

THE NEW GAME PLAN FOR STUDENT-ATHLETE SUCCESS IN THE NAME, IMAGE, AND LIKENESS ERA: THE INDIVIDUAL STUDENT-ATHLETE RETIREMENT ACCOUNT

Joe Lizcano*

ABSTRACT

As a result of the Supreme Court's landmark decision in NCAA v. Alston, student-athletes from across the country are now earning hundreds and thousands of dollars in compensation for their name, image, and likeness. As more money starts to roll into student-athletes' pockets, financial planning will play an essential role in intercollegiate athletics. Given that most student-athletes will not become professional athletes, it is inevitable that, at some point, a student-athlete will leave their competitive sport behind. In preparing student-athletes for this out-of-sport transition, it will be of the utmost importance for them to begin thinking about the retirement planning process earlier in their careers. As of today, the NCAA, state legislatures, and Congress have provided no workable support system for assisting student-athletes in managing their NIL earnings to support and guide their financial futures without sports.

This Comment will propose the Individual Student-Athlete Retirement Account, an individual retirement account dedicated to assisting incoming and current intercollegiate student-athletes in managing NIL earnings while in college or university. In implementing ISARA, an NIL collective, a third-party entity separate from the NCAA and its member institutions, would effectively act as a parental custodian for the student-athlete while they are in school—overseeing NIL deals and earnings but also investing them accordingly into a player's ISARA. NIL is a relatively new concept in college sports with immature regulatory frameworks, and it has faced its fair share of controversy. However, whether someone sees NIL as positive or negative, one thing is certain—NIL is here to stay. Therefore, the NCAA, state legislatures, and Congress will need to adapt and find a better way to prepare student-athletes for a post-collegiate career without sports, and ISARA is the ideal solution.

* J.D. Candidate, Texas Tech University School of Law, 2024; Bachelor of Science, Sport Management, Texas A&M University, 2020. I would like to thank Professor Stephen Black for his mentorship, Christine Vanderwater and Miguel Escobar for their editorial guidance and support, and my family and friends for their encouragement throughout the writing process.

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I. INTRODUCTION

For intercollegiate student-athletes, a “[s]ound retirement [plan] . . . is about planning what you will do in the second season of life.”¹ Whether a student-athlete is a highly recruited prospect or an unknown walk-on, both will need improved financial literacy skills with retirement savings as they pursue their next venture after their athletic careers.² However, uniform legislation is required because retirement planning is inherently complex, specifically with amateur athletes earning compensation for their name, image, and likeness (NIL).³

1. Vedia Jones-Richardson, *Perspectives*, 33 No. 8 L. PRAC. 4 (2007).

2. See Rachel Stark, *When the Playing Days End*, NCAA, <https://www.ncaa.org/sports/2018/4/23/feature-when-the-playing-days-end.aspx> (last visited Feb. 1, 2023) [<https://perma.cc/NBG7-S4T5>].

3. Author's original thought.

Despite 77% of Americans having retirement plans, many people will not have enough savings to fund their standard of living during retirement.⁴ One of the most common regrets amongst retirees in the United States is that they often wish they would have done more, such as saving earlier in their careers.⁵ Most student-athletes will face the same retirement savings predicament, whether continuing to play sports at the professional level or entering the workforce.⁶ As said by Erin Reifsteck, Ph.D. in Kinesiology:

A lot of the student-athletes . . . haven't really grappled with [retirement savings] until it's kind of right in their face and they're getting ready to graduate. . . . The research suggests that proactive coping is really important. So, not waiting until after you're experiencing the transition [out of sport] to deal with it, but to have some pre-retirement planning [in place].⁷

In light of the Supreme Court's decision in *Alston v. NCAA*, prioritizing retirement savings should be of utmost importance for student-athletes, now more than ever, given that student-athletes can now profit off their NIL without it affecting their amateur status or playing eligibility.⁸ In other words, players can now accept monetary compensation from businesses in exchange for being used in marketing and promotional deals.⁹ With more money flowing into student-athletes' pockets from NIL, the time to focus on retirement planning for student-athletes is now.¹⁰ One unique solution would be to consolidate retirement savings with NIL earnings into an individual retirement account (IRA) dedicated to intercollegiate student-athletes.¹¹

This Comment proposes the Individual Student-Athlete Retirement Account (ISARA), which will provide a much-needed financial management tool to simplify the retirement process for incoming and current intercollegiate student-athletes in dealing with their NIL earnings.¹²

4. Jordan Rosenfeld, *10 Jaw-Dropping Stats About the State of Retirement in America*, GOBANKINGRATES (Mar. 16, 2023), <https://www.gobankingrates.com/retirement/planning/jaw-dropping-stats-state-retirement-america/> [<https://perma.cc/7DJM-MNQ8>].

5. See Jasmin Suknaran, *5 of the most common regrets when it comes to saving for retirement*, CNBC SELECT, <https://www.cnbc.com/select/common-regrets-when-saving-for-retirement/> (last updated Sep. 10, 2021) [<https://perma.cc/W5N4-GXPB>].

6. See Randall Kelso, *Employee benefits: a simple guide for new grads and hires*, NCAA, <https://www.ncaa.org/sports/2019/5/1/employee-benefits-a-simple-guide-for-new-grads-and-hires.aspx> (last visited Mar. 8, 2023) [<https://perma.cc/9YWM-8YHU>]; Ross Dellenger, *The Other Side of the NIL Collective, College Sports' Fast-Rising Game Changer*, SPORTS ILLUSTRATED (Aug. 10, 2022), <https://www.si.com/college/2022/08/10/nil-collectives-boosters-football-tennessee-daily-cover> [<https://perma.cc/PN3T-GHXC>].

7. Stark, *supra* note 2.

8. See Nat'l Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141, 2166 (2021).

9. Sun Devil Compliance, *Name, Image, Likeness (NIL) Activities*, ARIZ. STATE UNIV., <https://sundevilcompliance.asu.edu/nil> (last visited Nov. 26, 2022) [<https://perma.cc/MP9L-XMYU>].

10. See *id.*

11. See discussion *infra* Part III.

12. See discussion *infra* Section III.A.1.

Additionally, this Comment will act as an accessible and inclusive marketplace to support and promote NIL opportunities for student-athletes.¹³ Part II of this Comment will give a general background on the National Collegiate Athletic Association (NCAA), the beginning of the NIL era, current NIL collective models and their drawbacks, and the importance of financial advisors and literacy regarding personal retirement savings.¹⁴ Part III will present the ISARA plan and how it would potentially function.¹⁵ Part IV addresses some obstacles to ISARA implementation and how they could potentially be addressed.¹⁶ Part V will propose statutory language, which will expand on Internal Revenue Code Section 408.¹⁷ For the purposes of this Comment, the proposed statutory language will be shortened and simplified.¹⁸ Finally, Part VI will conclude with some final thoughts on this Comment's larger goal: improving intercollegiate student-athletes' financial literacy with retirement savings while also increasing their NIL capital.¹⁹

II. BACKGROUND

The NCAA, established in 1906, is a member-led organization comprised of approximately 1,100 academic institutions and 100 athletic conferences dedicated to nearly 500,000 student athletes' well-being and lifelong success.²⁰ The NCAA is widely considered "the largest and most prestigious association of colleges and athletic conferences in the United States."²¹ The nearly half a million student-athletes in the NCAA make up around 19,886 teams, including 57,661 participants competing in twenty-four sports and ninety championships across three divisions.²²

The NCAA's members include four-year colleges and universities and are separated into three divisions: Division I (D-I), with 350 schools; Division II (D-II), with 310 schools; and Division III (D-III), with 438 schools.²³ D-I offers its student-athletes full or partial athletic scholarships and is considered "the highest level of competition in most sports."²⁴ D-II

13. See discussion *infra* Section III.A.1.

14. See discussion *infra* Part II.

15. See discussion *infra* Part III.

16. See discussion *infra* Part IV.

17. See discussion *infra* Part V; I.R.C. § 408.

18. See discussion *infra* Part V.

19. See discussion *infra* Part VI.

20. Overview, NCAA, <https://www.ncaa.org/sports/2021/2/16/overview.aspx> (last visited Mar. 3, 2023) [<https://perma.cc/MG44-4GNP>].

21. Coll. Athletic Placement Serv. v. Nat'l Collegiate Athletic Ass'n, Inc., No. CIV.A.74-1144, 1974 WL 998, at *2 (D. N.J. Aug. 22, 1974).

22. What is the NCAA?, NCAA, <https://www.ncaa.org/sports/2021/2/10/about-resources-media-center-ncaa-101-what-ncaa.aspx> (last visited Mar. 3, 2023) [<https://perma.cc/T4KK-G548>].

23. MATTHEW MITTEN ET AL., SPORTS LAW & REGULATION 107 (4th ed. 2017); *Our Three Divisions*, NCAA (Jan. 7, 2016), <https://www.ncaa.org/sports/2016/1/7/about-resources-media-center-ncaa-101-our-three-divisions.aspx> [<https://perma.cc/EUC3-8A9Z>].

24. *Our Three Divisions*, *supra* note 23.

offers partial athletic scholarships and is the intermediate level of competition.²⁵ In contrast, D-III does not offer athletic scholarships and is the lowest level of competition, making it more student-oriented than D-I and D-II.²⁶

The NCAA enforces strict rules among its member institutions and student-athletes, ranging from recruiting, compliance, academics, and championships.²⁷ The NCAA also promulgates the enforcement of its amateurism and eligibility rules for all of its current student-athletes, which regulates most aspects of college sports, from academic requirements to financial aid and scholarship packages.²⁸ To be deemed eligible to play for an NCAA member institution, a student-athlete must abide by the NCAA's amateur and eligibility requirements while enrolled in school.²⁹ Each NCAA division has policies and guidelines the student-athlete must meet to be considered fully eligible.³⁰ For example, those enrolling at D-I or D-II institutions for the first time must receive a "final amateurism certification" that confirms their amateur status before being allowed to compete.³¹

Those who do not abide by the NCAA's eligibility requirements are no longer viewed as amateurs in the eyes of the NCAA, meaning they would be ineligible to compete and unable to receive academic scholarships at the collegiate level.³² In this regard, the NCAA's purpose is to maintain student-athletes as an integral part of the educational program and keep a clear line of demarcation between collegiate and professional sports.³³

A. The Beginning of the End for NCAA Amateurism

The NCAA commonly refers to an amateur as an athlete who does not possess an express or verbal agreement with an agent, does not profit above their ordinary and necessary expenses, and does not gain any competitive advantage while competing.³⁴ In theory, student-athlete participation should be primarily motivated by educational, physical, mental, and social benefits—not monetary gain.³⁵ A student-athlete's participation in

25. *Id.*

26. *Id.*

27. *What is the NCAA?*, *supra* note 22.

28. *See id.*

29. *See id.*

30. *See id.*

31. *See id.*; *Amateurism*, NCAA, <https://www.ncaa.org/sports/2014/10/6/amateurism.aspx> (last updated Oct. 6, 2014) [<https://perma.cc/9FT2-TAPS>].

32. *See Amateurism*, *supra* note 31.

33. *NCAA Division I Manual*, Bylaws of NCAA 12.01.2, at 42 (Nov. 25, 2022), <https://web3.ncaa.org/lstdbi/reports/getReport/90008> [<https://perma.cc/M5L6-TRKG>] [hereinafter *NCAA Drafting Manual*].

34. *What is amateurism?*, NCAA, <https://ncaa.egain.cloud/kb/EligibilityHelp/content/KB-2219/What-is-amateurism> (last visited Mar. 7, 2023) [<https://perma.cc/J8AX-3R6V>].

35. Kristin R. Muenzen, *Weakening It's Own Defense? The NCAA's Version of Amateurism*, 13 MARQ. SPORTS L. REV. 257, 260 (2003).

intercollegiate athletics should be recreation and nothing more.³⁶ The NCAA reasons that amateurism: (1) serves the best interests of student-athletes, (2) ensures competitive balance amongst its member institutions, and (3) maintains student-athletes as an integral part of the education program.³⁷ With this line of reasoning, the NCAA prohibited student-athletes from endorsing any commercial good or service, regardless of whether they received compensation, and prohibited student-athletes from using their NIL to promote their personal business affairs.³⁸ The NCAA has a reputation for strictly regulating and sanctioning its member institutions and student-athletes to prevent such rule violations.³⁹

I. NCAA Antitrust Litigation: O'Bannon & Alston

Congress passed the Sherman Antitrust Act (Sherman Act) to promote free and fair competition.⁴⁰ Section 1 of the Sherman Act provides that “[e]very contract . . . , or conspiracy, in restraint of trade or commerce . . . is declared to be illegal.”⁴¹ Following the Supreme Court’s 1984 decision in *NCAA v. Board of Regents*, many lower courts developed caselaw with preferential treatment towards the NCAA’s amateurism principles.⁴² Historically, courts have given the NCAA great deference regarding antitrust laws and seemingly declined to invalidate NCAA rules.⁴³ It was not until August 2014 that the NIL debate emerged, as Ed O’Bannon brought suit against the NCAA for using his likeness in an Electronic Arts basketball video game series without prior notification or compensation for its use.⁴⁴ While the Ninth Circuit’s decision in *O’Bannon v. NCAA* did not receive a clean sweep as many had hoped for, as the Supreme Court denied the petition for certiorari, it certainly left its mark as it laid the groundwork for the NCAA to be subject to antitrust scrutiny.⁴⁵

36. *See id.* at 261.

37. Katherine McClelland, *Should College Football’s Currency Read “In BCS We Trust” or Is It Just Monopoly Money?: Antitrust Implications of the Bowl Championship Series*, 37 TEX. TECH L. REV. 167, 173 (2004).

38. *House v. Nat’l Collegiate Athletic Ass’n*, 545 F. Supp. 3d 804, 812 (N.D. Cal. 2021).

39. McClelland, *supra* note 37.

40. *See* 15 U.S.C.A. § 1.

41. *Id.*

42. *NCAA v. Bd. of Regents*, 468 U.S. 85, 87 (1984); Robert Harding, *Calling Time: The Case for Ending Preferential Antitrust Treatment of NCAA Amateurism Rules After Alston*, 2022 UNIV. ILL. L. REV. 1637, 1639 (2022).

43. McClelland, *supra* note 37.

44. *O’Bannon v. Nat’l Collegiate Athletic Ass’n*, 802 F.3d 1049, 1055 (9th Cir. 2015).

45. James A. Johnson, *O’Bannon What Is the Right of Publicity?*, N.Y. STATE B. J. 37, 39 (2014); Judith Araujo & J. Nicci Warr, *A Dollar and a Dream: Student-Athlete Compensation in the Aftermath of the U.S. Supreme Court’s Alston Decision*, JD SUPRA (Oct. 7, 2021), <https://www.jdsupra.com/legalnews/a-dollar-and-a-dream-student-athlete-2056263/> [<https://perma.cc/HL9U-A7W4>].

