

April 14, 2004

Federal Trade Commission  
CAN-sySPAM Act  
P.O. Box 1030  
Merrifield, VA 22116-1030

Re: CAN SPAM Act Rulemaking  
Project No. R411008

Dear Sir/Madam:

Navy Federal Credit Union provides the following comments in response to the Federal Trade Commission's request for comments on various aspects of the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN SPAM Act). Navy Federal is the nation's largest natural person credit union with over \$20 billion in assets and 2.4 million members.

The Commission requests comments on how to determine the "primary purpose" of an electronic mail message ("e-mail"). Determining the primary purpose of an e-mail is integral to determining whether it is subject to certain provisions of the CAN SPAM Act. We believe that the primary purpose of an e-mail should be determined based on the net impression of the e-mail. For example, if the subject line of an e-mail indicates that its message contains an advertisement or promotion of a product or service and/or the most prominent content of the e-mail promotes the sale of a product or service, then the primary purpose of the e-mail should be deemed "commercial." On the other hand, if the subject line of the e-mail indicates that the message is related to a product or service the recipient has already agreed to receive and/or the most prominent message in the e-mail is related to a product or service the recipient has already agreed to receive, the primary purpose of the e-mail should be deemed "transactional" or "relationship-based."

When developing criteria to determine the primary purpose of an e-mail, we urge the Commission to permit senders to include commercial messages within transactional or relationship-based e-mails. Such messages could provide valuable information to recipients that would improve their transactions or relationship with the sender. We believe the primary purpose of such e-mails should continue to be considered transactional or relationship-based, not commercial. If the Commission provides guidance on the prominence of different types of messages within an e-mail, it should not suggest that senders signify prominence by using formats (i.e. large font size, type style, or bright colors) that are subject to alteration before they reach their intended recipients. For example, an e-mail that is originated in an html format could be converted to plain text by the recipient's e-mail software and, as a result, lose its original variety of font sizes, type styles, and colors. Instead, the Commission should focus on the description of the message in the e-mail's subject line, the placement of messages within the body of the e-mail, and information contained within the e-mail's header.

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The Commission requested comment on whether or not ten business days is an appropriate deadline for a sender to act on an opt-out request by a recipient. We believe this deadline is more than enough time for a sender to delete a requestor's e-mail address from their directory. Currently, Navy Federal processes such requests within two business days.

With regard to "forward-to-a-friend" and similar e-mail marketing campaigns, we believe the person who first initiates the message or otherwise induces a person to initiate the message should be subject to the requirements of the Act. In addition, they should also be liable for the veracity of the unaltered message content after the original recipient forwards the message to someone else. It would be impractical to subject every person who forwards an e-mail to all provisions of the Act, especially when many of these senders are individuals who are potential victims of such campaigns.

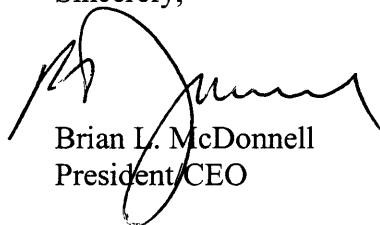
We believe that P.O. Box addresses and commercial mail drop addresses should not be considered valid physical postal addresses for purposes of Section 5(a)(5)(A)(iii) of the Act. Such addresses are often used in fraud schemes and effectively shield their owners from identification. Therefore, we believe permitting use of these addresses would facilitate the activities of unscrupulous e-mail marketers rather than curtail them.

We believe Section 5(a)(1) of the Act is sufficiently clear on what information may or may not be disclosed in an e-mail's "from" line. As such, we do not recommend any clarification of this provision.

To measure the effectiveness of the Act, we recommend the Commission require several of the large Internet service providers to provide periodic reports on the amount of unsolicited e-mails received at their network.

Navy Federal appreciates the opportunity to respond to the Federal Trade Commission's request for comments on provisions of the CAN SPAM Act.

Sincerely,



Brian L. McDonnell  
President/CEO

BLM/scs