

DEATH AND PAPERWORK REDUCTION

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ABSTRACT

How does government value people’s time? Often the valuation is implicit, even mysterious. But in patches of the federal administrative state, paperwork burdens are quantified in hours and often monetized. When agencies do monetize, they look to how the labor market values the time of the people faced with paperwork. The result is that some people’s time is valued over ten times more than other people’s time. In contrast, when agencies monetize the value of statistical life for cost-benefit analysis, they look to how people faced with a risk of death subjectively value its reduction. In practice, agencies assign the same value to every statistical life saved by a given policy.

This Article establishes these patterns of agency behavior and suggests that there is no satisfying justification for them. Welfarist and egalitarian principles, along with the logic of statistical life valuation, lean against the use of market wages to monetize a person’s time doing government paperwork. The impact of this practice might be limited, given the modest ambition of today’s paperwork reduction efforts. But time-related burdens—and benefits—are key consequences of government decisions in countless contexts. If we want to scale up a thoughtful process for valuing people’s time in the future, we will need new foundations.

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INTRODUCTION

In an odd corner of the federal government at this moment, a mid-level agency official is busy making educated guesses about how much time a particular government initiative will cost. Not how much money people will pay, but how much time they will spend, in units of hours. Sometimes lots of hours. The Internal Revenue Service (IRS) estimated that individual taxpayers would spend 1.9 billion hours preparing their federal tax returns in 2015.¹ The Office of Information and Regulatory Affairs (OIRA) reports that annual federal paperwork burdens exceed 9.4 billion hours, all told,² which amounts to a full workweek of time for each adult in the United States if the burden were spread evenly.³ In fact, as shown below, numerous federal officials are now obligated to estimate how many hours of our lives will be devoted to following the law or to showing that we deserve the law’s entitlements, benefits, and exemptions.

1. See Proposed Collection; Comment Request for Form 1040, 79 Fed. Reg. 24,498, 24,499 tbls. 1–2 (Apr. 30, 2014).

2. OFFICE OF INFO. & REGULATORY AFFAIRS, EXEC. OFFICE OF THE PRESIDENT, INFORMATION COLLECTION BUDGET OF THE UNITED STATES GOVERNMENT 3 (2014) [hereinafter 2014 OIRA REPORT], http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/icb_2014.pdf [<http://perma.cc/SJP3-3ENL>] (regarding FY2013).

3. About 39 hours: 9.4 billion hours for FY2013 divided by the estimated 2013 population of people age 18 and over (76.7 percent of the total population of 316,128,839, or 242,470,820 adults). See *State and County Quickfacts Beta Table*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/00000.html> [<http://perma.cc/M9QL-9GPC>]; see also *American Time Use Survey—2013 Results*, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/news.release/atus.nr0.htm> [<http://perma.cc/7DYL-Q4MG>] (reporting that “[e]mployed persons worked an average of 7.6 hours on the days they worked”).

But government efforts at time quantification are neither comprehensive nor uniform. These efforts occur only in segments of the bureaucracy with respect to slices of policy effects. For instance, paperwork associated with litigation is excluded from OIRA's time count,⁴ and time spent commuting or waiting around seems to be left out as well.⁵ Moreover, quantification methods are not standardized despite White House oversight. Sometimes agencies count hours without converting those time burdens into dollar costs.⁶ When agencies do translate hours into dollars, the monetized costs typically depend on how the labor market values the time of those who will do the paperwork and not on a universal figure for everyone. The resulting variance is remarkable: by using hourly wages to value time spent doing paperwork, some people's time gets counted as over *ten times* more valuable than other people's time.⁷ New data, introduced below, shows this. A society concerned with inequality should not ignore it.

In some ways, death is different. Leading federal agencies make well-known, routinized efforts to quantify the value of human life—more precisely, the value people assign to reducing small risks of death. This value comes in dollars, not hours. Indeed, Office of Management and Budget (OMB) guidance for cost-benefit analysis (CBA) has long recommended monetizing a value for the number of statistical lives saved by proposed regulations.⁸ But this dollar value is not based on hourly wages; and each agency assigns the same value to each statistical life saved by a given risk-reducing policy. The global number is now \$9.2 million at the Department of Transportation, for example.⁹ By converting the benefit of statistical lives saved into

4. See *infra* note 32 and accompanying text.

5. For instances of an agency including commuting time in an information collection request, see *infra* note 111.

6. See *infra* notes 116–19, Figure 1, Figure 2, and accompanying text.

7. See *infra* notes 121–24, Figure 3, and accompanying text.

8. See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, CIRCULAR NO. A-4, REGULATORY ANALYSIS 30 (2003) [hereinafter CIRCULAR NO. A-4], http://www.whitehouse.gov/omb/circulars_a004_a-4 [<http://perma.cc/B5A6-J533>] (“A substantial majority of the resulting estimates of [value of statistical life (VSL)] vary from roughly \$1 million to \$10 million per statistical life. . . . You should consider providing estimates of both VSL and [value of a statistical life year], while recognizing the developing state of knowledge in this area.”).

9. See U.S. DEP'T OF TRANSP., GUIDANCE ON TREATMENT OF THE ECONOMIC VALUE OF A STATISTICAL LIFE 1, 3 (2014), http://www.dot.gov/sites/dot.gov/files/docs/VSL_Guidance_2014.pdf [<http://perma.cc/72WT-RKA2>] (noting a policy against estimating a different value of statistical life (VSL) for subgroups, and stating that analysts should calculate high/low estimates using \$13.0/\$5.2 million); James K. Hammitt & Lisa A. Robinson, *The Income Elasticity of the*

dollars, officials can easily compare projected regulatory costs, which usually come in dollars.

When officials estimate the number of hours expended without converting those units of time into dollars, however, there is no obvious way to integrate those time estimates into an overall evaluation of the proposal. Of course it is possible to conclude that a person's dollars and time are incommensurable—and so too for life, limbs, liberty, and other things. It is also possible to conclude that a person's dollars, time, life, and so on are all sufficiently commensurable for purposes of policymaking, by converting each to the same metric of value—dollars, happiness, or whatever. Our government adopts neither of these positions. Instead, the administrative state is basically determined to convert risks to people's lives, but not always losses of their time, into dollars; and when government does convert our time into dollars, our wages are used to produce large disparities in valuation.

In this Article, I establish these patterns and then suggest that there is no satisfying reason for them. My point of departure is the Paperwork Reduction Act,¹⁰ which surely has had an effect on federal agency practice. Untold numbers of information collections are prevented by the Act's own paperwork demands, and we can hope that many of these foregone collections were not worthwhile. In some respects, however, the statute has been a miserable failure. The Act offered tall talk and weird numerical benchmarks for reducing a subset of all time-related burdens. Neither careful cost-benefit analysis nor much scholarly attention followed.¹¹ In fact, even if the

Value per Statistical Life: Transferring Estimates Between High and Low Income Populations, 2 J. BENEFIT-COST ANALYSIS 1, 6–7 (2011) (explaining that federal agencies do not use different VSL for different subpopulations, but do adjust VSL over time based on real income changes for the overall population). Agencies have not fully converged on their VSLs but there is a bounded range. See ENV'TL PROT. AGENCY, GUIDELINES FOR PREPARING ECONOMIC ANALYSES B-1 to B-2 (2010) (recommending \$7.4 million in 2006 dollars based on surveys and wage-risk data); CURTIS W. COPELAND, CONG. RESEARCH SERV., HOW AGENCIES MONETIZE “STATISTICAL LIVES” EXPECTED TO BE SAVED BY REGULATIONS 10–17 (2010); Hammitt & Robinson, *supra*, at 4 (“Most U.S. agencies use central values . . . between about \$5 million and \$8 million when expressed in 2007 dollars.”). Agency reporting of the value of a statistical life year (VSLY) and quality-adjusted life years (QALY) complicates matters, but begins to link lives saved to time lost. See *infra* Part III.A.

10. Paperwork Reduction Act, 44 U.S.C. §§ 3501–3521 (2012 & Supp. I 2014).

11. What passes as the academically alluring part of the Act involves OIRA and its role in cost-benefit analysis (CBA), which is directed by executive orders. See 44 U.S.C. § 3503(a) (2012) (establishing OIRA within OMB); Exec. Order No. 13,563 § 6(b), 3 C.F.R. 215, 217 (2012) (regarding CBA); Exec. Order No. 12,866 § 6(b), 3 C.F.R. 638, 646–48 (1994) (same);

Act's fight-paperwork-with-paperwork strategy is effective, the very mission of paperwork reduction might look passé. We live in a digital world of big-data analytics, crowdsourcing, and high-tech surveillance—new tools for information collection beyond old school routines of bureaucrats posing one-way questions on photocopied forms.¹²

So the Act might be a failure, but it is a provocative failure. It implicates foundational questions for government, which needs reliable information to function well and yet must value people's time appropriately to deserve their respect. Understanding the Act's shortfalls can inspire us to better measure and evaluate time-related burdens in a wider range of settings, or at least to wonder whether, why, where, and how government cares about our time.

Part I examines the law of federal paperwork, explaining the structure and standards for approving information collection requests. Part II investigates agency practices and presents data on how agencies actually quantify individual time burdens. Part III is normative. It links the goals of saving lives and saving time, and suggests that monetizing people's time using wage rates is unattractive from social welfarist and egalitarian perspectives. There is room for disagreement over the best way forward, the notion of civic duty will come into play for some burdens,¹³ and time burdens faced by organizations are special.¹⁴ But today's practices should draw few cheers. Time-related burdens—and benefits—are key

cf. Cass R. Sunstein, *The Office of Information and Regulatory Affairs: Myths and Realities*, 126 HARV. L. REV. 1838, 1840 nn.1–2 (2013) (noting scholarship on CBA but generalizing that OIRA is an “information aggregator”).

On the Act generally, see William F. Funk, *The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law*, 24 HARV. J. LEGIS. 1 (1987) (offering background from the 1940s to the 1980s); Andrew L. Levy, *The Paperwork Reduction Act of 1980: Unnecessary Burdens and Unrealized Efficiency*, 14 J.L. & COM. 99, 113, 115–20 (1994) (complaining that agencies violate the Act and recommending assertive judicial review); Jeffrey S. Lubbers, *Paperwork Redux: The (Stronger) Paperwork Reduction Act of 1995*, 49 ADMIN. L. REV. 111 (1997) (explaining the new statute). On the situation in Europe, see Jonathan B. Wiener, *Better Regulation in Europe*, 59 CURRENT LEGAL PROBS. 447, 447–49, 498–501 (2006). An ambitious effort to think about administrative burdens within ordinary households is Elizabeth F. Emens, *Admin*, 103 GEO. L.J. 1409, 1464 (2015).

12. On the transition away from direct questions, see Adam M. Samaha & Lior J. Strahilevitz, *Don't Ask, Must Tell—And Other Combinations*, 103 CALIF. L. REV. 919, 919, 922, 975–80 (2015). The Paperwork Reduction Act and OIRA do encourage electronic filings and dissemination, by the way. See *infra* notes 24 & 48.

13. See *infra* Part III.B.1.c.

14. See *infra* notes 232–35 and accompanying text.

consequences of government policies in countless contexts. If we want to scale up a thoughtful process for valuing people's time in the future, we will need new foundations.

I. PAPERWORK LAW

Modern government, like any institution, requires information. Data is a cause and a product of institutional capacity. Hence government officials ask questions or otherwise collect data to enforce legal norms that people would otherwise ignore, to allocate benefits that people desperately need, and to confirm eligibility for regulatory exemptions that people deserve. But of course these efforts cost somebody something. Resistance to bureaucratic “red tape” and “wasted time” accompany government's information-collection efforts. The New Deal illustrated the conflict. Fighting a global depression and a world war triggered major increases in federal information collection, not just regulation and conscription.¹⁵ Those increases were followed by administrative and legislative initiatives to moderate the burden and target the government's collection efforts.¹⁶ The federal government's “appetite for data” was never “insatiable,” as the Supreme Court once suggested,¹⁷ but information collection does cost us. An effort to regulate government data collections, and make them sensitive to those costs, is entirely logical.¹⁸

15. See Funk, *supra* note 11, at 7–8 (discussing the backdrop against which action was taken).

16. For more history, see U.S. COMM'N ON FED. PAPERWORK, HISTORY OF PAPERWORK REFORM EFFORTS 1, 11–16, 24–25 (1977); Funk, *supra* note 11, at 7–70; Anne Marie Lyons, A Social History of Paperwork Reform Efforts 11–13 (Dec. 2004) (unpublished manuscript) (on file with the author).

17. *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 32 (1990) (adding “seemingly” to “insatiable”).

