DEPARTMENT OF THE NAVY
CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON DC 20350-2000

7000
Ser N00/100071
22 Jun 10

From: Chief of Naval Operations
To: Secretary of the Navy
Via: Assistant Secretary of the Navy (Manpower and Reserve Affairs)

Subj: U.S. NAVAL ACADEMY (USNA) NON-APPROPRIATED FUND INSTRUMENTALITY (NAFI) AUDIT PLAN OF ACTION AND MILESTONES

Ref: (a) Your ltr of 26 May 2010

Encl: (1) Plan of Action and Milestones

1. As directed by reference (a), and provided in enclosure (1), Superintendent, USNA has established a comprehensive and executable timeline for implementing corrective actions.

2. By copy of this letter, Commander, Navy Installations Command is directed to schedule a follow-on visit, and conduct annual fiscal oversight audits of USNA's NAFI.

3. Reference (a) directed a thorough examination be conducted of the Naval Academy Athletic Association's (NAAA) relationship with the Naval Academy. By copy of this letter, Director, Navy Staff is directed to establish a working group led by a Flag officer, in coordination with the Superintendent, General Counsel, and Judge Advocate General to identify all involvement by the NAAA in the Naval Academy's operations and management, and review the relationship in light of applicable ethics, contract, and fiscal laws, as well as any other applicable statutory and regulatory guidelines. I will report back to you by 3 September 2010.

G. ROUGHEAD
Admiral, U.S. Navy

Copy to:
USN
GC
VCNO
DNS
OJAG
USNA
CNIC

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO
7000
Ser N09D/0U118118
July 07, 2010

From: Director, Navy Staff
To: RDML Russell Penniman

Subj: SPECIAL REVIEW OF THE RELATIONSHIP BETWEEN U.S. NAVAL ACADEMY (USNA) AND THE NAVAL ACADEMY ATHLETIC ASSOCIATION (NAAA)

Encl: (1) SECNAV Memo of 26 May 10
(2) CNO ltr Ser N00/100071 of 22 Jun 10

1. This appoints you, per enclosures (1) and (2), as chair of a working group to identify all involvement by the NAAA in the operations and management of USNA and to review the relationship between USNA and NAAA in light of applicable ethics, contract, and fiscal laws and regulations, as well as any other applicable statutory and regulatory guidelines.

2. To assist you in this review, the following are appointed as members of your working group:

CAPT(sel) (b) (6) [redacted], SC, USN, OPNAV (N41), (b) (6) [redacted]
Ms. (b) (6) [redacted], OGC/ASN(MRA), (b) (6) [redacted]
Mr. (b) (6) [redacted], OGC/USNA, (b) (6) [redacted]
CAPT (b) (6) [redacted] JAGC, USN, USNA, (b) (6) [redacted]
CDR (b) (6) [redacted] JAGC, USN, OJAG (Code 11), (b) (6) [redacted]

By copy of this letter CAPT(sel) (b) (6) [redacted] is directed to immediately establish contact with you and the other members and serve as the group's liaison. Others may be appointed by me as necessary to accomplish the mission.

3. Report your findings by letter report to me. This report is due no later than 20 August 2010, unless an extension of time is granted by me.

4. By copy of this appointing order, DNS Executive Secretariat is directed to furnish necessary administrative support. My POC in this matter is CAPT (b) (6) [redacted] JAGC, USN, (b) (6) [redacted]

/S/
S. J. LOCKLEAR, III
Vice Admiral, U.S. Navy

Copy to:
CNO (N00J, N09D)
VCNO
COMPACFLT
COMTHIRDFLT
DNS-1
CAPT (sel) (b)(6) [redacted]
Ms. (b)(6) [redacted]
Mr. (b)(6) [redacted]
CAPT (b)(6) [redacted]
CDR (b)(6) [redacted]

DEPARTMENT OF THE NAVY
CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON DC 20350-2000

7000
Ser N00/100101
2 Sep 10

From: Chief of Naval Operations
To: Secretary of the Navy

Subj: REVIEW OF RELATIONSHIP BETWEEN THE NAVAL ACADEMY ATHLETIC ASSOCIATION AND THE U.S. NAVAL ACADEMY

Ref: (a) Your memo of 26 May 10

Encl: (1) Working Group report of 23 Aug 10

1. Per your direction in reference (a), and in conjunction with the General Counsel and the Judge Advocate General, a thorough examination of the Naval Academy Athletic Association's (NAAA) relationship with the U.S. Naval Academy was completed. Rear Admiral Russ Penniman led the working group that included members from the offices of the General Counsel and the Judge Advocate General. The working group report is forwarded for your review at enclosure (1).

2. Over time, the relationship between NAAA and the Naval Academy has yielded tremendous benefit to the Academy in the execution of its mission, as well as cost savings to the American taxpayer. The report describes in detail the relationship between the NAAA and the Naval Academy and recommends several areas of improvement, in particular in governance and authorities.

3. To improve governance, the working group recommends the NAAA Board of Control (BOC) be increased in size and populated with senior experienced individuals who receive both indoctrination and refresher training. In addition, the operating agreement between NAAA and the Naval Academy, last updated in 1999, should be updated to reflect current activities.

4. As to authorities, the working group recommends the Navy submit proposed legislation so that the Naval Academy has clear, well-defined legal authority to continue its relationship, in its present form, with NAAA. For example, the legislation should clarify the Navy's authority to assign personnel to the BOC to ensure the effective governance of NAAA and to receive and use money and services generated by NAAA.

Subj: REVIEW OF RELATIONSHIP BETWEEN THE NAVAL ACADEMY ATHLETIC ASSOCIATION AND THE U.S. NAVAL ACADEMY

5. I intend to send the report to the Superintendent, U.S. Naval Academy, for his review, comments, and the development of a Plan of Actions and Milestones to implement the recommendations of the report. I will direct the Superintendent to provide an update to the Vice Chief in December 2010. You will receive an update in January 2011.

G. ROUGHEAD
Admiral, U.S. Navy

Copy to:
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WORKING DOCUMENT – NOT FOR FURTHER DISSEMINATION
PRE-DECISIONAL

Review of the Relationship between the U.S. Naval Academy and the Naval Academy Athletic Association

Executive Summary

Background

Given the extensive involvement of the Naval Academy Athletic Association (NAAA), a non-Federal entity, in multiple areas of Naval Academy operations, the Secretary of the Navy directed the Chief of Naval Operations, in conjunction with the General Counsel and the Judge Advocate General, to "identify all involvement by NAAA in operations and management of USNA, and to review the relationship between USNA and NAAA in light of applicable ethics, contract and fiscal laws, as well as any other statutory and regulatory guidelines." Director, Navy Staff appointed the members of the working group to conduct the review.

The Working Group

RDML Russ Penniman, USN, chaired the working group, which included individuals with knowledge in such matters as civilian personnel law, ethics/standards of conduct, fiscal law, non-appropriated fund instrumentalities, non-profit organizations, and Title 10. The working group included advisors from the Office of the Judge Advocate General and the Office of the General Counsel.

Method of Review

The group initiated its review by examining documents related to the current operating relationship between the Naval Academy and NAAA, historical documents, and prior audits and investigations related to the relationship. To gain a better understanding of the true working relationship between the Academy and NAAA, and to collect additional information and documentation, members of the group conducted interviews with the Superintendent, Commandant of Midshipmen, Academic Dean & Provost, Dean of Admissions, members of the Board of Control, and other military officers and employees of the Naval Academy, as well as the Athletic Director/President of NAAA and other employees of the Association. All of those interviewed were helpful and extremely forthcoming.

History

The NAAA was founded, and currently exists, solely to support athletics at the Naval Academy in the furtherance of the Academy's mission to develop Midshipmen "morally, mentally and physically" to become officers in the United States Navy and Marine Corps. Over the course of the last 119 years, in addition to managing and funding the Academy's varsity athletic program, the Association's responsibilities have grown to include management of the Academy's Physical Mission, which encompasses the execution of almost all sports and physical education activities. Fielding thirty-two NCAA Division I

varsity sports, the Academy's athletic program is considered a model for intercollegiate athletics. More importantly, graduation rates for student athletes at the Academy rank among the highest in the country and are above average when compared to the Brigade of Midshipmen as a whole.

NAAA conducts external business activities with third parties. Included among these are ticket sales; operating athletic camps on Academy grounds; managing rental agreements for parking; and negotiating contracts for bowl games, including bowl game venue, broadcasting rights, sponsorships, and game guarantees. These external business activities are essential for generating the revenue necessary to fund the Academy's extensive athletic program. For example, 85% of the Athletic Department's 2010 annual operating budget, projected to exceed $35 million, will be generated by NAAA business activities. Over the last 15 months alone, NAAA has negotiated and executed multi-year contracts, with a total value in excess of $100 million, on the Academy's behalf.

Governance

NAAA is a public, non-profit 501(c)(3) organization, which was organized to administer, promote and assist in financing the athletic programs of the Midshipmen at the Naval Academy. NAAA's President is also the Director of Athletics of the Academy. The Director has management responsibilities for the Physical Mission at the Academy, which includes varsity and club athletics and physical conditioning activities. The Director of Athletics reports to the Superintendant, and serves as a member of both the Academy's Senior Leadership Team and Board of Control.

