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## SPORTS

# NCAA Wants to Allow Athletes to Cash In...to a Point

A new proposal outlines 'guardrails' for allowing college athletes to retain agents and profit from their name, image and likeness



LSU players Joe Burrow, left, Grant Delpit, center, and Patrick Queen celebrate after winning the College Football Playoff.

PHOTO: DAVID J. PHILLIP/ASSOCIATED PRESS

By *Laine Higgins* and *Louise Radnofsky*

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The National Collegiate Athletic Association on Wednesday rolled out its first concrete proposals on how it plans to allow college athletes to cash in on marketing opportunities generated by their collegiate sports prowess. But the debate will likely focus on how the NCAA also wants to limit the opportunities star athletes can generate.

The NCAA proposal would allow college athletes to retain agents and profit from their name, image and likeness as long as the association agrees that proposed deals represent fair market value. The NCAA says the measure is meant to protect student athletes from exploitative below-market deals, but it could also be used to block lucrative “professional opportunities” that it believes could provide an unfair recruiting advantage for some schools.

The NCAA also said it would seek a “safe harbor” antitrust exemption from Congress. That would allow it to impose some broad uniformity that regulates the terms of name, image and likeness endorsement deals—and limit lawsuits over pay issues.

“Allowing promotions and third-party endorsements is uncharted territory,” said Michael V. Drake, chair of the NCAA Board of Governors and president of Ohio State, in a statement in which he said the association is trying to “modernize” to “protect college athletics and college athletes on a national scale.”

The NCAA had resisted endorsement rights for athletes for decades, including in lengthy, costly court battles. Then California passed a law effectively nullifying NCAA rules within the state, starting in 2023. Faced with the prospect of up to three dozen other states following suit—and members of Congress from both parties working on federal legislation to force the NCAA to change—the NCAA suddenly announced it would amend its own rules. It also threw its backing behind Congress passing federal legislation to create a nationwide system, to prevent any one state from acting alone.



Oklahoma celebrates after winning the NCAA college women's gymnastics championship in 2019.

PHOTO: COOPER NEILL/ASSOCIATED PRESS

The nation's top antitrust enforcer, Makan Delrahim, has said he has been eyeing the NCAA's actions to date and that he will continue to do so.

“We welcome the steps it announced today. We will analyze any specific rules that the NCAA's three divisions propose to adopt relating to NILs, as well as any conduct pursuant to those rules, to ensure the NCAA and its member institutions comply with the antitrust laws,” said Delrahim, head of the Antitrust Division of the Department of Justice, in a statement.

The new proposal will test the appetite of states, players and federal lawmakers to continue a prolonged fight over the future of college sports. Some of those entities are likely to push for athletes to have a less restrictive path to profiting from their success while in college.

“Today is either the day that a wall of injustice around student-athletes started to crumble, or the day the NCAA used more tactics to bait and switch young men and women from some of America’s most vulnerable communities,” said U.S. Rep. Mark Walker, a North Carolina Republican who has pushed for years to undo the NCAA’s amateurism definition. “The working group’s final report has some reason for pause at the implied request for the NCAA to have antitrust exemptions.”

The proposals, presented to the board of governors by a 19-person federal and state legislation working group co-chaired by Big East commissioner Val Ackerman and Ohio State athletic director Gene Smith, provide the clearest look yet at the NCAA’s vision for athlete compensation. One important tenet: allowing athletes to sign endorsements in no way makes them employees of the university nor professional athletes.

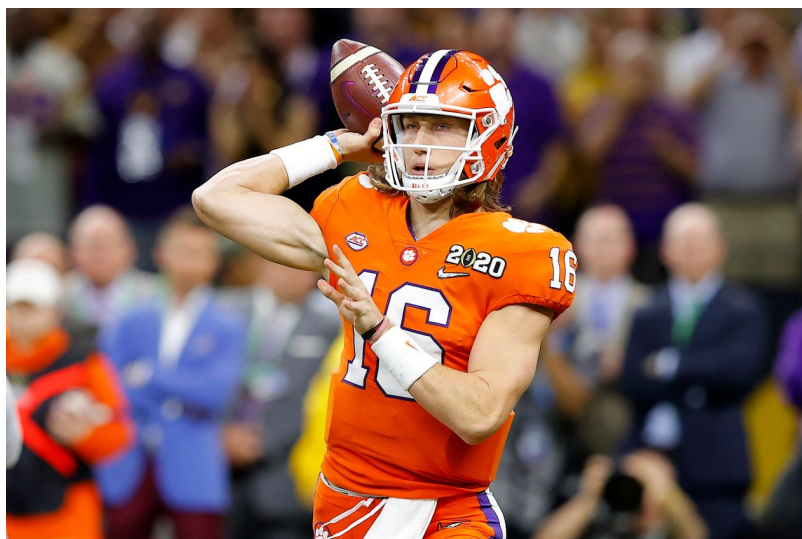
Smith said that “there will be no cap” on athletes’ earning potential. At the same time, the NCAA is looking to create a mechanism to review payments to athletes’ deals as part of an effort to quash deals from boosters that would function as compensation for athletic performance or recruiting inducements.

This potentially is at odds with California’s plan for uncapped compensation, and some federal lawmakers’ hopes to remove restrictions on college athletes. California Sen. Nancy Skinner, a Democrat and co-author of the state’s landmark law, said she was encouraged by the NCAA’s progress but still believed that “the devil will be in the details.”

Florida Rep. Chip LaMarca, a Republican author of a similar bill, said the NCAA “proposals reek with protectionism” and “are about protecting their pockets, not about student athletes.”

But the NCAA approach could also satisfy states and members of Congress who want to settle the issue and move on. The NCAA suspended competition in March due to the coronavirus outbreak, and college sports suddenly faces new financial pressures and has a fleet of federal lobbyists pushing its perspective on Capitol Hill.

The NCAA’s proposals would allow athletes to “identify themselves by sport and school” but prohibit them from using logos or markings from their university of athletic conference when monetizing their name, image and likeness. For example, Clemson quarterback Trevor Lawrence could hawk a sports energy drink, but be barred from wearing his school’s eye-catching orange or showing footage of him quarterbacking the Tigers to a national championship in 2019.



Under the proposal, Clemson quarterback Trevor Lawrence could hawk a sports energy drink, but be barred from wearing his school's gear.

PHOTO: KEVIN C. COX/GETTY IMAGES

This ostensibly would allow an athlete who competes for a Nike-sponsored school to sign a sneaker deal with a rival brand, such as Adidas. However, it's unclear whether universities would be able to challenge or limit such arrangements.

The NCAA proposals are the ultimate test of one of the stickiest questions in the compensation debate: Is value generated from the name on the front of the jersey or the name on the back?

"The NCAA has argued in lawsuits and publicly that the players don't have any value. It's all what the schools bring," said Ramogi Huma, president of the National College Players Association. "For an entity that believes that college athletes don't have market value to determine what market value is, [that] is a losing proposition for college athletes."

The NCAA has said it's worried that schools with the most prominent national brands could exploit their marketing value by dangling lucrative endorsement deals to gobble up the most talented recruits. Advocates for players' compensation say it's unlikely that the scales of competitive balance could tip further out of whack, and this is another way to penalize athletes.

"Your name, image and likeness value is so inherently tied to your sport ability that...it's impossible to disentangle," said Andy Schwarz, an antitrust economist who has consulted in cases challenging NCAA rules.

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*What do you think about the NCAA's proposal? Join the discussion.*

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*—Brent Kendall contributed to this article.*

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