

REPORT FOR THE
ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

**IDENTIFYING AND REDUCING BURDENS
IN ADMINISTRATIVE PROCESSES**

Pamela Herd
Georgetown University

Donald Moynihan
Georgetown University

Amy Widman
Rutgers Law School

This report was prepared for the consideration of the Administrative Conference of the United States. It does not necessarily reflect the views of the Conference (including its Council, committees, or members).

Recommended Citation

Pamela Herd, Donald Moynihan, & Amy Widman, Identifying and Reducing Burdens in Administrative Processes (Dec. 5, 2023) (report to the Admin. Conf. of the U.S.)

IDENTIFYING AND REDUCING BURDENS IN ADMINISTRATIVE PROCESSES

*Pamela Herd, Donald Moynihan, & Amy Widman**

Table of Contents

INTRODUCTION	2
I. DEFINITIONS	3
II. METHODOLOGY	4
III. BACKGROUND	6
A. LEGAL FRAMEWORK	6
1. Agency Prioritization.....	6
2. Data Collection.....	7
3. Data Management.....	8
4. Simplification.....	9
B. POLICY ARCHITECTURE.....	10
C. LITERATURE REVIEW	13
IV. EXISTING AGENCY PRACTICES TO IDENTIFY AND REDUCE BURDENS	19
A. BUILDING CULTURE: PUT THE PUBLIC AT THE CENTER	20
B. CAPACITY: HAVE A DEVOTED CUSTOMER EXPERIENCE TEAM	25
C. COLLABORATION: BUILD COLLABORATIVE TEAMS DEDICATED TO BURDEN REDUCTION	26
D. SIMPLIFYING: INCREASE ACCESS BY SIMPLIFYING PROCESSES AND PROVIDING SUPPORT	27
V. DEVELOPING INNOVATIVE PRACTICES TO IDENTIFY AND REDUCE BURDENS	31
A. ORGANIZATIONAL CULTURE, INCLUDING BUILDING APPROPRIATE CAPACITY, WHICH FOCUSES ON BURDEN REDUCTION.....	31
B. COLLABORATION: CROSS DEPARTMENT AND CROSS GOVERNMENTAL COLLABORATION	35
C. BUILDING CAPACITY: PROVIDING ASSISTANCE WITH ACCREDITED REPRESENTATIVES AND OMBUDS	40
D. CRITICAL ANALYTIC TOOLS: RETHINKING COST BENEFIT ANALYSIS AND REQUIREMENTS.....	42
E. CRITICAL DATA TOOLS: MODERNIZING AND EXPANDING DATA MATCHING AND SHARING	43
VI. RECOMMENDATIONS	45
1. RECOMMENDATION FOR FEDERAL AGENCIES: ADOPT AND BUILD UPON EXISTING POSITIVE PRACTICES	45
2. RECOMMENDATION FOR FEDERAL AGENCIES: BUILDING CULTURE BY IMPROVING COLLABORATION WITH GENERAL COUNSELS AND THIRD-PARTY ORGANIZATIONS	45
2.A. Encourage General Counsels to Join Burden Reduction Efforts.....	46
2.B. Leverage Third Parties to Expand Representation.....	46
2.C. Leverage Existing Federal Agencies to Expand Access	46
3. RECOMMENDATION FOR OMB: BUILDING BETTER ANALYTICAL TOOLS BY EXPANDING MEASURES OF BURDEN	47
4. RECOMMENDATION FOR OMB: BUILDING CRITICAL ANALYTIC TOOLS BY INCORPORATING BURDEN INTO COST-BENEFIT ANALYSIS	48
5. RECOMMENDATIONS FOR OMB AND CONGRESS: MODERNIZE DATA-SHARING GUIDANCE AND LAWS	48
5.A Recommendation for OMB: Working Within Existing Statutory Requirements	49
5.B Recommendation for Congress: Modernize Data Sharing Statutory Rules.....	49
6. RECOMMENDATION FOR OMB AND CONGRESS: PUT THE PUBLIC AT THE CENTER BY BETTER LEVERAGING THE PAPERWORK REDUCTION ACT	50
CONCLUSION	51

INTRODUCTION

This project seeks to identify best practices that agencies are using to identify and reduce unnecessary burdens that members of the public and public service providers face when they engage with administrative programs or participate in administrative processes. The report defines administrative burdens; reviews current statutory and policy frameworks that guide agency policies governing identification and reduction of burdens; situates the study of administrative burdens within the universe of Administrative Conference of the U.S. (ACUS) recommendations; explores how agencies currently identify and attempt to reduce such burdens, including particular situations involving cross-agency collaboration; and highlights what works and examines the legal, policy, technological, and internal organizational constraints that can impede the identification and reduction of burdens. The report focuses on the connection between elimination of burdens and increasing access to justice for those who are underrepresented in the administrative architecture.

This report has four main objectives. First, it provides background on the legal and regulatory landscape related to burden identification and reduction in federal agencies. Next, it describes existing agency practices to identify and reduce burdens that predate the new Executive Orders (EOs) focused on reducing burden. It then details innovative strategies that agencies have begun to employ in recent years, highlighting some successes as well as challenges and areas on which to build and expand these strategies. Finally, it offers conclusions and recommendations for how agencies, and sometimes other institutional actors, can improve their efforts to identify and reduce burdens.

Part I defines various burdens and how they appear throughout the administrative system. Part II describes our methodology. Part III lays out necessary background, including the relevant statutory framework, the policy architecture created by various EOs and guidance from the Office of Management and Budget (OMB), and various literature studying burdens in administration and administrative law. Part IV describes strategies that are ingrained in agency practice with some success at identifying and reducing burdens. Part V builds on these practices and highlights where current challenges are being addressed and how practices can be improved upon. Part VI focuses on recommendations that can expand best practices throughout the agencies.

Some preliminary notes are in order. First, this report does not claim to address all agency experiences with burden reduction. Our focus was primarily on agencies with public-facing interactions as a large part of their mission. Some agencies may not directly serve the public, such as regulatory agencies or scientific agencies. However, administrative burden reduction efforts are still relevant. This can include burdens imposed on stakeholders, other governments, partners, or grantees. For example, OMB has embarked upon an effort to better identify and reduce burdens experienced by tribal governments seeking federal grants.¹ Federal employees

* Mario Bennetti (Rutgers Law) and Frederick Davis (Rutgers Law) provided outstanding research assistance on this project, including participating in and providing detailed notes and summaries of many Zoom interviews that form the basis of the field work for the Report.

also experience administrative burdens. The same tools to identify and reduce burdens on the public can be used to reduce burdens on these other groups.² In this report, we focused on external burdens rather than agency work to identify and reduce internal (employee-related) burdens. Second, while this report discusses particular legal constraints on agency action to reduce burdens, it does not propose particular statutory language or analyze the legality of any statutory changes in this area. Third, the report relies on information from a variety of sources, some publicly available and others learned from interviews with agency leadership and staff. All interviews were premised as background only. Accordingly, information learned from these interviews, including any quotations, are included herein anonymously.

Finally, we want to clearly acknowledge the ways that Congressional action, or lack thereof, will influence agencies' ability to most effectively reduce administrative burdens. First, agencies need to have sufficient capacity and resources to most effectively reduce burdens. Inadequate resources will limit the extent to which agencies can take action. Second, agencies will face clear statutory constraints. The key is leveraging potential flexibilities and opportunities within that statutory language. Third, burden reduction will be significantly more successful if Congress, in addition to the Executive Branch, takes burden reduction seriously, not only with sufficient funding and statutory changes, but also attention to statutory accountability. If Congress fails to better incorporate attention to administrative burdens as part of its oversight responsibility, agencies will have less incentive to prioritize reducing those burdens on members of the public. Finally, Congress also needs to carefully consider administrative burdens in policy design. Complex eligibility criteria, as well as definitions such as what constitutes income, which vary across policies and programs, constrain burden reduction efforts.³

I. Definitions

We define administrative burdens as onerous experiences people encounter when they interact with public services. In this report, we focus on those seeking to access government benefits or services. More precisely, these burdens entail three specific costs, detailed in Table 1 below: learning costs, compliance costs, and psychological costs. Identifying specific costs is useful because it can then help identify interventions to reduce them. For example, if the central burden

¹ *Understanding Tribal Nations Experiences Accessing Federal Grants*, PERFORMANCE.GOV, <https://www.performance.gov/cx/life-experiences/understanding-tribal-experiences-accessing-grants/>.

² For example, the U.S. Agency for International Development launched a Burden Reduction Program to eliminate processes that are “low-value, overly time-consuming, outdated or unproductive” by reviewing and eliminating unnecessary forms while simplifying necessary ones, shifting to simplified grant and travel reimbursement processes. Reducing these internal burdens gives employees more time to focus on mission-related activities. *See Policy Framework: Driving Progress Beyond Programs*, United States Agency for International Development (March 2023), https://www.usaid.gov/sites/default/files/2023-05/Policy%20Framework%20%28V16%29%2005-04-2023_2.pdf.

³ Positive legislative models include the pandemic relief payments, which had simple eligibility requirements that made it easy to keep burdens low, as well as providing agencies with the legal authority to access needed data to keep burdens low. The FAFSA Simplification Act (2022) simplified formulas for student aid and better aligned them to Internal Revenue Service (IRS) data now available via the Fostering Undergraduate Talent by Unlocking Resources for Education Act (FUTURE Act). This illustrates a policy effort where there was prolonged bipartisan legislative support to reduce burdens, creating a new policy framework that enabled and then exploited data sharing.

is a learning cost, or people don't know about the nature of the service and how to apply for it, obvious solutions are to use informational treatments that provide such information or adjust processes so that such detailed knowledge is not necessary.

Administrative burden includes three types of costs: learning costs include finding out whether one is eligible for a program, what forms need to be completed, or how to apply for and stay on public programs; compliance costs include tasks such as completing and submitting forms, providing documentation for eligibility criteria, time or financial costs spent on the process; and psychological costs include stress, frustrations, anxiety, loss of autonomy, or a sense of stigma.⁴ While much of the focus on administrative burdens centers on application or renewal processes, they also extend to redemption costs in using public services, a particular kind of learning cost.⁵

Table 1: Learning, compliance, and psychological costs associated with administrative burdens

Learning costs	Time and effort expended to learn about the program or service, ascertain eligibility status, the nature of benefits, conditions that must be satisfied, and how to gain access.
Compliance costs	Provision of information and documentation to demonstrate standing; financial costs to access services (such as fees, legal representation, travel costs); avoiding or responding to discretionary demands made by administrators.
Psychological costs	Stigma arising from applying for and participating in an administrative process; loss of autonomy that comes from intrusive administrative supervision; frustration at dealing with learning and compliance costs, unjust or unnecessary procedures; sense of fear from dealing with administrative actors that hold power over the individual; stresses that arise from uncertainty about whether a citizen can negotiate processes and compliance costs.

Adapted from Herd and Moynihan (2018)

II. Methodology

At the request of ACUS, we prepared this report to examine the legal and policy frameworks guiding how agencies minimize burdens on the public and, through wide-ranging research, synthesize successful strategies that agencies can employ to increase access to their programs and benefits while remaining within these statutory and policy boundaries. To identify best practices, we conducted our own legal and policy research, engaged in an interdisciplinary literature review, shared expertise among the three project consultants with an interdisciplinary legal, sociological and public administration focus, conducted interviews with a variety of agencies (including follow ups and review of documents with particular units within agencies),

⁴ PAMELA HERD AND DONALD P. MOYNIHAN, ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS (Russell Sage Foundation 2019).

⁵ Carolyn Barnes, "It Takes a While to Get Used To": The Costs of Redeeming Public Benefits. 31 J. PUB. ADMIN. RSCH. & THEORY 295 (2021).

and reviewed comments from the public submitted through a posted request for information.⁶ All public comments received from that request are posted on the ACUS webpage for this project.⁷

All interviews were conducted via Zoom and were considered as background interviews. Accordingly, agency staff spoke with an expectation of anonymity. Decisions about which agencies to interview were iterative and made throughout the eight-month study period, starting with many of the agencies designated as “high impact service providers” by OMB as part of its implementation of EO 14,058.⁸ We developed and refined the original list as more information was acquired through the interview process. If follow-up interviews were required with other agency staff, we met more than once with some agencies and sub-agencies.

That said, we spoke with various staff and officials from a range of executive agencies, including the Department of Agriculture (USDA), the Department of Commerce, the Department of Education, the Department of Health and Human Services (HHS), the Department of Housing and Urban Development (HUD), the Department of Homeland Security (DHS), the Department of Labor (DOL), the Department of Treasury, the Department of Veterans Affairs (VA), and the Social Security Administration (SSA).

We asked open-ended questions and had wide-ranging discussions regarding the practices these agencies had found beneficial to aid with identifying and reducing external burdens, as well as challenges associated with burden reduction work. We aimed to speak with people occupying a variety of positions within agencies, including general counsel, data information specialists, customer experience personnel, program managers, and others. We heard from both political and career employees. We also interviewed various officials at oversight agencies such as the Office of Information and Regulatory Affairs (OIRA) within OMB and the U.S. General Services Administration (GSA).

Finally, the scope of this report and any associated recommendations are grounded in detailed review of a variety of informal adjudication processes and other public-facing agency services, including benefits programs, state/federal partnerships with respect to benefits programs, administrative processes, compliance services, informational services, and data collection/data-sharing.⁹ The interviews and document reviews that form the basis of this report did not focus on burdens associated with regulatory services, such as agency rulemaking and enforcement practices.¹⁰

⁶ Identifying and Reducing Burdens in Administrative Processes; Request for Comments, 88 Fed. Reg. 9851-852 (Feb 15, 2023).

⁷ *Identifying and Reducing Burdens in Administrative Processes*, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, <https://www.acus.gov/research-projects/identifying-and-reducing-burdens-administrative-processes>.

⁸ OFFICE OF MGM'T & BUDGET, DESIGNATED HIGH IMPACT SERVICE PROVIDERS, OMB CIRCULAR A-11 PART 6 SECTION 280 (2022).

⁹ See Bijal Shah, *Administrative Subordination*, at 24 (Mar. 17, 2023) U. Chi. L. Rev., Forthcoming, Available at SSRN: <https://ssrn.com/abstract=4392123>. Bijal Shah has written about the ways in which institutional focus on efficiency can harm vulnerable communities in regards to the Bureau of Land Management expedited granting of gas and oil leases in rural towns.

¹⁰ The Office of Information and Regulatory Affairs (OIRA) is currently engaged in a multi-year project to modernize regulatory review. Proposed reforms interact in multiple ways with the burden reduction and equity initiatives prioritized by the Biden Administration but are outside the scope of this project. See *Modernizing Regulatory Review*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS,

III. Background

A. Legal Framework

Congress has a large role in structuring the framework governing how agencies can identify and reduce burdens. While at times Congress can and does legislate to solve particular burden issues at particular agencies,¹¹ more often legislation addresses agency processes on a more general scale and rarely considers burden reduction as a legislative priority either in policy design, budgeting investments or accountability processes. But there are frameworks in place that collectively justify greater attention to burden reduction and the use of data and evidence to address it. The following is an overview of the main statutory requirements that steer agencies in their burden reduction work. These include the general federal privacy laws as well as laws governing how agencies should incorporate burden reduction. These statutory mandates and constraints overlap with a variety of burden-related areas, including agency prioritization, data collection, data management, and other simplification best practices. In addition to the following federal laws, there are benefit-specific laws that govern how each agency can use data generated through program administration, as well as laws governing data security and medium. Due to the immense variation of benefit-specific laws, this Report focuses on the general legal landscape, while acknowledging this is merely the minimum legal requirements each agency must address when considering burden reduction opportunities.

1. Agency Prioritization

GPRA Modernization Act

The Government Performance and Results Act (GPRA) Modernization Act builds on previous statutory planning and reporting requirements to move agencies toward a more systematic strategic planning and performance reporting.¹² Such planning encourages inter-agency collaboration and coordination and increases public access to agency priorities. Additionally, the GPRA Modernization Act encourages reliance on evidence-based policymaking.¹³

OMB Circular No. A-11 instructs Executive agencies on the various requirements to fulfill their Strategic Plans.¹⁴ In 2022, the Circular added Section 280 to incorporate the Biden Administration's customer experience priorities.¹⁵ Section 280 describes in detail the purpose of the customer experience focus and the methods for agencies to take inventory of service delivery touchpoints, identifies agency structural and organizational methods to prioritize customer experience, and moves on to more holistic understandings of how people engage with various

<https://www.whitehouse.gov/omb/information-regulatory-affairs/modernizing-regulatory-review/> (last visited May 22, 2023).

¹¹ See, e.g., FUTURE Act revamping FAFSA process: Fostering Undergraduate Talent by Unlocking Resources for Education Act, 116 Pub. L. No. 91, 133 Stat. 1189 (2019).

¹² GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011).

¹³ OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR A-11, PREPARATION, SUBMISSION AND EXECUTION OF THE BUDGET (2023)(2022). This circular explains the planning and reporting requirements under the Act.

¹⁴ *Id.*

¹⁵ Exec. Order No. 14,058, 86 Fed. Reg. 71,357 (December 16, 2021).

agency services and how agencies can improve their service design. In short, Circular A-11 pushes agencies to better incorporate customer experience goals into regular strategic planning and performance reporting requirements.