NAAA is governed by a constitution that defines the responsibilities of a Board of Control (BOC). The BOC currently consists of seven members, and its areas of responsibility include; establishing policy for contracts, governing ticket issuance, expenditures for entertainment and other public relations purposes, banking functions, investment strategies, determining salaries and honoraria for NAAA employees, and reviewing monthly treasurers' reports and the annual audit report.

While the BOC is responsible for the review of some of NAAA's activities, and has voting authority on the approval of others, ultimate approval authority for all decisions lies with the Superintendent. NAAA's constitution states that, "all negotiations, plans, appointments and acts of this Association" . . . "which directly affect the Naval Academy athletic program, shall be subject to review by the BOC, and approval of the Superintendent."

In addition to the constitution, other governing documents define and control the activities of NAAA. An operating agreement between Academy & NAAA sets the conditions under which NAAA will operate at the Academy. (b) (5) [redacted] Lastly, the Policy and Procedures Manual of NAAA sets guidance for daily operations of the Association. There is currently no formal indoctrination or training program for BOC members.

The BOC and the Superintendent ensure NAAA's activities are in alignment with the Academy's mission and goals, and are in compliance with NCAA regulations. They also ensure the relationship between the two organizations falls within applicable ethics, contract and fiscal laws and regulations. (b) (5) [redacted]

Current oversight of NAAA appears to meet all NCAA, state and federal requirements for the operation of an intercollegiate non-profit organization, but (b) (5) [redacted]

Taking into account the expansion of NAAA's activities, both inside and outside the walls of the Academy, the complexity of the relationship between the two entities, and the scale of the Association's operation as a whole, it is clear the current size and composition of the Board of Control are inadequate to provide the level of guidance and oversight required to effectively govern NAAA's current activities.

It is the working group's recommendation that the BOC be increased in size to at least nine members, and populated with senior, experienced individuals who possess the requisite knowledge and skill sets required to more proactively inform the Board's decision making processes and govern the activities of the Association.

(b) (5) [redacted]

Authorities

An operating agreement controls the relationship and dealings between the Academy and the NAAA. In theory, although not always in practice, the agreement delineates the areas in which the two organizations coexist, integrate and cooperate to support athletics at the Naval Academy. The agreement addresses the physical spaces provided to NAAA by the Naval Academy and generally outlines each party's responsibilities. However, many of

the requirements outlined in the document are not always followed. Last updated in 1999, the operating agreement does not reflect current activities. For example, the shift in the majority of the responsibilities for the Physical Mission, from the Academy to the NAAA in 2006, is not addressed in the current document. Additionally, the extensive marketing, sponsorship and licensing arrangements NAAA undertakes for the benefit of the Academy and guidance for the distribution of profits derived from these activities are not well defined.

Because of the long history of this relationship, one would expect to find a clearly identifiable legal authority for the Academy to enter into, or be bound by, such an arrangement. However, the operating agreement cites no underlying legal authority.

Although it is clear the relationship between the Naval Academy and NAAA has been considered time and again by both the Legislative and Executive branches of government through legislation, investigations and audits; the working group found nothing in Title 10 or the Joint Ethics Regulations that clearly authorizes the relationship. (b) (5) [redacted]

The United States Air Force (USAF) Academy recently received Title 10 authority to operate the USAF Academy intercollegiate athletic program in a manner similar to the Naval Academy/NAAA model. However, the legislation as written does not directly align with the current Naval Academy and NAAA model. The working group suggests the Navy should submit its own proposed legislation, to be codified along with the Academy's existing authorities found in Title 10.

The legislation should formally authorize the relationship between the Academy and NAAA. In particular, the legislation should clarify the Navy's authority to; (1) assign personnel to the Board of Control to ensure the effective governance of NAAA; (2) receive and use money and services generated by NAAA; (3) charge usage fees for sports camps; (4) retain funds generated by camps beyond the current fiscal year and (5) transfer appropriated funds to NAAA in support of the Academy's Physical Mission.

While the working group offers several recommendations within this report to strengthen both control and oversight of the program, none of these suggested changes will bring the relationship between the Academy and NAAA into full compliance without legislative relief.

Summary

Irrespective of the issues of governance and authorities identified above, the relationship between NAAA and the Academy yields tremendous benefit to the Academy in the execution of its mission, as well as cost savings to the American taxpayer. Given current and complete governance documentation and a larger, more senior governing body, whose membership reflects the required skill sets and experience required to more effectively govern the activities of NAAA, the benefits that flow through to the Academy should only increase. Legal and regulatory authorities, always in a state of flux, remain problematic. Rather than continuing to operate in an authorities "grey" area, the relationship between the Academy and NAAA should be codified into Title 10.

WORKING DOCUMENT – NOT FOR FURTHER DISSEMINATION
PRE-DECISIONAL

Review of the Relationship Between the U.S. Naval Academy and the Naval Academy Athletic Association

I. CURRENT MISSION STATEMENTS

In order to understand the relationship between the Academy and NAAA, and the complementary and supportive role the latter plays, one only has to review the current mission statements of the two organizations.

The stated mission of the United States Naval Academy is, "To develop Midshipmen morally, mentally, and physically and to imbue them with the highest ideals of duty, honor and loyalty in order to provide graduates who are dedicated to a career of naval service and have potential for future development in mind and character to assume the highest responsibilities of command, citizenship and government both in peace and war."

The stated mission of NAAA is, "To provide physical challenges through diverse, competitive athletics and challenging physical education programs that contribute to the development of each Midshipman and help prepare them for the rigors of combat leadership."

II. HISTORY OF THE NAVAL ACADEMY AND NAAA

Since 1891, the Naval Academy and the NAAA have combined efforts to provide athletic programs for Midshipmen. The relationship began with a need for athletic funding. Through decades of interaction and changing needs, NAAA, once merely a funding mechanism for Midshipmen to participate and travel to sporting events, began to take on more responsibility for the operation and management of Academy sports.

The process was gradual and mirrors the decades-long expansion of popularity and funding for all intercollegiate sports. The breadth, popularity and funding of Naval Academy sports has expanded in direct proportion to athletic programs at all service academies, colleges and universities since their inception.

To understand how the relationship came to where it is today, an understanding of its evolution over the last 119 years is required. The purpose of the historical review below is not to excuse current actions or explain-away inconsistencies with existing regulatory mandates, but rather to put into context the relationship as it currently exists.

A historical perspective of the relationship between the Naval Academy and NAAA was provided by the Secretary of the Navy in a 1995 report to Congress. That same year, the Associate Director of NAAA, D.W. Davis, wrote a letter to Senator Robert Byrd, in opposition to creating a non-appropriated fund account to fund Naval Academy athletic programs. The following is an amalgamation of those two documents and is supplemented to contain more recent history.[1]

Football began at the Naval Academy in 1881. The Midshipmen's Athletic Association started in 1882. In the early years, the Association assessed membership dues of fifty cents to help support sports expenses. Officers "passed-the-hat" to help when dues failed to covers expenses.

Originally known as the Naval Academy Auxiliary Athletic Association, *the NAAA was founded in 1891 to "promote, influence, and assist in financing USNA's athletic programs in accordance with the policy of the Superintendent."* The centerpiece of the NAAA was its athletic fund. Dues were originally set at $1 per year. Members were asked contribute $1 per month to seed the fund.

At first, NAAA was careful to maintain that its purpose was to aid, rather than direct Midshipmen athletic efforts. A turning point seems to be the 1893 hiring of a football coach for the Midshipmen, following the example of West Point. The Midshipmen approved of the hiring, provided that the team Captains would retain final decision-making authority. NAAA, which was paying for the coach, thought it necessary that the

[1] The working group did not fact-check the largely historical narrative given by the Secretary and Associate Director.

Midshipmen agree to follow the advice of the coach. It was at this point that NAAA began to assume more control of athletic activities at the Academy.

In 1900, the Association changed its name to the Navy Athletic Association. *Three naval officers on duty in the Navy Department in Washington, D.C., served on the executive committee*, which oversaw football, baseball, boating, rifle, fencing, track, gym, swimming, basketball and lacrosse teams. Between 1900 and 1908, the minutes of the Association reflect increasing participation of the Academy Superintendent in the conduct of Association business.

NAAA's constitution of 1908 recognized the Superintendent's prominent leadership role, stating the object of NAAA was to "promote and influence sports in the Navy, particularly at the Naval Academy, in accordance with such orders as the Superintendant may issue." The 1908 constitution was approved by the Superintendent. That year the Navy ordered officers to the Academy to help coach football. The 1908 constitution divided expenses; with NAAA being responsible for the expenses of coaches, assistants, game officials, prizes, medals, and away games logistics.

The interconnectivity between the Naval Academy and NAAA continued to grow throughout the years. In 1911, NAAA conducted a fund raising campaign that lead to the construction of the Thompson stadium, the Naval Academy's first such venue, that remained in use until 1959. The revenue generated from ticket sales athletic events went to NAAA, which in turn was able to pay for athletic instructors when Congress cut funding. *Similarly, when Congress cut appropriations for maintenance at the Naval Academy, NAAA assumed a greater role in maintaining the athletic grounds.*

In 1934 NAAA changed its constitution to include three senior members of the Academy staff on the executive committee. The constitution placed the Commandant of Midshipmen as President, the head of Physical Training (who was the Academy's Director of Athletics and the Secretary-Treasurer of NAAA) on the executive committee and called-for third member selected by the other two. The constitution also reflected the Superintendent's control over NAAA in that "all negotiations, plans appointments, and acts of this Association or of the officers acting as such, shall be subject to the approval of the Superintendent, U.S. Naval Academy."

