

TACKLING ADMINISTRATIVE BURDENS: THE LEGAL FRAMEWORK AND INNOVATIVE PRACTICES

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INTRODUCTION

This Article seeks to identify best practices that agencies are using to identify and reduce unnecessary burdens that members of the public and public service providers face when they engage with administrative programs or participate in administrative processes. This Article defines administrative burdens; reviews current statutory and policy frameworks that guide agency

policies governing identification and reduction of burdens; situates the study of administrative burdens within the universe of Administrative Conference of the United States (ACUS) recommendations; explores how agencies currently identify and attempt to reduce such burdens, including particular situations involving cross-agency collaboration; highlights what works; and examines the legal, policy, technological, and internal organizational constraints that can impede the identification and reduction of burdens. This Article focuses on the connection between eliminating burdens and increasing access to justice for those who are underrepresented in the administrative architecture.

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

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

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

1. See *Understanding Tribal Nations Experiences Accessing Federal Grants*, U.S. GEN. SERVS. ADMIN., <https://www.performance.gov/cx/life-experiences/understanding-tribal-experiences-accessing-grants/> (last visited May 10, 2024).

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

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

2. For example, the U.S. Agency for International Development launched a Burden Reduction Program to eliminate processes that are “low-value, overly time-consuming, outdated, or unproductive” by reviewing and eliminating unnecessary forms while simplifying necessary ones, shifting to simplified grant and travel reimbursement processes. Reducing these internal burdens gives employees more time to focus on mission-related activities. See U.S. AGENCY FOR INT’L DEV., POLICY FRAMEWORK: DRIVING PROGRESS BEYOND PROGRAMS 41 (2023), <https://www.usaid.gov/sites/default/files/2023-03/Policy%20Framework%202003-23-2023.pdf>.

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

I. DEFINITIONS

We define administrative burdens as onerous experiences people encounter when interacting with public services. In this Article, we focus on those seeking to access government benefits or services. More precisely, these burdens entail three specific costs, detailed in Table 1 below: learning costs, compliance costs, and psychological costs. Identifying specific costs is useful because it can help identify interventions to reduce them. For example, if the central burden is a learning cost, or people do not know about the nature of the service and how to apply for it, obvious solutions are to use informational treatments that provide such information or adjust processes so that such detailed knowledge is not necessary.

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

burdens, creating a new policy framework that enabled and then exploited data-sharing. *See, e.g.*, FAFSA Simplification Act Changes for Implementation in the 2023–2024 Award Year, 87 Fed. Reg. 66,683, 66,683–84 (Nov. 4, 2022) (describing provisions of the FAFSA Simplification Act, which makes changes to the Higher Education Act of 1965, to reduce burdens for certain applicants); Fostering Undergraduate Talent by Unlocking Resources for Education Act (FUTURE Act), Pub. L. No. 116-91, 133 Stat. 1189 (2019) (explaining the FUTURE Act, including its reauthorization of mandatory funding programs for historically Black colleges and universities (HBCUs) and other minority-related higher education institutions, loan discharges, income-contingent repayment, and other resources).

4. *See* PAMELA HERD & DONALD P. MOYNIHAN, ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS 2–4, 13, 264 (2018).

5. *See* Carolyn Y. Barnes, “It Takes a While to Get Used to”: *The Costs of Redeeming Public Benefits*, 31 J. PUB. ADMIN. RSCH. & THEORY 295, 296 (2021).

Table 1: Learning, compliance, and psychological costs associated with administrative burdens⁶	
Learning costs	Time and effort expended to learn about the program or service, ascertain eligibility status, the nature of benefits, conditions that must be satisfied, and how to gain access.
Compliance costs	Provision of information and documentation to demonstrate standing; financial costs to access services (such as fees, legal representation, or travel costs); avoiding or responding to discretionary demands made by administrators.
Psychological costs	Stigma arising from applying for and participating in an administrative process; loss of autonomy that comes from intrusive administrative supervision; frustration at dealing with learning and compliance costs; unjust or unnecessary procedures; sense of fear from dealing with administrative actors that hold power over the individual; stresses that arise from uncertainty about whether a citizen can negotiate processes and compliance costs.

Adapted from Herd and Moynihan (2018).⁷

II. METHODOLOGY

At the request of ACUS, we prepared this Article to examine the legal and policy frameworks guiding how agencies minimize burdens on the public and, through wide-ranging research, synthesize successful strategies that agencies can employ to increase access to their programs and benefits while remaining within these statutory and policy boundaries. To identify best practices, we conducted our own legal and policy research, engaged in an interdisciplinary literature review, shared expertise among the three project consultants with an interdisciplinary legal, sociological, and public administration focus, conducted interviews with various agencies (including follow-ups and review of documents with particular units within agencies), and reviewed comments from the public submitted through a posted request for information.⁸ All public comments received from that request are posted on

6. Justin Schweitzer, *How to Address the Administrative Burdens of Accessing the Safety Net*, CTR. FOR AM. PROGRESS (May 5, 2022), <https://www.americanprogress.org/article/how-to-address-the-administrative-burdens-of-accessing-the-safety-net/>.

7. See HERD & MOYNIHAN, *supra* note 4, at 2–5, 12–14.

8. Identifying and Reducing Burdens in Administrative Processes, Request for Comments, 88 Fed. Reg. 9,851, 9,851–52 (Feb. 15, 2023).

the ACUS webpage for this project.⁹

All interviews were conducted via Zoom and were considered to be background interviews. Accordingly, agency staff spoke with an expectation of anonymity. Decisions about which agencies to interview were iterative and made throughout the eight-month study period, starting with many of the agencies designated as “High-Impact Service Providers” by OMB as part of its implementation of EO 14,058.¹⁰ We developed and refined the original list as more information was acquired through the interview process. If follow-up interviews were required with other agency staff, we met with some agencies and sub-agencies more than once.

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

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

Finally, the scope of this Article and any associated recommendations are a detailed review of various informal adjudication processes and other public-facing agency services, including benefits programs, state-federal partnerships regarding benefits programs, administrative processes, compliance services, informational services, and data collection or data-sharing.¹¹ The

9. See *Identifying and Reducing Burdens in Administrative Processes*, ADMIN. CONF. OF THE U.S., <https://www.acus.gov/research-projects/identifying-and-reducing-burdens-administrative-processes> (last visited May 10, 2024) (displaying comments left by members of the public starting in February 2023 through December 2023).

10. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, OMB CIRCULAR A-11, DESIGNATED HIGH IMPACT SERVICE PROVIDERS, pt. 6, § 280.13, at 11 (2022).

11. See Bijal Shah, *Administrative Subordination*, U. CHI. L. REV. (forthcoming 2024) (manuscript at 1, 24–25) (on file with authors and available at <https://ssrn.com/abstract=4392123>). Bijal Shah has written about the ways in which institutional focus on efficiency can harm vulnerable communities in regarding the Bureau of Land Management expedited granting of gas and oil leases in rural towns.

interviews and document reviews that form the basis of this Article did not focus on burdens associated with regulatory services, such as agency rule-making and enforcement practices.¹²

III. BACKGROUND

A. *Legal Framework*

Congress has a large role in structuring the framework governing how agencies can identify and reduce burdens. While at times Congress can and does legislate to solve burden issues at particular agencies,¹³ more often, legislation addresses agency processes on a more general scale and rarely considers burden reduction as a legislative priority either in policy design, budgeting investments, or accountability processes. But there are frameworks in place that collectively justify greater attention to burden reduction and the use of data and evidence to address it.¹⁴ The following is an overview of the main statutory requirements that steer agencies in their burden reduction work. These include the general federal privacy laws and laws governing how agencies should incorporate burden reduction. These statutory mandates and constraints overlap with various burden-related areas, including agency prioritization, data collection, data management, and other simplification best practices. In addition to the following federal laws, benefit-specific laws govern how each agency can use data generated through program administration and laws governing data security and medium.¹⁵ Due to the

12. The Office of Information and Regulatory Affairs (OIRA) is currently engaged in a multi-year project to modernize regulatory review. Proposed reforms interact in multiple ways with the burden reduction and equity initiatives prioritized by the Biden Administration but are outside the scope of this project. *See Modernizing Regulatory Review*, OFF. OF INFO. & REGUL. AFFS., <https://www.whitehouse.gov/omb/information-regulatory-affairs/modernizing-regulatory-review/> (last visited May 10, 2024).

13. *See, e.g.*, FUTURE Act, Pub. L. No. 116-91, 133 Stat. 1189 (2019) (revamping the FAFSA process).

14. *See* OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, STUDY TO IDENTIFY METHODS TO ASSESS EQUITY: REPORT TO THE PRESIDENT 21–29 (2021) [hereinafter STUDY TO IDENTIFY METHODS TO ASSESS EQUITY], *as reprinted in* OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-22-10, IMPROVING ACCESS TO PUBLIC BENEFITS PROGRAMS THROUGH THE PAPERWORK REDUCTION ACT 5, 15–18 (2022) [hereinafter OMB M-22-10].

15. *See Protecting Personal Privacy*, U.S. GOV'T ACCOUNTABILITY OFF., <https://www.gao.gov/protecting-personal-privacy> (last visited May 10, 2024); STEPHEN P. MULLIGAN & CHRIS D. LINEBAUGH, CONG. RSCH. SERV., R45631, DATA PROTECTION LAW: AN OVERVIEW (2019) (“At the federal statutory level, there are a number of statutes that protect individuals’ personal data or concern cybersecurity, including the Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act, Children’s Online Privacy

immense variation of benefit-specific laws, this Article focuses on the general legal landscape while acknowledging that these are merely the minimum legal requirements each agency must address when considering burden reduction opportunities.

1. Agency Prioritization

Government Performance and Results Act (GPR) Modernization Act

The Government Performance and Results Act (GPR) Modernization Act builds on previous statutory planning and reporting requirements to move agencies toward more systematic strategic planning and performance reporting.¹⁶ Such planning encourages interagency collaboration and coordination and increases public access to agency priorities. Additionally, the GPR Modernization Act encourages reliance on evidence-based policy-making.¹⁷

OMB Circular No. A-11 instructs executive agencies on the various requirements to fulfill their Strategic Plans.¹⁸ In 2022, the Circular added Section 280 to incorporate the Biden Administration's customer experience priorities.¹⁹ Section 280 describes in detail the purpose of the customer experience focus and the methods for agencies to take inventory of service delivery touchpoints, identifies agency structural and organizational methods to prioritize customer experience, and moves on to more holistic understandings of how people engage with various agency services and how agencies can improve their service design.²⁰ In short, Circular A-11 pushes agencies to better incorporate customer experience goals into regular strategic

Protection Act, and others. And a number of different agencies, including the Federal Trade Commission (FTC), the Consumer Finance Protection Bureau (CFPB), and the Department of Health and Human Services (HHS), enforce these laws.”); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-01-05, GUIDANCE ON INTER-AGENCY SHARING OF PERSONAL DATA – PROTECTING PERSONAL PRIVACY (2000) [hereinafter OMB M-01-05].

16. Government Performance and Results Act (GPR) Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011).

17. See OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, CIRCULAR A-11, PREPARATION, SUBMISSION & EXECUTION OF THE BUDGET pts. 1, 6, §§ 15, 200, 210, 220, 230, 240 (2023) [hereinafter OMB CIRCULAR A-11 (2023)] (explaining the planning, reporting, budgeting, updating, and evidence requirements under the GPR Modernization Act).

18. See *id.* pt. 6, §§ 210, 220, 230 (describing agencies' requirements for Strategic Plans and making the Plans accessible for the public).

19. See Exec. Order No. 14,058, 86 Fed. Reg. 71,357, 71,357–65 (Dec. 16, 2021); OMB CIRCULAR A-11 (2023), *supra* note 17, at pt. 6, § 280, at 1–13 (providing the customer experience updates, including executive agencies' duties in improving customer experience).

20. See OMB CIRCULAR A-11 (2023), *supra* note 17, at pt. 6, § 280, at 1–13.

planning and performance reporting requirements.

American Rescue Plan Act/Inflation Reduction Act

The American Rescue Plan Act (ARPA) was passed in 2021 to help people access relief from the impact of COVID-19 on all areas of life.²¹ The ARPA also provides congressional authority for burden reduction innovations to make such relief easier to access, such as modernizing unemployment compensation systems.²² It also provides necessary funding for agencies to hire and build support for better customer experiences and data management, although such funding is temporary.²³ Some of these funds have been continued through incorporation into the Inflation Reduction Act.²⁴ Both of these laws play a significant role in providing agencies with the financial support needed to improve service delivery.

2. *Data Collection*

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) governs how agencies collect information from the public. Generally, information collection requests to ten or more members of the public require OIRA clearance, publication in the Federal Register, and comment-and-review periods.²⁵ OIRA reviews the information being collected and the burden hours being asked of the public to ensure that any burdens are minimized while still meeting particular program goals.²⁶ The PRA is particularly relevant here because information collection requests such as forms and applications for benefits and grant programs make up a large portion of the public's administrative burdens when interacting with the government.²⁷ Additionally, other statutory reporting requires agencies to track outcomes of burden reduction processes through feedback surveys, which the PRA also governs.²⁸

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

22. See KATELIN P. ISAACS & JULIE M. WHITTAKER, CONG. RSCH. SERV., IF11786, UNEMPLOYMENT INSURANCE PROVISIONS IN THE AMERICAN RESCUE PLAN ACT OF 2021 (2021); *Unemployment Insurance Modernization*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/eta/ui-modernization> (last visited May 10, 2024).

23. See ARPA of 2021, 15 U.S.C. §§ 9024, 9026–27, 9048–49 (Supp. II 2021).

24. See Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818.

25. Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. § 3501.

26. 5 C.F.R. § 1320.8(d)(1)(ii) (2022).

27. Annie Lowrey, *The Time Tax: Why Is So Much American Bureaucracy Left to Average Citizens?*, ATLANTIC (July 27, 2021), <https://www.theatlantic.com/politics/archive/2021/07/how-government-learned-waste-your-time-tax/619568/>.

28. *Do I Need Clearance?*, DIGITAL.GOV, <https://pra.digital.gov/do-i-need-clearance/> (last visited May 10, 2024).

OMB issued additional guidance for agencies on how best to meet these burden reduction priorities while complying with the Act.²⁹ In particular, agencies are encouraged to use the many types of information collection processes not governed by the PRA, such as direct observations and listening sessions.³⁰ In addition, OMB has issued guidance about flexibilities in meeting PRA requirements under general clearance programs.³¹ However, a 2018 ACUS Report highlighted that these flexibilities are underutilized and suggested additional training to encourage greater agency adoption of expedited clearance processes and other methods for gathering necessary information.³²

3. Data Management

Computer Matching and Privacy Protection Act of 1988

The Computer Matching and Privacy Protection Act of 1988 (Privacy Act) governs the process agencies must use when sharing certain types of records with other federal or nonfederal agencies through computerized matching programs to determine eligibility, compliance, or debts associated with federal benefits programs.³³ This amendment to the Privacy Act requires specific written agreements before any computerized sharing of “personally identifiable records maintained in a system of records subject to the Privacy Act” and the creation of Data Integrity Boards at each federal agency to oversee the agreements.³⁴ In 1990, the Privacy Act was amended to address

29. OMB M-22-10, *supra* note 14; *see also* OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, TESTING AND SIMPLIFYING FEDERAL FORMS (2012) (explaining how the PRA shall be used to minimize public confusion).

30. *Exclusions to the Regulatory Definition of “Information” Under Paperwork Reduction Act*, OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT (Sept. 5, 2014), https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/inforeg/inforeg/memos/2014/appendix-data-search-tools-calculators.pdf; *see also* OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, SOCIAL MEDIA, WEB-BASED INTERACTIVE TECHNOLOGIES, AND THE PAPERWORK REDUCTION ACT (2010) (discussing various social media communications and meetings excluded from the PRA’s requirements).

31. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, FLEXIBILITIES UNDER THE PAPERWORK REDUCTION ACT FOR COMPLIANCE WITH INFORMATION COLLECTION REQUIREMENTS (2016); *see also* OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-11-26, NEW FAST-TRACK PROCESS FOR COLLECTING SERVICE DELIVERY FEEDBACK UNDER THE PAPERWORK REDUCTION ACT (2011).

32. ACUS Recommendation 2018-1, Paperwork Reduction Act Efficiencies, 83 Fed. Reg. 30,683, 30,685 (June 29, 2018).

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

34. *Computer Matching Programs*, U.S. DEP’T OF THE TREASURY, <https://home.treasury.gov/footer/privacy-act/computer-matching-programs> (last visited May 10, 2024); *Policy*

due process concerns further and authorize a Data Integrity Board to waive certain procedures regarding independent data verification.³⁵

The Privacy Act itself does not create authority for data-matching programs; instead, it governs the general process for such agreements once statutory authority exists. Congress can also prescribe additional processes for particular programs.³⁶ Due to the Privacy Act's rigid requirements, confusion about its scope, and the short timeframe for a computer matching program, the U.S. Government Accountability Office (GAO) reported that agencies are somewhat discouraged from seeking opportunities to share data.³⁷

Even so, over the past decade, more than 440 Notices of Matching Agreements have been published in the Federal Register, for an average of roughly forty-four agreements per year.³⁸ Over half of these agreements are categorized in the Federal Register under "Health & Public Welfare."³⁹ The agencies initiating the most matching agreements are SSA, HHS, VA, Federal Communications Commission, the Department of Education, Centers for Medicare and Medicaid Services, DHS, and HUD.⁴⁰

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

The Evidence Act requires the federal government to modernize its data

Directives, U.S. DEP'T OF THE TREASURY, <https://home.treasury.gov/footer/privacy-act/privacy-directives> (last visited May 10, 2024).

35. Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 7201, 104 Stat. 1388, 1388-34; *see* Computer Matching and Privacy Protection Amendments of 1990 and Privacy Act of 1974, 56 Fed. Reg. 18,599, 18,600 (Apr. 23, 1991) ("A clear example of the kind of data exchange that is eligible for waiver consideration is the furnishing to States by the Social Security Administration of Cost of Living Adjustment (COLA) information that consists of the name of the benefit recipient, the benefit amount including amount of the COLA change, and other information. In this example, the name and benefit amount would be eligible for the waiver procedure; the 'other information' would not.").

36. *See* Interview with Internal Revenue Serv. (Dec. 14, 2022) (on file with authors).

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

38. *See* Daily Journal of the U.S. Government, Document Search, Fed. Reg., <https://www.federalregister.gov/documents/search> (follow "Show Advanced Search" hyperlink; type "matching agreement" in the search bar; under "Publication Date," select "Range" and input dates for the last decade ("On or after" 03/25/2014 to "On or before" 03/25/2024); click "Search" button; next to the search bar, results show "445 documents").

39. *See id.* (scroll to find "SECTION" in the sidebar to the left; under "Health & Public Welfare," results show "250" documents).

40. *See id.* (find "AGENCY" in the sidebar to the left; select "view more agencies," results show the agencies initiating the largest number of matching agreements).

management practices.⁴¹ It adds to requirements in the GPR Modernization Act and OMB Circular A-11 to embed best practices for evidence-based policymaking in agency strategic planning.⁴² Specifically, the Act created the Chief Data Officer Council

to establish government-wide best practices for the use, protection, dissemination, and generation of data; promote and encourage data[-]sharing agreements between agencies; identify ways in which agencies can improve upon the production of evidence for use in policymaking; consult with the public and engage with private users of [g]overnment data and other stakeholders on how to improve access to data assets of the [f]ederal [g]overnment; and identify and evaluate new technology solutions for improving the collection and use of data.⁴³

4. *Simplification*

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

The 21st Century Integrated Digital Experience Act (21st Century IDEA) requires agencies to assess their digital services and prioritize those with the highest impact for usability improvements.⁴⁴ All executive agencies must take inventory of the agency's services and maintain processes for each service, focusing on increasing digital service provision.⁴⁵ The law requires agencies to draft plans for expanding digital forms and services,⁴⁶ including electronic signatures⁴⁷ and modernizing websites to incorporate website standards.⁴⁸ Additional OMB guidance on a broader range of issues concerning the Act's further implementation is due soon.

Plain Writing Act of 2010

The Plain Writing Act requires all federal agencies to use clear government communication that the public can understand and use.⁴⁹

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

42. *See id.* § 312, 132 Stat. at 5530 (detailing the agency evidence-building plan and the requirements of an agency's strategic plan).

43. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-19-23, PHASE I IMPLEMENTATION OF THE FOUNDATIONS FOR EVIDENCE-BASED POLICYMAKING ACT OF 2018: LEARNING AGENDAS, PERSONNEL, AND PLANNING GUIDANCE 9 (2019).

44. 21st Century Integrated Digital Experience Act, Pub. L. No. 115-336, §§ 3-4, 132 Stat. 5025, 5026-27 (2018).

45. *See id.* §§ 3-4, 7 (highlighting that executive agencies must coordinate and implement digital service modernization).

46. *Id.* § 4.

47. *Id.* § 5.

48. *Id.* § 3(e); *see Website Standards*, U.S. GEN. SERVS. ADMIN. (Jan. 22, 2020), <https://designsystem.digital.gov/website-standards>.

49. Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861.

Simplification of legal processes generally, and with this statute, simplification of government documents, is a major tenet for access to justice advocates.⁵⁰ OMB issued final guidance that encourages agencies to communicate clearly and concisely with the public, establish a public-facing implementation plan, and encourage comments from the public on areas for improvement.⁵¹ In 2017, ACUS issued its own recommendations to agencies as to concrete steps agencies can make to their internal drafting guidelines to further the goals of the Plain Writing Act.⁵²

B. Policy Architecture

In addition to the complex statutory framework potentially governing burden reduction initiatives throughout federal agencies, there is a clear policy architecture that prioritizes customer experience in government agency interactions. The White House has prioritized identification and reduction of burdens, particularly as such burdens fall to marginalized communities, through a series of EOs and Memorandums. On his first day in office, President Biden signed EO 13,985 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), which requires agencies to “recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.”⁵³ Additionally, President Biden signed a memorandum on Modernizing Regulatory Review the same day, which directed OMB to recommend practices that would “ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities.”⁵⁴

Particularly relevant to this Article and building on many past steps toward improving government service to the public,⁵⁵ the Biden

50. LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE THROUGH SIMPLIFICATION: A ROADMAP FOR PEOPLE-CENTERED SIMPLIFICATION OF FEDERAL GOVERNMENT FORMS, PROCESSES, AND LANGUAGE 9 (2022) [hereinafter LEGAL AID INTERAGENCY ROUNDTABLE].

51. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-11-15, FINAL GUIDANCE ON IMPLEMENTING THE PLAIN WRITING ACT OF 2010 1, 4–6 (2011).

52. ACUS Recommendation 2017-3, Plain Language in Regulatory Drafting, 82 Fed. Reg. 61,728, 61,730 (Dec. 29, 2017).

53. Exec. Order No. 13,985, 86 Fed. Reg. 7,009, 7,009 (Jan. 25, 2021).

54. Modernizing Regulatory Review, 86 Fed. Reg. 7,223, 7,223 (Jan. 20, 2021); *see also* Exec. Order No. 14,094, 88 Fed. Reg. 21,879, 21,879 (Apr. 6, 2023) (“This order also further implements the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review).”).

