Protecting and Promoting the
Health of NFL Players:
Legal and Ethical Analysis and Recommendations

Chapter 13

Christopher R. Deubert
I. Glenn Cohen
Holly Fernandez Lynch

Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School

Financial Advisors

As we discussed in the Introduction to this Report, our goal is to examine all the inputs that may influence players' health, including the so-called "social determinants of health." Financial health is a major contributor to physical and mental health, and also, in turn, affected by physical and mental health.[a] Indeed, many studies have shown a correlation between financial debt and poor physical health.[1] For these reasons, financial advisors are a critical stakeholder in players' long-term health. Despite multiple layers and the availability of well-qualified financial professional regulation (discussed below), there are many stories of NFL players suffering from financial difficulties. While the

a Many experts have recognized that "financial insecurity can cause people to 'cut corners in ways that may affect their health and well-being,' like spending less on food, clothing, or prescriptions." Nadia N. Sawicki, *Modernizing Informed Consent: Expanding the Boundaries of Materiality,* Univ. Ill. L. Rev. (2016), *citing* Kevin R. Riggs and Peter A. Ubel, *Overcoming Barriers to Discussing Out-of-Pocket Costs With Patients*, 174 Jama Int. Med. 849 (2014); Peter A. Ubel, Amy P. Abernethy, and S. Yousuf Zafar, *Full Disclosure—Out-of-Pocket Costs as Side Effects,* 369 New Eng. J. Med. 1484 (2013). Indeed, to many, "financial well-being is certainly within the boundaries of most peoples' concept of health." *Id., quoting* Michael S. Wilkes and David L. Schriger, *Caution: The Meter is Running: Informing Patients About Health Care Costs*, 165 Western J. Med 74, 78 (1996) (noting that "discussions about the cost of care are an important part of the physician-patient relationship").

actual career earnings of NFL players are difficult to ascertain,[b] there have been multiple studies about NFL player financial health with a variety of results.

According to a 2009 *Sports Illustrated* article, by the time NFL players have been retired for two years, 78 percent of them are bankrupt or in financial distress.[2] However, according to a 2009 NFL-funded study of former NFL players by the University of Michigan, the median income of a former player between the ages of 30 and 49 is $85,000, compared to $55,000 for the general population. The study also found that 8.4 percent of former players between ages 30 and 49 were below the poverty level, as compared to 9.5 percent of the general population. A 2015 academic study also refuted the figures in the *Sports Illustrated* article, finding that within two years of the end of their career, only 1.9 percent of players were bankrupt, while also finding that one in six players was bankrupt within 12 years of leaving the NFL.[c] Moreover, in 2012, ESPN released the documentary "Broke" detailing the financial problems of professional athletes, and exploring how they had gotten there.[3] And in a 2014–2015 survey of 763 former players by *Newsday*, 50.59 percent of former players interviewed said they had struggled financially since their playing career ended.[4]

There are, however, important limitations to the above-mentioned studies.

To support its findings *Sports Illustrated* cited "reports from . . . athletes, players' associations, agents and financial advisers" but no additional details and no information that can be independently verified.

There are two potential limitations to the Michigan Study. First, the Michigan Study population only included players who had vested rights under the NFL's Retirement Plan, meaning that the players generally had been on an NFL roster for at least three games in at least three seasons. There is likely a significant but unknown percentage of NFL players who never become vested under the Retirement Plan. Second, responders to the survey were 36.8 percent African American and 61.4 percent white—almost a complete reversal of the NFL's population of current players. While the racial demographics of former players is likely closer to the population of the Michigan Study, *i.e.,* there were more white players than in the current NFL, the Michigan Study did not provide such data on the former player population and did not adjust or account for the racial demographics of the former player population.

In a telephone call with Dr. David Weir, the lead author of the Michigan Study, he explained that: (1) due to limited resources, the population of players to be studied and contacted was limited to the data and contact information available to and provided by the NFL; and, (2) the NFL did not provide racial demographics of former players and thus the study could not adjust for that factor. Weir also believes that the racial demographics of former players is substantially similar to the racial demographics of the Michigan Study's participants. Finally, Weir explained that, during the internal review process with the NFL, the study was leaked to the media, preventing the study from being amended and submitted to a peer-reviewed publication.

Finally, there are also limitations to the *Newsday* survey: (1) the survey was sent via email and text message by the NFLPA to more than 7,000 former NFL players, thus eliminating former players who were less technologically savvy and also possibly skewing the sample towards those former players closer to the NFLPA; (2) the response rate for the survey was low (approximately 11 percent); and, (3) the study does not discuss the demographics of those that responded, making it difficult to ascertain whether those who responded are a representative sample of all former players.

Despite these limitations, we provide the reader with the best existing data. Moreover, while there are limitations to the data collected to date as well as differences in the figures presented, it is clear that there are serious concerns about former players' financial difficulties.[5]

b Based on an average career length of approximately three years, the NFLPA has estimated that the average career earnings of an NFL player are $4 million after taxes. *See* Adam Molon, *Why So Many Ex-NFL Players Struggle With Money*, CNBC (Jan. 31, 2014, 12:29 PM), www.cnbc.com/id/101377457#, *archived at* http://perma.cc/F5YN-FJE2. Using an average salary of $1.9 million and an average career length of 3.5 years, others have estimated NFL players earn about $6.7 million in their careers, a figure largely on par with that of the NFLPA's. *See* Nick Schwartz, *The Average Career Earnings Of Athletes Across America's Major Sports Will Shock You*, USA Today, Oct. 24, 2013, http://ftw.usatoday.com/2013/10/average-career-earnings-nfl-nba-mlb-nhl-mls, *archived at* http://perma.cc/9DFP-WPQ2. However, the NFL has disputed the 3.5 years figure generally provided by the NFLPA, stating instead that players who actually make an NFL Club have, on average, careers of about 6 years. *See What is average NFL player's career length? Longer than you might think, Commissioner Goodell says*, NFL (Apr. 18, 2011), http://nflcommunications.com/2011/04/18/what-is-average-nfl-player%E2%80%99s-career-length-longer-than-you-might-think-commissioner-goodell-says/, *archived at* http://perma.cc/PX5U-9SFK. Finally, it is important to point out that the average in this case does not reflect the median career earnings of NFL players, *i.e.,* the career earnings of a typical NFL player.

c Kyle Carlson, et al., *Bankruptcy Rates Among NFL Players with Short-Lived Income Spikes*, Nat'l Bureau of Econ. Research (April 2015). The study found that the rate of bankruptcy among the general population in the 25–34 year age group was very similar to the bankruptcy rate of NFL players. However, the general population's average income is almost certainly substantially less than that of the average NFL player's.

The relationship between physical and financial health goes in both directions. Without adequate savings and benefits during and after NFL play, players may find themselves insufficiently prepared to meet their physical and mental health needs, especially in the event of crisis. On the flip side, crises in physical and mental health are closely tied to bankruptcy, home foreclosure, and other serious financial setbacks.[6] At its worst, these two outcomes can lead to a vicious cycle — poor health outcomes lead to financial losses, which worsen the ability to combat physical and mental health impairments, which in turn further deplete financial resources.

Financial health is also in and of itself an important component of a person's health. Financial difficulties can cause stress that contributes to or exacerbates psychological and physical ailments.

For all of the above reasons, it is thus critical to consider a stakeholder with a key role in helping players cope and plan financially — financial advisors. It is also critical to recognize that even though NFL players may make a sizeable income during their playing years, they do not all have million dollar contracts, and depending on their career options outside of football, the money they earn may need to see them and their families through decades.