In 1937 NAAA and the U.S. Naval Institute (USNI) agreed to provide the funding for the construction of a museum at the Academy in exchange for permanent authority to maintain NAAA and USNI offices in the building.

In 1939, NAAA agreed to supplement the salaries of Academy physical training instructors, who also served as coaches for the various athletic teams. That same year *NAAA purchased the property on which the current Navy-Marine Corps Memorial Stadium now stands.* In 1956 the Superintendent took it upon himself to raise funds for the construction of a new stadium. NAAA provided $1 million of the $3.1 million construction cost and participated in the fundraising effort. The stadium was constructed in 1958-59 entirely with private funds. *NAAA currently owns, operates and maintains*

the Stadium and it makes available for use by the Academy without charge. In order to generate additional funds, NAAA makes the Stadium available for use to state and local governments, civic associations, and others for a fee.

In the late nineteen-sixties the relationship between NAAA and the Academy's athletic program became even closer. *The last active duty naval officer to serve as the Academy's Director of Athletics served from 1968 to 1970. After his retirement he became the first civilian Director of Athletics at the Academy and also assumed the duties of President of NAAA. For the last forty years the Academy Athletic Directors have served in this capacity and their salaries have been paid by the Association.*

Governmental agencies have routinely examined the Academy's relationship with the NAAA over the years. *In 1974 the United States Comptroller General determined that NAAA is a private, voluntary association, not under the direct jurisdiction of the Navy and exempt from federal income tax under section 501(c)3 of the Internal Revenue Code.*

In 1977 the Navy Judge Advocate General issued a one page legal opinion stating that it was proper for active duty naval officers to serve on NAAA's Board of Control.[2]

In 1978 a Navy Audit Service inspection of the Academy addressed the issue of the President of NAAA serving gratuitously as the Athletic Director. The report noted a Comptroller General opinion that permitted such voluntary service and advised that the relationship be reduced to writing. The inspection also noted that no formal operating agreement was in place setting out the division of responsibilities between the Academy and NAAA. In response, *the Academy documented its gratuitous arrangement with the Athletic Director and entered into a formal operating agreement with NAAA in 1979.*

In 1991, the United States Government Accountability Office (GAO) issued a report on NAAA characterizing the organization as a private, nonprofit, voluntary association, not under the direct control of the Academy. *The GAO report identified the operating agreement that sets forth the conditions under which NAAA operates at the Naval Academy, describing it as "comparable to a contract providing mutual obligations for specific actions to be carried out by the parties involved."*

In 1992, the relationship between USNA and NAAA raised controversy when reports in the Baltimore Sun (the Sun) revealed that NAAA bought a condominium for then-President Jack Lengyel and sent academy officials, local businessmen and their spouses on a trip to the Army-Navy game in Philadelphia in December of that year. According to the Sun, those expenditures came five months before NAAA approved cutting four varsity sports and reducing another sport to club status, citing costs and other factors.

In response to the Sun reports, Senator Robert Byrd introduced an amendment to the fiscal year 1995 DoD authorization bill requiring the Army, Navy and Air Force Service

[2] This information comes from the 1994 Navy Inspector General's Report entitled Naval Academy Gift Funds, Case No 940211, p.14. When the group queried the Office of the Judge Advocate General, Administrative Law Division (Code 13), the document was no longer in their records.

(b) (5)

In March of 1995 the Secretary of the Navy submitted a report to Congress on the implications of dissolving NAAA and turning over its activities to a non-appropriated fund activity as required by the Byrd Amendment. The report envisioned three avenues to fulfill the intent of the law:

(1) The donation by NAAA of all its assets to the Naval Academy. NAAA would then effectively cease to exist;

[3] At the time, the IG was reporting on Naval Academy gift funds. The use of "these organizations" in the quoted text above refers to the NAAA, the Memorial Fund, the Naval Academy Sailing Foundation and The Naval Academy Foundation.

[4] Discussed in more detail below, 2009 legislation was passed providing for the Air Force Academy's transition from a non-appropriated fund activity to a 501(c)(3) nonprofit, similar to that of the Naval Academy.

(2) NAAA retains its investments and ownership of the football stadium and donates all equipment to the Navy. The day-to-day administration of the Naval Academy athletics would operate via a non-appropriate fund operation. The NAAA would lease the stadium to the Navy at market value, and

(3) The Academy retains NAAA management of the athletics program and strengthens the oversight of NAAA operations to ensure continued compliance with standards.

(b) (5)

[redacted]

(b) (5)

[redacted]

The Secretary argued for the third alternative. The reasoning was extensive but simple: the Navy could not replace NAAA with a non-appropriated fund activity without the expenditure of significant government money and the transition would add no benefit to

[5] As NAAA's constitution stands today, the Association can be dissolved by the affirmative of two-thirds of the members of its Board of Control.

[6] Revenue is generated by NAAA from leasing parking during football games and the Assiciation's lots are leased to the State of Maryland during the rest of the year. The receipts are placed in the operating budget of the NAAA and used to support athletics at the Academy. If a NAFI collected such revenue, under federal law the proceeds would have to be deposited in the U.S. Treasury's miscellaneous receipts account.

[7] A NAFI would have to invest in government approved securities where the return on investment was historically lower. In 1994, NAAA's return on investment was 12.7% compared to the BUPERS NAFI which was realizing a 7.5% return on investment over a ten year period.

the taxpayer. The bottom line was NAAA could be operated more efficiently than a NAFI.

Recognizing the Superintendant already had control over NAAA by virtue of its constitution, the Secretary identified four oversight enhancements; (1) the creation of a sub-committee for the Presidentially-appointed Board of Visitors for Athletics and Physical Education, (2) an amendment to NAAA's constitution expanding membership on the Board of Control, to include an additional active duty officer representative (at the time, the membership of the Board of Control consisted of four active duty officers, one government civilian, and the President of NAAA), (3) appointing several distinguished citizens with expertise in Division I athletic administration and governance to serve as advisory officials to the Superintendant and (4) the annual audit of NAAA by a big six audit firm.

The Byrd amendment was repealed in 1996 and, by this action, Congress arguably authorized the status quo ante, by which NAAA included Navy officials in a management role.[8]

Also, in a 5 March 1996, memorandum from the Secretary of the Navy, to the Superintendant of the Academy, the Secretary authorized, "USNA military and civilian personnel to participate in the management of the NAAA in their official capacity, subject to the direction and control of the Superintendent."

In theory, if not totally in practice, an operating agreement controls the relationship and dealings between the Academy and NAAA, and many of the activities of the latter. The parties signed the latest iteration of the document in 1999. The agreement delineates the areas in which the two organizations coexist, integrate and cooperate to support athletics at the Naval Academy. It also defines the physical spaces provided to NAAA by the Academy; outlines the shared responsibilities; identifies safety, inspection and compliance requirements; and grants NAAA authority to operate summer youth camps on behalf of the Academy. While the agreement has not changed since it was signed in 1999, both the Academy and NAAA look to the agreement to define the relationship in 2010.

The group's review of the historical and current relationship between the Academy and NAAA leads us to the conclusion that the (b) (5) [redacted]

[8] Although the working group found that the oversight enhancements were implemented, it is clear that the some practices have fallen by the wayside. Specifically, the Board of Control has been expanded to include a seventh seat, and audits by an independent firm are conducted on an annual basis, but we found no evidence that the Academy is currently using distinguished citizens to serve as advisory officials for the athletics program.

III. CURRENT ATHLETIC ACTIVITIES AT THE NAVAL ACADEMY

NAAA manages and operates the Physical Mission of the Naval Academy. With the exception of intramural sports, which are run by first class Midshipmen as a leadership experience, NAAA controls every other facet of athletics and physical conditioning .

NAAA provides funding for thirty two Division I varsity sports teams at the Academy.[9] There are eighteen men's sports (football, basketball, baseball, lightweight crew, heavy weight crew, cross country, golf, gymnastics, lacrosse, soccer, sprint football, squash, swimming, tennis, indoor track, outdoor track, water polo and wrestling,) twelve woman's sports (basketball, crew, cross country, soccer, lacrosse, swimming, tennis, indoor track, outdoor track and volleyball,) and four coed sports (diving, rifle, offshore sailing and intercollegiate sailing) offered. Additionally, there are twelve club sports (boxing, hockey, rugby, cycling, karate, pistol, triathlon, powerlifting, marathon, women's ruby and woman's softball). All are supported almost entirely with NAAA funding. Although Midshipmen are recruited for specific sports, any Midshipman may try-out for any sport..

Assessment of NAAA Operations

The Physical Mission is very effectively run at the Naval Academy; both in terms of successful programs and the ability to meet intercollegiate academic and sportsmanship standards. To wit, the following examples:

A. Athlete Performance

Graduation Rates – USNA varsity athletes graduate at a higher rate than non-athletes. The average 2006-2009 graduation rates for varsity athletes were 89.25% compared to the non-athlete average of 81.12%. Academy athletes do even better when compared against other NCAA athletes. When using NCAA graduation computation standards, 98% of Academy varsity athletes graduate compared to 56% across the NCAA.[10]

Student Participation Rates - 27% of male and 35% of female Midshipmen are varsity athletes. This compares favorably with the United States Military Academy (20% males and 35% of females) and the United States Air Force Academy (16% of males and 20% of females.)

