

**NO ENFORCEMENT, NO PROBLEM**

**HOW INEFFICIENT REGULATORY  
STATUTES HAVE DEMONSTRATED THE  
NEED FOR A FEDERAL REGISTRATION  
OF NATIONAL FOOTBALL LEAGUE  
PLAYER AGENTS**

*Ryan Becker\**

Introduction.....	392
I. The Current State of Athlete Agent Legislation and Registration .....	394
A. Uniform Athlete Agents Act .....	395
B. Sports Agent Responsibility and Trust Act.....	398
C. NCAA Regulations .....	400
D. NFL Players Association Regulations.....	401
II. Flaws in the Current Registration System.....	404
A. The NCAA Lacks the Ability to Enforce Rules Against Athlete Agents .....	404
B. The Lack of Enforcement Under the UAAA, SPARTA and NFLPA.....	405
C. The Multistate Game Under the UAAA.....	407
III. Solution: The Federal Regulation of Athlete Agents Act	408
A. Legality of a Federal Regulation .....	409
B. General Requirements of the Federal Regulation of Athlete Agents Act.....	410
C. Education Requirements .....	411

---

\* B.A., Florida State University, 2010; J.D., University of Mississippi School of Law, 2013. MISSISSIPPI SPORTS LAW REVIEW, Editor-in-Chief 2012-13. The author would like to thank Dr. William Berry III for his hard patience and assistance with the entire volume of the REVIEW. The author would also like to thank the editorial staff of the REVIEW. The author can be reached by email at [ryanbeckerj@gmail.com](mailto:ryanbeckerj@gmail.com).

D. Renewal.....	412
E. Duty and Responsibility of a Registered Athlete Agent under the Federal Regulation of Athlete Agents Act	413
F. Enforcement and Discipline.....	417
Conclusion .....	419

## INTRODUCTION

“In this business it’s kill or be killed. You’re either going to sign a player or somebody else will. You’re either going to get the money from the team or you’re not. You gotta [sic] go for it. The bottom line is, if there is a player who does not want to retain his agent, I will be the first guy there.”<sup>1</sup> – Drew Rosenhaus

Drew Rosenhaus has been and continues to be one of the most disliked agents in the National Football League (NFL). He is a media darling who continually sways the public’s opinion, so they view him as a relentless, hardworking, and charismatic agent. Despite public opinion, many NFL agents view Rosenhaus as an unethical, corrupt rule breaker.<sup>2</sup> Continuous chatter about alleged violations of the National Football League Players Association (NFLPA) rules governing agents surrounds Rosenhaus, but there has never been a citation or even an investigation by the NFLPA into his behavior as an NFL agent.<sup>3</sup>

Rosenhaus is arguably the most well-known NFL agent in the modern era, and his glitz and glamour have misled aspiring NFL agents about the realities of the business. Rosenhaus and other NFLPA agents have allegedly defied NFLPA rules for decades because of the lack of enforcement, which has created the

---

<sup>1</sup> John M. Phillips, *Drew Rosenhaus- Dissecting the Self Proclaimed “Shark”*, MYBTSA.COM, (June 13, 2011), [http://www.mybtsa.com/BTSA/Blog/Entries/2011/6/13\\_Drew\\_Rosenhaus-\\_Dissecting\\_the\\_Self\\_Proclaimed\\_Shark.html](http://www.mybtsa.com/BTSA/Blog/Entries/2011/6/13_Drew_Rosenhaus-_Dissecting_the_Self_Proclaimed_Shark.html). (Quoting from an interview conducted with NFL agent Drew Rosenhaus, who currently has a client base of over 100 current NFL players.)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

need for an enforceable body of law to impose strict sanctions on the violators.

In light of recent National Collegiate Athletic Association (NCAA) scandals involving NFL agents at the University of North Carolina and the University of Southern California, the agent industry is currently portrayed in a way that more closely resembles the Wild West than a professional industry. This depiction drastically overstates the reality of the profession. The reality of the business is that there are approximately 825 agents certified with the NFLPA and over half of those agents do not have a single NFL client.<sup>4</sup>

The glamorous portrayal of the NFL agent industry is a falsity. The increase in NFLPA dues and state registration fees, establishment of a rookie salary cap,<sup>5</sup> and the decrease in maximum representation fees agents are permitted to charge have created a substantial obstacle to aspiring sports agents who wish to enter into the industry. In addition to the NFLPA and statutory regulated fees, agents invest tens of thousands of dollars into their clients before they are ever drafted.<sup>6</sup> Agents, both new and old, invest vast amounts of time and energy worrying about the variations in registration requirements from state-to-state rather than investing that time in their clients. Additionally, with no real enforcement, ethical agents who follow all of the rules and regulations are at a financial and temporal disadvantage. The current registration and regulation system regarding NFL agents has allowed wealthy, established, agents to prosper while imposing a nearly insurmountable burden on new agents.

The combination of the lack of uniformity in statutory regulations regarding athlete agent registration and the inability

---

<sup>4</sup> Andrew Brandt, *So You Want to Be an NFL Agent*, HUFFINGTONPOST.COM, (Oct. 15, 2010), [http://www.huffingtonpost.com/andrew-brandt/so-you-want-to-be-an-nfl\\_b\\_764188.html](http://www.huffingtonpost.com/andrew-brandt/so-you-want-to-be-an-nfl_b_764188.html).

<sup>5</sup> John Czarnecki, *Rookie Cap Biggest Win from the New CBA*, FOXSPORTS.COM (Jul. 27, 2011), <http://msn.foxsports.com/nfl/story/NFL-rookie-salary-cap-biggest-win-from-new-CBA-less-risk-for-owners-072711>.

<sup>6</sup> Andrew Brandt, TWITTER.COM, (Apr. 12, 2012), <https://twitter.com/#!/adbrandt/status/190210685882466304>. Expenses that agents invest into their clients include training, housing, food, and supplements. It is standard for agents not to recover on these costs in preparation for the draft.

and unwillingness of state governments and the NFLPA to enforce the current rules and regulations has resulted in a demand for a unified federal athlete agent regulation system.

This article will demonstrate the need to establish the Federal Regulation of Athlete Agents Act, focusing specifically on the need to establish the act for NFL player agents. Part I of this article will analyze the current athlete agent legislation and regulation. Part II will demonstrate the defects, gaps, and inefficiencies that plague current athlete agent law. Part III will propose the Federal Regulation of Athlete Agents Act, which emphasizes the need to generate an ethically qualified profession of athlete agents who are responsible for acting in compliance with the law, to benefit current and future NFL players.

#### I. THE CURRENT STATE OF ATHLETE AGENT LEGISLATION AND REGISTRATION

Merriam-Webster dictionary defines an agent as “one who is authorized to act for or in the place of another.”<sup>7</sup> The agency relationship is the “fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.”<sup>8</sup>

The term “athlete agent” has conflicting definitions between the Uniform Athlete Agents Act, the Sports Agent Responsibility and Trust Act, and the NCAA. The one consistent element of the definition of an athlete agent that is common across all athlete agent legislation is that the athlete agent is an individual who directly or indirectly recruits or solicits a student-athlete to enter into an agency contract.<sup>9</sup>

One of the primary differences between the legislative definition of the term athlete agent centers on who is eligible to be an athlete agent. Sports Agent Responsibility and Trust Act

---

<sup>7</sup> “Agent.” MERRIAM-WEBSTER ONLINE DICTIONARY. <http://www.merriam-webster.com/dictionary/agent>.

