

***Highway to NIL* Podcast — The NCAA's Recent Q&A Document: Clues on What NIL Enforcement Will Look Like Post-House**

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Cal Stein:

Hello, and welcome back to *Highway to NIL*, the podcast series that discusses legal developments in the name, image, and likeness, or NIL space. NIL, of course, affects colleges and universities all over the country, particularly those in Division I athletics. In this podcast series, we delve deep into the current NIL rules impacting colleges, universities, and their compliance departments.

I am, of course, Cal Stein, a litigation partner at Troutman Pepper Locke. Today, I am joined by *Highway to NIL* OG, Chris Brolley, and we are going to be discussing the latest guidance published by the NCAA called Question and Answer: Implementation of the House Settlement. This was released on June 13th, 2025. Now, this is a 35-plus page document chockfull of helpful information and way too much to go through in a single episode.

Today, what we're going to focus on is what this document has to say about enforcement, enforcement of NIL rules going forward in the post-house settlement world. What's enforcement going to look like, who will be enforcing the rules, and what rules are most likely to be enforced? Before we do all of that, though, everyone already knows Chris, but Chris, why don't you go ahead and introduce yourself one more time?

Chris Brolley:

As you noted, Chris Brolley. I am a senior associate resident of our Philadelphia office. I've been working with you, Cal, on NIL matters, speaking at conferences for the last several years and looking forward to jumping into this, as you noted, lengthy Q&A document.

Cal Stein:

All right, great. Well, thanks for being here, Chris. Let's start with a little bit of background on this Q&A document. It was developed by the NCAA and the defendant conferences, which of course, the ACC, the Big 10, the Big 12, the PAC 12, and the SEC. Now, the stated purpose of the guidance is to provide guidance to Division I members on the implementation of the house settlement. Now, this Q&A is not exhaustive. It specifically says that. It also says, there is a possibility, if not an expectation, that the document will be updated over time.

Now, the Q&A is divided into six general sections. General information, changes to Division I legislation, roster limits, institution, null benefits, and the benefits cap, i.e., money from schools to student athletes, non-institutional NIL and NIL Go, i.e., boosters, collectives, associated entities, individuals paying NIL. Then the last section is on enforcement rules and process. As I

mentioned, we're not going to talk about all of these today. We're only going to talk about the components that we think bear on enforcement. What better place to start talking about enforcement than with the final section of the QA, which is called enforcement rules and process. Let's start with that section and talk about what does it look like. The first thing we want to talk about is the newly formed college boards commission. Chris, tell us what the Q&A says about that and what it is.

Chris Brolley:

Yeah. I think it's interesting is a lot of our listeners and people that have been following NIL for the last maybe not even a couple years, but maybe several months, since the settlement was preliminarily approved and finally approved. The NCAA essentially abdicated its role in enforcement and created this college sports commission, as you noted. It is the designated enforcement entity that will be looking over all these NIL deals and making sure that all of them are in compliance with its rules. The college sports commission, as its own website states, will help facilitate revenue sharing in college sports, making sure NIL deals made between student athletes and third parties are fair and comply with the rules.

As part of schools that opted into the house settlement, they must agree that the college sports commission has the authority to investigate and enforce the NCAA bylaws. They specifically are in charge with enforcing the rules that were developed as part of the settlement agreement. As we've talked about at length, these are the roster limits, the provisions on additional payments or benefits, and non-institutional NIL agreements, or payment from unaffiliated entities. What does this Q&A document say about the college sports commission and how it operates? Well, it essentially will have three main functions. The commission will conduct investigations into rule violations, will prescribe penalties for violation, and will seek enforcement of any contested penalties through the arbitration process, which Cal, I believe you'll be discussing in a few minutes.

The Q&A document, what it says about the enforcement and penalty process is that enforcement matters by the commission can be resolved by mutual agreement of all parties, including the CEO of the commission. If not resolved through mutual agreement, if a penalty is contested by either a student athlete, or a school, then they may go through the neutral arbitration process. Cal, why don't you give us a little bit more information about this arbitration process?

Cal Stein:

Yeah. This is a new process, of course. The Q&A document provides some helpful information about what this process is going to be and what it's going to look like. First, who presides over this neutral arbitration process? As you might expect, a neutral arbitrator will preside. That neutral arbitrator will have the authority to resolve disputes regarding decisions, including imposed penalties by the commission. Now, the arbitrator's decision is final and binding on all of the parties. The rules actually set forth a pretty aggressive schedule for completing the arbitration process, stating that the neutral arbitrator actually has only 45 days from the commencement of arbitration to reach a final, written decision. That schedule can only be extended for good cause.

