

COLLEGE ATHLETE PROTECTION ACT (CAP Act)

Fact Sheet

Three hundred and seventy-seven (377) 4-year higher education institutions in the USA, all members of the National Collegiate Athletic Association (NCAA), sponsor athletic programs generating annual revenues in excess of \$1 million each, for a total of \$11 billion. Only twenty-three (23) of these athletic programs earn more money than they spend on operations, drawing upon student fees and institutional general fund subsidies to balance their budgets. The unprecedented commercialization of these athletics programs threatens the integrity of their institutions by (a) driving an “arms race” that results in athletics program annual cost increases that exceed the growth rates of other higher education expenses, (b) causing insufficient attention to the academic success and graduation of athletes, (c) encouraging admissions practices that allow academically under-qualified but athletically talented athletes, unable to compete with their peers in the classroom, to attend and participate in athletics (d) elevating the compensation of football and men’s basketball head coaches to levels far exceeding the compensation of top institutional faculty and administrators and the highest paid state employees in 41 of 50 states, (e) providing inadequate attention to the prevention and treatment of athletics injuries and insufficient athletics injury insurance, (f) proliferating construction of elaborate and costly facilities limited to athletics use only, and (g) igniting antitrust lawsuits and unionization efforts by athletes who believe they are being financially and academically exploited.

As a condition for receiving federal funds and tax preferences, these institutions should meet standards that (1) specify adequate care of the education, health, and welfare of students participating in athletics, (2) prohibit excessive expenditures and exploitative practices, and (3) maintain a clear line of demarcation between collegiate sport conducted by non-profit educational institutions and professional sport.

The CAP Act applies to 4-year higher education institutions with commercialized athletic programs (those generating \$1 million or more in annual revenues) and conditions federal financial aid eligibility under Title IV of the Higher Education Act of 1965, prohibiting membership in any national governance association that does not apply the following standards to all of its members:

- (A) Independent Governance.** The association’s governing board must be comprised of “independent directors” (former presidents, trustees, athletic directors, tenured faculty, and college athletes with extensive experience and knowledge of athletics) who are held in the highest esteem by the general public, reflect diversity of gender, race, and ethnicity, are not currently employed by any member institution, and are held responsible for protecting the interests of students and the integrity of higher education;
- (B) Athlete Protections.** Requires high standards of due process prior to withdrawal of participation rights or athletics financial aid, mandates a coaching ethics code, specifies athletes’ rights related to commercial use of name, likeness and image and transfer to other institutions, mandates institutionally financed athletics injury insurance, requires prevention education and baseline testing/monitoring of health related risks, mandates physician determination of return to competition following injury, and mandates athletic scholarships extending to graduation (or five years) that cannot be reduced or canceled based on athletics performance, physical condition, or injury.
- (C) Specific Benefits to Athletes.** Allows institutional members of the highest competitive division to provide athletic scholarships up to the full cost of attendance under federal definitions, requires that remedial and academic support programs of all member institutions be under the control of the institution’s academic authority, and mandates that a percentage of media revenues be used for the establishment of academic trust funds that enable athletes to complete baccalaureate or advanced degrees following completion of athletic eligibility.
- (D) Minimum Standards of Educational Athletic Program.** Association members must provide for (1) “whistle blower” protection to college athletes, faculty, and other institutional employees, (2) regular external peer certification, (3) athletic participation restrictions for admitted athletes whose academic profile is more than one standard deviation below the mean academic profile of their entering class or below a cumulative GPA of 2.0, (4) institution ineligibility for post-season competition if Title IX or sport academic deficiencies are not remedied, (5) minimal regular season athletic contest schedule conflicts with class attendance and final exams, (6) prohibition of construction and exclusive use athletics facilities not available for general student use, and (7) control of excessive salaries and student fees.

Financing Athlete Benefits. This Act requires NCAA ownership of all national championships, including any FBS play-off, and use of such championship proceeds to pay for all athlete health, insurance, scholarship and other benefits and protections under this Act.

Limited Antitrust Exemption. Conditioned on its enforcement of all standards specified in this Act and the continued membership of all commercialized athletic programs specified in this Act, the NCAA would receive an antitrust exemption limited to those rules or rule categories specified in the Act.

Reporting and Oversight. The Act requires institutions to have faculty-only committees for academic oversight of athletics. These committees would report annually to faculty senates and would provide annual reports to Congress that would be available online to the general public. The Secretary of Education would have the authority to approve exceptions and to issue regulations clarifying Act requirements.

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