55. *See, e.g.*, Exec. Order No. 13,571, 76 Fed. Reg. 24,339, 24,339–40 (May 2, 2011); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-11-24, IMPLEMENTING

Administration prioritized customer experience (CX) through EO 14,058 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government).⁵⁶ This CX EO mandated that the federal administrative system “reduce administrative hurdles and paperwork burdens to minimize ‘time taxes,’ enhance transparency, create greater efficiencies across [g]overnment, and redesign compliance-oriented processes to improve customer experience”⁵⁷ The EO also builds on a bipartisan history of executive attention to customer service. Since Customer Service Week under President George H.W. Bush in 1992, every president has engaged in some initiative to improve customer service delivery, especially for federal agencies that interact more directly with the public.⁵⁸

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

People First. First, the emphasis on experience was not just limited to those who can find government services; the government should actively identify and reach out to those who are eligible for those services.⁵⁹ Furthermore, the EO encourages agencies to look for root causes of problems that create burdens, including existing legal and regulatory barriers.⁶⁰ Finally, the EO aims to simplify the process of interacting with federal websites via a digital “Federal Front Door” that allows users to quickly find key benefits, services, and programs within one to three clicks.⁶¹ This is sometimes referred to as a “No Wrong Door” principle.⁶² It tries to reduce learning costs and ensure the

EXECUTIVE ORDER 13,571 ON STREAMLINING SERVICE DELIVERY AND IMPROVING CUSTOMER SERVICE 1–4 (2011); Exec. Order 13,576, 76 Fed. Reg. 35,297, 35,297–98 (June 16, 2011).

56. See Exec. Order 14,058, 86 Fed. Reg. 71,357, 71,357–59 (Dec. 16, 2021).

57. *Id.* at 71,358.

58. See, e.g., Exec. Order No. 12,862, 58 Fed. Reg. 48,257, 48,257 (Sept. 14, 1993) (illustrating President Clinton’s efforts to improving customer service).

59. See Exec. Order 14,058, 86 Fed. Reg. at 71,357 (“Government must also work to deliver services more equitably and effectively, especially for those who have been historically underserved. Strengthening the democratic process requires providing direct lines of feedback and mechanisms for engaging the American people in the design and improvement of [f]ederal [g]overnment programs, processes, and services.”).

60. See *id.* at 71,358 (“[A]gencies’ efforts to improve customer experience should include systematically identifying and resolving the root causes of customer experience challenges, regardless of whether the source of such challenges is statutory, regulatory, budgetary, technological, or process-based.”).

61. See *id.* at 71,361.

62. See Press Release, White House, Fact Sheet: Putting the Public First: Improving Customer Experience and Service Delivery for the American People (Dec. 13, 2021) [hereinafter Putting the Public First], <https://www.whitehouse.gov/briefing-room/statements->

public does not give up because they cannot navigate confusing websites.⁶³

Moments that Matter. The Customer Experience EO directs attention to big agencies and programs, but it also frames the effort to fix people’s experience of government around key life experiences.⁶⁴ Some of these moments might be mundane or predictable—retiring, traveling, paying taxes, seeking funding for a small business—and some are extraordinary and stressful—experiencing food insecurity, having a child, or experiencing a disaster.⁶⁵ People usually need help from multiple government providers at such moments, but they might feel too overwhelmed to figure out the different offices they need to navigate.⁶⁶ Thinking about government services through the lens of how the public experiences such moments makes it more likely that they can be structured in a way that makes them more accessible.⁶⁷

An Ongoing Government-wide Set of Routines. The EO institutionalizes a set of routine interactions within agencies and between agencies and OMB, which are primarily responsible for both helping agencies and holding them accountable for meeting the EO’s demands.

- OMB must routinely “select a limited number of customer life

releases/2021/12/13/fact-sheet-putting-the-public-first-improving-customer-experience-and-service-delivery-for-the-american-people/ (“Those navigating across multiple [federal safety net] programs can expect a ‘no-wrong door’ approach – interacting with one [f]ederal program can help get them connected with other benefits and streamline enrollment for which they are eligible.”); Jory Heckman, *Biden Executive Order Seeks ‘Seamless’ Customer Experience Across Federal Services*, FED. NEWS NETWORK (Dec. 13, 2021, 12:38 PM), <https://federalnewsnetwork.com/management/2021/12/biden-executive-order-seeks-seamless-customer-experience-across-federal-services/> (“To reduce barriers to access for people who are experiencing poverty or rely on social safety net programs, the executive order directs agencies to implement a ‘no-wrong door’ approach, in which users who sign up for one agency program or benefit can get connected to other related programs.”); *A New Era in Government-Sector Customer Experience*, QUADIENT BLOG (June 28, 2022) [hereinafter *A New Era*], <https://www.quadient.com/en/blog/new-era-government-sector-customer-experience> (“The concept of ‘Federal Front Door’ uses some state best practices from ‘No Wrong Door’ (NWD) policies that allow customers to apply for multiple services from any of the relevant agencies.”).

63. See *Putting the Public First*, *supra* note 62; Heckman, *supra* note 62; *A New Era*, *supra* note 62.

64. See *Government-Wide CX Efforts*, U.S. GEN. SERVS. ADMIN. [hereinafter GSA, *Government-Wide CX Efforts*], <https://www.performance.gov/cx/projects> (last visited May 10, 2024).

65. See *id.* (referring to life experiences as “significant events or transitions that often require interactions and touchpoints with multiple [f]ederal agencies” and describing more ordinary life experiences as “[e]arly [c]hildhood”).

66. See *id.*

67. See *Human-Centered Design for CX*, U.S. GEN. SERVS. ADMIN., <https://www.performance.gov/cx/hcd/> (last visited May 10, 2024).

experiences to prioritize for [g]overnment-wide action to improve customer experience.”⁶⁸

- OIRA must propose ways to reduce paperwork burdens on the public.⁶⁹
- The leaders of thirty-five “High Impact Service Providers” who engage with the public must designate specific areas for improvement and report back to OMB each year with results and new targets.⁷⁰
- Agencies are required to embed customer improvement efforts into existing strategic planning and performance reporting processes that are required by law, helping to ensure that these reforms are not seen as distinct from existing performance management requirements.⁷¹

Data-sharing and Cross-agency Cooperation as Solutions. The EO requires that federal agencies work together to reduce burdens.⁷² Many recommendations, such as automatic enrollment and prepopulating forms, require agencies to share data and information.⁷³

Better Measure and Track Burdens. OMB has provided guidance to the agencies as to expectations regarding agency engagement with burden assessment, including how to “(1) more completely and transparently articulate burdens and associated costs experienced by the public when accessing essential public benefits programs, and (2) use that analysis to ‘minimize the Federal information collection burden, with particular emphasis on those

68. Exec. Order 14,058, 86 Fed. Reg. 71,357, 71,362 (Dec. 16, 2021).

69. See *id.* at 71,363 (noting that OIRA shall guide agencies on “identifying specific steps to reduce information collection burdens on customers to enhance access across agencies”).

70. See *id.* at 71,359, 71,361, 71,363–64; *Delivering Excellent, Equitable, and Secure Federal Services and Customer Experience*, U.S. GEN. SERVS. ADMIN. [hereinafter GSA, *Federal Services and CX*], <https://www.performance.gov/pma/cx/> (last visited May 10, 2024).

71. See Exec. Order 14,058, 86 Fed. Reg. at 71,364 (“Informed by findings from these assessments, plans for improvement should include, as appropriate, actions such as conducting outreach to the public about the agency’s programs and other Federal programs for which those served by the agency may be eligible, providing assistance to members of the public enrolling in the agency’s programs and other Federal programs, streamlining and improving accessibility of forms and digital experiences, eliminating unnecessary administrative burdens on customers, ensuring the accessibility of services for customers with disabilities and those with limited English proficiency, developing targeted actions to advance equity for communities that face inequitable barriers to service access, or engaging in other efforts to coordinate with other agencies to reduce the need for those they serve to interact separately with multiple agencies.”).

72. See *id.* at 71,360, 71,362, 71,364.

73. See *id.* at 71,360, 71,362 (detailing how agencies should provide “an integrated experience that meets customers’ needs”).

individuals and entities most adversely affected'"⁷⁴ OMB guidance states that agencies consider every step in the process of an information collection in order to estimate the associated burden transparently.⁷⁵ To do this, OMB encourages robust consultation with users to ensure correct burden estimates.⁷⁶ Even so, there is evidence that agencies underestimate burdens experienced by people.⁷⁷ For example, agencies often consider the number of pages and the time spent per page for burden estimation under the PRA.⁷⁸ Less common is a robust accounting of the tangential burdens associated with filling out the form, including researching which form is relevant, finding the correct form, getting answers to questions about wording, and navigating various state requirements that might require additional steps once any form is completed.⁷⁹

In addition to using the PRA's "generic clearance" process, OMB recommends that agencies expand consultative processes to include forms of engagement that are not subject to the PRA.⁸⁰ The ultimate goal is to use the burden assessment and associated consultations to identify and plan for burden reductions. Specific areas ripe for burden reduction innovations include outreach and notice of eligibility; policies that auto-enroll or cross-enroll eligible participants; and mitigation of disproportionate barriers to access due to disability, English language proficiency,⁸¹ digital access, transportation barriers, employment barriers, housing insecurity, and other life circumstances that would amplify the time, learning, and psychological costs attached to the agency program.⁸²

The President's Management Agenda, which guides implementation efforts across government, has also identified "[d]elivering [e]xcellent, [e]quitable, and [s]ecure [f]ederal [s]ervices and [c]ustomer [e]xperience" as one of its three goals.⁸³

74. See OMB M-22-10, *supra* note 14, at 1.

75. See *id.* ("Consideration of burden on individuals and groups most affected by information collections related to accessing and maintaining eligibility for public benefits programs is also consistent with and supports agency implementation of Executive Order 14058").

76. See *id.* at 2.

77. See Lowrey, *supra* note 27.

78. See OMB M-22-10, *supra* note 14, at 2.

79. See *Identifying and Reducing Burdens in Administrative Processes*, *supra* note 9; OMB M-22-10, *supra* note 14, at 2.

80. See OMB M-22-10, *supra* note 14, at 2, 6; see also OFF. OF MGMT. & BUDGET, OFF. OF SCI. & TECH. POL'Y, EXEC. OFF. OF THE PRESIDENT, BEHAVIORAL SCIENCE INSIGHTS AND FEDERAL FORMS 3 (2015) (explaining the *de minimis* PRA exception).

81. See Exec. Order No. 13,166, 65 Fed. Reg. 50,121, 50,121 (Aug. 11, 2000).

82. See OMB M-22-10, *supra* note 14, at 8, 12–13.

83. GSA, *Federal Services and CX*, *supra* note 70.

Finally, ACUS has studied and reported recommendations on many areas related to increasing access to federal programs and benefits, which tangentially operate to minimize types of burdens on the public. ACUS has studied and provided recommendations to increase public engagement in rulemaking,⁸⁴ increase access to various agency documents,⁸⁵ simplify various agency interactions,⁸⁶ and improve the experience of unrepresented parties in informal adjudication processes.⁸⁷ The White House Legal Aid Interagency Roundtable, of which ACUS is an active member, recently released a report further highlighting the need for greater simplification of agency procedures to enable people to navigate government services and benefits without need for a lawyer.⁸⁸ This project incorporates and supplements these recommendations with a sharper focus on how agencies can take specific steps, either internally or in conjunction with other agencies or institutions, to improve access to benefits or programs designed for public use.

84. See, e.g., ACUS Recommendation 2018-7, Public Engagement Rulemaking, 84 Fed. Reg. 2,139, 2,146 (Feb. 6, 2019); ACUS Recommendation 2021-3, Early Input on Regulatory Alternatives, 86 Fed. Reg. 36,075, 36,082 (July 8, 2021); ACUS Recommendation 2017-2, Negotiated Rulemaking and Other Options for Public Engagement, 82 Fed. Reg. 31,040, 31,040 (July 5, 2017).

85. See, e.g., ACUS Recommendation 2018-6, Improving Access to Regulations.gov's Rulemaking Dockets, 84 Fed. Reg. 2,139, 2,143 (Feb. 6, 2019); ACUS Recommendation 2021-7, Public Availability of Inoperative Agency Guidance Documents, 87 Fed. Reg. 1,715, 1,718 (Jan. 12, 2022); ACUS Recommendation 2019-3, Public Availability of Agency Guidance Documents, 84 Fed. Reg. 38,927, 38,931 (Aug. 8, 2019); ACUS Recommendation 2020-5, Publication of Policies Governing Agency Adjudicators, 86 Fed. Reg. 6,612, 6,622 (Jan. 22, 2021); ACUS Recommendation 2021-6, Public Access to Agency Adjudicative Proceedings, 87 Fed. Reg. 1,715, 1,715 (Jan. 12, 2022); ACUS Recommendation 2017-1, Adjudication Materials on Agency Websites, 82 Fed. Reg. 31,039, 31,040 (July 5, 2017).

86. See, e.g., ACUS Recommendation 2018-3, Electronic Case Management in Federal Administrative Adjudication, 83 Fed. Reg. 30,683, 30,686 (June 29, 2018); ACUS Recommendation 2022-2, Improving Notice of Regulatory Changes, 87 Fed. Reg. 39,798, 39,800 (July 5, 2022); ACUS Recommendation 2017-3, Plain Language in Regulatory Drafting, 82 Fed. Reg. 61,728, 61,728 (Dec. 29, 2017); ACUS Recommendation 2023-4, Online Processes in Agency Adjudication, 88 Fed. Reg. 42,678, 42,681 (July 3, 2023).

87. See, e.g., ACUS Recommendation 2016-5, The Use of Ombuds in Federal Agencies, 81 Fed. Reg. 94,312, 94,316 (Dec. 23, 2016); ACUS Recommendation 2016-6, Self-Represented Parties in Administrative Proceedings, 81 Fed. Reg. 94,312, 94,319 (Dec. 23, 2016); ACUS Recommendation 2021-9, Regulation of Representatives in Agency Adjudicative Proceedings, 87 Fed. Reg. 1,715, 1,721 (Jan. 12, 2022); George M. Cohen, ADMIN. CONF. OF THE U.S., *Regulation of Representatives in Agency Adjudicative Proceedings* 10–13 (2021), <https://www.acus.gov/sites/default/files/documents/Cohen%20Final%20Report%20December%202021%20GY%20formatted.pdf>.

88. See LEGAL AID INTERAGENCY ROUNDTABLE, *supra* note 50, at 9–10.

C. Literature Review

There is interdisciplinary literature that is relevant to this project. This literature stems from multiple fields, including legal academia, the access to justice movement, public governance, and social science studies. Part of this project entails bringing an interdisciplinary lens to the daily workings of agencies. In Parts IV through VI of this Article, we will discuss in detail how breaking down silos within and across agencies is a central best practice for developing programs that reduce burdens.⁸⁹ We start here by explaining how the various strands of literature have addressed these issues to date. The following part synthesizes these various strands of literature to highlight a common theme regarding the need for rethinking and structuring administrative agencies and processes from the perspective of those who access and use these Federal services.

Legal academia has been slow to develop a coherent body of scholarship related to reforming administrative law from the perspective of regulatory beneficiaries. One reason for this lies in administrative law's historical top-down view that tends to focus on constraining agency action.⁹⁰ Using the role of law and procedure as a primary means to provide legitimacy to administration has shaped administrative law scholarship for decades. While administrative law scholars have long focused on public participation, this focus tends to be rooted in the perceived democratic legitimacy value of participation rather than the policy and design benefits that accrue from robust and diverse participation. Nor has consideration of the burdens associated with access for those who are underrepresented been the goal of increased public participation in agency decisionmaking.⁹¹ Additionally, legal scholarship tends to address agencies as independent actors constrained solely through other branches rather than a web of collaborating and interconnected entities that exert influence over each other and interact with various statutory mandates.⁹² Together, these tendencies have kept administrative law scholarship from engaging deeply with the social science literature.⁹³

89. See *infra* Parts IV–VI.

90. See Nicholas Bagley, *The Procedure Fetish*, 118 MICH. L. REV. 345, 351–60 (2019) (placing the PRA and OIRA review squarely in the middle of the historical developments built on constraint and distrust).

91. See Emily S. Bremer, *Reckoning with Adjudication's Exceptionalism Norm*, 69 DUKE L.J. 1,749, 1,749 (2020).

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

93. See Emily S. Bremer, *Power Corrupts*, YALE J. ON REGUL. (forthcoming 2024) (manuscript at 1) (on file with authors and available at <https://papers.ssrn.com/sol3/>

Recently, however, administrative legal scholarship has begun to grapple with how the administrative state has ignored, forgotten, or subordinated the interests of underrepresented communities.⁹⁴ This includes a turn toward understanding how administration is practiced, including examining internal administrative agency structure and how agency design can affect policy development and outcomes,⁹⁵ taking account of the larger ecosystem in which agencies collaborate,⁹⁶ and acknowledging that the constraining impulses underlying much of administrative law is divorced from a necessary understanding of the complex ecosystem of the administrative state.⁹⁷

The access to justice movement has been a leader here out of necessity because complicated and time-consuming processes lead many people to forgo or otherwise be excluded from benefits without assistance, which is all too often unavailable.⁹⁸ Lawyers, court personnel, activists, and others have studied factors that hinder people's access to legal remedies. For example, underrepresented communities experience a severe "justice gap," with the most recent study finding that low-income Americans either did not receive any legal help or enough legal help for 92% of the problems that substantially

papers.cfm?abstract_id=4375200).

94. See Shah, *supra* note 11.

95. See Gillian E. Metzger & Kevin M. Stack, *Internal Administrative Law*, 115 MICH. L. REV. 1,239, 1,263 (2017); Amy Widman, *Inclusive Agency Design*, 74 ADMIN. L. REV. 23, 23 (2022).

96. See Winship, *supra* note 92, at 330.

97. See ELIZABETH FISHER & SIDNEY A. SHAPIRO, ADMINISTRATIVE COMPETENCE: REIMAGINING ADMINISTRATIVE LAW 2, 8 (2020) (arguing that administrative law developed largely isolated from public administration and a much deeper understanding of public administration, and particularly what is meant by administrative competence, is needed to reimagine an administrative state that is less binary (constraining action versus arbitrary discretion) and more honestly reflects the complexity of public regulation); see also Bagley, *supra* note 90, at 349 ("call[ing] into question the administrative lawyer's instinctive faith in procedure, to reorient discussion to the trade-offs at the heart of any system designed to structure government action, and to soften resistance to the relaxation of unduly burdensome procedural rules").

98. See *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans*, LEGAL SERVS. CORP. (Apr. 8, 2022), <https://justicegap.lsc.gov/>; see also Richard Zorza, *Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation*, 61 DRAKE L. REV. 845, 847 (2013) ("We must find ways to radically simplify the legal dispute resolution system so it becomes much more accessible and so the costs of accessing and operating the system dramatically decrease."); Kathryn M. Young & Katie R. Billings, *An Intersectional Examination of U.S. Civil Justice Problems*, 2023 UTAH L. REV. 487, 489 (2023) ("Attempting to resolve their civil legal problems . . . costs Americans an inordinate amount of time (searching for information, traveling to courts or offices, making phone calls, gathering evidence) as well as stress and negative emotions.").

impacted their lives in the past year.⁹⁹ Research shows that outcomes improve with legal assistance.¹⁰⁰ While the access to justice literature has championed reforms in the delivery of legal services, much of this work has centered on state courts.¹⁰¹ However, many of these problems have administrative components, including income maintenance reliance on government benefits. When people encounter compliance or psychological barriers due to burden, the services and benefits become out of reach. Access to assistance can ameliorate the harshest effect of burdens for the individual while also providing another avenue for stakeholder engagement in that the representative can report patterns of burdens that disrupt agency missions. Thus, reducing administrative burdens can increase access to justice as well. This reimagining of the role that law can play in administration has opened space for legal reformers and academics to collaborate with other disciplines studying administrative burdens, often stemming from the “proceduralization” of law and its effect on people interacting with the government.¹⁰²

The basic insight from empirical social science research is that difficult administrative processes can meaningfully disrupt access to valued public services and rights.¹⁰³ A large and growing body of evidence, which we turn to here, demonstrates that people frequently do not access rights and benefits that they want and are entitled to because of onerous administrative processes.¹⁰⁴

We intuitively understand such hassles to be irritating but can easily miss

99. See *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans*, *supra* note 98.

100. See Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. FOR SOC. JUST. 51, 52 (2010).

101. See Zorza, *supra* note 98, at 849–50, 854; Young & Billings, *supra* note 98, at 539.

102. See, e.g., Margaret D. Hagan, *A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Interventions to Make Courts User-Friendly*, 6 IND. J. L. & SOC. EQUAL. 199, 200 (2018); Widman, *supra* note 95; Emily S. Taylor Poppe, *Institutional Design for Access to Justice*, 11 U.C. IRVINE L. REV. 781, 781 (2021); K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 679 (2020); *Administrative Conference of the United States and Legal Services Corporation Announce Additional Webinars for Public Forum “Assisting Parties in Federal Administrative Adjudication,”* ADMIN. CONF. OF THE U.S. (Apr. 20, 2023), <https://www.acus.gov/newsroom/news/acus-and-lsc-announce-additional-panels-for-public-forum-assisting-parties-in-federal-administrative-adjudication>.

103. See HERD & MOYNIHAN, *supra* note 4, 3–12, 264 (providing a review of the principle that administrative processes can disrupt access to important rights and services).

104. See *id.*; see also Pamela Herd, Thomas DeLeire, Hope Harvey & Donald P. Moynihan, *Shifting Administrative Burden to the State: The Case of Medicaid Take-up*, 73 PUB. ADMIN. REV. 69, 69–78 (2013); Carolyn J. Heinrich, *Presidential Address: “A Thousand Petty Fortresses”: Administrative Burden in U.S. Immigration Policies and Its Consequences*, 37 J. POL’Y ANALYSIS & MGMT. 211, 211–39 (2018).

their scale, invasiveness, and the extent to which they target marginalized groups.¹⁰⁵ Below, we will detail the costs that result from these burdens—even seemingly small ones—the types of burdens that cause the largest problems, and key ways we can reduce burdens.

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

Learning costs can be a relatively straightforward problem. People need to know they are eligible for a benefit before they can access it. Simple informational nudges can, in some cases, be a powerful mechanism to reduce burdens.¹⁰⁶ For example, one experiment provided information to people who had not claimed the Earned Income Tax Credit (EITC), a benefit for low-income workers.¹⁰⁷ About one in five of those eligible do not claim the benefit, which has a typical value of over \$1,000 or equivalent to a lost month of income for the typical EITC recipient.¹⁰⁸ The intervention demonstrated that notifying people about the size of their potential benefit increased benefit-claiming by 33%.¹⁰⁹ It also showed that complex instructions about how to file for the benefit reduced claiming by 27%.¹¹⁰ Another recent information experiment focused on immigrants.¹¹¹ About half of immigrants eligible for naturalization also have low enough incomes to be eligible for a fee waiver.¹¹² Application fees range from \$405 to \$725.¹¹³ Many, however, do not know they are eligible for the waiver. An experiment that simply notified people they were eligible for a fee waiver increased citizenship applications by 35%.¹¹⁴

105. See Victor Ray, Pamela Herd & Donald Moynihan, *Racialized Burdens: Applying Racialized Organization Theory to the Administrative State*, 33 J. PUB. ADMIN. RSCH. & THEORY 139, 139–49 (2023).

106. See Saurabh Bhargava & Dayanand Manoli, *Psychological Frictions and the Incomplete Take-Up of Social Benefits: Evidence from an IRS Field Experiment*, 105 AM. ECON. REV. 3,489, 3,490 (2015).

