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B. Dan Berger
President & Chief Executive Officer

National Association of Federally-Insured Credit Unions

November 9, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

RE: Americans with Disabilities Act – Website Accessibility Standards

Dear Attorney General Sessions:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation’s federally-insured credit unions, I am writing to you to discuss potential Department of Justice’s (Department) actions regarding website accessibility standards under the Americans with Disabilities Act of 1990 (ADA or Act). As you are aware, both the Department's regulations and the ADA itself currently remain silent on the issue of website accessibility standards. Under the previous administration the Department took a position that the Act is constructed broadly enough to include websites administered by public accommodations, including banks and credit unions, within its scope. We hope you will consider re-examining this position.

Title III of the ADA requires credit unions to meet standards for “newly constructed or altered places” and has wide-ranging implications that impact how to communicate with persons with disabilities, which could include websites. For the past several years, the Department has gathered information on standards for website accessibility and has even issued an advance notice of proposed rulemaking (ANPR) intended to consider the feasibility of adopting formal standards. Unfortunately, none of these efforts have – as of yet – resulted in regulatory clarity or clear standards.

NAFCU and our members support the Department’s efforts to ensure that individuals are not discriminated against based on a disability. Specifically, NAFCU believes that disabled individuals should have the equal access to life’s necessities, including financial services. However, NAFCU and our members would respectfully request the Department consider issuing additional guidance and/or an interim final rule that provides clear “rules of the road” for financial institutions in the area of website accessibility under the ADA. The current “grey area” has led to an increase in frivolous litigation which is equating to real dollars being taken out of the hands of credit union members to be put into the pockets of plaintiff’s attorneys.

As not-for-profit, community-based financial institutions, credit unions are uniquely situated to meet the needs of their individual members and prospective members, especially those with disabilities. For example, a NAFCU-member credit union in the Northeast region offers a lending program specifically designed to assist disabled members finance the purchase of life-improving products, devices, and/or building modifications, including adaptive computer and communications equipment. This program is just one example of many across the industry where credit unions meet the specialized needs of their members.

Should the Department pursue an ADA rulemaking, NAFCU strongly recommends the Department keep in mind the structure of credit unions as member-focused community-based financial institutions. Credit unions' unique nature should warrant the creation of a limited credit union exemption from the website accessibility requirements or, at minimum, a less burdensome alternative to facilitate regulatory compliance.

Credit unions – as part of their core mission –always seek out ways to accommodate disabled members. For example, it would not be an uncommon occurrence for a credit union to verbally deliver disclosures or loan terms to a visually-impaired member. The Department should provide some mechanism for these special accommodations to continue as a means of compliance with website accessibility under the ADA.

In addition, as with all evolving technologies and information platforms, we believe it is important that any rulemaking and/or guidance adequately protect the intended consumers while also being flexible enough to adapt to changing conditions. Our ultimate goal is to balance robust protections for the disabled with a reduction in the frequency of frivolous litigation as it relates to website accessibility. We would welcome the opportunity to meet with you as the Department works to develop any future ADA rulemaking and/or guidance for ADA website accessibility standards. Should you have any questions or concerns, or if you would like to discuss this issue further, please feel free to contact me or Alexander Monterrubio, NAFCU's Director of Regulatory Affairs at amonterrubio@nafcu.org or (703) 842-2244.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dan Berger', with a stylized flourish at the end.

Dan Berger
President and CEO