

# GOBEL

Should Your Organization Veto Political  
Contribution Data in Fundraising?

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# Should Your Organization Veto Political Contribution Data in Fundraising?

BY JENNIFER MOODY,  
Associate Vice President, Research, GOBEL

Does your organization factor individual political contribution data into your fundraising data gathering? If so, you might be unwittingly exposing your shop to legal repercussions.

FEC Record: Outreach publication dated November 2, 2018, begins with the following:

Under the *Federal Election Campaign Act* (the Act), information about individual contributors taken from FEC reports cannot be sold or **used for soliciting contributions** (including any political or **charitable contribution**) or for any commercial purpose.<sup>1</sup>

This was a subtle change upon first glance; however, it has a major impact in the world of philanthropy.

Since the 1970s, Congress had stated that FEC data could not be used “for the purpose of soliciting contributions or for commercial purposes.” It had generally been accepted that Congress meant soliciting political contributions and not necessarily philanthropic contributions. After all, the information was publicly available and free to access. Why wouldn’t nonprofits be able to use it? And with the wealth of individual political contribution data out there, it was incorporated into just about every wealth-screening service available.

But any ambiguity regarding the legal stance on the topic should have been dispelled with the 2018 publication. As a result, the best practice should be for nonprofit organizations to avoid factoring individual political giving into ratings, research, or solicitation plans.

The full text of the CFR pertaining to the restrictions on sale and usage makes the point even more clearly:

§ 104.15 Sale or use restriction (52 U.S.C. 30111(a)(4)) .<sup>2</sup>

- a. Any information copied, or otherwise obtained, from any report or statement, or any copy, reproduction, or publication thereof, filed under the Act, shall not be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose, except that the name and address of any political committee may be used to solicit contributions from such committee.
- b. For purposes of 11 CFR 104.15, soliciting contributions includes soliciting any type of contribution or donation, such as political or charitable contributions.

Despite this update being nearly four years old as of the writing of this white paper, the rollout has been slow in the nonprofit sphere, with many organizations still using political contribution data in their algorithms and their work.

1. <https://www.fec.gov/updates/sale-or-use-contributor-information/>

2. <https://www.fec.gov/regulations/104-15/2022-annual-104#104-152>.

In January 2021, a vendor in the prospect development realm, ALUMinate<sup>3</sup>, even reached out to the FEC to expressly ask permission to use FEC<sup>4</sup> individual contributor data to 1) act as an additional means to identify a prospect, 2) inform wealth rating algorithms, 3) help identify a prospect's interests, and 4) identify alumni who hold leadership positions. Two attorneys sent in a letter of support<sup>5</sup> stating that ALUMinate should be allowed to use the data, as they were using it in a more narrow and focused purpose than other organizations who had previously received permission from the FEC.

Ultimately in March 2021, the FEC chose not to rule on the request. Stating, "The purpose of this letter is to inform you that the Commission has concluded its consideration of your advisory opinion request without issuing an advisory opinion."<sup>6</sup> Essentially, they didn't say ALUMinate's work was permissible... but they also didn't say it was impermissible.

For more clarity we must look to the FEC's advisory opinions on other requests outside of the nonprofit arena. In May 2021, the FEC ruled that the political algorithm company Tally Up could not use aggregate individual contribution data as part of its analytics to help campaigns target individuals more likely to give larger amounts.<sup>7</sup> Sounds a lot like traditional wealth screening in the nonprofit world, doesn't it? In October 2021, the FEC settled with United States Representative Ro Khanna and his associated campaign, fining him \$16,000<sup>8</sup> for his use of software that used FEC individual contribution in data analytics to score potential donors on their likelihood to donate to the campaign.

GOBEL follows the professional advice of Apra – the nonprofit industry's leading prospect research professionals organization -- which advises prospect development professionals that no FEC data is to be used in any facet of the work.<sup>9</sup> Some organizations have determined that it is acceptable to use individual contribution data for only those already in their database and not for prospecting, and others have discarded it all together. If you have doubts, it may make sense to have your organization's legal counsel review the FEC's guidance and make the determination that makes the most sense for your organization.

As a final note, if you do decide that you should no longer be using FEC individual political contribution data, be sure to reach out to your vendors to determine if they use that data in their algorithms and if it can be removed from your view.

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3. ALUMinate was acquired by SSB in July 2021 and is now known as Affinaquest, but is still referred to here as ALUMinate to stay consistent with the FEC proposal.

4. The full scope of ALUMinate's request and the logic and reasoning behind it can be found here:

[https://www.fec.gov/files/legal/aos/2021-01/202101\\_R1.pdf](https://www.fec.gov/files/legal/aos/2021-01/202101_R1.pdf)

5. [https://www.fec.gov/files/legal/aos/2021-01/202101C\\_2.pdf](https://www.fec.gov/files/legal/aos/2021-01/202101C_2.pdf)

6. <https://www.fec.gov/files/legal/aos/2021-01/2021-01.pdf>

7. <https://www.fec.gov/files/legal/aos/2021-05/2021-05.pdf>

8. [https://www.fec.gov/files/legal/murs/7062/7062\\_37.pdf](https://www.fec.gov/files/legal/murs/7062/7062_37.pdf)

9. <https://www.aprahomes.org/Resources/Ethics-and-Compliance-Toolkit> (under List Collection - Using FEC Data)

For more information on political contribution data in fundraising, please feel free to contact:

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**GOBEL**

450 Carillon Pkwy  
St. Petersburg  
FL 33716

+1585.598.1171  
info@gobelgroup.com  
gobelgroup.com