

April 19, 2023

The Honorable April J. Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Notice of Proposed Rulemaking, Federal Trade Commission; Non-Compete Clause Rule; 88 Fed. Reg. 3482 (RIN: 3084-AB74) (January 19, 2023)

Dear Secretary Tabor:

As a representative of America's 33 million small businesses, we urge the Federal Trade Commission (FTC) to enact its proposed rule to ban most non-compete agreements. Non-compete agreements are a significant impediment to entrepreneurship, create a non-level playing field and impede the ability of employees to maximize their skills. They are not only a barrier to entry for entrepreneurs, but they also prevent small firms from hiring the most diverse, qualified and skilled talent.

Small Business Majority is a national small business organization that empowers America's diverse entrepreneurs to build a thriving and equitable economy. From our nine 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 businesses and those facing systemic inequities.

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. Not only do non-compete clauses impede workers' ability to maximize their value in our economy, they create barriers for aspiring entrepreneurs—particularly for people in our most under-resourced communities where the recent surge in business formation has been most pronounced and where entrepreneurship is so vital to building an inclusive economy. Indeed, the growth rate of Black entrepreneurship has tripled in recent years; Hispanic entrepreneurs started businesses 44% faster than their non-Hispanic counterparts; and the rate of women starting new businesses has doubled.

Moreover, non-compete agreements stifle innovation. Indeed, a recent [study](#) by the Federal Reserve Bank of Minneapolis found that non-compete contracts limit our economy's potential by making it more difficult for employers and entrepreneurs to recruit new workers and start new businesses. And, non-compete agreements contribute to corporate concentration, and thus higher prices for goods and services.

Our opposition to non-competes is supported by our [recent research](#), which found almost half (46%) of small business owners have been the subject of a non-compete agreement that prevented them from starting or expanding their business. What's more, more than 1 in 3 (35%) said they have been prevented from hiring someone due to a non-compete agreement. Nearly 6 in 10 small businesses support the FTC's proposed rule to ban non-compete agreements, with only 14% opposing the ban.

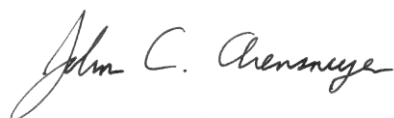
It is reasonable for a business to protect its proprietary assets and trade secrets; however, non-disclosure or confidentiality agreements are more than sufficient to accomplish this goal. Our research found more than two thirds (69%) of small business owners believe that non-disclosure agreements can protect their confidential information or trade secrets as effectively as a non-compete agreement. In another [survey](#), 87% said that leveling the playing field for small businesses via anti-trust enforcement and restricting non-compete agreements was a priority for policymakers.

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.

We've also heard directly from small business owners around the country about how non-compete agreements have prevented them from starting and growing their businesses or from hiring talented employees. A sample of these stories is included below.

All small business want is a level playing field on which to compete; however, non-compete agreements distort the ability to compete in the marketplace freely and fairly. For these reasons, we urge you to enact this rule to support aspiring entrepreneurs and help small businesses access qualified workers.

Sincerely,



John Arensmeyer,
Founder & CEO
Small Business Majority

Feedback from small business owners in our network

“I can only do so much to keep people here. I simply make it difficult for them to want to leave. The best way I can go about it is do what I can to make them stay. 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.”

Jacob Hanson, PR with Panache, Minnesota

“I think it's 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. It turns out the agreement wasn't well written, however enforceable in the state of Illinois. I had to wait one year before being able to start the business with my partners.”

Jean Underwood, Design Mavens Architecture, Illinois

“I honestly think doing a better job at your business is the way you compete, not by squashing the competition with legal arguments. I can't control any business except my own, and I succeed if I do a great job with my business. I hope to corner the market on Paint Your Own Pottery in my area just by being awesome at it. I have no problem with disallowing non-competes in most situations.”

Tracy DuCharme, Color Me Mine, Colorado

“I have never believed that any employer has the right to restrict opportunities of workers as relative to the worker's well-being and that of their family. 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.”

Shirley Modlin, 3D Design and Manufacturing, LLC, Virginia

“I really believe this new ban on non-competes is a very good thing for most small businesses and that it would increase the new small business formation rate. I appreciate the new thinking of the president in proposing it.”

Mike Roach, Paloma Clothing, Oregon

“It's not fair to them. I understand life changes and is very difficult at this time. So, if they have a better opportunity and a better chance, I won't prevent that. I call it a containment of control. It's like being in prison if I'm making you sign a non-compete but the guy next door has a security company to pay you \$3 an hour more and it's within a mile distance from your home. I can totally understand.”

Filipe Monteiro, Guardian Capital Security, Massachusetts

“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.”

Leo Carr, Elite Group, Michigan

“If there are people going out to work, those individuals need my support. There's more of them than just me that can do what I do... But our business is so unique that you can come here and become accustomed to my services... It would be hard to duplicate it if that's your motive. You have to feel confident in what you do. I encourage people to know what their talents and skills are because you can do something that nobody else can. You were put here for a reason. I believe that the more I give, the more that I get back. I don't always get it back from where I give. It's the giving part and the gratitude associated with giving.”

Monica Jackson, Jackson Family Child Care and Foster Family Respite Care, Virginia
