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Legal Sidebar

College Athlete Compensation: Impacts of the *House* Settlement

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For much of its history, the National Collegiate Athletic Association (NCAA) has enforced rules related to college athlete compensation, including rules prohibiting athletes from earning money for the use of their name, image, and likeness (NIL). The NCAA long held the position that limiting athlete compensation was an essential component of its commitment to amateurism in college athletics. A series of antitrust challenges to the NCAA's compensation rules, however, has prompted changes to this landscape. According to some commentators, at least one of these cases may have contributed to the NCAA's July 2021 decision to suspend some of its rules related to NIL compensation. Since the NCAA suspended these rules, it is estimated that college athletes have collectively earned millions of dollars in NIL deals.

A recent settlement in three interrelated antitrust cases may further alter the amateurism principles that had previously defined college athletics. On June 6, 2025, a federal district court approved an agreement to settle *In re College Athlete NIL Litigation*, *Hubbard v. NCAA*, and *Carter v. NCAA*, collectively referred to as the *House* settlement (with "House" referring to a plaintiff in one of the cases). The *House* settlement includes nearly $2.8 billion in damages and injunctive relief that would, in part, allow for revenue sharing by institutions for the next 10 years.

The *House* settlement has significantly impacted the national debate on college athlete compensation, and some stakeholders have called for congressional action on the issue. In Congress, some Members have introduced numerous college sports reform bills since 2020, and committees have held multiple hearings on the matter. This Legal Sidebar discusses historical developments that led the NCAA to suspend its NIL compensation rules in 2021 and then provides a summary of the *House* settlement. It concludes with some considerations for Congress, including issues left unresolved after the settlement's approval.

Background

The NCAA—a private, nonprofit organization composed of nearly 1,100 member institutions—was founded in 1905 to set standards governing intercollegiate athletics. Since its inception, the NCAA has promoted amateurism in college athletics. The NCAA adopted the concept of the "student-athlete," expressing the view that athletes competing in college sports should be "amateurs . . . and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived." With amateurism as a guiding principle, the NCAA enforced rules on matters such as

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athlete eligibility, financial aid, and compensation, including rules that limited athletes' ability to earn money for the use of their NIL.

Beginning in the late 2000s, the NCAA's athlete compensation rules became the focus of several lawsuits brought under Section 1 of the Sherman Antitrust Act (Sherman Act), which generally prohibits unreasonable restraints of trade. In many Section 1 Sherman Act cases, courts apply a standard called the "rule of reason," which is often described as a "three-step, burden-shifting framework" designed to distinguish between restraints on trade that are anticompetitive and restraints that stimulate competition. Under the rule of reason framework, a plaintiff must first establish that the restraint has a "substantial anticompetitive effect that harms consumers in the relevant market." The burden then shifts to the defendant to show a "procompetitive rationale for the restraint." If the defendant is successful at establishing a procompetitive justification, the burden shifts back to the plaintiff to show that the stated justification could have been achieved by a less restrictive alternative that offers the same benefits without the threat of competitive harm.

In one of the first lawsuits involving NCAA compensation rules, *O'Bannon v. NCAA*, the plaintiff—a former college athlete—discovered his likeness was being used in a commercial video game without his permission or compensation. Representing a class of college athletes, the plaintiff sued the NCAA, claiming that its rules prohibiting athletes from being compensated for the use of their NIL in video games, live game telecasts, and other video footage violated the Sherman Act. In a 2015 decision, the Ninth Circuit Court of Appeals held that the challenged rules violated the Sherman Act because, although there were procompetitive justifications for the rules, less restrictive alternatives were available. Ultimately, the court required the NCAA to implement a less restrictive alternative that would permit schools to provide athletes compensation up to the full cost of attendance. The court's decision, however, did not require the NCAA to change the specific rules regarding NIL compensation.

