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Summary of Responses from Universities, Colleges, Associations, and Conferences to Inquiries from Chairman Roger Wicker on the Issue of Compensation for the Use of Name, Image, and Likeness by Collegiate Student-Athletes June 30, 2020

Background: On May 7, 2020, Chairman Wicker of the Senate Committee on Commerce, Science, and Transportation, sent a letter to 50 different collegiate associations, conferences, universities, junior colleges, community colleges, and service academies with 20 questions designed to help the Committee gain a better understanding of how each organization or institution views the debate over whether student-athletes should receive compensation for the commercial use of their name, image, and likeness (NIL). The Committee has since received responses to these letters. Below is a consolidated summary of the answers the Committee received for each question.

Summary of Responses:

Question 1: *What is the current structure for how student-athletes receive financial support or compensation for their athletic ability? For example: scholarships, clothing, food, per diem, and housing.*

All schools affiliated with national organizations (NCAA, NAIA, NCCCA, etc.) responded that their rules regarding how student-athletes are compensated are consistent with their respective organization's rules. Military academies compensate student-athletes with military pay.

Question 2: *Do certain student-athletes or sports teams receive more in financial support or compensation based on their athletic ability or performance potential? If so, how is that financial support or compensation determined for each sports team?*

Approximately 90-percent of respondents answered "no" to this question. Some answered "yes," and some entities representing multiple schools delegate this decision to their members.

Question 3: *Does a student-athlete receive more in financial assistance from the university if his or her name, image, and likeness (NIL) is more profitable for the school and athletic department? If so, how is that financial assistance determined?*

All respondents answered “no” to this question.

Question 4: *Do the different athletic programs consider internally whether or not a prospective student-athlete will have a higher NIL worth during the recruitment process? If so, please describe how this is evaluated and determined?*

All respondents answered “no” to this question.

Question 5: *When making admissions decisions, does your institution consider how a prospective student-athlete would benefit the program financially?*

All respondents answered “no” to this question.

Question 6: *What, if any, role should NIL have in the recruitment process?*

Nearly all respondents to this question answered that NIL should play no role in the recruitment process. Some said NIL discussions could play only a limited role, such as if education on the NIL rules is required.

Question 7: *Across the United States, there has been a major increase in state laws and proposals that deal with compensating student-athletes for their name, image, and likeness. Please share your institution’s views on the impact of these state laws and proposals on collegiate sports, including non-revenue generating sports.*

Just over half of the respondents answered that the increase in state laws and proposals to compensate student-athletes for their NIL would have a negative impact on the industry. Large universities believe that a conflicting mix of state laws would undermine the NCAA’s authority to effectively regulate NIL in collegiate sports. The junior college and small university communities consistently believe that a patchwork of different state laws would negatively impact recruitment and retention of athletes. Some answered that it would have very little effect.

Question 8: *How would a patchwork of different state laws regarding this issue affect your student-athletes?*

Almost all respondents answered that a patchwork of differing state NIL laws would have a negative impact on their athletics program. While responses varied, most of the concern focused on the risk of inconsistent rules, enforcement issues, and an unfair recruiting advantage. A few respondents answered that there would be no impact.

Question 9: *Does your institution believe there is a need for a federal, nationwide standard?*

Over 70 percent of respondents believe there is a need for a federal, nationwide standard. Some entities stated that they did not have a particular position on the issue. Additionally, some smaller universities and colleges believe that even if there were a single nationwide standard, allowing for third-party compensation would negatively impact their institution. These smaller programs believe they would still face challenges with the recruitment and retention of their athletes.

Question 10: *Have you already engaged your student-athletes on NIL issues? If so, please share the feedback you received.*

Over half of the respondents stated that they have already engaged their student-athletes on NIL issues. These preliminary conversations suggest that students are generally supportive of NIL, but seek guidance on several issues, including: the tax consequences of revenue derived from NIL and how it could impact their financial aid, the coordination of their academic schedules and athletics commitments with possible NIL promotional/endorsement opportunities, and the clarification of their rights and NCAA compliance obligations. The remainder of respondents answered that they have not engaged their athletes.

