
NIL COMPLIANCE

JOSH LENS, J.D.*

ABSTRACT

The transformative name, image, and likeness (“NIL”) era of college athletics is in its infancy yet one cannot overstate its impact on college athletics. While student-athletes have largely benefited from NCAA rules changes permitting their newfound ability to earn remuneration from their NIL, uncertainty exists regarding the rules and enforcement of them.

While the NCAA’s guidelines regulating student-athletes’ use of their NIL are minimalist, they contain some restrictions applicable to student-athletes, university staff members, universities, and universities’ athletics supporters. Despite repeated threats, the NCAA has yet to enforce its NIL restrictions, resulting in confusion and upheaval. NCAA legislation requires universities to monitor their compliance with all NCAA rules, however, and the NCAA will, at some point, enforce its NIL restrictions and penalize those who violate them. Thus, universities must monitor their compliance with NCAA NIL restrictions.

Scholars and the national media have written extensively about the NCAA’s NIL restrictions and their effects. Lacking from this discourse, however, is recognition and examination of universities’ responsibility to monitor compliance with the restrictions. This Article fills that void. To do so, Part I details the NCAA’s enforcement and infractions processes through which it enforces its myriad rules and explains universities’ efforts, including monitoring, to comply with NCAA rules on their campuses. Part II describes the NCAA’s NIL restrictions and suggests reasonable activities that universities should undertake to monitor compliance with them. Doing so would not only fulfill universities’ monitoring responsibilities but help foster compliance with NIL regulations on campuses.

*Assistant Professor of Recreation and Sport Management at the University of Arkansas, Fayetteville (J.D., University of Iowa College of Law). Prior to entering academia, Lens worked on Baylor University’s athletics compliance staff for eight years. In addition to his academic duties, Lens consults for college athletics conferences and university athletics departments regarding legal and NCAA matters. The views this Article expresses are the author’s and not necessarily representative of the University of Arkansas or Baylor University.

CONTENTS

INTRODUCTION	71
I. THE CURRENT NCAA DIVISION I ENFORCEMENT AND INFRACTIONS PROCESSES	76
A. <i>The NCAA Enforcement Staff and its Roles in the Infractions Process</i>	78
B. <i>Resolution of NCAA Infractions Cases</i>	79
C. <i>NCAA Rules Compliance on University Campuses</i>	82
II. MONITORING NIL COMPLIANCE	85
A. <i>NCAA Interim Policy and Guidelines</i>	86
B. <i>NCAA Restrictions Regarding NIL and Suggested Monitoring Activities for Them</i>	88
CONCLUSION.....	95

INTRODUCTION

For decades, the National Collegiate Athletic Association (“NCAA”)¹ strictly enforced its numerous constraints on collegiate student-athletes’ ability to earn remuneration from their names, images, and likenesses.² When it eliminated many of these restrictions on July 1, 2021, the NCAA ushered in a new era for college athletics.³ This transcendent, seismic pivot⁴ permitted student-athletes to accept remuneration for endorsements and autographs, for example.⁵

Student-athletes’ newfound freedoms paid off—literally—in the first year of the name, image, and likeness (“NIL”) era.⁶ Student-athletes received just under a billion dollars for NIL activities in that time frame, an amount which some expect to increase in the future.⁷ On the individual level, nineteen-year old University of Texas football student-athlete Quinn Ewers’ NIL earnings total nearly \$4 million, for example.⁸ Women student-athletes have also benefited, as evidenced by University of Connecticut (“UConn”) women’s basketball student-athlete Paige Bueckers. Bueckers will miss the 2022-23 women’s basketball season due to a knee injury but will return to play for UConn in 2023-24 in lieu of beginning her professional basketball career, as remaining a UConn student-athlete will provide more lucrative NIL opportunities than available in the Women’s National Basketball Association (“WNBA”).⁹ In fact, Bueckers’

¹ The NCAA is the most powerful regulatory body in college athletics. W. Burlette Carter, *Student-Athlete Welfare in a Restructured NCAA*, 2 VA. J. SPORTS & L. 1, 3 (2000).

² Tim Tucker, *NIL Timeline: How We Got Here and What’s Next*, ATLANTA J.-CONST. (Mar. 18, 2022), <http://ajc.com/sports/georgia-bulldogs/nil-timeline-how-we-got-here-and-whats-next/EOL7R3CSSNHK5DKMAF6STQ6KZ4/> [<https://perma.cc/HXG2-MUYL>].

³ *Id.*

⁴ Ross Dellenger, ‘It’s Going to Be a Clusterf—:’ *The New Era of College Sports Is Here. Is Anyone Ready?* SPORTS ILLUSTRATED (July 1, 2021), <http://si.com/college/2021/07/01/ncaa-athletes-profit-nil-daily-cover> (quoting University of Miami football student-athlete D’Eriq King as describing the NCAA’s elimination of the restrictions as “long overdue”); see also Dennis Dodd, *NCAA Unlikely to Meet Constitution Deadline as Hot-Button NIL Issue Disrupts College Athletics*, CBS SPORTS (May 5, 2022), <http://cbssports.com/college-football/news/ncaa-unlikely-to-meet-constitution-deadline-as-hot-button-nil-issue-disrupts-college-athletics/> [<https://perma.cc/22XW-T3E2>] (identifying NIL as “maybe the single biggest factor that will shape college athletics going forward”).

⁵ Tucker, *supra* note 2.

⁶ *Id.*

⁷ Josh Schafer, *NIL: Here’s How Much Athletes Earned in the First Year of New NCAA Rules*, YAHOO! FINANCE (July 1, 2022), <http://finance.yahoo.com/news/nil-heres-how-much-ncaa-athletes-earned-185901941.html> (citing estimates by Opendorse, a technology provider in the athlete endorsement industry).

⁸ Josh Schafer, *College Quarterback’s NIL Compensation Nears \$4 Million amid New NFT Partnership*, YAHOO! FINANCE (Oct. 7, 2022), <http://finance.yahoo.com/news/college-quarterbacks-nil-compensation-nft-partnership-200004496.html> [<https://perma.cc/P9WD-T6JG>] (describing Ewers’s NFT campaign that accounts for \$1 million of Ewers’s earnings).

⁹ *Paige Bueckers Sees High NIL Value in Return to UConn for Senior Season*, SPORTS BUS. J. (Sept. 6, 2022), <https://www.sportsbusinessjournal.com/Daily/Issues/2022/09/06/Marketing-and->

array of NIL arrangements will generate more compensation for her than the base salary she would earn as the number one overall WNBA draft selection.¹⁰

Student-athletes have also utilized their NIL to benefit charitable and community efforts. Among the many examples is University of Iowa football student-athlete Tory Taylor. As an international student, the Australian-born Taylor faces complications and restrictions regarding his ability to earn revenue from his NIL.¹¹ After verifying that using his NIL to raise money for charities would not negatively impact his standing as an international student, Taylor teamed with local nonprofit Count the Kicks to raise money for its fetal movement awareness campaign.¹² An elite punter, Taylor was a natural fit for an organization that sought to encourage pregnant people to monitor daily kick counting sessions during their pregnancy's third trimester.¹³ T-shirts with the slogan "Punting is Winning" with Taylor's name and jersey number on the back "easily has become the most popular among Iowa (football) fans," with Taylor donating over \$11,000 to Count the Kicks from their sale.¹⁴ University of Arkansas football student-athlete KJ Jefferson likewise used his NIL for a good cause, teaming with organizations like the United Way on a social media campaign to raise money for flood victims in Jefferson's home state of Mississippi.¹⁵

While the NIL era has resulted in many positives, it has also led to uncertainty, chaos, and a free-for-all.¹⁶ Instead of adopting new bylaws that apply to all

Sponsorship/Paige-Bueckers-UConn-NIL-deals.aspx [https://perma.cc/RG5X-BY4U] (quoting Adam Zagoria of the *New York Times*).

¹⁰ *Id.* (listing Bueckers' NIL arrangements to include deals with Gatorade, the e-commerce platform StockX, and education platform Chegg).

¹¹ Scott Dochterman, 'Count the Kicks': Unable to Profit Off His NIL, Iowa Punter Tory Taylor Is Still Maximizing the Impact of His Platform, *THE ATHLETIC* (Dec. 21, 2021), <http://theathletic.com/3028564/2021/12/21/count-the-kicks-unable-to-profit-off-his-nil-iowa-punter-tory-taylor-is-still-maximizing-the-impact-of-his-platform/> [https://perma.cc/3M96-GRZD] (explaining that Taylor's punting prowess and engaging personality led to NIL overtures).

¹² *Id.*

¹³ *Id.* (explaining that a change in the amount of time it takes to count ten movement changes could signal potential issues).

¹⁴ *Id.*

¹⁵ Anna Darling, *KJ Jefferson NIL For a Good Cause: Water Crisis Aid in Mississippi*, *KNWA* (Sept. 16, 2022), <http://nwahomepage.com/news/featured-stories/kj-jefferson-nil-for-a-good-cause-water-crisis-aid-in-mississippi> [https://perma.cc/4HER-UMMK] (explaining that flooding overwhelmed Jackson, Mississippi's main water treatment plant, leaving many relying on bottled water to make food and for hygienic purposes).

¹⁶ Dellenger, *supra* note 4 (describing "this new space" as consumed by "chaos"). For example, nationally renowned head football coaches Nick Saban of the University of Alabama and Jimbo Fisher of Texas A&M University publicly sparred over the meaning and application of NCAA NIL guidance, illustrating a fundamental misunderstanding of NIL guidelines. Derin B. Dickerson & Trenton Hafley, *The NIL Paradox for NCAA Athletes—Enforce or Recruit?* *BLOOMBERG L.* (June 27, 2022), <http://news.bloomberglaw.com/us-law-week/the-nil-paradox-for-ncaa-athletes-enforce-or-recruit> [https://perma.cc/BJL3-3KQS].

member universities, the NCAA instead implemented a minimalist “uniform interim policy” that eliminated NCAA bylaws restricting student-athletes’ monetization of their NIL¹⁷ that had been longstanding.¹⁸ While the NCAA’s interim policy is barebones,¹⁹ it includes some restrictions.²⁰ The interim policy, for example, “preserves the commitment to avoid pay-for-play and improper inducements tied to choosing a particular school.”²¹

Rules are only effective if enforced, however,²² and many college athletics constituents crave enforcement of NCAA NIL restrictions.²³ More than eighteen months into the NIL era, however, its legal and regulatory landscape is unclear.²⁴ Though the NCAA “built its reason for existence on enforcement,” it has not

University of Nebraska head football coach Matt Rhule has also voiced his reservations that “NIL is being ‘misused and mishandled in a lot of places.’” Jeremy Crabtree, *NCAA Continues to Focus on NIL Rule Violation Enforcement*, ON3 (Jan. 28, 2023), <https://www.on3.com/nil/news/ncaa-takes-another-shot-at-nil-rule-violation-enforcement/> [https://perma.cc/65YS-LJVZ].

