

NIL: THE TITLE IV FINANCIAL AID ENIGMA

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Abstract

In perhaps the most historic revolution in modern-day college sports, California Governor Gavin Newsom signed into law the Fair Pay to Play Act (“FPTPA”) on September 30, 2019, allowing student-athletes to financially benefit from their Name, Image, and Likeness (“NIL”). Though the National Collegiate Athletic Association (“NCAA”) initially attacked the bill as a threat to the student-athlete model, it quickly changed its stance in support of NIL earnings. While monumental, allowing student-athletes to financially benefit from NIL is not a panacea. Across all NCAA divisions, less than 2% of student-athletes receive athletic scholarships. Of those, 48.5% still require some form of federal Title IV need-based aid. This Article investigates the relationship between Title IV and NIL income and examines the potential consequences facing student-athletes who capitalize off their NIL, but rely on Title IV funding to finance their higher education.

I. Introduction

In February 2022, sports columnist Mark Bradley referenced NIL funds as “the new currency of college football.”¹ Bradley’s economic exposé strikes at the heart of the NCAA’s century-long effort to restrain student-athletes from engaging in any form of pay-for-play, even amidst an increasingly commercialized college sports industry.² Since 2021, NIL contracts have propelled the evolution of the entire collegiate sports ecosystem. Student-athletes can now entertain commercial endorsement deals that monetize their NIL³ without running afoul of the NCAA’s primordial tenet of amateurism.⁴

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1. Mark Bradley, *NIL Money Is the New Currency of College Football*, ATLANTA J.-CONST. (Feb. 4, 2022), <https://www.ajc.com/sports/mark-bradley-blog/nil-money-is-the-new-currency-of-college-football/2VHRQ6URWFHG3JXV7V3NQYSBXY/>.

2. See John T. Holden & Kathryn Kisska-Schulze, *Taxing Sports*, 71 AM. U.L. REV. 845, 866 (2022) [hereinafter Holden & Kisska-Schulze, *Taxing Sports*] (identifying “amateurism” as the historic NCAA principle tethered to college sports).

3. Kaitlin M. Ray, Note, *Where the “20 Hour Rule” Meets the 40-Hour Workweek: A New Model for College Athletics*, 20 VA. SPORTS & ENT. L.J. 215, 220 (2021).

4. See generally Courtney Seams, *How Name, Image and Likeness Reforms Are Eroding Amateurism in the NCAA and How That Will Affect the NCAA’s Tax-Exempt Status*, BUS. & FIN. L. REV., Apr. 2022, at 28, 30 (discussing amateurism in the age of NIL).

Such economic prowess lies in stark contrast to the historical notion of college athletics, where student-athletes were the only parties *not* enjoying a piece of the revenue-sharing pie.⁵

Collegiate sports are a big business. Boosters and alumni contribute millions to college athletic departments.⁶ Annual football coaching salaries recently surpassed the \$10 million mark.⁷ In 2021, the Southeastern Conference (“SEC”) increased its revenue by \$105 million, eclipsing \$833 million for the entire fiscal year.⁸ Also in 2021, the Atlantic Coast Conference (“ACC”) paid between \$35 and \$38.1 million to each of its member schools,⁹ while the NCAA generated record-breaking revenue of \$1.16 billion.¹⁰ In 2019, the same year California Governor Gavin Newsom signed the FPTPA into law,¹¹ NCAA-member athletic departments collectively generated \$18.9 billion from broadcasting agreements, third-party sponsorships, and ticket sales.¹² In the four years since legalized sports betting became widely accessible across the United States, bettors have wagered over \$125 billion.¹³

5. Kathryn Kisska-Schulze & Adam Epstein, *Changing the Face of College Sports One Tax Return at a Time*, 73 OKLA. L. REV. 457, 488 (2021) [hereinafter Kisska-Schulze & Epstein, *Changing the Face*].

6. Kathryn Kisska-Schulze, *This Is Our House! – The Tax Man Comes to College Sports*, 29 MARQ. SPORTS L. REV. 347, 351 (2019) [hereinafter Kisska-Schulze, *This Is Our House!*].

7. See David Suggs, *Highest-Paid Football Coaches: Kirby Smart, Nick Saban Among the Nation’s Biggest Earners*, SPORTING NEWS (Aug. 23, 2022), <https://www.sportingnews.com/us/ncaa-football/news/highest-paid-college-football-coaches-kirby-smart-nick-saban/n5q5tiw3ag96kafbb21006iy> (providing a list of notable college coaches making more than \$10 million a year).

8. Steve Berkowitz, *SEC Increased Its Revenue by \$105 Million in 2021, Reaching a Total of \$833 Million*, USA TODAY (Feb. 10, 2022, 6:10 PM ET), <https://www.usatoday.com/story/sports/2022/02/10/southeastern-conference-revenue-increase-fiscal-2021/6741455001/>.

9. Nick Schultz, *SEC, ACC Lead the Way in Power 5 Revenue Gains for 2021 Fiscal Year*, ON3 (May 20, 2022), <https://www.on3.com/news/sec-acc-lead-way-power-5-revenue-gains-2021-fiscal-year-big-ten-pac-12/>.

10. Eben Novy-Williams, *March Madness Daily: The NCAA’s Billion-Dollar Cash Cow*, SPORTICO (Mar. 26, 2022), <https://www.sportico.com/leagues/college-sports/2022/march-madness-daily-the-ncaas-billion-dollar-cash-cow-1234668823/>.

11. See S.B. 206, 2019-2020 Leg., Reg. Sess. (Cal. 2019) [hereinafter Fair Pay to Play Act].

12. Felix Richter, *U.S. College Sports Are a Billion-Dollar Game*, STATISTA (July 2, 2021), <https://www.statista.com/chart/25236/ncaa-athletic-department-revenue/>.

13. See *Murphy v. NCAA*, 138 S. Ct. 1461, 1484 (2018) (removing barriers to state gambling legislation); see also Wayne Parry, *Americans Bet \$125 Billion on Sports in 4 Years Since Legalization*, ASSOCIATED PRESS (May 13, 2022, 12:28 PM CDT), <https://apnews.com/article/us-supreme-court-sports-new-jersey-6c0493a9a0be610abd5ef18bd83a556a>.

Adding NIL funds to the financial jumble merely exacerbates the massive dollar amounts already in play. Estimates indicate that the NIL market will mature to over \$1 billion annually.¹⁴ The recent emergence of NIL collectives has opened the door for an even greater variety of earnings opportunities.¹⁵ While media outlets tend to focus on those signing multi-million-dollar endorsement deals,¹⁶ not every student-athlete signing an NIL contract is garnering the big bucks. Data supports that about \$5,000 is the average NIL compensation amount earned for multi-activity endorsements, with Instagram posts generating about \$522, YouTube videos paying \$933, and individual interviews compensating around \$450.¹⁷ A 2022 study by Opendorse indicated that the median Division-1 (“D-1”) student-athlete earns about \$3,711 in NIL deals.¹⁸

Whether NIL contracts ultimately generate hefty payouts or small-to-moderate deals, most student-athletes entertaining them must consider how

14. See Justin Birbaum & Olivia Evans, *College Athletes Are Ready to Reap the Rewards of a Billion-Dollar NIL Market. Opendorse Is Here to Help*, FORBES (June 24, 2021), <https://www.forbes.com/sites/oliviaevans/2021/06/24/college-athletes-are-ready-to-reap-the-rewards-of-the-billion-dollar-nil-market-opendorse-is-here-to-help/?sh=3b8164604f57>.

15. See, e.g., Larry Mohr, *The Tax-Exempt Entity: NIL Collectives Are Getting Creative in Pursuing College Athletes*, BAKERTILLY (June 27, 2022), <https://www.bakertilly.com/insights/the-tax-exempt-entity-nil-collectives>; Nicole Auerbach, *College Leaders ‘Extremely Concerned’ with NIL Collectives’ Direction: Survey*, ATHLETIC (May 4, 2022), <https://theathletic.com/news/athletic-directors-ncaa-nil-survey/wA4u5Y8rqf8P/>; Brandon Marcello, *NIL Collectives Provide Big Checks, New Challenges for College Athletes*, 247SPORTS (Mar. 9, 2022), <https://247sports.com/Article/College-Football-NIL-Collectives-Money-Behind-The-Scenes-184104753/>.

16. See, e.g., Mike Chiari, *2023 5-Star CFB Recruit Reportedly Signs Historic NIL Deal Worth Up to \$8M*, BLEACHER REP. (Mar. 12, 2022), <https://bleacherreport.com/articles/10029537-2023-5-star-cfb-recruit-reportedly-signs-historic-nil-deal-worth-up-to-8m>; Josh Rodgers, *Quarterback Jaden Rashada Said to Have Inked Largest NIL Deal in History for a High School Recruit at \$9.5M*, AFROTECH (June 28, 2022), <https://afrotech.com/jaden-rashada-said-to-have-inked-largest-nil-deal-in-history-at-9-5m>; Coleman Bentley, *Pitt WR Jordan Addison Reportedly Transferring to USC on NIL Mega-Deal, Will Make More Than JuJu Smith-Schuster with the Chiefs in 2022*, GOLF DIGEST (May 20, 2022), <https://www.golfdigest.com/story/jordan-addison-usc-nil-contract-college-football-juju-smith-schuster-chiefs>.

17. See Opendorse (@opendorse), TWITTER (Jan. 6, 2022, 9:00 AM), <https://twitter.com/opendorse/status/1479105524209569801?s=20>.

18. Josh Schafer, *NIL: Here’s How Much Athletes Earned in the First Year of New NCAA Rules*, YAHOO!FINANCE (July 1, 2022), <https://finance.yahoo.com/news/nil-heres-how-much-ncaa-athletes-earned-185901941.html> (reflecting numbers through 2022).

those funds could impact their overall economic outlook.¹⁹ Certainly, taxes play an inevitable role.²⁰ Financial planning, however, expands beyond mere income tax planning; it involves a comprehensive examination of one's entire economic outlook, including budgeting, investing, saving, and, for many student-athletes, advanced planning for the costs of higher education.

