Bill cracking down on LLCs used for tax evasion and money laundering faces obstacles

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After bouncing around Congress for over a decade, a bill to crack down on anonymous shell companies used in money laundering and tax evasion may advance this year, having attracted support from some strange bedfellows, including banks, unions, the national security community, human rights advocates, environmentalists, multinational corporations, law enforcement and the Trump administration.

Democratic Rep. Carolyn B. Maloney is expected to introduce the bill with her fellow New Yorker, Republican Rep. Peter T. King, as Congress returns from recess, and it could go to markup as soon as May 8.

The bill would require corporations and limited liability companies to tell the Treasury Department who really owns them, reporting the names and addresses of their beneficial owners at the time of formation and after every change in ownership.

At a hearing in April, Treasury Secretary Steven Mnuchin offered Maloney his support. “I do believe generally you are headed in the right direction, and I appreciate your work on this,” he said. “I hope this is something that, on a bipartisan basis, we can get accomplished, both here and [in] the Senate.”

But even with bipartisan backing and the support of 120 groups including the Bank Policy Institute (BPI), the National District Attorneys Association, Amnesty International and Global Witness, the bill’s passage remains far from guaranteed. A small collection of similarly diverse groups oppose it, including the American Bar Association, the National Federation of Independent Businesses and researchers from the Cato Institute and Heritage Foundation.

Shady state of affairs

By many accounts, the U.S. is one of the largest havens for money laundering and tax evasion. A United Nations report, confirmed by the Treasury Department, estimated $300 billion in illicit proceeds flowed through the U.S. financial system in 2010.

The U.S. is a popular destination for despots to deposit ill-gotten gains in large part because of its corporate registration system, or lack thereof. In America, corporate entities are created at the state level, and states have an economic incentive to make the registration process as quick and easy as possible. In Delaware, all it takes is $90 and a one-page form with three questions (name of the entity, name of a registered agent and a mailing address or P.O. box) to create an LLC. Library cards require more information.

In most states, it's possible to form companies anonymously, using a lawyer or a registered agent service to file the forms. That company can purchase legitimate assets, like real estate, using surreptitiously transferred illegitimate funds, laundering them in the process. For added secrecy, the initial anonymous entity often itself incorporates a subsidiary, creating multiple layers of shells around the illicitly financed assets.

"The number one systemic vulnerability of the United States system for combating illicit finance, for using financial intelligence, for disrupting national security threats through targeted economic actions – the number one systemic vulnerability we face – is the use of anonymous entities," said Chip Poncy, senior adviser at the Foundation for Defense of Democracies Center on Economic and Financial Power and a former Treasury official. He spoke at a panel organized by BPI and the Financial Accountability & Corporate Transparency (FACT) Coalition in April.

Groups like the FACT Coalition have long pushed for the U.S. to bring beneficial ownership disclosure up to the rest of the world. In 2006, the Financial Action Task Force of Money Laundering criticized the U.S. for failing to collect beneficial ownership information and has reiterated that condemnation as other developed nations, including the European Union, implemented disclosure regimes. But opposition from the American Bar Association and small business trade groups has kept the U.S. from honoring its international anti-money laundering commitments.

Things began to change in 2016, when the Treasury finalized a requirement that financial institutions ascertain the beneficial ownership behind newly opened accounts. The new rule went into effect last year.

The FACT Coalition approached BPI two years ago, pitching the beneficial ownership bill as a way to essentially outsource some of the banks' compliance work to customers. Maloney's bill would keep beneficial ownership information secret except from law enforcement and customer-authorized banks, which could rely on the FinCEN filings to fulfill their customer due diligence requirements. BPI signed on and the rest of the banking sector followed. Now nearly every financial services trade group supports the proposal.

The bill would exclude federally regulated public companies, banks, investment companies, credit unions and public accounting firms from the filing requirements. It also would exclude churches and charitable organizations that file for federal tax exemptions. The bill would also exclude any U.S. company that employs more than 20 full-time workers and reports more than $5 million in annual gross revenue to the IRS.

The exceptions are aimed at narrowing the bill's scope to just the subset of entities similar in size and scope to shell companies. But the bill isn't tailored enough, said Diego Zuluaga, a policy analyst at Cato.

"This is how not to kill a fly with a bazooka," Zuluaga said. "They are putting in place a regime that applies to millions of businesses, which are not the target, and making it quite easy for the people that they are targeting to avoid this regime."

David Burton, a senior fellow at the Heritage Foundation, argued the burden of filing would largely fall on America's 12 million small business owners, who would spend "well over a billion" in legal fees and consultants.

That's nonsense, said Clark Gascoigne, deputy director at the FACT Coalition. "The notion that Joe doesn't know who owns 'Joe's Pizza Shop' seems a little far-fetched to me," he said. For most small businesses, he said, compliance would be a cinch.

Burton also said the kind of criminal sophisticated enough to set up a Russian nesting doll of LLCs is smart enough to evade reporting requirements.

Maybe so, said Tim Richardson, a legislative liaison with the national Fraternal Order of Police, but that doesn't mean it should make it easy for them. "We lock our house doors and car doors for a reason: to make it more difficult for criminals to get this stuff out there," he said.

There's a long history of law enforcement agencies prosecuting lies on government forms when it couldn't prove the more egregious underlying crime. Al Capone famously went to jail for tax evasion, not rum running or murder.

The path forward

For the bill to have a good shot of getting to the floor of the Senate, backers said it must win overwhelming GOP support in the House. Proponents say on the House Financial Services Committee, Republicans will likely turn to Rep. Blaine Luetkemeyer, R-Mo., for guidance. If Luetkemeyer, who co-sponsored a broader financial crime bill last year with a similar beneficial ownership provision, signs on, supporters say most of the other Republicans on the panel will follow suit.

At a March hearing on financial crime proposals, Luetkemeyer didn't indicate where he stood on Maloney's bill, focusing his five minutes of questioning on a different bill. Luetkemeyer's office did not respond to a request for comment.

Rep. French Hill, R-Ark., is circulating his own beneficial ownership proposal, which could draw support from some Republicans. Hill's bill would have the Internal Revenue Service collect information, rather than FinCEN. That would mean less paperwork for filers, but more work for law enforcement agencies, which would need to subpoena the IRS for the information. Hill did not respond to a request for comment.

Even if Maloney's corporate transparency bill enjoys clear passage through Congress, it may face one last complication when it arrives at the president's desk. As his Federal Election Commission financial disclosures reveal, Donald Trump owns about 500 LLCs, many of which are used to mask the true nature and value of his underlying assets.