



Comparing Health-Related Policies & Practices in Sports: The NFL and Other Professional Leagues

Chapter 6

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Eligibility Rules



Each of the leagues has rules governing when individuals become eligible to play in their leagues. While we fully acknowledge the unique nature and needs of the leagues and their athletes, we believe the leagues can learn from the other leagues' policies.

Leagues' eligibility rules affect player health in two somewhat opposite directions: (1) by potentially forcing some players who might be ready to begin a career playing for the leagues to instead continue playing in amateur or lesser professional leagues with less (or no) compensation and at the risk of being injured; and, (2) by protecting other players from entering the leagues before they might be physically, intellectually, or emotionally ready. As will be shown, the NCAA's Bylaws are an important factor in considering the eligibility rules and their effects on player health and thus must be included in this discussion. This issue too is discussed in our Recommendations.

In this Chapter we explain each of the leagues' eligibility rules as well as the rules' relationship to player health, if any. But first, we provide: (1) information on the eligibility rules' legal standing; (2) general information about the leagues' drafts that correspond to their eligibility rules; (3) an explanation of the NCAA and its relevance to the leagues' eligibility rules; and, (4) insurance options that might be available to players before joining one of the leagues.

So long as the leagues' eligibility rules are negotiated with the union, they will likely be exempt from the antitrust laws.

1) LEGAL STANDING OF THE ELIGIBILITY RULES

Each of the sports leagues we discuss in this Report, except MLS^a, consists of member clubs that are individually owned and operated, with the league serving as a centralized, governing body. The clubs compete both on and off the field, court, or ice.¹ Off the field, most notably, clubs compete in the labor market for players' services, bidding against one another on the terms of a contract in hopes of persuading a player to sign with their club. Eligibility rules put a limitation on this market by prohibiting certain potential players from participating in the market. The clubs—through the eligibility rules—have collectively agreed not to bid and contract for the services of particular classes of individuals.

The clubs' eligibility rules have the potential to violate the antitrust laws.² Section 1 of the Sherman Antitrust Act prohibits contracts, combinations or conspiracies that unreasonably restrain trade.³ The eligibility rules restrain trade by prohibiting potential players from contracting with clubs. Whether this restraint is “unreasonable” requires a complicated antitrust analysis of a variety of legal and factual factors.⁴

Nevertheless, the leagues' eligibility rules have been generally treated as not subject to antitrust scrutiny. Certain collective actions by the clubs are exempt from antitrust laws under what is known as the non-statutory labor exemption. The non-statutory labor exemption exempts restrictions imposed by a multi-employer unit—such as sports clubs—where the restrictions were negotiated with a labor organization, *i.e.*, a union, as part of the collective bargaining process.⁵ For each of the professional sports leagues discussed in this Report, there is a corresponding union that represents the players and negotiates a collective bargaining agreement (“CBA”) with the league. Consequently, based on at least the decision of the United States Court of Appeals for the Second Circuit in the *Clarett* case (explained below), it appears that so long as the eligibility rules are negotiated with the union, they will be exempt from the antitrust laws.^{6,b}

The eligibility rules in the NFL, NBA, NHL, and CFL are all collectively bargained with those leagues' respective players associations and are thus exempt from antitrust law.^c Below, we discuss each of these leagues' eligibility rules as well as the unique circumstances of MLB's and MLS' eligibility rules.

In most cases, the leagues' eligibility rules are designed, in part, to require players to enter the leagues through their respective drafts. As will be discussed below, the size of these drafts can have important impacts on player decisions concerning their eligibility. Table 6-A on the next page provides information about the drafts.

a MLS' unique structure is discussed at length in Chapter 5: Compensation, Section F: Compensation in MLS.

b Some scholars have debated whether other Circuit Courts would find that eligibility rules are protected by the non-statutory labor exemption. See Marc Edelman and Joseph A. Wacker, *Collectively Bargained Age/Education Requirements: A Source of Antitrust Risk for Sports Club-Owners or Labor Risk for Players Unions?* 115 Penn St. L. Rev. 341 (2010); Michael A. McCann, *Justice Sonia Sotomayor and the Relationship Between Leagues and Players: Insights and Implications*, 42 Conn. L. Rev. 901 (2010). Also of note, in two cases involving now defunct professional sports league eligibility rules that were not negotiated with a union, the courts found that the rules did violate antitrust laws. See *Linseman v. World Hockey Ass'n*, 439 F. Supp. 1315 (D. Conn. 1977); *Boris v. U.S. Football League*, 83-cv-4980, 1984 WL 894 (C.D. Cal. Feb. 28, 1984).

c Unions are empowered to negotiate terms and conditions that might affect future employees, even if those employees are not yet a part of the union's bargaining unit. See *Clarett v. Nat'l Football League*, 369 F.3d 124, 139 (2d Cir. 2004) (discussing union's rights to “preserve jobs for current players to the detriment of new employees and the exclusion of outsiders”); *Wood v. Nat'l Basketball Assoc.*, 809 F.2d 954 (2d Cir. 1987) (denying prospective NBA player's antitrust challenge to CBA provisions negotiated between NBA and NBPA).

Table 6-A:
Leagues' Drafts

	NFL	MLB	NBA	NHL	CFL	MLS
Month	April/May	June	June	June	May	January
Length	7 Rounds ⁷	40 Rounds ⁸	2 Rounds ⁹	7 Rounds ¹⁰	7 Rounds ¹¹	4 Rounds ¹²
Approximate Number of Players	255	1,215	60	210	60	84

2) THE NCAA

The NCAA is a non-profit unincorporated association headquartered in Indianapolis through which the nation's colleges and universities govern their athletic programs. The NCAA consists of over 1,200 member institutions, all of which participate in the creation of NCAA rules and voluntarily submit to its authority.¹³ The NCAA's member institutions hire a President to oversee its affairs, currently Mark Emmert, formerly the President of the University of Washington.

As will be demonstrated below, the majority of players in the leagues played college sports at NCAA member institutions and according to the NCAA's rules before joining their respective leagues. The NCAA's rules have a substantial impact on players and their decisions about when to join one of the professional leagues.

The NCAA Bylaws declare that “[o]nly an amateur student-athlete is eligible for intercollegiate athletics participation[.]”¹⁴ Moreover, there must be “a clear line of demarcation between college athletics and professional sports.”¹⁵ Consequently, student-athletes are generally barred from receiving any compensation of any kind for their athletic ability other than a scholarship,¹⁶ and stipends to cover the full cost of attendance.¹⁷

The NCAA Bylaws also limit a student-athlete's options concerning joining one of the leagues. The effect of certain NCAA Bylaws will be discussed in the course of this Chapter but here we highlight two specific Bylaws that affect player health and eligibility.

First, NCAA Bylaws generally prohibit players from hiring agents¹⁸ or retaining a lawyer to represent them in contract negotiations.¹⁹ Were they permitted in NCAA sports, agents and attorneys would have the ability to communicate with professional clubs about a player's prospects and also, if the player has been drafted but has collegiate eligibility remaining (as will be explained below), negotiate with the club so the player can make an informed decision about whether to

return to college or turn professional. While some student-athletes may have the sophistication or support to do this by themselves, it stands to reason that they could benefit from the advice of experienced counsel. Nevertheless, NCAA Bylaws prohibit players from having lawyers who have any direct contact with professional clubs.²⁰

There is, however, an important caveat to this discussion. In 2014, the NCAA approved allowing the five most competitive and highest revenue producing conferences (ACC, Big 12, Big Ten, Pac-12, and SEC) to write their own rules on certain matters.²¹ As a result, in 2016, these conferences agreed to allow high school baseball players who are drafted to have an agent negotiate a potential contract with an MLB club.²² The player must pay the agent a market rate and if the player chooses to enroll in college rather than sign with the MLB club, he must terminate the relationship with the agent.²³ This rule, which can be adopted by other conferences, will provide baseball players with a meaningful opportunity to consider whether to turn professional instead of enrolling in college.

Second, NCAA Bylaws effectively prohibit basketball and football student-athletes from returning to intercollegiate athletics if they are eligible for the draft but are undrafted.^d College basketball student-athletes are, however, permitted

^d The NCAA's Bylaws suggest that these players can return but in reality they cannot. A basketball student-athlete can return to college if he declares his intention to do so “before the first day of the spring National Letter of Intent signing period for the applicable year.” NCAA Division I Manual, Bylaw 12.2.4.2.1.1. The first day of the National Letter of Intent signing period for basketball is in April. *NLI Signing Dates for Prospective Student-Athletes Signing 2015–16 and Enrolling 2016–17*, Nat'l Letter of Intent, <http://www.nationalletter.org/signingDates/> <http://www.nationalletter.org/signingDates/> (last visited Sept. 23, 2015), *archived at* <http://perma.cc/65MQ-DBAN>. The NBA Draft is in June. Thus, the player cannot go through the Draft in June and still meet the April deadline to declare his intention to return to college. Similarly, a football student-athlete can return to college if he declares his intention to do so “within 72 hours following the National Football League draft declaration date.” NCAA Division I Manual, Bylaw 12.2.4.2.3. The NFL requires student-athletes to declare for the NFL Draft by January 15. *See Unofficial underclassmen early entry list for 2015 NFL Draft*, Nat'l Foot League, Jan. 2, 2015, <http://www.nfl.com/news/story/0ap3000000441827/article/unofficial-underclassmen-early-entry-list-for-2015-nfl-draft>, *archived at* <http://perma.cc/SD8M-PUXV>. The NFL Draft is in April or May. Thus, the player cannot go through the Draft in April or May and still meet the January deadline to declare his intention to return to college.

to declare for the NBA Draft and attend pre-Draft workouts and return to school provided they withdraw their name from the NBA Draft and had never hired an agent. Nevertheless, the players still are unable to actually weigh the results of having been drafted against the possibility of returning to school. Thus, players in both basketball and football must weigh whether they are physically, emotionally, and intellectually ready for the professional ranks, or to return to college and play for free while risking an injury that might jeopardize their ability to ever play professionally.

The NCAA and some of these Bylaws are currently the subject of lawsuits throughout the country. The lawsuits principally contend that the NCAA's prohibition against student-athletes earning pay while playing violates various legal doctrines and laws, notably the Sherman Antitrust Act's prohibition against agreements that unreasonably restrain trade.²⁴ Nevertheless, the NCAA Bylaws are still in existence as of today and thus play an important role in analyzing leagues' eligibility rules and their effect on player health.

To address the concerns of student-athletes who are weighing whether to turn professional, in 1990 the NCAA created the Exceptional Student-Athlete Disability Insurance ("ESDI") program.²⁵ We discuss the ESDI and other insurance options next.

3) PLAYERS' INSURANCE OPTIONS

In light of the NCAA's rules prohibiting players from being compensated while playing college sports (as many are effectively required to do for reasons explained below), some athletes might want insurance policies to protect against an injury preventing or reducing their future professional earnings. Such athletes generally have two options: (a) the NCAA's ESDI program; and, (b) loss of value insurance policies through private insurers.

