II. CSBS 2020 Vision: Goals, Progress, and Future

A. Introduction

After the 2008 Global Financial Crisis, traditional banks were under intense regulatory standards, which led to a contraction in lending from banks.[1] This environment allowed non-banking financial institutions (NBFIs) to grow very quickly because they were able to fill this void and provide their services.[2] To address the growth of NBFIs, the Conference of State Bank Supervisors (CSBS) created Vision 2020 to achieve "a more streamlined state regulatory system that supports business innovation, local and national economic growth, and essential protections for consumers and taxpayers."[3] However, the Office of the Comptroller of the Currency's (OCC) attempts at issuing their own NBFI national charter has threatened the success of Vision 2020.[4]

This article discusses in Section B some important definitions and background information. Section C discusses what the CSBS hoped to accomplish regarding regulation of NBFIs through Vision 2020 at its outset, as well as the CSBS's progress towards achieving these goals. Section D discusses the future of Vision 2020 and the tension between the CSBS and the OCC.

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[1] *Nonbanking Financial Company*, CORP FIN. INST. (May 26, 2020), https://corporatefinanceinstitute.com/resources/knowledge/finance/non-banking-financial-company-nbfc/ [https://perma.cc/NE3G-6CM6] ("After the financial crisis, traditional banks found themselves under an intense regulatory microscope. It led to a large contraction of lending activities, as regulations for lending and other credit activities tightened.").

[2] *Id.* ("After the 2008 Global Financial Crisis, NBFCs were able to grow very quickly, and in various industries.").

[3] *See CSBS Announces Vision 2020 for Fintech and Non-Bank Regulation*, CSBS (May 10, 2017), https://www.csbs.org/newsroom/csbs-announces-vision-2020-fintech-and-non-bank-regulation [https://perma.cc/2H2Z-M84B] (listing the initiatives that Vision 2020 plans to pursue).

[4] MAUREEN MURPHY, CONG. RESEARCH SERV., COURT BATTLE FOR FINTECH BANK CHARTERS TO CONTINUE 1, 2 (Dec. 6, 2019) ("The Office of the Comptroller of the Currency (OCC) plans to appeal an October district court judgement holding that the agency lacks the authority to grant national bank charters to financial technology companies (fintechs) that do not take deposits.").

B. Definitions and Background

NBFIs are financial companies that do not have licenses to conduct themselves as a bank.[5] Therefore, NBFIs cannot receive deposits, however they perform other financial services such as "investment (both collective and individual), risk pooling, financial consulting, brokering, money transmission, and check cashing."[6] Some examples of NBFIs include casinos, investment funds, money services businesses (MSBs), insurance companies, and credit card operators.[7] To protect consumers, "state regulators are the primary authority governing nonbank financial services."[8] NBFIs are required to obtain licenses in one or more states, and are subject to the laws in those states.[9]

The Conference of State Bank Supervisors (CSBS) is a national forum of financial regulators from all 50 states, the District of Columbia and U.S. territories.[10] CSBS acts as a medium for states to develop policy and coordinate supervision of NBFIs collectively, as well as work with federal regulators and policymakers.[11] Vision 2020 is a plan to "modernize and harmonize the licensing and supervision of nonbanks operating on a multistate basis."[12]

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[5] *Nonbanking Financial Institution*, WORLD BANK GRP. (accessed Jan. 30, 2021), https://www.worldbank.org/en/publication/gfdr/gfdr-2016/background/nonbank-financial-institution [https://perma.cc/QX5G-W2X9] (defining a NBFI as "a financial institution that does not have a full banking license and cannot accept deposits from the public").

[6] *Id.*

[7] *Risks Associated with Money Laundering And Terrorist Financing*, FFIEC (accessed Mar. 6, 2020), https://bsaaml.ffiec.gov/manual/RisksAssociatedWithMoneyLaunderingAndTerroristFinancing/25 [https://perma.cc/BZ8P-3LRE].

