



Division III  
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# Division III Conference Office Business Management Resource



# Conference Office Business Management Resource

Spring 2019

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# Table of Contents

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<b>Introduction</b> .....	<b>3</b>
<b>Conference Office Structure</b> .....	<b>7</b>
Core Responsibilities .....	8
Staff Responsibility.....	9
Staff Expectations.....	9
Resources .....	10
Staffing Needs Assessment .....	11
Division III Conference Sample Organizational Chart .....	12
Job Descriptions.....	13
<b>Accounting Controls</b> .....	<b>17</b>
Policies and Procedures .....	18
Budgeting.....	18
Cash Reserve Policy.....	18
Audit .....	18
Cash Management.....	19
1099s for Officials .....	21
Conference Incorporation.....	21
Filing Local, State and Federal Forms.....	23
Trademarks and Logos .....	24
Conference Championship and Bowl Host.....	25
Conference Grant Distribution .....	26
Resources .....	27
<b>Crisis Management</b> .....	<b>31</b>
The Crisis Management Team (CMT).....	32
The Crisis Management Plan (CMP).....	33
Communication Considerations.....	34
Use of Practice Vignettes.....	35
Visibility Between the Conference and Its Members.....	35
<b>Hiring Risks and Considerations</b> .....	<b>39</b>
The Search and Selection Process.....	39
International Hiring Considerations .....	40
Virtual Workplace Considerations .....	40
Directors and Officers .....	42
<b>Human Resources Function</b> .....	<b>45</b>
Human Resources Function.....	45
Three Basic Personnel Compliance Areas .....	46
Key Employment Laws .....	47

Whistleblower Policy.....	48
Resources .....	48
<b>Information Security Considerations.....</b>	<b>51</b>
The Goal of Information Security.....	52
Principles of Information Security.....	52
First Steps.....	53
Basic Controls.....	53
<b>Insurance Considerations.....</b>	<b>57</b>
Financial Strength of Insurer.....	58
Selecting Limits.....	58
Other Considerations.....	58
Commercial General Liability (CGL) Insurance.....	59
Directors & Officers Liability (D&O)/Employment Practices Liability (EPL) Insurance.....	61
Additional Insurance Coverages for Consideration .....	62
<b>Legal Counsel Considerations.....</b>	<b>67</b>
Types of Issues That may be Addressed by Internal/External Counsel .....	67
Internal vs. External Hiring Considerations.....	67
Identifying and Engaging Outside Counsel.....	68
Managing Outside Counsel.....	69
Shared Resource Considerations.....	69
<b>Protecting Tax-Exempt Status.....</b>	<b>73</b>
Organizational and Structural Formalities.....	74
Records and Documentation.....	74
Politics and Lobbying.....	74
Fundraising.....	74
Limitations on Other Activities .....	75
<b>Officiating Contracts and Background Checks.....</b>	<b>79</b>
NCAA Background Check Program .....	79
Institutional Background Check Program.....	80
Officiating Assignor Considerations.....	81

# Introduction

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A subgroup of Division III conference commissioners, in collaboration with NCAA national office staff, developed the *Conference Office Business Management Resource* to assist conference offices and oversight bodies in establishing procedures and content to know related to the business management of a Division III conference office.

Conference commissioners and institutions may wish to consult this document in establishing or refining business policies for consideration by their conference's oversight group and/or membership. The commissioner subgroup's intent was to produce a document that may guide discussion with conference presidents, chancellors and athletics administrators active in conference oversight and policy review.

As individual conferences operate in various settings, the information contained in the *Conference Office Business Management Resource* may apply to each conference in different ways. Typical settings include, but are not limited to:

- Free-Standing Conference Office;
- Campus-Based Office Operated Independently;
- Campus-Based Office Operated Under Auspices of an Institution;
- Home-Based Office.

The setting in which the conference office operates may dictate specific policies and situations that affect the usage of information contained within the *Conference Office Business Management Resource*.

Finally, the *Conference Office Business Management Resource* should be considered neither legal advice nor a best practice guide, but as a sample resource to assist conference commissioners and conference membership in creating, understanding and refining a business model best suited to their specific organization. Conference commissioners and oversight bodies are strongly advised to consult legal counsel, risk management, human resources and accounting professionals familiar with geographic locales in which the conference operates to ensure compliance with all applicable laws and requirements.

CONFERENCE  
OFFICE  
STRUCTURE

ACCOUNTING  
CONTROL

CRISIS  
MANAGEMENT

HIRING RISKS  
AND  
CONSIDERATIONS

HUMAN  
RESOURCES  
FUNCTION

INFORMATION  
SECURITY  
SYSTEMS

INSURANCE  
CONSIDERATIONS

LEGAL  
COUNSEL  
CONSIDERATIONS

PROTECTING  
TAX-EXEMPT  
STATUS

OFFICIATING



# Conference Office Structure

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A great hallmark of Division III is the autonomy that conferences have to develop an identity and structure unique to their membership. While we celebrate our uniqueness, we do have many elements that share different degrees of commonality. This section provides a look at organizational structures and position descriptions that several conferences have successfully implemented. While not an exhaustive list, these items may be helpful to conferences looking to refine their existing processes.



## CORE RESPONSIBILITIES

The conference office is generally responsible for all fiscal matters, including the collection of revenue (member dues, NCAA conference grant funds, sponsorship monies, championship gate receipts) and the payment of expenses. Additional duties associated with the NCAA Strategic Initiatives Grant Program (conference grant) include working with conference-member institutions to develop grant funding allocation policies and procedures as well as proposals for accounting and tracking proper use for each tier. An annual impact form also must be submitted to the NCAA along with the annual third-party review form.



### CORE RESPONSIBILITIES

- ▶ *Budgeting*
- ▶ *Championships*
- ▶ *Compliance*
- ▶ *Marketing and promotions*
- ▶ *NCAA form submissions*
- ▶ *Officiating*
- ▶ *Policies and procedures*
- ▶ *Scheduling*
- ▶ *Strategic planning*

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***The conference office should maintain consistent and regular communication with its membership and the NCAA.***

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As the primary compliance officer, the conference office should assist its members with NCAA bylaw interpretation questions, reviewing, determining and processing medical hardship waiver requests, and assisting with institutional violations. The conference also should be engaged and provide compliance education for its member institutions. A member of the conference office is encouraged to attend the NCAA regional rules seminar on a regular basis; however, attendance is not required.

If the conference office is responsible for scheduling, general parameters should be established along with any sport-specific requirements. Policies for change-of-schedule requests should be defined for member institutions.

The conference office should maintain consistent and regular communication with its membership and the NCAA. The conference office is responsible for submitting the Championship Automatic Qualifier and Declaration forms and the annual Sport Sponsorship and Demographic forms to the NCAA.

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***The conference office staffing structure, reporting structure and service agreements should be described in official conference documents such as bylaws and various statements of policy.***

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Conferences may have coordinators of officials for specific sports. These positions could be independent contractors or employees. The coordinator of officials assigns officials to contests and should recruit and educate officials throughout the year. Conference offices also may be responsible for the payment of officials either during the regular season and/or for the postseason.

The conference office duties related to conference championships/postseason can include securing officials, providing awards, marketing and media coverage of the event, supervising, staffing and working the event, and finding neutral sites for events if needed.

**Conference offices typically are responsible for updating and ensuring accurate conference Bylaws, Articles of Incorporation, and sport codes.**

## **STAFF RESPONSIBILITY**

The conference office staffing structure, reporting structure and service agreements should be described in official conference documents such as bylaws and various statements of policy. It is recommended that these documents are reviewed and updated regularly to ensure that conference needs are being met. Subcommittees consisting of various governance groups can be formed to help in the review of these documents.

**Job descriptions and the responsibilities for conference office staff should be updated as new hires are made and/or following a performance review during which staff members' goals and objectives are discussed.** These should be kept on file.

Generally, conference members establish the structure, area of focus and responsibilities of staff members.

## **STAFF EXPECTATIONS**

**There should be an established review process for conference office employees, including an evaluation and designating individuals with oversight of it (e.g., chair of the Presidents' Council).** As dictated by conference policy, input could be sought from different governance groups such as presidents, faculty athletics representatives and





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***Conferences must be able to demonstrate that chancellors or presidents have ultimate responsibility and final authority for the operation of the conference and any institution that is a member of the conference.***

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athletics administrators with regard to the performance of the conference office staff. A self-assessment by the different conference employees also could be included in this process, along with the establishment of future performance goals.

Conferences must be able to demonstrate that chancellors or presidents have ultimate responsibility and final authority for the operation of the conference and any institution that is a member of the conference [NCAA Constitution 3.3.4.4 (president or chancellor involvement)]. This responsibility should be clearly reflected in the bylaws and constitution.

## **RESOURCES**

Staffing resources might include full- and part-time staff, students, interns and graduate assistants. There are numerous ways to address staffing needs, including several models that provide professional development opportunities for recent graduates, especially former student-athletes transitioning to be administrators. The conference office can use the NCAA Division III Strategic Matching Alliance Grant or the Women and Ethnic Minority Internship.

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***There should be an established process to review staffing needs, membership needs and growing trends in intercollegiate athletics, Division III institutions and conference offices.***

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Conference office employees should have access to laptops, tablets, cell phones and internet as needed. Office space should be provided, which could be free-standing, campus-based or in a home. The type of conference arrangement for space will dictate the types of resources available to the conference office staff.


Financial assets typically include membership dues, the conference strategic grant funding, other NCAA grants/scholarships, sponsorship revenue, merchandise sales, interest-bearing accounts, conference tournament/championship revenue and institutional fines/penalties for failing to adhere to policies.

## **STAFFING NEEDS ASSESSMENT**

There should be an established process to review staffing needs, membership needs and growing trends in intercollegiate athletics, Division III institutions and conference offices. This could be included in the review process of the commissioner and the conference office performance. Additionally, the commissioner should address this in their self-evaluation.

