

TOPIC:

STAYING OUT OF THE PENALTY BOX: NAVIGATING THE NCAA DIVISION III FINANCIAL AID REPORTING PROGRAM

INTRODUCTION:

Division III is the largest division of the National Collegiate Athletic Association (“NCAA”). The goal for NCAA Division III institutions is to integrate athletics into broader campus life and provide an opportunity for student-athletes to participate and excel both academically and in extra-curricular activities. As part of fulfilling this goal, NCAA Division III financial aid legislation prohibits institutions from considering athletics participation or ability in the awarding of financial aid. This legislation is unique to Division III; Divisions I and II permit athletically related financial aid. The NCAA monitors compliance with these rules closely and frequently takes enforcement action against institutions that fail to comply. Indeed, between 2005 and 2012, 74 Division III institutions had been referred to the enforcement process. [\[1\]](#) Sanctions for major infractions may include public reprimand and censure, vacating records, and ineligibility for postseason play.

Thus, while the Division I institutions may get much of the attention when it comes to NCAA enforcement matters, Division III institutions should take just as much care in ensuring their compliance with the rules uniquely applicable to their Division – particularly regarding financial aid. This NACUANOTE provides an introduction to the NCAA Division III financial aid rules, including the process of annual financial aid reporting, a guide to enforcement, and best practices.

DISCUSSION:

Applicable NCAA Rules

NCAA Division III Bylaw 15.01.3 explicitly prohibits a member institution from awarding financial aid “on the basis of athletics leadership, ability, participation or performance.” [\[2\]](#) Accordingly, Bylaw 15.4, which governs financial aid, requires that a financial aid package offered to a student-athlete is consistent with the institution’s policy for all students. [\[3\]](#) Specifically:

- (a) athletics leadership, participation, or performance may not be considered;
- (b) the financial aid procedures used for student-athletes must be the same as the

institution's existing official financial aid policies;

- (c) the financial aid package for a particular student-athlete cannot be clearly distinguishable from the general pattern of all financial aid for all recipients at the institution; and
- (d) the percentage of total institutional aid awarded to student-athletes must be closely equivalent to the percentage of student-athletes in the student population.

These rules are intended to ensure institutions do not award financial aid based upon a prospective student's athletic ability.

Financial Aid Reporting Program

Annual Financial Aid Report

In 2004, the Division III membership adopted bylaw 15.4.1.1, which established an electronic financial aid reporting process to assist in evaluating member institutions' compliance with Bylaw 15.4. Under this reporting process, institutions submit a data file each September to the NCAA with information for the previous academic year about all new full-time, first-time students; this population includes freshmen and transfers, but excludes graduate students and students who were readmitted. [4] If the data, when analyzed, reveals a statistical outlier, or if certain statistics are above the threshold set by the NCAA, then the institution's data will be reviewed by the NCAA Division III Financial Aid Committee (hereinafter "Financial Aid Committee") in a Level I review.

Level I Review

The statistical outliers that trigger a Level I review are:

- (1) the difference in the proportion of financial need met by institutional gift aid between student-athletes and other students;
- (2) the proportionality of student-athletes in the cohort to the amount of overall institutional gift aid awarded to them; and
- (3) the proportion of financial need met by institutional gift aid for sport groups as compared to other sport groups and/or other students. [5]

The NCAA also uses a statistical analysis called a variance estimate to calculate the dollar impact of student-athlete status, and a variance above four percent in favor of student-athletes may also lead to a Level I review. [6] Institutions that were referred to enforcement the previous year are automatically reviewed during the next reporting cycle. [7] The possible outcomes from a Level I review are: no action, no action with conditions, or forward to Level II review and request a written justification from the institution. A typical "condition" is an automatic Level I review by the Financial Aid Committee the following year, regardless of whether statistical outliers exist in that report. [8]

The data is newly aggregated annually to determine the norm, and thus, the outliers. In the 2011-12 reporting cycle, a difference in need met that exceeded 20.8 percent and a proportionality test exceeding 8.9 percent were both considered statistical outliers. [9] That year, the NCAA conducted 60 Level I reviews, or 13.6% of the Division III membership. Of those 60, 36 were referred to Level II

review. [\[10\]](#)

