

## **Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form**

The Federal Trade Commission (“Commission”) and the Antitrust Division of the Department of Justice (“DOJ”) (together, “the Agencies”) seek public comment on the effectiveness of the Hart-Scott-Rodino Antitrust Improvements Act (“HSR Act”)’s premerger reporting requirements.

When the Commission voted to adopt an updated version of the Hart-Scott-Rodino (“HSR”) Form (“the Updated Form”), which took effect on February 10, 2025, then-Commissioner, now-Chairman Ferguson stated that the revisions included “some important, lawful updates” to allow the federal antitrust agencies to fulfill “Congress’s mandate to conduct premerger review,” and that post-promulgation “experience almost certainly will reveal that the Final Rule can be improved.”<sup>1</sup> He flagged that “subsequent rulemakings,” informed by experience with the Updated Form, may be appropriate to refine the Updated Form further and strike the proper balance between the Updated Form’s benefits and burdens.<sup>2</sup>

On February 12, 2026, a federal district court vacated the Updated Form;<sup>3</sup> the Commission has appealed.<sup>4</sup> On March 19, 2026, the U.S. Court of Appeals denied the Commission’s motion for a stay pending appeal.<sup>5</sup> As a result, the Agencies are now accepting HSR filings using the same Form and Instructions that were in place before the Final Rule took effect.<sup>6</sup> The Agencies will also continue to accept HSR filings made pursuant to the Updated Form and Instructions should filers voluntarily submit them.<sup>7</sup> The Commission continues to believe that the information required by the prior, nearly 50-year-old form was insufficient to review modern mergers and acquisitions. Regardless of the outcome of the pending appeal, the Commission is considering engaging in a new rulemaking process.

Prior to the vacatur order, the Updated Form was in place for more than a year. During that period, practitioners prepared, and the Agencies’ staff reviewed, over 3,000 filings for a wide range of transactions. Commission staff have also answered many questions from practitioners about complying with the Updated Form.

Based on this experience, the Agencies’ staff and practitioners have obtained insights about what aspects of the Updated Form may be improved. Drawing on those insights, the Agencies seek to understand whether the requirements of the Updated Form effectively fulfill their intended purpose, i.e., to enable the Agencies to identify potentially anticompetitive mergers more efficiently and to determine more swiftly whether a Request for Additional Information and Documentary Material (“Second Request”) would be necessary. The Agencies also want to ensure

---

<sup>1</sup> Concurring Statement of Comm’r Andrew N. Ferguson, In re Amendments to the Premerger Notification and Report Form and Instructions, and the Hart-Scott-Rodino Rule 16 C.F.R. Parts 801 and 803, Matter No. P239300, at 1, 14 (Oct. 10, 2024).

<sup>2</sup> See *id.* at 14.

<sup>3</sup> Memorandum Opinion and Order, Dkt. 75, *Chamber of Commerce v. FTC*, No. 6:25-cv-9 (E.D. Tex. Feb. 12, 2026).

<sup>4</sup> Notice of Appeal, Dkt. 1, *Chamber of Commerce v. FTC*, No. 26-40094 (5th Cir. Feb. 18, 2026).

<sup>5</sup> Order, Dkt. 44, *Chamber of Commerce v. FTC*, No. 26-40094 (5th Cir. Mar. 19, 2026).

<sup>6</sup> Premerger Notification Program, Special Highlights, FTC, <https://www.ftc.gov/enforcement/premerger-notification-program>.

<sup>7</sup> *Ibid.*

that the requirements of the Updated Form do not impose burdens on filers that outweigh the usefulness of the information provided to the Agencies. Finally, the Agencies are evaluating whether additional modifications to the Updated Form may be warranted to address certain topics based on developments affecting the HSR review process that have emerged over the past year.