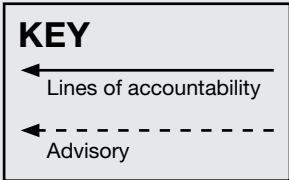
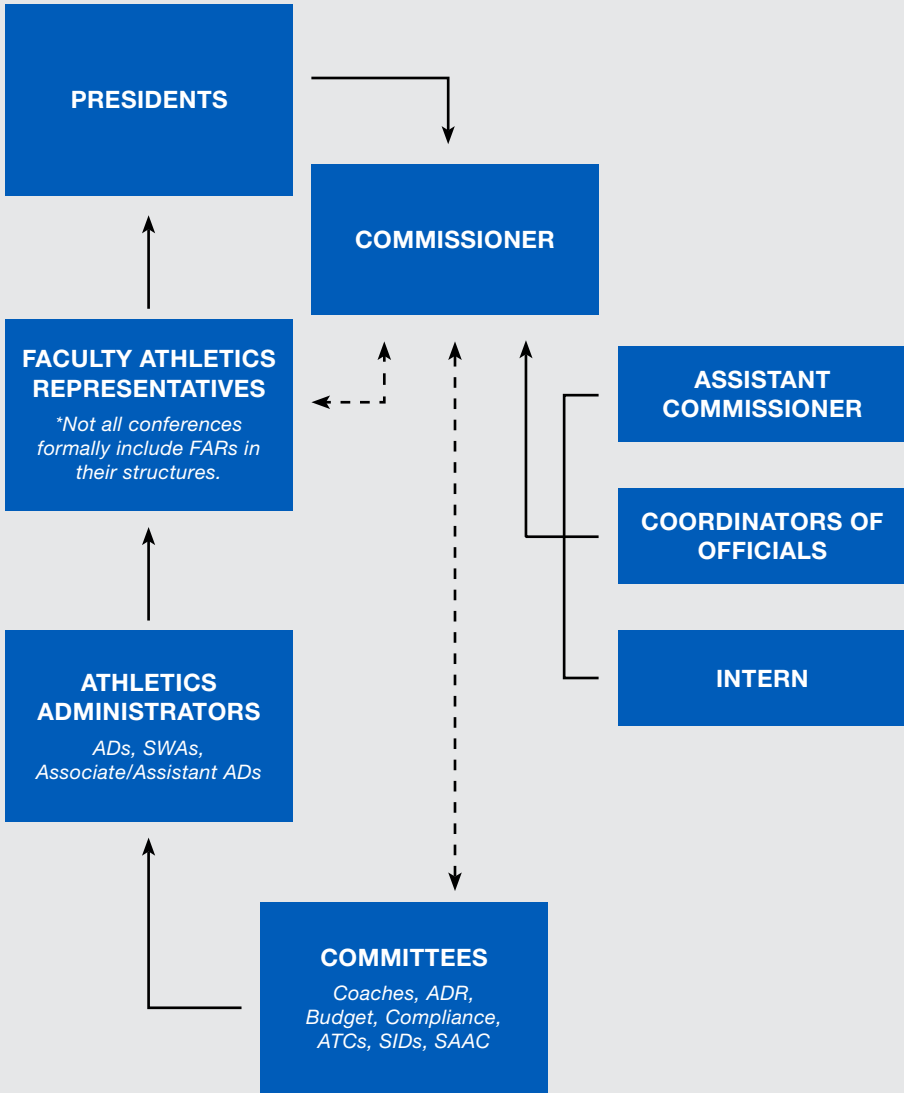
### **DIIIICA CONTACT INFORMATION**

[www.diiica.org](http://www.diiica.org)



The Division III Commissioners Association (DIIIICA) can serve as a resource for conference office and staffing data. Through a series of annual meetings, a newly enhanced committee structure and an organizational mentoring program, the DIIIICA offers conferences the ability to seek valuable information in a number of different organizational and operational areas. The DIIIICA conducts an annual conference office survey focused on staffing, financials, office organization and benefits.

## DIVISION III CONFERENCE SAMPLE ORGANIZATIONAL CHART



## **JOB DESCRIPTIONS**

The conference executive is the chief operating officer and responsible for the leadership of conference operations. The position reports directly to the Presidents Council, but works with all conference governance groups, including presidents, faculty athletics representatives, athletics administrators, coaches and the Student-Athlete Advisory Committee. The conference executive duties include, but are not limited to, the following:

### **Administration and Conference Governance**

- Promote and uphold the mission of the conference that is consistent with the philosophy, rules and regulations of the league and NCAA Division III.
- Advise and guide the presidents, faculty athletics representatives and athletics administrators on issues related to the general welfare of the conference.
- Maintain daily conference operations.
- Review, update, maintain and distribute the conference bylaws, policy, sport rules, calendars and other organizational documents.
- Hire, supervise and evaluate conference staff.
- Arrange conference meetings and serve as an ex-officio member of Presidents, FARs, AAs and coaches groups in each sport and all other standing and ad hoc conference committees.
- Ensure that the physical assets of the conference office are maintained.
- Assist membership in conference strategic planning when applicable.

### **Fiscal Management**

- Prepare and submit to the membership a budget for conference operations, including assessing annual member dues.
- Collect dues and other income and invest any short- or long-term financial assets.
- Responsible for the payment of all budgeted expenses.
- Submit regular financial reports to the membership.
- Oversee NCAA Division III Conference Grant.

### **Compliance**

- Serve as the conference's chief compliance, enforcement and education officer by interpreting and monitoring NCAA and conference rules, bylaws and policies.
- Manage hardship waiver process.
- Regularly educate the members on effective utilization of NCAA rules and interpretation resources.

### **Sport Management**

- Produce team sport schedules and oversee team postseason contests.
- Coordinate championship events for individual sports without a regular-season league schedule including securing neutral-site facilities if needed.
- Negotiate independent agreements with coordinator of officials and monitor the selection, assignment and evaluation of game officials in all sports.
- Monitor and promote a culture of sportsmanship.

## **Conference Sports Information**

- Develop overall branding and marketing strategies for the conference.
- Supervise conference sports information through management of the assistant/associate director.
- Serve as the primary point of contact with media on issues beyond the scope of sports information.

## **NCAA and Professional Association Relations**

- Ensure league compliance with NCAA conditions of membership.
- Serve as the conference voting delegate.
- Attend NCAA programs and actively participate in professional associations.
- Promote the involvement of individuals at member institutions on NCAA committees.
- Assist the conference in sponsoring legislation at NCAA meetings.

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# Accounting Controls

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The NCAA has created the following considerations for conference administrators to consider using when establishing accounting controls. Please note that this document provides suggestions and considerations only and may not be applicable to each conference. Conference administrators should determine the appropriate controls necessary to meet their circumstances.

The suggested policy and procedural guidelines are designed to:

- Protect the assets of the conference;
- Ensure the maintenance of accurate records of the conference's financial activities;
- Provide a framework for the conference's financial decision making;
- Establish operating standards and behavioral expectations;
- Serve as a training resource for staff; and
- Ensure compliance with federal, state and local legal and reporting requirements.

## **POLICIES AND PROCEDURES**

At least annually, conference policies and procedures should be reviewed and updated, as necessary, to ensure that the information in the policy remains accurate, necessary and effective in its current form. Prior versions of policies should be archived in accordance with the conference's document retention guidelines.

## **BUDGETING**

Each conference shall establish an annual budget based upon the preceding year's budget and adjust for any anticipated changes in revenue or expense, including, but not limited to, fee changes, distributions, changes to other programs or services and inflation. Types of budgets include: 1) Incremental; 2) Activity-based; 3) Value propositioning; and 4) Zero-based.

Revenues and expenses shall be categorized by major sports programs and non-program-specific activities by source of revenue/object of expense. As an option, conferences could follow the template of the Statement of Revenues and Expenses and Classifications of Revenues and Expenses provided to NCAA member institutions. A sample of this document is located within Appendixes A and B of the NCAA Agreed-Upon Procedures.

Each conference should review its budget to actual results on a regular basis to ensure it remains within established spending limits.

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## **CASH RESERVE POLICY**

Each conference should determine the appropriate level of cash reserves necessary for its operations. This could range from three months to six months of cash to maintain operations. When developing a policy, the conference should consider the following: (1) the appropriate amount of funds that should be set aside at any given time; (2) how the reserve will be calculated; (3) the acceptable situations that would necessitate the reserve being used; (4) the process to authorize the use of the funds; and (5) the process and established time to replenish the reserve.

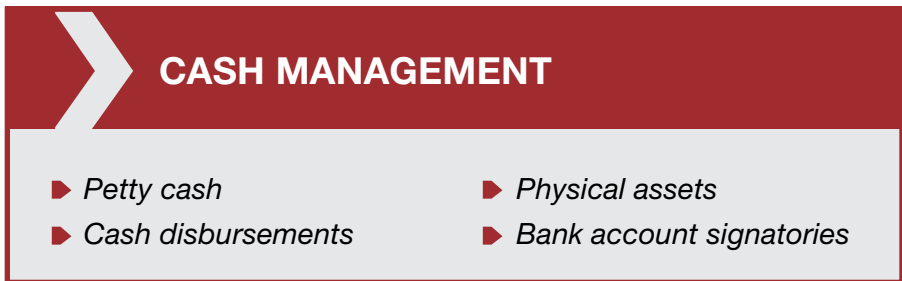
The actual reserve needed should be determined in conjunction with the conference's insurance policies in force.

## **AUDIT**

Each conference office should evaluate the need for a third-party audit or financial review based on lender requirements, contractual requirements, external stake-

holder requirements, etc. If deemed necessary, the conference should determine the frequency of the review, the entity performing the review (i.e., internal or external), the completion date of the review, the report format and the recipients of the report.

Additionally, each year, conferences are required to provide documentation of a third-party review of grant fund usage to the NCAA not later than October 15 of each year. These reviews may be completed by an institutional member's business unit office that does not directly handle conference finances, chair of conference's presidential oversight body, the conference's bank or an external accounting firm.



**CASH MANAGEMENT**

- ▶ *Petty cash*
- ▶ *Cash disbursements*
- ▶ *Physical assets*
- ▶ *Bank account signatories*

## CASH MANAGEMENT

### Petty Cash Policy

Each conference should evaluate the need for maintaining petty cash. If it is determined that a petty cash fund is necessary, then the conference should assign someone to be the custodian of petty cash, the appropriate uses of these funds (e.g., office supplies, snacks, delivery tips, etc.), documentation required for each distribution, how and where the cash will be secured, and the process required to reimburse the fund.

### Cash Disbursements

The conference must determine the appropriate procedures for all cash disbursements. This includes the documentation required from vendors to pay invoices and approvals for check requests and employee expense reimbursements. Additionally, the conference office should ensure that appropriate segregation of duties exists to reduce the risk of employee fraud and embezzlement. The following roles should be segregated: the person who authorizes distributions, the person who writes checks, and the person who records the transaction in the accounting system. Additionally, the conference should evaluate if multiple signatures for disbursements would be a value-added control (e.g., two signatures required on checks greater than \$1,000).

### Physical Assets of Cash, Checks and Credit Card Machines

Each conference should evaluate the need for maintaining a safe or other locked storage container based on the amount of cash received. All cash and checks should be kept in a locked or combination safe or cabinet. Access to these areas should be



limited to employees who need access. For additional security, the conference should consider establishing a lockbox with its bank to receive checks.

Credit card machines and receipts also should be locked and never left unattended.

Cash and checks should be deposited within a timely manner, not to exceed three business days. If possible, all deposits should be made by more than one person. All cash collected should be counted by more than one person. A log of amounts to be deposited should be maintained by someone independent of the collection process. Someone independent of the deposit process should reconcile the deposit ticket to the amount collected.

Conference checks should be stored and secured, and a numerical log should be maintained by someone separate of the check writing process.

### **Bank Account Signatories**

Each conference office must determine the number of and appropriate persons to be signatories on each of its accounts. The appropriate level of segregation of duties should be maintained to avoid fraud or error. Maintenance of bank accounts is a regular activity of any finance department. When it becomes necessary to change the signatories of a bank account due to termination or reassignment of duties, below are some of the steps that may need to be considered.

The documentation required to change the signatories may differ by bank. However, there is certain documentation that is commonly asked for by all banks to update authorized signatures. Some of the documents required for change in bank account signatories include:

1. Letter covering the authorized signatory request with applicable dates of change.
2. Signed authorization from the conference or authorizing body established when the account was opened.
3. Details of roles and responsibilities of new signatories on the update form of the bank.
4. Identity and proof of address of new signatories.
5. Color photo of new signatories.
6. Any other document as may be required by the bank.

## 1099s FOR OFFICIALS

A 1099 is required to be issued to the IRS and to certain entities (as defined by the IRS) when an organization has made payments in excess of \$600 to these entities during the calendar year. Many accounts payable systems (AP) can track 1099 entities and 1099 transactions. At the end of the year, the conference should review its vendor data and export the 1099 values from the AP system to report to the IRS and individuals. For officials, the NCAA uses ArbiterSports, which tracks and is responsible for 1099 reporting.

