

# RISK Alert

ACTIONABLE INSIGHTS FOR CREDIT UNIONS



Alert Type

Awareness

Watch

Warning

## Law Firms Become More Aggressive Alleging ADA Non-Compliance

Law firms representing private litigants have become increasingly aggressive in recent weeks and months in pursuing credit unions regarding website and mobile app accessibility suggesting they are not equally accessible to people with disabilities. Demand letters threatening to file legal action were initially delivered to credit unions in the state of California; however, plaintiff firms have extended their efforts into hundreds of credit unions within multiple states. In addition, some credit unions have also received letters from multiple plaintiff firms.

It is expected that this trend will continue and impact credit unions in all states. Credit unions should take immediate necessary steps to ensure their websites, including online banking sites and mobile applications, are accessible to individuals with disabilities.

If the demand is ignored or disputed, a lawsuit is then filed in State Court or even possibly in Federal Court potentially leaving your credit union to damages and fees. For example, if a credit union is found in violation under the Unruh Act in California, the individual could be entitled to \$4,000 in damages for each instance, and an injunction requiring remediation of the website and attorneys' fees.

### Common Questions & Answers

#### How are credit unions being threatened?

The legal actions, typically beginning with a letter, allege that websites and/or mobile applications are not accessible to individuals with disabilities in violation of Title III of the ADA, which covers public accommodations. It is contended that websites contain barriers that limit the ability of individuals with disabilities to use assistive technology, such as screen reader software, to access the organization's website. Screen readers, commonly used by the blind or visually impaired, convert text displayed on web pages to audible synthesized speech or sends that information to a digital braille display. However, for screen readers to work, the web developer must program the website or app for compatibility.

**Date:** December 20, 2017

**Risk Category:** Compliance; ADA; Web/Internet; E-commerce; Litigation

**States:** All

#### Share with:

Credit unions within your League or Association membership

- Risk Manager
- Marketing
- Web / Mobile App Developer
- IT
- Executive Management



**Credit unions can gain additional risk insights or assistance by:**

Contacting a CUNA Mutual Group Risk & Compliance Consultant at:

- **800.637.2676**  
select you're a credit union,  
then choose option 4
- [riskconsultant@cunamutual.com](mailto:riskconsultant@cunamutual.com)



## Which states have been impacted?

The states currently impacted include: California; D.C.; Illinois; Georgia; Maryland; Michigan; North Carolina; Ohio; Oregon; Pennsylvania; South Carolina; Texas; and Virginia. Additional states are also expected to be impacted soon.

## Are the demand letters focused only on larger asset-size credit unions?

The legal actions have not focused on a specific asset tier. However, most recently, an increased number of smaller to smaller/mid-size credit unions have reported receiving demand letters. The plaintiff firms most likely anticipate that these websites will be non-complaint and the credit unions may be more apt to want to settle quickly. Credit unions should take immediate necessary steps to ensure their websites, including online banking sites and mobile applications, are accessible to individuals with disabilities.

## Are specific regulations or requirements currently in place?

Unfortunately, this risk involves ambiguous requirements making it challenging. While there are not yet specific regulations addressing website accessibility, these consumer rights attorneys are relying on the general language of the Americans with Disabilities Act (ADA) for public accommodations and state-specific legislation to make demands and bring actions claiming that credit union websites are not equally accessible to people with disabilities.

## Should credit unions wait to see if a demand letter is issued or until accessibility regulations are in place?

Clearly, credit unions waiting until precise accessibility regulations are in place could have costly consequences. Credit unions should take immediate necessary steps to ensure their websites, including online banking sites and mobile applications, are accessible to individuals with disabilities.

## What mitigations tips should credit unions follow?

- Conduct a thorough risk assessment on websites and mobile applications and ensure content / services is accessible and compatible with assistive technology. W3C provides a list of vendors offering website accessibility evaluation tools to help organizations determine if their website meets accessibility guidelines. Credit unions should use an evaluation tool to determine what adjustments, if any, need to be made to their websites.
- Define a policy and establish someone to be point person to document steps your credit union will take towards website accessibility conformity
- Work with your IT, risk / compliance teams, and vendors to ensure their websites, including online, mobile banking websites and mobile applications are accessible to people with disabilities.
- Use the [WCAG 2.0](#) to identify weaknesses that should be corrected to make the website accessible to individuals with disabilities. In addition, use compliance tools and resources to maintain results and track new website content.

## Do the WCAG 2.0 Principles & Guidelines establish clear alignment?

[WCAG 2.0](#) contains 12 guidelines for website accessibility that are organized under four principles: Perceivable; Operable; Understandable; and Robust. In addition, the WCAG 2.0 provides three conformance levels. Many industry experts believe the Department of Justice will adopt WCAG 2.0 Levels A and AA as the standard for public accommodations.

## Interested in learning more about ADA & Website Accessibility?

Contact CUNA Mutual Group's Risk & Compliance Solutions at **800.637.2676** or by email at [riskconsultant@cunamutual.com](mailto:riskconsultant@cunamutual.com) for additional risk insights.



## Is there a list of organizations that can assist credit unions?

The World Wide Web Consortium (W3C) provides [a list of vendors offering website accessibility evaluation tools](#) to help organizations determine if their website meets accessibility guidelines and determine what adjustments, if any, need to be made to their websites. In addition, many credit unions will also use a third party to assist in bringing websites into compliance. While many vendors offer these services, be sure to perform due diligence when selecting one.

For a more detailed discussion and specific guidelines on WCAG 2.0, refer to [WebAIM's WCAG 2.0 Checklist](#).

## What should our credit union do if we receive a demand letter?

If a credit union receives a demand letter; policyholders should immediately report it to CUNA Mutual Group's Third-Party Litigation to review coverage and develop appropriate next steps. Be assured, CUNA Mutual Group is monitoring case progress globally and ensures that strategy and litigation practices are consistent and streamlined for policyholders.

## What other resources are available to assist credit unions with this website accessibility issue?

These resources were designed by CUNA Mutual Group to help credit unions better understand the magnitude of this emerging risk and to introduce efforts that should be taken to mitigate potential losses.

- RISK Alert: [New Lawsuits Allege Website Inaccessibility](#)
- Video: [Website Accessibility & ADA](#)
- Resource: [Website Accessibility Risk Overview](#)

**Risk & Compliance Solutions • 800.637.2676 • [riskconsultant@cunamutual.com](mailto:riskconsultant@cunamutual.com)**

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800.637.2676 | [cunamutual.com](http://cunamutual.com)

P.O. Box 391 | 5910 Mineral Point Road

Madison, WI 53701-0391

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