



NAME, IMAGE, AND LIKENESS ("NIL") INSTITUTIONAL REPORT

JUNE-JULY 2021

"With Congress and states involved, as well as the NCAA considering adopting NIL rule changes, the NIL collegiate landscape presents many new issues and challenges for athletics departments. The LEAD1 NIL Institutional Report will help our members navigate through these changes."

—Tom McMillen, President and Chief Executive Officer of LEAD1 Association

BART LAMBERGMAN
(LEAD1)

Editor and Publisher

HOLT HACKNEY

Managing Editor

HANNAH DEWEY (LEAD1)

Deputy Editor

MICHAEL BRIGANTE

(LEAD1)

Contributor

THE ROBERTS GROUP

Design Editor

Please direct editorial or subscription inquiries to Hackney Publications at:

P.O. Box 684611

Austin, TX 78768

(512) 716-7977

info@hackneypublications.com

Hackney Publications

The *NIL Institutional Report* is published monthly by Hackney Publications, P.O. Box 684611, Austin, TX 78768. Postmaster send changes to The *NIL Institutional Report*, Hackney Publications, P.O. Box 684611, Austin, TX 78768.

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The NIL Institutional Report

NIL

LEAD1 Releases NIL Institutional Publication with Hackney Publications

The "LEAD1 NIL Institutional Report" is a member exclusive benefit to help athletic departments better navigate college sports NIL changes with respect to institutional involvement.

WASHINGTON, D.C. – The LEAD1 Association ("LEAD1"), which represents the athletics directors of the 130-member schools of the Football Bowl Subdivision ("FBS"), and Hackney Publications, the nation's leading publisher of sports law periodicals, released today a new publication to help athletics departments better navigate college sports name, image, and likeness (NIL) rule changes. The "LEAD1 NIL Institutional Report" will be released every two months on LEAD1's website as a member exclusive benefit featuring original articles from subject matter experts and leading NIL companies on the most relevant and timely NIL institutional topics including legal, tax, accounting, brand building, and other ancillary NIL categories.

This first issue features: (1) original articles from leading NIL companies and firms: INFLCR, Spry, TeamAltemus, RSM, and FINN Partners; (2) the "Tom McMillen Federal NIL Scoop" for an update on congressional NIL legislation; (3) interviews with Jack Swarbrick on use of institutional marks and Sean Frazier on the intersection between diversity, equity, and inclusion and NIL; (4) interviews with LEAD1 NIL Working Group co-chairs, Mike Hill, and Michael Alford on agent and booster involvement; (5) an update from Pat Chun on what the NCAA Division I Council may consider at its late June meeting; (6) an institutional preview with Desiree Reed-Francois on what UNLV is doing to prepare for NIL; and more.

"With Congress and states involved, as well as the NCAA considering adopting NIL rule changes, the NIL collegiate landscape presents many new issues and challenges for athletics departments," said



Tom McMillen, President and Chief Executive Officer of LEAD1 Association

LEAD1 President and CEO, Tom McMillen. "The LEAD1 NIL Institutional Report will help our members navigate through these changes."

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For more general information on the publication, including sponsorship inquiries, please contact Hannah Dewey (hannah@lead1a.com). ■

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THE TOM MCMILLEN FEDERAL NIL SCOOP

By Tom McMillen, President and Chief Executive Officer of LEAD1. McMillen is a former Congressman, college basketball All-American, Rhodes Scholar, and NBA player, who took over LEAD1 in 2015.

Thank you for reading the LEAD1 NIL Institutional Report. Our goal here at the LEAD1 office is to help provide some clarity with regard to NIL and institutional involvement. In each of our issues, this short piece will be intended to keep our member athletics departments abreast about where the Congress stands relative to the NIL legislative front.

On that point, there is simply not much time for Congress to pass an NIL deal before July 1st when some state NIL laws go into effect (in fact, there are only 7 days left in June for Congress to legislate). The Senate Commerce Committee took some heat for not having any student-athletes on their June 9th panel hearing. The student-athlete's voice will need to be heard before July 1st as another hearing has been promised. While the Senate is leading the charge on a compromise, the House has not held any hearings, and, of course, legislation must pass through both chambers to become law.

As a former Congressman, I know firsthand that sometimes Congress has the capacity to act quickly when there is crisis. This summer, varying state laws going into effect could actually create fertile ground for getting a deal done. Still, in all likelihood, Congress will not have acted by our annual meeting in late September. So, it will be critical for all of our member athletics directors to meet with their representatives in Washington during that time period and have their voices heard.

As for LEAD1, over the past year or so, we submitted five comment letters to the NCAA on this issue and have advocated for an extremely low regulation model as any complicated regulatory structure would seem punitive to student-athletes, be subject to

litigation, and likely be heavily criticized as well as disconnected with the body politic on this issue.

I have often compared it to a student at the University of Notre Dame, for example, who happens to be a great musician. Those students can make money based upon their NIL but cannot use institutional marks. That may be a foreseeable pathway for a low regulation model in athletics, with limited guardrails, such as prohibitions on using institutional marks and having an NIL opportunity that conflicts with team activities.

We have also advocated for a third-party administrator or TPA to be involved. This phrase, which LEAD1 helped coin, could manage the NIL process and include a fair market value component in order to red flag NIL deals that have outlier monetary values. The TPA model seems like a solid framework to proceed, but the threats of litigation may have killed it, at least temporarily, as the NCAA seems to have withdrawn the concept from consideration. Again, the

rights of publicity for ordinary students do not require disclosure and other limitations, which is now the hurdle the NCAA faces in putting forth any NIL legislation with guardrails, without a safe harbor from litigation.

What is missing from the NCAA's legislative proposal and what should be included in a federal bill, however, is group licensing—or the “low hanging fruit” of NIL. One of the unintended consequences of NIL may be the degradation of academics given that many student-athletes will be focused on how to monetize their social media accounts instead of focusing time on their classes.

Group licensing would help us ease into NIL, since it would not be as time consuming as student-athletes working individually to identify and monetize opportunities.

However this plays out, we will keep you educated on the intersection between Congress and college sports in future issues of the LEAD1 NIL Institutional Report. Enjoy the reading! ■

Next Week's D1 Council Meeting – One Last Gasp

Many believe the moment of truth for collegiate athletics arrives one second before midnight on July 1, 2021, since that is when various state laws go into effect that officially usher in the Name, Image, and Likeness movement.

One of the entities that could provide more clarity is the NCAA Division I Council, which meets on June 22-23. Topping its agenda is: What if anything can be done to minimize the chaos that could emerge from the disparate treatment of NIL rules?

“The belief and hope and need is for the NCAA to pass something this month to specifically help schools in states without NIL laws to manage this process,” Patrick Chun, the Athletic Director of Washington State University and a member of the NCAA Division I Council, told us. “We also need to be able to help our student athletes and provide some guidance about what rules they need to follow. That way, they can make good business decisions.”

He added that the “expectation is that schools and states without NIL laws would be protected in that their student athletes will not lose any kind of eligibility if they exercise their NIL rights. This is why it is important for the NCAA to pass something next week.

“This is a historic juncture in college athletics.” ■

What Role Does Technology Play in NIL Legislation?

By Lyle Adams, CEO of Spry



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Imagine that it's July 1, 2021 and Name, Image and Likeness (NIL) Bills in Georgia, Florida, Alabama, New Mexico, and Mississippi have gone into effect. Depending on the state where they attend college, a student-athlete's value will take on a whole new meaning. The types of opportunities are endless and student-athletes can now capitalize on their NIL and build a brand around themselves. It is up to the individual institution to decide how they will implement strategies that keep their student-athletes and schools compliant. How will it be possible to manage the potential hundreds (if not thousands) of opportunities that will require the Compliance Department to review? The answer is simple, through sophisticated technology. Institutions must prepare themselves with a software program capable of growing and pivoting with the school and Athletic Department as NIL legislation is rolled out (and changing) over the coming years.

TECHNOLOGY WILL HELP STREAMLINE COMMUNICATION

With every opportunity for a student-athlete, comes a multi-step approval process to ensure that the institution and athlete remain compliant with NCAA regulations. The new processes for NIL have the potential to bury compliance staff. To avoid employee burnout, each institution

Contact Lyle at lyle@spry.so



Lyle Adams
CEO of Spry

must have an intricate platform and plan in place before student-athletes return to campus with questions on what opportunities are "ok to say yes to". Streamlining and automating these processes will allow for effective workflows throughout the Athletic Department and entire institution. By having a detailed NIL approval process in place, compliance departments can help student-athletes by providing the necessary resources and material to educate themselves, thus making the approval process more efficient. Institutions will be successful with NIL opportunities when they take the paperwork off the desk of compliance staff and allow all parties (student-athlete, coach, compliance staff, institution staff) to participate in the digital approval process with seamless communication.

