

May 24, 2024

The Honorable Lina Khan
Chair
Federal Trade Commission
Washington, DC 20580

The Honorable Melissa Holyoak
Commissioner
Federal Trade Commission
Washington, DC 20580

The Honorable Rebecca Kelly Slaughter
Commissioner
Federal Trade Commission
Washington, DC 20580

The Honorable Andrew N. Ferguson
Commissioner
Federal Trade Commission
Washington, DC 20580

The Honorable Alvaro Bedoya
Commissioner
Federal Trade Commission
Washington, DC 20580

Re: Request to Stay and Delay Implementation of the Noncompete Rule

Dear Commissioners:

On behalf of the undersigned organizations, we request that the Commission stay the effective date of the Non-Compete Clause Final Rule (89 Fed. Reg. 38,342-38,506, “Noncompete Rule”) to allow for judicial review.

Under Section 705 of the Administrative Procedure Act, agencies “may postpone the effective date of action taken by it, pending judicial review” when “justice so requires.” We strongly encourage you to exercise this power on the Noncompete Rule as FTC and other agencies recently have on other rulemakings. The Commission already elected to stay its CARS Rule pending litigation.¹ Similarly, the Securities and Exchange Commission acted to stay its Climate Disclosure Rule,² and the National Labor Relations Board delayed the effective date of the Joint Employer Rule.³

A stay would be a prudent step. The impending effective date of the Noncompete Rule and lack of Commission guidance on key pieces of it – such as what it means to be in a policy-making position or how the Commission will apply its “functional” test – has creating substantial uncertainty for businesses and employees around the country. In delaying the CARS Rule, the Commission cited “misunderstandings of the Rule” and the “uncertainty” that resulted as a

¹ Order Postponing Effective Date of Final Rule Pending Judicial Review, Federal Trade Commission, January 18, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/P204800CARSExtensionOrder.pdf.

² Order Issuing Stay, Securities and Exchange Commission, April 4, 2024, <https://www.sec.gov/files/rules/other/2024/33-11280.pdf>.

³ Board Extends Effective Date of Joint-Employer Rule to February 26, 2024, National Labor Relations Board, November 16, 2023, <https://www.nlr.gov/news-outreach/news-story/board-extends-effective-date-of-joint-employer-rule-to-february-26-2024>.

reason for delay.⁴ A brief, voluntary delay would provide invaluable certainty as to the Rule's potential effective date and conserve significant resources.

Although the Noncompete Rule's legal fate remains in question, it is already imposing significant costs and uncertainty on the U.S. economy. Businesses are identifying existing noncompetes and notifying employees and former employees that their noncompetes may no longer be enforceable. Companies are incurring substantial legal costs as they explore other tools to attempt to protect their investments, and workers are losing training opportunities and bargaining power to negotiate compensation.

Noncompete agreements have been enforceable since before the country's founding. A short implementation delay of a few months should impose no meaningful costs, and certainly no unexpected costs, on anyone. If the Commission ultimately succeeds in court, only a small number of noncompetes for policy-making senior employees entered into between September 4, 2024 and the final effective date would be impacted given the rule's retroactivity requirements.

Finally, a brief delay would comport with the Commission's mission of enforcing federal law in a cost-effective manner. As set forth in the Commission's current [strategic plan](#), the Commission "strives to efficiently address the competitive concerns raised by a merger or business practice and works toward a solution that maintains competition in the marketplace without unduly burdening legitimate business activity." In keeping with this goal, a brief delay would provide invaluable certainty to the business community and, if the Rule ultimately is enjoined, potentially conserve significant resources around the country.

We thank you for your consideration of this request.

Sincerely,

National

ACA International
Advanced Medical Technology Association
Alternative Investment Management Association
American Bankers Association
American Coatings Association
American Council of Engineering Companies
American Foundry Society
American Hospital Association
American Hotel & Lodging Association
American Property Casualty Insurance Association
American Staffing Association
American Trucking Association
Associated Builders and Contractors

⁴ Order Postponing Effective Date of Final Rule Pending Judicial Review, Federal Trade Commission, January 18, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/P204800CARSExtensionOrder.pdf.

