



The Honorable April Tabor
Secretary, Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite 1, CC-5610 (Annex C)
Washington, DC 20580

Re: Non-Compete Clause Rulemaking, Matter No. P201200

Dear Ms. Tabor:

I am writing on behalf of the membership of the National Association of Benefit and Insurance Professionals (NABIP), which was previously known as the National Association of Health Underwriters (NAHU). The membership of our association includes over 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefit specialists. We appreciate the opportunity to provide comment on the proposed rule titled “Non-Compete Clause Rule,” published in the *Federal Register* on January 19, 2023.

The proposed rule would, among other things, provide that it is 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. While the members of NABIP understand the intent behind the proposed rule, we have concerns about the legal authority available to the Biden administration to issue it. Accordingly, we suggest withdrawing the proposed measure and allowing Congress to act, if it desires, on the status of non-compete clauses nationally. Or this matter may continue to be addressed by state governments, 47 of which already allow for non-compete clauses to be utilized within their jurisdictions.

There are several reasons why NABIP believes that the FTC lacks the statutory authority to promulgate the proposed measure. The proposal cites Sections 5 and 6(g) of the FTC Act as its authority for promulgating the Non-Compete Clause Rule. Section 5 addresses how the Commission may legally address



matters of unfair competition, and that is through individual, specific enforcement actions. Section 6(g) provides narrow authority to develop internal procedural rules. Neither provision, nor any other, authorizes the FTC to adopt generally applicable substantive rules defining unfair methods of competition. Further, nothing in the FTC Act indicates Congressional intent to allow the Commission to invalidate employment contracts on a nationwide scale. In fact, Congress has historically declined to authorize regulations addressing unfair methods of competition. Finally, for more than 200 years, non-competes have been a matter of state law, and this regulation would disrupt state-based regulation. For all these reasons, NABIP suggests that the FTC withdraw this proposed rule and allow this matter to be addressed by Congress.

Thank you for the opportunity to provide input about the proposed regulation. If you have any questions about our comments or need more information, please do not hesitate to contact me at (202) 595-0639 or jtrautwein@nabip.org.

Sincerely,

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Benefits and Insurance Professionals