TECHNOLOGY WILL TRACK THE APPROVAL PROCESS / GIVE VISIBILITY

Once student-athletes are receiving NIL opportunities, it is their responsibility to communicate with their institution

and navigate the proper channels for approval. User-friendly technology allows for a simple, custom five to seven questions approval questionnaire that can be completed via the mobile app and sent directly to the administrators inbox for approval. The customized process is specific to each institution allowing administrators to ask the questions that are most necessary to stay compliant. In addition to creating a simplified approval process, there will now be a digital record of all disclosure approvals and denials. Therefore, should any compliance conflicts arise, institutions can quickly pull all historical records to help protect their institution and student-athletes.

TECHNOLOGY CAN BE USED TO CREATE CUSTOM REPORTS

Technology will make it easy to track all NIL deals that occur. Institutions can pull specific data, based on sport or graduating class, to make educated decisions on ways to best serve their student-athletes. The data can be used to generate reports that provide metrics for other student-athletes and may reveal areas of NIL success and concern. These reports may show that student-athletes ask similar questions or engage more with particular topics and therefore an institution can create educational material. Class subjects such as small business planning, tax reporting, or personal branding may be popular requests. Additionally, Athletic Departments can research summary statistics about the amount of money student-athletes are making per transaction. This will allow compliance departments to provide student-athletes data to be used in their own negotiations. With the digital database collecting information on each institution, Athletic Departments can also track booster involvement in NIL

See **WHAT ROLE** on Page 22

BRAND BUILDING presented by INFLCR

INFLCR's Launching NIL On-Campus Tour Accelerates Preparation Ahead of July

By Tim Stephens, of INFLCR



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When Jim Cavale launched INFLCR in late 2017, he looked to solve a problem ... with an eye on the future.

With college athletes soon gaining the ability to monetize their name, image and likeness, that future is now.

Cavale's software company has evolved from a brand-building, content-distribution platform to a brand-management and NIL preparation platform. Acquired by Teamworks in 2020, INFLCR serves more than 1,000 NCAA teams and more than 40,000 NCAA athletes who rely on it as an integral part of their NIL strategy.

"When I started INFLCR, we were focused on tackling what I saw as an immediate problem — the student-athletes are in-effect channels today because of their social media, but they didn't have access to content," Cavale says. "At the same time, there was all this team and media coverage. What if we could get that content to the athletes in real-time?"

"That is what led us to start INFLCR, but in the back of our mind, we always felt it was a matter of when, not if, that student-athletes would be able to leverage their name, image and likeness."

Things become clearer in July when the first of more than 40 proposed state NIL bills become law. Federal and NCAA legislation is still pending, but already universities across the country are beginning to enter these uncharted waters.

Contact CEO Jim Cavale jim@inflcr.com



INFLCR CEO Jim Cavale with members of the UAB Football team after a presentation at the Blazers' athletic facilities in June.

Ready or not, NIL is here.

Cavale has been helping several of INFLCR's partners get out front on the issue with his *Launching NIL Tour*, visiting campuses for strategic conversations with administrators, coaches and student-athletes, fielding their top NIL questions and leaving them with even more clarity around how to execute their strategy with INFLCR's software. Up first among more than 10 stops, were trips to the University of Mississippi, University of Alabama at Birmingham and Florida State University, where state NIL laws were set to take effect July 1.

Key questions center around:

- What education, assets and support is required by student-athletes to maximize their NIL potential?
- How will student-athletes report their transactions and remain compliant with state, federal and/or NCAA legislation?
- What does staff need to monitor NIL activity?
- How can coaches effectively talk about NIL to prospective student-athletes?

Recruiting is the lifeblood of collegiate athletics; NIL will be no exception.

"It comes down to how you can communicate the brand impact of your institution," Cavale says. "Through using a tool like INFLCR that shows you how many followers a student-athlete has when they show up on campus, and continues to track their follower growth, or engagement percentage growth, or other related statistics from social media, you can *show* brand value and brand value growth. You can then convey those numbers to recruits so they can understand the brand effect that your institution has."

What else should coaches discuss with prospects, within the rules? First, legislation clearly states — reiterated in comments by NCAA President Mark Emmert in testimony before Congress — that there should be a wall of separation between institutions and the endorsement market. Institutions cannot purchase a marketplace, and of course, boosters are not allowed to have a role in facilitating NIL opportunities.

"Promising deals or even talking about

See INFLCR'S on Page 7

INFLCR's On-Campus Tour Accelerates Preparation Ahead of July

Continued From Page 6

deal volume is tough,” Cavale says. “But talking about brand impact that your institution has is very doable, especially if you’re creating content, using a platform to distribute that content to student-athletes as it’s shot from multiple sources and then tracking the usage not only of that content by student-athletes, but also their social-media usage and statistics in general.

“That creates an opportunity for you as a coach to be able to convey around branding and NIL, along with showing what you have in place to help them manage their NIL business. Showing them how you’re going to help them be educated about opportunities without directly compensating them — because you’re not allowed to do that — is really important.”

INFLCR’s approach to bolstering its brand-building support has started with projects like [Launching NIL](#) and with the creation of ongoing NIL-related video and short educational articles for student-athletes via the Storyteller Playbook. Former collegiate athletes, professional athletes, and industry experts speak on topics such as brand strategy, business best practices, and financial literacy to provide educational resources for student-athletes.

While the early states are coming on board, institutions across the country await federal intervention and NCAA legislation. Uniformity in the rules is not yet a reality, which leads to another key NIL question Cavale often fields:

What can we, as an institution, do right now to be ready?

“We talk about the B-E-S-T acronym,” Cavale says.

“B stands for Build Athlete Brands. E stands for Educate Student Athletes and Staff. S stands for Showcase Your Brand Impact and T stands for Transact Transparently.”

It’s a formula for success that, like Cavale’s company itself, is sure to evolve. ■



INFLCR’s Karlee Kuykendall, Jim Cavale and Joe Maggio at INFLCR’s first Launching NIL Tour Stop at the University of Mississippi. Cavale and team met with coaches, administrators and student-athletes to educate them on NIL issues and prepare them for the state’s NIL law to go into effect on July 1.



INFLCR’s team meets with Ole Miss coaches after instructing them on ways to communicate the Rebels’ NIL support and strategies in their recruiting efforts. This summer, in partnership with INFLCR, Ole Miss launched its Next Level NIL education program.

Charlotte's Hill Examines Agents and their Role in NIL

Prior to becoming the Director of Athletics at the University of North Carolina at Charlotte, Mike Hill had a front row seat at the University of Florida, where he served as the Gators' Executive Associate Athletics Director for External Affairs.

In that position, he was a primary advisor to Florida's AD, where he helped lead a number of head coaching searches and served as the direct supervisor for men's basketball and men's tennis.

That experience, coupled with Hill hiring six head coaches in his first 18 months at Charlotte, afforded him significant interaction with agents and contributed to his appointment as co-chair of the LEAD1's Name, Image and Likeness Working Group, which has submitted several comments to the NCAA over the past year. We recently sought him out for an interview on the role that agents will place NIL, and he graciously agreed.

Question: *What are your thoughts on agents being involved in NIL space?*

Answer: "We are doing a disservice to our athletes by not allowing them more access to professional guidance and advice. If we applied what we have done with basketball with other sports than I believe we might have better outcomes.

I know there's a lot of fear and concern about the influence of agents. But we have our heads in the sand if we think that they're not on a periphery anyway. So why not formalize a system that would allow for a more modernized approach, which would allow student athletes to get the guidance that they need to market their athletic abilities, like any other adult would be able to do?"

Q: *Do agents have enough voice in NIL process? Is it something that you have discussed with them?*

A: "I've had some conversations with a couple of agents. They're best known for

working in the head coaching business, right? I've not really gotten a strong opinion from them one way or the other as to whether or not they should have a voice in it. But I think that they all see it as really good opportunity for young people to be able to capitalize on their NIL.

And we have already taken steps in the past for schools to be able to help, for example, graduating seniors in sports, well before the basketball changes occurred.

The idea that all agents are these sorts of shadowy figures that appear around the corner at night is not accurate. Are there some bad actors? Of course. There are bad actors in every part of life. But if we formalize it in a way that it provides access to young people to make educated decisions and explore their options, it would be valuable. We're dealing with a lot of dynamics that are hard to manage right now. Our enterprise is changing radically. We can long for the good old days. But this is the future. We need to modernize our approach."

Q: *What are your thoughts on the NCAA potentially making a distinction between representation for NIL marketing opportunities versus professional opportunities related to their athletic skills? Would this be too restrictive?*

A: "A lot of these agencies have the expertise in both, and there's value in providing those services in all areas, which could be helpful to the student athlete. So, it's a little bit like the days of prohibition, when people still found a way to consume alcohol and they found a way to sell it. Why don't we acknowledge the fact that this is the reality of today's sort of modern world in college athletics and help facilitate, help educate our student athletes, and maybe help set up a system that allows us to vet the agents to try to prevent the bad actors?"

