COALITION FOR A
DEMOCRATIC WORKPLACE

May 12, 2025

The Honorable Russel Vought
Director
Office of Management and Budget
725 17th St NW,
Washington, DC 20503

Re: Request for Information on Deregulation (FR Doc. 2025-06316) (90 FR 15481)

Dear Director Vought:

The Coalition for a Democratic Workplace[1] (CDW) thanks you for the opportunity to respond to the Office of Management and Budget's (OMB) Request for Information (RFI) on deregulation. We write to request that OMB consider rescinding the following final rules issued by the National Labor Relations Board (NLRB), Federal Trade Commission (FTC), and subagencies of the Department of Labor (DOL), as part of its deregulatory efforts:

- Standard for Determining Joint Employer Status (RIN 3142-AA21) (NLRB)
- Election Procedures (RIN 3142-AA18) (NLRB)
- Representation-Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships (RIN 3142-AA22) (NLRB)
- Non-Compete Clause Rule (RIN 3084-AB74) (FTC)
- Joint Employer Status Under the Fair Labor Standards Act (RIN 1235-AA37) (WHD, DOL)
- Revision of the Form LM-10 Employer Report (RIN 1245-AA13) (OLMS, DOL)

CDW would like to share the letter that we recently sent to the National Labor Relations Board, Federal Trade Commission, and Department of Labor urging the agencies to rescind these final rules as part of their review of all regulations under their purview as required by Executive Order 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*.

[1] CDW is a broad-based coalition of hundreds of organizations representing hundreds of thousands of employers and millions of employees in various industries across the country concerned with a longstanding effort by some in the labor movement to make radical changes to the National Labor Relations Act (NLRA) without regard to the severely negative impact they would have on employees, employers, and the economy. CDW was formed in 2005.

As we explain in our letter, these regulations, if kept in effect, would have devastating consequences for the economy, business community, and workers nationwide, including decimating successful business models, infringing on workers' rights, and violating employers' due process rights. While the NLRB's joint employer rule and the FTC's non-competes rule have both been struck down by federal courts,[2] the rules should still be formally rescinded by the agencies to ensure they will not be resurrected in the future.

Rescinding these rules – and, in the case of the FTC's noncompetes rule, abandoning the defense of the rule in court – would align with the Trump administration's deregulatory agenda and save the agencies in question significant resources. CDW, therefore, urges OMB to rescind these Biden-era final regulations.

Sincerely,

Coalition for a Democratic Workplace

[2] Joint Employer: The U.S. District Court of the Eastern District of Texas nullified the 2023 Final Rule in March 2024, saying the rule "would treat virtually every entity that contracts for labor as a joint employer because virtually every contract for third-party labor has terms that impact, at least indirectly… essential terms and conditions of employment."

Non-competes: In August 2024, the U.S. District Court for the Northern District of Texas held in *Ryan, LLC v. FTC* that the FTC's Final Rule is unlawful and blocked the rule nationwide. The FTC subsequently appealed the decision to the U.S. Court of Appeals for the 5th Circuit and submitted its opening brief in January 2025.

COALITION FOR A
DEMOCRATIC WORKPLACE

April 17, 2025

The Honorable Lori Chavez-DeRemer
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

The Honorable William B. Cowen
Acting General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570

The Honorable Donald Harrison
Acting Administrator
Wage and Hour Division
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

The Honorable Elisabeth Messenger
Director
Office of Labor-Management Standards
U.S. Department of Labor
Room N-5609
200 Constitution Ave NW
Washington, DC 20210

The Honorable Andrew Ferguson
Chairman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Secretary Chavez-DeRemer, Acting General Counsel Cowen, Acting Administrator Harrison, Director Messenger, and Chairman Ferguson:

The Coalition for a Democratic Workplace[3] (CDW) writes to request the National Labor Relations Board (NLRB), Wage and Hour Division (WHD), Office of Labor-Management Standards (OLMS), and Federal Trade Commission (FTC) consider rescinding the regulations listed below as part of their review of all regulations under their purview required by Executive Order 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*. These regulations, if kept in effect, would have devastating consequences for the economy, business community, and workers nationwide, including decimating successful business models, infringing on workers' rights, and violating employers' due process rights. In addition, each regulation falls under at least one of the seven categories that "undermine national interest" as specified in the Executive Order. The regulations are:

- Standard for Determining Joint Employer Status (RIN 3142-AA21) (NLRB)

[3] CDW is a broad-based coalition of hundreds of organizations representing hundreds of thousands of employers and millions of employees in various industries across the country concerned with a longstanding effort by some in the labor movement to make radical changes to the National Labor Relations Act (NLRA) without regard to the severely negative impact they would have on employees, employers, and the economy. CDW was formed in 2005.

