

BUILDING AN ALTERNATIVE NCAA DIVISION I COMPETITION MODEL

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ABSTRACT

Shinann Featherston: Building an Alternative NCAA Division I Competition Model
(Under the direction of Barbara Osborne)

As the costs of athletic departments continue to rise, there is growing concern that the geographical footprint of conferences will not be financially sustainable. In response to this uncertainty, different competition models have been explored at the surface level; however, no clear model has been set forward. Recommendations and lessons learned from thirteen participants were used to create an initial framework for a student-centered competition model. The construction of this model is driven by factors considered most important to student-athlete academic and athletic experiences while continuing to provide broad based opportunities and responsible stewardship of limited resources. By delineating a true alternative competition model, this study aims to provide administrators and coaches with a viable alternative structure.

PREFACE

As a former collegiate athlete at the University of North Carolina at Chapel Hill, I was given a once in a lifetime opportunity with unlimited resources to learn, grow, and ultimately leave the school as a better person than I was when I came, but I am aware and have learned that not all student-athletes are given the same/equal opportunity to pursue a national championship.

As a huge sports fan, I do appreciate the Cinderella story every year in Basketball or in any sport for that matter (Coastal Carolina winning the College World Series). However, as the financial situations continue to look bleak with budget deficits, I believe we need to sit back and ask ourselves the question—where do we want the college landscape/industry to be in ten years? If what we are doing does not seem to help that—things need to change.

At the end of day, there are many children throughout the world whose goal is to play a sport in college. Some may also have professional ambitions, but by and large many are looking for the balanced student-athlete experience to have the opportunity to play a sport and study whatever major they choose at the same time. I have, therefore, felt compelled to find an alternative NCAA Division I (for the purposes of this paper) Competition Model, to allow or to guarantee that upcoming youth will be given the college athlete experience I was given.

Although the competition experience may look a little different, perhaps more regionalized, the opportunities to play a college sport will still be available. The goal of this paper is to try and create an alternative competition model that provides/and or maintains the broad-based sports opportunities in NCAA Division I Intercollegiate Athletics.

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CHAPTER I

INTRODUCTION

Intercollegiate athletics, specifically Football and Men's Basketball, elicit significant media revenue and publicity for Division I institutions.¹ This in turn drives schools to follow the money to conferences that have large media deals. Although institutions greatly benefit from the media rights deals and the national exposure of the Football and Men's Basketball programs, the question of whether Olympic non-revenue sports should be tied to these conference decisions remains. So much of conference realignment is driven by money, a new approach could be student-athlete centered.

The impetus to change the current NCAA Division I model is to address the financial concerns for Division I institutions and the time demands issues for student athletes.²

Purpose of Study

The purpose of this study is to delineate an alternative NCAA Division I regionalized competition model.

¹ Jason R. Lanter & Billy J. Hawkins, *The Economic Model of Intercollegiate Athletics and Its Effects on the College Athlete Educational Experience*, 6 J. INTERCOLLEGIATE SPORTS 86, 86 (2013), http://www.humankinetics.com/acucustom/sitename/Documents/DocumentItem/10_lanter_JIS_02130011_ce%2086-95-ej.pdf.

² Jeff Smith, *Aligning Athletics Within Academic Missions in Division I*, FORBES.COM, (Sept. 4, 2014, 4:23 PM), <http://www.forbes.com/sites/ccap/2014/09/04/aligning-athletics-within-academic-missions-in-division-1/#54cb8db8332f>.

Research Question

RQ. What are the philosophical, organizational, and managerial components of a regionalized NCAA Division I competition model federated by sport?

Definition of Terms

Conference realignment: When an institution accepts an invitation to join an athletic conference with which it is not already affiliated.³

Division I: The highest level of intercollegiate athletics sponsored by the National Collegiate Athletic Association. In general, Division I institutions have the biggest student bodies, manage the largest athletics budgets and offer the most generous number of scholarships.⁴

NCAA: A national governing body for collegiate athletic associations.

Athletic Conferences: Voluntary athletic associations in which NCAA member institutions agree to simultaneously cooperate and compete.

Autonomous Five Conferences: Collegiate athletic conferences in the NCAA Division I FBS, comprised of the Atlantic Coast Conference (ACC), the Big Ten Conference (BIG TEN), the Big 12 Conference (BIG 12), the Southeastern Conference (SEC), and the Pacific 12 Conference (PAC-12).

Group of Five Conferences: Collegiate athletic conferences in the NCAA Division I FBS and Non-football subdivision comprised of the American Athletic Conference (AAC), the Big East

³Jeffrey S. Guin, Decision-Making in Higher Education and Intercollegiate Athletics: Case Study on the Big Ten Conference Realignment (Apr. 14, 2015) (unpublished Ed.D. dissertation, University of Illinois at Urbana-Champaign) (manuscript at 24), <https://www.ideals.illinois.edu/bitstream/handle/2142/78387/GUIN-DISSERTATION-2015.pdf?sequence=1&isAllowed=y>.

⁴*About the NCAA*, NCAA.ORG, <http://www.ncaa.org/about> (last visited Nov. 28, 2016).

Conference (BIG EAST), Conference USA (CUSA), the Mid-American Conference (MAC), and Mountain West Conference (MWC).⁵

Limitations

1. The study is limited by the recommendations of the participants interviewed.
2. The study is limited by information describing newly emerging research on alternative competition models, specifically academic journals and the results from NCAA & Knight Commission surveys.

Delimitations

1. The scope of this study is delimited to only the identified alternative NCAA Division I regionalized competition model.
2. The study is further delimited to the legal implications in the current 2016-2017 time-frame as circumstances and legal implications may change over time.

Assumptions

1. The researcher assumes the identified alternative NCAA Division I regionalized competition model is the final blueprint of the model.

Significance of the Study

⁵ Chris Smith, *The Most Valuable Conferences in College Sports: Can the SEC Be Caught?* FORBES.COM, (Jul. 18, 2016, 10:56 AM), <http://www.forbes.com/sites/chris-smith/2016/07/18/the-most-valuable-conferences-in-college-sports-can-the-sec-be-caught/print/>.

As the costs of athletic departments continue to rise, there is growing concern that the geographical footprint of conferences will not be financially sustainable.⁶ Moreover, a recent survey conducted by the Knight Commission revealed “high levels of anxiety and uncertainty about the Current Division I model among a significant number of key campus leaders.”⁷ As a response to this uncertainty, different competition models have been explored at the surface level; however, no clear model has been set forward. By delineating a true alternative competition model, this study aims to provide administrators and coaches with a viable alternative structure.

⁶ Press Release, Knight Comm’n. on Intercollegiate Athletics et al., Knight Commission Studies Interest in Alternative Division I Competition Models (Jan. 7, 2015), http://www.knightcommission.org/images/pdfs/2015_01_07_kcia_study_release.pdf.

⁷ *Id.*

Chapter II

REVIEW OF LITERATURE

NCAA Division I Autonomy Governance Structure

In August 2014, the NCAA Division I Board of Directors adopted a new governance structure that provides legislative autonomy to the so-called Autonomous Five conferences.⁸ The new model grants tremendous power to schools in the ACC, BIG 12, BIG TEN, PAC-12, and SEC to self-govern without interference from the other Division I conferences.⁹ Although conferences outside the Autonomous Five can opt to adopt the same rules, many schools cannot afford these new measures, which highlights the disparity that exists within the current NCAA Division I competition model.

Since the inception of intercollegiate athletics¹⁰, the need for regulation existed due to the presence of commercialization and the propensity for schools to seek unfair advantages against opponents.¹¹ Rising concerns regarding the need to control the excesses of intercollegiate athletics and the safety of student-athletes led to the formation of the NCAA in 1905.¹² The

⁸ Michelle B. Hosick, *Board Adopts New Division I Structure*, NCAA.ORG (Aug. 7, 2014, 11:49AM), <http://www.ncaa.org/about/resources/media-center/news/board-adopts-new-division-i-structure>.

⁹ Anthony Weaver, *New Policies, New Structure, New Problems?: Reviewing the NCAA's Autonomy Model*, 5 ELON L.J. 551, 551 (2015), https://www.elon.edu/docs/e-web/law/law_review/Issues/Elon_Law_Review_V7_No2_Weaver.pdf.

¹⁰ Rodney K. Smith, *A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics*, 11 MARQ. SPORTS L. REV. 9, 10 (2000), <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1393&context=sportslaw> (discussing the 1852 Harvard and Yale crew teams, which competed against each other in a New Hampshire race that was sponsored by a railroad company).

¹¹ RONALD G. SMITH, *PAY FOR PLAY: A HISTORY OF BIG-TIME ATHLETIC REFORM* 8 (Univ. of Ill. Press, 2011).

¹² Smith, *supra* note 10, at 12.

NCAA is a member-led governing body that regulates intercollegiate athletics. As decades have passed and new developments emerged, the NCAA has undergone several structural changes.¹³

Currently, within the NCAA, there are three divisions- Division I, II, and III. Within Division I there are three subdivisions - Football Bowl Subdivision (FBS), Football Championship Subdivision (FCS), and Division II.¹⁴ Within the FBS, there are eleven (11) conferences all of which belong to the Bowl Championship Series (BCS), but only five of which receive automatic qualification bids to the Bowl games. These five conferences are commonly known as the “Power Five”¹⁵ but for the purposes of this paper they are recognized as the Autonomous Five.

Within the Division I Governance structure, the Autonomous Five Conferences have specific legislative areas of autonomy (in the Division I Council) that they may vote upon to amend or adopt. The areas of autonomy include: athletics personnel, insurance and career transition, promotional activities unrelated to athletics participation, recruiting restrictions, pre-enrollment expenses and support, financial aid, awards-benefits-expenses, academic support, health and wellness, meals and nutrition, and time demands.¹⁶

Although schools are not required to adopt the policies, some feel the new structure will only increase the financial and competitive gap between the Autonomous Five Conferences and the remaining Division I Conferences.¹⁷ The current FBS structure along with the autonomous

¹³ MATTHEW J. MITTEN, TIMOTHY DAVIS, RODNEY K. SMITH & N. JEREMI DURU, SPORTS LAW AND REGULATION CASES, MATERIALS, AND PROBLEMS 101 (3D ED. 2013).

¹⁴ *NCAA Division I*, NCAA.ORG, <http://www.ncaa.org/about?division=d1> (last visited Mar. 2, 2017).

¹⁵ Joe Meyer, *Paying to Play (Somewhere Else): An Examination of the Enforceability of Athletic Conferences Liquidated Damages Provision*, 20 JEFFREY S. MOORAD SPORTS L.J. 111 (2013).

¹⁶ NCAA DIVISION I MANUAL 21 (2016 ed.), <http://www.ncaapublications.com/productdownloads/D117.pdf>.

¹⁷ Jake New, *Autonomy Gained*, INSIDE HIGHER EDUC. (Aug. 8, 2014), <https://www.insidehighered.com/news/2014/08/08/ncaa-adopts-structure-giving-autonomy-richest-division-i-leagues-votes-college>.

legislative power both perpetuate the increasing divide amongst Division I institutions which has led to emerging research on alternative competition models.

Role of Conferences

The NCAA Division I membership currently consists of three-hundred and forty-six (346) schools in thirty-two (32) conferences. Intercollegiate athletic conferences have been a part of college athletics for more than a century, actually predating the establishment of the NCAA.¹⁸ Bowen and Levin refer to them as “orbits of competition,” that were created primarily for the formulation and enforcement of rules governing student-athlete eligibility, and ease and convenience of travel and scheduling, which “lift[s]some of the political burden away from the individual member institutions.”¹⁹ These voluntary associations are central mechanisms in which institutions agree to simultaneously cooperate and compete. Traditionally, conference member institutions generally share common missions, practices, and policies for the benefit of the universities and their student athletes.²⁰ They often have a common purpose, such as large public research institutions, or common geography.

Within the larger framework of the NCAA, athletic conferences provide further structure to intercollegiate athletics.²¹ Conference Commissioners, along with member institutions’ Athletic Directors and Faculty Athletic Representatives (FARs) represent the conferences in the NCAA Division I Council. The Council is the primary legislative authority for Division I,

¹⁸ Meyer, *supra* note 15, at 107; Carol A. Barr, *History of Faculty Involvement in Collegiate Athletics*, NCAA.ORG, (1999), https://www.ncaa.org/sites/default/files/History%20of%2BFaculty%2BInvolvement_final.pdf.

¹⁹ DAVID COVELL & CAROL A. BARR, *MANAGING INTERCOLLEGIATE ATHLETICS* 72 (2010); Jerome Quarterman, *Managerial Role Profiles of Intercollegiate Athletic Conference Commissioners*, 8 J. SPORT MGMT. 129, 129–39 (1994).

²⁰ Gregg Katz, *Conflicting Fiduciary Duties Within Collegiate Athletic Conferences: A Prescription for Leniency*, 47 B.C. L. REV. 345, 348 (2006).

²¹ *Id.* at 348.

subject to review by the Board of Directors.²² Under this responsibility, the Autonomous Five conference institutions have specific legislative areas of autonomy that they may vote upon to amend or adopt.²³ Each conference then adopts independent bylaws based on NCAA requirements, which are tailored to effectuate their member institutions' goals.²⁴

In addition, conferences provide further structure to college athletics within the larger framework of the NCAA, because they are associations of NCAA-member institutions in charge of several key organizational activities. Some of their main roles include scheduling competitions among their members to determine a conference champion in one or more sports,²⁵ managing conference championships, and negotiating football bowl invitations.²⁶ Arguably the most important role of athletic conferences today is negotiating television contracts for their members, a right exclusive to the NCAA just three decades ago.²⁷ The sources of revenue gained from these lucrative television contracts have incentivized schools to abandon their traditional/regional conference alignments to find the best revenue pipeline available. This has led to the emergence and formation of conferences bound primarily by market rather than geographic ties.

²² NCAA DIVISION I MANUAL, *supra* note 16, at 21 (2016). (noting that the Division I Board of Directors is the highest governing body at the Division Level and explaining that the Board's main responsibilities include monitoring legislation, setting policy and guiding the direction of the division, assessing operation of the governance structure, and delegating responsibilities to the Council).

²³ *Id.*

²⁴ Connor J. Bush, *The Legal Shift of The NCAA's "BIG 5" Member Conferences to Independent Athletic Associations: Combining NFL and Conference Governance Principles to Maintain the Unique Product of College Athletics*, 16 U. DENV. SPORTS & ENT. L.J. 1, 8 (2014).

²⁵ *Id.*

²⁶ Peter Kreher, *Antitrust Theory, College Sports, and Interleague Rulemaking: A New Critique of the NCAA's Amateurism Rules*, 6 VA. SPORTS & ENT. L.J. 51, 71–72 (2006).

²⁷ Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 136 (1984) (holding NCAA violated antitrust law by exclusively negotiating television deals for member schools); Meyer, *supra* note 15 at 110.

Conference Realignment

Intercollegiate athletics at the Division I level has experienced an enormous shift in conference affiliations leading to rising travel costs for athletic departments and increased time student-athletes are spending away from campus. For example, in 2014, East Carolina University (ECU) left Conference USA to join the American Athletic Conference (AAC).²⁸ As a result, the new conference travel schedule has student-athletes traveling north to Storrs, Connecticut (UCONN), as far west as Dallas, Texas (SMU), and south to Tampa, Florida (USF).²⁹ The expansive geographic footprint of conferences has increased the travel costs significantly, straining athletic budgets and increased travel time which has led to an increase in missed class time for many student-athletes.

