THE EQUITY IN ATHLETICS DISCLOSURE ACT: DOES IT REALLY IMPROVE THE GENDER EQUITY LANDSCAPE?

KATHRYN KEEN*

INTRODUCTION

Intercollegiate athletics provide many colleges and universities with both tangible financial benefits in addition to intangible benefits, such as prestige and publicity. Moreover, participation in intercollegiate athletics provides student-athletes with opportunities to develop leadership skills, perfect self-discipline, and nurture self-confidence.[1] National Collegiate Athletic Association ("NCAA") President Myles Brand asserts that sports are a proper part of the college and university, and that "athletics support, enhance, and imbue the educational experience that takes place within the university."[2] Intercollegiate athletics can help develop the character of athletes, create a focus for campus community, and sustain ties between schools, alumni, and the public.[3] The NCAA Presidential Task Force describes the benefits of intercollegiate athletics:

> As an integral part of the higher education experience, the operation of intercollegiate athletics is comparable to other components of the campus. Similar to theater, music and other performing arts, athletics is entertaining; however, entertainment is not its mission. Like all other parts of the campus, the mission of intercollegiate athletics is to educate. The characteristics of participation in athletics (pursuit of excellence, resilience in the face of defeat, self-discipline, time management, etc.) are direct benefits to student-athletes. Furthermore, athletics in a well-run and value-based program models these important characteristics to other students, the academic community and to

---

* The author is a 2008 Juris Doctorate candidate at the University of Notre Dame Law School, where she received her B.A. in Philosophy, as well as a B.B.A and M.S. in Accountancy. Many thanks go to Professor Matthew Barrett for his assistance in developing the article, as well as to Willow Keen for her company and support. The author would also like to acknowledge Tony Bellino for enriching the author's human experience.

1. Rodney K. Smith, *An Academic Game Plan for Reforming Big-Time Intercollegiate Athletics*, 67 DENV. U. L. REV. 213, 220 (1990) (quoting NAT'L COLLEGIATE ATHLETIC ASS'N, SIXTH SPECIAL CONVENTION PROCEEDINGS 72 (1987)).

2. Memorandum from the NCAA Presidential Task Force Fiscal Responsibility Subcommittee, Fiscal Responsibility in Intercollegiate Athletics: Recommendations and Best Practices 2 (May 2, 2006), *available at* http://www2.ncaa.org/portal/legislation_and_governance/committees/future_task_force/fiscal/fiscal4.doc [hereinafter NCAA Recommendations].

3. *Id.*

> society. They are the characteristics of a well-educated individual. In addition, there is significant and well-documented research that correlates success in college to a sense of belonging. Athletics provides a sense of attachment to the campus for both the student-athlete and other students. Intercollegiate athletics is the common experience for the entire student body.[4]

Gender equity in intercollegiate athletics has been a subject of public debate since the late 1960s, when Congress began examining the discriminatory policies and practices that colleges and universities applied against women.[5] In 1972, with the goal of ending gender discrimination, President Richard Nixon signed Title IX into law.[6] In 1994, Congress passed the Equity in Athletics Disclosure Act ("EADA"), a law designed to increase awareness among prospective student-athletes of their school's commitment to providing equitable athletic opportunities for its male and female students.[7]

Notably, despite the similar data collection requirements under the EADA and Title IX, EADA reporting is separate from Title IX. It is required of all coeducational postsecondary educational institutions participating in Title IV federal student assistance programs.[8] Under the EADA,[9] the Department of Education is required to provide Congress with a financial and statistical report based on data it has collected on men's and women's collegiate sports.[10]

Relevantly, all colleges and universities that participate in any federal student financial aid program and have an intercollegiate athletic program must prepare an annual EADA report.[11] Under the regulations,[12] EADA reports must include, among other information, the total revenues and expenses attributable to football, men's basketball, women's basketball, all men's sports combined except football and basketball, and all women's sports combined except basketball; the number of participants for each varsity team and an unduplicated head count of individuals

4. Memorandum from NCAA Presidential Task Force Fiscal Responsibility Subcommittee, Fiscal Responsibility in Intercollegiate Athletics, What is the Problem? 2 (Apr. 12, 2006), *available at* http://www2.ncaa.org/portal/legislation_and_governance/committees/future_task_ force/fiscal/fiscal1.doc [hereinafter What is the Problem?].

5. THE SECRETARY OF EDUCATION'S COMMISSION ON OPPORTUNITY IN ATHLETICS, "OPEN TO ALL" TITLE IX AT THIRTY 14 (Feb. 28, 2003), *available at* http://www.ed.gov/about/bdscomm/list/athletics/title9report.pdf [hereinafter OPEN TO ALL].

6. Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 373 (codified as amended 20 U.S.C. §§ 1681–1688 (2000)). Title IX provides: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." *Id*. at § 1681.

7. U.S. Dept. of Educ., Office of Postsecondary Educ., Equity in Athletics Disclosure Act (EADA) Survey, http://surveys.ope.ed.gov/athletics/ (last visited Nov. 15, 2007) [hereinafter EADA Survey].

8. *Id*.

9. 20 U.S.C § 1092 (2000).

10. EADA Survey, *supra* note 7.

11. *Id*.

12. *See* Report on Athletic Program Participation Rates and Financial Support Data, 34 C.F.R. § 668.47 (2005).

(by gender) who participate on at least one varsity team; and whether a coach is assigned to a team full- or part-time, and, if part-time, whether the coach is a full- or part-time employee of the institution.[13]

Despite Congress' intention to improve gender equity within intercollegiate athletics, many government officials and college and university administrators demand the law's repeal, or, at least, reform.[14] The NCAA has also unequivocally acknowledged that the EADA has its shortcomings.[15] In its request for public comments, the Department of Education seemingly acknowledged some of the EADA's shortcomings. Among different information the Department sought to collect, it first sought comment on whether the collection of EADA information is necessary.[16] The Department also sought comment on whether the "information was processed and used in a timely manner" and if the estimated financial cost on schools was accurate.[17] Additionally, the Department wanted advice on "enhanc[ing] the quality, utility, and clarity of the information."[18] Finally, the Department acknowledged the burden the EADA requirements created and asked how it could be minimized.[19]

This paper will examine the flaws of the EADA and address the criticisms proffered by various members of our government, NCAA officials, and college and university administrators. Following the analysis, the author concludes that repealing the EADA is the best course of action.

