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Trump Executive Order Aligns with NCAA Policy Positions Post-*House* Settlement

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On July 24, 2025, President Donald Trump issued Executive Order 14322: Saving College Sports, which is largely focused on the state of NCAA Division I college sports and which aligns closely with positions taken by the NCAA.

Policy and purpose (Section 1)

The order acknowledges the educational and leadership-developmental benefits of the collegiate athletic experience for student-athletes, as well as for America's Olympic success. The order identifies the source of current instability in NCAA Division I college sports as a combination of factors—including ongoing litigation, third-party pay-for-play payments, unlimited transfer opportunities for athletes, and multiple and conflicting state laws—and calls for a national solution, presumably in the form of a federal law. In lieu of congressional intervention, the order directs various agencies and the U.S. Attorney General to take action to stabilize college sports and ensure the continuation and expansion of women's and non-revenue sports.

Protecting and expanding women's and non-revenue sports and prohibiting third-party pay-for-play (Section 2)

The order includes two specific policy directives related to college athletics: (1) the preservation and, where possible, expansion of women's and non-revenue sports and (2) the elimination of third-party, pay-for-play payments, while permitting fair market value compensation for true Name, Image, and Likeness (NIL) activities. The order states that institutions "should" implement certain revenue-sharing standards based on their annual revenues, setting forth that:

Athletic departments with revenues greater than $125 million should provide the maximum number of roster spots and increase scholarships above the 2024-25 limits in non-revenue sports.

Athletic departments with revenues greater than $50 million should provide the maximum number of roster spots and at least as many scholarships as permitted in 2024-25 for non-revenue sports.

Athletic departments with revenues of $50 million or less should not disproportionately reduce scholarships or roster sports based on revenue generated.

Within 30 days of the date of the order, the Secretary of Education, in consultation with the Attorney General, the Secretary of Health and Human Services, and the Chairman of the Federal Trade Commission, are directed to develop a plan to advance the recommended policies above "through all available and appropriate regulatory, enforcement, and litigation mechanisms, including federal funding decisions, and enforcement of Title IX of the Education Amendments Act of 1972…"

The order's reference to Title IX is in the context of roster and scholarship opportunities, for which the Office of Civil Rights (OCR) has provided consistent guidance related to the application of Title IX athletics regulations. However, while the order states revenue-sharing should be implemented in a manner that "preserves or expands" scholarships and athletic opportunities in women's and non-revenue sports, it does not explicitly address how Title IX applies to revenue-sharing and *House* payments.

On January 16, 2025, the Department of Education (ED) issued guidance that "compensation provided by a school for the use of a student-athlete's NIL constitutes athletic financial assistance under Title IX" and would therefore need to be distributed proportionally between male and female student-athletes. However, the ED under the Trump administration rescinded that guidance on February 16, 2025. There remains an open question related to *House* payments. But if women's and non-revenue sports really are to be preserved and expanded, the influx of money into a majority of men's sports—nearly 90% or more of additional dollars by some estimates—will need to be addressed.

With respect to third-party pay-for-play, the College Sports Commission (CSC) and many state NIL laws already prohibit third-party pay-for-play payments. Generally, this directive is consistent with the manner in which the *House* settlement is being implemented through NIL Go and the CSC's recently revised guidance on the subject. Theoretically, the Federal Trade Commission (FTC) could also take steps to prohibit deceptive and unfair practices related to NIL under the Consumer Protection Act using civil penalties and seeking injunctive relief. Likewise, the Department of Justice (DOJ) could prosecute individuals and entities that enter into predatory NIL deals.

Addressing student-athlete status and the negative impacts of ongoing litigation (Sections 3 and 4)

The order, echoing NCAA language, acknowledges that litigation threatens college sports. President Trump instructs federal officials to create guidelines to stabilize the industry, safeguard student-athlete rights, and maintain the long-term availability of college athletics. The order directs:

The Secretary of Labor and National Labor Relations Board (NLRB) to clarify the status (i.e., employment status) of student-athletes in a way that maximizes the educational opportunities college sports provide.

The Attorney General and FTC[1] to take appropriate actions to protect student-athletes' rights and reduce antitrust challenges. Within 60 days, they are ordered to revise and develop a plan for related future litigation positions and policies.

With respect to employment status, the Secretary of Labor has authority to issue guidance regarding worker classification under the Fair Labor Standards Act (FLSA). However, even with some guidance, there still may be different interpretations by courts. There is already a circuit split with respect to the classification of student-athletes as employees under FLSA. The Seventh and Ninth Circuits have ruled that as a matter of law student-athletes are not employees under FLSA, and the Third Circuit recently concluded in *Johnson v. NCAA* that student-athletes could be considered employees under FLSA by noting the economic realities test. With respect to the NLRB, the memorandum by the previous general counsel of the NLRB that stated some college athletes were employees pursuant to the National Labor Relations Act was rescinded in February 2025, and the NLRB has already signaled that it will not pursue these types of cases. That said, the NLRB could issue affirmative guidance in this regard.

With respect to the Attorney General and FTC reducing antitrust challenges, both the DOJ and FTC can revise litigation positions related to NCAA rules. In particular, the DOJ previously expressed concern that the benefits cap in the *House* settlement violated antitrust law. Certainly, this order would suggest a reversal of that position. Regardless, neither the DOJ nor the FTC can provide affirmative antitrust shelter for college sports. In that regard, the overall signal of the order is that the administration supports congressional intervention. The Student Compensation and Opportunity Through Rights and Endorsements Act (SCORE Act), which made it out of committee one day prior to the issuance of the order, seeks to provide an antitrust exemption for college sports.

Protecting development of the United States Olympic team (Section 5)

The last substantive section of the order directs the White House staff to consult with the United States Olympic and Paralympic Committee (USOPC) about safeguarding the role that college athletics plays in developing athletes to represent America in international athletics competitions. This could not only involve the steps described therein related to preserving and expanding women's and non-

revenue sports through Title IX but other proposals in coordination with Congress as they pertain to funding college sports integral to the Olympic movement.

Finally, **Section 6** simply notes that nothing within the order can override existing statutory authority or create enforceable private rights.

What this means to you

There continues to be a heightened level of uncertainty surrounding the applicable guardrails and enforcement mechanisms related to institutions' implementation of the *House* settlement. The prescribed timelines for federal agency action in the order suggest that additional changes may come during this academic year. In light of the recent measures the executive branch has taken to enforce preferred policies at colleges and universities, schools that opt in to the *House* settlement should carefully consider the extent to which their NIL and *House* implementation strategies align with the executive order, including current and anticipated reliance on third-party NIL and compliance with Title IX regulations.

Contact us

For more information about the legal and regulatory decisions affecting your institution, please contact Jason Montgomery, TaRonda Randall, Kristina Minor, or your Husch Blackwell attorney. Husch Blackwell regularly publishes updates on industry trends and new developments in the law for our clients and friends. Please fill out this quick form if you would like to receive electronic updates and newsletters.

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[1] While the majority of antitrust claims brought against the NCAA involve the Sherman Act, the Supreme Court has said that "all violations of the Sherman Act also violate the FTC Act." (*Fashion Originators' Guild of America v. FTC*, 312 U.S. 457, at 463 (1941)). Thus, the FTC has authority regarding antitrust claims under the FTC Act for activities that would violate the Sherman Act. (https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws).