

Summary of Public Comments Following the 60 Day Review Period

	<p>On December 27, 2012, the Department of Education (the Department) published a Notice in the Federal Register regarding the Athletics Disclosure Act (EADA). Comments were due on or before February 28, 2013. We received approximately 1,400 comments regarding the collection, the estimated burden, the timing of the collection, on the importance of the continued collection, and the summary and analysis of the comments.</p>
Topic	Comment
Comments on Content	
	<p>Over 1400 commenters recommended that the Department should require institutions to report the race/ethnicity of their student populations and athletic participants in order to reveal any differences among subgroups. The commenters believed that institutional-level athletics data revealing the intersections of gender with race/ethnicity will increase awareness among practitioners and administrators and will help them to tailor solutions accordingly. Additionally, the commenters believed that the disaggregation will help researchers and advocates study current discrepancies among athletes and will facilitate the formulation of general guidelines to achieve racial/ethnic parity in athletics among male and female athletes. Some commenters further asserted that disaggregating the data this way would be consistent with the approach the Department takes in its Civil Rights Data Collection.</p>
	<p>Over 1400 commenters recommended that the Department should change the EADA User's Guide to more accurately count participants. They asserted that allowing male practice players to be counted as participants on women's teams does not make sense and overstates the actual number of female members of a particular team. The commenters believed that males participating on a women's team as a practice player should not be counted as participants because they cannot compete.</p>

	<p>One commenter recommended retaining the reporting category for the percentage of scholarships that are given to male and female athletes.</p>
	<p>One commenter recommended clarifying the process for counting athletes in the report. The commenter suggested that while in the past an athlete could be counted multiple times if they participated on, for instance, both the junior varsity and varsity teams within the same sport, currently institutions report opportunities and not participants. The commenter questioned whether this would represent two opportunities if one person is consuming both.</p>
	<p>One commenter believed that institutions should report campus and other non-coaching specific income separately rather than combining them under one salary field to reflect dramatically different circumstances available for campuses in different regions. Similarly, one commenter recommended that the coaching salary figures should include fringe benefits as they are in the NCAA report.</p>
	<p>One commenter recommended providing a list of the items that require further explanation of disparities, based on percentages, in the User Guide rather than identifying those disparities upon submission.</p>

	<p>Several commenters believed that institutions should not be required to balance their overall revenues and expenses in the report, arguing that this can create a major misconception of departmental fiscal operations to those who read the report. The commenters asserted that this requirement doesn't take into account situations such as when surplus revenue from a previous year may be used to offset a deficit in the current year, or when a school utilizes athletic equity as a source of funds to cover a deficit. To address these issues, one commenter recommended that the Department's EADA Data Analysis Cutting Tool should indicate on each page that the EADA survey is not an accounting report and that institutions must allocate revenues to balance or exceed expenses. Another commenter recommended adding a separate line for equity so that it doesn't distort actual revenue figures. Along these lines, two commenters recommended requiring institutions to report generated revenue, to the exclusion of revenue that may be allocated from the institution. These commenters argued that including an institutional subsidy as "revenue" gives the false impression that athletic programs profit, or break even, when they do not.</p>
	<p>Two commenters recommended requiring institutions to allocate all expenditures that are currently listed as unallocated. They asserted that this can be done by prorating the expenditure to each team in a manner proportionate to the number of opportunities associated with each team. These commenters also recommended requiring institutions to report capital expenses and to assign them to the team or teams associated with those capital expenses, believing that the exclusion of capital expenditures hides the true cost of athletic opportunities, as well as any gender inequality related to those costs. They provided the example that the debt on a stadium devoted to the football team should appear as an expense for the football team, while the debt on a multi-use facility should be allocated among the teams using that facility.</p>

	<p>One commenter noted that the amount of revenue brought in by a sport does not take into account the expenses for physical facilities and upkeep, including direct costs and indirect costs such as overhead, that are associated with those revenues.</p>
	<p>One commenter believed that it would be more beneficial to have coeducational sports like men's and women's cross country and swimming reported separately.</p>
	<p>One commenter recommended that institutions be permitted to use full-time or part-time status when determining the average annual institutional salary of non-volunteer coaches.</p>
	<p>One commenter noted that sports require their athletes to be engaged for three seasons even though they only compete for one. The commenter asked whether these players are counted three times or only once.</p>
	<p>One commenter noted that counting participants as of the first day of competition does not distinguish between traditional and nontraditional seasons and believed that this would allow a team to cut players after one competition of the nontraditional season and then not count them in their roster numbers.</p>
	<p>One commenter asserted that transportation costs should be categorized by mileage, not by the number of players transported. The commenter provided the example of a male football team that transports more players than a women's volleyball team and asserted that assessing transportation costs by mileage makes the women's sports appear more expensive because the total cost is divided by fewer players. The commenter believed that institutions manipulate their data in this manner to protect the status quo.</p>

