HUSCH BLACKWELL

2023 NCAA COMPLIANCE REPORT

College Athletics at a Crossroads

March 2023

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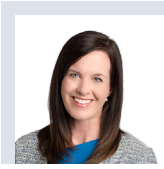
WELCOME TO HUSCH BLACKWELL'S 2023 NCAA COMPLIANCE REPORT

The NCAA in recent years has been under scrutiny on Capitol Hill, at the Supreme Court, by state legislatures and, to an extent, by its own member schools. In the fall of 2000, noted sports scholar Rodney K. Smith opined in an article for the *Marquette Sports Law Review* that the desire for universities and conferences to gain a competitive advantage has led to an expansion in rules and regulations and that this expansion has placed great strain on the capacity of the NCAA to govern. "This strain is unlikely to dissipate in the future because the pressures that have created the strain do not appear to be susceptible, in a practical sense, to amelioration," Smith wrote. "[I]ncreased commercialization and public pressure leading [will lead] to more sophisticated rules and regulatory systems."

More than two decades later, Smith's prognostication appears to be accurate. The NCAA's inability to evolve and adapt decades ago has led to the chaotic collegiate athletic landscape of today. Our 2023 NCAA Compliance Report examines the challenges colleges and universities deal with in an effort to remain compliant and competitive.

We begin by dissecting the upcoming *House* trial, which largely pertains to Name, Image and Likeness (NIL), but also potential TV broadcast revenue sharing. Next, we analyze in more depth some of the matters that are pushing the agenda in college athletics, including NIL updates and concerns; the reclassification of the employment status of student-athletes; the transfer portal; modernizing the infractions process; and the NCAA's new president. We also provide a synopsis of the NCAA's Transformation Committee recommendations.

The future of NCAA Division I college athletics is one of uncertainty as it faces a number of outside pressures—including the confluence of legal challenges, media rights, and scrutiny over amateurism—but we hope our Compliance Report provides a useful roadmap for how to think about the coming year and the issues that will drive the conversation in and around college athletics.



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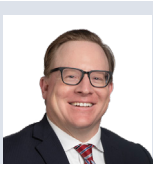

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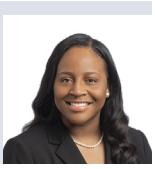
Partner | Husch Blackwell



TARONDA RANDALL
Senior Counsel | Husch Blackwell

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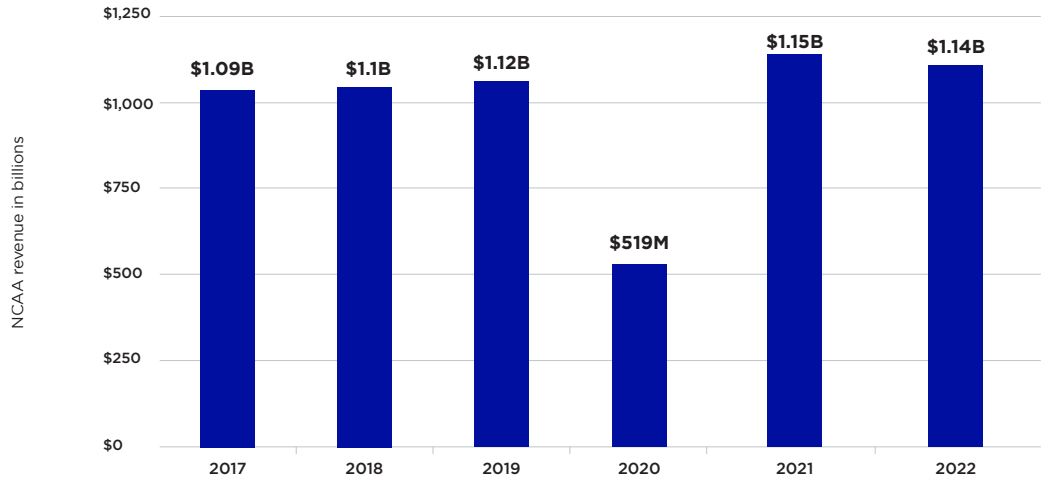
COULD THE NCAA'S HOUSE FALL?

