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# Financial Transparency in College Athletics: How to Save College Sports from Becoming the Monster It Created and Forge a Path of Sustainability

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## Introduction

Only in college sports can you change your geographic location in the blink of an eye. Standford and Cal successfully pulled off this Houdini act by leaving the Pacific Athletic Conference and joining the Atlantic Coast Conference for the upcoming year.[1] Like many, I am excited for the natural rivalries like Stanford against Syracuse, or Cal versus Wake Forest, that we have been missing until these recent changes. But what could cause such a drastic change for Stanford and Cal to be seen as in their best interests?[2]

The past 15 years of college sports have been punctuated by major conference realignment that will have you reconsidering your ability to count, and your sense of direction.[3] Schools consider many factors when deciding on their conference affiliation for athletics.[4] One of the most important factors when it comes to conference membership is the guaranteed money from media deals the conference has in place.[5] The current state of media rights and guaranteed revenue for conference members has incentivized schools to maximize these payouts and seek membership in

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[1] While Cal and Stanford have completely switched coasts with this move, Southern Methodist University (SMU) also joined the ACC and has also made an impressive "move" from Dallas to the Atlantic Coast. *See*, Josh Dubow, *Cal and Stanford believe move to ACC was needed for survival*, ASSOCIATED PRESS (Sep. 1, 2023, 4:22 PM), https://apnews.com/article/cal-stanford-acc-conference-realignment-2259a1439f112679950c48667c2ef5f8.
[2] *Id*.
[3] *Id*. (Which part of the country is the Atlantic Coast again?). The Big Ten now has 18 schools. *See*, Brian Hamilton & Brendan Quinn, *How will Big Ten manage 18-team, bicoastal basketball league? 'I have zero clue'*, THE ATHLETIC (Aug. 7, 2023), https://theathletic.com/4754176/2023/08/07/big-ten-basketball-expansion-coaches. The Big 12 now has 16 schools. *See*, Pete Thamel, *Big 12 approves additions of Utah, Arizona State, bringing league to 16 teams*, ESPN (Aug. 4, 2023), https://www.espn.com/college-football/story/_/id/38136135/big-12-approves-addition-utah-arizona-state-bringing-league-16-teams.
[4] Recent conference realignment moves, the consolidation of Power Five conferences to the Power Four, exit fees, maximizing TV dollars, and maximizing postseason opportunities for football and basketball are some of the key considerations for schools. *See*, Ralph Russo, *What's next in major college football realignment? How about a best-of-the-rest league*, ASSOCIATED PRESS (Sep. 21, 2023), https://apnews.com/article/conference-realignment-relegation-e50adf12c41365614ebac1fa8c1b346d.
[5] *See*, Joe Reedy, *Pac-12's downfall came after it could not adjust to changing media landscape*, ASSOCIATED PRESS (Aug. 8, 2023), https://apnews.com/article/pac-12-conference-realignment-big-ten-big-12-17dc50f7b479fe19b0599dd4b690bac4.

a conference that will pay them their perceived value.[6] With the expansion of the College Football Playoff and the new format for conference payouts, there is even more reason for schools to try and join one of the Power conferences.[7]

Why is increasing revenue so important to these schools and their athletics departments? College sports cost a lot of money to successfully operate and run each team. Most athletic departments operate at a loss to the school and very few schools have self-sustaining athletics departments where their revenues exceed their expenses.[8] But in a world with ever increasing expenses due to ballooning salaries for coaches and the arms race to upgrade athletic facilities, will revenue ever catch up?[9] The financial gap between Group of 5 (G5) schools and the autonomy conferences (Power Four football conferences) continues to widens.[10] With the consolidation of higher revenue schools into fewer conferences for football, this will also have a direct impact on smaller G5 schools that rely on these marquee matchups for revenue vital to an athletics budget.[11] COVID has further exacerbated some of these effects and many schools made the decision to cut

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[6] *See*, Susan M. Shaw, *Money Has Torn The Pac-12 Apart. Student-Athletes Are Left Holding The Pieces*, FORBES (Aug. 8, 2023), https://www.forbes.com/sites/susanmshaw/2023/08/08/money-has-torn-the-pac-12-apart-student-athletes-are-left-holding-the-pieces/?sh=57101b6965c1.

[7] After the mass exodus of the Pac-12, the remaining Power Conferences are the ACC, Big Ten, Big 12, and SEC. The new CFB payout structure heavily favors these conferences in terms of qualifying for the playoffs and yearly payouts. *See*, Stewart Mandel & Chris Vannini, *CFP leaders agree to framework of Playoff through at least 2031; expansion to 14 on hold*, THE ATHLETIC (Mar. 14, 2024), https://theathletic.com/5343141/2024/03/14/college-football-playoff-contract-revenue-split.

[8] *See,* Molly Geary, *Report: 24 public schools met NCAA's benchmark for self-sufficiency*, SPORTS ILLUSTRATED (May 26, 2015), https://www.si.com/college/2015/05/27/ncaa-athletics-finances-revenue-expenses-oregon-texas; *See also*, *NCAA Finances: Revenue and Expenses by School*, USA TODAY (Mar. 14, 2024), https://sports.usatoday.com/ncaa/finances (Data from most recently available fiscal year, FY 2021-22).

[9] *See*, Adam Hoffer et al., *Trends in NCAA Athletic Spending: Arms Race or Rising Tide?*, 16 J. OF SPORTS ECON., no. 6, 2016, at 576-596.

[10] *See*, *Financial Projections Through 2032 For Division I FBS Programs*, KNIGHT COMM'N ON INTERCOLLEGIATE ATHLETICS (Sep. 6, 2023), https://www.knightcommission.org/2023/09/financial-projections-through-2032-for-division-i-fbs-programs.

[11] *See*, Ross Dellenger, *Conference-Only Power 5 Schedules Come at a Steep Price to Group of Five Schools*, SPORTS ILLUSTRATED (Jul. 10, 2020), https://www.si.com/college/2020/07/10/college-football-buy-games-group-of-five.

sports to try and save money.[12] When a school decides to cut a sport there is the looming potential for Title IX issues and lawsuits.[13]

There are two general factors to contemplate when trying to balance a budget. One can look to increase revenue, decrease expenses, or both. Schools may be trying to do both, but what if poor accounting practices and a narrow view of university finances are playing a part in the current financial decision making? Could a lack of financial transparency be causing a miscalculation of university resources? Is there a way to avoid potential Title IX lawsuits that come from cutting sports and removing women's opportunities? Perhaps the Big East basketball of my childhood[14] would still exist if schools had a more uniform and transparent financial reporting procedure.

Part I of this paper will begin by discussing why the current process exists for reporting school finances for athletics. It will look at the methods that schools must report these numbers, the legal obligations for these reports, and the differing standards that exist within each report. Part II will investigate how schools make money and how they spend money. It will highlight trends in the industry and the stark differences in realities for smaller G5 schools compared to P5 schools. Part III will discuss the current landscape of college athletics and why schools are willing to spend so much on sports. It will also provide recent examples of different schools trying to navigate their budgetary problems within athletics. Part IV will conclude this paper with key takeaways, provide

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[12] *See*, *Tracker: College Sports Programs Cut During COVID-19 Pandemic*, BUS. OF COLL. SPORTS (Jul. 14, 2021), http://businessofcollegesports.com/tracker-college-sports-programs-cut-during-covid-19-pandemic.

[13] *See*, Billy Witz, *Stanford Faces Two Lawsuits for Decision to Cut Sports*, N.Y. TIMES (May 13, 2021), https://www.nytimes.com/2021/05/13/sports/stanford-sports-cuts-lawsuit.html.

[14] The Big East was a basketball behemoth up until the major realignment that occurred in the early 2010s. The 16-team conference from 2005-2013 consisted of: Cincinnati, UCONN, DePaul, Georgetown, Louisville, Marquette, Notre Dame, PITT, Providence, Rutgers, Seton Hall, USF, St. John's, Syracuse, Villanova, and West Virginia. https://en.wikipedia.org/wiki/Big_East_Conference_(1979-2013).

ideas for change, discuss shortcomings and items not considered by this paper, and highlight potential issues in the future for athletics departments.

## PART I: WHY DO WE KEEP TRACK OF THE MONEY?

There are several reasons why schools create financial reports outside of internal use. Title IX, and the Equity in Athletics Disclosure Act (EADA) are federally mandated requirements that NCAA institutions must follow. In addition to federal requirements, schools are subject to additional financial reports as mandated by their membership to the NCAA.[15] Despite the similarity in reporting requirements for schools, it should come as no surprise that there are different definitions for categories included in the reports.[16] These different definitions can lead to discrepancies in numbers reported by schools for the NCAA Member Financial Report Survey (MFRS) and the EADA.[17] This section will address the legal reasons why schools keep detailed accounts of their finances and how their differing standards impact the numbers reported. It will also highlight the different publicly available sources for financial reports and some of their strengths and weaknesses.

### A. THE LEGAL FOUNDATION OF IT ALL – TITLE IX

One of the most important reasons for a school to keep track of its finances and create these reports is to comply with Title IX. Essentially, any school that participates in federal student aid programs and receives Title IV funding is subject to compliance with Title IX.[18] It states that, "No

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[15] Per Bylaw 20.2.4.17 of the Division I Manual, the NCAA requires Division I institutions to annually submit their revenues and expenses information for their athletic department as well as other general information.
[16] Ellen Staurowsky, *Strengthening the Equity in Athletics Disclosure Act to Improve Gender Equity Transparency & Institutional Accountability in the Future*. 16 J. OF INTERCOLLEGIATE SPORT, no. 1, 2023, 111, at 122.
[17] Ted Tatos, *An Empirical Evaluation of EADA and NCAA College Sports Financial Data: Applications for Research and Litigation*, 29 MARQ. SPORTS L. REV. 411 (2019) (discussing major differences in totals reported).
[18] Title IX of the Education Amendments Act, 20 U.S.C. §§ 1681-1688 (1972).

person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."[19] This applies to both public and private universities if they receive Title IV funding.[20] The importance of this will become clear as other reporting procedures and requirements are explored.

