

October 8, 2025

Andrew N. Ferguson
Chairman
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, DC 20580

RE: Request for Information Regarding Employer Non-compete Agreements

Dear Chairman Ferguson:

As a representative and advocate on behalf of America's 36 million small businesses, Small Business Majority writes to provide comments in response to the Federal Trade Commission's (FTC) request for information to better understand the scope, prevalence and effects of employer non-compete agreements. By restricting worker mobility and suppressing competition, non-compete agreements not only serve as an anti-competitive tool for employers but also hinder entrepreneurship and block small businesses from accessing skilled workers.

Small Business Majority is a national small business organization that empowers America's entrepreneurs to build a thriving and equitable economy. From our 12 offices across the country, we engage our network of more than 85,000 small businesses and 1,500 business and community organizations to deliver resources to entrepreneurs and advocate for public policy solutions that promote inclusive small business growth. Our work is bolstered by extensive research and deep connections with the small business community that enable us to educate stakeholders about key issues impacting America's entrepreneurs, with a special focus on the smallest, most under-resourced businesses.

Small Business Majority proudly supported the FTC's 2024 final rule to ban non-compete agreements for the tens of millions of American workers and aspiring entrepreneurs that remain subject to them. Our support of the final rule is rooted in the sentiments of small business owners and entrepreneurs who see non-compete agreements as an impediment to hiring talented workers and entrepreneurship rates overall. While we are disappointed with the agency's decision to abandon the 2024 final rule to ban non-compete agreements, we urge the FTC to consider how these anti-competitive clauses continue to hinder entrepreneurship and small business growth, which we detail throughout the following answers to several questions posed in the RFI.

Question 8: Do the non-compete agreements limit employees from starting or operating their own businesses? If so, how?

Yes. As employees gain experience and expertise in any given industry or craft, it remains critical that they can leverage those skills to pursue the American dream and open their own business. However, non-compete agreements, which often prevent employees from starting or working for a competing business for an extended period of time, can discourage or delay many prospective entrepreneurs from launching their own ventures. In fact, the FTC previously estimated that the 2024 final rule would have resulted in 8,500 new businesses created each year.¹ Small Business Majority polling also found that nearly half of small business owners (46%) reported being subject to a non-compete agreement that prevented them

¹ "FTC Announces Rule Banning Noncompetes," Federal Trade Commission, April 23, 2024. <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>

from starting or expanding their business.² When workers are held under non-compete agreements, they are forced to make decisions between leaving their chosen profession entirely or continuing to work for their same employer without exploring opportunities to pursue entrepreneurship. In many cases, non-compete agreements also contain a geographical clause, prohibiting workers from starting or working for a competing business in a certain geographical radius which hurts prospects of increasing competition in local economies.

Employees who are subject to a non-compete agreement and knowingly, or unknowingly, violate the terms and conditions of the agreement by starting a competing business are often subject to threats, intimidation and even legal action from their former employer. For a prospective entrepreneur who is just starting out, the simple threat of legal action, which implies thousands of dollars in legal fees, may discourage them from pursuing their entrepreneurial journey.

Question 9: Do the non-compete agreements make it more difficult for rival employers to hire employees? If so, how?

Yes. As small businesses continue to face workforce shortages, especially for in-demand skilled workers, non-compete agreements have made it especially hard for small businesses to hire skilled workers within their same industry. When workers are subject to non-compete agreements, they are less likely to enter the job market to switch jobs which further restricts the talent pool for small businesses in search of skilled workers. According to the Economic Innovation Group, workers bound by non-compete agreements remain in their positions for 11% longer than workers who are not.³ Small Business Majority research also found that more than 1 in 3 (35%) business owners have been prevented from hiring someone due to a non-compete agreement.⁴ Without access to a skilled workforce, small businesses oftentimes do not have the capacity to pursue new business opportunities and may be forced to spend more time and resources on workforce training which can have grave impacts on a business's productivity and bottom line.

Question 10: Do the non-compete agreements contribute to a loss in innovation? If so, how?

Yes. Small businesses and entrepreneurs are widely recognized as the driving force behind economic innovation in the U.S., accounting for the lion's share of new patents and spearheading the development of novel products and services. In an economic environment bound by non-compete agreements, workers face additional barriers and legal repercussions which limit their ability to use their experience and skills to develop new, innovate products and services that ultimately fosters greater competition in the market. The FTC estimated that their 2024 final rule would have increased the average number of patents filed each year by 17,000 to 29,000.⁵

Small business owners nationwide support efforts to ban non-compete agreements to promote competition and innovation in our economy

Small businesses support banning non-compete agreements because they are antithetical to the free, fair and open competition that is essential to a thriving and equitable economy. Our research shows that

² "Opinion Poll: Small Business Owners Support Banning Non-Compete Agreements", Small Business Majority, April 13, 2023, <https://smallbusinessmajority.org/our-research/fair-competition/opinion-poll-small-business-owners-support-banning-non-compete-agreements>