18. See Michael Lipsky, *The Rationing of Services in Street-Level Bureaucracies*, in CRITICAL STUDIES IN ORGANIZATION AND BUREAUCRACY 264, 266 (Frank Fischer & Carmen Sirianni eds., 1984) (“Clients [of government services] are typically required to wait for services; it is a sign of their dependence and relative powerlessness that the costs of matching services with the served are borne almost entirely by clients Importantly, bureaucracies often have little interest in reducing delay, since more expeditious processing would simply strain available resources.”); see also Mark N. Wexler, *Re-thinking Queue Culture*, 35 INT'L J. SOC'Y & SOC. POL'Y 165, 168–71 (2015) (describing an emerging sociological perspective from which waiting experiences are the product of third-party management and design, and less of spontaneous norms generated by those waiting). The ability of clients, customers, and regulated parties to exit may increase an organization's sensitivity to time burdens on those populations. See generally Sin-Hoon Hum & Hoon-Hong Sim, *Time-Based Competition: Literature Review and Implications for Modelling*, 16 INT'L J. OPERATIONS & PRODUCTION MGMT. 75, 75 (1994)

The Paperwork Reduction Act as we know it was built from several bills with punchy titles, along with the less conspicuous Federal Reports Act of 1942.¹⁹ There was the Paperwork Reduction Act of 1980,²⁰ followed by the Paperwork Reduction Reauthorization Act of 1986,²¹ and the Paperwork Reduction Act of 1995.²² These legislative efforts were not enough to win the war on government paperwork. Others followed, including the Economic Growth and Regulatory Paperwork Reduction Act of 1996,²³ the too-good-to-be-true Government Paperwork Elimination Act of 1998,²⁴ and the Small Business Paperwork Relief Act of 2002.²⁵ Congress is not alone in the effort. For his part, President Obama has tried to instigate and publicize agency efforts to make major paperwork cuts.²⁶ Recently the President ordered each agency that imposes relatively high paperwork burdens to identify initiatives that will reduce at least two million hours of annual burden.²⁷ Such missions must seem attractive to mainstream voters if not to every interest group. The extent to which the statutes and directives make a difference in government operations is another question, the answer to which partly depends on the structure and standards within today's version of the Act.

(asserting customer sophistication and sensitivity to speed-related options across market competitors). For an indication of slow yet significant improvement in paperwork processing by competitors, see the case studies on administrative bottlenecks in Joseph D. Blackburn, *Time-Based Competition: White-Collar Activities*, 34 BUS. HORIZONS, no. 4, 1992, at 96, 96–101.

19. Federal Reports Act of 1942, Pub. L. No. 77-841, 56 Stat. 1078.

20. Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 94 Stat. 2812.

21. Paperwork Reduction Reauthorization Act of 1986, Pub. L. No. 99-500, 100 Stat. 3341-335 to -340 (Title VIII, sections 801–820 of the Continuing Appropriations Resolution).

22. Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (rewriting 44 U.S.C. §§ 3501–3520).

23. Economic Growth and Regulatory Paperwork Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (codified in scattered titles of the U.S. Code).

24. Government Paperwork Elimination Act of 1998, Pub. L. No. 105-277, §§ 1701–1710, 112 Stat. 2681, 2749–51 (codified at 44 U.S.C. § 3504 (2012)) (involving electronic submissions).

25. Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (codified in scattered sections of 44 U.S.C.).

26. See 2014 OIRA REPORT, *supra* note 2, at 15–18; Exec. Order No. 13,610 § 3, 77 Fed. Reg. 28,469, 28,470 (May 10, 2012) (ordering agencies to prioritize “initiatives that will produce significant *quantifiable monetary* savings *or* significant quantifiable reductions in *paperwork burdens*” (emphasis added)).

27. See 2014 OIRA REPORT, *supra* note 2, at 16 n.22 (citing Memorandum of Cass R. Sunstein, Admin., OIRA, to the Heads of Exec. Dep’ts & Agencies (June 22, 2012)).

A. Structure

The Paperwork Reduction Act generates paperwork, actually. The Act mandates bureaucratic sensitivity to paperwork burdens by creating a bureaucracy that does paperwork on paperwork.²⁸ Federal agencies must hire Chief Information Officers and underlings who will implement procedures to regulate agency information collections directed at ten or more persons.²⁹ Regulated “collections” include not only information sent to the federal government (e.g., tax forms and benefits applications), but also recordkeeping by private parties (e.g., workplace accident reports) and disclosures between private parties (e.g., food labeling).³⁰ Agency collections are regulated “whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.”³¹

In other ways, however, the statute is notably narrow. Targeted federal investigations and civil and criminal litigation are explicitly carved out of the Act’s concern,³² even though these burdens can be extremely heavy for the persons involved. In addition, a variety of time-related consequences are apparently beyond the Act’s requirements. True, the statute is written to make agencies sensitive to resources expended reviewing instructions, searching for data, completing and reviewing forms, and transmitting information.³³ But these activities do not necessarily include other time-related burdens, such as learning about regulations, traveling to a government office if necessary, waiting in line, and other items within a broad

28. A few federal agencies are exempt from the structure described here. *See* 44 U.S.C. § 3502(1) (2012) (excluding the Federal Election Commission, the Government Accounting Office, the D.C. government, territorial governments, and “[g]overnment-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities”); *Kuzma v. U.S. Postal Serv.*, 798 F.2d 29, 32 (2d Cir. 1986) (holding that the U.S. Postal Service, as opposed to the Postal Rate Commission, is exempt from the Act).

29. 44 U.S.C. §§ 3502(3)(A)(i), 3506(a)(2)–(3) (2012).

30. *See id.* § 3502(3)(A) (defining “collection of information” as “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format”); *Action All. of Senior Citizens v. Sullivan*, 930 F.2d 77, 83 (D.C. Cir. 1991) (including grant recipients’ required self-evaluations regarding Age Discrimination in Employment Act compliance within the OMB review process, even though this paperwork would not necessarily be sent to the federal government).

31. 5 C.F.R. § 1320.3(c) (2014); *see also infra* notes 191–93 and accompanying text (discussing the usefulness of estimating time burdens that are thought to be associated with conditions on government benefits).

32. 44 U.S.C. § 3502(3)(B) (2012) (referencing § 3518(c)(1)–(2) and recognizing that most “general investigations” are not covered by the Act).

33. *See id.* § 3502(2)(A)–(F).

understanding of “compliance costs.”³⁴ An agency might have the will and authority to investigate these other time burdens—OMB guidance for cost-benefit analysis is nicely inclusive on this score³⁵—but the Act does not explicitly regulate them.

When the Act does cover an agency collection, however, it triggers a formidable-looking screening procedure.³⁶ The process ordinarily takes months. First, an information collection request typically will be subject to public notice and comment.³⁷ If the agency wants to go forward, the proposal must be reviewed and approved by OIRA in a clearance process. Someone at the agency completes an OMB form,³⁸ writes a supporting statement,³⁹ and assembles supporting documents, and then someone at OIRA reviews the agency’s paperwork.⁴⁰ This clearance process is accompanied by a second round of public notice and comment, along with an opportunity for individual challenges directed at OMB.⁴¹

Moreover, OMB cannot authorize a collection for longer than three years.⁴² These automatic sunsets are then followed by further

34. Some of these uncovered activities allow for multitasking, which is a complication I leave aside for now. *Cf.* Robert A. Pollak, *Notes on Time Use*, MONTHLY LABOR REV., Aug. 1999, at 7, 8 (describing “simultaneous activities,” divided into “parallel” activities like driving while listening to the radio and “on call” situations like cooking while being responsible for a sleeping child). Also note privacy concerns as a cost, which are covered by other laws.

35. *See infra* note 126 and accompanying text (discussing CBA guidance). IRS’s 2011 survey on taxpayer burdens mentioned “researching tax law changes” in the instructions, and the survey form listed “[r]esearching strategies to reduce the taxes you owe” and “[g]athering IRS tax forms, instructions, or publications.” INTERNAL REVENUE SERV., U.S. DEP’T OF TREASURY, INDIVIDUAL TAXPAYER BURDEN SURVEY, at i, 12 (2011), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=25585501> [<http://perma.cc/LJ86-GSUN>].

36. *See generally* 44 U.S.C. § 3507(a)(1)(D), (a)(2)–(3), (b)–(c) (2012) (covering Paperwork Reduction Act standards and procedural requirements); *id.* § 3508 (same); 5 C.F.R. § 1320.10 (2014) (reiterating and elaborating on same).

37. *See* 44 U.S.C. § 3506(c)(2)(A) (2012).

38. *See* OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, PAPERWORK REDUCTION ACT SUBMISSION (OMB FORM 83-I) 1 (2004), <http://www.whitehouse.gov/sites/default/files/omb/inforeg/83i-fill.pdf> [<http://perma.cc/S6AK-2Z4F>].

39. *See* OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, PAPERWORK REDUCTION ACT SUBMISSIONS (SUPPORTING STATEMENT INSTRUCTIONS) 6–7 (1995) [hereinafter OMB SUPPORTING STATEMENT INSTRUCTIONS], <http://www.whitehouse.gov/sites/default/files/omb/inforeg/83i-fill.pdf> [<http://perma.cc/FG8X-A94B>].

40. *See* Lubbers, *supra* note 11, at 115. The Act refers to OMB but OIRA does the job in practice.

41. *See* 44 U.S.C. § 3517(b) (2012). An independent regulatory agency, *see id.* § 3502(5) (defining the term with a list and a residual clause), may reverse an OMB disapproval of a proposed collection if the agency gives reasons. *See id.* § 3507(f); 5 C.F.R. § 1320.15 (2014).

42. *See* 44 U.S.C. § 3507(g) (2012).

rounds of request, notice, comment, and review for information collections that still matter to agencies.⁴³ There is a different procedure when an information collection is bundled with a proposed regulation, in which OIRA participates in the comment process.⁴⁴ But those collections are likewise subject to automatic sunset and then stand-alone requests to OIRA. In addition, agencies must advertise estimated burdens to those who suffer them,⁴⁵ and OIRA reports annually to Congress on agency progress in reducing the public burden of information collection.⁴⁶

To be sure, all of this procedure might be completed without much hardship. The latest IRS proposal for individual income tax forms drew a grand total of zero public comments after notice in the *Federal Register*.⁴⁷ Moreover, agencies may now use a menu-driven website to submit information collection requests to OIRA.⁴⁸ If OMB fails to act within sixty days, approval may be inferred and the agency may go ahead and collect the information for a year.⁴⁹ OMB offers expedited review in emergencies.⁵⁰ Courts are largely absent from the process, so the expected litigation burden is modest.⁵¹ And OMB may

43. See *Lewis v. Comm'r*, 523 F.3d 1272, 1276 n.8 (10th Cir. 2008) (discussing IRS Form 1040).

44. See 5 C.F.R. § 1320.11 (2014) (clarifying OMB's role in filing public comments); see also 44 U.S.C. §§ 3506(c)(2)(B), 3507(d)(4)(C) (2012) (allowing OMB to reject "unreasonable" agency rejections of OMB comments).

45. See 44 U.S.C. § 3506(c)(1)(B)(iii)(III) (2012); see also *id.* § 3506(c)(1)(B)(iii)(I) (requiring stated reasons).

46. See *id.* § 3514(a)(2)(A).

47. See U.S. DEP'T OF TREASURY, U.S. INDIVIDUAL INCOME TAX RETURN: SUPPORTING STATEMENT 21 (2014), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=47130100> [<http://perma.cc/YH6Y-CLSP>].

48. The new "ROCIS" platform replaced a mainframe in 2006, and it offers the older data plus several new search options and easy public access to agency supporting documents. See *Information Collection Review Data on Reginfo.gov*, REGINFO.GOV, http://www.reginfo.gov/public/jsp/PRA/ICR_info.jsp [<http://perma.cc/L54U-Z8XL>] (indicating that the old data system has records back to the 1970s, but that supporting data for agency requests was not saved in the system until 1995). The manual for the information collection review module is 123 pages long. See REGULATORY INFO. SERV. CTR., ROCIS HOW TO GUIDE FOR AGENCY USERS OF THE INFORMATION COLLECTION REQUEST (ICR) MODULE (2013) [hereinafter ROCIS HOW TO GUIDE], https://www.rocis.gov/rocis/jsp3/common/ROCIS_HOW_TO_Guide_for_AGENCY_Users_of_ICR_Module-08272013.pdf [<http://perma.cc/ZQU7-NN2Y>].

