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**National Association of Federally-Insured Credit Unions**

February 1, 2018

Hon. Maureen K. Ohlhausen  
Acting Chairman  
Federal Trade Commission  
600 Pennsylvania Ave, NW  
Washington, DC 20580

Hon. Terrell McSweeney  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Ave, NW  
Washington, DC 20580

**RE: Unfair and Deceptive Lawsuits, Americans with Disabilities Act**

Dear Acting Chairman Ohlhausen and Commissioner McSweeney:

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 express NAFCU's concerns about the recent tide of frivolous lawsuits and demand letters unfairly targeted at credit unions and other entities due to unclear website accessibility requirements under the Americans with Disabilities Act (ADA).

NAFCU and its member credit unions recognize the significance of the ADA and fully support the ability for all Americans to be free from discrimination and to have access to a broad array of financial services. However, the important goals of the ADA are best achieved through clear guidance and standards for compliance, not through meritless and costly lawsuits that serve only to financially benefit plaintiffs' attorneys at the expense of well-meaning and community-focused credit unions.

The ADA and the Department of Justice's (DOJ) implementing regulations are currently silent on website accessibility standards. For many years, the DOJ gathered information on standards for website accessibility, but recently removed this initiative from its rulemaking agenda and withdrew two related advanced notices of proposed rulemaking, stating that it is "evaluating whether promulgating regulations about the accessibility of Web information and services is necessary and appropriate." *See*, 82 FR 60932 (Dec. 26, 2017). Meanwhile, courts are not in agreement on this issue. Recently, a federal court in Virginia held that a website is not a "place" and not subject to the ADA (*See, Carroll v. Northwest Federal Credit Union*, No. 1:17-cv-01205, slip. op. at 5 (E.D. Va. Jan. 26, 2018)). Another federal court in California dismissed a lawsuit claiming the ADA requires websites to meet certain private industry accessibility standards in part because it would be a violation of due process rights "to impose on all regulated persons and entities a requirement that they "compl[y] with [private industry standards]" without specifying a particular level of success criteria and without the DOJ offering meaningful guidance on this topic." *See, Robles v. Domino's Pizza LLC*, 2017 WL 1330216 (C.D. Cal. 2017). Thus, unfortunately, there is a complete lack of regulatory guidance combined with a lack of

unambiguous legal standard with respect to website accessibility for entities like credit unions. With no clear rules of the road, the door is open for opportunistic law firms to capitalize on the lack of clarity in the law to their own financial advantage.

As not-for-profit, community-based cooperative financial institutions owned by member-consumers, credit unions are uniquely focused on the needs of their members, including those with disabilities. However, these unfair lawsuits impose a real cost on the institutions and their individual credit union member-owners.

NAFCU has seen numerous demand letters targeting our member credit unions that contain several misleading characteristics that we believe may constitute unfair or deceptive acts or practices (UDAPs) in violation of the Federal Trade Commission Act. For example, the letters often present the law as clear and settled relative to the ADA and website accessibility, alleging that the targeted credit union's website does not comply with the World Wide Web Consortium Web Content Accessibility Guidelines, Version 2.0 (WCAG 2.0), a private industry standard. The letters also claim that the plaintiff is now "entitled to damages" as a result. These allegations are very misleading since federal law limits relief to the possibility of an injunction and attorneys' fees. The ADA and its regulations permit the DOJ to assess civil penalties for ADA violations, but do not authorize statutory penalties for private party plaintiffs. *See*, 42 U.S.C. § 12188; 42 U.S.C. § 2000a-3; 28 C.F.R. § 36.504. Intimations that credit unions are liable for damages to private party plaintiffs for noncompliance with private industry accessibility standards are untrue, deceptive, and most importantly, potentially misleading to credit unions and consumers.

In addition, the demand letters typically claim to represent an unnamed visually-impaired person who is not a member of the credit union or even clearly eligible for membership in the credit union's limited field of membership, and therefore does not appear to have legal standing. Recently, a federal district court in Virginia ruled that the plaintiff to an ADA lawsuit lacked standing to sue the credit union because he was not eligible for membership and would not likely use the credit union's services. *See, Carroll v. Northwest Federal Credit Union*, No. 1:17-cv-01205, slip. op. at 5 (E.D. Va. Jan. 26, 2018).

We want to bring this troubling matter to your attention, and we ask the Federal Trade Commission look at this issue for potential UDAP violations by the law firms and to urge the DOJ to issue clear guidance on ADA standards to help stem the growing rise of costly and meritless lawsuits. Should you have any questions or concerns, please do not hesitate to contact me at 703-842-2221 or [bbruyere@nafcu.org](mailto:bbruyere@nafcu.org).

Sincerely,



Brandy L. Bruyere  
VP of Regulatory Compliance