ADA Website Accessibility Frequently Asked Questions
(Last updated by CUNA staff: January 2018)

1. What's the status of the Justice Department's website accessibility regulations?

Answer: In late December 2017, the Department of Justice (DOJ) formally withdrew its two Advanced Notices of Proposed Rulemaking (ANPRM) related to website accessibility under Title II of the Americans with Disabilities Act (ADA) applicable to state and local governments; and under Title III applicable to private businesses open to the public.

The DOJ plans to evaluate whether promulgating regulations about the accessibility of web information and services is "necessary and appropriate." The evaluation "will be informed by additional review of data and further analysis." And, the DOJ "will continue to assess whether specific technical standards are necessary and appropriate to assist covered entities with complying with the ADA."

This latest announcement follows DOJ's July 2017 decision to place the Title III regulations on the "inactive list" and terminates the agency's rulemaking that started with the release of the ANPRM in 2010. Click here for the December 26, 2017 Federal Register Announcement.

2. What impact does DOJ's ANPRM withdrawal have on credit unions facing ADA web accessibility lawsuits?

Answer: As explained in CUNA's Dec. 28, 2017 Removing Barrier's Blog post:

"The decision to rescind this ANPRM arguably could be somewhat helpful since at least one court dismissed a website accessibility case on due process grounds because the complaint did not specify, 'a particular level of success criteria and because the DOJ has not offered meaningful guidance on this topic." (Robles v. Dominos Pizza LLC, No. CV-16-6599 SJO (SPx), 2017 WL 1330216, at *5 (C.D. Cal. Mar. 20, 2017). The court further found that until the DOJ takes "action to set minimum web accessibility standards," the court cannot "determine what obligations a regulated individual or institution must abide by in order to comply with Title III.'

As such the DOJ's decision to withdraw the ANPR provides fodder to the argument that it has not spoken on this topic and there would not be due process in finding that there is a national standard.

Alternatively, however, there has also been case law calling into question any due process arguments. In Gorecki v. Hobby Lobby Stores, Inc., No. CV 17-1131-JFW(SKX), 2017 WL 2957736, at *6 (C.D. Cal. June 15, 2017), rejected the decision in Dominos and instead found there was no due process violation because the DOJ has maintained for 20 years that websites must be accessible, which the court argued provided notice to defendant."

3. What standards should credit unions follow in the absence of federal regulations?

Answer: In the absence of formal regulations, website operators have turned to the Web Content Accessibility Guidelines (WCAG) 2.0 developed by the World Wide Web Consortium (W3C) as the de facto standard.

The WCAG 2.0 is a technical standard written for web developers. But there are a number of non-technical explanatory resources available on the consortium's website as well. Additional resource links appear below, but you may want to begin with Easy Checks - A First Review of Web Accessibility. Then move on to Tips for Getting Started with Web Accessibility, which includes:

- Designing for Web Accessibility: tips for user interface and visual design.
- Writing for Web Accessibility: tips for writing and presenting content.
- Developing for Web Accessibility: tips for markup and coding.

The United States Access Board adopted WCAG 2.0 as its accessibility standard for federal agency websites in January 2017. However, please note that WCAG 2.1 is currently under development and is scheduled to be published as a standard some time in 2018. So, these standards will be tweaked in the future.

4. Are credit unions required to use the WCAG standard, or can they develop their own to address accessibility concerns?

Answer: The DOJ hasn't adopted WCAG 2.0, so there's no federal mandate that requires credit unions to comply with the standard. However, adhering to WCAG is probably your safest bet at this stage of the game for several reasons:

- As mentioned above, WCAG 2.0 has become the de facto international standard for website accessibility among web developers.
- WCAG 2.0 is the accessibility standard for federal agency websites.
- Many vendors offer auditing and web development services to help businesses comply with WCAG 2.0 standards.
- Some plaintiffs have requested, and some courts have ordered, businesses to bring their websites into compliance with WCAG 2.0 (e.g., the infamous Winn-Dixie case).

