY SOLUTIONS FOR BANKS AND NONBANKS<sup>1</sup>

Gregory D. Omer

*Gregory Omer represents larger, nationwide banking organizations, as well as regional and community banks, in a broad-based regulatory practice, focusing in the areas of banking, financial services, and corporate matters. Greg's practice also involves representation of loan companies, trust companies, savings associations, money services businesses, and various other types of clients offering financial services.*

When the Office of the Comptroller of the Currency ("OCC") announced in July 2018 that it would move ahead with its plan to authorize a limited purpose, non-depository financial technology ("fintech") national bank charter, state bank regulators immediately responded with legal and policy arguments against the concept.<sup>2</sup>

The OCC's fintech national bank charter concept had initially been proposed in late 2016 and was met with lawsuits filed by the Conference of State Bank Supervisors ("CSBS")—the nationwide association of state bank regulators—and by the New York Department of Financial Services ("NY DFS"). Although those lawsuits were dismissed in early 2018 for not being ripe for judicial review,<sup>3</sup> the OCC's subsequent decision in July 2018



Gregory D. Omer

1. An earlier version of this article was published May 12, 2017 on the Thompson Coburn LLP Bank Check Financial Services Regulatory Blog. See Greg Omer, *State-Chartered Fintech Banking and Financial Services: What Solutions Will States Pursue?*, THOMPSON COBURN LLP: BANK CHECK BLOG (May 12, 2017), [https://www.thompsoncoburn.com/docs/default-source/default-document-library/fintech\\_v2\\_1264.pdf?sfvrsn=ed545ea\\_0](https://www.thompsoncoburn.com/docs/default-source/default-document-library/fintech_v2_1264.pdf?sfvrsn=ed545ea_0) [<https://perma.cc/9MRX-T9AL>].
2. Press Release, Office of the Comptroller of the Currency, OCC Begins Accepting National Bank Charter Applications From Financial Technology Companies (July 31, 2018), <https://www.occ.treas.gov/news-issuances/news-releases/2018/nr-occ-2018-74.html> [<https://perma.cc/9KKG-ATRH>]; Press Release, Conference of State Bank Supervisors, CSBS Responds to Treasury, OCC Fintech Announcements (July 31, 2018), <https://www.csbs.org/csbs-responds-treasury-occ-fintech-announcements> [<https://perma.cc/36GK-U2WJ>].
3. Conference of State Bank Supervisors v. Office of the Comptroller of the Currency, 313 F.Supp.3d 285, 299 (D.D.C. Apr. 30, 2018); *Vullo v. Office of the Comptroller of the Currency*, No. 17-3574, 2017 WL 6512245, at \*9 (S.D.N.Y. Dec. 12, 2017).

to accept fintech charter applications spurred both the CSBS and the NY DFS to publicly indicate that they will reassert their arguments against the fintech national bank charter.<sup>4</sup> Both the CSBS and the NY DFS subsequently filed lawsuits again in 2018 challenging the OCC fintech charter concept.<sup>5</sup>

The idea behind the OCC's fintech charter initiative is to foster fintech innovation by allowing nonbank fintech companies, such as licensed Internet lenders and money transmitters, to become national banks and thereby gain the benefit of nationwide federal preemption authority over state financial services regulatory law, like other national banks.<sup>6</sup> This preemption authority would address the current costly and burdensome fifty-state financial regulatory compliance regime imposed upon such nonbank fintech companies.<sup>7</sup>

However, fintech activities, such as Internet-based lending and deposit taking, are also conducted directly by traditional banks. As explained below, this fifty state compliance burden also impacts state-chartered banks conducting interstate Internet fintech banking operations and puts them at a disadvantage to national banks conducting the same type of operations.