***House v. National Collegiate Athletic Association* will be the third case in a trilogy—after *O'Bannon* and *Alston*—aimed at dismantling the amateur model.**

In 2015, *O'Bannon v. NCAA* cracked the NIL door and allowed for student-athletes to receive athletics financial awards up to full cost-of-attendance to attend a school. The court found that the NCAA was profiting from the names and likenesses of student-athletes and that limiting athlete compensation to the traditional scholarship value (tuition, fees, room and board) violated antitrust law. The 2021 ruling against the NCAA in *Alston* required the NCAA to allow for certain types of academic benefits beyond the previously-established scholarships up to the cost of attendance from *O'Bannon*, such as for "computers, science equipment, musical instruments and other tangible items not included in the cost of attendance calculation but nonetheless related to the pursuit of academic studies." The court in *Alston* also upheld additional academic awards of up to $5,980, so called "Alston Awards," in addition to the other education-related benefits. This all sets the stage for *House*, which not only seeks damages for student athletes who couldn't profit from NIL prior to 2021 but will also determine if basketball and football athletes from the "Power 5" conferences should be compensated for TV broadcast revenues. Financial statements revealed the NCAA made approximately $1.14 billion in revenue—$870 million deriving from the NCAA Men's Basketball tournament—during the 2022 fiscal year ending August 31, 2022. The NCAA distributed $657 million in revenue to its Division I members.

NCAA REVENUE BY YEAR



SOURCE: NATIONAL COLLEGIATE ATHLETIC ASSOCIATION. (2022). NCAA FINANCIAL DATABASE

Like *O'Bannon* and *Alston*, *House* was filed in the United States District Court for the Northern District of California and will be heard by U.S. District Judge Claudia Wilken, who presided over the two aforementioned cases. *House* alleges that the NCAA, as well as the Power 5 conferences, violated antitrust law by prohibiting athletes from earning compensation based on their NIL from third parties, and also that football and basketball players should have the ability to share in telecast group licensing revenue. *House* survived a motion to dismiss, but it is not scheduled for trial until September 2024.

For nearly four decades, the NCAA has relied on the *NCAA v. Board of Regents of the University of Oklahoma* to justify its actions in an effort to maintain that amateurism in collegiate athletics is "entirely consistent with the goals of the Sherman Act." Despite pleas for an exemption (see page 9 for more information), the Sherman Act applies to the NCAA; however, the courts have not addressed the underlying pay-for-play issue head on, and the court in *Alston* specifically stated that its review was a narrow one and that it was not wading into the waters of the wider debate on compensating college athletes. *House* attempts to press the courts for further answers.

House is seeking to maximize the full value of NIL deals, which is currently limited to compensation from only third parties. The current NIL rules do not permit NIL payments to athletes from the NCAA, conferences, or institutions. The NCAA has argued that this case is a repeat of the *O'Bannon* and *Alston* antitrust cases and that the athletes cannot seek damages for group licensing because they do not have publicity rights in game broadcasts; however, Judge Wilken said in a June 2021 order that *House* is "predicated on a different legal theory" that "the amateurism rules' validity be proved, not assumed." The plaintiffs filed a motion for class certification in October 2022, which is set for hearing on May 23, 2023.

THE EVOLUTION OF NAME, IMAGE AND LIKENESS

Student-athletes have been handsomely compensated for the use of their names, images and likenesses since the NCAA deregulated its rules less than two years ago; however, the NCAA is at a crossroads when it comes to enforcement.

In October 2022, the NCAA released new NIL guidance that addressed what is permissible and impermissible with respect to an athletic department's involvement in NIL activity. Institutional education (to student-athletes, NIL entities, boosters, and professional sports authenticators) and monitoring are permissible under the current policy/NCAA rules.

