

ONE HUNDRED NINETEENTH CONGRESS

# Congress of the United States

## House of Representatives

### COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

Majority (202) 225-3641

Minority (202) 225-2927

February 28, 2025

#### MEMORANDUM

TO: Members, Subcommittee on Commerce, Manufacturing, and Trade  
FROM: Committee Majority Staff  
RE: Subcommittee on Commerce, Manufacturing, and Trade Hearing

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#### I. INTRODUCTION

The Subcommittee on Commerce, Manufacturing, and Trade has scheduled a hearing on Tuesday, March 4, at 10:15 a.m. (ET) in 2123 Rayburn House Office Building. The title of the hearing is “Moving the Goalposts: How NIL is Reshaping College Athletics.”

#### II. WITNESSES

- **Coach Shane Beamer**, Head Football Coach, University of South Carolina
- **Mr. Josh Whitman**, Director of Athletics, University of Illinois
- **Ms. Emily Cole**, All-American Track Athlete, Duke University ‘24
- **Mr. Anthony Egbo Jr.**, Football Athlete, Abilene Christian University ‘24
- **Mr. Justin Falcinelli**, Former College Athlete, Clemson Football, and Vice President, College Football Players Association (*Minority*)

#### III. BACKGROUND

The introduction of Name, Image, and Likeness (NIL) rights in college athletics has provided student-athletes with long-overdue opportunities to financially benefit from their personal brands. However, the rapid implementation of NIL, lack of transparency, and the fragmented nature of the current landscape has created challenges for student-athletes. It is widely agreed that student-athletes should be able to profit from their NIL, but the current path is unsustainable.

For years, the National Collegiate Athletic Association (NCAA) had strict amateurism rules prohibiting student-athletes from profiting off their NIL.<sup>1</sup> Beginning on July 1, 2021, the NCAA allowed schools and conferences to establish their own NIL policies, provided they adhere to state laws.<sup>2</sup> This was a result of several court decisions regarding NCAA antitrust violations.<sup>3</sup>

The change in NIL rules has affected universities, businesses, and the hundreds of thousands of student-athletes that compete in programs at colleges and universities across the United States. The NCAA is the most widely recognized governing body in college athletics and has a three-division structure with more than 500,000 student-athletes at about 1,100 member schools.<sup>4</sup> Other college divisions include the National Association of Intercollegiate Athletics (NAIA) and the National Junior College Athletic Association (NJCAA).<sup>5</sup> The NAIA has a one-division structure and more than 80,000 student-athletes; the NJCAA has a three-division structure with 60,000 student-athletes across 500 colleges.<sup>6</sup>

The largest colleges and universities are typically in NCAA Division I (D-I) and generate the most revenue, especially those within the Football Bowl Subdivision (FBS). The most notable sports programs in NCAA D-I are in the following “power” or “autonomy” conferences: the Southeastern Conference (SEC), Big Ten Conference, Atlantic Coast Conference (ACC), and Big 12 Conference.<sup>7</sup> The Pac-12 Conference was previously included until it was removed from the list by the NCAA.<sup>8</sup>

To date, there are more than 450,000 student-athletes who have earned NIL money by partnering with local businesses in promotions.<sup>9</sup> Some have projected that there will be around

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<sup>1</sup> See NCAA, Nat'l Collegiate Athletic Ass'n Const., art 1.3.1, in 2002-03 NCAA Division I Manual (2002).

<sup>2</sup> See NCAA, *NCAA adopts interim name, image and likeness policy* (Jun. 30, 2021) <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>.

<sup>3</sup> See Claire Haws, Michigan Business & Entrepreneurial Law Review, Volume 11, Issue 2, *The Death of Amateurism in the NCAA: How the NCAA Can Survive the New Economic Reality of College Sports* (2022) <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1132&context=mbelr>.

<sup>4</sup> See National Collegiate Athletic Association (NCAA), *Overview* (last accessed Feb. 28, 2025) <https://www.ncaa.org/sports/2021/2/16/overview.aspx>.

<sup>5</sup> See Collegepipe, *College Divisions* (last accessed Feb. 28, 2025). <https://www.collegepipe.com/divisions>.

