



Congressional Testimony

Exploring a Compensation Framework for Intercollegiate Athletes

Testimony before
Committee on Commerce, Science, and Transportation
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Ole Miss

Introduction

Mr. Chairman and members of the committee, thank you for the opportunity to provide my perspective as Congress works toward developing a compensation framework in the best interest of intercollegiate athletes.

Keith Carter, VC for Intercollegiate Athletics, The University of Mississippi

My name is Keith Carter, and I am a proud long-time member of the University of Mississippi¹ family. Since November 2019, I have served as the Vice Chancellor for Intercollegiate Athletics, a position I started in an interim capacity in May 2019. I began my career in the Ole Miss Athletics Department in 2009, later became the Executive Director of the Ole Miss Athletics Foundation, and then served as the Deputy Athletic Director for Resource and Development Acquisition.

While I was a University of Mississippi student, I was a four-year starter on the Ole Miss men's basketball team, which won SEC Western Division titles in 1997 and 1998. I earned All-American honors after my senior season in 1999. I received All-SEC first and second team honors in 1998 and 1999. I also won a gold medal as a proud member of the U.S. national team at the 1998 Goodwill Games and played professional basketball in Italy from 2001 until 2008.

As a former Ole Miss student-athlete, former professional athlete and a current senior administrator at a SEC university, I hope my perspective will add helpful insight to this important conversation. Addressing NIL opportunities for student-athletes within the model of amateur athletics is a complex topic, and it is critical for Congress to consider all aspects of the issue and arrive at the best possible solution as these decisions will impact the futures of so many dedicated college students.

Role of the University

The University's principal obligation as an academic institution is to provide academic excellence for all of our students. It is a privilege, and enormous responsibility, to earn the trust that students and their families place in us. It is our duty to hold all students to high standards for achievement including student-athletes as they are students first and foremost.

Our student-athletes, like all University of Mississippi graduates, must enter the world prepared to thrive in a competitive environment on and off the field. The University is obligated to

¹ The University of Mississippi and its athletics programs are widely known to alumni, students, and friends under the name Ole Miss. The terms "University of Mississippi" and "Ole Miss" are used interchangeably throughout this testimony.









provide them with a foundation to experience lifelong growth and to contribute in all aspects of today's society.

We are extremely proud of our accomplished Ole Miss student-athletes who thrive in their academic pursuits and move on to great success in a variety of careers and professions. The University of Mississippi is dedicated to supporting all students and empowering them to reach their greatest potential, and athletics is one avenue to honor our commitment.

Current University Support of Student-Athletes

Under the existing model of amateur intercollegiate athletics, student-athletes are not compensated for their athletic participation, ability or performance potential. Student-athletes are eligible for full or partial athletics scholarships, academic scholarships, and financial aid up to the cost of college attendance (*i.e.*, tuition, fees, room and board, books, supplies, transportation, and other related expenses). Because all eighteen of the University's sponsored teams are fully funded, coaches may award athletics scholarships up to the NCAA limit for their respective sports. The University also provides student-athletes medical care and academic services in support of the recognized goal of graduation. In addition, student-athletes may request support from the Student Assistance Fund to mitigate any financial hardship they may experience.

SUPPORT PER STUDENT-ATHLETE

	\$5,153 Academic Services
	\$4,261 Strength & Conditioning
	\$8,411 Medical Services
	\$3,461 Nutrition
	\$25,216¹ / \$41,170² Scholarship
	\$7,671¹ / \$10,867² Non-Traditional Academic Term Scholarship
	\$1,235 Academic Break Meals & Housing
	\$1,088 Opportunity Fund

1- In-state 2- Non-Resident

* Non-Traditional Academic Term Scholarship includes a student-athlete taking one Winter Intercession course and two Summer classes. All costs are budgeted costs for the 2017-18 academic year. Student-Athlete support does not include coaching salaries, travel, facilities expenses, event management and other administrative expenses.



VISION

TO BE THE NUMBER ONE ACADEMIC AND ATHLETICS PROGRAM THROUGH THE STRONG EMPHASIS OF CORE VALUES AND THE OPPORTUNITY TO EXPERIENCE ATHLETIC PURSUITS AT THE HIGHEST LEVEL.

