

# Financial Institution Websites and the ADA: Is Your Website Accessible?

In 1990, Congress passed the Americans with Disabilities Act (“ADA”) to prevent discrimination on the basis of disability. Title III of the ADA (“Title III”) prohibits discrimination in places of public accommodation, defined as businesses that are generally open to the public. Service establishments, such as branches of a bank or other financial institutions, qualify as places of public accommodation under Title III.

Until recently, Title III primarily applied to brick and mortar locations. Increasing reliance on online platforms has led some courts to apply Title III to a business’s online presence as well. Plaintiffs’ attorneys have become increasingly focused on this trend, as evidenced by an increasing number of demand letters requesting companies update their websites to comply with the Title III or face litigation. The relief demanded usually includes attorney’s fees and paying for the cost to monitor compliance with a court-order changes to the website.

## Uncertain Standards for Financial Institution Websites

One challenge financial institutions face is the lack of federal guidance on what an accessible website actually looks like. This puts financial institutions in a difficult legal position as courts are willing to enforce website-related Title III claims without federal standards. Courts have instead looked towards the privately-produced Web Content Accessibility Guidelines 2.0 (“WCAG 2.0”) as the standard even though it has not been adopted by law or regulation.

Another issue facing financial institutions is who can actually bring these lawsuits. Recently, in *Carello v. Aurora Policeman Credit Union*, the Seventh Circuit dismissed a case brought by a “tester”—an individual who visits websites “solely for the purpose of testing [ADA] compliance”—because the plaintiff was legally barred from joining the credit union. Although the decision may feel like a win for defendants, financial institutions should still take caution: Plaintiffs’ attorneys will can get around this decision by targeting financial institutions which do not have restrictions on membership or by finding plaintiffs who meet the membership criteria.

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## Getting Ahead of the Trend

Until the federal government provides guidance on this issue, the best solution for financial institutions is to comply with the WCAG 2.0. Compliance may provide a defense in a Title III lawsuit and give financial institutions a way to respond to plaintiffs' demand letters. Legalities aside, compliance will also help the financial institution better serve its customers and potential customers who suffer from disabilities.

Compliance is often not an easy task. Many website developers do not consider accessibility to be a top priority, if they consider it at all, when building websites. And even if a website is initially compliant, small updates to it may render it less so.

In light of these difficulties, financial institutions should proactively work with their website developers, disability consultants, and their legal counsel to remediate accessibility barriers before a lawsuit is filed. If you have questions about Title III compliance, or have received a Title III demand letter, please contact Robert S. Driscoll, John T. Reichert, or your Reinhart attorney.

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