

# FTC Increases HSR Notification Threshold to \$111.4 Million for 2023 and Implements Significant HSR Filing Fees Changes

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The Federal Trade Commission (FTC) announced yesterday the increased Hart-Scott-Rodino (HSR) Act thresholds for 2023. These thresholds update the cost to submit an HSR filing—increasing by almost tenfold the filing fee for HSR notifications for transactions valued at \$5 billion or more—and increase the minimum value of transactions that must be notified under the HSR Act to \$111.4 million.

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 enforcement agencies have not yet lifted the nearly two-year 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, the agency 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.

## 2023 Jurisdictional Thresholds

The FTC adjusts the HSR Act filing thresholds annually, based on changes to the gross national product. Due to the 2022 growth in the gross national product, the FTC will increase the “size of transaction” threshold from \$101 million to \$111.4 million. Any transaction valued below \$111.4 million (for HSR purposes) need not be reported. For transactions valued between \$111.4 million and \$445.5 million (up from \$403.9 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 \$222.7 million (up from \$202 million) and the other party must have annual net sales or total assets of at least \$22.3 million (up from \$20.2 million). If a transaction is valued above \$445.5 million, the “size of person” test does not apply.

Below is a table displaying the original dollar amount thresholds of the HSR Act, the current (2022) thresholds, and new 2023 thresholds, which will become effective for transactions that close on or after February 27, 2023:

ORIGINAL THRESHOLD	2022 THRESHOLD	2023 THRESHOLD
\$10 million	\$20.2 million	\$22.3 million
\$50 million	\$101 million	\$111.4 million
\$100 million	\$202 million	\$222.7 million
\$500 million	\$1.0098 billion	\$1.1137 billion
\$1 billion	\$2.0196 billion	\$2.2274 billion

## 2023 FILING FEE THRESHOLDS

The 2023 thresholds are the first thresholds incorporating provisions from the Merger Filing Fee Modernization Act, which became law on December 29, 2022, and altered the filing fee thresholds. For transactions that are notified under the HSR Act on February 27, 2023, or thereafter, the top HSR filing fee will increase from \$280,000 to \$2,250,000 for all transactions valued at \$5 billion or more, increase in smaller increments for all transactions valued at \$500 million or more, and decrease for transactions below \$500 million. For further discussion on the effect of the Merger Filing Fee Modernization Act, please see our previous post [here](#).

The filing fee amounts the parties must pay as well as the thresholds for those fees will change to the following:

SIZE OF TRANSACTION	FILING FEE <sup>1</sup>
Greater than \$111.4 million but less than \$161.5 million	\$30,000
\$161.5 million or greater but less than \$500 million	\$100,000
\$500 million or greater but less than \$1 billion	\$250,000
\$1 billion or greater but less than \$2 billion	\$400,000
\$2 billion or greater but less than \$5 billion	\$800,000

## SIZE OF TRANSACTION

## FILING FEE <sup>1</sup>

\$5 billion or greater

\$2,250,000

Failure to file an HSR Notification and Report Form is subject to a statutory penalty 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.

## 2023 Interlocking Directorate Thresholds

Finally, the FTC announced revised thresholds under Section 8 of the Clayton Act, which prohibits interlocking directorates. The jurisdictional thresholds under Section 8 of the Clayton Act that trigger prohibitions on a person serving as a director or officer in two competing corporations will increase to \$45,257,000 for Section 8(a)(1) and \$4,525,700 for Section 8(a)(2)(A). The new thresholds for Section 8 became effective immediately upon their publication in the Federal Register on January 20, 2023. Further discussion of the DOJ's recent increased use of Section 8 can be found [here](#).

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[1] Following passage of the Merger Filing Fee Modernization Act, the filing fee amounts will be updated based on changes to the Consumer Price Index.

4 Min Read

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