



March 15, 2023
12:00-1:00 PM EST



ATHLETIC COMPLIANCE UPDATE (HIGHER ED)



DISCLAIMER

- We are not giving legal advice today.
- Please consult with your legal counsel regarding specific situations.
- Use chat function to ask general questions and hypotheticals.
We encourage questions!
- Yes, we will send out the slides. If you used your email to register, look for a “Thank You For Attending!” email.

ABOUT US



**KASEY
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**JEFF
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**JOEL
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*Guest & former college
athletics administrator (AD)*

ABOUT OUR PRACTICE

Our team is particularly experienced in:

- Title IX compliance and investigations, including the NCAA Policy on Campus Sexual Violence (check out our Title IX and athletics resource page [here](#))
- Operationalizing Name, Image and Likeness
- Student-athlete safety and well-being
- Enforcement investigations
- Eligibility reviews
- Policy and procedure reviews including student-athlete handbooks
- Intellectual property portfolio development and management
- Multimedia streaming rights agreements, product licensing, and sponsorship
- Facilities compliance
- E-sports

And where to find
more information!



Athletic Compliance Resource Center

Athletic Compliance, Ohio NIL, NIL, name, image, likeness, Title IX, sexual misconduct, NCAA, e-sports

 Bricker & Eckler Attorneys At Law

AGENDA

1 Title IX and Athletics Update

2 Name, Image, and Likeness


3 NCAA Attestation & Forms

4 Other Updates - Roundtable

- Student-Athlete Employment
- Student-Athlete Discipline & Speech
- Student-Athlete Health, Safety, and Well-being
- Student-Athlete Privacy
- Sports Gambling
- Revenue Sharing
- Conference Realignment

TITLE IX AND ATHLETICS UPDATE

TITLE IX REGULATIONS



U.S. Department of Education
 Office for Civil Rights

February 2021

Title IX and Athletic Opportunities in Colleges and Universities

A Resource for Students, Coaches, Athletic Directors, and School Communities

INCLUDED IN THIS RESOURCE

- Background on Title IX 2
- Evaluating Your School's Athletic Program 3
 - Benefits, opportunities, and treatment for men's and women's teams 3
 - Athletic scholarships and financial assistance 6
 - Meeting students' athletic interests and abilities 8
- What to Do if You Think Your School's Athletic Program Violates Title IX 12

This resource is designed by the [Office for Civil Rights \("OCR"\)](#) of the U.S. Department of Education ("Department") to help college and university communities ("schools"), including students, coaches, athletic directors, and school officials evaluate whether a school is meeting its legal duty to provide equal athletic opportunity based on sex consistent with Title IX of the Education Amendments of 1972 ("Title IX") and the Title IX regulations.¹

This resource explains the rights that students have to participate in intercollegiate, intramural, or club athletic programs free from discrimination based on sex and may help you evaluate whether your school's athletic program is providing equal opportunity consistent with Title IX.

If you believe that your school may not be providing equal athletic opportunities based on sex, you may file a complaint through your school's grievance procedures or directly with OCR, as described on page

¹ Title IX says: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." You can find the full Title IX statute at [20 USC 1681-1683](#). You can find the Department's Title IX regulations at [34 CFR 106.106](#). The Title IX athletics regulation is at [34 CFR 106.41](#) and the athletic scholarships regulation is at [34 CFR 106.37\(c\)](#). In addition, the Department has published several guidance documents on Title IX and athletics that are linked in the Appendix. The examples and questions in this resource draw in part from those guidance documents but are not intended to be comprehensive of all of the guidance documents linked in the Appendix. While this resource focuses on men's and women's teams, please note that schools must also ensure equal opportunity based on sex on educational teams.

A Resource for Students, Coaches, Athletic Directors, and School Communities

- Keep an eye on DOE
 - "The Department will engage in a separate rulemaking to address Title IX's application to the context of athletics and, in particular, what criteria recipients may be permitted to use to establish students' eligibility to participate on a particular male or female athletic team"
- OCR released resources to assist with Title IX and Athletics
- NCAA Policy on Campus Sexual Violence (more next!)

