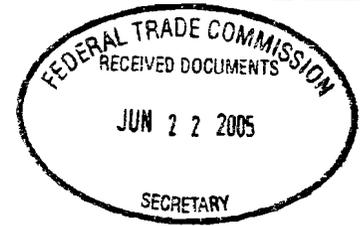




June 20, 2005

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580



Re: American Society of Association Executives/ CAN-SPAM Act
Rulemaking, Project No. R411008.

The American Society of Association of Executives¹ (“ASAE”) hereby submits comments in response to the May 12, 2005 Notice of Public Rulemaking issued by the Federal Trade Commission (“FTC” or “Commission”).

American Society of Association Executives. The American Society of Association of Executives’ membership consists of professionals who manage or work for virtually every kind of tax-exempt nonprofit organization. These tax-exempt nonprofit organizations exist to serve and provide value to their members and constituencies, who, almost invariably, seek out membership and/or involvement in the organization. Organization membership and participation provide an important resource to individuals to achieve a variety of personal, professional, business, social, and educational goals. To assist individuals and others in achieving their goals, tax-exempt nonprofit organizations continuously strive to offer a variety of current communications, educational courses and seminars, and related publications, such as books and periodicals. E-mail has become the preferred vehicle to deliver these messages.

ASAE would like to take this opportunity to comment on some areas of the proposed regulations from the May 12, 2005 NPRM that are of concern to the association community.

Proposal to shorten the time within which an opt-out must be honored from ten to three business days. The Commission has proposed to shorten from ten to three business days the time within which an opt-out request must be honored. ASAE believes that this proposal is impractical and places a significant burden on associations, particularly those associations with few paid staff members. 17.7 % of ASAE’s member associations are comprised of staffs no larger than five full-time people.

In most of these cases, the staff person who handles opt-out requests will have multiple duties within their association. For many of these organizations, the opt-out

¹ The American Society of Association Executives represents over 22,000 professionals that manage tax exempt nonprofit organizations and is considered the “association of associations.”

request is not entirely automatic and may require certain manual procedures. Additionally, if that employee were to be out of the office on travel at a conference, annual meeting or business meeting, having to honor an opt-out request within three business days would be extremely difficult if not impossible. In the case of an annual meeting, many small association's entire staff could be out of the office on travel for several days, thereby leaving no staff person available to process an opt-out request during that time.

ASAE believes that the Commission should retain the current ten-day period for complying with opt-out requests. Small associations that do not have extensive technical support will be better able to honor an opt-out request in ten business days than they would in three business days. Any decision to officially shorten the time period to three business days would cause all associations to have to significantly alter their internal opt-out procedures, creating a heavy administrative and financial burden, particularly on small associations across the country.

ASAE continues to believe that electronic mail messages from nonprofit organizations to members are exempt from the provision of the Act on the basis that they are transactional or relationship messages. ASAE previously submitted comments in response to the August 13, 2004 NPRM and reiterates its position that most electronic communications to members are likely to be "transactional or relationship messages." The Commission once again reaffirmed its position that it "believes it is likely that many such messages may have a primary purpose that fits within the existing categories of transactional or relationship messages."

Section 7702(17)(A)(v) of the Act, which is essentially the same as Section 316.2(o)(e) of the Proposed Rule, states that "the term 'transactional or relationship message' means an electronic mail message the primary purpose of which is –

(v) to deliver goods or services ... that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender." (Emphasis added.)

Based upon this definition of transactional and relationship messages, ASAE strongly believes that a member is entitled to and would expect to receive the messages, information, and other materials sent by a nonprofit organization or membership association to its members. As a result of paying dues or providing other consideration necessary to be considered a member, whether a voting member or not, the organization or association is under a requirement and obligation to send to all members, for example, information about the organization's educational meetings and conferences, professional books and publications, newsletters and magazines, position papers and legislative briefings, announcements of new surveys and association activities, and all manner of nonprofit tax-exempt activities of the organization.

Therefore, ASAE continues to interpret the regulations to mean that in most cases messages from a nonprofit organization to its members will not be commercial, but would instead be exempt from the provisions of the Act as transactional or relationship messages.

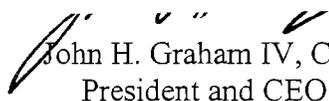
Conclusion. ASAE respectfully urges the Commission not to shorten from ten to three business days the time within which an opt-out request must be honored. The Commission

proposal, if adopted, would have harmful effects both administratively and financially on associations, particularly those with smaller-sized staffs. ASAE requests that the Commission leave in place the current 10-day period for honoring opt-out requests.

Additionally, ASAE continues to believe that most messages from a nonprofit to its members are exempt from the provisions of the Act because they are transactional or relationship messages. By paying dues to become a member of an organization, that member expects to receive certain information, whether it has a commercial aspect to it or not.

The American nonprofit community and the benefits from membership in nonprofit organizations present a very positive value to our country. Associations truly do advance America. ASAE respectfully requests that the Commission adopt the position stated above to ensure that tax-exempt nonprofit organizations are recognized for the value they contribute.

Sincerely,



John H. Graham IV, CAE
President and CEO