A 2015-16 study found that 48.5% of all student-athletes receive some form of federal Title IV need-based aid.²¹ Such a reality is perhaps unsurprising given that only 2% of all high school recruits receive athletic scholarships,²² and 86% of college athletes live below the poverty line.²³ Student-athletes may be naïve to the reality that the NIL earnings they receive as freshmen and/or sophomores could impact their federal Title IV need-based eligibility as juniors and seniors.²⁴ Signing an NIL contract and collecting a check is the easy part. Understanding and planning for the impact of such earnings on Title IV need-based aid could prove more complex.

To illustrate, consider the following hypothetical example. Pat is an incoming 2023-2024 freshman recruit for a Power 5 conference men's track team. The total cost of attendance at X University where Pat will be attending

19. See I.R.C. § 6017 (“Every individual . . . having net earnings from self-employment of \$400 or more for the taxable year shall make a return with respect to the self-employment tax imposed by Chapter 2.”).

20. See generally Kisska-Schulze & Epstein, *Changing the Face*, supra note 5, at 477–503 (examining various federal and state tax issues that could impact student-athletes who earn NIL income).

21. See Owen Daugherty, *NCAA Permitting College Athletes to Profit Off of Name, Image, and Likeness Comes with Questions for Financial Aid Offices*, NASFAA (July 21, 2021), https://www.nasfaa.org/news-item/25885/NCAA_Permitting_College_Athletes_to_Profit_Off_of_Name_Image_and_Likeness_Comes_With_Questions_for_Financial_Aid_Offices.

22. See Michael D. Fasciale, Comment, *The Patchwork Problem: A Need for National Uniformity to Ensure an Equitable Playing Field for Student-Athletes' Name, Image, and Likeness Compensation*, 52 SETON HALL L. REV. 899, 899 n.3 (2022).

23. John T. Holden et al., *Reimagining the Governance of College Sports After Alston*, 74 FLA. L. REV. 427, 443 n.111 (2022).

24. Title IV references to Title IV the Higher Education Act of 1965, which regulates federal financial aid assistance to institutions of higher education. See Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (1965); see also Susan Maloney & Andy Bush, *NIL and Title IV Financial Aid Considerations for Colleges and Universities*, BAKERTILLY (Aug. 16, 2021), <https://www.bakertilly.com/insights/nil-and-title-iv-financial-aid-considerations-for-colleges> (noting that NIL earnings are “more likely to impact juniors’ and seniors’ needs-based aid if they received NIL income in their early years of college”). The Higher Education Act is subject to reauthorization every few years, with the last reauthorization occurring in 2008. ALEXANDRA HEGJI, CONG RSCH. SERV., R43351, THE HIGHER EDUCATION ACT (HEA): A PRIMER 1 (2023).

is \$28,000. Assume for purposes of simplicity that this cost will remain static for the duration of Pat's time there. Pat is offered a \$5,000 athletic scholarship his freshman year. Knowing that this partial scholarship will not cover the total cost of attendance at *X* University, Pat (and his parents) complete a Free Application for Federal Student Aid ("FAFSA") form,²⁵ which requires, among other things, that they input their adjusted gross income ("AGI") for the 2021 tax year. After reviewing his completed FAFSA application, *X* University determines that Pat's estimated family contribution ("EFC") for 2023-2024 is \$7,000. As such, Pat will need to take out \$16,000 in federal student loans to cover the remaining balance due. During his freshman year, Pat competes well and garners increased social media attention. A local business negotiates and enters into a contract that pays Pat \$20,000 in exchange for the use of his NIL in an advertising campaign. Pat immediately uses those earnings to buy a car.

Fast forward to his junior year. Following a knee injury, Pat has been unable to compete at a competitive level. Pat has not received any further NIL contract opportunities. His athletic scholarship remains at \$5,000, so he and his parents again fill out a FAFSA form for the 2025-2026 academic year to help cover the cost of attendance at *X* University. Because this year's FAFSA application requires that Pat and his parents input their AGI from 2023-2024, a weighted portion of Pat's \$20,000 NIL earnings must be included in their EFC calculation. Using the data input on his FAFSA application, assume Pat's EFC is now calculated at \$10,000 (thus reducing the amount of his federal loan eligibility to \$13,000). Pat did not financially plan for this, and neither he nor his family has the funds to cover the increased out-of-pocket cost. Pat meets with his coach about this concern, but no additional athletic scholarship funding is available. In addition, there do not appear to be any further NIL contracts coming his way. Pat must now figure out how to pay for, or privately finance, some or all of the remaining out-of-pocket expenses without the assistance of Title IV funding.

At present, there exists a lacuna in the legal scholarship addressing the potential impact of NIL funding on federal Title IV need-based aid eligibility and the accompanying role that colleges, universities, policymakers, and NIL collectives should play in helping to ensure that student-athletes understand the potential conflicts involved. This Article seeks to fill this void. To address the relationship between NIL earnings and Title IV, this Article proceeds as follows. Part I offers an Introduction. Part II provides a brief history of the evolution of NIL. Part III examines the impact of NIL earnings on student-

25. See generally *FAFSA Application*, U.S. DEP'T OF EDUC: FED. STUDENT AID, <https://studentaid.gov/h/apply-for-aid/fafsa> (last visited Oct. 22, 2023).

athletes' need-based federal aid and offers recommendations about how to better assist student-athletes in their financial planning endeavors, with an eye towards Title IV eligibility. Part IV provides closing remarks.

II. NIL: A Brief History

For over seven decades, student-athletes have launched a myriad of legal battles (albeit, often unsuccessfully) in an attempt to narrow the playing field between amateur and professional sports.²⁶ Relegating student-athletes to the NCAA's hard-and-fast principle of amateurism, even amidst an increasingly commercialized college sports arena,²⁷ has been a heavily scrutinized area within academic literature.²⁸ Although college sports have yet to evolve into a

26. See, e.g., *Univ. of Denver v. Nemeth*, 257 P. 2d 423, 430 (Colo. 1953) (finding that a college football player, who was employed by his university, qualified for workers' compensation benefits following a sports-related injury); *State Comp. Ins. Fund v. Indus. Comm'n*, 314 P. 2d 288, 289–90 (Colo. 1957) (denying workers' compensation benefits to a college football player's widow after her husband died from injuries suffered in a football game); *Coleman v. W. Mich. Univ.*, 336 N.W. 2d 224, 228 (Mich. Ct. App. 1983) (holding that there was no evidence of an employment contract between a university and a student-athlete that would qualify him for workers' compensation benefits); *Berger v. NCAA*, 162 F. Supp. 3d 845, 857 (S.D. Ind. 2016), *aff'd*, 843 F.3d 285, 294 (7th Cir. 2016) (holding that NCAA student-athletes are not employees under the Fair Labor Standards Act); *Nw. Univ. & College Athletes Players Ass'n*, No. 13-RC-121359, 2014 NLRB LEXIS 221 (N.L.R.B. Mar. 26, 2014), *rev'd*, 362 NLRB No. 167 (Aug. 17, 2015) (declining jurisdiction over Northwestern University football players' efforts to unionize and bargain collectively); *Waldrep v. Tex. Emps. Ins. Ass'n*, 21 S.W. 3d 692, 695 (Tex. App. 2000) (finding no employer-employee relationship existed between a university and its football player); *Rensing v. Ind. State Univ. Bd. of Trs.*, 444 N.E. 2d 1170, 1175 (Ind. 1983) (finding no employment relationship between a university and its football player); *O'Bannon v. NCAA*, 802 F.3d 1049, 1079 (9th Cir. 2015) (finding that NCAA compensation rules violate federal antitrust laws); *NCAA v. Alston*, 141 S. Ct. 2141 (2021) (holding that the Sherman Act prohibits restrictions of education-related funding to student-athletes beyond their scholarship funds).

27. See NCAA, 2021-22 NCAA DIVISION I MANUAL art. 2.9, at 3 (2021) [hereinafter 2021-22 NCAA DIVISION I MANUAL], <https://www.ncaapublications.com/productdownloads/D122.pdf> (“Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental, and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.”); see also Holden & Kisska-Schulze, *Taxing Sports*, *supra* note 2, at 877.

28. See, e.g., William W. Berry III, *Amending Amateurism Saving Intercollegiate Athletics Through Conference-Athlete Revenue Sharing*, 68 ALA. L. REV. 551, 556 (2016) (proposing student-athletes receive revenue sharing opportunities to better preserve the NCAA's system of intercollegiate athletics); Marc Edelman, *The Future of Amateurism After Antitrust Scrutiny*:

true pay-for-play model, where student-athletes are deemed employees of their institutions,²⁹ California's passage of the FPTPA in 2019 radically transformed the NCAA's historical paradigm.³⁰

For the first time in college sports history, the FPTPA allows student-athletes to profit off their NIL, thereby circumventing the NCAA's ban on student-athletes receiving compensation outside of their educational grants-in-aid.³¹ Immediately following Governor Newsom's signing of the FPTPA into law, the NCAA condemned it as an "unconstitutional" threat to the "critical distinction between college and professional athletics."³² Likewise, critics voiced concerns over the statute's potential impact on recruiting processes.³³ Still, a cascade of states soon followed California's impetus, introducing or passing similar legislation.³⁴

In a remarkable twist, and just one month after the FPTPA's passage, the NCAA changed its stance by unanimously supporting NIL opportunities, so long as funds earned remained within the purview of the "collegiate model" of amateur sports.³⁵ Six months later in April 2020 an NCAA-appointed working group released a final report. The working group recommended that student-athletes earn NIL compensation derived from third-party endorsement deals

Why a Win for the Plaintiffs in the NCAA Student-Athletes Name & Likeness Licensing Litigation Will Not Lead to the Demise of College Sports, 92 OR. L. REV. 1019, 1055 (2014) (proposing that NIL financial opportunities would not negatively impact NCAA colleges sports); Casey E. Faucon, *Assessing Amateurism in College Sports*, 79 WASH. & LEE L. REV. 3 (2022) (proposing less restrictive commercialized opportunities to allow student-athletes to take advantage of pay-for-play models, while maintaining inherent values of amateurism). See generally Kevin Brown & Antonio Williams, *Out of Bounds: A Critical Race Theory Perspective on 'Pay for Play'*, 29 J. LEGAL ASPECTS SPORT 30, 40 (2019) (evaluating the amateur/education model of college revenue-generating sports, with particular attention paid to the racial exploitation of athletes); Marc Edelman, *The Future of College Athlete Players Unions: Lessons Learned from Northwestern University and Potential Next Steps in the College Athletes' Rights Movement*, 38 CARDOZO L. REV. 1627 (2017) (promoting student-athlete unionization efforts); Josephine R. (Jo) Potuto et al., *What's in a Name? The Collegiate Mark, the Collegiate Model, and the Treatment of Student-Athletes*, 92 OR. L. REV. 879 (2014) (arguing the need for continued differences between collegiate and professional sports, even amidst an antiquated NCAA amateurism model).

