ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Identifying and Reducing Burdens in Administrative Processes

Committee on Administration and Management

Draft Recommendation for Committee | November 6, 2023

1   Each year, millions of people navigate administrative processes to access benefits and

2   services and otherwise engage with government programs to help themselves and their families.

3   These processes can be extraordinarily complex. Additionally, processes can vary significantly

4   across and within government agencies. These variations can make it especially hard when

5   individuals need to access multiple programs at the same time, including during key life events

6   such as retirement, birth of a child, or unexpected disaster.

7   Navigating these processes requires time and effort, both to learn about programs and

8   how to access them. Complying with these processes also requires significant work, such as

9   completing forms, obtaining and submitting information, and possibly traveling to in-person

10   interviews or hearings. Sometimes, depending on what the processes require, efforts to comply

11   can result in stigma, frustration, fear, or other psychological harms. These costs—which may be

12   described as learning, compliance, and psychological costs, respectively—can be collectively

13   understood as administrative burden.[1]

14   Administrative burdens significantly impact whether and how the public accesses a wide

15   range of government programs, including those related to veterans benefits and services, student

16   financial aid, Social Security benefits, health care, disaster assistance, tax credits, nutrition

17   assistance, housing assistance, and unemployment insurance. These burdens can be exacerbated

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[1] Pamela Herd, Donald Moynihan & Amy Widman, Identifying and Reducing Burdens in Administrative Processes 4 (Oct. 4, 2023) (draft report to the Admin. Conf. of the U.S.). This Recommendation uses both "administrative burden" and "administrative burdens." The singular is intended to capture the idea of burden as a theoretical concept; the plural reflects the fact that, in practice, burdens are multiple rather than singular. *See* PAMELA HERD & DONALD MOYNIHAN, ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS 1, 269 (2018).

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18   when programs are not wholly administered by the federal government but in partnership with

19   state, local, or tribal governments. Although some level of administrative burden may be

20   necessary—to establish eligibility for programs with sufficient accuracy, or to prevent fraud—

21   research shows the cumulative effect of this burden hinders the ability of agencies to achieve

22   their missions. Billions of dollars in government benefits go unclaimed every year,[2] and

23   administrative burdens are a key reason for this gap.[3] Administrative burdens do not fall equally

24   on all members of the public. Individuals who face disproportionate burdens, including those

25   from historically underserved communities, the disabled, and those for whom English is not their

26   primary language, often bear the largest total burdens.[4] Reducing administrative burden, while

27   also taking into account other important public values such as program integrity, can make

28   government work better for everyone.

29   Various authorities govern how federal agencies identify and reduce administrative

30   burdens. The Paperwork Reduction Act (PRA) has long required agencies to identify burdens

31   associated with information they collect from the public and explain why those burdens are

32   necessary to administer their programs.[5] The Office of Management and Budget in the present

33   Administration (OMB) Circular A-11 emphasizes the importance of customer life experiences[6]

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[2] Office of Information & Regulatory Affairs, Office of Mgmt. & Budget, Exec. Office of the President, Tackling the Time Tax: How the Federal Government Is Reducing Burdens to Accessing Critical Benefits and Services 9 (2023).

[3] Herd et. al, *supra* note 1, at 16-18.

[4] Tackling the Time Tax, *supra* note 2, at 10. *See also* Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (August 16, 2000) (requiring federal agencies to prepare plans to improve access to programs for persons with limited English proficiency). The U.S. Department of Justice is responsible for governmentwide coordination with respect to implementing Executive Order 13,166.

[5] Paperwork Reduction Act, 44 U.S.C. §§ 3501–3521.

[6] Customer life experiences are experiences that require members of the public to navigate government services across multiple programs, agencies, or levels of government. OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET (2023). As explained in § 280.16, OMB will manage the selection of a limited number of customer life experiences to prioritize for Government-wide action in line with the President's Management Agenda. *See also* Exec. Order No. 14,058, 86 Fed. Reg. 71,357 (December 16, 2021).

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34 and human-centered design[7] in how agencies manage organizational performance to improve
35 service delivery.