Despite the state protests over the OCC's fintech charter plan,<sup>8</sup> when the plan was originally announced in 2016 the states did not initially appear

---

4. John Ryan, *OCC's Fintech Charter is a Mistake*, CSBS EXAMINER, Aug. 10, 2018, <https://www.csbs.org/occs-fintech-charter-mistake> [<https://perma.cc/X67Y-MC4B>]; Press Release, N.Y. Dep't of Fin. Servs., Statement by DFS Superintendent Maria T. Vullo on Treasury's Endorsement of Regulatory Sandboxes for Fintech Companies and the OCC's Decision to Accept Fintech Charter Applications, (July 31, 2018), <https://www.dfs.ny.gov/about/statements/st1807311.htm> [<https://perma.cc/6EBN-CZSN>].

5. Press Release, Conference of State Bank Supervisors, CSBS Sues OCC Over Fintech Charter (Oct. 25, 2018), <https://www.csbs.org/csbs-sues-occ-over-fintech-charter> [<https://perma.cc/W26N-4FQ6>]; Rachel Witkowski, *N.Y. State Refiles Suit to Block OCC's 'Reckless' Fintech Charter*, AMERICAN BANKER (Sep. 14, 2018, 12:21 PM), <https://www.americanbanker.com/news/ny-state-refiles-suit-to-block-occs-reckless-fintech-charter>.

6. OFFICE OF THE COMPTROLLER OF THE CURRENCY, COMPTROLLER'S LICENSING MANUAL SUPPLEMENT: CONSIDERING CHARTER APPLICATIONS FROM FINANCIAL TECHNOLOGY COMPANIES (2018), <https://www.occ.treas.gov/publications/publications-by-type/licensing-manuals/file-pub-lm-considering-charter-applications-fintech.pdf> [<https://perma.cc/9NAT-J7ZT>].

7. Under current law, most nonbank fintech companies are state licensed entities that are subject to a fifty state compliance regime, involving varying requirements and standards in jurisdictions across the nation. In other words, there is no general federal preemption of state law applicable to these types of state licensed nonbank financial services entities. They are subject to the law in each state where they serve customers, which is commonly all fifty states for fintech companies reaching customers via the Internet without regard to geographic boundaries.

8. The states have asserted that the OCC lacks the authority to charter a non-depository fintech national bank unless the bank fits into certain limited excep-

to offer regulatory alternatives to address the underlying issue of the fifty state compliance burden or a solution to level the regulatory playing field so that state chartered banks could engage in multi-state fintech operations in a manner competitive with national banks. However, certain states have since publicly recognized these issues and are becoming proactive in pursuing solutions to address them.

### I. STATES SEEKING FINTECH REGULATORY SOLUTIONS

In 2017, the Secretary of the Illinois Department of Financial and Professional Regulation issued a public statement recognizing the need for the states to develop a framework for fintech regulation that fosters innovation in a responsible manner and also addresses problematic issues concerning the state-by-state regulatory system—including the “lack of uniformity in state requirements result[ing] in regulatory inconsistency, which is a pain point for the industry.”<sup>9</sup>

Similarly, the California commissioner of the Department of Business Oversight publicly recognized “legitimate criticisms” of the current state regulatory regime applicable to most fintech companies and invited a select group of fintech companies to meet with her on the issue.<sup>10</sup> The concerns acknowledged by the California commissioner also center on the cost-intensive and time-intensive burden of the state-by-state licensing regulatory system and the related risks.<sup>11</sup> Her department publicly announced that it is interested in all ideas and solutions related to the concerns about the state-by-state system for fintech licensing and regulation.<sup>12</sup>

Although the Illinois and California regulators’ comments were aimed at nonbank fintech companies, the current state-by-state regulatory system impacts state-chartered banks and state-licensed nonbanks alike in a man-

---

tions, such as a “national trust bank.” States have also claimed that the OCC fintech charter proposal would involve harmful economic policy because the high cost of establishing a fintech national bank would preclude many interested smaller and start-up fintech companies, thus creating a two-class system of fintech industry competitors: one class with federal preemption over state laws and one without. See Ryan, *supra* note 4; Letter from John Ryan, President & CEO, Conference of State Bank Supervisors, to the Office of the Comptroller of the Currency (Jan. 13, 2017), <https://www.occ.treas.gov/topics/responsible-innovation/comments/comment-csbs-comment-letter-special-purpose-national-bank-charters-fintech.pdf> [<https://perma.cc/8UKK-XUGR>].

