

ARTICLE

THE ROLE OF NIL COLLECTIVES IN COLLEGE RECRUITING: NAVIGATING LEGAL CHALLENGES AND EMERGING RISKS

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INTRODUCTION

In June 2021, the National Collegiate Athletic Association (“NCAA”) implemented an interim Name, Image, and Likeness (“NIL”) policy, preventing college student-athletes’ sports eligibility from being impacted because of their participation in NIL activity.¹ The NCAA regulates college athletics as an organization with over 1,000 member schools.² As a result of the interim NIL policy, student-athletes are allowed to receive financial compensation from the use of their NIL, such as endorsements, social media posts, and autographs.³ The interim NIL policy facilitated the rise of a new market for deals between student-athletes, brands, businesses, and more. It also induced crowdfunding from fans, donors, boosters, and businesses to pay student-athletes through deals facilitated by school-specific organizations known as collectives. However, the absence of a federal NIL law and the ambiguity around collectives have allowed impermissible recruitment tactics, including the offer of benefits to student-athletes and their family

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1. David Ubben & Tess DeMeyer, *What Is NIL, How Has It Changed College Sports and Why Are Schools Under Investigation?*, THE ATHLETIC (Feb. 2, 2024), <https://theathletic.com/5245564/2024/02/02/nil-explained-ncaa-name-image-likeness-investigation/> [https://perma.cc/9KCY-A6MM].

2. *Overview*, NCAA, <https://www.ncaa.org/sports/2021/2/16/overview.aspx> [https://perma.cc/VT4E-WLE4] (last visited June 26, 2025).

3. *Everything You Need to Know About NIL*, ICON SOURCE, <https://iconsource.com/everything-about-nil/> [https://perma.cc/W5J3-F2TE] (last updated Feb. 2, 2022).

members not specifically authorized by the NCAA, to permeate the NIL market.⁴

This Article commences with a concise history of NIL, followed by an exploration of pivotal legal cases that have influenced both NIL regulations and collective practices. It proceeds with an overview of collectives, delving into the general policies that define the NIL market and how those policies may facilitate impermissible recruiting. The subsequent sections examine the recruitment process and the specific mechanisms through which collectives enable impermissible recruiting. Finally, the Article addresses the impact of collectives on the transfer portal and their role in impermissible recruiting within that context.

LANDMARK CASES AND CRITICAL MOMENTS IN NIL HISTORY

To understand the present landscape of NIL and collectives, it is important to know where the need for student-athletes' compensation started, how it has evolved, and where it stands today.

*NCAA v. Board of Regents of the University of Oklahoma*⁵

In 1984, the United States Supreme Court dealt a major blow to the NCAA's near-total control of college athletics. The University of Oklahoma and its Board of Regents brought an antitrust suit against the NCAA to challenge the NCAA's plan for televising college football games during the 1981–1985 seasons.⁶ The plan limited the number of games shown and the regions in which they would be aired.⁷ The Supreme Court ruled in favor of the Board saying the plan constituted a restraint on the operation of a free market and was not justified on the basis of procompetitive effect, protecting live attendance, or maintaining competitive balance among amateur athletic teams.⁸ The effect of the *Board of Regents* decision was twofold: first, college sports grew into a multibillion-dollar industry, fueled by television money unleashed by a freer market.⁹ Second, the NCAA leaned into its power to police amateurism, using that authority to consolidate control. In his opinion, Justice Stevens observed that the NCAA has a vested interest in preserving amateurism in collegiate athletics.¹⁰ The NCAA seized on this dictum and, for the next four decades, repeatedly cited it as both

4. See discussion *infra* Collectives as Pay-for-Play Schemes.

5. See *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 104 (1984).

6. See *id.* at 91–92.

7. See *id.* at 92–94.

8. See *id.* at 117–20.

9. Serena Morones & Paul Heidt, *Following the Money in College Sports*, MORONES ANALYTICS (Nov. 14, 2023), <https://moronesanalytics.com/following-the-money-in-college-sports/> [https://perma.cc/5C6S-SBDJ].

10. *Bd. of Regents*, 468 U.S. at 120.

evidence of the purported educational value it offered student-athletes and as justification for prohibiting direct compensation.

*O'Bannon v. NCAA*¹¹

The next critical point in the NIL journey came in a lawsuit revolving around sports video games. From 1998 to 2009, EA Sports manufactured the *NCAA Basketball* series, a basketball video game in collaboration with the NCAA that utilized university logos and likenesses of real-life student-athletes.¹² Ed O'Bannon, a former college basketball star and 1995 National Champion at the University of California, Los Angeles ("UCLA"), was depicted in the game wearing a jersey with his number (31) and the UCLA wordmark.¹³ O'Bannon brought suit against the NCAA and the Collegiate Licensing Company, the company which licensed the NCAA's and UCLA's trademarks to EA Sports, alleging a violation of the Sherman Act for conspiring to block student-athletes from NIL opportunities and thereby restricting trade.¹⁴ The district court ruled that this constituted a restraint on trade and issued an injunction, not allowing the NCAA to prohibit its member schools from providing student-athletes with scholarships covering the full cost of attendance.¹⁵ Additionally, the court allowed schools to offer up to \$5,000 per year for each athlete whose NIL was used, with the funds held in trust until the conclusion of their NCAA careers.¹⁶ The NCAA appealed to the Ninth Circuit, which held that compensation must be related to education.¹⁷ The circuit court also held that amateurism rules in the NCAA should be analyzed by the rule of reason standard.¹⁸ Under this rule, students could receive scholarships for their education, but not the \$5,000.¹⁹ The court was clear: student-athletes could not be compensated for the use of their NIL untethered to their education expenses.²⁰

NCAA v. Alston

In 2014 and 2015, student-athletes from Division I Football Bowl Sub-division (FBS) football and women's basketball, including Shawne Alston, a running back from West Virginia University, filed an antitrust class action against the NCAA and eleven conferences over their respective policies that

11. *O'Bannon v. NCAA*, 802 F.3d 1049, 1073 (9th Cir. 2015).

12. *Id.* at 1055.

13. *Id.*

14. *Id.*

15. *Id.* at 1053.

16. *Id.* at 1053, 1056.

17. *Id.* at 1061.

18. *Id.* at 1062.

19. *Id.*

20. *Id.* at 1076.

limited student-athletes' compensation.²¹ The United States District Court for the Northern District of California held that the NCAA's rules violated Section 1 of the Sherman Act as they restricted non-cash education-related benefits.²²

The United States Supreme Court heard the case in March 2021 and issued the decision on June 21, 2021.²³ Justice Gorsuch delivered the decision on behalf of a unanimous court, affirming the district court's decision.²⁴ Justice Kavanaugh, writing in concurrence, issued a scathing rebuke of the NCAA's long-touted values of amateurism.²⁵ Kavanaugh specifically tackled the NCAA's position on student-athletes' compensation for NIL, stating, "[t]he bottom line is that the NCAA and its member colleges are suppressing the pay of student athletes who collectively generate *billions* of dollars in revenues for colleges every year."²⁶ "Those enormous sums of money flow to seemingly everyone except the student athletes."²⁷

DOJ Letter to the NCAA

In January of 2021, the Department of Justice ("DOJ") sent a letter to the NCAA informing the organization that it would be in violation of antitrust law if it kept its current NIL policy in place.²⁸ The NCAA replied with some reformed rules, but the DOJ said that even those reformed rules would still be in violation.²⁹ This ultimately led to the NCAA issuing its interim policy, which remained in effect, and essentially abandoning efforts to govern NIL absent federal law.³⁰

NCAA Interim Policy

The NCAA published a one-page interim policy on July 1, 2021.³¹ This policy was meant to be a short-term solution while the NCAA worked with Congress to adopt federal legislation.³² However, no federal legislation has been implemented, and the NCAA provided minimal additional guidance

21. Case Comment, *Sherman Act — Antitrust Law — College Athletics — NCAA v. Alston*, 135 HARV. L. REV. 471, 472 (2021).

22. *NCAA v. Alston*, 594 U.S. 69, 103 (2021).

23. *Id.* at 69.

24. *Id.*

25. *Id.* at 107–08 (Kavanaugh, J., concurring).

26. *Id.* at 110.

27. *Id.*

28. Sarah Polus, *NCAA Tables Name, Image and Likeness Vote After DOJ Warns of Potential Antitrust Violations*, THE HILL (Jan. 12, 2021, 1:30 PM), <https://thehill.com/business-a-lobbying/533830-ncaa-suspends-name-image-and-likeness-vote-after-doj-warns-of-potential/> [<https://perma.cc/WXD3-TGCS>].

29. *Id.*

30. NCAA, NAME, IMAGE, LIKENESS, INTERIM NIL POLICY (2021), https://ncaaorg.s3.amazonaws.com/ncaa/NIL/NIL_InterimPolicy.pdf [<https://perma.cc/R4YK-UCSY>].

31. *Id.*

32. *Id.*

regarding NIL until August 2024.³³ The policy laid out three rules for NCAA student-athletes to adhere to. First, student-athletes and NCAA member schools may not participate in pay-for-play or improper recruiting inducements.³⁴ Second, for schools in states without active NIL laws or executive actions, student-athletes' NCAA eligibility will not be impacted by student-athletes' engagement in NIL activity.³⁵ For schools in states that have active NIL laws or executive actions, student-athletes must comply with the state's laws.³⁶ So long as the student-athletes comply with the state laws, student-athletes' NCAA eligibility will not be impacted by their engagement in NIL activity.³⁷ Lastly, student-athletes are allowed to use a professional services provider, such as an agency, for permissible NIL activities.³⁸ The interim policy also states that the NCAA will continue its normal regulatory operations, but will leave it up to individual states and schools to ensure compliance with their specific laws and executive actions.³⁹ While it is recommended that student-athletes report their NIL activities to the school that they attend and state in which they reside, doing so is not required.⁴⁰ In summary, the interim NIL policy made it such that student-athletes were allowed to receive NIL compensation with few restrictions, provided they complied with applicable state law.⁴¹

NCAA NIL Assist Policy

On August 1, 2024, the NCAA's new NIL Assist Policy took effect.⁴² The launch included a new platform called "NCAA NIL Assist," a voluntary registry where third parties like businesses can seek student-athlete clients and schools can submit anonymous disclosure data.⁴³ The new rules allowed for schools to assist student-athletes in seeking third-party NIL benefits, so long as the student-athletes agreed to disclose deals valued at more than \$600, per guidelines from the Internal Revenue Service (IRS).⁴⁴ The new policy marks a step forward, as the NCAA will now allow student-athletes to receive institutional assistance with securing deals and understanding the tax and intellectual property implications of those agreements.