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[9] Given that 92 percent of the incoming plebes at the Academy were high school varsity athletes, continued participation in sports is an incredible draw for recruitment at the Academy. Of the 300 National Collegiate Athletic Association ("NCAA") Division I colleges in the United States, only Ohio State and Stanford offer a wider range of sporting activity than found at the Naval Academy.

[10] The Academy computes graduation rates based upon the number of Plebes who enter each year. The NCAA computes graduation rates based upon the number of student athletes attending the university on the first day of their respective sports season.

B. Naval Service Career Performance

Probably the most critical assessment of the Academy athletics program is how student-athletes perform as career naval officers when compared to non-athletes. A review of the ten year retention rate of Navy and Marine Corps Academy graduates for twelve graduating classes (1988-1999) revealed the following retention rates:

USN (Academy Varsity Athlete)	46.57%
USN (non-athlete)	48.62%
USMC (Academy Varsity Athlete)	54.27%
USMC (non-athlete)	53.79%

C. NCAA Compliance

The Academy currently meets all NCAA standards for academics and sportsmanship.[11] The NCAA Compliance Office has established monitoring procedures and educational programs that provide guidance in how to work within NCAA rules. Each individual in the athletic department is obligated to maintain competency in knowledge of these rules and to act within his or her area of responsibility to ensure the Academy's varsity programs remain in full compliance. The Naval Academy is also a member of the Patriot League, which conducts its own audits of the Academy's athletic program.

Although NAAA and the Academy aggressively recruit varsity athletes, all candidates for admission are evaluated through a formal board of admissions process. Of the sixteen member Admissions Board, only one is a representative of the Athletic Department, and that individual is a non-voting member.

Academic performance is monitored for all midshipmen, regardless of athletic participation by the Academic Board. Sports participation and eligibility decisions are the purview of the Academic Board under 10 USC § 6963 and USNAINST 5420.24G. Even if is determined by the Athletic Department that an athlete meets NCAA academic eligibility criteria, the Academic Board can mandate more rigorous criteria for sports participation. Although the Athletic Department has an input, it does not have a voting member on the Academic Board. There are no supplemental tutorial services provided to athletes beyond those that are available to all Midshipmen.

[11] The Naval Academy must be certified every ten years by the NCAA in order to continue participation in NCAA sporting events. The Academy is currently engaged in the certification process and NAAA voluntarily provided us the extensive report it has prepared in connection with the ongoing certification review.

IV. NAAA'S OPERATIONS AT THE NAVAL ACADEMY

As stated earlier, (b) (5) [redacted]

The group identified several key areas where NAAA provides key services for the Academy, either in direct support of the athletic program or as a revenue generator to support the athletic mission. The group also looked at funding, examining appropriated funds entrusted to NAAA, as well as those funds generated by the Association in support of the athletic mission.

A. NAAA's Activities in Direct Support of Athletics at the Academy

1. The Physical Mission

The Naval Academy's Physical Mission encompasses sports (varsity, junior varsity, club, intramural) and physical education (including military requirements such as the Physical Readiness Test). The goal of the Physical Mission is to inculcate physical excellence in Midshipmen through diverse, competitive athletics, challenging physical education programs and continuous personal conditioning. The desired end state is Midshipmen fully developed in "mind, body and spirit" in order to prepare them for the rigors of combat leadership.

The roles and responsibilities of the Physical Mission have evolved along with the Naval Academy. Traditionally, intercollegiate sports were the responsibility of NAAA, while physical education, club sports, intramural sports, and the Physical Readiness Testing program fell under the purview of the Commandant of Midshipmen.

In 2005, the Superintendent directed a comprehensive review and analysis of the Physical Mission requirements and programs. The Physical Mission Review (PMR) encompassed a yearlong study of all facets of the conduct of athletics at the Academy. The PMR's purpose was to determine if the USNA is "doing what we should to physically prepare our midshipman to be officers in the 21st Century" and to develop "an overall physical mission plan which establishes policy for the conduct of athletics at the Naval Academy."

Numerous committees and subcommittees, with Academy-wide representation, were established to conduct the PMR. Committees were tasked to evaluate and provide recommendations for a wide range of activities. Among these were athletic organization, varsity and club sports, physical education, officer development, and Midshipmen athlete performance.

In addition to the Academy committees an External Review Committee of graduates and interested citizens was established to evaluate varsity and club sports. The Committee was comprised of the following members:

- ADM Bob Natter, Former Commander-in-Chief, U.S. Atlantic Fleet (Co-Chair)
- Mr. Gene Corrigan, Former President of the NCAA (Co-Chair)
- Mr. Chet Gladchuk, USNA Director of Athletics
- RADM Tom Lynch, Former USNA Superintendent
- ADM Leighton Smith, Board of Visitors Representative
- VADM Culter Dawson
- The Honorable John Dalton, Former Secretary of Navy
- Mr. Omar Nelson, Former USNA athlete
- CDR (b) (6) [redacted] Former USNA athlete
- Mrs. Sharon Disher, Former USNA athlete
- Ms. Kayla Weston, Assistant to Athletic Director

In the fall of 2006, each committee briefed the Superintendent and offered their recommendations. The Superintendent promulgated his decisions though a series of memoranda entitled "Decision Directive Serials." The first such Directive realigned all athletics under the Director of Athletics.

The PMR identified several conflicts that arose because multiple assets, facilities and personnel organizations that supported the Physical Mission traditionally fell under the responsibility of the Commandant of Midshipmen, while varsity athletics were the responsibility of the Athletic Director. Among the problems identified were conflicting schedules for use of facilities between varsity, club, intramural and physical education; unclear and inconsistent achievement of requirements for graduation; multiple and confusing reporting chains for coaches and Physical Education instructors; inconsistent hiring policies and promotion opportunities for coaches and staff and uncertainties as to which organization was responsible for maintenance and care of athletic fields and facilities.[12]

The Superintendent's Directive sought to increase efficiencies and to remedy those shortfalls identified in the PMR. In accordance with the Directive, the Director of Athletics is to be the primary member to the Naval Academy Senior Leadership Team responsible for the accomplishment of the Physical Mission. To facilitate this transition, the position of Senior Associate Athletic Director for Facilities (current title) was created. Additionally, because the Athletic Director position was not filled by a government employee, all Physical Mission government employees are aligned under a Navy Captain/Marine Corps Colonel Deputy Director of Athletics to ensure federal employees

[12] The External Review Committee of the PMR reviewed several options for the administrative organization of athletics at the Naval Academy. The model that produced the most interest was one in which all Physical Mission programs would fall under the Athletic Director. After reviewing the pros and cons for this option, the Committee failed to reach a unanimous agreement as to the way ahead. It did, however, recommend that the Athletic Director take on more significant oversight and responsibility for the Physical Mission.

are supervised by a federal employee.[13] The intramural sports program remains under the Commandant as it provides a venue for Midshipmen leadership development.

As a result of the PMR, the Athletic Director is responsible for, and NAAA now manages and operates, all aspects of the Physical Mission with the exception of intramural sports. This includes varsity sports, junior varsity sports, club sports, camps and clinics, and the scheduling of athletics facilities.

It is the opinion of the working group that (b) (5) [redacted]

2. Facilities

The relationship between the USNA and NAAA has allowed the Academy to maintain first class athletic facilities, which would not be possible through appropriated funding alone. Over the past six years, NAAA reports providing (b) (4) [redacted] in funding for Academy athletic facility construction projects. This includes improvements to the Navy-Marine Corps Memorial Stadium along with the soccer, baseball, squash, lacrosse, and sailing facilities.

Given the wide range of athletic offerings and the high percentage of Midshipmen that participate in varsity, club and intramural sports, proper management of athletic facilities is critical to ensure the facilities are well maintained, safe, and available for use in support of Naval Academy requirements. Prior to the PMR, management of athletic facilities was divided between the Commandant and NAAA. As a result of the PMR, the Superintendent consolidated athletic facility management under NAAA.[14]

While Academy athletic facilities are government property, the use and scheduling of the facilities is managed by NAAA as directed in the operating agreement and the PMR. In addition, NAAA leases space on Academy grounds from Commander Naval Installations Command (CNIC). These leases are maintained by Public Works Department, Annapolis and are staffed and reviewed through the appropriate processes via Naval Facilities Engineering Command, Washington. Routine maintenance and upkeep is generally funded by appropriated CNIC dollars, but upgrades and non-routine maintenance are funded by NAAA. The spaces leased by NAAA include:

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[13] The military Deputy Director position is currently vacant. Federal civilian employees are now reporting to the senior federal civilian employee of the Athletic Department.

[14] We note without discussion the Academy provides government quarters on Academy grounds for the Director of Athletics, a NAAA employee. NAAA pays monthly rental charges as established by the Naval Facilities Engineering Command. Quarters for the Director of Athletics is included in the operating agreement and is authorized by the Superintendent per USNA instruction 11101.13 and USNA note 11101. Per the instruction, personnel designated as "key and essential" are required to reside on Academy grounds unless an exception is granted by the Superintendent. Note 11101 lists key and essential personnel, including the Director of Athletics.

