



Published on *Inside Higher Ed*  
(<https://insidehighered.com>)

[Home](#) > NCAA Board of Governors approves name, image, likeness guidelines

## NCAA Board of Governors approves name, image, likeness guidelines

Submitted by Greta Anderson on April 30, 2020 - 3:00am

As part of its ongoing exploration into allowing college athletes to profit from their personal celebrity, the Board of Governors for the National Collegiate Athletic Association on Tuesday approved recommendations to allow athletes to be paid for third-party endorsements by the start of the 2021-22 academic year.

The NCAA leadership and the State and Federal Legislation Working Group, which was created to help determine the association's response to legislation allowing athletes to receive payment for the use of their name, image and likeness, or NIL, released [a report](#) <sup>[1]</sup> earlier this month to guide the three NCAA divisions' rule making on NIL benefits. The guidelines outlined in the report say any pay related solely to athletic performance will not be permissible, but compensation for other activity such as social media promotions or endorsements of a product or service [will be allowed](#) <sup>[2]</sup>. Athletes may also operate their own businesses using their NIL.

Athletes participating in activities for which they will be paid can identify themselves as members of a specific college sports team under the guidelines, but they will not be able to use trademarked logos and other university intellectual property, Val Ackerman, commissioner of the Big East Conference and co-chair of the working group, said during a conference call with media Wednesday.

“We thought there would be no reason for them not to make known their position at a specific school, but we saw a line with the trademark,” Ackerman said. “We are not eager to make the school complicit in those arrangements,

and we believe bringing in intellectual property would contribute to that slippery slope into ‘pay for play.’”

Any subsequent NIL legislation, which the NCAA’s three divisions have now been tasked with recommending by the end of October, must also bar universities from arranging any deals between companies and athletes, the working group report said. But it is possible that universities could have some say over the products and services their athletes endorse, if they conflict with an institution’s values, Ackerman said. The working group does anticipate some associationwide limitations in forthcoming division rules on the kinds of products athletes are allowed to promote. For example, athletes can expect to be barred from endorsing banned substances <sup>[3]</sup>, such as narcotics and growth hormones, and sports betting, Ackerman said.

“The source of most concern” during the working group’s deliberation and in feedback from institutions and athletes was the role of university boosters, who support and promote athletic departments and are often notable donors or season and box-seat ticket holders, Ackerman said. Boosters are permitted to establish relationships with families of prospective athletes, but working group members worried that boosters could use third-party endorsement opportunities as a “recruiting inducement or a means of paying for athletics participation,” the report said.

Specific guardrails for booster activity and recruitment will be determined by division leaders, said Gene Smith, athletic director at Ohio State University and co-chair of the working group. The guardrails should maintain athletes’ ability to freely choose where they attend college and protect against “potentially harmful involvement by overzealous individuals in the recruiting environment,” Ackerman said.

Such protections should also regulate the behavior of agents or advisers <sup>[4]</sup> hired by athletes to manage their paid appearances and endorsement deals, said Michael Drake, president of Ohio State and chair of the NCAA Board of Governors.

Ackerman said the working group “did talk at length” about creating an entity outside the NCAA to manage athletes’ disclosure of NIL benefits they receive,

which would make the process more transparent. The payments athletes receive will be market-driven and unlimited, but a regulatory body will “look for abnormal activity and payment,” Smith said.

“There will be some subjectivity there,” Smith said. “There was no discussion on the dollar amount -- it’s just, what is appropriate relative to the activity that they’re being compensated for.”

Feedback from NCAA member institutions in the report also showed concern for athletes “prioritizing NIL compensation over academic success and team commitment.” Colleges and universities should “encourage student-athletes to keep their academic commitments and not let NIL activities distract or interfere with their academic progress,” the report said. Athletes should be advised on managing their new financial opportunities and responsibilities, Smith said.

Ackerman noted that the athletes would be entering an unfamiliar business landscape that also has tax implications and could affect any federal financial aid they receive. Smith said university and NCAA supports would likely be provided to help athletes navigate these issues.

“We need to make sure that we educate our student athletes in this space,” Smith said. “A number of them receive support from the federal government through Pell Grants. We need them to understand that whatever activity could have an impact on scholarship or Pell money. There might be a limit they need to pay attention to in order to retain Pell eligibility.”

Compensation from NIL will not impact student’s athletic scholarship eligibility, the report said.

