

The NCAA Accountability Act (HR 5817)

Introduced by Representatives David Kustoff (R-TN), Josh Harder (D-CA), and Burgess Owens (R-UT)

This legislation establishes due process protections for student-athletes, coaches, and universities that are under investigation by the NCAA for rule violations.

Background:

The National Collegiate Athletic Association (NCAA) is a nonprofit organization that regulates the athletic programs of its member institutions. It is the largest collegiate sports organization in the U.S., with roughly 1,100 member universities and over 480,000 student-athletes. The NCAA holds immense power over student athletes and universities nationwide. It governs virtually every aspect of its members' sports programs and competition. The NCAA also has the authority to investigate and penalize universities, coaches, and student-athletes who violate its rules. This is what's known as the NCAA's "Infractions Process." Penalties may entail fines, loss of eligibility, recruiting restrictions, and even postseason bans. Such penalties can significantly impact universities, the careers of student-athletes, and the health of local economies. Unfortunately, the NCAA's infractions process is systemically flawed.

The NCAA has complete control of the infractions process. It establishes the rules, decides when to enforce the rules, determines if rule violations have taken place, and issues sanctions. Essentially, the NCAA acts as the judge, jury, and executioner. This unchecked authority leads to conflict of interests, favoritism, and biased decision making. Further, the NCAA provides its members with minimal due process protections. Its investigations lack transparency and established procedures, its rules are ambiguous and sometimes made up on the fly, and accused individuals are not provided with fair notice. Lastly, the NCAA's sanctions for rule violations are inconsistent, unpredictable, and often disproportionately severe with respect to the alleged violation. One student athlete may get off scot-free for a violation, while another may receive a life-altering penalty for a similar violation.

Considering the NCAA's vast influence over numerous universities, students, and American life; Congress must ensure that the NCAA guarantees adequate protection for its members and student-athletes in the form of due process, transparency, and fairness during enforcement proceedings.

Solution:

The NCAA Accountability Act addresses these concerns by directing the NCAA to establish procedures providing due process protections for universities and individuals under investigation for bylaw infractions.

Due Process:

- Requires the NCAA to provide its member universities with fair notice regarding enforcement proceedings, including information about: the status of the investigation, alleged violations being investigated, the involved individuals and programs, the potential penalties of each allegation, and the rights and resources available to the accused. The NCAA is required to provide this information through:
 - A notice of inquiry (when the NCAA opens an investigation into a member).
 - A notice of allegations (if the NCAA files formal charges).
- Requires the NCAA complete any investigation no later than one year after it begins.
- Statute of limitations. Prohibits the NCAA from penalizing any violation that occurred more than two years prior.
- Prohibits information from confidential sources from being offered into the NCAA's enforcement decisions.
- Prohibits the NCAA from publicly disclosing information relating to an ongoing investigation into a member institution until formal charges are filed in the notice of allegations.

Fairness, Consistency, Accountability:

- Provides member universities the right to resolve disputes (over sanctions for bylaw infractions) with the NCAA through arbitration. The 3-person arbitration panel will provide an independent, unbiased review and legally binding decision.
- Requires the NCAA to conduct its enforcement proceedings and investigations in a fair and consistent manner. The penalties issued against member institutions for bylaw infractions shall be equitable with respect to severity of the infraction and the institution's history of infractions.
- Directs the NCAA to submit an annual report to the DOJ summarizing its enforcement proceedings, investigations, and issuance of punishments to member organizations over the past year. The NCAA must also submit separate reports to each state's Attorney General summarizing its interactions with member universities headquartered in their respective states.

Enforcement:

- Directs the DOJ to establish supervisory and investigatory procedures to determine the NCAA's compliance with this bill.
- Authorizes the DOJ, through an administrative law judge, to fine the NCAA or individuals on staff (up to \$15,000,000) for violating the provisions of this bill.
- Authorizes the DOJ to order the removal of any member on the NCAA's board of governors.

Legal Standing:

The federal government has the authority to regulate the NCAA through the Commerce Clause, as the NCAA is an interstate non-profit organization whose activities substantially affect interstate commerce. The legislation would apply to any interstate athletic association, conference, or other organization with authority over intercollegiate athletics or that administers intercollegiate athletics, with at least 900 Member institutions.