American Rescue Plan Act / Inflation Reduction Act

The American Rescue Plan Act (ARPA) was passed in 2021 to help people access relief from the impact of COVID-19 on all areas of life.¹⁶ The Act also provides Congressional authority for burden reduction innovations in order to make such relief easier to access, such as modernizing unemployment compensation systems.¹⁷ ARPA provides necessary funding for agencies to hire and build support for better customer experience and data management, although such funding is temporary. Some of these funds have been continued through incorporation into the Inflation Reduction Act.¹⁸ Both of these laws play a large role in providing agencies with the financial support needed to improve service delivery.

2. Data Collection

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) governs how agencies collect information from the public. Generally, information collection requests to 10 or more members of the public require OIRA clearance, publication in the Federal Register, and comment and review periods.¹⁹ OIRA reviews the information being collected and the burden hours being asked of the public to ensure that any burdens are minimized while still meeting particular program goals.²⁰ The Act has particular relevance here because information collection requests such as forms and applications for benefits and grant programs make up a large portion of the administrative burdens the public shoulders when interacting with the government. Additionally, other statutory reporting requires agencies to track outcomes of burden reduction processes through feedback surveys which are also governed by the PRA.

OMB issued additional guidance for agencies as to how best to meet these burden reduction priorities while remaining within statutory requirements under the Act.²¹ In particular, agencies are encouraged to use the many types of information collection processes that are not governed by the PRA, for example, direct observations and listening sessions.²² In addition, OMB has

¹⁶ American Rescue Plan Act, Pub. L. No. 117-2, 135 Stat. 4 (2021).

¹⁷ *Unemployment Insurance Modernization*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/eta/ui-modernization> (last visited May 23, 2023).

¹⁸ Inflation Reduction Act, Pub. L. No. 117-169 (2022).

¹⁹ Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501 et seq.

²⁰ 5 C.F.R. § 1320.8(d)(1)(ii).

²¹ OFF. OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, M-22-10, *Improving Access to Public Benefits Programs Through the Paperwork Reduction Act* (Apr. 18, 2022). See also OFF. OF MGMT. & BUDGT, EXEC. OFF. OF THE PRESIDENT, *Testing and Simplifying Federal Forms* (Aug. 9, 2012).

²² OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, *Exclusions to the Regulatory Definition of "Information" Under Paperwork Reduction Act*, https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/inforeg/inforeg/memos/2014/appendix-data-search-tools-calculators.pdf

issued guidance about flexibilities in meeting PRA requirements under general clearance programs.²³ An ACUS Report from 2018 stressed that these flexibilities are not used as often as expected and recommended more training to spur greater agency use of expedited clearance processes and other ways to collect the information needed to improve processes within the boundaries of the PRA.²⁴

3. Data Management

Computer Matching and Privacy Protection Act of 1988

The Computer Matching and Privacy Protection Act of 1988 governs the process agencies must use when sharing certain types of records with other federal or non-federal agencies through computerized matching programs for the purpose of determining eligibility, compliance, or debts associated with federal benefits programs.²⁵ This amendment to the Privacy Act requires specific written agreements before any computerized sharing of “personally identifiable records maintained in a system of records subject to the Privacy Act” as well as the creation of Data Integrity Boards at each federal agency to oversee the agreements.²⁶ In 1990, the Act was amended to further address due process concerns and to authorize a Data Integrity Board to waive certain procedures regarding independent verification of data.²⁷

The Act itself does not create authority for data matching programs; it instead governs the general process for such agreements once statutory authority already exists. Congress can also prescribe additional processes for particular programs.²⁸ Due to the Act’s rigid requirements, confusion about its scope, and the short time period for a computer matching program, the U.S. Government Accountability Office (GAO) reported that agencies are somewhat discouraged from seeking out opportunities to share data.²⁹

(last visited Nov. 29, 2023). See also OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, *Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act* (April 7, 2010).

²³ OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, *Flexibilities under the Paperwork Reduction Act for Compliance with Information Collection Requirements* (July 22, 2016); see also OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M11-26, *New Fast-Track Process for Collecting Service Delivery Feedback Under the Paperwork Reduction Act* (June 15, 2011).

²⁴ Admin. Conf. of the U.S., Recommendation 2018-1, *Paperwork Reduction Act Efficiencies*, 83 Fed. Reg. 30683 (June 29, 2018)..

²⁵ Computer Matching and Privacy Protection Act of 1988, 5 U.S.C.S. § 552a(a)(8) (1988).

²⁶ *Computer Matching Programs*, U.S. DEPARTMENT OF THE TREASURY, <https://home.treasury.gov/footer/privacy-act/computer-matching-programs> (last visited Mar. 25, 2023).

²⁷ Omnibus Budget Reconciliation Act, Pub. L. No. 101-508 § 7201 (Nov. 5, 1990). A clear example of the kind of data exchange that is eligible for waiver consideration is the furnishing to States by the Social Security Administration of Cost of Living Adjustment (COLA) information that consists of the name of the benefit recipient, the benefit amount including amount of the COLA change, and other information. In this example, the name and benefit amount would be eligible for the waiver procedure while the other information would not. See 56 Fed. Reg. 18,599 (Apr. 23, 1991).

²⁸ See for example the specific statutory provisions governing any data sharing with the IRS (from IRS interview, Dec. 14, 2022).

²⁹ *Computer Matching Act: OMB and Selected Agencies Need to Ensure Consistent Implementation*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (Jan. 13, 2014), <https://www.gao.gov/products/gao-14-44>.

Even so, over the past decade there have been 434 Notices of Matching Agreements published in the Federal Register, for an average of 44 agreements per year. Roughly half of these agreements are categorized in the Federal Register under “Health & Public Welfare.” The agencies initiating the most matching agreements are: SSA, HHS, VA, Federal Communications Commission, the Department of Education, Centers for Medicare & Medicaid Services, DHS, and HUD.

The Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act)

The Evidence Act requires the federal government to modernize its data management practices.³⁰ The Act adds to requirements in GPRA Modernization Act and OMB Circular A-11 to embed best practices for evidence-based policy-making in agency strategic planning. Specifically, the Act created the Chief Data Officers Council “to establish government-wide best practices for the use, protection, dissemination, and generation of data; promote and encourage data sharing agreements between agencies; identify ways in which agencies can improve upon the production of evidence for use in policymaking; consult with the public and engage with private users of Government data and other stakeholders on how to improve access to data assets of the Federal Government; and identify and evaluate new technology solutions for improving the collection and use of data.”³¹

4. Simplification

21st Century Integrated Digital Experience Act (21st Century IDEA)

The 21st Century Integrated Digital Experience Act (“21st Century IDEA”) requires agencies to assess their digital services and prioritize those with the highest impact for usability improvements.³² All Executive agencies must take inventory of the services that the agency provides and maintain processes for each service, with a focus on increasing digital service provision. The law requires agencies to draft plans regarding expansion of digital forms and services,³³ including electronic signatures,³⁴ as well as website modernization to incorporate website standards.³⁵ Further OMB guidance is due soon on a broader range of issues with respect to further implementation of the Act.

Plain Writing Act of 2010

The Plain Writing Act requires all federal agencies to use clear government communication that the public can understand and use.³⁶ Simplification of legal processes generally, and with this statute, simplification of government documents, is a major tenet of many access to justice

³⁰ Foundations for Evidence Based Policy-making Act of 2018, 115 Pub. L. No. 435, 132 Stat. 5529 (2019).

³¹ OFF. OF MGMT. & BUDGT, EXEC. OFF. OF THE PRESIDENT, M-19-23, *Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance* (July 10, 2019).

³² 21st Century Integrated Digital Experience Act, 115 Pub. L. No. 336, 132 Stat. 5025 (2018).

³³ *Id.* at § 4.

³⁴ *Id.* at § 5.

³⁵ *Website Standards*, U.S. WEB DESIGN SYSTEM (USWDS), <https://designsystem.digital.gov/website-standards> (last updated Jan. 22, 2020).

³⁶ Plain Writing Act of 2010, 111 Pub. L. No. 247, 124 Stat. 2861 (2010).

advocates. OMB issued final guidance that encourages agencies to communicate in a clear and concise manner with the public, establish a public-facing implementation plan, and encourage comments from the public on areas for improvement.³⁷ In 2017, ACUS issued its own recommendations to agencies as to concrete steps agencies can make to their internal drafting guidelines to further the goals of this Act.³⁸

B. Policy Architecture

In addition to the complex statutory framework potentially governing burden reduction initiatives throughout federal agencies, there is a clear policy architecture that prioritizes customer experience in government agency interactions. The White House has prioritized identification and reduction of burdens, particularly as such burdens fall to marginalized communities, through a series of EOs and Memorandums. On his first day in office, President Biden signed EO 13,985 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), which requires agencies to “recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.”³⁹ Additionally, President Biden signed a memorandum on Modernizing Regulatory Review the same day, which directed OMB to recommend practices that would “ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities.”⁴⁰

Particularly relevant to this project, and building on many past steps toward improving government service to the public,⁴¹ the Biden administration prioritized customer experience (CX) through EO 14,058 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government).⁴² This CX EO mandated that the federal administrative system “reduce administrative hurdles and paperwork burdens to minimize ‘time taxes,’ enhance transparency, create greater efficiencies across Government, and redesign compliance-oriented processes to improve customer experience....”⁴³ The EO also builds on a bipartisan history of executive attention to customer service. Since Customer Service Week under President George H.W. Bush in 1992, every president has engaged in some initiative to improve customer service delivery, especially for federal agencies that interact more directly with the public.

While not the first administrative effort to enhance customer experience, the current iteration is different in a few ways.

People first. First, the emphasis on experience was not just limited to those who are able to find government services; now the government should actively identify and reach out to those who

³⁷ OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-11-15, *Final Guidance on Implementing the Plain Writing Act of 2010* (Apr. 13, 2011).

³⁸ Admin. Conf. of the U.S., Recommendation 2017-3, *Plain Language in Regulatory Drafting*, 82 Fed. Reg. 61728 (Dec. 29, 2017).

³⁹ Exec. Order No. 13,985, 86 Fed. Reg. 7009 (Jan. 25, 2021).

⁴⁰ Exec. Order No. 14,094, 88 Fed. Reg. 21,879 (Apr. 11, 2023).

⁴¹ *See, e.g.*, Exec. Order No. 13,571, 76 Fed. Reg. 24,339 (May 2, 2011); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-11-24, *Implementing Executive Order 13571 on Streamlining Service Delivery and Improving Customer Service* (June 13, 2011); and Exec. Order 13,576, 76 Fed. Reg. 35,295 (June 16, 2011).

⁴² Exec. Order 14,058, 86 Fed. Reg. 71,357 (Dec. 16, 2021).

⁴³ *Id.* at § 2.

are eligible for those services.⁴⁴ Furthermore, the EO encourages agencies to look for root causes of problems that create burdens, including existing legal and regulatory barriers.⁴⁵ Finally, the EO sets out a goal to simplify the process of interacting with federal websites via a digital “Federal Front Door” that allows users to quickly find key benefits, services and programs within one to three clicks. This is sometimes referred to as a “No Wrong Door” principle. It tries to reduce learning costs and ensure that people do not give up because they cannot navigate confusing websites.

Moments that matter. The EO directs attention to big agencies and programs, but it also frames the effort to fix people’s experience of government around key life experiences.⁴⁶ Some of these moments might be mundane or predictable—retiring, traveling, or paying taxes, seeking funding for a small business—and some are extraordinary and stressful—experiencing food insecurity, having a child, or experiencing a disaster. People usually need help from multiple government providers at such moments, but they might feel too overwhelmed to figure out the different offices they need to navigate. Thinking about government services through the lens of how the public experiences such moments makes it more likely that they can be structured in a way that makes them more accessible.

An ongoing governmentwide set of routines. The EO institutionalizes a set of routine interactions within agencies, and between agencies and OMB, who have primary responsibility for both helping agencies and holding them accountable for living up to the demands of the EO.

- OMB must routinely “select a limited number of customer life experiences to prioritize for Governmentwide action to improve customer experience.”
- OIRA must propose ways to reduce paperwork burdens on the public.
- The leaders of 35 “High Impact Service Providers” who engage with the public must designate specific areas for improvement and report back to OMB each year with results and new targets.
- Agencies are required to embed customer improvement efforts into existing strategic planning and performance reporting processes that are required by law, helping to ensure that these reforms are not seen as distinct from existing performance management requirements.

Data-sharing and cross-agency cooperation as solutions. The EO requires that federal agencies work together to reduce burdens. Many of the recommendations, such as automatic enrollment and pre-populating forms, require that agencies share data and information.

⁴⁴ “Government must also work to deliver services more equitably and effectively, especially for those who have been historically underserved. Strengthening the democratic process requires providing direct lines of feedback and mechanisms for engaging the American people in the design and improvement of Federal Government programs, processes, and services.”

⁴⁵ “[A]gencies’ efforts to improve customer experience should include systematically identifying and resolving the root causes of customer experience challenges, regardless of whether the source of such challenges is statutory, regulatory, budgetary, technological, or process-based.”

⁴⁶ *Customer Experience Projects*, PERFORMANCE.GOV, <https://www.performance.gov/cx/projects>.

Better measure and track burdens. OMB has provided guidance to the agencies as to expectations regarding agency engagement with burden assessment, including how to “(1) more completely and transparently articulate burdens and associated costs experienced by the public when accessing essential public benefits programs, and (2) use that analysis to ‘minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected.’”⁴⁷ OMB guidance requires that agencies consider every step in the process of an information collection in order to transparently estimate the associated burden. In order to do this, OMB encourages robust consultation with users to ensure burden estimates are correct. Even so, evidence points to a significant underestimating of the burdens experienced by people. For example, agencies often consider the number of pages and the time spent per page for burden estimation under the PRA. Less common is a robust accounting of the tangential burdens associated with filling out the form, including researching which form is relevant, finding the correct form, getting answers to questions about wording, and navigating various state requirements that might require additional steps once any form is completed.⁴⁸

In addition to using the PRA “generic clearance” process, OMB recommends agencies expand consultative processes to include forms of engagement that are not subject to the PRA.⁴⁹ The ultimate goal is to use the burden assessment and associated consultations to identify and plan for burden reductions. Specific areas ripe for burden reduction innovations include: outreach and notice of eligibility; policies that auto-enroll or cross-enroll eligible participants; and mitigation of disproportionate barriers to access due to disability, English language proficiency,⁵⁰ digital access, transportation barriers, employment barriers, housing insecurity, and other life circumstances that would amplify the time, learning, and psychological costs attached to the agency program.⁵¹

The President’s Management Agenda, which guides implementation efforts across government, has also identified “delivering excellent, equitable, and secure federal services and customer experience” as one of its three goals.⁵²

Finally, ACUS has studied and reported out recommendations on many areas related to increasing access to federal programs and benefits, which tangentially operate to minimize types of burdens on the public. ACUS has studied and provided recommendations to increase public engagement in rulemaking,⁵³ increase access to a variety of agency documents,⁵⁴ simplify

⁴⁷ See OMB M-22-10, *supra* note 21.

⁴⁸ See response to ACUS Request for Information.

⁴⁹ *Id.* See also OFF. OF MGMT. & BUDGT, EXEC. OFF. OF THE PRESIDENT, *Behavioral Science Insights and Federal Forms* (Sept. 15, 2011). This memo specifically explains the *de minimis* PRA exception.

⁵⁰ Exec. Order 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

⁵¹ See OMB M-22-10, *supra* note 21.

⁵² *Delivering Excellent, Equitable, and Secure Federal Services and Customer Experience*, PERFORMANCE.GOV <https://www.performance.gov/pma/cx>.

⁵³ See, e.g., Admin. Conf. of the U.S. Recommendations 2018-7, *Public Engagement Rulemaking*, 86 Fed. Reg. 2146 (Feb. 6, 2019); 2021-3, *Early Input on Regulatory Alternatives*, 86 Fed. Reg. 36,082 (July 8, 2021); and 2017-2, *Negotiated Rulemaking and Other Options for Public Engagement*, 82 Fed. Reg. 31,039 (Jul 5, 2017).

⁵⁴ See, e.g., Admin. Conf. of the U.S. Recommendations 2018-6, *Improving Access to Regulations.gov's Rulemaking Dockets*, 84 Fed. Reg. 2143 (Feb 6, 2019); 2021-7, *Public Availability of Inoperative Agency Guidance Documents*, 87 Fed. Reg. 1718 (Jan. 12, 2022); 2019-3, *Public Availability of Agency Guidance Documents*, 84 Fed. Reg. 38,931

various agency interactions,⁵⁵ and improve the experience of unrepresented parties in informal adjudication processes.⁵⁶ The White House Legal Aid Interagency Roundtable, of which ACUS is an active member, recently released a report further highlighting the need for greater simplification of agency procedures to enable people to navigate government services and benefits without need for a lawyer.⁵⁷ This project incorporates and supplements these recommendations with a sharper focus on how agencies can take specific steps, either internally or in conjunction with other agencies or institutions, to improve access to benefits or programs designed for public use.

C. Literature Review

There is an interdisciplinary literature that is relevant to this project. This literature stems from multiple fields, including legal academia, the access to justice movement, public governance, and social science studies. Part of this project entails bringing an interdisciplinary lens to the daily workings within agencies. In parts IV-VI of this Report, we will discuss in detail how breaking down silos within and across agencies is a central best practice toward developing programs that reduce burdens. We start here with explaining how the various strands of literature have addressed these issues to date. The following part synthesizes these various strands of literature to highlight a common theme regarding the need for rethinking and structuring administrative agencies and processes from the perspective of those who access and use these Federal services.

