National Association of College and University Attorneys
Presents:

Preparing for Kick Off:
Athletics Issues for 2025-2026

Webinar

August 27, 2025

1:00 PM – 3 :00 PM Eastern
12:00 PM – 2:00 PM Central
11:00 AM – 1:00 PM Mountain
10:00 AM – 12:00 PM Pacific

Scott Bearby
Senior Vice President and Chief Legal Officer
National Collegiate Athletic Association

Nathan "Nate" LaVallee
Deputy General Counsel
University of Connecticut

TaRonda Randall
Senior Counsel
Husch Blackwell

Tammi Wong
Principal Counsel
University of California, Office of the President

Contents

1. Speaker Bios, Pages 1-2
2. Materials, Pages 3 - 106
3. NACUA Webinar CLE Forms, Pages 107 - 109
4. PowerPoint Slides, Pages 110 - 164

NACUA

Speaker Biographies

Preparing for Kick Off: Athletics Issues for 2025-2026

Scott Bearby serves as Senior Vice President and Chief Legal Officer for the National Collegiate Athletic Association (NCAA). Bearby leads enterprise legal strategy for legal affairs, government relations and hearing operations.

The office of legal affairs handles numerous legal responsibilities for the Association, including managing litigation involving the national office and supporting its governance and sport committees, 90 championships, and national office staff in assisting the membership and student-athletes.

Bearby was named Vice President of Legal Affairs and General Counsel in August 2016 after serving in various legal positions at the national office since January 1999.

Before joining the NCAA, Bearby spent six years in private practice. A native of Hammond, Indiana, he earned his bachelor's degree in government from Notre Dame and his law degree from Indiana University, Bloomington.

Nathan ("Nate") LaVallee serves as Deputy General Counsel at the University of Connecticut within the Office of the General Counsel. He provides legal services and advice in connection with the many issues affecting the University.

Nate has spent more than 16 years working in the public law sector and has primarily served as in-house counsel to New England's two largest public flagship universities. Nate has extensive experience in regulatory compliance, legislative initiatives, and other higher education legal matters including FERPA, student discipline, NIL, and public record laws. He also has experience creating and executing critical university strategies, agreements, and transactions necessary to address key business issues. He often presents locally and nationally on topics concerning higher education.

Before joining UConn, Nate was Associate General Counsel for the University of Massachusetts, where he handled the full range of higher education issues. Nate has also represented municipal and state agencies in a variety of legal matters in State and Federal Courts as well as before state commissions and other regulatory bodies.

TaRonda Randall is Senior Counsel at Husch Blackwell. Clients count on TaRonda's broad background in collegiate athletics and sound legal judgment to address complex and evolving NCAA compliance, legal, and regulatory issues in college athletics.

TaRonda provides college and university clients with a comprehensive understanding of the challenges associated with collegiate athletics. TaRonda brings invaluable experience to her private practice, having served in the athletic departments of major public universities and as a postgraduate intern with the National Collegiate Athletic Association (NCAA) National Office.

She understands the complex regulatory issues colleges and universities face. She assists clients by analyzing NCAA legislation, drafting, and submitting waivers and violations of NCAA bylaws, conducting athletics compliance assessments and independent investigations related to student-athlete welfare issues, as well as advising institutions on issues related to diversity, equity and inclusion and Title IX equity in athletics. She has witnessed firsthand the rapid evolution of novel challenges in connection with Name, Image and Likeness (NIL) and related areas.

TaRonda's passion for the regulation and governance of collegiate athletics extends back to her undergraduate education. As a student-athlete at a Division I institution, she competed as a member of her school's basketball team, serving as a team captain and Vice-President of the Student-Athlete Advisory Committee.

Tammi Wong is Principal Counsel on the General Education Affairs and Governance team at the University of California, Office of the President. Tammi advises on a variety of issues involving student programs and services including athletics, students of concern, financial aid and scholarships, FERPA and nondiscrimination across the UC system, including response to agency investigations.

Prior to joining the University of California, Tammi was a Senior Deputy General Counsel at the San Francisco Unified School District focusing on student matters, and a Senior Attorney at the U.S. Department of Education, Office for Civil Rights (OCR) with a focus on Title IX and athletics, Title VI hostile environment, and Title II physical access. Tammi began her legal career at Legal Services of Northern California working with parents and students to advocate for access to high quality public education.

Materials

I. NIL Contract Checklist

II. NCAA NIL Guidance (22.11) and College Sports Comm'n Memoranda

III. NCAA Question and Answer: Implementation of the House Settlement

IV. Saving College Sports Ex. Order Summary

V. Scores Act Summary

VI. Knight Commission Brief Explaining Proposed *House* Settlement and Impacts

VII. *House*: Objection based on Failure to Apply Title IX

VIII. January 2025 OCR Fact Sheet: NIL Activities

IX. Press Release - U.S Department of Education Rescinds Biden's 11th Hour Guidance on NIL Compensation

Checklist of Contract Terms for University NIL Agreements

Contract Boilerplate Terms

☐ **Term of Agreement**: Define the expected duration and any renewal or extension options.

☐ **Termination**: Define triggers and procedures for ending the agreement (e.g., entering the Portal).

**Consider whether student athletes will have the right to early termination.*

☐ **Effect of Termination**: Clarify obligations and rights following contract termination.

☐ **Representations, Warranties, and Covenants**: Include assurances regarding conflicts with other agreements and compliance.

☐ **Governing Law**: Specify the jurisdiction governing the agreement.

☐ **Dispute Resolution**: Outline procedures for dispute resolution, including whether the University would like to include an opportunity to cure any disputes, what options it would prefer in the event of a dispute related to the agreement, and whether the prevailing party should be entitled to reimbursement of attorney's fees.

☐ **Force Majeure**: Include force majeure protections for unforeseen events.

☐ **Assignment**: Restrict or allow assignment of rights and obligations under the contract.

☐ **Severability**: Ensure enforceability of remaining contract provisions if one is invalidated.

☐ **Entire Agreement**: State that the contract supersedes all prior agreements or understandings.

Recommended NIL Licensing Terms

☐ **Conditions Precedent**: List conditions that must be met for the contract to take effect (e.g., admission and full-time enrollment at the University, maintaining NCAA eligibility, etc.). Consider stating whether the University will defer to the NCAA or other applicable governing body for a final determination regarding student-athlete's eligibility.

☐ **Compensation**: Clearly outline all forms of consideration or payment to the student-athlete (e.g., monthly payments, front loaded, back loaded).

☐ **Compensation Adjustments**: Outline if and how compensation may be adjusted due to changes in NIL value.

☐ **Services**: Detail any required services the student-athlete must perform (media, events, promotions, etc.).

**If entering into agreements with international students, carefully consider F-1 visa implications.*

☐ **Independent Contractor**: Affirm the student-athlete's independent status (not an employee).

☐ **Work for Hire**: Clarify that any content created by the student-athlete (e.g., promotional materials, videos, designs) is considered "work for hire," meaning the University will own the intellectual property.

**If entering into agreements with international students, carefully consider F-1 visa implications.*

☐ **Conduct**: Address behavioral expectations and restrictions to protect NIL value and reputation.

☐ **License Grants & Sublicense Rights**: Specify the type (exclusive, nonexclusive, or hybrid) and scope of license, and whether sublicensing is permitted.

☐ **Prohibited Categories**: Restrict NIL use in connection with certain categories (e.g., alcohol, tobacco, gambling, controlled substances, adult entertainment, etc.), consistent with state law and/or University policy.

☐ **Broadcast NIL**: Specify that any broadcast NIL rights are excluded.

☐ **Discretion to Operate Program Waiver**: Reserve University's discretion to make decisions related to playing time, rosters, etc.

☐ **No Obligation to Use NIL Rights:** State that the University is not required to use the student-athlete's NIL rights.

☐ **Institutional IP and Co-Branding:** Address limitations on use of University's intellectual property and marks by the student-athlete.

☐ **Marketing Agent**: Determine if University will have exclusive or non-exclusive marketing rights.

☐ **Third-Party Beneficiaries**: Consider designating NCAA and Conference(s) as beneficiaries.

☐ **Confidentiality**: Set expectations for information sharing and remedies for breaches.

☐ **Taxes**: Specify that the student-athlete is responsible for applicable tax requirements.

☐ **Reporting/Disclosure:** Define disclosure requirements for NIL agreements.

☐ **Rights After Eligibility**: Address University rights to use NIL-related content after eligibility expires (e.g., "Historical Rights")

<u>Additional Terms for Consideration</u>

☐ **Non-Defamation**: Prohibit disparaging remarks by either party.

☐ **No Guarantee of Playing Time**: State that the University is not required to provide student-athlete playing time.

☐ **No Pay-for-Play**: Clarify that compensation is not for University attendance or athletic participation.

☐ **Liquidated Damages**: Decide if predefined damages for breach will be included.

☐ **Buyout Clause:** Establish repayment terms that apply if a party terminates the agreement early.

☐ **Subservience**: Clarify that all benefits owed and rights granted under the agreement are subject, subordinate to, and limited by NCAA and Conference rules, policies and procedures; and, in the event of any conflict or inconsistency between the terms and conditions of the agreement and NCAA and Conference rules, the latter will govern.

Division: I

Legislative Cite: 22.1.1

Title: Institutional Involvement in Student-Athlete Name, Image and Likeness Activities.

Text:

22.1.1 Institutional Involvement in Student-Athlete Name, Image and Likeness Activities. [S] An institution or an entity owned, controlled, funded or operated by the institution may: *(Adopted: 4/18/24, Revised: 6/6/25 effective 7/1/25)*

(a) Enter into a written license and/or endorsement agreement for the use of a student-athlete's name, image or likeness, or other rights, other than a license or agreement that authorizes payment for the right to use a student-athlete's name, image or likeness for a broadcast of collegiate athletic games or competitive athletic events, for a period not to exceed the student-athlete's period of eligibility (see Bylaw 12.6). However, if an institution and a student-athlete agree to the institution's use of the student-athlete's name, image or likeness to promote its academic or athletics program in content created while the student-athlete is enrolled, the institution may, pursuant to the agreement, continue the use of such content after the student-athlete's eligibility has expired; and

(b) Act as a marketing agent for a student-athlete with respect to noninstitutional name, image or likeness contracts. A parent, guardian, lawyer, or other competent representative may assist the student-athlete in discussions regarding entering into an exclusive or nonexclusive license or endorsement agreement, unless the student-athlete waives in writing the assistance of a parent, guardian, lawyer, or other competent representative.

Proposals

Proposal Number	Title
2025-12	NAME, IMAGE AND LIKENESS ACTIVITIES -- IMPLEMENTATION OF HOUSE V. NCAA SETTLEMENT
2024-3	NAME, IMAGE AND LIKENESS ACTIVITIES -- ROLE OF INSTITUTIONS

Division: I

Legislative Cite: 22.1.3

Title: Involvement of Associated Entities or Individuals in Student-Athlete Name, Image and Likeness Activities.

Text:

> **22.1.3 Involvement of Associated Entities or Individuals in Student-Athlete Name, Image and Likeness Activities. [S]** An associated entity or individual shall not enter into an agreement with or provide payment to a prospective student-athlete or student-athlete unless the agreement or payment terms, as determined by the name, image and likeness clearinghouse, are for a valid business purpose related to the promotion or endorsement of goods or services provided to the general public for profit, with compensation at rates and terms commensurate with compensation paid to similarly situated individuals with comparable name, image and likeness value who are not prospective student-athletes or student-athletes of the institution. *(Adopted: 6/6/25 effective 7/1/25 any contracts or payment terms for a third party's use of a student-athlete's NIL executed on or after 6/6/25, and agreements executed before 6/6/25 with payments to be made on or after 7/1/25 are subject to the applicable reporting requirements and name, image and likeness clearinghouse review)*

Proposals

Proposal Number	Title
2025-12	NAME, IMAGE AND LIKENESS ACTIVITIES -- IMPLEMENTATION OF HOUSE V. NCAA SETTLEMENT

College
Sports
Commission

MEMORANDUM

TO: Athletic Directors of Division I Institutions

FROM: College Sports Commission

DATE: July 10, 2025

RE: Update on NIL Go & Guidance

The purpose of this memorandum is to provide an update on the NIL Go platform and further guidance based on early trends.

NIL Go Usage & Deal Clearance

Since it launched on June 11, NIL Go has seen broad usage. Over 12,000 student-athletes and over 1,100 institutional users are registered and approved to use the system, and student-athletes have added over 1,500 representatives/agents into the system. In the past week, around 500 students and 300 institutional users logged into NIL Go on an average day.

Thus far, over 1,500 deals have been cleared, ranging in value from three figures to seven figures. Other deals have been submitted but either are awaiting verification of certain information from the payor or the institution or have been returned to student-athletes for clarification or correction of data and are awaiting resubmission.

In the past several days, the College Sports Commission ("CSC") has begun notifying some student-athletes that their deals cannot be cleared as submitted, and more notifications of this kind are forthcoming. In some of these cases, notification was or has been delayed while certain aspects of settlement implementation were finalized. Since many of these deals cannot be cleared for similar reasons, we are providing additional guidance below.

Valid Business Purpose

In most of the deals that cannot be cleared as submitted, the valid business purpose requirement of the Settlement, as set forth in NCAA Rule 22.1.3, has not been satisfied. An entity with a business purpose of providing payments or benefits to student-athletes or institutions, rather than providing goods or services to the general public for profit, does not satisfy the valid business purpose requirement of Rule 22.1.3. The requirement is not met even if the particular deal with the student-athlete purports to provide goods or services to the general public. For example, a NIL collective that has a business purpose to pay student-athletes associated with a particular school or schools does not satisfy Rule 22.1.3 when it reaches a deal with a student-athlete to make an appearance on behalf of the collective at an event even if that event is open to the general public and the collective charges an admission fee (e.g., a golf tournament). In this example, the NIL

collective's purpose is to raise money at the event to pay that student-athlete and potentially fund deals with other student-athletes at that school, which are not goods or services available to the general public for profit. The same collective's deal with a student-athlete to promote the collective's sale of merchandise to the public would not satisfy the valid business purpose requirement for the same reason; the collective's whole purpose in selling merchandise is to raise money to pay that student-athlete and potentially other student-athletes at a particular school or schools, which is not a valid business purpose under NCAA Rule 22.1.3.

These same deals would satisfy the valid business purpose requirement if the entities paying the student-athletes, and receiving the proceeds from the general public, were businesses that had a broader purpose outside of paying student-athletes at a particular school or schools (e.g., a golf course, an apparel company). Such deals might also satisfy the requirement even if the NIL collective made the payments to the student-athletes, provided that there is documentation establishing that the sources of those specific funds were the entities with a valid business purpose that received the benefit of the student's NIL (e.g., the golf course, the apparel company). In other words, NIL collectives may act as marketing agencies that match student-athletes with businesses that have a valid business purpose and seek to use the student's NIL to promote their businesses.

Payor Information

Other deals have yet to be cleared because schools have failed to respond to requests for information about the entity involved in the deal (e.g., whether it is an associated entity). Responses to this information are critical to the ability of the CSC to evaluate submitted deals in a timely manner. Going forward, please ensure that your institution is promptly responding to these inquiries to facilitate clearance of your student-athletes' deals.

If you have questions about anything in this memorandum, please reach out to your conference's general counsel or compliance lead or to settlementquestions@ncaa.org. In the coming months, the CSC will grow its staff to the point where it can receive inquiries directly from schools. Thank you for your patience.

College
Sports
Commission

MEMORANDUM

TO: Athletic Directors of Division I Institutions

FROM: College Sports Commission

DATE: July 31, 2025

RE: Revised Guidance on Valid Business Purpose

On July 10, 2025, the College Sports Commission ("CSC") issued a memorandum that included guidance on the valid business purpose ("VBP") requirement of NCAA Bylaw 22.1.3. Based on further discussions between Class Counsel and counsel for Defendants in the *House* litigation, the CSC is providing revised guidance herein to replace the earlier memorandum. The CSC is in the process of reviewing deals that were not cleared under the standard articulated in the prior guidance and will clear deals consistent with this revised guidance.

In furtherance of the existing prohibition of pay for play, the House settlement allows the Defendants to adopt the VBP test as a standard to review NIL licenses or payments between student-athletes and associated entities or individuals. As such, NCAA Bylaw 22.1.3 provides that "[a]n associated entity or individual shall not enter into an agreement with or provide payment to a prospective student-athlete or student-athlete unless the agreement or payment terms, as determined by the name, image and likeness clearinghouse, are for a valid business purpose related to the promotion or endorsement of goods or services provided to the general public for profit . . ." To meet this requirement, the NIL payment or license must be for a valid business purpose related to the promotion or endorsement of goods or services to the general public and those goods or services must be sold "for profit."

The CSC's "for profit" inquiry focuses on whether the sale of goods or services is for profit and not whether the entity itself is operating at a profit or a loss at any given time. As part of this inquiry, the CSC may require student-athletes or the entities with whom they seek to enter NIL agreements to provide information and documentation to establish compliance with the requirements, including the entity's efforts to profit from the deal. Refusal to provide this information or the provision of insufficient information to establish compliance may result in deals not being cleared by the CSC.

Even if the deals mentioned above satisfy the VBP requirement, they would still be subject to the requirement in Bylaw 22.1.3 that compensation to the student-athlete must be "at rates and terms commensurate with compensation paid to similarly situated individuals with comparable name, image and likeness value who are not prospective student-athletes or student-athletes of the institution."

In addition, an associated entity or individual can serve as a marketing agent matching student-athletes with businesses offering NIL opportunities.

If you have questions about anything in this memorandum, please reach out to your conference's general counsel or compliance lead or to settlementquestions@ncaa.org. In the coming months, the CSC will grow its staff to the point where it can receive inquiries directly from schools. Thank you for your patience.

Question and Answer: Implementation of the *House* Settlement

Published June 13, 2025

The NCAA and the defendant conferences (i.e., Atlantic Coast Conference, Big Ten Conference, Big 12 Conference, Pac-12 Conference and Southeastern Conference) entered into a settlement agreement in the *House, Hubbard* and *Carter* cases. This document was developed by the defendant conferences and the NCAA to provide guidance to the Division I membership on the implementation of the settlement agreement.

While this document has been updated, it is not exhaustive. NCAA staff will collaborate with the defendant conferences to update the document as needed.

Table of Contents

Section A: General Information 2

Section B: Changes to Division I Legislation 7

Section C: Roster Limits 10

Submission and Revision of a Roster *11*

Inclusion on a Submitted Roster *11*

Implications of a Submitted Roster *15*

Replacement on a Submitted Roster *16*

Section D: Institutional Benefits and the Benefits Cap 19

Academic Requirements to Receive Settlement-Related Institutional Payments and Benefits *27*

Section E: Noninstitutional NIL and NIL Go 30

Reporting Noninstitutional NIL Contracts and Payments *30*

Associated Entities and Individuals and Additional Review of NIL Payments or Contracts by NIL Go *32*

Section F: Enforcement Rules and Process 35

Arbitration *35*

Section A: General Information

Question No. A1: Will it be permissible for any Division I institution to provide the additional payments or benefits contemplated in the settlement agreement?

Answer: Yes. Any Division I institution may provide additional payments or benefits to student-athletes permitted by the settlement agreement. If an institution provides additional payments or benefits (e.g., new incremental athletically related financial aid, direct institutional payments for NIL) to student-athletes not currently permitted by NCAA rules or in amounts above those permitted under NCAA rules as of October 7, 2024, the institution is subject to all obligations and limitations of the settlement.

Any Division I institution that is a member of a defendant conference (i.e., the Atlantic Coast Conference, the Big Ten Conference, the Big 12 Conference, the Pac-12 Conference, and the Southeastern Conference) or is providing additional payments or benefits is a Participating Institution.

Question No. A2: Is an institution that provides direct name, image and likeness (NIL) payments to a student-athlete subject to the terms of the settlement?

Answer: Yes.

Question No. A3: Under the settlement agreement, does every Division I institution have to provide additional payments or benefits to student-athletes?

Answer: No. Each active Division I member institution may decide whether and how much of any new benefit to provide to student-athletes, up to the benefits cap.

However, if a Division I institution provides additional payments or benefits to student-athletes not currently permitted by NCAA rules or in amounts above those permitted under NCAA rules as of October 7, 2024, the institution is subject to all obligations and limitations of the settlement including, but not limited to roster limits, reporting, the benefits cap and enforcement.

Question No. A4: Can an institution opt in to the settlement on a team-by-team basis?

Answer: No. For Participating Institutions, the terms of the settlement apply to all NCAA-sponsored programs at an institution and may not apply on a team-by-team basis. Multidivisional institutions that sponsor a Division I sport may opt in for its Division I sport(s).

Question No. A5: May a Division I team at a multidivisional institution (e.g., Division II or III institution) opt in to the settlement?

Answer: Yes. A multidivisional institution that sponsors a Division I sport may opt in for its Division I sport(s).

Question No. A6: If a multidivisional institution has two Division I sports, can it opt in for one of the Division I sports but not the other?

Answer: No. If the multidivisional institution opts in, requirements related to opting in (e.g., roster limit for the sport, benefits cap, cap management reporting system) apply to all Division I sports. If a Division II or III institution opts in for its Division I sports, the non-Division I sports are not subject to the terms of the settlement.

Question No. A7: Is a multidivisional institution that opts in subject to the same benefits cap as other Participating Institutions?

Answer: Yes.

Question No. A8: What is the process for an institution to indicate whether it has opted-in to the settlement?

Answer: For the 2025-26 academic year, non-defendant institutions must formally opt in no later than June 30, 2025.

Each non-defendant institution should submit its declaration of intent via the unique link received by the director of athletics in February 2025. An institution that requests to change its declaration of intent after submitting its initial intent should email settlementquestions@ncaa.org. If no change is made to an institution's declaration of intent by June 30, 2025, the submitted initial intent will be considered the institution's formal declaration of intent for the 2025-26 academic year.

For the 2026-27 academic year and beyond, Division I institutions that intend to provide additional settlement-related payments or benefits must provide notice of intent to the NCAA no later than March 1 of each year, beginning March 1, 2026.

Question No. A9: May an institution that initially does not opt in to the settlement decide to opt in to the settlement during a subsequent academic year during the remainder of the ten-year term of the settlement?

Answer: Yes. An institution may make a decision to opt in to the settlement (e.g., providing additional payments or benefits to student-athletes) for the next academic year during the ten-year term of the settlement.

The settlement also allows an institution that previously offered additional payments or benefits contemplated by the settlement to return to awarding benefits at pre-settlement levels. However, institutions will be accountable for multiyear agreements entered into with their students and the Division I core guarantees continue to apply. An institution that does not opt in to the settlement must be fully compliant with the settlement terms if it decides to opt back in. The settlement terms tie roster limit compliance to the awarding of the additional payments or benefits. Therefore, the

settlement does not require an institution to comply with the roster limits contemplated by the settlement during an academic year it does not opt in.

Question No. A10: What are the obligations for institutions that opt in to the settlement (i.e., Participating Institutions)?

Answer: An institution that opts in to the settlement must fulfill obligations that apply to defendant conferences and their members under the settlement, including, at minimum:

- Ensure that any additional payments or benefits being provided comply with the benefits cap and cap-related rules, policies and procedures.
- Report to the cap management reporting system (CAPS):
  - All licenses between the institution and its student-athletes for name, image and likeness; and
  - Any other payments or benefits provided beyond what was permitted by NCAA Division I rules as of October 7, 2024, assuming such benefits are otherwise permitted by NCAA rules;
- Report all additional benefits that count against the benefits cap to CAPS and complete the annual attestation by September 1 after the close of each academic year.
- Adhere to the established roster limits.
- Agree that the designated enforcement entity (i.e., College Sports Commission) has the authority to enforce NCAA Bylaws adopted as part of the settlement (e.g., roster limits, additional payments and benefits and noninstitutional NIL) pursuant to NCAA Division I Bylaw 23 and any internal operating procedures.

Question No. A11: What are the implications if an institution does not opt in to the settlement?

Answer: All existing Division I legislation remains effective unless and until modified, other than institutional financial aid limits for Division I, which will be eliminated as part of the settlement. However, if an institution or conference provides athletically related financial aid above the current Division I institutional financial aid limits in the 2024-25 Division I Manual, the institution(s) are subject to the terms of the settlement including roster limits.

The term "institutional financial aid limits" refers to the amount of financial aid (e.g., scholarships, tuition waivers) an institution could provide in an academic year to counters on a per-team basis under NCAA Division I legislation prior to July 1, 2025. These limits included financial aid provided directly by the institution, as well as certain other sources of countable financial aid, such as educational expenses from a national governing body recognized by the United States Olympic and Paralympic Committee (or international equivalent).

Further, institutions that choose not to provide additional payments or benefits contemplated by the settlement are not bound by the requirements of Participating Institutions, except all Division I student-athletes must report all third-party NIL contracts or payments worth $600 or more to NIL Go.

Question No. A12: If an institution that is not subject to the terms of the settlement increases the amount of financial aid offered in a sport but remains under the amount of financial aid permitted in that sport by Division I legislation during the 2024-25 academic year, does the increase in the amount of financial aid subject the institution to the terms of the settlement?

Answer: No.

Question No. A13: Does the settlement change the amount of Alston awards an institution may provide to a student-athlete each academic year?

Answer: No. However, the first $2.5 million in Alston awards provided by a Participating Institution count against the benefits pool (see Question No. D7).

Question No. A14: If a Nonparticipating Institution that did not previously provide Alston awards begins providing Alston awards up to $5980 per athlete after the effective date of the settlement, does the provision of the Alston awards subject the institution to the terms of the settlement?

Answer: No.

Question No. A15: May a Division I conference establish a roster limit that is lower than the Division I roster limits contemplated by the settlement?

Answer: Yes, a Division I conference may establish a roster limit lower than those established in the settlement. However, the roster limit may not be lower than that sport's Division I scholarship limit in the 2024-25 Division I Manual.

Question No. A16: May a Nonparticipating Institution, or a conference composed of multiple Nonparticipating Institutions establish a higher roster limit than established in the settlement?

Answer: Yes. If an institution does not opt in, roster sizes may be governed by the conference or institution and not legislated at the national level. However, if an institution or conference provides athletically related financial aid above the current Division I institutional financial aid limits in the 2024-25 Division I Manual, the institution(s) are subject to the terms of the settlement including roster limits.

If a conference includes a combination of Participating and Nonparticipating Institutions, the Participating Institutions must comply with the established roster limits.

Question No. A17: When will the technology behind the CAPS and NIL Go be developed?

Answer: LBi (CAPS) and Deloitte (NIL Go) have been engaged to develop, test and provide appropriate training for the platforms relevant to the settlement. Training on both platforms has started and institutions have been asked to provide both vendors with points of contact (i.e., "change champions"). Institutions may visit www.collegesportscommission.org for more information about the implementation of the settlement.

Question No. A18: Does the settlement agreement impact access to qualification for Division I championships and existing revenue distribution formulas?

Answer: No.

Question No. A19: Where should I go if I have questions about the settlement agreement and its impact on my campus?

