

ENFORCING AND ARBITRATING NAME, IMAGE, AND LIKENESS COMPENSATION LIMITS

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Abstract

The parties' historic settlement agreement in In re: College Athlete NIL Litigation, more commonly known as House v. NCAA, has received significant attention from legal scholars, the national media, and college athletics constituents. While those groups focus on settlement outcomes, like universities sharing revenue with their athletes, and its imposition of roster limits, along with potential resulting Title IX ramifications, they have largely overlooked the creation of a new system for regulating collegiate athletes' receipt of name, image, and likeness (NIL) compensation. Specifically, the settlement agreement's inclusion of both a third-party and arbitration in NIL policy enforcement is drastic for college athletics and warrants examination.

Procedurally, this new process will determine whether collegiate athletes' compensation from many NIL agreements falls within an acceptable range of compensation. When a third-party entity determines NIL compensation exceeds this suitable range, the student-athlete must decide among a few options on how they will proceed. Per the settlement agreement, a student-athlete in this situation may renegotiate or cancel the NIL agreement or proceed with arbitration on an expedited timeline, with the athlete's university possessing the ability to fund the latter proceedings. Should a student-athlete proceed with an unapproved NIL agreement, enforcement actions could include loss of athletics competition eligibility. This article examines these new processes, their significant ramifications for universities and their student-athletes, and potential legal issues with them.

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INTRODUCTION

The parties' settlement agreement in *In re: College Athlete NIL Litigation*, more commonly known as *House v. NCAA*, is "historic" for numerous reasons and resulted in changes to several long-standing policies and practices in college athletics.¹ Chief among the changes is that universities may share millions of dollars in revenue directly with their student-athletes under a new athlete compensation model.²

Optimists, including National Collegiate Athletic Association (NCAA) president Charlie Baker,³ view the settlement as a means to eliminate or mitigate the perceived chaos emanating from the name, image, and likeness (NIL) era in college athletics.⁴ This NIL era commenced in July 2021 when, largely due to pressure from state legislatures, the NCAA began permitting collegiate athletes to accept compensation for use of their NIL.⁵ These changes allowed student-athletes to accept pay or in-kind compensation for third-parties' use of athletes' personal brands, for example.⁶

Those who believe a state of chaos exists may point to examples like quarterback Nico Iavaleava refusing to participate in a University of Tennessee practice in an attempted professional sports-like "holdout" for increased NIL compensation⁷ or

1 *In re: College Athlete NIL Litigation, Opinion and Order Granting Final Approval to Settlement*, No. 979, N.D. Cal., June 6, 2025. See Ross Dellenger, *Historic House-NCAA Settlement Leaving Hundreds of Olympic Sport Athletes in Peril*, YAHOO! SPORTS (Oct. 25, 2024), [https://sports.yahoo.com/historic-house-ncaa-settlement-leaving-hundreds-of-olympic-sport-athletes-in-peril-125238713.html#:~:text=The%20deal%20features%20three%20main,3\)%20the%20overhauled%20roster%20structure](https://sports.yahoo.com/historic-house-ncaa-settlement-leaving-hundreds-of-olympic-sport-athletes-in-peril-125238713.html#:~:text=The%20deal%20features%20three%20main,3)%20the%20overhauled%20roster%20structure) (referring to the parties' settlement agreement as "groundbreaking and landmark"); see also Shehan Jeyarajah, *How Historic House v. NCAA Settlement Will Impact College Athletics On and Off the Field For Years to Come*, CBSSPORTS (May 24, 2024), <https://www.cbssports.com/college-football/news/how-historic-house-v-ncaa-settlement-will-impact-college-athletics-on-and-off-the-field-for-years-to-come/> (opining that the case's resolution will forever alter college athletics by abolishing its amateurism model).

2 See Dellenger, *supra* note 1; see also Jeyarajah, *supra* note 1.

3 David Hale, *Charlie Baker Hopes NCAA Settlement Creates Stability for Schools*, ESPN (May 13, 2024), https://www.espn.com/college-sports/story/_/id/40140633/charlie-baker-hopes-ncaa-settlement-creates-stability-schools (citing Baker's statement that the settlement would result in "clarity and a framework for a sustainable business model for college sports").

4 See Jerry Kutz, *House-NCAA Settlement Could Clean Up Wild West of NIL*, THE OSCEOLA (Nov. 21, 2024), <https://floridastate.rivals.com/news/house-ncaa-settlement-could-clean-up-wild-west-of-nil> (quoting Florida State University athletics director Michael Alford as proclaiming that the settlement "is really going to clean up where we've been in this wild west atmosphere we've had the last few years ...").

5 Jada Allender, *The NIL Era Has Arrived: What the Coming of July 1 Means for the NCAA*, HARV. J. SPORTS & ENT. L. (July 1, 2021), <https://journals.law.harvard.edu/jsel/2021/07/the-nil-era-has-arrived-what-the-coming-of-july-1-means-for-the-ncaa/>.

6 Sara Coello, *What Is NIL in College Sports? How Do Athlete Deals Work?* ESPN (Mar. 24, 2025), https://www.espn.com/college-sports/story/_/id/41040485/what-nil-college-sports-how-do-athlete-deals-work (explaining that student-athletes can now accept things like footwear and dorm room supplies in exchange for promoting the items as examples).

7 See Margaret Fleming, *Nico Iavaleava Leaves Tennessee After NIL Standoff*, FRONT OFF. SPORTS (Apr. 11,

quarterback Matthew Sluka sitting out the remainder of UNLV's 2024–25 season over an NIL compensation dispute after leading the team to wins in its first three games.⁸ More specifically, some idealists theorize that in the post-*House* settlement era, universities' ability to provide additional compensation directly to their student-athletes will minimize the substantial influence that third parties like NIL booster collectives currently possess.⁹ Others hope the settlement will stem the tide of lawsuits against the NCAA.¹⁰

The national media, legal scholars, and college athletics constituents have been quick to identify issues that remain in spite—or perhaps because—of the settlement, however. These issues include Title IX's potential application¹¹ and athletics departments' continued attempts to shift increased expenses in the form of additional athlete compensation to fans¹² and/or nonathlete students.¹³

Perhaps overlooked in the significant commentary regarding the *House* settlement is its controversial¹⁴ creation of an NIL policy enforcement process that differs vastly from any current or former such NCAA procedure.¹⁵ Specifically, the NIL rules enforcement process now includes both a third-party investigatory and adjudicative entity and arbitration.¹⁶ While the NCAA attempted to utilize a third-party to

2025), <https://frontofficesports.com/tennessee-nico-iamaleava-nil-holdout/>.

8 See Ralph D. Russo, *UNLV QB to Sit Out Season After Agent Says \$100,000 Promised for Transfer Has Not Been Paid*, ASSOC. PRESS (Sept. 25, 2024), <https://apnews.com/article/unlv-sluka-59449174adffe0940266427158d964d3>.

9 Kutz, *supra* note 4.

10 See Charlie Baker, *A Letter from NCAA President Charlie Baker*, NCAA (June 6, 2025), <https://www.ncaa.org/news/2025/6/6/media-center-a-letter-from-ncaa-president-charlie-baker.aspx> (stating that the settlement agreement's final approval results in a "release from future litigation" on certain "subjects").

11 See Amanda Christovich, *DOE Issues More Guidance on Title IX Application to Athlete Pay*, FRONT OFF. SPORTS (Jan. 17, 2025), <https://frontofficesports.com/education-department-clarifies-proportionate-college-athlete-pay/> (describing Department of Education guidance regarding Title IX's application to universities' revenue share distributions to their athletes).

12 See David Rumsey et al., *How Fans Could Be on the Hook for Player Pay in College Sports*, FRONT OFF. SPORTS (Sept. 18, 2024), <https://frontofficesports.com/newsletter/the-price-fans-pay-for-nil/> (explaining that while student-athletes' compensation increases, "It is also—perhaps not surprisingly—getting more expensive for fans.").

13 For example, see WCCO Staff, *University of Minnesota Adds \$200 Fee at Twin Cities Campus to Help Pay Student Athletes*, WCCO NEWS (July 19, 2025), <https://www.cbsnews.com/minnesota/news/university-of-minnesota-athletics-fee/> (explaining that University of Minnesota students will pay \$100 per semester with those funds helping pay, among other things, student-athletes following the *House* settlement).

14 Michael McCann, *Clearinghouse Denial of NIL Deals to Be Limited by Arbitration*, SPORTICO (June 8, 2025), <https://www.sportico.com/law/analysis/2025/arbitration-nil-clearinghouse-lawsuits-1234855588/>.

15 Ross Dellenger, *NCAA College Leaders File Landmark Agreement in Antitrust Cases; Here's What Was Settled and What's Next*, YAHOO! SPORTS (July 26, 2024) (describing the amended settlement agreement as creating "an enforcement mechanism unlike anything college sports has seen").

16 Amended Injunctive Relief Settlement, *In re: College Athlete NIL Litigation*, No. 4:20-CV-03919, 23–24 (N.D. Cal.) [hereinafter Amended Settlement Agreement].

adjudicate certain rules violations allegations previously through the Independent Accountability Resolution Process,¹⁷ the disastrous practice was mercifully short-lived.¹⁸ The introduction of arbitration into the NCAA rules enforcement process in the post-*House* college athletics landscape is a first, however.¹⁹

More specifically, the *House* settlement agreement created a system whereby a third-party clearinghouse evaluates certain NIL agreements that compensate student-athletes \$600 or more to determine whether the compensation amount falls within a “reasonable range.”²⁰ When the clearinghouse determines that an NIL arrangement’s compensation amount exceeds this acceptable range, the athlete is left with a couple of choices to avoid imposition of penalties, which can include loss of the ability to compete athletically.²¹ In such a situation, the student-athlete may choose to renegotiate or cancel the NIL arrangement or appeal the clearinghouse’s decision to neutral arbitrators.²² In the latter instance, a student-athlete’s university can fund their legal expenses.²³

In this new era of college athletics, universities and their NIL-involved student-athletes must familiarize and prepare to engage with this new process. Thus, this article explores the process and its potential ramifications, which, as the article shows, are significant for both universities and their student-athletes.

I. PRE-HOUSE ENFORCEMENT OF NCAA NIL REGULATIONS

To appreciate how much the *House* settlement agreement alters enforcement of NIL regulations, one must understand how the NCAA enforced them presettlement. Thus, this part overviews that unique,²⁴ oft misunderstood²⁵ process.

A. College Athletics’s NIL Era

Prior to July 1, 2021, the NCAA staunchly enforced its amateurism rules, including those that prohibited a student-athlete from accepting compensation for

17 See *Independent Investigators and Decision-Makers*, NCAA (Oct. 31, 2018), <https://www.ncaa.org/sports/2018/8/8/independent-investigators-and-decision-makers.aspx> (describing the process that previously existed for “complex” cases).

18 See Dennis Dodd, *After Kansas Joins Other Teams Recently Let Off Easy for NCAA Violations, the IARP Will Thankfully RIP*, CBS SPORTS (Oct. 11, 2023), <https://www.cbssports.com/college-basketball/news/after-kansas-joins-other-teams-recently-let-off-easy-for-ncaa-violations-the-iarp-will-thankfully-rip/> (“The idea turned out to be ill-conceived and further complicated the process.”).

19 See *House v. NCAA Settlement—FAQ*, Temple University Athletics Department, <https://owlsports.com/sports/2025/3/31/faq-house-settlement> (referring to the arbitration system as “new”).

20 Coll. Sports Comm’n, *Student-Athlete NIL Deals*, <https://www.collegesportscommission.org/nil>.

21 *Id.*

22 *Id.*

23 Amended Injunctive Relief Settlement, *supra* note 16.

24 See Kevin E. Broyles, *NCAA Regulation of Intercollegiate Athletics: Time for a New Game Plan*, 46 ALA. L. REV. 487, 487 (1995).

