



**EXECUTIVE OFFICE OF THE
PRESIDENT
OFFICE OF NATIONAL
DRUG CONTROL POLICY**
Washington, DC 20503

Report on World Anti-Doping Agency Governance
as required by House Report 116-456
May 17, 2021

EXECUTIVE SUMMARY

The Office of National Drug Control Policy (ONDCP) is pleased to have this opportunity to update Members of Congress on the fight against doping and the ongoing efforts at governance reform within the World Anti-Doping Agency (WADA). As the sole international regulatory body against doping in sport, WADA has a unique responsibility to ensure that international competitions, especially the Olympic and Paralympic Games, are fairly conducted with the highest possible standards of integrity. Significant additional reforms to the way WADA is structured and operates are required to ensure that the organization is able operate with “independence and transparency of its operations, enhancing the role of athletes in WADA decision-making, and restoring confidence in clean competition.”¹ ONDCP recognizes that this degree of change is challenging to accomplish and will require dialogue and cooperation among all key stakeholders.

This Report provides an overview of the threat of doping and related corruption to sport (Section 1); then describes the progress of reform at WADA to date (Section 2); and follows with a discussion of the top ten reform challenges faced by WADA and its stakeholders, accompanied by a roadmap on how to begin addressing them (Section 3).

It is WADA’s job to monitor anti-doping programs including drug testing, not just during the Olympics, but year-round. Elite athletes who participate in doping often do so with the assistance of highly skilled scientists who carefully develop protocols to reduce or eliminate the chances they will be caught. These efforts at cheating may be instigated by and protected through the work of corrupt sport and government ministries, law enforcement, or intelligence agencies. WADA must ensure that all anti-doping programs are robust and effective; confirm that anti-doping laboratories can detect all forms of doping; and monitor the administration of tests around the globe. Considering this critical role, it is vital that every effort is taken by WADA to avoid even the appearance of any conflicts of interest. WADA has an important

¹ From House Report 116-456, which reads in part: “The Committee directs ONDCP to closely monitor WADA’s reform efforts to determine whether WADA is making sufficient progress in increasing the independence and transparency of its operations, enhancing the role of athletes in WADA decision-making, and restoring confidence in clean competition.” See page 42, [CRPT-116hrpt456.pdf \(congress.gov\)](https://www.congress.gov/116/hrpt/456/pdf/print/?date=20190901&from=openlaw&offset=0).

responsibility. The United States (U.S.) is deeply invested in WADA's success. American athletes, and those from around the world who dedicate themselves to years of training to reach an elite level in their sport, are counting on WADA to provide a level playing field at high stakes international competitions.

The approach of the Biden-Harris Administration is to work with WADA with a spirit of engagement and direct communication to improve the organization and in a sincere search for common ground for a way forward to ensure WADA is the type of global regulator that can meet the immense doping challenge. WADA is not responsible for the crisis that sports are in with regard to state-sponsored doping. In fact, as an institution, its appointees, staff, and expert advisors have all been working, often under tremendous pressure, to try to take on this enormous threat. Nonetheless, the challenge to the organization is daunting, and the need to make sure every element of the organization is set up for success is great. The mission of controlling doping in sport is a critical and difficult one. When sovereign governments are willing to conspire with, or coerce athletes to cheat by doping, and bring into this criminal enterprise the financial, bureaucratic, and technical capabilities of government agencies, as well as to recruit into their scheme the anti-doping lab directors and technical staff who are trained to serve as the country's top experts on how doping control programs and WADA work, the threat to the integrity of sport is immense.

The core question with regard to WADA reform is not whether or not it is possible for the organization to make necessary reforms; it has already shown a willingness to do so. Those steps are appreciated and recognized. Rather, the fundamental issue is whether, as WADA proceeds forward with incremental reforms, this momentum for reform will grow to the point where it can bring fundamental change to the organization. As discussed throughout Section 3 of the report, WADA and its stakeholders have substantial challenges it needs to take on, most critically the inherent conflict of interest that comes with giving representatives of the Olympic Movement, essentially the industry that WADA is seeking to regulate, such strong decision-making influence within the organization. The individuals appointed by the Olympic Movement to serve within WADA are generally hard working, experienced, and capable, with deep backgrounds in sport. However, by embedding within WADA a voting majority from the industry being regulated, the organization's founders (including the U.S.) built into its governing bodies a conflict of interest. This opens the organization to external skepticism on whether decisions are made solely to promote the integrity of sports. The leaders, staff, and experts and WADA today are not responsible for this organizational decision in the 1990s; however, they are forced to make the organization function well and to manage through this vulnerability and initial error.

This Report includes a discussion of a proposed way ahead for the U.S. Government to most effectively pursue the important reform objectives advocated by Congress and strongly supported by the Biden-Harris Administration. ONDCP is grateful for the very strong support of Congress on this subject, and is committed to continuing to consult closely as we work to move forward on this issue.

INTRODUCTION

Since WADA's founding in 1999, the U.S. Government has been an active member of WADA, having served over the years on its two governing bodies, the Executive Committee and the Foundation Board. Public authorities such as the U.S. at times rotate off these institutions to give others from the same geographical region the opportunity to serve. The U.S., due to its major role in global sport, as well as being the single-largest government base dues payer of WADA,² has long served on the WADA Foundation Board. However, the U.S. has not been able to rotate back on to the WADA Executive Committee since 2015, and that appears unlikely to change near-term given a rule change in 2015.³ The WADA Executive Committee has significantly more decision-making authority and influence than the Foundation Board. Regardless, the U.S. will continue to work with other public authorities and WADA stakeholders to communicate our priorities and to seek common ground for needed reforms to the organization.

The U.S. Government, with ONDCP's assistance, has created an independent National Anti-Doping Agency in the United States Anti-Doping Agency (USADA), which is recognized as a world leader in protecting the rights of clean athletes and the fairness of sport competition. The U.S. Government is also a signatory to the United Nations Educational, Scientific and Cultural Organization (UNESCO) Treaty Against Doping in Sport an international agreement upholding the principles of fair competition.⁴

The U.S. must continue to be a leader in the anti-doping fight, as we are an important sporting nation and the home of many of the world's most talented and decorated Olympic and Paralympic athletes. Their right to compete and win under the rules of sport in a clean, healthy and safe way is an important priority for the U.S. It is also critical because the summer Olympic and Paralympic Games in 2028 will be hosted in Los Angeles, California. With our collective determination here in the U.S. and in conjunction with our global partners, including what we hope will be a reformed WADA to take on today's challenges, we can work to ensure that the 2028 Summer Olympic Games are the fairest and cleanest Games ever. ONDCP recognizes the need to work closely with athletes, anti-doping organizations, and other like-minded partners around the world. Doing our part to protect and support clean competition is a responsibility we

² Congress appropriated up to \$2.932 million in funding to WADA for FY 2021 payable through ONDCP. See Division E of Public Law 116-260, the *Consolidated Appropriations Act, 2021*, <https://www.congress.gov/bill/116th-congress/house-bill/133/text/pl?overview=closed>. The top contributors to WADA are: (1) United States - \$2,931,923; (2) Japan - \$1,502,800; (3) Canada - \$1,465,962; (4) France - \$1,091,877; (5) Germany - \$1,091,877. *Contributions to WADA's Budget 2021*, World Anti-Doping Agency, (April 9, 2021) available at, [wada-contributions-2021-update-en-1.pdf \(wada-ama.org\)](https://wada-ama.org/wada-contributions-2021-update-en-1.pdf). Note that if in kind contributions are counted Canada, which hosts and supports the headquarters of WADA in Montreal, could be considered the largest total funder of WADA.

³ Section 6 of the Statutes of the American Sports Council (Consejo Americano del Deporte, CADE) states that the President of CADE will "be the legal, judicial, and extrajudicial representative of CADE before any international body or any dependency that requires the representation of the governmental sector of sport in the Americas."

⁴ UNESCO International Convention against Doping in Sport 2005, full text of the convention can be found at, [International Convention against Doping in Sport \(unesco.org\)](https://unesco.org/international-convention-against-doping-in-sport).

take very seriously. As we detail in this report, some progress has been made in reforming WADA; however, WADA and its stakeholders still have much more work to do.

Since ONDCP's June 2020 report to Congress,⁵ WADA has initiated a new governance reform review process. This process is assessing what additional governance changes are necessary and is still ongoing. This was a good step by WADA. While the U.S. is not represented on the formal governance review working group, we have been very active in advocating for substantial reform, working with our global government partners at WADA as well as with USADA, the United States Olympic and Paralympic Committee (USOPC), and the Athletes' Advisory Council.

We are hopeful that WADA's ongoing governance reform process, with the active engagement of the United States and other participants, will catalyze major reform. However, there are serious systemic challenges to WADA's current governance model based on how the organization has been structured from its origins. The founders of WADA, including the United States, are responsible for those early structural decisions, not the current WADA leadership, appointees, or staff. However, the United States, its domestic partners, and international allies are committed to working with all stakeholders in good faith, including the Olympic and Paralympic Movement that has unique knowledge of global sport at the highest levels, to find a way forward to permanently correct mistakes from two decades ago, in order to best protect athletes' rights and fair competition around the globe.