-Rickets Hall – approximately 11,000 square feet for offices
-Alumni Hall – 1,200 square feet for the operation of three concessions
-Naval Academy Golf Course – 110 acres & buildings

The Navy-Marine Corps Memorial stadium is owned by NAAA and, per the operating agreement, is provided to the Academy free of charge for athletic events and graduation. Maintenance, scheduling and operation procedures for the stadium are specifically detailed in NAAA's Policies and Procedures Manual.

A member of the NAAA staff is responsible for developing the master schedule for athletic facilities and for ensuring the usage of athletic facilities best meet Physical Mission requirements. NAAA's Policies and Procedures Manual provides priority guidance for facility usage and details roles and responsibilities for scheduling, operations, and maintenance of Academy athletic facilities.

3. Sports camps

The current operating agreement authorizes NAAA to conduct summer sports camps. The stated purpose of these camps is to enhance recruiting and assist in exposing youth groups to the Naval Academy. NAAA manages the summer sports camp program and receives 25 percent of the income in order to cover NAAA overhead and expenses as well as to help support Academy intercollegiate activities and other NAAA programs.

The sports camps are conducted on Naval Academy grounds and are run by NAAA employees along with short-term summer hires of the NAAA. NAAA employs Naval Academy employees to work the camps if they are on leave or in a non-paid status and have approval from the Naval Academy for outside employment. NAAA reimburses the Naval Academy for all meals provided to camp participants during the sports camps.

NAAA collects and retains Naval Academy facility fees from camp participants for field usage and camp lodging. As a general rule, the amount charged for the camps exceeds operating costs to administer the camps by NAAA. A memorandum from the Academy's Deputy for Finance authorizes NAAA to collect and retain the fees with funds retained in a restricted account of the Association. The memorandum states these funds may be used at the discretion of NAAA's Athletic Director in support of maintenance and life-cycle replacement of equipment and facilities used by the summer camp program. A review of the sports camp account by the Academy's Command Evaluation Officer indicates that funds were expended as authorized.

(b) (4) [redacted].

The operation of the summer camps is a money-maker for NAAA, provides an avenue for young athletes to become acquainted with the Academy and directly benefits the Academy's Physical Mission. It is, however, currently operating in an unauthorized manner and we recommend changes below.

4. NAAA Employees Supporting Physical Mission

NAAA employs a number of individuals in support of the Academy's Physical Mission, with the majority of athletic coaches and trainers being NAAA employees. They also employ the administrative staff, which supports the overall athletic program. The Athletic Director, as previously noted, is an NAAA employee.

The Naval Academy employs a number of individuals as physical education instructors. Some of these instructors also serve as coaches. Whether employed by the NAAA or the Academy, all individuals within the Athletic Department take direction from the Athletic Director, who is directly accountable to the Superintendent.

(b) (5)

(b) (5)

B. NAAA's Funding and Revenue Generating Activities

1. Funding

The working group reviewed government appropriated and non-appropriate funding provided to NAAA. The intent was not to duplicate recent audits by Chief of Naval Personnel and CNIC, but to ensure government funding provided to NAAA is expended in accordance with governing authority.

(b) (4)

[15] Some exceptions apply, most notably if unlawful discrimination motivates the termination.
[16] The A&S donations are specific use funds that are placed in restricted accounts and audited regularly by an independent auditor. They are typically used for supplemental recruiting support, team travel, sports equipment, medical support during sporting events, medical supplies and computer equipment and software.

A general breakdown of the revenue streams is as follows:

(b) (4)

A general breakdown of expenses is as follows:

(b) (4)

a. Appropriated Funds

NAAA, in the execution of the Academy's Physical Mission, incurs costs that are resourced using appropriated funds. Examples include coach and trainer salaries, varsity sports expenses such as entry fees, recruiting, printing, athletic equipment, facility maintenance, and facilities and administrative salaries.

The Academy requests specific services from NAAA in the form of physical education instructors, field maintenance, and graduation support. Appropriated funding is provided to NAAA based upon the cost of this support.

In 2009, the total NAAA operating budget in support of the Physical Mission was $29,794,771. Of that amount, the appropriated funding provided by the federal government was allocated as follows:

Coaches/trainers	$2,272,234
Varsity Sports Expenses	$ 445,395
Athletic Equipment	$ 253,293
Facilities/Athletic Ops/Admin	$ 285,866
Physical Education Support	$ 152,611
Field Maintenance	$ 125,000
Graduation Support	$ 123,733
Total	$3,658,132

Appropriated funding provided to NAAA in support of the Physical Mission is transferred on a reimbursable basis. NAAA documents legitimate appropriated fund expenses and then submits for reimbursement on a quarterly basis. The Naval Academy Comptroller verifies this documentation and reimburses NAAA for valid expenses.

b. Non-Appropriated Funds

The following describe instances where non-appropriated funds are provided to NAAA.

Midshipmen Ration Allowance – The Academy is tasked to feed Midshipmen and receives Military Personnel, Navy (MPN) funding based on the number of Midshipmen mustered per meal. Upon receipt by the Academy, MPN funding is converted to non-appropriated funds in accordance with the DoD Financial Management Regulation, Vol. 12, Ch. 20. When Midshipmen on Movement Orders are unable to dine on Academy grounds, meals are often provided by the organization that arranges the travel. In the case of varsity athletics, this is NAAA. When NAAA provides meals for Midshipmen on Movement Orders it requests reimbursement from the Midshipmen Food Service Division. Requests for ration reimbursement is limited to the OSD Comptroller prescribed rates for the actual meals and are properly documented.

Midshipmen Welfare Fund (MWF) – The MWF is a non-appropriated fund used to assist the Brigade of Midshipmen by providing opportunities for structured extra-curricular involvement in recreational or other constructive activities at the individual, company or battalion level. The MWF functions in a manner similar to campus support organizations, including student unions and recreational organizations, at civilian institutions of higher education. For away football games the Academy frequently send Midshipmen as spectators to represent the Academy and the Navy. Tickets for these away games are provided by NAAA and the MWF reimburses the Association for the price of tickets for Midshipmen in attendance.

Midshipmen Stipend – The Midshipmen Stipend is authorized by Congress to outfit and financially fulfill military and academic responsibilities of Midshipmen while they are at the Academy. Portions of the stipend are necessarily set aside by the Naval Academy to

cover expenses associated with routine Midshipmen requirements while enrolled. In these instances DFAS decrements the stipend from Midshipmen pay based on the approved Midshipmen Budget Book and, in turn, distributes these funds by issuance of a check to the entity providing goods or services to Midshipmen. As it relates to NAAA, the sole charge against the stipend ($12.00 per month per midshipmen) is distributed to NAAA to offset the cost of non-revenue producing sports programs and athletic facility maintenance. It is also used to offset ticket costs of Midshipmen who attend varsity athletic events when admission is charged.

It is the opinion of the working group that non-appropriated funds are properly provided to NAAA for expenses incurred, and are adequately governed and regulated. This arrangement must be reflected in the operating agreement.

c. Travel Funding

NAAA pays the majority of travel expenses related to the athletic program. While the operating agreement outlines how travel costs are to be shared between USNA and NAAA, the reality is the Association pays most athletic travel expenses.

2. NAAA Marketing and Sponsorship Agreements

According to NAAA, twelve percent of its revenue comes from marketing and promotions. Navy sports are represented to corporations as an opportunity to associate their brand names with the values of the Academy. On its website NAAA portrays the potential association as being in a class by itself, claiming, "On the national stage, it stands with few other programs as pure American treasures. In this era of high fives and end zone gyrations, you can count on good old American enthusiasm with class when the Midshipmen take the playing field or court."

The list of Navy sponsors is long and varied. Corporate sponsors include companies such as [redacted] (b)(4)

NAAA provides its sponsors multiple venues to associate their companies or products with the Academy and its sports programs. Sponsors can have their billboards or signs displayed prominently at the football stadium or purchase advertising on the Navy Football Radio Network. According to NAAA, "[a]n organization can choose to promote itself via repeated impressions through print collateral, logo identification, select electronic media and game day promotional advertising that extends well beyond the walls of the Yard or the interior of the stadium. Your corporate logo as well as its image will remain in front of loyal Navy fans, alumni, friends, etc. for the duration of our partnership."

3. Post-Season Bowls/Army-Navy Game Contracts

The working group reviewed the signed contracts for the 2010 post-season bowl game (Poinsettia Bowl) and one of the upcoming Army-Navy games.

The Poinsettia Bowl agreement is a short, two-page Memorandum of Understanding (MOU) between NAAA and the Executive Director of the San Diego Bowl Game Association (Poinsettia Bowl).

The Army-Navy game agreement is a three-party contract between the Army Athletic Association NAFI, NAAA, and the host city promoter. The general provisions outline the revenue sharing arrangement, ticket distribution, and the standard disclaimer clause *alerting the promoter that the NAAA does not represent the U.S. Naval Academy*. The promoter is responsible for arranging the use of the stadium and its preparation to host the game; providing a private gala for the Army and Navy VIP parties; providing a specified number and type of hotel rooms; reimbursing the cost of transporting the Brigade, team, and the designated Official Party; and a game guarantee. In return, the Service Academies agree to participate in the game, to provide officials and medical staff support, and commit to other additional non-controversial activities.