Since the *NCAA. v. Board of Regents*,³⁰ economic reasons have been a major driver in conference realignment.³¹ As a result of this decision, conferences immediately took the NCAA's place at the negotiating table for television rights of college football. This has led to constant shifts in conference membership as schools try to maximize profits by moving to a conference with more lucrative television contracts.³² More than forty percent (40%) of major college football teams changed their conferences in the 1990s.³³ Since 2010, there has been eighty-four (84) conference moves affecting twenty-eight (28) Division I conferences (see graphic in Appendix A).³⁴ NCAA President, Mark Emmert, has described this conference

²⁸ Pete Volk, *Conference Realignment Cheat Sheet 2014: Where College Football Teams Are Now*, SB NATION (Feb. 12, 2014, 9:01 AM), <http://www.sbnation.com/college-football/2014/2/13/5404930/college-football-realignment-2014-conference-moves>.

²⁹ Am. Athletic Conference, *Membership Timeline*, AMERICAN, <http://theamerican.org/sports/2013/6/22/Membership.aspx?path=about> (last visited Nov. 28, 2016).

³⁰ See *supra* note 27 and accompanying text.

³¹ Guin, *supra* note 3, at 24.

³² Meyer, *supra* note 15, at 110.

³³ *Id.* at 111.

³⁴ Nick Infante & Ashley Greco, *Conference Realignment Graphic*, COLL. ATHLETIC CLIPS (Mar. 15, 2014), <https://collegeathleticsclips.com/news/clipsrealignmentchartversion25.html>.

realignment phenomena as a “market shakedown” centered on media rights.³⁵ Table 1 and Table 2 illustrate the impact of media rights revenue.

Tables 1 and 2 compare the Autonomous Five Conferences and Group of Five Conferences³⁶ by their three biggest generated revenue streams: College Football Playoff and Bowl payouts, NCAA Basketball Tournament revenue distribution, and media rights deals.³⁷ These conferences were selected because they are the ten most valuable in college sports.³⁸

Table 1: Revenue Produced by Autonomous Five Conferences (2014-2015)

Conference	CFP/Bowl	NCAA Tournament	Media Rights Revenue	Total	Per School Total
ACC	\$84 mil	\$21 mil	\$233 mil	\$328mil	\$21.9 mil*
BIG TEN	\$119 mil	\$21 mil	\$291 mil	\$431 mil	\$30. 8 mil
BIG 12	\$113 mil	\$19 mil	\$170 mil	\$302 mil	\$30.2 mil
PAC 12	\$107 mil	\$11 mil	\$233 mil	\$351 mil	\$29.3 mil
SEC	\$123 mil	\$17 mil	\$375 mil	\$515 mil	\$36.8 mil

* Per school total includes football independent Notre Dame (ND). Omitting ND makes per-school total \$23.4 million.

Table 2: Revenue Produced by Group of Five Conferences (2014-2015)

Conference	CFP/Bowl	NCAA Tournament	Media Rights Revenue	Total	Per School Total
AAC	\$30 mil	\$19 mil	\$19 mil	\$68 mil	\$5.7 mil
BIG EAST	\$0	\$10 mil	\$35 mil	\$45 mil	\$4.5 mil
CUSA	\$17 mil	\$3 mil	\$16 mil*	\$36 mil	\$2.6 mil
MAC	\$20 mil	\$2.5 mil	\$3.5 mil	\$26 mil	\$2.2 mil
MWC	\$18 mil	\$9 mil	\$14 mil	\$41 mil	\$3.4 mil

* Includes \$6 million in exit fees received in 2015-2016 that were paid by schools that left the conference in 2013 and 2014.

³⁵ Meyer, *supra* note 15, at 109.

³⁶ Smith, *supra* note 5 (Collegiate athletic conferences in the NCAA Division I FBS and Non-football subdivision include: the American Athletic Conference (AAC); the Big East Conference (BIG EAST); the Conference USA (CUSA); the Mid-American Conference (MAC); and the Mountain West Conference (MWC).

³⁷ *Id.* (noting that media right revenues include both rights fees and, for conferences with network ownership stakes, estimated profit shares, but does not include smaller revenue streams like those garnered from licensing and conference tournament deals).

³⁸ *Id.*

There are several points worth highlighting: (1) the Autonomous Five conferences receive more revenue for media rights deals than any other form of revenue, (2) the BIG 12 has the least valuable media rights agreement of the Autonomous Five- an average of \$200 million per year which is still twice as much as the entire Group of Five combined, (3) CFP/Bowl Payouts for both Autonomous Five and Group of Five schools provide more revenue than the NCAA Basketball Tournament payout (the exception is the BIG EAST which does not sponsor football), and (4) the difference between the lowest per school total payout in the Autonomous Five Conferences (ACC) and highest per school total payout in the Group of Five Conferences (AAC) is \$16.2 million.³⁹

As these numbers illustrate, NCAA Division I athletics is truly a world of haves and have-nots. Schools that are currently outside the Autonomous Five are fighting to find a way in to receive the benefits of these media rights payouts. Most recently talks of BIG 12 expansion sent schools into a flurry fluffing their resumes and future plans to get a chance of being invited into the club. According to an *Outside the Lines* analysis, thirteen (13) public schools reported to have been vying to get into the BIG 12 over the summer;⁴⁰ however, talks of expansion seem to be at a halt after the BIG 12 announced it has decided to stay at ten members.⁴¹

While it is apparent that media rights revenue is driving conference realignment decisions, other circumstantial reasons mentioned in the literature are: (1) to pursue membership in a more competitive conference, (2) to expose the college or university to new markets and

³⁹ *Id.* (the difference between the ACC per school total of \$21.9 million and the AAC per school total of \$5.7 million equals \$16.9 million).

⁴⁰ Paula Lavigne, *Rich Get Richer in College Sports as Poorer Schools Struggle to Keep Up*, ESPN.COM (Sept. 6, 2016, 9:20 AM), http://www.espn.com/espn/otl/story/_/id/17447429/power-5-conference-schools-made-6-billion-last-year-gap-haves-nots-grows.

⁴¹ Stewart Mandel, *The Big 12 Owes A Lot of People an Apology*, FOXSPORTS.COM (Oct. 17, 2016, 7:35 PM), <http://www.foxsports.com/college-football/story/big-12-expansion-conference-should-apologize-oklahoma-texas-mandel-101716>.

increase visibility, (3) to associate with a particular conference's brand image, (4) to pursue increased prestige, and (5) because the current conference is discontinuing sponsoring a sport (i.e. football).⁴²

Although media rights revenue is necessary to support college athletics programs, conference realignment decisions are being driven by what is best for Football and Men's Basketball programs. As a result, Olympic non-revenue sports teams are dragged into new conferences, leading to increased travel costs, longer regular seasons (in some cases), and more missed class time for student-athletes. As the costs of athletic programs continue to rise, there is a growing concern that the current geographical footprint of conferences will not be financially sustainable.⁴³ Instead of revenue-driven conference realignment that also creates additional expenses, a new approach could be student-athlete centered.

Financial Concerns

Intercollegiate athletics, specifically Football and Men's Basketball, generate significant media revenue and publicity for Division I institutions.⁴⁴ This in turn drives schools to follow the money to conferences that have larger media deals. Although institutions greatly benefit from these media rights deals and the national exposure for the Football and Men's Basketball programs, the question of whether Olympic non-revenue sports should be tied to these conference decisions remains. A big concern with the expansive geographic footprint of conferences, caused by conference realignment, is financial sustainability. Moreover, the "out of control expenditures" seen among the Autonomous Five Conference programs are creating a

⁴² Daphne R. Carr, *A Longitudinal Analysis of the Effects of Conference Realignment on College Football Brand Equity*, (2014) (unpublished Ed.D. dissertation, University of Alabama), 1 PQDT 3683639.

⁴³ Press Release, *supra* note 6.

⁴⁴ Lanter & Hawkins, *supra* note 1.

divide that may eventually force many schools in the Group of Five and some in the Autonomous Five to drop out of the current Football Bowl Subdivision.⁴⁵

The current economic model of Division I athletics engenders challenges to the sustainability of athletic departments. The nation's richest athletic departments, all within the Autonomous Five conferences, pulled in a record \$6 billion last year -- nearly \$4 billion more than all other schools combined.⁴⁶ These numbers illustrate the gulf between the haves and have-nots in college sport has never been greater. To highlight the disparity, an *Outside the Lines* report shows that "in 2008, the gap between the average overall revenue of schools in today's Autonomous Five conferences and those in the FBS Group of Five conferences was about \$43 million. In 2015, it was \$65 million." Moreover, if subsidies are subtracted from that revenue, the gap gets even wider, from an average of \$53 million in 2008 to \$83 million in 2015.⁴⁷

Although there is a large disparity between the two groups, Group of Five schools are trying to keep up with the aggressive spending of the Autonomous Five conferences. This phenomenon is known as the athletic arms race wherein athletic administrators outbid one another in spending "in an effort to stockpile 'arms.'"⁴⁸ Today, the arms race has become the generic term denoting extravagant operating expenditures by schools to outdo opponents.⁴⁹ In order to gain a competitive advantage, especially in Football and Men's Basketball,

⁴⁵ Jake New, *The Have and Have-Not Gap*, INSIDE HIGHER EDUC., (Oct. 25, 2016), <https://www.insidehighered.com/news/2016/10/25/knight-commission-meeting-worries-over-spending-and-stability-football-bowl>.

⁴⁶ Lavigne, *supra* note 40.

⁴⁷ Lavigne, *supra* note 40, at 4 (noting that information is limited to data collected from public institutions).

⁴⁸ Erianne A. Weight, Matthew A. Weight & Raymond Schneider, *Confronting the Arms Race: Conference Commissioner Perspectives on Spending Within Intercollegiate Athletics*, 14 INT'L J. SPORT MGMT. 1, 2 (2013); Rodney Fort, *College Athletics Spending: Principals and Agents v. Arms Race*, 2 J. AMATEUR SPORT 119, 121 (2016), <https://journals.ku.edu/index.php/jams/article/view/5673/5159>.

⁴⁹ Weight, Weight & Schneider *supra* note 48, at 2.; William Tsitsos & Howard L. Nixon, *The Star Wars Arms Race in College Athletics: Coaches' Pay and Athletic Program Status*, 36 J. SPORT & SOC. ISSUES 69, 69 (2012).

administrators are building bigger/more advanced facilities, paying coaches exorbitant salaries,⁵⁰ and giving student athletes more money to cover the cost of attendance. This win-at-all-costs phenomenon has been pursued at all levels of intercollegiate athletics but some of the most detrimental effects of spending are most clearly seen at the Autonomous Five level.⁵¹

Group of Five schools are also increasing salaries to lure the best administrators and coaches, building multimillion-dollar stadiums and arenas, and giving student-athletes more money to cover tuition and living expenses.⁵² However, as noted above, the Group of Five do not have the same revenue streams as the Autonomous Five, making it very difficult to sustain the spending without creating budget deficits. For example, Texas A&M reported making \$192,608,876 in revenue in 2014-2015 year, whereas the highest revenue generated by a Group of Five school was Cincinnati with \$52,536,185.⁵³ Table 3 below compares the top five revenue making public schools in the Autonomous Five versus the top five in the Group of Five.

Table 3: Top Five Revenue Making Public Schools in the A5 vs. the Group of 5

Autonomous Five Schools	Revenue for 2014-2015	Group of Five Schools	Revenue for 2014-2015
Texas A&M	\$192,608,876	Cincinnati	\$52,536,185
Texas	\$183,521,028	Central Florida	\$51,455,603
Ohio State	\$167,166,065	Air Force	\$50,191,669
Michigan	\$152,477,026	San Diego State	\$49,011,745
Alabama	\$148,911,674	East Carolina	\$48,918,305 ⁵⁴

Moreover, most of the Group of Five schools' revenue is largely made up of funds from student fees, university subsidies, and state or local government; whereas subsidized sources

⁵⁰ Tsistos & Nixon *supra* note 49, at 69 (describing the “arms race” for coaches’ salaries as “star-wars” like).

⁵¹ Fort, *supra* note 48, at 121.

⁵² Lavigne, *supra* note 40, at 4.

⁵³ Steve Berkowitz et al., *NCAA Finances (2015-2016)*, USA TODAY SPORTS (Apr. 14, 2016, 7:45 AM), <http://sports.usatoday.com/ncaa/finances/> (last visited Nov. 28, 2016).

⁵⁴ *Id.*

make up on average just five percent (5%) of Autonomous Five schools' budgets.⁵⁵ The highest subsidized public school in the Autonomous Five is Rutgers University receiving 33.74% or \$23,803,903.00 of its \$70,558,935 revenue total from subsidies.⁵⁶ Among Group of 5 institutions, Florida International University receives 82.55% or \$23,620,086 of its \$28,612,452 revenue total from subsidies. Below Table 4 lists the highest subsidized public school in each of the Group of Five Conferences, excluding the BIG EAST.

Table 4: Highest Subsidized Public Schools in each of the Group of 5 Conferences

Group of Five Schools	Revenue	Total Subsidy	% Subsidy
Florida International	\$28,613,452	\$23,620,086	82.55
Eastern Michigan	\$33,956,233	\$27,309,988	80.43
Houston	\$44,815,210	\$25,994,014	58.00
Air Force	\$50,191,669	\$43,481,337	67.90

Although there is a large disparity between the Autonomous Five and Group of Five schools, it is important to note that Autonomous Five schools are also running budget deficits. According to the NCAA website, only two dozen or so public schools generate more money (does not include subsidy) than they spend.⁵⁷

While media revenues have increased in recent years, this influx of revenue is not flowing to the Group of Five schools. Furthermore, the geographical footprint of these new conferences has made team travel costs significantly increase. If the trend of schools spending continues to outpace the revenues generated, the future of the current NCAA Division I competition model appears unsustainable. A regional conference model especially for the non-revenue sports may help relieve the rising travel costs at institutions.

⁵⁵ Lavigne, *supra* note 40.

⁵⁶ *Id.*

⁵⁷ Brian Burnsed, *Athletic Departments That Make More Money Than They Spend Still A Minority*, NCAA.ORG (Sept. 18, 2015, 9:30 AM), <http://www.ncaa.org/about/resources/media-center/news/athletics-departments-make-more-they-spend-still-minority>.

Time Demands

Student-athletes' time demands have also increased with the rise of media revenue pouring into big-time NCAA Division I intercollegiate sports. Large television contracts have come with academic trade-offs such as more midweek games. Heightened expectations to win have made many coaches reluctant to give their teams much time off, and new conference re-alignments have led to increased travel for students in many programs.⁵⁸ As a result, questions about time demands have taken center stage over the past few years and were a hot topic during the 2017 NCAA Convention.⁵⁹

The demands on student-athletes' time gained more traction when student-athletes were given a seat on the NCAA Division I Board of Directors in 2014.⁶⁰ Over the past two years, the rise in student-athlete influence, along with the results from the December 2015 Division I SAAC survey⁶¹ and the 2015 NCAA GOALS⁶² study, collectively helped spearhead the time demands conversation at the 2016 NCAA Convention. Although no provisions were voted on, these conversations led to another NCAA survey which garnered nearly 50,000 responses from Division I coaches, athletic administrators and student-athletes. The survey included sport-specific questions and identified solutions for various concerns including countable athletically related activities (CARA), competition time demands, out-of-season time demands, academics and travel.⁶³

⁵⁸ Brad Wolverton, *NCAA Considers Easing Demands on Athletes' Time*, CHRON. HIGHER EDUC. (Jan. 8, 2016), <http://www.chronicle.com/article/NCAA-Considers-Easing-Demands/234840>.

