

PE Firms: Prepare for the BEA's Upcoming BE-180 Survey

Private equity firms may be subject to new mandatory BEA reporting requirements with respect to their cross-border financial services transactions.

The Bureau of Economic Analysis (BEA) of the US Department of Commerce conducts the BE-180 benchmark survey every five years. The BEA aims to collect comprehensive economic data on US resident companies — including for this purpose private investment funds and fund managers — as well as their cross-border financial services transactions. The BE-180 is in addition to other periodic BEA surveys, such as the BE-10 and BE-13 direct investment surveys. Companies required to file a BE-180 report may need to respond or request an automatic extension as early as **November 1, 2015**.

Who Must Respond

The BEA requires a BE-180 report from any US person that had either combined sales or combined purchases of financial services in excess of **US\$3 million** to or from foreign persons during the US person's 2014 fiscal year. For purposes of the BE-180, financial services include any of the following:

- Financial advisory or management services
- Private placement services
- Trading, issuing, dealing, underwriting, lending, or custody of financial instruments
- Credit-related services (including establishing, maintaining, or arranging credit, letters of credit, lines of credit and mortgages)
- Credit card services
- Electronic funds transfer services
- Insurance services

In the private fund context, covered sales of financial services may include: (a) a US investment adviser charging management and advisory fees in respect of any non-US fund clients, including non-US private equity funds, mutual funds, hedge funds and any non-US parallel funds, feeder funds or alternative investment vehicles of US or non-US funds; and (b) according to recent guidance released by the BEA, a US general partner (or other manager) of a non-US fund earning carried interest or other profit allocations representing compensation due to fund performance. Covered purchases of financial services may include: (x) payments a US investment adviser or fund sponsor made to foreign persons for custodial, depository, placement agent or advisory services; and (y) payments a majority-owned portfolio company made to foreign persons for any covered financial services.

As with the BE-10 and BE-13 direct investment surveys, a US person is now required to respond to the BE-180 survey if it meets the reporting requirements, regardless of whether the person has been

contacted by the BEA regarding the survey. In addition, the US person filing the Form BE-180, if required, should be the “fully consolidated US domestic business enterprise.” This is defined as the US business whose voting securities are not owned more than 50% by another US business together with, proceeding down each ownership chain from that US business, any US business whose voting securities are more than 50% owned by the US business above it.

Completing a BE-180 Report

The determination of whether, and to what extent, a US person is required to complete a BE-180 report is a function of: (a) whether combined sales and/or purchases of financial services to or from foreign persons exceeded US\$3 million during the US person’s 2014 fiscal year; and (b) whether the US person was contacted by the BEA regarding the survey. In making the initial determination of whether combined sales or purchases exceeded the US\$3 million threshold during the reporting period, US companies may rely on the judgment of knowledgeable persons within the company who can identify covered transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search. If such persons identify potentially covered transactions, the US person must respond to the BE-180 survey, depending on their volume of sales and purchases, as follows:

- **Sales or purchases greater than US\$3 million:** If the US person had either combined sales or purchases of financial services to or from foreign persons in excess of US\$3 million during its 2014 fiscal year, the US person will be required to file a BE-180 report and provide a breakdown of any covered transactions, regardless of whether the BEA contacted that US person regarding the BE-180 survey. The report must include the specific categories of financial services, the nationality of the foreign parties to the covered transactions, and whether the foreign persons were affiliated or unaffiliated with the US person submitting the report.
- **Sales and purchases less than US\$3 million:** If the BEA contacted a US person regarding the BE-180 survey and each of the US person’s combined sales and purchases were less than US\$3 million, the US person will be required to provide estimates of total sales and purchases of financial services, but will not be required to provide a detailed breakdown of the estimated totals. US persons that were not contacted by the BEA and that did not have sales or purchases in excess of US\$3 million are not subject to any mandatory reporting obligation, but may provide responses on a voluntary basis.
- **No covered sales or purchases:** If a US person was contacted by the BEA regarding the BE-180 survey and the US person did not have any covered transactions with foreign persons, the US person is still required to submit a BE-180 report, indicating that it did not have any covered transactions during the reporting period.

Deadlines and Extensions

- **Companies that were not contacted by the BEA:** Companies that meet the reporting thresholds that were not contacted by the BEA are required to respond by **November 1, 2015**. Such respondents may also request an automatic 60-day extension (*i.e.*, until **January 1, 2015**) by submitting an extension request before November 1, 2015 via www.bea.gov/ssb/be180.
- **Companies that were contacted by the BEA:** Companies that were contacted by the BEA must respond: (a) by **November 1, 2015** if their BE-180 ID number is below 140012490; or (b) by **December 1, 2015** if their BE-180 ID number is above 140012490. Respondents falling into either of these categories may also request an automatic 30-day extension beyond the applicable deadline by

submitting an extension request before **November 1, 2015** via email to be-180extension@bea.gov or by calling the BEA at +1.202.606.5588.

Penalties for Failure to Respond

US companies (as well as their officers, directors, employees or agents) that fail to respond may incur civil penalties between US\$2,500 and US\$32,500, and may be subject to injunctive relief. Willful violations may result in fines of up to US\$10,000 and imprisonment for up to one year (for individuals).

Confidentiality and Use of Information

Information the BEA collects will be used in compiling the BEA's US international transactions accounts and national income product accounts, and may be used to create statistical reports for use in evaluating and setting US economic policy. Survey responses will be confidential and accessible solely to selected government officials and employees of agencies authorized by the President. Further survey responses may not be presented in a manner that identifies individual respondents, and may not be used against any respondent for purposes of taxation, investigation or regulation.

Conclusion

The BE-180 survey, like the BEA's direct investment surveys, represents another element of regulatory compliance for fund managers to address. Fund managers should take care to identify and complete any required reports.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

Investment Funds Practice:

[David J. Greene](#)
david.greene@lw.com
+1.202.637.2154
Washington, D.C.

[Matthew J. Holt](#)
matthew.holt@lw.com
+1.202.637.1083
Washington, D.C.

Export Controls, Economic Sanctions & Customs Practice:

[Les P. Carnegie](#)
les.carnegie@lw.com
+1.202.637.1096
Washington, D.C.

[Matthew J. Peters](#)
matthew.peters@lw.com
+1.202.637.2345
Washington, D.C.

You Might Also Be Interested In

[Be Prepared for the BEA's Increased Reporting Requirements and Upcoming Deadlines](#)

[Multitudes, Multitudes: The SEC's Asset Management Unit Delivers Important Messages for Investment Advisers](#)

[Private Equity Fund Managers: Annual Compliance Reminders and New Developments](#)

[Navigating FCPA Risks in Global Private Equity Ventures](#)

[US PE Sponsors Take on Europe](#)

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. A complete list of Latham's *Client Alerts* can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham & Watkins, visit <http://events.lw.com/reaction/subscriptionpage.html> to subscribe to the firm's global client mailings program.