25 Jerry R. Parkinson, *Scoundrels: An Inside Look at the NCAA Infractions and Enforcement Processes*, 12 WYO. L. REV. 215, 219 (2012).

use of their NIL.²⁶ For example, University of Georgia football student-athlete and Heisman Trophy contender²⁷ Todd Gurley missed four games due to suspension in the 2014 season after acknowledging he violated NCAA rules by selling autographed memorabilia.²⁸

One of the NCAA's main rationales for precluding student-athletes from accepting NIL compensation was helping maintain and foster prioritization of academics over athletics, which simultaneously advanced its notion of amateurism within college athletics.²⁹ And for most of the NCAA's history, the public largely accepted that, because they are amateurs, collegiate athletes should not be able to accept compensation for their athletics exploits.³⁰ Limiting athletes' compensation to education-related benefits like athletics scholarships also helped differentiate the NCAA's product—college athletics—from professional sports, where the *employees* receive salaries in exchange for their play.³¹

Amid pressure from state legislatures,³² and in a seismic shift, the NCAA eliminated many of its long-standing rules forbidding student-athletes from permissibly accepting NIL compensation in late June 2021.³³ As a result, and with limited exceptions, student-athletes could accept remuneration for use of their

- 26 Tim Tucker, *'The Wild West': College Sports' NIL Era Brings Upheaval*, ATLANTA J.-CONST. (Mar. 18, 2022), <http://ajc.com/sports/georgia-bulldogs/the-wild-west-college-sports-nil-era-brings-upheaval/YORTVG5VAZCMPBLMVK42QMA63E/>; see also Pete Nakos, *NIL Timeline: Key Moments That Have Defined the Era*, ON3 (Feb. 26, 2024), <https://www.on3.com/nil/news/nil-timeline-key-moments-ncaa-greg-sankey-charlie-baker-livvy-dunne-jaden-rasahda-nico-iamaleava/> (“The NCAA prohibited college athletes from profiting from their name, image and likeness for more than a century.”).
- 27 Steve Almasy, *Heisman Trophy Contender Todd Gurley Suspended by Georgia*, CNN (Oct. 9, 2014), <https://www.cnn.com/2014/10/09/us/heisman-trophy-frontrunner-suspended/index.html#:~:text=Running%20back%20Todd%20Gurley%2C%20one,possible%20violation%20of%20NCAA%20rules.>
- 28 *Georgia's Gurley Eligible to Play Nov. 15*, NCAA (Oct. 29, 2014), <https://www.ncaa.org/news/2014/10/29/georgia-s-gurley-eligible-to-play-nov-15.aspx>.
- 29 Jordan Zaia, *The History and Future of Amateurism in College Sports*, 35 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 503, 505 (2025); see also William W. Berry III, *SAVING CAMELOT? NIL and the Future of Amateurism*, 50 BYU L. REV. 197, 213 (2024) (explaining that “unchecked commercialization” within collegiate athletics could threaten universities’ educational missions).
- 30 Robert J. Romano, *The Concept of Amateurism: How the Term Became Part of the College Sports Vernacular*, 1 U. N.H. SPORTS L. REV. 29, 29 (2022) (describing the NCAA’s successful public pitch that amateur competition serves as a core college athletics principle and that maintaining amateurism is necessary to ensure collegiate athletes receive a quality education).
- 31 Berry, *supra* note 29, at 219–20; see also Audrey C. Sheetz, *Student-Athletes vs. NCAA: Preserving Amateurism in College Sports Amidst the Fight for Player Compensation*, 81 BROOK. L. REV. 865, 865 (2016) (noting that the NCAA and its member universities began requiring athletes to be amateurs in 1910).
- 32 Dan Murphy, *Universities, NCAA See Pros and Cons of New State NIL Laws*, ESPN (July 1, 2023), https://www.espn.com/college-sports/story/_/id/37940566/universities-ncaa-nil-laws-texas-texas-am (“Competition from different states is what initially forced the NCAA to allow athletes to make NIL money....”).
- 33 Ross Dellenger, *'It's Going to Be a Clusterf---': The New Era of College Sports Is Here. Is Anyone Ready?* SPORTS ILLUSTRATED (July 1, 2021), <http://si.com/college/2021/07/01/ncaa-athletes-profit-nil-daily-cover>.

NIL beginning in July 2021.³⁴ This pivot generally permitted student-athletes to accept compensation for selling their autographs, hosting camps or clinics,³⁵ and promoting goods, services, and entities, for example.³⁶ Student-athletes immediately took advantage of their newfound abilities, collectively earning over \$900 million in NIL compensation within a year.³⁷

Instead of adopting a comprehensive NIL policy that included numerous new rules, the NCAA instead initially implemented a minimalist interim NIL policy.³⁸ The interim policy's basic stipulations included prohibiting both pay-for-play and use of NIL as a recruiting inducement, and requiring student-athletes to perform *quid pro quo* in exchange for NIL compensation.³⁹

The NCAA subsequently released guidance regarding the interim policy's application on multiple occasions.⁴⁰ In May 2022, for example, the NCAA clarified that NIL booster collectives meet its legislated booster definition, and thus NCAA rules largely preclude them from engaging in the process through which universities recruit prospective student-athletes.⁴¹ These entities formed as early as August 2021⁴² and have provided millions of dollars in compensation to student-athletes in what many classify as pay-for-play or recruiting inducements in the guise of NIL compensation.⁴³ The NCAA's interim NIL policy was in place for over three years until the NCAA largely codified it as permanent legislation in 2024.⁴⁴

34 *Id.*

35 *NIL (Name, Image, Likeness)*, NCAA (July 9, 2021), <https://www.ncaa.org/sports/2021/7/9/name-image-likeness.aspx>.

36 Tucker, *supra* note 26.

37 Josh Moody, *The Current State of NIL*, INSIDE HIGHER ED (June 7, 2023), <https://www.insidehighered.com/news/students/athletics/2023/06/07/two-years-nil-fueling-chaos-college-athletics>.

38 See Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021), <http://ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>.

39 *Id.*

40 See Josh Lens, *NIL Enforcement Preemption*, 2024 UTAH L. REV. 891, 904 (2024) (describing the NCAA's guidance released in May and October of 2022 and June 2023).

41 *Interim Name, Image and Likeness Policy Guidance Regarding Third Party Involvement*, NCAA, https://ncaaorg.s3.amazonaws.com/ncaa/NIL/May2022NIL_Guidance.pdf. Note, however, that a federal judge issued an injunction in February 2024 that precluded the NCAA from enforcing certain NIL regulations that sought to prevent boosters and NIL collectives from negotiating NIL agreements with prospective student-athletes, including prospective transfer student-athletes, during the recruiting process. Brandon Marcello, *House v. NCAA Attorneys Amend 'Booster' Language in Settlement as Two Sides Look for Federal Judge Approval*, CBS SPORTS (Sept. 26, 2024), <https://www.cbssports.com/college-football/news/house-v-ncaa-attorneys-amend-booster-language-in-settlement-as-two-sides-look-for-federal-judge-approval/>.

42 Nakos, *supra* note 26.

43 Dellenger, *supra* note 15.

44 For example, see NCAA, § 22.01.1, LSDBi, <https://web3.ncaa.org/lldb/search/bylawView?id=134186>.

B. *The Enforcement Staff and COI's Roles in Enforcing NCAA NIL Regulations*⁴⁵

Rules, such as those regulating NIL, are hollow unless enforced.⁴⁶ Thus, the NCAA empowers a group of its employees known as the enforcement staff to enforce its myriad rules⁴⁷ so compliant schools and coaches will not be disadvantaged.⁴⁸

The enforcement staff effectually serves as the NCAA's prosecutor,⁴⁹ receiving and reviewing information regarding potential NCAA rules violations via numerous means, including anonymous tips.⁵⁰ After reviewing this information in a "fair, accurate, collaborative, and timely manner,"⁵¹ the enforcement staff determines whether and how to proceed. If it believes the information it uncovers during an investigation may substantiate NCAA rules violations, the enforcement staff alleges potential Level I or Level II violations, with the former being the more egregious categorization.⁵²

45 As a private association, the NCAA possesses the ability to not only adopt governing rules, but to enforce them. Josephine (Jo) R. Potuto, *The NCAA Rules Adoption, Interpretation, Enforcement, and Infractions Processes: The Laws That Regulate Them and the Nature of Court Review*, 12 VAND. J. ENT. & TECH. L. 257, 272 (2010).

46 Pete Nakos, *NCAA Releases Updated NIL Guidance Aimed at Institutions*, ON3NIL (Oct. 26, 2022), <http://on3.com/nil/news/ncaa-division-i-board-of-directors-nil-guidance-collectives-schools-member-institution/> (quoting an anonymous NIL collective operator); see also Jeremy Crabtree, *Enforcement is Key to Solving NIL 'Pay-For-Play' Concerns on Recruiting Trail*, ON3 (Dec. 22, 2012), <https://www.on3.com/nil/news/ncaa-enforcement-is-key-to-solving-nil-pay-for-play-concerns-on-college-football-recruiting-trial/> (quoting an unidentified collective operator). "Were there no rules setting up an enforcement and infractions system to find and punish cheaters, unscrupulous coaches and staff would have a field day," for example. Potuto, *supra* note 45, at 262.

47 See NCAA, *Division I Infractions: 2019–20 Annual Report 9* (2020), https://ncaaorg.s3.amazonaws.com/infractions/d1/2019D1Inf_AnnualReport.pdf [hereinafter 2019–20 Annual Report]; see also NCAA, *NCAA Enforcement Overview 1*, https://ncaaorg.s3.amazonaws.com/infractions/d1/glncgrphcs/D1INF_InsideEnforcement.pdf ("The enforcement staff supports schools and individuals who play by the rules and are committed to integrity."). "[E]nforcement staff members ... are paid employees of the NCAA." Parkinson, *supra* note 25, at 224.

48 Potuto, *supra* note 45, at 272.

49 See Timothy Davis & Christopher T. Hairston, *Majoring in Infractions: The Evolution of the National Collegiate Athletic Association's Enforcement Structure*, 92 OR. L. REV. 979, 988 (2014); see also Mike Rogers & Rory Ryan, *Navigating the Bylaw Maze in NCAA Major Infractions Cases*, 37 SETON HALL L. REV. 749, 753–54 (2007). The enforcement staff largely consists of attorneys and former student-athletes, coaches, scouts, academic advisors, compliance staff members, or other athletics administrators. NCAA *Enforcement Overview*, *supra* note 47, at 1.

50 Potuto, *supra* note 45, at 289–90 (listing examples of sources of reports to include university self-reports, rival coaches, media stories, anonymous tips, and disgruntled staff members or student-athletes). In one case, for example, a University of California, Los Angeles assistant football coach's ex-girlfriend notified the NCAA that the "coach had knowledge of and/or involvement in potential NCAA recruiting violations." See COMM. ON INFRACTIONS, NCAA, UNIVERSITY OF CALIFORNIA, LOS ANGELES PUBLIC INFRACTIONS DECISION, 6 (2016), <http://web3.ncaa.org/lsdbi/search/miCaseView/report?id=1025586> (describing violations of NCAA recruiting rules).

51 2019–20 Annual Report, *supra* note 47, at 9 (describing a university's trust and collaboration as "vital to the process").

52 See *id.* at 7. Note that the third category of violations is Level III, which the enforcement staff and university typically handle sans Committee on Infractions involvement. *Id.* at 9.

When the enforcement staff alleges potential Level I or II violations, the Committee on Infractions (COI) ultimately determines their merit.⁵³ Thus, while the enforcement staff is the NCAA's prosecutorial group,⁵⁴ the COI is the rules infractions process's judge and jury.⁵⁵ Founded in 1954,⁵⁶ the COI is an independent administrative body consisting of volunteers.⁵⁷ More specifically, COI panelists' professional profiles include current and former university presidents, chancellors, athletics directors, conference commissioners, former coaches, attorneys, and professors.⁵⁸ Thus, the COI touts the infractions process as "peer-review[ed]."⁵⁹ There are up to twenty-four COI members at any given time, a smaller panel of

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- 53 The NCAA's infractions process is a form of alternative dispute resolution with similarities to arbitration in that it works via the parties' formal agreement identifying the adjudicator and processes. Potuto, *supra* note 45, at 304.
- 54 Potuto, *supra* note 45, at 289 (describing the enforcement staff's role as "something like that of police in investigating crimes or a prosecutor presenting cases in court").
- 55 Josh Lens, *NCAA's Changing Landscape Offers Chance to Improve Infractions Process*, SPORTICO (Feb. 2, 2022), <http://sportico.com/leagues/college-sports/2022/ncaa-infractions-reform-1234659517/>; see also Pat Forde, *Meet the Officials Who Volunteered for an NCAA Job Most Would Run Away From*, SPORTS ILLUSTRATED (Feb. 28, 2023), <https://www.si.com/college/2023/03/01/committee-infractions-ncaa-rulings-inside-look-tennessee> ("There are some major distinctions, but this is the college sports version of a courtroom and the people seated around the square are both judge and jury."). A hearing at which the COI adjudicates enforcement staff violation allegations is akin to the college athletics court room. Bryan Fischer, *How Will New College Sports Commission Enforce Post-Settlement Regulations?* SPORTS ILLUSTRATED (June 17, 2025), <https://www.si.com/college-football/college-sports-revenue-sharing-era-concerns-collectives>.
- 56 See Greg Heller, *Preparing for the Storm: The Representation of a University Accused of Violating NCAA Regulations*, 7 MARQ. SPORTS L.J. 295, 298 (1996) (explaining that the COI's creation "gave the NCAA some legitimacy and spurred growth, as it now had a mechanism in place with investigative powers and powers to punish member institutions").
- 57 Division I Committee on Infractions, NCAA, <http://ncaa.org/governance/committees/division-i-committee-infractions> (describing COI) (last visited Feb. 12, 2025). The NCAA enforcement staff and COI are "entirely separate enterprise(s)." Gene Marsh & Marie Robbins, *Weighing the Interests of the Institution, the Membership and Institutional Representatives in an NCAA Investigation*, 55 FLA. L. REV. 667, 677 (2003). However, the COI affirmed a staggering ninety-three percent of the enforcement staff's allegations over a recent three-year period. JON DUNCAN, NCAA, ENFORCEMENT SELF-STUDY OPERATIONS AND COMPLIANCE 7 (2019), http://ncaaorg.s3.amazonaws.com/infractions/guides/2019ENF_SelfStudyOperComp.pdf (contending that this data shows that the enforcement staff makes well-supported charges). Some question the COI's neutrality and describe the COI as an arm of the enforcement staff that will not deviate from the enforcement staff's recommendations. For example, see Davis & Hairston, *supra* note 49, at 993. For additional analysis of the propriety of the COI's affirmation rate of enforcement staff allegations, see Josh Lens, *Examining the Committee on Infractions's Affirmation Rate of NCAA Enforcement Staff Allegations of Rules Violations*, 22 FLA. L. REV. F. 121 (2022).
- 58 See NCAA Division I Committee on Infractions Roster, NCAA, <http://ncaa.org/sports/2018/3/20/ncaa-division-i-committee-on-infractions-roster.aspx>. Former COI chair Gene Marsh has likened Committee on Infractions service to "being on jury duty in perpetuity." Marsh & Robbins, *supra* note 57, at 679.
- 59 See 2019–20 Annual Report, *supra* note 47, at 5. For discussion regarding the benefits of judgment by peers, see Gene A. Marsh, *A Call for Dissent and Further Independence in the NCAA Infractions Process*, 26 CARDOZO ARTS & ENT. L.J. 695, 709 (2009) (recommending, among other things, more independent COI members). For analysis regarding whether the process is actually peer reviewed for coaches who face allegations that they violated NCAA rules, see Josh Lens, *The NCAA Infractions Process and Peer Review*, 83 OHIO STATE L.J. ONLINE 80 (2022).