	One commenter believed that the Department should require transparency within private institutions to disclose salary differences between male and female coaching staff, including supplemental duties, federal financial work study allotments, and budget differences.
	One commenter recommended revising the language pertaining to athletically-related student aid to make it clear that all sources of funds used for aid must be included in the revenue.
Comments on Burden	
	4 commenters indicated that the time burden to complete the EADA report is much higher than estimated by the Department. However, one of those commenters noted that because the NCAA report collects similar information, the time burden for the EADA and NCAA reports would be shared.
	One commenter suggested that, with the ubiquity of the internet, the requirement that institutions make the EADA report publicly available should be eliminated. The commenter suggested that the requirement could be met solely by the the information that ED posts on its own website, which would serve as a centralized resource for people who are seeking this information.
	A number of commenters recommended that the Department allow institutions to use an NCAA report to satisfy this statutory requirement, arguing that the NCAA data: 1) are largely duplicative of EADA data, 2) are more detailed than EADA data, and 3) may be more accurate and valid than EADA data.

	Some commenters suggested that the Department and the NCAA work together to create a single report, or a report with a supplement, to reduce burden on schools. Similarly, one commenter recommended that the NCAA should create a view that is similar to the EADA and grant public access to it.
	One commenter recommended making the EADA report more comparable and compatible with the NCAA version by allowing for data entry in categories that would calculate the respective line items.
	One commenter noted that the EADA requirements cover a larger set of institutions than do the NCAA requirements and that eliminating the EADA reporting favor of NCAA reporting would result in an incomplete dataset.
Comments on Timing	
	15 commenters made suggestions regarding the timing of the EADA reports. In particular they recommended 1) extending the reporting window by opening in early August to give institutions more time to complete the report and 2) delaying the reporting deadline until a December - February timeframe to accommodate institutions whose fiscal year ends at the end of August and to align with the National Collegiate Athletic Association (NCAA) reporting deadline.
	Two commenters noted that having two dates for the reporting and disclosure requirements associated with EADA is confusing. The commenters recommended having only one deadline.
Comments on the Utility and Need for the EADA Data Collection	

	<p>Over 1400 commenters strongly supported the continued collection of EADA data, citing its usefulness and critical role in helping prospective students, families, campus communities, researchers, and advocates evaluate sports programs at the institutional level. Some commenters asserted that the EADA requirements are critical and absolutely necessary to ensure minimum accountability to providing equitable opportunities for women in intercollegiate athletics. Commenters also asserted that the EADA is important for institutions because it provides an incentive for them to self-audit and address compliance issues.</p>
	<p>One commenter noted that the EADA report was created to assist prospective student-athletes make informed college decisions but that no one knows where or how to find this information.</p>
	<p>5 commenters argued that the EADA report is not utilized and is perceived as flawed due to a lack of detail and a lack of consistency across institutions in how they determine and report their information.</p>
Comments on EADA and Title IX	
	<p>3 commenters recommended that the Department's Office of Civil Rights should initiate more compliance reviews of school districts, colleges, and universities and should issue further guidance to schools clarifying what they can designate as participation opportunities under Title IX. Another commenter recommended that the Department should remind institutions that Title IX compliance requires equality in staff, including coaching staff.</p>
	<p>One commenter asserted that finances only indicate a potential for problems at an institution and recommended that a more complete report should be required every 3-5 years. The commenter believed that institutions should be required to complete a self-study assessing compliance with all three components of Title IX.</p>

