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**United States Olympic Committee**  
**NGB Compliance and Audit Department**



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Report for:  
**USA Swimming**

Review of:  
**Compliance Checklist**

Dated:  
**April 4, 2019**



April 4, 2019

Tim Hinchey  
Chief Executive Officer  
USA Swimming

Dear Tim,

Enclosed is the United States Olympic Committee's (USOC) report on the 2018 Compliance Checklist for USA Swimming. We want to express our appreciation for the time you spent completing the Checklist and providing documents during the review.

USA Swimming was compliant as it specifically related to the compliance checklist report for the questions outlined below in the areas: governance/managerial, financial capabilities, SafeSport, and anti-doping. The review identified two deficiencies related to athlete representation. There are also additional observations in the report that when implemented, would improve due process, and SafeSport grievances.

The report will be presented to the USOC Audit Committee at its next quarterly meeting and be made available on the Team USA website. We hope you found the review process to be helpful. If you have any suggestions, please do not hesitate to share them with us.

Sincerely,

Bridget Toelle, CPA, CIA  
Vice President, NGB Audit and Compliance

Rich Wright  
Staff Auditor

cc: Rick Adams                      Chris McCleary                      Lucinda McRoberts  
Wendy Guthrie                      Denise Parker                      Bob Vincent  
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# COMPLIANCE CHECKLIST REPORT

USA Swimming

## OBJECTIVE AND SCOPE

The objective of the review is to verify USA Swimming is in compliance with key elements of the Ted Stevens Olympic and Amateur Sports Act, the USOC Bylaws and certain USOC policies, in order to demonstrate ongoing commitment to the values and requirements of membership in the USOC. The scope includes the 2018 Compliance Checklist certified by USA Swimming and the supporting documents provided by USA Swimming. Compliance Checklist procedures are designed to verify that certain National Governing Body (NGB) policies or processes are in place. This Compliance Checklist does not conclude on the effectiveness of any policies or processes questioned in this report. Additional audit procedures are completed on select NGBs each year to verify various policies and processes are being followed.

The following chart shows all the requirements in the Compliance Checklist and corresponding status for USA Swimming. For any deficiencies, see the explanations and action plans after the chart.

|   | Question   | Status    |
|---|--|-----------|
| <b>Governance/Managerial</b>                  |  |           |
| 1   | Do you have a code of conduct for your employees, members, board of directors and officers?  | Compliant |
| 2   | Do you have a strategic plan that is capable of supporting athletes in achieving sustained competitive excellence, and in growing the sport?   | Compliant |
| 3   | Do you have your current bylaws posted on your website?  | Compliant |
| <b>Financial Capability</b>                   |  |           |
| 4   | Are you recognized by the IRS as a tax-exempt organization?  | Compliant |
| 5   | Are you incorporated under the laws of a state of the United States or the District of Columbia as a not-for-profit corporation?   | Compliant |
| 6   | Do you have your three most recent IRS Form 990s on your website?  | Compliant |
| 7   | Have you completed and posted on your website your three most recent annual audited financial statements?  | Compliant |
| 8   | Do you have written financial policies and procedures?   | Compliant |
| 9   | Do you have an approval and/or review process for cash disbursements?  | Compliant |
| 10  | Do you provide frequent (monthly or quarterly) financial statements to your board or designated committee?   | Compliant |
| 11  | Do you have a board-approved annual budget?  | Compliant |
| 12  | Have you spent USOC funds as required by the funding agreements in the previous 12 months?   | Compliant |
| <b>Due Process and Athlete Representation</b> |  |           |
| 13  | Do you provide procedures for the prompt and equitable resolution of grievances of your members?   | Compliant |
| 14  | Do your grievance procedures provide for fair notice and opportunity for a hearing to any athlete, coach, trainer, manager, administrator or official before declaring the individual ineligible to participate? | Compliant |