which considers each infractions case on the COI's behalf.⁶⁰ These volunteers "love college sports and seek fairness and competitive balance in them."⁶¹

The COI ultimately produces a publicly available written decision detailing a case's facts, violations, penalties,⁶² and reasons for its findings and penalties.⁶³ The COI bases penalties on guidelines that attempt to align them with the violations' severity and degree of fault while offsetting any competitive or advantage.⁶⁴ Penalties range from monetary fines and vacation of wins and records to athletics scholarship reductions and postseason participation bans.⁶⁵

An example of this process occurring was in an NIL rules violations case involving Florida State University. The case resulted from an assistant football coach including an executive from an NIL booster collective in a prospective transfer student-athlete's recruitment.⁶⁶ Specifically, the assistant coach facilitated a meeting between the executive, the student-athlete, and the latter's family.⁶⁷ Not only did the assistant coach inform the student-athlete and their family about the meeting, the assistant coach transported them to it.⁶⁸ During the meeting, the executive recruited the student-athlete on behalf of the University and offered him an NIL deal.⁶⁹ The executive's involvement did not end there, as they called and sent a text message to the student-athlete's mother.⁷⁰ The COI concluded that the

60 Division I Committee on Infractions Composition, NCAA (Jan. 2019), http://ncaaorg/s3.amazonaws.com/infractions/d1/glnc_graphcs/D1INF_COIComposition-FactSheet.pdf. Panels of three, five, or seven COI members consider each case and panelists' "experience, availability and the absence of a conflict of interest" determines a panel's makeup. NCAA, Division I Infractions: 2021-22 Annual Report 18 (2022), https://ncaaorg.s3.amazonaws.com/infractions/d1/2022D1Inf_AnnualReport.pdf [hereinafter 2021-22 Annual Report].

61 Pete Thamel, *In New College Sports World, What Is Role of NCAA Committee on Infractions?* ESPN (Feb. 29, 2024), https://www.espn.com/college-football/story/_id/39623660/in-new-college-sports-world-role-ncaa-committee-infractions/.

62 See 2019-20 Annual Report, *supra* note 47, at 22.

63 Potuto, *supra* note 45, at 295. Not many are aware that COI written decisions, which are comparable to courts' decisions, are publicly available. Parkinson, *supra* note 25, at 218.

64 Potuto, *supra* note 45, at 301.

65 Nathaniel Richards, *The Judge, Jury, and Executioner: A Comparative Analysis of the NCAA Committee on Infractions Decisions*, 70 ALA. L. REV. 1115, 1116 (2019) (citing relevant NCAA legislation).

66 COMM. ON INFRACTIONS, NCAA, FLORIDA STATE UNIVERSITY NEGOTIATED RESOLUTION, 1 (2024), https://ncaaorg.s3.amazonaws.com/infractions/decisions/Jan2024D1INF_FloridaStateNegotiatedResolution.pdf [hereinafter Florida State Case].

67 *Id.*

68 *Id.*

69 *Id.* Since the Florida State infractions case, the NCAA and attorneys general of Tennessee and Virginia settled an antitrust lawsuit the states brought that challenged NCAA rules banning NIL collectives from communicating with prospective athletes regarding potential NIL agreements during the recruiting process. Ralph D. Russo & Justin Williams, *Settlement Reached in Tennessee Suit Against NCAA Regarding NIL Recruiting Inducements*, THE ATHLETIC (Jan. 31, 2025), <https://www.nytimes.com/athletic/6104215/2025/01/31/settlement-tennessee-virginia-nil-ncaa/>. As a result of the settlement, the NCAA will no longer enforce its rules preventing such communications. *Id.*

70 Florida State Case, *supra* note 66, at 1.

executive's recruitment of the prospective transfer student-athlete violated NCAA recruiting rules that existed at the time.⁷¹

Penalties from the case included:⁷² (1) two years of NCAA probation; (2) a financial penalty; (3) scholarship reductions in the football program; (3) recruiting restrictions (e.g., prohibiting the assistant coach from recruiting off campus in the fall of 2023); (4) a two-year show-cause order⁷³ for the assistant coach, which included a three-game suspension; and (5) disassociation⁷⁴ of the executive and collective for periods of time.⁷⁵

II. POST-HOUSE ENFORCEMENT OF NIL COMPENSATION LIMITS

When the parties agreed to settle the *House* case, the NCAA explained that the settlement would permit the installation of a more "robust and effective enforcement and oversight program" that would help ensure that student-athletes' NIL deals with third parties are "legitimate."⁷⁶ Specifically, the NCAA hopes the settlement will curtail NIL collectives' influence and payments to athletes to induce them to attend, or remain enrolled at, universities instead of as compensation for their value as influencers.⁷⁷ This part overviews the *House* case and then details the new

71 *See id.* at 3 (citing violations of NCAA Bylaw 13 recruiting rules).

72 The case involved other NCAA rules violations, as the assistant coach was not completely forthcoming during the investigation, thus violating NCAA rules requiring ethical conduct. *See id.* at 3.

73 Show-cause orders are a form of an NCAA penalty that make it more difficult for universities to hire or retain individuals subject to them. Ellen J. Staurowsky et al., *California Judge Rules NCAA's Show-Cause Order Violates State Law*, SPORTS L. EXPERT (Dec. 12, 2018), <http://sportslawexpert.com/2018/12/12/California-judge-rules-ncaas-show-cause-order-violates-state-law>. In such a situation, the university must "show cause" to the COI for its employment decision, which includes demonstrating why it should not receive a penalty. NCAA, § 19.02.3, LSDBi, <https://web3.ncaa.org/lstdbi/search/bylawView?id=122303>.

74 Disassociation is the COI's primary penalty for illicit booster activity. Dennis Dodd, *NCAA to Soon Pass Name, Image and Likeness Rules Targeting Boosters Offering Inducements to Athletes*, CBS SPORTS (May 6, 2022), <https://cbssports.com/college-football/news/ncaa-to-soon-pass-name-image-and-likeness-rules-targeting-boosters-offering-inducements-to-athletes> (quoting former Ohio State University athletics director Gene Smith). It can include losing athletically related privileges that one enjoyed, including the ability to purchase season tickets, make donations, or belong to a booster club. *Consequences for Booster Involvement in NCAA Violations*, Marq. U. Acads. & Compliance (July 1, 2010), https://gomarquette.com/news/2010/7/1/Consequences_for_Booster_Involvement_in_NCAA_Violations.

75 Florida State Case, *supra* note 66, at 6–9.

76 Daniel Murphy, *Court Filing Reveals Terms of NCAA Antitrust Lawsuits Settlement*, ABC NEWS (July 26, 2024), <https://abcnews.go.com/Sports/court-filing-reveals-terms-ncaa-antitrust-lawsuits-settlement/story?id=112318798> (quoting the NCAA statement describing the parties' settlement when they negotiated it). For this article's purposes, third parties are individuals, corporate entities, etc. other than a student-athlete's university. *Question and Answer: Implementation of the House Settlement*, 30, NCAA (June 13, 2025), https://ncaaorg.s3.amazonaws.com/governance/d1/legislation/2024-25/June2025D1Gov_PhaseThreeInstSetQuestionandAnswer.pdf.

77 *Id.* ("The NCAA hopes its new system will reduce those types of arrangements.").

enforcement process for NIL regulations and its “significant”⁷⁸ changes, including insertion of both a third-party enforcement entity and arbitration.

A. *House v. NCAA Background*

Grant House, Sedona Prince, and other current and former student-athletes filed a class-action antitrust lawsuit against the NCAA and “power” athletics conferences⁷⁹ in 2020.⁸⁰ Considered the most significant antitrust case in college athletics history,⁸¹ the plaintiff-athletes argued that the NCAA deprived thousands of student-athletes of the opportunity to accept NIL compensation prior to permitting it on July 1, 2021.⁸² More specifically, the plaintiffs alleged antitrust law violations including (1) fixing student-athletes’ amount of NIL compensation at zero, (2) prohibiting student-athletes from engaging in the NIL market, (3) fixing student-athletes’ compensation for their athletics services at an amount equal to or less than their scholarship amount, and (4) limiting the number of available athletics scholarships.⁸³ Among other remedies, the lawsuit sought an injunction restraining the NCAA and power conferences from enforcing rules that the plaintiffs described as anticompetitive and unlawfully restrictive.⁸⁴ Of note, the plaintiffs’ lawsuit targeted NCAA rules prohibiting universities from sharing

78 Steve Argeriset al., *What the Proposed House Settlement Means for NCAA Division I Institutions*, JD SUPRA (June 28, 2024), <https://www.jdsupra.com/legalnews/what-the-proposed-house-settlement-2128660/>.

79 The national media refers to certain college athletics conferences as “power” conferences. For example, see Amanda Christovich, *As Conference Realignment Becomes Official, the Power 5 Era Iis Over*, FRONT OFF. SPORTS (June 30, 2024), <https://frontofficesports.com/conference-realignment-end-of-power-5-end/>. When the plaintiffs filed the *House* lawsuit, there were five such conferences: the Pac-12 Conference, the Big Ten Conference, the Big 12 Conference, the Southeastern Conference, and the Atlantic Coast Conference. See Third Consolidated Amended Complaint, *In re: College Athlete NIL Litigation*, No. 4:20-CV-03919, 23-24 (N.D. Cal) [hereinafter Third Amended Complaint]. Though not named as defendants, numerous universities that belong to nonpower conferences will contribute to the payout. Gregg E. Clifton, *Will the NCAA Settlement Lead to Finalization of Agreements, or Are More Disputes and Legal Actions on the Horizon?* SPORTS LITIG. ALERT (Aug. 23, 2024), <https://sportslitigationalert.com/will-the-ncaa-settlement-lead-to-finalization-of-agreements-or-are-more-disputes-and-legal-actions-on-the-horizon/>.

80 See Third Amended Complaint, *supra* note 79. The intricacies of antitrust law placed the NCAA “at a critical crossroads.” Eli Henderson, *NCAA’s Revised Settlement Addresses Antitrust and NIL Concerns*, NIL DAILY (Sept. 30, 2024), <https://www.si.com/fannation/name-image-likeness/nil-news/ncaas-revised-settlement-addresses-antitrust-and-nil-concerns>.

81 See Marcello, *supra* note 41; see also Ben Portnoy, *House Settlement Moves to Next Stage in Passage Process*, SPORT BUS. J. (July 26, 2024), <https://www.sportsbusinessjournal.com/Articles/2024/07/26/house-settlement-long-form-filed/> (referring to the *House* case as “One of the most consequential court cases in the history of college athletics....”).

82 Ralph D. Russo, *House v. NCAA Agreement Replaces Scholarship Limits with Roster Caps, Details Athlete Compensation*, ASSOC. PRESS (July 27, 2024), <https://www.wholehogsports.com/news/2024/jul/27/house-v-ncaa-agreement-replaces-scholarship-limits-with-roster-caps-details-athlete-compensation/>.