Student-athletes who demonstrate that they have the potential to be selected in the first three rounds of the NHL Draft, the first two rounds of the NFL Draft, or the first round of the NBA, MLB, or Women's National Basketball Association ("WNBA") Draft are eligible for the NCAA's Exceptional Student-Athlete Disability Insurance ("ESDI") program.²⁶ The program pays student-athletes a lump sum payment 12 months after determining that the player has suffered permanent total disability.²⁷

The ESDI program, administered through HCC Specialty Underwriters Company, used to cap coverage at \$5 million for projected first-round NFL Draft picks and men's

basketball student-athletes,²⁸ while coverage for baseball, men's ice hockey and women's basketball was capped at \$1.5 million, \$1.2 million, and \$250,000, respectively.²⁹ However, the amount of coverage is now determined by the insurer "based upon [the student-athlete's] prospective status in the upcoming draft."³⁰ The premiums cost between \$3,000 and \$6,000 annually for each \$1 million of coverage, depending on the sport and the player's position, which is considered a few thousand dollars less expensive than a private policy. Beginning in 2014, the NCAA has permitted colleges to pay the premiums on behalf of the player.³¹ Alternatively, student-athletes may take out loans to pay for the insurance without losing their amateur status for the NCAA.³² Approximately 40 to 50 athletes participate in the ESDI program each year, and the majority of those athletes are college football players.³³

In addition to the ESDI program, players might also consider obtaining a loss of value ("LOV") insurance policy through a private insurance company. LOV policies provide benefits to players whose draft stock, and thus the expected value of their contract, decreases due to injury.³⁴ For example, if a highly touted college player suffered an injury that prevented him from being the first overall pick in the draft, a LOV policy would have paid him the difference between the contract of the first overall pick and the player's actual, lesser contract.

In 2014, the NCAA approved permitting players to obtain loans based on the player's future earnings to pay for the premiums of LOV policies.³⁵ And because LOV policies are provided by private insurers rather than the NCAA, any player is able to obtain one if an insurance company is willing to provide coverage.

While LOV policies have reportedly become more common in recent years,³⁶ research has not revealed any publicly available data on how many players are obtaining the policies or whether any have had difficulty repaying the loans used to pay the premiums.

In 2015, for example, former Oregon and current NFL cornerback Ifo Ekpre-Olomu collected on a LOV policy.³⁷ Ekpre-Olomu was projected as a first round pick in the 2015 NFL Draft before tearing his ACL towards the end of the 2014 college season.³⁸ As a result of his injury, Ekpre-Olomu dropped to the seventh round of the NFL Draft.³⁹ Ekpre-Olomu's policy provided him with a \$3 million payment as a result.⁴⁰ In another instance, following the 2016 NFL Draft, former Notre Dame linebacker Jaylon Smith reportedly collected a \$900,000 LOV policy after a knee injury dropped him from the first round into the second round of the Draft.⁴¹

With this background information covered, we are now ready to examine the NFL's player eligibility rules before comparing them to the other leagues.



A) Player Eligibility Rules in the NFL

The 2011 NFL CBA provides that: “No player shall be . . . eligible for the [NFL] Draft, until three NFL regular seasons have begun and ended following either his graduation from high school or graduation of the class with which he entered high school, whichever is earlier.”⁴² Because there are no football leagues in the world comparable to the NFL in terms of skill and pay, the NFL's eligibility rule effectively requires almost all players to attend college for at least three seasons before they can enter the NFL Draft.^e

The NFL's eligibility rule has faced legal challenges. In 2004, former Ohio State running back Maurice Clarett initiated an unsuccessful legal challenge to the NFL's eligibility rule. After a stellar freshman season in the fall of 2002 in which Clarett led Ohio State to the national championship, Clarett was suspended by the NCAA for the entire 2003 season due to a variety of NCAA rules infractions.⁴³ Rather than not play the 2003 season and then seek an uncertain reinstatement from the NCAA for the 2004 season, Clarett wished to enter the NFL Draft.⁴⁴ However, because he was not yet three years removed from his high school graduation, Clarett was ineligible for the Draft.

Clarett sued the NFL, arguing that the NFL's eligibility rule violated the antitrust laws. After initially winning in the United States District Court for the Southern District of New York, the United States Court of Appeals for the Second Circuit, in an opinion written by then-Judge Sonia Sotomayor, reversed. The Second Circuit held that the NFL's eligibility rule, even though it was not contained within the CBA, had been collectively bargained with the NFLPA and was thus immune from antitrust law pursuant to the non-statutory exemption.⁴⁵ In 2006, to help avoid future challenges, the NFL and NFLPA added the eligibility rule to the CBA.

The NFL's eligibility rule creates health-related pressures on two groups of potential players. We discuss each in turn.

First, the NFL's eligibility rule affects those college players who have already proven themselves as NFL prospects but are not yet eligible for the Draft. These players might be concerned about remaining healthy until they are eligible for the Draft (*e.g.*, freshmen and sophomores). For example, in 2012, sophomore South Carolina defensive lineman Jadeveon Clowney established himself as the most dominant player in college football.⁴⁶ Many in the media argued that Clowney would have been the first overall pick in the 2013 Draft if not for the NFL's eligibility rule.⁴⁷ However, because of the eligibility rule, Clowney was forced to return to South Carolina for the 2013 season. Clowney had a less impressive 2013 season, including missing several games due to injuries. Clowney's diminished performance and missed game time caused some, including South Carolina's head coach Steve Spurrier, to speculate that Clowney was more concerned with protecting his NFL Draft status than playing college football.⁴⁸ Clowney was ultimately selected with the first overall pick in the 2014 NFL Draft.⁴⁹

While Clowney's story still ended in him being highly drafted, there have been many players who suffered injuries in college and, as a result, saw their NFL Draft stock drop significantly. For example, Adewale Ogunleye, from the University of Indiana, was one of the country's best defensive players between 1996 and 1999 and considered leaving college early after his junior season in 1998. However, Ogunleye returned to college and suffered a knee injury during the 1999 season that caused him to go undrafted and left him unable to play in 2000.⁵⁰ Ogunleye ultimately went on to have a successful ten-year career in the NFL.

Clowney's former teammate at South Carolina, Marcus Lattimore, provides another interesting example. Lattimore, a running back who was First-Team All-SEC in his freshman year,^f tore multiple ligaments in his knee in both his sophomore and junior seasons.⁵¹ Lattimore was drafted by the San Francisco 49ers in the fourth round of the 2013 NFL Draft, but never played in an NFL game before

e A notable exception was former University of Pittsburgh wide receiver Larry Fitzgerald. Fitzgerald had attended five years of high school and was thus eligible for the 2004 Draft after only two years of college football. Paul Zeise, *Fitzgerald Leaving Pitt Early for NFL*, Pittsburgh Post-Gazette, Feb. 10, 2004, available at 2004 WLNR 4854116. Fitzgerald was chosen with the third pick of the 2004 Draft and has had a stellar career with the Arizona Cardinals.

f The SEC is widely regarded as the best college football conference. *After the SEC, which is the best conference in college football?* Nat'l Collegiate Athletics Ass'n, Sept. 2, 2014, <http://www.ncaa.com/news/football/head-head/2014-08-22/after-sec-which-best-conference-college-football>, archived at <http://perma.cc/8JN2-AHAR>; Clay Travis, *The SEC Is Dead, Long Live the SEC*, Fox Sports, Jan. 5, 2015, <http://www.foxsports.com/college-football/outkick-the-coverage/the-sec-is-dead-long-live-the-sec-010515>, archived at <http://perma.cc/6C3W-LJVG>.

retiring in 2014 due to ongoing knee problems.^{52,g} Fortunately, Lattimore reportedly was eligible for a \$1.7 million payment from a disability insurance policy.⁵³

The Clowney, Ogunleye, and Lattimore stories all demonstrate the perils of being prevented from entering the NFL. A football player might suffer health problems at any time, but at least if the player is in the NFL, he will have earned (or be entitled to) some money before facing them.

The second group of potential players affected by the NFL's eligibility rule is comprised of those players who are eligible for the Draft and who also have college eligibility remaining (e.g., juniors) but are considering entering the NFL Draft. These players (such as Ogunleye) often face a difficult choice between entering the Draft or playing another year of college football—during which time they may improve their skill and improve their Draft prospects, play for a championship at the collegiate level with their current teammates, and/or finish (or come closer to finishing) their educations, but also risk being injured.

The NFL's eligibility rule coupled with the short average duration of NFL careers, rookie contract structures, and free agency rules all place at least some pressure on players to leave college early for the NFL Draft. The mean career length of a drafted player is about five years.⁵⁴ NFL rookie contracts are limited to four years plus a club option for a fifth-year for first round picks and four years for all other Draft picks.⁵⁵ In addition, the form of rookie contracts is restrictive, limiting the amount players can potentially earn to amounts far below what Unrestricted Free Agents^h might earn on the open market.⁵⁶ Finally, players cannot even become Unrestricted Free Agents until they have played at least four seasons.⁵⁷ Consequently, the typical player might only have one year left in his career when he is finally able to reach free agency and offer his services to the highest-bidding club.

All of this causes some players to believe they need to be in the NFL as soon as possible to capitalize on the limited timespan during which they can expect to be a healthy and productive NFL player. In particular, it is common to hear coaches or the media discuss the limited “lifespan” or “tread on the tires” for running backs.⁵⁸ If not for the NFL's eligibility rule, it is likely that some players would choose to enter the NFL Draft after their freshman or sophomore year of college, or maybe even high school, in order to maximize the perceived potential length of their NFL careers.

To assist these players, in 1994, the NFL created an Advisory Committee to help student-athletes determine their potential Draft round in the NFL Draft and assist them in making the decision of whether or not to leave school early.⁵⁹ The Advisory Committee is comprised of NFL club general managers, personnel directors, and scouts, and performs evaluations of student-athletes upon request from the student-athlete or his athletic department.⁶⁰ The Advisory Committee historically provided the student-athlete with an estimated range of rounds that the student-athlete should expect to be drafted (e.g., rounds three through five).⁶¹ In an effort to discourage players from entering the Draft early, the Advisory Committee's assessments are now separated into five categories: “As high as the first round; as high as the second round; as high as the third round; no potential to go in the first three rounds; and no potential to be drafted.”⁶² The Advisory Committee's assessments are confidential so it is thus impossible to judge their accuracy unless a player discloses them.

