



Analysis: College sports' multibillion-dollar House settlement has been approved, but what happens now?

Extent of its impact on college sports is still unclear



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Federal judge Claudia Wilken ended five years of ongoing litigation late last Friday night when she finally approved the House settlement, the most consequential development in college sports in decades.

Athletic departments, coaches, athletes and the universities they represent have spent the months and years in advance of the settlement's approval preparing for its existential changes. But now that approval has finally been settled, where does everyone go from here?

Some of the immediate steps are clear and have been laid out well in advance. But there are legal questions remaining that threaten to upset the

painstakingly earned detente that has only now been established between college sports' labor and management classes.

Short-term solutions for long-term problems?

On June 11, the NIL clearinghouse opened, and athletes now have 30 business days from the day they signed a qualifying endorsement deal to log it. On June 30, schools from outside the power conferences, which are not bound to the House settlement, must opt in or out. And on July 1, college sports' revenue-sharing era begins.

As the NCAA's hardline rules maintaining collegiate sports as an amateur enterprise come crashing down — first through the legalization of NIL in 2021 and its newer, more drastic evolution four years later — the long-time governing body, one many thought was ineffectual at its stated job, is abdicating its power.

Patrick Afriyie — a former football player at Colgate University and in the NFL who now practices law for the firm Archer and Greiner and specializes in corporate governance, shareholder rights, employment disputes, protection of trade secrets and unfair competition — explained why.

“There’s just been a major change. I think when the NCAA lost the lawsuit that allowed players to start capitalizing on their [NIL], that was when they started to lose a lot of their control that they've had and relied upon for decades,” Afriyie told the Post-Gazette.

“And this position that the players were amateurs was now kind of in flux. ... The NCAA kind of built their whole empire on that standard.”

Ohio State athletic director Ross Bjork said on Tuesday at the National Academic Advising Association (NACADA) convention in Orlando, Fla., the goal of new college sports governance is to create a “pro sports model” and a critical part of pro sports is a third party that can both create and enforce rules that keep the playing field even.

The power conferences hope to provide more stringent enforcement of new NIL and revenue-sharing caps through a joint venture called the College Sports Commission (CSC), which was established as a limited liability corporation in April but is making its presence known nationally now in the wake of the settlement's approval.

Immediately after the settlement was approved, the CSC formally announced the hiring of Bryan Seeley as its first CEO. He most recently held the role of executive vice president for legal and operations at MLB and has experience as an assistant U.S. attorney.

Seeley will be expected to build out a wide-ranging enforcement and investigative arm of the CSC, which is tasked with holding its member institutions more strictly to established rules regarding NIL and revenue sharing.

But his first task is to get everyone participating in revenue sharing on the same page about reporting rules, potential punishment for violations and the enforcement process.

First, athletes must understand their responsibilities to the NIL clearinghouse, run by consulting giant Deloitte. Any deal struck after June 7 of this year is liable to scrutiny from an online platform called NIL Go.

Athletes and their representation will submit the details of NIL deals they have signed through the platform. Then the agreements will be evaluated on three criteria — the relationship between the payor and athlete's institutions, whether it is for a "valid business purpose" and if the compensation fits within a range in line with that paid to individuals in similar circumstances.

CSC enforcement will, at the end of the process, have a final say over whether the deal meets standards outlined in the House settlement.

"This is a significant moment for college athletics," Jim Phillips, the commissioner of the ACC, said after the settlement was approved. "We look forward to implementing this new system, which offers much-needed transparency and structure to create a more sustainable model for the long-term future of college athletics."

Some greet these changes as a victory. Others see them as insufficient and easily torn down once challenged in court.

The new rules are fairly straightforward, which is good for athletes and athletic departments who need to make sure they are compliant by the time July 1 arrives. But they aren't quite aligned with federal antitrust law, even with Wilken's rubber stamp.

Initial establishment was the easy part, but making sure they stick will be much harder.

Is federal legislation on the way?

The revenue-sharing era begins in 20 days, putting every participating institution on a time crunch if it wants to become compliant with the new rules. But there is an even larger onus on the NCAA and power conferences to make sure they last.

The first legal hurdle college sports officials will face is with NIL Go because, as many have already identified, the “fair market value” of an athlete or their endorsement is whatever a business or individual is willing to pay them.

To again artificially cap the new rounds of payments would require an antitrust exemption from the federal government, similar to what professional leagues like the NFL have.

But the professional sports leagues are allowed to institute salary caps because they have collectively bargained with their employees (i.e., the players) to do so.

The Division I conferences have not gone through such a process because of their insistence that college athletes are not employees, a fact that becomes more dubious with approval of the House settlement.

“If these players are getting paid directly by the schools, I think the argument that they're not employees becomes less and less realistic without some type of exemption,” Afriyie said.

Stakeholders around college sports have been begging for help from federal legislators for years now as they try to outmaneuver a patchwork of state laws that have created an uneven playing field and confusion. And their pleading with national lawmakers has been fruitless until this week.

There are now three separate sets of college sports-related legislation being drafted in Congress right now. The two most recent ones are notable — the College SPORTS (College Student-athlete Protections and Opportunities through Rights, Transparency, and Safety) Act and SCORE (Student Compensation and Opportunity through Rights and Endorsements) Act.

Both are similar — they codify NIL rights for athletes and make certain guarantees for athletes. But above all else, they would each prevent the patchwork of state laws currently in place from superseding federal law or NCAA rules, award the NCAA and conferences an antitrust exemption and maintain that college athletes aren't employees if passed.

The terms of the House settlement extend only 10 years into the future, but after that, the future of college sports is foggy without federal assistance.

"Some schools have the capacity to do a lot in this ecosystem and some some schools may not," Afriyie said. "I think that that interplay between how schools are approaching this will drastically impact what it is going to look like 10 years from now, who's going to be pushing the ball forward and who may be backing out."

The newest federal spending bill is the most pressing issue on the Senate's mind currently, so members of the House of Representatives have taken up the mantle of college sports governance for now.

Bipartisan support for some of the legislation allows for some optimism, but it seems unlikely federal help is coming for college sports anytime soon, even as the NCAA steps up its lobbying efforts on Capitol Hill.

Can college sports get more competitive?

The House settlement was, in part, a response to some of the anticompetitive practices being played out on an individual level in recruiting and on a larger scale as NIL budgets ballooned in major-revenue sports like football and men's basketball particularly.

In the NIL landscape that was an unregulated market, the wealthiest schools and fanbases in college athletics dominated in recruiting, then on the field and court. The current landscape made enforcing these new rules a difficult thing for some to imagine.

"I think it's a flawed system before it gets started," St. John's basketball coach Rick Pitino told ESPN in March. "Totally flawed."

"I think [enforcement will] be very hard," Kansas basketball coach Bill Self added.

But that was before the CSC, a more powerful enforcement arm, had arrived. The balance of wins and losses may or may not swing dramatically back toward a middle road with the dawn of a new, postsettlement era having arrived.

But revenue sharing and new NIL guidelines do encourage some of the have nots to raise their spending floor. It limits the haves' ability to spend.

A lot goes into winning championships and being nationally competitive, but in theory, the recruiting ground becomes more level.

"I think it is going to 100% get way more competitive with the off-the-field things — NIL contracts and revenue sharing," Afriyie said. "If they're invested in being a premier college athletics institution, I think that they have a vested interest in maintaining their position in a competitive ecosystem."

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