March 2, 2020

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

By electronic mail (IRS.Commissioner@IRS.gov and First Class mail)

Re: Complaint against the National Rifle Association for Private Inurement

Dear Commissioner Rettig:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that the Internal Revenue Service ("IRS") investigate whether the National Rifle Association of America ("NRA"), a social welfare organization organized under section 501(c)(4) of the Internal Revenue Code ("tax code"), violated its tax-exempt status by making payments that inured to the private benefit of its Executive Vice President, Wayne LaPierre, and LaPierre's family members.[1]

LaPierre is the NRA's top executive. For much of the last decade, he has received a seven-figure salary, including over $2.2 million in 2018. Recent news reports also revealed that the NRA has reimbursed LaPierre for unusual and costly expenses, including more than $274,000 on wardrobe purchases and more than $243,000 on luxury travel, and that LaPierre took steps to obscure this lavish spending by routing it through the NRA's long-time advertising agency, Ackerman McQueen. Those reports further revealed that the NRA has guaranteed LaPierre's compensation even after his employment with the NRA ends and planned to purchase a mansion for him and his wife.

As a social welfare organization under section 501(c)(4), "no part of the net earnings" of the NRA may "inure[] to the benefit of any private shareholder or individual." 26 U.S.C. § 501(c)(4)(B). LaPierre's seemingly excessive compensation and expenses, coupled with his ability to direct NRA funds for his own benefit and his efforts to obscure his spending, warrant an investigation to determine if the NRA's funds unlawfully inured to LaPierre's private benefit.

[1] CREW submits this letter in lieu of Form 13909; a copy is being sent to the Dallas office.

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Factual Background

LaPierre's Role in the NRA

The NRA is a tax-exempt social welfare organization organized under section 501(c)(4) of the tax code.[2] LaPierre began working for the organization in 1977 as a lobbyist, and in 1991 became Executive Vice President, the same position he holds today.[3] In this position, he exercises significant control over the organization.[4] As detailed below, this control is further exemplified by LaPierre's ability to direct significant amounts of NRA funds to his benefit without the knowledge or prior approval of the Board of Directors.

LaPierre's Compensation From the NRA

LaPierre is the NRA's most highly compensated employee.[5] In 2018, LaPierre received payment in the amount of $2,150,634, as well as $73,793 in additional compensation from the NRA or related organizations.[6] This total payment of $2,224,427 appears to have made him the highest compensated executive at a 501(c)(4) organization in the country for fiscal years ending in 2018 and the fifth most highly compensated executive at any nonprofit for that time period, based on data compiled by Charity Watch.[7] In the prior decade, the NRA and its affiliates similarly paid LaPierre between $948,848 and $1,433,977 annually, plus a massive $5,110,979 in 2015.[8]

Nor will LaPierre's compensation end when his employment with the NRA ends. Rather, his contract with the NRA reportedly entitles him to compensation for "consulting services and personal appearances" even after his employment with the NRA ends "at an annual rate that starts at his currently contracted" base salary.[9] This post-employment compensation is in addition to his extremely generous retirement compensation, including a 2015 retirement payout of $3.7 million.[10]

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[2] NRA 2018 Form 990, Page 1, Line I, *available at* https://bit.ly/3aH3scw.

[3] Mike Spies, Secrecy, Self-Dealing, and Greed at The N.R.A., *New Yorker*, Apr. 17, 2019, *available at* https://bit.ly/2PfPMe8; NRA 2018 Form 990, Part VII.

[4] Danny Hakim, How Wayne LaPierre Survived a Revolt at the N.R.A., *The New York Times*, Aug. 22, 2019, *available at* https://nyti.ms/37ROmhL. According to court filings by former NRA President Oliver North, LaPierre exercised "total dictatorial control" over the NRA and its Board of Directors, including firing the Board's counsel and initiating litigation without consulting the Board. Defendant's Answer and Counterclaim, ¶¶ 12, 20-22, *NRA v. North*, Case No. 653577/2019 (N.Y. Sup. Ct.), *available at* https://bit.ly/2IDyTry.

[5] NRA 2018 Form 990, Part VII.

[6] *Id.*

[7] *See* Charity Watch, Top Charity Compensation Packages (comparing LaPierre's 2018 salary figure from the NRA's 2018 990 to the other reported fiscal year 2018 executive compensation packages), *available at* https://bit.ly/2g2HSHC.

[8] *See* Chart, *infra* at p. 8. As discussed below, LaPierre's 2015 compensation included a very large retirement payout.

[9] Spies, *New Yorker*, Apr. 17, 2019.

[10] Katie Watten, NRA head Wayne LaPierre made $1.4 million in 2017. Here's what we know, and don't know, about the finances of America's most public gun rights advocate, who can reportedly change Trump's mind on gun policy with a single phone call, *Business Insider*, Aug. 21, 2019 *available at* https://bit.ly/2pbkBaK.