The court in *O'Bannon* concluded that NCAA member institutions could award capped grants-in-aid up to the full cost of attendance.⁴⁶ The NCAA defines a full grant-in-aid as financial aid that covers tuition, room and board, textbooks, and other costs related to attendance.⁴⁷ It was not considered direct compensation or the promise of direct compensation for athletic ability, which would violate NCAA amateur and eligibility requirements.⁴⁸ Nonetheless, the Supreme Court rejected grant-in-aid caps on antitrust grounds in *NCAA v. Alston*.⁴⁹ In June 2021, the Supreme Court unanimously ruled that limiting education-related compensation and benefits violated Section 1 of the Sherman Act.⁵⁰ To reach its decision, the Court emphasized how much college athletics has changed since its *Board of Regents* decision:

When it comes to college sports, there can be little doubt that the market realities have changed significantly since 1984. Since then, the NCAA has dramatically increased the amounts and kinds of benefits schools may provide to student-athletes. For example, it has allowed the conferences flexibility to set new and higher limits on athletic scholarships. It has increased the size of permissible benefits “incidental to athletics participation.” And it has developed the Student Assistance Fund and the Academic Enhancement Fund, which in 2018 alone provided over \$100 million to student-athletes. Nor is that all that has changed. In 1985, Division I football and basketball raised approximately \$922 million and \$41 million respectively. By 2016, NCAA Division I schools raised more than \$13.5 billion. From 1982 to 1984, CBS paid \$16 million per year to televise the March Madness Division I men’s basketball tournament. In 2016, those annual television rights brought in closer to \$1.1 billion.⁵¹

The Court concluded that the NCAA and its member institutions could no longer cap grants-in-aid up to the value of the full cost of attendance, which left more questions than answers about the future of college sports.⁵² Although the *Alston* decision is not primarily concerned with all forms of student-athlete compensation, it weakened the NCAA’s collegiate model by broadening the scope of compensation opportunities that student-athletes may be entitled to while attending school.⁵³ Today, many do not consider the NCAA’s amateur defense as “a viable pro competitive justification for the

46. *O'Bannon*, 802 F.3d at 1067, 1075.

47. *Id.* at 1076; *NCAA Drafting Manual*, *supra* note 33, Bylaw 15.02.6, at 148.

48. *See NCAA Drafting Manual*, *supra* note 33, Bylaw 12.01.4, at 42.

49. *See Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141, 2166 (2021).

50. *Id.* at 2147.

51. *Id.* at 2158.

52. Ken Kurdziel, *The Alston Decision: What Does it Mean for Student-Athletes and Universities?*, JAMES MOORE, <https://www.jmco.com/articles/collegiate-athletics/alston-decision-what-does-it-mean-for-student-athletes-universities/> (last visited Nov. 25, 2022) [<https://perma.cc/P5X2-DB2N>].

53. Araujo & Warr, *supra* note 45.

NCAA's mutual restraints of trade" because student-athletes are no longer amateur in nature.⁵⁴

2. FLSA Employee Status for Student-Athletes

For decades, courts have held that a student-athlete who has voluntarily agreed to participate in intercollegiate athletics in exchange for financial aid is not an employee of their college or university as a matter of law.⁵⁵ However, since *Alston*, there have been renewed discussions revolving around whether an employer-employee relationship exists between student-athletes, the NCAA, and their member institutions.⁵⁶ The great majority that feel that this relationship exists are the student-athletes themselves, such as Ramogi Huma, a former football player for the University of California, Los Angeles (UCLA).⁵⁷

'College athletes meet the definition of employee under labor law', said Huma, a former linebacker for UCLA, said in February. 'They are highly skilled in their sport, paid scholarships and stipends to perform athletic services, and they perform their work under extensive control of their employer. These athletes deserve every right afforded to them under labor laws—just like other hard-working Americans'.⁵⁸

In *Johnson v. NCAA*, Trey Johnson, a former Villanova University football player, and other D-I student-athletes brought suit against the NCAA seeking student-athlete employment status under the Fair Labor Standards Act (FLSA).⁵⁹ As a counter, the NCAA and D-I member institutions sought dismissal of the lawsuit because: (1) student-athletes are amateurs, (2) the Department of Labor had previously declared that student-athletes were not employees under the FLSA, and (3) student-athletes failed to qualify as employees under the economic realities balancing test.⁶⁰

54. Stephen Shaver, *Unnecessary Roughness: Why the NCAA's Heavy-Handed Amateurism Rules Violate the Sherman Antitrust Act*, 48 WASH. UNIV. J. L. & POL'Y 347, 365 (2015).

55. See *Waldrep v. Tex. Emp. Ins. Ass'n*, 21 S.W.3d 692, 699–700 (Tex. App.—Austin 2000, pet. denied).

56. Kai W. McGintee et al., *Critical Decision: United States Court of Appeals for the Third Circuit to Consider Whether Division I Student Athletes are Employees*, BERNSTEIN SHUR, <https://www.bernsteinshur.com/what/publications/critical-decision-united-states-court-of-appeals-for-the-third-circuit-to-consider-whether-division-i-student-athletes-are-employees/> (last visited Nov. 26, 2022) [<https://perma.cc/MQ82-UR7C>].

57. Ryan Morik, *US National Labor Relations Board Rules NCAA violated athletes' labor rights; court meetings likely: reports*, FOX NEWS (Dec. 15, 2022, 9:09 PM), <https://www.foxnews.com/sports/us-national-labor-relations-board-rules-ncaa-violated-athletes-labor-rights-court-meetings-likely-reports> [<https://perma.cc/7ZRM-PZ8K>].

58. *Id.*

59. *Johnson v. Nat'l Collegiate Athletic Ass'n*, 556 F. Supp. 3d 491, 495–96 (E.D. Pa. 2021).

60. *Id.* at 500.

The court in *Johnson* agreed with the NCAA that there is no expectation for student-athletes to receive monetary compensation for their participation in intercollegiate athletics.⁶¹ Notably, *Johnson* stated, “NCAA sports are not tied to the student’s formal education program.”⁶² This is due to the amount of time that student-athletes commit to their participation in athletics which may substantially interfere with their educational studies.⁶³ The *Johnson* court diverged from historical precedent by denying the NCAA and D-I member institutions’ motions to dismiss.⁶⁴ While *Johnson* has not been fully decided, as it is currently awaiting appeal, it draws noteworthy attention to salient issues in the collegiate landscape that have arisen since *Alston*.⁶⁵

In September 2021, the National Labor Relations Board (NLRB) announced its stance on the matter, classifying certain student-athletes at private institutions as employees under the National Labor Relations Act for purposes of unionization and other statutory protections afforded under the FLSA.⁶⁶ Furthermore, in November of 2022, the state of New York adopted new legislation permitting student-athletes to receive NIL compensation without losing their scholarships and playing eligibility, which went into effect in early 2023.⁶⁷ More specifically, this legislation would limit the NCAA and member institutions’ enforcement over compensation derived from NIL while student-athletes participate in athletic competitions, essentially treating them as professional athletes.⁶⁸ Other states may soon follow as the NCAA, Pac-12 conference, and the University of Southern California (USC) will likely be facing additional litigation after the NLRB officially ruled that the parties were the legal employers of college football and basketball players.⁶⁹ The suit notably accuses the NCAA, the conference, and the school of misclassifying players as “student-athletes,” as well as other labor law violations.⁷⁰

As noted in *Johnson* and *Alston*, the NCAA generates billions of dollars in revenue every year from student-athlete participation in intercollegiate athletics leading to more advocacy for the idea of revenue sharing as part

61. *Id.* at 507–09.

62. *Id.* at 511.

63. *Id.*

64. McGintee, et al., *supra* note 56.

65. *See id.*

66. NLRB General Counsel Jennifer Abruzzo Issues Memo on Employee Status of Players at Academic Institutions, NAT’L LAB. REL. BD. (Sept. 29, 2021), <https://www.nlr.gov/news-outreach/news-story/nlr-general-counsel-jennifer-abruzzo-issues-memo-on-employee-status-of> [<https://perma.cc/9SNX-32LY>].

67. Governor Hochul Signs Legislation to Allow Collegiate Student Athletes to Receive Compensation for Endorsements and Athletic Participation, N.Y. STATE (Nov. 21, 2022), <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-allow-collegiate-student-athletes-receive-compensation> [<https://perma.cc/ZN75-BT5S>].

68. *Id.*

69. Morik, *supra* note 57.

70. *Id.*

of the new business model in college sports.⁷¹ While many may still view amateurism and education as the backbone of intercollegiate athletics, the momentum is now shifting to viewing student-athletes as more than mere amateurs.⁷²

There is a general sense that intercollegiate athletics is as thoroughly commercialized as professional sports. . . . And the public would generally agreed [sic] that has all taken place at the expense of the student-athlete whose participation is exploited to make another buck for a bigger stadium, the coaches, the administrators or for other teams who can't pay their own way. It is a fairness issue, and along with the notion that athletes are students is the great hypocrisy of intercollegiate athletics.⁷³

The application of the NCAA amateurism principles has long received backlash and criticism due in part to the restrictive measures placed on student-athlete compensation.⁷⁴ Consequently, many arguments have arisen regarding student-athletes being allowed to receive other kinds of compensation that falls outside of the educational-related benefits scope, such as compensation from retirement plans.⁷⁵ Retirement plans are well regarded as a mode of employee compensation earned during a given period of employment.⁷⁶ And even though the Employee Retirement Income Security Act does not require employers to provide retirement plans to employees, FLSA employment status for student-athletes will provide much-needed pressure in allowing student-athletes to receive employee type compensation from the NCAA, its member institutions, and NIL collectives.⁷⁷

Over the years, the NCAA has faced “never-ending litigation” and debate over its amateurism principles.⁷⁸ Despite the NCAA’s continued efforts to preserve its longstanding “revered tradition of amateurism” in and outside the courtroom, its application has been inconsistent and gradually

71. Dan Murphy, *College athletes advocating for revenue sharing, new model*, ESPN (Nov. 16, 2022), https://www.espn.com/college-sports/story/_/id/35041631/college-athletes-advocating-revenue-sharing-new-model [https://perma.cc/DRJ3-79XZ].

72. *See id.*

73. Memorandum of Points and Authorities in Support of Motion by Antitrust Plaintiffs for Summary Judgment, *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, No. 4:09-cv 1967 CW, 2013 WL 6149252 (N.D. Cal. Nov. 15, 2013).

74. *See id.*

75. *See id.*

76. *See* *Cearley v. Cearley*, 544 S.W.2d 661, 662 (Tex. 1976); *Whorrall v. Whorrall*, 691 S.W.2d 32, 37–38 (Tex. App.—Austin 1985, writ dismissed).

77. *FAQs about Retirement Plans and ERISA*, U.S. DEP’T OF LAB. 1, 1, <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/retirement-plans-and-erisa-compliance.pdf> (last visited Jan. 25, 2023) [https://perma.cc/MGQ8-6KP7].

78. *NCAA statement on U.S. Supreme Court oral arguments*, NCAA (Mar. 31, 2021), <https://www.ncaa.org/news/2021/3/31/ncaa-statement-on-u-s-supreme-court-oral-arguments.aspx> [https://perma.cc/6ZYT-JDUD].

changed over time.⁷⁹ As the NCAA's regulation of student-athlete compensation continues to adapt and mature to the present, the demarcation line between intercollegiate and professional sports grows increasingly unclear with the unprecedented changes revolving around NIL in intercollegiate sports.⁸⁰

B. The Name, Image, And Likeness Era in Intercollegiate Athletics

As the clock struck midnight on July 1, 2021, the collegiate model template changed forever as the first batch of state legislation, and the NCAA's NIL Interim Policy went into full effect, opening the floodgates for student-athletes to freely receive NIL compensation for the first time without it affecting their NCAA eligibility requirements.⁸¹ With no federal legislation or specific long-term NCAA NIL rules on the horizon, NIL has been growing at an ever-increasing rate in intercollegiate athletics.⁸²

Within the first year, student-athletes earned approximately \$917 million in NIL deals—with projections reaching up to \$1.14 billion in year two, and around the same in year three.⁸³ While there is no way to have NIL compensation evenly apportioned among student-athletes, it is clear that far more have been taking advantage of NIL than what was previously expected.⁸⁴ Even though most of the top NIL earners are from “revenue sports” (i.e., men's football and basketball), there has been traction with student-athletes signing NIL deals associated with “non-revenue sports” as well, such as golf, gymnastics, wrestling, and track & field.⁸⁵

79. Nat'l Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141, 2163 (2021); see Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 120 (1984).

80. See The Athletic College Football Staff, *What is NIL?: Everything you need to know about the NCAA and name, image and likeness*, THE ATHLETIC (May 10, 2022), <https://theathletic.com/3301694/2022/05/10/nil-ncaa-definition/> [<https://perma.cc/LWJ7-YF5Q>].

81. Dan Murphy, *Everything you need to know about the NCAA's NIL debate*, ESPN (Sept. 1, 2021), https://www.espn.com/college-sports/story/_/id/31086019/everything-need-know-ncaa-nil-debate [<https://perma.cc/98B4-AFX3>].

82. *NCAA Name, Image, Likeness Rule*, NCSA, <https://www.ncsasports.org/name-image-likeness> (last visited Jan. 25, 2023) [<https://perma.cc/LE8X-QD3A>].

83. Amanda Christovich, *One Year of NIL: Becoming a Billion-Dollar Industry*, FRONT OFF. SPORTS (July 1, 2022, 11:46 AM), <https://frontofficesports.com/nil-billion-dollar-industry/> [<https://perma.cc/GY5B-XN8H>]; see *NIL One Year of Name, Image and Likeness*, OPENDORSE 1, 4, https://opendorse.com/wp-content/uploads/2022/07/NIL_Full_063022_3.pdf (last visited Nov. 26, 2022) [<https://perma.cc/ZF8J-AP8R>].

84. Jay Bilas, *Why NIL has been good for college sports . . . and the hurdles that remain*, ESPN (June 29, 2022), https://www.espn.com/college-sports/story/_/id/34161311/why-nil-good-college-sports-hurdles-remain [<https://perma.cc/Q2ST-FJD8>].

85. Kaufman & Canoles, *NIL Market Creates New Opportunity for “Non-Revenue” Sports and Regional Endorsers*, JD SUPRA (June 8, 2022), <https://www.jdsupra.com/legalnews/nil-market-creates-new-opportunity-for-4073866/> [<https://perma.cc/S9FQ-73K9>].