- Lastly, why reinvent the wheel?

5. Does CUNA have a handy list of companies that provide ADA website audits?

Answer: The following providers offer ADA website compliance auditing and/or web development services. This is not an exhaustive list as other companies may offer similar services.

> **DISCLAIMER:** *Please note that we are providing this list solely for your convenience. CUNA does not guarantee the accuracy, relevance, timeliness, or completeness of any third party information or services. Further, the inclusion of a vendor is not intended to assign importance to that particular vendor, nor is it intended to endorse, recommend, or favor any views expressed, or commercial products or services offered by the vendors.*

Credit Union System Service Providers

- AffirmX www.affirmx.com/solutions/ada-compliance-audit; Contact sales@affirmx.com or 1-888-972-3624 for information
- CU Solutions Group www.cusolutionsgroup.com/ADA; Contact info@CUSolutionsGroup.com or 1-800-262-6285 for additional information.
- Growth By Design www.growthbydesign.org; Contact contact@growthbydesign.org or 1-770-476-9625 for additional information.
- Trace Security www.cunastrategicservices.com/credit-union-providers/tracesecurity; Contact Jenny Jackson, CUNA Strategic Services alliance manager, at 1-800-356-9655, ext. 4102 or jjackson@cuna.com

Other Providers in the Marketplace

- Accessible 360 accessible360.com
- Credit Union Web Design (SK Advertising + Design) www.creditunionwebdesign.com
- Criterion Web Accessibility Solutions www.criterion508.com
- iNet Solution, Inc. www.inetsolution.com
- Interactive Accessibility www.interactiveaccessibility.com
- ZAG Interactive www.zaginteractive.com

(Please cut and paste the hyperlink into your web browser if the link no longer works.)

6. What WCAG conformance level should a credit union shoot for – A, AA, or AAA?

Answer: The WCAG 2.0 "success criteria" are categorized according to three levels: A, AA, and AAA.

> Level A – provides the most basic web accessibility features
> Level AA – addresses the most common barriers for disabled users
> Level AAA – delivers the highest level of web accessibility

Conformance at a higher level indicates conformance at lower levels, i.e. conformance to Level AA necessarily implies conformance to Level A. Most web operators shoot for Level AA. The Federal Access Board's standards and guidelines for federal agency websites conform to WCAG 2.0's Level A and Level AA success criteria and conformance requirements.

7. What are some common website problems that cause accessibility issues for individuals with vision or hearing problems?

Answer: Common problems include images without text equivalents, the use of inaccessible formats, and video and multimedia with inaccessible features. However, for each problem, there is a solution as outlined below:

Images without Text Equivalents: Blind people and individuals with "low vision" can use "assistive technologies" to access information displayed on a webpage. Two commonly used technologies are screen readers that speak the text that appears on the screen, and refreshable Braille display devices that translate text into Braille characters that can be read by touch. However, these assistive technologies cannot translate images into speech or Braille, even if words appear in the images. **Solution:** Adding a line of HTML code to provide text for each image and graphic can enable a user with a vision disability to understand what it is.

Documents that are not posted in an accessible format: PDF documents, or those in other image based formats, are often not accessible to blind people who use screen readers and people with low vision who use text enlargement programs or different color and font settings to read computer displays. Text-based formats, such as HTML or Rich Text Format (RTF) are the most compatible with assistive technologies. **Solution:** Provide documents in an alternative text-based formats in addition to PDF.

Specifying Colors and Font Sizes: Many people with low vision use specific color and font settings when they access the Internet in order to make the pages more readable. Some webpages, however, are designed so that changing the color and font settings is impossible. **Solution:** Design websites that can be viewed with the color and font sizes

set in users' web browsers and operating systems. That way, users with low vision can specify the text and background colors as well as the font sizes needed to see webpage content.

