

PREPARED STATEMENT OF
COMMISSIONER NOAH JOSHUA PHILLIPS *

of the
FEDERAL TRADE COMMISSION

on

ANTITRUST AND ECONOMIC OPPORTUNITY: COMPETITION IN LABOR
MARKETS

Before the
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* This written statement, my oral testimony, and my responses to questions reflect my views and do not necessarily reflect the views of the Commission or any individual Commissioner.

Chairman Cicilline, Ranking Member Sensenbrenner, Members of the Subcommittee, thank you for the opportunity to appear before you today. I commend you for convening this hearing to discuss policy issues that bear directly on a pressing problem facing American workers.

America has a labor mobility problem. For the past several decades, workers in America have been increasingly likely to move to new places and start new jobs, even to switch jobs in the same location. That is not what we might expect, since the costs of transportation have declined and the costs of communication reduced essentially to zero.

This decline in American labor mobility is bad for workers, and the country as a whole. When Americans can move, they can adjust to changing economic or life circumstances—the prospect of opening a business, getting a better job at a new company, or moving to help a sick parent or a child with a new baby, if they can find work. Labor mobility isn't just about leaving for the job you want tomorrow—it's about making the job you have today better. When you can leave a job, you have greater leverage to improve conditions, including to demand a higher wage.

When workers cannot move, they have less leverage; so it is not surprising that scholars point to declining labor mobility as a culprit in slow wage growth. One important solution is

competition—the more options workers have, the more firms effectively ~~compete~~ **compete** their labor. Policies that favor labor mobility increase that competition; policies that inhibit it—including occupational licensing, no-poach agreements, and ~~no-compete~~ **no-compete** agreements (“non-competes”)—reduce it.

Labor mobility stokes commerce and innovation. It reduces inequality, as people who are less well-off can move to areas where the benefits of economic growth are being shared more broadly. It’s worth noting: evidence shows that people get bigger raises when they switch jobs than they do when they stay where they ⁴are. And, as Yale Law School professor David Schleicher describes in his article “Stuck!”, labor mobility allows the federal economic policies we choose—whatever they are—to work better, as it brings our national economy together. This isn’t about labor versus capital, splitting the pie a different way. It’s about matching workers with employers, increasing the productivity of businesses, empowering workers, and growing the pie for everyone.

All of that is why I am so eager to testify today about occupational licensing, no-poach agreements, and ~~no-compete~~ **no-compete**, the risks they pose, and how the FTC is approaching them.

Occupational licensing

All of us are familiar with professions that require licenses, like medicine and law. And licensing has a role to play in protecting health and safety. But studies suggest some 25-30% of the U.S. workforce is now employed in occupations requiring a license—often in areas like hair

braiding or makeup application, where the need for licensing is less apparent.⁶ Like the guilds of old, licensing regimes can impede competition and keep people from pursuing the work they want. Morris Kleiner and Alan Krueger estimated they reduced employment by nearly three million jobs, and cost consumers over \$200 billion.⁷ That may be good for incumbents who are shielded from competition,⁸ and those who make money off licensing, like for-profit and other occupational schools,⁹ but it's bad for consumers,¹⁰ raising prices, dampening innovation, and making markets less responsive to consumer demand. It is also bad for workers, especially the most vulnerable: the marginal worker, the young person who wants to start their career, the servicemember or their spouse.¹¹ Occupational licensing leaves these workers stuck.¹²

Part of the problem is that states empower members of professions to erect barriers around themselves: the fox guarding the henhouse.¹³ When the North Carolina Board of Dental Examiners tried to ban low-cost teeth whitening services sold at drug stores, the Federal Trade

⁶ U.S. DEPT OF THE TREASURY, COUNCIL OF ECON. ADVISORS & DEPT OF LABOR, OCCUPATIONAL LICENSING: A FRAMEWORK FOR REFORM (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

Non-Compete Agreements

Non-competes are contractual terms in which the worker promises their employer a limitation on the worker's labor, generally after their employment ends. Members of the House and Senate, and state legislators, are devoting increased attention and skepticism—to non-competes. English common law was similarly skeptical, deeming them “great abuses” by employers that could lead to “the loss of [one's] livelihood and the subsistence of his family” and an abuse against society “by depriving it of a useful member.”¹⁸ Today, the enforceability of non-competes is a matter of state law, which varies widely. California generally prohibits non-competes. [TTr24.ule](#)