[8] *CSBS: At the Forefront of Financial Supervision*, CSBS (accessed Jan. 30, 2021), https://www.csbs.org/csbs-forefront-financial-supervision [https://perma.cc/4BS9-SHYR].

[9] *Id.* ("Business entities obtain licenses in one or more states and are then subject to state laws governing related business activities.").

[10] Conference of State Bank Supervisors v. Office of the Comptroller of the Currency, 313 F. Supp. 3d 285, 291 (D.D.C. 2018) ("CSBS is a nationwide organization of state banking and financial services regulators from all fifty U.S. states ….").

[11] CSBS, *supra* note 8 ("CSBS serves as a national forum for state regulators to develop collective policy, coordinate supervision and work with federal regulators and policymakers.").

[12] *Id.*

C. Vision 2020: Goals and Progress

1. Redesign the Nationwide Multistate Licensing System (NMLS)

One of the six initiatives that the CSBS was looking to achieve at the onset of Vision 2020 was to redesign and expand the NMLS through technological efforts.[13] The NMLS is a platform that states use for the regulation of NBFIs.[14] According to the CSBS, redesigning the NMLS was intended to have three outcomes. The redesign was intended to "use data and analytics to provide a more automated licensing process for new applicants, streamline multi-state regulation, and shift state resources to higher-risk cases."[15] From the start, the redesign of the NMLS has shown great results in encouraging states to adopt the NMLS system. In July 2017, the New York State Department of Financial Services (NYDFS) shifted over to "the NMLS to manage the license application and ongoing regulation of all non-depository financial institutions conducting business in the state, commencing with money transmitters."[16] The NMLS has also innovated through the use of an electronic surety bond (ESB). An ESB, which is often required as a condition to obtain a license, is similar to a traditional bond except it is delivered electronically through the NMLS portal instead of through mail.[17] As of February 10, 2021, over 150 license authorities managed on NMLS accept NMLS ESB as a condition of licensure, and this number is expected to grow as more

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[13] *Id.* ("CSBS has launched a technology effort that redesigns and expands NMLS, the common platform for state non-bank regulation.").

[14] *Welcome to the Federal Registry Resource Center*, NMLS (accessed Mar. 6, 2021), https://fedregistry.nationwidelicensingsystem.org/Pages/default.aspx [https://perma.cc/5BLE-XYDS]

[15] CSBS, *supra* note 3.

[16] *Conference of State Bank Supervisors Announce Initiatives to Obviate Need for Fintech Charter, New York Joins Nationwide Mortgage Licensing System for Fintechs*, BUCKLEY (May 18, 2017), https://buckleyfirm.com/blog/2017-05-18/conference-state-bank-supervisors-announce-initiatives-obviate-need-fintech-charter-new-york-joins-nationwide-mortgage-licensing-system-fintechs [https://perma.cc/NW83-HB5A].

[17] *NMLS Electronic Surety Bond*, NMBLS RESOURCE CTR. (accessed Feb. 13, 2021), https://nationwidelicensingsystem.org/Pages/esbt.aspx [https://perma.cc/9NBB-QNRV] (describing the policy behind both normal surety bonds and electronic surety bonds used by NMLS).

agencies decide to utilize NMLS to manage licensing.[18] This is an extraordinary achievement considering that under 30 license authorities managed on NMLS accepted NMLS ESB as of August 11, 2016.[19] Another initiative put into place was the overhaul of the NMLS to "leverage data to triage applicants based on risk."[20] This redesign improved efficiency and the quality of supervision, because lower-risk applicants move through the licensing process more quickly, and regulators are able to put a higher emphasis on higher-risk applicants.[21]

2. *Harmonize Multi-state Supervision*

A second initiative that the CSBS was looking to achieve at the onset of Vision 2020 was to harmonize multi-state supervision through more uniform examinations between the states, and through capturing and reporting violations at the national level.[22] Furthermore, to harmonize multi-state supervision, the CSBS plans to utilize a common platform for examinations.[23] On August 8, 2018, the CSBS took major steps in achieving their goal when they announced that "all