29. Holden & Kisska-Schulze, *Taxing Sports*, *supra* note 2, at 907.

30. See Fair Pay to Play Act, *supra* note 11; see also CAL. EDUC. CODE § 67456 (2023).

31. See Kisska-Schulze & Epstein, *Changing the Face*, *supra* note 5, at 457–58.

32. *NCAA Responds to California Senate Bill 206*, NCAA (Sept. 11, 2019, 10:08 AM), <https://www.ncaa.org/news/2019/9/11/ncaa-responds-to-california-senate-bill-206.aspx>.

33. Ashley Jo Zaccagnini, Comment, *Time's Up: A Call to Eradicate NCAA Monopsony Through Federal Legislation*, 74 SMU L. REV. F. 55, 82 (2021).

34. Kisska-Schulze & Epstein, *Changing the Face*, *supra* note 5, at 473–77.

35. Holden & Kisska-Schulze, *Taxing Sports*, *supra* note 2, at 887.

and other business opportunities only as long as schools and conferences played no role in such activities.³⁶ Amidst the increasing cacophony surrounding NIL discussions, numerous states passed legislation that allowed student-athletes to benefit financially from the use of their NIL, some as early as July 1, 2021. Congress then became entrenched in evaluating whether a national student-athlete compensation standard was needed.³⁷ The U.S. Supreme Court's unanimous decision in *NCAA v. Alston* upended payment limitation restrictions on student-athletes.³⁸ Following *Alston*, on July 1, 2022, the NCAA suspended its previously published NIL policies, instead announcing "interim" guidance that significantly relaxed its previous stance on the matter, thereby leaving a patchwork of state efforts to address student-athlete compensation.³⁹

The NCAA's interim guidance effectively "gifted" those jurisdictions that had yet to pass any form of NIL legislation greater leverage with outside stakeholders, thus resulting in a 2022 state legislative cycle that accelerated NIL proposals and amendments.⁴⁰ On February 3, 2022, Alabama became the

36. Jeffrey F. Brown et al., *A Proposal for Group Licensing of College Athlete NILs*, 12 HARV. J. SPORTS & ENT. L. 1, 4–5 (2021); see also FED. & STATE LEGIS. WORKING GRP., NCAA BD. OF GOVERNORS, FINAL REPORT AND RECOMMENDATIONS 22–23 (2020), https://ncaaorg.s3.amazonaws.com/committees/ncaa/wrkgrps/fslwg/Apr2020FSLWG_Report.pdf.

37. See John T. Holden et al., *A Short Treatise on College-Athlete Name, Image, and Likeness Rights: How America Regulates College Sports' New Economic Frontier*, 57 GA. L. REV. 1, 34–35 (2022) (noting that Florida was the first state to accelerate NIL rights when it passed a law similar to that of the FPTPA, but allowed such rights to take effect on July 1, 2021); see also *infra* notes 96–102 and accompanying text.

38. 141 S. Ct. 2141, 2153, 2166 (2021).

39. See Holden et al., *supra* note 37, at 6–7; see also Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> ("The policy provides the following guidance to college athletes, recruits, their families and member schools: Individuals can engage in NIL activities that are consistent with the law of the state where their school is located. Colleges and universities may be a resource for state law questions. College athletes who attend a school in a state without an NIL law can engage in this type of activity without violating NCAA rules related to name, image and likeness. Individuals can use a professional services provider for NIL activities. Student-athletes should report NIL activities consistent with state law or school and conference requirements to their school.").

40. Braly Keller, *NIL Incoming: Comparing State Laws and Proposed Legislation*, OPENDORSE (Jan. 31, 2023), <https://biz.opendorse.com/blog/comparing-state-nil-laws-proposed-legislation/>.

first state to officially repeal its NIL legislation, finding its law to be more restrictive than that permitted by the NCAA.⁴¹

At current, more than twenty-five states have passed some form of NIL law;⁴² four have amended previously passed laws;⁴³ and at least fifteen have introduced new legislation focused on student-athlete compensation.⁴⁴ The following chart provides a breakdown of NIL legislative action by state:⁴⁵

State	Statute/ Bill	Status	Effective Date
Alabama	HB 404 ⁴⁶	Repealed by HB 76 ⁴⁷	Date of repeal: 2/3/22
Alaska	---	---	---
Arizona	SB 1296 ⁴⁸	Passed	07/23/2021
Arkansas	HB 1671 ⁴⁹	Passed	01/01/2022
California	SB 206 ⁵⁰ SB 26 ⁵¹	Passed Advances start date	09/01/2021 01/01/2023
Colorado	SB 20-123 ⁵²	Passed	07/01/2021
Connecticut	HB 6402 ⁵³	Engendered in Public Act No. 21-132	09/01/2021

41. See H.B. 404, 2021 Reg. Sess. (Ala. 2021) (repealed by H.B. 76, 2022 Reg. Sess. (Ala. 2022)).

42. See *Tracker: Name, Image and Likeness Legislation by State*, BUS. OF COLL. SPORTS, <https://businessofcollegesports.com/tracker-name-image-and-likeness-legislation-by-state/> (last updated July 28, 2023) (noting that states with NIL laws on the books include Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, Oklahoma, Oregon, South Carolina, Tennessee, Texas, and Virginia).

43. See *id.*

44. See *id.*

45. Data derived from *id.*

46. See H.B. 404, 2021 Reg. Sess. (Ala. 2021).

47. See H.B. 76, 2022 Reg. Sess. (Ala. 2022).

48. See H.B. 1296, 55th Leg., 1st. Reg. Sess. (Ariz. 2021).

49. See H.B. 1671, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021).

50. See S.B. 206, 2019-2020 Leg., Reg. Sess. (Cal. 2019).

51. See S.B. 26, 2021-2022 Leg., Reg. Sess. (Cal. 2021).

52. See S.B. 20-123, 72d Gen. Assemb., Reg. Sess. (Colo. 2020).

53. See H.B. 6402, Gen. Assemb., Reg. Sess. (Conn. 2021).

State	Statute/ Bill	Status	Effective Date
Delaware	SB 297 ⁵⁴	Passed ⁵⁵	11/2/2022
District of Columbia	B24-0456	Introduced	---
Florida	SB 646 ⁵⁶	Passed	07/01/2021
Georgia	HB 617 ⁵⁷	Passed	07/02/2021
Hawaii	SB 2673 ⁵⁸	Introduced	
Idaho	---	---	---
Illinois	SB 2338 ⁵⁹ HB 1175 ⁶⁰	Passed Amends SB 2338	07/02/2021 05/20/2022
Indiana	---	---	---
Iowa	SF 245 ⁶¹	Introduced	---
Kansas	HB 2264 ⁶²	Passed in House	---
Kentucky	SB 6 ⁶³	Passed	03/09/22
Louisiana	SB 60 ⁶⁴	Passed	07/01/22
Maine	Leg. Doc. 1893 ⁶⁵	Introduced	---
Maryland	HB 125 ⁶⁶	Passed	07/01/23
Massachusetts	S 832 ⁶⁷	Introduced	---
Michigan	HB 5217 ⁶⁸	Passed	12/31/22

54. See S.B. 297, 151st Gen. Assemb., Reg. Sess. (Del. 2021-2022).

55. This Act amends the Uniform Law Commission's Revised Uniform Athlete Agents Act to include agents representing athletes for NIL purposes. See *id.*

56. See S.B. 646, 2020 Leg., Reg. Sess. (Fla. 2020).

57. See H.B. 617, 2021-2022 Gen. Assemb., Reg. Sess. (Ga. 2022).

58. See S.B. 2673, 2020 Reg. Sess. (Haw. 2020).

59. See S.B. 2338, 102d Gen. Assemb., Reg. Sess. (Ill. 2022).

60. See S.B. 1175, 102d Gen. Assemb., Reg. Sess. (Ill. 2022).

61. See S.F. 245, 89th Gen. Assemb., Reg. Sess. (Iowa 2022).

62. See H.B. 2264, 2021-2022 Reg. Sess. (Kan. 2022).

63. See S.B. 6, 2020 Reg. Sess. (Kan. 2020).

64. See S.B. 60, 2021 Reg. Sess. (La. 2021).

65. See Leg. Doc. 1893, 130th Leg., 2d Reg. Sess. (Me. 2022).

66. See H.B. 125, 2021 Reg. Sess. (Md. 2021).

67. See S. 832, 192d, Gen. Court (Mass. 2021-2022).

68. See H.B. 5217, 2020 Leg., Reg. Sess. (Mich. 2019).

State	Statute/ Bill	Status	Effective Date
Minnesota	HB 3329 ⁶⁹	Introduced	---
Mississippi	SB 2313 ⁷⁰ SB 2690 ⁷¹	Passed Amends SB 2313	07/01/22 04/18/22
Missouri	HB 297 ⁷² SB 718 ⁷³ HB 417	Passed Amends HB 297	08/28/21 06/16/22
Montana	SB 248 ⁷⁴	Passed	06/01/23
Nebraska	LB 962 ⁷⁵	Passed	No later than 07/01/23
Nevada	AB 254 ⁷⁶	Passed	01/01/22
New Hampshire	HB 1505 ⁷⁷	Introduced	---
New Jersey	S 971 ⁷⁸	Passed	5 th academic year following passage
New Mexico	SB 94 ⁷⁹	Passed	07/01/21
New York	S 5891F ⁸⁰	Passed in Senate	---
North Carolina	EO 223 ⁸¹	Executive Order	07/02/21
North Dakota	---	---	---
Ohio	SB 187 ⁸²	Executive Order	07/01/21
Oklahoma	HB 1994 ⁸³ SB 840 ⁸⁴	Passed Passed	No later than 07/01/22 No later than 07/01/23

