

**Federal and State Legislative Working Group
Report to the NCAA Board of Governors
October 23, 2019**

Introduction.

For the reasons identified in the Board of Governors [charge](#), and after our own further examination of the issues around name, image and likeness, we agree change is appropriate, necessary and in the best interest of student-athletes and the Association. The NCAA membership and its divisions have a long history of [expanding opportunities for college athletes](#), and enhanced opportunities related to name, image or likeness would be an appropriate extension of efforts to modernize NCAA rules in a way that is consistent with our values and principles. We believe additional flexibility in this space can and must continue to support the collegiate model in clear contrast to the professional sports model.

The working group spent many hours studying, considering extensive feedback, discussing and deliberating challenges and opportunities related to student-athlete engagement in activities that use a student-athlete's name, image or likeness in return for some form of compensation. As part of this process, the working group engaged a diverse group of stakeholders through in-person interviews, written feedback and formal presentations. These stakeholders included current and former student-athletes, faculty, presidents, conference commissioners, athletics administrators and coaches from Divisions I, II and III, as well as thought leaders and experts in the higher education and college sports communities. Members of the working group agree that issues related to such use are complex and any potential modifications should be carefully considered by the NCAA membership. Further, members of the working group agree that any changes must both enhance the student-athlete experience and support the collegiate model.

At this stage, the working group is prepared to make the following recommendations to the Board of Governors with the request that each division have the benefit of providing input to identify appropriate regulations and address divisional needs. Membership input and decision-making are the foundation of our voluntary association and, while our working group was a representative body, the issues here are so important, complex and challenging that we believe further dialogue is appropriate before we submit additional recommendations. These recommendations will form the basis for continued conversations and engagement with state and federal lawmakers around enacted, introduced and proposed legislation.

Recommendations.

To best serve student-athletes, the Federal and State Legislation Working Group recommends that the Board of Governors:

- Authorize change in policy and bylaws to permit name, image and likeness benefits consistent with NCAA values and principles as well as with legal precedent.
- Reject any approach that would make student-athletes employees or use likeness as a substitute for compensation related to athletic participation and performance.
- Reaffirm the integrity of the student-athlete recruitment process, which is unique to college sports. Changes to NCAA name, image and likeness rules should support this principle and not result in undue influence on a student's choice of college.
- Extend the timeframe of this working group through April 2020 to continue to gather feedback and work with the membership on the development and adoption of new NCAA legislation.
- Endorse the regulatory framework described in this report as appropriate guardrails for future conversations and possible NCAA legislation.
- Instruct NCAA leadership on engagement with state and federal lawmakers.

The NCAA, over many years, has progressively adapted to changing student-athlete environments by adopting regulations that meet their needs in a manner consistent with NCAA values and principles, including the opportunity to receive cost of attendance. Our recommendations reject the idea of student-athletes as employees and the use of their name, image, or likeness as a substitute currency in a “pay-for-play” model.

The current state and federal legislative efforts are in conflict with NCAA values and principles and fail to differentiate the NCAA intercollegiate athletic experience from those of professional athletes. These efforts also undermine the legal precedent that the U.S. Supreme Court and other courts have afforded the NCAA to regulate intercollegiate athletics at a national level. What we are proposing within this document is a framework by which all student-athletes in all sports across all three divisions have the opportunity to engage in name, image and likeness activities without eroding the priorities of education and the collegiate experience.

NCAA member schools also continue to seek opportunities to allow prospective and current student-athletes to go directly into the professional leagues. Students should have choice and opportunity to select the professional model whenever they believe they are ready to pursue a professional sports career.

The law does not recognize name, image and likeness compensation to individuals in the broadcast of athletic events. Student-athletes cannot be afforded special publicity rights regarding name, image or likeness that are not available to the general population.

The working group recommends a uniform set of principles and a framework that will allow for equitable national collegiate competition and championships. State mandates such as the law enacted by California or those contemplated by other jurisdictions fail to address this necessary uniformity. NCAA legislation that allows for variability based on identified circumstances must first be vetted and adopted by the membership representing college athletics in all 50 states – not by a single state or even multiple states. The framework proposed by the working group will facilitate national consistency while allowing for divisional differences and greater student-athlete choice within our structure. This approach works for colleges and universities throughout our membership, public and private, urban and rural, in all three divisions and addresses the needs of 500,000 student-athletes nationwide. Institutions will need to consider how gender equity, including Title IX regulations, may be applied for all student-athletes.

Our recommendations are made with the explicit reliance on the principles, guidance, and framework identified below, based on the NCAA constitution and operating bylaws.

PRINCIPLES AND ADDITIONAL GUIDANCE FOR THE DECISION-MAKING PROCESS RELATED TO POTENTIAL NAME, IMAGE AND LIKENESS MODIFICATIONS

Student-athletes may pursue and receive benefits for the use of their name, image and likeness in a manner consistent with the principles stated below.

1. In order to maintain the differentiation of collegiate and professional sports, payment to a student-athlete for use of his or her name, image or likeness should not be a substitute form of currency to pay for athletic performance or participation; nor should the payment serve as an inducement for a prospective or current student-athlete to select a particular NCAA member school.
2. Regulation of a student-athlete's name, image or likeness use should be transparent, narrowly tailored and enforceable, and it should facilitate the principle of fair competition among schools in a division, including the integrity of the recruiting process. While the concept of fair competition is important to all three divisions, all divisions recognize variability will exist among member schools based on institutional mission, priorities, resources and membership in a particular division or subdivision.
3. A student-athlete should be able to use his or her name, image or likeness similar to college students who are not student-athletes, while recognizing the importance of interstate, uniform competition and recruiting rules that are unique to NCAA athletics. To fairly balance these interests, there must be some factors that result in treating student-athletes differently.

