



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Identifying and Reducing Burdens on the Public in Administrative Processes

Committee on Administration and Management

Proposed Recommendation for Plenary | December 14, 2023

1 Each year, millions of people navigate administrative processes to access benefits and
2 services and otherwise engage with government programs to help themselves and their families.
3 These processes can be extraordinarily complex. Additionally, processes can vary significantly
4 across and within government agencies. These variations can make it especially hard when
5 individuals need to access multiple programs at the same time, for example during key life
6 events such as retirement, birth of a child, or unexpected disaster.

7 Navigating these processes requires time and effort, both to learn about programs and
8 how to access them. Complying with these processes also requires significant work, such as
9 completing forms, obtaining and submitting information, and possibly traveling to in-person
10 interviews or hearings. Efforts to comply can result in stress, stigma, frustration, fear, or other
11 psychological harms. These costs—which may be described as learning, compliance, and
12 psychological costs, respectively—can be collectively understood as administrative burden.¹

13 Administrative burdens significantly **impact-affect** whether and how the public accesses a
14 wide range of government programs, including those related to veterans benefits and services,

¹ Pamela Herd, Donald Moynihan & Amy Widman, Identifying and Reducing Burdens in Administrative Processes 4 (Oct. 4, 2023) (draft report to the Admin. Conf. of the U.S.). This Recommendation uses both “administrative burden” and “administrative burdens.” The singular is intended to capture the idea of burden as a theoretical concept; the plural reflects the fact that, in practice, burdens are multiple rather than singular. *See* PAMELA HERD & DONALD MOYNIHAN, ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS 1, 269 (2018). *See also Burden Reduction Initiative*, OFF. OF INFO. & REGUL. AFFS., OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, <https://www.whitehouse.gov/omb/information-regulatory-affairs/burden-reduction-initiative> (last visited Nov. 9, 2023).

Commented [CoA&MI]: Proposed Amendment from the Committee on Administration & Management:

The Committee voted to replace the original title of this Recommendation (*Identifying and Reducing Burdens in Administrative Processes*).

DRAFT December 11, 2023



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

15 student financial aid, Social Security benefits, health care, disaster assistance, tax credits,
16 nutrition assistance, housing assistance, and unemployment insurance. These burdens can be
17 exacerbated when programs are not wholly administered by the federal government but in
18 partnership with state, local, or tribal governments. Although some level of administrative
19 burden may be necessary—to establish eligibility for programs with sufficient accuracy or to
20 prevent fraud—research shows the cumulative effect of this burden hinders the ability of
21 agencies to achieve their missions. Billions of dollars in government benefits go unclaimed every
22 year,² and administrative burdens are a key reason for this gap.³ Administrative burdens do not
23 fall equally on all members of the public but fall disproportionately on certain members of
24 historically underserved communities (including people with disabilities),⁴ the elderly, those for
25 whom English is not their primary language, people with poor physical or mental health, and
26 persons of limited literacy.⁵ Reducing administrative burden, while also taking into account other
27 important public values such as program integrity, can make government work better for
28 everyone.

29 Various authorities govern how federal agencies identify and reduce administrative
30 burdens. The Paperwork Reduction Act (PRA) has long required agencies to identify burdens
31 associated with information they collect from the public and explain why those burdens are
32 necessary to administer their programs.⁶ Office of Management and Budget (OMB) Circular

² Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *Tackling the Time Tax: How the Federal Government is Reducing Burdens to Accessing Critical Benefits and Services* 9 (2023).

³ Herd et al, *supra* note 1, at 16–18.

⁴ Exec. Order No. 13,985, 86 Fed. Reg. 7,009 (Jan. 20, 2021).

⁵ *TACKLING THE TIME TAX*, *supra* note 2, at 10; *see also* Herd et al, *supra* note 1, at 10–12; HERD & MOYNIHAN, *supra* note 1, at 105, 134–135, 157–162, and 264; Herd et al, *supra* note 1, at 10–12.

⁶ 44 U.S.C. §§ 3501–3521.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

33 No. A-11 emphasizes the importance of customer life experiences⁷ and human-centered design⁸
34 in how agencies manage organizational performance to improve service delivery.