V. GOVERNANCE OF NAAA

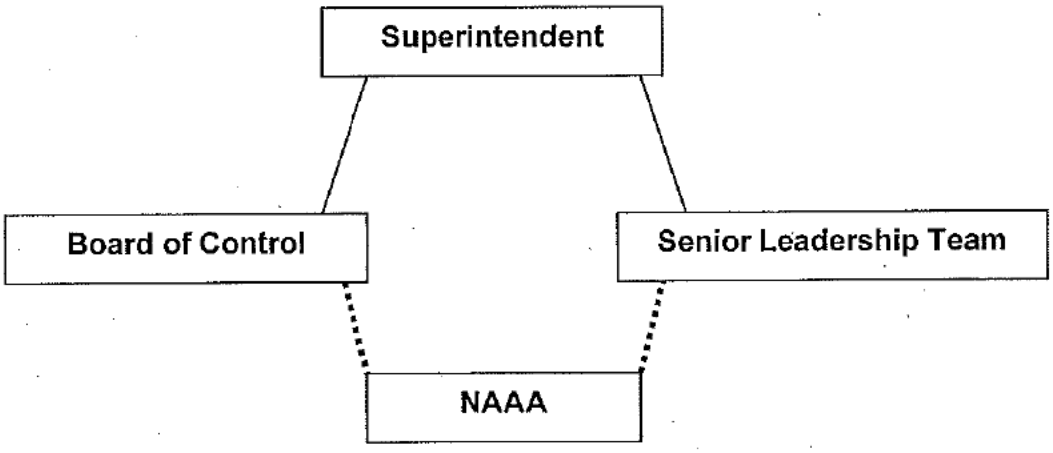
A. Background

Having identified those areas where NAAA operates, manages and generates revenue for the Naval Academy Physical Mission, the group reviewed how the Navy provides oversight to ensure that both NAAA and the Athletic Department operate effectively, efficiently, ethically, and within the law.

NAAA is an unincorporated Maryland association, grandfathered as a 501(c)(3) and treated by the IRS as a nonprofit organization.[17] The Association was organized to administer, promote and assist in financing the athletic programs of the Midshipmen at USNA. The President of NAAA is also the Director of Athletics of the Academy and, in his capacity as Director, is responsible for the Physical Mission at the Academy.

B. Superintendent's Authority over NAAA

NAAA's constitution provides the Superintendent of the Academy with authority over almost all of the activities of NAAA. All negotiations, plans, appointments, and acts of NAAA or its officers, which directly affect the Academy's Physical Mission, are subject to the approval of the Superintendent. The Superintendent's control over NAAA's activities is exercised through two bodies, the Senior Leadership Team (SLT) and the Board of Control.



C. Senior Leadership Team

[17] A 1974 Comptroller General Decision (54 Compo Gen. 518) determined that NAAA is a private, voluntary association, not under the direct jurisdiction of the Navy.

Members of the Senior Leadership Team (SLT) provide advice to the Superintendent and execute the mission of the Naval Academy in their respective areas of responsibility. Among the composition of the SLT is the, Commandant of Midshipmen, Academic Dean & Provost, Dean of Admissions, Athletic Director, Deputy for Finance and other key leadership staff at the Academy.

The Academy's Athletic Director, who is also the President of NAAA, is a member of the SLT. The SLT meets weekly with the Superintendent to coordinate and seek approval for various activities, including of the Athletic Department and NAAA.

D. NAAA Board of Control

The Board of Control (BOC) is the formal governing body of NAAA and the Association's constitution defines the Board's responsibilities. Consisting of seven members, the BOC is responsible for forming policy and providing oversight of NAAA. The constitution permits the Superintendent to appoint *ex officio*, non-voting members to the BOC, and he has authorized the Vice President/Athletic & Scholarship Programs of the Naval Academy Foundation to serve in this capacity.

The BOC's areas of responsibility include; establishing policy for contracts, governing ticket issuance including complementary tickets, expenditures for entertainment and other public relations purposes, banking functions, investment strategies, determining salaries and honoraria for NAAA employees, and reviewing monthly treasurer's reports and the annual audit report. The constitution further states, "all negotiations, plans, appointments and acts of this Association . . . which directly affect the Naval Academy athletic program, shall be subject to review by the BOC, and approval of the Superintendent."

(b) (5)
[redacted]

The current composition of the Board of Control is:

Name	Position on BOC	Position at USNA / NAAA
Captain Robert Clark, USN	Chairman	Commandant of Midshipmen
Mr. Chet Gladchuk	Member	President of NAAA & Athletic Director
Mr. Eric Ruden	Member	Vice President of NAAA & Deputy Director of Athletics
Professor Christine Copper	NCAA Institutional Faculty Athletics Representative	Chemistry Professor, USNA
Mr. Robert Parsons	Member / Compensation oversight	Deputy for Finance, USNA
CDR Edward J. Tucholski, USN	Officer Representative	Physics Department Associate Chair, USNA
LCDR Dave Forman, USN	Member	Flag Secretary, USNA

The NAAA constitution stipulates the Board of Control should meet monthly, or on an as-needed basis, but at least every 60 days.[18] The Superintendent approves all of the Board of Control meeting minutes.

In formulating its recommendations in Section VI, the working group examined various documents relevant to the Naval Academy's oversight of NAAA. (b) (5) [redacted].

Following the 1995 Report to Congress on the costs of implementing 10 USC 6975, Secretary John H. Dalton authorized USNA military and civilian personnel to participate in the management of NAAA in their official capacity. The Secretary also authorized the Superintendent to appoint the members of the Board of Control and to take official action

[18] The constitution mandates one meeting at least every sixty days. A review of the Board of Control minutes show that the Board met six times in 2009 and met four times this year through August 20.

on matters affecting the USNA that may be submitted by NAAA for approval. At the time of this authorization, Service Secretaries had the authority to permit DOD employees to serve on boards of NFE's in their official capacity. Secretary Dalton's approval, which specifically provided that it would remain in effect until revoked in writing, has not been revoked by his successors.

Since that time JER 3-202 has been modified to require DoD General Counsel approval to permit DoD employees to participate in their official capacities in the management of certain non-federal entities. However, unless expressly authorized by Congress to participate, the DoD official must repudiate his fiduciary duty to the entity. Otherwise, that official may only serve in a liaison capacity.

Corporate and nonprofit best practices call for (b) (5) [redacted]

E. The Operating Agreement

An operating agreement controls the relationship and dealings between the Academy and NAAA. The parties signed the latest iteration of the document in 1999. The agreement delineates the areas in which the two organizations coexist, integrate and cooperate to support athletics at the Naval Academy. It defines the physical spaces provided to NAAA by the Academy; outlines shared responsibilities; identifies safety, inspection and compliance requirements and grants NAAA authority to operate summer youth camps on behalf of the Academy.

VI. FINDINGS AND RECOMMENDATIONS OF THE WORKING GROUP

The working group determined four areas requiring attention in order to bring the current relationship within the construct of existing law. While our review was not an audit or investigation, we found the existing relationship beneficial to the Naval Academy, the Navy and the American taxpayer. The recommendations that follow assume the Navy and the Naval Academy desire to keep the relationship near its current form, which is the strong recommendation of this group. In brief, the Academy and NAAA must (1) update the operating agreement, (2) improve BOC governance, including greater oversight responsibilities, ([redacted] (b) (5) (4) seek legislation to clarify authorities.

A. Updating the Operating Agreement

Although operating agreement between USNA and NAAA covers multiple subjects, employees from the Academy and NAAA with whom we spoke acknowledged the agreement requires extensive revision to accurately reflect current practices. As an example, although the Academy's Physical Mission shifted to NAAA in 2006, this substantial change is not reflected in the current agreement.

Specifying all the changes needed in the operating agreement is beyond the scope of the working group's tasking to review the legal and ethical implications of the Academy/NAAA relationship. That said, certain deficiencies in the current iteration of the agreement are noteworthy. The operating agreement is eleven years old. The current agreement mentions governing Boards that are no longer operating (Planning Board for Approval); does not identify the facilities where NAAA is licensed to operate (Max Bishop Stadium, Glen Warner Soccer Facility, Wesley Brown Filed House, etc.); lists activities in which NAAA is no longer engaged (operating the Visitor's Center); does not adequately define responsibilities for maintenance of facilities and fields; lists performance requirements that are simply not followed (i.e., the Academy will pay food, lodging and transportation costs of government employees for recruitment using the GTR while NAAA will pay all food lodging and transportation costs for NAAA employees.) Also of significance, the agreement does not address the distribution of proceeds from the numerous marketing and sponsorship activities NAAA undertakes for the benefit of the Academy.

