

Money on My Mind (And In My Pocket): Multi-Billion-Dollar Settlement For College Athletes Granted Final Approval and Related Federal Legislation Gains Momentum

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AUTHORS

Timothy Heaphy | Soumya Dayananda | Katrina Robson | Barnett Harris
Lindsay Hemminger

A federal judge has just cleared the path for a new era in college sports. The National Collegiate Athletic Association (“NCAA”) has reached a historic nearly \$2.8 billion settlement with former college athletes who had filed antitrust class actions seeking billions in compensation allegedly denied to them for decades. This settlement will usher in the most consequential change in college athletics in recent years, pending resolution of several outstanding legal issues. Universities nationwide must now contemplate how to proceed under the new settlement that impacts student athletes, athletic programs and the broader university community.

Background

On June 6, 2025, U.S. District Judge Claudia Wilken (NDCA) granted final approval of a settlement of pending litigation between the NCAA, power conferences, and current and former Division One (“Division-I”) student

athletes. The settlement covers three major class action antitrust lawsuits brought against the NCAA: *House v. NCAA*; *Hubbard v. NCAA*; and *Carter v. NCAA* (collectively, the “House Settlement”). Each of these lawsuits involved allegations by former college athletes that the NCAA was violating antitrust laws by conspiring to restrain competition, specifically barring name, image and likeness (“NIL”) payments for athletes prior to 2021, refusing to grant education-related benefits and financial rewards to student athletes, and capping the amount that Division-I student athletes could be compensated for their participation in athletics dating back to 2019. In addition to injunctive relief, the plaintiffs sought backpay for these alleged lost revenues.

On July 26, 2024, attorneys for the NCAA, the Power Five conferences, and the classes of college athletes sought preliminary approval of a nearly \$2.8 billion settlement agreement to resolve these three antitrust class actions. On June 6, 2025, the court granted final approval of the settlement.

Operative Terms of the Settlement

The *House* Settlement has four significant provisions:

First, nearly 400,000 former student athletes will share in nearly \$2.8 billion in retroactive damages for lost NIL revenue dating back to 2016. The settlement dollars will be provided by the NCAA, conferences, and individual institutions as follows: (1) the NCAA will provide \$1.1 billion; (2) the Power Five conferences will provide \$664 million; (3) other Division-I conferences will provide \$990 million; and (4) individual institutions will provide \$1.65 million. It is also important to note that these payments will not be evenly distributed; rather, roughly 75% of the funds will be awarded to football players, 20% to men’s and women’s basketball student athletes, and the remaining 5% to student athletes in the remaining sports.

Second, the *House* Settlement outlines a 10-year revenue-sharing plan that permits institutions to share up to 22% of certain revenue categories. Each institution has discretion in how they allot the revenue sharing payments to the student athletes. In other words, nothing prohibits an institution from allocating 99% of the revenue sharing payments to the quarterback of the football team. Importantly, the revenue sharing payments will be *in addition* to both athletic scholarships as well as NIL deals student athletes sign with third parties. Institutions can begin directly sharing revenue with college athletes starting July 1, 2025. Importantly, the revenue sharing plan is permissive, and there is no requirement that Division-I schools must participate.

Third, the settlement imposes roster limits on programs for each sport. These limits will be phased in over time, allowing all current or incoming 2025-2026 Division-I student athletes to compete for a roster spot at their schools or other schools without counting against the roster limit, for the duration of their NCAA eligibility.

Fourth, while the settlement does not impact the nature or amount of so called NIL payments to student athletes, it provides that all NIL deals worth more than \$600 with associated entities and associated individuals executed after June 6, 2025, will be subject to an assessment and review by a neutral third party—Deloitte.¹ These deals

¹ Updated Question and Answer: Impact of the Proposed Settlement on Division I Institutions, NCAA (Dec. 9, 2024), https://ncaaorg.s3.amazonaws.com/governance/d1/legislation/2024-25/Dec2024D1Gov_PhaseTwoInstSetQuestionandAnswer.pdf.

will be reviewed to assess whether the compensation aligns with what the student athlete could reasonably command in an open and competitive market. If a deal is not cleared by Deloitte, student athletes have three options: (1) revise the deal and resubmit; (2) cancel the deal; or (3) appeal Deloitte's decision to neutral arbitration before arbitrators approved by the plaintiffs, the defendant conferences, and the NCAA. In addition, Power Five conference institutions will also have to report any NIL agreements they individually enter into with student athletes. This reporting rule applies to all institutions who choose to opt into revenue sharing even if the institution is not involved in the *House* Settlement.

What's Next for Colleges and Universities?

