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## *Journal of Issues in* **Intercollegiate Athletics**

### **Have Changes to NCAA DI Men's Basketball Recruitment Rules and Rules Enforcement Influenced Rules Compliance?**

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*This study examined compliance with two NCAA DI recruitment rules by tying essential features of the rules to direct outcomes to evaluate the influence of the rules on compliance. The public reports of major infractions cases from 1952 to 2010 were analyzed and data was collected on past compliance, self-reporting, and enforcement for violations of NCAA DI recruitment rules prohibiting the use of inducements in the sport of men's basketball. A Mann-Whitney U Test was utilized to test the influence of NCAA reforms on compliance. Results indicated no significant change in compliance after reforms were implemented. Trends in self-reporting and enforcement shed light into how and why the reforms failed to improve compliance. Finally, theoretical scripts on compliance were applied to explain past experience with NCAA rules. This study provides evidence that NCAA rules do not function to support compliance and offers practical insight to athletics administrators into regulatory considerations to improve future policymaking.*

*Keywords: Sport governance, NCAA rules, NCAA reforms, compliance, self-reporting, enforcement, strategic management, sport policy*

The need for rules and the desire to break them is a fundamental tension that infuses the very fabric of sport (Mitchell, Crosset, & Barr, 1999). The need to achieve success may challenge compliance with rules restricting competition when winning percentages define success in intercollegiate athletics. The desire to control the excesses of competition gives way to the need for competitive advantages to tilt the playing field. Colleges and universities formed the Intercollegiate Athletic Association of the United States (IAAUS) in 1906 as a result of their failure to collaborate in the governance of intercollegiate athletics (Stern, 1979). The failure of schools to collaborate had led to the use of competitive strategies that were problematic within the scope of higher education and had attracted public criticism. In 1910, the IAAUS took its present name, the National Collegiate Athletic Association (NCAA) (Smith, 2000). Since 1906, the NCAA has been the primary regulating association of intercollegiate athletics competition in the United States. In NCAA Division I (DI) athletics, the most elite athletics division of the NCAA, concerns over increasing rules violations (Mahoney, Fink, & Pastore, 1999), competitive equity (Depkin & Wilson, 2006; Stern, 1979) and inconsistencies in enforcement (Otto, 2006) have led to questions about the state of NCAA rules and enforcement. Past research suggests that NCAA enforcement does not deter violations in recruitment, as the potential gains from winning trump any incentive to comply (Fleisher, Goff, Shughart & Tollison, 1988; Fleisher, Goff, & Tollison, 1992; Goff, 2000; Humphreys & Ruseski, 2006; Padilla & Baumer, 1994). Public scrutiny over continuing violations of NCAA DI recruitment rules have prompted NCAA DI university and college presidents and athletics administrators to invest time and resources to implement reforms (Stern, 1979). However, it is not clear if past NCAA reforms have worked to achieve their intended objectives.

### *NCAA and Regulatory Systems of Voluntary Associations*

The rights and obligations NCAA rules establish for compliance, monitoring, and enforcement are important determinants of the NCAA's success in maintaining commercialized intercollegiate athletics within the legitimate scope of higher education. A school could gain a competitive advantage if it violated the rules without being detected, but this undermines the collective benefit of having the opportunity to participate in fair competition (Mitchell, Crosset, & Barr, 1999; Leifer, 1995). These dynamics are often seen in other areas of life when institutions collaborate to achieve a common goal (Mitchell, Crosset, & Barr, 1999; Ostrom, 1990). Free riding refers to a situation in which signatories to a collective agreement decide to enjoy the benefits of the association, but choose not to contribute to the costs (Mitchell, 2010). Individual rational behavior characterizes the challenges to collaborative efforts and this leads to collectively suboptimal conditions (Axelrod, 1984). These situations are commonly researched as "prisoners' dilemmas" or "tragedies of the commons" (Mitchell, Crosset, & Barr, 1999). The issue of free riding is a major threat to the success of voluntary associations (Prakash & Potoski, 2007).

Free riding is more pervasive when voluntary associations required members to comply with rules that are enforced utilizing a two-tiered regulatory structure (Mitchell, 1994). This is due to the principle of institutional control, or 'home rule', which recognizes an institution as an independent entity with sole authority over the actors, agents, structure, processes, policies, and

dynamics within its institutional or domestic domain. This legal autonomy counteracts and protects violators within institutions from bearing the costs of enforced sanctions and this can preclude the choice of actors to enforce sanctions (Mitchell, 1994). Actors with incentives to enforce the treaty do not have the authority to enforce sanctions within the institutional bounds of the deviant signatories' institution. Mitchell (1994) contends that concerns regarding sovereignty diminish the incentives to enforce sanctions on violators. Sanctions represent second-order free-rider problems because, in the case of collaboration issues, actors recognize the benefits produced by collective sanctioning, but also seek to avoid the costs of contributing to collective efforts (Axelrod, 1986). Hence, they cheat. Consequently, regulatory systems that remove institutional barriers that limit monitoring and enforcement efforts will be more effective at deterring violations than those that do not (Mitchell, 1996). Josephine Potuto, former 9-year veteran of the NCAA Committee on Infractions, supports the contention that institutional and legal barriers inhibit the strength and effectiveness of the NCAA's monitoring and enforcement system (2010). Scholars have studied the conditions that lead to the failure and success of treaties, associations, and regimes and other collective efforts that depend on rules to achieve intended objectives. It is well recognized that the issue of free riding may become pervasive and, if left unaddressed, may lead to the unraveling of a voluntary association (Prakash & Potoski, 2007).

The NCAA's principle of 'home rule' prioritizes institutional control, which states that "it is the responsibility of each member institution to monitor and control its athletics programs, staff members, representatives and student-athletes to ensure compliance with the Constitution and bylaws of the Association" (NCAA, 2016). Institutional control bars external monitoring of violations within institutions which effectively obscures the activities inside of each institution. The NCAA's Principles of Institutional Control and Responsibility (Constitutional Article 2.1) obligates member institutions to self-monitor for violations and, when such violations are discovered, to self-report these violations to the NCAA enforcement staff (NCAA, 2016). The principles of institutional control also entrusts presidents of NCAA DI colleges and universities with the responsibility of overseeing NCAA rules compliance on actors who operate within, or who interact with, their college or university (Hanna, Levine, & Moorman, 2017) despite disincentives to do so.

Voluntary association regulatory systems can be structured to increase transparency and account for the costs and benefits of actors to fulfill the obligations of enforcement to improve the odds that sanctions will be credible and potent. Privatizing the costs of sanctioning help ensure that sanctions are a viable mechanism and convincing deterrent (Mitchell, 1994). Next, devising rules that account for the fact that different rules bear different costs on actors to comply and enforce regulations. By accounting for the inequity in the costs of alternative rule arrangements, rules can be designed to take advantage of the fact that actors have varying levels of disincentives to comply with and enforce regulations (Mitchell, 1994). Potuto (2010) contends that the recruiting advantage for violating NCAA DI recruitment rules against the use of offers and inducements is significant. The violation may lead the prospect to sign with the university, and "the recruiting, and ultimately, competitive advantage will be perceived to be high" (Potuto, 2010, p.327). The coach who violated the rule, "and certainly all other coaches, will believe that the rules-violate behavior paid off big time" (Potuto, 2010, p.327). Rules that distribute the benefits of compliance across all parties offset the costs of compliance and decrease the incentives of individual actors to violate the rules (Axelrod & Keohane, 1986).

### *History of NCAA Recruitment Rules and Compliance*

The very need for NCAA rules on the competitive strategies used by schools arose because of the recognition that if the number of schools that engaged in illegitimate behavior escalated out of control, it could lead to the end of intercollegiate athletics (Stern, 1979). Short-term interest in winning can undermine compliance with NCAA rules and this threatens the long-term collective benefits of participating in intercollegiate athletic competition (Mitchell, Crosset, & Barr, 1999; Stern, 1981). In this sense, NCAA rules matter. They matter because they outline correct and ethical actions in intercollegiate athletics. They are important because they promote equal opportunity to succeed on the playing field (Mitchell, Crosset, & Barr, 1999). Understanding whether, how, and why NCAA rules succeed or fail to address problematic behavior is important to improving future compliance.

All evidence indicates that major violations of NCAA rules are on the rise. During this period, over half of Division I institutions had been penalized for various rule violations and cheating appeared to be the norm (Knight Commission Report, 2001). The average of major infractions reported before the 1990s shows a similar trend. During the 1950s there was an average of 5.1 major violations per year, then it rose to 6.8 in the 1960s, 10.9 in the 1970s, up to 14.1 during the 1980s (Zimbalist, 1999, p.178). Researchers also found evidence that not only had violations become more frequent, but they had also become more serious in nature (Jubenville, Goss, & Wright, 2008; Mahony, Fink, & Pastore, 1999). Most are not surprised when they find out NCAA recruitment rules are some of the most violated bylaws of the NCAA. 76 percent of Americans believe that schools break recruitment rules, especially when recruiting for the sport of men's basketball (Rainey, 2006). An analysis of NCAA DI schools from 1952 to 2007 showed that 60 percent have been caught for at least one major violation of NCAA rules, with 34 percent of violations being related to recruitment (Vernon, 2009). Clark and Batista (2009) conducted a study of all major infractions since 1987 and found that recruitment violations made up over 66 percent of all NCAA major infractions. Sack and Staurowsky (1998) contend that violations of NCAA recruitment rules are widespread because they allow for a school's athletic program to procure the skills of an elite player, which allows for better team performance, increased gate receipts and alumni contributions, as well as more media coverage. Essentially, violating recruitment rules towards these ends decreases uncertainty inherent in competition in intercollegiate sports. Yet, such violations produce the type of negative externalities that "compromise the intellectual standards and educational process at U.S. universities" (Zimbalist, 1999, p.6).

