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The Federal Antideficiency Act at 150—Where Do We Stand?

PHILIP J. CANDREVA

The Antideficiency Act of 1870 codified Congress’s power of the purse to curb unauthorized agency spending. Is it still working? This paper analyzes all violations of the Act over 12 years by agency and type, causes and consequences, and how violations were detected. The number of violations has trended down slightly. While agency preventive controls have failed, detective controls are working. Employees and agencies are comfortable self-reporting violations, which are neither pervasive nor material. The risk of violations increases during fiscal year transitions and periods of change. The Act remains effective at stopping unauthorized and overspending, but does not address wasteful spending.

INTRODUCTION

The 2018–2019 government shutdown is a potent example of the dysfunction in the federal budgeting process (Meyers 2014). When Congress’s inability to strike a budget deal results in a lapse of appropriations, members typically pass a temporary appropriation until they reach a decision. When that process breaks down, as it did in December 2018, a little-known law called the Antideficiency Act requires the political gridlock to manifest in a furlough of government workers and closure of government agencies and services. The Antideficiency Act prescribes in federal statute the constitutional provision that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law” (U.S. Const. art. I, §9, cl. 7). When the spending authority granted under an appropriation expires, federal agencies are forbidden from incurring new financial obligations until Congress enacts another appropriation. Hence, affected governmental operations cease.

Ideally, Congress will enact the 12 annual discretionary appropriations before the start of the fiscal year. Actually, since the passage of the Congressional Budget Act of 1974, which established the current legislative budget process, there have only been four years in which Congress enacted all appropriations on time (Saturno and Tollestrup 2016). The last time was 1997. Continuing resolutions, and the threat of a government shutdown, are the norm.

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Stated most simplistically, the Antideficiency Act (hereafter, ADA) prohibits federal agencies from spending money they do not have. This article looks briefly at the history of the ADA and related fiscal laws to understand their origin and intent. Following that history is a detailed look at the hundreds of reports of violations of the ADA over the past 12 years with the aim of understanding what happened, the severity of the problem, and how agencies have responded to violations. Federal managers fear violating the ADA because of the potential consequences to themselves and their agencies and the administrative burden associated with investigating and reporting violations. This study adds to the public budgeting literature by taking a contemporary empirical look at a

longstanding tool of political control over the budget to assess its effectiveness, to understand the nature of violations, and to provide insight into the efficacy of internal controls and audit functions.

The study finds that the number of violations has trended down slightly and violations are neither pervasive nor material. While agency preventive controls have failed, detective controls are working and responsible parties apparently feel safe self-reporting. While the administrative burden of investigating and reporting violations may be excessive given the materiality of violations, it also has a deterrent effect. Anecdotally, violations tend to occur during fiscal year transitions and other periods of change or complexity (changing authorities, new organizational structures, and new accounting systems or during wartime). With respect to congressional control over the executive, the ADA is effective at stopping overspending and unauthorized spending but does not address wasteful spending. To address wasteful spending, Congress and executive agencies should shift some of the effort and attention spent investigating and reporting ADA violations to addressing improper payments.

APPLICATIONS FOR PRACTICE

- The Antideficiency Act (ADA) is a long-standing tool to enforce Congress's power of the purse and remains effective at preventing federal agencies from overspending appropriations or using them for unauthorized purchases. It is not effective at curbing wasteful spending.
- Violations of the ADA can take different forms and tend to occur during times of uncertainty, complexity, change, and fiscal year transition.
- Detective controls discovered the majority of violations; employees and agencies are comfortable self-reporting.
- Violations are neither pervasive nor material, so policymakers should consider relaxing penalties and streamlining the investigation and reporting burden.

HISTORY

The ADA is a shorthand term for several provisions of federal law that Congress first enacted in 1870, modified in 1905–1906, and last revised in 1950. But to understand the story of the ADA, one must look even earlier.

Congress's first appropriation provided lump sums for broad categories of spending: the civil list, department of war, and pensions to invalids (1 Stat. 95 [1789]). Within a few years, Congresses were enacting more specific appropriations, but the executive agencies would transfer funds at will between accounts, finding it easier to act as if they were lump sums (Banks and Raven-Hansen 1994; Casper 1997). Some agencies borrowed funds to expand their

spending power, assuming future appropriations would cover the loans (Stith 1988). By 1809, a restriction applied to the entire federal government, which today is codified in 31 U.S.C. §1301(a), commonly referred to as the purpose statute: “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”

While discrete appropriations provide a dollar limitation on expenditures, for much of the first century of the nation executive agencies routinely over-obligated them, creating coercive liabilities which Congress felt compelled to ratify (Fisher 1975, 232; Hopkins and Nutt 1978, 58). An early example: “For making good a deficiency in the appropriation of the year one thousand seven hundred and ninety-three, for extra-services of clerks in the office of the Secretary of State [...] eight hundred dollars” (1 Stat. 342 [1794]). In an effort to instill more discipline in agency spending, Congress enacted the ADA in 1870, stating: “it shall not be lawful for any department of the government to expend in any one fiscal year any sum in excess of appropriations made by Congress for that fiscal year, or to involve the government in any contract for the future payment of money in excess of such appropriations” (16 Stat. 251 [1870]).

