

Journal of

NCAA Compliance

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Will Student-Athletes on F-1 Visas be Affected by the Fair Pay to Play Act?

By *Gregg E. Clifton*
and *Amy L. Peck*, of *Jackson Lewis*

The Fair Pay to Play Act, California SB 206, would allow college-level student-athletes in California to market their name, image, and likeness without affecting their amateur status. How may the new law, which is in the final phases of approval, affect international student-athletes?

Foreign students enter the United States on F-1 student visas. The terms of this type of visa drastically restrict the ability of each individual to earn money while studying in the United States as an international student.

The F-1 visa is a non-immigrant student visa that allows foreign-born individuals to pursue academic studies in the United States. International students must meet the following criteria in order to qualify:

- The student must be enrolled in an "academic educational program."
- The specific school must be approved by the Student and Exchange Visitors Program, which is administered by Immigration & Customs Enforcement.
- The student must be enrolled as a full-time student at the proposed school.
- The student must be proficient in English or enrolled in courses leading to English proficiency.
- The student must have sufficient funds to be able to support themselves during the entire length of their proposed course of study and stay in the United States.
- The student must maintain a residence abroad that the student has no intention of abandoning.
- The F-1 student cannot work, except in specific circumstances regulated under federal law.
- The terms of the F-1 visa restrict the student from working off-campus during their first academic year.

F-1 students may engage only in three

types of off-campus employment: Curricular Practical Training, Optional Practical Training, and Science, Technology, Engineering, and Mathematics Optional Practical Training Extension. All off-campus employment for F-1 students must be related to their area of study and authorized by the Designated School Official before starting any work. An F-1 visa does not authorize any other type of work activity and clearly does not authorize international student-athletes to enter into endorsement agreements to secure remuneration for their name, image, and likeness.

In fact, an international student found to have been working illegally while on an F-1 visa is deemed to have committed a serious violation of the regulations and could result in the student being deported.

The proposed California legislation authorizes student-athletes at all 24 California public and private colleges and universities to market their name, image, and likeness and restricts the ability of the NCAA to prevent student-athletes from participating in any such marketing opportunities.

SB 206 fails to address the predicament of the international student-athlete.

How will the hundreds of international student-athletes participating on California colleges and universities teams benefit from the new legislation? Will the California legislature address this apparent loophole that would restrict an international student-athlete from benefiting from the value of their name, image, and likeness before the bill can be signed into law by Governor Gavin Newsom?

These are key questions that can and should be addressed by attorneys at law firms with experience in both collegiate athletics and immigration law.

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Presidents Choose to Enable Academic Fraud in Athletics

By David Ridpath, Gerry Gurney,
and Donna Lopiano

In 2017, after the University of North Carolina (UNC) escaped punishment for a two decades long massive academic scandal designed to manage and maintain the eligibility of underprepared athletes, the cumulative outrage from the public, media, and athletics watchdog groups demanded that the NCAA establish stronger rules and standards for the widespread fraud within American college programs. Last week, the NCAA Division I Board of Directors under pressure from the Division I Presidential Forum, quietly dropped important academic integrity recommendations advanced by two NCAA groups that would have modified and strengthened rules to address systematic and widespread academic fraud on member institution campuses. The non-action was taken “in the dark of night” despite an August 7th NCAA news release that announced the Division I Board of Directors was ready “to shore up academic integrity rules.”

Dr. David Ridpath, Drake President, commented on the decision:

“It was timid, spineless, defensive, protective of the status quo and fully supportive of the public view that college presidents are incapable of controlling renegade coaches and under-supervised tutors, learning specialists and athletic academic advisers at their institutions. College and university presidents are fully aware that they have already sold out academic integrity to commercialized college sport. Once the president approves special waivers of normal academic admissions standards, which allows academically underprepared football and basketball players into their selective institutions, the proverbial dominoes start to fall. Underprepared athletes are clustered in less demanding academic majors and classes. Underprepared athletes must be steered

toward friendly professors and propped up by armies of athletic department tutors and learning specialists. It is not surprising that college presidents are perpetrating their own job security by failing to approve more stringent standards. They turn a blind eye to academic integrity by offering independent studies or online classes with no academic rigor or similar fraudulent practices to keep underprepared athletes eligible to participate in athletics—as long as the institution makes sure non-athlete students are also participating in the scam.”

In 2017, The Knight Commission on Intercollegiate Athletics co-chairs former Secretary of Education Arne Duncan and former university president Carol Cartwright called for the NCAA to change rules that permitted institutions to make their own determinations of academic fraud, as was the case at UNC. Cartwright, co-chair of the Knight Commission and president emeritus of Kent State University said, “It’s clear that we need a new approach that can provide more fairness to student-athletes, while giving more teeth to the NCAA to ensure academic integrity in college sports.” Coupled with tough talk from NCAA president Mark Emmert, it seemed maybe the NCAA was going to make a decision on how to enforce systematic academic misconduct and fraud consistently, something it has failed miserably at as an organization in the past.

In response, two NCAA blue ribbon committees, one led by former U.S. Secretary of State Condoleezza Rice, and another led by the NCAA Academic Working Group, were tasked with modifying ineffectual NCAA rules regarding academic misconduct and fraud. For an organization that claims to be about education these were needed steps to finally define college sports’ role within the higher education space. Both came up with the

same conclusions, it was essential to give the NCAA power to investigate and adjudicate systemic academic fraud such as that demonstrated at UNC. Yet, despite all the bluster and promises, it simply is not going to happen, and it is back to business as usual for the NCAA and that means keep college athletes eligible at any cost so winning and money can continue to flow.

If the NCAA membership, led by university presidents, refuse to exercise any authority over academic integrity in college sports, then it is simply past time for a new approach that all institutions can follow without NCAA oversight. Dropping tougher systemic academic fraud proposals is an abject failure of college presidents to protect the educational mission of the university. It is time for tenured faculty to stand up, and demand accountability at least on their own campuses since the NCAA membership wants no part in it. As discussed in our recent Drake position paper on shared responsibility, there are better ways to regulate intercollegiate athletics and ensure academic integrity. The only path forward, and one that has been a bedrock principle of The Drake Group, is transparency and disclosure of academic benchmarks within intercollegiate athletic programs in comparison to the general student body. In other words, until institutions are publicly shamed or at least under the threat of public exposure, they will continue to hide behind federal privacy rules to protect an athletics eligibility-centered commercial enterprise at the expense of providing a real education. As with many academic scandals in the past, once fraudulent academic practices came to light the institutions finally acted to fix problem. Without that public exposure, these practices continue unabated under the NCAA mythology that the organization is primarily about the

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athlete and academics. The way forward is clear. Transparency and disclosure monitors vulnerabilities and fixes issues before they become scandals and it can be done within federal privacy law (Family Educational Rights and Privacy Act-FERPA) guidelines.

Our position paper on shared responsibility has 15 detailed, measurable and achievable benchmarks to ensure academic integrity in intercollegiate athletic programs. Some of the highlights have been principles of The Drake Group since its formation in 1999. We believe academic integrity is a shared responsibility, but the primary function of the faculty as guardians of the curriculum. At a minimum, here are some steps that every institution can take today to increase academic integrity within intercollegiate athletics without any NCAA involvement or direction.

Transparency and Disclosure. Sunshine is the best disinfectant! Institutions have been hiding behind federal privacy laws such as FERPA to protect an eligibility-centered enterprise that more often than not falls far short of actual access to an education for the college athlete. Each institution should be required to establish an athlete academic oversight committee, consisting of tenured faculty appointed by the institution's faculty senate that produces an annual audit submitted to the senate that includes an analysis of several benchmarks, overall and by sport in comparison with the student body. Things examined include athlete versus non-athlete enrollment and grading patterns, adopting a policy that prohibits selection of courses and majors intended merely to ensure continued athletics eligibility or athlete attendance at practice, athlete majors v. non-athletes (Clustering), independent study enrollment, incomplete grades and grade changes, admission exceptions and number of NCAA waivers, just to name

a few. A faculty oversight committee can view this data without violating FERPA and faculty senates can enforce changes and policies to ensure academic primacy. The athletic department should not be involved in this oversight. In addition, institutions should publicly make this information available in an aggregate form that does not specifically identify an athlete or student by name but does show that the institution is committed to giving the athlete the best chance at a viable and meaningful education.