Q: *Would it be problematic, for example, to*

have a representative of the institution's athletic interest provide a professional services contract for tax services to a student athlete in connection with a student athletes' NIL activities?

A: "I don't think it's problematic. In the proposed NIL legislation that the NCAA has previously submitted, the membership includes some latitude and ability for athletic representatives to be involved in NIL activities. For us to prohibit them from being involved in professional guidance, provided that they're certified and vetted; why would you not want to try to connect your student athlete with someone who you trust, who you know? The same holds true with other services. I'd like to see us loosen restrictions in that area."

Q: *What are your thoughts concerning the NCAA's evolution and its evolving position on agents?*

A: "I love the fact that the NCAA examined its position and sought to help cure the ills that face the sport of college basketball. That's a good result, to allow players to go seek counsel, seek guidance without penalty about whether they want to enter the NBA draft, or allow them to get feedback from the advisory committee from the NBA without being penalized. It's a much more progressive approach to managing representation. And we should provide more latitude in all of our sports for that."

Q: *How can athletic departments better position themselves to work with agents or professional service providers?*

A: "We have some brilliant people on our campuses and in our communities, and we should tap into those resources, those people. These professionals can help support that education effort and allow us to help formulate the best education system possible, which we can then offer to student athletes as they are vetting agents." ■

What Athletic Departments Need to Know About Having Agents Represent Student-Athletes in the Age of NIL

By Robert J. Romano, JD, LL.M.,
Sports Law Professor at St. John's
University

College athletics will soon undergo a substantial change given the movement to permit student-athletes to monetize their Name, Image and Likeness (NIL) without fear of losing either their scholarship or eligibility. In addition, most of these regulations allow, in one form or another, the athletes to hire either an attorney or agent to represent them in contract negotiations with a brand, marketing firm, social media outlet, or any other entity that wishes to retain their services.

The NCAA's rule, as proposed, would allow student-athletes to hire what it refers to as "professional service providers" as long as they are not associated with the college or university as an employee or contractor. Professional service providers would be allowed to pursue and negotiate various endorsement and marketing opportunities on behalf of the student-athletes with the following provisos:

"Enter deals with agents only for (1) advice on NIL ventures, (2) assistance in contract negotiations, and (3) marketing of NIL ventures. Student-athletes must disclose all NIL ventures, relationships, and contracts with agents to their schools and a third-party administrator to be named."¹

College athletic departments need to be aware that anyone wanting to be considered a professional service provider must, in addition to the NCAA rule as outlined above,

comply with both the *Uniform Athlete Agents Act (UAAA)*² and the *Sports Agent Responsibility and Trust Act (SPARTA)*³, two pieces of legislation implemented to safeguard both the student-athlete and the NCAA member institutions. Per these two laws, any violation would allow a college and university to bring a civil action to recover any and all damages as a result of the professional service provider engaging in illegal or prohibited activity. In addition, because of these laws, athletics needs to be aware that the NCAA may implement some form of certification process, similar to the one it enacted for agents wishing to represent college basketball players known as the Enforcement Certification and Approvals Group (ECAG).⁴

The ECAG, ratified in 2018, requires that anyone who wishes to represent a Division I men's basketball player that is contemplating jumping to the professional ranks to be certified with the NCAA. The certification process requires the agent or attorney to file an application with the appropriate fee (\$250), submit to a back-ground check, complete the appropriate educational requirements, and to subsequently pay the NCAA a returning application fee which can range anywhere between \$250 to \$1,700 annually.

With regards to NIL legislation at the state level, all contain provisions allowing for student-athlete representation, along with the requirements needed for an attorney or agent to become a 'third party

advisor' legally within its state. By way of example, Florida's NIL legislation, which goes into effect on July 1, 2021, forbids any NCAA member institutions from preventing student-athletes from employing either an agent or attorney when it comes to NIL ventures, but requires that the attorney be a member in good standing with the Florida Bar and that the agent be licensed in accordance with Florida State Statute 468, Part IX.⁵ The Mississippi Act is similar in that all attorneys must be licensed by the Mississippi Bar, but also requires that agents, in addition to being licensed within the state, comply with the terms of both the *Uniform Athlete Agents Act* (Section 73-42-1 et seq., Mississippi Code of 1972) and the *Sports Agent Responsibility and Trust Act*.⁶

As for those remaining states whose NIL legislation becomes effective as of July 2021, Alabama⁷, Georgia⁸, and New Mexico⁹, each in some form restricts a college or university from unreasonably preventing an athlete from obtaining representation, while at the same time requiring an attorney who wishes to engage in this form of student-athlete representation to be duly licensed within its state, and that all agents to comply with state laws as to licensing and certification.

Regarding federal legislation, it is reported that Congress is working on coalescing

⁵ <https://www.flsenate.gov/Session/Bill/2020/646/BillText/er/PDF>

⁶ <https://legiscan.com/MS/text/SB2313/id/2351829>

⁷ <http://alisondb.legislature.state.al.us/alison/searchableinstruments/2021RS/bills/HB404.htm>

⁸ <https://legiscan.com/GA/text/HB617/id/2356824/Georgia-2021-HB617-Enrolled.pdf> and <https://law.justia.com/codes/georgia/2010/title-43/chapter-4a/>

⁹ https://legiscan.com/NM/text/SB94/id/2360396/New_Mexico-2021-SB94-Enrolled.pdf

¹ <https://www.natlawreview.com/article/ncaa-takes-additional-steps-toward-ratification-name-image-and-likeness-legislation>

² <https://www.uniformlaws.org/committees/community-home?CommunityKey=4d46906c-2d24-4ede-84ab-a57b40fa5c37>

³ <https://sportslaw.uslegal.com/the-sports-agent-responsibility-and-trust-act/>

⁴ <https://www.ncaa.org/themes-topics/enforcement-certification-and-approvals-group-ecag>

Boosters and NIL; FSU's Michael Alford Examines the Opportunities, Challenges

When Florida State University President John Thrasher discussed the appointment of Michael Alford as CEO of Seminole Boosters, Inc. last summer, his endorsement of Alford was impressive.

"As a former student-athlete and a respected leader who has held positions in both Division I athletics and the NFL," he said, "Michael brings a unique perspective and a wealth of experience to the Seminole Boosters. He has a strong vision for fundraising and membership, and that will build on our culture of excellence and lead us into the future."

In addition to being LEAD1's NIL Working Group co-chair, it is those same qualifications that attracted us to reach out to Alford to discuss the opportunities and friction that may arise between boosters and NIL.

Question: *What are your thoughts on boosters and their involvement in NIL?*

Answer: "It's going to be an interesting dynamic. Something that we're putting in here at FSU, is a pretty proactive educational program. We want to attack it and be proactive.

What are going to be in those platforms, the final product? We don't know yet, because we don't know where NIL is headed. But the key is going to be educating student-athletes on what they can and cannot do, for example, educating them that really our organization [Seminole Boosters] is not involved.

What we do know is that our organization is not going to be there reviewing, discussing, or helping to negotiate the contract. We can't be a part of that process, but we can make sure we educate our students on the current laws and opportunities they have in front of them."

Q: *Given that boosters are so vested in recruiting, how do you, or do you, try to counteract that perception with boosters and say, "Well, it's really about being sensible and giving these athletes a chance," or do you just let it fly and let them perceive it as okay, give them the sweetest deal since it is going to help the university?*

A: "That's an interesting dilemma, one that we don't know the answer to. I'm a market-corrects-itself person, and that's been my stance on this in any of our conversations. Am I for the NIL? 100 percent. The student athletes should have their rights. We create the platform to develop that marketability, but other than that, they should have their rights.

I always use former Clemson Quarterback Trevor Lawrence as an example. He would have made a lot of money in endorsements. He could have been in a Head and Shoulders commercial all last year with Troy Polamalu. He would have done very well, and that is his right to be Trevor Lawrence in those commercials. Now, how did he become Trevor Lawrence? Was it through the platform that the institution and conference provided him to showcase his talents?

You have to give that some credit and some notoriety. But that is his right to go do it. I'm all for it. What we need to do moving forward is just make sure that we're giving these student athletes their right and educating them on the legislation, we're educating our donors moving forward, and that we're making sure that there is a line being drawn. That's what we're doing to educate our donors – doing what the legislations says you can do and making sure donors understand our process or lack thereof in that process.