<sup>8</sup> RESTATEMENT (SECOND) OF AGENCY §1 (1958).

<sup>9</sup> Nat’l Conference of Comm’rs on Unif. State Laws, UNIFORM ATHLETES AGENT ACT, § 2(2) (2000), [hereinafter, “UAAA”], *available at* [http://www.uniformlaws.org/shared/docs/athlete\\_agents/uaaa\\_finalact\\_2000.pdf](http://www.uniformlaws.org/shared/docs/athlete_agents/uaaa_finalact_2000.pdf).

(SPARTA) and Uniform Athlete Agent Act (UAAA) exclude immediate family members from being athlete agents.<sup>10</sup> According to these acts, immediate family members include spouses, parents, siblings, legal guardians, and grandparents.<sup>11</sup> This differs from the NCAA's definition of athlete agent, which does not exclude family members from being athlete agents.<sup>12</sup>

The NFLPA refers to athlete agents as contract advisors. The association fails to provide a distinct definition of contract advisor, merely stating that one who receives a certification from the NFLPA is an NFL contract advisor.<sup>13</sup>

In the grand scheme, the definition of inconsistencies in the definition of athlete agent is a relatively minor one; however, it is the tip of the iceberg into demonstrating the inconsistencies within the registrations.

#### A. Uniform Athlete Agents Act

The National Conference of Commissioners on Uniform State Laws (NCCUSL), with assistance from the NCAA and several large universities, developed the UAAA in an effort to harmonize state laws governing athlete agents.<sup>14</sup> The NCCUSL, originally reluctant to participate in writing the Uniform Act, drafted the UAAA.<sup>15</sup>

The purpose of the UAAA is to protect student-athletes from losing their eligibility, to prevent universities' athletic programs

---

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Nat'l Collegiate Athletic Ass'n., *Council Broadens 'Agent' Definition*, NCAA.COM (Jan. 12, 2012), <http://www.ncaa.com/news/ncaa/article/2012-01-12/council-broadens-%E2%80%98agent%E2%80%99-definition>. (The definition of athlete agent now includes family members who are seeking a financial gain or benefit from a student athlete's service.)

<sup>13</sup> NFL Players Ass'n., *NFLPA Regulations Governing Contract Advisors*, (as amended through March, 2007), available at [http://images.nflplayers.com/mediaResources/files/PDFs/SCAA/NFLPA\\_Regulations\\_Contract\\_Advisors.pdf](http://images.nflplayers.com/mediaResources/files/PDFs/SCAA/NFLPA_Regulations_Contract_Advisors.pdf). [Hereinafter, "NFLPA Regulation."]

<sup>14</sup> *Supra* note 9 at Prefatory Note.

<sup>15</sup> *Id.* (The NCCUSL met over a period of three years and received input from a wide array of groups including: athlete agents, coaches, members of the NFLPA, and the members of the NCAA.)

from facing sanctions, and to safeguard the reputation of universities.<sup>16</sup>

The goal of the UAAA is to synchronize the statutory registrations athlete agent registration between the individual states. Under the UAAA, agents are required to register in each state in which they act as an athlete agent.<sup>17</sup> Each state, however, is not required to adopt the UAAA and, even if they adopt the UAAA, they are not obligated to adopt the entire act.

Under the UAAA, in order to register in a state as an athlete agent, potential agents must submit a standardized application, signed under penalty of perjury, to the appropriate Secretary of State.<sup>18</sup> The application requires full disclosure of the following: formal training, practical experience, and educational background<sup>19</sup>; conviction of crimes involving moral turpitude or a felony<sup>20</sup>; administrative or judicial determination of a false, misleading, deceptive, or fraudulent representation<sup>21</sup>; any suspension out of occupational or professional conduct<sup>22</sup>; and any prior denial, suspension, or revocation of registration or licensure of the applicant.<sup>23</sup> Agents who have previously registered in one state, and have been approved for an athlete agent license by that state, may submit a copy of the original state application to a different state along with a copy of their registration instead of submitting a completely new registration.<sup>24</sup> This is only permitted if the previous application is less than six months removed from the new application, the applications are substantially similar, and the original application was signed under the penalty of perjury.<sup>25</sup> The failure to register as an athlete agent in a state

---

<sup>16</sup> *Id.* (Sanctions can include the return of substantial revenues for participation in post-season events.)

<sup>17</sup> *Id.* at § 4.

<sup>18</sup> *Id.* at § 5(a).

<sup>19</sup> *Id.* at § 5(b)(4).

<sup>20</sup> *Id.* at § 5(b)(8).

<sup>21</sup> *Id.* at § 5(b)(9).

<sup>22</sup> *Id.* at § 5(b)(11).

<sup>23</sup> *Id.* at § 5(b)(12). (Note that this list is not inclusive. In total, the UAAA requires fifteen total items.)

<sup>24</sup> *Id.* at § 5(b).

<sup>25</sup> *Id.*

prohibits one from acting in any capacity as an athlete agent in that specific state.<sup>26</sup>

Once an agent is registered under the UAAA, the act outlines specific behaviors that are prohibited for all registered agents. The UAAA forbids athlete agents from giving false or misleading information to student-athletes.<sup>27</sup> Under the UAAA, agents cannot provide anything of value to a student-athlete before that individual enters into the agency contract.<sup>28</sup> Additionally, agents cannot furnish anything of value to an individual other than the student-athlete or a registered athlete agent.<sup>29</sup>

The UAAA establishes guidelines for the athlete agent representation contract.<sup>30</sup> A predated or postdated contract is deemed void.<sup>31</sup> In capitalized and bold font, the agency contract must clearly inform the student-athlete that he will lose any remaining eligibility by signing the agreement, that he must inform the university within 72 hours of signing the contract, and that he has the right to cancel the contract within fourteen days after signing the agency contract.<sup>32</sup>

In addition to the detailed registration requirements, the UAAA holds athlete agents administratively, criminally, and civilly liable for violations.<sup>33</sup> Individual states establish the criminal punishments imposed on violators.<sup>34</sup> Individual states also establish administrative punishments, not to exceed a \$25,000 fine.<sup>35</sup> If an athlete agent violates the UAAA and, in the process, harms an educational institution, that specific institution may bring civil action for any damages the violation caused.

---

<sup>26</sup> *Id.* at § 4. (The UAAA allows agents to register within a state no later than seven days after they have initiated contact with a student athlete.)

<sup>27</sup> *Id.* at § 14.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at § 10.

<sup>31</sup> *Id.* at § 14.

<sup>32</sup> *Id.* at § 10. (Additionally, the agency contract must include compensation agreements, names of others that will be compensated, a description of expenses the student athlete must reimburse, a description of services to be provided, the duration of the contract, and the date of execution.)

<sup>33</sup> *Id.* at § 15-17.

<sup>34</sup> *Id.* at § 15.

<sup>35</sup> *Id.* at § 17.