Academic Support and Advisement. Athletes should be advised by the same faculty or specialist employees who advise all students. Employees of the athletic department should not be involved in this process. Academic support programs serving athletes should be funded and administered by regular academic authorities and not the athletic department in order to eliminate the conflict of interest. Employment agreements with all athletics personnel should include a provision prohibiting interference with teaching faculty or instructors, regular academic advising, course and major selection, scheduling of classes or tutoring and other academic support services. Employment agreements for academic support personnel such as tutors or learning specialists hired to provide learning assistance to college athletes should include a strict prohibition against writing papers for or preparing other work that is the responsibility of the student. NCAA member institutions should be responsible for providing sufficient release time to their respective NCAA Faculty Athletic Representatives and faculty athletics committees to exercise their oversight and certification responsibilities.

Athlete Admissions Tenured faculty members who are free of athletic influence must become more involved and be

the final decision makers in the review of athlete admissions. The review of qualifications for every athlete must be based upon the applicant's ability to succeed. We support the institution admitting anyone they want, and it certainly can be important from a diversity and socio-economic standpoint to have a broad based admission policy. However, it is criminal to not remediate those students to bring them to a level where they can succeed academically. It is even worse when it is an athlete, who is working for 40-60 hours per week, traveling and missing classes. If a prospective athlete is more than one standard deviation below the academic profile of the incoming freshman class, he or she should be intensively academically remediated for one academic year combined with a very restrictive practice schedule and no competition. Let's get our athletes to a level where they can compete academically as much as we want them to compete athletically. Just by doing this, the pressure to cluster and outright cheat is severely minimized. It is telling that a coach would never dream of putting an unprepared athlete on the field or court and will often "redshirt" those athletes so they can become more seasoned and able to compete. Yet, when it means preparing an athlete academically before being allowed to compete, the institution seems less than inclined to do that versus losing a potential player who can help generate wins. Institutions, presidents and faculty must decide what is more important, and if it is winning and revenue generation then at least be honest about it.

Accrediting Bodies The institution's regional accreditation agency responsible for conducting a regular comprehensive review of the operation of the athletic program as part of the Council of Higher

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Ferris's Past Experiences Fuel Rise to AAC Compliance Chief

The recipe for a successful career is often an amalgamation of many ingredients. And so it has been with Ellen Ferris, who was named Associate Commissioner for Governance and Compliance at the fast-growing American Athletic Conference (AAC) in October 2013. Her extensive experience at the NCAA, as well as at the institutional and conference levels, played a big role in her advancement.

Ferris joined the AAC from the University of Southern California, where she served as Associate Vice President for Athletic Compliance. Before joining the staff at USC, Ferris spent more than three years at the NCAA, including one year as Associate Director of Membership Services. She served as a staff liaison to Division I institutions in the athletics certification process and presented rules education sessions at conference meetings and regional compliance seminars. In addition, Ferris spent three academic years as Assistant Commissioner for Compliance Services at the Big Sky Conference, where she was also the league's Senior Woman Administrator.

Ferris has served on the Board of Directors of the National Association of Athletic Compliance and has been a member of the NAAC Reasonable Standards Committee, the NCAA Division I Legislative Review and Interpretations Committee, the Division I Management Council and the Division I Men's Tennis Committee. She currently serves on the NCAA Division I Infractions Appeal Committee.

Ferris holds an undergraduate degree in education from Texas State University-San Marcos and a master's degree in sport management from the United States Sports Academy. She earned a Juris Doctor degree from Southern Methodist University and was admitted to the Texas State Bar in 1999.

Ferris' success merits a deeper look into

how she has charted a successful course, one that other compliance professionals might learn from in the interview that follows:

Question: Was there anyone in your college years who influenced you down the path of NCAA compliance and how?

Answer: I was a graduate assistant at SMU working in athletic academic support when the football program was sanctioned by the NCAA. Watching the fallout from that was my first introduction to compliance, and I became interested in the ripple effect of how policies and decisions affected individuals outside the intended scope. Several years later, I enrolled in law school knowing that I wanted to work in college athletics. I completed several internships, including one in compliance at the Southland Conference with Beth Chapman (now at The Compliance Group). Beth was a great mentor, and while working with her, I knew I found my niche in athletics.

Q: How did your experience at the NCAA prepare you for a successful career in compliance?

A: Working at the NCAA relatively early in my compliance career was transformational. My colleagues were intelligent and driven; they approached issues from different perspectives, which forced me to think more critically and creatively. The NCAA provided a strong foundational knowledge of the rules and their rationales. In addition, I had the opportunity to meet a variety of individuals in the industry, and those interactions allowed me to see how different institutions operated. Understanding that there is more than one way to reach a goal and having a phenomenal group of colleagues across the country to discuss ideas with has helped me tremendously throughout my career.

Q: How do your responsibilities differ at the NCAA or conference level versus at an individual school?

A: Conference compliance is more

policy-governance driven, whereas compliance on campus is more student-athlete/coach driven. On campus, your role is to implement and enforce the rules, which may include providing education, completing forms and reviewing data... essentially ensuring all the i's are dotted and the t's are crossed. You are working with individuals to resolve their questions or issues, and, in that moment, that person becomes the focus of your attention (i.e., what is the fair outcome for that individual). When you are at the conference or the NCAA, your focus is more at the macro level. The perspective of fairness shifts to creation of policies and rules, and how can they be written to ensure equality for all participants.

Q: What are the most challenging NCAA rules to enforce and why?

A: Recruiting rules are the most difficult to enforce. Many are created as a reaction to extreme situations, but, when applied to common situations, the rules are counterintuitive. Many individuals working in college athletics are uber-competitive and creative. The downside is that it can lead to a culture of one-upmanship, which then leads to a continuous moving of the line, and the result is constant change and pressure to outdo the competition. In addition, technology changes quickly but the rules change slowly. Trying to apply outdated rules to new technology can be very challenging.

Q: What are the biggest changes you have noticed with the NCAA rules enforcement staff since you joined the conference?

A: The enforcement staff has improved its outreach to the membership. Each conference has a liaison in football and basketball development, and they have been willing to join conference calls or

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Ferris's Past Experiences Fuel Rise to AAC Compliance Chief

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attend in-person meetings with our membership. We have had other enforcement staff members with specific expertise (e.g., academic fraud, sports wagering) present to our membership as well. This has been very beneficial in that it increases the knowledge for our membership and it provides an opportunity for the enforcement staff to better understand the challenges faced on various campuses.

Q: What is the key to being a successful manager of a compliance team?

A: 1. Communication: Having clear, consistent communication is essential in a compliance office, and this applies to communication both internally and externally to your department.

2. Innovation: Being innovative is necessary to keep up with changing rules, priorities and technology. Compliance administrators are being asked to do more every year, while still being expected to monitor the activities of 250 plus staff members and 600 plus student-athletes.

You have to find new ways to be efficient and effective while appropriately prioritizing the issues needing to be addressed.

3. Professional development opportunities: Having a strong compliance office starts with who you hire. Providing professional development opportunities to the staff helps to develop and retain the superstars in our industry.

Q: What advice would you give a young compliance professional in order to have a successful career in the field?

A: 1. Develop excellent communication skills and know your audience. You will be working with a variety of different personalities and you need to learn how to best communicate with each of them. How you provide information to a student-athlete will not be the same as how you respond to a coach or an administrator.

2. Be a problem solver. First, though, to solve a problem, you have to understand it. Learn the rules and the rationale for why a rule was adopted. One fact can

be the difference between a yes and a no answer, so pay attention to the details and ask questions. Before giving a “no” answer, make sure you understand what the individual is really trying to accomplish and see if there is another way to achieve (or get close to achieving) it within the rules. Be creative, but ethical, in your solutions. But, at the end of the day, if the answer is no, do not be afraid to say so.