107. See *id.* at 3,489–90.

108. See *id.* at 3,490.

109. See *id.* at 3,510.

110. See *id.* at 3,509.

111. See *id.* at 3,489–90.

112. See *id.*

113. See *id.*; Michael Hotard, Duncan Lawrence, David D. Laitin & Jens Hainmueller, *A Low-Cost Information Nudge Increases Citizenship Application Rates Among Low-Income Immigrants*, 3 NATURE HUM. BEHAV. 678, 678 (2019).

114. See Bhargava & Manoli, *supra* note 106; Hotard et al., *supra* note 113, at 678–83.

In some cases, simply reducing such costs by informational nudges—telling people about a benefit and how to access it—is not enough to significantly increase access.¹¹⁵ Indeed, a recent meta-analysis of eight randomized interventions to reduce learning costs and increase health insurance take-up found a median impact of 2.3 percentage points.¹¹⁶ If the procedures and processes to access that benefit are difficult, information has a more limited impact.¹¹⁷

For example, robust evidence shows that people who need financial assistance to attend college do not complete the Free Application for Federal Student Aid (FAFSA) because the form is too difficult.¹¹⁸ A large field experiment with more than 800,000 students found that different types of informational nudges did not affect FAFSA completion.¹¹⁹ The difference between nudges and help is illustrated with one intervention study, where information provided to parents about financial assistance had no impact, but help from a tax preparer not only substantially increased form completion but led to an eight percentage-point increase in the completion of two years of college.¹²⁰ The evidence regarding FAFSA's compliance costs has been so robust that Congress passed the FAFSA Simplification Act in 2020, which includes provisions like automated benefit calculations based on Internal Revenue Service (IRS) data rather than requiring parents to document and provide information about their income.¹²¹

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

116. See Rebecca Myerson, Nicholas Tilipman, Andrew Feher, Honglin Li, Wesley Lin & Isaac Menashe, *Personalized Telephone Outreach Increased Health Insurance Take-up for Hard-to-Reach Populations, but Challenges Remain*, 41 *HEALTH AFFS.* 129, 129, 134 (2022).

117. See *id.*

118. See Greta Anderson, *Nudging Doesn't Scale Nationally*, *INSIDE HIGHER ED* (Aug. 19, 2019), <https://www.insidehighered.com/news/2019/08/20/national-nudging-campaign-produced-no-increase-fafsa-applications-college-enrollment> (“The researchers do acknowledge that ‘complexities associated with [FAFSA] can deter college-ready students from enrolling or succeeding in higher education,’ specifically low-income or first-generation college students, whose families are less likely to have experience applying for federal financial aid . . .”).

119. Kelli A. Bird, Benjamin L. Castleman, Jeffrey T. Denning, Joshua Goodman, Cait Lambertson & Kelly Ochs Rosinger, *Nudging at Scale: Experimental Evidence from FAFSA Completion Campaigns*, 183 *J. ECON. BEHAV. & ORG.* 105, 113 (2020); see Anderson, *supra* note 118.

120. Eric P. Bettinger, Bridget Terry Long, Philip Oreopoulos & Lisa Sanbonmatsu, *The Role of Application Assistance and Information in College Decisions: Results from the H&R Block FAFSA Experiment*, 127 *Q.J. OF ECON.* 1,205, 1,205 (2012).

121. Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, div. FF, tit. vii, 134 Stat. 3137–84 (2020) (codified in scattered provisions of 20 U.S.C. §§ 1001–90); see *What Is the*

An experimental study on housing assistance provides another example of the limitations of simply providing information about a right or benefit.¹²² Housing vouchers for low-income families were designed to encourage families to move to neighborhoods with more economic and educational opportunities.¹²³ Such vouchers were a reaction to segregated housing projects that emerged in the 1960s.¹²⁴ The problem, however, is that few families actually moved to better-off neighborhoods.¹²⁵ Families struggled to navigate the rental process, from finding units that would take a housing voucher to managing the application process with a landlord.¹²⁶ A recent experiment,

FAFSA Simplification Act?, FED. STUDENT AID, <https://studentaid.gov/help-center/answers/article/afsa-simplification-act> (last visited May 10, 2024).

122. See Douglas S. Massey, *The Legacy of the 1968 Fair Housing Act*, 30 SOCIO. F. 571, 584 (2015) (“Absent interventions to counsel participants about expectations in rental markets and provide information about housing in advantaged areas, voucher holders tend simply to replicate the status quo of racial and class segregation When vouchers have been paired with support and counseling in the housing search process, however, voucher-based mobility programs have shown considerable success in promoting desegregation”); Peter J. Mateyka, *Housing Programs and Racial Segregation: The Role of Place-Based and Mobility Programs*, OFF. OF POL’Y DEV. & RSCH. EDGE (Oct. 17, 2023), <https://www.huduser.gov/portal/pdredge/pdr-edge-pdrat50-101723.html> (“The initial [Experimental Housing Allowance Program (EHAP)] experiment was intended to improve housing quality by expanding choices for households receiving assistance, but reducing racial segregation and poverty was also a stated goal.”); *Moving to Opportunity*, OFF. OF POL’Y DEV. & RSCH., U.S. DEP’T OF HOUS. & URB. DEV., <https://www.huduser.gov/portal/mto.html> (last visited May 10, 2024).

123. See Mateyka, *supra* note 122 (“Mobility programs provide subsidies to underserved households that allow them to move to high-opportunity neighborhoods with better employment and educational opportunities and lower crime rates.”).

124. See *Public Housing History*, NAT’L LOW INCOME HOUS. COAL. (Oct. 17, 2019), <https://nlhc.org/resource/public-housing-history> (“[S]egregated public housing construction persisted throughout the 60s and 70s and cemented deeply segregated public housing across the country. . . . After passage of the Fair Housing Act of 1968, public housing would no longer be a tool for advancing segregation. . . . There has been no significant expansion of public housing since then, as federal housing subsidies shifted to housing vouchers.”); Mateyka, *supra* note 122 (“The AFFH mandate of the Fair Housing Act of 1968 arose to address the extreme segregation and poverty present in central city neighborhoods and the influence of discriminatory federal housing policies . . . in perpetuating them.”).

125. See Mateyka, *supra* note 122 (“[A]mong the variations of the voucher program that HUD tested, ‘[n]one of the allowance or non-allowance programs [had] any substantial impact on neighborhoods chosen by recipients or on existing patterns of racial and economic segregation.’ Instead, EHAP participants and unsubsidized control households both chose neighborhoods with similar racial and economic compositions.”).

126. See *id.*; Capi Lynn & Whitney Woodworth, *Finding a Place to Live, Even with a Housing Voucher, Is a Complex Process*, STATESMAN J. (Jan. 29, 2023, 6:00 AM),

however, provided individuals with significant individualized support in searching for a rental property and negotiating with landlords.¹²⁷ The control group received the voucher and information about how to use it but no individualized support.¹²⁸ Only approximately 15% in the control group moved to an upwardly mobile neighborhood, compared to around 53% in the treatment group that received extra help navigating the complex system.¹²⁹

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

Administrative burdens also involve psychological costs; navigating seemingly impossible bureaucratic rules and procedures is stressful, frustrating, and sometimes overwhelming.¹³⁰ Evidence that complicated administrative procedures can trigger observable adverse effects on physiological indicators such as accelerated heart rates.¹³¹

Existing evidence demonstrates that these costs can be especially high for marginalized groups, and it can significantly and negatively impact access to needed and wanted benefits and rights.¹³² In high-stakes contexts where individuals have limited power and are subject to control by state actors, stress and fear are salient psychological costs. For example, members of immigrant families are less likely to seek out public benefits, to which they are legally entitled, relative to native-born individuals, and this gap increases at times of high anti-immigrant sentiment.¹³³ In 2019, one in five adults in immigrant

<https://www.statesmanjournal.com/story/news/local/2023/01/29/finding-a-home-even-with-a-housing-voucher-is-a-complex-process/69820489007/>.

127. See generally Peter Bergman, Raj Chetty, Stefanie DeLuca, Nathaniel Hendren, Lawrence F. Katz & Christopher Palmer, *Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice* (Nat'l Bureau of Econ. Rsch., Working Paper No. 26,164, 2019), https://www.nber.org/system/files/working_papers/w26164/w26164.pdf (finding that families induced to move to a higher opportunity neighborhood by reducing housing search barriers and increasing individual support are more likely to report positive results).

128. See *id.* at 13.

129. *Id.* at 2–3.

130. See Donald Moynihan, Pamela Herd & Hope Harvey, *Administrative Burden: Learning, Psychological, and Compliance Costs in Citizen-State Interactions*, 25 J. PUB. ADMIN. RSCH. & THEORY 43, 48, 51 (2015); Schweitzer, *supra* note 6.

131. Fabian Hatke, David Hensel & Janne Kalucza, *Emotional Responses to Bureaucratic Red Tape*, 80 PUB. ADMIN. REV. 53, 53–54, 57 (2020).

132. Pamela Herd, Hilary Hoynes, Jamila Michener & Donald Moynihan, *Introduction: Administrative Burden as a Mechanism of Inequality in Policy Implementation*, 9 RUSSELL SAGE FOUND. J. SOC. SCIS. 1, 1–2 (2023).

133. Jeremy Barofsky, Ariadna Vargas, Dinardo Rodriguez & Anthony Barrows, *Spreading Fear: The Announcement of the Public Charge Rule Reduced Enrollment in Child Safety-Net Programs*,

families reported that they, or a family member, avoided basic public benefits, even though they were eligible, out of fear as to how it could affect their immigration status.¹³⁴ In short, according to the law, they were eligible and should not face negative consequences in the immigration process for accessing benefits, but fear overrode these basic facts, leading people to go without.

How do we reduce burdens? As governments increasingly turn to burden reduction efforts, three key insights have emerged regarding the most effective strategies. Overall, it is important to remember that various strategies can be employed, but the most effective strategies typically address all three costs: learning, compliance, and psychological.¹³⁵

First, informational “nudges” can work when the main barriers are learning costs, but they cannot eliminate the burdens created by compliance and psychological costs.¹³⁶ Comparisons of burden reduction efforts for relatively complex processes, such as the FAFSA, the Supplemental Nutrition Assistance Program (SNAP), and the EITC, show that informational interventions have no effect¹³⁷ or work substantially less well than other alternatives, such as providing direct help.¹³⁸ Moreover, one-off outreach or informational campaigns are especially unlikely to be effective since burdens tend to be reduced where repeated information that is easily accessible about a program is available.¹³⁹

Second, the most effective burden reduction tool is to simplify or even eliminate unnecessary administrative processes to the greatest extent

39 HEALTH AFFS. 1,752, 1,753 (2020) (examining whether the announced change to the federal public charge rule affected the share of children enrolled in Medicaid, Supplemental Nutrition Assistance Program (SNAP), and Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)).

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

135. See Moynihan et al., *supra* note 130 (grouping the costs of administrative burdens into three categories: learning, compliance, and psychological); Schweitzer, *supra* note 6 (discussing the three categories of administrative burden-related costs).

136. See Herd et al., *supra* note 132.

137. See Elizabeth Linos, Allen Prohofsky, Aparna Ramesh, Jesse Rothstein & Matthew Unrath, *Can Nudges Increase Take-Up of the EITC? Evidence from Multiple Field Experiments*, 14 AM. ECON. J.: ECON. POL'Y 432, 434 (2022); see Bettinger et al., *supra* note 120, at 1,205–07, 1,223–27, 1,236, 1,238–40; Haley et al., *supra* note 134; Amy Finkelstein & Matthew J. Notowidigdo, *Take-up and Targeting: Experimental Evidence from SNAP*, 134 Q. J. OF ECON. 1,505, 1,543 (2019).

138. Finkelstein & Notowidigdo, *supra* note 137.

139. See Bhargava & Manoli, *supra* note 106, at 3,524.

possible. Every step to simplify further increases access. For example, an experiment that used administrative data to prefill forms emailed to student loan beneficiaries, requiring only that applicants provide a signature, increased take-up from 24% to over 60%.¹⁴⁰

Third, regardless of the approach, the key underlying requirement to reduce burdens is having sufficient information on program participants to actually reduce barriers.¹⁴¹ To enable automatic enrollment or process simplification, state actors need access to administrative data to identify actors eligible for a benefit and provide it to them.¹⁴² In the case of automatic enrollment, such actions reduce or eliminate the requirement for individuals to overcome learning, compliance, or psychological costs.¹⁴³ As a result, this approach ensures nearly universal take-up and reduces the risk of unequal outcomes. Examples include automatic student loan forgiveness for veterans and the disabled, pandemic payments, and health insurance markets.¹⁴⁴

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

In April 2022, as part of general guidance to agencies on implementing the PRA, OIRA provided agencies with specific evidence-based tactics to reduce burdens (see Table 2).¹⁴⁵

140. Holger Mueller & Constantine Yannelis, *Increasing Enrollment in Income-Driven Student Loan Repayment Plans: Evidence from the Navient Field Experiment*, 77 J. OF FIN. 367, 369 (2022).

141. See generally Finkelstein & Notowidigdo, *supra* note 137, at 1,542.

142. See *id.* at 1,521, 1,530 (describing how SNAP-qualified individuals who were “proactively reach[ed] out to” by the government for enrollment resulted in a higher SNAP enrollment over those individuals who were not reached out to); see also OMB M-22-10, *supra* note 14, at 16 (providing that “shifting the burden involved in developing evidence or external documentation necessary to support an information collection from the applicant to agency personnel” and “[a]llow[ing] for streamlined enrollment coupled with post-enrollment verification of eligibility” would minimize the costly burden in both time and money for applicants).

143. See OMB M-22-10, *supra* note 14; Schweitzer, *supra* note 6.

144. Adrianna McIntyre, Mark Shepard & Myles Wagner, *Can Automatic Retention Improve Health Insurance Market Outcomes?*, 111 AM. ECON. ASS’N PAPERS & PROC. 560, 560–62 (2021).

145. See *Modernizing Regulatory Review*, WHITE HOUSE, <https://www.whitehouse.gov/omb/information-regulatory-affairs/modernizing-regulatory-review/> (last visited May 10, 2024).

Table 2: OIRA Guidance to Agencies to Reduce Burdens¹⁴⁶

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

IV. EXISTING AGENCY PRACTICES TO IDENTIFY AND REDUCE BURDENS

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

146. See Memorandum from the Off. of Info. & Regul. Affs., Strategies for Reducing Admin. Burden in Pub. Benefit & Serv. Programs 1–2 (Dec. 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/12/BurdenReductionStrategies.pdf>.

EO identifies as “[h]igh impact service providers.”¹⁴⁷

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

A. *Building Culture: Put the Public at the Center*

Addressing administrative burdens requires a Copernican shift in worldview—one which puts the public, rather than government processes, at the center.¹⁴⁸ This logic starts with the assumption that administrative processes embedded in policy implementation should serve the public by centering the experiences of the public. Access to benefits and services should be designed to maximize the public’s experience—by ensuring that experience is accessible, simple, and respectful.

While an amorphous factor, agency culture plays a critical role in how effectively agencies can reduce burdens.¹⁴⁹ Part of implementing new policy changes depends upon how willing individual public employees are to be creative and persistent. In short, it is not just about following rules but also about a “way of thinking.”¹⁵⁰ Indeed, one agency employee described her own way of thinking about burden reduction: “We are government employees, but we are also citizens.”¹⁵¹

An overlapping set of management techniques makes it easier for public

147. See U.S. DEP’T OF VETERANS AFFS., VETERANS EXPERIENCE OFF., THE CUSTOMER EXPERIENCE COOKBOOK 3 (2020) [hereinafter COOKBOOK], <https://department.va.gov/veterans-experience/wp-content/uploads/sites/2/2023/06/customer-experience-cookbook.pdf>.

148. *Copernican*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/Copernican> (last visited May 10, 2024).

149. OFF. OF INFO. & REGUL. AFFS., TACKLING THE TIME TAX: HOW THE FEDERAL GOVERNMENT IS REDUCING BURDENS TO ACCESSING CRITICAL BENEFITS AND SERVICES 24 (2023) [hereinafter TACKLING THE TIME TAX], <https://www.whitehouse.gov/wp-content/uploads/2023/07/OIRA-2023-Burden-Reduction-Report.pdf>.

150. Elizabeth Popp Berman, *Student Loan Debate Reveals Limits of Economist-Style Thinking*, PROQUEST (Aug. 29, 2022), <https://www.proquest.com/blogs-podcasts-websites/student-loan-debate-reveals-limits-economist/docview/2707524214/se-2?accountid=8285>.

151. Interview (Jan. 6, 2023) (on file with authors).

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

Table 3: Key terms and resources

Human-centered design is a technique to understand administrative processes from the user’s perspective, using those insights to adjust those processes to match human capacities better. Human-centered design often employs distinct stages of discovery, design, delivery, and measurement as part of an iterative and ongoing process.¹⁵² *Journey mapping* is a visualization technique that maps out steps that clients take in their engagement with administrative processes.¹⁵³ It helps to illustrate the complexity of processes, including potential pain points where users struggle.¹⁵⁴ To be credible, journey maps have to draw from the actual experiences of users and will sometimes employ user personas to illustrate those journeys.

Additional Resources:

Human-Centered Design for CX (Performance.gov)¹⁵⁵

General Services Administration, Human-Centered Design Discover Stage Field Guide¹⁵⁶

U.S. Digital Service: Digital Services Playbook¹⁵⁷

Beeck Center: Starting Small with Human-Centered Design¹⁵⁸

152. See *Human Centered Design (HCD) Discovery Stage Field Guide V.1*, U.S. GEN. SERVS. ADMIN. 4 [hereinafter *HCD V.1 Guide*], <https://www.gsa.gov/system/files/HCD-Discovery-Guide-Interagency-v12-1.pdf> (last visited May 10, 2024).

153. See *User Journey Maps*, YALE UNIV., USABILITY & WEB ACCESSIBILITY, <https://usability.yale.edu/understanding-your-user/user-journey-maps> (last visited May 10, 2024).

154. See generally TARA DAWSON MCGUINNESS & HANA SCHANK, *POWER TO THE PUBLIC: THE PROMISE OF PUBLIC INTEREST TECHNOLOGY* (2021).

155. See *Human-Centered Design for CX*, *supra* note 67.

156. See *HCD V.1 Guide*, *supra* note 152.

157. See *Digital Services Playbook*, U.S. DIGIT. SERVS., <https://playbook.cio.gov/#play1> (last visited May 10, 2024).

158. See Katie Sullivan & Sara Soka, *Starting Small with Human-Centered Redesign*, BEECK CTR. FOR SOC. IMPACT & INNOVATION AT GEO. UNIV. (Nov. 2021), <https://beeckcenter.georgetown.edu/wp-content/uploads/2022/11/Small-ScaleHumanCenteredRedesign.pdf>.

Going Big with Human-Centered Design¹⁵⁹

The federal government has used journey mapping to illustrate key life experiences.¹⁶⁰

Burden reduction efforts using human-centered design can easily connect to broader management techniques such as performance management, Lean, Six Sigma, and Agile, which favor collaborative teams in consultation with stakeholders and customers, using iterative processes of mission-based improvement, rapid feedback loops that convert insights into actions, which in turn depends upon engaged and empowered teams and leadership.¹⁶¹ These shared philosophical goals are often contrasted with more traditional bureaucratic approaches, which are presented as cut off from client feedback, lacking institutionalized routines to collect and use data, and overly cautious about engaging in change.¹⁶² While those critiques can sometimes veer into stereotypes, they are echoed by those trying to make changes in government. In the absence of market-based competition and the presence of many structural constraints, public organizations need management tools that can better embed change processes.

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

Public comments, focus groups, and surveys provide ways of gaining input, but they sometimes do not represent the public using the services. A representative approach would deliberately look for those not being heard. This need not be burdensome. Careful sampling can mean drawing on smaller samples, employing either quantitative or qualitative methods, to understand their experiences.

159. See Katie Sullivan & Sara Soka, *Going Big with Human-Centered Design*, BEECK CTR. FOR SOC. IMPACT & INNOVATION AT GEO. UNIV. 6 (Nov. 2021), <https://beeckcenter.georgetown.edu/wp-content/uploads/2022/11/Large-ScaleHumanCenteredRedesign.pdf>.

160. See GSA, *Government-Wide CX Efforts*, *supra* note 64.

161. See G. Edward DeSeve, *The Road to Agile Government: Driving Change to Achieve Success*, IBM CTR. FOR BUS. OF GOV'T 14 (2020), https://napawash.org/uploads/The_Road_to_Agile_Government.pdf.

162. See *id.* at 5.

1. Consultation With Stakeholders

Consultation allows agencies to hear from underrepresented communities and better understand where burdens can be reduced. Where agencies have institutionalized consultation processes, valuable information is exchanged, leading to burden reduction.¹⁶³ Consultation can occur in various ways; some of the most promising are exemplified below.

A key to the success of CX efforts at the Department of Veterans Affairs (VA) has been the engagement of stakeholders.¹⁶⁴ Veteran service organizations (VSOs) regularly meet with the Secretary and staff.¹⁶⁵ This allows them to identify client concerns.¹⁶⁶ VSOs also work directly with clients.¹⁶⁷ They may take claims and provide counseling, conditional on training and accreditation, giving them direct experience with the administrative process.¹⁶⁸ They have come to see CX efforts as a way to ensure their members' voices are heard.¹⁶⁹

It is worth noting that VA is fortunate and unusual in some respects that make CX efforts more likely to succeed.¹⁷⁰ It directly serves clients, unlike many government agencies, and those clients are viewed as deserving of government support by both parties.¹⁷¹ It also experiences less ambiguity about

163. See Ariel Kennan, Sara Soka & Katie Sullivan, *Accessible Benefits Information*, BEECK CTR. FOR SOC. IMPACT & INNOVATION AT GEO. UNIV. 7, 17 (Jan. 2022), <https://beeckcenter.georgetown.edu/wp-content/uploads/2022/01/Accessible-Benefits-Information.pdf> (detailing how New York City updated a public service mobile app to better serve residents by engaging residents in a redesign process).

164. Interview with U.S. Dep't of Veterans Affs. (May 10, 2023) (on file with authors); see also COOKBOOK, *supra* note 147.

165. Interview with U.S. Dep't of Veterans Affs. (May 10, 2023) (on file with authors); see also COOKBOOK, *supra* note 147.

166. Interview with U.S. Dep't of Veterans Affs. (May 10, 2023) (on file with authors); see also COOKBOOK, *supra* note 147.

167. Interview with U.S. Dep't of Veterans Affs. (May 10, 2023) (on file with authors); see also COOKBOOK, *supra* note 147.

168. Interview with U.S. Dep't of Veterans Affs. (May 10, 2023) (on file with authors); see *Recognized Veterans Service Organization*, U.S. DEP'T OF VETERANS AFFS., <https://www.va.gov/ogc/recognizedvsos.asp> (last visited May 10, 2024); *Accredited Representatives*, U.S. DEP'T OF VETERANS AFFS. (Feb. 5, 2021) [hereinafter *Accredited Representatives*], <https://www.benefits.va.gov/vso/>.