Damages shall include, but are not limited to, losses and expenses that were the result of the conduct of an athlete agent.<sup>36</sup>

*B. Sports Agent Responsibility and Trust Act*

In September 2004, President George W. Bush signed the Sports Agent Responsibility and Trust Act (SPARTA) into law.<sup>37</sup> SPARTA is the first federal legislation created for the purpose of regulating athlete agents; the goal of SPARTA is to protect student-athletes from the unethical conduct of athlete agents.<sup>38</sup>

SPARTA makes it unlawful for an athlete agent to directly or indirectly recruit or solicit a student-athlete for purposes of entering into an agency contract.<sup>39</sup> An athlete agent cannot induce a student-athlete into an agency contract by giving false or misleading information.<sup>40</sup> Before a student-athlete enters into an agency contract, SPARTA prohibits the agent from giving anything of value to that student-athlete or any individual associated with the student-athlete.<sup>41</sup> As a requirement for entering into an agency contract, SPARTA mandates that athlete agents disclose to student-athletes the fact that they will lose their eligibility if they enter into the agency contract.<sup>42</sup> Essentially, SPARTA imposes the duty on athlete agents to be truthful, to refrain from buying student-athletes, and to disclose the termination of NCAA eligibility to student-athletes.<sup>43</sup>

---

<sup>36</sup> *Id.* at § 16. (Factors that contribute to the damages a university can suffer are the penalty administered, loss of wins, suspension from post-season competition, and other reasonable self-imposed sanctions.)

<sup>37</sup> Glenn M. Wong, *Essentials of Sports Law*, § 12.5.2 (4<sup>th</sup> ed. 2010) (citing Sports Agent Responsibility and Trust Act, 15 U.S.C. § 7801-07 (2004), [hereinafter "SPARTA"], available at <http://uscode.house.gov/download/pls/15C104.txt>).

<sup>38</sup> See SPARTA § 7801, *supra* note 37.

<sup>39</sup> *Id.* § 7802(a)(1).

<sup>40</sup> *Id.* § 7802(a)(1)(A).

<sup>41</sup> *Id.* § 7802(a)(1)(B).

<sup>42</sup> *Id.* § 7802(a)(2). (The agency contract must state in boldface typed font "Warning to student athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport.") *Id.* § 7802(b)(3).

<sup>43</sup> *Id.* § 7802(a)(3). (SPARTA prohibits the predating or postdating of an agency contract.)



The Federal Trade Commission (FTC) is the primary enforcement agency for SPARTA.<sup>44</sup> If the FTC fails to bring a claim against an athlete agent for violating SPARTA, the Attorney General of a state has the authority to bring such action against an agent.<sup>45</sup> To commence action against an athlete agent, the Attorney General must believe the interests of the residents of that state have been or are being threatened by the conduct of an athlete agent in violation of SPARTA.<sup>46</sup> The FTC may intervene in any SPARTA action that a state's Attorney General initiates.<sup>47</sup>

Like the UAAA, SPARTA provides a civil remedy for educational institutions against athlete agents.<sup>48</sup> The damages that educational institutions can recover are limited to actual losses and expenses incurred because of conduct by an athlete agent in violation of SPARTA.<sup>49</sup> The educational institution must have been injured, penalized, disqualified, or suspended from participation in athletics.<sup>50</sup> SPARTA does not prohibit individuals from seeking remedies available under existing state or federal law.<sup>51</sup> SPARTA fails to offer any direct relief for student-athletes harmed by the conduct of an athlete agent.

Under the Federal Trade Commission Act, an athlete agent will receive a fine of \$11,000 for each individual unfair or deceptive act or practice that violates SPARTA.<sup>52</sup> The revenue from these fines goes to the U.S. Treasury.<sup>53</sup>

---

<sup>44</sup> *Id.* § 7803. (The FTC is an independent government agency that focuses on consumer protection, and primarily deals with antitrust suits.); *See supra* note 37.

<sup>45</sup> *See* SPARTA § 7804, *supra* note 37.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* § 7804(b).

<sup>48</sup> *Id.* § 7805.

<sup>49</sup> *Id.* § 7805(b)(2).

<sup>50</sup> *Id.* (These actions can be taken by a national association, by a collegiate athletics conference, or by reasonably self-imposed disciplinary actions taken to mitigate actions likely to be imposed by an association or conference.)

<sup>51</sup> *Id.* § 7806.

<sup>52</sup> *Id.* §7803; *The Sports Agent Responsibility and Trust Act*, USLEGAL.COM, <http://sportslaw.uslegal.com/the-sports-agent-responsibility-and-trust-act/>.

<sup>53</sup> Lloyd Z. Remick & Christopher J. Cabott, *Keeping Out the Little Guy: An Older Contract Advisor's Concern, A Younger Contract Advisor's Lament*, 12 VILL. SPORTS & ENT. L.J. 1, 9 (2005).

### C. NCAA Regulations

The NCAA is an organization composed of voluntary member institutions and conferences.<sup>54</sup> The NCAA only regulates the conduct of the member institutions through student-athletes and university employees.<sup>55</sup> Because athlete agents are not members of the NCAA, the organization lacks the authority to regulate their conduct.<sup>56</sup> The NCAA's most effective tool in deterring athlete agents from violating NCAA rules is to create a culture that establishes an unwillingness on the part of universities to allow agents who violate the rules to meet with student-athletes, their potential clients.<sup>57</sup> Institutions, through a variety of ways, may also discourage student-athletes from signing with an agent who violates NCAA rules.<sup>58</sup>

The primary regulatory function of the NCAA is regulating the conduct and amateur status of both current and future student-athletes. Under NCAA rules, it is illegal for student-athletes to enter into professional representation contracts with athlete agents while they still have NCAA eligibility remaining.<sup>59</sup> NCAA student-athletes who accept extra benefits from athlete agents, including cash, dinners, gifts, and rides, threaten their eligibility as amateur athletes.<sup>60</sup>

The NCAA does not prohibit student-athletes from contacting agents.<sup>61</sup> The NCAA explicitly allows student-athletes to meet with agents to assist in determining potential value as a

---

<sup>54</sup> Nat'l Collegiate Athletic Ass'n, *Agent Student-Athlete* (2007), available at <http://www.texastech.com/manual/graphics/compliance/Agent%20Guide.pdf>.

<sup>55</sup> *Id.*

<sup>56</sup> Nat'l Collegiate Athletic Ass'n, 2010-11 NCAA DIVISION I MANUAL (2010), available at <http://www.ncaapublications.com/productdownloads/D111.pdf>. [Hereinafter, references to the manual will be to "NCAA Manual" and citations will be to specific bylaws by the bylaw number.] (The NCAA Manual does not discuss regulating agents; however, it does contain rules regulating student athlete conduct with agents.)

<sup>57</sup> *Supra* note 54.

<sup>58</sup> *Id.* (Athlete agents may also face criminal or civil liability for violating NCAA rules.)

<sup>59</sup> NCAA Manual, Bylaw §12.3.