<sup>6</sup> National Association of Intercollegiate Athletics, *About Us* (Last accessed Feb 28, 2025) <https://www.naia.org/about/about-us>; National Junior College Athletic Association, *Sponsors and Partners* (Last accessed Feb. 28, 2025). <https://www.njcaa.org/about/sponsorships/index>.

<sup>7</sup> See ESPN, *College Football Conferences* (last accessed on Feb. 28, 2025) <https://www.espn.com/college-football/conferences>.

<sup>8</sup> See NCAA, *Division I 2024-25 Manual* (2024-25) <https://www.ncaapublications.com/productdownloads/D125.pdf#page=26>.

<sup>9</sup> See Paul Rudder, AS USA, *Who is the highest paid college athlete? NIL endorsement deal money in NCAA sports* (Jan. 1, 2025) <https://en.as.com/ncaa/who-is-the-highest-paid-college-athlete-nil-endorsement-deal-money-in-ncaa-sports-n-2/>.

\$1.7 billion in transactions in the NIL market this school year.<sup>10</sup> Less than a third of the money that student-athletes are making is publicly known, according to Opendorse.<sup>11</sup>

#### **IV. THE CURRENT LANDSCAPE: A PATCHWORK OF REGULATIONS AND LEGAL CHALLENGES**

##### **A. State Law Disparity**

The absence of a national standard has resulted in a fragmented regulatory landscape. As of February 2025, 33 states and the District of Colombia have passed NIL laws, some of which permit direct school involvement in NIL deals, while others restrict it.<sup>12</sup> Student-athletes have raised concerns about navigating such a confusing, ambiguous, and turbulent regulatory environment, especially athletes that call one state their home and another state their home field. The interstate nature of college sports has made the patchwork of state laws unworkable.

Congress has the authority to regulate interstate commerce and establish a single uniform national standard that would provide an even playing field for student-athletes, establish protections to help ensure student-athletes are not taken advantage of, and create regulatory certainty for athletic programs and entities looking to contract with student-athletes.

##### **B. Legal Challenges**

The NCAA's efforts to regulate NIL have faced numerous legal challenges, primarily on antitrust grounds.<sup>13</sup> Key cases:

- *O'Bannon v. NCAA* (2015): The Ninth Circuit affirmed a ruling that the NCAA's prohibition on student-athletes being compensated for their NIL rights was an unlawful restraint on trade.<sup>14</sup>
- *Alston v. NCAA* (2021): The Supreme Court struck down NCAA limits on education-related benefits.<sup>15</sup>

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<sup>10</sup> See Opendorse, *NIL At 3 the Annual Opendorse Report* (2024-2025) <https://biz.opendorse.com/wp-content/uploads/2024/07/NIL-AT-3-The-Annual-Opendorse-Report-1.pdf>.

<sup>11</sup> See Joe Drape and Allison McCann, New York Times, *In College Sports' Big Money Era, Here's Where the Dollars Go* (Aug. 31, 2024) <https://www.nytimes.com/interactive/2024/08/31/business/nil-money-ncaa.html>.

<sup>12</sup> See Troutman Pepper Locke, *State and Federal Legislation Tracker* (last updated Jan. 31, 2025) <https://www.troutman.com/state-and-federal-nil-legislation-tracker.html>.

<sup>13</sup> See ESPN News Services, ESPN, *Judge rules against NCAA* (Aug. 8, 2014) [https://www.espn.com/college-sports/story/\\_/id/11328442/judge-rules-ncaa-ed-obannon-antitrust-case](https://www.espn.com/college-sports/story/_/id/11328442/judge-rules-ncaa-ed-obannon-antitrust-case).

<sup>14</sup> *O'Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015).

<sup>15</sup> *National Collegiate Athletic Association. v. Alston*, 141 S. Ct. 2141 (2021).

- *House v. NCAA* (ongoing): The Northern District of California is reviewing a settlement between the NCAA and athletes who argue NCAA rules illegally restrict compensation, including TV revenue.<sup>16</sup> (See below).