Associated Equipment Distributors
Associated General Contractors of America
Business Roundtable
Consumer Technology Association
Direct Selling Association
Federation of American Hospitals
FIA Principal Traders Group
FMI - The Food Industry Association
Foodservice Equipment Distributors Association
Futures Industry Association
HR Policy Association
Independent Electrical Contractors
Independent Insurance Agents & Brokers of America
Independent Lubricant Manufacturers Association
International Agribusiness Council
International Franchise Association
Investment Adviser Association
Meat Institute
MEMA, The Vehicle Suppliers Association
Metals Service Center Institute
MFA, Managed Funds Association
National Association of Business and Insurance Professionals
National Association of Convenience Stores
National Association of Manufacturers
National Association of Mutual Insurance Companies
National Association of Wholesaler-Distributors
National Automobile Dealers Association
National Federation of Independent Business
National Lumber & Building Material Dealers Association
National Mining Association
National Newspaper Association
National Pest Management Association
National Propane Gas Association
National Restaurant Association
National Tooling and Machining Association
National Waste & Recycling Association
NCTA - The Internet & Television Association
Precision Machined Products Association
Precision Metalforming Association
Reinsurance Association of America
Retail Industry Leaders Association
Securities Industry and Financial Markets Association
The Council of Insurance Agents and Brokers
U.S. Chamber of Commerce
U.S. Council for International Business
USTelecom - The Broadband Association

Wholesale & Specialty Insurance Association

Alabama

Prattville Area Chamber of Commerce
Selma and Dallas County Chamber of Commerce

Alaska

Alaska Chamber

Arizona

Arizona Chamber of Commerce and Industry
Buckeye Valley Chamber of Commerce
Carefree Cave Creek Chamber of Commerce
Chandler Chamber of Commerce
Greater Flagstaff Chamber of Commerce
Greater Phoenix Chamber
Green Valley Sahuarita Chamber of Commerce
Lake Havasu Area Chamber of Commerce
Mesa Chamber of Commerce
Nogales Santa Cruz County Chamber of Commerce & Visitor Center
Northwest Valley Chamber of Commerce
Peoria Chamber of Commerce
Prescott Valley Chamber of Commerce
Queen Creek Chamber of Commerce
Southwest Valley Chamber
Tucson Metro Chamber
West Valley Chamber of Commerce Alliance
Wickenburg Chamber of Commerce

Arkansas

AR State Chamber/AIA
Rogers-Lowell Chamber of Commerce

California

Brea Chamber of Commerce
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Colusa County Chamber of Commerce
Dana Point Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Grass Valley Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Laguna Niguel Chamber of Commerce
Lincoln Area Chamber of Commerce
Long Beach Area Chamber of Commerce
Modesto Chamber of Commerce

Murrieta/Wildomar Chamber of Commerce
Newport Beach Chamber of Commerce
North San Diego Business Chamber
Palos Verdes Peninsula Chamber of Commerce
San Juan Capistrano Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santee Chamber of Commerce
Simi Valley Chamber of Commerce
Tracy Chamber of Commerce
West Ventura County Business Alliance
Western States Trucking Association
Yorba Linda Chamber of Commerce

Colorado

Greater Woodland Park Chamber of Commerce
Vail Valley Partnership

Florida

Florida Chamber Litigation & Regulatory Reform Center
Lakeland Chamber of Commerce
Venice Area Chamber of Commerce

Georgia

Barrow County Chamber of Commerce
Fayette Chamber of Commerce
Jackson County Area Chamber of Commerce
Newton Chamber of Commerce

Idaho

Boise Metro Chamber of Commerce
Greater Idaho Falls Chamber of Commerce
Pocatello-Chubbuck Chamber of Commerce, Inc.
Twin Falls Area Chamber of Commerce

Illinois

Chicagoland Chamber of Commerce
GLMV Chamber of Commerce
Grundy County Chamber of Commerce & Industry
Illinois Chamber of Commerce
Joliet Region Chamber of Commerce & Industry
Quad Cities Chamber of Commerce
The Greater Springfield Chamber of Commerce
Western DuPage Chamber of Commerce

