

5/1/23

UNIVERSITY AT BUFFALO NIL POLICY

INTRODUCTION: EFFECTIVE JULY 1, 2021, UNIVERSITY AT BUFFALO STUDENT-ATHLETES MAY RECEIVE COMPENSATION FROM THIRD PARTIES (BUT NOT FROM THE UNIVERSITY) FOR USE OF THEIR NAME, IMAGE AND LIKENESS (“NIL”) IN ENDORSEMENTS OR BUSINESS ACTIVITIES AND SERVICES.

1. SCOPE AND DEFINITIONS

An “NIL Activity” is any business activity in which a student-athlete is compensated in any way for using a student-athlete’s name, image, or likeness.

- I. **Name, Image and Likeness:** Terminology frequently used to describe a concept known as “right of publicity.” Right of publicity involves situations where permission is required of a person to use their name, image (e.g., a picture or video) or likeness (e.g., a cartoon, avatar or sculpture); the requirement of permission also means that the person whose NIL is being used may require compensation from a third party in return for use of one’s NIL.
- II. **NIL Activity:** An NIL Activity is any activity in which a prospective student-athlete or student-athletes’ NIL or personal appearance is used for promotional purposes by a non-university entity¹, including for use by the individual prospective student-athlete or student-athlete, a commercial/for profit entity, or a non-university nonprofit or charitable entity, regardless of whether such use is compensated or uncompensated.

¹ 2.5.1.1 Institutional, Charitable, Educational or Nonprofit Promotions. An institution or recognized entity thereof (e.g., fraternity, sorority or student government organization), a conference or a noninstitutional charitable, educational or nonprofit agency may use a student-athlete's name, picture or appearance to support its charitable or educational activities or to support activities considered incidental to the student-athlete's participation in intercollegiate athletics, provided the following conditions are met: (Revised: 1/11/89, 1/10/91, 1/10/92, 1/16/93, 1/9/96, 11/12/97, 4/26/01, 4/28/05, 4/27/06 effective 8/1/06, 5/6/08, 4/28/16 effective 8/1/16)

- III. **Endorsement:** An act, either expressed or implied, that indicates one's public approval or promotion of a product or service.
- IV. **Compensation:** Remuneration or payment in any form received for work or services actually performed, including cash, credit, goods, cryptocurrency, product, other forms of payment or other benefit.
- V. **Pay for Play:** Compensation provided to a student-athlete in any form for performance in a sport in which the student-athlete participates at an NCAA Division I institution.
- VI. **Professional Service Provider:** Individuals or companies who provide any of the following professional services to student-athletes: (a) advice regarding NIL activities, (b) representation in contract negotiations related to NIL activities, (c) tax advice related to NIL Activities, and (d) marketing or representation of the student-athlete's NIL. Per NCAA rules students may engage with someone to assist them in NIL marketing but that does not mean that they can utilize the services except for specifically allowed for in NCAA rules.
- VII. **Agent:** Any individual who, directly or indirectly: (a) represents or attempts to represent an individual for the purpose of marketing his or her athletics ability or reputation for financial gain as a professional athlete; or (b) seeks to obtain any type of financial gain or benefit from securing a prospective student-athlete's enrollment at an educational institution or from a student-athlete's potential earnings as a professional athlete. Athlete agents are governed under State law and must be registered in the State of New York.
- VIII. **Prospective Student-Athlete:** A prospective student-athlete is a student who has started classes for the ninth grade.

2. PERMISSIBLE NIL ACTIVITIES

Student-athletes may be compensated for NIL activities so long as those activities are permissible under NCAA, MAC, and UB policies and regulations and comply with New York Law.

- I. **Compensation for services:** A student-athlete may receive compensation from a third party (but not from the student-athlete's university) for NIL Activity as long as such compensation is provided in exchange for services, activities, intellectual property, appearances, or other items of value actually provided by the student-athlete and is NOT provided in exchange for athletic performance. Compensation that does not meet this requirement, or is provided in exchange for athletic performance, could be deemed "pay for play" and may lead to a determination of ineligibility to participate in college athletics.

- II. **Disclosure:** Student-athletes must disclose any NIL Activity² opportunities to University at Buffalo Compliance Office³ through INFLCR that will result in compensation (5) business days prior to signing their contract or engaging in the activity or entering into an agreement for future compensation, whichever occurs earlier. Absent disclosure, University at Buffalo is unable to advise a student-athlete with potential eligibility implications that may result from violation of current or future NCAA rules, state or federal law. Please contact the Office of Athletics Compliance at ath-compliance@buffalo.edu.⁴ University at Buffalo will maintain all documentation related to a student-athlete's NIL transactions for a period of seven (7) years.

3. STUDENT-ATHLETE DISCLOSURE OF NIL ACTIVITIES

Student-athlete must disclose details of any NIL activity ⁵within 5 business days of the agreement (prior to signing their contract) to the Compliance Office for review. Compliance will respond within 5 business days indicating:

- i. Approval;
- ii. Requiring certain revisions prior to approval or;
- iii. Rejection
 - 1. *Rejection will occur on the grounds listed in "Restrictions On Types Of Business Activities." The approval shall remain in effect throughout the contracts original term, any subsequent renewals or assignments must be submitted for approval. Renewals are not perpetually final and are subject to annual review at which time all aspects of a student-athletes academic, and personal status will be reviewed and approved by Compliance within 5 business days on INFLCR.*

4. NO IMPERMISSIBLE RECRUITMENT OR BENEFITS THROUGH NIL ACTIVITIES

² NIL Activity, meaning an exchange of value whether it be a product or promotion or monetary value.

