Supplemental Resource on Proposed *House v. NCAA* Settlement
Prepared by the Knight Commission on Intercollegiate Athletics
(updated as of March 17, 2025)

This document is not intended to replace any of the information the NCAA has and will develop and should not be viewed as legal advice. This Supplemental Resource is current as of February 12, 2025, however, details regarding implementation continue to develop and may change with final settlement approval.

This Supplemental Resource is a complement to the Knight Commission's Brief on the proposed *House v. NCAA* Settlement. That Brief covers core information about the proposed settlement terms available through January 17, 2025, with relevant updates through March 17, 2025, about the application of Title IX. This Supplemental Resource summarizes additional information not covered in the Brief and developments regarding the proposed settlement after January 17, 2025. This Resource also includes recently released institutional guidance from the NCAA.

Educational Resources Released by NCAA (February 12, 2025)

1. *House* Settlement: A Guide For Schools, NCAA Division I Educational Resource
2. *House* Settlement: Opting In, NCAA Division I Educational Resource
3. Updates from the Implementation Committee (Feb. 2025; March 2025)

The additional information prepared by the Knight Commission in this Supplemental Resource is organized in the following sections:

Consistent with the Knight Commission's Brief, this Supplemental Resource is provided from the Knight Commission's independent viewpoint. As an independent nonprofit leadership group with a legacy of impact on policies that advance the educational mission of college sports, the Knight Commission's purpose is to lead change that prioritizes college athletes' education, health, safety and success. The Commission is a resource on governance and policy in college sports and maintains a unique, publicly accessible database on Division I finances that can inform decision-making.

I. College Athlete Opt-Outs

Division I college athletes who competed between 2016 and 2024, and who are members of the damages class had the ability to opt out of the Damages Settlement Classes. The opt-out deadline was January 31, 2025. Class members who opted out of the class maintain their ability to bring a separate lawsuit seeking antitrust damages.

According to media reports, 343 current and former college athletes opted out of the settlement.[1]

In contrast, as of March 4, 2025, the *Associated Press* reported that "plaintiffs' attorneys say they have about 101,000 eligible claims, out of a total of 390,000 in the damages class, from former or current athletes."[2]

Several athletes who opted out filed a new lawsuit that seeks greater damages from the underlying claims related to athletes' NIL, and others have joined an ongoing lawsuit challenging athlete compensation rules (*Fontenot v NCAA)*. These lawsuits are discussed in Section VII.

[1] Pells, Eddie. "Attorneys in College Sports Lawsuit Point to 'intergalactic Paradigm Shift' for NCAA." AP News, March 4, 2025.
[2] Ibid

II. Objections to the Proposed *House* Settlement

Class Members and other interested parties also had the ability to object to any aspect of the proposed settlement by January 31, 2025. Seventy-three (73) athletes objected to the settlement terms in more than 35 filings.[3]

Athletes who filed objections focused on the impact of roster limits, the distribution of damages, and the institutional cap on athlete benefits. For example, in October, seven athletes filed an objection noting, among other things, that the institutional cap on new athlete benefits is too low and violates state laws.[4] In another objection, a former Stanford non-scholarship football player focused on the formula used to calculate lost NIL value in the damages payments.[5] Other objections claim:[6]

- The institutional cap on new athlete benefits violates antitrust law.
- The damages payout is too low and unfair to female athletes, "walk-on" athletes, and other participants.
- Conflicts of interest exist for the plaintiffs' attorneys, including a clause that mandates them to support a Congressional antitrust exemption for the NCAA.
- The implementation of roster limits is unfair and will deprive thousands of current and future college athletes of athletic opportunities.

Judge Wilken will consider these objections during the final approval process and determine whether to approve or reject the settlement outright.[7] At the April 7, 2025 hearing for final approval, she is permitting 14 parties to speak about the settlement.[8] One of the parties permitted to speak is a representative of the U.S. Department of Justice[9] (DOJ), which filed a statement of interest on January 17, 2025 (see Section V); however, it is unknown if this will occur given the recent change in DOJ administration.

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[3] Ibid
[4] Christovich, Amanda. "'Sour Grapes': Lawyers Battle Over College Athlete Pay Settlement." *Front Office Sports* (blog), October 4, 2024.
[5] Kasemervisz, David Objection Letter, *In re College Athlete NIL Litigation*, January 24, 2025.
[6] Murphy, Dan. "Judge Weighs NCAA's $2.8B Deal amid Objections." ESPN.com, January 31, 2025.
[7] Ibid
[8] Wilken, Claudia. "Order Regarding Hearing on Motion for Final Approval of Proposed Settlement." United States District Court for the Northern District of California, March 4, 2025.
[9] Wilken, Claudia. "Order Regarding Hearing on Motion for Final Approval of Proposed Settlement." United States District Court for the Northern District of California, March 4, 2025.

III. Institutional and Conference Announcements of Opt-In Decisions

[Note: For more information about opt-in considerations, please see the discussion of institutional and financial implications in Sections II and V in the Knight Commission's Brief.]

