

## PART 800 [RESERVED]

### PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

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AUTHORITY: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101-3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

SOURCE: 77 FR 24374, Apr. 24, 2012, unless otherwise noted.

#### § 801.1 Purpose.

The purpose of this part is to provide general information on international trade in services and direct investment data collection programs and analyses under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 to 3108, as amended) (the Act). The purpose of the Act is to provide for the collection of comprehensive and reliable information pertaining to international investment,

including international trade in services and direct investment, and to do so with a minimum of burden on respondents and with no unnecessary duplication of effort.

#### § 801.2 Definitions.

For purposes of the Act and for reporting requirements under this part:

(a) *United States*, when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign*, when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) *United States person* means any person resident in the United States or subject to the jurisdiction of the United States.

(e) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

(f) *Business enterprise* means any organization, association, branch, or venture which exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

(g) *Services* are economic activities whose outputs are other than tangible goods. This term includes, but is not limited to, banking, other financial services, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design, engineering, management consulting, real estate, professional services, entertainment, education, and health care.

(h) *International investment* means:

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(1) The ownership or control, directly or indirectly, by contractual commitment or otherwise, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a United States person; and

(2) The ownership or control, directly or indirectly, by contractual commitment or otherwise, by United States persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person.

(i) *Direct investment* means the ownership or control, directly or indirectly, by one person of 10 percent or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

#### § 801.3 Reporting requirements.

Except for surveys subject to rule-making in §§ 801.7, 801.8, 801.9, 801.10, 801.11, 801.12, and 801.13, reporting requirements for all other surveys conducted by the Bureau of Economic Analysis shall be as follows:

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Director of the Bureau of Economic Analysis in the FEDERAL REGISTER prior to the implementation of a survey;

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code, persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act; and

(c) Persons not notified in writing of their filing obligation by the Bureau of Economic Analysis are not required to complete the survey.

[85 FR 31052, May 22, 2020]

#### § 801.4 Recordkeeping requirements.

In accordance with section 3104(b)(1) of title 22 of the United States Code, persons subject to the jurisdiction of the United States shall maintain any

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information essential for carrying out the surveys and studies provided for by the Act.

[79 FR 47575, Aug. 14, 2014, as amended at 79 FR 53291, Sept. 9, 2014; 79 FR 69759, Nov. 24, 2014]

#### § 801.5 Confidentiality.

Information collected pursuant to 3104(c) of title 22 of the United States Code is confidential.

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under § 801.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer.

#### § 801.6 Penalties specified by law.

(a) *Civil penalties.* Whoever fails to furnish any information required by the Act or to comply with any rule, regulation, order or instruction promulgated under the Act shall be subject to a civil penalty of not less than \$2,500, and not more than \$25,000, and to injunctive relief commanding such person to comply, or both (see 22 U.S.C. 3105(a) and (b)). These civil penalties

are subject to inflationary adjustments (15 CFR 6.4.).

(b) *Criminal penalties.* Whoever willfully fails to submit any information required by the Act or willfully violates any rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment or both (see 22 U.S.C. 3105(c)).

**§ 801.7 Rules and regulations for the BE-13, Survey of New Foreign Direct Investment in the United States.**

The BE-13, Survey of New Foreign Direct Investment in the United States, is conducted to collect data on the acquisition or establishment of U.S. business enterprises by foreign investors and the expansion of existing U.S. affiliates of foreign companies to establish new facilities where business is conducted. Foreign direct investment is defined as the ownership or control by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent interest of an unincorporated U.S. business enterprise, including a branch. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-13 survey are given in paragraphs (a) through (d) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-13, Survey of New Foreign Direct Investment in the United States, contained herein, whether or not they are contacted by BEA. Also, persons, or their agents, that are contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to this section. This may

be accomplished by filing the properly completed BE-13 report (BE-13A, BE-13B, BE-13D, BE-13E, or BE-13 Claim for Exemption).

(b) *Who must report.* A BE-13 report is required of any U.S. business enterprise, except certain private funds, see exception in paragraph (b)(4) of this section, in which:

(1) A foreign direct investment in the United States relationship is created;

(2) An existing U.S. affiliate of a foreign parent establishes a new U.S. business enterprise, expands its U.S. operations, or acquires a U.S. business enterprise, or;

(3) BEA requests a cost update (Form BE-13E) for a U.S. business enterprise that previously filed Form BE-13B or BE-13D.