¹⁷ Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021), <http://ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> [https://perma.cc/7AY5-S68M]. For example, “(f)or generations, college athletes were forbidden by NCAA rules from receiving compensation for endorsements, autographs and the like, or from using their (NIL) in any way to earn profits.” Tim Tucker, *‘The Wild West’: College Sports’ NIL Era Brings Upheaval*, ATLANTA J.-CONST. (Mar. 18, 2022), <http://ajc.com/sports/georgia-bulldogs/the-wild-west-college-sports-nil-era-brings-upheaval/YORTVG5VAZCMPBLMVK42QMA63E/> [https://perma.cc/8Z34-SYRH] (citing examples where former University of Georgia football student-athletes A.J. Green and Todd Gurley received multigame suspensions for violating “the draconian rules”).

¹⁸ Dellenger, *supra* note 4 (describing the NCAA’s interim NIL policy as “taking a wrecking ball to its already crumbling bedrock of antiquated rules”).

¹⁹ Andy Wittry, *Here’s How State NIL Laws Could Challenge the NCAA’s Interim Policy*, ON3 (Aug. 18, 2022), <http://on3.com/nil/news/state-nil-laws-name-image-likeness-illinois-nevada-ncaa-interim-policy/> [https://perma.cc/N732-X5XJ].

²⁰ Ross Dellenger, *College Leaders Urging NCAA to Enforce New NIL Guidelines, Or Else*, SPORTS ILLUSTRATED (May 5, 2022), <https://www.si.com/college/2022/05/06/nil-chaos-leaders-urging-ncaa-new-guidelines> (quoting University of Colorado athletics director Rick George as explaining, “just because we have NIL, it doesn’t eliminate the rules”).

²¹ Hosick, *supra* note 17 (“Those rules remain in effect.”).

²² See Blake Toppmeyer, *NCAA is All Bark, No Bite, When Enforcing NIL Rules Against Recruiting Inducements*, TENNESSEAN (May 11, 2022), <http://tennessean.com/story/sports/college/2022/05/11/ncaa-nil-guidelines-rules-boosters-collectives-natitrust-lawsuit/9681621002/> [https://perma.cc/2DKJ-3QAY]; see also Crabtree, *supra* note 16 (explaining that “for months and months, coaches have been clamoring for enforcement from the NCAA.”).

²³ Dellenger, *supra* note 20.

²⁴ Dickerson & Hafley, *supra* note 16; see also Chris Carlson, *NCAA Wants to Rein in Boosters Abusing Recruiting Rules. Should Syracuse, Adam Weitsman Be Worried?*, SYRACUSE.COM (Feb. 10, 2023), <http://syracuse.com/orangebasketball/2023/02/ncaa-wants-to-rein-in-boosters-abusing-recruiting-rules-should-syracuse-adam-weitsman-be-worried.html> [https://perma.cc/R4LB-AK89] (describing “the confusion and uncertainty running through college sports”).

enforced any of its interim policy's restrictions,²⁵ let alone alleged potential NIL violations,²⁶ culminating in a wild, wild west college athletics climate.²⁷

The NCAA has, however, put member universities on notice that it is investigating potential NIL rules infractions²⁸ with a focus on university staff

²⁵ Darren Rovell, *NCAA Gets Smarter With New, Meaningful NIL Directives*, ACTION (Oct. 26, 2022), <http://actionnetwork.com/ncaab/ncaa-gets-smarter-with-new-meaningful-nil-directives> [https://perma.cc/MNK6-73QT]; see also Toppmeyer, *supra* note 22 (“To this point, the NCAA has shown all bark and no bite.”).

²⁶ Associated Press, *NCAA Calls for Schools to Help Investigate NIL Violations*, SPORTS ILLUSTRATED (Aug. 19, 2022), <http://si.com/college/2022/08/19/ncaa-nil-investigations-calls-for-help-member-schools-impermissible-benefits>. The NCAA Committee on Infractions recently cited the University of Miami for NCAA violations. See NCAA, UNIVERSITY OF MIAMI (FLORIDA) NEGOTIATED RESOLUTION 1 (2023), https://ncaaorg.s3.amazonaws.com/infractions/decisions/FEB2023D1INF_COIPublicReportUniversityMiamiFL.pdf [https://perma.cc/YB8R-4ZSM] [hereinafter MIAMI CASE]. Members of the national media have described it as the NCAA's first NIL infractions case. See, e.g., Amanda Christovich, *NCAA's First NIL Infractions Case Is Against Miami Women's Hoops*, FRONT OFFICE SPORTS (Feb. 24, 2023), <http://frontofficesports.com/ncaas-first-nil-infractions-case-is-against-miami-womens-hoops/> [https://perma.cc/K82D-QF22]. Others have described the penalties in the case as the NCAA's first NIL sanctions. See, e.g., Emma Hruby, *NCAA Issues First NIL Sanctions Against Miami in Cavinder Twins Case*, JUST WOMEN'S SPORTS (Feb. 25, 2023), <https://justwomenssports.com/reads/ncaa-cavinder-twins-miami-recruiting-nil-sanctions/#:~:text=Miami%20basketball%20was%20issued%20sanctions,of%20the%202022%2D23%20season> [https://perma.cc/BWY5-RSFY]. However, the written case decision specifically acknowledges “[t]he investigation did not develop any facts directly linking activities around name, image and likeness to the prospects’ recruiting to or decision to enroll at the University of Miami.” MIAMI CASE, *supra* note 26, at 1. Further, while the written decision cites the parties with violations of numerous NCAA bylaws, there are no violation citations involving the NCAA's interim NIL guidelines. *Id.* at 4-5. Thus, the Miami case resulted from the head coach connecting prospective student-athletes’ family with a booster—not from violations of NCAA NIL restrictions. See *id.* at 4.

²⁷ Dodd, *supra* note 4 (quoting a college coach as stating, “They say it’s like the Wild, Wild West. Who won the Wild, Wild West? Bandits, pirates, criminals. When there is looting in the streets and chaos, who wins? The guys who break windows and runs [sic] out of Walmart with TVs.”); see also Tucker, *supra* note 17 (quoting Emory University marketing professor Mike Lewis as explaining college athletics is in the “Wild West” NIL phase).

²⁸ Michelle Brutlag Hosick, *DI Board of Directors Directs DI Council to Review Impact of NIL on Student-Athletes*, NCAA (Feb. 18, 2022), <http://ncaa.org/news/2022/2/18/media-center-di-board-of-directors-directs-di-council-to-review-impact-of-nil-on-student-athletes.aspx> [https://perma.cc/9CYA-8NG3] (explaining that investigations have focused on violations of pay-for-play and recruiting inducement restrictions); see also Amanda Christovich, *The NCAA Posted a Job for an NIL Rule Violations Investigator*, FRONT OFFICE SPORTS (Oct. 4, 2022), <http://frontofficesports.com/ncaa-nil-enforcer/> [https://perma.cc/42KC-7ATH] (noting that the NCAA confirmed “it is now working on ‘a number of cases’ related to NIL”). The NCAA has made inquiries involving NIL arrangements involving University of Miami and University of Oregon student-athletes, for example. Pete Nakos, *NCAA Posts Job for Associate Director of NIL Enforcement*, ON3 (Oct. 3, 2022), <https://www.on3.com/nil/news/ncaa-posts-job-for-associate-director-of-nil-enforcement-pay-to-play-recruiting-inducement/> [https://perma.cc/G8AP-Q8FT].

members and representatives' behaviors.²⁹ In fact, NCAA Vice President of Enforcement Jon Duncan recently explained that there a lot of cases involving NIL or NIL adjacent behavior "in the hopper" that will soon see sunshine.³⁰ Further, the NCAA adopted a guilty-until-proven-innocent standard for potential violations of its interim NIL policy.³¹ The NCAA's recent staff additions likewise suggest it will aggressively enforce its NIL restrictions. In August, the NCAA hired a former CIA Deputy Group Chief and FBI executive leader with decades of cybersecurity, counterintelligence, and strategic communications experience.³² The NCAA also recently advertised a job opening titled "Associate Director of Enforcement for Name, Image, and Likeness," with the position's primary responsibility including identifying potential NCAA violations.³³ This individual's tasks will include monitoring and enforcing NCAA rules and guidelines regarding NIL.³⁴

With NIL rules enforcement appearing an NCAA priority³⁵ and potentially facing the guilty-until-proven-innocent standard for violations, universities should follow NCAA NIL regulations and, like all other NCAA rules,³⁶ monitor

²⁹ Daniel Chavkin, *NCAA Says It's Investigating 'Potential Violations' Regarding NIL*, SPORTS ILLUSTRATED (June 9, 2022), <http://si.com/college/2022/06/09/ncaa-enforcement-nil-issues-letter-potential-violations> (citing NCAA Enforcement Staff correspondence to member universities).

³⁰ Crabtree, *supra* note 16 (quoting Duncan's interview with Collegiate Sports Connect's Matt Banker).