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[18] *Id.* ("Over 250 license authorities managed on NMLS required the company to obtain and maintain a surety bond as a condition of licensure. As more state agencies choose to manage license authorities on NMLS, SRR expects this number to grow."); *see also State Adoption of NMLS ESB*, STATE REGULATORY REGISTRY LLC (Feb. 10, 2021), https://mortgage.nationwidelicensingsystem.org/news/Documents/ESB%20Adoption%20Map%20and%20Table.pdf [https://perma.cc/95XT-AA78] (listing different licenses for which states use NMLS ESB).

[19] *See State Adoption of NMLS ESB*, STATE REGULATORY REGISTRY LLC (Aug. 11, 2016), https://nationwidelicensingsystem.org/news/Documents/NMLS%20ESB%20Adoption%20Map%20and%20Table.pdf [https://perma.cc/4BPK-NXUH] (listing license authorities accepting NMLS ESB).

[20] *CSBS Vision 2020 A Progress Report*, CSBS (Apr. 25, 2019), https://www.csbs.org/newsroom/csbs-vision-2020-progress-report [https://perma.cc/DN4R-FSRS]

[21] *Id.* ("Thus, the new system will enable regulators to speed lower-risk applicants through the licensing process, while focusing regulators on higher-risk applicants. This shift will enhance the quality of supervision and improve regulatory efficiency.").

[22] CSBS, *supra* note 3 ("The groups will work to enhance uniformity in examinations, facilitate best practices, and capture and report non-bank violations at the national level").

[23] *Id.* ("To further streamline the process, CSBS will create a common technology platform for state examinations.").

states and U.S. territories now use a single, common exam to assess mortgage loan originators (MLOs), simplifying the licensing process for MLOs and streamlining supervision of the mortgage industry."[24] Beforehand, candidates seeking mortgage licenses were required to take a national exam and one exam for each state they would like to be licensed in.[25] With the single exam process, MLO candidates can now attain their licenses quicker and more efficiently.[26] Furthermore, the single exam lowers the cost of licensure in each state by $69, saving MLO candidates millions of dollars in total since the new system has been implemented.[27] Since the uniform test was initiated by the CSBS for MLO candidates, the CSBS has only implemented a uniform exam for one other subset of NBFIs.[28] On September 15, 2020, the CSBS announced that "[m]oney transmitters operating in 40 or more states will benefit from streamlined state examinations in 2021."[29] According to Rosemary Gallagher of Western Union, Western Union "firmly believe[s] that the impact of this new approach to multistate exams will be significant in terms of driving harmonization and streamlining of state supervision across the board."[30] Another initiative that the CSBS has put in place is the Multistate Money Services Business

[24] *State Regulators Nationwide Adopt Single Exam for Mortgage Licensing*, CSBS (Aug. 8, 2018), https://www.csbs.org/newsroom/state-regulators-nationwide-adopt-single-exam-mortgage-licensing [https://perma.cc/5G2B-W2BR].

[25] Jeremy McLaughlin, *CSBS Rolls Out Joint Examination Initiative for Nationwide Payments Firms*, NAT'L. REV. (Sep. 21, 2020), https://www.natlawreview.com/article/csbs-rolls-out-joint-examination-initiative-nationwide-payments-firms [https://perma.cc/49VQ-QL7Q] ("[T]he initiative will allow 78 licensed payments companies … to undergo one joint examination rather than separate examinations for each state in which they are licensed.").

[26] *See id.* ("A single, uniform examination process will likely reduce compliance costs and business interruptions while providing more regulatory certainty.").

[27] CSBS, *supra* note 24 ("[E]ach state that adopted the UST has reduce the cost of licensure in its state by $69. In 2017, those 33,000 first-time test takers collectively saved more than $2.2 million.").