⁵⁹ Michelle Brutlag Hosick, *DI Student-Athletes to Have More Time Away From Sports*, NCAA.ORG (Jan. 20, 2017, 1:17PM), <http://www.ncaa.org/about/resources/media-center/news/di-student-athletes-have-more-time-away-sports>.

⁶⁰ Hosick, *supra* note 8.

⁶¹ Summary of Findings, Division I SAAC Time Commitments Study, NCAA.ORG (Dec. 2015), http://www.ncaa.org/sites/default/files/DISAAC_time_commitments_summary_20160127.pdf.

⁶² Initial Summary of Findings, NCAA GOALS Study of the Student-Athlete Experience, NCAA.ORG, (Jan. 2016), http://www.ncaa.org/sites/default/files/GOALS_2015_summary_jan2016_final_20160627.pdf.

In response to this research and the growing concerns for student-athletes' experience and well-being, five (5) different time demand proposals were adopted by the Autonomous Five conferences at the 2017 NCAA Convention.⁶⁴ The changes adopted, effective August 1, 2017, require: the creation and annual review of a time management plan for each sport, a seven-day break after the season and fourteen additional days off during the regular academic year when classes are in session, and one day off per week during preseason and vacation periods.⁶⁵ Additionally, the changes prohibit athletically related activities during a continuous eight-hour period between 9p.m. and 6a.m., and off-campus practice during vacation periods outside the championship season and unrelated to away-from-home competition.⁶⁶ In regards to the remaining Division I schools, their conferences can decide individually whether to adopt the proposals. In fact, the IVY League and Mid-American Conference (MAC) institutions have already adopted some of the new proposals.⁶⁷

MAC commissioner, Jon Steinbrecher, indicated these adopted proposals are just “the starting point not the end point” and that “the next evolution gets into sport-specific requirements.”⁶⁸ If what Steinbrecher says turns out to be true, proposals for time demand

⁶³ Tom Yelich, *Nearly 50,000 Weigh In on DI Time Demands*, NCAA.ORG, (May 9 2016, 3:02 PM), <http://www.ncaa.org/about/resources/media-center/news/nearly-50000-weigh-di-time-demands> (noting that overall a majority of coaches support this concept; however, within some sports, a majority of coaches did not support the idea); *see also* Summary of Findings, Division I Time Demand Study, NCAA.ORG (Apr. 2016), http://www.ncaa.org/sites/default/files/2016RES_DI-Time-Demands-.

⁶⁴ Hosick, *supra* note 60.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Jake New, *Ivy League Adopts New Rules Limiting Time Demands on Athletes*, INSIDE HIGHER EDUC. (June 10, 2016) <https://www.insidehighered.com/news/2016/06/10/ivy-league-adopts-new-rules-limiting-time-demands-athletes> (noting that the IVY League rules give student athletes a ten-hour window of no official athletic activity following their return from a road trip and a two-week break following the completion of a team's season); *MAC Adopts Four Proposals to Decrease Time Demands for Athletes*, ESPN.COM (Sept. 8, 2016), http://www.espn.com/college-sports/story/_/id/17496278/mac-adopts-four-proposals-decrease-demands-athletes (explaining that the MAC Conference rules give student athletes an eight-hour window of no official athletic activity following their return from a road trip, a two-week break following the completion of a team's season, a full week off with no athletic obligations at the beginning of each semester, and provide that MAC institutions will be required to share weekly practice schedules with student-athletes).

legislation may become the new trend. Jack Swarbrick, the athletic director at Notre Dame, believes if the organization is really concerned with student-athletes' time the focus should be on scheduling and traveling,⁶⁹ stating, "Nothing is more disruptive than that."⁷⁰ As an example, Mr. Swarbrick explains that it takes 10 to 12 hours of travel, at least, each way for his teams to travel from ND, in South Bend, IN, to Blacksburg, VA., to compete against Virginia Tech, an ACC rival.⁷¹ He suggests colleges should have multiple teams travel together and compete on the same day, which would justify the cost of chartered flights. Swarbrick believes more coordinated scheduling would eliminate the daylong excursions his teams sometimes make when traveling, therefore cutting down on time away from campus.

Another suggestion, supported by Arkansas State Athletic Director Terry Mohajir, is the idea of realigning the Group of Five conferences (at least for now) to be more geographically matched.⁷² In addition, the Knight Commission has recommended shortening seasons or reducing games and letting non-revenue sports compete with schools that are more aligned geographically to reduce travel time, scheduling, and financial burdens.⁷³

Legal Framework

Change in competitive frameworks may have legal implications. Three different areas of law are important in creating an alternative Division I regionalized competition model: Title IX of the Educational Amendments Act of 1972 ("Title IX")⁷⁴, the Sherman Antitrust Act⁷⁵, and contract law.

⁶⁸ *MAC Adopts Four Proposals to Decrease Time Demands for Athletes*, *supra* note 67.

⁶⁹ Wolverson, *supra* note 58.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Lavigne, *supra* note 40.

⁷³ Lavigne, *supra* note 40.

⁷⁴ 20 U.S.C. § 1681 (2012).

⁷⁵ 15 U.S.C. §§ 1–2 (2012).

Title IX

Title IX is the law most frequently utilized to remedy sex discrimination in intercollegiate athletics. Most cases have involved claims that women are not being provided with equal athletic opportunities in comparison to men.⁷⁶ The current conference model, driven by decisions that benefit Football and Men's Basketball, has resulted in inequities for women's teams. If an institution were to move to a more regionalized competition model for some of its sports but not others, Title IX implications may arise as well.

Title IX of the Educational Amendments Act of 1972 states, "No person in the United States, shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance."⁷⁷ The statute was created and modeled after the civil rights legislation of the 1960s in response to congressional findings of widespread discrimination against women in educational institutions.⁷⁸ Similar to its predecessors in form and function, its main objectives were "to avoid use of federal resources to support discriminatory practices and to provide individual citizens effective protection against those practices."⁷⁹

In 1975, the Department of Health, Education and Welfare (HEW) promulgated regulations specific to college athletics.⁸⁰ To provide guidance as to what is considered "equal opportunity for members of both sexes," Section 106.41(c) lists the following factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

⁷⁶ Davis, DURU, MITTEN, & SMITH *supra* note 13.

⁷⁷ 20 U.S.C. § 1681(a) (2012).

⁷⁸ Deborah L. Rhode & Christopher J. Walker, *Gender Equity in College Athletics: Women Coaches as a Case Study*, 4 STAN. J. C.R. & C.L. 1, 5 (2008).

⁷⁹ *Id.* at 6, (citing *Cannon v. Univ. of Chi.*, 441 U.S. 677, 704 (1979)).

⁸⁰ 34 C.F.R. § 106 (2016).

- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and services;
- (9) Provision of housing and dining facilities and services;
- (10) Publicity⁸¹

After the 1975 regulations were released, an influx of Title IX complaints from schools, teams, and individuals were received by the Office of Civil Rights (OCR).⁸² In order to reduce these complaints and to encourage self-policing, OCR promulgated a Policy Interpretation to clarify the responsibilities of institutions subject to the mandates of Title IX.⁸³ The regulations that define whether schools are in compliance with Title IX fall within three categories: (1) equality in Athletic Financial Assistance (Scholarships)⁸⁴, (2) Equivalence in Other Athletic Benefits and Opportunities⁸⁵, and (3) Effective Accommodation of Student Interests and Abilities.⁸⁶

The Policy Interpretation explains a school must allocate athletically related financial assistance in proportion to the numbers of male and female students participating in

⁸¹ *Id.* § 106.41(c).

⁸² Sara A. Elliot & Daniel S. Mason, *Gender Equity in Intercollegiate Athletics: An Alternative Model to Achieving Title IX Compliance*, 11 J. LEGAL ASPECTS SPORT 1 (2001), http://heinonline.org/HOL/Page?handle=hein.journals/jlas11&div=7&g_sent=1&collection=journals.

⁸³ U.S. Dep't of Educ. OCR, Intercollegiate Athletics Title IX Policy Interpretation, 44 C.F.R. § 71, 413-23 (1979).

⁸⁴ 34 C.F.R. § 106.37(c) (2016).

⁸⁵ *Id.* § 106.41(c)(2)–(10).

⁸⁶ *Id.* § 106.41(c)(1).

intercollegiate athletics to satisfy the Athletic Financial Assistance requirement.⁸⁷ Further, for a school to satisfy the equivalence in other athletic benefits and opportunities requirement, a school should look to the 1975 Regulation Sec 106.4(c)(2)-(10) laundry list of requirements. Lastly, the OCR issued the Three-Part “Effective Accommodation Test,” to help schools determine if they were compliant with the equal athletic participation opportunity requirement.⁸⁸ The test provides three options for a school to demonstrate compliance:

- (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- (2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of that sex; or
- (3) Where the members of one sex are underrepresented and among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.⁸⁹

If a school meets any one of these three prongs, it will be seen as effectively accommodating the interests and abilities of members of both sexes in compliance with that aspect of the Regulations.

⁸⁷ U.S. Dep’t of Educ. OCR, Intercollegiate Athletics Title IX Policy Interpretation, 45 C.F.R. § 88.37(c) (1979).

⁸⁸ *Id.* § 26 (1979).

⁸⁹ *Id.* at 71418.

Antitrust Law

Congress passed the Sherman Act in 1890⁹⁰ to preserve a competitive marketplace for the benefit of consumers. The two provisions that will be used to analyze the delineated model are 15 U.S.C. §§ 1-2. Section 1 provides that “[E]very contract, combination . . . or conspiracy in restraint of trade or commerce”⁹¹ is illegal, and Section 2 prohibits monopolization or attempts to monopolize trade or commerce.⁹² For a court to have Sherman Act jurisdiction, the challenged activity must have (1) an interstate nexus or effect, and (2) constitute or affect trade or commerce.⁹³

Currently the NCAA has no blanket exemption from the federal antitrust laws merely because it is a non-profit organization whose members are predominantly colleges and universities with educational objectives.⁹⁴ In *NCAA v. Board of Regents*, the court did find anti-trust violations for the NCAA’s rules restricting its members television rights; however, the Court acknowledged the NCAA’s role “as the guardian of an important American tradition” and its “historic role in the preservation and encouragement of intercollegiate amateur athletics.”⁹⁵ It is important to note that courts have given deference to the primarily noncommercial NCAA rules to preserve amateurism, academic integrity, and competitive balance.⁹⁶

⁹⁰ BUREAU OF COMPETITION, U.S. FED. TRADE COMM’N, GUIDE TO THE ANTITRUST LAWS: THE ANTITRUST LAWS, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws> (outlining agency guidance on competition) (last visited Nov. 28, 2016).

⁹¹ 15 U.S.C. § 1 (2012).

⁹² *Id.* § 2 (“[E]very person who shall monopolize, attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony . . .”).

⁹³ *Summit Health, Ltd. v. Pinhas*, 500 U.S. 322 (1991).

⁹⁴ *NCAA v. Bd. of Regents*, 468 U.S. 85 (1984).

⁹⁵ *Id.* at 85.

⁹⁶ Matthew J. Mitten, *Applying Antitrust Law to NCAA Regulation of “Big Time” College Athletics: The Need to Shift from Nostalgic 19th and 20th Century Ideals of Amateurism to the Economic Realities of the 21st Century*, 11 MARQ. SPORTS L. REV. 1, 4 (2000), <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1392&context=sportslaw>.

Federal antitrust lawsuits against the NCAA generally have been brought under Section 1 of the Sherman Act, which prohibits “concerted activity” that produces unreasonable restraints of trade.⁹⁷ The NCAA is also subject to Section 2, which bans both unilateral and concerted conduct that produces a monopoly or that constitutes an attempt to achieve a monopoly⁹⁸, however, historically these claims have been unsuccessful.⁹⁹ The collective adoption and enforcement of NCAA rules by its member universities as well as other agreements concerning the production, marketing, and regulation of intercollegiate athletics is considered concerted action for purposes of Section 1 of the Sherman Act. This means that virtually all NCAA rules and agreements among NCAA members are potentially subject to antitrust challenge.¹⁰⁰ Because the delineated model would require member institutions of the NCAA to agree, there may be antitrust implications.

Damages awarded for anti-trust violations can be quite costly for an enterprise, whether it is monetary or injunctive relief. The Clayton Act, enacted by Congress in 1914, expanded the ability of private individuals to sue for damages.¹⁰¹ Section 4 of the Clayton Act states that any person, other than foreign nations, whose business or property is injured by a violation of the antitrust laws may recover treble damages, and the cost of the suit, including reasonable attorney’s fees.¹⁰² Successful plaintiffs can also obtain a court order (injunctive relief) prohibiting the anticompetitive practice in the future.¹⁰³ This damages provision gives an incentive for private individuals to bring anti-trust litigation against enterprises.

⁹⁷ Davis, DURU, MITTEN, & SMITH *supra* note 13, at 226; 1 JULIAN O. VON KALINOWSKI, MAUREEN MCGUIRL & PETER SULLIVAN, ANTITRUST LAWS AND TRADE REGULATION (2d ed. Matthew Bender & Co. 2016) (e-book).

⁹⁸ 15 U.S.C. § 2 (2012); *see also* VON KALINOWSKI, MCGUIRL & SULLIVAN, *supra* note 97.

⁹⁹ Ass’n of Intercollegiate Athletics for Women v. NCAA, 735 F.2d 577 (D.C. Cir. 1984).

¹⁰⁰ DAVIS, DURU, MITTEN, & SMITH *supra* note 13, at 226.

¹⁰¹ 15 U.S.C. § 12 (2012); *id.* § 15.

¹⁰² *Id.* § 15.

¹⁰³ BUREAU OF COMPETITION, U.S. FED. TRADE COMM’N, *supra* note 90.

Contract Law

Currently, athletic conferences have contracts with broadcast/cable networks (“Media Contracts”) and member institutions have contracts with their athletic conferences (“Conference Contracts”). If schools were to move to the delineated alternative competition model for certain sports, both schools and athletic conferences may be held financially liable if this move is considered a breach of their existing Media and/or Conference contracts. This paper will focus on the duties & responsibilities clause and liquidated damages clause in Conference contracts and the reconfiguration clause in Media contracts.

A contract is a promise that the law will enforce.¹⁰⁴ More specifically, a contract is a promise for the breach of which the law either provides a remedy or recognizes as a duty.¹⁰⁵ But not all promises are enforceable. In order for a promise to be enforceable, there needs to be consideration. Consideration is present when the promise was made as part of a “bargain.”¹⁰⁶ In this context, “bargain” means that the promise was made as part of an exchange.¹⁰⁷ For example, conferences agree to allow broadcast/cable networks to televise the sports programs of their member institutions in exchange for money. Promises are also sometimes enforced based on the alternative doctrine of “promissory estoppel.” Promissory estoppel makes a promise enforceable where the promisee has reasonably and foreseeably relied on the promise to its detriment.¹⁰⁸ For example, in 2003 the BIG EAST brought a promissory estoppel claim against Miami and

¹⁰⁴ RESTATEMENT (SECOND) OF CONTRACTS § 1 (AM. LAW INST. 1981).

