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DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

Docket No. 150108021-5409-01

RIN 0691-AA84

International Services Surveys: BE-I80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations of the Bureau of Economic Analysis (BEA), Department of Commerce, to reinstate reporting requirements for the BE-180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. Benchmark surveys are conducted every five years; the prior survey covered 2009. For the 2014 benchmark survey, BEA is making one change in the survey data items to collect data on equity- and debt-related underwriting transactions separately. This mandatory survey is conducted under the authority of the International Investment and Trade in Services Survey Act (the Act). Unlike most other BEA surveys conducted pursuant to the Act, 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, 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.

DATES: This final rule is effective [insert date 30 days after publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE-50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606-9850.

SUPPLEMENTARY INFORMATION: On January 27, 2015, BEA published a notice of proposed rulemaking that set forth revised reporting criteria for the BE-180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons (80 FR 4228-4231). BEA received four comments on the proposed rule.

One comment was written on behalf of hedge fund managers who are subject to BE-180 reporting requirements. The letter stated that the BE-180 survey is not well suited to hedge funds and that, for these respondents, the burden of reporting is significant. The commenter made two recommendations: (1) Entities that are not contacted by BEA should have no reporting responsibilities (similar to other BEA surveys); and (2) BEA should not extend reporting by U.S. investment managers to other BEA surveys. BEA is very concerned about respondent burden and has employed several approaches to reduce the burden where possible. However, BEA does not adopt the above two recommendations because of the statistical needs that govern how the data are collected and tabulated. If BEA does not require responses from all persons subject to the reporting requirements of the BE-180, we could not ensure that a complete and accurate sample frame is maintained in the non-benchmark years. Thus, lack of this

information in a benchmark year would result in incomplete data in our tabulated information in non-benchmark years. To aid in communicating filing requirements, BEA will consider what additional guidance it can offer to hedge fund filers, possibly by providing expanded form instructions and Frequently Asked Questions (FAQs).

Another comment was written on behalf of the international banking community in the United States. The letter requested that BEA adopt an accommodating approach to allow impacted companies adequate time to complete the BE-180 survey. As the BE-180 applies to a broader audience and has reporting requirements that differ from the related BE-185 Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons, the commenter stated that additional time to comply was necessary to help alleviate the filing burden. To provide ample time for respondents to complete and file the BE-180 survey, BEA will accept filing extension requests through the October 1, 2015 due date. Respondents can request extensions of 30 days or less over the phone or in writing; requests of greater than 30 days must be provided in writing. Additionally, any respondent that chooses to file electronically through BEA's eFile system will automatically receive a 30 day extension.

The third comment was written on behalf of the commercial energy industry and was concerned with the BE-180 definition of financial services provider. The commenter requested that BEA provide clarification with regard to what information should be reported by principals to commodity contracts. The commenter recommended that if BEA is unable to provide this clarification, the obligation to file the BE-180 should be limited

only to those entities that are contacted by BEA. We will consider what additional guidance it can offer to clarify how commodity-related activities are to be reported, including expanded form instructions and FAQs.

The final comment was written on behalf of asset management firms that are subject to BE-180 reporting requirements. The letter stated that the impact of the BE-180 survey and the reporting burden for entities in this industry are significant. The commenter made three recommendations: (1) Entities that are not contacted by BEA should have no reporting responsibilities (similar to other BEA surveys); (2) BEA should raise the \$3 million monetary threshold for mandatory reporting on the BE-180 of financial services transactions; and (3) BEA should provide additional guidance to asset managers in order to collect meaningful Survey data. BEA does not adopt the first recommendation because of the statistical needs that govern data collection and tabulation. As previously stated, BEA could not ensure that a complete and accurate sample frame is maintained in the non-benchmark years if we did not require responses from all persons subject to the reporting requirements of the BE-180, which is a benchmark survey. BEA does not adopt the second recommendation because the \$3 million threshold for mandatory reporting on the BE-180 survey is necessary to ensure an accurate sample frame for the quarterly BE-185 survey. Therefore, this threshold is unchanged from the previous benchmark survey. Regarding the third recommendation, BEA will consider what additional guidance it can offer to asset managers, possibly in the form of expanded instructions and FAQs, to aid in communicating the filing requirements.

The change in data items collected (described in the Description of Changes section below) will be reflected in the final version of the BE-180 survey form.

This final rule adds 15 CFR Part 801.9 to set forth the reporting requirements for the BE-180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. BEA conducts the BE-180 under the authority provided by the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108) and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988.

By rule issued in 2012 (77 FR 24373), BEA established guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. This final rule amends the regulations to require a response from persons subject to the reporting requirements of the BE-180, 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.

