THE DRAKE GROUP
Advancing Positive Legislative Change In College Athletics

April 9, 2026

TO: The Honorable Bill Cassidy
United States Senator for the State of Louisiana
opportunitiesforathletes@help.senate.gov

FROM: Kassandra Ramsey, Esq., President
kramsey@kassandraramseylegal.com

RE: **The Drake Group Responses to the Senate Health, Education, Labor and Pensions Committee's "Request for Information: Stabilizing College Sports and Preserving Opportunities for Athletes**

We commend your leadership as Chair of the Health, Education, Labor, and Pensions (HELP) Committee in examining the need for more information on issues related to Title IX, Olympic sports, gender equity, and other factors affecting the financial sustainability of Division I athletic programs. Although the Commerce Committee has taken the lead on these issues so far, we believe that the HELP Committee is a more appropriate venue for legislative reform. Since 98 percent of all athletic programs are subsidized by institutional general fund dollars (tuition) and student activity fees, the significant expenses of the Division I football and men's basketball arms race—with few expenditure limits—threaten the overall financial health and academic integrity of higher education institutions.

This situation has worsened as institutions respond to the *House v. NCAA* Settlement, disregarding the fact that approval of the Settlement is under appeal in the 9th Circuit and the authority to pursue and implement the Settlement has never been presented to the NCAA membership as a whole. Institutions are now investing large sums into recruiting and retaining men's football and basketball players through cash revenue-sharing payments and questionable forms of NIL licensing and third-party contractor agreements. Meanwhile, they continue to ignore their Title IX obligations, cut Olympic sports budgets, and fail to adequately fund athletes' medical, mental health, and academic support services while still spending heavily on coaches, administrators, and the commercial success of revenue-generating sports. These financial pressures affect all Division I schools with under-resourced institutions feeling these effects most.

Attached please find our responses to each of your questions. Please do not hesitate to call upon The Drake Group's experts to assist in developing sound educationally defensible solutions.



The Drake Group is a non-partisan 501(c)(4) non-profit organization whose mission is to educate policymakers and advance legislative initiatives that foster academic integrity and athlete well-being in intercollegiate athletics.

8 Wright Street
Suite 107
Westport, CT 06880

**The Drake Group's Responses to the Committee's "Request for Information: Stabilizing College Sports and Preserving Opportunities for Athletes"**

## Compensation and benefits

- **Where is the balance between providing student-athletes with opportunities to earn compensation and preserve opportunities for student-athletes at all levels of competition?**
    - Currently, there are no constraints on revenue-generating sports' expenditures, which leads to pressure to cut women's and Olympic sports budgets as these costs rise. Appropriate guardrails to consider include: a requirement that total annual salaries for coaches and administrators (excluding academic or medical/mental health professionals) not exceed the scholarships and other financial benefits provided to college athletes; limits on the length of multi-year coaching contracts and the amount of their exit payouts; and restrictions on the number of coaches and administrative staff per sport.
    - Neither institutional NIL agreements nor revenue-sharing payments are subject to the same scrutiny as third-party NIL deals. Third-party NIL deals are required to be submitted to NIL Go (*House v. NCAA* Settlement NCAA enforcement entity), where deals are reviewed to determine whether third-party NIL deals are made for the purpose of using an athlete's NIL for a "valid business purpose" and do not exceed a "reasonable range of compensation". However, institutional NIL agreements or revenue sharing payments are not required to be submitted to NIL Go. Those deals are required to be reported to the College Athlete Payment System (CAPS) which is a cap management system to ensure that institutions allocate revenue sharing funds within the allowed 22 percent of revenue share limit. The CAPS system does not assess deals to determine whether they are for a "valid business purpose" and do not exceed a "reasonable range of compensation".
    - Institutional "revenue share" payments that are not linked to educational purposes or legitimate NIL obligations should be considered pay-for-play salaried employment, which is supposedly banned by NCAA rules. Eighty to ninety percent of institutional revenue payments under the House vs. NCAA Settlement go to men's football and basketball players. This rapid increase in revenue-sports spending is pressuring schools to cut budgets for women's and Olympic sports, shut down some programs, or replace traditional women's sports like swimming and diving, equestrian, and gymnastics with cheaper, larger-roster sports like stunt, acro-tumbling, and flag football. It also pressures schools to inflate women's track and field rosters.

