

2021 Hart-Scott-Rodino Requirements

Hart-Scott-Rodino (HSR) filing thresholds will be adjusted downward effective March 4, 2021.

Parties involved in a merger or acquisition should analyze whether it will exceed the new thresholds. The HSR Act dollar thresholds are adjusted each year. The next set of adjustments will take effect on March 4, 2021. These adjustments may affect whether a company is required to make a premerger notification filing in any given transaction.

By way of background, the HSR Act is designed to provide notice to the federal antitrust enforcement agencies (the Federal Trade Commission and the U.S. Department of Justice Antitrust Division) in advance of large mergers and acquisitions. Where the HSR Act applies, the parties to such a transaction must submit a detailed form, along with copies of certain internal documents and consultant documents accompanied by a filing fee (\$45,000, \$125,000 or \$280,000, depending on the size of the transaction). When Congress passed the HSR Act in 1976, Congress set dollar thresholds for its application, and those dollar amounts stayed frozen for 24 years. Congress then reformed the HSR law in 2000 by increasing the thresholds and by providing that they will be adjusted for changes in the U.S. gross national product.

Adjusted Filing Thresholds as of 2021

In every year since 2010 the thresholds have been increased. This year, the dollar figures were decreased, because the nation's overall economic activity declined. Below is a short reference:

2000 Threshold	2020 Threshold	Revised 2021 Threshold
\$10 million	\$18.8 million	\$18.4 million
\$50 million	\$94 million	\$92 million
\$100 million	\$188 million	\$184 million
\$200 million	\$376 million	\$368 million

By way of brief review, and after giving effect to the 2021 adjustments to the thresholds, in most instances the parties to a transaction must make an HSR filing if:

- One party has a size of at least \$184 million (measured by sales or assets);
- The other party has a size of at least \$18.4 million (measured by sales or assets if engaged in manufacturing; by assets, usually, if not engaged in manufacturing); and
- The size of the transaction is at least \$92 million.

Regardless of the size of the parties, an HSR filing will be required if the size of the transaction is at least \$368 million. These figures will be adjusted for changes in GDP again next year.

Some transactions that would not have required an HSR filing last year will require a filing if they close on or after March 4, 2021. For example, the new size-of-transaction threshold will be \$92 million. Suppose a given transaction has a size of \$93 million. If this transaction closes in February, it will not require an HSR filing, because it is below the current threshold figure of \$94 million. If this transaction closes on or after March 4, however, it may require an HSR filing if the other tests are met.

The FTC has also published for comment a set of important revisions to the HSR regulations. Under the current regulations, each private equity fund is usually its own “person” for HSR purposes. Under the proposed new regulations, the HSR “person” will include all funds that have the same manager. As a result, it will take more time and effort to prepare an HSR filing for a private equity fund, and some transactions will require an HSR filing that would not have required a filing under the current regulations. The revised regulations will likely go into effect sometime in 2021, but this is not yet certain.

HSR analysis often involves nuances and detailed rules. The parties should consult counsel early in the planning of any transaction that has the potential to cross these thresholds.

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If you have questions about the 2021 HSR filing thresholds, please contact one of the following attorneys.

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