

NCAA Working Group on the Collegiate Model – Rules

NCAA Bylaw 12 (Amateurism)

Concepts Discussion Document

The purpose of this document is to solicit input from the NCAA Division I membership on concepts currently being considered by the NCAA Working Group on the Collegiate Model – Rules. This feedback will be used by the working group as it continues to finalize its recommendations for the NCAA Division I Board of Directors. Forward this document and any feedback and comments to rulesworkinggroup@ncaa.org.

Name: 1A FAR Board

Institution/Conference/Organization:

Title:

Date: June 16, 2012

Concept No. 1: Establish a uniform definition of “actual and necessary” competition expenses.

Rationale: Current amateurism legislation regarding what is considered an actual and necessary expense is inconsistent. This results in confusion by the membership and perceptions of unfairness to prospective and enrolled student-athletes. This change will eliminate unnecessary regulations and interpretations.

Points to Consider:

- The “actual and necessary expenses” noted in the current definition of a professional team would be used as basis for establishing permissible “actual and necessary” competition-related expenses. [See NCAA Bylaw 12.02.4-(a).]
- Definition would clarify that actual and necessary expenses are only for those expenses related to participation on a team or in an event.
- Definition would clarify that expenses are only for athlete, not for parents or coaches of athletes.
- Would not include training-only expenses; expenses must be associated with competition or practice immediately preceding competition.

Questions:

1. Do you support this concept?

Yes

2. Why or why not?

It leads to consistency and simplification.

Concept No. 2: In individual sports, to permit calculation of actual and necessary expenses over a period of time (e.g., calendar year) rather than event-by-event basis.

Rationale: Currently, individuals prior to NCAA enrollment whose annual expenses significantly exceed their annual prize money may still incur a violation if their prize money exceeded their expenses in a single event. Calculation of expenses versus prize money over a calendar year is a more fair approach.

Points to Consider:

- Calendar year expenses are currently considered as mitigation for purposes of student-athlete reinstatement.
- Only applies to payment based on performance legislation (e.g., prize money); therefore, the analysis is made based on expenses received on the back end of competition.
- Limited to actual and necessary competition-related expenses.
- Would apply to both prospective student-athletes prior to enrollment and current student-athletes engaging in permissible outside competition.

Questions:

1. Do you support this concept?

Yes, but we do have a concern. What if in the first two events of the year a student-athlete got prize money over expenses and then was injured and did not compete or did not make the cut for later events? We support the concept if either (1) the student-athlete cannot at any time during the period have more total prize money than expenses or (2) the student-athlete undertakes the risk that if the two don't even out there is a violation. This also raises the question of whether this will encourage the student-athlete to compete in more events if her prize money exceeds expenses and she wants to avoid a violation.

2. Why or why not?

It is fairer to the student-athlete, and preserves the basic intent of the original legislation.

3. Should this concept be extended to NCAA team sports (e.g., 3 versus 3 competition, team tennis)?

Yes

4. Should this concept apply to prospective student-athletes who have not enrolled full time at any collegiate institution or to prospective student-athletes who have not enrolled full time at an NCAA institution?

Yes

5. Why or why not?

This might simplify the compliance issue and allow prospective student-athletes to cover expenses over an entire period rather than one event. This is a common business practice.

6. How should year be measured (e.g., tax year, calendar year)?

Calendar year.

7. Provide rationale.

While the tax year might make sense for student-athletes who are U.S. citizens, this may not be the case for foreign student-athletes. The calendar year would be simpler.

Concept No. 3: Establish a \$300 de minimus standard in cases in which an individual, prior to enrollment in an NCAA institution, receives more than actual and necessary expenses from an otherwise permissible source.

Rationale: This change would be consistent with the Association's efforts to deregulate the NCAA Manual and streamline the student-athlete reinstatement process. Currently, violations of these specific bylaws when a prospective student-athlete received more than actual and necessary expenses from an otherwise permissible source typically result in immediate reinstatement of eligibility on repayment.