83 Third Amended Complaint, *supra* note 79, at 3.

84 *Id.* at 4.

revenue from media rights agreements with their athletes.⁸⁵ The plaintiffs sought damages in the form of compensation that they would have received in the absence of these allegedly unlawful restraints,⁸⁶ including back pay for lost NIL opportunities, such as from broadcasts and NIL arrangements with third parties.⁸⁷

With \$20 billion in potential damages at stake, a loss in the case could have resulted in the NCAA and conferences seeking bankruptcy,⁸⁸ effectively destroying the former.⁸⁹ This possible nightmare scenario incentivized the NCAA to settle the case.⁹⁰

B. House v. NCAA Settlement

The parties agreed to settle the case in May 2024.⁹¹ At the time, the defendants described the settlement as a “road map” that would permit continuation of college athletics’ unique traditions and opportunities.⁹² And one of the plaintiffs’ attorneys credited the settlement with modernizing college athletics and equitably allocating revenue to student-athletes.⁹³

85 Brandon Marcello, *House v. NCAA Settlement Approved: Landmark Decision Opens Door for Revenue Sharing in College Athletics*, CBS SPORTS (June 6, 2025), <https://www.cbssports.com/college-football/news/house-v-ncaa-settlement-approved-landmark-decision-opens-door-for-revenue-sharing-in-college-athletics/>.

86 Third Amended Complaint, *supra* note 79, at 4–5.

87 Zaia, *supra* note 29, at 544.

88 Ross Dellenger, *Docs: NCAA Could Face \$20B in Damages, Bankruptcy if Proposed Settlement Offer Isn't Agreed Upon*, YAHOO! SPORTS (May 14, 2024), <https://sports.yahoo.com/docs-ncaa-could-face-20b-in-damages-bankruptcy-if-proposed-settlement-offer-isnt-agreed-upon-232315637.html>.

89 Dennis Dodd, *Meet Grant House, the Man Front and Center Fighting the NCAA's Last Gasp to Cap Athlete Compensation*, CBS SPORTS (May 15, 2023), <https://www.cbssports.com/general/news/meet-grant-house-the-man-front-and-center-fighting-the-ncaas-last-gasp-to-cap-athlete-compensation/> (quoting sports law attorney Mit Winter).

90 Lauren Merola et al., *What's at Stake with the House v. NCAA Settlement? Goodbye Amateurism, Hello Revenue Sharing*, THE ATHLETIC (Apr. 7, 2025), <https://sports.yahoo.com/article/stake-house-v-ncaa-settlement-101605313.html>; see also Mark Zeigler, *House Settlement Not the Final Answer*, SAN DIEGO UNION-TRIBUNE (June 17, 2025), <https://www.nwaonline.com/news/2025/jun/17/house-settlement-not-the-final-answer/> (explaining that the settlement “consolidated three antitrust lawsuits and opted to avoid trial and the prospect of potentially catastrophic financial losses, essentially accepting a 20-point beatdown instead of what could be 40 or 50 given its inauspicious record in litigation”).

91 See *Joint Statement on the Agreement of Settlement Terms*, NCAA (May 23, 2024), <https://www.ncaa.org/news/2024/5/23/media-center-joint-statement-on-the-agreement-of-settlement-terms.aspx>. The parties’ settlement agreement settles two additional antitrust cases, *Hubbard v. NCAA* and *Carter v. NCAA*. Kristi Dosh, *10 Things to Know About the NCAA's House Settlement*, FORBES (May 24, 2024), <https://www.forbes.com/sites/kristidosh/2024/05/24/10-things-to-know-about-the-ncaas-house-settlement/>.

92 *Joint Statement on the Agreement of Settlement Terms*, *supra* note 91 (quoting NCAA president Charlie Baker and the commissioners of the five power conferences as they existed at the time).

93 Dosh, *supra* note 91 (quoting plaintiffs’ attorney Steve Berman, “Our clients are the bedrock of the NCAA’s multibillion-dollar business and finally can be compensated in an equitable and just manner for their extraordinary athletic talents.”).

More specifically, the parties' "mammoth"⁹⁴ and "transformative"⁹⁵ settlement agreement included, among other things: (1) NIL backpay for the plaintiffs and class members; (2) the opportunity for NCAA-member universities to provide student-athletes with increased benefits, including NIL compensation; and (3) utilizing roster limits in lieu of NCAA-legislated scholarship limits.⁹⁶ Thus, the parties' settlement agreement includes both backward-looking and forward-looking benefits for collegiate athletes.⁹⁷

Under the settlement agreement, the NCAA, conferences, and numerous universities will pay current and former student-athletes \$2.8 billion over a ten-year period for NIL compensation.⁹⁸ This distribution intends to compensate hundreds of thousands⁹⁹ of athletes for lost NIL compensation opportunities, including their appearances in video games and on broadcasts of their competitions.¹⁰⁰

The settlement agreement permits universities to opt in to this new system that provides them the ability to share revenue with their athletes in a quasi-salary cap system similar to those that exist in many professional sports leagues.¹⁰¹ The agreement permits participating universities to share \$20.5 million in revenue with their athletes in the 2025–26 academic year, an amount that will increase in subsequent years.¹⁰² Universities that opt into participating in the settlement agreement may also enter NIL arrangements directly with their athletes with any

94 Eddie Pells, *Attorneys Tweak \$2.78B College Settlement, Remove the Word 'Booster' From NIL Language*, ASSOC. PRESS (Sept. 26, 2024), <https://apnews.com/article/college-nil-lawsuit-settlement-booster-4812f2f48dfae4b9f6dfd536e652dc5a>; see also Russo, *supra* note 82 (referring to the settlement agreement as a "sprawling plan").

95 Argeris et al., *supra* note 78 (referring to the parties' settlement agreement as introducing a "transformative model" and "forward-looking framework").

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

97 Aaron Glas, Note, *A Breakthrough or a Band-Aid? The Hosue Settlement and the Future of College Athlete Compensation*, 79 U. MIAMI L. REV. INSIGHTS (2025).

98 Michael McCann, *NCAA House Settlement Faces Its Day of Reckoning in Court*, SPORTICO (Sept. 5, 2024), <https://www.sportico.com/law/analysis/2024/ncaa-house-settlement-judge-wilken-1234795985/>.

99 Jodi Balsam, *Free College Athletes*, LAW & LIBERTY (Mar. 21, 2025), <https://lawliberty.org/free-college-athletes/> (noting that 390,000 class members stand to receive backpay as a result of the settlement).

100 Glas, *supra* note 97.

101 McCann, *supra* note 98. Once a university elects to opt in to the settlement, it is subject to all of its obligations and limitations. *Question and Answer: Implementation of the House Settlement*, *supra* note 76, at 1.

102 Dan Murphy, *Judge OK's \$2.8B Settlement, Paving Way for Colleges to Pay Athletes*, ESPN (June 6, 2025), https://www.espn.com/college-sports/story/_/id/45467505/judge-grants-final-approval-house-v-ncaa-settlement (noting that the agreement's term spans ten years). In total, universities will share around a billion dollars with their athletes annually. Jessica Mendoza, *NCAA President on a New Era for College Sports*, WALL ST. J. (June 24, 2025), <https://www.wsj.com/podcasts/the-journal/ncaa-president-on-a-new-era-for-college-sports/7674f565-1c2f-4ec1-b295-1aa554861d87> (quoting NCAA president Charlie Baker). The cap on the amount of revenue that universities can distribute to their athletes will increase by four percent annually over the next ten years. Marcello, *supra* note 85.

such compensation counting against the \$20.5 million maximum total amount they can provide in revenue share payments.¹⁰³

The parties appeared before Judge Claudia Wilken in September 2024 for the settlement's preliminary approval hearing¹⁰⁴ at which Wilken professed concerns with the parties' agreement.¹⁰⁵ Specifically, Wilken took issue with its language regarding perceived pay-for-play NIL compensation and booster involvement¹⁰⁶ that effectively permitted the NCAA to target NIL booster collectives by forcing them to prove their NIL payments served a "valid business purpose."¹⁰⁷ Wilken believed that the parties intended to continue to simultaneously: (1) permit NIL compensation for what they considered valid endorsement or sponsorship arrangements based on athletes' right of publicity and (2) mitigate pay-for-play and signing or retention bonuses for athletes disguised as NIL compensation.¹⁰⁸ Wilken suggested that the parties "go back to the drawing board"¹⁰⁹ to address her concern that such regulation could chill the marketplace to athletes' detriment.¹¹⁰ She also queried why NIL deals with certain third parties would receive heightened scrutiny under the settlement agreement's terms while universities' deals with their athletes would not.¹¹¹ Given her concerns, Wilken declined to preliminarily approve the agreement during the hearing.¹¹²

103 *Question and Answer: Implementation of the House Settlement*, *supra* note 76, at 23 (noting that such arrangements may not extend past an athlete's period of competition eligibility and universities may not compensate their athletes for athletics participation or achievement).

104 *See* Murphy, *supra* note 102 (stating that the future of college athletics was in Judge Wilken's hands). Judge Wilken has presided over other important litigation involving the NCAA. Clifton, *supra* note 79.

105 Ben Portnoy, *NCAA, Power Five Conferences Don't Get Immediate Preliminary Approval From Judge in House Settlement*, *SPORT BUS. J.* (Sept. 6, 2024), <https://www.sportsbusinessjournal.com/Articles/2024/09/06/house-ncaa-settlement-analysis/> (quoting Wilken at the hearing's outset, "We've got a lot to get to. I have a lot of questions.").

106 *Id.* (describing Wilken's concerns with contrasting "pay-for-play" and "real NIL" and the agreement's "nebulous" and "subjective" definition of boosters).

107 Marcello, *supra* note 41. For its part, the NCAA explained at the preliminary approval hearing that enforcing NIL regulations against NIL booster collectives was a "central part" of the settlement for the NCAA, the absence of which could derail the settlement. Pete Nakos, *House v. NCAA Settlement Attorneys Working to Clarify Booster, NIL Collective Enforcement*, *ON3* (Sept. 17, 2024), <https://www.on3.com/nil/news/house-v-ncaa-settlement-attorneys-working-to-clarify-booster-nil-collective-enforcement/>.

108 Glas, *supra* note 97 (identifying the agreement's subject language as Wilken's main concern).

109 Ross Dellenger, *Plaintiff Attorneys in House-NCAA Settlement File Brief to Clarify Language in Hopes of Appeasing Judge*, *YAHOO! SPORTS* (Sept. 26, 2024), <https://sports.yahoo.com/plaintiff-attorneys-in-house-ncaa-settlement-file-brief-to-clarify-language-in-hopes-of-appeasing-judge-223754328.html> (quoting Wilken).

110 *Id.* (noting that some settlement objectors believed that such regulation could cost collegiate athletes billions in NIL deals with collectives).

111 *Id.*

112 Glas, *supra* note 97 ("This was not just a mere rubber stamping of the agreement.").

After the “contentious”¹¹³ preliminary approval hearing, the parties’ negotiations resulted in the filing of a historic¹¹⁴ amended settlement agreement that attempted to address Wilken’s concerns, and she granted preliminary approval of it in October 2024.¹¹⁵ Key to the amended settlement for the NCAA and conference defendants is their belief that it attempts to eliminate pay-for-play transactions and compensation to attend or remain at a university guised as NIL payments, instead permitting NIL payments that further valid business purposes that actually promote goods or services.¹¹⁶ Specifically, while the revised settlement agreement permits entities or individuals associated with a university (i.e., NIL booster collectives) to compensate student-athletes for use of their NIL, such payments must be “for a valid business purpose related to the promotion or endorsement of goods or services offered to the general public for profit and are at fair-market value rates.”¹¹⁷

The parties thereafter began notifying current and former student-athletes of the settlement’s terms and the procedures through which they could submit claims.¹¹⁸ And athletics departments proceeded to operate under the assumption that the revised settlement agreement would ultimately receive Wilken’s stamp of final approval, with some cutting student-athletes from rosters to meet the settlement’s imposition of roster limits.¹¹⁹

113 Michael McCann, *NCAA House Settlement Not Approved, Faces Fire in Hearing*, SPORTICO (Sept. 5, 2024), <https://www.sportico.com/law/analysis/2024/ncaa-house-settlement-not-approved-1234796270/>; see also Dan Wetzel, *Wetzel: How the Spoils of NCAA Settlement Will Be Divided*, ESPN (June 7, 2025), https://www.espn.com/college-sports/story/_/id/45469494/ncaa-settlement-done-divide-spoils (quoting University of Alabama athletics director Greg Byrne as explaining that the three most significant events in college athletics’s history are the NCAA’s foundation, Title IX’s adoption, and the *House* settlement).

114 See Eric Prisbell, *Long-Form House v. NCAA Settlement Document Filed in Court*, ON3 (July 26, 2024), <https://www.on3.com/news/long-form-house-v-ncaa-settlement-document-filed-in-court/> (explaining that the long-form settlement document moved college athletics “closer to a landscape-shifting new financial model.”).