3. Have the ability to adapt to and facilitate change. If you need a consistent, structured environment to work well, then compliance might not be the best option. No two days are alike, and your priorities can change in a minute based on the events of the day. Working in compliance is a sometimes-mundane, sometimes-exhilarating, generally-challenging, roller-coaster of an adventure! As frustrating as it can be sometimes, it is definitely a very interesting and rewarding career. ■

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Education accreditation process required of the institution should reexamine its standards to consider the adoption of recommendations made in this document and the position paper. If accrediting bodies are truly more responsible than the NCAA for ensuring academic primacy on campus, then these proposals provide teeth the better regulate intercollegiate athletic programs from an accreditation level and provide another layer of oversight that can keep institutions closer to the goal of actually educating their athletes.

These simple and straightforward solutions mentioned in this article and our position paper are imminently clearer than

current NCAA rules regarding academics and academic integrity. Moreover, most can be imposed today by any college president as “best practice.” The Drake Group calls upon college presidents to “step up to the plate” and do their job at the institutional level since the NCAA

Iowa Coach Fired for Allegedly Paying Player's Rent

University of Iowa Head Volleyball Coach Bond Shymansky, who was fired earlier this summer, said he was fired for violating an NCAA violation when he paid a player's rent in the summer of 2017.

In a statement, Shymansky said the

membership as a whole has made it more clearer than ever and as they communicate via recent court cases, that they do not have a legal duty or responsibility to insure that a college athlete is provided an education. If that is their stance, it is time to for institutions to fulfill that promise. ■

player “came to Iowa City expecting to be on full scholarship. But when that status changed, she had nowhere else to turn.” Further, he said he was “prepared to accept whatever sanction is deemed appropriate by the NCAA.”

Idaho Basketball Coach's Termination Caused by Self-Reported NCAA Violation

By Tim Hipps

Three weeks after the University of Idaho self-reported three potential NCAA violations and put men's head basketball coach Don Verlin on paid administrative leave, the Vandals terminated for cause the winningest coach in school history.

Since taking the job in March 2008, Verlin led Idaho to an overall record of 177-176, but the Vandals finished 5-27 in 2018-19. With a salary of \$263,563 slated for 2019-20, Verlin had two years remaining on a contract that stipulated he could be fired for cause for NCAA violations committed by employees "for whom coach is administratively responsible ... if coach knew or should have known of the violation and could have prevented it by ordinary supervision."

The fired-for-cause clause likely got Idaho off the monetary hook for the remainder of Verlin's contract.

According to university emails and the violations report submitted to the NCAA, then Idaho Director of Compliance Jordan Hall warned the men's basketball staff of potential NCAA bylaw violations, but similar violations continued.

Hall wrote emails that detailed two instances in which he learned of potential NCAA violations and informed Verlin. Hall spotted one of the violations while peering through the window of a locked gym. When he tried to observe practice two days later, the windows were covered and the doors remained locked, Hall wrote in his report.

"This seemed very intentional and passive aggressive," Hall wrote in an email to the university's deputy general counsel.

In the emails, Hall recounted a conversation with Verlin. Hall wrote that Verlin said former Athletic Director Rob Spear informed him he could be "lenient" with one of the potential violations, which

involved illegal participation of a non-coaching staff member in practices and games.

Staff was made aware of the potential violation and subsequent rules in September 2018, Hall wrote, and the basketball program was found to have potentially committed more violations of the same kind in October and December.

Every member of the athletic department was sent rules on what noncoaching staff members were allowed to do as early as February 2016 and as recently as the spring of 2018, according to the emails and report. Despite that, Verlin told Ice Miller he "did not recall specific compliance education" on that topic.

Spear was fired by the State Board of Education in August following an independent investigative report that detailed mistakes his department made in handling a sexual assault allegation made by a female student-athlete.

The NCAA violation detailed in Hall's emails involves then-Director of Player Development Brooks Malm. According to the report, Malm, a former manager for the men's basketball team as an undergraduate student, was found to have participated in on-court activities with the team during the 2017-18 season, the following off-season, and the 2018-19 season.

Malm's participation was a violation of NCAA bylaw 11.7.3, which forbids noncoaching staff members from participating in practice. Malm told Ice Miller he was unaware that his conduct was not permitted until the fall of 2018, and he stopped for the most part after the early portion of the 2018-19 season.

Prior to his decreased role later in the season, Malm had scrimmaged with the team five to seven times over the last few years and "performed other coaching duties at practice" nearly every day, per a January

2019 email from Hall.

In an earlier email, Hall detailed a September 2018 photo in which Malm was wearing a whistle around his neck, standing on the court. Hall said he told the men's basketball staff that Malm's actions were violations. On Oct. 3, 2018, Hall said he saw Malm participating in a drill with players through a window in the gym, though the doors were locked. Hall said he informed Verlin the next day that he would submit an NCAA violation. Hall's ensuing attempt to observe practice was thwarted by coverings on the windows.

On Oct. 11, Hall said he met with Verlin and Interim Athletic Director Pete Isakson about Malm's violation. Verlin told him that "[Former Athletic Director] Rob Spear said we could be lenient on this rule because we don't have enough paid managers and we would be down one scholarship student-athlete."

In December 2018, Hall said he saw Malm holding play cards during a game, and again informed Verlin the Vandals were violating NCAA rules. Hall said he spoke with Verlin and mentioned a 2016 email that was sent to everyone in the athletic department regarding what "noncoaching staff member(s)" were allowed to do. Verlin told Hall he "doesn't read his emails," Hall wrote.

Malm was briefly suspended from attending practice after the violations were reported in the fall of 2018. In February 2019, while on a road trip at Montana and Montana State, Malm participated in scout team walk-throughs, according to people interviewed by Ice Miller. Malm also admitted to participating.

The second violation outlined in the report is almost entirely redacted, including which NCAA bylaw was violated. The third involves members of the coaching

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staff evaluating prospective players during pickup games with current players on campus, which is a violation of NCAA bylaw 13.11.2.1. One of the prospects wasn't eligible for such an evaluation because of medical paperwork that hadn't been completed; another was a local high school player who occasionally played pickup games with the Vandals and was seen in action by coaches.

Despite the reported violations, the report found that Idaho had an "institutional commitment to NCAA rules and a functioning athletics compliance program that educates coaches, athletics staff members and student-athletes."

Ice Miller labeled the violation related to Malm as a Level II infraction, defined by the NCAA as a "significant breach of conduct." The other two were labeled

Level III, a "breach of conduct." Level I is the most egregious category, for a "severe breach of conduct."

The report details a series of self-imposed sanctions, including a one-game suspension for the team's head coach, a \$5,000 fine, reduced access for Malm, mandatory rules seminars and recruiting and practice limitations through the 2019-20 season. Walsh reportedly said all sanctions will be enacted, and the NCAA could add more.

Verlin was placed on paid administrative leave May 23 – the same day the school self-reported three potential violations to the NCAA.

"Consistent with the requirements of NCAA membership, the University of Idaho has submitted to the NCAA enforcement staff a self-report identifying what

the university believes to be violations of NCAA bylaws within the men's basketball program," Idaho spokesman Michael Walsh said in a statement.

On June 14 Verlin was fired.

"As with all personnel matters, we weigh many factors before we make a decision," Isakson said in a statement. "These are not easy conversations or decisions, but we have a direct responsibility to do what is best for the university. Our fundamental goal in U of I athletics is that each sports program be a source of pride for the Vandal community – pride in our competition performance, in how we educate our student-athletes and in how we run our department. Foundational to meeting that goal is an absolute commitment to compliance and excellence." ■

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Dr. Robert Greim

NCAA Slaps Florida A&M With Five-Year Probation

By Tim Higgs

It will take Florida A&M student-athletes five years to atone for nearly a decade of NCAA rules infractions committed by university administrators.

The NCAA placed FAMU on five years probation for allowing ineligible athletes to compete and for lacking “institutional control” from 2010-17, when the university improperly certified 93 student-athletes 162 times in 12 sports, according to an NCAA committee.

The school certified student-athletes as eligible when they failed to fulfill required credit hours, did not complete required percentages of their degree by designated times, did not meet minimum grade point average requirements, and/or failed to meet transfer requirements or exceptions. The school also failed to certify a student-athlete’s amateur status and allowed another student-athlete to compete after the student-athlete had exhausted all seasons of competition eligibility, according to the NCAA.