DISCUSSION

A. The Athletic Community Condemns the EADA

One of the most stinging criticisms of the EADA is that it fails to serve its avowed purpose of making prospective student-athletes better aware of their institutions' commitment to providing equitable athletic opportunities for their male and female students.[20] In 2004, retired University of Iowa athletics director Christine Grant questioned whether prospective students were even aware that EADA data were available:

> The intent of [the EADA] was to shame universities into doing the right thing. And, to a certain extent, it's had that effect, but not the effect it

13. ROBERT E. LITAN ET AL., THE EMPIRICAL EFFECTS OF COLLEGIATE ATHLETICS: AN INTERIM REPORT 12 (2003), *available at* http://www.ncaa.org/library/research/athletic_spending/2003/empirical_effects_of_collegiate_athletics_interim_report.pdf.

14. *See generally*, Jodi Upton & Erik Brady, *Errors Mar Equity Reports*, USA TODAY, Oct. 18, 2005, at C1.

15. *See* Press Release, NCAA, NCAA Releases Interim Report on the Effects of Spending in Intercollegiate Athletics (Aug. 14, 2003), *available at* http://www.ncaa.org/releases/miscellaneous/2003081401ms.htm [hereinafter NCAA Release].

16. Notice of Proposed Information Collection Requests, 67 Fed. Reg. 60,642, 60,643 (Sept. 26, 2002).

17. *Id.* at 60,643.

18. *Id.*

19. *Id.*

20. EADA Survey, *supra* note 7.

> could have because we envisioned that prospective student-athletes would have access to that data. And they do—they just don't know it. They don't know about the EADA. They don't know to ask an institution, "Could I see your EADA report?"[21]

Not surprisingly, many question the utility of EADA information, including college and university athletic directors, NCAA personnel, and, strikingly, the government department charged with the administration of the Act. Boston College athletic director Gene DeFilippo mirrored Christine Grant's sentiment when asked whether people were aware of the availability of EADA data: "I really don't know anybody that really looks at them."[22]

Perhaps suggesting that there is little concern for the EADA's effectiveness, the Department of Education was unable to say whether it even tracked how many people accessed the Department's EADA website database.[23] Further, no one tracks whether student-athletes find the reports useful.[24] NCAA spokeswoman Gail Dent also seemed to doubt whether student-athletes used the EADA information: "It is possible that student-athletes and the public use these publications, but it is more membership- or administration-focused."[25] It is interesting to note that even the Department of Education does not use the reports and cannot verify the data that colleges and universities publish under them.[26] Although EADA data is a matter of public information, it is not easy to find, and when it is found, it is not widely used to influence school choices by student-athletes.[27]

Sheldon Steinbach, vice-president and general counsel for the American Council on Education, scoffed at the idea that prospective student-athletes would even consider using the EADA reports:

> Please. Student-athletes, male or female, who are seeking a full-ride scholarship at a Division I school will look at a lot of things . . . . They will look at the training facilities. They will look at the size of the stadium. They will look at what meals are served at the training table. They will be influenced dramatically by who the coach is. But the last thing any of them would think to look at is financial data filed with the federal government.[28]

Others criticize the EADA data because of its astonishing lack of precision. A 2005 study by USA Today found that over one-third of NCAA Division I-A

21. Maureen Mullen, *They Earn Their Keep*, BOSTON GLOBE, Mar. 26, 2004, at E13.

22. *Id*.

23. Alan Schmadtke, *What's Hidden in the EADA?*, ORLANDO SENTINEL, May 14, 2006, at C8.

24. *Id*.

25. *Id*.

26. Memorandum from Welch Suggs, Members of Federal Panel on Gender Equity in Sports Suggest How They Would Change Title IX, *available at* http://www1.ncaa.org/membership/governance/division_I/board_of_directors/2003/January/12_BOD_Title_IX.htm. (last visited Nov. 15, 2007).

27. Schmadtke, *supra* note 23.

28. Erik Brady, *An Overlooked Resource*, USA TODAY, Oct. 18, 2005, at C12.

schools reported erroneous EADA data:

> Of the nation's highest-profile athletic programs, more than 34% had at least one error in the 2003 and 2004 revenue and expense figures . . . . The errors range from just a few dollars to a $34 million data-entry mistake in the University of Texas report.[29]

Due to the inaccurate reporting under the EADA, "[t]he NCAA . . . maintains an adjusted set of records that it declines to make public."[30] Other problems abound in the EADA reporting, such as misclassification of colleges and universities and, in one instance, a complete lack of data for a major institution.[31] The EADA data often do not accurately reflect athletic department budgets.[32] Despite the frequency of errors in reported data, the Department of Education does not correct errors in data from past fiscal periods.[33]

Senator Edward M. Kennedy finds it "troubling" that after ten years of reporting under the EADA, the numbers are so flawed, saying that "[i]t's essential . . . to have reliable information on gender equity in college sports so that we can deal with the discrimination that still exists."[34] Rep. Louise M. Slaughter suggests that the errors are intentional, an attempt by the schools to make their treatment of women seem more equitable: "I don't think those [errors] are by chance at all."[35] An NCAA report found that of the 114 Division I-A schools filing a combined NCAA/EADA report for the 2000-2001 academic year, 13 either failed to report a total institutional spending figure or reported a clearly erroneous amount.[36]