115 See Steve Berkowitz, *Judge Gives Preliminary Approval for NCAA Settlement Allowing Revenue-Sharing with Athletes*, USA TODAY (Oct. 7, 2024), <https://www.usatoday.com/story/sports/college/2024/10/07/ncaa-revenue-sharing-house-settlement-approved/75514164007/> (referring to the amended settlement agreement as “slightly revised”). The revised settlement agreement “softened” restrictions on NIL agreements. Michael McCann, *NCAA House Settlement Preliminarily Approved*, SPORTICO (Oct. 7, 2024), <https://www.sportico.com/law/analysis/2024/ncaa-house-settlement-preliminarily-approved-college-sports-1234800114/>. It also replaced the term “boosters” in the agreement with more narrow terminology that limits enforcement of third-party NIL agreement regulations. Marcello, *supra* note 41.

116 Prisbell, *supra* note 114 (explaining that the settlement aligns with college athletics administrators’ desire for “authentic” or “true” NIL deals). “What was once mostly unregulated is now mostly regulated.” Wetzel, *supra* note 113.

117 *House Settlement: A Guide for Schools*, NCAA (Feb. 2025), https://ncaaorg.s3.amazonaws.com/ncaa/legal/house/Feb2025D1Gov_MembershipEducation_AGuideforSchools.pdf.

118 Berkowitz, *supra* note 115.

119 Daniel Libit, *Rise of the Roster Resistance: House v. NCAA’s Unwelcome Underdogs*, SPORTICO (May 2, 2025), <https://www.sportico.com/leagues/college-sports/2025/roster-limit-objectors-house-v-ncaa-settlement-1234850724/> (noting that some athletics departments made preparations to drop certain athletics programs).

Meanwhile, individuals and entities filed dozens of objections to the revised agreement, among them collegiate athletes like Louisiana State University gymnast Livvy Dunne, who objected to the settlement's damages calculations.¹²⁰ Another notable objector was the Department of Justice (DOJ), which took issue with the artificial cap on the amount that universities may distribute to their athletes, arguing that it does not represent free-market value and effectively shields against potential future antitrust claims.¹²¹ Yet another group of objectors focused on the settlement agreement's replacement of NCAA scholarship limits with roster limits and the effects the change would have on nonscholarship student-athletes.¹²²

The parties sought Wilken's final approval of the settlement agreement at an April 2025 hearing.¹²³ After hearing and considering the objectors' positions, Wilken provided the parties two weeks to amend their settlement agreement to address her concerns, which primarily involved the immediate imposition of roster limits and the effects on athletes who would lose their places on teams.¹²⁴

After the parties agreed to provide temporary flexibility to student-athletes affected by the imposition of roster limits such that they would not count against roster size caps,¹²⁵ Wilken granted final approval of the settlement agreement in June 2025.¹²⁶ In doing so, Wilken's "landmark" decision¹²⁷ ushered in a new era of college athletics¹²⁸ that effectively cut the legs out from under the NCAA's century-old amateurism model¹²⁹ and repositioned college athletics as quasi-professional

120 Jack McNabola, Note, *Where Does Amateurism Stand After House v. NCAA*, VAND. J. ENT. & TECH. L. (Feb. 2025), <https://www.vanderbilt.edu/jetlaw/2025/02/13/where-does-amateurism-stand-after-house-v-ncaa/>. Dunne's success in NIL endeavors is in large part due to her significant social media following, which includes millions of followers on social media sites like Instagram and TikTok. See Alexis Yoder, *Olivia Dunne Gives Statement During Hearing for NCAA Settlement Case*, YAHOO! SPORTS (Apr. 8, 2025), <https://sports.yahoo.com/article/olivia-dunne-gives-statement-during-132220897.html>.

121 Glas, *supra* note 97 (describing the DOJ's position that some universities could compensate their football and basketball athletes an amount that exceeds the maximum amount permitted by the settlement).

122 *Id.*

123 Gary Adornato, *NCAA Roster Caps Could Squeeze Out High School Recruits Under NIL Settlement*, SPORTS ILLUSTRATED (June 9, 2025), <https://www.si.com/high-school/recruiting/ncaa-roster-caps-could-squeeze-out-high-school-recruits-under-nil-settlement-01jx8mckdc12>.

124 *Id.*

125 Libit, *supra* note 119. The parties effectively compromised on the roster limits issue by providing universities the option of temporarily exceeding the maximum roster limit for current athletes who would have lost their spots. Marcello, *supra* note 85.

126 Murphy, *supra* note 102.

127 Pete Nakos, *Judge Approves Landmark House v. NCAA Settlement*, ON3 (June 6, 2025), <https://www.on3.com/news/judge-approves-landmark-house-v-ncaa-settlement/>.

128 Murphy, *supra* note 102.

129 a et al., *supra* note 90 ("the amateurism model that has ruled college sports for more than a century will nearly cease to exist at the Division I level."); see also Murphy, *supra* note 102 ("Friday's order is a major milestone in the long push to remove outdated amateurism rules from major college sports."). Per Oregon State University athletics director Scott Barnes, "Amateurism as we knew it is dead." Jackson Demmler, *Oregon State AD Scott Barnes Discusses New Revenue Sharing Payments*,

sports.¹³⁰ Notably, prior to Wilken’s decision, the NCAA had not permitted universities to directly pay their athletes in its existence, which spans over a century.¹³¹

Despite this substantial, new cost in the form of additional athlete compensation, 319 Division I universities—82 percent of Division I membership—opted in to participating in the settlement for the 2025–26 academic year.¹³² The maximum amount that individual universities may share with their athletes in the 2025–26 academic year is \$20.5 million, an amount that will increase in subsequent years.¹³³ A common allocation breakdown is to provide at least seventy percent of this amount to football student-athletes, at least ten percent to men’s basketball student-athletes, and the remaining amount to student-athletes in other sports.¹³⁴ In many cases, universities are allocating revenue to those sports that produce it as, for example, football programs generally generate roughly seventy-five to eighty percent of an athletics department’s revenue.¹³⁵ In all, universities will share

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- KVAL (July 8, 2025), <https://kval.com/sports/content/oregon-state-university-beavers-athletic-director-ad-scott-barnes-discusses-new-revenue-sharing-payments> (explaining that the pendulum has swung away from amateur athletics to professionalism within college sports).
- 130 McCann, *supra* note 115 (referencing a salary cap system akin to many professional sports leagues).
- 131 Marcello, *supra* note 85; *see also* Nakos, *supra* note 127 (quoting Wilken’s opinion describing the settlement agreement as permitting “levels and types of student-athlete compensation that have never been permitted in the history of college sports...”). Only student-athletes who satisfy NCAA eligibility requirements may receive additional payments or benefits from their universities. *Question and Answer: Implementation of the House Settlement*, *supra* note 76, at 27.
- 132 @RossDellenger, Twitter (July 1, 2:39PM), <https://x.com/RossDellenger/status/1940133285905961189>. The University of Central Arkansas is an example of a university that will not opt in to the settlement agreement, with its athletics director citing its imposition of roster limits as a main reason for the decision. *See* Sam Lane, *University of Central Arkansas to Opt Out of House Settlement*, NW. ARK. DEMOCRAT GAZETTE (July 3, 2025), <https://www.nwaonline.com/news/2025/jul/03/uca-to-opt-out-of-house-settlement/> (quoting the athletics director as explaining that opting in to the settlement would result in a loss of student-athletes due to roster limits, which would result in less revenue for the university). In addition to roster limits, the University of Idaho cited insufficient finances as reasons for declining to opt in. Trevor Junt, *Idaho Chooses to Opt Out of Revenue Sharing*, LEWISTON TRIB. (July 9, 2025), <https://www.lmtribune.com/sports/ui-chooses-to-opt-out-of-revenue-sharing-19894943> (quoting athletics director Terry Gawlik).
- 133 Murphy, *supra* note 102 (noting that the agreement’s term spans ten years). In total, universities will share around a billion dollars with their athletes annually. Jessica Mendoza, *NCAA President on a New Era for College Sports*, WALL ST. J. (June 24, 2025), <https://www.wsj.com/podcasts/the-journal/ncaa-president-on-a-new-era-for-college-sports/7674f565-1c2f-4ec1-b295-1aa554861d87> (quoting NCAA president Charlie Baker). The cap on the amount of revenue that universities can distribute to their athletes will increase by four percent annually over the next ten years. Marcello, *supra* note 85.
- 134 Ross Dellenger, *Could Impending Rev-Share Changes Help Cinderellas in the Future? ‘Everybody Will Be in the Game,’* YAHOO! SPORTS (Mar. 26, 2025), <https://sports.yahoo.com/college-basketball/article/could-impending-rev-share-changes-help-cinderellas-in-the-future-everybody-will-be-in-the-game-130005097.html> (noting that the formula causes strife among a university’s coaches, each of which seeks a higher percentage). Universities that do not have a football program could gain a competitive advantage in basketball by providing a larger allocation to basketball student-athletes relative to those schools with football programs. *Id.*
- 135 David Cunningham, *Full Transcript: Hokes AD Whit Babcock and Bill Roth Discuss the House Settlement*, TECHSIDELINE (June 11, 2025), <https://virginiatech.sportswar.com/article/2025/06/11/transcript-hokies-ad-whit-babcock-bill-roth-discuss-house-settlement/> (quoting Virginia Tech University athletics director Whit Babcock).

roughly a billion dollars with their student-athletes annually under the settlement.¹³⁶

These universities will enter revenue-sharing agreements with their athletes under which the latter receives compensation for things like media appearances and use of their NIL in advertisements.¹³⁷ These contracts can include buyouts and penalties for transferring.¹³⁸ Texas Tech University, for example, made headlines in July 2025 for its rumored three-year, \$2.3 million revenue sharing contract with a rising high school football prospect.¹³⁹

C. *The Settlement Agreement's Insertion of a Third-Party Entity into the NIL Rules Enforcement Process*

In effect, the *House* settlement repositions college athletics under a professional sports-like model¹⁴⁰ without expanding the NCAA's rules enforcement authority.¹⁴¹ Thus, who—or what—will monitor and enforce NIL policies such as those seeking to eradicate pay-for-play NIL compensation? This section introduces and describes the responsible entity and the process by which it will enforce NIL compensation limits.

136 Jessica Mendoza, *NCAA President on a New Era for College Sports*, WSJ PODCASTS (June 24, 2025), <https://www.wsj.com/podcasts/the-journal/ncaa-president-on-a-new-era-for-college-sports/7674f565-1c2f-4ec1-b295-1aa554861d87>.

137 Glas, *supra* note 97 (describing the forward-looking aspects of the settlement agreement as “a move toward a more equitable future for college athletes, who have long seen their labor benefit everyone but themselves”). The settlement agreement does not specify how universities must allocate revenue distributions among their teams. The University of Washington, for example, will share revenue among five teams: football, men’s basketball, women’s basketball, softball, and volleyball. Christian Caple, *Pat Chun Says Washington Revenue Share Will Focus on 5 Teams*, ON MONTLAKE (June 18, 2025), https://www.onmontlake.com/p/pat-chun-says-washington-revenue?utm_source=post-email-title&publication_id=1456757&post_id=166285880&utm_campaign=email-post-title&isFreemail=false&r=2t3w8&triedRedirect=true&utm_medium=email. The University of Kansas, on the other hand, will distribute revenue among seven teams. Shreyas Laddha, *What We Know About Kansas Jayhawks’ Approach to Revenue Share – and 7-Sport Split*, KANS. CITY STAR (June 18, 2025), https://www.kansascity.com/sports/college/big-12/university-of-kansas/article308758335.html?taid=6852aca2e78de70001113a69&utm_campaign=trueanthem&utm_medium=social&utm_source=twitter. Montana State University, which does not belong to a Power conference, elected to opt in to the settlement and will distribute revenue—not the maximum \$20.5 million—based on individual teams’ fundraising abilities. Ethan Becker, *Athletic Director Discusses MSU’s Plans on House Settlement*, NBC MONT. (June 18, 2025), <https://nbcmontana.com/sports/local-sports/athletic-director-costello-discusses-msus-plans-with-house-settlement>. Some have expressed that universities need to abide by Title IX’s gender equity requirements when distributing this revenue. For example, see Zeigler, *supra* note 90.

138 Dan Wolken, *Can New Commission Police Money Paid to College Athletes? Good Luck with That*, USA TODAY (June 15, 2025), <https://www.usatoday.com/story/sports/college/columnist/dan-wolken/2025/06/15/nil-college-sports-commission-policing-new-rules/84218254007/>.

139 See Sam Khan, Jr. et al., *Texas Tech’s Latest Recruiting Coup: How Big Is Deal for 5-Star Offensive Tackle?* THE ATHLETIC (July 5, 2025), <https://www.nytimes.com/athletic/6475649/2025/07/05/texas-tech-felix-ojo-nil-deal/> (noting that billionaire oil magnate and Texas Tech supporter Cody Campbell predicted that Texas Tech student-athletes would receive a total combined amount of \$55 million in NIL compensation and revenue share distributions for the 2025–26 academic year).

140 McCann, *supra* note 98 (referencing a salary cap system akin to many professional sports leagues).

141 Marcello, *supra* note 41. In fact, attorney for the *House* plaintiffs Steve Berman acknowledged that the revised settlement agreement’s language restricts the NCAA’s already-diminished oversight of NIL agreements. Pells, *supra* note 94.