CASE UPDATES

Participation Requirement (three-prong test)

- *Balow v. Michigan State Univ.* (6th Cir. Feb. 1, 2022)
 - Participation Prong 1: emphasis on participation gap and a "viable team"
- *Navarro et al. v. Fla. Inst. of Tech.* (M.D. Fla. Feb. 17, 2023)
 - Whether esports amounted to a genuine participation opportunity for Title IX counting purposes
 - 2008 Guidance Letter and *Quinnipiac* case

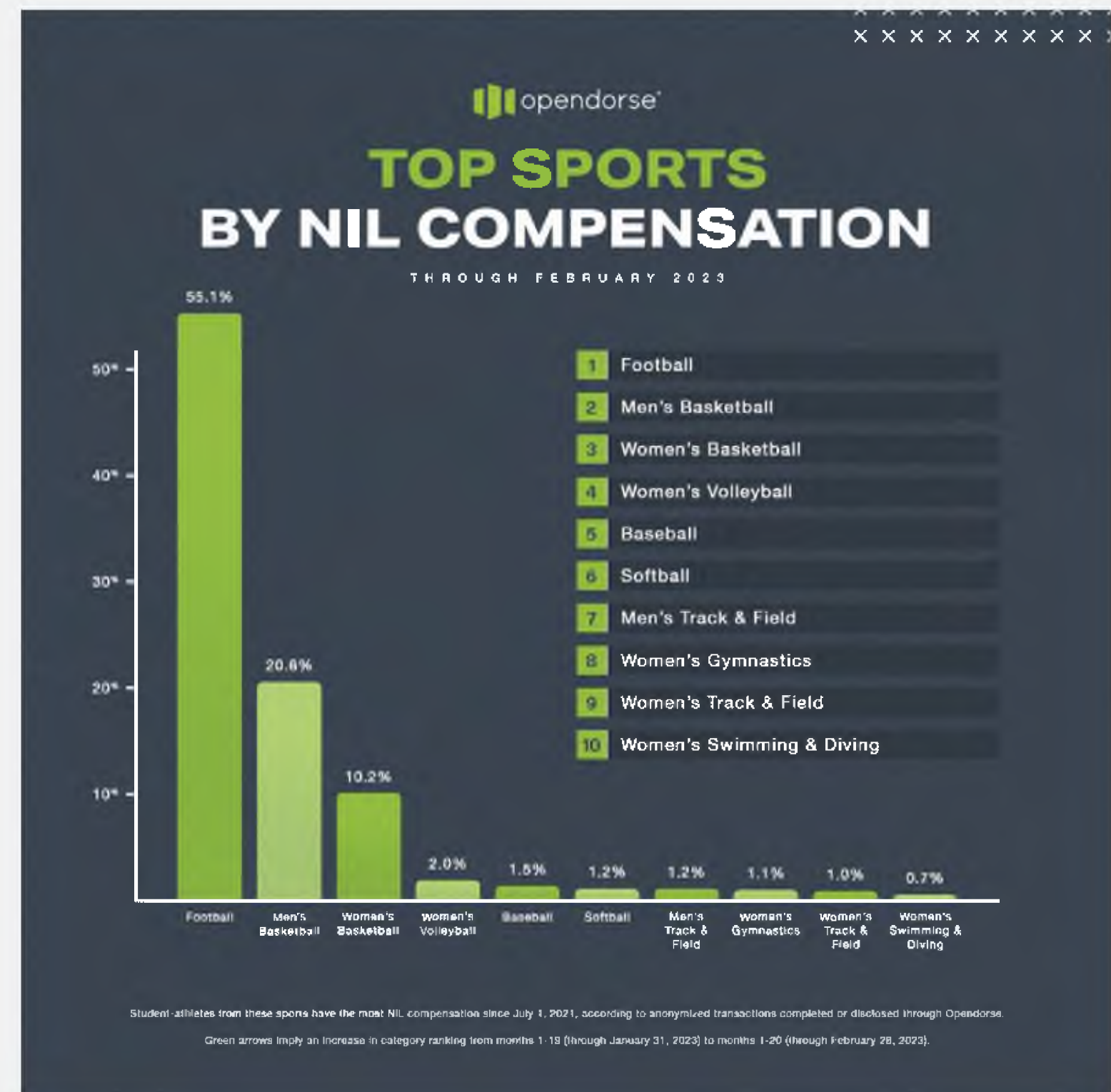
CASE UPDATES (CONTD)

- *Anders v. Cal. State Univ.* (E.D. Cal. Aug. 16, 2022)
 - Denied class certification
- *Becker, et al. v. The N. Dakota Univ. Sys.* (D. N.D. Jan. 9, 2023)
 - "Would be members" of the team did not have standing because they never enrolled
- *Portz v. St. Cloud State Univ.* (D. Minn. Sep. 7, 2022)
 - Dissolved the 2019 permanent injunction related to participation requirements, but kept intact the equal treatment and benefits regarding travel opportunities and per diem

NAME, IMAGE, AND LIKENESS UPDATE

THE STATS

- Football takes the lion's share, then men's basketball
- Around 16% of NIL compensation goes to women's athletes... more later!