Recruiting "inducements" and "pay-to-play" deals have been and still are against NCAA rules, but the NCAA is seeking assistance from member institutions in uncovering and reporting infractions. The concern is that these violations stem from collectives, which pool funds from boosters and businesses to help facilitate NIL deals for student-athletes. Institutions are permitted to introduce enrolled student-athletes to representatives of a NIL entity; however, the NIL entities, like a traditional booster, are not allowed to persuade a recruit on behalf of a school or to premise an NIL agreement on a student-athlete's continued enrollment at a particular school.

INSTITUTIONAL SUPPORT FOR STUDENT-ATHLETE NIL ACTIVITY

PERMISSIBLE UNDER INTERIM POLICY/NCAA RULES	IMPERMISSIBLE UNDER INTERIM POLICY/NCAA RULES
• Engage NIL entity to inform student-athletes of NIL opportunities. • Engage NIL entity to administer a marketplace that matches student-athletes with NIL opportunities without involvement of institution. • Provide information to student-athletes about opportunities that institution has become aware of (transmit information without further involvement). • Provide student-athlete contact information and other directory information to NIL entity (e.g., collectives and others seeking to engage student-athletes). • Provide stock, stored photo/video/graphics to a student-athlete or NIL entity. • Introduce student-athlete to representatives of NIL entity. • Arrange space for NIL entity and student-athlete to meet on campus or in institution's facilities. • Promote student-athlete's NIL activity, provided there is no value or cost to the institution (e.g., retweeting or liking a social media post). • Promote student-athlete's NIL activity on paid platform provided student-athlete or NIL entity is paying going rate for advertisement (e.g., NIL entity pays for advertisement on video board). • Purchase items related to a student-athlete's NIL deal that are de minimis in value and for the same rate available for the general public.	• Communicate with NIL entity regarding specific student-athlete request/demand for compensation (e.g., student-athlete needs X dollars in NIL money) or encouragement for NIL entity to fulfill student-athlete's request. • Proactively assist in the development/creation, execution or implementation of a student-athlete's NIL activity (e.g., develop product, develop promotional materials, ensure student-athlete performance of contractual NIL activities) unless the same benefit is generally available to the institution's students. • Provide services (other than education) to support NIL activity (e.g., graphics designer, tax preparation, contract review, etc.) unless the same benefit is generally available to the institution's students. • Provide access to equipment to support NIL activity (e.g., cameras, graphics software, computers, etc.) unless the same benefit is generally available to the institution's students. • Allow student-athlete to promote their NIL activity while on call for required athletically related activities (e.g., practice, pre- and postgame activities, celebrations on the court, press conferences).

INSTITUTIONAL SUPPORT FOR NIL ENTITY/COLLECTIVE

PERMISSIBLE UNDER INTERIM POLICY/NCAA RULES	IMPERMISSIBLE UNDER INTERIM POLICY/NCAA RULES
• Staff member assists NIL entity in raising money for NIL entity (e.g., appearances at fundraisers, donates autographed item). • Provide assets (e.g., tickets, suite) to NIL entity under sponsorship agreement provided access to assets are available to and on the same terms, as other sponsors • Request donor to provide funds to NIL entity (without directing funds be used for a specific sport or student-athlete). • Provide donor information or facilitate meetings between donors and NIL entity.	• Subscribes to the entity and donates cash to the entity (regardless of whether funds are earmarked for a specific sport or student-athlete). • Provide assets (e.g., tickets, suite) to a donor as an incentive for providing funds to the NIL entity. • Athletics department staff member employed by NIL entity.