169. See COOKBOOK, *supra* note 147, at 25.

170. See *id.*; Interview with U.S. Dep't of Veterans Affs. (May 10, 2023) (on file with authors).

171. Interview with U.S. Dep't of Veterans Affs. (May 10, 2023) (on file with authors); see Jory Heckman, *Biden Pitches VA Goals as Part of Bipartisan 'Unity Agenda' to Divided Congress*, FED. NEWS NETWORK (Feb. 7, 2023, 4:52 PM), <https://federalnewsnetwork.com/veterans->

its core goals than other agencies, though politicians may still disagree about how to get there, with some favoring greater privatization of services.¹⁷² Further, it has an active group of stakeholders who share the basic mission of serving veterans, are in direct contact with both veterans and VA, and can advocate for veteran concerns.¹⁷³ Human-centered design and customer experience efforts resonate with those stakeholders because their purpose is to represent the voices of veterans.¹⁷⁴

Stakeholder engagement can also occur through a proxy-like system through established working groups like the White House Legal Aid Interagency Roundtable.¹⁷⁵ This group, housed in the Department of Justice's (DOJ's) Office of Access to Justice, convenes agency representatives, including the Legal Services Corporation, to, among other things, "improve coordination among Federal programs, so that programs are more efficient and produce better outcomes by including, where appropriate, legal services among the range of supportive services provided."¹⁷⁶ Through this group, the Legal Services Corporation can identify burdens experienced by underrepresented and vulnerable communities coming to legal aid services for assistance navigating benefits programs.¹⁷⁷ Agencies consult with the advocacy community directly as well.¹⁷⁸ "For example, DOL regularly convenes Claimant Advocate listening sessions," typically legal service lawyers, to identify burdens claimants face.¹⁷⁹

2. *Direct Observation, Focus Groups*

To understand how to reduce burdens, one must be able to identify them. In some agencies, the barriers people face trying to access benefits or services

affairs/2023/02/biden-touts-va-plans-as-part-of-bipartisan-unity-agenda-pitch-to-congress/; *Accredited Representatives*, *supra* note 168.

172. Interview with U.S. Dep't of Veterans Affs. (May 10, 2023) (on file with authors); see Juana Summers, *Democrats See Red Line for Veterans Affairs Nominee on Privatization*, CNN (Apr. 19, 2018, 6:08 PM), <https://www.cnn.com/2018/04/19/politics/ronny-jackson-veterans-nominee-privatization/index.html>.

173. See COOKBOOK, *supra* note 147, at 11.

174. See *HCD V.1 Guide*, *supra* note 152.

175. See generally Memorandum of May 18, 2021, Restoring the Department of Justice's Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable, 86 Fed. Reg. 27,793, 27,793 (May 21, 2021) (signaling the renewal of the White House Legal Aid Interagency Roundtable).

176. See *id.* at 27,793, 27,794 (quoting § 3(b)(i)).

177. See *id.* at 27,793.

178. See *id.*

179. TACKLING THE TIME TAX, *supra* note 149, at 29.

are easily identifiable.¹⁸⁰ In cases where they are not, direct observation of clients engaging with processes or listening sessions with users can be informative.¹⁸¹ Such data can feed into human-centered design and journey mapping processes.¹⁸²

For example, Department of Homeland Security (DHS) staff were asked to examine processes to identify whether each step was necessary.¹⁸³ Did information still need to be collected? Were there alternative sources of information? The Biden Administration has institutionalized this sort of journey mapping with their focus on nine key life experiences as a frame for understanding burden reduction.¹⁸⁴ One life experience, recovering from a disaster, exemplifies how journey mapping can lead to tangible reductions in burdens.¹⁸⁵ In this case, DHS was able to collaborate with other agencies—the Small Business Administration, the Department of Housing and Urban Development (HUD), the Department of Agriculture (USDA), and the Department of Health and Human Services (HHS)—to

clarify and simplify the experience of applying for Federal disaster assistance programs. Currently, survivors must navigate and apply for each relief program separately. These processes can be confusing, and survivors are unclear about the different kinds of assistance [which] they may be eligible for and how to apply [for them]; once they do, they must keep track of multiple processes and communication channels and often enter the same data multiple times.¹⁸⁶

This process led to concrete reforms, such as flexibility in requirements for

180. See Kennan et al., *supra* note 163 (comparing University of Michigan Poverty Solutions, New York City Benefits, and City of San José: Machine Learning for Translation).

181. See TACKLING THE TIME TAX, *supra* note 149 (detailing DOL sessions).

182. See COOKBOOK, *supra* note 147, at 18.

183. Interview with U.S. Dep't of Homeland Sec. (Jan. 6, 2023) (on file with authors); see Lisbeth Perez, *OMB PMA Update Highlights New CX Pilot Programs*, MERITALK (May 31, 2023, 2:02 PM), <https://www.meritalk.com/articles/omb-pma-update-highlights-new-cx-pilot-programs/>.

184. See Press Release, White House, Fact Sheet: Biden-Harris Administration Launches Nine Life Experience Projects to Streamline Service Delivery for the American People (Mar. 3, 2023), <https://www.whitehouse.gov/omb/briefing-room/2023/03/03/fact-sheet-biden-harris-administration-launches-nine-life-experience-projects-to-streamline-service-delivery-for-the-american-people/>.

185. See generally *Recovering from a Disaster Journey Map*, U.S. GEN. SERVS. ADMIN., <https://assets.performance.gov/cx/files/life-experiences/2022/CX-2022-Life-Experience-Disaster-Recovery-Journey-Map.pdf> (last visited May 10, 2024) (illustrating three hypothetical journey maps of individuals recovering from disasters).

186. *Recovering from a Disaster*, U.S. GEN. SERVS. ADMIN., <https://www.performance.gov/cx/life-experiences/recovering-from-a-disaster/#project-documentation> (last visited May 10, 2024).

assistance to streamline and speed up benefits.¹⁸⁷ Examples included expanding the types of documents that can prove home ownership, waiving proof of homeownership for repeat disaster survivors, and expanding application times.¹⁸⁸

3. *Client Surveys*

One means of collecting data on user experience is via client surveys.¹⁸⁹ Such surveys can serve different purposes. They can be used to examine the value of interventions designed to reduce burdens, identify problematic processes or offices, or track long-term trends. For example, each quarter, VA “surveys approximately 257,000 [v]eterans with recent interactions . . . with claims, appeals, health care, memorials[,] and other services to rate their overall trust in VA.”¹⁹⁰ The office also provides resources and training to other VA employees, such as human-centered design.¹⁹¹ One person we interviewed, who had worked in claims, discussed how the survey data was illuminating. “We were like ‘wow, this is great!’ as a way to infuse the perspective of the veteran, as opposed to ‘we will decide for the veterans what is best for them, and we will decide bureaucratically what is best for us.’”¹⁹²

4. *Public Comment*

Agencies have also relied upon public comments on published notices to understand the public’s view.¹⁹³ This can also be a valuable tool for burden identification and reduction. DHS has successfully turned to public

187. See Press Release, Dep’t of Homeland Sec., FEMA Makes Changes to Individual Assistance Policies to Advance Equity for Disaster Survivors (Sept. 2, 2021), <https://www.fema.gov/press-release/20210902/fema-makes-changes-individual-assistance-policies-advance-equity-disaster>.

188. See *id.*

189. See COOKBOOK, *supra* note 147, at 15.

190. Press Release, U.S. Dep’t of Veterans Affs., Veteran Trust in VA Reaches All-Time High (June 5, 2020), <https://news.va.gov/press-room/veteran-trust-in-va-reaches-all-time-high/>.

191. See COOKBOOK, *supra* note 147, at 24.

192. Interview with Veteran’s Benefit Off. (Feb. 13, 2023) (on file with authors); see also TACKLING THE TIME TAX, *supra* note 149, at 53 (providing examples of how VA incorporated veterans’ perspectives).

193. See generally Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services, Request for Public Input, 86 Fed. Reg. 20,398, 20,398 (Apr. 19, 2021) (requesting the interested public to provide comments regarding issues with current USCIS immigration processes).

comment to gain insight into burden reduction.¹⁹⁴ For example, the U.S. Citizenship and Immigration Services (USCIS) published a request for public input specifically related to burdens felt by the public.¹⁹⁵ The agency then prioritized going through the comments as a crowd-sourcing tool.¹⁹⁶ Such processes can easily become make-work, but DHS created a process of reviewing comments to identify possible actions.¹⁹⁷ In the wake of these comments, USCIS published policy alerts that addressed immediate burdens, such as updating language on forms related to allowing an automatic extension of twenty-four months beyond the expiration of a permanent resident card.¹⁹⁸ This flexibility reduced the number of forms needed for particular permanent residents seeking naturalization.¹⁹⁹ DHS estimated that dozens of agency actions flowed from responding to public comments.²⁰⁰

5. *Complaint Portals*

A less interactive form of learning from the public that provides additional information toward identifying and reducing burdens is through an accessible complaint portal.²⁰¹ In order for a complaint portal to generate burden reduction, it must be structured so that the information from the public flows to the CX office.²⁰² The Consumer Financial Protection Bureau offers an example: using a

collection of personal stories by consumers dealing with credit, debt collection, student loans, and other financial matters is a particularly effective use of complaint processes and education. These stories are published online and used to guide data collection and enforcement priorities at the agency. The complaint architecture is designed well from an access to justice perspective, but, as with all agency structures, its effectiveness depends on leadership and culture at the agency to learn from it.²⁰³

These tools can be further refined by mapping a person's journey with a

194. *See id.*

195. *See* Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input, 86 Fed. Reg. at 20,399.

196. Interview with U.S. Dep't of Homeland Sec. (Jan. 6, 2023) (on file with authors).

197. *Id.*

198. *See* U.S. DEP'T OF HOMELAND SEC., CITIZENSHIP & IMMIGR. SERV., PA-2022-26, EXTENSION OF PERMANENT RESIDENT CARD FOR NATURALIZATION APPLICANTS (2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221209-ExtendingPRC.pdf>.

199. *See id.*

200. Interview with U.S. Dep't of Homeland Sec. (Jan. 6, 2023) (on file with authors).

201. *See* Widman, *supra* note 95, at 58.

202. *See id.*

203. *See id.*

complaint. For example, HUD is currently studying the experience of a prospective tenant going through the portal to file a complaint.²⁰⁴ The CX team at HUD is mapping this out with the goal of making the complaint process less burdensome for the public.²⁰⁵

6. *Exploit Worker Knowledge*

To learn how the public experiences accessing benefits and services, agencies should also exploit worker knowledge about those processes.²⁰⁶ Staff working with the public will have deep knowledge about complex frictions that will be less apparent to nonspecialists.²⁰⁷ Such expertise in both the policy and the organizations in which it is implemented is needed.²⁰⁸ Journey mapping, in particular, will not work without individuals who are deeply knowledgeable about the policy and its current implementation.²⁰⁹ In some cases, journey mapping is less functional, in part because agency staff already know both the journey and the pain points.²¹⁰ They are more likely to share that knowledge under conditions where (a) identifying and reducing administrative burdens are framed as a salient agency goal and (b) routines exist where their knowledge is sought.²¹¹

B. *Capacity: Have a Devoted Customer Experience Team*

Agencies that have enacted some of the most systematic burden reduction reforms have made CX teams, which coordinate efforts to improve customer experiences within agencies, a critical capacity component.²¹² The teams play a few key roles. First, because it is their primary mission or the entire focus of their work, they provide a stable and consistent source of effort and attention to continue burden reduction efforts in the agency.²¹³ Second, they coordinate efforts across groups within the agency to tackle burdens, as

204. Interview with Dep't of Housing & Urb. Dev. (Apr. 3, 2023) (on file with authors).

205. *Id.*

206. *See* Kennan et al., *supra* note 163, at 15.

207. *See id.* at 19.

208. *See id.*

209. *See id.*

210. *Customer Journey Pain Points, How to Find Them, & How to Fix Them*, WOOPRA, <https://www.woopra.com/blog/customer-journey-pain-points> (discussing frequent customer journey pain points and how to avoid these issues) (last visited May 10, 2024).

211. *See* COOKBOOK, *supra* note 147, at 12–13.

212. *See id.* at 20–24 (highlighting customer experience (CX) efforts at the U.S. Department of the Interior Indian Affairs, General Services Administration, and Department of Veterans Affairs Veterans Experience Office).

213. *See id.* at 9.

described below.²¹⁴ In short, they are the driving organizing force that facilitates team building.²¹⁵ One fundamental rule, however, is that the CX team must have deep policy and agency knowledge, as well as sufficient authority within the agency to succeed at the mission.²¹⁶

VA provides an excellent example of why creating a specific team devoted to customer experience matters. In 2014, VA was rocked by a scandal that became front-page news and led to the resignation of its Secretary and the resignation or reassignment of fourteen of the seventeen top agency leaders.²¹⁷ VA hospital staff had been falsifying wait lists to make it appear that patients were seen more quickly than they really were.²¹⁸ In the years that followed, trust in the agency rebounded, from about 55% to almost 80% in 2022.²¹⁹ In doing so, it became a leader in CX skills years before more systematic efforts were in place in other agencies or the CX EO.²²⁰ Using its experience integrating CX principles into a large organization, VA has developed outstanding resources for others in government doing the same, such as *The CX Cookbook*.²²¹

After the VA hospital scandal, the new VA Secretary, Bob McDonald, saw the lack of a mechanism to channel the voice of customers as a blind spot that needed to be corrected.²²² In response to the scandal, McDonald created a Customer Experience Institute, which offered a systematic means to understand customer experience.²²³ Each quarter, VA “surveys approximately 257,000 [v]eterans with recent interactions . . . with claims, appeals, health care, memorials[,] and other services to rate their overall trust in VA.”²²⁴ Ultimately, McDonald helped institutionalize customer experience

214. *See id.* at 13–14.

215. *See id.*

216. *See id.* at 9.

217. *See* German Lopez, *The VA Scandal of 2014, Explained*, VOX, <https://www.vox.com/2014/9/26/18080592/va-scandal-explained> (updated May 13, 2015, 3:43 PM).

218. *See id.*

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

220. *See generally* COOKBOOK, *supra* note 147 (publishing a guide to assist other agencies in imparting CX practices).

221. *See id.*

222. *See* Frank Konkell, *How Customer Experience Leaders Are ‘Hardwiring’ CX Across Government*, NEXTGOV (Oct. 22, 2020), <https://www.nextgov.com/digital-government/2020/10/how-customer-experience-leaders-are-hardwiring-cx-across-government/169476/>.

223. *See id.*

224. *See* COOKBOOK, *supra* note 147.

improvement efforts by giving these officials resources and ensuring they had the authority and permission structure to experiment, innovate, and coordinate across the agency.²²⁵

The VA experience points to two key requirements for an effective CX team.²²⁶ First, members need to be experts on the agency's policy, benefits, and services, and have a deep understanding of the agency itself.²²⁷ VA has made an early start on CX efforts and has the largest CX team in government, with hundreds of members.²²⁸ It has emphasized the need for service-specific expertise to use CX skills best:

Understanding government, its constraints, its levers, is critical to understanding how to implement any new initiative, including CX. Career public servants are experts with this distinct skill set, and through their experience, they know how to navigate through the government environment to execute, scale, and sustain Understanding the particular agency's culture is also key, as every organization is different. Identifying what is important to the agency, how initiatives receive prioritization in terms of leadership visibility, funding, etc., how one makes CX relevant to agency mission and strategy, and knowing how to tie CX to anything that is important in the agency's culture and operations enables the organization to clearly see how CX fits in.²²⁹

The second requirement of an effective CX team is that they need senior staff members with authority and leverage to ensure the team is taken seriously, within and outside of the agency.²³⁰ Having a team of CX workers within an agency is critical to implementing more systematic reforms.²³¹ The CX team does a lot of the team coordination, keeping track of what different groups are doing, and can facilitate to ensure everyone is moving forward.²³² Some agencies that have been most active regarding burden reduction, such as HHS, USDA, and VA, all have CX teams that can provide the capacity to guide the agency toward implementing these reforms.²³³ Key to their success is the leadership of the CX team and the support and resources they enjoy from agency leaders.²³⁴

225. See Konkel, *supra* note 222.

226. See COOKBOOK, *supra* note 147, at 24.

227. See *id.*

228. Interview with U.S. Dep't of Veterans Affs. (May 10, 2023) (on file with authors).

229. See COOKBOOK, *supra* note 147, at 4.

230. See COOKBOOK, *supra* note 147, at 24; see also TACKLING THE TIME TAX, *supra* note 149, at 27, 29.

231. See *id.*

232. See Exec. Order No. 14,058, 86 Fed. Reg. 71,357, 71,362 (Dec. 16, 2021).

233. See TACKLING THE TIME TAX, *supra* note 149, at 22–23.

234. See COOKBOOK, *supra* note 147, at 9.

C. *Collaboration: Build Collaborative Teams Dedicated to Burden Reduction*

Having a dedicated CX team is crucial to reducing burdens, but engaging in any sort of change will inevitably require many parts of an agency to work together, including those whose work is being affected, senior policymakers, and General Counsels.²³⁵ Reducing administrative burdens, like many wicked problems, requires nontraditional combinations of actors to coordinate with each other.²³⁶ However, agency staff within different departments are often siloed from others.²³⁷ As one OMB official noted: “There is a cultural thing in the government about not going outside of your lane, and this is about crossing lanes.”²³⁸

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

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

How agencies are structured internally has a significant impact on burden reduction efforts.²³⁹ In the wake of the CX EO, more agencies have created offices or roles to manage customer experience. There can be issues with budgets and appropriations that can be handled better if these offices are staffed properly.²⁴⁰ One emerging best practice is to have senior career staff and a partner political appointee champion the people and the work in these offices.²⁴¹

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

Burden reduction efforts will often involve new ways of doing things and create requests about what powers the agency actually has to implement burden reduction. This, in turn, requires the involvement of Offices of General Counsel.²⁴² If General Counsel (GC) officials are involved in burden reduction teams, particularly from the start, they are more likely to understand the

235. See Widman, *supra* note 95, at 56 (showing Legal Aid Interagency Roundtable brought “interagency roundtable that brought the [Department of Justice (DOJ)] and other federal agency officials together”).

236. See *id.* at 55.

237. See *HCD V.1 Guide*, *supra* note 152, at 24 (showing collaboration between two Department of Veteran’s Affairs (VA) groups who used to be siloed from each other).

238. Interview with Anonymous Source (date redacted) (on file with authors).

239. See *COOKBOOK*, *supra* note 147, at 12.

240. See *id.* at 10, 13.

241. See *id.* at 11.

242. See OMB M-22-10, *supra* note 14, at 11.

purpose and benefit of burden reduction efforts and can help facilitate ways to achieve them. If they are the last actor in the process to be consulted, it is more likely that they will veto a change, in part because they have not been able to provide advice throughout the process that could prevent roadblocks.

We also heard from agencies that sometimes the disagreements are between Program Counsel and GC.²⁴³ In one case, the dynamic was described like this: “Our counsels do [not] always agree, but the pattern is the Program Counsel thinking about statutes directly connected to the action, GCs thinking more about government-wide statutes and might mandate a different interpretation.”²⁴⁴

Agencies also have case officers responsible for the implementation of the PRA.²⁴⁵ As with GC, there is often a pattern of desk officers taking a procedural approach to their role, ensuring that they follow guidance but do not look for onerous or unnecessary friction.²⁴⁶ OMB has issued guidance on flexibilities with PRA,²⁴⁷ and ACUS has recommended that agencies increase training on these statutory flexibilities.²⁴⁸ In one agency, we learned of variations among desk officers when denying requests for nonsubstantive revisions under the PRA.²⁴⁹ Another issue is how long it takes to receive approvals under the PRA.²⁵⁰ At one agency, we learned of placeholders almost a year out for PRA renewals.²⁵¹ Bringing desk officers more actively into burden reduction teams could help agencies systemize solutions to these challenges.

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

Agencies also employ strategies to reduce administrative burdens, such as simplifying processes.²⁵² Tactics include limiting the number of steps in processes, reducing the number and length of forms, limiting documentation

243. Interview with Anonymous Source (date redacted) (on file with authors).

244. *Id.*

245. See PRA of 1995, 44 U.S.C. § 3501.

246. Interview with Anonymous Source (date redacted) (on file with authors).

247. See PRA of 1995, 44 U.S.C. § 3501; OMB M-22-10, *supra* note 14.

248. See Paperwork Reduction Act Efficiencies, 83 Fed. Reg. 30,683, 30,683–85 (June 29, 2018).

249. Interview with Anonymous Source (date redacted) (on file with authors).

250. See *PRA Approval Process*, U.S. GEN. SERVS. ADMIN. & OFF. OF MGMT. & BUDGET, <https://pra.digital.gov/clearance-process> (last visited May 10, 2024) (stating that it takes six to nine months for agencies to get PRA clearance from OIRA).

251. Interview with Anonymous Source (date redacted) (on file with authors).

252. See Moynihan et al., *supra* note 130.

requirements, and expanding language access.²⁵³

The U.S. Postal Service (USPS) provides an excellent example of how to provide robust customer support and how other agencies can specifically partner with USPS to expand their own customer support.²⁵⁴ USPS's one-stop address change is one particular example.²⁵⁵ Members of the public can change addresses, forward mail, or temporarily stop mail by filling out a short form at a post office or online.²⁵⁶ It takes only a few moments. The USPS process is notably easier and faster than changing an address with many private companies, such as a cellular telephone provider. But USPS has also partnered with other federal agencies to provide on-the-ground support.²⁵⁷ Post offices are nearly everywhere, the public always knows how to find them, and the public generally views them favorably.²⁵⁸ It has already partnered with the Department of State to ease access to passports.²⁵⁹ It has also more recently been a site for individuals to provide in-person support for those trying to obtain identity verification for Login.gov.²⁶⁰

USDA, particularly in its administration of SNAP, has been actively

253. See, e.g., *id.* (discussing administrative burdens from the viewpoint of citizens and suggesting further research to reduce administrative burdens).

254. See *Standard Forward Mail & Change of Address*, U.S. POSTAL SERV., <https://www.usps.com/manage/forward.htm> (last visited May 10, 2024).

255. See *id.*

256. See *id.*

257. See, e.g., U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-216, U.S. POSTAL SERVICE: OVERVIEW OF INITIATIVES TO INCREASE REVENUE AND INTRODUCE NONPOSTAL SERVICES AND EXPERIMENTAL POSTAL PRODUCTS 3, 10 (2013) (discussing "agreements specifying the terms and conditions for [U.S. Postal Service's (USPS's)] ongoing cooperation with other federal agencies"); *FAQs*, U.S. POSTAL INSPECTION SERV. (Mar. 2019), <https://www.uspis.gov/wp-content/uploads/2019/05/USPIS-FAQs.pdf> ("Overlapping jurisdiction often requires collaboration with other federal, state and local authorities. Postal Inspectors have developed close working relationships with other agencies that facilitate such cooperation.").

258. See *Postal Facts*, U.S. POSTAL SERV., <https://facts.usps.com/size-and-scope/> (reporting "31,132 Postal Service-managed retail offices in the United States") (last visited May 10, 2024); J. Baxter Oliphant & Andy Cerda, *Americans Feel Favorably About Many Federal Agencies, Especially the Park Service, Postal Service and NASA*, PEW RSCH. CTR. (Mar. 30, 2023), <https://www.pewresearch.org/short-reads/2023/03/30/americans-feel-favorably-about-many-federal-agencies-especially-the-park-service-postal-service-and-nasa/> (finding that 77% of those surveyed by Pew Research Center look favorably upon USPS).

