

To: Michigan Credit Union CEOs

From: Michigan Credit Union League

Dated: October 25, 2017

Re: Americans with Disabilities Act – Credit Union Website Accessibility

The MCUL has learned of a number of credit unions in Michigan who have recently received a letter from Pacific Trial Attorneys alleging their website was in violation of the Americans with Disabilities Act (ADA) and that Pacific Trial Attorneys was preparing to file a class action lawsuit against the credit union. In an effort to assist Michigan credit unions Holzman Corkery, PLLC has provided the attached memo.

The MCUL has also prepared the following guidance for credit unions in the event such a letter is received. Should a credit union receive a letter such as this the credit union should take, at a minimum, the following steps.¹

- Immediately report receipt of the letter to your bond carrier to review coverage and identify appropriate next steps
- Consult with credit union legal counsel
- Regardless of action taken with the credit unions' bond carrier or legal counsel, credit unions should;
 - Assess the credit union website – conducting a thorough risk assessment of the website and mobile applications to ensure content and services are accessible to those with disabilities and are compatible with assistive technology
 - Work with IT teams, compliance and risk teams and third party vendors to remedy any issues with website and mobile applications
 - Utilize the [Website Content Accessibility Standard \(WCAG\) 2.0](#) to identify weaknesses that should be corrected in order to make the website accessible to individuals with disabilities.
 - Review and amend policies and procedures and provide this information on the credit union website.
 - Conduct ongoing auditing, monitoring and review of websites and mobile applications to ensure accessibility.

CU Solutions Group has two options available to assist credit unions with ADA Website Accessibility

Option 1: CUSG offers a software program that will scan a credit union website for ADA compliance producing a report of any ADA errors identified within a week's time. The report also shows any third party

¹ This communication should not be considered legal advice. If you have concerns about your credit union's website we recommend you contact your own legal counsel.

sites a credit union may be linked to that may have ADA issues. The report provides the credit union with information they can use in discussions with their providers to identify plans for meeting ADA accessibility standards.

CUSG provides the report to the credit union who may then work with their web development provider to make the necessary corrections. Once the corrections have been made, CUSG will run a second scan of the site and provide the credit union with the report. This gives credit unions a “before and after” report to show a good faith effort has been made to correct ADA issues on their website. This service helps prepare credit union websites for ADA requirements, however does not guarantee compliance or provide any certification.

Option 2. CU Solutions Group offers a full ADA solution through our business partner, AudioEye. AudioEye is a leader in ADA Accessibility for websites. The service includes a full ADA Audit of the credit union’s website, corrections to address all the ADA issues (this includes automated corrections, as well as manual corrections), ongoing weekly monitoring and corrections to the site, as well as ADA Certification for the website. The service includes a toolbar that is placed on the website to the right of the screen and provides tools that are used by the visitor to address specific needs they may have for navigating the site. The certification information is always available to view through the tool bar. This is one of the only ADA Accessibility services that not only does the audit, but also fixes the site for the credit union.

If your credit union would like to learn more, please email info@cusolutionsgroup.com to request additional information and a quote for these services.

Advocacy Efforts

The MCUL is actively working to identify members from Michigan congressional delegation who will sign on to a bi-partisan letter to Attorney General Jeff Sessions asking the U.S. Department of Justice to resume plans to issue regulations on website accessibility under the ADA. Regulations are necessary in order to ensure financial institutions have clear guidance on what they must do to provide those with disabilities access to their websites. To date, Congressmen Mike Bishop, Paul Mitchell, John Moolenaar, and Tim Walberg have signed on to the letter and the League is working to secure additional signers before the October 26, 2017 deadline.

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FROM: Chuck Holzman
DATED: October 25, 2017
RE: Americans with Disabilities Act and Banking-Related Websites in Michigan

Some credit unions have recently received a letter from Pacific Trial Attorneys (PTA) essentially stating that PTA was preparing to file a class action lawsuit against the credit unions because their websites did not comply with the requirements of the Americans with Disabilities Act (ADA). PTA asserts that businesses with websites that do not comply with the accessibility suggestions contained in version 2.0 of the Web Content Accessibility Guidelines are subject to liability. As support for its claim, PTA cited three cases from Florida and California where courts found that an internet website could be a place of public accommodation under the ADA. These were trial court determinations and have not been reviewed by appellate courts.

The ADA prevents “places of public accommodation” from discriminating against people due to disability. In some situations, the ADA also requires places of public accommodation to take measures to provide extra assistance for the disabled. Banks and other service establishments are places of public accommodation under the ADA if their operations affect commerce. Many credit unions would likely qualify as places of public accommodation.

The federal appellate court that has jurisdiction over Michigan, the Sixth Circuit, has not decided a case involving a disabled person’s claim that a website’s failure to comply with the Web Content Accessibility Guidelines is an ADA violation. And it is unclear whether the Sixth Circuit would find that a website is a place of public accommodation because, in the past, the Sixth Circuit has limited the term “place of public accommodation” to a physical place. For example, the Sixth Circuit has said that it was not an ADA violation to refuse to telecast a sporting event under the “blackout rule” for the benefit of hearing impaired fans. The court reasoned that, while the game is played in a place of public accommodation, a televised broadcast (the requested service) is not a place of public accommodation—the plain language of the ADA limits it to “places” (physical locations).

Because the issue of websites has not been brought up in the Sixth Circuit, we do not know if the Sixth Circuit will continue to follow the cases requiring that an ADA claim be tied to a physical place or if it will follow more recent cases from other circuits which indicate that an ADA violation can occur outside of a physical space. Some circuits have said that an ADA violation can occur if there is some connection between the good or service complained of and an actual physical place. For example, a game show that used an off-site telephone process for screening contestants violated the ADA because it discriminated against disabled people who wanted to enjoy a privilege (being on the show) offered by a place of public accommodation (the television studio). It appears that PTA is using this type of an argument to claim that a disabled persons inability to utilize a website is depriving them of the ability to obtain the goods and services being offered on the website. Other circuits have simply concluded that places of public accommodation are not limited to physical locations without explanation.

Further complicating things, the Department of Justice (DOJ), the government agency overseeing the ADA, has not issued any rules or regulations setting out guidelines for websites. In 2010, the DOJ discussed the public policy supporting web access for the disabled; described barriers to accessibility and how they could be handled, explained that rulemaking is necessary because it “is clear that the system of voluntary compliance has proved inadequate in providing Web site accessibility to individuals with disabilities.” But, the DOJ has not actually issued any rules or regulations for websites. And, the issue of ADA website regulations was taken off its official agenda for 2017.

Because of the uncertainty surrounding the issue of websites and the ADA in our circuit, there is some risk for credit unions with websites that are inaccessible to the disabled. Any credit union that gets a demand letter should immediately send it to the credit union’s insurance carrier to see if the credit union has liability coverage before responding to the demands contained in the letter.