

Working With Influencers: Legal Essentials for Nonprofits

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Agenda

1. Why Influencers Matter for Nonprofits and How to Collaborate
2. Tax-Exemption and Mission Alignment
3. Charitable Fundraising Issues
4. Federal Trade Commission, Consumer Protection Regulation of Endorsements and Nonprofits
5. Updates to the Federal Trade Commission Endorsement Guides
6. Disclosures for Influencer Posts
7. Best Practices for Managing Influencer Programs
8. Influencer Agreements
9. Lobbying and Election-Related Activity
10. Wrap-Up

Influencer Campaigns Through a Nonprofit Lens

Core Nonprofit Issues to Frame Collaborations

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Influencer Campaigns Through a Nonprofit Lens

- Influencer activity can implicate multiple nonprofit legal regimes
- This depends on the activity
- So ask: **What kind of campaign is this?**



Mission awareness, education, PSA



Charitable fundraising



Cause-related marketing effort



Issue advocacy



Lobbying or election-related activity

Core Tax-Exemption Issues

- The influencer may be the messenger, but the nonprofit is responsible for how its name and assets are used
- Consider:
 - Exempt purpose alignment
 - Implications stemming from how an influencer is paid
 - Reasonable compensation and establishing fair market value
 - Private benefit issues, possibly
 - Professional fundraiser and related compliance
 - Restrictions on funds raised
 - Documentation and compliance considerations
 - Donor trust and reputational risks



Is It Acknowledgment or Advertising?

- Sponsorships and UBIT: Influencer content can affect how corporate sponsorship payments are treated
- Influencers are naturally promotional, making them effective messengers
- But this creates added reasons for tax-exempt organizations to carefully monitor efforts
- Know on whose behalf an influencer is speaking: the tax-exempt organization or the sponsor

Acknowledgment	Advertising
✓ Recognition of sponsor's support	x Qualitative or comparative claims
✓ Sponsor name, logo, or established slogan	x Price or value information
✓ Neutral description of sponsor's business	x Calls to buy, use, or try a product
	x Endorsements, product recommendations
	x Promotional codes, affiliate links, revenue-sharing arrangements

When Influencer Content Becomes Fundraising

- State charitable solicitation registrations
- Cause-related marketing compliance
- Professional fundraiser considerations
- Volunteer fundraising issues
- Donor disclosures and donation flow



Donate today!



Give through this link now!



Join my campaign to support this *nonprofit!*



Help us reach our fundraising goal!

Fundraising Claims Need Controls

- **Accuracy and substantiation:**
 - Saying 100% will benefit nonprofit is compelling, but is it true and can it be supported based on records?
 - Impact metrics should be carefully vetted, if applicable, to avoid overstating charitable benefits (e.g., be sure you can support statements like “every \$10 donated feeds a family”)
- **Restricted use of funds raised:**
 - Have discussions about how funds will be used
 - Make sure calls to action align with that understanding to avoid unintentional restrictions
- **Match caps and deadlines:**
 - Align with major donors in advance
 - Confirm whether their gift is conditional on hitting a target (a fundraising challenge, e.g., donor will give \$X if we raise \$Y) or is secure (a matching campaign, e.g., \$1-for-\$1 match)
- **Required donor disclosures:**
 - Screen for issues related to (non)deductibility, state fundraising disclosures particular to campaign structure (volunteer fundraising, platform fees, cause-related marketing, etc.)

Cause-Related Marketing Considerations

- Influencer campaigns might promote transactions that benefit both a company and a charity (e.g., if company sponsored advertising campaign)
- A **charitable sales promotion** is an advertisement that represents that the purchase or use of a product or service will benefit a charitable organization or purpose. A person or company that conducts a charitable sales promotion is a **commercial coventurer (CCV)**.
- Key compliance considerations:
 - Written agreement
 - Defined geographic area for sales and marketing
 - Clear donation formula (\$ or % per purchase; not “proceeds benefit charity,” which is generally insufficient)
 - Material terms like start and end dates, minimum and/or maximum donations
 - State CCV registration, bonding, and/or contract filing requirements
 - Post-promotion accounting and reporting obligations
 - Maintain oversight and control over the use of charity’s name and marks, claims

Practical Fundraising Controls Before Launching



Understand the nature of your campaign and what it means for compliance, legal review



Consider registration, reporting, and tax implications before going live



Use a written agreement, especially when dealing with charitable fundraising issues