- Institutional NIL licensing and revenue share payments are not being equitably distributed between male and female athletes, thereby increasing the risk of Title IX compliance litigation. Ensuring Title IX compliance and protecting women's sports funding at equitable levels, while limiting excessive spending on revenue-generating sports and maintaining current minimum sports sponsorship standards, would also help preserve opportunities for men's Olympic sports.

- **Is the current "Name, Image, and Likeness" system working for today's student-athletes and schools?**
  - No. Institutions are manufacturing "NIL licensing" agreements containing onerous employee-like controls and penalty provisions having little or no relationship to legitimate NIL opportunities.
  - No. Unlicensed player agents who help college athletes negotiate NIL licensing agreements with institutions and third-party entities are charging high fees and demanding unreasonable terms regarding the agreement length and control of player rights.
  - No. The system has fostered a cash transaction culture where some athletes enter the transfer portal seeking better-paying agreements from other schools whenever their current institution does not meet their playing time or financial expectations. Additionally, some athletes enter the portal after a coaching change or after being encouraged to enter the transfer portal once it is made clear by the coach that there will likely not be much opportunity for playing time.

- **Should federally-provided student aid be offset by alternative guaranteed revenue sources, such as NIL, in order to preserve resources for students who need them?**
  - No. Conditions for receiving federal financial aid are distinct and should remain so. Institutional NIL payments to athletes should not be provided for anything other than legitimate NIL purposes, and should not put at risk the pool of student loans or Pell grant funds available to both athlete and non-athlete students who need them, most of whom do not participate in school-funded NIL programs.
  - No. Institutions should be reminded of their federal financial aid obligations, specifically that compensation for students' employment, including college athletes, must conform to the rates outlined in Title IX's 106.38 and 106.51 through 106.54 provisions—particularly 106.54.

    *§ 106.54 Compensation.*

*A recipient shall not make or enforce any policy or practice which, on the basis of sex:*
*(a) Makes distinctions in rates of pay or other compensation;*
*(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and* ***which*** *are performed under similar working conditions.*
*(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)*

- **How does revenue sharing under the House Settlement affect schools' ability to comply with Title IX requirements?**
    - The House v. NCAA Settlement is voluntary for all Division I institutions except members of the defendant Power Five conferences and does not specify how increased athlete financial aid is to be distributed. As of now, about 320 of over 360 NCAA Division I schools are either automatically in or have opted into the Settlement. Media reports indicate that, based on school officials' statements, most schools are using NIL and revenue-share payments to recruit or retain participants in men's revenue-generating sports and are simply ignoring their Title IX responsibilities. These institutions are refusing open records requests from the media for exact data. Department of Education Official Equity in Athletics Disclosure Act reports for 2025-26 (the first year of the Settlement) will not be publicly available until spring 2027. This male-athlete-skewed distribution of new NIL and revenue-share payments likely will worsen schools' current litigation risks and non-compliance issues which could lead to the loss of federal funds. A 2024 U.S. Government Accountability Office Report revealed that 93 percent of colleges and universities were not in compliance with Title IX's athletics provisions.
    - The Department of Education's annual Equity in Athletics Disclosure (EADA) Report, a transparency requirement for receiving federal funds, mandates that institutions report all athletics-related student aid. The Department of Education Office of Civil Rights (OCR) can easily use existing EADA participation and student aid data to determine whether institutions are providing these funds to male and female athletes within the one percent allowable variance from their unduplicated count proportions. Any Congressional legislation should require OCR to perform this simple calculation and formally notify institutions that they might be in violation of this athletics-related student aid regulation. This cost-effective calculation and notification process would be an efficient way to screen institutions and encourage them to self-remedy non-compliance, a preferred alternative

compared to OCR's current reliance on student complaints or random sampling, both of which involve more time-consuming and costly investigations.