opendorse
NIL INSIGHTS

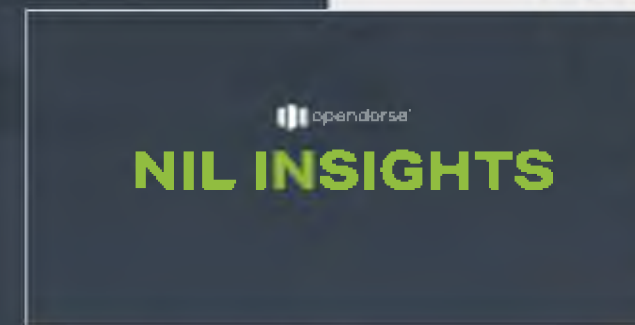
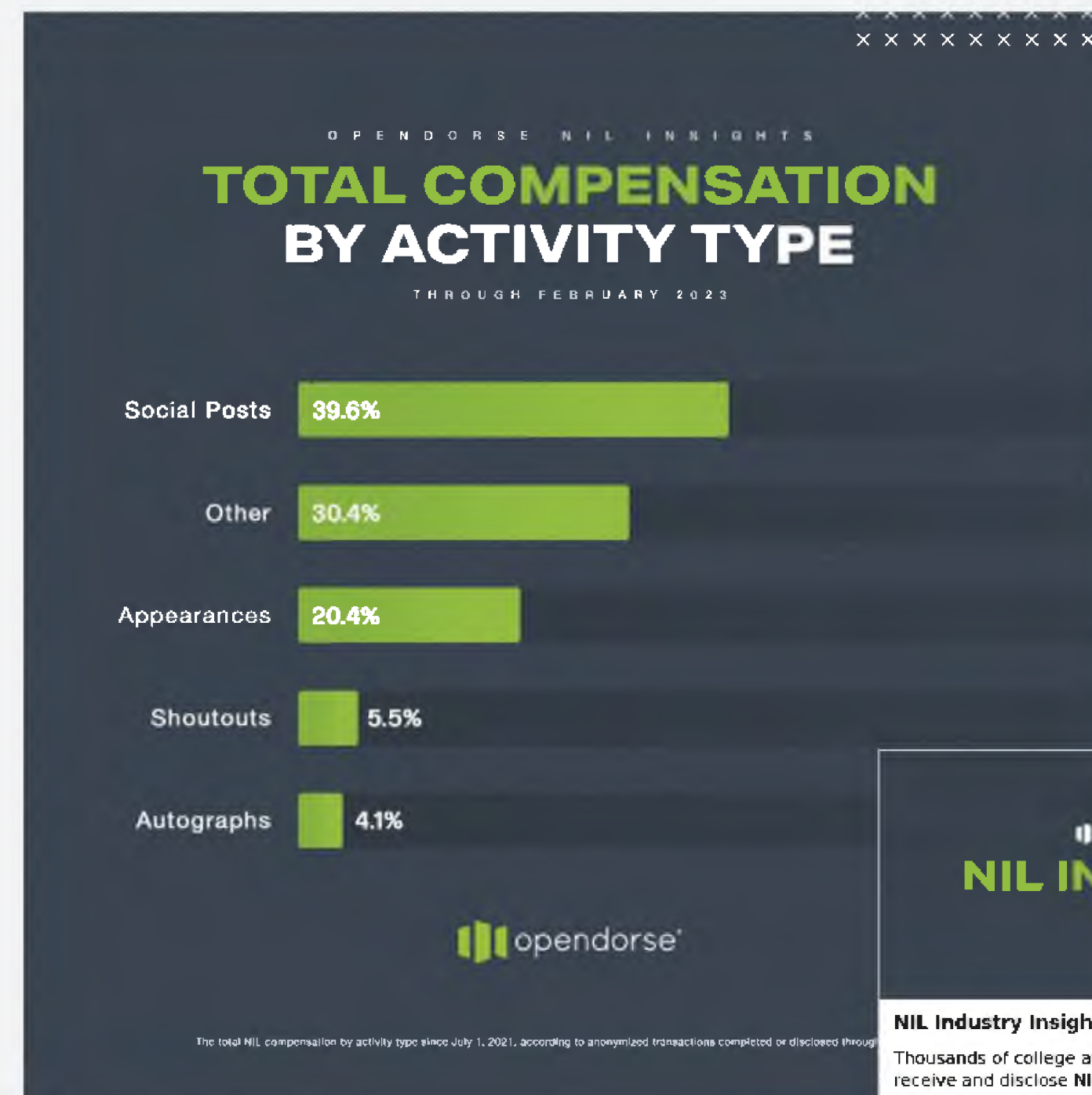
NIL Industry Insights

Thousands of college athletes use Opendorse to receive and disclose NIL deals, providing monthly insights into the industry.