As of August 2022, more than 450,000 student-athletes across the country have earned compensation through NIL opportunities.⁸⁶ The smaller and more common NIL deals for student-athletes include social media influencing, television program promotions, exclusive in-person player appearances, youth training camps, and autograph signing sessions that normally pay a couple of hundred to thousands of dollars, with the average income ranging from \$1,000 to \$10,000.⁸⁷ Nevertheless, it did not take long for people to find a way to pay student-athletes more as NIL collectives are now providing greater amounts of NIL compensation to most student-athletes than ever before.⁸⁸

C. NIL Collectives & University-Specific Platforms

In the early days of NIL, collectives associated with colleges and universities were unheard of and could have been seen as merely an alternative for student-athlete compensation, beginning as a convenient way for student-athletes to access the NIL marketplace.⁸⁹ However, as it stands today, NIL collectives are a business and have emerged with significant popularity across the country, dominating collegiate space from top to bottom with NIL opportunities, bringing more money, controversy, and debate into intercollegiate athletics.⁹⁰

As defined by the Stinson Law Firm, a NIL collective is a corporation organized by alums, boosters, businesses, and former athletes that is structurally independent of a student-athlete's college or university yet provides student-athletes with compensation and other NIL opportunities.⁹¹ In the past, NIL collectives have been categorized as either for-profit or non-profit entities.⁹² The main factor distinguishing the two is that non-profit collectives have a 501(c)(3) tax-exemption status that allows potential tax deductions for collective contributions.⁹³

Today, the most pervasive non-profit collective is charitable, consisting of student-athletes performing community or charitable services in exchange

86. Paul Rudder, *How much money can college athletes make with NIL Marketing endorsement deals?*, DIARIO AS (Aug. 23, 2022, 10:05 AM), <https://en.as.com/ncaa/how-much-money-can-college-athletes-make-with-nil-marketing-endorsement-deals> [<https://perma.cc/E2M5-C4AX>].

87. *Id.*; Sun Devil Compliance, *supra* note 9.

88. Dellenger, *supra* note 6.

89. See Pete Nak, *What are NIL Collectives and how do they operate?*, ON3 MEDIA (July 6, 2022), <https://www.on3.com/nil/news/what-are-nil-collectives-and-how-do-they-operate/> [<https://perma.cc/7AWZ-AFT2>].

90. *See id.*

91. Bilas, *supra* note 84.

92. Ethan Sanders et al., *Pass Interference: Potential Tax Implications of NIL Collectives in College Sports*, STINSON L. FIRM (Sept. 23, 2022), <https://www.stinson.com/newsroom-publications-pass-interference-potential-tax-implications-of-nil-collectives-in-college-sports> [<https://perma.cc/6W5R-RMFD>].

93. *Id.*

for set compensation amounts.⁹⁴ A good example is The Matador Club, a donor-driven collective organized by Texas Tech University donors, which is reportedly, as of 2022, offering \$25,000 annual contracts to 100 Texas Tech football and basketball players in exchange for set community service quotas and other charitable work.⁹⁵

While most NIL collectives have done good by greatly simplifying the NIL deal-making process for student-athletes, each collective sets out to accomplish its own agenda and goals which may cause unwanted variations, such as streamlining NIL opportunities and crowdsourcing funds from boosters and other donors, which may ultimately take away from student-athletes' financial education in the long-term.⁹⁶ Therefore, a new uniform collective type is needed that not only focuses on making NIL compensation for student-athletes but also teaches them how to manage it.⁹⁷ This subsection briefly discusses the most common types of NIL collectives and the drawbacks of not improving a student-athletes financial literacy on retirement savings.⁹⁸ There have been three main collective types that have emerged across the collegiate landscape: (1) marketplace collectives, (2) donor-driven collectives, and (3) dual collectives.⁹⁹

1. The Marketplace Collective

The first type of NIL collective is the marketplace collective, which acts as an intermediary between student-athletes and local businesses, allowing them to connect, collaborate, and create new NIL opportunities.¹⁰⁰ In some instances, the collective acts as an agent representative for student-athletes, assisting them in negotiating and navigating NIL activities.¹⁰¹ Some common NIL deals that marketplace collectives create for student-athletes include traditional endorsements, social media promotions, youth training camps, autograph signing sessions, and other in-kind deals.¹⁰²

Montlake Futures at the University of Washington (UW) is a good example of an existing marketplace collective.¹⁰³ Montlake Futures, founded

94. *Matador Club plans to offer NIL deals to 100 Texas Tech players*, SPORTS BUS. J. (July 19, 2022), <https://www.sportsbusinessjournal.com/Daily/Issues/2022/07/19/Marketing-and-Sponsorship/NIL.aspx> [<https://perma.cc/F85P-L6NA>].

95. *Id.*

96. *See* Nak, *supra* note 89.

97. *See id.*

98. *See* discussion *infra* Section II.C.1–3.

99. *See* discussion *infra* Section II.C.1–3.

100. Nak, *supra* note 89.

101. *Id.*

102. *Tracker: University-Specific NIL Collectives*, BUS. OF COLL. SPORTS (2023), <https://businessofcollegesports.com/tracker-university-specific-nil-collectives/> (last visited Mar. 8, 2023) [<https://perma.cc/KKR4-9XUA>].

103. *See* MONTLAKE FUTURES, <https://www.montlakefutures.com/> (last visited Jan. 25, 2023) [<https://perma.cc/TB5H-HC8U>].

in February 2022, is considered one of the largest NIL collectives and producers of NIL opportunities for UW as a recognized non-profit organization.¹⁰⁴ The Business of College Sports, a business news outlet, describes Montlake Futures as “[a] platform to directly create and develop NIL opportunities for UW student athletes, including raising and stewarding financial resources, in cooperation with local businesses and sponsors. This group [also] assists corporate partners with NIL sponsorship and outreach and connects UW student athletes with opportunities.”¹⁰⁵

According to *The Seattle Times*, Montlake Futures’ mission statement is to “create a best-in-class NIL ecosystem in Seattle.”¹⁰⁶ Arguably, the two key components of an NIL ecosystem are earning money and learning how to manage it.¹⁰⁷ While information is provided on how Montlake Futures maximizes endorsement value for UW student-athletes and increases the overall NIL opportunities available in the Seattle area, there is no mention of any program that is dedicated to advancing UW student-athlete financial literacy.¹⁰⁸

As Montlake Futures displays, marketplace collectives place great emphasis on gathering the best NIL deals for its student-athletes with no consideration of other important topics, such as retirement planning.¹⁰⁹ While marketplace collectives can serve various purposes, it is not uncommon for them not to include a retirement planning program that helps student-athletes manage and invest their NIL earnings.¹¹⁰ Nevertheless, a student-athlete retirement planning program has great value in marketplace collectives, as advancing student-athletes’ financial literacy skills in retirement savings will ultimately affect their lives long after leaving school.¹¹¹ Therefore, for marketplace collectives to provide more long-term preparation for student-athletes regarding NIL, a retirement planning program that teaches student-athletes about the importance of saving for retirement should be incorporated.¹¹²

104. *Id.*; *Montlake Futures-Washington Huskies Collective*, ON3 MEDIA, <https://www.on3.com/nil/collectives/montlake-futures-42/> (last visited Mar. 8, 2023) [<https://perma.cc/C2SH-FZG3>].

105. *Tracker: University-specific NIL Collectives*, *supra* note 102.

106. Mike Vorel, *For NIL Company Montlake Futures, the goal is to help Washington win without selling its soul*, SEATTLE TIMES (Feb. 25, 2022, 7:00 PM), <https://www.seattletimes.com/sports/uw-husky-football/for-nil-company-montlake-futures-the-goal-is-to-help-washington-win-without-selling-its-soul/> [<https://perma.cc/XX8H-J9LN>].

107. *See id.*

108. *See* MONTLAKE FUTURES, *supra* note 103.

109. *See id.*

110. *See id.*

111. *See* Austin Miller, *How A Solo 401(K) Plan Can Help College Athletes Win In Retirement*, ANDERS (Aug. 30, 2022), <https://anderscpa.com/how-a-solo-401k-plan-can-help-college-athletes-in-retirement/?tag=sae> [<https://perma.cc/HA97-3DH5>].

112. *See id.*

2. The Donor-Driven Collective

The next and most popular NIL collective type is the donor-driven collective.¹¹³ Unlike marketplace collectives, donor-driven collectives are mainly driven by pooled funds from public supporters, such as alumni, former athletes, and boosters.¹¹⁴ A good example of a current donor-driven collective is the This is Sparta! collective with Michigan State University (MSU).¹¹⁵ Launched in February 2022 as a non-profit organization, This is Sparta! allows donors and fans to pool funds to support their favorite MSU players financially.¹¹⁶ In January 2023, each student-athlete was guaranteed to receive \$2,500 and was expected to get an additional \$5,000 for the 2023–2024 academic school year, with 5% going to a charity of the student-athlete’s choice.¹¹⁷ As of now, This is Sparta! has given approximately \$382,000 to forty-one MSU student-athletes, and is expected to give even more in the future.¹¹⁸

While donor-driven collectives such as This is Sparta! leave student-athletes well-compensated, they have received much public criticism because of their resemblance to a pay-for-play scheme (compensation for a student-athlete’s athletic ability, which has been generally prohibited in the NCAA and may render a student-athlete ineligible for intercollegiate competition).¹¹⁹ While marketplace collectives emphasize creating new NIL opportunities for student-athletes, donor-driven collectives focus on giving student-athletes the most compensation allowed without violating the law and NCAA rules.¹²⁰

While making money is an important element of NIL and is beneficial for all student-athletes, it should not be the only purpose of a NIL collective.¹²¹ Even though This is Sparta! requires student-athletes to give 5% of their earnings to a charity of their choice, it is simply a means to continue paying MSU student-athletes the maximum they are allowed while still maintaining their 501(c)(3) tax exemption status.¹²² As previously

113. See Nak, *supra* note 89.

114. *Id.*

115. *The On3 guide to NIL collectives around the nation*, ON3 MEDIA (Aug. 25, 2023), <https://www.on3.com/nil/news/on3-guide-to-nil-collectives-around-the-nation/> [<https://perma.cc/V9J2-NRDB>].

116. *Id.*

117. Dan Canova, *This is Sparta! NIL collective inks deal with Michigan State men’s and women’s soccer, golf teams*, THE NIL DEAL (Oct. 31, 2022), <https://nildealnow.com/this-is-sparta-nil-collective-michigan-state-mens-womens-soccer-golf-teams/> [<https://perma.cc/9PMA-AATE>].

118. *Id.*

119. Jared Yaggie, *The New Wild West: An Update to the Existing NIL Environment in College Sports*, UNIV. CIN. L. REV. BLOG (Oct. 4, 2022), <https://uclawreview.org/2022/10/04/an-update-to-the-existing-nil-environment/> [<https://perma.cc/8L3P-WKLT>]; see *NCAA Drafting Manual*, *supra* note 33, Figure 15-1, at 214–15.

120. See Nak, *supra* note 89.

121. See *id.*

122. See Canova, *supra* note 117.

mentioned, NIL collectives should provide long-term preparation for student-athletes regarding their NIL earnings, such as retirement planning, which most donor-driven collectives unfortunately do not do.¹²³ With as much money that is being thrown at donor-driven collectives in the NIL era, creating a retirement account for student-athletes and having them begin to contribute a certain percentage towards it makes the most sense.¹²⁴

3. The Dual Collective

The next NIL collective type is a dual collective, which mainly operates as a hybrid of a marketplace and donor-driven collectives, being a hub for NIL opportunities and offering a platform for public donations to support players attending a specific college or university.¹²⁵ A dual collective can operate as a business, selling exclusive player merchandise and sports memorabilia while giving a portion of the profits to the student-athletes.¹²⁶ However, this presents the same issues as marketplace and donor-driven collectives, emphasizing establishing NIL deals and giving compensation to their student-athletes, while not stressing the importance of other essential topics such as retirement planning.¹²⁷ Some examples of dual collectives include: The Gator Collective (University of Florida), Rising Spear (Florida State University), and Classic City Collective (University of Georgia).¹²⁸

D. Newfound Role for Financial Advisors

While the NIL era is a game changer in intercollegiate athletics, it also presents a unique opportunity for financial advisors to create ongoing relationships with student-athletes, their families, and friends.¹²⁹ It is indisputable that most student-athletes will now need access to affordable and competent representation to manage their newfound NIL earnings.¹³⁰ Financial advisors can provide various services to student-athletes, including: investment advice, debt management, budgeting, college savings, retirement planning, estate planning, long-term healthcare and insurance, and tax

123. *See id.*

124. *See id.*

125. *See Nak, supra* note 89.

126. *Id.*

127. *See id.*

128. *Id.*

129. Mark Schoeff Jr., *Newfound financial freedom for college athletes could be a game-changer for advisers*, INVESTMENTNEWS (July 15, 2021), <https://www.investmentnews.com/financial-freedom-for-college-athletes-is-game-changer-for-advisers-208861> [<https://perma.cc/RR4E-YB86>]; *A Sports Agent's Role In The World Of NIL: Part II*, ATHLETIC DIR. U, <https://athleticdirector.uconn.edu/sanil/a-sports-agents-role-in-the-world-of-nil-part-ii/> (last visited Dec. 1, 2022) [<https://perma.cc/9P92-6SE9>].

130. Schoeff Jr., *supra* note 129; *A Sports Agent's Role In The World Of NIL: Part II, supra* note 129.

planning.¹³¹ Most importantly, however, financial advisors can also make great educators for student-athletes in improving their financial literacy skills.¹³² As defined by Jason Fernando with Investopedia:

Financial literacy is the ability to understand and effectively use various financial skills, including personal financial management, budgeting, and investing. The meaning of financial literacy is the foundation of your relationship with money, and it is a lifelong journey of learning. The earlier you start, the better off you will be because education is the key to success when it comes to money.¹³³

Most student-athletes that receive NIL compensation are unequivocally at a point in their life where financial literacy is not only important, but vital.¹³⁴ Part of the reason people hire financial advisors in the first place is to help them understand their financial status and assist them in meeting their long-term goals.¹³⁵ The biggest long-term goal for many today is saving enough money for retirement.¹³⁶ However, where most people fail is being consistent with the amount of money they invest towards their retirement fund, which could be difficult without a financial advisor to hold them accountable.¹³⁷

Usually, one way to find a reputable financial advisor to help with retirement planning is to ask a family member or friend, as well as other professionals such as lawyers and accountants in the industry that you might know.¹³⁸ However, as far as student-athletes are concerned, there must be a better way to connect student-athletes with financial advisors specializing in NIL.¹³⁹ This needs to be someone who could simultaneously assist student-athletes in obtaining NIL deals and accordingly invest their money for their future into an account while they are enrolled in school.¹⁴⁰ Most student-athletes need easy access to affordable and competent representation

131. Amy Fontinelle, *What Does a Financial Advisor Do?*, INVESTOPEDIA (Nov. 23, 2022), <https://www.investopedia.com/articles/personal-finance/050815/what-do-financial-advisers-do.asp> [https://perma.cc/B32Y-7FZJ].

132. *See id.*

133. Jason Fernando, *Financial Literacy: What It is and Why It Is So Important?*, INVESTOPEDIA, <https://www.investopedia.com/terms/f/financial-literacy.asp> (last updated Aug. 15, 2022) [https://perma.cc/KCL5-D5ZB].

134. *See id.*

135. Fontinelle, *supra* note 131.

136. Amy Fontinelle, *How to Set Financial Goals for Your Future*, INVESTOPEDIA, <https://www.investopedia.com/articles/personal-finance/100516/setting-financial-goals/> (last updated Oct. 8, 2022) [https://perma.cc/9EBB-242X].