Legal academia has been slow to develop a coherent body of scholarship related to reforming administrative law from the perspective of regulatory beneficiaries. One reason for this lies in administrative law's historical top-down view that tends to focus on constraining agency action.⁵⁸ Using the role of law and procedure as a primary means to provide legitimacy of administration has shaped administrative law scholarship for decades. While administrative law scholars have long focused on public participation, this focus tends to be rooted in the perceived democratic legitimacy value of participation, rather than the policy and design benefits that accrue from robust and diverse participation. Nor has consideration of the burdens associated with access for those who are underrepresented been the goal of increased public participation in agency decision-making.⁵⁹ Additionally, legal scholarship tends to address agencies as

(Aug. 8, 2019); 2020-5, *Publication of Policies Governing Agency Adjudicators*, 86 Fed. Reg. 6622 (Jan. 22, 2021); 2021-6, *Public Access to Agency Adjudicative Proceedings*, 87 Fed. Reg. 1715 (Jan. 12, 2022); 2017-1, *Adjudication Materials on Agency Websites*, 82 Fed. Reg. 31,039 (July 5, 2017).

⁵⁵ See, e.g., Admin. Conf. of the U.S. Recommendations 2018-3, *Electronic Case Management in Federal Administrative Adjudication*, 83 Fed. Reg. 30686 (June 29, 2018); 2022-2, *Improving Notice of Regulatory Changes*, 87 Fed. Reg. 39798 (July 5, 2022); 2017-3, *Plain Language in Regulatory Drafting*, 82 Fed. Reg. 61728 (Dec. 29, 2017); 2023-4, *Online Processes in Agency Adjudication*, 88 Fed. Reg. 42,681 (July 3, 2023).

⁵⁶ See, e.g., Admin. Conf. of the U.S. Recommendations 2016-5, *The Use of Ombuds in Federal Agencies*, 81 Fed. Reg. 94,316 (Dec. 23, 2016); 2016-6, *Self-Represented Parties in Administrative Proceedings*, 81 Fed. Reg. 94,319 (Dec. 23, 2016); 2021-9, *Regulation of Representatives in Agency Adjudicative Proceedings*, 87 Fed. Reg. 1721; George M. Cohen, 2021-9, *Regulation of Representatives in Agency Adjudicative Proceedings* (Dec. 3, 2021) (report to the Admin. Conf. of the U.S.).

⁵⁷ White House Legal Aid Interagency Roundtable, *Access to Justice Through Simplification* (2022), <https://www.justice.gov/d9/2023-03/Legal%20Aid%20Interagency%20Roundtable%202022%20Report.pdf>.

⁵⁸ Nicholas Bagley, *The Procedure Fetish*, 118 MICH. L. REV. 345, 351-360 (2019) (placing the Paperwork Reduction Act and OIRA review squarely in the middle of the historical developments built on constraint and distrust).

⁵⁹ Emily S. Bremer, *Reckoning with Adjudication's Exceptionalism Norm*, 69 DUKE L. J. 1749 (2020).

independent actors constrained solely through other branches, rather than a web of collaborating and interconnected entities that exert influence over each other and interact with various statutory mandates.⁶⁰ Together, these tendencies have kept administrative law scholarship from engaging deeply with the social science literature.⁶¹

Recently, however, administrative legal scholarship has begun to grapple with the ways in which the administrative state has ignored, forgotten, and/or subordinated the interests of underrepresented communities.⁶² This includes a turn toward understanding how administration is practiced, including examining internal administrative agency structure and the ways in which agency design can affect policy development and outcomes,⁶³ taking account of the larger ecosystem in which agencies collaborate,⁶⁴ and acknowledging that the constraining impulses underlying much of administrative law is divorced from a necessary understanding of the complex ecosystem of the administrative state.⁶⁵

The access to justice movement has been a leader here out of necessity because complicated and time-consuming processes lead many people to forgo or otherwise be excluded from benefits without assistance, which is all too often unavailable.⁶⁶ Lawyers, court personnel, activists, and others have studied factors that hinder people's access to legal remedies. For example, underrepresented communities experience a severe "justice gap," with the most recent study finding that low-income Americans did not receive any legal help or enough legal help for 92 percent of the problems that substantially impacted their lives in the past year.⁶⁷ Research shows that outcomes improve with legal assistance.⁶⁸ While the access to justice literature has championed reforms in the delivery of legal services, much of this work has centered on state courts. However, many of these problems have administrative components including income maintenance reliance on government benefits. When people encounter compliance or

⁶⁰ Verity Winship, *Enforcement Networks*, 37 YALE J. ON REGUL. 274, 330 (2020) (noting policy and academic debates often depict agencies as siloed "in solitary pursuit of their own statutory mandates.").

⁶¹ Emily S. Bremer, *Power Corrupts*, YALE J. ON REGUL. (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4375200.

⁶² See Shah, *supra* note 9.

⁶³ Gillian Metzger & Kevin M. Stack, *Internal Administrative Law*, 115 MICH. L. REV. 11239 (2017); Amy Widman *Inclusive Agency Design*, 74 ADMIN. L. REV. 23 (2022).

⁶⁴ Verity Winship, *Enforcement Networks*, 37 YALE J. ON REGUL. 274.

⁶⁵ Elizabeth Fisher and Sidney A. Shapiro, *Administrative Competence: Reimagining Administrative Law*, CAMBRIDGE UNIV. PRESS (2020) (arguing that administrative law developed largely isolated from public administration and a much deeper understanding of public administration, and particularly what is meant by administrative competence, is needed to reimagine an administrative state that is less binary (constraining action vs. arbitrary discretion) and more honestly reflects the complexity of public regulation.) See also Nicholas Bagley, *The Procedure Fetish*, 118 MICH. L. REV. 345 (2019) ("draw[ing] into question the administrative lawyer's instinctive faith in procedure, to reorient discussion to the trade-offs at the heart of any system designed to structure government action, and to soften resistance to a reform agenda that would undo counterproductive procedural rules.")

⁶⁶ Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans* (Apr. 8, 2022), <https://justicegap.lsc.gov/>. See also Richard Zorza, *Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation*, 61 DRAKE L. REV. 845, 847 (2013); Kathryne M. Young & Katie Billings, *An Intersectional Examination of U.S. Civil Justice Problems*, 2023 UTAH L. REV. 487 (2023).

⁶⁷ *The Justice Gap, the Unmet Civil Legal Needs of Low-income Americans*, LEGAL SERVICES CORP., <https://justicegap.lsc.gov/>.

⁶⁸ Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. FOR SOCIAL JUSTICE 51, 52 (2010).

psychological barriers due to burden, the services and benefits become out of reach. Access to assistance can ameliorate the harshest effect of burdens for the individual while also providing another avenue for stakeholder engagement in that the representative can report patterns of burdens that disrupt agency missions. Thus, reducing administrative burdens can increase access to justice as well.

This reimagining of the role that law can play in administration has opened space for legal reformers and academics to collaborate with other disciplines studying administrative burdens, often stemming from the proceduralization of law and its effect on people interacting with the government.⁶⁹

The basic insight from empirical social science research is that difficult administrative processes can meaningfully disrupt access to valued public services and rights.⁷⁰ A large and growing body of evidence, which we turn to here, demonstrates that people frequently don't access rights and benefits, which they want and are entitled to, because of onerous administrative processes.⁷¹

We intuitively understand such hassles to be irritating but can easily miss their scale, their invasiveness, and the extent to which they are targeted at marginalized groups.⁷² We will detail below the costs that result from these burdens, even seemingly small ones, the types of burdens that cause the largest problems, as well as key ways we can reduce burdens.

Large burdens have large effects, but small burdens can have large effects, too

One clear lesson from behavioral science and the study of public policy is that seemingly minor administrative barriers, which may appear reasonable to the administrator, have empirically large effects on access to benefits.

Learning costs can be a relatively straightforward problem. People need to know they are eligible for a benefit before they can access it. Simple informational nudges can, in some cases, be a powerful mechanism to reduce burdens. For example, one experiment provided information to people who had not claimed the Earned Income Tax Credit (EITC), a benefit for low-income

⁶⁹ See, e.g., Margaret D. Hagan, *A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User Friendly*, 6 INDIANA J. OF LAW & SOCIAL EQUALITY 199, 200 (2018); Widman, *Inclusive Agency Design*, *supra* note 63; Emily S. Taylor Poppe, *Institutional Design for Access to Justice*, 11 U.C. IRVINE L. REV. 781 (2021); K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679 (2020); *Administrative Conference of the United States and Legal Services Corporation Announce Additional Webinars for Public Forum "Assisting Parties in Federal Administrative Adjudication"*, Administrative Conference of the United States, <https://www.acus.gov/newsroom/news/acus-and-lsc-announce-additional-panels-for-public-forum-assisting-parties-in-federal-administrative-adjudication>.

⁷⁰ For a review, see HERD & MOYNIHAN, *supra* note 4.

⁷¹ *Id.* See also Pamela Herd, Thomas DeLeire, Hope Harvey, & Donald P. Moynihan, *Shifting Administrative Burden to the State: The Case of Medicaid Take-up*, 73 PUB. ADMIN. REVIEW 69-81 (2013); CAROLYN J. HEINRICH, *Presidential Address: A Thousand Petty Fortresses: Administrative Burden in U.S. Immigration Policies and Its Consequences* 37.2 J. OF POL'Y ANALYSIS AND MGMT. 211-239 (2018).

⁷² Victor Ray, Pamela Herd, & Donald Moynihan, *Racialized Burdens: Applying Racialized Organization Theory to the Administrative State*, 33 J. OF PUB. ADMIN. RSCH. AND THEORY 139-152 (2023).

workers.⁷³ About one in five of those eligible do not claim the benefit, which has a typical value of over \$1,000, or what is equivalent to a lost month of income for the typical EITC recipient. The intervention demonstrated that notifying people about the size of their potential benefit increased benefit-claiming by 33 percent. It also showed that complex instructions about how to file for the benefit reduced claiming by 27 percent. Another recent information experiment focused on immigrants. About half of immigrants eligible for naturalization also have low enough incomes that they are eligible for a fee waiver. Application fees range from \$405 to \$725. But many do not know they are eligible for the waiver. An experiment that simply notified people they were eligible for a fee waiver increased citizenship applications by 35 percent.⁷⁴

In some cases, simply reducing such costs by informational nudges—telling people about a benefit and how to access it—is often not enough to significantly increase access.⁷⁵ Indeed, a recent meta-analysis of eight randomized interventions to reduce learning costs and increase health insurance take up found a median impact of 2.3 percentage points. If the procedures and processes to access that benefit are difficult, information has a more limited impact.⁷⁶

For example, there is robust evidence that people who need financial assistance to attend college do not complete the Free Application for Federal Student Aid (FAFSA) because the form is too difficult. A large field experiment with more than 800,000 students found that different types of informational nudges had no effects on FAFSA take up.⁷⁷ The difference between nudges and help is illustrated with one intervention study, where information provided to parents about financial assistance had no impact, but help from a tax preparer not only substantially increased form completion, it actually led to a 29 percent increase in the completion of two years of college.⁷⁸ The evidence regarding FAFSA's compliance costs has been so robust that Congress passed the FAFSA Simplification Act in 2020, which includes provisions like automated benefit calculations based on Internal Revenue Service (IRS) data, rather than requiring parents to document and provide information about their income.

An experimental study focused on housing assistance provides another example of the limitations of simply providing information about a right or benefit. Housing vouchers for low-income families were designed to encourage families to move to neighborhoods with more economic and educational opportunities. Such vouchers were a reaction to segregated housing projects that emerged in the 1960s. The problem, however, is that few families actually moved to

⁷³ Saurabh Bhargava & Dayanand Manoli, *Psychological Frictions and the Incomplete Take-up of Social Benefits: Evidence from an IRS Field Experiment*, 105(11) AM. ECON. REV. 3489-3529 (2015).

⁷⁴ Michael Hotard, Duncan Lawrence, David D. Laitin & Jens Hainmueller, *A Low-cost Information Nudge Increases Citizenship Application Rates Among Low-income Immigrants*, 3 NATURE HUMAN BEHAVIOUR 678-683 (2019).

⁷⁵ Stefano DellaVigna & Elizabeth Linos, *RCTs to Scale: Comprehensive Evidence from Two Nudge Units*, 90(1) ECONOMETRICA 81-116 (2022).

⁷⁶ Rebecca Myerson, et. al., *Personalized Telephone Outreach Increased Health Insurance Take-up for Hard-To-Reach Populations, But Challenges Remain*, THE PEOPLE TO PEOPLE HEALTH FOUNDATION (Jan. 2022).

⁷⁷ Kelli A. Bird, Benjamin L. Castleman, Jeffrey T. Denning, Joshua Goodman, Cait Lamberton & Kelly Ochs Rosinger, *Nudging at scale: Experimental evidence from FAFSA completion campaigns* 183 J. OF ECON. BEHAVIOR & ORG. 105-128 (2019).

⁷⁸ Eric P. Bettinger, Bridget Terry Long, Phillip Oreopoulos & Lisa Sanbonmatsu, *The role of application assistance and information in college decisions: Results from the H&R Block FAFSA experiment*, 127 THE Q. J. OF ECON. 1205-42 (2012).

better off neighborhoods. Families struggled to navigate the rental process, from finding units that would take a housing voucher to managing the application process with a landlord. A recent experiment, however, provided individuals with significant individualized support searching for a rental property and negotiating with landlords. The control group received the voucher, and information about how to use it, but no individualized support. Only 15 percent in the control group moved to an upwardly mobile neighborhood, compared to 55 percent in the treatment group that received the extra help navigating the complex system.⁷⁹

In short, reducing learning costs can increase access but does not eliminate compliance costs that may frustrate even a well-informed participant.

Administrative burdens also involve psychological costs; it's stressful, frustrating, and sometimes overwhelming to navigate seemingly impossible bureaucratic rules and procedures. Most of us can relate to those feelings. And there is evidence that complicated administrative procedures can trigger observable negative effects on physiological indicators such as accelerated heart rates.⁸⁰

Existing evidence demonstrates that these costs can be especially high for marginalized groups—and it can significantly and negatively impact access to needed and wanted benefits and rights.⁸¹ In high-stake contexts where individuals have limited power and are subject to control by state actors, stress and fear are salient psychological costs.

For example, members of immigrant families are less likely to seek out public benefits, to which they are legally entitled, relative to native-born individuals, and this gap increases at times of high anti-immigrant sentiment.⁸² In 2019, one in five adults in immigrant families reported that they, or a family member, avoided basic public benefits, even though they were eligible, out of fear as to how it could affect their immigration status.⁸³ In short, according to the law, they were eligible and should not face negative consequences in the immigration process for accessing benefits, but fear overrode these basic facts, leading people to go without.

⁷⁹ Peter Bergman, Raj Chetty, Stefanie DeLuca, Nathaniel Hendren, Lawrence F. Katz, & Christopher Palmer, *Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice* (Nat'l Bureau of Econ. Rsch., Working Paper No. 26164, 2019).

⁸⁰ Fabian Hattke, David Hensel, & Janne Kalucza, *Emotional Responses to Bureaucratic Red Tape*, 80 PUB. ADMIN. REV. 53-63 (2020).

⁸¹ Pamela Herd, Hilary Hoynes, Jamila Michener and Donald Moynihan. *Introduction: Administrative Burden as a Mechanism of Inequality in Policy Implementation*, 39 RSF: THE RUSSELL SAGE FOUNDATION J. OF THE SOC. SCIENCES 1-31 (2023).

⁸² Jeremy Barofsky, Ariadna Vargas, Dinardo Rodriguez, & Anthony Barrows, *Spreading Fear: The Announcement of the Public Charge Rule Reduced Enrollment in Child Safety-Net Programs*, 39 HEALTH AFFAIRS 1752-61 (2020). This study examines whether the announced change to the federal public charge rule affected the share of children enrolled in Medicaid, SNAP, and WIC.

⁸³ Jennifer M. Haley, Genevieve M. Kenney, Hamutal Bernstein, & Dulce Gonzalez, *One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*, URBAN INSTITUTE (2020), <https://www.urban.org/sites/default/files/publication/102406/one-in-five-adults-in-immigrant-families-with-children-reported-chilling-effects-on-public-benefit-receipt-in-2019.pdf>.

How do we reduce burdens?

As governments have increasingly turned to burden reduction efforts, three key insights have emerged regarding the most effective strategies. Overall, it is important to keep in mind that a variety of strategies can be employed, but the most effective strategies typically address all three costs: learning, compliance and psychological.

First, informational nudges can work when the main barriers are learning costs, but they cannot eliminate the burdens created by compliance and psychological costs. Comparisons of burden reduction efforts for relatively complex processes, such as the federal Financial Aid Student Aid Form, the Supplemental Nutrition Assistance Program (SNAP) and the EITC show that informational interventions have no effect⁸⁴ or work substantially less well than other alternatives, such as providing direct help.⁸⁵ Moreover, one-off outreach or informational campaigns are especially unlikely to be effective, since burdens tend to be reduced where there is repeated information that is easily accessible about a program.

Second, the most effective burden reduction tool is to simplify or even eliminate unnecessary administrative processes to the greatest extent possible. Every step to simplify further increases access. For example, an experiment that used administrative data to pre-fill forms that were emailed to student loan beneficiaries, requiring only that applicants provide a signature, increased take-up from 24 percent to over 60 percent.⁸⁶

Third, regardless of the approach, the key underlying requirement to reduce burdens is having sufficient information on program participants to actually reduce barriers. To enable automatic enrollment or process simplification, state actors need access to administrative data to identify actors eligible for a benefit and provide it to them. In the case of automatic enrollment, such actions reduce or eliminate the requirement for individuals to overcome learning, compliance, or psychological costs. As a result, this approach ensures nearly universal take-up, and reduces the risk of unequal outcomes. Examples include automatic student loan forgiveness for veterans and the disabled, pandemic payments, or health insurance markets.⁸⁷

Even lower touch forms of burden reduction, such as limiting the amount of information participant's need to provide, doing effective outreach, or pre-filling forms all require information on beneficiaries. The degree to which agencies have access to that information shapes their ability to more successfully reduce burdens.