The market ultimately corrects itself, for example, the kid comes on campus and he is a freshman. Either he plays or he doesn't play. Let's say he's sitting behind someone and he's not playing in a well-established program. He signs a contract with a car dealer. If he's not moving cars for you, you got to make a decision. It's not like you're getting any donor points or benefits for that business decision. You're not getting any preferential seating treatment. That is a pure business decision that you made. And that's the education we're really talking to our donors about. If you want to hire somebody to endorse your product, that's fine. But when that doesn't move your product, then that is a business decision. Understand, from my experience in the NFL there will be performance clauses within these endorsements, which will be a part of the educational process for not only the athletes but for our coaching staffs. Part of our educational process will be brand training so that the athlete understands the value of their brand, how they grow it and what could also be detrimental to that image."

Q: *Can you talk about the concept of overpaying boosters?*

A: "Let's say you have an athlete named Susie, who's going to model a dress in a print ad for Jane's Boutiques Store. The potential third party administrator is telling us that she's worth five grand, and we know that Jane's Boutique Store is paying her 20 grand. It's her right to be paid 20. If dresses are flying off the shelf, that's between you the business owner and that athlete. And that's going to be the biggest education to our donors that we're going to have to really sit down and explore this, especially

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FINANCIAL PLANNING presented by TeamAltemus

Almost July 1 – It’s Go-Time! Your Student-Athletes are going to start making money. What now?

By Courtney Altemus, CEO and founder of TeamAltemus

TEAM ALTEMUS



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Financial literacy education is critical. But it’s often explained in hypothetical and broad terms. Many of these concepts are vastly different from real-life, critical daily financial habits that need to be practiced. The difference between the general financial literacy education and a program that’s going to involve student-athletes (SAs) learning through experience is the difference between creating awareness and delivering functional educational concepts and tools.

The stakes are much higher than the pre-NIL goal of exposing SAs to financial literacy to help them during their college career and for the rest of their lives. With actual NIL income, if SAs aren’t practicing healthy financial habits, some of the potential negative consequences will manifest quickly. Some of these consequences are:

- Distraction from optimal performance as a student and as an athlete
- Legal issues
- Reputational challenges
- Negative influence on mental health

Supporting the mental health of SAs has obviously been a growing area of focus for all institutions and the pandemic has added to the acute importance of this. Even prior

Contact CEO Courtney Altemus at caltemus@team-altemus.com

to the pandemic, in a survey of U.S. adults¹ 18+, money was the second highest most common source of stress.

In the NCAA’s Fall 2020 Student-Athlete well-being study, a majority of participants were feeling negative about their family’s financial situation.² It is imperative that effective financial education and tools are provided for SAs to ensure that money stress from NIL isn’t negatively impacting their mental health, especially during this tentative time of emergence from the pandemic.

Money stress is omnipresent even for people who have a sufficient amount and a healthy income. Money means responsibility and accountability. Many SAs don’t know that they don’t know this. The responsibilities associated with money start the day NIL goes into effect. Understanding and immediate application of financial concepts are necessary for SAs to limit stress. The demands from their existing roles as student and athlete generate considerable stress even without added NIL-induced money worries.

Over 25 years of working with professional athletes has consistently shown that athletes typically need to engage in the practice of an activity, an experiential learning process, when first learning how to manage their money. Rookies who are able to participate in NIL compensation for the first time in their lives are especially unprepared despite having a salary and only one full-time job. Student-athletes don’t have that same luxury. Instead, all will be balancing their work as a student and as an athlete.

Practicing for competition as a student-



Courtney Altemus, CEO and founder of TeamAltemus

athlete is adequate preparation only when it involves actual physical participation and simulation. Similarly, their learning and practice for healthy financial habits needs to be at least initially conveyed through engagement. While they’re used to classroom learning, this necessary financial education doesn’t include material to be studied for a test, instead it’s for immediate application in real life.

At this critical confluence of events, a receding pandemic simultaneous with a seismic shift in collegiate athletics, empowering student-athletes with effective education and practical tools is paramount. Branding and social media tools are a great start. A compliance and activity-tracking platform with or without a learning management system is also going to help ath-

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1 “American Psychological Association (2017)” *The State of our Nation: Stress in America Survey*
 2 “NCAA Research” *NCAA Student-Athlete Well-Being Study (Fall 2020)*

LEAD1 NIL INSTITUTIONAL PREVIEW - UNLV

University Preparing for NIL By Using The Vegas Effect

Las Vegas may well be the epicenter in the United States when it comes to free will and commerce, given the fact that millions visit the city each year to place a wager.

Combine that with the fact that University of Nevada, Las Vegas (UNLV) Athletics is on an upswing, thanks in large part to the work of Desiree Reed-Francois as Director of Athletics, and it's easy to see why we would target the AD for her perspective on NIL and the department's approach to managing it.

Question: *When did the real preparation for NIL begin?*

Answer: "It was about two years ago that we started planning for NIL, but it was in spurts. We also had COVID, social injustice, and the need for conversations around race relations. There were times where NIL was at the forefront, but there were times where it had to take a back seat."

Q: *Did being based in Las Vegas affect your awareness about issues associated with NIL, because of the commercialized nature of the city?*

A: "Las Vegas is becoming the epicenter of sports. We're one of the fastest growing cities in the nation, and we have a lot of dynamic opportunities, which makes us attractive to recruits. We recognized that NIL is going to be a recruiting advantage, so we had to get this right."

Q: *How much of the athletic department has been involved in the preparation for NIL?*

A: "We talk about it regularly at our senior staff meetings. Recruiting is our lifeline, and so we prioritize anything that touches on recruiting. We all have a recruiting responsibility. We all have a development responsibility. And we know that there is great opportunity being in Las Vegas. So, we have a committee and that is their focus. And it's a great cross section of people. It's a 12-person committee of coaches and staff, business officers and recruiting coordina-



tors, and they put together the bones of our program. Our program is called The Vegas Effect. It has five pillars, which are:

- Education
- Opportunity
- Parameters
- Policy Disclosure
- Next Steps

And so that's the framework. However, we've also got to be fluid, because there are so many unknowns. We have a bill that's going through our legislative process at the state level right now with an effective date of January 1, 2022. Fortunately, our legislators made some changes to the bill.

So, we have a lot of plans, but just like our COVID-19 navigation plans, they have sub-parts. They have a myriad of sub-parts and we're going to have as many plans as we can. However, we know that they're all going to change once those different variables come into play."

Q: *Can you talk about the pressure NIL puts on the compliance department?*

A: "Our compliance team is definitely working overdrive on this. They are chairing our NIL committee. And they work collaboratively with our coaches, staff members, business office, marketing team, and recruiting people, to come up with this Vegas Effect. We're going to have guardrails, and so that's why we wanted the compliance team to lead this effort. But we also have the education piece, the opportunity piece, and the monitoring piece. We are in negotiations for a third-party administrator to help with that monitoring piece, but it begins with the education. Our compliance team and this committee has put together a very robust education platform -- we recognize this great opportunity we have for our student athletes to help them build their brand."

Q: *What do you mean when you say it is not a fiduciary duty, but a custodial duty?*

A: "It's a wonderful opportunity to explore that entrepreneurial spirit that many of our student athletes have. We want to take this as, yes, we have the education piece, we have the opportunity piece and the guardrails aspect, but what a great learning laboratory NIL can be for a student athlete that is developing his or her brand."

Q: *How did being a lawyer help you prepare for NIL?*

A: "As administrators, we all try extremely hard to see around the corner. One of the things we learn in law school is issue spotting. So that training tends to kick in.

Also, governance and legislation are second languages to attorneys. This is what we do.

It is an interesting intersection between our practitioner piece of our world, our training, and then also understanding the different political realities in terms of our state statutes as well as the NCAA governance process." ■

MEDIA RELATIONS presented by Finn Partners

NIL Is Almost Here – Are you Ready?

By John Acunto, Senior Partner of Consumer, Lifestyle & Sports Practice at FINN Partners



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A historic change is coming to college sports that all of you are well aware of.

Amidst all the unknowns—what the NCAA may or may not do, if the federal government will get involved, or states with planned legislation will simply push ahead, one thing is certain:

On July 1, Name, Image and Likeness (NIL) will be here in one form or another and is forever going to alter the course of the college sports landscape as we know it.

And as we sit less than two weeks from history, the big question is – Are you ready?

Before joining FINN Partners, I was fortunate to have had the opportunity to work at the National Basketball Association in our communications department for nearly 20 years with incredible leaders like David Stern, Adam Silver, and Mark Tatum.

During my time with the league, there were certainly many good moments, but also many challenges.

Here are a few things that were always front-and-center in how we handled challenges, and the similar approach we have taken here at FINN Partners, which may be helpful given all the ongoing uncertainty surrounding NIL.

Be Prepared: This sounds simple, but it is important. Do not sit and wait and let

other schools deal with NIL. The reality is NIL is going to impact everyone. The more you do in advance of July 1, the better off you will be.