<sup>60</sup> *Id.*

<sup>61</sup> *Supra* note 54 at 11.

professional athlete.<sup>62</sup> However, a violation of NCAA rules occurs if such discussions involve an oral or written agreement to represent the student-athlete now or in the future.<sup>63</sup>

In 2010, several high-profile collegiate coaches, members of the NCAA, and Roger Goodell<sup>64</sup> participated in a dialogue to address the possibility of the NCAA and NFL working together to remedy the unethical conduct of athlete agents.<sup>65</sup> A week after discussions began, the NCAA posted on its website that improper contact between athlete agents and student-athletes is an “age-old problem that not just one group or organization can solve on its own.”<sup>66</sup>

#### *D. NFL Players Association Regulations*

The National Football League Players Association is the sole bargaining representative of current NFL players.<sup>67</sup> The NFLPA’s collective bargaining unit includes past NFL players, current NFL players, NFL free agents, and NFL rookies; notably, it does not include future NFL players.<sup>68</sup>

In addition to being the bargaining representative for NFL players, the NFLPA regulates the conduct of agents who represent players in individual contract negotiations with NFL teams.<sup>69</sup> The NFLPA forbids NFL organizations from negotiating contracts with uncertified NFLPA agents.<sup>70</sup>

To be certificated as an NFLPA Contract Advisor, potential NFL agents must file an application with the NFLPA, pay the

---

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Roger Goodell is the current NFL Commissioner.

<sup>65</sup> Associated Press, *Report: State Agent Laws Unenforced*, ESPN.COM (Aug. 17, 2010), <http://sports.espn.go.com/ncaa/news/story?id=5470067>. (The conference call included coaches Nick Saban (University of Alabama), Urban Meyer (at the time of the call University of Florida, currently the head coach at Ohio State University), and Jim Tressel (at the time of the call Ohio State University))

<sup>66</sup> *Id.*

<sup>67</sup> *See* NFLPA Regulations, *supra* note 13.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 3.

<sup>70</sup> *Id.* (The NFLPA imposes a fine of \$15,000 on any team that negotiates an NFL player contract with an uncertified agent or representative; however, franchises are not fined for their first violation of this rule.)

required application fee,<sup>71</sup> have an undergraduate and postgraduate degree from an accredited university,<sup>72</sup> authorize a background check, attend a two-day seminar, and successfully complete a proctored written exam.<sup>73</sup> The requirements necessary to be an NFLPA Contract Advisor are seemingly more strenuous than those required to be a registered agent under the UAAA and SPARTA.

In order to maintain NFLPA Contract Advisor certification, the NFLPA requires the Contract Advisor to submit an annual fee to the NFLPA.<sup>74</sup> Additionally, each Contract Advisor is required to negotiate at least one NFL player contract every three years.<sup>75</sup>

Furthermore, the NFLPA regulates a wide array of certified Contract Advisor conduct, ranging from client recruiting to business relationships with clients.<sup>76</sup> In general, Contract Advisors cannot provide or offer any item of value to a prospective client in an effort to persuade that individual to sign with them, whether the individual is still a student-athlete or currently in the NFL. Contract Advisors cannot provide false or misleading information to entice a prospective client to sign with them. The NFLPA also prohibits a Contract Advisor from initiating communication with a player who has entered into a standard representation agreement with another NFLPA Contract Advisor.<sup>77</sup>

The NFLPA heavily regulates the standard representation agreements between players and Contract Advisors. If an agreement between a client and a Contract Advisor does not follow

---

<sup>71</sup> NFL Players Ass'n. *Agent Regulations*, NFLPLAYERS.COM, <https://www.nflplayers.com/about-us/Rules—Regulations/Agent-Regulations/>. (Current Application fee is \$2,500.00 and is non-refundable.)

<sup>72</sup> The NFLPA waives this requirement if the applicant has at least six years of relevant, fulltime negotiating experience. *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* (The annual fee is currently set at \$1,200 if the advisor represents less than ten active players, and the fee increases to \$1,700 for advisors who represent ten or more active players.)

<sup>75</sup> NFLPA Regulations, *supra* note 13 at 5. (This excludes negotiating practice squad contracts.)

<sup>76</sup> See NFLPA Regulations, *supra* note 13. (In total, the NFLPA lists thirty prohibited actions. Additionally, the NFLPA lists twenty forms of required action.)

<sup>77</sup> *Id.* at § 3 (B)(21)(c).

the standard representation agreement, or if it does not meet the minimum requirements established by the NFLPA, that contract is unenforceable.<sup>78</sup> Thus, if there is a compensation dispute between a Contract Advisor and their client involving an unenforceable contract, the Contract Advisor does not have the right to assert a claim for compensation.<sup>79</sup>

The NFLPA has established that three percent is the maximum commission fee a Contract Advisor can collect from a client's contract; however, agents are permitted to charge less than three percent.<sup>80</sup> Contract Advisors receive a commission from base salaries, signing bonuses, reporting bonuses, roster bonuses, and incentive bonuses.<sup>81</sup> Contract Advisors receive their fee after their client has received his compensation.<sup>82</sup>

The NFLPA can discipline Contract Advisors for violating the terms of the NFLPA. Disciplinary actions can range from an informal reprimand to revocation of the Contract Advisor's certification.<sup>83</sup> Other punishments include fines, public reprimands, and suspension from practice for a specified length of time.<sup>84</sup>

Though the NFLPA can technically punish Contract Advisors for improper dealings with student-athletes,<sup>85</sup> the NFLPA rules and regulations governing Contract Advisors focus primarily on the relationships between Contract Advisors and current professionals.<sup>86</sup>

---

<sup>78</sup> *Id.* at 12 § 4(A).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 12 § 4(B)(1). (The NFLPA establishes lower maximum fees for certain contract deals. If a player signs a one year tender while subject to a Franchise or Transition designation, or as a Restricted Free Agent, the Contract Advisor maximum charge is two percent.)

<sup>81</sup> *Id.* at 12 § 4(B)(3)-(4). (Contract Advisors cannot collect on honor bonuses (Pro Bowl, All Pro, Rookie of the Year, etc.) or collectively bargained for benefits in the player's contract.)

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 12 §6(D)(3).

<sup>84</sup> *Id.*

<sup>85</sup> Mike Florio, *NFL Suspends Gary Winchard, who Waives appeal rights*, PROFOOTBALLTALK.COM (Dec. 3, 2010), <http://profootballtalk.nbcsports.com/2010/12/03/nflpa-suspends-gary-wichard/>.

<sup>86</sup> *Supra* note 65.

## II. FLAWS IN THE CURRENT REGISTRATION SYSTEM

The current athlete agent system has three different entities that have enforcement capabilities over athlete agents: UAAA, SPARTA, and NFLPA. The NCAA has no such enforcement power over athlete agents. Each entity has a different standard of behavior, a different enforcement policy, a different financial burden, and a different registration requirement. These variations cause confusion among athlete agents and lead to an inability of performance in their capacity as advocates for their clients. Additionally, the assortment of ever-increasing fees prohibits qualified candidates from entering into the profession.

### *A. The NCAA Lacks the Ability to Enforce Rules Against Athlete Agents*

Former sports agent Josh Luchs's mentor, Harold Daniels, once told Luchs "We ain't [sic] members of the NCAA. We didn't agree to follow these rules."<sup>87</sup> Daniels clearly understood that the NCAA lacked the ability to enforce against any wrongdoings by athlete agents. To this day, the NCAA still lacks ability to hold athlete agents responsible for their actions. The NCAA is a membership institution that can issue punishments only to its members.<sup>88</sup> Since athlete agents are not members of the NCAA, an infraction committed by an agent does not result in direct repercussions by the NCAA against that individual.

Under the current NCAA regulations, an athlete agent may provide a student-athlete with impermissible benefits without any repercussions from the NCAA.<sup>89</sup> The most effective method of deterring unethical agent behavior by the NCAA is to discourage student-athletes from signing with an unethical agent.