⁸⁴ Elizabeth Linos, Allen Prohovsky, Aparna Ramesh, Jesse Rothstein, & Matt Unrath, *Can Nudges Increase Take-up of the EITC? Evidence From Multiple Field Experiments* (Nat'l Bureau of Econ. Rsch., Working Paper No. 28086, 2020). See also Eric P. Bettinger, Bridget Terry Long, Philip Oreopoulos & Lisa Sanbonmatsu, *The Role of Application Assistance and Information in College Decisions: Results From the H&R Block FAFSA experiment*, 127 THE Q. J. OF ECON. 1205-42 (2012).

⁸⁵ Amy Finkelstein & Matthew J. Notowidigdo, *Take-up and Targeting: Experimental Evidence from SNAP*, 134 THE Q. J. OF ECON. 1505-56 (2019).

⁸⁶ Mueller, Holger, and Constantine Yannelis, *Increasing Enrollment in Income-Driven Student Loan Repayment Plans: Evidence from the Navient Field Experiment*, 77.1 THE J. OF FIN. 367-402 (2022).

⁸⁷ Adrianna McIntyre, Mark Shepard, & Myles Wagner, *Can Automatic Retention Improve Health Insurance Market Outcomes?*, 111 AEA PAPERS AND PROC. 560-66 (2021).

In April of 2022, as part of general guidance to agencies on implementing the PRA, OIRA provided agencies with specific evidence-based tactics to reduce burdens (see Table 2).

Table 2: OIRA Guidance to Agencies to Reduce Burdens

- Providing easy-to-use and actionable information to likely eligible individuals has been shown to increase program participation under some conditions but is unlikely to reach the most vulnerable and disconnected individuals. Instead, informational interventions are most likely to be effective, according to research, when paired with other burden reduction methods that target compliance and psychological costs.
- Ensuring that program decision points minimize required actions by beneficiaries has been shown to boost the likelihood that beneficiaries will receive the full services or benefits to which they are entitled. Two complementary strategies for reducing learning, compliance, and psychological costs in this way include: (1) shifting from “opt-in” to “opt-out” for receipt of benefits and services where feasible; and (2) setting defaults in programs to be most favorable towards beneficiaries.
- Providing additional methods of submitting applications has been shown to increase program participation—but is most likely to be effective when paired with other burden reduction methods that target compliance and psychological costs.
- Using existing administrative records to automatically enroll individuals, populate application information, or determine eligibility has been shown to increase program participation.
- Making in-person assistance options more physically and geographically accessible has been shown to increase successful applications, and thus program participation rates, particularly among disadvantaged individuals.
- Simplifying, permitting more flexibility in, or eliminating unnecessary reporting, documentation, and other requirements for application and recertification has been shown to increase program participation rates.
- Providing assistance through sources trusted by target communities or intermediaries for accessing benefits has been shown to increase participation rates, especially for disadvantaged participants.

IV. Existing Agency Practices to Identify and Reduce Burdens

Our research, and particularly our interviews with various agency officials and staff, yielded specific examples of burden reduction efforts undertaken in the federal government. The examples below offer positive examples of innovation. Before we discuss these successes, it is worth noting that burden reduction is more applicable for some agencies than for others, or what the CX EO identifies as “high impact service providers.”

These agencies have at least some of the following qualities: 1) have identifiable clients; 2) are highly engaged with the public; 3) have clear outputs to measure; 4) have broad leadership, political and stakeholder support to improve the public experience with their agency; and 5) have the resources and capacity to effectively provide services. Most agencies will not have all of these characteristics, even among the designated high impact service providers. Thus, our examples and recommendations identify both specific tools and actions to reduce burdens, as well as ways to improve the broader environmental conditions for change.

A. Building Culture: Put the Public at the Center

Addressing administrative burdens requires a Copernican shift in worldview, one which puts the public, rather than government processes, at the center. This logic starts with the assumption that administrative processes embedded in policy implementation should serve the public by centering the experiences of the public. Access to benefits and services should be designed to maximize the public’s experience—by ensuring that experience is accessible, simple, and respectful.

While an amorphous factor, agency culture plays a critical role in how effective agencies can be at reducing burdens. Part of implementing new policy changes depends upon how willing individual public employees are to be creative and persistent. In short, it is not just about following rules, it is also about “a way of thinking.” Indeed, one agency employee described her own way of thinking about burden reduction: “We are government employees, but we are also citizens.”⁸⁸

An overlapping set of management techniques makes it easier for public organizations to see and hear the public they serve. These include human-centered design (also described as user-experience or UX research) and journey mapping (see Table 3). While these specific techniques draw from the private sector, and often from firms centered around technology, such methods are, fundamentally, not about improving websites or improving online services. Instead, they provide a structure to think about how to improve an individual’s overall experience. The tools themselves are not mysterious, though it may still take some time to expand their use in government.

⁸⁸ January 6, 2023, zoom interview, notes on file with the authors.

Table 3: Key terms and resource

Human-centered design is a technique to understand administrative processes from the user perspective, using those insights to adjust those processes to better match human capacities. Human centered design will often employ distinct stages of discovery, design, delivery, and measurement as part of an iterative and ongoing process.

Journey mapping is a visualization technique that maps out steps that clients take in their engagement with administrative processes. It helps to illustrate the complexity of processes, including potential pain points where users struggle. To be credible, journey maps have to draw from the actual experiences of users and will sometimes employ user personas to illustrate those journeys.

Additional Resources

[Human-Centered Design for CX \(Performance.gov\)](#)

[General Services Administration, Human Centered Design Discover Stage Field Guide](#)

US Digital Service: [Digital Services Playbook](#)

Beeck Center: [Starting Small with Human Centered Design](#)

[Going Big with Human Centered Design](#)

The federal government has used [journey mapping to illustrate key life experiences](#)

Burden reduction efforts using human-centered design can easily connect to broader management techniques such as performance management, Lean, Six Sigma and Agile, which favor collaborative teams, in consultation with stakeholders and customers, using iterative processes of mission-based improvement, rapid feedback loops that convert insights into actions, which in turn depends upon engaged and empowered teams and leadership.⁸⁹ These shared philosophical goals are often contrasted with more traditional bureaucratic approaches, which are presented as cut off from client feedback, lacking institutionalized routines to collect and use data, and overly cautious about engaging in change. While those critiques can sometimes veer into stereotypes, they are echoed by those trying to make change in government. In the absence of market-based competition, and in the presence of a great deal of structural constraints, public organizations need management tools that can better embed processes of change.

An important consideration in soliciting information to improve the public experience is representativeness and participation. These components are interrelated and iterative. For example, deep expertise is created through institutional knowledge gleaned from experience and extended engagement with stakeholders and strong internal agency teams that can share this knowledge. Deep knowledge includes learning from the agency workers interacting with the public on a daily basis as well as building out channels to learn from the public.

Public comments, focus groups, and surveys provide ways of gaining input, but are sometimes not representative of the public using the services. A representative approach would deliberately look for those not being heard from. This need not be burdensome. Careful sampling can mean

⁸⁹ See generally Edward DeSeve, *The Road to Agile Government*, IBM Center for the Business of Government (2020), https://napawash.org/uploads/The_Road_to_Agile_Government.pdf.

drawing on smaller samples, employing either quantitative or qualitative methods, to understand their experiences.

A.1. Consultation With Stakeholders

Consultation allows agencies to hear from underrepresented communities and to better understand where burdens can be reduced. Where agencies have institutionalized consultation processes, valuable information is being exchanged that leads to burden reduction. Consultation can occur in a variety of ways, some of the most promising are exemplified below.

A key to the success of CX efforts at the Department of Veterans Affairs (VA) has been the engagement of stakeholders. Veteran service organizations (VSO) have regular meetings with the Secretary and staff. This allows them to identify client concerns. VSOs also work directly with clients. They are allowed to take claims and provide counseling, conditional on training and accreditation, which gives them direct experience with the administrative process. They have come to see CX efforts as a way to ensure the voices of their members are heard.

It is worth noting that VA is fortunate and unusual in some respects that make CX efforts more likely to be successful. It directly serves clients, unlike many government agencies, and those clients are viewed as deserving of government support by both parties. It experiences less ambiguity about its core goals than other agencies, though politicians may still disagree about how to get there, with some favoring greater privatization of services. It has an active group of stakeholders who share the basic mission of serving veterans, are in direct contact with both veterans and the VA, and can advocate for veteran concerns. Human-centered design and customer experience efforts resonate with those stakeholders because their purpose is to represent the voice of veterans.

Stakeholder engagement can also occur through a proxy-like system through established working groups like the White House Legal Aid Interagency Roundtable. This group, housed in the Department of Justice's (DOJ's) Office of Access to Justice, convenes agency representatives, including the Legal Services Corporation to, among other things, "improve coordination among Federal programs, so that programs are more efficient and produce better outcomes by including, where appropriate, legal services among the range of supportive services provided."⁹⁰ Through this group, the Legal Services Corporation can identify burdens experienced by underrepresented and vulnerable communities that are coming to legal aid services for assistance navigating benefits programs. Agencies consult with the advocacy community directly as well. For example, DOL regularly convenes Claimant Advocate listening sessions, typically legal service lawyers, to identify problems with burdens faced by claimants.⁹¹

⁹⁰ Memorandum on Restoring the Department of Justice's Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable (May 18, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/18/memorandum-on-restoring-the-department-of-justices-access-to-justice-function-and-reinvigorating-the-white-house-legal-aid-interagency-roundtable>.

⁹¹ OFF. OF INFO. AND REGUL. AFF., TACKLING THE TIME TAX: HOW THE FEDERAL GOVERNMENT IS REDUCING BURDENS TO ACCESSING CRITICAL BENEFITS AND SERVICES (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/07/OIRA-2023-Burden-Reduction-Report.pdf>.

A.2. Direct Observation, Focus Groups

In order to understand how to reduce burdens, you have to be able to identify them. In some agencies, the barriers that people face trying to access benefits or services are well understood. In cases where they are not, direct observation of clients engaging with processes, or listening sessions with users can be informative. Such data can feed into human-centered design and journey mapping processes.

For example, in the Department of Homeland Security (DHS), staff were asked to examine processes to identify whether each step was necessary. Did information still need to be collected? Were there alternative sources of information? The Biden administration has institutionalized this sort of journey mapping with their focus on nine key life experiences as a frame for understanding burden reduction. One life experience, recovering from a disaster, exemplifies how journey mapping can lead to tangible reductions in burdens.⁹² In this case, DHS was able to collaborate with other agencies—the Small Business Administration, the Department of Housing and Urban Development (HUD), the Department of Agriculture (USDA), and the Department of Health and Human Services (HHS)—in order to “clarify and simplify the experience of applying for Federal disaster assistance programs.” Currently, survivors must navigate and apply for each relief program separately. These processes can be confusing, and survivors are unclear about the different kinds of assistance for which they may be eligible and how to apply for them; once they do, they must keep track of multiple processes and communication channels and often enter the same data multiple times.⁹³ This process led to concrete reforms, such as flexibilities in requirements for assistance to streamline and speed up benefits.⁹⁴ Examples included expanding the types of documents that can prove home ownership, waiver of proof of homeownership for repeat disaster survivors, and expansion of application times.

A.3. Client Surveys

One means of collecting data on user experience is via client surveys. Such surveys can serve different purposes. They can be used to examine the value of interventions designed to reduce burdens, to identify problematic processes or offices, or to track long-term trends. For example, each quarter VA surveys approximately 257,000 veterans with recent interactions with claims, appeals, health care, memorials, and other services to rate their overall trust in VA. The office also provides resources and training to other VA employees, such as human centered design. One person we interviewed, who had worked in claims, discussed how the survey data was illuminating. “We were like ‘wow, this is great!’ as a way to infuse the perspective of the veteran, as opposed to ‘we will decide for the veterans what is best for them, and we will decide bureaucratically what is best for us.’”⁹⁵

⁹² See *Recovering from a Disaster Journey Map*, PERFORMANCE.GOV, <https://assets.performance.gov/cx/files/life-experiences/2022/CX-2022-Life-Experience-Disaster-Recovery-Journey-Map.pdf>.

⁹³ *Recovering from a Disaster*, PERFORMANCE.GOV, <https://www.performance.gov/cx/life-experiences/recovering-from-a-disaster/#project-documentation>.

⁹⁴ Press Release, Department of Homeland Security, FEMA Makes Changes to Individual Assistance Policies to Advance Equity for Disaster Survivors (Sept. 2, 2021), <https://www.fema.gov/press-release/20210902/fema-makes-changes-individual-assistance-policies-advance-equity-disaster>.

⁹⁵ See OFF. OF INFO. AND REGUL. AFF., *supra* note 91, at 53.

A.4. Public Comment

Agencies have also relied upon public comments on published notices to understand the public's view. This can also be a useful tool for burden identification and reduction. DHS has successfully turned to public comment to gain insight into burden reduction. For example, the U.S. Citizenship and Immigration Services (USCIS) published a request for public input specifically related to burdens felt by the public.⁹⁶ The agency then prioritized going through the comments as a crowd-sourcing tool. Such processes can easily become make-work, but DHS created a process of reviewing comments to identify possible actions. In the wake of these comments, USCIS published policy alerts that addressed immediate burdens, for example updating language on forms related to allowing an automatic extension of 24 months beyond the expiration of a permanent resident card.⁹⁷ This flexibility reduced the number of forms needed for certain permanent residents seeking naturalization. DHS estimated that dozens of agency actions flowed from responding to public comments.

A.5. Complaint Portals

A less-interactive form of learning from the public that provides additional information toward identifying and reducing burdens is through an accessible complaint portal. In order for a complaint portal to generate burden reduction, it must be structured in such a way that the information from the public flows to the CX office. The Consumer Financial Protection Bureau offers an example, using a “collection of personal stories by consumers dealing with credit, debt collection, student loans, and other financial matters is a particularly effective use of complaint processes and education. These stories are published online and used to guide data collection and enforcement priorities at the agency. The complaint architecture is designed well from an access to justice perspective, but, as with all agency structures, its effectiveness depends on leadership and culture at the agency to learn from it.”⁹⁸

These tools can further be refined through mapping the journey of a person with a complaint. For example, HUD is currently studying what the experience is when a prospective tenant goes through the portal to file a complaint. The CX team at HUD is mapping this out with a goal of making the complaint process less burdensome for the public.

A.6. Exploit Worker Knowledge

To learn how the public experiences accessing benefits and services, agencies should also exploit worker knowledge about those processes. Staff working with the public will have deep knowledge about complex frictions that will be less apparent to non-specialists. Such expertise of both the policy and the organizations in which it is implemented is needed. Journey mapping, in particular, will not work without individuals deeply knowledgeable about the policy and its current implementation. In some cases, journey mapping is less useful, in part, because agency staff already know both the journey and the pain points. They are more likely to share that

⁹⁶ See *Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input*, 86 Fed. Reg. 20,398-400 (Apr. 19, 2021).

⁹⁷ U.S. CITIZENSHIP AND IMMIGR. SERV., EXTENSION OF PERMANENT RESIDENT CARD FOR NATURALIZATION APPLICANTS (Dec. 9, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221209-ExtendingPRC.pdf>.

⁹⁸ Widman, *supra* note 63.

knowledge under conditions where a) identifying and reducing administrative burdens are framed as a salient agency goal, and b) routines exist where their knowledge is sought.

B. Capacity: Have a Devoted Customer Experience Team

Agencies that have enacted some of the most systematic burden reduction reforms have made CX teams, which coordinate efforts to improve customer experiences within agencies, a critical capacity component. The teams play a few key roles. First, because it is their primary mission or the entire focus of their work, they provide a stable and consistent source of effort and attention to continue burden reduction efforts in the agency. Second, they coordinate efforts across groups, within the agency, to tackle burden, as we describe below. In short, they are the driving organizing force that facilitates team building. One fundamental rule, however, is that the CX team must have deep policy and agency knowledge, as well as sufficient authority within the agency, to be successful at the mission.

The VA provides an excellent example of why creating a specific team devoted to customer experience matters. In 2014, the VA was rocked by a scandal which became front page news and led to the resignation of its Secretary and resignation or reassignment of 14 of 17 top agency leaders. VA hospital staff had been falsifying wait lists to make it appear that patients were seen more quickly than they really were. In the years that followed, trust in the agency rebounded, from about 55 percent to almost 80 percent in 2022.⁹⁹ In doing so, it became a leader in CX skills years before more systematic efforts were in place in other agencies, or the CX EO. Using its experience of integrating CX principles into a very large organization, the VA has developed outstanding resources for others in government doing the same, such as *The CX Cookbook*.

After the VA hospital scandal, the new VA Secretary, Bob McDonald, saw the lack of a mechanism to channel the voice of customers as a blind spot that needed to be corrected. A key way that he responded was to create a Customer Experience Institute, which offered a systematic means to understand customer experience. Each quarter, VA surveys approximately 257,000 veterans with recent interactions with claims, appeals, health care, memorials and other services to rate their overall trust in VA. Ultimately, McDonald helped institutionalize customer experience improvement efforts by not just giving these officials resources but by ensuring they had the authority and permission structure to experiment, innovate, and coordinate across the agency.