	<p>One commenter recommended an increase in the responsibility of Title IX Coordinators in the review, verification, and use of the EADA information. The commenter suggested that the submission instructions be amended to require the Title IX coordinator to verify and affirm the validity of the data, and recommended that the school report full contact information for the Title IX Coordinator, as well as the institutional Website on which its EADA information is posted. Finally, the commenter recommended that if the Title IX Coordinator uses a committee, that the names and contact information of the committee members should be posted on the school's website as well.</p>
	<p>One commenter recommended that the report form and the public website should clarify that the information in the report is not the same data used for Title IX compliance purposes.</p>
	<p>One commenter recommended requiring institutions to define which of the three tests they are using to comply with Title IX when reporting their data.</p>
	<p>One commenter believed that access to institutional athletic committees is not gender-neutral and noted the need to increase female involvement in these positions.</p>
Other Comments	
	<p>A number of commenters raised concerns about the accuracy of the data. One commenter suggested that ED should develop an auditing process to ensure that all reported opportunities are genuine and not illusory - that institutions are not misreporting male practice players, cutting or adding students after the EADA reporting deadlines, or rostering students in name only.</p>

	<p>One commenter requested that the Department design the survey so that completing it provides institutions with the tools to make the information publicly available on their website.</p>
	<p>Numerous commenters stressed the need for greater enforcement of Title IX and for continued efforts to achieve equal opportunity on the playing field. These commenters cited the benefits of sports for girls and women, including leadership opportunities, better long-term health prospects, improved academic performance, and greater employment success.</p>
	<p>4 commenters asserted that similar data should be collected and posted for high school athletics programs.</p>
	<p>One commenter recommended that the Department convene a focus group with individuals who prepare the report to revise or expand the instructions for clarity.</p>
	<p>3 commenters believed that the Department should do more to publicize and highlight the data collected, noting the substantial capacity of the Data Analysis Cutting Tool. Along these lines, One commenter asserted that the Department should analyze and publicize the EADA data so that the public can better understand what is happening rather than what is presumed to be happening in collegiate athletics.</p>
	<p>One commenter recommended that the Department invite comments via a hotline or other means.</p>
	<p>One commenter asserted that no one requests the EADA report and suggested that schools have no way of knowing whether anyone has pulled up their school on the Data Analysis Cutting Tool or on College Navigator to review the EADA data.</p>
	<p>One commenter recommended requiring institutions to include a link to their EADA data on their athletics website so that the public may view and download the data.</p>

	<p>One commenter asserted support for the bipartisan High School Data Transparency Act (H. R. 455, S. 217), which would require high schools to report data on the number of male and female students participating in their athletic programs and expenditures made for their sports teams.</p>
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od of the Equity in Athletics Data Act (EADA) Collection Instrument

ster inviting comments on the proposed extension of the existing information collection required by the Euity in tely 1,500 comments in response to this Notice. The commenters provided feedback primarily on the content of ion of this data, and on the interaction between this data and Title IX of the Education Amendments of 1972. A nments follows in the table below.

Response

The HEA currently requires institutions to report data on their intercolleagiate athletic programs only by gender and not by race/ethnicity. We believe this would require a statutory change.

The Department's longstanding policy has been that male practice players on a women's team are counted as participants because institutions still spend money to support those players in the form of, for example, athletically-related student aid and coaching salaries. A change to this policy would require the Department to engage in a rulemaking process. However, we understand the commenters' concerns. As several commenters pointed out, institutions have for many years been able to note in the caveat box whether there was an opposite sex player on a team. For instance, institutions have had the option to specify for a women's team whether there were any male practice players and to provide other information that the institutions wish to clarify. We have updated the EADA User's Guide and Caveat Box to instruct institutions with an opposite sex player on a men's or women's team to state how many participants on that team are males and how many are females.

The regulations require that institutions report information on the total amount of money spent on athletically related student aid, aggregately for men's teams and aggregately for women's teams. Accordingly, this information continues to be collected in the EADA report.

Institutions currently report the number of participants on each varsity team. For instance, an institution would report the number of participants on its men's varsity soccer team and the total number of participants on its women's varsity softball team. The Secretary interprets participants to include all students who receive athletically-related student aid, in addition to students who practice with the varsity team and receive coaching from one or more varsity coaches as of the day of the first scheduled intercollegiate contest of the designated reporting year. In addition to reporting the number of men and women participating on varsity teams, institutions must report an unduplicated count of participants. This "head count" reflects situations where a student participates on more than one team.

The regulations define "institutional salary" as "all wages and bonuses an institutions pays a coach as compensation attributable to coaching." (See 34 CFR 668.47(b).) Accordingly, institutions report only the salaries and bonuses that they pay coaches specifically for coaching, and they exclude non-coaching income and fringe benefits. We note, however, that while benefits are not reflected in coaching salary categories, they would still be captured in the total expenses categories.