After a few more decades of either disregard of this new rule or the exploitation of loopholes causing deficiency appropriations, Congress expanded the ADA to include all obligations and not just contracts, forbade the acceptance of voluntary services, required the apportionment of appropriations to control the rate of obligations, and provided for criminal penalties for violations (33 Stat. 1257 [1905]). This 1905 law allowed for waivers, which departments used excessively, so in 1906 Congress restricted the use of waivers. Finally, there was a law with some teeth. Congress made no further changes to the ADA until 1950, when it modified the apportionment and reapportionment processes and enhanced both civil and criminal penalties (64 Stat. 765 [1950]; Hopkins and Nutt 1978, 59–60).

Today, the ADA is codified in four sections of Title 31 of the U.S. Code, shown in Table 1. In sum, the law prohibits obligations in excess of an appropriation or an apportionment of an appropriation, obligations prior to having an appropriation, and the acceptance of voluntary services. While the provision that no obligation can be made before funds have been appropriated is written with a temporal perspective, the provision also applies to any obligation for which an appropriation has never been provided or possibly even considered. Title 31 defines a voluntary services violation as accepting the labor of a government employee or contractor for which they have a right to be compensated without having the budget authority to pay them. Table 1 provides a few examples from the dataset.

The ADA does not include all provisions of federal fiscal law. A violation of the purpose statute (31 U.S.C. §1301(a)) does not itself constitute a violation of the ADA because it can be cured through an accounting adjustment if there are sufficient funds in the proper appropriation (Davidson 2018). To illustrate, imagine a government agency with two appropriations, one for salaries and expenses and one for capital purchases. The agency enters into a capital lease using the salaries and expenses account, but such a lease is properly funded under the capital account. If they adjust the accounting records while they still have sufficient funds in the capital account, there is no ADA violation. But if the agency does not discover the error was until the capital account is depleted, then it will have violated the ADA (31 U.S.C. §1341(a)(1)(A)).

TABLE 1
The Antideficiency Act and Examples of Violations

Statute	The Antideficiency Act prohibits federal employees from:	Examples of violations
31 U.S.C. §1341(a)(1)(A)	Making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law.	<ul style="list-style-type: none"> • a fund for foreign national tax withholdings was over-disbursed • contracts contained open-ended indemnification clauses • cost of an upgrade to a General officer’s quarters exceeded the statutory cap on such expenditures • accounting errors created a mistaken belief about the amount of funds available causing an over-obligation • exceeding a minor construction threshold caused the project to become an unauthorized major construction project
31 U.S.C. §1517(a)	Making obligations or expenditures in excess of an apportionment or reapportionment, or in excess of the amount permitted by agency regulations.	<ul style="list-style-type: none"> • obligated funds in an amount in excess of what was apportioned under a continuing resolution • cited the wrong appropriation when sufficient funds were not available in the proper appropriation at the time • failing to request a re-apportionment of a multiyear appropriation or carryover funds resulted in an apportionment insufficient to cover obligations • obligated more on a specific project than was permitted by agency regulations
31 U.S.C. §1341(a)(1)(B)	Involving the government in any obligation to pay money before funds have been appropriated for that purpose, unless otherwise allowed by law.	<ul style="list-style-type: none"> • obligated the government to buy food or water when unauthorized • entered into a multiyear lease citing one-year funds • entered into contracts in one year for work that would not commence until the subsequent year • acquired 14 months of services citing one-year funds
31 U.S.C. § 1342	Accepting voluntary services for the United States, or employing personal services not authorized by law, except in cases of emergency involving the safety of human life or the protection of property.	<ul style="list-style-type: none"> • an employee worked while in a furlough status • a volunteer student intern was not actually a student per the program definition • a contractor continued working after the contract ended

The link between continuing resolutions, government shutdowns, and the ADA should now be clear. Once an appropriation for an object of expense has expired, say at the end of Fiscal Year (FY) 2019, incurring obligations without a new appropriation would be obligating the government prior to enactment and apportionment of the FY2020 appropriation or in excess of the FY2019 appropriation. Thus, the government must shut down. To avoid the shutdown, Congress enacts a temporary appropriation (continuing resolution).

In addition to being a factor in government shutdowns,¹ the ADA has been related to other newsworthy events in the past few years. In May 2014, the government's exchange of five Guantanamo Bay prisoners for the Taliban's release of U.S. Army Sergeant Bowe Bergdahl violated the ADA. The appropriation for the Department of Defense (DoD) for that year required that the executive branch notify Congress 30 days before any prisoner could be released from Guantanamo Bay. President Obama did not notify Congress until the day of the transfer, thereby incurring financial obligations associated with the transfer without requisite authority (Poling 2014). In its ADA violation report, the administration argued that the provision in the appropriation unconstitutionally interfered with executive functions.