36   While some administrative burdens are imposed by Congress or by state law, federal
37 agencies have an important role to play in reducing the burdens they impose when administering
38 their programs. Agencies employ numerous strategies to reduce those burdens, including
39 simplifying processes, improving language access, and expanding the availability of online
40 (instead of solely in-person) processes.[8] Collaboration within and between federal agencies, and
41 between federal agencies and state, local, and tribal governments, is also essential for burden
42 reduction. Agencies have achieved success in reducing burdens by, for example, establishing
43 devoted customer experience (CX) teams that have sufficient policy knowledge and authority
44 within the agency to be effective.[9] Data sharing between agencies, especially when used in
45 conjunction with simplifying onerous processes or eliminating unnecessary ones, can also reduce
46 administrative burdens.[10]

47   In addition to collaboration across the government, federal agency partnerships with non-
48 governmental third parties (such as legal aid organizations) also play a crucial role in agency
49 efforts to reduce burden. Third parties assist agencies by providing information about where

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[7] OMB CIRCULAR A-11, *supra* note 6, § 280.1. Human-centered design is a technique to understand administrative process from the user's perspective and then use those insights to adjust processes to better match human capacities. Herd et. al, *supra* note 1, at 22. Journey mapping is a related concept that involves documenting each step that an individual takes when engaging with an administrative process in order to better understand the process and where individuals struggle with it. *Id.*

[8] *See id.* at 28. *See also* Tackling the Time Tax, *supra* note 2, at 48-49, and White House Legal Aid Interagency Roundtable, Access to Justice through Simplification (2022).

[9] Herd et. al, *supra* note 1, at 26. Under Executive Order 14,058, the term "customer" refers to any individual, business, or organization that interacts with an agency or program, and the term "customer experience" refers to the public's perceptions of and overall satisfaction with interactions with an agency, product, or service. *See* Exec. Order 14,058, *supra* note 6, at 71,358.

[10] *See id.* at 19, 30-32. *See also* Tackling the Time Tax, *supra* note 2, at 36, 41.

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50 processes can be improved to better serve the public and by directly assisting individuals who
51 interact with government programs.[11]

52   This recommendation provides best practices for agencies to use in identifying and
53 reducing unnecessary administrative burdens. Building on previous recommendations of the
54 Conference,[12] this recommendation provides specific consultation techniques agencies should
55 use to gather information from individual members of the public to better understand
56 administrative burdens. The recommendation encourages the use of online processes and offers
57 other techniques to simplify and streamline processes and to make information about processes
58 more accessible. The recommendation also sets out broad organizational and collaborative tools
59 agencies should employ in burden reduction efforts, including outlining how agency leadership
60 and staff[13] should engage with burden reduction initiatives within their agencies and across the
61 government. The primary focus of burden reduction efforts should be with those federal agencies
62 that have the greatest interaction with the public. The tools discussed are intended to reduce
63 burdens and not become a reporting burden on agencies for whom they are less relevant.

64   This recommendation also includes several recommendations directed to OMB, to build
65 on the substantial guidance and efforts OMB has already provided on burden reduction. This
66 guidance could take many forms, including written guidance or agency-specific or government-
67 wide training. It recommends that OMB develop and disseminate new standardized methods for

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[11] *See* Herd et. al, *supra* note 1, at 48. *See also* Admin. Conf. of the U.S. & Legal Servs. Corp. Forum, *Assisting Parties in Federal Administrative Adjudication* (2023), and Admin. Conf. of the U.S., Recommendation 2021-9, *Regulation of Representatives in Agency Adjudicative Proceedings*, 87 Fed. Reg. 1721 (January 12, 2022).

[12] Admin. Conf. of the U.S., Recommendation 2023-4, *Online Processes in Agency Adjudication*, 88 Fed. Reg. 42,681 (July 3, 2023); Admin. Conf. of the U.S., Recommendation 2023-2, *Virtual Public Engagement in Agency Rulemaking*, 88 Fed. Reg. 42,680 (July 3, 2023); Admin. Conf. of the U.S., Recommendation 2021-3, *Early Input on Regulatory Alternatives*, 86 Fed. Reg. 36,082 (July 8, 2021); Admin. Conf. of the U.S., Recommendation 2018-7, *Public Engagement in Rulemaking*, 86 Fed. Reg. 2146 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2019-3, *Public Availability of Agency Guidance Documents*, 84 Fed. Reg. 38,931 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2017-3, *Plain Language in Regulatory Drafting*, 82 Fed. Reg. 61,728 (Dec. 29, 2017); Admin. Conf. of the U.S., Recommendation 2016-6, *Self-Represented Parties in Administrative Hearings*, 81 Fed. Reg. 94,319 (Dec. 23, 2016).