Universities have the right to sue athlete agents for violating terms of the UAAA,<sup>90</sup> but the likelihood of this happening is

---

<sup>87</sup> George Dohrmann, *Confessions of an Agent*, SPORTSILLUSTRATED.COM (Oct. 12, 2010), <http://sportsillustrated.cnn.com/2010/magazine/10/12/agent/index.html>.

<sup>88</sup> See *supra* note 54.

<sup>89</sup> The NCAA has the ability to punish student athletes and universities for their violations of the NCAA Bylaws.

<sup>90</sup> See *Supra* note 9.

extremely low; in fact, no university has ever sued an athlete agent for violating the UAAA. One of the reasons the NCAA member institutes have not sued an agent is because the damages the university would likely seek are potentially unrecoverable, and even if they are recoverable, they are relatively small in comparison to the cost of the potential litigation. Additionally, by suing the agent, the university's reputation could suffer in the public light. Finally, universities are unlikely to sue because of the damage it could cause in the recruiting of future student-athletes.<sup>91</sup>

Under the NCAA's current structure, an agent, by being involved in conduct with a student-athlete that violates the NCAA Bylaws, can potentially cost a school millions of dollars in revenue, force the forfeiture of wins, and damage the school's reputation by violating NCAA rules; however, nothing prohibits that agent from continuing to recruit and sign other student-athletes to agency contracts. This is a flaw in the system because it leaves the agent unpunished for detrimental conduct to NCAA member institutions.

*B. The Lack of Enforcement Under the UAAA, SPARTA and NFLPA*

In order to deter individuals from illegal conduct, punishments for their misconduct must be fully enforceable upon the violator. Under the current rules and regulations of athlete agent legislation there is a clear lack of enforcement.

Since 2004, the FTC does not have one instance where it enforced SPARTA.<sup>92</sup> The non-enforcement over the past ten years has eliminated the deterrent effect of the law. In addition, the

---

<sup>91</sup> R. Alexander Payne, *Rebuilding the Prevent Defense: Why Unethical Agents Continue to Score and What Can Be Done to Change the Game*, 13 Vand. J. Ent. & Tech. L. 657, 676 (2011).

<sup>92</sup> Alan Zagier, *Laws on Sports Agents Rarely Enforced*, HUFFINGTONPOST.COM (Aug. 17, 2010), [http://www.huffingtonpost.com/2010/08/17/laws-on-sports-agents-rar\\_n\\_685000.html](http://www.huffingtonpost.com/2010/08/17/laws-on-sports-agents-rar_n_685000.html). ("FTC spokesman said the agency has had 'very, very few' complaints and taken no enforcement actions.")

monetary fine of \$11,000<sup>93</sup> is not an effective deterrent when agents have the potential to sign a new client.

The NFLPA has issues similar to SPARTA. The NFLPA has suspended agents for violating the NFLPA rules governing illegal dealings with current NFL players.<sup>94</sup> Until recently, however, the NFLPA has not disciplined agents for violating the rules concerning football players who were still student-athletes.<sup>95</sup>

The UAAA is no different from SPARTA or the NFLPA in its enforcement record. According to the Associated Press, twenty-four states with agent registration requirements have failed to invoke any sort of punishment.<sup>96</sup> Texas and Alabama are the only two states to actively enforce the UAAA. Texas has collected fines of over \$17,250,<sup>97</sup> and an individual in Alabama currently faces felony charges for violating state agency laws.<sup>98</sup> In Pennsylvania, as in most states, the law is seldom enforced; in seven years, Pennsylvania issued only four fines, none of which exceeded \$1,000.<sup>99</sup> This is not a real deterrent to any athlete agent.

Under the current rules and regulations, states have the ability to revoke an agent's license for a violation of the state statute; however, if one state revokes an agent's license, that agent can still recruit and sign student-athletes in other states.<sup>100</sup> There is a true lack of consistency in enforcing current legislative efforts to protect student-athletes.

---

<sup>93</sup> *Supra* note 53.

<sup>94</sup> Rick Karcher, *David Dunn Accepts 18-Month Suspension*, SPORTSLAWBLOG.COM (Nov. 29, 2006), <http://sports-law.blogspot.com/2006/11/david-dunn-accepts-18-month-suspension.html>.

<sup>95</sup> *Supra* note 86. (In conducting a detailed and thorough search this was the only example of the NFLPA suspending an agent for illegal conduct in regards to student athletes.)

<sup>96</sup> *Supra* note 65.

<sup>97</sup> *Id.*

<sup>98</sup> Jon Solomon, *Virginia Sports Agent Jailed in Alabama in Tyrone Prothro Case*, AL.COM (Feb. 16, 2011), [http://www.al.com/sports/index.ssf/2011/02/virginia\\_sports\\_agent\\_jailed\\_i.html](http://www.al.com/sports/index.ssf/2011/02/virginia_sports_agent_jailed_i.html).

<sup>99</sup> *Supra* note 65.

<sup>100</sup> *Id.*



### C. *The Multistate Game Under the UAAA*

At the heart of the UAAA's creation was a desire to codify the twenty-eight different agency regulation requirements into one consistent, easy-to-use piece of legislation.<sup>101</sup> That did not happen.

Currently, forty states have enacted some form of the UAAA. Additionally, California, Michigan, and Ohio have their own statutes that require the registration of athlete agents.<sup>102</sup> Under the UAAA, agents who fail to register in a state are subject to discipline for working as an agent in that state.<sup>103</sup>

The UAAA's intent was to allow applicants to easily file applications in multiple states. The ambiguous language of the statutes and inconsistencies in the statutes makes this a very difficult process. Under the model UAAA statute, if an agent register as athlete agent in one state, they may submit a copy of their application to the Secretary of State in another state. The original application is valid if its submission occurred in the previous six months, if it contains substantially similar information, and if the submission was under the penalty of perjury.<sup>104</sup> The UAAA fails to define what the phrase "substantially similar" means. In addition, because states are not required to adopt the entire statute, the actual statutes in the state differ from state to state; not all UAAA states allow for duplicate applications. The result of the inconsistencies in UAAA state statutes creates uncertainty among athlete agent registration.

Agents can easily become confused about when they must re-register with a state because of the UAAA's failure to standardize the term of years after which agents must renew their registration. For example, if State X has a two year renewal requirement and State Y has a three year renewal requirement,

---

<sup>101</sup> *Supra* note 14.

<sup>102</sup> The information was from a spreadsheet collected by Darren Heitner of SPORTSAGENTBLOG.COM. [https://docs.google.com/spreadsheet/ccc?authkey=CNPa-8YD&key=0AhBoF1Q\\_EsPhdHFzc1lheUFWRFJNVWxWVkrqSXFPPQ1E&hl=en\\_US&authkey=CNPa-8YD#gid=0](https://docs.google.com/spreadsheet/ccc?authkey=CNPa-8YD&key=0AhBoF1Q_EsPhdHFzc1lheUFWRFJNVWxWVkrqSXFPPQ1E&hl=en_US&authkey=CNPa-8YD#gid=0). (There are currently seven states without any form of agent registration requirements.)

<sup>103</sup> *Supra* note 17.

<sup>104</sup> *Supra* note 9 at §5(b).

an agent can easily forget to re-register in one of those states. If an agent does fail to renew their registration with a state, that agent would be in violation of the UAAA and subject to discipline. Adding to the problem, many states that have adopted the UAAA have not adopted the provision allowing reciprocal application to be filed.