35 While some administrative burdens are imposed by Congress or by state law, federal
36 agencies have an important role to play in reducing the burdens they impose when administering
37 their programs. Agencies employ numerous strategies to reduce those burdens, including
38 simplifying processes, improving language access for persons with limited English proficiency,
39 expanding the availability of online (instead of solely in-person) processes, and establishing
40 ombuds offices to assist those experiencing burdens.⁹ In addition, agencies have achieved
41 success in reducing burdens by establishing devoted customer experience (CX) teams that have
42 sufficient policy knowledge and authority within the agency to be effective.¹⁰

43 Collaboration within and between federal agencies, and between federal agencies and
44 state, local, and tribal governments, is also essential for burden reduction. Interagency Data data
45 sharing between agencies that is consistent with the Fair Information Practice Principles and all

Commented [CA2]: Proposed Amendment from Council #1

⁷ Customer life experiences are experiences that require members of the public to navigate government services across multiple programs, agencies, or levels of government. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, OMB CIRCULAR A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET (2023). As explained in Part 6 § 280.16, OMB will manage the selection of a limited number of customer life experiences to prioritize for government-wide action in line with the President’s Management Agenda. *See also* Exec. Order No. 14,058, 86 Fed. Reg. 71,357 (Dec. 16, 2021).

⁸ OMB CIRCULAR A-11, *supra* note 7, § 280.1. Human-centered design is a technique to understand administrative process from the user’s perspective and then use those insights to adjust processes to better match human capacities. Herd et al, *supra* note 1, at 22. Journey mapping is a related concept that involves documenting each step that an individual takes when engaging with an administrative process in order to better understand the process and where individuals struggle with it. *Id.*

⁹ *See* Herd et al, *supra* note 1, at 28. *See also* TACKLING THE TIME TAX, *supra* note 2, at 48–49; White House Legal Aid Interagency Roundtable, Access to Justice through Simplification (2022); Admin. Conf. of the U.S., Recommendation 2016-5, *The Use of Ombuds in Federal Agencies*, 81 Fed. Reg. 94,316 (Dec. 23, 2016).

¹⁰ Herd et al, *supra* note 1, at 26. Under Executive Order 14,058, the term “customer” refers to any individual, business, or organization that interacts with an agency or program, and the term “customer experience” refers to the public’s perceptions of and overall satisfaction with interactions with an agency, product, or service. *See* 86 Fed. Reg. at 71,358. This Recommendation uses the term “customer” following its use in that Executive Order, notwithstanding the debate regarding the appropriateness of referring to members of the public as “customers.” *See, e.g., Does DHS Really Have Customers?*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/news/2022/06/23/does-dhs-really-have-customers> (last visited Nov. 9, 2023).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

46 relevant law and policy;¹¹ especially when used in conjunction with simplifying onerous
47 processes or eliminating unnecessary ones, can also reduce administrative burdens.¹² In addition
48 to collaboration across the government, federal agency partnerships with non-governmental third
49 parties (such as legal aid organizations and others) also play a crucial role in agency efforts to
50 reduce burden. Third parties assist agencies by providing information about how processes can
51 be improved to better serve the public better and by directly assisting individuals who interact
52 with government programs.¹³

53 This Recommendation provides best practices for agencies to use in identifying and
54 reducing unnecessary administrative burdens. Building on previous recommendations of the
55 Conference,¹⁴ this Recommendation provides specific consultative techniques agencies should
56 use to gather information from individual members of the public to better understand gain a fuller
57 and more accurate understanding of administrative burdens. The Recommendation encourages
58 the use of online processes and offers other techniques to simplify and streamline processes and
59 to make information about processes more accessible. The Recommendation also identifies
60 broad organizational and collaborative tools agencies should employ in burden reduction efforts,

Commented [CMA3]: Proposed Amendment from Government Member Stephanie Tatham #1 (see parallel amendment at line 183).

¹¹ Fair Information Practice Principles (FIPPs), FED. PRIV. COUNCIL, OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, <https://www.fpc.gov/resources/fipps> (last visited Nov. 7, 2023).