137. *See id.*

138. Adam Hayes, *How to Hire a Retirement Advisor*, INVESTOPEDIA, <https://www.investopedia.com/articles/personal-finance/012516/how-hire-retirement-advisor.asp> (last updated Apr. 22, 2022) [https://perma.cc/VTP6-NDPF].

139. Author's original thought.

140. *Id.*

to manage their newfound NIL earnings and need to begin thinking about saving for retirement, which is a rather unfamiliar concept to most student-athletes today.¹⁴¹

E. The Importance of Saving for Retirement Early

The term “retirement” is commonly used to refer to the end of one’s professional career, which typically occurs much later in life.¹⁴² The ideal goal for many is to reach retirement debt-free and with enough funds to be financially independent through their golden years; however, in reality, as inflation and consumer costs have continued to mount in recent years, many are opting out of saving for retirement entirely.¹⁴³ Studies have shown that 37% of the United States population is not currently saving for retirement, with 39% having \$0 in any retirement account.¹⁴⁴ Consequently, about half of Americans do not have the recommended savings amount for their particular age group.¹⁴⁵ This leaves the question: when should student-athletes start saving for retirement?¹⁴⁶ Ideally, one should begin saving for retirement in their twenties, when they leave school and earn an annual salary from their employment.¹⁴⁷ Investing at an earlier age means one’s retirement savings will have significantly more time and potential to flourish due to the power of compound interest, which can have long-lasting effects.¹⁴⁸

But what is compound interest, and why should student-athletes care at this stage in their lives?¹⁴⁹ Compound interest is interest on interest, meaning interest earned over a period that is then periodically added to an account’s principal amount, allowing an overall balance to grow at an increasing rate.¹⁵⁰ To illustrate, if one were to deposit \$1,000 into an account with a 1% annual interest rate, they would earn \$10 in interest after one year.¹⁵¹ Assuming that

141. Schoeff Jr., *supra* note 129; *A Sports Agent’s Role In The World Of NIL: Part II*, *supra* note 129.

142. Kayla Hunter, *The Extra Mile: How Collegiate Coaches Can Better Prepare Student-Athletes for Retirement*, TAYLOR UNIV., 1,10 (May 2019), <https://pillars.taylor.edu/cgi/viewcontent.cgi?article=1142&context=mahe> [<https://perma.cc/VZ8H-U6VG>].

143. Yaël Bizouati-Kennedy, *Half of Americans Don’t Have Enough Retirement Savings, New Study Shows*, GOBANKINGRATES (June 28, 2022), <https://www.gobankingrates.com/retirement/planning/half-americans-do-not-have-enough-retirement-savings-new-study-shows/> [<https://perma.cc/4VLF-LARL>].

144. *Id.*

145. *Id.*

146. *See Benefits of starting early*, CAP. GRP., <https://americanfundsretirement.retire.americanfunds.com/planning/benefits-of-starting-early.html> (last visited Nov. 30, 2022) [<https://perma.cc/B2HA-KYCV>].

147. *Which is better for me, a Roth or traditional IRA?*, CNNMONEY, https://money.cnn.com/retirement/guide/IRA_Roth.moneymag (last visited Dec. 1, 2022) [<https://perma.cc/FCZ6-3CCY>].

148. *See Benefits of starting early*, *supra* note 146.

149. *See* Robin C. Lerner, 14 MICH. CIV. JUR. INTEREST § 18 (2023).

150. *Id.*

151. Karen Bennett, *What is compound interest?*, BANKRATE (Mar. 9, 2022), <https://www.bankrate.com/banking/what-is-compound-interest> [<https://perma.cc/3L9U-2EC2>].

the account holder makes no monthly contributions or withdrawals and the annual interest rate stays at 1%, they would be earning 1% on \$1,010 or \$10.10 in interest for the second year.¹⁵² The longer the account is left open and untouched, the more the balance will grow to the account owner's benefit.¹⁵³

For student-athletes, the retirement strategy that would be most beneficial for them would be to anticipate planning for two retirements once they leave school.¹⁵⁴ One that can supplement income immediately as they seek employment after school and a more traditional retirement plan that can support them in the long-term.¹⁵⁵ While funds one contributes to a retirement account may seem insignificant at first, the power of compound interest over time will become a major player for student-athletes after their playing days conclude.¹⁵⁶

The end of an athletic career can be a traumatic experience and a rude awakening for many student-athletes whose main focus of attention has been athletics throughout the years, having devoted many long hours to practice and competition.¹⁵⁷ A student-athlete's participation in athletic activities is supposedly limited to a maximum of four hours per day and twenty hours per week by the NCAA.¹⁵⁸ Yet, many student-athletes spend thirty to forty hours per week on their sport.¹⁵⁹

It is also well-known that not every student-athlete will continue competing in their sport once they leave school, as fewer than 2% of NCAA student-athletes will become professionals.¹⁶⁰ Whether a student-athletes' decision to leave sports is voluntary (i.e., change in self-interest, career changes, or family circumstances) or involuntary (i.e., injuries, violation of NCAA rules, global pandemic, or age), they will need guidance to manage their retirement savings before they pursue their future endeavors.¹⁶¹

152. *Id.*

153. *Id.*

154. *Professional athletes need a retirement game plan*, RBC WEALTH MGMT., <https://www.rbcwealthmanagement.com/en-us/insights/professional-athletes-need-a-retirement-game-plan> (last visited Nov. 30, 2022) [<https://perma.cc/A5XF-J5D6>].

155. *Id.*

156. *See* Kelso, *supra* note 6.

157. *See How to Support Athletes Who Transition Out of Sports*, FAM. INST. NW. UNIV. (June 7, 2021), <https://counseling.northwestern.edu/blog/supporting-athletes-transitioning-out-of-sports/> [<https://perma.cc/3FZ3-8VAZ>].

158. *See NCAA Drafting Manual*, *supra* note 33, Bylaw 17.1.7.1, at 235.

159. Brian Wakamo, *Student Athletes Are Workers—They Should Get Paid*, INST. FOR POL'Y STUD. (Oct. 24, 2019), <https://ips-dc.org/student-athletes-are-workers-they-should-get-paid/> [<https://perma.cc/U7RC-U8WG>].

160. *NCAA Recruiting Facts*, NCAA, https://ncaaorg.s3.amazonaws.com/compliance/recruiting/NCAA_RecruitingFactSheet.pdf (last visited Dec 1, 2022) [<https://perma.cc/KRT7-SZ5D>].

161. *How to Support Athletes Who Transition Out of Sports*, *supra* note 157.

1. What Is an Individual Retirement Account?

For most hard-working individuals, an IRA can become a major player in creating a sound retirement strategy.¹⁶² But before one considers opening an account, one must understand what an IRA is and how it functions.¹⁶³ Section 408 of the Internal Revenue Code defines an IRA as a trust created and organized for the exclusive benefit of the account owner or some other designated beneficiary.¹⁶⁴ IRAs come in numerous variations, such as traditional, Roth, Simplified Employee Pension (SEP-IRA), and SIMPLE IRA.¹⁶⁵

- Traditional IRA. Contributions typically are tax-deductible. You pay no taxes on IRA earnings until retirement, when withdrawals are taxed as income.
- Roth IRA. Contributions are made with after-tax funds and are not tax-deductible, but earnings and withdrawals are tax-free.
- SEP IRA. Allows an employer, typically a small business or self-employed individual, to make retirement plan contributions into a traditional IRA established in the employee's name.
- SIMPLE IRA. Is available to small businesses that do not have any other retirement savings plan. The SIMPLE—which stands for Savings Incentive Match Plan for Employees—IRA allows employer and employee contributions, similar to a 401(k) plan, but with simpler, less costly administration, and lower contribution limits.¹⁶⁶

While this Comment touches on various features from the different IRAs listed above, including some other retirement accounts such as employer-sponsored 401(k)s, the two main accounts that will be considered are traditional and Roth IRAs.¹⁶⁷ Both of these have their advantages that would help ensure future financial security for student-athletes.¹⁶⁸

162. Miranda Marquit, *Roth IRA vs Traditional IRA*, FORBES (Oct. 24, 2022, 11:22 AM), <https://www.forbes.com/advisor/retirement/roth-ira-vs-traditional-ira/> [<https://perma.cc/UXZ6-R3Y2>].

163. *Id.*

164. I.R.C. § 408(a).

165. See *What is IRS Form 8606: Nondeductible IRAs*, TURBOTAX (Dec. 1, 2022, 8:27 AM), <https://turbotax.intuit.com/tax-tips/investments-and-taxes/what-is-irs-form-8606-nondeductible-iras/L7iVxrgTs> [<https://perma.cc/9KQN-Y654>].

166. *Individual Retirement Accounts (IRAs)*, U.S. SEC. & EXCH. COMM'N, <https://www.investor.gov/additional-resources/retirement-toolkit/self-directed-plans-individual-retirement-accounts-iras> (last visited Jan. 27, 2023) [<https://perma.cc/F3DN-MTW5>].

167. See *How do deductible and nondeductible IRAs differ?*, CNNMONEY, https://money.cnn.com/retirement/guide/IRA_traditional.moneymag/index2.htm (last visited Jan. 27, 2023) [<https://perma.cc/LL73-TZW8>]; Amanda Parsons, *Slam the Door: Why Congress Should End the Backdoor Roth IRA*, 35 YALE L. & POL'Y REV. INTER ALIA 41, 46 (2017).

168. See *What is IRS Form 8606: Nondeductible IRAs*, *supra* note 165.

Generally, traditional IRAs are the better option for individuals who are expected to be in a lesser tax bracket once they have retired.¹⁶⁹ Roth IRAs, however, are seen as better for those who are expected to be in the same or higher tax bracket once they have retired.¹⁷⁰ For most student-athletes, a Roth IRA will be the preferable option because of the tax benefits (i.e., savings contributed to a Roth IRA grow tax-free).¹⁷¹ Nevertheless, a student-athlete will also have the option to establish a traditional IRA under an ISARA plan as well.¹⁷²

III. THE INDIVIDUAL STUDENT-ATHLETE RETIREMENT ACCOUNT

For this proposal, a NIL collective will act as a financial advisor and custodian that will effectively oversee a student-athletes NIL activity and earnings throughout their time in school.¹⁷³ Because most student-athletes are young adults in their twenties with little to no experience establishing and maintaining an IRA, they would need to grant the NIL collective permission to act on their behalf by signing a custodial agreement.¹⁷⁴

A custodial agreement is a legal contract between the owner of assets or property and a nominee that agrees to hold the assets or property on behalf of the owner. Companies usually enter into custodial agreements to administer benefits [to] their employees [such as] 401(k) plans or health savings accounts.¹⁷⁵

In designing a temporary IRA dealing with student-athlete compensation, this Comment's proposal provides a basic overview of (a) the type of plan document to adopt, (b) the contributions allowed, (c) the distributions allowed, revocation, and termination.¹⁷⁶

169. *Which is better for me, a Roth or traditional IRA?*, *supra* note 147.

170. *Id.*

171. *See id.*

172. *See id.*

173. *See* Riley Adams, *Roth IRA for Kids: Can I Open a Custodial Roth IRA for a Child?*, YOUNG & THE INVESTED (July 5, 2022), <https://youngandtheinvested.com/roth-iras-for-kids/> [<https://perma.cc/57ZN-ESJY>].

174. *Roth IRA Custodial Agreement*, FIDELITY INVESTMENTS, Article IX, 1, 3, <https://institutional.fidelity.com/app/proxy/content?literatureURL=/703912.PD> (last visited Dec. 1, 2022) [<https://perma.cc/F2HK-PSSM>].

175. *Custodial agreement*, CONTRACTSCOUNSEL, <https://www.contractscounsel.com/t/us/custodial-agreement> (last visited Jan. 27, 2023) [<https://perma.cc/Z7AV-XRW5>].

176. JANE MEACHAM, *THE 401(K) HANDBOOK* § 610 (Supp. 2016).

A. Type of Plan to Adopt

The first thing to determine is whether the collective should adopt a prototype or a non-prototype document.¹⁷⁷ A prototype is a pre-approved plan that the Internal Revenue Service (IRS) designates as “qualified,” meaning it already satisfies the IRC in both form and operation.¹⁷⁸ One of the biggest advantages of using a prototype document is the cost-savings it may provide to startups, such as an NIL collective, because one could merely rely on the IRS determination letter of the existing prototype, which already expresses the qualified status of the plan document.¹⁷⁹

However, if the prototype document were to be amended by any means, the protections that the document provided would no longer be afforded under the IRS determination letter.¹⁸⁰ It would then be considered a non-prototype document, requiring further review by the IRS.¹⁸¹ Because of this, most prototypes offer limited design options and may be more challenging to reformat in the context of student-athlete compensation.¹⁸² Therefore, this proposal may require changes to the IRC and the NCAA’s amateur and eligibility requirements.¹⁸³ This would allow ISARA to be more flexible in its individual design to better accommodate each student-athlete’s needs and circumstances.¹⁸⁴ For this proposal, the ISARA plan will primarily resemble a custodial Roth IRA account and is assumed to be an already qualified plan.¹⁸⁵

1. Utilizing a Custodial Roth IRA Format

The IRS has uniformly classified a custodial Roth IRA account as identical to a trust.¹⁸⁶ It is distinguishable from other custodial accounts in that they are primarily used for minors and disabled individuals.¹⁸⁷ For example, a parent may create a custodial Roth IRA to help their children

177. See *id.* § 611.

178. Mark Miller, *Employee Benefit Plans for the Small Law Firm*, 35 HOUS. L. 16, 17 (1998); *A Guide to Common Qualified Plan Requirements*, I.R.S., <https://www.irs.gov/retirement-plans/a-guide-to-common-qualified-plan-requirements> (last visited Dec. 4, 2022) [<https://perma.cc/D4FN-U583>].

179. See MEACHAM, *supra* note 176, § 613; *Determination Letters for Individually Designed Retirement Plans FAQs*, I.R.S., <https://www.irs.gov/retirement-plans/determination-letters-for-individually-designed-retirement-plans-faqs#:~:text=An%20IRS%20determination%20letter%20expresses,Determination%20Letter%20%2D%20Individually%20Designed%20Plans> (last visited Dec. 4, 2022) [<https://perma.cc/6XZD-26AE>].

180. See MEACHAM, *supra* note 176, § 613.

181. *Id.*

182. *Id.*

183. See *id.*

184. David M. Rosenberger, *Sep: The 401(k) Alternative*, MICH. B. J. 908, 911 (1985).

185. See Rosemary Carlson, *How Does a Custodial Roth IRA Work?*, SMARTASSET (Jan. 10, 2023), <https://smartasset.com/estate-planning/custodial-roth-ira> [<https://perma.cc/9FPN-YSMV>].

186. *Taproot Admin. Serv., Inc. v. C.I.R.*, 679 F.3d 1109, 1119–20 (9th Cir. 2012).