¹⁰⁵ *Id.*

¹⁰⁶ RESTATEMENT (SECOND) OF CONTRACTS § 71(1) (AM. LAW INST. 1981) ; *See generally* David Gamage & Allon Kedem, *Commodification and Contract Formation: Placing the Consideration Doctrine on Stronger Foundations*, 73 U. CHI. L. REV. 1299 (2006).

¹⁰⁷ RESTATEMENT (SECOND) OF CONTRACTS § 71(2) (AM. LAW INST. 1981).

¹⁰⁸ JEFF FERRIELL, UNDERSTANDING CONTRACTS § 3.01, at 114 (3d ed. 2014).

Virginia Tech, when they decided to leave the conference for the ACC. The BIG EAST argued it relied on their membership to remain a premier football conference.¹⁰⁹

Non-performance of a contractual duty is a breach unless non-performance is excused.¹¹⁰ The two potential consequences of a breach of contract are: (1) the injured party is entitled to a remedy, usually monetary damages¹¹¹, and (2) the injured party may also be entitled to temporarily suspend its own performance or sometimes even terminate or “rescind” the contract.¹¹² For example, a school’s decision to leave a conference would likely be considered a material breach of its membership agreement with conference, therefore, it would owe the conference money (often the amount is set out in a liquidated damages clause or “buy out” clause of the membership agreement). In regards to the second consequence, were a conference’s membership to change, broadcast/cable networks may have the power rescind some of their promises (amount of programming), re-negotiate payment, or terminate the agreement altogether (often this will be laid out in a reconfiguration clause of the Media contracts).

It is customary for Conference contracts and Media contracts¹¹³ to contain clauses describing the remedy for breach of contract in advance. The contract might contain an agreed upon “liquidated” damages provision, or an agreement limiting the injured party’s remedy. A liquidated damages provision specifies an amount of money to be paid as damages for any breach.¹¹⁴ If the amount specified is significantly different from the amount of actual damages, the provision may be unenforceable if found to be a “penalty.”¹¹⁵ A limited remedy provision is

¹⁰⁹ Katz, *supra* note 20, at 357.

¹¹⁰ FERRIELL, *supra* note 108, at 444 (citing RESTATEMENT (SECOND) OF CONTRACTS § 235 & cmt. b (AM. LAW INST. 1981)).

¹¹¹ RESTATEMENT (SECOND) OF CONTRACTS § 345(a) (AM. LAW INST. 1981).

¹¹² FERRIELL, *supra* note 108, at 445.

¹¹³ Katz, *supra* note 20; Meyer, *supra* note 15.

¹¹⁴ Charles J. Goetz & Robert E. Smith, *Liquidated Damages, Penalties and the Just Compensation Principle*, 77 COLUM. L. REV. 553 (1977).

¹¹⁵ Meyer, *supra* note 15, at 114.

one that imposes a barrier on the types of remedies the injured party may receive or on the types of harm for which a remedy may be available.¹¹⁶ Additionally, Media contracts may contain a reconfiguration clause which addresses the remedies available for a broadcast/cable network due to a change in athletic conference membership. For example, “As a result of a reconfiguration clause in its television contracts with ABC and ESPN, the BIG EAST was forced to renegotiate the terms of those deals. The Big EAST was forced to accept less money because three of the preeminent football schools left for the ACC.”¹¹⁷

¹¹⁶ FERRIELL, *supra* note 108, at 684.

¹¹⁷ Katz, *supra* note 20, at 354.

Chapter III

METHODOLOGY

Personal Interviews

General Methodology

Classic grounded theory is a general methodology that uses the process of induction to develop a theory that is ‘grounded’ in the data from which it has been derived.¹¹⁸ Thus the sampling used is theoretically oriented because it is directed towards the generation and development of conceptual theory as opposed to creating a descriptive account. The sampling is directed by the emerging theory. In other words, the researcher follows up on leads as they arise in the data and focuses data collection to refine and integrate the theory.¹¹⁹

Theoretical sampling was used to conduct the personal interviews. Theoretical sampling is defined as “the process of data collection for generating theory whereby the analyst jointly collects, codes and analyses his/her data and decides what data to collect next and where to find them, in order to develop his/her theory as it emerges.”¹²⁰ It is known as a means to focus data collection and increase the analytic abstraction of the theory by illuminating variation and identifying gaps that require elaboration.¹²¹

¹¹⁸ Barney G. Glaser, *Constructivist Ground Theory?*, 3 F: QUALITATIVE SOC. RES., art. 12 (2002), <http://www.qualitative-research.net/index.php/fqs/article/view/825/1792>.

¹¹⁹ BARNEY G. GLASER & ANSELM L. STRAUSS, *THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH* (2d ed. 2006), http://www.sxf.uevora.pt/wp-content/uploads/2013/03/Glaser_1967.pdf.

¹²⁰ Jenna Breckenridge & Derek Jones, *Demystifying Theoretical Sampling in Grounded Theory Research*, 8 GROUNDED THEORY REV. 113, 115 (2009), <http://groundedtheoryreview.com/wp-content/uploads/2012/06/GT-Review-Vol8-no2.pdf> (citing GLASER & STRAUSS 1967 *supra* note 118, at 45).

¹²¹ *Id.* at 3.

Unlike conventional sampling, the researcher did not go out and collect the entire set of data before beginning the analysis. Instead, analysis begins after the first day of data gathering. Specifically, data collection led to analysis, analysis led to concepts, and concepts generated more questions to ask. These questions lead to more data collection allowing the researcher to learn more about these concepts.¹²² This circular process continued until the research reached the point of saturation; that is, the point in the research when all the concepts were well defined and explained.¹²³

Procedure

Semi-structured personal interviews were conducted using the theoretical sampling technique. Email invitations were sent out to four participants who were recommended to the researcher. These initial interviews took place either in person or over the phone. The researcher received recommendations from these initial participants to then send out email invitations for more interviews. The process continued as such until the researcher felt a point of saturation had been reached. The interviews were semi-structured with six questions guiding the conversation based on the study's research question. Thirteen participants in total were interviewed. The information learned from these interviews helped the researcher delineate the framework for an alternative competition model.

Each interview began with an introduction, brief description of the study, and verbal consent from the participant. Then, based on the review of literature, the following questions were asked:

1. What are your thoughts on establishing an alternative competition model federated by sport and regionalized, particularly for Olympic (non-revenue) sports?

¹²² JULIET CORBIN & ANSELM STRAUSS, BASICS OF QUALITATIVE RESEARCH: TECHNIQUES AND PROCEDURES FOR DEVELOPING GROUNDED THEORY 144 (3d ed. 2012).

¹²³ *Id.* at 145.

2. Is it possible to create an alternative model with the current conference structures? If so, what would it look like?

Note: Below are some other areas the researcher asked about if the interviewee did not address them. These bullet points provided the researcher with a structured rubric.

- a. Organizational components?
 - b. What sports would use this model?
 - c. Who would organize the scheduling?
 - d. Where would the funding come from?
 - e. Who would the officers be?
 - f. What would the championships look like?
 - g. Would the NCAA recognize the teams competing in the model?
 - h. Would the model consist of subsidiary conferences under the umbrella of the current conferences? Or would it be a completely separate entity?
 - i. What are the legal implications of creating and implementing this new model?
3. Would you be in favor of establishing regionalized competition models for Olympic sports?
 - a. Why or why not?
 - b. What are your concerns?
4. How will this new model affect college athletics?

Note: Below are some other areas the researcher asked about if the interviewee did not address them. These bullet points provided the researcher with a structured rubric.

- a. Strength of schedule?
 - b. Recruiting?
 - c. Budget?
 - d. Student-athlete time away from campus?
 - e. Overall athlete experience.
 - f. Branding of school?
 - g. Funding?
 - h. Relationships between teams and coaches (w/ Football and Men's Basketball likely staying in current model)
 - i. Are you worried about Title IX implications?

Additional follow-up questions were asked, based upon the participant's responses to the questions above. Each interview varied in length, depending on the individual participant's knowledge/perception/opinion of alternative competition models. The interviews were recorded and transcribed for future data analysis.

Data Analysis

After interviewing each participant, the interview was transcribed from the recording and notes taken during the interview. Each participant was given a subject number to keep their name anonymous. The transcribed interviews involved creating a document for each participant and then going through and comparing each transcription to find commonalities. Those commonalities were used to identify specific themes and answers to the research questions among the responses of the thirteen participants. Once those themes were developed they were used to construct and organize findings on how to build an alternative competition model.

CHAPTER IV

RESULTS

The purpose of this study was to delineate an alternative NCAA Division I regionalized competition model. Qualitative research based on semi-structured interviews with 13 participants was utilized to explore the philosophical, organizational, and managerial components of a regionalized NCAA Division I competition model federated by sport.

The findings from the interviews are presented in this chapter beginning with the career background information of each of the participants. The remainder of the chapter is organized by emergent themes.

Participant Career Background Information

A total of eighteen individuals were recommended to the researcher throughout the interview process and were contacted to participate in this study. Thirteen individuals agreed to participate, with four in-person interviews, and nine phone interviews. Therefore, the response rate was 72.2%. During the data collection process, semi-structured interviews were conducted with all thirteen participants providing a diversity of answers to the pre-set question list. The participants come from various career backgrounds in college athletics which brought unique perspectives and opinions to this study. See table 5 for a summary of the participant career background information.

Table 5: Participant Background

	%	<i>n</i>
Sex		
Male	70.0%	9
Female	30.0%	4
Division I		6
Group of 5 Commissioner		
3 DI Commissioners (non-FB)		
Associate Commissioner (non-FB)		
Head Coach		
Industry Consultant		5
Knight Commissioner Officer		
Former NCAA Vice President		
Former DI (FCS) Commissioner		
2 Professors		
Division I- Autonomous 5		2
Athletic Director		
Head Coach		

Research Question 1

What are the philosophical components of building a regionalized NCAA Division I competition model?

In order to understand the philosophical components of building an alternative regionalized competition model, the participants were asked the following questions: (1) What are your thoughts on establishing an alternative competition model federated by sport and regionalized, particularly for Olympic (non-revenue) sports? and (2) How will this model affect college athletics? The participants' responses were organized into two categories, "Reasons for building an alternative competition model" and "Concerns about building an alternative

competition model.” Throughout the interview, participants addressed only those questions they felt confident answering; therefore, some of the answers below will not have thirteen responses.

Reasons for Building an Alternative Competition Model

Reasons for building an alternative NCAA Division I competition model include current emergent issues with the current competition model that may be minimized by additional regionalization of competition. Each emergent issue is summarized below. See Table 6 for a complete summary of the findings where n = the number of participants who discussed that specific reason in their interview.

Table 6: Reasons for building an Alternative Model

Reasons	%	n
Decrease Financial Costs	100.0%	13
Decrease Travel and Student-Athletes’ Time Away from Campus	100.0%	13
Overall Student-Athlete experience	76.9%	10
Current Model Structured Around Football & Men’s Basketball	61.5%	8
Reinvigorate/Strengthen Local Rivalries	46.2 %	6
Continue to Provide Broad-Based Opportunities for Student-Athletes	38.5%	5

1. Decrease Financial Costs

All thirteen participants cited decreasing financial costs and increasing financial sustainability as reasons to build an alternative regionalized competition model. All of them shared the idea that the geographic footprint of some conferences, due to recent conference realignment, has caused travel costs to rise. Nine participants stated that for most conferences

outside the Autonomous Five, revenues have remained stagnant and budget deficits continue to increase. Below are quotes from participants that identify decreasing financial costs as reason to build an alternative regionalized competition model.

*“I think the evidence shows it needs to be considered **from a financial standpoint** from reducing travel costs.”* (Subject 2).

“AD’s with whom I talked to outside Autonomous 5 schools. Those schools recognize that it’s a different world now with the money that the Autonomous 5 schools that they don’t have.” (Subject 2).

*“For us honestly, it would probably be better competition and **more cost effective to just play teams** in the south (our area). And our budget is not like the budget at UNC so it’s brutal and stressful as a coach trying to figure out how you are going to do all of it. I mean I do a ton of fundraising here, you know on top of my job so I definitely meet with a lot of alums trying to raise money you know so they can supplement our money to make sure we have enough to do everything we need to do.”* (Subject 7)

2. Decrease Travel and Student-Athletes’ Time Away from Campus

Decreasing travel and student-athletes’ time away from campus was another unanimously mentioned reason to build an alternative regional competition model. All participants shared the idea that time spent traveling to competitions has increased due to the geographic footprint of conferences therefore student-athletes are missing more class and spending less time on campus. Below are quotes from participants that identify decreasing travel and student-athletes' time away from campus as reasons to build an alternative regionalized competition model.

*“It would help our budget, **help missed class time** because we wouldn’t have to travel so much...”* (Subject 4)

*“When I was approached by the Knight Commission, I thought this was a wonderful idea to bridge/strengthen local rivalries and **decrease student time away from campus** and decrease financial costs-those are the three main reasons why- that make an alternative model attractive.”* (Subject 3).

*“The **size of these new conferences is being negatively felt by the student-athletes** in the Olympic sports and certainly felt.”* (Subject 5)

“Even for school wise, for academic reasons we are only allowed to miss three M/W/F and three T/Thurs classes per semester. So I mean we are here trying to play all of these teams . . . and for us to only miss so few days it makes it really difficult.” (Subject 7)

3. Overall Student-Athlete Experience

Ten of the thirteen participants cited the overall student-athlete experience as a reason to build an alternative regional competition model. Eight of the ten participants feel like a regionalized model could improve the current student-athlete experience by saving money on travel and perhaps being able to put the money into two big trips, and facilitating student-athletes’ more on campus; whereas two of the ten believe the regionalized model could be a worse experience for student-athletes. A Head Coach at an Autonomous 5 institution feels like if there are travel limitations then the teams’ budget will decrease making the experience worse.¹²⁴ A Commissioner of a small-mid major Conference does not feel comfortable giving football and basketball players a different experience by allowing them to continue play a national schedule while limiting the other student-athletes to a regional model.¹²⁵ Below are quotes from participants that identify the overall student-athlete experience as a reason to build an alternative regionalized competition model.

“And all of these other sports, we should focus on the experience and there still will be travel and there still will be team bonding, and tremendous competitive experiences but it won’t be quite as extravagant.” (Subject 3)

“These student-athletes get to travel...but it’s much like a business trip. Our goal is to integrate these kids—there are other ways their horizons can be broadened...” (Subject 1).

“I think we would be able to offer a better experience because I think we wouldn’t have to spend so much money on traveling to all these matches through-out the season. I think, I feel like if we did have a conference tournament, we’ve saved money playing in the south so then maybe we could fly to the tournament rather than drive 8 hours and then staying in not so nice of hotel. That would help us save some money to do some great things like taking a really cool spring break trip if we wanted to do that- we would have the money to be able to do it. Or even just having the right amount of equipment. Like I can’t even provide these guys racquets, they have to

¹²⁴ In Person Interview with Subject 4 (Mar. 2, 2017) (Interviewee name withheld to protect privacy).