The BE-180 survey covers financial services transactions with foreign persons. In non-benchmark years, the universe estimates covering these transactions are derived from the sample data reported on BEA's BE-185, Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons.

The data are used by BEA to estimate the financial services component of the U.S. International Transactions Accounts and other economic accounts compiled by BEA. The data are needed to monitor U.S. exports and imports

of financial services; analyze their impact on the U.S. and foreign economies; support U.S. international trade policy on financial services; and assess and promote U.S. competitiveness in international trade in services. In addition, these data will improve the ability of U.S. businesses to identify and evaluate market opportunities.

The services covered by the BE-180 include the following transactions:

(1) Brokerage services related to equity transactions; (2) other brokerage services; (3) underwriting and private placement services; (4) financial management services; (5) credit-related services, except credit card services; (6) credit card services; (7) financial advisory and custody services; (8) securities lending services; (9) electronic funds transfer services; and (10) other financial services.

Description of Changes from the 2009 BE-180 Survey

The changes amend the regulations and the survey form for the BE-180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. These amendments include changes in the data items collected and questionnaire design. Under this final rule and unlike many other BEA surveys conducted pursuant to the Act, persons subject to the reporting requirements of the BE-180 are required to respond whether or not they are contacted by BEA. Also, we are adding one item to the 2014 BE-180 survey form to collect data on equity- and debt-related underwriting transactions separately. The 2009 BE-180 survey collected these transactions as a combined amount. Separate reporting of these transactions is needed to accurately remove equity- and debt-related underwriting fees from purchases and sales of

equity and debt security transactions, which are reported inclusive of underwriting and brokerage fees. A number of reporters include language in their financial statements that suggests equity- and debt-related underwriting transactions are readily obtainable from their accounting records. In addition, BEA is redesigning the format and wording of the survey form. The new design incorporates cognitive design improvements made to other BEA surveys that improve the flow of the survey form and eliminate redundancies in the survey questions. Survey instructions and data item descriptions are being changed to improve clarity and to make the benchmark survey form more consistent with those of other BEA surveys.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information in this final rule has been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). OMB has pre-approved the information collection under OMB control number 0608-0062. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a

penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

The BE-180 survey is expected to result in the filing of reports from approximately 8,750 respondents. Approximately 1,250 respondents would report mandatory or voluntary data on the survey and approximately 7,500 would file exemption claims. The respondent burden for this collection of information will vary from one respondent to another, but is estimated to average ten hours for the respondents that file mandatory or voluntary data-including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and two hours for other responses. Thus the total respondent burden for this survey is estimated at 27,500 hours, compared to 24,000 hours for the 2009 BE-180 survey. The increase in burden hours is due to an increase in the size of the respondent universe. Written comments regarding the burden-hour estimates or other aspects of the collection-of-Information requirements contained in the final rule should be sent to both BEA via e-mail at Christopher.Stein@bea.gov, and to OMB, via email at pbugg@omb.eop.gov or by FAX at (202) 395-7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, certified at the proposed rule stage to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities. The factual

basis for the certification was published in the proposed rule and is not repeated here.

BEA received one comment on the impact on small entities. The commenter, writing on behalf of asset management firms, stated that the broad scope of the financial services collected on the BE-180 survey, and the fact that the \$3 million mandatory reporting level applies separately to sales or purchases, will impact a larger number of small businesses than indicated by BEA. BEA is very concerned about respondent burden and only collects data from the broader group of filers on benchmark surveys that are conducted once every five years. BEA acknowledges that a larger number of asset managers may be required to complete the BE-180 survey as a result of the \$3 million threshold. However, even with a larger number of entities being required to report, preparing and submitting the required data will not have a significant economic impact on any entity, large or small. While the resources required to respond to the survey will vary from one respondent to another, BEA estimates that it will take, on average, ten hours for the respondents that file mandatory or voluntary data, and two hours for other responses. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing, reviewing, and submitting the appropriate form. This rule has no other impact or regulatory burden beyond the one-time reporting of the required information. Therefore, even businesses required to provide mandatory data on the survey will only expend a minimal number of hours of staff time to comply, which does not constitute a significant economic impact. Because this rule will not have a significant economic impact on a

substantial number of small entities, no FRFA is required and none has been prepared.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and record keeping requirements, International Services.

Dated May 12, 2015

Brian C. Moyer,
Director, Bureau of Economic Analysis

For reasons set forth in the preamble, BEA amends 15 CFR part 801 as follows:

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

1. The authority citation for 15 CFR part 801 continues to read as follows:

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).

2. Revise § 801.3 to read as follows:

§ 801.3 Reporting requirements.

Except for surveys subject to rulemaking in §§801.7, 801.8 and 801.9, 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(6)(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.

3. Add § 801.9 to read as follows:

§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 services 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.

BILLING CODE 3510-06-P

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