

Potential Models of Name, Image and Likeness – DIII

WHAT IS NIL?

NIL is a concept based on laws defining “right of publicity,” or when permission is required to use someone’s name, image or likeness.

FOUNDATIONAL PRINCIPLES

According to the NCAA Board of Governors, membership discussions around NIL must be centered on the following principles:

- Benefits for name, image and likeness should not be a substitute form of currency to pay for athletics performance for the student-athlete’s institution.
- Regulation of a student-athlete’s name, image or likeness use should be transparent, focused, enforceable and should promote integrity of the recruiting process.
- A student-athlete should be able to benefit from his or her name, image or likeness similar to college students who are not student-athletes, while recognizing the importance of interstate, uniform competition and recruiting rules that are unique to NCAA athletics.

MODELS FOR CONSIDERATION

The NCAA Board of Governors determined the status quo is not an acceptable option, nor is the idea of unregulated compensation given its inconsistency with the principles of collegiate athletics and the ramifications of a conversion to a professional model. **The membership must determine the types of activities or regulations that should be evaluated within the above guidelines provided by Board of Governors.** Any new legislation supporting name, image and likeness should recognize the importance of interstate, uniform competition and recruiting rules that are unique to NCAA athletics.

Below are three possibilities that could be evaluated as potential changes to current NIL legislation. While they are grouped as concepts to better facilitate discussion, they should not be considered separate blocks of activities that need to be approved or rejected entirely within a concept. Elements within a concept may stand alone and may be considered in conjunction with elements from any of the concepts based on feedback from and discussion within the divisional memberships.

CONCEPT A: INCOME UNRELATED TO NCAA PARTICIPATION

- Introduce rule to allow use of NIL consistent with current commonly approved waiver conditions or interpretive outcomes.
- Permit use of NIL for activities involving a student-athlete's own work, product or business. No need for waivers.
- Selling NIL rights to third parties for product and service endorsement purposes remains impermissible in Division I and impermissible in Divisions II and III if related to athletics participation.
- Permit use of NIL for sports-related instruction (e.g., quarterback camp, private lessons) if it meets employment legislation (paid going rate and for work performed).
- Use of institutional, conference or NCAA marks not permitted, unless purchased through normal processes consistent with other licensees.
- Use of institutional facilities consistent with policies applicable to all students or outside groups.
- Payments or benefits made to student-athletes in this model are like those made to students who are not athletes. Payments or benefits clearly are not compensation tied to education or considered incidental to athletics participation.
- Regulation and oversight of these activities could be like how institutions comply with bylaws related to student-athlete employment.

CONCEPT B: ACTIVITIES WITH NO INSTITUTIONAL INVOLVEMENT

(Note: Without appropriate regulation, a model permitting compensation for use of a student-athlete's name, image or likeness may constitute pay-for-play and be inconsistent with the principles endorsed by the Board of Governors.)

- Allow expanded rights to permit agreements between third parties and a student-athlete or group of student-athletes.
- Could include endorsement of third-party commercial products.
- Use of institutional, conference or NCAA marks would not be permitted.
- Representative of athletics interest (e.g., booster) may not be involved in securing agreements or being a party to agreements.
- Third party NIL licensors could monitor booster involvement and use of institutional, conference or NCAA marks.

CONCEPT C: INSTITUTIONALLY MANAGED ACTIVITIES

(Note: Institutionally managed activities will require additional legal review and analysis to ensure that an employer/employee relationship is not created, that a student-athlete has reasonable opt-out opportunities from an activity, and that any proceeds received are applied to educational benefits or incidental to athletics participation consistent with the Association's and members' legal positions.)

- Permit a student-athlete or group of student-athletes to enter into agreements with institution, conference or NCAA, provided benefits are tied to education.
- Use of institutional, conference or NCAA marks would be permissible if activity is institutionally managed.
- Agreements must include institutional, conference or NCAA marks.
- Institutions may not pay student-athletes for use of their NIL for university promotions.
- May not include on-field/court activities while representing institution or pay for specific athletic achievement or award.
- Payouts could be managed by third party and distributed on an equal basis to all group participants.
- A student-athlete would not be required to participate in institutionally managed activities and could opt out, but permissibility is conditioned on institutional management.
- Booster may not be involved in securing agreements or being a party to agreements.
- Institutions may establish policies prohibiting NIL agreements from conflicting with existing institutional vendor agreements and or institutional philosophies.

The DIII Philosophy Statement includes the following tenets:

- A student-athlete's athletics activities should be conducted as an integral part of the their educational experience,
- Athletics participants should not be treated differently from other members of the student body,
- Student-athletes should be supported in their efforts to meaningfully participate in nonathletic pursuits to enhance their overall educational experience.
- Providing equitable athletics opportunities for males and females and giving equal emphasis to men's and women's sports

DISCUSSION QUESTIONS.

- How would each proposed concept advance or distract from those goals?
- DIII does not permit the awarding of institutional financial aid to any student on the basis of athletics leadership, ability, participation or performance. How would the proposed concepts advance or conflict with that goal?
- What would be the most important practical challenges related to the implementation of each concept? How would those challenges best be addressed at the institutional, conference or national levels?