

May 21, 2025

Abigail Slater
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530

RE: ATR-2025-0001 - U.S. Department of Justice Antitrust Division Anticompetitive Regulations Task Force

Dear Assistant Attorney General Slater:

As a representative and advocate on behalf of America's 34 million small businesses, Small Business Majority writes to provide comments in response to the U.S. Department of Justice Antitrust Division's Anticompetitive Regulations Task Force request for comments to identify barriers to competition for small businesses.

Small Business Majority is a national small business organization that empowers America's diverse 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.

While small businesses account for more than 99% of all U.S. businesses, employing over half of our nation's private sector workforce, they continue to face substantial barriers to competing on a level playing field with the larger businesses and corporations that have grown increasingly dominant across our nation's economy. The use of anti-competitive practices across all industries, including the healthcare industry, has contributed to both higher operating and healthcare costs for small businesses, limited opportunities for growth and more limited workforce pools which ultimately prevent the smallest businesses from reaching their full potential. In fact, 83% of small businesses agree that larger companies have the resources to take these businesses' creative ideas, mass produce them and drown small businesses out with their market power.¹

As market power and opportunity increasingly shifts away from Main Street in favor of large corporations, federal regulations play a critical role in providing consistent guardrails against anti-competitive behavior that disproportionately impacts the smallest businesses. In national polling conducted by Small Business Majority, small business owners repeatedly point to the importance of regulations in both fostering competition in the modern economy and holding larger corporations accountable. Eighty-six percent of small business owners agree that some regulation of business is necessary in a modern economy, and 93% of them agree their business can live with regulations if they are fair, manageable and reasonable.²

¹ "Scientific Opinion Poll: Small businesses seek a level playing field and chance to compete fairly." Small Business Majority. March 2022. <https://smallbusinessmajority.org/our-research/small-businesses-seek-level-playing-field-and-chance-compete-fairly>

² "Small Business Owners' Opinions on Regulations and Job Creation." Small Business Majority. February 2012. <https://smallbusinessmajority.org/our-research/government-accountability/small-business-owners-opinions-regulations-and-job-creation>

While we acknowledge the Anticompetitive Regulations Task Force's intent to identify and assess existing regulations that hinder competition for small businesses and employers, our comments instead underscore how a broader lack of regulation and enforcement, compounded by recent actions of the administration, has made it more difficult for small businesses to compete on a level playing field.

Anti-competitive practices in the healthcare industry are driving up costs for small businesses

Access to affordable, high-quality healthcare coverage is essential for all small businesses. It supports the well-being of entrepreneurs and their employees while also serving as a vital tool for attracting and retaining a skilled workforce. However, small businesses continue to struggle to provide affordable healthcare coverage to their employees. While there are many barriers standing between small business owners and their ability to offer quality coverage, recent increases in anticompetitive practices, including provider consolidation, are contributing to rising healthcare costs that burden many of America's small business workforce. Small Business Majority polling found that small business owners who offer health coverage to their employees reported that the cost of either insurance premiums (78%), deductibles (57%), copays (60%), prescription drug copays (60%) and hospital visits (59%) have risen over the past few years.³

As prices continue to increase, small business owners are left to make difficult decisions regarding the future of the coverage options they can provide to employees. Our research found that employers who have seen costs increase were most likely to respond by increasing employee contributions to health plans (51%), moving to an insurance plan offering more limited coverage (47%) and cutting other employee benefits (29%). Notably, nearly one-quarter (24%) of these small businesses dropped health coverage altogether.⁴ When small businesses are forced to pull back on their healthcare coverage, or can't afford to offer coverage altogether, they risk losing their workforce to larger businesses that can offer attractive and affordable healthcare coverage options – further hindering small businesses' ability to attract and retain the skilled workforce that is required to compete in today's economy.

A major driver of rising healthcare costs is the growing consolidation within the industry, fueled by anticompetitive mergers and acquisitions of hospitals and other healthcare facilities which frequently result in higher costs for consumers and small businesses alike, with no apparent improvements in service or outcomes. The proliferation of consolidation, paired with skyrocketing private equity healthcare acquisitions, has resulted in a highly concentrated healthcare system in which a select few hospital networks retain strong leverage over insurance companies and providers. This allows hospitals to negotiate higher prices and force insurance providers to include certain high-cost providers in their network. For example, when hospital chains contract with insurance companies, they often require the insurer to work with a majority, if not all, of the hospitals in their system, leaving insurance companies little choice but to work with large hospital systems and comply with their reimbursement rates and service costs. This often leads to increases in premium costs and ultimately impacts small businesses and their employees who are left to pick up the bill.