While that violation may appear to be a mere technicality, the funding of a key provision of the Patient Protection and Affordable Care Act (ACA) also violated the ADA, to the tune of billions of dollars. Section 1402 of the ACA (Patient Protection and Affordable Care Act, 124 Stat. 119 [2010]) requires insurers to reduce co-payments and deductibles for certain low-income plans, with reimbursement by the federal government. Congress did not appropriate funds for that portion of the ACA in a permanent appropriation, instead opting to use annual appropriations. For the first few years under the ACA, the administration requested funds in its budget for these reimbursements, but Congress chose not to include them in an appropriation. The administration made the payments regardless. In an unusual move, the House of Representatives successfully sued the Secretary of Health and Human Services in federal court to enjoin her from continuing the payments (*House of Representatives v. Burwell*, 185 F. Supp. 3d 165 [D.C. 2016]). The court stayed the injunction pending appeal and the two sides reached a settlement in December 2017. Despite the ADA calling for criminal and civil penalties, evidently no one was disciplined in either of these high-profile cases for willful violation of the Act. The ACA violation, curiously, is not (yet) included in the Government Accountability Office (GAO) database.

DATA AND METHODOLOGY

This study examines all of the summary reports of ADA violations available on the GAO's website, covering fiscal years 2006 through 2017 (Government Accountability Office 2018).

1. The lack of an annual appropriation does not result in a complete government shutdown because some appropriations are enacted in multiyear or permanent laws, and there are some exceptions for law enforcement and national security. There are also a dozen annual appropriations and in some cases, such as in 2018, a few of the 12 may be enacted and only those government functions without appropriations are affected.

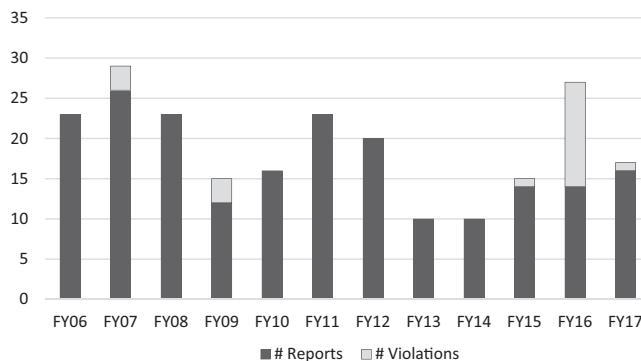
Office of Management and Budget (OMB) Circular A-11 governs the reporting process and requires agency heads to submit them to the President, leadership of both chambers of Congress, and the Comptroller General (see also 31 U.S.C. §1351, 1517(b)). Reports typically describe the cause of the violation, the statute that was violated, and the type of funds. They also identify by name the responsible parties, and discuss remedial action. About 15 percent of the reports in the data set also discuss how the violation was discovered.

The DoD, which has approximately half the nation’s discretionary budget authority, accounts for about half of the violations. They also typically do not report how their violations were discovered to GAO, but they do generate a detailed internal departmental report. Information on how DoD violations were detected was obtained through a Freedom of Information Act (FOIA) request.

Across those 12 fiscal years, there were 207 reports of violations of the ADA. Some of the reports cite more than one violation and where the report cites multiple instances of the same error, they are counted as one violation. For example, in a 2006 report, the National Oceanic and Atmospheric Administration reported 80 instances of the same error; this was counted as one violation. Other reports cite multiple instances that are unrelated to one another and those are counted separately to the extent that there is sufficient information to code them separately. In an extreme example, a single report in 2016 from the Department of Housing and Urban Development (HUD) discussed separately 14 unrelated violations, so they are counted as 14. Using this approach, the author examined 228 unique violations. There are an average of 17.3 reports per year and an average of 19 violations per year. See Figure 1.

Quantitatively, this analysis examined the reports to provide a description of: (i) the frequency of violations by statute, (ii) the types of funding involved, (iii) the number of violations by agency and by agency normalized for the size of their budgets, (iv) the dollar amounts involved in absolute terms and relative to the agency budgets, (v) the time lags between the violation, its discovery, and the reporting of the violation, and (vi) punitive and remedial actions taken at the individual and organizational levels.

FIGURE 1
Number of ADA Reports and Violations



Qualitatively, this analysis examined the reports in three ways. First was a determination of the root causes of violations. While a report may cite a violation of 31 U.S.C. §1517(a), the root cause may not simply be overspending an apportionment. Recall that under some circumstances a violation of the purpose statute may be the root cause of overspending.

