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To: Federal Trade Commission

From: Alexis Bailey, Vice President of Government Affairs, New Jersey Business and Industry Association

Date: April 19, 2023

RE: Non-compete clause rule (NPRM): 16 CFR 910, RIN 3084-AB74

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On behalf of our member companies that make NJBIA the largest, most impactful voice representing business in New Jersey, I write to you to express our opposition and concern regarding the FTC's rule proposal to create a blanket ban on the use of non-compete agreements. We understand that non-compete agreements can be overly burdensome in some instances and as such are regulated by state laws. However, a total ban on these types of agreements goes far beyond protecting vulnerable workers and will limit the ability of businesses across the country to protect their legitimate business interests.

Reasonable non-compete agreements are an important tool for employers to protect their legitimate business interests. These types of agreements help promote innovation in the U.S. economy and lead to increased investment in businesses and their employees. Non-compete agreements ensure that previous employees are not able to unfairly utilize resources and information they obtained from a previous employer to gain an undue advantage as they move on in their careers.

For example, non-compete agreements can ensure that proprietary information such as formulas or client lists are not utilized unfairly if a former employee intends to work for a direct competitor or start their own business in the same field. As a state that is home to many companies in the pharmaceutical, financial services and technology industries, these agreements are important to the economic vitality of the New Jersey economy.

Moreover, post-employment agreements have historically been a matter of state law. We firmly believe this matter is outside the purview of the Federal Trade Commission and should remain a state level issue. State courts already have the authority to completely strike non-compete agreements that impose an undue hardship on workers. In addition to completely striking an overly burdensome restrictive covenant, New Jersey courts are empowered to "blue pencil" or rewrite unreasonable non-compete agreements to make them enforceable. Through these mechanisms, both workers and employers are already protected from overly restrictive non-compete agreements.

NJBIA has long supported banning non-compete agreements for low-wage workers when discussing policies regarding restrictive covenants with our state legislature. Our organization has suggested restricting the use of non-compete agreements on anyone making less than the statewide average weekly wage. This figure is recalculated each year by the New Jersey Department of Labor and Workforce Development and is roughly

\$70,000 this year. A more tailored measure such as this would address the concerns the FTC has regarding the use of unenforceable non-competes being placed on workers.

We urge the Federal Trade Commission not to move forward with this sweeping rule proposal that would ban all non-competition agreements across the nation. The Federal Government should leave these contracting matters to the states or at the very least consider a more narrow and targeted approach to address specific concerns rather than unnecessarily infringing on employers' ability to protect their interests.

Thank you for taking our comments and concerns into consideration. If you have any questions, I can be reached at [abailey@njbja.org](mailto:abailey@njbja.org).