[28] *See State Regulators Roll Out One Company, One Exam for Nationwide Payments Firms*, CSBS (Sept. 15, 2020), https://www.csbs.org/regulators-announce-one-company-one-exam-for-payments-companies [https://perma.cc/7LAX-YZ88] (describing the new examination process for money transmitters in "40 or more states").

[29] *Id.*

[30] *Id.*

Licensing Agreement.[31] This agreement will make the money services business more efficient because if one of the signatory states (currently 29 states have signed on) reviews important elements of state licensing for a money transmitter, the other signatory states will accept those findings and do not need to do any further investigating.[32]

3. Form an Industry Advisory Panel

A third initiative that the CSBS was looking to achieve at the onset of Vision 2020 was to "establish a fintech industry advisory panel to identify points of friction in licensing and multi-state regulation, and provide feedback to state efforts to modernize regulatory regimes."[33] This advisory panel was intended to find solutions specifically towards money lending and money transmission.[34] Furthermore, Margaret Liu, Deputy General Counsel of the CSBS stated that another goal of the advisory panel was "to expand and deepen industry engagement and elicit actionable industry feedback about aspects of the state licensing system that are the biggest pain points for fintech companies."[35] The CSBS made progress in 2017 by forming a Fintech Advisory Panel of 33 companies that was split into two groups with its focus mainly on payments and lending, and a smaller group focused on community banking and innovation.[36] From its inception, the advisory panel has spent more than 100 hours in meetings identifying problems

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[31] John Ryan, *States are well equipped to regulate fintechs*, AM. BANKER (Sept. 21, 2020), https://www.americanbanker.com/opinion/states-are-well-equipped-to-regulate-fintechs [https://perma.cc/9XJT-2G9C] (describing the Multistate Money Services Business Licensing Agreement).

[32] *Id.* ("To date, 29 states have signed on. If one of these signatory states reviews key elements of state licensing for a money transmitter, other participating states agree to accept the findings. The process has shown to reduce the time for a company to obtain a license by two-thirds.").

[33] CSBS, *supra* note 3.

[34] *Id.* ("The panel will focus on lending and money transmission, and discuss a wide range of solutions.").

[35] Stephanie Forshee, *CSBS' Margaret Liu on Bank Regulators' Vision 2020 for Fintechs; News/Columns*, NAT'L L.J. (May 19, 2017), https://www.law.com/nationallawjournal/almID/1202786752021/CSBS-Margaret-Liu-On-Bank-Regulators-Vision-2020-for-Fintechs/?mcode=1202617074964&curindex=3&slreturn=20210222131712.

[36] CSBS, *supra* note 20 (discussing the format of the Fintech Industry Advisory Panel).

in the multistate system.[37] These meetings have been effective, as the CSBS have accepted at least 14 recommendations from the Fintech Industry Advisory Panel.[38] Some recommendations that the CSBS is putting into action include to:

> Develop a 50-state model law to license money services businesses, [c]reate a standardized call report for consumer finance businesses, [b]uild an online database of state licensing and fintech guidance, while encouraging a common standard, [d]evelop a new technology offering, a State Examination System (SES), to simplify examinations of nonbanks operating in more than one state, [and] [e]xpand the use of the Nationwide Multistate Licensing System among all state regulators and to all nonbank industries supervised at the state level.[39]

To date, the CSBS has developed a model law to license money services businesses via one exam, but the money services business must exceed the threshold of operating in more than 40 states.[40] This means only the largest payment and cryptocurrency organizations in the United States will have access to the "one comprehensive exam" system.[41] As well, the standardized call report for consumer businesses, known as the NMLS MSB Call Report, standardizes information available to state regulators, however it is currently only required by "approximately 36 states."[42] Next, the SES

