ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Identifying and Reducing Burdens in Administrative Processes

Committee on Administration and Management

Draft Recommendation for Committee | October 30, 2023

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

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

14   Administrative burdens significantly impact whether and how the public accesses a wide
15 range of government programs, including those related to veterans benefits and services, student
16 financial aid, Social Security benefits, health care, disaster assistance, tax credits, nutrition
17 assistance, housing assistance, and unemployment insurance. These burdens can be exacerbated

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

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

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

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

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

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

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

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

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

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

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

28 government work better for everyone.

29   Various authorities govern how federal agencies identify and reduce administrative

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

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

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

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

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

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

[4] TACKLING THE TIME TAX, *supra* note 2, at 10.

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

[6] Customer life experiences are experiences that require members of the public to navigate government services across multiple programs, agencies, or levels of government. OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET (2023). As explained in § 280.16, OMB will manage the selection of a limited number of customer life experiences to prioritize for Government-wide action in line with the President's Management Agenda. *See also* Exec. Order No. 14058, 86 Fed. Reg. 71,357 (December 16, 2021).

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

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

47   In addition to collaboration across the government, federal agency partnerships with non-
48 governmental third parties (such as legal aid organizations) also play a crucial role in agency
49 efforts to reduce burden. Third parties assist agencies by providing information about where
50 processes can be improved to better serve the public and by directly assisting individuals who
51 interact with government programs.[11]

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

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

[9] Herd et. al, *supra* note 1, at 26.

[10] *See id.* at 19, 30-32. *See also* TACKLING THE TIME TAX, *supra* note 2, at 36, 41.

[11] *See* Herd et. al, *supra* note 1, at 48. *See also* Admin. Conf. of the U.S. & Legal Servs. Corp. Forum, *Assisting Parties in Federal Administrative Adjudication* (2023).

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52   This recommendation provides best practices for agencies to use in identifying and

53   reducing unnecessary administrative burdens. Building on previous recommendations of the

54   Conference,[12] this recommendation provides specific consultation techniques agencies should

55   use to gather information from individual members of the public to better understand

56   administrative burdens. The recommendation encourages the use of online processes and offers

57   other techniques to simplify and streamline processes and to make information about processes

58   more accessible. The recommendation also sets out broad organizational and collaborative tools

59   agencies should employ in burden reduction efforts, including outlining how agency leadership

60   and staff should engage with burden reduction initiatives within their agencies and across the

61   government. The primary focus of burden reduction efforts should be with those federal agencies

62   that have the greatest interaction with the public. The tools discussed are intended to reduce

63   burdens and not become a reporting burden on agencies for whom they are less relevant.

64   This recommendation also includes several recommendations directed to OMB, to build

65   on the substantial guidance and efforts OMB has already provided on burden reduction. This

66   guidance could take many forms, including written guidance or agency-specific or government-

67   wide training. It recommends that OMB develop and disseminate new standardized methods for

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

69   past recommendations of the Conference,[13] this recommendation also outlines how agencies and

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

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

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

[13] 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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RECOMMENDATION

Burden Identification and Reduction Principles

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

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

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

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

Burden Identification Strategies

82 5. Agencies should institutionalize procedures for consulting with individuals who interact
83   with government programs, particularly those who face ~~special barriers~~disproportionate
84   burdens in accessing ~~agency programs~~them~~, particularly with historically underserved~~
85   ~~communities or individuals for whom English is not their primary language~~, to better
86   understand the burdens in those programs. Agencies should employ multiple consultation
87   techniques, including:
88   a. Client outreach, such as surveys and focus groups;
89   b. Requests for public comment;
90   c. Complaint portals available on agency websites;
91   d. Consultation with agency staff who work with the public; and
92   e. Consultation with members of the private sector who assist individuals, such
93   as representatives, program navigators, and social workers.

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Comments:

Commented [JK2]: Will assume "administrative burdens" and "the public" will be defined in the Preamble.

Commented [CG3]: Perhaps improving benefit services or improving the timeliness of benefit services. Improving benefits and services could be interpreted as increasing benefits.

Commented [BB4]: Identification and reduction of burdens should not be based *solely* on customer perspectives.

Commented [BB5]: Address in preamble as well.

Commented [BB6]: Should agencies first collaborate to identify the "key life experiences" for which cross-agency coordination is important? Should such an overall effort be managed by OMB or coordinated by ACUS?

Commented [BB7R6]: There was consensus at the committee meeting that this comment would be resolved if we include language in the preamble addressing such life experiences, which we have done.

