

117TH CONGRESS  
1ST SESSION

# H. R. 5817

To establish due process requirements for the investigation of intercollegiate athletics, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 2, 2021

Mr. KUSTOFF (for himself, Mr. HARDER of California, and Mr. OWENS) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To establish due process requirements for the investigation of intercollegiate athletics, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “NCAA Accountability  
5 Act of 2021”.

6 **SEC. 2. DUE PROCESS REQUIREMENTS.**

7 (a) IN GENERAL.—Each covered athletic association  
8 shall establish and administer due process requirements  
9 for the investigation of any member institution, student  
10 athlete enrolled in such member institution, or other indi-

1 vidual for any alleged infraction of the covered athletic as-  
2 sociation's bylaws or failure to meet the conditions and  
3 obligations of membership if the matter cannot be resolved  
4 without a formal investigation, consistent with the fol-  
5 lowing:

6 (1) If the covered athletic association initiates  
7 an investigation into a member institution, the cov-  
8 ered athletic association shall provide written notice  
9 to the member institution detailing the nature of the  
10 inquiry by not later than 60 days after the covered  
11 athletic association receives information indicating  
12 that a bylaw violation may have occurred, and that  
13 the covered athletic association has determined that  
14 an investigation is warranted. The notice shall in-  
15 clude, to the extent such information is available, the  
16 following:

17 (A) Each program under investigation.

18 (B) All persons under investigation.

19 (C) The specific alleged violations under  
20 investigation.

21 (D) Each date or time period an alleged  
22 violation may have occurred.

23 (E) The rights and resources available to  
24 the accused.

1           (2) The notice under paragraph (1)(C) shall be  
2           limited to possible violations occurring not earlier  
3           than 2 years before the date the notice is provided  
4           to the member institution. The covered athletic asso-  
5           ciation shall thereafter promptly notify the member  
6           institution of any other relevant information discov-  
7           ered in the course of the investigation.

8           (3) Prior to commencing any enforcement pro-  
9           ceeding, the covered athletic association shall provide  
10          the member institution with a notice of allegations  
11          not later than 8 months after the notice of inquiry  
12          is received under paragraph (1), which shall include  
13          the following:

14                (A) Details about each allegation.

15                (B) The potential penalties for each allega-  
16          tion.

17                (C) The information and factors the cov-  
18          ered athletic association considered in its deter-  
19          mination to file charges.

20                (D) The rights and resources available to  
21          the member institution and involved individuals.

22          (4) Not earlier than 60 days after the notice of  
23          allegations is received, there shall be a hearing be-  
24          fore the covered athletic association's infractions  
25          committee or body with authorization to hear cases

1 and prescribe punishments to member institutions  
2 which shall conform to the following requirements:

3 (A) The hearing shall commence not later  
4 than 1 year after the notice is provided under  
5 paragraph (1).

6 (B) No information from confidential  
7 sources may be offered into evidence or form  
8 the basis for any decision.

9 (5) In the event that there is any dispute re-  
10 garding the covered athletic association's punish-  
11 ment of a member institution, the member institu-  
12 tion may compel entry into arbitration conducted in  
13 accordance with the standard commercial arbitration  
14 rules of an established major national provider of ar-  
15 bitration and mediation services based in the United  
16 States, which will provide an independent review and  
17 binding decision. The arbitration shall be conducted  
18 by a three-person panel. The covered athletic asso-  
19 ciation and member institution shall each appoint  
20 one arbitrator of their respective choosing. The third  
21 arbitrator shall be appointed in agreement by the  
22 two arbitrators appointed by each party.

23 (6) The covered athletic association shall con-  
24 duct its enforcement proceedings and investigations  
25 in a fair and consistent manner, and the penalties

1 issued against member institutions for bylaw infrac-  
2 tions shall be equitable with respect to severity of  
3 the infraction and the member institution's history  
4 of infractions.

5 (7) The covered athletic association shall not  
6 disclose information relating to an ongoing investiga-  
7 tion into a member institution until formal charges  
8 are filed in the notice of allegations submitted under  
9 paragraph (3). The member institution shall have  
10 discretionary authority to disclose any information  
11 relating to an ongoing investigation, and no informa-  
12 tion relating to an ongoing investigation shall be  
13 subject to any disclosure requirement under State  
14 law.

15 (b) REPORT.—A covered athletic association shall  
16 submit an annual report to the Attorney General summa-  
17 rizing its enforcement proceedings, investigations, and  
18 issuance of punishments to member organizations under  
19 this Act over the preceding year. A covered athletic asso-  
20 ciation shall submit an annual report to each State Attor-  
21 ney General (and the Attorney General for the District  
22 of Columbia) summarizing its enforcement proceedings,  
23 investigations, and issuance of punishments to member in-  
24 stitutions headquartered in the State.

1 **SEC. 3. LIMITATION.**

2       The privileges of membership of any member institu-  
3 tion in the covered athletic association may not be im-  
4 paired as a consequence of any rights granted under this  
5 Act.

