2021 NCAA Convention Division III Legislative Proposals
Question and Answer Guide
Approved November 18, 2020, by the
Division III Interpretations and Legislation Committee

Please note this is the first edition of the 2021 NCAA Convention Division III Legislative Proposals Question and Answer Guide. Future editions may be developed as questions are presented to the NCAA staff or the NCAA Division III Interpretations and Legislation Committee. On release of subsequent editions of this guide, newly approved questions and answers will be shaded in gray.
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Understanding How to Read the 2021 NCAA Convention Division III Official Notice.

1. **How to read the NCAA Division III legislative proposals.** When reviewing legislative proposals, it is important to note that:
   - The letters and words that appear in *italics and strikethrough* are letters and words in the current NCAA Division III rule that would be deleted with the adoption of the proposal;
   - The letters and words that appear in **bold face and underlined** are letters and words that would be added with the adoption of the proposal; and
   - The letters and words that appear in normal text are letters and words in the current Division III rule that would remain unchanged with the adoption of the proposal.

2. **What appears in the white pages of the NCAA Division III Official Notice?**

   The white pages of the NCAA Division III Official Notice contain the legislative proposal that will be voted on individually at the NCAA Division III business session. Anticipated questions and answers related to the proposal appearing in the white pages are contained in this question and answer guide.

3. **What is the difference between the Presidents Council grouping and the general grouping of proposals?**

   The NCAA Division III Presidents Council has determined that it will focus primarily on those national issues in Division III athletics that prompt widespread concern among Division III chancellors or presidents.

   The Presidents Council has identified one proposal that it believes is of particular interest to Division III chancellors or presidents and has included that proposal in the Presidents Council grouping. There are no proposals included in the general grouping for the 2021 convention. The one proposal has been identified by the Presidents Council for a roll-call vote.

4. **What appears in the blue pages of the Official Notice?**

   The blue pages of the Official Notice contain three types of legislative proposals. The proposals appearing in the blue pages have already been adopted by the authority of the NCAA Division III Management Council. These proposals have an immediate effective date from the time of adoption. These groups of proposals will be ratified by the NCAA Division III membership during the Division III business session. If a delegate objects to the incorporation of any one of these legislative proposals, that objection should be raised
prior to the ratification of the package of proposals. (It is preferred that any delegate intending to raise an objection also inform a member of the NCAA academic and membership affairs staff of that intent before the Division III business session.) The Division III membership would then vote on the proposal in question via a separate action.

The questions and answers document does not address proposals that are included in the blue pages. The blue pages, however, include an "additional information" section with each proposal that provides additional clarification regarding the proposal.

The three types of legislation contained within the blue pages are listed below:

- **Interpretations to be incorporated in the 2020-21 NCAA Division III Manual.** These interpretations have already been accepted by the membership and the only issue that is before the membership is whether they should be set forth in the Division III Manual.

- **Noncontroversial legislation adopted by the Management Council.** These proposals constitute all noncontroversial legislative changes the Management Council has adopted during the past year. The Management Council is permitted to adopt such legislation, if it is necessary, to promote the normal and orderly administration of the Association's legislation.

- **Modifications of wording.** These proposals are modifications to current legislation that have been shown to be consistent with the intent of the membership in adopting the current legislation. To approve such a change, the Management Council has determined that sufficient documentation and testimony exists to establish clearly that the original wording of the legislation requires modification to better reflect the original intent. There are no modifications of wording to be approved this year.
NCAA Division III Proposal No. 2021-1 (2-1)

Title: STUDENT-ATHLETE USE OF NAME IMAGE AND LIKENESS FOR PROMOTIONAL PURPOSES

Effective Date: August 1, 2021.

Source: NCAA Division III Presidents Council [Management Council (Interpretations and Legislation Committee)].

Intent: To permit Division III student-athletes to use their name, image and likeness, to promote their own work product or services and to promote third party products and services consistent with the Board of Governors guiding principles and subject to the conditions set forth in the proposal.

I. General Application:

Question No. 1: What is name, image and likeness (NIL) activity for purposes of this proposal?

Answer: An activity that involves the use of a student-athlete's NIL for promotional purposes.

Question No. 2: How does the proposal expand a Division III student-athlete's allowable use of their NIL?

Answer: The proposal allows the student-athlete to use their NIL and specifically their status as an athlete, to: (1) promote their own work product or service; and (2) be compensated (e.g. cash, product or other benefit) for use of their NIL to promote third party products or services.

Question No. 3: What types of NIL activities are subject to the proposal?

