

**Draft Positions on the Proposed DII Legislation
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Division II Legislative Review Committee

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**No. 2-1 PERSONNEL — CONDUCT OF ATHLETICS PERSONNEL —
RESPONSIBILITY OF HEAD COACH**

Intent: To define the responsibilities of a head coach with regard to compliance with NCAA rules.

Rationale: The head coach has a special obligation to promote a culture of compliance in the entire sport program, including assistant coaches, other staff and student-athletes. The head coach must monitor the activities of assistant coaches and staff to determine if they are acting in compliance with NCAA rules. Too often, when assistant coaches or other administrators involved with the program are involved in serious violations, head coaches profess ignorance regarding such violations while indicating such responsibilities were entrusted to their assistant coaches. A head coach should be presumed to have knowledge and, therefore, responsibility for the actions of those individuals associated with his or her team whom the coach directly or indirectly supervises. However, a violation of the proposed bylaw will occur only in major-infractions cases, similar to institutional control allegations, or in very serious secondary cases. This proposal does not imply that every violation by a staff member or student-athlete involved in the head coach's program will be considered a lack of control on the part of the head coach. There is a rebuttable presumption that exists when situations indicate that the head coach has set a proper tone of compliance. Under such circumstances, the head coach would not be charged with a lack of control for activities that may result in NCAA rules violations. A similar version of this bylaw has previously been adopted in Divisions I and III.

FARA Position: Strongly Support. This proposal has the advantage of bringing DII into parity with the other divisions as well as providing for better protection of current and future student-athletes.

No. 2-2 AMATEURISM — FINANCIAL DONATIONS FROM OUTSIDE ORGANIZATIONS — PROFESSIONAL SPORTS ORGANIZATIONS — TO INSTITUTION

Intent: To specify that a member institution may receive contributions (e.g., tickets, funds, memorabilia) from a professional sports organization.

Rationale: Under current legislation, an institution is only permitted to receive funds or sports memorabilia from a professional sports organization if certain requirements are met. Deregulation of this legislation will allow an institution to develop relationships and partnerships with professional sports organizations. Further, allowing institutions to accept any contributions from a professional sports organization should not impact the amateur status of individual student athletes. This proposal also reduces bureaucracy by eliminating the requirement that funds be placed in the institution's general fund or received as a result of a reciprocal contractual marketing relationship.

FARA Position: Oppose. There are two major objections to this legislation: 1) there is neither a limit on the amount of contributions nor its form; and 2) there is the real possibility of creating substantial inequity based on the proximity, or lack thereof, of an institution to a professional sports team. It is recognized that a very small number of student-athletes might benefit from such an alliance, but this proposal is excessively broad, the deregulation attempt notwithstanding.

No. 2-3 RECRUITING — LETTER-OF-INTENT PROGRAMS, FINANCIAL AID AGREEMENTS — TRANSCRIPT PRIOR TO NATIONAL LETTER OF INTENT OR WRITTEN OFFER OF ATHLETICALLY RELATED FINANCIAL AID

Intent: To specify that an institution shall not provide a high school, preparatory school, two-year or four-year college prospective student-athlete with a National Letter of Intent or written offer of athletically related financial aid until the prospective student-athlete presents the institution with a current high school, preparatory school or college transcript (official or unofficial).

Rationale: Prospective student-athletes are best served by early notification of their academic status for purposes of NCAA eligibility. Encouraging early submission of transcripts to the institution will provide for an earlier academic analysis, which is a vital step in determining a prospective student athlete's preliminary initial-eligibility status or academic transfer status, and readiness for collegiate academic work. Late submission of transcripts to institutions can lead to an inability to advise student-athletes regarding academic deficiencies in a timely fashion. Specifically, this proposal requires high school, preparatory school, two-year and four-year prospective student athletes to provide the institution with a transcript prior to a National Letter of Intent or written offer of athletically related financial aid.

FARA Position: Strongly Support. Legislation that provides potentially valuable information to both the prospective student-athlete and the target institution serves a desirable goal in the recruiting process.

No. 2-4 DIVISION MEMBERSHIP — DEFINITIONS AND APPLICATIONS — EMERGING SPORTS FOR WOMEN — ARCHERY, BADMINTON, SYNCHRONIZED SWIMMING, TEAM HANDBALL AND SAND VOLLEYBALL

Intent: To add sand volleyball as an emerging sport for women; further, to remove archery, badminton, synchronized swimming and team handball as emerging sports for women and to eliminate other specified legislation associated with these sports, as specified.