(4) Certain private funds are exempt from reporting on the BE-13 survey. If a U.S. business enterprise is a private fund and its foreign parent does not own through the private fund 10 percent or more of the voting interest of a business enterprise that is not also a private fund or a holding company, the private fund is not required to file any BE-13 report except to indicate exemption from the survey if contacted by BEA.

(c) *Forms to be filed.* Depending on the type of investment transaction, U.S. affiliates shall report their information on one of five forms—BE-13A, BE-13B, BE-13D, BE-13E, or BE-13 Claim for Exemption.

(1) Form BE-13A—Report for a U.S. business enterprise when a foreign entity acquires a voting interest (directly, or indirectly through an existing U.S. affiliate) in that U.S. business enterprise including segments, operating units, or real estate; and

(i) The total cost of the acquisition is greater than \$3 million; and

(ii) By this acquisition, the foreign entity now owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the acquired U.S. business enterprise.

(2) Form BE-13B—Report for a U.S. business enterprise when it is established by a foreign entity or by an existing U.S. affiliate of a foreign parent; and

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(i) The expected total cost to establish the new U.S. business enterprise is greater than \$3 million; and

(ii) The foreign entity owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the new U.S. business enterprise.

(3) Form BE-13D—Report for an existing U.S. affiliate of a foreign parent when it expands its operations to include a new facility where business is conducted and the expected total cost of the expansion is greater than \$3 million.

(4) Form BE-13E—Report for a U.S. business enterprise that previously filed Form BE-13B or BE-13D. Form BE-13E collects updated cost information and will be collected annually until the establishment or expansion of the U.S. business enterprise is complete.

(5) Form BE-13 Claim for Exemption—Report for a U.S. business enterprise that:

(i) Was contacted by BEA but does not meet the requirements for filing Forms BE-13A, BE-13B, or BE-13D; or

(ii) Whether or not contacted by BEA, met all requirements for filing Forms BE-13A, BE-13B, or BE-13D except the \$3 million reporting threshold.

(d) *Due date.* The BE-13 forms are due no later than 45 calendar days after the acquisition is completed, the new U.S. business enterprise is established, the expansion is begun, the cost update is requested, or a notification letter is received from BEA by a U.S. business enterprise that does not meet the filing requirements for the survey.

[81 FR 72521, Oct. 20, 2016]

### **§ 801.8 Rules and regulations for the BE-10, Benchmark Survey of U.S. Direct Investment Abroad.**

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad, will be conducted every five years and covers years ending in 4 and 9. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 and 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-10 survey are given in paragraphs (a) through (d) of this section. More detailed in-

structions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-10, Benchmark Survey of U.S. Direct Investment Abroad, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted in writing by BEA about reporting in this survey must respond by filing a properly completed BE-10 report (BE-10A and BE-10B, BE-10C, BE-10D, and/or BE-10 Claim for Not Filing).

(b) *Who must report.* A BE-10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, including a branch—at the end of the U.S. person’s fiscal year that ended in the calendar year covered by the survey. Foreign affiliates that are private funds and meet certain criteria are exempt from the BE-10 survey. Specifically, if a foreign affiliate meets all of the criteria in paragraphs (b)(1) through (3) of this section, the U.S. reporter is not required to file a BE-10 form for that affiliate except to indicate exemption from the survey if contacted by BEA:

(1) The foreign affiliate is a private fund; and

(2) The private fund foreign affiliate does not own, directly or indirectly through another business enterprise, an “operating company”—*i.e.*, a business enterprise that is not a private fund or a holding company—in which the consolidated U.S. reporter owns at least 10 percent of the voting interest; and

(3) If the U.S. reporter owns the private fund indirectly (through one or more other business enterprises), there are no “operating companies” between the consolidated U.S. reporter and the indirectly-owned foreign private fund.

(c) *Forms to be filed.* (1) Form BE-10A must be completed by a U.S. reporter. Form BE-10A is required to cover the fully consolidated U.S. domestic business enterprise. It must also file Form(s) BE-10B, BE-10C, and/or BE-10D

for its foreign affiliates, whether held directly or indirectly.