33. Edward Jordan II, *Opinion: We Need a Federal NIL Framework. It's Long Overdue*, NORTHJERSEY.COM (Sept. 26, 2024, 9:53 AM), <https://www.northjersey.com/story/opinion/2024/09/26/opinion-federal-nil-reform/75362201007/> [<https://perma.cc/42VN-MSF4>]; Meghan Durham Wright, *New NIL, Health and Academic Benefits Take Effect for NCAA Student-Athletes Thursday*, NCAA (Aug. 1, 2024, 9:54 AM), <https://www.ncaa.org/news/2024/8/1/media-center-new-nil-health-and-academic-benefits-take-effect-for-ncaa-student-athletes-aug-1> [<https://perma.cc/6YQJ-63XG>].

34. NCAA, *supra* note 30.

35. NCAA, *supra* note 30.

36. NCAA, *supra* note 30.

37. NCAA, *supra* note 30.

38. NCAA, *supra* note 30.

39. NCAA, *supra* note 30.

40. NCAA, *supra* note 30.

41. NCAA, *supra* note 30.

42. Wright, *supra* note 33.

43. Wright, *supra* note 33.

44. Wright, *supra* note 33.

House v. NCAA Antitrust Class Action Settlement

In 2020, former NCAA student-athletes brought three separate anti-trust cases against the NCAA.⁴⁵ These cases were consolidated into what is now known as *House v. NCAA*.⁴⁶ The plaintiffs alleged that the NCAA and its conferences worked to exploit student-athletes and limit the compensation the student-athletes were entitled to.⁴⁷

On July 26, 2024, the parties submitted settlement documents to Judge Claudia Wilken for the U.S. District Court for Northern California.⁴⁸ Almost five years after litigation started, Judge Wilken granted final approval for the settlement on June 6, 2025.⁴⁹ The settlement permits NCAA member schools that opt into the settlement to compensate their student-athletes directly, with a cap of \$20.5 million for the schools to use for student-athlete compensation in the 2025–26 academic year.⁵⁰ This direct compensation can begin July 1, 2025.⁵¹ This cap will increase annually with new baselines reconfigured periodically.⁵² The settlement also obligates the NCAA and member schools to distribute roughly \$2.576 billion in back pay over a ten-year period to former and current student-athletes who began competing between 2016 and September 2024.⁵³ Eligible student-athletes were required to opt into the settlement by January 31, 2025, to receive any of the settlement money.⁵⁴ The compensation framework established under the *House* settlement is designed to remain in effect for a ten-year period, during which schools that opt in must adhere to its terms.⁵⁵

45. Ranjan Jindal, *Breaking Down the House v. NCAA Settlement and the Possible Future of Revenue Sharing in College Athletics*, THE CHRONICLE (May 27, 2024, 9:08 PM), <https://www.dukechronicle.com/article/2024/05/duke-athletics-ncaa-house-settlement-nil-revenue-sharing-college-sports-hubbard-carter> [https://perma.cc/7WL2-ZPVJ].

46. *Id.*; *House v. NCAA*, 545 F. Supp. 3d 804 (N.D. Cal. 2021).

47. Jindal, *supra* note 45.

48. Jindal, *supra* note 45.

49. Steve Berkowitz, *What Does the NCAA Settlement Mean for College Sports? We Answer the Burning Questions*, USA TODAY (June 7, 2025, 6:01 AM), <https://www.usatoday.com/story/sports/college/2025/06/07/ncaa-revenue-sharing-settlement-questions/83221673007/> [https://perma.cc/JHN7-542C].

50. Eddie Pells, *A \$2.8 Billion Settlement Will Change College Sports Forever: Here's How*, AP NEWS (June 7, 2025, 9:55 AM), <https://apnews.com/article/ncaa-house-settlement-aa3169056e-8194aebf34495641bce0b> [https://perma.cc/A42X-CKCJ].

51. Berkowitz, *supra* note 49.

52. Berkowitz, *supra* note 49.

53. *In re College Athlete NIL Litig.*, No. 20-cv-03919, 2025 WL 1675820, at *5 (N.D. Cal. June 6, 2025).

54. *House v. NCAA Settlement Explained*, UNIV. OF CIN. (Jan. 29, 2025), <https://gobearcats.com/news/2025/1/29/general-house-vs-ncaa-settlement-explained.aspx> [https://perma.cc/D7LP-MBHX].

55. Justin Williams, *New Filings in House v. NCAA Maintain Roster Limits as Settlement Awaits Final Approval*, THE ATHLETIC (Apr. 15, 2025), <https://www.nytimes.com/athletic/6280682/2025/04/15/house-v-ncaa-settlement-roster-limits/> [https://perma.cc/6VZA-XJU8].

Although objections were raised, new roster limits will replace the current scholarship limits.⁵⁶ One of the final issues before Judge Wilken approved the settlement was what to do with current athletes who may lose their spots as a result of roster limits.⁵⁷ In the final approval, the answer is schools now have the option to designate certain qualifying student-athletes to be “grandfathered” in, essentially not counting as one of the roster spots under the limit.⁵⁸ This designation will follow them throughout their collegiate careers, even if they transfer schools.⁵⁹ The roster limits are intended to preserve some measure of competitive equity across schools and sports, but they will also reduce the opportunities for walk-ons in certain sports.⁶⁰

The settlement has drawn criticism and raises potential negative consequences, particularly due to its disproportionate focus on football and men’s basketball. After Judge Wilken approved the settlement, a group of female athletes who competed in volleyball, soccer, and track appealed the back pay portion claiming it violated Title IX and would not give female athletes their fair share of back pay.⁶¹ The impending compensation for student-athletes will also benefit student-athletes in football and men’s basketball significantly more than women’s sports or Olympic sports.⁶² “The generally acknowledged breakdown of payments is along these parameters: 75% to football players, 15% to men’s basketball players, 5% to women’s basketball players and 5% to all other sports combined.”⁶³ It remains to be seen how college sports will navigate this new landscape in a way that ensures the survival and fair treatment of sports outside of football and men’s basketball.

The *House* settlement does not eliminate collectives, the subject of this Article, so the discussion below continues to be relevant even after the settlement. However, the settlement does allow the NCAA to prohibit payments from “Associated Entities or Individuals” if they are “not for a valid business purpose” or if the compensation is not at fair market

56. Steve Berkowitz, *House vs. NCAA Settlement Gets Possible Revisions, but Not on Roster Limits*, USA TODAY (Apr. 15, 2025, 2:33 AM), <https://www.usatoday.com/story/sports/college/2025/04/15/house-vs-ncaa-settlement-gets-possible-revisions-but-not-on-roster-limits/83093440007/> [<https://perma.cc/U39R-37GS>].

57. See Berkowitz, *supra* note 49.

58. Berkowitz, *supra* note 49.

59. Berkowitz, *supra* note 49.

60. Kelsey Dallas, *Roster Limits in the Spotlight as Plan for Revenue Sharing with College Athletes Nears Final Approval*, DESERET NEWS (Apr. 16, 2025, 8:36 AM), <https://www.deseret.com/sports/2025/04/16/house-ncaa-settlement-roster-limits/> [<https://perma.cc/G96W-Y7VR>].

61. Ben Nuckols, *Female Athletes Appeal Landmark NCAA Settlement, Saying It Violates Federal Antidiscrimination Law*, AP NEWS (June 12, 2025, 8:19 AM), <https://apnews.com/article/ncaa-house-settlement-appeal-female-athletes-e2864d7bcd74d0c538c1f2e6c98fe6c> [<https://perma.cc/TSP8-W5B3>].

62. Pat Forde, *Grant House Prevails in Landmark Settlement, But Olympic Sports Will Be Severely Affected*, SPORTS ILLUSTRATED (June 7, 2025), <https://www.si.com/college/grant-house-prevails-in-landmark-settlement-but-olympic-sports-will-be-severely-affected> [<https://perma.cc/H39U-CS3W>].

63. *Id.*

value.⁶⁴ Collectives fall into this Associated Entity category.⁶⁵ This potentially restricts the way collectives compensate student-athletes, though it is unclear how much this will alter current practices. Further, the schools' ability to pay student-athletes directly may impact the influence and utilization of collectives and NIL compensation generally in ways that are unforeseeable at the time of this Article's publication.

Johnson v. NCAA

Following *House*, the next significant case addressing payments to student-athletes is *Johnson v. NCAA*, which may determine whether student-athletes qualify as employees.⁶⁶ The plaintiffs filed the original complaint in 2019, and the case could proceed to trial next year absent a settlement.⁶⁷ The employment question could also prompt federal legislation aimed at resolving the issue.⁶⁸ Student-athletes becoming employees of their school would send shockwaves throughout the entire system. It is difficult to predict the precise impact this case will have on collectives; nevertheless, it is a development that the sports and NIL sectors will be monitoring closely as the litigation unfolds. For the time being, collectives remain an essential component of the student-athlete compensation system, even if they ultimately represent only one chapter in the broader narrative concerning employment status. This Article will now examine collectives, including their various forms, operational mechanisms, regulatory frameworks, and overall impact on college athletics.

