

For Release Upon Delivery  
10 a.m., May 21, 2019

TESTIMONY OF  
GROVETTA N. GARDINEER  
SENIOR DEPUTY COMPTROLLER FOR BANK SUPERVISION POLICY AND  
COMMUNITY AFFAIRS

OFFICE OF THE COMPTROLLER OF THE CURRENCY

Before the

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

May 21, 2019

Statement Required by 12 U.S.C. § 250:

The views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent the views of the President.

## Introduction

Chairman Crapo, Ranking Member Brown, and members of the Committee, thank you for the invitation to appear before you today to discuss the threats posed to our financial system by the use of shell companies and other methods to conceal the true beneficial owners of assets. The Office of the Comptroller of the Currency (OCC) welcomes the Congressional focus on protecting the financial system from misuse by bad actors through effective implementation of the beneficial ownership legal regime, and we support legislative action to improve the regime's framework by creating a requirement for legal entities to provide consistent information regarding the identification of their beneficial owners.

The OCC charters, supervises, and regulates more than 1,200 national banks, federal savings associations, and federal branches of foreign banks (collectively, "banks") that cover virtually the entire range of bank asset sizes and business models. Our supervised banks range in size from very small community banks to the largest most globally active U.S. banks. The vast majority of them, about 968, have less than \$1 billion in assets, while more than 60 have greater than \$10 billion in assets. Together, they hold \$12.7 trillion in assets — almost 70 percent of all the assets of the commercial U.S. banks. These institutions touch the lives of most American families in some way.

Fundamental to our mission as a banking supervisor, is the requirement that banks soundly manage their risks, meet the needs of their communities, comply with applicable laws and regulations, and provide fair access to financial services and fair treatment of their customers. To this end, the OCC is committed to ensuring that the banks we supervise have established the appropriate policies, processes and procedures to

implement these requirements as part of strong and effective BSA/AML compliance programs.

In his testimony last week, Comptroller Otting noted that one of his top priorities is improving the efficiency and effectiveness of the BSA/AML framework, while continuing to support law enforcement and protect the financial system from those who seek to exploit it for illicit purposes. Additionally, the Comptroller expressed his concerns about the increased burden of BSA/AML compliance on banks. These are the OCC priorities that bring me here today. Our examiners' frontline insight, knowledge and experience can inform the Committee of how BSA compliance programs are designed and implemented in the banks we supervise. This perspective also provides unique insights into where there are gaps and what can be done to strengthen the beneficial ownership regime used by our financial system.

My testimony describes the challenges that are emerging as our banks work to implement the provisions of the *Customer Due Diligence Requirements for Financial Institutions* or CDD Rule,<sup>1</sup> and highlights the OCC's support for the establishment of a consistent, nationwide requirement for legal entities to provide accurate beneficial ownership information. Alternatively, Congress could consider creating a centralized database for the maintenance of beneficial ownership information. In either case, a standardized approach to allow for the verification of beneficial ownership data would benefit law enforcement, regulators and the banks supervised by the OCC.

---

<sup>1</sup> The CDD Rule issued by FinCEN on May 11, 2016 covers both beneficial ownership requirements codified at 31 C.F.R. 1010.230, and the customer due diligence requirements codified at 31 C.F.R. 1020.210 (banks, savings associations and credit unions).

## The Importance of Collecting Beneficial Ownership Information

The beneficial ownership requirements of the CDD Rule were established by FinCEN in May 2016, with a mandatory compliance date of May 2018. These provisions of the CDD Rule established a comprehensive regulatory requirement to identify, and verify, on a risk basis, the identities of, beneficial owners of legal entities. These requirements support the important goal of the BSA to protect the nation's financial system from use by criminals for illegal purposes. It also supports the effective implementation of the economic sanctions programs administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC). A critical objective of the CDD Rule is to help prevent criminals, or prohibited individuals and entities, from maintaining anonymity by using legal entities to shield their illegal activities from detection by law enforcement.

Prior to the issuance of the CDD Rule's beneficial ownership requirements in 2016, banks generally utilized the 2010 *Interagency Guidance on Obtaining and Retaining Beneficial Ownership*. The guidance explained that, with respect to certain accounts posing heightened risk, banks could take certain steps to identify and verify beneficial owners, in order to reasonably understand both the sources and uses of funds in the account and the relationship between the legal entity customer and the beneficial owners. As a result, prior to the CDD Rule, many OCC-supervised banks had policies and procedures in place to identify beneficial owners as a part of their general prudent risk management practices; however, the absence of a comprehensive regulatory requirement created opportunities for bad actors to misuse legal entity accounts.