69. See H.B. 3329, 191st Leg. (Minn. 2020).

70. See S.B. 2313, 2021 Reg. Sess. (Miss. 2021).

71. See S.B. 2690, 2022 Reg. Sess. (Miss. 2022).

72. See H.B. 297, 2021 Reg. Sess. (Mo. 2021)

73. See S.B. 718, 2022 Reg. Sess. (Mo. 2022).

74. See S.B. 248, 2021 Reg. Sess. (Mt. 2021)

75. See L.B. 962, 106th Leg., 2d Sess. (Neb. 2020).

76. See A.B. 254, 81st Leg. (Nev. 2021).

77. See H.B. 1505, 2020 Reg. Sess. (N.H. 2020).

78. See S. 971, 219th Leg., Reg. Sess. (N.J. 2020).

79. See S.B. 94, 55th Leg. Sess. (N.M. 2021).

80. See S. 5891F, 2021-2022 Leg. Sess. (N.Y. 2022).

81. See Exec. Order No. 223 (July 2, 2021) (N.C. 2021).

82. See S.B. 187, 134th Gen. Assemb., 2021-2022 Reg. Sess. (Ohio 2022).

83. See H.B. 1994, 2021 Reg. Sess. (Okla. 2021).

84. See S.B. 840, 2023 Reg. Sess. (Okla. 2023).

State	Statute/ Bill	Status	Effective Date
Oregon	SB 5 ⁸⁵ SB 1505 ⁸⁶	Passed Passed	07/01/21 02/01/22
Pennsylvania	SB 381 ⁸⁷	Included in state budget proposal	Immediately
Rhode Island	HB 5082 ⁸⁸	Introduced	---
South Carolina	SB 935 ⁸⁹	Passed	07/01/21
South Dakota	---	---	---
Tennessee	HB 1351 ⁹⁰	Passed	01/01/22
Texas	SB 1385 ⁹¹	Passed	07/01/21
Utah	---	---	---
Vermont	S. 328 ⁹²	Introduced	---
Virginia	SB 223 ⁹³	Passed	04/11/22
Washington	HB 1084 ⁹⁴	Introduced	---
West Virginia	HB 2583 ⁹⁵	Introduced	---
Wisconsin	---	---	---
Wyoming	---	---	---

Aside from the various above-noted state efforts to pass NIL legislation, eight federal laws have thus far been introduced into Congress, aiming to effectuate NIL protections for student athletes, create rule uniformity, impose institutional penalties, and override federal regulatory authority. These include the Student-Athlete Equity Act,⁹⁶ Fairness In Collegiate Athletics

85. See S.B. 5, 2021 Reg. Sess. (Or. 2021).

86. See S.B. 1505, 2022 Reg. Sess. (Or. 2022).

87. See S.B. 381, 2021-2022 Reg. Sess. (Pa. 2022).

88. See H.B. 5082, 2021 Reg. Sess. (R.I. 2021).

89. See S.B. 935, 2019-2020 Gen. Assemb., 123rd Sess. (S.C. 2019).

90. See H.B. 1351, 112th Gen. Assemb. (Tenn. 2022).

91. See S.B. 1385, 87th Leg., 2021-2022 Sess. (Tex. 2022).

92. See S. 328, 2019-2020 Reg. Sess. (Vt. 2020).

93. See S.B. 223, 2022 Reg. Sess. (Va. 2022).

94. See H.B. 1084, 2021 Reg. Sess. (Wash. 2021).

95. See H.B. 2583, 2021 Reg. Sess. (W. Va. 2021).

96. See H.R. 1804, 116th Cong. (2019-2020) (modifying I.R.C. § 501(j)(2) to ensure that a tax-exempt “qualified amateur sports organization” “not include an organization that substantially restricts a student athlete from using, or being reasonably compensated for the third party use of, the name, image, or likeness of such student athlete”).

Act,⁹⁷ Student Athlete Level Playing Field Act,⁹⁸ Collegiate Athlete Compensation Rights Act,⁹⁹ a House and Senate version of the College Athletes Bill of Rights,¹⁰⁰ Amateur Athletes Protection and Compensation Act of 2021,¹⁰¹ and College Athlete Economic Freedom Act.¹⁰²

In addition, any account of evolving revenue opportunities for student-athletes must include a brief mention of the recent rise in NIL collectives. Beginning in 2021, donors, alumni, boosters, fans, and outside businesses have amassed significant financial resources to provide increased NIL opportunities for student-athletes.¹⁰³ Presently, there exists a diverse market of over 120 for-profit and non-profit NIL collectives.¹⁰⁴ While such

97. See S. 4004, 116th Cong. (2019-20). The bill would require intercollegiate athletic associations to “establish (1) a policy that permits any student athlete to earn compensation from a third party” for NIL purposes, and to “obtain professional representation” with respect to such compensation. In addition, an association must administer the program in such a way as to “preserve the amateur status of student athletes.” *Id.* § 3(1)–(2).

98. See S. 8382, 116th Cong. (2019-20). The bill would restrict colleges, universities, or covered athletic organizations “from prohibiting a student athlete from participating in intercollegiate athletics” due to their signing endorsement deals, and granting enforcement authority over this to the Federal Trade Commission. *Id.* § 2.

99. See S. 5003, 116th Cong. (2019-20). This bill would preserve the rights of student athletes with regard to NIL, and establish “an independent entity for intercollegiate athletics to develop rules with respect to NIL, and for other purposes.” See *id.* §§ 3, 6(e)(1)(B).

100. See H.R. 9033, 116th Cong. (2019-20). This bill would prohibit colleges, universities, intercollegiate athletic associations, or conferences from restricting student-athletes’ rights to entertain NIL deals; establish penalties for violating this protection; and establish a Commission on College Athletics to ensure protection of student-athletes’ economic rights. See *id.* §§ 3, 4, 11; see also S. 5062, 116th Cong. (2019-20) (providing the same protections afforded under House Bill 9033).

101. See S. 414, 117th Cong. (2021). This bill would establish uniform standards and protections for the use of NIL in intercollegiate athletics.

102. See S. 238, 117th Cong. (2021). This bill would establish a federal right that allows student-athletes to engage in NIL opportunities; prohibit colleges, universities, and athletic associations from regulating student-athlete representation; authorize federal grants to analyze NIL; give NIL regulatory authorization to the Federal Trade Commission, and preempt more restrictive state laws with regard to NIL. See *id.* §§ 3–6.

103. See Amanda Christovich, *One Year of NIL: Controversial Collectives Aren’t Going Away*, FRONT OFF. SPORTS (June 27, 2022, 11:46 AM), <https://frontofficesports.com/collectives-arent-going-away/>.

104. See Pete Nakos, *What Are NIL Collectives and How Do They Operate?*, ON3 (July 6, 2022), <https://www.on3.com/nil/news/what-are-nil-collectives-and-how-do-they-operate/>; see also *Tracker: University-Specific NIL Collectives*, BUS. COLL. SPORTS, <https://businessofcollegesports.com/tracker-university-specific-nil-collectives/> (providing a list of NIL collectives by institution) (last updated Oct. 4, 2023). It should be noted that on March 23,

collectives are generally affiliated with specific colleges and universities, they are wholly independent of one another.¹⁰⁵ Academic institutions, however, are becoming more involved in these collectives' processes by creating school-specific NIL policies and/or by establishing NIL departments that facilitate increased business opportunities for student-athletes.¹⁰⁶ For example, the Texas Tech Matador Club is distributing \$25,000 to each member of the football and women's basketball teams. Southern Methodist University's Boulevard Collective is paying every football and men's basketball player \$36,000.¹⁰⁷ Clemson University's TigerImpact is one of the first collectives to facilitate NIL deals for student-athletes across every university sport.¹⁰⁸

While lucrative, concerns about the potential recruiting abuses¹⁰⁹ and Title IX concerns have been raised amidst this rapid influx of NIL collectives.¹¹⁰ In May 2022, Alabama Head Football Coach Nick Saban publicly decried

2023, the IRS released an Office of Chief Counsel legal memorandum that effectively negated the tax-exempt status of most NIL collectives. See LYNN A. CAMILLO, OFF. OF THE CHIEF COUNSEL INTERNAL REVENUE SERVICE MEMORANDUM NO. AM 2023-004, at 12 (2023), <https://www.irs.gov/pub/lanoa/am-2023-004-508v.pdf> ("Consequently, it is the view of this Office that many organizations that develop paid NIL opportunities for student-athletes are not tax exempt and described in section 501(c)(3) because the private benefits they provide to student-athletes are not incidental both qualitatively and quantitatively to any exempt purpose furthered by that activity."). For more information on the status of tax-exempt NIL collectives, see generally Kathryn Kisska-Schulze, *Narrowing the Playing Field on NIL Collectives*, 34 MARQ. SPORTS L. REV. 1 (2023) (discussing this IRS legal memorandum and its consequences).

105. Mohr, *supra* note 15.

106. Ezzat Nsouli & Andrew King, *How Schools and Private Entities Have Engaged in NIL Activity*, SPORTS SHORTS (July 19, 2022), <https://www.sports.legal/2022/07/how-schools-and-private-entities-have-engaged-in-nil-activity/>.

107. Ross Dellenger, *The Other Side of the NIL Collective, College Sports' Fast-Rising Game Changer*, SPORTS ILLUSTRATED (Aug. 10, 2022), <https://www.si.com/college/2022/08/10/nil-collectives-boosters-football-tennessee-daily-cover>.

108. See *TigerImpact Signs NIL Deals with Student-Athlete Leaders in Every Clemson Sport*, TIGER IMPACT (June 8, 2022), <https://blog.tigerimpact.org/2022/06/08/tigerimpact-signs-nil-deals-with-student-athlete-leaders-in-every-clemson-sport/>.