Since *O'Bannon*, several other antitrust lawsuits have challenged the NCAA's compensation rules, one of which, *NCAA v. Alston*, was resolved by the Supreme Court. In *Alston*, current and former college athletes challenged the "interconnected" set of NCAA rules that caps the amount of compensation an athlete may receive for their athletic services. Applying an analysis similar to that used in *O'Bannon*, the district court held that the NCAA's rules read together were "more restrictive than necessary" and that a less restrictive alternative would be to enjoin NCAA limits on compensation and benefits related to education. The court concluded, however, that the NCAA could continue to limit "compensation and benefits unrelated to education." That decision was affirmed by the Ninth Circuit Court of Appeals, and in June 2021, the Supreme Court upheld the Ninth Circuit's decision, allowing compensation for certain education-related benefits that had previously been prohibited by the NCAA such as "computers, science equipment, musical instruments and other items not currently included in the cost of attendance calculation but nonetheless related to the pursuit of various academic studies." In a concurring opinion, Justice Kavanaugh more broadly questioned the legality of the NCAA's remaining restrictions on athlete compensation. He asserted that the NCAA could not rely on its "circular and unpersuasive" rationale that unpaid labor is procompetitive because it defines the NCAA's product, and stated that the NCAA is "not above the law."

Against the backdrop of this ongoing antitrust litigation, individual states began considering legislation to grant NIL rights to college athletes. The first, the California Fair Pay to Play Act, enacted in 2019, prohibits California's postsecondary institutions and other groups with authority over intercollegiate athletics (e.g., the NCAA) from having rules that prevent California's college athletes from earning NIL compensation. Since 2019, more than half of the states have taken action to address NIL compensation. By 2021, the NCAA faced a situation in which a "patchwork" of state laws allowing NIL compensation were about to go into effect across the nation. Considering the anticipated impacts of the impending state laws and the potential repercussions of the *Alston* ruling, the NCAA decided to suspend its rules related to

NIL compensation. This change effectively allowed college athletes to enter endorsement deals and earn compensation for promoting goods or services. When suspending its NIL rules, the NCAA announced it would continue enforcing other rules that prohibit pay-for-play (third-party deals with an athlete that have no valid business purpose) and the use of NIL as a recruiting inducement tied to attending a particular school. In other words, going forward, the NCAA would allow college athletes to enter into NIL contracts with third parties for legitimate business purposes, but it would not allow third-party entities, such as institutional boosters, to pay athletes money to attend a school under the guise of NIL compensation.

Since the NCAA suspended its NIL rules, college athletics has entered a period some commentators and Members of Congress have referred to as the "wild west." The NCAA has struggled to create any national standard for NIL regulation due to the patchwork of state laws. For example, several states have passed laws that prohibit NCAA enforcement actions regarding NIL activities, with one forbidding the NCAA from "penaliz[ing] a student[-]athlete" for receiving NIL compensation. The NCAA has also continued to face antitrust challenges to its existing rules. For instance, one federal district court enjoined the NCAA from enforcing rules that prohibit institutional boosters from engaging in recruiting activities on behalf of a school, including promising any NIL compensation to an athlete in exchange for the athlete's enrollment at a particular school. The court found this "NIL-recruiting ban" likely violated the Sherman Act. Another federal district court held that NCAA transfer eligibility rules (rules that restrict an athlete's eligibility to compete after transferring institutions) also likely violated the Sherman Act.

In re College Athlete NIL Litigation

As discussed above, several antitrust cases have helped shape the current NIL compensation landscape. While the *Alston* case involved a challenge to various NCAA compensation rules, it did not directly challenge the NCAA's rules that prohibited college athletes from earning NIL compensation. In 2020, current and former athletes who competed in NCAA Division I (which is composed of the schools that have the largest athletic budgets) filed lawsuits against the NCAA and the "Power Five" athletic conferences, alleging that NCAA rules that prohibited athletes from receiving compensation in exchange for the use of their NIL violated the Sherman Act. These two cases, *House v. NCAA* and *Oliver v. NCAA*, were consolidated as *In re College Athlete NIL Litigation*. The district court granted class certification in the case to three different groups of college athletes, potentially making thousands of current and former college athletes eligible to claim damages.