9. Bryan A. Schneider, *State Regulator to Fintechs: We Hear You*, AMERICAN BANKER (Mar. 31, 2017), <https://www.americanbanker.com/opinion/state-regulator-to-fintechs-we-hear-you> [<https://perma.cc/S2D7-PKXA>].

10. Lalita Clozel, *California Regulator Acknowledges ‘Legitimate Criticisms’ of State Licensing*, AMERICAN BANKER (Feb. 16, 2017), <https://www.americanbanker.com/news/california-regulator-acknowledges-legitimate-criticisms-of-state-licensing>.

11. *Id.*

12. *Id.*

ner that puts them at a competitive disadvantage to national banks when conducting interstate fintech activities. Accordingly, both state-chartered banks and state-licensed nonbanks could benefit from state initiatives to reduce regulatory burdens that are inherent in their interstate financial services activities under current law.

## II. INITIATIVES TO MAKE STATE-CHARTERED BANKS AND STATE-LICENSED NONBANKS MORE COMPETITIVE IN FINTECH

**Leveling interstate regulatory playing field for banks.** Under current federal law, according to OCC regulations, national banks—including any potential new nondepository fintech national banks—are not subject to state banking laws on a panoply of financial services regulatory issues, such as licensing, disclosures, fees and interest rates, limitations and requirements for the terms of loans or deposits, escrow accounts, and advertising.<sup>13</sup> However, a state-chartered bank is potentially subject to all of these types of state laws in every state in which it has customers,<sup>14</sup> except for the following:<sup>15</sup>

- **Usury exception.** A state-chartered bank can follow its chartering state's usury laws, rather than the laws of other states in which the bank's customers reside, if the state-chartered bank adheres to certain procedural requirements.<sup>16</sup> This authority is nearly identical to the authority of national banks to offer loans at rates using the law of the home state of the national bank, rather than the law of the home state of the borrower.<sup>17</sup>
- **Interstate branch exception.** In the case of a state-chartered bank with a branch in a "host state" (i.e., a state other than the bank's chartering state), the bank is subject to the law of that host state only to the extent that such laws would be applicable to a national bank, in connection with activities of the bank's branch operations in that host state.<sup>18</sup> In such a situation, under federal law, the law of the state bank's home

13. See, e.g., 12 C.F.R. §§ 7.4000–4010 (2017). According to the OCC, certain other types of state laws generally apply to national banks, such as anti-discrimination, zoning, taxation, criminal and tort laws.

14. Although certain state statutes may include exemptions for out-of-state banks, such exemptions usually cover only certain aspects of a state's overall regulatory framework, leaving other state laws applicable to out-of-state, state-chartered banks.

15. Both exceptions apply only to FDIC insured banks.

16. See 12 U.S.C. § 1831d (2017); Fed. Deposit Ins. Corp., Opinion Letter on Interest Charges Under Section 27 of the Federal Deposit Insurance Act, 63 Fed. Reg. 19258 (Apr. 17, 1998); Fed. Deposit Ins. Corp., Opinion Letter on Interest Charges by Interstate State Banks, 63 Fed. Reg. 27282 (May 18, 1998).

17. *Id.*

18. 12 U.S.C. § 1831a(j) (2017).

state would apply to those branch activities, instead of the host state law.<sup>19</sup> However, unlike the “usury exception” described above, this exception only applies if the state bank is conducting activities from the physical branch situated in the host state, so it would rarely apply to a bank offering fintech Internet banking services, which would normally be done from the bank’s home state, rather than from host state branches.

