Student-athlete compensation: Key early considerations

By Clare Conaty, Tim Walsh

Several recent and ongoing pieces of litigation have already started to unfurl the notion of compensating student-athletes directly across intercollegiate athletics, especially within NCAA Division I Football Bowl Subdivision (FBS) athletics, including *O'Bannon v. NCAA* (name, image, and likeness (NIL)), *NCAA v. Alston* (educational benefits), *Johnson v. NCAA* (student-athlete employment), *Ohio et al. v. NCAA* (transfer limitations), and *House v. NCAA* (retroactive NIL and revenue-sharing), to name several.

These lawsuits all center on the concept that a student-athlete is entitled to control their futures. The outcomes of these lawsuits are still taking shape, and the repercussions are certain to have direct and indirect impacts across the full range of divisions of intercollegiate athletics. Uniquely, however, the *House v. NCAA* case directly impacts only Division I institutions — and these institutions and their conferences will determine to what extent they are affected by their response to the outcome.

IN BRIEF

- Ongoing litigation concerning student-athlete compensation, including revenue-sharing and back pay, is projected to significantly impact universities' financial planning and resource allocation.
- Leading colleges and universities are proactively planning for new financial obligations in multiple ways, including growing revenue streams and reducing costs while ensuring Title IX compliance.
- Despite many unknowns, institutional and athletics leaders can begin working now to make critical decisions regarding the future of their departments, institutions, and student-athletes.

House v. NCAA is a class-action lawsuit filed in 2020 over back pay related to student-athletes' ability to be compensated for the use of their NIL. U.S. Senior District Judge Claudia Wilken recently declined to grant preliminary approval for the settlement, causing further uncertainty regarding the repercussions of the case.

There will likely be both rear-facing and forward-looking implications, including the distribution of more than $2.8 billion over 10 years to former student-athletes while also allowing for up to 22% of most future athletics revenues to be shared with student-athletes within a given Division I athletics department.

How colleges and universities are responding to the financial impact

All NCAA Division I institutions are scrambling to plan for this financial impact in varied ways. Well-resourced athletics departments with larger operational budgets are better positioned to participate fully in revenue-sharing. In contrast, lesser-resourced departments could be priced out of revenue-sharing, adding to a great divide between the haves and have-nots across Division I.

Annual NCAA distributions would be repurposed to cover a portion of the rear-facing terms of the settlement and, therefore, notably reduce revenues shared with Division I athletics departments. Some leaders across the Group of Five conferences believe this places a disproportionate burden on their membership due to their comparative revenue profile with Autonomy 4 institutions. University of Montana President Seth Bodnar commented, "Our frustration is, as we think about this back pay … is that we want that to be equitable. We don't want that burden to fall more heavily on smaller universities like ours, where [true] amateurism is alive and well at our level. We'd like to see that distribution of how that pay is spent to be more equitable."

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Retroactive impacts are a reality that all Division I institutions must bear. However, looking forward, conferences and universities will need to decide if they want to opt in to revenue-sharing, which comes with up to a $23 million price tag annually, with escalators in future years. Institutions that do opt in will be forced to validate their future athletics identity and priorities to fund this commitment year in and year out. Many FBS institutions have already publicly stated their intention to fully participate in revenue-sharing, such as Texas Christian University's Director of Athletics Jeremiah Donati, who commented, "We're going to be focused primarily on putting that [$23] million of rev-share in the hands of the players. … We've got to figure out a way to create a new business model in more or less six to eight months." For Group of Five members, many departments plan to participate in revenue-sharing, although their financial footings are often markedly different from Autonomy 4 departments. Utah State Athletic Director Diana Sabau emphasized, "It would be easy for [A4 departments] to dip into some coffers to get it started. You know, we don't have a lot of reserves. We don't have that financial fund just ready to go. Every day we eat what we can kill, and we have to do a better job of having more reserves, so that we can plan for that."

Each Division I athletics department is being forced to make decisions regarding its future athletics identity and priorities. Participating in revenue-sharing and the necessary annual financial investment requires an institutional commitment far beyond the athletics department utilizing athletics more broadly as a fundamental vehicle to further the university's mission. However, even the most prominent institutions are already responding to the concept by finding ways to optimize their resources — through identifying new revenue streams and enhancing traditional ones, curtailing spending, and pausing future capital investments.

Strategies to fund student-athlete compensation	
Grow traditional revenue streams	To fund revenue-sharing, the University of Tennessee is adding a 10% talent fee to all football season tickets.
Identify new revenue streams	Oklahoma State University partnered with the Bank of Oklahoma to feature its logos on the 25-yard lines to drive new revenues.
Adjust roster sizes and scholarships awarded	With new regulations related to *House v. NCAA*, roster sizes will decrease across most programs, but the scholarship limit will rise, potentially increasing programmatic expenses.
Slow capital investments	The University of Illinois recently paused the development of a $14 million standalone wrestling facility due to the many unknowns across the industry.
Review non-essential operational spend	Schools will likely evaluate the operating models of their departments and programs, including staffing and competition scheduling, to limit costs where possible.
Evaluate sport portfolios	While this is an undesirable option, some fear that new costs related to revenue share could reduce the number of sponsored sports and/or scholarships offered across departments.

Even if an institution finds the resources to fund revenue-sharing, many questions remain unanswered, such as how the funds should be allocated by program and within each program. In July 2024, the U.S. Department of Education clarified that all revenue-sharing payments must comply with Title IX, although specific guidelines on how to do so are still forthcoming.

Proactive planning in the face of uncertainty

With the settlement not yet approved by Judge Wilken, many uncertainties persist. However, institutional and athletics leaders should not wait to prepare their departments and universities for this almost inevitable reality. Leaders can take vital steps to ensure they have the necessary information to make critical decisions regarding the future of their departments, institutions, and, importantly, their student-athletes.

Understand the holistic departmental financial picture: Identifying projected growth in traditional and new sources and uses of funds will allow leaders to understand their organization's financial health and make more fully informed investments to sustain and enhance competitiveness.

Evaluate industry-leading examples and benchmarks: Understanding how peers across the country are responding to certain challenges allows for added perspective in identifying the best path forward.

Optimize administrative structures to support new responsibilities: Recognizing new responsibilities that must be attended to in the new era of college sports, such as general managers and "capologists" who manage player compensation, as well as existing verticals with responsibilities that will likely evolve, such as traditional compliance, will be critical to ensure needs are met.

Ensure compliance with Title IX: Aligning with Office for Civil Rights guidance that all revenue-sharing adheres to Title IX will require new and evolved compliance protocols while also ensuring competitive strategy in resource allocation to student-athletes.

The last several years of intercollegiate athletics have proven once again the adage that "change is the only constant," and this landscape will continue to evolve as ongoing court decisions are made. However, leaders must not wait until these rulings are reached and emphasize innovation now. Gene Smith, former Director of Athletics at The Ohio State University, shared, " … the intercollegiate athletic model is going to change. … you have to embrace change or be irrelevant. … figure out how you're [going to] embrace it. And then be a part of that change."

By embracing change and thinking strategically about which, and to what degree, levers should be pulled, leaders can position their departments for success in this new era of intercollegiate athletics despite the many uncertainties that will continue to play out.

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