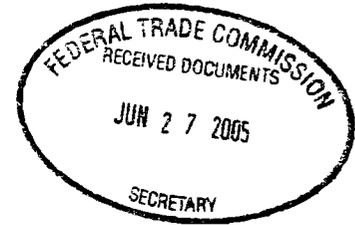


June 20, 2005



Federal Trade Commission
Office of the Secretary
Room 159-H (Annex Y)
600 Pennsylvania Avenue, NW.
Washington, DC 20580

Re: CAN-SPAM Act Rulemaking
Project No. R411008

Dear Madam/Sir:

Navy Federal Credit Union provides the following comments in response to the Federal Trade Commission's (the Commission) 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 world's largest natural person credit union with over \$24 billion in assets and 2.5 million members.

Navy Federal believes that a "commercial transaction" could exist under section 7702(17)(A)(i) even in the absence of an exchange of consideration. We believe that determining the primary purpose of an e-mail is integral to determining whether it is a "commercial transaction" and therefore 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 impressions 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."

Navy Federal believes newsletters sent on a periodic basis by membership organizations (e.g., credit unions) to their members should be exempt from the CAN-SPAM Act's requirements. We do not believe that electronic membership newsletters are the types of unsolicited e-mail that the CAN-SPAM Act was intended to address. If a consumer has voluntarily joined a membership organization, it is appropriate to assume that the consumer would appreciate—and even expect—to receive periodic communications from the organization he/she joined. Further, we believe this exemption should apply regardless of the amount of

commercial content in a particular newsletter. Newsletters provide valuable information to members about news, products, or services related to the organization and its purpose and likely contain a mixture of commercial and other content. We believe members anticipate and appreciate receiving these types of communications from the organization to which they belong regardless whether the perceived net impression of a particular newsletter could be considered commercial. Therefore, we encourage the Commission to exempt membership organization newsletters from the CAN-SPAM Act rules.

We believe that P.O. Box addresses and commercial mail drop addresses should not be considered valid physical postal addresses for purposes of complying with section 7704(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.

The Commission requested comment on whether or not three business days is an appropriate deadline for a sender to act on an opt-out request by a recipient. We believe that ten days is the most appropriate time frame for complying with an opt-out request. We have seen no compelling justification for shortening the time frame. Financial institutions, especially those that use third party vendors to update their data bases, may not be able to meet a three day deadline. If the Commission does modify the ten-business-day period described in the CAN-SPAM Act, we recommend that an institution be given at least five days for honoring a recipient's opt-out request.

The Commission also requested comment on whether there should be a time limit on the duration of opt-out requests. Navy Federal believes the opt-out requirements should be consistent with existing law. 15 U.S.C. Section 1681s-3(a)(3)(b) states that if the consumer elects to opt-out of solicitations for purposes of marketing, this "shall be effective for at least 5 years, beginning on the date on which the persons receives the election of the consumer, unless the consumer requests that such election be revoked." We encourage the Commission to use this same standard.

We appreciate the opportunity to respond to the Federal Trade Commission's request for comments on provisions of the CAN-SPAM Act.

Sincerely,



W. A. Earner
Acting President/CEO