109. See Auerbach, *supra* note 15.

110. See Karen Weaver, *Already on an Untenable Financial Path, NCAA Schools Are Inviting More Legal Trouble If They Oversee NIL*, FORBES (June 30, 2022), <https://www.forbes.com/sites/karenweaver/2022/06/30/already-on-an-untenable-financial-path-ncaa-schools-are-inviting-more-legal-trouble-if-they-oversee-nil/?sh=88797ea1bef2>.

select coaches' inappropriate use of collectives,¹¹¹ thus spawning a “war of words” across the greater college football arena.¹¹² Some suggest that NIL collectives are transforming college sports into the “wild west,”¹¹³ given the NCAA’s current lackluster interest in enforcing NIL rules and regulations.¹¹⁴ Still, as NIL collectives remain well-financed and active,¹¹⁵ they provide student-athletes with increased and creative opportunities to earn compensation for the use of their NIL.

Earning compensation for services rendered, no matter the source derived, invokes important financial considerations. First, NIL compensation invites potential federal and state income tax filing and payment obligations, an issue that has been explored in the literature.¹¹⁶ In addition, and of particular focus in this Article, NIL earnings could substantially impact student-athletes’ Title IV need-based aid eligibility.¹¹⁷ Such concern is not insignificant, given that almost 50% of NCAA student-athletes receive some form of federal need-based aid.¹¹⁸ To better address this potential enigma, Part III next examines the relationship between Title IV and NIL earnings.

III. The Impact of NIL Earnings on Title IV Need-Based Aid Eligibility

The examination of Title IV within the spectrum of collegiate sports is not novel. For example, in 2002, the Third Circuit reversed a lower court’s dismissal of claims raised by an African American student-athlete against the

111. Nick Schultz, *Nick Saban: ‘I Think Collectives Are the Issue’ Regarding NIL*, ON3NIL (May 19, 2022), <https://www.on3.com/nil/news/nick-saban-i-think-collectives-are-issue-regarding-nil-college-football-alabama-crimson-tide-texas-am-aggies-jimbo-fisher/>.

112. David Cobb, *Nick Saban Apologizes for Singling Out Texas A&M and Jackson State, Says Collectives Are Real Issue with NIL*, CBS (May 19, 2022, 5:49 PM ET), <https://www.cbssports.com/college-football/news/nick-saban-apologizes-for-singling-out-texas-a-m-and-jackson-state-says-collectives-are-real-issue-with-nil/>.

113. Terence Moore, *Collectives, NILs Combining to Kill College Football and Basketball as We Know It*, FORBES (May 10, 2022), <https://www.forbes.com/sites/terencemoore/2022/05/10/collectives-nils-combining-to-kill-college-football-and-basketball-as-we-know-it/?sh=57bcb5ed3604>.

114. See Ralph D. Russo, *NCAA Clarifies Compensation Rules for Name, Image and Likeness – but Is a Crackdown Realistic?*, CHI. TRIB. (May 9, 2022, 7:20 PM), <https://www.chicagotribune.com/sports/college/ct-ncaa-name-image-likeness-rules-20220510-ewipwecvqffe5bv3jh7dn7gwwq-story.html>.

115. See Christovich, *supra* note 103.

116. See Kisska-Schulze, *This Is Our House!*, *supra* note 6; see also Holden & Kisska-Schulze, *Taxing Sports*, *supra* note 2, at 887-91; Kisska-Schulze & Epstein, *supra* note 5, at 477-99.

117. See Daugherty, *supra* note 21.

118. See *id.*

NCAA that alleged intentional and racial discrimination, resulting in an indirect claim of the plaintiffs' inability to receive athletically related financial aid.¹¹⁹ In 2013, Congress introduced the National Collegiate Athletics Accountability Act which, had it passed, would have halted Title IV funding to institutions failing to abide by select health and safety requirements in contact and collision sports.¹²⁰ Two years later, discussions emerged about the potential impact of D-1 "full cost of attendance" awards on Title IV funding.¹²¹

Once NIL opportunities came to fruition, Title IV discussions again resurfaced, prompting the U.S. Department of Education ("ED") to issue pronounced guidance on the relationship between the two.¹²² To better understand the connection between NIL earnings and Title IV funding: subpart (A) provides a brief overview of Title IV; (B) examines the NIL guidance provided by the ED; and (C) offers recommendations for the NCAA, colleges and universities, policymakers, and NIL collectives to educate student-athletes in financial literacy further as they embark on this newfound NIL earnings journey.

119. See *Pryor v. NCAA*, 288 F.3d 548 (3d. Cir. 2002); see also Jonathan Stahler, *Creating an Equitable Playing Field: Vital Protections for Male Athletes in Revenue-Generating Sports Who Are Predominantly African-American*, ARIZ. ST. SPORTS & ENT. L.J., Spring 2014, at 231, 238–41.

120. See H.R. 2903, 113th Cong. (2013). The bill requires that institutions with intercollegiate athletic programs that also participate in Title IV programs

abstain from membership in a nonprofit athletic association unless the association: (1) requires annual baseline concussion testing of student-athletes on the active roster of teams participating in contact/ collision or limited-contact/collision sports before they participate in any contact drills or activities; (2) holds remedies for violations of its policies in abeyance until the schools and student athletes subject to those remedies have been afforded certain due process procedures; (3) requires athletically-related student aid provided to student athletes who play contact/ collision sports to be guaranteed for the duration of their attendance at the school, up to four years, and irrevocable for reasons related to skill or injury; and (4) does not prevent schools from paying stipends to student athletes.

Id.

121. Martin J. Greenberg & Alexander W. Evrard, Report, *Athletic Directors*, 26 MARQ. SPORTS L. REV. 735, 806–07 (2016).

122. See *Treatment of Name, Image, and Likeness Compensation in Awarding Title IV, HEA Assistance*, U.S. DEP'T OF EDUC: FED. STUDENT AID (Nov. 8, 2021) [hereinafter *NIL Treatment Dear Colleague Letter*], <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-11-08/treatment-name-image-and-likeness-compensation-awarding-title-iv-hea-assistance>.

A. Title IV Funding – A Primer

In 1965, President Lyndon B. Johnson signed the Higher Education Act (“HEA”) into law to provide “a Federal program of student loan insurance for students who do not have reasonable access to a State or private nonprofit program.”¹²³ Title IV of the HEA specifically authorizes the federal government, through administration by the ED, to provide financial aid to qualifying students engaged in postsecondary studies.¹²⁴ While the initial program only offered federal guarantees of student loans issued by private lenders, beginning in 2010, the federal government started issuing federal student loans directly.¹²⁵

Higher education and financial aid have weathered social and political crossroads, largely due to U.S. college and university tuition and fees increases of almost 180% over the last two decades.¹²⁶ According to a 2022 National Opinion Research Center (“NORC”) survey, 75% of respondents identified cost as the single greatest impediment to accessing higher education.¹²⁷ Many have scrutinized the expanding “affordability crisis” in higher education,¹²⁸ which has resulted in 83% of first time, first year college students requiring some form of financial aid,¹²⁹ and 92% deriving such aid from federal student loans.¹³⁰ The U.S. government’s student-debt portfolio currently stands at \$1.6 trillion, encompassing more than forty-four million

123. See Higher Education Act of 1965, Pub. L. No. 89-329, § 421, 79 Stat. 1219, 1236 (1965) (codified as amended at 20 U.S.C. §§ 1001–1107).

124. See *id.* at 1232–54; see also Note, *Forgive and Forget: Bankruptcy Reform in the Context of For-Profit Colleges*, 128 HARV. L. REV. 2018, 2022 (2015) [hereinafter Note, *Forgive and Forget*].

125. See Note, *Forgive and Forget*, *supra* note 124, at 2020–21.

126. See Melanie Hanson, *Average Cost of College by Year*, EDUC. DATA INITIATIVE (Jan. 9, 2022), <https://educationdata.org/average-cost-of-college-by-year> (noting that the fee increase is based on four-year public institution tuition and fee costs).

127. Press Release, NORC at the Univ. of Chi., *Survey: Americans See Cost as the Biggest Barrier to Higher Education* (May 3, 2022), <https://www.norc.org/NewsEventsPublications/PressReleases/Pages/survey-americans-see-cost-as-the-biggest-barrier-to-higher-education.aspx>.

128. See Jeremy Pilaar, *The Laws of Public Higher Education Retrenchment*, 23 N.Y.U. J. LEGIS. & PUB. POL’Y 159, 163 (2020) (noting that literary scholars have probed “the roots of the affordability crisis” in higher education).

129. See Melanie Hanson, *Financial Aid Statistics*, EDUC. DATA INITIATIVE, <https://educationdata.org/financial-aid-statistics> (last updated Feb. 15, 2021).

130. Alicia Hahn, *2023 Student Loan Debt Statistics: Average Student Loan Debt*, FORBES (Feb. 22, 2023, 2:26 PM), <https://www.forbes.com/advisor/student-loans/average-student-loan-statistics/> (reflecting numbers of all student debt).

borrowers.¹³¹ Such concerns prompted President Joe Biden to recently announce a student-loan forgiveness plan,¹³² which incited swift backlash from both sides of the political aisle,¹³³ and was eventually overturned by the U.S. Supreme Court.¹³⁴

Despite economic and political hang-ups, higher education price increases and financial aid needs continue. Title IV funding encompasses five different types of funding programs; Direct Subsidized and Unsubsidized Loans,¹³⁵ Direct PLUS Loans (made up of Parent PLUS and Grad PLUS Loans),¹³⁶ and Federal Pell Grants.¹³⁷ Students wanting to apply for federal funding must fill out a FAFSA form, which requires that they and their parents provide specific income, asset, and tax information to calculate their EFC.¹³⁸ The

131. *Is Rising Student Debt Harming the U.S. Economy?*, COUNCIL ON FOREIGN RELS. (Aug. 22, 2023, 10:30 AM EST), <https://www.cfr.org/backgrounder/us-student-loan-debt-trends-economic-impact>.

132. *See The Biden-Harris Administration's Student Debt Relief Plan Explained*, U.S. DEP'T OF EDUC: FED. STUDENT AID, <https://studentaid.gov/debt-relief-announcement/> (last visited Dec. 12, 2023).

