ANSWERS TO THE MOST COMMONLY ASKED QUESTIONS ABOUT THE COLLEGE ATHLETE PROTECTION ACT
(revised February 25, 2014)

TABLE OF QUESTIONS

QUESTIONS AND ANSWERS

General

1. **Why do commercialized athletics programs within institutions of higher education need to have reforms initiated by Congress?**
   The following timeline reviews the origins of the NCAA's loss of control of collegiate athletics and explains why college athletes are now demanding a larger share of the revenues and a turn toward professional sport:
   - In 1973 the NCAA, under pressure from coaches and athletic directors, abandoned multiyear scholarships for one year renewable grants, which transformed big-time college athletes into a well-disciplined and relatively cheap source of exploitable labor.
   - In 1984, the University of Georgia and the University of Oklahoma, with the backing of the College Football Association schools, sued the NCAA on antitrust grounds, arguing that they were entitled to sell their TV rights to networks without NCAA interference. The Supreme Court agreed with the big schools and said the NCAA was a "classic cartel which was no different from any other business. Yet, because the ruling did not alter the players' amateur status, it produced raging capitalism for the big schools and their coaches while retaining socialist poverty for the athletes.
   - It took several decades for O'Bannon, other former athletes, the Justice Department and others to begin using the same tactic (antitrust law) as the College Football Association used in 1984 to attack the NCAA cartel. These forces of athlete interest appear to be making substantial progress in attacking the system that enriches coaches and athletic directors while ignoring the educational needs of college athletes. The current system, with its corruption and hypocrisy, may implode if the athletes win their antitrust lawsuit, which would be a good thing.
   - In 2011, the NCAA panicked and half heartedly made compromises to athlete interests such as making multiyear year scholarships optional and considering stipends to supplement athletic scholarships. The public is not buying it and the op-ed media, after decades of writing about "student athletes" and violations of "amateur" standards, suddenly realized that supporting pay for college athletes sells newspapers. Others have jumped on the bandwagon, accepting the notion that higher education is best served by openly paying the athletes and keeping them athletically eligible.
   - In 2013, The Drake Group is now taking a courageous step to work with other organizations to advance legislation that will restructure the NCAA to give equal voting power to all three NCAA divisions and truly - maintain a clear line of demarcation between collegiate sport and professional sport as played in the NFL and NBA. The focus of the CAP Act is on the education, health, and well-being of college athletes which should be the primary function of a national athletic governance organization. A limited antitrust exemption is proposed to eliminate some of the damage done by the 1984 Georgia/Oklahoma decision. Multiyear year scholarships that extend to graduation are mandated to break the current employee-employer relationship that has characterized Division I college sport. It is proposed that the new NCAA FBS football championship funnel millions of dollars to the college athletes to pay for educational, medical, and other benefits that go far beyond anything any other organization has ever conceived. As important, sham academic standards are discarded as more educationally defensible academic standards are mandated. The new educational model reflects The Drake Group's mission, as well as the goals of other supporting organizations, to protect the academic integrity in higher education from the corrosive aspects of commercialized college sport. Until this bill is passed,

the public should support wholeheartedly any action by athletes to defend their rights as workers, including unionization, access to workers compensation, salaries if money is available to them, etc. The current system should not be allowed to continue. If the O'Bannon lawsuit "breaks the bank," so be it.

There are two routes to social justice. One is to openly recognize athletes as the employees they have become. The other is to create a system where college athletes are an integral part of the student body. The current NCAA has failed miserably at the latter. It is time to stop this system from exploiting minorities in this country by funneling them into sports while dangling the carrot of professional sports opportunity, a hollow promise for all but a select few. It is time to legitimately prepare these students to serve in Congress, law firms, and on Wall Street or as teachers, social workers, or in other white collar jobs. Only a real education can do this. By fulfilling our promise of educating all college athletes will we deliver real social justice.

2. **What is the College Athlete Protection Act ("CAP Act") designed to accomplish?**

To amend section 487(a) of the Higher Education Act of 1965 and, thereby, ensure that higher education institutions that receive federal funds provide students participating in commercialized athletic programs with sufficient health and medical protection and prevent their academic or financial exploitation. The unprecedented commercialization of these intercollegiate athletics programs threatens the academic success of college athletes and the integrity of higher education institutions, creates excessive institutional expenditures and burdensome student fees, and has resulted in inappropriate financial benefits to individuals conducting those programs. The Act:

- provides remedies by addressing these issues;
- exempts from the antitrust laws certain conduct engaged in by national governance associations in order to restore the ability of these associations to combat commercial excesses in college sports and to maintain a clear line of demarcation between collegiate and professional sports;
- expands due process for persons accused of violating the rules of such Associations;
- provides increased scholarship support and injury and medical benefits to college athletes; and
- better enables institutions to comply with the athletics provisions of Title IX of the Education Amendments of 1972.

3. **The CAP Act prohibits higher education institutions with athletic programs that generate $1 million or more in revenues[1] from becoming members of a national nonprofit college athletic association unless the association conforms to minimum standards that protect athletes' health and welfare and prevent academic or financial exploitation. What are the minimum standards required of such an association?**

- Hold a limited antitrust exemption granted by Congress which enables the association to adopt rules that limit the negative effects of commercialized athletic programs on athletes and their institutions and protect the association's and institutions' revenues for use in advancing educational objectives. Such antitrust exemption would:
  - permit educational leaders to control the cost of intercollegiate athletics by capping operational expenses, including coaches salaries, without violating antitrust laws
  - increase the possibility of excess revenues over expenses benefitting institutional academic programs instead of being returned to athletics to fuel an "arms race"

[1] Generated revenues are defined as only those gross revenues earned by activities of the athletics programs including ticket sales, radio and television receipts, alumni contributions, guarantees, royalties, athletic governance association distributions, and other revenue sources that are not dependent upon institutional entities outside the athletics department such as student fees or institutional general fund subsidies.

- allow member institutions and conferences (bowls, etc.) to retain their current media rights fees, and other event-related revenues to enable them to continue to fund their athletics programs and capital facilities costs instead of being susceptible to lawsuits asking that such funds be distributed to currently eligible participating college athletes;

- Have a Board of Directors consisting of "independent" members and legislative controls that will restore Congress' s and the public's confidence that current employees of higher education institutions with commercialized athletics programs do not act based on financial self-interest rather than the well-being of college athletes and the integrity of higher education
- Maintain minimum college athlete academic conditions for participation to protect the academic integrity of higher education from the corrosive aspects of commercial college sports and protect college athletes from exploitation;
- Sponsor a football play-off/championship and use the media rights revenues from such championship ($470 -700 million annually[2]) to provide the following college athlete benefits
  - Fund an enforcement staff and process that requires member institutions, athletics employees, and athletes to receive a higher standard of due process protection and unbiased rules enforcement ($6 million annually)[3]
  - Provide athletics injury insurance (estimated cost of $120-180 million annually) and medical cost subsidies ($50-75 million annually) benefitting all athletes at no additional cost to member institutions and no cost to college athletes or their parents [4]
  - Ensure the continued existence of a catastrophic insurance policy providing the necessary level of benefits for seriously injured college athletes (estimated cost $15-20 million annually)
  - Allow full scholarship college athletes from the highest competitive division to receive the full Cost of Attendance (a federally defined cost standard used for all student financial aid) from the athletics budget, through substantial institutional subsidies funded by the association to the extent possible to permit institutions to provide such additional financial aid (estimated cost of $170 million annually[5]); and
- Establish an academic trust fund to assist those athletes who have not completed their undergraduate degrees or need assistance to pursue advanced degrees or similar educational opportunities, and to provide scholarship funds for non-athlete students. ($23.5 million annually)

4. **Is the CAP Act an attempt by Congress to control a private 501 (c) (3) organization?**
   No. Congress is authorized to establish conditions of eligibility for the receipt of federal funds by postsecondary educational institutions. The CAP Act prohibits institutions that wish to receive federal financial assistance from holding membership in a national athletic governance association that fails to meet minimal standards for the protection of students participating in commercialized athletic programs. An institution may either withdraw its membership in an association that fails to meet such standards or act in concert with other voting members to change the rules or the

[2] Note that all of the estimated costs and benefits mandated by the Act are approximately $478.5 million annually which is at the high end of a $403.5 to $478.5 million conservatively estimated range. The value of the current 4-team FBS play-off has already been established as $5.64 billion over 12 years or $470 million annually. This amount could easily increase to an estimated $700 million annually based on 8 team play-off, which would be a likely future for the NCAA championship.

[3] See Appendix C for a detailed estimate of these costs.

[4] See Appendix A for explanations of how these estimated costs were developed.

[5] See Question 46 and Appendix B for a full explanation of how this estimate was developed.

structure of that association to satisfy minimum standards. Thus, in the CAP Act, Congress operates well within the bounds of its authority to set conditions whereby postsecondary educational institutions can qualify for federal financial assistance. Those conditions happen to affect the NCAA because its member institutions receive federal funds and because the NCAA dictates the programmatic practices of those institutions. But the principal aim of the CAP Act is not to control the NCAA; rather, it is to ensure that postsecondary educational institutions receiving federal financial assistance protect the health, safety, equitable participation, and educational opportunities of their students who play commercialized college sports.

5. **Why doesn't the antitrust exemption apply to athletic governance associations other than the NCAA?**
   An antitrust exemption is only necessary for economic entities commercially successful enough that their activities are susceptible to a lawsuit alleging that those activities unreasonably restrain commerce. Among national athletic governance associations, only the NCAA generates sufficient revenues to potentially restrain commerce unreasonably, so only the NCAA conceivably has the need of an antitrust exemption. The exemption is warranted in the NCAA's case because the prospect of an antitrust lawsuit deters the NCAA from adopting reforms designed to control costs and enhance educational integrity in its members' athletic programs, thereby ensuring a clear line of demarcation between college and professional sports. The expenses and possible damages associated with litigation would consume funds the NCAA could otherwise distribute to member institutions to support their athletic or academic programs. Thus, giving the NCAA an antitrust exemption will benefit 1,066 institutions and more than 450,000 athletes in this country's only athletic governance association featuring commercialized athletic programs.

6. **Is an institution with an athletic program that annually generates $1 million or more, required to be a member of a national organization that meets the minimum standards of the CAP Act?**
   YES. If the institution of higher education is not a member of a national non-profit collegiate athletic association that fails to meet minimal standards for the protection of students participating in commercialized athletic programs, the Secretary of Education would be responsible for finding that institution in non-compliance with the Higher Education participation requirement.

7. **(a) Could all FBS institutions leave the NCAA and form a new national organization? (b) If so, would that association meet the requirements of the Act?**
   (a) YES.
   (b) NO. The granting of an antitrust exemption by Congress to a national association is based on distributing the revenues created by commercialized national championships to benefit the largest number of institutions of higher education and college athletes. The granting of the antitrust exemption to only a large collective of higher education institutions is also intended to minimize the possibility of a small group of highly commercialized athletic programs advancing their own interests, escalating an already excessive "arms race" and continuing to use generated revenues to escalate salaries of athletics personnel or building palatial athletics facilities rather than returning these funds to protect the health and welfare and support the education of college athletes or support the institution's general fund. This large collective requirement coupled with the requirement of a Board of Directors consisting of independent directors with balanced educational interests is intended to maintain a college athlete educational focus. If FBS institutions leave the NCAA and ignore the importance of the antitrust exemption, these institutions put all of their athletics revenues at risk for litigation such as the O'Bannon lawsuit. The Act, specifically its

antitrust exemption, offers specific protections allowing institutions to retain all revenues (see Section (D)) generated from the conduct of athletics events.

8. **The CAP Act requires that higher education institutions with commercialized athletic programs (programs that generate annual revenues of $1 million or more), be prohibited from being a member of a national non-profit college athletic association, unless that association, among other requirements, offers national championships in all sports governed by the association, including a national championship for the most competitive football membership subdivision. Further, the Act requires that the association use income from such a valuable championship to provide increased benefits to college athletes. Does this change result in a major redistribution of revenues?**

YES. The CAP Act proposes a major increase in direct athlete benefits and major decreases in institutional spending on exorbitant coaches' salaries, palatial athletics-only buildings and the football and basketball arms race that has resulted in FBS schools now spending 78% of all men's sports operating expenses on two sports (men's basketball and football)[6] and being the only membership division that is terminating sponsorship of men's "minor" sports.[7]

The CAP Act is based on the belief that, like the media rights to the NCAA Basketball Final Four, media rights to all football national championships in which NCAA members participate should be NCAA property and should benefit all members. As soon as the FBS moved away from individual bowl games with no national championships (ostensibly to create less pressure on football athletes) and created the FBS national play-off, widely accepted as determining a national champion, this property, like all national championships, should have become an NCAA property. FBS institutions should not have been entitled to keep this newfound gain to benefit only themselves. Thus, the CAP Act would result in a major change away from such revenues only benefitting a small group of institutions and athletes (124 FBS institutions) to increased benefits for more athletes. Specifically, the proposed NCAA FBS national championship money would be used to fund increased insurance and medical benefits for all 430,000 NCAA athletes, plus a substantial distribution to NCAA Division I athletes for financial aid increases to permit full athletic scholarships that include a student's full cost of attendance and educational grants to athletes who have completed their eligibility. The NCAA should also be able to increase institutional subsidies, with FBS schools most likely receiving the bulk of these subsidies, based on their higher participation numbers and scholarship expenditures. In other words, FBS schools will still receive a substantial proportion of NCAA FBS national championship funds, but they must use those funds to provide benefits to athletes. Further, even more NCAA funds will be available for distribution because the proposed NCAA limited antitrust exemption will improve NCAA credit ratings and reduce legal costs. Many athletic

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[6] The percent of operating expenses spent in men's NCAA sports:

Division	Football	Men's Basketball	FB/BB	Other Men's Sports
D-I FBS	**59%**	**19%**	**78%**	**22%**
D-I FCS	46%	22%	68%	32%
D-I No FB	0%	55%	55%	45%
D-II	32%	23%	55%	45%
D-III	27%	16 %	43%	57%

[7] 2011-12 NCAA sports sponsorship data reveals that during the 1988-89 through 2011-12 period, Division I experienced a net loss of 315 men's teams compared to net gains of 386 in Division II and 570 in Division III. All divisions showed net gains in the number of women's teams added over this same period (737 in Division I, 963 in Division 2 and 1283 in Division III)

programs will also realize significant savings from caps on coaches' salaries and sport operating budgets.

9. **Why is it necessary for Congress to intercede in the operation of higher education athletics programs?**

Absent an antitrust exemption, which only the Congress can provide, any large collective of higher education like the NCAA would be subject to lawsuits for implementing reforms designed to make college sports more compatible with higher education (e.g., ending weeknight football games, reducing the length of competitive seasons, restricting starting times for weeknight basketball games, etc.) that would also have commercial consequences. A limited antitrust exemption that applies only to actions whose primary purpose is to make college sports more compatible with higher education will enable institutions to collectively enact needed reforms without fear of legal liability. But the exemption will not apply to activities whose primary purpose is commercial (e.g., selling DVD's of "classic" college games).

A limited antitrust exemption will reduce the national association's costs for legal counsel, damages and debt service. Such savings should be used to advance the association's non-profit purpose.

To a large extent, Congress has been responsible for the increased commercialization of athletics and its concomitant pressures on academic integrity because of the tax preferences granted to athletics. Tax preferences enjoyed by athletics programs include (1) donations to athletics programs being considered tax deductible, including 80% of donations providing the donor with athletic event seating preferences, (2) net revenues from commercial activities such as ticket sales, sponsorships, licensing fees and royalties, and television rights fees not being considered "unrelated business income" subject to income taxes, and (3) athletics programs being permitted to use tax exempt bonds to build athletics facilities. These tax preferences are reasonable as long as controls exist to prevent the excesses that occur when the use of revenues is not balanced against the educational purposes of the athletics activity. This bill uses the leverage of a limited antitrust exemption to ensure that institutions taking the most advantage of such tax preferences will remain within the NCAA and run educationally sound athletic programs.

All elements of the CAP Act depend on each other, and only Congress has the power to control all elements via one piece of integrated legislation. Simply put, establishing a football national championship or play-off as a national governance association property provides the funds necessary to increase insurance and other health benefits, furnish scholarships up to the full cost of education, and establish an academic trust fund for athletes as well as funding a fairer national association enforcement process with no additional cost to financially strapped institutions. This is how non-profit entities should use athletics media rights revenues. The significant benefit of an antitrust exemption should keep all FBS schools within their current national association. The limited antitrust provision allows the national association to control athletics program costs and reduce the impact of commercialism on academic integrity. The restructure of the national athletic association governance system to install independent directors removes the self-interest that allowed commercial interests to control the direction of educational sport.