### *NCAA Compliance Literature*

The desire to answer questions about compliance with NCAA rules has led to an accumulation of literature on the topic. Past literature on NCAA enforcement presents the perspective that NCAA compliance is a byproduct of actor interests, competitive outcomes, and the environment (Humphreys & Ruseski, 2001; Fleisher, Goff & Tollison, 1988; 1992). In many cases, research suggests that NCAA enforcement has been irresponsive to rule violations (Otto, 2006; Potuto, 2010; Weston, 2011). One perspective contends that violations of NCAA DI rules result from the rational belief that violating the rules will lead to winning and maximizing profits (Clark & Batista, 2009; Goff, 2000; Stern, 1979, 1981; Thelin, 1996; Zimbalist, 2001). A second perspective argues that violations are the byproduct of the belief that violating NCAA DI rules

will lead to achieving social and cultural rewards such as prestige and status (Baxter & Lambert, 1990, 1991; Baxter, Margavio, & Lambert, 1996; Frey, 1985; Washington & Zajac, 2005). These studies have correlated the outcomes of NCAA enforcement with a number of factors unrelated to the rules, including on-field performance, competition levels, geographic region, conference membership, Bowl Championship Series (BCS) affiliation, school size, academic selectivity and tradition, as well as other economic, social, cultural, environmental and institutional variables. These studies assume that factors unrelated to NCAA rules determine compliance.

A third perspective of NCAA compliance contends that NCAA rules reflect the power and interests of those who were successful in the negotiation of NCAA regulatory strategies to address prioritized issues. From this viewpoint, NCAA rules are negotiated, implemented, and enforced by the presidents of NCAA colleges and universities and, therefore, reflect the presidents' independent interests in maintaining control over competition in intercollegiate athletics (Duderstadt, 2003; Washington, 2004) and violations of NCAA rules reflects these interests (Baxter & Lambert, 1991; Jubenville, Goss, & Wright, 2008; Otto, 2006; Southall, Nagel, Amis, & Southall, 2008; Stern, 1979). Consequentially, this is to the detriment of athletes, who are exploited (Sack & Staurowsky, 1998; Sack, 2008; Zimbalist, 2001), and to the mission of maintaining the academic integrity of sport in higher education (Gerdy, 1997; Shulman & Bowen, 2001; Splitt, 2007). Legal scholars argue that the NCAA's enforcement system is the cause of inconsistent regulatory outcomes (Otto, 2006; Potuto, 2010; Weston, 2011). On the other hand, past research suggests that the NCAA's enforcement of the postseason penalty incurs relatively high enough costs on institutions to deter future NCAA violations (Perry, 2002). Most would agree that compliance is important for any regulatory strategy to be effective. However, it is unclear whether NCAA rules influence compliance or if compliance is more likely caused by other factors.

A key notion that emerges from the literature on NCAA rules is that the policies of the NCAA do not always achieve their intended objectives. Past literature on NCAA enforcement presents the perspective that NCAA rules and compliance are not causally linked (Benford, 2007; Clark & Batista, 2009; Goff, 2000). Scholars contend that NCAA rules correlate with but do not directly influence compliance (Otto, 2006; Padilla & Baumer, 1994). It is unclear whether this is the case because past studies aggregate violations across rule provisions, losing important variance observed in compliance with specific rules violations. Few studies (Southall, Nagel, Amis & Southall, 2008) narrowly evaluate individual NCAA rule provisions or systematically tie the important features of NCAA regulatory strategies to their direct outcomes (Baxter & Lambert, 1991; Clark & Batista, 2009; Humphreys & Ruseski, 2006; Stern, 1981). Therefore, whether NCAA rules achieve their intended objectives remains unknown.

### *Compliance Theory*

Political science and international affairs scholars have developed systematic methods for studying the efficacy of rules (Chayes & Chayes, 1993; Mitchell, 1994; Prakash & Potoski, 2007). By testing theory against real world outcomes, studies have identified important features of regulatory strategies and produced convincing evidence that the frame and structure of a rule are important determinants of the rule's influence on compliance (Axelrod & Keohane, 1986; Chayes & Chayes, 1993; Mitchell, 1994, 2010; Ostrom, 2007; Prakash & Potoski, 2007). The present study applies a theoretical and analytic framework developed in political science for the specific purpose of evaluating the influence of a rule on compliance.

Each NCAA rule represents the chosen strategy by which to address a perceived issue that challenges the success of the NCAA to achieve its mission and objectives. While the presidents of NCAA institutions have voluntarily agreed to abide by the rules of the Association, members of the NCAA are regularly found in violation of the NCAA's recruitment rules. The conflict between the desire to recruit the most talented athletes in order to win and the desire to compete with integrity by honoring recruitment rules is intrinsic to competition in NCAA DI sports. NCAA recruitment rules, the rights and responsibilities the rules establish for compliance, monitoring, and enforcement, are important to determining the success of the NCAA to maintain commercial intercollegiate athletics within the legitimate scope of higher education. The objective intent of a rule is to influence behavior (Chayes & Chayes, 1993). Therefore, a rule has no value if behavior is not influenced. Essentially, rules of the NCAA that restrict the use of offers and inducements in recruitment will have value if, and only if, the rules cause people to do things that they would not otherwise do (Chayes & Chayes, 1993). The importance of the present study of compliance with NCAA DI recruitment rules is the fact that compliance with these rules is critical to the success of the NCAA in achieving its intended objectives.

### *Definition of Compliance*

The present study applies compliance theory (Mitchell, 1994) to examine how and why past compliance is a function of NCAA rules. By the term compliance, this study refers to an actor's behavior that adheres to the explicit language of a particular rule provision (Mitchell, 1994, p.26). Compliance theory examines the strategies chosen by an individual in a given situation, based upon their perception of the various consequential benefits and costs with alternative strategies and their likely outcomes (Ayers & Braithwaite, 1992; Mitchell, 1994; Williamson, 1979). Compliance theory posits that the intended causal path of a rule to influence behavior is comprised of three components. These components are the primary rules, the compliance information system, and the noncompliance response system (Mitchell, 1994). The primary rules, compliance information system, and noncompliance response system are comprised of those actors, structures, and processes that are intended to causally effect change in targeted behavior (Mitchell, 2010).

### *Primary Rules*

The selection of primary rules, and the language and structure used to define the rules, is significant to determining the success of a rule to influence compliance. Many alternative solutions exist that "impose different costs on actors with different incentives to comply" (Mitchell, 1993, p. 329). Rules and identities often collide and actors sometimes violate rules because they must adhere to other standards (Orren & Skowronek, 2004). The primary concerns of actors and those that dominate negotiation will influence future levels of compliance (Jervis, 1988). Compliance is dependent upon the language and particular words utilized to define substantive goals (Ostrom, 1990). The language utilized to define regulatory strategies may:

- Establish ambitious or constrained objectives (Downs, Rocke, & Baroom, 1996).
- Target more or less transparent behavior of a large or narrow scope of actors (Ostrom, 1990).
- Be specific or ambiguous (Fisher, 1981).

- Condemn, prescribe, or recommend actions (Mitchell, 1997).
- Ban or limit behavior and regulate communication about the compliance of regulated actors (Mitchell, 2010).

Rules that do not overcome institutional boundaries that constrain external monitoring and enforcement efforts pre-determine the failure of the rule to influence compliance (Putnam, 1988). Rules are more credible when they are designed in a way that is conducive to verifying compliance (Ostrom, 2007).

### *Compliance Information System*

The compliance information system aims to maximize transparency by collecting, analyzing and disseminating information on compliance (Mitchell, 2010). Creating more transparency is a fundamental task to any prescription to increase compliance (Fisher, 1981). The degree to which regulated actors expect that their actions will not go undetected will determine the extent to which threats of sanctions for non-compliance are credible (Mitchell, 1994). There are two subcomponents of the compliance information system (Mitchell, 2010). The first involves monitoring and disseminating information about the magnitude, causes, and impacts of a problem and regulatory activities. The NCAA publishes the annual NCAA DI Manual, and supplemental materials to support compliance with NCAA rules in specific sports and in particular regulatory areas. The NCAA issues public reports on its ongoing efforts to oversee compliance to news outlets, and posts announcements regarding compliance on the NCAA's websites using language to emphasize the importance of rules compliance. The NCAA provides public access to the major infractions cases on the NCAA's Legislative Services Database (LSDBi).

