



AUDIT AND ADVISORY SERVICES

NCAA Compliance Program Audit

Project No. 14-630

September 5, 2014

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September 5, 2014

John Wilton
Vice Chancellor
Administration and Finance

Vice Chancellor Wilton:

We have completed our audit of the NCAA compliance program as per our annual service plan in accordance with the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing* and the University of California Internal Audit Charter.

Our observations with management action plans are expounded upon in the accompanying report. Please destroy all copies of draft reports and related documents. Thank you to the staff of Intercollegiate Athletics for their cooperative efforts throughout the audit process. Please do not hesitate to call on Audit and Advisory Services if we can be of further assistance in this or other matters.

Respectfully reported,

Wanda Lynn Riley
Chief Audit Executive

cc: Interim Athletic Director Michael Williams
Senior Associate Athletic Director Foti Mellis
Associate Athletic Director Chris Stivers
Senior Vice President and Chief Compliance and Audit Officer Sheryl Vacca
Associate Chancellor Linda Morris Williams
Assistant Vice Chancellor and Controller Delphine Regalia
Faculty Athletics Representative Bob Jacobsen

**University of California, Berkeley
Audit and Advisory Services
NCAA Compliance Program**

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OVERVIEW

Executive Summary

The purpose of this audit was to assess the control environment and activities of Intercollegiate Athletics' (IA) National Collegiate Athletics Association (NCAA) compliance program and whether management's control objectives for the program were being met with respect to the minimum requirements for an effective compliance program defined by the University and NCAA, as well as attributes of an effective compliance program for organizations outlined in the United States Sentencing Commission's (USSC) Guidelines Manual. During our planning procedures, we observed that the University and NCAA generally do not have prescriptive requirements for the design and implementation of an NCAA compliance program. As a result, we focused on the attributes of effective compliance in the USSC's Guidelines Manual (Federal Sentencing Guidelines), Chapter 8, §8B2.1 "Effective Compliance and Ethics Program". Under the Federal Sentencing Guidelines, an entity convicted of criminal violations may have its penalty reduced if it has an effective compliance program in place at the time of the violation.

In reviewing the control environment and activities of IA's NCAA compliance program, we observed that the organization generally had appropriate controls in place to meet the guidelines set by the USSC for having an effective organizational compliance program.

Although the minimum guidelines for an effective compliance program were met, we noted an opportunity to better define and publicize channels through which an individual may confidentially or anonymously report potential NCAA compliance violations. Although IA cited the existence of the University's whistleblower hotline, it acknowledged that it does not generally publicize it or other mechanisms through which reports of potential violations may be made on its website or through other forms of communication channels. The compliance staff currently does notify IA staff, coaches and student-athletes of this opportunity, but not through a formal mechanism.

To promote the likelihood that potential violations are reported in a timely manner, the compliance organization has an opportunity to increase awareness of reporting options to boosters, athletes' parents, fans, alumni, potential recruits, and other external stakeholders and partners who may not have regular contact with IA's compliance organization as faculty, staff, or students do. Raising such awareness will likely promote reporting because potential reporters will not fear retaliation, will have an expectation that their allegation will be treated seriously and handled appropriately, and will perceive that IA is committed to an ethical and compliant culture throughout its organization.

Management agrees with the observation and has proposed an action plan that, if implemented, would address the observed risk.

Source and Purpose of the Audit

The purpose of this audit was to assess the control environment and activities of IA's NCAA compliance program and whether management's control objectives for the program were being met with respect to the minimum requirements for an effective compliance program defined by the University and NCAA, as well as attributes of an effective compliance program for organizations outlined in the Federal Sentencing Guidelines.

Scope of the Audit

During our planning procedures, we observed that the University and NCAA generally do not have prescriptive requirements for the design and implementation of an NCAA compliance program. As a result, we focused on the attributes of effective compliance in the USSC's Federal Sentencing Guidelines, Chapter 8, §8B2.1 "Effective Compliance and Ethics Program". Under the Federal Sentencing Guidelines, an entity convicted of criminal violations may have its penalty reduced if it has an effective compliance program in place at the time of the violation. The Federal Sentencing Guidelines outlines the following nine elements of effective compliance programs.

Paraphrasing the guidance, an effective compliance organization shall have:

- Standards and procedures to prevent and detect non-compliant activity;
- A governing authority that is knowledgeable about the content and operation of the compliance program and exercises reasonable oversight with respect to its implementation and effectiveness;
- A specific individual within high-level personnel with overall responsibility for the compliance program;
- A specific individual with delegated day-to-day operational responsibility for the compliance program;
- Adequate resources, appropriate authority, and direct access to the governing authority by the specific individual with day-to-day operational responsibility;
- Periodic communication of its standards and procedures;
- Effective training programs;
- Monitoring and auditing to detect non-compliant activities;
- Periodic evaluation of the effectiveness of the compliance program;
- Publicize a system, which may allow for anonymity or confidentiality, to report or seek guidance regarding potential or actual non-compliant activities;
- Appropriate responses to non-compliant activities;
- Promotion and enforcement through incentives to perform in accordance with the compliance program and disciplinary measures for engaging in non-compliant activities; and
- Periodic assessment of non-compliance risks.

We evaluated IA's NCAA compliance program against the above mentioned criteria.

