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Playing Fair, Paying Fair: A Comprehensive Federal Scheme for the Regulation of Collectives and the Student-Athlete Name, Image, and Likeness Market

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College athletics have transformed with the advent of new name, image, and likeness (NIL) policies, permitting student-athletes to earn compensation in exchange for the use of their NILs. This development was driven by a series of court decisions, ultimately constraining the National Collegiate Athletic Association's (NCAA) authority and capacity to enforce its compensation-prohibiting rules. State legislatures have adopted NIL laws in an effort to obtain competitive advantages for in-state educational institutions ("institutions"), resulting in a patchwork of NIL regulations across the United States. In the midst of this varied NIL regulatory landscape, the NCAA is ill-equipped to enforce NIL rules, the market values of NILs are shrouded in mystery, and entities unaffiliated with institutions have been able to avoid accountability for sex discrimination. Though numerous federal NIL bills have been proposed in both the House and Senate, no proposal has gained traction due to the inclusion of controversial provisions.

This Comment proposes a comprehensive federal scheme for NIL regulation, combining core provisions from state NIL laws, considering the failures of previous federal proposals, and addressing issues regarding the actions of collectives in the NIL dealmaking process. Specifically, this federal scheme calls for the creation of a central oversight entity with subpoena power to regulate the NIL marketplace, an express preemption of state NIL laws, the incorporation of foundational provisions from state NIL legislation, mandatory disclosure of NIL deals, the participation of institutions in the dealmaking process, and a requirement for collectives to affiliate with institutions. The combination of these provisions would allow student-athletes to earn fair market NIL compensation while being protected from discrimination in the dealmaking process.

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