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DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[200219-0058]

RIN 0691-AA90

International Services Surveys: BE-180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to renew reporting requirements for the mandatory BE-180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. This survey will apply to the 2019 fiscal reporting year. This mandatory benchmark survey, conducted under the authority of the International Investment and Trade in Services Survey Act, covers the universe of transactions in financial services and is BEA's most comprehensive survey of such transactions. For the 2019 benchmark survey, BEA proposes several changes in the data items collected and the design of the survey form.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5:00 p.m. [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You can submit comments, identified by RIN 0691-xxxx, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for

submitting comments. For Keyword or ID, enter “EAB-2019-0003.”

- *E-mail:* christopher.stein@bea.gov
- *Fax:* Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, (301) 278-9507.
- *Mail:* Christopher Stein, Chief, Services Surveys Branch (BE-50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233.
- *Hand Delivery/Courier:* Christopher Stein, Chief, Services Surveys Branch (BE-50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Rd., Suitland, MD 20746.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA through any of the methods above and to the Office of Management and Budget (OMB), OIRA, Paperwork Reduction Project 0608-0062, Attention PRA Desk Officer for BEA, via e-mail at Robert_G_Sivinski@omb.eop.gov, or by fax at 202-395-7245.

Public Inspection: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. BEA will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document file (pdf) formats only.

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, 4600 Silver Hill Rd., Washington, DC 20233; e-mail *christopher.stein@bea.gov* or phone (301) 278-9189.

SUPPLEMENTARY INFORMATION: The BE-180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons is a mandatory survey and is conducted once every five years by BEA under the authority provided by the International Investment and Trade in Services Survey Act (P.L.94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended)(the Act), and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908(b)). The Act provides that data reported to BEA on this survey are confidential and may be used only for analytical and statistical purposes. Without prior written permission from the survey respondent, the data collected cannot be presented in a manner that allows individual responses to be identified. An individual respondent's report cannot be used for purposes of taxation, investigation, or regulation. Copies retained by BEA are exempt from legal process. Per the Federal Cybersecurity Enhancement Act of 2015 (Division N, Title II, Subtitle B, P.L. 114-113), a respondent's data are protected from cybersecurity risks through security monitoring of the BEA information systems.

A response is required from persons subject to the reporting requirements of the BE-180, whether or not they are contacted by BEA, to ensure complete coverage of transactions in financial services between U.S. persons (any individual or organization subject to the jurisdiction of the United States) and foreign persons.

In 2012, BEA established regulatory guidelines for collecting data on international trade in services and direct investment (77 FR 24373; April 24, 2012). This proposed rule, as published, would amend those regulations to require a response from persons subject to the reporting requirements of the BE-180, whether or not they are contacted by BEA.

The BE-180 benchmark survey is intended to cover the universe of financial services transactions of U.S. financial services companies with foreign persons and is BEA's most comprehensive survey of such transactions. In nonbenchmark years, the universe of 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 BE-185 and the BE-180 collect similar information. BEA uses cutoff sampling for the BE-185, meaning that respondents must report on the BE-185 only if they had combined sales to foreign persons that exceeded \$20 million or combined purchases from foreign persons that exceeded \$15 million in any one of the 10 covered financial services transaction categories during fiscal year 2019. The sample of respondents that file on a quarterly basis throughout fiscal year 2019 will also be required to report on the 2019 BE-180 survey. BEA reconciles the annual data from the BE-180 survey with the quarterly data reported on the BE-185 survey by comparing quarterly to annual submissions that are typically completed using audited information.

The benchmark data, which include data from respondents not subject to filing on an ongoing quarterly basis, will be used, in conjunction with quarterly data collected on the companion BE-185 survey, to produce quarterly estimates of financial services transactions for BEA's international transactions accounts, national income and product accounts, and industry accounts. If this information is not collected on the BE-180 survey, BEA would need to expand the scope of the BE-185 quarterly survey in order to collect additional data items and reduce reporting thresholds. Expanding the BE-185 quarterly survey in this way would result in an increased number of respondents and a measurable increase in the reporting burden each quarter. The data collected through the BE-180 are needed to monitor U.S. trade in financial services, to analyze the impact of U.S. trade in financial services on the U.S. economy and on foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to

conduct trade promotion activities, and to improve the ability of U.S. businesses to identify and evaluate market opportunities.

