

# NIL Settlement

June 7, 2024

On May 23, 2024, the National Collegiate Athletics Association (“NCAA”) and its “Power 5” athletic conferences<sup>[i]</sup> settled several significant antitrust class action lawsuits (the “Settlement”). This Settlement will drastically change the economic model of college sports and provide billions of dollars in backpay damages and future revenue sharing to college athletes.

In 2020, Grant House, a former Arizona State swimmer, and Sedona Prince a former Oregon University and current Texas Christian University women’s basketball player commenced an action against the NCAA in the United States District Court for the Northern District of California. A third plaintiff, Tymir Oliver, formerly a football player at the University of Illinois, had initially filed a separate lawsuit, *Oliver v. NCAA*<sup>[ii]</sup>, which subsequently was consolidated with the *House v. NCAA* case.<sup>[iii]</sup>

This action alleged that the NCAA and its “Power 5” athletic conferences violated antitrust laws by barring athletes from receiving name, image, and likeness (“NIL”) compensation prior to 2021 and prohibiting revenue-sharing from broadcasting agreements and similar contracts with athletes. In November of 2023, the District Court granted class-action certification to three additional classes of athletes.<sup>[iv]</sup> This certification increased the potential liability in this action by expanding the number of plaintiffs from three student athletes to more than 15,000.

## Settlement Details

The Settlement resolves three pending antitrust lawsuits, *House v. NCAA*, *Hubbard v. NCAA*, and *Carter v. NCAA* and includes approximately \$2.8 billion in back-pay damages that the NCAA must pay to former Division I athletes, as well as a future revenue sharing model between power-conference schools and athletes.<sup>[v]</sup>

The damages, in the form of \$2.8 billion will be paid out over a 10-year period through a combination of NCAA reserve funds and reductions in future revenue distributions to conferences. The current structure would have the NCAA responsible for 41% of the overall damages, the “Power 5” responsible for 24%, the Football Championship Subdivision (“FCS”)<sup>[vi]</sup> responsible for 13%, the Group 5<sup>[vii]</sup> responsible for 10% and any other DI school who does not have a football team representing 12% of the damages.

In addition, the Settlement includes an optional revenue sharing model for power-conference programs in which 22% of the school’s annual revenue, estimated to be approximately \$20 million depending on school size, would be distributable directly to student athletes. It will be up to each school on how this money will be distributed and this number could increase in the future depending on more lucrative television deals. These new payments

would be in addition to scholarships, third-party NIL payments, health care and other benefits that college athletes already receive, and schools can choose to make the new payments and benefits to athletes playing any Division I sport.

As part of the Settlement, NIL deals will not be going anywhere. Instead, there will be a reporting mechanism in place that will require athletes to report third-party NIL deals that are not part of revenue-sharing profits he or she receives from the school. Student Athletes will now be able to have multiple revenue streams from both third-party NIL deals and the NCAA revenue sharing model.<sup>[viii]</sup>

Finally, as part of the Settlement, eligible NCAA athletes must agree not to pursue pending actions or commence additional actions against the NCAA for certain antitrust violations.<sup>[ix]</sup> Players can, however, opt out of the Settlement and join separate and pending antitrust cases that are currently moving forward.<sup>[x]</sup>

### **Other Settlement Terms**

The full Settlement details have yet to be ironed out. However, in addition to the financial compensation listed above, NCAA scholarship caps may also be eliminated which could lead to roster restrictions. For example, if a football team was allowed 125 roster spots which consisted of 85 scholarship players, this new format could consist of 100 total roster spots all of whom are eligible for scholarships. Other sports with a more severe scholarship restriction such as baseball, currently at 11.7 eligible scholarships per team, could also benefit tremendously from this change.