Rationale: There is wide-spread support for sand volleyball to be added as an emerging sport for women, including support from institutions and governing bodies. Data indicates that over 200,000 females ages six to 17 play sand volleyball and over 60 percent play only sand volleyball. Also, there were over 40 teams from NCAA institutions competing in sand volleyball tournaments in spring 2008. It is expected that the addition of sand volleyball will produce a significant increase in participation opportunities for women. The delayed effective date for sand volleyball will provide the divisions time to develop the necessary regulations. NCAA regulations require that emerging sports gain championship status within 10 years or show steady progress toward that goal. Four sports on the original list, (archery, badminton, synchronized swimming and team handball) have seen minimal sponsorship growth over the past 14 years. In July 2007, the institutions, conferences and national governing bodies supporting these four sports were notified that they needed to provide a minimum of 10 commitment letters from institutions by July 2008 and that failure to meet that request would result in a recommendation for their removal from the list. None of the four sports were able to meet this requirement.

FARA Position: No Position.

No. 2-5 (1-1) ELIGIBILITY — HARDSHIP WAIVER — PERCENTAGE CALCULATION

Intent: To specify that a student-athlete's eligibility for a hardship waiver may be determined by the number of the institution's completed contests or dates of competition or the maximum permissible number of contests or dates of competition set forth in Bylaw 17 for the applicable sport; further, to eliminate the provision that a conference championship shall be counted as one contest or date of competition in determining the institution's completed contests or dates of competition in that sport, regardless of the number of days or games involved in the championship.

Source: Lone Star Conference and Mid-America Intercollegiate Athletics Association

Rationale: By permitting institutions to use 20 percent of the contests or dates of competition limits set forth in Bylaw 17 for the applicable sport, the proposal accommodates student-athlete wellbeing by allowing a comparable denominator for all student-athletes, regardless of the institution's scheduling patterns. Because of conference, budgetary, philosophical and/or geographical constraints, Division II institutions currently schedule different numbers of contests or dates of competition. Since the student-athletes have no role in scheduling, this creates inequitable treatment of student-athletes from institution to institution. Further, since the scheduling practices of some institutions are incumbent on conference scheduling policies, even institutions cannot completely control the amount of scheduled contests. By still allowing the institution to use in the percent calculation the institution's completed contests or dates of competition, the proposal enables the use of the "best possible" denominator for student-athletes from institutions that complete more contests than the limits set forth in Bylaw 17 (e.g., the institution completes additional contests due to participation in a conference championship, in the Division II Tip-Off Classic in basketball, in contests played in Hawaii, Alaska or Puerto Rico). Further, allowing all contests in a conference championship to be counted only further accommodates student-athlete well being.

FARA Position: Support. The unfortunate circumstances of a hardship waiver mandate that any option that promotes student-athlete well-being should be supported provided no inequity is generated.

No. 2-6 ELIGIBILITY — SEASON-OF-COMPETITION WAIVER — COMPETITION WHILE ELIGIBLE — DOCUMENTED COACH'S MISUNDERSTANDING — PENALTY

Intent: To specify that a student-athlete who is granted an additional season of competition due to a coach's documented misunderstanding of the legislation shall be withheld from two contests of intercollegiate competition for each contest in which he or she competed.

Rationale: In the case of a coach's documented misunderstanding of the legislation, the student athlete triggers the use of a season of competition based on a circumstance within the control of the institution. In order to account for the institutional responsibility in this circumstance and to deter abuse of the legislation, a two-for-one withholding condition should be applied when waivers are granted based on the documented coach's misunderstanding of the legislation. Since a violation is not assessed in this circumstance, the only way to hold an institution accountable for the misunderstanding is to impose a withholding condition on the student-athlete. This legislative amendment will bring consistency to the season-of-competition waiver legislation for both Divisions I and II.

FARA Position: Oppose. FARs are not opposed to injecting some accountability into the legislation passed last year. But to place the only penalty on the student-athlete, who was only acting on a coach's statements, seems inappropriate, and is clearly not

student-friendly. Logic dictates that a coach should be accountable for a coach's misunderstanding.

No. 2-7 ELIGIBILITY — PROGRESS-TOWARD-DEGREE REQUIREMENTS — BONA FIDE FOREIGN EXCHANGE STUDENT EXCEPTION

Intent: To specify that the eligibility for competition of a student-athlete who meets the bona fide foreign exchange student exception to the four-year college transfer legislation shall be based on the satisfactory completion of progress-toward-degree requirements, as specified.

Rationale: Current legislation allows student-athletes who meet the bona fide foreign exchange student exception to the transfer legislation to participate in intercollegiate athletics competition without meeting NCAA progress-toward-degree requirements while enrolled at the certifying institution. Such student-athletes are only required to maintain progress toward a baccalaureate or equivalent degree at their preceding educational institutions. While these student-athletes often are limited in their ability to designate a degree program at the certifying institution, this proposal will require a review to ensure that such students are maintaining a minimal level of academic achievement.

FARA Position: Strongly Support. That foreign students should meet the same progress-toward-degree requirements as non-foreign generates equity across institutions and sports.