Answer: This Q&A is intended to provide guidance on national issues. Issues that are campus-specific or conference-specific should be addressed at a local level. Questions about the implementation of the settlement should be submitted to settlementquestions@ncaa.org.

Question No. A20: Where should institutions or conferences direct student-athletes who have questions about participation in the settlement?

Answer: Student-athletes with questions about the settlement should visit www.collegeathletecompensation.com or www.collegesportscommission.org.

Question No. A21: How will student-athletes be educated on the impact of the settlement?

Answer: Student-athletes can learn more about the settlement from the attorneys representing the student-athlete classes and/or at the following website: www.collegeathletecompensation.com.

A separate question-and-answer document for student-athletes is available at the following website: https://ncaaorg.s3.amazonaws.com/governance/d1/legislation/2024-25/Jan2025D1Gov_StudentAthleteSetQuestionandAnswerCourtApproved.pdf.

Section B: Changes to Division I Legislation

Question No. B1: What is the process for reviewing and modifying the Division I legislation to be consistent with the settlement agreement?

Answer: Consistent with duties and responsibilities associated with litigation, the NCAA Division I Board of Directors will continue to act on legislation necessary to implement the settlement, consistent with the action previously taken by the Board of Directors on April 21 and June 6. The proposals adopted by the Board in April are effective July 1, 2025, unless otherwise noted in the proposal.

Question No. B2: Will the financial aid limits be eliminated from the Division I Manual?

Answer: Yes. The Division I Manual will not include institutional financial aid limits for any sport. Nonparticipating Institutions that do not opt in should refer to the financial aid legislation in the 2024-25 Division I Manual to ensure compliance with the provisions of the settlement related to opting in.

Question No. B3: Will Division I institutions be required to provide full athletic scholarships in any particular sport after final approval of the settlement?

Answer: No. Athletics aid financial aid may be provided in any amount (full or partial) up to the individual limit in any sport.

Question No. B4: In head count sports, will Nonparticipating Institutions remain subject to the Division I counter limits in the 2024-25 Division I Manual?

Answer: No. Nonparticipating Institutions may provide up to the value of institutional financial aid limit provided by the 2024-25 legislation (as measured in equivalencies) in head count sports without triggering opting in. For example, in women's gymnastics (previously a head count sport with a team financial aid limit of 12) a Nonparticipating Institution may provide the value of 11 equivalencies distributed to 15 student-athletes.

Question No. B5: May a Participating Institution reduce, cancel or not renew the athletically related aid of a student-athlete who was on aid prior to the 2025-26 academic year who decides to enter the transfer portal after being told they will lose their roster spot if they decide not to transfer?

Answer: No.

Question No. B6: Do the financial aid protections associated with the undergraduate four-year transfer legislation remain in place?

Answer: No. National regulation on the period of award, as well as the permissible reasons to reduce, cancel or not renew athletically related financial aid, are consistent for all student-athletes,

regardless of transfer history. However, institutions must consider the specific terms and conditions of existing financial aid agreements when determining whether such agreements may be reduced, cancelled or nonrenewed.

Question No. B7: For an FBS institution to count a victory against an FCS team toward meeting the definition of a "deserving team," how many grants-in-aid per year in football must the FCS team have over a rolling two-year period (see Bylaw 18.7.2.1.1)?

Answer: 56.7 grants in aid per year in football during a rolling two-year period.

Question No. B8: For an FCS institution (regardless of whether the institution opts in to the settlement), may financial aid that could be exempted from equivalency computations (e.g., academic honor awards) be included in calculating whether the institution has provided at least 56.7 grants-in-aid per year during a rolling two-year period?

Answer: Yes; however, for an institution that does not opt in to the settlement, if the financial aid is counted toward meeting the 56.7 grants-in-aid per year requirement, the aid must also count toward the overall limit of 63 equivalencies.

Question No. B9: Will sport-specific bylaws removed from Bylaws 15 and 17 (e.g., Bylaws 15.5.1.1, 15.5.4.1, 15.5.3.1.1.1, 15.5.7, 17.3.8.3 and 17.11.3.1.2) apply to any Division I institution after NCAA Division I Proposal Nos. 2025-09 (Financial Aid) and 2025-11 (Playing and Practice Seasons – Roster Limitations) become effective?

Answer: No. These bylaws will no longer apply to Division I institutions because they have been removed from the Division I Manual to implement the settlement agreement. For example, an institution that does not opt into the settlement may provide athletically related financial aid in any amount (e.g., less than 25%) to a baseball student-athlete and will not have a limit on the number of baseball student-athletes who can participate in CARA activities during the championship segment. The institution would not have a violation or subject itself to the terms of the settlement, provided it does not provide more than the equivalent value of 11.7 countable financial aid to baseball student-athletes.

Question No. B10: Were the bylaws governing financial donations from outside organizations simply moved from Bylaw 12 to Bylaw 8?

Answer: Yes.

Question No. B11: When is the earliest an institution may provide a written offer regarding NIL or other additional benefits or payments to a high school, prep school, or two-year college prospective student-athlete?

Answer: An institution may provide a written offer regarding NIL or other additional benefits or payments on or after August 1 of the prospective student-athlete's senior year of high school; however, the offer may not be signed until the applicable signing dates specified in Bylaw 13.02.13.

_____

Question No. B12: May an institution communicate with a four-year college student-athlete regarding either an institutional offer regarding NIL other additional benefits or payments or a noninstitutional NIL contract or payment which the institution has identified, before the student-athlete is permissibly entered into the NCAA Transfer Portal?

Answer: No.

Section C: Roster Limits

Note: The NCAA Division I Board of Directors will consider and potentially adopt Proposal No. 2025-17 (Roster Limit Provisions) during its June 23 conference call. As a result, the information below is subject to change but is being provided now as the best information available pending Board review.

Question No. C1: When must Participating Institutions be in compliance with new roster limits (see Bylaw 17.2)?

Answer: Beginning in the 2025-26 academic year, for fall sports, Participating Institutions must be at or below the roster limits no later than the end of the calendar day before the first date of competition that counts for championships selection in the relevant sport. For winter and spring sports, Participating Institutions must be at or below the roster limits no later than December 1 or the end of the calendar day before the first contest that counts for championships selection in the relevant sport, whichever is earlier. Participating Institutions should remain at or below the relevant roster limit for the remainder of the academic year or until the end of the team's playing season, whichever is later. The team's playing season as mentioned in this section shall include postseason competition.

A sport at a Participating Institution may exceed the Division I and conference roster limits by the number of Designated Student-Athletes included on the submitted roster. See Question Nos. C12 through 16 for information on Designated Student-Athletes.

Question No. C2: Do all NCAA-sponsored sports at a Participating Institution have to comply with the roster limits contemplated by the settlement?

Answer: Yes. If a Division I institution opts in to the settlement, the roster limits apply to all NCAA-sponsored teams at the institution. For a Division I sport on a Division II or III campus, if the institution opts in to the settlement, the roster limits apply to all Division I sports.

Question No. C3: Does a Nonparticipating Institution have to comply with the roster limits contemplated by the settlement and described in this document?

Answer: No.

Question No. C4: Can a Division I institution reduce, cancel or not renew athletically related financial aid for a student-athlete who was on aid prior to the 2025-26 academic year if the reduction, cancellation or nonrenewal is the result of the roster limit legislation?

Answer: No. While roster spots are not guaranteed, individuals who are on athletically related financial aid at the time of the settlement may not have their athletically related financial aid reduced, canceled or not renewed due to the settlement. Further, current student-athletes with active financial aid agreements who were on athletically related financial aid at the time the

settlement was approved and who no longer participate in athletics after the roster submission deadline but remain enrolled are not required to be included on a sport's roster.

Question No. C5: What will be the system of record for submitting a sport's roster?

Answer: CAPS, developed by LBi under the oversight of the College Sports Commission, is the system of record for an institution's rosters.

Submission and Revision of a Roster

Question No. C6: For a Participating Institution, what is the deadline for submitting each sport's roster to CAPS?

Answer: No later than the end of the calendar day before the sport's first contest or date of competition used for championship qualification or December 1, whichever is earlier.

Question No. C7: For a Participating Institution, what is the deadline for submitting the roster for a men's tennis, women's tennis, men's golf and women's golf team to CAPS?

Answer: Each men's or women's tennis team and men's or women's golf team must submit a single roster for the academic year by the end of the calendar day before the first contest or date of competition in the fall semester.

Question No. C8: For a Participating Institution, at what point does a sport's submitted roster expire?

Answer: A sport must comply with its submitted roster until the end of the academic year or the end of the team's playing season, whichever is later. Once a sport's roster is submitted, an institution may not exceed the roster limit at any point during the roster year, which is the time period between the roster declaration deadline and the roster expiration date. See "Replacement on a Submitted Roster" below for more information.

Question No. C9: For a Participating Institution, may a sport adjust its roster after the deadline for submitting the roster?

Answer: Yes, as provided by the bylaws, policies and procedures regarding roster limits discussed further below. If a sport has not reached the sport's roster limit, the institution may add student-athletes to the roster by adding the student-athletes to CAPS before the sport's next contest.

Inclusion on a Submitted Roster

Question No. C10: For a Participating Institution, when must a student-athlete be included on a sport's roster?

Answer: Once a sport's deadline for roster submission has passed, a student-athlete must be on the sport's submitted roster to participate in athletically related activities (countable, required, or voluntary) until the submitted roster expires. A sport's submitted roster must identify any Designated Student-Athletes who intend to continue to participate in athletically related activities after the roster submission deadline.

An institution can renew or honor an existing athletically related financial aid agreement with a student-athlete who was on a squad list before the 2025-26 academic year without including the student-athlete on the sport's submitted roster, provided the student-athlete does not participate in athletically related activities (countable, required or voluntary) after the roster submission deadline.

Question No. C11: Who is a Designated Student-Athlete?

Answer: An individual who a member institution attests was or would have been removed from the institution's 2025-26 roster due to the implementation of roster limits and was either:

1. Certified as eligible for practice or competition or otherwise placed on the institution's squad list form for the 2024-25 academic year, prior to April 7, 2025, or
2. Recruited prior to April 7, 2025, to be, or was assured by an institutional staff member the individual would be, on the institution's roster for the 2025-26 academic year.

Question No. C12: May a sport at a Participating Institution exceed the roster limit due to the presence of Designated Student-Athletes on a submitted roster?

Answer: Yes. A sport at a Participating Institution may exceed the Division I and conference roster limits by the number of Designated Student-Athletes included on the submitted roster, provided the student-athlete has athletics eligibility remaining. Such student-athletes are exempted from the roster limits; however, if they receive aid and/or settlement-related benefits, they must count toward an institution's pool cap.

Question No. C13: What impact does the arrival or departure of a Designated Student-Athlete have on a sport's roster limit?

Answer: Each sport has a specific roster limit. A Designated Student-Athlete is exempted from (i.e., does not count toward) the sport's roster limit. For example, the roster limit for football is 105; however, a Designated Student-Athlete on a football roster does not count towards the 105-person roster limit.

As a result, if a Designated Student-Athlete arrives at a Participating Institution, the Designated Student-Athlete is exempted from the sport's roster limit. If a Designated Student-Athlete departs from a Participating Institution, the Designated Student-Athlete is no longer exempted from the sport's roster limit of the original school. In other words, a sport's roster limit does not change due to the presence of Designated Student-Athletes on a roster. The number of exemptions from the

roster limit change due to the inclusion of Designated Student-Athletes on a sport's roster for the year.

For example, a school's roster limit for football will never be more than 105. If the school has one or more Designated Student-Athletes in football, those Designated Student-Athletes will be exempt from the 105-person limit and those Designated Student-Athletes can participate without counting toward the 105-person limit.

Question No. C14: How long may a Designated Student-Athlete be exempted from a sport's roster limit?

Answer: For the duration of the athletics eligibility of the Designated Student-Athlete.

Question No. C15: Does each Participating Institution have to declare its Designated Student-Athletes in each sport?

Answer: Yes. A member institution that opts in during the 2025-26 academic year should prepare and submit, in good faith, a list of all Designated Student-Athletes by July 6, 2025, (30 days after the court granted final approval of the settlement). Institutions will submit their list of Designated Student-Athletes to CAPS. A copy of all Designated Student-Athletes must be also filed on campus.

Question No. C16: Can an institution that opts in during the 2025-26 academic year supplement or revise its list of Designated Student-Athletes after the 30-day deadline to submit the list to CAPS?

Answer: No.

Question No. C17: Will an institution that does not opt in during the 2025-26 academic year and opts in during a future academic year have the opportunity to submit a list of Designated Student-Athletes?

Answer: No. The identification of student-athletes as Designated Student-Athletes must be complete within 30 days of the court granting final approval of the settlement. An institution that opts in during a future year would not have prospective or current student-athletes whose roster spot at the institution was impacted during the 2025-26 academic year due to the implementation of the roster limits because the institution was not subject to the roster limits.

Question No. C18: Can a Designated Student-Athlete transfer to an institution other than the one that identified them as a Designated Student-Athlete?

Answer: Yes. A Designated Student-Athlete may enter the transfer portal between their declaration as a Designated Student-Athlete through the roster declaration date for that student-athlete's sport for the 2025-26 academic year. Following the student-athlete's team's roster declaration date for the 2025-26 academic year, the established notification of transfer windows will apply to Designated Student-Athletes.

A Designated Student-Athlete who wants to enter the transfer portal must initiate the notification of transfer process pursuant to the legislation. Further, existing tampering rules apply to Designated Student-Athletes who have not entered the transfer portal.

Question No. C19: For a Participating Institution, does a multisport athlete need to be on the roster for each sport in which they participate in athletically related activities after each team's respective roster submission deadline?

Answer: Yes.

Question No. C20: For a Participating Institution, do male practice players for a women's sport have to be included on the roster for the women's sport?

Answer: No. A male student who is eligible to practice with a women's team per Bylaw 12.7.5 (Eligibility Requirements for Male Students to Practice With Women's Teams) may participate in team practices without being included on the roster. The male student forfeits remaining eligibility at the institution in the men's sport that corresponds to the sport in which they are a male practice player (e.g., men's basketball for a male student who practices with the women's basketball team).

Question No. C21: For a Participating Institution, does a student manager need to be included on a sport's roster?

Answer: No. Existing Division I rules limiting manager participation in practice continue to apply.

Question No. C22: For a Participating Institution, does a noncoaching staff member with sport-specific responsibilities in sports other than men's basketball or an institutional staff member in football need to be included on a sport's roster?

Answer: No. A noncoaching staff member with sport-specific responsibilities in sports other than men's basketball may participate in limited on-court or on-field activities (e.g., assist with drills, throw batting practice), and in football, any institutional staff member may provide technical and tactical instruction to student-athletes without being included on the sport's roster. However, those individuals forfeit any remaining eligibility at the institution in the sport where the individual participates in activities related to practice or competition.

Question No. C23: For a Participating Institution, may a former student-athlete in sports other than football participate in organized practices on an occasional basis (see Bylaw 14.2.1.7 - Exception -- Former Student Participating in Practice on an Occasional Basis -- Sports Other Than Football.) without being included on a sport's roster?

Answer: Yes.

Question No. C24: For a Participating Institution, may a current or former student-athlete participate in organized practice sessions on an occasional basis while not enrolled as a full-time student under the current exception (see Bylaw 14.2.1.8 - Exception -- U.S. Olympic and

Paralympic Committee/National Governing Body -- Practice.) without being included on a sport's roster?

Answer: Yes.

Question No. C25: For a Participating Institution, may a student-athlete who sustains a season-ending injury or illness prior to the roster submission deadline continue to use institutional facilities and resources if they are not included on the sport's roster?

Answer: Yes. A student-athlete who sustains a medically documented season-ending injury or illness prior to the roster declaration deadline may use institutional facilities and resources for rehabilitation purposes and may participate in practice-related activities, when medically cleared, without being included in the sport's roster limit. The student-athlete may not participate in competition that is considered in individual or team selections for postseason opportunities or participate in postseason.

Question No. C26: For a Participating Institution, may a student-athlete who is on the roster, but suffers a medically documented incapacitated injury (e.g., career-ending injury) be replaced on the current year's roster by another student-athlete?

Answer: No. A student-athlete who suffers an injury after the roster submission deadline may not be replaced on the submitted roster. If student-athlete on a sport's roster sustains a medically documented, incapacitating and career ending injury or illness, the student-athlete may be exempted from the roster limit beginning with the roster year following the injury or illness (e.g., football student-athlete sustains incapacitating injury during fall 2025 season may be exempted from the 2026 football roster). The student-athlete may continue to receive benefits from the institution but may not participate in any athletically related activities (countable, required or voluntary).

Implications of a Submitted Roster

Question No. C27: For a Participating Institution, may an individual who is not included in a sport's roster participate in athletically related activities after the sport's roster submission deadline?

Answer: No. These individuals may, however, receive the same access and treatment from the institution as a member of the institution's student body or the general public (e.g., no special access to facilities, nutrition etc.).

Question No. C28: For a Participating Institution, after the roster submission deadline, may an institutional staff member (e.g., countable coach, noncoaching staff member, manager, graduate assistant, strength and conditioning coach) be involved in athletically related activity (e.g., practice, skill instruction, film review, strength and conditioning) with a student-athlete who is not included in the sport's submitted roster?

Answer: No.

Question No. C29: For a Participating Institution, after the roster submission deadline, may an institutional staff member be involved in conducting or arranging outside skill instruction, technical or tactical instruction or strength and conditioning activity for a student-athlete with eligibility remaining who is not on a sport's submitted roster?

Answer: No.

Question No. C30: For a Participating Institution, after the roster declaration deadline, may an individual with eligibility remaining who is not included in the sport's roster access athletics facilities where athletics activities occur (e.g., practice, strength and conditioning, competition)?

Answer: The individual may access athletics facilities where athletics activities occur in the same manner available to a member of the institution's student body or the general public**.**

Question No. C31: For a Participating Institution, after the roster declaration deadline, may an institutional staff member with athletics department responsibilities (e.g., athletic trainer, academic advisor, mental health provider) provide support consistent with their job responsibilities to an individual who is not included on their sport's roster?

Answer: Yes, at the institution's discretion.

Replacement on a Submitted Roster

Question No. C32: For a Participating Institution, may a student-athlete who sustains a medically-documented season-ending injury after the roster submission deadline be replaced on a sport's roster during the current year?

Answer: No, unless the injury occurred after the roster submission deadline and before the first contest or date of competition used for championship selections (e.g., sports whose first contest is after the December 1 roster submission deadline).

Question No. C33: Can a Participating Institution replace a rostered football student-athlete who suffers an injury during the first game after the football roster submission deadline?

Answer: No, because the injury occurred after the roster submission deadline and was not before the first competition used for championship selection.

Question No. C34: Can a Participating Institution replace a rostered basketball student-athlete who suffers an injury during the first game after the basketball roster submission deadline?

Answer: No, because the injury occurred after the roster submission deadline and was not before the first competition used for championship selection.

Question No. C35: Can a Participating Institution replace a rostered baseball student-athlete who suffers an injury between the roster submission deadline and the first contest that counts toward championship selection?

Answer: Yes, because the injury occurred between the roster submission deadline and the first competition used for counts towards championship selection.

Question No. C36: For a Participating Institution, may a student-athlete who voluntarily withdraws from the institution between regular academic terms be replaced on the roster?

Answer: Yes, for fall sports only. In fall sports, a student-athlete who was on a sport's roster and withdraws from the institution for any reason (e.g., transfer, employment opportunity) between regular academic terms may be replaced on the roster during the current year. If the student-athlete withdraws from athletic participation and remains enrolled at the institution, the student-athlete cannot be replaced during the current year.

In football, a student-athlete who will be replaced after withdrawing at midyear may continue to practice and compete during the second term of the academic year through the end of the playing season. The replacement student-athlete may not participate in team athletically related activities or receive competition-related travel expenses until after the sport's playing season.

In winter and spring sports, a student-athlete who withdraws from the institution may not be replaced after roster submission.

Question No. C37: For a Participating Institution, may a fall sport student-athlete who is no longer participating in their sport, but remains enrolled at the institution be replaced on the roster during the current year?

Answer: No, unless one of the conditions that would allow for midyear replacement is met.

Question No. C38: For a Participating Institution, may a student-athlete who exhausts eligibility in the sport at the end of a term or between terms be replaced on the roster?

Answer: Yes. In addition, the replaced individual may continue to receive benefits from the institution but may not participate in athletically related activities (i.e., countable athletically related activities, required athletically related activities, voluntary athletically related activities).

Question No. C39: For a Participating Institution subject to the terms of the settlement, do midyear enrollees in the sport of football have to be included on the football roster?

Answer: Yes.

Question No. C40: For a Participating Institution, may a student-athlete who is rendered permanently ineligible during an academic term due to a violation of NCAA rules (e.g., suspension

for academic misconduct or sports wagering) be replaced on a sport's roster during the current roster year?

Answer: Yes.

Question No. C41: For a Participating Institution, may a student-athlete who enters a professional draft list and remains entered in the professional draft while being enrolled full-time at the institution be replaced on a sport's roster during the current roster year?

Answer: Yes. After the student-athlete is replaced, they can receive benefits consistent with Bylaw 17.2.3.2, use athletics facilities and participate in athletically related activities with institutional staff members on an individual basis.

Section D: Institutional Benefits and the Benefits Cap

Question No. D1: What is the benefits pool?

Answer: The benefits pool is the value of additional payments and/or benefits a Participating Institution may provide to its student-athletes during an academic year (i.e., July 1 and June 30). The value of the benefits pool and the benefits cap are the same for each year.

Question No. D2: What is the benefits cap?

Answer: The maximum dollar value of additional payments or benefits a Participating Institution may provide to its student-athletes during an academic year (i.e., July 1 through June 30). The value of the benefits pool and the benefits cap are the same for each year.

Each Participating Institution may provide benefits, at its discretion, to a student-athlete as long as the combined value of the new benefits (e.g., additional payments or benefits not currently permitted by NCAA rules or in amounts above those permitted under NCAA rules as of October 7, 2024) provided by or on behalf of the Participating Institution to all student-athletes at the Participating Institution does not exceed the benefits cap at any time during the academic year.

Question No. D3: How will the initial benefits pool be calculated?

Answer: The benefits pool will be set by totaling up eight of the Membership Financial Reporting System Reports (MFRS) revenue categories for each institution from the five defendant conferences and Notre Dame, then dividing the total by the number of institutions from the five defendant conferences plus Notre Dame, then taking 22% of the resulting dollar figure. The 2025-26 benefits cap is $20.5 million.

The MFRS revenue categories include ticket sales (does not include donations tied to season tickets), input revenue from participation in away games, media rights revenues, NCAA distributions and grants; non-media conference distributions; direct revenues from participation in football bowl games, as well as conference distributions of football bowl revenues; and athletics department revenues from sponsorships, royalties, licensing agreements and advertisements.

Question No. D4: Will the benefits pool and benefits cap change for each academic year?

Answer: Yes. The benefits pool and benefits cap will be recalculated every three years using the same formula, unless calculation is accelerated pursuant to an exception in the settlement agreement. In the second and third year of each three-year period, the benefits pool and benefits cap will increase by four percent from the previous year.

Question No. D5: May institutions that do not opt in continue to provide benefits permitted as of October 7, 2024, to student-athletes?

Answer: Yes. All Division I institutions can continue to provide previously-permissible benefits.

Question No. D6: In head count sports, may an institution that does not opt in have more counters in a sport than permitted in the 2024-25 Division I Manual?

Answer: Yes. Division I institutional financial aid limits will be eliminated as part of the settlement; however, an institution may not provide more than the equivalent value of the team financial aid limit permitted in the 2024-25 Division I Manual without triggering opting in. For example, in 2024-25, an institution could provide any amount of countable financial aid to up to 12 women's volleyball student-athletes. A nonparticipating institution may provide more than 12 women's volleyball student-athletes with athletically related financial aid, provided the value of such aid does not exceed the value of 12 full financial aid awards without having first opted in.

Question No. D7: How do additional payments or benefits provided to student-athletes beyond what was previously permitted in Division I as of October 7, 2024, count against the benefits cap?

Answer: A Participating Institution must comply with the rules, policies and procedures outlined by the Division I Board of Directors, Division I membership and the College Sports Commission.

The provision of any direct payments or additional benefits by a Participating Institution or entities or organizations owned, operated or controlled by Participating Institutions or conferences to a student-athlete or the student-athlete's family will count against the benefits cap unless exempted by NCAA bylaw. This includes payments from an institutional designee or contractor (e.g., multimedia rights holder) acting as agent, facilitator or administrator for a Participating Institution to make a payment to a student-athlete with funds that originate from or are provided by the institution.

Permissible Types of Benefits/Payments/Expenses	Will Count Against Benefits Cap	Will Not Count Against Benefits Cap
Total Value of Institutional Payments to SAs for use of NIL (including from institutional designee or contractor)	X	
Other direct institutional payments or additional benefits to SAs and/or SAs' families not currently permitted or exempted by NCAA rules.	X	
Academic or graduation awards or incentives (i.e., Alston)	X (up to $2.5MM)	
Athletically related financial aid in excess of the 2024-25 AY team limit	X (up to $2.5MM)	
Third-party NIL payments, including those arranged or facilitated by institution.		X
Funds distributed to SAs from Student Assistance Fund (SAF)		X
Benefits from third parties (i.e., individuals or entities other than a Division I institution)		X

Question No. D8: Does the value of an additional payment or benefit provided to a student-athlete count against the benefits cap during the year in which the additional payment or benefit is promised to be provided or paid or was actually provided or paid?

Answer: The value of the additional payment or benefit counts against the benefits cap in the year it is paid or provided by the institution. An additional payment or benefit promised in a future year will count against the benefits cap in the year the additional payment or benefit is actually paid or provided. (See Question No. D21)

Question No. D9: Does new incremental athletically related financial aid above the 2024-25 institutional financial aid limits count against the benefits cap?

Answer: Yes, up to $2.5 million of new incremental athletically related financial aid (e.g., scholarships) above the current Division I institutional financial aid limits in the 2024-25 Division I Manual will count against the benefits cap each year. Beyond $2.5 million, new incremental athletically related financial aid beyond the current Division I institutional financial aid limits in the 2024-25 Division I Manual will not count against the cap. Further, financial aid that would have been countable under the 2024-25 financial aid legislation that is not based in any degree on athletics (e.g., scholarships given to all students from particular states, nonqualifying merit-based awards) will not count against the benefits cap.

The athletically-related financial aid for a student-athlete who was cut from the team due to the implementation of roster limits prior to the roster submission deadline and does not engage in athletically-related activity but continues to receive athletically related financial aid at the institution in accordance with the terms of the settlement, does not count against the benefit cap.

Question No. D10: What is the process for determining whether an institution has provided new incremental athletically related financial aid that will count against the benefits cap?

Answer: An institution is determined to have provided new incremental athletically related financial aid that will count against the benefits cap when it provides more athletically related financial aid than permitted by the 2024-25 Division I Manual in any sport.
Each institution has discretion to determine whether it reaches the 2024-25 equivalency value, provided equivalency computations are conducted in a manner consistent with the relevant legislation in effect during the 2024-25 academic year (e.g., all countable financial aid is included in the numerator of the equivalency computation and the denominator in the equivalency computation is consistent with the student-athlete's residency and enrollment status with the institution).