Second, the study examined how and by whom violations were detected to assess the frequency of detection by agency internal controls, internal auditors, and external auditors. Clearly, violations slipped past preventive controls, but there may be a favorable story if the agency's own detective controls discovered the error. In some cases, they may have been discovered through task controls or through management controls in the agency (Anthony and Govindarajan 1998; Hildreth 1993). Alternatively, if management failed to detect the violation through its control processes, it may have been discovered by an internal audit team. In other cases, the violation may have been detected through external sources, such as the complaints of a whistleblower or an external audit team.

Third, the reports only provide basic facts of what happened and, therefore, do not permit a rigorous causal analysis. However, the author made some inferences based upon the context of the violations, and based upon discussions with senior officials who have been involved with investigations of violations.

RESULTS

Of the reported violations, 58 percent were violations of 31 U.S.C. §1341 (spending in excess of an amount appropriated or spending without an appropriation), 32 percent were violations of section 1517 (spending in excess of an apportionment of an appropriation), and only five percent were violations of section 1342 (accepting voluntary services). The remaining five percent cited violations of statutes that, technically, are not part of the ADA. As those other five percent suggest, often an ADA violation begins as another form of violation, which may not be correctable and ultimately results in a 1341, 1517, or 1342 violation.

After performing a root causes analysis of each violation, this analysis discovered that agencies directly violated the ADA only 59 percent of the time, not 95 percent of the time. The root cause in 26 percent of cases was citing the wrong type of funds when there were insufficient proper funds. Six percent of the time the agencies cited the wrong fiscal year's funds, while three percent of violations cited cases of misusing collections, two percent were failures to properly record transactions leading to a misbelief that sufficient funds were available, two percent were caused by using expired funds, and the remaining violations were due to a few other miscellaneous reasons. These are displayed by year in Table 2.

Among the types of funding involved, 70 percent of the reported violations were to salary and expense type appropriations, only nine percent were to capital accounts, five percent each to R&D or revolving funds, and 11 percent were insufficiently identified, or the agency refuted the fact that an ADA violation had actually occurred.

TABLE 2
Root Cause U.S. Code Violated

Fiscal year	Number of reports	Number of violations	1341		1517		1342		1301		1502		3302	
			Overspend or no appropriation	Overspend or no appropriation	Overspend	Voluntary services	Purpose violation	Wrong fiscal year's funds	Misuse of collections	All others				
2006	23	23	8	8	5				7				2	1
2007	26	29	13	13	8				4		1		1	2
2008	23	23	10	10	4				4		2		1	2
2009	12	15	5	5	3		2		2		3			
2010	16	16	2	2	2				7		2		2	1
2011	23	23	8	8	4				8		2			1
2012	20	20	10	10	2		1		6		1			2
2013	10	10	2	2	2				4		2		1	1
2014	10	10	4	4	1		2		3					
2015	14	15	5	5	2		3		3					2
2016	14	27	12	12	6		2		7					
2017	16	17	9	9	2		1		7					
Sum	207	228	88	88	41		11		62		13		7	12
Percentages			38	38	18		5		26		6		3	5

The DoD had just over half of the ADA violations (115 of 228, or 50.4 percent). HUD had the second most with 18, Homeland Security had the third highest total with eight violations. In all, 38 federal entities reported violations, though 13 of them reported only one. Eight departments had more than three reported violations, accounting for 75 percent of the violations—these are listed in Table 3. Employing a simple assumption that the total dollar value of an agency’s annually appropriated discretionary budget authority is correlated with the complexity of its finances, one would expect agencies with larger budgets to commit more violations, but not necessarily at a higher rate. Among those agencies with more than three reports of violations, we see the rate of violations varies from a low of 0.72 per \$100 billion of budget (Department of Health and Human Services [HHS]) to a high of 4.71 (Environmental Protection Agency [EPA]).

The average value of an ADA violation by agency varied from a low of \$0.2 million for the EPA to a high of \$223.6 million for HHS. As a percentage of the agencies’ budgets, ADA violations are quite small. For the eight agencies with more than three violations, the value of the violations averaged \$38.9 million and in aggregate represented only 0.062 percent of their discretionary budget authority. HUD suffered the highest percentage of budget violating the ADA at 0.468 percent, the lowest was the EPA at 0.001 percent. So while the EPA had the most violations per dollar of budget, the amount of each violation was quite small. While the DoD had the most violations by an overwhelming margin, it was at a rate slightly below the average of other agencies with respect to the size of their budget, and the dollar amount of the average violation was one-fifth that of the other agencies.

