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U.S. Financial Services Providers May Be Required to Complete a BE-180 Benchmarking Survey for Fiscal Year 2019

The U.S. Bureau of Economic Analysis (the “BEA”) is conducting a Form BE-180, Benchmark Survey of Financial Services Transactions Between U.S. Financial Service Providers and Foreign Persons in 2020 covering the 2019 fiscal year. The following are responses to commonly asked questions about the BEA and the BE-180 survey.

What is the BEA?

The BEA is an agency of the U.S. Department of Commerce, and it collects and analyzes economic data and produces economic accounts statistics to assist government and business decision-makers, researchers and the American public to follow and understand the performance of the nation’s economy.

What is the BE-180 survey, and why is the BEA conducting the BE-180 survey?

The BEA conducts a BE-180 survey every five years to monitor U.S. exports and financial services transactions in order to analyze their effects and assist in formulating policy. The U.S. government uses the data in estimating the United States’ international transactions accounts. The U.S. government also uses the collected information to help support U.S. international economic policy and to analyze the impact of that policy on international trade in financial services, the U.S. economy and foreign economies.

In 2020, the BE-180 survey collects data on U.S. financial services companies’ transactions with foreign persons during the 2019 fiscal year.

The BEA is conducting the BE-180 survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908(b)).

Who must respond to the BE-180 survey?

A response is required from persons subject to the reporting requirements of the BE-180 survey whether or not they are contacted by the BEA. Specifically, a response to the BE-180 survey is required from each U.S. person that (i) 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 (ii) had financial services transactions with foreign persons in the categories covered by the BE-180 survey during its 2019 fiscal year.

Any U.S. person that receives the BE-180 survey from the 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 the BEA by the due date of the BE-180 survey.

Who is a “U.S. financial services provider” for purposes of the BE-180 survey?

A “U.S. financial services provider” for the purposes of the BE-180 survey is a company that falls under North American Industry Classification System (NAICS) Sector 52 (available here) [provide link: <https://www.naics.com/six-digit-naics/?code=52>], which encompasses establishments primarily engaged in financial transactions (transactions involving the creation, liquidation or change in ownership of financial assets) and/or in facilitating financial transactions. “U.S. financial service provider” also includes holding companies that own or influence the management decisions of such companies. Examples of “U.S. financial service providers” include companies in the following industries:

- 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); and
- Other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts and other financial vehicles).

What transactions are reportable in the BE-180 survey?

The BE-180 survey covers sales to, and purchases from, foreign persons of the following financial services during the 2019 fiscal year:

- Brokerage services related to equity transactions;
- Other brokerage services;
- Underwriting and private placement services related to equity transactions;
- Underwriting and private placement services related to debt transactions;
- Financial management services;
- 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.

If the sales or purchases exceeded \$3 million during the 2019 fiscal year, on an accrual basis, the reporting company will be required to (i) break out the sales and purchases into each of the categories above and (ii) disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group or unaffiliated).

If the sales or purchases did not exceed \$3 million during the 2019 fiscal year, on an accrual basis, the reporting company will only be required to break out the sales and purchases into each of the categories above. Because the \$3 million threshold applies separately to sales and purchases, the more robust reporting requirement may apply only to sales, only to purchases, or to both.

What time period does the BE-180 survey cover?

The BE-180 survey covers transactions occurring during the 2019 fiscal year.

How do respondents submit BE-180 survey responses?

Respondents are allowed to submit BE-180 survey responses by (i) electronic filing through the BEA's eFile system, (ii) fax, (iii) overnight delivery, or (iv) U.S. mail. Those who use eFile will get an automatic one-month extension.

Will the information provided in BE-180 survey responses be publicly accessible?

No. The BEA will keep the information confidential and the information may be used only for statistical purposes.

Is a response to the BE-180 survey mandatory?

A response to the BE-180 survey is required only if a respondent is a financial services provider that has a transaction to report for the 2019 fiscal year (regardless of whether a respondent is contacted by the BEA). If a respondent receives a BE-180 survey form from the BEA but does not have any reportable transactions, the respondent must claim an exemption by completing the determination of reporting status section of the BE-180 survey and returning it to the BEA by the due date of the BE-180 survey.

Are there consequences for failure to respond to the BE-180 survey?

Yes. Whoever fails to respond to the BE-180 survey as required by the BEA is subject to a civil penalty of not less than \$4,819, and not more than \$48,192, and to injunctive relief commanding such person to comply, or both. A willful failure to file is subject to a fine of not more than \$10,000 and, if an individual, may result in imprisonment 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.

What is the deadline for responding to the BE-180 survey?

A respondent must submit a completed BE-180 survey, or complete the determination of reporting status section and claim an exemption, to the BEA not later than Sept. 30, 2020, if filing in paper or by fax, or Oct. 30, 2020, if filing using the BEA's eFile system. Further, on its website, the BEA states that "extensions are available if needed" as a result of the COVID-19 pandemic.

Resources

The text of the regulations governing the BE-180 can be found [here](#).

Rikard D. Lundberg

Shareholder

rlundberg@bhfs.com

303.223.1232

John S. Kyed

Associate

jkyed@bhfs.com

303.223.1123

This document is intended to provide you with general information regarding the BEA's Benchmark Survey of Financial Services Transactions Between U.S. Financial Service Providers and Foreign Persons in 2020 covering the 2019 fiscal year. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.