Lavish Spending Routed Through Ackerman McQueen

In addition to his direct compensation from the NRA, LaPierre has also received extravagant benefits through a large vendor, advertising, and public relations firm, Ackerman McQueen ("Ackerman"). For almost the entirety of LaPierre's tenure at the NRA, it has worked closely with and relied heavily on Ackerman. In 2018, the NRA directed nearly $32 million to Ackerman, plus an additional over $12 million to Membership Marketing Partners LLC, an entity closely associated with Ackerman.[11] Together, these payments comprised over 12.5% of the NRA's total expenditures for the year.[12] Similarly, in 2017, the NRA directed over $42 million to Ackerman and its associated entities, comprising approximately 12% of the NRA's total expenditures for the year.[13] Recently, however, this relationship has suffered a very-public rupture, and the parties are currently embroiled in acrimonious litigation. Documents disclosed in the public feud reveal that LaPierre apparently received lavish benefits from arrangements that allowed him to direct NRA money through Ackerman for his personal use.

As early as 2004, LaPierre appears to have asked for and received a credit card from Ackerman, which then was reimbursed by the NRA.[14] As detailed in a letter from an Ackerman executive to LaPierre, from 2004-2017, LaPierre charged over $274,000 at Zegna, a high-end Beverly Hills men's clothing boutique.[15] This includes a single charge of $39,000 on September 22, 2015 and another of $21,080 on February 12, 2017.

Letters from Ackerman executives to LaPierre further document exorbitant travel spending totaling more than $243,000 in 2013 and 2014. For example, in January 2013 alone, LaPierre spent $29,100.63 on air travel from the Bahamas to Dallas, $25,634.12 on air travel from Dallas to Palm Beach, $17,600 on air travel from "Wash" to New York, $47,025 on air travel from "NTY" to Los Angeles to Reno, $7,075.00 on air travel from Reno to Los Angeles, and $40,345 on air travel from Reno to "Wash."[16] In November 2014, LaPierre spent $17,550 for an "air charter" from Budapest to Brescia, $12,919.30 for a "car & driver" in Italy, $5,352.19 for a "car & driver" in Budapest, and $1,096 for "airport assistance" in Frankfurt.[17] While billed to LaPierre's Ackerman credit card, the vendor passed these costs to the NRA.[18]

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[11] NRA 2018 Form 990, Part VII, Independent Contractors; Spies, *New Yorker*, Apr. 17, 2019 (describing association between Ackerman and Membership Marketing Partners).
[12] NRA 2018 Form 990, Part I, Summary; Part VI, Independent Contractors.
[13] Mark Maremont, NRA Files Suit Against Ad Agency in Rift With Key Partner, *Wall Street Journal*, Apr. 15, 2019, *available at* https://on.wsj.com/38V0IGR; NRA 2017 Form 990, Part I, Summary; Part VI, Independent Contractors, *available at* https://bit.ly/3aJfB0n.
[14] Letter from William Winkler, CFO, Ackerman McQueen to Wayne LaPierre, Re: Clothing purchases by Ackerman McQueen (AMc) on your behalf, Apr. 22, 2019, *available at* https://bit.ly/2MuCKsq.
[15] *Id.* A plain white, cotton t-shirt, for example, costs $295.00. Zegna website, Zegna Jerseywear Cotton T-shirt, listed at $295.00, *available at* https://bit.ly/320impr.
[16] Letter from William Winkler, CFO, Ackerman McQueen to Wayne LaPierre, Re: Documentation of expenses incurred by Ackerman McQueen (Amc) and billed to the National Rifle Association (NRA), Apr. 22, 2019, *available at* https://bit.ly/2vkOOrb.
[17] *Id.*; Mark Maremont, NRA Chief Wayne LaPierre Questioned on Travel Expenses, *Wall Street Journal*, May 2, 2019, *available at* https://on.wsj.com/2IUE6gv.
[18] *Id.*

The exorbitant expenses incurred by LaPierre, routed through its vendor, Ackerman, and charged to the NRA appear to be far from an isolated occurrence. One news report alleged that LaPierre's wife, Susan LaPierre, similarly benefited from expenses charged to Ackerman and paid for by the NRA. Susan LaPierre co-chaired the NRA's Women's Leadership Forum, and according to the report, Ackerman paid to fly her Nashville-based makeup artist and hair stylist to do her hair and make-up at NRA events around the country, costs which were then reimbursed by the NRA.[19] This spending reportedly continued for "years" before being discontinued following the revelations.[20]

NRA's Lax Vendor Supervision and LaPierre's Attempts to Obscure His Spending

While the exorbitant nature of the spending itself is cause for concern, compounding the problem is that, as LaPierre likely knew, there was no meaningful oversight of his spending either by Ackerman or the NRA. Furthermore, LaPierre appears to have taken steps to shield his spending from scrutiny.