Further, there is precedent for Congress's involvement in national sport programs with high commercial viability. The Ted Stevens Olympic and Amateur Sports Act created the United States Olympic Committee (USOC) as a non-profit corporation and gave the USOC the right to commercially exploit the Olympic rings in return for conditions of operation related to affording athletes due

process rights and other similar sport program conduct conditions. The Act even specified the composition of the Board of Directors, including by requiring a majority of "independent" directors, similar to the requirements of this Act.

College athletics is at a crossroads. Congressional leaders concerned about the impact of highly commercialized athletics programs on the integrity of higher education in the United States have both the right and the obligation to act. Educational leaders should support such Congressional action to restore the educational integrity of athletics programs and create a more functional national athletic governance association. The alternative is to mandate that commercially successful programs leave their non-profit educational institutions and the financial advantages and protection non-profit status affords to incorporate as professional sports teams and pay taxes and player salaries. The CAP Act is designed to accomplish the return to academic integrity and to ensure viable college sports programs that are not professional.

10. Does the CAP Act perpetuate the exploitation of college athletes, especially athletes from lower socio-economic backgrounds?

NO. The CAP Act mandates multiyear athletic scholarships that extend to graduation. These scholarships cannot be canceled for athletic performance or injury. College scholarships valued from $150,000-$250,000 are priceless and provide an unprecedented opportunity for athletes from disadvantaged economic backgrounds. The CAP Act also provides medical benefits (insurance, including deductibles and co-pays for families who cannot afford insurance or whose insurance does not cover athletics injuries). The CAP Act is a model for ensuring that athletes receive educational opportunities consistent with those afforded all students, overseen by non-athletics affiliated faculty. The CAP Act specifies the academic, health, welfare, and due process rights of athletes from all backgrounds. By requiring high academic standards, the Act can bring about a cultural change in the relationship between minorities and higher education. The academic trust fund created by the CAP Act will provide opportunities never before offered, especially for those athletes who were unable to complete their college degrees prior to the exhaustion of athletics eligibility.

11. Are other educational associations or groups supporting the CAP Act?

The CAP Act was initiated, in part, as an educational project of The Drake Group. An independent group of experts was assembled to draft both the bill and anticipated questions and answers regarding the bill. The bill was constructed using many of the athletics position statements developed by respected educational associations. The draft was sent to the following education or educational sport related organizations with a request for those organizations to consider signing on as supporters of this initiative.

- Faculty Athletic Representatives Association (FARA)
- Coalition on Intercollegiate Athletics (COIA)
- American Council on Education (ACE)
- American Association of State Colleges and Universities (AASCU)
- Association of American Universities (AAU)
- Association of Governing Boards (AGB)
- American Council of Trustees and Alumni (ACTA)
- Knight Commission on Intercollegiate Athletics
- National Association of Academic Advisors for Athletics (N4A)
- National Association of Collegiate Directors of Athletics (NACDA)
- National Association of Collegiate Women Athletics Administrators (NACWAA)

- National Association of Collegiate Directors of Athletics (NACDA)
- Black Coaches Association (BCA)
- Women's Sports Foundation (WSF)

12. **Why should Congress give one national athletic governance association like the NCAA monopoly power to govern the most commercialized athletics programs when the NCAA created the current dysfunctional system in the first place?**
The CAP Act does not support the "old" NCAA. The CAP Act creates a new model for national athletic association governance that better fits the realities of the 21st century. The proposed board of "independent" directors gives equal representation to all membership divisions and includes former college presidents, governing board members, tenured faculty, athletic directors, and college athletes. This board, coupled with the educational conditions set forth in the CAP Act, is structured to guide a more educationally oriented and less commercially influenced organization. Due process requirements will give new protections to athletes, institutions, and athletic department employees. These protections alone represent a giant leap beyond the current NCAA. Further, additional "conditions" required by the Act remove rules that have allowed Division I programs to exploit college athletes for revenue gain (e.g., one-year renewable athletic scholarships that can be canceled for any reason, and rules that allow athletes with limited academic skills to participate as freshmen). The Act also delineates important rights of athletes to insurance and medical protections as well as to freedoms currently enjoyed by non-athlete students. Last, funding mechanisms, such as the highest competitive level national football championship of which the newly structured NCAA will be the sole owner, have been put in place to effect these changes without additional costs to institutions of higher education that are already economically strapped.

13. **Why does the CAP Act generally spread the financial largesse of big-time college sports over all competitive divisions when big-time college football and basketball are the real moneymakers?**
Each national association member institution retains the proceeds from the athletics events it conducts to provide athletic program benefits to its athletes. Each member conference retains the proceeds from the conference championships or other events it conducts, eventually sharing these revenues with all conference members who in turn provide these benefits to their respective athletes. Likewise, the national association shares the wealth of its national championships to benefit all of its member institutions and athletes. In many cases the national association wealth-sharing formulas give the highest competitive division institutions larger shares because these programs support more participants and award more scholarships. In fact, assuming the NCAA passes legislation to meet the standards established by the Act, NCAA Division I institutions have received in the past and presumably will continue to receive the bulk of the NCAA Final Four Championships revenues and a substantial Division I student assistance funds. In some cases, however, as the CAP Act proposes, benefits are deemed to be so important that they should be provided to all college athletes regardless of competitive division. Currently, the NCAA funds drug-testing programs, injury surveillance programs, athletics best practices handbooks and leadership programs, and other programs that benefit all members. Similarly, the CAP Act proposes that the proceeds from the highest valued football national championship be designated on a priority basis to pay for (1) an umbrella policy covering athletics injury at all NCAA institutions, (2) increases in catastrophic injury coverage for all athletes at all NCAA institutions, and (3) the increased cost of a better enforcement system in which due process is guaranteed to coaches, athletes, and employees at all member institutions. The CAP Act also proposes Division I dedicated funds. Close to 40% of the new NCAA football championship proceeds will be designated to provide Division I athletes full athletics scholarships up to the cost of attendance permitted by federal rules.

The collective participation of all member institutions results in a competition hierarchy and quality of competition that creates public and media interest in seeing "the best." The public appreciates that college athletes are not, and most will never be, professional athletes and that athletics programs contribute to campus culture, alumni affinity, and community, state and alumni pride in their educational institutions. The teams that win or are consistently successful do not own these national championship proceeds. These proceeds should benefit the non-profit association's collective membership, which made the championship possible and should serve the mission of the national non-profit association instead of being shared by a small number of successful teams.

The CAP Act is designed to restore this clear line of demarcation between collegiate and professional sports and to treat the health, welfare, and educational benefits of all athletes as primary. America's collegiate sport model is recognized worldwide as being superior to other elite athlete development models and should be retained.[8]

Limited Antitrust Exemption (CAP Act/Sec. 4-30 (A))

14. **Why is a limited antitrust exemption necessary to reform collegiate athletics? (CAP Act/Sec. 4-30 (A))**

Without a limited antitrust exemption, the NCAA or any national governance association whose members include the majority of commercially successful athletic programs could be sued (as in the past) on antitrust grounds for restricting commercial activities that are not in the best academic interests of college athletes. Examples of such restrictions include:

- Control of conference realignment to prevent unreasonable travel and classes missed. An antitrust lawsuit might allege that such rules would prevent some institutions from penetrating new markets and realizing increased revenues.
- Control of the scheduling of athletic contests to limit classes missed during the week. In an antitrust lawsuit, institutions might maintain that not allowing competition to occur on all days of the week limits media exposure and revenues.
- Control of national championship revenues and their distribution among members to benefit the academic and welfare needs of the largest number of athletes. Legislation prohibiting a small group of institutions from owning and benefitting from a national championship or play-off property could be grounds for an antitrust lawsuit.

Furthermore, without a limited antitrust exemption, the national association could control excessive athletics program spending or student fees that subsidize athletics budgets and divert resources away from academic needs or increasing the college costs for general students. Examples include:

- Coaches' salaries that far exceed those of the highest paid faculty, college presidents, and leaders of other extracurricular activities on campus. The NCAA lost an antitrust suit when it tried to limit the salaries of part-time coaches.
- Excessive spending on stadiums and other athletic facilities restricted for athletes' use only which spending strains university budgets, often draining money from the university general fund and escalating student fees.
- An athletic arms race for college sport's "Pot of Gold" that creates pressure to win at all costs, even if that means widespread cheating to keep athletes eligible and the lowering of academic standards to recruit athletes who may not be academically qualified.

[8] See Pat Doble on "Athletic Development: Collegiate Model vs. Nationalism or Apprenticeships" at http://pointofthegame.blogspot.com/2013/09/athletic-development-collegiate-model.html

Further, the costs of such lawsuits, both in legal fees and damages, are extraordinary. The NCAA's past efforts to restrict the earnings of part-time coaches cost it $54 million dollars, excluding legal fees. The NCAA's past efforts to limit full scholarship expenditures cost it $10 million dollars.

Without the limited antitrust exemption, the national association cannot enact reforms designed to improve the educational integrity of college sports or reduce the time and commercial pressures on athletes without risking a lawsuit alleging unreasonable interference with economic competition in the marketplace. Because of the economic implications of national association actions for broadcasters and sponsors, the national association needs a limited antitrust exemption so it can cap coaches' salaries, reduce the length of competitive seasons, or implement other reforms aimed at making college sports less commercially driven and fairer to the athletes.

See also Questions 1 and 5.

15. **Does the "limited antitrust exemption" give the national athletic governance association unfettered freedom to violate antitrust laws? (CAP Act/Sec. 4-30 (A))**

NO. The antitrust exemption is "limited" to only those rules and categories of rules specified in the act, which are rules whose primary purpose either (a) enhances educational opportunities for athletes, (b) protects and health and well-being of college athletes, or (c) makes athletics programs more compatible with the educational mission of the university. The exemption is also contingent on all national association member institutions' compliance with the requirements of the CAP Act, which restrict the conduct of college athletics programs by:

- Specifying use of championship revenues to fund athlete insurance and/or medical cost/scholarship cost subsidies
- Conditioning college athletics participation on maintaining a minimum grade point average of 2.0 with a cancellation of financial aid if one's cumulative grade point average over two semesters falls below 2.0
- Mandating scholarship terms that extend to five years or graduation and prohibiting revocation based on a coach's evaluation of athletics performance
- Conditioning freshman participation eligibility on athletes achieving standardized test scores and high school GPAs fall within one standard deviation of the general student body
- Requiring each institution to have a faculty academic oversight committee that annually reports academic integrity data to the institution's faculty senate
- Mandating baseline testing, education and prevention programs for high medical risk conditions (concussion, sickle cell trait, etc.)
- Requiring that a licensed physician be responsible for return-to-play decisions following injury
- Prohibiting coaches from reaping extraordinary salaries from an artificial "marketplace" where there is no paid labor force, as if they were operating in the professional sports marketplace

The proposed exemption is limited to educationally based reforms, so it would not apply to any national association activity that is primarily commercial, such as selling media rights or marketing videos of classic college games. When engaged in primarily commercial activities, the national association would be subject to the restrictions imposed by the antitrust laws.

See also Question 5.

16. **Does the antitrust exemption proposed in the CAP Act negate the O'Bannon lawsuit? (CAP Act/Sec. 4-30 (A) (vi) and (E))**

NO. By and large, the CAP Act and the O'Bannon lawsuit are apples and oranges because the Act extends an antitrust exemption only to national athletic association actions that focus primarily on education, whereas the O'Bannon lawsuit is concerned with purely commercial activities, namely, marketing the names, pictures, and likenesses of current and former college athletes.

The CAP Act and the lawsuit are related only in the limited sense that they both address the prospect of current college athletes being paid for the commercial use of their names, pictures, and likenesses. But the CAP Act permits payments to athletes for product endorsements, modeling, etc. during the period of their collegiate eligibility only if the athletes' institution and collegiate sport are not identified. The O'Bannon suit contemplates no such limitation, and it seeks to compensate college athletes from athletics revenues, which the CAP Act prohibits.

Besides, the Act and the O'Bannon lawsuit address different subjects. The Act is primarily about enhancing the educational integrity of college sports, whereas the O'Bannon lawsuit is primarily about forcing the NCAA to compensate former college athletes for the NCAA's longstanding commercial use of their names, pictures, and likenesses.

17. **Why is it important for there to be a distinction between "pay for play" (or a cut of revenues generated by athletics events or other commercial ventures) received by professional athletes and no "pay for play" (or cut of revenues generated by athletic events) received by eligible college athletes under the CAP Act? (CAP Act/Sec. 4-30 (E) (i))**
Under common law, an employee is a person who performs services for another under a contract for hire, subject to the other's control or right to control, in return for payment. Workers' Compensation law adds the right to discipline or fire to the definition of employment. Athletes in professional leagues fit this definition. They pay taxes on their salaries and their employers are required to pay workers compensation, social security and other taxes, and athletes can be fired for poor performance.

Under the CAP Act, college athletes bear no resemblance to professional athletes. As students, college athletes will receive multiyear athletic scholarships that extend to graduation. Because these scholarships cannot be canceled or gradated on the basis of performance, an athlete's contribution to team success, or injury, the "right to fire," which is essential to employer-employee relationships is lacking. An athletic scholarship is an award bestowed on a talented athlete, not a contract for hire or a payment for services rendered.

Most colleges and universities could not afford to conduct athletics programs if athletes were salaried employees. In fact, in 2012, only 23 of more than 1000 NCAA member institutions with earned revenues that exceeded their expenses. Openly paying salaries and other labor market considerations would not only be disruptive to the academic culture, but would further isolate college athletes from the general student body.

The primary purpose of an athlete's attendance at a college or university under the CAP Act is to pursue higher education that leads to a degree. Athletics participation is secondary to academic study, and athletics programs are extracurricular activities in the same genre as drama or dance productions, debate programs, or musical performances, albeit more commercially successful.

<u>The proceeds of athletics events are shared with athletes but not in the form of salaries or employment.</u> Rather, the college athletics model uses revenues for not-for-profit educational purposes. These purposes include providing athletes with many benefits:

- athletic scholarships that support athletes achieving higher education degrees
- medical treatment, paying medical expenses and providing injury insurance
- academic support programs
- the services of highly qualified coaches who teach sport skills
- safe athletics training and competition facilities
- equipment, uniforms, and supplies
- transportation and accommodations for away competitions
- other program-related benefits

The CAP Act continues to support this important distinction between the collegiate and professional model. A scholarship is a multiyear commitment extending to the completion of the athlete's baccalaureate degree. NCAA member institutions currently award over $2.3 billion each year in athletic-related financial aid to support college athletes' educational expenses. The CAP Act would allow Division I athletic programs to increase these awards to athletes by approximately $180 million to add a "cost of attendance" benefit, funded from the national association's new highest competitive division national football championship proceeds. In addition, it is anticipated that the NCAA will continue to provide over $75 million dollars per year to Division I institutions in athlete assistance funds for special needs such as travel home in the event of a family emergency, and other extraordinary needs.

This basic distinction between college sport as an extracurricular educational activity and college sport as professional employment that makes the NCAA and its member institutions qualify as non-profit organizations. Students don't get taxed on their athletic scholarships benefits. Institutions don't get taxed on athletics events revenues. Donations to athletics are tax deductible. Because of these tax preferences and other benefits, colleges and universities should not be conducting professional sport programs. College athletics must retain its primary educational purpose; this is the central purpose of the CAP Act.