³¹ Meghan Durham, *DI Board Approves Clarifications for Interim NIL Policy*, NCAA (Oct. 26, 2022), <http://ncaa.org/news/2022/10/26/media-center-di-board-approves-clarifications-for-interim-nil-policy.aspx> [<https://perma.cc/KU68-HFBU>] (explaining that such a standard exists "when information available to the Enforcement Staff indicates impermissible conduct occurred"). The NCAA codified this new presumption as Bylaw 19.7.3, which went into effect on January 1, 2023. Crabtree, *supra* note 16. It permits the NCAA to use things like media reports and other credible information to bring allegations of NCAA rules violations. Carlson, *supra* note 24; *see also* Ross Dellenger, *The Doors Are Opening for NCAA to Close in on NIL Violations*, ON3 (Jan. 30, 2023), <https://www.si.com/college/2023/01/30/ncaa-enforcement-name-image-likeness-more-room-investigations> [<https://perma.cc/4MP5-87HR>] (explaining how the new standard no longer permits uncooperative witnesses to hamstring the NCAA and its Enforcement Staff).

³² Darren Heitner, *Newsletter, Image, Likeness Vol. 7: After 18 Months, Is the NCAA About to Enforce Its NIL Rules?*, LINKEDIN (Dec. 23, 2022), <https://www.linkedin.com/pulse/newsletter-image-likeness-vol-7-after-18-months-ncaa-enforce-heitner/> [<https://perma.cc/F4JV-HSV3>] (describing NCAA's hiring of Craig Moringiello as the Assistant Director of Enforcement).

³³ Christovich, *supra* note 28 (noting that the NCAA explained its reasoning for creating the position because "member schools have expressed a desire for the national office to ensure NCAA rules . . . are not being violated").

³⁴ Nakos, *supra* note 28 (explaining the Enforcement Staff job posting is a "small sign" that the NCAA will enforce NIL regulations).

³⁵ Christovich, *supra* note 28; *see also* Dickerson & Hafley, *supra* note 16.

³⁶ NCAA legislation requires member universities "to monitor . . . to ensure compliance with the bylaws of the Association." NCAA, 2022-23 DIVISION I MANUAL § 19.2.1 (2022),

their compliance with them. This Article's aims include identifying both: (1) the NCAA NIL restrictions with which universities must monitor their compliance and (2) suggested activities universities can undertake to effectively monitor compliance with NCAA NIL restrictions. Thus, Part I details the current NCAA enforcement process by which the NCAA enforces its myriad rules and describes universities' efforts to comply with NCAA legislation on campuses. Part II describes NCAA NIL restrictions and suggests actions for universities that would satisfy their monitoring obligations and help foster compliance with NCAA NIL guidelines. A brief conclusion follows.

I. THE CURRENT NCAA DIVISION I³⁷ ENFORCEMENT AND INFRACTIONS PROCESSES

The NCAA is “big, national, the focus of media and public attention, and scrutinized by legislators.”³⁸ A private association,³⁹ the NCAA describes itself as “a member-led organization” that consists of over 1,000 colleges and universities.⁴⁰

A ground-up entity,⁴¹ the NCAA derives its authority from its member universities.⁴² Through the NCAA's legislative process, the universities that belong to it propose and adopt rules regarding college athletics and implement

<http://web3.ncaa.org/lstdbi/reports/getReport/90008>
[hereinafter 2022-23 MANUAL].

[<https://perma.cc/SY9G-C3PD>]

³⁷ Division I is the highest division in the NCAA's three-division structure. Glenn M. Wong et al., *NCAA Division I Athletic Directors: An Analysis of the Responsibilities, Qualifications and Characteristics*, 22 JEFFREY S. MOORAD SPORTS L.J. 1, 5 (2015). It includes “the largest and best-funded research universities.” Josephine (Jo) R. Potuto, *The NCAA Rules Adoption, Interpretation, Enforcement, and Infractions Processes: The Laws That Regulate Them and the Nature of Court Review*, 12 VAND. J. ENT. & TECH. L. 257, 259 n.2 (2010).

³⁸ Potuto, *supra* note 37, at 266. It may surprise that state legislatures and even United States Congresspeople have shown interest in the NCAA's regulation of college athletics. Kevin E. Broyles, *NCAA Regulation of Intercollegiate Athletics: Time for a New Game Plan*, 46 ALA. L. REV. 487, 506-07 (1995). For example, in March 2022, Congresspeople released a bipartisan bill titled the NCAA Accountability Act of 2021. Dennis Dodd, *With NCAA Enforcement on Its Last Legs, Congress Seeks to Place Limits on Investigations*, CBS SPORTS (Mar. 29, 2022), <http://cbssports.com/college-basketball/news/with-ncaa-enforcement-on-its-last-legs-congress-seeks-to-place-limits-on-investigations/> [<https://perma.cc/7KH4-DK4L>]. The bill attempts to streamline the infractions process, limiting investigations to eight months and reducing the statute of limitations by half to two years. *Id.*

³⁹ Potuto, *supra* note 37, at 266 (citing *NCAA v. Tarkanian*, 488 U.S. 179 (1988)).

⁴⁰ *What Is the NCAA?*, NCAA, <http://ncaa.org/about/resources/media-center/ncaa-101/what-ncaa> (last visited Mar. 26, 2023).

⁴¹ Jerry R. Parkinson, *Scoundrels: An Inside Look at the NCAA Infractions and Enforcement Processes*, 12 WYO. L. REV. 215, 223 (2012).

⁴² Potuto, *supra* note 37, at 259 (describing the NCAA as both “one of the most talked about and widely known private associations” yet “also the least understood”).

them on campus.⁴³ NCAA legislation, while often complex,⁴⁴ attempts to level the playing field for universities competing against each other.⁴⁵ Member universities and their staff and student-athletes agree to abide by the rules in exchange for the opportunity to compete in NCAA-sponsored competitions.⁴⁶

The NCAA notoriously does not lack for rules.⁴⁷ For example, one NCAA Division I bylaw defines the term “business day[,]” while others regulate when and how often coaches may call or write prospective student-athletes, or even answer incoming calls from them.⁴⁸ Thus, college coaches work in an environment controlled by NCAA rules,⁴⁹ and the NCAA expects staff members and student-athletes to know and follow its rules.⁵⁰

⁴³ See *What is the NCAA*, *supra* note 40 (noting these rules include “everything from recruiting and compliance to academics and championships”).

⁴⁴ Megan Fuller, *Where’s the Penalty Flag? The Unauthorized Practice of Law, the NCAA, and Athletic Compliance Directors*, 54 N.Y.L. SCH. L. REV. 495, 507 (2010) (noting that “experienced coaches and sports law scholars have lamented the difficulty of understanding these rules and called for reforms to the rules”). Former Washington State University head football coach Mike Leach once lamented, “A lot of these NCAA . . . rules, they’re not written by lawyers. They’re written by people pretending to be lawyers. And the only thing more annoying than a lawyer is someone pretending to be a lawyer, and I’ve got a law degree, so I know something about it.” Angelique S. Chengelis, *Jim Harbaugh’s Transfer Idea Has Supporters and Critics, But All Agree Change is Needed*, DETROIT NEWS (Jan. 8, 2020), <http://detroitnews.com/story/sports/college/2020/01/08/jim-harbaughs-transfer-idea-has-supporters-and-critics-but-all-agree-change-needed/2844680001/> [<https://perma.cc/AC6U-F4UC>].

⁴⁵ Potuto, *supra* note 37, at 262 (explaining that “[t]he NCAA exists to do what no institution can do on its own: administer championships and regulate athletics competition so as to ensure a level playing field”). For example, without rules regulating the amount of time they can require student-athletes to practice, some coaches would “require student-athletes to spend all waking hours in athletics-related activities” to gain a competitive advantage. *Id.* at 262.

⁴⁶ See Brandon Leibsohn, *Road to Recovery: The NCAA’s New Enforcement Process Creates More Legal Headaches*, 21 SPORTS L.J. 123, 126 (2014).

⁴⁷ NCAA bylaws and policies cover myriad substantive areas, competition rules, and scheduling. See Potuto, *supra* note 37, at 262. NCAA rules is a “dense, wonky bog.” Pat Forde, *Meet the Officials Who Volunteered for an NCAA Job Most Would Run Away From*, SPORTS ILLUSTRATED (Feb. 28, 2023), <http://si.com/college/2023/03/01/committee-infractions-ncaa-rulings-inside-look-tennessee>.

⁴⁸ 2022-23 MANUAL, *supra* note 36, at §§ 13.02.1, 13.1.3, 13.4.1.

⁴⁹ Martin J. Greenberg, *College Coaching Contracts Revisited: A Practical Perspective*, 12 MARQ. SPORTS L. REV. 127, 146 (2001) (describing NCAA rules as a “voluminous, complicated and very often broken set of guidelines”).

⁵⁰ Broyles, *supra* note 38, at 509; see also Potuto, *supra* note 37, at 302 (describing expectations that coaches know, understand, and comply with NCAA rules as an affirmative obligation). For example, consider the NCAA infractions case involving a University of California, Los Angeles (“UCLA”) assistant football coach who professed ignorance of NCAA recruiting rules after allegedly violating them. See NCAA, UNIVERSITY OF CALIFORNIA, LOS ANGELES PUBLIC INFRACTIONS DECISION 6 (2016), <https://web3.ncaa.org/lsdbi/search/miCaseView/report?id=102558> [<https://perma.cc/DS37->

Rules are meaningless unless enforced, however.⁵¹ The NCAA investigative and penal process through which it sanctions member universities and their staff members for NCAA rules violations is unique,⁵² and, like the NCAA itself, the public holds many misperceptions about it.⁵³ Thus, this Part details the NCAA enforcement and infractions process, hopefully clearing up any misperceptions.

A. *The NCAA Enforcement Staff and its Roles in the Infractions Process*

Universities and staff members that abide by NCAA legislation should not be disadvantaged by doing so.⁵⁴ Thus, NCAA member universities created an infractions process to help ensure fair play and integrity among members.⁵⁵ One group of NCAA employees in particular bears this responsibility: the Enforcement Staff.⁵⁶ The Enforcement Staff is akin to the NCAA's prosecutor.⁵⁷

KG7R] [hereinafter *UCLA CASE*]. The assistant coach received sanctions for not only violating recruiting rules but also for engaging in unethical conduct for his lack of awareness of the rules. *Id.*

⁵¹ Pete Nakos, *NCAA Releases Updated NIL Guidance Aimed at Institutions*, On3 (Oct. 26, 2022), <https://www.on3.com/nil/news/ncaa-division-i-board-of-directors-nil-guidance-collectives-schools-member-institution-2/> [https://perma.cc/F2G6-LLZC] (quoting an anonymous operator of an NIL collective); see also Crabtree, *supra* note 16 (quoting a football coach as stating "pages of guidelines are worthless unless they can be enforced"); see also Dellenger, *supra* note 31 (quoting Florida sports attorney Darren Heitner as stating that until the NCAA enforces its NIL prohibitions, "you are going to see cavalier collectives decide that they are not bound by the rules of the NCAA").

