ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Identifying and Reducing Burdens on the Public in Administrative Processes

Commented [CoA&M1]: 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*).

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 whether and how the public accesses a wide
14 range of government programs, including those related to veterans benefits and services, student

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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). *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).

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15 financial aid, Social Security benefits, health care, disaster assistance, tax credits, nutrition

16 assistance, housing assistance, and unemployment insurance. These burdens can be exacerbated

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

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

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

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

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

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

23 on all members of the public but fall disproportionately on certain members of historically

24 underserved communities (including people with disabilities),[4] the elderly, those for whom

25 English is not their primary language, people with poor physical or mental health, and persons of

26 limited literacy.[5] Reducing administrative burden, while also taking into account other important

27 public values such as program integrity, can make government work better for everyone.

28 Various authorities govern how federal agencies identify and reduce administrative

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

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

31 necessary to administer their programs.[6] Office of Management and Budget (OMB) Circular

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[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.

[6] 44 U.S.C. §§ 3501–3521.

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32 No. A-11 emphasizes the importance of customer life experiences[7] and human-centered design[8]

33 in how agencies manage organizational performance to improve service delivery.

34   While some administrative burdens are imposed by Congress or by state law, federal

35 agencies have an important role to play in reducing the burdens they impose when administering

36 their programs. Agencies employ numerous strategies to reduce those burdens, including

37 simplifying processes, improving language access, expanding the availability of online (instead

38 of solely in-person) processes, and establishing ombuds offices to assist those experiencing

39 burdens.[9] In addition, agencies have achieved success in reducing burdens by establishing

40 devoted customer experience (CX) teams that have sufficient policy knowledge and authority

41 within the agency to be effective.[10]

42   Collaboration within and between federal agencies, and between federal agencies and

43 state, local, and tribal governments, is also essential for burden reduction. Data sharing between

44 agencies that is consistent with the Fair Information Practice Principles, especially when used in

45 conjunction with simplifying onerous processes or eliminating unnecessary ones, can also reduce

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[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).

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46 administrative burdens.[11] In addition to collaboration across the government, federal agency

47 partnerships with non-governmental third parties (such as legal aid organizations and others) also

48 play a crucial role in agency efforts to reduce burden. Third parties assist agencies by providing

49 information about how processes can be improved to better serve the public and by directly

50 assisting individuals who interact with government programs.[12]

51   This Recommendation provides best practices for agencies to use in identifying and

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

53 Conference,[13] this Recommendation provides specific consultative techniques agencies should

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

55 administrative burdens. The Recommendation encourages the use of online processes and offers

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

57 more accessible. The Recommendation also identifies broad organizational and collaborative

58 tools agencies should employ in burden reduction efforts, including outlining how agency

59 leadership and staff[14] should engage with burden reduction initiatives within their agencies and

60 across the government. The primary focus of burden reduction efforts should be with those

61 federal agencies that have the greatest interaction with the public. The tools discussed are

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[11] *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).

[12] *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).

[13] 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).

[14] 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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62 intended to reduce burdens on the public and not become a reporting burden on agencies for
63 which they are less relevant.

64   This Recommendation also includes a recommendation directed to OMB that builds on
65 the substantial guidance and efforts OMB has already provided on burden reduction. It
66 recommends that OMB provide agencies with additional guidance for measurement and
67 consideration of administrative burden and foregone benefits and services, as well as provide
68 additional guidance on agencies' examination of the potential advantages and disadvantages of
69 administrative data sharing. This guidance could take many forms, including written guidance or
70 agency-specific or government-wide training. In addition, again building on past
71 recommendations of the Conference and related implementation efforts,[15] this Recommendation
72 outlines how agencies and OMB should leverage the PRA in support of burden reduction efforts,
73 including by expanding flexibilities under the PRA for agencies to conduct customer experience
74 research. It also includes a recommendation to Congress that, when developing new legislation
75 that establishes or affects administrative programs, it should provide express statutory authority
76 for agencies to share data where beneficial for achieving the goals of the legislation.

RECOMMENDATION

Burden Identification and Reduction Principles

77 1. Federal agencies should seek to identify and reduce administrative burdens that the public
78   faces when interacting with government programs.
79 2. Agencies' efforts to identify and reduce burdens should take into account the experiences
80   and perspectives of individuals who interact with government programs.
81 3. Because individuals often interact with multiple government agencies and programs
82   during key life experiences, such as retirement, birth of a child, or unexpected disaster,

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[15] *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).

83   agency and program officials should collaborate to identify and reduce burdens that
84   would predictably arise during those experiences.

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

Burden Identification Strategies

87   5. Agencies should institutionalize procedures for consulting with individuals who interact
88   with government programs to better understand the burdens in those programs. In seeking
89   to do so, agencies should try to identify and consult with those who may face
90   disproportionate burdens in accessing agency programs. Agencies should employ
91   multiple consultative techniques, including:

92   a. Client outreach, such as surveys and focus groups;
93   b. Requests for public comment;
94   c. Complaint portals available on agency websites;
95   d. Consultation with agency staff who work with the public, including agency
96   ombuds or public advocate staff; and
97   e. Consultation with members of the private sector who assist individuals, such as
98   representatives, program navigators, and social workers.