Although the *House* Settlement resolves some questions, many remain unanswered. Some include:

- **Evaluation of “Valid Business Purpose” of NIL Deals:** The *House* Settlement provides that the NCAA and its conferences will be allowed to impose rules that prohibit individual boosters or NIL collectives from engaging in and/or entering into NIL agreements with or for the benefit of current or prospective student athletes unless the NIL agreement possesses a “valid business purpose related to the promotion or endorsement of goods or services provided to the general public for profit” and compensates the athlete 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 Member Institution.” The *House* Settlement does not further define the “valid business purpose” or the commensurate rates and terms of compensation for nonstudent athletes. This provision may give rise to litigation brought by NIL collectives, marketing agencies, and/or student athletes who opt out of the agreement.
- **Potential Title IX Issues:** The *House* Settlement does not address how Title IX will impact financial distributions to men's and women's teams, especially if universities begin to cut non-revenue generating sports programs to offset the financial impact of the *House* Settlement in an effort to keep resources balanced. Additionally, the settlement releases Title IX claims “arising out of or relating to the distribution of the Gross Settlement Fund,” which may in and of itself violate Title IX. The near \$2.8 billion retroactive damages fund is projected to be distributed at 75% to male football players, 20% to male and female basketball players, and 5% to student athletes from other teams, which may have Title IX implications. Indeed, a group of eight female student athletes has already challenged the retroactive payment provision of the settlement, alleging that it violates Title IX.²
- **Potential Antitrust Issues:** Several potentially significant antitrust questions remain unresolved. The *House* Settlement embodies a written agreement among Division-I colleges to cap the amount of revenue shared with (and hence a portion of the compensation given to) student athletes without permitting unionization (nor was it collectively bargained), which may raise potential antitrust concerns.³ Additionally,

² Ben Nuckols, *Female athletes appeal landmark NCAA settlement, saying it violates federal antidiscrimination law*, Associated Press (June 12, 2025), <https://apnews.com/article/ncaa-house-settlement-appeal-female-athletes-e2864d7bcd74d0c538c1f2e6c98fe6c>.

³ *White v. National Football League*, 836 F. Supp. 1458, 1485–88 (D. Minn. 1993) (approving a settlement agreement between professional football players and the National Football League that contained a similar provision because it was collectively bargained, and as a result was held to be exempt from antitrust scrutiny as a result of the nonstatutory labor exemption).

the settlement attempts to release further potential antitrust liability by including clauses making it difficult for the plaintiffs in the settled lawsuits, their successors in interest, and their lawyers to bring antitrust lawsuits against the NCAA, which may violate the principle that parties to a settlement cannot engineer their own exemption from antitrust scrutiny.

- **Potential Labor & Employment Issues:** Labor issues, including the potential classification of student athletes as employees, remain unanswered but of significant importance. This is especially true in light of the recent *Johnson v. NCAA*⁴ decision. In *Johnson*, former student athletes alleged that under state and federal legislation, they should be classified as “employees.” The Third Circuit concluded that the plaintiffs alleged a significant employment relationship. As a result, the court created a new test for student athlete classification under the Fair Labor Standards Act. Now that the *House* Settlement has been approved, this new test may permit courts to find that student athletes are employees.
- **Potential Conflicts with State Laws:** The *House* Settlement may violate current state laws. For example: Six states—California,⁵ Ohio,⁶ Illinois,⁷ Georgia,⁸ Colorado,⁹ and Virginia¹⁰ currently have laws or executive orders that permit universities to pay student athletes without any limit. Two states—Nebraska¹¹ and Oregon,¹²—currently have proposed bills which would restrict the NCAA from requiring student athletes to disclose their NIL deals, and state laws trump federally approved settlements.
- **Other NCAA Lawsuits:** The *House* Settlement also does not resolve additional lawsuits currently pending against the NCAA. These cases include antitrust claims brought by class members who opted out of the *House* Settlement in *Hill v. NCAA*, the ongoing litigation in *Johnson v. NCAA* over whether student athletes are employees, and the ongoing litigation over the NCAA eligibility rules in *Pavia v. NCAA*. The *House* Settlement would also not resolve ongoing and prospective legal efforts regarding college athletes potentially unionizing.

The SCORE Act

The *House* Settlement has created new urgency for federal legislation to address some of the issues left unresolved by that resolution. On June 12, 2025, the Subcommittee on Commerce, Manufacturing, and Trade of the U.S. House Committee on Energy and Commerce held a hearing to discuss the Student Compensation and Opportunity

⁴ No. 22-1223 (3d Cir. July 11, 2024), <https://www2.ca3.uscourts.gov/opinarch/221223p.pdf>.

⁵ Collegiate athletics: student athlete compensation and representation, California Senate Bill 206 (Sep. 30, 2019), <https://legiscan.com/CA/text/SB206/id/2055437>.

⁶ Ohio Executive Order 2024-08D (Nov. 18, 2024).

⁷ Freedom of Information Act, Illinois Public Act 103-0724 (Jan. 1, 2025), <https://www.ilga.gov/legislation/publicacts/103/PDF/103-0724.pdf>.

⁸ Executive Order Regarding Fairness to Georgia’s Student-Athletes in Compensation for Their Name, Image, and Likeness (Sept. 17, 2024).