- As Congress is contemplating antitrust exemption legislation, Title IX compliance by OCR can be assisted by including the following or similar gender equity provisions:
  - *Any school, conference, or national association receiving an antitrust exemption:*
    i. *Require institutional Title IX compliance as a condition of membership by the institution's athletic governance entity, as demonstrated by regularized 3rd party or peer review assessment every three years, with one year to remedy any identified deficiencies. Failure to correct such deficiencies shall result in ineligibility for postseason play.*
    ii. *Require that all financial compensation benefits provided by educational institutions to college athletes under the provisions of new NIL legislation must meet Title IX gender equity requirements.*

- **How would the taxation of scholarships and other compensation, including education-related and non-education-related benefits, as income affect college sports, particularly the recruitment and retention of athletes of all income levels?**
  - There is no need to change how scholarships and NIL or non-NIL student employment compensation are taxed for both athletes and non-athlete students, as long as the institution complies with Title IX requirements for both. Current definitions within Title IX regulations already include appropriate restrictions. If athletes receive non-NIL compensation unrelated to educational expenses or purposes, such pay must be considered pay-for-play employment, available to both male and female athletes, and taxed accordingly, just like any other student employee.

- **How are revenue-sharing payments working for today's student-athletes and schools? To what degree does revenue sharing reach all students playing the revenue sport? How would this arrangement be affected if students were classified as employees?**
  - While there is no transparency yet, media reports and statements by coaches and others make clear that the so-called revenue-sharing payments, which are capped at $20.5 million but escalate annually at 4 percent or are recalculated based on changes in standards for determining the pool, are not being evenly distributed among all members of revenue-generating sports

teams at the vast majority of Division I schools. According to media reports, these funds are used to recruit or retain “star” athletes on those teams based on their perceived value to winning in revenue-generating sports including payments as high as $4 million to some individual athletes. Neither total amounts disaggregated by sex nor individual contracts with athletes are being released in response to open records requests, with institutions claiming federal (e.g., FERPA) or state privacy laws or arguing that such records are trade secrets and that disclosure would put them at a competitive disadvantage. Furthermore, disclosure of some Power Five institution contract “templates” reveals onerous control provisions likely to be interpreted by courts as employment agreements. If students are classified as employees, institutions may be required to pay employment taxes and benefits ranging from 24 to 38 percent of such payments.

  - The House v. NCAA Settlement does not specify that payments can only be made to athletes in revenue-generating or specific sports. Institutions make these decisions. It is important to note that in any given year, roughly 20 out of 2,000 higher education athletic departments report excess revenues over expenses. When capital and indirect costs are fully included, this number likely drops below 10. All athletic departments are subsidized by their institutions — through general fund student tuition income, athletics fees charged to all students, or as a result that the larger institution's 501(c)(3) status qualifies their athletic department for tax benefits such as tax-deductible contributions from donors, tax-exempt bonds for construction, and tax-free purchases. Currently, this subsidized athletic program system functions as a united fund benefiting all sports. As expenditures on revenue-generating sports increase, institutions face significant pressure to cut costs on non-revenue sports and boost sponsorship and donor income; however, the latter is subject to donor fatigue that also may negatively impact fundraising efforts for the entire institution**.**

- **Should revenue-sharing agreements following the House Settlement permit or require schools to deposit funds into portable benefits accounts, such as retirement or health savings accounts, that follow student-athletes during competition and after they leave college?**
  - Yes, the agreements should permit, but not require, and only if non-athlete students are given the same benefits related to the use of such portable benefit accounts. Participation should be voluntary and not mandated by any agreement with the institution or other payors.