Points to Consider:

- In 2011-12, there were a total of 110 amateurism certification process cases in which the student-athlete reinstatement penalty was repayment only. For 43 of the 110 cases, the total penalty involved was \$300 or less.
- Examples include prize money received from sponsor of event that exceeds actual and necessary expenses incurred by athlete provided the excess expenses were \$300 or less.
- Any expenses from agents, professional teams (unless within pre-enrollment professional team exception) or boosters (exception may be appropriate for booster living in locale of prospective student-athlete) remain impermissible regardless of amount.
- Reduces the administrative burden on the NCAA Eligibility Center, the student-athlete reinstatement staff and institutional compliance departments.
- A de minimus violation of this legislation shall not render a prospective student-athlete ineligible as is the case currently with legislation designated as de minimus.

Questions:

1. Do you support this concept?

Yes

2. Why or why not?

It would lead to a reduction in the administrative burden.

3. If you do not support \$300 or less as the dollar amount, what should the amount be?
4. Provide rationale.
5. If the impermissible amount is \$300 or less, should the prospective student-athlete be required to repay the impermissible excess expenses to a charity of individual's choice or should these cases not require any additional action by the prospective student-athlete?

Repay to charity of the student-athlete's choice.

6. Why or why not?

The impermissible amount should be repaid to preserve the idea of amateurism.

7. Should this concept be expanded to include student-athletes who engage in permissible outside competition and receive more than actual and necessary expenses from an otherwise permissible source?

Yes

8. Why or why not?

The situations are similar and so should be treated the same.

Concept No. 4: Eliminate specific regulations associated with competition-related expenses that may be received from outside sources while maintaining the prohibition on receipt of expenses from professional sports organizations, boosters and agents.

Rationale: Currently, there are several bylaws addressing the provision of competition-related expenses to prospective and enrolled student-athletes that are overly complicated and bureaucratic. This provides the opportunity for prospective student-athletes and student-athletes to seek out additional permissible financial resources to support their athletics aspirations.

Points to Consider:

- Current legislation permits an individual to only accept expenses to compete in an athletics event if the expenses are provided by his or her parents or legal guardians, or the nonprofessional sponsor of an event or a team in which the individual is representing.
- Any expenses from agents, professional teams (unless within pre-enrollment professional team exception) or boosters (exception may be appropriate for booster living in locale of prospective student-athlete) remain impermissible.
- Limited to actual and necessary competition-related expenses.
- Will permit earmarked fundraising in both team and individual sports.
- Would not apply to payment based on performance legislation (addressed in Concept No. 5). As a result, expenses must be provided prior to the competition.
- Outside competition legislation still prohibits student-athletes during the academic year from participating as a member of an outside noncollegiate, amateur team (limited exceptions).

Questions:

1. Do you support this concept?

Yes

2. Why or why not?

Because it is limited to actual and necessary competition-related expenses, and it provides a way for student-athletes to get the financial help they may need without compromising amateurism in any serious way.

3. Should this concept apply to currently enrolled student-athletes or only prospective student-athletes?

Both

4. Why or why not?

The rationale we gave for question 2 also applies here.

5. Should a booster who lives in the locale of the prospective or enrolled student-athlete be permitted to provide competition-related actual and necessary expenses?

We are divided on this issue.

6. Why or why not?

Most would answer No to question 5 because they are concerned that this would open the door to booster activity that could result in escalating recruiting wars.

However, some think we should try to limit our regulatory world. If boosters want to get in a war as to who pays the actual and necessary expenses of a prospective student-athlete, then let them. In addition, they cannot imagine bidding wars with a student-athlete or a prospective student-athlete who signed an NLI.

Concept No. 5: Eliminate specific regulations associated with payment based on performance to permit prospective and current student-athletes to receive up to actual and necessary competition-related expenses, pre- and post-enrollment, in both team and individual sports from an amateur team or the sponsor of event.

Rationale: Currently, there are several bylaws addressing the provision of payment based on performance for prospective and enrolled student-athletes that are overly complicated and bureaucratic. This change would streamline the legislation for individuals prior to and following enrollment and for both individual and team sports.