⁵² Broyles, *supra* note 38, at 487 (explaining that aspects of the infractions process would be unconstitutional in the United States court system yet "this is the way the game is played" in college athletics).

⁵³ Parkinson, *supra* note 41, at 219.

⁵⁴ See Elizabeth Lombard, *Changes Are Not Enough: Problems Persist with NCAA's Adjudicative Policy*, 95 NOTRE DAME L. REV. 925, 928 (2019).

⁵⁵ See NCAA, *Division I Infractions Process*, <http://ncaa.org/enforcement/division-i-infractions-process> [https://perma.cc/4HYX-3K8U] (last visited Mar. 26, 2023) [hereinafter *Division I Infractions Process*]. A byproduct of private associations' authority to adopt the rules governing them is their right to control their rules' enforcement and interpretation. Potuto, *supra* note 37, at 272.

⁵⁶ See NCAA, *DIVISION I INFRACTIONS: 2019-20 ANNUAL REPORT* 9 (2020), https://ncaaorg.s3.amazonaws.com/infractions/d1/2019D1Inf_AnnualReport.pdf [https://perma.cc/Y3EV-XXQS] [hereinafter 2019-20 ANNUAL REPORT]. "[E]nforcement staff members . . . are paid employees of the NCAA." Parkinson, *supra* note 41, at 224. Due in large part to COVID-19-associated layoffs, the Enforcement Staff currently consists of only around fifteen to twenty individuals. Dellenger, *supra* note 20 (quoting George as describing the Enforcement Staff's size as its "biggest issue").

⁵⁷ See Timothy Davis & Christopher T. Hairston, *Majoring in Infractions: The Evolution of the National Collegiate Athletic Association's Enforcement Structure*, 92 OR. L. REV. 979, 988 (2014) (describing the Enforcement Staff's responsibilities to include presenting information to support allegations of rules infractions to the Committee on Infractions ("COI")); see also Mike Rogers & Rory Ryan, *Navigating the Bylaw Maze in NCAA Major Infractions Cases*, 37 SETON HALL L. REV. 749, 753-54 (2007) (noting that Enforcement Staff

It is the NCAA entity responsible for reviewing information about potential violations.⁵⁸ The Enforcement Staff receives information regarding potential rule violations from many sources, including self-reports and sources.⁵⁹ Its investigators must review information regarding potential violations in a “fair, accurate, collaborative, and timely manner.”⁶⁰

If the Enforcement Staff believes information may substantiate violations, it alleges potential Level I or Level II violations, with the former being the more significant of the two.⁶¹ The Enforcement Staff states its allegations in a Notice of Allegations, a formal document directed to the university and involved individuals.⁶² The Enforcement Staff bears the burden of proving these violations.⁶³

B. *Resolution of NCAA Infractions Cases*

If the Enforcement Staff is the prosecutor of NCAA rules violations, the Committee on Infractions (“COI”) is the judge and jury.⁶⁴ There are currently three means by which an infractions case involving a Division I member university resolves, and all conclude with a Committee on Infractions (“COI”)

members are full-time NCAA employees). As of January 2023, nearly half of Enforcement Staff members hold law degrees. Dellenger, *supra* note 31.

⁵⁸ See *Division I Infractions Process*, *supra* note 55.

⁵⁹ See *Inside the Infractions Process: Paths for Handling Potential Violations*, NCAA (Jan. 2020), https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/DIINF_ResolutionPathsforViolations.pdf [<https://perma.cc/U2FC-SYX3>] (illustrating various resolution paths for potential violations). University staff members, athletics representatives, student-athletes, and prospective student-athletes may violate NCAA rules. Potuto, *supra* note 37, at 284. The Enforcement Staff receives tips on potential violations from university self-reports, rival coaches, media stories, anonymous tips, and disgruntled staff members or student-athletes. See *id.* at 289-90. In one case, a former girlfriend of a UCLA assistant football coach notified the NCAA that the “coach had knowledge of and/or involvement in potential NCAA recruiting violations.” See *UCLA CASE*, *supra* note 50, at 2.

⁶⁰ 2019-20 ANNUAL REPORT, *supra* note 56, at 9 (characterizing trust and collaboration between the Enforcement Staff, universities, and conferences as “vital” to the process).

⁶¹ See *id.* at 7. There are three violation levels. See *id.* at 9. The COI adjudicates cases involving alleged levels I and II violations, whereas, for the most part, the Enforcement Staff and universities handle Level III violations. See *id.* For context, the Enforcement Staff alleged an average of ninety-one Level I or II violations per year between 2017 and 2019. See *id.* at 11. For further context, the COI hosted six hearings over disputed allegations in 2019. See *id.* at 12. On the other hand, many universities self-report at least ten Level III violations annually, many of which do not become public. Gene Marsh & Marie Robbins, *Weighing the Interests of the Institution, the Membership and Institutional Representatives in an NCAA Investigation*, 55 FLA. L. REV. 667, 675 (2003).

⁶² Parkinson, *supra* note 41, at 226 (noting that the Enforcement Staff directs the notice to the university’s president or chancellor).

⁶³ See *id.* at 224 (explaining that the COI has concluded that the Enforcement Staff failed to meet its burden “plenty” of times).

⁶⁴ Forde, *supra* note 47.

decision.⁶⁵ Founded in 1954,⁶⁶ the COI is an independent administrative body that includes volunteers from NCAA member universities, athletics conferences, former coaches, and individuals from the general public who possess legal training.⁶⁷ More specifically, COI panelists' professional profiles include current and former university presidents, chancellors, athletics directors, conference commissioners, former coaches, attorneys, and professors.⁶⁸ Thus, the COI touts the infractions process as "peer-review[ed]."⁶⁹ There are up to twenty-four COI members at any given time, a smaller panel of which considers each case on the COI's behalf.⁷⁰

One way that an infractions case resolves is through "negotiated resolution." This path is available in instances where the university and any other parties (e.g., coaches) agree with the Enforcement Staff on the facts, violations, level(s) of violations, and penalties.⁷¹ If that occurs, and the parties seek to pursue

⁶⁵ See *Division I Infractions Process*, *supra* note 55 (illustrating the means by which cases resolve and that they end with a COI adjudication). "The jurisdictional responsibility of the COI is to hear and resolve cases of institutional culpability." Potuto, *supra* note 37, at 295. "An unusual aspect of the NCAA model is that the body that resolves cases under the bylaws—the COI—is not the same body that renders authoritative interpretations." *Id.* at 274 (listing other NCAA units on which the interpretative function falls). Note that, until recently, a fourth means through which an infractions case could resolve existed through the Independent Accountability Resolution Process, although as of this writing referrals to it have been paused due to its backload of cases. See Michelle Brutlag Hosick, *DI Board of Directors Pauses Referrals to Independent Infractions Process*, NCAA (Jan. 20, 2022), <http://ncaa.org/news/2022/1/20/media-center-di-board-of-directors-pauses-referrals-to-independent-infractions-process.aspx> [<https://perma.cc/HRA9-3FB7>].

⁶⁶ See Greg Heller, *Preparing for the Storm: The Representation of a University Accused of Violating NCAA Regulations*, 7 MARQ. SPORTS L.J. 295, 298 (1996) (explaining that the COI's creation "gave the NCAA some legitimacy and spurred growth, as it now had a mechanism in place with investigative powers and powers to punish member institutions").

⁶⁷ *Division I Committee on Infractions*, NCAA, <http://ncaa.org/governance/committees/division-i-committee-infractions> [<https://perma.cc/UN4E-ZV2U>] (last visited Mar. 26, 2023) (describing COI). The NCAA Enforcement Staff and COI are "entirely separate enterprise(s)." Marsh & Robbins, *supra* note 61, at 677.

⁶⁸ See *Inside the Division I Infractions Process: Division I Committee on Infractions Composition*, NCAA (Jan. 2019), <https://www.ncaa.org/sports/2018/3/20/ncaa-division-i-committee-on-infractions-roster.aspx> [<https://perma.cc/T6DB-9LXS>] [hereinafter *Inside the Division I Infractions Process: Composition*]. Former COI chair Marsh has stated, "Being on the Committee on Infractions is like being on jury duty in perpetuity." Marsh & Robbins, *supra* note 61, at 679.

⁶⁹ See *Division I Infractions Process*, *supra* note 56, at 5.

⁷⁰ See *Inside the Division I Infractions Process: Composition*, *supra* note 68 (explaining that a panel's size for each individual case is between three and seven COI members).

⁷¹ *Division I Infractions Process*, *supra* note 55.

negotiated resolution, they draft a report and submit it to the COI for review.⁷² The COI reviews the appropriateness of the parties' agreed-upon penalties.⁷³

If the parties to an infractions case agree to the facts and violation level but disagree on penalties, they may attempt to resolve their case via the "summary disposition" track.⁷⁴ When doing so, the Enforcement Staff, university, and any individual subject to a violation charge submit a report to the COI.⁷⁵ If the COI accepts the report, it administers penalties.⁷⁶ However, the COI may reject the report and order a full hearing if it feels the Enforcement Staff failed to allege a pertinent violation.⁷⁷

The third way an infractions case resolves is via a hearing on a contested case. When the university and/or individuals dispute the Enforcement Staff's allegations, a panel of COI members conducts a hearing and determines whether the Enforcement Staff's allegations are accurate and, if so, imposes penalties on the university and any staff member(s).⁷⁸ The COI also has the authority to conclude that violations occurred even when the Enforcement Staff did not allege them.⁷⁹ A COI hearing, which is not open to the public,⁸⁰ combines elements of a legal trial, an administrative agency hearing, and an academic misconduct hearing on a university campus.⁸¹

⁷² *Id.* (noting there is no opportunity to appeal a negotiated resolution).