49. See 44 U.S.C. § 3507(c)(3) (2012).

50. See 5 C.F.R. § 1320.13 (2014).

51. Courts might not be willing to bar judicial review of OMB approvals of stand-alone information collection requests as matters committed to agency discretion, see 5 U.S.C. § 701(a)(2) (2012); Levy, *supra* note 11, at 118, but courts have played no direct role in defining burdens, assessing benefits, or evaluating agency need for information collections. The statute

delegate its review authority to trusted officials, such as the Federal Reserve's Board of Governors and the Federal Communication Commission's Managing Director.⁵²

Still, every lawful information request comes with a stack of (electronic) paper, and therefore the trade-offs associated with added process.⁵³ To the extent the Act has an independent effect on agencies that are sensitive to procedural costs, we can expect the statute's procedures to reduce the number of information collections, to increase the government cost of performing the surviving collections, and, hopefully, to increase the quality of those collections by enhancing deliberation and participation by people from multiple perspectives.⁵⁴ But we can wonder exactly which collections survive and which are screened out by the process. Other statutory provisions are merely suggestive on those questions, as we shall see.

B. Standards

The Act does call on agencies to pay attention to burdens. Each agency must operate an internal process that yields “a specific, objectively supported estimate of burden” for each information collection.⁵⁵ And each agency is supposed to certify that each collection “reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency.”⁵⁶ As the entity with global oversight authority,⁵⁷ OMB is

does provide a defense to penalties for failing to comply with an agency information request that unlawfully omits a valid OMB control number. *See* 44 U.S.C. § 3512 (2012); 5 C.F.R. § 1320.6 (2014) (covering, as well, agency failure to inform respondents that they are not required to respond absent such a display, with an exception for the tax code, 26 U.S.C. § 6011(a)); *United States v. Hatch*, 919 F.2d 1394, 1398 (9th Cir. 1990) (confirming this defense in a criminal case). But courts have denied that the Act offers a private right of action. *See, e.g., Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 844 (9th Cir. 1999). In any event, complaining and commenting, let alone litigating, are not worth it for most people.

52. *See* 44 U.S.C. § 3507(i) (2012); 5 C.F.R. §§ 1320.16(d), 1320 app. A (2014).

53. *See* Adam M. Samaha, *Undue Process*, 59 STAN. L. REV. 601, 616–20 (2006) (discussing decision costs, error rates, and so on).

54. Who gains and who loses is not entirely clear. The Act might shift information collection burdens from the private sector to the federal government—then back to the private sector, depending on who pays for these government operations. This prospect of cost shifting should prompt the question whether we might go further, and “in-source” within government more information collection and dissemination duties.

55. 44 U.S.C. § 3506(c)(1)(A)(iv) (2012).

56. *Id.* § 3506(c)(3)(C); *cf. id.* § 3506(c)(3)(A), (J) (requiring an agency to certify that a collection submitted for review, *inter alia*, “is necessary for the proper performance of the functions of the agency, including that the information has practical utility,” and “to the

supposed to set and oversee standards for estimating collection burdens,⁵⁸ and also “minimize the [f]ederal information collection burden, with particular emphasis on those individuals and entities most adversely affected.”⁵⁹ The Act directs attention at the benefits of information, too. Agencies are supposed to evaluate the “need” for the information,⁶⁰ and OMB shall “maximize the practical utility of and public benefit from information collected.”⁶¹ Thus the statute makes room for, if not requires, a cost-benefit protocol for information demands—language such as “to the extent practicable and appropriate” and “practical utility” suggests as much.⁶²

In addition, the Act is, or was, weirdly precise about how much burden reduction should happen. The 1995 legislation contained percentage goals, albeit of unknown origin. The statute instructed OMB to consult with agency heads and “set an annual [g]overnmentwide goal for the reduction of information collection burdens by at least 10 percent during each of fiscal years 1996 and 1997 and 5 percent during each of fiscal years 1998, 1999, 2000, and

maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public”).

57. *See id.* § 3504(c)(1) (stating that the OMB Director shall review and approve proposed collections).

58. *See id.* § 3504(c)(5).

59. *Id.* § 3504(c)(3).

60. *See id.* § 3506(c)(1)(A)(i); *see also id.* § 3508 (“Before approving a proposed collection of information, the [OMB] Director shall determine whether the collection . . . is necessary . . .”).

61. *Id.* § 3504(c)(4); *see also id.* § 3508 (similar). Left unspecified is “public benefit” for OMB purposes in Section 3504(c)(4), and “practical utility” is unhelpfully defined as “the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion.” *Id.* § 3502(11).

62. The best interpretation is not doubt-free. The Act’s directive that OMB “minimize” the paperwork burden is not the clearest way to endorse CBA, for instance. But an agency decision to conduct CBA probably is a reasonable interpretive choice. *See Entergy Corp v. Riverkeeper, Inc.*, 556 U.S. 208, 217–19 (2009) (allowing EPA to use CBA under a statute requiring “best technology available for minimizing adverse environmental impact”). “Minimize” must not mean “eliminate at all costs,” which would be satisfied by collecting no information beyond that required by other law. Even OMB’s directive to make collections the “least burdensome necessary,” 5 C.F.R. § 1320.5(d)(1)(i) (2014), is linked to agency functions and program objectives, *see id.*, which seem to be benefits. And of course “necessary” sometimes means useful or convenient instead of indispensable. *See Nat’l R.R. Passenger Corp. v. Boston & Maine Corp.*, 503 U.S. 407, 419 (1992) (citing *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 413 (1819)); *Necessary*, BLACK’S LAW DICTIONARY (6th ed. 1990). Related debates over CBA and feasibility analysis are discussed in Jonathan S. Masur & Eric A. Posner, *Against Feasibility Analysis*, 77 U. CHI. L. REV. 657, 665–70 (2010).

2001.”⁶³ OIRA has reported that, almost without exception, the federal government failed to meet these numerical goals.⁶⁴ But before allocating blame, we should recognize that OIRA’s confession depends on a choice of metrics, and this choice is not dictated by the statute.

The Act is remarkably open about how to count paperwork burdens. The statute defines “burden” as “time, effort, *or* financial resources expended by persons to generate, maintain, or provide information to or for a [f]ederal agency.”⁶⁵ So when agencies try to estimate the “burden” of an information collection objectively, it is not fully clear what they are supposed to be objective about. And when agencies and OMB try to appropriately minimize information collection “burden,” it is not fully clear what is supposed to be minimized, let alone who counts as “most adversely affected” and the extent to which the utility of the collection may justify its burdens. Nor does the statute describe whether and how to convert estimated burdens of time, effort, and money into the same metric. Similar uncertainties surround OMB’s rule that each agency show that “it has taken every reasonable step to ensure that the proposed collection of information . . . is the least burdensome necessary for the proper performance of the agency’s functions to comply with legal requirements and achieve program objectives.”⁶⁶ Least burdensome on which metric?

The simplest interpretation appears to be that OMB and the agencies choose metrics: they should somehow estimate and minimize time, effort, *or* financial resources; and while they must strive to be objective in their estimates, the statute seems not to make particular choices of how to quantify these burden types. A reading like this would follow the ordinary distinction between the disjunctive “*or*” and the conjunctive “*and*.”⁶⁷ Moreover, it would make space for

63. See 44 U.S.C. § 3505(a)(1) (2012); *cf.* Wiener, *supra* note 11, at 500–01 (reporting percentage targets in the European Union that seem no better grounded). The conference report to this Act suggests that the baseline for each goal was the preceding fiscal year, see H.R. Conf. Rep. 104-99, at 32 (1995), but the report is uninformative about the proper metric(s) for burden.

64. See OFFICE OF INFO. & REGULATORY AFFAIRS, EXEC. OFFICE OF THE PRESIDENT, MANAGING INFORMATION COLLECTION AND DISSEMINATION: FISCAL YEAR 2002, at 1 (2002).

65. 44 U.S.C. § 3502(2) (2012) (emphasis added).

66. 5 C.F.R. § 1320.5(d)(1)(i) (2014).

67. See, e.g., Chao v. Day, 436 F.3d 234, 236 (D.C. Cir. 2006) (quoting 1A NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 21.14 (6th ed. 2002) (“[C]ourts presume that ‘or’ is used in a statute disjunctively unless there is a clear legislative intent to the

targeted judgments on suitable measurement within the jumble of information collection efforts—from the census and customer satisfaction surveys to blood tests and tax forms—but also unifying judgments that allow the use of comparable metrics for collection burdens and benefits. Not every information collection presents the same estimation issues, as the statute’s ecumenical language seems to recognize, and yet the statute channels agency requests into a central oversight body with a mission of reducing burdens while enhancing utility. This set up is unlike, say, the Inspector General Act,⁶⁸ which lacks an executive coordinator for the agency-level struggle against waste, fraud, and abuse.⁶⁹ OMB is statutorily tasked with making paperwork assessments government-wide. A credible effort to improve information collection globally needs flexibility as well as universal metrics of some kind. The statute itself presents no test for making such concrete choices, and instead lists nearly a dozen rival purposes.⁷⁰

An alternative reading would understand “or” differently and would require that all three kinds of burden be estimated and minimized.⁷¹ Perhaps the Act’s definitional provision, in context, is best interpreted such that a paperwork “burden” can be any of these things and none should ever be ignored. As the 1980 Act was being drafted, President Carter regulated agency information collections by

contrary.”); ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW* 116, 122–23 (2012) (following similar reasoning and making room for contextual judgments).

68. Inspector General Act of 1978, 5 U.S.C. App. 3 §§ 1–13 (2012).

69. See *Nat’l Aeronautics & Space Admin. v. Fed. Labor Relations Auth.*, 527 U.S. 229, 240 (1999) (setting aside the President and agency heads, and explaining that “[t]here is no ‘OIG–OIG’”).

70. See 44 U.S.C. §§ 3501(1)–(11) (2012) (reciting various purposes including lower costs and higher benefits from information collections); *cf.* Paperwork Reduction Act of 1995, H.R. Rep. No. 104-37, at 22–23 (1995) (quoting an interest group’s conversion of hours to dollars, but remaining unclear on how burden-reduction goals should be tallied). I am not discussing these interpretive issues in terms of *Chevron* deference, see *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–45 (1984); see also *United States v. Mead Corp.*, 533 U.S. 218, 229–31 (2001) (discussing eligibility for *Chevron* deference), because courts are out of the picture. See *supra* note 51. If need be, there is a good case for judicial deference to (reasonable) OMB/OIRA decisions to choose one or another metric for burdens. The Paperwork Reduction Act charges OMB with establishing and overseeing “standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information.” 44 U.S.C. § 3504(c)(5) (2012). Even without formal promulgation of metrics under that provision, agencies have responsibility to administer processes for evaluating and moderating paperwork burdens under the statute, see *id.* § 3506(c)(1)(A)(iv), as overseen by OIRA.

71. See *De Sylva v. Ballentine*, 351 U.S. 570, 573 (1956) (“[T]he word ‘or’ is often used as a careless substitute for the word ‘and.’”).

executive order; the OMB-review component of this initiative focused on hours, not dollars or anything else.⁷² We might understand the Act by contrast to that limited notion of burden. However, a broad concept of burden does not cut sharply between conjunctive and disjunctive interpretations of the statute's definitional provision, nor does it indicate how much discretion officials should have. Furthermore, it is not obvious how officials could minimize respondent time, money, and effort all at once. These metrics can point in different directions. For instance, simplifying government forms can prompt individuals to substitute do-it-yourself (DIY) solutions in place of contracting out the paperwork, thereby increasing respondent burden hours while decreasing their out-of-pocket expenditures.⁷³

OMB might have tried to resolve these issues by regulation,⁷⁴ but it has not. OMB rules from 1995 define burden in nearly the same language as the statute,⁷⁵ followed by a more detailed list of included activities: burden means “total time, effort, *or* financial resources” from activities such as reviewing instructions, searching data sources, training personnel, and using technology to collect information.⁷⁶ The rules do not instruct when burdens should be measured or minimized in time, money, or anything else. Protocols for showing agency need, estimating the utility of information, and comparing these to the burdens of collection are at least equally undefined. Formal law

72. Although President Carter's order directed agencies to minimize the paperwork burden on people outside the federal government in terms of “the time and costs entailed,” he ordered agencies to prepare annual paperwork budgets based on “an estimate of the total number of hours required to comply with requests for information.” Exec. Order No. 12,174, §§ 1-101, 1-104, 44 Fed. Reg. 69,609, 69,609 (Nov. 30, 1979) (ordering the Director of the OMB to review proposed agency paperwork budgets and subsequent requests for increases); *see also* Controlling Paperwork Burdens on the Public, 45 Fed. Reg. 2586, 2594 (Jan. 11, 1980) (proposing, in § 1320.41(i), to define burden solely in terms of time).

73. *Cf.* Stanley Veliotis, *Sweating the Small Stuff: The Cost of Immaterial Tax Law Provisions*, 3 WM. & MARY POL'Y REV. 36, 54–55 (2011) (suggesting that tax code complexity helps explain increased use of paid tax preparers and tax software).