⁵ [ONDCP WADA Congressional Report 20200617 \(usada.org\)](https://www.usada.org/2020/06/24/ondcp-wada-congressional-report-20200617)

SECTION 1

The Threat to Sport, American Athletes, and the United States

Neither doping in sport, nor sports-related corruption, is a new threat to American athletes or the United States, but it remains a substantial and serious threat. While no country, including the United States, is immune to the threat of doping, a system must be in place to effectively deter this fraudulent activity, to detect it and sanction it when athletes, coaches, sport or government officials choose to undermine sport by doping athletes or assist in any way in concealing such cheating.

We know Russia ran a sophisticated state-sponsored doping program for years.⁶ Their long-standing success at defrauding the world, and in large part getting away with it, is deeply troubling. The Russian government funded and orchestrated fraud reflects their longstanding approach to sport and it is difficult to conclude that the behavior has truly changed today. Further, the on-going efforts by Russian officials to minimize the extent of their doping fraud, the lack of contrition for the large-scale injustice to athletes and the sporting community, and the recent evidence of ongoing doping behavior and interference with the Russian National Anti-Doping Agency (RUSADA) suggests that there is much still to be done.⁷

Russia's state-sponsored doping program, prior to and during the 2014 Winter Olympics and Paralympics in Sochi, is a particularly appalling example of the well-orchestrated state-sponsored doping scheme. Russia's offenses, before, during, and after Sochi, send a clear message on the urgent need for international institutions such as WADA to upgrade how they operate to combat this serious threat.

Russia's historic theft of medals from American and other deserving athletes worldwide through a comprehensive state-sponsored doping conspiracy has had real and devastating consequences, for honest athletes and for their countries. Back in 2010, at the Vancouver Winter Olympic Games, Russia won just 15 medals total, 3 of which were gold. Four years later in Sochi, the Russian hosts won the overall medal count and were initially awarded 33 total medals, including 13 gold medals, a stunning and, as it turned out, unsustainable and undefendable result. Equally disturbing was the doping prior to and during the 2014 Sochi Paralympic Games. The level of fraud and corruption led the head of the International Paralympic Committee to state, "Their medals-over-morals mentality disgusts me."⁸

This outcome in Sochi, as intended, brought glory to Russia and its leadership. As evidence emerged years later that the Russian medal count was the result of cheating organized by state authorities', some Russian athletes were stripped of their medals, and deserving athletes were

⁶ In 2008, a 16-month investigation conducted by the International Association of Athletics Federations (IAAF) resulted in the doping suspension of seven female Russian track and field athletes, five of whom were Olympians.

⁷ Five Russian Athletics Federation officials were sanctioned by the Athletic Integrity Unit (AIU) with four-year bans. See [AIU sanctions show WADA was correct to sanction Russia - Sports Integrity Initiative](#) (February 19, 2021).

⁸ - [Paralympic Chief on Doping: 'Medals Over Morals Disgust Me' \(nbcnews.com\)](#).

awarded the medals they earned. The United States emerged with the most medals, but only years after the Olympics were completed. Importantly, some Sochi results are still in dispute, and many athletes still have not received the medals they fairly earned during a Winter Olympics that took place seven years ago. Through the course of the scheme including Sochi, there were dozens of doped athletes that got away with it, leaving many athletes still waiting for justice, which sadly may never come.⁹ In part, this happened because of the Russians' comprehensive cover-up, including through the intentional manipulation of the Moscow laboratory database, which they were required to turn over to anti-doping authorities.¹⁰

The U.S. was not the only country which paid a price for Russia's sporting crimes. Other countries and international athletes were also deprived of the success and recognition they deserved. Although, as referenced above, some athletes did receive medals belatedly, even for those who received justice, the benefits to the athletes can be substantially reduced. Especially in a country like the U.S., where Olympic and Paralympic athletes may have limited prospects for income from their athletic achievements, the chances for sponsorships, speaking opportunities, and other paid work that often comes with medaling in the Olympics and Paralympics may have been affected directly by the consequences of doping.¹¹

Of course, the injustice of being denied a fairly earned victory is a heartbreak to any Olympian or Paralympian, their families, and their teammates that may never be made whole. The country as a whole also pays a price. Fewer sports role models are produced, and patriotic celebrations do not occur because of the many years of delay before their achievements are recognized. The experience of Olympian bobsledder Steven Holcomb, who did not live long enough to receive the medal he earned in Sochi, is an important example to keep in mind.¹²

The consequences of cheating go far beyond the individual athletes harmed. There are also long-term consequences for any nation robbed of the chance to celebrate its sports heroes. Results in international competitions affect perceptions of government competence; influence investment, tourism, and travel; and provide a measure of a society's level of success. As well, the fans who spend time and energy to watch and cheer for their sporting heroes are robbed, as are the companies and governments that invest hundreds of millions of dollars into Olympic and

⁹ Biathlon was a target of Russia for medals in the 2014 Sochi Olympics and a focus of doping. See Katie Uhlaender Testimony, Helsinki Hearing, State of Play, *available at*, [X:_HS\work\29393.txt \(csce.gov\)](X:_HS\work\29393.txt (csce.gov)) (July 25, 2018).

¹⁰ "In September 2018, WADA's Executive Committee (ExCo) reinstated the Russian Anti-Doping Agency (RUSADA) to the list of Code-compliant Signatories, see https://www.wada-ama.org/sites/default/files/20191209_crc_recommendation_final.pdf (December, 09, 2019).

¹¹ Alysia Montaño, who received a belated medal was cheated out of multiple years of rollover bonuses and increased base pay. Erik Kynard, USA Track & Field Athlete, received a belated gold medal for the high jump at the 2012 London games. Kynard stated "nobody cares...it doesn't mean anything right now." *available at*, [2020 Olympics: Erik Kynard Q&A - Sports Illustrated](#) (July 26, 2019). Chaunte Lowe, USA Track and Field, found herself going from 6th to 3rd in the 2008 Olympics in Beijing as the three competitors ahead of her failed retroactive doping tests. "Man, I wanted to get that feeling of being on a podium...I was robbed of that." *available at*, [Olympic Medal, Earned; Glory, Denied; Future, Uncertain - The New York Times \(nytimes.com\)](#) (July 7, 2017).

¹² In Sochi the two-man bobsled team of Steven Holcomb and Steve Langton initially finished third in the two-man event, behind first-place Russia and second-place Switzerland. In 2017, after reanalysis of samples from Sochi, gold-medal winning Russians Alexander Zubkov and Alexey Voevoda were disqualified for doping offenses and stripped of their medals. Following the exhaustion of appeals, the Americans officially became the silver medalists.

Paralympic sport. These investors including the broadcasters, simply put, do not get what they pay for.

The entire world should be grateful that this sporting crime was exposed through the courageous acts of whistleblowers, all of whom put their lives at risk by cooperating first with the media to reveal the truth, and then with the various WADA investigations that were formed in response to the media revelations. Russia almost got away with it, and although many individual cases are still unresolved, it's important that a deeper understanding of the threat has been gained.

After the 2014 Winter Olympics in Sochi, Yulia Stepanova, a former Russian track star, and her husband Vitaly Stepanov, a former doping-control officer for RUSADA, initially exposed the Russian government's vast state-sponsored doping system in a televised German documentary, which led to further revelations by Dr. Grigory Rodchenkov. Dr. Rodchenkov, the former head of Russia's national anti-doping laboratory, fled Russia in fear for his life, taking with him comprehensive digital records. If these three brave whistleblowers had not stood-up and mustered the courage to speak the truth, the world might have never known about the Russian scandal. This remarkable cheating scheme, portrayed in vivid detail in the 2018 Oscar-winning documentary "Icarus",¹³ and described in Rodchenkov's book,¹⁴ have led to important new authorities being granted to the U.S. Department of Justice in the Rodchenkov Anti-Doping Act of 2019.¹⁵ Dr. Rodchenkov, in particular, has explained very clearly that doping in sport should not be thought of as the individual actions of athletes, but rather part of a complex conspiracy with many key actors behind the scenes orchestrating events with technical proficiency, careful planning, and state power.

Specifically, the new law—which does not apply to athletes—imposes a criminal penalty of up to 10 years and a fine up to \$250,000 for individuals who conspire to influence the results of any major international sports competition through the use of a prohibited substance or method to defraud sport. By legally defining doping as fraud, since such crimes defraud athletes' prize money and sponsorships, it extends the substantial whistleblower protections in U.S. law to those who provide useful information to law enforcement in prosecuting these cases. The Rodchenkov Anti-Doping Act, which was passed unanimously by both the House of Representatives and the Senate, can be applied internationally where U.S. money is invested to broadcast or sponsor the competition and where U.S. athletes compete. Dr. Rodchenkov, due to credible threats on his life, had to enter U.S. witness protection program, but thanks to his courage and his unique depth of personal knowledge of these sporting and other crimes, Americans and the world now know the truth of the challenge we face.