In May 2024, the NCAA and conference defendants announced they had reached a settlement in *In re College Athlete NIL Litigation*. This settlement also includes resolution of two related antitrust cases pending in the same federal court, *Carter v. NCAA* and *Hubbard v. NCAA*. On October 7, 2024, the district court granted preliminary settlement approval. After preliminary approval, class members were notified of the settlement and given the opportunity to opt out of the damages classes. Class members were also granted time to file objections for consideration by the district court in its final approval of the settlement. The court held a final approval hearing on April 7, 2025, and after asking for some modifications, approved the final settlement on June 6, 2025.

The settlement involves both injunctive and compensatory relief for two class groups—the damages class and the injunctive relief class. The damages class consists of three different damage classes: (1) athletes who received full scholarships and were deemed initially eligible to compete on a Division I men's football or basketball team at an institution in one of the Power Five conferences between June 15, 2016, and September 15, 2024; (2) athletes who received full scholarships and were deemed initially eligible to compete on a Division I women's basketball team at an institution in one of the Power Five conferences between June 15, 2016, and September 15, 2024; and (3) any other athletes who were deemed initially eligible to compete on a Division I athletic team between June 15, 2016, and September 15, 2024. For the damages class, the defendants have agreed to pay approximately $2.8 billion, to be divided amongst the

class members according to an agreed-upon distribution plan. Damages class members who have opted into the settlement have agreed to release their claims, meaning they will be prohibited from suing the defendants in the future for the same issues asserted in the litigation.

While the damages portion of the settlement is designed to compensate class members for past injuries, the injunctive relief portion involves prospective action that some commentators have suggested may fundamentally change college athletics. The injunctive relief class includes all college athletes who compete on a Division I athletic team at any time between June 15, 2020, through the end of the settlement term (i.e., 10 academic years from the date of final approval of the settlement). The parties have agreed that each athlete who enters the class will be notified of the settlement and given the opportunity to object to the injunctive relief settlement's terms. Members of the injunctive relief class will release all claims for injunctive relief that arise out of NCAA and conference rules agreed to as part of the settlement.

There are three main features to the injunctive relief agreement. First, the defendants have agreed to allow institutions to share a portion of athletic revenue with athletes. Each institution will be permitted, but not required, to distribute athletic revenue to athletes up to a cap of 22% of the "average shared revenue" generated by Power Five member institutions. For the 2025–2026 academic year, institutions will be able to distribute $20.5 million (which does not include grant-in-aid) amongst its athletes, and this figure will increase throughout the settlement term. Each institution may decide how to distribute the revenue amongst its athletes, and some reports suggest that revenue sharing may primarily go to athletes in revenue-generating programs like football and men's basketball.

Second, the NCAA has agreed to eliminate rules limiting the number of scholarships each institution is permitted to award its athletes. Instead, the NCAA will be allowed to institute caps on the number of athletes allowed to compete on each team. Institutions will now be able to offer scholarships up to the number of athletes that are allowed on each team under the new roster caps. This may reduce the total number of athletes at each institution but would allow universities to offer athletic scholarships to all of its varsity athletes.

Third, while the NCAA and conferences may not have rules that prohibit athletes from receiving NIL compensation from third parties, they may continue to have rules designed to ensure that NIL deals are for a "valid business purpose related to the promotion or endorsement of goods or services" and are not simply payments to athletes in return for their enrollment at an institution. Per the settlement, athletes and institutions are required to report any third-party NIL contracts worth $600 or more to a "designated reporting entity" chosen by the defendants. Since the finalization of the settlement, the defendants have announced the creation of NIL Go as the designated reporting entity. NIL Go is a "software platform" that will be used to determine whether third-party NIL deals "are made with the purpose of using a student-athletes' NIL to advance a valid business purpose and within a reasonable range of compensation."