74. *See* 44 U.S.C. § 3504(c)(5) (2012) (regarding the OMB's duty to set standards and guidelines for burden estimates); *id.* § 3516 (granting the Director rulemaking authority).

75. 5 C.F.R. § 1320.3(b)(1) (2014) (“[T]he total time, effort, or financial resources expended by persons to generate, maintain, *retain*, or *disclose* or provide information to or for a Federal agency.” (emphases added)); *see* Controlling Paperwork Burdens on the Public, 60 Fed. Reg. 44,978, 44,985 (Aug. 29, 1995) (including this definition).

76. 5 C.F.R. § 1320.3(b)(1)(i)–(ii), (vi), (vii) (2014) (emphasis added); *see also id.* § 1320.3(b)(2)–(3) (explaining that the burden estimate should exclude burdens undertaken in the ordinary course of business and those that the agency can show would be required by state, local, or tribal governments anyway).

certainly does present agencies with procedural cost whenever they ponder an information collection, but provides no algorithm for evaluating those collections. Agency evaluation is importantly decentralized.

II. PAPERWORK PRACTICES

Indications of agency and OIRA routines are other sources of understanding, but the patterns are not ready-made. A jump into the trenches of the federal paperwork process shows that different agencies have different practices for quantifying information collection burdens. OIRA oversight is not rigid enough to produce uniform standards even in the field of burden quantification, to say nothing of need, benefits, and ultimate determinations of whether and how to collect information. For now, we can try to understand better how agencies evaluate burdens. What follows is a discussion of interesting examples, some suggested patterns and aggregate data, plus an initial search for positive explanations—which seem neither simple nor self-evident.

A. Agencies

On significant occasions, agencies estimate burdens in hours and without dollar conversions. Consider the constitutionally mandated decennial census.⁷⁷ For 2010, the Census Bureau estimated that U.S. households would need about 24 million hours—and zero dollars—to complete census forms at five or ten minutes a piece.⁷⁸ The Bureau explained that “[t]here is no cost to respondents, except for the time it takes to respond to the questions.”⁷⁹ (The cost of collection to the federal government was estimated in dollars: about \$8.5 billion.⁸⁰) It is true, of course, that people do not pay out-of-pocket to fill out this fairly brief survey, with answers often immediately known to the respondent. But we may still ask why an agency would not convert its time estimate into a dollar estimate, and the Bureau offered no answer to that question. True, census surveys are not large time

77. See U.S. CONST. art I, § 2, cl. 3 (requiring an “actual Enumeration” but in some legally directed “Manner”).

78. See U.S. CENSUS BUREAU, 2010 CENSUS: SUPPORTING STATEMENT PART A REVISED 25–26 tbl.1 (2008), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=18128501> [<http://perma.cc/2A59-LHUW>].

79. *Id.* at 26.

80. See *id.* at 27.

burdens for each one of us individually, and we get ten years off between them. Many respondents might think that filling out census forms is a little bit fun, or at least a fulfilling civic duty that yields interesting information about life in the United States. Perhaps we should shrug off the census example as a low-stakes issue with understandably restrained agency effort to quantify burdens.

Tax forms are orders of magnitude more significant than the census in terms of respondent burden,⁸¹ and yet agency quantification practices are similar. For the millions of households legally obliged to file a tax return, the burden probably is the largest they undertake for the federal government. IRS predicts for various classes of taxpayers how much time they will spend filling out an individual tax return, such as a Form 1040-EZ or 1040 with Schedules. This estimate is in hours, ranging from four to twenty-four.⁸² In addition, IRS estimates average out-of-pocket costs—pegged at \$207 per taxpayer and \$31.7 billion in total for tax year 2014. But IRS explains that those dollar figures are separate economic expenditures on top of the estimated cost in hours.⁸³ It makes sense to count up dollar costs to hire a tax preparer along with time costs that an individual needs to prepare their own tax forms, whether the taxpayer is reporting income as required by law or seeking deductions that are legally optional. Good policymaking depends on all of this information.⁸⁴ The question, again, is why IRS would estimate time costs without converting those costs into dollar figures, and again the agency offered no answer. Not converting time to dollars is an especially remarkable omission in this context, where people are aware of a vibrant market for tax preparation. Low stakes and taxpayer enjoyment are not good explanations for the absence of a dollar conversion.

What about a pattern related to civic duty? People will disagree about the precise scope of our civic duties, properly understood, but perhaps agencies refuse to monetize hours spent on tasks that are

81. See 2014 OIRA REPORT, *supra* note 2, at iii (estimating that Treasury accounted for 75 percent of total hours tallied).

82. See Proposed Collection; Comment Request for Form 1040, 79 Fed. Reg. 24,498, 24,499 Exs. 1–2 (Apr. 30, 2014). Some individual filers are “business filers,” and the estimated time burden is higher for the latter.

83. See *id.* at 24,498–99 (“Time spent and out-of-pocket costs are presented separately. . . . Out-of-pocket costs include . . . tax return preparation and submission fees, postage and photocopying costs, and tax preparation software costs.”). Presumably IRS reduces the estimated time burden for those who hire a tax preparer.

84. On the usefulness of tallying time “burdens” that arise as conditions for receiving a government “benefit” of some kind, see *infra* notes 191–93 and accompanying text.

easily associated with legal or societal obligations of good citizenship. Military draft registration shows up on the list of nonmonetized paperwork burdens,⁸⁵ as it happens, which might sit comfortably alongside census forms and tax returns as civic duties.⁸⁶ This potential pattern is unsettled with additional study, however. One complication is that, as administered, the decennial census collects more data than necessary to make a constitutionally required actual enumeration.⁸⁷ This should make us wonder whether census responses go beyond the best notion of civic duty, even if Congress is entirely free under the law to pose these questions. Paperwork needed to claim various tax deductions, such as for home mortgage interest, also presents difficulties for a public duty characterization even if allowing such deductions is good public policy. Any civic duty pattern is upset further once we scan a wider range of paperwork burdens tracked by the administrative state. In the following discussion we will see that many applications for government benefits do not prompt agency monetization (Social Security Administration paperwork, for instance, in curious contrast to Veterans Administration paperwork, which is monetized),⁸⁸ while mandatory reporting requirements for regulated industries are typically monetized (the Environmental Protection Agency's Acid Rain Program, for instance).⁸⁹ Either the notion of civic duty at work is irreducibly mysterious, or civic duty does little or no work in monetization decisions.

Searching further, reporting hours without dollars surely is not the most common agency practice but it happens in smatterings of significant places. Examples from established programs include the Department of Education's online *Free Application for Federal Student Aid*—which, according to the agency, is free in dollar terms

85. See U.S. SELECTIVE SERV. SYS., SELECTIVE SERVICE REGISTRATION FORM: SUPPORTING STATEMENT 3–4 (2011), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=31028501> [<http://perma.cc/FE3W-KLDR>] (not monetizing time to complete selective service forms).

86. For more on civic duty, see *infra* Part III.B.1.c.

87. See *The Questions on the Form*, U.S. CENSUS 2010, <http://www.census.gov/2010census/text/text-form.php> [<http://perma.cc/E364-CSCH>] (listing and explaining the questions on the 2010 standard form, including questions about age, sex, race, and Hispanic origin for purposes of funding programs, monitoring antidiscrimination law compliance, and academic research); see also U.S. CENSUS BUREAU, THE AMERICAN COMMUNITY SURVEY: SUPPORTING STATEMENT 16–17 (2013), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=41990401> [<http://perma.cc/N3JH-P7CU>] (not monetizing time to complete annual census surveys voluntarily answered by samples of households).

88. See *infra* Figure 2.

89. See *infra* note 98 and accompanying text.

and burdensome only in hours (26 million hours, that is).⁹⁰ Similarly, application burdens for people seeking disability benefits from the Social Security Administration are totaled in hours, not dollars.⁹¹ The burden on medical professionals who evaluate applicant disability is likewise left in hours.⁹² The foregoing examples could indicate an older view about how to count paperwork burdens, locked into renewal requests by past practice. But several recent agency requests also use hours without conversion to dollars, including new collections in which the estimated burden exceeds one million hours.⁹³

90. See OFFICE OF FED. STUDENT AID, U.S. DEP'T OF EDUC., 2014-15 FEDERAL STUDENT AID APPLICATION: SUPPORTING STATEMENT 10, 14 (2013), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=42690801> [<http://perma.cc/2YBA-GMTJ>]. A challenge for this hours estimate is predicting participation rates, which depend on many factors including paperwork burdens.

91. See SOC. SEC. ADMIN., SOCIAL SECURITY BENEFITS APPLICATION: SUPPORTING STATEMENT 6 (2013), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=40178702> [<http://perma.cc/SR2X-7AR4>]. The same goes for the forms agencies use to evaluate applicant disability. See SOC. SEC. ADMIN., DISABILITY REPORT—ADULT: SUPPORTING STATEMENT 4 (2013), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=32275801> [<http://perma.cc/JL8L-KA6B>] (estimating 3.5 million applicant hours without a dollar conversion: “[t]his figure represents burden hours, and we did not calculate a separate cost burden”).

92. See SOC. SEC. ADMIN., REQUEST FOR EVIDENCE FROM DOCTOR OR HOSPITAL: SUPPORTING STATEMENT 3 (2014), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=45102101> [<http://perma.cc/R5RS-TF75>].

93. A search of OIRA's database, see *Search of Information Collection Review*, REGINFO.GOV, <http://www.reginfo.gov/public/do/PRAsearch> [<http://perma.cc/3KH8-KVA8>], conducted July 4, 2014 for new, active information collections with estimated burdens over one million hours yielded twenty-five results, with the following five requests reporting hours without converting to dollars: U.S. DEP'T OF JUSTICE, MONTHLY RETURN OF HUMAN TRAFFICKING OFFENSES: SUPPORTING STATEMENT 3-4 (2014), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=36394403> [<http://perma.cc/D73M-NX3U>] (reporting a three million hour burden on law enforcement officials spread over three years, without conversion to dollars); U.S. DEP'T OF JUSTICE, PRISON RAPE ELIMINATION ACT: SUPPORTING STATEMENT 4 (2012), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=31640403> [<http://perma.cc/4J83-ZBJB>] (reporting a 1.2 million hour burden in prison staff time for 13,119 facilities during the first reporting year, without conversion to dollars); INTERNAL REVENUE SERV., U.S. DEP'T OF TREASURY, FORM 1125-A, COST OF GOODS SOLD; FORM 1125-E, COMPENSATION OF OFFICERS: SUPPORTING STATEMENT 5 (2012), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=28134402> [<http://perma.cc/WJG2-E5FJ>] (reporting a 44 million hour burden on corporate filers, without conversion to dollars, and stating that “[e]stimates of the annualized cost to respondents for the hour burden shown are not available at this time”); U.S. DEP'T OF STATE., TECHNOLOGY SECURITY/CLEARANCE PLANS: SUPPORTING STATEMENT 4 (2011), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=26478001> [<http://perma.cc/5F4D-HVK4>] (reporting a one million hour recordkeeping burden on 100,000 recipients of nonclassified defense materials, without conversion to dollars); OFFICE OF E-GOVERNMENT & INFO. TECH., EXEC. OFFICE OF THE PRESIDENT, REAL PROPERTY STATUS REPORT: SUPPORTING STATEMENT 4-5 (2011),

At the same time, many agency requests do convert hours to dollars. Consider a humble telephone survey on public feelings about libraries, conducted by the Institute of Museum and Library Services. Not knowing who would be randomly selected for the survey,⁹⁴ the agency used the national average per capita income of about \$20 per hour to convert respondent time into dollar cost.⁹⁵ More targeted is the \$15 per hour figure used by the Department of Health and Human Services (HHS) to estimate a dollar cost of filling out the basic Medicare reimbursement form.⁹⁶ This number seems to be an average hourly wage for clerical staff at medical facilities. The Food and Drug Administration (FDA) did something similar at the upper end of the wage scale. For new drug applications, the agency estimated a single average industry loaded wage rate of \$75 per hour, and multiplied that number by the estimated total burden hours.⁹⁷ In other requests, the dollar conversions are even more calibrated to subgroups. For its acid rain regulations, the Environmental Protection Agency estimated hourly wage rates of \$66 for company technicians and \$102 for company managers.⁹⁸ Or take a recent request by the Commodity Futures Trading Commission. Under existing regulations, an investment fund can avoid the hassle of shareholder votes on accountants if the fund has an independent audit committee. Creating such a committee takes time at a board meeting, so the agency

<http://www.reginfo.gov/public/do/DownloadDocument?objectID=47897901> [<http://perma.cc/LG3A-L5K3>] (reporting a 3.5 million hour burden on federal grant recipients with real property in which the federal government holds an interest, without conversion to dollars).