|                    |   |           |
|--------------------|---|-----------|
| 15                 | Do you require at least 20% athlete representation on grievance panels?   | Compliant |
| 16                 | Do you have at least 20% athlete representation on your board of directors?   | Deficient |
| 17                 | Do you have at least 20% athlete representation on your budget committee?   | Deficient |
| 18                 | Do you have at least 20% athlete representation on your selection committee, which prepares, approves or implements selection of international, Olympic, Paralympic and Pan American Games team members, including athletes, coaches, administrators and sport staff?   | Compliant |
| <b>SafeSport</b>   |   |           |
| 19                 | Do you have USOC SafeSport language in your bylaws that provides jurisdictions to the U.S. Center for Safe Sport?   | Compliant |
| 20                 | Do you have a USOC-compliant Athlete Safety Policy?   | Compliant |
| 21                 | Do you have a grievance process that is materially free of bias and conflicts of interest for SafeSport allegations, and includes the opportunity for review by a disinterested individual or body?   | Compliant |
| 22                 | Does your policy require criminal background checks, at least every two years, for those individuals that are formally authorized, approved or appointed (a) to a position of authority over, or (b) to have frequent contact with athletes?  | Compliant |
| 23                 | Does your policy require education and training specific to SafeSport for those individuals that are formally authorized, approved or appointed (a) to a position of authority over, or (b) to have frequent contact with athletes?   | Compliant |
| <b>Anti-Doping</b> |   |           |
| 24                 | Do you inform Athletes, Athlete Support Personnel and other Persons in your sport of the USOC National Anti-Doping Policy and of the USADA Protocol?  | Compliant |
| 25                 | Unless otherwise agreed by USADA, at least quarterly do you provide USADA with an updated list of athletes, proposed by your NGB, to be included in the USADA RTP? With respect to each athlete on such list and such additional athletes as may be designated by USADA for inclusion in the USADA RTP, do you provide USADA with initial contact information which shall, at a minimum, include accurate residential, mailing and email addresses (if available) and phone numbers for each athlete? | Compliant |
| 26                 | At least six months prior to the commencement of the most recent applicable Olympic or Paralympic Games, did you provide USADA with a list of all athletes that may have reasonably been selected to represent the U.S. in such Games?  | Compliant |
| 27                 | Do you have an identified staff member to act as a liaison with USADA?  | Compliant |

## DEFICIENCIES

### ***Do you have at least 20% athlete representation on your board of directors?***

USA Swimming was deemed deficient because USA Swimming's Athlete Committee elects the Board of Director athletes and this is not consistent with USOC Bylaws, Section 8.8.5. The USOC Bylaws, Section 8.8.5 requires that athletes on NGB Boards are directly elected by athletes who meet the standards set forth in Section 8.8.2 of the USOC's Bylaws.

***USA Swimming Action Plan:*** USA Swimming will propose legislation to change the manner by which the athlete representatives on its Board of Directors are elected such that they are directly elected by athletes who meet the standards set forth in Section 8.8.2 of the USOC's Bylaws.

**USOC Status Update:** USA Swimming's legislative cycle requires rules changes to be submitted by May 15, 2019 and then voted on in September of 2019. USA Swimming will address this deficiency via this process in 2019.

### ***Do you have at least 20% athlete representation on your budget committee?***

USA Swimming's Board of Directors is responsible for budget approval and functions in accordance with USOC Bylaw 8.8.1 (a). However, USA Swimming was deemed deficient for the same reason as above regarding election of athletes to the Board of Directors.

***USA Swimming Action Plan:*** USA Swimming will propose legislation to change the manner by which the athlete representatives on its Board of Directors are elected such that they are directly elected by athletes who meet the standards set forth in Section 8.8.2 of the USOC's Bylaws.

**USOC Status Update:** USA Swimming's legislative cycle requires rules changes to be submitted by May 15, 2019 and then voted on in September of 2019. USA Swimming will address this deficiency via this process in 2019.

## ADDITIONAL OBSERVATIONS

During the review we identified additional areas for improvement. The additional observations do not impact the compliant status but could impact it in the future.

### ***Do your grievance procedures provide for fair notice and opportunity for a hearing to any athlete, coach, trainer, manager, administrator or official before declaring the individual ineligible to participate?***

Auditor reviewed USA Swimming's Background Check Policy. USA Swimming's Background Check Policy divides any findings that could lead to disqualification into two categories: "Potential Disqualifiers" (Eligible for Appeal) and "Automatic Disqualifiers" (Eligible for Dispute). Individuals in the Eligible for Appeal category are afforded an opportunity to be heard before their application for membership is approved or denied. However, individuals with background check findings that place them in the Eligible for Dispute category are only afforded a chance to dispute the accuracy of the reported information. If the information is accurate, they are not afforded any further opportunity to be heard and are automatically disqualified.

According to the Ted Stevens Act, NGBs must provide an opportunity for a hearing to an amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate. The USOC is concerned that USA Swimming's automatic disqualification rule may be inconsistent with that requirement.

The USOC recognizes that USA Swimming has adopted the position that successful completion of a background check is a membership requirement and no hearing is required when an applicant is automatically disqualified from membership based on a background check finding. However, because an individual must be a member with USA Swimming to participate, this interpretation could be challenged. If such a challenge was raised, the USOC would support that challenge being heard by a Section 10 hearing panel, for its consideration and final resolution.

***Do you have a grievance process that is materially free of bias and conflicts of interest for SafeSport allegations, and includes the opportunity for review by a disinterested individual or body?***

USA Swimming answered their SafeSport grievances procedures are the same as for due process, however, there is no clear language in the 2018 Rulebook to point someone to these procedures.

USA Swimming needs to add language in their 2018 Rulebook (or in a SafeSport policy) that points to their existing grievance procedures to minimize any confusion.

## **CONCLUSION**

USA Swimming must improve its athlete representation to be fully compliant with the USOC's Compliance Checklist. The Compliance Checklist does not conclude on the effectiveness of any policies reviewed. Additional audit procedures are completed on select NGBs each year to verify various policies and processes are being followed