Now, interestingly, during the pendency of any arbitration, whatever penalty was prescribed by the commission will be stayed, i.e., it will not be imposed. It will not be enforced. Only the arbitrator may lift the stay for good cause shown before the decision is made final. Now, in any of these arbitrations, a student athlete may be represented by counsel. The Q&A specifically says that an institution, a school may pay the attorney's fees for a student athlete. It also says, the school shall pay the arbitrators fees.

Now, one question I had having gone through many, many arbitrations in my day is, well, what about discovery? What about the hearing process? The Q&A addresses this as well. The arbitrator has the ability to order the parties to the arbitration to produce documents if it's necessary. The arbitrator also has the authority to call witnesses at the hearing.

Okay, so we just went through the process of enforcement, what the Q&A document says about the college sports commission and this brand-new arbitration process. Let's shift now and talk about, well, what rules are likely to be enforced? The Q&A document provides some hints here, and we'll go through a few of those. The first of which, I think, is the topic of timing. Timing of NIL offers. The Q&A has explicit guidance on when schools can make offers of NIL to prospective student athletes. Let's start with high school athletes.

Q&A B11. B11. This is what says schools may provide written offers regarding NIL, or other benefit payments on or after August 1st of the prospective student athlete's senior year of high school. The Q&A goes on to say, the offer may not be signed until the applicable signing date specified by NCAA bylaws. What enforcement activities could come of this? Well, certainly, the timing of written offers to high school athletes could become an issue to be investigated and enforced, i.e., if a school, if a coach, if someone associated with a school makes a written offer too early before the deadline is prescribed by the rules.

Now, notably, the Q&A only addresses written offers. Written offers of NIL does not prescribe discussions about NIL prior to those deadlines. Actually, not that hard to envision investigation or enforcement activity concerning that issue. What constitutes a written offer? What if you have an email? What if you have a text communication between a school coach, or school official and a prospective student athlete? Do those constitute a written formal offer? Or does it have to be a formal contract? Those are the types of things that I think we will see on the enforcement side for high school athletes.

Chris Brolley:

Yeah, Cal. You just spoke about the high school athletes. I'll discuss a little bit about transfer athletes, which I think we've noted that this may have been even before the House settlement would have been right for enforcement, given potential tampering. The guidance document is clear that no written NIL offer can be made before a student athlete is in the transfer portal. The guidance is pretty clear that schools may not communicate with student athletes regarding any NIL benefits from the schools, or non-institutional entities before the student athlete is in the transfer portal.

I see this and it may be a response to the Xavier Lucas case, which we've discussed at some points in our articles and on our podcast. This is the Wisconsin student athlete who transferred to Miami. Here, he requested permission to enter the transfer portal. Wisconsin denied that

request, and he still transferred to Miami. Under these rules right now from the commission, it seems like this could be considered a tampering violation as the student athlete, Xavier Lucas, was technically not in the transfer portal yet, but yet, he still was able to transfer to Miami and secure a deal.

Interestingly, this guidance is much more broad, as what it previously was, as it forbid the school's communication with the student athlete before entering the transfer portal and does not limit it to written offers like the previous guidance that we had for NIL. Regarding the enforcement activities, I noted before, this is tampering. This is what we've been talking about. It is likely that this is a major enforcement focus going forward.

Cal Stein:

Yeah, I completely agree, Chris. Especially given the relaxation of all the transfer rules. We've talked about this. With more players transferring, with more student athletes transferring, there are just more opportunities for tampering. I would expect this to be a major focus going forward. The athletic department personnel and school personnel that we've spoken to all agree and are very focused on this.

All right, let's talk about another topic that could be ripe for enforcement, and that goes to roster limits, which of course was a major, major, major focus of not only the House settlement itself, but all of the hearings before Judge Wilkin leading up to the approval. Let's start with talking about timing. Again, timing of compliance with roster limits. The first Q&A that addresses this is Q&A C1. It says that schools that opt into the settlement must be in compliance with roster limits beginning in the 2025-2026 academic year for fall sports. They must be at or below roster limits by the day before the season starts, which is defined as the first date of competition that counts for championship selection.

For winter and spring sports, schools must be at, or below roster limits by December 1, or the end of the day, again, before the season starts, which is defined the same way, whichever of those two dates is earlier. Schools must remain in compliance with roster limits for the remainder of the academic year, or until the end of the team's playing season, whichever is later, and the end of the season does include post-season competition.

