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New Hart-Scott-Rodino Act Filing Thresholds, Filing Fees and Interlocking Directorate Thresholds Announced

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The Hart-Scott-Rodino (HSR) Act thresholds, which determine whether mergers and acquisitions must be reported to the US Department of Justice (DOJ) and Federal Trade Commission (FTC), will increase by nearly 6% in February 2025. The key minimum "size-of-transaction" threshold will increase from $119.5 million to $126.4 million. These annual adjustments, announced by the FTC on January 10, 2025, reflect changes in the US gross national product (GNP) and are expected to go into effect in mid-February 2025, 30 days after publication in the Federal Register.

Under the HSR Act, parties to proposed mergers and acquisitions – including acquisitions of voting securities and assets – must notify the DOJ and FTC and observe a statutory waiting period before closing if the transaction meets specified "size-of-person" and "size-of-transaction" thresholds, unless an exemption to the HSR Act applies. While the standard waiting period for most transactions is 30 days, historically it has often been terminated early for deals without substantive issues. Although grants of early termination have been largely halted since February 2021, early termination is expected to resume during the Trump administration.

In addition to increasing the minimum "size-of-transaction" threshold, other significant adjustments include the following:

- The "size-of-person" thresholds will increase from $23.9 million to $25.3 million and from $239 million to $252.9 million, with respect to the required level of annual net sales or total assets.
- The larger "size-of-transaction" threshold, which is applicable even if the "size-of-person" test is not met, will increase from $478 million to $505.8 million. Acquisitions exceeding this value must be reported regardless of whether the "size-of-person" threshold is met, unless an exemption applies.

Adjustments also will be made to the six-tiered filing fee structure implemented in 2023 by the agencies. While adjustments to the deal value thresholds are based on changes in the GNP for the prior fiscal year ending September 30, filing fee adjustments are based on changes in the US Department of Labor's Consumer Price Index (CPI) for the same period.

The current and new HSR filing fees are as follows:

2024 deal value thresholds	2024 filing fee	2025 deal value thresholds	2025 filing fee
Less than $173.3 million	$30,000	Less than $179.4 million	$30,000
$173.3 million to less than $536.5 million	$105,000	$179.4 million to less than $555.5 million	$105,000
$536.5 million to less than $1.073 billion	$260,000	$555.5 million to less than $1.111 billion	$265,000
$1.073 billion to less than $2.146 billion	$415,000	$1.111 billion to less than $2.222 billion	$425,000
$2.146 billion to less than $5.365 billion	$830,000	$2.222 billion to less than $5.555 billion	$850,000
$5.365 billion+	$2,335,000	$5.555 billion+	$2,390,000

The FTC also announced revised dollar thresholds applicable to the size criteria applied under Section 8 of the Clayton Act, which governs the legality of “interlocking directorates” – situations where an officer or director of one firm simultaneously serves as an officer or director of a competing firm. These thresholds are adjusted annually based on changes in the GNP.

Under the updated Section 8 thresholds, interlocks may be prohibited if each corporation has capital, surplus and undivided profits aggregating more than $51,380,000 (up from $48,559,000). An exception applies if the competitive sales of either corporation are less than $5,138,000 (up from $4,855,900). The updated thresholds will be effective upon publication in the Federal Register.

Determining HSR filing obligations and assessing whether interlocking directorates may violate Section 8 of the Clayton Act are highly technical analyses. For guidance, please contact a member of your Cooley corporate or antitrust team.

The FTC has not yet announced an adjustment to the maximum daily civil penalty for HSR violations. This penalty is adjusted annually for inflation and is based on changes in the CPI for all urban consumers from October to October. The current maximum daily civil penalty, effective as of January 14, 2025, is $51,744 per day.

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Key Contacts

Sharon Connaughton Washington, DC	sconnaughton@cooley.com +1 202 728 7007
Julia R. Brinton Washington, DC	jrenehan@cooley.com +1 202 962 8364
Megan Browdie Washington, DC	mbrowdie@cooley.com +1 202 728 7104
Jeremy Morrison Washington, DC	jmorrison@cooley.com +1 202 776 2177

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