133. *See Kathryn Watson, Biden's Student Loan Forgiveness Plan Criticized by Republicans and a Few Democrats*, CBS NEWS (Aug. 25, 2022), <https://www.cbsnews.com/news/biden-student-loan-forgiveness-plan-backlash-criticism/>.

134. *See Biden v. Nebraska*, 143 S. Ct. 2355 (2023).

135. *See Subsidized and Unsubsidized Loans*, U.S. DEP'T OF EDUC: FED. STUDENT AID, <https://studentaid.gov/understand-aid/types/loans/subsidized-unsubsidized> (last visited Oct. 22, 2023). Interest accrued on direct subsidized loans, which are only available to qualifying undergraduate students with financial need, is paid by the U.S. Department of Education while the borrowers are in school at least full time, for the first six months after they leave school, and during periods of deferment. Interest accrued on direct unsubsidized loans, which are available to both undergraduate and graduate students regardless of their financial need, must be paid entirely by the borrower. *Id.*

136. *See Direct PLUS Loan*, U.S. DEP'T OF EDUC: FED. STUDENT AID, <https://studentaid.gov/help-center/answers/article/direct-plus-loan> (last visited Oct. 22, 2023). Direct PLUS Loans are available to parents, graduates or professional students with adverse credit histories. *Id.* Parent PLUS loans are loans made to a parent, while Grad PLUS loans are made to the graduate or professional student. *Id.*

137. *See Federal Pell Grant Program*, U.S. DEP'T OF EDUC: FED. STUDENT AID, <https://studentaid.gov/help/federal-pell-grant> (last visited Oct. 22, 2023) (stating that Federal Pell Grants are awarded to undergraduate students showing exceptional financial need and do not need to be repaid); *Federal Pell Grants Are Usually Awarded Only to Undergraduate Students*, U.S. DEP'T OF EDUC: FED. STUDENT AID, <https://studentaid.gov/understand-aid/types/grants/pell> (last visited Oct. 22, 2023) (noting the cap on Federal Pell Grants). For the 2023-2024 award year, for example, the maximum cap is \$7,395. *Id.*

138. *See 2021-2022 Federal Student Aid Handbook, Chapter 2: Filling Out the FAFSA*, U.S. DEP'T OF EDUC: FED. STUDENT AID, <https://fsapartners.ed.gov/knowledge-center/fsa->

EFC is a dollar amount that institutional financial aid offices use to assess the amount of federal aid a student needs to attend their program compared to what they can financially afford to contribute.¹³⁹

Items used to calculate the EFC include both the student and their parent(s)' taxable income,¹⁴⁰ Social Security and unemployment benefits, bank account balances, 529 and Coverdell Education Savings Account balances, non-retirement account values, tax allowances, contributions to flexible spending and health savings accounts, trust fund values, investment net worth, and number of children attending college.¹⁴¹ Of these, income carries the greatest weight,¹⁴² with 50% of the student-applicant's income over a protected base amount of \$7,040 considered in the EFC calculation.¹⁴³ Beginning in 2016, FAFSA applicants must use their tax return information from two years prior.¹⁴⁴ Thus, for example, those who applied for federal funding for Fall 2023 (for the 2023-2024 academic year) were required to input their 2021 income tax data. Ultimately, the lower the income, the lower the EFC amount and, thus, the greater the potential for larger need-based

handbook/2021-2022/application-and-verification-guide/ch2-filling-out-fafsa (last modified June 5, 2022); *2021-2022 Federal Student Aid Handbook, Chapter 3: Expected Family Contribution (EFC)*, U.S. DEP'T OF EDUC: FED. STUDENT AID, <https://fsapartners.ed.gov/knowledge-center/fsa-handbook/2021-2022/application-and-verification-guide/ch3-expected-family-contribution-efc> (last modified June 5, 2022).

139. See College Cost Reduction and Access Act, Pub. L. No. 110-84, 121 Stat. 784, 804-05 (2007).

140. See *Making Prior-Prior Year Work*, NAT'L ASS'N OF STUDENT FIN'L AID ADM'RS (2016), https://www.nasfaa.org/uploads/documents/Making_PPY_Work.pdf (stating that beginning in 2016, students and their parents filing a FAFSA application must use income and tax information from two years prior to determine federal aid eligibility).

141. See Mark Kantrowitz, *What Is the Expected Family Contribution (EFC)*, SAVING FOR COLLEGE (Aug. 7, 2023), <https://www.savingforcollege.com/article/what-is-the-expected-family-contribution-efc>; see also *The EFC Formula, 2022-2023*, U.S. DEP'T OF EDUC: FED. STUDENT AID 1 (Aug. 2021), <https://fsapartners.ed.gov/sites/default/files/2021-08/2223EFCFormulaGuide.pdf>.

142. See Kantrowitz, *supra* note 141.

143. See *The EFC Formula, 2022-2023*, *supra* note 141, at 10 (noting that the base protected amount of \$7,040 is for the 2022-2023 FAFSA application term); see also Angela Brown, *EFC: How Your Expected Family Contribution Affects Financial Aid*, CREDIBLE (Oct. 8, 2021), <https://www.credible.com/blog/student-loans/how-to-calculate-your-student-loan-expected-family-contribution-efc/> (providing that parental income is generally weighted between 22% and 44%).

144. *Making Prior-Prior Year Work*, *supra* note 140.

funding awards. Alternatively, the higher the income, the higher the EFC amount and thus the potential for less need-based funding awards.¹⁴⁵

Given that almost half of all student-athletes benefit from some form of need-based federal aid,¹⁴⁶ and due to the rapidly evolving NIL arena, the discourse surrounding student-athletes' Title IV eligibility has increased.¹⁴⁷ While compensation for the use of their NIL may not impact student-athletes' ability to secure institutional athletic scholarships,¹⁴⁸ only 2% of high school recruits actually receive athletic scholarships.¹⁴⁹ For those who rely on federal need-based aid to finance some or all of their education, NIL endorsement deals may prove unexpectedly challenging without appropriate financial planning.¹⁵⁰

Consider, for example, that 31% of all student-athletes rely on federal Pell Grants to help fund their education.¹⁵¹ Pell Grants are specifically designed to support low-income students; to qualify, a FAFSA applicant's EFC must be less than \$5,846, an amount far below the average EFC calculation for four-year institutions.¹⁵² While there is no set income cutoff for Pell Grant eligibility, students whose families earn over \$60,000 annually will not likely

145. See Stephen Ngo, *How Does Household Income Correlate to EFC?*, EDMIT, <https://www.edmit.me/blog/how-does-household-income-correlate-to-efc> (last visited Jan. 6, 2022).

146. See Daugherty, *supra* note 21.

147. See, e.g., *id.*; see also Todd Hairston, *Need-Based Aid and the Unintended Consequences of NIL*, SPRY, <https://spry.so/insights/need-based-aid-and-the-unintended-consequences-of-nil/> (last visited Oct. 22, 2023); Katie Davis, *Pell Grant Eligibility: NIL May Not Be as Lucrative as It Seems*, JAMES MOORE, (Aug. 17, 2022), <https://www.jmco.com/articles/collegiate-athletics/pell-grant-eligibility-nil-may-not-be-lucrative/>; *Student-Athlete NIL Compensation May Impact Federal Aid Dollars*, NACUBO (Nov. 12, 2021), <https://www.nacubo.org/News/2021/11/Student-Athlete-NIL-Compensation-May-Impact-Federal-Aid-Dollars>; Sydney Large, *NIL Opportunities Can Close the Scholarship Gap*, OPENDORSE (Jan. 20, 2022), <https://opendorse.com/blog/nil-opportunities-can-close-the-scholarship-gap/>; Emily Caron, *NCAA Athlete Pay Confounds Financial Aid Forms and Pell Grant Awards*, SPORTICO (July 6, 2021, 5:55 AM), <https://www.sportico.com/leagues/college-sports/2021/nil-earnings-muddle-financial-aid-1234633515/>.

148. See Maloney & Bush, *supra* note 24.

149. See Fasciale, *supra* note 22, at 899 n.3.

150. Davis, *supra* note 147.

151. See Caron, *supra* note 147.

152. See Chingh Ngo, *What Is the Pell Grant?*, BEST COLLEGES (Aug. 26, 2022), <https://www.bestcolleges.com/blog/what-is-the-pell-grant/> (stating that the \$5,846 designated amount is for 2022-2023); see also Kantrowitz, *supra* note 141 (identifying \$14,000 as the average EFC for four-year institutions).

qualify.¹⁵³ Thus, if a student-athlete who is eligible to receive a Pell Grant as an incoming 2023 college freshman entertains NIL earnings that same year in the amount of \$50,000, they could risk reducing or losing Pell Grant eligibility. Hypothetically, that student-athlete would lose Pell Grant eligibility their junior year if the weighted portion of that \$50,000 pushes their 2025 EFC calculation above the \$5,846 threshold. Similarly, a student-athlete who entertains a \$50,000 NIL contract in 2023 during their sophomore year and likewise qualifies for a Direct Subsidized or Unsubsidized Loan during the 2023-2024 academic year, may also lose eligibility. The student athlete may find themselves ineligible to receive some or all federal need-based aid in 2025 if the weighted portion of that \$50,000 pushes their EFC near or beyond the point of federal need-based funding eligibility.

In either situation, the student-athlete may be unaware of the impact that NIL revenue earned today could have on future Title IV need-based aid eligibility. The student-athlete may be wholly unprepared to cover some or all of the future costs associated with their remaining college education. Specifically, the lag time between the year revenue is actually earned, and the year that a FAFSA application is submitted, could negatively impact student-athletes who fail to plan for future higher education costs when entertaining present NIL contracts. As Part B briefly summarizes, this potential disconnect led the ED to issue official guidance in 2021 to help clarify the treatment of NIL compensation for purposes of Title IV funding.