To better inform our understanding of financial advisors' obligations and practices, we conducted 30–60 minute interviews with three active financial advisors. On average, the financial advisors interviewed had been NFLPA-registered financial advisors for 15 years and had 34 active or former NFL players as clients. The interviews were not intended to be representative of the entire financial advisor population or to draw scientifically valid inferences, but were instead meant to be informative of general practices among financial advisors. We provide quotes from these interviews and urge the reader to keep that caveat in mind throughout. We then invited all three financial advisors to review a draft of this chapter prior to publication. Although two agreed to review a draft of the chapter, only one, Mark Doman of The Doman Group, provided comments. Finally, while two of the financial advisors we interviewed preferred to remain anonymous, Doman preferred to be identified by name in the Report.

(A) Background

Financial advisors are a variety of professionals whose services depend on their area of expertise but can include services such as tax planning, investment advice and services, budgeting, financial planning, insurance, estate planning, and retirement planning.[d] While many financial advisors working on behalf of NFL players try to focus their efforts in the world of professional sports, the majority of them have a wide range of clients.

As described in Chapter 12: Contract Advisors, under the National Labor Relations Act (NLRA), the NFLPA is the exclusive representation of players in negotiations with NFL clubs. By choosing to delegate this authority to contract advisors, the NFLPA has the legal authority to certify, regulate and discipline contract advisors. The NFLPA is able to further strengthen its control over contract advisors by requiring NFL clubs to only deal with contract advisors who have been certified by the NFLPA, or be subject to a $30,000 fine.[7]

Without adequate savings and benefits during and after NFL play, players may find themselves insufficiently prepared to meet their physical and mental health needs.

The NFLPA has no such authority over financial advisors. Neither the NLRA nor any other law confers any status on the NFLPA that gives it the right to regulate financial advisors. More specifically, financial advisors are not involved in the labor dynamics that create the NFLPA's legal authority over contract advisors, *i.e.,* financial advisors do not negotiate contracts and generally have no contact with the NFL or NFL clubs.

d The NFLPA Financial Advisor Regulations define "Financial Advice" as "any form of advice, guidance, recommendation, direction, or control, directly or indirectly, over a Player's funds, property and/or investments, and shall include, but not be limited to, investment advice (including securities, commodities, banking, insurance, or real estate), financial planning, budgeting, money management, retirement planning, the purchase of insurance, tax and estate planning, and any other form of financial consultation that permits the advisor to exercise discretion or control over a Player's funds, property, and/or investments. As such, 'Financial Advisors' includes 'Brokers,' 'Dealers,' 'Investment Advisers,' and 'Financial Planners,' each as defined herein. 'Financial Advisors' also expressly includes insurance agents, accountants, and attorneys." 2012 NFLPA Financial Advisor Regulations, § 1.

Nevertheless, after an estimated 78 players were defrauded of $42 million in a three-year period, the NFLPA began a system of regulating financial advisors in 2002.[8] That year, the NFLPA launched a program whereby financial advisors could register with the NFLPA and released its Regulations and Code of Conduct Governing Registered Player Financial Advisors ("Financial Advisor Regulations").[e] The NFLPA's financial advisor program was, and remains, the only one of its kind among the major American sports unions, and deserves praise in this regard.

It is important to note that the NFLPA only "registers" financial advisors while it "certifies" contract advisors. This distinction likely exists for several reasons: the NFL lacks legal authority over financial advisors as described above; and, the NFLPA does not want to be seen as endorsing any financial advisor and becoming liable for the wrongdoing of any financial advisor.[9] Indeed, the NFLPA requested and received a No-Action Letter from the Securities and Exchange Commission (SEC) agreeing with the NFLPA's position that by operating the financial advisor program, the NFLPA would not be considered an investment adviser or solicitor within the meaning of federal securities laws.[10]

Significantly, this distinction means that while contract advisors are *required* to be certified by the NFLPA to perform their duties, financial advisors are under no obligation to register with the NFLPA.

> There are many financial advisors who refuse to engage in recruiting as a matter of professional ethics.

The Financial Advisor Regulations have been amended from time to time, most recently in 2012.[11] Like the NFLPA's Contract Advisor Regulations, the Financial Advisor Regulations contain extensive eligibility requirements, including: a bachelor's degree; a minimum of eight years of experience with appropriate financial industry licensure; minimum of $4 million in insurance coverage; and, no civil, criminal or regulatory history relevant to financial services or fiduciary duties.[12]

While there are currently 262 NFLPA-registered financial advisors, there are many financial advisors working with NFL players who are not NFLPA-registered, many of whom likely could not meet the registration requirements.

I) FORMATION OF THE PLAYER-FINANCIAL ADVISOR RELATIONSHIP

The financial advisor industry has become as competitive as the contract advisor industry, if not more so.[13] Many financial advisors recruit clients in the same manner as contract advisors, by calling them, texting them, and sending recruitment materials as soon as the player demonstrates that he might become an NFL player.[f] In addition, some financial advisors offer financial incentives as inducements to hire them, including payments in the tens or hundreds of thousands of dollars to players. Indeed, it was reported that one firm offered 2015 draft picks six-month loans of $55,000–75,000.[14] Such payments are not expressly prohibited by the Financial Advisor Regulations, as discussed in more detail below in Section E: Recommendations. Financial Advisor Mark Doman explained that, in addition to receiving interest on the loans provided to the players, some financial advisors (but not he) will advise the players to use some of the loaned money to purchase financial products, such as an annuity or insurance, from or through the financial advisor, off which the financial advisor can make additional income.

Nevertheless, as will be discussed more below, there are many financial advisors who refuse to engage in recruiting as a matter of professional ethics. These financial advisors generally receive their clients through referrals from other players or contract advisors. Because contract advisors are often recruiting the player at the same time as the financial advisor, contract advisors often do not have the ability to recommend a financial advisor to a player. Additionally, since college players are generally permitted by NCAA Bylaws to have financial advisors while they cannot have contract advisors, players often retain a financial advisor before a contract advisor.

Ultimately, the college players, with the help of their family, friends and college, will sort through the multitude of financial advisors, meet with a few, and choose one. The player and financial advisor formalize the relationship by executing the financial advisor's individualized services agreement,

e The Financial Advisor Regulations define a "Financial Advisor" as "any person who, for compensation in any form, gives any financial advice with respect to a Player's funds, property, and/or investments of any kind, including, but not limited to, any 'Alternative Investment' as defined herein, as well as any other security, commodity, or financial product, whether or not traded on an organized public market in the United States (*e.g.,* The New York Stock Exchange or the NASDAQ) or abroad." 2012 NFLPA Financial Advisor Regulations, § 1.

f During the recruiting process, the financial advisor will generally make the player aware of other players with whom the financial advisor purportedly work, to try and demonstrate the financial advisor's skill. For those financial advisors registered with the NFLPA, the NFLPA is the best resource for confirming a financial advisor's bona fides, as is discussed in the Recommendations section. Players should also seek to discuss the quality of a financial advisor's services with current and/or former clients.

as the NFLPA does not have a standard services agreement like with contract advisors.