⁷³ *Inside the Division I Infractions Process: Negotiated Resolution*, NCAA (Jan. 2019), http://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/DIINF_InfractionsProcessNegotiatedResolution-FactSheet.pdf [<https://perma.cc/D3SL-MTDD>].

⁷⁴ *See Inside the Division I Infractions Process: Infractions Process Overview*, NCAA (Jan. 2023), https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/DIINF_InsideEnforcement.pdf [<https://perma.cc/VZW3-W665>] [hereinafter *Inside: Infractions Process Overview*]. The summary disposition process should be streamlined and cooperative. Edward O'Brien, *NCAA Announces Results of Its Investigation into UM's Athletics Department*, MONT. PUB. RADIO (Jul. 26, 2013, 10:17 AM), <http://mtpr.org/montana-news/2013-07-26/ncaa-announces-results-of-its-investigation-into-ums-athletics-department> [<https://perma.cc/A8D3-UZ6F>] (quoting University of Montana President Royce Engstrom following the University's summary disposition case).

⁷⁵ *See Inside: Infractions Process Overview*, *supra* note 74.

⁷⁶ *See id.*

⁷⁷ *See* NCAA, DIVISION I COMMITTEE ON INFRACTIONS: INTERNAL OPERATING PROCEDURES, §§ 4-10-2-3, 4-10-3 (July 20, 2021), https://ncaaorg.s3.amazonaws.com/committees/d1/infraction/D1COI_IOPs.pdf [hereinafter INTERNAL OPERATING PROCEDURES].

⁷⁸ *See Division I Infractions Process*, *supra* note 55.

⁷⁹ *See* INTERNAL OPERATING PROCEDURES, *supra* note 77, at § 5-12.

⁸⁰ Broyles, *supra* note 38, at 507 (describing the fact that COI hearings are private as one of the enforcement structure's "most apparent problems").

⁸¹ *See* Marsh & Robbins, *supra* note 61, at 678 (describing a COI hearing as "a unique process"). COI hearing procedures have been criticized for lacking due process safeguards. Heller, *supra* note 66, at 308. For example, evidence rules are inapplicable at infractions hearings; therefore, reliance on hearsay is commonplace. Potuto, *supra* note 37, at 297. For further comparison of NCAA infractions proceedings and legal proceedings, *see* Rogers & Ryan, *supra* note 57, at 754-61.

Following a hearing, the COI confers privately,⁸² ultimately producing a written decision detailing the facts, violations, penalties,⁸³ and reasoning for its findings and penalties.⁸⁴ This written report is publicly available⁸⁵ and is comparable to a court opinion.⁸⁶ In summary disposition and contested cases, the COI follows NCAA member-legislated guidelines when issuing penalties.⁸⁷ Penalties should reflect the violations' severity and degree of institutional fault while heeding the interests of other universities not involved in the case by offsetting any competitive or other advantage through sanctions.⁸⁸ "The penalties range from financial penalties and vacation of records to [athletics] scholarship reductions and postseason bans."⁸⁹ A law review article co-authored by former COI Vice Chair Gene Marsh describes the COI as "the thousand pound gorilla, with the final word in the case."⁹⁰ Some consider the COI to be the most powerful committee in college athletics.⁹¹

C. *NCAA Rules Compliance on University Campuses*

The NCAA Division I constitution requires member universities to comply with all NCAA rules,⁹² and holds universities accountable for their staff members' actions.⁹³ Thus, "[b]ecause universities act through individuals for whom they are responsible, when one such individual commits a violation so too does the university."⁹⁴ The university's knowledge and exercise of due diligence is irrelevant—its responsibility stems from its relationship with the individual who broke rules.⁹⁵

⁸² Broyles, *supra* note 38, at 496.

⁸³ See 2019-20 ANNUAL REPORT, *supra* note 56, at 22.

⁸⁴ Potuto, *supra* note 37, at 295.

⁸⁵ Parkinson, *supra* note 41, at 218 (noting that many are unaware that COI written decisions are publicly available on the NCAA's website).

⁸⁶ Broyles, *supra* note 38, at 497.

⁸⁷ See 2019-20 ANNUAL REPORT, *supra* note 56, at 15 (describing penalty guidelines as increasingly serious).

⁸⁸ Potuto, *supra* note 37, at 301.

⁸⁹ Nathaniel Richards, *The Judge, Jury, and Executioner: A Comparative Analysis of the NCAA Committee on Infractions Decisions*, 70 ALA. L. REV. 1115, 1116 (2019).

⁹⁰ See Marsh & Robbins, *supra* note 61, at 677 (describing the COI's vast authority in cases where a party does not appeal). COI members "are the last line and get the last word." Forde, *supra* note 47.

⁹¹ See, e.g., Broyles, *supra* note 38, at 493.

⁹² 2022-23 MANUAL, *supra* note 36, at § 2.1.1 (explaining that a university's president or chancellor has ultimate responsibility for "all aspects of the athletics program").

⁹³ *Id.* at § 2.1.2. NCAA legislation shares similarities with tort law's concept of *respondeat superior* through which businesses may be held responsible for employees' acts. Marsh & Robbins, *supra* note 61, at 671.

⁹⁴ Potuto, *supra* note 37, at 298 (referring to institutional responsibility for violations as "(o)ne of the least understood aspects of the infractions process").

⁹⁵ *Id.* (explaining that the institutional responsibility concept "tracks the law of *respondeat superior*" and agency principles). "Who committed the violation and whether an institution

NCAA member universities' top responsibility toward each other and the NCAA is institutional control.⁹⁶ Institutional control requires universities to self-police and self-report any violations of NCAA rules.⁹⁷ Thus, just as following NCAA rules is an obligation of NCAA membership, "member institutions must monitor the conduct of those for whom they are responsible and sanction them for violations."⁹⁸

NCAA legislation explicitly holds a university's president or chancellor accountable for its athletics department's conduct.⁹⁹ Practically, however, a university's athletics director has a greater impact on the attitudes of staff members, coaches, student-athletes, and boosters toward NCAA rules compliance.¹⁰⁰ Athletics directors are full-time administrators who oversee their respective university's athletics enterprises.¹⁰¹ Their jobs are 24/7, and their vast responsibilities may include negotiating multimillion-dollar media and licensing rights agreements, managing highly paid coaches, acting as fundraising and development specialists, balancing budgets, and mastering applicable compliance standards.¹⁰²

While the athletics director "sets the tone, NCAA rules compliance hardly defines the job."¹⁰³ As most of the athletics compliance responsibility on a campus therefore falls on the athletics department's compliance staff,¹⁰⁴ it is essential that an athletics department possesses a strong compliance department.¹⁰⁵ Compliance offices often include several staff members who

could have prevented or uncovered it, however, are relevant to assessment of penalties." *Id.*

⁹⁶ Potuto, *supra* note 37, at 283. A COI conclusion that a university lacks institutional control is one of the worst findings that it can suffer, as this indicates institution-wide failure, as opposed to one coach or staff member's dishonest act, for example. Fuller, *supra* note 44, at 503. Said otherwise, a lack of institutional control finding can suggest a climate of noncompliance or lackadaisical attitude toward NCAA rules compliance. Marsh & Robbins, *supra* note 61, at 671.

⁹⁷ Potuto, *supra* note 37, at 283 (explaining that the Enforcement Staff would be unnecessary if universities had trust and confidence in other universities' self-policing and that all universities approached NCAA rules compliance the same). "Institutional control means that an institution has the responsibility to investigate potential violations vigorously and expeditiously, to share inculpatory information with the Enforcement Staff, and to cooperate fully as the Enforcement Staff does its investigation." *Id.* at 291.

⁹⁸ *Id.* at 267.

⁹⁹ Marsh & Robbins, *supra* note 61, at 695. "The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures." 2022-23 MANUAL, *supra* note 36, at § 2.1.1.

¹⁰⁰ Marsh & Robbins, *supra* note 61, at 695.

¹⁰¹ Martin J. Greenberg & Alexander W. Evrard, *Athletics Directors*, 26 MARQ. SPORTS L. REV. 735, 735-36 (2016).

¹⁰² *See id.* at 736.

¹⁰³ Marsh & Robbins, *supra* note 61, at 695 (describing athletics directors' time as devoted to fundraising, negotiating contracts, speaking engagements, and related matters).

¹⁰⁴ Potuto, *supra* note 37, at 274.

¹⁰⁵ Wong et al., *supra* note 37, at 12-13 (explaining that most, if not all, NCAA member universities have a compliance department); *see also* Fuller, *supra* note 44, at 503

focus on student-athletes' financial aid and academic eligibility among all of the other applicable NCAA rules.¹⁰⁶ A university's athletics compliance department's overall mission and everyday duty is to keep the athletics department and student-athletes compliant with NCAA rules.¹⁰⁷ Responsible for serving coaches, current and prospective student-athletes, athletics representatives, and supporters of as many as dozens of sports and hundreds of student-athletes,¹⁰⁸ this Section describes the important monitoring and rules enforcement roles that athletics compliance administrators play on their campuses to help maintain institutional control.

Monitoring systems help ensure rules compliance.¹⁰⁹ A compliance staff's monitoring efforts include double checking and verifying information.¹¹⁰ Thus, compliance administrators often require sport staff members and student-athletes to complete and submit numerous forms.¹¹¹ For example, coaches must disclose information regarding practice hours so the compliance staff can verify compliance with relevant NCAA limitations.¹¹² Compliance administrators often verify the veracity of the coaches' submitted practice hours by providing that information to student-athletes to review and/or by spot-checking practices.¹¹³ When coaches realize the information they submit is subject to review by their student-athletes or that compliance administrators may show up at practices, they are more likely to provide complete and accurate information.¹¹⁴

While coaches may not appreciate this watchful eye on their sport programs,¹¹⁵ they must understand that "when (the COI) concludes that

(characterizing athletics compliance staff as "vital within an athletic department").

¹⁰⁶ Marsh & Robbins, *supra* note 61, at 695.

