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Federal Trade Commission
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Office of the Chair

**Remarks of Chair Lina M. Khan
As Prepared for Delivery
Small Business Majority Event on
Non-Compete Agreements**

April 13, 2023

Thank you, John. Hi, everyone. Let me start by saying thank you to Small Business Majority for inviting me to take part in today's event. I'm thrilled to be here.

At the FTC, we're charged with promoting fair competition. An essential part of that is ensuring that small businesses and entrepreneurs have a fair shot in the marketplace. In practice, that means addressing business practices that prevent small businesses from thriving, impede new entrants, and enable dominant firms to maintain their power in unfair ways.

We've been hard at work doing just that. To name a few examples, we've been:

- Investigating how business credit reporting companies collect and report data on small businesses.¹
- Cracking down on unlawful right-to-repair restrictions, which can waste valuable time and money for consumers and small businesses and close off opportunity for independent repair shops.²
- Looking into how franchisors exercise their power to maintain control over franchisees and their workers.³

A signature part of this work is the FTC's proposed rule to ban employers from imposing noncompete clauses on their workers.⁴ Since publishing the proposal in January—the first step in the rulemaking process—we've been requesting input from a variety of stakeholders, including workers, business owners, and investors.

¹ Press Release, Fed. Trade Comm'n, FTC Launches Inquiry into Small Business Credit Reports (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-launches-inquiry-small-business-credit-reports>.

² Fed. Trade Comm'n, Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers (July 21, 2021), <https://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-repair-restrictions-imposed-manufacturers-sellers>.

³ Press Release, Fed. Trade Comm'n, FTC Seeks Public Comment on Franchisors Exerting Control Over Franchisees and Workers (Mar. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-public-comment-franchisors-exerting-control-over-franchisees-workers>.

⁴ Press Release, Fed. Trade Comm'n, FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition (Jan. 5, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition>

We've received thousands of comments, which is incredibly exciting—and a testament to the impact a final rule could have on people's lives and livelihoods. Thank you to everyone here today who took the time to share their experiences. When you're steeped in the day-to-day operations of running a small business, I know that stepping away from it all isn't always easy. I also recognize that making your voice heard isn't always risk-free. I'm grateful for your input, and for Small Business Majority's latest research on the FTC's proposal.

Conducting surveys like this enhances our understanding of how these pervasive contracts directly affect small business owners—which is particularly important given the lack of publicly available data on the small business landscape.

By design, noncompetes close off a worker's most natural alternative employment options: jobs in the same professional field or geographic area. And while they were long assumed to apply mainly to high-level executives with access to sensitive corporate information, the Commission estimates that they now bind about one in five American workers. That's approximately 30 million people across income and job levels. At the individual level, noncompetes can hinder a worker's ability to pursue better job opportunities and earn higher wages—even harming those who aren't personally bound by one. They can also keep people locked into jobs that might not be the best job for them.

This doesn't just restrict individual workers. The Commission has preliminarily found that, in the aggregate, noncompetes can pose a significant burden on the economy. Research shows that our whole economy is more productive when workers can match better with jobs and businesses can match better with workers. But a recent poll suggests that noncompetes can prevent that from happening.⁵ The poll shows that two in five Americans would be more likely to search for a new job if employers were prohibited from using noncompetes. Some workers may start at a big company, for instance, and realize that it's not the right environment for them—but their noncompete prevents them from being able to leave and join a smaller business.

We also see evidence that the widespread use of noncompetes stifles innovation, entrepreneurship, and new business formation. Rather than spurring dynamism, noncompetes can enable bigger firms to lock out new competitors. By locking workers into jobs, noncompetes can prevent new firms from hiring qualified workers—especially in concentrated markets. How can a new business break into the market if the would-be founder is bound by a noncompete? Or if all the qualified workers are tied up by larger companies with the resources to afford repeated litigation? These are questions that I'm sure many of you have had to think about.

A recent FTC case against two of the three largest manufacturers in the glass container industry demonstrates how noncompetes can restrain fair competition. The complaint alleged that noncompetes locked up highly specialized workers in a highly concentrated industry, potentially depriving new competitors of the talent necessary to enter the market.⁶ This industry

⁵ Clifford Young & Chris Jackson, *Most Americans Support Banning Noncompete Agreements for Workers*, Ipsos (Jan. 6, 2023), <https://www.ipsos.com/en-us/news-polls/most-americans-support-banning-noncompete-agreements>.

⁶ Press Release, Fed. Trade Comm'n, *FTC Cracks Down on Companies That Impose Harmful Noncompete Restrictions on Thousands of Workers* (Jan. 4, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-cracks-down-companies-impose-harmful-noncompete-restrictions-thousands-workers>.

is just one example. There's a huge amount of potential growth and innovation in markets across the American economy, but noncompetes can keep it locked up.

People might worry that eliminating noncompetes would make it impossible for companies to protect their trade secrets. But the Commission preliminarily found that more targeted alternatives, such as trade secret law and nondisclosure agreements, can achieve the same goal without imposing such a burden on the economy. Look at California, North Dakota, and Oklahoma—three states in which employers can't enforce noncompetes. There, industries that depend on trade secrets and other key investments have still flourished.

The rule isn't final. We're eager to hear from as many small business owners as possible. The public comment period closes on April 19th, so there's still time to submit a comment to [regulations dot gov](https://www.regulations.gov) if you haven't already.

To close, I'd like to reiterate my appreciation for Small Business Majority and the critical role they play in supporting America's entrepreneurs. Thank you again to the small business owners participating in today's event and to everyone who has shared their input thus far.