187. *Id.*

manage future finances, such as college savings.¹⁸⁸ The income and proceeds that comprise such an account is known as “custodial property.”¹⁸⁹ While it is very similar to a standard Roth IRA, it must be created alongside a parental figure acting as a custodian who will manage the custodial property until the child comes of age.¹⁹⁰ A “custodian” is a responsible figure, such as an adult, designated to receive, manage, and maintain the custodial property on behalf of the beneficiary.¹⁹¹ Even though the custodian is considered the legal owner of the account, the beneficiary will possess equitable title, meaning the custodial property could only be used for the beneficiary’s benefit.¹⁹² Once the child has reached the age of eighteen, twenty-one, or even sometimes twenty-five, depending on the child’s domiciled state, the account fully transfers to them without having to wait until retirement age.¹⁹³

While there are various retirement plans that the ISARA could be based on, a custodial Roth IRA plan makes the most sense.¹⁹⁴ When an individual makes any contributions to a custodial Roth IRA account, they become irrevocable gifts that belong to the named beneficiary.¹⁹⁵ These gifts cannot be transferred to another, and a custodian will not be able to blend the account’s assets with their own, enhancing the beneficiary’s overall financial security in the long term.¹⁹⁶ Unlike other plans, such as a 529 plan earmarking funds for a designated purpose, custodial Roth IRAs allow maximum flexibility in spending and investing as long as it is for the benefit of the named beneficiary.¹⁹⁷ In addition, there is no age requirement to open a custodial Roth IRA, but the beneficiary must have earned income that they can set forth and contribute.¹⁹⁸

For this proposal, the student-athlete will take the place of the beneficiary and a NIL collective will be designated as the custodian.¹⁹⁹ The NIL collective will function as an ordinary marketplace collective (helping the student-athlete negotiate and navigate their NIL deals and opportunities), but will also receive, facilitate, and manage the student-athlete’s NIL compensation through ISARA, a custodial Roth IRA type of account.²⁰⁰ However, because most student-athletes are young adults between the ages of twenty and thirty, and not minor children, the NIL collective will need to

188. Carlson, *supra* note 185.

189. See TEX. PROP. CODE ANN. § 141.002(5)(B).

190. Carlson, *supra* note 185.

191. See TEX. PROP. CODE ANN. § 141.002(6).

192. Sam Swenson, *What Is a Custodial Roth IRA?*, MOTLEY FOOL, <https://www.fool.com/retirement/plans/roth-ira/custodial/> (last updated Jan. 9, 2023) [<https://perma.cc/DR7L-M68N>].

193. Adams, *supra* note 173; Carlson, *supra* note 185.

194. Adams, *supra* note 173.

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. See *id.*

200. See Nak, *supra* note 89; Carlson, *supra* note 185.

consider any instructions, directions, or concerns the student-athlete has regarding income placement and investment options, while still providing financial expertise.²⁰¹ In addition, like a regular custodial Roth IRA account, once a student-athlete has graduated from school or declared to play professionally in their sport, the account will be fully transferred to the individual.²⁰² At this time, the student-athlete could roll over the account into another retirement plan or terminate it, withdrawing the funds.²⁰³

2. Backdoor Roth IRAs for the Elite

The disparity of compensation a student-athlete may receive from NIL deals is worth noting in designing ISARA; within the first year of NIL, the average D-I student-athlete received approximately \$3,711, while some of the top players in the nation cashed in with high six-figure deals.²⁰⁴ The student-athletes earning \$153,000 or more (or \$228,000 and above, if married) will not be able to contribute to a Roth IRA for the 2023 tax year; they would need another option to establish a Roth IRA.²⁰⁵

If an individual made regular contributions to a Roth IRA that exceeded the maximum threshold, the excess would be subject to an additional 6% tax.²⁰⁶ However, a backdoor Roth IRA allows those whose income exceeds the maximum contribution threshold to roll over a traditional IRA into a Roth IRA.²⁰⁷ Three methods can achieve this type of conversion: (1) a rollover, (2) a trustee-to-trustee transfer, or (3) a transfer by the same trustee.²⁰⁸ A backdoor Roth IRA, regardless of the method used, is treated as a rollover contribution and does not count towards the one-rollover-per-year rule.²⁰⁹ Usually, a rollover transaction is not taxable, but because ISARA is designated mainly as a Roth IRA, it would therefore be taxable.²¹⁰

201. See Carlson, *supra* note 185.

202. See *id.*

203. See Adams, *supra* note 173.

204. Josh Schafer, *NIL: Here's how much athletes earned in the first year of new NCAA rules*, YAHOO FINANCE (July 1, 2022), <https://finance.yahoo.com/news/nil-heres-how-much-ncaa-athletes-earned-185901941.html> [<https://perma.cc/F36H-M94H>]; Prince J. Grimes, *How many NIL deals does Bryce Young have? Alabama quarterback answers the Fansville question*, USA TODAY (Sept. 1, 2022, 4:35 PM), <https://ftw.usatoday.com/2022/09/how-many-nil-deals-bryce-young-alabama-heisman-fansville> [<https://perma.cc/KV7S-D2N2>].

205. *2022–2023 Roth IRA Contribution Limits*, SCHWAB BROKERAGE, <https://www.schwab.com/ira/roth-ira/contribution-limits> (last visited Jan. 21, 2023) [<https://perma.cc/WB25-KF9Z>].

206. I.R.C. § 4973(a)(6), amended by Consolidated Appropriations Act, Pub. L. No. 117-328, 136 Stat. 4459 (2023).

207. Parsons, *supra* note 168, at 47.

208. Treas. Reg. § 1.408A-4, Q&A 2(b) (2008).

209. *Id.*

210. *Topic No. 413 Rollovers From Retirement Plans*, I.R.S., <https://www.irs.gov/taxtopics/tc413#:~:text=This%20rollover%20transaction%20isn't,the%20year%20of%20the%20distribution> (last visited Dec. 4, 2022) [<https://perma.cc/V6WL-CXU4>].

Nevertheless, a backdoor Roth IRA provides a convenient loophole that allows higher income earners, who typically could not open or contribute to a Roth IRA, to enjoy the benefits associated with this type of account.²¹¹ Therefore, a backdoor Roth IRA would benefit student-athletes who earn \$153,000 or more annually for their NIL.²¹² These same guidelines would also need to apply to multisport student-athletes who are professional in one sport but not the other.²¹³ Accordingly, this would enable the ISARA to accommodate all student-athletes' financial plans, no matter the amount of NIL earnings they receive within a given year.²¹⁴

B. Contributions to ISARA

When it comes to investing, time is an individual's greatest asset.²¹⁵ The sooner one starts contributing to their retirement plan, the longer it will grow to their benefit.²¹⁶ For example, if an individual were to invest \$6,000 in a Roth IRA each year for a ten-year period at a 7% interest rate, then, by the tenth year, the funds in the account would potentially reach up to \$83,000.²¹⁷ After thirty years, it could equate to over half a million dollars.²¹⁸ The market may yield negative returns in a given year, and the average person may not contribute up to \$6,000 per year; nevertheless, consistent contributions over a long period of time will significantly impact an account's growth.²¹⁹

However, in order to prevent unhinged growth, the IRS limits the amount one may contribute to an IRA and other retirement savings plans.²²⁰ Contribution limits typically vary according to the type of plan used, the account owner's age, and an individual's income.²²¹ The maximum annual contribution limit is the same for traditional and Roth IRAs.²²² The statutory maximum is set at \$5,000 but is adjusted for inflation.²²³ For 2023, the IRS

211. Parsons, *supra* note 168, at 47.

212. See *Amount of Roth IRA Contributions That You Can Make for 2022*, I.R.S., <https://www.irs.gov/retirement-plans/plan-participant-employee/amount-of-roth-ira-contributions-that-you-can-make-for-2022> (last visited Dec. 4, 2022) [<https://perma.cc/D4TN-TYSY>].

213. See *NCAA Drafting Manual*, *supra* note 33, Bylaw 12.1.3, at 47.

214. See *Amount of Roth IRA Contributions That You Can Make for 2022*, *supra* note 212.

215. Carl Engelking, *How Much Should I Contribute to an IRA and How Often?*, NW. MUT. (Dec. 17, 2021), <https://www.northwesternmutual.com/life-and-money/how-much-should-i-contribute-to-an-ira-and-how-often/> [<https://perma.cc/AG28-E7MZ>].

216. See *id.*

217. Ashley Kilroy, *What Is an Average Roth IRA Return?*, SMARTASSET (Oct. 24, 2022), <https://smartasset.com/retirement/average-roth-ira-return> [<https://perma.cc/9PXE-YBSU>].

218. *Id.*

219. Engelking, *supra* note 215.

220. Claire Boyte-White, *Why IRA, Roth IRA, and 401(k) Contributions Are Limited*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/082515/why-are-ira-roth-iras-and-401k-contributions-limited.asp> (last updated Mar. 6, 2023) [<https://perma.cc/73F5-A4RT>].

221. *Id.*

222. GARY I. BOREN & NORMAN P. STEIN, ROTH IRAS, 1 QUAL. DEFERRED COMP. PLANS § 1:22 (2023).

223. *Id.*

increased the limit on annual contributions to \$6,500, meaning student-athletes can contribute up to \$6,500 of their NIL earnings for both traditional and Roth IRAs, assuming they have the income to contribute.²²⁴

In order to be able to contribute to an IRA, the IRS stipulates that an individual must have earnable income, meaning the income received from a position of employment.²²⁵ This may include “wages, commissions, professional fees, tips, and other amounts received for personal services, as well as taxable alimony and separate maintenance payments received under a decree of divorce or separate maintenance.”²²⁶ At the same time, amounts received from pensions, annuities, or deferred compensation are excluded.²²⁷

In most cases, student-athlete compensation from NIL would likely be classified under self-employment income, meaning income that is derived from performing personal services.²²⁸ Nevertheless, student-athletes who make at least \$600 in income, be it monetary or in-kind compensation, would be subject to the IRS self-employed guidelines.²²⁹ Therefore, in comporting with current NCAA legislation, initial contributions made towards an ISARA plan will comprise of compensation a student-athlete has received from NIL deals.²³⁰

The average student-athlete’s NIL is currently valued at approximately \$35,354.²³¹ Because various forms of in-kind compensation may be included in this estimate that cannot be contributed to an IRA, this proposal will focus primarily on the income the student-athlete may receive from NIL deals.²³²

224. See *Retirement Topics - IRA Contribution Limits*, I.R.S., <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-ira-contribution-limits#:~:text=For%202022%2C%202021%2C%202020%20and,taxable%20compensation%20for%20the%20year> (last updated Dec. 21, 2022) [<https://perma.cc/E5CS-39NA>]; Peter Butler, *Roth IRA Conversions Can Save Big Money Through the Years: How They Work*, CNET (Dec. 23, 2022), <https://www.cnet.com/personal-finance/interesting/roth-ira-conversions-can-save-big-money-through-the-years-how-they-work/> [<https://perma.cc/6FD9-XD95>].

225. Julia Kagan, *Understanding Earned Income and the Earned Income Tax Credit*, INVESTOPEDIA, <https://www.investopedia.com/terms/e/earnedincome.asp#:~:text=Earned%20income%20is%20any%20income,not%20be%20considered%20earned%20income> (last updated Feb. 25, 2023) [<https://perma.cc/E54D-FHYJ>].

226. Treas. Reg. § 1.408A-3, Q&A 4.

227. *Id.*

228. Sarah Wake & Addison Fontein, *NCAA Athletes Will Need a New Playbook to Score on Tax Day (I)*, BLOOMBERG TAX, <https://news.bloombergtax.com/tax-insights-and-commentary/ncaa-athletes-will-need-a-new-playbook-to-score-on-tax-day> (last updated Apr. 27, 2022, 1:54 P.M.) [<https://perma.cc/84YE-HTP2>]; see *Self-Employment Tax*, I.R.S., <https://www.irs.gov/individuals/international-taxpayers/self-employment-tax#:~:text=Self%20employment%20income%20is%20income,the%20payer%20and%20the%20payee> (last visited Nov. 7, 2022) [<https://perma.cc/5VLM-ZUAC>].

229. Ron L. Brown, *Tax Implications When NCAA Student Athletes Make Money*, KIPLINGER (July 21, 2022), <https://www.kiplinger.com/taxes/604955/tax-implications-when-ncaa-student-athletes-make-money> [<https://perma.cc/YLE9-RRSZ>].

230. See Engelking, *supra* note 215.

231. Andy Wittry, *College football, basketball players average \$35k, On3 NIL Evaluation*, ON3 MEDIA (July 20, 2022), <https://www.on3.com/nil/news/on3-nil-valuation-college-high-school-athletes-bruce-young-bronny-james/> [<https://perma.cc/P3F5-QP74>].

232. See *id.*

Contributions are generally limited to cash payments, checks, wire transfers, and automated clearing-house payments and must not exceed the federally mandated maximum contribution limit.²³³ In this proposal, three types of contributions can be utilized under the ISARA plan: (1) regular contributions, (2) transfers, rollover contributions, and (3) matching contributions.²³⁴

1. Regular Contributions

A regular contribution is the first type of contribution that student-athletes are able to make under an ISARA plan.²³⁵ A regular contribution is a non-deductible cash contribution taken from one's annual salary.²³⁶ As previously mentioned, the annual maximum contribution limit for traditional and Roth IRAs (or a combination of both) for 2023 is capped at \$6,500, or \$542 per month.²³⁷ While a minority of student-athletes may be able to afford to set aside the full \$542 towards their ISARA monthly, most student-athletes will not be in a position to afford it.²³⁸ That is why there would be no minimum regular contribution requirement to open an ISARA, and there would be no mandatory requirement on how much one must consistently contribute.²³⁹

However, to ensure sustainable growth of a student-athlete's ISARA, it would be recommended by each NIL collective acting as the custodial figure that student-athletes contribute at least 6% of their annual NIL earnings into their ISARA if they are able to do so while in school.²⁴⁰ That way, a student-athlete would be able to realize actual gains after graduation, even if it is a small amount, and hopefully encourage them to continue to contribute.²⁴¹ A common approach used by employer-sponsored 401(k) plans is to allow plan employees to have their contribution amount increase on a

233. See Parsons, *supra* note 168 at 46–47; John P. Ruiz, *Transfer vs. Rollover: What's the Difference Between them?*, THE ENTRUST GRP. (Nov. 16, 2021), <https://www.theentrustgroup.com/blog/difference-transfers-from-rollovers> [<https://perma.cc/3892-98XR>].

234. Treas. Reg. § 1.408A–3, Q&A 1.

235. See *id.*

236. *Roth IRA Custodial Agreement and Disclosures: Important legal information, disclosures, and terms you need to know*, WELLS FARGO 1, 5 (Dec. 9, 2020), <https://www.wellsfargo.com/fetch-pdf?formNumber=PCS8363&subProductCode=WRT> [<https://perma.cc/3XPW-UZDV>].

237. Engelking, *supra* note 215.

238. See *id.*

239. See Dayana Yochim & Andrea Coombes, *IRA Rules: Your 2022-2023 Cheat Sheet*, NERDWALLET, <https://www.nerdwallet.com/article/investing/traditional-ira-rules> (last updated Jan. 9, 2023) [<https://perma.cc/YBB4-RMSV>].