Despite the Advisory Committee's work, recent data suggests that many players declare for the NFL Draft before they are ready. In 2014, 45 of the 107 players (42%) who left college early were not drafted;⁶³ in 2015, 24 of the 84 early entrants (29%) went undrafted;⁶⁴ and, in 2016, 30 out of the 107 early entrants went undrafted (28%).⁶⁵ Although those players had the opportunity to sign as undrafted free agents with any club, they were not guaranteed any compensation if they did so and their careers are likely to be shorter than those of drafted players.⁶⁶

A player also cannot go through the Draft process and then, if not drafted, return to college football. Pursuant to NCAA Bylaws, a player who declares for the NFL Draft has only 72 hours to rescind his declaration or he cannot

g Drawing on Lattimore's story, some recommended that Leonard Fournette, a star running back at LSU, not play his 2016 college season to avoid the risk of injury before becoming eligible for the 2017 NFL Draft. See Mike Florio, *Fournette definitely should take a year off in 2016*, ProFootballTalk (Sept. 30, 2015, 9:33 AM), <http://profootballtalk.nbcsports.com/2015/09/30/fournette-definitely-should-take-a-year-off-in-2016/>, archived at <https://perma.cc/5XL4-6NJ4>. Instead, Fournette obtained \$20 million in insurance policies and played in the 2016 season. Mike Florio, *Leonard Fournette gets a pair of insurance policies*, ProFootballTalk (May 12, 2016, 10:05 PM), <http://profootballtalk.nbcsports.com/2016/05/12/leonard-fournette-gets-a-pair-of-insurance-policies/>, archived at <https://perma.cc/2R2M-5DWK>.

h An Unrestricted Free Agent is a “player with four or more Accrued Seasons [who] . . . at the expiration of his Player Contract . . . shall be completely free to negotiate and sign a Player Contract with any Club, and any Club shall be completely free to negotiate and sign a Player Contract with such player without penalty or restriction[.]” 2011 NFL CBA, Art. 9, § 1(a).

i It is important to know that while many (if not most) of the players who left college early did so because they thought they had the skill necessary to play in the NFL, at least some were likely forced to leave college for academic, personal, or institutional reasons.

return to play college football.⁶⁷ The NFL requires student-athletes to declare for the NFL Draft (which takes place in April or May) by January 15.⁶⁸ Thus, if a player has gone through the Draft in April or May, he is long past the January 18 (January 15 plus 72 hours) deadline to return to college football.

Even if the deadline for a player to rescind his declaration for the Draft were extended until after the Draft, NCAA Bylaws create an additional hurdle to players considering entering the Draft. A college football season ends in December or January but the NFL Draft is not until April or May. In that interim period, almost all prospective NFL players undergo extensive training to enable them to show off their skills at the NFL Combine and in other workouts in front of NFL clubs. The costs of that training and the player's living expenses during this time period—which are typically at least \$30,000—are almost always paid for by agents. Consequently, to enter the NFL Draft, a player generally needs an agent—something forbidden by NCAA rules. Thus, a player who enters the NFL Draft and undertakes the requisite training to be drafted essentially gives up his NCAA eligibility, which prevents him from playing college football in the future.⁶⁹

Despite the pressures the NFL's eligibility rule creates, the NFL's stated purposes for the rule are largely to protect player health. In the *Clarett* case, the NFL offered four reasons for its eligibility rule: “[1] protecting younger and/or less experienced players—that is, players who are less mature physically and psychologically—from heightened risks of injury in NFL games; [2] protecting the NFL's entertainment product from the adverse consequences associated with such injuries; [3] protecting the NFL clubs from the costs and potential liability entailed by such injuries; and [4] protecting from injury and self-abuse other adolescents who would over-train—and use steroids—in the misguided hope of developing prematurely the strength and speed required to play in the NFL.”⁷⁰

The NFL's eligibility rule imposes a strict delay on when players can enter the league. Given the injury concerns about playing football, players are often anxious to get to the NFL as soon as possible to maximize their potential earnings. Nevertheless, players must weigh their desire to enter the league with an understanding of whether or not they are physically prepared for the NFL.

Now that we have an understanding of the NFL player eligibility rules we are ready to compare them to the other major leagues.

B) Player Eligibility Rules in MLB



As a preliminary note, comparing player eligibility rules between the NFL and MLB from a health perspective is likely of diminished significance due to the different injury rates in the sports, discussed at length in Chapter 2. With that note in mind, we detail the player eligibility rules in MLB and their substantial difference from those of the NFL.

Players' eligibility to play in MLB depends on where the player is a resident. The eligibility rules differentiate players who are residents from the United States^l or Canada from those who are not.

American and Canadian players who have never previously contracted with a major or minor league baseball club^k are subject to MLB's First-Year Player Draft, known as the “Rule 4 Draft,” because the Draft is set out in Rule 4 of MLB's Major League Rules^l (“MLR”)—but not the CBA).^m Additionally, when players are eligible for the Rule 4 Draft depends on their education status.

The principal result of the Rule 4 Draft is that, generally, once a player enters college, he cannot enter the Draft again until after his junior year of college (unless he is 21). If the player plays beyond his junior year, he cannot enter the Draft until his collegiate eligibility has expired, which is typically after his senior year. Next, we provide a more detailed description of the Rule 4 Draft's nuances.

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- j The “United States” includes “the 50 States of the United States of America, the District of Columbia, Puerto Rico, and any other Commonwealth, Territory or Possession of the United States.” Major League Rule 3(a)(1). Additionally, a “resident of the United States” includes anyone who “enrolls in a United States high school or college or establishes a legal residence in the United States on the date of the player's contract or within one year prior to that date.” Major League Rule 3(a)(1)(A).
- k Minor league baseball generally refers to lower levels of baseball in which players almost always play before reaching MLB. Minor League Baseball (“MiLB”) is an organization of 15 different minor leagues with 176 teams, almost all of which are affiliated with an MLB club. See *General History*, Minor League Baseball, http://www.milb.com/milb/history/general_history.jsp (last visited June 23, 2016), archived at <http://perma.cc/2WHA-44D2>. In addition to MiLB, there are independent minor leagues that are not affiliated with MLB or MLB clubs in any way.
- l In addition to the CBA, many of MLB's rules are set out in a document entitled Major League Rules. Many of the Major League Rules have not been collectively bargained with the MLBPA, but the CBA does mention and amend some of the Rules. To the extent the Major League Rules and CBA conflict, the CBA controls.
- m The Major League Rules are not the CBA and are not necessarily collectively bargained with the MLBPA. While the CBA mentions multiple Major League Rules, and news reports indicate that changes to the Rule 4 Draft resulted from negotiations of the 2011 CBA, see *MLB, MLBPA reach new five-year labor agreement*, Major League Baseball, Nov. 22, 2011, <http://m.mlb.com/news/article/26025138/>, archived at <http://perma.cc/48JZ-CUHX>. MLB's eligibility rules are not an explicit part of the CBA and thus might be slightly more prone to an antitrust attack as compared to the eligibility rules of the NFL, NBA, NHL, and CFL for the reasons discussed in the Introduction of this Chapter.

High school players are not eligible for the Draft—and thus not eligible for MLB—while “the student is eligible for participation in high school athletics.”⁷¹ High school athletic eligibility typically terminates at the earlier of eight semesters of enrollment or graduation.⁷² A high school player may become eligible for the Draft prior to graduation if he has become ineligible for high school competition due to his age, because he has completed the maximum number of allowable semesters of attendance without graduation, or if “the maximum number of seasons in which the player was eligible to participate in any major sport has passed,” though in no case may a high school player be obligated “to report for service prior to the normal graduation of the class with which [he] originally entered high school.”⁷³ Additionally, a high school player who drops out of high school prior to the expiration of his athletic eligibility must remain out of school for “365 days including the date of withdrawal” before he is eligible for the Rule 4 Draft.⁷⁴

Of the 1,216 players drafted in 2016’s Rule 4 Draft, only 300 (24.7%) were drafted directly out of high school.⁷⁵ The remaining players all played at least some college or junior college baseball. However, once a player decides to enter college, his eligibility for the Rule 4 Draft becomes restricted.

Subject to a number of exceptions discussed below, a college⁷⁶ player is ineligible for the Rule 4 Draft from the “date [he] attends the first class in [his] freshman year” until “the graduation of the class with which [he] originally entered college,” or the graduation of a subsequent undergraduate class “if [he] retains eligibility to play baseball at [his] college in [that] year.”⁷⁷

The general rule that a college player is not eligible until the graduation of the class with which he entered college does not apply to a college player:

- 1 who is at least 21 years old and is currently between school years;
- 2 who has completed [his] junior year and is currently between school years;
- 3 who has completed the full period of [his] eligibility for intercollegiate baseball;
- 4 whose association with [his] college has been terminated by reason of scholastic deficiency⁷⁸; or,
- 5 who withdraws from college and remains out [of college] for at least 120 days (including the date of withdrawal).⁷⁹

Some high school players may also enter junior colleges. Junior college players are eligible for the Draft after either their first or second year at the school.⁸⁰

MLB’s different rules result in the possibility that a player can be drafted multiple times. A player drafted after high school may choose to enter college instead of signing. Players might believe they will have more opportunity to play and develop in college than in the minor leagues. Then, if the player enters a four-year college, he cannot be drafted again until he is 21 years of age or after his junior year. If he is still not ready to sign, he can return for his senior season. In each case, the player does not choose to enter the Draft—he is automatically subject to the Draft. Therefore, a player could be drafted after high school, after his junior year of college, and then a third time after his senior year of college.⁸¹

While MLB’s Draft rules provide considerable flexibility, there have been occasions where players thought they were sufficiently prepared for MLB before they could be drafted. After completing his sophomore year of high school in 2009, during which he batted .626, Bryce Harper earned his General Educational Development (“GED”) and enrolled in a junior college to face better competition.⁸¹ After one year in junior college, Harper was selected as the first overall pick in the 2010 Rule 4 Draft at the age of 17. Nevertheless, Harper’s situation (and talent) is considered anomalous.

We now discuss the eligibility rules for foreign (*i.e.*, non-U.S./non-Canadian) players, assuming they have not entered an American or Canadian college or otherwise become a resident of the United States. These foreign players are never subject to the Rule 4 Draft.⁸² Instead, an international player is eligible to sign a professional contract if he is “17 years old at the time of signing, or . . . will attain age 17 prior to either the end of the effective season for which the player has signed or September 1 of such effective season, whichever is later.”⁸³

In lieu of a draft, MLB clubs engage in a competitive scouting and bidding process for international talent, particularly as the rate of foreign-born players has increased. In 2016, 27.5% of players on clubs’ opening day rosters were foreign-born.⁸⁴ Moreover, 22.3% of all MLB players were from South or Central American countries.⁸⁵

n It is even possible to be drafted four times. Some players go from high school to junior college, where you can be drafted after your second year. Hypothetically, a player could be drafted after high school, enter a junior college and be drafted after junior college, then enroll in a four-year college, be drafted after his junior year, and be drafted a fourth time after graduating from, or completing his eligibility at, the four-year college.

Unfortunately, the scouting and bidding process has been fraught with problems. In Latin American countries, young baseball players—some not even in their teens—are often found and then controlled by “buscones,” or street agents.⁸⁶ The buscones control MLB clubs’ access to the players and can effectively sell the players to the clubs, taking a portion of the players’ signing bonus for themselves.⁸⁷ MLB club personnel have also been caught defrauding their clubs by taking a portion of the signing bonus allocated for the player (and often splitting it with the buscone).⁸⁸ In addition, there are widespread problems with identity fraud. Players desperate to reach MLB claim to be younger than they are or might even pretend to be someone else entirely.⁸⁹ While MLB and MLB clubs have taken steps to prevent identity fraud and to eliminate the influence of buscones (by having their own academies), many have also argued that the best way to resolve the issues is through an international Draft.⁹⁰

The 2011 CBA created an International Talent Committee charged with “discuss[ing] the development and acquisition of international players, including the potential inclusion of international amateur players in a draft, and to examine the rules and procedures pursuant to which international professional players sign contracts with clubs.”⁹¹ As part of its mandate, the International Talent Committee was to provide the MLBPA and MLB with advice on “[t]he appropriate age at which international amateur players should be signed to professional contracts.”⁹² Other than its first meeting in 2012,⁹³ our research has not revealed any output from the International Talent Committee. At the time of this writing there was still no draft for international players.