I I) SERVICES PROVIDED TO PLAYERS (CURRENT AND FORMER)

Financial advisors generally provide advice and assistance concerning any of the player's financial matters, including investment management, income tax preparation, budgeting, estate planning, post-career planning, and insurance (including, *e.g.*, homeowner's, renter's, car, life, disability). In addition, some financial advisors will provide a bill paying service or recommend a firm that can handle these tasks for the players.[g] Perhaps one of the financial advisor's most important responsibilities is making sure players are aware of and take advantage of the various financial benefits under the CBA, including but not limited to the Retirement Plan, Player Annuity Program, Tuition Assistance Plan, Severance Pay, Second Career Savings Plan, and Health Reimbursement Account.[h]

Financial advisors generally work with players and their family for the player's entire life. In this respect, financial advisors are more important than contract advisors and are crucial stakeholders when it comes to the player's post-career health. A 2014–2015 survey of 763 former players by *Newsday* shows the importance of post-career planning: 34.5 percent of former players interviewed said they had difficulty finding employment after their NFL career ended, and 37.1 percent said they did not prepare for life after football during their playing career.[i] The financial advisors interviewed explained that retirement is the opportunity to show the player that the post-career plan they had put together works and to begin to take the next steps, including for the player to potentially finish his education and obtain another job.[j]

The level of communication between the financial advisor's firm and the player varies depending on the needs of the player. Younger players may speak with their financial advisor once a week while more experienced players might only communicate with their financial advisors once a month. The financial advisors generally send monthly statements concerning the player's finances, even though the NFLPA only requires them to be sent quarterly.[15]

More specifics on some of these services will be discussed below, in Section C: Current Practices.

(B) Current Legal Obligations[k]

The financial advisor industry is heavily regulated by both governmental and private organizations that perform quasi-governmental functions. Financial advisors are subject to federal and state statutes and regulations concerning the various financial industries in which they may practice. Most importantly, all financial advisors must comply with the Securities Exchange Act and its regulations, as enforced by the SEC.

In addition, many financial advisors are subject to oversight by the Financial Industry Regulatory Authority (FINRA). FINRA is a private, non-profit "self-regulatory organization" within the meaning of the Securities and Exchange Act, registered with the SEC, and responsible for enforcing FINRA rules, SEC regulations, and federal securities statutes against FINRA members.[16] FINRA promulgates and enforces rules governing more than 4,000 securities firms and approximately 630,000 financial professionals.[17] FINRA brings disciplinary actions against its members and also provides an arbitration mechanism that is the chief forum for resolving disputes between financial advisors and their clients.[18]

A financial advisor's precise legal obligations might depend on his or her qualifications, licensure, and the services he or she provides to a player. While we briefly describe these possible distinctions below, none of our recommendations turns on the exact nature of the financial advisor's legal duty to his or her player-client. Moreover, there is an ongoing debate in the financial services industry about the duties owed by certain types of financial professionals to their clients, and much will depend on specific facts.

Some financial advisors might only be registered as "brokers" or "dealers" under the Securities Exchange Act of 1934. Broker-dealers are individuals engaged in the business of buying and selling stocks,[19] who traditionally earn the majority of their income from commissions on the stock sales or purchases.[20] Broker-dealers are historically held to a "suitability," as opposed to a fiduciary standard.[21]

g Bill paying services generally are responsible for ensuring the timely and proper payment of a player's various expenditures, including housing payments, utilities, car payments, cellular telephone payments, contract advisor, financial advisor and attorneys' fees, child support, etc. Nevertheless, Financial Advisor 1 explained that he prefers players pay their own bills so that players are aware of their expenses and "feel[] the same pain that anybody else feels."

h Financial Advisor 1 estimated that the annual value of benefits players are entitled to is "almost $200,000."

i *See* Jim Baumbach, *Life After Football*, Newsday, Jan. 22, 2015, http://data.newsday.com/projects/sports/football/life-football/, *archived at* http://perma.cc/77DP-LUUE. In the introduction to this chapter, we described some limitations to *Newsday's* analysis.

j To assist players in preparing for careers after football, Financial Advisor Mark Doman offers his players the opportunity to intern at his office during the offseason. During the internship, the players study their own financial portfolios and the related concepts.

k The legal obligations described herein are not an exhaustive list but are those we believe are most relevant to player health.

The suitability standard only requires broker-dealers to recommend investments that are suitable based on the client's needs and goals.[22] The broker-dealer "must have an adequate and reasonable basis for any recommendation that [he or she] makes,"[23] but are not necessarily required to provide investment advice that puts the client's interest first, as a fiduciary would.[24] This looser standard permits broker-dealers to recommend its clients to buy stocks currently owned by the broker-dealer's firm, thus benefiting the firm. Nevertheless, broker-dealers can develop fiduciary relationships with their clients if the broker-dealer takes on greater responsibilities towards the client, such as having discretionary authority over the client's account.[25]

The potentially limited obligations of broker-dealers are complicated by the Investment Advisers Act of 1940.[26] An investment adviser is "any person, who, for compensation is engaged in a business of providing advice to others or issuing reports or analyses regarding securities."[27] Traditionally, investment advisers, charge a fee based on the amount of assets managed by the investment adviser.[28] Investment advisers *do* have a fiduciary relationship with their clients, requiring them to put the interests of their clients first and to avoid conflicts of interest.[29] Under common law,[l] from which the securities statutes and regulations are generally derived, a fiduciary is "a person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor; . . . [o]ne who must exercise a high standard of care in managing another's money or property."[30]

Depending on the broker-dealer's compensation structure, he or she too may also be subject to the higher standards of the 1940 Act. A broker-dealer who provides investment advice to clients is not considered an investment adviser only so long as the broker-dealer's advice is "solely incidental" to the broker-dealer's services and the broker-dealer charges only commissions and not asset-based fees.[31] Nevertheless, the interpretation of this exception remains open to debate and is often a fact-specific inquiry.[32]

In 2016, the Department of Labor potentially further complicated matters with a new regulation set to take effect in April 2017. The new regulation requires that individuals that invest a client's money as part of a tax-deferred retirement account, such as a 401(k) or IRA, act in a fiduciary capacity toward the client, regardless of whether they are a broker-dealer or investment adviser.[33]

While the above uncertainty demonstrates that some NFL player financial advisors might be able to avoid having a fiduciary relationship with their clients, they almost certainly cannot if they choose to register with the NFLPA. The Financial Advisor Regulations, which are a quasi-legal/ethical code, dictate that financial advisors "have the duty to act in the best interest of his/her Player-clients."[34] Moreover, by agreeing to be registered with the NFLPA, each financial advisor

> acknowledges[m] that it is a fiduciary with respect to each of its Player-clients and agrees to perform its duties as a Financial Advisor to such Player-client in good faith and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and consistent with the Registered Player Financial Advisor's obligations and duties under applicable law, and consistent with the Registered Player Financial Advisor's existing practices and procedures, obligations, powers and duties under its written contract with the Player-client required under Section Three (H) of the Regulations.[35]

Despite the fiduciary standard imposed by the Financial Advisor Regulations, as will be discussed below in Section E: Enforcement, the Financial Advisor Regulations provide players with minimal recourse in the event of a violation.

Generally, the Financial Advisor Regulations require financial advisors to "[f]ully comply with all federal and state laws governing the . . . Financial Advisor's professional activities."[36] The Financial Advisor Regulations prohibit a wide variety of conduct subject to abuse in the financial advisor industry, including:

1. Employing any device, scheme, or artifice to defraud a Player;
2. Inducing any activity in a Player's account that is excessive in size or frequency in view of the Player's financial resources and/or sophistication, and the character of the account;
3. Soliciting or obtaining any general power of attorney from a Player over his assets or investment;

l Common law refers to "[t]he body of law derived from judicial decisions, rather than from statutes or constitutions." Black's Law Dictionary (9th ed. 2009).

m A broker-dealer might theoretically argue that since he or she never had a fiduciary relationship with a player-client, he or she cannot "acknowledge" such an obligation. It nonetheless seems more likely that a financial advisor who registers with the NFLPA who otherwise would not be in a fiduciary relationship with his or her clients voluntarily assumes fiduciary obligations as part of the NFLPA registration.