Ackerman stated that it issued an American Express credit card to LaPierre "at [his] request" and "with the intent to keep [his] business travel confidential and secure."[21] Ackerman further asserted that during the time LaPierre used the card, he did not provide the company with "written approvals, receipts, and other support for expenses" related to the travel expenses, nor did he provide original receipts or an itemized list of the items purchased to substantiate the clothing purchases at Zegna.[22]

Asked about the spending through Ackerman, NRA spokespeople have stated that the costs were justified for business reasons.[23] This assertion, however, conflicts with reporting that indicates the NRA lacked the internal infrastructure or board oversight to monitor vendor reimbursements. Memos written by the NRA's then-managing director of tax and risk management in advance of a 2018 meeting of the Board's Audit Committee provide a glimpse into the apparently disorganized state of vendor and expense oversight at the NRA.[24] The memo reportedly asserted that the "N.R.A. pays overbilled, deceptive, vague invoices to 'preferred' vendors and contractors" and that "decisions are made in the best interest of vendors" such as Ackerman.[25] As its long-time chief executive, LaPierre would have likely helped influence, or at least been well aware of, the NRA's lax attitude towards vendor reimbursements, making his decision to route his lavish spending through Ackerman point to a desire to obscure the nature of the spending from the NRA.

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[19] Betsy Swan, NRA Spent Tens of Thousands on Hair and Makeup for CEO's Wife, *Daily Beast*, Aug. 16, 2019, *available at* https://bit.ly/2KFEVJW.
[20] *Id*.
[21] Letter from Winkler to LaPierre, Apr. 22, 2019.
[22] *Id*.
[23] Mark Maremont, Check for Dallas Mansion Raises New Questions About NRA Plans, *Wall Street Journal*, Aug. 12, 2019, *available at* https://on.wsj.com/2VD86RM.
[24] Spies, *New Yorker*, Apr. 17, 2019 (contents of memo described and quoted in article).
[25] *Id*.

Planned Purchase of Mansion for LaPierre

The planned purchase of a mansion for LaPierre and his wife is a further example of his willingness and ability to direct the expenditure of NRA funds for his personal benefit and the NRA's lack of internal controls. While there is some dispute about the details of the transaction, the facts that have emerged raise serious questions.

According to news reports, in spring 2018, Wayne and Susan LaPierre visited a 10,000 square foot residence in a gated golf community in the Dallas area and were preparing to put down $70,000 in earnest money to make an offer on the property.[26] According to emails and text messages reviewed by the *Washington Post*, both LaPierre and his wife were granularly involved in the selection of the property and discussion of its amenities.[27] Meanwhile, on May 17, 2018, an attorney working for Ackerman incorporated a new Delaware entity, WBB Investments LLC.[28] In its 2018 Form 990, the NRA acknowledged that WBB Investments LLC was directly controlled by the NRA.[29] By check dated May 25, 2018, the NRA transferred $70,000 from an NRA bank account to WBB Investments LLC.[30] The house purchase appears to have fallen through, and WBB Investments LLC returned the funds to the NRA on June 14, 2018.[31]

Ackerman and the NRA dispute how the transaction was arranged. According to Ackerman, LaPierre was concerned about his security in the wake of the Parkland shooting and sought to purchase a gated property for security.[32] Ackerman further asserted that LaPierre asked Ackerman personnel to facilitate the transaction through WBB Investments LLC, so that LaPierre's connection to the transaction would not be public.[33] The NRA initially disputed this account, saying that the idea for the purchase originated with Ackerman and that LaPierre shut down the transaction after discovering the intention to use NRA funds.[34] However, after the $70,000 check came to light, the NRA changed its story and admitted that NRA funds were transferred to WBB Investments LLC "to help facilitate" the home purchase.[35]

Furthermore, it appears that the transfer of $70,000 in NRA funds to WBB Investments LLC violated internal NRA policies. In a July 2018 memo from NRA accountants to the Board's Audit Committee, transactions like this were flagged as among the "top concerns" for the

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[26] Maremont, *Wall Street Journal*, Aug. 12, 2019; *see also* Carol D. Leonnig and Beth Reinhard, NRA Chief Sought Purchase of $6 Million Mansion in Wake of Parkland Shooting, *Washington Post*, Aug. 7, 2019, *available at* https://wapo.st/2KDqzZo.
[27] *Id.*
[28] *Id.*; Entity Details, Division of Corporations, State of Delaware (document accessed from database located at https://bit.ly/1n6VyiE by searching for "WBB Investments").
[29] NRA 2018 Form 990, Schedule R, Part III.
[30] Maremont, *Wall Street Journal*, Aug. 12, 2019.
[31] *Id.*
[32] Mark Maremont, NRA Chief Sought Help of Group's Ad Agency in Trying to Buy $5 Million Mansion, *Wall Street Journal*, Aug. 6, 2019, *available at* https://on.wsj.com/3aU4gLe.
[33] Maremont, *Wall Street Journal*, Aug. 12, 2019.
[34] *Id.*
[35] *Id*. The fact that the NRA lists WBB Investments, LLC on its 2018 Form 990, Schedule R, as an entity it directly controls, further confirms the NRA's role in this aborted transaction.

