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# U.S. Lawmakers Call For Broad Interpretation Of Beneficial Ownership Law

- Senior legislators disappointed by Treasury's failure to meet January 2022 deadline
- Lawmakers reiterate request for law to be interpreted broadly
- Beneficial owner reporting may foreclose certain loopholes but leave others open

**Senior Congressional Democrats have called on the U.S. Treasury to speed up the implementation of an important law that will crack down on anonymous shell companies, and interpret the law as broadly as possible.**

As part of the country's big overhaul of anti-money laundering (AML) rules, Congress passed the Corporate Transparency Act (CTA), which [requires](#) certain corporations and limited liability companies to disclose their beneficial owners to the Treasury's Financial Crimes Enforcement Network (FinCEN).

The act directed FinCEN to issue regulations implementing the law by January 1, 2022.

With the deadline approaching, Congressional committee chairs [told](#) Treasury Secretary Janet Yellen that they are disappointed by delays that mean the final rule is unlikely to be issued by the implementation deadline.

In the letter, Senate banking chair Sherrod Brown (D-OH), House Financial Services Committee chairwoman Maxine Waters (D-CA), and House Oversight Committee chairwoman Carolyn Maloney (D-NY) reiterated that Congress "intended for the CTA to be interpreted and implemented broadly and flexibly, and in a manner that evolves to address new strategies that sophisticated criminals employ to hide and launder their illicit assets."

In other words, they urge FinCEN to write the rule broadly to include in the reporting as many corporate entities as possible, while limiting the scope of exemptions as far as possible.

"Don't let the discussion of deadlines distract from the substantive import of the letter," Jamal El-Hindi, former FinCEN deputy director and counsel at Clifford Chance, told VIXIO.

The committee chairs want the secretary to devote personal energy to the issue, particularly with respect to their request in May that the reporting requirements be written as broadly as possible and result in broad access to reported information by FinCEN's stakeholders, El-Hindi explained.

Their May [letter](#), responding to FinCEN's Advanced Notice of Proposed Rulemaking, stated their intent that the rules be written in a way that would require all beneficial owners of a legal entity

to be reported, with anything less being "unacceptable," El-Hindi added.

### **In wake of Pandora Papers**

Although the statute has room for a more narrow interpretation than what the committee chairs are now requesting, the Pandora Papers [raised concerns](#) that the agency may not have room to write the rules broad enough.

One of the key revelations of the Pandora Papers was that money launderers use trusts in at least a dozen U.S. states as “go-to vehicles” for financial secrecy.

The papers underscore that certain trusts, those formed without filing with a secretary of state, are currently exempt from the definition of “reporting company” under the CTA, experts previously [told](#) VIXIO.

The CTA requires a study of these kinds of trusts to be prepared and submitted to Congress, but FinCEN may not have the authority to require reporting of beneficial ownership from these entities.

In their May submission, the Democratic lawmakers advised FinCEN to exempt state-chartered non-depository trust companies from the reporting requirement because these entities are already supervised and examined by state authorities.

It is possible, however, that FinCEN may consider the Pandora Papers as the agency drafts the proposed rules.

At the same time, Congressional representatives also took steps to revisit the “reporting company” exemptions under the CTA and introduced a bill called the ENABLERS Act to close the loophole that allowed this large-scale money laundering to happen.

The ENABLERS Act would, among other things, require the Treasury to mandate that certain “gatekeeper” professions, such as attorneys, accountants, and trust company service providers establish AML programs.

### **Rulemaking challenges**

The [Anti-Money Laundering Act \(AMLA\) 2020](#) includes sweeping positive changes, any one of which requires time to get right, El-Hindi said.

He noted that the tight deadlines in the statute arguably were intended to keep pressure on the Treasury and force it to devote more resources to FinCEN.

FinCEN has been facing various challenges to meet the statutory deadlines, including the transition to a new presidential administration, leadership changes at FinCEN, and funding constraints.

The agency [issued](#) an Advance Notice of Proposed Rulemaking regarding the beneficial ownership information reporting and access provisions in April. Next, the agency will have to publish a proposed rule for public comment and can issue a final rule after weighing in the

information received to the consultation.

## Jurisdictions

United States

## Authorities

U.S. Congress

Financial Crimes Enforcement Network

U.S. Department of the Treasury

## Specialisms

Conduct of Business

Regulatory Reporting

## Products And Services

Bank Accounts