Collectives and states have also challenged NCAA enforcement. To avoid constant litigation surrounding college sports, the NCAA has advocated for a limited antitrust exemption.<sup>17</sup>

### C. The \$2.8 Billion Settlement

A \$2.8 billion settlement between the NCAA, the Power Conferences, and student-athletes has been reached, pending final court approval slated for April 7, 2025. The Settlement would resolve multiple lawsuits (*House, Hubbard, and Carter v. NCAA*) primarily related to the NCAA's previous restrictions on athletes' ability to profit from their NIL.<sup>18</sup> This \$2.8 billion would be distributed over ten years to eligible current and former D-I athletes dating back to 2016 for lost NIL opportunities and revenue sharing that they were previously denied access to.<sup>19</sup> About 15,000 to 25,000 D-I student-athletes are eligible to receive back damages; however, at least 250 have opted out.<sup>20</sup> The exact amount paid to each student will be calculated by an allocation formula established by the plaintiffs.<sup>21</sup>

The settlement proposes a future “revenue sharing” model where an institution would share up to 22 percent of the revenue generated from athletics with student-athletes going into effect in the 2025-2026 season.<sup>22</sup> It is important to note that institutions and conferences can choose to opt out of the settlement, and therefore, are not required to participate in the revenue sharing model. The Ivy League has already announced it is opting out of the settlement and not participating in the revenue sharing model.<sup>23</sup> The settlement also proposes that schools would be able to directly

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<sup>16</sup> In re College Athlete NIL Litigation, 4:20-cv-03919, (N.D. Cal. Sep 26, 2024) ECF No. 535. <https://www.courtlistener.com/docket/17248915/535/2/in-re-college-athlete-nil-litigation/>.

<sup>17</sup> See Ben Nuckols, Associated Press, *NCAA president says Congress must act to preserve sports at colleges that can't pay athletes* (Feb. 23, 2024) <https://apnews.com/article/ncaa-charlie-baker-congress-lobbying-f5dfbcc5e8aba387d533b392f78c8be7>.

<sup>18</sup> See Michelle Brutlag Hosick, NCAA, *Settlement Documents Filed in College Athletics Class-Action Lawsuits* (Jul. 26, 2024) <https://www.ncaa.org/news/2024/7/26/media-center-settlement-documents-filed-in-college-athletics-class-action-lawsuits.aspx>.

<sup>19</sup> *Id.*

<sup>20</sup> See Amanda Christovich, Front Office Sports, *At Least 250 Athletes Have Opted Out of the House v. NCAA Settlement* (Feb. 4, 2024) <https://frontofficesports.com/college-athletes-opt-out-house-ncaa-settlement/>.

<sup>21</sup> In re College Athlete NIL Litigation, 4:20-cv-03919, (N.D. Cal. Sep 26, 2024) ECF No. 535. <https://www.courtlistener.com/docket/17248915/535/2/in-re-college-athlete-nil-litigation/>.

<sup>22</sup> See Michelle Brutlag Hosick, NCAA, *Settlement Documents Filed in College Athletics Class-Action Lawsuits* (Jul. 26, 2024) <https://www.ncaa.org/news/2024/7/26/media-center-settlement-documents-filed-in-college-athletics-class-action-lawsuits.aspx>.

<sup>23</sup> See Jimmy Golen, Associated Press, *Ivy League won't join NCAA antitrust settlement, clings to academics and amateurism* (Jan. 24, 2025) <https://apnews.com/article/college-athletes-pay-ivy-league-6153eedf1e4644d3d4f6dd004a666f00>.

license athlete NIL rights and sublicense them to third parties at fair market value (FMV). NIL agreements over \$600 must be disclosed to a Deloitte-run clearinghouse for an FMV analysis.<sup>24</sup>

Another key provision includes the elimination of scholarship limits while setting caps on roster sizes. These changes are meant to provide institutions with greater financial flexibility by allowing more athletes to receive scholarships while containing overall expenses through limiting team sizes.<sup>25</sup> However, estimates suggest that roster caps could lead to the elimination of over 10,000 athlete positions across non-revenue sports.<sup>26</sup> This has significant implications for Olympic and non-revenue sports as those programs are often subsidized by revenues from higher earning sports such as football. Some speculate that the settlement incentivizes schools to cut non-revenue programs to reallocate those funds to the high viewership sports.<sup>27</sup>

