


From: Carlino, Gerald A. <jerry.carlino@phil.frb.org>
Sent: Monday, January 30, 2023 9:48 AM
To: Wilkins, Elizabeth <ewilkins1@ftc.gov>
Subject: RE: FTC Announces Proposed Rule on Noncompete Clauses

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Dear Ms. Wilkins.

Thank you for mentioning my research studying state enforceability of non-compete agreements on startup activity in the commission's NPRM report. In summary, I find no evidence that increased enforcement of employee noncompete agreements in Michigan negatively affected the startup entry rate or the overall job creation rate of new firms. If anything, increased enforcement appears to have had positive effects on the job creation rate of startups in Michigan.



But I have misgivings with comments your staff stated regarding my findings. On page 28 of the report, the commission is concerned that:

“[T]he job creation rate calculated in this study is the ratio of jobs created by startups to overall employment in the state: therefore, the job creation rate at startups may rise either because the number of jobs created by startups rose, or because employment overall fell. The study does not investigate which of these two factors drives the increase in the job creation rate at startups.”

But the commission’s claim might be a cause for concern if I looked at the job creation rate for a single year or a few years, but my study considers a 37-year period, 1977 to 2013. Importantly, my findings are based on a difference-in-difference methodology measuring the *average* change in the job creation rate for Michigan (the treatment group), relative to the *average* change in the job creation rate for the control group. I do not believe that the objection raised in the commission’s report diminishes my findings.

In my paper, I also consider the extent to which increased enforcement in Michigan affected innovation in the state. In evaluating several studies of increased enforcement on innovation, the commission notes that it

“[P]laces relatively greater weight [on the findings] on studies focused on multiple legal changes to non-compete clause enforceability.”

But there is a serious problem with studies based on multiple legal changes to non-compete clause enforceability from a variety of states. It is highly likely that both employers and employees will anticipate the changes in enforceability *ex ante* and adjust their behavior before the effective date of new law, thereby biasing the results. In March 1985 Michigan’s legislature inadvertently transformed the state from a non-enforcing to enforcing state making the change a surprise both to employers and employees. I choose the Michigan legislative change because it allows for the estimation of the causal effect of enforcement on startup activity.

Sincerely,
Gerald Carlino

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