

## Advocacy Submits Comments on FTC's Non-Compete Clause NPRM

On January 19, 2023, the Federal Trade Commission (FTC) published a notice of proposed rulemaking for the Non-Compete Clause Rule. The proposed rule would make it an unfair method of competition for an employer to enter into or attempt to enter into a non-compete clause with a worker; to maintain with a worker a non-compete clause; or, under certain circumstances, to represent to a worker that the worker is subject to a non-compete clause. The proposed rule will require employers to rescind current non-compete clauses and will not apply to franchisees.

On March 20, 2023, the Office of Advocacy (Advocacy) submitted comments on the Federal Trade Commission's notice of proposed rulemaking on the Non-Compete Clause Rule.

- The FTC estimates that 2.94 million small firms, comprising of 3.08 million small establishments, will be impacted by the proposed rule. The FTC estimates that the direct costs of updating contractual practices would be \$317.88 to \$563.84 for single establishment firms. However, this does not consider other costs, including legal costs, that would be associated with the rule change.
- Advocacy asserted that the proposed rule could be detrimental to small firms that use non-compete clauses to protect their businesses. As small businesses stated at Advocacy's roundtable and at the FTC's forum on the issue, non-compete clauses are used to protect things such as client lists, businesses practices, teaching techniques, and technology.
- Conversely, businesses in the medical profession argued non-compete clauses prevented them from working in their fields. Similarly, franchisees stated that non-compete clauses are problematic when their franchise agreement ends because the franchisor may make unreasonable demands when renegotiating their contract.
- Advocacy argued that, because of differing concerns among small entities, an outright ban of non-compete clauses is inappropriate. Accordingly, Advocacy encouraged the FTC to adopt an approach that addresses the different concerns of small entities in the marketplace, estimate the full impacts of changes to non-compete clauses, and consider and analyze alternative approaches for small entities to minimize adverse impacts while achieving agency objectives.

A complete copy of Advocacy's letter to the FTC [is available online](#). For more information, please contact Jennifer A. Smith, Assistant Chief Counsel, at [Jennifer.Smith@sba.gov](mailto:Jennifer.Smith@sba.gov).