94. See U.S. INST. OF MUSEUM & LIBRARY SERVS., PUBLIC NEEDS FOR LIBRARY AND MUSEUM SERVICES (PNLMS) SURVEY: SUPPORTING STATEMENT 4 (2013), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=48758101> [<http://perma.cc/N33Q-9MYT>].

95. See *id.* at 9 (relying on 2011 per capita income of \$41,560, then assuming full-time work).

96. The electronic version takes one minute to complete, HHS estimated, but 966 million claims in a year add up to over 16 million hours (and supposedly over \$300 million in respondent costs for both electronic and dwindling paper filings). See CTRS. FOR MEDICARE & MEDICAID SERVS., U.S. DEP'T OF HEALTH & HUMAN SERVS., HEALTH INSURANCE COMMON CLAIMS FORM: SUPPORTING STATEMENT 11 (2012), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=36407101> [<http://perma.cc/5SXU-ZWNL>].

97. See FOOD & DRUG ADMIN., U.S. DEP'T OF HEALTH & HUMAN SERVS., NEW DRUG APPLICATION: SUPPORTING STATEMENT 18 (2011), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=24273701> [<http://perma.cc/EEV7-B95W>]. FDA did not explain how it estimated the loaded rate (*e.g.*, overhead, training, leave, taxes).

98. See U.S. ENV'TL PROT. AGENCY, ACID RAIN PROGRAM: SUPPORTING STATEMENT 30 (2012), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=36362000> [<http://perma.cc/W7X3-W4B2>].

estimated an hour burden for this task and then valued paralegal time at \$175 per hour and director time at \$500 per hour.⁹⁹

Agencies might put a positive dollar value on a person's time even when the person is unemployed. Consider the Department of Agriculture's recent request to adjust ongoing information collections for the Women, Infants, and Children (WIC) program. The program provides food and education to low-income pregnant women, new mothers, and their children.¹⁰⁰ Running WIC effectively and in accord with federal law depends on information from vendors, state and local officials, and applicants—including reports on applicant income and a nutrition risk assessment.¹⁰¹ But unlike vendors and officials, many applicants may not have an established market value for their time.¹⁰² When paperwork burdens hit such people, agencies that are committed to monetization seem to rely on the minimum wage. The Department used the federal minimum wage of \$7.25 per hour¹⁰³ to calculate an annual dollar cost of \$4.4 million to nine million applicants.¹⁰⁴ The Supplemental Nutrition Assistance Program

99. See U.S. COMMODITY FUTURES TRADING COMM'N, CLEARING EXEMPTION FOR SWAPS BETWEEN CERTAIN AFFILIATED ENTITIES: SUPPORTING STATEMENT 4–6 & 10 nn.8–9 (2013), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=41160101> [<http://perma.cc/ZX9A-QTRT>] (using a figure of eight directors on average and aggregated board of directors cost of \$4000/hour); see also Securities Offering Reform, 70 Fed. Reg. 44,722, 44,788–90, 44,794 nn.625 & 630 (Aug. 3, 2005) (reporting a dollar conversion in the CBA section in which CFTC calculated issuer personnel time at \$125 per hour and outside professional time at \$300 per hour).

100. See Comment Request—WIC Program Regulations, 77 Fed. Reg. 50,457, 50,458 (Aug. 21, 2012).

101. See FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., WIC PROGRAM REGULATIONS: SUPPORTING STATEMENT 6 (2014), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=44959401> [<http://perma.cc/A2HM-Y8JZ>] (noting program changes prompting the request).

102. Cf. Laura Tiehen & Alison Jacknowitz, *Why Wait?: Examining Delayed WIC Participation Among Pregnant Women*, 26 CONTEMP. ECON. POL'Y 518, 523 tbl.1 (2008) (estimating that 63 percent of pregnant WIC participants were employed in the year before giving birth).

103. See FOOD & NUTRITION SERV., *supra* note 101, at 16 tbl.A.12.1 (estimating 615,829 total annual burden hours for applicants); see also *id.* (setting state and local staff hourly wages at \$23.54 and vendor staff hourly wages at \$12.55).

104. See *id.* at 9 (providing a dollar estimate for applicant time); FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., WIC PROGRAM REGULATIONS: BURDEN TABLE, at cells C40, F35–F39 (2014), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=36110701> [<http://perma.cc/KCP8-GXRV>] (estimating 0.05 hours for certification data for the vast majority of nearly nine million applicants). Most WIC applicants are infants and children, see *id.* at cells C35–C39, so presumably the agency estimates for them reflect burdens on adults doing paperwork on their behalf.

(SNAP, formerly Food Stamps) operates on similar estimates. In 2013, the Department estimated that nearly eleven million people would spend about twenty minutes each to apply for these benefits, and translated the resulting 3.5 million hour burden into \$25 million of cost to applicants at \$7.25 per hour.¹⁰⁵

We lack comprehensive data on agency quantification practices. Often it is difficult to tell how agencies estimate the time needed to understand and complete government forms, how they choose a universal or particular wage rate, or how they adjust wage data to include costs borne by employers of respondents.¹⁰⁶ Assuming that officials seek to avoid process costs, we might expect agencies to estimate burdens on others quickly and cheaply. Indeed OIRA instructs agencies to economize here, generally recommending “[c]onsultation with a sample (fewer than 10) of potential respondents.”¹⁰⁷ One obvious explanation for a nine-respondent limit is avoiding another round of Paperwork Reduction Act process costs.¹⁰⁸ This default rule for gathering burden information will cap the quality of those investigations, and scattered public comments will only add so much knowledge.

For a burden estimate that seems wildly off, consider WIC applications. The agency asserts that applicants need three minutes on average to complete the application,¹⁰⁹ even though eligibility certification requires recorded data or documentation on residency,

105. See FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) FORMS EXTENSION: BURDEN TABLE, at row 3 (2013), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=38398701> [<http://perma.cc/XUL6-9AZ6>].

106. Sometimes agencies bump up hourly wage figures by estimating hourly fringe benefits—a form of loaded wage estimate. For a collection involving disclosure of manufacturer payments to physicians and their families, HHS identified a physician hourly wage of \$103, then “applied a 33 percent increase to this amount to account for change overtime and fringe benefits” to provide a likely maximum estimate of \$137 per hour. CTRS. FOR MEDICARE & MEDICAID SERVS., U.S. DEP’T OF HEALTH & HUMAN SERVS., REGISTRATION, ATTESTATION, ASSUMPTIONS DOCUMENT AND DATA RETENTION REQUIREMENTS FOR OPEN PAYMENTS: SUPPORTING STATEMENT 7–8 (2014), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=43307402> [<http://perma.cc/WP5L-6LY2>] (doing the same for support staff and other affected parties).

107. OMB SUPPORTING STATEMENT INSTRUCTIONS, *supra* note 39, at 6 (for item 12); see also *id.* at 6–7 (suggesting reliance on the public comment period and existing CBA for item 13).

108. The Act is triggered when ten people are asked the same question. See *supra* note 29 and accompanying text.

109. See FOOD & NUTRITION SERV., *supra* note 104.

income, diet, and blood work.¹¹⁰ Surely most applicants take far more time than this to document eligibility, especially the first time around. OIRA instructs agencies to count not only the time needed to fill out a benefits application, but also “the time that an individual or entity spends reading and understanding a request for information, as well as the time spent developing, compiling, recording, reviewing, and providing the information.”¹¹¹ For WIC, the Department must be estimating how long it takes applicants to hand over blood tests and other documents already in their hands—not a broader understanding of “compiling” and “providing” information that could include obtaining the documents, traveling to a local WIC agency, waiting for service, and participating in a nutrition assessment interview.¹¹² “One way the poor pay for government aid is with their time,” Kathryn Edin and Luke Shaefer remind us.¹¹³ On the other hand, some agencies do study hourly burdens thoroughly and broadly. An example is IRS’s random sample surveys and complex Individual

110. See 7 C.F.R. § 246.7 (2014) (detailing information that must be gathered on recipients); *id.* § 246.7(e)(1)(i)(A), (ii)(B) (regarding required tests for anemia).

111. 2014 OIRA REPORT, *supra* note 2, at 1; see also 44 U.S.C. § 3502(2)(D)–(F) (2012) (defining “burden” to include “searching data sources” and “completing and reviewing the collection of information”); 5 C.F.R. § 1320.3(b)(1)(vii)–(ix) (2014) (same). The agency received no public comments on the WIC collection request. An accurate count of the above-mentioned burdens would still underestimate total applicant burdens, on a broader understanding of time burdens for CBA. See *infra* Part II.B. Applicants travel to local WIC agencies, often wait before being served, may spend time receiving instructions and questions about nutrition, and they had to learn about the program in the first place. I thank Ellen Teller and Geri Henchy at the Food Research and Action Center for helping me understand WIC applicant requirements and burdens.

For examples of agency requests that do estimate respondent travel time, see U.S. DEP’T OF STATE, BIRTH AFFIDAVIT: SUPPORTING STATEMENT 3–4 (2014), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=48139601> [<http://perma.cc/2PDW-NTXE>]; CTRS. FOR MEDICARE & MEDICAID SERVS., U.S. DEP’T OF HEALTH & HUMAN SERVS., EVALUATION OF THE MULTI-PAYER ADVANCED PRIMARY CARE PRACTICE (MAPCP) DEMONSTRATION: FOCUS GROUP INTERVIEW GUIDES: SUPPORTING STATEMENT 8–9 (2013), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=42215001> [<http://perma.cc/9WEX-ASRF>]; U.S. CONSUMER FIN. PROT. BUREAU, QUALITATIVE TESTING OF MORTGAGE SERVICING RELATED MODEL FORMS AND DISCLOSURES: SUPPORTING STATEMENT 6 (2012), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=30716901> [<http://perma.cc/6KXP-7BCM>].

112. Telephone Interview with Amy M. Herring, Senior Program Analyst, Supplemental Food Programs Div., Food & Nutrition Serv. (Sept. 19, 2014) (summarizing how the 0.05 hours estimate was reached).

113. KATHRYN J. EDIN & H. LUKE SHAEFER, \$2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA 2 (2015).

Taxpayer Burden Model.¹¹⁴ But we cannot expect consistently high-quality burden estimates, let alone firmly grounded cost-benefit analysis, given limited agency resources.¹¹⁵

Moreover, agencies vary in their commitment to monetization. Agencies regularly monetize time burdens on organizations, it appears.¹¹⁶ For time burdens borne by individuals, agency practice is divided. Although we lack official statistics, we can get a sense of monetization practices from a random sample of more than 160 information collection requests that reported burdens on individuals or households and for which OIRA completed review during a recent three-year period.¹¹⁷ In this sample, under 60 percent of agency requests monetized individual or household time burdens while over 40 percent did not (Figure 1, Figure 2). These statistics do rest on some judgment calls. Three agency requests are counted as “monetized” when they used \$0.00 as the value for time spent by unemployed students, unemployed seniors, and recipients of disability benefits.¹¹⁸ Also, the fraction of monetized requests is not the same measure as the fraction of monetized hours. Recall that IRS

114. The Model was developed with the assistance of IBM, and it combines survey data with respondents' tax forms to extrapolate time and out-of-pocket costs for all taxpayers and for new tax law proposals. See John L. Guyton, John F. O'Hare & Michael P. Stavrianos, *Estimating the Compliance Cost of the U.S. Individual Income Tax*, 56 NAT'L TAX J. 673, 674–81 (2003); Janet Holtzblatt, *Measuring Compliance Burdens: Issues Raised by the Individual Taxpayer Burden Model*, in PROCEEDINGS: ANNUAL CONFERENCE ON TAXATION AND MINUTES OF THE ANNUAL MEETING OF THE NATIONAL TAX ASSOCIATION 366, 367 (2004).

115. Cf. Improving Implementation of the Paperwork Reduction Act, 74 Fed. Reg. 55,269, 55,270 (Oct. 27, 2009) (reporting OIRA's recognition of varying quality of agency burden estimates, with the IRS Model held out as a careful effort).

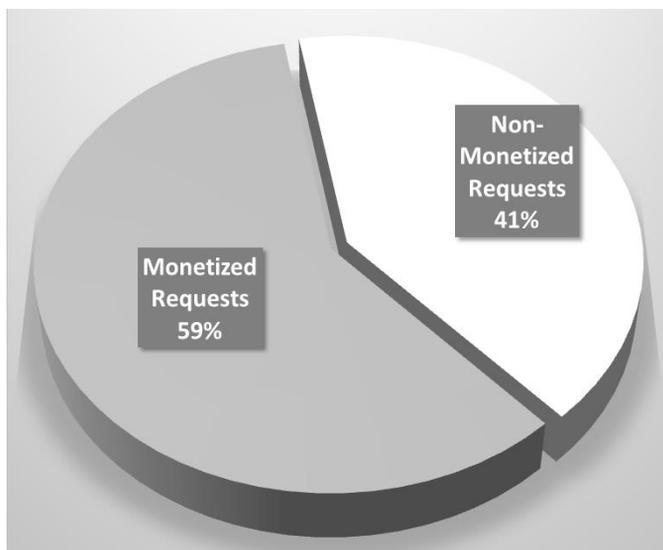
116. This is my impression based on a review of dozens of information collection requests from the past three years.