And it has been great to see some schools doing just that. Creating NIL programs and forming partnerships with companies like INFLCR to establish resources to support student-athletes.

Establish Your Story: Every school should clearly identify what their story is. This is done through topline key messages that are concise, but effective.

At FINN, for any initiative, we quickly establish our top three messages – which becomes the focus of all our communications and media interviews. With NIL, a good starting place for any school, should be leading with the importance of their student-athletes and their success.

Prepare the Answers for the Questions: Former Secretary of State Henry Kissinger once opened a press conference with this question: “Does anyone have any questions for my answers?”

Preparing a Q/A is invaluable, especially for one with so many unique elements connected to NIL. Make sure answers are crafted for the tough questions and that those answers are consistently provided. Use pivots and other simple transitions during interviews to go back to the answers and key messages you truly want to convey.

And forget the zoom, do an old-fashioned media call if possible so you can have Q/A points and key messages right in front of you to reference.

Identify Key Spokesperson and a Consistent Voice: Whether this is the college president, athletic director, or someone on the legal team, look to establish a spokesperson and consistent voice.

As it relates to NIL, who is your go-to spokesperson? Has this been established?

Ultimately, it will be ideal to have one, or perhaps two voices, consistently speak to NIL to establish familiarity, tone, and someone that can be the college’s true expert on the subject.

Remember, when speaking with media the role of the spokesperson is to speak in sound bites, and effectively communicate the key messages.

Communication to Your Key Constituents: July 1 is going to come with a ton of questions from a wide range of constituents. Staff, student-athletes, alumni, boosters, parents, and others all looking for answers.

How are you connecting with them? What is your message?

Definitely something that should be on the radar, and not overlooked. A very important part of communications is communicating directly with those most closely connected to your college.

Work with Your Media: NIL has been covered widely by both national and local media. As we head into July 1, media are going to have more questions than ever before – and will be reporting on what the future holds for your college athletes and more broadly, the future of college sports.

Hopefully, in your college market your communications team has good relations with your media. This is obviously going to be crucial with NIL.

Now is not the time to disappear, but to work closely and stay connected with your media. Look to conduct off-the-record and background conversations to be a trusted resource – and more importantly, to make sure a story angle or point a reporter may be working on, or making, related to NIL is accurate.

For communications professionals, having established media relations is our bread-and-butter. Here at FINN, we are constantly

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Contact CEO John Acunto at john.acunto@finnpartners.com

DIVERSITY, EQUITY, AND INCLUSION

Frazier Talks NIL and the Impact it will Have on Diversity

Entering his eighth year at the helm of Northern Illinois University Department of Intercollegiate Athletics, Sean T. Frazier has guided the Huskies to historic milestones in the competitive arena and academically.

But it's his work on the social front that could be the most impactful. Frazier has worked tirelessly to promote diversity & inclusion throughout the university and community as a whole.

In fact, less than a year ago, Frazier was appointed chair of LEAD1 Association's diversity, equity, and inclusion working group, which released a white paper in January, and has tried to implement the paper's recommendations since. Given that role and his preparation for the name, image, and likeness (NIL) era, we asked Frazier to share his insights about the impact of NIL on diversity in collegiate athletics. That interview follows.

Question: *What is the state of diversity awareness in collegiate athletics? And how far has it come?*

Answer: "Colleagues, student-athletes, and others have made it clear that this is not a moment. It is a movement. As it relates to the NIL movement, the social consciousness is really centered around the concept of equality of compensation.

The staying power for this is the fact that there are student and activist voices, which are finally being heard and sustained. Normally, when we have these types of things, it is a moment or back-to-back concept where it started up as pretty hot and then it kind of dissipates. Not anymore.

The ability to have people who understand what is going on and who also could be a part of the discourse around change is leading to meaningful action. Those individuals are also going to be able to advance their agendas more so than someone waiting back, maybe in a fetal position, underneath

their desk or in a closet, hoping that it goes away."

Q: *In what ways do you see NIL bringing diversity to collegiate athletics?*

A: "I'm actually more worried about the unintended consequences of some of this new NIL legislation and not necessarily helping young people. Will this jeopardize the collegiate model? I'm one of those individuals who believe that the college degree is paramount. It should not be an option. It should be a necessity.

NIL poses a lot of challenges. For example, we have a lot of student athletes that are Pell eligible, meaning that these individuals will have Pell Grants that are federally subsidized, and do not need to be paid back. But their household incomes need to be lower than \$20,000 or around that range, NIL could affect what they currently get now, which is money that they don't have to pay back.

When I throw that out to people, they sit back and say, "What are you talking about?" They need to understand the repercussions of this new rule on all different sides, not just the fact that now I can get on TikTok, or Instagram, and start making some money off of my NIL."

Q: *What are some of the unique opportunities that the NIL provides to people of color?*

A: "It's an opportunity for folks to make money. That's the clear piece of it. Now, we just have to come up with a good monitoring system."

Q: *What can athletic departments do to make sure they're being as inclusive as possible with regard to NIL education and assistance?*

A: "Have a plan. Right now, we have an education disclosure monitoring tool. It's not necessarily helping the student athletes monetize themselves. This is more of a situation where it educates them on financial literacy. It talks about disclosure, what

you're doing, how you're doing it, and then the whole monitoring piece. For example, "okay if you do this, but you need to make sure you do that.

So, for us, it's really about making sure we have the financial literacy component and understanding in totality about how this is going to impact you individually with your brand. Having a plan in place is going to be key for every institution."

Q: *How can athletic departments be more "intentional" with student athletes of color in the NIL process?*

A: "You need to sit down and have the conversation. You know, one of the things that we've done here is that I've got a Captain's Council and I've got a Student Athlete Advisory Committee. While the SAAC is mandated by the NCAA, the Captain's Council is another level of direct conversation with my student athletes. I have more than 400 student athletes. The real issue is taking those leaders from both SAAC and the Captain's Council, and then having this conversation about NIL and what that impact is going to be. And what it is going to look like here. Are we going to be providing opportunities for you to monetize that? No. But, as this thing starts to change and evolve, we'll add different pieces to our relationship and a game plan. If we feel that we need to go that route, we'll do that. But at the very least, we need to have the education, disclosure, and that monitoring to help them understand the impact of the decisions that they currently make."

Q: *What can the FBS enterprise do to be more intentional for student athletes of color in the process?*

A: "It needs to advocate. This is where we opened up about the moment versus the movement, and really getting to understand the pulse of what's happening with these

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8 Accounting, Tax and Compliance Considerations for Designing an Effective NIL Compliance Program

By Greg Naviloff, Ron Nahass, and Matt Twomey – RSM US LLP



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The evolution of collegiate name, image, and likeness compensation legislation over the last 18 months has created a challenging environment for collegiate athletics programs who have been left with more questions than answers. For administrators, the only certainty is that a massive transformation is underfoot, one that could potentially create significant federal, state and NCAA compliance risks. While these are undoubtedly exciting times for student-athletes, who are on the cusp of capitalizing financially on their abilities, these expanded financial opportunities come with risk.

While many previously prohibited student-athlete activities are now expected to be permitted, such as compensation from endorsements or camps, the eased restrictions present new ways for bad actors to take advantage of students or schools. Compliance departments must identify new potential avenues of abuse and quickly adapt their compliance programs to protect student-athlete eligibility.

As the college athletics community eagerly awaits additional guidance from the NCAA, the Supreme Court and Congress, below are eight considerations from an accounting, tax and compliance perspective

Contact Ron at
Ronald.nahass@rsmus.com

for administrators in designing an effective NIL compliance program.

GETTING AHEAD OF THE CURVE WHEN IMPLEMENTING / UPDATING A COMPLIANCE PROGRAM

- 1. Proactive NIL Readiness Assessment:** To maintain student-athlete eligibility and avoid penalties to the school, the athletic directors, and the student-athlete, schools will need to perform a proactive readiness assessment. The assessment should focus on evaluating specific schemes (e.g. conflicts of interest, above market compensation, unqualified agents, improper disclosure of NIL deals) so that the school may develop a executable roadmap to establish adequate guidelines / policies, programs to monitor NIL activities and agent activity and develop appropriate educational programs.
- 2. Control Environment:** Institutional leadership must be accountable in evaluating the impact of NIL on the design and operating effectiveness of their internal controls. This will likely include adapting role and responsibilities, additional training of key personnel, and re-writing organizational policies, procedures, and handbooks. Also important is the communication plan and supporting technologies to make the guidance most effective, assessable and hold participants accountable.
- 3. Tone at the top:** The board of directors, president's office, athletic director and other organizational leaders must not only be involved in the NIL implementation process, but they should lead the charge in demonstrating the importance

of an ethical compliance program and promoting a culture of integrity and ethical behavior. This can and should start in helping communities navigate the evolving landscape.