During the 2016 CBA negotiations, it was reported that MLB and the MLBPA seriously discussed the possibility of a draft for international players.⁹⁴ However, the sides were not able to reach an agreement. Instead, the parties agreed that Clubs would be subject to a “Signing Bonus Pool” that limited the amount of compensation Clubs could provide to international players.⁹⁵ The Signing Bonus Pool is a maximum of \$5.75 million, growing annually with league revenues.⁹⁶

Importantly, regardless of how a player ends up with an MLB club—whether through the Draft or as an international signee—almost all players will play several seasons with the minor league clubs affiliated with the MLB club that drafted them before signing an MLB contract⁹⁷ or playing in an MLB game, if they ever even do. Indeed, only about 17% of drafted players ever reach the major leagues.⁹⁸ Players signed to minor league contracts are not members of the MLBPA and are not entitled to the same rights and benefits as major league players.⁹⁹ Whereas the

minimum salary for a major league player was \$507,500 in 2016,¹⁰⁰ minor league players often earn between \$10,000 and \$20,000 per season.¹⁰¹

Additionally, for either domestic or international players, health generally would not be a factor in considering how to proceed with their professional eligibility.

International players generally want to get into international camps or onto minor league clubs affiliated with MLB clubs as soon as possible, *i.e.*, as soon as they are eligible. MLB’s eligibility rule permits international players to sign at age 17 (or slightly earlier) and thus is a minimal (if any) barrier to entry for international players. These camps and clubs generally provide international players with the best resources—including coaching, housing, and health-care—that they have ever experienced, while also increasing their chances of one day making the Major Leagues. In doing so, these players forfeit the right to ever play college baseball—an unlikely career trajectory for international players anyway. Thus, international players generally gain little by not entering into a professional contract as soon as they are able.

MLB’s eligibility rules also do not create health-related concerns for American and Canadian players. MLB’s eligibility rules do not prevent American and Canadian players, apart from very rare circumstances (*e.g.* Bryce Harper), from entering MLB as soon they believe it is in their best interests. They have the opportunity to become a major leaguer at various times and as early as age 17. By the time a player reached the skill level necessary to be drafted by an MLB club, he almost certainly would have reached the age of 17. Thus, the eligibility rule generally does not force players to make difficult decisions concerning their health.

NCAA eligibility rules, however, can affect an American or Canadian player’s choices. American or Canadian players who have been drafted by MLB clubs often have to consider whether to forego a signing bonus worth tens or hundreds of thousands of dollars from an MLB club to play or continue playing in college. Choosing to remain in college subjects the player to the risk of career-ending or threatening injury without compensation. As discussed above, the NCAA’s ESDI program attempts to alleviate some of these concerns.

The NFL and MLB eligibility rules are very different. The NFL eligibility rules effectively require a player to play three years in college and permit the player one chance to determine when is best for him to enter the NFL. In contrast, MLB eligibility rules allow a player to be drafted multiple times, including right out of high school.

The differences in the rules are perpetuated by the NCAA's rules and also the role of agents. A player becomes ineligible for NCAA competition once he signs with an agent.¹⁰² However, to be drafted in MLB, a player does not need an agent. MLB's Draft is held in June—shortly after a high school or college player would have finished his season and thus their prior results will largely determine their Draft performance. As discussed above, college football players almost always need the help of an agent to prepare for the NFL Draft—help that is forbidden by NCAA rules. As a result, even if the NFL adopted a system whereby players have the ability to be drafted multiple times like that of MLB, it would be useless due to the NCAA's rules.

The number of rounds in each league's draft also plays an important role. The MLB Draft has 40 rounds. Additionally, MLB clubs generally do not even sign many of the players they draft and, of the athletes they do sign, all of them will have to prove themselves in the minor leagues before reaching the MLB club. Consequently, MLB clubs have much more flexibility in drafting players who might not yet be ready for MLB. In contrast, the NFL Draft is only seven rounds and every player will immediately join the NFL club, creating considerably more pressure on NFL clubs to use each and every Draft pick wisely. NFL clubs do not have the luxury of drafting players who might instead prefer to return to college.

calendar year in which the Draft is held) and has no remaining intercollegiate basketball eligibility; or,

- b. The player is attending or previously attended a four-year college or university in the United States, his original class in such college or university has graduated (or is to graduate in the calendar year in which the Draft is held), and he has no remaining intercollegiate basketball eligibility; or,
- c. The player has graduated from high school in the United States, did not enroll in a four-year college or university in the United States, and four calendar years have elapsed since such player's high school graduation; or,
- d. The player did not graduate from high school in the United States, and four calendar years have elapsed since the graduation of the class with which the player would have graduated had he graduated from high school;^o or,
- e. The player has signed a player contract with a 'professional basketball team not in the NBA' . . . and has rendered services under such contract prior to the January 1, immediately preceding such Draft; or,
- f. The player has expressed his desire to be selected in the Draft in a writing received by the NBA at least sixty days prior to such Draft (an "Early Entry" player)[.]¹⁰⁶

International players must meet two criteria to be eligible for NBA Draft:

1. The player must be at least 19 years old during the calendar year in which the Draft is held;¹⁰⁷ and,
2. The player must meet one of the following three conditions:
 - a. The player is or will be twenty-two years of age during the calendar year of the Draft; or,
 - b. The player has signed a player contract with a "professional basketball team not in the NBA" . . . that is located in the United States, and has rendered services under such contract prior to the Draft; or,



C) Player Eligibility Rules in the NBA

The NBA's eligibility rules differentiate between American players and international—including Canadian—players.¹⁰³

American players must meet three criteria to be eligible for the NBA Draft, summarized as follows:

1. The player is or will be at least 19 years old during the calendar year in which the Draft is held;¹⁰⁴
2. At least one NBA season must have elapsed since the player's graduation from high school (or the graduation of the class with which the player would have graduated high school);¹⁰⁵ and,
3. The player must meet one of the following seven conditions:
 - a. The player has graduated from a four-year college or university in the United States (or is to graduate in the

^o As a result of this specific rule, some players can be eligible for the NBA Draft by intentionally not graduating from high school. For example, prior to the 2016 NBA Draft, it was reported that Jonathan Isaac, a high school player, was considering going straight from high school to the NBA. Isaac was in his 5th year of high school and thus the class with which Isaac entered high school had already graduated. Provided Isaac did not complete high school, he would have been eligible for the 2016 NBA Draft. Nevertheless, Isaac ultimately chose to attend college instead. See Dan Feldman, *Will Jonathan Isaac Jump from High School to NBA Draft?*, Pro Basketball Talk (Feb. 11, 2016, 10:40 PM), <http://nba.nbcsports.com/2016/02/11/will-jonathan-isaac-jump-from-high-school-to-nba-draft/>, archived at <https://perma.cc/XPB4-NYYB>. Had Isaac graduated from high school but did not enroll in college, he would have had to wait four calendar years until he would be eligible for the Draft. 2017 NBA CBA, Art. X, § 1(b)(ii)(C).

- c. The player has expressed his desire to be selected in the Draft in a writing received by the NBA at least sixty days prior to such Draft (an “Early Entry” player).¹⁰⁸

The NBA’s eligibility rules and their evolution have been controversial. Prior to 1971, the NBA required players to be four years removed from high school graduation in order to be eligible for the Draft.¹⁰⁹ In 1970, Spencer Haywood, a former Olympic basketball player who chose to play in the professional American Basketball Association (“ABA”)¹¹⁰ rather than finish college, sued the NBA, alleging that the NBA’s eligibility rule violated the antitrust laws.¹¹¹ The United States District Court for the District of California agreed and enjoined the NBA from enforcing its eligibility rule.¹¹² Two weeks after the District Court’s decision, the United States Court of Appeals for the Ninth Circuit stayed the injunction pending the NBA’s appeal.¹¹³ However, two weeks later, the Supreme Court of the United States reinstated the injunction.¹¹⁴ Haywood and the NBA then settled the case, with the NBA agreeing to allow players who were less than four years removed from high school graduation to enter the NBA if they if they could demonstrate “financial hardship.”¹¹⁵ In 1976, the eligibility rule was removed in its entirety.¹¹⁶

Despite the NBA’s removal of the eligibility rule, almost all players continued to spend at least some time in college before entering the NBA.¹¹⁷ Between 1976 and 1995, no players entered the NBA without first attending college.¹¹⁸ In 1995, Chicago high school star Kevin Garnett was chosen with the fifth overall pick in the Draft, beginning a wave of high school players trying to make the leap straight to the NBA. Between 1995 and 2005, 39 high schoolers were selected in the NBA Draft.¹¹⁹

However, some high schoolers went undrafted^p or otherwise had unsuccessful NBA careers, causing many to believe that they had tried to make the NBA too soon.¹²⁰ As a result, the NBA sought and obtained the current eligibility rule as part of the 2005 CBA.¹²¹ Nevertheless, many have also criticized the current eligibility rule for the creation of so-called “one-and-done” players, that is, players who play one season of college basketball (as required by the eligibility rule), before entering the NBA Draft.¹²² These players are able to enroll in college, take the minimum number of classes in their first semester, go to some of their classes as the college basketball season winds down in their second

p The players would have been unable to pursue college basketball if they had signed an agreement with an agent, *see* NCAA Division I Manual, § 12.1.2 (“An individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual . . . [e]nters into an agreement with an agent.”). Most, if not all, of the players signed with agents in hopes of increasing their chances of being drafted.

semester, declare for the Draft, and drop out of school having completed only four or five general education classes.¹²³ Since the initiation of the current eligibility rule, 95 players have left college after only one season and were drafted by an NBA club (a mean of 8.6 per Draft), with mixed success in the NBA.¹²⁴

There are also college players who are eligible for the Draft but, if they have collegiate eligibility remaining, debate whether to return to college. For these players, the NBA’s eligibility rule is not a concern but only their readiness for the NBA and the potential for injury at the collegiate level. The NCAA’s ESDI program, discussed above, is an attempt to alleviate some of the concerns about possible injury. In addition, beginning in 2016, the NCAA amended its rules to permit underclassmen players to participate in the NBA’s pre-Draft Combine to allow players to better gauge their Draft potential.¹²⁵ Following the Combine, a player now has ten days to withdraw from the Draft and return to college (provided he never signed with an agent).¹²⁶

Instead of playing NCAA basketball, some American players have chosen instead to go play professionally in foreign countries before entering the NBA Draft,¹²⁷ with mixed success. In 2008, Brandon Jennings, a highly acclaimed high school basketball player from California, decided to play professional basketball in Italy instead of playing college basketball. After one season in Italy, Jennings was selected 10th overall in the 2009 NBA Draft and has had, as of the publication of this Report, a successful NBA career.¹²⁸ Jeremy Tyler, another California basketball player who, in 2009, opted to play professionally overseas rather than play college basketball in the United States, had less success.^{129,q}

