

Investor Comment Letter to the Federal Trade Commission

Non-Compete Clause Rulemaking, Matter No. P201200

Response to Request for Comment on the proposed Noncompete Clause Rule (NPRM) Docket ID FTC-[2023-0007](#)

April 19th, 2023

Dear Chair Khan,

We are a diverse group of long-term public equity investors representing \$436 billion in assets under management writing to register our support for your proposed plan to ban noncompete agreements. We believe an inclusive labor market is integral to corporate long-term value and believe there is an unequivocal business and economic case for banning noncompetes. A ban on noncompetes across the country by the Federal Trade Commission would be a powerful and comprehensive way of making the economy more dynamic, innovative, and equitable.

We especially support banning corporate noncompetes for frontline and essential workers, including the contracted workforce. These segments of the labor force predominantly are employed in health care, food and agriculture, and the industrial, commercial, residential facilities and services industry, and predominantly must physically show up to their job.^{1,2} Across industries, Black and Hispanic workers are disproportionately represented in the lowest paid frontline occupations, (21 and 24 percent, respectively) compared to white and Asian workers (9 and 13 percent).³

We recognize that deep-rooted and longstanding systemic and institutional discriminatory policies, including noncompete contracts, have disadvantaged these populations. These enduring disparities affect corporate culture and hinder the freedom to negotiate for better pay or seek new employment. For example, research has shown that women and people of color are less likely to negotiate or violate noncompetes than their white counterparts.⁴ These outcomes artificially restrict the talent pool for companies to recruit from, which also hinders corporate growth, particularly during the current period of worker shortage.

Ample evidence demonstrates that noncompete clauses have increased racial (and gender) wage gaps by systematically suppressing the wages of non-white workers. Despite periods of economic growth and contraction, income disparities have persisted over time. Income inequality is a systemic risk that has far reaching impacts on the economy and puts the economic system at risk of underperforming from inhibited innovation, entrepreneurship, and diversity. The Covid-19 crisis further exposed the vulnerability of a system that has not fully accounted for wealth or income inequality. Barriers to progress like noncompetes will ensure that Black Americans continue to make 73.4 cents on the dollar earned by white Americans.⁵

While noncompetes may serve a limited purpose to safeguard trade and other firm specific secrets, we believe that noncompetes are particularly harmful when they impact workers who are least exposed to trade secrets. A recent Economic Policy Institute survey analysis of the national prevalence of noncompetes found that while private sector business employees with high pay or high levels of education are more likely to use noncompetes, they have become

¹ <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/>

² <https://www.brookings.edu/research/to-protect-frontline-workers-during-and-after-covid-19-we-must-define-who-they-are/>

³ <https://www.niussp.org/education-work-economy/frontline-workers-in-the-u-s-race-ethnicity/>

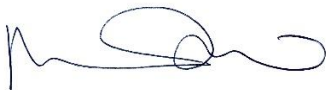
⁴ <https://digitalcommons.law.seattleu.edu/sulr/vol39/iss3/13/>

increasingly common in work segments with low pay and where workers have limited education credentials.⁵ The study also found that nearly 30 percent of the businesses where the average wage was less than \$13 an hour used noncompete agreements with all employees.⁶ Employees earning at or below this average wage tend to perform duties using little or no advanced technical skills, which inherently does not require handling trade secrets directly.⁷ Noncompetes also inhibit the acquisition of new skills. These restrictions have a long-term, systemic impact that clearly outweigh the risks of this segment of workers having access to proprietary information.

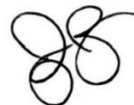
Banning noncompetes removes an important obstacle toward the freedom to pursue wage growth, acquire new skills, and build a business.⁸ As the Commission notes, there is overwhelming evidence that noncompete clauses are harmful to workers and consumers, but the case that noncompete clauses benefit the labor force is weak. Restricting worker mobility has spillover effects where workers—even those not bound by noncompetes—experience reduced mobility, lower wages, and receive fewer job offers.⁹ Conversely, evidence shows the link between corporate outperformance and higher wages paid during the downturn of 2020, supporting the case for corporate resilience through the provision of higher wages.¹⁰

In sum, as long-term investors, we believe companies that invest in their workforce for long-term retention and growth, without using the artificial barrier of noncompete agreements, will be better positioned to respond to labor shortages and economic downturns. Your proposal helps to address important, market-wide, systemic risks from wealth inequality that can help to build a more resilient society and workforce with job mobility, higher pay, and skills acquisition. For all the above reasons, we strongly support the FTC's proposed Noncompete Clause Rule. For any questions, please contact Marcela Pinilla at marcela@zevin.com.