committee.[36] Describing a culture of problematic spending, the accountants identified transactions like this as violating NRA procedures and as an example of "senior management override of internal controls" leading to violations of "accounts payable procedures" and "HR policy."[37]

While the home purchase ultimately did not occur and the funds were returned to the NRA, the fact that LaPierre, apparently through his ability to "override . . . internal controls," caused $70,000 of NRA money to be transferred to an LLC controlled by the NRA and created to facilitate a confidential home purchase itself raises the specter of improper inurement. LaPierre's control over this money, as well as his lavish, laxly documented spending may have caused the NRA to run afoul of IRC's prohibition on private inurement.

Potential Violations of 26 U.S.C. § 501(c)(4) – Private Inurement

Under section 501(c)(4) of the tax code, none of the assets or income of a charitable organization may "inure[] to the benefit of any private shareholder or individual." A covered private shareholder or individual is broadly defined as a person "having a personal or private interest in the activities of the organization,"[38] meaning an "insider" of the organization.[39] Insiders include the organization's "founder, or the members of its board, or their families," as well as anyone else who acts as "the equivalent of an owner or manager."[40] This is a functional test that "looks to the reality of control."[41] This prohibition "serves to prevent anyone in a position to do so from siphoning off any of a charity's income or assets for personal use."[42] The prohibition is absolute: an organization can lose its tax-exempt status even if only a small percentage of its income inures to a private individual.[43]

As an initial matter, LaPierre is covered by the prohibition on private inurement because, as an "insider" of the NRA, he is a covered individual. As the NRA's Executive Vice President, chief executive officer, and highest-paid employee, LaPierre is the very definition of an insider.[44] That the test "looks to the reality of control" further confirms LaPierre's status as an insider. LaPierre has worked at the NRA for over 40 years, and its former President described him as exercising "total dictatorial control" over the NRA and its Board of Directors.[45] Furthermore, his ability to direct the movement of $70,000 of NRA funds to WBB Investments LLC, apparently by "overrid[ing] . . . internal controls" confirms his functional control over the organization.[46]

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[36] Mike Spies, An Internal Memo Raises New Questions About Self-Dealing At The N.R.A., *New Yorker*, May 7, 2019, *available at* https://bit.ly/2Hbd96p.
[37] *Id.*
[38] Treas. Reg. § 1.501(c)(3)-1(c)(2).
[39] *United Cancer Council, Inc. v. Comm'r,* 165 F.3d 1173, 1176 (7th Cir. 1999); *Family Trust of Mass., Inc. v. United States*, 892 F. Supp. 2d 149, 156 (D.D.C. 2012).
[40] *United Cancer Council*, 165 F.3d at 1176.
[41] *Id.*
[42] G.C.M. 39862 (Dec. 2, 1991).
[43] *Orange County Agricultural Soc'y v. Comm'r*, 893 F.2d 529, 534 (2d Cir. 1990); *Church of Scientology v. Comm'r*, 823 F.2d 1310, 1316 (9th Cir. 1987).
[44] Treas. Reg. § 1.501(c)(3)-1(c)(2); *United Cancer Council*, 165 F.3d at 1176.
[45] *NRA v. North*, Defendant's Answer and Counterclaim, at ¶ 12.
[46] Spies, *New Yorker*, May 7, 2019.

Additionally, case law makes clear that LaPierre's family, including his wife Susan, share his insider status for purposes of the private inurement analysis.[47]

The next inquiry is whether NRA assets or income inured to LaPierre's benefit, and it appears they have. Whether an impermissible benefit has been conferred on an insider is primarily a factual question.[48] Factors "indicative of a prohibited relationship" between the insider and the organization include: "control by the [insider] over the entity's funds, assets, and disbursements; use of entity moneys for personal expenses; payment of salary or rent to the [insider] without any accompanying evidence or analysis of the reasonableness of the amounts; and purported loans to the founder showing a ready private source of credit."[49] Furthermore, an insider taking steps to obscure or fail to properly report the spending is evidence of improper inurement.[50] Here, LaPierre's excessive salary, the significant benefits he received through Ackerman, his control over NRA funds and assets, and his propensity to use NRA funds and assets for personal benefit all support the conclusion that LaPierre has a "prohibited relationship" with the NRA that has caused NRA assets or income to improperly inure to LaPierre's private benefit.

1. <u>LaPierre's Excessive Compensation</u>

While non-profit entities such as the NRA are allowed to pay "reasonable" compensation to their officers and employees, excessive compensation runs afoul of the prohibition against private inurement.[51] Relevant compensation includes not only an officer or employee's salary, but also other benefits and non-salary compensation, as "an organization's net earnings may inure to the benefit of private individuals in ways other than by the actual distribution of dividends or payment of excessive salaries."[52] Accordingly, inurement may occur through the provision of goods and services to an insider.[53] The issue of whether compensation is reasonable or excessive is a question of fact,[54] and here the facts mandate a finding of unreasonableness.