To address the disparate impacts of healthcare consolidation on consumers and employers, the federal government must play a larger role in implementing guidance and guardrails to rein in the anti-competitive practices of healthcare providers and investors. Small Business Majority recommends the following actions to ensure that our nation's healthcare industry is prioritizing lower costs and higher quality care for consumers and small businesses, as opposed to profit-motivated decisions that wreck competition in the industry and drive-up costs:

³ "Opinion poll: Small businesses struggling with rising healthcare costs, support bipartisan policy solutions." Small Business Majority. February 21, 2024. <https://smallbusinessmajority.org/our-research/healthcare/small-businesses-struggling-rising-healthcare-costs-support-bipartisan-policy-solutions>

⁴ Ibid.

- Strengthen and increase anti-trust enforcement of healthcare mergers and acquisitions:** Since 1998, there have been over 2,000 hospital and health system mergers, in addition to the more than six-fold increase in private equity provider acquisitions from 2012 to 2021.⁵ While some argue that hospital mergers can streamline care through the integration of services and broadening the availability of care to consumers, research from the New England Journal of Medicine finds that hospital acquisition by another hospital system was associated with worse patient experiences and no improvement in readmission or mortality rates.⁶ On the contrary, increased competition in the hospital industry has been linked to better patient outcomes and a lower cost of care. Given this troubling upward trend of healthcare consolidation, Small Business Majority urges the DOJ and Federal Trade Commission (FTC) to continue monitoring proposed hospital mergers and develop comprehensive guardrails to ensure mergers will benefit consumers through lower costs and increased availability of quality care. In fact, our research found that 75% of small business owners believe the government should have even greater authority to block mergers and acquisitions in the healthcare industry.⁷
- Develop contracting and ownership reporting guidelines:** Hospital mergers have grossly consolidated the industry, allowing a select few hospital networks to control most hospitals in any given region. As noted previously, large hospital chains have been able to leverage their power over the market to engage in unfair contracting practices which force insurance companies to agree to unfair reimbursement rates and include certain high-cost providers in their network. To address this issue, we urge the administration to consider the impacts of anti-competitive hospital contracting prices and develop contract guidelines for hospitals and insurance companies to adhere to limit the market power of hospital networks. The administration should also continue to support previous joint efforts by the DOJ, FTC and the Department of Health and Human Services (HHS) to allow the public to report healthcare practices that may harm competition, which will allow the agencies to better evaluate how these anti-competitive practices are harming consumers.⁸
- Continue to enforce price transparency regulations:** We applaud the administration for reaffirming its commitment to enforcing price transparency rules to ensure our nation's healthcare providers are disclosing the actual prices of items and services, not just estimates.⁹ This not only helps consumers and businesses make more informed decisions regarding their coverage options but incentivizes competition in the healthcare marketplace. Requiring greater price transparency among providers also receives nearly unanimous support from the small business community as 96% of small business owners agree that healthcare providers should be required to publicly post the prices they charge for services.¹⁰ We urge the HHS and the Departments of the Treasury, and Labor (DOL) to continue the rigorous enforcement of price transparency rules to hold healthcare providers accountable.

⁵ "Ten Things to Know About Consolidation in Health Care Provider Markets." KFF. April 19, 2024. <https://www.kff.org/health-costs/issue-brief/ten-things-to-know-about-consolidation-in-health-care-provider-markets/>

⁶ "Changes in Quality of Care after Hospital Mergers and Acquisitions." The New England Journal of Medicine. January 1, 2024. <https://www.nejm.org/doi/10.1056/NEJMsai901383>

⁷ "Opinion poll: Small businesses struggling with rising healthcare costs, support bipartisan policy solutions." Small Business Majority. February 21, 2024. <https://smallbusinessmajority.org/our-research/healthcare/small-businesses-struggling-rising-healthcare-costs-support-bipartisan-policy-solutions>