The second component of the compliance information system is the strategy selected for monitoring and reporting compliance with the rules. The compliance information system is an important step in the causal path traveled by the rule to influence compliance because it directly links the rule to observed behavior (Mitchell, 1994). The NCAA monitors compliance by requiring presidents and chancellors of NCAA DI colleges and universities to annually self-report violations to maintain the institutions' eligibility for NCAA competition according to Bylaw 18.4.2 in the NCAA DI Manual (NCAA, 2015, p. 307). However, self-reporting is challenged primarily by the fact that actors are unlikely to voluntarily self-incriminate, especially, if sanctions are likely to follow (Brown Weiss, & Jacobsen, 1998). Threats of severe consequences drive information regarding deviant behavior underground. As delineated by Hanna, Levine, and Moorman (2017), the consequences for individuals who report deviant behavior in intercollegiate athletics are severe. The NCAA mandates the use of Form 16-2, which requires all intercollegiate athletics personnel of NCAA member institutions to annually report any information regarding violations that had occurred during the year (Hanna, Levine, & Moorman, 2017). Employees who fulfill this responsibility often face the threat of severe consequences and harm. Not only have employees who have been willing to report violations been terminated, but they have been targets of death threats, and other retaliatory actions taken by those working within the institution and by members of the local community (Hanna, Levine, & Moorman, 2017). Therefore, individuals who are capable and authorized to report violations do not have the incentive to do so because of the tremendous costs paid by past whistleblowers. Compliance information systems that make "reporting both advantageous and easy" are more

successful than those that “sanction non-reporting or fail to address practical obstacles to reporting” (Mitchell, 2010, p. 165). The failure of the compliance information system to detect violations means that the causal path of a rule to influence compliance is broken and no credible connection exists between violations and the outcomes delivered by the non-compliance response system.

### *Non-Compliance Response System*

The non-compliance response system determines the type, likelihood, magnitude, and appropriateness of responses to non-compliance (Mitchell, 1994). Consequential strategies, such as the use of penalties based on behavior, depend on joining “after the fact monitoring activities with contingent responses” and signal the “likely responses to behaviors, after they occur in hopes of influencing choices before they occur” (Mitchell, 2010, p. 166). Sanctioning strategies rely heavily on a compliance information system that can credibly identify behavior and on a response system that will consistently and reliably produce the corresponding threatened course of action to incur appropriate costs (Young, 1979). Sanctions will only be considered seriously if actors perceive that individual violations of the provisions of the agreement pose a direct threat to their interests (Mitchell, 2010). Those with the obligation to enforce sanctions may value the benefits of collective sanctioning but seek to avoid the costs of such sanctioning (Axelrod & Keohane, 1986). The cost of enforcement varies across penalties and enforcement will reflect the extent to which a penalty imposes costs on those responsible for fulfilling the obligations of the noncompliance response system (Mitchell, 1994). Voluntary agreements with sanctions that do not pose costly threats for violations are hollow gestures that will not result in changing behavior (Young, 1979) and will threaten the credibility of the voluntary association (Prakash & Potoski, 2007). To evaluate the degree to which the NCAA’s noncompliance response system functions to support compliance, this study examines the extent to which the NCAA fulfills its responsibility to enforce sanctions against member institutions found in violation of NCAA rules.

Each component of the compliance system needs to be correctly matched to the problem that the rule is intended to address (Mitchell, 2010). If one component of the compliance system falls short of fulfilling intended objectives, the greater the burden of compliance is for the other components of compliance (Mitchell, 2010).

The credibility of the association is undermined when actors fail to fulfill the tasks and obligations required for monitoring and enforcement (Prakash & Potoski, 2007). The primary purpose of voluntary associations is to produce positive social externalities, beyond what government legally requires of voluntary association member organizations (Prakash & Potoski, 2007, p.776). It is important to know the extent to which the NCAA and its’ member institutions fulfill NCAA regulatory obligations. This is because colleges and universities can join the NCAA and claim to produce positive social externalities but fail to live up to these promises (Mitchell, Crosset, and Barr, 1999). Compliance with NCAA recruitment rules is essential to maintaining a level playing field for all members of the Association. However, violating recruitment rules may offer a competitive advantage that would allow for a team to win the championship (Stern, 1979).

### *Analytic Goals, Methods, and Limitations*

Understanding compliance with NCAA rules necessitates evaluating the direct outcomes achieved by each component of the NCAA's compliance system. Past violations, self-reporting, and the penalties enforced for violations are direct outcomes of the NCAA's compliance system. These provide the hard evidence required for evaluating the past performance of actors to fulfill the tasks and obligations required by the compliance. Identifying goals that have been achieved and those that have not allows for the identification of efforts that need to be made in order to achieve more success (Rossi, Lipsey, & Freeman, 2004). The present study investigates NCAA enforcement by identifying important features of specific regulatory strategies and tying these to direct outcomes. The present study sheds light on the conditions that may lead to the success or failure of NCAA DI rules on the use of offers and inducements in recruitment for men's basketball by testing theoretical prescriptions on compliance against the direct outcomes of the rules.

The purpose of the present study is to identify the extent to which NCAA DI recruitment rules on the use of offers and inducements influence compliance in the sport of men's basketball. According to compliance theory (Mitchell, 1994), it is necessary to examine the intended causal path of a rule to influence behavior in order to understand how and why it effects compliance. It is more analytically accurate to evaluate compliance with specific rule provisions, rather than compliance observed across rule provisions. Actors comply with the language and words used to define legitimate behavior in specific rule provisions, not with the spirit or the general principles of an agreement. An evaluation of compliance is accomplished by utilizing a method that involves a two-process analysis of data. The first phase of the analysis begins by identifying exact changes to rules. Baselines of compliance levels before and after rule changes are analyzed to assess whether the change to the rule led to a change in compliance. If there is a significant improvement in compliance with the rule following a reform, then further empirical analyses must be done to sift out other plausible explanations and exogenous factors that may account for the increase in compliance. If no other factor can account for the observed change in compliance, then the increase in compliance may be attributed to the rules. If there is no improvement in compliance with the rule following a reform, no further empirical analyses is warranted. This is because the results of further analyses would inherently imply that the rule is working effectively. The evaluation shifts to the second phase of the analysis and theoretical scripts are applied to understand the history of past compliance with NCAA rules. This process provides an opportunity to understand the conditions that led to the success or failure of a rule to influence compliance.

The present study utilizes NCAA DI recruitment rules on the use of offers and inducements as the units of analysis. To be clear, the present study narrowly examines rule changes and resulting changes in compliance within one specific issue area addressed by NCAA regulation: the use of offers and inducements in recruitment. By narrowly focusing on specific recruitment rule provisions, this study may miss the fact that the NCAA compliance system is nested among broader norms, principles, and processes that may play significantly greater roles in altering behavior (Ostrom, 2007). This research does not attempt to isolate the impact of these broader contextual elements and limits the purpose of the evaluation to gaining insight into how the form and structure of the NCAA's compliance system perform to support compliance with NCAA DI rules on the use of offers and inducements in recruitment.

Measuring compliance poses many difficult challenges. By definition, the present study refers to data on detected and reported violations that have been subject to NCAA sanctions. Practical obstacles stand in the way of collecting data on actual violations rather than detected and identified violations. Aggregating compliance across NCAA institutions and actors over time is also problematic because it groups together violations of varying magnitude and quantity. Compliance is not a clear binary concept (Mitchell, 1994). Some actors fulfill a portion of NCAA regulatory obligations while others may completely disregard such responsibilities. Relying on the rate of violations observed over time to evaluate NCAA compliance is problematic since it is impossible to determine the number of times actors violated the rules as a fraction of the cases in which actors had the opportunities. Practical data issues prevent measuring NCAA compliance in ways theory might suggest. To address these challenges, the present study follows the analytic steps outlined in compliance theory (Mitchell, 1994) and makes the best of both quantitative and qualitative data. Further, this research strictly adheres to the contention that NCAA DI rules on the use of offers and inducements in recruitment do not effect an independent change in compliance unless clear and convincing evidence is produced to demonstrate otherwise and there are no other exogenous factors or other plausible explanations that could account for any observed change in compliance.

Several analytic considerations outlined in compliance theory (Mitchell, 1994) guided the selection of the NCAA regulatory strategy to be analyzed in the present study. First, rules with high rates of compliance raise questions about whether actors had any incentives to violate and pose a challenge to explaining compliance, thus it is important to select rules that are not self-enforcing. Next, selecting a case where compliance has been challenged over time provides the opportunity to diagnose issues challenging compliance and provide policy prescriptions for improving compliance in such situations. Further, the analytic method utilized in compliance theory necessitates examining a regulatory case in which concerns over violations led to changes in the regulatory system to improve compliance. Finally, analysis requires rules with explicit definitions of legitimate behavior and the process by which the rule is expected to influence behavior. This provides the clear identification and definition of benchmarks required for evaluating the extent to which the rule is achieving its intended objectives.

### *NCAA DI Rules on Recruiting Inducements*

NCAA DI recruitment rules banning the use of offers and inducements (NCAA Bylaws 13.2.1 and its supporting rule provision NCAA Bylaw 13.2.2) were selected for the present study's evaluation of compliance because they fulfill the analytic requirements of compliance theory. The original rule provisions of Bylaw 13.2.1 (NCAA, 1996):

“An institution’s staff member or any representative of its athletics interests shall not be involved, directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to the prospect or the prospect’s relatives or friends, other than expressly permitted by NCAA regulations. This prohibition shall apply regardless of whether similar financial aid, benefits, or arrangements are available to prospective students in general, their relatives or friends.”