117. Nearly all of these requests were approved without change or with a change not apparently related to monetization. Withdrawn and improperly submitted requests were excluded from the sample, as well as requests that appeared to burden only organizations. The data collection method, the spreadsheet of compiled data, and the agency supporting statements are on file with the author. I thank Rucha Desai for her extraordinary efforts on this inquiry.

118. See FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., SCHOOL NUTRITION AND MEAL COST STUDY BURDEN TABLE 1, at cells Q55–Q59 (2014), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=46559701> [<http://perma.cc/643U-BKAE>]; CTRS. FOR MEDICARE & MEDICAID SERVS., U.S. DEP'T OF HEALTH & HUMAN SERVS., PARTS C AND D COMPLAINTS RESOLUTION PERFORMANCE MEASURES: SUPPORTING STATEMENT 16 tbl.2 (2012), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=34074901> [<http://perma.cc/88US-DDFS>]; U.S. SOC. SEC. ADMIN. & NAT'L INST. OF HEALTH, THE SSA-NIH COLLABORATION TO IMPROVE THE DISABILITY DETERMINATION PROCESS: SUPPORTING STATEMENT 14–15 tbl.A.12–2 (2012), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=29411202> [<http://perma.cc/G2YC-6MUR>].

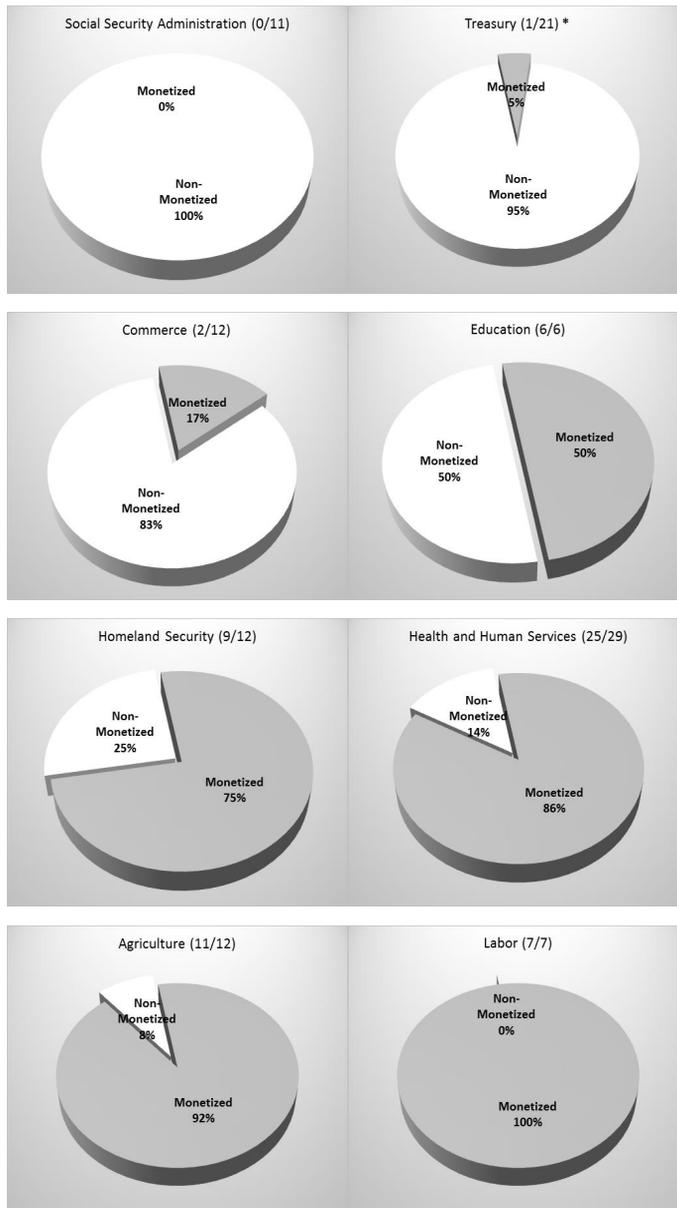
generates a uniquely large share of the reported federal paperwork burden, taking into account all tax forms used to report income, exemptions, and deductions whether legally optional or not, but IRS does not monetize time expended by individuals on their tax forms. The basic individual tax forms happen not to be in this sample;¹¹⁹ if they were, those nonmonetized hours would basically swamp the hours monetized in this or any other sample. Either way, agencies certainly do vary in their willingness to monetize time.

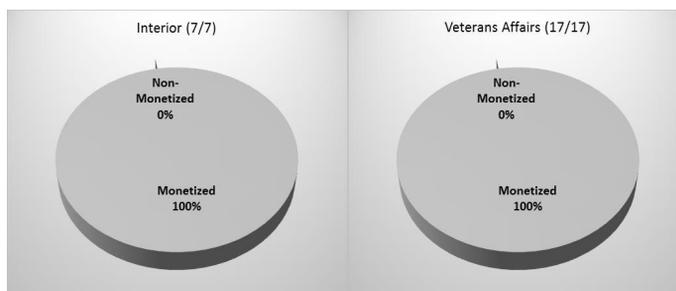
Figure 1. Fraction of Sampled Agency Requests that Monetized Individual/Household Time, 2011–2014



119. Fifteen other IRS requests do show up in this sample. IRS did not monetize hours in any of them.

Figure 2. Some Agency-by-Agency Fractions of Sampled Requests that Monetized Individual/Household Time, 2011–2014





*As discussed in the text, the Treasury Department and its Internal Revenue Service account for most of the total *hours* currently counted by agencies, whatever the quality of those counts, but they account for far less than half of the total number of information collection *requests*. The one request in the sample from Treasury that monetized hours was generated by the Office of the Comptroller of the Currency, for a customer complaint form regarding bank practices.¹²⁰

For agency requests that do convert individual and household time into dollars, invariably wage rates are used. But this metric yields variation anyway because agencies are not committed to a universal wage rate for everyone. Very different monetary values are assigned to similar paperwork burdens based on how the labor market values the jobs that the respondents ordinarily do (Figure 3). Ignoring the three \$0.00 values, the range in agency valuation of people's time is easily more than tenfold in our sample and in the specific examples discussed above—\$7.25 per hour imputed to unemployed people seeking nutrition and other benefits,¹²¹ over \$80 per hour for professionals such as doctors answering questions,¹²² and over \$250 per hour for the highest-income outliers such as nuclear

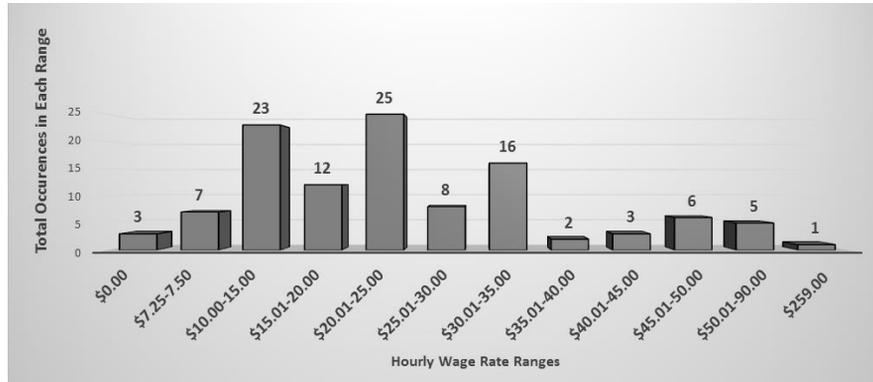
120. See OFFICE OF THE COMPTROLLER OF THE CURRENCY, U.S. DEP'T OF TREASURY, CUSTOMER COMPLAINT FORM: SUPPORTING STATEMENT 1–2 (2012), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=34765001> [<http://perma.cc/EN7A-EE5D>].

121. See, e.g., U.S. DEP'T OF HEALTH & HUMAN SERVS., SUBSIDIZED AND TRANSITIONAL EMPLOYMENT DEMONSTRATION (STED) AND ENHANCED TRANSITIONAL JOBS DEMONSTRATION (ETJD): SUPPORTING STATEMENT 36 (2013), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=39889201> [<http://perma.cc/3WMS-8ZHP>].

122. See OFFICE OF THE NAT'L COORDINATOR FOR HEALTH INFO. TECH., SURVEY OF MEDICAL CARE PROVIDERS FOR THE EVALUATION OF THE REGIONAL EXTENSION CENTER (REC) PROGRAM: SUPPORTING STATEMENT 8 (2013), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=49123501> [<http://perma.cc/JW4J-JR8N>] (using \$86 per hour for primary care physicians).

scientists seeking government jobs.¹²³ The sample's distribution does clump in the \$10 to \$15 range, which seems to reflect clerical wages, and again in the \$20 to \$35 range, which reflects national median hourly income plus occasional augmentation for overhead and fringe benefits.¹²⁴ Even so, significant variance in time valuation is undeniable.

Figure 3. Wage Rates Used in a Sample of Agency Requests that Monetized Individual/Household Time Burdens, 2011–2014



B. OIRA

Agency variance in monetizing time is not the result of a White House directive, but wage rates do show up in OMB guidance. OMB instructions for agencies going back to 1995 call for estimates of out-of-pocket dollar costs as well as hour burdens, and for a conversion of the hour burdens into dollars, “identifying and using appropriate wage rate categories.”¹²⁵ More generally, OMB has encouraged agency monetization of people’s time—but without the commitment to hourly wages—since at least 2003. Circular A-4 on cost-benefit analysis suggests that agencies tally time costs in dollars, and this guidance indicates a broad understanding of time-related burdens beyond filling out forms. The Circular explains that agencies should

123. See NUCLEAR REGULATORY COMM’N, NRC FORM 354, DATA REPORT ON SPOUSE: SUPPORTING STATEMENT 4 (2011), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=27489401> [<http://perma.cc/9MFZ-WDKX>].

124. On the link between loaded wage rates and an employer perspective on paperwork burdens, see *infra* note 233.

125. See OMB SUPPORTING STATEMENT INSTRUCTIONS, *supra* note 39, at 6 (explaining that, for item 12, out-of-pocket costs should exclude the cost of any hour burden); see also *id.* (same for item 13).

estimate the monetary value of significant effects including “inconvenience costs and benefits” as well as “[g]ains or losses of time in work, leisure and/or commuting/travel settings.”¹²⁶

OMB does not exactly advertise the conversion of hours into dollars. The dollar value of these hours does not appear on OMB forms or in a searchable format on *Reginfo.gov*.¹²⁷ Confirming an agency translation of hours into dollars requires downloading a supporting statement or searching the *Federal Register*. And OIRA treated monetization as a controversial issue worth revisiting in a 2009 request for public comments. Ideas on “[w]hether and how burden hours should be monetized” were solicited, including whether a universal dollar figure should be used for all information collections.¹²⁸ Also, OIRA’s annual reports nearly always count hourly burdens without attempting to translate hours into dollars,¹²⁹ plus the President’s recent initiative to cut federal paperwork burdens called for new burden-reduction ideas in hours, not dollars.¹³⁰ Of course, neither OMB nor OIRA are hiding burden information.¹³¹ OIRA made a real contribution to transparency in 1995 when it began posting agency supporting statements online. Anyone can make their own hours-to-dollars conversions using easily accessible hour estimates.

More important, the foregoing cannot reveal exactly how serious agencies are about estimating, monetizing, and integrating time burdens with other considerations when they judge whether and how

126. CIRCULAR NO. A-4, *supra* note 8, at 37. This guidance applies to information collections bundled with proposed rules.

127. See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, PAPERWORK REDUCTION ACT SUBMISSION (INSTRUCTIONS FOR COMPLETING OMB FORM 83-I) 3 (1995), <http://www.whitehouse.gov/sites/default/files/omb/inforeg/83i-fill.pdf> [<http://perma.cc/VYF2-4L5P>] (item 14); ROCIS HOW TO GUIDE, *supra* note 48, at 40.

128. Improving Implementation of the Paperwork Reduction Act, 74 Fed. Reg. 55,269, 55,271–72 (Oct. 27, 2009). No policy change appears to have followed this solicitation.

