

# Stay Ahead of the Game: Update on Legal Issues Facing College Athletics

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# Agenda

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- Student-Athletes as Plaintiffs: Challenges to the NCAA Amateurism Model
- Title IX: Heightened Attention Brings Heightened Settlements
- FLSA: Recent Changes Require Immediate Attention

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# Challenges to Amateurism

# Student-Athletes as Plaintiffs

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- Most challenges to the NCAA's amateurism model begins with the same concept:

“I should get paid because...”

# Antitrust Challenges

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- *O'Bannon v. NCAA* and Antitrust law

“I should get paid because the NCAA has a monopoly on college athletics, and ...”

# Antitrust Challenges

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*O'Bannon v. NCAA*: Ninth Circuit appeal

# Antitrust Challenges

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## *Jenkins v. NCAA* and the Free Market Theory

# Antitrust Challenges

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- *Rock v. NCAA* (scholarship limits)
- *Pugh v. NCAA* (scholarship limits and transfer rules)
- *Deppe v. NCAA* (transfer rules)



# Underlying Compensation Theories

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Are student athletes entitled to compensation for televised games?

- *Marshall v. ESPN* and the Right to Publicity

# Underlying Compensation Theories

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Should student-athletes be entitled to compensation for the use of their name, image, or likeness in commercial enterprises?

- Knight Commission on Intercollegiate Athletics

# Underlying Compensation Theories

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Are student-athletes employees of a university?

- Challenges based on the National Labor Relations Act (NLRA)
- Challenges based on the Fair Labor Standards Act (FLSA)

# Challenges to the NCAA – On the Horizon

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1. Petitions to the Supreme Court for review of the O'Bannon decision.
  - NCAA's arguments
  - Athlete's arguments
  
2. Jenkins v. NCAA

# Title IX Update

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- High Profile Sexual Misconduct Cases
- Title IX Athletics
  - High Dollar Settlements → Highly Motivated Plaintiffs' Attorneys
  - Retaliation Claims
  - National Compliance Statistics

# High Dollar Settlements

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\$950,000 settlement:

- Of that amount, how much did the student's attorneys receive?

# **Title IX Athletics High Dollar Settlements**

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Strength coaches, director of sports medicine, and media director settled for hundreds of thousands of dollars.

# Title IX Athletics

## High Dollar Settlements

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- A university recently settled a lawsuit filed by a coach terminated after 11 straight losing seasons.
  - How much did the university pay to settle?



# Title IX Athletics: 13 Program Areas

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- Equality of Opportunity
- Equality of Scholarships
- Equality of Treatment
  - Equipment and Supplies
  - Scheduling of Games and Practice Times
  - Travel and Per Diem Allowance
  - Tutors
  - Coaches
  - Locker Rooms, Practice and Competitive Facilities
  - Medical and Training Facilities and Services
  - Housing and Dining Facilities and Services
  - Publicity
  - Support Services
  - Recruitment of Student-Athletes

# Title IX: The Three-Prong Test

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- Equality of Opportunity
  - ***The Three-Prong Test***
    - ***Prong One: Proportionality***
    - Prong Two: Progress towards proportionality
    - Prong Three: Fully and effectively accommodating the interests and abilities of the members of the underrepresented gender
- Equality of Scholarships
- Provision of Resources

# National Prong One Compliance 2014-2015

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## NCAA All Divisions (1,078 total schools)

- **$\leq -5\%$ : 772 schools (71.6%)**
- **Between  $-5\%$  and  $-2\%$ : 100 schools (9.3%)**
- **Between  $+ -2\%$ : 129 schools (12.0%)**
- **Between  $+2\%$  and  $+5\%$ : 42 schools (3.9%)**
- **$\geq +5\%$ : 35 schools (3.2%)**

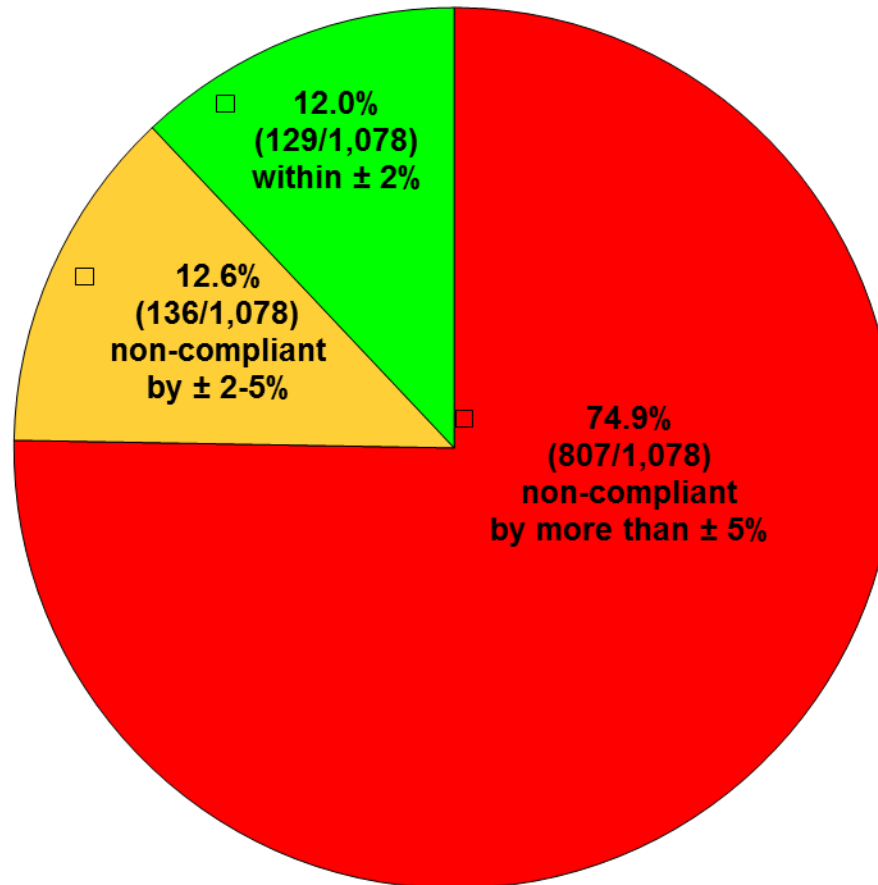
**581 schools (53.9%) are  $-10\%$  or worse.**