While Title IX applies to more than just athletics, for the purposes of this paper we will focus on its application and importance for university athletics. Title IX requires schools to offer three things to their prospective student-athletes.[21] First, men and women must be provided equal opportunities to participate in sports.[22] Second, the schools must offer athletic scholarships to men and woman student-athletes in dollars that are proportional to their participation. Finally, both men and women are entitled to equal treatment regarding the other benefits that student-athletes receive on campus.[23]

For a school to show compliance with Title IX they must meet all three of the requirements previously listed. To satisfy the first prong, showing that the school offers equal opportunities to their student-athletes, there are three tests that a school may use to show its abiding by Title IX requirements.[24] After satisfying the first prong, the schools must then show they are offering

[19] *Id*. at §1681(a)
[20] *Title IX Frequently Asked Questions*, NCAA, https://www.ncaa.org/sports/2014/1/27/title-ix-frequently-asked-questions.aspx#how (last visited May 12, 2024).
[21] *Id*.
[22] Title IX does not require institutions to offer identical sports but an equal opportunity to play.
[23] Other benefits: Title IX requires the equal treatment of female and male student-athletes in the provisions of: (a) equipment and supplies; (b) scheduling of games and practice times; (c) travel and daily allowance/per diem; (d) access to tutoring; (e) coaching, (f) locker rooms, practice and competitive facilities; (g) medical and training facilities and services; (h) housing and dining facilities and services; (i) publicity and promotions; (j) support services and (k) recruitment of student-athletes.
[24] For the purposes of this paper these tests will be listed here, but not expanded upon as they do not involve the finances of an athletics department. The second test may possibly be met with financial records supporting the continuing practice of adding sports for the underrepresented sex, but the use of financial records is much more apparent in the second and third requirements of Title IX compliance.

athletic scholarship dollars in a proportional manner and there is equal treatment between men and women in regards to the other student-athlete related benefits they are receiving. This is where financial reports come into play and are key components in showing schools satisfy their Title IX requirements and remain compliant with federal law. However, for decades after the passing of Title IX in 1972, many schools were not in compliance with the federal mandates.[25] There were several events that occurred around the 20th anniversary of Title IX that eventually led into the creation of another federal mandate that schools must comply with.[26]

## B. THE EVOLUTION OF TITLE IX IN THE 1990s – THE EQUITY IN ATHLETICS DISCLOSURE ACT (EADA)

### a. An overview of the EADA and why it exists.

The EADA was enacted in 1994 as a direct result of the fallout from the mishandling of the first 20 years of college athletics under Title IX.[27] The official government website states:

> "The Equity in Athletics Disclosure Act requires co-educational institutions of postsecondary education that participate in a Title IV, federal student financial assistance program, and have an intercollegiate athletic program, to prepare an annual report to the Department of Education on athletic participation, staffing, and revenues and expenses, by men's and women's teams."[28]

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The three tests that a school may use to satisfy the first prong of Title IX compliance are:
(a)Provide participation opportunities for women and men that are substantially proportionate to their respective rates of enrollment of full-time undergraduate students;
(b) Demonstrate a history and continuing practice of program expansion for the underrepresented sex;
(c) Fully and effectively accommodate the interests and abilities of the underrepresented sex

[25] Blair v. Washington State Univ., 108 Wash. 2d 558, 740 P.2d 1379 (1987). There is a history of schools not complying and rarely, if ever, being held accountable for their violations. *See*, Rachel Axon, *What happens if a school doesn't comply with Title IX? Not a whole lot.*, USA TODAY (Dec. 15, 2022), https://www.usatoday.com/in-depth/news/investigations/2022/12/15/title-ix-enforcement-essentially-toothless-mired-red-tapedelays/10803850002.

[26] *See*, Rachel Axon, *What happens if a school doesn't comply with Title IX? Not a whole lot.*, USA TODAY (Dec. 15, 2022), https://www.usatoday.com/in-depth/news/investigations/2022/12/15/title-ix-enforcement-essentially-toothless-mired-red-tape-delays/10803850002 (providing a history and timeline of shortcomings with Title IX and the failure to uphold its purpose for decades after it was implemented).

[27] 20 U.S.C. § 1092; 34 C.F.R. §§ 668.47.

[28] *Equity in Disclosures Act*, U.S. DEP'T OF EDUCATION, https://www2.ed.gov/finaid/prof/resources/athletics/eada.html (last visited May 12, 2024).

Many of the qualifying traits for a school under the EADA overlap with the traits that would qualify a school under Title IX. The EADA was designed to increase compliance with Title IX and provide more specific and transparent information regarding school's efforts to provide equal opportunities for their students.[29] The reports show how schools are spending and allocating resources for their men's and women's athletics programs. While they both require financial disclosures to ensure compliance with the federal regulations it is important to know that complying with one does not necessarily mean complying with both.[30]

The United States Department of Education, specifically the Office of Postsecondary Education (OPE), is the federal agency tasked with overseeing the EADA.[31] For any schools not in compliance with the EADA, these violations are punishable by fines, the limitation/suspension/termination of Title IV programs, or emergency actions for correction.[32] While the law came into effect in 1994, the first EADA reports were not generated until 1996.[33] In the spirit of promoting transparency and accountability, the U.S. Department of Education Office of Postsecondary Education (OPE) hosts a website where the EADA reports are publicly available and held in a database for easy access.[34] Users can access individual school reports, compare multiple schools, create custom data reports, or even generate trend data based on user inputs by utilizing the Data Analysis Cutting Tool.[35]

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[29] *Equity in Disclosures Act Survey*, U.S. DEP'T OF EDUC., https://surveys.ope.ed.gov/athletics (last visited on May 12, 2024) ("The Equity in Athletics Disclosure Act is designed to make prospective students aware of a school's commitment to providing equitable athletic opportunities for its men and women students.").
For additional background regarding motive and purpose of the EADA. Staurowsky, *supra* note 16, at 116.
[30] *Id*. at 118.
[31] *U.S. Department of Education's Guidance Homepage*, U.S. DEP'T OF EDUC., https://www2.ed.gov/policy/gen/guid/types-of-guidance-documents.html (last visited May 12.2024).
[32] 34 C.F.R. §§ 668.81 (2022).
[33] Staurowsky, *supra* note16, at 116.
[34] https://ope.ed.gov/athletics
[35] *Id*. The website answers the question "What is the Equity in Athletics Data Cutting Tool?" by stating: "The Equity in Athletics Data Analysis Cutting Tool is brought to you by the Office of Postsecondary Education of the U.S.

b. Information schools are required to report under the EADA.

Schools are required to complete their EADA reports each year by October 15 for the previous academic reporting year.[36] Some of the mandatory items that must be reported include head counts of student athletes that participate on a varsity team by gender, revenues and expenses of the athletic department, athletic student aid, and coaches' salaries.[37] The student aid, coaches' salaries, and the revenue and expenses of the department are also broken down by gender to give

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Department of Education. This analysis cutting tool was designed to provide rapid customized reports for public inquiries relating to equity in athletics data. The data are drawn from the OPE Equity in Athletics Disclosure Website database. This database consists of athletics data that are submitted annually as required by the Equity in Athletics Disclosure Act (EADA), via a Web-based data collection, by all co-educational postsecondary institutions that receive Title IV funding (i.e., those that participate in federal student aid programs) and that have an intercollegiate athletics program."

[36] 34 C.F.R. § 668.41(g)(1)(i).

[37] The 10 items listed in the 2022-2023 Federal Student Aid Handbook that must be included in the report are:

(i) the number of full-time undergraduate students enrolled broken down by race and sex

(ii) a listing of the varsity teams that competed in intercollegiate athletic competition and for each team the following data:

- the total number of participants as of the day of its first scheduled contest of the reporting year, the number of participants who also participated on another varsity team, and the number of other varsity teams on which they participated;
- the total operating expenses attributable to the team;
- whether the head coach (including graduate assistants or volunteers who served as head coaches) was male or female, was assigned to the team full-time or part-time, and, if assigned on a part-time basis, whether the head coach was a full-time or part-time employee of the school;
- the number of assistant coaches (including graduate assistants or volunteers who served as assistant coaches) who were male and the number who were female and, within each category, the number who were assigned to the team on a full-time or part-time basis, and, of those assigned on a part-time basis, the number who were full-time and part time employees of the institution;

(iii) the unduplicated head count of students who participate on at least one varsity team by gender;

(iv) revenues derived by the institution from intercollegiate athletic activities: total revenues attributable to all men's sports combined, all women's sports combined, football, men's basketball, women's basketball, all men's sports except football and basketball combined, and all women's sports except basketball combined;

(v) expenses incurred by intercollegiate athletic activities in the following categories: total expenses attributable to football, men's basketball, women's basketball, all men's sports except football and basketball combined, and all women's sports except basketball combined;

(vi) the total amount spent on athletically related student aid;

(vii) the ratio of athletically related student aid awarded to male athletes to female athletes;

(viii) the total amount of recruiting expenses aggregated for all men's teams and all women's teams;

(ix) the average institutional salary of the non-volunteer head coaches of all men's teams, across all sports, and the average annual institutional salary of the non-volunteer head coaches of all women's teams, across all offered sports, on a per person and a per full-time equivalent position basis;

(x) the average annual institutional salary of the non-volunteer assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer assistant coaches of women's teams, across all offered sports, on a per person and a full-time equivalent basis.

a quick snapshot of the allocation of resources and the equity a school exhibits in their athletics practices.