- Non-Compete Clause Rule (RIN 3084-AB74) (FTC)
- Joint Employer Status Under the Fair Labor Standards Act (RIN 1235-AA37) (WHD)
- Election Procedures (RIN 3142-AA18) (NLRB)
- Representation-Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships (RIN 3142-AA22) (NLRB)
- Revision of the Form LM-10 Employer Report (RIN 1245-AA13) (OLMS)

President Trump's Executive Order 14219 directs agencies to review all regulations within their jurisdictions and, within 60 days, identify those that fall into any of the following seven categories that "undermine national interest":

- Are unconstitutional or raise constitutional difficulties, such as exceeding the scope of the power vested in the Federal Government by the Constitution;
- Are based on unlawful delegations of legislative power, are based on anything other than the best reading of the underlying statutory authority or provision;
- Implicate matters of social, political, or economic significance that are not authorized by clear statutory authority;
- Impose significant costs upon private parties that are not outweighed by public benefits;
- Harm the national interest by significantly and unjustifiably impeding technological innovation, infrastructure development, disaster response, inflation reduction, research and development, economic development, energy production, land use, and foreign policy objectives; and
- Impose undue burdens on small business and impede private enterprise and entrepreneurship.

Based on these categories, the Office of Information and Regulatory Affairs (OIRA) will publish a regulatory agenda that seeks to rescind or modify the identified regulations.

Below, we provide more detail on the finalized regulations we believe the NLRB, FTC, and subagencies within the Department of Labor (DOL) should consider rescinding and, if applicable, abandoning in court. Each of the identified rules falls under at least one of the seven categories outlined in the Executive Order as undermining the national interest.

Final Rules that Are Currently Being Challenged in Court:
Standard for Determining Joint Employer Status (RIN 3142-AA21) (NLRB)
On October 27, 2023, the National Labor Relations Board under the Biden administration issued a new joint employer standard dramatically expanding the definition of a "joint employer" under the National Labor Relations Act (NLRA). The joint employer standard is used to determine when

two or more entities share responsibility over a shared group of workers. Joint employer status comes with significant liability responsibilities under the NLRA, including collective bargaining obligations and liability for any unfair labor practices committed against the shared employees.

Under the 2023 Final Rule's broader definition, the NLRB would find a business a joint employer of another company's workers if they have indirect or reserved control over the workers' terms and conditions of employment. This standard ropes in essentially every contractual relationship between businesses, decimating the franchise model and destroying small businesses in the process. CDW's comments on the proposal of this rulemaking provide additional detail on the flaws and dangers of this approach.

The new standard is a significant departure from the traditional joint employer definition included in the 2020 Trump-era joint employer final rule, which established that an entity can only be a joint-employer under the NLRA if it *actually* exercises control over the essential terms and conditions of another employer's employees. The Trump-era rule provided much-needed clarity for businesses and protected them from unnecessary involvement in labor negotiations and disputes impacting other workplaces. This clarity is especially necessary in today's world, where large and small businesses alike have contractual relationships with numerous franchisees, vendors, suppliers, and/or contractors. CDW submitted comments in support of the 2020 Final Rule. The expanded joint employer definition under the 2023 Final Rule, however, eliminates that clarity and, instead, imposes significant ambiguity into the standard.

Fortunately, the U.S. District Court of the Eastern District of Texas nullified the 2023 Final Rule in March 2024, saying the rule "would treat virtually every entity that contracts for labor as a joint employer because virtually every contract for third-party labor has terms that impact, at least indirectly… essential terms and conditions of employment." Congress also passed a Congressional Review Act challenge on a bipartisan basis to nullify the rule.[4] Despite opposition from Congress and the courts, the Board initially appealed the district court's decision to the U.S. Court of Appeals for the 5th Circuit. Fortunately, the Board then withdrew its appeal, reinstating the Trump standard, which remains in effect today.

Even though the litigation around this rulemaking is over and the Trump-era standard is in effect, the 2023 Final Rule should be officially rescinded as it aligns with multiple categories that undermine national interest, including implicating matters of economic significance not authorized by clear statutory authority, imposing significant costs upon private parties that are not outweighed by public benefits, imposing undue burdens on small business, and impeding private enterprise and entrepreneurship.

[4] President Biden, unfortunately, vetoed the legislation.

Non-Compete Clause Rule (RIN 3084-AB74) (FTC)

On May 7, 2024, the Biden administration's Federal Trade Commission published its Non-Compete Clause Final Rule, effectively banning non-compete agreements economy-wide. The new rule makes it illegal for employers to include such agreements in employment contracts and voids nearly all existing agreements.[5] The rule also requires employers to notify employees or former employees that any existing non-compete clauses in their employment or severance contracts will not and cannot be enforced. This categorical ban on non-compete agreements would impact every sector of the economy and is therefore of "vast economic and political significance," given its sheer magnitude and implications.