Answer: For purposes of this proposal, a NIL activity includes any promotional situation in which a prospective or current student-athlete is being compensated (e.g., cash, product, or other benefit) for use of their NIL or personal appearance. Name, image and likeness activities include compensation in exchange for a prospective or current student-athlete's NIL as a product or service, such as the student-athlete's autograph, photograph, or personal appearance. See table immediately below for additional examples:
Question No. 4: Does the proposal apply to individuals before they enroll full-time in a collegiate institution?

Answer: Yes. While the focus of the proposal is on current student-athletes, the proposal also clarifies that prospective student-athletes may use their NIL is the same manner as student-athletes, without jeopardizing their eligibility at a Division III institution. However, Division III institutions may not use potential NIL opportunities as a recruiting inducement.

Question No. 5: If adopted, will this proposal apply retroactively (i.e., prior to August 1, 2021)?

Answer: No.

Question No. 6: Does the proposal change how an institution may currently use a student-athlete's NIL?

Examples of Name, Image and Likeness Activities

<table>
<thead>
<tr>
<th>Student-Athlete's Own Work Product or Service</th>
<th>Promotion of a Third-Party Commercial Product or Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-employment or business ownership (providing a product or service), including examples such as music, selling sports equipment, and others noted below.</td>
<td>Appearance in television advertisements for commercial products or services.</td>
</tr>
<tr>
<td>Providing lessons, including conducting camps, clinics, and tutorials regardless of platform (e.g., live, in-person or streaming online).</td>
<td>Appearance in print or social media advertisements for commercial products or services.</td>
</tr>
<tr>
<td>Sale of merchandise owned by the student-athlete [including items provided by the institution for athletics participation (e.g., awards, apparel no longer used by the institution)].</td>
<td>Use of a student-athlete's name or voice in audio commercials for commercial products or services.</td>
</tr>
<tr>
<td>Sale of autographs on items while not representing the institution.</td>
<td>Social media influencer (compensation for social media activity/posting).</td>
</tr>
<tr>
<td>Personal appearances (independent of the institution) not in promotion of commercial products or services.</td>
<td>Personal appearances (independent of the institution) by a student-athlete to promote commercial products or services (e.g., appearance at a commercial establishment)</td>
</tr>
</tbody>
</table>
Answer: No. An institution is still permitted to use a student-athlete's NIL to support its charitable and educational activities, as well as activities considered incidental to participation in intercollegiate athletics pursuant to existing regulations.

Question No. 7: What is the impact of state laws that may conflict with this proposal as well as existing Division III legislation related to NIL?

Answer: The NCAA continues to work with federal legislators toward the development and passage of national NIL legislation by the House and Senate such that federal law would pre-empt any applicable state legislation. It is expected that there will be a period between adoption and the effective date by which time we hope a federal bill will be in place.

Question No. 8: What are the primary proposed limitations to a student-athlete's use of their NIL?

Answer: The following limitations are included in the proposal and will be addressed throughout this document: (1) NIL opportunities may not be used as a recruiting inducement; (2) Institutions (and their staff members) may not be involved in the development, operation or promotion of a student-athlete's work product or service or facilitating promotional opportunities except to the extent such is provided to students generally at the institution; (3) Student-athletes may not promote commercial products prohibited by NCAA legislation or prohibited by the institution as it applies to all students.

Question No. 9: Does this proposal allow for any form of institutional involvement in a student-athlete NIL activity?

Answer: Yes. Institutions would be encouraged, though not required, to provide comprehensive education to their student-athletes regarding NIL activities. The following activities would be permitted without constituting impermissible institutional involvement in a student-athlete's NIL activity: (1) Providing educational programming on NIL and associated regulations; (2) Assisting in evaluating opportunities, including compliance elements (e.g., booster engagement); (3) Assistance with reporting expectations; and (4) Assistance with evaluation of professional service providers.

II. Student-Athlete's Promotion of their Work Product or Service

Question No. 10: What is the current legislation regarding a student-athlete using their NIL to promote their own work product or service?
Answer: Currently, a student-athlete is permitted to use their NIL to promote their own work product (e.g., music, novel) or service, provided no reference is made to their athletics reputation.

This proposal allows a student-athlete to use their athletics status and reputation as an athlete to promote their own work product or service. However, transactions may not constitute for pay-for-play.

Question No. 11: Does this proposal allow a student-athlete to use their NIL to promote their work product or service if such is athletically related (e.g. conducting fee-for-lessons instruction)?

Answer: Yes.

Question No. 12: Does this proposal permit a student-athlete to reference enrollment at a member institution in the promotion of their own work product or service?

Answer: Yes; however, such references must be consistent with institutional policies applicable to any student.

Question No. 13: Does this proposal permit a student-athlete to use institutional marks in the promotion of their own work product or service? [An institutional mark is any protected name or identifying mark (e.g., logo, seal, protected verbiage) ordinarily requiring licensing prior to commercial use.]