129. An exception is the 2011 report: “We have not attempted to monetize this number of hours, but it is clear that the monetary equivalent would be very high. For example, if each hour is valued at \$20, the monetary equivalent would be \$176 billion.” OFFICE OF INFO. & REGULATORY AFFAIRS, EXEC. OFFICE OF THE PRESIDENT, INFORMATION COLLECTION BUDGET OF THE UNITED STATES GOVERNMENT 2011, at 1 (2011).

130. See *supra* notes 26–27 and accompanying text.

131. See generally 5 C.F.R. § 1320.14(a) (2014) (regarding public access to OMB paperwork docket files, with exceptions for trade secrets and other risks to lawful collection of information). An encouraging view of OMB oversight on VSL for CBA is John D. Graham, *Saving Lives Through Administrative Law and Economics*, 157 U. PA. L. REV. 395, 449–50 (2008).

to collect information. The relevant officials are operating under partially vague standards and very scarce resources. OIRA employs fewer than fifty people to perform a range of duties, including review of the costs and benefits of proposed regulations. These regulatory proposals often implicate much higher stakes than information collections within what agencies take to be the ambit of the Paperwork Reduction Act.¹³² From the summer of 2013 until the summer of 2014, OIRA's small staff reviewed nearly 3,900 information collection requests.¹³³ Unsurprisingly, agency explanations of their collection requests tend not to be elaborate,¹³⁴ and OIRA does not offer in-depth public explanations for its conclusions.¹³⁵

132. See Sunstein, *supra* note 11, at 1845 n.26 (reporting that OIRA has about forty-five employees, mostly career staff, and reviews upwards of 700 regulatory actions per year, although noting help from others outside the office); see also Jennifer Nou, *Agency Self-Insulation Under Presidential Review*, 126 HARV. L. REV. 1755, 1800 (2013) (reporting that twenty to thirty OIRA staff “consistently engage in regulatory review”).

133. Based on searches on the “Search of Information Collection Review” page at *Reginfo.gov* restricted to “Concluded” OIRA actions between July 30, 2013 and July 29, 2014, OIRA approved 3,041 requests without change, plus 839 requests with changes, encountered 47 withdrawals, and denied 2 requests.

134. As the Securities and Exchange Commission (SEC) warned in a recent request, “The estimated burden hours are made solely for the purpose of the Paperwork Reduction Act. The hours are not derived from a comprehensive or even representative survey or study of the hours to comply with Commission rules and forms.” U.S. SEC. & EXCH. COMM’N, RULE 173: SUPPORTING STATEMENT 2 (2014), <http://www.reginfo.gov/public/do/DownloadDocument?objectID=47864701> [<http://perma.cc/XVB8-9FVF>].

135. See, e.g., OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, NOTICE OF ACTION: RULE 173, at 1 (2014), <http://www.reginfo.gov/public/do/DownloadNOA?requestID=258033> [<http://perma.cc/ARB2-A8PN>] (approving SEC’s request without comment); OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, NOTICE OF ACTION: FDA APPROVAL TO MARKET A NEW DRUG 1 (2014), <http://www.reginfo.gov/public/do/DownloadNOA?requestID=259847> [<http://perma.cc/KB6H-DTM8>] (approving FDA’s request with a warning that the scope of approval is limited by the supporting statement); cf. 5 C.F.R. § 1320.10(b) (2014) (“OMB shall notify the agency involved of its decision to approve, to instruct the agency to make a substantive or material change to, or to disapprove, the collection of information, and shall make such decision publicly available.” (emphasis added)). An exception to the rule of reticence is the process for OMB participation in public comment when an agency bundles a proposed information collection into a proposed rule, see 5 C.F.R. § 1320.11(c) (2014), and subsequent review after publication of any final rule, see *id.* § 1320.11(i) (“If OMB disapproves or instructs the agency to make substantive or material change to the collection of information, it shall make the reasons for its decision publicly available.” (emphases added)); see also *id.* § 1320.12(f)(1) (regarding renewed authorization). Also, independent agencies must explain their override votes. See *id.* § 1320.15; see also 44 U.S.C. § 3507(f)(2) (2012) (“The agency shall . . . explain the reasons for such vote.”).

C. Politics

If neither formal law nor OIRA policy fully explains agency behavior, political forces might enhance our understanding. No straightforward political theory will account for the patterns, unfortunately. Typical for large-scale positive theorizing, much depends on controversial assumptions about incentives within government institutions and the operative model for politics.¹³⁶ But something useful can be said about the politics of paperwork.

At a macro level and simplifying greatly, increases in estimated paperwork burdens tend to decrease the scope of government projects. The value of statistical life (VSL) moves in the opposite direction, with increases in VSL tending to increase the scope of government projects.¹³⁷ The reason is that, conventionally, paperwork burdens are taken to fall on the cost side of a cost-benefit analysis, lives saved on the benefit side. If a group can influence these estimates and if they favor (disfavor) a government project, they will tend to prefer a lower (higher) estimated paperwork burden and a higher (lower) estimated life valuation.¹³⁸ We might then suppose that the political left generally favors lower paperwork burden estimates and higher VSL, while the political right generally favors the opposite.

Furthermore, we might speculate that filling out forms is a widespread annoyance for business concerns and households alike that agencies cannot easily ignore altogether without political pushback, whereas waiting in line is a burden more likely to fall on relatively powerless people, and therefore less likely to be counted by government officials who are undisciplined by competitive forces.¹³⁹

136. See, e.g., Gillian Lester, *Can Joe the Plumber Support Redistribution?*, 64 TAX L. REV. 313, 332 n.60 (2011) (discussing median voter and interest group models, among others, in the redistribution context); Daryl J. Levinson, *Empire-Building Government in Constitutional Law*, 118 HARV. L. REV. 915, 923–34 (2005) (regarding conflicting scholarship on agency incentives to expand); see also Lisa Schultz Bressman, *Procedures as Politics in Administrative Law*, 107 COLUM. L. REV. 1749, 1767–71 (2007) (discussing positive political theory models based on agency slack vis-à-vis congressional preferences).

137. For introductions to the concept of VSL, see *supra* note 8 and accompanying text and *infra* Parts III.A–B.1.

138. Cf. Binyamin Appelbaum, *As U.S. Agencies Put More Value on a Life, Businesses Fret*, N.Y. TIMES (Feb. 16, 2011), <http://www.nytimes.com/2011/02/17/business/economy/17regulation.html> [<http://perma.cc/T8GC-C46E>] (reporting such allegations, noting variation in agency-level VSL, and suggesting avoidance of a high-stakes issue and “flexibility” as explanations).

139. See *supra* note 18 (discussing queuing and exit opportunities). Occasionally, markets that are otherwise presumed sensitive to customer time nevertheless produce highly visible time

Indeed, in practice, information collection requests are regularly concerned with people completing forms and not at all concerned with people waiting around. There probably are no powerful groups organized around paperwork per se, or statistical lives for that matter, but these suggested valences for different estimates of costs and benefits illuminate one facet of paperwork politics. That said, we lack good data on whether and which agencies systematically report high or low time burdens, however tested.

But now we do have evidence of variance in agency *monetization* practices, along with reliance on wage rates when monetization occurs.¹⁴⁰ And we might suppose that many upper-income people would favor individuated wage rates because this conversion tool emphasizes paperwork burdens on them.¹⁴¹ Also, certain constituencies do seem particularly interested in paperwork burdens and dollar figures more specifically. Professor Jeffrey Lubbers, who contributed to Vice President Gore's National Performance Review, reports that "[t]he small business community was up in arms about needless agency forms and paperwork, and the federal agency representatives were upset about what they perceived to be needless OMB forms and paperwork. That war of words was, not surprisingly, won by the small business interests, and the result was an even

burdens. Think about media coverage of holiday sales openings or a new iPhone release; both include long lines of people outside brick-and-mortar stores waiting to become the first wave of possessors—and possibly accruing status points therefor. *See, e.g.*, Jefferson Graham, *Expect Long Lines for iPhone this Week*, USA TODAY (Sept. 14, 2014), <http://www.usatoday.com/story/tech/columnist/talkingtech/2014/09/14/look-to-long-lines-for-iphone-this-week/15626913> [<http://perma.cc/J4QA-NLQ8>]. Shake Shack, which has been a popular restaurant destination in Manhattan, both informed the public and advertised long lines with its "Shack Cam," on the web at <https://www.shakeshack.com/location/madison-square-park/#shack-cam> [<http://perma.cc/DPYS-3HHE>]. This slightly modifies the tradition of exclusive nightclubs, with hordes on the sidewalk and highly valued customers ushered in. Precisely why market phenomena such as these are not treated as significant failures to match product availability with competent estimates of demand—while long lines at the polls on election day are readily criticized—is somewhat difficult to explain. Market players sometimes garner publicity benefits from the show of intense consumer support, and these eager consumers sometimes garner admiration from subpopulations or establish part of their identity during these episodic queuing events. Apparently, election officials and eager voters get no such credit. Complaints about long lines at some polling places in 2012 led to a presidential commission, which recommended a goal of holding waiting times to under thirty minutes (without explaining the underlying valuations that yielded this goal). *See* PRESIDENTIAL COMM'N ON ELECTION ADMIN., *THE AMERICAN VOTING EXPERIENCE 13–14* (2014), <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf> [<http://perma.cc/S2J7-EV4A>].

140. *See supra* Part II.A.

141. Leaving paperwork burdens in hourly terms is more egalitarian at first glance, but the effects depend on how agency discretion is used thereafter. *See infra* Part III.B.3.

stronger [Paperwork Reduction Act in 1995].”¹⁴² When OIRA requested public comments in 1999, the National Association of Manufacturers and the National Federation of Independent Business (NFIB) endorsed monetizing business time with reference to wage rates.¹⁴³ More generally, analysts worried about federal regulatory burdens on businesses have tried to calculate an impressive measure of compliance costs in dollars. Nicole Crain and Mark Crain, who served at OMB during the Reagan Administration, received polarized media attention for a report to the Small Business Administration’s Office of Advocacy that asserted overall compliance costs of \$1.75 trillion and \$15,586 per household.¹⁴⁴

Perhaps, then, projects that affect businesses and higher-income individuals are more likely to have paperwork burdens monetized via wage rates, if the action agencies are responsive to those interests. An employer-like perspective on paperwork costs—as a market-oriented cost of doing business either in-house or contracted out, not as a personal burden suffered by an individual¹⁴⁵—does seem to match certain agency practices. But it is not at all clear that such presumed preferences regarding monetization map onto larger patterns across agencies. How likely is it, for instance, that upper-income or business interests drive the paperwork analysis at Health and Human Services,

142. Lubbers, *supra* note 11, at 113.

143. See National Association of Manufacturers, Comment on OMB Notice on Improving Implementation of the Paperwork Reduction Act 6 (Dec. 28, 2009), <http://www.regulations.gov/contentStreamer?documentId=OMB-2009-0020-0064&attachmentNumber=1&disposition=attachment&contentType=pdf> [<http://perma.cc/H4V7-3FHJ>] (recognizing, however, that different businesses operate differently, including their propensity to contract out); National Federation of Independent Business, Comment on OMB Notice on Improving Implementation of the Paperwork Reduction Act 2 (Dec. 24, 2009), <http://www.regulations.gov/contentStreamer?documentId=OMB-2009-0020-0015&attachmentNumber=1&disposition=attachment&contentType=msw8> [<http://perma.cc/J79U-J4F2>] (asserting special hardships for high-earning small business owners who often do their own paperwork).

144. See NICOLE V. CRAIN & W. MARK CRAIN, THE IMPACT OF REGULATORY COSTS ON SMALL FIRMS, at iv (2010); Nicole V. Crain & W. Mark Crain, *The Regulation Tax Keeps Growing*, WALL ST. J. (Sept. 27, 2010), <http://www.wsj.com/articles/SB10001424052748703860104575508122499819564> [<http://perma.cc/5T7P-BX5B>]. For reactions from the political left, see Meteor Blades, *Report Knocks Legs from Under Study Saying Regulations Cost the Economy \$1.75 Trillion*, DAILY KOS (Apr. 25, 2011, 7:45 AM), <http://www.dailykos.com/story/2011/04/25/969321-Report-knocks-legs-from-under-study-saying-regulations-cost-the-economy-1-75-trillion> [<http://perma.cc/7CHH-3ZQK>], and Zachary Pleat, *Fox’s Attack on Regulations Relies on Widely Discredited Cost Estimate*, MEDIA MATTERS FOR AM. (Sept. 14, 2011, 4:28 PM), <http://mediamatters.org/research/2011/09/14/foxs-attack-on-regulations-relies-on-widely-dis/181805> [<http://perma.cc/ZZ3T-BCRR>] (emphasizing the use of Crain and Crain’s data on *Fox News*).