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[47] *United Cancer Council*, 165 F.3d at 1176.
[48] *Capital Gymnastics Booster Club, Inc. v. Comm'r*, 106 T.C.M. (CCH) 154 (2013) (applying a "facts and circumstances" test); *Church by Mail, Inc. v. Comm'r*, 48 T.C.M. (CCH) 471 (1984).
[49] *Rameses School of San Antonio, Texas v. C.I.R.*, 93 T.C. Memo (CCH) 1092 (T.C. 2007), 2007 WL 1061871, at *6-7 (Apr. 10, 2007) (collecting cases).
[50] *Id*.
[51] *Founding Church of Scientology v. United States*, 412 F.2d 1197, 1200 (Ct. Cl. 1969); *Birmingham Bus. Coll., Inc. v. Comm'r*, 276 F.2d 476, 480 (5th Cir. 1960).
[52] *Founding Church of Scientology*, 412 F.2d at 1200 (*citing General Contractors' Ass'n of Milwaukee v. United States*, 202 F.2d 633, 636 (7th Cir. 1953) ("valuable services" rendered to members of an association constitute inurement).
[53] *Id.*; *Spokane Motorcycle Club v. United States*, 222 F. Supp. 151, 153-54 (E.D. Wash.1963) (provision of refreshments, goods, and services to members of motorcycle club constitutes inurement); *Puritan Lawn Mem'l Park Cemetery v. United States*, 15 Cl. Ct. 234, 244 (1988) (extension of unsecured loans to individuals involved in organization constituted improper inurement).
[54] *Founding Church of Scientology*, 412 F.2d at 1200.

On its face, LaPierre's salary is exceedingly high, as summarized by the following chart.

Year	**Compensation from NRA**	**Other Compensation from NRA and Related Organizations**	**Total**
2008[55]	$ 1,139,568	$ 123,533	$ 1,263,101
2009[56]	$ 823,643	$ 125,215	$ 948,858
2010[57]	$ 835,469	$ 125,615	$ 961,084
2011[58]	$ 831,709	$ 140,291	$ 972,000
2012[59]	$ 833,312	$ 141,555	$ 974,867
2013[60]	$ 834,786	$ 149,396	$ 984,182
2014[61]	$ 927,863	$ 58,022	$ 985,885
2015[62]	$ 5,051,249[63]	$ 59,736	$ 5,110,985
2016[64]	$ 1,358,966	$ 63,373	$ 1,422,339
2017[65]	$ 1,366,688	$ 67,289	$ 1,433,977
2018[66]	$ 2,150,634	$ 73,793	$ 2,224,427

The determination of whether compensation is outside the bounds of the law, requires examining not only the absolute amount but also the context—specifically, data regarding comparable salaries. To this end, IRS regulations provide organizations with a rebuttable presumption that compensation is reasonable where they meet a three-part test.[67] The relevant part of this analysis requires an authorized body of a tax-exempt organization to "obtain[] and rel[y] upon appropriate data as to comparability," which includes "compensation levels paid by

[55] NRA 2008 Form 990, Part VII, *available at* https://bit.ly/3aHGJNd.
[56] NRA 2009 Form 990, Part VII, *available at* https://bit.ly/2TVRFRp.
[57] NRA 2010 Form 990, Part VII, *available at* https://bit.ly/2tODKC3.
[58] NRA 2011 Form 990, Part VII, *available at* https://bit.ly/2vk1COx.
[59] NRA 2012 Form 990, Part VII, *available at* https://bit.ly/36klUUZ.
[60] NRA 2013 Form 990, Part VII, *available at* https://bit.ly/2NX9GLr.
[61] NRA 2014 Form 990, Part VII, *available at* https://bit.ly/2GnHxJw.
[62] NRA 2015 Form 990, Part VII, *available at* https://bit.ly/2TUcGw8; *see also id.*, Schedule J.
[63] This amount includes a deferred compensation payout of $3,767,345 LaPierre received as part of a section 457(f) retirement plan through the NRA. NRA 2015 Form 990, Part III.
[64] NRA 2016 Form 990, Part VII, *available at* https://bit.ly/2NXz0Bf.
[65] NRA 2017 Form 990, Part VII, *available at* https://bit.ly/2TPgtuB.
[66] NRA 2018 Form 990, Part VII.
[67] 26 C.F.R. § 53.4958-6(a).

similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions."[68] The NRA asserts that it complies with this test.[69]

Even where a tax-exempt organization purports to comply with the three-part test required to invoke the presumption of reasonableness, the IRS may still rebut the presumption. To do so, it must show "sufficient contrary evidence to rebut the probative value of the comparability data relied upon by the authorized body."[70] Here, the IRS should have ample ability to rebut the NRA's presumption, because LaPierre's salary is grossly out-of-step with salaries for comparable non-profit executives.

