



March 31, 2004

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

**Re: CAN-SPAM Act Rulemaking
Project No. R411008**

To Whom It May Concern:

The National Association of Mortgage Brokers (NAMB) submits this letter on behalf of its members to comment on the advance notice of proposed rulemaking published in the Federal Register by the Federal Trade Commission (FTC) on March 11.

NAMB supports the creation of a National Do Not E-mail Registry (Registry) and the definitions of “transactional or relationship messages” found in the CAN-SPAM Act. However, NAMB believes these definitions should be expanded to include more situations where businesses receive unsolicited e-mails from consumers and other businesses. NAMB also believes businesses should be able to send unsolicited e-mails to other companies and pre-existing customers. Before discussing the reasons why NAMB believes these e-mails should remain unrestricted, this letter provides general information about mortgage brokers and NAMB. After providing this brief overview, the comment letter explains the rationale behind keeping these particular types of e-mails unrestricted.

Mortgage brokers act as intermediaries between consumers and lenders during the process of financing the purchase of a home. A typical broker maintains business relationships with various lenders to provide consumers with numerous financing options. These partnerships allow the 44,000 mortgage brokerage companies employing over 360,000 employees in the United States to offer consumers the most competitive mortgage products available.

By offering consumers a variety of mortgage products, mortgage brokers can find loans for borrowers that match the financial needs of each customer. Mortgage brokers assist buyers with perfect credit histories in addition to those with less than perfect credit histories. The mortgage brokerage industry also helps borrowers with low-to-moderate incomes in finding access to the credit they need to secure the benefits of homeownership. By advising homebuyers throughout the home financing process and delivering cost effective mortgages to consumers, mortgage brokers originate two out of every three residential loans in any given year. As the single largest group of loan originators, mortgage brokers undoubtedly have played a significant role in increasing the rate of homeownership in the United States to an all-time high of 68%.

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NAMB is the only national trade association exclusively devoted to representing the mortgage brokerage industry. As the voice of mortgage brokers, NAMB speaks on behalf of more than 21,000 members in all 50 states and the District of Columbia. NAMB offers educational courses and certification programs to mortgage professionals to maintain their expertise. By adhering to a strict code of ethics and best lending practices, NAMB members guide consumers through the mortgage loan origination process. NAMB's government affairs representation ensures the voice of the mortgage brokerage industry is heard on Capitol Hill.

While NAMB supports exempting "transactional or relationship messages" from the provisions of the CAN-SPAM Act, NAMB believes these categories should be expanded. With regard to the receipt of unsolicited e-mails, the Registry should allow businesses to respond to such e-mails received from consumers and other businesses even if the e-mail address of the sender is listed in the Registry. NAMB believes businesses should maintain this right regardless of whether the recipient and sender have entered into a business arrangement. The statute does not appear to address this situation when discussing the primary purpose of "transactional or relationship messages." NAMB's suggestion is based on the observation that businesses use mass media outlets to promote their products. Such advertising includes all of the following: television commercials, print advertisements, radio ads, banner ads on the Internet, and other forms of mass media advertising. When businesses receive an e-mail in response to such an ad, they must have the ability to follow up on potential sales opportunities to remain competitive. The Registry should allow businesses to send unsolicited e-mails to pre-existing customers and other companies as well. However, a company should lose this right upon receiving an opt-out request from either a customer or business that receives such unsolicited e-mails from the sender. By allowing businesses to act in this manner, NAMB believes the exemptions for "transactional or relationship messages" are improved to reflect the realities of the global marketplace.

NAMB greatly appreciates the opportunity to comment on the proposed rulemaking related to the implementation of a National Do Not E-mail Registry. While protecting consumers from unwanted e-mails, NAMB believes any rules and regulations issued by the FTC should also protect the commercial interests of legitimate businesses. NAMB believes its suggestions achieve this goal. If you have any questions, please contact Roy DeLoach at 703-245-8035 or Tobias Moon at 703-610-0205.

Sincerely,

A handwritten signature in black ink, appearing to read "A.W. Pickel III". The signature is written in a cursive style and is positioned to the left of a vertical red line.

A.W. Pickel III, CMC
President