

## Private Foundations and Social Media

### Tips for Private Foundations Using Social Media for Policy Change

Social media presents great advocacy opportunities for private foundations, though they need to ensure social media platforms are not used for lobbying or partisan political activity. Although the IRS has not specifically said how the advocacy laws apply to social networking, its broader rules likely apply to social networking sites just as they do to other communications channels. While a private foundation is generally not responsible for the lobbying or partisan content<sup>1</sup> of others, these lines can be somewhat blurred on social media platforms. This fact sheet is designed to give private foundations a framework to engage audiences and accomplish their missions using social media, now and in the future.

### Using Social Media to Advocate

Private foundations may participate in many forms of advocacy activities. Although private foundations incur a prohibitive tax on any lobbying expenditure, lobbying is only one type of advocacy and there are many permissible [advocacy avenues for private foundations](#). Private foundations should not use social media to engage in lobbying activities the foundation would be prohibited from doing in any other forum. For example, a private foundation could not engage in grassroots lobbying by tweeting (or retweeting) a link asking people to send a letter to swing legislators supporting the DREAM Act. Additionally, a private foundation should not send direct lobbying tweets to a legislator's social media address (e.g., "We need immigration reform, @SenRockefeller. The Senate votes tomorrow"). On the other hand, it would not be considered lobbying to encourage an administrative action, for example a tweet like this one to President Obama encouraging him to take an [administrative action](#) to curb gun violence "@BarackObama please take action to curb gun violence. We can't wait for Congress to Act!"

### Private Foundations Cannot Use Social Media For Partisan Political Activities

A private foundation can discuss officeholders and candidates in tweets and status updates only to the extent they could legally do so through other communications channels. Private foundations may use social media to [discuss public officials](#), as long as those messages do not suggest support for, or opposition to, those public officials as candidates for office. For example, a private foundation could use Twitter and Facebook to criticize the votes of a legislator after the vote has taken place, but only if such activity is neither lobbying nor [a veiled attempt to intervene in the election or to influence legislation](#).

### Private Foundations Responsible For Content It Maintains

Although there may be exceptions, a good rule of thumb is that a private foundation will be responsible for content over which it maintains editorial control and not likely responsible where it does not. Private foundations should consider the following general rules about content it maintains or distributes:

- **Liking, Retweeting and Amplifying the Content of Others.** A private foundation may be responsible for any content it 'likes' or 'retweets,' or whenever it in some way shares or amplifies

---

<sup>1</sup> [Public charities and public foundations](#) may be able to do more advocacy activities using social media. Additionally, 501(c)(4) political activity conducted through social media must follow the relevant state or federal laws regarding corporate campaign contributions and independent expenditures, and political activity cannot be the primary purpose of a section 501(c)(4) organization.

the content of others – in the same way it would be responsible if it distributed a flyer about a 501(c)(4)'s endorsed candidates. A foundation needs to think about why it is retweeting or using a Twitter widget, since these tools cannot be used to do indirectly what a foundation cannot do directly. If a foundation communicates via its own pages on social media platforms (e.g., Facebook, Twitter, Pinterest), which carry its name and goodwill, the foundation is responsible for content appearing on these pages. If a foundation retweets a [call to action](#) posted by another organization or re-posts a photo from a political candidate's Facebook page, the activity could be attributable to the foundation (and, in the case of lobbying, it would be a taxable expenditure).

