

FTC Announces Higher 2022 Revised Thresholds for HSR Act Filings

JANUARY 21, 2022

The Federal Trade Commission (FTC) announced today increased Hart-Scott-Rodino thresholds for 2022, which will be published in the Federal Register next week. These changes affect the notification thresholds for Hart-Scott-Rodino Act (HSR Act) premerger notifications and will apply to all transactions that close on or after February 23, 2022, i.e., 30 days after publication in the Federal Register. In a change from the unusual year last year, when [the FTC lowered the HSR Act notification thresholds](#), the changes this year reflect a significant increase to notification thresholds, including an increase from \$92 million to \$101 million for the size-of-transaction threshold.

The HSR Act requires all persons or entities contemplating certain mergers or acquisitions that meet or exceed the jurisdictional thresholds of the Act to file notifications of that transaction with the FTC and the Department of Justice. Once both parties have submitted their HSR filings, the enforcement agencies have up to 30 days to decide whether to seek additional information—a process commonly known as a “Second Request.” The parties also have the option to request “Early Termination,” which, if granted, will shorten the 30-day waiting period. Note, however, that the agencies have not yet lifted the [temporary suspension](#) on grants of Early Termination. If the 30-day waiting period expires without the issuance of a Second Request, or if Early Termination is granted, the parties are free to close the transaction. If the reviewing agency issues a Second Request, under the HSR Act, the government has 30 days from the date the parties substantially comply with the request to decide whether to let the transaction proceed or attempt to block it in court.

The FTC adjusts the HSR Act thresholds annually, based on changes to the gross national product. Due to the 2021 growth in the gross national product, the FTC will increase the “size of transaction” threshold from \$92 million to \$101 million. With few exceptions, any transactions valued below \$101 million need not be reported. For transactions valued between \$101 million and \$403.9 million (up from \$368 million), the “size of person” test further determines whether the parties need to make a filing. For an HSR filing to be required in this range, one party must have annual net sales or total assets of at least \$202 million (up from \$184 million) and the other party must have annual net sales or total assets of at least \$20.2 million (up from \$18.4 million). If a transaction is valued above \$403.9 million, the “size of person” test does not apply.

Set forth below is a table displaying the original dollar amount thresholds of the HSR Act, the current (2021) thresholds, and new 2022 thresholds, which will become effective on February 3, 2022:

2022 Jurisdictional Thresholds

ORIGINAL THRESHOLD ¹	2021 THRESHOLD	2022 THRESHOLD
\$10 Million 7A(a)(2)(B)(ii)(I) 7A(a)(2)(B)(ii)(III)	\$18.4 Million	\$20.2 Million
\$50 Million 7A(a)(2)(B)(i) § 801.1(h)	\$92 Million	\$101 Million
\$100 Million 7A(a)(2)(B)(ii)(I) 7A(a)(2)(B)(ii)(II) 7A(a)(2)(B)(ii)(III) § 801.1(h)	\$184 Million	\$202 Million
\$500 Million § 801.1(h)	\$919 Million	\$1.0098 Billion
\$1 Billion § 801.1(h)	\$1.8398 Billion	\$2.0196 Billion

The filing fee amounts the parties must pay will not change, although they will be tied to the new thresholds:

2022 Filing Fee Thresholds

FILING FEE	GREATER THAN	LESS THAN
\$45,000	\$101 Million	\$202 Million
\$125,000	\$202 Million	\$1.0098 Billion
\$280,000	\$1.0098 Billion	

Failure to file an HSR Notification and Report Form is subject to a statutory penalty of up to \$43,792 per day for noncompliance. The HSR thresholds are only one part of the analysis to determine whether an HSR filing is required. Please contact one of the authors with any questions regarding the reportability of a transaction. Winston lawyers regularly advise parties regarding the reportability of transactions, as well as guide clients through the reporting process and any government investigation that may follow.

▮ These are the thresholds that appear in the statute. The statute contains the language “as adjusted” after these thresholds to reflect the yearly adjustment based on GDP.

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Authors

[Richard Falek](#)

[Conor Reidy](#)

[Nathan Garg](#)

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[Richard Falek](#)



Conor Reidy



Nathan Garg

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