



April 19, 2023

Federal Trade Commission
Office of Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex C)
Washington, DC 20580

RE: [RIN 3084-AB74]
Non-Compete Clause Rulemaking, Matter No. P201200

Dear Sir or Madam:

National School Transportation Association (NSTA) is pleased to offer comments to the Federal Trade Commission (FTC) on its Non-Compete Clause Rule, as published in Volume 88 Number 12, of the Federal Register on January 19, 2023.

About The National School Transportation Association

NSTA has been the leading resource for school transportation solutions and the voice for private school bus operators for over 57 years. We are a membership organization for school bus contract-operators engaged primarily in transporting students to and from school and school-related activities. Members range from small family businesses to large multi-state operators. Private school bus contractors account for 38 percent of the nation's pupil transportation services and employ more than 250,000 individuals as bus drivers, mechanics, maintenance workers, dispatch, and office workers. School transportation represents the largest form of mass transportation in the United States, and daily, approximately 25 million K-12 students are transported by an estimated 480,000 yellow school buses.

NSTA Opposes the Proposed Non-Compete Ban

Firstly, as a matter of jurisdiction, NSTA believes the Federal Trade Commission may lack the authority to issue any substantive regulation concerning unfair methods of competition through this rulemaking. Thus, moving forward with adoption will surely lead to litigation and confusion amongst the parties to these types of transactions.

Additionally, we are concerned because claims of widespread abuse in this area are seemingly anecdotal and largely unfounded, and there is clear lack of evidence that indicate state legislatures and courts are not taking proper steps to safeguard workers' rights. According to feedback we have received from our members, there are a number of states, including North Dakota, Oklahoma, and California that continue to provide protections to safeguard workers' rights.

As you know, because a vast amount of contract law is adjudicated at the state level, a federal ban could also cause unintended consequences – causing jurisdictional confusion and actually

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elongating the legal process. For this reason, and as a matter of principle, these proposed restrictions should remain in the realm of state legislatures and state courts.

We are also concerned that the FTC ostensibly ignores the fact that, meaningful negotiations support many such non-compete agreements, for example they include stock or signing bonuses which have already transferred to the employee, as well as separation payments. Stripping away the benefit of what an employer has already bargained and paid for may actually prove to be unconstitutional.

NSTA would also like to highlight that the proposed rule's 25 percent ownership requirement for the sale of business exception is far too high and will impede commercial transactions - if buyers cannot protect their purchase. We do not believe that this outcome is something that the Commission desires.

Finally, it should be noted that trade secret laws do not sufficiently protect employers. The laws are only applicable after damage is done to the business, and in many cases these damages are significant. Keep in mind that non-compete clauses are vital as a protection to keep trade secrets internal. These agreements also prevent executives from leaving a company – while taking employees and clients with them – and causing immediate and direct harm to the business.

Summary and Conclusion

In conclusion, as a matter of principle, NSTA believes in free market competition, while providing protections to safeguard workers' rights. Unfortunately, we strongly feel that these proposed restrictions will likely have unintended consequences on businesses large and small, and will create a system where trade secrets become open game. Fundamentally, the Commission should continue to allow states to provide appropriate jurisdiction in this area.

NSTA appreciates the opportunity to offer comments on FTC RIN 3084-AB74, and we look forward to a continued dialogue with the Agency in monitoring the results of these initiatives. If you have any questions, or need further clarification on our comments is required, please do not hesitate to contact me via email at [REDACTED], or via telephone at [REDACTED].

Sincerely,



Curt Macysyn
Executive Director
National School Transportation Association