Exercise caution when influencers will be paid a portion of funds raised



Require, whenever possible, funds to flow directly to nonprofit organization



Establish mechanisms for approving the messaging



Reserve the right to correct or request take-downs, especially for tax-exempt status concerns

Regulation of Endorsements and Influencers

Federal Trade Commission and Consumer Protection Considerations

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Federal Trade Commission Guides Concerning the Use of Endorsements and Testimonials in Advertising (FTC Endorsement Guides)

Part IV

Federal Trade Commission

16 CFR 255

**Guides Concerning the Use of
Endorsements and Testimonials in
Advertising Federal Acquisition
Regulation; Final Rule**

www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/guides-concerning-use-endorsements

Federal Trade Commission Regulation & Nonprofits

The FTC only has authority over entities “organized to carry on business for its own profit or that of its members.” (15 U.S.C. §44.)



FTC v. Grand Canyon University (2025) A nonprofit entity is not subject to the FTC Act, even if it generates revenue that it uses to pay for “expansion and self-perpetuation.” But organizations cannot merely claim they are not-for-profit to avoid regulation. The FTC can reach organizations seeking a private benefit, such as dividends to owners and investors.

However, state regulators and courts look to the FTC for guidance in interpreting other false advertising and consumer protection laws that **do apply to nonprofits**.

- Consumer Protection Laws in California, District of Columbia, Illinois, Pennsylvania, Virginia
- Unlawful Business Practices Laws / Unfair Trade Practices Laws in Florida, Illinois, Pennsylvania
- State law claims for breach of express warranty, negligent misrepresentation, unjust enrichment

Importance of Transparency in Advertising and Promotion

A 2024 survey found that **nearly 50%** of nonprofits advertise through influencers, increasing their fundraising capacity, issue advocacy, and **legal risk**.

2025 Better Business Bureau Influencer Trust Index—Key Findings:

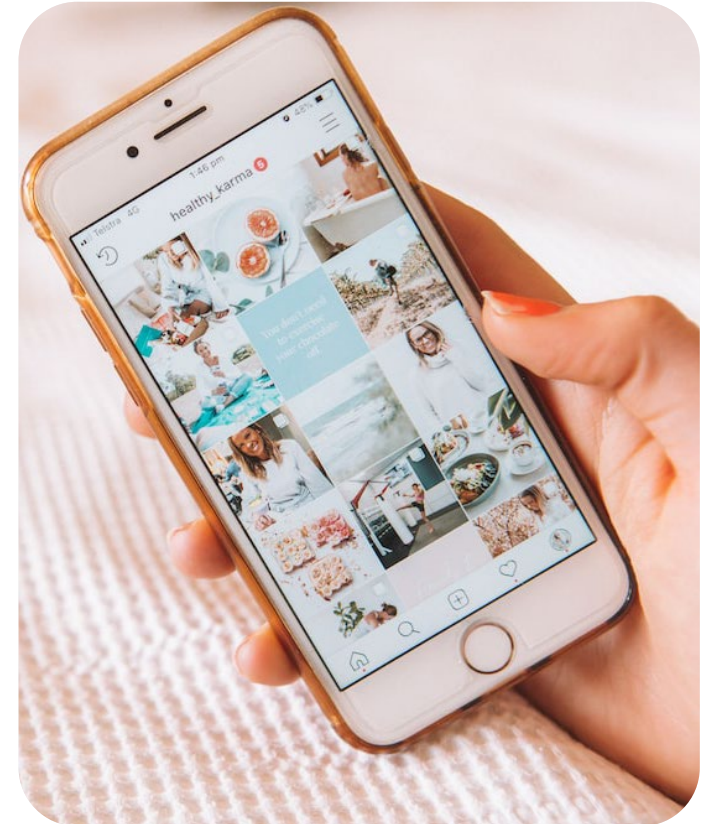
- **Transparency drives trust:**
 - 71% of consumers trust influencers who disclose brand partnerships.
 - 70% of consumers feel *deceived or negative* when disclosure is missing.
- **Partnership ≠ Distrust:**
 - 70% of consumers said an influencer partnering with a brand *does not* make them less trustworthy.
 - The mere *presence* of a brand partnership alone has little or no effect on perceived trustworthiness—**lack of disclosure** is what erodes trust.