- Another reason it should not be required is that the impact of such would be disparate. If legislation like the proposed HUSTLE Act (S.3378) passes, athletes from lower socioeconomic backgrounds who need NIL income right away will not benefit from such NIL investment opportunities. Meanwhile, highly recruited star athletes receiving most of the major institutional and third-party NIL payments will gain because they can save income not immediately needed in such accounts.
- Additionally, while the Hustle Act (S.3378) defines NIL income as legitimate NIL (any income received by an eligible athlete that is derived from the use of such athlete's name, image, or likeness, including endorsements, appearances, social media content creation, and licensing arrangements), it lacks important institutional guarantees. The legislation should also clarify that if the payment comes from the institution, the licensing rights payment must be for a specific performance of service unrelated to participation in the institution's athletic program. This would prevent cash revenue sharing for exclusive, unspecified NIL rights during enrollment and ensure that payments for those rights are not used to pay for actual athletic participation, which is prohibited by NCAA rules. Additionally, the legislation should specify that athletes do not have legal rights to the institution's broadcast revenues, ticket sales, other athletics-related income, or any non-athletics institutional revenue sources used to fund these payments.

- **What challenges do student-athletes face when filing taxes on NIL payments and revenue-sharing payments? Is current federal and state tax guidance sufficient?**
  - Unlike other jobs many college athletes have held, being self-employed means no automatic withholding, more complex filing rules, tax bills, and the realization that this new income may affect their eligibility for need-based aid. Few athletes are familiar with the self-employment tax (15.3 percent for Social Security and Medicare on net earnings over $400) or the need to pay quarterly estimated taxes during the year. Many athletes don't have accountants or financial advisors, especially given the current situation of few agents being certified. Furthermore, most college athletes don't realize that all NIL income, even small and informally negotiated deals, must be reported—including cash, free products, and perks such as use of automobiles. Athletes earning NILs in multiple states sometimes face complex additional filing requirements in different states, and internationally, athletes face restrictions that could jeopardize their student visas.

- There is no shortage of free and high-quality NIL tax resources. Government and IRS partner services offer clear and accessible NIL explanations, the NCAA provides an online NIL education platform, private entities like TurboTax and CPAs offer free downloadable NIL tax guides, and athletes can even watch YouTube videos to learn NIL basics and avoid common mistakes. The main issues for athletes are that many do not know these resources exist, do not understand they need them, are unaware of where to find them, and, importantly, may lack basic financial literacy to use them effectively. This is why NIL legislation should always require institutions to address the financial literacy gap.

## Protecting paid student-athletes

- **What health and retirement benefits do student-athletes have access to in the traditional retirement system?**
  - Institutions often require their athletes to have a family or student insurance policy that covers athletic injuries. Meanwhile, institutions maintain a secondary policy for expenses not covered by primary insurance and co-pays and are permitted to pay for an athlete's loss-of-value (LOV) insurance. National governance organizations may also offer catastrophic insurance. This coverage is available only while the athlete is enrolled, and few governance rules exist for extending injury coverage beyond 2-4 years after enrollment.
  - As NIL third-party contractors, college athletes typically lack 401(k) plans, pension schemes, or employer matching contributions because they are not considered "employees." Most athletes are also unaware of individual retirement accounts available to self-employed contractors.
  - If Congress considers classifying athletes as non-employees, legislation must require that institutions not treat them as employees (i.e., extent of control of time, termination of compensation at any time, etc.) but provide medical benefits typically available to employees.
- **How do student athletes typically receive information on retirement benefits?**
  - Most do not. But, self-employed athletes could be made aware of individual retirement accounts available to them if institutions are required to provide financial literacy programs by state or federal law or national or conference governance rules.

- Fewer than 5 of the 30 states with college athlete NIL laws explicitly require institutions to provide education on taxes, financial literacy, or related topics. This education requirement should be a must for any Congressional NIL bill.