Critics of the EADA make a compelling argument that the data collected do not provide meaningful comparisons between various colleges and universities. Former University of Iowa athletic director Christine Grant noted, "This is a big flaw when you start to compare institution to institution . . . . That's the kind of thing that those of us who communicate with the DOE are trying to get them to correct. If we're going to do differential analysis, let's do it as well as we can."[37] Ohio State associate athletics director Susan Henderson finds institution to institution comparisons meaningless: "People use these to compare budgets, and that's not what EADA is for. The comparisons are apples to oranges."[38] Former

---

29. Upton & Brady, *supra* note 14.

30. *Id.*

31. *Id.* Problems are abundant:

> Of the 119 NCAA Division I-A schools, 41 had errors. There are other problems: Five community colleges are classified as Division I-A schools in the Education Department's data; a Division I-AA school also was classified as I-A. The University of Arkansas has no data for 2003 even though the school says it filed its EADA report.

Id.

32. Erik Brady & Jodi Upton, *Financial Report Not Standardized*, USA TODAY, Oct. 19, 2005, at C12.

33. Upton & Brady, *supra* note 14 (noting that there is no process to clean old files and, while the website information can be updated, changes are not reflected in permanent records).

34. *Id*.

35. *Id*.

36. LITAN ET AL., *supra* note 13, at 13.

37. Mullen, *supra* note 21.

38. Brady & Upton, *supra* note 32.

Stanford athletics director Ted Leland agrees that school-to-school comparisons are impossible and suggests that part of the problem may be due to a lack of standardized accounting practices under the EADA.[39] Leland contends that the information is flawed because it "is supposed to serve as a comparison between institutions when no comparison is actually possible because different schools use different accounting practices and fill out the reports in different ways."[40]

The lack of accounting standards is troubling also to a number of college and university administrators, and it is partly responsible for the uselessness of data for school-to-school comparisons. "The reality of the EADA reports is that there is a disconnect between their intent and their use. Varying accounting methods preclude many apples-to-apples comparisons between schools."[41] The NCAA has acknowledged that "[w]ithout 'uniform and common definitions,' the concept of comparative transparency is meaningless."[42] Some schools complain that reporting under the EADA has little to do with standard accounting practices.[43]

The lack of accounting standards under the EADA has come to the attention of the academic community, as well.[44] "When it comes to money used for recruiting, for instance, schools often record different expenses. Some include the cost of phone calls. Some include the cost of meals served during official visits. Others include only what they pay for their coaches' recruiting trips."[45]

The NCAA Presidential Task Force similarly concluded that inconsistencies in data reporting lessened the usefulness of information:

> Clouding the financial picture of intercollegiate athletics has been the problem that for more than a decade, data regarding revenues and expenses for college sports have been less than reliable because they were subject to individual institutional interpretation. For example, one institution may report security costs for athletics events as institutional costs, while another school reports them as athletics costs. Also, notwithstanding the widespread evaluative commentary and debates using terms such as "self-sufficiency of athletics departments" and "institutional support," no commonly accepted definitions of such terms have been used. The divergent reporting options made comparison of data points difficult, if not impossible.[46]

---

39. *Id.*

40. *Id.* Leland argues, "It is a garbage-in, garbage-out type of proposition. . . . You could argue bad information is better than no information. I'd make the opposite argument. I'd rather know I don't know than think I know and not know." *Id.*

41. Schmadtke, *supra* note 23.

42. NCAA Recommendations, *supra* note 2, at 3.

43. Brady & Upton, *supra* note 32.

44. Schmadtke, *supra* note 23 ("Notre Dame finance professor Richard Sheehan doesn't blame anyone if he or she ignores the gender-equity reports . . . . Much of the information released to the public falls into categories that keep school accountants busy with their creative thinking.").

45. *Id.*

46. PRESIDENTIAL TASK FORCE ON THE FUTURE OF DIVISION I INTERCOLLEGIATE ATHLETICS, THE SECOND-CENTURY IMPERATIVES 19–20 (Oct. 2006), *available at* http://www2.ncaa.org/portal/legislation_and_governance/committees/future_task_force/final_report.pdf

The electricity bill is a simple example of how differences in accounting methods are apparent. Some schools pay the athletic department's electricity bill without itemizing the cost of electricity to the department, let alone apportion amounts spent on women's teams. That is, some schools may include the cost of electricity on their EADA reports, while others leave it out.[47] A Department of Education administrator admitted that standards under the EADA may be lacking: "We define what expenses are, we define what revenues are . . . . But those definitions are maybe not as precise as they could be."[48] Indeed, defining and categorizing an expense require subjective judgment calls, which leads to the inability for meaningful comparison.[49]

Another source of the problem may be that the Department of Education does not verify the data it receives. At least one member of the academic community strongly advocates auditing EADA data it receives from colleges and universities:

> David Ridpath, an assistant professor of sports administration at Mississippi State, calls the current numbers "window dressing" unless schools can be held accountable for their accounting practices. Ridpath, executive director of The Drake Group, a national organization of faculty and others that lobbies for academic integrity in college sports, suggests random audits of five or 10 schools a year.
>
> "The Department of Education should do spot checks, like the IRS," he says. "If schools thought they could be audited, there would be real incentive to get things right."[50]

There is also considerable concern that the EADA, or regulations promulgated pursuant to it,[51] do not properly measure capital expenditures.[52] In 2003 the

---

[hereinafter SECOND-CENTURY IMPERATIVES].

47. Upton & Brady, *supra* note 14.

48. Mullen, *supra* note 21.

49. *See id.*

50. Brady & Upton, *supra* note 32. *See also* Mullen, *supra* note 21 (noting that Christine Grant, retired athletic director at the University of Iowa, agrees: "The DOE could do spot audits. You don't have to do hundreds. Just do a few to scare everybody to do it right.").

51. *See generally* NCAA Release, *supra* note 15.