Level II Review

If the Financial Aid Committee advances the case to a Level II review, the Committee may ask the institution to provide additional information on other class years, specific student sub-groups, and certain aid programs. The institution also may submit what is called a “justification” of the appearance of noncompliance, including any statistical outliers or elevated variance. [\[11\]](#) If the Committee finds evidence of noncompliance, the case will be referred to the NCAA enforcement staff. In 2011-12, 14 cases were referred to enforcement. [\[12\]](#)

Enforcement and Financial Aid Violations

Enforcement Process

When referring a case to the NCAA enforcement staff, the Financial Aid Committee will also provide the staff with information obtained during its evaluation of the data and its communication with the institution. [\[13\]](#) Additionally, the enforcement staff may request additional documentation from the institution and interview institutional staff members to better understand the circumstances and context of the situation. If the NCAA enforcement staff believes that the evidence supports a determination that a major violation occurred, it will issue a Notice of Allegations to the institution. At that time, an institution can either 1) agree with the NCAA’s allegations and start the summary disposition process; or 2) proceed to a hearing before the Division III Committee on Infractions (hereinafter “COI”). [\[14\]](#)

The summary disposition process involves the institution and the enforcement staff working cooperatively to create a written report describing the facts of the case, findings, violations of NCAA rules, and proposed penalties. If the COI approves the agreed upon report and accepts the institution’s proposed penalties, the COI will prepare a public report that it will send to the institution shortly before it is released to the media.

If the COI does not approve the report, then the parties will revert to the hearing process. [\[15\]](#) At the end of the hearing, the COI will deliberate, make findings, determine the sanctions it wishes to impose, and prepare its public report. Typically, institutions choose to use the summary disposition process. It is certainly more cost effective than a hearing in front of the Committee on Infractions and because it is a negotiated document, the institution has a say in its contents.

It should be noted that Division III financial aid violations can be found independent of the Financial Aid Reporting Program. An institution may become aware of a violation that is not identified through the reporting program but is detected through continuing compliance efforts on campus (or through some external report of a concern). For example, the institution may discover a financial aid package for a specific student-athlete (or group of student-athletes) that is contrary to NCAA regulations but is not in a large enough amount to trigger concern in the review of the annual report. In such instances, the institution should self-report the violation to the NCAA and move through the process described in this section in the same manner as for a violation detected in the annual report.

Financial Aid Violations: Major and Secondary [\[16\]](#)

NCAA Division III violations fall into two categories: major and secondary. Secondary infractions are isolated or inadvertent, and provide minimal advantage and benefits. [\[17\]](#) The overwhelming majority of secondary infractions in Division III stem from Bylaw 15.4.1, prohibiting the consideration of athletics leadership and participation in financial aid awards. Secondary violations published to the NCAA’s database contain only a brief description of the violation and the relevant rule and do not

name the institution. [\[18\]](#) Still, it is easy to see the pattern among the violations of Bylaw 15.4.1. Here are a few examples of recent Bylaw 15.4.1 secondary violations:

- A leadership scholarship for which “team captain” is explicitly noted as one possible consideration.
- A merit award based on academic credentials and extra-curricular activities that considers athletics participation.
- Athletics is considered as an extra-curricular activity on a worksheet that is used to assign a score to determine eligibility for a variety of scholarships.

The penalties imposed for secondary infractions, if any, are minor. [\[19\]](#) Multiple secondary violations may be considered collectively as a major violation. [\[20\]](#)

Major violations are all other violations beyond secondary ones, including those that provide significant recruiting or competitive advantages. [\[21\]](#) Below are some descriptions of recent major infractions cases involving financial aid:

- International student-athletes who played ice hockey received more aid than international student-athletes who played other sports, and more than five times the aid received by international students who were not athletes, resulting in clearly distinguishable financial aid packaging and a finding of a failure to adequately monitor the awarding of financial aid. [\[22\]](#)
- A Diversity Scholarship was awarded in larger amounts to some student-athletes compared to non-student-athletes, which resulted in a pattern clearly distinguishable from the general pattern of financial aid and a finding of a failure to adequately monitor the awarding of financial aid. [\[23\]](#)
- Considering athletics leadership and participation as a criterion for awarding scholarships and allowing athletics staff to serve on the scholarship selection committees, which constituted a failure to adequately monitor. [\[24\]](#)

Best Practices

As the seventh year of the Financial Aid Reporting Program closed, results suggested a number of Division III member institutions were still misapplying the division’s financial aid legislation. [\[25\]](#) This misapplication of financial aid legislation has led 14 institutions to have their cases referred to the NCAA enforcement staff to be processed as major violations since 2007.