Board of Directors Consisting of "Independent" Members (CAP Act/Sec. 4-30 (B))

18. Would the Board of Directors proposed by the CAP Act create another layer of bureaucracy within the NCAA if adopted? (CAP Act/Sec. 4-30 (B))

NO. The Board of Directors would replace the current NCAA Executive Committee as the highest legislative/executive structure and would assume all of those functions. The proposed new Board is more inclusive and because none of its members are employed or currently serving member institutions, there is a reduction in potential conflicts of interest. The primary differences between the current NCAA Executive Committee and the Board of Directors proposed by the CAP Act are:

- All divisions would be equally represented; currently, Division I is overrepresented
- All stakeholders—college athletes, athletic directors, faculty, governing board members, and presidents are represented, not just college and university presidents.
- Members must not be currently employed by member institutions or participating in athletics in order to avoid conflicts of interest
- Members must act in the best interest of the organization, not the institution or membership division they represent
- All members are nominated based on their expertise and past experience in athletics

19. **Why is a national association Board of Directors consisting of "independent" members, as proposed by the CAP Act, essential to the achievement of collegiate athletics reforms? (CAP Act/Sec. 4-30 (B))**
    - Board members who are not currently employed by and dependent on their member institutions will remove the perception and reality of a conflict of interest in making decisions that benefit those institutions. For instance, currently, the NCAA Executive Committee and Divisional presidents and legislative councils consists of members who are current employees of the institutions that will benefit from that board or council's decisions. For example, these decisions:
        - affect the distribution of revenues to members;
        - enable members to create more revenues as a result of manipulating eligibility rules that allow academically deficient college athletes to continue playing or use the names, images and likenesses of athletes in commercially inappropriate ways; and
        - enable Division I to follow a commercial path often in conflict with educationally sound decisions because the Board is overrepresented on the executive committee and the Division I Board of Directors
    - College presidents have demonstrated an inability of college presidents to successfully confront alumni and commercial pressures to exploit student-athletes[9]
    - College presidents have also demonstrated an inability of college presidents to make changes necessary to control the spiraling costs of big-time college sports
    - The Knight Commission, a similarly constructed board of retired athletics experts, has demonstrated that removing the conflict of interest created by current employment enables better oversight and stronger commitments to educational values.
    - An independent group of educators not susceptible to internal or external pressure is necessary if the line between collegiate and professional sports is to be maintained.
    - The current system does not adequately protect students from excessive time commitments to athletics, such as the 45 hours per week in athletics related activities spent by Division I football players[10] that affect class attendance and study time
    - Only such an independent governance structure, with the assistance of a limited antitrust exemption, can control the cost of collegiate athletic programs so that student fees and institutional general funds supporting academic offerings do not reach excessive levels.
    - The expenditure of NCAA revenues to support athlete benefit programs across all membership divisions requires board members, currently unaffiliated with member institutions, who are less susceptible to pressure from governing boards, donors, fans, and coaches than board members who are sitting college presidents might be.

20. **Is there any precedent for Congress to intervene in the operation of a non-profit sport association, to require independent members serving on an athletics governance organization board of directors, or to set conditions for the conduct of sport programs? (CAP Act/Sec. 4-30 (B))**
    In 2004, Congress threatened to reopen and amend the Ted Stevens Olympic and Amateur Sports Act to require a smaller and more independent United States Olympic Committee Board of

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9 See 2009 Knight Commission Survey of FBS college presidents, available online at: http://usatoday30.usatoday.com/sports/college/other/2009-10-26-knight-commission_N.htm

10 See http://usatoday30.usatoday.com/sports/college/2008-01-12-athletes-full-time-work-study_N.htm and http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Research/Student-Athlete+Experience+Research for further data and discussion.

Directors. A Congressional committee was assembled for that purpose, but before it could act, the USOC bowed to Congressional pressure by amending its own Bylaws to accomplish that purpose. Congress was concerned with the dysfunction of a 125-member representative Board of Directors and believed the smaller, more independent board would remove the inherent conflicts that occur when the recipients of financial and other benefits created by Board decisions are members of that Board. The United States Olympic Committee is a 501 (c) (3) organization that is federally chartered but is not a government entity (not funded by the government except for select Paralympic military programs).

21. Does the more independent Board of Directors proposed in the CAP Act undermine member institution participation in the generation of athletics rules and regulations? (CAP Act/Sec. 4-30 (B))

NO. The CAP Act requires every member institution to have a vote and voice in divisional deliberative assemblies for the discussion and adoption of legislation. In areas for which the new Board of Directors of independent directors has sole authority, the membership may continue to advance such legislation through the divisional management councils to the new Board of Directors for approval and, the entire membership voting in deliberative assembly may overturn any action of the Board of Directors or any membership division or subdivision by three quarters vote. In areas in which membership divisions and subdivision have legislative authority, divisional or subdivision membership vote is determinative except that a two-thirds vote of the new Board of Directors may amend or repeal such legislation. Should the NCAA adopt CAP Act standards, it is anticipated that current committees and cabinets formed to consider legislation in areas like championships, recruiting, academic issues, etc., will continue to exist to insure the participation of expert groups in the development of legislation. Current presidents' councils and management councils will continue to operate. The current NCAA Division I Board of Directors would need to change its name to avoid conflict with the new Board of Directors that would replace the current Executive Committee.

22. What is the theory behind the composition of the CAP Act's proposed more independent Board of Directors? (CAP Act/Sec. 4-30 (B))

- **Broader Representation of Stakeholders.** All stakeholders – presidents, governing board members, college athletes, faculty, and athletic directors are represented with former college or university presidents holding 40% of the vote as contrasted with the current NCAA Executive Committee which consists entirely of presidents and trustees currently employed by or serving member institutions. Currently serving college presidents are overrepresented on the proposed new Board of Directors because this institutional official ultimately is administratively responsible for the conduct of athletic programs. But the structure fails to recognize the important interests, perspectives, and expertise of other groups that deserve both voice and vote. With 40% of the vote, college presidents must garner the support of other stakeholder groups, including student-athletes, to adopt legislation and must consider the relative interests of all stakeholders.
- **More Educationally Balanced Representation.** Currently, the NCAA Executive Committee consists of 20 members. The NCAA president and the chairs of the Division I Leadership Council and the Division II and Division III Management Councils serve as ex officio nonvoting members, except that the NCAA president is permitted to vote in the case of a tie among the 16 voting members of the Executive Committee who are all college presidents or chancellors. Of these 16 members, 12 are from Division I, two from Division II, and two from Division III. Of the 12 Division one members, eight are from the FBS, and two are from the FCS. Thus 12 of the 16 voting members of the Executive Committee represent the member institutions with highly

commercialized football and basketball programs. The CAP Act's proposed composition of the Board of Directors equally balances Divisions I, II, and III.

- **Reduction of Conflict of Interest.** CAP Act requirements are intended to significantly reduce conflict of interest. By definition, no person can serve as a director if that person is currently serving, or within the two years prior to nomination, or during an elected term, has served as a president, member of a governing board, faculty member, college athlete, athletic director and/or other paid employee of an NCAA member institution. Members are specifically charged with the exercise of governance responsibilities in the educational interest of all college athletes rather than the interest of any member institution, conference, or membership division.
- **Diversity Mandate**. The CAP Act requires that all slates of nominations and the election of Board members reflect diversity of gender, race, and ethnicity. Assembling diverse slates of nominees should be easier because nominating groups will draw from larger populations of position holders who represent diversity. Despite a legislated diversity mandate, the 2012-13 NCAA Executive Committee was only 15% female and 15% ethnic minority. [11]
- **Expertise.** The CAP Act requires that Executive Committee members be highly qualified in athletics governance. Except for college athlete nominees, each nominee shall have previously served for no less than five years in a leadership position directly related to the oversight of intercollegiate athletics or, in lieu of such leadership experience, have demonstrated expert knowledge of intercollegiate athletics and dedication to the health and educational advancement of student-athletes and higher education. Choices from among the best leaders who have ever served will be a larger pool of potential candidates than choices from among only those leaders currently serving. Each college athlete nominee shall have completed four years of eligibility, earned a baccalaureate degree, and completed his or her eligibility within 10 years of the time of election.

23. Why does the composition of the proposed Board of Directors not give additional voting power to Division I institutions responsible for generating the majority of the NCAA's championship resources? (CAP Act/4-30 (B))

Under the CAP Act, members of the Board of Directors do not "represent" their former institutions or various membership divisions. They are obligated to act for the general welfare of all athletes, all member institutions, and collegiate athletics as a bona fide higher education extracurricular activity. Weighting voting power to give more power to commercialized programs in the national association, as demonstrated historically within the NCAA, supports increased commercialization, increased athletics program expenditures to compete in the "arms race", and an erosion of academic integrity as reflected in a dramatic increase in major academic fraud cases[12]. Under the CAP Act, national association member institutions and member conferences will continue to own and control the revenue proceeds from their own properties (regular season and conference athletics events). The national association's championship proceeds belong to the organization as a whole and not any subdivision no matter which institutions are more instrumental in generating such revenues. These proceeds should benefit all college athletes and members governed by the association. The obligation to benefit all members does not preclude an independent association

[11] During the course of the 2011-12 twenty-seven different individuals served in the 20 designated positions due to changes during the course of the year. Four women and 23 men served. Four ethnic minorities and 23 non-minorities served.

[12] See http://www.insidehighered.com/news/2011/02/07/ncaa_punishes_almost_half_of_members_of_football_bowl_subdivision_for_major_rules_violations

governing Board of Directors from distributing its subsidies based on the number of athletes served, the amount of scholarship dollars awarded, and other similar factors. These factors, typically adopted for NCAA distributions, result in Division I institutions generally and the Division I football subdivisions receiving larger subsidies because their programs are supporting more participants and participant educational benefits. Success in balancing these various interests and maintaining sound educational standards is much more likely in an independent governance environment not dominated by commercialized programs and their employed leaders.

24. Does the CAP Act change the powers of the NCAA Chief Executive Officer? (CAP Act/Sec. 4-30 (B))
YES. If the NCAA adopts Cap Act standards, the NCAA president would serve the Board of Directors in an ex-officio non-voting capacity as a traditional chief executive officer. Under the current NCAA operating structure, the NCAA President has a vote in the case of ties and this would not be true under the provisions of the CAP Act. Also, the President would not have the executive power, even with the concurrence of the Board of Directors, to deny member institutions, coaches, or individuals the right to due process as specified under Section 4-30 (C) of the CAP Act.

Significant Legislative Authority of the Board of Directors (CAP Act/Sec. 4-30 (B) (i)-(v))

25. There are areas of governance in addition to oversight over the administrative operation of a large non-profit organization in which the Board of Directors has the "sole authority" to enact association legislation. Why does the CAP Act propose that the power to legislate in these areas be removed from the respective membership divisions? (CAP Act/Sec. 4-30 (B) (iii)
While the power for final decision-making about legislation in these designated areas rests with the Board of Directors, competitive division membership governance structures may still initiate and advance proposals to meet identified needs and may be three-quarters vote of the entire membership overturn any Board action.

The areas assigned to the Board of Directors for final authority encompass those activities that affect the health and academic needs of the college athlete, the integrity of higher education institutions, and the cost of athletics programs. These are the areas most often compromised by institutional or membership division legislation that reflects self-interest. For example:

- recruiting and/or sustaining the participation eligibility of academically under-qualified or under-performing athletes in order to produce winning and/or more commercially successful programs
- excessive athletics time commitments resulting in missed classes, insufficient study time or physical and mental fatigue that increases susceptibility to injury
- concentration of revenues among a small number of institutions rather than broader distributions that benefit all college athletes served by the non-profit organization (such as using revenues to provide athletics injury coverage for all college athletes rather than increasing revenues to the most commercially successful institutions)

The current NCAA Executive Committee, dominated by Division I interests (12 of 16 voting members), approves the NCAA's final budget and revenue distributions. The current Executive Committee does not have legislative powers and must defer action on issues to each division's governance structure. In some cases, the current Executive Committee has the authority to call for an Association-wide vote. The current Executive Committee grants the Chief Executive Officer authority to penalize institutions for rule violations absent an established enforcement procedure. A council possessing legislative authority and consisting of currently serving college presidents heads

each division. Few college presidents currently in office are able to stand up to alumni and powerful athletics program pressures to produce winning and commercially successful teams. Few college presidents can devote considerable time to the governance of athletics programs. R. Gerald Turner, President of Southern Methodist University and Co-Chairman, Knight Commission on Intercollegiate Athletics, eloquently described this powerlessness in a January 12, 2010 keynote address to the NCAA Scholarly Colloquium:

> *While the quantitative research revealed strong presidential support for studies of policy changes regarding a number of concerns, such as the number of coaches and athletic contests, the qualitative research revealed a sense of individual powerlessness to effect the kind of change that is needed at the conference and national levels to contain the athletics arms race and address critical issues regarding sustainability, such as rapidly escalating coaches' salaries. The quantitative research also shows that a high percentage of presidents who believe that sustainability is problematic for their own institution or for their conference or the FBS as a whole believe that sweeping change is necessary across the FBS. In sum, presidents would like serious change but don't see themselves as the force for the changes needed, nor have they identified an alternative force they believe could be effective.*

26. Do the membership divisions have the power to enact their own legislation in the proposed CAP Act standards? (CAP Act/Sec. 4-30 (B) (iv))

YES, in areas other than those in which the Board of Directors has sole authority. But the Board of Directors, which, by two-thirds vote, may amend or repeal divisional legislation, oversees the actions of membership divisions.

27. Five of the nine identified "rights" of college athletes relate to health issues. What are the reasons for these specific provisions? (CAP Act/Sec. 4-30 (B) (iii))

Health and medical issues (concussion, sickle cell trait, dehydration, and other risks for death or permanent disability) require the highest standard of care, including the assessment of baseline data, prevention education and exercise/supervision guidelines, which should be mandatory for all athletics programs. Similarly, coaches and other athletics personnel without medical licenses should not be permitted to make return-to-play decisions without physician oversight. The Act holds the national association and its member institutions of higher education, rather than college athletes or their parents, responsible for all costs for athletics-related injuries. Funds derived from the sale of the national association's highest competitive division football championship are designated for this purpose. College sport is an aspect of the educational experience that often exposes student participants to physical risks. The CAP Act designates these health issues as priority obligations of the national association and its member institutions.

28. Why does the CAP Act permit all college athletes to transfer to another institution without the penalty of having to sit out a year of eligibility? Doesn't the NCAA currently permit such transfers? (CAP Act/Sec. 4-30 (B) (iii) (X) (aa))

Currently in Division I athletics, a one-time transfer exception that permits athletes to leave their institutions for any reason is available in all sports except football, men's basketball, baseball and men's ice hockey. In these sports, one-year in residence is required before resuming eligibility to participate in athletics. The rationale for this transfer restriction is to protect the recruitment investment in the athletes and the interests of coaches, who, ironically, often feel free to abandon their contracts with the university to pursue other coaching opportunities. If an athlete in these

sports has previously red-shirted (attended college for one year without participating in athletic competition), the cost of the transfer residency requirement is a lost year of athletic eligibility. No other student on college campuses is penalized for transferring. The CAP Act frees the revenue-producing athlete from this unwarranted restriction.

29. **Why is there a need for an NCAA coaching ethics code that details professional conduct expectations? (CAP Act/Sec. 4-30 (B) (ii))**
    National athletic governance associations have not effectively addressed the anachronistic athletics culture that glorifies coaches who bully and denigrate their athletes, tolerates physical punishment for errors, and encourages a lack of respect in coach-athlete interactions. Coaching certification or membership in professional coaches associations with ethics codes and enforcement systems are not required and in many sports do not exist. A national association coaching ethics code is needed to reinforce values regarding human dignity as well as those that emphasize continuous striving for excellence, respect for authority, performance under pressure, teamwork, and other values reinforced by participation in competitive sports. National association member institutions can then be required to comply by using the code as an element of coach employment agreements.

30. **Why do college athletes need to be assured of "whistle-blower protection"? (CAP Act/Sec. 4-30 (B) (iii) (X) (gg))**
    Athletes need whistle-blower protection because they are vulnerable to retaliation by coaches and athletic directors for reporting violations of association rules or violations of law such as a failure to comply with Title IX or criminal behavior by other athletes or athletics personnel. Colleges and universities rely on a positive image of the athletics department to generate a favorable institutional image, so they might well seek to discredit an athlete who reports violations of law or national governance association rules. It is relatively easy to discredit, hence silence, an undergraduate whose chance to obtain a college education or to play a sport professionally depends on remaining in the good graces of his or her current institution. Therefore, absent whistle-blower protection, athletes would be too fearful of retaliation by athletics personnel to report suspected violations of national association rules or of state or federal law.

31. **Why do college athletes need to be assured that they will receive due process protection? (CAP Act/Sec. 4-30 (B) (iii) (X) (hh))**
    Athletes need due process protection that is commensurate with the high stakes they face if targeted by a national association's enforcement process. In the current highly commercialized and professionalized world of college sports, an athlete whose eligibility the national association revokes may lose the opportunity to obtain a college education inexpensively and to pursue a career in professional sports. Even if a professional team drafts the athlete, his or her draft number and compensation may suffer because of reputational damage resulting from the national association's enforcement process. Therefore, the due process protections afforded to athletes must be upgraded to match the professionalized nature of big-time college sports and the high stakes athletes face in national association enforcement proceedings. Upgrading those protections will protect athletes' rights in the enforcement proceedings without sacrificing the national association's capacity to identify and punish violations of its rules by individuals and institutions.