The VA experience points to two key requirements for an effective CX team. First, members need to be experts on the policy, benefits, and services of the agency, as well as have a deep understanding of the agency itself. The VA has made an early start on CX efforts, and has the largest CX team in government, with approximately 360 members. It has emphasized the need for service-specific expertise to best use CX skills: “Understanding government, its constraints, its levers, is critical to understanding how to implement any new initiative, including CX. Career public servants are experts with this distinct skill set, and through their experience, they know how to navigate through the government environment to execute, scale, and sustain Understanding the particular agency’s culture is also key, as every organization is different. Identifying what is important to the agency, how initiatives receive prioritization in terms of

⁹⁹ Cate Burgan, *VA Invests in CX, Sees Major Uptick in Veteran Trust*, MERITALK (Mar. 13, 2023, 12:27 PM), <https://www.meritalk.com/articles/va-invests-in-cx-sees-major-uptick-in-veteran-trust/>.

leadership visibility, funding, etc., how one makes CX relevant to agency mission and strategy, and knowing how to tie CX to anything that is important in the agency’s culture and operations enables the organization to clearly see how CX fits in.”¹⁰⁰

The second requirement of an effective CX team is that they need senior staff members who have authority and leverage to ensure the team is taken seriously within, and outside of, the agency. Having a team of CX workers within an agency is critical to implement more systematic reforms. The CX team does a lot of the team coordination, keeping track of what different groups are doing, and can facilitate to ensure everyone is moving forward. Some of the agencies that have been most active when it comes to burden reduction, such as HHS, USDA, and the VA, all have CX teams that can provide the capacity to guide the agency towards implementing these reforms. Key to their success is leadership of the CX team, and the support and resources they enjoy from agency leaders.

C. Collaboration: Build Collaborative Teams Dedicated to Burden Reduction

Having a dedicated CX team is crucial to reducing burdens, but engaging in any sort of change will inevitably require many parts of an agency to work together, including those whose work is being affected, senior policymakers, and General Counsels. Reducing administrative burdens, like many wicked problems, requires non-traditional combinations of actors to coordinate with each other. However, agency staff within different departments are often siloed from others. As one OMB official noted: “There is a cultural thing in the government about not going outside of your lane, and this is about crossing lanes.”

Collaboration requires officials performing tasks outside of their normal hierarchy. It therefore requires extra effort and coordination, including leadership prioritization.

C.1. Connect CX Teams to Other Parts of the Agency

How agencies are structured internally has a huge impact on burden reduction efforts. In the wake of the CX EO, more agencies have created offices or roles for managing customer experience. However, one agency reported that there were struggles integrating the CX office into the other functions of the agency. There can be issues with budgets and appropriations that can be handled better if these offices are staffed properly. One emerging best practice is to have senior career staff and a partner political appointee to champion the people and the work in these offices.

C.2. Include General Counsels and OIRA Desk Officers in Working Teams

Burden reduction efforts will often involve new ways of doing things, and create requests about what powers the agency has to actually implement burden reduction. This, in turn, requires the involvement of Offices of General Counsel. If General Counsel officials are involved in burden reduction teams, particularly from the start, they are more likely to understand the purpose and benefit of burden reduction efforts, and can help facilitate ways to achieve them. If they are the

¹⁰⁰ *The Customer Experience Cookbook*, VETERANS EXPERIENCE OFFICE at 4 (Nov. 11, 2020), <https://www.va.gov/ve/docs/cx/customer-experience-cookbook.pdf>.

last actor in the process to be consulted, it is more likely that they will veto a change, in part because they haven't been able to provide advice throughout the process that could prevent roadblocks.

We also heard from agencies that sometimes the disagreements are between Program Counsel and General Counsel. In one case, the dynamic was described like this: "Our counsels don't always agree, but the pattern is the program counsel thinking about statutes directly connected to the action, GCs thinking more about government-wide statutes and might mandate a different interpretation."

Agencies also have case officers responsible for the implementation of the PRA. As with General Counsel there is often a pattern of desk officers taking a procedural approach to their role, ensuring that they are following guidance but not looking for onerous or unnecessary frictions. OMB has issued guidance on flexibilities with PRA,¹⁰¹ and ACUS has also recommended that agencies increase training on these statutory flexibilities.¹⁰² In one agency, we learned of variations among desk officers when it comes to denying requests for non-substantive revisions under the PRA. Another issue is the amount of time it takes to receive approvals under the PRA. At one agency we learned of placeholders of almost a year out for PRA renewals. Bringing desk officers more actively into burden reduction teams could help agencies systemize solutions to these challenges.

D. Simplifying: Increase Access by Simplifying Processes and Providing Support

Simplifying processes is another strategy employed by agencies to reduce administrative burdens. Tactics include practices such as limiting the number of steps in processes, reducing the number and length of forms, limiting documentation requirements, and expanding language access. Cass Sunstein has called on agencies to routinely deploy "sludge audits" as a way of detecting and reducing burdens in practice.¹⁰³

The U.S. Postal Service (USPS) provides an excellent example of both how to provide robust customer support and also how other agencies can specifically partner with the USPS to expand its own customer support. USPS's one-stop address change is one particular example. Members of the public can change addresses, forward mail, or temporarily stop mail by filling out a short form either at a post office or online. It takes only a few moments. The USPS process is notably easier and faster than changing an address with many private companies. But the USPS also has partnered with other federal agencies to provide on-the-ground support. Post offices are nearly everywhere, the public always knows how to find them, and the public generally views them favorably. It has already partnered with the Department of State to ease access to passports. It has also more recently been a site for individuals to provide in-person support for those trying to obtain identity verification for Login.gov.¹⁰⁴

¹⁰¹ See OMB M-22-10, *supra* note 21.

¹⁰² See *Paperwork Reduction Act Efficiencies*, *supra* note 24.

¹⁰³ CASS R. SUNSTEIN, *SLUDGE: WHAT STOPS US FROM GETTING THINGS DONE AND WHAT TO DO ABOUT IT* (MIT Press 2021).

¹⁰⁴ *Verify Your Identity in Person*, LOGIN.GOV, <https://www.login.gov/help/verify-your-identity/verify-your-identity-in-person/>.

The USDA, particularly in its administration of SNAP, has been actively engaged in simplifying processes and reducing burdens since the early 2000s. Prior to the 1996 welfare reform bill, those enrolled in Aid to Families with Dependent Children (AFDC) nearly automatically received SNAP, which substantially decreased burden and increased access to SNAP. When SNAP was delinked from AFDC after the 1996 welfare reform, the fraction of people eligible for benefits who actually received them plummeted.¹⁰⁵ Consequently, USDA engaged in a decades-long process of gradually simplifying processes, ranging from simplified income reporting and less complicated applications to reducing in-person interview requirements and expanding periods between recertification.¹⁰⁶ The result has been an increase in participation from a low of 54 percent of eligible individuals in 2001 to over 80 percent of eligible individuals today. USDA simplification efforts have also been in place to help farmers. To increase access to its loan program application program, USDA converted a 10 form, 29-page application process into a single 13-page document, while also launching a Loan Assistance Tool to help farmers determine eligibility and complete the process.¹⁰⁷

Beyond merely simplifying processes, agencies have long offered multiple types of support and assistance with navigating processes. Assistance can range from partnering with legal aid organizations, codifying programs to accredit nonlawyer representatives, to providing other forms of agency support through ombuds, public advocates, and navigator programs. Some agencies, like the IRS, help support and collaborate with organizations that help low-income taxpayers, who are eligible for benefits that exceed their tax liability, particularly the EITC, file taxes so that they can access these benefits. We discuss the current state of expanding representation in Part V.

We do want to note some recent successes in burden reduction related to the pandemic. The pandemic was an era of intense experimentation where governments sought to maintain the supply of benefits. In some cases, those flexibilities improved access and are worth maintaining.¹⁰⁸ For example, in-person requirements may tangibly reduce access. One study found that Special Supplemental Nutrition Program for Women, Infant, and Children (WIC) participation during the pandemic was 14 percent lower in “Offline Electronic Benefits Transfer (EBT)” states, where beneficiaries had to reload their EBT cards in person, as compared to “Online EBT” states, where beneficiaries could reload their cards remotely.¹⁰⁹

Similarly, creating alternatives to “wet” signatures, such as digital or telephone signatures, would eliminate a barrier to access. The Western Center on Law and Poverty said in a comment: “The expanded use of telephonic signature technology by benefits-granting agencies during the pandemic has been enormously helpful. The logistical challenges of getting wet signatures

¹⁰⁵ Peter Ganong & Jeffrey B. Liebman, *The Decline, Rebound, and Further Rise in Snap Enrollment: Disentangling Business Cycle Fluctuations and Policy Changes*, (Nat’l Bureau of Econ. Rsch., Working Paper No. 19363, 2013).

¹⁰⁶ See HERD & MOYNIHAN, *supra* note 4.

¹⁰⁷ See OFF. OF INFO. AND REGUL. AFF., *supra* note 91.

¹⁰⁸ ACF *Emergency and Disaster Waivers and Flexibilities*, U.S. DEP’T OF HEALTH AND HUM. SERV., <https://www.acf.hhs.gov/ohsepr/training-technical-assistance/acf-emergency-and-disaster-waivers-and-flexibilities> (last updated Sept. 5, 2023).

¹⁰⁹ Aditi Vasani, Chen C. Kenyon, Christina A. Roberto, Alexander G. Fiks, & Atheendar S. Venkataramani, *Association of Remote vs In-Person Benefit Delivery With WIC Participation During the COVID-19 Pandemic*, 326 JAMA 1531- 33 (2021).

causes unnecessary delays and unfair denials/terminations. Requiring wet signatures on documents burdens applicants and beneficiaries who are unhoused, elderly, and/or have disabilities. These applicants go into an agency office to sign documents, which can be very difficult for those with mobility issues. Applicants and recipients who must wait to receive and return documents by mail, experience problems with timely submissions due to slow mail delivery, and those who do not have a fixed address are disadvantaged.”¹¹⁰

The federal waiver system for programs allows such experimentation, and it has been used in the past to generate insights about how to reduce burdens in programs such as Medicaid.¹¹¹ For example, Oregon will use a waiver to pilot a continuous enrollment program for children under the age of six years, reducing the burden of re-enrolling annually.¹¹² This is critical because large fractions of beneficiaries, who are still eligible, lose coverage during re-enrollment for procedural reasons, such as missing paperwork or documentation. That said, waivers can also create additional complexity for the public. For example, Medicaid waiver programs have become a central way that states fund and deliver long term care. Their temporary nature, the amount of variation across and within states in who is eligible and how to apply for benefits, as well as funding constraints, all actually increase burdens for eligible individuals.¹¹³

E. Critical Data Tools: Sharing Data

Effectively sharing data across federal agencies and between federal and state agencies is one of the strongest potential tools to reduce burdens. Because of conditionality, or the need to demonstrate one is eligible for benefits and services, as well as the amount and quantity, agencies need information about the individual to ensure eligibility. Having sufficient information allows agencies to significantly ease access. This can allow for 1) better outreach so that individuals know they are eligible; 2) reduction in forms and documentation requirements; and 3) automatic enrollment under some conditions.

The Chief Data Officer Council’s Data Sharing Working Group issued a report that highlights the need for expediting data sharing agreements.¹¹⁴ Similar to our findings, the Working Group explained that data sharing agreements are slowed by “a myriad of complex legal, oversight, policy and compliance regimes that often conflict” and that “[e]ducation of agency leadership across the federal government is needed on the value of data and the importance of sharing for cross-agency mission enablement.” Moreover, the working group found that “an agency’s aversion to risk, especially concerning the interpretation of statute supporting data-sharing, leads to a historical posture of inaction.”

¹¹⁰ Letter from Western Center on Law & Poverty to ACUS (Apr. 17, 2023), https://www.acus.gov/sites/default/files/documents/Identifying%20and%20Reducing%20Burdens%20in%20Administrative%20Processes%20Comment%20from%20Western%20Center%20on%20Law%20%26%20Poverty%202023_04.17.pdf.

¹¹¹ See HERD & MOYNIHAN, *supra* note 4.

¹¹² Amelia Templeton, *Oregon pioneers continuous Medicaid coverage for kids through their 6th birthday*, OPB (Sept. 28, 2022), <https://www.opb.org/article/2022/09/28/oregon-first-nation-offer-continuous-medicaid-coverage-children-through-age-six/>.

¹¹³ Pamela Herd, *Improving Older Adults' Health by Reducing Administrative Burden*, THE MILBANK Q., 101(S1), 507-531 (2023).

¹¹⁴ Federal CDO Council, *Data Sharing Working Group Findings & Recommendations* (2021), at 2, available at https://resources.data.gov/assets/documents/2021_DSWG_Recommendations_and_Findings_508.pdf.

For many agencies, data-sharing practices are primarily governed by the Computer Matching and Privacy Protection Act.¹¹⁵ Some agencies have other specific statutory guidelines regarding data-sharing.¹¹⁶ There are foundational legal questions that must be addressed with any data-sharing possibility, including: which agency is sharing the data and which agency is using the data, what are the parameters of the data being shared, and what is the purpose for which the data are being shared. Each of these questions will have statutory guidance that must be interpreted and adhered to, and small edits to data-sharing design at an early stage in the process can open up possibilities. A key step here requires the program and legal staff to collaborate closely to understand how any sharing of data furthers program administration, including articulating burden reduction benefits. It is critical to note that in addition to reducing burdens, effective data sharing can also significantly reduce fraud and abuse, as well as general error in the distribution of benefits and services.

The model of such a system is SSA's Old Age Insurance (OAI) benefits, which is based on a shared data model with the IRS. Individual beneficiaries don't have to provide earnings or almost any information. The administrative system set up when the program was implemented in the 1930s ensured that employers would provide these data and that SSA would keep track of it, based on a shared data model with the IRS. The result is a system with low administrative costs (1 percent, compared to 9 percent for a program like SNAP), very little error, and very low burdens for beneficiaries. Shared data between the IRS and SSA is integral to the relatively low burdens and low administrative costs for OAI benefits.

There have also been some more recent efforts to reduce burdens with better data sharing. A GAO report found that former students who were entitled to student loan forgiveness due to disability status often lost the benefit due to paperwork. A striking 98 percent who lost the benefit did so not because they were ineligible but because they failed to provide an annual income verification form.¹¹⁷ As a result, the Department of Education used data matching with SSA to verify eligibility status, automatically discharging debt for some 323,000 borrowers.¹¹⁸

Another example features SSA data sharing with states. SSA has data exchange agreements with all 50 states.¹¹⁹ In a number of states, an agreement between USDA, SSA, and the state allows for a joint application between Supplemental Security income (SSI) and SNAP (the Combined Application Project (CAP)).¹²⁰ In short, because SSI eligibility is more restrictive than SNAP

¹¹⁵ See Part III.A.

¹¹⁶ I.R.C. § 6103.

¹¹⁷ U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-45, SOCIAL SECURITY OFFSETS: IMPROVEMENTS TO PROGRAM DESIGN COULD BETTER ASSIST OLDER STUDENT LOAN BORROWERS WITH OBTAINING PERMITTED RELIEF (2016).

¹¹⁸ *Over 323,000 Federal Student Loan Borrowers to Receive \$5.8 Billion in Automatic Total and Permanent Disability Discharges*, U.S. DEPARTMENT OF EDUCATION (Aug. 19, 2021), <https://www.ed.gov/news/press-releases/over-323000-federal-student-loan-borrowers-receive-58-billion-automatic-total-and-permanent-disability-discharges>.

¹¹⁹ SOCIAL SECURITY ADMINISTRATION, DATA EXCHANGE, <https://www.ssa.gov/dataexchange/>.

¹²⁰ *Combined Application Projects*, U.S. DEPARTMENT OF AGRICULTURE, <https://www.fns.usda.gov/snap/combined-application-projects-0> (last updated Dec. 15, 2021); Letter from Edward Markey, U.S. Senator, to Thomas Vilsak, Sec'y of USDA and Kilolo Kijazaki, Sec'y of SSA (Apr. 10, 2023), https://www.markey.senate.gov/imo/media/doc/senator_markey_letter_to_usda_and_ssa_-_april_2023pdf.pdf.

eligibility, it can serve as a ‘passport’ for SNAP eligibility. This has been shown to significantly reduce burdens and increase access to SNAP benefits for eligible individuals.

There are, however, problems with the existing program. First, only 17 states participate. And even among those states that do participate, it is sometimes limited to narrow populations or has lower SNAP benefits. In December of 2022, SSA and the USDA were going to work more closely to reduce burdens and improve their data sharing.¹²¹ In part, establishing and expanding such agreements is reported to be very labor intensive, requiring months of negotiation between SSA, USDA, the state, and vendors of data management systems. The labor-intensive nature of these agreements slows the spread of a useful data-sharing arrangement.

Further, there is limited information on the actual outcomes associated with the CAP or broader ways that SSA and USDA work together to improve access to SNAP for SSI beneficiaries. Indeed, a recent letter from twelve U.S. Senators asked SSA and USDA to document data, like the number of SNAP applications received by SSA offices and the number SNAP applications transferred to state offices, both by CAP and non-CAP states.¹²² This kind of data collection and reporting is critical to understanding how effectively this collaboration is working at both reducing burdens and increasing benefit access.

In sum, while there are excellent existing models of data sharing for burden reduction, there is a need for significant improvements on this front to maximize burden reduction.