Chris Brolley:

I think, as you noted, what was really important in the hearings was the issue of the roster limits and what to do with student athletes at schools, or recruits that had started implementing these roster limits before the settlement was actually approved. What they created was this term called the designated student-athlete. I think we need to define what that is first. I'm going to call DSA to make this go a little quicker. DSAs are individuals who were, or would have been removed from the school's 2025-2026 roster due to early implementation of roster limit, and were either certified as eligible for practice, or competition, or otherwise, on a squad list form for the 2024-2025 academic year prior to April 7, 2025, which was as listeners may know, the date that Judge Wilkin had all the parties come in and discuss the terms of the settlement.

Second, they must have been recruited prior to April 7, 2025 to be, or were assured to be on the school's roster for the 2025-2026 academic year. As part of these roster limits and the ability for

these student athletes who were impacted, the schools must declare and identify these DSAs as the DSAs are exempted from the sports roster limit. The DSAs must be on a sport submitted roster to participate in athletically related activities, until the submitted roster expired.

Interestingly, each sport must prepare and submit in good faith a list of the DSAs by July 6, 2025. July 6, 2025 is actually 30 days after the court granted final approval of the settlement, so the schools must get this in actually relatively shortly in a few days. The schools are not allowed to revisit, or to revise it with after this 30-day deadline to submit the list to the cap management reporting system.

Now, there may be some enforcement activities regarding these DSAs. Two of them that I'll discuss are timing and the in good faith language that's discussed in this guidance document. In terms of timing, the schools are not allowed to fudge the rosters after the limit for submission. As noted, they're required to submit the list of DSAs for each individual sport by July 6 and cannot make adjustments to this list. Schools that opt in during a future year cannot submit a list of DSAs, because the school would not have had a prospective, or current student athlete whose roster spot was impacted during the 2025-2026 year.

That means that this really only impacts, is only a current impact for the student athlete. If a school did not opt in, obviously, they would not be subject to these roster limits. However, schools that opt in later on would not have to worry, or would not worry about these DSAs as they likely would not have cut any of their student athletes to comply with the roster limit requirement.

Second, I noted the in good faith language. This seems to be wide open for enforcement. The Q&A, or the guidance document makes clear that schools cannot supplement the list of DSAs and must submit a list of DSAs in good faith. If they don't submit any of these athletes as DSAs, the student athlete will count against the roster limit and ostensibly, not be able to play.

Cal Stein:

Okay. Let's shift again and talk about another area that's going to be ripe for enforcement in our opinions. That is the benefit cap. That was obviously a huge component of the settlement, the one that allows the schools to pay the student athletes directly. Let's start with, well, what counts towards that benefits cap, which is, of course, how much a school can pay the student athletes directly. Now, Q&A D7 addresses what counts towards the cap. It talks about really two things, direct payments and additional benefits.

That same Q&A also addresses from whom the payments must come in order to count. Those are by a participating institution, or entities, or organizations owned, operated, or controlled by participating institutions, or conferences. Lastly, that same Q&A D7 addresses to whom the payments must be made in order to count. That is to the student athlete himself, or herself, or to the student athlete's family. All payments that meet these criteria count towards the cap, unless they are otherwise exempted. The Q&A document actually includes a pretty handy chart of things that do count against the benefits cap and things that do not count against the benefit cap.

Here's what it says. Here are the things that will count against the benefits cap. The total value of institutional payments to student athletes for the use of their NIL, other direct institutional payments, or additional benefits not currently permitted by NCAA rules, all student awards up to 2.5 million dollars and athletically related financial aid in excess of the 2024-2025 limit up to 2.5 million dollars. All of that will count towards the benefit cap.

Now, what doesn't count towards the benefit cap? Third-party NIL payments, even if it's arranged by the institution, funds distributed to student athletes from student assistance funds, and benefits from third parties. Enforcement activities, what is that going to look like in this space? Well, the first and most obvious area are the characterization of payments to student athletes. Any institution that's bumping up against the cap would certainly look if they could to shift payments from the will count category to the will not count category. We could certainly see investigations and enforcement over that.

For example, whether payments are from a school, or from a true third party. If they're from a school, they count. If they're from a third party, they won't count. Let's say, there's a situation in which a third party actually pays the money to a student athlete. What then if the school gives that third party some equal, or greater benefit to essentially compensate it, or cancel out that payment? Think about tickets to a game, or other things like that.