⁹ Concerning Measures to Support a Student Athlete in the Use of Their Name, Image, or Likeness, HB 25-1041 (Mar. 28, 2025), https://leg.colorado.gov/sites/default/files/2025a_1041_signed.pdf.

¹⁰ VA Code §§ 23.1-408.1 (2024), <https://legacylis.virginia.gov/cgi-bin/legp604.exe?241+ful+CHAP0837>.

¹¹ Legislative Bill 370, First Session, 109th Nebraska Leg. (2025), <https://nebraskalegislature.gov/FloorDocs/109/PDF/Intro/LB370.pdf>.

¹² House Bill 3694, 83rd Oregon Leg. Assembly (2025), <https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureDocument/HB3694/Introduced>.

through Rights and Endorsements Act (the “SCORE Act”), which was introduced by Rep. Gus Bilirakis (R-Florida) in January 2024.¹³ The SCORE Act seeks to establish a national standard for NCAA athletes, create reasonable guardrails around NIL deals, and ensure that benefits like scholarship protections and financial literacy programs are widely available.¹⁴ The Committees on Education and the Workforce and the Judiciary are also involved in drafting the SCORE Act. The Washington Post has reported that individual legislators are contemplating adding language to the bill that would resolve some of the issues left unresolved by the *House Settlement*: (1) a preemption of state NIL and other laws that conflict with NCAA or conference rules, (2) a prohibition on college athletes being classified as employees, and (3) broad antitrust protections that align with the *House Settlement*.¹⁵ The antitrust protections include preventing an associated entity or individual from providing an athlete with compensation that is greater than fair market value for NIL agreements, which aligns with the clearinghouse that the *House Settlement* establishes.¹⁶ It also includes protections for the NCAA and its members from legal challenges to a new salary cap for schools’ direct payments to athletes and attempts to regulate booster spending in the NIL market, as well as from lawsuits challenging eligibility rules.¹⁷ The bill also provides that college athletes may not be classified as employees of their individual schools regardless of the *House Settlement* payments,¹⁸ removing their right to collectively bargain.

It is hard to predict whether the SCORE Act will progress toward further consideration and final passage, and if so which provisions survive. It is largely a Republican-led effort at this point, and Democrats on the subcommittee expressed reservations about the antitrust and employment provisions at the June 12 hearing. The bill is also a House-only effort at this point, disconnected from other college sports bills pending in the United States Senate. While the concept of a national NIL standard and the resolution of some of the remaining open issues in college sports enjoy an unusual level of bipartisan support in Congress, the specific details of the SCORE Act and other provisions are contentious and will require compromise. We expect further evolution of this legislation going forward, with the hope by sponsors and NCAA President Charlie Baker that an ultimate compromise solution will eventually emerge.

Final Thoughts

The landscape of college athletics is evolving at an alarmingly fast rate. The *House Settlement* is poised to make a seismic shift in collegiate athletics, and the legislation pending in Congress may result in further change. Institutions should consult with counsel as part of their planning for how to proceed under the now-final *House Settlement*, and to be prepared for the potential changes included in the SCORE Act. Schools that are considering

¹³ Jesse Dougherty, *Congress could soon introduce a very NCAA-friendly bill* (June 9, 2025), <https://energycommerce.house.gov/posts/chairman-bilirakis-delivers-opening-statement-at-subcommittee-on-commerce-manufacturing-and-trade-hearing-on-standardizing-nil-in-college-athletics>.

¹⁴ *Chairman Bilirakis Delivers Opening Statement at Subcommittee on Commerce, Manufacturing, and Trade Hearing on Standardizing NIL in College Athletics*, Energy & Commerce (June 12, 2025), <https://energycommerce.house.gov/posts/chairman-bilirakis-delivers-opening-statement-at-subcommittee-on-commerce-manufacturing-and-trade-hearing-on-standardizing-nil-in-college-athletics>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

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opting in to fully commit to revenue sharing by the June 15, 2025 deadline should consider how structural changes to their athletic program will allow them to maximize revenue, protect student athletes, and avoid potential liability. It is also vital that institutions and conferences continue to monitor developments with related federal legislation like the SCORE Act and contribute to the important discussions of its various provisions as the bill progresses.

Willkie can assist university and conference personnel with navigating these changes and monitoring the evolution of the rules surrounding college athletes. The outstanding issues identified above will present ongoing challenges and require interpretation, evaluation, and thoughtful implementation—a process that may be assisted by legal and other professionals. Our skilled higher education team has experience with universities and entities in the private sector who are at the forefront of the evolution of these and other issues facing college athletics. We are available to assist as you consider the impact of these issues on your organization.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Timothy Heaphy

202 303 1068
theaphy@willkie.com

Soumya Dayananda

202 303 1312
sdayananda@willkie.com

Katrina Robson

202 303 1096
krobson@willkie.com

Barnett Harris

202 303 1054
bharris@willkie.com

Lindsay Hemminger

202 303 1035
lhemminger@willkie.com



BRUSSELS CHICAGO DALLAS FRANKFURT HOUSTON LONDON LOS ANGELES MILAN
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