

Full Court Press: New Executive Order Targets College Athletics Spending on Multiple Fronts

Client Alerts

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On April 3, the President issued a new executive order about college sports, Urgent National Action to Save College Sports (“College Sports EO,” “the Order,” or “EO”) (Apr. 3, 2026), and an accompanying Fact Sheet.

In short, the central provision of the Order instructs the NCAA to adopt greater restrictions on student-athlete eligibility, transfers between institutions, revenue sharing between institutions of higher education (IHEs) and student-athletes, and other financial activities related to college sports, then calls for federal agencies to enforce the resulting NCAA rules through potential suspensions or terminations of federal contracts and grants. The Order applies only to institutions of higher education that have generated \$20 million or more in revenue from intercollegiate athletics the preceding school year.

In addition, the Order calls on Congress to enact legislation on these issues and directs various federal agencies to take specific actions—including issuing guidance for the implementation of the Order, proposing rulemakings for the collection of related data, and enforcing the policy of the Order through enforcement of existing antitrust laws and lawsuits challenging conflicting state laws as preempted.

This is the administration’s second executive order concerning college sports. An earlier Order, Saving College Sports (July 24, 2025), identified similar policy objectives and directed the DOJ, FTC, and ED to take various actions, including to consider enforcing that Order through “Federal funding decisions.”

Summary of Executive Order

The Order presents itself as “a national solution” to the “out-of-control financial arms race in . . . sports that is driving universities into debt, threatening to siphon resources from other sports, and damaging student-athletes’ educational and graduation opportunities,” a situation it blames on the combination of pressure to excel in football and basketball and the loosening of NCAA rules around recruitment and payment of student-athletes. The Order claims that without such a solution,

universities may decide to curtail women's and Olympic sports and/or these pressures might jeopardize IHEs' financial wellbeing, which could in turn affect government-funded research.

The Order States That the NCAA “Should . . . Update or Clarify” Its Rules Before August 1, 2026 to Include:

- Age-based eligibility limits:
 - Limiting eligibility to five years, with limited exceptions.
 - Prohibiting professional athletes from returning to collegiate sports.
- Transfer-related rules that:
 - Permit one transfer during the five-year period with immediate eligibility, and one additional transfer if the student obtains a four-year degree.
 - Prioritize the academic development, graduation, and long-term well-being of student-athletes.
 - Ensure the transfer window does not incentivize interference with athletic seasons or the academic year.
- Requirements for medical care for athletics-related injuries, including for a reasonable time after enrollment.
- Restrictions on revenue sharing between universities and student-athletes such that the revenue sharing preserves or expands—and does not reduce—scholarship and athletic opportunities for women's and Olympic sports.
- Prohibition on the use of federal funds for NIL payments, revenue-sharing payments, or coaching or athletic compensation.
- Prohibition on improper financial activities, “including collectives or other entities or methods used to facilitate third-party, pay-for-play payments.”
- Establishment of a national student-athlete agency registry and providing reasonable protections for student-athletes from excessive agent commissions.

The Order Then Requires:

- Heads of grantmaking agencies to evaluate perceived violations by IHEs of the new NCAA rules, and “permissible and improper financial activities,” in order “to determine whether [the violations] are a cause so serious or compelling in nature to affect the present responsibility of the recipient” of the contracts and grants;

- The Office of Management and Budget (OMB) to issue agency guidance regarding compliance with the Order and suspension and debarment for non-compliance;
- The General Services Administration (GSA) to propose a system for regular collection of information from institutions to evaluate compliance;
- The Department of Education (ED) to consider requiring regular reporting by institutions of the total number of roster spots per varsity team and the total amount of money spent on athletically related student aid or payments for men's and women's teams, among other information;
- The Federal Trade Commission (FTC) to enforce existing laws related to the student-athlete/agent relationship, including Section 5 of the FTC Act and the Sports Agent Responsibility and Trust Act; and
- The Department of Justice (DOJ) to take action to invalidate state laws that conflict with NCAA rules, to the extent that they either violate the Dormant Commerce Clause, impair a contractual relationship in violation of Article I, Section 10 of the Constitution, or violate any other federal law.

Timing of Implementation

The EO does not go into effect immediately. Section 2 of the EO states that the Order's effective date is August 1, 2026, and exhorts the NCAA to update its rules before that date. Because much of the remainder of the Order requires federal agencies to determine whether IHEs are in compliance with those as-yet-unissued rules, the Order does not seem to contemplate any implementation of its directives against IHEs before the NCAA issues new or updated rules and does not directly require IHEs to take any action at this time.

At the same time, because the Order directs federal agencies to "immediately begin work to ensure that appropriate regulatory or policymaking measures will be in place by the effective date," agencies could well begin taking the actions that don't rely on the new NCAA rules before August 1.

All Eyes on the NCAA

Any new NCAA rules would likely face immediate antitrust challenges. The Supreme Court opened the door to these types of challenges in *Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69 (2021), when it ruled that the NCAA's limits on education-related benefits for student-athletes violate the Sherman Act. *Id.* at 107. While the majority's holding was limited to education-related benefits, Justice Kavanaugh suggested that many other restrictions on student-athletes' compensation would not pass antitrust muster. *Id.* at 109 (Kavanaugh, J., concurring). Since then, the NCAA has changed many of its rules, and student-athletes have brought dozens of suits against current and previous restrictions on name, image, and likeness (NIL) licensing; transferring between schools; and

eligibility for participation in NCAA sports. The rule changes contemplated by this EO would almost certainly face an antitrust challenge—particularly because a number of plaintiffs have already challenged, with some success, some of the same requirements (including rules related to transfer eligibility, revenue sharing and payment for NIL use, and the five-year eligibility rule).