## CONFERENCE INCORPORATION

- ▶ *Unincorporated Associations*
- ▶ *Corporations vs. Limited Liability Companies (LLCs)*
- ▶ *LLC Benefits as Opposed to Corporations*
- ▶ *Corporation Benefits as Opposed to an LLC*
- ▶ *Taxation*
  - *Corporations*
  - *LLCs*

## CONFERENCE INCORPORATION

The following is not intended as legal advice. Before making any changes to the conference structure, the conference should consult with its financial advisor and legal counsel.

### **Unincorporated Associations**

Absent some affirmative registration with a state, a group operating by mutual consent for a common lawful purpose is considered an unincorporated association. That mutual consent typically is shown through a set of bylaws and operating principles. Although unincorporated associations, like the NCAA, operate for educational or charitable purposes, the entity must seek federal non-profit IRS status through a separate application procedure. Unincorporated associations essentially have no state regulation, which can make them attractive from a governance perspective. However, unincorporated associations do not provide their members with any liability protection in the event that the association faces liabilities.

### **Corporations vs. Limited Liability Companies (LLCs)**

Corporations and LLCs are formed by filling out the articles of incorporation or articles of organization, which typically can be found online through the state

agency that regulates business entities. Organization papers are filed with the state's business entity filing office (the state in which you file is the corporation or LLC's home state).

- A corporation or LLC will then have to comply with certain requirements of the home state's corporation or LLC law.
- A corporation or LLC typically must maintain a registered agent, file an annual report, pay an annual fee, and file documents if it makes structural or other material changes.
- If formed and maintained properly, the corporate or LLC structure provides liability protection against individual shareholder or member assets.
- State and federal tax consequences arise from the choice of entity structure. Obtaining nonprofit status at the state and federal levels is a different process from the establishment of an organizational structure.
- A membership entity may choose to operate as an unincorporated association of members.

### **LLC Benefits as Opposed to Corporations**

- LLCs can be governed more informally than corporations. Corporation laws require a board of directors, meetings, quorums, minutes keeping and other management "formalities" that LLC laws typically don't require.
- LLCs have greater flexibility in deciding how to split financial interests. An LLC can distribute its income to each member equally, based on their capital contributions, or in many other ways. A corporation distributes its income to shareholders on a per-share basis.

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***Employers are required to report their tax obligations and make federal tax deposits.***

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- An LLC can be a pass-through tax entity without the restrictions imposed on corporations.
- Owners of an LLC are called members, and most states do not restrict ownership, so members may include individuals, corporations, other LLCs and foreign entities.
- Depending on elections made by the LLC and the number of members, the IRS, for federal tax purposes, will treat an LLC as either a corporation, partnership, or as part of the LLC's owner's tax return.

### **Corporation Benefits as Opposed to an LLC**

- The corporate legal structure has existed for a longer period than LLCs and is generally more familiar to the public and to those in the financial services and legal services industries. A corporation with proper records may be afforded more deference to shield individual shareholders from corporate liability and debt.
- An LLC may not obtain nonprofit tax status directly but may operate as a wholly owned subsidiary of a nonprofit corporation.
- Because the corporate ownership structure is based on issuance of stock, corporations can offer stock options and stock bonuses as incentives to employees and managers.

## Taxation

- **Corporations**

C corporation is a separate taxable entity that pays tax on income from the business separate from its shareholders. Shareholders may be taxed on income distribution or dividends that are received from the corporation.

S corporation is a pass-through entity that does not pay corporate income taxes. Its income passes through to its shareholders, who pay personal income taxes on their share of the corporation's income. A corporation can be taxed as an S corporation by filing a form with the IRS and meeting a number of restrictions, including not having more than 100 stockholders, not having non-resident aliens as shareholders, and only having one class of stock.

- **LLCs**

The IRS has default rules under which an LLC is a pass-through entity. (By default, an LLC with one member is taxed as if it were a sole proprietorship, and an LLC with more than one member is taxed like a partnership).

An LLC is not subject to the restrictions a corporation is subject to in order to be a pass-through entity.

An LLC can elect to be taxed as a C corporation. This election is made by filing a document with the IRS. If it meets the requirements, it also can choose to be taxed as an S corporation.

## FILING LOCAL, STATE AND FEDERAL FORMS

The information provided here is not indented to be a comprehensive list of all tax-filing requirements.

### Payroll Taxes

Payroll taxes must be withheld from employees' paychecks. These withholdings, including federal tax, social security tax, Medicare tax, state income tax and various local withholdings (such as city, county or school district taxes, state disability or unemployment insurance), should be remitted to the respective agencies. In addition to employee withholdings, companies also are required to pay their portion of payroll taxes. These taxes are in addition to the employee's gross pay and include social security tax, Medicare taxes and federal and state unemployment taxes.

Additionally, employers are required to report their tax obligations and make federal tax deposits, including the following:

- Make federal tax deposits
- Annual federal unemployment tax return (Form 940 or 940EZ)
- Employer's quarterly payroll tax return (Form 941)
- Annual Return of Withheld Federal Income Tax (Form 945)
- Wage and Tax Statements (Form W-2)

Employers also have requirements to file reports with various state and local agencies. Refer to the American Payroll Association website for links to state tax agencies.



## Local and State Taxes

Most states require nonprofit corporations to file an annual or biannual report. These reports must be submitted to the agency that maintains the records for nonprofit organizations that are registered within each state. Visit [<https://www.hurwitassocates.com/resources>] for a list of requirements by state.

Some states require organizations to periodically renew their tax-exempt status. For example, many states issue their own “tax-exempt certificate” for sales and use tax purposes that nonprofits must apply for and periodically renew. Additionally, states may require unrelated business income returns to be filed. Visit [<https://www.haborcompliance.com/information/authority/department-of-revenue>] to identify the filings required by each state.

## Federal Taxes

In general, tax-exempt organizations must file annual information returns. These forms usually are due four-and-a-half months after the end of the fiscal year. However, there are certain exceptions. Visit [<https://www.irs.gov/charities-non-profits>] to determine whether the conference meets the requirements to file a return.

## TRADEMARKS AND LOGOS

Each conference should evaluate their current trademark and licensing program as the foundation to a strong program is establishing and tracking your trademark portfolio. A strong program builds affinity, increases brand awareness and generates excitement and revenue.

An important first step for each conference is to survey your internal environment. That process includes an inventory of your marks, logos and colors, identifying and understanding your licensing policy, knowing your conference partners and making sure that your program aligns with the conference mission and goals. Likewise, perform a survey of your external environment. This includes identifying who are your top licensees and retailers and how fans support the program.



Each conference should work with your general counsel to protect your marks and program. Develop a basic understanding of trademark law and various protection and enforcement strategies. Collaborate with counsel to determine marks to be registered and ensure that registrations are maintained. Provide clear-use guidelines that tie into the conference's brand guidelines.

A basic guideline to a successful program is to refer to the four P's of licensing: Protect, Promote, Preserve and Profit.

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*An important first step for each conference is to survey your internal environment.*

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## **CONFERENCE CHAMPIONSHIP AND BOWL HOST**

In the event that institutions apply to host a conference championship or football bowl event, as part of the site-selection process, each prospective host institution should submit a proposed budget for approval by the conference office according to conference guidelines. All receipts and expenses associated with the conduct of the championship competition, including lodging, officials and site representatives, should be included in the proposed budget.

Should the conference have financial policies in place for championship events, the host institution should adhere to championship expenses as approved by the conference office, including (but not limited to) competition site rental, maintenance, insurance, printing of tickets, ushers, maintenance personnel, ticket sellers, ticket takers, minor officials, police and security, promotion, publicity, advertising, meetings, banquets, and medical staff. Any expenses not included in the original proposed budget should be approved in advance by the respective conference.

Apart from financial requirements, host institutions and the conference office should be clear on the delineation of responsibilities associated with all conference championship events including, but not limited to, game management, communication with competing institutions, postgame duties and award ceremonies.

For football bowl games, participating conferences should coordinate as early as possible the policies on the various items described above, as well as procedures for team and site selection and the delineation of tasks for each participating conference before, during and after all bowl games. As with conference championships, all policies should appear in writing and be reviewed by the participating conferences on a regular basis.

After each championship and football bowl game, it is recommended that the host institution provide the conference with a detailed financial report. Any amounts due to the conference office should be remitted within a prescribed timeframe. Penalties



should be assessed to those host institutions that do not submit financial reports or amounts due within the required time.

## **CONFERENCE GRANT DISTRIBUTION**

Conference grant distributions should be used in accordance with the guidelines established by the Division III Strategic Planning and Finance Committee. Each year, conferences should submit an annual report of uses form. Penalties and potential loss of funding could be applicable if the funds are not used as prescribed.

## RESOURCES

### **Annual Exempt Organization Returns, Notices and Schedules**

[<https://www.irs.gov/charities-non-profits/annual-exempt-organization-returns-notices-and-schedules>]

### **Bank Account Signatory Change Procedure**

[<https://www.indiastudychannel.com/resources/153823-Procedure-change-bank-account-signatory-company.aspx>]

### **Business Structures**

[<https://www.irs.gov/businesses/small-businesses-self-employed/business-structures>]

### **Department of Revenue State Directory**

[<https://www.harborcompliance.com/information/authority/department-of-revenue>]

### **Intercollegiate Athletics, Fiscal and Accounting Procedures**

[[https://www.suny.edu/sunypp/documents.cfm?doc\\_id=459](https://www.suny.edu/sunypp/documents.cfm?doc_id=459)]

### **LLCs, S Corporations and C Corporations**

[<https://www.bizfilings.com/docs/default-source/pdfs/llc-vs-inc-comparison-infographic.pdf?sfvrsn=2>]

### **LLCs vs. Corporations**

[<https://www.bizfilings.com/toolkit/research-topics/incorporating-your-business/llc-vs-inc>]

### **National Association of College and University Business Officers**

[[http://efarm.nacubo.org/search-results/site-search-7.360987?q=operational+budgets+for+non+profits&ty=&ev=&tr=&pe=&pn=&tag\\_co=&tag\\_lo=&tag\\_or=&tag\\_pe=Financial+Accounting+and+Reporting+Manual+for+Higher+Education&tag\\_ta=&tag\\_su=](http://efarm.nacubo.org/search-results/site-search-7.360987?q=operational+budgets+for+non+profits&ty=&ev=&tr=&pe=&pn=&tag_co=&tag_lo=&tag_or=&tag_pe=Financial+Accounting+and+Reporting+Manual+for+Higher+Education&tag_ta=&tag_su=)]

### **National Council of Nonprofits – Financial Management**

[<https://www.councilofnonprofits.org/tools-resources/financial-management>]

### **National Council of Nonprofits – Operating Reserves**

[<https://www.councilofnonprofits.org/tools-resources/operating-reserves-nonprofits>]

### **NCAA Statement of Revenues and Expenses and Classifications of Revenues and Expenses**

[<http://www.ncaa.org/about/resources/finances/ncaa-membership-financial-reporting-system>]

## Nonprofit Law Library

[<https://www.hurwitassociates.com/resources>]

## Payroll Taxes and Employer Responsibilities

[<https://www.thebalancesmb.com/payroll-taxes-3193126>]



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CONFERENCE  
OFFICE  
STRUCTURE

ACCOUNTING  
CONTROL

CRISIS  
MANAGEMENT

HIRING RISKS  
AND  
CONSIDERATIONS

HUMAN  
RESOURCES  
FUNCTION

INFORMATION  
SECURITY  
SYSTEMS

INSURANCE  
CONSIDERATIONS

LEGAL  
COUNSEL  
CONSIDERATIONS

PROTECTING  
TAX-EXEMPT  
STATUS

OFFICIATING

# Crisis Management

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The organizational crisis experience is inevitable. It is not predictable or preventable and can manifest in a variety of ways including, among others, events involving physical/safety threats and social media and other reputational challenges. A thoughtfully constructed organizational crisis management plan can go a long way to mitigate and avoid the potential fallout that is often associated with organizational crisis. Below is a summary of some of the considerations that should go into developing and implementing an organizational crisis management plan.