SOURCE: NCAA DIVISION I INSTITUTIONAL INVOLVEMENT IN A STUDENT-ATHLETE'S NAME, IMAGE, AND LIKENESS ACTIVITIES, NCAA: https://ncaaorg.s3.amazonaws.com/ncaa/NIL/D1NIL_InstitutionalInvolvementNILActivities.pdf

This very issue came to the surface in recent months after a high-profile athlete flipped his commitment from one rival school to another and agreed to a reported record eight-figure deal. According to a February 2022 article from *The Athletic*, which obtained the contract, a half-million dollar payment was scheduled for early December—before the student-athlete even enrolled at the university—but the payment did not come from the collective and the contract was terminated days later citing a provision that the collective could terminate "without penalty or further obligation." The recruit did not enroll for the spring semester, asked for a release from his letter of intent, which was granted, and ultimately, signed with another university. At first glance, a circumstance like this has all the makings of a pay-to-play deal on the surface in that the recruit's enrollment was predicated on the NIL deal and that the enrollment fell through once it was revealed that the money wasn't there.

This is only one example of the large sums of money being paid to athletes. According to a database from *On3*, a publication focused on college athletics, recruiting, NIL, and the transfer portal, nearly 90 collegiate athletes (or high schoolers who have signed their letters of intent) have NIL valuations of $400,000 or more. While this is heavily skewed toward football and men's basketball, two of the top 10 athletes are female gymnasts.

Call to Congress

In August 2022, the Power 5 conference commissioners sent a letter to Senators Joe Manchin (D-W. Va) and Tommy Tubberville (R-Ala) outlining six key pillars that are integral to a fair and enforceable federal framework for NIL and calling for federal legislation:

1. A national standard allowing all athletes to earn compensation from third parties;
2. Prohibiting pay-for-play as well as outlawing booster involvement in recruiting;
3. Providing protections for athletes, including assurances that agents "are subject to meaningful regulation" and access to appropriate dispute resolution processes for student athletes;

4. Banning advisors/third parties from obtaining "long term rights" to a student-athlete's NIL;

5. Requiring deals to commensurate with market rates for NIL activity; and

6. Requiring athletes to disclose NIL deals to their university.

It's difficult to envision Congress coming together on this issue in any meaningful timeframe. Some of these pillars are already in place—prohibiting pay-for-play and outlawing booster involvement in recruiting—in some state laws and in the NCAA policy.

Collectives

Collectives work by representing the interests of athletes in negotiations over the use of their NIL rights. According to an *On3* database, there are more than 200 Division I collectives. The exact operations and services offered by NIL collectives can vary, but generally they work as follows:

- **Representation:** NIL collectives provide representation for individuals in negotiations over the use of their NIL rights. This can include negotiations with brands, media companies, and other entities that want to use an individual's image for commercial purposes.

- **Education and support:** NIL collectives often provide educational resources and support for their members, including information about NIL laws and regulations, guidance on negotiations, and advice on protecting their rights.

- **Collective bargaining power:** NIL collectives can provide a unified voice for individuals and a platform for collective bargaining. By pooling their resources and negotiating as a group, NIL collectives can negotiate better terms and conditions for their members.

- **Revenue sharing:** Some NIL collectives may offer revenue-sharing arrangements, where members share in the profits generated from the use of their NIL rights.

- **Marketing and brand development:** NIL collectives may also provide marketing and brand development support for their members, helping them to build and promote their personal brands.

Overall, the goal of NIL collectives is to help student-athletes receive fair compensation for the use of their NIL rights, while also providing support and resources to help them navigate this rapidly changing landscape; however, there are several concerns associated with collectives, including conflicts of interest, potential for exploitation, data privacy issues and intellectual property.

Immigration

While international students represent two percent of Division I college football players, according to the NCAA's most recent report through the 2020-21 school year, other sports such as tennis (63% men, 59% women), ice hockey (39% men, 44% women), soccer (37% men, 12% women), and golf (24% men, 35% women) have a far higher proportion of international student-athletes.

