

At a Glance

S. 228, Merger Filing Fee Modernization Act of 2021

As ordered reported by the Senate Committee on the Judiciary on May 13, 2021

By Fiscal Year, Millions of Dollars	2022	2022-2027	2022-2032
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	-1,405	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Over Threshold

The bill would

- Change the structure and amount of premerger filing fees levied by the Federal Trade Commission under its Premerger Notification Program
- Impose mandates by raising the fees for companies that file premerger notifications

Estimated budgetary effects would mainly stem from

- Decreases in spending subject to appropriation because of increases in fee collections

Detailed estimate begins on the next page.



Bill Summary

S. 228 would change the structure and the amount of filing fees levied by the Federal Trade Commission (FTC) under its Premerger Notification Program. That program requires companies to notify the FTC and the Department of Justice (DOJ) before proceeding with a large merger or acquisition. The bill also would adjust filing fee amounts each year based on changes in the Consumer Price Index; under current law, fee amounts remain unchanged from year to year.

Estimated Federal Cost

The estimated budgetary effect of S. 228 is shown in Table 1. The costs of the legislation fall within budget functions 370 (commerce and housing credit) and 750 (administration of justice).

Table 1.
Estimated Increases in Spending Subject to Appropriation Under S. 228

	By Fiscal Year, Millions of Dollars						2022-2027
	2022	2023	2024	2025	2026	2027	
Estimated Authorization	0	-110	-294	-314	-333	-354	-1,405
Estimated Outlays	0	-110	-294	-314	-333	-354	-1,405

Basis of Estimate

CBO assumes that S. 228 will be enacted near the end of calendar year 2022 and that the new fee structure would be effective starting on January 1, 2023.

Filing Fees

As of March 3, 2022 (the last time the ranges were updated), companies must pay the following filing fees based on the size of the transaction:

- \$45,000 if the transaction size is between \$101 million and \$202 million,
- \$125,000 if the transaction size is between \$202 million and \$1 billion, or
- \$280,000 if the transaction size is \$1 billion or greater.

The transaction size ranges are updated annually based on changes in the gross national product. Filing fees are collected by the FTC and distributed evenly between the FTC and the DOJ's Antitrust Division and credited to their respective salaries and expenses appropriations accounts as discretionary offsetting collections.

The bill would change the number of ranges for transaction size and would require acquiring companies to pay the following filing fees:



- \$30,000 if the transaction size is between \$92 million and \$161.5 million,
- \$100,000 if the transaction size is between \$161.5 million and \$500 million,
- \$250,000 if the transaction size is between \$500 million and \$1 billion,
- \$400,000 if the transaction size is between \$1 billion and \$2 billion,
- \$800,000 if the transaction size is between \$2 billion and \$5 billion, and
- \$2.25 million if the transaction size is at least \$5 billion.

Spending Subject to Appropriation

Using information from the FTC about historic filings, CBO estimates that S. 228 would increase filing fees by \$1.4 billion over the 2023-2027 period. Because those collections are treated as discretionary offsetting collections they are shown as a reduction in spending subject to appropriation. CBO estimates that total collections would increase because the bill would create additional tiers with higher fees and would index those fees to changes in the Consumer Price Index.

For fiscal year 2022, the bill would authorize the appropriation of \$252 million for DOJ's Antitrust Division's salaries and expenses account and \$418 million for the FTC's salaries and expenses account. CBO has not estimated any budgetary effect for those authorizations because appropriations for 2022 have already been completed.

Pay-As-You-Go Considerations: None.

Increase in Long-Term Deficits: None.

Mandates

S. 228 would increase the cost of an existing private-sector mandate on some businesses by increasing the fees to file a premerger notification with the FTC. CBO estimates that the aggregate cost of the private-sector mandate would be about \$325 million in each of the first five years the mandate is in effect, exceeding the annual threshold established in the Unfunded Mandates Reform Act (UMRA) (\$184 million in 2022, adjusted annually for inflation).

S. 228 contains no intergovernmental mandates as defined in UMRA.

Previous CBO Estimate

On September 27, 2022, CBO transmitted a [cost estimate for H.R. 3843](#), the Merger Filing Fee Modernization Act of 2021, as reported by the House Committee on the Judiciary on



September 26, 2022. The two bills are similar, and CBO's estimates of their budgetary effects are the same.

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