The settlement also contemplates the creation of a "designated enforcement entity" that will oversee compliance with terms of the settlement agreement. On June 6, 2025, the newly established College Sports Commission (CSC) announced it would be responsible for implementing the *House* settlement. The CSC, which is an independent body separate from the NCAA, was, according to some reports, established by college sports' existing power conferences. The CSC is to implement and enforce settlement terms governing revenue sharing, NIL deals, and roster limits. According to the NCAA, the CSC will utilize NIL Go in ensuring compliance with settlement terms related to third-party NIL deals.

After the settlement was approved, seven separate groups of athletes filed appeals challenging various aspects of the settlement. As a result, the damages payments will not be paid to athletes while appeals are pending; however, the appeals do not affect the injunctive portion of the settlement, which went into effect on July 1, 2025.

Considerations for Congress

The implementation of the *House* settlement may create new legal and practical issues, particularly as institutions begin revenue sharing and the CSC assumes the role of primary enforcer of rules governing athlete compensation. For one, it is unclear how Title IX, which prohibits sex discrimination in federally funded education programs, will apply to institutional revenue sharing. While guidance from the Biden Administration—that has been rescinded—suggested that revenue sharing would be subject to Title IX, there remains uncertainty about how compensation for athletes will interact with Title IX requirements. Some have also raised questions regarding the settlement's impacts on non-revenue-generating college sports, suggesting it could result in colleges cutting smaller, non-revenue-generating programs and affect the development of athletes for Olympic competition.

The *House* settlement also leaves some significant topics related to college sports unresolved. For example, the settlement does not address transfers between institutions and other eligibility rules. The "transfer portal," for one, has long been a point of contention in the NIL debate. As mentioned above, at least one federal court has enjoined NCAA transfer rules, finding them to be anticompetitive under antitrust law. As a result, the NCAA no longer enforces some restrictions related to transfer eligibility. Further, college athletes have begun challenging NCAA rules related to the number of years an athlete may participate in college athletics, claiming that limits on eligibility violate antitrust law. Federal courts are so far seemingly split on the issue, with at least one case still pending on appeal.

Another contested issue not addressed in the *House* settlement is whether college athletes should be considered employees of their institutions. As discussed in these two Legal Sidebars, recent developments may indicate a shift in the legal landscape toward recognizing athletes as employees under the Fair Labor Standards Act and the National Labor Relations Act. According to some reports, various stakeholders support a model that would allow college athletes to engage in collective bargaining without being considered employees of their institution. Two companion bills introduced in the 119th Congress address collective bargaining and employment status under the National Labor Relations Act for college athletes.

With the uncertainties surrounding college athletics in mind, the entities in charge of regulating college athletics—including the NCAA and conference leaders—have called for federal legislation to help set uniform NIL standards in college sports. The NCAA has more recently expressed its top priorities for federal legislation, which include limited antitrust protection, preemption of state NIL laws, and clarification that college athletes are not employees.

While some Members of Congress have introduced various bills over the past five years that address different facets of college sports reform, none had advanced out of a House or Senate committee prior to the 119th Congress. More than 10 bills related to college athlete compensation and college sports reform have been introduced so far in the 119th Congress, including the SCORE Act, which recently advanced out of the House Education and Workforce and House Energy and Commerce Committees. At least one report has described the SCORE Act as "all-inclusive" in that it covers antitrust protection, preemption of state laws, codification of elements of the *House* settlement, and employment treatment of athletes.

The executive branch has also taken action to address certain aspects of college sports. On July 24, 2025, President Trump issued an executive order, "Saving College Sports," that seeks to "protect student-athletes and collegiate athletic scholarships and opportunities, including in Olympic and non-revenue programs, and the unique American institution of college sports." Amongst other things, the executive order directs relevant federal agencies to take action prohibiting non-fair market value payments to athletes, to clarify athlete employment status, and to take appropriate action to protect athlete rights in antitrust and other legal challenges. According to some commentators, the executive order does not immediately change the landscape surrounding college athlete compensation, but at least one college's athletics director has suggested it may build momentum toward further federal action, including legislation.

Author Information

Whitney K. Novak
Legislative Attorney

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