The vast majority of international students, regardless of their athletic status, receive F-1 visas from their institutions, which allow them to enter the U.S. as full-time students. International students are not permitted to be employed as F-1 visa holders except in limited circumstances including using the on-campus employment provision of the F-1 visa, or as part of a Curricular Practical Training (CPT)

or Optional Practical Training (OPT). Both CPT and OPT have specific requirements and must be fulfilled and approved by the institution's Designated School Official (DSO) who is required by federal law to update and maintain Student and Exchange Visitor Program (SEVIS) records of nonimmigrant students. Immigration law designed the F-1 visa for academic programs only. The rules related to student employment were created to allow students to earn income through their sponsoring school to pay for tuition (e.g., on-campus employment) or engage in practical training programs (e.g., internships and work student programs) related to their degree programs. Compensated NIL arrangements fall outside of this limited scope.

Generally, in the context of immigration law, "employment" is interpreted broadly. Any time a foreign national is in the U.S. performing services for compensation, regardless of the source of compensation—domestic or foreign—or type of compensation (free merchandise or actual cash), the foreign national needs some sort of work authorization. The Department of Homeland Security (DHS) has not opined as to whether they would consider compensated NIL arrangements "employment" under federal immigration law, or on the impact of such arrangements on nonimmigrant statuses. It is unlikely that there will be a definitive answer to this question from federal immigration authorities until an individual's SEVIS record is terminated or someone applies to change their immigration status from F-1 to a new status, and immigration authorities deny the request for prior employment without authorization. During this time, the relevant immigration agencies will rely on SEVP-certified schools to act as the enforcers and ensure their sponsored students are complying with the F-1 program and report violations as they are required to do under the regulations. Therefore, a conservative approach to international student-athletes engaging in any type of compensated NIL arrangement is appropriate.

Not only would violations of an F-1 visa status create issues for the athlete, but it can create issues for the sponsoring school as well. DHS can impose penalties on the school for failure to terminate a student-athlete's SEVIS record in violation of the SEVIS rules. That could mean a withdrawal of the SEVP certification for the school, which would affect the ability of the school to issue F-1 visas to any students. So, while individually an institution may be able to conceive of the potential for compensated NIL arrangements for F-1 student-athletes that would not run afoul of F-1 student visa rules, the risk of negative consequences affecting the institution is very high and may be prohibitive for the sponsoring school to allow student-athletes to engage in any type of compensated NIL arrangement without more guidance.

For these reasons, any proposed compensated NIL arrangement that occurs outside of the country or is based on the concept of "passive" income still comes with significant risk for the sponsoring school. It is true that U.S. immigration law only applies when the foreign national is physically in the country. So, if the student-athlete is outside of the U.S. and accepts a car and cash from an auto dealer while in their home country for summer break, U.S. immigration laws do not apply, and the student-athlete would not violate his F-1 visa. The challenge, however, could be proving to United States Citizenship and Immigration Services (USCIS) that the service actually occurred in the athlete's home country, as opposed to in the U.S. Further, the nexus between a student-athlete's status in the U.S. as an athlete at a particular institution from which he or she draws their notoriety could create an assumption that the student-athlete is receiving compensation for services in the U.S., regardless of where the activities took place. Concerning the concept of "passive" income, there is no law or regulation that specifically states that F-1 students can earn passive income. It is implied from the rule that they cannot work without

authorization (on-campus provisions of the F-1 visa, CPT, or OPT). The question that has not been answered is at what point is the F-1 student considered to be performing services or receiving income for active participation? As noted above, the F-1 visa program was designed for academic programs and any employment exceptions directly related to academics or paying tuition. As a result, USCIS could argue with respect to any potential "gray" area that NIL activities are contrary to the purpose and intent of the F-1 visa, and therefore, violated the F-1 visa program.

While some international students who have significant notoriety may be eligible for other visas, such as the O-1 extraordinary ability visa, that would permit the student to both enroll in degree programs and work in the United States, these visa options are extremely limited. The O-1 visa option would only be available to the most elite college athletes.

Based on the foregoing—and absent clarification from DHS—schools and international student-athletes must approach compensation-based NIL questions cautiously and we recommend conservatively.