Included in the EADA are definitions for revenue and expenses which creates broad-stroke, large bucket categories, but imposes narrow applications or mandates for these two important financial items.[38] Expenses include obvious topics such as student aid, equipment, travel, lodging, meals, and paying for officials.[39] Notably absent from the reporting requirement are major expenses like capital expenditures and debt servicing.[40] Another interesting choice for reporting in the EADA is that the grand total of reported revenue MUST be enough to cover the grand total of reported expenses, even making clear that this is not an accounting report and merely data collection.[41] The EADA is more all-encompassing with its definition of revenue compared to expenses as they include earned revenue in addition to allocated institutional support.[42] Even with

[38] 34 CFR 668.47
[39] The definitions of expenses as written in 34 CFR 668.47(b)(1):
(i) Expenses means expenses attributable to intercollegiate athletic activities. This includes appearance guarantees and options, athletically related student aid, contract services, equipment, fundraising activities, operating expenses, promotional activities, recruiting expenses, salaries and benefits, supplies, travel, and any other expenses attributable to intercollegiate athletic activities.
(ii) Operating expenses means all expenses an institution incurs attributable to home, away, and neutral-site intercollegiate athletic contests (commonly known as "game-day expenses"), for—
(A) Lodging, meals, transportation, uniforms, and equipment for coaches, team members, support staff (including, but not limited to team managers and trainers), and others; and
(B) Officials.
(iii) Recruiting expenses means all expenses an institution incurs attributable to recruiting activities. This includes, but is not limited to, expenses for lodging, meals, telephone use, and transportation (including vehicles used for recruiting purposes) for both recruits and personnel engaged in recruiting, any other expenses for official and unofficial visits, and all other expenses related to recruiting.
[40] USER'S GUIDE FOR THE EQUITY IN ATHLETICS DISCLOSURE ACT WEB-BASED DATA COLLECTION 66 (2023), https://surveys.ope.ed.gov/athletics2023/wwwroot/documents/2023_EADA_Users_Guide.pdf.
[41] *Id*. at 71.
"When reporting revenues for the EADA Survey, it is important to remember that this is not an accounting report. It collects data about revenues and expenses that are similar to data from an income and expenses statement. Therefore, revenue must always equal or exceed expenses, showing that the institution is supporting the teams. For the purposes of EADA reporting, revenue is any money used to pay for team expenses. If money is earned in previous years and used to pay for expenses in the current year, then that is revenue both for the year that it was earned and the year that it was used."
"Your grand total reported revenues must cover your grand total reported expenses. If your initial calculations indicate that your total revenues do not cover your total expenses, you may find it helpful to work backwards. How were the bills paid? The funds used to pay them should be included in your revenues."
[42] The definitions of revenue as written in 34 CFR 668.47(b)(5):

the expanded view of what counts as revenue, the EADA does not require a school to separate its institutional, state, or government support into distinct sub-categories, only requiring a total line item.[43]

c. What the EADA allows us to do and the limitations of the EADA.

The narrow definition of expenses and the lack of distinction for allocated revenues creates limitations on the true transparency of EADA reports and they do not account for large swathes of money that are being earned and spent by athletics departments.[44] In addition to the limits on the information that is included in the report, the actual reporting itself can lead to increased effort and expenses for athletics departments. Schools have argued that the EADA reports are cumbersome, duplicative of information already reported, and incur enough costs that if they did not have to fill out the report, they could field another team for women's sports.[45] The NCAA has even gone so far as to suggest that the EADA process and the data it gathers is unreliable.[46] The EADA fails to take into account a school's entire financial picture and unique circumstances that schools may employ.[47] Since schools must have their reported revenues at least equal their expenses, and many major expenses are excluded in their EADA reports, it gives the appearance that more athletics programs are financially stable and independently viable than may actually be true.[48]

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(5) Revenues means revenues attributable to intercollegiate athletic activities. This includes revenues from appearance guarantees and options, an athletic conference, tournament or bowl games, concessions, contributions from alumni and others, institutional support, program advertising and sales, radio and television, royalties, signage and other sponsorships, sports camps, State or other government support, student activity fees, ticket and luxury box sales, and any other revenues attributable to intercollegiate athletic activities.

[43] USER'S GUIDE FOR THE EQUITY IN ATHLETICS DISCLOSURE ACT WEB-BASED DATA COLLECTION 73 (2023), https://surveys.ope.ed.gov/athletics2023/wwwroot/documents/2023_EADA_Users_Guide.pdf.

[44] Staurowsky, *supra* note, at 122.

[45] *Id*. at 121-22.

[46] *Id*. at 123-24.

[47] *Id*. at 123.

[48] *Id*. at 122.

Despite these limitations there are still a lot of positives that have come out of EADA reports. It has given some level of access and transparency to the inner working and financials of a school. These reports are the only publicly available sources of this information for private schools and are easily accessible. The availability of these reports has been instrumental in outside research for scholars, government oversight for Title IX compliance, and the basis for countless lawsuits alleging misconduct by the NCAA or one of its institutions.[49] EADA data provided necessary information for several lawsuits alleging Title IX violations when schools tried to cut sports and was even used in briefs submitted to the court in the O'Bannon case.[50] Regardless of its flaws and shortcomings, the EADA has been a net positive since its inception. In combination with the next financial report, it can give a much deeper understanding of a school's financial picture and where the money is going, albeit with a few noteworthy caveats.

### C. NCAA MEMBER FINANCIAL REPORT SURVEY (MFRS)

#### a. An overview of the NCAA MFRS.

The NCAA MFRS are a required disclosure by all members of the NCAA.[51] These financial reports are mandated for each school due to their membership in the NCAA. As a required disclosure for each school, there are also Agreed-Upon Procedures that are utilized in the reporting of this financial information.[52] The MFRS collects similar data to EADA reports, but they are not the same. They have different definitions that are used for revenue and expenses and different

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[49] *Id*. at 119.
[50] O'Bannon v. Nat'l Collegiate Athletic Ass'n, 802 F.3d 1049 (9th Cir. 2015).
[51] "NCAA constitution, Article 2(D)(1)(c) states that all members of the NCAA must submit annually its financial data as determined by the division detailing operating revenues, expenses and capital relating to the intercollegiate athletics program. The financial data is subject to the Agreed-Upon Procedures performed by a qualified independent accountant annually for DI members and at least once every three years for DII members."
NCAA Membership Financial Reporting System, https://www.ncaa.org/sports/2013/11/21/ncaa-membership-financial-reporting-system.aspx (last visited May 12,2024).
[52] NCAA 2024 Agreed-Upon Procedures, https://ncaaorg.s3.amazonaws.com/ncaa/finance/NCAAFIN_AgreedUpon Procedures.pdf (last visited May 12, 2024).

items fall within each category.[53] The MFRS also differs from EADA reports because there is no requirement to balance expenses with revenues; the MFRS is a true accounting of an athletic department's resources and financial standing.[54] Unlike the EADA report, the NCAA requires Division I schools to have their reports audited by an outside qualified independent accountant.[55] Once the accountant verifies the report it must then be reviewed and approved by the president or chancellor of the school prior to submission.[56]

b. Information schools are required to report under the NCAA MFRS.

Schools have different requirements to report information to the NCAA depending on what division they are members of.[57] Division I schools have an annual requirement to disclose their financial information on a yearly basis.[58] Division II schools have a lower threshold and are only required to review their revenues and expenses at least once every three years despite filing their information annually.[59] Division III schools have two methods to meet the MFRS requirement, but one of the methods grants a school the ability to satisfy NCAA requirements by simply filing their EADA Certificate of Completion.[60] It is difficult to see how truthful and transparent reporting can fully exist at the Division II and Division III level when schools can go several years without reviewing the numbers they have filed or can satisfy this requirement with simply utilizing their EADA report numbers.

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[53] *Id*. at 17-38.
[54] *Id*. at 4-6.
[55] *Id*. at 4.
[56] *Id*.
[57] *Id*. at 3.
[58] *Id.* at 4.
[59] *Id*. at 5.
[60] *Id*.

The MFRS also carries significantly different definitions for what is encompassed in the revenue and expense categories.[61] The base number of categories for both is larger than what the EADA calls for, and there are several subdivisions within them that are completely absent from EADA reports.[62] Some examples for MFRS revenues are the inclusion of compensation and benefits provided by a third party, NCAA distributions, and conference distributions.[63] The MFRS also separates institutional support into direct/indirect categories and state/government support into separate and distinct categories rather than group them all together like the EADA report.[64] The expenses are also more granular by disclosing coaching salaries and total compensation, including bonuses, as paid by the university and by third parties.[65] Two of the largest inclusions for expenses under the MFRS are severance payments and capital expenditures like debt servicing.[66] For some schools these may be some of the largest expenses categories, and under the EADA they are simply excluded from the accounting. The MFRS also has additional categories for total athletics related debt, total institutional debt, and total athletics related capital expenditures.[67] These examples highlight some of the reasons there can be major differences between the EADA and MFRS numbers. An empirical study conducted in 2019 observed that both revenue and expenses reported in the EADA were lower than their corresponding figures in the MFRS.[68] The study also found that EADA reports ranged from 3.5% to 6.7% lower than MFRS numbers.[69] For a school reporting $150M in revenues or expenses on their EADA report, this

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[61] *Id*. at 17-27.
[62] MSFR categories for revenue = 19 (21 total including subcategories); EADA categories for revenue = 18, (12 actual categories with an all-encompassing category and 6 places to insert where institutional state or government support goes); MSFR categories for expenses = 23; EADA categories for expenses = 6.
[63] NCAA Agreed-Upon Procedures, *supra* note 52, at 19.
[64] *Id*. at 17-18.
[65] *Id*. at 23.
[66] *Id*. at 24-25.
[67] *Id*. at 27.
[68] Tatos, *supra* note 17, at 447.
[69] *Id*.

could mean a difference of nearly $5-10M exists with the MFRS numbers, which is a substantial number when some sports only cost a few hundred thousand to run each year. The differences in the categories and the MFRS not requiring expenses to equal revenues are certainly factors in why there is a variance in the numbers reported, but this should further highlight why there is a need for true financial transparency in college athletics.

c. Limitations of the NCAA MFRS.