### **Next Settlement Steps**

Within the next 30-45 days, the terms of the Settlement will be submitted for preliminary approval by the Court. If preliminary approval is granted, there will be a set period of several months in which those in the retroactive damages and future revenue-sharing classes will have an opportunity to either opt out or object to the terms of the agreement, depending on the Court's ruling. A final approval hearing will then be held before the Settlement officially goes into effect.<sup>[xi]</sup>

### **Questions That Remain**

Although this Settlement will answer many outstanding questions regarding college athletics, there are still many unanswered questions. For example, how will the Title IX policy be affected and will the increase in scholarships and money for athletes be equal for both men and women sports? How exactly will revenue be distributed, and will it be distributed equally throughout each sport? Will certain sports be cut in order to offer higher revenue driving sports such as football and basketball a higher portion of the school's annual revenue, which could be upwards of \$20 million? Furthermore, athletes may believe that they should get more than 22% of the school's revenue which could lead to further conversations about unionizing and the employment status of student athletes.

All of these questions and the many more that may evolve as a result of the Settlement and any other developments that effect NIL and/or Student Athletes will be closely monitored by Cullen and Dykman's Higher

Education team. Should you have any questions about this legal alert, please feel free to contact Ariel Ronneburger ([aronneburger@cullenllp.com](mailto:aronneburger@cullenllp.com)), Karen Levin ([klevin@cullenllp.com](mailto:klevin@cullenllp.com)) or Ryan Goldberg ([Rgoldberg@cullenllp.com](mailto:Rgoldberg@cullenllp.com)).

This advisory provides a brief overview of the most significant changes in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

## Footnotes

[i] The Power 5 athletic conference consists of the Big Ten, South Eastern Conference (“SEC”), Pacific Coast Conference (“Pac-12”), Big 12 and Atlantic Coast Conference (“ACC”).

[ii] *Oliver v. NCAA*, 920 N.E.2d 203 (Ohio Com.Pl. 2009)

[iii] *House v. NCAA*, 545 F. Supp.3d 804

[iv] These classes consisted of football and men’s basketball players along with women’s basketball players; players in other college sports starting in 2016; and all D-I Athletes who competed or will compete from June 15, 2020 (when the complaint was filed), to the date of judgement in the case, which was set to go to trial in January 2025.

[v] Ranjan Jindal, *Breaking Down the House v. NCAA Settlement and the Possible Future of Revenue Sharing in College Athletics*, Duke Chronicle, [Breaking down the House v. NCAA settlement and the possible future of revenue sharing in college athletics - The Chronicle \(dukechronicle.com\)](https://dukechronicle.com/breaking-down-the-house-v-ncaa-settlement-and-the-possible-future-of-revenue-sharing-in-college-athletics) (last accessed June 6, 2024).

[vi] The FCS is comprised of 129 teams in 13 conferences and is the second highest level of college football in the United States.

[vii] The Group 5 consists of the American Athletic Conference, Conference USA, Mid-American Conference, Mountain West Conference and the Sun Belt Conference.

[viii] Zach Braziller, *NCAA’s \$2.8 billion settlement marks ‘professionalization’ of college sports*, MSN.com, May 25, 2024, [NCAA’s \\$2.8 billion settlement marks ‘professionalization’ of college sports \(msn.com\)](https://www.msn.com/en-us/sports/college-sports/ncaa-28-billion-settlement-professionalization) (last accessed May 28, 2024).

[ix] Dan Murphy and Peter Thamel, *NCAA, Power 5 Agree to Deal That Will Let Schools Pay Players*, Espn.com, May 23, 2024, [https://www.espn.com/college-sports/story/\\_/id/40206364/ncaa-power-conferences-agree-allow-schools-pay-players](https://www.espn.com/college-sports/story/_/id/40206364/ncaa-power-conferences-agree-allow-schools-pay-players) (Last accessed June 6, 2024).

[x] *Fontenot v. NCAA*, No. 23-cv-03076 (D. Colo. Nov. 20, 2023) (class action alleging that the NCAA restricted athletes from sharing in television rights revenue).

[xi] Nicole Auerbach and Justin Williams, *What to know about House v. NCAA settlement and a historic day for college sports*, The Athletic, May 24, 2024, <https://www.nytimes.com/athletic/5517461/2024/05/24/ncaa-lawsuit-house-paying-players/> (last accessed May 28, 2024).

## Practices

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