This is not just an international threat tied to international competitions. Countries have their own responsibilities to institute good domestic anti-doping practices and to conduct regular

¹³ For his 2017 American documentary Bryan Fogel enlists the help of Dr. Grigory Rodchenkov, then head of the National Anti-Doping Laboratory of Moscow, *available at*, [Icarus \(2017 film\) - Wikipedia](#).

¹⁴ After fleeing Russia for the U.S., Dr. Rodchenkov wrote an account of what is now known as the greatest doping scandal in sports history, detailing his role in Russia's state-sponsored doping program, *see* <https://athleticsillustrated.com/book-review-the-rodchenkov-affair-how-i-brought-down-putins-secret-doping-empire/>.

¹⁵ Rodchenkov Anti-Doping Act of 2019, Public Law 116-206 *available at*, [congress.gov](https://www.congress.gov) (Dec. 4, 2020).

testing for prohibited substances and methods and otherwise hold cheaters accountable. When National Anti-Doping Organizations (NADOs) are doing their job, cheating is prevented, and those who choose to cheat are detected, exposed, and sanctioned. Many countries have competent NADOs, including the United States; since its creation at the end of 2000, USADA has long set the standard for excellence and integrity among NADOs. USADA has also confronted sophisticated and professionalized doping schemes before, albeit none that were state-sponsored and on the magnitude of what the Russians perpetuated. For example, in the Lance Armstrong case, USADA showed the world that the U.S. is serious about its commitment to fairness in sport and clean athlete's rights, and that the U.S. will always try to do the right thing even when it is difficult or involves a global icon and sporting hero. No one should be above the rules or too big to be held accountable to the rules.

The Global Threat

The U.S. is working seriously on both the issue of doping, at home and abroad, and the wider criminal threat of sport related crime. However, because so many of the most important and highest visibility sporting competitions are international, it is important that all nations take these obligations seriously and bring athletes, coaches, sport officials who cheat and other sporting criminals who operate within their borders to justice. When countries are unwilling or unable to act to prevent and sanction these violations, WADA, as the global-regulator, must take decisive action on specific offenses, as well as support efforts to ensure that national shortcomings are permanently addressed. Most of the countries that participate in the Olympic and Paralympic Games have also entered into the UNESCO Treaty Against Doping in Sport, and have agreed to support NADOs and uphold the anti-doping rules to ensure that all athletes from across the globe have a global level-playing field, not just a level playing field in their own countries.¹⁶

Also, there are two specific resolutions on this subject that are included in the United Nations Convention Against Corruption. Resolution 7/8 on Corruption in Sport and 8/4 on Safeguarding Sport from Corruption. In addition, the United Nations General Assembly has approved Resolution 73/24 *Sport as an enabler of sustainable development*, and Resolution 73/190 *Preventing and combating corrupt practices and the transfer of proceeds of corruption, facilitating asset recovery and returning such assets to legitimate owners, in particular to countries of origin, in accordance with the United Nations Convention against Corruption*.

As outlined in a United Nations Office of Drugs and Crime document:

“From a societal perspective, sport plays a vital role in modern contemporary society as evidenced by its prominence in the media, which may even devote more coverage to sport than to politics or economics. For many people, sport forms an integral part of daily life, whether as active

¹⁶ United Nations Convention against Corruption, available at, [International legal framework \(unodc.org\)](https://www.unodc.org/).

participants or passive spectators, sport provides countless positive impacts on society.”¹⁷

The American people, today’s and tomorrow’s athletes, and sponsors investing in sport deserve clean sport. The U.S. takes our obligations seriously and will continue to partner with those, at home and abroad, who share this commitment. The further corruption of international competitions through criminal conspiracies, that might involve match-fixing, bribery, and other sports related corruption and crime, is a serious and growing concern. In cases where such conspiracies directly affect American interests, the U.S. Department of Justice will not hesitate to use the new international authorities provided by the Rodchenkov Anti-Doping Fraud Act to bring violators to justice.

The Department of Justice and its Federal Bureau of Investigation (FBI) have taken steps to address this complicated landscape through increased outreach and partnership with domestic and international sporting organizations, other local and federal law enforcement, and domestic and international Integrity watchdog organizations. An *Integrity in Sport and Gaming* program has been developed within the FBI’s Transnational Organized Crime-Global Section. This unit, collaborating with its domestic partners including USADA, leverages the developed international law enforcement partnerships to disrupt and prosecute the transnational threats and corruption elements that prey on the societal institutions of sport. This tool will be a great asset to WADA’s goals and will support its vital mission.

The U.S. Department of the Treasury retains an array of tools and authorities, including targeted financial sanctions that may be directed against foreign actors involved in a wide range of corrupt international actions, including sports related corruption and/or doping. Once sanctioned, foreign persons with assets that are in the U.S., or in the possession or control of U.S. persons, are blocked. Sanctions generally prohibit all dealings by U.S. persons or within (or transiting) the U.S. that involve any property or interests in property of blocked or designated persons. Further, any foreign person who materially supports or knowingly facilitates a transaction for or on behalf of sanctioned persons risks being sanctioned themselves.

The American Commitment to Clean Sport

The U.S. projects its values and principles in the world through soft power that is demonstrated through our country’s achievements in a variety of fields, including in sport. Sport is a global good that brings economic, cultural, and social benefits to nations. Doping, as well as other corruption and crime in sport, undermines sports’ ability to achieve that potential. When American athletes compete and win the right way in international sports competitions, their successes strengthen how the country as a whole is perceived, both at home and abroad. However, state-sponsored cheating in sport, whether through doping, bribery, or other corrupt acts, can deprive the U.S. and other countries of fairly earned accomplishments, while bestowing them on global competitors seeking to bolster their regimes through cheating. Such state-

¹⁷ United Nations Programme on Safeguarding Sport from Corruption and Crime, *available at*, <https://www.unodc.org/unodc/safeguardingsport/index.html>.

sponsored doping also robs U.S. athletes of their ability to be sports heroes and role models domestically and internationally.

An international anti-doping regulator is charged with taking on doping issues in a fair, efficient, and timely fashion. The next section of this Report describes and assesses WADA reform efforts since the last ONDCP Report submitted to Congress in June 2020.

SECTION 2

Progress to Date

In Section 2 of the Report, ONDCP will share the steps taken by WADA over the past year, describing these steps briefly, relying in large part on WADA’s own reporting. We will focus on recent reforms that are either already completed as well as ones, although not yet complete, appear to be on track for formal adoption this year. A summary of earlier reforms is available on WADA’s web site.¹⁸ The five topics, where there has been relevant recent action by WADA and are discussed below are:

- *Formation of an Independent Ethics Board and Ethics Code*
- *United States Representation within WADA*
- *Attempts to Increase Independent Voices at WADA*
- *Role of Independent Athletes*
- *WADA’s Approach to Subsequent Governance Reforms*

Formation of an Independent Ethics Board and Ethics Code

After initially committing to a plan to draft and adopt a Code of Ethics and process for handling ethics complaints in 2018, a full draft *Code of Ethics* and proposal to form an *Independent Ethics Board* were submitted to the WADA Executive Committee in September 2020 and to the Foundation Board in November 2020. WADA’s process was to provide an opportunity for a variety of stakeholders, including public authorities such as the U.S., to review and comment on the proposals. The goal is to have a proposal presented to the Foundation Board in May 2021. The U.S. was an active participant in this consultation process. We expect that a revised proposal to establish a WADA Code of Ethics and an Ethics Board will be formally approved in 2021, and full implementation will begin soon after enactment.

The U.S. identified priority issues and concerns in our response to WADA’s ethics reform survey. Our comments and recommendations emphasized how important a strong, transparent, and enforceable approach to ethics is to strengthening WADA’s governance. We noted that WADA’s Ethics Board should be 100% independent, transparent as to its requirements and procedures, and free from political influence, particularly in cases where an ethics matter might involve any person with a formal role on the Foundation Board, Executive Committee, or one of WADA’s Standing or Expert Committees. In addition, our comments included the following recommendations:

- **Independence:** The WADA Ethics Officer should not formally work for or report to either the Executive Committee or the Foundation Board. Rather, the Ethics Officer—who will investigate specific issues that arise—should be selected by the Ethics Board, work for

¹⁸ [Governance | World Anti-Doping Agency \(wada-ama.org\)](https://www.wada-ama.org/en/governance).

an independent organization separate from WADA, and be responsible for coordinating matters related to breaches of the code. The Ethics Officer can brief WADA periodically to keep management up to date.

- **Conflict of Interest Policy:** WADA needs a much more robust and clearly defined Conflict of Interest Policy, which should be set forth in full within its Code of Ethics so that all basic ethical rules are readily accessible in a single document.
- **Confidentiality:** The WADA Code of Ethics should include strong protections for whistleblowers and against retaliation. It should also include a clear exception to confidentiality for reporting to: law enforcement, regulatory authorities, the WADA Ethics Officer and Ethics Board.
- **Selection Process of Ethics Board:** The Code of Ethics should make it clear that the WADA Nominations Committee, which itself must have a high degree of independence, has the sole authority to recruit and vet members of the Independent Ethics Board and that WADA Executive Committee should not have a formal role in the appointment of these individuals.
- **Rules of Procedure for Ethics Complaints:** The draft rule provides, “The Ethics Officer shall inform the person who is the subject of a complaint.” The final rule should be clarified to make clear that the Ethics Officer may choose when, during the course of their investigation, to inform the person that they are the subject of a complaint and need not do so at the outset of the investigation.
- **Referral to Criminal Authorities:** The draft rule states: “The Ethics Officer is not entitled to report a complaint to the criminal or other authorities.” The rule should be amended to permit reporting to any applicable law enforcement or regulatory authorities. Criminal misconduct should be reported at the earliest possible stage.

