



Comments of the Regulatory Action Center

RE: Non-Compete Clause Rulemaking

Matter No. P201200

The Regulatory Action Center at FreedomWorks Foundation is dedicated to educating Americans about the impact of government regulations on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rulemaking process of government agencies to which they are entitled to contribute.

On behalf of the below-signed individuals, FreedomWorks Foundation appreciates the opportunity to offer these comments opposing the Federal Trade Commission's proposed ban on non-compete clauses in employment agreements.

Non-compete agreements bar employees from taking a job with their employer's competitors after their employment ends. Such agreements are generally limited in time and geographic scope. The Federal Trade Commission (FTC) has proposed to ban all non-compete contracts (except those in connection with the sale of a business) as an "unfair method of competition" under Sec. 5 of the FTC Act.

Employers use non-compete agreements to protect their investments in (1) their employees and (2) their businesses. Employers spend money to train their employees. Employees have access to business practices, including trade secrets, and to client lists that would provide a new employer an unfair competitive advantage and reduce the value of the incumbent employer's investment in building their business. The FTC admits that its proposed rule could reduce capital investment, worker training, and even job growth—and there is some evidence that the ban could cause prices to increase. As for the benefits, the best case scenario would be a slight wage increase for hourly workers and a bigger increase for CEOs, who do not need the government's protection in negotiating their employment agreements.

It is far from clear that Sec. 5 of the FTC Act gives the FTC the power to make rules prescribing "unfair methods of competition." Rather, the FTC's authority is intended to be used on a case-by-case basis. And the FTC has scant enforcement experience with non-compete clauses, relying on academic studies with mixed results to justify the sweeping ban.

Every state already regulates non-compete agreements: 47 states allow them with limits on how long they can be in effect, the geographic area they can cover, and whether they can be used with low-wage workers. Three states ban them entirely.

Despite little enforcement experience, mixed evidence of the harms versus the benefits of non-compete clauses, and lack of clear congressional authority, the FTC's proposal would substitute the whim of three bureaucrats for the considered judgments of state legislators and hundreds of years of court precedent—and void 30 million contracts in the process. If the

Commission moves forward with the rule as proposed, it will be up to the courts to protect American businesses and workers from the unintended consequences of the FTC's power grab.

Respectfully submitted,