Deals at every Level



What is "Other"?



NIL Industry Insights

Thousands of college athletes use Opendorse to receive and disclose NIL deals, providing monthly insights into the industry.

NCAA GUIDANCE

- **Boosters - Recruiting inducements**
 - Division I May 2022 NIL Guidance
 - Division II July 2022 NIL Guidance
 - Division III October 2022 NIL Guidance
 - NCAA Division I and II Third Party Involvement Policy Q&A
- **Institutional Involvement**
 - NCAA Division I Institutional Involvement in a Student-Athlete's NIL Activities

NCAA INTERIM GUIDANCE ON THIRD PARTY INVOLVEMENT

Collective
=
"booster"

A representative of athletics interests ("booster"), in part, is defined as an individual, independent agency, corporate entity (e.g., apparel or equipment manufacturer) or other organization promoting the institution's intercollegiate athletics program.

NCAA INTERIM GUIDANCE ON THIRD PARTY INVOLVEMENT

For All



NIL agreements must be based on an independent, case-by-case analysis of the value that each athlete brings to an NIL agreement as opposed to providing compensation or incentives for:

- enrollment decisions (e.g., signing a letter of intent or transferring),
- athletic performance (e.g., points scored, minutes played, winning a contest),
- achievement (e.g., starting position, award winner), or
- membership on a team (e.g., being on roster).

For Recruits



No conversations between Boosters and recruits (or family members thereof for recruiting purposes)



NIL agreements between a recruit and a Booster may not be guaranteed or promised contingent on initial or continuing enrollment at a particular institution.



Institutional coaches and staff may not organize, facilitate, or arrange a meeting between Boosters and a recruit.



Institutional coaches and staff may not communicate directly or indirectly with a recruit on behalf of a Booster.

For Current



NIL agreements between a recruit and a Booster may not be guaranteed or promised contingent on initial or continuing enrollment at a particular institution.

INSTITUTIONAL INVOLVEMENT

Permissible and Impermissible situations under:

- EDUCATION AND MONITORING
- SUPPORT FOR STUDENT-ATHLETE NIL ACTIVITY
- SUPPORT FOR NIL ENTITY/COLLECTIVE
- NEGOTIATING, REVENUE SHARING AND COMPENSATING

SUPPORT FOR STUDENT-ATHLETE NIL ACTIVITY

- Assistance with deal
 - Can inform student-athletes about potential NIL opportunities
 - Can work with an NIL service provider to administer a "marketplace"
 - Cannot engage in negotiations
- Services and equipment
 - Can provide stock photos/graphics and arrange a space for student-athletes to meet collectives
 - Cannot provide free services or offer equipment that are not available to the general student body
- Promotion
 - Can promote student-athletes' NIL activities, but...
 - Cannot allow student-athletes to promote while they are participating in required athletic activity

SUPPORT FOR NIL ENTITY/COLLECTIVE

- School personnel
 - Can assist an NIL entity with fundraising through appearances or by providing autographed memorabilia but cannot donate cash directly
 - Cannot be employed by or have an ownership stake in an NIL entity.
- Requesting funds from donors
 - Can request donors provide funds to collectives and other NIL entities, provided the schools do not request that those funds be directed to a specific sport or student-athlete.
- Tickets and suites
 - Can provide tickets or suites to NIL entities through sponsorship agreements, provided...

NIL RECENT DEVELOPMENTS

NCAA Enforcement

NCAA Infractions Case
regarding Miami (FL)
women's basketball had an
NIL piece related to
boosters + recruiting

Official Athletic Booster Clubs

Texas A&M is believed to be
the first school whose official
athletic booster organization
also is directly fundraising NIL
opportunities in this manner.

*New standard of review for evaluating NIL violations

WHERE WE ARE HEADED

- State law rollback
- Federal Legislation?
 - Breaking News: House Committee to hold public hearing on March 29th
- New NCAA President Baker's comments (3/12/23)

“

"I was in Washington last week. I'll be in Washington next week. Republicans, Democrats, house members, senate members, everybody I've talked to said that they are aware that this lack of transparency, this lack of accountability, the fact there is no standardization, there is no uniformity, there is no really quote-unquote market that anybody can see is a problem. And I think they're going to take it pretty seriously and maybe we'll get something done on that."

”

TITLE IX AND NIL?