In its Form 990, the NRA asserts that it has complied with the IRS test requiring it to "obtain[] and rel[y] upon appropriate data as to comparability," which includes "compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions."[71] A review of nonprofit compensation data for positions comparable to LaPierre's, however, shows that his compensation is not reasonably justified. Based on the *GuideStar Nonprofit Compensation Report*,[72] across every applicable metric, LaPierre's 2018 salary of $2,224,427 is 1.55 to 2.9 times higher than the 90th percentile salary for similarly situated organizations:

Category	**Median Salary (CEO/Exec. Dir.)**	**90th Percentile Salary (CEO/Exec. Dir.)**	**How Much Higher Is LaPierre's 2018 Salary vs. 90th Percentile?**
All Organizations, Budget >$50 million[73]	$ 477,401	$ 1,348,970	1.65 times higher
All 501(c)(4) Organizations, Budget >$5 million[74]	$ 281,716	$ 1,000,931	2.22 times higher

[68] 26 C.F.R. § 53.4958-6(c)(2)(i). The regulation further lists as relevant information "the availability of similar services in the geographic area of the applicable tax-exempt organization; current compensation surveys compiled by independent firms; and actual written offers from similar institutions competing for the services of the disqualified person." *Id.*
[69] *See, e.g.*, NRA 2018 Form 990, Part VI, Section B, Line 15; *see also* NRA 2018 Form 990, Schedule O.
[70] 26 C.F.R. § 53.4958-6(b).
[71] *See, e.g.*, NRA 2018 Form 990, Part VI, Section B, Line 15; *see also* NRA 2018 Form 990, Schedule O; 26 C.F.R. § 53.4958-6(c)(2)(i). The regulation further lists as relevant information "the availability of similar services in the geographic area of the applicable tax-exempt organization; current compensation surveys compiled by independent firms; and actual written offers from similar institutions competing for the services of the disqualified person." *Id.*
[72] *GuideStar Nonprofit Compensation Report* (19th ed., Sept. 2019). The report is derived from the IRS-reported data on 162,000 individual positions at more than 113,000 tax-exempt organizations. Due to GuideStar's licensing agreement, the full report cannot be published here or transmitted. It is available for purchase at https://bit.ly/37hTE5O.
[73] *Id.* at 30.
[74] *Id.* at 503. For 501(c)(4) organizations, the highest budget category provided in the data is those organizations with budgets exceeding $5 million.

All Organizations in Virginia, Budget >$50 million[75]	$ 484,157	$ 1,436,128	1.55 times higher
All 501(c)(4) Organizations in Virginia, Budget >$5 million[76]	$ 279,072	$ 460,745[77] (75th percentile)	4.8 times higher[78]
All 501(c)(4) Organizations in the DC Metro Area, Budget >$5 million[79]	$ 328,202	$ 767,268	2.9 times higher

Furthermore, the substantial increase in salary that LaPierre enjoyed between 2017 and 2018 is far out-of-step with similar organizations. In 2017, LaPierre made $ 1,433,977, but in 2018, his salary shot up more than 55% to $2,224,427. According to GuideStar, for all nonprofit organizations nationally with budgets exceeding $50 million, the median CEO/Executive Director saw their compensation increase a modest 3.5%, while the 90th percentile received an increase of 15.6%.[80] Looking at only 501(c)(4) organizations in the DC Metro area with budgets exceeding $5 million, the median percent increase for CEO/Executive Director compensation was 4%, while the 90th percentile increase stood at 15.2%.[81] Thus, LaPierre's 2018 increase of more than 55% is exceedingly out-of-sync with similarly situated organizations.

Indeed, based on compensation information compiled by Charity Watch, LaPierre appears to be the highest paid executive at any 501(c)(4) social welfare organization in the country and by a massive amount. Charity Watch compiles an annual list of the 25 highest-paid non-profit executives, and for fiscal year 2018, LaPierre was the fifth most highly compensated nonprofit executive in the country.[82] Each of the other 24 organizations on the list are 501(c)(3) charitable organizations. This means that the next highest-paid executive of a 501(c)(4) social welfare organization, because it did not make Charity Watch's top-25 list, made no more than $922,253 in 2018, the salary of the 25th most highly paid executive on the list. As a result, LaPierre appears to be paid, at a minimum, 2.41 times more than the next highest paid 501(c)(4) executive.

Nor can the NRA claim that it is comparable to the other organizations on the Charity Watch list. As noted, none of the organizations are the same legal structure as the NRA – the NRA is a 501(c)(4) social welfare organization, while the other organizations on the list are

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75 *Id.* at 660.
76 *Id.* at 1745.
77 This figure is identified as the 75th percentile, as no 90th percentile figure is provided for this data set.
78 As compared to the 75th percentile. *See* supra note 77.
79 *Id.* at 2850.
80 *Id.* at 2860.
81 *Id.* at 4871.
82 Charity Watch, Top Charity Compensation Packages, supra note 8.