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

102   7. To determine agencies' authority to reduce burdens, agencies should trace the legal or
103   operational source of identified burdens in order to determine whether they are imposed
104   by statute or by regulation, guidance, or agency practice, at the federal or state level.

105   8. Agencies should measure administrative burdens associated with their programs by
106   estimating and quantifying, to the extent feasible, any learning, compliance, or
107   psychological costs of interacting with their programs. These costs include the time it
108   takes to learn about programs and how to access them, the work it takes to comply with

109   program requirements, and the stress or stigma involved with engaging with

110   administrative programs, as well as forgone benefits or services.

Burden Reduction Strategies

111   9.   Agencies should periodically review their administrative processes to identify

112   opportunities to simplify them by, as appropriate:

113   a.   Limiting the number of steps in processes;

114   b.   Reducing the length of required forms;

115   c.   Limiting documentation requirements, where possible; and

116   d.   Expanding language access.

117   10.   Agencies should allow the public to interact with government programs using online

118   processes while still retaining in-person processes when necessary to ensure access to

119   benefits and services. In particular, agencies should, when possible:

120   a.   Create alternatives for requirements for "wet" signatures, such as digital or

121   telephonic signatures, consistently across the agency;

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

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

124   rather than requiring in-person appointments.

125   11.   When permitted by law, agencies should reduce steps individuals must take to receive

126   benefits or services by using information in the government's possession to determine

127   program eligibility or to pre-populate enrollment forms or by automatically selecting the

128   most beneficial program options for individuals unless they decide to opt out.

129   12.   Agencies should make information about their programs as easy as possible to find and

130   understand, proactively provide information to members of the public about their

131   eligibility for benefits and services, and allow individuals to expeditiously access records

132   pertaining to themselves when required for obtaining benefits and services.

133   13.   Agencies should provide information in plain language and, when appropriate and

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

135   information.

136   14. Agencies should increase the availability of assistance for individuals interacting with
137   their programs, beyond continuing to enable individuals to rely on assistance from other
138   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;

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        b. Establishing rules governing non-attorney representatives who may practice
           before the agency; and

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        c. Expanding the use of agency staff, including front-line staff, ombuds, and public
           advocates, as well as government-sponsored and -supported entities, such as
           navigator programs.

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147   15. Agencies should identify unnecessary administrative burdens that are required by statutes
148   in their Supporting Statements under the Paperwork Reduction Act (PRA) and in their
149   annual proposed legislative program submissions to the Office of Management and
150   Budget (OMB) under OMB Circular No. A-19.

Agency Organization

151   16. Agency leaders should prioritize burden identification strategies and reduction efforts,
152   using their leadership positions to articulate burden reduction goals for agency staff and
153   outline commitments for achieving them, particularly when such commitments require
154   collaboration between agency departments. Agencies should connect their burden
155   reduction goals to their strategic planning and reporting goals under the Government
156   Performance and Results Act.

157   17. Agencies should identify whether they have particular programs or functions that involve
158   interaction with the public. Agencies with such programs should assemble a team
159   devoted to improving the experiences that these individuals have when interacting with
160   the agency, often referred to as customer experience (CX) teams. CX teams should have
161   thorough knowledge of relevant agency programs. Senior career staff should partner with

162   one or more political appointees to provide CX teams with sufficient authority within the
163   agency to accomplish their goals.

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

Agency Collaboration

168   19. Federal agencies should expand efforts to collaborate with other entities to maximize
169   burden reduction. In particular, program and legal staff should collaborate with their chief
170   data officer on ways to share data across federal agencies and between federal and state
171   agencies, consistent with the Fair Information Practice Principles, in order to:

172   a. Increase outreach to individuals who may be eligible for administrative programs;
173   b. Reduce requirements for forms and documentation; and
174   c. Under certain conditions, provide for automatic enrollment and renewal.

175   20. Agencies should work with their chief data officers in cross-agency working groups to
176   share information about best practices for reducing burden and using data-sharing
177   agreements.

Roles for OMB and Congress

178   21. OMB should provide agencies with additional guidance, potentially including positive
179   models and training, to inform agency:

180   a. Measurement and consideration of administrative burden and foregone benefits
181   and services, such as in regulatory impact analyses;
182   b. Examination of the potential legal or policy advantages and disadvantages of
183   administrative data sharing, in particular providing additional positive examples
184   of data sharing; and
185   c. Use of flexibilities under the PRA to inform CX research and to improve agency
186   service delivery in order to make it easier for agencies to conduct CX research.

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187   22. When developing new legislation that establishes or affects administrative programs,
188   Congress should provide express statutory authority for agencies to share data where
189   beneficial for achieving the goals of the legislation.

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