The MFRS is a much more in-depth and realistic financial analysis of a school's athletic department than EADA reports. In a perfect world, both reports would be available for all schools, public and private, for anyone to view. The biggest limitation of the MFRS is the inability to fully gather the financial reports for all NCAA schools. While the EADA is publicly available for all schools, the MFRS is not automatically published. To access a school's MFRS one must make a public records request to gain access to the internal document.[70] For public universities that receive a formal request for this information they are obligated to disclose their filings.[71] However, nearly 37% of schools at the Division I level are private institutions.[72] This means they are not required to produce the information if requested, but may voluntarily disclose the records.[73] The best-case scenario for financial transparency is obtaining the MFRS from public schools and the EADA reports of private schools while realizing all the shortcomings and limitations that come along with them. Luckily, there are some sources that take the time to aggregate this information and attempt to unravel the mystery that is college athletics financial reporting into one centralized location.

[70] In most states an OPRA or written request to the school will suffice.
[71] Some public universities are in states that do not require them to comply with request. These are exceptions.
[72] 134 of 363 institutions. This number increases at the Division 2 and Division 3 level.
[73] Public data is available and easier to track down. Private school data is not required to be disclosed through FOIA or OPRA requests and exact numbers for private schools are lacking. Private schools usually decline to disclose.

d. Other sources that utilize EADA reports and the MFRS.

USA Today and the Knight Commission on Intercollegiate Athletics are two sources that try and publish the most accurate financial information for NCAA schools. In an effort to increase transparency of athletics spending, USA Today takes it upon themselves to aggregate the publicly available date and publish the information every year.[74] USA Today requests the information from colleges and compiles the reports into a yearly database that is accessible to the public.[75] The database is a quick snapshot of the financial standing of a school and provides a sortable, easy to read table with the information.[76] USA Today is also instrumental in providing information for the Knight Commission to use in their databases.[77]

The Knight Commission is an independent group, comprised of current and former university presidents, chancellors, student-athletes, trustees, and thought leaders trying to improve the future of college sports.[78] Their website states that, "In an effort to strengthen financial transparency and inform policy development, the Knight Commission produces resources about the finances of Division I college sports programs, the NCAA, and the College Football Playoff."[79] The Knight Commission takes the financial information they obtain and creates the Knight-

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[74] *NCAA Finances: Revenue and Expenses by School*, USA TODAY (Mar. 14, 2024), https://sports.usatoday.com/ncaa/finances.

[75] Tatos, *supra* note 17, at 413 ("The USA Today NCAA Finances database relies on public records of NCAA MFRS reports submitted by public universities. Data detailing the main components of athletic revenues and expenses are provided by institution and year. No sport-specific breakdowns are provided. In addition, USA Today also provides separate datasets containing head coach and assistant coach salary information for NCAA Football Bowl Subdivision (FBS) members.").

[76] *Methodology for 2022 NCAA athletics department revenue-and-expense database*, USA TODAY (Apr. 12, 2023), https://www.usatoday.com/story/sports/2023/04/14/college-sports-finances-ncaa-revenue-expense-database-methodology/11664404002.

[77] Tatos, *supra* note 17, at 413.

[78] *About the Knight Commission*, THE KNIGHT COMM'N, https://www.knightcommission.org/about-knight-commission ("The purpose of the Knight Commission on Intercollegiate Athletics is to develop, promote and lead transformational change that prioritizes the education, health, safety and success of college athletes.") (last visited May 12, 2024).

[79] Id.

Newhouse College Athletics Database.[80] The foundation for most of their database is the MFRS reports, but they have an extensive methodology on exactly how they compute their data.[81] Their database is limited to Division I sports, but they provide unprecedent access to financial numbers for revenues, expenses, and third-party entities like the College Football Playoff. Based on the data they collect, the Knight Commission also creates reports, statements, and proposals for the future betterment of college athletics, some of which are enacted by the NCAA.[82] Both USA Today and the Knight Commission are leading the way in financial transparency for college athletics. They are taking the EADA and MFSR reports and making them more digestible and easier to access for the general public, while allowing users to create their own custom reports from the data.

## PART II: HOW SCHOOLS MAKE MONEY AND HOW THEY SPEND IT

College athletics is a big business that has a lot of similarities to professional sports. A lot of money comes into the schools and a lot of money is spent by the schools. The previous sections spoke briefly about some of the categories that fall under the definitions of revenues and expenses for the differing reports. This part will give a broader overview of the business of college athletics and how it generally operates while highlighting some of the major differences in revenue generation and expenses when compared to professional sports.

### A. HOW DO SCHOOLS GENERATE REVENUE FROM THEIR ATHLETICS?

College sports and professional sports share a few streams of revenue that are similar. There are also streams of revenue that are unique to college sports and are vital to the financial stability

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[80] Knight-Newhouse College Athletics Database, https://knightnewhousedata.org ("The mission of the project: Improve transparency in college athletics' finances. Better disclosure of revenue, spending and financial priorities enhances the ability of colleges and universities to ensure athletics programs are advancing the mission of higher education.") (last visited May 12, 2024).
[81] *About the Data*, KNIGHT-NEWHOUSE, https://knightnewhousedata.org/about-the-data (last visited May 12, 2024).
[82] *About the Knight Commission*, *supra* note 78.

and operation of a school's athletics department. While looking at the different streams of revenue that exist in the college sports landscape, we will be focusing on these in particular:

- Media Rights/Conference Membership
- Ticket Sales
- Licensing
- NCAA Distributions
- College Football Playoff
- March Madness
- Donations
- Student Fees
- University Subsidies
- Guarantee Games

Schools at the FBS level, make a large portion of money from media rights and conference membership.[83] This money is guaranteed to the school each year and has served as one of the primary catalysts in conference realignment over the past twenty years.[84] While the NFL has centralized media deals that are equally paid out to teams, college sports more closely resembles the other major sports Regional Sports Network model and their select national packages.[85] The individual conferences negotiate the terms of their media deals, largely predicated on football and basketball rights.[86] Some conferences have started their own sports media networks to gain direct-to-consumer access, creating another stream of media revenue outside of third party rights holders.[87]

Ticket sales and licensing operate in a similar manner to professional sports, although there are some unique quirks that can accompany ticket sales. For the most part, ticket sales revolve

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[83] ANDREW C. COMRIE, LIKE NOBODY'S BUSINESS: AN INSIDER'S GUIDE TO HOW US UNIVERSITY FINANCES REALLY WORK 275 (2021).

[84] Russo, *supra* note 4 (Pac-12 is the most recent example of realignment due to guaranteed media rights).

[85] Each Conference would be akin to a different sport or Regional Network fending for itself and negotiating the best deal possible to maximize revenue and exposure. *See*, Anthony Crupi, *WHAT YOU NEED TO KNOW ABOUT U.S. SPORTS TV CONTRACTS*, SPORTICO (Feb. 1, 2024), https://www.sportico.com/feature/sports-television-contracts-media-nfl-nba-ncaa-rights-1234764931.

[86] March Madness and the College Football Playoff are two of the biggest sports media deals ever signed. The conferences negotiate their own deals and will separate football and basketball to different networks to maximize revenue and/or exposure. *See*, *Current College Sports Television Contracts*, BUS. OF COLL. SPORTS (Mar. 19, 2024) (For an in-depth look at current media deals).

[87] *Id*.

around the "revenue sports" of football and men's basketball.[88] For schools that have FBS football and men's basketball teams, there is an inherent advantage to generating revenue compared to schools without either of these programs. For alumni and non-students, obtaining tickets may incur extra costs. Tickets may be sold at a higher price to non-students or may require significant donations to guarantee access to the limited number of seats available.[89] Ticket sales and licensing can be a revenue boon to many schools, especially those with football teams.

The NCAA distributes guaranteed money each year to all its member schools in the form of a member distribution.[90] In its simplest terms, this is a form of revenue sharing, or membership privileges, that schools obtain for being a part of the NCAA, like conference payouts for its members. In addition to this guaranteed number that schools receive, there are also merit based payouts that result from the College Football Playoff and March Madness. There are formulas involved to determine the amount that each conference and schools receives for its participation in these prestigious tournaments.[91] For schools that are routinely at the top of these sports, this is a major form of revenue and helps perpetuate the success and spending of top programs. For smaller schools, just one significant performance in either tournament can create a spike in revenue that can lead to significant improvements within the athletics department.[92]

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[88] COMRIE, *supra* note 83, at 280.
[89] Many top-tier football programs in the country require a donation, in addition to ticket costs, for season tickets. *See*, *2024 Football Season Ticket and Hartman Fund Contribution Information*, GEORGIA BULLDOGS (Feb. 6, 2024), https://georgiadogs.com/news/2024/2/6/2024-football-season-ticket-and-hartman-fund-contribution-information.
[90] 2024 DIVISION I REVENUE DISTRIBUTION PLAN, https://ncaaorg.s3.amazonaws.com/ncaa/finance/d1/2024D1Fin_RevenueDistributionPlan.pdf (last visited May 12, 2024).
[91] *Id*. at 8.
[92] Karen Weaver, *Cinderella Runs Like St. Peter's Can Impact A University's Bottom Line — Just Not As Much As You Think*, FORBES (Mar. 21, 2022), https://www.forbes.com/sites/karenweaver/2022/03/21/cinderella-runs-like-saint-peters-can-impact-a-universitys-bottom-line-just-not-as-much-as-you-think/?sh=28030b2e1d22.

