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Client Alert: Banks and Thrifts: Please do NOT Ignore the Latest Wave of Website Inaccessibility Demand Letters

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Several law firms nationally are in the process of issuing demand letters to banks, thrifts and various other businesses alleging website access barriers. The most recent wave of demand letters specifically target the banking industry. The letters demand changes to banks' web pages and payment of substantial legal fees based on alleged violations of the Americans with Disabilities Act (the ADA).

Title III of the ADA prohibits discrimination based on disability in the "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodation of any place of public accommodation." Bankers will recall similar claims by law firms based on ATM accessibility challenges not long ago. Banks are considered places of public accommodation, which includes their public-facing web pages. Until very recently, plaintiffs' law firms have focused on businesses outside the banking industry. No more.

Here's the quandary: banks have to comply with the ADA with no official rules on how to do so in regard to the newest claims. There are no firm regulations or standards in place addressing website accessibility compliance with the ADA. The U.S. Department of Justice (DOJ) is charged with enforcement of the ADA. The DOJ may enact specific website accessibility regulations or standards and has indicated that it intends to do. However, the DOJ began its rulemaking process in this area in 2010 and has postponed issuance of final rules year after year. Under the DOJ's latest estimates, the earliest it will issue rules that would apply to banks and other places of public accommodation would be in 2018.

In the interim, and in a landscape without specific rules, plaintiffs' counsel claim that standards established outside the DOJ by the World Wide Web Consortium on web content accessibility guidelines (WCAG 2.0) are the "baseline requirements" that banks must meet. WCAG 2.0 include a host of technical provisions like providing text alternatives to non-text content, the ability to resize text to make it larger without assistive technology tools and without loss of content or functionality, navigation method requirements, etc. While there are indications that

the DOJ supports and even prefers WCAG 2.0 standards, WCAG 2.0 standards are not officially the law and compliance with the ADA is theoretically possible, even if WCAG 2.0 standards are not met.

Federal court lawsuits based on alleged website inaccessibility have spiked since the beginning of 2015 with several hundred filed against a wide spectrum of businesses – from retailers to restaurants – that provide public accommodation. The banking industry is squarely in the sights of this trend.

These threats are, unfortunately, very real. Ignoring this latest wave of website accessibility demand letters is at an organization's own peril.

The Vorys firm is already dealing with a number of these claims on behalf of the industry. Please contact your Vorys attorney or any of the following for more information: Angela Gibson (513.723.8136 or ajgibson@vorys.com), Rodney Holaday (614.464.8356 or raholaday@vorys.com), Kim Schaefer (513.723.4068 or kjschaefer@vorys.com), or Jeff Smith (614.464.5436 or jesmith@vorys.com).