- **How are schools helping student athletes prepare for retirement?**
  - Since 2024, NCAA rules have required all member institutions to provide financial literacy education programs to athletes. However, there is no specific curriculum requirement that outlines minimum content, a syllabus, or instructional formats. While the NCAA offers broad content recommendations, institutions have full discretion over the content and delivery methods.
- **Should schools contribute to student-athletes' retirement savings? For example, should a portion of NIL revenue and direct payments to players be automatically dedicated to a tax-advantaged portable retirement account?**
  - Schools do not pay taxes (FICA, Medicare, unemployment taxes) or retirement benefits (pensions, 401(k)) to third-party contractors and should not provide these benefits to athletes unless they do so for non-athlete students.
  - If Congress considers classifying athletes as non-"employees," legislation should require institutions not to treat them as employees (i.e., extent of control of time, termination of compensation at any time, etc.) and to provide medical benefits usually available to employees. It is assumed that such a non-employee provision does not apply to NIL employment as a third-party contractor.
- **Should financial literacy education become mandatory for all student-athletes?**
  - Yes. While, since 2024, NCAA rules require all member institutions to provide financial literacy education programs for athletes, there is no specific requirement for a curriculum, syllabus, or instructional format. Although the NCAA offers broad content suggestions, institutions have full control over the content and how it is delivered.
- **To what extent do student-athletes encounter unclear or unenforceable contracts? Should there be a standard contract to protect student-athletes from unscrupulous agents?**
  - There are three types of contracts of concern: (1) the contract between the agent and the athlete, (2) any agreement or contract between the institution and the athlete involving licensing rights, performance of NIL services, or

cash payments other than traditional cost of education grants-in-aid, and (3) any contract between any institutional LLC, third-party contractor, or associated entity or individual (such as NIL booster collectives or individuals) offering compensation or benefits of value on behalf of the institution to support its recruiting or retention efforts. Because institutions have been unresponsive to open records requests for copies of NIL/revenue share agreements, it is difficult to respond to this question about concerns with certainty, but generally, concerns include provisions that overly favor the institution, such as certain claw-back clauses, clauses that unfairly lock in an athlete to the school, and clauses that violate first amendment rights. When litigation arises from institutional contracts with athletes, these documents have and will become public records easily accessible as court documents. See, for instance, a court document here in the case of Duke University v. Darian Mehnsah, which includes the player contract. In this example, concerns have been raised over whether this "NIL license agreement" constitutes an employment agreement or involves a level of control or conditions inappropriate for classification as a third-party contractor.

- With regard to standardization of compensation contracts and agreements, depending on who requires the uniformity (e.g., NCAA), there could be antitrust concerns. The concern might be less if a conference develops and requires a common contract.

**Eligibility and academic experience**

- **Given recent federal and state court cases challenging the NCAA's authority, what power does the NCAA, or another governing body, still have to set eligibility limits?**
  - The NCAA has lost its authority to regulate athletics to courts and state legislatures because these bodies believe that athletic programs are excessively controlling and exploiting students involved in revenue-generating sports—treating them as employees instead of students, paying coaches and administrators lavish salaries and benefits while providing minimal funding for athlete scholarships, basic medical and mental health care during enrollment, and no long-term protection against athletic injuries. We should not be surprised that courts and legislatures seek to address this imbalance by focusing on athlete compensation—such as allowing students more years of eligibility to benefit financially or eliminating state income taxes on NIL earnings. However, the solution is to address the root of the problem rather than the symptoms. Congress should consider replacing the NCAA's leadership structure with an independent board of directors and establishing

specific athletes' rights as mandatory conditions for all institutions with athletic programs and governed by any athletic organization to receive federal financial aid. For example:

a. Any athlete participating in an extracurricular athletic program should be limited to 4 or 5 years of eligibility within 5 years of initial enrollment, with waiver provisions limited to athletics injury or specified types of extenuating circumstances (e.g., death of an immediate family member).
b. All scholarships awarded shall be for a period of five years or until graduation, whichever occurs first, conditioned only on participation and not on performance.
c. Recruited scholarship athletes who leave the institution before graduation and do not enroll at another institution shall be eligible to apply for a degree completion stipend equal to the most recent cost-of-education amount received from their last attended institution. Such student applications must include a degree completion and academic support plan developed in consultation with the institution, and must be approved if submitted within ten years of dropping out.
d. The institution shall not be allowed to spend more on coach and administrative salaries and benefits (excluding academic, medical, and mental health personnel) in total than it provides in financial aid and benefits to athletes in total.
e. Institutions are not permitted to be members of governance organizations that do not require Title IX compliance as a condition of membership.
f. Institutions or their conference or national governance entity must provide primary insurance, catastrophic coverage, and all costs related to athletics injuries during enrollment and for up to five years following departure from the institution and must contribute to a medical trust fund funding long-term care related to athletics injuries.