The most daunting aspect of the multistate “game” is dealing with fees associated with the statutes. Currently the state registration costs ranging from \$2,500<sup>105</sup> to \$20.<sup>106</sup> That cost does not include the fee associated with securing a surety bond that many UAAA states require. In total, not including the financial burden of assuring a \$50,000 or greater surety bond that several UAAA states require, a new agent could be required to pay upwards of \$5,000 before he is even registered in a state. New agents with less financial assets than established agents find it difficult to register or practice in multiple states, especially in states with higher registration fees. Additionally, even established agents, whom have the financial wherewithal to register in multiple states, find it difficult to register because of the lack of uniformity in the registration requirements. The UAAA fees create a culture that allows the rich to get richer and the poor to stay poor. If new upcoming agents want to break into the industry, they need to balance the risk of steep financial burdens against the rewards of signing a client. Even if agents are established the time it takes to maintain a proper license in more than one state negatively affects their clients. The UAAA unfairly creates a boundary of entry for new agents and, ultimately, it hurts the individual athletes it is meant to protect.

### III. SOLUTION: THE FEDERAL REGULATION OF ATHLETE AGENTS ACT

As established, the current system of athlete agent regulation and legislation is fundamentally flawed. It prohibits ethical agents from fairly competing in recruiting new clients, creates a cynical

---

<sup>105</sup> *Board if Athletics Fee Schedule*, DELAWARE.GOV, <http://www.dpr.delaware.gov/boards/athleticagent/fees.shtml>.

<sup>106</sup> A.R.S. § 15-1765.

cycle that fails to promote the best interests of individual clients, and harms the general public welfare.

The implementation of the Federal Regulation of Athlete Agents Act will create a financially reasonable system that will generate a more qualified and ethically sound collection of athlete agents. The Federal Regulation of Athlete Agents Act will require the commitment of multiple entities, and will call for an increase in the ethical performance of duties and responsibilities of agents to the profession and to their clients.<sup>107</sup>

### A. Legality of a Federal Regulation

In order to proceed with the introduction of the Federal Regulation of Athlete Agents Act, it is essential to establish that the new regulation system complies with federal law. In order to comply with federal law, the Federal Regulation of Athlete Agents Act must be legal under the commerce clause of the U.S. Constitution.

Congress has the authority to regulate activities that have a substantial effect on interstate commerce.<sup>108</sup> Congress has the ability to regulate and protect persons or things involved in interstate commerce, even if the threat to commerce is from intrastate activities.<sup>109</sup>

The regulation of agents is certainly an interstate commerce issue. Agents travel to multiple states to recruit clients, negotiate deals, and expand their business enterprise. Their clients compete throughout the United States. Athlete agents also negotiate multimillion-dollar deals between interstate parties each year.

Additionally, by establishing SPARTA, legislative history demonstrates that the legislature is in support of federally regulating the athlete agent industry. A federal regulation system

---

<sup>107</sup> Kevin McGuire, *NFLPA Repeals "Junior Rule" for Agents, College Football on High Alert*, EXAMINER.COM (Mar. 28, 2012), <http://www.examiner.com/article/nflpa-repeals-junior-rule-for-agents-college-football-on-high-alert#ixzz1sVdROvN4>.

(Recently, NCAA spokesperson Stacey Osburn stated, "Tackling the complex issue of improper agent activity in college sports requires commitment from several groups to provide effective education and enforcement.")

<sup>108</sup> *United States v. Lopez*, 514 U.S. 549, 565-66 (1995).

<sup>109</sup> *United States v. Morrison*, 529 U.S. 598, 609 (2000).

is likely to be constitutional. The courts, however, can ultimately address the constitutionality of such a claim.<sup>110</sup>

*B. General Requirements of the Federal Regulation of Athlete Agents Act*

Athlete agents must submit an electronic application under the penalty of perjury to the Department of Labor. The Federal Regulation of Athlete Agents Act follows the UAAA registration application model.<sup>111</sup> Any applicant who knowingly lies on their application will suffer an automatic disqualification from becoming a registered agent. Additionally, an applicant who knowingly lies on their application faces a five-year ban on reapplying to be a registered athlete agent. Though the penalties may appear to be severe, they promote the ideals of honesty and ethical conduct that are essential to this act from the beginning.

After submitting the application, the applicant has five business days to tender a one-time, nonrefundable fee of \$1,000.<sup>112</sup> Failure to submit the fee within five days after the submission of the application results in termination of the application; however, it does not result in any future disqualifications or bans from the application process.

At the time of the application, the applicant must have proof of malpractice insurance. In the event of a lawsuit against an agent, the malpractice insurance will afford the plaintiff the ability to recover real damages. This would eliminate the need for agents to acquire a surety bond for each state. As a result, the total cost of registration will be decreased. Failure to prove malpractice insurance will result in a hold on the registration. After one month, applicants who fail to provide proof of malpractice insurance will have their application dismissed.

---

<sup>110</sup> *Id.* at 614.

<sup>111</sup> *Supra* note 19. (The application includes a disclosure of: formal training, practical experience, and educational background; criminal conviction of a crime involving moral turpitude or a felony; administrative or judicial determination of false, misleading, deceptive, or fraudulent representation; any suspension out of occupational or professional conduct; and any prior denial, suspension or revocation of registration or licensure of the applicant.)

<sup>112</sup> The goal is not to deter potential applicants with multiple number large fees and a variety of financial burdens.

Athlete agents must submit an application and have it approved before initiating contact with any potential new client. This includes a ban on contact between a prospective client and third parties, commonly known as “runners.” Prospective clients include current student-athletes, former student-athletes that have declared for the NFL draft, and current NFL players and free agents.<sup>113</sup> Failure to file an application before initiating contact with a potential client will result in a lifetime ban on representing that specific client, as well as a fine.<sup>114</sup>

### *C. Education Requirements*

Under the Federal Regulation of Athlete Agents Act, athlete agents must have a four-year degree, have graduated from an American Bar Association accredited law school, and have a license to practice law in at least one state or territory. Meeting these requirements will increase the quality of athlete agents as well as the ethical standards in the industry.<sup>115</sup> The strict educational requirement will help ease the financial burden the government faces in monitoring the ethical behavior and conduct of athlete agents.

Athlete agents must successfully pass the Federal Regulation of Athlete Agents entrance exam. This three-hour exam consists of both multiple choice and essay questions concerning the rules and regulations of the Federal Regulation of Athlete Agents Act. A committee, comprised of members from the NCAA and the NFLPA, is responsible for writing the exam. The committee responsible for writing the exam is also responsible for creating an ethics test specific to working in the sports agent industry. This will help ensure that athlete agents are aware of the current rules governing their ethical obligations.

Each athlete agent must attend a biannual seminar conducted jointly by the NCAA and NFLPA. Agents registered for

---

<sup>113</sup> This excludes players who are no longer seeking employment as football players.

<sup>114</sup> Fines will be discussed in § III (D).

<sup>115</sup> Individuals who graduated law school and are not licensed or admitted to practice law in any state are not bound by the Rules of Professional Conduct.

ten years or more, with no violations of the Act, are only required to attend the seminar once every four years.