32. **Certain provisions of the CAP Act (i.e., NCAA ownership of all football championships or play-offs) may conflict with existing contracts between member institutions or conferences and third parties. What will happen to these agreements? (CAP Act/Sec. 4-30 (B) (v)**

Assuming NCAA adoption of CAP Act standards, the CAP Act would give the NCAA Board of Directors power to cancel or modify existing contracts when the requirements of the Act affect such contracts. It is anticipated that the Board will engage all parties in the best way to "unwind" such obligations. This may mean a mutual agreement to rescind contracts that have not yet been performed, thereby restoring all parties to the positions they would have occupied had no contract ever existed. It may also mean the negotiation of agreements between the NCAA and other parties whereby the NCAA compensates those parties for their losses resulting from the cancellation or modification of a contract, provided the other parties take reasonable measures ahead of the effective date of cancellation or modification to mitigate their losses by making alternative arrangements. Failure to take such measures could result in a reduced payment to the contractor by the NCAA if a contract is cancelled or modified.

Due Process (CAP Act/Sec. 4-30 (C))

33. Why should high standards of due process apply to national athletic governance association enforcement processes? (CAP Act/Sec. 4-30 (C))

Questions have been raised about NCAA enforcement proceedings with regard to (a) improper investigatory practices; (b) the impartiality of those who "judge" NCAA enforcement cases (current members who may compete against such institutions); (c) the lack of opportunity for accused parties to confront witnesses against them; (d) the lack of public access to NCAA enforcement proceedings; and (e) the tendency of institutions to make scapegoats of certain athletics personnel to curry favor with the NCAA and mitigate their penalties. Section 4-30 (C) of the CAP Act addresses these due process deficiencies by (a) implementing a pre-hearing discovery process, including depositions and document production; (b) hiring retired judges to resolve enforcement cases; (c) hiring experienced investigators as third party contractors, (d) allowing accused parties to confront and cross-examine opposing witnesses; (e) permitting a nonparty identified as having engaged in wrongdoing to present an oral or written statement at the hearing; and (f) opening all hearings and appellate proceedings to the public unless an accused party objects. These changes would go a long way toward making available to coaches and athletes legal protections that are commensurate with the high stakes they face in the current NCAA enforcement process.

34. Does the CAP Act discard the principle of institutional cooperation and responsibility to adhere to national association rules? (CAP Act/Sec. 4-30 (C) (i))

NO. The Act specifically mandates that the national association have a "cooperative principle" which requires member institutions to self-report rules violations, investigate themselves, and assist the national association in its own investigation or face enhanced penalties for not cooperating or taking appropriate action.

35. Would the CAP Act require that the current NCAA enforcement staff be replaced by former judges and independent investigators? (CAP Act/Sec. 103 (b) (1))

PARTIALLY. If the NCAA adopts CAP Act standards, the Act would only require that such personnel be used for significant and severe breaches of conduct. There are four levels of NCAA rules violations. The current NCAA staff would handle Level III (breach of conduct) and Level IV (incidental issues) violations while former judges and independent investigators would handle Level I (severe breach of conduct) and Level II (significant breach of conduct) violations. Level I and II violations are those which result in significant penalties to coaches, athletes, and institutions.

36. Would Congress be establishing new national governance association investigatory or hearing powers that were previously not possible? (CAP Act/Sec. 4-30 (C) (ii) (IV))

Under the CAP Act, the hearing judges working for the national association as independent contractors would have subpoena power, which the NCAA presently lacks. The judges could issue subpoenas to compel reluctant witnesses to participate in enforcement hearings. This would enhance the national association's power to obtain information, but it would also benefit accused parties because they could compel reluctant corroborating witnesses to testify. And because accused parties could also confront and cross-examine unfavorable witnesses, any benefit to the national association from the judges having subpoena power would be equaled by the benefit to be enjoyed by accused parties.

37. Does the CAP Act require increased transparency of the national association enforcement process? (CAP Act/Sec. 4-30 (C) (ii) (IV) and (VI)

YES, in three specific ways. First, the judges' subpoena power would enable accused parties to confront and cross-examine hostile witnesses because those witnesses could be compelled to attend enforcement hearings, thereby exposing their credibility to scrutiny. Second, individuals who are not parties to an enforcement case, but have been identified in an investigation as having violated Association rules will have a chance to clear their names during the hearing, subject to the discretion of the hearing judge. Finally, the public could attend hearings and appeals as long as the accused parties agreed. All three changes would enhance the transparency of the national association's enforcement process.

Revenues from Collegiate Athletics Events (CAP Act/Sec. 4-30 (D))

38. What major changes does the CAP Act require in the ownership or use of revenues from athletics events properties? (CAP Act/Sec. 4-30 (D)

- The CAP Act requires the national association to offer an open, divisional or sub-divisional championship in all sports it recognizes and requires member institutions to be required to participate in such championships if they qualify. Further, the national association is designated as the owner of all national championship or "play-off" properties. Thus, there would be a top competitive football division national championship owned by the national association. Thus, if the NCAA adopts CAP Act standards, the most significant change would be that the current FBS play-off or any football play-off or national championship becomes an NCAA property with the NCAA using the revenues derived for the benefit of all member institutions just as it does with the Final Four basketball championship.
- Institutions and conferences will continue to own their respective conference championships and regular season athletics events and the rights to earn revenues from these properties.
- The national association has the power to permit its member institutions to participate in other pre-playing season or post-playing season athletics events owned by third parties (i.e., bowl games, pre-season tournaments, etc.) according to conditions established by the national association (noting that the NCAA currently has this power). The CAP Act specifies that college athletes may not miss classes as a result of participating in such events.
- Assuming the NCAA adopts CAP Act standards, while institutions will lose their current direct FBS play-off revenues, a significant portion of these resources will be returned to institutions through NCAA payment of current institutional costs (such as athletics injury insurance) or NCAA subsidies to institutions to allow them to increase direct benefits to athletes (such as $180 million in Division I Cost of Attendance subsidies). The CAP Act specifies that the NCAA use its highest division football championship revenues, representing the equivalent of the Final Four, for the following purposes:

- increase allocations to Division I institutions to enable them to fund increases in athletically related financial aid to cover the full cost of attendance for athletes who receive full scholarships;
- establish an athletics injury insurance and/or institutional member medical cost subsidy program that covers usual and customary charges for treatment of athletics injuries suffered by athletes participating in the athletics programs of member institutions. In combination with institutional funding of NCAA specified insurance deductibles, co-payments, or other medical expenses and an NCAA-funded claims gap fund for special circumstances, such program shall result in lower medical and/or insurance costs, as a proportion of total medical costs, for NCAA member institutions. Thus, institutions will not incur additional costs for this athlete benefit program;
- fund annual enhancements to the NCAA catastrophic insurance policy;
- establish an academic trust fund to assist those athletes who have not completed their undergraduate degrees or who need assistance to pursue advanced degrees or similar educational opportunities; and
- fund the additional cost of former judges and independent investigators and other costs associated with new due process obligations.

- Neither the national association nor its member conferences would be permitted to distribute revenues based on the competitive success of participating institutions.
- The national association and its member conferences and institutions are also required to designate five percent of their respective annual media rights fees to an academic trust fund. Sixty percent of the proceeds of such fund would be used to disburse education-based grants (not considered athletics-related financial aid) to their respective former college athletes and forty percent would be used for non-athlete financial aid based on merit or need. Thus, in addition to using athletics events revenues to fund athletics programs and benefits for currently participating athletes, an education fund is established to benefit those athletes who for many reasons might have been unable to complete their degrees or seek advanced educational opportunities. In addition, athletics program generated media rights fees provide benefits to non-athletes.

39. Why does the CAP Act reject paying athletes directly for their performances that generate millions of dollars for institutions, conferences, and the national governance association? (CAP Act/Sec. 4-30 (E) (i)

Professional athletes, like those in the NFL and NBA, are under contract to produce mass commercial entertainment. Thus, they are motivated to make sport their top priority. College athletes, as defined in the CAP Act, are students engaged in an extracurricular educational activity. Because their athletic scholarships are not conditioned on athletic performance, their primary motivation for excelling in sports is intrinsic, or related to public recognition of their accomplishments.

Sports events, drama and dance performances, and similar performing arts experiences may generate funds via ticket sales or media rights. Their purpose is primarily educational, however, thus making these activities consistent with a university's not-for-profit status. Such activities allow students to explore their potential and learn skills in these areas. Many of these students take what they learn and apply it to future careers. All of these students use these experiences to enhance their educations without being paid to do so.

The CAP Act was written to ensure a balanced bargain between athletes whose performances have created significant revenues for institutions and the educational interest of those athletes. The 430,000 athletes of the NCAA, including those who help generate millions of dollars in revenue, will receive medical, health, and other significant benefits appropriate to the higher education mission and purpose. By awarding multiyear athletic scholarships that extend to graduation and cannot be cancelled because of injury or athletics performance, the CAP Act is making a significant investment in the future success of college athletes, not merely handing them a paycheck.

40. Why does the CAP Act propose the establishment of an Academic Trust Fund to benefit future college athletes? (CAP Act/Sec. 4-30 (D) (vi))

Legislation cannot prevent every abuse of athletes. Some institutions will still recruit talented athletes who are either academically unqualified or are "mismatched" for institutions with extraordinary academic competition among highly qualified students. There will still be coaches who insist that athletics is the athlete's first priority. Some institutions will still place athletes in courses or programs of study that do not result in meaningful degrees ("eligibility majors"). Some athletes will continue to be outmatched in the classroom and exploited for their athletic prowess by institutions in every competitive division. The Academic Trust Fund creates a remedy for such injustices following completion of an athlete's eligibility when a return to education without the pressure of athletics participation becomes viable. The Fund is designed to benefit athletes who:

- have completed their baccalaureate degrees and are continuing their education to pursue another undergraduate degree or an advanced degree; or
- have completed at least one year of eligibility, are no longer eligible to participate and are returning to complete their undergraduate degrees or to pursue other training at an accredited educational institution.

These broadly phrased purposes will permit grants to be awarded for a wide range of educational programs.

41. Who administers the Academic Trust Fund grants required by the CAP Act? (CAP Act/Sec. 4-30 (D) (vi))

Each entity (member institutions, conferences, and the national association) administers its own fund. Assuming the NCAA adopts CAP Act standards, the NCAA Academic Trust Fund would consist of approximately $39 million from the Final Four and $23.5 million from the FBS national football championship. Proceeds from the fund would be available to all athletes at all national association member institutions in every competitive division who are no longer eligible for participation. The NCAA could administer an athlete grant program or provide a distribution to member institutions for that purpose. The CAP Act specifies that the portion of the national association Academic Trust Fund designated for non-athletes be equally distributed among all NCAA member institutions for administration by institutional offices of student financial aid. Conferences and member institutions would administer their own Academic Trust Funds with regard to grants to their respective former athletes. Institutional offices of student financial aid would administer grants to non-athletes.

42. Will the five percent reduction in media rights revenues to create Academic Trust Funds required by the CAP Act cause further economic distress in the funding of athletics programs? (CAP Act/Sec. 4-30 (D) (vi))

NO. The five percent Academic Trust Fund assessment is purposely levied on media rights fees that are received by a limited number of institutions that already have among the best-funded athletics programs. Such fees typically incur little or no administrative expense. The national association's

new FBS football championship revenue source is also large enough[13] to increase annual institutional subsidies in addition to funding new uses specified in the CAP Act (i.e., athletics injury insurance, medical cost subsidies, institutional subsidies to cover the increased scholarship costs created by allowing full funding up to cost of attendance). Moreover, the CAP Act creates institutional cost savings from caps on coaches' salaries and sport operating expenses that the new Board of Directors can establish. These savings will partially offset current FBS play-off revenue use losses and reductions in media rights fees. The Academic Trust Fund percentage is purposefully small to limit impact on institutional and conference budgets. The Academic Trust Fund requirement targets the institutions most likely to receive significant revenues from their athletics programs. Thus, the trust fund is the right thing to do to offset the pressure on institutions to exploit athletes in the name of athletics success. Last, the CAP Act's limited antitrust exemption should permit the NCAA to increase institutional subsidies because reductions in legal costs and antitrust judgments, and an enhanced credit rating, resulting from the antitrust exemption will produce financial savings.

43. Why does Section 4-30 (E) (i) of the CAP Act permit institutions to use the names, likenesses, and images of athletes for program and media guides that generate revenues at athletics events when Section (D) (v) and (E) (ii) of the CAP Act prohibits institutions from doing so for any other commercial purpose? (CAP Act/Sec. 104 (b) (1)-(4))

The intent of this athletics event exception for limited use in publications sold at athletics events is to give institutions the same rights as the media have with news. The proper institutional use of athletes' names, likenesses, and images should be restricted to statistics, performance records, and historical photographs of championship teams and athletes holding such records. The primary purposes of such permitted uses are to preserve institutional traditions, assist fans to understand an athletic event, and recognize the contributions made by of former athletes while representing their respective institutions.

Revenues from Commercial Use of Names, Likenesses, and Images of College Athletes (CAP Act/Sec. 4-30 (E))

44. Why does the CAP Act permit the national association, its member institutions and conferences and third party owners of athletics properties to sell the rights to use the name, likeness, and image of any college athlete in conjunction with athletics events? (CAP Act/Sec. 4-30 (E) (i))

Such rights are strictly limited to the promotion, publicity, conduct, and/or live or delayed electronic transmission of such events as specified in SEC. 4-30 (E) (i) of the CAP Act. These events are considered to be owned and properly conducted extracurricular student activities funded by institutions, which should be permitted to use event proceeds to fund or supplement the funding of these extracurricular opportunities. Whether these extracurricular activities are sports events, drama and dance performances, or similar performing arts events, institutions should be permitted to promote them, sell tickets, sell media rights, and publicize them. This provision recognizes that the primary purposes of these extracurricular activities are to allow students to explore their potential and to learn skills. Some students take what they learn and apply it to future professional sports careers, but most do not. Students who participate in these athletics or performing arts activities do not get paid for doing so and should have no rights to the proceeds from these extracurricular activities.

[13] The FBS 4-team play-off is currently valued at $470 million. An 8-team national championship would be valued at double that amount.

45. Why does the CAP Act prohibit athletes as well as the national association, its member conferences and institutions, and third parties from selling the rights to use the names, likenesses, and images of college athletes for any commercial purpose other than promotion of athletics events during athletes' collegiate eligibility (e.g., use in video games, names on apparel or use on other merchandise or commercial products). (CAP Act/Sec. 4-30 (E) (ii)
The national association's mission includes setting rules that differentiate between professional sports and college sports. If athletes are prohibited from selling these rights during their college eligibility, the national association, its member institutions or conferences, or third parties should also be prohibited from doing so. While it is proper for non-profit educational institutions to charge admissions fees and to sponsor other commercialized extracurricular event performances (plays, recitals, football, or other sport contests) to offset the costs of staging these events, selling the names, likenesses, and images of student participants to offset costs goes beyond what is appropriate in an academic setting. College athletes are students, not commodities. Protecting their personal likenesses and images from commercial exploitation underscores that message.

46. Does the CAP Act position on selling rights to an athletes' name, likeness, or image conflict with the plaintiffs' position in the O'Bannon lawsuit? (CAP Act/Sec. 4-30 (E)
Generally, NO. The CAP Act does not extend to national association commercial activities that occurred prior to the adoption of this Act. Further, its provisions are conditioned on the installation of a new national association structure and legislative provisions that will operate in the future. In the future, neither the national association nor its member institutions, conferences, or third party bowls, will have any rights to sell the names, likenesses, or images of college athletes during their collegiate eligibility other than in the promotion of the athletics events they conduct.

Still, the CAP Act permits the national association, its member institutions and conferences, and approved third party collegiate athletics events (i.e., bowls and invitational tournaments owned by third parties) to sell rights to and retain revenues from their respective athletics events -- media rights and event-related products (concessions, parking, programs, media guides, posters, schedule cards, highlight films, documentaries, licensing of institutional marks, uniform/shoe/supplies/ equipment sponsorships) -- without directly sharing proceeds with athletes participating in those events. The O'Bannon suit calls for sharing such media rights revenues with athletes. Thus, the CAP Act and the O'Bannon lawsuit differ on this point.