(2) Form BE-10B must be filed for each majority-owned foreign affiliate (for purposes of this survey, a “majority-owned” foreign affiliate is one in which the combined direct and indirect ownership interest of all U.S. parents of the foreign affiliate exceeds 50 percent) for which any of the items in paragraph (c)(2)(i) through (iii) of this section (not just the U.S. reporter’s share) was greater than \$80 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey:

(i) Total assets (without netting liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; or

(iii) Net income after provision for foreign income taxes.

(3) Form BE-10C must be filed:

(i) For each majority-owned foreign affiliate for which any one of the three items listed in paragraph (c)(2) of this section was greater than \$25 million but for which none of these items was greater than \$80 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey; and

(ii) For each minority-owned foreign affiliate (for purposes of this survey, a “minority-owned” foreign affiliate is one in which the combined direct and indirect ownership interest of all U.S. parents of the foreign affiliate is 50 percent or less) for which any one of the three items listed in paragraph (c)(2) of this section was greater than \$25 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(4) Form BE-10D must be filed for majority- or minority-owned foreign affiliates for which none of the three items listed in paragraph (c)(2) of this section was greater than \$25 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey. Form BE-10D is a schedule; a U.S. reporter would submit one or more pages of the form depending on the number of affiliates that are required to be filed on this form.

(5) BE-10 Claim for Not Filing will be provided for response by:

(i) Persons that are not subject to the reporting requirements of the BE-10 survey but have been contacted by BEA concerning their reporting status; or

(ii) U.S. reporters that have been contacted by BEA concerning their reporting status for foreign affiliates that are no longer subject to the reporting requirements of the BE-10 survey.

(d) *Due date.* A fully completed and certified BE-10 report comprising Form BE-10A and Form(s) BE-10B, BE-10C, BE-10D, and/or BE-10 Claim for Not Filing (as required) is due to be filed with BEA not later than May 31 of the year after the year covered by the survey, for those U.S. reporters filing fewer than 50, and June 30, for those U.S. reporters filing 50 or more, foreign affiliate Forms BE-10B, BE-10C, and/or BE-10D.

[84 FR 60915, Nov. 12, 2019]

**§ 801.9 Rules and regulations for the BE-180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons—2014.**

A BE-180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons will be conducted covering 2014. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-180 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and in instructions accompanying the report forms.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons—2014, contained herein, whether or not they are contacted by BEA to ensure complete coverage of financial services transactions between U.S. financial services providers and foreign persons. Also, a person, or its agent,

that is contacted by BEA about reporting in this survey, either by sending a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:

(1) Completing and returning the BE-180 survey by the due date; or,

(2) If exempt, by completing pages one through five of the BE-180 survey and returning them to BEA.

(b) *Who must report.* (1) A BE-180 report is required of each U.S. person that is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and that had transactions (either sales or purchases) directly with foreign persons in all financial services combined in excess of \$3,000,000 during its fiscal year covered by the survey on an accrual basis. The \$3,000,000 threshold should be applied to financial services transactions with foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the \$3,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

(i) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters that file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated).

(2) *Voluntary reporting.* If, during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries, or parts, combined that are financial serv-

ices providers or intermediaries, are \$3,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed records search. Because the \$3,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply only to sales, only to purchases, or to both.

(3) *Exemption claims.* Any U.S. person that receives the BE-180 survey form from BEA, but is not subject to the mandatory reporting requirements and chooses not to report voluntarily, must file an exemption claim by completing pages one through five of the BE-180 survey and returning it to BEA. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(c) *BE-180 definition of financial services provider.* The definition of financial services provider used for this survey is identical to the definition of the term as used in the North American Industry Classification System, United States, 2012, Sector 52—Finance and Insurance, and holding companies that own or influence, and are principally engaged in making management decisions for these firms (part of Sector 55—Management of Companies and Enterprises). For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation); non-depository credit intermediation (including credit card issuing, sales financing, and other non-depository credit intermediation); activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation); securities and commodity contracts intermediation and brokerage (including investment

banking and securities dealing, securities brokerage, commodity contracts and dealing, and commodity contracts brokerage); securities and commodity exchanges; other financial investment activities (including miscellaneous intermediation, portfolio management, investment advice, and all other financial investment activities); insurance carriers; insurance agencies, brokerages, and other insurance related activities; insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds); other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles); and holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

(d) *Covered types of services.* The BE-180 survey covers the following types of financial services transactions (sales or purchases) between U.S. financial services companies and foreign persons: brokerage services related to equity transactions; other brokerage services; underwriting and private placement services; financial management service (including fees for mutual funds, pension funds, exchange-traded funds, private equity funds, corporate portfolio, individual portfolio, hedge funds, trusts, and other); credit related services, except credit card services; credit card services; financial advisory and custody services; securities lending services; electronic funds transfer services; and other financial services.