[37] *Id.* ("The panel divided into two groups focusing on lending and payments, devoting more than 100 hours to meetings that identified pain points in the multistate experience.").
[38] *See id.* (referencing an announcement of the 14 accepted recommendations).
[39] *State Financial Regulators Embrace Recommendations from Fintech Advisory Panel*, CSBS (Feb. 14, 2019), https://www.csbs.org/newsroom/state-financial-regulators-embrace-recommendations-fintech-advisory-panel [https://perma.cc/7R23-DAFA].
[40] CSBS, *supra* note 28 (referencing the 40-state threshold that receive MSB Networked Supervision).
[41] *Id.* ("[T]he initiative applied to 78 of the nation's largest payments and cryptocurrency companies that currently meet the 40-state threshold.").
[42] *NMLS Money Services Businesses Call Report Overview*, STATE REGULATORY REGISTRY LLC (Feb. 10, 2021), https://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/MSBCR%20Ove

has only been adopted by nine states for supervisory activities and complaints, and the SES has been adopted by only 23 states for supervisory activities only.[43]

4. Assist Banking Department

A fourth initiative that the CSBS was looking to achieve at the onset of Vision 2020 was to assist state departments to more effectively supervise banks and non-banks.[44] The CSBS's goal was to seek to update standards and analytics to help states "determine where new expertise is most needed, identify and address weaknesses, update supervisory processes, and compare themselves to and learn from other state departments."[45] Since these goals were announced, the CSBS has "deployed a new Online Accreditation System for states to validate improved performance," and all states have identified an Innovation Contact to make the exchange of information more efficient between states and NBFIs.[46] Furthermore, the CSBS has accomplished "the most sweeping training program in CSBS history" by training over 250 examiners, with a focus on cybersecurity.[47] Lastly, in 2020 the CSBS updated their SES platform to give state financial regulators the ability to manage and address customer complaints through the SES system.[48] CSBS president and CEO John Ryan stated that "[t]his new functionality will allow regulators to view complaints across the country and more quickly identify trends and bad actors … This is another example of how states are creating a

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rview%20-%20(FINAL).pdf [https://perma.cc/PW4M-L4S3] (describing the purposes of the NMSL MSB Call Report).

[43] *State Examination System (SES)*, CSBS (accessed Feb. 14, 2021) https://www.csbs.org/aboutSES#ses-anchor [https://perma.cc/5CLW-FSGT].

[44] CSBS, *supra* note 3 ("CSBS education programs will make state departments more effective in supervising banks and non-banks.").

[45] *Id.*

[46] CSBS, *supra* note 20 ("To speed information exchanges with fintech firms, in 2018 states identified an Innovation Contact within their departments.").

[47] *Id.* (discussing the updates to the new CSBS Online Accreditation System).

[48] *State Regulators Add Customer Complaint Management to SES Technology Platform*, CSBS (Sept. 30, 2020) https://www.csbs.org/newsroom/state-regulators-add-customer-complaint-management-ses-technology-platform [https://perma.cc/F5UC-AGSS] ("State financial regulators now have the ability to input, manage and address customer complaints electronically within the State Examination System, technology platform ….").

more networked system of supervision to enhance state oversight while streamlining compliance for regulated entities."[49]

5. Make It Easier for Banks to Provide Services to Non-banks

Due to regulatory uncertainty, banks in 2017 were cautious about doing business with non-banks.[50] A fifth initiative that the CSBS was looking to achieve at the onset of Vision 2020 was to encourage banks to do more business with non-banks by "increasing industry awareness that strong regulatory regimes exist for compliance with laws for money laundering, the Bank Secrecy Act, and cybersecurity."[51] The CSBS took steps to achieving this goal first by developing a white paper that showed the regulatory regimes that exist to protect banks from money laundering risks.[52] Next, the CSBS developed anti-money laundering to help banks and money services businesses manage and assess their money laundering risks.[53]

