

ONE HUNDRED SIXTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

September 17, 2020

Mr. Mark Emmert  
President  
National Collegiate Athletic Association, Board of Governors  
700 W. Washington Street  
P.O. Box 6222  
Indianapolis, Indiana 46206-6222

Dear Mr. Emmert:

The Committee on Energy and Commerce and its Subcommittee on Consumer Protection and Commerce requests you respond to a series of questions regarding whether and how collegiate athletes should be compensated for the use of their name, image, and likeness (NIL) in interstate commerce as well as related matters. As a Committee of jurisdiction over sports matters, your responses will help inform our work as we consider federal legislation.<sup>1</sup>

College sports bring together millions of Americans each week as both participants and fans. Universities rely on their athletic programs to attract students, cultivate alumni, and, in some cases, generate tens of millions of dollars of revenue. Students play for the love of the game, but also to further their educational and, in some cases, professional sporting opportunities. The devotion, sacrifice, and effort of collegiate athletes has helped make college sports one of the most popular and lucrative brands of sports entertainment in the country.

In recent months, there has been a renewed focus on granting collegiate athletes the right to earn compensation for the use of their NIL. Currently, legislation empowering collegiate athletes to receive payment for their NIL has been introduced in over 30 states, with California, Colorado, and Florida enacting NIL laws since September of 2019.<sup>2</sup> In response to activity on the state level, the National Collegiate Athletics Association (NCAA)—the largest collegiate athletics organization in the country—formed a Federal and State Legislation Working Group, which recommended that the NCAA Board of Governors “authorize changes to NCAA policy and bylaws to permit student-athletes to receive compensation related to their NIL, provided the

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<sup>1</sup> House rule X, clause 1(f)(5).

<sup>2</sup> *Can Congress Help the NCAA Find NIL Consistency?*, ESPN (July 1, 2020).

compensation is consistent with NCAA values and principles and with legal precedent.”<sup>3</sup> The working group also recommended that Congress pass federal legislation to ensure that there is a national framework for the commercialization of student-athletes’ NIL.<sup>4</sup> Specifically, the working group has recommended that Congress take steps to:

- Ensure federal preemption over state name, image, and likeness laws to ensure national uniformity;
- Establish a safe harbor for the NCAA to provide protection against lawsuits filed for name, image, and likeness rules;
- Safeguard the nonemployment status of student-athletes;
- Maintain the distinction between college athletes and professional athletes; and
- Uphold the NCAA’s values, including diversity, inclusion, and gender equity.<sup>5</sup>

This call for federal legislation has spurred a broader debate about compensation, health care and services, and academic opportunities for collegiate athletes.<sup>6</sup>

We respectfully request that you provide detailed answers and any related documentation to questions that will help inform our work on federal legislation. Please respond to the following questions no later than October 8, 2020:

1. Should collegiate athletes and prospective collegiate athletes be permitted to earn compensation for the commercial use of their NIL? If not, why not? If so, please answer and explain your reasoning for the following:
  - a. Should collegiate athletic organizations, Conferences, and institutions of higher education be permitted to provide current and prospective collegiate athletes compensation for the commercial use of their NIL?<sup>7</sup> Should collegiate athletic

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<sup>3</sup> NCAA, *NCAA Board of Governors Federal and State Legislation Working Group Final Report* (Apr. 2020).

<sup>4</sup> *Id.*

<sup>5</sup> NCAA, *Board of Governors Moves Toward Allowing Student-Athlete Compensation for Endorsements and Promotions* (Apr. 29, 2020) (press release).

<sup>6</sup> *National College Players Association Asks Congress to Pursue Broad-Based Reform in Adopting Compensation for Student-Athletes*, USA Today (June 25, 2020).

<sup>7</sup> Collegiate athletic organizations are the governing bodies setting the policies and practices for collegiate athletics, such as the NCAA, National Association of Intercollegiate Athletics, and the National Junior College Athletic Association. Conferences are organizations or associations of multiple institutions of higher education that set rules for college sports, such as

organizations, Conferences, and institutions of higher education be prohibited from providing NIL compensation as an inducement for players to attend, remain at, or transfer to a specific institution of higher education?

