

*Client Alert**February, 2026*

WINTER 2026 HSR ACT DEVELOPMENTS

HSR Act “Size of Transaction” Test Increases by 5.9% to \$133.9 Million

Federal Court Throws Out Biden Administration’s Enhanced HSR Reporting Reforms

- Federal court vacates Biden-era HSR Act reforms: A judge struck down the October 2024 Hart-Scott-Rodino Antitrust Improvements Act reporting overhaul, calling it “arbitrary and capricious,” but stayed the ruling through February 19, 2026 to allow an appeal.
- 2026 HSR filing and other dollar thresholds increase: The minimum “size-of-transaction” threshold rises to \$133.9 million effective February 17, 2026, potentially reducing filing obligations for some deals.
- Filing fees adjusted upward: New multi-tiered HSR fees take effect February 17, 2026, with transactions under \$189.6 million subject to a \$35,000 filing fee and filing fees for mega-deals (\$5.869 billion+) reaching \$2.46 million.
- Prohibited interlocking directorate thresholds also rise: Updated Clayton Act Section 8 thresholds affect service as an officer or director of competing companies amid heightened enforcement.
- Advance planning & compliance strategy for deal makers remains critical: Despite regulatory uncertainty and shifting enforcement priorities at the FTC and DOJ, careful advance antitrust planning remains essential for parties to mergers, acquisitions and other HSR reportable events.

The Federal Trade Commission, the agency that administers the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“*HSR Act*”), has announced the annual adjustments to its coverage thresholds, filing fees and other dollar-denominated amounts. The HSR Act applies to mergers, asset and stock acquisitions and other transactions that satisfy specified “size-of-transaction” and “size-of-person” dollar thresholds. If triggered, the HSR Act requires parties to a proposed transaction to make pre-closing filings with both the Federal Trade Commission (“*FTC*”) and the Department of Justice (“*DOJ*”) providing detailed information about the transaction and observe a waiting period (typically 30 days) before consummating the transaction. The HSR Act’s jurisdictional dollar thresholds change from year to year, based on changes in the U.S. gross national product for the government’s fiscal year ending September 30. The 2026 revisions have been published in the *Federal Register* and become effective without further action on February 17, 2026. The new thresholds will remain in effect until the next annual adjustment, expected early next year.

Separately, on Thursday, February 12, 2026, a federal judge in the Eastern District of Texas vacated sweeping changes made to the HSR Act filing requirements that were adopted in the final months

of the Biden Administration. Those changes (*as we previously summarized*) significantly overhauled the entire HSR Act notification reporting process and were widely opposed by the business community as dramatically increasing the time and cost required for many HSR filings. Among other new and expanded requirements, the Biden reforms required filing parties to explain the strategic rationale for the transaction, provide descriptions of all product and service offerings, and submit “top 10” customer information as part of the HSR Act filing.

In invalidating the Biden reforms, the court held that the FTC failed to demonstrate that the benefits of the Biden rules outweighed their significant costs to merging parties. Citing language in the HSR Act that authorizes the FTC to impose “necessary and appropriate” filing requirements, the court held that any benefits from requiring additional information must “reasonably outweigh” the associated cost. Finding that this was not established, the reforms were ruled “arbitrary and capricious.” In vacating the Biden reforms in their entirety, the court stayed its order through February 19, 2026 to allow the FTC to appeal the ruling and seek relief from the Fifth Circuit. Therefore, parties that plan to make HSR Act filings before February 19, 2026 should continue to use the “new” HSR Act form and regulations. Though what happens next is unclear, it is anticipated that HSR practice will either revert to the prior pre-Biden iteration of the HSR form or the FTC will pursue a scaled-back version of the revisions. This is a very fluid circumstance and bears careful monitoring.

