



**National Association of Federal Credit Unions**

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June 27, 2005

Donald C. Clark  
Secretary  
Office of the Secretary, Room H-159 (Annex A)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

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

Dear Mr. Clark:

I am writing on behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, in response to the Federal Trade Commission's (FTC) request for comments regarding proposed rules implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM or Act). CAN-SPAM requires unsolicited commercial email messages ("spam") to be labeled as advertisements or solicitations and include opt-out instructions along with the sender's physical and electronic address.

Pursuant to the Act, the FTC has issued a proposed rulemaking on a number of topics, including expanding or contracting the definition of transactional or relationship message, potentially modifying the ten-day period for honoring a recipient's request to opt-out of receiving messages and defining a "valid physical postal address." NAFCU supports the efforts of the FTC to protect consumers from unwanted solicitation. In regards to specific questions raised by the FTC's proposed rulemaking, NAFCU offers the following comments outlined below.

Transactional Messages

CAN-SPAM outlines five categories of transactional messages that are excluded from the opt-out requirements of the Act. The FTC declined to expand the five categories of "transactional messages" in its proposed rulemaking. NAFCU believes that these existing categories are appropriate; however, NAFCU believes that giving some specific examples of what types of messages are included in the categories, would be helpful from a compliance standpoint. For instance, NAFCU believes that a message sent by a third party on behalf of a credit union that has entered into an existing agreement with a member should be considered a transactional message and should be outlined in the rule. Credit unions are membership organizations with the goal of improving members' financial wellbeing; new products should be

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able to be offered by a third party affiliate without triggering the opt-out requirements of the Act if the member has agreed to receive such solicitations.

Further, NAFCU believes that messages to lapsed members should be considered transactional if the contact is related to administrative issues regarding the lapsed account. NAFCU notes that emails regarding debt collection should be considered to be transactional in nature as well. NAFCU believes that both of these types of messages fall under the existing exemption for messages to provide a notification regarding a member's account and should be included as examples in the rule.

#### Definition of Sender

The FTC in its proposed rulemaking defined how a sender should be identified if more than one entity could be considered a "sender" under the statutory definition. The proposed rule states that one party may be considered a sender if the person controls the content of the message, determines who gets the message, and the person is identified in the "from" line in the email. Otherwise, all entities identified in the email may be considered senders. NAFCU supports the proposed definition and in particular believes that determining who controls the content of the message is an appropriate method of determining the "sender" of the message. Providing this definition will help determine who is liable for violations under the Act.

#### Ten-Day Business Day Rule

As permitted by the Act, the proposed rule also shortens the statutory time frame prescribed for removing a consumer from an opt-out list from ten to three-days. NAFCU believes that this time frame is appropriate as technology exists to almost instantaneously remove an individual from a list. NAFCU does believe that there could be a situation in which a party would need more than three days to remove someone from a list - for instance, if there was a technical problem with the computer or software. Therefore, NAFCU suggests that the FTC include language in the proposed rule that the FTC will take such a scenario into consideration when deciding whether to bring an enforcement action.

NAFCU would like to thank you for this opportunity to share its views on this proposed rule. Should you have any questions or require additional information, please call me or Carrie Hunt, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 234.

Sincerely,

Fred R. Becker, Jr.  
President/CEO

FRB/crh