The U.S. will continue to work within WADA to develop a strong and clear written Code of Ethics and an Independent Ethics Board. Assuming the final product is of high quality when the proposal comes before the Foundation Board this year the U.S. looks forward to being able to formally support the adoption of this important governance reform.

Assessment: Significant ethics reform, if accomplished near-term, will reflect an important step forward in WADA’s accountability. The U.S. will use its voice within WADA to advocate and support for ethics reform. Until a final proposal is enacted we will reserve comment on assessing progress on this important anticipated reform.

United States Representation within WADA

WADA appointed additional U.S. members to its advisory Standing Committees, a welcome and appreciated step. As of the beginning of 2021, the U.S. has more representation on WADA Standing Committees than any other nation. There are now four Americans serving on Standing Committees, representing an increase from just one last year. The first two appointees (listed below) were selected directly from the joint recommendation of ONDCP, USADA, UPSPOC and U.S. athletes. The additional two members from the U.S. appointed by WADA were recommended by international sport bodies. Their roles and background are as follows:

- The Athlete Committee includes former two-time U.S. Olympian, Dr. Jeff Porter.
- The Health Medical and Research Committee now includes Dr. Matthew Fedoruk, the Chief Science Officer at USADA. Dr. Fedoruk was also appointed to chair an expert group to identify lessons learned from drug testing for doping during the pandemic.
- The WADA Finance and Administration Committee includes four-time U.S. Olympian, Lauryn Williams and the head of World Lacrosse and Olympian, James Scherr.

In addition to these new appointees, there are currently 11 other U.S. representatives, including current and former U.S. Government officials, serving on various WADA expert advisory and *ad hoc* working groups. The percentage of members from the U.S. on WADA Standing Committees (13.5%) is just under the proportion of funding WADA receives from the U.S. (14.5%). Approximately the same percentage of U.S. representatives serve across all WADA committees and Expert Advisory/Working groups.

As referenced above, the U.S. does not have a path to rotate back on the WADA Executive Committee. We recognize that there are many more dues-paying Members of WADA than available seats, and we therefore do not expect to always have the opportunity to serve on this group. However, we would welcome a dialogue with WADA colleagues that would result in a predictable process through which we would get a fair chance to represent the U.S. on the Executive Committee.¹⁹

Assessment: *There has been notable advances in the total number of U.S. representatives in WADA Standing Committees and other advisory groups. The recent addition of more independent appointees on WADA bodies is important; however, these appointees should have real opportunities to influence the work and recommendations of the body on which they serve. No appointee or expert working within WADA should expect to always get their way or to dictate outcomes, but neither should they be asked to commit their time and energy if they are not able to influence the decision-making process of the body on which they serve. With regard to the U.S. role on the Executive Committee, we will continue to confer with public authorities and*

¹⁹ “The Foundation Board delegates to an Executive Committee of twelve members, the majority chosen from amongst the Foundation Board members” the actual management and running of WADA. WADA Statutes, Article 11, available at, [ANTOINE ROCHAT \(wada-ama.org\)](http://wada-ama.org).

other stakeholders on a mechanism that would allow the U.S. to have the opportunity to rotate back on to the Executive Committee.

Attempts to Increase Independent Voices at WADA

WADA has pledged to implement a number of steps in an effort to strengthen its governance structure, including actions intended to reduce undue influence by sports organizations with a direct financial interest in WADA decisions. After approval in 2018, WADA’s Executive Committee added two additional members to the Executive Committee on March 1, 2021. These two members were appointed—one selected by governments and one by the International Olympic Committee (IOC)/sports movement of WADA. There was some debate whether these experts qualified as ‘independent’, but after a legal opinion was received, it was determined that they met the definition of WADA independence. These two new members are:

- Ms. Gabriella Battaini-Dragoni (Italy) a former Deputy Secretary General of the Council of Europe; and,
- Dr. Patricia Sangenis (Argentina), a fellow at the American College of Sports Medicine.

After appointment for selection by the governments and IOC/sports movement, respectively, both individuals were vetted by the WADA-appointed Nominations Committee to ensure they were qualified.²⁰ The two new appointments serve alongside five officials from public authorities (one from each region), five sport institution representatives, and the President and Vice President of WADA.

WADA has also issued new by-laws on independence that are now in effect. The by-laws on Independence define a “General Standard of Independence” which applies to all individuals covered by WADA Regulations.²¹ These by-laws specifically mandate that WADA’s President and Vice President may no longer have any current affiliation with government or sport institutions. The two most senior leaders at WADA are now prohibited from fulfilling any duty or responsibility to, or holding office, or formal relationship with any sports institution, government or public corporation while concurrently serving at WADA.²²

***Assessment:** The appointment of the two highly respected individuals to the Executive Committee Members adds to the expertise within WADA. However, both have longstanding ties to prominent sports or multilateral organizations that are already well represented within WADA. It is perhaps unfair to ask them to serve as truly independent representatives. Also, ONDCP believes the General Standard of Independence adopted by WADA should be replaced by a*

²⁰ Two new candidates put forth by the governments, but not voted on. The lack of transparency in this process was raised by the governments at the WADA Foundation Board in November 2020.

²¹ “An individual is considered independent when he/she is independent in character and judgement and there are no relationships or circumstances which to an informed third party could affect, or could appear to affect, the individual’s judgment. Membership of a sport organization or of a Public Authority is not against the General Standard.” See [consolidatedregulations_october2019_clean_final_withdisclaimer.pdf \(wada-ama.org\)](https://www.wada-ama.org/en/resources/consultation/consolidatedregulations_october2019_clean_final_withdisclaimer.pdf).

²² Implementation of the provision must be transparent so all WADA stakeholders can be kept up to date.

stronger Conflicts of Interest Policy so that it is clear that every WADA appointee is obligated to serve in the best interests of the organization and its mission, regardless of background or affiliation. This is discussed in Part 3 of the report.

Role of Independent Athletes

Athletes serving on the Governance Review Working Group and the WADA Athlete Committee are working on reform by adopting a representational framework for the committee's own composition and exploring options to further increase the role of athletes within WADA's governance. In 2020, the Athlete Committee established an Athlete Representation Working Group to develop and present recommendations on how to best enhance athlete representation throughout WADA. The aim of the Athlete Committee is to deliver an update to the Executive Committee and Foundation Board in May 2021 and to seek approval in November 2021 of a concrete proposal for athletes to select their own independent representatives.

Assessment: Progress is modest, with more work to do. Additional advancement is dependent both on WADA embracing more proactive reforms, and on international athletes developing a consensus among themselves on how they can appropriately elect their representatives. These subjects are discussed further in Section 3 of the report.

WADA's Approach to Subsequent Governance Reforms

In November 2020, a Working Group on the Review of WADA Governance Reforms (Governance Review WG) was established to assess reforms accomplished to date and to guide WADA on additional governance changes required. The Governance Reform WG consists of a small group of WADA appointees (two from the government, two from sport, and two athletes along with a Chair) tasked to assess the implementation of the reforms adopted to date and recommend additional reforms. Two of the seven members of this working group are athlete representatives. These athlete representatives (a Paralympian from Canada and an Olympian from the United Kingdom) were asked to serve by the current WADA Athlete Committee.

The Governance Reform WG has met regularly during the past six months and is currently evaluating submissions from stakeholders as part of a global consultation process. During this process, WADA sought input from anti-doping stakeholders as well as the public. The survey instrument solicited advice on numerous governance topics, including the role of athletes within WADA. The submissions from stakeholders will be published on WADA's website following the next WADA Executive Committee meeting on May 20, 2021. According to WADA, the Governance Review WG received more than 2,300 comments from nearly 60 stakeholders.²³ In addition, 10 different athlete groups provided recommendations. ONDCP submitted extensive comments for the United States, some of which are highlighted in Section 3 of this Report. The Governance Review WG will report to the WADA Executive Committee at its upcoming

²³ WADA has the constructive and clearly disclosed process to make stakeholder submissions public unless the stakeholder requested that it not be. These submissions should be made public as soon as feasible so all stakeholders can benefit from the effort put in to them.

meeting in May. WADA's governance bodies are expected to hold preliminary discussions based on the report made by the Governance Review WG, which intends to hold a second round of consultation in the fall. The WADA Foundation Board is expected to adopt a second phase of reforms at its scheduled meeting in November 2021.