## THE CRISIS MANAGEMENT TEAM (CMT)

- Identify a core group of trusted individuals who will serve as the crisis management team (CMT). The CMT should be broad enough to represent all applicable stakeholders but small enough to remain agile and focused during a crisis scenario.
- Consider whether and how best to include representation from member institutions.
- Each member of the team should have a clearly defined role in management activities and should have the authority necessary to carry out protocol responsibilities.
- The use and monitoring of social media is an integral part of any crisis management communications plan. Consider including at least one individual whose role and responsibilities are focused on social media. That individual should have access to and expertise/fluency in all social media platforms that may be relevant to the organization and its identified stakeholders.
- Similarly, consider selecting an individual who is well versed in the legal and discovery implications pertaining to social media posts and ensure that the individual has access to and regular communications with conference legal counsel. Because content limitations can vary from platform to platform, practice vignettes and response plans should include potential social media responses and considerations.

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*At a minimum, input from and communication with legal counsel should be considered an integral piece of any response plan.*

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- Consider including conference legal counsel as part of the CMT, either in a consultancy capacity or, if resources permit, as a defined role on the broader team. At a minimum, input from and communication with legal counsel should be considered an integral piece of any response plan. It should be noted that communications by and between members of the CMT will *not* automatically be considered legally privileged communications. However, in instances when CMT participants are soliciting or receiving legal advice, or advice that will be used by organizational attorneys in anticipation of litigation, those communications often will be protected.
- **Make sure each CMT member accepts the role and responsibilities that they are assigned.** Ensure each fully understands the nature and breadth of all potential crisis scenarios. Some individuals may have personal sensitivities to certain types of scenarios that may make them unable or less able to effectively implement specific management responsibilities or activities during one type of crisis scenario or another. It is important to understand these types of limitations ahead of time and to develop the CMT in a way that accounts for these considerations.

## THE CRISIS MANAGEMENT PLAN (CMP)

- Identify clear criteria by which to distinguish urgent material and/or challenging events from true crisis scenarios. One consideration may be whether there is a risk or allegation of immediate material harm to or by any individual, the organization or any member.
- Because crisis scenarios have become so commonplace, the public expects and feels entitled to warp speed and near-perfect responses. Any delay can be the death knell for even the most otherwise reputable organizations and qualified leaders. Consider developing a variety of “playbooks” that pertain to different types of potential crisis scenarios. Leverage and adjust each playbook as part of your implementation of practice vignettes and as new potential crisis scenarios are identified.
- Consider implementing a “direct dial” policy around hot issues. Higher education, and its governing bodies, are well known for hierarchal communication protocols that are navigated only at a glacial pace. While there are certainly benefits to a carefully constructed communication protocol, consider whether it makes sense to create a “direct line” to the commissioner’s office and/or other management personnel for anyone with material information relating to a potential crisis scenario.

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*The two most important decisions around effective crisis communications may arguably be “What will we say?” and “When will we say it?”*

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- **Consider confidentiality implications as they relate to communications within the CMT and between the CMT and third-party stakeholders.**

Crisis management typically involves the type of sensitive, non-public, strategic information and advice that would be deemed confidential to an organization. In evaluating how best to protect the confidentiality of the information being conveyed during crisis management, consider the type of information that is being shared, whether it is better communicated by phone vs. email, and limiting the communication to only those who need to be included. Also consider implementing the use of a standard “Confidential Internal Communication” or similar template header on all such written communications and training all CMT members about the importance of confidentiality practices.

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***Avoid jumping to early conclusions that are based on partial facts and information.***

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## COMMUNICATION CONSIDERATIONS

- The two most important decisions around effective crisis communications may arguably be “What will we say?” and “When will we say it?”
- The intended audience also is very important; a list of relevant stakeholders and the prioritization of communications can often be (and should be) largely identified ahead of any crisis as part of the CMP.



- Avoid jumping to early conclusions that are based on partial facts and information. There often is significant public pressure to deliver a particular response to a crisis scenario. Just because there is a loud cry for a specific response, does not necessarily mean it is the best response. Sometimes, overreaction and knee-jerk reaction can be worse than a delayed response.
- While seeking additional facts and information, consider sharing what you do know. Messages about all the reasonable precautionary steps previously taken to prevent similar situations and all the actions taken to address the current situation can go a long way to fill the void when the public is clamoring for some transparent communication, but a definitive conclusion or detailed path forward has not yet been identified.

- Consider including a variety of communication templates as part of your CMP playbook and routinely leverage them as part of practice vignettes.
- Accuracy and authenticity are everything. Even under the duress and urgency of a crisis scenario, the CMT must take the time to ensure all messaging is true and factually supportable. We are in an era of fundamental public mistrust of higher education and the athletics industry. As a result, it is imperative that CMT communications reflect genuine concern and commitment.
- Consider using a media monitoring service to gather real-time feedback around public response to messaging and to inform necessary shifts in the CMP. These types of monitoring services also can be used to proactively monitor social media for potential and festering issues before they become true crises.

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***Consider confidentiality implications as they relate to communications between the conference and its members.***

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## **USE OF PRACTICE VIGNETTES**

- Time is of the essence when responding to crisis scenarios. There is no time, during a crisis, to develop and vet appropriate response activities and related communication plans.
- Mapping out potential alternative responses to various crisis scenarios ahead of time (e.g., a CMP Playbook) is key to successful crisis management.
- Practice vignettes can be developed from real-life scenarios. Avoid discounting any vignette ideas as “not realistic” or “too unlikely” for your organization. The great majority of organizations that have experienced major crises never would have predicted their involvement ahead of time.
- Create practice scenarios that are as realistic as possible and use them, frequently.

## **VISIBILITY BETWEEN THE CONFERENCE AND ITS MEMBERS**

- Conference leadership should be considered a relevant stakeholder with respect to any crisis scenario arising out of membership activities related to collegiate athletics or involving student-athletes. Consider strategies on how best to connect with campus crisis management teams to ensure that the conference is a relevant stakeholder and part of the early stages of any communication plan with respect to events that can impact conference risk.
- Consider confidentiality implications as they relate to communications between the conference and its members. Crisis management typically involves the type of sensitive, non-public, strategic information and advice that would be deemed confidential to an organization. In evaluating how best to protect the confidentiality of the information being conveyed during crisis management,

consider the type of information that is being shared, whether it is better communicated by phone vs. email, and limiting the communication to only those who need to be included. Also consider implementing the use of a standard “Confidential Conference Communication” or similar template header on all such written communications and training applicable member contacts about the importance of confidentiality practices.



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CONFERENCE  
OFFICE  
STRUCTURE

ACCOUNTING  
CONTROL

CRISIS  
MANAGEMENT

HIRING RISKS  
AND  
CONSIDERATIONS

HUMAN  
RESOURCES  
FUNCTION

INFORMATION  
SECURITY  
SYSTEMS

INSURANCE  
CONSIDERATIONS

LEGAL  
COUNSEL  
CONSIDERATIONS

PROTECTING  
TAX-EXEMPT  
STATUS

OFFICIATING



# Hiring Risks and Considerations

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## THE SEARCH AND SELECTION PROCESS

- While search firms can provide tremendous expertise and benefit, neglecting to carefully oversee the search, selection and hiring of employees, especially at the executive level, can have disastrous effects.
- The significant number of interested stakeholders can quickly muddy hiring waters and circumvent an otherwise robust process. A definitive position statement should be finalized before any potential candidates are contacted. Establish clear expectations from the start about who will participate, the process that will be followed, and any important timelines.
- Whether using a search firm or internal resources, consider the following as part of the candidate vetting process:
  - Implement thorough background checks that comply with all applicable federal and state laws.
  - Diligently check prior employment history and references – especially references from individuals who stand to gain or lose nothing by the hire.
  - Beware of “recycled” candidate lists. Leverage local and national court filings and other public records, historical compliance reports and social media, as available, permitted and appropriate.
- Consider claw back protections if using search firms.

## INTERNATIONAL HIRING CONSIDERATIONS

International hiring is high risk and process-intensive. It involves several federal agencies and numerous procedural steps – all of which take considerable time:

- Petition UCSIS for non-immigrant visa.
  - Limited availability.
  - Eligibility requirements.
  - Various filing fees.
  - Time limited if granted.
  - Employer's responsibility to maintain a public access file.
- Initiate permanent residency certification for the employee via the Department of Labor.

NOTE: Student employees have different, and often less challenging, documentation requirements.

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*Virtual employees can offer flexibility and other potential benefits for conference employers who often operate in limited and/or shared office spaces.*

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## VIRTUAL WORKPLACE CONSIDERATIONS

Virtual employees can offer flexibility and other potential benefits for conference employers who often operate in limited and/or shared office spaces. The following are some considerations related to remote employment arrangements:

- **Employer Property**
  - For information security purposes, consider issuing employer-owned technology and prohibiting use of employer property for non-work purposes or use of employee-owned technology for work purposes.
  - Consider a written agreement that clearly identifies company property, and that secures the employee's agreement to properly care for and protect the property, and the organization's authority to deduct wages for any damage to property in accordance with applicable state laws.
- **Security**
  - Employers are responsible for ensuring the security of sensitive documents and data that are handled by employees, regardless of where the work is performed. Consider establishing information access controls (e.g., VPN access, encryption, network firewalls, mandatory password changes) and setting clear expectations regarding proper storage (e.g., work-issued technology only, locked cabinets/drawers) and protection of proprietary and confidential information.
- **Workers Compensation**
  - Employers are typically responsible for providing a safe working environment for on-site and remote work locations.

## VIRTUAL WORKPLACE CONSIDERATIONS

- ▶ *Employer property*
- ▶ *Security*
- ▶ *Workers compensation*
- ▶ *Payroll*
- ▶ *State laws*
- ▶ *Virtual status*

- Consider asking virtual employees to designate a specific area of the home that is considered work space and specific hours of the day in which they will perform work-related activities. Also consider providing notice to virtual employees about potential in-home safety hazards and asking them to agree (in writing) to take certain precautionary safety measures and to maintain safe conditions as a condition precedent to employment.
- **Payroll Records/Compensation**
  - FLSA requires employers to pay nonexempt employees at or above minimum wage for all hours worked and to pay overtime for all hours worked more than 40 in a given work week. In most instances, hours must be counted as “worked hours” if the employer knows or has reason to believe that the work is being performed. Strongly consider setting clear written expectations around work schedules and hour limits for all non-exempt virtual employees and working with employees to carefully track and report all hours worked.
- **Other State Laws**
  - There are a host of state laws the applicability of which will be determined by the location where the virtual employee is performing the work (e.g., his or her residence). These include, among others, vacation accrual and payout, final compensation payout, intellectual property use and ownership, paid and unpaid leave rights, non-compete agreements and background checks.
- **Position Criteria/Changes in Virtual Status**
  - When remote employment is only offered to certain employees or on certain projects, consider establishing and documenting the objective criteria by which you will evaluate virtual employment opportunities.
  - To adequately prepare for and address any organization need to change the virtual employment model, consider clarifying in employment policies and/or employment

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***Employers are responsible for ensuring the security of sensitive documents and data that are handled by employees, regardless of where the work is performed.***

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agreements that it is in the full discretion of the organization whether to continue to permit remote employment arrangements and that the organization reserves the right to reestablish a workplace office requirement at any time.