Commented [BB8]: COS

Commented [BB9R8]: At the October 17 committee meeting, there was discussion about modifying the language concerning "historically undeserved groups." At the meeting, ACUS staff suggested using the concept of "disproportionate burdens" here. ACUS staff has drafted alternate language along these lines for consideration.

Commented [BB10]: Reference in preamble (EOs, etc.).

Commented [JK11]: Should we add something about disabled individuals? The National Council on Disability may have some perspective on these kinds of issues.

Commented [BB12]: Front-line employees
Caseworkers (agency and legislative?)
Ombuds
Case managers (private and government)

Commented [MG13R12]: I think all of these are represented in either subsections (d) or (e).

Commented [BB14]: Do we need to define "navigators"—a word search of the word "navigator" reveals the term is used only once in the consultant's report.

Commented [BB15R14]: I think this comment is resolved. We added the word "program" in front of "navigators" and there seemed to be agreement this was sufficient. I reviewed the YouTube video here to confirm.

6. To help identify burdens, agencies should use the information obtained through such consultation to identify the procedures individuals face, and resulting burdens, at each step in the process.

7. To determine ~~what is within the~~ agencies' ~~control~~ability to reduce burdens, agencies should trace the legal or operational source of identified burdens in order to determine whether they are imposed by statute or by regulation, guidance, or agency practice, at the federal or state level.

8. Agencies should measure administrative burdens associated with their programs by estimating and quantifying, to the extent feasible, any learning, compliance, or psychological costs of interacting with their programs, and the forgone benefits of their services.

Burden Reduction Strategies

9. Agencies should periodically review their administrative processes to identify ways to simplify them. Opportunities for simplification may include:
   a. Limiting the number of steps in processes;
   b. Reducing the length of required forms;
   c. Limiting documentation requirements, where possible; and
   d. Expanding language access.

10. Agencies should allow the public to interact with government programs using online processes while still retaining in-person processes where necessary to ensure access to benefits and services. In particular, agencies should, where possible:
   a. Create alternatives for requirements for "wet" signatures, such as digital or telephonic signatures consistently across the agency;
   b. Allow individuals to use universal logins used by government agencies; and
   c. Allow individuals to conduct interactions with agencies by telephone or video conference rather than requiring in-person appointments.

11. Agencies should reduce steps individuals must take to receive benefits or services by using existing information to determine program eligibility or to pre-populate enrollment

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Commented [BB16]: Preamble reference,

Commented [BB17R16]: The essence of the discussion here was that we could reference journey mapping in the preamble (which we have done) and then leave this rec more general (i.e., not specifically reference journey mapping but retain reference to "each step in the process"). I think this is resolved.

Commented [BB18]: COS

Commented [BB19R18]: It was decided at the October 17 committee meeting that the initial clause of this sentence should be modified to clarify the reason for which agencies should trace the source of the burden, and it was agreed that the committee on style could draft language for consideration.

Commented [JK20]: This section does not address the cumulative effects of burden being imposed by various agencies. Burdens by individual agencies/programs may be viewed as tolerable, but cumulatively they may be problematic (e.g., different administrative/ legal interpretations of acceptable documentation for identify between agencies/programs).

Commented [BB21R20]: I don't believe this comment was specifically addressed at the October 17 meeting.

Commented [JK22]: Should ". . . compliance, and . . ." be ". . . compliance, and/or. . ."?

Commented [JK23]: So it is clear that this isn't a one-time thing.

Commented [JK24]: Should this be expanded in some way (or an additional subsection) to include the use of standard or common documentation across different programs?

Commented [BB25R24]: It was agreed at the October 17 committee meeting that this comment would be considered when addressing recommendation #19.

Commented [BB26]: Consider re: preamble.

Commented [BB27]: The report mentions telephonic signatures on page 30 but does not appear to explain what that is or the procedures to ensure there is a record of such telephonic signatures.

Commented [BB28R27]: This is just to follow up on today's meeting. Consultant Dan Moynihan sent to everyone in the chat a link to SNAP Telephonic Signature Guidance, <hyperlink unable to be displayed in comment bubble>. This satisfies my inquiry about telephonic signatures and th ... [1]

Commented [CG29]: SSA requires wet signatures for some documents, allows digital signatures for others, and w ... [2]

Commented [BB30]: COS; government connection.

Commented [MG31R30]: COS suggests using the same structure as in Online Processes recommendation.