ONGOING MONITORING

- 4. Compliance is not a "one and done" approach:** Compliance programs require ongoing monitoring to be effective and compliant with NCAA regulations. NIL will continue to evolve as both schools and governing bodies adapt to the new rules and regulations. When issues are inevitably proactively or reactively identified and a potential violation does occur, administrative leadership must act swiftly in performing root-cause analyses, incorporate lessons learned, so that they may remediate programs and thereby ensure that they are not a repeat offender.
- 5. Use of specialists:** Compliance concerns will shift from illicit conduct to financial irregularities. Compliance departments may require additional qualified personnel or consultants to combat potential violations. Identification of resources most equipped to prevent, detect, and remediate potential NIL issues, specialists such as valuation, accounting, forensic and technology providers who can assist with the implementation and deployment of NIL case management and compliance tools, may be needed. Accountants trained in auditing compliance programs may be especially important in testing internal controls and investigating suspect transactions.
- 6. Education of student-athletes and**
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Notre Dame's Swarbrick Considers the Role of Institutional Marks in the NIL Movement

Few brands in collegiate athletics are as omnipresent as Notre Dame Athletics.

That is attributable in part to John B. "Jack" Swarbrick Jr., who has been Vice President and James E. Rohr Director of Athletics at his alma mater for 13 years.

Thus, we sought out Swarbrick, an economics major with a law degree from Stanford University, to discuss how an institution's "marks" should be protected or perhaps co-opted within the movement to afford Name, Image, and Likeness (NIL) rights to college athletes.

Question: *Should institutional marks be permissible with regard to student-athlete NIL agreements?*

Answer: "Yes. All of the imagery that we capture of our student athletes practicing, competing and serving in the community, are typically in logoed merchandise. It is in everybody's interest for the students to be able to use that content as they're promoting themselves and talking about what they do. It would be a shame to deny them that opportunity. We should instead allow as subject to university approval.

And in the same way, the school should remain connected to the student athlete and all the great things they're doing."

Q: *Why would it be potentially problematic for the NCAA not to allow the use of marks in these NIL agreements?*

A: "The NCAA is primarily worried about two things.

First, it is concerned about the school effectively being an agent or broker for deals because you do grant permission for your marks to be used. That risk can be managed.

Second, it is concerned about conflicts of interest. Schools do not want student-athletes to use university identification in categories or with sponsors that create

value or business conflicts. But that can be managed on a case-by-case basis. The answer is not to prohibit them from using the marks at all."

Q: *What are some of the ways that schools and student athletes could work together to facilitate the use of institutional marks with regard to NIL agreements?*

A: "The most obvious example of that is what we already do, which is to make a lot of the images of the student athletes that we capture available to those student athletes to use in their social media accounts. Now, you may choose to allow or not allow that

"The group license is the hardest problem to solve, without question. And I would like to find a way to do it."

imagery to be used when they're doing an appearance with a sponsor that's in conflict with your sponsor, or they are connecting their online activity directly to a company or product. But that can be managed."

Q: *What are some of the advantages to student athletes and institutions being allowed to market their institutional marks?*

A: "The advantage to the institution is it keeps us connected to the student athlete, as opposed to creating an artificial barrier between us. We're proud of these young people and they tend to be proud of their institutions. We ought to highlight that instead of trying to prevent that connection from being made.

The student athlete benefits because it gives them a more interesting and market-

able profile. The student athlete in a blank t-shirt versus the image of that same student athlete in their uniform has different value."

Q: *Can the NCAA make a distinction saying that institutions could decide whether certain categories of potential NIL agreements would be prohibited for use of their marks?*

A: "Certainly. There are categories you'd prohibit for value reasons, like alcohol and tobacco. And some of those will be different from institution to institution. But you have that option.

And then you have the category of sponsor conflicts. The professional leagues draw that distinction and don't allow professional athletes to appear in team apparel if they're doing a sponsorship activity with a competing sponsor or a sponsor who's not affiliated with the team. We could take a similar approach."

Q: *How do you envision institutional marks being used in a potential group licensing scenario?*

A: "The group license is the hardest problem to solve, without question. And I would like to find a way to do it. For most student athletes, their opportunities are likely to exist in a group dynamic, as opposed to individually. But it's complicated because they don't have an association, they don't have a union, they don't have an entity that can represent them on a group basis or bind them. And so, what you really have to do is create situations where a third party makes an opportunity available to members of a group, and the individual members of the group are making their own decision whether to opt* in or not.

It's very complicated and I don't minimize the difficulty of it. But the answer is not to prohibit it. It's to be more creative and find ways to allow it to happen." ■

Exploring the NIL Landscape for Women's Collegiate Soccer

By Chelsea C. Police, Anita M. Moorman, and Adam R. Cocco

Significant speculation exists around the monetization opportunities for college athletes from name, image, and likeness (NIL) activities. Several scholars have reported on the potential value for college athletes to profit from the use of their NIL (e.g., Kunkel et al., 2021). To navigate this changing environment, athletic administrators will need a thorough understanding of NIL policies to identify permissible marketing activities and fair market value of those activities. This study analyzed available NIL policies or proposals from relevant national amateur athletic associations to identify permissible activities. Furthermore, this study explored the earning potential for a diverse sample of women's collegiate soccer players to evaluate the earning potential for those female athletes based on social media presence.

NIL BACKGROUND AND POLICY DEVELOPMENT

On September 30, 2019, California Governor Gavin Newsom signed the Fair Pay to Play Act (SB206), guaranteeing student-athletes at California's four-year institutions of higher education the right to profit off the use of their NIL (SB206, 2019; McCann, 2019). While California was the first to enact NIL legislation, it does not take effect until 2023. Florida's NIL legislation, however, included a July 1, 2021 effective date putting immediate pressure on the National Collegiate Athletic Association (NCAA) to re-evaluate NIL policies (SB646, 2020; See, O'Brien, 2020; Sports Business Journal, 2019).

Beginning in the summer of 2019 the NCAA and the National Intercollegiate Athletics Association (NAIA) began efforts to authorize policy and bylaw changes to

permit athletes the rights to receive compensation related to their NIL. The NCAA formed a working group on May 14, 2019 and conducted an extensive evaluation of its current rules, the historic distinction between permitted and prohibited activities, and member concerns about abuse of NIL commercialization. Concurrently, each of the three NCAA divisions formed committees to provide input to the working group (NCAA, n.d.). On April 17, 2020 the working group recommended that each NCAA division be encouraged to consider appropriate revisions to their bylaws to permit student-athlete NIL activities (NCAA, 2020). The April 2020 Report identified two broad categories in which NIL rules should be modernized: (1) compensation for third-party endorsements; and (2) compensation for student-athlete work product or business activities.

Meanwhile, in October 2020, the NAIA became the first national amateur athletic association to enact NIL policies. These policies are perceived to be some of the least restrictive policies developed, enabling NAIA athletes to receive compensation for promoting commercial products, from business enterprises, for public or media appearances, and to even reference their athletic participation in promotional activities and appearances (NAIA, 2020).

By December 2020, each of the three NCAA divisions developed NIL legislative proposals planned for adoption at their annual conventions scheduled for January 12-15, 2021. A vote on the legislative proposals was tabled on January 11, 2021 by the Division I Council. The NCAA issued a statement attributing the delay to "several external factors, including recent correspondence with the U.S. Department of Justice" (NCAA, 2021a). Divisions II and III similarly withdrew their pending

NIL legislative proposals on January 12, 2021 (NCAA, 2021b).

While the NCAA has delayed adoption of new NIL policies, many states have continued to enact new NIL legislation. Recently, NCAA President, Mark Emmert, stated the NCAA would not penalize athletes who engage in NIL activities in those states where NIL laws become effective on July 1, 2021; however, he did not state whether those same activities by athletes in other states would be penalized (Leistikow, 2021).

NAIA/NCAA POLICY COMPARISON AND ANALYSIS

With the uncertainty surrounding whether the NCAA will enforce its policies after July 1, 2021, an examination of the various policy proposals will further aid those navigating and regulating NIL activities. Figure 1 illustrates the NIL spectrum in terms of restraints or regulations currently proposed or adopted by the NAIA and the NCAA. Generally, the NAIA has adopted a NIL policy framework with minimal restrictions or restraints on athletes. At the opposite end of the spectrum, the NCAA Division I policy proposal, while generally allowing NIL activities, still contains numerous oversight measures and limitations leaving a complex and restrictive environment for athletes to navigate.