4. Soliciting or obtaining any limited power of attorney or discretionary authority which is not specifically and reasonably necessary for the Registered Player Financial Advisor to perform his/her services;

5. Commingling any Player's funds or other property with the Registered Player Financial Advisor's personal funds. Commingling one or more client funds together is permitted, subject to applicable legal requirements and proper accounting;

6. Having custody of a Player's funds or other property unless the Registered Player Financial Advisor is a Qualified Custodian;

7. Placing an order for the purchase or sale of a security if that security is not either registered or exempt from registration under applicable law;

8. Providing false or misleading information to any Player, or concealing material facts from any Player, in the course of recruiting the Player as a client, or in the course of representing or consulting with that Player as a Registered Player Financial Advisor;

9. Making any false or misleading statement about his or her ability, degree, or area of competence;

10. Engaging in any unlawful conduct and/or conduct involving dishonesty, fraud, deceit, misrepresentation, or any other activity which reflects adversely on his/her honesty, trustworthiness, professional competence, and fitness as a Registered Player Financial Advisor, or which otherwise jeopardizes his/her effective representation of Players;

11. Representing or suggesting to anyone that his/her status as a Registered Player Financial Advisor constitutes an endorsement or recommendation by the NFLPA of the Registered Player Financial Advisor, or his/her qualifications, or services;

12. Providing or offering money or any other thing of value, or extending credit or loaning money, to any Player, or member of a Player's family, or anyone in a position to influence the Player, where such payment or loan would violate any applicable law, regulations, rule, or ethical standard;

13. Engaging in any activity which creates an actual or potential conflict of interest with the effective representation of a Player, including, but not limited to, the following:

a) Convincing a Player to purchase stock or property, or to invest in any manner, or loan money or extend credit from, any enterprise or entity in which the Registered Player Financial Advisor fails to disclose, in advance and in writing, his/her own financial or ownership interest, or that of an affiliate or a family member, to the Player;

b) Failing to disclose, in advance and in writing, any commission, finder's fee, or other thing of value that the Registered Player Financial Advisor receives, or is to receive, from any third party or entity, in return for convincing a Player to make or not make an investment, or to retain or not to retain a Certified Contract Advisor, or any other person;

c) Failing to disclose, in advance and in writing, any commission, finder's fee, or referral fee, promised and/or paid to, any third party, in return for that party's agreement to refer a Player to him or her[.][37]

(C) Current Ethical Codes

In addition to legal obligations, depending on the financial advisor's expertise or experience, he or she is likely subject to additional ethics rules. For example, the Chartered Financial Analyst Institute (CFA Institute),[38] Certified Financial Planner Board of Standards (CFP Board),[39] National Association of Personal Financial Advisors (NAPFA),[40] National Association of Insurance and Financial Advisors (NAIFA),[41] and American Institute of Certified Public Accountants (AICPA)[42] all have an ethics code of some kind regulating the professional responsibilities of their members.

The codes of ethics for the CFP Board, NAPFA, and NAIFA are not particularly lengthy and instead generally identify principles by which members are required to act. For example, the totality of the CFP Board's Code of Ethics and Professional Responsibility reads as follows:

Principle 1 – Integrity: Provide professional services with integrity.

Integrity demands honesty and candor which must not be subordinated to personal gain and advantage. Certificants are placed in positions of trust by clients, and the ultimate source of that trust is the certificant's personal integrity. Allowance can be made for innocent error and legitimate differences of opinion, but integrity cannot co-exist with deceit or subordination of one's principles.

Principle 2 – Objectivity: Provide professional services objectively.

Objectivity requires intellectual honesty and impartiality. Regardless of the particular service rendered or the capacity in which a certificant functions, certificants should protect the integrity of their work, maintain objectivity and avoid subordination of their judgment.

Principle 3 – Competence: Maintain the knowledge and skill necessary to provide professional services competently.

Competence means attaining and maintaining an adequate level of knowledge and skill, and application of that knowledge and skill in providing services to clients. Competence also includes the wisdom to recognize the limitations of that knowledge and when consultation with other professionals is appropriate or referral to other professionals necessary. Certificants make a continuing commitment to learning and professional improvement.

Principle 4 – Fairness: Be fair and reasonable in all professional relationships. Disclose conflicts of interest.

Fairness requires impartiality, intellectual honesty and disclosure of material conflicts of interest. It involves a subordination of one's own feelings, prejudices and desires so as to achieve a proper balance of conflicting interests. Fairness is treating others in the same fashion that you would want to be treated.

Principle 5 – Confidentiality: Protect the confidentiality of all client information.

Confidentiality means ensuring that information is accessible only to those authorized to have access. A relationship of trust and confidence with the client can only be built upon the understanding that the client's information will remain confidential.

Principle 6 – Professionalism: Act in a manner that demonstrates exemplary professional conduct.

Professionalism requires behaving with dignity and courtesy to clients, fellow professionals, and others in business-related activities. Certificants cooperate with fellow certificants to enhance and maintain the profession's public image and improve the quality of services.

Principle 7 – Diligence: Provide professional services diligently.

Diligence is the provision of services in a reasonably prompt and thorough manner, including the proper planning for, and supervision of, the rendering of professional services.

The CFA Institute's Code of Ethics and Standards of Professional Conduct is similar, but provides more specific guidance in the following areas: professionalism; integrity of capital markets; duties to clients; duties to employers; investment analysis, recommendations, and actions; conflicts of interest; and, responsibilities as a CFA Institute member or CFA candidate.

In contrast, the AICPA's Code of Professional Conduct is far more complicated and includes interpretations of the relevant rules. Moreover, the AICPA's Code is divided into the following sections: Principles of Professional Conduct; Independence, Integrity and Objectivity; General Standards Accounting Principles; Responsibilities to Clients; Responsibilities to Colleagues; and, Other Responsibilities and Practices. The AICPA's Code is likely longer to ensure its' members compliance with generally accepted accounting principles.

(D) Current Practices

Players were near unanimous in explaining the importance of financial advisors and financial health, while having mixed feelings about financial advisors themselves:[n]

- **Current Player 2:** *"Those financial advisors are huge." "[F]inancial health is important and that is a great opportunity for a young man to jumpstart their lives financially, and put themselves at an advantage moving forward to their next career."*
- **Current Player 4:** *"I personally was able to find a financial advisor who I trust and I think he's doing an excellent job. But I would say probably about one in three guys have a problem with their Financial Advisor."*
- **Current Player 5:** *"Financial education is hugely important. And we get some but not nearly enough." "I think there are some good financial advisors, some bad financial advisors . . . . They have a vested interest in helping to make sure the player keeps his money but they have a bigger vested interest in keeping the player as a client. So, whether the player is burning through his money or not, the financial advisor he keeps getting paid a percentage until the player runs out of money . . . [but] in general, financial advisors do a pretty good job of advising their clients and preparing them for life outside the NFL."*
- **Current Player 6:** *"That's the biggest question I'd like to try to figure out. What can be done to help players be better with their finances?"*
- **Current Player 9:** *"Financial health is important to NFL players and everybody . . . . So I think planning and education is very important."*

n We reiterate that our interviews were intended to be informational but not representative of all players' views.

- **Former Player 3:** *"You have the full gamut . . . . Good financial advisors are the ones that can tell their clients 'no,' [but] you'll probably get fired but players need to hear 'no' a lot more than they tell them 'yes.'"*

The financial advisors interviewed were similarly unanimous in their assessment that players are generally not well served by the current crop of financial advisors.[o] The financial advisors' sentiment matched that of contract advisors interviewed. The contract advisors noted that while there are some well-qualified and ethical financial advisors, there are many who are not. However, some contract advisors recognized that financial advisors often have difficulty convincing the players to take certain financially responsible actions.[p] Below, we discuss the most important areas where financial advisors have an opportunity to influence player health, including Recruiting, Educating and Budgeting, Insurance, and Fees.