In each of the above limited exceptions, a state-chartered bank can follow its chartering state’s law, rather than adhere to a potential multi-state regulatory regime. The problem is that these exceptions apply only to usury issues and branch-based activity, so they are much more restrictive than the rules applicable to national banks.

Updating the federal law (specifically 12 U.S.C. § 1831a(j)) so that the laws of states in which bank customers reside would apply to state-chartered banks only to the extent that they apply to national banks would effectively level the playing field between all state and national banks conducting fintech operations, i.e., not just between state banks and the proposed national fintech banks. In other words, under this potential legislative reform, state banks could engage in fintech activities and primarily be subject to their own home state laws and applicable federal law, which would be similar to the national bank regime of national banks primarily following OCC regulations and other applicable federal banking law.

**Coordinating uniform state laws and reciprocity for state-licensed fintech nonbanks.** With regard to the fifty state compliance dilemma of state licensed fintech nonbanks, states are considering:

- adopting uniform laws and procedures so that compliance requirements are the same in each state, and
- coordinating reciprocity and exemption provisions in state statutes to allow a fintech company licensed in one state to do business without the need to comply with all of the licensing and compliance requirements of every other state in which customers reside, but instead to be primarily obligated only to follow the licensing and compliance obligations of that company’s home licensing state.<sup>20</sup>

CSBS announced a program in 2017, known as Vision 2020, to coordinate a multi-state initiative to modernize state regulation of nonbanks, including

---

19. *Id.* The concept of interstate branch preemption for state banks was implemented into federal law via the Riegle-Neal Amendments Act of 1997. Riegle-Neal Amendments Act of 1997, Pub. L. No. 105-24, 111 Stat. 238 (1997). The intent of this federal law was to even the playing field between national and state-chartered banks doing interstate banking business. However, in 1997, Internet banking was in its infancy and the concept of “fintech” did not practically exist. So, the law addressed only interstate business conducted from actual interstate bricks-and-mortar branch offices.

20. Schneider, *supra* note 9.

fintech firms, with the goals of harmonizing multi-state regulatory supervision through uniform examination standards and procedures, and automating and streamlining the multi-state licensing process.<sup>21</sup> In 2018 this program produced a multi-state agreement to standardize key elements of the licensing process for money services businesses.<sup>22</sup> CSBS has also announced the development of a uniform financial report to be used by money services businesses, such as money transmitters and prepaid card companies, in connection with meeting regulatory reporting requirements under the laws of various states.<sup>23</sup>

In a related initiative, Arizona adopted the nation's first "fintech regulatory sandbox" statute in 2018, which establishes an arrangement whereby a fintech company can obtain authority to test a new fintech product or service with customers on a limited basis without being burdened with the full scope of regulatory compliance issues.<sup>24</sup> However, this statute addresses only Arizona legal compliance issues. A state-based fintech regulatory sandbox program in one state cannot impact the applicability of the laws of other states to ease the multi-state compliance burden without similar or reciprocal provisions being incorporated into the laws of the other states where the fintech company has customers.

**Facilitating state banks' use of limited purpose FDIC insured state bank charters.** Federal law and the banking law in many states allow a Federal Deposit Insurance Corporation ("FDIC") insured state bank to be established for a limited purpose.<sup>25</sup> Examples of these types of limited purpose banks can include trust companies, credit card banks, bankers' banks, and other types of "monoline" banks that specialize in only certain des-

---

21. Press Release, Conference of State Bank Supervisors, CSBS Announces Vision 2020 for Fintech and Non-Bank Regulation (May 10, 2017), <https://www.csbs.org/csbs-announces-vision-2020-fintech-and-non-bank-regulation> [<https://perma.cc/A3W9-T55E>].

22. Press Release, Conference of State Bank Supervisors, State Regulators Take First Step to Standardize Licensing Practices for Fintech Payments (Feb. 6, 2018), <https://www.csbs.org/state-regulators-take-first-step-standardize-licensing-practices-fintech-payments> [<https://perma.cc/4GCA-ZDGC>].