Bylaw 13.2.1 is supported by Bylaw 13.2.2, which provides specific prohibitions on offers and inducements and is defined in the following terms (NCAA, 1996):

“Specific Prohibitions. Specifically prohibited financial aid, benefits and arrangements include, but are not limited to, the following:

- ( a ) An employment arrangement for a prospect's relatives;
- ( b ) Gift of clothing or equipment;
- ( c ) Cosigning of loans;
- ( d ) Providing loans to a prospect's relatives or friends;
- ( e ) Cash or like items;
- ( f ) Any tangible items, including merchandise;
- ( g ) Free or reduced-cost services, rentals or purchases of any type;
- ( h ) Free or reduced-cost housing;
- ( i ) Use of an institution's athletics equipment (e.g., for a high-school all-star game); and
- ( j ) Sponsorship of or arrangement for an awards banquet for high-school, preparatory school or two-year-college athletes by an institution, representatives of its athletics interests or its alumni groups or booster clubs.”

Thus, the original bylaws prohibit any use of offers and inducements in recruitment in accordance with the NCAA's priority to maintain competitive equity among NCAA institutions.

The intended purpose of NCAA Division I rules prohibit the use of offers and inducements in recruitment is to ensure that intercollegiate athletics remains an academic and amateur endeavor, and to maintain competitive equity among NCAA member institutions. The NCAA originally served to facilitate discussion and collective decision making for its members. This led to the development of an array of enforcement strategies, such as the Constitutional Compliance and Fact-Finding Committees (Stern, 1979). However, several scandals led to public criticism of the NCAA's governance of intercollegiate athletics which prompted the members of the NCAA to implement a formal enforcement system to oversee compliance with NCAA rules in 1952 (Stern, 1979). Since the NCAA gained the power of enforcement in 1952, NCAA DI recruitment rules banning the use of offers and inducements have experienced a continuing high rate of violations, which demonstrates that these rules are not self-enforcing (Jubenville, Goss, & Wright, 2008; Lapchick & Slaughter, 1991). NCAA DI rules were reformed in the wake of the NCAA's 1997 governance restructuring, in which the NCAA adopted a federated model of governance. The 1997 NCAA Annual Convention marked the last year in which the Association would use the legislative process that had been relied upon since the beginning of the NCAA (Dempsey, 1997). Instead of all members of the Association (across Divisions) conducting business together as one legislature, under a one-institution, one-vote philosophy the membership divisions would act on a federated basis (Crowley, 2006). The new federation placed Division II (DII) and Division III (DIII) together in the same legislature and continued to utilize the one-vote approach to governance of intercollegiate athletics. Division I institutions, however, abandoned the one-vote approach in favor of establishing four large 'cabinets' to steer legislative issues specific to Division I. The new cabinet structure of NCAA DI governance is comprised of representatives of NCAA DI institutions and NCAA administrators (Dempsey, 1997).

The goal of the restructuring effort was to allow for each Division to have more autonomy and to better address Division-specific legislative concerns and to provide the presidents of member institutions more power (Dempsey, 1997). It represents a major shift in governance as it allows elected NCAA DI administrators to determine NCAA DI rules, rather than having to negotiate the rules with the administrators of DII and DIII institutions, which have relatively fewer resources for competing in intercollegiate athletics (Stern, 1979) and opposing interests (Baxter & Lambert, 1990). The NCAA's reformed governance structure gave the Division I Board of Directors final authority over all administration of Division I intercollegiate athletics. The Division I Board of Directors is comprised of university presidents and chancellors who are elected by the members of the Association (NCAA Constitution Articles 4.01.1, 4.2, 4.2.2). The DI Board of Directors proposes and endorses the rules proposed by the Division I Leadership and Legislative Councils (NCAA Constitution Article 4.5.2, 4.6.2). The presidents of NCAA DI member institutions make rule choices based on the interests of their institutions (Duderstadt, 2000, p.59). NCAA DI rules and procedures changed in 1997 aimed to embrace the divisional autonomy afforded by the new governance structure to make rules and processes in the best interests of the members of each division (Dempsey, 1997). The primary concerns that drove NCAA reform efforts were expressed by former NCAA President Cedric Dempsey in his speech to members at the NCAA's annual conference in 1997. Dempsey charged that NCAA legislation had over prioritized maintaining a level playing field to ensure more parity in competition and this fear that "someone else may gain some slight advantage" was detrimental to the welfare of student-athletes (1997, p.1). The priority of competitive equity that had driven NCAA administration of intercollegiate sports had fed "the perception that the NCAA acts against the interest of student athletes, which hurts the organization and every member institution" (1997, p.1). The concerns prioritized by Dempsey subsequently led to reforms across many NCAA DI rules, including the rules against the use of recruiting inducements.

In 1997, NCAA DI legislation was proposed to take advantage of the new autonomy afforded by the federated governing structure. NCAA DI rule changes were instituted in response to cultural pressure to prioritize the welfare of student-athletes, over the traditional priority of maintaining competitive equity (Dempsey, 1997). For example, the NCAA rule provisions banning the use of any type of offer or inducement made the recruitment process challenging because they restricted institutional actors from providing a meal to a recruit visiting campus or providing any item of value. For example, Zimbalist (1999) recounts David Berst, the NCAA's chief of enforcement from 1988 to 1998, that his office received about 3,000 calls a year from colleges to report that a prospective student-athlete violated the rules when accepting transportation across campus or has "been the improper beneficiary of an ice-cream cone" (p.174). The practicality of hosting a recruit without providing meals or transportation was problematic and, over time, the stringency of such rules made compliance difficult. The NCAA drew criticism for enforcing rules that seemed to work against the welfare of student-athletes (p.174). In response to cultural pressure, NCAA DI rule provisions on the use of offers and inducements in recruitment were changed in the wake of the restructuring of NCAA's governance system in 1996.

The following amendment was made to both Bylaws 13.2.1 and 13.2.2 (NCAA, 1997, p.98):

“For violations of this bylaw in which the value of the offer or inducement is \$25 or less, the eligibility of the individual (i.e., prospective or enrolled student athlete) shall not be affected conditioned upon the individual repaying the value of the benefit to a charity of his or her choice. The individual, however, shall remain ineligible from the time the institution has knowledge of the receipt of the impermissible benefit until the individual repays the benefit. Violations of this bylaw remain institutional violations per Constitution 2.8.1, and documentation of the individual's repayment shall be forwarded to the enforcement staff with the institution's self-report of the violation.”

NCAA Bylaws 13.2.1 and 13.2.2 1997 rules still banned the use of offers and inducements in recruitment, however, benefits valued at \$25 or less (the value of benefits was increased from \$25 to \$100 in 2000) (NCAA, 2000, p.99) would no longer affect the eligibility of the student-athlete or prospective student-athlete, as long as the individual repays the value of the benefit to a charity of their choice (NCAA, 1997; NCAA, 2000).

NCAA Bylaw 13.2.1 was reformed in 2005 to allow prospective student-athletes the same benefits that are available to the institution's prospective students, and other segments of the general student body (NCAA, 2005). The 2005 reforms led to the following definition of Bylaw 13.2.1 (NCAA, 2005, pp.102-103):

“An institution's staff member or any representative of its athletics interests shall not be involved, directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to the prospect or the prospect's relatives or friends, other than expressly permitted by NCAA regulations. Receipt of a benefit by prospective a student-athlete or his or her relatives or friends is not a violation of NCAA legislation if it is determined that the same benefit is generally available to the institution's prospective students or their relatives or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability.”

The 2005 reform removed the language expressing the prohibition on the use of offers and inducements, which had been previously included in Bylaws 13.2.1 and Bylaw 13.2: “This prohibition shall apply regardless of whether similar financial aid, benefits, or arrangements are available to prospective students in general, their relatives or friends” (NCAA, 2005).

A change in compliance would be expected after the NCAA DI reforms in 1997 because it decreased the costs of violating NCAA rules prohibiting the use of offers and inducements. The 2000 NCAA reform strengthened the 1997 NCAA DI reform by increasing the scope of benefits that could be used in recruitment that would not result in making the student-athlete ineligible (NCAA, 1997). The 2005 NCAA DI reform reversed the clause in the original rules prohibiting the use of any benefit by allowing for the use of benefits if the benefits are also available to the institution's general prospective student population or a segment within the student population (NCAA, 2005). Essentially, the 2005 reforms marked the end of the NCAA's strict prohibition on the use of recruiting inducements. After 2005, the NCAA DI ban on the use of offers and inducements was re-defined to only restrict the use of offers and inducements in recruitment. Therefore, an increase in compliance would be expected to follow because NCAA reforms essentially allowed for the use of offers and inducements in recruitment. However, any

increase in compliance after 2005 cannot be attributed to the NCAA's rule. Rather than changing the behavior, the NCAA just changed the rule. Not vice versa.