Question No. D11: Does financial aid from noninstitutional sources that would have been countable financial aid during the 2024-25 academic year, such as educational expenses from a national governing body and financial aid programs that restrict the recipient's choice of institution, need to be considered when determining whether an institution has provided new incremental financial aid above the 2024-25 academic year limit?

Answer: Yes. Any financial aid that counted against team financial aid limits in 2024-25 must be considered when determining whether an institution has provided new incremental aid above the 2024-25 academic year limit.

Question No. D12: What are the next steps once a Participating Institution determines that it is providing more athletically related financial aid than permitted by the 2024-25 Division I Manual in one or more sports?

Answer: Once a Participating Institution provides new incremental athletically related financial aid, the dollar value that must count against the benefits cap is limited to financial aid based in any degree on athletics and does not include "other countable" financial aid.

For example, an institution identifies that it awarded the value of twenty financial aid awards to baseball student-athletes. Using the relevant legislation in effect during the 2024-25 academic year, the institution determines that it provided the value of 15 institutional athletically related awards, one full award from noninstitutional sources that would have counted against team financial aid limits in 2024-25, and four full awards in "other countable" forms of aid that are not based in any degree on athletics. The institution has, therefore, identified that it provided more athletically related financial aid than permitted by the 2024-25 Division I manual (11.7 awards). Specifically, the institution provided 20 financial aid awards that would have counted against team financial aid limits in 2024-25, which exceeded the 2024-25 financial aid limit by 8.3. However, four of these awards were "other countable" forms of aid that are not based in any degree on athletics. As a result, the institution must count the value of 4.3 equivalencies against the benefits cap, up to $2.5 million.

Question No. D13: If athletically related financial aid is not accounted for in actual dollars (e.g., tuition waiver), how must a Participating Institution determine the value countable against the benefits cap?

Answer: The published cost-of-attendance that applies to the student-athlete is used to determine the value of athletically related financial aid that has been provided to an individual. If an institution publishes cost-of-attendance figures for a specific group or designation of students (e.g., graduate school, in-state vs. out-of-state, commuter), then the institution must use the published cost-of-attendance for the group or designation of which the student-athlete is a member of when determining the value of financial aid provided.

Question No. D14: Is there a limit on how much new incremental athletically related financial aid (e.g., scholarships) an institution can award, either overall or by sport?

Answer: No.

Question No. D15: Do education-related benefits for student-athletes that are currently permissible (other than *Alston* payments) count against the benefits cap?

Answer: No.

Question No. D16: Do benefits from the NCAA to student-athletes count against the benefits cap?

Answer: No.

Question No. D17: Can a Participating Institution provide direct payments outside of NIL to student-athletes or their families not currently permitted or exempted by NCAA rules?

Answer: Yes. Any such payments count against the benefits cap.

Question No. D18: Can a Participating Institution enter into an NIL deal with a current student-athlete?

Answer: Yes, a Participating Institution may enter into an exclusive or non-exclusive license or endorsement agreement with a student-athlete for the use of the student-athlete's name, image and likeness, institutional brand promotion, or other rights as permitted by the Settlement Agreement, provided they do not authorize payments for the right to use a student-athlete's NIL for a broadcast of collegiate athletic games or competitive athletic events. Any such licenses or agreements cannot extend beyond the student-athlete's NCAA competition eligibility. Name, image and likeness activities may not be used to compensate an individual for athletics participation or achievement.

A license or agreement between a Participating Institution or a conference and a student-athlete for the rights to use a student-athlete's NIL to promote the conference or institution's academic or athletic program that created content during the student-athlete's enrollment may permit the Participating Institution or conference to continue to use the content after the student-athlete's enrollment.

All payments from an institution for a student-athlete's NIL must count against the benefits cap. This includes payments from an institutional designee or contractor (e.g., multimedia rights holder) acting as agent, facilitator or administrator for a Participating Institution to make a payment to a student-athlete with funds that originate from or are provided by the institution.

Question No. D19: Do payments from a Participating Institution for a student-athlete's NIL count against the benefits cap?

Answer: Yes, including payments in which an institutional designee or contractor (e.g., multimedia rights holder) is making payments funded by, or made on behalf of, an institution. All payments made by or on behalf of an institution to a company owned, controlled by or created for the benefit of a student-athlete count against the benefits cap.

Question No. D20: How do multiyear agreements count against the benefits cap of a Participating Institution?

Answer: Additional payments promised in multiyear agreements are counted against a Participating Institution's benefits cap in the year that the payments and/or benefits are provided.

Example No. 1 – Multiyear Agreements:

Student-athlete signs a 2-year agreement as follows:
- Signing incentive payment to be paid upon enrollment: $50,000.
- January 1 of year 1: $100,000.
- January 1 of year 2: $100,000.

In year one, $150,000 would count against this institution's benefits cap and $100,000 would count against this institution's benefits cap in year two.

Example No. 2 – Transfer:

Student-athlete attends Institution A and student-athlete's agreement with Institution A includes a $100,000 annual payment under which $50,000 is paid at the beginning of the academic year and the remaining $50,000 is paid only if the student-athletes remains with Institution A for the entire academic year, and a $100,000 buyout if the student-athlete transfers from Institution A.
- Student-athlete transfers to Institution B after the first $50,000 payment is made but prior to the second $50,000 payment
- Unpaid $50,000 installment payment is removed from the cap from Institution A because it was never owed or paid
- Institution B pays the buyout to Institution A on behalf of the student-athlete.

The $100,000 buyout must count against Institution B's benefits cap allowance in the year in which it is paid to Institution A. Institution A may not increase its benefits cap allowance by $100,000 as a result of this buyout payment.

Example No. 3 – Unachieved Incentive:

Student-athlete signs a 2-year agreement as follows:
- January 1 of year 1: $50,000.
- January 1 of year 2: $50,000.
- $5,000 payment on February 1 of each year if student-athlete maintains a 3.0 cumulative GPA after the fall semester.

Before any payments are made, all possible payments, including the $5,000 incentive payment, will count against the institution's benefits cap allowance in the years they may be paid. If the $5,000 payments are not made to the student-athlete before the end of each academic year, the payment will be removed from the benefits cap allowance for that year.

Question No. D21: Do payments identified or facilitated by an entity owned, operated or controlled by an institution (e.g., multimedia rights holder) and paid for by a third-party count against the involved institution's benefits cap?

Answer: No. Such third-party payments, if equal to or greater than $600, must be disclosed to NIL Go.

Question No. D22: Will the NCAA national office maintain a record of the current and upcoming benefits pool and benefits cap amounts?

Answer: Yes.

Question No. D23: Will the NCAA maintain a record of the permissible benefits institutions were allowed to provide to student-athletes permitted by the Division I Manual as of October 7, 2024, so a Participating Institution can accurately calculate the value of any additional payments and benefits offered to student-athletes?

Answer: The NCAA will maintain a record of the permissible benefits as of October 7, 2024, on LSDBi (e.g., 2024-25 Division I Manual) for the full term of the settlement so that institutions that choose not to be bound by the terms of the settlement can understand what benefits would subject them to the terms of the settlement and a Participating Institution can calculate the value of additional payments and benefits offered to student-athletes.

Question No. D24: Does a Participating Institution and a student-athlete have discretion over the terms and conditions of licensing agreements to use the student-athlete's NIL (e.g., academic standards, nonathletic incentives, transfer-related restrictions, buyouts, compliance with written institutional policies, initial or continued enrollment at Participating Institution)?

Answer: Yes, subject to any conference-specific requirements and cap-related rules, policies and procedures. Student-athletes may have a parent, guardian, lawyer or other competent representative present during the negotiation of any such agreements, unless they waive their right to the assistance of such representative.

Question No. D25: Does a student-athlete have the right to representation during the negotiation of any agreements with their institution?
Answer: Yes. Student-athletes may have a parent, guardian, lawyer, or other competent representative present during the negotiation of any such agreements, unless they waive their right to the assistance of such representative.

Question No. D26: Is there a maximum term for an NIL contract or payment between a Participating Institution and a current or prospective student-athlete?

Answer: Yes. The term of the agreement may not be longer than the prospective or current student-athlete's period of eligibility to participate in intercollegiate athletics.

If a prospective or current student-athlete agrees to an institution's use of their NIL to promote its academic or athletics program in content created while the student-athlete is enrolled, the institution may continue the use of the content after the student-athlete's eligibility has expired.

Question No. D27: May a Participating Institution enter into an NIL deal with a former student-athlete?

Answer: Yes. A Participating Institution may compensate a former student-athlete for NIL activities completed after the individual exhausts their athletics eligibility. A Participating Institution may not defer compensation for the use of a current student-athlete's NIL until after they exhaust eligibility.

Question No. D28: For a Participating Institution, does a payment from the institution or their owned, operated or controlled entities to a student-athlete as part of a license for the use of the student-athlete's NIL count against the benefits cap?

Answer: Yes.

Question No. D29: Is there an annual cap-related attestation process for a Participating Institution?

Answer: Yes. No later than September 1 each year, all Participating Institutions must complete an annual attestation to CAPS regarding the total amount and types of additional payments or benefits the member institution provided to individuals during the preceding July 1 through June 30 period.

Each institution's president/chancellor, athletics director and each head coach must complete the attestation. The attestation, at a minimum, will require confirmation of the following:

1. The information in CAPS is complete, accurate and compliant with the benefits cap rules and policies. The institution must report additional benefits countable against the benefits cap provided to any individual who participated in athletically-related activities (countable, voluntary, required) during the applicable year, regardless of whether the individual is on a sport's submitted roster;
2. All countable benefits provided to student-athletes were included in written agreements and the agreements were uploaded into CAPS; and
3. Student-athletes were not guaranteed payments or benefits that were not included in a written agreement and entered into CAPS.

Question No. D30: Is each Participating Institution required to designate an individual to have final review authority for each written agreement that is entered and uploaded to CAPS?

Answer: Yes. This individual must be responsible for ensuring the agreements being entered are compliant with benefits pool and benefits cap rules and policies, including that the institution is not, at any time, over its benefits cap.

Question No. D31: Do all additional payments or benefits provided by a Participating Institution to a prospective or current student-athlete have to be identified in a written agreement between the institution and the student-athlete?

Answer: Yes.

Question No. D32: Do all written agreements between a Participating Institution and a student-athlete or their family regarding additional payments or benefits have to be submitted to CAPS?

Answer: Yes. Such agreements must be entered into and uploaded into CAPS within a specified time period from final signatures.

Question No. D33: Is each Participating Institution required to provide unencumbered access to internal or third-party auditors at any time to audit compliance with benefits pool and benefits cap rules and policies?

Answer: Yes. Such an audit may, but will not always, be conducted as part of an enforcement investigation. If the audit is conducted as part of an enforcement investigation, all enforcement policies shall be followed.

Academic Requirements to Receive Settlement-Related Institutional Payments and Benefits

Question No. D34: Does a student-athlete have to meet Division I eligibility requirements (e.g., full-time enrollment, progress-toward-degree) to receive additional payments or benefits from their institution (e.g., payment for institutional use of student-athlete's NIL)?

Answer: Yes.

Progress-Toward-Degree (Bylaw 14.4).

Question No. D35: May a student-athlete receive additional payments or benefits as early as July 1, 2025, even if the student-athlete has not yet been certified for all the progress-toward-degree requirements they will be required to meet to compete during the 2025 fall term?

Answer: Yes. An institution may provide additional payments or benefits to a student-athlete on or after July 1, 2025, regardless of whether the student-athlete is certified as eligible to compete during the 2025 fall term., The student-athlete will need to be certified based on their academic record in existence on first day of class for the 2025 fall term in order to remain eligible to receive additional payments or benefits during the 2025 fall term through the student-athlete's next certification for competition.

For example, a midyear transfer may receive additional payments or benefits on or after July 1, 2025, even if they have not yet been certified for all progress-toward-degree requirements they will be required to meet to compete during the 2025 fall term.

Question No. D36: May an institution continue to or initially provide additional payments or benefits to a student-athlete on or after the first day of class of a regular academic term if the institution's certifying officer is waiting on the proper academic information (e.g., official transcripts, summer grades) to certify the student-athlete satisfied all applicable progress-toward-degree requirements?

Answer: Yes, provided the student-athlete is meeting full-time enrollment requirements. Once the institution obtains the proper academic information to determine whether the student-athlete satisfied all applicable progress-toward-degree requirements to compete during the applicable term, the institution should certify whether the student-athlete remains eligible to receive additional payments or benefits for the remainder of the in-progress term through the student-athlete's next certification for competition.

Note, a student-athlete in these circumstances would be ineligible for competition until their institution has certified the student-athlete's eligibility for the applicable term pursuant to Bylaw 14.01.1.

Question No. D37: If a student-athlete fails to satisfy an applicable progress-toward-degree requirement, when do they become ineligible to receive additional payments or benefits?

Answer: If a student-athlete becomes ineligible to compete due to failing to satisfy an applicable progress-toward-degree requirement, the student-athlete shall become ineligible to receive additional payments or benefits on the date their ineligibility is officially certified by the appropriate institutional authority consistent with Bylaw 14.4.3.4.

The earliest date on which an ineligible student-athlete can subsequently regain their eligibility to receive direct payments or additional benefits is the day after the date of the last scheduled examination listed in the institution's official calendar for the term that is ending (see Bylaw 14.4.3.4).

Question No. D38: Is a student-athlete who is ineligible to compete due to the application of other NCAA eligibility rules (e.g., initial eligibility, transfer requirements, disciplinary suspension) still able to receive additional payments or benefits during the period of time they are ineligible to compete?

Answer: Yes, the student-athlete could still be eligible to receive additional payments or benefits while ineligible to compete provided but for the application of other NCAA eligibility rules the student-athlete would be otherwise eligible to compete under applicable progress-toward-degree requirements and full-time enrollment requirements.

Full-Time Enrollment (Bylaw 14.2).

Question No. D39: Must a student-athlete be enrolled full-time on July 1, 2025, in order to receive additional payments or benefits prior to the start of either the 2025-26 academic year or any preseason practice that occurs immediately prior to the 2025 fall term, whichever occurs first?

Answer: No. While some student-athletes may be enrolled in summer classes in order to participate in summer athletics activities (see Bylaw 17.1.7.2.1.6), full-time enrollment requirements only apply to organized practice sessions and competition that occur between terms (e.g., August preseason practice/competition, winter break, May/June postseason competition) and during the regular academic year.

Question No. D40: Must a student-athlete meet full-time enrollment requirements to remain eligible or initially receive additional payments or benefits during the 2025-26 academic year?

Answer: Yes. A student-athlete must meet full-time enrollment requirements to continue to or initially receive additional payments or benefits during the 2025-26 academic year, including during any preseason period that occurs immediately prior to the 2025 fall term (see NCAA Bylaws 14.2.1.1, 14.2.2.1.1 and 14.2.2.1.2).

Section E: Noninstitutional NIL and NIL Go

Question No. E1: What is NIL Go?

Answer: NIL Go is the designated reporting entity to which all Division I student-athletes must report all noninstitutional NIL payments or contracts worth $600 or more.

NIL Go is a software platform created by the College Sports Commission and assisted by Deloitte to determine whether third-party NIL deals with associated entities or individuals are made with the purpose of using a student-athletes' NIL to advance a valid business purpose and within a reasonable range of compensation. It offers a simple way for student-athletes to report third-party NIL deals to determine compliance with the new rules, allowing student-athletes to move forward with their deals confidently while protecting their eligibility.

Question No. E2: What is a third party for the purposes of reporting to NIL Go?

Answer: Any individual, corporate entity, etc. that is not the institution in which the student-athlete is enrolled (i.e., not institutional agreements) and not an entity owned or operated by an institution. NIL Go will request information from all third parties to assist with the determination of whether a third party is an associated entity or individual. The College Sports Commission, with assistance by Deloitte, will determine whether a third party meets the definition of an associated entity or individual.

A payment from a third party or payor may not be funded, directly or indirectly, by an institution and must be entirely funded by the party receiving the benefit of the student-athlete's services, even if a separate payor acts as an intermediary and/or makes the payment on behalf of the party receiving the benefit.

Question No. E3: May a Division I institution identify or facilitate a noninstitutional NIL contract or payment (e.g., act as a marketing agent) between a student-athlete and a third party?

Answer: Yes, provided the third party is self-funding the entire payment outlined in the NIL contract.

Reporting Noninstitutional NIL Contracts and Payments

Question No. E4: Are all Division I student-athletes required to report noninstitutional NIL contracts or payments valued at $600 or more to NIL Go?

Answer: Yes.

Question No. E5: Within how many days of execution is a student-athlete required to submit a noninstitutional NIL contract or payment to NIL Go?

Answer: A Division I student-athlete must report all written documentation to NIL Go within five business days of execution of the noninstitutional NIL contract or agreement to the payment terms.

Additionally, a student-athlete may submit a proposed NIL agreement or offer for NIL Go review before execution (See Question No. E22).

Question No. E6: Does a Division I student-athlete have to report multiple noninstitutional NIL agreements or NIL payments from the same or substantially the same third parties to NIL Go if the aggregate value is $600 or more?

Answer: Yes.

Question No. E7: Does a Division I student-athlete have to report to NIL Go a noninstitutional NIL agreement if royalties, contingencies or bonuses result in the resulting payments reaching an aggregate value of $600 or more?

Answer: Yes.

Question No. E8: When does a NIL agreement deal that reaches an aggregate value of $600 or more (e.g., multiple payments add up to $600 or more) need to be reported to NIL Go?

Answer: Within five days of payments meeting or surpassing $600 of aggregate value.

Question No. E9: What documentation is required for a student-athlete to submit a NIL contract or payment to NIL Go?

Answer: Written documentation of the NIL contract or payment terms with clear evidence of agreement to the contract or payment terms from both the student-athlete and a noninstitutional payor. Additional documentation or information may be requested if the payor is different from the third-party that entered into a noninstitutional NIL contract with the student-athlete or agreed to payment terms with the student-athlete.

Question No. E10: Other than written documentation, what else is required for a student-athlete to submit a noninstitutional NIL contract or payment to NIL Go?

Answer: Division I student-athletes must attest that (a) the NIL contract or payment as submitted is accurate and complete; (b) student-athlete obligations and noninstitutional payment details are included in the written documentation, (c) the written documentation of the actual NIL contract or payment terms has been uploaded, and (d) student-athlete obligations will be or are intended to be performed during the annual reporting period.

Question No. E11: What is the role of the noninstitutional payor in NIL Go reporting process?

Answer: For each noninstitutional NIL contract or payment, the payor shall attest to the following when a student-athlete submits a NIL contract or payment to NIL Go:

1. Whether the payor meets the definition of an associated entity or individual,
2. The accuracy and completeness of the NIL contract or payment terms as submitted by the student-athlete,
3. That the payor was not directed by an institution to enter into the NIL contract or payment terms with the student-athlete and

4. The payor self-funded the involved payment(s) to the student-athlete.

Associated Entities and Individuals and Additional Review of NIL Payments or Contracts by NIL Go

Question No. E12: What is an associated entity?

Answer: An associated entity is:

1. An entity that is or was known (or should have been known) to the athletics department staff of an institution, to exist, in significant part, for the purpose of (a) promoting or supporting a particular institution's intercollegiate athletics program or student-athletes; and/or (b) creating or identifying NIL opportunities solely for a particular Member Institution's student-athletes;
2. An entity that has been directed or requested by an institution's athletics department staff to assist in the recruitment or retention of prospective or current student-athletes, or otherwise has assisted in the recruitment or retention of prospective or current student-athletes; or
3. Any entity owned, controlled, or operated by, or otherwise affiliated with an associated entity or individual other than a publicly traded corporation.

Question No. E13: Can a publicly traded corporation be determined to be an associated entity?

Answer: Yes. A publicly traded corporation may be determined to be an associated entity if it satisfies subsections (a) or (b) of Question No. E12.

Question No. E14: Who is an associated individual?

Answer: An associated individual is:

1. An individual who is or was a member, employee, director, officer, owner, or agent of an associated entity;
2. An individual who directly or indirectly (including contributions by an affiliated entity or family member) has contributed more than $50,000 over their lifetime to a particular institution or to an associated entity; or
3. An individual who has been directed or requested by an institution's athletics department staff to assist in the recruitment or retention of prospective or current student-athletes or otherwise has assisted in the recruitment or retention of prospective or current student-athletes.

Question No. E15: Can a student-athlete enter into an NIL contract or payment with an associated entity or individual?

Answer: Yes. An associated entity or individual may enter into an agreement with or provide payment to a prospective or current student-athlete for a valid business purpose related to the

promotion or endorsement of goods or services provided to the general public for profit with compensation at rates comparable to similarly situated individual with comparable NIL value who are not prospective or current student-athletes of the institution, as determined by NIL Go.

Question No. E16: Who determines whether an individual or an entity meets the definition of an associated entity or individual?

Answer: The College Sports Commission, with assistance from Deloitte, will determine whether a third party meets the definition of an associated entity or individual.

Specifically, upon submission of a noninstitutional NIL contract or payment to NIL Go, the payor will attest whether it meets the definition of an associated entity or individual. If a noninstitutional payor cannot be verified as an associated entity or individual, then the institution in which the involved student-athlete is enrolled will be responsible for determining whether the payor is an associated entity or individual. Further, each Division I institution must submit a list of all associated entities or individuals to NIL Go annually or as requested by the College Sports Commission.

Question No. E17: Are associated entities and individuals the same as boosters?

Answer: No. However, a booster (see Bylaw 13.02.16) may be an associated entity or individual or vice versa.

Question No. E18: Which noninstitutional NIL contracts and payments will be subject to additional review by NIL Go using the valid business purpose and range of compensation standard?

Answer: Noninstitutional NIL contracts or payments terms involving a Division I student-athlete and an associated entity or individual as submitted by student-athletes. The review will ensure that a valid business purpose exists, and the payment does not exceed the range of compensation. Third-party NIL deals with entities or individuals other than associated entities and individuals are not required to fall within the range of compensation.

Question No. E19: What is the valid business purpose standard that will be used by NIL Go?

Answer: When the student-athlete executes or agrees to the NIL contract or payment terms, it must include the promotion or endorsement of goods or services provided to the general public for profit.

Question No. E20: What is the range of compensation standard that will be used by NIL Go?

Answer: Any payment from or license between an associated entity or individual and a student-athlete must be at rates and terms commensurate with compensation paid to similarly situated individuals with comparable NIL value who are not current or prospective student-athletes at the institution the student-athlete is currently enrolled in or being recruited to attend.

Question No. E21: Can a student-athlete submit a proposed noninstitutional NIL agreement or offer from an associated entity or individual to NIL Go for review before agreeing to the terms of the agreement or offer?

Answer: Yes. If the proposed agreement does not meet the review standards, it may be revised and resubmitted.

Question No. E22: What are the potential outcomes of NIL contracts or payments involving associated entities or individuals reviewed by NIL Go?

Answer: A Division I student-athlete submits the NIL contract or payment to NIL Go. The NIL contract or payment will be "cleared" if a valid business purpose exists, and the payment does not exceed the range of compensation.

If a NIL contract or payment does not meet one or both of those requirements, it will be designated as "not cleared." If a NIL contract or payment is designated as "not cleared," the student-athlete can take the following steps to avoid challenge or potential penalties resulting from the non-compliant NIL contract or payment:

1. Rescind or revise the NIL contract or payment through renegotiation and resubmit to NIL Go,
2. Appeal the decision to the College Sports Commission and the decision of the College Sports Commission may be appealed to the neutral arbitration process, or
3. Return payments received pursuant to the impermissible agreement.

Section F: Enforcement Rules and Process

Question No. F1: What areas is the College Sports Commission responsible for enforcing?

Answer: Participating Institutions agree the designated enforcement entity (i.e., College Sports Commission) has the authority to investigate an alleged violation of NCAA rules developed as part of the settlement agreement (e.g., roster limits, provision of additional payments or benefits and noninstitutional NIL agreements) pursuant to the standards and procedures set forth in Bylaw 23 and any applicable internal operating procedures. The entity is also responsible for prescribing penalties for violation determinations and serving as the party seeking enforcement of any penalties contested through neutral arbitration.

Question No. F2: Can an enforcement matter be resolved by mutual agreement of all parties, including the Chief Executive Officer of the College Sports Commission, to the disputes or violations?

Answer: Yes.

Arbitration

Question No. F3: Can penalties imposed by the College Sports Commission be contested by an involved student-athlete or institution?

Answer: Yes. A student-athlete or institution may contest the decisions of the College Sports Commission for violations of the applicable rules using the neutral arbitration process.

Question No. F4: Who will preside over the neutral, independent arbitration process?

Answer: A neutral arbitrator with the authority to resolve disputes regarding any decisions of or penalties prescribed by the College Sports Commission. Arbitrator's decisions shall be final and binding on the parties. Each neutral arbitrator will be appointed and serve terms consistent with the settlement agreement.

Question No. F5: How long will the arbitration process take?

Answer: The arbitrator has 45 days from the commencement of proceedings to reach a final, written decision. The final, written decision is final and binding to the fullest extent permitted by applicable law. In limited circumstances when the neutral arbitrator finds good cause, the schedule can exceed 45 days from commencement of proceedings to final, written decision.

Question No. F6: Will enforcement of the penalties connected to the violation(s) being contested be stayed during the arbitration process?

Answer: Yes. Penalties connected to violation(s) being contested will be paused during the arbitration process. Only the arbitrator may lift the stay of penalties if good cause is shown.

Question No. F7: Do student-athletes who elect to use the neutral arbitration process have the right to be represented by counsel of the student-athlete's choice?

Answer: Yes.

Question No. F8: May an institution directly or indirectly pay the attorney's fees and costs of a student-athlete that elects to use the neutral arbitration process?

Answer: Yes. In addition, an institution that directly or indirectly pays the attorney's fees and costs of a student-athlete that elects neutral arbitration shall also pay the arbitrator's reasonable fees and expenses.

Question No. F9: May the arbitrator order the production of documents in addition to evidence made available by the College Sports Commission during the neutral, independent arbitration?

Answer: Yes, if the additional documentation is deemed to be necessary for the fair adjudication of the dispute.

Question No. F10: May the arbitrator call witnesses during the arbitration process?

Answer: Yes. Further, each witness has the right to be represented by counsel of their choice and at their own expense.

Question No. F11: Who is responsible for the costs associated with arbitrators, including arbitrator's reasonable fees and expenses for proceedings relating to the penalties being challenged?

Answer: An institution that directly or indirectly pays the attorney's fees and costs of a student-athlete that elects neutral arbitration shall also pay the arbitrator's reasonable fees and expenses.