No. 2-8 PLAYING AND PRACTICE SEASONS — GENERAL PLAYING-SEASON REGULATIONS — TIME LIMITS FOR ATHLETICALLY RELATED ACTIVITIES — WEEKLY HOUR LIMITATIONS — OUTSIDE OF PLAYING SEASON — EXCEPTION — ALTERNATE PLAYING SEASON — GOLF AND TENNIS

Intent: In golf and tennis, to specify that an institution that conducts its championship segment during the fall term must discontinue practice at the conclusion of its nonchampionship segment (designated 45- or 60-consecutive calendar day period); further, to specify that such a team may resume practice the day following the conclusion of the institution's final examination period for the applicable academic term or 10-consecutive calendar days before the start of the championship, whichever is earlier, provided the institution has reasonable belief that it is under consideration for selection to participate in an NCAA, NCCAA or NAIA championship event.

Rationale: Under current legislation, an institution that conducts its championship segment for golf or tennis during the fall must conclude the nonchampionship (spring) segment and cease all countable athletically related activities beginning seven days prior to the institution's final examination period through the end of the final examination period, even if the team is under consideration for participation in a postseason championship. Further, countable athletically related activities are not permissible

during the summer vacation period. Such restrictions place teams that use the alternate playing season that may have an opportunity to participate in the championship at a competitive disadvantage and can present a student-athlete well-being concern if there is an extended period without practice and conditioning before the championship begins. This proposal provides for competitive equity and student-athlete well-being without unnecessarily compromising the legislation protecting student-athletes' time to study and prepare for final examinations. An immediate effective date will permit institutions to take advantage of the amendment during the 2009 spring golf and tennis championships.

FARA Position: Oppose. The troublesome phrase is “without unnecessarily compromising the legislation protecting student-athletes' time to study and prepare for final examinations.” This means that practice could begin during final exams if the last day of exams is less than 10 days from the start of the championship. FARs wish to preserve finals as a true academic sanctuary. We recognize that this places the “student” part of student-athlete well-being above that of the “athlete” part, but that seems a reasonable position given the importance of final exams.

No. 2-9 (1-2) PLAYING AND PRACTICE SEASONS — TIME LIMITS FOR ATHLETICALLY RELATED ACTIVITIES — INSTITUTIONAL VACATION PERIOD — STRENGTH AND CONDITIONING PERSONNEL DESIGNING AND CONDUCTING WORKOUT PROGRAMS

Intent: To specify that outside the playing season during the summer, strength and conditioning personnel who perform such duties for all of the institution's intercollegiate teams may design and conduct specific workout programs for student-athletes, provided such workouts are voluntary and conducted at the request of the student-athlete.

Source: Lone Star Conference and Mid-America Intercollegiate Athletics Association

Rationale: Current legislation specifies that strength and conditioning personnel, including a coaching staff member if he or she performs such duties for all intercollegiate teams, may monitor voluntary individual workouts for safety purposes without considering such supervision as a countable athletically related activity. Therefore, strength and conditioning personnel are precluded from conducting workout programs during the summer, because "to conduct" is different than "to monitor." This proposal would allow strength and conditioning personnel to design and conduct specific workout programs for student-athletes as they do during the academic year, provided such workouts are voluntary and at the request of the student-athlete. This proposal also promotes student-athlete well-being by allowing conditioning programs to occur in a safe and controlled environment and by allowing strength and conditioning personnel to work more closely with student-athletes, rather than only stepping in during voluntary workouts if there is a safety issue. The immediate effective date will allow strength and conditioning personnel to design and conduct specific workout programs for student-athletes during the 2009 summer.

FARA Position: Strongly Oppose. There have been numerous legislative successes in recent years that moved DII more toward DI student-athlete expectations. We have non-championship seasons and skill development (now virtually practice). This proposal would move DII further along that trajectory. Student-athletes know that “voluntary” rarely is! Why would we even want to advocate “voluntary” workouts when the reason many student-athletes are on campus in the summer is to improve their academic standing or complete credits not taken during the academic year because of athletics? Further, the legislation promotes competitive advantage over student-athlete well-being. There is the possible student-athlete inequity that could occur on each campus in those disciplines where an off-campus summer internship is critical for success in the job market. The circumstances permitted by this legislation would be ripe for abuse.

No. 2-10 (1-3) PLAYING AND PRACTICE SEASONS — BASKETBALL — FIRST CONTEST

Intent: In basketball, to specify that a member institution shall not play its first contest (game or scrimmage) with outside competition prior to the second Friday of November.

