

PUBLICATION

2023 Changes to the HSR Pre-Merger Notification Thresholds, Filing Fees, and Interlocking Directorate Thresholds

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On January 23, 2023, the Federal Trade Commission (FTC) announced changes to the Hart-Scott-Rodino (HSR) Act notification thresholds and filing fees. The FTC is required by law to revise the jurisdictional thresholds annually, based on the change in gross national product (GNP). The 2023 HSR reporting thresholds will increase approximately 10%, reflecting the increase in the GNP during 2022.

In addition, HSR filing fees will change significantly in 2023 for the first time this century due to the enactment in December of the Merger Filing Fee Modernization Act of 2022. From now on, the FTC will adjust HSR filing fees annually based on changes in the consumer price index.

The FTC approved the changes to the transaction and filing fee thresholds by a vote of 4-0 and published the changes in the [Federal Register](#). The revised thresholds will apply to transactions closing on or after the effective date of the notice, which is 30 days after publication, or February 22, 2023. Please note that the application of the HSR filing thresholds to transactions requires a thorough understanding of the statute and the complex implementing regulations.

Revised HSR Filing Thresholds

The HSR Act requires parties to a transaction that meets or exceeds the jurisdictional thresholds in the Act to file notification with the FTC and Department of Justice, and wait until the expiration or termination of the statutory 30-day waiting period before closing the transaction. Transactions that meet the following thresholds and will close on or after February 22 will require HSR notification unless an applicable exemption applies:

- Transactions valued between **\$111.4** million and **\$445.5** million **where**:
 - One party holds assets or has annual net sales of **\$222.7** million; **and**
 - The other party holds assets or has annual net sales of **\$22.3** million.
- Transactions valued in excess of **\$445.5** million are reportable notwithstanding "size of the parties."

Revised and Updated Transaction Filing Fees Based on Size of Transaction

Filing Fee	Size of Transaction
\$30,000	Less than \$161.5 million
\$100,000	Not less than \$161.5 million but less than \$500 million
\$250,000	Not less than \$500 million but less than \$1 billion

\$400,000	Not less than \$1 billion but less than \$2 billion
\$800,000	Not less than \$2 billion but less than \$5 billion
\$2.25 million	\$5 billion or more

Civil Penalty for Failure to File HSR Notification

The current civil penalty for violations of the HSR Act is \$50,120 *per day*. The FTC adjusted the amount on [January 6, 2023](#), pursuant to the Federal Civil Penalties Inflation Adjustment Act of 2015, which requires annual inflation adjustments based on a prescribed formula.

Revised Interlocking Directorate Thresholds

The 2023 thresholds under Section 8 of the Act that trigger prohibitions on certain interlocking memberships on corporate boards of directors are \$45,257,000 for Section 8(a)(I) and \$4,525,700 for Section 8(a)(2)(A). These thresholds became effective upon publication in the Federal Register, or January 23, 2023.

For more information, contact [Katherine I. Funk](#), [Alex S. Lewis](#), or any member of Baker Donelson's [Antitrust Group](#).