When identifying a compelling reason to differentiate, through regulation, a student-athlete's name, image and likeness activities from those of a college student who is not a student-athlete, the following considerations may allow for additional flexibility in some form:

- a. Name, image and likeness benefits should be tethered to education.
- b. The determination and receipt of name, image and likeness benefits should be transparent, objective and reasonable.
- c. The activity is regulated to allow first amendment expression that is without the expectation of compensation.
- d. Regulation of a student-athlete's name, image and likeness use should promote student-athlete well-being and educational achievement.

Regulatory framework developed by the working group.

The working group spent considerable time discussing a regulatory framework that will serve as guidance for additional discussions by the working group and the divisions' governance structures, as well as the enactment of future NCAA legislation. The working group believes the framework is consistent with NCAA values and principles, enhances the collegiate model, affirms an appropriate nexus between higher education and intercollegiate athletics and supports the guiding principles developed by the working group.

It is important that the framework addresses both current and future opportunities related to the use of a student-athlete's name, image or likeness. The working group will continue to develop resource materials, including targeted issues for discussion, that will inform the group and the membership about licensing and monetization opportunities so that proper assessment can occur before additional recommendations are provided to the Board of Governors in April 2020.

The working group conceptualized name, image and likeness benefits and opportunities on a continuum. At one end of the spectrum, the working group generally believes student-athletes should be permitted to use their name, image or likeness to promote their own work product or business, particularly when the work product or business is not related to athletics. Even when the work product or business is related to athletics, the working group believes sufficient controls can be developed to mitigate potential abuse, including current rules related to recruitment offers and inducements and extra benefits, and permit student-athletes to pursue opportunities in a manner consistent with the collegiate model. Any regulation should focus on restricting behavior that is inconsistent with the collegiate model. Further, the working group acknowledges some amount of regulation may be necessary to ensure the relevant activities remain consistent with the principles developed by the working group.

It is important to note that NCAA bylaws already allow for student-athletes to have outside employment and business activity. This framework of review and regulation is specific to when student-athletes wish to lend their name, image or likeness to promote a student's own enterprise or an employer's business activity, such that name, image and likeness become intertwined.

Examples include but are not limited to:

- Student-athlete uses name, image or likeness to promote his or her legitimate commercial activity (for example, writing and publishing a book or charging a fee for a lesson).
- Student-athlete creates a social media channel to serve as the platform for his or her business.
- Student-athlete uses name, image or likeness to promote his or her own nonprofit organization.
- Student-athlete creates and produces a video series containing nutritional tips for athletes and distributes the content via social media.

Potential issues to consider:

- Whether a student-athlete is truly being compensated for the work product, as opposed to being compensated (directly or indirectly) for participation in NCAA athletics.
- Challenges of determining where "work product" ends and the name, image and likeness begins as the value-driver.
- Possible inappropriate involvement of institutional boosters that could impact enrollment decisions of prospective student-athletes.

Examples of regulation to consider:

- Prior approval from athletics director, faculty athletics representative or their designee (for example, the compliance administrator) to address potential pay-for-play and related concerns.
- Student-athletes may not miss class or required team activities to participate in promotional activities.
- No involvement of schools, employees or boosters in the development or promotion of these opportunities.
- No use of institutional, conference or NCAA brand marks.

- Include a “failsafe” or “backstop” provision to address obvious malfeasance not clearly prohibited by the legislation.

Next steps for working group and divisional governance structures:

- Develop regulation to mitigate potential abuse and ensure appropriate institutional oversight.
- Propose legislation to codify or develop waiver guidelines to facilitate or support the concepts noted above.
- Determine the extent to which current rules would apply to possible modifications.
- Examine and make recommendations about application of these rules to pre-enrollment activities.

On the other end of the spectrum of activities, the working group believes that the commercial value of a student-athlete’s name, image or likeness may be derived largely through that student-athletes association with his or her school and/or participation in NCAA athletics. As such, the working group believes that, in many cases, allowing student-athletes to be paid for the right to use their name, image or likeness in these circumstances could be tantamount to allowing compensation for athletic participation. Such compensation could be a substitute form of currency to pay for athletic performance, which is inconsistent with the principles developed by the working group. Without mitigation, these activities would be inconsistent with the collegiate model.

Potential issues to consider:

- Unregulated use of student-athlete name, image and likeness could inappropriately impact the recruitment process. (For example, a student-athlete’s endorsement agreement explicitly or implicitly requires the student-athlete to attend a particular college or university.)
- Representatives of a student-athlete’s interests or an institution’s athletics interests could inappropriately insert themselves into business agreements to provide enrollment inducements for prospective student-athletes or extra benefits for enrolled student-athletes.

Examples of regulation to consider:

- Agreements may not require or encourage enrollment in a particular school or set of schools.
- Institutions and boosters may not be involved in arranging endorsement activities.
- Institutional, conference and NCAA brand marks may not be used in any aspect of the activity.

- Student-athletes may not miss class or required team activities to participate in promotional activities.

Next steps for working group and divisional governance structures:

- Determine whether enforceable regulation could address the concerns around recruiting and improper inducement in order to make the activities permissible.
- Review and develop current agent and advisor regulations with respect to allowing student-athletes representation to further permissible name, image and likeness activities.
- Examine and make recommendations about application of these rules to pre-enrollment activities.
- Examine whether shared revenue activities generated by the commercial use of a student-athlete's name, image or likeness would be lawful.