DEFINITION AND ROLE OF COLLECTIVES

Following the adoption of the NCAA interim policy, student-athletes were immediately able to engage in NIL activities, including hosting camps, signing autographs, making appearances, and selling merchandise.⁶⁹ This gave rise to a host of new opportunities, not just for student-athletes, but third parties such as external companies as well—namely the NIL collective. Because the collective concept developed out of the relatively loose interim policy, NIL collectives emerged in a legal gray area due to the NCAA's limited guidance, and consequences for improper actions are vague and confusing.

64. *In re College Athlete NIL Litig.*, No. 20-cv-03919, 2025 WL 1675820, at *29 (N.D. Cal. June 6, 2025).

65. *See id.*; Question and Answer: Impact of the Proposed Settlement on Current Division I Student-Athletes, *In re College Athlete NIL Litig.*, No. 20-cv-03919 (N.D. Cal. Dec. 23, 2024).

66. Seth Emerson, *The College Sports Employment Case That Looms as the NCAA's Next Pivotal Court Battle*, THE ATHLETIC (June 12, 2025), <https://www.nytimes.com/athletic/6416474/2025/06/12/johnson-vs-ncaa-case-college-sports-employees/> [https://perma.cc/3NE7-CKXC].

67. *Id.*

68. *Id.*

69. Dallas, *supra* note 60.

A “collective” is an organization formed to benefit student-athletes through the creation, facilitation, and funding of NIL deals.⁷⁰ While the NCAA has yet to explicitly define such entities, collectives effectively operate as a vehicle for donors to pool money together for the purpose of compensating student-athletes in exchange for the use of student-athletes’ NIL in brand ambassador roles, personal appearances, camps, clinics, and more.⁷¹ It is important to note that collectives are not formally associated with their respective schools, although in practice, they exist to benefit a specific organization.⁷² For example, the Dinkytown Athletes collective is the official NIL collective of Gopher Athletics but has no affiliation with the University of Minnesota beyond that paid sponsorship title.⁷³ For collectives, this means that they cannot participate in recruiting activities for the school.⁷⁴ For schools, this means their staff (coaches, athletic department staff, etc.) cannot market, negotiate, or secure NIL deals on behalf of student-athletes.⁷⁵ They also cannot donate directly to the collective.⁷⁶ However, school staff may direct fans to donate to specific collectives and may assist collectives in fundraising by making appearances at events, handing out autographs to collective members, etc.⁷⁷

More recent NCAA guidelines permit more communication and collaboration between the collectives and the schools, allowing the two parties to work more closely together to ensure student-athletes are in compliance with school policies, NCAA rules and regulations, and state laws.⁷⁸

TYPES OF COLLECTIVES

Several types of collectives currently exist, and it is helpful to distinguish the various forms to further understand how collectives function in the marketplace.

70. *Tracker: University-Specific NIL Collectives*, BUS. COLL. SPORTS, <https://businessofcollegesports.com/tracker-university-specific-nil-collectives/> [https://perma.cc/3WZP-4EPV] (last updated July 24, 2024); Austin Arnold, Matthew Geiszler & John McKinley, *Most NIL Collectives Likely Ineligible for Tax-Exempt Status, IRS Advises*, J. ACCOUNTANCY (Sept. 1, 2023), <https://www.journalofaccountancy.com/issues/2023/sep/most-nil-collectives-likely-eligible-for-tax-exempt-status-ia-advises.html> [https://perma.cc/K2U9-JFGL].

71. *Name, Image, Likeness*, NCSA COLL. RECRUITING, <https://www.ncsasports.org/name-image-likeness> [https://perma.cc/M556-LG7P] (last updated Dec. 6, 2024).

72. Ubben & DeMeyer, *supra* note 1.

73. *FAQs*, DINKYTOWN ATHLETES, <https://dinkytownathletes.com/faq/> [https://perma.cc/D4BG-5QPX] (last visited Dec. 20, 2024).

74. *See id.*

75. *Minnesota NIL: More Information*, GOPHER SPORTS, <https://gophersports.com/sports/2021/9/7/Minnesota-NIL> [https://perma.cc/V7QK-YLP4] (last visited Jan. 9, 2024).

76. Ubben & DeMeyer, *supra* note 1.

77. Ubben & DeMeyer, *supra* note 1.

78. Ubben & DeMeyer, *supra* note 1; GOPHER SPORTS, *supra* note 75; *Understanding How NIL Collectives Work*, ROOTNOTE (June 30, 2023), <https://rootnote.co/understanding-how-nil-collectives-work/> [https://perma.cc/Q7JN-NFVA].

Donor Collective

One of the most common types of collectives is the “donor collective.”⁷⁹ In this structure, members donate directly to the collective, and the collective pays the student-athletes.⁸⁰ Donors may contribute to a specific student-athlete or athletic program that they want to support and/or receive services from.⁸¹ In order to maintain their NCAA eligibility, student-athletes must complete a deliverable for the collective in exchange for payment, such as appearances at donor events, social media posts promoting donor businesses, and other similar services.⁸² Essentially, the donors pool together funds to support the student-athletes, and the collective creates opportunities for the student-athletes to give back to the donors.⁸³ Importantly, student-athletes *cannot* be paid for athletic performance, achievement, or participation.⁸⁴ Such prohibition also extends to compensation made contingent on a student-athlete’s enrollment at a specific school or player performance.⁸⁵ For example, a donor cannot make a deal to pay a student-athlete \$50,000 if the student-athlete averages eighteen points per game during the basketball season.

Donor collectives will often offer tiered memberships that provide members with different perks based on their level of contribution.⁸⁶ Members generally consist of boosters (as defined by the NCAA), fans, and supporters, varying greatly in contribution size and frequency.⁸⁷ This structure is most similar to the well-known booster concept, but attempts to provide more transparency and protect student-athletes from corrupt recruiting practices when utilized and implemented correctly.⁸⁸

Donor Collective Example: Dinkytown Athletes

Dinkytown Athletes (“DTA”) is the official NIL Collective of the University of Minnesota’s Gopher Athletics, and representative of a typical

79. ROOTNOTE, *supra* note 78.

80. ROOTNOTE, *supra* note 78.

81. DINKYTOWN ATHLETES, *supra* note 73.

82. Ubben & DeMeyer, *supra* note 1.

83. *Name, Image, and Likeness (NIL) Collectives*, TAXPAYER ADVOC. SERV. (Mar. 7, 2023), <https://www.taxpayeradvocate.irs.gov/get-help/general/nil/nil-collectives/> [https://perma.cc/6KP5-Z7EY].

84. Ubben & DeMeyer, *supra* note 1.

85. Ubben & DeMeyer, *supra* note 1.

86. William Lawrence, *In Effort to Rein in NIL Collectives, the NCAA’s Newest NIL Missive Upends U.S. Jurisprudence and Contradicts the NCAA’s Prior NIL Missives*, BURR & FORMAN LLP (Feb. 15, 2023), <https://www.burr.com/newsroom/articles/in-effort-to-rein-in-nil-collectives-the-ncaas-newest-nil-missive-upends-u-s-jurisprudence-and-contradicts-the-ncaas-prior-nil-missives> [https://perma.cc/94Y6-YDPR].

87. See Andrew Petcash, *The 3 NIL Collectives Transforming College Sports and Why the NCAA Might Ban One of Them*, PROFLUENCE SPORTS (Feb. 18, 2022), <https://www.petcashpost.com/p/the-3-nil-collectives-transforming> [https://perma.cc/8WSS-WENP].

88. ROOTNOTE, *supra* note 78.

donor collective structure.⁸⁹ DTA provides a platform for student-athletes at the University of Minnesota to engage in NIL activities with DTA members.⁹⁰ DTA does not engage student-athletes with an agent. Rather, DTA connects student-athletes with fans, businesses, and people who are members of the collective and want to engage with the student-athlete.⁹¹ Because DTA does not connect student-athletes with an agent and only connects student-athletes with its members, DTA is considered a donor collective. DTA also provides five different member tier levels based on monthly or annual donations.⁹²

Marketplace Collective

Another type of collective is a “marketplace collective.” In a marketplace collective model, the collective acts as a middleman, connecting student-athletes to third-party endorsement opportunities.⁹³ It effectively provides a place for businesses and student-athletes to meet and create profitable relationships.⁹⁴ This type of collective may employ members to act in a similar function to agents, facilitating deals between student-athletes and local and national brands.⁹⁵ In contrast to donor collectives, regarding NCAA eligibility, student-athletes are not required to provide a service in exchange for these marketplace collective deals; permitted use of their NIL is sufficient.⁹⁶

Marketplace Collective Example: MarketPryce

MarketPryce matches brands with student-athletes in a straightforward manner, eliminating the need for an agent by using uncomplicated contracts.⁹⁷ It is free for student-athletes to participate, while brands have to pay a monthly subscription ranging from \$999 to \$2,999. The platform operates on a mutual selection model, requiring both student-athletes and brands to express reciprocal interest in order to initiate a partnership.⁹⁸ To get started, student-athletes fill out a questionnaire about their interests and link their social media accounts.⁹⁹ The product seems geared towards smaller brands that rely on influencer marketing tactics. It is unclear how

89. DINKYTOWN ATHLETES, *supra* note 73.

90. DINKYTOWN ATHLETES, *supra* note 73.

91. DINKYTOWN ATHLETES, *supra* note 73.

92. *Home*, DINKYTOWN ATHLETES, <https://dinkytownathletes.com/> [<https://perma.cc/24L9-U854>] (last visited Mar. 14, 2025).

93. ROOTNOTE, *supra* note 78.

94. *See* ROOTNOTE, *supra* note 78; TAXPAYER ADVOC. SERV., *supra* note 83.

95. *See* ROOTNOTE, *supra* note 78.

96. *See* ROOTNOTE, *supra* note 78.

97. MARKETPRYCE, <https://www.marketpryce.com> [<https://perma.cc/D923-PBVA>] (last visited Mar. 26, 2024).

98. *Brands*, MARKETPRYCE, <https://www.marketpryce.com/brands> [<https://perma.cc/W3Y2-NFDL>] (last visited Mar. 26, 2024).