Executive Order 14322
Saving College Sports
July 24, 2025

- EO 14322: Saving College Sports available at: https://www.whitehouse.gov/presidential-actions/2025/07/saving-college-sports/
- Fact Sheet: Saving College Sports available at: https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-saves-college-sports/

An Executive Order memorializes policy direction from the Executive Branch to implementing Federal agencies. EO 14322 does not specify the exact Executive Branch policy on the below, but rather directs certain federal agencies to develop a plan to advance policies in the following areas:

- Protecting scholarship and competitive opportunities for women and non-revenue sports
- Whether student-athletes should be employees
- Whether there should be a federal rule on NIL compensation that preempts State laws on NIL
- What the antitrust protection should be for NIL compensation to student-athletes

EXECUTIVE ORDER SUMMARY

I. Purpose and Policy
   a. Affirms value of college sports as educational and leadership development opportunities
   b. Affirms value of Olympic sports to the United States' international success
   c. Affirms that litigation threatens the sustainability of college sports
   d. Affirms the need for reasonable rules and guardrails in college sports to ensure balanced use of resources across collegiate athletics programs
   e. Acknowledges that there are 30 different State laws on NIL
   f. Criticizes the economic disparity created by teams that "can buy the best players" at the cost of supporting non-revenue sports
   g. Values the new roster limits as an opportunity to "strengthen and expand non-revenue sports"
   h. Seeks to eliminate third party pay for play inducements

II. Protecting and Expanding Women's and Non-Revenue Sports and Prohibiting Third-Party Pay-for-Play Payments
   a. Preserves, and where possible, expands opportunities for scholarship and collegiate athletic competition in women's and non-revenue sports
   b. Creates a "policy" of the Executive Branch that tiers support for non-revenue sports (NRS)

i. Revenue > $125M: In 25-26, increase scholarship opportunities for non-revenue sports above 24-25 season + Max # of roster spots for non-revenue sports
ii. Revenue > $50M: In 25-26, provide at least as many scholarship opportunities for non-revenue sports as 24-25 + Max # of roster sports for non-revenue sports
iii. Revenue < $50M: In 25-26, should not disproportionately decrease scholarship opportunities or roster spots based on the revenue that the sport generates.

c. Permitted revenue share between universities and student-athletes should preserve or expand scholarships and athletic opportunities in women's and non-revenue sports.
d. Universities should not permit third-party, pay-for play payments unless compensation is provided for fair market value the student-athlete provides to the third party, such as brand endorsement.
e. Within 30 days of the EO (August 23), directs the
    i. Secretary of Education
    ii. Attorney General
    iii. Secretary of Health and Human Services; and
    iv. Chairman of the Federal Trade Commission
f. To develop a plan to advance the policies in Section 2 through
    i. Regulation
    ii. Enforcement
    iii. Litigation
    iv. Federal funding decisions
    v. Enforcement of Title IX
    vi. Prohibiting unconstitutional actions that regulate interstate commerce
    vii. Enforcement of other constitutional and statutory protections
    viii. Working with Congress and State governments
g. EO 14322 is silent on the following areas
    i. How Title IX applies to revenue sharing or allocating *House* payments
    ii. Enforceable "rights" of a "non-revenue sport"
    iii. A definition of "revenue-generating sport" or "non-revenue sport"

III. Student-Athlete Status
    a. Directs the Secretary of Labor and National Labor Relations Board to determine and implement measures to clarify the status of collegiate athletes to maximize educational benefits and opportunities provide by higher ed institutions using:
        i. Guidance
        ii. Rules

iii. Other appropriate actions

b. No timeline provided

c. Note: Feb 14, 2025 the NLRB Acting GC rescinded the previous NLRB's position that student-athletes should be classified as employees.

IV. Legal Protections for College Athletics from Lawsuits

a. Within 60 days of the EO (September 22), directs the Attorney General and Chairman of the Federal Trade Commission to stabilize and preserve college athletics by

i. Protecting the rights and interests of student-athletes

ii. Protecting long term availability of collegiate scholarships and opportunities when unreasonably challenged under antitrust or other legal theories

b. Using mechanisms such as

i. Litigation

ii. Guidelines

iii. Policies

iv. Other actions

V. Protecting Development of the United States Olympic Team

a. Directs the Asst. to the President for Domestic Policy and the Director of the White House Office of Public Liaison to consult with the United States Olympic and Paralympic Committee to safeguard the integral role and competitive advantage for American athletes through American collegiate athletics.

The SCORE Act: Federal NIL Framework for College Athletes

I. Overview of the SCORE Act and NIL Provisions

The Student Compensation and Opportunity through Rights and Endorsements (SCORE) Act [H.R. 4312] is a proposed federal bill (introduced in July 2025) designed to create a uniform national framework for college athlete compensation. It targets the rapidly evolving Name, Image, and Likeness (NIL) landscape by codifying athletes' rights to earn money from endorsements while imposing "guardrails" to preserve the traditional college sports model.[1] In effect, the bill aims to replace the patchwork of state NIL laws with one federal standard and address related issues like athlete employment status, booster funded collectives, and the sustainability of non revenue sports. The bill would codify major components of the *House* settlement, with addition of sports agent regulation and enhanced supports for student-athletes from certain institutions. As of the date of this publication, this bill is eligible for vote on the House floor in the Fall 2025. If the bill passes through the House, it will need 60 votes in the Senate to pass. Below is a summary of the SCORE Act's major NIL related provisions:

II. Summary of Major NIL Provisions in the SCORE Act

Provision	NIL-Related Stipulation in SCORE Act
Athlete NIL Rights	Affirms that college athletes can profit from their name, image, and likeness. No institution, conference, or NCAA like association may block a student-athlete from signing NIL deals, *except* in limited cases (e.g. if a deal involves "prohibited compensation" or conflicts with a team contract or school code of conduct).[2] This guarantees athletes nationwide the ability to earn endorsement income.
Prohibited Compensation	Defines and bans certain pay-for-play and recruiting inducements masquerading as NIL deals. Specifically, any payment from a booster/collective not tied to a bona fide, market-value endorsement (e.g. a deal without a valid business purpose or far above fair market rates) is deemed "prohibited compensation".[3] Also, if a school (or its boosters) pays athletes beyond a set annual cap (the "pool limit," see below), the excess is prohibited.[4] These rules target booster-run NIL collectives, preventing them from offering illicit inducements to recruits or athletes under the guise of NIL.

[1] See https://www.insidehighered.com/news/students/athletics/2025/07/24/republicans-rethink-structure-college-athletics#:~:text=their%20name%2C%20image%20and%20likeness,well%20as%20their%20college%E2%80%99s%20revenue; see also https://www.foxnews.com/politics/sweeping-bipartisan-bill-would-nationalize-standards-student-athlete-pay

[2] See https://www.parkerpoe.com/news/2025/07/trump-executive-order-seeks-to-rein-in-chaotic#:~:text=The%20SCORE%20Act%20would%20bar,or%20agreement%20with%20the%20school

[3] See https://www.congress.gov/bill/119th-congress/house-bill/4312/text#:~:text=,image%2C%20and%20likeness%20rights%20of

[4] See https://www.congress.gov/bill/119th-congress/house-bill/4312/text#:~:text=with%20respect%20to%20such%20institution%3B,and

Provision	NIL-Related Stipulation in SCORE Act
Revenue-Sharing Cap ("Pool Limit")	Authorizes an athletic association (e.g. the NCAA) to set a yearly pool limit on total compensation a school can provide to its athletes.[5] The law requires this cap to be at least 22% of the average annual athletics revenue of top programs.[6] (Notably, 22% of top tier revenue is roughly $20.5 million per school under current estimates.)[7] Schools could directly pay athletes up to this cap, for example, via NIL licensing deals or new revenue-sharing distributions, but payments beyond the pool limit are forbidden as "prohibited compensation".[8] This essentially codifies the recent *House v. NCAA* court settlement's framework for limited revenue sharing,[9] while ensuring an upper limit to protect non profitable sports.
Institutional Involvement	Allows schools and conferences to participate in NIL activities within the federal rules. Institutions may facilitate or even enter NIL contracts with athletes (e.g. paying them for use of their NIL in promotions) so long as those payments count toward the pool limit. Schools can restrict specific deals only if an athlete's NIL deal violates the school's conduct standards or conflicts with an existing sponsorship contract.[10] They *cannot* blanket ban athlete NIL earnings. This provision lets colleges assist athletes in finding opportunities (something some state laws permit) but stops colleges from cherry picking which endorsements athletes may accept, aside from narrow conflicts (like, say, a player endorsing a competitor to the school's apparel sponsor).
Role of Interstate Intercollegiate Athletic Associations	Authorizes an athletic association to establish and enforce rules that require disclosure of NIL agreements; publicly share aggregated anonymized data about NIL agreements; regulate and provide dispute resolution around prohibited compensation; establish recruitment window parameters; calculate institutional compensation pool limit; establish transfer window parameters;

[5] See https://www.congress.gov/bill/119th-congress/house-bill/4312/text#:~:text=,likeness%20agreement%20or%20direct%20payment

[6] See Id.

[7] See https://www.dglaw.com/navigating-nil-key-considerations-as-the-ncaa-settles-into-a-new-era/#:~:text=At%20its%20core%2C%20the%20settlement,caps%20common%20in%20professional%20sports

[8] See https://www.congress.gov/bill/119th-congress/house-bill/4312/text#:~:text=,such%20institution%20is%20a%20member

[9] See https://www.insidehighered.com/news/students/athletics/2025/07/24/republicans-rethink-structure-college-athletics#:~:text=their%20name%2C%20image%20and%20likeness,well%20as%20their%20college%E2%80%99s%20revenue

[10] See https://www.parkerpoe.com/news/2025/07/trump-executive-order-seeks-to-rein-in-chaotic#:~:text=The%20SCORE%20Act%20would%20bar,or%20agreement%20with%20the%20school

Provision	NIL-Related Stipulation in SCORE Act
Agent and Contract Regulation	Expands the Sports Agent Responsibility and Trust Act (SPARTA) to cover NIL dealings.[11] Athlete-agents who broker NIL deals must register via an NCAA run process, and agent fees are capped at 5% of an NIL deal's value when the deal is between an athlete and their school.[12] The Act also preserves athletes' "right to representation," barring NCAA or schools from preventing athletes from hiring agents or advisors for NIL. [13] These measures professionalize NIL dealings and protect athletes from unqualified or exploitative agents.
Athlete Protections and Benefits	Mandates new benefits to support athletes' education and well being in the NIL era. Under the Act, colleges must provide athletes with financial literacy and life skills training (e.g. managing NIL income, tax guidance).[14] Schools also must offer degree completion scholarships and at least 3 years of healthcare coverage after an athlete's college career. [15]These requirements recognize that as athletes earn money and potentially spend more time on athletics, they need extra support to finish their education and tend to their health.
Transparency and Oversight	Imposes disclosure and transparency requirements on NIL activities. Athletes would be required to disclose NIL contract terms to their institution (in a timely manner), and the NCAA/association must collect and publish aggregated, anonymized data on NIL deals across schools.[16] This creates a public record of the NIL landscape. The NCAA is empowered to set up a process to investigate and resolve "prohibited compensation" violations, where importantly, an athlete cannot be deemed ineligible while a dispute over a deal's legality is pending.[17] In essence, the Act gives the NCAA enforcement authority to police pay-for-play schemes, with due process protections for athletes during adjudication.
Federal Preemption of State Laws	Includes a broad preemption clause that makes federal law supreme in this domain. No state or local government may enforce any law or rule regarding student-athlete compensation, NIL, eligibility, or employment

[11] See https://www.congress.gov/bill/119th-congress/house-bill/4312/text#:~:text=%E2%80%9CSEC,name%2C%20image%2C%20and%20likeness%20agreements
[12] See Id.
[13] See Id.
[14] See https://www.insidehighered.com/news/students/athletics/2025/07/24/republicans-rethink-structure-college-athletics#:~:text=The%20bill%20does%20include%20some,of%20health%20care%20after%20graduation
[15] See Id.
[16] See https://www.congress.gov/bill/119th-congress/house-bill/4312/text#:~:text=An%20interstate%20intercollegiate%20athletic%20association,enforce%20rules%20with%20respect%20to%E2%80%94
[17] See https://www.congress.gov/bill/119th-congress/house-bill/4312/text#:~:text=An%20interstate%20intercollegiate%20athletic%20association,enforce%20rules%20with%20respect%20to%E2%80%94

Provision	NIL-Related Stipulation in SCORE Act
	status that conflicts with the SCORE Act. [18]In fact, states are barred from having any laws "related to" NIL or athlete pay/benefits at all. [19] This would override all existing state NIL statutes, create one nationwide standard and preventing states from enacting athlete-compensation laws going forward. Proponents argue this ends the chaos of 30+ differing state rules, while critics note it strips states of consumer protection roles.
Antitrust Protection for NCAA	Grants the NCAA and conferences a **limited antitrust immunity** for complying with the Act. Any actions taken in line with this federal law (e.g. enforcing the pool limit or NIL rules) "shall be treated as lawful" under antitrust laws.[20] In practical terms, this shields the NCAA from antitrust lawsuits challenging the new compensation system.[21] This was a top NCAA demand after the Supreme Court's *Alston* case and other suits, where the law would prevent further antitrust claims so long as the NCAA stays within the law's boundaries.
No Athlete Employment Status	Explicitly declares that student athletes are not employees of their school, conference, or athletic association purely due to sports participation.[22] This preempts efforts to classify athletes as employees under labor laws. It means, for example, athletes could not unionize or be paid salaries by their universities under existing labor law, preserving the NCAA's "student athlete" amateur model in the eyes of federal law.[23] (Notably, this would override any future National Labor Relations Board rulings to the contrary.)
Preservation of Sports Programs & Funding	Includes provisions to protect Olympic sports and limit financial fallout. Any school with at least one highly paid coach (>$250,000 salary) must sponsor at least 16 intercollegiate sports teams,[24] echoing a current NCAA rule for Division I FBS schools. This aims to prevent schools from cutting non revenue teams (like gymnastics or track) to free up money for football/basketball player pay. Additionally, for colleges with major media rights revenues, the Act bans the use of general student

[18] See Section 10 https://www.congress.gov/bill/119th-congress/house-bill/4312/text#:~:text=No%20State%2C%20or%20political%20subdivision,and%20effect%20of%20law%20that%E2%80%94

[19] See https://www.sportsbusinessjournal.com/Articles/2025/07/23/college-sports-bill-passes-house-committee-clearing-way-for-full-vote/#:~:text=POWER%20PACK%3A%20In%20Nashville%2C%20Jessica,reached%20a%20settlement%20in%20an

[20] See Section Two https://www.congress.gov/bill/119th-congress/house-bill/4312/text#:~:text=SEC

[21] See https://www.espn.com/espn/story/_/id/45713128/bill-congress-standards-nil-payments

[22] See Section Two https://www.congress.gov/bill/119th-congress/house-bill/4312/text#:~:text=SEC

[23] See https://www.espn.com/espn/story/_/id/45713128/bill-congress-standards-nil-payments

[24] See Id.

Provision	NIL-Related Stipulation in SCORE Act
	fees or tuition revenue to fund athletics.[25] This ensures that new athlete compensation costs are not simply passed on to the wider student body. (Many universities had considered or enacted student fees to cover the anticipated ~$20 million in athlete payouts; under the Act, powerhouse programs must find other funding sources.) [26]

[25] See https://www.foxnews.com/politics/sweeping-bipartisan-bill-would-nationalize-standards-student-athlete-pay

[26] See https://www.espn.com/espn/story/_/id/45713128/bill-congress-standards-nil-payments

Knight Commission On Intercollegiate Athletics
A PROJECT OF THE JOHN S. AND JAMES L. KNIGHT FOUNDATION

Brief on *House v. NCAA* Settlement (February 12, 2025)[1]
Prepared by the Knight Commission on Intercollegiate Athletics

The House settlement was approved on June 6, 2025, and takes effect on July 1, 2025.

****This document was first published on January 6, 2025 to provide educational information about the then proposed House settlement and its impact on the NCAA and Division I institutions in the absence of comprehensive NCAA or other publicly-accessible resources. It is not intended to replace any of the information the NCAA has since and/or will develop and should not be viewed as legal advice. This Brief is current as of February 12, 2025, with the exception of one important resource published by the NCAA on June 13 and that is linked here and added below as the most recent post-approval guidance. The Brief only covers "pre-approval information" and does not include the changes and developments that occurred as part of the June 6 settlement approval. [Note: A Supplemental Resource is accessible here that provides related information issued after February 12, 2025 as well as topics not covered in this Brief.]***

The Brief is provided from the Knight Commission's independent viewpoint. As an independent non-profit leadership group with a legacy of impact on policies that advance the educational mission of college sports, the Knight Commission's purpose is to lead change that prioritizes college athletes' education, health, safety and success. The Commission is a resource on governance and policy in college sports and maintains a unique, publicly accessible database on Division I finances that can inform decision-making.

The Brief contains an Executive Summary that provides an overview of the following sections:

I. Key Background on *House v. NCAA* Settlement
II. NCAA Division I Membership and Championships/Impact of *House* Settlement
III. *House* Settlement Timeline and Major Points
IV. Opt-in Considerations
V. Overview of Relevant Financial Information
VI. Impact on Athletes and Change in Taxable Benefits
VII. Appendix

[*Resources Added After February 12, 2025]
Link to: Knight Commission Supplemental Resource providing related information not covered in this Brief and issues that have developed after February 12, 2025.

Link to: NCAA *Question and Answer: Implementation of the House Settlement*, published on June 13, 2025.

[1] This Brief was developed as a resource, and was originally distributed on January 6, 2025, as an attachment to a memorandum sent to presidents and provosts who registered and participated in a November 14, 2024, meeting on the future of college sports. The Brief was updated on January 13, 2025, and again following the release of the January 16 OCR Fact Sheet and again on February 12 after the January 16 OCR Fact Sheet was rescinded. Other relevant information not covered in this Brief and developments issued after February 12 can be found in this Supplemental Resource. Several significant notations made after Feb. 12 are noted in bold and identified.

Executive Summary

The hearing for final approval of the pending *In re: College Athlete NIL Litigation* (*House v. NCAA*) settlement is scheduled for April 7, 2025. If approved by Judge Wilken, the settlement will set into motion a monumental shift in Division I (DI) athletics on July 1, 2025. The four primary changes include:

- Providing back damages (approximately $2.8 billion) across *all* DI athletes who participated between 2016 and 2024, to be paid over 10 years at approximately $280 million annually. An estimated 95 percent of the damages will be paid to football and men's and women's basketball players in the Defendant Conferences.
- Allowing institutions to provide significant financial payments to athletes beyond those previously permitted. These include direct payment for the use of an athlete's Name, Image, and Likeness (NIL) and additional payments and benefits commonly labeled as "athlete revenue-sharing" by media. These payments have an initial cap estimated at $20.5 million per institution for 2025-26. Institutions will also be permitted to facilitate NIL deals for athletes with third parties.
- Eliminating athletics scholarship limits and instead instituting roster limits for each sport.
- Requiring all DI college athletes to report any third-party NIL compensation greater than $600 in the aggregate, while also instituting increased scrutiny, reporting, and fair-market-value assessment requirements for NIL agreements with certain third parties, such as NIL collectives.

All institutions in the Defendant Conferences are bound by all terms of the *House* settlement. Institutions from non-Defendant Conferences (all DI conferences other than ACC, Big 10, Big 12, Pac-12, and SEC) are only bound by the settlement if they choose to "opt in." A non-Defendant Conference institution "opts in" if the institution provides *any* new athlete payments (e.g., direct NIL compensation) or enhanced benefits (e.g., scholarships) beyond what is currently permitted, even if provided to only one athlete. Non-Defendant Conference institutions should carefully consider the consequences of providing these new athlete payments and/or enhanced benefits since such actions subject institutions to *all* requirements of the settlement.

The NCAA will decrease its revenue distributions to all DI institutions over the next 10 years to fund back damages, with 40 percent of the funds coming from Defendant Conferences and 60 percent from Non-Defendant Conferences.

NCAA bylaws governing **DI membership** and **access to DI championships** are *not* impacted by the *House* settlement.

Division I member institutions across all conferences will benefit from a clear understanding of the settlement and its sweeping impacts. The Knight Commission recommends that institutions undertake a careful, institution-specific analysis when considering the decision to "opt in" to providing new payments to athletes and/or enhanced benefits. That analysis ideally would not be limited to financial considerations, but also factor in Title IX, enrollment implications, institutional mission and values, and the impact on college athletes and their opportunities.

Key References and Resources used to prepare this memorandum (Resources released after Feb. 12, 2025 can be accessed in the Knight Commission's Supplemental Resource):

- NCAA Release: Settlement Documents Filed in College Athletics Class Action Lawsuits, July 26, 2024
- Amended Stipulation and Settlement Agreement, September 26, 2024
- College Athlete Compensation Settlement Website (https://www.collegeathletecompensation.com)
- NCAA Updated Question and Answer: Impact of the Proposed Settlement on Division I Institutions, December 9, 2024
- Question and Answer: Impact of the Proposed Settlement on Current Division I Student-Athletes, court-approved guidance document from December 23, 2024

Post-Feb. 12 addition: Note the above resources were the only ones available prior to the settlement's approval. The above Q&A documents are now superceded and updated through this NCAA resource:

NCAA *Question and Answer: Implementation of the House Settlement*, published on June 13, 2025.

I. Key Background on *House v. NCAA* Settlement

The *House* settlement terms were negotiated by the Defendant Conferences (ACC, Big 10, Big 12, Pac-12, SEC) and NCAA leadership and approved by the DI Board of Directors and the NCAA Board of Governors. The settlement consolidates three antitrust cases (*House, Hubbard, and Carter)* and provides relief from claims that challenge NCAA rules restricting athlete benefits. The defendants estimated that their potential liability under these antitrust cases was tens of billions of dollars, including treble damages.

The settlement includes:

- Back damages (approximately $2.8 billion) for *all* DI athletes who participated between 2016 and 2024, to be paid over 10 years at approximately $280 million annually. An estimated 95 percent of the damages will be paid to football and men's and women's basketball players in the Defendant Conferences.

- A new model for athlete benefits that will allow but not require institutions to provide athletes with significant financial benefits beyond those previously permitted ("new payments to athletes"). This new model also allows, but does not require, institutions to provide more athletics scholarships in all sports by eliminating current NCAA scholarship limits. Additionally, all athletics scholarships, regardless of opt-in status, will be treated as equivalencies. New roster limits will be imposed for institutions in the Defendant Conferences and other DI institutions that opt into the settlement.

- A new requirement for all DI athletes to report third-party (non-institutional) NIL compensation greater than $600 in the aggregate. [Note: Any ***institutionally-provided athlete NIL compensation*** counts as "new payments to athletes" and will be reported by the institution through a different process.]

The settlement does not resolve any conflicts that may still exist or may arise in the future between NCAA rules and state laws regarding NIL restrictions and college athlete compensation, provided by either the institution or by third parties.

The settlement also does not resolve the separate legal challenges about whether some or all college athletes should be classified as employees.

II. Division I Membership and Championships/Impact of *House* Settlement

A. Mandatory and Optional DI Institutional Involvement in the Settlement

The Defendant Conferences currently include 69 institutions that are members of the ACC, Big 10, Big 12, SEC, and Pac-12, and the University of Notre Dame. This number will increase since at least five (5) institutions are currently scheduled to join one of the Defendant Conferences.

As of this memo's distribution, there are approximately 280 Division I institutions that are neither current nor future members of the Defendant Conferences and thus will need to make a choice whether to opt into the *House* settlement terms.

B. DI Membership Standards Are Not Impacted

NCAA bylaws governing **DI membership** is not impacted by the *House* settlement.

C. NCAA Revenue Distribution and Championship Access Bylaws Are Not Impacted

NCAA "division dominant" bylaws guarantee DI members access to championships at least at the level provided as of August 1, 2014 and revenue distribution under a formula approved as of January 20, 2022. Any changes to these bylaws require a two-thirds vote of DI membership.[2] [Note: There is litigation on the revenue distribution bylaw and its application to the NCAA's damages payment plan for the *House* settlement as approved by the NCAA Board of Governors and DI Board of Directors.[3]]

See Section III.C.3. below for discussion of the NCAA damages payment plan and its impact on future revenue distribution.

[2] NCAA Manual. See Bylaws 18.01.3 and 20.01.3 – 20.01.3.2.2.

[3] *The State of South Dakota and the South Dakota Board of Regents v. NCAA (Complaint filed on September 10, 2024)*. **Post Feb. 12 notation**: **This litigation was settled on April 23, 2025**.

III. *House* Settlement Timeline and Major Points

A. Key Terms

New payments to athletes: This term is used throughout this memorandum to describe the significant new financial benefits that **institutions** are allowed to provide to athletes beyond those previously permitted as proposed the *House* settlement terms. These new institutional payments include direct NIL compensation and additional payments and benefits commonly labeled as "athlete revenue-sharing" by media. NCAA documents refer to these "new payments to athletes" as "additional payments and benefits" and "pool payments."

Opt-in: Refers to the option available to DI institutions outside the five Defendant Conferences to provide enhanced benefits permitted under the settlement. The triggers for opting in are:

- Providing any **new payments to athletes** to one or more college athletes as allowed under the *House* terms, or
- In any one sport, providing athletics scholarships that *exceed current* (2024-25 academic year) NCAA scholarship limits.

B. Timeline

1. Approval Process

   a. The NCAA's DI Board of Governors and DI Board of Directors approved the settlement terms in May 2024.

   b. The settlement terms were preliminarily approved by Judge Wilken in the United States District Court for the Northern District of California on October 7, 2024. A final approval hearing is scheduled for April 7, 2025[4].

   c. Athletes have the right to opt out of the settlement and continue to sue for damages. Objections to the settlement and athlete "opt-outs" must be filed by January 31, 2025. Separately, there are lawsuits challenging the proposed settlement terms.

   d. If the settlement is approved, the terms will go into effect for the 2025-26 academic year and continue through the 2034-2035 academic year.

2. Following approval, NCAA bylaws will need to be changed to reflect the settlement terms no later than the settlement effective date of July 1, 2025.

3. Institutions in Defendant Conferences are required to abide by all settlement terms. The non-Defendant Conference institutions will declare annually whether

[4] The *House* settlement was approved on June 6, 2025.

to opt in. The NCAA established a **March 1 annual** opt-in "declaration date" for the duration of the 10-year settlement.[5] Non-Defendant Conference institutions can choose during any year to change their opt-in status. For example, an institution can decide not to opt in during years 1 and 2 and decide in year 3 to opt in.[6] Alternatively, a school can opt in during years 1, 2, and 3, and then decide in year 4 to opt out.

C. Major Points

The following explains the new model for institutions in the five Defendant Conferences and the non-Defendant Conference institutions that opt into the *House* terms.

1. New payments to athletes. DI institutions will be allowed to provide significant new financial benefits to athletes beyond those previously permitted. There is no minimum amount required for these payments, but there is a cap. In Year 1 (2025-26), the Defendant Conferences estimate the cap on new payments to athletes to be $20.5 million per institution.[7]

   a. Distribution. The settlement terms do not dictate how institutions should distribute any "new payments to athletes." For example, the settlement does not prevent an institution from providing all of its new payments to only one athlete. (See item e. below on Title IX considerations for additional information on this point.)

   b. NIL Compensation Provided by the Institution**.** Any NIL compensation provided directly by an institution to an athlete must count as a new athlete payment and towards the benefits cap. Institutionally provided NIL compensation is not subject to a fair-market-value assessment as described in Section VI.A for third-party NIL compensation.

   c. Cap on "new payments to athletes." The cap for new payments to athletes is based on a formula – 22 percent of the average of specific revenue categories for the institutions in the Defendant Conferences. The cap applies on an institutional basis, and there are no sport-specific caps. Figure 1 in the Appendix explains this cap.

   d. New audit/enforcement procedures. Institutions that provide new payments and benefits to athletes must comply with new financial reporting and compliance processes. The Defendant Conferences are determining these processes with their selected outside provider, LBi. There may be a new associated service cost for institutions that opt into the settlement.