The violations by the DoD were not evenly distributed across the military departments, nor over time. The Army submitted half of the reports with 58. Eighty percent of these were submitted in the period from 2006 to 2012—an average of 6.7 reports per year. This time period coincides with major combat operations, significant increases to the Army budget for war-related expenses, and relatively complex appropriations. After the major combat operations ended in Iraq and Afghanistan and the budget returned to normal, the Army’s rate of violations decreased to an average of 2.2 per year. That pattern holds for the entire DoD, which averaged 13.6 violations per year in the earlier period and only 4.0 per year more recently. Compared to the Army’s 58, the Navy submitted 24 reports of violations, the Air Force 18, Defense-wide agencies 10, and the Marine Corps only five.

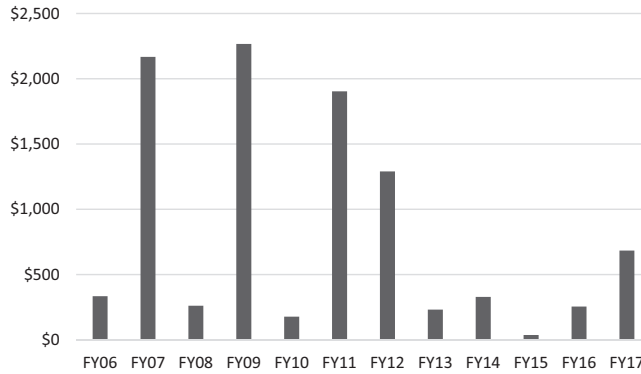
The 228 violations across the federal government summed to a total of \$9,939 million. Annual totals ranged from a high of \$2,266 million in FY2009 to a low of \$37 million in FY2015, and averaged \$828 million per year (see Figure 2). Individual violations ranged from zero dollars to \$1,637 million. Some were reported as zero because either the agency disputed a GAO finding that an ADA violation occurred, or there was a violation with no measurable amount. These included, for example, contracts with unlimited indemnity clauses which exposed the government to theoretically infinite liability, but which did not result in any actual claims against the government.

Four years stand out in Figure 2 and are heavily influenced by one violation per year. Excluding those four outliers, in Figure 3 we see a more level pattern with an annual range of \$37.4–\$737.2 million, an average annual total of \$377.8 million, and an average per violation of \$20.2 million.

**TABLE 3
Federal Agencies With More Than Three Reported Violations**

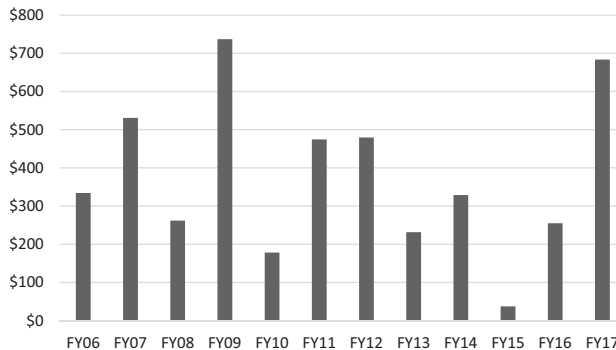
Agency	# ADA violations	Total budget authority (\$B)	ADAs per \$100B of budget	Total value of ADAs (\$M)	Average value of ADA (\$M)	ADA value as % of budget
Department of Defense	115	7,409	1.55	2,044	17.8	0.028
Department of Housing and Urban Development	18	480	3.75	2,247	124.8	0.468
Department of Homeland Security	8	531	1.51	551	68.8	0.104
Department of Transportation	7	280	2.50	49	7.0	0.018
Department of Health and Human Services	7	971	0.72	1,565	223.6	0.161
Department of Veterans Affairs	6	668	0.90	182	30.4	0.027
Department of Agriculture	5	304	1.65	19	3.7	0.006
Environmental Protection Agency	5	106	4.71	1	0.2	0.001
Agency Totals	171	10,750	2.16	6,659	38.9	0.062
Non-DoD Totals	56	3,341	1.68	4,614	82.4	0.138

FIGURE 2
Sum of Value of ADA Violations by Fiscal Year



It is worth noting here that many of these violations, including some extraordinarily large ones, do not represent a loss to the government. OMB corrected the single largest violation of \$1.6 billion—a violation of 31 USC §1517 (spending in advance of an apportionment) by NASA—with a reappropriation. The Federal Housing Administration overspent during a continuing resolution that was well within the amount provided in the ultimate annual appropriation, causing a \$1.5 billion violation of section 1341. And the Securities and Exchange Commission committed an \$810 million violation by funding a capital lease in annual increments instead of as a lump sum. These cases show federal agencies acting outside their legal authorities may incur a political and managerial cost, but ultimately no additional financial cost to the taxpayer.

FIGURE 3
Sum of Value of ADA Violations by Fiscal Year, Less Outliers



Two hundred twenty-three of the 228 violation reports contained sufficient detail to compute the time span from the violation to the issuance of the report. Where there were multiple, similar violations in one report, the author used the oldest violation. The average time between violation and report was 5.7 years, the median was four years, with the longest being an incredible 82 years and the shortest only six months.