Commented [JK32]: Is the intent to "allow individuals" or is the intent for agencies to "adopt Login.gov" (or ... [3]

121   forms, where permitted by law, or by automatically selecting the most beneficial program

122   options for individuals unless they decide to opt out. , data sharing with other programs

123   requesting the same information

124   12. Agencies should make information about their programs easier to find and understand,

125   proactively provide information to the public about their eligibility for benefits and

126   services, and allow individuals to access their own personal information where necessary

127   to seek and obtain benefits and services.

128   13. Agencies should provide information in plain language and, where appropriate and

129   feasible, in multiple languages to ensure individuals can understand and use the

130   information.

131   14. Agencies should increase the availability of assistance for individuals interacting with

132   their programs. Such efforts could include:

133   a. Working with legal aid organizations and others who provide *pro* bono or

134   "low" bono services to increase availability of representation;

135   b. Establish rules to accredit nonlawyer representatives who may practice before

136   the agency;

137   c. Allowing individuals to obtain assistance from other individuals, such as

138   family or friends; and

139   d. Providing internal support through front-line agency staff, including ombuds,

140   public advocates, and navigator programs.

141   15. Agencies should compile lists of identified burdens that are traceable to statute and

142   provide them to the Office of Management and Budget (OMB) in their annual

143   performance reports for review and potential submission to Congress.

Agency Organization

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

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

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

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

Commented [TD33]: The recommendation in a number of places uses a relative standard rather than an objective one. For example, paragraph 12 (line 55) says agencies should make information about their programs "easier" to find and understand; paragraph 14 (line 62) says agencies should "increase" the availability of assistance; paragraph 19 (line 89) says agencies should "expand" efforts. I don't love this kind of relative language because it doesn't create a meaningful yardstick for measuring agency performance; it simply tells each agency to use its own current practices as the baseline and try to do better than the baseline. Agencies that are already performing at the A+ level are told they need to do better, and agencies that are performing at the D- level are likewise told they need to do better—and given the permanent quality of the recommendation, in both cases they seemingly have to do it perpetually—make it easier, and easier, and easier, and easier, ad infinitum. I think instead agencies should be given a fixed, timeless, objective standard (even though it might be vague). For example, we tell agencies to use "plain" language; we don't tell them to use "plainer and plainer and plainer" language. I realize my comment here also strikes at the basic thrust of the recommendation—paragraph 1, line 2, agencies should "reduce" burdens. I suggest there must be a point at which an acceptable level of burden has been achieved. What is that level?

As a related issue—perhaps this is a second comment—I would like the recommendation to be more clear about whether it is intended to be a one-time sprint ("reduce as much as you can over the next X years") or a perpetual responsibility institutionalized within the agency. If the former, I think "relative" language may be more tolerable. If the latter, it begs the question—what guidance, if any, do we want to provide to agencies on how they should accomplish this?

Commented [BB34]: Examples are law school clinics (*pro bono*) or Rutgers Law Associates ("low" *bono*). Law firms provide some *pro bono* services as well.

Commented [BB35]: I don't have a specific modification to propose but am concerned that if an agency accredits nonlawyer representatives that it also undertakes the responsibility to ensure that such nonlawyer representatives competently represent their clients and are subject to being disciplined or removed if they do not. Uninformed or poor nonlawyer representation can increase the client's burdens or even cause the client to lose benefits or services.

Commented [BB36]: Front-line employees.

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

149   Act.

150   17. Agencies should have a team devoted to improving the customer experiences that

151   individuals have when interacting with the agency. Customer experience teams should

152   have thorough knowledge of relevant agency programs. Senior career staff should partner

153   with one or more political appointees to provide customer experience teams with

154   sufficient authority within the agency to accomplish its goals.

155   18. Agencies should incorporate their General Counsels and other legal officers into burden

156   reduction efforts as early as possible in order to ensure that agencies understand the full

157   range of legal options available to maximize burden reduction and that such efforts are

158   consistent with legal authorities.

Agency Collaboration

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

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

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

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

163   can reduce burdens by:

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

165   programs;

166   b. Reducing requirements for forms and documentation; and

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

168   20. Agencies that establish data-sharing programs should measure and document the effects

169   of those programs.

170   21. Agencies should establish cross-agency working groups to share information about best

171   practices for reducing burden and using data-sharing agreements.

Guidance on Conducting Customer Experience Research

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Commented [JK37]: "Agencies should incorporate . . ." or should they "include?" . . . also, what about including other guardians of institutional stakeholders like PRA, Risk officers, CIO, CDO, Privacy, Ombuds? More than lawyers can stymie progress!