⁸ "Federal Agencies Launch Portal for Public Reporting of Anticompetitive Practices in the Health Care Sector." Federal Trade Commission. April 18, 2024. <https://www.ftc.gov/news-events/news/press-releases/2024/04/federal-agencies-launch-portal-public-reporting-anticompetitive-practices-health-care-sector>

⁹ "Making America Healthy Again by Empowering Patients with Clear, Accurate, and Actionable Healthcare Pricing Information." The White House. February 25, 2025. <https://www.whitehouse.gov/presidential-actions/2025/02/making-america-healthy-again-by-empowering-patients-with-clear-accurate-and-actionable-healthcare-pricing-information/>

¹⁰ "Opinion poll: Small businesses struggling with rising healthcare costs, support bipartisan policy solutions." Small Business Majority. February 21, 2024. <https://smallbusinessmajority.org/our-research/healthcare/small-businesses-struggling-rising-healthcare-costs-support-bipartisan-policy-solutions>

Non-compete agreements are anticompetitive by nature but end up harming smaller businesses across our economy

The continued use of non-compete agreements across industries not only creates barriers to entry for prospective entrepreneurs but also prevents existing small businesses from hiring the most diverse, qualified talent. In fact, Small Business Majority's research shows that 35% of small business owners were prevented from hiring an employee due to a non-compete agreement, and 46% said that they have been subject to a non-compete agreement that prevented them from starting or growing a business of their own.¹¹ Non-compete agreements represent one of the most explicitly anti-competitive practices that employers engage in today, as their sole purpose is to prevent employees from leveraging their skills and experience to pursue opportunities in any given field of expertise – whether that employee wants to start their own business or help a small startup firm grow.

Given their anti-competitive nature and impact on entrepreneurship and small business growth, the FTC issued a final rule in April 2024 to ban the use of non-compete agreements. Small Business Majority strongly supported the final rule as the FTC estimated that it would result in more than 8,500 businesses being created each year and significantly increase the number of patents filed each year, fueling economic growth and innovation.¹² Both the 2023 proposed rule and 2024 final rule received strong support among the small business community, with nearly 6 in 10 small business owners supporting FTC's 2023 proposed rule to ban non-compete agreements.¹³ 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%). Nearly 7 in 10 small business owners believe that non-disclosure agreements can protect their confidential information or trade secrets as effectively as a non-compete agreement.¹⁴

While the FTC's final rule is an important step in fostering a competitive and level playing field for the small business ecosystem, a federal district court issued a ruling in August 2024 that prohibits the agency from enforcing the final rule. Although the FTC maintains authority to ban non-compete agreements under Section 5 of the FTC Act, the current administration has not yet indicated that it will continue to defend the 2024 final rule and has rather filed motions for a 120-day stay of its challenge in two U.S. appeals courts. In response to the expectation that the administration would forgo its defense of the final rule, Small Business Majority filed a motion to intervene in two lawsuits challenging the non-compete ban, arguing that it should be allowed to continue the defense on the basis that many small businesses are disadvantaged by non-compete agreements.¹⁵ However, both motions were denied, raising additional concerns about the future of the final rule.

We are disappointed in the administration's failure to stand by the 2024 final rule as non-compete agreements continue to impose barriers on entrepreneurship and small business growth. As the Anticompetitive Regulations Task Force identifies barriers to competition for small businesses and entrepreneurs, it is imperative for the administration and the FTC to reevaluate its defense of the 2024 final rule to ensure that the rulemaking is upheld in federal courts.

¹¹ "Opinion Poll: Small Business Owners Support Banning Non-Compete Agreements", Small Business Majority, April 2023, <https://smallbusinessmajority.org/our-research/fair-competition/opinion-poll-small-business-owners-support-banning-non-compete-agreements>

¹² "FTC Announces Rule Banning Noncompetes," Federal Trade Commission, April 2023, <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>

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

¹⁴ Ibid

¹⁵ "Small Business Majority Files Motions to Intervene in Defense of FTC Non-Compete Ban." Small Business Majority. January 13, 2025. <https://smallbusinessmajority.org/press-release/small-business-majority-files-motions-intervene-defense-ftc-non-compete-ban>

Robust enforcement of existing antitrust laws, like the Robinson-Patman Act, enables small businesses to compete on a level playing field

