



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

## **Administrative Conference Recommendation 2023-6**

### **Identifying and Reducing Burdens on the Public in Administrative Processes**

**Adopted December 14, 2023**

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

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

Administrative burdens significantly affect whether and how the public accesses a wide range of government programs, including those related to veterans benefits and services, student financial aid, Social Security benefits, health care, disaster assistance, tax credits, nutrition

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<sup>1</sup> Pamela Herd, Donald Moynihan & Amy Widman, *Identifying and Reducing Burdens in Administrative Processes 4* (Oct. 4, 2023) (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 Dec. 14, 2023).



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assistance, housing assistance, and unemployment insurance. These burdens can be exacerbated when programs are not wholly administered by the federal government but in partnership with state, local, or tribal governments. Although some level of administrative burden may be necessary—to establish eligibility for programs with sufficient accuracy or to prevent fraud—research shows the cumulative effect of this burden hinders the ability of agencies to achieve their missions. Billions of dollars in government benefits go unclaimed every year,<sup>2</sup> and administrative burdens are a key reason.<sup>3</sup> Administrative burdens do not fall equally on all members of the public but fall disproportionately on certain members of historically underserved communities (including persons with disabilities),<sup>4</sup> the elderly, persons with limited English proficiency, and persons with poor physical or mental health.<sup>5</sup> Reducing administrative burden, while also taking into account other important public values such as program integrity, can make government work better for everyone.

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

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<sup>2</sup> 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).

<sup>3</sup> See Herd et al., *supra* note 1, at 15–17.

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

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

<sup>6</sup> 44 U.S.C. §§ 3501–3521.



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11 emphasizes the importance of customer life experiences<sup>7</sup> and human-centered design<sup>8</sup> in how agencies manage organizational performance to improve service delivery.

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

Collaboration within and between federal agencies, and between federal agencies and state, local, and tribal governments, is also essential for burden reduction. Interagency data sharing that is consistent with the Fair Information Practice Principles<sup>11</sup> and all relevant law and

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<sup>7</sup> 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).

<sup>8</sup> 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.*

<sup>9</sup> *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).

<sup>10</sup> 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 Dec. 14, 2023).

<sup>11</sup> *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 Dec. 14, 2023).



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policy, especially when used in conjunction with simplifying onerous processes or eliminating unnecessary ones, can also reduce administrative burdens.<sup>12</sup> In addition to collaboration across the government, federal agency partnerships with non-governmental third parties (such as legal aid organizations and others) also play a crucial role in agency efforts to reduce burden. Third parties assist agencies by providing information about how processes can be improved to serve the public better and by directly assisting members of the public who interact with government programs.<sup>13</sup>

This Recommendation provides best practices for agencies to use in identifying and reducing unnecessary administrative burdens. Building on previous recommendations of the Conference,<sup>14</sup> this Recommendation provides specific consultative techniques agencies should use to gather information from individual members of the public to gain a fuller and more accurate understanding of administrative burdens. The Recommendation encourages the use of online processes and offers other techniques to simplify and streamline processes and to make information about processes more accessible. The Recommendation also identifies broad organizational and collaborative tools agencies should employ in their burden reduction efforts, including outlining how agency leadership and staff<sup>15</sup> should engage with burden reduction initiatives within their agencies and across the government. The primary focus of burden reduction efforts should be with those federal agencies that have frequent or consequential

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<sup>12</sup> See Herd et al., *supra* note 1, at 18, 29–31; see also TACKLING THE TIME TAX, *supra* note 2, at 36, 41.

<sup>13</sup> See Herd et al., *supra* note 1, at 46; 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).

<sup>14</sup> See, e.g., Admin. Conf. of the U.S., Recommendation 2023-4, *Online Processes in Agency Adjudication*, 88 Fed. Reg. 42,681 (July 3, 2023); Admin. Conf. of the U.S., Recommendation 2023-2, *Virtual Public Engagement in Agency Rulemaking*, 88 Fed. Reg. 42,680 (July 3, 2023); Admin. Conf. of the U.S., Recommendation 2021-3, *Early Input on Regulatory Alternatives*, 86 Fed. Reg. 36,082 (July 8, 2021); Admin. Conf. of the U.S., Recommendation 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).

<sup>15</sup> 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.



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interactions with the public. The tools discussed are intended to reduce burdens on the public and not become a reporting burden on agencies for which they are less relevant.

This Recommendation also includes a recommendation directed to OMB that builds on OMB's prior actions directed at reducing burdens. It recommends that OMB provide agencies with additional guidance for measurement and consideration of administrative burden and forgone benefits and services, as well as provide additional guidance on agencies' consideration of the potential advantages and disadvantages of administrative data sharing. This guidance could take many forms, including written guidance or agency-specific or government-wide training. In addition, again building on past recommendations of the Conference and related implementation efforts,<sup>16</sup> this Recommendation encourages OMB to provide agencies with additional guidance on the use of flexibilities under the PRA to conduct CX research. It also includes a recommendation to Congress that, when developing new legislation that establishes or affects administrative programs, it should provide express statutory authority for agencies to share data where beneficial for achieving the goals of the legislation.

### RECOMMENDATION

#### **Burden Identification and Reduction Principles**

1. Federal agencies should seek to identify and reduce administrative burdens that the public faces when interacting with government programs.
2. Agencies' efforts to identify and reduce burdens should take into account the experiences and perspectives of members of the public who interact with government programs.
3. Because members of the public often interact with multiple government agencies and programs during key life experiences, such as retirement, birth of a child, or unexpected disaster, agency and program officials should collaborate to identify and reduce burdens that would predictably arise during those experiences.

