

**SB 206 Name, Image, and Likeness Working Group – December 8, 2020 Public Meeting  
Item 2.4: Name, Image, and Likeness - Personal Service Providers and Third-Party  
Administrators (Anita Moorman/Adam Cocco)**

**NCAA Division II and Division III Legislative Proposals**

Division II – Last Updated – December 4, 2020

Division III – Approved – November 18, 2020 (DIII Interpretations and Legislation Committee)

**Student-Athlete Use of Name Image and Likeness for Promotional Purposes**

(1) promote their own **work product or service (D-III)/student business activities (D-II)**.

*Examples:*

- Self-employment or business ownership (providing a product or service), including examples such as music, selling sports equipment, and others noted below.
- Providing lessons, including conducting camps, clinics, and tutorials regardless of platform (e.g., live, in-person or streaming online).
- 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)].
- Sale of autographs on items while not representing the institution.
- Personal appearances (independent of the institution) not in promotion of commercial products or services.

(2) be compensated (e.g. cash, product or other benefit) for use of their NIL to **promote third party products or services**.

*Examples:*

- Appearance in television advertisements for commercial products or services.
- Appearance in print or social media advertisements for commercial products or services.
- Use of a student-athlete's name or voice in audio commercials for commercial products or services.
- Social media influencer (compensation for social media activity/posting)
- Personal appearances (independent of the institution) by a student-athlete to promote commercial products or services (e.g., appearance at a commercial establishment)

## Overview of Promotion of a Third-Party Commercial Product or Service Policy

### Permitted Third Party Endorsement Activities

- to endorse a commercial product based on his or her athletics ability
- to get paid for an appearance at a commercial establishment
- to model/promote/sell athletics apparel or equipment
- to receive athletics apparel or equipment as a form of compensation for promoting a commercial establishment
- to establish a monetized media platform (e.g., YouTube, Instagram) **regardless if it is related to athletics**
- 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)
- 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

### Conditions or Restrictions Related to **References to Involvement in Athletics and Use of Institutional Marks/Uniforms**

- **Reference enrollment at a member institution** in the promotion or endorsement of a third-party product or service must be consistent with institutional policies **applicable to any student**.
- **Use institutional marks** in the promotion or endorsement of a third-party product or service if the use is subject to institutional policies **consistent for all students**.
- Student-athlete may not **wear their institutional uniform** when promoting a third-party product or service. 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.

### **Booster Activities and Transactions with Boosters**

- Booster transactions are not expressly prohibited. 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- or-play.

### **Institutional Involvement related to Third Party Endorsements**

- **MAY NOT**: 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.

## Who is a Professional Service Provider (PSP)?

A professional service provider (PSP) 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.

*(Note: All agents are PSP, but not all PSP's are agents).*

### ◇ Permitted Uses of PSP in connection with NIL activities?

- to sign with a professional service provider **after August 1, 2021**.
- to hire an agent for the purpose of marketing their NIL opportunities but not for the purposes of securing a professional sports contract.
- May receive same benefits (meals, copies, mailing) from PSP that are regularly provided to other clients (so long as not an extra benefit)

### ◇ Gray Areas with PSP's

- representative of an **institution's athletics interest (booster)** may provide professional services (e.g., contract review, tax services) to a student-athlete in connection with their own business or NIL activities 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.
- May not use an **institutional staff member** as a professional service provider (e.g., agent, tax advisor) in connection with their NIL activities?
- May receive **free or discounted services** from a professional service provider (e.g., agent, tax advisor) so long as it is not an inducement to influence institutional choice. Engagement should be consistent with industry practice. Financial arrangements can vary (flat fee, profit share, pro bono, upfront guarantee).

### ◇ Institutional Involvement related to Professional Service Providers

- **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.
- **MAY NOT**: be involved in **identifying, selecting, arranging, or providing payment for professional service providers** related to NIL activities.

## Restricted or Prohibited Third Party Endorsement Activities

⇒ to engage in NIL activities involving a commercial product or service that conflicts with NCAA legislation (e.g., **sports wagering, banned substances**). (NCAA Advertising and Promotional Guidelines – Effective September 2019, rev'd, 2/6/2020.)

- **NCAA-banned substances**\* (e.g., stimulants, anabolic steroids, testosterone products, marijuana) and impermissible **Nutritional Supplements** that NCAA member institutions may not provide to student-athletes (e.g., creatine, amino acids, ginseng, most energy or stimulant drinks)]. **I**
- Establishments that include **adult entertainment, gambling, sports books and the like**. **I**
- **Public personalities** whose personas/images are inappropriate for NCAA audiences (e.g., those who promote hatred, misogyny or discrimination). **I**
- Advocacy of viewpoints on **controversial issues** of public importance (e.g., religious beliefs, political beliefs). **I**
- **Sports wagering**. **I** [Note: The NCAA's position on sports can be found at <http://www.ncaa.org/enforcement/sports-wagering?division=d1>]
- Organizations or companies primarily involved in **gambling** or gaming business activities (e.g., publications, Web sites, products, services). This includes casinos, horse/dog racing tracks, off-track betting and state-run lotteries. **I**
- **Athletics recruiting services**. **I**
- Promotions for **motion pictures, television programming** that are not yet rated or above rated **R and interactive games** that are rated "NC-17 (formerly "X") or their television/interactive game equivalents. **I**
- Gratuitous **violence** of any kind, including ads depicting reckless, disorderly or destructive behavior. **I**
- Material that is defamatory, **obscene**, profane, vulgar or otherwise considered socially unacceptable or offensive to the general public. **I**
- Overt and demeaning portrayal of males and/or females as **sexual objects**. **I**
- Depiction of any student-athlete subgroup in a **degrading, demeaning or disrespectful** manner. **I**
- **Alcoholic beverages** (except as specified above). **I**
- Companies primarily involved in the manufacture or sale of **tobacco** or tobacco-related products/services. **I**
- Attacks or other **disparagements** of the NCAA or its members. **I**

⇒ 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**.

⇒ An institution may implement policies that restrict a student-athlete from entering into an agreement with companies that may conflict with an **institution's current endorsement deal provided those restrictions are applicable to the general student-body (D-III); current endorsement deal restrictions should be disclosed to current and prospective athletes (D-II)**.

## Name, Image, and Likeness Counseling Panel

The **NCAA D-II** NIL proposal specifically recommended that institutions would be permitted, but not required, to establish a **name, image, and likeness (NIL) counseling panel** for student-athletes. This panel would function similar to the currently permissible professional sports counseling panel. NCAA bylaw 12.3.4 permits, but does not require, institutions to establish a **professional sports counseling panel** to:

- Advise student-athletes on a future professional career in sports

- Assist student-athletes with securing a loan or purchasing insurance
- Meet with student-athletes and representatives of a professional team
- Assist student-athletes with securing a tryout with a professional team
- Assist student-athletes with the selection of an agent
- Assist student-athletes in determining his or her market value

The NCAA bylaw states a professional sports counseling panel should consist of at least 3 people appointed by the institution's president or chancellor, the majority of panel members should be full-time employees outside of the institution's athletics department, and no agent or agent affiliate should be a member of the panel. All panel members must be identified to the NCAA national office.

### **DII and DIII Diverge in a Few Additional Areas**

- ⇒ **Amateurism and Transfer**
- ⇒ **Student Business Activities v. Promotion of Student Athlete Work Product or Service**
- ⇒ **Crowdfunding**
- ⇒ **DII Promotional Activities Legislation**
- ⇒ **Reporting Requirements**
- ⇒ **Cost of Attendance**
- ⇒ **National Letter of Intent/Use of Athlete NIL by Institution**