***Assessment:** The potential for progress is real, and this potential can be actualized when possible reforms are turned in to concrete proposals and a majority emerges within WADA's Executive Committee and Foundation Board to support them. Reforms to bring about real change would reduce the influence of those that currently hold seats on these WADA governing bodies. Progress may be difficult to achieve until WADA decides as an institution to empower enough independent voices inside the organization to represent a voting majority on important decisions. The U.S. will continue to do its part by helping to shape concrete proposals that can be voted on within WADA and by working constructively with all stakeholders who want to see an effective, democratic, transparent WADA. The content of the proposals that come before WADA for a vote, and the outcome of those votes, will be the best test whether WADA is making sufficient progress in increasing the independence and transparency of its operations, enhancing the role of Independent Athletes in WADA decision-making, and truly restoring confidence in clean competition.*

SECTION 3

Ten Challenges

As referenced in the previous sections of this Report, in November 2020, WADA established a Governance Reform WG to build on initial governance reform efforts that emerged in the aftermath of the Russian state-sponsored doping scandal. WADA reports that this group of appointees has been meeting and consulting with a variety of stakeholders among governments, athletes, and sports organizations. A critical part of this consultation was the development of a detailed survey for all stakeholders on priorities for reform.²⁴ The U.S. Government, with the advice of our national partners USADA, the USOPC, and Athletes' Advisory Council, as well as insight shared by key international governmental allies, provided a detailed response to the WADA governance survey.

We were pleased with the opportunity to participate in the survey²⁵ and believe it was very helpful in focusing on needed changes and putting ideas and specific recommendations in writing. Soliciting input from a variety of sources is a useful and appropriate process; however, the best test is how that feedback is evaluated and transformed in to concrete proposals for reform that can be voted on, approved, adopted, and implemented by WADA. This is a complex task. The hundreds of responses submitted may include not just substantial proposals for reform, but also suggestions which could preserve elements of WADA's foundational structure that raise concerns about conflicts of interests in its decision-making process.

ONDCP is hopeful that major reforms will emerge from the current round of governance reform discussions. The U.S. will work constructively to add its voice to others who also want to strengthen WADA. We intend to consult directly and in good faith with the Olympic Movement, athletes, sponsors, and other stakeholders both inside and outside the confines of formal WADA meetings.

ONDCP appreciates that some of the challenges described in this report, and the U.S. proposals to address them described below, represent significant change to the current structure of WADA. Nonetheless, we believe these changes—a roadmap to a new WADA—are needed to address structural flaws within the organization. Given this, ONDCP feels that it is beneficial to describe specifically the elements needed to truly reform WADA into the modern institution that can best fulfill its promise for clean and fair sport. The discussion below presents the beginning of a reform roadmap on how WADA can accomplish its important tasks as a modern, global regulator.

Just as the sports and doping world has changed a great deal since WADA was initially established in 1999, society's understanding of the core elements of an effective, modern, responsive organization has also changed. For example, the need for high ethical standards,

²⁴ The governance survey did not include questions on ethics or the Court of Arbitration for Sport. Public authorities had the opportunity to respond to an ethics specific survey. However, stakeholders, including the U.S., also referenced ethics and the need to reform of the Court of Arbitration for Sport in the governance survey.

²⁵ Note that not every suggestion in this Report to Congress was included in the U.S. governance survey response.

avoidance of conflicts of interests, management efficiency, as well as diversity, equity, and inclusion, have all quite properly advanced over the past two decades. A fit for purpose WADA would adapt and address issues that hamper the organization's effectiveness, as well as perceptions of that effectiveness, as the global-regulator of doping in sport.

With the objective of advancing reform, combined with the understanding that such reform should be supported in the spirit of collaboration and partnership among all stakeholders, the U.S. wants to highlight the following areas – the “Ten Challenges” – which must be taken on. These are not just challenges to WADA's appointees, leadership, and staff, but to all stakeholders, including the U.S. The Ten Challenges are listed below, followed by an in-depth discussion of each.

- 1. Utilize the opportunity for governance review to foster major reforms.**
- 2. Ensure WADA appointees are fully Independent and free of the appearance, or at times, the reality of a conflict of interest.**
- 3. Include more Independent Athletes inside the organization.**
- 4. Increase participation of National Anti-Doping Organizations within its structure.**
- 5. Expand stakeholder engagement and ensure that such engagement is channeled in to concrete reforms.**
- 6. Closely consider reforms to WADA's Executive Committee structure, as concerns are raised that it may not be sufficiently independent, is duplicative of the Foundation Board, and is subject to the appearance, or the reality, of conflicts of interest.**
- 7. Include Independent Athletes and national anti-doping organizations on the Foundation Board, and make reforms related to the potential undue influence by the Olympic Movement.**
- 8. Identify a diversity, equity, and inclusion policy for WADA, along with an implementation plan.**
- 9. The Court of Arbitration for Sport lacks transparency and independence and has failed to adequately sanction state-sponsored doping – WADA's voice is needed to help address this.**
- 10. WADA should consider ways to provide additional support for struggling WADA signatories.**

1. Utilize the opportunity for governance review to foster major reforms.

As referenced above, and will be discussed throughout this section, soliciting ideas and proposals is a very appropriate methodology to collect a wide variety of input. Taking this input and forging concrete proposals that can be approved by WADA is imperative. Considering that some of the decision makers at WADA who will be voting on such proposals may have a very direct stake in the outcomes of such proposals, it is unclear how viable it will be for the organization to actually be able to truly reform itself. That concern will not stop the U.S. from working in good faith within WADA for constructive change. But it's important to acknowledge that major changes will require the WADA Executive Committee and Foundation Board Members to accept reforms that might limit perceived short-term interests for the benefit of the entire organization and its mission. If that is not possible, some type of negotiation between the Olympic Movement, Public Authorities, Independent Athletes, and other stakeholders outside WADA's formal organizational structure may be necessary. Given the urgency of the needed reforms, either approach or a combination, is acceptable to the U.S.

The U.S. Government is subject to some of these cross-pressures as well. For example, ONDCP recognizes that our proposal described below to reform the Foundation Board and to bring into that organization the needed expertise from National Anti-Doping Organizations, Independent Athletes, and anti-doping laboratories, might result in public authorities like the U.S. less frequently holding a Foundation Board seat.²⁶ However, the urgency of creating a much more independent Foundation Board is so great, and a stronger WADA overall so critical, that it outweighs the interest of any individual country or organization's continued presence on a WADA body. The U.S. proposals are designed to create a strong, effective, independent WADA in order to promote clean sport for all nations. All participants need to understand that our roles within WADA are to serve a higher cause and may require sacrifices and trade-offs for the greater good. These types of ambitious changes are something which all institutions, public, private, and multilateral must grapple with to thrive in modern times.

The commentary in this Section of the Report is offered in a spirit of strengthening the organization, in recognition of the U.S.'s own responsibility to be a constructive voice for reform within WADA, and with an appreciation that the core issues are rooted in decisions made two decades ago. As is highlighted in Section 2 of this report, to WADA's credit, there have been both a real recognition of the need for reform as well as useful, positive steps from WADA. In addition, WADA's intent to continue these reforms is understood and appreciated by the U.S.

²⁶ Under the current structure, ONDCP is working with public authorities and other stakeholders to advance fair representation within the organization for the U.S., including service on the Executive Committee. Until such time as WADA becomes a truly independent organization these efforts to increase representation must continue. We plan to concurrently seek major reform while we also pursue representation for the U.S. fitting with its contributions to WADA and to the entire global sports endeavor.

Having said that, our view is that governance reform should be an area of focus for all parts of the organization, not just a particular committee. Toward this end, we will partner with colleagues at WADA to bring forward concrete proposals for discussion and further detailed work to advance reform, both inside and through conversations with stakeholders outside WADA.

As ONDCP prepares for the first Foundation Board meeting to occur during the Biden-Harris Administration, we will be participating with good will and an open mind on the extent to which this important and consequential organization remains a good investment for U.S. taxpayers or whether there are other viable alternatives that can be funded to fulfill the critical function of an independent international regulator of doping in sport. Either way, the U.S. is fully committed to continuing to support international anti-doping efforts as a genuine partner to all stakeholders.

2. Ensure WADA appointees are fully Independent and free of the appearance, or at times, the reality of a conflict of interest.

The definition and application of ‘Independence’ standards are critical to WADA’s organizational structure. Given that international athletic competitions have been undermined by corruption on the part of both sport organizations and government officials, it is critical that WADA promote independence among its officials to the maximum extent possible. This is especially true in that WADA’s work, in order to succeed, must inspire trust and respect globally. The U.S. is pleased that WADA is discussing this issue actively and expects additional action on this subject over the next year.

