

Increase in HSR Reportability Thresholds and Filing Fees and Other HSR Developments

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In January 2026, the Federal Trade Commission (FTC) announced updates to jurisdictional and fee thresholds for premerger notification filings. The new thresholds and fee schedule, published at [91 FR 2133](#), will become effective on February 17, 2026.

This article summarizes the new threshold requirements and reports on relevant developments over the last year related to the Hart-Scott-Rodino (HSR) Act.

Background

The HSR Act requires parties to notify the FTC and U.S. Department of Justice (DOJ) before closing on an acquisition of voting securities, assets, or non-corporate interests where the transaction value exceeds certain dollar-based size thresholds. If the transaction is reportable, the parties must observe a mandatory waiting period (30 days for most transactions) before closing their transaction. The waiting period allows the agencies to review the proposed transaction and determine whether the transaction raises antitrust issues that require further investigation. Either agency can investigate, although only one agency will do so. If the investigation is not completed during the initial waiting period, then the waiting period may be extended. Ultimately, the investigating agency must decide whether to challenge the transaction (or, potentially, reach a compromise that addresses the agency's antitrust concerns but permits the parties to proceed with their transaction).

Basic Size Tests

The HSR Act's dollar-based thresholds (including the size thresholds that trigger the reporting obligation) are adjusted each year to reflect annual percentage changes in gross national product (GNP). The most significant effect of the annual indexing is on the "size of transaction"¹ and "size of persons"² tests. Here are the new thresholds:

- Transactions resulting in holdings valued at or below \$133.9 million in voting securities and/or assets of the seller are not reportable (subject to the rules on

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aggregation).

- Transactions resulting in holdings valued at more than \$535.5 million are reportable (unless exempted) regardless of the size of persons.
- Transactions resulting in holdings valued at more than \$133.9 million but less than \$535.5 million are reportable (unless exempted) if the “size of persons” test is satisfied.
- The “size of persons” test is satisfied if:
 - A person with \$267.8 million in total assets or annual net sales acquires (or acquires from) a manufacturing person with \$26.8 million in total assets or annual net sales; or
 - A person with \$267.8 million in total assets or annual net sales acquires (or acquires from) a non-manufacturing person with \$26.8 million in total assets; or
 - A person with \$26.8 million in total assets or annual net sales acquires (or acquires from) a person with \$267.8 million in total assets or annual net sales.

Notification Thresholds

In addition to these basic tests, the HSR Act provides five separate “notification thresholds” that are also adjusted each year to reflect annual percentage increases or decreases in GNP. If an acquisition would cause an acquiring person to cross a new threshold, the parties must file HSR notifications before closing their transaction. After indexing, the notification thresholds will be:

- An aggregate total amount of voting securities of the acquired person valued at greater than \$133.9 million but less than \$267.8 million;
- An aggregate total amount of voting securities of the acquired person valued at \$267.8 million or greater but less than \$1.339 billion;
- An aggregate total amount of voting securities of the acquired person valued at \$1.339 billion or greater;
- Twenty-five percent of the outstanding voting securities of an issuer (if valued at greater than \$2.678 billion); or
- Fifty percent of the outstanding voting securities of an issuer (if valued at greater than \$133.9 million).

Exemptions

The increases also affect some of the exemptions from reporting requirements. For example, the “foreign assets” exemption (16 C.F.R. § 802.50) exempts the acquisition of assets located outside the United States “unless the foreign assets the acquiring person would hold as a result of the acquisition generated sales in or into the U.S. exceeding \$50 million (*as adjusted*) during the acquired person's most recent fiscal year” (emphasis added). With the most recent adjustment, this exemption applies unless the assets generated sales in or into the U.S. of more than \$133.9 million.

Filing Fees

This year, the HSR filing fees are increasing as required by the Merger Filing Fee Modernization Act of 2022. There is now an annual adjustment to track inflation based on changes to the Consumer Price Index as determined by the Department of Labor. The new fee schedule will be as follows:

Transaction Value	Old Fee	New Fee
More than \$133.9 million but less than \$189.6 million	\$30,000	\$35,000
\$189.6 million or more but less than \$586.9 million	\$105,000	\$110,000
\$586.9 million or more but less than \$1.174 billion	\$265,000	\$275,000
\$1.174 billion or more but less than \$2.347 billion	\$425,000	\$440,000
\$2.347 billion or more but less than \$5.869 billion	\$850,000	\$875,000
\$5.869 billion or more	\$2.39 million	\$2.460 million

New HSR filing process

On February 10, 2025, a new HSR filing form and rules went into effect. The new form and rules require the submission of new narrative statements, additional deal-related documents, and certain ordinary-course documents with information about relevant products and markets. The new form also expands the requirements for disclosure of revenue detail and adds a requirement for disclosure of certain foreign subsidies and pending or active defense or intelligence contracts. On the positive side, the new rules also restored the “early termination” process, which can result in shortening of the 30-day waiting period.

Interlocking Directorates – Increased Thresholds and Other Issues

On January 14, 2026, the FTC announced updated thresholds for the Clayton Act Section 8’s prohibition on interlocking directorates. The Clayton Act prohibits one person from serving as an officer or director of two competing companies when each company has capital, surplus, and undivided profits of more than \$54,402,000 for Section 8(a)(1) and competitive sales of more than \$5,440,200 for Section 8(a)(2)(A). The updated thresholds became effective as of January 16, 2026.