#### *D. Renewal*

Under the Federal Regulation of Athlete Agents Act, athlete agents have the duty to renew their registration every two years. The renewal application is much less demanding than the initial application. An agent who wishes to renew must provide current contact information as well as a current business location. Under the Act, athlete agents have thirty days to notify the Department of Labor of any changes in their address or contact information. Failure to provide the Department of Labor with correct contact information will first result in a writing warning, and then it will result in a fine.

In addition, the application for renewal must include lists of current clients, previous clients whom have terminated their standard representation agreement, and new clients. The renewal application must also outline all deals and negotiations the agent participated in during the previous two years. Unlike the NFLPA, under the Federal Regulation of Athlete Agents Act, there is no requirement that athlete agents negotiate a contract every three years to maintain their certification.<sup>116</sup>

Once every four years, registered athlete agents are required to take an ethics exam. The ethics exam is the same exam that new agents must take before they become certified. Administration of the test occurs at the biannual seminar. If athlete agents do not pass the exam, they must attend an individualized seminar on the ethical obligations of the industry. The purpose of the ethics exam is to ensure that athlete agents are knowledgeable of the rules and requirements of the Federal Regulation of Athlete Agents Act and remain in compliance with the Act.

An agent must discontinue activity as an athlete agent if he or she fails to renew under the Federal Regulation of Athlete Agents Act; however, the athlete agent will still be able to collect

---

<sup>116</sup> *Supra* note 76.

commission on contracts they have already negotiated for their clients.

Any person registered, but no longer certified, as an agent under the Act must attend the biannual seminar and pay the renewal fee to become re-registered. These individuals will not be subject to the entire application process again. The agent renewal fee is \$250, but if an agent represents ten clients or more the fee is \$1000.

*E. Duty and Responsibility of a Registered Athlete Agent under the Federal Regulation of Athlete Agents Act*

The most important aspects of the Federal Regulation of Athlete Agents Act are the duties and responsibilities assigned to registered athlete agents.

Since the Federal Regulation of Athlete Agents Act allows only attorneys to be registered athlete agents, the Rules of Professional Conduct will already be enforceable on agents. The nature of the athlete agent's business, however, will require that the lawyer's rules concerning conflicts of interest with clients be relaxed.

Model Rule 1.7 prohibits a lawyer from representing a client representation involves a conflict of interest.<sup>117</sup> This would impede on the athlete agent's ability to represent multiple athletes because it is foreseeable that an agent with more than one client would have a conflict of interest.<sup>118</sup> If Model Rule 1.7 was fully enforced, agents could not represent clients on the same team, clients that play the same position, or clients that are free agents at the same time.<sup>119</sup> In addition to the aforementioned potential violations, a feasible argument could be made that it would be a violation of Rule 1.7 for an agent to represent more than one professional football player.

---

<sup>117</sup> CONFLICT OF INTEREST: CURRENT CLIENTS, MRPC Rule 1.7.

<sup>118</sup> Under MRPC Rule 1.7(b) a lawyer who reasonably believes that he will be able to provide competent and diligent representation to each client may choose to represent both. *Id.*

<sup>119</sup> Admittedly, there is an endless supply of situations that could cause a violation of Rule 1.7.

Under the Federal Regulation of Athlete Agents Act, the agent has a duty to act in the best interest of his or hers client. If the client does not feel that the agent is fulfilling their obligations, the client has the ability to terminate the relationship at any point.<sup>120</sup> If a client feels their agent has a conflict of interest, the client has the ability to terminate the standard representation agreement at any time under the Federal Regulation of Athlete Agents Act. In order to protect the agents, if the client terminates his standard representation agreement before he signs a professional football contract, he, or his future agent, must repay training cost and any advanced loans received by the clients.

Unlike under the Model Rules of Professional Conduct, athlete agents are not obligated to a duty of confidentiality.<sup>121</sup> This is because agents may need to use information that could be confidential in order to increase their ability to bargain for the best possible deal. For example, if a free agent client tells his agent that he only wants to play for his previous team but that he also would accept a deal with another team if they guaranteed him at least \$15 million over three years, the agent should have the ability to use this information in negotiations. The inability to use this information would hurt both the client and the agent's ability to negotiate in the best interest of the client. Any information the agent receives from the client can be used to the benefit of the client, unless explicitly instructed that the information is to remain confidential. The Federal Regulation of Athlete Agents Act specifically prohibits any use of this information against the best interests of the client.

Athlete agents have an obligation not to entice athletes who have already signed a standard representation agreement with another agent to switch agents. This includes initiating contact with any player who has already signed a standard representation agreement with another agent. This obligation is in place to

---

<sup>120</sup> If the client terminates the standard player representation agreement, the agent will still collect commission on all contracts negotiated for the client that were negotiated under the standard player representation agreement.

<sup>121</sup> CONFIDENTIALITY OF INFORMATION, MRPC Rule 1.6.



eliminate the threat client stealing.<sup>122</sup> The only contact an athlete agent may have with a represented athlete is contact that is initiated by the athlete.

The Federal Regulation of Athlete Agents Act explicitly prohibits athlete agents from offering any sort of enticement or thing of value to a prospective client. This includes gifts, vacations, money, or any other benefit that would attract a client. It is acceptable, however, for agents to make a “sales pitch” on why they would do a better job at representing the client than any other agent. Athlete agents may not misrepresent their ability to perform as an athlete agent. This duty of honesty applies to both current clients and future clients.

Additionally, as established under the current NFLPA regulations, agents may send general advertisements to athletes; however, the Department of Labor must approve the advertisements before distribution. The advertisements cannot directly or indirectly mention any other athlete agent or athlete outside of the current clients of the agent.

In light of the recent NCAA sanctions imposed on the University of North Carolina<sup>123</sup> and the University of Southern California,<sup>124</sup> the Federal Regulation of Athlete Agents Act focuses on protecting NCAA member institutions and their student-athletes. To protect student-athletes, there is a no-contact rule that starts on August 15 each year and ends on the Tuesday after the National Championship Game. The no-contact rule prohibits any contact between athlete agents and student-athletes, even if the student-athlete initiates the contact. Agents who fail to follow the no-contact period are subject to discipline. Agents may have

---

<sup>122</sup> Adem Fوسفeld, *Is Drew Rosenhaus Poaching Clients From Other NFL Agents?*, BUSINESSINSIDER.COM, (Dec. 28, 2010), [http://articles.businessinsider.com/2010-12-28/sports/30035488\\_1\\_agents-drew-rosenhaus-client](http://articles.businessinsider.com/2010-12-28/sports/30035488_1_agents-drew-rosenhaus-client).

<sup>123</sup> Ivan Maisel, *UNC Banned from 2012 Postseason*, ESPN.COM, (Mar. 12, 2012), [http://espn.go.com/college-football/story/\\_/id/7677271/north-carolina-tar-heels-handed-postseason-ban-2012-ncaa](http://espn.go.com/college-football/story/_/id/7677271/north-carolina-tar-heels-handed-postseason-ban-2012-ncaa).

<sup>124</sup> Stewart Mandel, *With Harsh USC Penalties, NCAA Sends Warning to all Elite Programs*, SPORTSILLUSTRATED.COM, (June 10, 2010), [http://sportsillustrated.cnn.com/2010/writers/stewart\\_mandel/06/10/usc.penalties/index.html](http://sportsillustrated.cnn.com/2010/writers/stewart_mandel/06/10/usc.penalties/index.html).

contact with student-athletes only after their first year of NCAA eligibility has expired.