There are several steps that need to be taken to enhance independence. WADA should eliminate the ‘General Standard of Independence’ and apply its substance to a clear *Conflicts of Interest Policy* and approach, as part of WADA’s enhanced ethics program. As currently used, we do not believe that the General Standard of Independence indicates real independence. The concept of independence itself must be clear and transparent, not only to avoid actual undue influence from interested parties, but also any appearance of such. WADA’s mission and work are such that building trust is almost as important as the substantive work itself. That’s why both actual and perceived conflicts must always be considered. The ‘Stricter Independence Standard’ should be the sole and simple WADA standard of Independence for WADA’s Executive Committee.²⁷

The U.S. supports a two-year ‘cooling off’ period for people who previously held conflicting positions, meaning any work that would create the reality or the appearance of a conflict of interest for individuals hired by WADA. WADA’s governance rules should make clear that service on any WADA governing body or standing committee carries with it a clear duty to

²⁷ The stricter Independence Standard states: “The Individuals to which the Stricter Independence Criteria apply shall hold no duty or responsibility to, and no office or relationship with, a sport institution or government or public corporation (including corporations funded by a State, but which operate autonomously from the State).” WADA Governance Bylaws IV 2.1-2.3.

act and make decisions for the good of WADA and its mission, and not any other person or organization. This ‘Duty of Loyalty’ extends to all such individuals, independent or not. Reformed WADA definitions and provisions for independence would be complemented by a more robust WADA system for avoiding conflicts of interest and for greater transparency around internal assessments of independence and conflict of interest regarding candidates for WADA positions.

As is discussed below under the Executive Committee and Foundation Board, the WADA management model since the organization’s founding, provides a strong voice to the Olympic Movement in every decision made by WADA. To their credit, back in the late 1990s, when there was an increasingly urgent need to establish and fund a professional international global regulator to take on the anti-doping challenge, the Olympic Movement stepped forward to fund half of WADA’s budget, with public authorities financing the other half. That contribution to the development of the anti-doping enterprise by the Olympic Movement was important. All who participate in sport, or enjoy it as fans, or who benefit from the Olympics as sponsors, should understand how critical that input was in the formation of the first of its kind global anti-doping regulator. Furthermore, many of the individuals who have served, and who currently serve, from the Olympic Movement within WADA are incredibly distinguished with deeply impressive background and much wisdom and guidance to offer. Their voice is an important one in understanding and addressing the challenges posed by doping in sport.

We do not question the capabilities or qualifications of the individuals now serving in WADA representing the Olympic Movement. Nonetheless, it is important to consider, from the perspective of today’s times, whether it best serves sport for WADA to have embedded within its critically important international doping regulator a de facto voting majority by the very industry being regulated. National governments and multilateral organizations have a great deal of experience in regulating critical and deeply valued endeavors such as sport. Placing the industry being regulated at the center of the regulatory decision-making process is not a typical or a ‘state of the art’ approach.

For example, when a national government regulates its energy industry, it is generally required to seek comments from energy companies and their industry association on how a new regulation, law or policy will impact the energy industry. Regulators solicit written comments, hold hearings, and have frank discussions so that they can truly understand and consider the energy industry’s views and well-informed perspectives. Governments quite properly ask and consider carefully and respectfully leading companies, such as Exxon Mobil, Shell, Chevron or BP, for their insight and advice. However, they do not empower these companies, which have an understandable vested interest in the outcomes of these decisions, to actually vote on regulatory decisions.

Similarly, when the World Health Organization (WHO) reviews a substance for potential international control, it welcomes the views of the pharmaceutical industry, including any and all with a direct commercial interest in the substance. However, for example, when the

WHO Expert Committee on Drug Dependence undertook a review of the dangerous opioid carfentanil, which was contributing to fatal drug overdoses, it did not invite manufacturers of the substance to sit on its expert committee or to have a formal role in its decision-making process.²⁸ WHO appropriately manages their important review process without asking a single representative of the pharmaceutical or chemical industry to approve a decision or formal finding of facts that directly impacts their financial interests.

It is time for all of WADA stakeholders to work constructively with the Olympic Movement to develop institutions and processes that give sport institutions fair and appropriate avenues to communicate their very well-informed perspectives, while asking them to step back from the actual WADA voting and decision-making process. Ultimately, by creating a truly independent WADA, all of those with a strong stake in clean sport, especially the Olympic Movement, will benefit.

The U.S. is ready to sit down in good faith with WADA appointees, the IOC, independent athletes, top corporate sponsors, and other stakeholders to find a new model for WADA. We want to collaborate on the creation of a WADA that respects the critically important contributions and accumulated knowledge of the Olympic Movement, while also ensuring that every decision made by this important global doping regulator is beyond reproach and not subject either to the appearance, or the reality, of a conflict of interest.

3. Include more Independent Athletes inside the organization.

The U.S. understands that any athlete, current or former, has relevant experience to share with regard to anti-doping in sport; however, the key relevant factor is independence, not just past experience as an elite athlete. Efforts to list the number of athletes playing some role in WADA, without clearly distinguishing which are independent and which are representatives of their home sport association or the Olympic Movement, fails to provide a complete picture of how they will conduct their work within WADA. Some athletes are contributing to WADA's processes while concurrently representing organizations that have a commercial interest in the outcome of decisions being made at WADA, in contrast to others who are participating as truly *independent* athletes, only focused on advancing clean sport. It is important to consider the difference. The Olympic Movement representatives deserve avenues to provide input into actions that impact them, but that does not mean they should be voting on issues in which they may have some conflict of interest. Any effort to blur this distinction, between athletes who are truly independent and who are not, will obscure approaches that could more completely incorporate the athlete voice at WADA.

Stronger and more *Independent Athlete* representation at the Executive Committee, Foundation Board and Standing Committees, especially the Athlete Committee, is a critical element of U.S. recommendations. The importance of this issue has been among the clearest

²⁸ https://www.who.int/medicines/access/controlled-substances/Critical_Review_Carfentanil.PDF.

messages the U.S. Government has received from USADA, the USOPC, and the elected athlete leaders of the USOPC Athletes' Advisory Council. Below are key elements to move forward on this critical issue of incorporating and strengthening the voice of *Independent Athletes* within WADA:

- 1) The U.S. Government strongly supports utilization of the USOPC's definition of who may serve as an "Athlete" within various WADA institutions and forums. USOPC employs the concept of "10 Year Athletes" and "10 Year + Athletes," where the former is made up of athletes who currently compete at a defined elite-level currently or have done so within the past ten years, and the latter have so competed, but not necessarily within the past ten years. The USOPC has shared with ONDCP that they have found that utilizing both of these groups in their governance ensures a positive and diverse set of athlete voices. The U.S. Government joins with USOPC and USADA in recommending that WADA adopt a similar approach.²⁹
- 2) The process by which these Athletes are appointed to their roles is critical. We believe it is appropriate that *Independent Athlete* representatives be elected directly by international athletes, rather than appointed by or from any Olympic Movement or public authority body. These *Independent Athletes* should not be answerable to any constituent organization. They must be vetted by a strengthened WADA Nominations Committee. The mechanism involved in holding these elections should be determined by athletes, but the inclusion of these additional *Independent Athlete* voices is critically important and should be a priority for all stakeholders interested in a stronger, more effective WADA.
- 3) Athletes should have the right, at times, to have input from external experts that they trust and that are employed to represent athletes' interests. We believe *Independent Athlete* representatives should be able to utilize professional expert designees or advisors in WADA meetings or to serve as their designated representatives. If athletes choose to appoint non-athletes, or to otherwise seek their advice, they should have that option, even if it is something only used intermittently.
- 4) Finally, the overall processes for securing additional *Independent Athlete* voices in WADA governance should seek to achieve balance in athlete diversity and backgrounds including in terms of race, ethnicity, sexual orientation, gender, winter/summer sport, and Olympic/Paralympic sport. Above all, these selection processes should be transparent and understandable to the international athlete community.

We encourage continued work on this issue. It is important for WADA to include *Independent Athlete* voices directly in the work and the organization itself, and to make sure those voices are supported, respected and empowered. The U.S. looks forward to continuing to work in cooperation with U.S. athletes and other WADA stakeholders to ensure that a

²⁹ S. 2330 – Empowering Olympic, Paralympic and Amateur Athletes Act of 2020, Public Law No. 116-189, available at, [congress.gov](https://www.congress.gov).

strong, *Independent Athlete* voice receives an appropriate place of prominence within WADA's governance model.

4. Increase participation of National Anti-Doping Organizations within its structure.

The U.S. Government believes that National Anti-Doping Organizations (NADOs) are a critically important WADA stakeholder and the source of valuable up-to-date technical expertise. Unlike other anti-doping agencies (international sport organizations and major games organizations) NADOs currently have no formal place in WADA's decision-making bodies, the Foundation Board, or the Executive Committee. This deprives WADA governance of the valuable expertise from the stakeholder group that conducts the majority of anti-doping activities. It also deprives WADA of expertise and a very well informed and important perspective in its decision-making processes.

NADOs should have parity within WADA governance with international sport organizations and major games organizations. In a new WADA governance model with a representative Foundation Board and a fully-independent Executive Committee, NADOs should have Foundation Board representation commensurate with their contributions to anti-doping (qualitatively and quantitatively) as compared to international sport organizations and major games holders. A representative Foundation Board with twenty percent NADOs would be appropriate and would significantly strengthen WADA.