The long-term impact on the settlement will depend on legal and legislative developments. Many questions remain unresolved, underscoring the need for Congress to establish a clear federal standard that provides stability and safeguards for student-athletes. Protecting the amateur status of college athletics and ensuring that student-athletes are not classified as employees is crucial to preserving non-revenue sports, as the financial burden of employment-related expenses could force schools to cut programs.<sup>28</sup>

## V. THE RISE OF COLLECTIVES AND RECRUITING CONCERNS

### A. NIL Collectives

Collectives are typically founded by notable alumni and supporters that pool funds from donors to create NIL opportunities for student-athletes.<sup>29</sup> Booster-funded NIL collectives have become prominent, significantly influencing recruiting. Some predict a potential decline in the

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<sup>24</sup> See Ross Dellenger, Yahoo!sports, *Do college football coaches think new enforcement arm will work? LSU's Brian Kelly: 'It is not a slap on the wrist'* (Feb. 24, 2025) <https://sports.yahoo.com/college-football/article/do-college-football-coaches-think-new-enforcement-arm-will-work-lsus-brian-kelly-it-is-not-a-slap-on-the-wrist-200619854.html>.

<sup>25</sup> See Kaitlin Broadway, NCSA College Recruiting, *New NCAA Scholarship and Roster Limits for the 2025-26 School Year* (accessed on Feb. 28, 2025) <https://www.ncsasports.org/blog/ncaa-scholarship-roster-limits-2024>.

<sup>26</sup> See Eddie Pells, Associated Press, *Objections flow in on NCAA settlement over 'unnecessarily harsh' impact of roster limits* (Jan. 29, 2025) <https://apnews.com/article/ncaa-lawsuit-settlement-016665bed121994b69fddaca50b7970a>.

<sup>27</sup> See Ross Dellenger, Yahoo!sports, *'Creating havoc everywhere' – House-NCAA settlement causing crunch for Olympic sports as roster limits come into focus* (Jan. 30, 2025) <https://sports.yahoo.com/creating-havoc-everywhere-house-ncaa-settlement-causing-crunch-for-olympic-sports-as-roster-limits-come-into-focus-234825869.html>.

<sup>28</sup> See Nick Tremps, The Wake Forest Law Review, *The Memorandum heard Around the College Athletics World: Why Student-Athletes in Non-Revenue-Generating Sports Should not Enjoy the Status of "Employee" Under the NLRA* (Apr. 1) <https://www.wakeforestlawreview.com/tag/employment-law/>.

<sup>29</sup> See Pete Nakos, On3, *What are NIL Collectives and how do they operate?* (Jul. 6, 2022) <https://www.on3.com/nil/news/what-are-nil-collectives-and-how-do-they-operate/>.

influence of booster-driven collectives with the new revenue sharing model.<sup>30</sup> The relationship between NIL collectives and institutions continues to evolve. Under the current legal landscape, NIL collectives are generally independent of schools but under the preliminary *House v. NCAA* settlement, NIL collectives can be affiliated with schools.<sup>31</sup>

## **B. "Pay-for-Play" and Recruiting**

Previous NCAA guidance on "pay-for-play" has lacked effective enforcement, raising concerns about the erosion of collegiate athletics.<sup>32</sup> NIL has become a major recruiting tool, with athletes receiving substantial sums to commit to specific schools. Some athletes are choosing to remain in college due to higher earning potential than in professional leagues.<sup>33</sup>

## **C. The Transfer Portal**

The transfer portal was introduced in 2018, which formalized the process for athletes to notify other schools of their intent to transfer.<sup>34</sup> Historically, the NCAA restricted athletes' eligibility immediately after transferring, particularly for those transferring multiple times.<sup>35</sup> Student-athletes legally challenged the NCAA's transfer rules. Following these challenges, the U.S. Department of Justice, along with state coalitions, released a consent decree in May 2024, which aims to prevent the NCAA enforcing its Transfer Eligibility Rule.<sup>36</sup>

The NCAA's relaxed transfer rules, including designated transfer windows, have further complicated the landscape.<sup>37</sup> Relaxing these rules has contributed to the perceived "pay-for-play" environment with athletes seeking increasingly lucrative deals.

