

## **FTC PROPOSES BROAD BAN ON NON-COMPETES, BUT THERE'S AN EXCEPTION FOR DEALMAKERS**

Jan 10, 2023

Taking aim at what it views as an unfair practice that keeps hundreds of billions of dollars out of workers' pockets, on January 5 the Federal Trade Commission (FTC) issued proposed rulemaking that would effectively ban non-compete agreements across the U.S. economy on a prospective basis, and force the rescission of millions of existing [non-compete clauses](#). The proposed ban is limited only by an exception for dealmakers that permits non-compete agreements to be entered into with "substantial" owners, partners and members of companies in the context of the sale of those companies. As every dealmaker knows, non-competes in a company sale scenario are often a critical safeguard for buyers, helping to ensure the seller doesn't simply open up shop again the next day with a new and competing business.

While this exception may satisfy some concerns, many businesses are already vocally pushing back against the breadth of the proposed rule as an example of dramatic administrative overreach that ignores businesses' legitimate interests in confidentiality and protecting investments in worker training.

Coming on the heels of the FTC's [November 2022 policy statement](#) purporting to more generally expand its jurisdiction under Section 5 of the FTC Act, the proposed rule continues the agency's attempts under current chair Lina Kahn to broaden what constitutes "unfair methods of competition." Expect intense interest and fierce debate now that the rulemaking has been opened up for public comment.

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