- b. Should current and prospective collegiate athletes be permitted to receive compensation for the commercial use of their NIL from boosters, or entities that support teams and athletic departments through financial donations or volunteer services?
- c. Should current and prospective collegiate athletes be required to disclose when they enter into a contract for the commercial use of their NIL? If not, why not? If so, please detail the content, frequency, and timing of such disclosures and which entities should be notified.
- d. Should current and prospective collegiate athletes be empowered to enter into NIL group licensing deals?
- e. Should current and prospective collegiate athletes be required to receive financial counseling?
- f. How would appropriate compensation be determined for a current or prospective collegiate athlete's NIL? Would there be a minimum and maximum level of compensation that may be allowed for a player's NIL? Should compensation for the use of a current or prospective collegiate athlete's NIL be commensurate with the market value of that player's NIL? If not, why not? If so, how would market value be determined? What safeguards could ensure that an athlete's compensation is commensurate with the market value of the player's NIL?
- g. Should current and prospective collegiate athletes be prohibited from entering into or continuing agreements for the commercial use of their NIL until they have met academic benchmarks, such as completing a certain number of college credits or achieving and maintaining good academic standing? What steps can be taken to ensure that collegiate athletes are students first?
- h. Should a current or prospective collegiate athlete be prohibited from entering into NIL licensing agreements with a current or prospective sponsor that provides support to the player's collegiate athletic organization, Conference, or institution of higher education? Should a current or prospective collegiate athlete be prohibited from entering into NIL licensing agreements with a competitor to a current or prospective sponsor that provides support for the player's collegiate athletic organization, Conference, or institution of higher education?

- i. Should current and prospective collegiate athletes be prohibited from entering into agreements for the commercial use of their NIL if a product or service could adversely affect the reputation or public image of the player's collegiate athletic organization, Conference, or institution of higher education?
2. Do you support a national standard regulating NIL compensation for collegiate athletes? Do you believe a state by state approach regulating NIL will put states that have enacted NIL laws at a competitive advantage in recruiting over states that have not enacted such a law? Please explain your reasoning.
3. How should federal law contemplate liability, including private rights of action, related to NIL? Please provide your input as to how a federal law should deal with liability.
4. What safeguards should be considered to ensure NIL licenses do not undermine the enforcement of recruiting rules?
5. Do you believe a federal bill should include a safe harbor from antitrust litigation? If so, please explain. If not, why not?
6. Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in education programs or activities receiving financial assistance from the federal government.<sup>8</sup> How would granting collegiate athletes and prospective collegiate athletes the right to earn compensation for the commercial use of their NIL affect Title IX protections?
7. Revenue generated from college sports like football and men's basketball can help offset the costs of non-revenue sports, helping maintain the viability of those programs.<sup>9</sup> How would granting current and prospective collegiate athletes the right to earn compensation for the commercial use of their NIL affect non-revenue sports?
8. Should current and prospective collegiate athletes be permitted to receive professional representation to assist in securing and entering into agreements for the commercial use of a player's NIL? If not, why not? If so, should there be any safeguards to ensure that the professional representative acts in the best interest of the player? What entity should enforce those safeguards?
9. Should collegiate athletic organizations, Conferences, and institutions of higher education be required to share some of the revenue generated from college sports with collegiate athletes?

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<sup>8</sup> 20 U.S.C. §1681-§1688.

<sup>9</sup> *Fearing Cuts, Non-Revenue College Sports Look for Ways to 'Weather This Storm,'* Washington Post (Apr. 27, 2020).

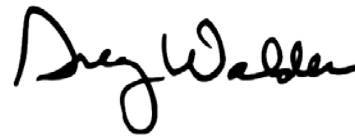
10. How do current collegiate athletics policies address prospective Olympic athlete compensation for their NIL and training and travel expenses?
11. What is your view of the current policies governing health care coverage and medical care for collegiate athletes?
12. How do current policies governing scholarships and academics prepare all players for success in the classroom and in the workforce? Are there any changes to current policies you believe should be made to increase the likelihood of academic and professional success of such athletes?
13. What is your view of the current policies related to transfers? Do you believe that there should be changes to transfer policies?
14. What is your view of the current policies governing a collegiate athlete's ability to seek recourse for issues related to health, welfare, and academics?
15. Are there other issues the Committee should consider or information that would be useful to the Committee?

Thank you for your attention to this important matter. Please send your written response via email to Chloe Rodriguez at [chloe.rodriguez@mail.house.gov](mailto:chloe.rodriguez@mail.house.gov). If you have any questions about our request, please contact Daniel Greene of the Majority Committee Staff at (202) 225-2927 and BJ Koohmaraie of the Minority Committee Staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.  
Chairman



Greg Walden  
Ranking Member