

**COMMENTS OF THE
INTERNATIONAL UNION OF POLICE ASSOCIATIONS**

**Before the Federal Trade Commission
March 29,2002**

**TELEMARKETING RULEMAKING-COMMENT
FTC File NO. R411001
Proposed Amendments to the Telemarketing Sales Rule**

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The International Union of Police Associations (**IUPA**) is a nonprofit, professional police association representing rank and file police officers, deputy sheriffs of police and state troopers across the nation. Law enforcement officers risk their lives daily protecting the citizens of this country. Now, more than ever, they are the vanguard of the battle against terrorism within the United States.

IUPA and its affiliates solicit funds to promote public safety. These activities include, but are not limited to, providing scholarships for young people seeking careers in law enforcement, improving communications with the public with regard to Homeland Security, racial profiling, neighborhood patrolling, self protection and other safety issues.

Organizations like IUPA typically use for-profit fundraising telemarketers to raise funds. Many of these associations cannot afford the infrastructure to make solicitations “in house.” The application of this proposed rule-making (FTC File No. R411001) to for-profit firms employed to solicit funds for these nonprofit organizations would seriously erode the ability to raise money to further their missions, such as promoting cancer research, wiping out AIDS, feeding homeless children, reducing drunk driving, etc. The most severe impact would be on the smaller groups.

COMMENTS:

Congressional Intent

Congress enacted the USA PATRIOT Act in the wake of the terrorist events on September 11, 2001. A review of the legislative history would logically conclude that the goal of the USA PATRIOT Act was to address the problem of fraudulent organizations which illegitimately sought to profit from tragedy. Congress intended to prevent false solicitations from fake charities. There is no evidence that Congress wanted to distinguish between nonprofits soliciting funds “in house” and those hiring for-profit fundraisers.

The language in the Act clearly states that failure to disclose the identity of the caller and the purpose of the call will be considered an abusive telemarketing act. The intent of the USA PATRIOT Act is to apply the disclosure rule to certain charities and nonprofits soliciting donations and to telemarketers acting on their behalf. There is no evidence that Congress intended to apply the entire rule to telemarketers employed as agents of nonprofit or charitable organizations.

Applicability

The Federal Trade Commission Act specifically exempts from the Commission’s jurisdiction banks, credit unions, savings and loans, companies engaged in common

carrier activity, *nonprofit organizations*, and companies engaged in the business (emphasis added).

Professional fundraisers employed by nonprofit organizations and charitable organizations are effectively agents and/or extensions of the employing entities and should be considered not under the jurisdiction of the FTC Act. The proposed broad application of the rule is not appropriate in this circumstance.

The outside fundraisers should, as Congress apparently intended, be subject to the disclosure rule only. Further, there is no evidence that these solicitations are less legitimate or fraudulent than solicitations made “in house.”

Constitutionality

There are at least three Supreme Court decisions which address state laws which restricted for-profit fundraisers acting on behalf of nonprofits. As this rule-making process continues, the Commission should note the Supreme Court’s guidance with regard to restrictions on charitable fundraising in Riley v. National Federation of the Blind, (1988); Schaumburg v. Citizens for a Better Environment, (1980); and Secretary of State of Maryland v. Munson, (1984).