Points to Consider:

- Current legislation permits payment based on performance, up to actual and necessary expenses, from both amateur and professional teams (pre-enrollment only) as well as from a sponsor of an event.
- Permissible sources still limited to amateur and professional teams (pre-enrollment only) as well as the sponsor of an event.
- Limited to actual and necessary competition-related expenses.
- Examples of payment based on performance include prize money and bonuses based on a finish in a competitive event.
- Creates consistency in all sports, including men's ice hockey and skiing, permitting payment based on performance, up to actual and necessary expenses, from amateur teams.
- Permits current student-athletes to accept payment based on performance, up to actual and necessary expenses, year-round as opposed to only in the summer. Current regulations that will remain in place include prohibitions on outside competition during academic year (limited exceptions available for individuals not representing the institution) and that the student-athlete may not accept more than actual and necessary expenses for competing in the event.

Questions:

1. Do you support this concept?

Yes

2. Why or why not?

It is limited to actual and necessary competition-related expenses, and therefore provides financial resources to student-athletes without compromising their amateurism.

3. Should a permissible source of payment include payment based on performance from any sponsor other than agent, professional team (unless within pre-enrollment professional team exception), or booster provided it is only up to actual and necessary expenses? This would permit a local athletics program that supports athletes to provide prize money to an athlete even though they are not the sponsor of the event.

We are divided on this issue.

4. Why or why not?

Most would answer No to question 3 because they are concerned that this would open up possible hidden booster activity. However some disagree with this position for the same reasons outlined in the answer to question 6 of Concept 4.

5. Should a booster who lives in the locale of the prospective or enrolled student-athlete be permitted to provide such payment(s)?

We are divided on this issue.

- In individual sports, current legislation permits these sources to provide competition-related expenses prior to an athletics event. Should the same sources be able to provide the same expenses at the conclusion of the same event (based on the athlete's performance)?

Yes

6. Why or why not?

As long as it is limited to actual and necessary competition-related expenses, it seems reasonable. Limiting to prior payments seems odd and certainly overregulation. Perhaps it relates to the prohibition against paying expenses based on performance, but we oppose that distinction.

Concept No. 6: Permit educational expenses based on performance in a competitive event.

Rationale: Although current legislation allows both prospective and enrolled student-athletes to receive educational expenses related to athletics, the payment based on performance legislation precludes these same individuals from receiving educational expenses based on performance in an event.

Points to Consider:

- Current legislation permits a prospective student-athlete to receive educational expenses, based on athletics, from any source other than an agent, professional team or booster provided the expenses are disbursed directly to the educational institution.
- Current legislation permits a student-athlete to receive educational expenses (i.e., financial aid) from any source other than an agent, professional team or booster provided:
 1. The source is an established and continuing program;
 2. Choice of institution is not restricted by the donor; and
 3. There is no direct connection between the donor and the institution (e.g., booster).

Finally, any financial aid received by a student-athlete under this legislation shall count against that student-athlete's individual limitations.

Questions:

1. Do you support this concept?

Yes

2. Why or why not?

It would help to cover educational expenses for student-athletes without compromising amateurism.

3. Do you support allowing prospective student-athletes to receive educational expenses based on performance that exceed actual and necessary expenses for event (e.g., prospective student-athlete wins \$5,000 educational scholarship, but expenses for event were only \$1,000)?

We are divided on this.

4. Why or why not?

Those opposed feel that it would effectively result in pay for play beyond actual and necessary expenses. The slippery slope away from amateur status has to be guarded.

Those in favor support it as long as payments relate to educational expenses up to cost of attendance, they see no slippery slope and no threat to amateurism.

Concept No. 7: Expand opportunities for receipt of training expenses by permitting governmental or provincial entities to provide financial assistance for training.

Rationale: Increased flexibility in the training expenses legislation would permit receipt of training expenses from governmental or provincial entities and help financially assist individuals in pursuing their athletic endeavors. This would reduce bureaucracy, confusion and enhance student-athlete well-being.