The CAP Act does not advocate paying any athlete for sports participation during collegiate eligibility. This "no pay for play" position is an essential demarcation of the line between collegiate athletics as an extracurricular education activity and professional sports. The O'Bannon suit is seeking distribution of some of these funds to athletes. The reason for the CAP Act position is the belief that athletic events are extracurricular educational programs that permit students to demonstrate their learned skills. These athletic events are analogous to music, dance or drama performances, debates, lectures, or other activities for which institutions routinely charge for admission. These events are used to generate funds to defray the costs of these programs. Notably, even with the inclusion of these rights to athletics event proceeds, only 23 of more than 1000

athletic programs sponsored by NCAA member institutions in 2011-12 generated sufficient revenues to fully fund their athletics programs on an operating basis (i.e., without considering capital costs). [14]

The CAP Act is consistent with the plaintiffs' position in O'Bannon in that it prohibits current NCAA and institutional practices like putting athletes' names on jerseys for sale, or using athletes in video games while they are eligible for collegiate athletic participation. Following collegiate eligibility, the athletes retain all rights to uses of their names, likenesses, and images for such commercial purposes which is consistent with the O'Bannon position. The use of athletes' names, images and likenesses as "news" by institutions is permissible, just as such free use by the media is permissible. This allows media guides and programs sold in conjunction with athletics events to contain performance records, historical photographs and other historical performance compilations.

Minimum Legislative Conditions of Educational Athletics Programs (CAP Act/Sec. 4-30 (F))

47. Is it true that the NCAA has already changed its rules to allow athletes to receive institutional financial aid up to the full cost of attendance (COA)? (CAP Act/Sec. 4-30 (F) (i)

YES, in 2011 NCAA rules were changed to permit financial aid from all institutional and government agency sources up to a maximum of COA. The NCAA retained its existing limits for athletics-related financial aid however, which means that athletic scholarships are still limited to tuition, required fees, room, board, and books. Only institutional aid without regard to athletics ability can be used to attain the full COA limit. Thus, if athletes qualify under institutional rules, they could get up to COA but not as part of the scholarship funded by the athletic department. Before this change, financial aid for athletes from all sources was limited to tuition, required fees, room, board, and books.[15]

48. Why is the athletics-related financial aid COA provision limited to the national association's highest competitive division? (CAP Act/Sec. 4-30 (F) (i)

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[14] Fulks, D.L. (2013) Revenues and expenses in NCAA Division I Intercollegiate Athletics Programs Report: 2004-2012.. National Collegiate Athletic Association, Indianapolis, IN, p. 8.

[15] This change appears to have been precipitated by antitrust suit brought against the NCAA with regard to athletes not being permitted to receive the full COA. The NCAA settled the lawsuit with the creation of a $10 million fund to provide certain career development services and reimburse various educational expenses to those former athletes who were members of the class involved in the lawsuit (and who qualified under and complied with requirements associated with the Fund). The Fund was intended to allow the former athletes to gain career development skills and further their educations. The class consisted of athletes who received an athletics grant-in-aid and were either (1) a Football Bowl Subdivision (formerly Division I-A) football players, or (2) men's basketball players in the ACC, Big East, Big Ten, Big 12, Conference USA, Pac-10, SEC, Sun Belt, MAC, Mountain West, WAC, Atlantic 10, Horizon League, Colonial Athletic Association, Missouri Valley Conference, or West Coast Conference at any time between February 17, 2002 and August 4, 2008. The deadline to submit a claim for reimbursement was August 31, 2011. (see: http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/White+v+NCAA) The NCAA also agreed to expand the criteria it uses to award $218 million in existing funds for colleges and athletes to make the funds more available to athletes with financial need. (see: http://www.insidehighered.com/news/2008/02/04/ncaa for more details) The recently proposed legislation to allow $2,000 stipends in Division I, which the membership rejected, was related to this issue.

The CAP Act proposes that in the highest competitive division, the maximum limit of athletics-related financial aid should be increased to cover the full COA. This provision should be limited to the highest competitive division because the time commitment required for scholarship athletes in these programs is so considerable as to preclude athletes from seeking employment during the school year, an option available to other non-athlete students. Also, with regard to creating a balance of benefits in the competitive division generating significant revenues, it appears fair and reasonable for athletes in this division to receive the full cost of attendance from athletics resources through subsidies derived from the championship in the NCAA's top football division.

49. Will increasing the maximum allowable athletics-related financial aid to COA further increase athletics program debt? (CAP Act/Sec. 4-30 (F) (i))

NO. The CAP Act requires that the national association use revenues from its highest competitive division's football championship to provide members of this division with subsidies to cover such increased scholarship benefits. Presumably, the new NCAA Board of Directors will develop a formula for such subsidies based on a study of average numbers of full scholarship recipients at various institutions and will require that increased subsidies only be used for this purpose.

50. Does the CAP Act require Division I institutions to award athletics-related financial aid in an amount equal to the full cost of attendance? (CAP Act/Sec. 4-30 (F) (i))

NO. The CAP Act only requires the national association to adopt legislation permitting maximum allowable athletics-related financial aid in the highest competitive division to include the COA at each institution. It does NOT require that all athletes in the division who are currently receiving a scholarship receive a full scholarship that is based on COA. Only the maximum value of an athletics award changes. The institution still determines the value of each scholarship offered to individual college athletes.

51. Does the CAP Act COA provision create a Title IX gender equity concern? (CAP Act/Sec. 4-30 (F) (i))

NO. If the institution increases awards to athletes (utilizing the CAP Act proposed NCAA subsidy for this purpose), it must still treat male and female athletes equally under the gender equity provisions of Title IX. Assuming the NCAA adopts CAP Act standards, it is likely that the larger number of head count participants and full scholarships in football will result in more COA subsidy funds being distributed to Division I FBS and FCS schools. The use of these funds may be challenged if these institutions are out of compliance with Title IX participation requirements.

In other words, any increase in athletic financial aid to reflect the full cost of attending college would be awarded to female athletes as well as to male athletes under the Title IX mandate of equal opportunity for both men and women in higher education. Therefore, increasing athletic financial aid to the full cost of attendance should not be confused with public statements that some football and men's basketball coaches have made in recent years advocating the payment of "stipends" to athletes in revenue sports. The "cost-of-attendance" standard in the CAP Act would benefit not only athletes who play revenue sports, but rather, athletes in all sports, women as well as men.

52. What is the estimated cost to the NCAA for these COA subsidies? (CAP Act/Sec. 4-30 (F) (i))

Under federal rules, the actual value of COA varies by institution and the circumstances of students receiving financial aid because it includes such items as transportation home during the school year, costs for a student with dependents, and other expenses. Federal rules guiding such computations

apply to all students.[16] It is estimated that for an athlete receiving a full scholarship under the old definition, additional COA costs will vary, on average, between $2,500 and $5,500 per athlete. In equivalency sports, not everyone on the team receives a full scholarship. Even in head count sports, many schools seldom award the maximum number of scholarships allowed, especially at Division I non-FBS institutions. Assuming, however, that every Division I program (a) gives 100 percent of NCAA maximum allowable aid in every sport it sponsors (an overestimation), (2) awards every athlete a full scholarship in every head count sport (an overestimation), (3) awards 20 percent of all athletes in equivalency sports a full scholarship (an overestimation), and (4) pays the average subsidy of $4000 per full scholarship to fully subsidize the additional COA expense, the maximum annual cost of such subsidies should not exceed $180 million (a substantial overestimation). [17]

53. Why is a provision regarding "whistle blower protection" for all faculty and other institutional employees necessary? (CAP Act/Sec. 4-30 (F) (ii))

Faculty, especially at universities with high profile athletic programs, experience frustration when their complaints about academic malfeasance are ignored, not well-received, and/or not dealt with appropriately. Such faculty members and staff sometimes face ostracism, causing them to fear for their jobs. All academic fraud claims warrant investigation. Universities should direct their faculties and staffs annually to web pages explaining how to handle situations in which they are concerned that national athletic governance association violations--or even near-violations--may be taking place.

In addition, institutional officials should conduct broad ethics and anti-retaliation training campus-wide to educate the staff on how to handle internal complaints by "whistle blowers." National athletic association rules violations and noncompliance with institutional policy must be taken seriously and addressed swiftly. Officials should review their policies and practices annually to ensure that all employees on campus (inside and outside of athletics) are encouraged to report wrongdoing, and that all reports receive prompt and non-retaliatory responses.

54. The NCAA suspended its certification program two years ago citing extraordinary time burdens created by the program and a desire to replace this program with a management dashboard. Why is a national athletic governance association certification program necessary? (CAP Act/Sec. 4-30 (F) (iii))

The certification process is a powerful mechanism to effect change and is consistent with "accreditation" procedures that depend on broad university community participation, reflect a high standard of data transparency, and feature committee conclusions and recommendations confirmed by external peer review. The certification process is largely a self-study, led by an institution's highest administrative official, which requires campus-wide participation. Most importantly, the certification process requires the establishment of a plan with measurable goals and a timetable detailing the steps the institution will take to remedy deficiencies. Thus, the CAP Act requires the existence of a certification program to maintain athletic program integrity.

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[16] See: http://ifap.ed.gov/ifap/byAwardYear.jsp?type=fsahandbook&awardyear=2013-2014 for complete details

[17] See Appendix B for additional detailed information on how this estimate was computed and http://usatoday30.usatoday.com/sports/college/2011-07-29-athletic-departments-cost-of-attendance_n.htm for a practical explanation of COA impact on athletic program budgets

In 2011, the NCAA suspended its 20 year old certification program. It intends to replace certification with a management "dashboard" program, providing data annually but with no obligation for action or external review. Dashboards also may or may not be subject to sharing and analysis by the larger institutional community. They are valuable management tools, but they perform a different function than many certification programs do. The certification program should supplement any management dashboard program. The once-every-ten-years certification timetable is not onerous.

Further, under the CAP Act, the institution must answer to the national governance association if a full certification plan is not carried out, and failures to meet certification standards and processes may result in suspension or withdrawal of membership. Certification is a positive mechanism, integral to the self-examination and self-improvement goals of higher education. It is the opposite of rules enforcement because it enables an institution to focus on program improvement. It also examines aspects of the program not covered by rules legislation, such as salary equity, minority issues, and student-athlete welfare issues.

55. Why is it important that oversight and budgetary control of athlete academic support programs rest with an academic authority rather the athletics department? (CAP Act/Sec. 4-30 (F) (iv))
Control of athlete academic support programs should not reside in the athletics department for conflict-of- interest reasons. Historically, housing such programs in athletic departments has contributed to academic scandals involving athletes, administrators, faculty, and academic support personnel. Athletics has a vested interest in keeping athletes academically eligible to participate. Athletics personnel should not control tutoring, academic advising, or other academic support programs.

Although athletics revenues can continue to fund many academic support programs, the budget, hiring, employee evaluation, and administrative oversight should reside in an academic unit of the university similar to those for the general student body. Presumably, upon implementation of the CAP Act, academic support facilities will remain housed within athletic facilities, but academic support personnel will report to an academic authority. Athletic academic staff will face reduced pressure, and the academic administration will address questions of academic integrity. This change will likely improve remediation for at-risk athletes without undue pressures from coaching staffs.

56. The CAP Act caps coach and athletic director annual compensation from all sources. Why is it necessary to control head coach and athletic director salaries? (CAP Act/Sec. 4-30 (F) (v))
Coaches' salaries far exceed those of the highest paid faculty and college presidents, as well as leaders of other extracurricular activities on campus and are a misallocation of funds. The average salary of the highest paid full professors (95th percentile) at the most prestigious doctoral institutions is $223,258. The average pay of university presidents at public research universities is $421,295, and the 95th percentile college president earns $834,562. A quick look at the pay ranges of top college basketball and football head coaches and athletic directors reveals:

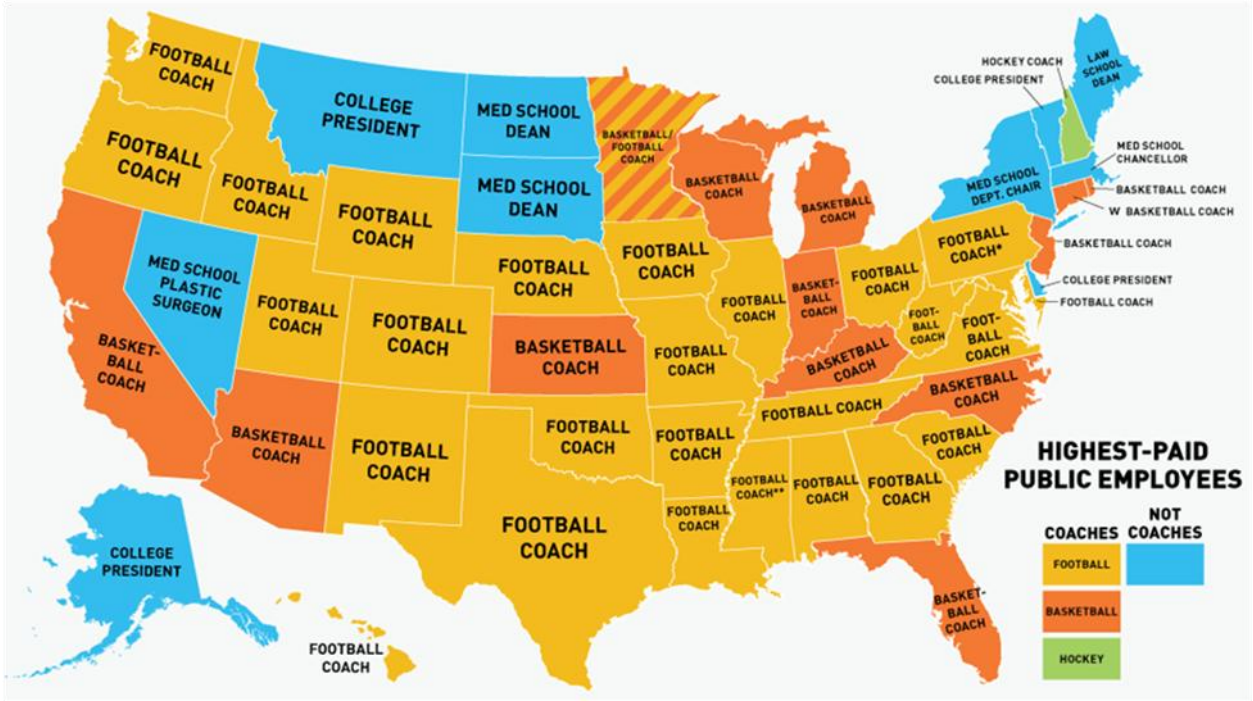
Total Pay Excluding Bonuses of Head Football and Basketball Coaches and FBS Athletic Directors*

2012 FBS Head Football Coaches	Low - $250,000	High- $5,476,738
2013 NCAA Final Four Basketball Coaches	Low - $115,000	High- $7,233,976
2012 FBS Athletic Directors	Low - $109,923	High- $3,239,678

*See question 52 for references and full information on all salary data

Excessive salaries drain resources from a university's charitable function, which is education, not entertainment. Excessive payments to coaches reduce the funds available for medical, insurance and academic benefits to athletes, or the University's general fund. No educational justification exists for college coaches being the highest paid officials in almost every state in the U.S.:

http://deadspin.com/infographic-is-your-states-highest-paid-employee-a-co-489635228



There is no justification for athletics to spend every dollar that it brings in and more. Athletics is part of a much larger educational non-profit, and institutions should use excess athletics revenues for academic purposes, not to fatten the wallets of athletics personnel (or to build palatial locker rooms or other facilities). Subsidized revenues of a tax-exempt organization should not inure to private individuals.

The "marketplace" justification for these one to seven million dollar head coach salaries is bogus. Coaches reap extraordinary salaries from an artificial "marketplace" without a paid labor force – no athlete employees – yet they maintain that they should be treated as if they operated in the professional sports marketplace. They actually operate in a non-profit educational environment in which salaries are lower than in the for-profit world.

Further, the number of professional teams is limited, therefore, competition for coaches is also limited. Higher education has created an artificial environment that has no comparator in the commercial marketplace. Andrew Zimbalist, noted sport economist, has criticized this manufactured "economic rent" – the portion of a coach's salary in excess of that needed to keep a coach employed in a rigged market:

> *…Consider the multimillion-dollar compensation packages offered to dozens of college football and basketball coaches. There are thirty-two NFL and thirty NBA head coaching jobs. These jobs are already taken. What would be the most remunerative alternative*

employment [for these college coaches if they did not coach at these universities] …for argument's sake, suppose there was an NCAA rule stipulating that no head coach could be paid more than the university president at the school. Would [these coaches] find another job that paid them more than $500,000? Probably not.

…I don't begrudge people seeking whatever the market will pay them. But given that (1) the market for college coaches is rigged by tax exemptions, subsidies, etc.; (2) paying the coach more than the school president sends the wrong message about a university's priorities; (3) the star athletes on the basketball and football teams are not allowed to receive cash salaries; and (4) resource allocation would not be affected by a salary-limit rule for coaches, it would make eminent sense for the NCAA to pass such a rule limiting head coach compensation.