¹⁰⁷ See Wong, *supra* note 37, at 12-13 (noting that this includes ensuring student-athletes are academically eligible to engage in practice and competition, that their universities' recruitment of student-athletes was permissible under NCAA rules, and that student-athletes refrain from accepting impermissible benefits).

¹⁰⁸ See, e.g., *Athletics Compliance Office*, UNIV. OF NOTRE DAME, <http://ncaacompliance.nd.edu> [<https://perma.cc/6C3A-RXLX>] (last visited Mar. 27, 2023) [hereinafter *Notre Dame Compliance Website*] (emphasizing Notre Dame's compliance staff's commitment "to the principles of institutional control in operating our athletic programs in accordance with the NCAA, ACC, and University rules and regulations").

¹⁰⁹ *Yale University Athletics Compliance*, YALE UNIV., <http://yale.prestosports.com/information/compliance/index> (last visited Mar. 27, 2023) (noting that monitoring systems also assist in maintaining accurate records).

¹¹⁰ Josephine (Jo) R. Potuto, *The Athletic Department Compliance Job: Descriptive and Prescriptive*, 61 SANTA CLARA L. REV. 87, 91 (2020).

¹¹¹ *Id.* at 94.

¹¹² *Id.* NCAA Bylaw 17 regulates when, how often, and how long student-athletes may participate in activities regarding their sport. See 2022-23 MANUAL, *supra* note 36, at § 17.

¹¹³ Potuto, *supra* note 110, at 94-95 (explaining that forms are "an important part of monitoring for rules compliance" but "only part of that job").

¹¹⁴ *Id.* at 95.

¹¹⁵ Knowing that their actions are constantly monitored may lead some coaches and staff

institutional monitoring and oversight were not reasonably calculated to prevent and uncover violations, then it will penalize the institution for a failure to monitor its athletic programs.”¹¹⁶ A failure to monitor allegation is among the most serious at the Enforcement Staff’s disposal.¹¹⁷

Along with effective monitoring, “[e]nforcement is a necessary component to a successful athletics compliance program.”¹¹⁸ When there appears to be a potential NCAA violation on campus, the compliance staff is often responsible for investigating and, if that investigation concludes that a violation occurred, reporting it to the Enforcement Staff.¹¹⁹ Compliance administrators usually must impose a penalty for a violation, sometimes in consultation with the athletics director.¹²⁰

II. MONITORING NIL COMPLIANCE

to perceive that the compliance staff distrusts them. *Id.* at 91.

¹¹⁶ *Id.* at 98.

¹¹⁷ *Division I Enforcement Charging Guidelines*, NCAA, <http://ncaa.org/sports/2018/2/8/division-i-enforcement-charging-guidelines.aspx> [<https://perma.cc/G4V6-ZL8T>] (last visited Mar. 27, 2023). According to Division I Enforcement charging guidelines, “the Enforcement Staff will take a common sense approach in considering an institution’s specific efforts to monitor individuals and operations consistent with the NCAA constitution and bylaws.” *Id.* Relevant factors include policies and procedures, education and training, program monitoring and review, and responses to enforcement issues on campus. *Id.*

¹¹⁸ *Yale University Athletics Compliance*, *supra* note 109.

¹¹⁹ Potuto, *supra* note 110, at 97. While their educational and interpretive efforts support coaches and staff, compliance administrators must be skeptical and potentially adversarial when conducting their monitoring and investigative duties. *Id.* (describing compliance administrators as “a Janus”).

¹²⁰ Heller, *supra* note 66, at 319. For example, the University of Alabama self-reported a dozen Level III violations in the 2021-22 academic year. Christopher Walsh, *Alabama Releases Annual List of Minor NCAA Infractions*, SPORTS ILLUSTRATED (July 1, 2022), <http://si.com/college/alabama/bamacentral/alabama-releases-annual-list-of-minor-ncaa-infractions>. Among them was a coach sending a text message to a prospective student-athlete prior to the first permissible date to send recruiting materials to the prospect. *Id.* The university self-imposed penalties for the violation including prohibiting the women’s basketball staff from sending the prospect additional recruiting materials for the first 30 days when it becomes permissible to do so. *Id.* Because compliance administrators at times impose penalties on sport programs and coaches, both their colleagues in the athletics department and individuals outside of it may blame them for costly penalties or view the compliance staff as disloyal. Potuto, *supra* note 110, at 91. Compliance administrators’ work, therefore, can be both grudging and grudge-making. Daniel Libit, *Weary Compliance Directors Hope NIL Boosts Their Market Value*, SPORTICO (July 2, 2021), <http://sportico.com/leagues/college-sports/2021/college-nil-compliance-directors-1234633397/> [<https://perma.cc/N6VV-8YCG>] (explaining that “for a college sports marketplace built on who you know, that often makes advancement precarious”). Successful compliance administrators, therefore, forge positive, trustworthy working relationships with coaches and staff and effectively communicate with them at all times. Potuto, *supra* note 110, at 90-91.

Though the interim NIL policy that the NCAA adopted on July 1, 2021 that permits student-athletes to monetize their NIL is “minimalist,”¹²¹ it contains some restrictions.¹²² The NCAA’s subsequent guidance and clarifications regarding the interim policy placed additional restrictions on universities’ involvement in NIL.¹²³ Already overwhelmed and under resourced,¹²⁴ compliance administrators must monitor and enforce these restrictions on their campuses.¹²⁵ This Part identifies the NIL restrictions that universities, specifically athletics compliance administrators, should monitor and suggests activities for doing so.

A. NCAA Interim Policy and Guidelines

The NCAA’s interim NIL policy began on July 1, 2021,¹²⁶ and it has since provided clarification or guidance of it in May¹²⁷ and October of 2022.¹²⁸ The May 2022 guidance was largely a warning shot to “collectives,”¹²⁹ which prominent alumni and influential supporters of a single university establish as a

¹²¹ Dellenger, *supra* note 4; see also Michelle Kaufman, *Memo to NCAA: Drop the Fig Leaf. NIL Killed Amateurism, Rules Need to Reflect New Age*, MIAMI HERALD (Feb. 23, 2023), <http://miamiherald.com/sports/spt-columns-blogs/michelle-kaufman/article272611583.html> (describing the NCAA’s interim NIL policy as “loosely regulated”).

¹²² Associated Press, *Lack of Detailed NIL Rules Challenges NCAA Enforcement*, ESPN (Jan. 29, 2022), http://espn.com/college-sports/story/_/id/33173542/lack-detailed-nil-rules-challenges-ncaa-enforcement [<https://perma.cc/3Z95-8YXJ>] (explaining that “[w]hile the NCAA has no NIL-specific bylaws, deals must still adhere to existing rules that prohibit recruiting inducements and athletes being paid solely for playing or for performance.”).

¹²³ Dellenger, *supra* note 4 (noting that compliance administrators “must create policy, enforce that policy and compliantly manage their athletes’ NIL activity”).

¹²⁴ *Id.*

¹²⁵ Libit, *supra* note 120 (describing compliance administrator’s work burdens as “especially weighty of late”). Compliance administrators braced themselves to be “overwhelmed” when the NIL era became inevitable. Dellenger, *supra* note 4.

¹²⁶ Hosick, *supra* note 17.

¹²⁷ *Interim Name, Image and Likeness Policy Guidance Regarding Third Party Involvement*, NCAA, https://ncaaorg.s3.amazonaws.com/ncaa/NIL/May2022NIL_Guidance.pdf [<https://perma.cc/UG2M-R5S6>] (last visited Mar. 27, 2023) [hereinafter *May 2022 Guidance*].

¹²⁸ Durham, *supra* note 31; see also *Name, Image and Likeness*, NCAA, <http://ncaa.org/sports/2021/2/8/about-taking-action.aspx#timeline> [<https://perma.cc/XVY9-DC3W>] (last visited Mar. 27, 2023). National media erroneously reported that the NCAA distributed additional guidance in the form of a memorandum. Crabtree, *supra* note 16. The memorandum, however, was actually a discussion document that the Division I Council’s NIL Working Group utilized. *Id.* Regardless, guidance has been “minimal.” Carlson, *supra* note 24.

¹²⁹ Dennis Dodd, *Boosters, Collectives in NCAA’s Crosshairs, but Will New NIL Policy Be Able to Navigate Choppy Waters?*, CBS SPORTS (May 10, 2022), <http://cbssports.com/college-football/news/boosters-collectives-in-ncaas-crosshairs-but-will-new-nil-policy-be-able-to-navigate-choppy-waters/> [<https://perma.cc/V4BF-5C7F>].

means to pool funds to help provide NIL opportunities for student-athletes.¹³⁰ These boosters have formed over 200 collectives nationally,¹³¹ many of which distribute between \$3 and \$5 million to student-athletes, mostly those who play football or basketball, at a single university.¹³² Controversy accompanied the formation of collectives, with reports suggesting that prospective and current student-athletes received multimillion dollar NIL arrangements for enrolling, or staying, at a particular university, respectively.¹³³ Worried that collectives were using NIL agreements to induce athletes to attend, or remain enrolled at, a particular university, the May 2022 guidance sought to address—and prevent—collectives’ involvement in recruiting.¹³⁴ The NCAA pointed out that collectives typically meet its legislated definition of a booster and thus NCAA rules preclude them from engaging in recruiting activities, including recruiting conversations and provision of benefits, on a university’s behalf.¹³⁵

The May 2022 guidance did not slow collectives’ involvement in the recruiting process, however.¹³⁶ The NCAA’s October 2022 guidance therefore attempted to address “specifically how the current rules relate to Division I member schools’ involvement in NIL activities.”¹³⁷ While the guidance promulgates both permissible and impermissible forms of university interaction with booster collectives,¹³⁸ it actually removed universities from the NIL process

¹³⁰ Pete Nakos, *What Are NIL Collectives and How Do They Operate?*, ON3 (July 6, 2022), <http://on3.com/nil/news/what-are-nil-collectives-and-how-do-they-operate/> [<https://perma.cc/XJZ3-6SM4>] (noting that “collective” lacks particular legal significance).

