

April 22, 2024

The Honorable Lina Khan
Chair, Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

The Honorable Rebecca Slaughter
Commissioner, Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

The Honorable Alvaro Bedoya
Commissioner, Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

The Honorable Melissa Holyoak
Commissioner, Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

The Honorable Andrew Ferguson
Commissioner, Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

RE: Federal Trade Commission's final rule to ban non-compete agreements

Dear Chair Khan and Commissioners Slaughter, Bedoya, Holyoak, and Ferguson,

On behalf of the undersigned organizations, which represent America's diverse small business economy, we write to support the Federal Trade Commission's (FTC) final rule to ban non-compete agreements across the economy and urge the Commission to vote in favor of implementing the final rule. Not only do non-compete agreements harm American workers across the socioeconomic spectrum, but they present real impediments for small businesses and entrepreneurs seeking to start or grow a business. By allowing dominant, incumbent companies to legally trap their employees, non-competes prevent newer, more innovative companies from forming and hiring new talent.

In January 2023, the FTC announced a proposed rule to ban non-compete agreements across the economy in January of 2023.¹ The rules—now being finalized—follow years of advocacy and economic research highlighting the harms of non-compete agreements, including reduced innovation, fewer startup businesses and an unfair advantage for big businesses. Encouragingly, the FTC's rule seeks to create one uniform prohibition on these contracts for all types of businesses and across industries.

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. Because of non-competes, prospective entrepreneurs are prevented from leveraging their skills and knowledge to contribute to our nation's economic growth and innovation. Small Business Majority's research found that nearly half (46%) of small business owners have been the subject of a non-compete agreement that prevented them from starting or expanding their business. When entrepreneurs have new, innovative business ideas, non-competes mean they can't find the skilled employees they need, and research shows more than 1 in 3 (35%) business owners have been prevented from hiring someone due to a non-compete agreement.

¹ Federal Trade Commission, "Non-Compete Clause Rulemaking," (2023), available at: <https://www.ftc.gov/legal-library/browse/federal-register-notices/non-compete-clause-rulemaking>.

When experienced workers want to set out on their own and start a business, non-competes keep them stuck between leaving their chosen profession entirely or continuing to work for their same employer. Meanwhile, established small businesses can't find employees to grow and compete on a level playing field with a dominant corporation that traps their skilled employees² through non-compete agreements. At a time when workforce challenges are ever pressing for small business owners, it is critical to move forward with the implementation of the rule to ensure small business owners can quickly and efficiently hire the best talent.

We strongly support the FTC's final rule on non-competes and urge you to vote in favor of establishing a complete ban on these unfair and abusive contracts. Small businesses should be able to compete on a level playing field and attract talented employees who will help them innovate and grow. To ensure the historic "small business boom" can continue in the years to come, we urge government leaders to take every action possible to foster a level playing field that is accessible, transparent and fair for America's smallest, but most innovative, job creators. The FTC's non-competes rule will foster innovation and fairness in the economy, and we hope the FTC swiftly looks to enforce it.

Sincerely,

Small Business Majority

Main Street Alliance

National Employment Law Project

Multicultural Business Alliance

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