While, modification of the operating agreement is allowed with the mutual consent of the parties, there is no requirement that modifications be reduced to writing. As noted above, while the Physical Mission realignment is complete, the shift of responsibility has not been incorporated in the agreement. The operating agreement needs to be rewritten, [redacted] (b) (5)

At a minimum, the working group recommends the following revisions to the operating agreement:

(b) (5)

[redacted]

[redacted]

[redacted]

[redacted]

(5) Anti-discrimination/Diversity. The operating agreement merely states (b) (5) [redacted]

B. Improving Oversight to NAAA

1. Background

While oversight of NAAA appears to meet all NCAA, state and federal requirements for the operation of an intercollegiate non-profit organization, when the operations of BOC are measured against the institutional best practices and principles outlined in enclosures (5) and (6) there is room for improvement. (b) (5) [redacted]

In 1995 the Secretary of the Navy recommended additional measures to improve oversight, including the addition of a seventh member to the BOC. (b) (4) [redacted]

[19] It must be noted that NCAA's compliance, Anti-discrimination/Diversity and the Physical Mission are addressed in detail in the NAAA Policy and Procedures Manual. Our review found exceptional results in the execution of these functions. Nevertheless if the Academy wishes to cede responsibility for these functions to a non-federal entity it is critical the operating agreement provide for oversight.

months, there were contract discussions, ongoing negotiations, and contract awards for over $100 million, including:

- Contracts with host cities/stadiums for Army/Navy football game for the next 10 years, gross value (b) (4) [redacted] to be split with Army);
- Contract with CBS for broadcast rights of the Army/Navy football game for the next 10 years, gross value (b) (4) [redacted] to be spit with Army
- Contract with USAA for (b) (4) [redacted] sponsorship for the next 10 years;

NAAA has grown over the years from a small, all volunteer operation, with limited scope of responsibility and resources, to a multi-million dollar enterprise. In addition to being responsible for management of almost all athletic sports and physical fitness activities at the Academy, NAAA's external business activities generate in the area of (b) (4) [redacted] dollars per year. Put simply, the capability and capacity of the BOC as a governance body has not kept pace with the tremendous growth of the Association. Further, many of its practices do not align with the best governance practices of business and non-profit organizations.

2. Recommendations for Improving the Board of Control

The membership of the BOC is deficient in numbers, knowledge, and experience to ensure a full, rich and diverse discussion on governance and organizational matters.

While the current BOC is populated with very capable and dedicated individuals, its constituency does not possess the required skill sets or level of experience required to provide adequate review and informed guidance for many of NAAA's current activities. Given the greatly expanded size, scope, and complexity of NAAA's operations, it would be of great benefit to both the Superintendent and the Association that the BOC's membership be increased in number, and populated with individuals who collectively possess the seniority, experience and skill-sets required to more proactively influence the Board's decision making processes.

The relationship between NAAA and USNA is unique in that the former came into existence specifically to support the latter. It only follows that a substantial portion of the BOC's membership be drawn from the uniformed and civilian staff of the Naval Academy as they are most knowledgeable about the Naval Academy's strategic plan and mission. Such personnel are best equipped to ensure NAAA's activities at the Academy are both complementary to and supportive of the Academy's goals. Given NAAA's unique and extensive business operations, there is also a need to draw additional experience and expertise from outside the Academy. The group recommends the board membership be expanded to at least nine members, to include:

(b) (5) [redacted]

(b) (5)

(b) (5)

[20] The recommendation that the Athletic Director, and members of the NAAA staff not serve on the BOC as voting members is in no way to infer their performance has been less than exemplary, but rather to bring the Association's governance in line with "best practices" of nonprofits and recommendations of the IRS. Further, the Athletic Director/NAAA President, and members of the NAAA organization are to be commended for bringing athletics at the Naval Academy to a level of national prominence over the last decade, as well as for their significant success in expanding the revenue generating activities of NAAA

(b) (5)

(b) (5)

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(b) (5)

3. Appropriated Funds

The operating agreement details a portion of what expenses are to be paid or reimbursed with appropriated funds.

Prior to May 2000, the purchase of athletic equipment was divided between the Academy and NAAA. The Association purchased uniforms and equipment for the varsity football and basketball teams, while the Academy purchased uniforms and equipment for all other sports using appropriated funds. Academy requirements that exceeded available appropriated funds were passed on to NAAA for purchase with private funds.

This division of responsibility created confusion and resulted in duplication of effort. Additionally, government procurement regulations do not necessarily allow the most economical purchase price or expedient procurement. In May 2000, the Superintendent approved the transfer of appropriated funds to NAAA to be used for the purchase of athletic uniforms and equipment. This practice continues today.

A Deputy for Management memo dated 18 May 2000, directs the transfer of funding to NAAA and provides justification for the transfer of funding and procurement responsibilities to the Association. The memo justified the transfer based upon:

- The September 1991 GAO report that noted "An operating agreement between the Academy and NAAA sets forth the conditions under which NAAA operates at the Academy and the support that the Academy provides to NAAA. The agreement is comparable to a contract providing mutual obligations for specific actions to be carried out by the parties."
- The sole source nature of the contract like relationship was not considered an issue as the sole and exclusive purpose of NAAA is to support USNA.

- The Board and Control and Superintendent provided sufficient oversight to NAAA to ensure it supported Academy requirements.

(b) (5)

4. Sponsorship Activities

The rules governing commercial sponsorship include DoDINST 1015.10 of July 6, 2010 and the implementing DON guidelines in BUPERSINST 1710.11C. Per the instruction, official sponsorship is authorized only in support of DoD MWR programs. Non-MWR organizations, including those authorized to operate on a DoD installation, may not accept commercial sponsorship. The federal government does not impose restrictions on the ability of NAAA, a non-federal entity, to enter into corporate sponsorships.

(b) (5)

(b)(5)

[21] The group found no evidence violations have occurred. The sponsorship agreement reviewed appeared to be industry boilerplate.

(b) (5) [redacted]

D. Suggested Legislative Revisions

In 2009, the United States Air Force Academy submitted a legislative proposal that allows the Air Force to "operate the USAF Academy intercollegiate athletic program and the revenue generating portions of the AFAAA (Air Force Academy Athletic Association) as a state chartered 501(c)(3) corporation – substantially similar to the model *followed for many years by the United States Naval Academy* for the Naval Academy Athletic Association (NAAA)."

The proposed amendment authorized the AFAAA to establish organize and operate as a non-profit 26 USC § 501(c)(3) corporation exclusively for charitable, educational and civic purposes to support the USAFA Athletic program. The proposal, as written, would have allowed the AFAAA to construct a business model similar to that used today by NAAA.[23] For various reasons, the Navy chose not to seek inclusion in the legislation.

In summary, the working group found a well-run, conscientious Athletic Department at the Naval Academy. We also rediscovered several issues with legislative authority that have existed for years, if not decades. Several recommendations are made in this report to strengthen both control and oversight of NAAA's activities; however, to retain the organization in its current form an amendment to Title 10 should be sought. The legislation should clarify the relationship between the Naval Academy and NAAA, as well as the Navy's authority to participate in the active management of Association.

[22] The First and Second areas of concern would exist irrespective of whether NAAA or the Academy is the employer.
[23] The Amendment as passed by Congress does not meet the needs of the Naval Academy.

The working group identified five areas where legislative authority would remove doubt as to the validity of current practices:

1. Conflict of interest – As yet, it has gone unchallenged that the Naval Academy has the authority to place members on NAAA's Board of Control. In 1996 the Secretary of the Navy approved official participation in the management of the Association. To ensure that Navy participation is authorized and not in violation of JER 3-202, the authorization should be codified.

2. Gratuitous Service – The Navy, through the Naval Academy receives millions of dollars in gratuitous services from NAAA. The Academy's authority to receive and use these gratuitous services for the purposes of supporting its Physical Mission should be supported by legislation. Ideally, the authority would specify that gratuitous services or no-cost contracts could be performed by NAAA and that, subject to prior approval of the Navy, the Association could enter into sponsorship and marketing agreements that bind the Naval Academy. It should also specifically allow the Academy to enter into an operating agreement with NAAA.

3. Usage Fees – The Academy needs the authority to charge and retain usage fees to enable the summer sports camps to continue. While the use of facilities and division of revenue for the camps can be provided for in the operating agreement with NAAA, there is currently no regulatory authority for the Academy to charge and retain facility fees.

4. Miscellaneous Receipts – Subject to strict oversight, the Navy should seek specific authority to retain the funds generated and subsequently donated by NAAA for the support of the Physical Mission, athletic program and facility maintenance.

5. Appropriated Funds – The legislation should clarify the USNA's authority to transfer appropriated funds to NAAA in its execution of the Academy's Physical Mission activities.

REFERENCES AND BACKGROUND MATERIALS CONSIDERED

(a) Office of the Naval Inspector General Case Number 200801937 Report of Investigation dtd 17 November 2009
(b) CNIC ltr 1700 Ser N00/10U51204, dtd 9 April 2010, FISCAL OVERSIGHT REVIEW OF THE UNITED STATES NAVAL ACADEMY NON-APPROPRIATED FUND INSTRUMENTALITY
(c) CNP ltr 7000 Ser 00/073, dtd 7 May 2010, REVIEW OF FINANCIAL MANAGEMENT PRACTICES AT THE UNITED STATES NAVAL ACADEMY
(d) Operating Agreement Between the USNA and NAAA, N00161-99032-014 dtd 01 February 1999
(e) Memorandum of Understanding Between the USNA and NAAA, N00161-99348-014B, Information Technology Requirements dtd 14 December 1999
(f) Operating Agreement Between USNA and Naval Academy Golf Association, N00161-99335-020 dtd 31March 2000
(g) Licensing Agreement Between USNA and NAAA dtd 23 April 1993
(h) Addendum to Licensing Agreement Between USNA and NAAA dtd 7 February 1996
(i) GAO Report NSIAD-91-291 dtd September 1991, Naval Academy Athletic Association Organization Status, Financial Operations, and Oversight
(j) USNA Command Evaluation Officer Memo 5200, CE-09-24 dtd 30 June 2009, NAVAL ACADEMY ATHLETIC ASSOCIATION SUMMER SPORTS CAMPS
(k) Memorandum of Understanding Between Commandant of Midshipmen and NAAA Regarding use of Bancroft Hall for Summer Camps, dtd 31 May 2005
(l) SECNAV REPORT TO CONGRESS ON THE COSTS OF IMPLEMENTING SECTION 6975 OF TITLE 10, UNITED STATES CODE, AS ADDED BY SUBSECTION (B) OF PUBLIC LAW 103-337, SECTION 556, ADMINISTRATION OF ATHLETIC PROGRAMS AT THE SERVICE ACADEMIES dtd 10 March 1995
(m) USNA Memo 5420 28-152 dtd 22 September 2005, PHYSICAL MISSION REVIEW
(n) USNA Memo 5400 29-130 dtd 25 October 2006, ATHLETIC ORGANIZATION REALIGNMENT
(o) USNA Memo 5400 28-146 dtd 12 April 2007, PHYSICAL EDUCATION REQUIREMENTS FOR GRADUATION FROM THE UNITED STATES NAVAL ACADEMY
(p) USNA Memo 5400 28-149 dtd 15 May 2007, ACADEMIC SUCCESS TRACKING SYSTEM FOR "AT-RISK" STUDENTS
(q) USNA Memo 5400 29-150 dtd 17 April 2007, UNITED STATES NAVAL ACADEMY VARSITY AND CLUB SPORTS
(r) USNA Memo dtd 14 October 2005, PHYSICAL MISSION EXTERNAL REVIEW COMMITTEE TASKING