The *House* case's amended settlement agreement inserts a third-party entity, referred to as "the Designated Enforcement Entity," into the NIL policy enforcement process.¹⁴² Of note is that this clearinghouse¹⁴³ also provides a compliance function,¹⁴⁴ possessing the ability to provide advisory opinions when student-athletes have questions regarding the permissibility of potential NIL agreements.¹⁴⁵ This process could benefit universities by increasing transparency regarding their student-athletes' NIL deals with third parties.¹⁴⁶

More relevant to this article is the process through which the enforcement entity—the conference defendants have created the College Sports Commission (CSC)¹⁴⁷ and hired Deloitte¹⁴⁸—will attempt to ensure that student-athletes' compensation meets certain settlement agreement requirements. Specifically, the revised settlement agreement requires student-athletes' NIL arrangements with certain third parties to both: (1) advance a valid business purpose and (2) compensate student-athletes within a reasonable range.¹⁴⁹

The CSC is independent from the NCAA and possesses authority for enforcing the new rules that the NCAA adopted pertaining to the settlement, including those

142 Amended Settlement Agreement, *supra* note 16, at 24.

143 Dellenger, *supra*, note 109.

144 See Colin J. Cloherty & Natalia Maria Szlarb, *NCAA's New Arbitration System: A Paradigm Shift in College Sports Discipline*, *SPORT BUS. J.* (Nov. 12, 2024), <https://www.sportsbusinessjournal.com/Articles/2024/11/12/Unpacks/oped-12-cloherty-szlarb/>.

145 Berkowitz, *supra* note 115.

146 See Clifton, *supra* note 79 (opining that the disclosure requirement will permit "better management of third-party influence and better assurance of legitimate NIL activity").

147 Ross Dellenger, *House Attorneys Slam NCAA and Power Conferences over Denied NIL Deals, Issue Legal Warning About Settlement*, *YAHOO! SPORTS* (July 11, 2025), <https://sports.yahoo.com/college-football/breaking-news/article/house-attorneys-slam-ncaa-and-power-conferences-over-denied-nil-deals-issue-legal-warning-about-settlement-205015881.html>.

148 See *Conferences Share New and Significant Progress Toward Implementation of House Settlement*, *NCAA* (Mar. 12, 2025), <https://www.ncaa.org/news/2025/3/12/media-center-conferences-share-new-and-significant-progress-toward-implementation-of-house-settlement.aspx>. Deloitte is an accounting firm. See Dan Shanoff, *The Launch of NIL Go Signals a High-Stakes Evolution in College Sports: Money Call*, *THE ATHLETIC* (June 11, 2025), <https://www.nytimes.com/athletic/6418924/2025/06/11/nil-go-deloitte-bryan-seeley-college-sports-commission-moneycall/>. It also has provided consulting services for at least one prominent athletics department. See Daniel Libit, *As Deloitte's 'NIL Go' Draws Heat, Other Athletic Work Stays Low-Key*, *SPORTICO* (June 1, 2025), <https://www.sportico.com/leagues/college-sports/2025/deloitte-college-sports-consulting-nil-go-1234854616/> (describing Deloitte's relationship with the University of Kansas). This may lead to questions about a perceived lack of experience within the college athletics industry or Deloitte's relationships with key constituents. And Deloitte's services are not cheap—it will charge anywhere between \$5,000 and \$500,000 per university. Amanda Christovich, *Will the House v. NCAA Settlement Actually End 'Pay-for-Play' NIL Deals?* *FRONT OFF. SPORTS* (May 16, 2025), <https://frontofficesports.com/will-the-house-v-ncaa-settlement-actually-end-pay-for-play-nil-deals/>.

149 Ranjan Jindal, *The House v. NCAA Settlement is Officially Approved. What Does It Mean for Duke and College Sports?* *THE CHRON.* (June 7, 2025), <https://www.dukechronicle.com/article/2025/06/duke-athletics-house-v-ncaa-settlement-approved-judge-wilken-revenue-sharing-commission-deloitte-nil-durham-devils-club>. One media member uses Caitlin Clark's arrangement with State Farm as an example of an NIL deal that would satisfy these requirements. See Wetzels, *supra* note 113.

regarding roster limits, revenue sharing, and NIL arrangements.¹⁵⁰ To enforce these policies, it possesses investigatory and adjudicative abilities.¹⁵¹

Procedurally, the amended settlement agreement requires student-athletes to disclose NIL agreements with all third parties worth \$600 or more to both their university¹⁵² and a database operated by the enforcement entity.¹⁵³ Student-athletes report such NIL arrangements within five days of their execution¹⁵⁴ through an online portal called NIL Go, which the CSC created with Deloitte's assistance.¹⁵⁵ This reporting requirement exists regardless of whether a student-athlete's university opts in to the settlement.¹⁵⁶ In the first couple months of NIL Go's existence, the CSC analyzed over five thousand reported deals, which ranged from \$600 to \$1.5 million in compensation.¹⁵⁷ As of this writing, CSC staff members are scrutinizing these reported deals manually, as opposed to using artificial intelligence.¹⁵⁸

150 Coll. Sports Comm'n, *FAQ*, <https://www.collegesportscommission.org/faq>. The NCAA is largely removed from enforcing student-athletes' financial deals with third parties. Dan Wetzel & Pete Thamel, *Sifting Legitimate NIL Deals from the Darker World of Pay-to-Play*, ESPN (Apr. 2, 2025), https://www.espn.com/college-sports/story/_/id/44491912/ncaa-nil-pay-play-house-settlement.

151 Col. Sports Comm'n, *FAQ*, <https://www.collegesportscommission.org/faq>. Former Major League Baseball executive Bryan Seeley will serve as the CSC's first CEO. Coll. Sports Comm'n, *Bryan Seeley Named Inaugural CEO of the College Sports Commission* (June 6, 2025), <https://assets.tina.io/29b83311-e587-42b1-861e-87ebde9aa253/BRYAN%20SEELEY%20NAMED%20INAUGURAL%20CEO%20OF%20THE%20COLLEGE%20SPORTS%20COMMISSION.pdf>.

152 *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. Some have noted that disclosure may violate a student-athlete's contract with a third party if it has a confidentiality clause. See Christovich, *supra* note 148.

153 Erica Hamilton, *The Death of Amateurism—Implications of the Proposed House Settlement for the Future of College Sports*, SPORTS LITIG. ALERT (Jan. 24, 2025), <https://sportslitigationalert.com/the-death-of-amateurism-implications-of-the-proposed-house-settlement-for-the-future-of-college-sports/>.

154 *Question and Answer: Implementation of the House Settlement*, *supra* note 76, at 30.

155 Coll. Sports Comm'n, *Student-Athlete NIL Deals*, <https://www.collegesportscommission.org/nil> (describing NIL Go as a "simple way for student-athletes to report third-party NIL deals to be evaluated for rules compliance"). NIL Go is "the single most talked-about concept of college athletics' new revenue-sharing era." Ross Dellenger, *What Is NIL Go, and Why Is It the Latest Subject of Debate Among College Sports Leaders?*, YAHOO! SPORTS (June 13, 2025), <https://sports.yahoo.com/college-sports/article/what-is-nil-go-and-why-is-it-the-latest-subject-of-debate-among-college-sports-leaders-120028561.html>. The web-based submission system operates similarly to registering for a passport. *Id.* Student-athletes may designate an individual to enter deals on their behalf. Coll. Sports Comm'n, *supra*.

156 *House Settlement: A Guide for Schools*, *supra* note 117; see also *Updated Question and Answer: Impact of the Proposed Settlement on Division I Institutions*, *supra* note 152.

157 *Kassandra Ramsey, What Is the College Sports Commission? What Is NIL Go?* ESQUIRE COACH (Sept. 3, 2025), <https://www.theesquirecoach.com/blog/what-is-the-college-sports-commission-what-is-nil-go?categoryId=406689>.

@RossDellenger, Twitter (Aug. 22, 2025 9:47 AM), <https://x.com/RossDellenger/status/1958903864784036300>.

158 @achristovichh, Twitter (Aug. 22, 2025 9:25 AM), <https://x.com/achristovichh/status/1958898238745981111>.

The parties' revised settlement agreement addressed Judge Wilken's concerns regarding the original agreement's use of the broad term "booster" by explicitly limiting the deals subject to heightened scrutiny based on (1) the source of the student-athlete's NIL compensation¹⁵⁹ and (2) the source's relationship with the athlete's university.¹⁶⁰ More specifically, only deals between student-athletes and a narrower group of people or entities associated with universities will be subject to heightened scrutiny.¹⁶¹ Such entities include, for example, NIL booster collectives, a university's marketing department, a booster-owned business, a university's fundraising foundation, and a university's media rights partner.¹⁶² One of the primary goals of this process is to keep universities from trying to use third parties to circumvent the \$20.5 million revenue share cap.¹⁶³ Another is to mitigate the authority that boosters and other third parties have gained in the NIL era and place more of the financial onus on universities.¹⁶⁴

For deals between student-athletes and these third-party entities, Deloitte will utilize a formula for determining whether NIL payments exceed an acceptable compensation range¹⁶⁵ under the presumption that only deals that reflect something akin to fair-market value are legitimate.¹⁶⁶ Thus, Deloitte will flag NIL compensation provided by this narrower group if, based on Deloitte's calculations, it exceeds this range,¹⁶⁷ defined as "commensurate with compensation paid to similarly situated individuals,"¹⁶⁸ or is not for a valid business purpose to promote

159 Dellenger, *supra* note 109.

160 Coll. Sports Comm'n, *supra* note 155.

161 Dellenger, *supra* note 109 (noting that NIL arrangements between student-athletes and commercial third parties such as shoe companies are not subject to the process); see also *Updated Question and Answer: Impact of the Proposed Settlement on Division I Institutions*, *supra* note 152. The amended settlement agreement exempts only shoe and apparel companies and brands and families who donate less than \$50,000 to the university from clearinghouse scrutiny. Marcello, *supra* note 41. The onus is on universities to determine whether a third party triggers application of the heightened scrutiny. Christovich, *supra* note 148.

162 Ross Dellenger, *Do College Football Coaches Think New Enforcement Arm Will Work? LSU's Brian Kelly: 'It Is Not a Slap on the Wrist,'* YAHOO! SPORTS (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>.

163 Wetzel & Thamel, *supra* note 150.

164 Cunningham, *supra* note 135 (quoting Virginia Tech University athletics director Whit Babcock).

165 Ross Dellenger, *With Non-Football Early Signing Period Upon Us, We're About to See How Messy College Sports Is Going to Get*, YAHOO! SPORTS (Nov. 13, 2024), <https://sports.yahoo.com/with-non-football-early-signing-period-upon-us-were-about-to-see-how-messy-college-sports-is-going-to-get-150224345.html?guccounter=1>; see also *Updated Question and Answer: Impact of the Proposed Settlement on Division I Institutions*, *supra* note 152. (noting that the defendant conferences will bear some responsibility for fair-market value system oversight).

166 Hamilton, *supra* note 153; see also *Implementation Committee Status Report—Feb. 2025*, NCAA, https://ncaaorg.s3.amazonaws.com/ncaa/legal/house/Feb2025D1Gov_ImplementationCommitteeStatusReport.pdf ("The NIL Clearinghouse development has met several important benchmarks in partnership with Deloitte.").

167 Dellenger, *supra* note 165; see also Hamilton, *supra* note 153.

168 Coll. Sports Comm'n, *supra* note 155.

goods and services provided to the public for profit.¹⁶⁹ The unacknowledged goal behind NIL Go is to prevent booster payments to student-athletes that have masqueraded as NIL compensation for over four years.¹⁷⁰

While acceptable compensation for an NIL arrangement is notoriously difficult to determine,¹⁷¹ Deloitte will access thousands of prior NIL deals involving collegiate and professional athletes to develop an acceptable “compensation range” for a deal or prospective deal within a day.¹⁷² Factors for determining this range include the student-athlete’s performance obligations under the arrangement, the athlete’s athletics performance and social media following, the local market, and the athlete’s university’s market reach.¹⁷³ A deal potentially subject to rejection could be a local car dealership’s \$1 million in NIL compensation to a student-athlete for deliverables that would normally result in \$10,000 in compensation to a different endorser.¹⁷⁴

The CSC will also review student-athletes’ NIL deals with these select third parties to determine whether the latter’s use of the former’s NIL serves a valid business purpose, meaning promotion or endorsement of a good or service offered to the public for profit.¹⁷⁵ In conducting this inquiry, the CSC will focus on whether the third-party’s sale of goods or services is for profit—not whether the entity operates at a profit or loss.¹⁷⁶ CSC guidance states that it could require the athlete or entity to provide documentation to verify compliance with this requirement, refusal of which could result in the CSC not clearing the NIL arrangement.¹⁷⁷

Once NIL Go completes its analysis, there are three potential outcomes.¹⁷⁸ The CSC will either clear the deal to proceed as submitted, not clear it, or flag the arrangement for additional review by the CSC.¹⁷⁹ In the latter instance, a flag could be the result of the need to conduct additional review over concerns regarding payor identity, compensation amount, or contract terms.¹⁸⁰ When this occurs,

169 *Question and Answer: Impact of the Proposed Settlement on Current Division I Student-Athletes*, NCAA (Dec. 23, 2024), https://ncaaorg.s3.amazonaws.com/governance/d1/legislation/2024-25/Jan2025D1Gov_StudentAthleteSetQuestionandAnswerCourtApproved.pdf.