(e) *Due date.* A fully completed and certified BE-180 report, or qualifying exemption claim with pages one through five completed, is due to be filed with BEA not later than October 1, 2015.

[80 FR 28820, May 20, 2015]

**§ 801.10 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2017.**

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States, will be conducted covering 2017. All legal authorities, provisions, definitions, and requirements contained in

§§ 801.1 through 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-12 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2017, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA about reporting in this survey, either by sending them a report form or a written inquiry, must respond in writing pursuant to this section. This may be accomplished by filing a properly completed BE-12 report (BE-12A, BE-12B, BE-12C, or BE-12 Claim for Not Filing);

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate (except certain private funds as described below), that is, for each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at the end of the business enterprise's fiscal year that ended in calendar year 2017. Certain private funds are exempt from reporting on the BE-12 survey. If a U.S. business meets ALL of the following 3 criteria, it is not required to file any BE-12 report except to indicate exemption from the survey if contacted by BEA: (1) The U.S. business enterprise is a private fund; (2) the private fund does not own, directly or indirectly through another business enterprise, an "operating company"—*i.e.*, a business enterprise that is not a private fund or a holding company—in which the foreign parent owns at least 10 percent of the voting interest; AND (3) if the foreign parent owns the private fund indirectly (through one or more other U.S. business enterprises), there are no U.S. "operating companies" between the foreign parent and the indirectly-owned private fund.

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(c) *Forms to be filed.* (1) Form BE-12A must be completed by a U.S. affiliate that was majority-owned by one or more foreign parents (for purposes of this survey, a “majority-owned” U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent) if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the following three items for the U.S. affiliate (not just the foreign parent’s share) was greater than \$300 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2017:

(i) Total assets (do not net out liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; or

(iii) Net income after provision for U.S. income taxes.

(2) Form BE-12B must be completed by:

(i) A majority-owned U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent’s share), was greater than \$60 million (positive or negative) but none of these items was greater than \$300 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2017.

(ii) A minority-owned U.S. affiliate (for purposes of this survey, a “minority-owned” U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent’s share), was greater than \$60 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2017.

(3) Form BE-12C must be completed by a U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, none of the three items listed in paragraph (c)(1) of this section for a U.S. affiliate (not just the foreign par-

ent’s share), was greater than \$60 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2017.

(4) BE-12 Claim for Not Filing will be provided for response by persons that are not subject to the reporting requirements of the BE-12 survey but have been contacted by BEA concerning their reporting status.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately on the same type of report that would have been required if the real estate holdings were aggregated.

(e) *Due date.* A fully completed and certified Form BE-12A, BE-12B, BE-12C, or BE-12 Claim for Not Filing is due to be filed with BEA not later than May 31, 2018 (or by June 30, 2018 for reporting companies that use BEA’s eFile system).

[82 FR 58553, Dec. 13, 2017]

### § 801.11 Rules and regulations for the BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons—2017.

The BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons will be conducted covering fiscal year 2017. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 and 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-120 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons—2017, contained in this section, whether or

not they are contacted by BEA. Also, a person, or its agent, that is contacted by BEA about reporting on this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:

(1) Completing and returning the BE-120 by the due date of the survey; or

(2) If exempt, by completing the determination of reporting status section of the BE-120 survey and returning it to BEA by the due date of the survey.

(b) *Who must report.* A BE-120 report is required of each U.S. person that had sales to foreign persons or purchases from foreign persons in the services and intellectual property categories covered by the survey during its 2017 fiscal year.