Answer: The proposal does not prohibit student-athletes from using institutional marks in the promotion of their work product or services but rather, the use of such is subject to institutional policies consistent for all students.

Question No. 14: Does this proposal allow a student-athlete to use their status as a collegiate athlete to promote their availability for teaching or coaching sport skills or techniques in their sport on a fee-for-lesson basis?

Answer: Yes.

Question No. 15: Does this proposal allow a student-athlete to wear their institutional uniform when promoting their work product or service?

Answer: No. Student-athletes are permitted to promote their work product or service in the same manner as students generally do. However, students generally do not have access to institutional athletic uniforms. Consequently, using such by a student-athlete goes beyond what is contemplated by this proposal. A student-athlete could wear apparel identifying the institution
provided it is consistent with institutional policy and any student had similar access to the apparel.

**Question No. 16:** Does this proposal allow student-athletes to use institutional facilities to conduct fee-for-lessons, clinics, and other services?

**Answer:** Yes, provided the student-athlete adheres to all applicable institutional processes for facility rentals in a manner consistent for members of the general student body.

**Question No. 17:** Does this proposal permit a student-athlete to receive compensation for signing autographs?

**Answer:** Yes, provided it does not occur while the student-athlete is representing the institution (e.g., reported for practice or competition; during an institutional promotional activity).

**Question No. 18:** Does this proposal allow an institution to purchase the work product or services of a student-athlete?

**Answer:** The proposal does not specifically prohibit such transactions. However, for any such purchases, the institution would have to follow institutional policies and procedures and should review the transaction under an extra benefit analysis to ensure the interaction is compliant with NCAA regulations.

**Question No. 19:** Does this proposal allow a representative of the institution's athletics interest (i.e. booster) to purchase the work product or services of a student-athlete?

**Answer:** The proposal does not specifically prohibit such transactions. The student-athlete is encouraged to report such transactions to the institution to ensure the activity does not constitute an extra benefit or can be construed as pay-for-play.

**Question No. 20:** Does this proposal allow an institution to arrange, develop, operate, or promote the work product or services of a student-athlete?

**Answer:** No. Neither the institution nor an institutional staff member shall be involved in the development, operation or promotion of a student-athlete's work product or service except to the extent such is provided to students generally at the institution.
Question No. 21: Does the proposal allow a student-athlete to use their NIL as a means of soliciting funds via crowdfunding for their business?

Answer: Yes. While a student-athlete may not use crowdfunding for tuition or use their status as an athlete to solicit funds for other personal items, crowdfunding as a means of financing a business is permissible.

III. Promotion or Endorsement of a Third-Party Product or Service.

Question No. 22: What is the current legislation regarding a student-athlete using their NIL to promote a third-party product or service?

Answer: Generally, a student-athlete may use their NIL to promote a third party product or service provided they became involved with the activity independent of athletics ability; no reference is made in the promotion to the student's involvement in intercollegiate athletics, and pay is not based on athletics reputation or ability.

This proposal allows student-athletes to be compensated for the use of their NIL in the promotion of third-party products or services, without the above stated conditions. However, transactions may not constitute pay-for-play.

Question No. 23: Does this proposal permit a student-athlete to endorse a commercial product based on his or her athletics ability?

Answer: Yes.

Question No. 24: Does this proposal permit a student-athlete to reference enrollment at a member institution in the promotion or endorsement of a third-party product or service?

Answer: Yes; however, such references must be consistent with institutional policies applicable to any student.

Question No. 25: Does this proposal permit a student-athlete to use institutional marks in the promotion or endorsement of a third-party product or service? [An institutional mark is any protected name or identifying mark (e.g., logo, seal, protected verbiage) ordinarily requiring licensing prior to commercial use.]

Answer: The proposal does not prohibit the use of institutional marks in third party endorsements but rather, the use of such is subject to institutional policies consistent for all students.
Question No. 26: Does this proposal allow a student-athlete to wear their institutional uniform when promoting a third-party product or service?

Answer: No. Student-athletes are permitted to promote third party products or services in the same manner as students generally. However, students generally do not have access to institutional athletic uniforms. Consequently, using such by a student-athlete goes beyond what is contemplated by this proposal. A student-athlete could wear apparel identifying the institution provided it is consistent with institutional policy and any student had similar access to the apparel.

Question No. 27: Does this proposal permit a student-athlete to get paid for an appearance at a commercial establishment?

Answer: Yes.

Question No. 28: Does this proposal permit a student-athlete to model/promote/sell athletics apparel or equipment?

Answer: Yes.

Question No. 29: Does this proposal permit a student-athlete to receive athletics apparel or equipment as a form of compensation for promoting a commercial establishment?