The solution seems straightforward, but there are two significant impediments. First, its elevated rhetoric notwithstanding, the NCAA basically functions as a trade association of athletics directors and coaches. Why would they vote to reduce their own compensation?

Second, such a rule would require Congress to pass an antitrust exemption for this market restriction. I can think of no good reason why Congress would not cooperate on this, if asked by the NCAA. There's the Catch 22.[18]

57. In addition to the absence of a marketplace justification, why is a $2 to 5 million coach salary ethically indefensible within higher education?

Such excessive salaries are examples of how a significant commercial activity can divert the management of a not-for-profit education institution (higher education) from its core educational or charitable program to the needs of the commercial business. The same can be said for universities that pour millions of dollars into athletics training facilities and stadiums. One must ask these salaries or facility expenditures in general are attributable to a race to provide the best educational environment for athletes, or are they attributable to the "arms race to win"? Is this money spent to enhance educational opportunities for athletes or are vast sums simple being diverted into the back pockets of individual employees (coaches and athletic directors) as payment for operating a commercial business. Does Nick Sabin's multi-million dollar salary have more to do with education or with building a sports entertainment empire? When coaches get paid more for winning, coaches actually undermine education of athletes by subjecting them to greater pressure to better ensure that they win – more hours in the weight room, more hours studying video, and more team meetings in addition to hours on the practice field. When money drives conference affiliations and athletes must travel extensive distances from campus to play, the result is more fatigue, more hours traveling and less hours studying.

58. The CAP Act sets a head coach/athletic director salary cap that is double the average of the highest paid full professors (95th percentile) at the nation's highest paying institutions of higher education. How was this cap determined? (CAP Act/Sec. 4-30 (F) (v))

The Drake Group[19] assembled a committee consisting of current and former faculty and athletic administrators "to examine the coaches' salary issue and develop an approach to salary caps that

[18] Zimbalist, A (2006) The bottom line: Observation and Arguments on the Sport Business. Philadelphia, PA: Temple University Press, p. 282

was “more than generous” in the higher education economic environment. In 2012-13, the highest paid (95th percentile) college professors at doctoral institutions received average compensation for a 9 month appointment of $223,258. Acknowledging that coaches and athletic directors work 12 months per year, given their respective recruiting and administrative obligations, a 12 month salary was extrapolated from that average, which computed to $279,073. Because the cap is for total compensation, the committee determined that bonuses or other merit increases could be more than reasonably accommodated by doubling that amount. The result was a cap of $558,146 based on 2012-13 data from the 2013 AAUP Annual Report on the Economic Status of the Profession. The committee considered this amount to be reasonable, given the $421,295 average pay and $834,562 95th percentile pay of college presidents at public research universities[20]. See the following chart for summary comparative data.

Comparator Summary Based on 2011-12 Compensation Tables

CAP ACT PROPOSAL HEAD COACH SALARY CAP	$ 558,146
HIGHEST PAID FULL PROFESSOR S (95th Percentile-Doctoral Institutions)	$ 223,258
AVG. PAY UNIVERSITY PRESIDENTS (Public research universities)	$ 421,295
95th PERCENTILE PAY UNIVERSITY PRESIDENTS (Public research univ.)	$ 834,562

Remember that current compensation for coaches and athletic directors is the result of a rigged marketplace (see Question 50). When faculty members choose to work in higher education or attorneys choose to work as public defenders, they willingly accept compensation at the lower levels of public servants. Many expert faculty can make much more as full-time consultants, and many attorneys can make much more in private practice. Coaches can only do so if they can access the small number of high paying jobs that are available each year in professional football and basketball. This is always an option for coaches. But working in higher education should mean foregoing professional coaching salaries.

59. Is there an estimate of the number of college coaches and athletic directors who will be negatively affected by the salary cap? (CAP Act/Sec. 4-30 (F) (v)

The USA Today basketball (2013) and football head coaches and athletic directors (2012) salary database was examined. These data are limited to FBS football coaches, basketball coaches from teams that qualified for the Final Four, and FBS athletic directors from public institutions that are required to respond to open records requests. Thus, numbers of individuals whose pay will be negatively affected are underreported to the extent that 20 private FBS schools of the 124-school

[19] The Drake Group is a voluntary association of higher education faculty whose mission is to defend academic integrity in higher education from the corrosive aspects of commercialized college sports, including influencing public discourse on current issues and controversies in sports and higher education. See TheDrakeGroup.org.

[20] Chronicle of Higher Education. *Executive Compensation at Public Colleges 2012. http://chronicle.com/article/Executive-Compensation-at/139093/#id=table*

total did not report football coach or athletic director data and six institutions of the 68 who participated in the 2013 NCAA Final Four did not report head basketball coach salary data. In addition, it is unknown how many Division I coaches and athletic directors not in these three samples are receiving salaries in excess of the cap.

USA Today-2012 D-I FBS Football Head Coaches Salary Impact Estimate-Public Schools Only[21]

Total Pay - Range: Low to High	**$250,000 to**	**$5,476,738**
Mean Institutional Salary	**$1,581,877**	**(N=116)**
Median Institutional Salary	**$1,461,646**	**(N=116)**
Mean Other Pay	**$42,488**	**(N=45)**
Median Other Pay	**$4,250**	**(N=45)**
Mean Total Pay	**$1,598,359**	**(N=116)**
Median Total Pay	**$1,502,750**	**(N=116)**
Mean Possible Bonus	**$523,043**	**(N=104)**
Median Possible Bonus	**$370,000**	**(N=104)**
# whose Total Pay exceeds $558,146		**85**

USA Today 2013 Final Four Tournament Head Basketball Coaches-Public Institutions[22]

Range: Low to High	**$115,000 to**	**$7,233,976**
Mean Institutional Salary	**$1,421,056**	**(N=62)**
Median Institutional Salary	**$1,209,200**	**(N=62)**
Mean Other Pay	**$110,845**	**(N=25)**
Median Other Pay	**$17,000**	**(N=25)**
Mean Total Pay	**$1,465,752**	**(N=62)**
Median Total Pay	**$1,247,700**	**(N=62)**
Mean Possible Bonus	**$542,221**	**(N=42)**
Median Possible Bonus	**$600,000**	**(N=42)**
# whose Total Pay exceeds $558,146	**42**	

[21] USA Today . (2012) FBS Head Football Coach Salary Database. www.usatoday.com/story/sports/ncaaf/2012/11/19/ncaa-college-football-head-coach-salary-database/1715543/ (includes a full explanation of the methodology of the salary survey and an explanation of compensation categories)

[22] USA Today. (2013) NCAA Final Four Head Basketball Coaches Salary Database. www.usatoday.com/sports/college/salaries/ncaab/coach/ This citation includes a full explanation of the methodology of the salary survey and an explanation of compensation categories.

USA Today 2012 FBS Athletic Directors[23]

Range: Low to High	**$109,923**	**to**	**$3,239,678**
Mean Institutional Salary	**$501,607**		**(N=113)**
Median Institutional Salary	**$450,000**		**(N=113)**
Mean Other Pay	**$19,229**		**(N=26)**
Median Other Pay	**$3,500**		**(N=25)**
Mean Total Pay	**$506,031**		**(N=113)**
Median Total Pay	**$450,000**		**(N=113)**
Mean Possible Bonus	**$185,641**		**(N=74)**
Median Possible Bonus	**$135,746**		**(N=74)**
# whose Total Pay exceeds $558,146	**40**		

60. Why does the CAP Act limit non-institutional athletics-related income that athletics personnel can earn? (CAP Act/Sec. 4-30 (F) (v))

It is common for institutions of higher education to limit the outside employment of faculty to ensure that their primary working effort is devoted to the institution that employs them on a full-time basis and that provides significant benefits based on such employment.

61. Why does the CAP Act propose a cap on the salaries of coaches and not on the salaries of college presidents or other non-athletics personnel?

College president and other non-athletics salaries appear to be tied to the appropriate higher education marketplace which is fueled by income from tuition, state legislative allocations, grants, donations and other sources. Income comes to the institution and is controlled by the institution. The institution disperses funds to all institutional academic and extracurricular programs, including salaries, based on funds needed to efficiently operate the teaching or educational non-profit enterprise. As a non-profit organization, the public expects the institution to not engage in excessive expenditures or permit any individual to be unjustly enriched. FBS athletic programs are trying to convince the public and higher education administrators that they operate in a professional sports marketplace when in football for instance, NFL teams revenues average some $280 million per team compared to FBS football team median revenues of $16 million. FBS programs maintain that they should be allowed to award salaries and make excessive expenditures commensurate with a professional sports business. Thus, FBS coaches and athletic directors attempt to operate as if they are an entity separate from the institution. They claim athletics event and other revenues are owned and should only be used by the athletic department instead of belonging to the institution. Then, without the expense of having to pay athletes, they award excessive salaries to coaches and athletic directors arguing they are required to operate in the professional sports marketplace when in actuality they are operating in a rigged collegiate sports marketplace with artificially suppressed athlete labor costs. Then, when athletics revenues do not cover expenses (which is the case in 1043 of 1066 NCAA member institutions), they wish to operate in the higher education marketplace, demanding

[23] USA Today. (2012) NCAA FBS Athletic Directors Salary Database. www.usatoday.com/story/sports/college/2013/03/06/athletic-director-salary-database-methodology/1968783/ This citation includes a full explanation of the methodology of the salary survey and an explanation of compensation categories.

student fee and general fund subsidies. In other words, they want to have it both ways. According to the NCAA's own figures, only 23 of the 124 FBS member institutions generate operating revenue in excess of their operating expenditures, and if capital costs were included, the number of programs in the black could be counted on two hands. Athletics must be forced to operate in the higher education marketplace. Salaries of athletics personnel must be tied to salaries in the higher education marketplace -- not professional sports.

62. Current NCAA rules permit athletes to participate in athletics even if they have a cumulative grade point average below 2.0. Why does the CAP Act establish a cumulative GPA of 2.0 as the minimum required for athletic participation? (CAP Act/Sec. 4-30 (F) (vi)

Current NCAA rules for Divisions I and II permit athletes with less than a cumulative GPA of 2.0 to compete[24]. Division III requires institutions to determine satisfactory progress for their athletes. The CAP Act requires all athletes in all divisions to maintain at least a 2.0 cumulative GPA or "C" average to maintain their eligibility to participate. College athletes should be regarded as students first and foremost and they should achieve the minimum GPA required for graduation before being subjected to athletic demands.

Students experiencing academic difficulties, whose standing is in an academic warning category, should be concentrating on improving their grades and should not be rewarded by being able to

[24] **Division I: 14.4.3.3 Fulfillment of Minimum Grade-Point Average Requirements.** A student-athlete who is entering his or her second year of collegiate enrollment shall present a cumulative minimum grade-point average (based on a maximum 4.000) that equals at least 90 percent of the institution's overall cumulative grade-point average required for graduation. A student-athlete who is entering his or her third year of collegiate enrollment shall present a cumulative minimum grade-point average (based on a maximum of 4.000) that equals 95 percent of the institution's overall cumulative minimum grade-point average required for graduation. A student-athlete who is entering his or her fourth or later year of collegiate enrollment shall present a cumulative minimum grade-point average (based on a maximum of 4.000) that equals 100 percent of the institution's overall cumulative grade-point average required for graduation. If the institution does not have an overall grade-point average required for graduation, it is permissible to use the lowest grade-point average required for any of the institution's degree programs in determining the cumulative minimum grade-point average. The minimum grade-point average must be computed pursuant to institutional policies applicable to all students.
Division II: 14.4.3.2 Fulfillment of Minimum Grade-Point-Average Requirements. A student-athlete shall meet the "satisfactory completion" provision of this requirement by maintaining a grade-point average that places the individual in good academic standing, as established by the institution for all students who are at an equivalent stage of progress toward a degree. To fulfill the "satisfactory completion" provision of this requirement, a student- athlete who first enters a Division II institution after the 1988-89 academic year must achieve the following cumulative minimum grade-point average (based on a maximum of 4.000) at the beginning of the fall term or at the beginning of any other regular term of that academic year, based on the student-athlete earning: *(Adopted: 1/14/89 effective 8/1/89, Revised: 1/12/04 effective 8/1/04, 1/9/06)* (a) 24-semester or 36-quarter hours: 1.800; (b) 48-semester or 72-quarter hours: 1.900; (c) 72-semester or 108-quarter hours: 2.000; and (d) 96-semester or 144-quarter hours: 2.000.
Division III: 14.4.1 Satisfactory-Progress Requirements. To be eligible to represent an institution in intercollegiate athletics competition, a student-athlete shall maintain satisfactory progress toward a baccalaureate or equivalent degree at that institution as determined by the regulations of that institution. As a general requirement, "satisfactory progress" is to be interpreted at each member institution by the academic authorities who determine the meaning of such phrases for all students, subject to controlling legislation of the conference(s) or similar association of which the institution is a member. (See Constitution 3.2.4.11 regarding the obligations of members to publish their satisfactory-progress requirements for student-athletes and Bylaw 14.01.2 for the requirements for student-athletes enrolled in two-year degree programs.) *(Revised: 1/10/05, 8/18/06)*

participate in athletics. The time spent traveling to competitive events should instead be spent concentrating on academic work. The "carrot" of participation is significant and should be used as an incentive for college athlete academic achievement. Institutions are "exploiting" academically underperforming athletes when they use such athletes to win contests despite the athletes' academic deficiencies. An athlete whose primary reason for attending college is to prepare for professional sports should consider participation in minor leagues sponsored by professional sports.

63. Does the minimum 2.0 cumulative GPA standard for athletics participation and athletics financial aid or the freshman eligibility standard (student SAT or high school GPA within 1 standard deviation of student body average) adversely affect racial minorities? (CAP Act/Sec. 4-30 (F) (vi))

NO. At nearly every university, academic achievement below a 2.0 cumulative GPA triggers some academic warning. The CAP Act reinforces academic aims for college athletes by requiring higher education institutions to establish a 2.0 cumulative GPA as a condition for athletic participation and providing underachieving students an incentive and time to improve grades, thereby increasing the prospect of graduation. The Act will assist any academically underachieving college athlete regardless of race, while reinforcing the expectation of satisfactory academic work throughout the school year. Coaches who knowingly recruit, and institutions that admit, athletes who are at academic risk are not deterred from doing so. But institutions recruiting athletes whose previous academic performance predicts high academic risk are obliged to use those athletes' first year at college and initial two semesters of athletics financial aid for concentrated remedial work. This provision prevents exploitation of these athletes by forcing institutions to provide remedial support while limiting practice hours and removing the time commitment required for competition. Because the 2.0 cumulative GPA is extremely low, hence is a reasonable expectation for all college athletes, regardless of their race. The CAP Act academic standards will also serve to increase the likelihood of graduation and decrease attrition through academic failure.

64. Current NCAA rules permit institutions to determine eligibility for athletics financial aid after meeting initial NCAA eligibility standards. Why does the CAP Act penalize college athletes with temporary loss of athletics-related financial aid if their cumulative GPA falls below 2.0 for two consecutive semesters? (CAP Act/Sec. 4-30 (F) (vi)

Higher education must be consistent in its message to college athletes as well as its student body. Athletes failing to meet the most basic low cumulative GPA standard of 2.0 after a year of eligibility and financial aid should not be rewarded with the continuation or new award of an athletic scholarship. A one year period of time to improve GPA extends beyond what many universities require for maintaining need-based aid, conditions which typically include that the undergraduate student maintain a cumulative GPA of 2.00 as an undergrad student.

65. Why is the "one year residency with no athletics competition eligibility" requirement for college athletes academically mismatched with their respective student bodies important for recruited student-athletes? (CAP Act/Sec. 4-30 (F) (viii)

Coaches knowingly recruit high academic risk athletes into academically competitive institutions. When they do so, huge pressures are created for these students to be steered into the easiest majors and courses. Further, the college athlete recruited into such a situation faces an uphill battle to maintain self-esteem and remain academically eligible. If an incoming recruit falls one standard deviation below the high school grade point average or standardized test scores of an institution's incoming class, this is a good predictor of such a circumstance. Athletes in such challenging situations should become established academically before being allowed to participate in athletics, and institutions should provide academic support programs to assist them in

overcoming identified academic deficiencies during that pivotal first year. Retention studies on both athletes and students who are not athletes repeatedly demonstrate the importance of the first year college experience. Further, the at-risk athlete should not be under the same time demands as an athlete who is eligible to participate, which accounts for the 10 hours per week athletics practice limit. The at-risk athlete is not "penalized" for this forced academic redshirt year in that he or she is eligible for athletics financial aid and limited practice and will still have four years of athletics eligibility and financial aid remaining. The one-year of residency in such circumstances is an investment in the athlete's future academic success.