52. 26 C.F.R. § 1.263(a)–1 (2005) defines capital expenditures as:

> (1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate, or (2) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made in the form of a deduction for depreciation, amortization, or depletion.

Id. 26 C.F.R. §1.263(a)–2 provides the following useful examples of capital expenditures:

> (a) The cost of acquisition, construction, or erection of buildings, machinery and equipment, furniture and fixtures, and similar property having a useful life substantially beyond the taxable year.
>
> (b) Amounts expended for securing a copyright and plates, which remain the property of the person making the payments. See section 263A and the regulations thereunder for capitalization rules which apply to amounts expended in securing and producing a copyright and plates in connection with the production of property, including films, sound recordings, video tapes, books, or similar properties.
>
> (c) The cost of defending or perfecting title to property.

NCAA released an interim report,[53] examining the economic impact of intercollegiate athletics in a number of areas.[54] The NCAA report found that measurement error in the capital expenditures data is an area of particular concern.[55] The report found that the value of the outstanding athletics capital stock is not recorded anywhere on the EADA forms.[56] The difference in reporting requirements for public and private colleges and universities explains part of the problem in measuring capital expenditures. Because they account for their expenses differently, "[i]t's difficult to compare two entities other than in the aggregate."[57]

The report examines the issue in more depth. The survey of chief financial officers from seventeen Division I colleges and universities revealed that their EADA data did not capture all athletic capital expenditures.[58] Further, the report found that the data clearly excluded substantial amounts of capital expenses, many of which were not recorded on their athletic departments' books.[59] As an example, more than half of all Division I-A schools have either opened a new football stadium or undertaken a major renovation of their old stadium since 1990, though much of these capital expenditures are not reflected in EADA data.[60]

The 2003 NCAA study, *The Empirical Effects of Collegiate Athletics: An Interim Report*,[61] emphasized that the data provided under the EADA were imperfect and failed to capture various components of athletic activities.[62] An updated study performed in 2005 maintained that the data were "still imperfect."[63] However, the study held out hope for better data:

> Further efforts are underway to improve the data; in conjunction with the National Association of College and University Business Officers

---

(d) The amount expended for architect's services.

Id.

53. *See generally* LITAN ET AL., *supra* note 13.

54. NCAA Release, *supra* note 15. The release provides :

> The research is based in large part on a comprehensive database of school-specific information collected as part of the Equity in Athletics Disclosure Act (EADA) and other sources, including the Integrated Post-Secondary Education Data System (IPEDS) managed by the Department of Education. The study also relies on a detailed survey of chief financial officers from 17 Division I institutions.

Id.

55. LITAN ET AL., *supra* note 13, at 32.

56. NCAA Release, *supra* note 15.

57. *Id*. NCAA Chief Financial Officer Jim Isch stated, "What you'll find with the capital expenditures in particular is that some may be on the books of the state, some may be on the books of municipalities, and some may be for multi-use facilities where expenses are allocated among a number of functions." *Id.*

58. LITAN ET AL., *supra* note 13, at 32.

59. *Id*.

60. *Id*.

61. *Id*.

62. *Id*. at 33.

63. JONATHAN M. ORSZAG & PETER R. ORSZAG, THE EMPIRICAL EFFECTS OF COLLEGIATE ATHLETICS: AN UPDATE 9 (2005), *available at* http://www.ncaa.org/library/research/athletic_spending/2005/empirical_effects_of_collegiate_athletics_update.pdf.

> (NACUBO), the NCAA has devised a new annual financial survey that will better capture ongoing capital expenditures. As these new data become available, they should provide additional insights into the effects of college athletics on institutions of higher education.[64]

In January of 2005, the NCAA established the Presidential Task Force on the Future of Division I Intercollegiate Athletics and, within that Task Force, a Fiscal Responsibility Subcommittee.[65] The Fiscal Responsibility Subcommittee was charged with examining the extent and depth of the financial pressures facing Division I intercollegiate athletics,[66] as well as with examining financial concerns that are at the root of broader concerns about the sustainability of intercollegiate athletics.[67] Noting that "[m]ore work will be required to improve the quality, transparency, and availability of financial information,"[68] the Subcommittee found:

> Despite Herculean efforts by the NCAA in recent years to collect and publicly display relevant data about intercollegiate athletics, much remains to be done in establishing common standards of financial reporting and developing the culture of transparency necessary for effective financial management. The development of these standards and the required culture is an important task of the Fiscal Responsibility Subcommittee.[69]

The Fiscal Responsibility Subcommittee pointed to a lack of common standards and sufficient transparency as a problem with current data collection.[70] "The story . . . is very clear, but the language used to tell the story needs clarification and greater consistency", said Peter Likins, Chair of the Task Force and of the Fiscal Responsibility Subcommittee.[71] To this end, the Fiscal Responsibility Subcommittee developed a set of dashboard indicators and presented a series of recommendations, best practices, and next steps.[72] The Subcommittee believes that "the adoption of consistent financial terms and financial 'best practices' is a critical first step. Decision-makers must believe they are operating with the best available information as they undertake plans for the future."[73]

B. The Roadmap to Better Reporting, Courtesy of the NCAA

The Fiscal Responsibility Subcommittee developed recommendations for NCAA reporting that should be considered in reviewing the EADA. In order to

---

64. *Id*.

65. Press Release, NCAA, Presidential Task Force Calls for Moderation of Budget Growth Rate, Integrating Athletics Within Academics (Oct. 30, 2006), *available at* http://www2.ncaa.org/portal/media_and_events/press_room/2006/october/20061030_presidential_task_force_rls.html.

66. NCAA Recommendations, *supra* note 2, at 1.

67. What is the Problem?, *supra* note 4, at 12.

68. *Id*. at 11.

69. *Id*. at 3.

70. NCAA Recommendations, *supra* note 2, at 2.

71. *Id*.