1) RECRUITING

As discussed in the background to this chapter, the recruiting of prospective clients is intensely competitive in the financial advisor industry. As a result, some financial advisors offer players payments and other inducements in order to obtain the client. All of the financial advisors we interviewed worried about this practice. Mark Doman, one of the financial advisors we interviewed, explained:

> *I think [financial advisor recruiting] is without any exaggeration or hyperbole, the most dangerous of the issues that face professional athletes off the field. Aside from their own personal health, the financial health of these young men and these horrible statistics of them going bankrupt due to . . . being exposed to people that are not sophisticated enough to actively manage the financial needs of these athletes. And even more specifically providing the financial literacy that they so desperately need.*[q]

While competition in industry is often good,[r] the intensity and form of competition in the financial advisor industry may raise concerns. Indeed, Former Player 1 described being recruited by financial advisors as "a crazy experience . . . a meat market."

The financial advisors interviewed further explained that their firms refused to recruit out of principle. Instead, these financial advisors generally obtain clients via referrals from players and contract advisors.

2) EDUCATING AND BUDGETING

The financial advisors and players we interviewed expressed that financial literacy among the players remains a major issue.[s] Most NFL players and their families are unlikely to have ever had the type of money that is available through an NFL career. In addition, most NFL players are young men in their 20s with limited time spent having lived on their own. Thus, most NFL players are unfamiliar with the different types of financial products and services that might be available to them and are unlikely to have a good understanding of how to spend and save their money.

All of the financial advisors we interviewed stressed the importance of an initial meeting with their clients where they can try to explain to the player the various financial issues he will likely have to address, how to develop responsible financial habits, and to plan properly for the future.[t] Financial Advisor 1 also explained a method his firm uses to help reign in client spending. The player's paycheck is directly deposited into an account to which the financial advisor has access. On the first of each month, a budgeted amount is transferred from the initial account to a checking account that the player is able to access for his personal spending. The arrangement prevents the player from

o Financial Advisor 2: "I think there are a lot of people that don't know what they're doing . . . . And you see some of the people in the room [at the NFLPA Financial Advisor conferences] and . . . it's scary that they're thinking about trying to work with players. They don't know anything." Also Financial Advisor 2: There are "a lot of people out there running around trying to work with players for all the wrong reasons . . . but I don't know how you regulate incompetency." We reiterate that our interviews were intended to be informational but not representative of all financial advisors' views. Additionally, we acknowledge the possibility of bias among the financial advisors we interviewed — they believe they are conducting themselves competently and professionally while their competitors are not.

p Contract Advisor 1: "[Y]ou can only take a horse to water, you can't make them drink."

q Doman also explained that he thinks the problem "has gotten infinitely worse" since he started working with NFL players.

r Indeed, in Speakers of Sport, Inc. v. ProServ, Inc., 178 F.3d 862 (7th Cir. 1999), Judge Richard Posner dismissed tortious interference and unfair competition claims brought by one sports agent against another, stating "[t]here is in general nothing wrong with one sports agent trying to take a client from another if this can be done without precipitating a breach of contract. That is the process known as competition, which though painful, fierce, frequently ruthless, sometimes Darwinian in its pitilessness, is the cornerstone of our highly successful economic system."

s Financial Advisor 1: "[I]t's really just about capitalizing on [the benefits offered], understanding them and capitalizing on them. Most guys just don't understand them." Financial advisor Mark Doman: "I emphasize to them that trust is great but knowledge is better. I don't need them to trust me. I need them to understand what we're doing. And if they understand what we're doing then they don't need to trust. Trust is a luxury." Current Player 9: "The PA and the NFL, there are some programs in place that players can learn [about financial matters]. But you know a lot of it is about motivating guys to actually take hold of it and actually become involved and engaged."

t Financial Advisor 1: "If I have a guy who's in his first year in the league, we're already talking about post-career. . . . I think it goes without saying that the NFL career has a very short life expectancy. So we usually talk to the guys right from the beginning about worst case scenario and this might be your only year in the league, so you need to plan as such."

spending beyond his means while still having control over his spending choices.

In addition to their financial advisors, players also are exposed to some financial education through the Rookie Transition Program. The Rookie Transition Program is a three-day program offered by each club in which rookies are presented with seminars, discussions, and information on a variety of topics intended to help the rookie make a successful transition to the NFL and to avoid some of the problems past NFL players have suffered.[43] The Rookie Transition Program replaced the Rookie Symposium in 2016, an event which previously hosted all incoming NFL rookies in one central location and provided the same types of services.[44] Nevertheless, there are questions as to whether players are sufficiently understanding the information presented to them.

Despite the Rookie Symposium and Transition Program, the financial advisors interviewed were mixed in their feelings towards existing programs and support for players in their financial matters. Appendix D includes a list of programs offered by the NFL's Player Engagement Department on financial and other matters. Financial Advisor 1 believes the NFLPA has not done a good job of educating players about financial issues but does provide useful resources to the financial advisors. Doman believes that both the NFL and NFLPA "could do a lot better" when it comes to educating players about financial matters.[u] Meanwhile, Financial Advisor 2 expressed uncertainty as to whether the NFLPA could do anything more to educate players. Additionally, the financial advisors were generally pleased with the type and availability of benefits (Financial Advisor 2: "I think they've done a tremendous job of improving the benefits.")

3) INSURANCE

One potentially important aspect of a financial advisor's duties is obtaining a disability or career ending insurance policy for the player. The financial advisors are generally responsible for soliciting, reviewing, and negotiating the insurance policies on behalf of the player. The financial advisors interviewed explained that whether players require the insurance is judged on a case-by-case basis, including an analysis of the player's age, contract structure, and status and financial security. For $1 million in coverage, a rookie will pay approximately $10,000 (1 percent) in premiums while a player in his mid-thirties can easily pay over $100,000 (10 percent) in premiums.[v]

There are other insurance options players might consider. For example, players might obtain an insurance policy on the unguaranteed portions of their contract in the event their contracts are terminated. Players might also obtain "loss of value" insurance policies when they are approaching free agency. The loss of value insurance policy will let a player recover in the event his next contract is not as expected due to injury or diminished skill.[45]

4) FEES

For their services, financial advisors are generally paid an amount equal to 1 percent (annualized) of assets under management. Thus, if a financial advisor is overseeing $1 million of a player's money, he or she will be paid $10,000 per year. Financial advisors with more total assets under management may charge lower fees.

