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The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dear Attorney General Barr:

The Credit Union National Association (CUNA) represents America's credit unions and their 115 million members. We would like to congratulate you on your successful confirmation as the 85th Attorney General of the United States.

CUNA and our members look forward to working with you in your capacity as Attorney General. Specifically, we are eager to discuss the increasingly problematic environment of frivolous litigation that has spread due to a lack of clarity surrounding standards for website accessibility under the Americans with Disabilities Act (ADA).

Credit unions are unique in the financial services market as member-owned, democratically-controlled cooperatives which have a proven track record of protecting the interests of their members. As community-based financial institutions, the strain on resources that inevitably results from frivolous lawsuits can have an outsized effect, and even a single lawsuit can jeopardize the ability of a small credit union to effectively serve its members. Every dollar spent fighting a meritless lawsuit is a dollar that cannot be applied toward helping members meet their financial needs and achieve their financial goals. In the United States, nearly half of all credit unions, 2,323 out of approximately 5,550 credit unions, have five or fewer full-time employees. More than half (3,229) have assets of less than \$50 million. Moreover, credit unions with less than \$20 million in assets account for nearly 40% of all U.S. credit unions (2,175).

Given their member-focused mission, credit unions are dedicated to serving *all* their members in need of financial services and strongly support the mission of the ADA. When a credit union becomes aware of methods to increase access to their products and services for members with disabilities, they take the steps necessary to incorporate those methods in their operations. However, the recent wave of demand letters threatening ADA lawsuits against credit unions are clearly different from any good faith effort to increase awareness due to legitimate accessibility concerns. In most cases, these legal threats are sent by a single law firm to credit unions located thousands of miles away from the firm's location, and on behalf of a client without any connection or possible connection under our industry's field of membership¹ restrictions to the credit unions being threatened. In addition, the threats almost always assert a highly technical violation of the ADA using opaque and broad language meant to confuse and intimidate.

The goal of these threats is not justice or increasing accessibility for persons who are disabled, but to get a quick payout while expending little effort. In some instances where a credit union has refused to acquiesce to the plaintiff attorney's demands, lawsuits have been filed in federal court. As of February 2019, lawsuits have been filed against credit unions in about 30 states with some suits being dismissed for lack of standing or other legal defects. These

¹ A credit union's field of membership is the legal definition of who is eligible to join. With some special and limited exceptions, credit unions are legally prohibited from providing financial products and services to individuals falling outside of their field of membership.

shakedowns are harming credit unions and their members and negatively impacting credit unions' ability to serve their communities.

Unfortunately, the Department of Justice (the Department) has not finalized a regulation or provided substantive guidance on standards of compliance for website accessibility under the ADA. The closest the Department has come to providing clarity on website accessibility was in 2010, with the issuance of an Advanced Notice of Proposed Rulemaking (ANPR)² that was subsequently withdrawn³ in December 2017. Plaintiffs' attorneys have taken advantage of this regulatory ambiguity to force credit unions and their members into paying settlement costs and of course, attorneys' fees. As is common when lawsuits are filed in a diverse range of jurisdictions, federal courts have created a patchwork of divergent interpretations of the ADA and, in certain instances, mandated a compliance standard despite the absence of appropriate due process in determining the standard to be applied.

On several occasions, CUNA has recommended the Department initiate a process to solicit input from stakeholders with the goal of issuing a clear ADA website accessibility standard for which credit unions and other entities can comply. It is also essential for the Department to clarify whether Web Content Accessibility Guidelines (WCAG) 2.0 is the appropriate compliance standard, as some courts have held, and if entities must also adjust to any subsequent amendments made to WCAG. Additionally, credit unions need clarity about whether websites are in fact considered public accommodations since there has been conflicting case law on this issue.

On all these questions, the Department has received repeated calls from Congress and state officials to act. In a letter dated September 4, 2018, six U.S. Senators⁴ wrote to your predecessor, Attorney General Jeff Sessions, highlighting concerns over how the ADA applies to websites and respectfully urging the Department to "promptly take all necessary and appropriate actions within its authority" to resolve the current uncertainty. This followed similar letters sent from 103 Members of Congress⁵ on June 20, 2018 and from 19 state attorneys general⁶ on July 19, 2018. The Department responded to these letters on September 25, 2018⁷, and October 11, 2018⁸, both times claiming the application of the ADA to websites was well-established and stating, "the Department has consistently taken the position that the absence of a specific regulation does not serve as a basis for noncompliance with a statute's requirements." However, the Department's past position does not sufficiently resolve the issue nor stop the flood of frivolous lawsuits against credit unions. Therefore, CUNA strongly recommends the Department reconsider its approach and clarify the issue through guidance or a rulemaking – until that time, the ADA will continue to be applied unevenly and unpredictably based on the whims of local federal courts.

The ADA's intersection with website accessibility also continues to be top of mind for Congress, as evidenced by the recent House Report 115-704⁹. In this report for the House Appropriations Committee's Commerce, Justice, and Science Appropriations Act for Fiscal Year 2019, the Committee included language regarding the need for ADA

² Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations, 75 Fed. Reg. 43460 (July 26, 2010).

³ Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions, 82 Fed. Reg. 60932 (Dec. 26, 2017).

⁴ U.S. Senate letter to the Dept. of Justice regarding Website Accessibility Standards under the ADA *available at* <https://www.grassley.senate.gov/news/news-releases/grassley-senators-seek-clarity-website-accessibility-under-ada> (Sept. 4, 2018)

⁵ House of Representatives letter to the Dept. of Justice regarding Website Accessibility Standards under the ADA *available at* https://www.cuna.org/uploadedFiles/Advocacy/Priorities/Removing_Barriers_Blog/ADA%20Final_06212018.pdf (June 20, 2018)

⁶ State Attorneys General letter to the Dept. of Justice regarding Website Accessibility Standards under the ADA *available at* <https://www.cuna.org/uploadedFiles/Advocacy/ADAAGLetter71918.pdf> (July 19, 2018).

⁷ U.S. Dept. of Justice, Office of Legislative Affairs response to Rep. Ted Budd (R-TX) *available at* https://www.cuna.org/uploadedFiles/Advocacy/Actions/Comment_Calls_Letters_and_Testimonies/2019/Letters/DOJ-letter-to-House.pdf (Sept. 25, 2018).

⁸ U.S. Dept. of Justice, Office of Legislative Affairs response to Sen. Chuck Grassley (R-IA) *available at* <https://www.judiciary.senate.gov/imo/media/doc/2018-10-11%20Justice%20Dept.%20to%20CEG%20-%20Website%20Accessibility%20Under%20ADA.pdf> (Oct. 11, 2018).

⁹ H. Rept. 115-704 - Commerce, Justice, Science, and Related Agencies Appropriations Bill, 2019; 115th Congress (2017-2018), pg. 35.

guidance: “The Committee expects the Department to clarify standards for website accessibility requirements pursuant to the Americans with Disabilities Act in fiscal year 2019. The Committee recognizes the confusion caused by a lack of uniform website accessibility standards. The lack of clear requirements disadvantages small businesses that provide essential services for our communities.” CUNA and our members sincerely hope the Justice Department, under your leadership, clarifies the standard for website accessibility under the ADA, and we stand ready to work with you in any capacity necessary.

On behalf of America’s credit unions and their 115 million members, thank you for your attention moving forward, and congratulations again on your confirmation.

Sincerely,



Jim Nussle
President & CEO