

September 3, 2004

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

Re: CAN-SPAM 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) proposed "primary purpose" rules implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act). Navy Federal is the nation's largest natural person credit union with over \$20 billion in assets and 2.4 million members.

Navy Federal supports the proposed approach for determining the primary purpose of an electronic mail (e-mail) message containing both commercial and transactional/relationship-based content. We agree that e-mail senders should be allowed to include some commercial content in e-mails that are primarily transactional/relationship-based without automatically subjecting those e-mails to the CAN-SPAM Act's requirements. Such commercial content could provide valuable information to e-mail recipients that would improve their relationship with the e-mail sender. Further, we support the proposed criteria that would be used to evaluate these types of messages to determine their primary purposes. We agree with the Commission that the subject line and the location of the transactional/relationship content in the e-mail message are appropriate factors to assess when determining the primary purpose of an e-mail that contains both commercial and transactional/relationship-based content.

Navy Federal also supports the proposed framework for determining the primary purposes of e-mails containing both commercial and "other" content (i.e., content that is neither commercial nor transactional/relationship-based). We believe the proposed "net impression" approach is appropriate for these types of e-mails, and agree with the Commission that this approach would prohibit unscrupulous e-mail senders from simply filling e-mails with random words to avoid being subject to the CAN-SPAM Act's requirements. However, we encourage the Commission to remove color, graphics, and type size from its list of possible illustrative factors that could be used to evaluate the net impression of an e-mail containing both commercial and other content. These factors are subject to possible alteration, over which the sender may not have any control, before the e-mail reaches its recipient. For example, an e-mail originated in

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HTML format could be converted into plain text by the recipient's e-mail program and, as a result, lose its original variety of font sizes, type styles, and colors. Navy Federal believes the remaining proposed illustrative factors, such as the proportion of the message dedicated to commercial content, provide sufficient guidance to e-mail senders.

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 organizations 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.

Navy Federal appreciates the opportunity to comment on the proposed CAN-SPAM Act rules for determining an e-mail's primary purpose.

Sincerely,



Brian L. McDonnell
President/CEO

BLM/slb