This proposed rule would amend 15 CFR part 801 by adding new § 801.13 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. A full list of the financial services transactions covered by the BE-180 survey can be found in the regulatory text of this proposed rule in new § 801.13(d). This includes brokerage services, underwriting and private placement services related to equity transactions and debt transactions, financial management services, credit-related services, credit card services, financial advisory and custody services, securities lending services, electronic funds transfer services, and other financial services.

Description of Changes

The proposed changes would amend the regulations and the survey form for the BE-180 benchmark survey. These amendments include several changes in data items collected and the design of the survey form relative to the 2014 benchmark survey.

BEA proposes to change the reporting requirements for respondents with transactions in covered services below the threshold for mandatory reporting on the schedule(s) of the survey (\$3 million in combined sales and/or purchases for fiscal year 2019). While responding to benchmark surveys is always mandatory, for the previous BE-180 survey, respondents with transactions below these thresholds were required only to provide a figure for total sales and/or total purchases for all covered transactions, combined. These respondents had the option of providing additional detail for each covered transaction by transaction type, by country, and by affiliation; such additional detail was voluntary rather than required. For the 2019 BE-180, however, *all* respondents, regardless of the amount of their transactions in covered services would be required to provide a total dollar amount for their sales and purchases, as applicable, *by transaction type*. This information would

allow BEA to improve the accuracy of the trade statistics.

This change would impose minimal additional burden for respondents because the additional information to be reported is information that respondents would have needed to compile or estimate previously in order to apply the reporting requirements. Under the prior approach, respondents would have needed to compile or estimate the dollar amount of their sales to and/or purchases from foreigners by transaction type in order to determine if their transactions met the threshold for mandatory reporting on the schedules. Under the new approach, BEA would simply be requiring that respondents report those transaction totals.

BEA proposes to add five items to the survey. The changes are proposed in response to suggestions from data users and to allow BEA to more closely align its statistics with international guidelines and publish more information on U.S. trade in financial services.

The following items would be added to the BE-180 benchmark survey:

(1) Question to request the Legal Entity Identifier (LEI) of the survey respondent.

Respondents would be asked to provide their 20-digit LEI, if they have one. Obtaining an LEI will not be required for the purpose of filing the survey. This information will assist in matching entities across databases, enabling better verification of data and more direct linking to other surveys and publicly available data.

(2) Questions to collect financial management transactions by type of account. Respondents

who had financial management transactions during the fiscal year would be required to disaggregate these transactions, for both sales and purchases, as applicable, by type of account (for example, mutual funds; pension funds; exchange-traded funds; private equity funds; corporate portfolio; individual portfolio; hedge funds; and trusts). This additional information can be used to better understand the nature of cross-border financial services transactions.

- (3) **Questions about the timing of performance fees.** Respondents who had financial management transactions during fiscal year 2019 would be required to provide additional information about whether these transactions included fees that are tied to performance and, if so, about the timing of those performance fees. Respondents with performance fees (receipts and/or payments) during fiscal year 2019 would be required to distribute them, in a table, based on the quarter(s) in which they were received and/or paid. The additional detail will be used to improve quarterly estimates.
- (4) **Mandatory questions to collect information on financial services that were conducted remotely, e.g. where both the supplier and the consumer were in different territories when the service is delivered.** This information would be collected for both sales of services performed remotely for foreign persons and for purchases of services performed remotely by foreign persons. For transactions in the financial services categories covered by the survey, respondents would be required to check one of several boxes identifying the percentage of their transactions that were conducted remotely, and to identify if this information was sourced from their accounting records or from recall/general knowledge. Respondents would also be required to check one of two boxes identifying how the remainder of the services not reported as 100% remotely transacted were typically performed (e.g. by the provider traveling to the consumer or by the consumer traveling to the provider). This additional detail will allow BEA to break down U.S. financial services transactions by the various paths (modes of supply) businesses take to access foreign markets. This information is important to trade negotiators and other policymakers because trade agreements are structured around these modes of supply.
- (5) **A question to identify respondents engaged in transactions related to cryptocurrency.**

BEA will add a single question asking respondents to identify, of their 2019 cross-border financial services reported in the required transaction categories, any that were related to cryptocurrency activities. The question would identify respondents involved in these transactions without a significant increase in reporting burden and ensure accurate reporting within the existing transaction categories.