99. *Athletes*, MARKETPRYCE, <https://www.marketpryce.com/athletes> [<https://perma.cc/J9HJ-N6DL>] (last visited Mar. 26, 2024).

many brands or students participate in this collective, or how successful the matching process is.

Dual Collective

Lastly, there are “dual collectives,” which combine aspects of both donor collectives and marketplace collectives.¹⁰⁰ Dual collectives have the flexibility to accept donor contributions *and* facilitate business deals for student-athletes.¹⁰¹ This allows student-athletes to have the greatest profitability through the use of their NIL. In this model, donors may contribute to the collective, but such contributions may be allocated to pay for operating costs if not directed to a specific exchange-for-services.¹⁰²

Dual Collective Example: Men of Westwood

The Men of Westwood collective (“MoW”) is the official NIL collective of UCLA and focuses specifically on the UCLA football and basketball teams.¹⁰³ The MoW facilitates student-athletes’ NIL opportunities, including autograph and memorabilia signing; camps and clinics; charity events; social media promotions, mentions, and campaigns; NFTs; commercials; and several other categories.¹⁰⁴ The MoW also assists student-athletes who want to enter into third-party NIL agreements with businesses.¹⁰⁵ As an additional requirement for MoW student-athletes, they must also undertake some form of charitable work.¹⁰⁶

Boosters and Collectives

To understand the abilities and limitations of collectives, it is also important to understand the booster status of collectives. The NCAA issued guidance clarifying the definition of “booster” as “any third-party entity that promotes an athletics program, assists with recruiting or assists with providing benefits to recruits, enrolled student-athletes or their family members.”¹⁰⁷ The NCAA’s guidance does not explicitly include collectives

100. ROOTNOTE, *supra* note 78.

101. ROOTNOTE, *supra* note 78.

102. ROOTNOTE, *supra* note 78.

103. *Frequently Asked Questions*, MEN OF WESTWOOD, <https://menofwestwood.com/faq/index.html> [<https://perma.cc/44XW-SA3V>] (last visited Mar. 14, 2025).

104. *Id.*

105. *Id.*

106. *Home*, MEN OF WESTWOOD, <https://menofwestwood.com/index.html> [<https://perma.cc/TDJ5-ZJKH>] (last visited Mar. 14, 2025).

107. Michelle Brutlag Hosick, *DI Board of Directors Issues Name, Image and Likeness Guidance to Schools*, NCAA (May 9, 2022, 5:21 PM), <https://www.ncaa.org/news/2022/5/9/media-center-di-board-of-directors-issues-name-image-and-likeness-guidance-to-schools.aspx> [<https://perma.cc/AU5F-UAUQ>].

in its booster definition.¹⁰⁸ However, in a clarifying document the NCAA stated that “[i]f an individual or NIL entity’s (e.g., collective) sole or primary purpose is to engage in NIL activities with student-athletes from a specific institution, such individual or NIL entity would be considered a booster.”¹⁰⁹ Therefore, collectives are generally considered to be boosters and are subject to the same restrictions as boosters, meaning collectives are precluded from recruiting and providing benefits to prospective student-athletes.¹¹⁰

TAX STATUS OF COLLECTIVES

The tax status of collectives poses a threat to their operation. In March of 2023, the Internal Revenue Service Office of the Chief Counsel concluded that NIL collectives generally have a substantial nonexempt purpose and serve the private interests of student-athletes (“IRS Memo”).¹¹¹ The IRS Memo describes NIL collectives as “organizations . . . established by boosters and fans of one or more of a university’s athletic programs to develop and fund, or otherwise facilitate, NIL deals for student-athletes.”¹¹² The IRS further distinguishes between collectives and “Nonprofit NIL collectives.”¹¹³ Nonprofit NIL collectives raise awareness and support for the nonprofit NIL collective and/or its charitable partners.¹¹⁴ These entities also compensate student-athletes for use of their NIL in collective activities.¹¹⁵ Section 501(c)(3) of the Internal Revenue Code provides a tax exemption for entities organized and operated exclusively for one or more exempt purposes which include charitable and educational purposes.¹¹⁶ To determine whether an organization is operated exclusively for exempt purposes, the operational test is applied.¹¹⁷ If there is a single nonexempt purpose that is substantial in nature, the organization will be precluded from 501(c)(3) status.¹¹⁸ If the organization is operated for the benefit of

108. *Id.*

109. NCAA, NAME, IMAGE AND LIKENESS POLICY QUESTION & ANSWER 1 (2022), https://ncaaorg.s3.amazonaws.com/ncaa/NIL/July2022NIL_DIInterimPolicy.pdf [https://perma.cc/FLM2-TCHC].

110. *See id.*

111. I.R.S. Chief Couns. Mem. AM 2023-004 at 2 (May 23, 2023).

112. *Id.* at 2 (citing *Taking the Buzzer Beater to the Bank: Protecting College Athletes’ NIL Dealmaking Rights: Hearing Before the Subcomm. on Innovation, Data, & Commerce of the H. Comm. on Energy and Commerce*, 118th Cong. (2023) (hearing memorandum) (“NIL Collectives are a third-party collection of fans and boosters who pool together capital to compensate athletes who play for a given school. Over 250 collectives have been formed nationwide and nearly one-third of collectives have a nonprofit status.”)).

113. *Id.* at 2–3.

114. *Id.* at 3.

115. *See id.*

116. 26 C.F.R. § 1.501(c)(3)-1(c)(1) (2025).

117. *See* I.R.S. Chief Couns. Mem., *supra* note 111, at 6 (citing *B.S.W. Group, Inc. v. Comm’r*, 70 T.C. 352, 358 (1978); *Est of Hawaii v. Comm’r*, 71 T.C. 1067, 1079 (1979)).

118. *See* *Better Bus. Bureau of Wash., D.C., Inc. v. United States*, 326 U.S. 279, 283 (1945).

private interests, instead of the public, then it will have a nonexempt purpose and not maintain 501(c)(3) status.¹¹⁹ If the private benefits are only occasional, an organization could still qualify.¹²⁰

This analysis is significant because the compensation student-athletes receive is a major part of the NIL collectives. The IRS Memo goes on to say the private benefit that student-athletes receive from these nonprofit NIL collectives is not just a byproduct, but a fundamental part of the organization's activities.¹²¹ The Chief Counsel believes that nonprofit NIL collectives will serve private interests "more than incidentally," especially for collectives that intend to pay student-athletes all funds after payment of their administrative expenses.¹²² Therefore, the IRS Memo concludes that many collectives are not tax exempt under Section 501(c)(3) "because the private benefits they provide to student-athletes are not incidental both qualitatively and quantitatively to any exempt purpose furthered by that activity."¹²³

It is unclear whether or how collectives will alter their business models following the IRS Memo. Some collectives have lost or withdrawn their 501(c)(3) status as a result—and donors should be cautious.

Tax Exempt Collective Example: The Foundation

The Foundation was established as a 501(c)(3) tax exempt entity in February of 2022.¹²⁴ The Foundation's goal is to use football and men's basketball players at The Ohio State University ("OSU") as "brand ambassadors" and to help local charities and organizations.¹²⁵ It was established to help student-athletes by providing them NIL deals, as well as teaching student-athletes about the importance of giving back to their community.¹²⁶ Student-athletes gain "invaluable" experience working with at least five charity partners, and "[t]he charit[ies] will also benefit based on the exposure in which they receive."¹²⁷ The Foundation claims no affiliation with OSU, but indicates that donations will go towards specific OSU football and men's basketball student-athletes.¹²⁸ The determination of which student-athletes receive compensation is based on "what [the Board] feel[s] is in the best interest of the Ohio State Football & Basketball programs

119. I.R.S. Chief Couns. Mem., *supra* note 111, at 2.

120. I.R.S. Chief Couns. Mem., *supra* note 111, at 11.

121. I.R.S. Chief Couns. Mem., *supra* note 111, at 8.

122. I.R.S. Chief Couns. Mem., *supra* note 111, at 8.

123. I.R.S. Chief Couns. Mem., *supra* note 111, at 12.

124. *About*, THE FOUNDATION, <https://www.thefoundationohio.com/about/> [<https://perma.cc/H7TA-ASYJ>] (last visited Feb. 22, 2024) [hereinafter *About*].

125. *Id.*

126. *Frequently Asked Questions*, THE FOUNDATION, <https://www.thefoundationohio.com/faq/> [<https://perma.cc/4HAY-5Q4U>] (last visited Feb. 22, 2024) [hereinafter *FAQ*].

127. *Our Trusted Charities*, THE FOUNDATION, <https://www.thefoundationohio.com/charities/> [<https://perma.cc/7R46-CFXQ>] (last visited Feb. 22, 2024).

128. *FAQ*, *supra* note 126.

[and] . . . consider which athletes will help raise the most awareness for charitable purposes.”¹²⁹ The Foundation claims that donated funds may qualify as tax-deductible, though this may be in tension with IRS guidance issued in 2023.¹³⁰ OSU recently consolidated its NIL collectives, including The Foundation, into the newly formed Buckeye Sports Group to centralize athlete support and resource allocation, signaling a potential trend toward university-managed collectives that could further reshape the landscape of athlete compensation and collective organization going forward.¹³¹

COLLECTIVES AS PAY-FOR-PLAY SCHEMES

Those who advocate for a federal NIL law argue that collectives are de facto pay-for-play organizations that are not actually separate from the school itself.¹³² Although collectives are not formally associated with their respective schools, and athletic directors and coaches do not control where the collective’s money is allocated, the school’s influence on the allocation of money is clear.¹³³ Because collectives operate outside of “institutional control,” they are not required to comply with Title IX, which means a collective’s money is often allocated to “high revenue sports” like men’s football and basketball.¹³⁴ Additionally, collectives will give substantial money to make student-athletes “brand ambassadors,” but it is often unclear what such a role requires of the student-athlete besides playing for their team.¹³⁵

The Big Ten Conference is an example of an organization that has shown skepticism as it relates to collective behavior in the NIL industry. The Big Ten released a statement in response to the formation of the collective landscape.¹³⁶ In a July 2023 statement, the newly appointed Big Ten Commissioner, Tony Petitti, expressed his concern that the current structure of NIL in college athletics is essentially a pay-for-play system under a different name.¹³⁷ He identified student-athletes’ ability to take advantage of their marketing rights as “true NIL.”¹³⁸ Petitti also criticized collectives as being pay-for-play systems that drive impermissible recruitment activities and use of the transfer portal, although he did so without explicitly naming

129. *FAQ*, *supra* note 126.