23. Press Release, Conference of State Bank Supervisors, State Regulators Announce Changes to Money Services Business Reporting (Apr. 18, 2017), <https://www.csbs.org/news/press-releases/pr2017/Pages/041817.aspx> [<https://perma.cc/7AUP-VZ39>].

24. Kevin Wack, *Arizona Creates Nation's First Testing Ground for Fintech*, AMERICAN BANKER (Mar. 22, 2018, 5:08 PM), <https://www.americanbanker.com/news/arizona-creates-nations-first-regulatory-sandbox-for-fintech>.

25. See Engaged in the Business of Receiving Deposits Other Than Trust Funds, 66 Fed. Reg. 54645, 54648 (Oct. 30, 2001) (to be codified at 12 C.F.R. pt. 303); Being Engaged in the Business of Receiving Deposits Other Than Trust Funds, 66 Fed. Reg. 20102 (proposed Apr. 19, 2001) (to be codified at 12 C.F.R. pt. 303); see also 12 C.F.R. § 303.14 (2018).

ignated banking services.<sup>26</sup> Many states have chartered and currently regulate such limited purpose FDIC insured banks.

Because these limited purpose state-chartered banks are actual FDIC insured banks, they are:

- subject to the same federal banking law framework that more traditional banks are subject to, such as the Community Reinvestment Act,<sup>27</sup> the Federal Deposit Insurance Act<sup>28</sup> and, except in certain limited cases, the Bank Holding Company Act (the “BHCA”);<sup>29</sup> and
- very different from the OCC’s proposed concept of a non-depository fintech national bank that would not be FDIC insured and not be subject to many of these federal banking laws.<sup>30</sup>

State bank regulatory authorities could implement—and may already be implementing—this limited purpose state bank authority to facilitate state banks pursuing monoline business plans in the fintech sector.<sup>31</sup>

---

26. State law commonly affords flexibility to tailor state bank charter powers to fit bank business plans and otherwise prescribes various bank regulatory standards specific to the state, subject to federal law. All state banks—including limited purpose FDIC insured state banks—are subject to capital requirements under federal and state law and to regulatory assessment cost requirements under state law.

27. Community Reinvestment Act, 12 U.S.C. §§ 2901–2908 (2018).

28. Federal Deposit Insurance Act, 12 U.S.C. §§ 1811–1835a (2018).

29. Bank Holding Company Act, 12 U.S.C. §§ 1841–1852 (2018). For example, under the Competitive Equality in Banking Act of 1987, if a bank engages only in credit card operations and otherwise limits its activities in certain ways, its parent may be exempt from the BHCA. Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, § 101, 101 Stat. 552, 555 (1987).

30. The OCC’s concept of a fintech “special purpose national bank,” as explained in its Comptroller’s Licensing Manual Supplement, expressly excludes FDIC insured institutions and requires only that the fintech national bank conduct one of the following core banking functions: lending money or “paying checks” (interpreted by the OCC to include electronic facilitation of payments). OFFICE OF THE COMPTROLLER OF THE CURRENCY, *supra* note 6. Under this concept, a fintech company could become a national bank, for example, if it only conducted Internet lending or only facilitated electronic payments via the Internet. See also OFFICE OF THE COMPTROLLER OF THE CURRENCY, POLICY STATEMENT ON FINANCIAL TECHNOLOGY COMPANIES’ ELIGIBILITY TO APPLY FOR NATIONAL BANK CHARTERS (2018), <https://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/pub-other-occ-policy-statement-fintech.pdf> [<https://perma.cc/2953-234U>].