259. See *Passports*, U.S. POSTAL SERV., <https://www.usps.com/international/passports.htm> (last visited May 10, 2024).

260. See *Verify Your Identity in Person*, LOGIN.GOV, <https://www.login.gov/help/verify-your-identity/verify-your-identity-in-person/> (last visited May 10, 2024).

simplifying processes and reducing burdens since the mid-to-late-2000s.²⁶¹ Prior to the 1996 welfare reform bill, those enrolled in Aid to Families with Dependent Children (AFDC) nearly automatically received SNAP,²⁶² which substantially decreased the burden on recipients and increased access to SNAP. When SNAP was delinked from AFDC after the 1996 welfare reform, the fraction of people eligible for benefits who actually received them plummeted.²⁶³ Consequently, USDA engaged in a decades-long process of gradually simplifying processes, ranging from simplified income reporting and less complicated applications to reducing in-person interview requirements and expanding periods between recertification.²⁶⁴ The result has been an increase in participation from a low of 54% of eligible individuals in 2001 to over 80% of eligible individuals today.²⁶⁵ USDA simplification efforts have also been in place to help farmers.²⁶⁶ To increase access to its loan program application program, USDA converted a ten-form, twenty-nine-page application process into a single thirteen-page document while also launching a Loan Assistance Tool to help farmers determine eligibility and complete the process.²⁶⁷

Beyond merely simplifying processes, agencies have long offered multiple types of support and assistance with navigating processes. Assistance can range from partnering with legal aid organizations and codifying programs to accredit nonlawyer representatives to providing other forms of agency support through ombuds, public advocates, and navigator programs.²⁶⁸ Some agencies, like the IRS, help support and collaborate with organizations that help low-income taxpayers, who are eligible for benefits that exceed their tax liability, file taxes so that they can access these benefits, particularly the

261. See generally Peter Ganong & Jeffrey B. Liebman, *The Decline, Rebound, and Further Rise in SNAP Enrollment: Disentangling Business Cycle Fluctuations and Policy Changes*, 10 AM. ECON. J.: ECON. POL'Y 153, 153 (2018) (discussing the U.S. Department of Agriculture's (USDA's) participation in researching changes in SNAP enrollment).

262. RANDY ALISON AUSSENBERG & GENE FALK, CONG. RSCH. SERV., R42054, *THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP): CATEGORICAL ELIGIBILITY 2-3* (2018) (discussing the history of SNAP eligibility).

263. Ganong & Liebman, *supra* note 261, at 154.

264. See HERD & MOYNIHAN, *supra* note 4, at 113.

265. See *id.*

266. See TACKLING THE TIME TAX, *supra* note 149.

267. See *id.*

268. See, e.g., Press Release, Dep't of Just., Executive Office for Immigration Review Announces Final Rule on the Recognition of Organizations and Accreditations of Non-Attorney Representatives (Dec. 20, 2016) (on file with DOJ).

EITC.²⁶⁹ We discuss the current state of expanding representation in Part V.²⁷⁰

We want to note some recent successes in burden reduction related to the pandemic. The pandemic was an era of intense experimentation where governments sought to maintain the supply of benefits.²⁷¹ In some cases, those flexibilities improved access and are worth maintaining.²⁷² For example, in-person requirements may tangibly reduce access. One study found that Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) participation during the pandemic was 14% lower in “Offline Electronic Benefits Transfer (EBT)” states, where beneficiaries had to reload their EBT cards in person, as compared to “Online EBT” states, where beneficiaries could reload their cards remotely.²⁷³

Similarly, creating alternatives to “wet” signatures, such as digital or telephone signatures, would eliminate access barriers. The Western Center on Law and Poverty said in a comment:

The expanded use of telephonic signature technology by benefits-granting agencies during the pandemic has been enormously helpful. The logistical challenges of getting wet signatures cause[] unnecessary delays and unfair denials/terminations. Requiring wet signatures on documents burdens applicants and beneficiaries who are unhoused, elderly, and/or have disabilities. These applicants go into an agency office to sign documents, which can be very difficult for those with mobility issues. Applicants and recipients who must wait to receive and return documents by mail, experience problems with timely submissions due to slow mail delivery, and those who do not have a fixed address are disadvantaged.²⁷⁴

The federal waiver system for programs allows such experimentation, and

269. See *Earned Income Tax Credit (EITC)*, INTERNAL REVENUE SERV., <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit-eitc> (describing how the EITC program works) (last visited May 10, 2024).

270. See *infra* Part V.

271. See *Tracking the COVID-19 Economy’s Effects on Food, Housing, and Employment Hardships*, CTR. ON BUDGET & POL’Y PRIORITIES (Feb. 10, 2022), <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and>.

272. See, e.g., OFF. OF HUM. SERVS. EMERGENCY PREPAREDNESS & RESPONSE, OFF. OF ADMIN. FOR CHILD. & FAMS., *ACF EMERGENCY AND DISASTER WAIVERS AND FLEXIBILITIES (2020)* (discussing various efforts by the Administration for Children and Families (ACF) to increase administrative flexibilities during the COVID-19 pandemic).

273. Aditi Vasan, Chén C. Kenyon, Christina A. Roberto, Alexander G. Fiks & Atheendar S. Venkataramani, *Association of Remote vs In-Person Benefit Delivery with WIC Participation During the COVID-19 Pandemic*, 326 JAMA 1,531–52 (2021).

274. Western Center on Law & Poverty, *Comment Letter on Identifying and Reducing Burdens in Administrative Processes* (April 17, 2023), <https://www.acus.gov/sites/default/files/documents/Identifying%20and%20Reducing%20Burdens%20in%20Administrative%20Processes%20Comment%20from%20Western%20Center%20on%20Law%20>

it has been used in the past to generate insights about how to reduce burdens in programs such as Medicaid.²⁷⁵ For example, Oregon will use a waiver to pilot a continuous enrollment program for children under six years old, reducing the burden of re-enrolling annually.²⁷⁶ This is critical because large fractions of beneficiaries who are still eligible lose coverage during re-enrollment for procedural reasons, such as missing paperwork or documentation.²⁷⁷ Waivers can also create additional complexity for the public. For example, Medicaid waiver programs have become a central way for states to fund and deliver long-term care.²⁷⁸ Their temporary nature, the amount of variation and application for benefits across and within states, and funding constraints all actually increase burdens for eligible individuals.²⁷⁹

E. Critical Data Tools: Sharing Data

Effectively sharing data across federal agencies and between federal and state agencies is one of the strongest potential tools to reduce burdens. Because of conditionality, or the need to demonstrate one is eligible for benefits and services, as well as the quantity, agencies need information about the individual to ensure eligibility. Having sufficient information allows agencies to ease access significantly.²⁸⁰ This can allow for (1) better outreach so that individuals know they are eligible; (2) reduction in forms and documentation requirements; and (3) automatic enrollment under some conditions.

The Chief Data Officer Council's Data Sharing Working Group issued a report highlighting the need to expedite data-sharing agreements.²⁸¹ Similar

26%20Poverty%202023.04.17.pdf.

275. See HERD & MOYNIHAN, *supra* note 4, at 122–24 (discussing the federal waiver program in Wisconsin that allowed the Clinton Administration to experiment with the federal waiver program).

276. Amelia Templeton, *Oregon Pioneers Continuous Medicaid Coverage for Kids Through Their 6th Birthday*, OR. PUB. BROAD. (Sept. 28, 2022, 5:06 PM), <https://www.opb.org/article/2022/09/28/oregon-first-nation-offer-continuous-medicaid-coverage-children-through-age-six/>.

277. See *id.* (stating that the annual reenrollment process leads to gaps in children's Medicaid coverage because of administrative procedures involving the paperwork required to reenroll).

278. See Pamela Herd, *Improving Older Adults' Health by Reducing Administrative Burden*, 101 MILBANK Q. 507, 515–18 (2023).

279. See *id.*

280. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-183, FEDERAL LOW-INCOME PROGRAMS: USE OF DATA TO VERIFY ELIGIBILITY VARIES AMONG SELECTED PROGRAMS AND OPPORTUNITIES EXIST TO PROMOTE ADDITIONAL USE (2021) (asserting that proper data allows agencies to “improve administrative efficiencies”).

281. FED. CHIEF DATA OFFICER'S COUNCIL, OFF. OF MGMT. & BUDGET, DATA

to our findings, the Working Group explained that data-sharing agreements are slowed by “a myriad of complex legal, oversight, policy and compliance regimes that often conflict” and that “[e]ducation of agency leadership across the federal government is needed on the value of data and the importance of sharing for cross-agency mission enablement.”²⁸² Moreover, the working group found that “an agency’s aversion to risk, especially concerning the interpretation of statute supporting data-sharing, leads to a historical posture of inaction.”²⁸³

For many agencies, data-sharing practices are primarily governed by the Computer Matching and Privacy Protection Act.²⁸⁴ Some agencies have other specific statutory guidelines regarding data-sharing.²⁸⁵ There are foundational legal questions that must be addressed with any data-sharing possibility, including: which agency is sharing the data, which agency is using the data, what are the parameters of the data being shared, and what is the purpose for which the data are being shared. Each of these questions will have statutory guidance that must be interpreted and adhered to, and minor edits to data-sharing design at an early stage in the process can open up possibilities. A critical step here requires the program and legal staff to collaborate closely to understand how data-sharing furthers program administration, including articulating burden reduction benefits. It is critical to note that in addition to reducing burdens, effective data-sharing can also significantly reduce fraud, abuse, and general errors in distributing benefits and services.²⁸⁶

The model of such a system is SSA’s Old Age Insurance (OAI) benefits, which is based on a shared data model with the IRS.²⁸⁷ Individual beneficiaries do not have to provide earnings or almost any other information.²⁸⁸

SHARING WORKING GROUP FINDINGS & RECOMMENDATIONS (2022) (reporting that one of the main findings by the Data Sharing Working Group was the need for expedited data-sharing agreements and making recommendations on how to achieve it).

282. *See id.* at 2.

283. *See id.*

284. *See supra* Part III.A.3.

285. *See, e.g.*, 26 U.S.C. § 6103 (providing the IRS’s confidentiality and disclosure of returns and return information standards).

286. *See* U.S. GOV’T ACCOUNTABILITY OFF., GAO-14-44, COMPUTER MATCHING ACT: OMB AND SELECTED AGENCIES NEED TO ENSURE CONSISTENT IMPLEMENTATION 1, 3 (2014).

287. *See* STAFF OF H. Comm. on Ways and Means, 105th Cong., 1998 Green Book 5 (Comm.: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 5 (Comm. Print 1998) (stating that workers were eligible for their benefits “as a matter of ‘earned right’” if their jobs covered them under Social Security benefits).

288. *See* U.S. SOC. SEC. ADMIN., PUB. NO. 13-11758, SOCIAL SECURITY PROGRAMS IN

The administrative system—set up when the program was implemented in the 1930s—ensures that employers provide these data and that SSA keeps track of it based on a shared data model with the IRS.²⁸⁹ The result is a system with low administrative costs (1%, compared to 9% for a program like SNAP), very little error, and low burdens for beneficiaries.²⁹⁰ Shared data between the IRS and SSA is integral to OAI benefits' relatively low burdens and administrative costs.²⁹¹

More recent efforts have also been made to reduce burdens with better data-sharing. A GAO report found that former students entitled to student loan forgiveness due to disability status often lost the benefit due to paperwork.²⁹² A striking 98% who lost the benefit did so not because they were ineligible but because they failed to provide an annual income verification form.²⁹³ As a result, the Department of Education used data-matching with SSA to verify eligibility status, automatically discharging debt for some 323,000 borrowers.²⁹⁴

Another example features SSA data-sharing with states. SSA has data exchange agreements with all fifty states.²⁹⁵ In some states, an agreement

THE UNITED STATES (1997).

289. *See id.* at 9, 22.

290. *See* Daniel Geller, Borjan Zic, Julia Isaacs & Breno Braga, URB. INST. & MANHATTAN STRATEGY GRP., *Exploring the Causes of State Variation in SNAP Administrative Costs* 6–7 (2019), <https://fns-prod.azureedge.us/sites/default/files/media/file/SNAP-State-Variation-Admin-Costs-FullReport.pdf>; Victor Oliveira, USDA, *The Food Assistance Landscape: FY 2016 Annual Report* (2017), <https://www.ers.usda.gov/webdocs/publications/82994/eib-169.pdf?v=5624.7>.

291. *Cf.* *IRS Information Sharing Programs*, INTERNAL REVENUE SERV., <https://www.irs.gov/government-entities/governmental-liaisons/irs-information-sharing-programs> (last visited May 10, 2024) (“IRS information sharing programs save government resources through partnerships between IRS and federal, state, and municipal government agencies. This includes, but is not limited to, facilitating the exchange of taxpayer data, leveraging resources, aiding taxpayers to improve compliance and communications, and identifying and reporting information on emerging tax administration issues.”).

292. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-45, *SOCIAL SECURITY OFFSETS: IMPROVEMENTS TO PROGRAM DESIGN COULD BETTER ASSIST OLDER STUDENT LOAN BORROWERS WITH OBTAINING PERMITTED RELIEF* 26 (2016).

293. *See id.* at 34–35.

294. *Over 323,000 Federal Student Loan Borrowers to Receive \$5.8 Billion in Automatic Total and Permanent Disability Discharges*, U.S. DEP'T OF EDUC. (Aug. 19, 2021) [hereinafter *Over 323,000 Federal Student Loan Borrowers to Receive \$5.8 Billion*], <https://www.ed.gov/news/press-releases/over-323000-federal-student-loan-borrowers-receive-58-billion-automatic-total-and-permanent-disability-discharges>.

295. *Data Exchange*, SOC. SEC. ADMIN., <https://www.ssa.gov/dataexchange/> (last visited May 10, 2024).

between USDA, SSA, and the state allows for a joint application between Supplemental Security Income (SSI) and SNAP (the Combined Application Project (CAP)).²⁹⁶ In short, SSI eligibility is more restrictive than SNAP eligibility, so it can serve as a “passport” for SNAP eligibility. This has been shown to significantly reduce burdens and increase eligible individuals’ access to SNAP benefits.²⁹⁷

There are, however, problems with the existing CAP program. First, only seventeen states participate.²⁹⁸ And even among those states that participate, it is sometimes limited to narrow populations or has lower SNAP benefits.²⁹⁹ In December 2022, SSA and the USDA were going to work more closely to reduce burdens and improve their data-sharing.³⁰⁰ In part, establishing and expanding such agreements is reported to be very labor intensive, requiring months of negotiation between SSA, USDA, the state, and vendors of data management systems. The labor-intensive nature of these agreements slows the spread of a useful data-sharing arrangement.

Further, there is limited information on the actual outcomes associated with the CAP or broader ways that SSA and USDA work together to improve access to SNAP for SSI beneficiaries. Indeed, a recent letter from twelve U.S. Senators asked SSA and USDA to document data, such as the number of SNAP applications received by SSA offices and the number of SNAP applications transferred to state offices, both by CAP and non-CAP

296. See *Combined Application Projects*, USDA, <https://www.fns.usda.gov/snap/combined-application-projects> (Mar. 18, 2024); see also Letter from Senator Edward Markey et al., U.S. Sens., to Thomas Vilsak, Sec’y, USDA, and Kilolo Kijazaki, Acting Comm’r, Soc. Sec. Admin. (Apr. 10, 2023) [hereinafter Letter from Senator Edward Markey et al.], https://www.markey.senate.gov/imo/media/doc/senator_markey_letter_to_usda_and_ssa_-_april_2023.pdf (stating and discussing concerns that Senator Markey has with the difficulties that applicants face when applying for SNAP benefits).

297. See Letter from Senator Edward Markey et al., *supra* note 296.

298. FOOD RSCH. & ACTION CTR., A GUIDE TO SUPPLEMENTAL SECURITY INCOME/SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: COMBINED APPLICATION PROJECTS 6 (2017), <https://frac.org/wp-content/uploads/guide-ssi-snap-combined-application-projects.pdf>.

299. See *id.* at 7–11, 14 (discussing different states’ Combined Application Project programs and its participants).

300. See Press Release, Soc. Sec. Admin., USDA & Social Security Administration Collaborate to Improve Nutrition Security Through SNAP (Dec. 8, 2022), <https://www.ssa.gov/news/press/releases/2022/#12-2022-2> (announcing that USDA and Social Security Administration (SSA) came to a shared agreement to work together to reduce administrative burdens for families in need of government assistance through increased data-sharing means, such as reporting on when Supplemental Security Income (SSI) applicants that are not receiving SNAP benefits discontinue the application process).

states.³⁰¹ This kind of data collection and reporting is critical to understanding how effectively this collaboration is working to reduce burdens and increase benefit access.

In sum, while there are excellent existing models of data-sharing for burden reduction, significant improvements are needed to maximize burden reduction.

V. DEVELOPING INNOVATIVE PRACTICES TO IDENTIFY AND REDUCE BURDENS

This section details newer innovations agencies have employed in recent years, many of which are a response to the series of recent EOs to improve people's interactions with government, including improving benefit and service delivery. This rapidly developing regulatory structure represents a change in agencies' worldviews. Burden reduction requires new thinking about data.³⁰² It also requires silo-busting: expanding trust and collaboration among experts with different skill sets, all interconnected with burden.³⁰³ Amid a flurry of new management tools, unfamiliar territory, and lots of information, agencies are innovating in successful ways while still encountering remaining and new challenges.³⁰⁴ The goal of this section is to illustrate more recent best practices, as well as how they can be further developed and expanded.

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

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

1. *Role of Leadership*

a. *White House Leadership/Prioritization Through EOs*

The impact of the Biden Administration's EOs on equity and customer

301. See Letter from Senator Edward Markey et al., *supra* note 296.

302. See generally OFF. OF INFO. & REGUL. AFFS., STRATEGIES FOR REDUCING ADMINISTRATIVE BURDEN IN PUBLIC BENEFIT & SERVICE PROGRAMS (2022), <https://www.whitehouse.gov/wp-content/uploads/2022/12/BurdenReductionStrategies.pdf> (discussing strategies that use administrative data to design programs that reduce administrative burden).

303. See LEGAL AID INTERAGENCY ROUNDTABLE, *supra* note 50, at 12.

304. See *id.* at 7–8.

experience cannot be overstated.³⁰⁵ Agencies already focused on burden reduction, such as VA, leveraged these orders to further build on their existing activities, while other agencies that had more limited attention to customer experiences, such as DHS, significantly ramped up their activities.³⁰⁶

The White House also plays a leadership role in more direct ways. For example, they have been seeding coordination, either via visible White House leadership or less visible actors, such as within OMB.³⁰⁷ For example, OMB budget examiners are credited with pushing data-sharing collaborations that facilitated burden reductions in access to SNAP—via the partnership between SSA and USDA—and student loan forgiveness for those with disabilities—via a partnership between SSA and the Department of Education—as discussed above.³⁰⁸

Another key support service facilitated by the central leadership within the Executive Branch is the Office of Evaluation Sciences (OES).³⁰⁹ OES collaborates with agencies across the federal government to enable evidence-based research on interventions, including those intended to reduce burdens.³¹⁰

Finally, the creation of the U.S. Digital Service (USDS) and 18F (an office within GSA that helps agencies build or buy digital services) have been critical to the broader effort across the federal government to improve customer experiences and reduce administrative burdens.³¹¹ USDS partners with nearly all of the agencies named in the EO on customer experience.³¹² They help bring a crucial part of capacity building agencies need to implement burden reduction efforts.³¹³

b. Prioritization from Agency Leadership

Agency leadership prioritizing burden reduction is a key element to effective reduction efforts. Agency leadership at VA was critical to building a culture and institutionalizing processes and procedures to improve customer

305. See TACKLING THE TIME TAX, *supra* note 149, at 25.

306. See *infra* Part V.A.1.b.

307. See *Office of Management and Budget*, WHITE HOUSE, <https://www.whitehouse.gov/omb/> (last visited May 10, 2024).

308. See *supra* Part IV.E.

309. See LEGAL AID INTERAGENCY ROUNDTABLE, *supra* note 50, at 47–48.

310. See *id.*

311. See *id.* at 48.

312. See *id.*; *Digital Services Playbook*, U.S. DIGIT. SERV., <https://playbook.cio.gov/> (last visited May 10, 2024).

313. See *Digital Services Playbook*, *supra* note 312.

experience after the 2015 hospital waiting scandal.³¹⁴ The new VA Secretary, Bob McDonald, would hand out his personal phone number and email to veterans and encourage them to contact him, symbolizing to agency employees the leadership commitment to hearing from clients and solving their problems.³¹⁵ Such actions reflect a model of transformational leadership, where leaders use their position to articulate and commit to a meaningful and motivating vision. The aftermath of the waiting list scandal could have been imposing new requirements and checks as a defensive measure. McDonald exploited the failure to change the ethos and operation of VA. One VA official we spoke with said: “The burning platform was there, but we also had leadership from McDonald. A Secretary-level endorsement is critical. It w[ill not] do the work for you, but it is essential.”³¹⁶

More recent attention has been paid to burden reduction on the part of leadership at DHS.³¹⁷ Agency staff repeatedly noted that Secretary Mayorkas’s focus on burden reduction made their efforts substantially easier.³¹⁸ For example, officials at DHS point to the Secretary prioritizing the need to make things simpler and easier for people as to why burden reduction has become a key part of their regulatory review agenda.³¹⁹ This was described as a shift toward holistically defining burden reduction throughout the agency, with a goal of reducing burdens by twenty million hours across different sub-agencies.³²⁰ The target was a tangible way to communicate the leadership priority across DHS. By June 1, 2023, DHS reported exceeding its goal, reducing the burden hours by twenty-one million.³²¹ A phrase used to describe the burden reduction goals at DHS was to make government interactions “less

314. See Drew Griffin, Nelli Black, Scott Bronstein & Curt Devine, *Veterans Still Facing Major Medical Delays at VA Hospitals*, CNN (Oct. 20, 2015, 9:07 PM), <https://www.cnn.com/2015/10/20/politics/veterans-delays-va-hospitals/index.html>.

315. *Veteran Posts on Reddit Her Experience Contacting Secretary McDonald*, VA NEWS (Feb. 3, 2015), <https://news.va.gov/16731/veteran-posts-on-reddit-her-experience-contacting-secretary-mcdonald/>.

316. Interview with VA Official, U.S. Dep’t of Veterans Affs. (Mar. 13, 2023) (on file with authors).

317. Cf. Press Release, U.S. Dep’t of Homeland Sec., *DHS Improves Customer Experience by Simplifying Services Used by the Public* (May 30, 2023), <https://www.dhs.gov/news/2023/05/30/dhs-improves-customer-experience-simplifying-services-used-public>.

318. See *id.*

319. See *id.*

320. Memorandum from Eric Hysen, Chief Info. Officer, U.S. Dep’t of Homeland Sec., to DHS Component and Off. Heads, *Paperwork Reduction Act Burden Reduction Initiative* (Mar. 22, 2022), https://www.dhs.gov/sites/default/files/2022-05/Burden_Reduction_Initiative_Memo_Final%20PDF%20CIO%20signed.pdf.

321. See TACKLING THE TIME TAX, *supra* note 149, at 44.

humiliating” for people.³²² That sort of humanizing of burden reduction goals can be a powerful motivator for agency staff.