The reports for 131 violations contained sufficient detail to compute the time between the violation and its detection and the time between its detection and the issuance of the report. On average, 3.6 years passed from the violation to its detection with a median time-to-report of two years. The longest time period between violation and report was 79 years and the shortest was zero in instances where the violation was immediately detected. From detection to the issuance of the final report, the average length of time was 36.2 months with a median of 32 months. The longest time period was 127 months and the shortest was only one month. Typically, then, agencies detected violations two to three years after they occurred and issued the final report another two to three years later.

These timeframes are longer than the standard set by the DoD in their financial management regulations. The DoD process for investigating and reporting violations begins with a two-week discovery phase, followed by a preliminary review (14 weeks), followed by a formal investigation (nine months), review of an advanced decision by general counsel (three months), a disciplinary process (two months), and a final month for reporting to Congress and OMB. Thus, the standard is 16 months from detection to final report (Department of Defense 2015).

ADA reports typically describe the remedial actions taken at the individual and organizational level. Despite the fact that the ADA provides for both civil and criminal penalties, no reports mentioned criminal penalties for ADA violations. However, five individuals noted in reports between 2006 and 2008 were convicted of fraud, embezzlement, obstruction of justice, or money laundering.

Among administrative actions at the individual level, agencies used counseling (107 instances), reprimands (95), additional training (41), and reassignments (11). In some cases, agencies took more than one action, such as counseling coupled with additional training. Reprimands included administrative actions such as oral or written reprimands (36), oral or written admonishments (34), demotion (10), suspension (eight), or termination (seven). Of the 357 unique people identified as responsible for violations, 120 (34 percent) were no longer working for the agency at the time of the formal report and as a result, no action was taken in nearly all cases. See Table 4.

Among administrative actions at the organizational level, agencies issued new policies or standard operating procedures (126 instances), trained nonresponsible employees (80), reorganized one or more offices (24), and adjusted other management controls (63). There were slightly more organizational actions than there were individual actions.

Table 5 shows who detected the violation. In slightly more than half (129) of the 228 violations, agency reports had sufficient detail to classify how the violation was detected. In 46 of those cases, someone with fiduciary responsibilities in the organization, such as a comptroller, budget officer, contracting officer, or lawyer, detected the violation. In two of those cases, that responsible person did not discover the error during a routine review but

TABLE 4
Individual and Organizational Remediation

Individual		
Counseling		107
Reprimand		95
Additional training		41
Reassignment		11
Criminal penalties		5
Other		7
No action		120
Organizational		
New policy or SOP		126
Training others		80
Other management control		63
Reorganization		24

TABLE 5
Who Detected ADA Violations

Fiscal year	Fiduciary	New fiduciary	Superior	Internal audit or IG	Whistle-blower	External audit (GAO)	Sum
2006	7	1	7	3	0	1	19
2007	6	1	8	8	1	0	24
2008	5	1	2	5	3	1	17
2009	1	0	1	3	0	1	6
2010	4	0	4	4	0	0	12
2011	7	1	3	2	0	1	14
2012	5	0	5	4	0	0	14
2013	0	0	0	1	0	0	1
2014	1	1	1	0	0	1	4
2015	1	1	0	1	1	0	4
2016	2	0	1	2	0	0	5
2017	1	0	4	2	1	1	9
Total							
Sum	40	6	36	35	6	6	129
%	31	5	28	27	5	5	100
DoD							
Sum	31	5	30	29	6	1	102
%	30	5	29	28	6	1	100
Non-DoD							
Sum	9	1	6	6	0	5	27
%	33	4	22	22	0	19	

instead was prompted to investigate by an inquiry from a customer organization or a line manager. In six other cases, a new employee discovered the violation. Recall that nearly one-third of the responsible parties had retired, transferred, or otherwise departed from the organization. These six reports clearly noted that the subsequent employee discovered the violation, often by questioning existing practices. It is likely that there were more than six such cases, but the other reports did not explicitly indicate whether the person discovering the violation was new.

In another 36 cases, an office superior in the organization discovered the violation during a routine program or budget review. These included higher echelon military commands conducting inspections, headquarters Chief Financial Officers reviewing budgets, or an office of general counsel responding to an inquiry.

Moving further from the source of the error and the realm of management controls to the realm of auditing, in 35 more cases an internal auditor within the agency found the violation. These were typically discoveries by an Inspector General (IG) or an internal audit agency. They may have been specifically looking at this issue or may have found it serendipitously while investigating something else. Only six case reports specifically noted that a whistleblower contacted an oversight authority, but there are likely more because some of the IG or auditor detections may have been initiated by a whistleblower complaint, but the reports normally did not say what prompted the audit or investigation.

Finally, a person or entity outside the executive branch of government detected six violations. These were all found by the GAO, either during an uninvited audit or in response to direct requests from members of Congress. In a few instances an agency invited GAO to assist them in determining whether an ADA violation occurred—those instances are coded to the office that initiated the call to GAO.

