



# 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 In December 2017 DOJ even rescinded two prior notices issued on this topic.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 25 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 courts 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.

- NAFCU has filed twelve amicus briefs in cases in five states, either on its own or [jointly with other credit union organizations](#). So far, six of these cases have been [dismissed](#). NAFCU continues to seek opportunities to support credit unions against predatory litigation.
- Where possible, [NAFCU attends hearings](#) to lend its support to credit unions and their motions to dismiss these cases.
- NAFCU [wrote to the U.S. Attorney General](#) asking the DOJ to consider issuing additional guidance on website accessibility under the ADA.

- NAFCU [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.
- NAFCU [has urged](#) the House Judiciary Committee to address this important issue. NAFCU also worked with a bipartisan group of House members to send a joint letter to DOJ urging the agency to clarify that, absent DOJ or Congressional action, there should be no ability for private action for ADA website compliance and that the DOJ should adopt clear guidelines and standards on ADA for websites.
- NAFCU [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.
- 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.
- 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 [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. [H.R. 620 was passed by the House](#) on February 16, 2018, and now awaits action from the Senate.

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

So far, five federal district courts in Virginia have dismissed lawsuits filed against credit unions. On January 26, 2018, [in a first 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. More recently, on June 11, 2018, another federal court ruled similarly for another credit union. NAFCU filed amicus briefs in both cases. Credit unions fighting lawsuits in other states cite these cases as support for their motions to dismiss but to date, courts have not ruled on these motions.

While these lower courts' decisions are not considered binding on other courts under common law principles, judges in other federal jurisdictions are scheduled to consider similar credit union ADA cases soon. The Virginia courts' decisions are persuasive—especially as these are the first cases to rule on whether credit union membership is necessary to establish standing in this kind of suit. Credit unions fighting lawsuits in other states cite these cases as support for their motions to dismiss but to date, courts in other jurisdictions have yet to finalize a ruling in one of these cases. Meanwhile, two of the Virginia cases have been appealed and those cases will progress later in 2018.

Read one of the Virginia court's dismissal orders [here](#). Several other courts in Virginia, making similar findings, have already followed suit in dismissing website accessibility claims against credit unions.

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.