¹² See Herd et al, *supra* note 1, at 19, 30–32. See also TACKLING THE TIME TAX, *supra* note 2, at 36, 41. Fair Information Practice Principles (FIPPs), FED. PRIV. COUNCIL, OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, <https://www.fpc.gov/resources/fipps> (last visited Nov. 7, 2023).

¹³ See Herd et al, *supra* note 1, at 48. See also Admin. Conf. of the U.S. & Legal Servs. Corp., Forum, Assisting Parties in Federal Administrative Adjudication (2023); Admin. Conf. of the U.S., Recommendation 2021-9, *Regulation of Representatives in Agency Adjudicative Proceedings*, 87 Fed. Reg. 1721 (Jan. 12, 2022).

¹⁴ Admin. Conf. of the U.S., Recommendation 2023-4, *Online Processes in Agency Adjudication*, 88 Fed. Reg. 42,681 (Jul. 3, 2023); Admin. Conf. of the U.S., Recommendation 2023-2, *Virtual Public Engagement in Agency Rulemaking*, 88 Fed. Reg. 42,680 (Jul. 3, 2023); Admin. Conf. of the U.S., Recommendation 2021-3, *Early Input on Regulatory Alternatives*, 86 Fed. Reg. 36,082 (Jul. 8, 2021); Admin. Conf. of the U.S., Recommendation 2019-3, *Public Availability of Agency Guidance Documents*, 84 Fed. Reg. 38,931 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2018-7, *Public Engagement in Rulemaking*, 86 Fed. Reg. 2146 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2017-3, *Plain Language in Regulatory Drafting*, 82 Fed. Reg. 61,728 (Dec. 29, 2017); Admin. Conf. of the U.S., Recommendation 2016-6, *Self-Represented Parties in Administrative Hearings*, 81 Fed. Reg. 94,319 (Dec. 23, 2016).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

61 including outlining how agency leadership and staff¹⁵ should engage with burden reduction
62 initiatives within their agencies and across the government. The primary focus of burden
63 reduction efforts should be with those federal agencies that have ~~the greatest frequent or~~
64 ~~consequential~~ interactions with the public. The tools discussed are intended to reduce burdens on
65 the public and not become a reporting burden on agencies for which they are less relevant.

Commented [CA4]: Proposed Amendment from Council #2

66 This Recommendation also includes a recommendation directed to OMB ~~building on~~
67 ~~OMB's prior actions directed at reducing burdens that builds on the substantial guidance and~~
68 ~~efforts OMB has already provided on burden reduction.~~ It recommends that OMB provide
69 agencies with additional guidance for measurement and consideration of administrative burden
70 and foregone benefits and services, as well as provide additional guidance on agencies'
71 examination of the potential advantages and disadvantages of administrative data sharing. This
72 guidance could take many forms, including written guidance or agency-specific or government-
73 wide training. In addition, again building on past recommendations of the Conference and related
74 implementation efforts,¹⁶ this Recommendation ~~outlines how agencies and encourages OMB to~~
75 ~~provide agencies with additional guidance on the use of should leverage the PRA in support of~~
76 ~~burden reduction efforts, including by expanding flexibilities under the PRA for agencies to~~
77 conduct customer experience research. It also includes a recommendation to Congress that, when
78 developing new legislation that establishes or affects administrative programs, it should provide
79 express statutory authority for agencies to share data where beneficial for achieving the goals of
80 the legislation.

¹⁵ For the purposes of this Recommendation, agency leadership and staff include a wide range of stakeholders such as general counsels, chief information officers, chief risk officers, and chief data officers, as well as ombuds and officials responsible for compliance with laws such as the Privacy Act (5 U.S.C. § 552a) and the PRA.

¹⁶ See also Admin. Conf. of the U.S., Recommendation 2018-1, *Paperwork Reduction Act Efficiencies*, 83 Fed. Reg. 30,683 (Jun. 29, 2018); Admin. Conf. of the U.S., Recommendation 2012-4, *Paperwork Reduction Act*, 77 Fed. Reg. 47,808 (Aug. 10, 2012).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

RECOMMENDATION

Burden Identification and Reduction Principles

- 81 1. Federal agencies should seek to identify and reduce administrative burdens that the public
82 faces when interacting with government programs.
- 83 2. Agencies' efforts to identify and reduce burdens should take into account the experiences
84 and perspectives of individuals who interact with government programs.
- 85 3. Because individuals often interact with multiple government agencies and programs
86 during key life experiences, such as retirement, birth of a child, or unexpected disaster,
87 agency and program officials should collaborate to identify and reduce burdens that
88 would predictably arise during those experiences.
- 89 4. When undertaking efforts to identify and reduce burdens, agencies should consider the
90 ~~impacts-effects~~ on other important public values, including program integrity.