170 Dellenger, *supra* note 155.

171 McCann, *supra* note 113.

172 Dellenger, *supra* note 162.

173 Coll. Sports Comm’n, *supra* note 155.

174 McCann, *supra* note 14.

175 Coll. Sports Comm’n, *supra* note 155.

176 *Id.*

177 *Id.*

178 *See id.*

179 *Id.* Deloitte itself will not block deals—it will only flag them. Christovich, *supra* note 148. The CSC is the entity that can reject deals. *Id.* Deloitte estimates that it would have flagged 70 percent of previous NIL arrangements with booster collectives while 90 percent of arrangements with public companies would have satisfied its analysis. Ross Dellenger, *Power Conferences Working on Contract to Bind Schools to New Enforcement Rules, with Strict Punishments*, YAHOO! SPORTS (May 19, 2025),

180 Coll. Sports Comm’n, *supra* note 155.

the CSC conducts another layer of review and provides the student-athlete with guidance.¹⁸¹

In instances of uncleared deals, the CSC provides student-athletes with three options.¹⁸² One possibility is to work with the payor to renegotiate the arrangement and resubmit it¹⁸³ (student-athletes have the ability to resubmit a deal once).¹⁸⁴ Another option is to cancel the deal and refund any compensation they already received.¹⁸⁵ Or a student-athlete may appeal the CSC's decision to not clear a deal to neutral arbitration,¹⁸⁶ which the next section further explores.

If a student-athlete proceeds with an NIL deal that the CSC has rejected, the CSC's chief executive officer (CEO) enjoys enforcement power greater than the COI ever possessed.¹⁸⁷ With final say in penalties, the CEO could declare that a student-athlete forfeited their competition eligibility by entering the rejected arrangement.¹⁸⁸ Further, the athlete's university could face reduction of financial distributions for violating the settlement agreement's terms.¹⁸⁹

The CSC's effectiveness is college coaches' biggest question.¹⁹⁰ College athletics constituents like Florida State University athletics director Michael Alford,¹⁹¹ University of Florida athletics director Scott Stricklin,¹⁹² Louisiana State University

181 *Id.*

182 *See id.*

183 *Id.*

184 Ross Dellenger, 'We Don't Know the Rules' — Big 12 Coaches Still Wrestling with New World Order After Player Payment Changes, YAHOO! SPORTS (July 8, 2025), <https://sports.yahoo.com/college-football/article/we-dont-know-the-rules--big-12-coaches-still-wrestling-with-new-world-order-after-player-payment-changes-013454522.html>.

185 Coll. Sports Comm'n, *supra* note 155.

186 *Id.*

187 *See* Pete Thamel, *How Proposed CEO Could Dole Out Punishments in College Sports*, ESPN (May 19, 2025), https://www.espn.com/college-sports/story/_/id/45227143/how-proposed-ceo-college-sports-dole-punishments (referring to the CSC's CEO as "one of the most powerful and influential people in college sports").

188 Coll. Sports Comm'n, *supra* note 155. Some believe that such regulation of NIL deals will result in additional litigation. For example, *see* Prisbell, *supra* note 114 (quoting sports attorney Mit Winter); *see also* Dellenger, *supra* note 162 (quoting Mississippi State University president Mark Keenum (commenting on the likelihood that a student-athlete's representative will challenge Deloitte's fair-market value assessment). Withholding revenue share compensation is among the most damaging penalties the new enforcement entity could implement. *See* Dennis Dodd, *There Will Be a College Sports CEO — Who They Are and How They'll Execute an Impossible Task Is Up in the Air*, CBS SPORTS (Feb. 12, 2025), <https://www.cbssports.com/college-football/news/there-will-be-a-college-sports-ceo-who-they-are-and-how-theyll-execute-an-impossible-task-is-up-in-the-air/>.

189 Amended Settlement Agreement, *supra* note 16, at 24 *see also* Dellenger, *supra* note 15.

190 Wolken, *supra* note 138 (pointing out that assuming that student-athletes will report their deals may be folly).

191 *See* Kutz, *supra* note 4 (quoting Alford).

192 Dellenger, *supra* note 165 (explaining that "Martial Law" would go into effect after the settlement receives final approval).

head football coach Brian Kelly,¹⁹³ and Oregon State University athletics director Scott Barnes¹⁹⁴ believe the CSC will enforce these NIL policies strictly.¹⁹⁵ Big 12 Conference Commissioner Brett Yormark, sums up this sentiment, “We’re providing rules. And we will be governed by those rules. And if we break those rules, you know, the ramifications will be punitive.”¹⁹⁶ Effective enforcement could create a more level playing field in college athletics.¹⁹⁷ Without it, a few universities with more resources would compete for championships.¹⁹⁸ Power conference executives have gone so far as to circulate a draft document that university officials would sign that would, among other things, waive their right to pursue legal challenges against the CSC.¹⁹⁹ Failure to sign this membership agreement could result in loss of conference membership and games scheduled against other power conference universities.²⁰⁰

Other college athletics constituents are skeptical that the new system will work—or that it is legal.²⁰¹ Regarding the former, some are not confident that the CSC and Deloitte will really be able to curb rule breaking.²⁰² In fact, within a month of the settlement’s imposition, the CSC already relaxed its position regarding applying heightened scrutiny of NIL collectives’ deals with student-athletes.²⁰³ At first, the CSC denied dozens of deals between collectives and athletes, finding

193 Dellenger, *supra* note 162 (quoting Kelly, “There will be real enforcement. It will be an across-the-board, consistent enforcement with severe sanctions. They will be quick. They will be swift. I think everybody is on board with that.”).

194 John Canzano, *Canzano: Is the Smoke Lifting for Pac-12?* BALD FACED TRUTH BY JOHN CANZANO (May 1, 2025), <https://www.johncanzano.com/p/canzano-is-the-smoke-lifting-for/> (“This is not the NCAA. This is a separate entity with professional enforcement staff. Nimble, small, autonomous decision making, and a big stick. Penalties that will absolutely hurt.”).

195 Some are skeptical that the acceptable range of compensation requirement would withstand legal scrutiny. *See* Dellenger, *supra* note 165 (quoting attorney Brian Davis, who maintains that the valuation is unlawful absent collective bargaining).

196 Fischer, *supra* note 55.

197 Dellenger, *supra* note 184. Virginia Tech University athletics director Whit Babock echoes those sentiments, explaining that the new enforcement structure, if it has penalties with “teeth,” could level the playing field. Cunningham, *supra* note 135.

198 Dellenger, *supra* note 203 (quoting Southeastern Conference commissioner Greg Sankey, “If you allow what’s happened to continue to escalate, there would be a very small number of programs that would be competitive with each other and we’d not have a national sport or a national championship.”).

199 Dellenger, *supra* note 179.

200 *Id.*

201 *See* Amanda Christovich, ‘Kind of a Joke’: Frustrations Mount as New NIL Deal Approval Process Lags, FRONT OFF. SPORTS (July 10, 2025), <https://frontofficesports.com/kind-of-a-joke-frustrations-mount-as-new-nil-deal-approval-process-lags/>; *see also* Dellenger, *supra* note 179 (quoting Tulane University law professor Gabe Feldman).

202 For example, *see* Steven Johnson, *TCU’s Athletic Director Opens Up on NIL and a New Era for College Football*, FORT WORTH STAR-TELEGRAPH (June 12, 2025), <https://www.star-telegram.com/sports/college/big-12/texas-christian-university/article307994270.html> (quoting Texas Christian University athletics director Mike Buddie).

203 *See* Ross Dellenger, *House Attorneys, Power Conferences Work Out Deal to Relax NIL Collective Roadblocks: Sources*, YAHOO! SPORTS (July 22, 2025), <https://sports.yahoo.com/college-football/breaking-news/article/house-attorneys-power-conferences-work-out-deal-to-relax-nil-collective-roadblocks-sources-213706035.html>.

that the arrangements could not satisfy the valid business purpose requirement.²⁰⁴ After pushback from, among others, the *House* plaintiffs' attorneys, the CSC will no longer apply additional scrutiny to collectives' deals,²⁰⁵ instead reviewing only for a valid business purpose and range of fair market value compensation as with other deals.²⁰⁶ This is significant, as compensation from approved deals with third parties does not count against the \$20.5 million revenue share cap.²⁰⁷ As a result, some see what was originally a \$20.5 million "hard" compensation cap as morphing into a "soft cap" that collectives will exploit.²⁰⁸

With respect to the concern that the new enforcement system would not withstand legal scrutiny, some feel that a rejected NIL deal could result in a lawsuit against the clearinghouse based on alleged violations of state NIL laws, tortious interference with contractual relations, and suppression of economic opportunities protected by state and federal antitrust laws.²⁰⁹ These doubts occur amidst a backdrop of at least one state—Tennessee—passing a bill permitting its universities to proceed without regard to the *House* settlement-related rules and attempting to preclude the CSC from enforcing them.²¹⁰

Regardless, by involving a third-party—the CSC—in the NIL rules enforcement process, the NCAA acquiesced to significantly altering its long-standing history of almost exclusively using its own enforcement unit to enforce its rules.²¹¹ The NCAA's lone previous dalliance using a third-party to enforce its rules proved disastrous. Amid calls for enforcement reform, the NCAA created the Independent Accountability Resolution Process (IARP), an independent body that briefly presided over infractions cases deemed complex²¹² in 2018.²¹³ The IARP's existence was short-lived, however, for reasons including its inefficiencies, and many consider

204 *Id.*

205 *Id.* (citing "athlete merchandise sales, autograph signings and athlete appearances at, for example, golf tournaments" as examples of arrangements that would satisfy CSC requirements).

206 Ross Dellenger, *College Sports Commission Informs Schools that NIL Collectives Can Pay Athletes Directly with Limitations*, YAHOO! SPORTS (July 31, 2025), <https://sports.yahoo.com/college-football/breaking-news/article/college-sports-commission-informs-schools-that-nil-collectives-can-pay-athletes-directly-with-limitations-135802722.html>.

207 *Id.*

208 Dellenger, *supra* note 203.

209 McCann, *supra* note 14.

210 Dellenger, *supra* note 179 (referring to Tennessee Senate Bill No. 536 as "a launched missile toward plans from the NCAA and power conferences").

211 Murphy, *supra* note 76. NCAA President Charlie Baker explains that removing itself from enforcing NIL regulations will permit it to focus on providing student-athletes with an exceptional academic and athletics experience. See *A Letter from NCAA President Charlie Baker*, *supra* note 10.

212 Dodd, *supra* note 188 (noting that individuals employed outside of the NCAA and its member universities comprised the IARP).

213 *Inside the Division I Infractions Process: Independent Accountability Resolution*, NCAA (Jan. 2019), https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_graphcs/DIINF_InfractionsProcessIndependentAccountabilityResolutionFactSheet.pdf.

it a failure.²¹⁴ And now another third party, the CSC, will now largely enjoy enforcement authority over third-party NIL arrangements.²¹⁵

D. The Settlement Agreement's Insertion of Arbitration into the NIL Rules Enforcement Process

As stated above, the *House* settlement agreement creates a neutral arbitration system that permits student-athletes and their universities to challenge adverse CSC decisions regarding athletes' NIL arrangements with third parties.²¹⁶ While the introduction of the CSC into the NIL rules enforcement process is radical, its insertion of arbitration is likewise significant²¹⁷ and unprecedented in college athletics.

Procedurally, the settlement permits a student-athlete or their university to appeal a CSC rejection of an NIL agreement,²¹⁸ including when the basis for the rejection is Deloitte's determination that the compensation exceeds its acceptable range of compensation.²¹⁹ When a student-athlete proceeds with arbitrating the CSC's rejection, Deloitte will serve as the prosecutorial group²²⁰ in front of arbitrators that the *House* parties approve.²²¹ Once arbitration commences, the arbitrator must reach a final, written decision within 45 days.²²²

If the arbitrators agree with Deloitte's analysis that compensation from an NIL agreement exceeds the acceptable range, the student-athlete who entered it

214 For example, see Dodd, *supra* note 188.

215 Karen Weaver, *House v. NCAA Settlement Proposal: Athletes Could Earn 51% of Revenue, Curb 'Booster' Role, and Use Neutral Arbiter for NIL*, FORBES (Sept. 26, 2024), <https://www.forbes.com/sites/karenweaver/2024/09/26/house-v-ncaa-settlement-proposal-athletes-could-earn-51-of-revenue-curb-booster-role-use-neutral-arbiter-for-nil/> (quoting revised settlement agreement). The NCAA will continue to handle enforcement of academic and eligibility requirements. Thamel, *supra* note 187.