6. Make Supervision More Efficient for Third Parties

A sixth initiative that the CSBS was looking to achieve at the onset of Vision 2020 was to support legislation on the federal level to allow state and federal regulators to coordinate better and more efficiently in regards to supervision of bank third-party service providers such as NBFIs.[54] Progress towards achieving this goal occurred in 2018 when the House Financial Services Committee voted to approve

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[49] *Id.*
[50] CSBS, *supra* note 3 ("[B]anks are cautious about doing business with non-banks, due to regulatory uncertainty").
[51] CSBS, *supra* note 3.
[52] CSBS, *supra* note 20 ("In 2016, CSBS developed a white paper on the market impacts of de-risking on MSBs, and clarified that strong regulatory regimes exist to protect banks against BSA/AML risk.").
[53] *Id.* ("In 2017, CSBS developed a BSA/AML self-assessment tool to help banks more effectively assess and manage their BSA/AML risks. In 2018, CSBS developed a similar tool for MSBs.").
[54] CSBS, *supra* note 3 ("CSBS supports federal legislation that would allow state and federal regulators to better coordinate supervision of bank third-party service providers.").

an amendment to the Bank Service Company Examination Act.[55] This amendment would "enhance the ability of state and federal regulators to coordinate examinations of—and share information on—banks' technology vendors."[56] In September 2019, the amendment to the Bank Service Company Examination Act was passed by the House.[57] However, this amendment has not yet been approved by the Senate.[58]

D. The Future of Vision 2020: Tension between CSBS and the Office of the Comptroller of the Currency

The future impact of Vision 2020 and the effectiveness of the CSBS' efforts in the future are in jeopardy due to the OCC's effort towards nationally chartering NBFIs. More specifically, in 2018 the OCC began offering a special purpose national bank (SPNB) charter to NBFIs that made loans or paid checks, even if they did not accept deposits.[59] According to the OCC, they supervise charter and regulate all federal savings associations, national banks and federal branches and agencies of banks outside of the United States.[60] Their mission is "[t]o ensure that national banks and federal savings associations operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations."[61] It is abnormal for the OCC to charter NBFIs that do not take deposits as it is only acceptable in two cases, trust banks and banker's banks, both of which were granted express authorization by

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[55] *The Bank Service Company Examination Coordination Act, Explained*, CSBS (Aug. 12, 2020), https://www.csbs.org/policy/opinions-insights/bank-service-company-examination-coordination-act-explained [https://perma.cc/GEL8-T5D5] (stating that the Act had passed the House).
[56] *Id.*
[57] H.R.241 - Bank Service Company Examination Coordination Act of 2019, CONGRESS.GOV (accessed Feb. 16, 2021), https://www.congress.gov/bill/116th-congress/house-bill/241.
[58] *Id.* (stating that the bill has been referred to the Senate, but not yet passed).
[59] *See* MURPHY, *supra* note 4 at 1 ("In July 2018, OCC announced that it would begin offering a SPNB charter to fintechs … As a result, fintechs would be eligible for a SPNB charter … even if they did not accept deposits.").
[60] *About Us*, OFFICE OF THE COMPTROLLER CURRENCY (accessed Feb. 16, 2021), https://www.occ.treas.gov/about/index-about.html [https://perma.cc/H7G6-UEQY] ("The OCC ... charters, regulates, and supervises all national banks and federal savings associations as well as federal branches and agencies of foreign banks.").
[61] *Id.*

Congress.[62] Whether it is permissible for the OCC to offer the NBFI national bank charter is significant, because it would allow banks who receive a SPNB "to avoid state-by-state licensing and preempt some state consumer protection laws."[63] As well, state banking regulators strongly oppose SPNB charters by the OCC because it would substantially lessen or completely eliminate state regulators' regulation over NBFIs.[64] The CSBS opposes SPNB charters because "if the OCC is allowed to create a special purpose nonbank charter, it would redefine our entire banking system, create new systemic risks and set a dangerous precedent that any federal agency can act beyond its legal limits."[65] Resultantly, CSBS and the New York State Department of Financial Services both filed suits in separate federal courts to challenge OCC's authority to charter NBFIs.[66] The Southern District of New York (SDNY) found that "the OCC regulation authorizing SPNB charters for non-depository fintechs exceeded the agency's authority" in May 2019.[67] However, in September of 2019, the U.S. District Court for the District of Columbia dismissed the CSBS's suit as the OCC had not yet chartered a NBFI and therefore no CSBS member could assert an injury.[68] Despite the SDNY holding and the suit from CSBS, the OCC still remained adamant about authorizing SPNB