72. *Id*.

73. *Id.* at 3.

enhance reporting of financial data, the Subcommittee recommended the following:

> 1) Collecting financial data using uniform and common definitions;
>
> 2) Presenting a full and comprehensive financial picture to decision-makers;
>
> 3) Providing easy access to aggregate data by decision-makers for use in strategic planning and policy development;
>
> 4) Creating dashboard indicators for decision-makers to make comparisons among institutions easier; and
>
> 5) Ensuring institutional and individual privacy in the presentation of data.[74]

To the NCAA, whose members are most likely the primary users of the data collected and presented under the EADA reports, the "concept of creating a common language for athletics finances and presenting financial data in a clear and uniform manner is an essential goal."[75]

Among the NCAA Presidential Task Force's recommendations was the reinstitution of the fiscal integrity review.[76] Such a fiscal integrity review would incorporate review of both operating and capital expenditure data, and the review would be required as a part of the NCAA athletics certification process.[77] The Task Force also recommended that the NCAA consider requiring college and university chancellors and presidents to conduct an internal fiscal integrity review every five years, both as part of the NCAA athletics certification process and as a mid-point check.[78]

The Fiscal Responsibility Subcommittee of the NCAA Presidential Task Force proffered a solution to the problem of lack of comparability in collected data, suggesting the adoption of a set of dashboard indicators[79] or ratios and data

---

74. *Id*.

75. *Id*.

76. SECOND-CENTURY IMPERATIVES, *supra* note 46, at 24.

77. *Id*.

78. *Id*.

79. The Fiscal Responsibility Subcommittee offers the following explanations of dashboard indicators:

> The number of potential operational variables that might be used to describe any complex organization will vary widely by the nature of the parent institution and by the maturity and status of the program. Drawn from business process improvement and continuous quality literature, dashboard indicators are comparators. They can be individual data points or ratios of variables that make comparisons among programs, organizations, or institutions easy to assimilate for all interested parties. The use of such indicators is increasingly common in many settings, including academic programs (for accreditation and other purposes), bond rating agencies and a variety of other financial and programmatic aspects of complex organizations.

Memorandum from NCAA Presidential Task Force Fiscal Responsibility Subcommittee, Dashboard Indicators 1 (May 2, 2006), *available at* http://www2.ncaa.org/portal/legislation_and_governance/committees/future_task_force/fiscal/fiscal3.doc [hereinafter Dashboard Indicators].

points.[80] Though the Task Force's recommendations were intended for the use by member colleges and universities, as well as the NCAA itself, the suggestions can be extrapolated to the EADA data collection process to enhance the usefulness, transparency, and comparability of the data collected. Through the use of dashboard indicators, the Fiscal Responsibility Subcommittee seeks to improve transparency, accountability, institutional control, and the quality of information available to individual presidents and institutions, while emphasizing that the responsibility and authority to utilize the available information in making decisions reside exclusively with each college and university.[81] The NCAA would require the following financial dashboard indicators:

> **Athletics expenditures / institutional expenditures –** Athletics expenditures as a percent of institutional expenditures. Identifies the relative importance of athletics expenditures to the institution's total expenditures.
>
> **Total revenues –** Total athletics revenues and percent change from the previous year. Trends total revenues and percent change over time.
>
> **Generated revenues –** Athletics-generated revenues as a percent of total athletics revenues. Identifies the share of revenues that the athletics department is producing.
>
> **Allocated revenues –** Athletics-allocated revenues as a percent of total athletics revenues. Identifies the share of revenues that the athletics department is receiving.
>
> **Allocated revenues increase** – Allocated revenue increase as a percent of university revenue increase. Provides a comparison of the growth rates of funds allocated by the institution for the athletics programs with the overall increase in university revenues percentage.
>
> **Athletics expenditure per category –** Athletics expenditures for salary and benefits, participation and game expenses, facilities and administrative support, debt service and other as a percent of total expenditures. Identifies the major athletics expenditure categories and its share of the overall athletics expenditures.
>
> **Athletics debt service –** Athletics debt service as a percent of the athletics expenditures. Identifies the percent of athletics expenditures dedicated to athletics debt service.
>
> **Athletics debt** – Athletics debt as a percent of university debt. Identifies the total long-term financial commitment of athletics debt on the university.[82]

The dashboard indicators are intended to enable comparisons to pooled data for relevant peer groups, rather than comparisons of colleges and universities in a one-

80. NCAA Recommendations, *supra* note 2, at 3.

81. *Id.* at 5.

82. Dashboard Indicators, *supra* note 79, at 4–5.

to-one context.[83] However, the dashboard indicators are part of a larger plan to incorporate certain best practices into the college and university athletics reporting environment. The Fiscal Responsibility Subcommittee recommended, among others, the following best practices for member colleges and universities:

> 1. Financial Integration
>
> The financial processes of the athletics program should be integrated within the institution's overall financial controls. Working within the institution's processes for budgeting, accounting, purchasing and debt management strengthens financial oversight and accountability.
>
> Guidelines should be established outlining the responsibilities of the chancellor or president, the chief financial officer, and the athletics director with respect to the budget, accounting, purchasing, and debt management of the athletics program. If it is not already an institutional practice, the chancellor or president should ensure that the institution's accounting offices have complete access to athletics financial records for internal audit and review purposes, consistent with the level of access to other university programs.
>
> In line with institution practices, the chancellor or president should receive annual budget planning information, and interim and end-of-year financial reports for the athletics program. In addition, multi-year budget planning should be adopted so that chancellors or presidents and athletics directors can evaluate the reliability of the athletics program's revenue streams for planning purposes. This process will help to assure the chancellor or president that appropriate planning is taking place and provides a way to anticipate potential financial problems before they arise.
>
> Institutions should provide faculty, through their representatives [sic] bodies (e.g., faculty senate), access to and the opportunity to provide input and recommendations on the athletics budget to at least the same extent that they do for other campus programs.
>
> 2. Outside Entities
>
> Institutions should clarify internally the reporting and financial relationships among the athletics program and any outside entities. Insofar as is practical, these relationships should be consistent with similar administrative oversight of other university business operations and related support organizations.
>
> Reporting of independent activities undertaken by individual coaches, such as summer camps, should be compliant with NCAA requirements and at a higher standard than the institution's policies and procedures for external activities undertaken by faculty."[84]

The Subcommittee also recommended that college and university officials use

83. NCAA Recommendations, *supra* note 2, at 3.

84. *Id.* at 6–7.