The policy proposals will directly impact how easily athletes will be able to transition into the NIL marketplace. Table 1 reveals areas in which the NAIA and NCAA have proposed similar types of restrictions to enable athletes to monetize their NIL. For example, athletes will be permitted to hire agents or professional service providers (PSPs), universities can assist athletes in vetting agents/PSPs, and athletes will be

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Exploring the NIL Landscape for Women’s Collegiate Soccer

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allowed to reference their athletic involvement and institutional affiliation. Table 1 also reveals universities may not assist in the development or facilitation of NIL or student-athlete work product activities and may not serve as a PSP or arrange for PSP services for prospective student-athletes (i.e., recruits).

On the other hand, Table 2 reveals the NCAA divisions intend to monitor and regulate NIL activities differently. For example, NAIA and D-III athletes may be permitted to use institutional marks and logos (IP) in NIL activities, while D-II athletes may use institutional IP to promote their business activities but not to promote a commercial product. D-I athletes are prohibited from using institutional IP in any NIL activities. Thus, D-I and D-II athletes will need to exercise greater caution and control when engaging in NIL activities.

IMPACT OF NIL POLICY DEVELOPMENT ON FEMALE ATHLETES

A recurring question related to relaxing NIL restrictions has focused on whether female athletes would be negatively impacted or have fewer opportunities than male athletes (Dosh, 2020; Steinbach, 2020). Initial Title IX compliance concerns have been addressed largely by the proposed NCAA policy models prohibiting institutions from having any involvement in athlete NIL agreements or arrangements. Compensation for NIL would come from third-party entities, which are not bound by Title IX and are not under the direct control of educational institutions. Most of the proposed concepts, enacted NIL policies, and state legislation expressly prohibit the educational institution (i.e., athletics program) from developing business opportunities for athletes and from arranging or securing endorsement opportunities for athletes (See Table 1). However, legal experts agree Title



Figure 1: NIL Policy Spectrum

Table 1: Consensus Elements Among NAIA and NCAA Policy Proposals				
	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Assist in Identifying, Selecting, or Arranging PSP for Athlete Allowed?	Not specifically addressed	No		
Athlete May Hire Agent/PSP to develop NIL opportunities	Yes, except agent may not help athlete secure a pro sports contract	Yes, except PSP may not assist with marketing athletic ability or reputation to secure a professional sport opportunity		
Institutional Staff Member Allowed to Serve as PSP for Prospective Athlete?	Not specifically addressed	No		No employee or independent contractor of university may be PSP
Assist in Vetting PSPs for Athlete	Yes			
Assist in Development, Operation, Promotion or Facilitation of Athlete Work Product / NIL	Not specifically addressed	No		
Athlete Allowed to Reference Athletic Involvement and Institution	Yes, may reference athletic involvement and institution consistent with institutional policies applicable to any student / general student population			

IX will be at the forefront of NIL scenarios and will require male and female athletes be treated equitably regarding any educational programming, PSP assistance programs, and access to NIL marketing partnerships for athletes (Dosh, 2020; National Law Review, 2021).

Additional equity concerns question whether female athletes would benefit to the same extent as male athletes from NIL activities. From a marketing perspective, men’s sports are often more visible on col-
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lege campuses, suggesting NIL legislation will further expand disparities in men’s and women’s programs (Dosh, 2019; O’Brien, 2020; Steinbach, 2020). Some argue NIL legislation could improve marketing opportunities for women’s sports by allowing female athletes to grow their personal brands and maximize earning potential (Baker, 2019). In fact, the first college athlete to monetize her NIL was Chloe Mitchel, an Aquinas College (NAIA) volleyball player. Mitchel is a social media influencer with a following of 2.6 million and 26,000 on TikTok and Instagram, respectively (Weaver, 2020).

Many student-athlete NIL opportunities could come in the form of social media influencer marketing. The influencer marketing industry was expected to grow to \$9.7 billion in 2020, and many firms now dedicate a substantial portion of their marketing budgets to social media influencer marketing campaigns (Influencer Marketing, 2020). Female athletes active on social media certainly have earning potential. One analysis suggested more than half of the 25 college athletes with the highest potential endorsement value were women (Maestas & Belzer, 2020). However, an individual does not need tens of thousands of social media followers to potentially monetize their NIL rights. Within the past three years, the use of micro-influencers (between 1,000 – 10,000 followers) has grown by 300% due to higher engagement rates among athletes in that follower count range (Influencer Marketing, 2020).

NIL VALUATIONS FOR COLLEGIATE FEMALE SOCCER PLAYERS

Women’s soccer was utilized to investigate the range of values available for female athletes across a spectrum of sport program sizes and geographical locations. 76 institutions (1,632 athletes) in the state of California across all levels of college women’s soccer

Table 2: Inconsistent or Variable Elements Among NAIA and NCAA Policy Proposals

	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Athlete Allowed to Wear Official Team Uniform/Gear in Promotions?	Yes	FAQs say “No”. Not specifically addressed in proposed policies, but likely covered under IP policy.	Not specifically addressed, but FAQs say not permitted for promotion of commercial product or service. IP policy may permit for student promoting their own work product or service with institutional approval	Not specifically addressed in proposed policies, but likely prohibited under IP policy
Institutional Staff Member Allowed to Serve as PSP for Current Athlete?	Currently not addressed in policy	Unclear, rule appears to only limit as to prospective athletes	Unclear, but appears to be permitted so long as the services are not provided by Athletics Dept. or an individual athletics staff member	No employee or independent contractor of university may be PSP
Use of Institutional IP	Yes, with institutional approval as allowed for general student population		Yes, for promotion of student-athlete business activities (with institutional approval as allowed for general public use). No for promotion of commercial product/service	No, student may not use IP; and institution may not permit IP use

competition (DI, DII, DIII, NAIA, and CCCAA) were identified using stratified random sampling based on competition level, program size, and geographical location. An Instagram profile was found for 729 athletes (44.67% of women’s college soccer players in the sample). The figure below outlines the frequency of Instagram accounts discovered by competition level.

An analysis of follower counts from each of the 729 identified Instagram profiles determined which athletes met the micro-influencer threshold of 1,000 followers (Influencer Marketing, 2020) and, therefore, possessed some level of NIL social media monetization value. In total, 412 athletes (56.5% of athletes with an identified Instagram profile; 25.2% of athletes in the overall sample) met this micro-influencer threshold. Seven athletes had over 10,000 followers with the rest possessing between

1,000 and 10,000 followers. The average player in this sample possessed 1,649 Instagram followers (*SD* = 8,003). To calculate NIL value estimates for the 412 athletes meeting the micro-influencer threshold, a simple social media influencer value equation was utilized:

An individual’s follower count on Instagram approximated their social media reach. Cost per thousand impressions (CPM) estimates the value marketers are willing to pay to generate 1,000 impressions from a sponsored post. A CPM value of \$10 was utilized for this analysis. To calculate annual NIL value estimates, one sponsored post per week was assumed. Using each athlete’s actual follower count on Instagram, along with standard CPM and post frequency values, allowed for the derivation of NIL value estimates for women’s college soccer

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players. The results of this analysis suggested the average player included in this sample could earn approximately \$1,250 per year through social media influencer marketing on Instagram. The maximum NIL value came from an NCAA DI soccer player with 214,000 Instagram followers, resulting in a per post estimate of \$2,140 and an annual NIL value estimate of \$111,280. The following figure summarizes average annual NIL value estimates for women's college soccer players in the state of California by competition level.

LEGAL AND ADMINISTRATIVE IMPLICATIONS

Although the regulatory environment is still evolving, the present study indicated NIL opportunities for female college soccer players do exist. One of four athletes included in this sample possess a large enough social media presence to monetize their NIL rights through influencer marketing opportunities. Additionally, Title IX is not an impediment to expanding NIL opportunities, however, collegiate athletic

departments must provide equitable NIL support services and educational programming for all athletes.

Women's soccer players at DI institutions have a higher ceiling for NIL monetization than athletes at other competition levels given their increased exposure in college athletics. Furthermore, female athletes have strong social media followings that can effectively be monetized despite less traditional mainstream media coverage than their male counterparts. Athletic administrators should also be aware of the brand development differences which exist between individual and team sports. For instance, team sport athletes such as soccer may have to navigate a more nuanced or strategic brand development approach to avoid any interference with team cohesion.

CONCLUSION

Once several states begin to operationalize NIL legislation on July 1, 2021, college athletics will change dramatically. The inevitable adoption of NIL policies from all NCAA divisions can help or hinder

athletes achieving fair market value for their NIL rights based on the policy's restrictiveness. Even in those states in which NCAA enforcement is uncertain, athletes are still able to align their personal brand development efforts with the proposed NCAA rules so that when monetization is permitted they will be able to transition swiftly to pursue these opportunities. Additionally, athletic administrators can play an important role in helping athletes realize NIL earnings through equitable personal brand development and NIL education initiatives. The data on this topic are clear – women's college athletes are in a position to substantially monetize their NIL rights. It is up to state legislators, athletic associations, and athletic administrators to create a nonrestrictive environment that will allow this to happen. ■

The references for this article can be viewed online at: <https://lead1.hackney-publications.com/issues/NIL-2021-June-July-references.pdf>

8 Accounting, Tax and Compliance Considerations

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completeness of the NIL population: Institutional leadership must prioritize the proper training of all student-athletes with respect to risks and consequences associated with lack of disclosure and compliance with individual tax reporting for NIL arrangements. Additionally, compliance officers will need to consider building in checks and balances into their process to verify completeness of the population, such as comparing disclosed contractual compensation to student athlete tax returns.