FAMU cooperated with the investigation and self-imposed penalties banning the Rattlers from 2019 and 2020 post-season competition in football, baseball, men’s and women’s basketball, men’s track and field, and women’s volleyball.

Other self-imposed restrictions include recruiting and scholarship reductions and the vacation of records of any seasons of competition that student-athletes competed while ineligible.

FAMU has been working to address the problems for the past 18 months.

“While we cannot change the circumstances of the past, we have accepted full responsibility for the infractions and are committed to running an athletic program that is in full compliance with NCAA rules and regulation,” FAMU President Larry Robinson said. “Rest assured, we have taken significant steps to address these issues and reduce the likelihood of recurrence. We will

meet and exceed the NCAA’s expectations to ensure that FAMU Athletics remains in compliance with its standards.”

This case was resolved through the summary disposition process, a cooperative effort where the involved parties collectively submit the case to the Committee on Infractions in written form. The NCAA enforcement group and university must agree to the facts and overall level of the case to use this process instead of a formal hearing.

The panel resorted to an expedited penalty hearing because the university did not agree with the core financial penalty prescribed by the COI based on the penalty guidelines. After the hearing, the committee maintained the financial penalty. The committee determined that while it was not indifferent to the financial challenges facing the university, the membership’s penalty guidelines require the committee to treat all schools the same, regardless of total operating budget.

“The panel recognizes that Florida A&M has faced resource limitations and significant turnover in high-level athletics leadership positions,” the committee said in its decision. “Those challenges, however, do not excuse the university’s inability to establish and maintain core compliance operations and meet fundamental obligations of NCAA membership.”

The committee found the university lacked control in five ways when it failed to adequately monitor and control the athletics certification process; properly apply academic certification legislation; sufficiently involve staff members outside the athletics department in the certification of student-athletes; withhold ineligible student-athletes from travel and competition; and detect and report the violations.

The committee noted that this is the university’s third case involving certification issues in the past 19 years. It continued that the recent cases have served as a focal point for university leadership to make necessary

changes to implement core compliance policies and procedures.

In its report, the committee noted that it “recognizes the university’s efforts — mainly hiring, training and maintaining individuals who are committed to improving the culture of compliance on the campus. Since 2015, those individuals have created and enhanced policies and procedures designed to meet NCAA rules and expectations. Those improvements, however, have only recently brought the university in line with what the NCAA membership has identified as a fundamental obligation of all Division I members — properly certifying student-athletes as eligible.”

The committee used the Division I membership-approved infractions penalty guidelines for a Level I-Aggravated case to prescribe the following measures:

- Five years of probation.
- A self-imposed 2019-20 postseason ban for football, baseball, men’s basketball, men’s track and field, women’s basketball and volleyball.
- A vacation of records in which student-athletes competed while ineligible. The university must provide a written report containing the contests impacted to the NCAA media coordination and statistics staff within 45 days of the public decision release.
- A reduction in scholarships by 10 percent for each of the following programs during the 2019-20 academic year: baseball, men’s basketball, men’s track and field, women’s basketball and volleyball.
- A reduction in scholarships by 10 percent for the football program during the 2019-20 and 2020-21 academic years.
- Recruiting restrictions for all sport programs during the 2019-20 and 2020-21 academic years. The public report contains specific detail on Page 16.
- A \$5,000 fine plus three percent of the total athletics budget. ■

NCAA ANNOUNCES INDEPENDENT INFRACTIONS PROCESS

As part of a series of significant changes set in motion in August 2018, as a result of recommendations issued by the Commission on College Basketball, the NCAA announced that the individuals responsible for important components of the new independent infractions process have been appointed.

These independent investigators will help minimize perceived conflicts of interest and to bring different perspectives to the infractions-review process. Select complex cases will be eligible for the independent process. Examples of complex cases include alleged violations of core NCAA values, such as alleged failures to prioritize academics and the well-being of student-athletes; the possibility of major penalties; or conduct contrary to the cooperative principles of the existing infractions process.

“The independent infractions process is NCAA members’ most recent effort to continue to hold schools appropriately accountable for conduct detrimental to college athletics,” said Naima Stevenson Starks, the NCAA’s vice president of hearing operations.

Stevenson Starks will serve as direct liaison to the NCAA Committees on Infractions and Infractions Appeals Committees in the existing infractions process in all three divisions and oversee the staffs that support these committees. She also will provide strategic coordination for the NCAA’s new Independent Accountability Resolution Process.

“The addition of independent voices, those not directly connected with member schools, will provide a different lens through which we evaluate what it means to uphold the values and mission of the Association,” Stevenson Starks said.

Schools, the vice president of enforcement and the NCAA Division I Committee on Infractions chair can request that an infractions matter be referred to the independent infractions process. Negotiated resolution, summary disposition and existing infractions hearings also remain available paths for resolution of infractions cases.

The new groups include:

- Independent Accountability Oversight Committee: Made up of three of the newly appointed independent members of the Board of Governors and the DI Board of Directors chair and vice chair. The oversight committee oversees the independent structure and appoints members to the Infractions Referral Committee, the independent investigators and advocates who make up the Complex Case Unit. The oversight committee also recommends the appointment of Independent Resolution Panel members.
- Infractions Referral Committee: Reviews requests to refer cases to the independent process.
- Complex Case Unit: Assesses whether further inquiry is needed,

conducts the investigation and shepherds the case through its review.

- Independent Resolution Panel: Reviews allegations and the school’s response to those allegations, conducts the case hearing and determines whether violations occurred and any appropriate penalties.

For more, visit <http://iarbcc.org/>

U OF IDAHO HIRES SENOUR TO RUN COMPLIANCE

The University of Idaho has hired Heath Senour as its Associate Athletic Director for Compliance. In his role, Senour will have dual reporting lines to University General Counsel and the Director of Athletics and serve on the athletic department’s senior staff. Senour joins the Vandals after serving as the Associate Athletic Director for Compliance at Santa Clara for the past nine months, and in the same position at Kennesaw State for seven years prior. Before Kennesaw State, he was at Minnesota from 2008-11 as the associate director of compliance. In addition, he led Stony Brook’s compliance department for four years, first as the director before being promoted to assistant athletic director for his final three years with the Seawolves. Senour earned his bachelor’s degree in business administration with an emphasis in sport management from Robert Morris University. He completed his master’s degree in business administration at Midwestern State.

NCAA, HIGH POINT AGREE THAT UNIVERSITY DID NOT NOTIFY STUDENT-ATHLETES IN WRITING OF CHANGES TO SCHOLARSHIPS

High Point University and the NCAA enforcement staff have agreed in a negotiated resolution agreement approved by a Division I Committee on Infractions panel that the university failed to notify 134 student-athletes in writing that their scholarships were reduced or canceled, as it was required to do. It also did not inform the student-athletes in writing about their opportunity for a hearing regarding the changes to their scholarship.

Pursuant to the new negotiated resolution process, the two sides agreed that the violations occurred because the financial aid office was unaware that NCAA rules required written notification. Because of changes in compliance staff, the financial aid office was not directly instructed to send letters to student-athletes whose scholarships were reduced, canceled or not renewed, according to the NCAA.

High Point and the enforcement staff used ranges identified by the Division I membership-approved infractions penalty guidelines to agree upon Level II-Standard penalties in this case. Those penalties, approved by the Committee on Infractions include two years of probation and a \$15,000 fine.

Cartel Behavior in US College Sports: An Analysis of NCAA Football Enforcement Actions from 1990 to 2011

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The NCAA is so mad at Kentucky, it's going to give Cleveland State two more years' probation -- Jerry Tarkanian (Forde, 2010, para. 2)

During his 2014 state-of-the-league address at the Big XII's annual meeting, Commissioner Bob Bowlsby said, "cheating pays" accusing the National Collegiate Athletic Association's (NCAA) infractions committee of not policing the membership, noting specifically: "If you seek to conspire to certainly bend the rules, you can do it successfully and probably not get caught in most occasions" (Trotter, 2014, para. 1 & 3). During those same meetings, Oklahoma State University head football coach Mike Gundy stated, "I am convinced there are teams cheating that are saying, 'Catch me if you can'" (Trotter, 2014, para. 7). Researchers (Fleisher, Goff, & Tollison, 1992; Fleisher, Shughart, Tollison, & Goff, 1988; Kahn, 2007, Pindyck & Rubinfeld, 2012; Zimbalist, 1999) and the judiciary (*NCAA v. Board of Regents*, 1984; *O'Bannon v. NCAA*, 2015) have long recognized big-time college sport as a *cartel*. Within this institutional field, the notion of clandestine cheating is a frequently described characteristic (Fleisher, Goff, & Tollison, 1992; Southall, Nagel, Amis & Southall, 2008).