B. Department of Education - Title IV Guidance on NIL Compensation

Following the NCAA's post-*Alston* interim guidance, on November 8, 2021, the ED issued a "Dear Colleague" letter to address the impact of NIL contracts on Title IV awards.¹⁵⁴ Such guidance clarified that NIL compensation is taxable income and, as such, must be included in a student-athlete's adjusted gross income (AGI) for FAFSA purposes.¹⁵⁵ The Dear Colleague letter, however, acknowledged that a dependent student-athlete who earns substantial NIL funds may still qualify for an Automatic Zero EFC. Automatic Zero EFC applies if the student-athlete's parents meet

153. See Kristyn Pilgrim, *Income Limits for Pell Grants in 2020 (Understand Your Eligibility)*, COLLEGE FIN. (Apr. 1, 2020), <https://collegefinance.com/financial-aid/income-limits-for-pell-grants-in-2020-understand-your-eligibility>.

154. See *NIL Treatment Dear Colleague Letter*, *supra* note 122.

155. *Id.* (noting that student-athletes entertaining NIL contracts will likely be classified as independent contractors, and thus receive IRS Form 1099s for amounts earned equal to or greater than \$600); see also I.R.C § 6041.

certain criteria, including having a combined AGI of \$27,000 or less.¹⁵⁶ In addition, the guidance stipulated that NIL income is includable in two-prior year calculations to determine a student-athlete's EFC.¹⁵⁷

The Dear Colleague letter also clarified that NIL earnings are wage-based and thus not considered estimated financial assistance ("EFA").¹⁵⁸ EFA includes any post-secondary enrollment awards that a student may receive from federal, state, institutional or other sources, such as scholarships, grants, need-based employment earnings, and loans.¹⁵⁹ These various awards are not deemed income for FAFSA purposes and thus not includable in the EFC calculation.¹⁶⁰ The ED's guidance specifically distinguishes NIL earnings from other non-wage-based financial resources that student-athletes may receive, including athletic grants-in-aid, academic or graduation award incentives, and free room and board.¹⁶¹

Of critical importance, the Dear Colleague letter also requires that colleges and universities bear the ultimate responsibility of identifying and resolving conflicting information that could impact a student-athlete's Title IV eligibility.¹⁶² Where institutions of higher education are "reasonably informed" of a student-athlete's NIL earnings, they must resolve conflicting information on such applicant's FAFSA if those earnings are not included in their AGI.¹⁶³ The guidance further stipulates that institutions "may be more aware of the existence of NIL compensation" due to their association with

156. *Id.*; see also *The EFC Formula, 2022-2023*, *supra* note 141, at 6 ("[A] **dependent student** automatically qualifies for a zero EFC if both (1) and (2) below are true: (1) Anyone included in the **parents'** household size (as defined on the FAFSA) received benefits during 2020 or 2021 from any of the designated means-tested federal benefit programs: the Medicaid Program, the SSI Program, SNAP, the Free and Reduced Price School Lunch Program, the TANF Program, and WIC; **OR** (2) the student's **parents**: [a] filed a 2020 IRS Form 1040, but did not file a Schedule 1, [b] filed a tax form from a Trust Territory, or [c] were not required to file any income tax return; **OR** the student's **parent** is a dislocated worker. **AND** (2) The combined 2020 income of the student's **parents** is \$27,000 or less." (footnotes omitted)).

157. *NIL Treatment Dear Colleague Letter*, *supra* note 122 ("NIL compensation noted on a 1099 should be reflected in the student's adjusted gross income (AG) for the applicable base year (prior-prior year) as reporting on the FAFSA.").

158. *Id.*

159. See 34 C.F.R. § 682.200(b).

160. *NIL Treatment Dear Colleague Letter*, *supra* note 122 ("Unless specifically excluded by statute, at given [financial] resource factors into the determination of either EFC or EFA but not both.").

161. *Id.*

162. *Id.*; 34 C.F.R. § 668.54(a)(2).

163. *NIL Treatment Dear Colleague Letter*, *supra* note 122.

student-athletes, “many of whom are public figures.”¹⁶⁴ As such, the Dear Colleague letter requires that whenever a college or university office is informed of a student-athlete’s NIL contract, the institution’s financial aid office is considered dually informed.¹⁶⁵

While the Dear Colleague letter offers a modicum of clarity to college and university financial aid offices surrounding the impact of NIL earnings on Title IV eligibility, there appears to be little guidance specifically directed at student-athletes. This gap in information sharing is concerning, given that there exists a “tipping point” for any student-athlete who relies on federal need-based aid. The situation requires that student-athletes proactively consider and calculate the point at which NIL benefits eclipse their financial aid eligibility.¹⁶⁶ As such, Part (C) offers recommendations for the NCAA, member institutions, policymakers, and NIL collectives to help ensure that student-athletes better understand the impact of NIL earnings on their overall financial position, including Title IV funding.

C. Recommendations

The complexities surrounding NIL earnings and Title IV eligibility could prove unexpected and overwhelming. For some, NIL contracts could make student-athletes ineligible for future federal need-based aid. While NIL earnings give student-athletes increased equitable opportunities between the big business of college sports, it is critical that student-athletes also be given access to an array of tools to help build their financial literacy.¹⁶⁷ The current NIL focus should not simply revolve around student-athletes’ earnings potentials, but also their increased fiscal knowledge. As such, this Article recommends considering a comprehensive approach to fortifying student-athletes’ financial literacy across the NCAA, institutional, policymaker, and NIL collective levels.

Research supports that positive economic planning improves financial outcomes, reduces financial stresses, and increases financial knowledge.¹⁶⁸ However, data shows that student-athletes’ financial literacy falls below that

164. *Id.*

165. *Id.*

166. *See* Davis, *supra* note 147.

167. *See* R.J. Curington, *The Importance of NCAA Student-Athletes’ Financial Literacy and Mental Health in Anticipation of the Historic Fair Pay to Play Act*, 16 DEPAUL J. SPORTS L. 74, 89 (2020) (“Federal legislation should focus on increasing education for athletes.”).

168. *See* Sonya L. Britt et al., *Financial Stress and Financial Counseling: Helping College Students*, 26 J. FIN’L COUNSELING & PLAN. 172, 173, 179–83 (2015).

of non-athletes.¹⁶⁹ Research further maintains that student-athletes need financial education not only to improve their financial self-efficacy,¹⁷⁰ but to serve as a positive recruiting tool in this age of earnings opportunities.¹⁷¹ As such, it would behoove the NCAA, colleges and universities, state policymakers, and NIL collectives to work together to encourage increased financial literacy among student-athletes.

The NCAA has already explored avenues to enhance student-athletes' financial knowledge base. In 2018, it ran a pilot program at two universities, Kansas State and the University of Texas at Austin, to evaluate student-athletes' financial literacy levels and analyze their preferred modes(s) of financial education.¹⁷² The findings reveal that student-athletes, like most college students, generally, have limited exposure to any form of financial management prior to entering college and therefore exhibit low levels of financial literacy.¹⁷³ The program's findings also indicate that only 21% of student-athletes have a monthly budget and 47% experience anxiety when managing money.¹⁷⁴ When asked on a scale of zero to ten, about their interest in financial literacy, with ten being very high interest, the surveyed athletes reported a strong 7.3.¹⁷⁵ Although the results of this program indicate that one-on-one financial counseling is the preferred method of financial education for student-athletes, it also found that they are more inclined to "buy in" to financial literacy programs if learning opportunities are offered in a manner *other than* purely remote.¹⁷⁶

Given the above, this Article recommends that the NCAA update its current arrangement with iGrad, the online financial literacy platform

169. Meghan Ann McCoy et al., *Investigating the Financial Overconfidence of Student-Athletes*, 9 *SPORT, BUS. & MGMT.: AN INT'L J.* 4, 381, 382–84 (2019) (finding that while student-athletes have lower financial literacy, they report higher levels of financial self-efficacy).

170. *Id.* at 384.

171. *Id.* at 391–92 (noting that financial education courses made available to student-athletes could serve a positive recruiting instrument for college sports).

172. See LISA M. RUBIN ET AL., ENHANCING FINANCIAL LITERACY AMONG STUDENT-ATHLETES: 2018 NCAA INNOVATIONS IN RESEARCH AND PRACTICE FINAL REPORT 4 (2018), https://ncaaorg.s3.amazonaws.com/research/grants/innovations/2018/2018RES_InnoGrant_FinancialLitKSU_FinalReport.pdf.

173. *Id.* at 2.

174. *Id.* at 4–5.

175. *Id.* at 6.

176. *Id.* at 8–9.

currently available to student-athletes.¹⁷⁷ iGrad incorporates increased financial awareness of the potential impact that NIL earnings could have on Title IV federal aid. Currently, more than 450,000 NCAA student-athletes have access to iGrad, which offers financial and personal business management instruction.¹⁷⁸ Specifically, iGrad offers nine modules covering budgeting, saving, banking, expenses and income, credit scores, debt, taxes, investment, lending and borrowing, and insurance.¹⁷⁹ Similarly, the NCAA recently partnered with Invesco/Invesco QQQ to launch the digital game “How Not To Suck at Money,” which educates student-athletes about budgeting, banking, and investing in a fun and engaging digital atmosphere.¹⁸⁰ While both iGrad and Invesco QQQ offer select financial learning modules for student-athletes, neither specifically targets NIL or Title IV aid eligibility. This void is problematic, given the potential consequences facing student-athletes who may be unaware of the impact that NIL earnings could have on their Title IV eligibility.

In conjunction with other financial literacy tools available through iGrad and Invesco QQQ, this Article urges the NCAA to audit and update its online financial platform arrangements to ensure Title IV education and training materials are made available to student-athletes. This Article does *not*, however, endorse making student-athlete financial literacy training mandatory, given that studies show adverse effects derive from forced financial literacy coursework.¹⁸¹ Instead, this Article recommends that the NCAA consider promoting student-athletes’ fiscal interests through

177. See Curington, *supra* note 167, at 84; see also *Online Program Provides Student-Athletes with Financial Awareness Education*, iGRAD: THE BRIDGE (Sept. 1, 2017) [hereinafter *iGrad Online Program*], <https://www.igradfinancialwellness.com/blog/online-program-provides-student-athletes-with-financial-awareness-education>.

178. See Curington, *supra* note 167, at 84–85.

179. *Id.* at 85; see also *iGrad Online Program*, *supra* note 177.