"an annual set of comparators or dashboard indicators" to assist in managing the athletics program.[85] Additionally, they should "strive to ensure that federal EADA and NCAA financial data are consistent."[86] The Subcommittee encouraged institutions and associations of higher education to determine how "to address the use of two different sets of numbers as a result of different submission dates" for the reports required by the NCAA and the EADA, while simultaneously ensuring third party review.[87] The Subcommittee also suggested "[r]e-institut[ing] the fiscal integrity review, including operating and capital expenditure data, into a fiscal integrity section of the NCAA certification process" and requiring institutions to "conduct an internal fiscal integrity review every five years."[88] Finally, the recommendations sought to "[r]equire that salary and total compensation data for intercollegiate athletics be submitted annually to the NCAA" and to have the data published.[89]

The Task Force addresses the problem of inconsistent reporting of capital expenditures as well, recommending that aggregated capital expenditures be reported for athletics facilities.[90] Specific categories would include "capitalized additions and deletions to facilities during the current reporting period, total estimated book value of athletically related plant and equipment net of depreciation, total annual debt service on athletics and university facilities, and total debt outstanding on athletics and university facilities."[91]

Additionally, the Presidential Task Force recommended more accurate and transparent salary reports.[92] The Task Force suggested that an annual salary and benefits survey be conducted for athletics positions.[93] Further, collected data would necessarily include "base salary, bonuses, endorsements, media fees, camp income, deferred income and other income contractually guaranteed by the institution."[94]

Also, the Task Force would require colleges and universities to report the value of endowments dedicated to the sole support of athletics at the end of each fiscal year.[95] The recommended changes, if made, would also require institutions to report the present value of all pledges supporting athletics, as well the ending fiscal year fund balance.[96]

Potentially most effective in assuring accuracy and transparency in reported data is the Task Force's suggestion that an "independent third party use agreed-upon procedures to verify the accuracy and completeness of the data before

---

85. *Id*. at 5–6.
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id*. at 5–6.
90. SECOND-CENTURY IMPERATIVES, *supra* note 46, at 25.
91. *Id*.
92. *Id*.
93. *Id*.
94. *Id*.
95. *Id*.
96. *Id*.

submission."[97] In fact, the NCAA followed up on this recommendation, and by the end of 2006, all Division I schools were required to have a third party accounting firm or state auditor review reports before submission.[98] As of August 31, 2006, the NCAA had revised its Agreed-Upon Procedures, requiring that all revenues, expenses, and capitalized expenditures on behalf of a college or university's athletics program, including those by outside entities, are reported annually by an independent accountant from outside the college or university.[99] The Agreed-Upon Procedures further provided that the independent accountant be "selected by the college or university's chief executive or the chief executive's designee."[100]

Colleges and universities are responsible for the production of the statement of revenues and expenses, as well as for a written representation from institutions regarding the assertion of information within the statement.[101] Colleges and universities are to provide to independent accountants a statement of revenues and expenses for the athletics department, for review by the independent accountant.[102] The revised Agreed-Upon Procedures also provides a classification of revenues and expenses to be used by college or university staff members and independent accountants in preparing the college or university's statement of revenues and expenses.[103] The uniform classification of revenue and expenses may assist in eliminating some of the problems caused by inconsistent reporting of revenue and expense items.

The revised Agreed-Upon Procedures also addresses the issue of capital expenditures reporting. Included in the new reporting requirements is a "Capital Expenditures Survey."[104] The survey requires reporting of current fiscal year additions and deletions, as well as total book-value at year end of athletically-related property, plant, and equipment, net of depreciation.[105] Through this form, the survey captures not only current fiscal year capital expenditures and losses but also tracks the year-to-year value of athletics-related capital assets. The survey also tracks debt service,[106] as well as debt outstanding on athletic facilities.[107] Facilities are categorized as property, plant, and equipment, and thus are considered capital assets. Also required with respect to capital assets is a description of the college or university's policies and procedures for acquiring,

---

97. *Id*.

98. Jodi Upton, *NCAA Considers Reforms on Reports*, USA TODAY, Oct. 18, 2005, at C12.

99. NCAA, AGREED-UPON PROCEDURES 1 (Aug. 31, 2006), *available at* http://www1.ncaa.org/membership/ed_outreach/eada/procedures.pdf.

100. *Id*.

101. *Id*. at 8.

102. *Id*. at 5.

103. *Id*. at 10.

104. *Id*. at 22–23.

105. *Id*.

106. Debt service is defined as Cash Flows from Operations before Interest and Taxes divided by Interest and Principal Payments. DAVID R. HERWITZ & MATTHEW J. BARRETT, ACCOUNTING FOR LAWYERS 402 (4th ed. 2006). That is, debt service is how many times cash flows from operations can cover the debt principal and interest payments.

107. OPEN TO ALL, *supra* note 5, at 23.

approving, depreciating, and disposing of intercollegiate athletics-related assets, as well as repayment schedules for all outstanding intercollegiate athletics-related debt maintained during the fiscal year.[108]

The revised Agreed-Upon Procedures appear to directly address the consistency, accuracy, and comparability issues that plague the EADA reports; however, as the NCAA has only implemented these procedures as of the end of the 2006 fiscal year, the impact of the new procedures remains to be seen. Further, the assurances provided by an independent auditor are less substantial than in years past, given the flurry of recent financial reporting scandals. However, the revised procedures represent a step in the right direction by the NCAA; such drastic measures have yet to be taken by the Department of Education.