[13] For the purposes of this recommendation, agency leadership and staff include a wide range of stakeholders such as General Counsels, Chief Information Officers, Chief Risk Officers, and Chief Data Officers, as well as ombuds and officials responsible for compliance with laws such as the PRA and the Privacy Act.

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68 agencies to measure the burdens associated with their programs. In addition, again building on

69 past recommendations of the Conference,[14] this recommendation also outlines how agencies and

70 OMB should leverage the PRA in support of burden reduction efforts, including by expanding

71 flexibilities under the Act for agencies to conduct customer experience research.

RECOMMENDATION

Burden Identification and Reduction Principles

72 1. Federal agencies should seek to identify and reduce administrative burdens the public
73   faces when interacting with government programs.

74 2. Agencies' efforts to identify and reduce burdens should take into account the
75   experiences and perspectives of individuals who interact with government programs.

76 3. Because individuals often interact with multiple government agencies and programs
77   during key life experiences that cut across federal agencies, agency and program officials
78   should collaborate to identify and reduce burdens that would predictably arise during
79   those key experiences.

80 4. When undertaking efforts to identify and reduce burdens, agencies should consider the
81   impacts on other important public values, including program integrity.

Burden Identification Strategies

82 5. Agencies should institutionalize procedures for consulting with individuals who interact
83   with government programs, , to better understand the burdens in those programs. In
84   seeking to do so, agencies should try to identify and consult with those who may face
85   disproportionate burdens in accessing agency programs. Agencies should employ
86   multiple consultation techniques, including:
87   a. Client outreach, such as surveys and focus groups;
88   b. Requests for public comment;

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[14] Admin. Conf. of the U.S., Recommendation 2018-1, *Paperwork Reduction Act Efficiencies*, 83 Fed. Reg. 30,683 (June 29, 2018); Admin. Conf. of the U.S., Recommendation 2012-4, *Paperwork Reduction Act*, 77 Fed. Reg. 47,808 (Aug. 10, 2012).

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89   c. Complaint portals available on agency websites;

90   d. Consultation with agency staff who work with the public; and

91   e. Consultation with members of the private sector who assist individuals, such

92   as representatives, program navigators, and social workers.

93 6. To help identify burdens, agencies should use the information obtained through such

94   consultation to identify the procedures individuals face, and resulting burdens, at each

95   step in the process.

96 7. To determine agencies' authority to reduce burdens, agencies should trace the legal or

97   operational source of identified burdens in order to determine whether they are imposed

98   by statute or by regulation, guidance, or agency practice, at the federal or state level.

99 8. Agencies should measure administrative burdens associated with their programs by

100   estimating and quantifying, to the extent feasible, any learning, compliance, or

101   psychological costs of interacting with their programs, and the forgone benefits of their

102   services.

Burden Reduction Strategies

103 9. Agencies should periodically review their administrative processes to identify ways to

104   simplify them. Opportunities for simplification may include:

105   a. Limiting the number of steps in processes;

106   b. Reducing the length of required forms;

107   c. Limiting documentation requirements, where possible; and

108   d. Expanding language access.

109 10. Agencies should allow the public to interact with government programs using online

110   processes while still retaining in-person processes where necessary to ensure access to

111   benefits and services. In particular, agencies should, where possible:

112   a. Create alternatives for requirements for "wet" signatures, such as digital or

113   telephonic signatures consistently across the agency;

114   b. Allow individuals to use universal logins used by government agencies; and

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115   c. Allow individuals to conduct interactions with agencies by telephone or video
116   conference rather than requiring in-person appointments.

117   11. Where permitted by law, agencies should reduce steps individuals must take to receive
118   benefits or services by using information in the government's possession to determine
119   program eligibility or to pre-populate enrollment forms or by automatically selecting the
120   most beneficial program options for individuals unless they decide to opt out.