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<sup>30</sup>See Justin Williams, The Athletic, New York Times, *What's the future of NIL collectives after the House v. NCAA settlement?* (Aug. 1, 2024) <https://www.nytimes.com/athletic/5672150/2024/08/01/nil-collectives-ncaa-lawsuit-settlement/>.

<sup>31</sup> *Id.*

<sup>32</sup> See NCAA, *NCAA adopts interim name, image and likeness policy* (Jun. 30, 2021) <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>.

<sup>33</sup>See Andrew Zimbalist, PBS News, *Analysis: Who is winning in the high-revenue world of college sports?* (Mar. 18, 2023) <https://www.pbs.org/newshour/economy/analysis-who-is-winning-in-the-high-revenue-world-of-college-sports>.

<sup>34</sup> See Greg Johnson, NCAA, *What the NCAA Transfer Portal Is... and What It Isn't* (Oct. 8, 2019) <https://www.ncaa.org/news/2023/2/8/media-center-what-the-ncaa-transfer-portal-is-and-what-it-isn-t>.

<sup>35</sup> See Michelle Brutlag Hosick, NCAA, *DI Council adopts new transfer legislation* (Apr. 15, 2021) <https://www.ncaa.org/news/2021/4/15/di-council-adopts-new-transfer-legislation.aspx>.

<sup>36</sup> See U.S. Department of Justice, Office of Public Affairs, *Justice Department and State Coalition Restore Competition for College Athletes at NCAA Division I Institutions* (May 30, 2024) <https://www.justice.gov/archives/opa/pr/justice-department-and-state-coalition-restore-competition-college-athletes-ncaa-division-i>.

<sup>37</sup> See Ross Dellenger, Sports Illustrated, *'It's Going to Change the Landscape': The NCAA's Transfer Revolution Is Here, and Its Impact Will Be Felt Far and Wide* (Apr. 14, 2021) <https://www.si.com/college/2021/04/14/ncaa-transfers-rule-change-football-basketball>.

The patchwork of state NIL laws can indirectly influence transfer decisions as some states have a more attractive regulatory landscape while others have more restrictive policies that may deter athletes from transferring to schools within that jurisdiction.<sup>38</sup> Revenue sharing may reduce the incentive for NIL-driven transfers. It is also widely believed that increased transfers have a negative effect on students' academic performance.<sup>39</sup>

## **VI. KEY QUESTIONS**

- Without congressional action, how will the NIL landscape continue to evolve? Will a patchwork of state laws be detrimental to collegiate sports and student-athletes?
- While football and basketball are sports where student-athletes may receive high compensation for their NIL, how should Congress ensure this right exists for all sports, including non-revenue generating and women's sports?
- How should a student-athletes' fair market value be generated?
- Has the transfer portal created impediments to student-athletes' education and collegiate sporting careers?
- What entity should be responsible for enforcing NIL laws?
- How is the lack of a national standard impacting competition and recruiting between universities in states with different or no NIL laws?
- How would small universities and conferences, such as Division II or III, be impacted by new requirements for athlete education, compliance, and enforcement?

## **VII. STAFF CONTACTS**

If you have any questions regarding this hearing, please contact Giulia Leganski or Natalie Hellmann of the Committee Staff at (202) 225-3641.

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<sup>38</sup> See Liz Clarke, Washington Post, *State-by-state rating system gives college recruits road map to evaluate NIL laws* (Oct. 21, 2021) <https://www.washingtonpost.com/sports/2021/10/21/name-image-likeness-laws-state-rankings/>.

<sup>39</sup> See Jessi Wynn, Minding the Campus, *Put the "Student" Back in Student-Athlete* (Jan. 24, 2025) <https://www.mindingthecampus.org/2025/01/24/put-the-student-back-in-student-athlete/>.