- Committee on Foreign Investment in the United States (“CFIUS”) Compliance and Information on Sovereign Wealth Funds. To better understand the involvement of foreign governments and other foreign persons in reportable transactions, the Agencies are considering whether to request that filers provide information regarding their compliance with any legal obligations relating to CFIUS, and whether the current Form captures sufficient information on sovereign wealth funds and the sovereigns with which they are affiliated.
- Transactions Involving Firms for which the Department of War (“DOW”) is a Customer. Transactions in the defense sector may implicate important national-security interests, which in turn may require DOW to assess how a proposed transaction would affect the defense supply chain. The Updated Form asks for information regarding the filers’ contracts with DOW that involve a horizontal competitive overlap. And pursuant to Section 857 of the National Defense Authorization Act for Fiscal Year 2024,<sup>8</sup> some filers may be required to submit a copy of their HSR premerger notification filing to DOW. To facilitate closer and more efficient coordination between the Agencies and DOW, and to ensure a competitive defense supply chain, the Agencies are considering whether to request information from filers regarding their contracts with, or direct and indirect sales to, the United States, regardless of whether there is currently a horizontal competitive overlap between the merging firms.
- The Scope of the Solely-for-the-Purpose-of-Investment Exemption. Recent litigation suggests that businesses may benefit from guidance regarding when the HSR Act’s exemption for certain acquisitions of voting securities “solely for the purpose of investment” applies.<sup>9</sup> The Agencies are considering whether to make explicit that this exemption does not apply when the acquiror uses its ownership of voting securities to influence a corporation’s competitive decision-making, including the corporation’s policies that may affect prices, quality, or output.
- Non-Traditional Transaction Structures. The Agencies have seen an uptick in business transactions that parties are not reporting to the Agencies under the HSR Act, yet which have the practical effect of eliminating a market participant. Some of these transactions have involved licensing agreements in combination with “acquihires,” or “reverse acquihires,” that leave the “Acquired Person” intact but not competitively viable. Other transactions have been structured as the purchase or sale of convertible securities allowing the parties to consummate transactions that meet or exceed the reporting threshold under the HSR Act. While such transactions may become HSR reportable when the securities are

---

<sup>8</sup> Pub. L. No. 118-31, § 857, 137 Stat. 136, 346 (2023).

<sup>9</sup> See *Texas v. BlackRock Inc.*, No. 6:24-cv-437, 2025 WL 2201071 (E.D. Tex. Aug. 1, 2025); 15 U.S.C. § 18a(c)(9); 16 C.F.R. § 802.9.

ultimately converted to voting securities, the Agencies will at that time be reviewing a consummated transaction that has already eliminated a competitor from the market. The Agencies are concerned that some of these transactions may be structured to avoid the HSR Act's reporting requirements, even when they may have serious competitive effects. To ensure they are conducting premerger review consistent with the statutory requirements of the HSR Act, the Agencies are evaluating whether changes to the Updated Form and the Commission's HSR regulations are appropriate to address "acquihires," "reverse acquihires," certain sales/purchase of non-exclusive intellectual property licenses, and other novel transaction forms.

- Structural Transaction Modifications. When a proposed transaction may lessen competition, the Agencies encourage filers to work with the Agencies' staff to negotiate modifications to their transaction that would remedy the transaction's anticompetitive effects and avoid litigation that is costly and time-consuming for everyone involved. At times, however, parties propose remedies very late in the Agencies' review process or even after the Agencies have commenced enforcement litigation. The late-proposed remedies may significantly alter the competitive analysis of the transaction as originally proposed, for instance by changing the scope of the assets that will be held by the proposed buyer after the transaction is consummated. At the same time, such late-proposed remedies deny the Agencies a meaningful opportunity to evaluate the competitive effects of the restructured transaction or the proposed remedial divestiture in the way that Congress intended under the HSR Act. During a Second Request, the Agencies obtain documents and information only on the original transaction that was the subject of the parties' notification. If the parties alter their transaction in the middle of a Second Request, however, the Agencies do not presently have a mechanism for extending the waiting period in order to obtain documents and information sufficient to evaluate the altered transaction or divestiture. Changes to a transaction proposed after the Agencies have commenced litigation may also leave federal courts in the position of having to adjudicate a "litigate the fix" scenario that was not subject to the HSR Act's reporting requirements, making already-complicated merger-enforcement litigation more complicated and less efficient. To ensure the Agencies have sufficient time and information to evaluate and engage with the parties on remedy proposals that materially alter the structure of the originally-proposed transaction, and to preserve the resources of the parties, the Agencies, and the federal courts, the Agencies are exploring whether, and under what circumstances, such late-breaking remedy proposals should be subject to new or supplemental HSR filing requirements.
- Single-Family Housing Acquisitions. President Donald J. Trump instructed the heads of the Agencies to "review substantial acquisitions, including series of acquisitions, by large institutional investors of single-family homes in local single-family housing markets for anti-competitive effects."<sup>10</sup> The Agencies are reviewing whether to make changes to the Commission's HSR regulations to carry out this directive.

---

<sup>10</sup> Executive Order 14376, Stopping Wall Street from Competing with Main Street Homebuyers, 91 Fed. Reg. 3023, 3024 (Jan. 20, 2026).

As part of this stocktaking process, the Agencies invite public comments on the Updated Form for potential areas of improvement. The Agencies seek feedback on the implementation, effects, and potential areas for further refinement of the Updated Form and its accompanying instructions to reduce the burden for non-problematic transactions while also making necessary updates informed by lessons learned from the recent implementation of the Updated Form. The Agencies encourage members of the public—including consumers, legal practitioners, industry representatives, workers, businesses, startups, potential market entrants, investors, and academics—to comment on any issues or concerns that are relevant to the Agencies’ consideration of this objective.