Question 11: *Does your institution support efforts to modernize rules to compensate student-athletes for the use of their name, image, and likeness?*

Approximately 40 percent of respondents believe there should be an effort to modernize NIL rules. 10 percent of the respondents only support these measures if there are uniform rules across the country. The remainder of respondents either believe there should be no effort to modernize the rules, or had no position on the issue.

Question 12: *Please outline your institution's views on third-party compensation for the use of a student-athlete's name, image, or likeness, and recommendations on how third-party compensation could be addressed in federal legislation on NIL.*

Most school respondents stated that they concur with their association's position on the matter. Some respondents stated that they oppose compensation for NIL, while others support it under certain conditions. A small minority answered that NIL compensation would have harmful effects on amateurism in collegiate athletics. Generally, the large universities support federal legislation that allows student-athletes to pursue NIL promotional and marketing opportunities with third-parties. However, any federal regulatory framework must prohibit institutions from compensating student-athletes for the use of their NIL.

Question 13: *Please describe how your institution views the impact of NIL on Title IX.*

Over 60 percent of respondents believe that NIL compensation would favor male athletes and/or extremely marketable sports such as football and men's basketball. Others answered that it would have no effect.

Question 14: *Please describe how NIL may impact amateurism in collegiate sports.*

84 percent of respondents answered that NIL would have a negative impact on amateurism in collegiate sports, while only 5 percent believe there would be a positive effect. The respondents have stated that if a standardized approach to NIL is not implemented on the federal level, and states are allowed to proscribe the NCAA's rulemaking authority, as some pending legislation would allow, NIL could negatively impact the amateur model. Absent sufficient regulatory guideposts, NIL opportunities could be used as improper inducements during recruiting. The unregulated involvement of boosters, agents, and other third-parties could result in "play for pay" arrangements, where student-athletes are impermissibly compensated for their participation or performance in athletics competitions. The amateur model would be further compromised if 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. The remainder of respondents did not know how NIL would impact amateurism.

Question 15: *Does your institution consist of any student-athletes that also compete or have competed in the Olympics? Do current rules governing the provision of financial support or compensation to a student-athlete change if that athlete is also a former or current Olympian? If so, please outline the current rules governing the provision of financial support or compensation to student-athletes that are also former or current Olympians.*

Over half of respondents do not have student-athletes that also compete as Olympians. The remainder of respondents do have Olympians at their institution, and highlighted that the current NCAA rules only allow for necessary Olympic expenses to be covered.

Question 16: *Do the NIL rules differ for student-athletes that are former or current Olympians?*

Nearly all respondents stated that NIL rules do not differ if you are an Olympian. However, some of the respondents argued that there should be different rules for student-athletes that are also Olympians.

Question 17: *To what extent has your institution consulted or engaged with professional leagues or the U.S. Olympic and Paralympic Committee (USOPC) on financial support or compensation to student-athletes?*

Nearly all respondents stated that they have not engaged with professional leagues or the USOPC at all, while some stated that they have engaged those entities on occasion, but not often.

Question 18: *To what extent has your institution consulted or engaged with professional leagues or the U.S. Olympic and Paralympic Committee on student-athletes' use of their name, image, and likeness?*

Nearly all of the respondents have not engaged with professional leagues or the USOPC on student-athletes' use of their NIL. A small minority have had minimal engagement with those organizations.

Question 19: *Who or what would be the appropriate enforcement authority in any federal legislation governing NIL in collegiate sports?*

Nearly half of respondents believe their national athletic organization (NCAA et al.) should govern NIL rules. Some respondents believe that these rules should be governed by the federal government, while others believe there should be an entirely new governing entity created.

Question 20: *Please provide your perspective on the recommendations included in the NCAA Board of Governors Federal and State Legislation Working Group report issued on April 28, 2020.*

Over 40 percent of respondents supported the NCAA's recommendations on how to modernize the current NIL rules. The remainder of respondents did not have a perspective on the report, or it did not apply to them.