C. A Government Commission Responds to Criticism, Recommending Repeal of the EADA

The Department of Education has not left the matter uninvestigated. On June 27, 2002, then-Secretary of Education Rod Paige created the Secretary's Commission on Opportunities in Athletics.[109] The Commission was charged with collecting information, analyzing issues, and obtaining broad public input directed at improving the application of current federal standards for measuring equal opportunity for men and women to participate in athletics under Title IX.[110] The Commission held four public meetings, conducted four town hall meetings, heard from more than fifty expert witnesses, and reviewed thousands of documents, reports, letters, and e-mails.[111] The Commission adopted twenty-three recommendations and considered several more,[112] certain of which deal directly with the Equity in Athletics Disclosure Act.

Recommendation nine, adopted by unanimous vote, held, "The Department of Education should encourage the redesign of the Equity in Athletics Disclosure Act so that it provides the public with a relevant and simplified tool to evaluate the status of Title IX compliance in the nation's post-secondary institutions."[113] The Commission "also felt that the form should be significantly simplified."[114] Since this form was created legislatively, any change would come through Congress, so the Commission framed the recommendation as a suggestion of encouragement that the Department of Education can give to Congress.[115]

Significantly more interesting, however, is Vote 12 taken by the Commission. Vote 12, which was narrowly defeated 6-8, would have adopted recommendation nine (b), in lieu of recommendation nine.[116] Recommendation nine (b) would

108. *Id.* at 9.
109. *Id.* at 1.
110. *Id.* at 2.
111. *Id.* at 4.
112. *Id.*
113. *Id.* at 35.
114. *Id.*
115. OPEN TO ALL, *supra* note 5, at 34.
116. *Id.* at 63.

have "encourage[d] the repeal of the Equity in Athletics Disclosure Act."[117] Those Commission members who voted in favor of recommendation nine (b) believed that the EADA report is overly burdensome, subjective, and cumbersome and that the Act should be repealed.[118]

A number of Commission members voiced their opposition to the EADA both prior to and following the issuance of the Final Report. Sally Stroup,[119] a ranking official in the Department of Education, supported the repeal of the EADA, because the Department of Education does not use the report and cannot verify the data that colleges and universities publish under it.[120] At a town hall meeting in Philadelphia, Stroup responded to criticisms of another Commission member:

> [O]ne consideration is to recommend to the Secretary that he support the repeal of [the EADA] and get rid of it all together . . . . People don't use it. We [the Department of Education] don't use it for any purpose at all. We literally pay a contractor to load it to the web site and stick it up there.
>
> Half of the time, we don't know if the data is right . . . . [W]e have no way of knowing if [colleges and universities] are reporting the right numbers. The Department of Education . . . would never be able to tell. We have to take your word for it that you are actually giving us good data.
>
> If what everyone says is true . . . and I have no reason to doubt you, half of it is irrelevant and not comparable across institutions so I don't know what value it has. You are right, it is costing everybody a lot of time and effort.[121]

At a Commission meeting on December 3, 2002, Graham Spanier, a Commission member, called the EADA requirements an "unfunded mandate."[122] Spanier further commented:

> If you totaled up the bill of what we are all spending on these reports that go to the Department of Education, it's probably a couple of hundred thousand dollars per institution. . . . If we did away with all of the reports, we could add another women's sport. I'm dead serious about that.[123]

University of Arizona President Peter Likins, Chair of the of the NCAA

---

117. *Id.*

118. *Id.*

119. "Sally Stroup was the U.S. Department of Education's assistant secretary for postsecondary education . . . . From 1993 to 2001, she was a professional staff member for the U.S. House of Representatives Committee on Education and the Workforce. From 1981 to 1993, Stroup was with the Pennsylvania Higher Education Assistance Agency." *Id.* at 57.

120. Suggs, *supra* note 26.

121. Sally Stroup, Address to the Secretary of Education's Commission on Opportunity in Athletics 100–01 (Dec. 4, 2002), *available at* http://www.ed.gov/about/bdscomm/list/athletics/transcript-120402.pdf [hereinafter Stroup Address].

122. Brady & Upton, *supra* note 32.

123. *Id.*

Presidential Task Force, agreed with Spanier's cost estimate,[124] but he proposed reform, rather than repeal, saying, "What we have [now] is disclosure for disclosure. What we have may satisfy the press or public, but it makes people grumpy."[125] Adding to the financial burden imposed on colleges and universities is the cost of compliance with NCAA information reporting requirements, which, like the revisions discussed earlier, require significant resources.

Commission co-chair and former Stanford athletics director Ted Leland dislikes the EADA reporting because "the information is supposed to serve as a comparison between institutions when no comparison is actually possible."[126] Leland, during a Commission meeting held in Colorado Springs, criticized the EADA even more strongly:

> I think anybody on our campuses who fills out those EADA forms just says they're garbage. They don't mean anything because the way we do it, and it's uncertain, and even though the government has tried to—you know, every year it gets more complicated, and every year there's more clarifications and more questions, in the end, the people in most campuses that fill it out say "These numbers don't make any sense to the numbers I handed in last year. My numbers don't [make] any sense to the guy that's across the bay because they're just different."[127]

At a Philadelphia town hall meeting, Graham Spanier continued to criticize the EADA reports on the grounds that the reports were not being used by student-athletes and proposed that the information be made useful to the intended users:

> I have not met an athlete yet who has ever looked at those data. I mean, our country is spending a lot of money and staff time . . . , but I've never met an athlete yet who actually looked at it. So my suggestion would be if we're going to take a look at it, let's redo it so it's a report of maybe a few pages with relevant information that somebody might be actually interested in looking at.[128]

At a later town hall meeting in Washington, D.C., Bob Bowlsby,[129] Director of Athletics at the University of Iowa, argued that the EADA could not be preserved through amendment:

> I don't think [the EADA] can be amended to be functional. I think we need to get away from the EADA and identify what it is we want to

124. *Id*.