The remaining methods of revenue (donations, students fees, university subsidies, and guarantee games) are intrinsic to college sports and can be a major source of revenue for a school's athletics department. Donations are straight forward as alumni and boosters can earmark their money for the athletics department and it will go to their operational budget. This allows schools to take in as much money as they can raise each year to use as they see fit, with some larger top-tier programs generating hundreds of millions of dollars in endowments to promote success in various sports.[93] Student fees have been growing in recent years and for many G5 schools, serve as a lifeblood to the athletics department.[94] Every student attending the school must pay this fee, so by increasing the attendance at a school, or increasing the fee, the school also increases the athletics budget.[95] Outside of the Power Five, school subsidies are one of the most important sources of financial support for an athletics program.[96] Since many athletics programs are not self-sustaining, based on the numbers in financial reports, schools must subsidize the athletics department with money outside of athletics.[97] This may come in the form of an outright apportionment or allotment, or the school may provide internal loans to athletics to help finance major costs for improvements.[98] For many schools in the Group of Five, guarantee games are a necessary stream of revenue to fund teams and balance their budget each year.[99] Smaller schools

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[93] *See*, Brad Crawford, *College sports top donors: Ranking the most generous athletics boosters*, 247 SPORTS (Aug. 29, 2023), https://247sports.com/longformarticle/college-sports-top-donors-ranking-the-most-generous-athletics-boosters-214986422/#2225316.
[94] *See*, Eben Novy-Williams, *JAMES MADISON'S RECORD $53M IN STUDENT FEES TOPS ALL PUBLIC SCHOOLS*, SPORTICO (Mar. 22, 2024), https://www.sportico.com/leagues/college-sports/2024/james-madison-student-fees-athletics-million-1234771980.
[95] *Id*.
[96] COMRIE, *supra* note 83, at 274-75.
[97] *Id*. at 275-76.
[98] *See*, James Kratch & Keith Sargeant, *Rutgers athletics' internal debt has tripled in last 2 years during facilities push*, NJ.COM (Feb. 12, 2021), https://www.nj.com/rutgersfootball/2021/02/rutgers-athletics-internal-debt-has-tripled-in-last-2-years-university-wont-say-why.html.
[99] *See*, Eric Jackson, *COLLEGE FOOTBALL GUARANTEE GAMES REAP POST-PANDEMIC CASH, FOR NOW*, SPORTICO (Sep. 30, 2022), https://www.sportico.com/leagues/college-sports/2022/college-football-guarantee-games-return-post-pandemic-payout-1234690099.

will schedule games against larger schools, almost certainly a victory for the larger team, and the smaller school will get paid a guaranteed sum of money for scheduling and playing that game.[100] These games are mostly scheduled in men's basketball and football, but can generate hundreds of thousands of dollars for some schools, or several millions of dollars for schools willing to schedule multiple Power Five opponents in football.[101] These guarantee games are often relied upon by smaller schools to help pay for other sports and also serve additional benefits for smaller schools outside of just financial gain.[102]

With all the different streams of revenue that are present in college sports, it is important to remember that not all schools operate on the same level. For the autonomy conferences, donations are a significant portion of the total athletics revenue that is generated.[103] For G5 schools, student fees, subsidies, and guarantee games are a much larger portion of their overall revenue compared to schools in autonomy conferences.[104] The chart below shows how these different categories are reflected in the overall athletic revenue for schools with and without football at the different division levels of NCAA sports. There is a stark contrast for FBS schools operating within the autonomy conferences compared to all other schools.

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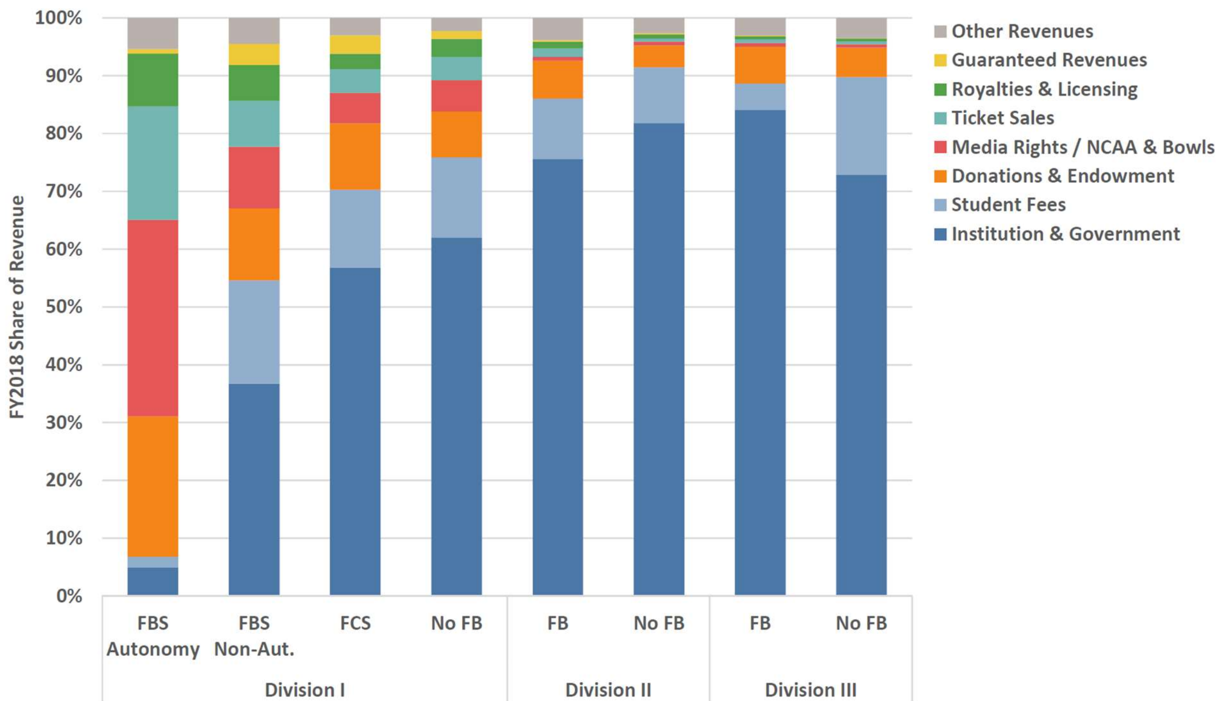
[100] *See*, Tom Layberger, *Auburn, Michigan Paying Nearly $2 Million In Week 1 College Football Guarantee Games*, FORBES (Aug. 29, 2023), https://www.forbes.com/sites/tomlayberger/2023/08/29/auburn-michigan-paying-nearly-2-million-in-week-1-college-football-guarantee-games/?sh=6d2485507d34.
[101] Ball State was able to generate over $3.2M from two guarantee games in 2023. *See*, Craig Meyer, *SEC 2023 buy games: How much teams paid non-conference opponents in FCS, Group of Five*, THE TENNESSEAN (Nov. 17, 2023), https://www.tennessean.com/story/sports/college/SEC/2023/11/17/sec-buy-games-2023-college-football-season-fcs-group-five/71597288007.
[102] *See*, Kevin Cave, *Guarantee Games in College Football*, SPORTS CONFLICT INST., https://sportsconflict.org/guarantee-games-ncaa-football (last visited May 12, 2024).
[103] COMRIE, *supra* note 83, at 274.
[104] *Id*. at 274-75.

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B. HOW DO SCHOOLS SPEND THE MONEY THEY GENERATE?

College and professional sports also share some of the same expenses. One of the largest expenses for a professional team is player salaries. This does not exist at the collegiate level, but there are still major expenses tied to student athletes despite not having any direct compensation. Here are some of the major expenses that do exist in college sports:

- Coaches Compensation
- Severance
- Facilities
- Guarantee Games
- Scholarships
- Student-Athlete Resources
- Administration and Staff Expenses
- Recruiting
- Travel

[105] COMRIE, *supra* note 83, at 275 (Figure 12.4 from book, figures are derived from FY 2018).