Because the majority of cases with detection information were the product of a FOIA request to the DoD, this analysis distinguishes DoD data from non-DoD agency data. Both groups saw similar proportions of detection by fiduciaries, senior management, and internal auditors, with the DoD running a little higher on the latter two, perhaps due to its deeper hierarchical structure and its several internal audit agencies. All of the whistleblower detections occurred in the DoD, but only one violation was discovered by an external auditor. Where external auditors detected only one percent of the DoD's violations, external auditors detected 19 percent of violations at other agencies.

Finally, the study considered the circumstances under which a violation occurred. In descending order of frequency, contextual and contributing factors include: year-end spending decisions and decisions affecting carryover funds (25 instances); misunderstanding legal authorities, often when authorities recently changed (15); inadequate employee training or oversight (14); an organizational change such as new information technology or a period of high turnover (eight); mistaken beliefs regarding funds status based on errors or limitations in accounting systems (eight); and errors associated with a shutdown or temporary appropriation (seven). Agency officials who have reviewed dozens of internal investigations said a recipe for violations is good intentions coupled with a lack of detailed knowledge of the rules in an environment of urgency or pressure on the financial staff.

DISCUSSION

Congress enacted the ADA to ensure that federal agencies spend within the bounds of their authority. The Act requires formal reporting of violations and the identification of responsible parties who are subject to criminal and civil liability. In the last 12 years, however, none of the responsible parties have been held criminally liable because violations were deemed unintentional. There were twice as many new policies or management controls than there were reprimands. There were more organizational responses to ADA violations than individual actions. Thus, it appears that agencies consider these to be institutional or structural problems more than cases of individual failures.

The data on detection support this conclusion. Task or management control systems detected nearly two-thirds of the violations. Whistleblowers identified at least another five percent and probably more, which is further evidence that the rank-and-file understand the contours of fiscal law and are willing to raise awareness of possible violations. Internal auditors discovered most of the rest.

It is notable that all the identified whistleblowers were in DoD and nearly all the violations found by external auditors were in agencies other than the DoD. It is possible that in the large DoD a whistleblower will call the IG, whereas a call to the GAO or a member of Congress is more likely in smaller, more intimate agencies. This is not knowable from the content of the reports and requires further investigation to verify.

The frequency of self-reported violations is unusual when compared with the detection and reporting of financial fraud in the corporate sector. Most fraud in the corporate sector is identified by whistleblowers and internal auditors, yet there has been a growing tendency of firms to self-report since the 2008 financial crisis. Coram, Ferguson, and Moroney (2008) noted that organizations with an internal audit function are more likely than those without such a function to detect and self-report fraud. Toffel and Short (2011) found that firms that voluntarily disclosed regulatory violations were committed to self-policing and reduced the burden on outside regulators. Seifert et al. (2010) found that employee reporting increases when organizational procedures, outcomes and relations with superiors are perceived as fair, and Young (2017) noted that self-reporting increases when the threat of retaliation is lowered. While not a perfect substitute for ADA reporting, this literature is consistent with the low rate of external discovery in the DoD which has significant internal audit capacity, and it may be indicative that senior leadership in the federal agencies have treated ADA cases and responsible parties fairly so employees feel safe self-reporting.

While violations clearly slipped past preventive controls, both transactional and management detective controls appear to be working. Routine reporting, oversight, account balancing and reconciliation processes detected the majority of errors. And the rate of errors has been falling slightly over time, suggesting that organizations responded effectively to the violations. This is corroborated in a 2012 DoD IG report that found that the military departments were “generally effective” at improving controls after ADA violations, noting that there was evidence that “36 of 44 corrective actions were implemented and sustained” (Department of Defense 2012, 6).

That said, the time required to navigate the complex processes associated with investigating and reporting ADA violations may impede organizational learning. One-third of responsible parties had departed before the final report was completed. While the violation may have only been discovered as a result of the turnover, in other cases the employee simply moved on before the report was completed. If so, the employee may not have learned from the error. If there are similar rates of turnover in surrounding staff positions, learning by others may also be compromised.

The root cause analysis shows that the law remains necessary as there were more than 10 instances per year of agencies spending more than they were appropriated or apportioned, or spent on things never authorized. In cases where agencies overspent or misspent through malfeasance or nonfeasance, the law may be an effective control and deterrent. It is impossible to say how many more times agencies would have overspent but for the burden and professional embarrassment of the ADA reporting process, but nearly every report said the violation was the result of unknowing and unintentional conduct. That type of conduct cannot easily be deterred. While a deliberate process may be necessary to ensure formal due process to protect the rights of those subject to criminal sanction, criminal penalties have not been used. Thus, an accelerated and streamlined investigation and reporting process could enhance organizational and individual learning without undue risk of additional or more malicious violations.