Burden Identification Strategies

- 91 5. Agencies should ~~institutionalize-adopt~~ procedures for consulting with individuals who
92 interact with government programs to better ~~understand-inform agency officials about the~~
93 ~~nature of the~~ burdens ~~in those programs~~ ~~their processes impose~~. In seeking to do so,
94 agencies should try to identify and consult with those who may face disproportionate
95 burdens in accessing agency programs. Agencies should employ multiple consultative
96 techniques, including:
- 97 a. Client outreach, such as surveys and focus groups;
- 98 b. Requests for public comment;
- 99 c. Complaint portals available on agency websites;
- 100 d. Consultation with agency staff who work with the public, including agency
101 ombuds or public advocate staff; and
- 102 e. Consultation with nongovernmental organizations, advocacy groups, and other
103 members of the private sector (such as representatives, program navigators who
104 help individuals engage with governmental processes, and social workers) who



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

105 assist individuals, such as representatives, program navigators, and social
106 workers.

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- 107 6. To help identify burdens, agencies should use the information obtained through such
108 consultation to identify the procedures individuals face, and resulting burdens, at each
109 step in the process.
- 110 7. To determine agencies' authority to reduce burdens, agencies should trace the legal or
111 operational source of identified burdens in order to determine whether they are imposed
112 by statute or by regulation, guidance, or agency practice, at the federal or state level.
- 113 8. Agencies should measure administrative burdens associated with their programs by
114 estimating and quantifying, to the extent feasible, any learning, compliance, or
115 psychological costs of interacting with their programs. These costs include the time it
116 takes to learn about programs and how to access them, the work it takes to comply with
117 program requirements, and the stress or stigma involved with engaging with
118 administrative programs, as well as forgone benefits or services.

Burden Reduction Strategies

- 119 9. Agencies should periodically review their administrative processes to identify
120 opportunities to simplify them by, as appropriate:
- 121 a. Limiting the number of steps in processes;
 - 122 b. Reducing the length of required forms;
 - 123 c. Limiting documentation requirements, where possible; and
 - 124 d. Expanding language access to persons with limited English proficiency and
125 persons with disabilities.
- 126 10. Agencies should allow the public to interact with government programs using online
127 processes while still retaining in-person processes when necessary to ensure access to
128 benefits and services. In particular, agencies should, when possible:
- 129 a. Create alternatives (such as digital or telephonic signatures) for requirements for
130 "wet" signatures, and ensure such alternatives are accepted by all relevant agency
131 programs such as digital or telephonic signatures, consistently across the agency;

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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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

133 c. Allow individuals to interact with agencies by telephone or video conference

134 rather than requiring in-person appointments; ~~and~~

135 ~~e.d. Eliminate notary requirements and substitute 28 U.S.C. § 1746.~~

Commented [CMA8]: Proposed Amendment from Senior Fellow Alan Morrison.

136 11. When permitted by law, agencies should reduce steps individuals must take to receive
137 benefits or services by using information in the government’s possession to determine
138 program eligibility or to pre-populate enrollment forms or by automatically selecting the
139 most beneficial program options for individuals unless they decide to opt out.

140 12. Agencies should make information about their programs as easy as possible to find and
141 understand, proactively provide information to members of the public about their
142 eligibility for benefits and services, and allow individuals to expeditiously access records
143 pertaining to themselves when required for obtaining benefits and services.

144 13. Agencies should provide information in plain language and, when appropriate and
145 feasible, in multiple languages to ensure individuals can understand and use the
146 information.