¹²⁵ Telephone Interview with Subject 10 (Mar. 4, 2017) (Interviewee name withheld to protect privacy).

buy their own racquets. I think this would save us a lot of money that would allow us to do some other things that would really enhance their experience while still getting to play some really good teams. And getting good competition and getting better.” (Subject 7)

Counterarguments

“I think if the budget didn’t change, I think it could be the same. If the budget was reduced and there were travel limitations then it would be worse. But if we just played teams in within 400 miles but we had more dates to play with and keep our same budget then it would be the same it actually might be better. But we are talking about Power 5 and our budget, if they do this—they will probably reduce our budget.” (Subject 5)

“The idea that these sports outside Men’s/Women’s Basketball and football that we are going to provide this different student athlete experience that some presumption wise would say is a lesser experience so that other sports get to travel more nationally and these other sports get to travel out of the region and they already getting treated so many different ways- I have a really hard time saying to a volleyball student athlete saying you know what we are going to significantly limit what you are doing and you are going to play in a regional model. That doesn’t sit right with me and I know why it’s happening and this notion of revenue driving everything but that’s not what this at its core college student athlete experience is about.” (Subject 10)

4. Current Model Structured Around Football & Men’s Basketball

Eight of the thirteen participants cited the current competition model being structured around Football and Men’s Basketball programs as a reason to build an alternative regionalized competition model. All eight shared the idea that the conference structures have evolved over the years usually by schools chasing basketball or football affiliations and the structures don’t make sense for Olympic sports who are traveling just as much as or even more than Football/Men’s Basketball but not bringing in revenue. As a result of the current structure, travel costs, missed class time, and budget deficits continue to rise. Below are quotes from participants that identify the current competition structure being organized around Football and Men’s Basketball and does not make sense for most Olympic sports as a reason to build an alternative regionalized competition model.

“I think it will do a little bit to temper the excessiveness and again I don’t know how it will affect football and basketball and that I think the train’s kind of left the station on those sports—but for everyone else there has been a trickle-down effect that’s not necessarily based in sound business

knowledge or some business practices that there isn't the revenue driving these sports and everything we are doing is modeling after football and men's basketball is because football and basketball are making money at many schools.” (Subject 3)

“We've organized ourselves for football and basketball but we dragged everybody else along because of it and I think there has to be a better model.” (Subject 6)

“I also think there are a lot of conferences that have evolved over the years in very accidental ways usually chasing basketball or sometimes football affiliations and when you look at them now they don't make much sense.” (Subject 8)

“Different world now, conference structures that have been developed for football and basketball don't really serve the other sports as well...” (Subject 2)

5. Reinvigorate/ Strengthen Regional Rivalries

Six of the thirteen participants cited the need to reinvigorate regional rivalries as a reason to build an alternative regionalized competition model. As a result of conference realignment, these six share the view that regional rivalries have been lost because geographic neighbors are not competing on a regular basis with each other like they were in the past. They believe that reinvigorating regional rivalries may generate more fan excitement and interest which in turn will increase the attendance and revenues at some of these conferences. Below are quotes from participants who identify reinvigorating/ strengthening regional rivalries as a reason to build and alternative regionalized competition model.

“And all of these other sports, we should focus on the experience. And there still will be travel and there still will be team bonding, and tremendous competitive experiences but it won't be quite as extravagant. It will be more regional, less need to fly places—still fly but not as much and hopefully it will really strengthen regional rivalries—things that everyone loves, plus the community aspect of college sports and getting communities together to cheer on their teams and I think it will be really neat to see more of that between schools that have been severed by conference realignment.” (Subject 3)

“There are so many rich rivalries and strong competitors that are right next door to each other but are traveling across the country to compete in separate conferences.” (Subject 3)

“There is evidence that shows attendance in some of these lesser profile conferences is stagnating or decreasing and there is some evidence that shows some of the reasons are they

don't have or lost some of their natural rivalries with the fact that some of their geographic neighbors they are not competing on a regular basis with like they were in the past.” (Subject 2)

6. Continue to Provide Broad-based Opportunities for Student-Athletes

Five of the thirteen participants cite the ability to provide broad-based opportunities for student-athletes as a reason to build an alternative regionalized competition model. All of them agree that new regional models need to be explored in order to preserve the sponsorship of Olympic sports at Division I institutions. With the rising cost of traveling and decreasing flow of revenues, institutions are seriously evaluating their sport offerings and discussing and/or deciding to drop Olympic sports in order to maintain a competitive chance in football and men's basketball. Below are quotes from participants identifying the need to provide broad-based opportunities for student-athletes as a reason to build an alternative regionalized competition model.

“I have been a proponent of it for 20 years. I think it makes complete sense. I think that broad based programming and conference affiliation has been very worthwhile for a long period of time but it doesn't fit today's needs as well as other models could. So I think regionalizing Olympic sports would be better for the sport and better for the institution.” (Subject 6)

“The question for those schools is not “is our women's tennis team going to be mad because now women's basketball gets to stay where they are, it's more of a question of how much do we value providing this opportunity to men's/women's tennis to make a change. Because if we don't make a change its easier for us to get rid of the sport then to continue flying them around.” (Subject 2)

“Financial sustainability is very important but also maintaining the breadth of opportunity that we currently provide, rather than focusing all the resources into a few main sports which I think would be a step backwards. I think that educational value and lessons learned from being on a team that really are for life that we should do as much of that as possible and that a new model or a continual evolution of what we do is inevitable.” (Subject 13)

“If what we do serves the student-athletes and their experience is increased, preserved, expanded, then that's the model that will win in my mind and for that to happen it has to be financially sustainable and it has to be based in academic success...” (Subject 13)

“But my own view is the largest challenge we have in college athletics at every division today is not whether the 65 teams that are making 25 million dollars a year just from their conference

packages can somehow stay within in their budgets—it’s how everybody else including the rest of Division I can continue to provide broad based opportunity, finally achieve gender equity and balance the budgets at a time when there is just a financial squeeze all over higher education.” I think people would really benefit from looking back and saying what are the pros and cons of changing the structure and maybe it means we get to keep baseball, softball, and soccer instead of having to get rid of some of those sports.” (Subject 8)

“The squeeze that people are in where increasingly it’s not just basketball, but if you want to compete at the high levels you are going to have to spend coach money, cost of attendance money, whatever disproportionately in some sports and you are going to wind up having to cut other sports.” (Subject 8)

“My own perspective is that I think it’s vitally important to maintain and not lose participation opportunities for student-athletes—so my view is for the whole enterprise rather than one particular institution that’s trying to get a schedule in women’s soccer for next season.” (Subject 9)

Concerns about Building an Alternative NCAA Division I Competition Model

For the purpose of this study, “Concerns about Building an Alternative NCAA Division Model” refers to the roadblocks the participants anticipate will arise when trying to build an alternative model. Each roadblock is summarized below. See Table 7 for a complete summary of the findings where *n*= the number of participants that discussed that specific roadblock in their interview.

Table 7: Concerns about building an Alternative Model

Concerns	%	<i>n</i>
RPI* ¹²⁶ /Strength of Schedule	76.9%	10
Legal Implications	69.3%	9
NCAA Championship Structure	69.3%	9
Branding/Identity Issues	61.5%	8

**Rating Percentage Index*

1. RPI/Strength of Schedule

¹²⁶ Gary K. Johnson, *What is RPI?* <http://www.collegerpi.com/rpifaq.html> (last visited Apr. 4, 2017).

Ten of the thirteen participants cited the focus on strength of schedule to position a team for NCAA Championship participation as a roadblock to build an alternative model. All share the view that many sports are concerned primarily with building their resume, and teams question whether always playing schools that are regional or geographically close to their institutions will raise their profile to give them the best opportunity to make the NCAA tournament. Below are quotes from participants that illustrate the strength of schedule structure/argument as a concern that will arise when trying to build an alternative regionalized competition model.

“It’s going to be systematic change- what we are trying to eliminate, some of this chasing around for strength of schedule/RPI that ought to come up at a higher level.” (Subject 12)

“If we got more dates to work with non-conference we may be able to schedule with some other teams—may not affect recruiting if we still had a strong schedule. But if the teams we are playing in conference are weak it really could affect our ranking because if Miami, FSU, GTech are the best teams in the conference and we don’t play them it might dilute our strength of schedule.” (Subject 4).

“We’ve had some of our sports even in the non-conference schedule where our volleyball and men’s/women’s soccer programs for their non-conference schedule have intentionally done 1 or 2 trips going back east so that they can get higher RPI or higher competitive games to get NCAA at large consideration.” (Subject 10)

“For soccer for example, we have only a single round robin. The motivation behind that was because they look at the remainder of their contests that are available to them to play teams at which they can position themselves for NCAA Championship participation—it’s an institutional decision where they go to play those games.” (Subject 10)

“So if we agree to ‘hey let’s try to get them on campus more and not travel as much and save some money,’ then we have to figure out the competitive component. They all want to get an automatic bid which means they need a conference or they want an at-large bid which means they need an RPI which means they have to play the right people and that might mean travel so maybe we revise some of those things about scheduling requirements or what gets valued in the NCAA selection committee but it comes back to the fact if agree on what we are trying to solve then we can start developing the alternative models and choose the best one.” (Subject 13).

2. Legal implications

Nine out of the thirteen participants cited the potential legal implications of a new model as a roadblock to build an alternative model. Although NCAA regulatory issues, Title IX issues, media rights issues, and antitrust issues were mentioned, all share the view that these legal issues are solvable ones, were an alternative model to be adopted.

Among the nine, two shared a NCAA regulatory issue concern with how an alternative model could maintain the incentive for the NCAA structure, in regards to the AQ requirement and NCAA basketball money distribution rubric. Seven shared the view that Title IX is theoretically a concern; however, they all share the view that it's an obstacle that can be overcome. Four believe that media rights contracts will need to be addressed/accommodated before an alternative model can be built or adopted. Two expect that antitrust considerations will need to be taken into account; however, if the implementation of a new model is done over time and is presented to Congress as a pro-student model, both believe the politics would be there to build an alternative model as long as it doesn't try to drive the NAIA¹²⁷ out of existence. Below are quotes from participants that illustrate legal implications may be a concern when trying to build an alternative regionalized competition model.

Quotes about legal concerns in general:

“Well, when coming up with something new there is always the hurdle of well this hasn't been done before so you have some inertia to overcome. Somebody shared with me that there are two mindsets, there's kind of the NBA Entrepreneur that says “go, go, go” and then there's the legal and the counselor that gives you the advice that you have to go “slow, slow, slow.” (Subject 13)

“They have to be balanced. You can't make change without being willing to take risks but you also have to be careful that you don't you now create conflicts and legal mistakes that open you up. It's a very real thing that litigation is a concern in many fronts.” (Subject 13)

¹²⁷ *About the NAIA*, NAIA.ORG, http://www.naia.org/ViewArticle.dbml?DB_OEM_ID=27900&ATCLID=205323019&_ga=1.207504667.92243933.1491602022 (last visited Mar. 28, 2017).

I do see some legal implications if an alternative model were to be adopted but not unsolvable ones—so let me kind of untack them one at a time. (Subject 8)

Quotes in regards to Title IX:

“I initially thought that football/basketball would likely stay the same, just because of the media rights deals and theoretically there should be equal treatment for the female sports but I think that can be interpreted in different ways. I think that if they are still given quality competitors they don’t necessarily have to be exactly the same as men’s basketball/football (maybe women’s basketball) have. But I think, the competition will be just as good but it will just be more local, so I don’t know if that will be as big of issue.” (Subject 3)

“I don’t see anything insurmountable in gender equity terms either. In fact, I think that part of what we might get out of this is that we move people off the dime and finish the job which we have finished yet. Because the men’s costs would be more realistic in some sports and the opportunity to focus on women’s sports would be different. To create a more rational system.” (Subject 8)

“I think that certainly something that has to be contemplated is the legal issues under the current application and current interpretation of Title IX in particular; again, you’re placing those three sports: football, m/w basketball, much more higher percentage of males are participating in those sports than female opportunities.” (Subject 10)

Quotes in regards to Media Rights:

“I think that now that we have so many conference television contracts, the primary driver of revenue is football and basketball but the primary driver of content is the Olympic sports, so changing the model would have huge implications on television rights.” (Subject 6)

“I do think we are too far down the road with our television networks in the Power 5. I could see this model being very effective for the non-Power 5s who don’t have television networks and I think it makes complete sense to play a regional schedule and then try to qualify in some way for the National tournament.” (Subject 6)

“The media rights/contract stuff is kind of complicated to unravel and then rewind but it is kind of like merging airlines seniority lists. (America and U.S. Airways) merge and you’ve got unions for flight attendants and unions for the maintenance staff, unions for the pilots, it takes a while to do it—you certainly have contracts that you have to accommodate but I don’t see anything insurmountable there.” (Subject 8)

“The broadcast agreements, even for the small conferences are staggered by in basketball and you can see it because ESPN3 might have Verizon’s League up next year and the Colonial League is up in two years and all of that is intentional so they can protect themselves against everyone coming up with this type of a concept but the fact is a more collaborative inventory of a bunch of conferences might be beneficial even to the broadcast folks. So they over time can be persuaded to re-negotiate rather than sue over these issues.” (Subject 9)

Quotes in regards to Antitrust Issues:

“The antitrust piece obviously is the one where you have to think about—are we really going to be able to do this and my answer is kind of the following—if we had a model that made sense and that people were really were willing to work with and if we could demonstrate to Congress that it actually provides more opportunity rather than less-its pro student in that sense- and it’s not going to decrease viewership to go back to the TV opinion to decrease the product I think the politics would be there if we needed an antitrust exemption I don’t call it an antitrust exemption as much as a congressional charter—like the Olympics Sports Act.” (Subject 8)

“Congress is going to say, ‘What’s in it for the students? Why are we doing this? Are we doing this just for the schools that can’t stop spending money, what about limiting student fees, what about academic progress, what about limiting expanding time off for the athletes?’ All of that I think is easier to provide if we’ve taken football and basketball out right? Because what we are saying yes, we are glad to do that--- we are tired of running huge deficits based on student fees so yea if you give us the opportunity or the help we need in kind of changing the competitive structure one of our goals is to rely less on student fees and yes we will be glad to say IAA soccer players will have fewer games and no spring games or whatever. It’s not clear to me that you need antitrust rubric to do that anymore than you need antitrust rubric to have the NCAA as long as it doesn’t try to drive the NAIA out of existence. But if we did need it I think it would be a lot easier to come up with the right framework with as you say football and big time basketball out of the mix.” (Subject 8)

“Well I think the changes would have to evolve, I don’t think you could make a decision today and put it into effect tomorrow because I do think under those circumstances you can have antitrust issues and other aggrieved parties that could be impacted if you end up with 30 conferences instead of 32 at the end of that. Then a conference could claim that it was somehow adversely affected.” (Subject 8)

3. NCAA Championship Structure

Nine out of the thirteen participants cited the current NCAA Championship structure as a roadblock to build an alternative model. In particular, all share the view that the notion of multi-sport conferences to receive Automatic Qualifications (AQ’s) into the NCAA championships will be difficult to change and the organizational components of the NCAA such as governance responsibilities and financial distribution of the NCAA will need to be addressed. Below are quotes from participants who identify the current NCAA Championship Structure as a concern when trying to build an alternative regionalized competition model.