## DIRECTORS AND OFFICERS

- Exposure and standards for nonprofit directors and executives are at least as high, and perhaps higher, than those applicable to their for-profit counterparts.
- Consider the adequacy of your D&O insurance coverage in light of stated/ unstated expectations and responsibilities and D&O-specific risks identified through assessment.
- General liability insurance and umbrella policies typically limit coverage to bodily injury, property damage and certain personal injury claims. Separate D&O coverage is required for a host of other types of claims that can arise out of a variety of daily decisions and activities involving conference management.
- Adequate D&O coverage is typically considered a prerequisite to attract an appropriate pool of D&O candidates.
- Most policies now include full entity coverage for claims made against the organization, even if no directors or officers are personally named.
- While most policies do not limit coverage for prior wrongful acts, consider indemnity carveouts related to activities that predate position start dates.
- See also the NCAA guidance document at: [http://www.ncaa.org/sites/default/files/2017Conference\\_Insurance\\_Considerations20171207.pdf](http://www.ncaa.org/sites/default/files/2017Conference_Insurance_Considerations20171207.pdf)



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CONFERENCE  
OFFICE  
STRUCTURE

ACCOUNTING  
CONTROL

CRISIS  
MANAGEMENT

HIRING RISKS  
AND  
CONSIDERATIONS

HUMAN  
RESOURCES  
FUNCTION

INFORMATION  
SECURITY  
SYSTEMS

INSURANCE  
CONSIDERATIONS

LEGAL  
COUNSEL  
CONSIDERATIONS

PROTECTING  
TAX-EXEMPT  
STATUS

OFFICIATING

# Human Resources Function

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The intent of this guide is to provide NCAA Division III commissioners with resources related to human resources function for the conference offices. Please note that this provides suggestions and considerations only and is not inclusive of all human resources-related policy or law. In addition, conferences that are housed on an institution's campus, or if wages and compensation are facilitated through an institution's campus, may be subject to additional policies and procedures specific to that institution.

## **HUMAN RESOURCES FUNCTION**

The human resources function includes:

- Talent acquisition (e.g., recruiting, sourcing, hiring).
- Performance management and reviews.
- Employee relations.
- Employee learning, development and training.
- Safety and wellness.
- Employee benefits.
- Total compensation strategy.

## THREE BASIC PERSONNEL COMPLIANCE AREAS

There are three basic compliance areas [<https://www.reallyeasyhr.com/hrbasics/>] for conference offices to be aware of and be compliant with:

- The creation and maintenance of three specific employee file types.
- The publication of an employee handbook with key policies.
- The posting of required state and federal notices.

### Employee Files [<https://www.reallyeasyhr.com/hrbasics/>]

- **I-9 file** – I-9 forms are used by the U.S. government to identify and verify your employees' eligibility to work in the United States. Keep all I-9 forms together in one file, rather than in individual employee files. Visit the United States Citizenship and Immigration Services [<https://www.uscis.gov/i-9-central/i-9-central>] website for all I-9 related questions.
- **Employee general file** – Keep any documentation associated with the employee in this file. Documentation could include resumes, performance reviews, disciplinary actions, training records, compliance documents, W-4 or other tax forms, and payroll forms.
- **Employee medical file** – All medical documentation should be kept in a separate file, physically away from the employee general file. Medical documentation could include notes from doctors, disability information and any other information you have from an employee. Medical information is considered Protected Health Information (PHI), which is protected by law. PHI is any information about health status or documentation that can be linked to a specific individual.

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*The employee handbook is designed to be used to inform employees of policies, and to set mutual expectations between the conference and the employee. It also can protect the conference in the event of a dispute with a former employee.*

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### Employee Handbook

The employee handbook [<https://wheniwork.com/blog/what-is-human-resources/>] is designed to be used to inform employees of policies, and to set mutual expectations between the conference and the employee. It also can protect the conference in the event of a dispute with a former employee.

Some components of a conference employee handbook could include:

- Confidentiality agreement.
- Conflict of interest policy.
- Anti-discrimination policies.
- Whistleblower policy.
- Safety and security (e.g., facility, inclement weather, information security).

- Compensation and benefits (e.g., benefits required by law, benefits that are unique to your conference).
- Work schedules and personal time off (e.g., office hours of operation, flexible work benefits, personal and/or sick time).
- Standards of conduct (e.g., dress code, professional behavior, social media policy).
- General employment information (e.g., promotions, employee reviews, termination, employee records).

Ensure that each employee has received a copy of the employee handbook and signs an acknowledgement. Place the signed acknowledgement in the employee's general file.

### **Required State and Federal Posters**

As an employer in the United States, the Department of Labor (DOL) requires posters or notices to be posted in the workplace.

Poster/notice subjects could include:

- Fair Labor Standards Act (FLSA).
- Family and Medical Leave (FMLA).
- Government Contracts.
- Immigration.

### **Helpful Links for Ordering Posters**

- e-laws Poster Advisor can be used to determine which poster(s) employers are required to display at their place(s) of business. Posters, available in English and other languages, may be downloaded and printed directly from the Advisor.
- Workplace Poster Requirements for Small Businesses and Other Employers [<https://www.dol.gov/general/topics/posters>].
- Order the DOL Poster Package [<https://www.dol.gov/whd/resources/posters.htm>], which includes FLSA, FMLA, OSH Act, EEO and EPPA posters.

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***The U.S. Department of Labor's key employment laws are meant to foster, promote and develop the welfare of wage earners, job seekers and retirees.***

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## **KEY EMPLOYMENT LAWS**

The U.S. Department of Labor's key employment laws are meant to foster, promote and develop the welfare of wage earners, job seekers and retirees. Some key employment law areas to be aware of are:

- Wages and Hours.
- Workplace Safety and Health.
- Worker's Compensation.
- Employee Benefit Security.
- Unions and Their Members.
- Employee Protection.

- Garnishment of Wages.
- Family and Medical Leave Act.
- Veterans' Preference.
- Government Contracts.

**Note:** *This list is not inclusive of all employment laws; rather, it is a listing that may be most applicable to your conference. All major employment laws can be reviewed on the U.S. Department of Labor [<https://www.dol.gov/general/aboutdol/majorlaws>] website.*

## WHISTLEBLOWER POLICY

A whistleblower is defined as a person who reports potential or perceived unethical or illegal actions as it relates to employer policies and procedures. The whistleblower does not have responsibility for investigating the action or for determining the outcome of the investigation.

Conference offices located on an institution's campus should be aware of the institution's whistleblower policy, and make sure that the whistleblower policy is included in the conference employee handbook.

## RESOURCES

**United States Department of Labor** [<https://www.dol.gov/general/aboutdol/>]

**Society for Human Resources Management** [<https://www.shrm.org/>]

**College and University Professional Association for Human Resources** [<https://www.cupahr.org/>]

**When I Work** – HR Resources Toolkit, including checklists, templates, best practices and interactive forms. [<https://wheniwork.com/hr>]



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CONFERENCE  
OFFICE  
STRUCTURE

ACCOUNTING  
CONTROL

CRISIS  
MANAGEMENT

HIRING RISKS  
AND  
CONSIDERATIONS

HUMAN  
RESOURCES  
FUNCTION

INFORMATION  
SECURITY  
SYSTEMS

INSURANCE  
CONSIDERATIONS

LEGAL  
COUNSEL  
CONSIDERATIONS

PROTECTING  
TAX-EXEMPT  
STATUS

OFFICIATING

# Information Security Considerations

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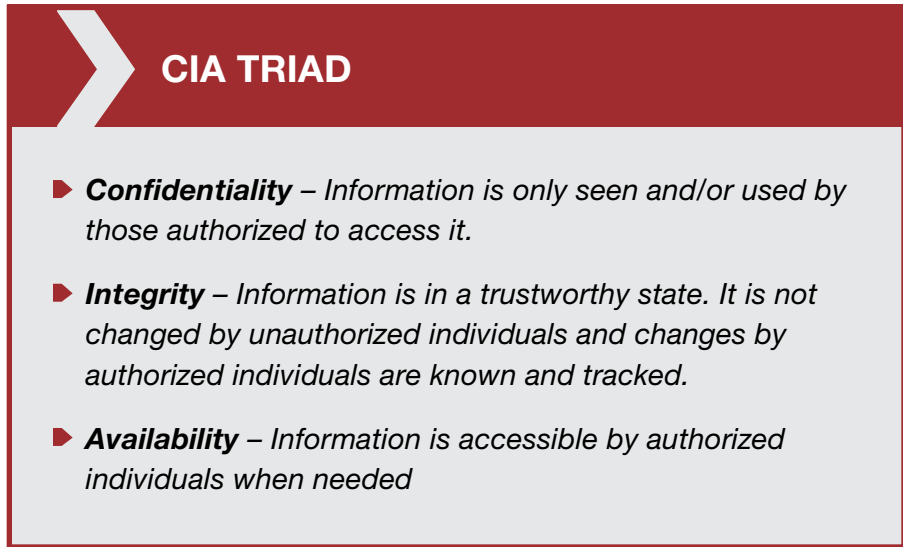
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The NCAA has prepared the following considerations for Division III conference administrators to use when determining appropriate controls to protect data. Please note that this document provides suggestions and considerations only and may not address all risks and threats of an NCAA Division III conference.

Conference administrators should assess their unique environment and apply the controls that mitigate the threats to that environment. For this document, information security and cybersecurity should be considered closely related and approached through a risk-based analysis.

## THE GOAL OF INFORMATION SECURITY

Information security, at a base level, is concerned with three characteristics regarding information:

A graphic with a dark red header containing a white chevron pointing right and the text "CIA TRIAD". Below the header is a light gray box with a dark red border containing three bullet points.

**CIA TRIAD**

- ▶ **Confidentiality** – *Information is only seen and/or used by those authorized to access it.*
- ▶ **Integrity** – *Information is in a trustworthy state. It is not changed by unauthorized individuals and changes by authorized individuals are known and tracked.*
- ▶ **Availability** – *Information is accessible by authorized individuals when needed*

This is known as the CIA triad and it is the goal of a risk-based information security program to address these characteristics.

## PRINCIPLES OF INFORMATION SECURITY

Developing an information security program is the first step in accomplishing the goals of the CIA triad.

- An information security program should be guided by a management-approved policy that has supporting standards, procedures and guidelines.
- Exceptions to the policy and program are only permissible in those instances in which a risk assessment has been performed outlining the implications of being out of compliance and the exception has been reviewed by the appropriate oversight committee or management team.
- Use of information must be consistent with the established policy and its supporting standards, procedures and guidelines.
- Information must be consistently protected in a manner commensurate with its sensitivity, value and criticality.
- Information will only be used for its intended business purpose as authorized by management.

The NIST Cybersecurity Framework identifies five functions with expanded categories and controls on which to focus a program:



## NIST CYBERSECURITY

- ▶ **Identify** – Know what information you have, where information is stored and on what resources.
- ▶ **Protect** – Apply appropriate safeguards to the information based on its risk assignment.
- ▶ **Detect** – Know when potential malicious activity has occurred.
- ▶ **Respond** – Have processes in place to act upon information security incidents.
- ▶ **Recover** – Identify appropriate activities to maintain plans for resilience and to restore capabilities or services.