LABOR LAW & STUDENT ATHLETES

While *House v. NCAA* could have far-reaching implications for how student-athletes earn money, 2023 could be an inflection point for the future of collegiate sports as it relates to reclassifying student-athletes as employees.

> **"If we are looking at the economic reality [test], it would lead me to conclude they are employees.**
>
> – U.S. CIRCUIT JUDGE DAVID J. PORTER

Johnson et al. vs. NCAA

In February 2023, the Third Circuit heard oral arguments in *Johnson v. NCAA*—a case that could have a massive, domino-like effect across college sports—as student-athletes vie for recognition as employees entitled to protections under the Fair Labor Standards Act (FLSA) such as minimum wages and overtime. A win for the student-athletes would create a circuit split. The Seventh and Ninth circuits indicated as a matter of law that FLSA did not apply to college athletes —both were decided before *Alston*—and would almost certainly set up a review by the Supreme Court.

During oral arguments in February, the Third Circuit panel acknowledged that the NCAA has some degree of control over student-athletes but recognized that more discovery might be necessary to come to a decision. Under the Department of Labor's economic reality test, an entity is deemed an employer if it could hire or fire a worker, supervise the worker's schedule and determine how and how much the worker is paid. In this case, an institution signs a recruit and can remove them from teams; can restrict classes a student-athlete takes so it does not conflict with practice schedules; and does not currently pay student-athletes. U.S. Circuit Judge David J. Porter said, "If we are looking at the economic reality [test], it would lead me to conclude they are employees." We expect a decision from the court later this fall.

Labor Relations

National Labor Relations Board (NLRB) General Counsel Jennifer Abruzzo issued a memo in September 2021 to all field offices regarding her stance that some student-athletes (basketball and football athletes from Power 5 conferences) are employees under the National Labor Relations Act. At the time of the memo, it opened the door for student-athletes to unionize, particularly at private institutions, given that the NLRB's remit extends to private businesses.

In December 2022, the NLRB directed its Los Angeles regional office to pursue unfair labor practices against the University of Southern California (USC) the Pac-12 Conference, and the NCAA—the latter two were alleged to be joint employers of student-athletes. The case—which was filed by the National College Players Association (NCPA) in February 2022—will go before an administrative court where the Los Angeles regional office of the Board will argue on behalf of the athletes. If the administrative law judge agrees that athletes should be considered employees, the parties can appeal to the full board and seek relief in federal court. Therefore, any final resolution could be years in the making.

This is the first major development the NLRB has taken against the NCAA since Northwestern University football players unsuccessfully tried to unionize in 2014. There, the NLRB denied an attempt to hold a union election, essentially punting on answering the question of whether or not student-athletes are employees. The USC case differs as NCPA filed unfair labor practice charges rather than a petition to unionize.

STUDENT-ATHLETE HEALTH AND SAFETY

During its annual convention in January, the NCAA approved strategic priorities for student-athlete mental and physical health, safety and performance to better align with responsibilities outlined in the new NCAA constitution that went into effect Aug. 1, 2022. Article 1, Section D states:

> Intercollegiate athletics programs shall be conducted by the Association, divisions, conferences and member institutions in a manner designed to protect, support and enhance the physical and mental health and safety of student-athletes. Each member institution shall facilitate an environment that reinforces physical and mental health within athletics by ensuring access to appropriate resources and open engagement with respect to physical and mental health. Each institution is responsible for ensuring that coaches and administrators exhibit fairness, openness and honesty in their relationship with student-athletes. Student-athletes shall not be discriminated against or disparaged because of their physical or mental health.