216 Ralph D. Russo, *College Athlete Advocacy Group Opposes NCAA Lawsuit Settlement, Says It Limits Potential Earnings*, ASSOC. PRESS (Aug. 29, 2024), <https://apnews.com/article/ncaa-lawsuit-athletes-61e2e2f9a98eaf03403ad9caa0747849#> (quoting *House* plaintiffs' attorney Steve Berman).

217 Henderson, *supra* note 80 (explaining that the availability of arbitration mitigates the likelihood that the NCAA will unilaterally impose its rules); see also Weaver, *supra* note 215 (referring to the revised agreement's inclusion of arbitration as a "sea change for college athletics").

218 Dellenger, *supra* note 15.

219 See *Updated Question and Answer: Impact of the Proposed Settlement on Division I Institutions*, *supra* note 152. Some are already questioning Deloitte's neutrality and/or ability to effectively determine fair-market value given that the relevant market is relatively limited in time. See Dodd, *supra* note 188.

220 See Cloherty & Szlarb, *supra* note 144.

221 Penalties that Deloitte imposed are stayed pending the arbitrator's ruling. Dellenger, *supra* note 15. As of this writing, college athletics executives and attorneys are finalizing a group of eight arbitrators, including many former judges, to constitute the independent arbitration group. Dellenger, *supra* note 184.

222 *Question and Answer: Implementation of the House Settlement*, *supra* note 76, at 35 (noting that any CSC-imposed penalties are stayed during arbitration).

may terminate the agreement²²³ or renegotiate it.²²⁴ If a student-athlete accepts the compensation originally bargained in a rejected deal, they can be deemed ineligible for competition.²²⁵

By including arbitration in their settlement agreement, the *House* parties intended to mutually benefit student-athletes, their universities, and the NCAA.²²⁶ While inserting arbitration into the NIL rules enforcement process largely removes the NCAA from it, optimists believe it should result in a more efficient²²⁷ and equitable²²⁸ process while potentially making it more difficult to challenge adverse decisions in court.²²⁹ According to the *House* parties' brief on their revised settlement, any arbitrations will occur quickly and, absent good cause, any penalties issued by the CSC are stayed during such proceedings.²³⁰ Additionally, universities may especially appreciate the fact that arbitration can be less public than litigation.²³¹ The NCAA benefits from arbitration as, theoretically, it provides some cover against potential

223 Weaver, *supra* note 215.

224 *Question and Answer: Impact of the Proposed Settlement on Current Division I Student-Athletes*, *supra* note 169. "For example, if Deloitte deems a submitted \$100,000 deal between an athlete and third party to actually be valued at \$50,000, the player can alter the deal to align with the clearinghouse's suggested fair market value figure." Ross Dellenger, *NCAA's House Settlement Approved, Ushering in New Era Where Schools Can Directly Pay Athletes*, YAHOO! SPORTS (June 7, 2025), <https://sports.yahoo.com/college-football/article/ncaas-house-settlement-approved-ushering-in-new-era-where-schools-can-directly-pay-athletes-011814078.html>.

225 Dellenger, *supra* note 224.

226 Portnoy, *supra* note 81.

227 Portnoy, *supra* note 105. The process contemplates a forty-five-day timeline to resolve such arbitration. Cloherty & Szlarb, *supra* note 144. Some feel so strongly about the inefficiency of the traditional NCAA investigative process that two U.S. senators recently reintroduced a bipartisan bill seeking to increase efficiencies and add procedural protections to it. See Pete Nakos, *Senators Re-Introduce NCAA Accountability Act to Enable Enforcement*, ON3 (Mar. 12, 2025), <https://www.on3.com/nil/news/senators-re-introduce-ncaa-accountability-act-to-enable-enforcement/>.

228 Henderson, *supra* note 80. To increase fairness, arbitrators may require document production and witness appearances, for example. Cloherty & Szlarb, *supra* note 144.

229 Wetzel & Thamel, *supra* note 150; see also McCann, *supra* note 14 (explaining that the judiciary is generally deferential to arbitrators' decisions). At least one media member points to lawsuits as the biggest story in college sports. See Matt Brown, *Nothing Really Matters Until the Lawyers Are Done Lawyering*, EXTRA POINTS (May 21, 2025), <https://www.extrapointsmb.com/p/nothing-really-matters-until-the-lawyers-are-done-lawyering-2639>.

230 Weaver, *supra* note 215 (quoting *House* parties' brief). Such a stay in disciplinary actions permits student-athletes and their universities to avoid immediate consequences. Cloherty & Szlarb, *supra* note 144.

231 See McCann, *supra* note 14 (explaining that arbitration would shield many relevant documents and proceedings from public review); see also Karen Weaver, *NIL Contracts and Disputes: Will They Shape the Future of College Athletics?* FORBES (Mar. 3, 2025), <https://www.forbes.com/sites/karenweaver/2025/03/03/nil-contracts-and-disputes-will-they-shape-the-future-of-college-athletics/> (noting that universities and their current and former student-athletes could also pursue arbitration over disputes regarding the former's use of the latter's NIL).

antitrust claims²³² since the NCAA no longer possesses jurisdiction over NIL rules enforcement as the proverbial judge, jury, and prosecutor.²³³

III. IMPLICATIONS FOR UNIVERSITIES

Following Judge Wilken granting final approval of the *House* settlement, universities must alter their approach within athletics to become—or remain—competitive.²³⁴ While the national media focuses on universities' newfound ability to share over \$20 million in revenue annually with their athletes,²³⁵ universities face a new regulatory environment that includes a novel process for adjudicating potential violations of NIL regulations.²³⁶ This new enforcement mechanism is perhaps an even bigger sea change than revenue sharing for student-athletes, coaches, and administrators.²³⁷ The revised settlement agreement's complexity increases this burden on university and athletics administrators faced with creating new processes to help ensure and monitor compliance with these new NIL policies.²³⁸

A starting point for universities is evaluating current systems to determine whether they are adequate or require updating.²³⁹ Among necessary processes is one including facilitating and requiring disclosure of student-athletes' NIL arrangements worth \$600 or more and educating constituents about this requirement.²⁴⁰ This could prove difficult for some as many universities were previously averse to involvement with student-athletes' disclosure of NIL agreements.²⁴¹ Further, some states have counseled against it.²⁴²

232 Portnoy, *supra* note 81.

233 Weaver, *supra* note 215; *see also* Hamilton, *supra* note 153.

234 Argeris et al., *supra* note 78 (explaining that athletics departments must be “more nimble”).

235 Cloherty & Szlarb, *supra* note 144. For example, *see* Henderson, *supra* note 80 (explaining that the settlement's outcome “could reshape the financial dynamics of college athletics for years to come ...”).

236 Weaver, *supra* note 215; *see also* Argeris et al., *supra* note 78 (“[I]nstitutions should prepare for a new and evolving set of rules and processes for infractions investigations under the settlement's framework.”).

237 Fischer, *supra* note 55.

238 Argeris et al., *supra* note 78 (explaining that the settlement requires universities to take a “multidisciplinary approach”).

239 *See* Cloherty & Szlarb, *supra* note 144 (specifically referencing systems involving NIL booster collectives as one that universities should evaluate).

240 *Id.* (suggesting training for employees and student-athletes).

241 Sanjay Reddy, *NIL and Data Transparency: Implications for Student-Athletes*, GEO. L. TECH. REV. (May 2024), <https://georgetownlawtechreview.org/nil-and-data-transparency-implications-for-student-athletes/GLTR-05-2024/> (citing the Family Educational Rights and Privacy Act as a reason that universities have been loath to involve with student-athletes' disclosure of NIL agreements). Prior to the settlement agreement's implementation, universities and conferences have largely decided whether and how to enforce disclosure requirements. For an example of a university with a disclosure requirement, *see* Brown U. Athletics Compliance, *Name, Image and Likeness Resources*, <https://brownbears.com/sports/2021/7/1/name-image-and-likeness-resources>.

242 Reddy, *supra* note 241 (citing Louisiana and Kentucky laws that have exempted student-athletes' NIL agreements from open records laws).

One power conference describes the amount of education that department staffers will need to deliver to student-athletes, coaches, and agents as “monumental.”²⁴³ Universities, however, must not only educate regarding the *House* settlement disclosure requirement but monitor for its compliance, too.²⁴⁴ Administrators’ monitoring practices can include observing student-athletes’ social media—especially high-profile student-athletes or those who compete in high-profile sports—for suggestion of unreported NIL deals and issuing reports to sport staff members listing agreements reported by student-athletes, in case sport staff members are aware of others.²⁴⁵ Not only is disclosure required in many instances, it ensures that NIL arrangements promptly receive Deloitte’s compensation valuation analysis.

Universities and their student-athletes should also familiarize themselves with, and take advantage of, the process through which the latter can receive an advisory opinion regarding potential NIL deals through the NIL Go platform.²⁴⁶ Universities may even consider requiring high-profile student-athletes or those in high-profile sports to utilize Deloitte’s advisory services as taking advantage of this resource could save proactive student-athletes and universities from significant hassle, anxiety, penalties, and arbitration (and expenses related to arbitration).

Universities must prepare for teaming up with their athletes²⁴⁷ who, because of the CSC’s rejection of a deal, participate in the arbitration process.²⁴⁸ Designed to be more efficient than the current NCAA infractions process, student-athletes and universities must remain primed to face the relatively condensed forty-five-day arbitration timeline when challenging Deloitte’s determinations.²⁴⁹ Discovery deadlines, for example, will be tight.²⁵⁰ Thus, universities and their student-athletes must be equipped to produce evidence not only in the discovery process but to the arbitrator, too.²⁵¹

243 Fischer, *supra* note 55.

244 To access documents that reflect the numerous changes to NCAA rules as a result of the settlement, see *Proposed Division I Rule Changes Involving Student-Athlete NIL Activities*, NCAA (last updated Aug. 19, 2025), <https://www.ncaa.org/sports/2025/4/6/proposed-rule-changes-contingent-on-house-settlement-final-approval.aspx>.

245 Josh Lens, *NIL Compliance*, 103 B.U. L. REV. ONLINE 69 (2023).

246 Cloherty & Szlarb, *supra* note 144.

247 Dellenger, *supra* note 155.

248 *Id.* (quoting Kessler).

249 *See id.*

250 *Id.*

251 *See* Ross Dellenger, *With NIL Era Ending, College Sports Is on Verge of Seismic Change. How Will Schools Adapt with Industry in Upheaval?* YAHOO! SPORTS (Jan. 7, 2025), <https://sports.yahoo.com/with-nil-era-ending-college-sports-is-on-verge-of-seismic-change-how-will-schools-adapt-with-industry-in-upheaval-154722732.html> (quoting Kessler as explaining that an arbitrator’s decision may depend on the evidence that the parties produce).

Further, arbitration will cost universities money.²⁵² While some may utilize in-house counsel to arbitrate, others may hire outside representation, particularly those experienced with alternative dispute resolution.²⁵³ Further, the *House* settlement agreement provides universities with the option of paying for their student-athletes' legal representation.²⁵⁴ This possibility first requires universities to determine whether such an arrangement creates an ethical conflict.²⁵⁵ This is not a new dynamic, however, as universities have long possessed the ability to pay for their prospective and current student-athletes' legal representation in NCAA eligibility disputes, for example.²⁵⁶ Universities may consider evaluating whether and how funding such legal matters impacts their student-athletes' cost of attendance calculations, however.

Navigating the post-*House* regulatory scheme, particularly Deloitte's acceptable range of compensation determinations and the potential for arbitrating its conclusions, requires universities to evaluate current processes, create and implement new ones, and be prepared to participate in arbitration on a relatively condensed timeline. Given the dire potential consequences of adverse ruling, which include student-athlete competition ineligibility, universities must remain vigilant.

IV. CONCLUSION

The *House v. NCAA* settlement agreement significantly alters college athletics in myriad ways, including providing universities the ability to share tens of millions of dollars in revenue directly with their student-athletes. These student-athletes, however, risk their ability to compete by entering NIL agreements that, according to Deloitte's calculations, exceed an acceptable range of compensation or that do not further a valid business purpose. Universities and their student-athletes can mitigate the likelihood of such a determination by proactively seeking an advisory opinion of potential NIL deals through NIL Go, disclosing NIL agreements, and remaining prepared to arbitrate instances where the CSC does not approve their NIL agreement. While such endeavors are largely new and complicated, college athletics' new reality requires familiarity with, and preparedness for, them.

252 Cloherty & Szlarb, *supra* note 144.

253 *Id.*

254 *Id.* When a university elects to fund their student-athlete's attorney's fees and costs for arbitration proceedings, the university must also pay the arbitrator's reasonable fees and expenses. *Question and Answer: Implementation of the House Settlement*, *supra* note 76, at 36.

255 Cloherty & Szlarb, *supra* note 144.

256 See NCAA, 2024–25 Division I Manual, §§ 12.11.2.1, 16.3.2 (2024), <https://ncaapublications.com/productdownloads/D125.pdf>.