[5] See question 13, page 3 of NCAA Updated Q&A, December 9, 2024.
[6] See question 13, page 3 of NCAA Updated Q&A, December 9, 2024.
[7] See question 23, page 6 of NCAA Updated Q&A, December 9, 2024.

e. Title IX considerations with new institutional payments to athletes. How Title IX applies to new payments to athletes **provided by the institution** remains an unresolved issue. Title IX applies to athletic financial assistance and benefits, opportunities, and treatment provided to athletes enrolled at schools that receive federal funding. A disparity in any new institutional payments provided to male and female athletes may be challenged as discriminatory under Title IX. Clarity on how Title IX will apply to these new payments and benefits will most likely be resolved in the courts, in administrative proceedings, or through federal legislation or regulations. Institutions should be mindful of potential legal challenges arising from disparate payments and benefits to male and female athletes.

[*Note: On January 16, 2025, the Office for Civil Rights (OCR) issued a Fact Sheet on this topic. The OCR guidance stated: "When a school provides athletic financial assistance in forms other than scholarships or grants, including compensation for the use of a student-athlete's NIL, such assistance also must be made proportionately available to male and female athletes."[8] On February 12, 2025, this guidance was officially rescinded by the Trump administration's acting Assistant Secretary for Civil Rights.[9]]

Regardless of how the issue is resolved, a major misconception is that the formula used to pay *House* settlement damages may be used as a guide for allocating new payments to male and female athletes in the coming decade. Janet Judge, Title IX attorney, said the following about this mistaken belief:

"Past damages allocation decisions are being made by the Plaintiffs' attorneys, according to their valuation of the individual antitrust claims of their clients under the cases at bar, none of which include Title IX claims. Accordingly, Title IX does not govern how the past damages claims will be disbursed, and as a result, it is reported that approximately 85 percent to 90 percent of those dollars will be allocated to male athletes.

For these reasons, Plaintiffs' attorney's decisions regarding past damages allocations are not being reviewed by Judge Wilken with an eye toward Title IX compliance, and are not receiving any sort of Title IX approval by the Court. As such, the past damages allocation framework should not be relied upon as setting the standard for satisfying

[8] U.S. Department of Education Office for Civil Rights. "Fact Sheet: Ensuring Equal Opportunity Based on Sex in School Athletic Programs in the Context of Name, Image, and Likeness (NIL) Activities," January 16, 2025. (Rescinded on February 12, 2025)

[9] U.S. Department of Education Office for Civil Rights. "U.S. Department of Education Rescinds Biden 11th Hour Guidance on NIL Compensation," Press Release, February 12, 2025.

a school's Title IX obligations moving forward when considering prospective fund payment allocations." [10]

2. Roster Limits Replace Scholarship Limits. The settlement terms require the NCAA to eliminate scholarship limits. Institutions from Defendant Conferences plus those that opt in must comply with new roster limits.[11] This change allows for any athletes on the roster to receive scholarship aid and/or the new athlete payments that the settlement now permits.[12]

3. Payment of Damages.

   a. Overview of damages. The terms of the settlement include a payment of damages to a class of athletes (2016 – 2024) who, due to NCAA rules, were unable to receive NIL compensation as well as the cash academic awards enabled by the *Alston* decision. The damages total approximately $2.78 billion, to be paid over 10 years.[13] Of this amount, NCAA reserves and insurance is expected to cover $1.1 billion and the remaining $1.6 billion will be withheld from future distributions to DI members.

   b. NCAA Damages Payment Plan. The current NCAA *internal* plan to pay $1.6 billion in *House* settlement damages, as approved by the Board of Governors and DI Board of Directors, will impact future DI revenue distributions by reducing the amounts paid to all DI members. The damages assessment differs by institution and by conference. **[Note: This plan was an internal decision that could be altered by a change in NCAA finances and/or membership vote. The *House* settlement does not dictate how the NCAA pays the damages.]**

      In sum, the NCAA's decision to reduce distributions by $1.6 billion will result in 40 percent of the funds coming from the institutions in the five Defendant Conferences and 60 percent being assessed on Non-Defendant Conference institutions.[14]

   c. Athletes receiving damages. The plaintiffs' proposed schedule for damages payments shows that more than 95 percent of the damages will be paid to football and men's and women's basketball athletes who played at institutions in the Defendant Conferences, and 5 percent to all other DI athletes.

---

[10] Knight Commission Public Session: "Impact of proposed House settlement and college athlete-employment cases, including a discussion of Title IX," September 18, 2024.
[11] Dellenger, Ross. "New college sports roster limits revealed as House settlement expands scholarship numbers," *Yahoo!Sports.com,* July 26, 2024.
[12] The *House* settlement was approved on June 6, 2025. Modifications were made to Roster Limit terms prior to approval. See Supplemental Resource for detailed information.
[13] NCAA Media Center. "Settlement Documents Filed in College Athletics Class-Action Lawsuits," July 26, 2024.
[14] Thamel, Pete. "Sources: NCAA plan to pay off settlement irks non-Power 5 schools," *ESPN.com*, May 17, 2024.

IV. Opt-In Considerations

Institutional leaders with an opt-in choice should weigh the consequences with great care. Important factors for consideration are: overall financial impact; Title IX compliance; potential loss of athlete opportunities; impact on enrollment management strategies; implications for institutional mission and values; potential implications of unresolved issues; pending litigation to overturn the settlement terms; and, the potential that providing new payments to athletes could make it more likely that athletes may be classified as employees in the future.

Decision-makers can choose between opting in versus providing educationally-related athlete benefits allowable within current limits. This important assessment should consider the following:

A. Conference Impact.

1. While opting in is an institutional decision, conferences are permitted to set independent policies for their member institutions that choose to opt in.[15]

2. Multiple conferences expect at least some of their institutions to opt in. This evolving situation could spur another round of conference realignments.

   It also could create scenarios where institutions within the same non-Defendant conference operate under different rules – some following new roster limits while others maintain current scholarship limits. Additionally, some institutions may share revenue with their athletes while others will not. These variations in rules within conferences may create unique competitive and administrative challenges.

B. Guidelines and opportunities for institutions that DO NOT opt in.

1. Institutions that **DO NOT** opt in must continue to abide by "pre-*House*" DI membership rules governing institutionally provided athlete financial benefits that are educationally related (e.g., scholarships, cost of attendance stipends, "Alston"/graduation and academic cash awards). The institutions must also abide by pre-*House* NCAA scholarship limits in each sport and are not subject to roster limits defined in the settlement.

   For these institutions, there may be opportunities to expand currently permissible educationally-related benefits to enhance athletes' financial packages without triggering any opt-in conditions. The Supreme Court's June 2021 decision in *Alston v. NCAA* prohibits the NCAA from imposing restrictions on institutions from offering educationally-related benefits, such as scholarships, academic

[15] The proposed settlement states: "Each of the Member Institutions, subject to any independently set conference-level rules or guidelines (i.e., conference-level rules or guidelines imposed by a conference without agreement with the NCAA or any other conferences), shall unilaterally decide/determine whether and how much of any benefits newly permitted by this Injunctive Relief Settlement to provide to any individual Division I student-athlete (up to the Pool amount)." Amended Stipulation and Settlement Agreement, *In re: College Athlete NIL Litigation;* Article 3, Section 2, "Institutional Decision-Making and Conference-Level Rules."

awards, laptops, internships, and other benefits tied to education. For example, if an institution is not currently awarding annual cash academic and graduation awards of up to $5980 to its athletes, it can begin fully funding those awards without triggering opt-in requirements.

2. Institutions that **DO NOT** opt in may provide scholarships **only** up to the current (2024-25) NCAA scholarship limits by sport and are not required to meet the roster limits determined by the settlement. However, moving forward, athletic scholarships will be treated as equivalencies in all sports, eliminating current "head count" scholarship restrictions. Increasing athletics scholarships within the current NCAA scholarship limits does not by itself trigger opt-in status. *(See Financial Considerations section below for more information on the potential financial impact of restrictive roster limits.)*

C. Opt-In Impacts.

1. If an institution provides new payments to athletes in only one or two sports, the roster limits and other settlement terms apply to *all* NCAA sports.

2. Institutions that opt in during a particular year can decide to return to an "opt-out" level in future years, requiring a return to pre-*House* athlete benefits and team scholarship levels.

3. Some institutional leaders are concerned that opportunities and benefits to athletes in Olympic or non-revenue sports will diminish as many institutions prioritize funding to football and basketball in the post-*House* model of new athlete payments and enhanced treatment and benefits focused on revenue sports.

4. Some athletics administrators are discussing plans to "tier sports"—providing greater benefits, treatment, etc. to the top tier and reducing them in the lower tier— rather than eliminating sports. Title IX is a critical factor to consider in determining which sports to tier and what benefits to provide at certain levels.

V. Overview of Relevant Financial Considerations

A. Current DI financial landscape. Figures 2 and 3 in the Appendix, generated using the Knight-Newhouse College Athletics Database, underscore the vast differences in revenue as well as the distinct sources of revenue among DI competitive groups.

Figure 2 in the Appendix highlights that the revenue for the median institution in the Defendant Conferences is $145 million, approximately $100 million greater than the median institution in the other FBS conferences and approximately $125 million greater than the median institutions in the other Division I Subdivisions.

Figure 3 in the Appendix highlights that for non-Power 4 institutions, athletics programs already rely significantly on institutional funding and student fees. For most of those institutions, any new payments to athletes will likely require increases in institutional funding and student fees or significant tiering of sports to reallocate spending.

The gap between revenue-rich programs and other DI programs is likely to grow in the next decade. For the institutions in the current Power 4 conferences (ACC, Big Ten, Big 12, SEC), media revenue funding will jump significantly in coming years since those four conferences will receive 90 percent of the revenues from the expanded College Football Playoff ("CFP") – an event managed independently of the NCAA that will generate more than $1.4 billion annually. The NCAA does not receive any funding from the CFP.

B. Impact of "Opting In" on Roster Limits/Tuition Payments from Athletes.
The implementation of roster limits could have far-reaching impacts on college athletes, on institutional spending, and on campus recruiting practices. Opting into the terms to provide new payments to athletes in only one sport, or even with one star athlete, requires that the terms of the settlement, including roster limits, apply to all sports at the institution. There is no partial "opt-in."

In some cases, these roster limits could reduce a program's current roster size and eliminate spots currently filled by tuition-paying students. For example, FCS football teams currently carry an average roster size of 118. With a current equivalency scholarship limit of 63, many FCS players are tuition-paying students. Opting-in means that the football roster drops to 105, thus reducing the number of tuition-paying players. A loss of roster spots could impact tuition revenue at institutions that use athletics in their enrollment management strategies (e.g., male enrollment, tuition-paying students).

C. Additional impact on budgeted NCAA distributions. As institutions increase scholarships as allowed by the *House* settlement, the NCAA's annual "Grant-in-Aid Fund" distribution will be altered and may result in reduced distributions for many institutions. As the number of total athletics scholarships grows larger, the overall unit distribution value will be reduced. The existing Grant-in-Aid distribution formula of more than $150 million annually is complicated, but it significantly rewards institutions that are providing more than 150 athletics scholarships.[16]

[16] NCAA Revenue Distribution Plan, pages 9-10.

D. Modeling spending and revenues. The Knight-Newhouse College Athletics Database provides substantial data to help institutional leaders explore the financial impact of policy decisions, and we are glad to provide educational sessions to help administrators use this data source.

VI. Impact on Division I Athletes and Change in Taxable Benefits

A. New Regulations for ALL DI College Athletes Receiving Third-Party NIL Compensation. The *House* settlement terms also establish new regulations for **ALL** DI college athletes receiving ***third-party NIL compensation*** (i.e., compensation from any source other than the institution), regardless of whether their institution opts into the settlement.

These regulations require college athletes to report any third-party NIL compensation that exceeds $600 in the aggregate to a designated entity.

There is no cap on athlete NIL compensation provided by third-party entities. However, the settlement terms provide for greater oversight and a fair-market-value assessment of NIL deals between athletes and boosters or associated entities/collectives to ensure that they are "legitimate" NIL deals.[17]

These provisions, aimed at bringing greater regulation to third-party NIL compensation, are raising criticism from state legislators in states with permissive laws regarding college athlete NIL rights. As noted previously, the settlement does not resolve any conflicts that may still exist or may arise in the future between NCAA rules and state laws regarding college athlete NIL compensation, provided by either the institution or by third parties.

Additional guidance for athletes receiving third-party NIL compensation can be found in this December 23, 2024 court-approved Q & A document.[18]

[Note: Institutionally provided NIL compensation, as described in Section III.C.1.b, is treated differently.]

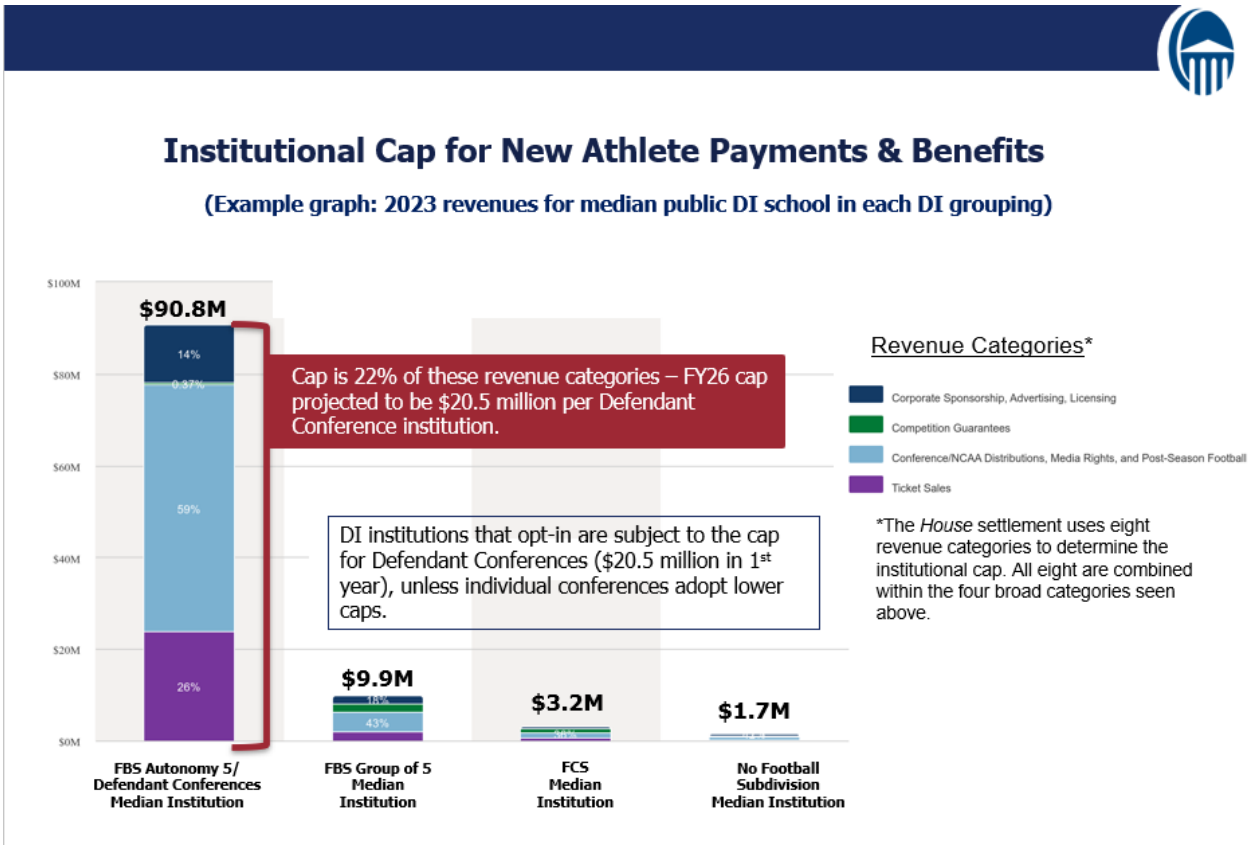
B. Tax Implications for New Payments to Athletes from Institutions. It is expected that the new institutionally provided payments to athletes will be taxable income. Institutions and athletes should consult with tax experts on these questions.

[17] See question 31, page 6 of NCAA Updated Q&A, December 9, 2024.

[18] **Post Feb. 12 addition: The *House* settlement was approved on June 6, 2025 with additional guidance on third party NIL Compensation. See June 13 NCAA resource.**

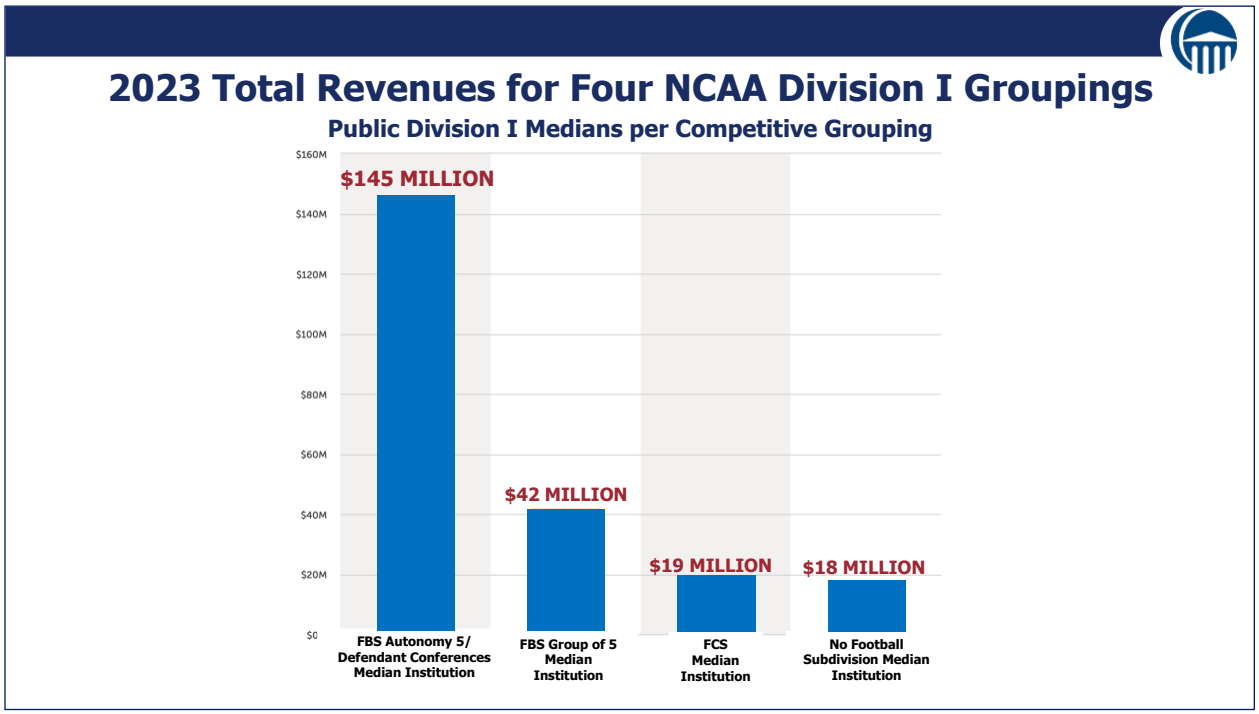
VII. Appendix

Figure 1



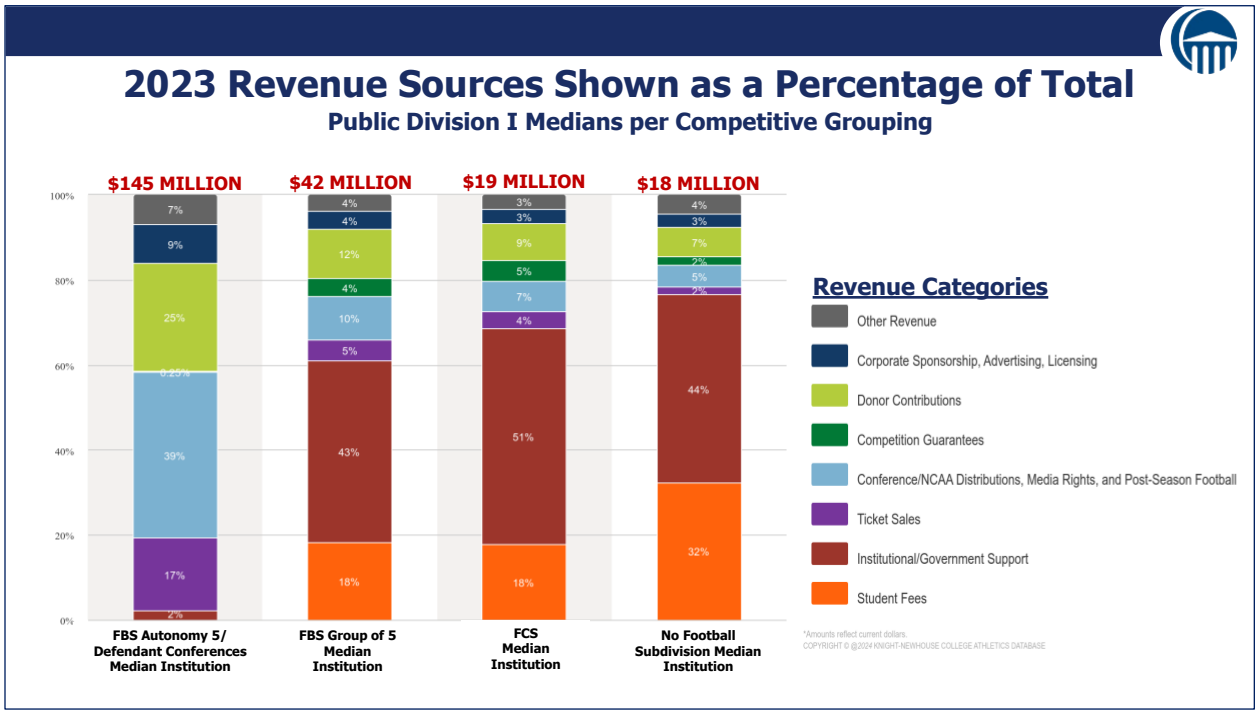
Note. This figure illustrates the revenue categories that determine the institutional cap on new payments to athletes, collectively referred to as "Pool Revenue." This institutional cap is set at 22% of the average Pool Revenue from all institutions within the Defendant Conferences (current and future conference members). The institutional cap is recalculated every three years and increases by 4% annually.

Figure 2



Note. This figure highlights that the revenue for the median institution in the Defendant Conferences is $145 million, approximately $100 million greater than the median institution in the other FBS conferences and approximately $125 million greater than the median institutions in the other Division I Subdivisions.

Figure 3



Note. This figure highlights that for non-Power 4 institutions, athletics programs already rely significantly on institutional funding (maroon) and student fees (orange). For most of those institutions, any new payments to athletes will likely require increases in institutional funding and student fees or significant tiering of sports to reallocate spending.

Rebecca Peterson-Fisher (SBN 255359)
KATZ BANKS KUMIN LLP
235 Montgomery St., Ste. 665
San Francisco, CA 94104
Telephone: (415) 813-3271
Email: peterson-fisher@katzbanks.com

John Clune, (Pending Pro Hac Vice)
Ashlyn L. Hare, (Pending Pro Hac Vice)
HUTCHINSON BLACK AND COOK, LLC
921 Walnut Street, Suite 200
Boulder, CO 80302
Telephone: (303) 442-6514
Email: john.clune@hbcboulder.com
ashlyn.hare@hbcboulder.com

Counsel for Objectors

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE: COLLEGE ATHLETE NIL LITIGATION

Case No.: 4:20-CV-03919-CW

OBJECTION TO AMENDED SETTLEMENT AGREEMENT AND OPPOSITION TO FINAL SETTLEMENT APPROVAL BASED ON FAILURE TO APPLY TITLE IX AND REQUEST TO SPEAK AT APPROVAL HEARING

Hon. Claudia Wilken

Table of Contents

INTRODUCTION 1

BACKGROUND 2

I. The Objectors 2

II. The Amended Settlement Agreement 3

LEGAL STANDARD 5

ARGUMENT 5

I. The Suggested "But-For" BNIL And ASC Damages Are Fictitious And Would Not Have Been Possible Due To Title IX. 5

A. Title IX Applies to Any Financial Aid and Educational Benefits Provided by or on Behalf of an Institution That Receives Federal Funding. 7

B. The Settlement's "BNIL" and "ASC" Damages Violate Title IX Whether Payment Would Have Come from the Schools or the Conferences. 10

1. The Settlement's suggestion that conferences would have paid the institutions' athletes directly is an impermissible extension of the "but-for world." 10

2. Even if conferences would have paid BNIL to athletes directly, those payments would still be governed by Title IX because the conferences are indirect recipients of federal funding that exercise controlling authority over their member institutions. 12

II. The Title IX Release Language Is Unfair To Female Athletes As Legitimate Title IX Claims Exist. 14

III. Releasing All Institutions From Liability Is Unfair, Unreasonable, And Inadequate As Legitimate Title IX Claims Exist Against Them 15

IV. Opting Out Is Not A Viable Alternative Given The Age Of This Case And The Relevant Statutes Of Limitations. 16

CONCLUSION 17

TABLE OF AUTHORITIES

Cases

A.B. by C.B. v. Haw. State Dep't of Educ., 386 F. Supp. 3d 1352, 1357-58 (D. Haw. 2019) 12, 13

Anders v. Cal. State Univ., No. 1:21-cv-00179, 2021 WL 3115867, at *3 (E.D. Cal. July 22, 2021) 8

Barrs v. Se. Conf., 734 F. Supp. 2d 1229, 1234 (N.D. Ala. 2010) 10, 12

Bonjorno v. Kaiser Aluminum & Chem. Corp., 752 F.2d 802, 812 (3d Cir. 1984) 11

Centaur Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp., 878 F. Supp. 2d 1009, 1014 (C.D. Cal. 2011) 16

Cohen v. Brown Univ., 1010 F.3d 155, 176 (1st Cir. 1996) 7

Daniels v. School Board of Brevard County, 985 F. Supp. 1458, 1462 (M.D. Fla. 1997) . 13

Equity in Athletics, Inc. v. Dep't of Educ., 675 F. Supp. 2d 660, 664 (W.D. Va. 2009) 9

Grady v. RCM Techs., Inc., 671 F. Supp. 3d 1065, 1082 (C.D. Cal. 2023) 5

Graham v. City of Manassas Sch. Bd., 390 F.Supp.3d 702 (E.D. Va. 2019) 16

Grant House v. Nat'l Collegiate athletic Ass'n, 545 F. Supp 3d 804, 816 (N.D. Cal, 2021) 4, 7

ICTSI Oregon, Inc. v. Int'l Longshore and Warehouse Union, No. 3:12-cv-1058-SI, 2022 WL 16924139, at *6 (D. Or. Nov. 14, 2022) 7, 10

In re Stable Rd. Acquisition Corp., No. 2:21-CV-5744-JFW(SHKX), 2024 WL 3643393, at *3 (C.D. Cal. Apr. 23, 2024.) 15

Kane v. Mount Pleasant Cent. Sch. Dist., 80 F.4th 101 (2023) 16

Litton Systems v. American Telephone and Telegraph Co., 700 F.2d 785, 822–23 (2d Cir. 1983) 11

Mansourian v. Regents of Univ. of California, 602 F.3d 957, 964 (9th Cir. 2010) 8

NCAA v. Smith, 525 U.S. 459, 461 (1999) 12

Officers for Justice v. Civ. Serv. Comm'n of City & Cnty. of S.F., 688 F.2d 615, 625 (9th Cir. 1982) (citing Fed. R. Civ. P. 23(e)) 5

Ploeger v. Tr. of Univ. of Pa., 653 F.Supp.3d 188, 199 16

Williams v. Bd. of Regents of Univ. Sys. of Georgia, 477 F.3d 1282, 1294 (11th Cir. 2007) 13

Other Authorities

120 Cong. Rec. 15,322 (1974) 9

20 U.S.C. § 1681 ..... 7, 14

Civil Rights Restoration Act of 1987, Pub. L. No. 100-259 (102 Stat. 28) 9

Justine S. Hastings & Michael A. Williams, *What is a "But-for" World?,* 31 ANTITRUST 102, 102 (Fall 2016) 10

Rules

34 C.F.R. § 106.2 12

34 C.F.R. § 106.31(b)(2), (6) 8

34 C.F.R. § 106.37 ..... 7, 8

34 C.F.R. 106.41(c) 7

Federal Rule of Civil Procedure 23(e) 1,5

Regulations

44 Fed. Reg. 71,415 (Dec. 11, 1979) 10

INTRODUCTION

Pursuant to Fed. R. Civ. P. 23(e), Kacie Breeding, Eden Hardy, Hannah Taylor, Alexis Drumm, Emmie Wannemacher, Savannah Baron, Riley Haas, Emma Appleman, Kate Johnson and Elizabeth Arnold ("Objectors"), by and through their undersigned counsel Hutchinson Black and Cook, LLC and Katz Banks Kumin LLP, hereby submit this objection opposing final approval of the Amended Stipulation and Settlement Agreement (the "Settlement"). ECF No. 535-1. Objectors are ten current and former Division I athletes and members of the Additional Sports Class who will be grossly undercompensated due to the Settlement's fundamentally flawed damages calculations that failed to apply Title IX. Specifically, Objectors maintain that the Settlement's "but for" damages could not have been paid to the athletes as suggested due to Title IX regulations requiring proportionate distribution of benefits and financial aid to male and female athletes.