Commented [BB38]: Discuss cumulative burden across agencies.

Shared definitions and documentation requirements.

Commented [JK39]: This isn't quite right. Cross-Agency Priority Goals are set and overseen by OMB, not agencies. Agencies have Agency Priority Goals. A current CAP goal on CX does span lots of agencies, but this is driven by OMB and not the agencies. Do you mean for these to be incorporated into APGs?

Commented [JK40]: "Agencies should establish . . ." Feels too much like immaculate conception. Need to make it actionable by putting someone/some institution in charge/held accountable.

172 22. The Office of Management and Budget (OMB) should develop, standardize, and
173 disseminate to agencies methods for measuring burden. Among other potential methods,
174 OMB should consider encouraging agencies to measure the estimated value of time saved
175 by members of the public through burden-reduction efforts by converting time to
176 financial costs by using the average value of wages as estimated by the Bureau of Labor
177 Statistics.
178 23. OMB should identify and disseminate to agencies positive models that support the use of
179 data-sharing under current statutory authority. Specifically, OMB should update its
180 guidance on interpreting the Privacy Act to include additional positive initiatives and
181 benefits obtained through burden reduction.
182 24. OMB should update and clarify specific elements that agencies can address in cost-
183 benefit analyses when required for computer matching agreements under the Privacy Act.
184 25. OMB should issue updated guidance that further expands upon flexibilities agencies can
185 use under the Paperwork Reduction Act (PRA) to conduct customer experience research.
186 OMB should consult with agencies about ways to streamline the PRA process for
187 research designed to reduce burdens.
188 26. Congress should amend the PRA to exempt customer experience research from
189 information collection requirements if the agencies undertake the research for the purpose
190 of reducing administrative burdens.
191 27. When developing new legislation that establishes or affects administrative programs,
192 Congress should provide express statutory authority for agencies to share data where
193 beneficial for achieving the goals of the legislation.

Commented [JK41]: Please expand on what you mean by "clarify specific elements." No need to change; just need to educate the reader!

Commented [JK42]: ". . . expands on flexibilities . . ." is vague. Maybe cite ACUS Recommendation 2012-4 on Paperwork Reduction Act (https://www.acus.gov/sites/default/files/documents/Final-Recommendation-2012-4-Paperwork-Reduction-Act.pdf) . . . For example, Rec. 4 recommends OMB delegating limited approval authority to agencies instead of everything funneling through OIRA.

Commented [CG43]: While I agree the PRA is a lengthy process, its goal was to reduce the burden on the public of filling out a bunch of paperwork. Exempting customer experience research could end up increasing paperwork burdens on the public. It also could lead to unscientific questions being posed to the public or agency officials using a "customer experience" exemption broadly to garner information.

Commented [BB44]: It is not clear to me that it is necessary to completely exempt "customary experience research from information collection requirements" from the Paperwork Reduction Act and how is it to be determined that the agency is undertaking such research "for the purpose of reducing agency burdens." How is such a purpose to be distinguished from showing that the agency is satisfying its customers or using such research as a metric to judge particular client-facing employees? Private commercial entities seem to use customer surveys for such purposes frequently.

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Page 6: [1] Commented [BB28R27]	Bernard Bell, Public Member	10/17/23 4:41:00 PM

This is just to follow up on today's meeting. Consultant Dan Moynihan sent to everyone in the chat a link to SNAP Telephonic Signature Guidance, <hyperlink unable to be displayed in comment bubble>. This satisfies my inquiry about telephonic signatures and the procedures to ensure retention of telephonic signatures. While I think it would help to have a reference to that or similar guidance re telephonic signatures, I don't have a strong feeling about whether it should be just in the final report or in the recommendation (and, if so, where). If the reference is at least in the final report, I'm fine with leaving "telephonic signatures" as is in the recommendation.

Page 6: [2] Commented [CG29]	Claire Green, Liaison Representative	10/16/23 11:54:00 AM

SSA requires wet signatures for some documents, allows digital signatures for others, and will allow someone (including an SSA employee) to sign "on behalf of" for other documents. The requirements do not appear to be related to the sensitivity of the document.

Page 6: [3] Commented [JK32]	John Kamensky, Senior Fellow	10/16/23 11:00:00 AM

Is the intent to "allow individuals" or is the intent for agencies to "adopt Login.gov" (or equivalent) as a default by agencies? . . . is this to be a passive recommendation or an active recommendation?