- **Staff Posts May At Times Be Attributed to the Organization.** To the extent a foundation is paying staff members to post work-related information on social networks, the activity likely will be attributed to the foundation and must comply with the foundation's tax-exempt status. As such, if employees post information on any social media profile (even if not in the name of the organization) only because they are employees, the post may be viewed by the IRS as part of their work and should comply with the organization's tax status.
- **Creating a Public Forum.** If the foundation is providing a forum for public discourse without asserting any editorial control, communications made by outside commenters are less likely to be attributed to the foundation. While the IRS has never specifically addressed this issue, two likely important factors are whether the foundation asserts editorial control over content (e.g., by moderating the forum) or whether a foundation is simply providing a public forum for political discourse. A social media tool that allows for [longer and more substantive comments](#) might be more likely seen by the IRS to be a forum for public discourse than would a venue where comments are brief.
- **Use Caution When Responding to Comments.** As described below, a foundation should be cautious in the way it handles user comments on Facebook, blogs and other platforms for discussion that carry the foundation's name.
- **Using Disclaimers May Be Helpful.** To reduce the likelihood of having comments attributed to the organization, a foundation should include a prominent disclaimer on its social media profiles stating that the views expressed are those of the people making the comments and not necessarily those of the foundation, that the foundation does not endorse any candidates, and that the commentaries are presented as a public service in the interest of informing the public.

Example: It is Alliance for Justice's policy not to delete comments posted by the Facebook community, though we may make exceptions when those comments involve copyright infringement, personal attacks, obscenity and/or ethnic slurs. Posts from community members do not necessarily represent the views of AFJ. Comments are included as a public service in the interest of informing the public.

- **Safest Approach is to Delete or Distance Organization from Comments.** If a member of the general public posts a partisan message on a foundation's Facebook wall or in response to the foundation's status update, the safest approach is either to delete that message or to post a follow-up from a staff member stating that statements expressed by others on the wall do not necessarily reflect the foundation's views and that the foundation does not support or oppose candidates. There may be circumstances where it would be appropriate (in consultation with an attorney) for the foundation not to respond to partisan comments made on its social media platforms.
- **Take a Consistent Approach.** A foundation should take a consistent approach by either deleting all partisan comments entirely, responding to them with a follow-up statement posted by an organizational representative, or (as noted above) ignore them and rely on the disclaimer posted on the social media platform. A foundation may delete any comments that contain statements

that conflict with the organization’s disclaimer (as described above), but if it deletes only some comments based on their political content and not all comments with political content, the foundation may open itself to an accusation that it is promoting one political message over another.

## **Private Foundation Not Responsible For How Others Use Its Content**

While the IRS has previously indicated that a foundation is responsible for content it creates on its own website (and, likely, by extension, its Facebook page, Twitter feed, blog, or any other place where the foundation maintains editorial control), a foundation is likely not responsible for how others use that content, unless the foundation suggests, promotes, or in some way sanctions the lobbying or partisan use of its content by others.

When a foundation creates nonpartisan content (e.g., a blog post, a tweet, or even a hashtag) and that content is used by a member of the general public for a lobbying or partisan purpose, we think the IRS is unlikely to hold the foundation responsible for that lobbying or partisan use. For example, at a conference hosted by a foundation where attendees are encouraged to use the hashtag #npvote2012 to promote and discuss the conference on Twitter, if a member of the public uses the #npvote2012 hashtag to engage in either a lobbying communication or a partisan communication, the foundation would likely not be responsible so long as they did nothing to encourage the lobbying or partisan commentary.

Likewise, a foundation cannot control what others say or attribute to it in tweets, so we do not believe the foundation has a legal obligation to respond to a communication from a third party that names the foundation or is addressed to one of its social media profiles (e.g., the foundation’s Twitter address), though a foundation could certainly reply to any posts where it feels the tweet improperly connects the foundation to partisan political content.

## **Grants for Social Media Projects**

We have no reason to believe the IRS would treat grants for projects involving social media any differently than it would treat grants for projects involving more traditional communication channels. Private foundations can [safely and legally support grantees that lobby](#). For more information on how the lobbying and election rules apply to you and your grantee’s social media presence, please review our publication [Influencing Public Policy in the Digital Age: The Law of Online Lobbying and Election-Related Activities](#).

---

The information contained in this fact sheet and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code. Alliance for Justice publishes plain-language guides on nonprofit advocacy topics, offers educational workshops on the laws governing the advocacy of nonprofits, and provides technical assistance for nonprofits engaging in advocacy. For additional information, please feel free to contact Alliance for Justice at 866-NPLOBBY.