In addition to playing NCAA basketball or overseas, players have one other option before they are eligible for the NBA. Players can play in the NBA Development League (“D-League”).^r The D-League, started in 2001, is the NBA’s official minor league, consisting of 22 clubs with players hoping to reach the NBA.¹³⁰ Indeed, more than 30% of current NBA players have played in the D-League at some

q Tyler decided to leave high school after his junior year and play professional basketball in Israel and Japan until he was NBA eligible. While Tyler eventually made it to the NBA as a second round NBA Draft pick in 2011, he was not a successful NBA player and currently plays in China. As another example, in 2014, Emmanuel Mudiay from Texas went to play in China rather than for an American college. Mudiay, who escaped from war in the Congo as a child, chose playing overseas due to potential problems concerning the NCAA’s academic eligibility and amateurism requirements. In the 2015 NBA Draft, Mudiay was selected with the seventh overall pick by the Denver Nuggets.

r Beginning with the 2017-18 season, the D-League will officially be known as the “G-League” as part of a sponsorship agreement with Gatorade. Dan Feldman, *D-League? It’s Now the G-League*, Pro Basketball Talk (Feb. 14, 2016, 9:50 AM), <http://nba.nbcsports.com/2017/02/14/d-league-its-now-the-g-league/>, archived at <https://perma.cc/8KN3-GL8J>.

point.¹³¹ Of most relevance, the minimum age to play in the D-League is 18 years old, one year younger than the NBA's requirement.¹³² However, no high school player has ever foregone the NCAA for the D-League^s and most D-League players are undrafted former college players or NBA veterans trying to make a comeback.¹³³ The low salaries (reportedly between \$19,500 and \$26,000¹³⁴) likely deter players from considering the D-League as their best option.^t

The NBA's eligibility rule is generally considered the most controversial in sports. To its critics, the rule prevents young men capable of playing in the NBA from pursuing their chosen career (or at least choosing to try to play in the NBA) and instead forces them to enroll in college for a brief period of time even if they have no interest in academics.¹³⁵ Others believe requiring players to mature more before entering the NBA is essential for their development as both players and people.¹³⁶ Additionally, some have suggested that by having rookies play at least one year of college basketball, they will be more familiar to fans and thus be more interesting and marketable to NBA fans.¹³⁷ For these reasons, leading up to the 2017 CBA negotiations, the NBA suggested requiring players to be at least two years removed from high school before entering the NBA Draft.¹³⁸ Nevertheless, the NBPA resisted those suggestions and no changes were made to the eligibility rule in the 2017 CBA.¹³⁹

The NBA and NFL eligibility rules are similar in that they both effectively require players to play at least some time in college. While the NBA requires one year and the NFL requires three years, both leagues' rules are generally designed to keep players out of the professional leagues

until they are sufficiently physically and mentally mature, thus arguably protecting both the players and the clubs' investments in those players.

D) Player Eligibility Rules in the NHL



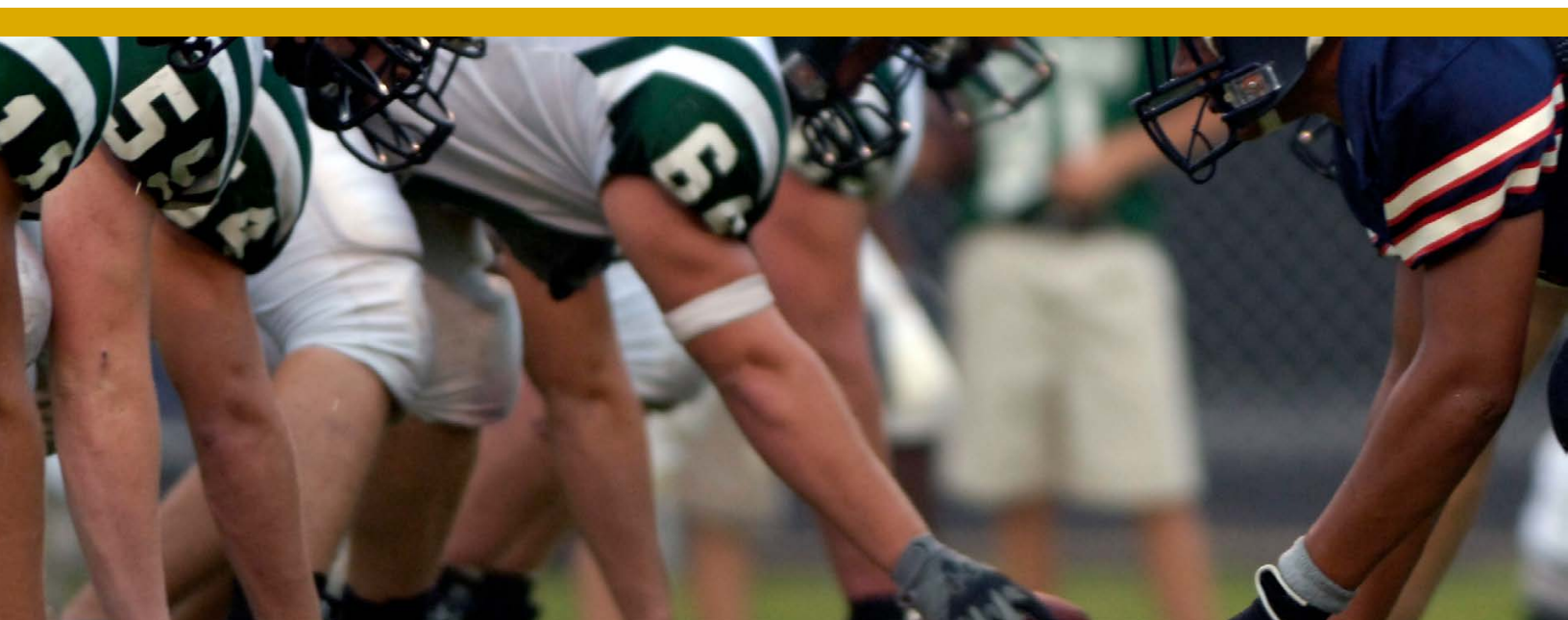
To be eligible to play in the NHL, a player must be at least 18 years old and have sufficient vision in both eyes (a requirement discussed further below).^{140,u} To reach the NHL, players are subject to the NHL Draft unless the player is at least 22 years old or is at least 21 years old and played hockey for at least one season in North America when he was 18, 19, or 20.¹⁴¹

The NHL's Draft and eligibility rules are complicated by the heavily international nature of the NHL. In the 2016–17 season, 48% of the players were born in Canada, 24.8% were born in America, and the remaining 27.2% of players were from 13 different European nations.¹⁴² All players are subject to the NHL Draft, regardless of their nationality.

The five principal sources of NHL Draft picks are: (1) the Canadian Hockey League, an organization of three hockey leagues (Quebec Major Junior Hockey League, Ontario Hockey League, and the Western Hockey League) (“Canadian Juniors”); (2) the United States Hockey League (“USHL”), an American junior hockey league; (3) American colleges; (4) players playing in European

^s In 2009, Latavious Williams did go directly from high school to the D-League. However, Williams had little choice — after committing to play at the University of Memphis, Williams could not meet NCAA academic requirements to play.
^t Players that entered the D-League would be ineligible to play NCAA basketball.

^u News reports have indicated that the NHL is considering trying to raise the minimum age to 19. See Allan Muir, *Notebook: Draft age change in store?* Sports Illustrated (Mar. 8, 2016), <http://www.si.com/nhl/2016/03/07/nhl-draft-age-change-world-cup-over-35-team-players>, archived at <https://perma.cc/9L6C-8CL4>.



professional leagues; and, (5) American high schools.¹⁴³ The Canadian Juniors are for players between the ages of 16–20 and operate like a semi-professional league: the players generally continue to be in school of some kind and receive a few hundred dollars a month as a stipend.¹⁴⁴ The NCAA considers Canadian Juniors to be professional leagues due to the compensation and benefits the players receive.¹⁴⁵ Consequently, many young players face a difficult choice between playing hockey for American colleges or playing in Canadian Juniors.¹⁴⁶ About 50% of NHL players played in Canadian Juniors,¹⁴⁷ while about 30% of NHL players went to an American college.¹⁴⁸ While the USHL is also for players between the ages of 16–20, it does not provide players a stipend and thus they retain their NCAA eligibility.

The NHL's eligibility rules provide flexibility for players. High school and college players can be drafted and choose to instead play college hockey. The drafting NHL club generally holds the player's rights until he graduates college, meaning no other club can draft or sign the player.¹⁴⁹ In the case of non-North American players, the drafting NHL club holds the player's rights for four years if the player is 18 or 19, or two years if he is 20.¹⁵⁰ After each collegiate season, the player can decide whether to return to college or to begin his NHL career with the club that drafted him.

The purpose of the NHL's age requirement is unclear. However, in deciding to return to college as opposed to enter the NHL, several players have cited the need to continue to grow physically and to gain weight to be prepared for the NHL.¹⁵¹ Thus, assuming age is a proxy for physical size, the NHL's eligibility rule prevents players who might not be physically ready for the NHL from entering prematurely.

Concerning the vision requirement mentioned above, the NHL By-Laws declare ineligible “[a] player with only one eye, or one of whose eyes has a vision of only three-sixtieths (3/60ths) or under.”¹⁵² In the 1970s, NHL draftee Greg Neeld, who had lost his left eye in a Juniors game, sued the NHL, alleging that the rule violated the antitrust laws. The NHL's rule was ultimately determined to be reasonable and not in violation of the antitrust laws.¹⁵³ The United States Court of Appeals for the Ninth Circuit determined that “the primary purpose and direct effect of the League's by-law was not anticompetitive but rather safety,” as there was “bound to be danger to players who happen[ed] to be on Neeld's blind side.”¹⁵⁴

The NHL's eligibility rules are generally flexible and do not force players to either abstain from entering the NHL or to enter the NHL. Players have a variety of options and generally enter the Draft when their skills and size have sufficiently developed to play in the NHL.

The NHL's eligibility rule is similar to MLB's in that it provides players multiple opportunities to determine when to enter the NHL. The NHL's eligibility rule thus differs from the NFL's in many of the same ways that MLB's rule does. Prospective NHL players—like prospective MLB players—can easily be drafted without the assistance of an agent, and thus do not need to risk their NCAA eligibility to consider whether to turn professional like prospective NFL players do. Additionally, prospective NHL players—also like prospective MLB players—will have to prove themselves in the minor leagues before reaching the NHL. The minor league system provides NHL—and MLB—clubs several years to develop their draft picks into productive professionals. In contrast, the NFL does not have a minor league and thus NFL clubs are under pressure to draft players who are going to have an impact in a relatively short period of time.

E) Player Eligibility Rules in the CFL



The CFL's eligibility rules depend on whether the player is a National Player or an International Player. National Players are those who are Canadian citizens at the time of signing the player's first CFL contract, or a player who was physically resident in Canada for an aggregate period of five years prior to turning 18 years old.¹⁵⁵ International Players are players who do not meet the criteria to be a National Player.¹⁵⁶

National Player eligibility is further differentiated based on whether the player plays in the Canadian Interuniversity Sport (“CIS”) League, Canada's equivalent of the NCAA, or in the NCAA or National Association of Intercollegiate Athletics (“NAIA,” the NCAA's much smaller American competitor).