147 14. Agencies should increase the availability of assistance for individuals interacting with
148 their programs, beyond continuing to enable individuals to rely on assistance from other
149 persons such as family or friends, by:

150 a. Working with legal aid organizations and others who provide pro bono or “low”
151 bono (below market rate but not free) services to increase availability of
152 representation;

153 b. Establishing rules ~~governing authorizing accredited or qualified non-~~
154 ~~attorney lawyer~~ representatives ~~who may to~~ practice before the agency; and

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155 c. Expanding the use of agency staff, including front-line staff, ombuds, and public
156 advocates, as well as government-sponsored and -supported entities, ~~such as~~
157 ~~navigator programs designed to help individuals navigate government processes.~~

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158 15. Agencies should identify unnecessary administrative burdens that are required by statutes
159 in their Supporting Statements under the Paperwork Reduction Act (PRA) and in their



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

160 annual proposed legislative program submissions to the Office of Management and
161 Budget (OMB) under OMB Circular No. A-19.

Agency Organization

- 162 16. ~~Agency Political appointees, senior executives, and other agency~~ leaders should prioritize
163 burden identification strategies and reduction efforts, using their leadership positions to
164 articulate burden reduction goals for agency staff and outline commitments for achieving
165 them, particularly when such commitments require collaboration between agency
166 ~~departments~~ units. Agencies should connect their burden reduction goals to their strategic
167 planning and reporting goals under the Government Performance and Results Act.
- 168 17. Agencies should identify whether they have particular programs or functions that involve
169 interaction with the public. Agencies with such programs should assemble a team
170 devoted to improving the experiences that these individuals have when interacting with
171 the agency, often referred to as customer experience (CX) teams. CX teams should have
172 thorough knowledge of relevant agency programs. Senior career staff should partner with
173 one or more political appointees to provide CX teams with sufficient authority within the
174 agency to accomplish their goals.
- 175 18. Agencies should include their general counsels and other relevant staff with statutory
176 responsibilities related to burden reduction (for example, privacy officers and PRA
177 officers) in such reduction efforts as early as possible in order to facilitate agency efforts
178 to maximize burden reduction.

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Agency Collaboration

- 179 19. Federal agencies should expand efforts to collaborate with other entities to maximize
180 burden reduction. In particular, program and legal staff should collaborate with their chief
181 data officer ~~and senior agency official for privacy~~ on ways to share data across federal
182 agencies and between federal and state agencies, consistent with the Fair Information
183 Practice Principles ~~and all relevant law and policy~~, in order to:
- 184 a. Increase outreach to individuals who may be eligible for administrative programs;

Commented [CMA12]: Proposed amendment from Government Member Stephanie Tatham #2 (see parallel amendment at lines 187-188).

Commented [CMA13]: Proposed Amendment from Government Member Stephanie Tatham #1 (see parallel amendment at lines 45-6).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 185 b. Reduce requirements for forms and documentation; and
186 c. Under certain conditions, provide for automatic enrollment and renewal.
187 20. Agencies should work with their chief data officers **and senior agency officials for**
188 **privacy** in cross-agency working groups to share information about best practices for
189 reducing burden and using data-sharing agreements.

Commented [CMA14]: Proposed Amendment from Government Member Stephanie Tatham #2 (see parallel amendment at line 181).

Roles for OMB and Congress

- 190 21. OMB should provide agencies with additional guidance, potentially including **positive**
191 models and training, to inform agency:
192 a. Measurement and consideration of administrative burden and foregone benefits
193 and services, such as in regulatory impact analyses;
194 b. Examination of the potential legal or policy advantages and disadvantages of
195 administrative data sharing, in particular providing additional positive examples
196 of data sharing; and
197 c. Use of flexibilities under the PRA **in order** to inform **and make it easier for**
198 **agencies to conduct** CX research and to improve agency service delivery **in order**
199 **to make it easier for agencies to conduct CX research.**
200 22. When developing new legislation that establishes or affects administrative programs,
201 Congress should provide express statutory authority for agencies to share data where
202 **beneficial for achieving the goals of the legislation doing so would further the goals of the**
203 **legislation and not cause disproportionate effects that would negatively affect other**
204 **legislative purposes or endanger critical privacy interests.**

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Commented [CA16]: Proposed Amendment from Council #10