The Final Rule clearly exceeds the FTC's authority. During deliberations over the Federal Trade Commission Act of 1914, there was no indication that Congress intended to categorically ban common and lawful business practices as an "unfair method of competition." Further, the Commission was designed to operate as an investigative and enforcement agency, rather than an agency with substantive rulemaking authority. As such, the FTC must exercise its authority under the FTC Act through adjudication on a case-by-case basis. The FTC itself recognized in its proposed rule that there has never been a successful challenge to a worker non-compete agreement under the FTC Act or other antitrust law. Although a few plaintiffs have pursued federal challenges to worker non-compete agreements, those claims have uniformly failed.

The 2024 Final Rule took effect on September 4, 2024, but currently faces litigation. In August 2024, the U.S. District Court for the Northern District of Texas held in *Ryan, LLC v. FTC* that the FTC's Final Rule is unlawful and blocked the rule nationwide. The FTC subsequently appealed the decision to the U.S. Court of Appeals for the 5th Circuit and submitted its opening brief in January 2025.

The FTC's Non-Compete Clause Final Rule should be officially rescinded and the administration should abandon its defense of the Final Rule in court, as it aligns with multiple categories that undermine national interest, including implicating matters of political and economic significance not authorized by clear statutory authority and imposing significant costs upon private parties that are not outweighed by public benefit.

Final Rules that Remain in Effect:

Joint Employer Status Under the Fair Labor Standards Act (RIN 1235-AA37) (WHD)

On July 20, 2021, the Wage and Hour Division issued its final rule rescinding a Trump-era joint employer regulation published in January 2020 that clarified when two or more employers are

[5] Only existing non-compete agreements for senior level employees can remain in effect.

considered joint employers over a shared group of workers under the Fair Labor Standards Act (FLSA).

The Trump-era 2020 Final Rule narrowed the criteria under which multiple entities could be found to be joint employers under the FLSA. It focused the analysis on whether a potential joint employer *actually* exercised control over the group of workers in question. Much like the Trump-era NLRB joint employer rule described above, the definition provided predictability and clarity for the regulated community and protected employers from unnecessary involvement in workplaces over which they did not exercise control. CDW's comments on the 2020 rulemaking provide additional context about the benefits of the Trump-era standard.

Unfortunately, in September 2020, the U.S. District Court for the Southern District of New York invalidated substantial portions of the 2020 Final Rule. DOL appealed the decision, but before the case could proceed before the U.S. Court of Appeals for the 2nd Circuit, the Biden administration issued the 2021 Rescission Rule, making the litigation moot.

By rescinding the Trump-era 2020 Final Rule, DOL under the Biden administration imposed significant uncertainty into the worker classification analysis. It has resulted in unpredictability for the regulated community and left workers unclear about their status.

The 2021 Rescission Rule should itself be rescinded, as it imposes undue burdens on small businesses and impedes private enterprise and entrepreneurship.

Election Procedures (RIN 3142-AA18) (NLRB)

On August 25, 2023, the National Labor Relations Board published its Election Procedures Direct Final Rule, which took effect in December 2023. The Final Rule implements numerous changes to the union representation election processes that result in the speeding up of the elections. The Direct Final Rule prioritizes speed of union representation elections at the expense of employees' right to be fully informed before choosing whether or not they want union representation in the workplace as well as employers' due process rights during organizing campaigns. Moreover, the final rule was completed without soliciting input from the public, resulting in an inappropriate policy that does not account for its significant negative consequences for the regulated community.

This was not the first instance of the NLRB attempting to speed up the election process. The rule reinstates a 2014 NLRB rulemaking issued during the Obama administration, which was subsequently undone by the first Trump administration. The NLRB under President Trump implemented common-sense policies to ensure workers were given sufficient time to make an

informed decision during organizing campaigns and protected employers' due process rights during the process as well.

Prioritizing speed over fully informed workers is in direct conflict with the NLRA and Congressional intent. When the NLRA was being amended by Congress in the 1950s, then-Senator John F. Kennedy stated that they were requiring at least 30 days between the filing of a petition and the election to "safeguard *against rushing employees into an election where they are unfamiliar with the issues.*" Congress eventually chose not to adopt that timeline, "because *elections would take place too quickly*." The Senate adopted amendments that "explicitly prohibited elections from occurring fewer than 30 days after the filing of a petition." Similar concerns were raised once again when the Board was considering its 2023 Final Rule. As dissenting Board member Marvin Kaplan explained in his dissent, "One is left to wonder how much the voters will actually benefit from the requirements that elections be held as quickly as possible when they find themselves exercising this right without fully understanding the arguments concerning representation and the ways in which their vote may affect them."