Plaintiffs' counsel has asserted that Title IX does not and could not apply to the Settlement damages, where over 90% of the damages would be paid to male athletes, because allegedly 1) Title IX does not apply to damages in an antitrust case based upon NCAA and conference rules, and 2) those entities are not required to follow Title IX. Tr. of Videoconference Proceedings at 31:8-17 (Sept. 5, 2024). Yet the question is not only whether Title IX applies to the Settlement distribution, but whether Title IX impacts the amount of damages class members would have incurred. This Objection argues that for the two categories of damages that would have been paid by either the schools or conferences but-for the unlawful restraint on athlete earnings, the Broadcast NIL ("BNIL") and Athlete Services Compensation ("ASC") damages, Title IX would have prevented the athletes from ever incurring such disproportionate damages in the first place and, as such, the damages calculations are grossly inaccurate.

Both the BNIL and ASC damages analyses are predicated on the mistaken assumption that the schools would have paid athletes in some proportion to the media market value of the individual sport in which each athlete participates. However, these calculations are amiss, as any payments

made to class members for BNIL and ASC damages would have been required to be made proportionately to male and female athletes due to Title IX. The result is that most female athletes will take home a meager $125 per year of eligibility, while male athletes will be given tens if not hundreds of thousands of dollars. Accordingly, Objectors ask the court to reject the Settlement as proposed based upon its critically flawed damage calculations or, alternatively, to require the Parties to submit a revised settlement allocation formula consistent with the mandate of Title IX and this Objection.

BACKGROUND

I. The Objectors

- Kacie Breeding was a cross county and track and field athlete competing for the Southeastern Conference's Vanderbilt University from the fall of 2016 to the Spring of 2020. Ms. Breeding has filed a claim and is estimated to receive $188 in ASC. Her NCAA Eligibility ID is 1311528533.

- Eden Hardy was a soccer player at the University of Oregon in the Pac-12 Conference from the summer of 2017 until December 2021. Ms. Hardy's eligibility number was not available but she will supplement this filing.

- Hannah Taylor was a soccer player at the University of Oregon in the Pac-12 Conference from the summer of 2017 until June 2021. Ms. Taylor's estimate was unavailable. Her NCAA Eligibility ID is 1411923749.

- Kate Johnson is a volleyball player at the University of Virginia in the Atlantic Coast Conference from the fall of 2022 to the present. Ms. Johnson's estimate was unavailable. Her NCAA eligibility number is 1903443501.

- Lexi Drumm is a soccer player competing for the College of Charleston from 2021 to the present. Ms. Drumm has filed a claim and is estimated to receive $426 in ASC. Her NCAA Eligibility ID is 2008903787.

- Emmie Wannemacher is a soccer player competing for the College of Charleston from 2021 to the present. Ms. Drumm has filed a claim and is estimated to receive $456 in ASC. Her NCAA Eligibility ID is 2008904246.

- Savannah Baron is a soccer player competing for the College of Charleston from 2021 to the present. Ms. Drumm has filed a claim and is estimated to receive $456 in ASC. Her NCAA Eligibility ID is 2001782845.

- Riley Haas is a soccer player who competed for the College of Charleston from 2020-2024. Ms. Haas has filed a claim and is estimated to receive $312.57 in ASC. Her NCAA eligibility number is 1811344623.

- Emma Appleman is a volleyball player who competed for the College of Charleston from 2021 to the present. Ms. Appleman has filed a claim and is estimated to receive $426 in ASC. Her NCAA eligibility number is 1906611343.

- Elizabeth Arnold is a soccer player competing for the College of Charleston from 2023 to the present. Ms. Arnold has filed a claim and is estimated to receive $222 in ASC. Her NCAA Eligibility ID is 2201426913.

II. The Amended Settlement Agreement

The Settlement in this matter is broken into two primary categories: 1) a past damages settlement for monies owed to athletes for restricting their right to earn money; and 2) future injunctive relief providing a method for the schools to share revenue with athletes for use of their Name Image and Likeness ("NIL") rights. Though Objectors' arguments here will apply equally to any future payments pursuant to the injunctive portion of the Settlement, this Objection itself is limited to the past damages. The past damages are comprised of three types of NIL damages totaling $1.976 billion: 1) Video Game NIL ("VNIL") in an amount of $71.5 million, 2) Broadcast NIL ("BNIL") in amount of $1.815 billion, and 3) Lost NIL Opportunities in an amount of $89.5 million, as well as a separate category of non-NIL damages in the amount of $600 million called Athlete

Services Compensation ("ASC"), which represents money damages for the athletes labor services to the institutions. This Objection pertains to the "BNIL" damages and the "ASC" damages only.[1]

According to Plaintiff's economist, Daniel Rascher, the Settlement suggests that "BNIL" damages represents money owed to the athletes for the use of their NIL rights in broadcasts of the schools' athletic competitions. Decl. of Daniel A. Rascher, ECF No. 450-4 ¶ 26. The Settlement's $1.815 billion in BNIL damages pays 90%, or roughly $1.63 billion, to the Football and Men's Basketball Class. The compensation for BNIL varies by conference based on each conference's respective revenue and is then disbursed on a pro rata basis to athletes according to their sport. *See* Decl. of Daniel A. Rascher, ECF No. 450-4 ¶ 26.[2] Other than 5% of BNIL damages going to female basketball players, remaining female athletes are collectively being paid nothing out of the $1.815 billion for BNIL settlement damages as "they add little to no value." Decl. of Daniel A. Rascher, ECF No. 450-4 ¶ 25 n. 11.

The "ACS" damages category is compensation from schools to its athletes in a but-for world where a labor market existed to pay athletes for their work on behalf of their schools. Mr. Rascher's declaration proposes the same percentage distribution for ASC without any rationale other than the fact that it is his understanding that these damages should be divided similarly to the other damage classes: "I further understand that the proposed allocation across settlement damage classes provides 5% to the Additional Sports settlement damage class and 95% distributed in a ratio of 75/15/5 to athletes across the three sports (football, men's basketball, and women's basketball) in the other two

[1] Arguably, "Lost NIL" and "VNIL" damages represent money that would have been paid directly by third parties (such as private retailers and EA Sports) to the class members but-for the unlawful restraint on earning. Those amounts, though perhaps also unfair and unreasonable for other reasons, are not the subject of this Objection.

[2] In reality, the BNIL damages class functions more like money paid to athletes as a cut of the school's profit off of that athlete's individual sport rather than NIL value. Football players who never played a minute in a game or even suited up in the given year will still get a far larger share of money than even the highest profile female Additional Sports Class members. *See* Ex. A, Decl. of Andrew Zimbalist Regarding the Settlement in *House v. NCAA*.

settlement damage classes." Decl. of Daniel A. Rascher, ECF No. 450-4 ¶ 48. Thus, without any analysis, the proposed distribution of ASC is the same as BNIL with 75% to Football, 15% to Men's Basketball, 5% to Women's Basketball, and 5% to the Additional Sports Class. Under this category, some male athletes could be paid over $15,000 while most female athletes will likely earn only $125. Decl. of Daniel A. Rascher, ECF No. 450-4 ¶¶ 61, 81.

LEGAL STANDARD

Federal Rule of Civil Procedure 23(e) requires judicial review and approval of any class settlement. *See* Fed. R. Civ. P. 23(e) ("The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval.") In order to pass muster for final approval, a class action settlement must be "fair, reasonable, and adequate to all concerned." *Officers for Justice v. Civ. Serv. Comm'n of City & Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982) (citing Fed. R. Civ. P. 23(e)). To make this determination, courts consider several factors, including whether "the class representatives and class counsel have adequately represented the class" and whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2). Additionally, the court must evaluate whether the scope of the release may impact class members differently, which could influence the distribution of relief. *Grady v. RCM Techs., Inc.*, 671 F. Supp. 3d 1065, 1082 (C.D. Cal. 2023) (quoting Fed. R. Civ. P. 23(e)(2)(D) advisory committee's note to 2018 amendment).

ARGUMENT

I. The Suggested "But-For" BNIL And ASC Damages Are Fictitious And Would Not Have Been Possible Due To Title IX.

This Settlement suffers from a mistaken assumption that schools or conferences would have paid athletes of the same institution widely varying amounts of money in proportion to their

individual sport's market value contribution to the schools' media rights revenue.[3] Daniel Rascher, with reliance on information from Plaintiffs' media expert Ed Desser, determined the allocation of the Gross Settlement Fund. Notably, both Mr. Desser and Mr. Rascher acknowledge that they were not asked to consider the application of Title IX in their opinions. *See* Defs.' Joint Opp'n to Pls.' Motion for Class Certification, ECF. No 249 at 15-16 ("Neither Desser nor Rascher considered Title IX."); Videotaped Dep. of Edwin Desser, ECF No. 251-6 at 64:9–15 (Title IX considerations are not "within what [he] was assigned to work on"); Dep. of Daniel Rascher, ECF No. 251-7 at 111:19–21 (Rascher has not "tried to account for Title IX in any of [his] damages models in this case."). Had the Settlement applied Title IX, the damages to the athletes would have necessarily been compliant with federal anti-discrimination law and made in proportion by gender.

Put simply, Rascher's analysis based on market value is fundamentally flawed because the damages he valued are athletic benefits and/or financial aid under Title IX and thus not subject to a market value analysis. For an antitrust settlement paying out past "but-for" damages owed to students from their institution or conference, all other laws, including Title IX, must apply when calculating those claimed losses. Prior to reaching a settlement, the Conferences and NCAA wholeheartedly agreed. "The gaping disparity yielded by Plaintiffs' BNIL injury and damages formula violates Title IX—and does so in a way that cannot be solved." Defs.' Joint Opp'n to Pls.' Motion for Class Certification, ECF. No 249 at 16. Counsel for Plaintiffs have been equally circumspect, stating to the media, "We told the court well, we don't think Title IX applies because in our world, this is money that goes to the conferences. And then the conferences are allowing schools to pay it, so it's not directly from schools. Not sure that argument is now going to fly given

[3] Though this issue was addressed in cursory fashion in the Plaintiff's Motion for Class Certification and the Court's order granting that motion, the issue requires deeper analysis for Settlement approval as acknowledged by Plaintiffs' counsel. "[Title IX] is just another argument that goes to the ultimate merits and is totally unrelated to class certification." Pls.' Reply Mem. in Supp. of Mot. for Class Certification, ECF No. 598-3 at 18.

the structure." Kristi Dosh, *10 Things to Know About The NCAA's House Settlement*, FORBES (May 24, 2024, 6:07 PM), https://www.forbes.com/sites/kristidosh/2024/05/24/10-things-to-know-about-the-ncaas-house-settlement/ (quoting Plaintiffs' counsel, Steve Berman). For the following reasons, that argument, in fact, does not fly.

A. Title IX Applies to Any Financial Aid and Educational Benefits Provided by or on Behalf of an Institution That Receives Federal Funding.

The proposed settlement ignores Title IX's application to the but-for damages analysis. In antitrust litigation, the "but-for" framework is utilized to calculate the damages owed to members of a class based upon the earnings they would have made but-for the unlawful conduct of the Defendants. *Grant House v. Nat'l Collegiate athletic Ass'n,* 545 F. Supp 3d 804, 816 (N.D. Cal, 2021) ("A plaintiff can show that it was injured in fact by alleging that it was deprived of the opportunity to receive compensation it otherwise would have received but for the challenged conduct."); *see also ICTSI Oregon, Inc. v. Int'l Longshore and Warehouse Union,* No. 3:12-cv-1058-SI, 2022 WL 16924139, at *6 (D. Or. Nov. 14, 2022) ("The "but-for world" is necessary to calculate damages here and is not used in causation. The real world is required for causation and is the comparator against the "but-for-word" in calculating damages.").

Title IX provides that "[n]o person ... shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Title IX's implementing regulations mandate that schools provide equal opportunities for their athletes regardless of sex. 34 C.F.R. 106.41(c). Though the opportunities need not be identical, they must be generally proportionate to the gender composition of the student body. *See* 34 C.F.R. § 106.37(c); *Cohen v. Brown Univ.*, 1010 F.3d 155, 176 (1st Cir. 1996). Where a school provides financial assistance to its athletes, such assistance must be in proportion to the number of students of each sex participating in the institution's athletic programs. 34 C.F.R. § 106.37(c)(1). The federal

regulations governing Title IX's requirements for equal benefits, opportunities and financial assistance unambiguously prohibit disproportionate payments on the basis of sex:

> Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:
>
> (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
>
> AND
>
> (6) Aid or perpetuate discrimination against any person *by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees.*
>
> 34 C.F.R. § 106.31(b)(2), (6) (emphasis added).
>
> Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, *a recipient shall not*:
>
> (1) On the basis of sex, *provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria,* or otherwise discriminate;
>
> (2) Through solicitation, listing, approval, provision of facilities or other services, *assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex.*
>
> 34 C.F.R. § 106.37 (emphasis added).

The regulations require educational institutions receiving federal funds to provide members of both sexes equal athletic financial assistance and equal athletic opportunity. *Anders v. Cal. State Univ.*, No. 1:21-cv-00179, 2021 WL 3115867, at *3 (E.D. Cal. July 22, 2021). Courts have similarly held that Title IX's "equal treatment" standard requires "equivalence in the availability, quality and kinds of other athletic benefits and opportunities provided male and female athletes." *Mansourian*

v. Regents of Univ. of California, 602 F.3d 957, 964 (9th Cir. 2010).

Moreover, despite what Mr. Rascher's damages allocation suggests, there is no exception to Title IX for revenue-generating sports. Though there have long been attempts to carve out special treatment for football and men's basketball, those efforts have been repeatedly quashed. In 1974, Senator John Tower attempted an amendment to Title IX's implementing regulations to exempt "revenue producing sports." *Equity in Athletics, Inc. v. Dep't of Educ.*, 675 F. Supp. 2d 660, 664 (W.D. Va. 2009). The proposed amendment stated that Title IX "shall not apply to an intercollegiate athletic activity to the extent that such activity does or may provide gross receipts or donations to the institution necessary to support that activity." 120 Cong. Rec. 15,322 (1974). In other words, Senator Tower wanted revenue producing sports to be able to keep the money they produced for themselves. Congress flatly rejected both the Senator's first and second proposals and each died in committee. *Id.* In 1987 Congress spoke again, making clear that Title IX applies to all programs under a federal funding recipient, including athletics. *See* Civil Rights Restoration Act of 1987, Pub. L. No. 100-259 (102 Stat. 28). No existing case law or statute holds otherwise.

Here, the Settlement proposes that schools or conferences would have shared $1.815 billion from its media rights deals and distributed at least 90% of the money to male athletes and at least 5% of the remainder to female athletes without any consideration as to whether such a historical but-for payment would have been permissible under Title IX. Instead, the Settlement reflects an analysis that relies on the market value of the relative sports. But federal funding recipients are not private corporations, and behaviors that may be appropriate in a professional sports league are not permissible for federal funding recipients subject to federal civil rights laws. Whether described as benefits or financial aid, payment to athletes by or on behalf of schools must be proportionate to the number of athletes by gender at the institution in order to accurately calculate the damages athletes would have earned but for the Defendants' unlawful conduct.

The Department of Education recently agreed: "When a school provides athletic financial

assistance in forms other than scholarship or grants, including compensation for the use of a student athletes NIL, such assistance must also be made proportionally available to male and female athletes." U.S. Dep't of Educ. Off. For Civ. Rights, Fact Sheet: Ensuring Equal Opportunity Based on Sex in School Athletic Programs in the Context of Name, Image, and Likeness (NIL) Activities, (citing Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,415 (Dec. 11, 1979) ("When financial assistance is provided in forms other than grants, the distribution of non-grant assistance will also be compared to determine whether equivalent benefits are proportionately available to make and female athletes.")). Conversely, there is no authority to suggest that Title IX would not apply to these payments to the athletes.

B. The Settlement's "BNIL" and "ASC" Damages Violate Title IX Whether Payment Would Have Come from the Schools or the Conferences.

There can be no dispute that the ASC payments are school money paid by the schools directly to their athletes. As such, Title IX's application to those payments is unequivocal. With regard to BNIL, Plaintiffs' counsel asserts that those damages do not implicate Title IX because the money would have been paid by the conferences, despite the fact that conferences have never directly been involved with financial aid or benefits provided to athletes. This suggested "but-for world" has no credible basis. It is merely an attempt to avoid a Title IX roadblock to the settlement. Moreover, the BNIL damages implicate Title IX regardless of whether they would have been paid by the schools or the conferences because the conferences are also subject to Title IX here, both as indirect recipients of federal funding and through their exercise of controlling authority over their member institutions, who are recipients of federal funding. *See Barrs v. Se. Conf.*, 734 F. Supp. 2d 1229, 1234 (N.D. Ala. 2010). Thus, Mr. Rascher's declaration envisions a but-for world of vastly disproportionate damages to male and female athletes that can not pass muster under Title IX.

1. The Settlement's suggestion that conferences would have paid the institutions' athletes directly is an impermissible extension of the "but-for world."

As an initial matter, Mr. Rascher's conclusion that in a but-for world, conferences would have, for the first time ever, provided financial aid and educational benefits *directly* to the athletes at their member institutions exceeds the scope of the but-for analysis. See *ICTSI Oregon, Inc.*, 2022 WL 16924139, at *8 (citing Justine S. Hastings & Michael A. Williams, *What is a "But-for" World?,* 31 ANTITRUST 102, 102 (Fall 2016) ("[T]he but-for world differs from what actually happened *only with respect to the harmful act*, that is, the but-for world holds all other factors except one—the alleged conduct—the same in order to measure what [profits] would have been but for the alleged conduct.")) (emphasis added). "It requires consideration of actual real-world conditions during the entire damages period, with the only fantastical element being that the unlawful conduct did not occur." *Id. See also Litton Systems v. American Telephone and Telegraph Co.,* 700 F.2d 785, 822–23 (2d Cir. 1983); *Bonjorno v. Kaiser Aluminum & Chem. Corp.*, 752 F.2d 802, 812 (3d Cir. 1984) (highly speculative predictions of a but-for world are impermissible). The parties cannot create a fantasy but-for world that changes additional real-world conditions.

Conferences have stated in this litigation that they do not provide and have never provided benefits or financial aid to athletes. ECF 249 at 13. Joint Opposition to Plaintiff's Motion for Class Certification. ("[T]here is nothing to support such a payment model. Schools, not conferences, compete with each other in recruiting, and schools, not conferences, decide what amount of scholarship aid to give to individual students.") *Id*. Schools have always been the provider of educational and financial benefits to their athletes. Thus, this Settlement asks the Court to remove not only the unlawful restraint, but then to manufacture a "fantastical" damages model in which conferences, not schools, would provide aid and benefits for athletes. Such a proposal plainly violates permissible methodology for calculating "but-for" damages and disregards the fundamental and historical process for how schools provide benefits to students. Indeed, even the current operative Complaint filed after the Notice of Settlement blurs the line between conference and school BNIL money alleging that the class members: "On behalf of the previously certified Football

and Men's Basketball Class, as amended herein. Plaintiffs seek the compensation that class members would have received *from their schools or conferences* absent Defendants' unlawful restraints on pay-for-play compensation, a share of game telecast revenue and compensation that these class members would have received from their schools or conferences for their Broadcast NILs ("BNIL"). Third Amended Complaint, ECF No. 533-1 ¶ 9 (emphasis added). The assumption that conferences would have paid athletes for BNIL directly seems to serve little purpose other than to address a Title IX challenge to this settlement.

2. Even if conferences would have paid BNIL to athletes directly, those payments would still be governed by Title IX because the conferences are indirect recipients of federal funding that exercise controlling authority over their member institutions.

Title IX's prohibition against discrimination on the basis of sex applies to BNIL payments made by the conferences because they are indirect recipients of federal funding from their members institutions, and the schools have ceded controlling authority over their athletic programs to the conference. A federal funding recipient is defined as, "[A]ny State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is *extended directly or through another recipient* and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof." 34 C.F.R. § 106.2. Courts have found that athletic associations—including the Southeastern Conference (the "SEC"), a Defendant in this case—are subject to Title IX when they exercise controlling authority over federal funding recipients.[4] In *Barrs v. Southeastern Conference*, the

[4] Title IX's application to the conferences (and even the NCAA) is not foreclosed by *NCAA v. Smith*, which found that membership dues were insufficient to establish federal funding under Title IX, but expressly declined to consider the arguments that the schools had ceded controlling authority over federally funded programs to the NCAA, or the NCAA indirectly or directly received federal funding because they were not raised in the trial court. 525 U.S. 459, 461 (1999).

court held that the plaintiffs had plausibly stated a Title IX claim against the SEC where the conference was alleged to have ceded control over portions of the schools' athletic programs. 734 F. Supp. 2d at 1234; *see also A.B. by C.B. v. Haw. State Dep't of Educ.*, 386 F. Supp. 3d 1352, 1357-58 (D. Haw. 2019) (collecting cases recognizing the controlling authority rule).

Where, as is the case here, the conferences control institutions' rulemaking, tournament schedules, publicity, promotion and, (as proposed) even distribution of financial benefits to a school's athletes, the conferences invariably exercise controlling authority over school programs and are subject to Title IX's anti-discrimination mandate. *See A.B. by C.B.*, 386 F. Supp. 3d at 1358; *see also Williams v. Bd. of Regents of Univ. Sys. of Georgia,* 477 F.3d 1282, 1294 (11th Cir. 2007). Notably, in the context of BNIL payments, a conference could not permissibly distribute broadcasting revenue from its media rights deal—money that ordinarily passes to the schools—directly to the conference's athletes without authorization from its member institutions. *See, e.g.*, Southeastern Conference Constitution & Bylaws (2024) (requiring a vote by the institutions to amend the breakdown on the allocation of media rights revenue to schools). Thus, the result of the parties' suggestion that conferences would have paid BNIL to the class members is simply a shift of controlling authority over athletic payments from the schools to the conferences, thereby implicating the conferences under Title IX.

Title IX cannot be avoided by a mere accounting exercise. Passing the checkbook, and the money, from the institution to the institution-controlled conference does not change Title IX's equity obligation to athletes. *Williams*, 477 F.3d at 1294 (11th Cir. 2007) ("We are persuaded . . . by the analysis of the Western District of Michigan, noting that if we allowed funding recipients to cede control over their programs to indirect funding recipients but did not hold indirect funding recipients liable for Title IX violations, we would allow funding recipients to receive federal funds but avoid Title IX liability."). Moreover, where federal funding recipients acquiesce to a funding system that results in inequitable distribution of benefits, they too are individually liable. *Daniels v. School*

Board of Brevard County, 985 F. Supp. 1458, 1462 (M.D. Fla. 1997) ("This funding system is one to which the Defendant has acquiesced; Defendant is responsible for the consequences of that approach."). The Conferences agree: "There is no basis to ignore Title IX requirements, gender equity considerations, or multiple state laws which outright prohibit conferences (and institutions) from making BNIL payments to student-athletes." Defs.' Joint Opp'n to Pls.' Mot. for Class Certification, ECF No. 249 at 24.

Accordingly, this Court must reject the Settlement because the proposed damages for BNIL and ASC—which combined total approximately $2.415 of the Settlement's past damages—could never have been distributed so grossly and inequitably to male and female athletes in violation of Title IX.

II. The Title IX Release Language Is Unfair To Female Athletes As Legitimate Title IX Claims Exist.

At the preliminary approval hearing, this Court expressed concerns regarding a lack of clarity around whether class members are waiving Title IX claims and asked the parties to address those concerns. The parties essentially responded that Title IX is not affected by the Settlement or its releases. Plaintiffs' counsel assured the Court that there were no Title IX implications:

With respect to Title IX, there is no disagreement about this and it has to do with the release language. The release language is of NCAA rules. NCAA rules cannot be a Title IX violation. What could be a Title IX violation is the decisions by individual schools as to how or not they pay out future benefits or money so there's nothing that releases that at all in the agreement at all. There is no release of any individual school conduct for anything in the current releases or settlement agreement. *So, Title IX is completely preserved.*

Tr. of Videoconference Proceedings at 31:8-17 (Sept. 5, 2024) (emphasis added). But the NCAA had a less assuring response:

I'm not sure I agree with it precisely as Mr. Kessler put it. There are release provisions that apply to individual institutions for the claims that we discussed. But if the question is as relates to *future* Title IX liability, that's not something we are releasing through the settlement.

