

# PUBLICATION

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## Executive Order Targets College Athletics Compliance, NIL Practices, and Federal Funding - Part 2

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### Overview

On April 3, 2026, the White House issued the Executive Order titled "Urgent National Action to Save College Sports." The order is designed to promote a more uniform national approach to core college-sports rules – especially athlete eligibility, transfers, revenue-sharing, and pay-for-play activity – by leveraging federal grants and contracts and by pressing the NCAA to update or clarify its rules before August 1, 2026.

Following our client alert on a recent executive order affecting athletics compliance and NIL funding, part two takes a closer look at key developments and their practical implications.

### NIL-Specific Provisions: "Fraudulent NIL Schemes," Safe Harbors, and "Improper Financial Activities"

The Order's name, image, and likeness (NIL) provisions are among its most operationally significant for institutions and third-party market participants. It defines a "fraudulent NIL scheme" as paying above the actual fair market value for goods or services (including NIL services) in connection with a student-athlete's participation in intercollegiate athletics, including payments routed through collectives or similar entities. At the same time, it recognizes two key safe harbors: (1) revenue-sharing that is consistent with governing-body rules; and (2) fair market value compensation paid by a third party not affiliated with the institution's athletic department for a valid business purpose (e.g., promoting goods or services to the general public for profit) that is not tied to participation in a particular institution's athletics program and is comparable to rates paid to non-student-athletes with similarly valued NIL rights.

The Order also defines "improper financial activities" for covered institutions and their officers, agents, affiliates, and representatives to include:

- Intentionally devising or participating in a fraudulent NIL scheme.
- Knowingly accepting contributions (financial or otherwise) from persons who intentionally devise or participate in a fraudulent NIL scheme.
- Using federal funds for NIL or revenue-sharing payments, or for certain payments or benefits to coaches, recruiters, or other team-management personnel.
- Tortiously interfering with a contract between a student-athlete and another covered institution, including a scholarship agreement.

### What This Could Mean for Colleges and Universities

**1) Scrutiny over federal funding eligibility increases:** The Order is designed to link compliance with certain governing-body rules to the "present responsibility" analysis used in federal procurement and grant administration. Covered institutions should anticipate more questions – internally and from sponsors and grant administrators – about how athletics compliance is monitored, documented, and escalated.

**2) NIL and collective oversight will likely intensify:** Athletic departments may need stronger controls around donor and booster involvement, collective relationships, and the internal review of NIL deals for fair market

value and business purpose. The "knowingly accepting contributions" concept may drive additional diligence on major donors and third-party funding flows.

**3) Transfer/eligibility compliance may become a procurement risk issue:** If governing-body rules change (and survive legal challenges), athletics eligibility and transfer compliance could become a cross-functional issue involving athletics, compliance, financial aid, procurement, grants management, and university leadership.

**4) Women's and Olympic sports considerations:** The Order frames revenue-sharing implementation and reporting in a way that seeks to preserve or expand opportunities in women's and Olympic sports. Institutions evaluating roster management, scholarship allocation, or program changes should consider the interplay with existing federal requirements and evolving reporting expectations.

### **What This Could Mean for NIL Collectives, Brands, Sponsors, Platforms, and Agents**

1) Emphasis on fair market value and business purpose: Third-party NIL deals that are demonstrably tied to a legitimate marketing or endorsement purpose, and priced at fair market value consistent with comparable non-athlete endorsers, are expressly recognized by the Order. Barring forecasted litigation to determine whether "fair market value" is a legally sound metric by which to judge business activity, businesses should, in the interim, strengthen valuation methodologies and maintain documentation of deliverables, campaign metrics, and payment rationale.

2) Independence from athletics departments is a key theme: The safe harbor is framed around third parties not affiliated with an athletic department and payments not tied to participation at a particular institution. Businesses should review governance, communications, and contracting practices to reduce the appearance of institutional control or recruiting inducement.

3) Agent and athlete-representation compliance: The Order anticipates a national agent registry and directs Federal Trade Commission Act (FTC) enforcement activity under the Sports Agent Responsibility and Trust Act (SPARTA) and the FTC Act. Agents and platforms should review disclosure practices, contract terms, commission structures, and state law compliance to prepare for increased scrutiny.

4) Contract interference and transfer-era conduct: The Order's "tortious interference" concept may increase risk around inducements to transfer schools (or communications that could be construed as tampering). Businesses working with athletes should adopt clear protocols to avoid conduct that could be alleged to intentionally interfere with existing scholarship or NIL contracts.

### **Key Open Questions and Litigation Risk**

The Order expressly states it must be implemented consistent with applicable law and does not create privately enforceable rights. Its practical impact will therefore depend on (i) how the National Collegiate Athletic Association (NCAA) and the College Sports Commission (CSC) update their rules by August 1, 2026; (ii) how federal agencies operationalize "present responsibility" evaluations; and (iii) whether courts uphold or enjoin particular provisions. Commentators have noted that many provisions could be challenged as inconsistent with existing case law or as exceeding the practical reach of executive action absent congressional legislation.

For questions about how this executive order may affect your institution or NIL practices, please contact [Kordell Caldwell](#), [Benjamin West Janke](#), or [Lesli Harris](#).