In some cases individuals could disguise their ownership in legal entities through the use of false representatives and multiple ownership layers using special purpose vehicles, private investment companies, and trust arrangements. Disguised, these parties could effectively send and receive funds anonymously or engage in tax avoidance. In addition, front companies could co-mingle the proceeds of legitimate and illegitimate business activities, and legitimate companies could conduct illegitimate business in trade-based money laundering schemes. These examples expose vulnerabilities in the national BSA/AML regime, where the lack of comprehensive beneficial ownership information has not only hampered law enforcement investigations, but has also negatively impacted international cooperation and limited banks' ability to effectively identify and report suspicious activity.

The U.S. *National Money Laundering Risk Assessment* published by the Department of the Treasury in 2018 noted that the misuse of legal entities poses a significant money laundering risk. The risk assessment also noted that law enforcement efforts to uncover the true owners of companies can be resource-intensive, especially when those ownership trails lead overseas or involve numerous layers of ownership through multiple legal entities. It is widely recognized that the abuse and misuse of legal entities to hide illicit sources of funds or a criminal beneficial owner is a common feature of money laundering and corruption schemes.

#### Bank BSA Compliance Programs and the CDD Rule

The OCC views the implementation of the CDD Rule as an integral part of a bank's BSA/AML compliance program to detect the abuse of legal entities for criminal

purposes. Under the long-standing BSA regulatory regime, each bank's BSA/AML compliance program must be designed to (1) identify and verify on a risk-basis the identity of each of its customers; (2) conduct appropriate risk-focused due diligence on those customers; and (3) identify, monitor and report suspicious activity. The beneficial ownership requirements of the CDD Rule are designed to improve the information on which banks conduct their risk-based customer due diligence, as noted above. Overall, the BSA/AML compliance program requirements establish a solid foundation to safeguard against banks being used as vehicles either to launder money for drug traffickers and other criminal organizations, to facilitate the financing of terrorist acts, or to permit prohibited parties unauthorized access to the U.S. financial system.

The CDD Rule specifically requires banks to establish and maintain written policies and procedures reasonably designed to (1) identify the beneficial owners of each legal entity customer at the time a new account is opened; (2) verify the identity of each beneficial owner according to risk-based procedures; (3) understand the nature and purpose of customer relationships in order to develop customer risk profiles; and (4) conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. The beneficial ownership provisions of the CDD Rule require banks to identify, and verify the identity of, as many as five individuals for each legal entity customer. Banks must identify each individual (up to four) who owns 25 percent or more of the equity interests in a legal entity, and, for each legal entity, one individual who exercises management control of that legal entity. Banks may choose to implement stricter written internal policies and procedures for the

collection and verification of beneficial ownership information than the requirements prescribed by the Rule.

Although the beneficial ownership requirements were issued in the 2016 CDD final rule, compliance was not required until May 2018. Prior to the May 2018 compliance date, the OCC regularly reviewed the extent to which banks had designed and implemented appropriate risk-based policies and procedures for identifying beneficial ownership. OCC examiners determined that banks made good use of the transition period after the issuance of the rule to make changes in their policies and procedures for account opening, as well as to implement operational changes for suspicious activity monitoring and other systems, in order to meet their obligations under the CDD Rule.

Subsequent to the mandatory May 2018 compliance date of the CDD Rule, the OCC conducted a number of reviews where we found that, overall, most banks examined had taken the necessary steps to come into compliance with the rule. These preliminary examination results indicated that banks have generally been diligent and compliant in designing and implementing appropriate policies and procedures for identifying beneficial owners and verifying their identities. More recently, the OCC has begun to conduct more in-depth examinations, and examiners have identified a relatively small number of violations of the requirements related to beneficial ownership identification, as those banks continue to work to adjust systems, implement policies and procedures, and test for compliance.

#### Challenges in Implementing the CDD Rule

The beneficial ownership requirements of the CDD Rule have moved toward creating a more comprehensive process for collecting and verifying beneficial ownership information. However, the rule also imposes significant challenges and costs on banks, and it cannot fill certain gaps in the beneficial ownership regime, as described below. These concerns may be best addressed through legislation establishing a consistent, nationwide requirement for legal entities to provide and update accurate beneficial ownership information, or by the creation of a centralized database for legal entities to provide and update this information. Some of the challenges with the CDD Rule relate to verification of ownership and control information, periodic updating requirements, ownership thresholds and recordkeeping requirements. For many banks, the new policies and procedures required by the CDD Rule result in costly new training obligations for all employees that are: (1) responsible for opening accounts and establishing customer relationships; (2) involved in bank operations and information systems and security; and (3) involved in compliance functions. There are also new costs associated with adjusting, testing and validating account opening and monitoring systems to ensure that they are capturing the required information and account level activity appropriately. These requirements have the potential for increasing bank compliance costs, particularly for smaller community banks.