130. *See FAQ*, *supra* note 126.

131. *General Athletics and Learfield Launch Buckeye Sports Group*, OHIO STATE UNIV. (June 9, 2025), <https://ohiostatebuckeyes.com/news/2025/6/9/general-athletics-and-learfield-launch-buckeye-sports-group> [<https://perma.cc/Q8CA-3AC9>].

132. *See* I.R.S. Chief Couns. Mem., *supra* note 111.

133. *See* Ubben & DeMeyer, *supra* note 1.

134. *See* Jack Ankony, *Big Ten Commissioner Tony Petitti Wants ‘True NIL,’ Concerned It’s Now a Pay-for-Play System*, SPORTS ILLUSTRATED (July 26, 2023), <https://www.si.com/college/indiana/football/big-ten-commissioner-tony-petitti-wants-true-nil-concerned-its-now-a-pay-for-play-system> [<https://perma.cc/8JBE-CL57>].

135. *See About*, *supra* note 124; *FAQ*, *supra* note 126.

136. *See* Ankony, *supra* note 134.

137. Ankony, *supra* note 134.

138. Ankony, *supra* note 134.

collectives.¹³⁹ He went on to say that the Big Ten has reason to be wary of the impact of collectives on recruitment and the transfer portal.¹⁴⁰ Conferences have been backing up the NCAA and supporting more systemic oversight as proposed in several versions of NIL bills at the federal level.¹⁴¹ With a new commissioner in place, it would not be surprising if the Big Ten changes or adds an NIL-specific policy. However, the conference will likely wait for a federal law, so as to not alienate top high school recruits and transfer talent who hope to capitalize on NIL through collectives.

IMPERMISSIBLE RECRUITING

Recruiting efforts are conducted against the backdrop of the NCAA's restrictions on third-party coordination. Successful modern coaches and schools have generally embraced the growing impact of NIL on recruiting. While other coaches have expressed dissatisfaction with the current nature of NIL and the lack of regulation,¹⁴² many Division I schools have affiliated collectives. The current recruiting landscape is inextricable from collectives' offering compensation for NIL. Coaches have implored donors to

139. Ankony, *supra* note 134.

140. See Ankony, *supra* note 134. In 2020, top recruit Quinn Ewers decommitted from the University of Texas and skipped his senior year of high school to reclassify and enter into the class of 2021 at Ohio State University. Griffin Conant, *Texas QB Quinn Ewers Reveals Reason He Committed to Ohio State as a Recruit*, ATHLON SPORTS (Jan. 7, 2025, 7:16 PM), <https://athlonsports.com/college/texas-longhorns/texas-qb-quinn-ewers-reveals-reason-he-committed-to-ohio-state-as-a-recruit> [https://perma.cc/CC45-SUYC]. Texas's state law did not allow high school students to enter into NIL deals, and there is a lot of speculation that that is why he reclassified and skipped his senior year of high school. *Id.* Upon arriving at Ohio State, Ewers promptly signed a three-year \$1.4 million deal with GT Sports Marketing. Tom VanHaaren, *Ohio State Buckeyes QB Quinn Ewers has NIL deal for \$1.4 Million, Source Says*, ESPN (Aug. 31, 2021, 2:22 PM), https://www.espn.com/college-football/story/_/id/32120440/ohio-state-buckeyes-qb-quinn-ewers-nil-deal-14-million-source-says [https://perma.cc/7CT3-3UPT]. Collectives get around pay-for-play accusations by making their student-athletes "brand ambassadors." Nicole Auerbach & Stewart Mandel, *The Future of College Football, Inc.: Where the Sport's Money and Management Go from Here*, THE ATHLETIC (Sept. 27, 2022), <https://www.nytimes.com/athletic/3627099/2022/09/27/college-football-ncaa-breakaway-revenue-sharing/> [https://perma.cc/KHF2-FA4J]. Ewers joined Ohio State in August of 2021 and entered the transfer portal that same year. Paolo Uggetti, *Ohio State Quarterback Quinn Ewers Enters Transfer Portal*, ESPN (Dec. 3, 2021), https://www.espn.com/college-football/story/_/id/32781078/ohio-state-quarterback-quinn-ewers-set-enter-transfer-portal [https://perma.cc/HSV8-XPCY]. In December 2021, Ewers recommitted to Texas. Tom VanHaaren, *Former 5-Star Recruit Quinn Ewers Will Join Texas Football as Transfer QB, Have Four Years of Eligibility*, ESPN (Dec. 12, 2021), https://www.espn.com/college-football/story/_/id/32856030/former-5-star-recruit-quinn-ewers-join-texas-football-transfer-qb-four-years-eligibility [https://perma.cc/AM7H-NABS].

141. See Erin Doherty, *Major College Conferences Team Up on Federal NIL Legislation*, AXIOS (Nov. 1, 2023), <https://www.axios.com/2023/11/01/college-sports-nil-deals-congress> [https://perma.cc/WZX8-5SWD].

142. See Daniel Chavkin, *Syracuse's Jim Boeheim Blasted for Claiming ACC Foes 'Bought' Their Teams*, SPORTS ILLUSTRATED (Feb. 5, 2023), <https://www.si.com/college/2023/02/05/syracuse-jim-boeheim-acc-teams-bought-nil-wake-forest-miami-pitt> [https://perma.cc/W4ME-YSPV]; Zach Lentz, *Dabo Swinney Clarifies NIL Stance; 'Not Everybody Does Much Research'*, SPORTS ILLUSTRATED (July 20, 2021), <https://www.si.com/college/clemson/football/dabo-swinney-clarifies-nil-stance-not-everybody-does-much-research> [https://perma.cc/E9XT-H44Q].

funnel money to NIL entities¹⁴³ and commented on the state of the recruiting market.¹⁴⁴ While the intangible qualities of a Division I athletic program's academic reputation, relationships with coaches, and opportunities for playing time still have an effect on a prospective student-athlete's decision to attend a particular school, NIL opportunities will likely become a major force in recruitment. Prospective student-athletes may factor in the NIL opportunities that will be available to them at a given university before making a commitment to enroll. Coaches have been candid about how important NIL has become not only in recruitment, but in retention efforts as well.¹⁴⁵ When a student-athlete decommits or transfers to another school, NIL money is often a significant factor.¹⁴⁶ While still important, recruiting from high schools has waned in importance with the rise of NIL and liberalization of the transfer portal.¹⁴⁷ Many players spend a season with smaller schools, with the best performers translating their skills into cash.¹⁴⁸ With the market still in its early stages and undergoing a great deal of fluctuation, it is still too early to determine the norms developing around recruiting with NIL incentives.

143. See Joe Nelson, *Gophers' PJ Fleck: Without NIL Money, We Can't Keep Team Intact*, SPORTS ILLUSTRATED (Nov. 13, 2023), <https://www.si.com/fannation/bringmethesports/gophers/gophers-pj-fleck-without-nil-money-we-cant-keep-team-intact> [https://perma.cc/XS9A-VSKP].

144. Bryan Clinton, *Matt Rhule Says a Good QB in the Portal Can Cost \$2 Million*, HEARTLAND COLL. SPORTS (Nov. 29, 2023), <https://www.heartlandcollegesports.com/2023/11/29/matt-rhule-says-a-good-qb-in-the-portal-can-cost-2-million/> [https://perma.cc/5B9Z-5PDE]; Josh Tolle, *Five-Star OT Jordan Seaton Turned Down "Multi-Million Dollar" NIL Deal from Tennessee Before Committing to Colorado, Sources Say*, SPORTS ILLUSTRATED (Dec. 12, 2023), <https://www.si.com/college/colorado/football/five-star-ot-jordan-seaton-turned-down-multi-million-dollar-nil-deal-from-tennessee-before-committing-to-colorado-sources-say> [https://perma.cc/BB2C-BCZS]; BuffsBeat Staff, *Travis Hunter Offered \$1.5 Million NIL Deal to Leave CU, According to Prime*, SPORTS ILLUSTRATED (June 15, 2023), <https://www.si.com/college/colorado/football/travis-hunter-offered-nil-deal-to-leave-cu-according-to-prime> [https://perma.cc/9CX8-PNB2].

145. See Marcus Trevino, *In the Loop: Firing Mike Boynton Would be a Band-Aid Solution*, STILLWATER NEWS PRESS (Feb. 16, 2024), https://www.stwnewspress.com/sports/in-the-loop-firing-mike-boynton-would-be-a-band-aid-solution/article_89d1d364-cd2c-11ee-9ff8-d3d1cfc37a6d.html [https://perma.cc/5TEK-RD3R] ("What I had to do to get Cade Cunningham here was way more difficult than what it takes to get players on campus now . . . when you can say, 'Hey, here's \$500,000 to spend 9 months over here.'"); Logan Newman, *5-Star Kady Proctor Says He's Receiving Less NIL Money with Flip to Alabama*, USA TODAY HIGH SCH. SPORTS (Jan. 7, 2023, 6:06 PM), <https://usatodayhss.com/2023/5-star-kadyn-proctor-says-hes-receiving-less-nil-money-with-flip-to-alabama> [https://perma.cc/X8NW-PKFK].