In addition to the changes described above, BEA proposes to redesign the format and wording of the survey. The new survey design would incorporate improvements that have been made to other BEA surveys. Some improvements are the result of a recent review conducted with selected survey respondents during the planning for the 2017 BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons. BE-180 Benchmark Survey instructions and data item descriptions would be changed to improve clarity and ensure that the survey form is consistent with other BEA surveys.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant for purposes of Executive Order 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520 (PRA). The requirement will be submitted to OMB for approval as a reinstatement, with change, of a previously approved collection under OMB control number 0608-

0062, for which approval has expired. Surveys were collected for the 2014 BE-180 in calendar years 2015 and 2016. No survey submissions were solicited by BEA after the expiration and discontinuance of the collection in August of 2018.

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, as proposed, is expected to result in the filing of reports from approximately 7,000 respondents. Approximately 5,500 respondents would report mandatory data on the survey, and approximately 1,500 would file exemption claims. The respondent burden for this collection of information would vary from one respondent to another, but is estimated to average (1) 11 hours for the 1,875 respondents that file mandatory or voluntary data by country and affiliation for relevant transaction types on the mandatory schedules; (2) 2 hours for the 3,625 respondents that file mandatory data by transaction type but not by country or affiliation; and (3) 1 hour for the 1,500 exemption claims. These burden-hour estimates consider time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden for this survey is estimated at 29,375 hours, or approximately 4 hours per response (29,375 hours/7,000 respondents), compared to 27,500 hours, or about 3 hours per response (27,500 hours /8,750 respondents) for the 2014 BE-180 benchmark survey. The increase in burden hours is due to estimated changes in the expected response composition of the respondent universe from 2014 to 2019, as well as changes in the content of the survey.

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Commerce invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the PRA. Comments are requested concerning:

(a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA and OMB following the instructions given in the ADDRESSES section above.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified 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 proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The changes proposed in this rule are discussed in the preamble and are not repeated here.

A BE-180 report would be required of any U.S. company that is a financial services provider who had financial services transactions, sales to, or purchases from foreign persons in any of the covered types of financial services listed in 15 CFR 801.13(d). This includes brokerage services, underwriting and private placement services related to equity transactions and debt transactions, financial management services, credit-related services, credit card services, financial advisory and custody services, securities lending services, electronic funds transfer services, and other financial services. While the survey would not collect data on total sales or other measures of the overall size of the respondents to the survey, historically the respondents to the existing quarterly survey of financial services transactions and to the previous benchmark surveys were mostly major U.S.

corporations. A completed benchmark survey, as proposed, would be required from U.S. financial companies that had financial services transactions in any of the covered categories with foreign persons. For U.S. financial services companies that had combined sales and/or purchases transactions exceeding \$3 million in the financial services covered by the survey for fiscal year 2019, a completed benchmark survey would include data on each of the covered types of financial services transactions with totals disaggregated by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated). For U.S. financial services companies that had combined sales and/or purchases transactions of \$3 million or less in the financial services covered by the survey for fiscal year 2019, a completed benchmark would include totals for each type of transaction in which they engaged. This abbreviated benchmark requirement would exclude most small businesses from mandatory reporting of detail by country and by affiliation. Any small businesses that would be required to report would likely have engaged in a small number of covered transactions and would be less likely to report detail by country and affiliation, and, therefore, would be expected to have below the average burden of 4 hours per response. Even if the responses for small businesses took the expected average burden of 4 hours per response, that would likely apply to a small number of transactions, and, as such, would not constitute a significant impact on any small business or other entity. Because this proposed rule would not have a significant economic impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements.

Dated: January 17, 2020.

Paul W. Farello,

Associate Director of International Economics, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA proposes to amend 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, 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.

3. Add § 801.13 to read as follows:

§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 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 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-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;
- (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 July 31, 2020 (or by August 31, 2020 for respondents that use BEA's eFile system).