Tr. of Videoconference Proceedings at 33:25-34:5 (Sept. 5, 2024) (emphasis added).

Following the hearing, the parties submitted a revised motion for settlement approval as well as an amended Settlement Agreement. The revised Settlement Agreement only somewhat clarified the claims released. That language now reads that "Unreleased Claims" include "Claims under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., *other than any claims arising out of or relating to the distribution of the Gross Settlement Fund*." (emphasis added). Am. Stipulation and Settlement Agreement, ECF No. 535-1 at 15. That means claims contesting the distribution of the settlement fund must be waived by anyone participating in the settlement. It is worth noting that Title IX—the claim that is allegedly "completely preserved"—is the only claim in the entire Settlement that includes this extra release language.

Regardless, such a release is inappropriate here given the rather large Title IX problems in the damages assessment discussed above. And if Title IX is truly not being implicated as represented, then the parties should have no concern about removing that extraneous language.

III. Releasing All Institutions From Liability Is Unfair, Unreasonable, And Inadequate As Legitimate Title IX Claims Exist Against Them.

Though not parties to the litigation, the Settlement improperly releases all 365 Division I institutions from any claims that could have been brought in the litigation along with *any claims arising out of or relating to the distribution of the Gross Settlement Fund*. Whether or not such a release of non-parties is permissible in the Ninth Circuit is contingent upon whether the claims against a third party arise from the same operative facts and theories at issue in the litigation. *In re Stable Rd. Acquisition Corp.*, No. 2:21-CV-5744-JFW(SHKX), 2024 WL 3643393, at *3 (C.D. Cal. Apr. 23, 2024.). However, here, the facts and theories of liability carry a significant distinction.

As stated above, the money payments that constitute the but-for damages are school money merely withheld from its normal distribution to the conferences. And though conferences may dispute whether Title IX applies to them, there is no question that it applies to the schools that directly receive significant federal funding. As such, legitimate related antitrust and Title IX claims may exist against the non-party schools for their part in both the antitrust scheme as well as this discriminatory damage analysis and distribution of the gross settlement fund. Accordingly, Title IX claims against the non-party schools must be preserved.

IV. Opting Out Is Not A Viable Alternative Given The Age Of This Case And The Relevant Statutes Of Limitations.

For many class members, this litigation may be their only opportunity to recover their proportionate share of past NIL damages. The Plaintiffs themselves have recognized that there is historical discrimination against women that is reflected in their disproportionately low damages as calculated in this settlement. Plaintiffs' counsel acknowledged as much and suggested that claims regarding the inherent discrimination against women in collegiate sports might be brought in another forum: "I'm deeply sympathetic to sex discrimination claims. That's not what our damages address. That's not what our antitrust claims address. It is not an antitrust violation to engage in sex discrimination. It may violate Title IX or some other discrimination law, none of which are released. And so, if there are damages claims for that, they should be asserted by someone in some other forum." Tr. of Videoconference Proceedings at 36:17-24 (Sept. 5, 2024).

However, at this late date, only the class members who competed in the most recent years of the classes may be able to bring claims. Though the filing of this matter is likely to toll antitrust claims similar to the ones brought here, that is likely not the case for Title IX claims. *See Centaur Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp.,* 878 F. Supp. 2d 1009, 1014 (C.D. Cal. 2011) (where a class member relies on the filing of a class action to vindicate their rights, the statute of limitations may be tolled for separate filing of the same claims). Since Title IX does

not have its own statute of limitations, it instead borrows a state's most applicable statute, and most states apply a two- or three-year statute of limitations. *See, e.g., Kane v. Mount Pleasant Cent. Sch. Dist.*, 80 F.4th 101 (2023) (applying New York's three-year statute of limitations for non-specified personal injury claims to claims brought under Title IX), *Ploeger v. Tr. of Univ. of Pa.*, 653 F.Supp.3d 188, 199 ("Under Pennsylvania law, Title IX claims are governed by a two-year statute of limitations."), *Graham v. City of Manassas Sch. Bd.*, 390 F.Supp.3d 702 (E.D. Va. 2019) (applying Virginia's two-year statute of limitations period for personal injury actions to Title IX claims). Many female class members who may have relied on the filing of this lawsuit to vindicate their claims, who will only now find out that their damages are being deeply discounted based upon discriminatory factors, will be out of time. Since their claims to address these deficient damages are based on Title IX, their statute of limitations has likely run.

CONCLUSION

The parties ask this Court to approve a Settlement where over 90% of the damages will go to men's athletes in a manner that is unfair, inadequate, and unreasonable. For the BNIL and ASC damages in particular, that damages allocation plainly ignores that schools and conferences could never have paid male and female athletes in disproportionate amounts without violating Title IX. Accordingly, on behalf of themselves and all other female athletes given short shrift under this Settlement, Objectors ask this Court to reject the Settlement.

Dated January 31, 2025

By: */s/ John Clune*
John Clune (Pending Pro Hac Vice)
Ashlyn L. Hare (Pending Pro Hac Vice)
HUTCHINSON BLACK AND COOK
912 Walnut Street, Ste. 200
Boulder, CO 80302
Email: john.clune@hbcboulder.com
Ashlyn.hare@hbcboulder.com
Telephone: (303) 442-6514

Rebecca Peterson-Fisher (SBN 255359)
KATZ BANKS KUMIN LLP
235 Montgomery St., Ste. 665
San Francisco, CA 94104
Email: peterson-fisher@katzbanks.com
Telephone: (415) 813-3271

Counsel for Objectors

FILER'S ATTESTATION

I, John Clune, am the ECF user whose identification and password are being used to file **OBJECTION TO AMENDED SETTLEMENT AGREEMENT AND OPPOSITION TO FINAL SETTLEMENT APPROVAL BASED ON FAILURE TO APPLY TITLE IX AND REQUEST TO SPEAK AT APPROVAL HEARING.** In compliance with Local Rule 5-1(h)(3), I hereby attest that all signatories hereto concur in this filing.

By: */s/ John Clune*
John Clune

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

Fact Sheet: Ensuring Equal Opportunity Based on Sex in School Athletic Programs in the Context of Name, Image, and Likeness (NIL) Activities

Title IX of the Education Amendments of 1972[1] (Title IX) prohibits discrimination on the basis of sex by schools that receive Federal financial assistance, including K-12 schools, colleges, and universities.[2] If a school receives Federal financial assistance, Title IX's prohibition on sex discrimination extends to all of the school's programs and activities, including its athletic program.

The U.S. Department of Education's Office for Civil Rights (OCR) enforces Title IX and its implementing regulations, which require that schools receiving Federal financial assistance provide equal athletic opportunities based on sex—including with respect to publicity, support services, and other benefits, opportunities, and treatment—and that schools not discriminate in the provision of athletic financial assistance.[3] As the types of benefits provided to student-athletes continue to evolve, including in the context of Name, Image, and Likeness (NIL) activities, schools may have questions regarding how NIL activities impact the provision of equal opportunities in their athletic programs.

OCR provides this Fact Sheet to clarify how OCR will evaluate equal opportunity in a school's athletic program under Title IX when student-athletes receive NIL-related compensation and benefits.[4]

Part One of this Fact Sheet describes the Title IX requirements to provide equal athletic opportunity based on sex. Part Two provides a brief background on NIL agreements. Part Three clarifies that Title IX's requirement that a school provide equivalent benefits, opportunities, and treatment in the components of the school's athletic program covers any benefits, opportunities, and treatment that a school provides related to NIL activities (particularly publicity and support services). Part Four explains that compensation from a school for use of a student-athlete's NIL

[1] 20 U.S.C. § 1681 *et seq.*
[2] Throughout this Fact Sheet, "school" is used generally to refer to elementary, secondary, and postsecondary educational institutions that are recipients of Federal financial assistance. This Fact Sheet uses the term "third party" to refer to an outside organization or individual, which includes a Name, Image, and Likeness (NIL) collective.
[3] 34 C.F.R. §§ 106.41(c) and 106.37(c). *See also* U.S. Dep't of Health, Educ., and Welfare, Office for Civil Rights, A Policy Interpretation: Title IX and Intercollegiate Athletics (1979 Policy Interpretation), 44 Fed. Reg. 71,413 (Dec. 11, 1979), https://tile.loc.gov/storage-services/service/ll/fedreg/fr044/fr044239/fr044239.pdf.
[4] The general principles of this Fact Sheet apply to both intercollegiate athletics and interscholastic athletics, although NIL activities less frequently involve K-12 schools. The general principles also apply regardless of what athletic association a school is a member of (e.g., National Collegiate Athletic Association (NCAA), National Association of Intercollegiate Athletics (NAIA), National Junior College Athletic Association (NJCAA), a state high school athletic association).

The Department's Title IX regulations assume that the receipt of financial assistance does not transform students, including student-athletes, into employees. *Compare* 34 C.F.R. § 106.37 (requirements regarding financial assistance for students), *with* 34 C.F.R. §§ 106.51-61 (requirements regarding employment). The analysis offered in this Fact Sheet operates under that same assumption. If the legal landscape around this issue changes, OCR would reevaluate this position.

qualifies as athletic financial assistance which, under Title IX, must be made available to male and female student-athletes in a manner that is substantially proportionate to the number of students of each sex participating in interscholastic or intercollegiate athletics at that school. Finally, Part Five addresses NIL agreements between student-athletes and third parties.

OCR evaluates each matter on a case-by-case basis with due regard for the unique facts presented by each case.

1. Title IX and athletic opportunities in school athletic programs

The Title IX regulations require schools to provide equal athletic opportunity, regardless of sex.[5] Equal opportunity in athletic programs is assessed in three main areas[6]:

1. The benefits, opportunities, and treatment given to male and female athletic teams;
2. The athletic financial assistance, including athletic scholarships, that a school awards to student-athletes; and
3. A school's accommodation of the athletic interests and abilities of its students.

Benefits, opportunities, and treatment

The Title IX regulations require a school that operates an athletic program to offer equal athletic opportunity regardless of sex.[7] OCR compares the availability, quality, and kinds of benefits, opportunities, and treatment afforded to male and female student-athletes in the major components of a school's athletic program (e.g., equipment and supplies, facilities, schedules, travel and per diem allowances, housing and dining facilities and services, publicity, and recruitment) in determining whether the school is providing equal athletic opportunities.[8] If the compared program components are equivalent (i.e., equal or equal in effect), OCR considers a school to be in compliance with Title IX.[9] Under this standard, identical benefits, opportunities, or treatment are not required to show that program components are equivalent, as long as the overall effect of any differences is negligible.[10] Even if the benefits, opportunities, and treatment in the components of a school's athletic program are not equivalent in availability, quality, or kind, the school may nevertheless be in compliance with Title IX if the differences are the result

[5] 34 C.F.R. §§ 106.41(c) and 106.37(c).
[6] *See* 1979 Policy Interpretation, 44 Fed. Reg. at 71414.
[7] 34 C.F.R. § 106.41(c).
[8] *See* 1979 Policy Interpretation, 44 Fed. Reg. at 71,415 ("The Department will assess compliance with both the recruitment and the general athletic program requirements of the regulation by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes."); *see also, e.g., Parker v. Franklin Cty. Cmty. Sch. Corp.*, 667 F.3d 910, 918 (7th Cir. 2012) (deferring to the 1979 Policy Interpretation and stating that the Department assesses compliance "by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes" (quoting 1979 Policy Interpretation, 44 Fed. Reg. at 71,415)); *McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 291-92 (2d Cir. 2004) (stating that the 1979 Policy Interpretation governs the court's inquiry and that the Department assesses compliance with "the general athletic program requirements of the regulation by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes" (quoting 1979 Policy Interpretation, 44 Fed. Reg. at 71,415)).
[9] 1979 Policy Interpretation, 44 Fed. Reg. at 71,415.
[10] *Id.*

of nondiscriminatory factors.[11] Under such circumstances, OCR would still investigate whether any disparity in the benefits, opportunities, or treatment in the school's athletic program—that is not the result of nondiscriminatory factors—is substantial enough in and of itself to result in the denial of equal athletic opportunities with respect to individual program components or the athletic program as a whole.[12]

For example, at one school, the men's teams collectively play significantly more games on Friday nights and Saturdays than the women's teams. These times are considered primetime because attendance is higher, and the school has not offered a nondiscriminatory justification for the scheduling of games in this manner. OCR may find that the school is not providing equal athletic opportunity to members of the men's and women's teams with respect to scheduling games, as required by 34 C.F.R. § 106.41(c)(3).

At another school, there are multiple locker rooms for the men's athletic teams while there is only one locker room for the women's athletic teams. The location of the women's locker room is further away from their practice and competition facilities than the location of the men's locker rooms. The women's soccer, field hockey, and lacrosse teams share a practice field, while each men's team uses a practice field designated for each sport. The school has not offered a nondiscriminatory justification for the provision of locker rooms and practice facilities in this manner. OCR may find that the school is not providing equal athletic opportunity to members of the men's and women's athletic teams with respect to provision of locker rooms, practice facilities, and competitive facilities, as required by 34 C.F.R. § 106.41(c)(7).

The application of Title IX's requirements regarding equal athletic opportunity in the components of a school's athletic program to the NIL context is discussed in Part Three.

Athletic financial assistance

If a school awards athletic financial assistance, the Title IX regulations require the school to "provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics."[13] The

[11] For example, OCR has recognized that certain aspects of athletic programs may not be equivalent based on sex because of unique factors related to the operation of particular sports, such as the nature/replacement of equipment and the nature/maintenance of facilities required for competition. If a school is meeting sport-specific needs equivalently in the men's and women's programs, OCR will likely find the differences in particular program components to be justifiable. OCR has also recognized that, in certain circumstances, the operation of a competitive event may give rise to special demands or imbalances in particular program components, due to the costs and support needed to manage events with large crowds (historically associated with football and men's basketball). As long as any special demands are met to an equivalent degree for both men's and women's teams, OCR may find these differences to be nondiscriminatory. Under Title IX, the school must use sex-neutral criteria to determine the levels of event management support and must not limit the potential for women's athletic events to rise in spectator appeal. *See* 1979 Policy Interpretation, 44 Fed. Reg. at 71,415-16.

[12] *See id.* at 71,417 (stating that OCR considers, in part, "[w]hether disparities of a substantial and unjustified nature exist in the benefits, treatment, services, or opportunities afforded male and female athletes in the institution's program as a whole" and "[w]hether disparities in benefits, treatment, services, or opportunities in individual segments of the program are substantial enough in and of themselves to deny equality of athletic opportunity").

[13] 34 C.F.R. § 106.37(c).

regulations do not require the same number of awards for male and female student-athletes or that individual awards be of equal value.

When evaluating a school's compliance with the Title IX regulations, OCR assesses whether the total amount of athletic financial assistance made available by the school to men and women is substantially proportionate to the number of students of each sex participating in interscholastic or intercollegiate athletics at that school.[14] OCR may find a school to be in compliance with Title IX if a disparity may be explained by legitimate nondiscriminatory factors, such as actions taken to promote athletic program development, legitimate efforts undertaken to comply with Title IX requirements, and unexpected fluctuations in the participation rates of males and females.[15] In assessing compliance with 34 C.F.R. § 106.37(c), OCR includes the amount of all compensation and other financial assistance provided by a school to its student-athletes when calculating the total amount of athletic financial assistance made available to men and women at a school.

Part Four of this Fact Sheet addresses how Title IX's athletic financial assistance requirements apply to compensation and other financial assistance that a school provides for use of a student-athlete's NIL.

Meeting students' athletic interests and abilities

In determining whether equal opportunities in an athletic program are available, the Title IX regulations also require a school that operates an athletic program to effectively accommodate the athletic interests and abilities of its male and female students. This Title IX athletics requirement is not discussed in this Fact Sheet.[16]

2. NIL agreements in school athletic programs

An NIL agreement is a contract that allows a student-athlete to control the use of their NIL and receive compensation for it.[17] NIL collectives are organizations typically created by booster clubs, fans, alumni, and/or businesses to develop, fund, and facilitate NIL opportunities for student-athletes.[18] Until recently, student-athletes were prohibited from receiving any compensation based on their athletic ability, including "from boosters, companies seeking endorsements, or would-be licensors of the athlete's name, image, and likeness."[19] Following several court decisions striking down limitations on NIL activities and other compensation for student-athletes,[20] the NIL landscape has continued to evolve. States, schools, and athletic

[14] *See id.*; *see also* 1979 Policy Interpretation, 44 Fed. Reg. at 71,415.
[15] *See* 1979 Policy Interpretation, 44 Fed. Reg. at 71,415.
[16] For information on the three-part test that OCR uses to determine whether a school is effectively accommodating the interests and abilities of its male and female students, please see 1979 Policy Interpretation, 44 Fed. Reg. at 71,417-18.
[17] *See O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049 (9th Cir. 2015).
[18] *See Tennessee v. Nat'l Collegiate Athletic Ass'n*, 718 F. Supp. 3d 756, 759-60 (E.D. Tenn. 2024); Internal Revenue Service, Whether Operation of an NIL Collective Furthers an Exempt Purpose Under Section 501(c)(3) (June 9, 2023), https://www.irs.gov/pub/lanoa/am-2023-004-508v.pdf.
[19] *O'Bannon*, 802 F.3d at 1055.
[20] *See, e.g., O'Bannon*, 802 F.3d at 1078-79 (holding that the NCAA must permit its member schools to award grants-in-aid up to the full cost of attendance to their student-athletes); *Nat'l Collegiate Athletic Ass'n v. Alston*, 594

associations have responded to the increased interest in NIL activities by enacting laws or policies, which regulate NIL activities involving student-athletes.[21] As student-athletes take advantage of new opportunities to benefit from their NIL, it is important for schools to understand how Title IX may apply to these benefits.

3. Benefits, opportunities, and treatment provided by a school to assist its student-athletes in obtaining and managing NIL agreements (with schools or third parties)

Schools remain responsible for ensuring that they are offering equal athletic opportunities in their athletic programs, including in the NIL context. A school may violate Title IX if the school

---

U.S. 69 (2021) (upholding a permanent injunction barring the NCAA from limiting education-related compensation or benefits that member conferences or schools could provide to student-athletes); *Tennessee v. Nat'l Collegiate Athletic Ass'n*, 718 F. Supp. 3d at 766 (issuing a preliminary injunction enjoining the NCAA "from enforcing the NCAA Interim NIL Policy, the NCAA Bylaws, or any other authority to the extent such authority prohibits student-athletes from negotiating compensation for NIL with any third-party entity").

[21] *See, e.g.*, Ark. Code Ann. § 4-75-13 (2021) (student-athletes have the right to enter into a contract and receive compensation for the commercial use of the student-athlete's publicity rights); Fla. Stat. § 1006.74 (2020) (an intercollegiate athlete may earn compensation for the commercial use of their name, image, or likeness commensurate with market value, but such compensation may not be provided in exchange for athletic performance or attendance at a particular postsecondary institution and may only be provided by a third party unaffiliated with the student-athlete's postsecondary institution); Ill. Comp. Stat. act no. 190. sec. no. 110 (2021) (student-athletes have the right to earn compensation commensurate with market value for the use of their name, image, likeness, or voice while enrolled in a postsecondary institution, student-athletes may not earn compensation in exchange for their athletic ability or participation in intercollegiate athletics or sports competition or willingness to attend a postsecondary institution); Tenn. Code Ann. § 49-7-2802(a) (2024) (an intercollegiate athlete may earn compensation and perform diligence for the use of their name, image, and likeness, a postsecondary institution and its affiliated foundations shall not compensate an intercollegiate athlete for their name, image, or likeness unless expressly permitted by Federal law, a court order, or the postsecondary institution's athletic association); NCAA, *DI Council approves NIL reforms, permits school assistance with NIL activity* (Apr. 17, 2024), https://www.ncaa.org/news/2024/4/17/media-center-di-council-approves-nil-reforms-permits-school-assistance-with-nil-activity.aspx (adopting a proposal that allows Division I schools to assist in NIL activities for student-athletes, including identifying NIL opportunities and facilitating deals between student-athletes and third parties); NJCAA Handbook – Bylaws, at Article V, Section 4, D.3.c.i, https://d2o2figo6ddd0g.cloudfront.net/0/q/spevi1jotzaysv/NJCAA_Handbook_-_Bylaws_08-05-24.pdf (member institutions may allow student-athletes to receive NIL compensation, as long as it complies with applicable law and there is an exchange of good or services—but representatives of the institution cannot directly pay the athletes, and the NIL compensation cannot be contingent upon enrollment or based on athletic performance); NAIA, *Name, Image, and Likeness (NIL) Tips & Best Practices*, https://www.naia.org/name-image-likeness/archive-legislative/NIL-FAQ-Document.pdf (student-athletes have the right to profit off their NIL and must report any NIL compensation to their athletic director; an NIL agreement must contain a quid pro quo; institutions have the right to restrict NIL agreements that they view as a conflict of interest with their mission or current sponsorship agreements); California Interscholastic Federation Article 20 Rule 212 (a student-athlete may participate in a commercial endorsement, but may not wear a school team uniform or any identifying school insignia while appearing in any advertisement, promotional activity, or endorsement for any commercial product or service and may not lend their name and team affiliation for purposes of commercial endorsement); Colorado High School Athletics Association (CHSAA) 200.12 (student-athletes are permitted to monetize their name, image, and likeness so long as there is no affiliation with a CHSAA member school); Florida High School Athletic Association (FHSAA) Rule 9.9 (student-athletes may profit from the use of their name, image, and likeness provided they comply with FHSAA Bylaw 9.9, permissible activities include commercial endorsements, promotional activities, social media presence, product, or service endorsements, student-athletes are prohibited from monetizing their name, image, and likeness with the use of their school's uniform, equipment, logo, name, proprietary patents, products, and/or copyrights associated with an FHSAA member school, unless granted authorization by the school).

fails to provide equivalent benefits, opportunities, and treatment in the components of the school's athletic program that relate to NIL activities. Thus, schools must be mindful of their Title IX obligations regarding the components of their athletic programs as they navigate the NIL landscape. These obligations apply regardless of whether student-athletes ultimately secure NIL benefits through their school or with third parties.

Publicity

In determining whether a school is complying with Title IX as to the program component of publicity, OCR examines, among other factors, the equivalence for male and female student-athletes of: (1) the availability and quality of sports information personnel; (2) access to other publicity resources for men's and women's teams; and (3) the quantity and quality of promotional devices that feature the men's and women's teams.[22] This examination may include consideration of the coverage for men's and women's teams and student-athletes on a school's website, in its social media postings, and in its publicity materials (e.g., posters, press guides, recruitment brochures, game programs, pocket schedules). OCR considers the school's efforts to provide equivalent publicity to its men's and women's athletic teams, recognizing that television, newspapers, and other forms of media may not be equally responsive to the school's efforts to provide equivalent publicity.

Even if publicity is not equivalent based on sex, a school may comply with Title IX if the differences are the result of nondiscriminatory factors. For example, the unique circumstances of a particular student-athlete (e.g., a prospective Olympic athlete), team (e.g., the reigning state/national champion), or competitive event (e.g., a national competition) may cause unique demands or imbalances related to publicity.

A school's obligation to provide equivalent publicity based on sex continues to apply in the context of NIL. For example, if a school is not providing equivalent coverage for women's teams and student-athletes on its website, in its social media postings, or in its publicity materials, these student-athletes may be less likely to attract and secure NIL opportunities. In addition, if a school is publicizing student-athletes for the purposes of obtaining NIL opportunities, OCR would examine whether the school is providing equivalent publicity for male and female student-athletes (including by examining the quantity and quality of publications and other promotional devices that feature the men's and women's athletic teams).

Support Services

Some schools offer support services to assist their student-athletes in securing NIL opportunities. Title IX's requirement that schools provide equal athletic opportunity based on sex includes any support services that a school provides to its student-athletes.[23] In determining whether a school is complying with Title IX as to support services, OCR examines, among other factors, the equivalence of the amount of administrative assistance provided to the men's and women's teams.[24]

[22] 34 C.F.R. § 106.41(c); 1979 Policy Interpretation, 44 Fed. Reg. at 71,417.
[23] *See* 34 C.F.R. § 106.41(c); 1979 Policy Interpretation, 44 Fed. Reg. at 71,417.
[24] *See* 1979 Policy Interpretation, 44 Fed. Reg. at 71,417.

A school's obligation to provide equivalent support services continues to apply in the context of NIL activities, including any services that schools provide to assist student-athletes in securing or managing NIL opportunities.[25] For example, if a school provides training sessions to its student-athletes on brand building, finances, reporting, entrepreneurship, or similar topics, OCR would examine whether the school is providing this training equally to men's and women's teams. Likewise, if athletics department employees assist the school's student-athletes by obtaining and negotiating NIL agreements, OCR would examine whether the school is providing this assistance equally to student-athletes on men's and women's teams.

4. NIL agreements between schools and their student-athletes as a form of athletic financial assistance

As part of determining whether a school is providing equal athletic opportunity, OCR considers the total amount of athletic financial assistance made available by the school. Compensation provided by a school for the use of a student-athlete's NIL constitutes athletic financial assistance under Title IX because athletic financial assistance includes any financial assistance and other aid provided by the school to a student-athlete that is connected to a student's athletic participation; it is not limited to scholarships or grants.[26] Thus, the various forms of financial assistance that could be provided by a school to student-athletes include, but are not limited to, scholarships, cost-of-attendance awards, other types of compensation and financial assistance permitted to be provided by schools following a federal court injunction,[27] and compensation

[25] *See id.* (stating that OCR will consider, in part, "[w]hether disparities of a substantial and unjustified nature exist in the benefits, treatment, services, or opportunities afforded male and female athletes in the institution's program as a whole" and "[w]hether disparities in benefits, treatment, services, or opportunities in individual segments of the program are substantial enough in and of themselves to deny equality of athletic opportunity").

[26] *See* 1979 Policy Interpretation, 44 Fed. Reg. at 71,415 (noting that athletic financial assistance also includes work-related aid and loans); Letter from Catherine E. Lhamon to Marcia D. Greenberger and Deborah Slaner Larkin (Nov. 15, 2015) (stating that cost-of-attendance awards constitute athletic financial assistance under Title IX and noting that athletic financial assistance also includes exhausted eligibility awards and summer aid), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/correspondence/stakeholders/20151112-cost-attendance-ath-scholarships.pdf. This approach is also consistent with postsecondary schools' reporting obligations under the Equity in Athletics Disclosure Act (EADA), 20 U.S.C. § 1092(e). Separate from Title IX, the EADA requires postsecondary institutions to report the amount of athletically related student aid provided to men's, women's, and coed teams. *See also* 34 C.F.R. § 668.47. The User's Guide for the EADA Data Collection explains that "athletically related student aid is any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at an institution." U.S. Dep't of Educ., Office of Postsecondary Educ., User's Guide for the Equity in Athletic Disclosure Act Web-Based Data Collection at 53 (Sept. 2023), https://surveys.ope.ed.gov/athletics2023/wwwroot/documents/2023_EADA_Users_Guide.pdf.