¹³¹ Andy Wittry, *Collectives Structure NIL Contracts with Protections for Transfer Portal*, ON3 (Jan. 30, 2023), <https://www.on3.com/nil/news/college-football-transfer-portal-nil-collectives-oklahoma-sooners-crimson-and-cream/> [<https://perma.cc/3DR2-ZJ7S>].

¹³² Dellenger, *supra* note 31.

¹³³ Nakos, *supra* note 130 (citing example of a prospective football student-athlete who verbally committed to attend the University of Tennessee and had an NIL arrangement with the collective affiliated with the school that could pay him over \$8 million by the end of his junior year); *see also* Kaufman, *supra* note 121 (explaining that “deep-pocketed boosters have . . . pooled their resources, and formed ‘NIL Collectives’—pots of money disguised as start-up companies that pay athletes for appearances and social media posts.”); *see also* Carlson, *supra* note 24 (noting that “wealthy boosters of college sports programs across the country are paying recruits and transfers to enroll in those schools—all by calling it NIL” and describing boosters as “chasing any loophole”).

¹³⁴ Ross Dellenger, *The NCAA Approval of NIL Guidelines Signals a Crackdown on Boosters Could be Coming*, SPORTS ILLUSTRATED (May 9, 2022), <http://si.com/college/2022/05/09/ncaa-nil-guidelines-boosters-athlete-funds>. One need look no further than the Champions Circle’s “One More Year Fund” as an example of a collective’s efforts to retain key student-athletes who attend the University of Michigan. Wittry, *supra* note 131 (noting that at the collective’s launch, Champions Circle identified four student-athletes including Blake Corum, all of which have since announced their return).

¹³⁵ *May 2022 Guidance*, *supra* note 127; *see also* Carlson, *supra* note 24 (explaining that “the NCAA does not allow boosters to be involved in recruiting.”).

¹³⁶ Nakos, *supra* note 130.

¹³⁷ Durham, *supra* note 31.

¹³⁸ Gregory Marino & Zack Flagel, *NCAA Updated Guidance on Institutional Involvement*

to a large degree,¹³⁹ largely empowering collectives and other third-party NIL platforms.¹⁴⁰

B. *NCAA Restrictions Regarding NIL and Suggested Monitoring Activities for Them*

The NCAA's interim NIL policy and its May and October 2022 guidance and clarifications placed restrictions regarding NIL activities for universities, university staff members, student-athletes, and prospective student-athletes. The below table identifies these restrictions and suggests activities for each that universities should undertake to monitor compliance with them on their campuses.

Most of the monitoring can be accomplished by the following primary suggested activities:

- *Creating and reviewing forms that athletics staff members and incoming and current student-athletes would complete and submit annually to compliance administrators.* These forms, referred to in this Article as Athletics Staff NIL Form, Incoming SA NIL Form, and Returning SA NIL Form, respectively, would inquire regarding the subject matter of several NCAA restrictions on NIL. Compliance administrators would review and analyze submitted forms and follow up on any red flags. To monitor to ensure that student-athletes' NIL arrangements included quid pro quo, for example, the Returning SA NIL Form would inquire regarding the services that the student-athlete provided in exchange for remuneration. If a student-athlete indicated on the form that they did not provide any services in exchange for receiving NIL compensation, compliance administrators would follow up with the student-athlete to determine whether the NIL arrangement violated the NCAA requirement that student-athletes do *something* in exchange for NIL payment.¹⁴¹

in NIL: An Explainer, SPORTS BUS. J. (Nov. 4, 2022), <http://sportsbusinessjournal.com/SB-Blogs/OpEds/2022/11/04-Marino-Flagel.aspx> [<https://perma.cc/H69V-Y3XW>] (describing the October 2022 guidance as “the NCAA’s most detailed attempt to outline clear and transparent regulations as the so-called ‘NIL Era’ of college sports continues along in its second year”).

¹³⁹ Thomas Baker, *New NCAA NIL Clarifications Expose College Athletes to Risk by Removing Schools from the Process*, FORBES (Oct. 31, 2022), <http://forbes.com/sites/thomasbaker/2022/10/31/new-ncaa-nil-clarifications-expose-college-athletes-to-risk-by-removing-schools-from-the-process/?sh=5e9211f7549f> [<https://perma.cc/9JU5-V9VG>] (citing prohibitions on universities from providing student-athletes with NIL representation and facilitating NIL deals on behalf of student-athletes as examples).

¹⁴⁰ Marino & Flagel, *supra* note 138.

¹⁴¹ See Ralph D. Russo, *NCAA Clarifies Compensation Rules But is Crackdown Likely*, SEATTLE TIMES (May 9, 2022), <http://seattletimes.com/sports/college/in-wild-west-of-nil-will-ncaa-crack-down-on-collectives/> (explaining that NCAA regulations require student-athletes to provide some type of service such as a social media post or appearance).

- *Reviewing NIL agreements and related documentation that student-athletes submit to the university.* Analyzing such information would enable compliance administrators to monitor whether student-athletes receive NIL compensation based on athletics performance, for example.
- *Annual individual meetings with high-profile incoming and returning student-athletes to inquire about their NIL arrangements.* Sit-downs between compliance administrators and high-profile student-athletes would provide a prime opportunity to monitor compliance with, and educate regarding, numerous NCAA NIL restrictions.

At a time when the NCAA deregulates other areas of NCAA legislation,¹⁴² compliance administrators may have additional time and resources to engage in these activities, which should not be overly burdensome or out of the ordinary for them. Requiring completion of and reviewing forms, for example, is a familiar way for compliance administrators to monitor.¹⁴³ Likewise, many universities already require student-athletes to submit documentation related to NIL arrangements.¹⁴⁴ The COI has stated that universities owe a higher degree of monitoring regarding high-profile student-athletes,¹⁴⁵ and compliance administrators at many universities already devote additional resources to educating and monitoring them.¹⁴⁶ Undertaking these suggested monitoring

¹⁴² See Dennis Dodd, *With the NCAA Backed Into a Corner, the Age of Paying College Athletes is Officially upon Us*, CBS SPORTS (Jan. 20, 2022), <http://cbssports.com/college-football/news/with-the-ncaa-backed-into-a-corner-the-age-of-paying-college-athletes-is-officially-upon-us/> [https://perma.cc/BRV7-3ESP] (quoting an athletics director “intimately involved in the ongoing deregulation of the NCAA”).

¹⁴³ Potuto, *supra* note 110, at 94.

¹⁴⁴ Arizona State University, for example, requires student-athletes to disclose “NIL activities within ten business days of the agreement using a form, workflow, or other process” such that it can conduct a “review for potential conflicts with NCAA legislation.” *Student-Athlete Name, Image, and Likeness Activity Policy*, ARIZ. ST. UNIV., http://sundevilcompliance.asu.edu/sites/default/files/2022-05/ASU_NIL_policy_04212022.pdf [https://perma.cc/T8RD-73Y3] (last visited Apr. 16, 2023). The University of Miami, on the other hand, requires student-athletes to disclose NIL activities “at least 48 hours prior to the execution of the applicable NIL agreement in order for the department to confirm that the agreement meets both the Florida NIL law and department policy.” *Miami NIL Policy*, UNIV. MIAMI, <https://miamihurricanes.com/nil-guidelines/#:~:text=State%20Law%20FNCAA%20Interim%20Policy,NIL%20activities%20for%20student%20athletes> [https://perma.cc/FPV6-FLN4] (last visited Apr. 16, 2023). Texas is one state that requires student-athletes to disclose NIL activities to their university prior to signing an agreement. Texas Act. S.B. 1385 § 51.9246.g.1. Like issues identified in forms that student-athletes and staff members complete, compliance administrators should follow up and pursue any issues they identify when reviewing NIL arrangement documentation that student-athletes submit.

¹⁴⁵ See NCAA, UNIVERSITY OF SOUTHERN CALIFORNIA PUBLIC INFRACTIONS DECISION 46 (2010), <http://web3.ncaa.org/lsdbi/search/miCaseView/report?id=102369> [https://perma.cc/F3Q8-4YT2].

¹⁴⁶ Arizona State University compliance administrators meet individually with elite

activities would help ensure compliance with the NCAA's interim NIL policy and subsequent guidelines and mitigate the likelihood of a potential failure to monitor allegation in the instance that individuals violate NCAA restrictions in a covert manner.¹⁴⁷

Table 1. Suggested Monitoring Activities.

Restriction	Source	Suggested Monitoring Activities
NIL agreements may not constitute improper inducements to attend, or remain at, a particular university. ¹⁴⁸	NCAA interim NIL policy ¹⁴⁹	The Incoming SA NIL Form and Returning SA NIL Form should inquire whether NIL arrangements, or offers of them, influenced their decision to attend, or remain at, their university, respectively. In meetings with high profile incoming and returning student-athletes, compliance administrators should inquire regarding NIL's role in their university selection or decision to remain enrolled at the university.
NIL agreements may not constitute "pay-for-play" (e.g., payment conditioned on number of touchdowns scored).	NCAA interim NIL policy ¹⁵⁰	The Returning SA NIL Form should require student-athletes to verify that they have not entered an NIL arrangement under which performance factors in to pay.

student-athletes to provide additional one-on-one education regarding NCAA rules, for example. *Arizona State University NCAA Compliance*, ARIZ. ST. UNIV. (Aug. 31, 2023), <http://azregents.edu/sites/default/files/reports/asu-fy2021-ncaa-compliance-summary.pdf> [https://perma.cc/2XWQ-4AQR]. Likewise, The Ohio State University has an Elite Student-Athlete Education Program. OHIO STATE UNIV., OHIO STATE STUDENT-ATHLETE HANDBOOK 34 (2020), <http://ohiostatebuckeyes.com/wp-content/uploads/2020/08/2020-21-Student-Athlete-Handbook.pdf> [https://perma.cc/FED7-GDJD].

¹⁴⁷ When a university establishes and follows written monitoring practices, the Enforcement Staff's ability to allege that it committed a failure to monitor violation is mitigated. *Division I Enforcement Charging Guidelines*, NCAA, <http://ncaa.org/sports/2018/2/8/division-i-enforcement-charging-guidelines.aspx#FTM> [https://perma.cc/74TL-NCDX] (last visited Mar. 27, 2023).