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[62] *See* MURPHY, *supra* note 59, at 3 ("Until the fintech charter issue arose, OCC had charted only two types of non-depository banks (i.e., trust banks and banker's banks) and only upon express authorization from Congress.").

[63] *The Fintech War Between the States and the OCC Is Redefining What It Means to Be a Bank in the United States*, SEWARD & KISSELL LLP (Oct. 15, 2020), https://www.sewkis.com/publications/the-fintech-war-between-the-states-and-the-occ-is-redefining-what-it-means-to-be-a-bank-in-the-united-states/ [https://perma.cc/A9PC-GXRF].

[64] *See* MURPHY, *supra* note 59, at 3 (discussing the lawsuit between CSBS and OCC).

[65] *CSBS Files New Complaint Against OCC*, CSBS (Dec. 22, 2020), https://www.csbs.org/newsroom/csbs-files-new-complaint-against-occ [https://perma.cc/RCZ7-2FHQ] (quoting John W. Ryan, CSBS president and CEO).

[66] *See generally* MURPHY, *supra* note 59 (discussing both law suits against the OCC).

[67] *Id.* at 2.

[68] *Id.* at 2 ("[T]he U.S. District Court for the District of Columbia dismissed the CSBS suit as unripe because OCC had not issued a fintech bank charter, and CSBS lacked standing because no member of the CSBS was able to assert an injury in fact.").

charters for NBFIs.[69] In 2020 the OCC has granted national bank charters to Varo Money, Inc., and in 2021 granted a national trust bank charter to Anchorage Trust Company.[70] In response to this and the OCC's impending grant of a charter to Figure Technologies Inc., the CSBS filed a lawsuit opposing the OCC's acceptance of a charter application from Figure Technologies Inc. and the OCC's creation of a national bank charter for NBFIs generally.[71]

With litigation pending, the future of Vision 2020 and the CSBS's involvement in regulating NBFIs is in question, as a verdict in favor of the OCC would surely limit state involvement in regulating NBFIs.[72] This is because each nationally chartered NBFI would have only been able to operate under state regulation if SPNB charters were not unauthorized.[73] Therefore, each NBFI that decides to be nationally chartered lowers the percentage of NBFIs regulated by the states. The reason why new NBFIs as well as current NBFIs may seek SPNB charters in lieu of state regulation is because of their ability to have

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[69] *See First Consumer Fintech in US History Gains Full Regulatory Approval to Become a National Bank*, VARO (Jul. 31, 2020), https://www.varomoney.com/press_release/first-consumer-fintech-in-us-history-gains-full-regulatory-approval-to-become-a-national-bank/ [https://perma.cc/SZN8-9STG] (announcing that the OCC had provided Varo Money, Inc., with its national bank charter and describing OCC's process and purposes); *OCC Conditionally Approves Conversion of Anchorage Digital Bank*, OCC (Jan. 13, 2021) https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6.html [https://perma.cc/HQ6Q-P7S4] (announcing the approval of a national trust bank charter to Anchorage Trust Company).

[70] Varo, *supra* note 69 (announcing that the OCC had provided Varo Money, Inc., with its national bank charter and describing OCC's process and purposes); OCC, supra note 69 (announcing the approval of a national trust bank charter to Anchorage Trust Company).