Points to Consider:

- Current legislation permits training expenses only from the United States Olympic Committee (or the international equivalent) or appropriate national governing body in the sport.
- Several government and provincial programs currently available to athletes do not meet the criteria of the training expenses legislation because they are not considered the United States Olympic Committee (or the international equivalent) or appropriate national governing body in the sport.
- Expansion of sources limited to governmental or provincial entities.

Questions:

1. Do you support this concept?

Yes

2. Why or why not?

It is limited to governmental or provincial entities, so it retains the spirit of the original legislation while expanding the financial support opportunities for student-athletes.

The purpose of this section is to collect feedback related to topics that may be considered in the future.

Topic: Agents.

Points to Consider:

- Current legislation does not permit agents/advisors to have any contact with professional teams on the athlete's behalf.
- New legislation could provide for agent contact with professional teams, but prohibit any type of financial assistance or material benefit to the prospective student-athlete, his or her friends or any others who are in a position to influence the prospective student-athlete.
- Increased flexibility to agent legislation may assist prospective or enrolled student-athletes to make a more informed decision whether to turn professional or remain an amateur.
- Current legislation is difficult to enforce.
- Need to distinguish between permitting direct contact with professional clubs and permitting agent involvement in negotiating a marketing/endorsement agreement.
- Recruiting rules may need to be reviewed and potentially modified given the contact that agent/advisors would likely have with NCAA coaches regarding their clients.

Questions:

1. Should opportunities be expanded for prospective student-athletes to use an agent for purposes of making an informed decision whether to turn professional or remain an amateur?

[We are divided on this issue.](#)

2. Why or why not?

[The reasons for support are:](#)

- (1) [It is in the interest of the student-athletes to be as well informed as possible.](#)
- (2) [Informed decisions help avoid financial issues in the future, one can hope.](#)

- (3) Teams have experience negotiating, putting the student-athlete at a disadvantage.
- (4) We would rather have these activities above ground. If agent advice is prohibited then only the cheaters will be giving it.
- (5) Present rules (at least as applied to baseball) are a major trap for the unwary and put student-athletes in untenable positions.

The argument for answering No is that current student athletes are continually misled by “agents” into making poor decisions. Increasing the opportunities for agents seems like letting the fox guard the hen house

- 3. Provide examples that should be considered.

Student-athletes considered in later rounds of draft may stay in school. However, some hypothesize that just the opposite would occur.

- 4. Should prospective student-athletes, including two-year college and non-NCAA four-year college athletes, have the opportunity to use an agent for purposes of making an informed decision whether to turn professional or remain an amateur?

We are divided on this issue.

- 5. Why or why not?

The argument in favor is the same as those outlined in the answer to question 2.

The argument against is that current student athletes are misled by “agents” into making poor decisions.

- 6. Should only prospective student-athletes in sports with non-opt-in drafts which allow individuals to be drafted out of high school (e.g., baseball, hockey) have the opportunity to use an agent for purposes of making an informed decision whether to turn professional or remain an amateur?

We are divided on this issue. Some support allowing all prospective student-athletes to use agents while others do not support this.

7. Why or why not?

It is in the interest of all student-athletes to be as well informed as possible. The argument against is that agents may lead student-athletes to make poor decisions.

8. Should prospective and current student-athletes with non-opt-in drafts have the opportunity to use an agent for purposes of making an informed decision whether to turn professional or remain an amateur?

We are divided on this issue. Some support the opportunity to use an agent in all cases, and others do not support the idea of giving agents more access to student athletes unless they have graduated or decided to leave college.

9. Why or why not?

The argument in favor is that it is in the interest of the student-athletes to be as well informed as possible. The argument against is that agents may lead student-athletes to make poor decisions.

Topic: Contracts and Other Written Agreements - Professional Team Involvement.

Points to Consider:

- Current legislation permits a prospective student-athlete in these sports to sign an agreement with a professional team provided it does not promise or guarantee more than actual and necessary expenses.
- Under current rule, prospective student-athlete is subject to two separate violations (i.e., payment above expenses plus contract violation) which may result in a more severe penalty.
- The “other written agreements” language of current legislation captures virtually any document signed by prospective student-athletes. In some instances, application of contract legislation to written agreement does not seem consistent with principles of fairness or student-athlete well-being.