V. Developing Innovative Practices to Identify and Reduce Burdens

This section details newer innovations agencies have employed in recent years, many of which are a response to the series of recent Executive Orders to improve peoples’ interactions with government, including improving benefit and service delivery. This rapidly developing regulatory structure represents a change in worldview for agencies. Burden reduction requires new thinking about data. It also requires silo-busting: expanding trust and collaboration among different experts with different skill sets all interconnected with burden. Amid a flurry of new management tools, unfamiliar territory, and lots of information, agencies are innovating in successful ways, while still encountering remaining and new challenges. The goal in this section is to illustrate more recent best practices, as well as how they can be further developed and expanded.

A. Organizational Culture, Including Building Appropriate Capacity, which Focuses on Burden Reduction

In this section, we detail particular actions that agencies have taken to actively create a culture focused on burden reduction. This provides additional insight on what factors might encourage an organizational culture that prioritizes burden reduction.

¹²¹ Press Release, SSA and USDA, USDA and Social Security Administration Collaborate to Improve Nutrition Security Through SNAP (Dec. 8, 2022), <https://www.ssa.gov/news/press/releases/2022/#12-2022-2>.

¹²² See Letter from Edward Markey, U.S. Senator, to Thomas Vilsak, Sec’y of USDA and Kilolo Kijazaki, Sec’y of SSA, *supra* note 120.

A.1. Role of Leadership

A.1.a WH Leadership/Prioritization Through EOs

The impact of the Biden administration's EOs on equity and customer experience cannot be overestimated. Agencies already focused on burden reduction, such as VA, leveraged these orders to further build on their existing activities, while other agencies that had more limited attention to customer experiences, such as the DHS, significantly ramped up their activities.

The White House also plays a leadership role in more direct ways. For example, they have been seeding coordination, either via visible White House leadership, or via less visible actors, such as within OMB. For example, OMB budget examiners are credited with pushing data sharing collaborations that facilitated burden reductions in access to SNAP, via the partnership between SSA and USDA, and student loan forgiveness for those with disabilities, via a partnership between SSA and the Department of Education, as discussed above.

Another key support service facilitated by the central leadership within the Executive branch is the Office of Evaluation Sciences (OES). OES collaborates with agencies across the federal government to enable evidence-based research on interventions, including those intended to reduce burdens.¹²³

Finally, the creation of the U.S. Digital Service (USDS) and 18F (an office within GSA that helps agencies build or buy digital services) have been critical to the broader effort across the federal government to improve customer experiences and to reduce administrative burdens. USDS partners with nearly all of the agencies named in the EO on customer experience. They help bring a key part of capacity building that agencies need to implement burden reduction efforts.¹²⁴

A.1.b Prioritization from agency leadership

Agency leadership prioritizing burden reduction is a key element to effective reduction efforts. Agency leadership at the VA was critical to building a culture, and the institutionalization of processes and procedures, to improve customer experience after the 2015 hospital waiting scandal. The new VA Secretary Bob McDonald would hand out his personal phone number and email to veterans and encourage them to contact him, symbolizing to agency employees the leadership commitment to hearing from clients and solving their problems. Such actions reflect a model of transformational leadership, where leaders use their position to articulate and commit to meaningful and motivating vision. The aftermath of the waiting list scandal could have been to impose new requirements and new checks as a defensive measure. McDonald exploited the failure to change the ethos and operation of VA. One VA official we spoke with put it this way: "The burning platform was there, but we also had leadership from McDonald. A Secretary-level endorsement is critical. It won't do the work for you, but it is essential."

¹²³ Legal Aid Interagency Roundtable Report, *supra* note 57.

¹²⁴ *Digital Services Playbook*, U.S. DIGITAL SERVICE, available at <https://perma.cc/FQ9L-HR3U>.

A more recent attention to burden reduction on the part of leadership has come about at DHS. Agency staff repeatedly noted that Secretary Mayorkas’s focus on burden reduction made their efforts substantially easier. For example, officials at DHS point to the Secretary prioritizing the need to make things simpler and easier for people as to why burden reduction has become a key part of their regulatory review agenda. This was described as a shift toward defining burden reduction holistically throughout the agency, with a stated goal of reducing burdens by 20 million hours across different sub-agencies.¹²⁵ The target was a tangible way to communicate the leadership priority across DHS. By June 1, 2023, DHS reported exceeding its goal, reducing the burden hours by 21 million.¹²⁶ A phrase used to describe the goals of burden reduction at DHS was to make government interactions “less humiliating” for people. That sort of humanizing of burden reduction goals can be a powerful motivator for agency staff.

More specifically, leaders can help by increasing the salience of customer experience efforts, linking them to mission and organizational culture, and allocating resources (including their time) to burden reduction efforts. Another recent example of this kind of leadership is at HHS. As Andrea Palm, Deputy Secretary of HHS, noted, the agency is putting “the people we serve at the center of what we do.”¹²⁷ She explicitly noted both cross-departmental and intergovernmental collaboration to reduce burdens. One specific example is a collaboration between HHS and the USDA to better serve families that are eligible for multiple programs across those agencies. As she noted, “So how we think about the customer experience is an opportunity for us at HHS to lift up, to put people at the center, and to wrap service around them instead of requiring people to come to programs and interface with individual programs.”

We heard a similar shift in approach from the Taxpayer Experience Office at IRS. There, interviewees spoke of the more holistic focus on the entirety of the taxpayer experience, beyond merely communicating filing instructions. Echoing this shift in view, the National Taxpayer Advocate recommended that the IRS adapt its mission statement to specifically recognize its role as a benefits-provider: “By explicitly stating the IRS’s benefits administration role as a separate agency mission in the context of service and non-coercive compliance, the IRS would be required to align its procedures, goals, and measures with those of other agencies serving similar situations. That would in turn build taxpayer trust and confidence, leading to improved compliance and an environment that reflects the essential dignity of all taxpayers.”¹²⁸

A.2. Codifying Burden Reduction

OMB is currently working on ways to ensure that burden reduction is actually encoded into agency regulations. The proposed Circular A-4 includes a section on “Improving Government Operations and Service Delivery” that states “[r]egulations are necessary for the day-to-day

¹²⁵ Memorandum from Eric Hysen, Chief Information Officer, to DHS Component and Office Heads, Paperwork Reduction Act Burden Reduction Initiative (Mar. 22, 2022), https://www.dhs.gov/sites/default/files/2022-05/Burden_Reduction_Initiative_Memo_Final%20PDF%20CIO%20signed.pdf.

¹²⁶ *See* OFF. OF INFO. AND REGUL. AFF., *supra* note 91.

¹²⁷ Mike Miliard, *HHS is prioritizing consumer experience, data exchange, explainable AI*, HEALTHCARE IT NEWS (Apr. 28, 2023, 10:51 AM), <https://www.healthcareitnews.com/news/hhs-prioritizing-consumer-experience-data-exchange-explainable-ai>.

¹²⁸ NATIONAL TAXPAYER ADVOCATE, EARNED INCOME TAX CREDIT: MAKING THE EITC WORK FOR TAXPAYERS AND THE GOVERNMENT 5 (2020), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20_Volume3.pdf.

functioning of government and can also help promote a government that operates smoothly, is more transparent, and delivers public services efficiently. For example, a regulation may further effective government operations by setting performance criteria that the government must follow. Regulations can also help the government deliver services to more individuals at lower cost, such as by reducing administrative burdens or by simplifying public-facing or internal processes.”¹²⁹

The VA provides a robust example as to why this kind of encoding can matter for agency culture. It is perhaps the most notable agency for creating a culture focused on burden reduction and broadly improving how veterans experience their encounters with the agency. It did this in part by explicitly connecting burden reduction efforts to its organizational culture. VA cultural values are codified in law as Integrity, Commitment, Advocacy, Respect and Excellence (I CARE). These values put veterans at the center of the organization and emphasize the need to continue agency learning to better serve veterans.¹³⁰ This made it easy to connect customer experience principles to the core values. The VA would also codify customer experience principles alongside these values. These include:

- (a) ***Ease***. VA will make access to VA care, benefits, and memorial services smooth and easy.
- (b) ***Effectiveness***. VA will deliver care, benefits, and memorial services to the customer's satisfaction.
- (c) ***Emotion***. VA will deliver care, benefits, and memorial services in a manner that makes customers feel honored and valued in their interactions with VA. VA will use customer experience data and insights in strategy development and decision-making to ensure that the voice of veterans, servicemembers, their families, caregivers, and survivors inform how VA delivers care, benefits, and memorial services.”

One notable aspect of these principles is that they focus on access to services, not just positive experiences for those who use services. They also use a word not commonly seen in government documents—“emotion”—to convey that the psychological experience of the service is a key aspect to serving clients. VA officials we spoke with emphasized that people are drawn into the government to help others. Reducing burdens and improving client experiences offers a chance to directly and measurably help the public and serve as a basis for recruiting the next generations of public servants showing, “You can be a badass in government.”

Even within VA, the connection to mission varies across staff. Nurses and physicians have direct interactions with the clients they serve, but back-office workers such as claim examiners do not. The work of those employees can still have a significant effect on client experiences, but it requires extra work to draw those connections.

A.3. Building learning routines and a sense of ownership over burden reduction

¹²⁹ OFFICE OF MGMT & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR A-4, § 5 at 19 (2023).

¹³⁰ See Core Values, Characteristics, and Customer Experience Principles of the Department, 84 Fed. Reg. 22,709 (May 20, 2019).

As with any new reform effort, long-term success depends upon institutionalization. Here, burden reduction efforts could look at performance management efforts in government. To some extent they have done so by, for example, connecting customer experience goals with Government Performance and Results Act Modernization Act (GPRAMA) strategic planning and performance reporting goals in Circular A-11. There are other lessons from the performance management practices. One such practice was to identify goal leaders who were publicly responsible for reporting progress on specific reporting goals, whose names and pictures are presented alongside the goal on the federal Performance.gov website.

Another strategy has been to ensure that data is used by mandating quarterly reviews of progress made on key views. Federal employees involved in such reviews were more likely to report using performance data to make substantive decisions relative to those who were not.¹³¹

One incentive structure that shapes cultural attitudes is that agencies face significant pressure to minimize spending. This can pit burden reduction efforts and spending reduction efforts at odds with each other. Burden reduction efforts will sometimes require costs: hiring new CX staff, or consulting help. The benefits are enjoyed by the public, but do not reduce the bottom line. By contrast, efforts to reduce spending can work in the opposite fashion. Asking the public to provide more information in administrative processes does not cost anything for the administrator, even as it imposes negative externalities on the public. A former Presidential Innovation Fellow, Angelo Frigo put it this way: “If an agency can increase program integrity by asking the public for more information or requiring more evidence—burdens go up. When CX leaders try to get their agencies to reduce burdens but that requires an increase in spending or a reduction in integrity—even if slight—it almost always loses.”

Of course, in many cases, burden reduction for the public, such as automating benefit renewals and relying on administrative data, actually reduces administrative overhead on average. For example, a caseworker will spend less time accessing administrative data to verify income than they will helping a beneficiary provide that information and documentation. There may be upfront costs, however, to achieve these savings.

B. Collaboration: Cross Department and Cross Governmental Collaboration

B.1. Collaboration across Federal Agencies

We described in Part IV how agencies, such as the VA, have been effectively building collaborations across units within the agency to reduce burdens. But one key part of the new EO, which is focused on “Life Experiences,” requires cross-agency collaboration.¹³² These experiences, such as retiring or facing a financial shock, require that people seek services and benefits across multiple agencies, which can be confusing and require duplicative, and sometimes unnecessary efforts. For example, one might be required to provide income documentation multiple times, or fill out somewhat different forms, but are ultimately providing the same information. Agencies need to collaborate to reduce these onerous processes.

¹³¹ Donald Moynihan & Alexander Kroll, *Performance management routines that work? An early assessment of the GPRAMA Modernization Act*, 76 PUB. ADMIN. REVIEW 314-323 (2016).

¹³² *Customer Experience Projects*, PERFORMANCE.GOV, <https://www.performance.gov/cx/projects/>.

Collaboration can take the form of information sharing on burden reduction methods, program design that connects certain functions across multiple agencies, expanded use of data match agreements, and ongoing communication channels. The broader lesson is the need for cross-agency working groups to reduce burdens, which include actors from the center of government who know the specifics of the case and the broader burden reduction agenda.

An example that highlights many of these collaborative tools is how the VA has worked closely with the Department of Defense (DOD), facilitating the handoff between the end of military service and accessing veterans benefits. This includes data sharing, document exchange, and process simplification. This outcome benefited from a joint executive committee that works together to find pain points. The HAIMS (Health Artifact and Image Management Solution) system facilitates document sharing and the two agencies are working on an electronic health record exchange. Officials from both agencies meet quarterly and are supported by OMB. The process can be slow. It has taken years to develop a single health assessment that both DOD and VA would accept. Such efforts not just improve access but reduce overpayments, such as individuals who are claiming multiple benefits when they are only allowed to claim one.

Such efforts depend upon good faith and trust from all sides. If one side thinks the other is slow rolling, they are more likely to withdraw effort and invest it elsewhere. One interviewee noted: “It’s like building the St. Louis Arch. You gotta build to meet in the middle.” Another noted that having an inexperienced counterpart unfamiliar with the complexities of the systems they sought to integrate was enough to stall progress. It may also require third parties, such as OMB, to step in. In a couple of instances, OMB budget examiners provided the impetus for pushing coordination.

More recently, HHS has been collaborating with Food and Nutrition Services within the USDA to streamline access to both SNAP and Medicaid, which are administered by separate agencies but serve similar populations.¹³³ This collaboration reflects a response to the CX EO, with the USDA specifically issuing a new regulation to facilitate this kind of cross agency collaboration.¹³⁴ In 2022, HHS also used categorical eligibility to reduce burdens for families with lower income seeking Early Start and Head Start services. It instructed providers to provide automatic eligibility for SNAP and Temporary Assistance for Needy Families (TANF) recipients rather than require an extra enrollment process which had been viewed as discouraging take-up.¹³⁵

There is significant potential to continue to build on existing collaborations, but also to build new collaboration. For example, in some cases, programs exist and have relatively low utilization because of limited collaboration. The Achieving a Better Life Experience (ABLE) program is one such example. It provides tax sheltered savings accounts for families who have a member

¹³³ Mike Miliard, *HHS is prioritizing consumer experience, data exchange, explainable AI*, HEALTHCARE IT NEWS (Apr. 28, 2023, 10:51 a.m.), <https://www.healthcareitnews.com/news/hhs-prioritizing-consumer-experience-data-exchange-explainable-ai>.

¹³⁴ U.S. DEP’T OF AGRIC., U.S. DEPARTMENT OF AGRICULTURE CUSTOMER EXPERIENCE POLICY (June 17, 2022), <https://www.usda.gov/directives/dr-1270-001>.

¹³⁵ *See* OFF. OF INFO. AND REGUL. AFF., *supra* note 91.

with a disability. The program ensures that disabled beneficiaries who have more than the \$2,000 asset cap for programs like Supplemental Security Income, can accrue some savings and not lose access to these critical benefits. The simplest solution would be to increase asset limits, which haven't been adjusted in decades, or do away with them, since only a small number of families have significant assets.

ABLE provides a complex way to work around the asset limits. But it remains underutilized because of the learning costs posed by a new program. Eligible individuals don't know about the program or how to utilize it. One way to address this would be for the IRS and the SSA to work together to reduce those learning costs by contacting eligible families, and explaining the program and their eligibility. Such a step has proven to be an effective tool for increasing take-up for the EITC, which is administered by the IRS.¹³⁶ The SSA has data that could help identify potentially eligible individuals. Though the SSA does advertise the program in its field offices, far more collaboration and outreach are required for that outreach to be effective. The SSA, however, sees the program as an IRS program, and the IRS does not see a role for itself in promoting tax credits which are administered by private third parties. The result is that only families with a good knowledge of the tax system are likely to be aware of the program.

B.2. Federalism: Collaborating across levels of government

One of the reasons for high levels of burden in public programs is federalism. Most federal social welfare policies, with key exceptions like Medicare and Social Security, are administered by the states, and the design of those benefits, such as who is eligible and what conditions people must meet to receive those benefits, also is significantly driven by state choices. The significant variation, in both benefit design and administration, adds complexity which, in turn, makes those programs more burdensome for people to access. Programs can gain layers of additional requirements as states or local governments customize them. Other levels of government may also lack the capacity to fix burdens.

The consequence is that significant coordination between the federal government, states, and sometimes counties or other localities is required to reduce burdens. Federal directives to identify and reduce burdens already exist through the revised PRA guidance, as well as the CX EOs. These apply to any program that receives federal funding regardless of who administers the program. But there is limited awareness of these changes, especially at lower levels of government, and more active coordination efforts are needed. We highlight some recent examples of how federal agencies are coordinating with states to reduce burdens.

One of the most notable failures in benefit delivery occurred during the pandemic when millions of people tried to access unemployment insurance (UI) benefits but were met, in many states, with endless burdens and barriers. A benefit, intended to protect people when they became unemployed, was effectively inaccessible to many of those eligible. UI is a prototypical example of how significant state variation in both benefit design and administration can lead to highly burdensome experiences for the public.

¹³⁶ Saurabh Bhargava & Dayanand Manoli, *Psychological frictions and the incomplete take-up of social benefits: Evidence from an IRS field experiment*, 105(11) AM. ECON. REV. 3489-3529 (2015).

A host of issues were identified with state UI systems, ranging from understaffing to outdated technologies, which helped drive some of the problems people faced at the start of the pandemic. And because UI comprises 53 different benefit systems, there is no single administrative solution that the federal government can employ to improve UI.