PURPOSE

TO DEVELOP STUDENTS TO THEIR FULLEST POTENTIAL THROUGH ATHLETICS.

CORE VALUES

- ACADEMIC EXCELLENCE
- INTEGRITY
- SOCIAL RESPONSIBILITY
- STUDENT-ATHLETE WELFARE
- UNIVERSITY INTEGRATION
- COMMUNITY ENGAGEMENT
- COMPETITIVE EXCELLENCE



The Need for Federal Name, Image, Likeness (NIL) Legislation

In light of the inconsistent state laws being enacted in the NIL space, The University of Mississippi supports federal legislation that allows student-athletes to pursue NIL promotional and marketing opportunities with third-parties. Intercollegiate athletics, as a whole, is best served by a federal regulatory framework, where the amateur collegiate model is preserved and academic institutions are prohibited from compensating student-athletes for the use of their NIL or otherwise identifying, facilitating, or arranging such opportunities. This approach reaffirms and preserves the unique relationship between amateur student-athletes and their universities. Consequently, the existing amateur model for collegiate sports does not include a mechanism by which schools can license intellectual property rights from student-athletes or “compensate” their students for athletic services

The University of Mississippi believes the appropriate regulatory authority or model is a hybrid approach, in which the NCAA retains its compliance enforcement authority over member institutions, and Congress delegates the administration, oversight, and rulemaking authority for any new NIL legislation to an independent body, preferably a non-profit. This body would have nationwide oversight over the myriad of issues implicated by NIL, such as agent regulation and discipline, NIL revenue reporting and disclosure requirements, fair market valuation and analysis, and support services for student-athletes.

The administration of NIL on a nationwide level remains a heavily debated topic. The University’s views on the issues surrounding enforcement necessarily remain open to continued discussions with our conference, the NCAA and Congress.

For the reasons above, I, along with the University of Mississippi, generally support the recommendations to the NCAA Board of Governors regarding the modernization of the NIL rules. We likewise recognize that while the Board has flagged multiple issues related to NIL, those issues warrant more analysis and development to ensure the effective administration and enforcement of any modernized rules.

More importantly, some of the issues surrounding NIL also implicate legal and policy considerations that the NCAA has no authority to address. Explicit and detailed federal guidance on these issues is necessary and should be codified, where warranted, to address conflicting state laws any conflicting state laws.

Federal NIL legislation should provide the necessary regulatory framework for NIL by specifically addressing the following unresolved considerations, among others:

- the identity and scope of authority for the regulatory body charged with administering and enforcing any Federal NIL legislation,
- requirements for the certification, regulation, investigation, and discipline of agents/advisors who represent student-athletes,

- mandatory cooling periods and time limits on when student-athletes are first eligible to pursue NIL opportunities,
- prohibitions on “lifetime” sponsorship deals and endorsement agreements that extend beyond college,
- Title IX gender equity guidance regarding NIL,
- restrictions to length of time and extent to which student-athletes may assign their NIL rights to trade associations for commercial exploitation,
- the inclusion of opt-out clauses in NIL agreements that allow student-athletes to reschedule or postpone NIL engagements that interfere with their athletic commitments, academic studies, and degree progress,
- disclosure requirements and reporting obligations for student-athletes,
- prohibitions on universities compensating students for the use of their name, image and likeness, whether such payments are made directly from the university or indirectly through the use of university facilities, trademarks or other intellectual property or by involvement of a university-affiliated entity or person,
- regulation of boosters in facilitating or offering NIL opportunities, and
- clarity on the extent to which universities may provide NIL education and support services (e.g., financial literacy training modules).

Federal legislation will provide much-needed clarity and a uniform national framework for NIL. Currently, three states have enacted NIL laws and more than twenty states have different versions of NIL legislation pending. The effective date of Florida’s NIL legislation is July 1, 2021. A patchwork of inconsistent state legislation unless preempted, will disrupt the amateur model for intercollegiate sports, undermine the integrity of the recruiting process, and could leave student-athletes vulnerable to the predatory practices of unregulated agents. Federal legislation will ensure that all student-athletes have an equal opportunity to monetize their NIL in a framework that best protects their academic and financial interests.