### FIRST STEPS

Every organization has a unique environment and values information differently. Therefore, each organization will need to determine the appropriate course to accomplish the intent of the five functions listed above. Here are suggested steps:


1. **Research** – There are many resources from which to learn the concepts of information security and cybersecurity.
2. **Framework** – Choose one or more frameworks on which to base your program. When choosing a framework, remember that not every aspect of a framework may apply to your environment. The key is to adopt the appropriate aspects of a framework and expand upon that.
3. **Develop a Plan** – This should be a documented, management-approved plan to guide the program.
4. **Assign Responsibility** – An individual or group of individuals should be assigned responsibility for the program, and its implementation and monitoring.
5. **Train** – All employees are responsible for adopting and adhering to practices to safeguard information. To do this, an effective training program is required.

### BASIC CONTROLS

Within any program, there are basic controls that should be considered after a risk assessment has been performed:

- **Patching** – Having a process to apply security patches and updates on software and hardware will correct many vulnerabilities that hackers take advantage of.

- **Authentication** – For important or sensitive information, a username and password may not provide adequate protection. Consider multi-factor authentication.
- **User Access Controls** – The concept of least privilege should be enforced, meaning an individual can only access what they need and nothing more.
- **Continual Training** – Staff and contractors must be trained and tested on expected secure behavior.
- **Cloud Configuration** – If you use cloud storage and hosted environments, they must be configured securely.
- **Monitor** – The environment must be monitored for potentially malicious behavior.
- **Response Plans** – An incident response plan and business continuity plan should be in place to respond to incidents.
- **Consider Cybersecurity Insurance** – Insurance coverage for breaches and other incidents help to cover the costs of recovery.
- **Security Testing** – Periodic penetration and vulnerability testing should occur to determine if a network's security is configured and maintained properly.



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# Insurance Policy

CONFERENCE  
OFFICE  
STRUCTURE

ACCOUNTING  
CONTROL

CRISIS  
MANAGEMENT

HIRING RISKS  
AND  
CONSIDERATIONS

HUMAN  
RESOURCES  
FUNCTION

INFORMATION  
SECURITY  
SYSTEMS

INSURANCE  
CONSIDERATIONS

LEGAL  
COUNSEL  
CONSIDERATIONS

PROTECTING  
TAX-EXEMPT  
STATUS

OFFICIATING

# Insurance Considerations

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The NCAA has prepared the following insurance considerations for Division III conference administrators to use when purchasing insurance. Please note that this document provides suggestions and considerations only and may not address all exposures of an NCAA Division III conference. Conference administrators should work with their chosen insurance advisor/broker to determine the type, level and scope of insurance coverage necessary to meet their unique circumstances. A more extensive resource for insurance considerations is also available to all NCAA conferences at [www.ncaa.org](http://www.ncaa.org).

## FINANCIAL STRENGTH OF INSURER

An occurrence today may result in a claim several years from now. Therefore, it is important that the insurer you select has the financial strength to pay claims both now and in the future. The A.M. Best Company provides insurance company ratings to help evaluate the strength of an insurer. An insurer's A.M. Best Rating can be verified via [www.ambest.com](http://www.ambest.com), or by requesting this information directly from your insurance advisor.

## SELECTING LIMITS

The type and number of activities that a conference organizes and the extent of the conference's direct involvement in these activities affect the conference's exposure to loss. The decision on how much insurance to carry should be discussed with the conference's insurance advisor, who may provide information on limits carried by

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***It is important to retain all occurrence-based policy documents (e.g., Commercial General Liability, Crime, Workers' Compensation policies) forever.***

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organizations of a similar size and nature. Unfortunately, it is not possible to know with 100% certainty what will prove to be an "adequate" limit because of the unknown factors associated with liability. A minimum limit standard is at least \$1,000,000 per occurrence/loss. This coverage amount is also the minimum amount typically required in third-party contractual arrangements.

## OTHER CONSIDERATIONS

It is important to retain all occurrence-based policy documents (e.g., Commercial General Liability, Crime, Workers' Compensation policies) forever. Occurrence-based policies will be in effect for claims when the loss occurred, not necessarily when the loss was filed/reported to the insurer. For example, if a claim is reported today for a loss that occurred 10 years ago, the policy that was issued 10 years ago will be in effect rather than the one that is today.

It is of the utmost importance that you accurately complete all insurance applications and reveal all relevant exposures, including all sports applicable to your conference. Failure to disclose information may result in denial of a claim. Keep your insurance brokers/carriers apprised of any new developments relating to your conference.

It is also critical to review the claim-reporting requirements established within the insurance policy and proactively notify the insurance company of any claim, or even an incident that could give rise to a claim, to avoid a claim declination based on late reporting. It also may be prudent to report a claim on all relevant insurance policies and coverage types, including any excess and umbrella liability policies.

## CLAIM-REPORTING REQUIREMENTS

- ▶ *Know when the coverage is for – when the claim is made or when the claim occurred.*
- ▶ *Discuss what the proper limit should be for the coverage.*
- ▶ *Keep all occurrence-based documents.*
- ▶ *Accurately complete all applications and also accurately report any claims.*

## COMMERCIAL GENERAL LIABILITY (CGL) INSURANCE

**Commercial General Liability (CGL) policies are designed to cover your organization with respect to claims of bodily injury, property damage and/or personal/advertising injury liability arising out of your conference's operations.**

The most common CGL coverage form is an “occurrence-based” policy that offers permanent coverage for incidents that occur during the policy period. In comparison, a “claims-made” policy covers claims that are made (reported) during the policy term and will cover claims after the coverage period only if the insured purchases extended-reporting period or “tail” coverage. Third-party contracts will often specifically require an occurrence-based CGL policy

A standard CGL policy is intended to provide coverage for the operations of a college conference, but there are certain exclusions and limitations that may restrict important coverages. The following provides a description of notable coverages you may consider, exclusions or limitations to look for, and coverage enhancements you may want or need:

- **Additional Insureds** – Many conferences have sponsorship relationships or venue-use agreements that require the conference to name a third party as an additional insured. Determine in advance whether there will be premium implications for such requests. Also determine whether the policy requires a written contract or agreement to provide additional insured status.

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***A standard CGL policy is intended to provide coverage for the operations of a college conference.***

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- **Participant Legal Liability** – **Confirm with your insurance advisor that the conference’s policy provides coverage for claims of bodily injury resulting from sports participation (typically referred to as “participant legal liability”)**. This is a primary source of exposure for a college conference, so you may want to confirm that coverage is in place and that you understand any restrictions or limitations that apply.
- **Athletic Trainers Liability** – If a conference arranges for or uses the services from athletic trainers and wants to provide liability coverage for these individuals, it is important to discuss whether the insurer offers an athletic trainers endorsement to provide coverage for medical services provided by athletic trainers (**standard policy language excludes coverage for individuals who provide professional medical services**).
- **Liquor Liability** – Standard CGL forms typically include coverage for “Host Liquor Liability,” but exclude alcohol-related losses if the insured is involved in “the business of ... selling, serving or furnishing alcoholic beverages.” While college conferences may not do this as a primary business function,

**coverage is sometimes restricted in the case of nonprofit and other organizations that may sell alcoholic beverages in connection with fundraising or other activities.** As part of discussions with your insurance advisor, you should discuss any events where alcohol will be sold or provided to determine whether full Liquor Liability coverage is needed, or if the Host Liquor Liability coverage is sufficient. **It also is important to verify that concessionaires and vendors serving alcohol are properly licensed and insured with Liquor Liability coverage, and the conference is named as additional insured.**

- **Sport-Specific or Activity-Specific Exclusion** – If the policy includes sport- or activity-specific exclusions, be sure that they are not for any sports or activities with which your conference is involved (e.g., a policy could specifically exclude claims related to the use of a javelin).
- **Concussion/Neurodegenerative Exclusion** – Insurers in general are adding head trauma and concussion-related exclusions on liability policies, even on sporting activities in which concussions are not prevalent. Conferences may consider sharing their concussion protocols with insurers and explain what is being done to mitigate the problems relating to concussions. Consult with your insurance advisor to explore options to avoid such exclusions on your liability policies.



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- **Designated Operations or Activities Provision** – Insurers may limit the scope of coverage by specifically listing what the policy covers. If your policy contains such a limitation, you must ensure that the wording is broad enough to encompass all your regular day-to-day business operations plus any special events you conduct. If possible, this type of limitation should be avoided.
- **Fireworks Exclusion** – Some policies contain exclusions or limitations with respect to fireworks. If fireworks or pyrotechnics are a part of any conference activities, you should evaluate the coverage provided to ensure that it is appropriate for your situation.
- **Abuse/Molestation Exclusion** – If the conference organizes or operates activities that involve youth, you may have exposure with respect to claims of abuse or molestation and should confirm that your policy provides coverage for such exposures. Additionally, you may be required to carry this coverage if you plan to use a third-party's premises where youth are present (e.g., you may wish to hold a practice at a local high school, and the high school requires you to have abuse/molestation coverage because the high school has youth on its premises).

## **DIRECTORS & OFFICERS LIABILITY (D&O)/ EMPLOYMENT PRACTICES LIABILITY (EPL) INSURANCE**

**D&O policies are designed to cover an organization and individuals for claims alleging wrongful acts.** There are many different policy forms that provide the same basic coverage but may have enhancements or exclusions that are of particular interest to a Division III conference. It also is prudent to verify whether outside directorship liability coverage is automatically extended to individual board members via their own employer's D&O policy. The following provides a description of core coverage, exclusions and limitations, and coverage enhancements that may be of interest to your conference.

- **Who is an Insured?** – Coverage should include past, present and future directors, officers, trustees, employees, committee members and volunteers. In addition, some policies extend coverage to spouses of these individuals in the event they are brought into a lawsuit. It is important that the correct entity be named on the policy declaration pages so that any subsidiaries also are covered under the policy. If not, they will need to be listed separately to be covered.
- **Non-Monetary** – **Coverage should apply to claims for which monetary and non-monetary demands are made.** It is important to confirm that the policy includes both triggers in the definition of a claim. Non-monetary claim examples include administrative proceedings or demands for injunctive relief. The defense costs associated with such claims could be significant, as this also could include antitrust or eligibility-related matters.



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**Coverage should include past, present and future directors, officers, trustees, employees, committee members and volunteers.**

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- **Anti-Trust** – Coverage may be available for anti-trust lawsuits. College conferences may have exposure in this area if the conference makes decisions that affect participants within the conference on a blanket basis and could be held to constitute a restriction of competition.
- **Employment Practices Liability (EPL)** – Many not-for-profit D&O policies contain EPL coverage. This also can be purchased on a separate policy should you not wish to combine the limits. This coverage should apply to claims brought by employees, former employees or prospective employees relative to employment practices (such as wrongful termination, failure to promote, age discrimination, etc.). **It also should contain coverage for claims by third parties, such as vendors or guests.**

## **ADDITIONAL INSURANCE COVERAGES FOR CONSIDERATION**

### **Property/Mobile Equipment**

A conference may own property (e.g., building and/furniture, computer equipment, or other contents) exposed to loss, which should be appropriately considered for property insurance coverage. It is important to confirm the valuation and type of coverage, such as Replacement Cost Value versus Actual Cash Value. Inland Marine insurance is used to cover movable equipment and unusual property. A college conference may have property such as sports equipment, valuable memorabilia, cameras and signage that would not be sufficiently covered by standard commercial property coverage. Therefore, when discussing property coverage with your insurance advisor, it is important to identify any unusual property you possess or equipment that you transport to tournaments or other events.

