



## Consumer Protection/FTC ADVISORY ■

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### FTC Chair's Initial Actions Forecast Aggressive Enforcement and Greater Transparency

By *[Kathleen Benway](#) and [Robert Poole](#)*

Lina Khan was sworn in as chair of the Federal Trade Commission (FTC) on June 15, 2021. In the short time since her appointment, Khan has already signaled a great shift toward transparent operations and aggressive enforcement against anticompetitive and deceptive conduct.

#### **New Monthly Public Meetings**

On June 24, Kahn announced that the FTC will hold a series of monthly meetings open to the public. This is a drastic departure from the FTC's decades-long practice of private voting on FTC matters. Importantly, voting on whether to issue complaints and other nonpublic matters will not be part of the monthly meetings. Nonetheless, it is noteworthy that the FTC has invited "members of the public to share feedback on the Commission's work generally and bring relevant matters to the Commission's attention." This will be the first time members of the public may speak at FTC meetings. The first of these meetings will take place virtually on **July 1, 2021 at 12 noon ET**. The tentative [agenda](#) indicates that the FTC may hold several votes during the meeting, including:

- **Finalizing the proposed "Made in the USA" rule.** Earlier this year, we reported on the FTC's continued focus on [U.S. origins claims](#). The FTC is poised to vote on a 2020 proposed rule that, if finalized, will impose civil penalties on companies whose product labeling violates the standards set forth in that rule, which mirrors the standards set out in the FTC's 1997 Enforcement Policy Statement on U.S. Origin Claims.
- **Streamlining Section 18 rulemaking procedures.** Section 18 of the FTC Act allows the FTC to prescribe rules identifying acts and practices that are unfair or deceptive under Section 5. A violation of those rules is subject to civil penalties. But the current rulemaking process is extremely cumbersome and time consuming and thus has been largely abandoned since the early 1980s. Streamlining this process would allow the FTC to issue rules to address what it deems unfair and deceptive acts or practices without waiting for congressional action.

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- **Rescinding the 2015 “Enforcement Principles Regarding ‘Unfair Methods of Competition’ Under Section 5 of the FTC Act.”** The FTC will consider whether to rescind the policy statement issued in 2015 “in order to better align with the requirements set out by Congress to condemn ‘unfair methods of competition.’” This [2015 policy statement](#) sets out the broad principles the FTC must apply to evaluate whether conduct is unfair under Section 5 when the conduct does not fall within the scope of the Sherman or Clayton Act.
- **Streamlining enforcement investigations.** The commissioners will decide whether to approve resolutions to streamline investigations into specific industries and conduct. As is true today, at least in consumer protection matters, a single commissioner would be able to approve the use of compulsory processes in those investigations.

## Appointment of Chopra Advisors as Top Staff

Khan, who served as a legal fellow to Commissioner Rohit Chopra in 2018, has signaled her intent to pursue aggressive enforcement actions by appointing virtually all of Chopra’s staffers into key agency positions, including to lead the Bureaus of Competition and Consumer Protection. Sam Levine, who served as Chopra’s consumer protection advisor, and Holly Vedova, Chopra’s competition advisor, are now acting directors of those bureaus. That they are appointed on an acting basis indicates that Kahn may be looking outside the agency to fill those positions permanently. Two other key appointments include Erie Meyer, Chopra’s technology and policy advisor, who will be the permanent FTC chief technologist and Jen Howard, Chopra’s chief of staff, who is now the agency’s chief of staff.

While Kahn has no discernable enforcement experience, Chopra is well known for his aggressive approach to enforcement. He has strongly advocated for greater monetary damages and frequently dissents from FTC settlements when he believes monetary penalties should be higher or injunctive relief stricter. The FTC’s [\\$5 billion settlement](#) with Facebook for privacy violations is one example. He has also voiced his support for increasing accountability for company executives.

Khan’s co-opting of Chopra’s staff, along with the topics set for the July 1 meeting, signals a likely aggressive enforcement agenda in line with Chopra’s. In the meantime, Chopra is set to leave the FTC, having been nominated to head up the Consumer Financial Protection Bureau. He is currently awaiting confirmation by the Senate.

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