College Sports Commission Revises Guidance on NIL Deals Involving Collectives

Background

On July 10, 2025, the College Sports Commission ("CSC") issued initial guidance to Division I athletic directors describing how it would scrutinize college athletes' NIL deals with associated entities[1] like collectives. Specifically, the CSC asserted that "[a]n entity with a business purpose of providing payments or benefits to student-athletes or institutions, rather than providing goods or services to the general public for profit, does not satisfy the valid business purpose requirement of Rule (NCAA Bylaw) 22.1.3." The CSC's position appeared to be that NIL deals involving collectives, *in general*, failed the "valid business purpose" test and were therefore impermissible post-*House* settlement.

NIL deals that athletes make with collectives are some of the most lucrative in the marketplace and have driven recruiting and transfer activity over the past four years. Importantly, third-party NIL deals are not subject to the annual $20.5 million revenue-sharing "Pool Cap." Coupling third-party NIL compensation with institutional revenue-sharing payments has allowed schools to construct rosters with total team compensation valued well into eight figures. The CSC's July 10 guidance cast doubt on the viability of collectives post-*House* and was met with immediate pushback from the plaintiffs' counsel and collectives nationwide. Following the July 10 memo, the CSC, defendant conferences (ACC, Big Ten, Big 12, Pac-12 and SEC) and plaintiffs' counsel negotiated "revised" guidance to permit collectives to continue to engage in NIL activity but with more regulation post-*House*.

Overview of CSC's "Revised" Guidance

The CSC's July 31 "revised" guidance replaces its July 10 memo. The CSC opened by reiterating that the terms of the *House* settlement allow the defendant conferences to adopt rules – including the "valid business purpose" test in NCAA Bylaw 22.1.3 – to police NIL activity involving collectives. In the CSC's revised guidance, which was agreed-to by plaintiffs' counsel, NIL deals involving collectives must satisfy three requirements:

1. the athlete must promote or endorse a good or service;
2. the good or service promoted by the athlete must be sold to the public for profit; and
3. the compensation paid to the athlete in exchange for promoting the good or service must be "at rates and terms commensurate with the compensation that is paid to similarly situated individuals with comparable NIL value who are not prospective student-athletes or student-athletes of the institution."

The "for profit" analysis noted in prong #2 above does not necessarily require that the collective operate at a profit but rather focuses on the collective's efforts to turn a profit from the deal it made with the athlete. The CSC underscored that it may request records and information from the athlete and/or collective to verify the "for profit" requirement has been met, and that failure to comply could result in the deal not being cleared by NIL Go.

The third requirement in NCAA Bylaw 22.1.3 relates to the amount of compensation in the deal. Pre-*House*

[1] NCAA Bylaw 22.02.1 defines "associated entity."

settlement, there was no meaningful regulation in this area, but as of June 11, the CSC has vetted third-party NIL deals through NIL Go, the newly created clearinghouse. So far, few details have been made public as to NIL Go's methodology for analyzing compensation amounts (e.g., how is "commensurate" compensation determined, or who qualifies as a "similarly situated individual with comparable NIL value"). There has been speculation that some degree of the "range of compensation" analysis includes how much college athletes at peer institutions are being paid by those institutions' collectives and the marketability of the athlete (e.g., size of social media following). Notably, the CSC stated in its July 10 memo that "most" of the third-party deals that had not been cleared by NIL Go as of that date had failed the valid business purpose test, *not* the allowable "range of compensation" analysis. Taken together, the CSC's July memos suggest that in these early stages post-*House*, the enforcement entity may be focusing less on the amount of money an athlete receives from an NIL deal and more on the details of the athlete's promotional activities for the collective.

Other Pertinent Developments

On July 24, 2025, President Trump issued an Executive Order ("EO") that addressed third-party NIL activity involving collectives (among other important topics currently impacting college sports).

Specifically, the EO calls for the elimination of "improper" third-party "pay-for-play inducements" that have "created an out-of-control, rudderless system in which competing university donors engage in bidding wars for the best players, who can change teams each season." However, the EO includes a carve out for "compensation provided to an athlete for the fair market value that the athlete provides to a third party, such as for a brand endorsement." This exception appears to align with the CSC's "revised" guidance for how it will assess third party NIL deals for compliance with NCAA Bylaw 22.1.3.

The EO directs the Secretaries of Education and Health and Human Services, Attorney General, and Chairman of the Federal Trade Commission to "develop a plan" within 30 days of the date of the EO (August 23) to "advance the policies" set forth in the EO through "all available and appropriate regulatory, enforcement, and litigation mechanisms, including Federal funding decisions, enforcement of Title IX of the Education Amendments Act of 1972, prohibiting unconstitutional actions by States to regulate interstate commerce, and enforcement of other constitutional and statutory protections, and by working with the Congress and State governments, as appropriate." As of this writing, it is unclear what specific actions the Trump Administration is considering in the area of third-party NIL.

On August 1, the NCAA issued an FAQ document regarding the EO, which reiterated that it "does not impact: (1) legitimate, fair-market-value NIL compensation that a third party provides to an athlete, like for a brand endorsement; or (2) new limited revenue-sharing payments permitted between universities and athletes." Also, the FAQ stated that the EO's policy against third-party pay-for-play agreements applies only to "future agreements and arrangements."

Bond will be monitoring this situation as it develops. Please contact Michael Sheridan or the other attorneys in Bond's Collegiate Sports practice for more information.

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