There are concerns that financial advisors find a number of ways to inflate their fees. For example, some financial advisors include as assets under management the amount in the player's retail checking account, even though the financial advisor is not investing those assets. Additionally, some financial advisors invest players' money in investment vehicles which provide the financial advisor a referral fee or commission, even though such fees are in violation of the Financial Advisor Regulations. Doman explained:

> *[T]he other things that these advisors are doing these days is they will tell the client that they'll do investment services and they won't charge them . . . . And the reality is what they are, are conduits to mutual funds and other very basic types of structured bank investment vehicles where there are built-in expense ratios and people who refer those funds money are able to get some sort of fee. Now, separately what they do is instead of charging them for business management . . . they'll sell a young person who has no dependents a multimillion dollar annuity or whole life product which has an enormous commission for [the financial advisor].*

u The St. Louis Rams provide an interesting example of a Club that perhaps takes educating its rookies on financial matters seriously. In 2012, Rams head coach Jeff Fisher had a Brinks truck deliver $1 million in cash to the Club's facility. Fisher put the money on the table in front of his rookies and took away portions for taxes, parents, cars, and living and other expenses to show how much money the rookies would actually have left. Jason La Canfora, *Rams' Calculated Risk-Taking On Prospects Working Wonders So Far*, CBS Sports (Aug. 9, 2013, 10:52 AM), http://www.cbssports.com/nfl/writer/jason-la-canfora/23082070/rams-calculated-risktaking-on-prospects-working-wonders-so-far, *archived at* http://perma.cc/X3HV-FYCZ. In addition, the Rams hold educational classes on financial planning, home ownership, investing and other everyday items. Nick Wagoner, *Rams Will Have Rookies Signed Soon*, ESPN (Jun. 10, 2014), http://espn.go.com/blog/st-louis-rams/post/_/id/9148/rams-will-have-rookies-signed-soon, *archived at* http://perma.cc/G6UZ-FXL4.

v Financial Advisor 1 explained that each week his firm reviews which of its clients were injured and provides notice to disability insurers to protect the player's right to a possible future claim.

(E) Enforcement of Legal and Ethical Obligations[w]

Despite the Financial Advisor Regulations' rigorous standards, the NFLPA currently lacks meaningful enforcement authority over financial advisors. The NFLPA requires registered financial advisors to consent to arbitration, but the arbitration mechanism only governs disputes concerning denial, suspension or revocation of the financial advisor's registration.[46] The totality of the NFLPA's disciplinary authority where the Financial Advisor Regulations have been violated is the issuance of a letter of reprimand or to suspend or revoke the financial advisor's registration.[47] Moreover, the NFLPA and its arbitration mechanism, unlike the contract advisor arbitration mechanism, have no authority to provide damages to a player adversely affected by a financial advisor as a result of a breach of the Financial Advisor Regulations.[48]

The relatively meek regulatory enforcement scheme begs the question why financial advisors register with the NFLPA at all. Indeed, while there are currently about 262 NFLPA-registered financial advisors, there are many players involved with financial advisors who are not NFLPA-registered and the NFLPA has no recourse other than to advise its players to only use registered financial advisors.[x]

w Appendix K is a summary of players' options to enforce legal and ethical obligations against the stakeholders discussed in this Report.

x There are no data on how many players use financial advisors not registered with the NFLPA. Current Player 10 commended the NFLPA for its financial advisor program: "I think the NFLPA has done a good job in terms of making financial advisors register and doing background checks and the criminal checks on all the financial advisors that are trying to come in. So there's a long list of guys that have been okayed by the PA."

As discussed above, financial advisor recruiting is extremely intense and thus players are inundated with recruitment pitches and might choose to hire a non-registered financial advisor. Nevertheless, it benefits financial advisors to register with the NFLPA for a variety of reasons: the financial advisor can explain the importance of meeting the NFLPA's registration requirements and having been vetted by the NFLPA; the NFLPA gives financial advisors financial, salary and benefit information relevant to NFL players, which can assist in their work;[49] and, a quality contract advisor will likely encourage the player to use only an NFLPA-registered financial advisor for the same reasons.

NFL players seeking recompense for damages caused by a financial advisor cannot rely on the Financial Advisor Regulations. Players can and have brought lawsuits or arbitrations (typically via FINRA) against financial advisors alleging breach of fiduciary duty, negligence, breach of contract, fraud, and other relevant causes of action.[50] Some courts have recognized a cause of action for financial advisor or stockbroker malpractice,[51] and most recognize a cause of action for accountant malpractice, if appropriate.[52] Lastly, causes of action and restitution claims likely exist under various federal and state securities laws.[53]

Enforcement of the ethics codes of the CFA Institute, CFP Board, NAPFA, NAIFA, and AICPA are of minimal importance to NFL players. While the organizations are empowered to expel their members and retract their certifications, these punishments provide no benefit to NFL player-clients.

While there are currently about 262 NFLPA-registered financial advisors, there are many players involved with financial advisors who are not NFLPA-registered.

(F) Recommendations Concerning Financial Advisors

Financial advisors play perhaps the most important role in a player's long-term health. Proper financial advice and planning can help a player determine when to retire (if he has that choice), maximize a player's career earnings, potentially provide the player with a comfortable retirement, help mitigate the consequences of the health issues suffered by many former players, and help avoid financial distress evolving into physical or mental distress. Additionally, financial advisors are governed by many robust codes of ethics that echo some of the same principles we incorporated into this Report, including Respect, Health Primacy, Empowered Autonomy, Transparency, Managing Conflicts of Interest, and Collaboration and Engagement. However, there are a variety of industry practices and realities that are preventing players from receiving the best possible financial guidance. Below are recommendations designed to improve the financial support provided to players.

Goal 1: To make sure players get the best financial advice possible.

Principles Advanced: Respect; Empowered Autonomy; Transparency; and, Collaborative Engagement.

Recommendation 13:1-A: Players should be encouraged by the NFL, NFLPA, and contract advisors to work exclusively with NFLPA-registered financial advisors.

There is significant concern and evidence that players are not well-served by the financial advisor industry and otherwise are prone to mishandling their finances. The NFLPA's financial advisor program is a well-intentioned program that at least sets basic requirements for financial advisors and attempts to weed out those with criminal and otherwise concerning pasts. In addition, the financial advisor registration scheme provides the NFLPA with at least some oversight over the financial advisor industry as it concerns NFL players. Nevertheless, a significant (but unknown) portion of players are persuaded to retain financial advisors who do not register with the NFLPA and whose experience and intentions may be questionable. The NFLPA should encourage players to use those financial advisors which it has determined have at least the minimal qualifications it is able to impose through its registration program. In so doing, the NFLPA should remind players of the advantages of using NFLPA-registered financial advisors, including access to NFL-specific benefit and financial information through the NFLPA.

One possible mechanism by which the NFLPA could encourage players to use NFLPA-registered financial advisors is to collect the names of players' financial advisors each preseason. If a player is using a financial advisor who is not registered with the NFLPA, the NFLPA should advise the player of the purposes and benefits of the NFLPA's registration system. If the player does not have a financial advisor, the NFLPA could advise the player to retain one and follow-up with the player to ensure that he does.[54]

Although the NFLPA financial advisor registration system does not guarantee a player will receive sound financial advice and assistance, it increases the odds as compared to non-registered financial advisors.

Recommendation 13:1-B: The NFLPA should strengthen its Financial Advisor Regulations.

The current Financial Advisor Regulations are robust and align well with other regulations and codes of ethics in the financial industry. Nevertheless, there are potential areas of improvement, including:

- **Requiring financial advisors to pass an examination concerning NFL economic and benefit provisions in order to be registered.** The NFLPA has long required contract advisors to pass an examination concerning the NFL CBA to be certified. There is no reason why financial advisors should be treated differently. It is clear that financial advisors are as much a part of players' lives as contract advisors

Recommendations Concerning Financial Advisors – continued

and perhaps even more important considering that they handle players' money. Nevertheless, financial advisors are not regulated as closely as contract advisors and thus have the potential to be more destructive to the health of players. An examination would provide an additional and meritorious barrier to entry into the NFL player-financial advisor industry. Financial advisors should understand the unique circumstances of NFL player employment while also understanding the variety of benefits available to players. An examination will force financial advisors to educate themselves on these issues while also eliminating the financial advisors unable or unwilling to do so.

- **Prohibiting registered financial advisors from providing or offering money or any other thing of value to any player or any other person (e.g., the player's family member) to induce or encourage the player to utilize the financial advisor's services.** The Financial Advisor Regulations currently prohibit "[p]roviding or offering money or any other thing of value, or extending credit or loaning money, to any Player, or member of a Player's family, or anyone in a position to influence the Player, where such payment or loan would violate any applicable law, regulations, rule, or ethical standard."[55] This rule, however, is unnecessarily vague. There is no reason for the NFLPA to defer to other laws, regulations, rules or ethical standards. There is clearly a problem whereby financial advisors are inducing players to retain them with large payments and players are thereafter receiving poor financial advice and assistance. The NFLPA should prohibit such payments to ensure players are choosing financial advisors based exclusively on their merit and qualifications.

- **Providing the NFLPA with greater authority to conduct audits of financial advisors' activities.** Section 3(I)(D) requires financial advisors to consent to audits by a Certified Public Accountant (CPA) at the player's request. Players are unlikely to know when an audit might be necessary and are also unlikely to take advantage of this right. The NFLPA in coordination with the right financial professionals could undertake this action on behalf of players randomly. Even though the NFLPA would be unable to catch every bad actor, making it known that it conducts such audits should have at least some deterrent effect.

The NFLPA could also require financial advisors to provide the NFLPA with copies of the itemized statements they provide to players. Section 3(I)(A) of the Financial Advisor Regulations requires financial advisors to provide players "at regular intervals, but in no event less than quarterly, itemized statements setting forth the amount charged to the Player-client for Financial Advice, the identity of any investments made in conjunction with that advice, and an accurate account of the increase or decrease in the economic value of any such investments." However, the majority of players are unlikely to review or understand the statements provided to them, and thus identify possible inconsistencies or troubling activities. While the NFLPA likely does not have the resources (and would probably have to hire financial experts) to check quarterly statements for all of its members, it could at a minimum conduct a random review of selected statements. Collection of the statements would identify those financial advisors who failed to follow a simple record production requirement while also having at least some deterrent effect. An alternative approach would be to rely on contract advisors to police financial advisors through inspection of these statements. More broadly, this recommendation could be extended from audits of itemized statements to audits of any financial advisor's activity concerning NFL players.

- **Requiring financial advisors to send the itemized statements required by Section 3(I)(A) of the Financial Advisor Regulations to the player's contract advisor, unless the player objects.** As discussed above, there is currently a lack of oversight concerning financial advisor fees and services. Contract advisors, like financial advisors, are professionals with a fiduciary obligation to look out for the player's best interests. Almost every player has a contract advisor and almost every player has a financial advisor. Thus, in the absence of NFLPA resources to do the same, contract advisors can provide a valuable check on financial advisor fees and activities.[y]

- **Requiring that financial advisors provide the NFLPA with a copy of any agreement with a player.** Section 3(I)(H) of the Financial Advisor Regulations requires all agreements between a financial advisor and player comply with applicable laws and regulations and be in writing. However, financial advisors are only required to provide a copy of the agreement to the NFLPA "upon request." In contrast, contract advisors are required to provide the NFLPA with a copy of any agreement between the contract advisor and player.[56] The NFLPA also generally reviews the contract advisor-player agreements to ensure they are in compliance with Contract Advisor Regulations. Similarly, the NFLPA should review financial advisor-player agreements to ensure they are in compliance with the Financial Advisor Regulations and not otherwise concerning.

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y Conversely, there is no need for contract advisors to provide statements of their fees to financial advisors. First, the financial advisors likely have access to the accounts and can see the fees anyway. Second, contract advisor fees are capped at 3 percent of a player's compensation by the Contract Advisor Regulations, eliminating much of the worry that contract advisors can financially take advantage of players.

Recommendations Concerning Financial Advisors – continued

- **Requiring financial advisors to stay abreast of current issues affecting NFL players (with the NFLPA providing the necessary courses and information).** The economics of the NFL are unique, complicated and often changing. Moreover, the application of mainstream financial issues might incur unexpected complications due to the dynamics of the NFL. It is thus important that financial advisors remain current on issues affecting NFL players. The NFLPA could provide relevant information, materials, and updates to financial advisors on a more regular basis or also require financial advisors to attend conferences more regularly. Section 3(I)(J) of the Financial Advisor Regulations only requires financial advisors to attend a conference every two years. In contrast, contract advisors are required to attend a conference every year. Requiring financial advisors to attend conferences more regularly not only ensures that they stay abreast of current financial issues affecting NFL players but also serves as another opportunity to weed out those who are less professional and do not attend.

* * *

We recognize that the above recommendations would increase the NFLPA's involvement in the financial advisor industry and would potentially require delicate maneuvering through complicated financial laws and regulations. Nevertheless, the NFLPA is in the most powerful position, and has as its mission to help players. Thus, it should take every step that it reasonably can to help players by overseeing the actions of financial advisors.

Recommendation 13:1-C: The NFLPA should consider investing greater resources in investigating and enforcing the Financial Advisor Regulations.

As discussed above, there are serious problems with the financial advisor industry that frequently result in substandard representation for and advice to the players, including poor handling of player health matters. Without meaningful enforcement, the Regulations lose their effectiveness to the detriment of players. One possibility is hiring more attorneys to focus on these matters.

Recommendation 13:1-D: Players should be given information to ensure that they choose financial advisors based on their professional qualifications and experience and not the financial benefits the financial advisor has or is willing to provide to the player.

As discussed in more detail above, prospective NFL players are routinely choosing their financial advisors not based on the financial advisor's professional qualifications but instead on how much the financial advisor provides the player at the outset. The players are excited about the opportunity to receive tens if not hundreds of thousands of dollars from the financial advisors for letting the financial advisor provide services to them. However, players do so at their own peril, sometimes agreeing to retain substandard financial advisors.

If the Financial Advisor Regulations are not amended to explicitly prohibit such arrangements as recommended above, it is important that the players understand the downsides of choosing their financial advisor based on loans or advances.

However, presently, there are minimal to no resources for players about how to choose a financial advisor. The NFLPA has the potential to be the best resource for helping players choose financial advisors appropriately but it is unclear what efforts it makes on this topic. The NFLPA conducts "Pipeline to the Pros" with current college football players to try to inform them about the process of becoming an NFL player, including hiring a contract advisor,[57] but it is unknown whether that advice also extends to financial advisors. Similarly, while the NFLPA's website includes a page advising "Active Players" on "How to Pick Your Agent,"[58] there is no similar advice concerning financial advisors.

Recommendations Concerning Financial Advisors – continued

The NFLPA is in a powerful position to help prospective NFL players pick financial advisors. While such players are not yet in the NFLPA's bargaining unit (and thus the NFLPA has no legal obligations toward them, see Chapter 7: The NFL and NFLPA), hundreds of college players will soon be NFLPA members and their decisions concerning a financial advisor while still in college can have a significant impact on their NFL career. Yet it does not appear that the NFLPA currently provides players with any assistance concerning the selection of financial advisors. The NFLPA could expand and intensify the information made available to prospective NFL players and could work with both the NCAA and the NFL (both of which more closely track potential NFL players) to ensure that the right players are receiving the necessary information. The NFLPA should also consider creating a system whereby players able to rate their financial advisors' performance and that data could be made available, including but not limited to a regular survey, a Yelp-like service, or some other means of information-sharing.

Goal 2: To help players better manage their finances.

Principles: Health Primacy; and, Empowered Autonomy.

Recommendation 13:2-A: The NFLPA and NFL should consider holding regular courses on financial issues for players.

As is true of the population more generally, players often lack the financial sophistication to make sound financial decisions, such as budgeting expenditures, saving for retirement, and planning for a post-career life. Additionally, players' lack of financial sophistication prevents them from monitoring the actions of their financial advisors and leaves them vulnerable to others who might seek to take advantage of them.