The DOJ continued to challenge interlocking directors in 2025. On September 15, 2025, the DOJ announced that three directors had resigned from Sevita Health’s Board of Directors due to concerns the DOJ raised about their overlapping membership on Beacon Specialized Living Services, Inc.’s Board of Directors.³

HSR Related Developments

Civil Penalties for HSR Violations

Parties who close a reportable transaction without filing complete notifications (including providing all documents required to be included under business-related documents and of the notification form) and observing the waiting period are subject to civil penalties. As of this writing, the maximum daily penalty is \$53,088. We expect that the FTC will soon announce the annual inflation adjustment, increasing this penalty to about \$54,540.

Last year, Dorsey's annual HSR update reported the DOJ's January 14, 2025 complaint against KKR & Co. Inc. and certain related advisors and funds, alleging repeated and systematic violations of the HSR Act on at least 16 separate transactions between 2021 and 2022.⁴ The complaint alleged that KKR failed to submit an HSR notification at all for two transactions in which notification was required, failed to include required business documents related to competition in several transactions that were notified, failed to correct a deficient filing to include documents that its outside counsel had in their possession, and knowingly altered or omitted documents to evade merger scrutiny, even after KKR became aware of the DOJ investigation into its HSR Act compliance. The complaint alleged 16 counts of violating the HSR Act (one for each transaction). The maximum civil penalty for the alleged violations exceeds \$650 million.

On April 17, 2025, KKR moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, arguing that the DOJ exceeded its statutory authority, that the government's interpretive guidance on the HSR Act is unconstitutionally vague and applied arbitrarily, and that the DOJ did not allege that KKR failed to "substantially comply" with the HSR Act, which is what is required under the Act. KKR's motion to dismiss has been fully briefed by both parties and is pending before the district court.

State Merger Notification Statutes

In July 2024, the Uniform Law Commission approved the "Uniform Antitrust Pre-Merger Notification Act." Two states (Washington and Colorado) adopted versions of this uniform law in 2025. The same proposed legislation had been introduced last year in six other jurisdictions (California, Hawaii, Utah, Nevada, West Virginia and DC) but not adopted. In 2026, the proposed legislation has been introduced in California, Hawaii, Indiana, West Virginia, and DC.⁵

Neither the Uniform Act nor the versions adopted in Washington and Colorado require creation of new notification forms. Rather, the Uniform Act requires the parties to HSR-reportable transactions to provide a copy of the HSR notification (including exhibits) to the State Attorney General if the filing person has its principal place of business in the State. If the filing person does not have its principal place of business in the State but does have annual net sales of about \$25 million (adjusted annually) in the State, then the filing person must file the notification form (without exhibits, but the filing person must provide the exhibits on request). (Colorado requires filing of exhibits in all cases.)

The Uniform Act provides that there shall be no state-level filing fee or waiting period. Materials produced under the Uniform Act are exempt from state-level FOIA laws (but this may require modification of the State's laws). The State AG may share materials with other States that have adopted the same or similar laws with at least the same level of confidentiality protection. The Uniform Act also provides for civil penalties for noncompliance.

A number of states have adopted premerger notification statutes specific to the healthcare industry. These states include California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Massachusetts, Minnesota, Nevada, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington.

Other Antitrust Developments

New California Antitrust Provisions

California did not adopt the Uniform Antitrust Pre-Merger Notification Act in 2025, but it did make some significant changes to its antitrust law.⁶ First, a new statute on pricing algorithms prohibits:

- Use or distribution of “a common pricing algorithm as part of a contract ... or conspiracy to restrain trade or commerce”
- Use or distribution of “a common pricing algorithm if the person coerces another person to set or adopt a recommended price or commercial term recommended by the common pricing algorithm for the same or similar products or services in the jurisdiction of this state”

The new statute also limits *Twombly* principles in state-court antitrust cases. The statute provides that “it is sufficient” for a complaint “to contain factual allegations demonstrating that the existence of a contract ... or conspiracy to restrain trade ... is plausible, and the complaint shall not be required to allege facts tending to exclude the possibility of independent action.”

California also increased the penalties for violations of its state antitrust laws.

Information Sharing Guidelines

In 2023, the DOJ and FTC withdrew 30-year-old antitrust guidelines on information-sharing. In October 2025, FTC Commissioner Melissa Holyoak said that fresh guidance from U.S. federal antitrust enforcers was needed to assist companies in effectively avoiding antitrust liability. Holyoak noted, “I am very supportive of trying to replace the guidance that was lost . . . and to be able to signal to the market our thinking on some of these issues so that we protect consumers.”⁷ Commissioner Holyoak left the FTC in November 2025, and there is no public timeline for when—if ever—the previous guidance will be replaced.

¹ The test includes the value of all the voting securities (and certain assets) of the acquired person that the acquiring person will hold after the transaction is completed, including voting securities of the acquired person that the acquiring person owned *before* the transaction.

² “Person” means the ultimate parent of the legal party to a transaction (including all entities controlled by the ultimate parent).

³ Three Directors Resign from Sevida Board of Directors in Response to the FTC’s Ongoing Enforcement Efforts Against Interlocking Directorates | Federal Trade Commission (September 15, 2025).

⁴ Office of Public Affairs | Justice Department Sues KKR for Serial Violations of Federal Premerger Review Law | United States Department of Justice (January 14, 2025).

⁵ Resources on the Uniform Act are available at Antitrust Pre-Merger Notification Act - Uniform Law Commission.

⁶ AB-325 Cartwright Act: violations; SB-763 Conspiracy against trade: punishment.

⁷ Chris May, *US FTC’s Holyoak ‘very supportive’ of issuing new information-sharing guidelines*, MLEX (Oct. 23, 2025).