Coaches are being paid more than ever and can be a major expense for schools. Oftentimes, the highest earning public employee in a state will be the head coach of the football or men's basketball team at the state university.[106] Some schools also carry heavy line items in the form of severance pay to former coaches.[107] Should a school choose to fire a head coach, they are still responsible for compensating the previous coach for any agreed upon guaranteed money, plus whatever costs the new coach will incur for the school.[108] The cost of staffing coaches for all sports and the cost of maintaining and improving athletic facilities has exploded in recent years.[109] With the influx of money that some schools have experience in the past decade, they have spent it on improving practice facilities, locker rooms, and student-athlete exclusive offerings.[110] It can be argued that some college athletic facilities and lifestyle enhancements are better than professional offerings.[111]

While guarantee games were discussed as a source of revenue for Group of Five schools, they are also an expense item for the Power Five schools that are procuring these matchups. They can become multi-million-dollar expenses at certain schools each year.[112] Aside from guarantee games, all the teams will have away games and significant expenses will be incurred for travel and

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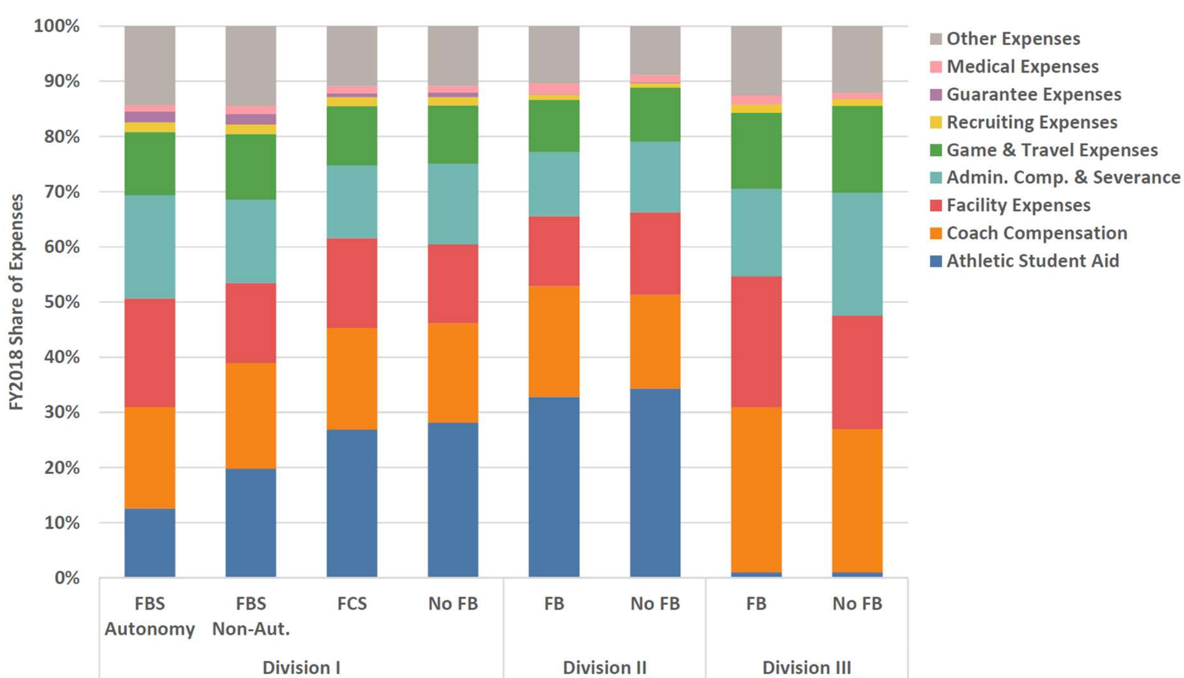
[106] *See*, David Keech, *College Coaches Dominate Highest-Paid State Employees List*, ON FOCUS (Aug. 4, 2023), https://www.onfocus.news/college-coaches-dominate-highest-paid-state-employees-list.
[107] *See*, Paula Lavigne & Mark Schlabach, *The Boom of Dead Money in College Sports*, ESPN, https://www.espn.com/espn/feature/story/_/id/32355679/dead-money (last visited May 12, 2024).
[108] *Id*.
[109] *See*, Dr. Kevin Blue, *Rising Expenses in College Athletics and the Non-Profit Paradox*, ATHLETIC DIR. U, https://athleticdirectoru.com/articles/kevin-blue-rising-expenses-in-college-athletics-and-the-non-profit-paradox (last visited May 12, 2024).
[110] Previous sources have discussed the increased spending on facilities, but some schools have taken their funding and created unique benefits available to athletes to try and create another "advantage" in athletics. *See*, *Alabama Athletics Unveils the Advantage*, https://rolltide.com/news/2021/5/4/general-alabama-athletics-unveils-the-advantage (a service for student-athletes to help build and elevate their personal brands).
[111] *See*, Brad Crawford, *College football's 25 most lavish facilities in 2023, ranked: Oregon, Texas A&M, Alabama highlight list*, 247 SPORTS (Feb. 27, 2023), https://247sports.com/longformarticle/college-footballs-25-most-lavish-facilities-in-2023-ranked-oregon-texas-am-alabama-highlight-list-205364207/#2115231.
[112] Layberger, *supra* note 100.

lodging. This goes for both the games being played and the recruiting process that occurs throughout the year for each sport. The school also must pay all the staff and administration tasked with running the athletics department and solving all these logistical problems.

Student aid for athletes, in the form of scholarships and resources available to student-athletes for academic support, incur significant expenses for schools. Some schools may hand out hundreds of scholarships each year, and along with student-athlete academic support and resources, it can cost schools millions of dollars annually. Across all the divisions, and schools with and without football, there is a commonality in the categories that garner a lion's share of the expense budget. Those categories are: Student aid, Coach compensation, Facility expenses, Administration Compensation and Severance, Game & Travel expenses. The chart below shows the share that each category of expenses has in relation to the total athletic budget.



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[113] COMRIE, *supra* note 83, at 279 (Figure 12.8 from book, figures are derived from FY 2018).

## PART III: THE CURRENT STATE OF COLLEGE ATHLETICS

Nearly 50 years after Title IX was instituted and over 30 years since the EADA tried to further its cause, it is important to look at the current state of college athletics and how schools are spending their money. The past 15 years have been the newest era of conference realignment and introduced the College Football Playoff. More money is being poured into college athletics than ever and spending has greatly increased. Some schools are cutting sports, some schools are adding sports, and while football and basketball continue to reign supreme. This part will address why schools are so eager to spend money on athletics and how they are spending that money. It will highlight differences between actions that larger schools have taken and what smaller schools are doing. Certain trends have emerged across college sports that will be discussed and potential solutions on the horizon will also be highlighted.

Why are schools so willing to spend copious amounts of money on college athletics? Earlier it was noted that an overwhelming majority of schools run their athletics departments at a loss, and they receive some sort of subsidy or financial safety net to ensure their operation. There must be compelling reasons that schools are willing to operate these departments at a loss annually. Some studies have shown a correlation between spending money on athletics and the success those teams have.[114] With this athletic success comes more public visibility and media exposure for the school, more applicants, more selective incoming classes, and hopefully higher academic

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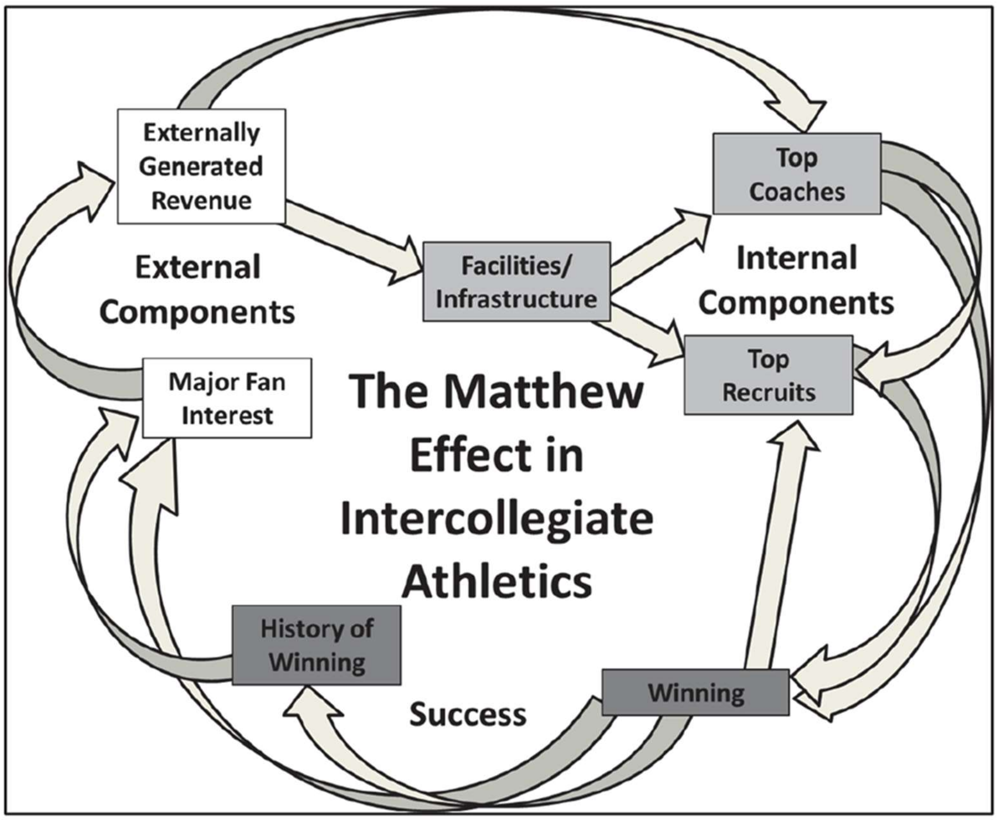
[114] *See*, Lara Beaudin, *Examining the Relationship Between Athletic Program Expenditure and Athletic Program Success Among NCAA Division I Institutions: A Dynamic Panel Data Approach*, 19 J. OF SPORTS ECON., 1016 (2018); Carey Caro & Adam Elder, *The relationship between spending and winning in college baseball: Is this the new 'arms race' in college athletics?*, 12 INT'L J. OF SPORTS SCI. & COACHING, 381, 386 (2017).

rankings.[115] Once a school has experienced these benefits, they want them to continue and with that comes pressure to keep winning. This has created an arms race in college sports where spending money on coaches and facilities or anything else that can create an advantage for a school or to simply keep up with their competition has become the standard.[116] This athletic success and subsequent spending has further cemented the Matthew Effect taking hold in college sports and has created an inherent split in P4 schools and G5 schools.[117]

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[115] This phenomenon is known as the "Flutie Factor" when receiving a spike in interest after a sporting event. In recent years, Alabama has experienced the "Saban effect" with their enrollment. *See*, COMRIE, *supra* note 83, at 284-85.
[116] Adam Hoffer et al, *Trends in NCAA Athletic Spending: Arms Race or Rising Tide?* 16 J. OF SPORTS ECON., 576 (2015).
[117] The Matthew Effect involves those with advantages to continue to experience the benefits and grow from these advantages and those with disadvantages to continue experiencing them and grow more disadvantaged over time. Some schools have natural advantages from history, prestige, and athletic pedigree. These are mostly larger public universities that continue to benefit from the "head start" in athletics.
[118] John Cheslock & David Knight, *Diverging Revenues, Cascading Expenditures, and Ensuing Subsidies: The Unbalanced and Growing Financial Strain of Intercollegiate Athletics on Universities and Their Students*, 86 J. OF HIGHER EDUC. no. 3, 417, 424 (2016).