Indiana

Fulton County Chamber of Commerce

Greater Lawrence Chamber of Commerce
Greater Valparaiso Chamber of Commerce
Indiana Chamber of Commerce
Shelby County Chamber of Commerce
South Bend Regional Chamber of Commerce
Tipton County Chamber of Commerce

Iowa

Iowa Association of Business and Industry

Kansas

Greater Topeka Chamber

Kentucky

Commerce Lexington
Greater Louisville, Inc.
Kentucky Chamber
Northern Kentucky Chamber of Commerce
Union County Chamber of Commerce

Louisiana

One Acadiana

Maine

Maine State Chamber of Commerce

Maryland

Maryland Chamber of Commerce

Massachusetts

Greater Boston Chamber of Commerce
South Shore Chamber of Commerce

Michigan

Battle Creek Area Chamber of Commerce
Cadillac Area Chamber of Commerce
Detroit Regional Chamber
Grand Rapids Chamber
Hartland Area Chamber of Commerce
Michigan Chamber of Commerce
Midland Business Alliance

Minnesota

Albert Lea-Freeborn County Chamber of Commerce
Greater Mankato Growth
I-94 West Chamber of Commerce

Lonsdale Area Chamber of Commerce
Minnesota Chamber of Commerce
SouthWest Metro Chamber of Commerce

Mississippi

Mississippi Economic Council

Missouri

Missouri Chamber of Commerce and Industry

Montana

Kalispell Chamber of Commerce
Montana Chamber of Commerce

Nebraska

Grand Island Area Chamber of Commerce
Kearney Area Chamber of Commerce
Nebraska Chamber of Commerce
Seward County Chamber & Development Partnership
Washington County Chamber of Commerce

Nevada

Carson City Chamber of Commerce
Henderson Chamber of Commerce
Vegas Chamber
White Pine Chamber of Commerce

New Hampshire

Business and Industry Association New Hampshire

New Jersey

New Jersey State Chamber of Commerce

New York

Capital Region Chamber of Commerce
The Business Council of New York State

North Carolina

Cabarrus Regional Chamber of Commerce
Highlands Chamber of Commerce/Visit Highlands NC

Ohio

Brookville Area Chamber of Commerce
Dayton Area Chamber of Commerce
Huber Heights Chamber of Commerce

Lima Allen County Chamber of Commerce
Ohio Chamber of Commerce
Shawnee Hills Area Chamber of Commerce

Oklahoma

State Chamber of Oklahoma

Oregon

Bend Chamber of Commerce
Canby Area Chamber of Commerce
Oregon Business & Industry
Salem Area Chamber of Commerce

Pennsylvania

Chamber of Business and Industry of Centre County
Hanover Area Chamber of Commerce
Harrisburg Regional Chamber
Lancaster Chamber of Commerce and Industry
Mechanicsburg Chamber of Commerce
Pennsylvania Chamber of Business and Industry
Pennsylvania Food Merchants Association
Schuylkill Chamber of Commerce
Somerset County Chamber of Commerce
Southern Chester County Chamber of Commerce
TriCounty Area Chamber of Commerce
Venango Area Chamber of Commerce

South Carolina

Anderson Area Chamber of Commerce
South Carolina Chamber of Commerce

Texas

Fort Worth Chamber of Commerce
Longview Chamber of Commerce
Nacogdoches County Chamber of Commerce

Utah

ChamberWest Chamber of Commerce
Salt Lake Chamber
St. George Area Chamber of Commerce
Utah Pacific Islander Chamber of Commerce

Virginia

Central Fairfax Chamber of Commerce
ChamberRVA

Loudoun County Chamber of Commerce
Lynchburg Regional Business Alliance
Roanoke Regional Chamber of Commerce
Virginia Chamber of Commerce

Washington

Association of Washington Business
Greater Spokane Valley Chamber of Commerce
Shelton-Mason County Chamber of Commerce
Washington Retail Association

Wisconsin

Beaver Dam Area Chamber of Commerce
Metropolitan Milwaukee Association of Commerce
Mosinee Area Chamber of Commerce
Oshkosh Chamber of Commerce
Rice Lake Area Chamber of Commerce
Wisconsin Manufacturers & Commerce

Wyoming

Campbell County Chamber of Commerce
Greater Cheyenne Chamber of Commerce
Jackson Hole Chamber of Commerce