The history of NCAA DI rules on the use of recruiting inducements demonstrates that NCAA DI Bylaws 13.2.1 and 13.2.2 meet the analytic considerations outlined in compliance theory for selecting a unit of analysis for evaluation. Therefore, the present study analyzes compliance levels before and after the reforms to two NCAA DI recruitment rule provisions (Bylaws 13.2.1 and 13.2.2) to evaluate whether NCAA reforms achieved their intended regulatory objectives.

### *Research Questions*

The questions addressed in this study include: Do past reforms to NCAA DI rules on the use of recruiting inducements influence compliance in the sport of men's basketball? In addition, an evaluation of the past performance of NCAA primary rules, and their attendant compliance information system and non-compliance response system is conducted to understand how and why the frame and structure of NCAA DI recruitment rules are important determinants of compliance observed from 1952-2010.

## **Methodology**

Data on compliance with NCAA DI rule provisions prohibiting the use of recruitment inducements in men's basketball from 1952-2010 was selected for analysis because these rules have triggered a high rate of major infractions. During this time period, the NCAA recognized two types of infractions: secondary and major. Major infractions are defined by the NCAA as "...those that provide an extensive recruiting or competitive advantage" (NCAA, 2000, p.314). The NCAA Committee on Infractions is charged with the responsibility of weighing the extent to which NCAA infractions are major or secondary. The NCAA's Legislative Services Database (LSDBi) contains the written public reports of NCAA DI major infractions cases since 1952.

A search was conducted on LSDBi for major infractions cases involving NCAA DI men's basketball from January 1, 1952 to December 31, 2010. This query garnered 271 major infractions cases. This search was refined by conducting a second search on major infractions cases involving NCAA DI men's basketball and Bylaws 13.2.1 and 13.2.2. This second search garnered 221 major infractions cases. In order to avoid sampling errors and to improve the ability to replicate this study in the future, researchers decided to examine the written public reports of all 271 major infractions cases in the sport of men's basketball to verify the cases that LSDBi identified as involving violations of Bylaws 13.2.1 and 13.2.2.

Each of the 271 major infractions cases are available in an itemized list in LSDBi. Each case is listed with the date and the name of the institution involved in the major infractions case, which is hyperlinked to a summary information page and a PDF file of the Committee of Infractions public report for the major infractions case. Researchers analyzed each major infractions case on the list by clicking on each case, downloading and reading the full public report to identify the major infractions cases that involved violations of NCAA Bylaws 13.2.1 and 13.2.2. 167 major infractions cases were identified by researchers to involve violations of Bylaws 13.2.1 and 13.2.2. The difference in the search results garnered by LSDBi (221 major infractions cases) and the major infractions cases identified by researchers to involve violations of Bylaws 13.2.1 and 13.2.2 (167 major infractions cases), suggests that there may be cataloging

errors in LSDBi. Each of the 167 major infractions cases were analyzed according to the extent of the violations of Bylaws 13.2.1 and 13.2.2, whether violations were self-reported, and whether and what type of penalties were enforced by the NCAA. All data was input into an Excel spreadsheet and aggregated across all Division I schools that competed in NCAA DI men's basketball from 1952-2010. Data was subsequently cleaned and transferred into the data program Statistical Package for the Social Sciences (SPSS) to analyze compliance levels before and after the 1997 NCAA reforms to evaluate whether the initial reform to the rules and the subsequent reforms influenced observed compliance.

## Results

### *Compliance Analysis Phase 1*

The overall past experience of compliance with these rules is provided in order to ground the results in the context of the life span of the rules. To recount, there were 108 schools that accounted for the 167 major infractions cases that involved Bylaw 13.2.1 and Bylaw 13.2.2 violations in men's basketball. Out of the 349 NCAA Division I schools competing in men's basketball and that had active NCAA membership in 2010, 31% have been convicted in a major infractions case for violations of Bylaw 13.2.1 and 13.2.2.

Compliance levels with Bylaws 13.2.1 and 13.2.2 in the sport of NCAA DI men's basketball were analyzed before and after the 1997, 2000, and 2005 NCAA reforms to evaluate the extent to which the reforms influenced observed compliance. From 1952 to 1996 there were an average of 2.8 major infractions cases involving offers and inducements per year. Following the NCAA's 1997 reforms that made the eligibility of the student-athlete contingent upon the student athlete repaying the value of the benefit (up to \$25) to a charity (NCAA, 1997), the average rate of major infractions cases increased to 3.6 per year (1997-1999). From 2000-2004, the NCAA increased the monetary value of the maximum benefit to \$100 (NCAA, 2000) and the average rate of major infractions cases per year remained 3.6. The NCAA DI reform in 2005 essentially reversed the ban on the use of recruiting inducements (NCAA, 2005) and the average rate of major infractions cases went down to 1.7 major infractions cases per year. The reform in 1997 to the ban was significant because it introduced exceptions to the rules. The 2000 and 2005 reforms just strengthened the 1997 reform by increasing the strength of the exceptions to the ban. Therefore, an increase in compliance should be expected following the NCAA's 1997 reform.

To investigate whether reforms to Bylaws 13.2.1 influenced a change in compliance, violations were aggregated according to two time blocks. The first time block reflected the time in which the original rule was enforced from 1952 until 1996. The second time block reflected the time period in which reforms to the rules were implemented, from 1997 to 2010. From 1952 to 1996 there were a total of 128 major infractions cases and from 1997 to 2010 there were 39 major infractions cases. Since the data was not normally distributed, a non-parametric statistical test was utilized to evaluate the influence of NCAA rule reforms on compliance (Keppel & Wickens, 2004). For data on independent groups, the null hypothesis is that the medians of the distributions are the same. The alternative hypothesis is that some of the medians are different. If the groups differ only in that their distributions are shifted in relatively opposing directions, then it is possible to test the hypothesis that the two groups are equivalent with the Mann-Whitney *U* test and the Wilcoxon rank sum test (Keppel & Wickens, 2004, p.146). These tests are less sensitive to differences in the distribution of the data and are better suited for examining data

characterized by a substantial skew and with extreme scores (Keppel & Wickens, 2004, p.146). Since this study measured compliance on a continuous scale, it meets the variable requirements for this test. The time period reflecting the original rule (1952 to 1996) was used as the grouping variable and violations were entered under the dependent variable name “violations.” The Mann-Whitney U test showed the mean rank for the 1997 to 2010 time period was greater ( $M = 33.18$ ; Sum of Ranks = 465.50) than for the 1952 to 1996 time period ( $M = 29.01$ ; Sum of Ranks = 1305.50). However, the difference between the groups was not significant,  $U = 270.50$ ,  $Z = -.827$ ,  $p = .408$ . These findings indicate that the empirical analysis of compliance found that NCAA DI reforms had no significant effect on compliance in the sport of men’s basketball with the two recruitment rules that were analyzed in this study. Any further statistical testing would inherently imply that the evaluated rules are working. Therefore, further statistical testing is not warranted.

Therefore, the analysis shifts to an evaluation of the performance of the NCAA’s compliance system to support compliance in NCAA DI men’s basketball with NCAA rule provisions on the use of recruiting inducements from 1952 to 2010. Theoretical scripts on compliance are tested against the past performance of the NCAA’s compliance information system and noncompliance response system to provide theoretically based explanations of past compliance with NCAA rules restricting the use of recruiting inducements.

### *Compliance Analysis Phase 2*

The non-significant findings for the statistical analysis of violation data shifted the analysis to an examination of the NCAA’s compliance system. Past trends in self-reporting and NCAA enforcement efforts provide evidence to understand how and why the compliance information system and noncompliance response system have functioned to support compliance with NCAA rules prohibiting the use of offers and inducements in recruitment.

*Self-reporting.* Self-reporting is an important mechanism of the NCAA’s compliance information system, as the individuals who are targeted by and most knowledgeable of the rules are responsible for reporting violations of the rules. Article 22, Athletics Certification, NCAA Bylaw 22.2 requires that institutions conduct investigations and self-report rules violations to the Association (NCAA, 2010). This is an integral part of the NCAA’s compliance information system, which relies on its members to self-report violations (the NCAA is also open to allegations of violations from sources outside of the institution).

Of the 167 major infractions cases involving violations of NCAA DI Bylaws 13.2.1 and 13.2.2 in the sport of men’s basketball from 1952 to 2010, only 21 (13%) were self-reported. Violations were self-reported at an average rate of .36 per year. More broadly speaking, 11% of institutions self-reported their violations prior to reforms, while 18% of institutions self-reported their violations following the 1997 reforms. Empirical results demonstrate that schools seldom self-report major infractions to the NCAA.

*NCAA penalties.* Article 19 Enforcement, Bylaw 19.5.2 provides a description of the penalties that may be applied to an institution for major violations of NCAA DI rules (NCAA 2010, p. 322-323). Data was collected on the following penalties that can be imposed by the NCAA: the determination of repeat offense status, a ban on television appearances, recruitment penalties which restrict recruitment activities that may be undertaken, financial aid restrictions, a

ban from competition in postseason games, a requirement to vacate all records that were achieved as a result of the behavior in violation of the rules, whether or not the school showed any cause for the violation, and the years of probation the school was placed on by the NCAA. Major infractions cases highlighted these penalties on both major infractions case summaries and within the Infractions Committee case reports, which provided two sources of information regarding the penalties imposed by the NCAA.