FTC Update to Endorsement and Testimonial Guides

- The Federal Trade Commission (FTC) first published its [Guides Concerning the Use of Endorsements and Testimonials in Advertising](#), 16 C.F.R. Part 255 (“Guides”) in the 1970s.
 - The Commission updated the Guides in 2009 to add examples explaining how they applied to the internet and social media and has continued to update them since then.
 - The Guides are not law, but represent the FTC’s interpretation of the FTC Act, intended to provide guidance on the agency’s positions regarding false and misleading endorsements in advertising—including misleading endorsements by influencers.
 - States look to the Guides when faced with endorsement lawsuits under state law.
- In addition to the Guides, the FTC has published [FAQs: FTC’s Endorsement Guides: What People Are Asking](#).
 - The FAQs have also been updated to include new questions and examples designed to reflect the changes in the advertising industry (though it can be a challenge to keep them up to date with developing technology).
- The FTC also adopted 16 C.F.R. Part 465 regarding Consumer Reviews & Testimonials in 2024.

FTC Endorsement Guides

1. Endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser, and an advertiser may continue to use an expert or celebrity on an ongoing basis only if it has good reason to believe the endorser still subscribes to the views presented.
 1. The advertiser should confirm the endorser's views at "reasonable" intervals, based on factors such as the existence of new information about product performance or effectiveness.
 2. The endorser must have been a bona fide user of the product at the time the endorsement was made.
 3. **"Material" connections such as payment, free gifts, employment, etc. must be disclosed when a significant minority of the audience for an endorsement would not understand or expect the connection.**
 1. **The endorsement must clearly communicate the nature of the connection sufficiently for consumers to evaluate its significance.**
 2. **Complete details are not required.**



What Do I Have to Disclose?

Any “Material Connection” between an advertiser and influencer, e.g.:

- Payment
- Free product or services
- Sweepstakes entries
- Other things of value
- Travel
 - Includes free admission to an event in exchange for posting
- Business, family, or other close relationship to seller
- Employer/employee relationship

That would not be expected by consumers.

Employees Should Disclose, Too

FTC's FAQs: "If your company allows employees to use social media to talk about its products, you should make sure your relationship is disclosed to people who read your online postings..."

Employers should remind employees periodically of their social media policy, especially if the nonprofit encourages employees to post about the organization's services, mission, events, fundraising, or otherwise promote the nonprofit.

Remember, the standard is whether "a significant minority of the audience for an endorsement would **not understand or expect** the connection." An employee who posts on a private account limited to their friends and family, who likely know of the employee's connection to the organization, would not need to disclose their relationship in the post.

Examples of acceptable disclosures:

- #[Nonprofit]Employee
- #Iworkat[Nonprofit]

Changes to FTC Guides in 2023

- **Endorsement** can explicitly include **tags in social media**.
- **Endorser** can be someone who “**appears to be**” a person or entity—capturing **virtual/AI/CGI influencers** and fabricated reviewers.
- **Product** now includes a **product, service, brand, company, or industry**.
- **Liability** has been **clarified and expanded**: The FTC “better explains” potential liability for **advertisers, endorsers, and intermediaries** (e.g., ad agencies, PR firms, **review brokers**, reputation managers) and clarifies that it **expects advertisers to guide, monitor, and remediate influencer conduct**.
- “**Misuse of images**” **rule of thumb**: New guidance warns that **use of someone else’s image (e.g., stock photos) with a testimonial can be deceptive if it misrepresents a material attribute** of the endorser (e.g., complexion in an acne ad).
- **Material-connection disclosures refined**: Disclose when a **significant minority** of the audience wouldn’t expect the connection; you don’t need dollar amounts, but you **must** convey the **nature** of the tie clearly enough for consumers to assess it.