Source: Mid-America Intercollegiate Athletics Association and Peach Belt Conference

Rationale: Currently, an institution shall not play its first contest against outside competition prior to November 15, aside from exceptions outlined in Bylaw 17.5.3.1. This proposal does not change that date substantially; however, it allows an institution to schedule its first contest on a weekend night. This proposal will not allow an institution to compete earlier than what is allowed under current legislation as most Division II basketball teams compete in exempted contests on or soon after November 1. The proposal will only change the date for the first permissible “countable” contest. This change will also provide a benefit to student-athletes as no season-opening games or events will take place during the week and teams can also schedule “countable” games earlier in the season to provide flexibility for conference playing dates that occur during final examination periods. Further, this change is easy to administer as all schools can easily determine when the second Friday of November is and coaches can better schedule knowing the season starts on a weekend every year. Finally, this will likely result in all Division II basketball teams officially starting their season on the same day.

FARA Position: Oppose. The FARs opposed this legislation last year and we do so again this year in spite of the additional verbiage in the Rationale. The legislation is still in opposition to the spirit of deregulation and could lead to a different number of practice and competition dates each year. We question the one assertion that “most Division II basketball teams compete in exempted contests on or soon after November 1.” It must be added as a point of information that the Management Council decided to oppose this proposal at their October meeting.

No. 2-11 (1-4) PLAYING AND PRACTICE SEASONS — BASKETBALL — NUMBER OF CONTESTS — ONCE-IN-THREE-YEARS EXEMPTION — CONFERENCE CHALLENGE EVENT

Intent: In basketball, to permit an institution, once every three years, to exempt from the maximum contest limitations a maximum of two contests played as part of a conference challenge event; further, to define a conference challenge event, as specified.

Source: Mid-America Intercollegiate Athletics Association and Peach Belt Conference

Rationale: The first weekend of the season should be designated to allow conferences to organize in-region conference challenge events at one or more sites with the incentive that not more than two contests played as a part of such events could be exempted once every three years. Division II institutions are required to participate in a minimum number of contests against Division II opponents and a minimum number of contests against in-region opponents. Further, institutions are encouraged to participate in as many in-region contests as possible in order to further the regionalization philosophy. This exemption creates an incentive for institutions to participate in early season in-region contests in order to meet these goals, while allowing them to maintain home contests against NAIA, Division III and other Division II opponents prior to the start of conference season. Contests played in accordance with this exemption must be part of an overall multi-team conference "challenge" event, must be played the first weekend of the season and must be considered in-region contests.

FARA Position: Oppose. This legislation would allow the more financially able institutions to engage in these events while the less able would rarely, if ever, participate. Such an inequity is not appropriate in DII. Moreover, this proposal appears at a time when the NCAA and many institutions are searching for ways to be more fiscally responsible. In addition, one wonders if this is approved that next year the request will be for every two years, and then every year.

No. 2-12 DIVISION MEMBERSHIP AND COMMITTEES — AUDIT OF MEMBERSHIP REQUIREMENTS

Intent: To specify that the Membership Committee shall have the authority to conduct an audit of an institution's fulfillment of membership requirements if the institution is placed on probation for failure to fulfill more than one membership requirement during a 10-year period and that the committee shall only audit the institution's fulfillment of membership requirements for which the institution has been placed on probation; further, to specify that the committee may impose conditions or penalties that an institution must satisfy during the probationary period.

Rationale: Under current legislation, an institution is placed on probation if certain conditions and obligations of membership have not been satisfied (e.g., sports

sponsorship, completion of the self-study report). If the institution fails to meet that same requirement within 10 years of being placed on probation, the institution shall be placed in restricted membership status. However, an institution may be on probation in each of the membership requirement areas concurrently with no negative effect. This proposal would allow the Membership Committee to conduct an audit if an institution fails to satisfy a membership requirement after the institution has been placed on probation in a different membership requirement area during a 10-year period. If an institution is put on probation in more than one membership requirement area within a 10-year period, the institution should be subject to an audit in order to review whether the institution can continue to meet membership requirements. The Membership Committee will also have the authority to impose penalties to focus on the institution's weaknesses detected in the audit. An audit will help ensure that current Division II members will satisfy the minimum requirements. Finally, the audit should be a legislated duty for the committee.

FARA Position: Strongly Support. Equity in membership obligations is a goal that can be supported by all.

No. 2-13 ADMINISTRATIVE REGULATIONS — RECRUITING CALENDARS — DEAD PERIODS FOR OTHER SPORTS — MEN'S LACROSSE

Intent: In men's lacrosse, to establish additional dead periods, as specified.

Rationale: Establishing specified dead periods in men's lacrosse will emphasize life-work balance for coaches and institutions and will also encourage coaches to attend important national events, such as the NCAA Division II Men's Lacrosse Championship and the Intercollegiate Men's Lacrosse Coaches Association (IMLCA) clinics. The recommended dead periods were proposed by the IMLCA and have been supported by the NCAA Divisions II Men's Lacrosse Committee.

FARA Position: No Position.