

FREQUENTLY ASKED QUESTIONS REGARDING ADA WEBSITE LITIGATION



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1. Why are credit unions being targeted in ADA website litigation?

The Americans with Disabilities Act (ADA) and the Department of Justice's (DOJ) regulations are unclear on website accessibility standards. For years, the DOJ gathered information on standards for website accessibility, but the DOJ withdrew this initiative from its rulemaking agenda. In December 2017 DOJ even rescinded two prior notices issued on this topic. NAFCU continues to hear from credit unions across the country that plaintiffs' attorneys are targeting credit unions with demand letters and threats of litigation relative to the institutions' website accessibility for the visually-impaired. This appears to be a new "cottage industry" for plaintiffs' firms that are exploiting unsettled law. Credit unions are not the only industry being targeted in ADA website litigation. Banks, hotels and other entities have seen a flood of recent lawsuits over the past year.

2. Which credit unions are being targeted by plaintiffs' attorneys?

There is no clear pattern to the type of credit union that is receiving demand letters. Credit unions across the country, with various fields of membership and asset sizes, have been unfairly targeted in ADA website litigation. To date, credit unions in at least 20 states, including Virginia, Georgia, California, Maryland, Michigan, the District of Columbia, New York, Texas, Washington, Illinois, Louisiana, Florida, and others have reported receiving nearly identical demand letters, often from the same plaintiffs' firm. Plaintiffs have also filed lawsuits against credit unions in federal district court in several jurisdictions for alleged violations of the ADA.

3. What is NAFCU doing to stand up for credit unions?

NAFCU is standing with credit unions in the fight against unfair ADA lawsuits. We recognize the importance of the ADA and fully support the ability for all Americans to be free from discrimination, but credit unions should not be the victims of ambiguities in federal law.

- In February 2018, [NAFCU sent a letter to the Federal Trade Commission](#) urging the FTC to look into the issue for potential unfair or deceptive acts or practices (UDAPs) by law firms in violation of the FTC Act and to urge the Justice Department to issue clear ADA website standards.

- [NAFCU submitted a fourth amicus brief](#) in January 2018 to support a Virginia credit union's motion to dismiss a complaint filed against them in federal district court under the ADA. The court has accepted NAFCU's latest brief.
- Also in January, [NAFCU President and CEO B. Dan Berger sent a letter](#) to the most active law firm in these frivolous lawsuits, demanding that they retract threats of legal action and cease and desist from making further demands.
- In December 2017, [NAFCU submitted briefs as *amicus curiae*](#) to support three Virginia credit unions' motions to dismiss complaints filed against them in federal district court. To date, all three courts have accepted NAFCU's briefs, and on January 5, 2018 NAFCU stood with one credit union as a court held hearings on the credit union's motion to dismiss. Also in December, we sent a [letter to National Association of Attorneys General](#) asking them to look into the issue and to join us in urging the DOJ to address this issue in order to prevent unnecessary litigation.
- In November, NAFCU [wrote to the U.S. Attorney General](#) asking the DOJ to consider issuing additional guidance on website accessibility under the ADA. We also sent a [letter](#) regarding the impact of lawsuit abuse on small businesses, requesting that Senate Judiciary Committee leaders take steps to curb the rise in frivolous ADA lawsuits.
- In a prior [letter](#), sent in October, NAFCU urged the House Judiciary Committee to address this important issue.
- NAFCU [supports](#) the *ADA Education and Reform Act of 2017* (H.R. 620) and is actively working to expand the bill's protections to cover website-related lawsuits.

NAFCU is at the forefront of this issue and proactive from all angles given the rapid increase in litigation risk. We are committed to fighting for credit unions and will continue to stand with our members in the face of these costly legal actions threatening the industry.

4. Have any of these ADA lawsuits been resolved in court?

On January 26, 2018, in a victory for credit unions facing litigation over unclear website requirements under the ADA, a federal district court in Virginia found that the plaintiff to such a lawsuit did not have standing to sue the credit union because he was not a member or eligible for membership and would not likely use the credit union's services. In addition, the court indicated that a website is not a place of public accommodation subject to Title III ADA protections. NAFCU filed an amicus brief supporting the credit union in this case. While the lower court's decision is not considered binding on other courts under common law principles, other judges in the same district and in various other federal jurisdictions will likely consider similar credit union ADA cases soon. However, the court's decision is persuasive—especially as it is the first case to rule on whether credit union membership is necessary to establish standing in this kind of suit. Meanwhile, the plaintiff already filed a new amended complaint on January 29, 2018, and credit unions in other jurisdictions are also fighting these lawsuits.

Read the court's dismissal order [here](#).

NAFCU continues to work with member credit unions facing litigation over unclear website accessibility requirements under the ADA and urges credit unions impacted by this issue to reach out for assistance.

5. I heard some banker groups entered into group settlements with plaintiffs' attorneys. Is NAFCU attempting to negotiate a settlement for its members?

NAFCU is aware that at least one association has negotiated or entered into limited group settlements with plaintiffs' attorneys on behalf of their member banks. NAFCU has carefully considered and will continue to consider multiple options and strategies to address the troubling rise in ADA litigation. Negotiating a settlement with one or several law firms will not effectively solve for litigation risk—for example, it would only prevent one law firm from suing while hundreds, or perhaps thousands, of other firms and attorneys would still be free to file lawsuits against credit unions. A settlement would also simply provide plaintiffs' attorneys with more funding to bring legal actions against other credit unions. While NAFCU will continue to pursue all avenues in fighting against attempts by plaintiffs' firms to exploit unsettled law at the expense of credit unions, we do not believe settlement is the best option for our industry right now.

6. How are credit unions responding to demand letters that claim a credit union's website does not comply with the ADA?

While NAFCU is not recommending any specific course of action, credit unions that have received demand letters have taken some steps. Credit unions generally consult with insurers and attorneys quickly, with some placing their websites as down for maintenance while awaiting legal advice. Many credit unions also assess their websites or place a statement and phone number for those experiencing issues to call. Some targeted credit unions are also exploring the possible costs of having their websites meet certain [private industry standards](#) for accessibility, which can differ depending on factors like the credit union's web hosting vendor.

Credit unions that have not necessarily received demand letters but are concerned about this growing litigation risk are also taking similar proactive steps with their websites.

7. What resources are available to help credit unions?

NAFCU has many resources available to help credit unions, including our [ADA landing page](#) complete with compliance resources and litigation updates. NAFCU will continue to keep our members apprised of any new developments with respect to litigation risk due to website accessibility under the ADA. In the meantime, please feel free to contact us for any assistance.