To that end, it's also the responsibility of the institutions and programs to facilitate a positive culture for its student-athletes. During the past four years, there has been a significant uptick in investigations that have looked into the cultures of college and university sports programs and coaches' conduct when there were allegations of inappropriate conduct and fear, anxiety, and depression among the student-athletes. These investigations are unique in as much as they do not traditionally fall either under the jurisdiction of the NCAA infractions process or an internal Title IX process. Therefore, investigators must often rely on institutional policies, applicable federal or state law, and industry standards and best practices when determining whether coaches crossed the line into abusive conduct. We anticipate issues related to student-athlete safety and well-being and issues related to the line between hard coaching and abuse continuing to be brought forward as student-athletes' ability to have a voice in order to effect change in their sports programs continues to increase with the recognition of athletes' economic value to their schools.

TRANSFER PORTAL

Debuting in the fall of 2018, the NCAA Transfer Portal has transformed how coaches—particularly in basketball and football—built their teams' rosters. According to the NCAA, the transfer portal was "created as a compliance tool to systematically manage the transfer process from start to finish, add more transparency to the process among schools and empower student-athletes to make known their desire to consider other programs."

The portal has certainly streamlined the process, but it has also added complications to sports that aren't baseball, men's and women's basketball, football or men's hockey. That's because these sports outside of the previously listed five—prior to the COVID pandemic—did not have a one-time transfer exception and student-athletes were forced to sit out one year unless they successfully filed a waiver. Student-athletes who participated in sports not in this cohort were allotted one free transfer.

In August 2022, the Division I Board of Directors adopted the following notification-of-transfer windows:

- **Fall sports:** a 45-day window beginning the day after championships selections are made in their sport, or May 1-15.
    - Reasonable accommodations will be made for participants in the Football Bowl Subdivision and Football Championship Subdivision championship games.
- **Winter sports:** a 60-day window beginning the day after championships selections are made in the sport.
- **Spring sports:** December 1-15, or a 45-day window beginning the day after selections are made in the sport.

The legislation also establishes exceptions to the new windows for student-athletes who experience head coach changes or have athletics aid reduced, canceled or not renewed. The legislation also guarantees financial aid through graduation to student-athletes who transfer at their next school.

Adopted beginning the 2021-2022 academic year, all student-athletes, regardless of sport, now have a free one-time transfer as long as they meet the following conditions:

1. This is the transfer.
2. A student-athlete returns to his/her first school without participating in sports at the second school.
3. The sport is dropped or not sponsored at the current school.
4. The student-athlete is nonrecruited or nonscholarship.
5. The student-athlete has not participated in his/her sport for two years
6. Graduate or postbaccalaureate participation.

Because of this change, the NCAA is imposing stricter requirements for granting waivers requesting immediate eligibility, which could be filed by a student-athlete who does not meet the above criteria.

INFRACTIONS PROCESS

The NCAA added in August 2018 the Independent Accountability Resolution Process (IARP) to the existing infractions process, which was created—on the recommendation from the Commission on College Basketball, led by former U.S. Secretary of State Condoleezza Rice—to handle select complex infractions cases and minimize perceived conflicts of interest.

Unfortunately, not only is the process complex, it is painstakingly long. Six cases were referred to the IARP between March 2020 and February 2021. Of those six cases, two remain ongoing. It took an average of two years to complete the four closed cases while the two ongoing cases have been open for an average of 31 months as of March 16, 2023. This does not take into account the timeframe prior to the referral where the traditional NCAA enforcement may have conducted an investigation. The schools that are part of the process are frustrated with the length of time it takes for the cases to be adjudicated, while the remainder of the membership seems frustrated with the perceived lack of penalties that have been issued based on how some of these cases have been characterized in the media.

Based on the general lack of satisfaction by all parties, the NCAA has decided to disband the IARP after the final two cases are decided. In August 2022, the Division I Board of Directors adopted two other proposals to "modify infractions procedures intended to modernize and enhance the process while focusing national office and membership resources on the most serious violations."

Effective January 1, 2023, the NCAA made changes to the peer-review and appeals processes. The goal is to increase transparency as well as speed up the infractions processes. Among the changes include:

Peer-review process—Enforcement and Committee on Infractions

- Presumption of a violation in NIL cases.
- Head coaches are responsible for violations in their programs; there is no longer a rebuttable presumption.
- Cases can include multiple resolution methods for parties.
- More clearly defined violation charging standards for enforcement staff.
- Clarification about the role of school leadership in an investigation.
- The creation of a public-facing dashboard of existing infractions cases.