Revised Dollar Thresholds to Determine Initial HSR Filing Obligation

Effective February 17, 2026, the minimum notification threshold under the HSR Act will increase to \$133.9 million. Thus, an acquisition will potentially trigger an HSR Act filing only if, as a result of the acquisition, the acquirer will hold assets, voting securities or non-corporate interests of the acquired person valued in excess of \$133.9 million. The complete revised 2026 initial thresholds are as follows:

Threshold Type	2025 Threshold	2026 Threshold (Effective for transactions closing on or after February 17, 2026)
Minimum “Size-of-Transaction” test	\$126.4 million	\$133.9 million
“Size-of-Person” Test (applicable only to transactions valued at less than the “Alternative Size-of-Transaction” test below)	Person #1: \$25.3 million Person #2: \$252.9 million	Person #1: \$26.8 million Person #2: \$267.8 million
Alternative “Size-of-Transaction” test (requiring HSR filing regardless of “Size-of-Person” test above)	\$505.8 million	\$535.5 million

Until February 17, 2026, the current \$126.4 million minimum “size-of-transaction” and other thresholds remain in effect.

To summarize, applying these new thresholds results in the following reporting obligations:

Transaction Size	HSR Act Reporting Obligation?
\$133.9 million or less	No
Greater than \$133.9 million and less than \$535.5 million	Yes, but only if the above “Size-of-Person” test is satisfied
\$535.5 million or more	Yes, without regard to the above “Size-of-Person” test

Annual Update to HSR Act Filing Fees

The HSR Act employs a multi-tiered filing fee structure, based on the size of the transaction. Effective February 17, 2026, the new filing fee structure is as follows:

Transaction Ranges	Filing Fees
Transactions less than \$189.6 million	\$35,000
\$189.6 million to less than \$586.9 million	\$110,000
\$586.9 million to less than \$1.174 billion	\$275,000
\$1.174 billion to less than \$2.347 billion	\$440,000
\$2.347 billion to less than \$5.869 billion	\$875,000
Transactions of \$5.869 billion or more	\$2,460,000

This fee schedule remains subject to annual adjustment based on changes in the Consumer Price Index. The new dollar thresholds for determining HSR Act filing requirements are effective for all transactions *closing* on or after February 17, 2026, and the new dollar thresholds for determining the applicable filing fee become effective for all filings first *made* on or after February 17, 2026.

Additional Notification Thresholds

As stated above, effective February 17, 2026, an acquisition that results in an acquirer holding more than \$133.9 million worth of the voting securities of an acquired person crosses the first of five staggered “notification thresholds.” The HSR Act rules identify four additional thresholds that determine whether a subsequent acquisition of voting securities from the same acquired person will require additional HSR filings. These additional notification thresholds have been revised as follows:

Original Additional Notification Thresholds	2025 Additional Notification Thresholds	2026 Additional Notification Thresholds
\$100 million	\$252.9 million	\$267.8 million
\$500 million	\$1.264 billion	\$1.339 billion
25% of the Voting Securities of an issuer	(if the 25% stake is valued at greater than \$2.529 billion)	(if the 25% stake is valued at greater than \$2.678 billion)
50% of the Voting Securities of an issuer	(if the 50% stake is valued at greater than \$126.4 million)	(if the 50% stake is valued at greater than \$133.9 million)

In effect, these staggered thresholds are designed to act as exemptions to relieve parties of the burden of making additional filings each time additional shares of the same person are acquired. Once a filing is made, the acquiring person is allowed one year from the end of the waiting period to cross the threshold stated in the filing; if it reaches the stated threshold within that period, it may continue acquiring shares up to the next threshold for five years from the end of the waiting period. These additional notification thresholds apply only to acquisitions of voting securities.

Once parties have made their required HSR Act filings, the enforcement agencies have up to 30 days (15 days in the case of certain bankruptcy sales) to decide whether to seek additional information –

an unwelcome and taxing process commonly known as a “second request” – or to take no action and allow the 30- or 15-day waiting period to automatically terminate. Filing parties have the option at the time of filing to request an “early termination” of the relevant waiting period, which, if granted by the agencies, typically shortens the 30-day waiting period to approximately 10 to 14 days.

