



Date Published [15 October 2021](#) by [Nora Gebhardt](#)

Pandora Papers Reveal Further Gaps In U.S. AML Rules

Just one year after the massive suspicious activity reports (SARs) leak that became known as the FinCEN Files, the U.S. is shaken again by the disclosure of millions of confidential files that sheds light on further deficiencies in the U.S. AML framework.

Earlier this month (October 3), the International Consortium of Investigative Journalists (ICIJ) and the Organized Crime and Corruption Reporting Project [published](#) the findings of an analysis of more than 11.9m confidential documents revealing how high-level officials, oligarchs and billionaires use shell companies to hide their wealth offshore.

The release comes a year after the publication of the so-called FinCEN Files, the leakage of more than 2,000 SARs filed by global financial institutions between 1999 and 2017. Even though banks and the Financial Crimes Enforcement Network (FinCEN) had the financial intelligence, the ICIJ concluded that banks continued to move money for fraudsters years after concerns first emerged.

The FinCEN Files were a wake-up call for many U.S. lawmakers, which led to Congress passing the Anti-Money Laundering Act 2020 (AMLA) to fix the gaps.

Among other things, the AMLA enhances the country's AML whistleblowing program, allows U.S. regulators to seek documents from foreign financial institutions, increases penalties for AML violations, and modernizes the overall U.S. anti-money laundering/counter-terrorism financing (AML/CTF) regime.

As part of the AMLA, the Corporate Transparency Act (CTA) requires certain corporations and limited liability companies to disclose their beneficial owners to FinCEN. Once launched, financial institutions will be able to rely on the FinCEN beneficial ownership register when carrying out know your customer (KYC) checks. Previously, it was the banks' responsibility to make efforts to collect beneficial ownership information, but the AMLA [will enable](#) them to use the FinCEN register for that purpose.

Some experts say that the U.S.' AML modernization has improved the country's AML laws; however, the Pandora Papers reveal that there are further gaps that need to be filled.

One of the key findings from the Pandora Papers leak is that trusts in at least a dozen U.S. states have become "go-to vehicles" for financial secrecy.

The papers identified South Dakota as a leader in these offshore trusts, followed closely by Alaska, Delaware, Nevada and New Hampshire.

With around 900,000 people, South Dakota is one of the smallest U.S. states, yet assets from offshore trusts more than quadrupled over the past decade to \$360bn, according to the ICIJ. This followed the passing of several state legislative proposals to protect trusts from creditors, taxing authorities, and foreign governments.

“With little transparency in the industry, it’s nearly impossible to determine whose money is being managed by trust companies,” the ICIJ found.

The Pandora Papers highlights that certain trusts, those formed without filing with a secretary of state, are currently exempt from the definition of “reporting company” under the CTA, Anand Sithian, counsel at Crowell & Moring, told VIXIO.

“While the CTA requires a study of these kinds of trusts to be prepared and submitted to Congress, it seems like FinCEN does not currently have authority under the CTA or AMLA to require reporting of beneficial ownership from these entities,” he explained.

It is possible that FinCEN will consider the Pandora Papers as the agency drafts proposed rules pursuant to the CTA, Sithian continued.

FinCEN may look at what kinds of entities are used to hold assets, where they are located, and whether the CTA provides authority to obtain beneficial ownership from these kinds of entities in the future.

It is also possible that Congress revisits the “reporting company” exemptions under the CTA or AML requirements under the Bank Secrecy Act (BSA).

To that end, last week a group of Congressional representatives [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 Treasury to mandate that certain “gatekeeper” professions, such as attorneys, accountants, art dealers, investment advisors, trust company service providers, third-party payment processors, and public relations professionals, establish AML programs and perform customer identification and verification procedures under the BSA, Sithian explained.

In addition to FinCEN, the Department of Justice’s Money Laundering and Asset Recovery Section (MLARS) could also take interest in these recent disclosures and the financial institutions involved, Sithian said.

MLARS has a “Kleptocracy Team” that investigates and seeks to recover assets from foreign corruption, he explained, pointing out that the team has been quite active in recent years and the Pandora Papers disclosures could prompt MLARS to take a closer look at bank accounts, real estate, and other assets associated with current and former foreign officials.

Jurisdictions

United States

Authorities

Financial Crimes Enforcement Network

Specialisms

Anti-Money Laundering/Counter-Terrorism Financing

Products And Services

Bank Accounts

Third-Party Providers