### **Auto Liability**

If a conference owns, rents or uses vehicles through sponsorship arrangements, or if vehicles are operated on its behalf (such as a chartered bus), and/or if personnel rent vehicles or use their own vehicles for conference business, the conference should obtain appropriate auto coverage. It is important to note that primary liability typically “follows” the vehicle, but the conference also will inevitably have a non-owned auto exposure. Coverage for non-owned auto liability should be verified. Additionally, a conference may be contractually required to evidence coverage for its owned, hired and non-owned auto exposure.

### **Crime**

A separate comprehensive crime policy may be considered to cover the conference in the event of an employee theft of funds.



### **Cyber Liability**

Conferences likely hold data that is considered sensitive and personal. If this information is breached and released, there are exposures that may not be covered by other insurance policies. Such expenses could include regulatory, defenses, personal notification, forensic and public relations costs. In addition, many insurers have a list of vendors that can help you mitigate the exposures in the event of a data breach.

### **Media Professional Liability**

If the conference is involved with publishing or broadcasting activities, there may be a need for separate Media Liability coverage. This coverage protects the conference from allegations of defamation, discrimination or trademark infringement related to content published or disseminated in print, on websites or via social media. Similar coverage may be available in Commercial General Liability coverage, but coverage is often restrictive.

### **Fiduciary Liability**

If the conference administers an employee retirement program or any programs that may subject it to allegations of an ERISA violation, Fiduciary Liability coverage should be considered. This exposure typically is excluded in traditional D&O Liability policies.

### **Workers Compensation**

Depending on the jurisdiction and number of employees, a conference may be required to carry workers' compensation coverage that covers employees for injuries or illnesses suffered on the job, including coverage for medical expenses and disability. It also is prudent to verify that any contractors/vendors maintain appropriate workers' compensation coverage. Please note that Ohio, Washington, North Dakota and Wyoming are monopolistic states in which employers must purchase workers' compensation insurance from a state-operated insurance fund.

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*It is important to identify any unusual property you possess or equipment that you transport to tournaments or other events.*

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## Participant Accident Medical

The conference may consider providing accident medical coverage for event participants if it conducts events in which the participants do not have coverage through the NCAA or a college/university (such as a youth activity). Also, be cognizant that a conference could be contractually required to obtain this coverage (venues may require a conference to maintain this coverage for participants).



### **NCAA CONTACT INFORMATION**

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CONFERENCE  
OFFICE  
STRUCTURE

ACCOUNTING  
CONTROL

CRISIS  
MANAGEMENT

HIRING RISKS  
AND  
CONSIDERATIONS

HUMAN  
RESOURCES  
FUNCTION

INFORMATION  
SECURITY  
SYSTEMS

INSURANCE  
CONSIDERATIONS

LEGAL  
COUNSEL  
CONSIDERATIONS

PROTECTING  
TAX-EXEMPT  
STATUS

OFFICIATING

# Legal Counsel Considerations

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## **TYPES OF ISSUES THAT MAY BE ADDRESSED BY INTERNAL/EXTERNAL COUNSEL**

- Governance
- Employment
- Data and Information Security
- Taxation
- Crisis Management
- Other Federal and State Regulatory Laws
- Contracts
- Intellectual Property
- Litigation and Other Types of Dispute Resolution

## **INTERNAL VS. EXTERNAL HIRING CONSIDERATIONS**

- Perceived benefits of hiring in-house counsel (attorneys employed by the organization):
  - Ready access and availability.
  - No competing interests.
  - Familiarity with unique conference and higher education legal and cultural issues.
  - Institutional memory and understanding of internal politics.
  - Fixed/budgeted costs and overhead savings.

- Perceived advantages of using outside counsel (independent attorneys/firms engaged via contract):
  - o Access to expertise in numerous areas of the law.
  - o Cross-institutional, cross-industry experience.
  - o Scalability.
  - o Professional detachment (the ability to bring a high level of objectivity that is not always easy to maintain via an employment relationship).
- When evaluating internal vs. external hiring models, consider the significance and timing (project, short or long term) of the resource need and give careful thought to the mission the role should serve (e.g., “ad hoc” tangential resource or permanent part of the team). Begin with an audit of current and predictable legal activities and expenses. Enterprise Risk Management assessments and plans can be valuable maps that can help predict potential areas of need and focus and facilitate a decision regarding internal vs. external hiring.
- Search and selection of internal candidates should be conducted like any other executive-level search. Member relations and collaboration will be key objectives, so member and other stakeholder input should be considered at various stages of the process.

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***Retaining outside counsel should be considered a significant investment. As with other capital outlays, it’s important to understand what you are buying to get the most out of your purchase.***

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## **IDENTIFYING AND ENGAGING OUTSIDE COUNSEL**

- Retaining outside counsel should be considered a significant investment. As with other capital outlays, it’s important to understand what you are buying to get the most out of your purchase.
- Typically, to get the full benefit of the outside counsel model, counsel must begin with or quickly establish a high level of client familiarity and must create and maintain regular and consistent interaction and communication with the client and its personnel. Accordingly, a passion for the athletics industry, and existing knowledge about your conference, personalities and chemistry, should be important hiring considerations.
- Avoid potential conflicts of interest by keeping politics and preexisting relationships out of the selection process.
- Consider the potential need or obligation to consult or involve insurance firms in the selection process. Coverage documents often describe whether and to what extent insurance carriers can/must be involved in the selection/retention of counsel and approval of counsel rates. Some types of coverage policies contain explicit “duty to defend” obligations that require the insurer to assume control of the claim defense process, including counsel selection and payment of defense costs and expenses. These duties are often coupled

with a right to access certain case information. In these scenarios, it is particularly important to evaluate the potential for misalignment and conflict between conference and carrier defense and settlement strategies, and the additional complexities that can arise if a member also is a named defendant. A more extensive resource for insurance considerations also is available to all NCAA conferences at [www.ncaa.org](http://www.ncaa.org).

- Firm engagement is like any other negotiated contract. It's important to understand your needs, as well as your leverage and bargaining power.
- Consider leveraging the same type of evaluation and selection process used with other material vendor/service arrangements.
  - Clearly define needs, objectives, expectations and limitations/contingencies.
  - Circulate Request for Information (RFI).
  - Circulate Request for Proposal (RFP).
  - Solicit multi-stakeholder assessment and input.
  - Engage in contract negotiations.
  - Initiate onboarding activities.

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***Consider the potential need or obligation to consult or involve insurance firms in the selection process.***

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## **MANAGING OUTSIDE COUNSEL**

- Establish clear billing guidelines (there is plenty of guidance on the internet).
- Do not be afraid to ask for data and details behind billing rates and invoices.
- Do not be afraid to request copies of reports, presentations and other work product. You've paid for it. You own it.
- Be wary of providing too much oversight and autonomy to a single firm. Maintaining adequate organizational visibility and involvement ensures that valuable historical knowledge stays in-house. It avoids the potential for firm complacency and facilitates the ability of the organization to shift counsel if/ as necessary.
- Conduct periodic, but regular, performance evaluations and audits and openly share feedback to create a culture of collaboration, shared expectations and success.
- Exhibit and communicate a willingness to regularly reexamine outside counsel relationships. This can help control spending and drive efficiencies, while keeping the attorney-client relationship from becoming complacent.

## **SHARED RESOURCE CONSIDERATIONS**

- While joint-defense and/or common-interest arrangements may permit the "sharing" of legal resources when members have been named as co-defendants in a lawsuit, or are participating in the evaluation of legal

issues that affect both the conference and the institution, the permissibility and defensibility of these types of arrangements vary from state to state and are highly nuanced.

- Be aware of the potential ethical issues and conflicts of interests that can arise when “borrowing” or “sharing” counsel and legal costs with members or other third-party entities. Legal and fiduciary interests often will diverge. It may be impossible for a single attorney or firm to adequately represent the interests of both parties in such scenarios. These are particularly important considerations when evaluating whether to use the same legal resources for both conference and member representation.
- Also, be aware of the potential conflicts that can arise when seeking organizational legal advice from a board member or other member of staff that may have legal training and expertise but has not been formally retained as an organizational attorney. Typically, those individuals are operating in the capacity of a non-lawyer. As a result, they may not have malpractice coverage and/or their coverage won’t extend to the provision of legal advice in non-client scenarios. Similarly, the defensibility of organizational decisions that are made in reliance on quasi-legal advice delivered outside a formal attorney-client relationship can present challenges.

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***Be aware of the potential ethical issues and conflicts of interests that can arise when “borrowing” or “sharing” counsel and legal costs with members or other third-party entities.***

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## **NCAA CONTACT INFORMATION**

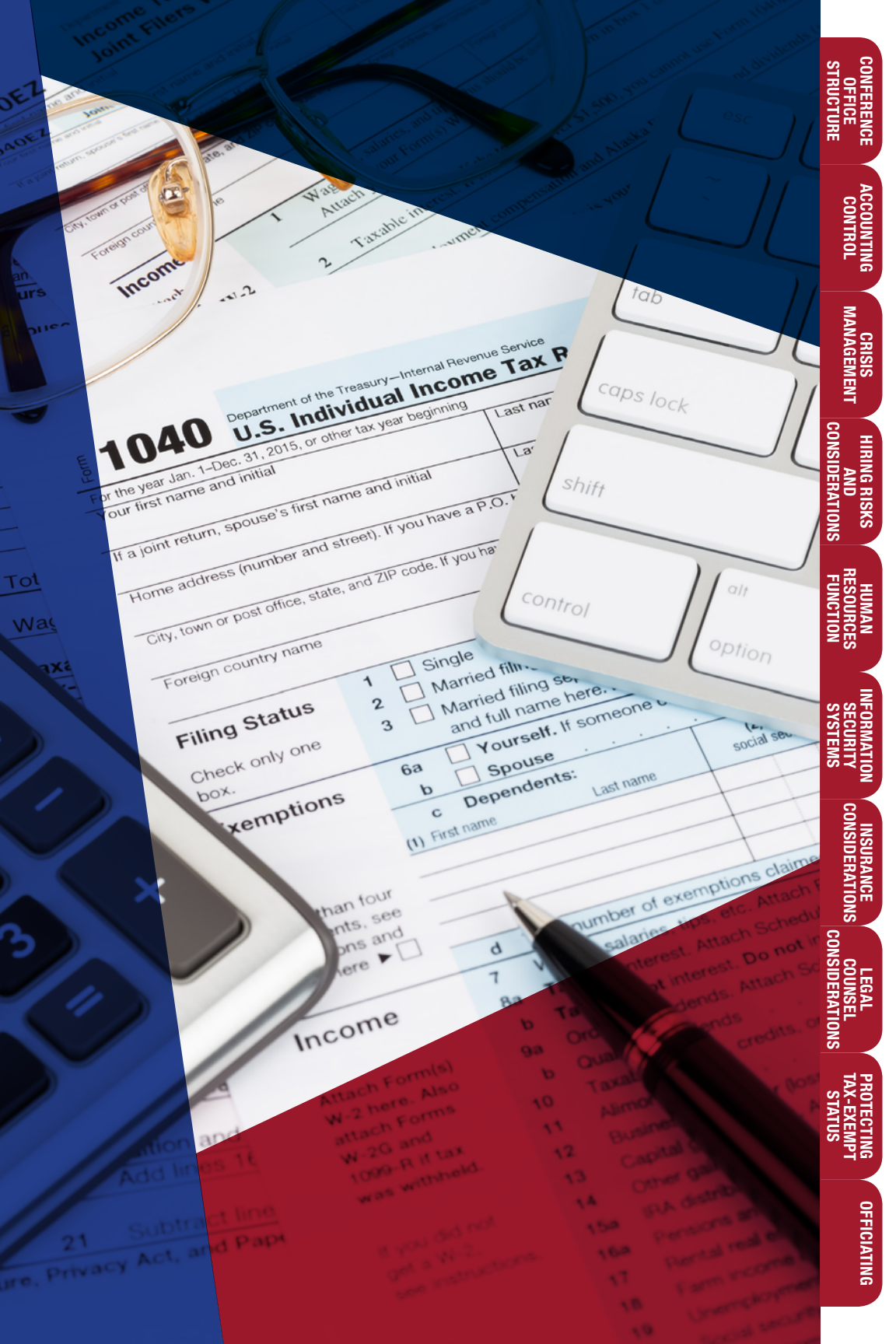
**Jess Kerr**

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CONFERENCE  
OFFICE  
STRUCTURE