More specifically, leaders can help by increasing the salience of customer experience efforts, linking them to mission and organizational culture, and allocating resources (including their time) to burden reduction efforts. Another recent example of this kind of leadership is at HHS. As Andrea Palm, Deputy Secretary of HHS, noted, the agency is putting “the people that we serve at the center of what we do.”³²³ She explicitly noted both cross-departmental and intergovernmental collaboration to reduce burdens.³²⁴ “For example, HHS and other agencies, like USDA and the Department of Labor, are critically thinking about how to serve families who may have needs that fall under multiple agencies’ jurisdiction or programs.”³²⁵ As she noted, “[s]o how we think about the customer experience is an opportunity for us at HHS to lift up, to put people at the center, and to wrap service around them instead of requiring people to come to programs and interface with individual programs.”³²⁶

We heard a similar shift in approach from the Taxpayer Experience Office at the IRS.³²⁷ There, interviewees spoke of the more holistic focus on the entirety of the taxpayer experience beyond merely communicating filing instructions.³²⁸ Echoing this shift in view, the National Taxpayer Advocate recommended that the IRS adapt its mission statement to specifically recognize its role as a benefits-provider:

By explicitly stating the IRS’s benefits administration role as a separate agency mission in the context of service and non-coercive compliance, the IRS would be required to align its procedures, goals, and measures with those of other agencies serving similar situations. That would in turn build taxpayer trust and confidence, leading to improved

322. Interview with Anonymous Source (date redacted) (on file with authors); see PAMELA HERD, DONALD MOYNIHAN & AMY WIDMAN, ADMIN. CONF. OF THE U.S., *Identifying and Reducing Burdens in Administrative Processes* 33 (2023), https://www.acus.gov/sites/default/files/documents/Identifying-and-Reducing-Burdens-in-Administrative-Processes-Final-Report-2023.12.05_2.pdf.

323. Mike Miliard, *HHS Is Prioritizing Consumer Experience, Data Exchange, Explainable AI*, HEALTHCARE IT NEWS (Apr. 28, 2023, 10:51 AM), <https://www.healthcareit-news.com/news/hhs-prioritizing-consumer-experience-data-exchange-explainable-ai>.

324. *Id.*

325. Interview with Anonymous Source (date redacted) (on file with authors); see *id.* (referring to USDA’s SNAP).

326. *Id.*

327. Interview with IRS Official, Taxpayer Experience Off., Internal Revenue Serv. (Dec. 14, 2022) (on file with authors).

328. *Id.*

compliance and an environment that reflects the essential dignity of all taxpayers.³²⁹

2. *Codifying Burden Reduction*

OMB is currently working on ways to ensure that burden reduction is encoded into agency regulations.³³⁰ The proposed Circular A-4 includes a section on “Improving Government Operations and Service Delivery” that states,

Regulations are necessary for the day-to-day functioning of government and can also help promote a government that operates more smoothly, is more transparent, and delivers public services more efficiently. For example, a regulation may further effective government operations by setting performance criteria that government must follow. Regulations can also help government deliver services to more individuals at lower cost, such as by reducing administrative burdens or by simplifying public-facing or internal processes.³³¹

VA provides a robust example of why this kind of encoding matters for agency culture.³³² It is perhaps the most notable agency for creating a culture focused on burden reduction and broadly improving how veterans experience their encounters with the agency.³³³ It partially did this by explicitly connecting burden reduction efforts to its organizational culture.³³⁴ VA cultural values are codified in law as Integrity, Commitment, Advocacy, Respect, and Excellence (I CARE).³³⁵ These values put veterans at the organization’s center and emphasize the need to continue agency learning to serve veterans better.³³⁶ This made it easy to connect customer experience

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

330. See OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, CIRCULAR A-4, REGULATORY ANALYSIS 1, 19 (2023).

331. *Id.* at 19.

332. See Core Values, Characteristics, and Customer Experience Principles of the Department, 84 Fed. Reg. 22,709, 22,709–10 (May 20, 2019) (to be codified at 38 C.F.R. pt. 0) (highlighting the agency’s obligations to veterans and their families and providing internal guidelines for employee behavior to ensure positive customer experience).

333. See TACKLING THE TIME TAX, *supra* note 149, at 44–54 (documenting ten agency burden reduction programs but differentiating Veteran’s Affairs as it is agency wide).

334. See Core Values, Characteristics, and Customer Experience Principles of the Department, 84 Fed. Reg. at 22,709–10 (defining organizational characteristics).

335. *I CARE Core Values, Characteristics, and Customer Experience Principles*, VA, <https://www.va.gov/icare/core-values.asp#:~:text=I> (last visited May 10, 2024).

336. See Core Values, Characteristics, and Customer Experience Principles of the Department, 84 Fed. Reg. at 22,710 (emphasizing the agency’s obligations to veterans and their families and providing guidelines to ensure agency employees can effectuate these

principles to the core values. VA would also codify customer experience principles alongside these values. These include:

- (a) **Ease.** VA will make access to VA care, benefits, and memorial services smooth and easy.
- (b) **Effectiveness.** VA will deliver care, benefits, and memorial services to the customer's satisfaction.
- (c) **Emotion.** VA will deliver care, benefits, and memorial services in a manner that makes customers feel honored and valued in their interactions with VA. VA will use customer experience data and insights in strategy development and decision-making to ensure that the voice of veterans, servicemembers, their families, caregivers, and survivors inform how VA delivers care, benefits, and memorial services.³³⁷

One notable aspect of these principles is that they focus on access to services, not just positive experiences for those using them.³³⁸ They also use a word not commonly seen in government documents—"emotion"—to convey that the psychological experience of the service is a key aspect of serving clients.³³⁹ VA officials we spoke with emphasized that people are drawn into the government to help others.³⁴⁰ Reducing burdens and improving client experiences offers a chance to directly and measurably help the public and serve as a basis for recruiting the next generations of public servants showing, "You can be a badass in government."³⁴¹

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

3. *Building Learning Routines and a Sense of Ownership Overburden Reduction*

As with any new reform effort, long-term success depends upon institutionalization. Here, burden reduction efforts could look at performance management efforts in government. To some extent, reformers have done so by, for example, connecting customer experience goals with GPRA

commitments).

337. *Id.*

338. *See id.*

339. *See id.*

340. Interview with VA Official, U.S. Dep't of Veterans Affs. (Jan. 27, 2023) (on file with authors); Interview with VA Official, U.S. Dep't of Veterans Affs. (Feb. 13, 2023) (on file with authors); Interview with VA Official, U.S. Dep't of Veterans Affs. (Mar. 13, 2023) (on file with authors).

341. Interview with VA Official, U.S. Dep't of Veterans Affs. (Mar. 13, 2023) (on file with authors).

Modernization Act strategic planning and performance reporting goals in Circular A-11.³⁴² There are other lessons from the performance management practices. One such practice was to identify goal leaders who were publicly responsible for reporting progress on specific reporting goals, whose names and pictures are presented alongside the goal on the federal Performance.gov website.³⁴³

Another strategy has been to ensure that data is used by mandating quarterly reviews of progress made on key views.³⁴⁴ Federal employees involved in such reviews were more likely to report using performance data to make substantive decisions relative to those who were not.³⁴⁵

One incentive structure that shapes cultural attitudes is that agencies face significant pressure to minimize spending.³⁴⁶ This can pit burden reduction efforts and spending reduction efforts at odds with each other. Burden reduction efforts will sometimes require costs, such as hiring new CX staff or consulting help. The public enjoys the benefits but does not reduce the bottom line. By contrast, efforts to reduce spending can work oppositely. Asking the public to provide more information in administrative processes does not cost the administrator anything, even as it imposes negative externalities on the public. A former Presidential Innovation Fellow, Angelo Frigo, put it this way:

If an agency can increase program integrity by asking the public for more information or requiring more evidence—burdens go up. When CX leaders try to get their agencies to reduce burdens but that requires an increase in spending or a reduction in integrity—even if slight—it almost always loses.³⁴⁷

Of course, in many cases, burden reduction for the public, such as automating benefit renewals and relying on administrative data, actually reduces

342. OMB CIRCULAR A-11 (2023), *supra* note 17, at pt. 6, § 280.

343. See *Agencies*, U.S. GEN. SERVS. ADMIN., <https://www.performance.gov/agencies/> (last visited May 10, 2024) (providing links to various agency performance goals).

344. See *A Commitment to Results: Federal Agency Strategic Plans Now Available*, U.S. GEN. SERVS. ADMIN. (Mar. 31, 2022) <https://www.performance.gov/blog/agency-strategic-plans-available/> (linking quarterly updates).

345. Donald Moynihan & Alexander Kroll, *Performance Management Routines that Work? An Early Assessment of the GPRM Modernization Act*, 76 PUB. ADMIN. REV. 314, 314 (2016).

346. See Steve Taylor, *It's Time for Congress to Take Back Congressionally Directed Spending*, HILL (Nov. 20, 2022, 9:00 AM), <https://thehill.com/opinion/finance/3742184-its-time-for-congress-to-take-back-congressionally-directed-spending/> (articulating some arguments for executive agencies to spend less).

347. Comment Letter from Angela Frigo, to Admin. Conf. of the U.S. (Feb. 16, 2023), <https://www.acus.gov/sites/default/files/documents/Identifying%20and%20Reducing%20Burdens%20in%20Administrative%20Processes%20Comment%20from%20Angelo%20Frigo%202022.02.16.pdf>.

administrative overhead on average. For example, a caseworker will spend less time accessing administrative data to verify income than helping a beneficiary provide that information and documentation. There may be upfront costs, however, to achieve these savings.

B. Collaboration: Cross Department and Cross Governmental Collaboration

1. Collaboration Across Federal Agencies

We described in Part IV how agencies, such as VA, have been effectively building collaborations across units within the agency to reduce burdens. But one key part of the new EO, which is focused on “Life Experiences,” requires cross-agency collaboration.³⁴⁸ These experiences—including retiring or facing a financial shock—require that people seek services and benefits across multiple agencies, which can be confusing and require duplicative and sometimes unnecessary efforts.³⁴⁹ For example, one might be required to provide income documentation multiple times or fill out somewhat different forms, but ultimately, they provide the same information. Agencies need to collaborate to reduce these onerous processes.

Collaboration can include information sharing on burden reduction methods, program design that connects certain functions across multiple agencies, expanded use of data match agreements, and ongoing communication channels.³⁵⁰ The broader lesson is the need for cross-agency working groups to reduce burdens, including actors from the Executive Office of the President, including OMB, who know the specifics of the case and the broader burden reduction agenda.³⁵¹

An example highlighting many of these collaborative tools is how VA has worked closely with the Department of Defense (DOD), facilitating the handoff between the end of military service and accessing veterans’ benefits.³⁵² This includes data-sharing, document exchange, and process

348. GSA, *Government-Wide CX Efforts*, *supra* note 64 (“Life experiences are significant events or transitions that often require interactions and touchpoints with multiple Federal agencies and even levels of government.”).

349. *See id.*

350. *A-11 Section 280 Explainer*, U.S. GEN. SERVS. ADMIN., <https://www.performance.gov/cx/a-11/> (last visited May 10, 2024) (documenting the types of government-wide practices encouraged).

351. *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government: Progress on Agency Commitments in EO 14058*, U.S. GEN. SERVS. ADMIN., <https://www.performance.gov/cx/executive-order/> (last visited May 10, 2024) (describing a “whole-of-government approach”).

352. Press Release, U.S. Dep’t of Veterans Affs., VA and DoD Collaborative Program

simplification. This outcome benefited from a joint executive committee that works together to find pain points. The Health Artifact and Image Management Solution (HAIMS) system facilitates document sharing, and the two agencies are working on an electronic health record exchange.³⁵³ Officials from both agencies meet quarterly and are supported by OMB.³⁵⁴ The process can be slow. Developing a single health assessment that both DOD and VA would accept has taken years.³⁵⁵ Such efforts improve access and reduce overpayments, such as individuals claiming multiple benefits when they are only allowed to claim one.

Such efforts depend upon good faith and trust from all sides. If one side thinks the other is slow rolling, they are more likely to withdraw effort and invest it elsewhere. One interviewee noted: “It’s like building the St. Louis Arch. You gotta build to meet in the middle.”³⁵⁶ Another noted that having an inexperienced counterpart unfamiliar with the complexities of the systems they sought to integrate was enough to stall progress.³⁵⁷ Third parties, such as OMB, may also be required to step in. In a couple of instances, OMB budget examiners provided the impetus for pushing coordination.³⁵⁸

More recently, HHS has been collaborating with Food and Nutrition Services within USDA to streamline access to both SNAP and Medicaid, each administered by separate agencies but serving similar populations.³⁵⁹ This collaboration reflects a response to the CX EO, with USDA specifically issuing a new regulation to facilitate this kind of cross-agency collaboration.³⁶⁰ In 2022, HHS also used categorical eligibility to reduce burdens for families

Helps Service Members Gain Valuable skills Prior to Transitioning from Military (July 19, 2022), <https://www.va.gov/fayetteville-coastal-health-care/news-releases/va-and-dod-collaborative-program-helps-servicemembers-gain-valuable-skills-prior-to-transitioning-from/> (exemplifying at least one of the collaborative programs between Department of Defense (DOD) and VA).

353. See *Fact Sheet: HAIMS*, DEF. HEALTH AGENCY, <https://health.mil/Reference-Center/Fact-Sheets/2023/06/07/HAIMS-Fact-Sheet> (last visited May 10, 2024) (streamlining processes for military members and veterans).

354. Interview with Veterans Benefit Admin. (Feb. 23, 2023) (on file with authors); see *VA/DoD Coordination Office*, U.S. DEP’T OF VETERANS AFFS. (Jan. 25, 2024), <https://www.va.gov/VADODHEALTH/Liaison.asp> (describing VA/DOD Health Executive Committee coordination).

355. Interview with Veterans Benefit Admin. (Feb. 13, 2023) (on file with authors).

356. *Id.*

357. Interview with U.S. Dep’t of Agric. (Feb. 2, 2023) (on file with authors).

358. *Id.*

359. Miliard, *supra* note 323.

360. U.S. DEP’T OF AGRIC., DR-1270-001, U.S. DEPARTMENT OF AGRICULTURE CUSTOMER EXPERIENCE POLICY 1, 6 (2022).

with lower income seeking Early Start and Head Start services.³⁶¹ It instructed providers to provide automatic eligibility for SNAP and Temporary Assistance for Needy Families (TANF) recipients rather than require an extra enrollment process, which had been viewed as discouraging take-up.³⁶²

There is significant potential to continue building on existing collaboration and build new collaboration. For example, in some cases, programs exist and have relatively low utilization because of limited collaboration. The Achieving a Better Life Experience (ABLE) program is an example.³⁶³ It provides tax sheltered savings accounts for families who have a member with a disability.³⁶⁴ The program ensures that disabled beneficiaries with more than the \$2,000 asset cap for programs like Supplemental Security Income can accrue some savings and not lose access to these critical benefits.³⁶⁵ The simplest solution would be to increase asset limits, which the government has not changed in decades, or do away with them since only a small number of families have significant assets.³⁶⁶

ABLE provides a complex way to work around the asset limits. However,

361. Memorandum from Bernadine Futrell, Dir., Off. of Head Start, U.S. Dep't of Health & Hum. Servs., to all Head Start and Early Head Start Agencies and Delegate Agencies (Apr. 21, 2022), <https://eclkc.ohs.acf.hhs.gov/sites/default/files/im/downloads/acf-im-hs-22-03.pdf>; see also *Administration Expands Eligibility Criteria for Head Start Programs*, FIRST FIVE YEARS FUND (Apr. 25, 2022), <https://www.ffyf.org/2022/04/25/administration-expands-eligibility-for-head-start-programs/> (“On April 21st, the Office of Head Start (OHS) announced it would expand categorical eligibility to include children who qualify for the Supplemental Nutrition Assistance Program (SNAP), giving more families access to Head Start and Early Head Start prenatal-to-five services and supports, including school readiness, nutrition, and family support.”).

362. See TACKLING THE TIME TAX, *supra* note 149, at 47; *PRA Approval Process*, *supra* note 250.

363. See *Spotlight on Achieving a Better Life Experience (ABLE) Accounts*, SOC. SEC. ADMIN., <https://www.ssa.gov/ssi/spotlights/spot-able.html> (last visited May 10, 2024).

364. See *id.*

365. See *About ABLE Accounts*, NAT'L RES. CTR., <https://www.ablenrc.org/what-is-able/what-are-able-accounts/> (last visited May 10, 2024).

366. See KATHLEEN ROMIG, LUIS NUÑEZ & ARLOC SHERMAN, CTR. ON BUDGET & POL'Y PRIORITIES, *THE CASE FOR UPDATING SSI ASSET LIMITS* 1–2, 6–7, 9–12 (2023), <https://www.cbpp.org/research/social-security/the-case-for-updating-ssi-asset-limits> (arguing that raising asset limits would encourage saving, reduce administrative burdens, and increase participation, and noting similar affects if limits were eliminated entirely); see also Press Release, U.S. Senate Comm. on Fin., Wyden, Brown, Cassidy Announce First Bipartisan, Bicameral Bill in Decades to Update Supplemental Security Income Program (Sept. 12, 2023), <https://www.finance.senate.gov/chairmans-news/wyden-brown-cassidy-announce-first-bipartisan-bicameral-bill-in-decades-to-update-supplemental-security-income-program> (proposing long overdue updates to income and asset limits).

it remains underutilized because of the learning costs posed by a new program.³⁶⁷ Eligible individuals do not know about the program or how to utilize it.³⁶⁸ One way to address this would be for the IRS and SSA to work together to reduce those learning costs by contacting eligible families and explaining the program and their eligibility. Such a step has proven to be an effective tool for increasing take-up for the EITC, which is administered by the IRS.³⁶⁹ SSA has data that could help identify potentially eligible individuals.³⁷⁰ Though SSA does advertise ABLE accounts in its field offices, far more collaboration and outreach are required for that outreach to be effective. The SSA, however, sees the program as an IRS program and does not see improving take-up as its responsibility.³⁷¹ The result is that only families with a good understanding of the tax system will likely be aware of ABLE accounts.

2. Federalism: Collaborating Across Levels of Government

One of the reasons for high levels of burden in public programs is federalism. Most federal social welfare policies, with key exceptions like Medicare and Social Security, are administered by the states, and the design of those benefits, such as who is eligible and what conditions people must meet to receive those benefits, is also significantly driven by state choices.³⁷² The significant variation—in both benefit design and administration—adds complexity, making those programs more burdensome for people to access.³⁷³ Programs can gain layers of additional requirements as states or local governments customize them.³⁷⁴ Other levels of government may also lack the

367. See Emile Hallez, *ABLE Accounts Underutilized by Advisors: Report*, Investment News (Jan. 6, 2021), <https://www.investmentnews.com/industry-news/news/able-account-underutilized-by-advisers-report-200948>; *ABLE Accounts Offer Financial Independence for Beneficiaries Who Can Manage Their Own Money*, FELDMAN L. GRP. (Jan. 29, 2021), <https://www.feldman-lawgroup.com/blog/2021/january/able-accounts-offer-financial-independence-for-b/> (“[A Better Life Experience (ABLE)] accounts are still woefully underutilized.”).

368. *Id.* (finding that ABLE accounts were intended to be used as a savings account but are more regularly treated as a checking account).

369. Bhargava & Manoli, *supra* note 106, at 3,524.

370. See *Payee and ABLE Accounts*, SOC. SEC. ADMIN., https://www.ssa.gov/payee/able_accounts.htm (last visited May 10, 2024).

371. See *id.*; Interview with Soc. Sec. Admin. (Feb. 27, 2023) (on file with authors).

372. See, e.g., John E. Hansan, *The Federal-State Public Welfare Programs: 1935–1995*, VA. COMMONWEALTH UNIV. (May 30, 2012), <https://socialwelfare.library.vcu.edu/public-welfare/federal-state-public-welfare-programs/>.

373. *Id.*

374. See *id.*

capacity to fix burdens.

Consequently, significant coordination between the federal government, states, and sometimes counties or other localities is required to reduce burdens. Federal directives to identify and mitigate burdens already exist through the revised PRA guidance and the CX EOs.³⁷⁵ These apply to any program that receives federal funding regardless of who administers the program.³⁷⁶ But there is limited awareness of these changes, especially at lower levels of government, and more active coordination efforts are needed. We highlight some recent examples of how federal agencies coordinate with states to reduce burdens.

One of the most notable failures in benefit delivery occurred during the pandemic when millions of people tried to access unemployment insurance (UI) benefits but were met, in many states, with endless burdens and barriers.³⁷⁷ A benefit intended to protect people when they became unemployed was effectively inaccessible to many of those eligible.³⁷⁸ UI is a prototypical example of how significant state variation in both benefit design and administration can lead to highly burdensome experiences for the public.³⁷⁹

A host of issues were identified with state UI systems, ranging from understaffing to outdated technologies, which helped drive some of the problems people faced at the start of the pandemic.³⁸⁰ And because UI comprises fifty-three different benefit systems, there is no single administrative solution that the federal government can employ to improve UI.³⁸¹

ARPA included resources that allowed DOL to send teams, called Tiger Teams, to consult with states, examining technology operations and process flows to improve benefit delivery systems.³⁸² Their goal is to

375. See, e.g., Exec. Order No. 14,058, 86 Fed. Reg. 71,357, 71,357, 71,363 (Dec. 13, 2021).

376. See *id.* at 71,357–58.

377. See Nick Gwyn, *Pandemic Unemployment Programs Saved Millions from Severe Hardship, but Permanent UI Needs Reform*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 31, 2023, 9:00 AM), <https://www.cbpp.org/blog/pandemic-unemployment-programs-saved-millions-from-severe-hardship-but-permanent-ui-needs>.

378. *Lessons Learned from the Pandemic Unemployment Assistance Program During COVID-19*, JPMORGAN CHASE & CO. (Apr. 2022), <https://www.jpmorganchase.com/institute/research/household-income-spending/lessons-learned-pandemic-unemployment-assistance-program-covid>.

379. See Michele Evermore, *Ensuring State Unemployment Insurance Readiness for the Next Downturn*, CENTURY FOUND. (Dec. 20, 2022), <https://tcf.org/content/commentary/ensuring-state-unemployment-insurance-readiness-for-the-next-downturn/>.

380. See *id.*

381. See *id.*

382. *Tiger Team Updates*, U.S. DEP'T OF LAB. (July 2023), <https://www.dol.gov/agencies/eta/ui-modernization/tiger-teams>.

work with states to identify ways to enhance their existing efforts and make actionable recommendations, along with allocated grant funding, for states to make near-term impacts within the pillars of Equity & Accessibility, Timeliness & Backlog, and Fraud Prevention & Detection. In addition, the Tiger Teams work across the national UI system to identify promising practices and develop tools and resources for the states.³⁸³

DOL has worked with thirty-six states up to May 2023.³⁸⁴

A key change from the federal government in employing these teams was a shift from only focusing on benefits errors and state compliance with federal rules to an additional focus on problem-solving to ensure improved benefit delivery.³⁸⁵ Before ARPA, the focus had been almost exclusively on fraud and error prevention.³⁸⁶ DOL did not have the operational resources to provide the kinds of assistance included in ARPA.³⁸⁷

Critically, DOL created entirely different teams for enforcement activities versus these new assistance activities. Tiger Teams emphasize organizational learning rather than focusing on blame for prior errors.³⁸⁸ Furthermore, they provided state governments, especially those with more limited capacity, additional expertise and necessary support for improving their systems.³⁸⁹ The basic programmatic model is that the teams work closely with states to understand their strengths and weaknesses and, in that context, develop a set of recommendations.³⁹⁰ The states can then access grants and awards to implement these recommendations.³⁹¹

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

3. *Standardizing Processes for Burden Reduction*

Whether it is collaboration across federal departments or departments across levels of government, one key way to improve people's experiences, given the complexity of federalist programs like UI, is to standardize

383. *Id.*

384. *See id.*

385. *See id.*

386. *See* KATELIN P. ISAACS & JULIE M. WHITTAKER, CONG. RSCH. SERV., IF11786, UNEMPLOYMENT INSURANCE PROVISIONS IN THE AMERICAN RESCUE PLAN ACT OF 2021 (2021).