ENFORCEMENT AND REMEDIATION

7. NCAA's new approach to enforcement: The NCAA established the Independent Accountability Resolution Process (IARP) in April 2018 at the recommendation of the Rice Commission following the FBI probe into college basketball and resulting arrests. This new body is in charge of evaluating complex infractions, and any school that finds itself in this process can expect a thorough investigation and harsh penalties. Potential NIL violators are likely to be subjected to severe consequences, particularly early on in the lifecycle as

the NCAA will attempt to set a zero-tolerance tone.

8. Some violations are inevitable: No matter how strong a school's compliance program might be, there is always an inherent risk that bad actors will successfully exploit the student or school. If your school is implicated, ignorance is not a defense. During the investigation process, one of the first questions the NCAA will ask is evidence of concrete steps that were taken to ensure an effective compliance program. Schools that detect and self-report violations may face lesser penalties. ■

Frazier Discusses NIL's Impact on Diversity

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young people. Hey, I'm a 53-year-old man. It's been a long time since I've been a young black man in an urban city. So, my pulse on what's happening to these young people — their lives, pressures, mental health — all of those particular issues should not be foreign to a frontline administrator like myself.

If I'm too far away to understand and comprehend and listen, I'm out of the game. It's really important for ADs, senior associates, presidents, and chancellors, to make sure that they make it their business to understand the strife and the pressures of these young people.

That's why this is just not going to dissipate. This is going to be something ongoing. And it's really important for me to educate myself on the latest issues, whatever they are. That way, when things do happen, the student athlete understands that I am here to listen and support."

Q: *What would you recommend for the ADID (athletics diversity and inclusion designee) specifically?*

NIL Is Almost Here – Are you Ready?

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speaking with our media. This can be a true benefit for colleges with NIL approaching.

Avoid the Dreaded "No Comment": Lastly, do not look to take the easy way out with a "no comment" for various media inquiries. Whether it is fair or not, the "no comment" or "declined comment" in an article has a negative connotation.

Prepare a simple statement your team is comfortable with. Throughout my career, there have been countless times when a media question has been answered with a carefully prepared statement.

Similarly, for any NIL statements go back to your key messages and provide a topline comment and look to reinforce the same message time and time again.

A: "Being the lone person of color, or a woman, on a staff, is extremely pressure filled. I was that person for many years at different places. And what I found is that frequently I didn't really know what I was talking about.

I knew my perspective as a young black man from Queens, New York, but I could not speak to the issues, nationally. What I needed to do is go back and get educated. And that's what I did. I went through a process of understanding multicultural education, diversity, inclusion, and equity. I sought out the education and mentors who helped me align my views with the views of the national agenda, so I could help my colleagues help themselves.

Hopefully, there is going to be a lot more education at the NCAA level. But the institution also has to do a good job with educating that designee. That way, he or she will have the credibility to sit in a room and make decisions. And that will be because they have a broad-based understanding of the issues." ■

Ultimately, NIL is uncharted territory for everyone, and whatever the future holds—and how it will look on July 1—is going to come down to the last second.

Regardless of how things unfold, I have always felt NIL can be a win-win for both colleges and student-athletes.

Change is coming. Make sure you are properly prepared for whatever NIL brings. ■

John Acunto is Senior Partner of Consumer, Lifestyle & Sports Practice at FINN Partners, a global marketing and communications agency. Prior to joining FINN, John spent nearly 20 years at the NBA working in communications. Reach John at john.acunto@finnpartners.com

Almost July 1 – It's Go-Time!

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letic departments and student-athletes. A consultant who has done a full inventory of NIL resources and identified gaps is helpful now and for future decisions about programming and infrastructure. A financial educator who is engaging student-athletes, giving necessary tools for effective daily habits and providing ongoing knowledge reinforcement, is necessary for a complete NIL solution.

Many schools have understandably been hesitant to make certain decisions until there is definition around NIL rules. Since money is universal and good money habits/effective money management is needed immediately when NIL goes into effect, here are some practical tips to help student-athletes start strong:

Make whatever form of financial education you're offering a priority.

Ensure student-athletes learn through engaging, experiential activities.

If a current education provider doesn't use this methodology, hire one who does to complement existing financial education.

Ensure student-athletes have access to expert and accessible ongoing knowledge reinforcement.

If there is currently no financial education provider in place, or the timing of financial education is planned for later in the year, at a minimum make sure student-athletes identify the following:

- How they will get paid for an activity (cash, in-kind merch, crypto...)
- When they will receive payment
- Where they plan to put payment (if money, how much will go into a tax account, spending account, savings account, etc.)
- Personal protocol to follow when full payment isn't received in its agreed-upon form and by the due date ■

What Athletic Departments Need to Know in the Age of NIL

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a bill that would ‘bundle’ current proposals which would include language from Sen. Cory Booker’s (D-NJ) “College Athletes Bill of Rights” bill, Senator Chris Murphy’s (D-CT) “College Athlete Economic Freedom Act” bill, as well as Senator Anthony Gonzalez’s (R-OH) “Student Athlete Level Playing Field Act” proposed legislation. Each of these provide in various forms that

the receipt of any NIL compensation by a student-athlete would not adversely affect his or her eligibility. In addition, each bill allows for a student-athlete to have the right to be represented, while at the same time prohibiting colleges, universities, and athletic associations from preventing an athlete – agent relationship.

Though we are not sure which scenario

will eventually come to the forefront, it is imperative that agents or attorneys who request to represent student-athletes on a college campus be fully vetted by the athletic department to make sure that they are in full compliance with NCAA rules, together with state and federal laws, and that they have the proper certifications and licenses. ■

Boosters and NIL; Alford Examines the Opportunities, Challenges

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as it relates to the third-party administrator who has the expertise to fully evaluate someone’s endorsement fair market value.

Q: *What would be your concerns from an NCAA enforcement standpoint as it relates to boosters in the process? Would it be that they’re overreacting or what would be your concerns about NCAA enforcement?*

A: “We’ve gone back and forth. Some believe you’ve got to punish the boosters if they overpaid. I’m like, well, who’s to say they’ve overpaid? We will give them a guideline through a third-party administrator. But at the end of the day if I’m making a movie and I’m in a bidding war to get Tom Cruise and the third-party administrator

tells me he’s worth \$8 million for this movie, and I give him 10, that’s between me and Tom Cruise. That is my business decision.”

Q: *How can athletic departments best educate their boosters with regard to NIL?*

A: “We’re setting up workshops. And we will really break this down once we have more clarity. Right now, it is all over the place. But it is basically about setting up processes where you’re proactive and educating them on what to do. That’s the most important thing — that your donor base understands what their rights are, that they can form these relationships with these athletes but also understand the role of the department as well.”

Q: *Is there a fear that people may stop giving to the organization, and instead give to the athletes?*

A: “They’re going to give money by endorsements to an athlete. The key for the organization is making sure the boosters continue to get something in return. What we can’t do, however, is if they hire an athlete to appear in a commercial – provide them with preferential treatment from the university standpoint. We can’t get involved in that. We can’t say, “Okay, you hire the athlete to represent your company, and all of a sudden now you’re now on the top shelf of our donor levels.” So, that’s going to be one of the things we have to educate our donor base and staff on.” ■

What Role Does Technology Play in NIL Legislation?

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opportunities. Having easy access to this data and custom reporting tools will allow Athletic Departments to analyze this data and provide additional resources to best support their student athletes.

TECHNOLOGY WILL HELP CATCH CONFLICTS OF INTEREST

Athletic Departments of all sizes rely on sponsor dollars for the success of their programs. Conflicts between school sponsorship and

individual sponsorship opportunities create a major concern for institutions today. The ability to identify relationships between existing institution contracts and collegiate-athlete opportunities and quickly/efficiently approve or deny incoming requests will allow Athletic Departments to navigate this new territory. Creating a transparent environment for student-athletes and compliance staff to communicate is critical to the success

of moving forward with NIL.

CONCLUSION

Every other industry is relying on sophisticated technology to keep up with an ever rapidly evolving landscape. Too much needs to be done too quickly while also keeping pace with now expected targeted insights—and that is a great place where technology can be leveraged, finally, in the compliance world. It’s your turn! ■