

Congress of the United States  
U.S. House of Representatives  
Committee on Small Business  
2361 Rayburn House Office Building  
Washington, DC 20515-6515

March 14, 2024

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

Dear Chair Khan:

The House Committee on Small Business (Committee) writes to inquire about the Federal Trade Commission's (FTC) notice of proposed rulemaking on the *Non-Compete Clause Rule*.<sup>1</sup> The proposed rule would ban the use of non-compete clauses in employment contracts. This rule would impose significant costs on small businesses and pose a serious risk of loss and potential closures. It appears that the FTC may not have properly considered small entities during this rulemaking process.

The Committee is concerned that the FTC underestimated the costs and impact of this proposed rule on small businesses when certifying this rule will not have a significant economic impact on a substantial number of small entities. The FTC estimates that 2.94 million small firms will be impacted by the proposed rule, but maintains the costs are limited to updating contractual practices—only costing small businesses between \$317.88 to \$563.84 per entity.<sup>2</sup> As the Small Business Administration's Office of Advocacy noted, the FTC has ignored significant implications for small businesses—failing to include the costs of hiring additional legal resources or hiring and retaining additional workers.<sup>3</sup>

Small businesses—producing 16.5 times more patents than large companies—drive American innovation.<sup>4</sup> Banning non-compete agreements, which drive ingenuity by safeguarding competitive information such as client lists, training techniques, or intellectual property, could make it more challenging for small businesses to prevent their workers from being poached by large corporations with more resources.

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. America's small

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<sup>1</sup> 88 Fed. Reg. 3482 (Jan. 19, 2023).

<sup>2</sup> 88 Fed. Reg. at 3531-3532 (Jan. 19, 2023).

<sup>3</sup> See Letter from Major L. Clark, III, Deputy Chief Counsel, Off. of Advocacy, U.S. Small Bus. Admin., *et al.*, to April Tabor, Act Sec'y of the Comm'n, Fed. Trade Comm'n (Mar. 20, 2023).

<sup>4</sup> See U.S. DEP'T OF DEFENSE, STATE OF COMPETITION WITHIN THE DEFENSE INDUSTRIAL BASE, 13 (Feb. 2022).

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businesses deserve to have their voices heard and considered. We therefore request the following information as soon as possible but no later than March 28, 2024:

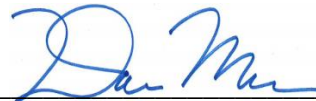
1. For the final rule, will the FTC update their assessment to include the full costs on directly impacted entities associated with the proposed rule such as additional costs for legal services or potential changes to hiring, training, and retaining workers?
2. What impact will this proposed rule have on salaries small businesses pay their employees?
3. How does this proposed rule safeguard the ingenuity, competitiveness, and intellectual property of small firms?
4. When does the FTC expect to release an updated version of this rule?
5. What alternatives have been considered to lessen the impact on small businesses? Provide justification for all of the alternatives considered and the reasons they were not selected.

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.

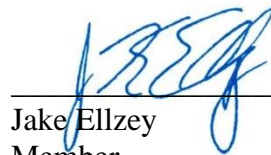
In God We Trust,



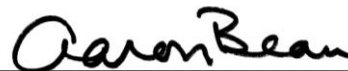
Roger Williams  
Chairman  
Committee on Small Business



Dan Meuser  
Member  
Committee on Small Business



Jake Ellzey  
Member  
Committee on Small Business



Aaron Bean  
Member  
Committee on Small Business

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