[27] The *NCAA v. Alston* case involved a challenge to the NCAA's restrictions on providing college athletes participating in Division I women's and men's basketball and Football Bowl Subdivision football with non-cash compensation for academic-related purposes. The court ruled that these restrictions violated antitrust law and issued a permanent injunction. *See In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litigation*, No. 14-md-02541, 2019 WL 1593939, at *1 (N.D. Cal. Mar. 8, 2019). Per the injunction, the NCAA can limit cash or cash equivalent payments to student-athletes for academic achievements (e.g., graduating or maintaining a specific GPA) so long as the limit is not lower than the total amount a student-athlete can earn in athletics participation awards. The NCAA cannot limit education-related benefits to student-athletes, including computers, science equipment, musical instruments, and other items not currently included in the cost of attendance but related to the pursuit of a student's educational studies, as well as post-eligibility scholarships for undergraduate, graduate, and

from schools for use of a student-athlete's NIL.[28] When a school provides athletic financial assistance in forms other than scholarships or grants, including compensation for the use of a student-athlete's NIL, such assistance also must be made proportionately available to male and female athletes.[29]

5. NIL agreements between student-athletes and third parties

As discussed in Part Four, compensation provided by a school for the use of a student-athlete's NIL constitutes athletic financial assistance under Title IX. By contrast, OCR does not view compensation provided by a third party (rather than a school) to a student-athlete for use of their NIL as constituting athletic financial assistance awarded by the school that must comply with 34 C.F.R. § 106.37(c).

However, OCR has long recognized that a school has Title IX obligations when funding from private sources, including private donations and funds raised by booster clubs, creates disparities based on sex in a school's athletic program or a program component.[30] The fact that funds are provided by a private source does not relieve a school of its responsibility to treat all of its student-athletes in a nondiscriminatory manner.[31] It is possible that NIL agreements between student-athletes and third parties will create similar disparities and therefore trigger a school's Title IX obligations. Because these NIL agreements vary widely and continue to evolve and because the application of Title IX's equal athletic opportunity requirements is a fact-specific inquiry, this Fact Sheet does not offer specific guidance on Title IX's application in the context of compensation provided for the use of a student athlete's NIL by a third party, including an NIL collective.

---

vocational programs at any school, tutoring, study-abroad expenses, and paid post-eligibility internships. The Supreme Court clarified that the NCAA could establish rules and criteria for these benefits, e.g., a "no Lamborghini rule." *Alston*, 594 U.S. at 106.

[28] This refers to compensation from NIL agreements between a school and a student-athlete and does not include payments from NIL agreements between a third party and a student-athlete. See Part Five in this Fact Sheet for information regarding how Title IX applies to NIL agreements between a third party and a student-athlete.

[29] 34 C.F.R. § 106.37(c); 1979 Policy Interpretation, 44 Fed. Reg. at 71,415 ("When financial assistance is provided in forms other than grants, the distribution of non-grant assistance will also be compared to determine whether equivalent benefits are proportionately available to male and female athletes.").

[30] *See, e.g.*, OCR's Letter to Chief State School Officers, Title IX Obligations in Athletics (1975), https://www.ed.gov/about/offices/list/ocr/docs/holmes ("[T]he fact that a particular segment of an athletic program is supported by funds received from various other sources (such as student fees, general revenues, gate receipts, alumni donations, booster clubs, and non-profit foundations) does not remove it from the reach of the statute and hence of the regulatory requirements.").

[31] *See Chalenor v. Univ. of N.D.*, 291 F.3d 1042, 1048 (8th Cir. 2002) ("[A] public university cannot avoid its legal obligations by substituting funds from private sources for funds from tax revenues."); *Cohen v. Brown Univ.*, 809 F. Supp. 978, 996 (D.R.I. 1992) ("[A]ll monies spent by Brown's Athletic Department, whether originating from university coffers or from the Sports Foundation, must be evaluated as a whole under § 106.41(c). Thus, Title IX covers all Sports Foundation funds allocated to Brown athletics. This position is consistent with the Investigator's Manual, which warns that where 'booster clubs' or other fundraising organizations help only members of one sex, the university must balance out these differences." (citing U.S. Dep't of Educ., Office for Civil Rights, Title IX Athletics Investigator's Manual (1990))); *Daniels v. Sch. Bd. of Brevard Cnty.*, 985 F. Supp. 1458, 1462 (M.D. Fla. 1997) (rejecting school district's argument that it cannot be held responsible for unequal booster club fundraising and holding that "[i]t is the Defendant's responsibility to ensure equal athletic opportunities, in accordance with Title IX").

* * *

For more information on benefits, opportunities, and treatment in a school's athletic program, you may find it helpful to review OCR's resources on Supporting Equal Opportunity in School Athletic Programs, Title IX and Athletic Opportunities in K-12 Schools, and Title IX and Athletic Opportunities in Colleges and Universities.

Anyone who believes that a school has engaged in discrimination may file a complaint with OCR. Information about filing a complaint is available on OCR's website at How to File a Discrimination Complaint with the Office for Civil Rights. Information about OCR's process for evaluating, investigating, and resolving complaints is available at How the Office for Civil Rights Handles Complaints.

To request language access services or resources, which may include oral technical assistance or written translation of Department information, free of charge, contact OCR@ed.gov. If you need more information about interpretation or translation services, call 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339). To request documents in alternate formats such as Braille or large print, contact the Department at 202-260-0818 or ofo_eeos@ed.gov.

This Fact Sheet does not have the force and effect of law and is not meant to be binding, beyond what is required by statutory and regulatory requirements. All enforcement determinations made by OCR are based on the particular factual circumstances presented in each individual case.

Historical Content
This page has been marked as historical and is no longer actively maintained by the Department of Education.

PRESS RELEASE

U.S. Department of Education Rescinds Biden 11th Hour Guidance on NIL Compensation

'The NIL guidance, rammed through by the Biden Administration in its final days, is overly burdensome, profoundly unfair, and it goes well beyond what agency guidance is intended to achieve'

FEBRUARY 12, 2025

The U.S. Department of Education's Office for Civil Rights (OCR) today announced it has rescinded the nine-page Title IX guidance on Name, Image, Likeness (NIL) issued in the final days of the Biden administration:

"The NIL guidance, rammed through by the Biden Administration in its final days, is overly burdensome, profoundly unfair, and it goes well beyond what agency guidance is intended to achieve. Without a credible legal justification, the Biden Administration claimed that NIL agreements between schools and student athletes are akin to financial aid and must, therefore, be proportionately distributed between male and female athletes under Title IX. Enacted over 50 years ago, Title IX says nothing about how revenue-generating athletics programs should allocate compensation among student ath

Title IX forces schools and colleges to distribute student-athlete revenues proportionately based on gender equity considerations is sweeping and would require clear legal authority to support it. That does not exist. Accordingly, the Biden NIL guidance is rescinded," said **Acting Assistant Secretary for Civil Rights Craig Trainor.**

CONTACT

Press Office | (202) 401-1576 | press@ed.gov

Office of Communications and Outreach (OCO)

Page Last Reviewed: June 17, 2025

Pay for College

- Fill out the FAFSA
- 529 Plans
- Repay Your Loans
- 1098 Tax Forms

Educational Resources

- 504 Plans
- FERPA
- IEPs (Individualized Education Program)

Teaching Resources

NACUA

Attendance Record
Webinar

Preparing for Kick Off: Athletics Issues for 2025-2026

August 27th, 2025

If you are an attorney applying for Continuing Legal Education credits (CLEs), you must sign this attendance record to verify your attendance. Please complete and return this form no later than Friday, September 5th to the CLE Credit Submission Portal (www.nacua.org/submitCLE).

***Total CLE Credits = 120 minutes**

Organization

PRINTED Name

SIGNATURE

State & Bar Number (If Applying for CLE)

Certificate of Attendance
Webinar

Preparing for Kick Off: Athletics Issues for 2025-2026

August 27th, 2025

- **Attorneys from MD, MA, MI, SD, or DC:** These jurisdictions do not have CLE requirements and therefore require no report of attendance or filing.

- **Attorneys from all other states:** Please complete and return this form no later than Friday, September 5th to the CLE Credit Submission Portal (www.nacua.org/submitCLE). Please also remember to sign the attendance record.

NACUA certifies that this program has been presumptively approved and conforms to the standards prescribed by the rules and regulations of the State Bars of AK, AZ, CA, CT, DE, HI, NV, NH, NJ, NM, PA, RI, VT, WV and WY. NACUA will apply for CLE credits from the following states: **AL, AR, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NE, NC, ND, OH, OK, OR, SC, TN, TX, UT, VA, WA and WI.**

The New York Approved Jurisdiction policy may apply to this program. New York attorneys may apply CLE credit from one of the approved jurisdiction states towards their NY CLE requirement. For more information and to review the policy, please visit www.nycourts.gov/attorneys/cle/approvedjurisdictions.shtml.

Note: Restrictions vary state by state and not all states will accredit this webinar.

Upon receipt of this certificate of attendance and your attendance record, NACUA will process the credits through the applicable state if approved.

Certification

NACUA will apply for a total of 120 minutes. By signing below, I certify that I attended the above activity and request minutes of CLE credits.

Name	**State & Bar Number**
Address	**Email**
Signature	

Authorized By:

Amanda McLean

Amanda McLean
Meetings and Events Coordinator

NACUA

CLE Verification Codes
Webinar

Preparing for Kick Off: Athletics Issues for 2025-2026

August 27th, 2025

FOR KANSAS, NEW YORK, OHIO AND PENNSYLVANIA ATTORNEYS ONLY

*This is a supplementary document to keep track of the verification codes for each program. Please complete and return this form no later than Friday, September 5th to the CLE Credit Submission Portal (www.nacua.org/submitCLE).

Date / Time	Session Title	Verification Code 1	Verification Code 2
8/27/2025 1:00 PM ET	Preparing for Kick Off: Athletics Issues for 2025-2026		

NACUA

Webinar

Sponsored by

LAWVU

Preparing for Kick Off: Athletics Issues for 2025-2026

Scott Bearby, Senior Vice President and Chief Legal Officer, National Collegiate Athletic Association

Nathan LaVallee, Deputy General Counsel, University of Connecticut

TaRonda Randall, Senior Counsel, Husch Blackwell LLP

Tammi Wong, Principal Counsel, University of California System

Agenda

- Introduction
- NCAA, Legislation, and Litigation Updates
- Gender Equity
- NIL Contracts and Best Practices
- Audience Q&A and Closing Remarks

NCAA Update

Litigation Update - *House* and NIL

- *House* Appeals
- Fontenot
- Injunctive class members notices

Compensation and Oversight

- Range of compensation
- Third-party NIL review
- Cap anticircumvention rules
- College Sports Commission and NCAA delineation (re: enforcement)

College Sports Commission

- What is it?
- Guidance
- Enforcement
- Arbitration

Direct Benefits under *House*

- CAPS platform
- Settlement and injunction (and the cap) apply to student-athlete benefits not previously allowed by NCAA rules.
- Financial aid can be maxed to anyone on a roster.
- Direct NIL institutional payments can be given to student-athletes.

Legislation

Overview of the SCORE Act

- Introduced in July 2025, the SCORE Act aims to establish a uniform national framework for college athlete compensation.

- It addresses the evolving NIL landscape by codifying athletes' rights to earn from endorsements while attempting to preserve college sports traditions.

- The Act seeks to replace varied state NIL laws with a single federal standard.

Implications and Goals of the SCORE Act

THE SCORE ACT AIMS TO BALANCE ATHLETE COMPENSATION WITH THE INTEGRITY OF COLLEGE SPORTS.

IT PROVIDES CLARITY AND CONSISTENCY ACROSS STATES AND INSTITUTIONS.

THE ACT ALSO SEEKS TO ENSURE FAIR TREATMENT AND OPPORTUNITIES FOR ALL STUDENT-ATHLETES.

Key Provisions of the SCORE Act

- Codifies athletes' rights to earn money from endorsements.
- Introduces guardrails to maintain the traditional college sports model.
- Addresses athlete employment status and booster-funded collectives.
- Supports sustainability of non-revenue sports.

SCORE Act Criticisms

- Long-Term Athlete Employment Rights
- Equity in NIL Opportunities
- Enforcement Mechanisms and NCAA Accountability
- Impact on Smaller Schools and Conferences
- Booster Influence and Transparency
- State-Level Consumer Protections

Saving College Sports Executive Order (EO)

Purpose and Policy

VALUES

- College sports
- Olympic success
- Federal regulation of college sports
- Balanced use of resources across the program, in support of
  - Educational and developmental benefits
  - Women's sports
  - Non-revenue sports
- Elimination of pay for play inducements by 3rd party market

Saving College Sports EO (cont.)

- Protecting scholarship and competitive opportunities for women and non-revenue sports
  - Directs an agency plan 30 days from July 24th.

- Student-Athlete Status – Determination as to whether student-athletes should be employees
  - No deadline for Labor and NLRB to issue clarification of status.

Saving College Sports EO (cont.)

- Whether there should be a federal rule on NIL compensation that preempts state laws on NIL
  - Directs an agency plan 30 days from July 24
- What the antitrust protection should be for NIL compensation to student-athletes
  - Directs AG & FTC determination 60 days from July 24

Litigation

Litigation

- Risk of court-mandated changes to amateurism and competitive balance.
- Eligibility litigation
- Cases to watch

Litigation - NCAA Prize Money Restrictions

Brantmeier v. NCAA

Filed: March 2024

Status: Class Certification Granted

Claim: Antitrust - unfair suppression of individual sport athletes' potential earnings (prize money earned in non-NCAA competitions)

Facts: UNC student-athlete Reese Brantmeier, a top-ranked collegiate tennis player, was denied amateur status by the NCAA due to accepting prize money at the 2021 U.S. Open in excess of the NCAA's cap of $10,000 plus actual expenses.

Litigation - Institutional NIL Deals

U. of Wisconsin & V.C. Connect v. U. of Miami

FACTS:

- NIL deal with UW states SA will not play for another school and cannot grant NIL rights to another school. NIL deal contains a condition precedent for final approval of the *House* settlement.
- SA asks UW to enter SA into the transfer portal. UW declines based on the NIL contract language.
- SA disenrolls from UW and announces enrollment in U. of Miami.

Litigation - Institutional NIL Deals (cont.)

U. of Wisconsin's legal claims

- Contract validity
- Tortious interference with the NIL contract
- Tampering

U. of Miami's legal position

- The NIL deal was conditional because *House* had not settled.
- There is no legal foundation for a tampering claim.
- Public policy disfavors constraints on a student-athlete's right to transfer/contract elsewhere (anti-competitive practice).
- The WI court does not have jurisdiction over U. of Miami (based in FL).

Litigation - Institutional NIL Deals (cont.)

U. of Wisconsin & V.C. Connect v. U. of Miami

LEGAL QUESTIONS

- Enforceability of NIL deals across state lines
- Impact on how NIL deals are structured
- Viability of civil liability claims for contract tampering
- Whether a student-athlete can contract away their right to transfer

Note: Sovereign immunity and public universities

- U. of Miami is a private institution.

Litigation - Title IX & NIL as Treatment, Benefit, Opportunity and Income

Schroeder v. U. of Oregon

Filed: Dec. 1, 2023

Status: Settlement conference Aug. 26, 2025

Claims: Title IX – benefits, financial aid, participation

Court on U. of OR Mtn to Dismiss: "But Plaintiffs do not challenge the third-party NIL contracts themselves; they merely allege that one of the ways Plaintiffs are harmed by UO's discrimination is by receiving less NIL-related training, opportunities, and income. Those ill effects are not irrelevant to Plaintiffs' claim."

Litigation - Title IX & Program Contraction Post-*House*

Myers v. S.F. Austin State U.

Filed: June 30, 2025

Status: 5th Cir. Appeal of Prelim. Inj.

Claims: Title IX effective athletic participation

Court on granting PI for Plaintiffs:

- *Loper Bright* doesn't disturb prior cases that relied on *Chevron* – it is undisputed that the TIX statute applies to athletics.
- Under *Kisor*, ED's interpretive guidance of TIX regs is reasonable and does not conflict with Congressional intent.
- SFA must preserve all women's varsity teams while case is pending.

Gender Equity

Gender Equity - Title IX State of Play

- Executive Branch policy
- Regulatory enforcement
- Litigation

Athletic Participation: The “Three-Part Test”

1. Whether participation opportunities for male and female students are provided in numbers **substantially proportionate** to their respective enrollments; or

2. Where the members of one sex have been and are underrepresented among interscholastic or intercollegiate athletes, whether the school can show a **history and continuing practice of program expansion** which is demonstrably responsive to the developing interests and abilities of the members of that sex; or

3. Where the members of one sex are underrepresented among interscholastic or intercollegiate athletes, whether the school can show that the interests and abilities of the members of that sex have been **fully and effectively accommodated by the present program**.

Athletic Participation (cont.)

- *House* roster caps
- Designated student-athletes
- *Pavia* line of cases – 5th year of eligibility

Athletic Participation – *Niblock v. U. of Kentucky*

- Prong 1: Even if cheer, dance and JV soccer count, the participation gap is 59 to 116 slots .

- Prong 2: One varsity sport added in 25 years is insufficient. Addition of non-NCAA sports do not count towards expansion. UK lacks a continuing expansion plan.

- Prong 3: The survey showed interest, but evidence did not show enough female varsity-level ability.

Athletic Participation - *Myers v. Stephen F. Austin State U.*

- Prong 1: At the time sports were cut, SFA was not close to substantial compliance (gap estimates between 71 and 245 based on witnesses).

- Prong 2: Failure to brief compliance interpreted as a concession that SFA did not meet this test.

- Prong 3: Lack of local competition/regional popularity does not negate interest of the SFA student body or lack of a survey of interest.

Athletic Financial Assistance

- Total amount of athletic scholarships and financial assistance is in proportion to the number of male and female athletic participants.
- Title IX does not require the same number of scholarships for male and female athletes or for individual scholarships to be of equal dollar value.
- Institutions can justify disparity with legitimate, nondiscriminatory reasons.
- Presumption that disparity of >1% is a violation. 1998 ED DCL Bowling Green.
- A disproportionate amount of non-grant assistance will also be compared. 1979 ED Policy Interpretation.

Athletic Financial Assistance (cont.)

- *House* additional payment and benefits
  - Increase in scholarship opportunities
  - Other direct institutional payments or additional benefits to SAs and/or SAs' families not currently permitted or exempted by NCAA rules
  - NIL
  - *Alston /* academic or graduation awards or incentives

- ED on then off NIL Guidance

- EO on Saving College Sports
  - Expanding or preserving scholarships for women's and non-revenue sports

- *Schroeder v. U. of OR* on NIL compensation

Athletic Financial Assistance – Practical Application

- Individual athlete NIL valuation
- Justify the compensation according to the brand value the SA brings to your institution.
- Examples given:
  - Drives greater interest in seeing games which has potential revenue generation in the form of concessions, parking, campus merch, corporate sponsorships, conference/media payouts
  - Furthers the charitable/educational purpose of public universities
  - Inspires interest in the athletics program for other recruits
  - Fosters alumni/donor engagement
  - Admissions effect

Athletic Financial Assistance – Practical Application (cont.)

- Similarly situated individuals not student-athletes
- Audience size and engagement (social media following)
- Sport specific reach (local for your campus/geographic reach)
- Demographic reach (age, location, “purchasing power”)
- Athletic reputation: recognition, award, stats
- Campus reputation
- Academic or other campus interests
- Media exposure
- Longevity (incoming freshman versus outgoing senior)
- Demand for the NIL (other third-party deals)

Athletic Financial Assistance - Practical Application (cont.)

- What will the institution do with NIL compensation valuation over time?
  - Does the analysis still work in/after the post-season?
  - Agreements with services vs. agreements without services
  - Accounting for equity in opportunity for NIL services
  - Annual re-evaluation as longitudinal dataset grows for institutional NIL

- What types of clauses might the institution consider to substantiate NIL compensation?

Benefits, Treatment, Opportunities

- Publicity
- Support services
- Recruitment [?]
- New category [?]
- Gender equity plan

Transgender Student-Athlete Participation

EO 14201: Keeping Men Out of Women's Sports

- Signed February 5, 2025.
- Per the EO, "it is the policy of the United States to rescind all funds from educational programs that deprive women and girls of fair athletic opportunities..."

NCAA Transgender Participation Policy

- Revised Feb. 6, 2025.
- A student-athlete assigned male at birth would not be allowed to compete on a women's team but may practice on a team consistent with their gender identity and receive all other benefits.
- A student-athlete assigned female at birth who has begun hormone therapy may not compete on a women's team but may practice and receive all other benefits.
- Local, state, and federal legislation supersedes NCAA policy.

Transgender Student-Athlete Participation (cont.)

- University of Pennsylvania entered a resolution agreement on June 30, 2025, requiring:
  - The University to issue a public statement that it will comply with Title IX;
  - The University to rescind or revise any guidance authorizing male athletes to compete in women's athletics; and
  - The University to review and restore "all individual [r]ecognitions that female athletes earned and would have been given but for the [r]ecognitions being give to male athletes who competed in women's athletics…"
- Wagner College entered a similar agreement on August 1, 2025.
- Quiet defunding of San Jose State University due to participation by women's volleyball transgender student-athlete.

Transgender Student-Athlete Participation (cont.)

Trends in Resolution Agreement (RA) language:

- RA language tracks EO 14168 and 14201
  - Incl. review and restore records under binary definition
  - Personal and public letters of apology

- RA language tracks with NCAA Transgender Participation Policy focus on competition

- Facilities:
  - Athletic facilities (locker rooms/bathrooms) strictly separated by sex [Brown]
  - All-female locker rooms and showering facilities [Columbia]
  - Separate and comparable facilities like locker rooms and bathrooms [U. Penn/Wagner]

Transgender Student-Athlete Participation Litigation

- *Gaines v. NCAA* (Filed: Mar. 14, 2024)
  - Claims: Title IX statutory violation by permitting transgender athlete participation

- *DOJ v. CA Dept. of Educ. and CA Interscholastic Federation* (Filed: July 9, 2025)

- *DOJ v. Maine Dept. of Educ.* (Filed: April 16, 2025)
  - Claims: Title IX preempts conflicting state policies

- *Parts v. Swarthmore College & NCAA* (Filed Aug. 14, 2025)
  - Claims: Excluding transgender athlete participation violates Title IX and Pennsylvania state law

Mental Health - NCAA Mental Health Best Practices

- Create healthy environments that support mental health and promote well-being;
- Establish procedures for identification of student-athletes with mental health symptoms and disorders, including mental health screening tools;
- Create mental health action plans that outline referral pathways of student-athletes to qualified providers; and
- Ensure licensure of providers who oversee and manage student-athlete mental health care

Information taken from NCAA Mental Health Best Practices: Understanding and Supporting Student-Athlete Mental Health

Mental Health (cont.)

- University of Wisconsin lawsuit filed by former women's basketball players related to mental health
- Intersection of mental health and NIL
- Impact of mental health on UNLV quarterback's decision to not participate ahead of the 4-game max

NIL Contracts and Best Practices

Contracting In a Post-*House* World

Understand:

- Schools can now contract directly with a Student-Athlete (SA).
- Revenue sharing vs. NIL rights and related services
- Most universities are contracting for NIL rights, marketing, promotion and/or services.
- Payments count against the cap.

Consider:

- What rights are you contracting for and who owns the rights?
- What do you want to do with the rights?
- Who else do you want to be able to use the rights?
- What rules and laws do you want to control?
- What conditions do you want to occur before you want the contract to take effect?
- How long will the contract last?
- What happens if things go sideways?
- What if the SA is an international student?

Key Contracting Issues

Term and Termination

- Start date
  - 1st day of class/practice
  - Issuance of Financial Aid
- End date
  - 1 year anniversary
  - End of sport/Academic yr.
- Early Termination
  - SA enters/declare for transfer portal or draft
  - SA leaves University
  - Violation of University/ NCAA/Conference rules
  - Morals Clause
- SA Termination Rights

Key Contracting Issues (cont.)

SA is an independent contractor

No Pay for Play

No playing time guarantee

No requirement to use NIL rights/services

SA must maintain eligibility and good conduct

Agreement subject to all NCAA, Conference, University, State & Federal rules and laws

SA cannot use University/Conference IP without permission

Key Contracting Issues (cont.)

- Compensation
- Taxes
- Waiver*

* *School does not use rights or services*

- Compensation Related Issues
  - Right to offsets
  - Repayment
  - Reductions
  - Liquidated damages
  - Buy-outs

License to NIL Rights

- Type of rights
- NCAA/Conference
- Marketing, merchandising & promotions
- Historical rights
- Group rights
- NCAA/Conference
- SA carve-outs or restrictions
- Anti-Brand Ambassador language
- SA may refuse conflicting exclusive promotions
- Product category carve outs
- Size of group for group licensing deals
- Brand integrity

Protect University Licensed NIL Rights

- Ownership
- All deliverables are University property
- Works made for hire
- SA must assign any non-automatically-owned rights
- Can the University sublicense?
- What is the value?

Other Contracting Issues

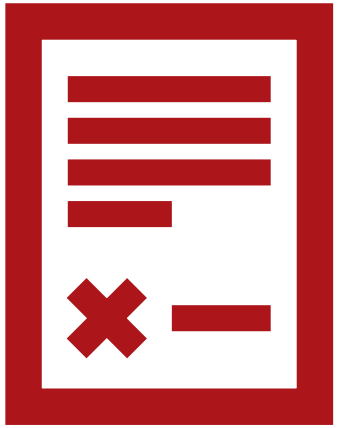
- What if someone else owns the SA's NIL Rights?
- What if the SA has preexisting NIL deals?
- What if the SA wants to pursue 3rd party NIL deals?

Student-Athlete Services

- Types of services
  - Event appearances
  - Social media posts
  - Meet-and-greets
  - Autograph signings (in-person or for University use)
  - Group licensing participation
- Non-specific (e.g., promo services as requested)
- Specific services
- How many?
- What is the value?

Other Contract Terms

- Survival & Assignment
- Confidentiality
- Includes mandatory state contract terms (Public)
- Dispute Resolution
- Severability
- Representations/Warranties/Covenants
- Impermissible Terms



Contract Monitoring

- State law requirements
- Conflicts with institutional sponsorships/agreements
- Intellectual Property
- Associated Individuals and Entities
- Third-party vs. Marketing Agent
- Circumvention

Confidentiality and Public Records

Confidentiality

Survival Period

Notice requirement

Requests for limit purpose disclosures

Public universities and sunshine laws

Statutory exemptions

FERPA

Other public record exemptions


Questions?

NACUA materials, PowerPoint slides and recordings available as part of this program are offered as educational materials for higher education lawyers and administrators. They are prepared by presenters and are not reviewed for legal content by NACUA. They express the legal opinions and interpretations of the authors.

Answers to legal questions often depend on specific facts, and state and local laws, as well as institutional policies and practices. The materials, PowerPoint slides and comments of the presenters should not be used as legal advice. Any hypothetical scenarios presented are based on fictional facts and persons. Legal questions should be directed to institutional legal counsel.

Those wishing to re-use the materials, PowerPoint slides or recordings should contact NACUA (nacua@nacua.org) prior to any re-use.