Really, what this is all about are indirect payments from schools using third parties as a proxy to either hide, or conceal the true nature of the payment to make them not count against the cap, when in fact, they should. I would expect to see a lot of investigations and potentially, enforcement activity into that.

Another area of enforcement goes to the total value, right? For example, one could envision arrangements where a institution tries to make the value of a benefit appear less than it is, so it has less impact on the cap. Envision a scenario where, for example, a school provides housing to a student athlete and claims it's worth X dollars per month, or X dollars per year, when the fair market value of that rent is actually much higher. Could very easily envision investigations, or enforcement activities along those lines.

Another area would be routing payments through other parties. Example, the Q&A document talks about payments counting towards the cap if they go to a student athlete, or the student athlete's family. What if payments are routed to a non-family member, right? It's clear that if it went to a family member, it would count against the cap. What if it's someone who's close with the student athlete, but who's not technically a family member? Is that a way to circumvent the rule? Could we see enforcement activity there? I think it's likely.

Then, lastly, again, timing, timing manipulation. Q&A D8 is clear that benefits count against a cap in the year they are provided, in the year they are paid. For example, could we see schools trying to manipulate when payments are actually made, so they can load up on student athletes, whether they be transfer, or high school athlete in one year by deferring some of the payments to the following year? They get more than the cap value in a year, but don't pay it out until the following year. That actually could be compliant under the current rules, but it could nonetheless be a source of investigation and enforcement activity.

Chris Brolley:

You touched on this cap and the guidance documents also have a requirement that there is an annual cap related attestation process for these participating schools. The document clarifies that no later than September 1 of each year, participating schools must complete an annual attestation regarding the total amount and types of payments to student athletes during the preceding year. This preceding year is from July 1 through June 30th. Who signs the attestation? This is actually signed by the president, or chancellor of the school, the athletic director, and each head coach, to make sure, essentially, that these schools, the student athletes and everyone involved in this process compensating these student athletes and working with these unaffiliated entities that everything that was submitted is above board, that they reviewed all these documents and everything that has been paid to and received by student athlete was reviewed and complies with these rules.

This document essentially says that the information provided to the cap management reporting system is accurate and compliant, that all capable benefits were included in written agreements and written agreements were uploaded to the cap management reporting system, and that the student athletes were not guaranteed payments, or benefits not included in the written agreement and entered into the cap management reporting system.

Essentially, the schools are attesting to that everything was reported in caps and everything was reported accurately. Now, with regard to the enforcement activities, the August 1 is the under reporting in the cap system, i.e. hiding payments, or under reporting the amount of payments, or also, payments outside of written agreements. This, I think, is where we may see the most enforcement coming from. There's been a lot of talk in the media when the NIL clearinghouse created by Deloitte called NIL Go, which we've discussed at length, and how this may now promote under the table deals.

While this may not stop or deter bad actors, it essentially puts the schools and the student athletes, or individuals, the president, chancellor, coaches, and anyone else involved in providing benefits to these student athletes. It puts them on the hook. They'll be punished that they are signing off and swearing that all these deals were essentially above board.

I want to direct the listener to question D33, which I believe, I think Cal would agree with me that this is probably one of the more critical aspects of the attestation, but also of the document. It clarifies that each participating institution must provide, "unencumbered access to internal, or third-party auditors at any time to audit compliance with benefits pool and benefits cap rules and policies." This show that the sports commission and the NCAA are serious about compliance and enforcement, and it also replaces the lack of subpoena authority, which allows now here for unencumbered access to internal and third-party auditors by the schools.

Cal Stein:

Let's shift from talking about payments from schools to student athletes to third party NIL, which is another area that's addressed in this Q&A document, and that is we believe, likely to lead to enforcement activity. Now, first, the focus on third-party NIL is on associated entities and individuals. This is a key definition, because NIL deals with associated entities and individuals

are subject to scrutiny and analysis. Whereas, NIL deals with unaffiliated, unassociated entities and individuals are not.

Let's talk first about what the Q&A document says. Q&A E12 talks about what is an associated entity, and it lists three things. First, an entity that is or was known, or should have been known to the athletic department that exists for the purposes of A, promoting or supporting a school's athletic program, or student athlete, and/or B, creating or identifying NIL opportunities solely for particular school student athletes. Really, what they're talking about here are boosters and collectives, although it's broader than that.

Number two, an entity that has been directed, or requested by a school's athletic department to assist in recruiting, or retaining student athletes. Then three, an entity owned, controlled, operated by or otherwise, affiliated with an associated entity, or individual with an exception for publicly traded companies. That's a little bit of a catch all. That is the Q&A documents definition of an associated entity.