How to Disclose: The “Clear and Conspicuous” Standard

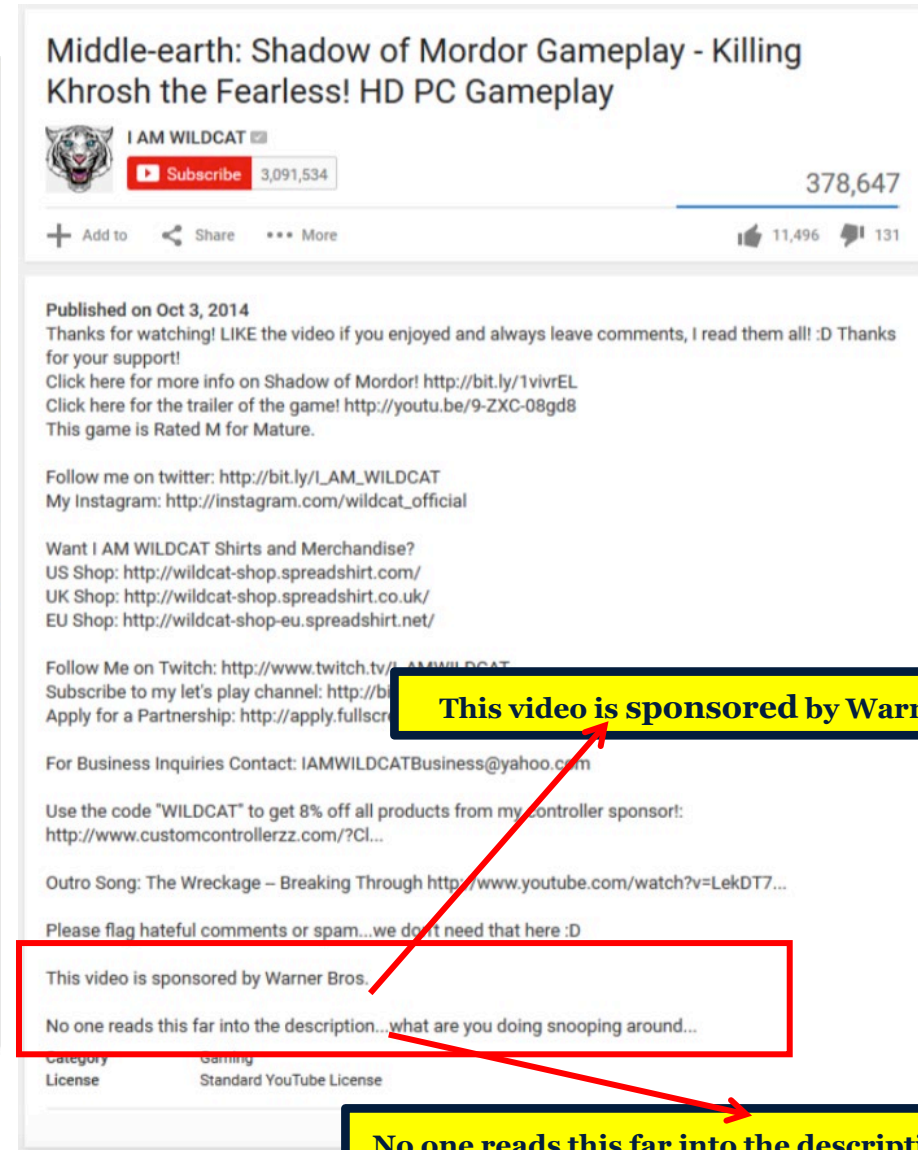
- When influencers have a material connection to the advertiser, they must disclose the connection clearly and conspicuously, meaning the disclosure must be “difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers”—and **unavoidable!**
- Additionally, the disclosure must:
 - Stand out from surrounding text or audio by its color, font, size, location, duration, speed, and/or cadence, and should appear in the same medium as the triggering claim.
 - Be superimposed on pictures on photo/video platforms.
 - Match the format of the claim.
 - For example, in a video where the content is delivered both visually and in audio, the disclosure must also be both visual and in audio.
 - May be necessary to include in both caption and in video (e.g., YouTube)
 - Consider the target of the advertisement (elderly, children, etc.)

Disclosures That Work

- Place disclosures up front; don't hide behind "...more," in comments, or buried among hashtags.
- Use plain words: "Ad," "Paid partnership with BRAND," "BRAND sent me this free."
 - Avoid ambiguous tags (#thanks___, #collab, #___partner, #ambassador, #gifted)
 - Avoid strings of hashtags, buried disclosures, lack of capitalization.
 - Commonly used disclosures that don't contain the brand or product name may be ambiguous, because they do not properly identify the advertiser. While #ad or #paid may be effective in certain contexts, "Sponsored by [BRAND]" or "Promoted by [BRAND]" is clearer.
- No abbreviations.
- Repeat as needed across a thread/series; each ad needs its own disclosure.
- FTC: Do not assume that a social media platform's disclosure tools alone will produce a disclosure that is unavoidable.