That said, ARPA included resources that allowed the DOL to send teams, called Tiger Teams, to consult with states, looking at technology operations and process flows to improve benefit delivery systems. Their goal is to “work with states to identify ways to enhance their existing efforts and make actionable recommendations, along with allocated grant funding, for states to make near-term impacts within the pillars of Equity & Accessibility, Timeliness & Backlog, and Fraud Prevention & Detection. In addition, the Tiger Teams work across the national UI system to identify promising practices and develop tools and resources for the states.”¹³⁷ The DOL has worked with 30 states up to May of 2023.

A key change from the federal government, by employing these teams, was a shift from only focusing on benefits errors and state compliance with federal rules, to an additional focus on problem solving to ensure improved benefit delivery. Prior to ARPA, the focus had been almost exclusively on fraud and error prevention. DOL did not have the operational resources to provide the kinds of assistance included in ARPA.

Critically, DOL created entirely different teams for enforcement activities versus these new assistance activities. Tiger teams emphasize organizational learning, rather than focusing on blame for prior errors. Furthermore, they provided state governments, especially those with more limited capacity, additional expertise and support that is needed for their systems to improve. The basic programmatic model is that the teams work closely with states to understand their strengths and weaknesses, and in that context, develop a set of recommendations. The states can then access grants and awards to implement these recommendations.

Moving forward, without the capacity to provide problem-solving help and improve state services, the relationship will revert back to compliance.

B.3. Standardizing Processes for Burden Reduction

Regardless of whether it is collaboration across federal departments or departments across levels of government, one key way to improve peoples’ experiences, given the complexity of federalist programs like UI, is to standardize eligibility tools when possible. We discuss a range of methods to address this below.

B.3.1. Identity Verification

A key tool, needed across almost any program, is identity verification. While a seemingly simple task, in practice it is complicated and can serve as a substantial barrier to services and benefits. Identity verification is also critical to prevent programmatic fraud, which was a significant problem in UI during the pandemic. One way to meet both goals—reduce fraud and simplify

¹³⁷ *Tiger Team Updates*, U.S. DEP’T OF LAB. (JULY 2023), <https://www.dol.gov/agencies/eta/ui-modernization/tiger-teams#:~:text=Tiger%20Teams%20work%20with%20states,%2C%20and%20Fraud%20Prevention%20%26%20Dection>.

access to services—is to create a single identity verification tool that can be used across any federal or state program.

One such tool is Login.gov, which is an identity verification tool created by GSA. This tool was extended to state governments under the Intergovernmental Cooperation Act. The value proposition of Login.gov is intuitive. Rather than having to create a separate account and password for every government service, a single one becomes the gateway for all. Users do not have to hunt for multiple passwords or renew credentials if they cannot find them. Other countries, such as Denmark, have models where all main government services run through a single account. On aggregate, a digital option reduces friction in accessing public services.

There have been controversies around Login.gov, in part because it does not include biometric verification. GSA chose not to add this feature because of robust evidence that biometric tools are effectively biased against black, indigenous, and people of color, failing to accurately identify individuals.

But the benefits of employing Login.gov are much higher than any costs associated with not having the biometric tools. Having both federal and state agencies employing a wide array of differing identity tools creates enormous burden and confusion. Further, if states employ other tools, private entities do not have the same obligation to pay attention to equity concerns as does the federal government.

One risk associated with any digital identification is exclusion if non-digital users have no other options. This is another area where Login.gov has a substantial advantage. Login.gov allows users to go to post offices to verify identity if they do not wish to do it online.

The actual value of Login.gov to users has not been estimated. This should be relatively easy for GSA to do, simply by estimating the time value of logins across the number of users by the number of accounts used. While the PRA mandates that the government track the amount of time that users spend on interactions, it should also look for examples to quantify time-savings, such as those offered by Login.gov.

B.3.2. Standardizing Definitions for Eligibility Processes

One key source of burden is varying definitions of particular components of eligibility, such as income. For example, different agencies can count income in different ways, such as including or excluding specific components (e.g. child care or health care costs), or whether it's based on weekly or monthly income. To the extent this varies across agencies, and even within agencies across programs, it creates confusion and complexity for beneficiaries, and it also reduces the ability to coordinate to reduce burdens. For agencies to work at synchronizing these kinds of definitions, it does require GCs to be involved in systematically reviewing statutes to see where agencies do, and do not, have flexibility.

One example of a success in this domain was through regulations related to the Housing Opportunity Through Modernization Act of 2016 (HOTMA). HUD regulations implementing HOTMA aim to allow more flexibility with data-sharing through upgraded definitions of income

and other eligibility criteria.¹³⁸ Through its work to integrate overlapping programs, HUD is streamlining eligibility determinations for certain of its rental assistance programs. “Specifically, the new rules will: require each adult household member to sign a consent form one time, instead of annually; enable PHAs [Public Housing Agencies]/owners to use income determinations made under other federal benefit programs, which will eliminate redundant work; simplify income deductions and allow families to self-certify assets up to \$50,000; and reduce the frequency of interim income recertifications.”

B.3.3. Common Forms and Shared Platforms

The extent to which agencies have shared platforms can also reduce burdens for the public. If all agencies, for example, employ the same identity verification platform, this substantially reduces learning and compliance costs for the public. Another example is the use of healthcare.gov, which is a single-entry portal that determines not just whether one is eligible for subsidies to provide private health insurance but also whether or not one is eligible for Medicaid. Statutory guidelines also allow for it to be used to assess eligibility for programs like SNAP. Indeed, some state exchanges allow for applications for SNAP within their state run health care exchanges. A previous ACUS recommendation noted that more common forms between agencies can lessen PRA clearance hurdles as well.¹³⁹

C. Building Capacity: Providing Assistance With Accredited Representatives and Ombuds

Legal aid organizations have deep experience and understanding of the challenges that historically underserved people face in accessing government services and benefits. And indeed, legal aid organizations provided comments in response to the Request for Information from ACUS as part of this project’s research strategy.¹⁴⁰ These comments focused mostly on Social Security and SSI benefits, with some overlap with SNAP, TANF, and Medicaid benefits. A few legal services organizations focused on taxpayer programs and unemployment insurance as well.

The comments received from legal services providers provide insight into the nature of challenges experienced by members of the public when attempting to access these vital benefits. These challenges can be sorted into the following buckets: communication barriers, technological barriers, burdensome procedures, and substantive hurdles.

Many commenters expressed frustration at extremely long wait times and failure to receive return phone calls after leaving messages. Mail and fax communications are often lost. Even when mail is a viable option, many people lack reliable mailing addresses and thus can miss communications or deadlines. Internet options vary and can create more burdens in terms of account creation and identity verification procedures. There were also repeated themes that plain language and language access is not being used throughout systems, particularly where there are

¹³⁸ *Housing Opportunity Through Modernization Act of 2016: Implementation of Sections 102, 103, and 104*, 88 Fed. Reg. 9600-76 (Feb 14, 2023).

¹³⁹ See *Paperwork Reduction Act Efficiencies*, *supra* note 24.

¹⁴⁰ ACUS received 20 comments in response to its RFI, roughly half of these came from direct service providers. See all responses here: <https://www.acus.gov/research-projects/identifying-and-reducing-burdens-administrative-processes>.

federal/state partnerships. Finally, comments highlighted the need for uniformity of policy and accountability across field offices.

Legal aid providers also were especially attuned to the differences between navigating these processes with and without representation. Burdens exist in both situations, but the cumulative burdens experienced without legal representation can be overwhelming to the point of foregoing benefits rightly entitled. In other cases, errors exacerbated through lack of assistance can result in benefits being wrongly denied.

Specific examples of the challenges added by lack of representation include inaccessibility to claimant's files, confusion about various forms and their purposes, and missing evidence in the first instance, which can cause an incomplete record that follows a claimant throughout the application process and any subsequent appeals. Disability benefits determinations have long been known to suffer from problems with consistency and accuracy.¹⁴¹ Recent studies have shown that legal representation at these initial benefits eligibility decision stages produce better outcomes for people who need these benefits. A 2022 study by the National Bureau of Economic Research concluded that "legal representation in the initial stage leads to earlier disability awards to individuals who would otherwise be awarded benefits only on appeal. Furthermore, by securing earlier awards and discouraging unsupported appeals, representation reduces total case processing time by nearly one year."¹⁴²

However, there are not enough lawyers to assist people with accessing government services and benefits. People may not have access to free or reduced-cost legal services due to geography, income or other restrictions and challenges. There are opportunities to expand available representation beyond the traditional lawyer model. For example, the VA has an accredited representative program.¹⁴³ VSO representatives are accredited by the agency to provide assistance with benefits applications, free of charge. DOJ has a similar accreditation program for expanding access to representation in immigration matters at USCIS, like visa applications and Deferred Action for Childhood Arrivals (DACA) applications.¹⁴⁴

Advocate ombuds in agencies can provide a similar service. According to a 2016 ACUS Report describing the duties of advocate ombuds: "Unlike other ombuds, the advocate ombuds is authorized, or required, to listen to individuals or groups found to be aggrieved. Due to the unique role, this ombuds must have a basic understanding of the nature and role of advocacy, and of legal statutes or regulations."¹⁴⁵ Ombuds play a variety of roles related to identifying and reducing burdens, as explained from survey results described in the ACUS report: "Ombuds were seen as providing value in assisting visitors to navigate a confusing government bureaucracy, and providing a bridge between concerns of individuals and offices of the government. Particularly noted was the value of the ombuds in providing a voice, and options for

¹⁴¹ See Admin. Conf. of the U.S. Recommendation 2013-1, *Improving Consistency in Social Security Disability Adjudications*, 86 Fed. Reg 36075-85 (June 8, 2021).

¹⁴² Hilary W. Hoynes, Nicole Maestas & Alexander Strand, *Legal Representation in Disability Claims* (Nat'l Bureau of Econ. Rsch., Working Paper No. 29871, 2020).

¹⁴³ U.S. DEP'T OF VETERANS AFFAIRS, ACCREDITED REPRESENTATIVES (Feb 5, 2021), <https://www.benefits.va.gov/vso/>.

¹⁴⁴ Representation of Others, 8 C.F.R. § 1292.1 (Jan. 1, 2017).

¹⁴⁵ See Carole S. Houk, Mary P. Rowe, Deborah A. Katz, Neil H. Katz, Lauren Marx, & Timothy Hedeem, *The Nature and Value of Ombudsmen in Federal Agencies*, at 84-163 (report submitted to ACUS) (providing case studies of federal agency ombuds) (Nov. 14, 2016).

understanding and resolution, for populations that would otherwise be ignored or have limited options. Ombuds were credited in helping both internal and external visitors to receive guidance on information and resources, ‘next steps’ they might pursue, and coaching suggestions on conflict resolution strategies. Furthermore, ombuds who were interviewed believe they add value by ‘humanizing’ the federal government and helping others ‘to find their own voice and resolve their own issues.’”¹⁴⁶

Even statutory notification expansions can increase access to representation and thereby reduce administrative burdens felt by underrepresented populations. For example, the Taxpayer First Act specifically authorizes the Secretary of the Treasury to notify taxpayers about Low Income Taxpayer Clinics in the taxpayers’ geographic region.¹⁴⁷

D. Critical Analytic Tools: Rethinking Cost Benefit Analysis and Requirements

Current agency cost benefit analyses do not typically incorporate the cost of burdens. According to the GAO, agencies “did not consistently address key costs and benefits needed to assess the value of their computer matching programs,” including administrative benefits.¹⁴⁸ And OMB guidance on cost/benefit analysis in terms of computer matching programs is extremely general and outdated.¹⁴⁹

More broadly, many agencies do not consistently and clearly document the costs and benefits of policy changes and procedures in terms of burdens. This can hamper the ability of lawyers to accurately assess how they interpret proposed changes to reduce burdens. For example, it hampers their ability to interpret statutes that guide data-sharing if they are not able to sufficiently account for costs (and benefits) of procedures employed to reduce administrative burdens. For example, many data sharing agreements across agencies are supposed to balance ‘benefits and costs’ in terms of what data is shared and how it is done, including privacy.¹⁵⁰ If agencies are not clearly detailing all the benefits, such as increased access to benefits, they may overweight costs, in terms of privacy, when making a recommendation.

On a related, but slightly different note, sometimes the requirement for cost benefit analysis that agencies impose on sub-entities delivering public services impedes the delivery of those services. In acknowledgement of this fact, DHS recently altered cost/benefit requirements for their community grants program. DHS provides community grants to many small agencies and organizations. DHS, through the Federal Emergency Management Agency (FEMA), has recently taken steps to make it easier for underrepresented communities to submit successful flood mitigation grant applications. This initiative allows for more technical assistance for grant applications and softens the required benefit-cost ratio.¹⁵¹ FEMA updated its benefit-cost

¹⁴⁶ *Id.* at 75.

¹⁴⁷ See Taxpayer First Act, Pub. L. No. 116-25, § 1402, 133 Stat. 981, 997 (2019).

¹⁴⁸ U.S. GOV’T ACCOUNTABILITY OFF., GAO-14-44, COMPUTER MATCHING ACT: OMB AND SELECTED AGENCIES NEED TO ENSURE CONSISTENT IMPLEMENTATION (2014).

¹⁴⁹ *Id.*

¹⁵⁰ Memorandum from Director Jacob J. Lew to Heads of Executive Departments and Agencies (Dec. 20, 2000), <https://www.whitehouse.gov/wp-content/uploads/2017/11/2001-M-01-05-Guidance-on-Inter-Agency-Sharing-of-Personal-Data-Protecting-Personal-Privacy.pdf>.

¹⁵¹ Memorandum from the Deputy Director of the Hazard Mitigation Assistance Division to the BRIC and FMA Grant Program Applicants (Oct. 6, 2022).

analysis toolkit to allow for alternative pathways for certain communities to satisfy “cost-effectiveness” in situations where “significant benefits are difficult to quantify.”¹⁵²

E. Critical Data Tools: Modernizing and Expanding Data Matching and Sharing

Existing statutory requirements do provide challenges for data sharing. There are generally applicable legal requirements through the Privacy Act, as well as agency-specific requirements for certain types of data (e.g., federal tax information) and certain populations (e.g., veterans). There are also specific requirements for different types of benefits, different types of data, and varying procedural requirements like whether cost benefit analysis and consent are needed for the specific sharing program. Many of these original data-sharing statutes were written before digital data and analytics were common. That said, Congress has amended standards at times to accommodate specific data sharing between agencies to reduce burdens. For example, amendments allowed for the IRS to share data in the context of the Health Care Exchanges to document eligibility for subsidies to buy health insurance and determine eligibility for both Medicaid and SNAP.

So, while there are plenty of opportunities for data sharing to reduce burdens, the layers of legal and regulatory steps can make data sharing an onerous process. And agencies lack capacity to prioritize this type of process without clear benefits. Trust between agencies is key. As one agency official explained it: “There’s always a level of skepticism. We’re going to share our data, what are you going to use our data for? And everyone wants to take data but not give.”¹⁵³

More recently agencies have been actively coordinating with each other to better share data in the context of new guidance in the CX EO.¹⁵⁴ For example, the USDA is coordinating with HHS to streamline the certification process for eligible participants in WIC.¹⁵⁵ The goal is to improve participation in the WIC program by sharing data across programs for which beneficiaries are eligible, to engage in burden reduction, through targeted outreach, automatic enrollment, simplification of documentation requirements, and including WIC in other benefit applications.

Sharing data between federal agencies can lead to drastic improvements in outcomes for people. A GAO report found that former students who were entitled to student loan forgiveness due to disability status often lost the benefit due to paperwork. A striking 98 percent who lost the benefit did so not because they were ineligible but because they failed to provide an annual income verification form.¹⁵⁶ SSA and the Department of Education worked together to develop a data sharing program that allowed the Department of Education to automatically discharge student loan debt for those with permanent disabilities. This action immediately led to over 323,000 individuals having nearly 6 billion dollars in student loan debt discharged.¹⁵⁷

¹⁵² *Id.* at 3 App. 1.

¹⁵³ January 25, 2023, interview notes, on file with the authors.

¹⁵⁴ The Interagency Working Group is a key player here.

¹⁵⁵ Memorandum from Sarah Olson, Director of the Policy Division of Supplemental Nutrition and Safety Programs, to the Regional Directors (Apr. 25, 2023).

¹⁵⁶ U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 116.

¹⁵⁷ *Over 323,000 Federal Student Loan Borrowers to Receive \$5.8 Billion in Automatic Total and Permanent Disability Discharges*, U.S. DEP’T OF EDUC. (Aug. 19, 2021),

Even so, generating a computer matching agreement to enable federal agencies to share data to reduce burdens is difficult. Further, certain agency-specific statutes make it even more challenging. The IRS, in particular, faces the strictest statutory requirements regarding what data it can share. Section 6103 of the Internal Revenue Code governs all aspects of data sharing, most of which relates to collection and other enforcement activities. A small subsection governs the kind of data sharing we are discussing here, where two or more agencies share data to reduce burdens on beneficiaries through shifting some of that burden back to the government in terms of streamlining notification of eligibility, identity verification, or other data request on the beneficiary. Such data sharing structure has been authorized by statutory amendment to include state tax agencies, the VA, SSA (to estimate Social Security benefits, and Medicare premium subsidies), and the Centers for Medicare & Medicaid Services (to determine advance premium credits for the health insurance marketplace).

