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November 29, 2021



The Federal Trade Commission (FTC) recently issued a new [policy statement](#) expanding its criminal referral policy.



While the FTC's authority is limited to civil enforcement, the

agency aims to enhance its efforts to address misconduct the FTC uncovers that may trigger criminal sanctions for companies and individuals and make referrals to law enforcement when appropriate. The agency aims to deter potential criminal activity in both its consumer protection and competition arms. In announcing its new policy statement, the FTC pointed to its existing efforts regarding criminal referrals, including 36 referrals this year to prosecutors from the FTC's Criminal Liaison Unit and 840 formal requests for cooperation from criminal law enforcement partners over the past five years. The FTC reported that prosecutors relied on FTC information and support to charge 228 new defendants and obtained 283 new pleas or convictions over a five-year period. On a going forward basis, the FTC has signaled that it will continue to prioritize the referral of potential criminal conduct and take steps to facilitate uptake of those cases by appropriate authorities. Specifically, the FTC pointed to four practices to forward the goals of the new policy statement:

- Developing guidelines to ensure criminal law violations — particularly by major corporations and their executives — are identified by staff and promptly referred to criminal law enforcement agencies;
- Convening regular meetings with federal, state, and local criminal authorities to facilitate coordination with FTC and law enforcement;
- Offering further trainings for all law enforcement regarding the FTC's Consumer Sentinel database system, which offers access to, and analysis of, millions of consumer complaints and fraud allegations submitted to the FTC; and
- Publicly reporting the agency's criminal referral efforts at regular intervals to highlight criminal prosecutions. The FTC will begin issuing regular public reports on its work detailing the number of referrals, the general nature of the alleged conduct involved, and, when appropriate, more detailed information concerning criminal enforcement actions that stem from Commission actions and investigations.

The policy statement is a strong signal that the FTC under new Chair Lina Khan intends to use "all of its tools" available, including criminal referrals. In separate [remarks](#) addressing the policy statement, Chair Khan emphasized the potential deterrence effect of FTC criminal referrals—particularly for individuals—in an era where companies "can treat even seemingly high penalties as a cost of doing business." She also directed FTC staff to exercise continued vigilance that "all" evidence of criminal activity be appropriately referred, "including instances where corporations have lied to or hid material information from FTC staff." Together, the criminal referral policy statement and Chair Khan's remarks serve as a valuable reminder that when engaging with the FTC, it is important to have a firm grasp of the facts, as well as a thorough understanding of potential liability and collateral consequences. The possibility of parallel investigations or enforcement actions is ripe for overlap in the areas that the FTC regulates, including antitrust, consumer fraud and abuse, and anti-money laundering violations. Therefore, it remains vitally important for corporate actors to avoid missteps that could increase the likelihood of a criminal referral.

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