387. *See id.* (noting "\$2 billion to U.S. Department of Labor (DOL) for federal and state administration of UI benefits").

388. *See Tiger Team Updates*, *supra* note 382.

389. *See id.*

390. *See id.*

391. *See id.*

eligibility tools when possible.³⁹² We discuss a range of methods to address this below.

a. Identity Verification

An essential tool needed across almost any program is identity verification. While a seemingly simple task, in practice, it is complicated and can serve as a substantial barrier to services and benefits. Identity verification is also critical to prevent programmatic fraud, a significant UI problem during the pandemic.³⁹³ One way to meet both goals—reduce fraud and simplify access to services—is to create a single identity verification tool that can be used across any federal or state program.

One such tool is Login.gov, an identity verification tool created by GSA.³⁹⁴ This tool was extended to state governments under the Intergovernmental Cooperation Act.³⁹⁵ The value proposition of Login.gov is intuitive. Rather than creating a separate account and password for every government service, a single one becomes the gateway for all.³⁹⁶ Users do not have to hunt for multiple passwords or renew credentials if they cannot find them. Other countries, such as Denmark, have models where all primary government services run through a single account.³⁹⁷ In the aggregate, a digital option reduces friction in accessing public services. There have been controversies around Login.gov, in part because it does not include biometric verification. The GSA chose not to add this feature because of compelling evidence indicating that biometric tools are prone to bias, particularly against Black,

392. See Matthew Darling & Will Raderman, NISKANEN CTR., *An Unemployment Insurance System That Works* 18 (2023), <https://www.niskanencenter.org/wp-content/uploads/2023/09/A-UI-System-That-Works-Final.pdf>.

393. See Memorandum from Brent Parton, Acting Assistant Sec’y, Emp. & Training Admin., to Carolyn R. Hantz, Assistant Inspector Gen. Audit, Off. Inspector Gen. 11 (Mar. 29, 2023), <https://www.oig.dol.gov/public/reports/oa/2023/19-23-005-03-315.pdf>.

394. See *Reducing Fraud and Increasing Access Drives Record Adoption and Usage of Login.gov*, U.S. GEN. SERVS. ADMIN.: GSA BLOG (Aug. 18, 2023), <https://www.gsa.gov/blog/2023/08/18/reducing-fraud-and-increasing-access-drives-record-adoption-and-usage-of-login.gov>.

395. See Intergovernmental Cooperation Act of 1968, Pub. L. No. 90-577, 82 Stat. 1098, 1102.

396. See DOMINICK A. FIORENTINO, NATALIE R. ORTIZ & MEGHAN M. STUESSY, CONG. RSCH. SERV., IF12395, LOGIN.GOV: ADMINISTRATION AND IDENTITY AUTHENTICATION (2023).

397. See *NemLog-in*, AGENCY FOR DIGIT. GOV’T, <https://en.digst.dk/systems/nemlog-in/> (last visited May 10, 2024) (demonstrating the Denmark government’s digital infrastructure with NemLog-in, providing seamless access to diverse services through a Single Sign-On (SSO) solution).

Brown, and Native individuals, leading to inaccuracies in identification.³⁹⁸

However, the benefits of employing Login.gov are much higher than any costs associated with not having the biometric tools. Having both federal and state agencies employ a wide array of differing identity tools creates enormous burden and confusion. Further, if states employ other tools, private entities do not have the same obligation to pay attention to equity concerns as does the federal government.³⁹⁹

One risk associated with any digital identification is exclusion if nondigital users have no other options. This is another area where Login.gov has a substantial advantage. Login.gov allows users to go to post offices to verify their identity if they do not wish to do it online.⁴⁰⁰

The actual value of Login.gov to users has not been estimated. This should be relatively easy for GSA to do by estimating the time value of logins across the number of users by the number of accounts used.⁴⁰¹ While the PRA mandates that the government track the amount of time users spend on interactions, it should also look for examples to quantify time savings, such as those offered by Login.gov.

b. Standardizing Definitions for Eligibility Processes

One key source of burden is varying definitions of particular eligibility components, such as income. For example, different agencies can count income differently, such as including or excluding specific components (e.g., child care or health care costs) or whether it is based on weekly or monthly income.⁴⁰² To the extent this varies across agencies, and even within agencies across programs, it creates confusion and complexity for beneficiaries, and it also reduces the ability to coordinate to reduce burdens.⁴⁰³ For

398. See *Identity Verification*, NAT'L EMP. L. PROJECT (Nov. 2023), <https://www.nelp.org/wp-content/uploads/ID-Verification-11-2023.pdf>; FIORENTINO ET AL., *supra* note 396.

399. See *generally Advancing Equity and Racial Justice Through the Federal Government*, WHITE HOUSE, <https://www.whitehouse.gov/equity/> (last visited May 10, 2024) (highlighting the Biden Administration's effort to combat inequity at the federal level).

400. *Verify Your Identity in Person*, U.S. GEN. SERVS. ADMIN., <https://www.login.gov/help/verify-your-identity/verify-your-identity-in-person/> (last visited May 10, 2024).

401. See *generally Reducing Fraud and Increasing Access Drives Record Adoption and Usage of Login.gov*, *supra* note 394 (noting statistics on Login.gov usage).

402. See *Frequently Asked Questions Related to the Poverty Guidelines and Poverty*, U.S. DEP'T HEALTH & HUM. SERVS., <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/frequently-asked-questions-related-poverty-guidelines-poverty> (last visited May 10, 2024).

403. See Justin Schweitzer, Emily DiMatteo, Nick Buffie & Mia Ives-Rublee, *How*

agencies to work at synchronizing these kinds of definitions, GCs must be involved in systematically reviewing statutes to see where they have and do not have flexibility.

One example of success in this domain was through regulations related to the Housing Opportunity Through Modernization Act of 2016 (HOTMA).⁴⁰⁴ HUD regulations implementing HOTMA aim to allow more flexibility with data-sharing through upgraded definitions of income and other eligibility criteria.⁴⁰⁵ Through its work to integrate overlapping programs, HUD is streamlining eligibility determinations for specific rental assistance programs.

Specifically, the new rules will: [o]nly require each adult household member to sign a consent form one time, instead of annually[;] [e]nable PHAs [Public Housing Agencies]/owners to use income determinations made under other federal benefit programs, which will eliminate redundant work[;] [s]implify income deductions and allow families to self-certify assets up to \$50,000[;] [and r]educe the frequency of interim income recertifications.⁴⁰⁶

c. Common Forms and Shared Platforms

The extent to which agencies have shared platforms can also reduce burdens for the public. If all agencies, for example, employ the same identity verification platform, this substantially reduces learning and compliance costs for the public. Another example is the use of Healthcare.gov, a single-entry portal that determines whether one is eligible for subsidies to provide private health insurance and whether or not one is eligible for Medicaid.⁴⁰⁷ Statutory guidelines also allow for it to assess eligibility for programs like SNAP.⁴⁰⁸ Indeed, some state exchanges allow for applications for SNAP

Dehumanizing Administrative Burdens Harm Disabled People, CTR. FOR AM. PROGRESS (Dec. 5, 2022), <https://www.americanprogress.org/article/how-dehumanizing-administrative-burdens-harm-disabled-people/> (discussing the difficulty for individuals to navigate government benefits).

404. See Housing Opportunity Through Modernization Act of 2016, Pub. L. No. 114-201, 130 Stat. 782.

405. Housing Opportunity Through Modernization Act of 2016: Implementation of Sections 102, 103, and 104, 88 Fed. Reg. 9,600, 9,600–76 (Feb. 14, 2023).

406. *HOTMA Income and Assets Final Rule: Questions and Answers for PIH Stakeholders*, U.S. DEP'T OF HOUS. & URB. DEV. 2, <https://www.hud.gov/sites/dfiles/PIH/images/PIH%20HOTMA%20QA.pdf> (last visited May 10, 2024).

407. *Healthcare.Gov*, U.S. CTRS. FOR MEDICARE & MEDICAID SERVS., <https://www.healthcare.gov> (last visited May 10, 2024) (showing healthcare.gov as a one stop shop for all things healthcare).

408. See RANDY A. AUSSENBURG & GENE FALK, CONG. RSCH. SERV., R42505, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP): A PRIMER ON ELIGIBILITY AND

within their state-run health care exchanges.⁴⁰⁹ A previous ACUS recommendation noted that more common forms between agencies could also lessen PRA clearance hurdles.⁴¹⁰

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

Legal aid organizations have deep experience and understanding of the challenges that historically underserved people face in accessing government services and benefits. And indeed, legal aid organizations provided comments in response to the Request for Information from ACUS as part of this project's research strategy.⁴¹¹ These comments focused mainly on Social Security and SSI benefits, with some overlap with SNAP, TANF, and Medicaid benefits. A few legal services organizations also focused on taxpayer programs and unemployment insurance.

The comments received from legal services providers provide insight into the nature of challenges experienced by members of the public when attempting to access these vital benefits.⁴¹² These challenges can be sorted into the following buckets: communication barriers, technological barriers, burdensome procedures, and substantive hurdles.⁴¹³

Many commenters expressed frustration at extremely long wait times and failure to receive return phone calls after leaving messages.⁴¹⁴ Mail and fax

BENEFITS (2023), <https://crsreports.congress.gov/product/pdf/R/R42505> (providing an overview of the rules governing SNAP eligibility); *Unwinding Watch: Tracking Medicaid Coverage as Pandemic Protections End*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 29, 2024), <https://www.cbpp.org/research/health/unwinding-watch-tracking-medicaid-coverage-as-pandemic-protections-end?item=28690>.

409. See FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: STATE OPTIONS REPORT (15th ed. 2023), <https://fns-prod.azureedge.us/sites/default/files/resource-files/snap-15th-state-options-report-october23.pdf>.

410. See ACUS Recommendation 2018-1, Paperwork Reduction Act Efficiencies, 83 Fed. Reg. 30,683, 30,685 (June 29, 2018).

411. ACUS received twenty comments in response to its Request for Information; roughly half of these came from direct service providers. *Identifying and Reducing Burdens in Administrative Processes*, *supra* note 9.

412. See, e.g., Letter from Legal Aid Found. of L.A., to Admin. Conf. of the U.S. (Apr. 17, 2023), <https://www.acus.gov/sites/default/files/documents/Identifying%20and%20Reducing%20Burdens%20in%20Administrative%20Processes%20Comment%20from%20Legal%20Aid%20Foundation%20of%20Los%20Angeles%202023.04.17.pdf> (highlighting the numerous administrative burdens and barriers to participating in SSA adjudicatory proceedings.).

413. See *Projects*, ADMIN. CONF. OF THE U.S., <https://www.acus.gov/research-projects> (last visited May 10, 2024) (showing public comments from legal service providers).

414. See, e.g., Letter from Legal Aid Found. of L.A., to Admin. Conf. of the U.S., *supra*

communications are often lost.⁴¹⁵ Even when mail is a viable option, many people lack reliable mailing addresses and thus can miss communications or deadlines.⁴¹⁶ Internet options vary and can create more burdens regarding account creation and identity verification procedures.⁴¹⁷ There were also repeated themes that plain language and language access are not being used throughout systems, particularly where there are federal and state partnerships.⁴¹⁸ Finally, comments highlighted the need for uniformity of policy and accountability across field offices.⁴¹⁹

Additionally, legal aid providers were especially attuned to the differences between navigating these processes with and without representation.⁴²⁰ Burdens exist in both situations, but the cumulative burdens experienced without legal representation can be overwhelming to the point of forgoing benefits rightly entitled.⁴²¹ In other cases, errors exacerbated through lack of assistance can result in benefits being wrongly denied.⁴²²

Specific examples of the challenges added by lack of representation include inaccessibility to claimants' files, confusion about various forms and their purposes, and missing evidence in the first instance, which can cause an incomplete record that follows a claimant throughout the application process and any subsequent appeals.⁴²³ Disability benefits determinations have long

note 412.

415. *See, e.g.*, Letter from Homeless Action Ctr., to Admin. Conf. of the U.S. (Apr. 14, 2023), <https://www.acus.gov/sites/default/files/documents/Identifying%20and%20Reducing%20Burdens%20in%20Administrative%20Processes%20Comment%20from%20Homeless%20Action%20Center%202023.04.14.pdf>.

416. *See, e.g.*, Letter from Bay Area Legal Aid to Admin. Conf. of the U.S. (Apr. 17, 2023), <https://www.acus.gov/sites/default/files/documents/Identifying%20and%20Reducing%20Burdens%20in%20Administrative%20Processes%20Comment%20from%20Bay%20Area%20Legal%20Aid%202023.04.17.pdf>.

417. *See, e.g.*, Letter from Homeless Action Ctr. to Admin. Conf. of the U.S., *supra* note 415.

418. *See Comments for ACUS: Identifying and Reducing Burdens in Administrative Processes*, NAVA PUB. BENEFIT CORP. (Apr. 17, 2023), <https://www.acus.gov/sites/default/files/documents/Identifying%20and%20Reducing%20Burdens%20in%20Administrative%20Processes%20Comment%20from%20Nava%20PBC%202023.04.17.pdf>.

419. *See id.*

420. *See, e.g.*, Letter from Se. La. Legal Servs. to Admin. Conf. of the U.S. (Apr. 15, 2023), <https://www.acus.gov/sites/default/files/documents/Identifying%20and%20Reducing%20Burdens%20in%20Administrative%20Processes%20Comment%20from%20Southeast%20Louisiana%20Legal%20Services%202023.04.15.pdf>.

421. *See id.*

422. *See id.*

423. *See, e.g.*, Letter from Legal Aid Soc'y of Mid-N.Y., Inc. to Admin. Conf. of the U.S. (Apr. 14, 2023), <https://www.acus.gov/sites/default/files/documents/Identifying%20and%20Reducing%20Burdens%20in%20Administrative%20Processes%20Comment%20from%20Legal%20Aid%20Soc%27y%20of%20Mid-N.Y.%20Inc.%202023.04.14.pdf>.

suffered from problems with consistency and accuracy.⁴²⁴ Recent studies have shown that legal representation at these initial benefits eligibility decision stages produces better outcomes for people who need these benefits.⁴²⁵ A 2022 study by the National Bureau of Economic Research concluded that “legal representation in the initial stage leads to earlier disability awards to individuals who would otherwise be awarded benefits only on appeal. Furthermore, by securing earlier awards and discouraging unsupported appeals, representation reduces total case processing time by nearly one year.”⁴²⁶

However, there are not enough lawyers to assist people with accessing government services and benefits. Due to geography, income, or other restrictions and challenges, people may not have access to free or reduced-cost legal services.⁴²⁷ There are opportunities to expand available representation beyond the traditional lawyer model. For example, VA has an accredited representative program.⁴²⁸ The agency accredits VSO representatives to assist with benefits applications free of charge.⁴²⁹ DOJ has a similar accreditation program for expanding access to representation in immigration matters at USCIS, such as visa applications and Deferred Action for Childhood Arrivals (DACA) applications.⁴³⁰

Advocate ombuds in agencies can provide a similar service. According to a 2016 ACUS Report describing the duties of advocate ombuds: “Unlike other ombuds, the advocate ombuds is authorized, or required, to listen to individuals or groups found to be aggrieved. Due to the unique role, this ombuds must have a basic understanding of the nature and role of advocacy, and of legal statutes or regulations.”⁴³¹ Ombuds play various roles related to

20Reducing%20Burdens%20in%20Administrative%20Processes%20Comment%20from%20Legal%20Aid%20Society%20of%20Mid-New%20York%202023.04.14.pdf.

424. See ACUS Recommendation 2013-1, *Improving Consistency in Social Security Disability Adjudications*, 86 Fed. Reg. 36,075, 36,075–85 (June 8, 2021).

425. Hilary W. Hoynes, Nicole Maestas & Alexander Strand, *Legal Representation in Disability Claims* 2, 4–5 (Nat'l Bureau of Econ. Rsch., Working Paper No. 29,871, 2022).

426. *Id.* at 2.

427. Deborah L. Rhode, Kevin Eaton & Anna Porto, *Access to Justice Through Limited Legal Assistance*, 16 NW. J. HUM. RTS. 1, 2–3 (2018).

428. *Accredited Representatives*, U.S. DEP'T OF VETERANS AFFS. (Feb. 5, 2021), <https://www.benefits.va.gov/vso/>.

429. See *id.*

430. Representation of Others, 8 C.F.R. § 1292.1 (2017).

431. See Carole S. Houk, Mary P. Rowe, Deborah A. Katz, Neil H. Katz, Lauren Marx & Timothy Hedeon, ADMIN. CONF. OF THE U.S., *A Reappraisal—The Nature and Value of Ombudsmen in Federal Agencies* 38 (2016), https://www.acus.gov/sites/default/files/documents/PART%202_Research%20Final%20%2011.14.16%20%28ACUS%29.pdf (providing case studies of federal agency ombuds).

identifying and reducing burdens, as explained by survey results described in the ACUS report:

Ombuds were seen as providing value in assisting visitors to navigate a confusing government bureaucracy, and providing a bridge between concerns of individuals and offices of the government. Particularly noted was the value of the ombuds in providing a voice, and options for understanding and resolution, for populations that would otherwise be ignored or have limited options. Ombuds were credited in helping both internal and external visitors to receive guidance on information and resources, 'next steps' they might pursue, and coaching suggestions on conflict resolution strategies. Furthermore, ombuds who were interviewed believe they add value by 'humanizing' the federal government and helping others 'to find their own voice and resolve their own issues.'⁴³²

Even statutory notification expansions can increase access to representation and reduce administrative burdens felt by underrepresented populations. For example, the Taxpayer First Act specifically authorizes the Secretary of the Treasury to notify taxpayers about Low Income Taxpayer Clinics' geographic region.⁴³³

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

Current agency cost-benefit analyses do not typically incorporate the cost of burdens. According to GAO, agencies "did not consistently address key costs and benefits needed to assess the value of their computer matching programs," including administrative benefits.⁴³⁴ And OMB guidance on cost-benefit analysis regarding computer matching programs is extremely general and outdated.⁴³⁵

More broadly, many agencies do not consistently and clearly document the costs and benefits of policy changes and procedures in terms of burdens. This can hamper the ability of lawyers to assess how they interpret proposed changes to reduce burdens accurately. For example, it hampers their ability to interpret statutes that guide data-sharing if they cannot sufficiently account for costs (and benefits) of procedures employed to reduce administrative burdens. For example, many data-sharing agreements across agencies are supposed to balance 'benefits and costs' regarding what data is shared and how it is done, including privacy.⁴³⁶ If agencies are not clearly detailing all the benefits, such as increased access to benefits, they may outweigh costs in

432. *Id.* at 75.

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

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

435. *Id.* at 12.

436. OMB M-01-05, *supra* note 15.

terms of privacy when making a recommendation.

On a related but slightly different note, sometimes the requirement for cost-benefit analysis that agencies impose on subentities delivering public services impedes the delivery of those services. In acknowledgment of this fact, DHS recently altered cost-benefit requirements for its community grants program.⁴³⁷ DHS provides community grants to many small agencies and organizations.⁴³⁸ Through the Federal Emergency Management Agency (FEMA), DHS has recently taken steps to make it easier for underrepresented communities to submit successful flood mitigation grant applications. This initiative allows for more technical assistance for grant applications and softens the required benefit-cost ratio.⁴³⁹ FEMA updated its benefit-cost analysis toolkit to allow for alternative pathways for certain communities to satisfy “cost-effectiveness” in situations where there are “significant benefits that are difficult to quantify.”⁴⁴⁰

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

Existing statutory requirements do provide challenges for data-sharing. There are generally applicable legal requirements through the Privacy Act and agency-specific requirements for certain types of data (e.g., federal tax information) and certain populations (e.g., veterans).⁴⁴¹ There are also specific requirements for different types of benefits, different types of data, and varying procedural requirements, such as whether cost-benefit analysis and consent are needed for the specific sharing program. Many of these original data-sharing statutes were written before digital data and analytics were common. Still, Congress has sometimes amended standards to accommodate

437. See Memorandum from Gerilee W. Bennett, Deputy Dir., Hazard Mitigation Assistance Div., for Applicants, Bldg. Resilient Infrastructure & Cmty. (BRIC) and Flood Mitigation Assistance (FMA) Grant Program 1–2 (Oct. 6, 2022) [hereinafter Memo, Deputy Dir. Bennett], https://www.fema.gov/sites/default/files/documents/fema_alternative-cost-effectiveness-methodology_102022.pdf.

438. See *DHS Grants*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/dhs-grants> (Nov. 6, 2023) (“The Department of Homeland Security (DHS) provides grants to state, local, tribal, and territorial jurisdictions that can be used for training, exercises, planning, personnel, and equipment to prepare for many threats and hazards.”).

439. See Memo, Deputy Dir. Bennett, *supra* note 437, at 1–3.

440. *Id.* at 4.

441. See *Overview of the Privacy Act: 2020 Edition*, OFF. OF PRIV. & C.L., U.S. DEP’T OF JUST. (Dec. 15, 2022), <https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/disclosures-third-parties> (“The general rule under the Privacy Act is that an agency cannot disclose a record contained in a system of records unless the individual to whom the record pertains gives prior written consent to the disclosure.”).

specific data-sharing between agencies to reduce burdens.⁴⁴² For example, amendments allowed the IRS to share data in the context of the Health Care Exchanges, documenting eligibility for subsidies to buy health insurance and determining eligibility for both Medicaid and SNAP.⁴⁴³

So, while there are plenty of opportunities for data-sharing to reduce burdens, the layers of legal and regulatory steps can make data-sharing an onerous process. And agencies lack the capacity to prioritize this type of process without clear benefits. Trust between agencies is key. As one agency official explained it: “There’s always a level of skepticism. We [are] going to share our data, what are you going to use our data for? And everyone wants to take data but not give.”⁴⁴⁴

More recently, agencies have been actively coordinating with each other to better share data in the context of new guidance in the CX EO.⁴⁴⁵ For example, USDA is coordinating with HHS to streamline the certification process for eligible participants in WIC.⁴⁴⁶ The goal is to improve participation in the WIC program by sharing data across programs for which beneficiaries are eligible, to engage in burden reduction through targeted outreach, automatic enrollment, simplification of documentation requirements, and including WIC in other benefit applications.⁴⁴⁷

Sharing data between federal agencies can drastically improve people’s outcomes. A GAO report found that former students entitled to student loan forgiveness due to disability status often lost the benefit due to paperwork.⁴⁴⁸ A striking 98% who lost the benefit did so not because they were ineligible but because they failed to provide an annual income verification form.⁴⁴⁹ SSA and the Department of Education worked together to develop a data-sharing program that allowed the Department of Education to discharge student loan debt for those with permanent disabilities automatically.⁴⁵⁰ This action immediately led to over 323,000 individuals having discharged nearly

442. Interview with Internal Revenue Serv. (Jan. 25, 2023) (on file with authors).

443. *Id.*

444. *Id.*

445. The Interagency Working Group is a key player here.

446. Memorandum from Sara Olson, Dir., Pol’y Div., SNAP, U.S. Dep’t of Agric., to Regional Dirs., Special Nutrition Programs 1, 3 (Apr. 25, 2023), <https://fns-prod.az-ureedge.us/sites/default/files/resource-files/WPM-2023-5-DataSharing.pdf>.