(c) *What must be reported.* (1) A U.S. person that had combined sales to foreign persons that exceeded \$2 million or combined purchases from foreign persons that exceeded \$1 million in the services and intellectual property categories covered by the survey during its 2017 fiscal year, on an accrual basis, is required to provide data on total sales and/or purchases of each of the covered types of services and intellectual property transactions and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated). The \$2 million threshold for sales and the \$1 million threshold for purchases should be applied to services and intellectual property transactions with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the \$2 million threshold for sales and \$1 million threshold for purchases apply separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both. The determination of whether a U.S. company is subject to this reporting requirement may be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(2) A U.S. person that had combined sales to foreign persons that were \$2 million or less or combined purchases

from foreign persons that were \$1 million or less in the intellectual property or services categories covered by the survey during its 2017 fiscal year, on an accrual basis, is required to provide the total sales and/or purchases for each type of transaction in which they engaged. The \$2 million threshold for sales and the \$1 million threshold for purchases should be applied to services and intellectual property transactions with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the \$2 million threshold for sales and \$1 million threshold for purchases apply separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

(i) *Voluntary reporting:* If, during fiscal year 2017, combined sales were \$2 million or less, on an accrual basis, the U.S. person may, in addition to providing the required total for each type of transaction, report sales at a country and affiliation level of detail on the applicable mandatory schedule(s). Provision of this additional detail is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed records search.

(ii) If, during fiscal year 2017, combined purchases were \$1 million or less, on an accrual basis, the U.S. person may, in addition to providing the required total for each type of transaction, report purchases at a country and affiliation level of detail on the applicable mandatory schedule(s). Provision of this additional detail is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed records search.

(3) *Exemption claims:* Any U.S. person that receives the BE-120 survey form from BEA, but is not subject to the reporting requirements, must file an exemption claim by completing the determination of reporting status section of the BE-120 survey and returning it to BEA by the due date of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(d) *Covered types of services.* Services transactions covered by this survey consist of sales and purchases related to certain intellectual property rights (see paragraphs (d)(1) through (18) of this section for a list of intellectual property-related transactions covered by this survey) and sales and purchases of selected services (see paragraphs (d)(19) through (59) of this section for a list of services covered by this survey). The transactions (sales or purchases) between U.S. companies and foreign persons covered by the BE-120 survey are:

- (1) Rights related to the use of a patent, process, or trade secret to produce and/or distribute a product or service;
- (2) Outright sales of proprietary rights related to patents, processes, and trade secrets;
- (3) Rights to use books, music, etc., including end-user rights related to digital content;
- (4) Rights to reproduce and/or distribute books, music, etc.;
- (5) Outright sales of proprietary rights related to books, music, etc.;
- (6) Rights to use trademarks;
- (7) Outright sales of proprietary rights related to trademarks;
- (8) Rights to use recorded performances and events, including end-user rights related to digital content;
- (9) Rights to reproduce and/or distribute recorded performances and events;
- (10) Outright sales of proprietary rights related to recorded performances and events;
- (11) Rights to broadcast and record live performances and events;
- (12) Rights to reproduce and/or distribute general use computer software;
- (13) Outright sales of proprietary rights related to general use computer software;
- (14) Fees associated with business format franchising;
- (15) Outright sales of proprietary rights related to business format franchising;
- (16) Rights to use other intellectual property;
- (17) Rights to reproduce and/or distribute other intellectual property;
- (18) Outright sales of proprietary rights related to other intellectual property;
- (19) Accounting, auditing, and book-keeping services;
- (20) Advertising services;
- (21) Auxiliary insurance services;
- (22) Computer software, including end-user licenses and customization services;
- (23) Cloud computing and data storage services;
- (24) Other computer services;
- (25) Construction services;
- (26) News agency services (excludes production costs related to news broadcasters);
- (27) Other information services;
- (28) Education services;
- (29) Architectural services;
- (30) Engineering services;
- (31) Surveying, cartography, certification, testing and technical inspection services;
- (32) Financial services;
- (33) Maintenance services;
- (34) Installation, alteration, and training services;
- (35) Legal services;
- (36) Market research services;
- (37) Public opinion polling services;
- (38) Other management, consulting, and public relations services;
- (39) Merchanting services (net receipts);
- (40) Mining services;
- (41) Operational leasing;
- (42) Trade-related services, other than merchanting services;
- (43) Artistic-related services;
- (44) Premiums paid on primary insurance;
- (45) Losses recovered on primary insurance;
- (46) Provision of customized and non-customized research and development services;
- (47) Other research and development services;
- (48) Telecommunications services;
- (49) Health services;
- (50) Heritage and recreational services;
- (51) Audiovisual and production services;
- (52) Contract manufacturing services;
- (53) Disbursements for sales promotion and representation;
- (54) Photographic services (including satellite photography services);
- (55) Space transport services;
- (56) Trade exhibition and sales convention services;

(57) Agricultural services;  
 (58) Waste treatment and depollution services; and

(59) Other selected services n.i.e. (not included elsewhere).