The College Football Playoff (CFP) has played a role in the widening gap between Power 4 and G5 football programs.[119] Schools are spending hundreds of millions of dollars in their athletics budget for the chance at success in the playoffs and all the accolades and financial windfall that may come from it.[120] Smaller schools simply cannot spend that money to keep up. As larger powerhouse schools have maintained their success in the CFP era, their revenues have grown, and it further exacerbates the Matthew Effect. This trend is likely to continue as the new revenue deal has brought with it increased payouts, especially to the Power conferences.[121] However, there are now more spots in the playoff, and in theory, a greater chance for a G5 school to make the playoff and experience a significant financial payout.[122]

One of the largest single athletic expenses for a school can be the salary of their football and/or basketball coach. Severance payments have already been discussed, but there has been a growing trend in firing coaches quickly after poor results within the first few years of a contract, sometimes even midseason.[123] With coach's salaries increasing this adds large salary expenses on top of each other and saddles schools with large amounts of dead money.[124] It is difficult to believe a school needs to cut a sport (that may only cost a couple hundred thousand dollars), when they decide to fire a coach and saddle themselves with millions of dollars in dead money. In addition to the rising head coach salaries, assistant coaches, coordinators, and strength and conditioning

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[119] Ben Portnoy, *College Football: The Cost of Winning*, SPORTS BUS. J. (Jan. 12, 2024), https://www.sportsbusinessjournal.com/Articles/2024/01/15/college-football.
[120] *Id*; *See*, *Where the Money Goes*, KNIGHT-NEWHOUSE, https://knightnewhousedata.org/reports/56542b99 (last visited May 13, 2024).
[121] Over $1.3B annually for the rights to the CFP through 2031-32. *See*, Heather Dinich, *College Football Playoff, ESPN agree to deal through 2031-32*, ESPN (Mar. 19, 2024), https://www.espn.com/college-football/story/ _/id/ 39766079/college-football-playoff-espn-agree-deal-2031-32.
[122] *Id*.
[123] *Explaining the trend of college football coaches fired midseason*, ESPN (Oct. 31,2022), https://www.espn.com/ college-football/story/_/id/34919780/explaining-trend-college-football-coaches-fired-midseason.
[124] *See*, Lavigne, *supra* note 107.

coaches have seen their salaries skyrocket as well.[125] Even if a school does not fire their coach, they are often giving them extensions early into their contracts.[126] This generally happens when the coach has experienced some success, and the school wants to retain his services and ward off other schools from trying to poach him. While rewarding a coach may be warranted, often it is top-tier programs granting these early extensions. This drives up the salary for the next coach who signs a contract and saddles the school with more dead money should they choose to fire a coach when things turn sour, and they often do.

Money has poured into college football and basketball resources, facilities, and coaching staffs in recent years. This gluttony of spending has now spilled over into another sport for these major programs. Baseball has taken on an expanded role in how schools will spend their money and continues the "arms race" for big-time programs looking to improve their stature outside of football and basketball.[127] Baseball may follow a similar path to football and basketball with rising salaries for coaches and lavish facilities if they can further increase their revenue and media deals.

Smaller schools have felt the ripple of conference realignment which has impacted their bottom line. With the creation of the larger "super" conferences, football teams have added another conference game to their schedule, which has eliminated one week of guarantee game

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[125] *See,* Cody Nagel, *College football salaries: 25 highest-paid assistant coaches in 2023*, 247 Sports (Nov. 20, 2023), https://247sports.com/longformarticle/college-football-salaries-25-highest-paid-assistant-coaches-in-2023-220866256/#2308435; Darren Rovell, *These strength and condition coaches carry hefty price tags*, ESPN (Dec. 30, 2015), https://www.espn.com/college-football/story/_/id/14459410/these-highly-paid-strength-conditioning-coaches-carry-plenty-weight-college-football.

[126] *See*, Nicole Auerbach, *Duke, Jon Scheyer agree to 6-year contract extension through 2028-29 season: Source*, N.Y. TIMES (Oct. 20,2023), https://www.nytimes.com/athletic/4982624/2023/10/20/duke-jon-scheyer-contract-extension; Audrey Snyder, *James Franklin, Penn State agree to new 10-year contract through 2031*, N.Y. TIMES (Nov. 23, 2021), https://www.nytimes.com/athletic/4185007/2021/11/23/james-franklin-penn-state-agree-to-new-10-year-contract-through-2031.

[127] *See*, Caro, *supra* note 114.

opportunities for G5 schools.[128] The NCAA is making more revenue than ever, but smaller schools are not seeing the impact like P4 schools.[129] G5 schools have found creative ways to increase revenue by adding sports, which can drive tuition and draw international students.[130] Some schools have gone a step further by adding non-traditional sports like cornhole.[131] G5 schools have also raised student fees to subsidize athletics and keep up with bigger schools.[132] However, this is not always a successful tactic and students have grown weary of these fees.[133] G5 schools have even taken the drastic step of leaving Division 1 FBS football to reduce their expenses.[134] While this is not quite as extreme as cutting sports, it is a major decision for a school and has major ramifications financially and reputationally.[135]

Even schools in Power conferences have their financial woes. Stanford tried to cut sports and was rebuffed by lawsuits, including a Title IX claim.[136] Other large schools considered cutting sports due to financial issues.[137] Interestingly enough, schools seem to become more frugal and

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[128] *See*, Ross Dellenger, *Conference-Only Power 5 Schedules Come at a Steep Price to Group of Five Schools*, SPORTS ILLUSTRATED (Jul. 10, 2020), https://www.si.com/college/2020/07/10/college-football-buy-games-group-of-five; Jackson, *supra* note 99.

[129] *See*, Daniel Libit & Eben Novy-Williams, *NCAA Took in Record Revenue in 2023 on Investment Jump*, SPORTICO (Feb. 1, 2024), https://www.sportico.com/leagues/college-sports/2024/ncaa-revenue-2023-financials-1234765147.

[130] *See*, Aaron Basko, *Can Sports Save Small Colleges?*, THE CHRON. OF HIGHER EDUC. (Sep. 5 , 2023), https://www.chronicle.com/article/can-sports-save-small-colleges ("[T]he university brought in an outside economist with expertise on the college-sports business model to show that sports should be judged not on cost alone, but on their potential to drive tuition revenue."); Dan Murphy, *Could adding athletic programs decrease financial woes for some schools? FDU is banking on it*, ESPN (Mar. 11, 2021), https://www.espn.com/college-sports/story/_/id/31038654/could-adding-athletic-programs-decrease-financial-woes-some-schools.

[131] *See*, Nell Gluckman, *Why This College Is Offering Scholarships in Cornhole*, THE CHRON. OF HIGHER EDUC. (FEB. 23, 2024), https://www.chronicle.com/article/why-this-college-is-offering-scholarships-in-cornhole.

[132] *See*, Novy-Williams, *supra* note 94.

[133] Houston was a G5 school until recently joining the Big 12 in 2023. *See*, Kate McGee, *University of Houston students face off against administrators over how to spend student fees*, THE TEXAS TRIB. (Feb. 21, 2024), https://www.texastribune.org/2024/02/21/university-houston-student-fees.

[134] *See*, Stefanie Loh, *Idaho football moving to FCS: 'Impossible' to afford staying at FBS level, AD says*, THE SEATTLE TIMES (Apr. 28, 2016), https://www.seattletimes.com/sports/college/idaho-announces-move-from-fbs-sun-belt-to-fcs-big-sky-in-2018.

[135] *See*, Daniel Libit, *FBS or FCS? Idaho, New Mexico State Offer Competing Lessons*, SPORTICO (Nov. 30, 2023), https://www.sportico.com/leagues/college-sports/2023/fbs-fcs-idaho-new-mexico-state-1234748471.

[136] Witz, *supra* note 13.

[137] *See*, David Brandt, *Arizona's athletic department is struggling financially ahead of move to the Big 12*, Associated Press (Nov. 10, 2023), https://apnews.com/article/arizona-wildcats-budget-sports-5c9195899368a55df007f626a48

budget conscious and can reduce expenses when the imminent threat of cutting sports is on the table. Arizona has avoided cutting sports for now by taking some of these measures.[138] Even for schools that do cut sports, there are rarely any savings from this move, as the money from the sports that were cut is usually diverted to the football program or men's basketball program.[139]

A recent example that perfectly encapsulates how financial woes can continue even when joining a "better" conference and why financial transparency is a pressing matter, would be Rutgers. They joined the Big Ten and their financial issues have not gone away.[140] In fact, joining the Big Ten may have caused more financial problems for them.[141] Rutgers recorded revenue in their reports that was actually money received from an internal loan to cover their operating deficit.[142] This goes directly against the guidelines for Title and EADA reports. While debt that large can be an issue, if it is serviced properly and the financial information is reported properly and everything is above board, then there is a solution to the problem. Doing what Rutgers did is never the answer, and it makes you wonder if private schools, who do not have to publicly disclose their financial reports, may be doing something similar and have been kept out of the spotlight because of that.