A Lesson in How Not to Disclose In the Matter of Warner Bros. Home Entertainment, Inc. (FTC Consent Order 2016)



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125
YEARS
young

No one reads this far into the description...what
are you doing snooping around...

Example: Nonprofit Influencer Post

Questions to ask:

- Did you ask the influencer to post?
- Did you give the influencer anything?
- Is there a “material connection” to your organization?

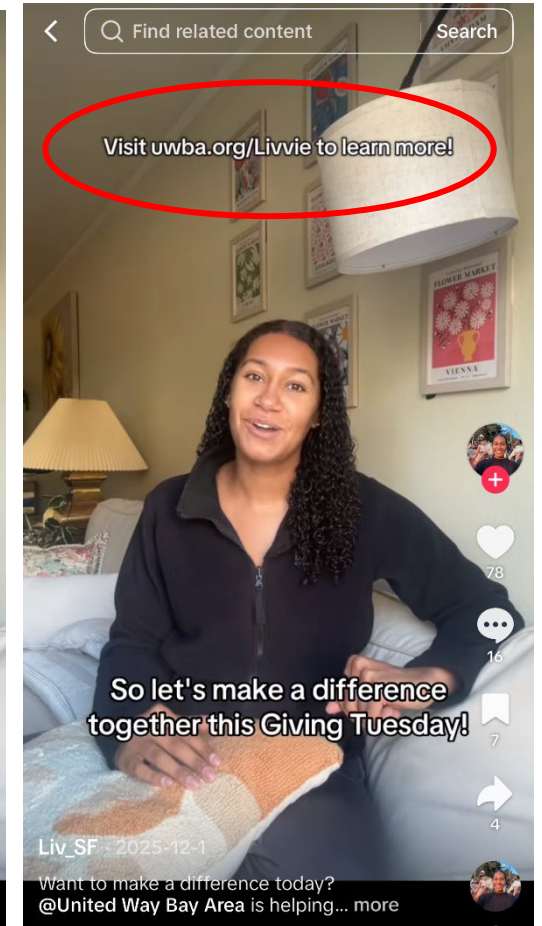
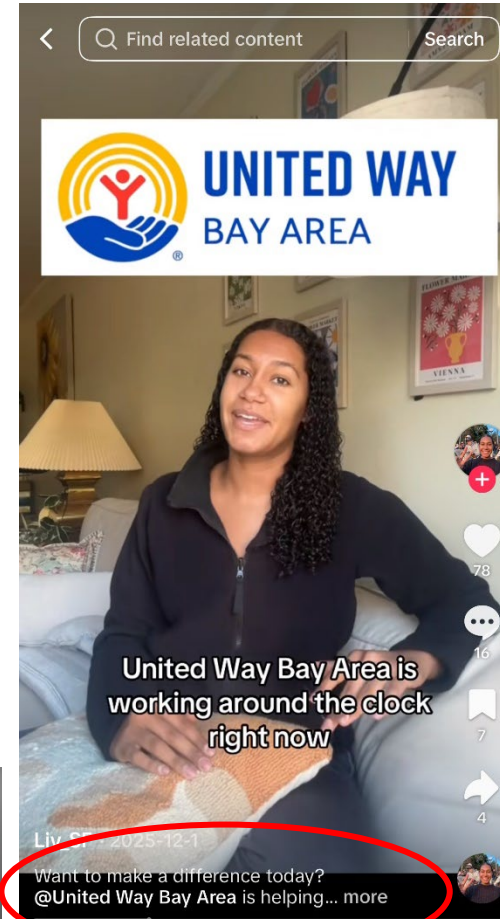
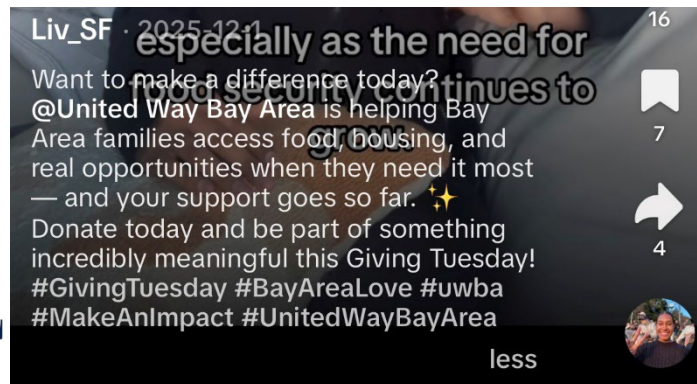
If yes:

- Is the connection clearly and conspicuously disclosed?
- Are disclosures up front or buried?
- Did the influencer use specific or generic hashtags?