Within any cartel, agreements allow a group of firms to achieve profit maximization by colluding to place restrictions on output and input prices (Stigler, 1964). As

the cartel's "agreement enforcer," the NCAA national office – through its enforcement program – has a strong interest in policing such agreements, while individual cartel members (e.g., Gundy's teams) may have a vested interest in clandestinely breaking such rules ("Enforcement," n.d.).

Consequently, cheating and punishment, or lack thereof, have long been a subject of interest among NCAA members, the media, and college sport fans. Since it is commonly believed the NCAA national office will never again impose the infamous 'death penalty' meted out to Southern Methodist University's football team in 1987 (Engel, 2011; Wojnarowski, 2002), even in cases where significant punishments have been handed down (e.g., the University of Michigan Men's Basketball team being forced to vacate all NCAA Tournament wins from 1992-1999, the University of Southern California forfeiting 13 victories and receiving a 4-year postseason ban in the aftermath of the 2006 Reggie Bush 'pay for play' saga), there is a sense among many observers that the benefits of cheating far outweigh any potential punishment (Forde, 2015; Simpson, 2015).

In addition to the perception that the NCAA national office may not aggressively enforce its rules, there are also some who believe the NCAA engages in *selective enforcement*, meting out harsher punishments to some programs for similar violations (Otto, 2006). While they rarely saw eye-to-eye on anything, former UNLV and Fresno State men's basketball coach Jerry Tarkanian, and former NCAA Executive Director Walter Byers (Byers, 1995) agreed that selective enforcement appeared to be commonplace, whether in the case of player compensation (Wetzel, 2004) or substandard academic achievement (Khurshudyan, 2015). In 2012, the NCAA national office – perhaps because of external perception of its enforce-

ment process – revamped its enforcement structure. NCAA President Mark Emmert noted, "We have sought all along to remove the 'risk-reward' analysis that has tempted people — often because of the financial pressures to win at all costs — to break the rules in the hopes that either they won't be caught or that the consequences won't be very harsh if they do get caught" (Grasgreen, 2012, para. 6).

Despite the NCAA's 2012 enforcement changes and the tremendous amounts of media attention that high-profile cheating cases received, an understanding of violations and various variables that contribute to probation was limited in the literature. Previous researchers (Fleisher, et al, 1992) explored the NCAA enforcement process and factors related to a Division I football program being placed on probation, but their research had not been updated. The purpose of the present study was to determine the factors that contributed to the likelihood of NCAA Division I Football Bowl Subdivision (FBS) members being placed on probation during 1990-2011.

LITERATURE REVIEW: CARTEL THEORY

In its most basic form a cartel consists of colluding firms with similar products, who would otherwise compete with each other, who seek to control inputs and outputs prices; therefore, they can more easily maximize profits (Blair & Whitman, 2017; Fleisher et al., 1992). Since collusion and the resulting profit maximization provides for similar market circumstances as a monopoly, it is no surprise competing firms pursue cartelization (Blair & Harrison, 2010; Stigler, 1964). While a monopolistic market occurs when there is one producer, a monopsonistic market occurs when there

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is only one buyer (Grant, Leadley, & Zygmunt, 2008). Both situations allow – the seller in the monopolistic and the buyer in the monopsonistic marketplace – to demand prices that obstruct market forces.

For cartelization to occur, the costs of initial agreement must be less than the expected profits gained by cartel members (Blair & Harrison, 2010; Levenstein & Suslow, 2006). Firms entering into a cartel agreement typically agree to restrictions on the price paid for inputs, as well as prices sought for outputs (Levenstein & Suslow, 2006). Such agreement is easier when firms are colluding to control an externality and can be more difficult with the sole purpose of profit maximization (Fleisher et al., 1992). Following their formation, cartels immediately face two existential issues: “monitoring the behavior of cartel participants to detect and deter defections from these collusive strategies; and preventing entry by noncartel firms” (Levenstein & Suslow, 2006, p. 44).

The more challenging task is detecting cheating by firms within the cartel (Blair & Harrison, 2010; Stigler, 1964). Regardless of restrictions placed on firms by the cartel agreement, individual firms will invariably act according to their self-interests (Grant et al., 2008). In a cartel agreement, the profit gained by acting in undetected self-interest (e.g. cheating) is enhanced if all other firms abide by an established agreement. Succinctly, a cartel works optimally when firms act in coordination: “if a [single] firm reduces output, the market price will not rise appreciably and its market share and profits would fall. However as all firms reduce output at the same time, the market price will rise, market shares will remain constant and everyone’s profits will increase” (Grant et al., 2008, p. 74).

While each individual firm has an incentive to cheat, it also has an incentive to cooperate in preventing cheating by other

firms, since too many such violations will jeopardize the cartel. While many firms may actually cheat, every firm must publicly profess to abhor cheating and cooperate to punish firms caught cheating, in order to maintain the cartel arrangement. To decrease the incentive to cheat, a cartel most often will establish penalties, as well as an enforcement structure to investigate infractions and punish violators. Established penalties must be deemed appropriate, since if a majority of firms deem established penalties are too severe, they may never be levied. On the other hand, if the punishment does not fit the perceived “crime,” penalties may not effectively prevent cheating (Grant et al., 2008).

Aside from cheating, the other primary challenge is controlling entry. While adding cartel members may increase the cartel’s market share and marketplace stability, new members may also result in decreased profits and increased cheating activity, both destabilizing effects, (Fleisher et al., 1992). Additionally, the larger the number of firms in a cartel, the more difficult it is to monitor and the more likely enforcement activity will focus on easily observable variables (Fleisher et al., 1992). Even with perfect monitoring of a cartel, non-price competition amongst firms will continue to occur. Given these factors, successful cartels generally have a limited number of concentrated firms, a product with a low elasticity of demand, and an effective monitoring mechanism.

THE NCAA

To the general public the National Collegiate Athletic Association (NCAA) is viewed as a member association with 1,268 active member schools. Though other college athletic governing bodies exist, the NCAA is by far the most visible, influential, and commercial. While the NCAA may be a well-known collegiate brand, according

to Myles Brand, the late NCAA President, there is “wide-spread lack of understanding of the nature of the NCAA” (Brand, 2004, p. 2). According to Brand, this lack of understanding is “...created occasionally by the media, but sometimes by the membership itself...as a handy cover for anything that appears to run counter to common sense or the interests of some person or group” (Brand, 2004, p. 2). In order to clear up such confusion, in his 2004 State of the Association address Brand outlined the three entities that comprise the NCAA: the association or “body corporate,” the members, and the national office and staff (Brand, 2004, p. 2). The three NCAA entities combine to create what Brand (2004, 2006, 2009) identified as the *NCAA Collegiate Model of Athletics*. Brand’s collegiate model consists of amateur participants and a commercialized “college sport enterprise” (2004, 2006, 2009), which generates the revenue necessary to support more than 400,000 NCAA athletes. The needed revenues are primarily generated through the NCAA Division I Men’s Basketball Tournament, with its multi-billion television rights deal with CBS and Turner Broadcasting providing the largest proportion of overall revenue (O’Toole, 2010).

NCAA ENFORCEMENT

Today, besides organizing and marketing NCAA championship events, one of the NCAA’s main functions is to “protect the integrity of intercollegiate athletics by educating NCAA member institutions about legislation, policies, and procedures, and to impose sanctions if rules are broken (“Enforcement,” n. d., para 1). Historically, this has not always been one of the NCAA national office’s primary functions. While the NCAA existed as an organization, prior to 1952 it was primarily an advisory body

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with limited (if any) enforcement structure or power (Byers, 1995).