The challenges of the mandate are further enhanced by an agency culture that prioritizes privacy as a dominant agency goal. In short, IRS has long believed that if the public doesn't trust their data is confidential then they will be far less likely to pay their taxes. But trust is not only about safeguarding privacy. Reducing burdens and improving outcomes also generates people's trust in the agency. Recalibrating the privacy-trust-burden reduction scale requires the type of cultural shift discussed elsewhere in this report. While the public clearly values privacy, it is also the case that Americans value simple and straightforward access to benefits and services for which they are eligible. While access to income data from the IRS for debt collection agencies would likely seriously undermine public trust in the agency, data sharing with the Department of Education to automatically discharge thousands of dollars in debt would likely do the exact opposite.

However, not all data is collected or stored in a way that is useful to other agencies' programmatic needs. Some misperceptions along these lines exist about IRS data. For example, IRS data does not include specific employment data, nor is it in real-time. As one IRS official noted: "What we have is data that is reported on your tax return. When other eligibility programs align or overlap, it works great. Where it doesn't, it doesn't."

Even agencies without additional statutory requirements behave conservatively when it comes to data sharing. Although there has been a noticeable uptick in the number of computer matching agreements between agencies over the past decade, and particularly in response to the CX EO, the default mode is not to share data. The federal privacy laws reflect an era where there were minimal opportunities to do so.

The default is structured not just by legal prohibitions, but also by agency officials' beliefs (sometimes mistaken) about whether a data sharing program is legal and how onerous it will be to create the necessary data sharing arrangements. We heard from more than one agency that data sharing agreements can take a long time and need dedicated staff, in both agencies, to get over the finish line. Many staff believe, correctly in some cases, that their General Counsel will err on the side of not sharing data because they are unaware of the benefits of reducing burdens, or there are inconsistent metrics for analyzing the cost to benefit ratio for such an arrangement. General Counsels might argue that the agency is not allowed to expend funds on such

<https://www.ed.gov/news/press-releases/over-323000-federal-student-loan-borrowers-receive-58-billion-automatic-total-and-permanent-disability-discharges>.

collaborations, imposing another roadblock, even if the collaboration would clearly benefit members of the public. Staff believe that data sharing arrangements will take months or years to structure and depend upon strong support from both sides of the arrangement, likely also leadership support from within and beyond the agency. At times, agency officials might believe that a change in law is required. Under these circumstances, the gap between what is possible and what is being done is growing. Administrative data is a central tool in reducing administrative burdens that is being underutilized.

The Biden administration gave the Director of OMB a stronger role in determining data-sharing approvals, particularly directing OMB to reconsider guidance and processes around how agencies collect and share data in the recent CX EO. OMB can play a role here in providing clear and consistent guidance that address the various beliefs that are currently holding some burden reduction opportunities back.

VI. Recommendations

The report will conclude with a series of draft recommendations for consideration by the Administrative Conference of the United States Office of the Chair. These recommendations are in addition to a general recommendation that Congress should, in conjunction with each agency, revisit specific governing statutes with an eye toward possible amendments that could encourage or maximize burden reduction.

1. Recommendation for Federal Agencies: Adopt and Build Upon Existing Positive Practices

In Sections IV and V we laid out a series of positive practices agencies have started to employ to reduce burdens. While we draw on existing agency practices to make these recommendations, many of them are still new and most agencies have significant work to do to embrace burden reduction. Key practices that all federal agencies that engage with the public should employ include: 1) agency leadership should prioritize burden reduction efforts; 2) agencies should center the public when they design processes; 3) agencies should have a devoted customer experience team with sufficient resources and authority to be effective; 4) agencies should simplify processes and provide support to help the public navigate burdens; 5) agencies should collaborate within and across agencies to maximize burden reduction; and 6) agencies should maximize data tools to reduce burdens.

2. Recommendation for Federal Agencies: Building Culture by Improving Collaboration with General Counsels and Third-Party Organizations

While our report has focused on new and existing legal authorities to identify and reduce burdens, it has also underlined the centrality of organizational norms and beliefs to embedding such actions within federal agencies. Organizational culture is amorphous, but understanding how it matters is essential to reform efforts in government. There is no single lever, and the work is ongoing. In the case of burden reduction, it requires organizational leaders who communicate their organizational mission in terms of helping the public and providing access to benefits and services that they need and value, and connecting burden reduction to such efforts. Such

messages are attractive to employees, since they tap into important motivational bases, such as a desire to help others and a sense of being part of a positive change.

For leadership messages to be credible, they require concrete investments in time (routine reviews of progress), resources (hiring outstanding CX leaders), and the creation of permission structures to experiment with ways to measure and improve user experiences. Effective leaders advertise quick wins to build a sense of momentum but also take the long view by embedding changes via stakeholder engagement with CX processes, institutionalizing specific offices to lead change, and ensuring that the efforts of those offices are visible and seen as connected to the everyday work of agency staff. Cultural change also depends on other organizational actors, and stakeholders outside the organization, buying into the new approach.

2.A. Encourage General Counsels to Join Burden Reduction Efforts

General Counsels are critical to burden reduction efforts. As General Counsels manage agency legal risk, the easiest path is to maintain the status quo. For example, wet signatures provide a legal basis to demonstrate a legal record to protect against litigation, but they also pose a barrier to access. Prioritizing access implies looking for alternatives, but prioritizing liability minimization implies maintaining the burdensome requirement. The new administrative burden policy architecture provides a legal basis for General Counsels to prioritize access to services and to minimize burdens.

General Counsels can use their expertise to inform burden reduction team efforts. This requires that they commit to understanding and enabling the new burden reduction structures in place. In some cases, this might require General Counsel offices to adopt greater integration into the actions of the agency, for example working directly with CX officials.

Framing legal questions in terms of various costs and benefits and relating those trade-offs to the agency mission rather than narrow questions of whether something is legal allows for the attorneys to better understand the evidence base behind the proposed interpretations rather than being brought in at veto point. Including General Counsels throughout the process can smooth the overall process.

2.B. Leverage Third Parties to Expand Representation

Agencies can continue process simplification efforts, as well as expanding their roles in providing avenues for assistance for public beneficiaries, whether that be partnerships with legal aid, innovations and flexibilities with accrediting representatives, or establishing an advocate ombuds role within the agency to assist the public. Agencies can continue to build capacity for assistance through collaborations with the White House Legal Aid Interagency Roundtable.

2.C. Leverage Existing Federal Agencies to Expand Access

In addition to contracting with third parties to build capacity, agencies can also leverage other government agencies to improve access. In some cases, this implies allowing for bricks-and-mortar access even as more and more services are transferred to a digital space. The USPS is a particularly valuable partner given the extensiveness of its reach, the sheer number of physical locations, and the positive relationship it has with the public. It has long partnered with the Department of State to ease access to passports. More recently, it offers a site for individuals to provide in-person identity proofing for Login.gov. As a result, those who face problems with digital processes are not locked out of the system.

3. Recommendation for OMB: Building Better Analytical Tools by Expanding Measures of Burden

More attention to burden reduction requires better measurement, and as we detail below, this is also critical to doing cost-benefit analysis that captures burden.

New PRA guidance has pushed agencies to do better on measurement, moving beyond estimates of the time it took to complete forms to also incorporate other types of compliance costs (such as pulling together documentation), as well as learning and psychological costs. Further, the CX EO also pushes agencies to embed their efforts into their performance reporting processes.

However, there is no single, agreed-upon way to measure burdens. The closest alternative is a survey-based measure of customer experience shared in Circular A-11. More alternative measures, which directly capture burdens, would be useful. Some of these measures could be standardized and disseminated by OMB in venues like Circular A-11. There will certainly be cases where off-the-shelf measures are not appropriate, but some standardized measures could facilitate cross-agency learning. In other cases, having clear measures of client outcomes (e.g. access or level of treatment) could powerfully illustrate the effect of minimizing burdens, making burden reduction efforts more salient.

A response to this tension would be to generate the estimated value of time saved by burden reduction efforts. The idea of a relationship between burdens and money is reflected in the concept of the “time tax.” While not all aspects of burdens can be easily translated into financial costs, the time spent on administrative processes can be converted into a financial metric by using the average value of wages as estimated by the Bureau of Labor Statistics. For example, generating direct electronic tax filing could cost the IRS, but is justified by significantly reducing the time that individuals would spend on preparing their tax returns. But such efforts to measure the value of time are rare in government. Moreover, when they do assess time, it only captures part of the process (e.g., how long it takes to fill out a form but not the time spent gathering information and documentation needed to do so). As we note elsewhere, Login.gov significantly reduces the amount of time that individuals have to spend interfacing with federal websites, but there has been no effort to measure the value of that time to justify the value of the tool.

While there are a variety of ways to measure burdens, and monetary estimates will inevitably be overly narrow, they can provide a tangible justification for why investments to reduce burdens are worth it. In the private sector, the value of tools like human centered design is that they improve customer retention and ultimately profitability. Without equivalent metrics, the public

sector needs tangible indicators of the value of burden reduction. Such an approach also draws upon the logic of benefit-cost analysis that are used for other aspects of government regulation of private activity.

4. Recommendation for OMB: Building Critical Analytic Tools by Incorporating Burden into Cost-Benefit Analysis

The point of measuring burdens in public programs is to reduce it. You cannot address a problem that you have not clearly identified. But once costs have been calculated they should be incorporated into cost-benefit analyses. For example, if the statutory goal of a program like Medicaid is to ensure access to medical care, coverage loss due to procedural problems (e.g., states not having correct addresses) should be included in a cost-benefit analysis of the length of the recertification period, as well as the administrative processes employed during recertification. In another example, if the statutory goal of a program like WIC is to ensure adequate nutrition for mothers, infants, and children, cost benefit analyses should consider how tightly restrictive rules about what foods they can and cannot buy affect, in practice, their access to adequate nutrition.

One way to specifically help integrate burden into cost-benefit analysis is for OIRA to build on their existing strategies by articulating the relationship between cost benefit analysis and burden reduction initiatives. Up to now, they have provided guidance via the PRA and Circular A-11 that helps agencies think about how to measure burdens. The next step is for OIRA to provide guidance to agencies regarding how to specifically integrate that into cost-benefit analyses to consider the impact of varying administrative requirements linked to eligibility, recertification, and benefit use. OIRA has recently proposed changes to Circular A-4, noting, “Regulations can also help government deliver services to more individuals at lower cost, such as by reducing administrative burdens or by simplifying public-facing or internal processes.” While there is disagreement about aspects of the proposed Circular A-4, there seems to be broad consensus that burden reduction initiatives to improve public services are an important and underserved topic.

5. Recommendations for OMB and Congress: Modernize Data-sharing Guidance and Laws

For nearly all burden reduction efforts, especially ones that substantially reduce burdens, data sharing within and across agencies is critical. The life experiences focusing the CX EO inherently require cross-agency data sharing. It shifts the lens from specific programs within specific agencies to people and their life experiences, which touch multiple agencies. For example, the EO identified burden reduction for low-income families with young children. These families need access to programs across multiple agencies, including housing supports, health insurance, and nutrition assistance. A key way to ease access across these programs is for those agencies to coordinate and share data so that individuals do not need to provide information, or duplicative information the government already has, to access benefits and services.

The Chief Data Officers Council has already proposed a series of data-sharing recommendations practices, primarily directed to federal agencies. We concur with these recommendations, which include expediting data use agreements between agencies, improving awareness of data sharing opportunities, and improving data trustworthiness.

We make two additional sets of recommendations to address this challenge. First, even under existing laws, we recommend ways to enhance and ease access to data sharing. In particular, both OMB and General Counsels within agencies could provide clear guidance on how to effectively navigate existing statutory requirements. Second, we recommend ways to modernize data-sharing laws. In particular, Congress needs to reevaluate the traditional data sharing structure created by the Privacy Act.

5.A Recommendation for OMB: Working Within Existing Statutory Requirements

OMB could share positive models that help make the case for benefits and ways to interpret data-sharing benefits under statutory authority to de-risk the practice. Specifically, we recommend that OMB update its 2011 guidance document on interpreting the Privacy Act to include more positive initiatives and additional benefits captured through a reduction in burdens. Additionally, OMB could update and clarify specific elements that agencies can address in cost benefit analysis specifically when required for computer matching agreements under the Privacy Act. The GAO made a similar recommendation in 2014. Positive examples and clarity around cost-benefit analysis, as it pertains to data sharing, could be used by agencies when drafting the required report to OMB for a data sharing program, particularly the narrative section that asks the agency to “explain the basis on which the agency is justifying the matching program.”

5.B Recommendation for Congress: Modernize Data Sharing Statutory Rules

There are a range of ways Congress can effectively build better data sharing into statutory rules for the purpose of burden reduction. Broadly, when designing a new benefit or altering existing benefits, Congress should actively consider how to ensure access to the benefit. One excellent recent example is the FUTURE Act, passed in 2019, which provided a statutory basis for a data exchange between the Department of Education and the IRS. This eased the implementation of programs like FAFSA, income-driven repayment plans, and total and permanent disability loan forgiveness.

An ambitious statutory approach would be to amend the Privacy Act. For example, one possibility is to allow for data sharing across agencies specifically for the purpose of burden reduction for the public. A basic logic for this change would be to ensure that agencies are actually able to deliver on the statutory requirements for the programs that they administer. Restrictions on data sharing currently hamper agencies in their ability to effectively deliver on promised benefits. Better measurement and documentation of burdens will help demonstrate the degree of the problem.

Advances in data analysis and technology have created new possibilities for how data sharing could be used to reduce burdens. Such possibilities are not reflected in privacy frameworks, which remain focused on privacy risk without seeking to balance with potential data sharing benefits. Those benefits are perhaps more apparent in the private sector, where consumers routinely agree to share information or have their information shared by other parties, such as

employers, and where data protection policies are much more permissive. One result is that private firms have filled the void, with credit rating companies such as Equifax selling personal data back to the government to verify eligibility.

6. Recommendation for OMB and Congress: Put the Public at the Center by Better Leveraging the Paperwork Reduction Act

The PRA exists to reduce administrative burdens on the public. Tools of human centered design have the same purpose. But historically, the two have been seen as in conflict. Agencies are asked to seek permission from OIRA if they are seeking the same information from 10 or more people in a 12-month period, which may trigger lengthy public comment. If simple user research triggers a multi-month administrative process, it will significantly delay the collection and deployment of insights. This might include a good deal of user research, such as user surveys, or focus groups. It is not that agencies cannot do such research, but they have to seek permission to do so. And permission breeds delay, and discourages such requests in the first place.

Over time, OIRA has provided more clarity around exceptions to the PRA. User research that involves directly observing how people engage with forms of processes, asking non-standardized questions, listening sessions with interested parties, or forms of user research which involve fewer than 10 people are allowed without any permission.

OIRA has also established a clearer process to collect information quickly, while conforming with the PRA. This occurs via “generic clearance” for a mode of data collection that uses similar methods over time. The initial plan is subject to full review, including notice and comment, but after that approval, it requires only OMB approval. Examples of such modes of data collection include “customer service surveys, focus groups, semi-structured interviews, and pre-testing alternative versions of forms.” Once generic clearance has been approved, agencies can submit more specific requests that fall under the generic tools identified under a “fast-track” process, which requires minimal paperwork and where the requests are assumed approved if OMB does not respond within five days.

This process creates a pathway to develop timely and responsive user research. The generic clearance tools that are approved are relatively broad, giving agencies flexibility with specific applications, e.g., different types of user surveys. OIRA has been working to increase awareness and use of generic clearance processes, as well as providing draft materials to agencies to facilitate approval. But the current process still requires agencies to develop generic clearance tools in the first place, ensure that staff are aware of and use those tools, and seek confirmation of the application of generic clearance. Such steps can create informal misunderstandings within agencies that the user research just cannot be done in many cases.

The purpose of additional changes in this area should, to the greatest extent legally feasible, align the practice of the PRA with the intent of the Act—to reduce burdens. This implies a permission structure where agency staff feel empowered to employ user research to identify burdens and experiment with ways to reduce them. Such a structure would still provide formal means of accountability, and communicate acceptable uses, but minimize upfront delays in undertaking research. In short, the ideal outcome would be that an agency spends more time on user experience research, but less time seeking permission to do so.

Agency General Counsels and OIRA desk officers could play a role by reviewing their agency policies and activities to ensure that existing flexibilities are clear and accessible. If needed, they could provide agency-specific guidance to ensure effective use of the exceptions already in place. OIRA could continue to communicate the nature of these exceptions in ways that ensure user research is not hampered by extensive delays, and that agencies take advantage of ways to minimize burdens in collecting user research.

Since the goal of the PRA is to reduce burdens, Congress could provide a general exemption for user research intended to reduce burdens, or structure reporting to be ex post rather than ex ante.

CONCLUSION

This report comes at a moment of both challenge and opportunity for the U.S. government. Both the public and closer observers have expressed, in different ways, concerns about the administrative state's ability to perform its core tasks, both great and small. Attention to administrative burdens does not address all of those concerns, but it does play a useful role in recentering the focus of public servants on serving the public, doing it well, and in a way that offers help rather than barriers and burdens. In a way that was not the case a decade ago, there is now a conceptual framework, managerial techniques, and an empirical research base to underpin efforts to identify and reduce burdens that improves how the public experiences government. Advances in data science and information technology provide the tools that the government can use to deploy those efforts and a range of new legal authorities offers both the formal justification and leadership prioritization to do so.

In many ways then, the stars are aligned for the federal government to significantly commit to burden reduction as an ongoing effort that can deliver dramatic improvements in the quality of government, one that will be directly experienced by members of the public. But as this report makes clear, this outcome is far from guaranteed. It requires not just learning and using these new concepts, frameworks, tools and technologies. It also requires sustained investment of leadership attention and resources to the topic, one that values policy implementation, as much as policy design. This report offers several suggestions of what can be done to further that investment.