240. See Jesse Piburn, *What is 401(k) matching and how does it work?*, EMPOWER, (Jan. 30, 2022) [https://www.empower.com/the-currency/work/how-does-401k-matching-work?utm_source=pcap&utm_medium=referral#:~:text=Matching%20401\(k\)%20contributions%20are,limit%20of%20total%20employee%20compensation./](https://www.empower.com/the-currency/work/how-does-401k-matching-work?utm_source=pcap&utm_medium=referral#:~:text=Matching%20401(k)%20contributions%20are,limit%20of%20total%20employee%20compensation./) [<https://perma.cc/ER5P-GXJN>].

241. See *id.*

recurring interval, such as monthly, quarterly, or yearly.²⁴² The same approach can be applied to an ISARA by increasing contributions yearly.²⁴³

2. Transfers & Rollover Contributions

The next two contribution types that student-athletes may utilize under ISARA are transfers and rollover contributions.²⁴⁴ Transfers and rollovers are two popular methods of funding traditional and Roth IRAs.²⁴⁵ Each is distinctive and has its own specific rules and tax implications.²⁴⁶ As previously mentioned, the NIL collective overseeing the ISARA and the student-athlete's assets will act as custodians and financial advisors.²⁴⁷ It will have the discretion to decide if a transfer or rollover contribution is necessary and if it is in the student-athlete's best interest.²⁴⁸ But, a choice between the two will ultimately boil down to each student-athlete's circumstances, such as if they already have a preexisting retirement account or make \$153,000 or more from their NIL.²⁴⁹

A transfer is the first contribution type that a student-athlete may consider when creating an ISARA.²⁵⁰ A transfer contribution is transferring "a [singular] type of retirement account to a new financial institution."²⁵¹ When using a transfer, the account type does not change.²⁵² This is also sometimes called a trustee-to-trustee transfer.²⁵³ In the instance where a student-athlete is already in possession of a qualified retirement plan at the beginning of the transfer, such as a Roth IRA, they will be able to roll over any part of that plan to an ISARA if it stays a Roth at the end of the transfer.²⁵⁴

The same applies to traditional IRAs and other retirement accounts such as SIMPLE IRAs.²⁵⁵ The only exception is that a SIMPLE IRA can also be transferred to a traditional IRA after a two-year waiting period.²⁵⁶ If a student-athlete were to contribute to their ISARA by transfer, the funds in the account would not be payable until the account is ready for distribution,

242. See MEACHAM, *supra* note 176, § 613.

243. See *id.*

244. See Ruiz, *supra* note 233.

245. *Id.*

246. *Id.*

247. See Adams, *supra* note 173.

248. See *id.*

249. 2022–2023 Roth IRA Contribution Limits, *supra* note 205.

250. See Ruiz, *supra* note 233.

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*; see Melissa K. Burnett-Testa, *Common Types of Retirement Plans: Roth IRAs*, in 2, PRAC. GUIDE EST. PLAN. R.I. § 9.2.7 (Melissa K. Burnett-Testa & Lauren K. Drury eds., 2022).

255. Ruiz, *supra* note 233.

256. *Id.*

meaning the funds in the account would not be taxable and the transfer would not be reported to the IRS.²⁵⁷

On the other hand, another way for student-athletes to move assets to an ISARA would be a rollover.²⁵⁸ A rollover contribution is a deposit of funds into a Roth IRA that is transferred from another eligible retirement plan, either by a direct or sixty-day rollover.²⁵⁹ “A direct rollover occurs when . . . account assets are transferred directly from one IRA custodian to another.”²⁶⁰ While “[a sixty]-day rollover is the process of moving . . . retirement savings from a qualified plan, typically a 401(k), into an IRA.”²⁶¹

A direct rollover, or a transfer by the same trustee, would allow a student-athlete to move assets from one type of retirement account to another type of retirement account.²⁶² Direct rollovers would also not require any funds to be withheld for taxation because they would go directly into the new account.²⁶³ The only downside to a direct rollover is that a student-athlete cannot move assets within the same institution (i.e., a traditional IRA with ISARA to a Roth IRA with ISARA).²⁶⁴ This means that an elite student-athlete who exceeds the maximum income limit (\$153,000 or more) for IRA contributions would be unable to take advantage of a backdoor Roth IRA with ISARA because it would be within the same institution.²⁶⁵

For the student-athletes who make \$153,000 or more for their NIL and have already created an ISARA, a sixty-day rollover is likely the better option to convert their account into a Roth IRA and still take advantage of Roth IRA benefits.²⁶⁶ The NIL collective would need to request a distribution of their retirement plan assets on the student-athlete’s behalf to initiate a sixty-day rollover.²⁶⁷ Unlike a transfer, the student-athlete would take possession of the funds immediately, and it would now be considered a distribution, meaning the funds would be vulnerable to taxation and early withdrawal penalties of 10% for IRAs.²⁶⁸

However, if the student-athlete were to deposit their funds into an ISARA within the sixty-day window, the funds would be returned to their tax-advantaged status.²⁶⁹ It is important to note that a student-athlete who

257. *Id.*

258. *Id.*

259. *Id.*; Burnett-Testa, *supra* note 254.

260. *What Is The Difference Between A 60-Day Rollover And A Direct Rollover?*, ALTO IRA, <https://help.altoira.com/what-is-the-difference-between-a-transfer-and-a-rollover> (last visited Jan. 28, 2023) [<https://perma.cc/S4VQ-BBC6>].

261. *Id.*

262. *Id.*

263. Ruiz, *supra* note 233.

264. *Id.*

265. *2022-2023 Roth IRA Contribution Limits*, *supra* note 205.

266. *Id.*

267. Ruiz, *supra* note 233.

268. *Id.*

269. *Id.*

rolls over between two IRAs of the same type would be limited to one rollover per year.²⁷⁰ This rule, however, does not apply to rollovers between different account types or direct transfers.²⁷¹

While a transfer or rollover contribution may not be the desired method for the average student-athlete, it is still important to include in this proposal to accommodate student-athletes with a preexisting retirement account or who earn \$153,000 or more from their NIL.²⁷² A transfer and a rollover contribution will ultimately allow these student-athletes to establish, participate, and grow their ISARA and take advantage of exclusive Roth IRA benefits.²⁷³ However, to better incentivize student-athletes to participate and continuously contribute to ISARA, NIL collectives should be allowed to match student-athlete contributions to aid account growth.²⁷⁴

3. Matching Contributions

While the uncertainty of amateurism looms over most student-athletes, they should be allowed to receive other kinds of compensation, such as matching contributions separate from their NIL earnings.²⁷⁵ Similar to a traditional 401(k) plan, matching contributions are generally used to increase contributions of low-paid employees.²⁷⁶ In general, matching contributions are contributions made by employers that are added to an employee's initial contribution amount to the employee's benefit.²⁷⁷ For this proposal, NIL collectives would have a separate fund similar to employers for matching contributions, which will derive from collective donors.²⁷⁸ The two common types of matching contributions are: (1) partial matching and (2) full matching.²⁷⁹

As the name implies, a partial match means that an employer would only partially match an employee's contribution.²⁸⁰ While it is generally up to the employer to determine matching parameters for 401(k)s, 50% is a common partial match amongst most employers, up to 6% of an employee's annual salary.²⁸¹ In practical terms, if a student-athlete earns \$80,000 per year in NIL, their contributions that would be eligible for matching are 6% or \$4,800 of their overall income.²⁸² However, when considering a 50% matching

270. *Id.*

271. *Id.*

272. *See 2022-2023 Roth IRA Contribution Limits, supra note 205.*

273. *See Roth IRA Custodial Agreement and Disclosures, supra note 236.*

274. Piburn, *supra* note 240.

275. *See id.*

276. MEACHAM, *supra* note 176, § 613.

277. Piburn, *supra* note 240.

278. *See id.*

279. *See id.*

280. *Id.*

281. *Id.*

282. *Id.*

contribution, the NIL collective will match with \$2,400, not the full \$4,800.²⁸³ In addition, if the student-athlete contributed more than the 6% that is allowed with a 50% matching contribution, the NIL collective would only be required to match half of the 6%.²⁸⁴

In contrast, with a full match or “dollar-for-dollar match,” an employer would put the same amount into a 401(k) as the employee up to a certain amount.²⁸⁵ An example would be up to 4% of an employee’s salary.²⁸⁶ In this case, if the student-athlete put in 4%, the NIL collective would also put in 4%.²⁸⁷ Likewise, if the student-athlete put in 2%, the NIL collective would put in 2%.²⁸⁸ For a partial contribution, if an employee contributes more than what is allowed, the employer would only need to put in what is required of them.²⁸⁹ For example, if a student-athlete contributed 6%, the NIL collective would only need to contribute 4% because that is their max.²⁹⁰

While it is important to understand these matching rules in order to incorporate them into an ISARA plan, it is also important to know that “a traditional 401(k) plan has a higher contribution limit than a traditional or Roth IRA”, allowing employees to contribute up to \$22,500 compared to \$6,500 for IRAs.²⁹¹ Ordinarily, for IRAs, contributions must be made in cash and must not exceed the maximum contribution limit for any taxable year unless it is a rollover contribution.²⁹² And if an individual passes that limit, the IRS would charge a 6% penalty fee for each year’s excess contribution until it is removed.²⁹³

However, an exception should apply because ISARA resembles a 401(k) plan.²⁹⁴ The student-athlete opens their account through a NIL collective instead of on their own initiative.²⁹⁵ Therefore, NIL collectives should be allowed to exceed the maximum contribution limits similar to 401(k) plans.²⁹⁶ In this case, an NIL collective maximum contribution limit

283. *Id.*

284. *Id.*

285. *Id.*

286. *Id.*

287. *See id.*

288. *See id.*

289. *See id.*

290. *See id.*

291. Gayle Sato, *401(k) vs. IRA Contribution Limits for 2023*, EXPERIAN (Jan. 4, 2023), [https://www.experian.com/blogs/ask-experian/401k-ira-contribution-limits/#:~:text=A%20401\(k\)%20plan%20has,both%20types%20of%20retirement%20plans](https://www.experian.com/blogs/ask-experian/401k-ira-contribution-limits/#:~:text=A%20401(k)%20plan%20has,both%20types%20of%20retirement%20plans) [https://perma.cc/5VG4-VVPW].

292. I.R.C. § 408A(c)(5)(A).

293. *Excess Contribution: Did you over-contribute to your IRA?*, VANGUARD, <https://investor.vanguard.com/investor-resources-education/iras/excess-contribution#:~:text=What%20the%20penalty%20could%20be,until%20you%20correct%20the%20mistake> (last visited Jan. 28, 2023) [https://perma.cc/C7XD-EWQR].

294. *See* MEACHAM, *supra* note 176, § 613.

295. *See* Robin Hartill, *IRA vs. 401(k): What’s the Difference?*, THE BALANCE (Dec. 13, 2022), <https://www.thebalancemoney.com/ira-vs-401k-whats-the-difference-5221705#:~:text=The%20key%20difference%20between%20the,re%20in%20the%20right%20place> [https://perma.cc/H8A8-F5DB].

296. *See id.*

should be increased to “100 percent of the [student-athlete’s] compensation, or \$66,000 for 2023.”²⁹⁷ That way, there is flexibility for the NIL collective in contributing to a student-athlete’s ISARA, and most student-athletes that contribute will benefit, no matter how much they earn from their NIL.²⁹⁸

In the end, “[t]hese matches [can be] made on a percentage basis, such as 25%, 50% or even 100% of the employee’s contribution amount, up to a limit of total employee compensation.”²⁹⁹ Many employers choose not to use matching contributions, because they encourage employees to save for retirement at the employer’s expense.³⁰⁰ While the NIL collective will not be considered the student-athlete’s employer but a custodian, they can utilize matching contributions to incentivize student-athletes to establish an ISARA.³⁰¹ Ultimately, this proposal’s primary goal is to encourage student-athletes to participate in saving for retirement at an earlier age, and it would not matter in this case if it were at the expense of the NIL collective.³⁰²

C. ISARA Termination, Revocation, & Distributions

The remaining key features to assess are ISARA termination, revocation, and the distribution of ISARA funds.³⁰³ Because ISARA is meant to be temporary and only active during a student-athlete collegiate career, it will terminate once they have completed school or declared professional in their sport.³⁰⁴ Generally, student-athletes are given ten semesters, or five years, to complete their academic coursework, on average taking at least twelve credit hours, or four classes per semester.³⁰⁵

Student-athletes who graduate early by bringing in college credits from high school would also be able to terminate their ISARA immediately upon graduation similar to if they declared professionally.³⁰⁶ For example, a student-athlete that plans to declare for the National Football League “must be at least three years removed from high school to enter the draft.”³⁰⁷ This

297. *Operating a 401k Plan*, IRS, <https://www.irs.gov/retirement-plans/operating-a-401k-plan#:~:text=Contribution%20limits&text=100%20percent%20of%20the%20employee's,2020%3B%20%2456%2C000%20for%202019> (last visited Jan. 28, 2023) [<https://perma.cc/5Z74-HQUB>].

298. *See id.*

299. Piburn, *supra* note 240.

300. MEACHAM, *supra* note 176, § 613.

301. *See id.*

302. *See* discussion *supra* Section II.E.

303. *See* MEACHAM, *supra* note 176, § 616.

304. *See* Finn Rice, *How Much Free Time Do College Athletes Have?*, 2ADAYS, <https://www.2adays.com/blog/how-much-free-time-do-college-athletes-have/> (last updated May 13, 2022) [<https://perma.cc/AT56-6TSL>].

305. *Id.*

306. *See id.*

307. Josh Edwards, *What if the NFL Draft had no age limit? 16 players who would have benefited most from NBA-style rules*, CBS SPORTS (Oct. 6, 2022, 11:21 AM), <https://www.cbssports.com/nfl/news/what-if-the-nfl-draft-had-no-age-limit-16-players-who-would-have-benefited-most-from-nba-style-rules/#:~:text=The%20NFL%20has%20established%20a,school%20to%20enter%20the%20draft> [<https://perma.cc/AT56-6TSL>].

means that the student-athlete could declare professionally and terminate their ISARA and distribute its funds only after their junior year of college.³⁰⁸

However, a student-athlete will have the option to revoke their ISARA prior to leaving school but will only have a limited time to revoke and inform the NIL collective shortly after opening the account.³⁰⁹ A right to revoke the ISARA provision will be included in the custodial agreement for the student-athlete to review immediately upon opening the account.³¹⁰ The revocation language in the custodial agreement will read as follows:

You have the right to revoke your [ISARA] within seven days of the receipt of the disclosure statement upon account opening. If revoked, you are entitled to a full return of the contribution you made to your [ISARA]. The amount returned to you [will] not include an adjustment for such items as sales commissions, administrative expenses, or fluctuation in market value. You may make this revocation only by mailing or delivering a written notice to the custodian at the address listed on the application.³¹¹

In general, once student-athletes have met their course credit requirements for graduation, their ISARA will terminate, and the funds will be readily available for distribution in a lumpsum to the student-athlete or another designated beneficiary.³¹² But what amount could a student-athlete receive once their ISARA has been terminated?³¹³ While there is no specific amount that a student-athlete would be guaranteed to receive because of different NIL earnings, it will ultimately come down to how much the student-athlete has contributed to their ISARA.³¹⁴ For comparison, the average retirement account balance in 2021 for individuals under twenty-five was approximately \$6,264, and the median was around \$1,786.³¹⁵ Once funds are distributed for student-athletes leaving school, it will be recommended for student-athletes to rollover their ISARA funds into another retirement account, such as another IRA or an employer-sponsored 401(k), so it may compound more interest and they will not incur withdrawal penalties that the IRS currently has in place.³¹⁶

ma.cc/3N6C-2UYA].

