

# National Collegiate Athletic Association Interim Name, Image and Likeness Policy Ushers in New Era of College Athletics

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**E**ffective July 1, 2021, the National Collegiate Athletic Association (“NCAA”) will permit its athletes to profit from their name, image and likeness (“NIL”). This article surveys the circumstances that led to this new interim policy and offers guidance on what college athletes, institutions and potential sponsors should consider when seeking to take advantage of opportunities in this space.

### NIL Overview

At its core, NIL concerns a college athlete’s right to control the commercial use of his/her identity. Until July, the NCAA restricted these rights because NIL compensation was inconsistent with its definition of amateurism. Now, college athletes will be able to earn money by endorsing brands, monetizing social media accounts, making appearances and creating their own businesses.



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This change resulted from two outside forces: (1) state legislation making NIL compensation legal and (2) the U.S. Supreme Court’s decision in *NCAA v. Alston*, 141 S. Ct. 2141 (2021).

In 2019, California became the first state to enact legislation making NIL compensation legal. Since then, twenty-four states followed, and seven more have legislation pending. Most significantly, on July 1, 2021, laws went into effect in eleven states, making it legal for college athletes to earn NIL-related compensation.

In addition, in late June, the U.S. Supreme Court issued its decision in *NCAA v. Alston*, an antitrust challenge to the NCAA’s amateurism bylaws. While the Court did not specifically address NIL, it unanimously affirmed that the NCAA was not entitled to restrict its college athletes’ academically related compensation and denied the NCAA’s request for a blanket antitrust exemption to enforce its bylaws. Further, in his concurring opinion, Justice Kavanaugh foreshadowed the success of future challenges to the NCAA’s model if it continued to unnecessarily restrict its athletes’ rights.

### The NCAA Concedes

Against this backdrop, the NCAA adopted a new interim policy on July 1, 2021, permitting college athletes across all three of its divisions to earn compensation from the use of their NIL. In states with NIL laws in place, those laws govern. In states without such laws, schools are expected to draft their own policies. In both cases, it is the institution’s responsibility to monitor these activities because certain compensation is prohibited, including for work not performed or compensation contingent upon enrollment.

### Anticipated Impact

For college athletes, this historic change provides immense opportunity to monetize their athletics participation. Brand endorsements, local appearances and business ventures are now available to be taken advantage of for entrepreneurial college athletes. However, it is vital that college athletes learn the boundaries of the controlling state legislation and/or university policies to ensure they do not jeopardize their eligibility based on an NIL deal gone astray.

Potential sponsors also stand to gain in the NIL space given the new mass of spokespeople available. Still, these companies must take care to comply with the NCAA’s rules and the corresponding state laws, which may be more restrictive than what brands typically encounter.

Lastly, schools that are best able to interpret this new NIL policy could see significant benefits in recruiting, on- and off-field success,

and in community engagement. In fact, many schools are already hosting seminars to guide college athletes and administrators in their future NIL ventures. Colleges and universities in New York State must take particular care in this space because the State has not yet passed an NIL law, requiring its institutions to draft policies for themselves. Administrators should avoid overly restrictive rules when drafting their policies as they could be met with legal challenges based on the *Alston* holding.

### Conclusion

The NCAA’s NIL era brings about both opportunity and uncertainty for college athletes, university administrators and companies. Given the lack of uniformity in the system, there is

likely to be significant differences in how states, institutions and the NCAA choose to interpret NIL policies. The NCAA vows to continue to work with Congress as this temporary policy will remain in effect until either a new federal law is created or new NCAA rules are adopted. It is critical, therefore, that these groups consult with legal counsel familiar with this legislation to ensure compliance and maximize their potential in this new era of college athletics.

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