A timely report might also have prevented some of the violations. In a few cases, an organization discovered an ADA violation only after reading about another organization's similar error. In many other cases, a purpose violation caused an ADA violation because of a lack of sufficient proper funds. The earlier such an error is identified, the sooner corrective action can be taken. By taking years to investigate, the likelihood that the proper account is depleted rises to the point where an ADA violation becomes nearly certain because the opportunity to address it has expired (Davidson 2018).

There were 62 cases (five per year, on average) where these purpose errors caused the ADA violation. Most were DoD organizations using an expense account for a capital purchase. The expense/investment criteria used by the DoD is seemingly straightforward, but can become a challenge in practical application. Minor construction projects can grow in complexity and quickly exceed the threshold for a capital project, especially if it is a multiyear project and key managers are replaced in the middle. There is also no process for disseminating the full spectrum of centrally-managed items that require an investment appropriation, easily causing a mistaken belief that a purchase is permissible (Chigwida and Rodriguez 2009). And some tasks are arguably on one side of a line or another (Candeva 2017, 264–266). For example, “studies and analyses” are properly funded with Operation & Maintenance funds while “research” is funded with Research, Development, Test & Evaluation funds. The distinction between research and a study is not always obvious. More clear ex ante direction may be more effective at ensuring compliance than the formal investigation and reporting process.

Looking at ADA violations by agency and their budgets, few clear relationships emerge. A larger budget correlates with more violations for the DoD, but HHS also has a large budget and had a low rate of violations. The DoD suffered more errors during dynamic

operational times than in more normal budget years. The highest rate of violations in relation to budget size occurred in a small agency. The size of the violations also does not conform to any specific pattern. The agency with the highest rate of violations per \$100 billion of budget also had the smallest average size. While DoD had the most violations, the average value of each violation was much less than other agencies. What we do see when looking at ADA violations as a function of the size of an agency's budget is that the total dollar value is often immaterial. Less than one-tenth of a percentage of an agency's budget, on average, was implicated in a violation and many of those violations did not result in any financial loss to the government, but were merely technical violations. One could argue that ADA violations are neither pervasive nor material.

This is particularly striking when comparing ADA violations to errors under the Improper Payment Acts where the government does incur a financial loss. "An improper payment is any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements" (PaymentAccuracy.gov 2019a). The federal government's Payment Accuracy Dataset for 2017 identifies \$57.2 billion of improper payments that represent a potential monetary loss to the government if not recovered (From FY2014 through FY2017, less than 50 percent of overpayments were recovered.). Of that, there was \$8.75 billion of confirmed fraud by payees. While the number of improper payments is not provided in the dataset, the rate of errors as a percentage of the size of the program budget is. In the most egregious cases, error rates are as high as 25 percent (Veterans Affairs Beneficiary Travel), 24 percent (Earned Income Tax Credit), 23 percent (U.S. Department of Agriculture School Breakfast program), 17 percent (Foster Grandparents), and 12 percent (Unemployment Insurance) (PaymentAccuracy.gov 2019b).

Combining the lack of materiality of the size of the ADA violation with the lengthy process and countless hours of management attention devoted to investigating and adjudicating ADA violations, there may very well be an excessive response to the majority of them. It seems that part of the ADA process should be a test for materiality before engaging in resource-consuming investigations. There is comparatively less attention paid to the much larger problem of improper payments. Larger because of dollar value (about a 50-fold difference) and the fact that they represent actual monetary losses to the government and not technical errors.

To avoid violations, managers should pay particular attention to a few circumstances. Financial actions at the time of fiscal year transition are prone to error, particularly when authorities have changed or there is a late appropriation. Minor construction projects can grow into major projects. Employee training can be a factor when conditions change such as a new authority, agency reorganization, or the implementation of new accounting systems.

CONCLUSION

While the federal budgeting process has evolved over the years, and the current processes are clearly broken (Meyers 2016), for almost 150 years the ADA has contained executive agency

spending. The law's greatest impact is to ensure agencies spend within the upper bounds of congressional authority, but does little to stop waste or other types of errors. Because the dollar amounts are mostly immaterial and the investigation process burdensome, Congress may consider a threshold for reporting, and agencies may consider streamlining their processes. Since no one has been found criminally liable, that threat should be removed to further speed the process by removing the controls over an individual's criminal rights. A faster investigation and reporting process would enhance organizational and individual learning and might prevent some violations. Further exploration of the causes and contextual factors of violations and the deterrent effect of current policies may be necessary before effecting change.

Internal controls appear to be working. Discovery of violations primarily occurs through task or management controls before they reach internal or external auditors. Violators often self-report, indicating that they feel safe doing so and that they perceive the process will be fair.

At the ripe old age of 150, the ADA is still working to enforce Congress's power of the purse, but its administration could be improved. However, the taxpayer would be better served if attention shifted to the improper payments problem.

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