308. *See id.*

309. *Disclosure Statement and Roth Individual Retirement Custodial Account Agreement*, AMERITRADE 1, 1 (2021) https://www.tdameritrade.com/retail-en_us/resources/pdf/AMTD6100.pdf [<https://perma.cc/YB4Z-ZFNM>].

310. *See id.*

311. *Id.*

312. *See Rice, supra* note 304.

313. *See AMERITRADE, supra* note 309, at 7.

314. *See id.*

315. Jeffrey W. Clark, *How America Saves 2022*, VANGUARD 1, 47 (June 2022), https://institutional.vanguard.com/content/dam/inst/vanguard-has/insights-pdfs/22_TL_HAS_FullReport_2022.pdf [<https://perma.cc/AAN4-F6AZ>].

316. *See Rice, supra* note 304.

Distributions from an IRA are generally classified into one of three categories: (1) permissible, (2) required, and (3) early.³¹⁷ Typically, once an IRA owner reaches the age of fifty-nine and one-half, they will be allowed to distribute their funds penalty-free; this is known as a permissible distribution.³¹⁸ Depending on the state that one resides in, the distribution amount would be subject to income taxes “(i.e., the full amount for traditional IRAs and the earnings for Roth IRAs).”³¹⁹

Because most individuals prefer to defer income tax liability on distributions, they ordinarily want to receive as little as possible and wait until they are required to make minimum distributions from their IRA.³²⁰ Once a traditional IRA owner reaches the age of seventy and one-half, they will be required to start taking their distributions.³²¹ On the other hand, Roth IRAs do not have “required minimum distributions,” and individuals may continue to contribute to their Roth IRA even after the age of seventy and one-half.³²²

While some student-athletes may want to leave their ISARA open long enough to allow permissible and required distributions, most student-athletes will want an early distribution plan to get their assets immediately once they leave school.³²³ For this proposal, an early distribution would be the most sensible option for student-athletes contributing to an ISARA.³²⁴

An “early” distribution from an IRA is one taken before the owner of the account attains age [fifty-nine and one-half]. For a traditional IRA (whether funded with deductible or non-deductible contributions) or Roth IRA, these distributions are subject to a [ten] percent penalty (this is in addition to the distribution being subject to income taxes. . .). Distributed funds are first deemed to be distributed from contributions, and then from earnings. In the case of Roth IRAs, the contributed funds are not subject to the [ten] percent penalty, but the earnings are. Congress has imposed this [ten] percent penalty as an incentive to encourage individuals to contribute to, and keep funds in, retirement accounts.³²⁵

While this ten percent penalty is meant to do good and encourage an ordinary IRA owner to leave their funds untouched until they reach retirement age, it may very well disincentivize student-athletes from

317. J. Aaron Nelson Jr. & Elizabeth M. Nelson, *Unlocking IRAs: Planning for Retirement (Yours and Your Clients')*, 28 S.C. LAW. 38, 40 (2016), <https://www.bluetoad.com/publication/index.php?m=18928&i=321579&p=6&ver=html5> [<https://perma.cc/24M8-MGGZ>].

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.*

323. *See id.*

324. *See id.*

325. *Id.*

contributing to their ISARA altogether.³²⁶ Some exceptions to the ten percent penalty may apply, such as rollovers, qualified educational expenses, and a series of substantially equal payments.³²⁷ However, a student-athlete contributing to an ISARA while pursuing an education is unlike ordinary individuals contributing to a traditional or Roth IRA and should fall into the exemption category.³²⁸

An ISARA is an educational tool that is meant to improve a student-athlete's financial literacy and decision-making skills, help them build a fundamental understanding of retirement planning and investing, and encourage early savings for retirement.³²⁹ Furthermore, being involved with ISARA setup and investment decisions will make student-athletes more financially responsible and independent once they leave school.³³⁰ In the end, it would be up to the student-athlete on how their ISARA will be distributed, and not having a ten percent penalty will go a long way in ensuring the NCAA's goals of academic and social development of student-athletes.³³¹

IV. POTENTIAL ISSUES WITH ISARA IMPLEMENTATION

Numerous obstacles will need to be addressed by state legislatures, the NCAA, and Congress before implementing a new retirement plan such as ISARA.³³² This section will briefly discuss three notable obstacles: (1) international student-athletes' income restraints, (2) smaller universities and other collegiate athletic associations' lack of following and NIL support, and (3) tax implications for non-profit NIL collectives.³³³

A. International Student-Athletes

Since this proposal is primarily designed to accommodate all student-athletes within the NCAA, international student-athletes and their ability to be compensated in the United States will need to be considered for ISARA purposes.³³⁴ More than 21,000 student-athletes with visa status,

326. *See id.*

327. *Retirement Topics—Tax on Early Distributions*, IRS, <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-tax-on-early-distributions#:~:text=Generally%2C%20the%20amounts%20an%20individual,tax%20unless%20an%20exception%20applies> (last visited Jan. 28, 2023) [<https://perma.cc/5SYM-V8JS>].

328. *See id.*

329. Author's original thought.

330. *Id.*

331. *See Student-Athlete Well-Being*, NCAA, <https://www.ncaa.org/sports/2014/5/16/student-athlete-well-being.aspx> (last visited Jan. 28, 2023) [<https://perma.cc/2PME-UBXH>].

332. *See discussion infra* Section IV.A.

333. *See discussion infra* Section IV.A.

334. Anayat Durrani, *3 Things International Student-Athletes Should Know*, U.S. NEWS & WORLD REP. (Feb. 15, 2022, 3:51 PM), <https://www.usnews.com/education/best-global-universities/articles/thing-s-international-student-athletes-should-know> [<https://perma.cc/EF7A-3UGY>].

excluding those with an F-1 visa, have no work authorization, meaning they are not lawfully permitted to work while attending school in the United States.³³⁵ As of 2022, international student-athletes made up nearly 12% of all NCAA student-athletes, with well over 3,000 competing at the D-I level alone, mainly participating in non-revenue sports such as tennis, ice hockey, soccer, and golf.³³⁶

Regarding monetary compensation, international student-athletes have been eligible to receive scholarships from their enrolled academic institutions and even other types of financial aid.³³⁷ The NCAA also permits international student-athletes to accept cash prizes and awards from a country's national athletic governing body for international competitions, such as the Olympics and Paralympics, without affecting their NCAA eligibility requirements.³³⁸ Despite that, international student-athletes are at a great disadvantage when earning other monetary compensation, such as NIL benefits, while attending school.³³⁹

In general, international student-athletes have not been able to earn compensation for their NIL, like their American counterparts.³⁴⁰ Many academic institutions are not participating in NIL opportunities due to current federal immigration regulations.³⁴¹ For example, West Virginia University has asked its international athletes to refrain from entering into any NIL agreement or from being compensated for NIL activity entirely.³⁴²

Generally, because visa rules have greatly limited international student-athletes from earning compensation for their NIL, some schools would prefer not to deal with the ramifications of possible visa violations.³⁴³ It is a different story at schools such as the University of Nebraska and the University of Florida where they actively promote NIL opportunities for international student-athletes in their home countries.³⁴⁴ Ultimately, it will be where an international student-athlete attends school that would determine if they have access to an NIL marketplace that will allow them to be compensated.³⁴⁵

335. Dean Golembeski, *Visa Rules Block International College Athletes From Making NIL Money*, BEST COLLEGES (May 18, 2022), <https://www.bestcolleges.com/news/2022/05/18/ncaa-nil-international-college-athletes-student-visas/> [https://perma.cc/8SFR-YKS8].

336. *Id.*

337. Durrani, *supra* note 334.

338. *NCAA Drafting Manual*, *supra* note 33, Bylaw 12.1.2.1.5.2, at 44.

339. *See id.*

340. *See* Durrani, *supra* note 334.

341. Ken Maguire, *'It's all legal': Foreign college athletes cash in at home*, AP NEWS (May 30, 2022), <https://apnews.com/article/college-football-sports-nebraska-cornhuskers-7bfc7f0e983ca10b22e3078ac212bf08> [https://perma.cc/WY46-WUD6].

342. *Id.*

343. *See* Golembeski, *supra* note 335.

344. Maguire, *supra* note 341.

345. *See id.*

Even though the NCAA's NIL Interim Policy does not expressly prohibit international student-athletes from engaging in NIL opportunities or collaborating with NIL collectives, they need to be cautious not to encroach upon their student visas.³⁴⁶ They must strictly limit their NIL deals to passive income that does not qualify as actual work.³⁴⁷ Common NIL opportunities such as "personal appearances, autographs, private coaching or endorsing products could potentially put an international student's visa at risk."³⁴⁸ The only exception for work authorization is that some spouses may be eligible for work authorization if their visa allows it; however, this may not apply to most international student-athletes.³⁴⁹

As it stands now, there is much ambiguity between international student-athletes and NIL.³⁵⁰ However, things may change in favor of international student-athletes wishing to get more involved in earning compensation for their NIL.³⁵¹ In November 2022, a student-athlete named Hansel Emmanuel, a Dominican Republic basketball player, was approved to receive compensation for their NIL, which may have been one of the first petitions of its kind.³⁵² This is important for ISARA because, while many may believe that retirement plans are only available to citizens of the United States, non-citizens who can legally live and work may also open a retirement account.³⁵³ Consequently, this recent development may lead to more international student-athletes being allowed to receive compensation for their NIL and allow them to contribute to an ISARA plan.³⁵⁴

B. Smaller Universities in Other Collegiate Athletic Associations

College sports consist of various lower levels of competition within the NCAA, and each level consists of even smaller sublevels and subdivisions that would need to be considered for ISARA implementation.³⁵⁵ For example,

346. Golembeski, *supra* note 335.

347. *Id.*

348. Durrani, *supra* note 334.

349. See Roy Maurer, *USCIS Makes Work Authorization Easier for Certain Spouses*, SHRM (Nov. 17, 2021), <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/uscis-makes-work-authorization-easier-h4-l2-visa-spouses.aspx> [<https://perma.cc/82W4-X6J8>].

350. See Golembeski, *supra* note 335.

351. See *id.*

352. Amy Maldonado, LINKEDIN (Oct. 2022), <https://www.linkedin.com/feed/update/urn:li:activity:6988936889978294272/> [<https://perma.cc/K7XX-29UU>]; see Wilton Jackson, *Hansel Emmanuel, One-Armed Basketball Player, Announces College Commitment*, SPORTS ILLUSTRATED (July 23, 2022), <https://www.si.com/college/2022/07/24/hansel-emmanuel-one-armed-basketball-player-announces-college-commitment> [<https://perma.cc/A5B9-WW4A>].

353. Valencia Patrice Higuera, *Can Non-U.S. Citizens Have Retirement Accounts (401k or IRAs)?*, MYBANKTRACKER, <https://www.mybanktracker.com/blog/retirement/non-us-citizens-retirement-accounts-401k-iras-286254#:~:text=The%20short%20answer%20is%20%E2%80%9Cyes,traditional%20or%20Roth%20IRA%2C%20too> (last updated Feb. 27, 2023) [<https://perma.cc/8A82-LPUA>].

354. Maldonado, *supra* note 352.

355. *Comparing Competition Levels in College Sports*, FIELDLEVEL, <https://recruiting.fieldlevel.com>

other smaller associations that currently exist include the National Association of Intercollegiate Athletics, with 250 schools and 77,000 student-athletes; the National Junior College Athletic Association, with 525 schools and 27,000 student-athletes; the California Community College Athletic Association with 108 community colleges; and the Northwest Athletic Conference with thirty-six community colleges.³⁵⁶

Even though most NIL opportunities may primarily cater to the NCAA's D-I division, student-athletes at all levels (including NCAA D-II and D-III divisions) of competition can participate in NIL activities and earn compensation.³⁵⁷ In addition, NIL collectives are not expressly exclusive to programs such as at the elite Power Five institutions at the D-I level.³⁵⁸ They may also be established at smaller academic institutions if there is enough of a public following for their student-athletes and athletic department.³⁵⁹ However, because the NIL movement is mainly driven by the public, a primary concern for implementing ISARA at smaller colleges and universities in other athletic associations is that there would not be enough public interest or financial support to maintain a continuous stream of NIL compensation for student-athletes.³⁶⁰

[Because] [t]he reality is that, across sports, small school [student-athletes] get less attention. They have smaller student bodies and, therefore, they have smaller alumni bases. In turn, they have smaller fan bases, with fewer people watching. This makes them less profitable, leaving them on smaller networks if their games are broadcast at all. In a very cyclical way, this keeps new potential fans from watching their games. Instead, big and popular schools are what is shown on major networks, helping to build those already large fanbases. Unfortunately for small school athletes, this means [their] NIL value is going to be lower than the average big school [student-athlete].³⁶¹

Therefore, ISARA would essentially serve no purpose for student-athletes at smaller schools in other athletic associations, as they will either have no money or be unwilling to contribute the little money they do

/2020/03/college-sports-division-levels/ (last visited Dec. 1, 2022) [https://perma.cc/G6KW-SRBH].

356. *Id.*

357. See *NIL is for Everyone—How small college athletes are dipping into the NIL game*, BUS. SMALL COLL. ATHLETICS (June 13, 2022), <https://www.smallcollegeathletics.com/nil-is-for-everyone-how-small-college-athletes-are-dipping-into-the-nil-game> [https://perma.cc/9MF4-YUSN] [hereinafter *NIL is for Everyone*].

358. Dellenger, *supra* note 6 (as of June 2022, the average compensation per D-II was \$204 and \$309 per D-III student-athlete).