Impact on Amateurism

As a general matter, NIL would provide male and female student-athletes an unprecedented opportunity to capitalize on the promotional and endorsement activities now available to all other students. Any such legislation, however should preserve the amateur model of collegiate athletics and ensure that student-athletes remain students and are not paid by their institutions to play sports. If properly regulated on a uniform nationwide basis, NIL licenses can be of significant benefit to student-athletes, particularly students with limited financial means, or those with limited to no opportunity to play professional sports.

If, however, a standardized approach to NIL is not implemented on the federal level, and states are allowed to supersede the NCAA’s rulemaking authority, as some pending legislation would allow, NIL could negatively impact the amateur model. Absent sufficient regulatory framework, NIL opportunities could be used as improper inducements during recruiting that could deter

prospective student-athletes from appropriately considering the academic and athletic opportunities a particular university may offer him or her. The unregulated involvement of boosters, agents and other third-parties could result in “play for pay” arrangements, in which student-athletes are impermissibly compensated for their participation or performance in athletics competitions. Student-athletes and their families are uniquely vulnerable, particularly considering that most students may be in high school when first approached by an agent for representation. The amateur model would be further compromised if the pending legislation in certain states is enacted and student-athletes are allowed to receive NIL payments either directly or indirectly from their schools. The student-athlete is effectively rendered an employee or independent contractor of the university, rather than one of its students.

I am concerned that the proposed NIL legislation in some states creates an unfortunate dynamic where student-athletes essentially become talent-for-hire for their respective universities. This outcome will cause irreparable harm not only to the amateur model of collegiate athletics, but also to the system of higher education as a whole.

A federal framework for NIL is needed to protect student-athletes’ interests, preserve the amateur model of intercollegiate athletics, and safeguard the integrity of the recruiting process. The federal legislation should include reasonably tailored exemptions or immunity to ensure that universities can comply with the legislation without being exposed to multimillion-dollar lawsuits similar to those filed against the SEC and NCAA.

Impact on Female Athletes and Non-Revenue Generating Sports

Whether NIL could adversely impact gender equity Title IX turns on the scope of the particular legislation ultimately enacted. For example, the NIL legislation proposed in some states will allow universities to pay student-athletes for the use of their NIL. If institutions in those states elect to pay, but fail to provide NIL equal opportunities to male and female student-athletes equitably, gender equity concerns under Title IX may be implicated.

Under the proposed NIL legislation in other states, universities are prohibited from entering into NIL promotional or endorsement deals with student-athletes, who may only pursue such ventures with third-parties who have no affiliation to the university. This model is unlikely to trigger Title IX gender equity issues, since no university funds or resources will be leveraged to make or otherwise facilitate any NIL payments. Alternatively, some states have either enacted or proposed NIL legislation that rejects this approach. If these various state laws take effect, endorsement deals between universities and student athletes will be legal in some states, but prohibited in others. As such, gender equity and Title IX implications of NIL could vary depending on where the university is located. In sum, Title IX implications are more likely if universities have a role in the marketing, promotion, endorsement, or disbursement of NIL funds to their student-athletes.

An additional concern is that no existing Title IX regulations or policies address the extent to which universities should offer NIL education and support services to student-athletes with NIL earning potential. Universities likewise have no clarity on how the value of these NIL education and support services should be quantified and presented in their annual Title IX disclosures. None of the hundreds of pages of new Title IX regulations that take effect in August 2020 address these issues. Federal guidance will be vitally beneficial and is necessary to ensure that the various state laws on NIL do not undercut Title IX gender equity. I encourage Congress to closely examine gender equity issues as federal legislation is developed.

Conclusion

Thank you for the opportunity to share the University of Mississippi's perspectives on the many complex issues involved in NIL. We are grateful for the thoughtful way Chairman Wicker and Senate Commerce Committee members are approaching the discussion and Ole Miss commits to being a helpful partner going forward in the best interest of the student-athletes.