

**Congress of the United States**  
**U.S. House of Representatives**  
**Committee on Small Business**  
2561 Rayburn House Office Building  
Washington, DC 20515-6515

April 16, 2024

The Honorable Lina M. Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, DC 20580

Mr. Jonathan Kanter  
Assistant Attorney General  
Antitrust Division  
Department of Justice  
950 Pennsylvania Ave. NW  
Washington, DC 20530

Dear Chair Khan and Mr. Kanter,

The House Committee on Small Business (Committee) writes to inquire about the Federal Trade Commission's (FTC) and the Department of Justice's Antitrust Division's (DOJ) jointly released Final Merger Guidelines (Guidelines) that significantly expand the amount and type of transactions subject to administrative antitrust investigation and challenge.<sup>1</sup> These new guidelines will have a significant impact on small businesses—nearly half of which look to mergers and acquisitions (M&A) to grow—but it seems the FTC and DOJ failed to properly consider the impact the new Guidelines will have on small businesses. This comes at a time when small businesses are struggling to access capital across the board, through traditional financing methods as well as alternative capital access options.

Congress has charged the FTC and DOJ with administering antitrust statutes to promote open and fair competition, including by preventing M&A that would violate these laws.<sup>2</sup> However, the revised set of Guidelines is significantly more hostile toward mergers than the set they replace. The Guidelines include several presumptions that would automatically designate some proposed M&A activity as harmful to competition and would trigger frequent extended review of transactions. By the FTC's own estimate, these Guidelines could lengthen the process for merger filing by nearly 300 percent.<sup>3</sup> By increasing uncertainty and the risk of time consuming, expensive, and burdensome investigations, the new Guidelines threaten to deter M&A transactions before they even get off the ground.<sup>4</sup> The FTJ and DOJ present these Guidelines as providing transparency and reflecting a modern market reality, but it is clear they further an aggressive enforcement agenda that will deter dealmaking.<sup>5</sup>

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<sup>1</sup> *Merger Guidelines*, U.S. DEP'T. OF JUSTICE AND THE FED. TRADE COMM'N (Dec. 18, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> Private Investment Works, *FTC and DOJ's Proposed Merger Guidelines Create Unnecessary Red Tape, Will Harm Small Businesses*, AM. INV. COUNCIL (Aug. 1, 2023).

<sup>4</sup> Steve Albertson, et. al, *FTC and DOJ Publish Final Revised Merger Guidelines, Driving Increased Uncertainty for M&A Activity*, FENWICK (Dec. 21, 2023).

<sup>5</sup> *New Year, New Merger Guidelines: What Dealmakers Need to Know*, COOLEY (Jan. 10, 2024).

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Nearly half of small business owners look to leverage M&A to grow, as merging with larger companies allow small businesses to connect with the capital, resources, and talent they need to scale.<sup>6</sup> Acquisition is a major avenue for entrepreneurs and investors to achieve returns on investment.<sup>7</sup> In 2020, nearly 90 percent of venture-backed startups exited their venture-funding through an acquisition.<sup>8</sup> The proposed Guidelines hindering these options is a looming threat that this exit strategy may no longer be available and will limit access to venture and other capital, thereby limiting innovation and growth.<sup>9</sup>

The Biden Administration has already implemented an unprecedented 288 million paperwork hours with its regulatory activity and these new guidelines only add to that burden.<sup>10</sup> It is important for agencies to examine small businesses interests, which make up 99.9 percent of all businesses in the United States, when passing any new rule or set of guidelines. America's small businesses deserve to have their voices heard and considered. We therefore request the following information as soon as possible but no later than April 30, 2024:

1. Documents sufficient to show how small business interests were considered in the drafting process by both the FTC and the DOJ.

To schedule the delivery of your response or ask any related follow-up questions, please contact the Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate "problems of all types of small business" under House Rule X. Thank you in advance for your cooperation with this inquiry.

In God We Trust,



Roger Williams  
Chairman

Committee on Small Business

cc: The Honorable Nydia M. Velazquez, Ranking Member  
Committee on Small Business

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<sup>6</sup> *FTC Chair Lina Khan: Startup Spoiler*, SMALL BUS. & ENTREPRENEURSHIP COUNCIL (Dec. 1, 2022); *FTC-DOJ Proposed Merger Guidelines Threaten U.S. Economic Leadership and Startups*, SMALL BUS. & ENTREPRENEURSHIP COUNCIL (Jul. 19, 2023).

<sup>7</sup> *The FTC's Bizarre Attempt to Rationalize Regulatory Overreach*, SMALL BUSINESS & ENTREPRENEURSHIP COUNCIL (Nov. 18, 2022).

<sup>8</sup> *Collateral Damage in Khan's FTC War on Big Business: Entrepreneurship, Innovation, Consumers*, SMALL BUS. & ENTREPRENEURSHIP COUNCIL (Dec. 16, 2022).

<sup>9</sup> *Id.*

<sup>10</sup> Dan Goldbeck, *Week in Regulation: EPA Starts Off March in a Major Way*, AM. ACTION FORUM (Mar. 11, 2024).