National Players who play in the CIS are eligible for the CFL Draft three years after completing their first year of CIS eligibility.¹⁵⁷ Under the CIS By-laws, a football player is “charged with a year of eligibility for each year of competition where the athlete participated in” more than one regular-season game.¹⁵⁸ Thus, under normal circumstances, a National Player is not eligible for the CFL Draft until he has played four years of college football. This rule was created in 2013 to eliminate the ability of “redshirt” juniors to enter the CFL Draft. In college athletics, when a player is “redshirted,” it means he will not compete in athletics that season,^v and that

^v Student-athletes red-shirt for several reasons: (1) as freshman, to allow for a transition to the athletic and academic rigors of college; (2) due to an injury; and, (3) to improve their academic standing.

season will not count against the number of seasons that the player is permitted to play. Therefore, a redshirted player would not be charged with a year of eligibility under CIS By-laws. A redshirted junior would be a fourth-year player academically but who has only played three seasons of college football (having sat out the redshirt season). The CFL's current eligibility rules no longer permit redshirt juniors to enter the CFL Draft.¹⁵⁹

National Players who play NCAA or NAIA football are only eligible for the CFL Draft after they have completed their senior year of eligibility.¹⁶⁰ Thus, redshirt juniors playing college football in the United States are also barred from the CFL Draft. Before the rule changes in 2013, juniors who were National Players playing college football in the United States could be drafted by CFL clubs but still return for their senior season.¹⁶¹ The CFL club would retain rights to the player upon their graduation.¹⁶² The prior regime required CFL clubs to speculate on which National Players would choose to leave college after their junior season for the CFL or choose to instead return to college and play a senior season with the hopes of maybe making the NFL.¹⁶³ The change was made to improve predictability in the Draft as to which National Players would actually play in the CFL.¹⁶⁴

In stark contrast to the rules for National Players and the rules of the NFL, the CFL imposes no age or education requirements for International Players.¹⁶⁵ Thus, American high school players could choose to play in the CFL as opposed to playing college football in the United States. Although our research has not revealed a case where that actually occurred, we have found at least one case where it was considered. In 2009, star high school running back Bryce Brown was reportedly considering foregoing college for the CFL.¹⁶⁶ Brown ultimately chose to attend the University of Tennessee and later Kansas State University before being selected in the 2012 NFL Draft.

While the CFL eligibility rules permit American players to enter at any time, they are very restrictive of National Players. Effectively, a National Player cannot join the CFL until he has played four years of college football. While the rule might assist National Players in obtaining their college degree, it also subjects them to the wear and tear of four years of college football before they can consider becoming professional. It is likely that some National Players believe they are physically prepared for the CFL prior to graduation and would prefer to enter the CFL earlier so as to avoid the risk of injury or diminished skill. However, the CFL rules do not permit a National Player to make that choice.

The CFL's eligibility rule is more restrictive than that of the NFL's. Whereas the NFL's rule only requires players to play

three years of college football, the CFL requires four years of college for National players (the only players relevant for this discussion). Additionally, the CFL's eligibility rule does not appear to be concerned with player health—but is instead principally concerned with CFL clubs' ability to know which players are likely to play in the CFL.

F) Player Eligibility Rules in MLS



In contrast to all of the other leagues, MLS does not have an eligibility rule. Players need not be of a certain age or have reached a certain level of education to play in MLS. Indeed, in the 2016 season, there were 18 teenagers on MLS rosters, with the youngest player being 16.¹⁶⁷ Notably, Freddy Adu began playing with MLS' D.C. United club in 2004 at the age of 14.¹⁶⁸

Although there is no eligibility rule, players arrive at MLS via a wide variety of paths. The path by which a player arrives at MLS determines the process by which the player reaches his club:

1. Allocation Process: U.S. Men's National Team players, elite youth U.S. National Team players, and former MLS players returning to MLS after playing with a non-MLS club for a transfer fee of greater than \$500,000 are allocated to clubs pursuant to MLS' Allocation Ranking List (which is in the reverse order of the prior season's standings).¹⁶⁹
2. SuperDraft: Clubs can nominate players to be in the MLS SuperDraft and only nominated players can be drafted.^w College players, non-collegiate international players, and players from Generation adidas are eligible for the Super Draft.^x

w Although it is called the "SuperDraft," the SuperDraft is simply MLS' draft.
 x "Generation adidas is a joint program between MLS and adidas that is dedicated to developing exceptional domestic talent in a professional environment. Each year, a handful of top domestic collegiate underclassmen and youth national team players are signed by the league and placed in the SuperDraft through this program." Generation adidas players may also receive an education stipend. Importantly, Generation adidas players are on a club's Supplemental Roster and are not charged against the team's salary budget. *Roster Rules and Regulations*, § II(C), MLS.com, <http://pressbox.mlssoccer.com/content/roster-rules-and-regulations> (last visited May 18, 2015), archived at <http://perma.cc/48QQ-VC4S>. Generation adidas is designed to prevent the best underclassmen from going to play in Europe. Brooke Tunstall, *Does MLS Block College Underclassmen from Draft?*, Am. Soccer Now (Jan 17, 2014, 6:39 PM), <http://americansoccernow.com/articles/does-mls-block-college-underclassmen-from-draft>, archived at <http://perma.cc/3862-WDCR>. As a result of the Generation adidas program, generally only players who have exhausted their collegiate eligibility are nominated to be in the SuperDraft. *Roster Rules and Regulations*, *supra*. The impact of the Generation adidas program is also discussed in Chapter 3: Health-Related Benefits.

3. **Discovery Process:** Clubs can scout and sign players who are not under contract to MLS and who are not subject to the Allocation Process or SuperDraft.¹⁷⁰ The Discovery Process is typically used to sign foreign players who were not nominated for the SuperDraft.¹⁷¹
4. **Homegrown Players:** Clubs may sign a player to his first professional contract without subjecting him to the SuperDraft if the player has been a member of the club's youth academy for at least one year.¹⁷²

Normally, MLS' different drafting and signing processes do not place pressure on players. There are a wide variety of soccer leagues around the world and generally, if a player is good enough, he will have opportunities. MLS' rules are generally designed to assist MLS in competing against more talented and better paying European leagues for players' services. For example, players signed to Generation adidas contracts are given incentive-laden contracts that provide the opportunity for greater compensation than if the player had completed his college degree while also placing money in escrow for them to complete their college education.¹⁷³

The Generation adidas education payments are similar to the NFL's Tuition Assistance Plan, which reimburses players for tuition, fees, and books from attending an eligible education institution. However, while the Generation adidas program is limited to only some elite players, all current NFL players with at least one Credited Season are eligible for the Tuition Assistance Plan. Former players with at least five Credited Seasons are also eligible provided that the costs are incurred within four years of the player's last season.

Now that we have reviewed the policies of the major leagues we are ready to analyze the NFL's policies by comparing them to these leagues' policies.

G | Analysis

The leagues' eligibility policies vary. MLS has the most liberal eligibility policy, with no minimum age requirement, while, by requiring several years of college, the NFL and CFL are the most restrictive.

All of the eligibility rules seemingly are at least partially concerned with when a player is "ready" to enter a professional league. Readiness is an important concept, but difficult to define. In our view, a player is ready when he is able

to enter the league safely, in terms of protecting his health,^y and maximize his success across various domains, including physically, mentally, and emotionally. Each of the leagues, often through negotiations with the unions, has made a judgment as to when they think the typical player is ready, or at least ready enough. In so doing, the leagues have helped protect clubs from drafting and investing in players who are not ready, and also potentially helped to protect players who need more time to prepare for a successful and healthy career.^z However, without more empirical analysis, we cannot say for certain when players—individually or collectively—are ready and thus whether the eligibility rule is fair or successful. No such data currently exists and would be challenging to gather. We discuss this issue further in the Recommendations.

The NBA is the one league that potentially has the data to inform its eligibility rule. Between 1995 and 2005, 35 high schoolers were selected in the NBA Draft.¹⁷⁴ Concerned that many of these players were not ready for the NBA, the NBA instituted its current eligibility rule in the 2005 CBA. Since the initiation of the current eligibility rule, 95 players have left college after only one season and were drafted by an NBA club.¹⁷⁵ One could, in theory, compare the career and health outcomes of the high schoolers that entered the NBA with those of the one-and-done players and with upperclassmen to potentially evaluate whether the NBA's eligibility rule has been effective at preventing players from entering the NBA before they are ready.^{aa} Such a comparison would be helpful, if not conclusive (in part because of selection effects and other research design problems), in understanding the value of delaying eligibility. Indeed, in 2017, NBA Commissioner Adam Silver discussed the need for the eligibility rule to be "studied" more closely,

y As a reminder and as discussed in the Introduction, Section F: Scope, we define health for purposes of this Report as "a state of overall wellbeing in fundamental aspects of a person's life, including physical, mental, emotional, social, familial, and financial components."

z On this point, it is interesting to note that in Europe, soccer and basketball players often begin playing professionally in their mid-to-late teens. See, e.g., *Next Generation 2015: 50 of the best young talents in world football*, The Guardian, Oct. 7, 2015, <http://www.theguardian.com/football/ng-interactive/2015/oct/07/next-generation-2015-50-of-the-best-young-talents-in-world-football>, archived at <https://perma.cc/PTR6-T8SJ>; Lang Whitaker, *Here's Footage of 14-Year-Old Ricky Rubio*, NBA.com (Nov. 7, 2014, 10:22 AM), <http://allball.blogs.nba.com/2014/11/07/heres-footage-of-14-year-old-ricky-rubio/>, archived at <https://perma.cc/WK5W-R777>.

aa Indeed, there has been some research on this issue. An analysis of first-round draft picks from 1989–2000 by Ryan Rodenberg and Jun Woo Kim concluded that "players who are drafted at a younger age relative to other draftees have, on average, more successful NBA careers." Moreover, the authors concluded that "there is no evidence that players who played one year of college basketball, while controlling for other factors, perform better than individuals who moved into the NBA straight from high school." Ryan Rodenberg and Jun Woo Kim, *Testing the On-Court Efficacy of the NBA's Age Eligibility Rule*, 8 J. Quantitative Analysis in Sports 1 (2012). While this analysis is interesting, some might argue that it does not address one of the core purposes of the eligibility rule: preventing young men who give up their eligibility to play at the college level by entering the Draft early from having their careers derailed by being drafted in the second round or not drafted at all.

including better understanding various factors that affect or are affected by the rule.¹⁷⁶ While the NBA's consideration of this issue is laudable, the data from any such study would have limited generalizability to the other leagues due to the different demands of each sport.

The Women's Tennis Association ("WTA") provides a useful example. WTA's eligibility rule, probably more than any other sports organization, is the result of considerable analysis and study. In the early 1990s, there was concern about the well-being and career longevity of teenage players competing on the WTA Tour.¹⁷⁷ At the time, fourteen- and fifteen-year-old players were permitted extensive play on the WTA Tour.¹⁷⁸ As a result, in 1994, the WTA Tour formed an Age Eligibility Commission to study the Tour's eligibility rule.¹⁷⁹ The Age Eligibility Commission, consisting of sports medicine and sports science professionals, gathered and analyzed extensive anecdotal, statistical, medical, and scientific evidence. Among the data gathered was evidence that an early start to a player's career correlated to an earlier departure from the Tour.¹⁸⁰ Based on such evidence, the Commission recommended a revised eligibility rule,¹⁸¹ adopted in 1995, that instituted a graduated maximum number of tournaments for players beginning at age 14 and with no limits after players reach age 18.¹⁸² In 2004, the Age Eligibility Commission's successor, the Age Eligibility Advisory Panel, conducted an extensive re-examination of the rule, again gathering a variety of anecdotal, statistical, medical, and scientific evidence.¹⁸³ The Age Eligibility Advisory Panel concluded that the 1995 rule change had been helpful to young players and enhanced their career longevity, while recommending some minor tweaks.¹⁸⁴

The NCAA's rules create a problem for players who have the potential to reach the NFL but who are required — or might prefer — to continue playing college football.