The NCAA initially set March 1, 2025 as the deadline for institutions in non-Defendant Conferences to declare whether they would opt into the settlement or not On February 28, 2025, the NCAA clarified that March 1, 2025 was an initial date for non-binding, opt-in announcements.[10] Institutions must declare their final intention by June 15, 2025.[11] In future years, March 1 will be the notification date for institutions to change or reaffirm their opt-in status.

Noah Henderson, a sports management professor at Loyola University Chicago, released a document tracking all Division I institutions' decisions about opting into the settlement. Below are a sample of the decisions that were announced by either conferences or institutions earlier this year along with the rationale the decision to opt in or not.

The Ivy League announced on January 24, 2025, that its institutions would not opt in to the proposed *House* settlement. The *AP* reported on the email Ivy League Executive Director Robin Harris sent to institutions, quoting from the email: "This decision to 'not opt in' means the Ivy League and its schools…will continue to provide an educational intercollegiate athletics model that is focused on academic primacy and the overall student-athlete experience."[12] The article further noted that "Harris said the decision does not affect their standing as Division I members or their access to NCAA championships."[13]

Additionally, two FCS institutions announced opposite decisions. North Dakota State University is not opting in and is taking a "wait-and-see approach" to determine the financial impact of the post-*House* model for college sports.[14] Montana State University plans to opt into the settlement, stating that the decision would allow the institution to best support their athletes and the athletic department.[15]

[10] Postins, Matthew. "NCAA Pushes Back Full Revenue Sharing Opt-In Date for Non-Defendant Schools." NIL Daily On SI, March 2, 2025.
[11] Ibid
[12] Golen, Jimmy. "Ivy League Won't Join NCAA Antitrust Settlement, Clings to Academics and Amateurism." AP News, January 24, 2025.
[13] Ibid
[14] Kolpack, Jeff. "NDSU Athletics Not Joining NCAA 'opt in' Financial Model." InForum, January 21, 2025.
[15] Flores, Victor. "While NDSU Opted out of NCAA Settlement, FCS Rival Montana State Opted in. Here's Why." InForum, January 24, 2025.

IV. Office for Civil Rights Statements on Application of Title IX

On January 16, 2025, the United States Department of Education's Office for Civil Rights (OCR) released a "Fact Sheet" titled "*Ensuring Equal Opportunity Based on Sex in School Athletic Programs in the Context of Name, Image, and Likeness (NIL) Activities."*[16] The Fact Sheet – which was only an advisory document and was not legally binding – was released shortly before the end of the Biden administration. It outlined how OCR would evaluate an institution's compliance with Title IX as it relates to institutional NIL compensation to college athletes.

In the Fact Sheet, OCR made it clear that "compensation from a school for use of a student-athlete's NIL," will qualify as "athletic financial assistance," subject to Title IX.[17]

When discussing NIL agreements in particular, the Fact Sheet stated: "When a school provides athletic financial assistance in forms other than scholarships or grants, including compensation for the use of a student-athlete's NIL, such assistance also must be made proportionately available to male and female athletes."[18]

On February 12, 2025, the Department of Education, under the new presidential administration, formally rescinded the January 16 Fact Sheet with a statement from the new Acting Assistant Secretary for Civil Rights Craig Trainor: "Title IX says nothing about how revenue-generating athletics programs should allocate compensation among student athletes. The claim that Title IX forces schools and colleges to distribute student-athlete revenues proportionately based on gender equity considerations is sweeping and would require clear legal authority to support it. That does not exist. Accordingly, the Biden NIL guidance is rescinded."[19]

[16] United States Department of Education Office for Civil Rights, Fact Sheet: Ensuring Equal Opportunity Based on Sex in School Athletic Programs in the Context of Name, Image, and Likeness (NIL) Activities. Issued on January 16, 2025. Rescinded on February 12, 2025 [*Note: Access to the Jan. 16 document is here.]
[17] Ibid
[18] Ibid
[19] United States Department of Education Office for Civil Rights, U.S. Department of Education Rescinds Biden 11th Hour Guidance on NIL Compensation. February 12, 2025

V. Department of Justice Statement on Antitrust Implications

On January 17, 2025, on one of the last days of the Biden administration, the United States Department of Justice (DOJ) filed a statement of interest in the *House* case, outlining its problems with the proposed *House* settlement and asking that the Court either decline to approve the settlement or establish that its approval "does not constitute a judgment of the competitive impact of the Salary Cap Rule or a determination that the Salary Cap Rule complies with the antitrust laws."[20]

The statement also expressed concerns that the proposed settlement may not solve the antitrust issues facing the NCAA and its member institutions. Pursuant to the statement, "the Proposed Settlement allows the NCAA, an adjudicated monopsonist, to continue fixing the amount its member schools can pay students for the use of their name, image, and likeness ("NIL")."[21]

The DOJ's statement emphasizes that despite the proposed settlement raising the cap on payments, the cap remains determined through an agreement among competitors (Division I institutions) and restrains competition.[22] This statement of interest also asserts that there is no relevant comparison between college sports and professional sports leagues when assessing the salary caps. The key differences from the DOJ's perspective are:[23]

1. Professional athletes rely on a union for representation and there is no such representation for college athletes.

2. Salary caps created through collective bargaining agreements are generally immune from antitrust scrutiny under the non-statutory labor exemption. As this settlement is not part of a collective bargaining agreement, it does not fall under the non-statutory labor exemption.[24]

3. Collective bargaining agreements stem from a process where "workers have different substantive and procedural rights" than the plaintiffs in the *House* case.

