

Important Considerations for Universities Awaiting House Settlement Approval

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The ever-changing landscape of college athletics and name, image, and likeness (NIL) regulation is about to be shaken up once again. The historic *House v. NCAA* settlement is nearing approval and will drastically change the ways many universities, particularly in Division I, operate their athletic departments and engage with their student-athletes.

This settlement will accomplish three main tasks: (1) it will distribute over \$2.5 billion to former players who participated in competitive Division I college sports from 2016-2024, (2) it will create a revenue-sharing model that will allow schools to compensate their student-athletes directly, and (3) it will attempt to establish more oversight and control over student-athlete NIL payments.

With these historic changes, universities should be prepared to take several critical actions to remain in-step with new NCAA requirements and related developments in the world of college athletics.

Opt In or Out

The named defendants in the suit, which currently include the PAC-12, Atlantic Coast Conference, Big Ten, Big 12, Southeastern Conference conferences, are automatically opted in to the settlement. Schools within those conferences, commonly referred to as the “power five,” must be ready to adhere to the terms of settlement for a ten-year period beginning on July 1, 2025.

This leaves non “power five” Division I schools with a decision to make about whether or not they wish to share revenue with their student athletes. Most Division I universities have already indicated whether or not they plan to “opt in” to revenue sharing. Schools who do choose to share revenue must do so according to the settlement terms, and must provide the NCAA a notice of intent to formally opt in by June 15, 2025. All schools (including those in “power” conferences) who opt in must be prepared to:

- Ensure compliance with the revenue-sharing “pool cap” set by the settlement.

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- Comply with new reporting requirements on NIL licenses and payments.
 - Adhere to the roster limits established by the defendant conferences.

It is important to realize that schools who opt in are only doing so for that upcoming academic year, and every non-power five school in the NCAA will have the opportunity to opt in or out every year of the ten-year settlement period. Beginning in 2026-2027, those opting in for an upcoming academic year must do so by March 1 of the prior year.

Those who opt out of the settlement will largely continue to follow guidelines from the 2024-25 NCAA Division I Manual. This means last year's scholarship limits will remain intact, and schools will remain prohibited from making direct NIL payments to student-athletes. However, all Division I schools will need to ensure that their student-athletes report all third-party NIL deals worth \$600 or more.

Any school that provides payments or benefits to any student athlete in excess of what is permitted by the Division I Manual will be considered to have automatically opted in to the settlement agreement, and will be subject to the restrictions of the settlement agreement.

Consider Financial Impacts

The settlement has the potential to create significant financial consequences for athletic departments. The revenue-sharing model established by the settlement allows schools to spend up to \$20.5 million—an expense they were not previously incurring—to pay their student-athletes directly during the 2025-26 academic year. In response to these increased financial demands, schools are actively exploring new revenue streams, including forming separate legal entities for their athletic departments and taking steps to ensure greater financial flexibility.

The draft settlement agreement itself notes that non power five schools may choose not to pay their student athletes the full \$20.5 million that is permitted in 2025-26 due to financial constraints. Whether or not they spend the full allotment, schools must determine exactly how to allocate payments to student athletes and ensure their plans align with their budgets. Similarly, the changes in allowable roster sizes must be factored into financial planning. Schools that do not wish to fall behind competitively must consider these changes and determine whether any fundraising, adjustments in ticket prices, new revenue streams or other efforts are necessary to cover the added costs.

Consider Program Impacts

The settlement will impact all student athletes at power five schools and those at schools that opt in to the settlement, regardless of whether those athletes are receiving revenue share payments. Even if a school opts to share revenue with only certain athletes or certain teams, it will be subject to roster limits imposed by the settlement for all sports. This could affect participation numbers, and should be considered in assessing Title IX compliance.

Consider Student Athlete Impacts

Schools need to be aware of how the settlement may affect both their student athletes as individuals and the way the institution interacts with them. As publicity and transparency around NIL deals increase, supporting student athlete mental health must become an even greater priority. Schools must also decide their role in helping students in building their personal brands and if they will be involved in any third party NIL deals.

On the other hand, schools must also be aware of how their student athletes can affect their institutional brands. Schools will want to consider placing limitations on NIL deals related to certain activities or industries (e.g., gambling or alcohol, and other drugs), and consult with their leadership and Boards, as well as state regulators, to ensure that NIL deals are consistent with the collective values of the institution, remain compliant, and to ensure that the schools and athletes are protected from public relations issues. While most agreements with players receiving revenue sharing payments contain restrictions prohibiting the player from engaging in marketing related to products or brands that could bring disrepute upon universities, schools will need to carefully consider policies for athletes who are not subject to revenue sharing contracts.

Addressing Title IX Concerns

Roster limits are not the only way that the settlement may impact Title IX compliance. The compensation distributed to former players will be primarily paid to men's basketball and football participants, and purports to release Title IX claims?although the enforceability of the release under Title IX has not been tested. Moving forward, market forces will likely dictate that schools compensate male athletes at much greater rates than female athletes, creating potential Title IX violations. In January, the Trump administration withdrew Biden-era guidance from the Department of Education that would require schools to share revenue equitably among men's and women's sports to comply with Title IX. While it seems unlikely that the federal government will pursue Title IX enforcement related to athlete compensation, schools should remember that Title IX may be enforced by private litigation. It is entirely foreseeable that female athletes will sue their institutions when they lose participation opportunities because of roster limits and are compensated at a lower rate than (or not at all) compared to their male counterparts.

Stay Informed

It is imperative for institutions to continue to monitor NCAA developments over the settlement period. It is still uncertain what role Title IX will play on these changes and future guidance has the potential for significant impacts. Additionally, many aspects are bound to change—some intentionally, such as the pool cap's annual 4% increase, and others unexpectedly. Schools should remain alert and ready to respond to any additional guidance to ensure NCAA compliance.

Schools who are considering opting in should consider structural changes to their athletics program that will allow them to maximize revenue and avoid potential liability.

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