³ "The Case for Non-compete Reform: How the Workforce Mobility Act Would Support Workers and Spur Entrepreneurship." Economic Innovation Group. February 25, 2021. https://eig.org/the-case-for-non-compete-reform/?utm_source=chatgpt.com

⁴ "Opinion Poll: Small Business Owners Support Banning Non-Compete Agreements", Small Business Majority, April 13, 2023, <https://smallbusinessmajority.org/our-research/fair-competition/opinion-poll-small-business-owners-support-banning-non-compete-agreements>

⁵ "FTC Announces Rule Banning Noncompetes," Federal Trade Commission, April 23, 2024. <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>

nearly 6 in 10 (59%) of small business owners supported the FTC's previous efforts to ban non-compete agreements. Notably, those who used non-competes in their business at the time of the survey were even more supportive of the ban (67%) compared to those who did not (51%). Furthermore, more than 400 small businesses and business organizations signed a 2023 letter urging the FTC to enact its proposed rule to ban non-compete agreements.⁶

While many argue that non-compete agreements are necessary for protecting a business's proprietary information, such as trade secrets or product designs, business owners have access to alternative, less restrictive methods for protecting their sensitive information. Forty-two percent of small business owners report using non-disclosure agreements to protect their confidential information or trade agreements and 69% believe that non-disclosure agreements can protect their confidential information or trade secrets as effectively as a non-compete agreement.⁷ It's also important to note that states like California, Oklahoma and North Dakota already prohibit the enforcement of non-compete agreements with no loss of business success and entrepreneurial spirit in any of these states.

The following quotes from small business owners in our network underscore the importance of banning non-compete agreements to foster a free, fair and competitive economy for small businesses and workers alike:

- **Leo Carr – Elite Group, Michigan** “Non-compete agreements tend to only benefit the previous employer. Employees working under the mandates of a non-compete agreement are restricted from seeking new employment, preventing them from opportunities to earn more in wages, upward mobility with another company, etc. It prevents the employee from capitalizing on their own skills and knowledge. This is particularly unfair to people who have worked diligently towards self-improvement and have acquired and developed new skills but are restricted to using them for one employer only. This causes undue stress and psychological burden on employees under the guise of non-compete agreements when they contemplate or actually try to move on from their employer or company. They might need to seek legal employment law assistance and thus incur some costs.”
- **Jacob Hanson – PR with Panache, Minnesota** “I see how companies use non-competes as a weapon and harass people. They inhibit their ability to provide for their families. I think that there needs to be more education for employees. From what I've witnessed, I think non-competes are used to penalize employees and people are manipulated. Companies are really smart about how they use them.”
- **Shirley Modlin – 3D Design and Manufacturing, LLC, Virginia** “I have never believed that any employer has the right to restrict opportunities of workers.... As workers gain skills and experience throughout their careers, they must be allowed to use that knowledge to further their livelihoods in ways that are in their best interest.”
- **Jean Underwood – Design Mavens Architecture, Illinois** “I think it's (non-compete agreements) a hindrance to people that want to start a small business. I think it's ridiculous. I didn't have a choice but to sign it. I was looking at a promotion and was told, “What's the big deal? You're not going anywhere, just sign it.” I had to wait one year before being able to start the business with my partners.”
- **Clifton Broumand – Man & Machine, Maryland** “I stopped doing non-compete agreements 5-6 years ago with my salespeople because it cost too much money. If I really wanted to enforce a non-compete, I would have to hire and pay a lawyer.”

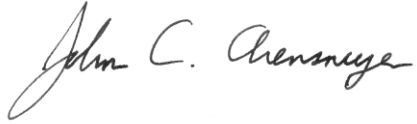
As the FTC evaluates how it can most effectively address the anti-competitive use of non-compete agreements across industries, we urge the agency to reconsider its case-by-case enforcement approach

⁶ “Small Business Community Urges FTC to Ban Non-Compete Agreements”, Small Business Majority, April 13, 2023, <https://smallbusinessmajority.org/policy/small-business-community-urges-ftc-ban-non-compete-agreements>

⁷ “Opinion Poll: Small Business Owners Support Banning Non-Compete Agreements”, Small Business Majority, April 13, 2023, <https://smallbusinessmajority.org/our-research/fair-competition/opinion-poll-small-business-owners-support-banning-non-compete-agreements>

which will likely fall short of boosting entrepreneurship and small business growth. Should you have any questions or would like to discuss our comments further, please contact our Government Affairs Director, Alexis D'Amato, at adamato@smallbusinessmajority.org or (202) 967-0995.

Sincerely,

A handwritten signature in black ink that reads "John C. Arensmeyer". The signature is written in a cursive style with a large, sweeping initial "J".

John Arensmeyer
Founder & CEO
Small Business Majority