From 1952 to 2010, 155 of 167 major infractions cases involved NCAA penalties, with an average rate of 2.6 per year. More generally, the NCAA enforced penalties in 93% of major infractions cases before NCAA reforms in 1997 and in 92% cases from 1997 to 2010.

*Repeat offenders.* According to the NCAA DI Manual (NCAA, 2010), a school will be considered a repeat offender if the Committee on Infractions finds that a major violation has occurred within five years of the starting date of a major penalty. For this provision to apply, at least one major violation must have occurred within five years after the starting date of the penalties in the previous case. Also, in order to consider an institution a repeat violator, the Committee on Infractions must hold its hearing and publish its report within this five year period. When an institution is considered a repeat offender and is identified for a major violation, it will be subject to additional penalties, subject to exceptions authorized by the Committee on Infractions (NCAA, 2010, p. 324).

From 1952 to 2010, 16 of 167 major infractions cases involved repeat offenders, or 10% of all major infractions cases involving the use of offers and inducements in recruitment for men's basketball. From 1952 to 1996, there were 6 major infractions cases involving repeat violators, representing 5% of the 128 major infractions cases during this time period. From 1997 to 2010, of 39 major infractions cases that occurred, 10 major infractions cases (26%) involved repeat offenders.

*Years of probation.* The presumptive penalty for a major violation, subject to exceptions authorized by the Committee on Infractions, includes a two-year probationary period, which includes in-person monitoring system and written institutional reports (NCAA, 2010, p. 322). Article 19, Bylaw 5.2.4.1 provides the Infractions Committee (or the Infractions Appeals Committee) may identify the possible conditions that an institution must fulfill a probationary period on a case-by-case basis to focus on the institution's administrative weaknesses detected in the case (NCAA, 2010). The variance in the yearly average of the number of probationary years imposed across time periods suggests inconsistency in the years of probation imposed by the NCAA in major infractions cases. Following NCAA reforms, the years of probation enforced for violations appears to have increased from an average of 1.7 per case during the 1952-1996 time period to an average of 2.7 years per case during the 1997-2010 time period.

*Television penalty.* The NCAA may deem that "the institution is ineligible for any television programs involving coverage of the institution's intercollegiate athletics team or teams in the sport or sports in which the violations occurred" NCAA Constitutional Article 19, Bylaw 5.2.2 (NCAA 2010, p. 323). From 1952 to 2010, the television penalty was imposed by the NCAA Infractions Committee in 47 (or 28%) of 167 the major infraction cases that involved violations of Bylaw 13.2.1 and Bylaw 13.2.2, with an average rate of .8 per year. From 1952 to 1996, the television penalty was imposed 46 times. This represents 36% of 128 major infractions cases that occurred during this time period. Following the 1997 reforms this penalty was

enforced in 3% major infractions cases. Despite the tendency of the NCAA to enforce this penalty prior to reforms, since 1997 the television penalty has become the least enforced penalty for violations of Bylaw 13.2.1 and Bylaw 13.2.2.

*Postseason penalty.* The NCAA may prohibit an institution's intercollegiate sports team or teams from postseason competitions and from participating in any outside competition for a specified period of time (NCAA 2010, p. 323). Notably, the results reflect that from 1952 to 1996, the NCAA enforced the postseason penalty in 61% of major infractions cases. The postseason penalty was enforced more often than any other penalty enforced by the NCAA. Following reforms in 1997 until 2010, the NCAA enforced this penalty in 23% of major infractions cases. Since the 1997 reform the NCAA has increasingly decided not to enforce the postseason penalty. The postseason penalty has become one of the least enforced penalties, being enforced only slightly more than the television penalty.

*Recruitment penalty.* The NCAA may prohibit the institution from recruiting prospective student-athletes for a sport or sports for a specified period of time. The presumptive penalties for a major violation, subject to exceptions authorized by the committee, include a reduction in the number of expense-paid recruiting visits to the institution in the involved sport for one year and a prohibition from engaging in any off-campus recruiting activities for up to one year (NCAA, 2010, p. 323). From 1952 to 1996, the recruitment penalty was enforced in 40% of major infractions cases. Following the 1997 reforms until 2010, the recruitment penalty was enforced in 67% of major infractions cases. Since the 1997 reform the NCAA has enforced this penalty more than any other penalty except for the financial aid penalty.

*Financial aid penalty.* The NCAA may impose a reduction in the number of financial aid awards that may be awarded to student-athletes in an institution's sport or sports during a specified period of time (NCAA, 2010, p. 323). Before 1997, the financial aid penalty was enforced in 43% of major infractions cases. Since the 1997 reform the NCAA enforced the financial aid in 87% of major infractions cases. From 1997 to 2010, the NCAA enforced the financial aid penalty more than any other penalty.

*Vacate record penalty.* The NCAA may penalize institutions by vacating or striking individual and team records and performances and returning any individual or team awards to the Association (NCAA, 2010, p. 323). From 1952 to 1997 the vacate records penalty was enforced in 0.1% of major infractions case and was the least enforced penalty during this time. From 1997 to 2010 the NCAA enforced this penalty in 36% of major infractions cases. These findings suggest an increasing tendency of the NCAA to enforce this penalty.

*Show cause penalty.* In the case where an institution has been found to have violated NCAA rules and taken disciplinary action as a result, the institutions must provide substantial reasoning for why the Infractions Committee or the Infractions Appeals Committee should not impose additional penalties. The show cause penalty will be enforced if the Committee believes that the institution has not taken appropriate corrective action to address the violation (NCAA, 2010, p. 323). The NCAA enforced this penalty in 33% of cases from 1952 to 1996 and in 54% of cases from 1997 to 2010. The results show an increasing tendency of the Committee on

Infractions to invoke the show cause order on institutions in violation of NCAA DI rules banning the use of recruiting inducements.

## Discussion

The present study applied compliance theory to evaluate the influence of two NCAA DI recruitment rule provisions on compliance in the sport of men's basketball. The binary analysis of data on compliance produced empirical evidence of the direct outcomes of the two NCAA DI recruitment rules and their attendant monitoring and enforcement mechanisms. The empirical findings of the binary analysis of compliance data provide the real world evidence required to diagnose regulatory issues that challenge compliance with these two NCAA DI recruitment rule provisions in the sport of men's basketball. By tying NCAA regulatory mechanisms to their direct outcomes, it is possible to apply the policy prescriptions and proscriptions outlined in compliance theory. This study applied an analytic model and theoretical approach to understand past compliance with two NCAA DI recruitment rules restricting the use of recruitment inducements in the sport of NCAA DI men's basketball. The findings of this research provide evidence that the frame and structure of these two NCAA DI recruitment rules, and their attendant monitoring and enforcement mechanisms are important determinants of compliance observed from 1952 to 2010.

The findings support the contention that NCAA DI recruitment rule provisions on the use of offers and inducements did not influence compliance from 1952 to 2010. The first phase of the binary analysis found no significant difference in baselines of compliance before and after NCAA DI reforms in 1997. The two NCAA DI recruitment rules on the use of inducements and their subsequent reforms did not lead to any significant change in the use of inducements to recruit prospective student-athletes in the sport of men's basketball. These findings provided no direct causal correlation between the changes to the two rules and the behavior the two rules intend to change. This is an important finding because it indicates that the two NCAA DI recruitment rules failed to achieve intended regulatory objectives in the sport of men's basketball.

Why did the two NCAA DI rule provisions on the use of recruiting inducements in men's basketball fail? Based on the results of the binary analysis, all three regulatory components of the NCAA's compliance system fell short of intended objectives. Essentially, the rules failed to influence compliance because they were flawed in their design. The frame and structure of the rules, compliance information system, and the noncompliance response system failed to create the expectation that violations would likely be detected and swiftly met with sanctions that would far offset any benefits that could be gained from violating the rules.

One of the most striking findings of this research is the failure of NCAA DI school leadership to impose harsh and costly penalties on deviant institutions to deter future violations of NCAA DI rules on the use of offers and inducements in recruitment for the sport of men's basketball. Past enforcement trends confirm that NCAA penalties do not impose harsh and potent costs that outweigh the potential benefits gained from violations of NCAA DI recruitment rules on the use of inducements in men's basketball. The cost of enforcement varies across NCAA penalties. The types of penalties enforced by the elected leaders of the NCAA likely reflect the extent to which the presidents of NCAA DI schools have the incentives, capacity and power to incur the costs of enforcing harsh and potent sanctions on NCAA DI schools that violate the rules (Prakash & Potoski, 2007). From 1952 to 1996, the NCAA enforced the postseason,

