

Mandatory BEA Filing for Many U.S. Businesses with Foreign Shareholders

Skadden

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The Bureau of Economic Analysis (BEA) within the U.S. Department of Commerce collects and publishes data regarding the U.S. economy and the status of foreign investment. As part of this mission, it conducts regular, periodic surveys of U.S. companies to assess the scale of foreign-owned business activities and their effect on the U.S. economy. One is a benchmark survey conducted every five years through Form BE-12, and the next round of submissions is due this year.

Unlike many of the BEA's other surveys, the BE-12 survey is mandatory for certain U.S. businesses owned by foreign persons, and the BEA does not provide any prior direct notification of the requirement.

All U.S. businesses in which a foreign person directly or indirectly held, at any time during FY 2022, 10% or more of the business' voting securities (subject to certain consolidation requirements) must file a Form BE-12 this year. For the purposes of the survey, ownership percentages held by multiple foreign persons are not aggregated. Thus, if several unaffiliated foreign persons together own more than 10% of a U.S. business, but no single foreign person owns over 10%, a filing is not required.

There are multiple versions of Form BE-12, but only one will apply to each company subject to the reporting requirement. The applicable form will depend on the level of a company's foreign-held ownership and its assets, sales and revenue numbers in FY 2022. The survey collects information on the breadth of the entity's business in the United States, including all majority-owned U.S. subsidiaries, as well as information regarding the company's foreign parent(s), financial information, and products and services. The responses are all confidential under federal law, and the BEA is prohibited from sharing them with other agencies or using them for anything other than statistical and analytical purposes.

Survey responses are due by May 31, 2023, or by June 30, 2023 for those submitting via [the BEA's eFile system](#). Reasonable requests for extensions to these deadlines may be granted if made before May 31. A willful failure to comply with BEA filing obligations can result in civil and criminal penalties, including possible criminal penalties for any officer, director, employee or agent of the company that knowingly participates in the non-compliance.

The BEA's website provides [more information regarding the BE-12 surveys](#), including [a helpful flow chart](#) describing which version of the form should be completed by a company. For additional guidance regarding whether the BE-12 reporting requirement applies to your organization, which version of the form to complete, or completing the form, please contact the authors.