5. Expand stakeholder engagement and ensure that such engagement is channeled into concrete reforms.

Broad and consistent engagement with constituents and other stakeholders – early, often, and candid – is important. This is another area where it is not sufficient just to meet with stakeholders and to sincerely intend to do good work on behalf of athletes and other important members of the community. Rather, ongoing candid exchanges that lead to action not only promote better decision making, but also can earn trust and increase engagement from those whom WADA serves and who are most directly affected by decisions made by WADA. It is positive that WADA is holding many consultations, but listening to stakeholders is just the first step. It's critical to take input provided and, to the extent possible, put that input to work in concrete ways. After these consultations, a sincere effort should be made to report back to stakeholders what was or was not done and why. That type of candid, honest exchange is the way to build strong, enduring, and productive stakeholder relationships. Organizations providing serious advice and input can understand they will not always receive all they ask for, but they deserve action when possible and forthright and honest feedback on why actions they requested were not taken. That type of accountability will improve the quality of the relationships between WADA and its stakeholders and increase both mutual understanding and depth of knowledge of participants in these important exchanges.

In addition, WADA should maintain a strong and broad online information and communications program with regular direct outreach via electronic means available to athletes and other community members worldwide, increased face-to-face meetings with athlete groups and other constituency groups (e.g., NADOs, National Olympic Committees), and surveys on important topics. As it has been noted with the WADA governance survey, some of these mechanisms have already been skillfully utilized by WADA. Additionally, WADA should seek input from athletes in determining the best platforms to communicate with athletes, who are, of course, a large, global, and diverse group. It is a sign of respect and of genuine desire to connect and communicate effectively when organizations are able to adjust their communication methodologies, within reasons, to the preferences and needs of their key stakeholders.

6. Closely consider reforms to WADA’s Executive Committee structure, as concerns are raised that it may not be sufficiently independent, is duplicative of the Foundation Board, and is subject to the appearance, or the reality, of conflicts of interest.

The two key governing structures of WADA, the Executive Committee and Foundation Board, are duplicative and subject to conflicts of interest due to how its members are appointed. Both bodies need major changes. There are multiple models that would help ensure both organizations are independent, transparent, and democratic. The U.S. looks forward to a near-term dialogue to find a path forward to make long needed changes.

There are two options the U.S. would like to put forward for discussion. The first, and the quickest, way to resolve the conflicts of interest embedded in the Executive Committee’s structure is for the Olympic Movement to step out of the Executive Committee entirely and serve only on the larger Foundation Board. The Olympic Movement is always going to have its voice heard within WADA. However, it is improper for them to maintain a *de facto* voting majority³⁰ within the influential Executive Committee. The U.S. recommends that, in exchange for the right to offer formal testimony on any Executive Committee decision that affects their interests, the Olympic Movement representatives on the Executive Committee withdraw from their role as voting members. They should be replaced with truly independent experts. The five current representatives to the Executive Committee from the Olympic Movement, all respected professionals, could continue to serve on the Foundation Board. Such a change, completely removing both the reality or appearance of conflicts of interest within the Executive Committee, would serve all WADA stakeholders. We recognize that this is very major change, but such a reform would represent a very encouraging step by the Olympic Movement and demonstrate their deep commitment to ensuring that WADA becomes the independent global regulator of doping in sport that the world needs.

³⁰ It would be fair to point out that the number of appointees to the Executive Committee from the Olympic Movement and governments are equal, five each. However, in practice it is unusual for public authorities to be entirely unified on the most important issues facing WADA, while it is more common for the Olympic movement representatives to vote together.

Another model to improve the Executive Committee was presented in the U.S.'s response to the WADA governance reform survey. Under this approach, the Executive Committee would be reformulated into a group of five to eight professional and fully independent appointees. They would be responsible for enacting and administering the strategic guidance, policies, and rules set out by the Foundation Board. The Executive Committee would then truly be separate from the Foundation Board, and there would be no overlap between the two organizations in memberships or responsibilities.

The members of the new Executive Committee would not be able to serve if they have any current official affiliations with any of the anti-doping or sport stakeholders. They could potentially serve again after separating from such affiliations, after a two-year cooling off period. Instead of representing any group or institution, Executive Committee Members under this option would be professionals, with experience in one or more of the key substantive areas important to WADA, including anti-doping, law, governance, science, and administration. The Members of the Executive Committee should be appointed by the Foundation Board after careful recruitment and vetting by an independent Nominations Committee, using an open, transparent process.

The key function of the Executive Committee should be to supervise the WADA staff and administration and to manage the organization's day-to-day functions. The new Executive Committee would also help prepare for Foundation Board meetings and would attend and participate in those meetings, but not preside over them. In this way, any overlap in duties with the Foundation Board would be avoided—ensuring a true separation of powers between WADA's two decision-making bodies. This means executive functions, including enforcement involving compliance, sanction decisions, and administration functions, would be left to the Executive Committee and not taken up by the Foundation Board. This would allow the Foundation Board to focus on more strategic and long-term matters as well as budgetary issues.

It is time to find a new balance within WADA between the important and deeply admired industry being regulated, and the regulators tasked to make tough decisions that impact the industry. Again, the U.S. is ready and eager to work within WADA on such changes, and engage in good faith with the IOC and other representatives and stakeholders in the Olympic Movement to jointly reform WADA for today's times.

7. Include Independent Athletes and national anti-doping organizations on the Foundation Board, and make reforms related to the potential undue influence by the Olympic Movement.

The Foundation Board – in order to fulfill the WADA legislative function – should be a broad representative body responsible for strategic guidance, overall review of Executive Committee performance, standard-setting and establishing rules (including the World Anti-Doping Code), and approving budget and other significant financial decisions impacting WADA's sound financial management. Like the Executive Committee, the Foundation

Board is also subject to conflicts of interest. There are multiple paths to reform, and we propose the following approach for consideration.

The composition of the Foundation Board should be broader than today, inviting in more expert voices, beyond the Olympic Movement and Public Authorities. In order to do this, the Foundation Board should be modestly expanded to approximately 40-50 members, split evenly among:

- Public authorities;
- The Olympic Movement;
- National Anti-Doping Agencies (NADOs);
- Independent Athletes; and
- Laboratories and other independent technical experts.

The Foundation Board would establish a committee structure to allow for focused discussion on key issues and to bring recommendations to the full Board. This new Foundation Board would be more representative—inclusive of all the major stakeholders in the entire anti-doping enterprise. Decisions made by a body constituted in this way would bring a needed depth of expertise around the table and would ensure a broader ownership of the Foundation Board's decisions. Each group would need to determine, and disclose publicly, a democratic and appropriate process to select their representatives. Term limits should be placed on membership and we suggest two four-year terms.

In order to protect the interests of the primary funders of WADA, a system of weighted voting, only on budget matters, could be established. Public authorities and Olympic Movement representatives, the two primary funders today, would count double on such votes, giving them each a strong, but not decisive, voice in deciding budget issues. This balance, broadening the Foundation Board to include all key stakeholders within the deliberations of the Foundation Board, combined with protecting the interests of funders responsible for explaining how their resources are utilized, will be key to the success of this new approach. It is a way both to ensure the financial integrity of WADA and to bring the world's top experts dealing with anti-doping matters into the critically important legislative structure of the new Foundation Board.

The Foundation Board should elect a Chair and Vice Chair, serving four-year terms. Together they will preside over Foundation Board meetings, develop meeting agendas, coordinate with their counterparts in the Executive Committee throughout the year, and otherwise ensure the smooth administration of the Foundation Board's operation and keep the other Foundation Board Members up to date. The Foundation Board should consider their frequency of meetings, but could meet twice a year, with one meeting extending several days and the second being shorter. The longer meeting would be important in

forging strong relationships among Foundation Board Members and allowing for deep dives on emerging challenges.

The democratic nature of WADA may be further strengthened by utilizing, every four to six years, the World Conference on Doping in Sport, in order to establish priorities or identify important new tasks for the Foundation Board. This could further increase the involvement of a broad number of stakeholders providing input in to WADA and ensuring that all voices involved with and interested in preventing doping and promoting clean sport have a chance to be heard.

In summary, the new Foundation Board should have the following functions:

- Legislative: make anti-doping rules and policies, including top-level WADA policies for governance and administration, and ensure proper participation of anti-doping stakeholders.
- Strategic: establish WADA's multi-year strategic plan and its performance indicators and assess performance of WADA and all of its components.
- Budgetary: formalize WADA's multi-year budget and ensure the contributions needed to fund it, appoint auditors, and approve decisions relating to the acquisition of real estate or other significant purchases.
- Appointments of a reformed Executive Committee: Working with the Nominations Committee, the Foundation Board will identify and vet possible nominations for key roles on the Executive Committee, including President and Vice President.
- Reporting: Annual public reporting and compliance with Swiss law, under which WADA was established.

As stated above about the proposed Executive Committee, it will be important for the Foundation Board to establish a culture of continuous improvement. This should include regular efforts, after the second year, to assess its effectiveness and, if appropriate, to hire an outside consultant to review its own performance and provide recommendations for improving its functioning.

The U.S. appreciates the opportunity to lay out a model for a new Foundation Board and Executive Committee that will put WADA in position to be a strong, independent, effective organization – one fit for its critically important mission. The current model, although it includes important features, needs to be reformed. There is inappropriate overlap currently between the Executive Committee and the Foundation Board. It is necessary to separate their roles and responsibilities into clear legislative/strategic management (Foundation Board) and executive management and administration (Executive Committee) functions. The current arrangement, with duplicative Executive Committee and Foundation Board meetings and virtually identical document packages, is an indication of governance inefficiency and overlapping functions. The U.S. looks forward to being an active partner with all WADA

stakeholders as we move forward together to updating WADA's key management bodies to efficiently meet today's important and complex challenges to clean sport.