- One of the main causes of the NCAA's governance failure is conceding institutional control by granting weighted voting to the most commercialized athletic programs that have threatened to withdraw their financial support unless granted autonomy to operate freely. There is no system of checks and balances to prevent financial excesses and control costs. Therefore, any limited antitrust exemption should be conditioned on membership only in a governance entity that has a one-institution, one-vote governance structure with no weighted voting, an independent board of directors responsible for the well-being of all competitive divisions, an independent rules enforcement system for all institutions (rather than divisions or subdivisions policing themselves), distribution of championship revenues based on the number of

participants supported, scholarship dollars awarded, provision of student aid for emergency needs, dedicated funds for academic support, and increasing numbers of athletic trainers, rather than based on winning teams or revenue contribution.

- **What authority should college sports governing bodies have to set academic eligibility limits?**
    - A faculty athletic representative (FAR) to the national governance association should be appointed by the faculty senate of each member institution. The current NCAA system is FAR appointment by the institution's president or chancellor with no requirement for consultation with or appointment by its faculty senate. Faculty senates are those entities responsible for academic standards and the curriculum of the institution. There should be an independent body (or committee) within the governance entity comprised of FARs that would be responsible for athletics academic eligibility rules. This would be an important academic integrity element of any national governance association. Member institutions and conferences should be permitted to adopt more stringent but not less stringent academic eligibility standards.
- **What authority should college sports governing bodies have to set limits on how many years a student-athlete may compete?**
    - The federal government has many important interests in how federal financial aid is used by the institutions it funds such as:
        a. The Department of Education annually allocates over $100 billion to $130 billion for student loans and grants to cover tuition and fees, which support the general operations of higher education institutions and subsidize athletics programs.
        b. The enforcement of tax laws that permit tax-deductible donations to 501(c)(3) educational institutions.
        c. Tax laws that enabling 501(c)(3) organizations to use tax-exempt bonds.

        Additionally, eligibility limitations serve as an incentive for students to graduate rather than remain in school solely for athletics. Considering the fact that athletes regularly transfer between institutions that may be members of different governance organizations, Congress should consider the adoption of a law requiring all institutions that are recipients of federal funds to adopt the same eligibility limits for college athletes. A national standard of four or five years of eligibility within five years of initial enrollment, coupled with reasonable waiver provisions for athletics-related injuries or other extenuating circumstances beyond the student's control, would be appropriate.

- **What authority should college sports governing bodies have to set limits on transferring and eligibility after transferring?**
    - Sports governing entities should have authority. However, currently, legal cases have resulted in many conflicting results. There needs to be uniformity dictated by Congress. A key concern is that transferring more than once likely results in less desirable academic outcomes. Most significantly, it is hard for any student to adjust to a new academic environment if the athlete is constantly changing institutions, but this is even more true if the student is also adjusting to a new athletic environment. Also, because transferring institutions increases a student's costs related to courses that were completed at the previous institution but not accepted by the new institution, changes in majors requiring coursework completion at the institution as a prerequisite for acceptance into a major, and additional coursework needed to meet the minimum earned credits standard for conferring a bachelor's degree. The government has a vested interest in the efficient use of tuition and mandatory student activity fee dollars paid through $100-130 billion in federal student loan and grant programs annually. This government interest justifies adopting a condition for a limited antitrust exemption or receipt of federal financial assistance that establishes a national athletics eligibility standard, discourages multiple transfers, but allows athletes at least one transfer without athletics eligibility penalty, and mandates waivers from the national athletic governance association based on extenuating circumstances.
- **Do college sports governing bodies have the ability to restrict former professional athletes from returning to college athletics after competing professionally? To what extent should college sports governing bodies have this ability?**
    - Currently, this is a problem with courts imposing different results. There should be a national standard for all athletic programs, such as a condition for receiving federal financial aid, that limits participation in extracurricular athletic programs to non-professional athletes. Non-professional athletes should be defined as students who have never signed contracts with a professional sports team, league, or governing body to provide regular athlete services. This provision should not prevent any athlete from participating as an unattached competitor—those not representing an institution, league, or team—in open or minimum-qualification one-off (not contracted for a series) exhibition competitions, where expenses are paid or prize money is awarded based on performance, or compensation as a member of a national team representing a country. Generally, such a rule would prevent professional athletes with advanced training, competitive experience, and physical