It is important that student-athletes become familiar with and knowledgeable about athlete agents. This will afford student-athletes the ability to make an informed decision when the time comes to sign with an agent. By allowing a relationship to grow between an agent and a student-athlete, another agent's attempts to steal the client will be less likely to succeed.<sup>125</sup> An agent or a party affiliated with an agent cannot provide student-athletes with any benefits deemed impermissible by the NCAA. An agent who violates this rule is subject to severe punishment under the Act.

The Federal Regulation of Athlete Agents Act prohibits athlete agents from giving items of value that would entice a client to sign with them; however, under this Act, agents may provide financial assistance to a client for their draft preparation. An athlete agent may provide a marketing guarantee up to \$15,000 to their client. The agent may provide up to an additional \$15,000 for draft preparation costs that exceed the original \$15,000. The Act requires that, if the client makes an NFL roster, the client must reimburse the money. This prevents agents from being "banks" and gifting an insurmountable amount money to their clients with no requirement of a repayment. This will help eliminate the practice of athletes signing with agents solely based on the amount of money they provide up front, rather than for the quality of representation they offer.

Athlete agents have the duty to notify a university 48 hours before having any face-to-face interaction with a current student-athlete. Before the agent has face-to-face contact with a student-athlete, he must check-in with the university's athletic department to inform them of his or her presence on campus. Additionally, after the agent has met with the student-athlete, the agent must notify the university that the agent and student-athlete have completed their meeting. The Federal Regulation of Athlete Agents Act recommends that the NCAA and its member

---

<sup>125</sup> Admittedly, allowing agents to have contact with student athletes after one year on campus is a risky concept. This is why the punishment for failing to inform the university of such contact results in severe fines and suspensions of agents.

institutions should not ban athlete agents from campuses so long as the athlete agent is in good standing under the Act. Athlete agents may only meet with student-athletes for a maximum of four hours each month, excluding the no-contact period. In an effort to protect the interest of the student-athlete, nothing requires them to meet with an athlete agent.

#### *F. Enforcement and Discipline*

The core problem with the current system of agent regulation is the inability to deter athlete agents from breaking the rules. The UAAA and SPARTA have demonstrated that the threat of fines and criminal and civil liability are not sufficient to prevent unethical conduct. The Federal Regulation of Athlete Agents Act will be different, with firm but fair enforcement against athlete agents.

The punishments under the Act will include fines, civil liability, criminal liability, and suspensions and revocations of licenses.

Each athlete agent has the duty to report known violations to the Department of Labor. In an effort to promote self-regulation, agents have the ability to confidentially report violations of the Federal Regulation of Athlete Agents Act. To prevent frivolous accusations, an athlete agent who submits two or more frivolous claims against another athlete agent cannot bring any more claims for four years. An honest, good faith report of a violation is not a frivolous claim. Athlete agents who knowingly fail to report a claim are guilty of a violation of the Federal Regulation of Athlete Agents Act. These agents face a fine and possible suspension of their license. Based on the totality of the circumstances, the Department of Labor determines if a violation of the duty to report has occurred. The Federal Regulation of Athlete Agents Act recommends that the NCAA mandate that universities report any known agent violations of the Act.

Any potential athlete agent who knowingly works as an agent without a license is subject to the most serious punishment under the Federal Regulation of Athlete Agents Act. Violators of this rule face the strict punishment of a lifetime ban against ever becoming a licensed athlete agent. Additionally, the individuals to whom they made a misrepresentation have a civil claim for

damages against them. There is also criminal liability for acting as an unlicensed agent resulting in a potential felony charge and up to five years of incarceration. This law is also applicable to third parties who work for unlicensed agents.

At the heart of this rule is the protection of student-athletes; therefore, the punishments against athlete agents for threatening the eligibility of or taking advantage of student-athletes are severe. If an agent initiates or continues contact with a student-athlete during the no-contact period, the agent – and anyone in his firm – cannot ever sign that student-athlete. Additionally, the agent is subject to a fine of \$25,000.

If an agent fails to notify a university about a face-to-face meeting with a student-athlete, the agent faces a first-time violators fine of \$5,000. The second occurrence of such violation is a fine of \$10,000 and a ban on recruiting the specific student-athlete with whom the violation occurred. The third violation is a fine of \$25,000 and a ban from the institutions where the violations took place.

If an athlete agent is found to be guilty of providing illegal benefits to a current student-athlete that would make the individual ineligible to participate in competition for an extended period of time, the agent will face serious sanctions. Impermissible benefits are subject to the same fines as those for failing to notify the university about face-to-face contact with a student-athlete; however, the punishments differ in that an agent who provides illegal benefits cannot sign any clients from that institution for five years after the conviction of a first offense. The second time an athlete agent is found guilty of providing student-athletes with impermissible benefits, their license to practice as an agent is subject to revocation for a two-year period. When the Department of Labor revokes an agent's license, the agent must reapply under the Federal Regulation of Athlete Agents Act.

If the athlete agent is guilty of providing illegal benefits to student-athletes that exceed \$250, that agent faces an automatic four-year suspension. The second time an agent provides an illegal benefit to student-athletes exceeding \$250, the agent suffers a suspension of eight years. It is highly unlikely that the Department of Labor will approve the application of an agent who

provided impermissible benefits to student-athletes on two separate occasions.

Under the Federal Regulation of Athlete Agents Act, agents have one calendar year from the date of the punishment to pay a fine. Agents who require more time to pay a fine, may plead their case to the Department of Labor with a request to extend the deadline for the payment of their fine.

Any violation that renders a student-athlete ineligible, for even one game, is punishable by up to three years in prison. The university also has the option to commence civil action against the agent to recover damages for the tuition of the student-athlete, the damage to the image and reputation of the university, and damages from lost revenue.

The Federal Regulation of Athlete Agents Act also provides discipline for agent conduct with current NFL players. Any agent who is guilty of providing special benefits or enticing a client to sign with items such as money, cars, clothing, or other gifts is subject to a fine of \$25,000. The Federal Regulation of Athlete Agents Act prohibits agents found guilty of attempting to steal clients from ever representing those players they attempt to steal. Illegal benefits also include loaning clients over \$30,000 in the pre-draft preparation.

#### CONCLUSION

The Federal Regulation of Athlete Agents Act will not solve every problem that the athlete agent industry faces today. Outliers will always be present when millions of dollars are at stake. No matter how many rules or regulations are in place, individuals will bend and break those rules for the opportunity to sign a future client.

The Federal Regulation of Athlete Agents Act will banish the multistate situation that acts as a barrier to entry for many qualified agents. The new Act will hold agents responsible for maintaining an ethical standard in the industry. The Act also provides opportunities for more qualified and ethically sound applicants than are available under the current system.

As with any law or regulation, the Federal Regulation of Athlete Agents Act must receive proper funding to have an effect on the athlete agent industry. With effective enforcement, the Act

will benefit student-athletes, universities, the NCAA, and the NFLPA.

Undoubtedly, the Federal Regulation of Athlete Agents Act will help change the culture of the athlete agent industry. It will shift the culture from a “show me the money” mindset to a “client first” mentality. The Federal Regulation of Athlete Agents Act will usher in a new era that promotes ethical and professional responsibility to the athlete agent industry.