

Advocacy Addresses Small Business Impacts of CAN-SPAM Act in Comments to the Federal Trade Commission

On April 20, 2004, the U.S. Small Business Administration's Office of Advocacy (Advocacy) filed comments with the Federal Trade Commission (FTC) on its advance notice of proposed rulemaking to implement the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act). Advocacy's comment may be found at <http://www.sba.gov/advo/laws/comments/>.

- In the advance notice, the FTC sought comment on how implementation of the CAN-SPAM Act would affect small businesses and requested information to help the FTC conduct its regulatory flexibility analysis.
- Advocacy commends the FTC for considering the impact on small businesses early in its rulemaking on unsolicited commercial e-mail. Advocacy encouraged the FTC to give careful consideration to the impact on small businesses throughout the rulemaking process.
- Advocacy acknowledged the burdens that unsolicited commercial e-mail can place on small businesses. Recent reports state that 60 to 80 percent of e-mail traffic is unsolicited commercial e-mail, and a recent third-party survey reported that 42 percent of the small businesses surveyed would consider abandoning e-mail if the e-mail situation worsens.
- Advocacy addressed concerns that two portions of the disclosure provisions of the CAN-SPAM Act could potentially burden small businesses – the definition of “sender” and whether post office boxes were permitted as physical addresses. Small businesses recommended that the FTC define “sender” narrowly and permit the use of post office boxes.
- The small businesses identified several additional provisions of the CAN-SPAM Act where implementation could have a disparate impact on small businesses – the definition of a “transactional or relationship message,” whether a 10-business-day period for processing opt-out requests was sufficient, and a system of rewarding those who report CAN-SPAM violations. Small businesses recommended construing transactional messages broadly and were split on the 10-business day period. Small businesses were concerned that a reward system would be ripe for abuse and would have little impact on unsolicited commercial e-mail.
- Advocacy submitted comments on March 31, 2004, to the FTC on the practicality, technical feasibility, privacy, and enforceability of a National Do Not E-mail Registry. As stated in the comment letter, Advocacy believes that a registry may not be a practical solution to curbing unwanted, unsolicited commercial e-mail and is concerned that a one-size-fits-all approach like a Do-Not-E-mail Registry will have unintended negative consequences on small business.