

## Senate Committee Approves Bill Raising Filing Fees for High-Value Mergers/Acquisitions

May 17, 2021

### Key Points

- The Merger Filing Fee Modernization Act of 2021, a bi-partisan proposal to increase Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR) filing fees for the largest transactions, has passed the Senate Judiciary Committee.
- Under the proposed legislation, smaller transactions would see a slight reduction in HSR filing fees, however, transactions of higher value would see significant increases, with transactions of \$5 billion or more paying a filing fee of \$2.25 million.
- Proposed legislation would also significantly increase the Federal Trade Commission (FTC) and Antitrust Division of the Department of Justice (DOJ) FY 2022 budgets.

### The Merger Filing Fee Modernization Act of 2021

Legislation introduced by Senator Amy Klobuchar (D-MN) and Senator Charles Grassley (R-IA) proposes to raise the cost associated with required filings under the HSR Act on larger mergers, acquisitions or other covered transactions, and lower it for smaller transactions. The Merger Filing Fee Modernization Act, which easily advanced in the Senate Judiciary Committee on May 13, is a bipartisan effort to update HSR filing fees for the first time since 2001. The proposed legislation would also significantly increase the FY 2022 budget allocations for the FTC and Antitrust Division of the Department of Justice (DOJ), raising them to \$418 million and \$252 million respectively.

The proposed Act raises HSR fees significantly for billion-dollar transactions, it also reduces fees for smaller deals (see table below). Additionally, unlike today, HSR filing fees would increase annually based on the Consumer Price Index (CPI). The filing free thresholds would continue to be indexed to the Gross National Product (GNP).

Although Sens. Klobuchar and Grassley sought to pass similar legislation in 2019, that bill—the Merger Filing Fee Modernization Act of 2019—died in committee. In the past year, however, members of both political parties have shown support for changing the HSR filing fee structure, as well as increasing budget appropriations for the FTC and DOJ. The bill's bi-partisan passage out of the Senate Judiciary Committee indicates

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that changes to HSR filing fees and to the United States (U.S.) antitrust agencies' budgets appear likely. The legislation may be added to the Endless Frontier Act, S. 1260, in the Senate this week.

### Proposed Changes to HSR Filing Fees (to be indexed annually)

<b>Transaction Value*</b>	<b>Proposed Filing Fee</b>
* all values indexed annually to gross national product	(change from current filing fee)
<b>&gt;\$92 million to &lt;\$161.5 million</b>	<b>\$30,000</b> (a decrease of \$15,000)
<b>\$161.5 million to &lt;\$500 million</b>	<b>\$100,000</b> (an increase of \$55,000 for transactions valued at \$161.5 million or more but less than \$184 million, and a decrease of \$25,000 for transactions valued at \$184 million or more but less than \$500,000)
<b>\$500 million to &lt;\$1 billion</b>	<b>\$250,000</b> (an increase of \$125,000 for transactions valued at \$184 million or more but less than \$919.9 million and a decrease of \$30,000 for transactions valued at \$919.9 million but less than \$1 billion)
<b>\$1 billion to &lt;\$2 billion</b>	<b>\$400,000</b> (an increase of \$120,000)
<b>\$2 billion to &lt;\$5 billion</b>	<b>\$800,000</b> (an increase of \$520,000)
<b>\$5 billion or greater</b>	<b>\$2,250,000</b> (an increase of \$1,970,000)

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