146. See Jesse Dougherty, *College Football Coaches Are Begging Fans for NIL Money. Does it Work?*, WASH. POST (Dec. 6, 2023, 10:55 AM), <https://www.washingtonpost.com/sports/2023/12/06/college-football-coaches-nil-money/> [https://perma.cc/MAQ7-8XLK].

147. See Cole Forsman, *How the NCAA Basketball Transfer Portal Has Changed the Emphasis on Recruiting High School Players*, SPORTS ILLUSTRATED (Feb. 13, 2024), <https://www.si.com/college/gonzaga/basketball/how-the-ncaa-basketball-transfer-portal-has-changed-the-emphasis-on-recruiting-high-school-players-> [https://perma.cc/43CN-Z373].

148. See Ross Dellenger, *As College Football's Elite is Engulfed in a Power Struggle, G5 Left Just Trying to Survive: 'We Are a Farm System,'* YAHOO! SPORTS (Feb. 19, 2024), <https://sports.yahoo.com/as-college-footballs-elite-is-engulfed-in-a-power-struggle-g5-left-just-trying-to-survive-we-are-a-farm-system-140058685.html> [https://perma.cc/8R8G-27UU].

NCAA Investigation of Impermissible Recruiting Involving Collectives

In October of 2022, the NCAA decided to allow school personnel, including coaches, to assist collectives with funding.¹⁴⁹ While this allowance has opened opportunities for coaches to interact with collectives, it has also blurred the lines on what constitutes impermissible recruiting. Coaches are allowed to recruit prospective student-athletes—who are allowed to sign contracts with collectives once committed—and collectives can work with said coaches to raise money.¹⁵⁰ While such conduct is permissible, the NCAA forbids collectives from recruiting potential student-athletes, and collectives cannot offer agreements contingent on enrollment at a particular school.¹⁵¹

In January of 2024, the NCAA sanctioned the Florida State University football program for a recruiting violation that occurred in April of 2022.¹⁵² The violation centered on an assistant coach arranging a meeting between a potential student-athlete in the transfer portal and a booster who was the head of a collective associated with Florida State University, “Rising Spear.”¹⁵³ While the assistant coach did not attend the meeting between the parties, he did transport the prospective student-athlete and family members to and from the meeting place.¹⁵⁴ Notably, the booster explicitly offered an NIL opportunity to the prospective student-athlete.¹⁵⁵ The NCAA, in a negotiated resolution concerned with the recruitment of women’s basketball players and social media stars Haley and Hanna Cavin-der by the University of Miami’s women’s basketball program in February of 2023, had earlier indicated a suspicion of collectives explicitly offering NIL opportunities.¹⁵⁶ Though the prospective student-athletes met with the

149. NCAA DIVISION I BOARD OF DIRECTORS, INSTITUTIONAL INVOLVEMENT IN A STUDENT ATHLETE’S NAME, IMAGE AND LIKENESS ACTIVITIES (Oct. 26, 2022), [https://perma.cc/QW3R-WMYJ].

150. *Id.*; Email from NCAA National Office to NCAA Division I Athletics Directors, Conference Commissioners, Presidents and Chancellors, Senior Compliance Administrators, Sports Information Directors, Student-Athlete Affairs Administrators, and Senior Woman Administrators (June 27, 2023), https://mc97gsxn49y6wmpf4p2n764zq7z1.pub.sfmc-content.com/2ezhy1105pc [https://perma.cc/SJ73-3BK9].

151. Email from NCAA National Office, *supra* note 150; NCAA, DIVISION I 2024–25 MANUAL 92, ART. 13 § 13.2. (2024), https://www.ncaapublications.com/productdownloads/D125.pdf [https://perma.cc/ZS4P-J63J] [hereinafter DIVISION I 2024–25 MANUAL].

152. NCAA, NEGOTIATED RESOLUTION: FLORIDA STATE UNIVERSITY – CASE NO. 020169 (Jan. 12, 2024), https://ncaaorg.s3.amazonaws.com/infractions/decisions/Jan2024D1INF_FloridaStateNegotiatedResolution.pdf [https://perma.cc/EU2K-32ZU] [hereinafter NCAA FSU NEGOTIATED RESOLUTION].

153. Tommy Mire, *Rising Spear Releases Statement in Wake of NCAA Penalties Against Florida State*, SPORTS ILLUSTRATED (Jan. 12, 2024), https://www.si.com/college/fsu/football/rising-spear-releases-statement-in-wake-of-ncaa-penalties-against-florida-state [https://perma.cc/4RVM-FK5S].

154. NCAA FSU NEGOTIATED RESOLUTION, *supra* note 152, at 1.

155. NCAA FSU NEGOTIATED RESOLUTION, *supra* note 152, at 1.

156. NCAA, NEGOTIATED RESOLUTION: UNIVERSITY OF MIAMI (FLORIDA) – CASE NO. 020161 (Feb. 24, 2023) https://ncaaorg.s3.amazonaws.com/infractions/decisions/FEB2023D1INF_

booster, the conversation was limited to the booster's experience with the University of Miami and did not explicitly discuss NIL opportunities.¹⁵⁷

In Florida State University's case, the parties took preemptive action against the coach involved, negotiated penalties, and imposed the agreed-upon restrictions.¹⁵⁸ The key factors in the NCAA's penalty decision were the athletic department personnel's facilitation of off-campus meetings with a booster and the booster's offer of a specific NIL opportunity.¹⁵⁹ That a member of the coaching staff transported the student directly to meet with a booster was deemed the most aggravating factor.¹⁶⁰ A mitigating factor mentioned in the NCAA's report was that both the school and the assistant coach took action to resolve the violation.¹⁶¹ In addition to penalizing the assistant coach and restricting the recruiting activities of the football team, the NCAA also required Florida State to disassociate from not only the booster, but their associated collective as well.¹⁶² The NCAA views disassociation of boosters and collectives as an effective penalty.¹⁶³ However, the disassociation from the collective is of nebulous effect. While the school is restrained from accepting assistance, the NCAA expressly allowed the collective to continue working with student-athletes.¹⁶⁴ Other Florida State University-associated collectives remain active.¹⁶⁵

The NCAA is also investigating the University of Florida in relation to its recruitment of then-high school quarterback Jaden Rashada in 2023.¹⁶⁶ A collective reportedly offered more than \$13 million to the prospective student-athlete and then later retracted the offer prior to payment.¹⁶⁷ Rashada received a release from his Letter of Intent and subsequently enrolled at Arizona State University.¹⁶⁸ The now-disbanded collective associated with the offer, Gator Collective, was not officially associated with the University

COIPublicReportUniversityMiamiFL.pdf [https://perma.cc/WP3Y-X9TX] [hereinafter NCAA MIAMI NEGOTIATED RESOLUTION]. Disassociation was discussed in this negotiated resolution but ultimately decided against, as the booster involved did not bring up NIL opportunities.

157. NCAA MIAMI NEGOTIATED RESOLUTION, *supra* note 156, at 1.

158. NCAA FSU NEGOTIATED RESOLUTION, *supra* note 152, at 5–7.

159. NCAA FSU NEGOTIATED RESOLUTION, *supra* note 152, at 3.

160. NCAA FSU NEGOTIATED RESOLUTION, *supra* note 152, at 1–3, 5.

161. NCAA FSU NEGOTIATED RESOLUTION, *supra* note 152, at 5.

162. NCAA FSU NEGOTIATED RESOLUTION, *supra* note 152, at 8.

163. NCAA MIAMI NEGOTIATED RESOLUTION, *supra* note 156, at 1. Disassociation was discussed in this negotiated resolution but ultimately decided against, as the booster involved did not bring up NIL opportunities. *Id.*

164. NCAA FSU NEGOTIATED RESOLUTION, *supra* note 152, at 9.

165. *Annual Membership*, SEMINOLE BOOSTERS, <https://boosters.fsu.edu/fsu-memberships/annual-membership/> [https://perma.cc/4FNL-JN6R] (last visited Dec. 19, 2024).

166. Zach Goodall, *Reports: Gators Under NCAA Investigation for Jaden Rashada Recruitment*, SPORTS ILLUSTRATED (Jan. 19, 2024), <https://www.si.com/college/florida/football/florida-gators-football-under-ncaa-investigation-jaden-rashada-recruitment> [https://perma.cc/B7VD-W3BM].

167. *Id.*

168. *Id.*

of Florida, but was an official sponsor of the University of Florida, separate from its NIL opportunities offered to student-athletes.¹⁶⁹

Much like the University of Florida, the University of Tennessee was similarly investigated in connection with the recruitment of starting quarterback Nico Iamaleava.¹⁷⁰ Iamaleava entered into a contract with the NIL collective associated with the University of Tennessee, the Spyre Sports Group.¹⁷¹ His deal, reported to be worth \$8 million over the course of his college career, is one of the largest ever signed by a non-professional athlete.¹⁷² Collectives offering large contracts to high-profile athletes has proven an attractive lure for NCAA investigators.

The NCAA's Ability to Investigate Impermissible Recruiting Is Waning

Although Florida State University cooperated with the NCAA investigation, other schools have taken a different approach. The University of Florida, though unable to comment on the ongoing investigation, expressed a desire to cooperate with the NCAA.¹⁷³ While cooperation with the NCAA is presumed to lessen the consequences of violations, it remains to be seen what actions the University of Florida takes in light of *Tennessee v. NCAA* (discussed below).¹⁷⁴

Unlike the Rashada investigation, *Tennessee v. NCAA* depicts a distinct lack of cooperation with the NCAA as the University of Tennessee reportedly began laying the groundwork for a struggle over NIL in December of 2022.¹⁷⁵ The state of Tennessee, joined by the state of Virginia, has filed

169. *Florida Gators Sports Properties Announces Gator Collective as a New Sponsor*, FLORIDA GATORS (Jan. 31, 2022), <https://floridagators.com/news/2022/1/31/general-florida-gator-sports-properties-announces-gator-collective-as-a-new-sponsor.aspx> [<https://perma.cc/6XBM-BDMG>].