We thank the commenter for the suggestion. We will explore this further and make updates to the User's Guide in the future if determined necessary.

We stress that the EADA survey is not an accounting report; rather, it is more similar to an expenses and revenues report. We believe that institutions should indicate the source for funds that they expend. Therefore, it has been our longstanding guidance that institutions that earn revenue in a previous year should report it as revenue in the year they earned it and in the year in which they spend it. We believe that the recommendations from the commenters who asserted that including institutional support for specific sports teams as revenue does not provide a clear picture of how a team was funded and how much they earned in revenue would require regulatory change.

The Department believes that there are some types of revenues that cannot be allocated specifically to one team or sport. For instance, it does not make sense to allocate the athletic director's salary to a particular team when that individual works to support all of the intercollegiate activities at the institution. With regards to the second recommendation, in the preamble to the final regulations published in the Federal Register on November 29, 1995, we explained that we omitted capital expenses from the kinds of expenses to be included in operating expenses because the statute omits them. We believe that rulemaking would be necessary to change this position.

We note that institutions are currently required to report direct costs for physical facilities and upkeep, including overhead. The EADA User's Guide specifies that expenses not attributable to a particular sport, such as general and administrative overhead, must be included in the "Not Allocated" field. Institutions must not include in their total expenses indirect facilities costs, such as the value of facilities and services provided by the institution but not charged to athletics.

Very few, if any, institutions currently report coeducational sports such as men's and women's cross country and swimming together. This is because we interpret a team to be coeducational for EADA reporting purposes if the men and women on the team compete against each other as equals. Competitions rarely meet this criterion; therefore, in practice, men's and women's cross country and swimming are generally reported separately.

The implementing regulations for the EADA provisions specify that the data for these categories must include the number of persons and full-time equivalent positions used to calculate each average. (See 34 CFR 668.47(c).) We note, however, that the EADA User's Guide provides an FTE calculation table intended to support institutions in reporting this item.

Institutions report participants per team per reporting year. A reporting year means a consecutive twelve-month period of time designated by the institution for the purposes of the EADA. (See 34 CFR 668.47(b).) Accordingly, each participant would be counted once per year.

The Department's longstanding guidance, as described in the EADA User's Guide, has been that the first day of competition means the first scheduled intercollegiate contest that "counts." We note that while athletes who receive athletically-related student aid but are cut prior to the first scheduled day of competition are not reflected in the number of participants, they are reflected in the expenses categories.

We note that the EADA User's Guide does not currently specify how institutions should assess transportation costs for the purposes of EADA. However, as discussed elsewhere in this document, we may convene a group of individuals who report EADA data to the Secretary to determine where we may need to clarify the instructions for calculating the data elements.

The EADA requirements apply to all institutions that participate in the Title IV programs and that have an intercollegiate athletic program, regardless of whether they are private or public institutions, and the statute specifies what items these institutions must report. We note that the report already captures some of the information that the commenter mentions, including salary information for male and female coaching staff, and expenses and revenues of athletic teams.

In accordance with the regulations in 34 CFR 668.41, the EADA User's Guide currently states that athletically-related student is any scholarship, grant, or other form of assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution. The EADA User's Guide also specifies that other student aid, of which a student-athlete simply happens to be the recipient, is not athletically-related aid.

The Department acknowledges that the time burden may vary across institutions, with some taking more time and others taking less. We believe that our estimated average takes into account the diversity of the institutions required to complete an EADA report, in terms of the size of their athletic programs and their administrative capacities. We further note we have received very few comments indicating that our estimate is inaccurate since the collection began. As the information collected has not changed substantively in several years, we do not believe that a significant increase in the burden estimate is warranted.

The HEA requires institutions to make the information in the EADA report publicly available to prospective and enrolled students and to the public, and the Department does not have the authority to waive this requirement. We further note that the disclosure requirement allows students, families, and other stakeholders access to updated information much earlier than would be possible if the Department of Education's website served as the sole resource.

The EADA report is mandated by section 485(g) of the HEA. The HEA does not provide a waiver for institutions participating in an athletic association or conference to use that data in lieu of the EADA report.

The Department may in the future explore the possibility of developing a single report that would satisfy the requirements of the EADA and of an association such as the NCAA; however, we note that fiscal constraints and other challenges would need to be addressed. While the EADA is statutorily driven, the NCAA has flexibility to conduct its organization in way that is satisfactory to its members. The Secretary does not have the authority to dictate how outside organizations determine and implement their requirements.