Videos and Other Multimedia Lack Accessible Features: Videos and other multimedia are commonly featured on websites these days. However, a deaf person or someone who is hard of hearing may not be able to hear the audio track of a video. On the other hand, persons who are blind or have low vision are frequently unable to see the video images but can hear the audio track. **Solution:** Provide audio descriptions of images to make videos accessible to people who are blind or have low vision. Provide text captions synchronized with the video images to make videos and audio tracks accessible to people who are deaf or hard of hearing.

Tips are derived from the [ADA Best Practices Tool Kit for State and Local Governments](#)

8. A number of lawsuits have been brought against "public accommodations" alleging that their websites are inaccessible to persons with disabilities. What exactly is a "place of public accommodation" under Title III of the Americans with Disabilities Act?

Answer: Title III of the ADA prohibits public accommodations from discriminating against persons with disabilities "in the full and equal enjoyment of" the goods and services provided by the place of public accommodation. Businesses that provide goods or services to the public are called "places of public accommodation" under the ADA.

The DOJ's ADA regulations establish requirements for 12 categories of public accommodations, which include stores, restaurants, bars, service establishments, theaters, hotels, recreational facilities, private museums and schools, doctors' and dentists' offices, shopping malls, and other businesses that serve the public (like financial institutions). Click [here](#) for the official definition.

What about "websites" and "mobile platforms"? Some "ADA experts" argue that only websites that are connected to brick-and-mortar businesses are considered "places of public accommodation," while others argue that the presence of a physical location has no bearing on whether a website is covered by Title III of the Americans with Disabilities Act. So, who's right? In the absence of federal regulations specifically addressing this issue, judges end up making the call and judgments vary from jurisdiction to jurisdiction.

9. What is the "Dominos Disclosure"?

Answer: Many attorneys are recommending that businesses provide a 24/7 toll-free telephone number to provide access to all of the information and functions on the company's website. The phone number would appear on the website's home page and be accessible using a screen reader.

It's called the "Domino's Disclosure" because Domino's Pizza "won" an ADA lawsuit – actually, the judge dismissed the case because the plaintiff in this case failed to allege that his ability to use Domino's website prevented him from accessing the company's stores. (Robles v. Dominos Pizza LLC) This is all that Dominos currently has on its website: "If you are using a screen reader and are having problems using this website, please call 800-XXX-XXXX for assistance."

Keep in mind that this was just one case in one jurisdiction – other judges may reach a different conclusion.

10. What can we do to reduce our exposure to ADA web accessibility claims?

Answer: You can't prevent a law firm from targeting your website. However, you can place your institution in the best possible position to defend itself against an ADA web accessibility claim by:

- Conducting an ADA compliance audit of your website and digital content (FAQ #5). See W3C's Web Accessibility Evaluation Tools List, available here: https://www.w3.org/WAI/ER/tools/;
- Engaging a reputable vendor to help bring your website into compliance with WCAG 2.0 Level AA Success Criteria;
- Reviewing vendor contracts of online banking providers to determine their level of compliance with WCAG standards, liability for violations, etc.;
- Posting an accessibility statement on your website (see FAQ #9);
- Implementing a long-term accessibility strategy for your credit union's website to include dedicated IT and compliance staff, periodic validation and testing, complaint management policies and procedures (should members encounter web accessibility problems), staff training (as needed), etc.;
- Locating competent legal counsel to assist with any ADA demand letters should you receive them;
- Monitoring CUNA News, CUNA and league blogs, CUNA Mutual Group's Risk Alerts, trade press, etc. to stay on top of the latest developments.
- Connecting with other credit unions (e.g., via CUNA's Compliance Community) for support and information sharing on ADA and other compliance issues.

If you do receive a demand letter from a law firm alleging an ADA website violation, don't go it alone. Consult with your legal counsel and contact your bonding company (e.g., CUNA Mutual Group) right away. And, please don't ignore the letter.

Additional Resources

W3C Web Accessibility Initiative (WAI)

CUNA's e-Guide: Americans With Disabilities Act

CUNA's CompBlog (housed on CUNA's Compliance Community)

CUNA's Removing Barriers Blog

CUNA Mutual Group Risk Alerts and other Resources (for CMG customers)