The President of the NCAA has called the Order “a significant step forward,” while also calling for “a permanent, bipartisan federal legislative solution.” But the NCAA has not yet announced how it will respond to the Order. Many of the rule changes are consistent with positions taken by the NCAA in defending its rules against antitrust actions in the aftermath of *Alston*, and the Order is careful to state that the NCAA (which it does not identify by name) “should” change its rules “in its discretion” and “as appropriate,” and “to the extent permitted by law and applicable court orders.” See College Sports EO § 4(b). Given how intertwined the enforcement mechanisms are with the rule changes, if the NCAA does not make these changes, that would complicate implementation and enforcement of the remainder of the Order.

Federal Funding as an Enforcement Mechanism

The Order gestures at consequences for universities’ federal funding, but it remains to be seen how the consequences threatened by the EO will be implemented by future guidance.

Title IX: The EO warns that, given the state of NIL-fueled competition for student-athletes, the largest college football programs in the country may be forced to seek stability through “a negotiated solution that may result in the withdrawal of financial and other resources from women’s and Olympic sports.” EO § 1. Its central provision is also framed as “Protecting Women’s . . . Sports.” *Id.* § 4. But Title IX already erects a barrier to the substantial withdrawal of funding from women’s athletics programs to support men’s athletics. See 37 C.F.R. § 106.41(c) (providing that ED “may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex”). Moreover, the EO does little work to connect its specific requirements to its concern that when universities spend more on student-athletes overall, they may underfund women’s athletics. And the Order does not – unlike other recent executive orders – directly name Title IX. So it is still unclear how and to what extent the enforcement mechanisms of Title IX, which permit the suspension and withdrawal of federal funding for failure to comply with the statute and its implementing regulations, will be used to implement this Order.

Title IV: Section 1 of the EO states that recent events around college athletics “may . . . jeopardize the overall financial well-being of universities with which the Federal Government has important financial relationships.” And the title of Section 4 mentions “Higher Education Financial Responsibility,” in what seems to be a direct reference to Title IV and its implementing regulations, which require institutions to demonstrate that they are financially responsible in order to be eligible for participation in federal student aid programs. See 34 C.F.R. § 668.171. (Public institutions are exempt from this requirement.) ED calculates Financial Responsibility Composite Scores (FRCS) for private nonprofit and for-profit institutions, and only those that score within the “financially

responsible” range can access federal funds without additional oversight. ED may “fine the institution, or limit, suspend, or terminate the institution’s participation in the title IV” program if it deems the institution not financially responsible. 34 C.F.R. § 668.171(i). The EO seems to suggest that institutions’ access to federal student aid—or their ability to avoid additional oversight under Title IV—could be jeopardized by financial instability caused by excessive spending on student-athletes. But here, too, agency guidance is required to determine when and how noncompliance might impact eligibility for Title IV funding.

FAR/Non-Procurement Regulation: The language in Section 4 of the Order that directs agencies to determine whether an institution’s noncompliance with NCAA rules is “so serious or compelling in nature to affect the present responsibility of the recipient” is a reference to the catch-all debarment provisions of the FAR and the corollary non-procurement regulation, which permit suspension or debarment of recipients of federal contracts or grants, *see* FAR § 9.406-2(c); 2 CFR § 180.800(d). But although debarment may not be used “for purposes of punishment,” *see* FAR § 9.402(b); 2 C.F.R. § 180.125(c), government agencies may attempt to argue that noncompliance with the Order constitutes a failure to follow government rules and policies that “establishes a lack of trustworthiness [in the recipient] . . . so serious and compelling in nature that it demonstrates a lack of present responsibility to be a steward of federal funds.” *Frech v. U.S. Dep’t of Health & Hum. Servs.*, No. 23-CV-2530, 2025 WL 3563196, at *8 (D.D.C. Dec. 12, 2025). Suspension or debarment is a serious sanction, and one that seems at least at first blush to be a mismatch with noncompliance with the rules of the NCAA. But because there is little legal authority that cabins the scope of those catch-all provisions, it is difficult to assess at this stage when and how the government may pursue debarment proceedings pursuant to this Order.

Next Steps for Universities

1. Monitor Developments: At this time, given that any funding-related enforcement action against IHEs will trail the anticipated NCAA changes to its rules on or before August 1, we suggest monitoring:

- how the NCAA and other intercollegiate athletic governing bodies respond to the EO;
- any guidance or notices of proposed rulemaking issued by OMB, GSA, or ED; and
- any federal challenges brought by DOJ to conflicting state laws or increased enforcement activity by the FTC against agents of student-athletes.

These actions should provide insight into whether and how the NCAA and federal agencies intend to carry out the Order, and how vigorously the administration will pursue its agenda with respect to college sports.

2. Review Existing Policies: Institutions may wish to review their current athletics policies, including how NIL values are calculated and how institutions handle eligibility requirements,

transfers to other institutions, revenue sharing, and other issues likely to be affected by changes in NCAA rules as contemplated by this Order.

3. Review Debarment Procedures: Given that it is unusual for the government to threaten debarment of IHEs, institutions may wish to familiarize themselves with debarment procedures, and should respond expeditiously to any show cause notice that might issue in connection with this Order.

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