121   12. Agencies should make information about their programs as easy as possible to find and
122   understand, proactively provide information to the public about their eligibility for
123   benefits and services, and allow individuals to access their own personal information
124   where necessary to seek and obtain benefits and services.

125   13. Agencies should provide information in plain language and, where appropriate and
126   feasible, in multiple languages to ensure individuals can understand and use the
127   information.

128   14. Agencies should increase the availability of assistance for individuals interacting with
129   their programs beyond continuing to enable individuals to rely on assistance from other
130   persons such as family or friends. Such efforts could include:

131   a. Working with legal aid organizations and others who provide *pro* bono or
132   "low" bono services to increase availability of representation;
133   b. Establishing rules governing non-attorney representatives who may practice
134   before the agency; and
135   c. Expanding the use of agency staff, including front-line staff, ombuds, and
136   public advocates, as well as government-sponsored and -supported entities,
137   such as navigator programs.

138   15. Agencies should identify unnecessary administrative burdens that are required by
139   statute and provide them to the Office of Management and Budget (OMB) in their:
140   a. Annual performance reports;
141   b. Paperwork Reduction Act (PRA) submissions;
142   c. Government Performance and Results Act Modernization Act (GPRAMA)
143   submissions; or

Commented [MG1]: Question from the Committee on Style: Does this capture the Committee's intent?

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144   d. Legislative proposals submitted under OMB Circular A-19.

Agency Responsibilities

145 16. Agency leaders should prioritize burden reduction efforts and use their leadership

146   positions to articulate burden reduction goals for agency staff and outline commitments

147   for achieving them, particularly when such commitments require collaboration between

148   agency departments. Agencies should connect their burden reduction goals with their

149   strategic planning and reporting goals under the Government Performance and Results

150   Act.

151 17. Agencies should have a team devoted to improving the experiences that individuals have

152   when interacting with the agency, often referred to as customer experience (CX) teams.

153   CX teams should have thorough knowledge of relevant agency programs. Senior career

154   staff should partner with one or more political appointees to provide CX teams with

155   sufficient authority within the agency to accomplish its goals.

156 18. Agencies should include their General Counsels and other internal stakeholders in burden

157   reduction efforts as early as possible in order to facilitate agency efforts to maximize

158   burden reduction.

Agency Collaboration

159 19. Federal agencies should expand efforts to collaborate with other entities to maximize

160   burden reduction, ~~incorporating, as necessary, these efforts in their~~ ~~Cross-Agency Priority~~

161   ~~Goals~~. In particular, agencies' program and legal staff should collaborate to seek ways to

162   share data across federal agencies and between federal and state agencies. Data sharing

163   can reduce burdens by:

164   a. Increasing outreach to individuals who may be eligible for administrative

165   programs;

166   b. Reducing requirements for forms and documentation; and

167   c. Under certain conditions, providing for automatic enrollment.

Commented [MG2]: This language is a placeholder drafted from the Committee's discussion. OMB indicated they would propose new language.

Commented [MG3]: The Committee requested that the Committee on Style look at EO 14058, performance.gov, and Circular A-11, but it could not find a strong basis from those sources to draw a line between those agencies that should and should not be encouraged to establish a CX team. The basic thrust of these materials is simply that all executive agencies are responsible for managing customer experience. Ultimately, it seems that the Committee needs to decide whether to retain the Recommendation as it is (and as the consultants put forward) that agencies should have a CX team, or whether it should be softened by "should consider" or "as appropriate."

Commented [BB4]: Discuss cumulative burden across agencies.

Shared definitions and documentation requirements.

Commented [BB5]: Rework/disaggregate:

Data sharing

Cumulative burden reduction

Best practices

Commented [JK6]: This isn't quite right. Cross-Agency Priority Goals are set and overseen by OMB, not agencies. Agencies have Agency Priority Goals. A current CAP goal on CX does span lots of agencies, but this is driven by OMB and not the agencies. Do you mean for these to be incorporated into APGs?

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168 20. Agencies that establish data-sharing programs should measure and document the effects
169   of those programs.
170 21. Agencies should establish cross-agency working groups to share information about best
171   practices for reducing burden and using data-sharing agreements.