The standard--deviation methodology is tied to the academic profile of each NCAA member institution. An athlete with poor high school academic performance or low standardized test grades may be immediately eligible if he or she matches up (is within one standard deviation) with the institution's general student body profile. The CAP Act will reinforce sound athlete admissions practices by promoting consideration of the athlete's academic fit. Recruited athletes may opt for institutions that offer a better fit and increased chances of academic success.

66. The CAP Act appears to accept the NCAA's initial eligibility "qualifier" requirements. Does this mean that meeting these requirements will allow these athletes to participate as freshmen? (CAP Act/Sec. 4-30 (F) (viii)

No. In addition to NCAA initial eligibility "qualifier" requirements, a one-year residency shall be required prior to eligibility for athletic competition for all freshmen whose high school grade point average or standardized test scores are below one standard deviation from the mean academic profile of their entering class, as determined by the certifying institution. Admitted athletes restricted from competition under this legislation are eligible for athletic-related aid and will have four years of eligibility if they have met NCAA initial qualifier requirements. Athletes restricted from competition are limited to ten hours of practice per week and must participate in an institutional academic improvement plan designed to build academic skills.

67. Why does the CAP Act offer college athletes whose institutions have declared them ineligible for intercollegiate competition an opportunity to appeal to a board of arbitrators?

Athletes faced with ineligibility for competition deserve due process, too, but it must be timely because eligibility for athletic competition is usually an immediate consideration. Therefore, the Act provides for binding arbitration when athletes appeal declarations of ineligibility. But arbitration is only available for athletes whose ineligibility resulted from disciplinary violations, not from academic failure because the Act leaves purely academic matters, such as low grades and the failure to earn sufficient credits to continue competing in athletics, to academic authorities exclusively. When arbitration is appropriate, the institution and the athlete will select the panel from a list of arbitrators approved by the American Arbitration Association. The panel's decision will be final and binding on the parties.

68. What is the rationale for tying institutional compliance with the federal Title IX gender equity law to eligibility for NCAA post-season championship play? (CAP Act/Sec. 4-30 (F) (x)

Over forty years have passed since the adoption of Title IX. Many institutions are still not in compliance with this federal law.[25] Lack of Title IX compliance and data revealing backsliding in participation and other benefits is disturbing. A recent NCAA report[26] revealed:

[25] See National Coalition for Girls and Women in Education. (2012) Title IX: Working to Ensure Gender Equity in Education. http://www.ncwge.org/PDF/TitleIXat40.pdf

- Intercollegiate athletic participation levels are at all-time highs but these participation rates are increasing faster for men than for women at both high schools and colleges. Since 2001-02, men have gained 5,526 more intercollegiate opportunities than women.
- Division I has the best participation rate for women, but at 54% male student-athletes and 46% female student-athletes, DI is still 7% away from mirroring the undergraduate female population. DII has a 17% difference between female athletes and undergraduates, while DIII has a 14% gap.
- In 2010-11, women had a net gain of 113 intercollegiate teams, and men experienced a net gain of 112 teams. But more women's teams (69) than men's (59) were dropped, a disturbing development because women continue to be the underrepresented sex in intercollegiate athletics.
- Division I has the greatest gap in expenditures between men's and women's athletics programs. Analysis of median expenses indicates that FBS institutions are spending 2.5 times more on their men's programs than on their women's programs.
- Spending on men's sports still exceeds that of women's sports by a considerable amount- a 20% difference in median expenses at DI, 14% in DII and 16% in DIII.
- From 2006 to 2010, all Divisions show a greater increase in spending on men's athletics programs than women's, most noticeably at FBS universities where expenditures increased by over $5 million for men and by just under $2 million for women.
- 2010 NCAA figures indicate that DI spends more on each male student-athlete than female student-athlete: over $30,000 more at FBS; $3,000 more at FCS; and $1,000 more at DI institutions without football. In contrast, the most recent available data for DII and DIII show slightly higher expenditures for each female student-athlete, a result affected by the male advantage in participation opportunities.
- Since Title IX was passed, the numbers of female head coaches and female athletics directors (ADs) have steadily declined. Over the past decade, the percentage of female coaches of women's teams has leveled off at around 40, and since 1980, the percentage of female AD's has remained around 20.
- Women hold only around 20% of all NCAA head coaching, AD, and conference commissioner positions.
- In 2010-11, women occupied 34% of Associate AD and Assistant AD positions, and more men (51%) than women (49%) were assistant coaches for women's teams.
- Men are now coaching female student-athletes in great numbers, but women have experienced meager increases in opportunities to coach men. The most recent figures indicate that only 4% of head coaches for men's teams are women.

The federal penalty for non-compliance has never been levied because it is simply too onerous (removal of all federal funds from the institution). Instead, the Office of Civil Rights has negotiated compliance agreements in response to complaints. Unfortunately, the Office of Civil Rights does not have the resources to oversee athletics compliance at 2,000 institutions of higher education and over 20,000 high schools. The national athletic governance association, however, has the power to enforce its rules. It is reasonable to condition national athletic governance association membership

[26] The NCAA Committee on Women's Athletics commissioned a report in 2012 produced by Amy Wilson on "The Status of Women in Intercollegiate Athletics as Title IX Turns 40". These data were taken from that report. See: http://www.ncaapublications.com/p-4289-the-status-of-women-in-intercollegiate-athletics-as-title-ix-turns-40-june-2012.aspx

and eligibility for post-season championships on compliance with federal gender equity requirements, just as an athletic association may require a minimum annual progress rate for post-season eligibility. This post-season eligibility gender equity stance is particularly appropriate when a national athletic governance association, such as the NCAA, has adopted gender equity as a guiding principle.[27] Under the CAP Act, the national association commitment to gender equity is more than just words.

Just as the NCAA requires reviews of rules compliance once every four years by entities outside the institution, with conferences often performing this service, it is reasonable to assume that a similar mechanism can be used for Title IX. This provision, namely, post-season play ineligibility and compliance review by the state high school athletic association, has been in place since 2001 in Kentucky.[28] Further, it is appropriate for Congress to insist on compliance with federal laws as a condition of granting a limited antitrust exemption and continued tax preferences.

69. The CAP Act requires that NCAA member institutions adhere to policies approved by their respective faculty senates ensuring that athletics contests are scheduled to minimize conflict with class attendance and prohibiting regular season contests during final examinations? What is the rationale for this educational condition? (CAP Act/Sec. 4-30 (B) (iii) (II) and (F) (xi))

Before 1984, the NCAA controlled the number of football games that could appear on television during the season. Generally, an NCAA "game of the week" was televised nationally, and several games were televised regionally. In the early 1980s, major football powers began to complain that because of viewer demand for their games, they should be able to sell their television rights to the highest bidder without interference from the NCAA. This led to an antitrust lawsuit against the NCAA. In 1984, the Supreme Court ruled in favor of the major football powers, arguing that the NCAA was acting like a "classic cartel." In the decades following this ruling the number of football games on television grew dramatically. Games are now played on just about any night of the week with little regard for the impact on athletes' educations. College football and basketball began to radically alter schedules to meet the needs of the networks, without regard to the education of the athletes who have made ESPN and other sports TV dynasties possible. Universities now jump from one conference to another in hopes that such realignment will allow them to penetrate new markets. Athletes who are now playing during the week have the added burden of long trips to play games across the country because of these conference realignments. Only a limited antitrust exemption can allow the NCAA to address such scheduling problems without fear of being sued. Faculty senates also need to address this issue. What started as a football problem has become a problem for all college sports at just about every level.

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[27] NCAA Division I, II and III Manuals state: 2.3 T he Principle of Gender Equity. [*]
2.3.1 Compliance With Federal and State Legislation. [*] It is the responsibility of each member institution to comply with federal and state laws regarding gender equity. *(Adopted: 1/11/94)*
2.3.2 N CAA Legislation. [*] The Association should not adopt legislation that would prevent member institutions from complying with applicable gender-equity laws, and should adopt legislation to enhance member institutions' compliance with applicable gender-equity laws. *(Adopted: 1/11/94)*
2.3.3 G ender Bias. [*] The activities of the Association should be conducted in a manner free of gender bias.*(Adopted: 1/11/94)*
See Kentucky High School Athletic Association Board of Control policy at:
www.khsaa.org/httpdocs/titleix/titleixpolicies.pdf

70. Why does the CAP Act prohibit construction and use of "athletics only" facilities? (CAP Act/Sec. 4-30 (F) (xii))

No small subset of the student body should receive the extraordinary privilege of exclusive access to university facilities, whether they are paid for by athletics revenues or private donations. It is particularly irresponsible in the current economic climate to engage in such practices. Numerous institutions use public bonds to finance such projects. NCAA rules have long prohibited exclusive housing units for athletes. Athletics only facilities have led to extravagances such as:

- The Ducks' Football Performance Center, a 145,000 square-foot building that cost a reported $68 million. Amenities include a lobby with sixty-four 55-inch televisions that can combine to show one image, a weight room floor made of Brazilian hardwood, custom foosball tables where one team is Oregon and the other team has 11 players each representing the rest of the Pac-12, a barber shop, and a coaches locker room with TVs embedded in the mirror.[29] Athletics already has an indoor practice field, an athletic medical center, and a brand-new basketball arena and academic study center for athletes. A new football program complex contains, among other things, movie theaters, an Oregon football museum, a players' lounge and deck, a dining hall and private classrooms for top players.[30]
- Athletics only practice facilities at West Virginia University, "utilized only by the Mountaineer men's and women's programs, the facility allows Mountaineer Basketball to have the best on the court performance training tools available, providing top tier practice areas, strength and conditioning space, sports medicine needs, team meeting rooms and video and facility equipment. Adding all the elements of performance training and providing first class locker room facilities, player's lounges and study areas the Basketball Practice Facility provides a distinct advantage in recruiting top tier student-athletes and showcasing the best Mountaineer Basketball and WVU can offer."[31]
- The Texas A&M University football players' lounge and academic center. The lounge is 5,000-square feet and conveniently located one floor above the locker room, training room, and meeting rooms and across the hall from the new state-of-the-art athletics only Academic Center. It is outfitted with ample leather seating and tables, oversized leather lounge chairs that recline to a full prone position so players can watch the huge widescreen high-definition television--equipped with a DVD player. Ping pong, foosball, pool, and gaming tables, and several arcade-style gaming stations feature the latest PlayStation 2, XBox and other video games. Mounted in corners of the room are several flat-screen TVs. Immediately to the left of the lounge's entrance is a marble-top bar that contains soft drink and candy machines for the players' use.[32]

Academic support facilities for athletes are often of higher quality than those available to the student body. Weight training facilities are often larger and include higher quality equipment than what is available to the student body. Gymnasia or fields that are used only for basketball or athletics team practices and left unused for the majority of the day should be unacceptable, especially in the current stressful economic environment for higher education. This issue is not only a matter of excessive expense, but also a matter of impropriety. Facilities and practices should not isolate athletes from the rest of the student body.

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[29] http://www.registerguard.com/rg/news/local/30050174-75/football-autzen-oregon-center-building.html.csp

[30] http://www.insidehighered.com/news/2012/07/23/criticism-athletics-spending-wake-penn-state-unlikely-slow-growth

[31] http://www.mountaineerathleticclub.com/page.cfm?storyid=103

[32] http://www.aggieathletics.com/ViewArticle.dbml?DB_OEM_ID=27300&ATCLID=205237707

71. Why are multiyear scholarships that cannot be gradated or canceled on the basis of athletic ability, performance, or contribution to team success crucial to the CAP Act? (SEC. 4-30 (F) (xiii))

- The relationship between coach and athletes would no longer be perceived as a contractual quid-pro-quo, thus helping the national association to retain a clear line of demarcation between collegiate and professional sport.
- Universities would signal that players they recruit are valued as students first, regardless of performance on the athletic field.
- Because coaches would have to work with their "recruiting mistakes," these athletes would have a chance to mature into players who can contribute to team success, and perhaps get significant playing time.
- Besides raising graduation rates, these scholarships would allow athletes to become an integral part of the student body they entered as freshmen and to benefit from the human capital often associated with a prestigious university.
- No court in the country would mistake a college athlete on scholarship for a university employee, thus significantly cutting the time and money the national association spends on lawsuits.

72. Why does the CAP Act require that each NCAA member institution have a faculty only Committee on Academic Oversight? (CAP Act/Sec. 4-30 (F) (xiv))

In higher education, the faculty is ultimately responsible for the academic integrity of the institution. The national athletic governance association should have a requirement for such oversight. The NCAA does not currently require such oversight. If an institution voluntarily has an athletics council or committee, though, the NCAA requires that a majority of its members be faculty. Yet, such committees do not have responsibilities that specify the mechanisms of oversight and accountability. The CAP Act requires a higher education institution to have a faculty-only committee, produce an annual report from that committee to the institution's faculty senate, and assign specific committee oversight activities to include:

- maintain academic progress and qualifications of players;
- report average SAT and ACT scores and Federal Graduation Rates by sport compared with average scores for the student body;
- report graduation success rates;
- report independent studies taken by sport compared with the student body;
- list professors offering the independent studies and their average grade assigned;
- compile admissions profiles of athletes compared to the student body;
- track athletes' progress toward a degree;
- show trends in selected majors by sport;
- show average grade distributions of faculty by major;
- identify incomplete grades by sport;
- specify grade changes by professor; and
- publish the name of each athlete's faculty advisor.

These data represent areas in which athletics programs have experienced integrity violations, and this process guarantees the level of transparency necessary to determine integrity concerns.

73. Why does the CAP Act give a faculty academic oversight committee the responsibility to ensure that college athlete disciplinary and team rules conform to student welfare best practices? (CAP Act/Sec. 4-30 (F) (xiv))

The CAP Act requires that one-year renewable athletic scholarships, which were adopted in 1973, be replaced with multiyear athletic scholarships that cannot be gradated or canceled on the basis of athletic ability, performance, or contribution to team success. A scholarship can be canceled, though, if an athlete is found to have violated team rules. The faculty academic oversight committee, in consultation with the faculty senate, must examine such rules to determine whether they are consistent with academic best practices. If a requirement for retaining a scholarship conflicts with an athlete's ability to make education a top priority, the faculty senate should examine that requirement closely to decide whether it is reasonable.

74. Why does the CAP Act require that athletics program use of mandatory student fee funding be conditioned on the vote and consent of the student government at least once every four years? (CAP Act/Sec. 4-30 (F) (xv))

Contrary to popular belief, most student fees are mandatory, and the bulk of these fees (sometimes 90%) are earmarked for athletic departments. Recent research has demonstrated that mandatory fees are increasing at a rate of 13-15% higher than tuition at most NCAA Division I institutions. For instance, in 2012, 70 institutions used student fee revenue to support their athletics programs for the first time. The $364,000,000 in student fees those institutions used for athletics in 2012 resulted in them increasing their athletic budgets by an average of 70 percent. These fees are neither transparent [remove comma] nor itemized on a student's bill. Students typically do not get the choice of funding athletics via an "optional" athletics fee that might include admission to all athletics contests. Many students do not even know that their fees support the athletics program.

A recent survey of the Mid-American Conference found that most students were unaware of the fees existence, its amount, and its mandatory nature. Most did not know that all students typically are admitted to athletics contests at no charge. They found this to be of little solace, though, considering that the athletics fee alone adds $3000-5,000 to their school bill, and potentially a much higher amount to their later student debt. An overwhelming majority of respondents wanted the fee to be reduced or eliminated and stated that athletics was not a major factor in choosing a college. The increasing costs of higher education and the size of student loans demand regular review of such fees through a vote. A vote every four years is not onerous, considering that many schools do not even give the students a choice about where their fees go.

75. Why does the CAP Act prohibit coaches from selling or donating the rights to use their names, likenesses, and images when such commercial use is related to their athletics position or institutional affiliation unless specifically authorized to do so by national association rules and their respective institutions? (CAP Act/Sec. 4-30 (F) (xvi)

The CAP Act treats this obligation as a basic ethical responsibility of all athletics department employees. Most public institutions already prohibit employees from using their position or the name of the institution for private gain. Coaches or other athletics personnel should adhere to this ethical position.