170. Adam Sparks, *Nico Iamaleava, NIL and NCAA's Investigation into Tennessee: A Full Timeline of Events*, KNOXVILLE NEWS SENTINEL (Feb. 5, 2024, 6:07 AM), <https://www.knoxnews.com/story/sports/college/university-of-tennessee/football/2024/02/05/nico-iamaleava-nil-tennessee-football-ncaa-investigation/72452481007/> [<https://perma.cc/7SVY-8AM7>].

171. David Cobb, *Tennessee Under NCAA Investigation Related to Potential NIL Violations Across Multiple Sports*, CBS SPORTS (Jan. 30, 2024, 4:46 PM), <https://www.cbssports.com/college-football/news/tennessee-under-ncaa-investigation-related-to-potential-nil-violations-across-multiple-sports/> [<https://perma.cc/F2CF-MGL3>].

172. Evan Crowell, *Report: Nico Iamaleava Has Lucrative NIL Deal in Works*, SPORTS ILLUSTRATED (Jan. 18, 2023), <https://www.si.com/college/tennessee/football/nico-iamaleava-has-lucrative-nil-deal-in-works-for-tennessee-football> [<https://perma.cc/2E2L-6AZY>].

173. *Florida Is Under NCAA Investigation a Year After a Failed NIL Deal with QB Signee Jaden Rashada*, CBS NEWS MIAMI (Jan. 20, 2024, 12:18 PM), <https://www.cbsnews.com/miami/news/florida-is-under-ncaa-investigation-a-year-after-a-failed-nil-deal-with-qb-signee-jaden-rashada> [<https://perma.cc/PA7P-PALD>].

174. Richard Johnson, *Nobody Knows Whether to Cooperate with the NCAA*, SB NATION (Jan. 31, 2019, 4:32 PM), <https://www.sbnation.com/college-football/2019/1/31/18205526/missouri-ncaa-sanctions> [<https://perma.cc/JE4J-LGK7>]; DIVISION I 2024–25 MANUAL, *supra* note 328–29, ART. 19 §19.2.

175. Adam Sparks, *Tennessee Was Ready to Fight NCAA Over NIL for Nico Iamaleava Even Before He Enrolled*, KNOXVILLE NEWS SENTINEL (Feb. 28, 2024, 10:24 AM), <https://www.tennessean.com/story/sports/college/university-of-tennessee/football/2024/02/28/>

a lawsuit against the NCAA on antitrust grounds.¹⁷⁶ The Attorneys General of Tennessee and Virginia argued that the NCAA's ban on discussions between prospective student-athletes and collectives prior to commitment to a school "constitutes an illegal agreement to restrain and suppress competition within the labor market of Division I athletics."¹⁷⁷ The U.S. District Court for the Eastern District of Tennessee agreed, finding that the NCAA's ban on collectives discussing compensation with prospective student-athletes prior to commitment was a "suppression of negotiating leverage" and "the consequential lack of knowledge" led to irreparable harm to the student-athletes unable to accurately determine their true NIL value.¹⁷⁸ On February 29, 2024, a federal judge imposed a nationwide preliminary injunction prohibiting the NCAA from enforcing guidance or policies which prohibit student-athletes from negotiating NIL compensation with collectives.¹⁷⁹ Following this injunction, the NCAA announced a pause on ongoing and new investigations related to NIL.¹⁸⁰ On January 31, 2025, the Attorney General of Tennessee announced the states involved in the litigation against the NCAA had reached a settlement in principle that will prevent the NCAA from reviving the ban at issue.¹⁸¹

NIL compensation is inextricable from the recruitment of potential student-athletes. The marketplace is still in its infancy, but it seems that coaches and collectives have pivoted to give themselves the best chances of securing sought-after recruits. The NCAA's sanctions have so far centered around high-profile NIL deals at highly visible programs.¹⁸² Whether the NCAA has the ability to enforce those sanctions will depend on the outcome of the lawsuits that the NCAA is facing, along with the ramifications of the *House* settlement.

nico-iamaleava-tennessee-football-ncaa-investigation-nil-name-image-likeness-attorneys/72763938007/ [https://perma.cc/H8H5-43EZ].

176. *Tennessee Sues NCAA Challenging Its NIL-Recruiting Ban*, TENN. ATT'Y GEN. (Jan. 31, 2024, 8:41 AM), <https://www.tn.gov/attorneygeneral/news/2024/1/31/pr24-10-tennessee-sues-ncaa.html> [https://perma.cc/MDB3-28QS].

177. *Tennessee v. NCAA*, 718 F. Supp. 3d 756, 760 (E.D. Tenn. 2024) (internal quotation marks omitted).

178. *Id.* at 765.

179. *Id.* at 766.

180. Mark Long, *After Loss in Court, the NCAA Is Pausing Investigations into Third-Party NIL Deals with Athletes*, AP NEWS (Mar. 1, 2024, 7:15 PM), <https://apnews.com/article/ncaa-pausing-nil-investigations-6b395c4b228fa82474cac152c9477c1c> [https://perma.cc/5CTZ-F2T3].

181. *Tennessee Attorney General Announces Settlement in Principle with NCAA to Protect Student-Athletes' Rights*, TENN. ATT'Y GEN. (Jan. 31, 2025, 3:19 PM), <https://www.tn.gov/attorney-general/news/2025/1/31/pr25-6.html> [https://perma.cc/U7U8-HVUA].

182. *See, e.g.*, Dan Murphy, *NCAA Penalizes FSU Football; Assistant Gets 3-Game Ban for Violations*, ESPN (Jan. 11, 2024, 8:26 PM), https://www.espn.com/college-football/story/_/id/39289391/ncaa-penalizes-florida-state-football-nil-rule-violations [https://perma.cc/637H-SXME]; Pat Forde, *Sources: Tennessee Under Potential NCAA Investigation for NIL Violations in Multiple Sports*, SPORTS ILLUSTRATED (Jan. 30, 2024), <https://www.si.com/college/2024/01/30/sources-tennessee-under-ncaa-investigation-for-nil-violations-in-multiple-sports> [https://perma.cc/Y49M-T9NY].

THE TRANSFER PORTAL

The Implementation of the Transfer Portal and Extension of the One-Time Transfer Exception

The NCAA must worry about more than just high school recruitment with the recent popularity of the transfer portal. In October 2018, the NCAA introduced the transfer portal to assist student-athletes in managing the transfer process.¹⁸³ Student-athletes are no longer required to seek their coaches' permission to contact other schools.¹⁸⁴ If student-athletes wish to transfer or explore the option to transfer, they must notify the compliance office at their school.¹⁸⁵ The compliance office has two business days to enter the student's name and information into the transfer portal.¹⁸⁶

There were two transfer portal windows established by the NCAA.¹⁸⁷ In Division I Football Bowl Subdivision (FBS), the windows are twenty days starting in early December and ten days in April.¹⁸⁸ Upon entering the transfer portal, student-athletes can provide their personal information for all programs to see or to personally communicate with other programs.¹⁸⁹ After they transfer to another school, they can be a scholarship player or a walk-on.¹⁹⁰ Although they can withdraw from the transfer portal at any time, their original school is not required to take them back or uphold their scholarship.¹⁹¹ The transfer portal improves the efficiency of the transfer process and empowers student-athletes to transfer freely. It also prevents schools and coaches from blocking student-athletes from transferring to certain schools (e.g., rival or intraconference institutions).¹⁹²

Nevertheless, merely entering the transfer portal is not a guarantee that student-athletes will have eligibility to play immediately after they transfer. Historically, a student-athlete had to sit out for a year before they could play again.¹⁹³ However, in 2021, the NCAA changed its rules to allow students who

183. Jake Elman, *How Does College Football's Transfer Portal Work?*, SPORTSCASTING (June 20, 2021), <https://www.sportscasting.com/college-football-transfer-portal-explanation/> [https://perma.cc/5SVY-SMWE].

184. *Id.*

185. *Id.*

186. *Id.*

187. Meghan Durham Wright, *DI Council Approves Changes to Notification-of-Transfer Windows*, NCAA (Oct. 4, 2023, 1:30 PM), <https://www.ncaa.org/news/2023/10/4/media-center-di-council-approves-changes-to-notification-of-transfer-windows.aspx> [https://perma.cc/N8LN-ARMS].

188. Max Olson, *NCAA's Division I Council Votes to Shorten Transfer Windows*, ESPN (Oct. 8, 2024, 6:34 PM), https://www.espn.com/college-sports/story/_/id/41686947/ncaa-division-council-votes-shorten-transfer-windows [https://perma.cc/RVL6-4US3].

189. Elman, *supra* note 183.

190. Elman, *supra* note 183.

191. Elman, *supra* note 183.

192. Josh Lens, *NIL Tampering*, 49 B.Y.U. L. REV. 101, 116 (2024).

193. Greg Johnson, *What the NCAA Transfer Portal Is . . . And What It Isn't*, NCAA CHAMPION MAG. (2019), <https://s3.amazonaws.com/static.ncaa.org/static/champion/what-the-ncaa-transfer-portal-is/index.html> [https://perma.cc/AF6D-37WZ].

transfer to compete immediately for their new school.¹⁹⁴ In April 2024, the NCAA approved a rule allowing student-athletes to transfer and play immediately with an unlimited number of times they can transfer.¹⁹⁵ These changes, combined with the subsequent decision to allow NIL activity, have increased the number of student-athletes who enter the transfer portal drastically.¹⁹⁶ From 2021 to 2022, the number of student-athletes in the transfer portal increased by 20 percent.¹⁹⁷ The recent 2023–24 college football transfer cycle witnessed a new record of 3,900 student-athletes entering the transfer portal.¹⁹⁸ Many star players took advantage of the transfer portal to get better NIL deals. For example, highly regarded quarterback Quinn Ewers transferred from Ohio State University to the University of Texas for a deal worth over \$1 million.¹⁹⁹ The implementation of the transfer portal, along with the new NIL rules, benefits student-athletes by allowing them greater freedom over their collegiate career and ability to capitalize on it.²⁰⁰

The Transfer Portal and Impermissible Recruiting

Once the athlete's name appears in the transfer portal, NCAA rules permit other schools to recruit them.²⁰¹ Coaches complain that the transfer portal has created a “free agency” market for collegiate talent.²⁰² Further, the increasing number of student-athletes in the transfer portal may incentivize coaches and collectives to violate NCAA rules by using NIL money to lure student-athletes to transfer. For example, the University of Pittsburgh head football coach, Pat Narduzzi, publicly accused two unnamed schools of offering University of North Carolina quarterback, Drake Maye, \$5 million to transfer.²⁰³ Coaches fear that rule followers will be at a competitive

194. Michelle Brutlag Hosick, *DI Council Adopts New Transfer Legislation*, NCAA (Apr. 15, 2021, 4:41 PM), <https://www.ncaa.org/news/2021/4/15/di-council-adopts-new-transfer-legislation.aspx> [https://perma.cc/37BS-QU7H].