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c5b88; Chris Chavez, *Five Months After Elimination Plans, Clemson Men's Track and Cross Country Program Will Continue*, SPORTS ILLUSTRATED (Apr. 22, 2021), https://www.si.com/olympics/2021/04/22/clemson-mens-track-and-field-cross-country-program-to-continue.

[138] *See*, *Arizona will not cut sports under plan to shore up financial difficulties*, Associated Press (Jan. 11, 2024), https://apnews.com/article/arziona-dave-heeke-0d2f0c19e85812fb1bcf58d2fe6e131b.

[139] Anne Marx et al, *The Financial Impact of Eliminating a NCAA Division I Men's Sport on the Athletic Budget: Is Title IX to Blame?*, 16 J. OF INTERCOLLEGIATE SPORT, 91, 105 (2023).

[140] *See*, Abbott Koloff & Jean Rimbach, *Rutgers athletics rang up a $73M deficit last year. Students, taxpayers were on the hook.*, NORTH JERSEY.COM (Jan. 19, 2022), https://www.usatoday.com/story/sports/college/2022/01/19/rutgers-athletics-2021-deficit-taxpayers-football-basketball-big-ten/6576342001.

[141] *Id*.

[142] *See*, Victoria Yeasky, *New report shows Rutgers Athletics has more than $265 million in outstanding debt*, THE DAILY TARGUM (Sep. 9, 2021), https://dailytargum.com/article/2021/09/new-report-shows-rutgers-athletics-has-more-than-usd265-million-in ("The Athletics Department has been reporting these loans as revenue, which not only went against University policies and guidelines from the NCAA, but also falsely displays the department's earnings and budget deficit").

The Knight Commission recently crafted a proposal of the C.A.R.E. model that touches upon many of the points that have been discussed so far.[143] Their proposal attempts to rectify many of the problems that exist for smaller schools and redistribute revenue in a way that is more sustainable for the future of college athletics.[144] This includes changing the distribution of funds from conferences and the CFP and their uses.[145] This proposal includes many of the same key core principles that have been discussed, mainly transparency and financial responsibility.[146] Implementing this model could have many positive outcomes for college sports and increasing revenue for smaller schools.

Schools may see an additional revenue stream from women's March Madness as early as next year.[147] While currently there are no payouts for units like the men's tournament, there are plans to institute a similar payout prize structure for the women's tournament.[148] This could become an additional source of revenue for schools and another opportunity for Cinderella schools to create a financial boost for their programs, but it may also further exacerbate the Matthew Effect occurring in college sports. As shown by the recent trends in spending and the ways smaller schools are adding revenue out of necessity, change is desperately needed, and something must give.

## CONCLUSION

With the numbers we have available through EADA reports, the NCAA MFRS, USA Today, and the Knight Commission, there are spending patterns and trends that have emerged.

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[143] *See*, *Knight Commission Releases New Report in its Transforming the D-1 Model Series*, KNIGHT COMM'N (Sep. 15,2021), https://www.knightcommission.org/2021/09/knight-commission-releases-new-report-in-its-transforming-the-d-i-model-series.
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *See*, Nicole Auerbach, *NCAA working toward women's tournament unit distribution as proposal circulates*, N.Y. TIMES (Apr. 10, 2024), https://www.nytimes.com/athletic/5404013/2024/04/10/ncaa-womens-tournament-units-distribution.
[148] *Id.*

With the current state of college athletics and the trends in spending, it begs the question, what can be done to try and fix the issues? The Knight Commission has crafted some proposals like the CARE Model and revamping the College Football Payout, but there are potential ways to alleviate issues that schools can directly undertake themselves. Schools can reduce their expenses to create a sustainable future for college athletics where schools can ensure Title IX compliance, sports will not be cut, and the need for conference realignment based on greater media payouts that eliminate storied rivalries and make no geographic sense can be reduced. The onus is on the schools to take the necessary actions to make it all happen. Whether that happens is a completely different issue.

Revenue has grown exponentially over the years and will continue to as it is buoyed by increasing media rights, larger donations, and the growth of women's sports. Schools that choose to add non-traditional sports have proven this tactic can be a net positive in university revenue as exemplified by Winthrop and Fairleigh Dickinson. Schools should also look to balance the impact that athletics has on enrollment, tuition dollars, and applications when considering the cost to the school and potentially cutting sports. While non-scholarship student-athlete tuition is not counted as revenue to the athletics department, it is revenue for the school. In addition to any direct money that these student-athletes may be giving to the school through tuition or room and board, the success of a team can have a positive impact on the revenue a school derives in applications from prospective students and revenue generated from increased enrollment. The Flutie Factor and Saban Effect shows that sports can have an impact on a school's finances without being counted as athletic revenue. To increase financial transparency and the decision-making process, schools should consider disclosing the indirect revenue that athletics generates for the school due to student-athletes and other students choosing to attend that school. This could give a true dollar-to-dollar accounting of the revenue that athletics generates and help paint a more complete picture when justifying a sport being cut from a program or leaving for a new conference.

With this increased revenue also comes increased expenses, but there are ways for schools to reduce their spending. Schools must be more conscious of the exorbitant spending on facilities that has occurred over the past several decades. Football and basketball facilities receive multi-million-dollar upgrades, seemingly every few years, and this practice has leaked into baseball over the past decade as well. These facility upgrades bog down schools with capital expenses and long-term debt servicing that is generally accompanied by internal institutional loans. Perhaps the biggest cavern of spending that can be reduced is in the salary of coaches and the quick trigger that schools have on extending coaches and firing coaches. Having a good coach, especially in football and basketball, is a driving factor in the success of a team and a school's athletics department. Ultimately it can lead to more revenue through postseason success, donations, and university enrollment. However, schools need to balance these potential positive effects with the burden of long-term contract extensions early into an existing contract, and the huge severance payments of dead money to coaches that they fire. The staggering level of severance payments to coaches no longer employed by a school is something they have direct control over and should be reduced. It is difficult to empathize with schools cutting sports that may only cost a few hundred thousand dollars each, when they have tens of millions of dollars in severance payments. Oftentimes, cutting a sport will result in more money going toward football and basketball programs rather than any saved expenses for the school.

College athletics is reaching a point where P4 schools are pulling away from G5 schools rapidly and there is no turning back without drastic changes. Programs are incurring greater expenses and G5 schools may lose a sizable portion of revenue if they are no longer able to schedule buy games with larger schools. The current state of college sports and where it appears to be heading may be a death knell for G5 schools. The need for true financial transparency with college athletics and reducing irresponsible spending has never been more apparent. Continuing to live with the status quo will result in changes that ripple on indefinitely. A few small tweaks to the current reporting system could create a more transparent financial picture and providing information for all schools to the public would remove another shroud of mystery. As it stands now, we may very well be living through late-stage college athletics in its current form and the future may be a very different landscape compared to the college sports we enjoyed growing up.

## Future considerations

The college landscape has been in a constant state of flux since the O'Bannon decision. The past few years have been a whirlwind of change regarding Name, Image, Likeness (NIL) and the transfer portal. This paper did not take into consideration the impact these may have on a school's finances. In addition, it did not weigh the future impact that NIL may have on finances or Title IX if that process is taken from external third parties to being internally run by schools. This has become a very real possibility with the recent developments in Virginia and remains to be seen if other states follow suit.[149]

Perhaps the biggest financial consideration that could ultimately change the entire landscape of an athletics department is the issue of student-athletes becoming employees. Since the start of my research for this paper, the NLRB handed down a major decision involving Dartmouth basketball players, and seemingly the rest of the Ivy League, which categorized their

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[149] *See*, Dan Murphy, *Virginia law allows schools to pay athletes for NIL*, ESPN (Apr. 18, 2024), https://www.espn.com/college-sports/story/_/id/39967961/virginia-law-allows-schools-pay-athletes-nil.

status to be employees for the purposes of forming a union.[150] Since that decision the players voted to form a union and the NLRB has certified them as a union.[151] Perhaps schools will naturally reduce their outlandish spending on coach's contracts and over-the-top facilities upgrades when they must also pay their student-athletes. The actual implications and fallout remains to be seen, but this is a testament to the fast-moving and ever-changing world of college sports.

Another major potential change to a school's athletic finances could be coming in the form of a revenue sharing agreement with student-athletes. This idea has been floated and proposed recently and could be a result of the pending litigation the NCAA has with the House case and similar claims.[152] In the event that a revenue sharing agreement is created, this would massively alter athletics budgets and could create Title IX implications depending on the resources that are disbursed. If revenue sharing were to take place, then it would further highlight the need for full financial transparency from schools to ensure the athletes are getting their fair share.

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[150] *See*, Marc Novicoff, *The Logical End Point of College Sports*, THE ATLANTIC (Apr. 9, 2024), https://www.theatlantic.com/ideas/archive/2024/04/dartmouth-college-basketball-ncaa-union/678007.
[151] *Id*.
[152] No official proposals with details have been revealed and any revenue sharing deal would face antitrust scrutiny since there are no collectively bargained rights with players. However, this does show how fast college sports is changing and what the NCAA is willing to do to settle previous lawsuits and forge a new era of collegiate sports. *See*, Pete Thamel & Dan Murphy, *Sources: NCAA could pay over $2.7B to settle antitrust suits*, ESPN (May 2, 2024), https://www.espn.com/college-sports/story/_/id/40071715/ncaa-pay-more-27b-settle-antitrust-suits-sources-say.