Reporting Requirements (CAP Act-Sec. 4-30 (G))

76. Why does the CAP Act require annual NCAA reports to Congress? (CAP Act/Sec. 301)

The granting of a limited antitrust exemption and provision of significant financial assistance to institutions of higher education by Congress should demand accountability in the form of mandated transparency. The publication of the following information (most of which is currently reported to the NCAA) via an online reporting system made available to Congress and the general public electronically, will allow Congress to assess compliance with the Act and will open institutions to deserved criticism if the academic performance of college athletes is deficient or expenditures are excessive:

a. certification status of each member institution per SEC 4-30 (F) (iii)
b. audited financial data of each member institution to include
    - student fee revenues
    - direct Institutional support
    - indirect Institutional support
    - direct governmental support
    - net generated revenues or negative net revenue, whichever is applicable
    - net sport operating expenses
    - total salaries, wages, and benefits
    - percentage of operating budget devoted to coaching and administrative salaries
    - salaries, wages, and benefits paid to the top five employees by position receiving salaries, wages, and benefits
    - capital construction and other debt service
    - total outstanding athletics debt
    - media rights fee revenues
    - Academic Trust Fund transfer and expenditures per SEC 4-30 (D) (vi)
c. NCAA graduation success rate overall and by sport for each member institution
d. federal graduation rate for all students overall , all athletes overall and athletes by sport at each member institution
e. academic progress rate by sport for each member institution
f. number of recruited “non-qualifiers” and number of “qualifiers” required to complete one year in residency per SEC 4-30 (F) (viii) for each member institution
g. institutions ineligible for NCAA championships due to (a) deficiencies in academic performance, (b) non-compliance with Title IX and (c) disciplinary or other reasons
h. audited financial data for the NCAA that shall separately show funds expended for direct support of college athlete benefits (e.g., college athlete assistance programs, athletics injury insurance or medical subsidies, catastrophic insurance, Academic Trust Fund, etc.) and aggregated amount distributed to NCAA member institutions by purpose; and
i. amount of direct distribution of national association funds to each member institution.

Implementation Requirements (CAP Act-Sec. 4-30 (H))

77. Is one year from the adoption of the CAP Act sufficient for institutions of higher education and their national athletic governance associations to comply with the provisions of the CAP Act? (CAP Act/Sec. 4-30 (G)

YES. The CAP Act compliance standards are sufficiently clear and detailed to permit their swift adoption. In some cases, like the development of the national association athletics injury insurance program, a longer time period is designated. In any event CAP Act Section 4-30 (J) gives the Secretary of Education the authority to grant exceptions to the timetable.

Institutions Seeking to Separate from National Governance Association Affiliation (CAP Act-Sec. 4-30 (I))

78. If an institution chooses not to affiliate with a national non-profit college athletics association to comply with the Act, will the institution be in compliance with the Higher Education Act?

The Act only applies to institutions with athletic programs that generate $1 million or more annually and specifies that it must protect its student-athlete by conforming to the standards of the Act, including membership in only those national governance associations in which all athletics programs of this commercial size are regulated. The Secretary shall be authorized to find that an institution which does not demonstration such membership is not in compliance with this participation requirement of the Higher Education Act.

APPENDIX A
EXPLANATION OF THE ESTIMATED COST OF NCAA INSURANCE COVERAGE AND MEDICAL COSTS UNDER THE PROPOSED LEGISLATION

Athletics Injury Policy Cost Estimate

Currently, most athletics programs are providing secondary coverage for athletics injuries. In other words, these departments use parent or student insurance first and then pay for uncovered costs. These policies also typically provide primary coverage for athletes who have no insurance. Parents and students may also be required to assume the cost of deductibles and co-pays. The costs and structures of athletic department insurance policies vary considerably. Institutions usually examine their actual costs over a period of years, choose a policy with a relatively high deductible to lower policy costs, and use policy savings to cover deductibles and other uncovered costs so as to pay as little as possible for medical coverage. This wide variety of practices makes estimating the institutional costs of medical coverage difficult. Because the development of an Association-wide policy will require extensive research of institutional loss/cost experiences, it would most likely take two years to develop an insurance program that covers all 430,000 athletes. The NCAA would pay for this national umbrella policy. A NCAA medical- costs-subsidy program would supplement the umbrella policy. It would reimburse institutions for the costs of the NCAA policy deductibles plus any uninsured usual and customary charges for athletics injuries if this total exceeded what these institutions are currently spending for insurance, deductibles, co-pays and uncovered medical costs.

Although the drafters of the CAP Act did not conduct extensive research into actual insurance and medical costs, they created high-end estimates by consulting various insurance brokers and experts, examining the insurance and cost experiences of several FBS institutions that incur maximum policy costs and provide extensive medical benefits to their athletes, and estimating the total medical and insurance costs now paid by NCAA member institutions.

Experts estimate that an NCAA umbrella athletics injury insurance policy covering 430,000 athletes with a deductible between $500 and $1,500 for institutions without football programs, and higher for institutions with football programs, would cost $120-180 million annually. Generally, the larger the risk pool, the lower the insurance costs. An additional $50-80 million should fund “gap” costs, the difference between (a) institutional costs for uncovered medical expenses and NCAA insurance deductibles and co-pays (with the NCAA paying insurance policy costs) and (b) what NCAA member institutions are currently paying for both athletics injury insurance policies and uncovered medical costs, deductibles, and copays – if any.

It is reasonable to ask whether these cost estimates are reliable. Information related to medical expenses and premiums is collected as part of an institution’s EADA report and is included in the NCAA Financial Reporting System. For the 2011-12 academic year, Division I members spent $135.2 million; Division II members spent $25.6 million and Division III spent a reported $10.8 million (only 60% of DIII members responded with data). By estimating the average institutional cost of 60% of DIII members, a 100% figure of $18 million was extrapolated. Thus, the total insurance and medical cost for NCAA institutions was $178.8 million. Thus, an NCAA insurance budget of $260 million ($180 million for the policy and another $80 million for gap costs from the FBS national championship) in addition to these institutional costs, which would be used to cover deductibles, co-pays, and uncovered costs, seems more than adequate to provide the proposed benefits at no additional cost to member institutions.

Estimated Cost to Member Institutions

What will this system look like in practice? In short,

- institutions will not be required to pay more than they pay now for the combined cost of their secondary insurance and the usual and customary charges for treatment of athletics injuries;
- institutions will no longer have to pay for an athletics insurance policy because the NCAA would pay this cost for all institutions by funding a national umbrella policy
- institutions will pay deductibles/copays, and medical costs up to the maximum of their current insurance/deductibles/co-pays/additional medical costs outlay. The NCAA college athlete gap fund would reimburse any remaining costs.

Using a large FBS school as an example, the system would work like this:

- The institution currently pays $175,000 for its secondary coverage insurance policy and $300,000 in additional costs to reimburse parents/students for deductibles, co-pays, and uncovered expenses.
- The institution will no longer have to pay for its insurance policy because the NCAA will pay for the policy.
- The institution will cover the cost of the NCAA insurance policy deductibles and all usual and customary charges for medical expenses not covered by the policy.
- If the institution's annual medical costs exceed $475,000, it will receive an NCAA medical- cost subsidy to pay for the extra overage.
- If the institution's costs do not exceed $475,000, the institution will realize a budgetary savings.

This system will not cover the cost of obtaining unlimited opinions from medical specialists, but it will cover second opinions and "normal and customary" charges, which is a commonly understood insurance limitation.

The legislation does not promise institutions that they will be able to pay <u>less</u> to insure their athletes, but instead, that they will not have to pay <u>more</u> and that some will most likely pay less. That is because the combination of their current insurance plus deductible/copay/medical costs will be reduced by virtue of the NCAA covering the basic insurance bill. NCAA subsidies will vary by institution each year based on the unpredictable nature of quantity and type of athletics injuries.

Two Year Policy Limitation

A two-year benefit period is an insurance industry norm. Although, in certain cases, policy holders can purchase an additional benefit year, risk management consultants are not aware of any insurer that offers more than a three-year benefit period, at any price. According to industry data, the vast majority of claims are closed within this time frame.

An injury need not be "catastrophic" to be covered under the NCAA's catastrophic policy. The only requirement for medical benefits is that the deductible (currently $90,000) is met. For example, a college athlete with a severe knee injury, who is not disabled, could still receive medical benefits under the catastrophic policy if medical expenses exceed $90,000 (assuming all other terms of the policy are met). The catastrophic policy does have the same two-year time frame as most of the basic accident policies, so that deductible must be met within two years of the date of injury. The proposed NCAA insurance program will have an $80 million gap fund that could address unusual injury cost cases.

Catastrophic Insurance

The NCAA currently maintains a comprehensive policy regarding catastrophic insurance. Even so, the CAP Act requires an annual policy and benefits review to adjust benefits regularly so as to meet unanticipated needs or gaps in coverage. The average annual cost of increased catastrophic insurance or gap benefits, which may vary considerably from year to year, is overestimated in the $15-20 million range.

APPENDIX B - ESTIMATED COSTS OF COST-OF-ATTENDANCE SUBSIDIES

Men's Sports (excluding non-championship sport N=50)	# Institutions	NCAA Limit	Head Ct-100%	Equiv-20%	COA Subsidy @$4000 per
Baseball	293	11.7		2.34	$2,742,480
Basketball	340	13.0	13.0		$17,680,000
C-CtryT&F	277	12.6		2.52	$2,792,160
C-Ctry only	33	5.0		1.00	$132,000
Fencing	21	4.5		0.90	$75,600
Football -FBS	121	85.0	85.0		$41,140,000
Football - FCS	121	63.0	63.0		$30,492,000
Golf	292	4.5		0.90	$1,051,200
Gymnastics	16	6.3		1.26	$80,640
Ice Hockey	58	18.0		3.60	$835,200
Lacrosse	61	12.6		2.52	$614,880
Rifle	17	3.6		0.72	$48,960
Skiing	11	6.3		1.26	$55,440
Soccer	202	9.9		1.98	$1,599,840
Swimming/Diving	134	9.9		1.98	$1,061,280
Tennis	259	4.5		0.90	$932,400
Volleyball	23	4.5		0.90	$82,800
Water Polo	22	4.5		0.90	$79,200
Wrestling	77	9.9		1.98	$609,840
Subtotal - Men's Sports					**$102,105,920**
Women's Sports (excluding emerging sports of squash and synchronized swimming N=12)	**# Institutions**	**NCAA Limit**	**Head Ct-100%**	**Equiv-25%**	**COA Subsidy @$4500 per**
Basketball	338	15.0	15.0		$20,280,000
Bowling	36	5.0		1.00	$144,000
C-ctry/Track and Field	317	18.0		3.60	$4,564,800
C-ctry only	19	6.0		1.20	$91,200
Equestrian	19	15.0		3.00	$228,000
Fencing	24	5.0		1.00	$96,000
Golf	253	6.0		1.20	$1,214,400
Gymnastics	62	12.0	12.0		$2,976,000
Ice Hockey	34	18.0		3.60	$489,600
Lacrosse	91	12.0		2.40	$873,600
Rifle (coed sport-subtracted men's programs)	4	3.6		0.72	$11,520
Rowing	87	20.0		4.00	$1,392,000
Rugby	2	12.0		2.40	$19,200
Skiing	12	7.0		1.40	$67,200

Soccer	317	14.0		2.80	$3,550,400
Softball	285	12.0		2.40	$2,736,000
Swimming/Diving	193	14.0		2.80	$2,161,600
Tennis	317	8.0	8.0		$10,144,000
Volleyball only	309	12.0	12.0		$14,832,000
Volleyball plus sand volleyball	14	20.0	14.0	1.20	$859,600
Water Polo	34	8.0		1.60	$217,600
Subtotal - Women's Sports					**$66,948,720**
OVERESTIMATED COST OF COA SUBSIDIES					**$169,054,640**

Notes: VB plus sand volleyball = 14 head count plus 6 equivalencies; Cross Country only = 5 for men and 6 for women

Appendix C
Calculation of Approximate Cost of Changes in NCAA Enforcement Process

Trying to determine the likely costs of implementing the due process changes called for by the Reform Act is difficult because it is hard to know with certainty how many judges will be needed and how many days they will work. Nonetheless, the following "ballpark figures" represent an educated guess, at the high end, of what the use of judges might cost.

Summary of Estimated Costs

30 Hearings Per Year	
Hearing Judges – 6, with each judge hearing 5 cases per year @ 7 days per case @ $2,000 per day ($70,000 per judge)	$420,000
Hearing Judges' Expenses – meals and incidentals @ $152 per day x 210 days	$ 31,920
20 Appeals Per Year	
Appeals Judges – 6, with each judge working 10 appeals at 4 days per appeal @ $2,500 per day ($100,000 per judge)	$600,000
Appeals Judges' Expenses - meals and incidentals @ $152 per day x 240 days	$ 36,480
Judge Transportation Expenses – 30 hearing judge trips and 60 appeals Judge (3 judges per panel times 20 cases) @ $250 per trip	$ 22,500
Investigators – 30 cases per year at 250 hours per case @ $500 per Hour	3,750,000
Investigator travel and per diem costs – 30 cases x $15,000 per case	450,000
Security guards and costs for hearings open to the public	600,000
Total	$ 5,910,900

Detailed Explanation of Estimates

1. Retired Judges

- The current NCAA Infractions Committee provides for up to 24 members, or eight panels of three members each. In contrast, retired judges under the new due process legislation will be highly experienced at considering disputes, therefore only one hearing judge per case is proposed, just as in a civil or criminal court. The number of teams under NCAA penalty in recent years has been 20-25. Overestimating case load, six "hearing" judges could consider 30 cases per year, although provision could be made for up to eight if necessary.
- The current Infractions Appeals Committee has five members, all of whom hear all appeals. Having six "appeals" judges would ensure that the same three-person panel would not sit on every case, thereby reducing the likelihood that one or two highly influential members would affect the outcome of every appeal. The United States Courts of Appeals use this system of rotating three-member panels.
- Assume six hearing judges, with each one hearing five cases per year, each of which would involve seven days of work (including pre-hearing discovery). Further assume that the hearing judges are paid at the high end of what arbitrators earn in labor-management disputes involving the NFL, NHL, or MLB, which would be $2,000 a day. They would be paid a per diem because they would be independent contractors.
- Based on these assumptions, each hearing judge would hear five cases per year, working seven days per case, or 35 days at $2,000 per day for an annual total of $70,000. Adding to that the $152 Indianapolis per diem for meals and incidentals under Indiana law boosts the total by

$5,320 (152 x $35). Thus, the annual total for each hearing judge would be $75,320. Multiplied by six, the annual total for the hearing judges is $451,920.

- Regarding the appeals judges, note that not every case is appealed. Thus, assume 20 appeals per year, with each judge participating in half of them. Assuming four days of work per case at $2,500 per day (appellate judges earn more than trial judges), each judge would earn $10,000 per appeal for 10 appeals, or $100,000 per year. Adding the $152 per diem for meals and incidentals times 240 days of work (twenty appeals times four days per appeal times three judges per appeal) results in $36,480 in per diem costs. Multiplying by six judges yields a total for the appeals judges of $640,800 per year.
- As to transportation costs, the NCAA would presumably be able to find enough retired judges in Indiana and the neighboring states to handle these matters. Thus, a transportation budget of $250 per judge per case (30 hearings requiring 30 judges and 20 appeals requiring 60 judges) or $22,500 would cover these estimated costs.
- Finally, adding the costs for both sets of judges produces a total annual judicial cost of $1,110,900.

2. Third Party Investigators

- The investigators are likely to be lawyers. Presumably, the NCAA could hire retired lawyers as independent contractors to do this work. It probably would not make sense to hire someone who already has a busy law practice. Nor should the NCAA hire law professors from NCAA member institutions. One model would be to hire, say, six retired lawyers, with each one working alone, supported by the NCAA's clerical staff, as needed. Another model would be to have two-person investigative teams consisting of a retired lawyer and a retired police officer, perhaps, to assist.
- Assuming we go with a lawyer working alone and assuming thirty cases per year, each investigating lawyer would handle five cases. Five cases, at 250 hours per case, and $500 per hour (a middle-range rate in employment arbitration cases, which seem like a reasonable analog) gets us to $125,000 per case for the investigator. Multiplying that by five cases equals $625,000 per investigator per year. Then multiplying $625,000 per investigator per year times six investigators gets us to $3,750,000 per year in investigative costs.
- Add $15,000 per case in travel expenses multiplied by thirty cases, we get $450,000 in travel expenses. Finally, adding $450,000 to $3,750,000 gets us to $4,200,000 in annual investigative costs.
- This estimate is probably a bit high, but it is in the ballpark. Two-person investigative teams would make it higher, although the retired police officers would not command the same hourly rate that the retired lawyers would (probably half or less) so the cost-per-investigation would not double.

3. Other Costs

- Two other costs could also arise. To open enforcement hearings to the public, the NCAA may have to hire additional security guards. Assuming salaries and benefits totaling $100,000 per person and the hiring of six guards, these costs could be as high as $600,000.