8. Identify a diversity, equity, and inclusion policy for WADA, along with an implementation plan.

Diversity, equity, and inclusion (DEI) are essential to all institutions. This is certainly true for all of global sport and the anti-doping movement. There are many robust models for process and outcomes on effective DEI policies/practices. WADA should consult true experts in the field and, at a minimum, develop policies and practices, with benchmarks, consistent with the norms for other international organizations. It is positive that WADA is taking on this important DEI work by soliciting input in its governance, and the U.S. is pleased to support this effort and to work with colleagues in approving and implementing the new policy. It is also important to note that many institutions are just grappling with their obligations in this area. The U.S. is not attempting to single out WADA on this matter, only to indicate our support for WADA's efforts to take this on.

9. The Court of Arbitration for Sport lacks transparency and independence and has failed to adequately sanction state-sponsored doping – WADA's voice is needed to help address this.

The U.S. believes it is critically important that WADA and its stakeholders, including all of us who care about integrity in sport, to come together to pursue a path to significant reform of the Court of Arbitration for Sport (CAS). Decisions made by this institution that weakened or overturned WADA's recommendations with regard to appropriate sanctions for Russian Code non-compliance have undermined the anti-doping movement and the effort to promote and protect clean athletes' rights. It is time to reform CAS to ensure that it is independent, transparent, and serious about addressing anti-doping rule violations. Only a reformed CAS can ensure that future acts of state-sponsored doping will be met with the appropriate sanctions that they deserve. Although WADA is not in charge of CAS and cannot on its own do anything to alter its structure or manner of function, WADA is nonetheless well-positioned to articulate CAS's shortcomings, past failings, and the vulnerabilities exposed by the failure to impose adequate sanctions. WADA should lead the effort to bring together relevant stakeholders to reform CAS. A recent legal journal article focused on avenues for reform of CAS and raises issues worthy of discussion.³¹ The U.S. encourages WADA to place this issue on its agenda and to consider issues raised in the article and other concerns.

The U.S. recognizes that reforming CAS will be a complex and challenging endeavor. Nonetheless, it is a critical one central to instilling confidence in the whole international doping control regulatory process. To be effective in combating doping, including state-

³¹ Lindholm, J. A legit supreme court of world sports? The CAS(e) for reform. *Int Sports Law J* (2021). see, <https://doi.org/10.1007/s40318-021-00184-0>.

sponsored doping, such as that perpetuated by the corrupt Russian scheme, which so damaged the cause of clean sport and fairness, there needs to be an independent body to review WADA anti-doping decisions. The U.S. would be pleased to work with WADA and other stakeholders on this important effort.

10. WADA should consider ways to provide additional support for struggling WADA signatories.

The U.S. believes WADA should establish a clear and transparent approach to special support and oversight for WADA signatories that are experiencing special challenges or difficulties with compliance. WADA should put those entities on a different “track” in terms of WADA support and oversight. This different track could include extra support measures, educational requirements, opportunities to confer with other members of the international anti-doping community, and other resources. Such an effort may require additional resources and effort in the short term, but in the longer term will benefit all parties and enhance the overall worldwide anti-doping effort. At the end of the day, it is unacceptable that some athletes are subject to fully compliant and implemented anti-doping programs and protocols, while others whom they compete against are not.

The WADA Independent Observers from the 2016 Rio Olympic Games noted that 1,913 athletes from just 10 high-risk sports had no anti-doping tests leading into the Rio Games, the most important time to collect samples. Additionally, a total of 4,125 athletes at the Rio Olympic Games had no tests in the months leading up to Rio.³² This should be considered unacceptable and must change. One way to address this is for WADA to publish the number of tests sessions conducted on all international-level athletes by name or to require WADA Code signatories to do so.³³

As one can see from the challenges described above, WADA has some major challenges ahead of it. Although the U.S. recognizes the steps taken by WADA to date, the work has only just begun. We look forward to continuing to work within WADA to support governance reform and to be a strong supporter of a modern, fit-for-purpose WADA that is able to fulfill its important mission of ensuring that every athlete can compete in clean and fair competitions, untainted from prohibited doping and all related sporting crimes.

³² WADA 2016 Rio de Janeiro Olympic Games Independent Observers Report, see, [2016 Rio de Janeiro Olympic Games IO Report | World Anti-Doping Agency \(wada-ama.org\)](#) (October 27,2016).

³³ In the U.S. and other countries, athletes’ test sessions are published. This practice in the U.S. was an athlete-led initiative and has been done by USADA since the early 2000s when USADA first opened.

CONCLUSION

It is important to acknowledge that WADA has a very challenging mission that it takes seriously, has many talented appointees and staff, and has a two-decade track record as an institution that has given it time to develop, learn from each new doping challenge, and improve. Since our last report, WADA has launched a positive and well-intended process to further enhance its governance. It has made some useful governance reforms already and is on track to make more this year. In particular, the U.S. is encouraged by WADA's plan to approve a detailed Ethics Code and establish an Ethics Board at their Executive Committee and Foundation Board meetings this year. We are also looking forward to hearing the report out of the expert Working Group on the Review of WADA Governance Reforms, which will summarize the responses to the stakeholder survey on the subject of additional reforms to WADA.

Since the upcoming May 21 Foundation Board session is the first formal WADA meeting that the Biden-Harris Administration will participate in, we will attend with great interest to gain a deeper understanding of the ways forward for reform, ready both to listen to the views and experiences of all and to share our perspective. Although the U.S. does not hold a seat on the Executive Committee, we are pleased that through the Americas Sports Council (CADE), the U.S. has Observer Status for that important meeting. The U.S., as a Foundation Board Member, will take its seat and participate directly in that meeting. Certainly, no decision on paying all, or a portion of WADA dues, will be made until after those meetings in May.

What would a truly reformed WADA look like? It would be one where WADA decision makers are free of conflicts of interest and would apply their talents and knowledge as truly independent appointees and experts. In rare cases where an appointee does have a conflict of interest, for example, when a decision has to be made directly impacting a single country, representatives from that country should recuse themselves from voting on such matters. These types of changes are significant and would require negotiation by all parties, especially between the Olympic Movement and public authorities.

Of course, it is possible that ultimately the Olympic Movement, if asked to give up its voting power at the Executive Committee or to support the establishment of a new organization built from the ground up with a new structure, may wish to withdraw the significant amount of funding it has traditionally contributed to fund the global doping regulatory body. That would be unfortunate, since no institution would benefit more from a truly reformed WADA than the Olympic Movement. It would remove the nagging questions it has endured for many years over its doping control decisions and processes and enable the re-establishment of WADA as an above reproach, independent, international regulator.

Regulatory agencies are commonly funded around the world by user fees on regulated industries, and in return they get an independent, expert regulatory entity and the ability to provide formal, expert input into regulatory processes, but not a right to vote on decisions. The finances of the Olympic Movement are complex, with significant revenue put to use in putting on the Olympics and supporting the International Federations for Olympic sports, as well as the National Olympic

Committees. It is important to note that, like other large sporting endeavors, the International Olympic Committee has faced substantial additional costs during the COVID-19 pandemic. However, we would also note that NBCUniversal signed a contract valued at \$7.75 billion for the rights to broadcast the Olympics in the U.S. from 2021-2032. Approximately 73 percent of IOC revenue comes from broadcasting rights³⁴ with American viewers contributing a substantial share of the total. The Olympic Movement funds WADA at about \$20 million a year, with governments paying the other half of the \$40 million budget.

As of now, the U.S. has not made a funding decision for 2021, but will consider options after the May meeting. Our hope is that we will see real progress and a path for more substantial future reforms laid out at the Foundation Board session. The important work of international doping control must continue unabated, and we certainly understand the next Olympic Games are almost upon us, set to begin on July 23, 2021, in Tokyo.

As we assess the challenge, ONDCP looks forward to consulting further with Congress on the subjects raised in this report. Ideally, we will be able to establish a modern global anti-doping regulator without serious built-in conflicts of interest, but it will be no simple endeavor to reach consensus with key stakeholders on what this modern global anti-doping regulator should look like. It will require a high tempo of consultation, planning, and coordinating and will involve input from a number of diverse interests. Keeping in mind these challenges, we look forward to working with willing partners in helping to reform WADA.

For all those who care about sport, these are weighty issues. No decision will be made lightly, and no action will be taken without speaking with and listening to the key actors and experts on this subject, and understanding the consequences of decisions. The U.S. Government will continue to explore every avenue and engage with all relevant interlocutors to support the continued strengthening of WADA, working both within the organization and with actors outside the organization. Together, we hope to find a way to make sure every athlete can rest assured that the one and only consideration of the global regulator for doping in sport is maintaining and supporting the integrity of sport.

³⁴ [IOC - International Olympic Committee.](#)