501(c)(3) charitable organizations. Moreover, the other organizations are not comparable to the NRA in purpose or activities. This is relevant because IRS Regulations regarding "appropriate" comparability data reference "compensation paid by similarly situated organizations . . . for functionally comparable positions."[83] Twelve of the 25 organizations and 9 of the top 15 are hospitals or medical research organizations.[84] For example, the most highly paid nonprofit executive on the list is the President and CEO of the Memorial Sloan Kettering Cancer Center, whose $3,426,352 in compensation exceeded LaPierre's $2,224,427.[85] However, Sloan Kettering is a large cancer treatment, research, and education institution that employed over 21,000 people in 2018 and had an operating budget of over $4.6 billion.[86] The NRA, by contrast, employed 816 people and had a budget of $355 million.[87] Thus, Sloan Kettering cannot be said to be a comparable organization to the NRA and the job of running it is not a functionally comparable position. Of the remaining organizations on the Charity Watch list, most are either large research centers or major, national charitable organizations, such as the United Way (whose highest paid employee made $1,042,231) or Goodwill Industries (whose highest paid employee made $987,624). The activities of these organizations are significantly different from those of the NRA, and in the case of groups like United Way and Goodwill Industries the salary scale much lower, rendering them inappropriate as comparable entities.

The GuideStar data and Charity Watch analysis both cast substantial doubt on any comparability analysis that the NRA might have done to justify LaPierre's salary. Given this data, the IRS has substantial information to meet its burden to rebut the presumption of reasonableness that attaches to LaPierre's compensation.[88]

2. La Pierre's Control over NRA Funds and Assets, and Use of NRA Assets for Personal Benefit

In addition to the reasonableness of compensation, factors such as the insider's ability to control the assets of the organization and the lack of transparent reporting regarding expenditures for the insider's benefit are relevant in determining private inurement.[89] Through (1) lavish expense reimbursement, (2) a golden parachute of indeterminate length, and (3) his use of NRA funds for an earnest money deposit on a mansion, LaPierre has demonstrated his ability to direct the expenditure of NRA funds and assets for his personal benefit. Not only can these funds be

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[83] 26 C.F.R. § 53.4958-6(c)(2)(i).
[84] Charity Watch, Top Charity Compensation Packages.
[85] Memorial Sloan-Kettering Cancer Center 2018 Form 990, Part VII, *available at* https://bit.ly/2Pm7vC5.
[86] *Id.*, Part I, Lines 5, 18.
[87] NRA 2018 Form 990, Part I, Lines 5, 18.
[88] *See* supra notes 51-54, 68-71; *see also Rameses*, 93 T.C.M. 1092, at *6-7 (citing "payment of salary or rent to the founder without any accompanying evidence or analysis of the reasonableness of the amounts" as indicative of prohibited inurement).
[89] *Founding Church of Scientology*, 412 F.2d at 1201 ("Not only can these payments, in the absence of explanation, be properly attributable to the individuals as income [internal citations omitted] but the logical inference can be drawn that these payments were disguised and unjustified distributions of plaintiff's earnings."); *Rameses*, 93 T.C.M. 1092, at *6-7 (citing factors including "control by the founder over the entity's funds, assets, and disbursements; use of entity moneys for personal expenses; payment of salary or rent to the founder without any accompanying evidence or analysis of the reasonableness of the amounts; and purported loans to the founder showing a ready private source of credit" as indicative of prohibited inurement) (collecting cases).

attributed to LaPierre as compensation, but they may be "disguised and unjustified distributions of [the NRA's] earnings" to him, which further violates the prohibition on private inurement.[90]

First, the expenses incurred by the NRA through LaPierre's spending on the Ackerman credit card constitute an additional form of income to LaPierre. As such, they are subject to the same reasonableness analysis performed with respect to his salary package. Given that little substantiation appears to exist for the charges, and the exorbitant nature of the charges themselves, it likely would be difficult for the NRA to justify them within the bounds of reasonableness, particularly when looked at in light of LaPierre's sky-high salary. These payments also demonstrate LaPierre's ability to direct NRA funds to his own benefit. The fact that he failed to provide contemporaneous substantiation for the expenses weighs in favor of a finding of unreasonableness.