“The other issue is no one has figured out how you would advance schools to the NCAA tournament other than through the normal conference based championship/advancement model. The way it works now, generally, conference would determine its winner (through regular season play/tournament) leads to AQ – and if you had some other model this would have to be completely re-imagined.” (Subject 11)

“You know that’s where I say it’s worth exploring, one of my immediate questions is if you create this competitive structure what does it really do for the way that conference are structured right now and then in turn how the NCAA governance structure is based on this notion of multisport conferences.” (Subject 10)

“I am skeptical on it because moving to that model really ends up in my mind, what I envision, would happen you end up having a single sport conference approach to what’s going on—you have the layers of the NCAA where the layers of the bureaucracy of the NCAA get compounded even more if you have single sport conferences out there. Like who really has the oversight, accountability, addressing officiating, assignments, addressing who is going to be running a conference championship—the organizational aspect of it.” (Subject 10)

“So I would say the conference structure and the NCAA is something that’s so woven in between the institution and the NCAA that yes it has to be a part of any ongoing evolution and that the conferences can’t go away—they are the conduit for the money, the conduit for the AQ, that’s the way our governance structure is designed and that’s the way our committees are populated.” (Subject 13)

4. Branding/Identity Issues

Eight participants cited branding/identity issues as a roadblock to build an alternative model. However, four of the eight participants share the belief that this concern is overplayed, that the brand association should not be considered an overwhelming factor in considering alternative models, and that preserving student-athlete experiences and competitive opportunities should be at the forefront of the discussion. Below are quotes from participants that illustrate branding issues may be a concern when trying to build an alternative regionalized competition model.

“The concern there is a power in today’s world of the brand is important, so there are some concerns with how a different competitive affiliation or alliance might impact brand identity of conferences and creates too much confusion in the marketplace.” (Subject 2)

“So from a student-athlete side that I think would be one of the things we will see here, there wouldn’t be any loyalty or brand association with any conferences because you basically minimize anything associated with that.” (Subject 10)

*“I think you have to do this on a conference basis. You can’t say well we are going to play Baseball in the Ivy League but we will play a lower level of soccer with half of America East and half of our lacrosse teams will play at a high level and half our lacrosse teams will play at a low level because **I do think that conference identities and rivalries are key to institutions being able to promote its athletic program as a whole.** So I think you have to focus around conferences and conferences saying as a whole we are going to play at one level in soccer and one level at lacrosse if we are going to do that.” (Subject 8)*

Counter-argument Quotes:

“I think branding, recruiting arguments are overplayed. I think coaches would complain, but I think its overplayed.” (Subject 6)

“I don’t feel like for us branding would be affected if we left our conference. I don’t think changing to a more regionalized competition model where we didn’t play all the teams in our current conference would affect our recruiting.” (Subject 7)

“From our standpoint, the benefits to the athletes in terms of ensuring that travel is reasonable, missed class time due to travel is reasonable and that the competitive affiliations are such that produce quality experiences for the athletes. Those should be the overwhelming factors that are considered more important than any consideration about brand identity.” (Subject 2)

“I certainly think it’s a very appropriate part of the discussion, so yes there are some issues and my response would be let’s focus on the student athlete and bring them into the discussion and see what their feelings are. Somebody else earned a PAC 12 conference medallion and mine says Gold Coast medallion is that a problem, do you feel like you are getting something less than the best? How can we address that?” (Subject 13)

“So if we are well known as a brand then that’s terrific, but let’s not do it at the expense of forfeiting student athletes opportunities.” (Subject 13)

Research Question 2

What are the organizational components of building a regionalized NCAA Division I competition model?

In order to understand the organizational components of building an alternative regionalized competition model, the participants were asked the following questions: (1) Would

you be in favor of establishing a regionalized competition model? (2) Would the model consist of subsidiary conferences under the umbrella of the current conferences, or would it be a completely separate entity? And (3) What would the alternative model look like? Throughout the interview participants addressed only those questions they felt confident answering; therefore, some of the answers below will not have thirteen responses.

Would you be in favor of establishing a regionalized competition model?

All participants think it is possible to create and explore alternative models, however when asked if they are in favor of establishing a regionalized competition model only nine participants answered “Yes”, one participant answered “No”, and three participants did not feel comfortable responding to the question without knowing what the blueprint of the model would be.

Table 8: Thoughts on establishing an Alternative Model

	In favor	Not in favor	Needs to be considered
<i>n</i>	9	1	3

A head coach at an Autonomous 5 institution is not in favor of a regionalized model “because you would play the same teams that you see all the time. Like for us, we would see them if North Carolina and South Carolina were our region—we would see them in regular season, then again at NCAA Regionals.”¹²⁸ The coach feels the current model provides a better competition experience for the players.

Would the model consist of subsidiary conferences under the umbrella of the current conference? Or would it be a completely separate entity?

¹²⁸ Subject 4, *supra* note 124.

Eight of the thirteen participants addressed this question in the interview. Due to the NCAA multi-sport conference requirement to gain Automatic Qualifiers into post season play, seven of the eight were for maintaining a conference affiliation in the new model. One thinks a completely separate entity organized by sport/ or sports would be more encompassing and include more schools on a regional basis.¹²⁹

Table 9: Affiliation with Conference

	Maintain Conference Affiliation	Separate Entity
<i>n</i>	7	1

What would an alternative competition model look like?

Seven of the thirteen participants offered initial recommendations to what an alternative regionalized model could look like.¹³⁰ All of them shared the view that an alternative regionalized model could be created out of a competitive alliance between two-three adjacent geographic conferences for particular sports (excluding Football and Men's/Women's Basketball). However, there are varying opinions on characteristics that would provide the competitive alliance with a path to post-season play. See Table 10 for a complete summary of the findings where *n*= the number of participants that recommended the specific characteristic. The following section will briefly summarize the characteristics mentioned by participants.

Table 10: Characteristics of a Competitive Alliance

Characteristics	<i>n</i>
Divide AQ by Regional Championship Tournaments	1
Joint Championships	2
Regular Season Regionalized Schedule w/ Traditional Conference Championships	2

¹²⁹ In Person Interview with Subject 1 (Feb. 23, 2017) (Interviewee name withheld to protect privacy).

¹³⁰ Note: Six of the thirteen participants had not given much thought to what an alternative model could look like and chose not to respond to this question.

1. Divide AQ by Regional Championship Tournaments

An Officer at the Knight Commission said, “I think having a conference combine for a competitive affiliation for a particular sport is an alternative that is a lot more doable.”¹³¹ The participant suggested the conferences would stay the way they are for the NCAA distribution units associated with Men’s and Women’s Basketball. For all other sports (excluding football) two-three conferences would be allowed to form a competitive alliance and group their schools regionally. This would allow the conferences to maintain their AQ’s for their championships. The three conferences would be one big competitive alliance and would have a north division championship, east division championship, and a south division championship and those would be the AQ’s. Or the alliance could get rid of a conference championship and the regular season North, East, and South champion would receive the AQ’s.¹³²

2. Regular Season Regionalized Schedule with Traditional Conference Championships

A Professor said, “I see it as more of a hybrid model that we have localized regular season competition and traditional conference championships and national championships because there is a prestige associated with being in a particular conference.”¹³³

An Associate Commissioner suggested a regionalized regular season model, with the caveat that schools within the same conference will play conference schools located outside their region every two-three years.¹³⁴

¹³¹ Telephone Interview with Subject 2 (Feb. 27, 2017) (Interviewee name withheld to protect privacy).

¹³² *Id.*

¹³³ In Person Interview with Subject 3 (Mar. 1, 2017) (Interviewee name withheld to protect privacy).

¹³⁴ Telephone Interview with Subject 5 (Mar. 6, 2017) (Interviewee name withheld to protect privacy).

3. Bifurcated Championship Structure/Premiere League Model

The former Commissioner of mid-major conference discussed the idea of a bifurcated championship structure, like we have in football, while trying to maintain the traditional conferences with some exceptions. The first exception could be a multisport entity for sports that are in an area that aren't sponsored by enough institutions in the conference, similar to the Mountain Pacific Sports Federation.¹³⁵ The second exception mentioned is keeping the basketball program in the current model and regionally align with conferences in your geographic area and agree to sponsor two championship levels of other sports. For example soccer, if you want to play in level 1 you be in this conference, and if you want to play at level 2 you are in that conference so that way you are at least in the right geography and there is some cross- marketing. The participant believes that the conferences could figure out how to do the officiating and Sports Information details without disturbing things so badly. Additionally, this participant thinks it would be hard to create a sense of identity, media rights deals, and fan interest with single sport conferences especially when more and more people are able to bundle their television/stream package on a conference basis.¹³⁶

A former Vice President of the NCAA believes you could divide the alliance into divisions. For example if three conferences joined together you would have three different divisions based on competition levels; that way, the alliance would maintain the three post-season (AQ's) opportunities. The participant said "the three conferences may be able to create a premiere league and play your way up and down within the three divisions- into the premiere

¹³⁵ *About Mtn. Pac. Sports Fed.*, MPSPORTS.ORG, <http://www.mpsports.org/about-us/mpsf-about-us.html> (last visited Apr. 7, 2017).

¹³⁶ Telephone Interview with Subject 8 (Mar. 8, 2017) (Interviewee name withheld to protect privacy).

group or lesser groups and you can design either a combined conference event and send only one Automatic Qualifier or you could send three Automatic Qualifiers if you keep the divisions separate.”¹³⁷ Additionally the participant believes that starting out the three conferences may not want to cooperate unless they can maintain three AQ’s but thinks eventually they may grow into wanting events that are more meaningful to the lower divisions that are hosted within the region. The participant said, “I am not sure the demand later on will be to send three it maybe to send one that really has a shot at going for it.”¹³⁸

4. Joint Championships

A Commissioner of a low-level conference (MAAC) also agrees that you could join the conferences but keep the names to get the AQ for each conference, and then have three or four conferences run a joint championship that will decide who will qualify for NCAA’s. The joint championship will save time and money and it will give the championship more of a festival atmosphere.¹³⁹

Another Conference Commissioner believes that the conference structure and the NCAA is so intertwined that it has to be a part of any ongoing evolution and that conferences can’t go away. The participant stated that conferences, “are the conduit for the money, the conduit for the AQ, that’s the way our governance structure is designed and that’s the way our committees are populated. Therefore, the conference structure should remain.”¹⁴⁰ The participant thinks the Autonomous 5 group were smart to work together (for example: ACC/BIG10 Challenge) and thinks the Conferences outside the Autonomous 5 should do similar things for different sports. In particular, the participant believes especially for sports that are not being sponsored by enough

¹³⁷ Telephone Interview with Subject 9 (March. 9, 2017) (Interviewee name withheld to protect privacy).

¹³⁸ *Id.*

¹³⁹ Telephone Interview with Subject 12 (Mar. 22, 2017) (Interviewee name withheld to protect privacy).

¹⁴⁰ Telephone Interview with Subject 13 (Mar. 23, 2017) (Interviewee name withheld to protect privacy).

institutions within their region, conferences should work together to run sport specific championships. That way student-athletes are being given a place to compete and are provided with a competitive outlet to culminate their season.¹⁴¹

Research Question 3

What are the managerial components of an alternative competition model?

To understand the managerial components of an alternative competition model, the participants were asked: (1) who within the structure of college athletics would lead the charge in building an alternative regionalized competition model? And (2) if conferences were to move to an alternative regionalized competition model, how would the change occur? Throughout the interview, participants addressed only those questions they felt confident answering; therefore, some of the answers below will not have thirteen responses.

Who within the structure of college athletics would lead the charge in building an alternative regionalized competition model?

Eleven of the thirteen participants responded to this question. Five stated College Presidents will have to assert some authority to get change, three believe it will have to come from Conference Commissioners, two cited Athletic Directors, and one believes it will have to come from the academic side, through Faculty Athletic Representatives (FARs). Although the eleven participants did not share a consensus on who would lead the change, they all agreed that College Presidents, Conference Commissioners, Athletic Directors, FARs, and the NCAA staff will have to work together to implement an alternative regionalized competition model. See Table 11 for a summary of the findings where n = the number of participants that voted on the leadership direction. The following section provides quotes from participants that address their

¹⁴¹ *Id.*

opinions of who will be at the forefront of leading the change to an alternative regionalized competition model.

Table 11: Leadership Direction

<i>Leadership Postitions</i>	<i>n</i>
College Presidents	5
Conference Commissioners	3
Athletic Directors	2
Faculty Athletic Representatives	1

1. Presidents

*“It has proven impossible—**not just hard to get enough presidents and enough trustees** to care enough, enough of the time to deal with this. The Big 5 Presidents have said to their commissioners go find a lot of money so we don’t have to worry about this and that’s what their commissioners have done. The Presidents of the next five leagues have said we are going to bury our heads in the sand and hope that we can somehow survive this. Everybody else seems to me to be saying you know I think we can hang on, I think we can raise student budgets, I think we can raise student fees, I think that tuition money will come back—and the parenthetical at the end of every one of those questions is (and “I’m only going to be here three more years anyway”) and as important as this may be, I have a medical center and I have to deal with that. So I do not know the answer to that really, I don’t know and it’s just this common thing—there’s stuff that you see that you know is happening inevitable and its awful and you say wait someone needs to change this and you just can’t find how it gets changed.” (Subject 8)*

*“It would be good if commissioners of conferences would begin some of those conversations, the actual athletic directors are going to feel it first but they may be last to do anything about it because their instincts are just to compete with the folks down the road rather than try to figure out another way to help the overall enterprise. So eventually **it’s probably going to have to be Presidents that are going to have to step up and so far they’re not there either—there is no leadership in the area that you are talking about so the most natural leadership would come from the Presidents who see this issue down the road** and some cooperation from the NCAA office by folks in the championships area or among the selection committees that select institutions from championship play they can begin to think about how to encourage more regionalization rather than saying schools drop programs.” (Subject 9)*

*“If it were to succeed, it would be primarily CEO's (**Presidents/Chancellors**) who will make it happen. Commissioners are solutions builders and can help construct new things, AD's are where the ideas and the implementation need to get vetted for refinement and support. Student-*

athletes need to be participants as well. Folks are generally more satisfied with an outcome if they helped shape it. CEO's are the ones who can instruct the commissioners and ADs that work for them to work collaboratively on solutions. That brings us back to the "what are we solving" question. If we can agree on what we need to address, that will shape the activity for the solution providers!" (Subject 13)

2. Commissioners

*"I have a thought that it's a conversation that needs to be advanced- more models need to developed to show how it would work. I think in working on this from a national standpoint, the obstacles are there is no real incentive for the folks who have the time, really whose job responsibilities you would think would be related to looking at those issues don't have an incentive to look at them. **I'm referring to conference commissioners**, NCAA staff that oversee national structure. More openness with the AD's to look at different competitive structures but again the drawback is—not really supported by conference commissioners whose paychecks incented are to keep everything the way it is." (Subject 2)*

*"Well you would have to have a separate governing body and honestly it would be really hard to do it because our model is created with the NCAA and then all your representation is by conference and your branded by your conference and you have all these sports that participate at the conference level **so you would have to really start, I guess you would have to start the conversation at the conference level** and see if it would work and see what's in your region." (Subject 6)*

*"**Commissioners can get a conversation started** about regional scheduling and probably move that along pretty well within the conference structure. It's going to be systematic change- what we are trying to eliminate some of this chasing around for strength of schedule/RPI that ought to come up at a higher level. Presidents and Chancellors will have to step in at some point and say we need to just bring in a little bit of sanity back into the game or games in how we schedule." (Subject 12)*

3. Athletic Directors

*"I think it would be **Athletic Directors and their presidents that come together** and it would need to come from a ground swell. Bring the model to conference commissioners then to the NCAA or it could totally come from a research paper." (Subject 3)*

4. FARs

*"The interesting thing you mentioned at some of those conferences, **FAR's have a lot of say** (some have voting abilities). I almost wonder, **if change is going to happen and if people are as concerned with academics and time demands as they say they are, I think almost it would have to be initiated by the academic side**---which ultimately I think has the most power (or they at least say) comes from. It may need to come from that side of the house and come from the top down and say this is what we are going to do because this is what's important to us. Again, really put their money where their mouth is—especially with some of these sports where they are*

really feeling the effects academically and that aren't the money makers that the football and basketball teams might be.” (Subject 5)

If conferences were to move to an alternative regionalized competition model, how would the change occur?