(e) *Types of transactions excluded from the scope of this survey.* (1) Sales and purchases of goods. Trade in goods involves products that have a physical form, and includes payments or receipts for electricity.

(2) Sales and purchases of financial instruments, including stocks, bonds, financial derivatives, loans, mutual fund shares, and negotiable CDs. (However, securities brokerage is a service).

(3) Income on financial instruments (interest, dividends, capital gain distributions, etc).

(4) Compensation paid to, or received by, employees.

(5) Penalties and fines and gifts or grants in the form of goods and cash (sometimes called “transfers”).

(f) *Due date.* A fully completed and certified BE-120 report, or qualifying exemption claim with the determination of reporting status section completed, is due to be filed with BEA not later than June 29, 2018 (or by July 30, 2018 for respondents that use BEA’s eFile system).

[83 FR 4836, Feb. 2, 2018]

**§ 801.12 Rules and regulations for the BE-140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons—2018.**

The BE-140 Benchmark Survey of Insurance Transactions by Insurance Companies with Foreign Persons will be conducted covering calendar year 2018. All legal authorities, provisions, definitions, and requirements contained in §§801.1 through 801.2 and §§801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-140 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

(a) *Response required.* A response is required from U.S. insurance companies subject to the reporting requirements of the BE-140 Benchmark Survey of Insurance Transactions by U.S.

Insurance Companies with Foreign Persons—2018, contained in this section, whether or not they are contacted by BEA. Also, a U.S. insurance company, or its agent, that is contacted by BEA about reporting on this survey, either by sending a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:

(1) Completing and returning the BE-140 by the due date of the survey; or

(2) If exempt, by completing the determination of reporting status section of the BE-140 survey and returning it to BEA by the due date of the survey.

(b) *Who must report.* A BE-140 report is required of each U.S. insurance company that had insurance transactions with foreign persons in the categories covered by the survey during its 2018 calendar year.

(c) *What must be reported—(1) Transactions exceeding \$2 million.* A U.S. insurance company that had transactions with foreign persons that exceeded \$2 million in at least one of the insurance categories covered by the survey during its 2018 calendar year, on an accrual basis, is required to provide data on the total transactions of each of the covered types of insurance transactions and must disaggregate the totals by country and by relationship to the foreign counterparty (foreign affiliate, foreign parent group, or unaffiliated). The determination of whether a U.S. insurance company is subject to this reporting requirement may be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(2) *Transactions \$2 million or below.* A U.S. insurance company that had transactions with foreign persons that were \$2 million or less in each of the insurance categories covered by the survey during its 2018 calendar year, on an accrual basis, is required to provide the total for each type of transaction in which they engaged.

(i) *Voluntary reporting of insurance transactions.* If, during calendar year 2018, total transactions were \$2 million or less in each of the insurance categories covered by the survey, on an

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accrual basis, the U.S. insurance company may, in addition to providing the required total for each type of transaction, voluntarily report transactions at a country and affiliation level of detail on the applicable mandatory schedule(s).

(ii) [Reserved]

(3) *Exemption claims.* Any U.S. person that receives the BE-140 survey form from BEA, but is not subject to the reporting requirements, must file an exemption claim by completing the determination of reporting status section of the BE-140 survey and returning it to BEA by the due date of the survey. The requirement in this paragraph (b)(3) is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(d) *Covered types of insurance services.* Insurance services covered by the BE-140 survey consist of transactions between U.S. insurance companies and foreign persons for:

(1) Premiums earned on reinsurance assumed from companies resident abroad;

(2) Losses incurred on reinsurance assumed from companies resident abroad;

(3) Premiums paid for reinsurance ceded to companies resident abroad;

(4) Losses recovered on reinsurance ceded to companies resident abroad;

(5) Premiums earned from direct insurance sold to foreign persons;

(6) Losses incurred on direct insurance sold to foreign persons;

(7) Receipts for auxiliary insurance services provided to foreign persons; and

(8) Payments for auxiliary insurance services provided by foreign persons.