Second, it appears that LaPierre has negotiated a golden parachute for himself, allowing him to continue to collect his base salary for an unspecified number of years after his official employment ends. As reported by the *New Yorker*: "State records reveal . . . that [LaPierre's] contract 'provides for consulting services and personal appearances upon the end of his employment, at an annual rate that starts at his currently contracted final base salary and is later reduced.'"[91] As of 2018, LaPierre's base compensation is over $1.267 million.[92] Former head of IRS Exempt Organizations Division, Marc Owens, described LaPierre's golden parachute arrangement as "extraordinary," commenting "I've never seen anything like that before."[93] Furthermore, this continued payment is in addition to the already-generous retirement compensation that LaPierre has and likely will continue to receive.[94]

If true, this unusual clause providing for payments to LaPierre in perpetuity and post-employment further strains the bounds of reasonable compensation. Rather, it puts LaPierre in a position to continue to extract benefits from the NRA long after he stops working for them. Such an arrangement likely violates the prohibition on private inurement.

Finally, the $70,000 earnest money payment, drawn on an NRA bank account to facilitate LaPierre's home purchase, demonstrates LaPierre's significant ability to direct the funds of the organization to his own benefit. Furthermore, it appears that this transfer of funds occurred without the knowledge or oversight of the NRA's internal accountants. While the home purchase ultimately did not occur and the funds were eventually returned, the fact that the transfer occurred is enough to establish LaPierre's ability to direct the NRA's funds and assets for his own benefit.

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90 *Scientology*, 412 F.2d at 1201.
91 Spies, *New Yorker*, Apr. 17, 2019.
92 NRA 2017 Form 990, Schedule J.
93 Spies, *New Yorker*, Apr. 17, 2019.
94 As noted above, in 2015 LaPierre received a deferred compensation payout of $3,767,345 as part of a section 457(f) retirement plan. Furthermore, the NRA offers pensions to its employees, and after 40 years of working at the NRA, LaPierre has likely amassed significant pension benefits. Tim Mak, As Leaks Show Lavish NRA Spending, Former Staff Detail Poor Conditions At Nonprofit, *NPR*, May 15, 2019, *available at* https://n.pr/32c6kJG (discussing existence of NRA pension plan).

Taken together, LaPierre's lavish spending, the golden parachute, and the earnest money payment show both LaPierre's ability to direct the NRA's funds and assets to his benefit and the extent to which he receives personal benefit from the NRA, above and beyond his already-exorbitant salary. These are key factors "indicative of prohibited inurement."[95]

3. LaPierre's Attempts to Shield His Spending from Scrutiny

Finally, LaPierre's attempts to shield the true nature of his spending from NRA internal controls and audits are relevant to the analysis. Where an insider has substantial control over an organization, there is an "'an obvious opportunity for abuse of the claimed tax-exempt status' and [these circumstances] make incumbent 'open and candid disclosure of all facts'; otherwise, 'the logical inference is that the facts, if disclosed, would show that petitioner fails to meet the requirements'" for tax-exempt status.[96] Here, LaPierre routinely flouted NRA internal controls to hide the nature of his spending.

First, LaPierre routed his lavish clothing and travel spending through the Ackerman credit card, instead of seeking direct reimbursement from the NRA. As detailed in the Ackerman letter, LaPierre did this in order to ensure that his spending remained "confidential and secure."[97] That confidentiality, along with the NRA's lax controls over vendor payments, about which – given his long tenure and executive position at the organization – LaPierre presumably knew, meant that his spending apparently went unscrutinized for years.[98]

Second, the $70,000 of NRA funds routed to NRA-controlled WBB Investments LLC for LaPierre's mansion deposit was similarly done outside of formal mechanisms and organizational controls. These types of transactions were flagged as a "top concern[]" by the audit committee, and it is an example of "senior management override of internal controls."[99] Even though the funds were ultimately returned, the fact that LaPierre could direct such an expenditure of funds, under the radar of NRA controls, shows his ability to direct the resources of the NRA to his personal benefit.

Accordingly, LaPierre's salary, the terms of his contract, his spending, and his ability to direct lavish spending to his benefit without the oversight of the organization all demonstrate that the NRA likely violated the statutory prohibition against private inurement for section 501(c)(4) organizations.

Conclusion

The tax code strictly prohibits tax-exempt organizations from allowing the organization's assets or income to inure to the benefit of any insider. The publicly available facts regarding

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[95] *Rameses*, 93 T.C.M. 1092, at *6-7.
[96] *Id*.
[97] Letter from Winkler to LaPierre, Apr. 22, 2019.
[98] Spies, *New Yorker*, Apr. 17, 2019. In addition, in at least 2004, the NRA did not adequately report it on its Form 990. 2004 Form 990, Part V, attachment.
[99] Spies, *New Yorker*, May 7, 2019.

LaPierre's salary, his post-employment compensation, his lavish spending, and his ability to direct NRA funds for his own benefit largely devoid of organizational scrutiny, such as for the mansion payment and the reimbursements from Ackerman McQueen, show that the NRA has likely violated this strict prohibition. The IRS should investigate the NRA and, should it find that the NRA's assets or income inure to LaPierre's private benefit, take appropriate action, which may include revoking the organization's tax-exempt status and imposing applicable taxes.

Sincerely,

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