The comparison of the leagues' policies highlights two clear issues with the NFL's eligibility rule, but, generally, neither is of the NFL's making.

First, the NFL's requirement that players effectively play at least three years of college football might ensure that only sufficiently physically mature players enter professional football, but it also requires players to risk their physical

health longer without getting paid—and in a sport with higher injuries rates than that of the other leagues, as discussed in Chapter 2: Injury Rates and Policies. While the NCAA's ESDI program tries to alleviate some of these issues, players have legitimate concerns that they will suffer a career-altering or ending injury before they are able to reach the professional level and earn any money from their athletic skills. This is at least in part a problem resulting from the NCAA's prohibition on student-athletes being compensated. Whether the NCAA's rules are fair is beyond the scope of this Report, but it is clear that the rules create a problem for players who have the potential to reach the NFL but who are required—or might prefer—to continue playing college football.

Second, in light of the fact that players are not paid for playing in college, it is understandable that many want to enter the NFL as soon as possible. Specifically, players will want to enter the NFL after their junior year of college, the first time they are permitted under the NFL's eligibility rule. However, whether the player is ready for the NFL is a difficult question to answer and may not be resolved until many years later—if ever. If the player is undrafted, NCAA rules effectively prohibit the player from returning to college football, and the player's football future is in serious doubt. Once again, although this problem intersects with the NFL's eligibility rule, it is the primary result of the NCAA's rules, not the NFL's.

Ultimately, without more data, it is unclear what the optimal eligibility rule is in any of the leagues. Thus, it is also unclear whether any of the leagues can learn from each other on this issue. As a result, we cannot assess the reasonableness of the NFL's current eligibility rule. The rule seemingly prevents players from joining the NFL before they are ready, which both protects those players from injury in the NFL and protects the clubs from investing in players who are not yet ready to play at a professional level. While there are likely to occasionally be players who are ready to join the NFL before the end of their junior season,^{ab} there are going to be outliers to any rule and, without data suggesting otherwise, we cannot say the NFL's eligibility rule is not reasonable or sufficiently considerate of player health. For this reason our main recommendation is for the NFL to continue to gather data to permit a better evidence-based evaluation of its current policy, as well to consider the interplay of its rules with the NCAA's.

^{ab} For example, in 2007, the Houston Texans drafted Amobi Okoye with the tenth overall pick at the age of 19. Okoye, originally from Nigeria, began college at the age of 15 in light of his academic performance. See Steve E. Cavezza, "Can I See Some ID?": An Antitrust Analysis of NBA and NFL Draft Eligibility Rules, 2010 Den. U. Sports & Ent. L.J. 22, 50–51 (2010).

H) Recommendations

Recommendation 6-A: The NFL should consider performing or funding research analyzing when a player might be “ready” for the NFL.

Currently, the NFL’s eligibility rule appears to be the NFL’s best guess as to when players, as a general rule, are ready to play in the NFL. However, we are unaware of any rigorous body of data to support the NFL’s eligibility rule as it is currently written. While the NFL’s eligibility rule seems reasonably protective of player health based on what is currently known, data could substantially buttress the rule—or prompt changes to it as necessary. For the sake of player health, the NFL should make efforts to gather this data.

Among the data that might be valuable in this context are: players’ ages when they enter the league; players’ height and weight; players’ position; players’ professional results; players’ injury histories; players’ financial health; players’ education; players’ psychological health; and, players’ post-career activities. This and other data may need to be gathered before, during, and after the player’s career, as relevant; there may also be questions related to the precise definition of player success for purposes of this analysis, although certain thresholds on either end of the spectrum will be evident. While some of this data does currently exist, the ideal comparison would be between players who entered the league under the current rule and those who entered earlier (or later) on an alternative rule. Because the current eligibility rule has been in place for decades, direct comparison is difficult. However, it is possible that the NFL—potentially with the help of others—could learn something from the data that is already available, for example, comparing the outcomes of players who enter the league at different ages beyond the eligibility threshold. Of course, this will not answer the question of how *individual* players might fare if they could enter the league even earlier than the current rule permits,^{ac} but it may nonetheless provide some helpful information for comparison between players who are younger or older at entry.

Recommendation 6-B: The NFL should reconsider the interplay of its eligibility rules with the NCAA’s rules as they concern player health and take appropriate action if necessary.

The NFL’s eligibility rule coupled with the realities of the NCAA’s rules cause tremendous pressure on prospective and future NFL players. While these NCAA rules are not the NFL’s creation, the NFL should nevertheless acknowledge that the football careers of prospective or future NFL players are substantially affected by the NCAA’s rules and take steps within its power to address those problems. The combination of the two organizations’ rules creates situations that many find inequitable and it is thus appropriate for the NFL to reconsider its eligibility rules’ applicability in those situations and whether anything can be done to change them.^{ad}

ac Given more advances in health technology, it is theoretically possible that leagues could adopt an individualized approach, using specific metrics to determine whether a particular player was “ready.” However, such an approach also raises concerns with the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act, as discussed in our article, *Evaluating NFL Player Health and Performance: Legal and Ethical Issues*, 165 U. Penn. L. Rev. 227 (2017).

ad Despite criticism on this issue, the NFL reportedly is not considering any changes to its eligibility rules. See Mike Florio, *NFL not considering a change to the three-year rule*, ProFootballTalk (Oct. 31, 2015, 10:38 PM), <http://profootballtalk.nbcsports.com/2015/10/31/nfl-not-considering-a-change-to-the-three-year-rule/>, archived at <https://perma.cc/34JC-M66Y>.

Endnotes

- 1 See *American Needle, Inc. v. Nat'l Football League*, 560 U.S. 183, 196-97 (2010) ("The teams compete with one another, not only on the playing field, but to attract fans, for gate receipts, and for contracts with managerial and playing personnel.")
- 2 See *Clarett v. Nat'l Football League*, 369 F.3d 124, 137 (2d Cir. 2004) (discussing application of antitrust law to NFL's eligibility rule).
- 3 See *Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 183, 186 (2010), citing 15 U.S.C. § 1.
- 4 See *id.* at 203, n.10, quoting *Board of Trade of Chicago v. United States*, 246 U.S. 231, 238 (1918) ("The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint is imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences.")
- 5 See *Brown v. Pro Football, Inc.*, 518 U.S. 231 (1996).
- 6 See *Clarett v. Nat'l Football League*, 369 F.3d 124 (2d Cir. 2004) (NFL's eligibility rule immune from antitrust scrutiny as a result of non-statutory labor exemption).
- 7 NFL CBA, Art. 6, § 2(a).
- 8 *Draft FAQ*, Major League Baseball, <http://mlb.mlb.com/mlb/draftday/faq.jsp> (last visited May 13, 2015), archived at <http://perma.cc/4HA7-4D8L>.
- 9 NBA CBA, Art. X, § 3.
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- 12 *Roster Rules and Regulations*, Major League Soccer, <http://pressbox.mlssoccer.com/content/roster-rules-and-regulations> (last visited Sept. 22, 2015), archived at <http://perma.cc/9BLN-R7QD>.
- 13 See *Who We Are*, Nat'l Collegiate Athletics Ass'n, <http://www.ncaa.org/about/who-we-are> (last visited Sept. 23, 2015), archived at <http://perma.cc/RXA5-4FLL>; *Membership*, Nat'l Collegiate Athletics Ass'n, <http://www.ncaa.org/about/who-we-are/membership> (last visited Sept. 23, 2015), archived at <http://perma.cc/6BTQ-G7QS> (describing membership as more than 1,200 schools).
- 14 NCAA Division I Manual, Bylaw 12.01.1.
- 15 NCAA Division I Manual, Bylaw 12.01.2.
- 16 See NCAA Division I Manual, Bylaw 12.02.9 ("Pay is the receipt of funds, awards or benefits not permitted by the governing legislation of the Association for participation in athletics."); *id.* at Bylaw 12.02.10 ("A professional athlete is one who receives any kind of payment, directly or indirectly, for athletics participation except as permitted by the governing legislation of the [National Collegiate Athletic] Association."); *id.* at Bylaw 12.1.2.1 (discussing "Prohibited Forms of Pay"); *id.* at 12.2 (regulating "Involvement With Professional Teams"); *id.* at 12.4 (regulating employment of student-athletes and requiring that student-athlete compensation be "[a]t a rate commensurate with the going rate in that locality for similar services"); *id.* at 12.5 (regulating "Promotional Activities"); *id.* at Bylaw 12.01.4 ("A grant-in-aid [a scholarship] administered by an educational institution is not considered to be pay or the promise of pay for athletics skill, provided it does not exceed the financial aid limitations set by the [National Collegiate Athletic] Association's membership.")
- 17 See *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1054-55 (9th Cir. 2015) ("In August 2014, the NCAA announced it would allow athletic conferences to authorize their member schools to increase scholarships up to the full cost of attendance. The 80 member schools of the five largest athletic conferences in the country voted in January 2015 to take that step, and the scholarship cap at those schools is now at the full cost of attendance.")
- 18 NCAA Division I Manual, Bylaw 12.1.2 ("An individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual . . . [e]nters into an agreement with an agent.")
- 19 NCAA Division I Manual, Bylaw 12.3.2.
- 20 NCAA Division I Manual, Bylaw 12.3.2.1 ("A lawyer may not be present during discussions of a contract offer with a professional organization or have any direct contact (in person, by telephone or by mail) with a professional sports organization on behalf of the individual. A lawyer's presence during such discussions is considered representation by an agent.") In *Oliver v. Natl. Collegiate Athletic Ass'n*, 920 N.E.2d 203 (Ohio Com.Pl. 2009), a college baseball player obtained a permanent injunction against the enforcement of this Bylaw. However, to avoid that result, the NCAA appealed the decision, and settled with the player for \$750,000 in exchange for the vacatur of the court's decision. Thus, the rule stands. See Glenn M. Wong, Warren Zola, Chris Deubert, *Going Pro in Sports: Providing Guidance to Student-Athletes in a Complicated Legal & Regulatory Environment*, 28 *Cardozo Arts & Ent. L.J.* 553, 583-85 (2011) (discussing the *Oliver* case).
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- 23 *Id.*
- 24 See, e.g., *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1054-55 (9th Cir. 2015); *In re Nat'l Collegiate Athletic Ass'n Grant-in-Aid Cap Antitrust Litigation*, 14-md-2541, 2016 WL 4154855 (N.D. Cal. Aug. 5, 2016).
- 25 See *Student-Athlete Insurance Programs*, Nat'l Collegiate Athletics Ass'n, <http://www.ncaa.org/about/resources/insurance/student-athlete-insurance-programs> (last visited Sept. 23, 2015), archived at <http://perma.cc/MHL6-7T3A> [hereinafter NCAA ESDI Program]. See also Glenn M. Wong & Chris Deubert, *The Legal and Business Aspects of Disability Insurance Policies in Professional and College Sports*, 17 *Vill. Sports & Ent. L.J.* 473, 506 (2010).
- 26 See Wong & Deubert, *supra* n 25.
- 27 *Id.* at 507-08.
- 28 *Id.*
- 29 *Id.*
- 30 *Student-Athlete Insurance Programs*, Nat'l Collegiate Athletics Ass'n, <http://www.ncaa.org/about/resources/insurance/student-athlete-insurance-programs> (last visited Sept. 23, 2015), archived at <http://perma.cc/MHL6-7T3A>.
- 31 See Michael David Smith, *Clemson buys \$5m insurance policies for Deshaun Watson*, *ProFootballTalk* (Aug. 17, 2016, 4:18 PM), <http://nhl.nbcsports.com/2016/10/11/nhl-plans-on-fining-teams-who-violate-new-concussion-protocol/>, archived at <https://perma.cc/M5PM-LS96>; Barry Petchesky, *FSU Paid For Jameis Winston's Insurance Policy On His Draft Stock*, *Deadspin* (Aug. 5, 2014), <http://deadspin.com/fsu-paid-for-jameis-winstons-insurance-policy-on-his-dr-1616301588>, archived at <http://perma.cc/DVB5-YGN7>.
- 32 See Wong & Deubert, *supra* n 25.