195. Heather Dinich, *NCAA Approves New Transfer Rule Allowing Immediate Eligibility*, ESPN (Apr. 17, 2024, 3:28 PM), https://www.espn.com/college-football/story/_/id/39963389/ncaa-approves-new-transfer-rule-allowing-immediate-eligibility [https://perma.cc/9UHE-A6BT].

196. *Transfer Portal Data: Division I Student-Athlete Transfer Trends*, NCAA (Jan. 5, 2024), <https://www.ncaa.org/sports/2022/4/25/transfer-portal-data-division-i-student-athlete-transfer-trends.aspx> [https://perma.cc/JD65-35YU].

197. Greg Johnson, *2022 Transfer Trends Released for Division I and II*, NCAA (Feb. 21, 2023, 2:00 PM), <https://www.ncaa.org/news/2023/2/21/media-center-2022-transfer-trends-released-for-divisions-i-and-ii.aspx> [https://perma.cc/P3CB-FHEE].

198. Cody Nagel, *College Football Transfer Portal: Power Conference Teams with Most Departures During 2023-24 Cycle, Ranked*, 247SPORTS (May 10, 2024, 8:35 AM), <https://247sports.com/longformarticle/college-football-transfer-portal-power-conference-teams-with-most-departures-during-2023-24-cycle-ranked-231485760/#2417034> [https://perma.cc/B25Q-T2QE].

199. See Lens, *supra* note 192, at 117.

200. Lens, *supra* note 192, at 121.

201. Lens, *supra* note 192, at 116.

202. Lens, *supra* note 192, at 117.

203. Tyler Conway, *UNC's Drake Maye Received 2 \$5M Offers to Transfer, Pitt HC Pat Narduzzi Says*, BLEACHER REP. (Dec. 20, 2022), <https://bleacherreport.com/articles/10059295->

disadvantage because they will fall behind in the recruiting process. There is an emerging culture where NIL compensation deals are openly discussed and offered, which creates a gray area within the rules, which is extremely difficult to regulate.²⁰⁴

Some coaches believe that impermissible recruiting happens even before the transfer portal opens, with NIL money serving as a means to induce student-athletes to enter the transfer portal.²⁰⁵ An assistant at a Power 4 program claimed that two of the school's best young players were being actively recruited by other programs, and there were "unbelievable" numbers of coaches reaching out to players on his team's roster.²⁰⁶ Some recruiters think that it will be too late if they wait for a quality player to enter the transfer portal, so they have been using collectives and businesses as third parties to make early contact with student-athletes.²⁰⁷ Some collectives also renegotiate deals with top returning players to ensure they do not transfer.²⁰⁸

Unless there is direct evidence of impermissible recruiting, most in the industry choose not to talk about it. Although coaches complain that the violation of NCAA rules is prevalent, most of them choose not to turn each other in.²⁰⁹ There are many theories as to why they do not report others. Some believe that impermissible recruiting has become a norm, and everyone is breaking the rules, so no one talks.²¹⁰ Another plausible theory as to why coaches do not deliver any evidence to the NCAA is that they are not willing to jeopardize student-athletes' and other coaches' careers at the cost of properly reporting instances of violations.²¹¹ Moreover, coaches are reluctant to make any report because they have doubts about what the NCAA is going to do about it.²¹² They do not believe the NCAA would harshly punish those schools that create high revenues.²¹³ To prevent

uncs-drake-maye-received-2-5m-offers-to-transfer-pitt-hc-pat-narduzzi-says [https://perma.cc/4HZF-RMCL].

204. Dennis Dodd, *Coaches Worry Tampering, Inducements, 24/7 Free Agency Have Turned Transfer Portal into Wild West*, CBS SPORTS (Feb. 1, 2022, 11:47 AM), <https://www.cbssports.com/college-football/news/coaches-worry-tampering-inducements-247-free-agency-have-turned-transfer-portal-into-wild-west/> [https://perma.cc/Q7HV-XDXL].

205. Alex Scarborough, *Tampering Has Arrived in College Football, and It Looks like NBA Free Agency*, ESPN (May 24, 2021, 5:42 AM), https://www.espn.com/college-football/story/_/id/31477534/tampering-arrived-college-football-looks-nba-free-agency [https://perma.cc/8Q2B-DYS9].

206. *Id.*

207. *Id.*

208. Bruce Feldman & Max Olson, *Tampering Confidential: In College Football, It's Inevitable and Impossible to Stop*, THE ATHLETIC (May 12, 2023), <https://theathletic.com/4512028/2023/05/12/college-football-transfer-portal-tampering/> [https://perma.cc/2HH7-EFD6].

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

impermissible recruiting in the transfer portal, the NCAA needs to have a clear policy and better enforcement efforts.

Additionally, the transfer portal affects the school's management and recruiting. It becomes increasingly difficult for coaches to manage their rosters and distribute scholarships.²¹⁴ Coaches have to be prepared for their players to leave, *and* they need to recruit new players.²¹⁵ They can no longer only focus on recruiting high school players.²¹⁶ Coaches have to simultaneously recruit players on their own rosters to keep them from entering the transfer portal.²¹⁷ Meanwhile, student-athletes assume the risk of missing out on a landing spot in what has become a high-stakes game of musical chairs. There are more players in the transfer portal than available scholarships.²¹⁸ In practice, a player usually cannot go back to the original school because they are considered disloyal, and the school has already found a replacement.²¹⁹ Especially with the temptation of the NIL marketplace, student-athletes must think through the potential consequences before entering the transfer portal.

CONCLUSION

Collectives have rapidly risen to become a core component in the NIL landscape. These collectives run the gamut from marketplace collectives connecting businesses with student-athletes, to donor collectives using donor funds to directly compensate student-athletes, and dual collectives combining aspects of both. The NCAA is reacting to the rise of collectives by attempting to determine their status. Collectives have recently been given more freedom to coordinate closely with the institutions whose athletes they support, while the NCAA's guidance designating them as boosters has restricted their permissible actions. Institutions and coaches have generally embraced—or at least recognized—the importance of NIL and collectives in recruiting student-athletes. The line between permissible and impermissible recruiting by collectives is in flux. While some schools have recognized the power of the NCAA to restrict communications between collectives and prospective student-athletes, the NCAA is currently restrained by an injunction against enforcing any rules against collectives offering incentives to prospective student-athletes.²²⁰ Even before the injunction,

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. Renford Reese, *The Unintended Consequences of the NCAA College Athletics Transfer Portal*, 2 J. HIGHER EDUC. ATHLETICS & INNOVATION 97, 102 (2023).

219. *Id.*

220. *Tennessee v. NCAA*, 718 F. Supp. 3d 756, 766 (E.D. Tenn. 2024) (order granting preliminary injunction).

many coaches accused others of tampering with players in or about to enter the transfer portal by offering NIL incentives.

As industry parties attempt to sort out the rocky terrain of intercollegiate athletics in the current leadership vacuum, those of us interested in the field anxiously await resolutions to the employment status of student-athletes in the form of the *Johnson v. NCAA* (Fair Labor Standards Act employment case),²²¹ the fallout from the final approval of the settlement of the multibillion-dollar *House* antitrust lawsuit,²²² and the National Labor Relations Board's ongoing hearing against the University of Southern California.²²³ Each of these cases is poised to shake up the structure of college sports. While developing lawsuits will determine the bounds of the NCAA's enforcement power and the status of the student-athletes permitted to take advantage of NIL opportunities, whether collectives will evolve, diminish, or become institutionalized remains to be seen—but their impact on the collegiate recruiting and compensation ecosystem is already profound and irreversible.

221. JIMMY BALSER, CONG. RSCH. SERV., LSB11223, *JOHNSON v. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION: THIRD CIRCUIT ALLOWS COLLEGE ATHLETES' CLAIM FOR WAGES TO MOVE FORWARD 2* (2024); Michael McCann, *NCAA Denied Appeal in College Athlete Employee Case*, SPORTICO (July 11, 2024, 1:02 PM), <https://www.sportico.com/law/analysis/2024/third-circuit-johnson-ncaa-flsa-case-1234780117/> [<https://perma.cc/D9G9-QHXZ>].

222. Justin Williams, *House v. NCAA Settlement Granted Preliminary Approval, Bringing New Financial Model Closer*, THE ATHLETIC (Oct. 7, 2024), <https://www.nytimes.com/athletic/5826004/2024/10/07/house-ncaa-settlement-approval-claudia-wilken/> [<https://perma.cc/FP72-6TMY>].

223. Joe Reedy, *Testimony in USC Case Before Labor Relations Board Administrative Judge Could Be Wrapping Up*, AP NEWS (Apr. 15, 2024, 1:27 PM), <https://apnews.com/article/uscncaa-nlrb-b261dd0164b4bd17e00e4c7da5ca3f98> [<https://perma.cc/M8DM-4VJ2>].