Assume this influencer was paid to promote.

Are the in-video and caption statements adequate?

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FTC Disclosure Guidelines Distilled

Not Acceptable	Acceptable
[brand]ad	Ad, advertising, paid advertising, [Brand]Ad
Sp, spon	Sponsored
Ambassador, Employee	[Brand]Ambassador, [Brand]Employee [Brand]_Ambassador, [Brand]_Employee
Partner	[Brand]Partner [Brand]_Partner
Thanks, Thank You, Thanks[Brand]	Thanks [Brand] for gifting me/Thanks[Brand] for the free [detail the stuff given]
[Brand]	
Platform disclosure alone	

Importance of Monitoring and Enforcement

Influencer agreements have two purposes: establishing terms of relationship between parties and compliance overlay.

FTC's position that advertiser is equally responsible for compliance, monitoring, and enforcement may warrant more extensive guidelines/policy.

- Organizations should monitor influencers for compliance and require that inadequate disclosures must be fixed.
- Organizations should contact influencers who violate policy with direction on how to correct, provide contractual remedy for failures to disclose, and follow through.

Importance to regulators of (1) existence of and (2) compliance with influencer policy/agreement.

Must be careful to ensure influencer is independent contractor.

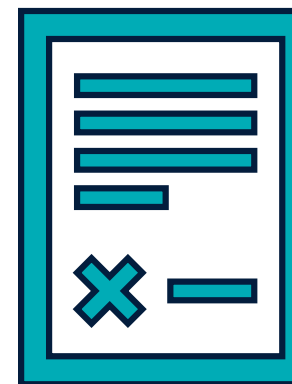
Best Practices for Managing Social Media Influencers



- **Standard contract terms.** Ensure you have a strong influencer agreement. Contracts with influencers and agencies should include clauses that protect your organization from false claims. Key terms to consider include:
 - Truth-in-Advertising Clause, Disclosure Requirements, Enforcement.
 - “Influencer shall comply with [Company’s Influencer Guidelines] and the Federal Trade Commission’s (FTC) Endorsement and Testimonial Guides.”
- **Create a social media influencer training program.** Don’t assume every influencer automatically knows the rules. When you start a campaign, walk your influencers through the key dos and don’ts. Explain why the rules matter (ex: “We don’t want to mislead our customers or face implications with regulators”). Sometimes giving the context will help influencers understand the seriousness.
- **Provide influencers with brand messaging/posting guidelines that state what they can and cannot say.**
 - **Do:** Stick to your personal experience with the product and use claims the brand has approved (ex: “Helps reduce the appearance of blemishes”). Be honest and use qualifiers.
 - **Don’t:** Make extreme or absolute claims that the product “cures,” “guarantees,” or magically fixes something overnight. Avoid any medical or health claims that aren’t officially allowed.
 - **Do:** Use the proper disclosures (#Ad, #GiftedBy[Brand], “Paid for by”), so it’s clear there is a paid partnership.
 - **Don’t:** Exaggerate results or share statistics that haven’t been verified.

Influencer Agreements

1. Parties: Who are the parties to the contract? Influencer? Agency?
2. Term: What's the length of the contract?
3. Services/Deliverables: What does advertiser want the influencer to do (e.g., the number and frequency of posts)?
4. Compensation and Payment Schedule
5. Exclusivity: Category, competition, time
6. Approval Rights and Procedure: Will Brand review/approve the content before it's posted? What approval rights, if any, does the influencer have?
7. IP Ownership: Who owns what?
8. Use Rights: Who can do what with the content?
9. Brand Policy, FTC Endorsement Guides, etc.
10. Representations and Warranties Clause.
11. Morals Clause.
12. Non-disparagement Clause.
13. Indemnity Clause: Even if the influencer will not be able to pay, you can crossclaim against the influencer to get the company's facts in front of the court.



Training—Employees, Volunteers, and Influencers

- Train early and repeat as needed. Consider e-training.
- Document attendance.
- Involve everyone involved in the campaign.
- Simple takeaways, “do and don’t” list, contact information for questions.
- Combine legal messages with marketing or other business guidance, if possible.

