October 28, 2020

Bob Bowlsby & Grace Calhoun [Co-Chairs]
NCAA Division I Legislative Solutions Group
Indianapolis, IN 46206
P.O. Box 6222

Dear Mr. Bowlsby & Ms. Calhoun:

This is to provide comment on the NCAA's draft proposed legislation with respect to possible student-athlete name, image, and likeness (NIL) rule changes. As you know, LEAD1 is the membership association that represents the 130 Football Bowl Subdivision (FBS) athletic directors and their departments within NCAA Division I. Since the NCAA began closely examining possible NIL rule changes in October 2019, LEAD1, through its working group, led by co-chairs Mike Hill, the Director of Athletics of the University of North Carolina at Charlotte, and Michael Alford, the CEO of Seminole Boosters at Florida State University (formerly the Director of Athletics at Central Michigan University), has provided several comments to the NCAA on this issue.

With respect to the NCAA's most recent NIL draft legislative proposal, we have several concerns, as outlined below.

First, with respect to disclosure of NIL activities (12.4.2.1.5; 12.4.2.1.6; 12.5.3.2; 12.5.3.3), since our initial comment from March 9, 2020, we have advocated that student-athletes should be required to disclose NIL deals to a third party administrator (TPA) so that the TPA could build intelligence in monitoring NIL deals over time, as well as flag NIL deals out of the norm. It is apparent that the NCAA's proposed legislation would only require prospective student-athletes, as opposed to all student-athletes (including enrolled student-athletes), to disclose NIL deals to a TPA. The proposed legislation mandates that enrolled student-athletes, instead, disclose NIL deals to the athletic department.

As we have stated in our previous comments, we have concerns with respect to any legislation that would require institutions to play a significant compliance role, and there would be additional risks and difficulties for athletic departments such as monitoring third-party vendors, representatives of athletics interests, and others. In fact, one of the main tenets of the NCAA's Federal and State Legislation Working Group Final Report from April 17, 2020, is that "schools and conferences [should] play no role in a student-athlete's NIL activities." In this vein, if the legislation were adopted as written, major questions would still need to be addressed including how athletic departments should determine fair market value, what specifically constitutes an "extra benefit" and "recruiting inducement," and whether athletic departments might be held accountable for playing a potentially ineligible student-athlete (these are only some of the major questions). There is also an appearance of impropriety and perceived lack of trust in the disclosure system if this type of burden is placed on athletic departments to enforce such legislation. Institutions, for example, could perceive their counterparts as bending the rules to gain a competitive advantage. **For these reasons, our working group would greatly appreciate the rationale with respect to placing these disclosure responsibilities on athletic departments (instead of the TPA).**

Second, with respect to merchandise and memorabilia (12.4.2.1.3), we recommend a low regulation model given that any complicated regulatory structure would seem punitive to student-athletes, be criticized by the general public, and be difficult to pass when more than 30 states are in the process of passing low regulation models. We, therefore, question whether there should be any regulation with respect to the resale of any items owned by student athletes (except that such transactions should be disclosed to the TPA for increased transparency and potential scrutiny). If a student-athlete, for example, won a championship and earned a championship ring provided from their institution, that student-athlete should be allowed to sell the ring. For clarity purposes, our working group is of the consensus that if a student-athlete purchases an item (with or without an institutional mark), and then, for example, adds an autograph to that item, that student-athlete should be able to sell the item.

Third, with respect to autographs (12.4.2.1.4; 12.5.3.1.4), we suggest that the current legislative proposal be written more clearly to mitigate possible confusion with respect to permissible

institutional affiliation. It is not clear, for example, whether a student-athlete could describe their institutional affiliation while signing an autograph (such as "I am a student-athlete at "school X"). In any case, student-athletes should be allowed to acknowledge their institutional affiliation while signing autographs.

There is also a need for greater consistency regarding permissible institutional involvement to be in tune with some of the other recommendations such as 12.4.2.1 (Use of NIL in Business Activities). In addition, businesses, in conjunction with autograph opportunities, should be able to use institutional marks as long as they have the rights to such marks through the institution or its multi-media rightsholder. On the other hand, student-athletes should be allowed to wear any institutional marks while signing autographs (provided that the business does not use any images (which includes the mark) from the appearance, unless it has rights to use the mark).

Fourth, with regard to conflicts with institutional agreements (12.5.3.1.3), any prohibitions on a student-athlete's right to earn compensation from their NIL will be subject to increased litigation. Therefore, we recommend the removal of any prohibited category of NIL deals. If that is not practical, the legislation should explicitly limit the number of protected categories to only apparel and footwear categories.

Fifth, over time, the prohibition that student-athletes may not retain professional service providers (e.g., agents) for the purpose of securing professional sports opportunities is overly restrictive and difficult – if not unnecessary – to enforce. Practically, if an agent is already providing assistance to student-athletes with respect to securing long-term NIL deals, it is unrealistic to believe that there will be no advice provided related to professional sports opportunities, or least an expectation that the agent-athlete relationship will extend beyond NIL at the appropriate time. While we acknowledge that the role agents play can be controversial, we believe that it is appropriate to reassess the NCAA's prohibition of such services.

Based on our previous comments, it should also be reiterated that the TPA could monitor agent involvement by creating a vetting process for agents (such as performing preliminary background checks and flagging bad actors). In this regard, student-athletes could pick their own agents as long as the agent were vetted by the TPA.

Sixth, while the Legislative Solutions Group has stated that the current legislative proposal reflects booster and pre-enrollment regulations, we recommend that a sophisticated registrar within the TPA regulate all booster involvement by performing preliminary background checks and flagging certain deals. More clarity is also needed on specific pre-enrollment parameters such as whether prospective student-athletes can keep their high school contracts while in college and whether institutional marks may be permissible in such agreements. It is worth underscoring that overregulation in this area could, again, spark increased litigation.

Thank you for the opportunity to provide comment to the NCAA Division I Legislative Solutions Group. We would be happy to provide further clarification on our recommendations.

Sincerely,

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