- Closer a collective is aligned with an institution, the more likely Title IX will apply.
- As state laws are repealed, and institutions move closer to leading collectives, the Title IX risk will be even greater.

79% of compensation for women's sports athletes come from brand endorsement deals



NIL Collectives Are Slacking On Supporting Women's Sports

Only 34% of existing collectives offered compensation to women's sports athletes so far, an Opendorse report found.

 Front Office Sports Jan 10

NCAA ATTESTATION & FORM UPDATES

NCAA ATTESTATION

1

***ATTESTATION
OF
COMPLIANCE***

Division I and
Division III only

2

***DIVERSITY,
EQUITY AND
INCLUSION
REVIEW***

Division I only

3

***CAMPUS
SEXUAL
VIOLENCE
ATTESTATION***

All members

ATTESTATION OF COMPLIANCE

- Division I and Division III only
 - Each DI and DIII school or conference attest to compliance requirements for member schools, collaboration with the NCAA when an issue arises, and the importance of creating a culture of compliance on member campuses.
- Deadline: October 15
- Requirements: Each chancellor/president and director of athletics must sign

DIVERSITY, EQUITY, AND INCLUSION

- Division I institutions and conferences
- Deadline: August 1, 2023
- Responsibility to conduct a DEI review every four years as outlined in NCAA Bylaws 20.2.4.3 (institutions) and 20.3.4.2 (conferences).
- Requirements: Each chancellor/president and director of athletics must sign

NCAA POLICY ON CAMPUS SEXUAL VIOLENCE

- All members!
- Deadline: 2023 - TBD (was May 15, 2023)
- Requirements: Each chancellor/president, director of athletics and Title IX coordinator must sign

NEW POLICY ITEMS

4. Annual student-athlete disclosure/questionnaire
5. Institution takes reasonable steps to confirm student-athlete is being truthful
6. Written policy about collecting information from other schools

WHAT MISCONDUCT IS COVERED?

- Resulted in discipline through a Title IX proceeding
- Resulted in criminal conviction for sexual, interpersonal or other acts of violence

NCAA FORMS - DIVISION I

NCAA Division I Annual List of Required Forms and Actions

- January 15 deadline:
 - NCAA Membership Financial Report (President & AD)
 - NCAA IPP Health and Safety Survey (Athletics Health Care Administrator)
- February 15 deadline:
 - FBS Attendance Report (President & AD)

NCAA FORMS - DIVISION I

NCAA Division I Annual List of Required Forms and Actions

- June 1 deadline:
 - Federal Graduation Rate (Designated Institutional Personnel)
 - NCAA Graduation Success Rate (Designated Institutional Personnel)
- July 25 deadline:
 - Sports Sponsorship and Demographic Report (AD)

NCAA FORMS - DIVISION I

NCAA Division I Annual List of Required Forms and Actions

- August 31 deadline:
 - Report of Uses for Revenue Distribution (Designated Institutional Personnel & Conference)
- September 1 deadline:
 - Membership dues (AD, fiscal staff)
- Eight weeks after first day of classes:
 - Academic Progress Rate and Academic Performance Census (Designated Institutional Personnel)

NCAA FORMS - DIVISION I

NCAA Division I Annual List of Required Forms and Actions

- October 15 deadline:
 - **EADA Report** (AD and Designated Institutional Personnel)
 - Goes to the United States Federal Government Office of Postsecondary Education
- Annually:
 - **NCAA Catastrophic Sport Injury Reporting** (Designated Institutional Personnel)
 - **Concussion Reporting** (Designated Institutional Personnel)
 - Based on school's policy: **Athletically Related Income and Benefits**
 - On file at the school

NCAA FORMS - DIVISION II & III

Division II and III Compliance Forms

- October 15 deadline:
 - EADA Report (AD and Designated Institutional Personnel)
 - Goes to the United States Federal Government Office of Postsecondary Education

DI TRANSFORMATION COMMITTEE

Adopted:

- Holistic student-athlete benefits model and more health and safety guidelines
- More membership requirements
 - Education for student-athletes and staff on:
 - Mental health.
 - Strength and conditioning.
 - Nutrition.
 - Name, image and likeness.
 - Financial literacy.
 - Transfer requirements.
 - Career preparation.
 - Diversity, equity, inclusion and belonging.
 - Campus sexual violence prevention.

MORE UPDATES

Student-
athlete
employment

Student-
athlete health,
safety and
well-being

Student-
athlete
discipline and
speech

Student-
athlete privacy

LIGHTNING ROUND

Sports gambling

Revenue
Sharing

Conference
Realignment

THANK YOU!

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