After the failure of the membership to enforce the *Sanity Code*, a series of rules passed in the late 1940s which attempted to address amateurism, financial aid and eligibility, the NCAA established the Committee on Infractions (COI) as its enforcement arm. The establishment of an enforcement program within the NCAA national office institutionalized the NCAA's (NO & A) role in restricting inputs and outputs. If a school, or one of its official or unofficial representatives, gave too much aid to a student-athlete it could be penalized. The initial COI structure survived 60 years with only minor alterations despite a variety of ensuing changes that would occur in intercollegiate athletics, particularly a governance structure remodeling which split the NCAA into multiple divisions so that members with like institutional philosophies and financial resources could compete with each other. Theoretically, by combining "peer" schools the NCAA would be able to more effectively control some of the cartel volatility.

Throughout most of its history, the penalties administered to violating members were classified as either *major* or *secondary*. Secondary violations were typically ones that involved a simple breaking of a rule, with no significant competitive advantage achieved. Given the size and complexity of the *NCAA Manual* (400+ pages throughout most of the past 15 years), it was expected that secondary violations would occur and, in most cases, would be self-reported by offending institutions. Punishments typically involved an admonition rather than anything of significant impact. Major violations were gross breaches of NCAA rules, which often occurred repeatedly over a period of multiple years. In most

cases, major violations involved player compensation, either in the recruiting process or once an athlete arrived on campus, and primarily occurred in football or basketball (Olson, 2016). Major violations typically were perceived as resulting in a significant competitive advantage being achieved and/or a substantial negative impact occurring to the NCAA brand. In the early years of the COI punishments for major violations often involved bowl bans, television broadcast bans and large grant-in-aid (GIA) reductions. However, since the NCAA no longer has central control of television contracts and nearly every Division I football and basketball program has extensive exposure through various media platforms, television bans (that would harm both competing teams) are no longer implemented.

During the 1980s, increased attention was paid to NCAA violations, particularly with the continued misdeeds and eventual death penalty that was administered to Southern Methodist University's football program in 1987. Within this environment, Fleischer et al. (1992) seminal study discovered that an increased winning percentage and switching conferences both led to schools being more likely to be placed on probation by the NCAA. They also found that more secondary schools in a state resulted in an increase in likelihood that a school would be placed on probation. A school's stadium size and its founding date were positive and significant variables. This suggested schools that had a higher demand for successful football programs were penalized more than schools with a lower demand. Perhaps, most importantly, as traditional winning measures were added to the equation, the likelihood of probation did not change, which "suggests that NCAA enforcement does not bother itself with either consistently successful teams or with teams that never win" (Fleisher

et al., 1992, p. 133). This resulted in two possible explanations: by effectively formulating the enforcement mechanism over several decades, traditional powers are able to fly under the radar of the system that they control or, that by developing such strong traditions over the years, traditional powers no longer need to cheat the cartel agreement to "maintain their dominant position" (Fleisher et al., 1992, p.121).

The NCAA experienced significant media scrutiny for its enforcement process in late 2000s and early 2010s. The heightened interest in NCAA enforcement activities resulted in the organization greatly expanding the size of the COI in an effort to provide a more streamlined process and to decrease case backlogs (Auerbach & Wolken, 2012). It also implemented tougher standards on head coaches, holding them accountable for the misbehavior of subordinates. In addition, the NCAA altered its two-tiered infractions classification system to a four-level approach:

LEVEL I – SEVERE BREACH OF CONDUCT

Violations that seriously undermine or threaten the integrity of the NCAA Collegiate Model as set forth in the constitution and bylaws, including any violation that provides or is intended to provide a substantial or extensive recruiting, competitive or other advantage, or a substantial or extensive impermissible benefit (NCAA, 2012a, para. 1).

LEVEL II – SIGNIFICANT BREACH OF CONDUCT

Violations that provide or are intended to provide more than a minimal but less than a substantial or extensive recruiting, competitive or other advantage; includes more than a minimal but less than a sub-

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TABLE 1 – VARIABLES

Variable	Definition
PROBATION (Dependent Variable)	Probationary status (1= on probation, 0= not on probation)
PROBATIONRATING	Total duration of probation penalty (yrs)
ENTEREDFBS	Years since entering the FBS
INSTITUTIONSWITHIN	Number of other Division I institutions located within 400 miles
ACADMICREPUTATION	Institution's rank in US News & World Report – America's Best Colleges
ENROLLMENT	Number of full-time student enrolled at institution
OTHERSPORTSPROBATION	Probationary status of all non-football programs at institution (1= probation, 0= no probation)
WINNINGPERCENTAGE	Winning percentage of football program for given year
VARIATIONWINNINGPERCENTAGE	Variation in winning percentage from previous year to given year
CHANGEINCONFERENCE	Change in conference affiliation during past five years
STADIUMSIZE	Capacity of football stadium
BIGSIX ¹	1= Member of BigTen, Big 12, SEC, Big East, Pac12, ACC 0= non member
BIGSIXRANK	Rank if member of Big6, =0 if not member of Big6
CONFERENCECHAMPIONSHIPS	Number of Conference Championships won in program history
ALLAMERICANS	Number of Consensus All Americans in given year
TENUREOFCOACH	Number of years Head Coach has been at institution (as Head Coach)
YEARSSINCEFOUNDING	Number of years from the date the institution was founded
FINALRANK	Rank determined by James Howell College Football Power Rankings
RANKPERCENTAGE	Rank as percentage
VARIATIONRANK	Variation in rank from previous year to given year
YEAR	Year of data collected

¹ During the time period studied, the top six Division I conferences were often called the BigSix. Due to conference realignment, the top conferences are currently called the Power Five.

stantial or extensive impermissible benefit; or involves conduct that may compromise the integrity of the NCAA collegiate model as set for in the Constitution and bylaws (NCAA, 2012b, para. 1).

LEVEL III – BREACH OF CONDUCT

Violations that are isolated or limited in nature; provide no more than a minimal recruiting, competitive or other advantage; and do not include more than a minimal impermissible benefit. Multiple Level IV violations may collectively be considered a breach of conduct (NCAA, 2012c, para. 1).

LEVEL IV: INCIDENTAL ISSUES

An incidental infraction is a minor infraction that is technical in nature and does not constitute a Level III violation. Incidental infractions generally will not affect eligibility for intercollegiate athletics. Multiple or repeated Level IV violations collectively may constitute a Level III violation (NCAA, 2012d, para. 1).

However, despite the increased media attention and infractions program changes, the NCAA's enforcement process had not been closely examined in the same manner as Fleisher et al (1992) even as many Division I stadiums were built or significantly remodeled and ESPN (Entertainment and Sport Programming Network) began broadcasting Division I football games and related content nearly all hours of a typical fall Saturday.

As Division I athletic departments' potential and realized revenues from Division I football programs escalated dramatically in the 1990s and 2000s, the importance of acquiring and retaining talented *profit-athletes* dramatically increased, while NCAA bylaws effectively limit individual player compensation (e.g. grant-in-aid) to an agreed-upon level (e.g. tuition, fees, room-

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board, and books). In a heightened revenue environment, a number of members of the NCAA Division I cartel may have sought to gain a competitive advantage, while the NCAA enforcement staff would at the same time work diligently to “police” those cartel violating activities.

METHODOLOGY

The purpose of this study was to construct a model to determine the factors that contributed to the likelihood that an institution’s football program would be on probation from 1990-2011. The NCAA, through its Legislative Services Database – LSDbi, provides access to major infraction cases. Specifically, variables that contributed to an institution’s probationary status for FBS Football were examined. As of 2011, there were 120 institutions belonging to the FBS of the NCAA’s Division I, however, that number has fluctuated between 1990-2011. If a school was a member of the FBS at the beginning of the academic year, it was included in the data set. For each year during 1990-2011, data was collected for 21 different variables (see Table 1).

