

## **Proposed FTC Rules Prohibiting Noncompete Agreements Excludes 'Banks'**

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The Federal Trade Commission (FTC) has just published proposed rules that would prohibit noncompete agreements between employers and workers. The rules are relatively short and to the point. Many banks have used noncompete agreements to protect the operations of their businesses. The proposed FTC rules do not mention banks, but the commission's commentary on the proposed rules states that they do not apply to some entities such as certain banks, savings and loan institutions, federal credit unions, and other named entities. The commentary does not explain the meaning of "certain banks," but it does cite directly to Section 15 U.S.C. 45(a)(2) of the FTC Act, which states that the FTC may prevent entities from engaging in unfair methods of competition; however, the section excludes certain entities, including banks. In addition, Section 15 U.S.C. 57a(f) states that for purposes of the act, the term "bank" means a national bank, a member bank of the Federal Reserve System, or a bank insured by the Federal Deposit Insurance Corporation.

It should be noted that while "banks" are excluded, the FTC Act in these sections says nothing about "bank holding companies." Thus, with respect to noncompete agreements, assuming the banking regulators do not take action similar to the FTC, such agreements may continue to be used by banks.

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