development from competing with college athletes—who are students expected to prioritize academics over year-round athletics training and competition. This rule also recognizes that most college students enter college before achieving physical maturity or having extensive experience competing against professional athletes, thereby better ensuring fair competition between teams and individuals.

**Student-athlete status**

- **In what ways would classifying student-athletes as employees benefit the student-athletes?**
    - In some cases, receipt of wages or salaries that would, in the aggregate, be more than the amount offered as athletics-related student financial aid (although one would have to figure out the tax implications).
    - At private institutions, NLRA rights (such as unionization and collective bargaining) and protections
    - FLSA Minimum Wage and Overtime Rights
    - Protection Against Unjust Termination and Retaliation
    - Workers' compensation for injuries
    - Possibly higher safety standards
    - Access to retirement benefits, disability insurance, and employer-paid Medicare and Social Security contributions.

- **In what ways would classifying student-athletes as employees hurt student-athletes?**
    - Compensating athletes as employees will raise institutional salary and benefit costs by 24-33 percent of that amount due to employer taxes, retirement obligations, and other state and federal requirements. Such an increase in expenses is likely to be unsustainable based on athletics-generated revenues. It is also unlikely that institutions or state legislatures would agree to subsidize athletics program losses at this level. Even if applied only to revenue sports, these cost increases would likely result in less support for and reduced participation opportunities for women's and non-revenue Olympic sports.
    - Reduced athletics participation would limit the developmental benefits of athletes to fewer students.
    - Employee status includes the institution's right to terminate employment based on performance. This will increase pressure on college athletes to perform well, dedicate more time to athletics training to keep their jobs and pay, and may reduce the time athletes spend on academic work.

- The actual experience of the first year of 2025-26 college athlete free agency under the House v. NCAA Settlement is clear—highlighting a culture focused on cash transactions rather than valuing student academic achievement and graduation. Transferring in the pursuit of increased financial support is taking priority over academic goals, and often postponing graduation until after the 4- to 5-year eligibility period of athlete pay.
- Athlete employment may increase the current exploitation of underprepared athletes in revenue-generating sports through academic fraud or placement of athletes in less challenging courses and majors or restrictions on athletes pursuing meaningful degrees of their choosing. Thus, employment may deprioritize academics to maximize athletes' availability for athletics-related training and other revenue-generating activities.
- Athlete employment may raise the risk of physical harm caused by athletes not reporting injuries or increasing pressure on athletic trainers and medical staff to make premature return-to-play decisions.
- Depending on hope for positive outcomes from collective bargaining overlooks the more likely result of agreements that would favor employers over athletes. Additionally, the transient athlete population will probably prioritize immediate compensation boosts over improvements in working or academic conditions due to their short athletic eligibility and earning window.

- **If schools were obligated to treat student-athletes as employees, how would that impact the number of scholarships or spots on teams available for schools to be able to offer prospective students?**
  - If a college athlete is paid to play and also receives an athletic scholarship, the athlete may be taxed on the value of the scholarship as an employment benefit. Because the athlete, as an employee, would benefit from and enjoy such an arrangement, athletes would likely insist that scholarships be included in addition to their employment agreement with the institution but not cause a reduction in their cash salary. This economic pressure to support revenue-sport athlete compensation packages that include scholarships would most likely increase athletics department costs, thereby creating pressure to reduce budgets and scholarship opportunities for women and Olympic sports participating in non-revenue sports.
- **If schools were obligated to treat student-athletes as employees, what would the impact be on non-revenue generating sports? What obstacles would schools encounter complying with Title IX requirements?**