financial aid, recruitment, and television penalties consistently for violations involving recruiting inducements in men's basketball. The postseason penalty was enforced in 60% of major infractions cases. The loss of the opportunity to compete in the postseason tournament imposes high costs for institutions competing in NCAA DI men's basketball. The costs of enforcement are high because NCAA DI schools lose the opportunity to gain valuable media exposure and revenue from competing in the postseason tournament (Southall, Nagel, Amis, & Southall, 2008; Stern, 1981). With success in intercollegiate athletics being defined in winning percentages, competition among schools for the best athletes is extremely high. The NCAA enforcement of the postseason and television penalties was intended to strike at the heart of the problem that motivated violations in recruitment: the desire to win. Past research suggests that the NCAA's enforcement of the postseason penalty incurs relatively high enough costs on institutions to deter future NCAA violations (Perry, 2002). After NCAA DI institutions gained autonomy in 1997 and the presidents of NCAA DI schools gained the authority to oversee NCAA rules and enforcement, a dramatic shift is seen in the types of penalties that are enforced for violations involving the use of recruiting inducements. From 1997 to 2010, NCAA enforcement imposed the financial aid and recruiting penalties for violations of NCAA DI rules on the use recruiting inducements. Rather than imposing penalties that target the strategic and financial rewards of winning in postseason competition, the college and university administrators elected to oversee NCAA DI rules on the use of recruiting inducements avoided enforcing the postseason and television penalties. This tends to confirm that the financial benefits for televising NCAA DI men's basketball and for participating in postseason competitions provide presidents of NCAA DI institutions the motive to avoid paying the financial costs of enforcement. The findings support the contention that the presidents of NCAA DI universities and colleges, who are elected to oversee enforcement of NCAA recruitment rules, have incentives to levy certain penalties over others and to engage in selective enforcement (Otto, 2006). Instead of incurring the costs of the television and postseason penalties, presidents of NCAA DI schools shifted the burden of enforcement to coaches, student-athletes, and prospective student-athletes. The costs of the recruitment and financial aid penalties limit coaches from fully engaging in recruitment activities and from providing prospective student-athletes with financial resources to matriculate (Potuto, 2010; Weston, 2011). This shifts the costs of NCAA enforcement from the presidents of NCAA DI institutions to coaches (who may or may not have been responsible for rules violations) and to prospective student athletes.

Financial ties to the outcomes produced by intercollegiate athletics postseason competition conflict with the incentives of presidents of NCAA DI schools to enforce the postseason and television penalties fellow Association members (Prakash & Potoski, 2007). While the NCAA has the authority to enforce the postseason and television penalties on Association members, the NCAA regulatory system does not assign the responsibility for fulfilling this regulatory obligation to actors with the incentives to do so, given other priorities. Consistent with compliance theory, those obligated to fulfill the tasks of enforcement may value the benefits of collective sanctioning, but seek to avoid the costs (Axelrod & Keohane, 1986). Analysis suggests that NCAA DI leaders elected by presidents of NCAA DI schools to oversee rule enforcement prioritized the collective benefits of participating in postseason play and media coverage over the costs of imposing sanctions for violations of recruitment rules, which impose little direct threat on the interests of presidents of NCAA DI member institutions. Additionally, the NCAA enforced sanctions against only 93% of institutions responsible for violations of NCAA DI recruitment rules restricting the use of offers and inducements from 1952-2010.

Therefore, it is not a stretch to say that the NCAA is not 100% reliable in enforcing sanctions for NCAA DI recruitment rules violations. The declining trend in the number and types of penalties enforced over time provides relative confidence in concluding that the NCAA's noncompliance response system fell short on its regulatory obligations. The evidence provides substantial support for contending that NCAA DI sanctions for violations of NCAA DI rules on the use of offers and inducements in recruitment in the sport of men's basketball are hollow gestures that will not result in effecting change in regulated behavior (Young, 1979) and this threatens the credibility of the NCAA (Prakash & Potoski, 2007).

The rules of the NCAA are the elected tools by which presidents of NCAA DI member schools govern intercollegiate athletics. The extent of compliance with rules in intercollegiate athletics is dependent upon the degree to which presidents of NCAA DI institutions fulfill the obligations of NCAA rules enforcement. The outcomes of NCAA enforcement are ultimately determined by the universities and colleges who are members of the NCAA. To be clear, the NCAA is a voluntary association that was formed to mitigate the negative externalities (scandals involving gambling, cheating to gain a competitive advantage) that resulted from competition in intercollegiate athletics. NCAA member institutions elect rules to govern competition in intercollegiate athletics and are responsible for compliance with and enforcement of the rules. The President of the NCAA, along with NCAA administrators, are responsible for fulfilling the tasks that are required to meet the needs and interests of members of the Association. Therefore, NCAA DI colleges and universities are responsible for determining the penalties that are enforced for violations of NCAA rules and the outcomes of NCAA enforcement.

The intended purpose of the NCAA's prohibition on the use of offers and inducements in recruitment was to maintain a level playing field and to maintain the appearance of intercollegiate athletics as legitimate in higher education (Crowley, 2006; Stern, 1979). The level of past compliance with NCAA DI rules banning recruiting inducements in the sport of men's basketball provides relative confidence that the content, rate, and total major infractions of these two NCAA DI recruitment rules remained relatively consistent since they were enforced in 1952. The evidence of continuing violations of the two NCAA DI rule provisions on the use of offers and inducements in recruitment indicate that presidents of NCAA DI institutions may lack control over the strategies utilized by actors to successfully procure talent for NCAA DI men's basketball.

More violations should be expected when winning percentages (rather than NCAA compliance) define success for actors responsible for recruitment in NCAA DI men's basketball recruitment. Coaches and schools that violate NCAA DI recruitment rules restricting the use of offers and inducements gain a substantial competitive advantage when there is more compliance (Axelrod, 1984). In other words, the decision to comply with NCAA DI recruitment rules leads to higher odds of losing in NCAA DI men's basketball competition when others choose to violate the rules. This indicates that free riding is a significant challenge to improving compliance with NCAA DI rules on the use of recruiting inducements in men's basketball. Overall, these findings support the contention that compliance is less likely with rules that intend to restrict the competitive strategies utilized to succeed in intercollegiate athletics competition (Stern, 1979).

NCAA DI coaches responsible for recruitment and compliance may recognize the limits of the power of the NCAA to hold them accountable for violations of NCAA DI rules on the use of offers and inducements when undertaking the calculus of costs and benefits in the decision to comply. The institutional and legal barriers of the NCAA's two-tiered regulatory structure

prevent NCAA enforcement from imposing swift and potent costs directly on actors responsible for violations of NCAA rules (Mitchell, 2010). NCAA rules target behavior that falls beyond the scope of the NCAA's regulatory influence, since the legitimate scope of the NCAA's authority extends only to NCAA member institutions, not to sub-institutional or private actors (Mitchell, 1994). This fails to deter violations of NCAA DI rules because institutional barriers protect deviant actors from incurring the direct costs of the penalties enforced by the NCAA (Mitchell, 1994). NCAA rules do not extend to private agents, who operate beyond the bounds of institutions and NCAA authority, which further weakens any direct threat of sanctions against non-institutional actors (agents, sporting goods and manufacturing representatives, etc.) for violating NCAA DI recruitment rules.

The variance in observed compliance provides evidence that lends credence to the perspective that the level of commitment to achieve the collective goals of the NCAA varies across institutions competing for prospective talent in NCAA DI men's basketball (Mitchell, 2010). Of the 349 NCAA institutions competing in NCAA DI men's basketball during the 2010-11 season, 108 schools (31%) have been identified and prosecuted for a major infraction of NCAA rules banning the use of recruiting inducement. This finding is important because it highlights the degree to which compliance varies across NCAA institutions (Mitchell, 2010). The results show that the majority of institutions have never been caught, penalized, or publicly cited for a major infraction of NCAA rules banning the use of recruiting inducements. However, some NCAA DI men's basketball recruiters appeared to be sufficiently unconcerned about being caught for violating the rules since they continued to use recruiting inducements blatantly enough to be caught more than once. Empirical data documents that repeat offenders were responsible for 10 of the 30 major infractions that occurred from 1997 to 2010. In comparison, only 6 of 128 major infractions cases involved repeat offenders from 1952 to 1996. The relative difference in the proportion of major infractions committed by repeat offenders between time periods documents an increase in the tendency of deviant institutions to continue violating the NCAA DI rules on the use of recruitment inducements. The rise in repeat offenders from 1997 to 2010 suggests that the changes in the NCAA's governance structure, which provided autonomy to NCAA DI institutions to oversee rules enforcement, did not result in reforms to improve compliance with NCAA recruitment rules. The rise in repeat offenders from 1997 to 2010 suggests that the autonomy provided to NCAA DI institutions to oversee compliance with rules may have decreased the expectation that violations would be detected, even for institutions on probation for past violations. It also reflects that the penalties enforced against these deviant institutions did not impose harsh and potent costs that would outweigh the potential benefits gained from violations of NCAA DI recruitment rules on the use of inducements in men's basketball.

According to compliance theory (Mitchell, 1994), resistance to the NCAA's ban on the use of offers and inducement in recruitment should be expected. The use of offers and inducements in recruitment was relatively common (Shea & Wieman, 1967; Smith, 1988) before the NCAA banned the practice. Since the behavior existed before NCAA DI recruitment rules were enforced, it can be argued that the NCAA's ban against using recruiting inducements was highly ambitious. The NCAA's ban on the use of recruitment inducements faced an uphill battle in gaining compliance because it required deep cooperation for the rule to effect change in targeted behavior (Downs et al., 1996). The reason the NCAA selected an ambitious approach to address the issue of recruiting inducements was to respond to public outcry over media reports that had directed attention to the negative outcomes of illegitimate behavior in intercollegiate

athletics (Smith, 1988). Despite the past conflicts among institutions over the rules governing competition in intercollegiate athletics, schools collaborated to gain control over the issues that had led to public concern (Stern, 1979; Baxter & Lambert, 1990). NCAA institutions committed to setting aside opposing individually rational interests to protect the collective value of intercollegiate athletics from the threat of outside intervention (Stern, 1979).

