

# ADA Website Litigation

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**Issue:** Credit unions across the country have been faced with an overwhelming number of demand letters regarding website inaccessibility under the *Americans with Disabilities Act* (ADA). A regulatory void exists due to ambiguities in the law regarding website accessibility requirements, and well-intentioned credit unions are being exploited by opportunistic plaintiffs' attorneys.

Title III of the ADA stipulates that places of "public accommodation" such as credit unions, banks and other "service establishments" are generally prohibited from discriminating on the basis of a disability in the activities of that place of public accommodation. The Department of Justice's (DOJ) regulations addressing "auxiliary aids and services" necessary to meet effective communication objectives for individuals with disabilities do not specifically address website accessibility.

Both the ADA and DOJ's regulations are silent on required standards for website accessibility. The DOJ has not provided specific technical requirements through a formal rulemaking process. The ADA was enacted in 1990, and reforms have not evolved on pace with technological advances. The DOJ began gathering information on setting website accessibility standards, but has not adopted any technical requirements. This issue was removed from the DOJ's rulemaking agenda, and two advanced notices of proposed rulemaking on the issue were withdrawn as the DOJ wanted to evaluate whether regulations were necessary and appropriate.

Credit unions across the country have received demand letters stating they are in violation of the ADA; in total, credit unions in 26 states have been faced with litigation. To date, NAFUCU has filed 16 amicus briefs in federal district and appeals courts to support credit unions' motions to dismiss these meritless ADA cases. Federal courts have granted credit unions' motions to dismiss in seven cases because a plaintiff was not a member nor in the field of membership. These decisions have been cited by courts dismissing cases in Virginia, Ohio, and Georgia. NAFUCU is awaiting decisions on cases in New Jersey, Texas, Florida, and the Fourth Circuit Court of Appeals.

NAFUCU has been engaged on the regulatory front as well to combat this frivolous litigation:

- NAFUCU met with the DOJ in February 2018 and urged the DOJ to propose a rule to clarify the ADA's standards and protect credit unions from undue burdens.
- NAFUCU sent a letter to the California law firm responsible for threatening credit unions, demanding that the law firm stop its meritless ADA lawsuits.

**Legislation:** During the 115<sup>th</sup> Congress, the House of Representatives passed NAFUCU-backed H.R. 620, the *ADA Education and Reform Act of 2017*. This important legislation presents a solution to address ADA lawsuits having to do with physical barriers. It provides businesses a timeframe to fix alleged infractions before the lawsuit can proceed, allowing the access and accommodation needs of consumers with disabilities to be met before trial attorneys have a chance to benefit. The bill now awaits Senate action or companion legislation. A colloquy during House consideration expressed the intent that the same opportunity should be given to websites to come into compliance should the ADA extend to websites. Members of Congress from both parties have also written to the DOJ to express concern over the ambiguity surrounding the issue and to ask the Department to help address it.

**NAFUCU Ask:** We urge members of Congress to support ADA reform and modernization, whether through statute or regulation, that provides clear guidance and standards for website compliance to combat meritless lawsuits. Further, we ask all lawmakers to urge the DOJ to further clarify website accessibility standards.