- Given the increased costs to institutions from the employment status of athletes (salary plus 24-33% in benefits), budgets and scholarship opportunities for women and Olympic sports would likely be reduced. Schools will seek to pay the athletes in revenue-producing sports much more than athletes in non-revenue sports. The actual experience of the first year of 2025-26 college athlete pay under the *House v. NCAA* Settlement and even a limited look at their onerous contracts, more akin to employee agreements than NIL licensing agreements, indicates that institutions are providing 80 to 90 percent of their new NIL and revenue payments to men. This ignores their Title IX obligations to not deny benefits on the basis of sex or otherwise discriminate on the basis of sex. Because 93% of institutions with athletic programs are not complying with Title IX (see 2024 U.S. Government Accountability Office Report), institutions will most likely increase their litigation risk.

- **If student-athletes are designated as employees, who is their employer?**
  - It depends on who pays them. Most likely it would be the institution. Funds from excess revenues over expenses, managed by an institution's national or conference governing body, are distributed to member institutions, not individual athletes. Any attempt by member institutions, which have controlling authority over rule-making of national and conference governing entities, to change this practice should be viewed as an effort to avoid their Title IX obligations.
- **If student-athletes were classified as employees and engaged in collective bargaining, what would be the appropriate bargaining unit? With which 'employer' would a bargaining unit bargain?**
  - It is unclear and also influenced by what group of athletes are in the bargaining unit. If the employer unit is a conference, institutions in the conference would likely be joint employers.
- **Should student-athletes be permitted to collectively bargain as non-employees? If so, over what terms of their participation should student-athletes be allowed to collectively bargain?**
  - While conceptually desirable, overcoming the practical issues of determining the bargaining unit that could represent the diverse interests of the multisport class, expecting outcomes that wouldn't prioritize cash payments on top of educational expenses by an athlete population, 98 percent of whom view the college eligibility window as one-time earning window, may be wishful thinking.

- Generally, employees at public institutions do not have NLRA-protected rights to bargain collectively. The NLRA does not apply to government agencies, Similarly, neither non-employees or third-party contractors (such as college athletes engaged in NIL employment) have NLRA protections.
- We believe the preferred approach to fair college athlete compensation, is to create a balance between the compensation interests of college athletes and coaches and administrators who benefit from their revenue and performance success. Congress should legislate as mandates the following or similar elements of what should be the outcome of a college athlete collective bargaining as conditions for the institution's receipt of federal funds:
    1. The institution shall not be allowed to spend more on coach and administrative salaries and benefits (excluding academic, medical, and mental health personnel) in total than it provides in financial aid, medical, and academic benefits to athletes in total.
    2. The institution shall provide the following important benefits which might have been collectively bargained. These benefits should be minimum athletic program athlete benefit standards provided by all institutions:
        a. All scholarships awarded shall be for a period of five years or until graduation, whichever occurs first, conditioned only on participation and not on performance. All athletics-related financial assistance must be tethered to education/training purpose and unlimited in amount. Such compensation should not be based on performance or revenue value because the non-profit educational institution should not be a professional sports employer.
        b. Recruited scholarship athletes who leave the institution before graduation and do not enroll at another institution shall be eligible to apply for a degree completion stipend equal to the most recent cost-of-education amount received from their last attended institution. Such student applications must include a degree completion and academic support plan developed in consultation with the institution, and must be approved if submitted within ten years of dropping out.
        c. Institutions must provide primary insurance, catastrophic coverage, and all costs related to athletic injury during enrollment and for up to five years following departure from the most recently attended institution and must contribute to a medical trust fund that includes funds for injury related costs beyond that period.
        d. Institutions shall not interfere with legitimate NIL or outside employment for work actually performed, at rates commensurate with local rates.

e. Institutions shall be required to operate athletic programs under an independent medical care model, code of conduct consistent w/ SafeSportCode, payment of all athletic injury and mental health costs not covered by insurance programs, including second opinions, out-of-pocket/co-pays, etc.
f. Institutions may provide an unlimited number and amount of academic achievement awards based on objective criteria applicable to all athletes.

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