447. *See id.* at 1, 3.

448. *See* U.S. GOV’T ACCOUNTABILITY OFF., GAO-17-45, SOCIAL SECURITY OFFSETS: IMPROVEMENTS TO PROGRAM DESIGN COULD BETTER ASSIST OLDER STUDENT LOAN BORROWERS WITH OBTAINING PERMITTED RELIEF 34–35 (2016).

449. *Id.* at 35.

450. *See* *Over 323,000 Federal Student Loan Borrowers to Receive \$5.8 Billion*, *supra* note 294.

six billion dollars in student loan debt.⁴⁵¹

Even so, generating a computer matching agreement to enable federal agencies to share data to reduce burdens is difficult. Further, certain agency-specific statutes make it even more challenging. The IRS, in particular, faces strict statutory requirements regarding what data it can share.⁴⁵² Section 6103 of the Internal Revenue Code governs all aspects of data-sharing, most of which relate to collection and other enforcement activities.⁴⁵³ A small subsection governs the kind of data-sharing we are discussing here, where two or more agencies share data to reduce burdens on beneficiaries by shifting some of that burden back to the government regarding streamlining notification of eligibility, identity verification, or other data request on the beneficiary.⁴⁵⁴ Statutory amendments have authorized such data-sharing structure to include state tax agencies, VA, SSA (to estimate Social Security benefits and Medicare premium subsidies), and the Centers for Medicare & Medicaid Services (CMS) (to determine advance premium credits for the health insurance marketplace).⁴⁵⁵

The challenges of the mandate are further enhanced by an agency culture that prioritizes privacy as a dominant agency goal. In short, the IRS has long believed that if the public does not trust their confidential data, they will be far less likely to pay their taxes.⁴⁵⁶ But trust is not only about safeguarding privacy. Reducing burdens and improving outcomes also generates people's trust in the agency.⁴⁵⁷ Recalibrating the privacy-trust-burden reduction scale

451. *Id.*

452. *See* 26 U.S.C. § 6103.

453. *See id.*

454. *See id.* § 6103(l)(7)(C).

455. *See id.*

456. Interview with the Internal Revenue Serv. (Dec. 15, 2022) (on file with authors); *see* TAXPAYER ADVOCATE SERV., INTERNAL REVENUE SERV., 2012 ANNUAL REPORT TO CONGRESS 16 n.51 (2012) (“[T]he IRS in some cases already has access to all the financial or other data required to determine eligibility for a benefit. If another agency were tasked with administering the benefit, the beneficiary would be required to submit the information twice (once to the IRS and once to another agency) or the IRS would be directed to share confidential tax return information, which would impose administrative burden on two agencies and could undermine future tax compliance.”).

457. *See* Exec. Order, 14,058, 86 Fed. Reg. 71,357, 71,362–63 (Dec. 16, 2021); *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government: Progress on Agency Commitments in EO 14,058*, PERFORMANCE.GOV (Dec. 2023) [hereinafter *Transforming Federal Customer Experience and Service Delivery*], <https://www.performance.gov/cx/executive-order/>; Schweitzer, *supra* note 6 (“[W]hen individuals experience significant burdens when trying to access aid, it decreases their trust in the government to solve problems and provide meaningful assistance”); Sha Hwang & Annelies Goger, *Want to Restore Trust in Government? Start with*

requires the type of cultural shift discussed elsewhere in this Article.⁴⁵⁸ While the public clearly values privacy, it is also the case that Americans value simple and straightforward access to benefits and services for which they are eligible. While access to income data from the IRS for debt collection agencies would likely seriously undermine public trust in the agency,⁴⁵⁹ data-sharing with the Department of Education to automatically discharge thousands of dollars in debt would likely do the exact opposite.

However, not all data is collected or stored in a useful way to other agencies' programmatic needs. Some misperceptions along these lines exist about IRS data. For example, IRS data does not include specific employment data, nor is it in real-time. As one IRS official noted: "What we have is data that is reported on your tax return. When other eligibility programs align or overlap, it works great. Where it doesn't, it doesn't."⁴⁶⁰

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

The default is structured by legal prohibitions and agency officials' (sometimes mistaken) beliefs about whether a data-sharing program is legal and how onerous it will be to create the necessary data-sharing arrangements. We heard from more than one agency that data-sharing agreements can take a long time and need dedicated staff in both agencies to get over the finish line. Many staff believe, correctly in some cases, that their General Counsel will err on the side of not sharing data because they are unaware of the benefits of reducing burdens or because there are inconsistent metrics for analyzing the cost-to-benefit ratio for such an arrangement. General Counsels might argue that the agency is not allowed to expend funds on such collaborations, imposing another roadblock, even if the collaboration would clearly benefit members of the public. Staff believe that data-sharing arrangements will take months or years to structure and depend upon strong support from both sides of the arrangement and leadership support from within and beyond the agency. At times, agency officials might believe that a change in law is required. Under these circumstances, the gap between what is possible and what is being done is growing. Administrative data is a central tool in

Customer Experience, BROOKINGS (Jan. 12, 2022), <https://www.brookings.edu/articles/want-to-restore-trust-in-government-start-with-customer-experience/>.

458. See *supra* Parts IV.A, V.A.

459. See TAXPAYER ADVOCATE SERV., *supra* note 456.

460. Interview with Internal Revenue Serv. (Dec. 14, 2022) (on file with authors).

reducing administrative burdens that is being underutilized.

The Biden Administration gave the Director of OMB a stronger role in determining data-sharing approvals, particularly directing OMB to reconsider guidance and processes around how agencies collect and share data in the recent CX EO.⁴⁶¹ OMB can play a role here in providing clear and consistent guidance that addresses the various beliefs currently holding some burden reduction opportunities back.

VI. RECOMMENDATIONS

This Article will conclude with a series of draft recommendations for consideration by the Administrative Conference of the U.S. Office of the Chair. These recommendations are in addition to a general recommendation that Congress should revisit specific governing statutes in conjunction with each agency to consider possible amendments that could encourage or maximize burden reduction.

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

In Sections IV and V, we laid out a series of positive practices agencies have started to employ to reduce burdens.⁴⁶² While we draw on existing agency practices to make these recommendations, many of them are still new, and most agencies have significant work to do to embrace burden reduction. Key practices that all federal agencies that engage with the public should employ include: (1) agency leadership should prioritize burden reduction efforts; (2) agencies should center the public when they design processes; (3) agencies should have a devoted customer experience team with sufficient resources and authority to be effective; (4) agencies should simplify processes and provide support to help the public navigate burdens; (5) agencies should collaborate within and across agencies to maximize burden reduction; and (6) agencies should maximize data tools to reduce burdens.

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

While our Article has focused on new and existing legal authorities to identify and reduce burdens, it has also underlined the centrality of organizational norms and beliefs to embedding such actions within federal agencies. Organizational culture is amorphous, but understanding how it matters is

461. See Exec. Order 14,058, 86 Fed. Reg. 71,357, 71,362–63 (Dec. 16, 2021).

462. See *supra* Parts IV, V.

essential to reform efforts in government. There is no single lever, and the work is ongoing. The case of burden reduction requires organizational leaders who communicate their organizational mission in terms of helping the public and providing access to benefits and services that they need and value—and connecting burden reduction to such efforts. Such messages are attractive to employees since they tap into important motivational bases, such as a desire to help others and a sense of being part of a positive change.

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

1. Encourage General Counsels to Join Burden Reduction Efforts

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

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

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

2. Leverage Third Parties to Expand Representation

Agencies can continue process simplification efforts and expand their roles

in providing avenues for assistance for public beneficiaries, whether that be partnerships with legal aid, innovations and flexibilities with accrediting representatives, or establishing an advocate ombud's role within the agency to assist the public. Agencies can continue to build capacity for assistance through collaborations with the White House Legal Aid Interagency Roundtable.⁴⁶³

3. *Leverage Existing Federal Agencies to Expand Access*

In addition to contracting with third parties to build capacity, agencies can also leverage other government agencies to improve access. In some cases, this implies allowing for bricks-and-mortar access even as more services are transferred to a digital space. USPS is a particularly valuable partner given the extensiveness of its reach, the sheer number of physical locations, and the positive relationship it has with the public.⁴⁶⁴ It has long partnered with the Department of State to ease access to passports.⁴⁶⁵ More recently, it offers a site for individuals to provide in-person identity proofing for Login.gov.⁴⁶⁶ As a result, those who face problems with digital processes are not locked out of the system.⁴⁶⁷

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

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

New PRA guidance has pushed agencies to improve their measurement, moving beyond estimates of the time it took to complete forms to incorporate other types of compliance costs (such as pulling together documentation) and learning and psychological costs.⁴⁶⁸ Further, the CX EO pushes agencies to

463. See LEGAL AID INTERAGENCY ROUNDTABLE, *supra* note 50, at 12.

464. See Michael Pollard & Lois Davis, *The U.S. Post Office Is a Public Service, Not a Business*, NAT'L INT. (Apr. 5, 2021), <https://nationalinterest.org/feature/us-post-office-public-service-not-business-182032> (discussing how the public's trust of the USPS has increased in recent years).

465. See *About: Other Products and Services*, U.S. POSTAL SERV., https://about.usps.com/who-we-are/financials/annual-reports/fy2016/annual_report2016_tech_048.htm (last visited May 10, 2024).

466. See *USPS In-Person Identity Proofing*, U.S. POSTAL SERV. (Oct. 17, 2023), <https://faq.usps.com/s/article/USPS-In-Person-Identity-Proofing>.

467. See *id.* (explaining how the process works at USPS stores when online identity verification processes fail).

468. See OMB M-22-10, *supra* note 14, at 1–3; see also U.S. OFF. OF PERS. MGMT.,

embed their efforts into their performance reporting processes.⁴⁶⁹

However, there is no single, agreed-upon way to measure burdens. The closest alternative is a survey-based measure of customer experience shared in Circular A-11.⁴⁷⁰ More alternative measures that directly capture burdens would be useful. Some of these measures could be standardized and disseminated by OMB in venues like Circular A-11. There will certainly be cases where off-the-shelf measures are inappropriate, but some standardized measures could facilitate cross-agency learning. In other cases, having clear measures of client outcomes (e.g., access or level of treatment) could powerfully illustrate the effect of minimizing burdens, making burden reduction efforts more salient.

A response to this tension would be to generate the estimated value of time saved by burden reduction efforts. The idea of a relationship between burdens and money is reflected in the concept of the “time tax.”⁴⁷¹ While not all aspects of burdens can be easily translated into financial costs, the time spent on administrative processes can be converted into a financial metric by using the average value of wages as estimated by the Bureau of Labor Statistics.⁴⁷² “For example, generating direct electronic tax filing would impose initial costs on the IRS, but it is justified by significantly reducing the time that individuals would spend on preparing their tax returns.”⁴⁷³ But such efforts to measure the value of time are rare in government. Moreover, when they do assess time, it only captures part of the process (e.g., how long it takes to fill out a form but not the time spent gathering information and documentation needed to do so). As we note elsewhere, Login.gov significantly reduces the amount of time that individuals must spend interfacing with federal websites, but there has been no effort to measure the value of that time to justify the value of the tool.⁴⁷⁴

While there are various ways to measure burdens, and monetary estimates will inevitably be overly narrow, they can provide a tangible justification for why investments in reducing burdens are worth it. In the private sector, the

PAPERWORK REDUCTION ACT (PRA) GUIDE VERSION 2.0 1, 40 (2011).

469. See *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government*, Exec. Order No. 14,058, 86 Fed. Reg. 71,357, 71,362–63 (Dec. 13, 2021); *Transforming Federal Customer Experience and Service Delivery*, *supra* note 457.

470. OMB CIRCULAR A-11 (2023), *supra* note 17, at pt. 6, § 280.1.

471. See *id.*

472. See *Employment and Wages Data Viewer*, U.S. BUREAU OF LAB. STAT., https://data.bls.gov/cew/apps/data_views/data_views.htm#tab=Tables (Sept. 7, 2022).

473. See INTERNAL REVENUE SERV., PUBLICATION 5788, IRS REPORT TO CONGRESS 16–17, 19 (2023).

474. See *About Us*, LOGIN.GOV, <https://www.login.gov/about-us/> (last visited May 10, 2024) (explaining that Login.gov makes the process smoother).

value of tools like human-centered design is that they improve customer retention and, ultimately, profitability.⁴⁷⁵ Without equivalent metrics, the public sector needs tangible indicators of the value of burden reduction. Such an approach also draws upon the logic of cost-benefit analysis used for other aspects of government regulation of private activity.

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

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

One way to specifically help integrate burden into cost-benefit analysis is for OIRA to build on its existing strategies by articulating the relationship between cost-benefit analysis and burden reduction initiatives. Up to now, they have provided guidance on the PRA and Circular A-11, which helps agencies think about how to measure burdens.⁴⁷⁶ The next step is for OIRA to provide guidance to agencies on how to specifically integrate that into cost-benefit analyses to consider the impact of varying administrative requirements linked to eligibility, recertification, and benefit use. OIRA has recently finalized changes to Circular A-4, noting, “Regulations can also help government deliver services to more individuals at lower cost, such as by reducing administrative burdens or by simplifying public-facing or internal processes.”⁴⁷⁷ While there is disagreement about aspects of the proposed

475. See generally Dutch MacDonald, H.R. Shiever, Nancy Rekhelman, Rehaab Raza, Phil Gerrard & David Heacock, *Human-Centered Design Is More Important Than Ever*, BOS. CONSULTING GRP. (July 27, 2020), [https://www.bcg.com/publications/2020/the-importance-of-human-centered-design#:~:text=\(explaining the importance of human-centered design\)](https://www.bcg.com/publications/2020/the-importance-of-human-centered-design#:~:text=(explaining%20the%20importance%20of%20human-centered%20design)).

476. See TACKLING THE TIME TAX, *supra* note 149, at 5–9 (explaining the burden reduction goals in conjunction with the OIRA); OMB CIRCULAR A-11 (2023), *supra* note 17, at pt. 6 § 260.33.

477. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, CIRCULAR A-4,

Circular A-4, there seems to be broad consensus that burden reduction initiatives to improve public services are an important and underserved topic.⁴⁷⁸

E. Recommendations for OMB and Congress: Modernize Data-Sharing Guidance and Laws

For nearly all burden reduction efforts, especially ones that substantially reduce burdens, data-sharing within and across agencies is critical. The life experiences focusing on the CX EO inherently require cross-agency data-sharing. It shifts the lens from specific programs within specific agencies to people and their life experiences, which touch multiple agencies. For example, the EO identified burden reduction for low-income families with young children.⁴⁷⁹ These families need access to programs across multiple agencies, including housing support, health insurance, and nutrition assistance. A fundamental way to ease access across these programs is for those agencies to coordinate and share data so that individuals do not need to provide information or duplicative information the government already has to access benefits and services.

The Chief Data Officer Council has already proposed a series of data-sharing recommendations primarily directed to federal agencies.⁴⁸⁰ We concur with these recommendations, which include expediting data use agreements between agencies, improving awareness of data-sharing opportunities, and improving data trustworthiness.⁴⁸¹

We make two additional sets of recommendations to address this challenge. First, even under existing laws, we recommend ways to enhance and ease access to data-sharing. In particular, both OMB and General Counsels within agencies could provide clear guidance on effectively navigating existing statutory requirements. Second, we recommend ways to modernize

REGULATORY ANALYSIS 19 (2023); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, DRAFT CIRCULAR A-4, REGULATORY ANALYSIS 19 (2023) (draft for public review).

478. See, e.g., Clyde Wayne Crews Jr., *Congress Should Halt OMB's Rewrite of Circular A-4 Guidance on Regulatory Cost-Benefit Analysis*, FORBES (May 16, 2023, 12:15 PM), <https://www.forbes.com/sites/waynecrews/2023/05/16/congress-should-halt-ombs-rewrite-of-circular-a-4-guidance-on-regulatory-cost-benefit-analysis/?sh=5fc4ef9d5bac> (explaining some problems some people have with portions of the proposed aspects).

479. Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, Exec. Order No. 14,058, 86 Fed. Reg. 71,357, 71,359 (Dec. 16, 2021).

480. FED. CHIEF DATA OFFICER COUNCIL, DATA SHARING WORKING GROUP: FINDINGS & RECOMMENDATIONS 1 (2021), https://resources.data.gov/assets/documents/2021_DSWG_Recommendations_and_Findings_508.pdf.

481. *Id.* at 2.

data-sharing laws. In particular, Congress needs to reevaluate the traditional data-sharing structure created by the Privacy Act.

1. Recommendation for OMB: Working Within Existing Statutory Requirements

OMB could share positive models that help make the case for benefits and ways to interpret data-sharing benefits under statutory authority to de-risk the practice. Specifically, we recommend that OMB update its 2011 guidance document on interpreting the Privacy Act to include more positive initiatives and additional benefits captured by reducing burdens. Additionally, OMB could update and clarify specific elements that agencies can address in cost-benefit analysis, specifically when required for computer matching agreements under the Privacy Act. GAO made a similar recommendation in 2014.⁴⁸² Positive examples and clarity around cost-benefit analysis, as it pertains to data-sharing, could be used by agencies when drafting the required report to OMB for a data-sharing program, particularly the narrative section that asks the agency to “explain the basis on which the agency is justifying the matching program.”⁴⁸³

2. Recommendation for Congress: Modernize Data-Sharing Statutory Rules

There are a range of ways Congress can effectively build better data-sharing into statutory rules for burden reduction. Broadly, when designing a new benefit or altering existing benefits, Congress should actively consider how to ensure access to the benefit. One excellent recent example is the FUTURE Act, passed in 2019, which provided a statutory basis for a data exchange between the Department of Education and the IRS.⁴⁸⁴ This eased the implementation of programs like FAFSA, income-driven repayment plans, and total and permanent disability loan forgiveness.⁴⁸⁵

An ambitious statutory approach would be to amend the Privacy Act. For example, one possibility is to allow for data-sharing across agencies specifically for burden reduction for the public. A basic logic for this change would be to ensure that agencies can deliver on the statutory requirements for the

482. See, e.g., GOV'T ACCOUNTABILITY OFF., GAO-14-44, COMPUTER MATCHING ACT: OMB AND SELECTED AGENCIES NEED TO ENSURE CONSISTENT IMPLEMENTATION (2014) (detailing the highlights of U.S. Government Accountability Office's 2014 recommendations).

483. REGUL. INFO. SERV. CTR., ROCIS HOW TO GUIDE FOR AGENCY USERS OF THE PRIVACY MODULE 47 (2022).

484. Fostering Undergraduate Talent by Unlocking Resources for Education Act (FUTURE Act), Pub. L. No. 116-91, 133 Stat. 1189 (2019).

485. See FED. STUDENT AID, DATA SHARING FOR A BETTER CUSTOMER EXPERIENCE (2020), <https://studentaid.gov/sites/default/files/future-act-fact-sheet.pdf>.

programs they administer. Restrictions on data-sharing currently hamper agencies' ability to deliver on promised benefits effectively.⁴⁸⁶ Better measurement and documentation of burdens will help demonstrate the degree of the problem.

Advances in data analysis and technology have created new possibilities for data-sharing to reduce burdens. Such possibilities are not reflected in privacy frameworks, which remain focused on privacy risk without seeking to balance with potential data-sharing benefits. Those benefits are perhaps more apparent in the private sector, where consumers routinely agree to share information or have their information shared by other parties, such as employers, and data protection policies are much more permissive. One result is that private firms have filled the void, with credit rating companies such as Equifax selling personal data back to the government to verify eligibility.⁴⁸⁷

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

The PRA exists to reduce administrative burdens on the public. Tools of human-centered design have the same purpose. But historically, the two have been seen as in conflict. Agencies are asked to seek permission from OIRA if they are seeking the same information from ten or more people in a twelve months, which may trigger lengthy public comment.⁴⁸⁸ If simple user research triggers a multi-month administrative process, it will significantly delay the collection and deployment of insights. This might include much user research, such as user surveys or focus groups. It is not that agencies cannot do such research, but they have to seek permission to do so. And permission breeds delay and discourages such requests in the first place.

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

OIRA has also established a clearer process for collecting information

486. See Ron Schmelzer, *Data Sharing in the Federal Government Still a Challenge—Interview With Taka Ariga*, GAO, FORBES (Sept. 1, 2023, 12:53 PM), <https://www.forbes.com/sites/cognitive-world/2023/09/01/data-sharing-in-the-federal-government-still-a-challengeinterview-with-taka-ariga-gao/?sh=f5a2ff6670566> (describing difficulties with sharing data within agencies).

487. See *Equifax Privacy Statement*, EQUIFAX, <https://www.equifax.com/privacy/privacy-statement/#EquifaxWorkforceSolutions> (Sept. 2024) (explaining that Equifax collects and stores personal data in conjunction with use of its services).

488. See 5 C.F.R. § 1320.7(s) (1995).

quickly while conforming with the PRA. This occurs via “generic clearance” for a mode of data collection that uses similar methods over time.⁴⁸⁹ The initial plan is subject to full review, including notice-and-comment, but it requires only OMB approval after that approval. Examples of such modes of data collection include “customer service surveys, focus groups, semi-structured interviews, and pre-testing alternative versions of forms.”⁴⁹⁰ Once generic clearance has been approved, agencies can submit more specific requests that fall under the generic tools identified under a “fast-track” process, which requires minimal paperwork and where the requests are assumed approved if OMB does not respond within five days.⁴⁹¹

This process creates a pathway to develop timely and responsive user research. The approved generic clearance tools are relatively broad, giving agencies flexibility with specific applications, e.g., different types of user surveys. OIRA has been working to increase awareness and use of generic clearance processes and providing draft materials to agencies to facilitate approval.⁴⁹² But the current process still requires agencies to develop generic clearance tools first, ensure that staff are aware of and use those tools, and seek confirmation of the application of generic clearance.⁴⁹³ Such steps can create informal misunderstandings within agencies that the user research just cannot be done in many cases.

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

489. OMB M-22-10, *supra* note 14, at 6–7; *A Guide to the Paperwork Reduction Act: Do I Need Clearance?*, DIGITAL.GOV, <https://pra.digital.gov/do-i-need-clearance/#:~:text=> (last visited May 10, 2024).

490. Don Moynihan & Pamela Herd, *Transforming the Paperwork Reduction Act to Tackle Administrative Burden*, CAN WE STILL GOVERN? (Apr. 26, 2022), <https://donmoynihan.substack.com/p/transforming-the-paperwork-reduction>.

491. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-11-16, *New Fast-Track Process for Collecting Service Delivery Feedback Under the Paperwork Reduction Act 1* (2011).

492. *See* OMB M-22-10, *supra* note 14, at 6–7.

493. Memorandum from Howard Shelanski, Adm’r, Off. of Info. & Regul. Affs., *Flexibilities to Heads of Exec. Dep’t & Agencies & Indep. Regul. Agencies, Flexibilities Under the Paperwork Reduction Act for Compliance with Information Collection Requirements 2* (July 22, 2016), https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/praflexibilities_memo_7_22_16_finalII.pdf.

be that an agency spends more time on user experience research but less time seeking permission to do so.

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

Since the PRA's goal is to reduce burdens, Congress could provide a general exemption for user research intended to reduce burdens, or structure reporting to be *ex post* rather than *ex ante*.⁴⁹⁴

CONCLUSION

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

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

494. See PRA of 1995, 44 U.S.C. § 3501(1)–(2).