Institutions can avoid the pitfalls that often lead to these violations by striving to meet the recommendations outlined below. While this list is intended to represent an ideal set of best practices, institutions must also determine the best use of their available funding and staffing resources.

Emphasis on Institutional Control and Shared Responsibility

NCAA Division III presidents and chancellors should stress the importance of and the commitment to

NCAA rules compliance within their institutions. Some key considerations:

Institutional Control: NCAA Constitution 6.1.1 vests the ultimate responsibility and final authority for the conduct of the institution's intercollegiate athletics program in the hands of the institution's president or chancellor. This responsibility includes oversight of the institution's administration of financial aid. Additionally, an institution's president or chancellor should meet with the athletics department coaching and administrative staff on an annual basis, at the beginning-of-the-year compliance meeting, to stress the importance of NCAA rules-compliance and a no-tolerance policy for staff members who knowingly, intentionally or negligently violate NCAA legislation. Further, the institution's president or chancellor should emphasize the importance of attendance at any rules-education seminars (which should be conducted as part of a campus-wide education effort) and the consequences of excessive absences from these seminars.

Adequate Personnel: Institutions should designate a full-time senior athletic department staff member to lead the institution's athletics compliance office, and whose sole (or primary) responsibility should be the oversight of athletics compliance. These responsibilities should include developing rules-education and formalized monitoring programs for athletics compliance.

Direct Reporting: Institutions should address the organizational structure of the athletic department to allow the athletic director at least a shared direct reporting line to the institution's president or chancellor. The president or chancellor's ability to be fully informed about relevant rules-compliance issues will assure that the institution's commitment to full compliance is supported and overseen at the highest level of institutional administration.

Shared Responsibility: While the institution's president or chancellor is charged with the ultimate responsibility for institutional control, the responsibility for compliance with NCAA legislation is truly shared by everyone involved with athletics at an institution. This includes athletics department staff members, coaches, student-athletes, representatives of athletics interests, and employees whose responsibilities interface with athletics (i.e., financial aid, admissions).

Administration of Financial Aid to Student-Athletes and Financial Aid Monitoring

Institutions must have an athletics compliance program in place that addresses the administration of financial aid to student-athletes. This program, at a minimum, should include the following measures:

Establish Clear Communication Lines: The senior athletics compliance administrator should be designated as the athletic department's liaison to the admissions office so coaches and other athletics staff members do not communicate directly with the admissions administrators. Further, coaches should not be permitted to communicate with the financial aid office regarding the prospective student-athletes they are recruiting.

Define Departments: Institutions must separate the responsibilities of the admissions and financial aid offices. Administrators involved in the admissions process should not make decisions on either need or non-need based financial aid awards. Information obtained in the admissions process concerning athletics participation, leadership or ability should not be shared directly or indirectly with those responsible for financial aid administration. It goes without saying that at least as strict a separation between athletics and student financial aid offices should be maintained.

Review Scholarship Criteria: Institutions should conduct a full review of the determining criteria for all scholarships administered by the institution and, where necessary, amend said criteria to eliminate direct or indirect references to athletically-related factors prohibited by NCAA legislation. Institutions should implement the following safeguards: (1) identify the institution as an NCAA Division III institution on its web site and discuss the commensurate prohibition on athletically-related financial aid; (2) on application materials for all institution-administered scholarships, identify the institution as

an NCAA Division III institution that prohibits athletically-related financial aid; and (3) provide guidance to all scholarship committees on permissible evaluation of applicant qualifications pursuant to applicable NCAA legislation. For example, no members of the athletics department staff should serve on scholarship committees.

Self-Assessment: Institutions should develop a data program that allows the institution to perform a real-time internal audit of all financial aid awards for first-time/full-time freshman and transfer students.

