

# Shruti Shah: Six bills in Congress (so far) target anonymous companies

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Shruti J. Shah in Clearing House, Corporate Transparency Act, Shell Corporations



Anonymous companies have attracted much attention in the past couple of years, and for good reason. These companies are used to facilitate a number of crimes, including corruption, money laundering and the trafficking of arms, drugs and humans.

Recent discussions about how to address anonymous companies have raised important national security issues. News stories point to how Moscow **interfered** in Central and Eastern European countries by using anonymous companies to take over important sections of the economy.

NPR recently did a segment on how anonymous companies enable North Korea to **dodge sanctions**. And almost every **story** on money laundering and real estate seems to feature anonymous companies.

The steady stream of news is not surprising as the United States has been subject to increased criticism for its lax approach to anonymous companies, particularly in the aftermath of the Panama Papers. However, there are recent and positive signs that the U.S. is beginning to address the potential threat that anonymous companies pose to our security and economy.

Last December a **report** on the United States by the global anti-money laundering body, the Financial Action Task Force (FATF), found significant weaknesses in the U.S. AML framework. The most important finding related to gaps in access to information on the ultimate owners (beneficial owners) of companies.

In January, the GAO **issued** a report which reviewed the available information on the ownership of General Services Administration (GSA) leased spaces that require higher levels of security protection due to factors such as mission criticality and facility size (high-security space). The GAO was unable to identify ownership information for about one-third of GSA's 1,406 high-security leases because ownership information was not readily available for all buildings. The report also found that 20 of the leases were in buildings with direct foreign ownership.

In response to this report, and to address the national security issues (such as cyber intrusions) that arise when federal agencies lack information about the beneficial owners of their high-security facilities, bipartisan **legislation**, the Secure Government Buildings from Espionage Act of 2017, was introduced by Congressmen Stephen Lynch (D-MA) and Peter King (R-NY). This bill would require that beneficial ownership information by bidders for high security leases be disclosed to the federal government.

In February, the Financial Crimes Enforcement Network (FinCEN) **renewed** existing Geographic Targeting Orders (GTO) that temporarily require U.S. title insurance companies to identify the natural persons behind shell companies that pay “all cash” for high-end residential real estate in six major metropolitan areas.

Rep. Maxine Waters (D-CA) recently introduced the End Secret Holdings and Ethical and Legal Loopholes (SHELLs) Act (**H.R. 3295**), which would require the President, the Vice President, and certain high-level officials to file a report with the Office of Government Ethics when selling real property, disclosing each natural person who is a beneficial owner of the real property upon completion of the sale.

In July, the Aircraft Ownership Transparency Act of 2017 (**H.R. 3544**), was introduced by Reps. Stephen Lynch (D-MA), Peter King (R-NY), and Carolyn Maloney (D-NY). The bill would require that those seeking to register aircraft with the Federal Aviation Administration (FAA) through anonymous shell companies disclose the beneficial owners behind the entities.

Finally, to address the lack of ownership transparency at the time of company formation, bipartisan pieces of legislation were introduced in June to require companies to disclose information about the real people who own or control them, upon incorporation. The Senate bill, True Incorporation Transparency for Law Enforcement (TITLE) Act (**S.1454**) is sponsored by Sen. Sheldon Whitehouse (D-RI), Senate Judiciary Committee Chairman Charles Grassley (R-IA) and Sen. Dianne Feinstein (D-CA).

Over on the House side, the Corporate Transparency Act of 2017 (**H.R.3089**) has been introduced by by Reps. Carolyn Maloney (D-NY) and Pete King (R-NY). It is important to note that H.R. 3089 has 10 co-sponsors (more than ever before), 5 of whom are Republican including Rep. Chris Smith (R-NJ), who co-chairs the Helsinki Commission and Rep. Ed Royce, the Chairman of the House Foreign Affairs Committee. Before Congress went on recess, two big names, Senators Ron Wyden (D-OR) and Marco Rubio (R-FL) also introduced **S.1717**, the Senate companion bill to H.R.3089.

While both the TITLE Act and the Corporate Transparency Act require collection of beneficial ownership information at the time of company formation, the TITLE Act requires states to collect the information. The Corporate Transparency Act authorizes FinCEN to collect the information in cases where the state cannot. Both bills provide access of the information collected to law enforcement (upon receipt of a subpoena) and also to financial institutions (upon customer consent).

While bipartisan legislation requiring incorporation transparency has been **proposed** in each session of Congress since 2008, it has never become law. However, this time feels different because there is more press attention focused on anonymous companies. These bills enjoy support from anti-corruption groups, including **the Coalition for Integrity**, law enforcement groups, as well as new allies.

**Clearing House**, a banking association which conducts advocacy on behalf of the largest U.S. commercial banks, has expressed support for the legislation as banks could also potentially benefit from

having access to the information for their due diligence efforts. The **B Team** leaders and CEOs of several companies including the Dow Chemical Group sent a **letter** to key members of Congress in support of these legislative efforts as transparency on company ownership would aid in risk management and corporate due diligence efforts.

A lot of work **remains**, but the momentum towards transparency has increased. We still need more supporters, especially from the private sector, to counteract the opposition that these legislative efforts face from the Chamber of Commerce and the National Association of State Secretaries. If you are interested in learning more or in supporting the movement for greater transparency, please contact us.

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