(e) *Types of transactions excluded from the scope of this survey.* Premiums paid to, or losses received from, foreign insurance companies on direct insurance.

(f) *Due date.* A fully completed and certified BE-140 report, or qualifying exemption claim with the determination of reporting status section completed, is due to be filed with BEA not later than September 30, 2019.

[84 FR 27199, June 12, 2019]

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### § 801.13 Rules and regulations for the BE-180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons—2019.

The BE-180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons will be conducted covering fiscal year 2019. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 and 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-180 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons—2019, contained herein, whether or not they are contacted by BEA. Also, a person, or its agent, that is contacted by BEA about reporting on this survey, either by sending a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:

(1) Completing and returning the BE-180 by the due date of the survey; or

(2) If exempt, by completing the determination of reporting status section of the BE-180 survey and returning it to BEA by the due date of the survey.

(b) *Who must report.* A BE-180 report is required of each U.S. person that is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and that had financial services transactions with foreign persons in the categories covered by the survey during its 2019 fiscal year.

(c) *BE-180 definition of financial services provider.* The definition of financial services provider used for this survey is identical to the definition of the term as used in the North American Industry Classification System, United States, 2012, Sector 52-Finance and Insurance, and holding companies that

own or influence, and are principally engaged in making management decisions for these firms (part of Sector 55-Management of Companies and Enterprises). For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation); non-depository credit intermediation (including credit card issuing, sales financing, and other non-depository credit intermediation); activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation); securities and commodity contracts intermediation and brokerage (including investment banking and securities dealing, securities brokerage, commodity contracts and dealing, and commodity contracts brokerage); securities and commodity exchanges; other financial investment activities (including miscellaneous intermediation, portfolio management, investment advice, and all other financial investment activities); insurance carriers; insurance agencies, brokerages, and other insurance related activities; insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds); other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles); and holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

(d) *What must be reported.* (1) A U.S. person that had combined sales to, or purchases from, foreign persons that exceeded \$3 million in the financial services categories covered by the survey during its 2019 fiscal year, on an accrual basis, is required to provide data on total sales and/or purchases of each of the covered types of financial services and must disaggregate the totals by country and by relationship to

the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated). The determination of whether a U.S. financial services provider is subject to this reporting requirement can be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(2) A U.S. person that had combined sales to, or purchases from, foreign persons that were \$3 million or less in the financial services categories covered by the survey during its 2019 fiscal year, on an accrual basis, is required to provide the total sales and/or purchases for each type of transaction in which they engaged. The \$3 million threshold for sales and purchases should be applied to financial services transactions with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the \$3 million threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

(e) *Voluntary reporting of financial services transactions.* If, during fiscal year 2019, combined sales and purchases were \$3 million or less, on an accrual basis, the U.S. person may, in addition to providing the required total for each type of transaction, report sales at a country and affiliation level of detail on the applicable mandatory schedule(s). The estimates can be judgmental, that is, based on recall, without conducting a detailed records search.

(f) *Exemption claims.* Any U.S. person that receives the BE-180 survey form from BEA, but is not subject to the reporting requirements, must file an exemption claim by completing the determination of reporting status section of the BE-180 survey and returning it to BEA by the due date of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(g) *Covered types of financial services.* Financial services covered by the BE-

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180 survey consist of transactions between U.S. financial services companies and foreign persons for:

- (1) Brokerage services related to equity transactions;
- (2) Other brokerage services;
- (3) Underwriting and private placement services related to equity transactions;
- (4) Underwriting and private placement services related to debt transactions;
- (5) Financial management services;
- (6) Credit-related services, except credit card services;
- (7) Credit card services;

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(8) Financial advisory and custody services;

(9) Securities lending services;

(10) Electronic funds transfer services; and

(11) Other financial services.

(h) *Due date.* A fully completed and certified BE-180 report, or qualifying exemption claim with the determination of reporting status section completed, is due to be filed with BEA not later than September 30, 2020 (or by October 30, 2020 for respondents that use BEA's eFile system).

[85 FR 31052, May 22, 2020]

**PARTS 806–899 [RESERVED]**