¹⁴⁸ Athletics directors are especially concerned regarding impermissible use of NIL as a recruiting tool. Bart Lambergman, *Lead1 Survey Reveals 90% of FBS Athletic Directors Polled Are Concerned NIL Used as Improper Recruiting Tool*, LEAD1 (May 4, 2022), <https://lead1association.com/lead1-survey-reveals-90-of-fbs-athletic-directors-polled-are-concerned-nil-used-as-improper-recruiting-tool/> [https://perma.cc/Z5ZE-68SN] (describing survey results showing that ninety percent of Football Bowl Subdivision athletics directors harbor concerns that collectives are impermissibly using NIL as a recruiting mechanism).

¹⁴⁹ Hosick, *supra* note 17.

¹⁵⁰ *Id.*

Restriction	Source	Suggested Monitoring Activities
		Review student-athletes' NIL materials to ensure performance does not affect remuneration.
NIL agreements must contain quid pro quo (e.g., student-athletes must perform some type of service to receive compensation)	NCAA interim NIL policy ¹⁵¹	<p>The Incoming SA NIL Form and Returning SA NIL Form should inquire regarding student-athletes' services provided in NIL arrangements.</p> <p>Review student-athletes' NIL materials to ensure they include quid pro quo.</p> <p>During meetings with high profile incoming and current student-athletes, compliance administrators should inquire regarding services provided for NIL payment.</p>
Universities may not provide compensation to student-athletes in exchange for their NIL.	NCAA interim NIL policy ¹⁵²	<p>The Returning SA NIL Form should require student-athletes to identify the source of compensation for all NIL arrangements.</p> <p>Review student-athletes' NIL materials to ensure they do not include compensation from the university.</p> <p>The Athletics Staff NIL Form should require staff members to verify they have not compensated student-athletes for their NIL and understand that NCAA rules prohibit them from doing so.</p>
Collectives may not communicate with a prospective student-athlete, or those affiliated with them, for a recruiting purpose.	May 2022 Guidance ¹⁵³	<p>The Incoming SA NIL Form should inquire whether collectives engaged with incoming student-athletes regarding the recruiting process or attending the university.</p> <p>During meetings with high profile incoming student-athletes, compliance administrators</p>

¹⁵¹ *Name, Image and Likeness Policy Question and Answer*, NCAA, https://ncaaorg.s3.amazonaws.com/ncaa/NIL/NIL_QandA.pdf [https://perma.cc/6XRU-2DA4] (last visited Apr. 16, 2023).

¹⁵² *Id.* A February 2023 NCAA e-mail to college athletics administrators reminded them that universities, including entities acting on their behalf, may not compensate student-athletes for their NIL. Ross Dellenger, *NCAA Sends Letter to Remind Schools They Cannot Compensate Athletes*, SPORTS ILLUSTRATED (Mar. 1, 2023), <https://www.si.com/college/2023/03/01/texas-am-letter-ncaa-warns-nil-collectives-money-school>.

¹⁵³ *May 2022 Guidance*, *supra* note 127.

Restriction	Source	Suggested Monitoring Activities
		should inquire regarding pre-enrollment interactions with collectives.
University coaches and staff may not facilitate a meeting between a booster collective and a prospective student-athlete (e.g., provide the entity with a recruiting or watch list).	May 2022 Guidance ¹⁵⁴	<p>The Incoming SA NIL Form should inquire regarding meetings with collectives and the sources of their arrangements.</p> <p>The Athletics Staff NIL Form should require staff members to verify they have not facilitated any such meetings.</p> <p>Compliance administrators should consider enacting a procedure for monitoring coaches' phone records to look for patterns suggesting they are facilitating meetings between collectives and prospects.¹⁵⁵</p>
University coaches and staff may not communicate with a prospective student-athlete on behalf of a collective.	May 2022 Guidance ¹⁵⁶	<p>The Incoming SA NIL Form should inquire regarding communication with coaches regarding collectives.</p> <p>During meetings with high profile incoming student-athletes, compliance administrators should inquire regarding communication with coaches regarding collectives.</p> <p>The Athletics Staff NIL Form should require athletics staff to verify they have not communicated with prospects on behalf of a collective.</p>
Universities may not engage in negotiations on behalf of an NIL entity or	October 2022 Guidance ¹⁵⁷	The Returning SA NIL Form should inquire regarding involvement of university staff members in NIL opportunities.

¹⁵⁴ *Id.*

¹⁵⁵ Many compliance departments have long monitored coaches' phone records to ensure compliance with NCAA legislation (e.g., rules regarding recruiting phone calls). *See, e.g., Policy and Procedures Manual*, UNIV. VA. DEP'T ATHLETICS, http://athletics.virginiasports.com/compliance/pdf/Policy_and_Procedure_Manual_Rev091417.pdf [<https://perma.cc/WUX3-ELWE>] (last visited Apr. 16, 2023).

¹⁵⁶ *May 2022 Guidance*, *supra* note 127. Note that the May 2022 Guidance listed other prohibitions on booster collectives, but they largely amount to clarifications of the original interim policy's prohibitions. *See id.* For example, the May 2022 Guidance precludes NIL agreements from being contingent on initial or continuing enrollment at a particular university. *Id.* This simply clarifies the original interim policy's prohibition on impermissible recruiting inducements and thus is not repeated in this Article's table.

¹⁵⁷ Durham, *supra* note 31.

Restriction	Source	Suggested Monitoring Activities
a student-athlete to secure specific NIL opportunities.		The Athletics Staff NIL Form should require staff to verify that they have not engaged in NIL-related negotiations on behalf of an NIL entity or student-athlete.
Universities may not provide free services (e.g., graphic designers, tax preparation, contract review) or equipment (e.g., cameras, graphics software, computers) to student-athletes for NIL activities unless they do so for non-athlete students.	October 2022 Guidance ¹⁵⁸	<p>The Returning SA NIL Form should inquire regarding the use of university services for NIL activities.¹⁵⁹</p> <p>During meetings with high profile student-athletes, compliance administrators should inquire regarding the use of free university services for NIL activities.</p> <p>The Athletics Staff NIL Form should require staff to verify that they have not provided any such free services.</p>
Universities may not permit student-athletes to promote NIL activities while participating in required athletics activities.	October 2022 Guidance ¹⁶⁰	<p>While attending games and practices, compliance administrators should monitor to ensure student-athletes do not promote NIL activities.¹⁶¹</p> <p>Compliance administrators should require sport staff members and student-athletes to verify that no NIL promotions occurred during required athletics activities when they submit and review practice logs, respectively.</p>

¹⁵⁸ *Id.*

¹⁵⁹ Of course, athletics officials should work with campus partners to ensure that no such free services are available exclusively to student-athletes or to ensure that they are available to all students.

¹⁶⁰ Durham, *supra* note 31.

¹⁶¹ Compliance administrators likely already monitor required athletically-related activities (e.g., to ensure sport programs do not exceed the maximum number of practice hours permitted per week) via attending games and practices in person and reviewing sport staffs' practice hour logs and sending them to student-athletes for verification. Potuto, *supra* note 110, at 94. This provides compliance administrators the opportunity to utilize already occurring activities to monitor for student-athletes promoting NIL activities during required athletics activities.

Restriction	Source	Suggested Monitoring Activities
University personnel may not donate cash directly to, be employed by, or have an ownership stake in NIL entities.	October 2022 Guidance ¹⁶²	<p>The Athletics Staff NIL Form should require staff members to verify that they have not engaged in any such activities with NIL entities.</p> <p>Compliance administrators should request materials from NIL entities listing their donors, employees, and owners to ensure no university personnel donated funds to, worked for, or had an ownership interest in, the entities.</p>
Universities may not request that funds that donors provide to collectives and NIL entities be directed to a specific sport or student-athlete.	October 2022 Guidance ¹⁶³	<p>The Athletics Staff NIL Form should require staff members to verify that they have not requested that funds they provided to collectives and NIL entities were earmarked for a particular sport or student-athlete.</p> <p>Compliance administrators should collect and monitor written communication (e.g., campaign mailouts, promotional materials) sent to the athletics department's donors and potential donors to verify that they do not include requests that donations to collectives and NIL entities are earmarked for a particular sport or student-athlete.</p>
Universities may not provide tickets or suites as an incentive to provide funds to an NIL entity.	October 2022 Guidance ¹⁶⁴	<p>The Athletics Staff NIL Form should require staff members to verify that they do not provide tickets or suites to incentivize providing funds to an NIL entity.</p> <p>Compliance administrators should update any sport staff discretionary ticket monitoring practices and forms to require sport staff members to verify that they do not provide tickets or suites to incentivize providing funds to an NIL entity.¹⁶⁵</p>

¹⁶² Durham, *supra* note 31.

¹⁶³ *Id.*

¹⁶⁴ *Id.* A February 2023 e-mail from the NCAA to college athletics administrators reminded them that universities may not provide assets to “entities engaged in NIL,” including priority points to stadium seating. Dellenger, *supra* note 152.

¹⁶⁵ Many compliance staffs already use a form to monitor how sport staff members allocate

CONCLUSION

Though imperfect, college athletics' NIL era is upon us and here to stay. While minimalist, the NCAA's NIL policy and subsequent guidance and clarifications contain restrictions for which universities must monitor their compliance. With the implementation of three new forms, reviewing student-athletes' NIL documentation, meeting with high profile student-athletes, and some additional activities, the compliance administrators who will largely bear the monitoring burden can effectively accomplish it. By doing so, not only can compliance administrators fulfill their monitoring obligations, they would also mitigate the likelihood that their university would face a failure to monitor allegation should other violations occur.

the discretionary tickets they receive as a benefit of their employment so as to ensure they distribute them in compliance with NCAA rules (e.g., they do not provide them to prospective student-athletes in violation of NCAA rules). *See, e.g., Montana State University Athletics Complimentary Admissions Policy and Procedures*, MONT. ST. COMPLIANCE, https://s3.amazonaws.com/sidearm.sites/msubobcats.com/documents/2017/12/6/Ticket_Policy_updated_12_2017_.pdf [<https://perma.cc/GDH3-W52F>] (last updated Dec. 2017).