



CUNA & Affiliates
A Member of the Credit Union System

*Credit Union
National Association, Inc.*

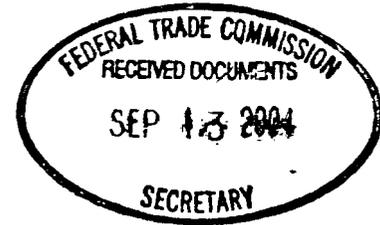
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September 13, 2004

Federal Trade Commission
Office of the Secretary
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580



RE: CAN-SPAM Act Rulemaking, Project No. R411008

Dear Sir or Madam:

The Credit Union National Association (CUNA) is pleased to respond to the Federal Trade Commission's (FTC's) proposed rule implementing certain provisions of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act). The CAN-SPAM Act requires the Federal Trade Commission (FTC) to issue rules that determine when an e-mail message has a commercial primary purpose. Every such e-mail is required to: 1) clearly and conspicuously indicate that the message is an advertisement or solicitation; 2) provide recipients with an opportunity to "opt-out" from receiving additional commercial e-mail messages from the same entity; and 3) provide a physical postal address of the sender. By way of background, CUNA is the largest natural credit union trade association, representing more than 90% of our nation's 9,400 state and federal credit unions.

Summary of CUNA's Position

- CUNA does not believe it is necessary to impose the proposed rule on membership organizations, such as credit unions. The CAN-SPAM Act and the proposed rule are intended to address unwanted advertisements, which has not been a problem with regard to e-mail communications between credit unions and their members.
- If the FTC determines it is necessary to apply the rule to credit unions, we believe it should not apply to newsletters from membership organizations that are transmitted by e-mail to their members.

Discussion

The requirements under the CAN-SPAM Act that apply to e-mail messages having a commercial primary purpose do not apply to "transactional or



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relationship” e-mails, defined as e-mails in which the primary purpose is to: 1) facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender of the message; 2) provide notification about a change in terms, features, or account information; or 3) deliver goods or services, including product updates. The proposed rule outlines criteria for determining when an e-mail has a commercial primary purpose, specifically those e-mails that also contain transactional or relationship content.

The CAN-SPAM Act requirements and the proposed rule regarding commercial e-mails are intended primarily to protect consumers from receiving unsolicited advertisements. Applying these requirements and the proposed rule to membership organizations, such as credit unions, will not address these concerns because credit unions would not want to adversely affect their membership relationships by sending unwanted advertisements.

As not-for-profit financial institutions, credit unions strive to provide services that best meet the interests of their members. This includes providing information on products and services that members may be interested in through a variety of means, such as e-mail communications. Members trust that their credit union will provide useful information and would not view this information as unwelcome. For this reason, we encourage the FTC to consider whether it is necessary to impose these CAN-SPAM Act requirements on membership organizations, such as credit unions.

We also question the need to apply these requirements to trade associations. These requirements may adversely impact the ability of trade associations to market their members regarding upcoming conferences, books, and other materials that members may find useful. Members often join their respective trade associations for precisely this type of information.

If the FTC determines it is necessary to apply the rule to credit unions, we believe it should not apply to newsletters from membership organizations that are transmitted by e-mail to their members, regardless of the content of these newsletters. We do not believe electronic newsletters are the types of unsolicited e-mails that the CAN-SPAM Act was intended to address. Credit union newsletters provide valuable educational information on a number of topics, such as financial security issues, fraud, identity theft, and the various loans and savings products that are available. This allows members to be well informed and helps them make prudent financial decisions.

Although these newsletters may contain “advertisements,” we believe members welcome these newsletters and are actually expected as a form of communications between the credit union and their members. Applying the requirements of the proposed rule may disrupt the ability of credit unions to continue to send these newsletters efficiently in their current format. For these

reasons, the proposed rule should not apply to electronic newsletters, regardless of the amount of commercial content that may appear in a particular newsletter.

Thank you for the opportunity to comment on the proposed rule implementing certain provisions of the CAN-SPAM Act. If you have questions about our comments, please contact Associate General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Bloch". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Jeffrey Bloch
Assistant General Counsel