6 **SEC. 4. ENFORCEMENT.**

7       (a) PROCEDURES.—The Attorney General shall es-  
8 tablish procedures—

9           (1) for individuals and entities to file written,  
10 signed complaints respecting potential violations of  
11 this Act by a covered athletic association or any per-  
12 son acting as an agent thereof;

13           (2) for the investigation of those complaints  
14 which have a substantial probability of validity;

15           (3) for the investigation of such other violations  
16 of this Act as the Attorney General determines to be  
17 appropriate; and

18           (4) for the evaluation of a covered athletic asso-  
19 ciation's annual report to determine compliance with  
20 this Act.

21       (b) INVESTIGATIONS AND HEARINGS.—In conducting  
22 investigations and hearings pursuant to this section, the  
23 following shall apply:

24           (1) Any hearing so requested shall be conducted  
25 before an administrative law judge of the Depart-  
26 ment of Justice determined by the Attorney General.

1       The hearing shall be conducted in accordance with  
2       the requirements of section 554 of title 5, United  
3       States Code. The hearing shall be held at the near-  
4       est practicable place to the place where the person  
5       or covered athletic association resides or of the place  
6       where the alleged violation occurred. If no hearing is  
7       so requested, the Attorney General's imposition of  
8       the order shall constitute a final and unappealable  
9       order.

10           (2) Officers and employees of the Department  
11       of Justice (including the administrative law judges  
12       referred to in paragraph (1)) shall have reasonable  
13       access to examine evidence of any person or covered  
14       athletic association being investigated.

15           (3) If the administrative law judge determines,  
16       upon the preponderance of the evidence received,  
17       that a person or covered athletic association named  
18       in the complaint has violated the statute, the admin-  
19       istrative law judge shall state his findings of fact  
20       and issue and cause to be served on such person or  
21       covered athletic association an order as follows:

22           (A) The administrative law judge shall  
23       order the person or covered athletic association  
24       to cease and desist from such violations and to

1           pay a civil penalty in an amount of not less  
2           than \$10,000 and not more than \$15,000,000.

3           (B) In determining the amount of the pen-  
4           alty, due consideration shall be given to the  
5           good faith of the covered athletic association or  
6           person, the seriousness of the violation, and the  
7           history of previous violations.

8           (C) The administrative law judge may  
9           order the permanent removal of any member of  
10          the covered athletic association's governing  
11          body in the case of a violation.

12          (4) The Attorney General may, not earlier than  
13          30 days after providing notice thereof to the person  
14          or covered athletic association, commence a hearing  
15          before an administrative law judge of the Depart-  
16          ment of Justice for any alleged violation of this Act  
17          by that person or covered athletic association. The  
18          administrative law judge may impose a civil penalty  
19          for any violation determined to have occurred.

20          (5) Administrative law judges may, if necessary,  
21          compel by subpoena the attendance of witnesses and  
22          the production of evidence at any designated place  
23          or hearing case of contumacy or refusal to obey a  
24          subpoena lawfully issued under this paragraph and  
25          upon application of the Attorney General, an appro-



1        piate district court of the United States may issue  
2        an order requiring compliance with such subpoena  
3        and any failure to obey such order may be punished  
4        by such court as a contempt thereof.

5            (6) The decision and order of an administrative  
6        law judge shall become the final agency decision and  
7        order of the Attorney General unless, within 30 days  
8        after the administrative law judge issues such order,  
9        the Attorney General modifies or vacates the deci-  
10       sion and order, in which case the decision and order  
11       of the Attorney General shall become a final order  
12       under this subsection.

13           (7) A person or covered athletic association ad-  
14       versely affected by a final order (including an order  
15       for assessment of a civil penalty) under this section  
16       may, within 45 days after the date the final order  
17       is issued, file a petition in the Court of Appeals for  
18       the appropriate circuit for review of the order.

19 **SEC. 5. DEFINITIONS.**

20        In this Act:

21            (1) COVERED ATHLETIC ASSOCIATION.—The  
22       term “covered athletic association” means an inter-  
23       state athletic association, conference, or other orga-  
24       nization with authority over intercollegiate athletics

1 or that administers intercollegiate athletics, with at  
2 least 900 member institutions.

3 (2) MEMBER INSTITUTION.—The term “mem-  
4 ber institution” means an institution of higher edu-  
5 cation that maintains at least one intercollegiate  
6 athletic program that is a member of a covered ath-  
7 letic association.

8 (3) INSTITUTION OF HIGHER EDUCATION.—The  
9 term “institution of higher education” has the  
10 meaning given the term “college” or “university” in  
11 section 1404 of the National Agricultural Research,  
12 Extension, and Teaching Policy Act of 1977 (7  
13 U.S.C. 3103).

14 **SEC. 6. EFFECTIVE DATE.**

15 A covered athletic association shall carry out the re-  
16 quirements of this Act by not later than 1 year after the  
17 date of enactment of this Act.

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