180. Gail Dent, *Invesco and Invesco QQQ Bring Financial Education to NCAA Student-Athletes*, NCAA (Nov. 12, 2021, 2:30 PM), <https://www.ncaa.org/news/2021/11/12/general-invesco-and-invesco-qqq-bring-financial-education-to-ncaa-student-athletes.aspx>; see also *How Not to Suck at Money*, INVESCO QQQ, https://hntsam.com/?utm_campaign=financial_edu&utm_source=National%20Press%20Release&utm_medium=article&utm_content=qqq%7Cpaid%7Cdisplay%7Civz%7Cimage%7C1121 (last visited Oct. 23, 2023).

181. See Tim Kaiser & Lucas Menkhoff, *Does Financial Education Impact Financial Literacy and Financial Behavior, and If So, When?* 4 (Rationality & Competition, Collaborative Rsch. Ctr. TRR 190, Discussion Paper No. 37, 2017), <https://epub.uni-muenchen.de/58049/1/37.pdf>.

educational nudges.¹⁸² Educational nudges allow individuals to make more informed decisions.¹⁸³ For example, displaying nutrition facts on foods or sending messages to consumers about the health-saving advantages of eating vegetables, are an educational nudge.¹⁸⁴ Likewise, hospitals sending brief messages about diagnostic testing abuse serve as educational nudges that inform patients about the health risks of over-testing.¹⁸⁵

Similarly, this Article recommends that the NCAA consider implementing educational nudges to increase fiscal awareness by helping student-athletes' make more informed decisions. The NCAA might consider including customized text messages to student-athletes containing messages like, "Check out iGrad," "Have you tried your hand at 'How Not To Suck At Money?'" and "Did you know that NIL income can affect your financial aid eligibility?" with accompanying URL links to resources, forms, and instructions. While targeted nudges may not entice *all* student-athletes to use available resources, they may invite *some* to take the next step toward their own financial literacy education.

In addition, this Article recommends that NCAA-member institutions more actively engage in a hands-on approach to help student-athletes achieve increased financial literacy. This recommendation was recently endorsed by the NCAA in a news article announcing the October 2022 interim NIL policy.¹⁸⁶ Given that the NCAA's pilot program found that one-on-one financial counseling is the preferred method of financial education for student-athletes,¹⁸⁷ colleges and universities are in far better positions than

182. See generally Robert J. Weijers et al., *Nudging in Education: From Theory Towards Guidelines for Successful Implementation*, 36 EURO. J. PSYCH. EDUC. 883, 883–85 (2021) (analyzing the benefits of nudging in education).

183. *Id.*; Alejandro Hortal, *Nudging and Educating: Bounded Axiological Rationality in Behavioral Insights*, 4 BEHAV. PUB. POL'Y 292, 310 (2020).

184. Matheus Mistura et al., *Examining the Efficacy of a 'Feasible' Nudge Intervention to Increase the Purchase of Vegetables by First Year University Students (17-19 Years of Age) in British Columbia: A Pilot Study*, NUTRIENTS, Aug. 2, 2019, at 1, 2, <https://www.mdpi.com/2072-6643/11/8/1786/pdf?version=1565746166>.

185. Ben Young et al., *Hospital Doctors' Attitudes to Brief Educational Messages That Aim to Modify Diagnostic Test Requests: A Qualitative Study*, 20 BMC MED. INFORMATICS & DECISION MAKING, article no. 80, Apr. 29, 2020, at 1, 7, <https://bmcmmedinformdecismak.biomedcentral.com/counter/pdf/10.1186/s12911-020-1087-2.pdf>.

186. See *DI Board Approves Clarifications for Interim NIL Policy*, NCAA (Oct. 26, 2022), <https://www.ncaa.org/news/2022/10/26/media-center-di-board-approves-clarifications-for-interim-nil-policy.aspx> ("[S]chools generally can and should provide education to current student-athletes, including on topics like financial literacy, taxes, social media practices and entrepreneurship.").

187. See RUBIN ET AL., *supra* note 172, at 8–9.

the NCAA to adequately meet such interest. In fact, beginning in 2021, the state of Florida requires that universities provide student-athletes with financial literacy workshops.¹⁸⁸ State-level mandates, however, appear to be the exception rather than the norm.¹⁸⁹ As such, this Article urges state policymakers to entertain legislative efforts that move beyond mere support of student-athletes' earning potentials.¹⁹⁰ The NCAA should require colleges and universities to provide increased financial awareness tools and educational mediums to further assist student-athletes in understanding the impact of NIL earnings on their entire economic outlook, to include Title IV financial aid.

In this spirit, it must be noted that cultural and socio-economic factors impact financial literacy, thus requiring that financial education programs be adaptive to accommodate varied audience needs.¹⁹¹ College sports are hugely diverse. Data shows that student-athletes derive from a multitude of cultural and socio-economic backgrounds. As previously noted, 86% of student-athletes live below the poverty line;¹⁹² 42% are women; 13.6% are Hispanic or Latino; 9.2% are African American; 5.9% are Asian; and 9% identify as LGBTQ+.¹⁹³ In addition, 12.4% of all D-1 athletes are international.¹⁹⁴ Given such diversity, a one-size-fits-all approach will not likely increase student-athletes' overall financial literacy. As such, any online platforms made available to student-athletes at the NCAA level, such as enhanced iGrad and Invesco QQQ platforms, should be supplemented with in-person financial

188. See Valerie Crowder, *All FL College Athletes Required to Complete Financial Literacy Course*, WFSU (June 14, 2021, 7:37 AM ET), <https://news.wfsu.org/state-news/2021-06-14/all-fl-college-athletes-required-to-complete-financial-literacy-course>.

189. See Zaem Shaikh, *With NIL Deals on the Rise, Student-Athletes Call for Financial Literacy Training*, ABC10 (Mar. 23, 2022, Mar. 23, 2022), <https://www.abc10.com/article/news/local/california/calatters/athletes-call-for-financial-literacy-training-california/103-41cfa0fc-e515-487c-b3f4-23621b03f756>.

190. See *supra* notes 41–102 and accompanying text

191. See László Csorba, *The Determining Factors of Financial Culture, Financial Literacy and Financial Behavior*, PUB. FIN. Q., 2020/1, at 67, 76, https://unipub.lib.uni-corvinus.hu/8669/1/A_Csorba_2020_1.pdf (“[A]lmost all socio-demographic variables affect[ed] the levels of financial literacy.”); *id.* at 78 (“[I]ndividual characteristics of cultural nature significantly and directly affect individual literacy.”).

192. See *supra* text accompanying note 23.

193. See *Student Athlete Demographics and Statistics in the US*, ZIPPIA, <https://www.zippia.com/student-athlete-jobs/demographics/> (last visited Oct. 23, 2023).

194. David Hale & Dan Murphy, *International Student-Athletes Face an NIL Conundrum, and No One Seems to Have an Answer*, ESPN (June 9, 2021), https://www.espn.com/college-sports/story/_/id/31575978/international-student-athletes-face-nil-conundrum-seems-answer (reflecting statistics from 2019).

counseling and educational services offered at every NCAA member institution. Such a broadened approach would provide student-athletes with both online *and* traditional modes of instruction, while simultaneously offering a more personalized approach to their specific financial needs. Athletic departments can be creative and frugal in these efforts by engaging outside professional financial planners, internal financial aid officers, or in-house engagement by College of Business and Law School faculty members well-versed in financial literacy and planning. Financial engagement opportunities could include offering courses or workshops to student-athletes, as well as creating and disbursing financial literacy materials. In addition, university athletic programs with significant fiscal resources could ratchet up their efforts by creating an internal staff position dedicated to educating and consulting with student-athletes about NIL financial planning, including Title IV issues.

Finally, and in conjunction with the above recommendations, this Article recommends that NIL collectives play a tertiary role to further increase financial literacy and Title IV awareness for those student-athletes with whom they directly engage. Specifically, NIL collectives could provide financial literacy resources to student-athletes, including tax and Title IV materials, as well as contact information for local certified public accountants (“CPAs”) and tax attorneys. In addition, NIL collectives more closely affiliated with select colleges and universities could proactively coordinate with those institutions to better ensure that student-athletes entering into NIL contract agreements comply with established minimum financial literacy requirements. For example, the University of Nebraska’s Big Red NIL Collaborative requires that participating student-athletes receive select financial literacy education at Nebraska’s College of Business *prior to* working with the collaborative.¹⁹⁵ Given the relational proximity between NIL collectives and select institutions,¹⁹⁶ establishing goals to cohesively work toward educating student-athletes on the broader financial impact of their NIL deals could prove beneficial.

195. See Mitch Sherman, *Explaining Nebraska’s New NIL Collective: Big Red Collaborative*, ATHLETIC (Sept. 15, 2022), <https://theathletic.com/3597257/2022/09/15/nebraska-nil-collective/>.

196. See *supra* text accompanying notes 106–08.

IV. Conclusion

In this new and evolving era of collegiate student-athletes entertaining NIL endorsement deals,¹⁹⁷ it is imperative that consideration be given to the impact that such earnings can have on their overall economic outlook, including advanced financial planning for higher education costs. This is particularly salient given that almost half of all student-athletes require some form of Title IV need-based aid to finance their college education.¹⁹⁸ Student-athletes may be wholly unaware that any NIL earnings they earn today could negatively impact their Title IV eligibility tomorrow, especially given the two-prior year lag time between the year revenue is earned and the year that the student-athlete's tax information must be submitted on their FAFSA application.¹⁹⁹ Concerns over this issue led the ED to issue guidance to help clarify the treatment of NIL compensation for purposes of Title IV funding.²⁰⁰

While NIL revenue now offers student-athletes equitable opportunities within the greater business of college sports, it is critical that they likewise be given a range of tools to help build their financial literacy.²⁰¹ The current NIL focus should not solely emphasize student-athletes' rights and earnings potentials, but also include increased fiscal awareness. Given the Venn diagram-like relationship existing among the NCAA, member institutions, state policymakers, and NIL collectives, these affiliated groups must work both individually and collectively, to assist student-athletes in their financial planning endeavors more effectively as they embark on novel earnings potentials.

197. *See supra* Part II.

198. *See supra* Part I.

199. *See supra* Section III.A.

200. *See supra* Section III.B.

201. *See supra* Section III.C.