Background Information

The campus competes as a member of the NCAA Division I group and as a primary member of the Pac-12 Conference (Pac-12). IA's NCAA compliance organization operates under the bylaws set by the NCAA in the NCAA Division I Manual and uses these bylaws to develop the compliance objectives for its compliance program. The compliance organization also seeks guidance from Pac-12 conference officials and external NCAA compliance advisors to achieve the compliance objectives set by the NCAA.

The compliance organization has a hierarchical management structure comprised of one Senior Associate Athletic Director, one Associate Athletic Director, one Director, one Assistant Director, one Admissions Coordinator, and one Financial Aid Coordinator. The Athletic Director oversees the compliance organization and reports directly to the Vice Chancellor for Finance and Administration. The Faculty Athletics Representative also has compliance oversight.

The compliance organization has established defined roles and responsibilities for personnel, coupled with the use of certain technology tools. The majority of the compliance organization's monitoring activities are conducted using the Student Athlete Database and JumpForward internal data gathering and tracking systems. The Student Athlete Database allows members of the compliance organization to monitor academic eligibility, practice eligibility, activity participation hours, travel eligibility and financial aid for student-athletes using a web interface shared with coaches and higher level IA management. This tool has automated alerts that notify management of potential NCAA violations, as well as the ability to produce activity reports for benchmarking and other forms of analysis.

The JumpForward software package assists the compliance organization in monitoring recruiting activities which is another high priority compliance area. This software allows for monitoring of communication between prospective recruits and coaches to ensure adherence with NCAA bylaws. JumpForward also acts as an information repository for other data relating to the recruitment of prospective athletes. Like the Student Athlete Database, JumpForward automatically flags certain transactions that may be potential infractions and is consistently updated for new NCAA legislation. Additionally, restrictions on user access and roles are in place to ensure appropriate segregation of duties. In addition to these systems, the compliance organization utilizes its internally designed Systems Manual that paraphrases rules and regulations outlined in the NCAA Division I Manual.

Due to the small size of the compliance organization, management performs a risk assessment to identify priority areas to focus its limited resources. Areas of focus for the compliance program are identified and prioritized based on the potential impact to the campus if an infraction is detected, with more time and internal resources on areas that pose greater risk exposure to the campus. To gain comfort around other priority areas, the compliance organization utilizes a third party law firm that periodically audits and monitors areas that are not monitored on a day-to-day basis. They also advise the compliance organization on methods to improve its operations and approaches for addressing new and existing NCAA legislation. The compliance organization aims to gain comprehensive coverage over NCAA compliance areas by use of its personnel, internal systems, and third party oversight.

Summary Conclusion

In reviewing the control environment and activities of IA's NCAA compliance program, we observed that the organization generally had appropriate controls in place to meet the guidelines set by the USSC for having an effective organizational compliance program.

Although the minimum guidelines for an effective compliance program were met, we noted an opportunity to better define and publicize channels through which an individual may confidentially or anonymously report potential NCAA compliance violations. Although IA cited the existence of the University's whistleblower hotline, it acknowledged that it does not generally publicize it or other mechanisms through which reports of potential violations may be made on its websites.

To promote the likelihood that potential violations are reported in a timely manner, the compliance organization has an opportunity to increase awareness of reporting options to boosters, athletes' parents, fans, alumni, potential recruits, and other external stakeholders and partners who may not have regular contact with IA's compliance organization as faculty, staff, or students do. Raising such awareness will likely promote reporting because potential reporters will not fear retaliation, will have an expectation that their allegation will be treated seriously and handled appropriately, and will perceive that IA is committed to an ethical and compliant culture throughout its organization.

SUMMARY OF OBSERVATIONS & MANAGEMENT RESPONSE AND ACTION PLAN

Communication of a Non-retaliatory Confidential Reporting System

In terms of outlining better practices for organizational compliance programs, the United States Sentencing Commission's (USSC) 2013 Guidelines Manual, Chapter 8 (Sentencing of Organizations) state *"The organization shall take reasonable steps to have and publicize a system, which may include mechanisms for anonymity or confidentiality, whereby the organizations employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation."*¹

We noted an opportunity to better define and publicize channels through which an individual may confidentially or anonymously report potential NCAA compliance violations. Although IA cited the existence of the University's whistleblower hotline, it acknowledged that it does not generally publicize it or other mechanisms through which reports of potential violations may be made on its website or through other communication channels. Management acknowledges that current department mechanisms do not provide confidentiality or anonymity and may deter individuals who wish to report.

To promote the likelihood that potential violations are reported in a timely manner, the compliance organization has an opportunity to increase awareness of reporting options to boosters, athletes' parents, fans, alumni, potential recruits, and other external stakeholders and partners who may not have regular contact with IA's compliance organization as faculty, staff, or students do. Raising such awareness will likely promote reporting because potential reporters will not fear retaliation, will have an expectation that their allegation will be treated seriously and handled appropriately, and will perceive that IA is committed to an ethical and compliant culture throughout its organization.

Management Response and Action Plan

Intercollegiate Athletics is adding an anonymous/confidential "tipline" to the compliance link on its website, Calbears.com. This addition should be operational by September 1, 2014. This function will allow any person, internal or external to the organization, to report potential compliance issues in an anonymous and confidential manner. Submissions via the website will be sent automatically to an email account created for this purpose and accessible only by athletics compliance staff. Furthermore, the compliance program will notify its constituents of this function in its continuing educational outreach efforts (e.g., compliance rules inserts in season ticket mailings, staff/coach/student-athlete education sessions, etc.).

¹ United States Sentencing Commission 2013 Guidelines Manual, §8B2.1. Effective Compliance and Ethics Program.