125. *Id*.

126. *Id*.

127. Ted Leland, Address to the Secretary of Education's Commission on Opportunity in Athletics 134 (Oct. 23, 2002), *available at* http://www.ed.gov/about/bdscomm/list/athletics/transcript-102302.pdf.

128. Stroup Address, *supra* note 121, at 99.

129. Bowlsby was recently named National Athletic Director of the Year by Street & Smith's *Sports Business Journal* and Regional Athletic Director of the year by the National Association of Athletics Directors. Bowlsby has served as chair of the Big Ten Championships and Awards Committee Council, and chair of the NCAA Management Council during its first two years. Bowlsby has also served as director of men's athletics and the assistant athletic director for facilities at the University of Northern Iowa. OPEN TO ALL, *supra* note 5, at 53.

> provide in the way of information to each other, to the public, and to Department of Education, and then design that document to make it happen.
>
> Of all things, it needs to be a lot simpler. . . . [O]ur institutions are spending thousands and thousands of dollars preparing this [EADA] report to be put up in a website and then left.[130]

Mr. Bowlsby went on to note that the EADA report was the "most labor intensive, manually manufactured report that we do during the entire year in our department. Without question."[131]

Though the Commission eventually voted to recommend to Congress the reform—rather than repeal—of the EADA, a review of the town hall meeting transcripts shows that the issue of repeal was not lightly dismissed.[132] The tone of the discussions often turned bitter, as evidenced by the comments of the various Commission members. However, the unanimous adoption of recommendation nine, encouraging the reform of the EADA, conclusively shows the dissatisfaction among the members of the intercollegiate athletics community. Further, the apathy evinced by Sally Stroup, a ranking official within the Department of Education, toward the very existence of the EADA reports, casts doubt on the utility of the EADA's continued existence.

CONCLUSION

The declared purpose of the Equity in Athletics Disclosure Act is to make prospective students aware of the school commitment to providing equitable athletic opportunities for its men and women students.[133] However, a great deal of anecdotal evidence suggests that prospective athletes never see, much less use, the reports produced through EADA data collection. Further, the EADA reporting standards are too vague to permit meaningful comparison among various colleges and universities. Thus, even if prospective student-athletes saw the information, they would be unable to use it effectively. The EADA reports omit essential information regarding capital assets and expenditures, thereby ignoring a large portion of investment into intercollegiate athletics and making the data not only incomplete, but ultimately misleading.

The NCAA, the premier intercollegiate athletics organization, has long recognized the shortcomings of the federally-required information disclosures. In order to enhance the accuracy, transparency, and utility of the information it collects, the NCAA has imposed stringent reporting requirements on its members that go far beyond the requirements of the EADA.

---

130. Bob Bowlsby, Address to the Secretary of Education's Commission on Opportunity in Athletics 350 (Jan. 29, 2003) *available at* http://www.ed.gov/about/bdscomm/list/athletics/transcript-012903.pdf.

131. *Id.* at 357.

132. *See* U.S. Dept. of Educ., Transcripts—Secretary's Commission on Opportunity in Athletics, http://www.ed.gov/about/bdscomm/list/athletics/transcripts.html (last visited Nov. 15, 2007).

133. EADA Survey, *supra* note 7.

Additionally, the Secretary of Education's Commission on Opportunities in Athletics unanimously concluded that the EADA reports were significantly flawed and of very limited utility. A representative of the Department of Education publicly conceded that the information contained in the EADA reports is never verified or used by the Department in any manner.

The Equity in Athletics Disclosure Act no longer serves its avowed purpose, if indeed it ever did. Although secondary purposes do exist in the use of the reports by colleges and universities to make comparisons among themselves and to meet Title IX requirements that are beyond the scope of this discussion, the EADA reports are widely regarded as useless for all purposes. The frequency of errors in reported data, the absence of any third party or Department of Education verification of the information, and the array of inconsistencies in reporting all preclude the effective and meaningful use of the information.

In light of the shortcomings of the Equity in Athletics Disclosure Act and the unhelpful reports generated under it, Congress should consider relieving the burden it imposed on colleges and universities in 1994, when it passed the Act. In the coming years, the NCAA's revised Agreed-Upon Procedures may provide insight into which, if any, of the EADA reforms will be truly effective. Alternatively, the NCAA revisions may show that reform is not possible and that the law's repeal is the solution. The NCAA action provides the legislature with a unique and valuable incubator for possible reform. Ultimately, the possibility of reform or repeal of the EADA lies with the legislature. While it is possible that the NCAA-initiated reform will spur on change, it is equally possible that the legislature may leave the matter alone and let the NCAA retain the lead in improving the accuracy, transparency, and utility of intercollegiate athletics-related financial disclosure. Ultimately, reform is not worth the effort if prospective student-athletes will never see the information collected. Thus, repealing the Act and thereby removing a tremendous financial burden from colleges and universities is the best course of action.

Beyond the possibilities of reform and repeal, consideration of the state of the EADA prompts difficult questions that beg further investigation. For instance, no one, not even the federal government that requires the collection of the EADA data, bothers to verify whether prospective student-athletes use the information. Given the apparent nonuse of the information by its intended users, as well as the unreliability of the data, can Congress justify imposing this cost upon colleges and universities? Further, if the Department of Education declines to verify the data collected, makes no discernible attempt to get the information to its intended users, and does not even monitor its own website to check whether users are accessing the data, it is worth asking whether the federal government is, in fact, concerned with the EADA. Inevitably, we are led to the darker issue of whether gender equity in athletics is still a government priority.