Five of the thirteen participants share the view that adopting an alternative regionalized competition model would be a continuing evolution in which change would occur systematically. Although there was no consensus of which Olympic sport would adopt a regional model first, eight of the thirteen participants believe that schools outside the Autonomous Five are more likely to adopt an alternative regionalized competition model first; however, the Commissioner of a Group of Five conference shared the view that Athletic Directors in that particular conference showed no interest in looking into an alternative regional model when the topic was brought up a few years ago.¹⁴² Below are some quotes that express these perspectives.

*“This **process will work more like a marathon**, rather than a sprint.” (Subject 1)*

*“More realistic version is one that says the Autonomous 5 have guaranteed revenue for the next 15-20 years that puts them in a different league, **so we are not touching Olympic sports in those conferences.**” (Subject 2)*

*“I think this conversation is **more present for the conferences and schools outside the Autonomous Five** group: the twenty-seven other conferences and that's where I think the focus needs to be right now I think the Autonomous Five do have enough money for the next ten years.” (Subject 2)*

*“I agree that **this will this will affect smaller Division I schools** first but I've spoken to Autonomous Five AD's and they have financial struggles as well--- it's not the same type of struggles but I think as a coach some of the Autonomous Five coaches may not want to continue these travel schedules—some travel schedules are much worse than others if you look at the conference distributions some are outliers and are traveling every weekend.” (Subject 3)*

*“Yes, I think it is possible because I think when ADs get together anything to save money and restructure their budgets and also give the athletes more time on campus and less class time missed—if you restructure so that we are not traveling so far and you're playing teams in a different conference but its closer. **So, is it possible? Yes. Likely? No, not for the Autonomous 5.**” (Subject 4)*

¹⁴² Telephone Interview with Subject 11 (Mar. 21, 2017) (Interviewee name withheld to protect privacy).

*“I do think we are too far down the road with our television networks in the Autonomous Five. I could see **this model being very effective for the non-Autonomous 5s who don’t have television networks and I think it makes complete sense to play a regional schedule and then try to qualify in some way for the National tournament.** And for the Autonomous 5 conferences would still play by conference affiliations and then play a national schedule beyond that because now you are playing for seeding.”* (Subject 6)

*“As I said, at the Big 5 level they have enough money to do virtually anything they want without having to make these drastic changes unless the cable television structure falls apart, which is always possible. **At the next five level, you know the CUSA and those guys they may be the people that need this most** because they run the largest deficits in actual dollar terms the largest deficits in percentage of budget terms because they are all chasing these rainbows.”* (Subject 8)

“So that your self-preservation, I think is going to require more collaborative efforts by conferences. The fact that there are not going to be significant increases in revenues available to at least 22 maybe 27 conferences over the next 10 years is also going to put pressure on everyone in that direction.” (Subject 9)

*“I think there is **a group that is outside the Autonomous 5 that has a more pressing need to address the financial issues.** The Group of 5 Bowl level football playing schools have certain challenges and then the 22 conferences below them have a different set of challenges. **So yes I would agree that others outside the Autonomous 5 will be spending the time developing, introducing and refining whatever models might come forward to provide some solutions.** And they all need to be focused on the student athletes and that experience. I mean that’s my opinion that the educational value of what we are doing is where we have impact and that’s something I would like to do more of rather than less of.”* (Subject 13)

Counterview

*“I would say from **the bigger conferences there seems to be no interest. For them it’s important to keep all of their sports under one roof** and not have a football or men’s basketball use a big conference brand name and then having Olympic sports be bundled regionally under some other name.”* (Subject 11)

*“I am intrigued by it because of the obvious but on behalf of our schools, you know, I actually did a call with my AD’s about this a few years ago about this and **it was like radio silence, they didn’t have any interest in going down this path.**”* (Subject 11)

CHAPTER V

PROPOSING A NEW NCAA DIVISION I REGIONALIZED COMPETITION MODEL

The purpose of this study was to delineate an alternative NCAA Division I regionalized competition model. Below is the framework for an alternative model that was created by information learned from the interviews, and academic literature.¹⁴³ The model addresses issues cited throughout this study with the current competition model while seeking to mitigate the roadblocks of changing to an alternative model.

The construction of this model is driven by factors considered most important to student-athlete academic and athletic experiences (reasonable missed class time due to travel, and competitive affiliations that produce quality experiences),¹⁴⁴ while continuing to provide broad based opportunities and responsible stewardship of limited resources.

Framework of Model

Timeline: This model should be implemented starting with one or two sports to see how the organizational components work. Additional sports will be added as legal and structural components are addressed.

Sport-Specific Change: This model would be used for sports other than Football and Men's/Women's Basketball. Sports that transfer to the new model will do so with sport-specific rules and alignment details. The NCAA Basketball financial distribution system would stay in place. Recommendation: Soccer would be a great sport to use as a pilot study for this model due

¹⁴³ Wolverton, *supra* note 58.

¹⁴⁴ Subject 2, *supra* note 131.

to the current double round robin scheduling and because many institutions offer Division I soccer. Currently there are 320 Division I soccer teams.¹⁴⁵ This model may be more difficult to implement for sports such as lacrosse, field hockey, and water-polo, which are not sponsored by as many institutions. An option for these sports is discussed more below.

Maintain Conference Affiliation: Currently there is no pathway to NCCA tournaments other than through the traditional conference based/championship model. Because of the current institutional-conference-NCAA legislative interdependency, current conference affiliations need to be maintained.¹⁴⁶

Process: Three adjacent conferences form a regional competitive alliance for a particular sport. This regional alliance is then sub-divided into three fluid competitive levels based on strength of teams and/or competitive aspirations (see Appendix B).

1. Determining the initial competitive sub-divisions may initially be difficult. Some factors that could be considered include program success history, competitive aspirations, budgets etc. Alternatively, a conference could decide that the top three teams in each conference will be placed in the first division, next three teams will be at the second division, last three teams will be at the third division for the initial year of the region.
2. Teams can play their way up and down within the three competitive sub-divisions. Conferences will decide the logistics of how the teams will move up and down. For example, whether the top 2 finishers move up (conference tournament winner and team with best record) and whether the two teams with the worst record move down. Moves

¹⁴⁵ Subject 5, *supra* note 134; Subject 8, *supra* note 136.

¹⁴⁶ Subject 13, *supra* note 140.

can be made either annually or according to a scheduling time-table (every two years, for instance).

Joint Championships: Host Joint Championships for the three competitive sub-divisions within the regional alliance at a single site on the same weekend each year.

1. NCAA Automatic Qualifiers: Given the current NCAA allocation of national tournament automatic qualifiers through conferences, the three conferences that join the regional alliance will transfer their AQ's into the new regional structure. Using soccer as an example, for instance, the Big South, Southern Conference, and Atlantic Sun each have one automatic qualifier. Together, the regional alliance will have three AQs. These AQs will be distributed to the champion of the three competitive sub-divisions, with a likelihood that the most competitive subdivision will garner additional at large bids to the national championship.
2. Festival Atmosphere: By combining the three championships at one site, the event will likely attract more fans and create a bigger championship atmosphere.
3. Time and money could potentially be saved by having conferences co-host the championships.
4. Conferences will divide sport championship responsibilities such that the Big South, for instance, may oversee the soccer championships and the Southern Conference may oversee swimming and diving.

Exceptions/Caveats:

1. For sports that are not sponsored by as many institutions in the region, the model may look more like a multi-sport or single sport entity similar to the Mountain Pacific Sports Federation¹⁴⁷ or the Coastal Collegiate Swimming Association.¹⁴⁸
2. Conference schedule exceptions: Conference rivalries that have been created that schools want to keep and/or have contest agreements with may be integrated into the schedule. To make this travel more cost effective—schools would arrange for these competitions to take place simultaneously for different sports teams. Multiple teams would travel together and compete on the same day, which would justify the cost of chartered flights or multiple buses. This type of coordinated scheduling facilitates more cost and time-effective travel cutting down on time away from campus. For example, in the fall, a southeastern team might have their men's/women's soccer and volleyball teams travel together to play Miami on the same weekend. The men's/women's soccer teams would play back to back days or potentially back to back games (depending on field surface) and volleyball would play their game simultaneously on one of those days. In the spring, men/women's tennis could travel with the men's/women's lacrosse teams.

Conclusion

Conference structures have evolved over the years by schools chasing football or basketball affiliations and the structures don't really serve other sports as well. Olympic sports are traveling just as much or arguably more than Football and Men's Basketball but do not bring in revenue, therefore, the expansive geographic footprint of these conferences caused travel costs to rise putting a bigger strain on athletic budgets.

¹⁴⁷ Subject 7, *supra* note 135.

¹⁴⁸ Subject 13, *supra* note 139.

While media revenues have increased in recent years mainly for the Autonomous Five Conferences, Division I Institutions have increased spending in order to gain a competitive advantage to outdo opponents. Although Group of 5 schools and the rest of the Division I institutions do not have the same influx of revenue coming in they too are taking part in this extravagant spending.¹⁴⁹ The athletic arms race phenomenon¹⁵⁰ is being used as a rationale to build bigger/more advanced facilities, pay coaches exorbitant salaries, and give student-athletes more intangible (soft) benefits such as more money to cover the cost of attendance (tuition and living expenses). If the trend of schools spending continues to outpace the revenues, the future of the current NCAA Division I competition model appears unsustainable. Although a regional competition may not be able to curb the athletic arms race phenomenon, it would decrease the (rising) travel costs at institutions for non-revenue sports moving in the right direction to balance budgets.

Football and Men's Basketball would remain competing in their tradition conference schedule. Women's Basketball would also remain in the current competition structure because it is the Title IX counterpart with men's basketball and because of the NCAA Tournament Distribution system. For Olympic sports, a sport-specific regional model would be implemented based on scheduling patterns, sponsorship number of sports, and AQ requirements.

Track & Field teams tend to compete in many regionalized events already¹⁵¹, whereas Men's/Women's Soccer tend to play a double round robin schedule with conference opponents. Some sports, such as Women's Soccer, are sponsored by 320 Division I institutions; other sports such as Men's Lacrosse, are sponsored by 67 institutions.¹⁵² The regionalized aspect will be

¹⁴⁹ Fort, *supra* note 48, at 121.

¹⁵⁰ E Weight, M. Weight & R. Schneider, *supra* note 48.

¹⁵¹ Subject 3, *supra* note 133.

¹⁵² Subject 5, *supra* note 134.

tricky in areas of the country where a collegiate sport is not popular in that region. Additionally, the AQ requirements may vary from sport to sport. For example, in Swimming & Diving there are no AQ's for conferences.¹⁵³ Based on the scheduling patterns, sponsorship numbers, and AQ requirements, Women's Soccer would be a great sport to use as a pilot study for this model.

At least initially, this regional model would maintain the traditional conference affiliations due to NCAA multisport requirement for conferences to receive Automatic Qualifiers. No one has figured out or is willing to figure out how to advance schools to the NCAA Tournament other than through normal conference championships or regular season championships. Additionally, if an alternative model is created without this notion of multi-sport conferences, other organizational components such as oversight, accountability, officiating, assignments, championships and financial distributions would need to be addressed.

To decrease financial expenses that have been caused partially by increased travel around the expansive geographic footprints of some of these conferences, this regional model will align three geographic adjacent conferences to form a competitive alliance. Travel days and missed class time will also decrease by joining conferences that are close to one another. Additionally, having adjacent conferences institutions compete against one another may re-invigorate local rivalries. If neighboring conferences were to align, local schools would go back to competing against one another on a yearly basis which may generate fan excitement and community interest thereby increasing the attendance and revenues at some of these smaller conferences.

The alliance will be divided up into three divisions to address the competitive balance/aspirations of the current teams in each of the three conferences. Division A will be the strongest competitive wise and Division C will be the weakest competitive wise. By allowing

¹⁵³ Subject 8, *supra* note 136.

teams to play their way up and down the three divisions, like the Premiere League Soccer Model, teams will have an incentive to find ways to get better to play stronger teams or stay content with similarly situated teams in the lowest division.

At the end of every regular season, the regional competitive alliance will host three joint championships for the three different divisions at the same site on the same weekend. The Joint Championship will be organized by the three conferences, who will share the costs of the championship weekend. Time, money, and man power could be saved by co-hosting these championships at the same site. This festival type atmosphere may enhance the student athletes over all experience by creating a championship event that is a bigger event, located closer to their schools, that attracts more fans and arguably more media attention. This festival championship event could bring back the importance of conference championships. Because this model is maintaining the three conferences, the regional competitive alliance will have 3 AQ's for the 3 winners of the Division Championships.

This regional model may be more difficult to implement for sports that are not sponsored by as many institutions in the region and may look more like a multi-sport entity or single sport entity. For example, the Mountain Pacific Sports Federation which sponsors ten sports from thirty-nine institutions consisting of 90 teams¹⁵⁴, or the Coastal Collegiate Swimming Association which sponsors 12 different swimming & diving teams from three different conferences.¹⁵⁵ However, conferences could try to implement the regional competitive alliance and have only 1 Division but send the top 3 finishers to NCAAs. The multi-sport entity or single sport entity could be funded by each participating teams' annual dues.

¹⁵⁴ Subject 8, *supra* note 135 (discussing the Mountain Pacific Sports Federation see *supra* note 134).

¹⁵⁵ Subject 13, *supra* note 139.

To address strength of schedule concerns, Title IX equity concerns, prior game agreements or media rights deal requirements, this model will allow schools to schedule away contests with schools from original conferences every two-three years. This caveat may also strengthen the overall student-athlete experience if schools include educational/cultural activities into the itineraries. To keep these trips more affordable, schools could arrange for several of their teams playing in the same season to travel together on the same weekend to play the host team. This would allow multiple teams to travel together and compete on the same day or weekend, which would justify the cost of chartered flights or multiple buses. This type of coordinated scheduling may also improve the overall student- athlete experience because student-athletes will have shorter travel days and will be able to cheer for or support their fellow peers. In addition, better relationships may be formed amongst the student-athletes and coaching staffs of the various teams.