³ In the future, if we do get use of the logo then we would require a different process where approval would go through Procurement Office and someone on campus.

⁴ In the future Compliance may want to set up a dedicated email for all NIL activities.

⁵ An "NIL Activity" is any business activity in which a student-athlete is compensated in any way for using a student-athlete's name, image, or likeness.

UB and its representatives are prohibited from utilizing NIL activities to recruit potential student-athletes to UB or compensate UB student-athletes for their athletic performance. This means:

- Compensation for NIL activities must align with the current market rate for comparable services.
- UB personnel are not allowed to assist student-athletes in developing, operating, or promoting their NIL activities.
- Student-athletes may be granted access to UB resources and facilities for their NIL activities, subject to approval by the Compliance Office.

5. RESTRICTIONS ON TYPES OF BUSINESSES OF ACTIVITIES

Student-Athletes may not engage in NIL activities that involve the following categories:

- Alcohol and alcohol products
- Casinos, gambling, sports wagering
- Cannabis and marijuana in any form
- Firearms or other weapons
- Gentlemen's clubs, adult entertainment, and escort services
- NCAA banned substances
- Political purposes or causes
- Post-secondary educational institutions or online schooling organizations
- Pharmaceuticals
- Sexually explicit materials
- Tobacco and electronic smoking Products
- Anything that runs counter to University at Buffalo or UB Athletic Department Policy

Please note, the University maintains the right to expand this list in the future should new areas of conflict arise. Student-athletes will be notified of the updated list through the Office of Athletics Compliance. In addition, student-athletes must comply with university policies, including but not limited to:

UB Code of Conduct

UB Title IX Policy

UB Discrimination and Harassment Policy

Student Athlete Handbook

6. NIL ACTIVITIES WHILE REPRESENTING UB

While representing UB in any capacity or during required team activities, including travel related to UB athletics competition, student-athletes are prohibited from engaging in NIL activities. Additionally, student-athletes are not permitted to skip classes for the sake of participating in NIL activities.

7. PROFESSIONAL SERVICE PROVIDERS

Student-athletes are permitted to enlist the aid of professional service providers, such as marketing agents and brand managers, for the purpose of managing and securing NIL activities and reviewing related agreements. It is important to note, however, that these providers may only be engaged for NIL activities and cannot be utilized to secure opportunities as professional athletes. Professional service providers must also comply with UB's agent policy.

8. USE OF INSTITUTIONAL MARKS

Student-athletes may use the UB intellectual property in connection with NIL activities only with permission from X (Compliance, Communications, Procurement?) office. Student-athletes may request the use of protected marks during the disclosure process before the activity occurs.

Implement policy "These are the ground rules of what the marks must look like, here are the links to guidelines and you do have to get approval from communications office to use these marks."

*Working with Cynthia Todd in Communications to craft policy

Goal: Getting all of the university marks registered and everybody having a uniform process by which marks can be used in an appropriate manner.

9. REVIEW

The Compliance Office will review NIL activities for compliance with this policy and NCAA legislation. Within 5 business days of receiving the agreement on INFLCR Compliance will either approve it, deny it, or flag it for review. Law students work with Compliance on a regular basis to review contracts and provide guidance on legal issues.

10. REVERSE MORALS CLAUSE

In the event Company engages in behavior that warrants termination ("Termination Event") the Athlete may terminate this Agreement in accordance with this section and upon notice provided pursuant to section __ of this Agreement. A Termination Event

includes a decline in the Company's reputation due to events such as a product recall and corporate scandal. Other Termination Events include, but are not limited to, bankruptcy or insolvency, breach of the endorsement agreement by the Company or failure to adequately promote the Athlete's endorsement of the Company's products or services.

11. INTERNATIONAL STUDENT-ATHLETES

International student-athletes are not eligible to receive compensation for NIL agreements in the United States. International student-athletes should discuss this matter with the Compliance Office to understand this matter further.

- I. International student-athletes are limited in their ability to receive NIL compensation from a third party under the terms of their visa or other immigration status. You must confer with the Office of International Students as well as Athletics Compliance for additional information to ensure that you do not jeopardize your status as a student in the United States.

12. CONSEQUENCES

Breaches of this policy may result in various penalties depending on the type and severity of the violation. More serious infractions may lead to the dismissal of staff members, dissociation of boosters, or modification of student-athlete scholarships. In the event of NCAA policy violations, the NCAA will be notified, and additional penalties may be imposed as required by the NCAA.

Disclaimer: Student-athletes are required to report information related to their name, image and likeness activities. Reported information will be kept on file consistent with state law, federal law, and institutional policy. NIL approval is conditioned on your remaining in compliance with all applicable rules including UB, NCAA, MAC, Team Rules, and your continued enrollment and good standing at UB. The notification of any NIL activity must go through INFLCR to be effective. Student-athletes should report NIL activities consistent with state law or school and conference requirements through INFLCR. Email is not an effective form of communication. It is not sufficient to mention the NIL activity to a coach or administration. Student-athletes must report all NIL activity through INFLCR in order for it to be effective.