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Revisions to HSR Act Filing Thresholds, Fee Structure and Civil Penalties, and Revisions to Clayton Act Section 8 Thresholds

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Original Threshold	2023 Adjusted Threshold
\$10 million	\$22.3 million
\$50 million	\$111.4 million
\$100 million	\$222.7 million
\$200 million	\$445.5 million
\$500 million	\$1.1137 billion
\$1 billion	\$2.2274 billion

The U.S. Federal Trade Commission (FTC) has issued the annual [revisions to the jurisdictional thresholds](#) for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act). The new thresholds will come into effect near the end of February, 30 days after the revisions are published in the Federal Register, which should occur this week. Once they become effective, the new thresholds will apply to transactions consummated on or after the effective date. The HSR Act requires the FTC to revise the thresholds annually based on changes in the gross national product.

Under the revisions, the size of transaction threshold has been increased from \$101 million to \$111.4 million. Consequently, the HSR Act notification and waiting period requirements will now apply to acquisitions resulting in the acquiring person holding assets and/or voting securities of the acquired person valued over \$111.4 million. The HSR Act requirements also will apply to purchases of partnership interests and membership interests of an LLC provided that (i) the acquiring person obtains a 50% or greater interest and (ii) the interests held by the acquiring person are valued over \$111.4 million.

Acquisitions that do not exceed \$445.5 million in value (previously \$403.9 million) also have to meet the size of person threshold to trigger the HSR Act requirements. Under the revisions, the size of person threshold generally will be met if one of the parties has total assets or annual net sales of \$222.7 million or more (previously \$202 million) and the other party has total assets or annual net sales of \$22.3 million or more (previously \$20.2 million).

Acquisitions of less than 50% of a corporation's voting securities also require an HSR notification when certain thresholds are reached. Under these revisions, a notification is required for voting security acquisitions when the value of the total voting securities acquired and held reaches any of the following dollar thresholds: (a) \$111.4 million, (b) \$222.7 million, (c) \$1.1137 billion, and (d) 25% of an issuer's outstanding voting securities if valued over \$2.2274 billion.

Revisions to Filing Fee Structure

As previously [announced](#), the 2022 Merger Filing Fee Modernization Act signed into law in December 2022 substantially changes the filing fee framework and requires annual adjustments to the tiers and respective filing fees, based on changes in the Consumer Price Index (previously, only the deal value thresholds were adjusted).

Like the new thresholds, the new filing fees also will come into effect 30 days after the revisions are published in the Federal Register, at or very close to the same time as the revised transaction thresholds, and will apply to transactions filed on or after the effective date.

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New Filing Fee Structure:

Transaction Valued at:	Revised Filing Fee
More than \$111.4 million, but less than \$161.5 million	\$30,000
\$161.5 million or more, but less than \$500 million	\$100,000
\$500 million or more, but less than \$1 billion	\$250,000
\$1 billion or more, but less than \$2 billion	\$400,000
\$2 billion or more, but less than \$5 billion	\$800,000
\$5 billion or more	\$2,250,000

Revisions to Maximum Civil Penalty for HSR Violations

The FTC also has revised the [maximum civil penalty](#) for HSR Act violations. Such maximum civil penalties, which were announced on January 6, 2023, will increase from \$46,517 per day to \$50,120 per day. The FTC is required to revise the maximum civil penalty for annual inflation adjustments.

The increased maximum will apply to civil penalties assessed after the effective date, including for violations that predate the effective date, but does not change penalties already assessed.

Revisions in Thresholds for Section 8 of the Clayton Act

Finally, the FTC has revised the [thresholds for interlocking directorates](#) prohibited by Section 8 of the Clayton Act, which became effective January 20, 2023. Like the HSR Act filing thresholds, the FTC is required to revise the Section 8 thresholds annually based on changes in the GNP. Section 8 of the Clayton Act prohibits, with certain exceptions, a person serving as a director or officer of two competing corporations if certain thresholds are met. As revised, Section 8 now covers situations where each corporation has capital, surplus, and undivided profits aggregating \$45,257,000 or more, unless either corporation has competitive sales of less than \$4,525,700.

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