Questions:

1. In sports other than men's ice hockey and skiing, should it be an amateurism violation if a prospective student-athlete signs a contract or written agreement that provides for more than actual and necessary expenses, if he or she never receives those benefits?

No

2. Why or why not?

The examples below illustrate why we should allow this. We do not want to prohibit student-athletes in these situations from going to college. Getting a degree is paramount, especially if we say they cannot use an agent to get good advice.

One FAR cited a situation where a foreign basketball player signed a contract with team but was not paid above expenses. He had to sit out a year (lost eligibility) and the first nine games of this season. The penalty seemed severe.

- o Example No. 1: Prospective student-athlete signs agreement with a professional league that provides for more than actual and necessary expenses. However, the agreement is contingent on the prospective student-athlete passing a physical. Prospective student-athlete subsequently fails the physical and agreement is void by professional league.
- o Example No. 2: Prospective student-athlete signs multiyear agreement with a professional league that provides for more than actual and necessary expenses. Prior to receiving any benefits above actual and necessary expenses, he or she leaves the team to pursue a collegiate education.

Topic: Student-Athlete Employment.

Points to Consider:

- Among other restrictions, current legislation does not permit student-athletes to use institutional facilities in fee-for-lesson employment and does not permit student-athletes to use his or her likeness to promote a business.
- Deregulation in this area would reduce some administrative burden in monitoring student-athlete employment.
- Permitting student-athletes to use likeness to advertise fee-for-lesson business is consistent with other student employment opportunities (e.g., music lessons).

Questions:

1. Should the student-athlete employment legislation be regulated only by requirement that compensation is for work actually performed and at a rate commensurate with the going rate in that locality for similar services?

Yes, but some are concerned about the likeness component of this.

2. Why or why not?

It is good to be consistent with other student employment opportunities. Why shouldn't student-athletes get money for reasonable work?

Regarding the likeness issue, some have a concern about the further commercialization of sports if we allow student-athletes to use their likenesses to advertise. However, some feel very strongly that student-athletes should be able to profit from their name and likeness in the same way that Emma Watson (the *Harry Potter* actress attending Brown University) could go out and make money. The difference, of course, is that her name/likeness value has nothing to do with Brown. The economists could monetize the name/likeness value of the second string quarterback, etc. We should let them.

Topic: Preferential Treatment.

Points to Consider:

- Legislation and interpretations governing preferential treatment attempt to balance a number of concerns related to benefits provided to an individual based on his or her athletics reputation. However, the current legislation and interpretations may not provide the appropriate flexibility to all issues identified as preferential treatment.
- Current interpretations may be overly restrictive in some instances in which an athlete receives certain benefits based on a relationship that is developed as a result of the athlete's participation in athletics.

Questions:

1. Should the preferential treatment legislation, either as written or as applied, be changed?

[This question is overbroad and therefore vague. We do not feel that we can give an accurate answer to such a general question.](#)

2. In what manner?
3. Does the current legislation provide the appropriate guidance and/or flexibility in applying the preferential treatment legislation?
4. Why or why not?

Topic: Promotional Activities.

Points to Consider:

- Legislation and interpretations related to promotional activities are outdated and difficult to apply to various media platforms in existence today.
- Promotional activities regulation requires clear principles that can be translated into enforceable rules pertaining to the uses of student-athlete likenesses, images and names.
- Commercial activity in intercollegiate athletics cannot abridge the principle of amateurism as applied to student-athletes, including their exploitation by commercial and professional interests and must comport with the values of higher education.

Questions:

1. Should elements of the promotional activities legislation be considered for change?

No. However, some prefer to permit promotions, monetize the profits, and share with the student-athletes, for example for education-related expenses.

2. What elements?

3. Why or why not?

Some feel that this is a slippery slope toward moving away from amateurism in college athletics. For example, we do not think EA Sports should be able to use college football players' likenesses in their video games