Sincerely,



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Director of Sustainable Investing
Zevin Asset Management



Josh Zinner
Chief Executive Officer
Interfaith Center on Corporate Responsibility

⁵ <https://www.epi.org/publication/noncompete-agreements/>

⁶ <https://www.epi.org/publication/noncompete-agreements/>

⁷ https://scholarlycommons.law.case.edu/faculty_publications/1641/

⁸ <https://justcapital.com/news/chart-of-the-week-companies-paying-a-fair-wage-outperform-peers-in-the-downturn/>

⁹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3027715

¹⁰ <https://justcapital.com/news/chart-of-the-week-companies-that-prioritize-their-workers-continue-to-outperform-the-market/>

Investor signatories

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Caisse De Pension Hewlett-Packard Plus
Caisse De Pensions De L'etat De Vaud (Cpev)
Caisse De Pensions Du Cern
Caisse De Pensions Du Personnel Communal De
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Caisse De Pensions Eca-Rp
Caisse De Pensions Féd. Int. Des Stés. De La Croix-
Rouge Et Du Croissant-Rouge
Caisse De Prév. Des Fonctionnaires De Police & Des
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Caisse De Prévoyance De L'etat De Genève Cpeg
Caisse De Prévoyance Des Interprètes De
Conférence (Cpic)
Caisse De Prévoyance Du Personnel De La Ville De
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Caisse De Prévoyance Du Personnel De L'etat De
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Caisse Intercommunale De Pensions (Cip)
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Fondation De Prévoyance Des Paroisses Et
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Fondation De Prévoyance Du Groupe Bnp Paribas En
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Fondation De Prévoyance Edmond De Rothschild
Fondation De Prévoyance Professionnelle En Faveur
De Aromed
Fondation De Prévoyance Romande Energie
Fondation Interprofessionnelle Sanitaire De
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Fondation Leenaards
Fondation Patrimonia
Fondazione Ticinese Per Il Secondo Pilastro
Fondo Di Previdenza Per Il Personale Dell'ente
Ospedaliero Cantonale
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Fonds Interprofessionnel De Prévoyance (Fip)
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Gebäudeversicherung St. Gallen
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Impact Investors Pbc
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Pensionskasse Bank Cic (Schweiz)
Pensionskasse Basel-Stadt
Pensionskasse Bühler Ag Uzwil
Pensionskasse Caritas
Pensionskasse Der Basler Kantonalbank
Pensionskasse Der Diözese St.Gallen
Pensionskasse Der Schweizer Paraplegiker-Gruppe

Nottwil
Pensionskasse Der Schweizerischen Nationalbank
Pensionskasse Der Stadt Biel
Pensionskasse Der Stadt Frauenfeld
Pensionskasse Der Stadt Weinfelden
Pensionskasse Der Stadt Winterthur
Pensionskasse Der Stadt Zug
Pensionskasse Der Technischen Verbände Sia Stv
Fsaï Usic
Pensionskasse Des Kantons Nidwalden
Pensionskasse Graubünden
Pensionskasse Pro Infirmis
Pensionskasse Römisch-Katholische Landeskirche
Des Kantons Luzern
Pensionskasse Schaffhausen
Pensionskasse Somedia
Pensionskasse Srg Ssr
Pensionskasse Stadt Luzern
Pensionskasse Stadt St. Gallen
Pensionskasse Unia
Personalvorsorgekasse Der Stadt Bern
Personalvorsorgestiftung Der Accenture Schweiz
Personalvorsorgestiftung Der Ringier Gruppe
Personalvorsorgestiftung Der Würth-Gruppe
Schweiz
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Stiftung Abendrot
Stiftung Auffangeinrichtung Bvg
Stiftung Personalvorsorge Liechtenstein
Sva Zürich
Swissbroke Vorsorgestiftung
Symova Sammelstiftung Bvg
Terre Des Hommes Schweiz
The Sustainability Group Of Loring, Wolcott &
Coolidge
Transformative Wealth Management, Llc
Trillium Asset Management
Tulipshare Ltd.
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United Church Funds
Université De Genève (Unige)
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