Monitoring

- Designate an individual to lead compliance.
- Set up regular check-ins, reviews.
- If you see a problem, correct it quickly.
- Create a paper trail of your actions.

Enforcement – How Much Is Enough?

- Contact the influencer with clear direction on how to disclose—what to say and where to say it.
- Impose consequences for failure to correct—e.g., warning, termination.
- If you continue to work with this influencer, monitoring must be stepped up.
- Follow the handlers—investigate to understand who dropped the ball and how to correct.
- Maintain a paper trail.

Wrap-Up/Takeaways

Recommendations for managing influencer campaigns:

- Thoroughly train influencers, employees, and agencies and explain the “why.”
- Make sure you have a good agreement and enforce the agreement.
- Ensure clear and conspicuous disclosures.
- Make sure claims are substantiated and up to date.
- Plan for monitoring and enforcement—and follow through.
- Audit regularly and document compliance.
- Have a crisis response plan ready.

Questions?

Lobbying and Election-Related Issues

Beyond the FTC: Tax, Lobbying, and Campaign Finance Considerations

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Framing the Engagement

- Nonprofits increasingly use social media influencers to amplify policy messages, mobilize grassroots action, and shape electoral narratives
- FTC endorsement guidelines focus on commercial advertising
- Federal rules may not require on-post disclaimers for all organic influencer content; paid promotion, express advocacy/electioneering communications, state law, and platform policies can change the analysis
- Organizations must still navigate tax law considerations, lobbying disclosure, campaign finance law, transparency expectations, and reputational risk



Tax Law Considerations

- **Education/Issue advocacy:** public policy discussion without lobbying or campaign intervention
- **Lobbying:** specific legislation + viewpoint; ballot measures are treated as legislation
- **Grassroots lobbying:** lobbying communication to the public with a call to action
- **Campaign intervention:** support for or opposition to candidates or political parties



Mitigating Lobbying/Campaign Intervention Risks

Issue briefs and agreements should include clear guidelines if the intent is to avoid lobbying or political activity.

- Consider a simple “Dos and Don’ts” list for creators:
 - **Avoid lobbying:** no legislator outreach, no calls to contact lawmakers, don’t identify a legislator who will vote on the legislation as being opposed to or undecided about a particular view on the legislation; focus on audience learning by providing facts to help legislators and the public improve their understanding of the issue(s)
 - **Stay educational:** use facts, neutral tone, and full/fair explanations
 - **Avoid political activity:** no candidate/party support or opposition, election/voting references, campaign coordination, campaign materials, or political fundraising

Remember: Classification turns on what the influencer actually publishes, not just contract terms or organizational intent.

Tracking and Expenditure Reporting

- Track influencer costs by activity category: education, lobbying, ballot measure activity, candidate-related activity
- Lobbying costs may need to be reported on Form 990 / Schedule C and under state or local lobbying disclosure regimes
- 501(c)(4) and 501(c)(6) organizations should track political campaign intervention for Form 990 reporting and potential 527(f) proxy tax exposure
- Agency and influencer payments may be reportable under federal, state, or local campaign finance or lobbying laws
- Preserve content and spend records to support tax, lobbying, and campaign finance classifications



When Disclaimers Aren't Required, Transparency May Still Matter

- FTC and FEC disclaimers may not be required for organic influencer posts on the influencer's own account
- Paid boosts, platform ads, express advocacy, or electioneering communications may change the analysis
- State law may require paid political influencer disclosures; California and Texas are key examples
- State law may also impose disclaimer requirements on grassroots lobbying communications
- Platform rules may require labels or restrict paid political content
- Agencies may have their own disclosure rules
- Audiences and journalists increasingly investigate whether grassroots campaigns are organically driven or paid, and undisclosed paid influencer campaigns are a prime target for those investigations
- Voluntary disclosure may reduce reputational risk even when not legally required

Practical Compliance Controls for Lobbying and Election-Related Influencer Campaigns



Define precisely whether the influencer is authorized for issue advocacy only, lobbying, or electoral communications — and expressly prohibit crossing categories without written approval.



Understand applicable laws before influencers engage in lobbying or election-related activities.



Depending on arrangement and how much control organization has over content, review of content may be necessary to ensure consistency with organizational objectives and compliance with applicable law.



But be careful about the balance between guidance and control. More control is not always better. Too little control creates compliance drift. Too much control can undermine editorial independence.



Track spend by category (educational, lobbying, campaign intervention).

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