Analysis of the NCAA's primary rules directs attention to issues in the frame and structure of NCAA rules that fail to support the causal influence of the rule (Mitchell, 1994). Analysis of the language utilized to define NCAA rules attests to the notion that the rules were not defined in ways to make it conducive to NCAA efforts to verify compliance (Ostrom, 1990). NCAA rules target behavior that involves a clandestine interaction that could occur at any time and place (Mitchell, 1994). The two NCAA DI recruitment rules examined intended to target the behavior of actors operating within and outside of NCAA institutions. However, the NCAA's regulatory system does not overcome the practical and institutional barriers necessary to verify compliance. The NCAA's sanctions only apply to the member institution, and are not enforced on directly on those responsible for violations of NCAA rules (Putnam, 1988; Mitchell, 2010). The reforms to NCAA DI recruitment rules prohibiting the use of offers and inducements failed to address these issues in the frame and structure of the NCAA's regulatory system.

A close examination of the substantive content of the reforms to NCAA DI recruitment rules restricting the use of offers and inducements provides insight into the interests of presidents of NCAA DI institutions who were elected to oversee NCAA DI governance (Mitchell, 2010). Rather than address the issues with the frame and structure of the regulatory system, public pressure led to reforms that decreased the potency of NCAA sanctions for violations of NCAA DI recruitment rules restricting the use of offers and inducements. The NCAA's reforms provided that the eligibility of student-athletes would not be affected upon repayment of the value of the benefit provided (NCAA DI Manual, 1997-98, 2000-01). When the costs of violating the rules are decreased, less compliance should be expected (Downs et al., 1996). NCAA violations involving offers of ice cream cones, rides across campus and cream cheese on bagels sparked public criticism of NCAA rules (Dempsey, 1997; Zimbalist, 2001). In 2005, NCAA DI institutions responded to public criticism by reforming NCAA rules banning recruiting inducements (Dempsey, 1997). The 2005 NCAA DI reforms reversed the NCAA's long-standing, all-inclusive ban on the use of recruiting inducements to allow for the use of inducements in recruitment, as long as the same benefits are available to other segments of the institution's general student population (NCAA DI Manual, 1997-98). The impact of the 1997 NCAA governance restructuring provided NCAA DI institutions the window of opportunity to reform NCAA DI recruitment rules according to their interests in responding to public criticism (Dempsey, 1997; Jervis, 1988; Strange, 1996). The reforms to NCAA DI rules banning the use of recruiting inducements reflect the interests of the public and the presidents of NCAA DI institutions as opposed to the NCAA's original rules on the use of recruiting inducements which were elected by all NCAA institutions (Stern, 1979, 1981).

The empirical analysis of compliance found that NCAA reforms had no significant effect on compliance for the two rules that were analyzed in this study. It provides clear evidence that the two evaluated NCAA DI recruitment rule provisions did not effect a change in behavior. Instead of changing the behavior of using offers and inducements in recruitment, the presidents of NCAA DI institutions who were elected to oversee NCAA DI enforcement decided to change NCAA rules to allow for the use of offers and inducements. Any improvement in compliance observed following the 2005 NCAA DI reform cannot be attributed to NCAA rules (Mitchell,

1994). By allowing for the use of inducements to influence the decision of a prospective student to attend an institution of higher education, this research provides support for the criticism that NCAA DI reforms conflict with the academic priority of higher education and the purported mission of the NCAA (Gerdy, 2006; Sack, 2009; Splitt, 2007). There is little evidence to suggest that compliance would improve if NCAA DI reforms effectively addressed the regulatory issues in the frame and structure of NCAA rules. There are considerable obstacles that the NCAA's deterrence-based regulatory strategy to address the use of inducements in recruitment must overcome to influence the compliance of actors with strong economic incentives to violate the rules (Mitchell, 1994).

The results of the second phase of the binary analysis of compliance with two NCAA DI rules on the use of recruiting inducements supports the contention that the NCAA's regulatory system failed because the necessary reporting and monitoring responsibilities for the NCAA's deterrence-based strategies to be effective were not fulfilled. The second phase of the binary analysis of compliance documents the failure of NCAA institutions to fulfill the obligation to self-report violations of NCAA rules. Only 13% of major infractions cases involved violations that were self-reported and this provides relative confidence that NCAA violations will likely go undetected (Mitchell, 1994). It is not surprising that institutions rarely self-report major infractions of NCAA DI rules prohibiting the use of offers and inducements. Most would not choose to provide self-incriminating information that could lead to high costs (Downs et al., 1996). Further, past research has found whistle-blowers face significant consequences for reporting violations of NCAA policies (Hanna, Levine, & Moorman, 2017). The threat of NCAA sanctions drives bad behavior underground and this makes it more difficult to detect violations of NCAA rules (Mitchell, 2010). These findings suggest that the NCAA's compliance information system failed to assign actors with the incentives, capacity and authority to fulfill the obligation to self-report. Additionally, it failed to overcome practical institutional barriers to verify compliance. To be credible, the efficacy of the NCAA's deterrence based strategy depends on convincing regulated actors that violations will not likely go undetected. Future research should investigate how past violations were detected and verified by the NCAA to identify effective strategies for monitoring compliance with rules on the use of offers and inducements in recruitment.

The failure of the NCAA's compliance information system to reliably detect violations represents a broken link in the NCAA's causal chain of deterrence. This gap in the causal chain of compliance leaves little causal connection between regulated behavior and the outcomes of the noncompliance response system (Mitchell, 1994). The evidence provides relative confidence that NCAA sanctions are not directly linked to the violations responsible for triggering the noncompliance response system (Mitchell, 1994). Consequential strategies depend on joining "after the fact monitoring activities with contingent responses" and signal the "likely responses to behaviors, after they occur in hopes of influencing choices before they occur" (Mitchell, 2010, p. 166). The compliance information system failed to signal the likely responses to behaviors because it did not directly connect monitoring activities with contingent responses (Mitchell, 1994). The findings of the present study's empirical analysis of compliance with two NCAA recruitment rule provisions support evidence that the outcomes of NCAA enforcement do not correspond with the nature of detected violations (Otto, 2006). If the penalties are not connected to the behavior in violation, then the outcomes of the NCAA's noncompliance response system likely reflects the influence of factors unrelated to NCAA rules banning the use of recruiting inducements.

NCAA DI rules are defined and enforced in accordance with the primary concerns and interests of colleges and universities who are members of the NCAA, without regard for structural regulatory considerations. Past enforcement trends suggest that NCAA DI schools and colleges have incentives to avoid paying the costs of reducing illegitimate behavior in the recruitment for NCAA DI men's basketball. While all members of the NCAA voluntarily joined the Association and have committed to the compliance with Association rules, it is clear that some members have goals that conflict with the intended purpose of NCAA rules. Past NCAA enforcement outcomes reflect the need to create incentives for colleges and universities to fulfill NCAA regulatory obligations and the credibility of the Association. Past research has examined the mechanisms that support the credibility of voluntary programs and has found that third-party monitoring, meaning that firms are required to have their policies audited by accredited, external auditors, is an effective strategy for improving the credibility of voluntary associations (Prakash & Potoski, 2007). Requiring third-party monitoring of NCAA members may provide additional incentives to fulfill NCAA regulatory obligations.

In conclusion, the empirical analysis of compliance found that NCAA reforms had no significant effect on compliance for the two rules that were analyzed in this study. At the most fundamental level, the two NCAA DI rules on the use of offers and inducements in recruitment fell short of intended objectives because they were pre-designed for failure. The empirical evidence from the analysis of the direct outcomes of each component of the NCAA's compliance system provides relative confidence that the frame and structure of NCAA DI recruitment rules, compliance information system, and non-compliance response system do not function to support compliance. In each component of the NCAA's compliance system, the rules do not match the regulatory obligations and tasks to actors with the incentives, capacity or authority to fulfill them. This problem is compounded in a two-tiered regulatory structure featuring institutional barriers that obstruct NCAA monitoring and enforcement efforts.

This study is limited to a case in which reforms to two specific NCAA DI recruitment rules failed to influence compliance. Future research is needed to identify a case in which NCAA rules were successful in influencing compliance in order to understand the factors and conditions that led to such success. Future research should also examine reforms that have been made to the frame and structure of the three components of the NCAA's compliance system. For example, future research should examine how changes in the NCAA's penalty structure in 2013 influenced rules compliance once enough time has passed to establish baselines of compliance. The findings of this study support the contention that the reforms to the NCAA's penalty structure will not influence compliance because the NCAA's causal chain of compliance is broken. The failure of the NCAA's compliance information system to reliably detect violations represents a gap in the causal connection between regulated behavior and the outcomes of the noncompliance response system. To improve compliance, reforms to NCAA rules should take into account the regulatory frame and structure of all three components of the NCAA's compliance system: the primary rules, the compliance information system, and the noncompliance response system.

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