We note that we provide worksheets to assist institutions in calculating the correct amounts to enter for each respective line item. These worksheets are available at <https://surveys.ope.ed.gov/athletics/WorksheetView.aspx>.

As noted, the law requires each coeducational institution that participates in any Title IV, HEA program and that has an intercollegiate athletic program to complete an EADA report. Therefore, the Department may not eliminate EADA reporting in favor of NCAA reporting.

The HEA requires institutions that are subject to the EADA requirements to annually disclose this information to prospective and enrolled students and to the public, and it specifies that institutions must report this information to the Secretary within 15 days of the disclosure. In developing the implementing regulations, the Secretary discussed the need to accommodate both institutions with a fiscal year that ends shortly before October 1 and student-athletes who must commit themselves to an institution in early November. We continue to believe that the end of October is an appropriate reporting deadline because it fulfills the intent of the statute that all prospective student athletes have this information available before they must commit to an institution. We do, however, note the commenter's request for an extended reporting window and will examine whether this would be possible for future years.

The HEA requires institutions to submit an EADA report to the Secretary within fifteen days of disclosing that information to prospective and enrolled students and the public. We note that institutions may opt to complete both of these requirements on the same date as long as they are in compliance with the regulatory deadlines.

The Department notes this significant showing of support for the EADA collection.

The regulations require institutions to make the EADA report easily accessible to prospective students, enrolled students, and public, and must provide the report promptly to anyone who requests it. The institution must notify all enrolled students of the availability of the EADA report and where to find it, and it must notify prospective students of their right to request the report. (See 34 CFR 668.41(g).)

The HEA requires institutions to make the information in the EADA report publicly available to prospective and enrolled students and to the public, and the Department does not have the authority to waive this requirement. We note further that a significant number of commenters asserted that the EADA data is highly useful and critical to many stakeholders. We will continue to improve the clarity of the instructions in the EADA User's Guide and the collection instrument where possible with the goal of ensuring comparability across institutions.

We appreciate the commenters' suggestions.

We thank the commenter for the suggestion; however, we note that the HEA does not currently require institutions to conduct such as assessment and the Department therefore does not have the authority to require institutions to do so.

We appreciate the commenter's suggestion and will review whether the collection of Title IX coordinator contact information and the website on which an institution discloses its EADA information would be appropriate under the statute.

We agree with the commenter's suggestion. We have added a statement to the log-in page for the survey (<https://surveys.ope.ed.gov/athletics/>), to the landing page for the Data Analysis Cutting Tool (<http://ope.ed.gov/athletics/>), and to the EADA User's Guide clarifying that the data reflected on these sites are provided by institutions in accordance with the EADA and may not be the same as data used for determining compliance with other Federal or state laws, including Title IX of the Education Amendments of 1972.

The EADA data collection is distinct from the assessment of compliance with the Title IX "Three Part test" conducted by the Department of Education's Office for Civil Rights. The Office for Civil Rights does not use EADA data to determine compliance with Title IX, as the two collections define terms differently and information about Title IX compliance would require institutions to provide data that are not required under the EADA.

We thank the commenter for the comment.

We thank the commenters for their suggestions for improving the quality of the EADA data.

The Department appreciates this suggestion to create an application that would provide a disclosure template for institutions upon completion of their EADA reporting. We may explore this possibility in the future.

We thank the commenters for their input.

The Department does not currently have the statutory authority to collect this information at the high school level.

The Department appreciates the suggestion to convene such a focus group and believes that this would support the desire to have comparable, consistent information across institutions. We may explore this possibility in the future.

We thank the commenters for their suggestions. We note that to supplement Departmental efforts to publicize the data, institutions, researchers, advocates, and other groups may wish to analyze and publicize the data as well.

We thank the commenter for the comment to create a hotline. We are interested in learning more about what the commenter has in mind for the purpose of such a hotline.

The HEA requires institutions to disclose to prospective and enrolled students and the public and report to the Secretary EADA information. We are interested in learning more about what the commenter has in mind.

The HEA requires institutions to disclose EADA information to prospective and enrolled students and the public; however, it does not specify that schools must provide a link to the EADA data on their athletics websites. Accordingly, we do not have the authority to require institutions to require institutions to do so.

The HEA does not generally govern the actions of high schools; however, we thank the commenter for sharing his opinion.