Appeals process—Infractions Appeals Committee

- Limiting appeals of penalties to only those that fall outside legislated penalty guidelines.
- Overturning Committee on Infractions decisions only when an appealing party demonstrates that no reasonable person could have made that decision.
- Resolving the majority of appealed cases through a written record rather than conducting oral arguments.

- As with the peer-review proposal, prohibiting extensions to timelines except in extreme and clearly defined circumstances.
- Removing the automatic stay for appealed penalties.
- Authorizing the Infractions Appeals Committee to issue summary affirmations of COI decisions without further comment.

Reading between the lines, it appears that what the NCAA is saying with these changes is that it does not want appeals of its infractions decisions. There may be a feeling on the part of the NCAA membership adopting the change that there have been too many appeals and the process has been misused to stay penalties and unnecessarily lengthen the infractions process. When it comes to NIL violations, if a coach, institution, or booster comes anywhere close to the pay-for-play or inducement line, the NCAA is going to make an allegation and make proving the violation extraordinarily easy for the enforcement staff. Perhaps the NCAA believes the newly adopted NIL presumption may serve as further deterrent with respect to institutional over-involvement in NIL-deals.

TRANSFORMATION COMMITTEE

The landscape surrounding collegiate athletics is experiencing unprecedented change. The Division I Board of Directors appointed 21 individuals to lead the modernization efforts after the adoption of the new NCAA constitution. There are three priority areas for the committee:

1. Elevating support for student athletes' mental, physical and academic well being;
2. Enhancing the Division I championships experience for student-athletes; and
3. Building a faster, fairer, and more equitable Division structure

The recommendations centered on the decentralization of rules. The concern was whether the regulation of rules was occurring on the right level—campus, conference or national level. There's also a push to have more sport-by-sport governance.

Another recommendation is that the board of directors should review or direct review related to:

- Academic Progress Rate: What is the appropriate benchmark
- Sports sponsorship minimums
- Financial aid minimums.

The biggest public splash was the committee's recommendation to allow 25% of teams in sports sponsored by at least 200 schools to compete in championship events. While not immediate—or even likely if adopted—it does create the potential for expansion, for example, of the men's NCAA basketball tournament from 68 schools to as many as 90. Based on looking at polls alone, it can be anticipated that additional participants will come from Power 5 conferences that already have a distinct financial advantage when looking at the totality of Division I membership. While it is debatable whether anything about the transformation committee was transformational, it could be viewed as putting additional pressure on schools that do not generate significant revenue from football or men's basketball to consider whether those schools can continue to provide the resources necessary to remain at the Division I level.

NEW LEADER TAKES THE HELM

Former Massachusetts Governor Charlie Baker became the sixth president of the NCAA on March 1, succeeding Mark Emmert, who led the NCAA for 12 years. While Baker played basketball at Harvard, he doesn't have collegiate administrative experience, unlike Emmert, who served as chancellor of Louisiana State University and president of the University of Washington, however, Baker was hired due to his political experience and ability to work across party lines.

Emmert was seen as a lightning rod for criticism; however, neither he nor Baker have the power to enact change like his counterparts in the professional leagues. The power is instead in the hands of the NCAA's member schools. When Emmert took over as president in 2010, one of the biggest storylines was conference realignment. While still a topic of discussion, it's a mere footnote compared to the issues and the uncertain future the NCAA faces today. The narrative with Baker's hiring is that he may be able to use his political experience in order to sway Congress into passing legislation to regulate NIL, and in doing so also secure an antitrust exemption for the Association. The real question is whether Baker and NCAA will fight for the status quo, as they have had a history of doing over the years, or embrace change and find a new way to regulate and manage college athletics at the highest levels.