ACCOUNTING  
CONTROL

CRISIS  
MANAGEMENT

HIRING RISKS  
AND  
CONSIDERATIONS

HUMAN  
RESOURCES  
FUNCTION

INFORMATION  
SECURITY  
SYSTEMS

INSURANCE  
CONSIDERATIONS

LEGAL  
COUNSEL  
CONSIDERATIONS

PROTECTING  
TAX-EXEMPT  
STATUS

OFFICIATING

# Protecting Tax-Exempt Status

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Properly maintaining tax-exempt status requires careful consideration of both the requirements and prohibitions. Tax-exempt status can be challenged and revoked based on a variety of criteria, which can result in unwanted costs and penalties. Below are a few considerations that tax-exempt entities should keep in mind.

## **ORGANIZATIONAL AND STRUCTURAL FORMALITIES**

- The board and governance structure should be formalized. Formal board meetings should occur regularly. Board and management discussions and decisions should be well documented.
- The organization should demonstrate that it continues to operate within the scope of the nonprofit purpose reflected on its nonprofit application.

## **RECORDS AND DOCUMENTATION**

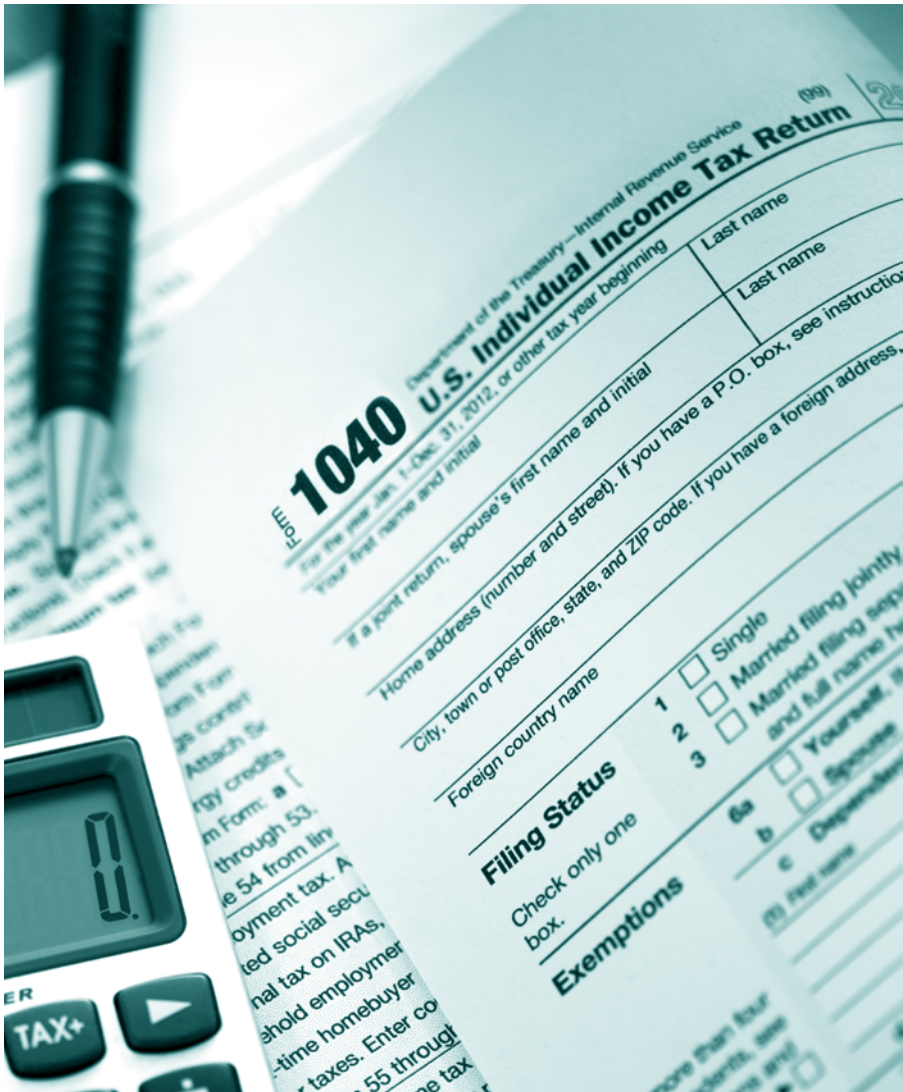
- All nonprofits must file an annual Form 990 tax return.
- Failure to file and untimely filings can result in unwanted government and media scrutiny, significant fees and possible status revocation.
- All nonprofits are required to keep clear and appropriate records that substantiate compliance with tax-exempt income and other requirements and limitations.
- Records should include properly maintained meeting minutes and documentation of all material discussions and decisions.
- Properly maintained records facilitate protection of tax-exempt status and limitations on personal liability for officers and directors.

## **POLITICS AND LOBBYING**

- Organizational donations to political campaigns or candidates holding or running for political office (at federal, state and local levels) are prohibited, as are organizational statements in support of any specific political party. While these limits don't prohibit statements made by staff and personnel in an individual capacity, be aware that attempts to distinguish between personal and organizational endorsements can get muddy and create unnecessary organizational scrutiny and risk.
- Lobbying occurs when an organization attempts to influence (propose, support or oppose) legislation. While certain lobbying activities are permitted, it can be challenging to navigate and comply with the numerous limitations. Consider whether it is easier to implement a strict prohibition on lobbying for organizational personnel or, at least, for those that aren't specifically operating in government relations roles.

## **FUNDRAISING**

- Nonprofits may participate in capital campaigns and also may solicit many types of individual donations including, among others, cash, pledges and property (real estate and personal), and donors are permitted to take a tax deduction in return.
- Nonprofits are entitled to seek private and government grants and corporate gifts.
- The sources and amounts of funds solicited and received, as well as their intended and actual uses, should be carefully documented as part of routine record-keeping activities.



## LIMITATIONS ON OTHER ACTIVITIES

- Income generated by a nonprofit must be used in furtherance of the stated tax-exempt purpose and not for the benefit of any individual. Accordingly, salaries must be reasonable and transparent, and properly considered and approved by the board.
- Earning too much income, or failing to properly track income, which is generated from activities that are not substantially related to an organization's tax-exempt purpose (unrelated business income [UBI]) can jeopardize tax-exempt status. It is important to be familiar with and comply with all applicable UBI limitations and reporting requirements.

- Similarly, any potential business conducted with any officer, director or key employee, or any business in which any such individual maintains an interest, should be carefully evaluated for potential conflicts. Amounts exchanged with these types of individuals and related organizations should be transparently approved by the board, well documented and reasonable in light of the goods or services provided.



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CONFERENCE  
OFFICE  
STRUCTURE

ACCOUNTING  
CONTROL

CRISIS  
MANAGEMENT

HIRING RISKS  
AND  
CONSIDERATIONS

HUMAN  
RESOURCES  
FUNCTION

INFORMATION  
SECURITY  
SYSTEMS

INSURANCE  
CONSIDERATIONS

LEGAL  
COUNSEL  
CONSIDERATIONS

PROTECTING  
TAX-EXEMPT  
STATUS

OFFICIATING

# Officiating Contracts and Background Checks

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## **NCAA BACKGROUND CHECK PROGRAM**

If a conference decides that the officials who are hired by the conference should have background checks and the conference wants to use the background check program that the NCAA has implemented (using the ArbiterSports website and Peopletrail, the vendor that conducts the background checks), the conference might consider:

- Becoming familiar with the FCRA (Federal Credit Reporting Act), which is a federal law that gives consumers certain rights.
- Deciding whether to require a background check to be eligible to officiate.
- Including legal representation to assist in developing the program.
- Developing a process for checking the conference's list of officials against the officials who register on the ArbiterSports website and who grant the NCAA permission to share the results of the background check with the conference.
- Establishing criteria to determine if an official passes or fails a background check (e.g., one or more felony convictions in the past seven years would serve as an automatic disqualifier to work for the conference).
- Establishing a process for reviewing the background check report and deciding the status of the official (e.g., who will be responsible for reviewing the background check reports).
- Working with ArbiterSports/Peopletrail to develop a process for notifying the official once the background check has been reviewed, and if the official fails the background check or if more information is needed before a decision will be made.
- Determining if an appeal process is necessary, and if so, the process for appealing.
- Developing a conference policy if an official does not grant the conference permission to conduct a background check.



## INSTITUTIONAL BACKGROUND CHECK PROGRAM

If a conference decides it wants to use a program other than the one the NCAA has developed to conduct background checks on officials who are hired by the conference, the conference might consider:

- Becoming familiar with the FCRA (Federal Credit Reporting Act), which is a federal law that gives consumers certain rights.
- Including legal representation to assist in developing the program.
- Identifying a company to conduct the background check.
- Developing a process for requesting permission from the official to conduct the background check.
- Determining how the cost for the background check will be paid (prices could range from \$10 to more than \$100 depending on the type of background check).
- Establishing criteria to determine if an official passes or fails a background check (e.g., one or more felony convictions in the past seven years would serve as an automatic disqualifier to work for the conference).
- Establishing a process for reviewing the background check report and deciding about the status of the official (e.g., who will be responsible for reviewing the background check reports).
- Establishing a process for notifying the official once the background check has been reviewed if the official fails the background check or if more information is needed before a decision will be made.
- Determining if an appeal process is necessary, and if so, the process for appealing.
- Developing a conference policy if an official does not grant the conference permission to conduct a background check.
- Determining a process for addressing other official conduct.



## **OFFICIATING ASSIGNOR CONSIDERATIONS**

When engaging an officiating assignor and officials it may be important to evaluate the relationships between the conference, the officiating assignor and the game officials. To do this, conferences may want to consider the following:

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- If the conference implements a background check program, the conference may determine what role, if any, the assignor plays in the review process and outline the responsibility of the assignor in the background check process.
- Determine whether to require the officiating assignor to enter into written agreements with the conference officials either on behalf of the conference or directly with the officiating assignor.
- Review the roles and responsibilities of the officiating assignor related to handling official complaints and allegations of misconduct.
- Consider whether to indemnify the actions of the officiating assignor when he/she acts within the scope of his/her duties for the conference.
- Analyze insurance options and your insurance coverage to determine whether it covers actions/decisions undertaken by your officiating assignor.

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