February 14, 2018

The Honorable Ted Poe  
House of Representatives  
Washington, D.C. 20515

Dear Representative Poe:

On behalf of the Credit Union National Association (CUNA), I am writing in support of your efforts to address litigation abuse under the Americans with Disability Act (ADA) and your legislation H.R. 620, the ADA Education and Reform Act of 2017. CUNA represents America’s credit unions and their 110 million members.

**Background on Impact Predatory Litigation for Website Accessibility is Having on Credit Unions and their Member Owners**

CUNA’s member credit unions have become the subject of a wave of litigation brought by individuals alleging that they are being denied equal access not to credit unions’ locations, but to the credit unions’ websites, which are asserted to be a violation of Title III of the ADA. To date, more than 100 credit unions have been sued and thousands have received demand letters in at least 15 states, with many forced into costly and time-consuming settlement agreements.

The vacuum created by the Department of Justice’s (DOJ) failure to act, despite having begun a proceeding in 2010 to provide clear guidance, is being filled by attorneys seeking to capitalize on confusion about what is required, and the ADA’s private right of action and award of attorney’s fees. Unfortunately, credit unions as member-owned not for profit financial institutions are particularly at risk because of the confusion in the marketplace. When credit unions are targeted for litigation as a result of unclear guidelines, resources are depleted from the pooled resources of the entire membership. Certain smaller credit unions have considered taking down their entire website or even closing their doors because of these threats. This harms all consumers, including those with disabilities, who rely on credit unions for safe and affordable products and services.

Since many credit unions are small businesses with limited staff and resources, their ability to serve smaller or rural local communities with limited options for financial services, can be particularly jeopardized in the face of frivolous litigation. In the United States, nearly half of all credit unions, 2,708 out of approximately 6,000 credit unions, employ five or fewer full time employees. More than half (3,457) have assets of less than $50 million. Moreover, credit unions with less $20 million in assets account for over 40% of all U.S. credit unions (2,369).

Examples of services provided by America’s credit unions, include offering financial education and products and services to consumers including young and older Americans, veterans, those with disabilities. This work consists of serving all consumers, with small dollar, automobile, and mortgage loan products; providing disaster relief support and counseling; and arranging solutions for those facing debt or other financial burdens.
The DOJ and other Lawmakers Failure to Provide Clarity is Harming Consumers and Small Business

The Department of Justice, the federal agency charged by Congress to implement the ADA, (see, 42 U.S.C. § 12186 (b)), has not promulgated any rules or standards to guide businesses on what is needed to make websites ADA compliant. More than 60 Members of Congress recently expressed concerns about this lack of clarity from the DOJ. Unfortunately, while policymakers continue to balk about who should act to provide clarity to protect against the predatory behavior by certain law firms, small businesses and consumers continue to suffer.

The opportunities for predatory plaintiffs’ firms to take advantage of this lack of clarity could be greatly ameliorated if the DOJ would provide some much-needed clarity about what is required, and whether a website is even considered a public accommodation and covered by the ADA since there is considerable judicial precedent to suggest that it is not.¹

The requirements proposed in H.R. 620 would also be an important step forward in addressing litigation abuse, and we strongly encourage you to consider expanding it to address issues outside the context of architectural barriers including website accessibility. Simply put, we agree with the message being sent in H.R. 620 that the first stop for concerns about consumer’s access to goods and services should be with the business who very likely may directly address the problem, not racing to the courthouse.

Congress Should Help Credit Unions and Other Small Businesses Address this Lack of Clarity Resulting in Abusive Litigation

H.R. 620 will ensure those protected by the ADA will continue to benefit from that important protection, but will take the right steps to curb predatory litigation that harms all consumers and credit union members. We encourage you to expand on the work of this legislation and consider holding a hearing, and taking other steps to address other frivolous ADA related class action litigation including website accessibility.

On behalf of America’s credit unions and their 110 million members thank you for your leadership on this important matter.

Sincerely,

Jim Nussle
President & CEO

¹ The term “website” does not appear anywhere in the ADA’s exhaustive list of covered public accommodations. The omission of this term alone is sufficient to conclude that websites cannot be considered a place of public accommodation. Carroll, slip op. at 4 (“Notably absent from the list is the term ‘website.’ Not only is ‘website’ not found on the list, but the statute does not list anything that is not a brick and mortar ‘place’”). The Third and Sixth Circuits concur that Title III of the ADA unambiguously applies only to physical locations, as evidenced by the comprehensive list of public accommodations. Ford v. Schering-Plough Corp., 145 F.3d 601, 614 (3d Cir. 1998) (“[W]e do not find the term ‘public accommodation’ or the terms in 42 U.S.C. § 12187(7) to refer to non-physical access or even to be ambiguous as to their meaning.”); Parker v. Metro Life Ins. Co., 121 F.3d 1006, 1010-11 (6th Cir. 1997) (“As is evident by § 12187(7), a public accommodation is a physical place and this Court has previously so held.”) (citing Stoutenborough v. National Football League, Inc., 59 F.3d 580 (6th Cir. 1995)). The Fifth Circuit, with its decision in Magee, now joins these Circuits in confining the ADA to physical locations