31. For example, under FDIC regulations, a limited purpose state bank would not have to engage in any type of public deposit taking functions to obtain FDIC insured status. Under its current regulations, the FDIC considers any bank to be “in the business of receiving deposits other than trust funds” as long as it has at least one deposit account and minimum aggregate deposit

Because such limited purpose state banks would generally be subject to the same federal banking law framework as other state banks, they would not have an unfair competitive advantage over those banks, as state regulators fear would be the case with non-depository fintech national banks proposed by the OCC that would be exempt from many federal banking laws. However, some bank industry groups may object to a state chartering a type of limited purpose bank to conduct fintech activities if that bank's parent entity would be exempt from the BHCA. For example, the 2017 application of Square Financial Services, Inc. ("Square"), a fintech company, for an industrial loan company ("ILC") charter garnered objections from the banking industry based on the ILC exemption from the BHCA.<sup>32</sup>

As FDIC insured banks, limited purpose state banks benefit from the same federal preemption described above that is applicable to other, more traditional types of state-chartered FDIC insured banks.<sup>33</sup> Accordingly, the potential equalization of preemption authority for state and national banks described above would also benefit these FDIC insured, state-chartered limited purpose banks.

### III. CHALLENGES FOR STATES PURSUING FINTECH STATE BANKING INITIATIVES

**Challenges for leveling interstate regulatory playing field for banks.** The equalization of federal preemption for state and national banks would likely involve the following challenges:

- **Passing federal legislation.** The most obvious obstacle is the need to pass federal legislation to expand the existing federal preemption authority available for state banks so that it would apply to their Internet banking operations—similar to preemption under the National Bank Act's application to national bank Internet banking. This type of legislative initiative may involve significant challenges to achieve pas-

---

amounts totaling \$500,000. 12 C.F.R. § 303.14 (2018) That deposit account could be from an affiliate of the bank. See 12 C.F.R. § 303.14; Engaged in the Business of Receiving Deposits Other Than Trust Funds, 66 Fed. Reg. 54645, 54650 (Oct. 30, 2001) (to be codified at 12 C.F.R. pt. 303).

32. An ILC is an FDIC insured banking institution that can be chartered only in certain states. ILCs are subject to certain powers limitations under federal law. Because the parent company of an ILC is not subject to the BHCA, an ILC can be owned by a commercial firm. Square chose to apply for an ILC charter due to its parent entity conducting activities that would be impermissible for a bank holding company under the BHCA. However, many fintech companies are not owned by a parent entity engaged in such BHCA-impermissible activities, and therefore could avoid the ILC controversy by opting for an FDIC insured bank charter that is not an ILC.

33. See, e.g., 12 U.S.C. §§ 1831a(j), 1831d (2018).



sage, including resistance from parties that do not want any additional federal preemption authority added to the existing banking law.

- **Potential objections.** While the update in preemption authority explained above would simply be evening the playing field for all state banks with the current national bank preemption authority, some states may balk at such a change due to a concern that the change would cause them to lose power to protect customers in their states. Consumer advocacy groups may share this concern. Certain banks and bank trade groups may oppose the change due to the additional competition it would facilitate. However, the concerns of the states and consumer groups may be mitigated by the fact that current federal law already restricts the states' ability to engage in this type of protection with regard to financial services provided by any national bank or by any state-chartered bank operating from an interstate branch, as well as with regard to usury limits on any interstate bank loans by either a state or national bank. This preemption law change would simply expand the existing state bank preemptive authority so that, rather than only applying to old fashioned brick-and-mortar office activities, it would also apply to modern, Internet-based activities. The industry concerns over additional competition may also be mitigated due to the fact that Internet-based lending competition from various sources is already commonplace.

**Challenges to coordinate uniform law and reciprocity for state-licensed fintech nonbanks.** With fifty state legislatures involved, it is likely to be very difficult and time consuming to implement the concept throughout the United States of coordinating:

- uniform state statutes for the licensing and regulation of nonbank fintech companies, and/or
- statutory provisions recognizing reciprocity throughout the United States so that each state would defer to the authority of the home state of a fintech nonbank to license and regulate that entity.