Limitations

The possibility that an alternative competition model could weaken a conference brand/identity and create confusion in the marketplace can be seen as a limitation to this regional model. According to a Group of 5 Commissioner, “from the bigger conferences there seems to be no interest. For them it’s important to keep all of their sports under one roof and not have a Football or Men’s Basketball team use a big conference brand name and then have Olympic sports be bundled regionally under some other name.”¹⁵⁶ Another view is that student-athletes in Olympic sports will not associate or identify with their traditional conference if the model were to change to more regionalized alliances. However, four of the eight participants shared the

¹⁵⁶ Subject 11, *supra* note 142.

belief that brand identity concerns can be overplayed and should not be an overwhelming factor in considering alternative models.

It appears that smaller Division I conferences are less concerned about brand identity and more concerned with providing student-athletes with broad based opportunities. A Commissioner of a small mid-major conference stated, “*so if we are well known as a brand then that’s terrific but let’s not do it at the expense of forfeiting student athletes opportunities.*”¹⁵⁷ To address this brand identity concern, conference names will need to remain the same for now, but if it’s a question of preserving a brand rather than opportunity, conferences should collaborate and create entities/associations for those sports that are not being sponsored by at least six institutions in the conference.

There are obvious Title IX issues with treating two men’s sports (Football and Men’s Basketball) with a large amount of male student-athletes and one women’s sport (Women’s Basketball) differently than Olympic sports because women in the Olympic sports could claim they are not being provided with equal athletic opportunities in comparison to men. Section 106.41(c)¹⁵⁸ provides guidance as to what is considered “equal opportunity for members of both sexes” and the factors that may cause red flags with an alternative competition model for certain sports but not others are (1) whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes; (3) scheduling of games and practice time; (4) travel and per diem allowance, and (10) publicity.¹⁵⁹

By playing only a regional model female student-athletes could argue they are not getting the same level of competition or they are not getting the same travel experience; however, the

¹⁵⁷ Subject 13, *supra* note 140.

¹⁵⁸ 34 C.F.R. § 106.41(c), *supra* note 81.

¹⁵⁹ *Id.*

factors listed in Section 106.41 are looked at as a whole, not factor by factor. In addition, female teams are paired up with a comparable Men's team (counterpart) so for example as long as Women's Tennis is being treated similarly to Men's Tennis or Men's Golf the school would likely satisfy this regulation of Title IX. Participants discussed a holistic approach and discussed the implications with Football and Men's Basketball out of the picture. Seven of the nine participants that mentioned Title IX believe the roadblock can be overcome when comparing Olympic women's sports to Olympic male (counterpart) sports.

Schools participating in the alternative model also must satisfy Title IX's athletic financial assistance requirement¹⁶⁰ by allocating athletically related financial assistance in proportion to the numbers of male and female students participating in intercollegiate athletics. Schools must also effectively accommodate student interests and abilities by satisfying at least one prong of the three-part "effective accommodation test".¹⁶¹ Title IX issues could potentially still be raised but there may be an overall student-athlete experience argument that may weigh in favor towards the model.

In regards to antitrust issues, an alternative competition model may be implicated by Section 1 of Sherman Act provides that "[E]very contract, combination . . . or conspiracy in restraint of trade or commerce"¹⁶² is illegal. For a court to have Sherman Act jurisdiction, the challenged activity must have (1) an interstate nexus or effect, and (2) constitute or affect trade or commerce.¹⁶³ In this case an alternative regionalized competition model would be considered "concerted activity" of NCAA member institutions; therefore, it could be subject to an antitrust challenge. However, an alternative regionalized competition model is not restricting competition

¹⁶⁰ 34 C.F.R. § 106.37(c) (2016).

¹⁶¹ U.S. Dep't of Educ. OCR, Intercollegiate Athletics Title IX Policy Interpretation, 45 C.F.R. § 26 (1979).

¹⁶² 15 U.S.C. § 1 (2012).

¹⁶³ *Summit Health, Ltd. v. Pinhas*, 500 U.S. 322 (1991).

in a commercial market and courts have given deference to the primarily non-commercial NCAA rules to preserve amateurism, academic integrity, and competitive balance,¹⁶⁴ so the model would likely survive any antitrust implications. Moreover, the student-centered reasons for creating this model would likely outweigh any negative impact on a commercial market (if one was identified).

Media rights issues were cited by four of the nine participants that mentioned legal implications as a potential roadblock to an alternative competition model. Specifically, the reconfiguration clause in media contracts addresses the remedies available for a broadcast/cable network due to a change in athletic conference membership. If the current conferences form regional competitive alliances with adjacent conferences for certain sports, this may be interpreted as a change in athletic conference membership which may allow broadcast/cable networks to rescind some of their promises (amount of programming), re-negotiate payment, or terminate the agreement altogether. Because the alternative model (at least initially) looks to have the traditional conferences remain, media right contracts may need to be re-drafted to address the new formation of regional alliances and programming duties; however, it is unlikely the alternative competition model would be considered a breach of contract. The same argument holds true for conference contracts, if traditional conferences remain the same.

As illustrated in Chapter 4 of this paper, the participants all shared the view that the implementation of an alternative model will take a collaborative effort that will need to include the NCAA staff; however, there is no consensus on who will lead the charge in building an alternative model. College Presidents, Conference Commissioners, Athletic Directors, and FAR's were all mentioned but there is some skepticism on who will spearhead this change.

¹⁶⁴ Mitten, *supra* note 96.

Presidents appear to be the likely choice but so far it has been very difficult to get Presidents interested in alternative models. Although Presidents may have the most power to finalize the change, Conference Commissioners can get the conversation started about regional scheduling and conference collaboration.

Therefore, this process will be a systematic change with the conversations starting at the conference offices with Commissioners, with the ideas being shared and approved by the NCAA staff and College Presidents, and then left to the Athletic Directors (with help of conferences) to supervise the change to an alternative model. Lastly, the implementation of an alternative competition model will most likely be adopted first by Division I conferences outside the Autonomous Five.

Summary

The landscape of college athletics has changed over the last couple of years due to the newly adopted NCAA Division I Autonomy Structure and conference realignment movement. As the costs of athletic departments continue to rise, there is growing concern that the geographical footprint of conferences will not be financially sustainable. Decreasing financial costs, travel, and student-athletes time away from campus are the main reasons for building alternative models but several roadblocks may stand in the way. These roadblocks are sports' focus on RPI/strength of schedule for NCAA post season play, the current NCAA Championship structure, legal implications, and branding issues.

All the participants in this study recognize that there are serious concerns with the current NCAA Division Competition Model. In general, there is an agreement that conferences need to start collaborating more for conference regional alliances and scheduling to work. However,

there is no consensus on whether Presidents, Commissioners, or Athletic Directors should be the leaders in spearheading the alternative competition model research and implementation.

If discussions about alternative competition models start occurring and actual models are developed, it is highly possible that conferences outside the Autonomous 5 will take a serious look at them and may start the systemic change to a regional model for certain sports.

Future Research

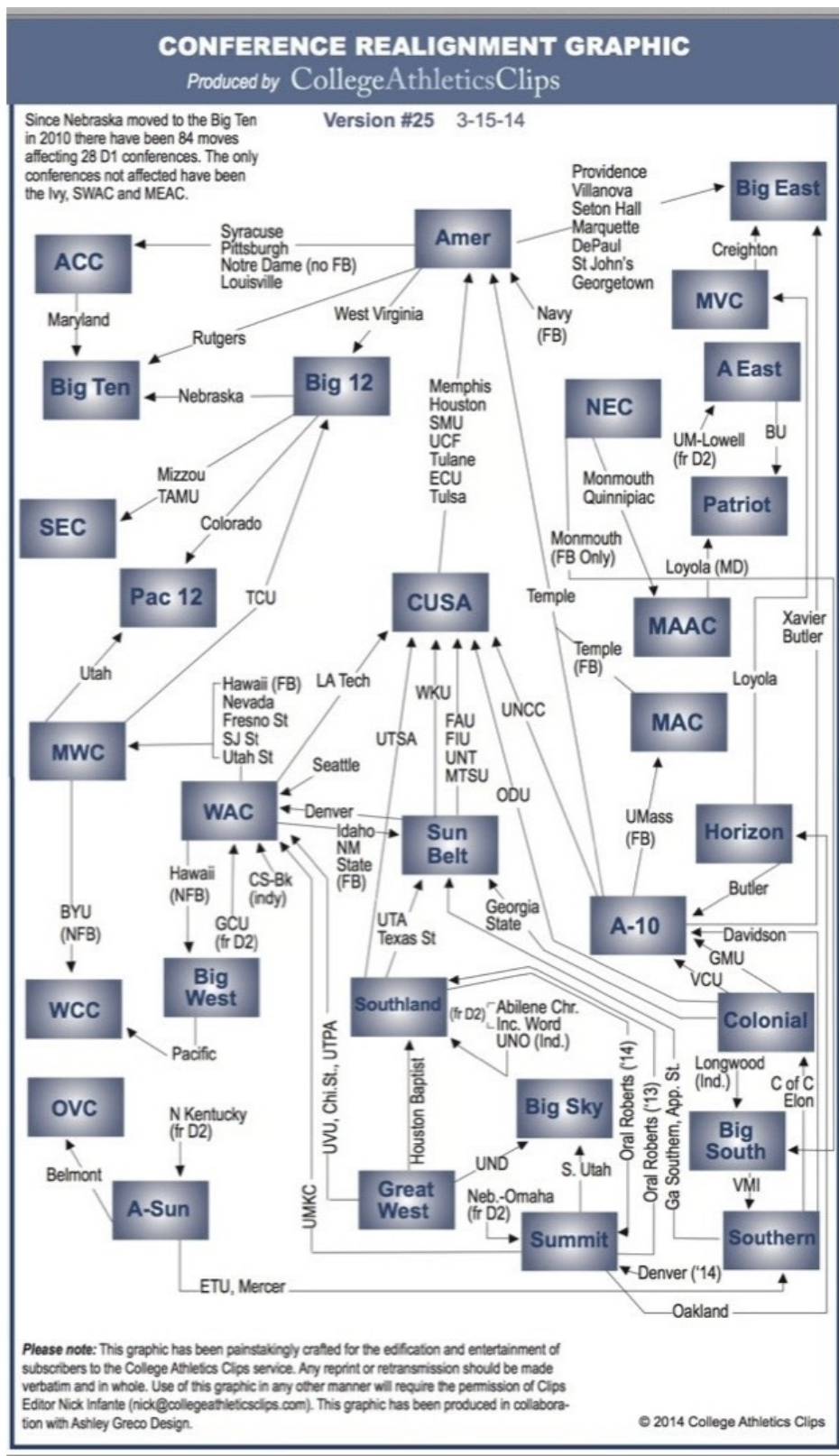
Current Division I student-athletes should be surveyed to gather their thoughts on creating a more regionalized competition model. The researcher should ask questions about how a regional model would affect their student-athlete experience. The student athletes could be surveyed as a Division I group or the research could divide the student athletes up into Autonomous 5 student-athletes vs. Group of 5 student-athletes or Autonomous 5 student-athletes v. student-athletes in the other 27 Division I conferences.

This research did not pin-point specific groups but relied on the participants recommendations to interview the next participants. Further research could be done to gather opinions of people in specific roles, for example, a study solely asking Presidents, Athletic Directors, Faculty Athletic Representatives, Commissioners, Head Coaches, etc., their thoughts on an alternative model. As seen in this study, it is more likely that Division I Conferences outside the Autonomous 5 will adopt an alternative model first; therefore, future research should focus on those conferences initially.

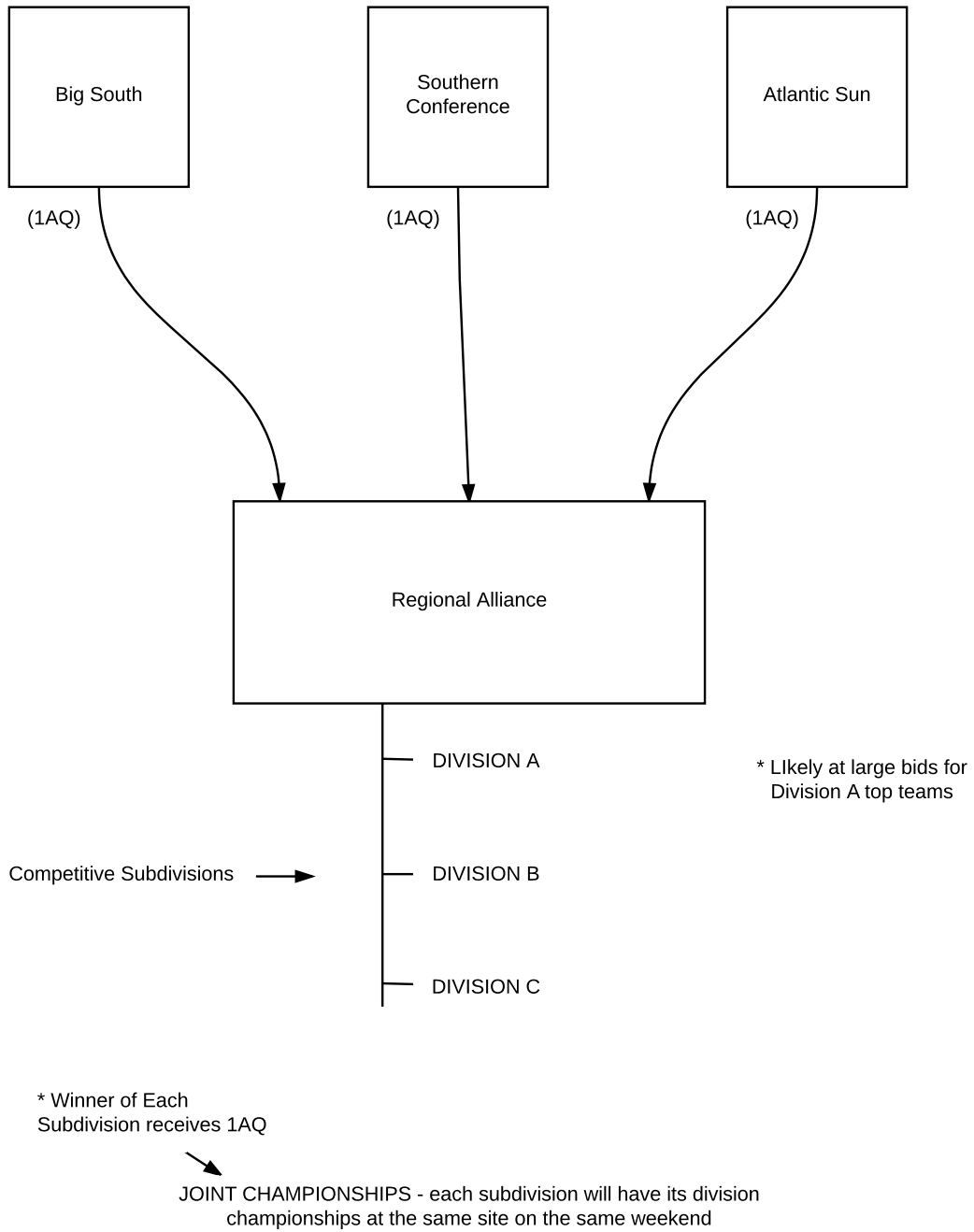
Interviewing NCAA staff about the current NCAA Championship structure and whether there has been a task force put in place to discuss this regionalization topic or any movement/strategies towards more regionalized NCAA competitions. This research did not include any current NCAA staff members and so future research would definitely need to

incorporate the NCAA's thoughts/plans on regionalized models were an alternative competition model to be adopted.

APPENDIX A



APPENDIX B



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