Initially, the data were analyzed to determine which variables should be dropped because of co-linearity. The variables STADIUMSIZE, CONFERENCECHAMPIONSHIPS and ALLAMERICANS were eliminated in favor of WINNINGPERCENTAGE and BIGSIX because the latter two variables sufficiently accounted for traditional success. The variables YEARSSINCEFOUNDING and ENTEREDFBS were collinear, thus ENTEREDFBS was utilized because it explained more of the variation. RANKPERCENTAGE was not needed as a variable because it was accounted for by FINALRANK. These variable exclusions solved the multicollinearity issues found in the early steps in the analysis. The summary

TABLE 2—SUMMARY STATISTICS FOR FINAL UTILIZED VARIABLES

Variable	Observations	Mean	Std. Dev.	Min	Max
Probation	2522	0.057	0.232	0	1
Year	2522	2000.754	6.325	1990	2011
Enteredi	2522	68.887	30.895	-5	105
Instwith	2522	18.727	11.09	0	45
academre	2522	96.249	62.829	0	330
enrollme	2522	23782.57	11171.59	1244	68064
other spt	2522	0.095	0.295	0	1
winper	2522	0.508	0.225	0	1
changcon	2522	0.201	0.401	0	1
bigsix	2522	0.532	0.499	0	1
big6_rank	2522	23.592	31.242	0	119
tenureoc	2522	4.333	5.332	0	45
finalran	2522	57.224	33.518	0	121

statistics for the final variables utilized are provided in Table 2.

Following the completion of initial variable determination a logit regression was conducted. The logit model is utilized when the dependent variable is binary. It uses the independent variables to create an econometric model that predicts whether or not the dependent variable is likely to be 0 or 1. The closer the result is to 1 indicates the likelihood of an FBS team being on probation given the levels of the independent variables.

RESULTS

From 1990-2011 there were 61 probation infractions, totaling 145 team-years (5.8% of possible team-years), levied against FBS NCAA D-I athletic departments. The penalties ranged from one-year to five-year probations. Seven institutions were issued two separate probation periods during the studied time period with one of those seven having a third probation (University of Alabama).

Following the initial analysis, the

relative importance of each variable to the model was discussed and two model variations were constructed. Model (1) was constructed using the previously mentioned logit analysis.

Model (1):

```
prob[PROBATION] = YEAR;
ENTEREDFBS; INSTITUTION-
SWITHIN; ACADEMICREP-
UTATION; ENROLLMENT;
OTHERSPORTSPROBATION;
WINNINGPERCENTAGE;
CHANGEINCONFERENCE;
BIGSIX; BIGSIXRANK; TEN-
UREOFCOACH; FINALRANK;
Constant
```

A robust estimator was used to deal with heteroscedasticity that was revealed by the Cook-Weisberg test. Using Wald Chi², the model was determined to be significant at a .05 level. This model had a Pseudo R² value of .1507. Model (1) results are reported below in Table 5.

In examining the model’s results,

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several variables were found to be significant ($p < .05$): OTHERSPORTSPROBATION, BIGSIX, BIGSIXRANK, YEAR and TENUREOF COACH, with OTHERSPORTSPROBATION, BIGSIX and YEAR all having positive coefficients. Succinctly, if an athletic department has another sport on probation during the given year, its football program is more likely to also end up on probation; a BCS Automatic Qualifier (AQ) “Big Six” conference program is more likely to be placed on probation than a program from a non-Big-Six conference; and probation has become more prevalent from 1990 to 2011. In addition, the negative coefficient associated with the variable TENUREOF COACH indicates FBS programs are more likely to be placed on probation during a coach’s first few years at a university. And finally, while ACADEMICREPUTATION only approached significance, its positive coefficient suggests football programs at “more-academically” rigorous universities are more likely to end up on probation.

Using the same model, the coefficients were converted into marginal impacts to assess their degree of impact upon the likelihood of being placed on probation.

From this model we can surmise the following: if an athletic department had another sport on probation, it was 17% more likely that its football program would also end up on probation; schools in the Big Six conferences were 11% more likely to be on probation than those not in the Big Six conferences; in 2011 there was a 3.2% greater likelihood that a FBS team would be on probation than in 1990; an academic reputation (lower number equals more prestigious reputation) figure that increases by 100 results in an increased probability of probation by 1.6%; for every ten years of experience a head coach

TABLE 3 – SCHOOLS ON PROBATION (FBS) 1990-2011

Institution	Year	Institution	Year
Clemson	1990	Colorado	2003
Florida	1990	Maryland	2003
Washington	1991	Rutgers	2003
Minnesota	1992	San Diego State	2003
Tennessee	1992	Oregon	2004
Auburn	1993	Arizona State	2005
Pittsburgh	1993	Baylor	2005
Syracuse	1993	FIU	2005
Virginia	1993	Mississippi State	2005
Texas A&M	1994	Georgia Tech	2005
Washington	1994	Illinois	2005
Alabama	1995	South Carolina	2005
Ole Miss	1995	Kansas	2006
Washington State	1995	Ohio	2006
Miami	1996	Ball State	2007
Michigan State	1996	Louisiana-Lafayette	2007
Mississippi State	1996	Ohio State	2007
Florida State	1997	Colorado	2007
Georgia	1997	FIU	2008
Texas	1997	New Mexico	2008
Texas Tech	1998	Alabama	2009
Kansas State	1999	Florida State	2009
Notre Dame	2000	New Mexico	2009
SMU	2001	Arkansas State	2011
USC	2001	LSU	2011
Wisconsin	2001	Michigan	2011
California	2002	UCF	2011
Kentucky	2002	USC	2011
Marshall	2002	West Virginia	2011
Alabama	2002	Georgia Tech	2011
Arkansas	2003		

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has, the likelihood of probation decreases by 2.4%; and being ranked worse by 100 lowers probability of probation by 5.2%. The interaction between a school being in the Big 6 and final football ranking lowers the probability of probation by 8.7% for every 100 decreases in final rank.

A football program's cheating could go undetected until they experience success. To account for the possibility that cheating occurs and then a period of time elapses before the investigation and resulting punishment is meted out, Model (2) built in lagged ranking variables. This was a parsimonious model using the following variables:

Model (2):

logit_ PROBATION ACAD-
MICREPUTATION OTH-
ERSPORTSPROBATION
CHANGEINCONFERENCE
BIGSIX BIGSIXRANK TEN-
UREOFCOACH FINALRANK
FINALRANK1 FINALRANK3
FINALRANK5 FINALDIF2 FIN-
ALDIF4 FINALDIF5

For instance, the variable FINALRANK3 = FINALRANK 3 years before. FINALDIF2 = FINALRANK / (FINALRANK2). Using Wald Chi², Model (2) was also significant ($p < .05$), with a pseudo R² of .1649. The results for Model (2) are displayed in Table 7 & Table 8.

OTHERSPORTSPROBATION and BIGSIX had statistically significant values ($p < .05$). When accounting for lagged values, having another sport on probation increases the probability that a school's football program will be on probation by 22%. Being in a Big Six conference increased the probability of probation by 10%. The only lagged term that was significant was the two-year lagged rank difference with a negative coefficient. A team that drops in the rankings (becomes

TABLE 4 – FBS SCHOOLS WITH MULTIPLE DISTINCT INSTANCES OF PROBATION (FOOTBALL) 1990-2011

Institution	Years on probation
Alabama	1995-1996, 2002-2006, 2009-2011
Colorado	2003-2004, 2007-2008
Florida International University	2005-2007, 2008-2011
Florida State	1997, 2009-2011
Georgia Tech	2005-2006, 2011-2013
Mississippi State	1996, 2005-2008
University of Southern California	2001-2002, 2011-2014

TABLE 5 – MODEL (1)–LOGIT MODEL (COEFFICIENT – PROBATION)

PROBATION	Coef.	Z	P> z
YEAR	0.033	2.320	0.020
ENTEREDFBS	0.005	1.060	0.289
INSTITUTIONSWITHIN	-0.006	-0.690	0.489
ACADMICREPUTATION	0.004	1.780	0.074
ENROLLMENT	0.000	1.490	0.135
OTHERSPORTSPROBATION	1.944	9.870	0.000
WINNINGPERCENTAGE	0.484	0.680	0.494
CHANGEINCONFERENCE	-0.353	-1.230	0.217
BIGSIX	2.301	4.080	0.000
BIGSIXRANK	-0.018	-2.460	0.014
TENUREOFCOACH	-0.047	-2.120	0.034
FINALRANK	0.010	1.490	0.137
Constant	-72.137	-2.550	0.011

worse in quality) from rank #30 to rank #60 decreases its probability of being placed on probation by just less than 1% (.8%). CHANGEINCONFERENCE was approaching significance ($p < .105$) with a negative coefficient; by not changing conferences a school was 2% more likely to be on probation. In addition, the longer tenure a school's coach had, the less likely they were to be on probation ($p < .06$), e.g., 10 years of service at one school decreases the probability of going on probation by 2%.