The Robinson-Patman Act (RPA) is an existing federal antitrust law which is intended to prevent price discrimination against smaller businesses that are often charged more than their larger competitors for the same goods or services. For example, in his 2024 testimony before the U.S. Senate Subcommittee on Economy Policy, Alap Vora, Small Business Majority network member and owner of Concord Market in Brooklyn, NY, cited instances of multiple local small vendors paying different prices for the same product and noted that he has found price increases as much as 50% - 100% based on which business is buying the product.¹⁶ Price discrimination, as experienced by Mr. Vora and other small businesses in his community, directly undermines the ability of Main Street businesses to compete with larger competitors that can often access preferential pricing from suppliers and wholesalers. This not only fosters a marketplace in which our nation's smallest businesses, that operate on razor thin margins, are paying more for goods and services than big-box stores, but steers consumers away from small businesses and towards larger businesses that can afford to keep prices low.

Until last year, federal antitrust enforcement agencies had not filed a lawsuit alleging an RPA violation in over two decades. The absent enforcement of RPA in recent decades has further enabled the largest and most dominant players in our economy to leverage their market power to prevent smaller competitors from competing on a level playing field. While we were encouraged to see the FTC file two RPA lawsuits against Southern Glazer's and Pepsi in the final days of the previous administration, respectively alleging that the companies charged small businesses more than larger chain stores for the same product and offered promotional pricing to select retailers, we urge the FTC to continue to pursue increased enforcement of the RPA against violators that knowingly charge smaller businesses more than their larger competitors for the same product.¹⁷ ¹⁸ Our research shows that 80% of small businesses support stronger enforcement of existing antitrust laws, including the Robinson-Patman Act, while 76% back targeted bans on predatory practices that undermine fair competition and put small businesses at a disadvantage.¹⁹

Regulations are necessary to protect small businesses and promote competition in the modern economy but should be promulgated in ways that ease burdens on small business

While we acknowledge that there are existing regulations that may make it harder for small businesses to compete or impose undue cost burdens on small businesses, it is important to recognize that a lack of regulation across industries in recent decades has enabled the largest and most dominant businesses to increase their market power at the expense of their smaller competitors. Regulations can and should be promulgated with proper small business feedback, utilizing existing structures to ensure that small business owners have a say in the process, while working to ease compliance burdens yet maintain strong standards that help businesses remain strong in their commitment to serving their community safely. Small Business Majority urges the Task Force to recognize that stronger enforcement of the regulations outlined above (which notably places little burden on the business owner, and in some cases help business owners compete) will help level the playing field for small businesses across the country.

Furthermore, as the administration reviews existing regulations that may affect small businesses' ability to compete, we caution against a one-size-fits-all approach to deregulation. Instead, we recommend leveraging existing frameworks, such as the Regulatory Flexibility Act and the Small Business

¹⁶ "Alap Vora, Owner of Concord Market, Testifies on the Impacts of Price Discrimination and Consolidation," Small Business Majority, May 2024, <https://smallbusinessmajority.org/policy/alap-vora-owner-concord-market-testifies-impacts-price-discrimination-and-consolidation>

¹⁷ "FTC Sues Southern Glazer's for Illegal Price Discrimination." Federal Trade Commission. December 12, 2024. <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-sues-southern-glazers-illegal-price-discrimination>

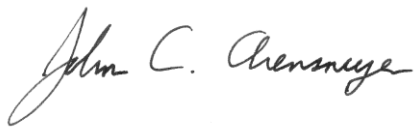
¹⁸ "FTC Sues PepsiCo for Rigging Soft Drink Competition." Federal Trade Commission. January 17, 2025. <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-sues-pepsico-rigging-soft-drink-competition>

¹⁹ "Scientific Opinion Poll: Small businesses seek a level playing field and chance to compete fairly." Small Business Majority. March 2022. <https://smallbusinessmajority.org/our-research/small-businesses-seek-level-playing-field-and-chance-compete-fairly>

Administration's Office of Advocacy, to evaluate how regulations are impacting small businesses on a case-by-case, industry-specific basis. Ensuring that federal agencies evaluate regulations through existing frameworks, which incorporate feedback from small businesses, will provide more targeted benefits to small businesses while avoiding a deregulatory environment that leads to chaos and confusion on Main Street.

Thank you for the opportunity to comment and provide feedback to the Anticompetitive Regulations Task Force. 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 fluid and cursive, with the first name "John" being the most prominent.

John Arensmeyer
Founder & CEO
Small Business Majority