

**To:** Uniform Law Commission: Drafting Committee on College Athlete Name, Image and Likeness Issues Act.

**From:** Dawn Buth, NCAA Office of Government Relations, Interim Director.

**Date:** March 18, 2021.

**Re:** Draft Uniform College Athlete Name, Image and Likeness Issues Act – Comments.

The NCAA thanks the drafting committee for its continued work related to the issue of student-athlete name, image and likeness and appreciates the opportunity to provide comments for the most recent draft of the Uniform College Athlete Name, Image and Likeness Issues Act.

As the committee advances its work, the Association encourages continued alignment between the commission's proposal and NCAA NIL legislation and bylaws developed and voted on by member institutions. This memo offers additional comments and recommendations based on the most recent draft legislation and attempts to highlight any notable divisional differences.

We look forward to future discussions on this important topic. Do not hesitate to contact our office if we can answer any follow-up questions or serve as a resource in any way.

## SECTION 2. Definitions.

- **(4) *Booster*:** The proposal’s definition for booster is both broader than the NCAA definition (e.g. it would include individuals who provide employment for a student-athlete) and narrower (it does not include the NCAA’s “known” or “should have been known” language). We suggest the following definition for booster which reflects the existing NCAA definition for “representative of athletics interests”: *An individual, independent agency, corporate entity (e.g., apparel or equipment manufacturer) or other organization who is known (or who should have been known) by a member of the institution's executive or athletics administration to: (a) Have participated in or to be a member of an agency or organization promoting the institution's intercollegiate athletics program; (b) Have made financial contributions to the athletics department or to an athletics booster organization of that institution; (c) Be assisting or to have been requested (by the athletics department staff) to assist in the recruitment of prospective student-athletes; (d) Be assisting or to have assisted in providing benefits to enrolled student-athletes or their family members; or (e) Have been involved otherwise in promoting the institution's athletics program.*”
- **(5) *College Athlete*:** We believe this definition is too broad and might capture unintended individuals. We recommend incorporating the following NCAA definition for student-athlete: *“A student-athlete is a student whose enrollment was solicited by a member of the athletics staff or other representative of athletics interests with a view toward the student's ultimate participation in the intercollegiate athletics program. Any other student becomes a student-athlete only when the student reports for an intercollegiate squad that is under the jurisdiction of the athletics department, as specified in Constitution [3.2.4.6](#). A student is not deemed a student-athlete solely on the basis of prior high school athletics participation.”*
- **(6) *Compensation*:** We suggest slightly modifying this definition to read “...or other forms of financial aid benefits...”.
- **(10) *Game-Related NIL Use*:** We understand the intent of including this definition is to make clear that permissible NIL activity would not include the broadcast of games, however we strongly recommend that this definition is removed. There is no recognized legal NIL or right of publicity provided for any of these items. This definition, therefore, creates a right that does not exist otherwise and has significant intellectual property implications for the sports and entertainment industry.

## SECTION 3. Scope.

- **(b) *Application to high school, youth, recreation athletes*.** We wonder if this provision may need more clarification. As we understand it, a person either has a right of publicity (NIL) or a person does not, therefore the question is whether limits apply. From the collegiate perspective, we recommend including a provision which prevents an institution from providing an impermissible NIL inducement to influence a prospective student-athlete’s decision to attend an institution.
- **(c) *Employment Status*.** We appreciate the commission’s willingness to adjust this language from the previous draft. We suggest this provision state more clearly that the law does not confer employment status to student-athletes and recommend the following language:

*“This act does not confer an employment relationship between a college athlete and in institution, and nothing in this Act presumes that an employment relationship exists by virtue of an athlete's participation in an intercollegiate sport.”*

## **SECTION 5.** Right to Earn Compensation; Limits on Athletic Association and Institution.

- **(a) *Fair Market Value.*** During its February meeting, we understand many members of the Commission were supportive of Option 2 so long as modifications were made to preserve the intent behind the use of “fair market value”. We are supportive of this approach and would underscore the need for any revisions to address impermissible inducements made to student-athletes to attend a particular institution and substitute payments for a student-athlete’s participation in college sports.
- ***Group Licensing.*** During the commission’s February meeting, there was some limited discussion about reintroducing provisions to address group licensing. The current NCAA proposals allow for student-athletes to license their NIL as a group to a third party, however they prevent institutions from providing, or being involved in providing, compensation for a student-athlete’s NIL. While we believe individual and group licensing opportunities can coexist, if not thrive in, college sports, we oppose any provisions which would allow or require institutional involvement in individual or group licensing arrangements or that would confer employment status to a student-athlete.

## **SECTION 6.** Limits and Restrictions on NIL Activity.

- **(a) *Institutional Marks.*** During the February meeting, the commission discussed support for Option 2 for this section. We agree that an institution should establish parameters to ensure equal access to marks, regardless of athletics ability.
- **(c) *Eligibility.*** NCAA proposals do not require student-athletes to be eligible in order to be compensated for the use of their NIL and we are not clear how this would be enforceable. As noted earlier, we understand that a person either has right of publicity (NIL) or a person does not. The question is whether limits apply. If an individual is not eligible or enrolled as a full-time student, they should not have their NIL rights encumbered by this bill and the bill should not create NIL/right of publicity that does not otherwise exist for everyone else.
- **(f) and (g) *Institutional Restrictions.*** Current NCAA proposals prohibit student-athletes from engaging in NIL activities involving a commercial product or service that conflicts with NCAA legislation (e.g. banned substances) and the proposals allow schools to prohibit certain NIL activities. The Division I proposals are most consistent with provisions which combine Option 1(2) for (f) and Option 2 for (f). The Division II proposals are most consistent with Option 2 for (f) and the Division III proposals are most consistent with Option 3 for (f). Option 3 for (g) would not be enforceable for NCAA schools. During the February meeting, there was also discussion to narrow this section and allow schools to place “limited” restrictions on NIL activity (e.g. shoe and apparel contracts). This approach would not be consistent with any of the division’s current legislation. Due to the varying financial situations of our 1,100 member schools, we support a more flexible approach for institutions. This is an unenforceable option with respect to trying to enforce in-season versus out of season.

## **SECTION 7.** Institutional and Conference Involvement.

- **(a)(3) *Institutional Involvement.*** This subsection would be in conflict with Division III proposals in which student-athletes would be allowed to use the intellectual property of institutions in the same manner as the general student body.

**SECTION 9.** Athlete Agent; Duties; Registration.

- **(b) *Use of Agents.*** During its February meeting, the commission discussed removing or narrowing this clause so that it would apply only to athlete agent representation for NIL-related activities. We strongly support this revision as current NCAA bylaws and NIL proposals largely do not permit student-athletes to obtain athlete representation for the purposes of exploring professional opportunities in their sport.