359. *Id.*

360. See BUS. SMALL COLL. ATHLETICS, *supra* note 357.

361. Dan Morrison, *How Small School Athletes Can Make Money Through NIL*, ON3 MEDIA (April 25, 2022), <https://www.on3.com/nil/news/how-small-school-athletes-can-make-money-through-nil/> [https://perma.cc/UBH2-2VZU].

have from their NIL.³⁶² One solution to this problem, however, would be to increase sports marketing and fundraising efforts for smaller colleges and universities.³⁶³ Studies have shown that the primary reason that people contribute to NIL collectives in the first place “is because of a compelling story of how that organization changes lives,” which is a main point of discussion amongst most NIL collectives.³⁶⁴

Telling a compelling story is a crucial element for fundraising for NIL collectives and athletic departments at smaller schools in other athletic associations.³⁶⁵ For example, on September 21, 2020, former NFL player Deion Sanders was introduced as the 21st head coach at Jackson State University (JSU), a member of the Southwestern Athletic Association.³⁶⁶ In agreeing to the position, he ultimately brought awareness to historically black colleges and universities (HBCU), which helped bring around \$185 million in advertising value and exposure for JSU within only six months of his head coaching stint.³⁶⁷ Even though Deion Sanders has since departed JSU, the move has had a long lasting impact and has brought much-needed public exposure for NIL opportunities to JSU, their athletic department, the conference, and HCBUs as a whole.³⁶⁸

While it will be more challenging for smaller school student-athletes to take advantage of NIL opportunities compared to other student-athletes at bigger colleges or universities, it is by no means impossible.³⁶⁹ There are various ways that smaller school student-athletes can be involved in NIL activities and earn compensation, such as through social media, a Cinderella run with their team, personal connections, and simply playing well.³⁷⁰ While this disparity of NIL support for smaller colleges and universities within other collegiate associations is an area of concern for ISARA purposes, there are other problems such as non-profit NIL collectives facing tax implications from the IRS and state legislatures, ultimately impacting all ISARA users and contributors.³⁷¹

362. See BUS. SMALL COLL. ATHLETICS, *supra* note 357.

363. See *Sports marketing for NCAA athletes is Fair Game. Here's What Brands Need to Know Now*, MIKEWORLDWIDE, <https://www.mwww.com/views/nil-sports-marketing-for-ncaa-athletes/> (last visited Jan. 28, 2023) [<https://perma.cc/W2KK-KF2X>].

364. Amanda Christovich, *Storytelling Is the Heart of Fundraising*, FRONT OFF. SPORTS (June 30, 2021), <https://frontofficesports.com/newsletter/fos-college-small-schools-nil-reality/> [<https://perma.cc/6QZD-7ZLV>].

365. *Id.*

366. Deion Sanders, JACKSON STATE UNIV., <https://gojsutigers.com/sports/football/roster/coaches/deion-sanders/219#:~:text=Sanders%2C%20named%20as%20the%2021,coach%20on%20February%2021%2C%202021> (last visited Jan. 28, 2023) [<https://perma.cc/JA2M-9RK7>].

367. Shanique Yates, *Deion Sanders Helped Bring Around \$185M In Advertising Value And Exposure Within About Six Months Of Becoming Coach*, AFROTECH (Dec. 20, 2022), <https://afrotech.com/deion-sanders-brought-185m-in-advertising-value-to-jsu> [<https://perma.cc/DD88-KMUB>].

368. JACKSON STATE UNIV., *supra* note 366.

369. Morrison, *supra* note 361.

370. *Id.*

371. See discussion *infra* Section IV.C.

C. Tax Implications for Non-profit NIL Collectives

As NIL collectives have rapidly increased in numbers across the nation, concerns have arisen about how they will be treated under the IRC.³⁷² As previously mentioned, NIL collectives are categorized as either for-profit or non-profit entities; the main factor distinguishing the two is that non-profit collectives are supposed to be organized and operated for exempt purposes.³⁷³ As provided in IRC 501(c)(3), an exempted purpose can be “charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and [for] preventing cruelty to children or animals.”³⁷⁴ Organizations recognized as 501(c)(3) tax-exempt may include hospitals, churches, educational institutions, and other public charities.³⁷⁵

When it comes to ISARA-backed NIL collectives, because they will not be mandatory for all student-athletes, they will face continuous competition during the beginning of ISARA implementation from other collective types.³⁷⁶ In keeping pace with these other NIL collectives, operating as a non-profit would be an incentivizing option.³⁷⁷ In theory, individuals, organizations, and collectives that contribute for NIL purposes would be able to write off contributions from their taxes, which could ultimately lead to more ISARA contributions and more compensation for student-athletes.³⁷⁸

In seeking 501(c)(3) exemption status, an NIL collective may generally seek qualification under three rationales.³⁷⁹ First, collectives may be exempt as an “amateur athletic” organization if it fosters amateur sports competition on the national or international level.³⁸⁰ Second, a collective may be exempt by being classified as “charitable” because it is combating major social issues such as juvenile delinquency or by lessening the burden of the government.³⁸¹

372. Sanders et al., *supra* note 92.

373. *Id.*; Gina M. Lavarda, *Nonprofits: Are You at Risk of Losing Your Tax-Exempt Status?*, 94 IOWA L. REV. 1473, 1478 (2009).

374. *Exempt Purposes—Internal Revenue Code Section 501(c)(3)*, IRS, <https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3#:~:text=The%20exempt%20purposes%20set%20forth,cruelty%20to%20children%20or%20animals> (last visited Nov. 28, 2022) [<https://perma.cc/7KNX-ZWVE>].

375. *How to lose your 501(c)(3) tax-exempt status (without really trying)*, IRS, <https://www.irs.gov/pub/irs-tege/How%20to%20Lose%20Your%20Tax%20Exempt%20Status.pdf> (last visited Jan. 28, 2023) [<https://perma.cc/WS9Y-K24R>].

376. See Gregg E. Clifton & David Kern, *United States: New Federal Legislation Aims To Eliminate Tax Write-Offs For Contributions To NIL Collectives*, MONDAQ (Oct. 3, 2022), <https://www.mondaq.com/unitedstates/sport/1236200/new-federal-legislation-aims-to-eliminate-tax-write-offs-for-contributions-to-nil-collectives> [<https://perma.cc/E95K-PPN5>].

377. *See id.*

378. *See id.*

379. *Amateur Athletic Organizations*, IRS, <https://www.irs.gov/pub/irs-tege/eotopice87.pdf> (last visited Jan. 28, 2023) [<https://perma.cc/C94R-BDDZ>].

380. *Id.*

381. *Id.*

Lastly, a collective may be exempt if it is “educational” because it teaches the principles of sports to the youth or has another affiliation with an exempt educational institution.³⁸² Even though ISARA could possibly be classified as exempt under a category such as the “educational” exemption for improving student-athlete’s financial literacy, non-profit NIL collectives come with their uncertainties.³⁸³

Although the IRS has considered non-profit NIL collectives exempt in the past, it does not answer whether collectives will survive a future IRS audit.³⁸⁴ Generally, no part of a 501(c)(3) organization’s income is supposed to accrue for the benefit of private shareholders or individuals.³⁸⁵ As a result, the IRS could revoke a collective’s tax-exempt status if it ultimately concludes that they are operating to serve or benefit private individuals, such as student-athletes.³⁸⁶ Furthermore, proposed legislation such as the Athlete Opportunity and Taxpayer Integrity Act, introduced by Senator John Thune, seeks to prohibit organizations, such as NIL collectives, from using charitable tax deductions for contributions that benefit student-athletes.³⁸⁷

‘College athletes have the ability to benefit from opportunities related to their own [NIL], but outside organizations and collectives should not be able to write contributions off their taxes that are used to compensate athletes’, Thune said in a statement. ‘This . . . legislation would prohibit these entities from . . . using NIL agreements to reduce their own tax obligations’.³⁸⁸

Therefore, to avoid any future consequences that may arise with non-profit NIL collectives, ISARA could also potentially function under a for-profit scheme because of its transparent goal of improving student-athlete financial literacy while teaching student-athletes about the essentials of retirement planning.³⁸⁹ In addition, this would allow for more flexibility for ISARA-backed collectives to pool funds from a wide band of donors without the burden of trying to maintain tax exemption status.³⁹⁰ Overall, ISARA would be able to be implemented as either a non-profit or for-profit

382. *Id.*

383. *See id.*

384. Sanders et al., *supra* note 92.

385. Mollie Cullinane, *Nonprofit Q&A: What are the benefits of having 501(c)(3) tax-exempt status?*, CULLINANE L. GRP. (Apr. 30, 2013), <https://cullinanelaw.com/benefits-of-having-501c3-tax-exempt-status/#:~:text=%231%20Private%20benefit&text=Inurement%3A%20No%20part%20of%20an,prohibition%20of%20inurement%20is%20absolute> [https://perma.cc/586M-NFM6].

386. *Id.*

387. Clifton & Kern, *supra* note 376.

388. Tim Shaw, *The Long Read: Tax Implications of College Collectives, NIL Deals*, THOMSON REUTERS (Oct. 6, 2022), <https://tax.thomsonreuters.com/news/the-long-read-tax-implications-of-college-collectives-nil-deals/> [https://perma.cc/P8E3-7A26].

389. Clifton & Kern, *supra* note 376.

390. *See id.*

organization and maintain its goal of helping student-athletes with their financial literacy and retirement planning while they are enrolled in school.³⁹¹

V. PROPOSED STATUTORY LANGUAGE

I.R.C. § 408B – Individual Student-Athlete Retirement Account:

(a) General Rule

Except as provided in this section, [an ISARA] shall be treated for purposes of this title in the same manner as an individual retirement plan.³⁹²

(b) ISARA

For the purposes of this title—

(1) The term [“ISARA”] means an individual retirement plan. . .which is designated. . .at the time of establishment of the plan as a [traditional or] Roth IRA.³⁹³

(c) Definitions

For the purposes of this title—

(1) The term [“student-athlete”] means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.³⁹⁴

(2) The term “self-employed individual” means, with respect to any taxable year, an individual who has earned income. . .for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year—

(i) an individual who would be a self-employed individual within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.³⁹⁵

(3) The term “earned [NIL] income” means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

391. *See id.*

392. I.R.C. § 408A(a); author’s proposed legislation.

393. I.R.C. § 408A(b); author’s proposed legislation.

394. *Student athlete definition*, L. INSIDER, <https://www.lawinsider.com/dictionary/student-athlete> (last visited Jan. 28, 2023) [<https://perma.cc/Y33C-KRMR>].

395. I.R.C. § 401(c)(1)(B); author’s proposed legislation.

- (i) only with respect to compensation from the use of the student athlete's own name, image, or likeness to the extent allowed by the rules established by the relevant national association for promoting or regulating collegiate athletics.³⁹⁶

(d) Treatment of Contributions

(1) Regular contributions

For the purposes of this subsection—

- (A) The recommended savings amount for student-athletes into their ISARA will be at least 6% of their annual earned NIL income.³⁹⁷

(2) Rollover contributions

For the purposes of this subsection—

- (A) Student-athletes will be exempted from the 10% early withdrawal penalty.³⁹⁸
- (B) A student-athlete that exceeds the maximum income limit for a given year for IRA contributions will utilize a sixty-day rollover.³⁹⁹
- (C) A student-athlete that has a preexisting retirement plan outside of ISARA may utilize a transfer or direct rollover.⁴⁰⁰

(3) Matching contributions

For the purposes of this subsection—

- (A) An organization that establishes a student-athlete's ISARA may contribute by:
 - (i) Full matching up to 6% of the student-athlete's annual NIL income; or
 - (ii) Partial matching up to 6% of the student-athlete's annual NIL income.⁴⁰¹

(e) Distribution Rules

For purposes of this title—

(1) Qualified distribution

For the purposes of this subsection—

(A) In general

The term “qualified distribution” means any payment or distribution—

- (i) Made on or after the date on which the student-athlete graduates or drops out from college or university, or

396. See I.R.C. §§ 401(c)(2), 1402(a); ARIZ. REV. STAT. ANN. § 15-1892(A) (2021); Author's proposed legislation.

397. See Piburn, *supra* note 240; author's proposed legislation.

398. See Ruiz, *supra* note 233 and accompanying text; author's proposed legislation.

399. See Ruiz, *supra* note 233 and accompanying text; author's proposed legislation.

400. See Ruiz, *supra* note 233 and accompanying text; author's proposed legislation.

401. See discussion *supra* pp. 26–28.

- (ii) Made on or after the date on which the student-athlete declared professionally in their respective sport.⁴⁰²
- (2) The conversion of an individual retirement plan (other than a Roth IRA) to a [ISARA] shall be treated for purposes of this paragraph as a distribution to which this paragraph applies.⁴⁰³

VI. CONCLUSION

There has been a lack of meaningful guidance and leadership in intercollegiate sports regarding NIL and student-athlete compensation from the NCAA, state legislatures, and Congress.⁴⁰⁴ Despite numerous attempts to establish uniform legislation concerning NIL, no proposal has yet passed the goal line.⁴⁰⁵ As it is unclear what the future holds in intercollegiate sports, student-athletes must prioritize their futures now more than ever.⁴⁰⁶ Given that most student-athletes will not become professionals, it is inevitable that, at some point, a student-athlete will leave their competitive sport behind and need to start thinking of a future without sports.⁴⁰⁷ For some student-athletes, preparing for the future will mean preparing for graduation.⁴⁰⁸ For others, it will mean preparing for an emergency or for retirement.⁴⁰⁹ No matter what the future holds for student-athletes, they will need guidance along the way and the earlier they get it the better.⁴¹⁰

Implementing ISARA would provide student-athletes with the much-needed platform and resources to improve their financial literacy and increase their overall NIL capital.⁴¹¹ An early comprehensive retirement plan such as ISARA will also ensure that student-athletes are on the right path to having enough money to enjoy a comfortable retirement standard, which is a common problem amongst retirees in the United States.⁴¹² While the agreement granting custodial responsibility to the NIL collective for ISARA is only designed to last for the period the student-athlete is enrolled in school,

402. See ARIZ. REV. STAT. ANN. § 15-1892(D)(2) (2021); author's proposed legislation.

403. I.R.C. § 408A(d)(3)(C).

404. Ralph D. Russo, *Senators Tuberville, Manchin Working on Bill to Tackle NIL in College Football*, ALA. NEWS (Aug. 3, 2022, 7:09 PM), <https://www.alabamaneews.net/2022/08/03/senators-tuberville-manchin-working-on-bill-to-tackle-nil-in-college-football/#:~:text=%E2%80%9CThe%20lack%20of%20meaningful%20leadership,Southeastern%20Conference%20Commissioner%20Greg%20Sankey> [https://perma.cc/RH3E-QP3A].

405. Shaw, *supra* note 388.

406. *Preparing for the Future*, DUPACO, <https://www.dupaco.com/discover/wellbeing/preparing-for-the-future/> (last visited Jan. 28, 2023) [https://perma.cc/X8LZ-K77B].

407. See *id.*

408. See *id.*

409. See *id.*

410. See *id.*

411. Author's original thought.

412. See Suknunan, *supra* note 5.

the student-athlete will still be allowed to roll over their ISARA into another retirement plan, either another IRA or an employer-sponsored plan such as a 401(k).⁴¹³ The goal is for the student-athlete to continue making contributions long after school is over and without the assistance of the NIL collective.⁴¹⁴ It is also important to note that a retirement account such as a Roth IRA grows through compounding, even if one does not contribute.⁴¹⁵ It is of the utmost importance for first-time student-athletes stepping onto the field, court, or diamond to consider their life after sports because they do not know what tomorrow will bring.⁴¹⁶

413. See Parsons, *supra* note 167, at 46–47.

414. See *id.*

415. Boyte-White, *supra* note 220.

416. See *id.*