(s) The External Review Committee's Report to the Superintendent dtd 23 September 2006
(t) Association of Governing Boards Statement on Board Responsibilities for Intercollegiate Athletics dtd 16 November 2007
(u) NAAA Balance Sheet and Treasurer's Report to the Board of Control dtd 31 May 2010
(v) NAAA 2010 Athletic Director's Transition Brief to Superintendent
(w) NAAA Constitution dtd 1 June 2002
(x) NAAA Policies & Procedures 2010 Manual, Vol I & II dtd 1 July 2010
(y) NAAA Self Assessment for NCAA Compliance dtd 22 July 2010
(z) 2003-2010 Depiction of NAAA Funding (Appropriated vs Private)
(aa) NAAA Athletic Director Employment Contract dtd 5 June 2009
(bb) Blank Navy Football Agreement Contact Football Game Guarantee
(cc) Navy Academy Baseball Summer Camp Application
(dd) USNAINST 1000.1A (Draft), BOARD OF CONTROL OVERSIGHT OF THE NAAA
(ee) Blank Sponsorship Agreement for USNA Athletics
(ff) Memorandum of Understanding Between the San Diego Bowl Game Association and the NAAA dtd June 2008
(gg) Navy Radio Network Radio Clearance Agreement dtd October 2009
(hh) USNAINST 11101.13 dtd 30 January 2009, ASSIGNMENT POLICY FOR KEY AND ESSENTIAL PERSONNEL TO PUBLIC-PRIVATE VENTURE HOUSING
(ii) USNA NOTE 11101 dtd 16 April 2009, DESIGNATION OF KEY AND ESSENTIAL BILLETS
(jj) General Purpose Lease for Ricketts Hall, N6247781RP00008 dtd 1 December 1989
(kk) General Purpose Lease for Golf Course, N4008-09-RP-00030 dtd 1 April 2009
(ll) General Purpose Lease for Alumni Hall, N62477-03-RP-00036 dtd 1 June 2003
(mm) SECNAV Memo dtd 5 March 1996, OFFICIAL PARTICIPATION IN THE MANAGEMENT OF THE NAVAL ACADEMY ATHLETIC ASSOCIATION
(nn) USNA Deputy for Management Memo dtd 18 May 2000, APPROPRIATED FUND SUPPORT FOR VARSITY ATHLETICS
(oo) Board of Control Minutes February 2009 through May 2010

DEPARTMENT OF THE NAVY
CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON DC 20350-2000

IN REPLY REFER TO

7000
Ser N00/100105
9 Sep 10

From: Chief of Naval Operations
To: Superintendent, U.S. Naval Academy

Subj: REVIEW OF RELATIONSHIP BETWEEN THE NAVAL ACADEMY ATHLETIC ASSOCIATION AND THE U.S. NAVAL ACADEMY

Ref: (a) SECNAV memo of 26 May 10

Encl: (1) Working Group report of 23 Aug 10

1. Per reference (a) and subsequent tasking, Rear Admiral Russ Penniman led a Working Group that examined the Naval Academy Athletic Association's (NAAA) relationship with the U.S. Naval Academy. Enclosure (1) is the Working Group's report. I reviewed the report and forwarded it to the Secretary of the Navy.

2. Enclosure (1) is forwarded for your review, comments, and development of a Plan of Action and Milestones to implement the recommendations of the report. Liaison directly with OPNAV, the Chief of Legislative Affairs, and other offices as you determine appropriate. Provide an update to the Vice Chief of Naval Operations no later than December 2010. Based upon your work, I will provide an update to the Secretary of the Navy in January 2011.

G. ROUGHEAD
Admiral, U.S. Navy

Copy to:
VCNO

DEPARTMENT OF THE NAVY
VICE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON DC 20350-2000

IN REPLY REFER TO.

7000
Memo N09D/016
17 March 2011

MEMORANDUM FOR CHIEF OF NAVAL OPERATIONS

Subj: REVIEW OF RELATIONSHIP BETWEEN THE NAVAL ACADEMY ATHLETIC ASSOCIATION AND THE U.S. NAVAL ACADEMY

Ref: (a) CNO ltr Ser N00/100105 of 9 Sep 10
(b) Superintendent, USNA ltr 28-263 of 4 Feb 11

1. Per reference (a), Superintendent, U.S. Naval Academy provided an update on the progress of implementing recommendations made by the RDML Penniman working group that examined the Naval Academy Athletic Association's (NAAA) relationship with the U.S. Naval Academy (USNA).

2. RDML Pennimen's working group report contained three major recommendations requiring implementation by USNA:

a. Updating of the 1999 USNA-NAAA Operating Agreement;

b. Drafting of a Title 10 legislative proposal providing authority to support the USNA-NAAA relationship; and

c. Improving the NAAA Board of Control (BOC) by expanding its size, diversity, and expertise of its members.

3. RDML Penniman recommended updating 1999 USNA-NAAA Operating Agreement to accurately reflect current practices. Based on recommendations from counsel for ASN (M&RA) and ASN (FM&C), USNA will defer entering into a new operating agreement with NAAA until statutory authority is established to transfer appropriated funds from USNA to NAAA. This will maintain the status quo in effect since the Penniman report was issued and not impact USNA's ability to carry out its mission. In the interim, USNA will enter into a services contract with NAAA to provide legal authority for the transfer of funds. USNA is preparing a briefing package to update you.

4. The Penniman report identified a need to seek legislative authority to clarify USNA's relationship with NAAA to "remove doubt as to the validity of current practices." In response, USNA drafted a Title 10 legislative proposal and forwarded it for OLA and JAG review. The proposal addresses the following issues:

- Operating Agreement. Authorizes the Academy to enter into an operating agreement with NAAA.

- USNA Participation in NAAA BOC. In 1996 the Secretary of the Navy approved USNA employees to officially participate in the NAAA BOC. This authority will be codified under the Title 10 proposal.

- Acceptance of NAAA Gifts and Funds. NAAA supports the Academy's athletic program through the management of several revenue generating programs including ticket sales, sports camps and clinics, and sponsorship deals. While general statutory authorization permits the Naval Academy to receive benefits and funds from the NAAA in the execution of the physical mission, the Title 10 proposal will formalize this fiscal relationship by authorizing the acceptance of NAAA fund transfers for USNA use.

- Authorization for Receipt of Gratuitous Services. USNA receives millions of dollars in gratuitous services from the NAAA. The proposal provides legislative authority for NAAA to provide these services to USNA.

- Transfer of Appropriated Funds to NAAA. The NAAA negotiates and executes multi-year contracts on USNA's behalf, primarily for athletic uniforms and equipment. These contracts require the transfer of appropriated funds to NAAA from USNA. The legislation seeks to affirm the practice of having NAAA be USNA's "agent" for purposes of negotiating and executing commercial sponsorships. In addition, it seeks to codify the use of appropriated funds to reimburse NAAA for USNA athletic-related expenses. If passed, this authority will remove the need to have an existing contract to reimburse NAAA for travel expenses.

5. Finally, RDML Penniman's working group determined the NAAA BOC was "deficient in numbers, knowledge, and experience to ensure a full, rich and diverse discussion on governance and organizational matters." They recommended expanding the BOC to nine members using senior USNA staff and instituting a training curriculum for BOC members on key regulations. Additionally, the working group encouraged the formation of BOC subcommittees to focus on key substantive areas. In fulfillment of these recommendations, NAAA increased its BOC membership from seven to nine. The Superintendent selected experienced personnel to fill these new positions; personnel who possess the necessary expertise to provide effective oversight of NAAA. The new BOC members are scheduled to be in place by 1 May 2011. Once in place, the entire BOC membership will receive training on the legal and regulatory issues associated with the USNA-NAAA relationship and be assigned to subcommittees to ensure key NAAA activities are properly reviewed. Expected completion of initial training is 1 June 2011. USNA will maintain an ongoing review of training requirements to ensure the training curriculum and the BOC membership's training remains current.

6. I will continue to monitor USNA's progress through monthly updates provided by the Superintendent.

J. W. GREENERT
Admiral, U.S. Navy