

Comment from Special Counsel Matthew Wiener on *Identifying and Reducing Burdens in Administrative Processes*
November 6, 2023

My comments follow. Nearly all, I think, are best directed to the Committee on Style. The obvious exception are my comments on lines 25-28.

Line 10: Consider deleting "depending on what the processes require." This qualification strikes me as so obviously implied as not to require mention.

Lines 25-28: Consider a revision along the following lines: "Administrative burdens fall disproportionately on certain members of historically underserved communities (including disabled people), the elderly, those for whom English is not their primary language, and persons of limited literacy." This revision avoids the awkward and perhaps redundant phrasing that "Individuals who face disproportionate burdens . . . often bear the largest total burdens," and substantively accomplishes four things: (1) implicitly acknowledges that not all people from "historically underserved communities" (at least as that term is used in EO 13,985) are disproportionately burdened; (2) treats disabled people as members of such communities rather than as a separate category (see EO 13,985); (3) adds what may be an important additional category, i.e., elderly people (see, e.g., Cass Sunstein's work on "sludge"); and (4) adds the additional category of people of limited literacy (I'm not sure of the best term here). A final, related comment: poor people are an important category here, but they're covered by the phrase "historically underserved communities." The only question is whether, like disabled people, they should be identified for emphasis.

Lines 32-33: Just say "Circular A-11" rather than referring to the "present Administration." (It's clear from the date in the citation to what version the Committee is referring.) If the Committee wants to attribute it to the current administration, the sentence should be rephrased to eliminate the awkward phrase "[OMB] in the present Administration . . . Circular A-11." Better to say something like "Circular A-11, as revised by the current Administration, . . ."

Line 33 and fn. 6: Consider defining the phrase "customer life experiences" in the text. It shouldn't be necessary to read the footnotes to understand a recommendation.

Line 34: Here again, consider moving the definition to the text.

Line 49: Replace "where" with "how."

Line 58: I think "identifies" is better than "sets out."

Line 64: replace "OMB, to" with "OMB that."

Line 77: "life experiences" should probably be defined in a parenthetical so that the recommendation is self-contained and not reliant on terminology from the preamble, per ACUS's customary practice.

Line 86: Change "consultation" to "consultative"?

Lines 100-101: For the reasons given above w/ respect to line 77, should "learning, compliance, and psychological costs," defined in the preamble, be defined here?

Line 104: If the Committee wishes to avoid the non-recommendatory language in the full sentence on line 104, per the general preference of the Assembly, it could revise lines 103-104 to read: "Agencies should periodically review their administrative processes to identify opportunities to simplify them by, as appropriate," (Further qualify if you want the list to be non-exhaustive.)

Line 123: Explain what "access their own personal information" means in this context

Line 130: Here, as in line 104, consider using recommendatory language.

Line 132: "low bono" should be defined.

Line 139: "Provide them" is awkward. I think "identify" is intended.

Heading "Agency Responsibilities" (page 8): Use a more specific/descriptive heading?

Line 156: Consider avoiding the term "stakeholder" to refer to agency staff. Something like "other relevant" staff would be better. See also line 60 fn. 13.

Last section of recommendations under heading "Guidance on Conducting Customer Experience Research": Consider putting OMB in the heading and creating a separate heading for the recommendations directed to Congress.

VERY MINOR EDITS:

Line-specific:

Line 20: delete the comma.

Line 69 (footnote): Begin note with "see also."

Line 72: add "that" before "the public"?

Line 113: include a comma after "signatures"?

Line 122: subject-pronoun disagreement: say "members of the public" (as elsewhere)?

Line 148: Change "with" to "to"?

Line 155: "their" rather than "it"?

Line 156: Use lower case "G" in "general" and "C" in "counsel." See also page 4 fn. 13. Any proper nouns here?

Global:

Capitalize the "R" in recommendation when referring to this recommendation, per the ACUS style guide.

Search "Government" and, where it doesn't start a sentence, make the "g" lowercase.

Search "See also." and replace, unless the context requires otherwise, with "; see also."

Review the use of "where" for consistency with the ACUS style guide. It's overused.

Abbreviate the months in citations.

Replace hyphens with en-dashes to reflect a range in citations.