Statistics were self-reported by schools to the Department of Education for the 2014-2015 school year.

# Prong One Compliance

NCAA All Divisions (1,078 total schools)

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# Second Title IX Program Area: Scholarships

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- Equality of Opportunity
- ***Equality of Scholarships***
  - ***Scholarship dollars to be awarded to women and men in same proportion as their respective rates of participation in the intercollegiate athletics program***
    - **Within 1.0%**
    - **Legitimate, non-discriminatory justifications for any larger disparity**
- Provision of Resources

# National Scholarship Compliance 2014-2015

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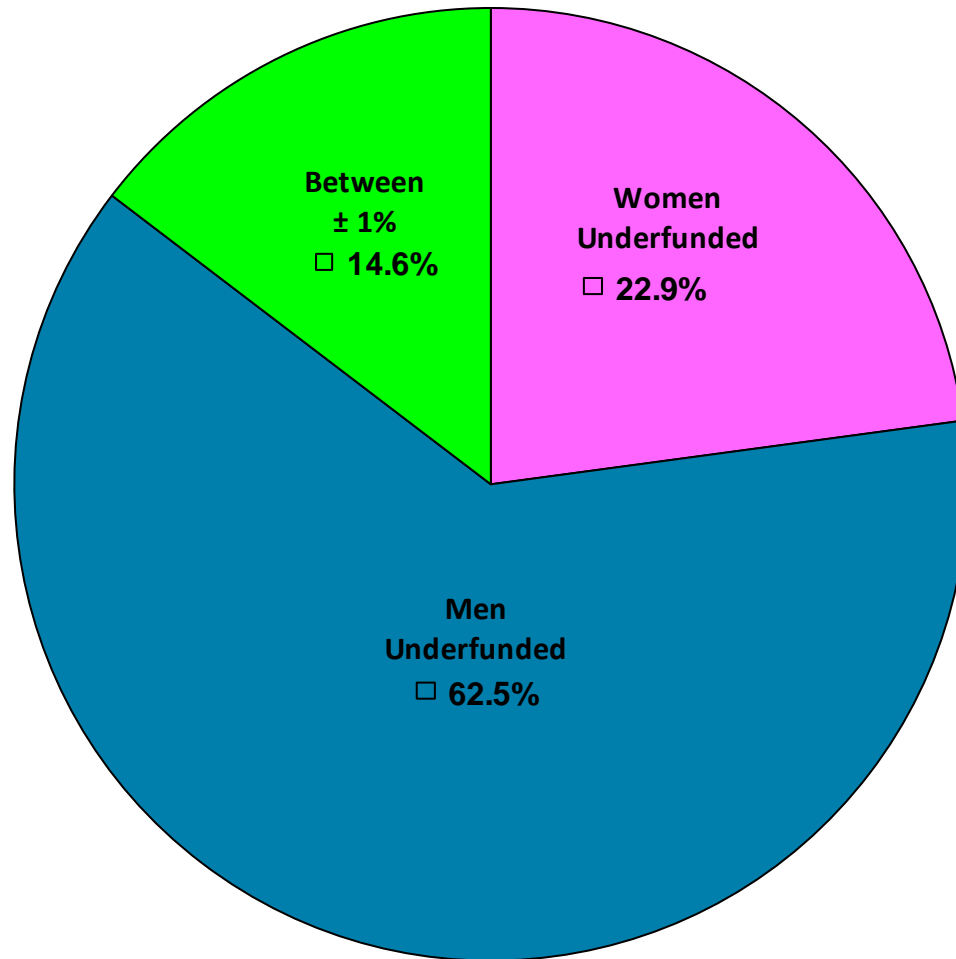
## NCAA Divisions I and II (656 total schools)

- $\leq -5\%$ : 42 schools (6.4%)
- $\leq -1\%$ : 150 schools (22.9%)
- **Between  $\pm 1\%$ : 96 schools (14.6%)**
- $\geq +1\%$ : 410 schools (62.5%)
- $\geq +5\%$ : 239 schools (36.4%)
- $\geq +10\%$ : 64 schools (9.8%)

Statistics were self-reported by schools to the Department of Education for the 2014-2015 school year.

# Scholarship Compliance

NCAA Divisions I and II (656 total schools)



# FLSA Overtime Rules: Recent Changes Require Immediate Attention

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- FLSA overtime rules become effective December 1, 2016 – within the budgetary cycle that begins in a month.
- Salary threshold is **doubling**
  - Employees earning less than **\$47,476** are eligible for overtime.
- Exemptions
  - Coaching is teaching (but recruiting is not)
  - Graduate and undergraduate students
  - Academic counselors and advisors



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## Questions?

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