Despite these challenges, many states may have the ability to implement some level of uniformity and reciprocity through interstate compacts and the state rulemaking process.

**Challenges to facilitate state banks' use of limited purpose FDIC insured state bank charters.** The idea of state-chartered limited purpose banks is not new, but promoting the ability of state banks to utilize such limited purpose charters for monoline fintech business plans would likely involve the following challenges:

- **State-federal cooperation on limited purpose charter.** The facilitation of such limited purpose state bank charters would take cooperation between state banking authorities and the FDIC. However, similar cooperation has existed between the states and the FDIC on prior limited

purpose bank charter concepts. The FDIC acknowledged in a 2001 rulemaking its “longstanding practice of approving applications from . . . non-traditional depository institutions.”<sup>34</sup> The FDIC cited trust banks, credit card banks and other types of “specialized institutions” as being among the types of banking institutions that the FDIC has agreed to insure.<sup>35</sup>

- **Potential bank industry objections.** Although the concept of state chartered limited purpose banks has been around for many years, certain banks and bank industry trade groups may object to states issuing such charters to banks wishing to institute only fintech operations, out of concern over the additional competition such entities would bring. These objections would likely be stronger if a state were to consider chartering a limited purpose bank whose parent entity would be exempt from the BHCA, such as an ILC. However, for other types of limited purpose banks, these objections may be mitigated due to the fact that such limited purpose banks would be FDIC insured (unlike the OCC’s version of fintech national banks), and, therefore subject to the same types of compliance requirements that more traditional FDIC insured banks face.

#### IV. CONCLUSION

For the past 150 years the United States has utilized a “dual banking” system to regulate financial services. Under this system, the states are the primary regulators of most nonbank financial services companies and both the states and the federal government charter and regulate banks that compete with each other to offer banking services to the American public.

Prior to the advent of Internet based financial services and the explosion of fintech, the flexibility of the dual banking system allowed states—within their geographic boundaries—to be laboratories for innovation and change for United States financial services.<sup>36</sup> States are now poised to utilize this

---

34. See Engaged in the Business of Receiving Deposits Other Than Trust Funds, 66 Fed. Reg. at 54646.

35. *Id.* at 54649. The FDIC noted that “for over thirty years, the FDIC has approved applications from many institutions that did not intend to accept [bank] deposits from the general public. Also, the FDIC has approved applications from institutions that only intended to hold one type of deposit account (e.g., certificates of deposit) or that did not intend to hold more than one or a few [bank] deposit accounts.” *Id.* at 54646.

36. The OCC itself has acknowledged that the dual banking system “allows the states to serve as laboratories for innovation and change, not only in bank powers and structures, but also in the area of consumer protection.” OFFICE OF THE COMPTROLLER OF CURRENCY, NATIONAL BANKS AND THE DUAL BANKING SYSTEM (2003), <https://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/national-banks-and-the-dual-banking-system.pdf> [<https://perma.cc/EF52-ZR27>] (citing *Fair Credit Reporting Act: How it Func-*

unique role in United States financial regulation to create the same type of laboratories for innovation and change in the fintech arena.

As noted above, certain state-based regulatory initiatives that could facilitate innovation and change in delivery of fintech services will certainly involve challenges, such as the passage of federal legislation to equalize the playing field for state and national banks to offer Internet-based fintech banking services. However, if successful, these types of state-based regulatory alternatives could facilitate banks and nonbanks in meeting the needs of the rapidly expanding fintech customer base.

---

*tions for Consumers and the Economy: Hearing Before the Subcomm. on Fin. Insts. & Consumer Credit of the H. Comm. on Fin. Servs.*, 108th Cong. 438 (2003) (quoted statement is by Joseph A. Smith, Jr., North Carolina Commissioner of Banks, on behalf of the Conference of State Bank Supervisors)) (the OCC acknowledged the statement by Mr. Smith was “rightly assert[ed]”).