The Agencies welcome any relevant information, including written responses to the following requests:

1. Please identify any requirements of the Updated Form that, in your view, are beneficial to effective and efficient premerger review.
  - a. Explain whether, and to what extent, the potential reduction of Second Request issuances for unproblematic transactions outweigh the incremental costs of complying with the Updated Form.
  - b. Please identify any research and data regarding the costs of anticompetitive transactions on American consumers, workers, businesses, etc.
2. Please identify any additional information that would provide benefits that would be justified in light of the potential additional costs borne by filers. To the extent that additional beneficial information could be limited to only certain types of transactions or certain types of filers, please identify the criteria for imposing an obligation for the additional information.
3. Please identify any requirements of the Updated Form that, in your view, may impose burdens on filers that outweigh their probative value to the Agencies’ analysis of whether the underlying transaction, if consummated, may violate the antitrust laws.
  - a. Please identify any requirements that seek information or documents that generally are not compiled when evaluating the acquisition or sale of a company.
  - b. Please identify any requirements that seek information or documents that generally are not compiled when evaluating the competitive impact of the acquisition or sale of a company.
  - c. Describe what makes any such requirement burdensome, including identifying and quantifying the incremental time, labor, and financial costs associated with providing the information, along with any clarifications or revisions that could mitigate that burden.

4. The Agencies are interested in detecting anticompetitive mergers while imposing no more burden than necessary on competitively beneficial or neutral transactions. Please provide any studies, data, or examples of potentially anticompetitive transactions that may have escaped identification for more in-depth review by the Agencies prior to the Updated Form. Please specify what information would have been useful to avoid this outcome.
5. Are there certain categories of transactions not exempt from the HSR Act that are less likely to raise competitive concerns? If so, please identify each category of transactions and explain why such categories are less likely to raise competitive concerns.
  - a. What information would provide the Agencies with sufficient information to effectively conduct their premerger antitrust risk assessment for these categories of transactions?
  - b. What categories of documents would provide the Agencies with sufficient information to effectively conduct their premerger antitrust risk assessment for these categories of transactions?
6. Explain whether there are aspects of the Updated Form's instructions that are ambiguous or could use further clarification or guidance.
7. Explain whether safe harbors or materiality requirements, for example, exceptions to certain requirements of the Updated Form for transactions of a certain nature or transactions below a certain value, could substantially reduce compliance complexity or uncertainty without limiting the Agencies' access to sufficient information to analyze whether the underlying transaction, if consummated, may violate the antitrust laws.
  - a. If so, then please propose any specific safe harbor and/or materiality thresholds.
8. Please identify best practices for preparing the Overlap Description and Supply Relationships Description.
9. Describe the estimated incremental time, labor, and financial costs associated with requiring filers to provide information regarding their compliance, if applicable, with any legal obligations relating to CFIUS in connection with the filed transaction, including compliance with Section 721 of the Defense Production Act of 1950, any regulations promulgated thereunder, or any CFIUS mitigation terms.
  - a. Explain whether there are particular instructions, examples, or guidance that would be useful in complying with such a requirement.

10. Does the Updated Form adequately capture the relationship between sovereign wealth funds and the sovereigns with which they are affiliated?
  - a. If not, what additional information should be captured?
11. Describe the estimated incremental time, labor, and financial costs associated with requiring filers to provide information regarding their current or recent contracts with or sales (direct and indirect) to any departments, agencies, or other organizations within DOW.
  - a. Explain whether there are particular instructions, examples, or guidance that would be useful in complying with such a requirement.
  - b. Describe the impact to filers, if any, of requesting voluntary waivers of the HSR disclosure exemption to permit the Agencies to disclose to DOW, upon DOW's request, information about the underlying transaction.
12. Describe what changes, if any, the Agencies should make to the HSR rules to clarify the scope of the solely-for-the-purpose-of-investment exemption.
  - a. Explain how the Agencies should balance the efficient allocation of capital in such transactions against the risk of creating loopholes that facilitate potentially anticompetitive HSR evasion.
  - b. How often are investors taking significant stakes in the same entity using different investment vehicles? What impact, if any, does this approach have in hindering effective and efficient premerger review?
13. Please identify investment strategies that enable investors to evade HSR filing requirements for transactions that should be subject to premerger review.
  - a. What revisions, if any, should the Agencies make to clarify the HSR filing requirements and address such investment strategies that are exempt and should not be?
  - b. Do the current HSR rules adequately capture licensing agreements, acquihires, reverse acquihires, and other potential transaction structures? If yes, how so?
14. What competitive, procedural, and informational gaps arise when merging parties unilaterally propose or implement remedies (e.g., divestitures, long-term supply agreements, behavioral commitments, etc.) in an attempt to address some or all of the apparent anticompetitive effects of their proposed transaction during an FTC or DOJ investigation or enforcement action?