[71] CSBS, *supra* note 65 ("[CSBS] announced today that it has filed a complaint in the U.S. District Court for the District of Columbia opposing the [OCC's] creation of a new national bank charter for nonbank companies and its acceptance and impending approval of a charter application from Figure Technologies Inc.").

[72] *See* MURPHY, *supra* note 59, at 1 ("[OCC] plans to appeal an October district court judgement holding that the agency lacks the authority to grant national bank charters to financial technology companies (fintechs) that do not take deposits.").

[73] *See* SEWARD & KISSELL LLP, *supra* note 63 (discussing fintech charters and the interplay between state and federal regulatory law).

federal preemption.[74] This would allow any nationally chartered NBFI to only follow the national requirements, and preempt any licensing requirements, interest rate charges, noninterest fees (such as check-cashing fees), loan term limitations, and limitations on branching imposed by the individual states on NBFIs.[75] These preemptions are troublesome for the future of Vision 2020 because they directly go against the CSBS' goal of having uniform regulations across NBFIs.[76] Another advantage of a SPNB charter is that NBFIs may have the ability to obtain a "Master Account" from the Federal Reserve to process transactions without having to partner with a bank.[77] Although these characteristics are attractive, there are many regulatory burdens that must be followed if a NBFI is nationally chartered. These burdens include: (1) capital and liquidity requirements, (2) the same safety and soundness requirements of nationally chartered banks, (3) requirements that each director must be a citizen of the United States (unless a waiver is given), (4) costly examinations by the OCC, (5) limits to affiliate transactions (including parent companies), and (5) even greater anti-money laundering specific regulations that must be followed.[78] Therefore, even if NBFI are permitted to have SPNB charters, it is likely that many will remain to be state regulated, however Vision 2020's success will likely be dampened as the proportion of NBFIs that they control will likely shrink.

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[74] Tres York, *National Bank Charter for Payments Companies Would Preempt State Authority*, NCSL (Oct. 28, 2020) https://www.ncsl.org/blog/2020/10/28/national-bank-charter-for-payments-companies-would-preempt-state-authority.aspx [https://perma.cc/JG2T-KFF4] (discussing the ways in which federal regulations would preempt state regulations under a national charter).

[75] John ReVeal & Rebecca H. Laird, *The OCC's New Fintech Bank Charter - What You Need to Know*, K&L GATES (Aug. 24, 2018) https://www.klgates.com/The-OCCs-New-Fintech-Bank-Charter---What-you-need-to-know-08-24-2018 [https://perma.cc/X97D-LQSB] ("The ability to preempt state licensing laws comes with the second advantage of having only one supervisory regulator—the OCC.").

[76] *See* CSBS, *supra* note 3 ("Achieving this vision should result in a regulatory system that makes supervision more efficient and recognizes standards across state lines—actions that will better support start-ups and enable national scale while protecting consumers and the financial system.").

[77] ReVeal & Laird, *supra* note 75 (discussing Master Accounts).

[78] *See id.* (listing the regulatory burdens).

E. Conclusion

In conclusion, the CSBS has taken steps towards achieving all of the goals they set out for Vision 2020.[79] However, most initiatives seem incomplete as they have not yet been adopted by every US state.[80] This is concerning because, as the name suggests, the CSBS expected their lofty goals to be accomplished in 2020.[81] Furthermore, the OCC's interest in granting national banks charters is threatening to make the CSBS redundant, and at the very least defeating the purpose of Vision 2020's goal of uniformity in regulation.[82]

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[79] CSBS, *supra* note 20 (discussing the progress made on the initiatives for Vision 2020).
[80] *See id.* ("Our program is now ongoing, with the goal of training more than 700 examiners in all 50 states.").
[81] *See* CSBS, *supra* note 3.
[82] *See* MURPHY, *supra* note 4 at 1 ("The Office of the Comptroller of the Currency (OCC) plans to appeal an October district court judgement holding that the agency lacks the authority to grant national bank charters to financial technology companies (fintechs) that do not take deposits.").
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