The NLRB's Election Procedures Final Rule should be rescinded, as it aligns with multiple categories that undermine national interest, including imposing significant costs upon workers not outweighed by public benefits and implicating matters of social and political significance not authorized by clear statutory authority.

Representation-Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships (RIN 3142-AA22) (NLRB)
On August 1, 2024, the National Labor Relations Board published its Representation-Case Procedures final rule, which went into effect on September 30, 2024. The Final Rule rescinded three changes to union representation elections issued during the Trump administration in 2020, making it more difficult for workers to express their true desire for or against union representation.

The 2024 Final Rule reinstated the "blocking charge" policy, which halts representation or decertification elections until any unfair labor practice allegations are resolved. The blocking charge rule allows unions to file unfair labor practice charges – whether credible or not – to block decertification elections while they try to revive workers' support. Elections can be delayed for years while the charges are pending. The blocking charge policy was eliminated during the first Trump administration in an effort to ensure this abuse of the election process and workers' rights was not allowed to continue.

The Final Rule also reinstated the "voluntary recognition bar," which prohibits the holding of a representation election for at least six months after an employer voluntarily recognizes a union

based on card check. Card check is a notoriously flawed process that enables unions, colleagues, and/or employers to pressure workers to vote one way or another on union representation. Rather than under an NLRB-supervised, secret ballot election where workers vote in a voting booth, under card check workers are not guaranteed any privacy when they make their selection, leaving them exposed to harassment, intimidation, and coercion. Moreover, under the voluntary recognition bar, workers could be stuck with a union and collective bargaining agreement they do not support for years. In order to rectify this issue, the Trump-era NLRB implemented a 45-day window during which workers could petition for a secret-ballot, NLRB-supervised election after an employer voluntarily recognized a union. This ensured workers would not be disenfranchised of their right to vote on union representation, and unions could not fraudulently obtain exclusive workplace representation unless they truly had majority support from the workers. The 2024 Final Rule eliminated that window, rolling back these critical protections.

Last, the Representation-Case Procedures Final Rule would allow construction industry unions to obtain exclusive bargaining status without proof of majority support. Under the NLRA, employers and unions in the construction industry can agree to a collective bargaining relationship without proof of majority support, but the relationship does not come with the benefits and longevity a traditional bargaining relationship provides. The Trump-era NLRB's rulemaking mandated that in order for a union to convert its relationship to a traditional bargaining relationship and obtain those additional protections, a union would have to demonstrate it had majority support from the workers. Under the 2024 Final Rule, however, a union could be locked in for years without ever proving the workers want to be represented by the union.

The 2024 Final Rule undermines employee free choice by eliminating common-sense measures that protect workers' right to choose whether they want union representation in the workplace. The Final Rule undermines the NLRB's statutory goals and credibility. CDW's comments in response to the Board's proposal for this rulemaking explain these concerns in greater detail.

The 2024 Representation-Case Procedures Final Rule should be rescinded, as it aligns with multiple categories that undermine national interest, including being based on anything other than the best reading of the underlying statutory authority, implicating matters of social and political significance not authorized by clear statutory authority, and imposing significant costs upon workers that are not outweighed by public benefits.

Revision of the Form LM-10 Employer Report (RIN 1245-AA13) (OLMS)
On July 28, 2023, the Office of Labor-Management Standards published its final rule revising the Form LM-10 Employer Report. The Labor-Management Reporting and Disclosure Act (LMRDA) requires employers file Form LM-10 with OLMS to disclose payments, expenditures, agreements,

and arrangements made to help educate their employees regarding union organizing or collective bargaining, often known as "persuader activities." The 2023 Final Rule adds a checkbox to Form LM-10 requiring filers to indicate whether they were a federal contractor or subcontractor in their prior fiscal year. The rule also adds two lines for entry of filers' unique entity identifiers. The rule took effect in August 2023.

The 2023 Final Rule was designed to discourage federal contractors from engaging in persuader activities despite these activities being lawful under the LMRDA. By including the checkbox, OLMS was increasing public pressure on and assisting advocacy efforts against federal contractors and any companies or federal agencies that want to raise concerns or potential consequences of unionization with their workers. The Final Rule has resulted in a chilling effect on employers, silencing them on a critical issue that will have significant consequences for their workers and their businesses.

The Final Rule should be rescinded, as it aligns with multiple categories that undermine national interest, including imposing undue burdens on small businesses and imposing costs upon private parties that don't outweigh public benefits.

Rescinding these rules – and, where applicable, abandoning the defense of these rules in court – would align with the Trump administration's deregulatory agenda and save the agencies in question significant resources. CDW therefore urges the appropriate agencies to review, rescind, and, where applicable, abandon the defense of the above regulations that undermine national interest.

Sincerely,

Coalition for a Democratic Workplace