*Ownership Information Verification and Updates* - The biggest challenge that we have observed in achieving a fully effective beneficial ownership regime is the absence of any reliable sources against which a bank can independently verify the accuracy of beneficial ownership information it obtains from a legal entity customer at account opening. Currently, beneficial ownership information is generally not collected by state



or tribal governments at the time of company formation or in subsequent filings or reports. Moreover, to the extent such information is collected, there is no consistent system banks can access and rely upon to verify that the ownership and control information obtained from their customers are accurate. Beneficial ownership requirements under the CDD Rule require banks to establish and maintain written procedures that are reasonably designed to identify, and verify the identity of, beneficial owners of legal entity customers. Banks may *identify* the beneficial owners by obtaining either a certification form, or the information prescribed in that form, from the individual opening the account on behalf of the legal entity. The required standard of accuracy of the information is to “the best of the individual’s knowledge.” There is no regulatory requirement for banks to verify the ownership or the control information that has been provided. Banks can rely on that information unless they have knowledge of facts that “would reasonably call into question the reliability” of the information

Moreover, as noted above, the CDD Rule provides for banks to rely on the accuracy of information obtained from an individual “to the best” of that individual’s knowledge, and also requires no further action in the absence of knowledge by a bank of facts that “would reasonably call into question the reliability” of the information. In cases of higher-risk customer relationships, this reliance may pose substantial risk, not just to the bank but also to the broader financial sector.

*Ownership Thresholds* – Under the CDD Rule, banks are required to identify owners at or above the 25 percent threshold established; however, this type of inflexible threshold permits bad actors to structure legal entities using multiple entities, trust arrangements and other legal forms to create numerous ownership layers so that

ownership percentages are below the threshold. Where ownership interests exist below the 25% threshold, some true owners may not be identified by the bank opening the account.

In the case of legal entities that may be engaging, or planning to engage, in illicit activity, by the time that entity approaches a bank to open an account, it is likely that beneficial owners who wish to remain anonymous have already structured the ownership of the legal entity to lower the percentage of their interests below the threshold.

Consideration should be given to establishing a consistent, nationwide requirement that cannot be easily circumvented and would require legal entities to provide, update and verify information regarding the identity and holdings of legal entity owners, or alternatively, to the creation of a federal database for the maintenance of beneficial ownership information.

The consistent collection and maintenance of this information would reduce the potential risk that owners who are bad actors will remain hidden and, if this information were made available for banks to access on an as-needed basis, banks could more efficiently and accurately identify and verify owners at, and below, the current threshold.

*Recordkeeping* – The CDD Rule requires that banks re-confirm the required beneficial ownership information for every new account opened by a legal entity customer. While there is evidence that some legal entities are misused by criminals, in the vast majority of cases, these entities serve legitimate business purposes and have sound business reasons for establishing several accounts. The current rule increases the compliance burden on banks to meet these requirements, because these requirements now apply across all legal entity customers, regardless of the associated risk. Prior to the 2016

beneficial ownership requirements, banks were required by regulation to identify beneficial owners only in limited categories of cases, and did so based on bank risk management policies in others. The burden of compliance with the CDD Rule is further increased by the requirements related to changes in beneficial ownership information and the need to maintain multiple sets of beneficial ownership information and supporting documentation, depending on the number of new accounts established by a legal entity.

### Establishing a Nationwide Requirement

To assist in addressing these challenges, the OCC supports legislation to create a consistent, nationwide requirement for legal entities to provide, update and verify accurate beneficial ownership information, or alternatively, the creation of a centralized database to maintain this information. The requirement to provide this information should apply to all domestic legal entities and to legal entities incorporated in foreign jurisdictions as a condition to having a bank account in the United States. To best address the critical risks we have discussed, the information should be provided in a consistent format to the appropriate state or tribal government at the time of corporate formation, and should be updated along with the filing of the regular reporting required of legal entities. For entities already in existence at the time such legislation is adopted, the same level of beneficial ownership information could be provided with the next-scheduled corporate report.

We note that collecting information on foreign legal entities and ownership is more challenging than for domestic entities, due to their incorporation in other jurisdictions. However, cross-border transaction activity presents a higher money

laundering and terrorist financing risk, and, therefore, the collection and verification of beneficial ownership information for these legal entity customers is critical. As a result, we would recommend that these foreign entities be required to report ownership information either at the time of state registration or upon establishing an account relationship with a U.S. financial institution.