Answer: Yes.

Question No. 30: Does this proposal permit a student-athlete to establish a monetized media platform (e.g., YouTube, Instagram) regardless if it is related to athletics?

Answer: Yes.

Question No. 31: Does this proposal allow a student-athlete to receive cash or commercial products in exchange for the promotion or endorsement of a third-party product or service through a media platform (e.g., YouTube, Instagram)?

Answer: Yes.

Question No. 32: Does this proposal permit a student-athlete to license their NIL (e.g., trademark of student-athlete's nickname) to a third-party to be included on commercial products sold by the third-party?
Answer: Yes.

Question No. 33: Does this proposal restrict the types of commercial products in which a student-athlete may use their NIL to promote?

Answer: Yes. A student-athlete would not be permitted to engage in NIL activities involving a commercial product or service that conflicts with NCAA legislation (e.g., sports wagering, banned substances). Further, an institution or conference, at its discretion, may have policies that are more stringent as it relates to the kinds of NIL activities a student-athlete may or may not engage in provided those restrictions apply to all students at the institution.

Question No. 34: Does the proposal allow an institution to implement policies that restrict a student-athlete from entering into an agreement with companies that may conflict with an institution's current endorsement deal?

Answer: Yes, provided those restrictions are applicable to the general student-body.

Question No. 35: Does this proposal eliminate the requirement that steps be taken to stop the use of a student-athlete's NIL without the student-athlete's knowledge or permission?

Answer: Yes. The institution or other entity acting on the behalf of the student-athlete will no longer be required to take steps to stop such activity in order to retain eligibility. However, a student-athlete will have the opportunity to take the necessary steps (e.g., cease and desist) to stop the use of their NIL when it is being used without their knowledge.

Question No. 36: Does this proposal allow a representative of the institution's athletics interest (i.e. booster) to hire a student-athlete to promote the booster's business?

Answer: The proposal does not specifically prohibit such transactions. The student-athlete is encouraged to report such transactions to the institution to ensure the activity does not constitute an extra benefit or can be construed as pay-for-play.

Question No. 37: Does this proposal permit institutional involvement in identifying or securing NIL activities?

Answer: No. It is impermissible for institutions or third parties hired by the institution, to be involved in identifying or securing name, image or likeness opportunities for a student-athlete (e.g., pairing a student-athlete with a
company seeking a student-athlete for an advertisement). This would include institutional athletics staff members being asked to identify student-athletes to participate in NIL activities for third parties.

IV. Professional Service Providers

**Question No. 38:** For purposes of this proposal, who is a professional service provider?

**Answer:** A professional service provider is an individual or entity that provides services to an individual regarding their NIL. It includes, but is not limited to, an agent, tax advisor, marketing consultant, attorney or anyone who is employed or associated with such persons.

**Question No. 39:** Does this proposal permit a student-athlete to use professional service providers in connection with their NIL activities?

**Answer:** Yes.

**Question No. 40:** Does the proposal permit a student-athlete to sign with a professional service provider prior to August 1, 2021?

**Answer:** No.

**Question No. 41:** Does this proposal permit student-athletes to hire an agent?

**Answer:** Student-athletes would be permitted to hire an agent for the purpose of marketing their NIL opportunities but not for the purposes of securing a professional sports contract.

**Question No. 42:** Does this proposal permit a student-athlete to use an institutional staff member as a professional service provider (e.g., agent, tax advisor) in connection with their NIL activities?

**Answer:** No.

**Question No. 43:** Does this proposal allow a representative of an institution's athletics interest to provide professional services (e.g., contract review, tax services) to a student-athlete in connection with their own business or NIL activities?

**Answer:** Yes, provided the institution is not involved in identifying or selecting a booster as a service provider or arranging or providing payment. Existing extra benefit legislation would continue to apply.
Question No. 44: Does this proposal permit a student-athlete to receive free or discounted services from a professional service provider (e.g., agent, tax advisor)?

Answer: No, if the discounted or free service is used as an inducement to influence a student's institutional choice. A student-athlete's engagement with a professional service provider should be consistent with industry standards. Financial arrangements may differ (e.g., flat fee, profit share, pro bono, upfront guarantee) among service providers. In addition, a student-athlete may receive the same benefits (e.g., meals, copies, mailing) from a professional service provider that are regularly provided to other clients and may not receive anything from a professional service provider that would constitute an extra benefit.

Question No. 45: Does this proposal permit an institution to be involved in identifying, selecting, arranging, or providing payment for professional service providers related to NIL activities?

Answer: No, however, an institution may assist current student-athletes with vetting professional services providers through a NIL counseling panel, similar to the activities that are currently permissible for institutional professional sports counseling panels related to a student-athlete's professional sports opportunities.