Document, Document, Document: In each student file, the institution should place written documentation describing the student's qualifications for any award offered. The senior compliance administrator should review all student-athlete files (or perform spot-checks of selected student-athlete files) to ensure that all financial aid awards to student-athletes are permissible under NCAA legislation. This review should be done prior to any student-athlete receiving notification of his or her financial aid award for the upcoming academic year.

Athletics Financial Aid Committee: Institutions should establish an athletics financial aid committee to provide oversight of the institution's administration of financial aid to student-athletes. This oversight should include, but is not limited to, developing institutional policies and procedures regarding financial aid for student-athletes, monitoring the administration of financial aid to student-athletes, organizing rules-education efforts and developing rules-education seminars and materials, and serving as a resource for institutional staff members on financial aid related issues. The athletics financial aid committee should meet no less than once a month and should include, at a minimum, the institution's faculty athletics representative, athletics director, senior athletics compliance administrator, a representative from the office of financial aid, a representative from the registrar's office, and a representative from the admissions office. The committee could be chaired by the faculty athletics representative or another individual deemed appropriate.

Athletics Compliance Manual: Institutions should develop an athletics compliance manual addressing all areas of NCAA Division III rules-compliance, including financial aid. Each chapter of the rules-compliance manual should include all relevant institutional policies and procedures, references to NCAA rules, forms, key definitions, applicable bylaw citations, and revision history. The rules-compliance manual should be distributed to all athletics staff members, coaches, and institutional employees whose responsibilities interface with athletics (i.e., financial aid, admissions, etc.).

Compliance Hotline: The senior athletics compliance administrator should set up an anonymous hotline (e.g., phone line or web-based questionnaire) for the reporting of any known or suspected rules-violations.

Rules-Education Programming & Training

Institutions should establish comprehensive rules-education programs that include the following measures:

Communication: The senior athletics compliance administrator should create a process for institutional staff members, coaches, student-athletes, and representatives of athletics interests to submit questions relating to rules-compliance and legislative interpretations. At least once a semester, the athletics department should distribute an electronic newsletter or other e-mail that includes interpretations, questions and answers, examples, and reminders of NCAA legislation to all athletics and other institutional employees involved with NCAA-related issues.

Formal, Broad Rules Education: NCAA rules-education sessions should be provided to the

institution's coaches, athletics administrators, and institutional staff members whose responsibilities interface with athletics-aid (e.g., admissions, retention, financial aid, etc.). These education sessions should be conducted regularly (perhaps monthly) and should include reviews of recent bylaw interpretations, educational columns, secondary cases, and major enforcement cases. These sessions should also stress timely rules-compliance issues (e.g., sports gambling legislation during March Madness). The senior athletics compliance administrator should take attendance at each session and follow up with personnel who are absent. Athletics staff members, coaches and institutional employees whose responsibilities interface with athletics should have a copy of the NCAA Division III manual, any applicable conference manuals, and the institution's rules-compliance manual.

Annual Training: The institution should hold an annual rules-education seminar for campus entities involved in supporting the intercollegiate athletics program, including staff members from the registrar's office, admissions, financial aid, and advancement. The seminar should be held at the conclusion of each academic year and should address current athletics compliance policies and procedures, the effectiveness of current monitoring programs, and an open discussion regarding essential changes for the following year.

Regional Rules Attendance: Institutions should consider requiring the institution's athletic director and senior athletics compliance administrator to attend regularly the NCAA Regional Rules Seminar. Additionally, the institution should rotate representatives from the financial aid, registrar, and admissions offices to attend once every three years. Institutional staff members who attend the NCAA Regional Rules Seminars should debrief the institution's coaches, athletic administrators, and other staff members who interface with athletics in subsequent rules-education sessions. This will assist the athletics compliance office with educating institutional offices that interface with athletics and all other institutional personnel who have athletics responsibilities about relevant NCAA rules.

Interim Training: Institutions shall require any mid-year hires in the financial aid or admissions office to attend a specialized rules-education seminar regarding the institution's financial aid process. This seminar should occur within one month of the individual's hiring date.