Guidance on Conducting Customer Experience Research

172 ~~22. The Office of Management and Budget (OMB) should develop, standardize, and~~
173 ~~disseminate to agencies methods for measuring burden. Among other potential methods,~~
174 ~~OMB should consider encouraging agencies to measure the estimated value of time saved~~
175 ~~by members of the public through burden-reduction efforts by converting time to~~
176 ~~financial costs by using the average value of wages as estimated by the Bureau of Labor~~
177 ~~Statistics.~~
178 ~~23. OMB should identify and disseminate to agencies positive models that support the use of~~
179 ~~data-sharing under current statutory authority. Specifically, OMB should update its~~
180 ~~guidance on interpreting the Privacy Act to include additional positive initiatives and~~
181 ~~benefits obtained through burden reduction.~~
182 ~~24. OMB should update and clarify specific elements that agencies can address in cost-~~
183 ~~benefit analyses when required for computer matching agreements under the Privacy Act.~~
184 ~~25. OMB should issue updated guidance that further expands upon flexibilities agencies can~~
185 ~~use under the Paperwork Reduction Act (PRA) to conduct customer experience research.~~
186 ~~OMB should consult with agencies about ways to streamline the PRA process for~~
187 ~~research designed to reduce burdens.~~
188 22. The Office of Management and Budget should provide agencies with additional
189   guidance, potentially including positive models and training, to inform agency:
190   a. Measurement and consideration of administrative burden and foregone
191   benefits and services, such as in regulatory impact analyses;
192   b. Examination of the potential advantages and disadvantages of administrative
193   data sharing; and

Commented [JK7]: "Agencies should establish . . ." Feels too much like immaculate conception. Need to make it actionable by putting someone/some institution in charge/held accountable.

Commented [ST8]: This is a well-established PRA methodology. The Committee removed this language from the agency burden measurement recommendation.

Commented [ST9]: Unclear reference

Commented [JK10]: Please expand on what you mean by "clarify specific elements." No need to change; just need to educate the reader!

Commented [JK11]: ". . . expands on flexibilities . . ." is vague. Maybe cite ACUS Recommendation 2012-4 on Paperwork Reduction Act (https://www.acus.gov/sites/default/files/documents/Final-Recommendation-2012-4-Paperwork-Reduction-Act.pdf) . . . For example, Rec. 4 recommends OMB delegating limited approval authority to agencies instead of everything funneling through OIRA.

Commented [sjt12]: In the preamble, we'd appreciate if ACUS could note that this guidance could take many forms, including written guidance, agency-specific or government-wide training. For example, the preamble might suggest that OIRA offer agency training on the use of generic PRA clearances for agency customer experience and service delivery initiatives. We ask that the Conference please avoid being overly prescriptive about the nature and form of guidance to agencies and leave the how and where to OMB's discretion.

We would also welcome ACUS noting in the preamble the variety of guidance OMB has already provided on these issues, which are well described in the consultants' research report. Future OMB guidance would build upon existing guidance and efforts.

Commented [sjt13]: Consistent with first Committee meeting.

194   c.   Use of flexibilities under the Paperwork Reduction Act to inform customer
195   experience research and to improve agency service delivery.
196   26.23.   Congress should amend the PRA to exempt customer experience research from
197   information collection requirements if the agencies undertake the research for the purpose
198   of reducing administrative burdens.
199   27.24.   When developing new legislation that establishes or affects administrative
200   programs, Congress should provide express statutory authority for agencies to share data
201   where beneficial for achieving the goals of the legislation.

Commented [CG14]: While I agree the PRA is a lengthy process, its goal was to reduce the burden on the public of filling out a bunch of paperwork. Exempting customer experience research could end up increasing paperwork burdens on the public. It also could lead to unscientific questions being posed to the public or agency officials using a "customer experience" exemption broadly to garner information.

Commented [BB15]: It is not clear to me that it is necessary to completely exempt "customary experience research from information collection requirements" from the Paperwork Reduction Act and how is it to be determined that the agency is undertaking such research "for the purpose of reducing agency burdens." How is such a purpose to be distinguished from showing that the agency is satisfying its customers or using such research as a metric to judge particular client-facing employees? Private commercial entities seem to use customer surveys for such purposes frequently.