DISCUSSION

Despite the intense media attention that some of the football probations received during the time period studied, the overall number of schools on probation (61) might appear to be low to some fans. Within a group of 120 cartel members, to have "only" approximately three on probation per year might lead some to question if there is that much "major" cheating occurring or if the NCAA enforcement staff was not highly effective at detecting

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and punishing cheating behavior.

Given the models' R^2 (Model 1 = .1507; Model 2 = .1649) the results do not warrant "hard and fast" conclusions or far-reaching pronouncements regarding the variables associated with FBS football programs' probation status during the time period studied. However, the results do provide context for several informed questions and possible avenues of future research, particularly under the NCAA's new (2012) enforcement plan. Despite replicating Fleischer et al.'s (1992) study and collecting additional variables, the relatively low goodness of fit measures leave much variability to be explained. This suggests that while the constructed models do identify statistically significant independent variables, this study's results support the conclusion that NCAA enforcement decisions reflect complex human interactions that cannot be captured in the current models. These interactions occur within an institutional field in which NCAA Committee on Infractions members may have divided loyalties. These institutional actors may be primarily concerned with developing, maintaining and cultivating good relations with the NCAA national office staff members, and volunteering or campaigning to be appointed to various NCAA committees. Fundamentally, they seek to "...represent their conference's competitive and financial interests first instead of [doing] what may be best for college sports as a whole" (Solomon, 2013, para 7).

As was discussed earlier, individual firms (e.g., athletic departments) invariably act according to their self-interests. In addition, individual actors also have an almost infinite number of motivations. Since any investigation will have a different "set" of actors, including different NCAA investigators, committee on infractions members, and athletic department staff

TABLE 6 – MODEL (1)–LOGIT MODEL AVERAGE MARGINAL EFFECTS (PROBATION)

PROBATION	Coef.	Z	P> z
YEAR	0.0015	2.330	0.020
ENTEREDFBS	0.0003	1.050	0.293
INSTITUTIONSWITHIN	-0.0002	-0.690	0.489
ACADMICREPUTATION	0.0002	1.770	0.076
ENROLLMENT	0.0000	1.440	0.151
OTHERSPORTSPROBATION	0.1700	6.680	0.000
WINNINGPERCENTAGE	0.0245	0.680	0.494
CHANGEINCONFERENCE	-0.0158	-1.350	0.176
BIGSIX	0.1090	3.100	0.002
BIGSIXRANK	-0.0009	-2.410	0.016
TENUREOFCOACH	-0.0024	-2.090	0.037
FINALRANK	0.0005	1.480	0.140

TABLE 7 – MODEL (2)–LOGIT MODEL WITH LAGGED TERMS (PARSIMONIOUS – COEFFICIENT–PROBATION)

PROBATION	Coef.	Z	P> z
ACADMICREPUTATION	0.003	1.49	0.14
OTHERSPORTSPROBATION	2.21	10.02	0.00
CHANGEINCONFERENCE	-0.52	-1.62	0.11
BIGSIX	1.96	3.70	0.00
BIGSIXRANK	-0.01	-1.48	0.14
TENUREOFCOACH	-0.04	-1.88	0.06
FINALRANK	0.01	0.70	0.48
FINALRANK1	-0.003	-0.66	0.51
FINALRANK3	0.01	1.33	0.18
FINALRANK5	-0.01	-1.39	0.16
FINALDIF2	-0.15	-1.98	0.05
FINALDIF4	0.04	1.18	0.24
FINALDIF5	-0.02	-0.93	0.35
Constant	-4.05	-6.25	0.00

members, developing a model that captures these disparate variables is likely to return a low R^2 . Clearly, each actor and firm will have unique self-interests. In addition, personal interactions between and among various NCAA officials and campus officials cannot be accounted for

in static models. However, despite these limitations the constructed models did identify two significant and meaningful variables: having another sport on probation and Big 6 conference membership.

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In many ways, this study's most important finding was that if an athletic department is investigated and has another sport placed on probation, the probability that its football program will be on probation is increased by 22%. Interestingly, there are two ways of viewing the data. One is that multiple sports being placed on probation is indicative of a "culture" of cheating. An alternative explanation is that once NCAA investigators are on campus, they are more likely to "uncover" transgressions. Cartel theory supports the view that while many athletic departments may actually cheat, NCAA investigators cannot monitor every athletic department or program, but will utilize the opportunity of being on campus to uncover transgressions that would potentially not otherwise come to light. Once such transgressions are revealed, firm representatives (e.g., committee on infractions members) must publicly profess to abhor cheating and cooperate to punish firms caught cheating, in order to maintain the cartel arrangement.

Another statistically significant and meaningful variable was membership in a Big Six conference, which increased the probability of probation by 10%. This supports Fleischer et al's. (1992) conclusion that a school with a higher demand for football success is more likely to be placed on probation than a university with a lower demand for football success. While this result makes intuitive sense, given that the financial rewards for acting in undetected self-interest (e.g., cheating) in football were greater for Big Six members, it also belies Walter Byers' and Jerry Tarkanian's views that NCAA enforcement unfairly targets mid-major or less-well-known programs.

Given the complex nature of the human interactions that occur within this institutional field, future research should look to expand the included variables to incorporate severity of punishment,

TABLE 8 MODEL (2) – LOGIT WITH LAGGED VARIABLES (PARSIMONIOUS, AVERAGE MARGINAL EFFECTS – PROBATION)

PROBATION	Coef.	Z	P> z
ACADMICREPUTATION	0.0002	1.49	0.14
OTHERSPORTSPROBATION	0.22	6.93	0.00
CHANGEINCONFERENCE	-0.024	-1.86	0.06
BIGSIX	0.10	3.11	0.00
BIGSIXRANK	-0.0006	-1.46	0.14
TENUREOFCOACH	-0.002	-1.84	0.07
FINALRANK	0.0003	0.70	0.48
FINALRANK1	-0.0002	-0.66	0.51
FINALRANK3	0.0003	1.33	0.18
FINALRANK5	-0.0004	-1.38	0.17
FINALDIF2	-0.008	-1.98	0.05
FINALDIF4	0.002	1.17	0.24
FINALDIF5	-0.001	-0.92	0.36

which in this study was reduced to a yes/no variable. In addition, Committee on Infraction or other high-profile NCAA committee membership was not captured in any developed variables. While Byers and Tarkanian may have understood the political nature of NCAA enforcement, they may have incorrectly identified the haves and have-nots. In the NCAA probation arena, the "haves" (e.g., programs not on probation) may be those athletic departments who have representatives on the Committee on Infractions. A future research question becomes: "Is there a relationship between Committee on Infractions membership and NCAA probation status?" ■

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DI Council Instructed to Introduce Clarifying Legislation, Support Best Practices

The Division I Board of Directors has “reaffirmed the significance of recent action taken to strengthen academic integrity at the campus and NCAA levels, while taking additional steps to further bolster efforts to prevent academic misconduct on Division I campuses.”

At its meeting in Indianapolis, the board asked the Division I Council to introduce legislation “intended to clarify and reinforce the intended application of academic integrity rules adopted in 2016.” The proposed

changes would:

- Move all legislation related to academic misconduct into one section of the Division I Manual.
- Simplify the terminology used in academic misconduct rules.
- Emphasize a school’s role in determining violations of its own policies regarding academic honesty and integrity in the process of applying NCAA rules.

The board also “supported best practices”

created by the Division I Committee on Academics that would assist each campus in its efforts “to promote and maintain academic integrity for student-athletes.”

The board acknowledged that several rule enhancements had yet to be tested in the academic integrity space, including the new authority of the enforcement staff to use information from other official processes, such as accreditation hearings, and the independent accountability resolution option in the enforcement process. ■

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