Under this information collection process, consideration should be given to applying the exemptions for certain legal entities (e.g., financial institutions, publicly listed companies), that are currently available under the CDD Rule. Appropriate degrees of access to the collected information should be made available to law enforcement, regulators, banks, and others engaged in the fight against financial crime. The OCC would effectively use this information as a part of the examination and supervisory processes as well as in any enforcement and investigation activities.

In addition to basic company information, legal entities should be required to disclose beneficial owners. A uniform format should be established for this information to ensure consistency and completeness regardless of the state or tribal government in which a legal entity is formed. Individuals providing beneficial ownership information on behalf of the legal entity should be required to attest to the truthfulness of the identity and ownership provided and be held accountable for making false statements.

While we support legislation to create a consistent, nationwide requirement or centralized database for beneficial ownership information, we are keenly aware of the importance of establishing a balance between the need for law enforcement, regulators and banks to access this information and important data protection and privacy rights. Recent examples of data breaches and misuse of personal information that have put

individuals at risk reminds us of the vital need to protect the security of the information that will be collected and maintained in this database. Careful consideration should be given to implementing required security measures such as setting a range of access levels to data or information sets based on criteria for demonstrating legitimate need. Congress should consider reviewing best practices in place in the European Union and other jurisdictions that have established and maintain corporate registries to collect and maintain beneficial ownership information.

#### Benefits of a Nationwide Requirement for Beneficial Ownership Data

There are important benefits that could be derived from the creation of a consistent, nationwide requirement for legal entities to provide and update accurate and complete beneficial ownership information, or from a centralized database for this information. For example, law enforcement could be more focused on substantive investigative steps, by reducing the amount of effort and time required to identify, request and obtain beneficial ownership information collected by numerous banks about a variety of legal entities and then maintained by those banks in a wide variety of formats. With a consistent approach for providing or maintaining this data, banks and law enforcement could both be more confident of the reliability of accessible beneficial ownership information.

A nationwide requirement for legal entities to provide this information, or the creation of a centralized federal database, in a consistent format also could reduce regulatory burden by providing banks with a transparent way to check the accuracy of the information they obtain from legal entity customers and streamline recordkeeping

requirements. In addition, it could alleviate the requirement to obtain and verify identity information for beneficial owners. As well, because the ownership information would be already available, there could be a process for banks to update information on ownership changes, as appropriate. A requirement for the person providing beneficial ownership to attest to its accuracy would further strengthen the system.

By addressing the challenges arising from the implementation of the rule and reducing regulatory burden, a nationwide requirement, or a centralized database would allow banks to spend less time on training, reporting and processing paperwork, so banks could focus resources on analyzing available information to make more informed judgements and determine whether the information provided by its legal entity customer is reasonable and reliable. Extending the consistent requirement to report ownership information to include foreign legal entities doing business in the U.S. would also support bank efforts to establish the accuracy of information they receive from these entities and would otherwise be unable to validate, since these entities are incorporated outside of the United States. Banks could also receive fewer information requests and subpoenas from law enforcement pertaining to this information since law enforcement likely would be able to access the information directly from the state and tribal governments responsible for incorporating the legal entities.

Finally, a nationwide requirement for legal entities to provide beneficial ownership information could enhance overall customer experiences with their banks by relieving some of the burdensome and duplicative information requirements on legal entity customers. Banks would be able to rely on the information contained in the database for both identification and verification purposes and the information would be

updated accordingly. As a result, banks would no longer have to continually contact the customer and the information would be verified.

### Conclusion

The spirit and underlying purpose of the CDD Rule are focused on identifying hidden beneficial owners who could be potential bad actors, to support successful investigations and assist law enforcement in preserving the overall integrity of the nation's financial system. The risks associated with failing to identify beneficial owners of legal entities and the impact of such failures have been well documented. However, implementation of the CDD Rule by itself is only a partial step toward achieving those objectives and our law enforcement goals cannot be met by banks alone. Full realization requires a partnership between the private and public sectors working together to provide law enforcement agencies with meaningful, accurate and timely information. It requires that there be other sources of information and data to support the current efforts by the banks. For these reasons, we support the development of a consistent, nationwide system for legal entities to provide and update accurate and complete beneficial ownership information of domestic legal entities and foreign legal entities doing business in the U.S. – or, in the alternative, the creation of a centralized database to maintain that information, -- to complete and complement the efforts already undertaken by banks supervised by the OCC. The collection of such information serves a critical purpose for law enforcement. The preservation of the integrity of our financial system and our national security cannot rest solely with the banks. We stand ready to work with the Committee and its members to develop a solution on this important issue.