External Audit of the Financial Aid Program

Institutions should retain a qualified outside entity for an outside audit of the institution's financial aid program at least once every four years. This program should include, at a minimum, reviews of the institution's athletics rules-education program and financial aid policies and procedures, a random sample of applications for prospective students, and the institution's self-assessments over the past three years. The audit should also include a meeting with the institution's president or chancellor, the athletic financial aid committee, and general counsel to provide recommendations and potential athletics compliance issues. The outside entity should also provide a detailed report to the institution's president or chancellor and athletics financial aid committee within one month of the audit.

CONCLUSION:

NCAA Division III financial aid legislation prohibits institutions from considering athletics participation or ability in the awarding of financial aid. To ensure compliance with these rules, the NCAA compares the financial aid packages of first-time, full-time student-athletes with the aid packages of other first-time, full-time students. Institutions should take advantage of preventative measures outlined in this Note, including regular rules-education for employees in relevant departments, policy review and drafting, and careful monitoring of the financial aid process, in order to avoid NCAA sanctions.

APPENDIX:

Sample Timeline of Financial Aid Reporting Process and Enforcement

Anytime: Create a data file and do a self-assessment

June: Upload data file to NCAA web site (available, not required)

September: Deadline to submit the data file is mid-September

October – December: Notifications of whether a Level I review will be conducted or not

December: Notification about a Level II review

February: Submit requested justification information, if subject to a Level II review

March: Notification of acceptable justification or referral to Enforcement, if subject to a Level II review

Summer and beyond, if referred to Enforcement: Hearing, or Summary Disposition Process, including interviews with campus staff and agreement on a Summary Disposition Report

FOOTNOTES:

FN1. [NCAA Division III Financial Aid Reporting Process: Review Results 2005-06 through 2011-12](#) (June 1, 2012).

FN2. [Philosophy Statement and General Principles 15.01.3](#), 2012-13 NCAA Division III Manual, , p. vii, section (c) and p. 107.

FN3. 15.4.1, Consistent Financial Aid Package, Division III Manual, p. 110.

FN4. [NCAA Division III Financial Aid Annual Reporting Process and Financial Aid Data Management System \(FADMS\) User's Manual](#) (June 1, 2012), p. 4.

FN5. [NCAA Division III Financial Aid Reporting Process: Review Results 2005-06 through 2010-11](#) (May 10, 2011).

FN6. FADMS User's Manual, p. 6.

FN7. FADMS User's Manual, p. 7.

- FN8.** Review Results, p. 3.
- FN9.** Review Results, p. 2.
- FN10.** Review results, p. 3.
- FN11.** See Justification Template, Appendix 3, FADMS User's Manual.
- FN12.** Review Results, p. 4.
- FN13.** FADMS User's Manual, p. 8.
- FN14.** See NCAA website, [Processing of a typical major infractions case](#).
- FN15.** Division III Manual, 32.7.1.4.2.
- FN16.** The NCAA recently announced a new enforcement structure for Division I, effective August 2013. At the time of this Note's publication, no such change has been adopted for Division III. See Gary Brown, [Board Adopts Tougher, more Efficient Enforcement Program](#) (October 3, 2012).
- FN17.** 19.02.2.1, Violation, Secondary, Division III Manual.
- FN18.** The public has access to a database (LSDBi) that contains all NCAA legislation, legislative proposals, and major infractions. Member institutions can log in for additional access, including short anonymous summaries of secondary violations. <https://web1.ncaa.org/LSDBi/exec/homepage>.
- FN19.** See [Penalties, NCAA Rules Compliance](#). Recent enforcement actions for secondary infractions involving financial aid include submitting to the NCAA an outline of the institution's review of and changes to the financial aid process and participation by institutional representatives in an educational session with Financial Aid Committee staff to discuss Division III financial aid legislation.
- FN20.** 19.02.2.1, Violation, Secondary, Division III Manual.
- FN21.** 19.02.2.2, Violation, Major, Division III Manual, p. 169.
- FN22.** [Manhattanville College, Public Infractions Report](#) (August 7, 2012).
- FN23.** [University of New England Public Infractions Report](#), (June 13, 2012).
- FN24.** [University of Wisconsin, La Crosse, Public Infractions Report](#) (April 11, 2012).
- FN25.** Gary Brown, [DIII Report Raises Financial Aid Concerns](#) (June 23, 2011).

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