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



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

### **Burden Identification Strategies**

5. Agencies should adopt procedures for consulting with members of the public who interact with government programs to better inform agency officials about the nature of the burdens their processes impose. In seeking to do so, agencies should try to identify and consult with those who may face disproportionate burdens in accessing agency programs. Agencies should employ multiple consultative techniques, including:
  - a. Client outreach, such as surveys and focus groups;
  - b. Requests for public comment;
  - c. Complaint portals available on agency websites;
  - d. Consultation with agency staff who work with the public, including agency ombuds or public advocate staff; and
  - e. Consultation with nongovernmental organizations, advocacy groups, and other members of the private sector (such as representatives, program navigators who help members of the public engage with governmental processes, and social workers) who assist members of the public.
6. To help identify burdens, agencies should use the information obtained through such consultation to identify the procedures members of the public face, and resulting burdens, at each step in the process.
7. To determine agencies' authority to reduce burdens, agencies should trace the legal or operational source of identified burdens to determine whether they are imposed by statute or by regulation, guidance, or agency practice, at the federal or state level.
8. Agencies should, to the extent feasible, estimate and quantify any learning, compliance, or psychological costs of interacting with their programs. These costs include the time it takes to learn about programs and how to access them, the work it takes to comply with program requirements, and the stress or stigma resulting from engaging with administrative programs, as well as forgone benefits or services.



### **Burden Reduction Strategies**

9. Agencies should periodically review their administrative processes to identify opportunities to simplify them by, as appropriate:
  - a. Limiting the number of steps in processes;
  - b. Reducing the length of required forms;
  - c. Limiting documentation requirements, where possible;
  - d. Eliminating notary requirements and substituting unsworn statements under penalty of perjury; and
  - e. Expanding access to persons with limited English proficiency and persons with disabilities.
10. Agencies should allow the public to interact with government programs using online processes while still retaining in-person processes when necessary to ensure access to benefits and services. In particular, agencies should, when possible:
  - a. Create alternatives (such as digital or telephonic signatures) for requirements for “wet” signatures;
  - b. Allow members of the public to use universal logins used by government agencies;
  - c. Allow members of the public to interact with agencies by telephone or video conference rather than requiring in-person appointments; and
  - d. Make agency websites and processes accessible on mobile devices.
11. When permitted by law, agencies should reduce steps members of the public must take to receive benefits or services by using information in the government’s possession to determine program eligibility, prepopulate enrollment forms, or automatically select the most beneficial program options for members of the public unless they decide to opt out.
12. Agencies should make information about their programs as easy as possible to find and understand, proactively provide information to members of the public about their eligibility for benefits and services, and allow members of the public to expeditiously access records pertaining to themselves when required for obtaining benefits and services.



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13. Agencies should timely provide information in plain language and, when appropriate and feasible, in multiple languages to ensure members of the public can understand and use the information.
14. Agencies should increase the availability of assistance for members of the public interacting with their programs, beyond continuing to enable members of the public to rely on assistance from other persons such as family or friends, by:
  - a. Working with legal aid organizations and others who provide pro bono or “low” bono (below market rate but not free) services to increase availability of representation;
  - b. Establishing rules authorizing accredited or qualified nonlawyer representatives to practice before the agency; and
  - c. Expanding the use of agency staff, including front-line staff, ombuds, and public advocates, as well as government-sponsored and -supported entities designed to help members of the public navigate government processes.
15. Agencies should identify unnecessary administrative burdens that are required by statutes in their Supporting Statements under the Paperwork Reduction Act (PRA) and in their annual proposed legislative program submissions to the Office of Management and Budget (OMB) under OMB Circular A-19.

### **Agency Organization**

16. Political appointees, senior executives, and other agency leaders should prioritize burden identification strategies and reduction efforts, using their leadership positions to articulate burden reduction goals for agency staff and outline commitments for achieving them, particularly when such commitments require collaboration between agency units. Agencies should connect their burden reduction goals to their strategic planning and reporting goals under the Government Performance and Results Act.
17. Agencies should identify whether they have particular programs or functions that involve interaction with the public. Agencies with such programs should assemble a team devoted to improving the experiences that these members of the public have when





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interacting with the agency, often referred to as customer experience (CX) teams. CX teams should have thorough knowledge of relevant agency programs. Senior career staff should partner with one or more political appointees to provide CX teams with sufficient authority within the agency to accomplish their goals.

18. Agencies should include their general counsels and other relevant staff with statutory responsibilities related to burden reduction (for example, privacy officers and PRA officers) in such reduction efforts as early as possible in order to facilitate agency efforts to maximize burden reduction.

### **Agency Collaboration**

19. Federal agencies should expand efforts to collaborate with other entities to maximize burden reduction. In particular, program and legal staff should collaborate with their chief data officer and other relevant officials on ways to share data across federal agencies and between federal and state agencies, consistent with the Fair Information Practice Principles and all relevant law and policy, in order to:
  - a. Increase outreach to members of the public who may be eligible for administrative programs;
  - b. Reduce requirements for forms and documentation; and
  - c. Under certain conditions, provide for automatic enrollment and renewal.
20. Agencies should work with their chief data officers and other relevant officials in cross-agency working groups to share information about best practices for reducing burden and using data-sharing agreements.

### **Roles for OMB and Congress**

21. OMB should provide agencies with additional guidance, potentially including models and training, to inform agency:
  - a. Measurement and consideration of administrative burden and forgone benefits and services, such as in regulatory impact analyses;



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- b. Examination of the potential legal or policy advantages and disadvantages of administrative data sharing, in particular providing additional positive examples of data sharing; and
  - c. Use of flexibilities under the PRA to make it easier for agencies to conduct CX research and to improve agency service delivery.
22. When developing legislation that establishes or affects administrative programs, Congress should provide express statutory authority for agencies to share data where doing so would further the goals of the legislation and not cause undue harm to other legislative purposes or critical privacy interests.