

## U.S. Senators Seek Formal Investigation Of Non-Compete Use And Impact

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Earlier this month, a group of six United States Senators made a joint request for the Government Accountability Office (GAO) to investigate the impact of non-compete agreements on workers and the U.S. economy as a whole. This action suggests that the federal non-compete reform effort is not going away.

### Recent Legislative Efforts

On February 18, 2019, [we reviewed](#) a new bill by Florida Senator Marco Rubio to prohibit non-competes for low-wage employees. That bill followed an effort in 2018 by Democrats in both houses of Congress to ban non-competes altogether. Although Senator Rubio's bill represents a more limited attack on non-competes, we noted that it "suggests a level of bipartisan support that was not previously apparent."

### The Joint Letter

The recent [joint letter to the GAO](#), issued on March 7, 2019, is signed by two Senators who were not involved in the prior legislative efforts: Democratic Senator Tim Kaine (VA); and Republican Senator Todd Young (IN). This represents additional evidence of bipartisanship on non-compete reform.

The joint letter does not formally oppose the use of non-competes. Nevertheless, from the Senators' explanation for their request, it is clear that they believe the use of non-competes has become excessive, and that significant harm is being done to workers and the greater economy as a result.

In the letter, the Senators cite three ways in which non-competes allegedly are being abused:

- The allegedly excessive imposition of non-competes on low-wage workers;
- The alleged inability of workers to "engage in genuine negotiation over these agreements"; and
- The belief that "most working under a non-compete were not even asked to sign one until after receiving a job offer."

Further, the Senators allege that "[a]cademic experts and commentators from across the political spectrum have raised serious concerns about the use and abuse of these clauses[.]"

Based on the above-referenced concerns, the letter instructs the GAO to investigate the following questions:

- What is known about the prevalence of non-compete agreements in particular fields, including low-wage occupations?
- What is known about the effects of non-compete agreements on the workforce and the economy, including employment, wages and benefits, innovation, and entrepreneurship?
- What steps have selected states taken to limit the use of these agreements, and what is known about the effect these actions have had on employees and employers?

Of note, these questions appear to address broader concerns about the use and impact of non-compete agreements than the discreet issues raised by the alleged "abuses" set forth above. The letter does not provide a deadline for the GAO to issue its report. However, the [GAO's explanation of how it handles investigation](#)

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[requests](#) sets forth a six-step process, from Congress making the request to the issuance of the report. Further, while the GAO protocol does not offer a time-frame for every step, it does state that it “typically” takes “about 3 months” to simply design the scope of the investigation. Consequently, it would be reasonable to anticipate waiting months at least for the GAO to issue the report.

### **Where Does This Leave Us?**

As noted above, the joint letter indicates that there is growing bipartisan support for restricting the use of non-competes on a nation-wide level. At the same time, by expressing the need for additional information about the use and impact of non-compete agreements on U.S. workers, the Senators may not move forward with further proposed non-compete legislation until they receive that information and take the time to fully digest its implications.

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