Failure to comply with HSR Act requirements can result in significant civil and other penalties. The monetary penalties are substantial because each day of non-compliance is an independent violation and can result in a separate penalty up to the maximum civil penalty. Effective January 17, 2026, the maximum civil penalty amount for violations of the HSR Act increased from \$53,088 per day to \$54,540 per day. Additional annual changes to the maximum daily civil penalty are expected, as such adjustments are required to be made each January.

Clayton Act Section 8 “Interlocking Directorate” Thresholds Also Increased

The FTC also recently announced revised dollar thresholds that trigger a prohibition preventing companies from having interlocking memberships on their corporate boards of directors. Section 8 of the Clayton Act generally prohibits, with certain exceptions, a person from serving as a director or officer of two competing companies if certain dollar thresholds are met. These thresholds are noteworthy, as there has been a marked increase in Section 8 enforcement actions over the last several years. As revised, the prohibition against interlocking directors applies if each company has more than \$54,402,000 (up from \$51,380,000 for 2025) in capital, surplus and undivided profits; however, the prohibition generally does not apply if either company has less than \$5,440,200 (up from \$5,138,000 for 2025) in competitive sales. The revised Clayton Act dollar thresholds became effective immediately upon publication in the *Federal Register* on January 16, 2026.

What does all of this mean?

The ultimate outcome of the Biden-era HSR Act reporting reforms is a very fluid situation and merits careful monitoring in the immediate future. Though what happens next is unclear, it is currently anticipated that HSR practice will ultimately either revert to the prior pre-Biden iteration of the HSR form or the FTC will pursue a scaled-back version of the revisions. For now, parties that plan to make HSR Act filings before February 19, 2026 should continue to use the Biden-era HSR Act form and regulations. For the vast majority of filers, the “old” HSR form will be considerably easier for parties to complete than the Biden form.

Over the past several years, in light of the increasing pro-enforcement posture of the FTC and DOJ, the suspension of early termination grants and the increase in second requests issuances, M&A and other dealmakers have engaged in significantly more advance HSR Act and antitrust law compliance planning, including conducting more thorough, detailed advance competitive review screens for proposed transactions and budgeting more time for HSR Act clearance to be obtained. Although the Trump administration has clearly articulated notably different enforcement priorities, careful advance planning remains highly recommended.

Companies and their investors and advisors should pay particular attention to the increased dollar thresholds in assessing HSR Act filing obligations – particularly for deals with either a filing date or closing date that straddles February 17, 2026. First, parties may be relieved from the obligation to make an HSR Act filing for a transaction closing on or after February 17, 2026, that falls under the revised \$133.9 million initial filing threshold. In addition, for HSR Act filings made on or after February 17, 2026, parties may realize the benefit of a lower filing fee for smaller transactions that straddle one of the new filing fee dollar thresholds.

Companies and others should be mindful that HSR Act filing obligations are often triggered by a wide variety of non-M&A or “merger” transactions, including asset acquisitions, bankruptcy sales, real estate deals, patent or other IP licensing activities, initial and follow-on investment transactions (including non-controlling investments), joint ventures or other NewCo formations, transactions by nonprofits and tax-exempt entities, as well as the exercise, exchange or conversion of options or other convertible securities.

Finally, deal parties should be mindful that a transaction will not escape antitrust scrutiny because either an HSR Act filing is not required or, even if a filing is required and made, a transaction receives HSR Act clearance. Non-reportable deals are still challenged by the FTC and the DOJ, as each of those agencies regularly file suit seeking to unwind previously consummated mergers. Even small transactions with a purchase price below the filing thresholds have been challenged. Finally, over the past five years, the FTC and DOJ have increasingly issued “warning letters” notifying merger parties that, despite the expiration of the HSR Act’s waiting period, the agencies specifically retain the power to challenge both proposed and consummated transactions.

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