15. Under what circumstances should a new or supplemental HSR filing be required for filing parties that propose a divestiture or some other structural modification of their proposed transaction? For example, when should such a new or supplemental HSR filing be required (e.g., if the proposal is made after certifying substantial compliance or during an enforcement action)?
- a. What additional information, if any, should the new or supplemental HSR filing require (e.g., detailed description of divested and retained assets, standalone viability analysis, transition services and supply arrangements, intellectual property licenses, identification and vetting of proposed divestiture buyer(s))? To the extent additional information should be required, describe the estimated incremental time, labor, and financial costs that it may impose.
  - b. What impact would a new filing requirement have on parties' incentives to propose remedies and the timing with which they do so? To what extent might this requirement deter efficient or procompetitive divestitures? How might the Agencies mitigate any such impact on parties' incentives to propose remedies?
  - c. Are there alternatives to a new or supplemental HSR filing—such as supplemental submissions, timing agreements, revised HSR rules, or guidance—that could achieve similar objectives?
  - d. Should any new requirements be implemented through rulemaking, policy guidance, or case-by-case discretion to address gaps in the HSR merger review process caused by merging party agreements to structural modifications of their filed transactions during an FTC or DOJ investigation and/or enforcement action?
  - e. What clarifications to the current HSR rules are needed to ensure that contested divestiture remedies cannot circumvent HSR Act review? Should 16 C.F.R. § 802.70(a), which exempts reportable transactions from pre-consummation review if they are completed pursuant to and in accordance with a federal court order in an action brought by the FTC or DOJ, be changed to clarify that the exemption applies only to transactions that have been evaluated by one of the Agencies?
16. Sections 802.2 and 802.5 (the “real estate exemptions”) of the HSR rules exempt certain acquisitions of real estate from filing under the HSR Act because historically these transactions were considered unlikely to violate the antitrust laws.
- a. Explain the potential impact of removing the real estate exemptions. What would be the benefits of doing so, and how would they weigh against the costs of filing?

- b. Would removal of the real estate exemptions better facilitate antitrust review of acquisitions of single-family homes in local single-family housing markets?
- 17. Acquisitions involving real estate investment trusts (“REITs”) are largely exempt under 7A(c)(1) of the statute. Should the REIT exemption be re-evaluated given their evolving operating structures? If so, how?
- 18. Describe the estimated incremental time, labor, and financial costs associated with requiring filers to provide information regarding their use of any artificial intelligence or generative artificial intelligence tools in preparing any HSR submissions, including the identification and selection of documents submitted as part of an HSR submission.
  - a. Explain whether there are any particular instructions, examples, or guidance that would be useful in complying with such a requirement.
- 19. Describe the estimated time, labor, and financial costs associated with responding to a Voluntary Access Letter issued after filing an HSR notification pursuant to the previous form. Explain and quantify the extent to which such costs are captured in responding to the Updated Form instead since the Updated Form took effect.
- 20. Describe the estimated time, labor, and financial cost savings associated with filers choosing to complete the Updated Form, any portions thereof, or preparing other aspects of HSR submissions with the aid of new tools, e.g., artificial intelligence or generative artificial intelligence tools. Explain the extent to which any incremental costs to comply with the Updated Form have been mitigated compared to the previous form through the use of such tools.
- 21. Describe the estimated time, labor, and financial costs associated with requiring filers to substantially comply with a Second Request. Explain and quantify the extent to which such compliance costs are being reduced through the use of new tools, e.g., artificial intelligence or generative artificial intelligence tools.
- 22. Should the Form include section numbers?
- 23. For any relevant question above, please describe any disproportionate burden that would likely fall on small businesses and the best ways to minimize those effects.
- 24. Describe any additional improvements to the Form, not elsewhere submitted, including potential benefits and costs.

Comments must be received no later than **May 26, 2026, by 11:59 pm ET.**

Instructions for submitting:

1. Go to the docket on regulations.gov
2. Click “Browse Documents”
3. Underneath the document containing the RFI questions, click comment (the blue button)
4. Fill out the form which requires:
  - 4.1. The comment text itself
  - 4.2. The comment category
5. You can submit as: an individual, an organization, or anonymous
  - 5.1. Optional: Attachments to aid your response. You can attach up to 20 files, but each file cannot exceed 10MB. Valid file types include: bmp, docx, gif, jpg, jpeg, pdf, png, pptx, rtf, sgml, tif, tiff, txt, wpd, xlsx, xml.

Please DO NOT include sensitive or confidential information in the comments including:

- social security numbers;
- dates of birth;
- driver’s license numbers or other state identification numbers;
- financial account information;
- sensitive health information; or
- competitively sensitive information

Comments will be posted on the Internet and made available to the public (subject to exceptions such as for personal privacy information). Comments submitted in response to this RFI could inform future actions related to the premerger notification and report form.