What about an associated individual? The very next question, Q&A E13. An associated individual is one, an individual who is or was a member employee, director, officer, owner, or agent of an associated entity. Two, an individual who directly, or indirectly has contributed more than \$50,000 over their lifetime to a school, or to an associated entity. Or three, an individual who has been directed, or requested by school athletic department personnel to assist in recruiting, or retaining student athletes.

Now, let's shift and talk about enforcement activity. The big one here is myths characterizing associated entities, or associated individuals as unaffiliated third parties. The reason, again, that a school, or someone would do that is to conceal or hide from scrutiny the NIL deals, because those with associated entities and individuals will be scrutinized, those with unaffiliated third parties will not.

Of course, the definitions that I just read have a lot of gray area, which means they have a lot of room for argument and a lot of room for circumvention. Now, the college sports commission with the assistance of Deloitte, those are the parties that are going to be determining who is an associated entity and an associated individual and who is not. Here's how they're going to do it according to the Q&A document. When a contract, an NIL contract gets submitted to NIL Go, the payer, the individual or entity paying the NIL deal, again, must attest whether it meets the definition of an associated entity, or individual. If a non-institutional payer cannot be verified, then the burden interestingly shifts to the school. It becomes the school's responsibility for determining whether the payer is an associated entity, or individual.

Along those lines, every school that opts in is going to be required to submit a list of all associated entities and individuals to NIL Go. They're going to have to do that every year, or as requested by the college sports commission. Really, very quickly and very frequently, it's going to be the school, the institutions that are in the position of making determinations of whether an individual, or entity is associated or not.

Chris Brolley:

You talked a lot about the definition of associated entity and individual. This is fairly important, because once those entities or individuals are defined, any deals coming from them are subject to review for a valid business purpose and whether the payment exceeds a reasonable range of compensation. What is a valid business purpose? Question E19 actually defines this and notes that an NIL agreement must include the promotion or endorsement of goods or services provided to the general public for profit. In other words, there must be a quid pro quo, where the student athlete is doing something for the money. This is similar to what the old NIL requirements under the interim policy required, which was a quid pro quo, or an exchange of services.

Also, what is a range of compensation, and question E20 defines this as rates and terms commensurate with compensation paid to similarly situated individuals with comparable NIL value for not current, or prospective student athletes at the institution. In other words, the amount must be paid reasonable and in line with fair market value.

What could be the enforcement activity for the types of deals? I think there's two main areas of enforcement, the quid pro quo, or lack thereof, and the fair market value. The quid pro quo would be investigated to see if student athletes are getting money for doing essentially nothing. I know that's been a big topic of conversation over the last several years. How are these athletes making X amount of dollars and what are they doing? You basically are not allowed to have what we'll call paper obligations, or written in contract, but not followed.

Another big area of enforcement, I think, maybe the biggest is what we'll see, will be regarding the fair market value payment. It will be difficult to pin down fair market value and reasonable compensation to start, given that this is a newly created area by Deloitte and NIL Go. Over time, there will be more information to compare with other deals. The key is initially, we'll be having some justification for amount. As noted in previous blog posts, and as I just addressed, the NIL Go Deloitte entity that was created allows for the school and student athlete to move forward, actually, with a deal that NIL Go has deemed not in conformity with the rules and may not satisfy the fair market value requirement.

Essentially, a student athlete, or a school may risk some penalty and may actually be subject to some enforcement if they are going forward with a deal that may not meet fair market value requirements.

Cal Stein:

Those are, as I said at the beginning, there's a lot more information in this Q&A document. We could spend three episodes on it. I think those are the key components of the Q&A guidance that go directly to anticipated enforcement. I'll say it again, we've been saying it here for a long time. When NIL started, the NCAA made a big deal about how they were ramping up and beefing up their enforcement staff. They got former government prosecutors, former FBI agents, etc., etc. They made a big show of it. Those folks have been sitting around twiddling their thumbs for a long time. I don't think that's going to continue.

We have the house settlement that has been approved. Now we have some guidance. What is going to follow will be enforcement, will be investigations, so schools and student athletes should be ready for that.

With that, we are out of time here today. I do want to bring this discussion to a conclusion. I want to thank you, Chris, for joining this podcast. I want to thank everyone for listening. If you have any thoughts, or any comments about this series, about this episode, I invite you to contact either of us directly. You can subscribe and listen to other Troutman Pepper Locke podcasts wherever you listen to podcasts, including on Apple, Google, and Spotify. Thank you for listening.

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