The DOJ's statement concludes with a recommendation that the Defendants collectively bargain with present and future athletes if they want to establish compensation rules. It is important to note that the new presidential administration can rescind the statement at any time.

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[20] United States Department of Justice, Statement of Interest of United States of America: *In Re: College Athlete NIL Litigation*. January 17, 2025.
[21] Ibid
[22] Ibid
[23] Ibid
[24] The non-statutory labor exemption is a judicially-created legal doctrine that exempts certain agreements reached through the collective bargaining process from antitrust scrutiny.

VI. College Athlete Employment Litigation Status

Following the 2024 Presidential election, several organizations withdrew their National Labor Relations Board (NLRB) claims requesting college athletes receive employee status under the National Labor Relations Act (NLRA). Labor experts have suggested that a Republican-majority NLRB will likely be less inclined to recognize college athletes as employees.[25]

On December 31, 2024, the Dartmouth men's basketball team withdrew its petition to unionize from the NLRB.[26] This came after the team voted to form a union in March 2024, and Dartmouth refused to bargain with them.[27] Similarly, the National College Players Association withdrew its unfair labor practice charge against University of Southern California, the Pac-12, and NCAA.[28] That group's executive director stated that the charge was withdrawn because of progress made in compensating college athletes through the proposed *House* settlement terms. Lastly, on January 15, 2025, the College Basketball Players Association withdrew its unfair labor practice charges against Dartmouth, Northwestern, Notre Dame, the Ivy League, and the NCAA.[29]

These withdrawals represented all of the college athlete employment cases before the NLRB, meaning that there is no current push for athlete employment through the NLRB.

There is, however, ongoing litigation in *Johnson v. NCAA,* where former college athletes argue that Division I college athletes should be considered employees under the Fair Labor Standards Act (FLSA). This case was originally filed in 2019. In August 2021, the United States District Court for the Eastern District of Pennsylvania denied the NCAA's motion to dismiss, which was appealed to the United States Court of Appeals for the Third Circuit.[30] In July 2024, the Third Circuit affirmed the district court's denial of the NCAA's motion to dismiss, created a new test to determine whether college athletes are employees under the FLSA, and remanded the case back to the district court.[31]

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[25] Henderson, Noah. "Donald Trump Fires Student-Athlete Labor Champion Jennifer Abruzzo From NLRB." NIL Daily On SI, January 28, 2025.
[26] McCann, Michael. "Dartmouth Basketball Moves to Drop Unionization Push." *Sportico.Com* (blog), December 31, 2024.
[27] Ibid
[28] Libit, Daniel. "College Players Group Drops NLRB Charge Against USC, NCAA and Pac-12." *Sportico.Com* (blog), January 10, 2025.
[29] McCann, Michael. "Notre Dame, Other NLRB Athlete Employment Charges Dropped." *Sportico.Com* (blog), January 15, 2025.
[30] Ibid
[31] Ibid

VII. Additional Litigation Challenging NCAA Restrictions

Two new lawsuits challenging athlete compensation restrictions were filed by football and basketball athletes who opted out of the proposed House settlement. *Hill v. NCAA*, filed in the Northern District of California, includes 67 athletes and *Allen v. NCAA*, filed in the Eastern District of Kentucky, includes 33 athletes.[32] Other athletes who have opted out of the settlement have joined the *Fontenot v. NCAA* case, which was filed in November 2023 by Colorado running back Alex Fontenot. Fontenot challenges NCAA Bylaw 12's prohibition on athletes receiving compensation related to their athletic performance.[33]

Other NCAA bylaws that are currently being challenged in lawsuits include:

- The four-year eligibility rule, including the standard that seasons of competition at junior colleges or non-Division I four-year institutions count against an athlete's eligibility.[34]

- The NCAA's prohibition on allowing Division I tennis players to earn prize money beyond their "actual and necessary" expenses.[35]

A resource for tracking these lawsuits and others impacting college sports is The College Sports Litigation Tracker, created by Boise State sports law professor Sam Ehrlich.

[32] Christovich, Amanda. "At Least 250 Athletes Have Opted Out of House Settlement." Front Office Sports (blog), February 4, 2025.

[33] Libit, Daniel, and Michael McCann. "Awaiting House, Fontenot v. NCAA Presses On With More Plaintiffs." *Sportico.Com* (blog), July 25, 2024.

[34] *See, e.g., Pavia v. NCAA* (M.D. Tenn, complaint filed November 8, 2024); *Arbolida v. NCAA* (D. Kansas, complaint filed February 14, 2025); *Fourqurean v. NCAA* (W.D. Wisc., complaint filed January 29, 2025); and *Sanchez v. NCAA* (E.D. Tenn., complaint filed February 12, 2025).

[35] *Brantmeier v. NCAA* (M.D.N.C., complaint filed March 18, 2024).