To assist players in learning important financial skills, the NFL has partnered with Money Management International, the country's largest non-profit credit and counseling service, to provide players with an educational website and a 24 hours a day, seven days a week advice hotline.[59] The NFLPA has established a near identical partnership with Financial Finesse, a company that provides financial education services.[60] Both the NFL and NFLPA should be commended for these partnerships.

However, players might not take advantage of these services. Consequently, an in-person introductory financial course would help to bridge the knowledge gap. Although the NFL's annual Rookie Transition Program likely includes discussions of financial issues (as its predecessor the Rookie Symposium did[61]), those are just some of the many issues players are presented with in a three-day event. Moreover, the Rookie Transition Program occurs before the player's first season and thus before players begin to receive their weekly pay, which is almost certainly the largest check the player has ever received. It would be beneficial to hold additional financial-focused courses or seminars after players begin to receive (and thus have the ability to spend) money. Two of the financial advisors interviewed recommended players take such a course. These would be useful supplements to the kinds of courses already offered by the NFL and NFLPA.

Relatedly, such courses could advise players of their rights concerning financial advisors, including the right to have their financial advisors' work audited.

Recommendations Concerning Financial Advisors – continued

Recommendation 13:2-B: The NFL and NFLPA should consider amending the player payment schedule so that players, by default, are paid over a 12-month period.

Players receive a check for each game they play. Thus, players generally only receive pay during the season.[z] As discussed above, some players might spend recklessly during the season, causing financial problems in the off-season or when their career is over. By paying a player over an entire year or deferring a player's salary payments for some period of time, the player will have additional income at a later point when he may not have otherwise saved for it. Indeed, in June 2014, the NFLPA was reportedly considering approaching the NFL about players being paid in 26 installments over a year,[62] and the issue is regularly considered at NFLPA Executive Committee meetings.[63]

In reviewing a draft of this Report, the NFL stated that "[t]here is no evidence cited in the Report that players face short-term stress during the year (or that they do so any more than other people), or that any longer- term financial problems would be alleviated by moving to a 12-month payment schedule."[64] Nevertheless, at least one club, the Tennessee Titans, does pay their players over a longer period of time, through March (when the League Year ends).[65] While it is uncertain if there is a problem with players spending too much money during the season, many players and contract advisors believe there is.[66] At a minimum, it is an issue in need of further consideration.

Andrew Brandt, a peer reviewer of this Report and a former Green Bay Packers executive, noted in his review that he used to provide players with the option of receiving their salary year-round in light of concerns he had about players' spending. While some players took the Packers up on the offer, the majority of players did not, as contract advisors often wanted interest to be paid on the deferred compensation.[67] While contract advisors are correct that players paid year round would be receiving slightly less based on the time value of money, a revised payment schedule would likely benefit players more than hurt them.

Making a 12-month payment schedule the default option could help ensure that all players have the opportunity to benefit from this possible change in payment schedule. Players should be free to opt out of a 12-month payment schedule if they like, but research suggests that most players will stay with the default option.[68]

Our recommendation supplements deferred compensation plans that the NFL offers, including the Player Annuity Plan and a 401(k) plan (the Second Career Savings Plan), discussed in detail in Appendix C. While these deferred compensation plans are retirement-focused, our recommendation is meant to help players better handle their income in the short term.[aa]

z Players might receive bonuses during the offseason.

aa In Chapter 7: The NFL and NFLPA, Recommendation 7:3-B recommends that the NFL and NFLPA undertake a comprehensive actuarial and choice architecture analysis of the various benefit and retirement programs to ensure they are maximally beneficial to players.

Endnotes

1 *See* Thomas Richardson et al., *The relationship between personal unsecured debt and mental and physical health: A systematic review and meta-analysis,* Clinical Psychol. Rev. 2013;33(8):1148–62.

2 Pablo S. Torre, *How (and Why) Athletes Go Broke*, Sports Illustrated, Mar. 23, 2009, http://www.si.com/vault/2009/03/23/105789480/how-and-why-athletes-go-broke, *archived at* http://perma.cc/4E3Z-NHL6.

3 Linda Holmes, *ESPN's 'Broke' Looks At The Many Ways Athletes Lose Their Money,* NPR (Oct. 2, 2012 1:35 PM), http://www.npr.org/blogs/monkeysee/2012/10/02/162162226/espns-broke-looks-at-the-many-ways-athletes-lose-their-money, *archived at* http://perma.cc/4HDY-6AZ2.

4 *See* Jim Baumbach, *Life After Football,* Newsday, Jan. 22, 2015, http://data.newsday.com/projects/sports/football/life-football/, *archived at* http://perma.cc/77DP-LUUE.

5 *See* Ken Belson, *When Settlement Buys Time*, N.Y. Times, Jul. 19, 2014, http://www.nytimes.com/2014/07/19/sports/football/former-nfl-players-make-difficult-choice-in-opposing-concussion-settlement.html, *archived at* http://perma.cc/5P3D-94A8; Sally Jenkins and Rick Maese*, Do No Harm: Who Should Bear The Costs Of Retired NFL Players' Medical Bills?* Wash. Post, May 9, 2013, http://www.washingtonpost.com/sports/redskins/do-no-harm-who-should-bear-the-costs-of-retired-nfl-players-medical-bills/2013/05/09/2dae88ba-b70e-11e2-b568-6917f6ac6d9d_story.html, *archived at* http://perma.cc/VER2-EM24.

6 *See, e.g.,* Melissa B. Jacoby, Teresa A. Sullivan, & Elizabeth Warren, *Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts,* 76 N.Y.U. L. Rev. 375 (2001) (empirical data demonstrating how many American families declare bankruptcy in the aftermath of illness or other healthcare crisis); Christopher Tarver Robertson, Richard Egelhof, & Michael Hoke, *Get Sick, Get Out: The Medical Causes of Home Mortgage Foreclosures*, 18 Health Matrix 65 (2008) (empirically demonstrating and discussing the role that health crises have in home foreclosures).

7 CBA, Art. 48, § 3.

8 *Report: Players Getting Bilked,* N.Y. Daily News, Feb. 4, 2002, *available at* 2002 WLNR 13839496. The figures in this report were aggregated by the NFLPA and include a variety of incidents, the details of which were not disclosed by the NFLPA in this publication.

9 Indeed, in *Atwater v. Nat'l Football League Players Ass'n*, 06-cv-1510, 2009 WL 3254925 (N.D.Ga. Mar. 27, 2009) *aff'd* 626 F.3d 1170 (11th Cir. 2010), six former players sued the NFLPA for losses they suffered by investing with NFLPA-registered Financial Advisors. The Court granted the NFLPA summary judgment, holding that the players' claims were preempted by the Labor Management Relations Act.

10 SEC No-Action Letter, Nat'l Football League Players Ass'n (Jan. 25, 2002), *available at* 2002 WL 100675.

11 The Financial Advisor Regulations are available from the NFLPA's website at http://nflparesources.blob.core.windows.net/mediaresources/files/PDFs/SCAA/2012_NFLPA_Regulations_Contract_Advisors.pdf, *archived at* https://perma.cc/D6E4-7USM?type=pdf.

12 *See* 2012 Financial Advisor Regulations, § 2(II).

13 *See* Julie Steinberg, *Colleges Push to Keep Financial Advisers Away From Athletes*, Wall St. J., Nov. 6, 2014, http://www.wsj.com/articles/colleges-push-to-keep-financial-advisers-away-from-athletes-1415331002?mod=WSJ_hp_RightTopStories, *archived at* http://perma.cc/HP9N-CKKF (discussing the increased recruiting efforts and unscrupulous practices of Financial Advisors).

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