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NCAA Answers Some *House* Questions, Leaves Others Up in the Air

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JASON J. MONTGOMERY
KANSAS CITY:
816.983.8291
JASON.MONTGOMERY@
HUSCHBLACKWELL.COM

TARONDA RANDALL
KANSAS CITY:
816.983.8255
TARONDA.RANDALL@
HUSCHBLACKWELL.COM

KRISTINA MINOR
CHICAGO:
312.985.8363
KRISTINA.MINOR@
HUSCHBLACKWELL.COM

SAMANTHA BOWIE
KANSAS CITY:
816.983.8229

The National Collegiate Athletic Association (NCAA) updated its *House* Settlement Question and Answer document on December 9, 2024, giving insight into how the NCAA is preparing for the settlement's potential approval (see our prior coverage of the settlement from August 2024). Athletes covered by the settlement have until January 31, 2025, to object or opt out before a final approval hearing on April 7, 2025. Schools have until March 1, 2025, to opt in or out of the settlement, which is notably before the final approval hearing.

Here are four things you need to know as you prepare your campus for a post-*House* environment.

1. A dive into "the Pool"

The Pool is the maximum amount of money able to be provided to athletes. Each institution may decide how much to distribute, up to the Pool limit. The Pool is estimated to be $20.5 million for the 2025-26 academic year, but the exact number will be calculated in early 2025.

The Pool will be 22% of the dollar figure calculated by totaling eight Membership Financial Reporting System Reports revenue categories for each institution in the defendant conferences and Notre Dame, then dividing the total by the number of institutions. The Pool will increase four percentage points in the second and third year of the settlement before being recalculated.

Institutions must report all benefits counting against the Pool within 60 days of the close of each academic year, with specific procedures still being developed. Alston payments count up to $2.5 million per year, with additional awards inapplicable to the Pool. Benefits currently permissible through the

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Student Assistance Fund do not count towards the Pool. Athletic scholarships above the number currently permitted under NCAA Division I rules for a particular sport count up to $2.5 million per year, with additional scholarships beyond $2.5 million not counting towards the Pool (although roster limits will apply). Third-party payments, including those arranged by the school acting as a marketing agent, also do not apply towards the Pool.

2. Flexibility, but be careful with agreements

Institutions can opt in or out of the settlement each year by March 1. However, an institution that opted into the settlement and then decides to opt out will be liable for any agreements entered into with its athletes while they were complying with the settlement. If an institution is contemplating the long-term benefits of opting in to the settlement, its athlete agreements should be drafted to give the institution flexibility if it decides to opt out.

The settlement applies to an institution's entire athletics program. If an institution chooses to provide a benefit to one athlete or one team, the settlement will apply to the entire institution. Each institution can decide how it wishes to comply with the settlement and how much money it wishes to disburse to its athletes, up to the Pool limit. This flexibility also applies to roster limits. However, conferences may develop their own limits. Institutions should work closely with their conference offices as they develop their plans to comply with both the settlement and any conference restrictions.

3. Details still forthcoming

Many of the finer details, like reporting structures and impact to existing NCAA bylaws, remain to be decided. Athletes will be required to disclose all name, image, and likeness (NIL) payments of more than $600, but the reporting mechanism is still being developed. Likewise, the platforms for cap reporting and NIL fair market value are in development by LBi and Deloitte, respectively.

While fall sports must be at or below the contemplated roster limits before the first date of competition in that sport's championship segment, and spring sports must be compliant by December 1, 2025, rules regarding how and if certain athletes are included on a team's roster are pending. In regard to the litany of other current Division I rules that will be impacted or nullified by the settlement, the Division I Board of Directors will act on the necessary legislation to comply with the settlement following its approval. Institutions should develop what internal reporting structures they need to prepare, but a busy spring and early summer in response to the settlement's potential approval is likely inevitable.

4. Players' association request likely to be denied

The named plaintiffs in the case sent a letter to U.S. District Court Judge Claudia Wilken asking her to address their desire for a players' association, which they propose to be organized by Athletes.org.

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Many hurdles stand between the request and Judge Wilken ordering the creation of such an association, including if she even has the authority to dictate it as part of a settlement. Additionally, the current version of the settlement does not address athlete employment status, which would likely be required for a players' association to have any real power. A non-union association would not be able to negotiate on behalf of athletes, although it might be able to develop influential best practice guidelines. Until athlete employment is decided by Congress, the National Labor Relations Board, the courts, or some combination of the three, a players' association is likely out of reach.

What this means to you

Institutions can and should prepare now for implementing the settlement next academic year, even before official approval in April. NIL agreements between an institution and athletes will be permissible but will count against the Pool. Third-party NIL agreements will not be attributed to the Pool, and institutions may broker such third-party deals as a marketing agent. Institutions should review their policies on institutional involvement and risk management regarding third parties before acting as an agent.

The settlement will require new reporting procedures, and although the exact structure is still forthcoming, institutions should decide which departments and personnel will be assigned to gather and submit the data. All institutions, whether they opt in to the settlement or not, will be required to report NIL deals over $600 to the NCAA. Institutions opting in to the settlement will be required to report all disbursements counting against the Pool within 60 days of the close of the academic year. Institutions should develop a central location for all athlete agreements, in addition to tracking other disbursements counting against the Pool, such as scholarships up to the $2.5 million limit.

Institutions are permitted to begin signing athletes to agreements pending settlement approval and state law restrictions. However, any payments contemplated in the agreements cannot be made until after July 1, 2025. That said, some states, through an amendment to the state NIL statute or by executive order, permit institutions to make immediate payments student-athletes. It is unclear if, or how, the NCAA or new settlement structure will address these payments or any other contradictions between the settlement agreement and state law that may arise.

Contact us

If you have any questions about the *House* settlement and its impacts on your institution, contact Jason Montgomery, TaRonda Randall, Kristina Minor, or your Husch Blackwell attorney.

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