The working group’s report largely reflects the principles shared with the NCAA <sup>[5]</sup> by the Knight Commission on Intercollegiate Athletics earlier this month, which outlined the commission’s ideal model for rules around NIL.

“This is the start of a new era for college sports -- one that provides even greater opportunity to college athletes than ever before,” Amy Perko, CEO of the Knight Commission, said in a written statement. “Athletes will learn that with opportunity comes responsibility, bringing yet another important educational experience.”

However, the patchwork of state laws and proposed legislation that gives athletes NIL benefits and circumvents the NCAA rule-making process “remains an additional hurdle” for the guardrails that divisions are now tasked with creating, Perko said. Governor Gavin Newsom of California in September signed into law a bill permitting NIL benefits for college athletes in the state, which will take effect in 2023. A similar Colorado law signed by Governor Jared Polis on March 20 <sup>[6]</sup> has the same timeline, *USA Today* reported. A concern about the California law previously expressed by NCAA and congressional leaders <sup>[7]</sup> was that it does not provide any guardrails.

At least one member of Congress made clear that she was not impressed with the new guidelines.

"The report released today by the NCAA is a public relations document -- not a starting point to improve college sports," U.S. Representative Donna Shalala said in a written statement. "The NCAA has once again demonstrated its ineffectiveness in acting in the best interest of student-athletes. While revenues have skyrocketed, students have continued to lack health insurance, proper safety measures, and real academic assistance. The recommendations proposed by the Board of Governors appear to be more about protecting their bottom line rather than ensuring an equal playing field for college athletics."

Shalala, a Florida Democrat who has been president or chancellor of three different colleges, said the NCAA's actions will allow "unscrupulous agents and boosters" to take advantage of college athletes. She introduced legislation last December to create a congressional commission with a broad mandate to examine the NCAA <sup>[8]</sup>, McClatchy reported.

Drake emphasized in Wednesday's conference call that a single piece of legislation was needed to set guidelines for NIL benefits in cooperation with the NCAA, rather than individual state laws. NCAA leaders will also continue to work with Congress on “safe harbor” legislation to protect it against antitrust lawsuits related to the NIL rules, NCAA president Mark Emmert said.

“The safe harbor is an effort to make sure when members change rules and policies to support student athletes, they can do so without running enormous legal risk,” Emmert said.

Even though the NCAA's rule changes would greatly expand NIL rights, any guardrails that prevent the compensation of athletes from some sources make it vulnerable to antitrust law violations, said Audrey Anderson, a lawyer who specializes in athletics department issues and is litigation counsel for the law firm Bass, Berry & Sims.

"Whenever the colleges are agreeing among themselves how athletes will not get paid, they can come under antitrust law," said Anderson, who is former general counsel for Vanderbilt University.

Anderson said she could see the public taking particular issue with bans on athletes using the trademarked logos of their universities.

"You splash the picture of your star quarterback all over town, but when the star quarterback starts to make money off of that, he can't use your logo at all," Anderson said. "I think some people will find that to be unfair ... It'll be interesting to see what the states do, if anything, in reaction to this."

**Source URL:** <https://insidehighered.com/news/2020/04/30/ncaa-board-governors-approves-name-image-likeness-guidelines>

#### Links

[1]

[https://ncaaorg.s3.amazonaws.com/committees/ncaa/wrkgrps/fslwg/Apr2020FSLWG\\_Report.pdf](https://ncaaorg.s3.amazonaws.com/committees/ncaa/wrkgrps/fslwg/Apr2020FSLWG_Report.pdf)

[2] <https://www.insidehighered.com/news/2019/10/30/college-athletes-permitted-be-paid-name-image-likeness>

[3] <http://www.ncaa.org/sport-science-institute/topics/2019-20-ncaa-banned-substances>

[4] <https://www.insidehighered.com/news/2020/01/14/market-rights-college-athletes-name-image-likeness-emerging>

[5] <https://www.knightcommission.org/wp-content/uploads/2020/04/kcia-principles-new-rules-use-college-athletes-nil-040320-01.pdf>

[6] <https://www.usatoday.com/story/sports/college/2020/03/20/colorado-governor-signs-college-athlete-name-image-likeness-bill/2887481001/>

[7] <https://www.insidehighered.com/news/2019/10/04/us-congressman-propose-college-athlete-payment-bill>

[8] <https://www.mcclatchydc.com/news/politics-government/article238480913.html>