- 33 See Wong & Deubert, *supra* n 25 at 507; see also Petchesky, *supra* n. 31.
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- 35 Bryan Fischer, *NCAA issues waiver allowing greater access to insurance*, Nat'l Football League, Oct. 15, 2014, <http://www.nfl.com/news/story/0ap3000000411358/article/ncaa-issues-waiver-allowing-greater-access-to-insurance>, archived at <http://perma.cc/E85A-ZZPM>.
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- 37 Dennis Dodd, *Ekpre-Ololu expected to be first to collect on loss of draft value insurance*, CBS Sports (Oct. 2, 2015, 1:37 AM), <http://www.cbssports.com/collegefootball/writer/dennis-dodd/25324664/ekpre-ololu-expected-to-be-first-to-collect-on-loss-of-draft-value-insurance>, archived at <https://perma.cc/QT3Q-S4WE>.
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- 39 *Id.*
- 40 *Id.*
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- 42 NFL CBA, Art. 6 § 2(b).
- 43 See *Clarett v. Nat'l Football League*, 306 F.Supp.2d 379, 387 (S.D.N.Y. 2004), *rev'd* 369 F.3d 124 (2d Cir. 2004).
- 44 See *id.*
- 45 *Clarett v. Nat'l Football League*, 369 F.3d 124 (2d Cir. 2004).
- 46 See *South Carolina's Jadeveon Clowney is Heisman frontrunner*, Augusta Chronicle (GA), Aug. 11, 2013, available at 2013 WLNR 19791739.
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- 48 Mike Florio, *Clowney passes on one game, Spurrier goes passive aggressive*, ProFootballTalk (Oct. 6, 2013, 10:16 AM), <http://profootballtalk.nbcsports.com/2013/10/06/clowney-passes-on-one-game-spurrier-goes-passive-aggressive/>, archived at <http://perma.cc/2LJ4-WVND>; Michael David Smith, *Clowney: I'm fully committed, not thinking about the NFL draft*, ProFootballTalk (Oct. 6, 2013, 6:36 PM), <http://profootballtalk.nbcsports.com/2013/10/08/clowney-im-fully-committed-to-my-team-not-thinking-about-the-nfl/>, archived at <http://perma.cc/9F2K-QUES>.
- 49 See Curtis Crabtree, *Warren Sapp jumps on bandwagon of Jadeveon Clowney criticism*, ProFootballTalk (Apr. 22, 2014, 1:33 AM), <http://profootballtalk.nbcsports.com/2014/04/22/warren-sapp-jumps-on-bandwagon-of-jadeveon-clowney-criticism/>, archived at <https://perma.cc/J4UR-ERK6>; Michael David Smith, *Mayock: Clowney can be the best player in the NFL, if he wants it*, ProFootballTalk (Apr. 23, 2014, 1:25 PM), <http://profootballtalk.nbcsports.com/2014/04/23/mayock-clowney-can-be-the-best-player-in-the-nfl-if-he-wants-it/>, archived at <http://perma.cc/T5N6-696B>.
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- 51 Cindy Boren, *49ers' Marcus Lattimore considering retirement*, Wash. Post, Nov. 3, 2014, available at 2014 WLNR 30777868.
- 52 Cindy Boren, *49ers' Marcus Lattimore retires, ends longshot NFL career before it even began*, Wash. Post, Nov. 5, 2014, available at 2014 WLNR 31019273.
- 53 *Id.*
- 54 See *What is average NFL player's career length? Longer than you might think*, Commissioner Goodell says, Nat'l Football League, 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/8UHQ-JMVX> (discussing dispute between NFLPA's assertion that the average career is 3.5 years and the NFL's assertion that the average career is 6 years); *Average NFL Career Length*, Sharp Football Analysis, Apr. 30, 2014, <http://www.sharpfootballanalysis.com/blog/?p=2133>, archived at <http://perma.cc/4EZY-E7ML> (discussing disagreement between NFLPA and NFL and determining that the average drafted player plays about 5 years).
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- 58 See Willie T. Smith III, *For the love of Mike*, Greenville News (Greenville, SC), Aug. 24, 2014, available at 2014 WLNR 23306853 (South Carolina head coach Steve Spurrier saying he would recommend running back Mike Davis enter the NFL because “The lifespan of a running back is only a certain number of years.”); Paolo Bovin, *Cardinals, RB Gordon appear to be perfect fit*, Ariz. Republic, Apr. 26, 2015, available at 2015 WLNR 12199272 (discussing the short “lifespan” on NFL running backs); Evan Woodbery, *Hightower still pursuing a dream, Hopes for comeback rest with the Saints*, New Orleans Times Picayune, Feb. 15, 2015, available at 2015 WLNR 4668527 (same); Greg Logan, *Johnson a good fit in Jets' Attack*, Newsday, Sept. 20, 2014, available at 2014 WLNR 26127868 (discussing the “tread” on veteran running back Chris Johnson's “tires”).
- 59 See Mike Chappell, *Chancy Proposition: Underclassmen who Enter Draft Weigh the Risks; Colts' Bashir Doesn't Regret Leaving School*, Indianapolis Star, Apr. 14, 2002, at C1; John McClain, *'Bama's Palmer to Enter Draft Now/All-America Receiver Alters Decision*, Hous. Chron., Jan. 11, 1994, available at 1994 WLNR 4953475.
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CONCLUSION

We began this Report by explaining the pressing need for research into the overall health^a of NFL players; the need to address player health from all angles, both clinical and structural; and the challenges presented in conducting such research and analysis. The issues and parties involved are numerous, complex, and interconnected. To address these issues—and ultimately, to protect and improve the health of NFL players—requires a diligent and comprehensive approach to create well-informed and meaningful recommendations for change.

We believe part of that comprehensive approach is for the NFL and NFLPA to learn from other professional sports leagues when possible. In many respects, the leagues and their games are very different and thus it can be challenging to draw comparisons. Nevertheless, the leagues face a series of common issues, such as labor negotiations, stadiums and arenas, fan interest, multimedia platforms, and many others. But perhaps the most important issue is player health. In recent years, each of the leagues has had to make a fresh and comprehensive examination of its player health policies and practices. We anticipate the leagues will continue to engage in this examination for many years to come.

The leagues have the opportunity to learn a great deal from one another in light of their shared interest in player health. In this Report we have identified many areas in which the policies and practices of the NFL concerning player health appear superior to those of the other leagues. Indeed, the NFL's player health provisions are generally the most protective of player health among the relevant comparators. Nevertheless, we also identified several areas in which the policies and practices of the NFL concerning player health could potentially be improved by comparison to the other leagues:

1. The CFL CBA, unlike the NFL CBA, requires that pre-season physicals “to determine the status of any pre-existing condition” be performed by a neutral physician.
2. The standard of care articulated in the NHL and MLS CBAs, unlike the NFL CBA, seemingly requires club doctors to subjugate their duties to the club to their duties to the player *at all times*.
3. MLB, unlike the NFL, has a concussion-specific short-term injury list.
4. The MLB, NHL, and CFL injury reporting policies, unlike the NFL, do not require the disclosure of the location on the body of a player's injury.
5. MLB, the NBA, and the NHL, unlike the NFL, generally offer health insurance to players for life.
6. Among the Big Four leagues, the retirement plan payments offered by the NFL are the lowest.
7. MLB and NHL players, unlike those in the NFL, are vested in their pension plans on the first day they play in the league.
8. The NBA and CFL, unlike the NFL, offer treatment to players who have violated their performance-enhancing substance policies.

^a As explained in the Introduction, Section F: Scope, we define health for purposes of this Report as “a state of overall wellbeing in fundamental aspects of a person's life, including physical, mental, emotional, social, familial, and financial components.”

9. The amount of player compensation that is guaranteed in the NFL is substantially lower than in the other Big Four leagues.
10. The NFL has the most prohibitive eligibility rule of the leagues (except the CFL).

It is important to note that where we have identified these differences, we have also explained the different nuances and contexts. In many cases, the NFL's policies might be justifiably different than the other leagues and perhaps

even superior, despite their apparent deficiency. Thus, it is essential that all of these differences be examined in a full and fair context.

There is still, however, room for improvement, as each Chapter's Recommendations show. Additionally, our Recommendations are only as useful as their implementation. For these reasons, we make the following final Recommendations.

Final Recommendation 1: The leagues and unions should continue to coordinate on player health issues and to consider each other's policies and practices.

Indications are that the leagues do communicate with each other concerning common issues on a regular basis. Similarly, the unions communicate on common issues. This coordination is assisted by the fact that many doctors, lawyers, and other professionals are advisors to multiple leagues or unions. It is important that the leagues and unions continue—and perhaps increase—their level of coordination on player health issues. As many of the leagues have increased their interest in and funding of research—particularly medical research—concerning player health issues, valuable data is being created that can help inform other leagues' policies and practices. We urge the leagues to share this data—not just with each other but with all researchers. Moreover, by combining resources the leagues might be able to take on broader and better projects than they can alone. Finally, as leagues continue to make advancements in player health policies and practices, it is important that the other leagues and unions take note of those advancements, consider their possible application to their respective organizations, and make the necessary changes to protect and promote player health. The leagues are tremendously powerful and influential institutions—by working together, they can maximize their ability to be positive change agents in player health.

Final Recommendation 2: The media, academics, the leagues, and the unions should continue to police the advancement of player health.

Following this Report, we do not intend to be a passive voice in the process of improving player health. It is our hope to be able to periodically review progress on the issues discussed in this Report and provide additional reports. However, in addition to any progress reports from the authors of this Report or the Football Players Health Study at Harvard University, we urge and trust that others—in particular the leagues and unions—will heed the message of this Report and hold other stakeholders accountable.

* * *

NFL football has a storied history and holds an important place in this country. The men who play it deserve to be protected and have their health needs met and it is our fervent hope that they will be met. We hope this Report furthers that cause.

Learning from Other Leagues

