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SUBJECT: Treatment of name, image, and likeness compensation in awarding Title IV, HEA assistance
SUMMARY: In response to a recent Supreme Court decision, the National Collegiate Athletic Association (NCAA) announced an interim policy that allows student athletes to receive remuneration for the use of their name, image, and likeness (NIL). The new policy took effect on July 1, 2021. This letter provides guidance to financial aid administrators on making awards of Title IV assistance to student athletes who have received compensation under NIL contracts.

⚠ Important

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Dear Colleague:

In response to the U.S. Supreme Court’s ruling in National Collegiate Athletic Association (NCAA) v. Alston et al., the NCAA announced an interim policy that allows student athletes to receive remuneration for the use of their name, image, and likeness. The new policy took effect on July 1, 2021. In light of these changes, some current and prospective student athletes may now receive compensation under name, image, and likeness (NIL) contracts with third-party entities. Companies that sign college athletes to NIL deals will likely classify those athletes as independent contractors, and this will have various tax implications for the athletes who enter into such contracts.

Generally, student athletes who receive compensation from organizations under an NIL contract will be issued Form 1099s for any amount totaling $600 or more. Such compensation might include monetary payments, such as stipends, appearance fees, and/or payments for services such as conducting summer camps. An NIL contract may also include in-kind compensation, such as clothing or a vehicle. Such in-kind compensation is not separately reported on the Free Application for Federal Student Aid (FAFSA) and, because the provision of merchandise is part of endorsement contracts, student athletes will receive 1099s for these benefits as well.

Treatment of NIL Compensation as Taxable Income

Of foremost importance for the purpose of awarding Title IV assistance is the treatment of such compensation by the IRS as taxable income. As such, NIL compensation noted on a 1099 should be reflected in the student's adjusted gross income (AGI) for the applicable base year (prior-prior year) as reported on the FAFSA. For example, compensation received by a student athlete under a NIL contract that is reported on that student’s 2021 tax return will eventually be reflected in the AGI reported on the 2023-2024 FAFSA. This delay in the consideration of a student’s recent income in the calculation of a student’s financial need is normal and expected given the use of prior-prior year tax and income information in the current expected family contribution (EFC) formula.

In addition, under the current EFC formula a dependent student qualifies for an Automatic Zero EFC if the parents’ combined AGI (for tax filers) or income earned from work (for non-filers) was $27,000 or less, and either (1) the parents did not file Schedule 1 with their IRS Form 1040, (2) one of them is a dislocated worker as defined in the Workforce Innovation and Opportunity Act, or (3) anyone counted in their household size received a means-tested federal benefit during 2019 or 2020. Because the primary qualifying factor for a dependent student Automatic Zero EFC is based solely on parental income, it is possible for a student with substantial earnings under an NIL contract, which has been correctly included in the student’s AGI reported on the FAFSA, to nevertheless have a 0 EFC. We note that this situation may also occur with sources of dependent student income other than from NIL contracts.

NIL Compensation Is Not Estimated Financial Assistance (EFA)
Department policy regarding the determination of estimated financial assistance (EFA) remains unchanged. When a student receives a resource because of postsecondary enrollment, it generally counts as EFA only if it is not considered wages according to federal or state rules, or if it is considered wages that are derived from employment that is based on financial need. If the award is considered wages and is not based on need, then it is not EFA and is instead considered income to be reported on the FAFSA in the applicable base year, as explained above. Unless specifically excluded by statute, a given resource factors into the determination of either EFC or EFA but not both. Therefore, as with other non-need-based sources of income, compensation received under NIL contracts is not considered EFA.

It is important to understand the distinction between such compensation and other resources that may be provided to student athletes. In accordance with longstanding guidance, resources that a student receives because of postsecondary enrollment and that are not considered wages for non-need-based employment must be counted as EFA. For example, athletically related scholarships, academic or graduation incentive awards, as well as complimentary room and board given to athletes must be counted as EFA in packaging a student for Title IV assistance.

Additional guidance regarding EFA, including examples of resources counted or not counted as EFA, is available in Volume 3, Chapter 7 of the FSA Handbook.

Conflicting Information

Institutions are required under 34 CFR § 668.16(f) to have an adequate internal system to identify conflicting information that would affect a student’s eligibility for Title IV assistance, regardless of the source and regardless of whether the student is selected for verification. As is the case with any other source of income, if an institution is reasonably informed that a student received compensation under an NIL contract but does not see it reported as part of the student’s AGI for the applicable base year, under 668.54(a)(2) it must resolve that conflicting information.

Because of its association with student athletes, many of whom are public figures, institutions may be more generally aware of the existence of NIL compensation than they would be of other more common sources of income. Although the NCAA interim policy does not include a broad requirement for students to report NIL activities to an institution, some states require that entities executing NIL contracts with student athletes report the value of those contracts to an athlete’s institution. Where any office at an institution has been provided with such documentation, we consider that the institution’s financial aid office is equally informed. We do not, however, expect institutions to search actively for the existence of NIL contracts that were not reported to the institution or to use anecdotal evidence and/or hearsay to establish the existence of this type of income.

Further questions about NIL compensation or EFA matters should be referred to the Department using the Contact Customer Support form in FSA’s Partner Connect Help Center. To submit a question, please enter your name, email address, topic, and question. When submitting a question related to this Dear Colleague Letter, please select the topic “FSA Ask-A-FED/Policy.”

Thank you for your continued support of the Title IV federal student aid programs.

Annmarie Weisman
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for Policy, Planning, and Innovation