145. See *infra* notes 233–44 and accompanying text.

Agriculture's Food and Nutrition Service, and Veterans Affairs (evinced by their use of wage rates), while Census, IRS, and Education are driven by lower-income interests (evinced by their failures to monetize hours)?¹⁴⁶ These characterizations are neither intuitive nor easily proved.

To fill out a political theory, moreover, we need to know how agencies react to paperwork burdens and, more specifically, to large or small public estimates of those burdens on private parties (when reported in dollars)—or how players in the political system believe that agencies react. The answers are not self-evident. One possibility is that agencies do not respond and burden estimates are for public consumption alone. To the extent that agencies do respond, they have several lawful options, not all of which with clear political valences. Aside from rigging their burden estimates and assuming statutory authority exists, agencies can cut estimated paperwork burdens by (1) decreasing the number of respondents by deregulating, cutting the number of benefits and regulatory exemptions, or deterring applicants from seeking benefits or exemptions by generating lots of hard questions or long wait times, or (2) decreasing response times by asking no, fewer, or shorter questions, which tends to decrease the quality of information on applicants and regulated parties,¹⁴⁷ or (3) changing the method of information collection, such as by shifting from paper to online forms or from surveys to surveillance or existing databases, which might not decrease information quality but often does reduce public awareness and individual control, or (4) changing the method of data analysis, such as by shifting from census-like raw counts to small random samples and big data analytics.¹⁴⁸ Any of these presumably lawful responses could help or hurt any given ideological camp, depending on other facts and circumstances.

At the agency level, though, politics might well help explain specific decisions. One might suspect that IRS and its lonely supporters would rather not show a very high burden associated with its operations, including taxpayer time. Individual taxpayers are not especially well organized, but their concerns can be tapped by those

146. *See supra* Figure 2.

147. *See Wiener, supra* note 11, at 494 n.153, 500 (emphasizing mixtures of costs and benefits likely associated with reducing and increasing information demands on regulated parties).

148. *Cf. Utah v. Evans*, 536 U.S. 452, 457 (2002) (holding that “hot-deck imputation” for missing census data was not statutorily prohibited “sampling” and was constitutionally valid, without judging the validity of statistical sampling).

who are. Perhaps IRS is insulated enough from pressure to boost burden estimates and the agency prefers hours to dollars.¹⁴⁹ Yet IRS seems to study *hourly* taxpayer burdens quite earnestly, with repeated random sample surveys and a sophisticated model of taxpayer behavior. Moreover, the resulting hour estimates are strikingly high. IRS stands out among all the other agencies in OIRA annual reports as imposing most of the national hourly paperwork burden.¹⁵⁰ This does not confirm or refute that IRS is sensitive enough to taxpayer burdens or has limited discretion. But in theorizing about why IRS seriously counts hours but does not itself convert those hours into dollars, a simple political story is elusive. Perhaps avoiding an IRS-endorsed dollar figure is best for the agency and its supporters with respect to mainstream voters,¹⁵¹ and perhaps the intense IRS opponents are largely indifferent to agency monetization.¹⁵² After all, anyone can convert hours to dollars once the hours are estimated.

149. IRS is not one of the agencies to which OMB or OIRA have redelegated Paperwork Reduction Act authority, *see* 44 U.S.C. § 3507(i) (2012); 5 C.F.R. §§ 1320.16(d), 1320 App. A (2014), but perhaps OIRA deference is the practice. The situation is simply not transparent to outside observers.

150. *See supra* note 81. The estimate is based on agency reporting practices. IRS might be relatively careful about estimating a larger scope of time-related burdens. *See supra* note 114 and accompanying text.

151. For disagreement over which numbers to use in converting hourly IRS burdens into dollar estimates, *see* Glenn Kessler, *John Boehner's Misfire on the Cost of Tax Compliance*, WASH. POST: FACT-CHECKER (Nov. 16, 2011), http://www.washingtonpost.com/blogs/fact-checker/post/john-boehners-misfire-on-the-cost-of-tax-compliance/2011/11/15/gIQArT7qPN_blog.html [<http://perma.cc/KA54-CH55>] (criticizing Speaker Boehner's reliance on a study that used \$68.42 per hour to monetize the total paperwork burden imposed by IRS). The IRS might want to avoid officially taking sides in such disputes. People involved with developing the Individual Taxpayer Burden Model have illustrated monetization options without recommending a value. *See* Guyton et al., *supra* note 114, at 676, 682–83, 684 tbl.5 (asserting there is “no consensus in the research community regarding the best method for monetizing time,” and illustrating monetization with rates between \$15 and \$25 per hour).

152. For many individuals, the government already has adequate data to fill out the tax forms on its own without taxpayer assistance. *See* Joseph Bankman, *Using Technology to Simplify Individual Tax Filing*, 61 NAT'L TAX J. 773, 774–76 (2008). Aside from accuracy concerns, one explanation for why IRS does not DIY most individual tax returns is political resistance to making federal taxation any easier. *See* GROVER G. NORQUIST, AMS. FOR TAX REFORM, PRESENTATION TO THE PRESIDENT'S ADVISORY PANEL ON FEDERAL TAX REFORM: IMPLEMENTING A “RETURN FREE” TAX FILING SCHEME (2005), http://govinfo.library.unt.edu/taxreformpanel/meetings/docs/norquist_05172005.ppt [<http://perma.cc/C7V4-K7A5>] (criticizing the idea as aiming to increase taxes without adequate taxpayer attention). If true, however, this strategy does not obviously suggest a position on the *quantification or monetization* of taxpayer burdens. The strategy does suggest actually high paperwork burdens for taxpayers, but the suggestions for quantification are less clear.

We might be left to investigate agency practice on a request-by-request basis, to avoid falling into speculative just-so stories that match our antecedent generalizations about politics. Why, for instance, do officials at the Food and Nutrition Service monetize paperwork burdens for WIC applicants by using the minimum wage, instead of refusing to monetize or monetizing with some other tool—or adding other time-related burdens such as travel and wait time? Even the agency's lowball estimate of applicant time burdens is not easy to understand. Is this low number emblematic of the Service's commitment to protect WIC benefits by making the program appear cheaper to implement, or instead to protect aspects of the program that try to screen, educate, and reform people by making conditions on benefits appear cheaper to execute? How much can be explained by agency carelessness or resource constraints? Good answers to questions like these depend on ground-level investigations.

Which prompts a final observation on the larger picture. Paperwork burdens almost certainly receive little weight in most decisions at OMB, OIRA, and the requesting agencies. These officials operate under serious resource constraints and paperwork burdens will usually strike them as low-stakes issues, as rounding errors even, at least within the limited scope of concern intimated by the Paperwork Reduction Act.¹⁵³ Such burdens are unimpressive compared to other factors in cost-benefit analysis for major regulatory proposals. In addition, a significant fraction of federal paperwork is required by statute.¹⁵⁴ True, agencies are supposed to estimate paperwork burdens for new legislative proposals,¹⁵⁵ and an accurate accounting of paperwork burdens from existing legislative mandates would help observers evaluate Congress's work. But none of this means that an agency will be motivated to immerse itself in paperwork issues when the collection of information is obligatory.¹⁵⁶ More likely, agencies will roughly comply with OIRA instructions using limited efforts; and OIRA might understandably leave in place an old instruction asking for monetization based on hourly wages,

153. See *supra* notes 32–34 and accompanying text.

154. See 2014 OIRA REPORT, *supra* note 2, at iii, 2, 4–5 (counting most burden hours as discretionary, but stressing factors outside agency control in explaining apparent increases in burdens).

155. See 44 U.S.C. § 3506(c)(1)(C) (2012).

156. A related point is that any thorough CBA depends on well-quantified benefits, which can be difficult to ascertain for government information. See *infra* text accompanying notes 246–47.

which are readily estimable, without enthusiastic enforcement or rethinking.

III. PAPERWORK PRINCIPLES

Paperwork politics enhance our understanding of the current system, but core normative questions of valuation have to be addressed at some point. Yes, agencies arguably exert more energy generating paperwork on paperwork burdens than thoughtfully managing the government's information collection system, and the situation could be stable for now. The slice of time burdens quantified and monetized could be embedded in political compromises on the range of benefits and burdens to take seriously. But political compromises disintegrate over time, while the deeper normative issues of valuation will survive. The Paperwork Reduction Act is a narrow entryway to a broader phenomenon. Indeed, time burdens affect all of us, whether wealthy or poor, old or young, organized, unorganized, or disorganized. Some attention should be directed at principles that can guide the valuation of people's time. Here is a start.

A. *Life and Time*

Agencies treat them differently but, in one sense, perhaps life and time are fundamentally the same. Speaking practically, losing a life or saving a life means a shorter or longer life, measured from some baseline. Nobody's life will be saved forever. Instead "life-extension is always what is at issue," as Professor Cass Sunstein reminds us.¹⁵⁷ When those debating policy discuss saving lives, they probably refer to otherwise expected lifespans, measured in chunks of time.¹⁵⁸ And when a policy's anticipated benefit is preventing deaths through risk reduction, the ultimate hoped-for gain comes in the form

157. Cass R. Sunstein, *Lives, Life Years, and Willingness to Pay*, 104 COLUM. L. REV. 205, 208 (2004) ("No program literally 'saves' lives . . .").

158. See, e.g., NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., PRELIMINARY STATEMENT OF POLICY CONCERNING AUTOMATED VEHICLES 1 (2013), http://www.nhtsa.gov/staticfiles/rulemaking/pdf/Automated_Vehicles_Policy.pdf [<http://perma.cc/8K43-6HDG>] (discussing the potential of self-driving cars to reduce lives lost in crashes); John Broder, *E.P.A. Sets a Lower Limit for Soot Particles in the Air*, N.Y. TIMES (Dec. 14, 2012), <http://www.nytimes.com/2012/12/15/science/earth/epa-proposes-tighter-soot-rule.html> [<http://perma.cc/LJK9-HQ8U>] (quoting the chief medical officer for the American Lung Association in support of EPA policy that could "save lives").

of longer life or life expectancy—more time in a life.¹⁵⁹ Thus reducing the risk of death from a particular kind of air pollution could mean that a particular class of people end up living out an otherwise average expected lifespan¹⁶⁰ with which they can do more work, get more family time, or whatever, instead of ending their lives earlier from air pollution. If we want, we can calculate the gains to people in (expected) life years—or even hours—instead of the crude measure of lives saved.¹⁶¹ This is one way of understanding what is at stake when lives are at stake.

A loss of time can be understood similarly. Losing time, wasting time, or saving time means losing or gaining the use of time within a person's life, measured from some baseline. These references are to allotments within a finite lifespan instead of the overall length of life, but there is a connection through the idea of people having a life to direct. When people discuss time in these ways, they seem to mean the use of part of a lifetime, again measured in chunks of time.¹⁶² And when a policy's anticipated benefit is saving people's time, presumably the hoped-for gain comes in the form of relief from an experience that the affected person would consider bad, worthless, or less valuable than whatever else they would do with that time. Thus reducing the time needed to complete paperwork associated with air pollution regulation would mean that a particular class of people end up doing other productive work, getting more family time, or whatever, instead of filling out government forms. As with lives saved, we can calculate gains to people in (expected) hours or even life years. From this perspective, gains and losses of people's time and lives seem to dissolve into similar metrics implicating opportunity costs.

159. See CIRCULAR NO. A-4, *supra* note 8, at 29 (explaining VSL as “willingness to pay for reductions in only small risks of premature death”).

160. In the United States, the numbers are about seventy-eight years at birth and forty more years at age forty. See Elizabeth Arias, *United States Life Tables, 2009*, 62 NAT'L VITAL STATS. REPS. 1, 1, 2, tbl.A (2014).

161. OMB suggests precisely this as part of cost-benefit analysis. See CIRCULAR NO. A-4, *supra* note 8, at 30 (stating that agencies “should consider providing estimates of both VSL and [value of a statistical life year]” saved).

162. See, e.g., Ellen Bravo, Opinion, *We Need Standards for Paid Time Off*, N.Y. TIMES (Sept. 5, 2014, 12:37 PM), <http://www.nytimes.com/roomfordebate/2014/09/04/why-dont-americans-take-vacation-7/we-need-standards-for-paid-time-off> [<http://perma.cc/Z7FE-R64G>] (discussing time saving as the ability to shift from the workplace to family care); Aaron Gouveia, *2014 Wasting Time at Work Survey: Workers are Wasting More Time Than Ever in 2014*, SALARY.COM, <http://www.salary.com/2014-wasting-time-at-work> [<http://perma.cc/DQL3-P2EC>] (discussing time wasted at work as including workers' recreational web surfing).

As well, valuing time and life requires a choice between subjective and objective perspectives. I have been writing in subjective terms, suggesting how people think or feel, but this is a contested choice. Many of us consider people's time and lives to be valuable quite apart from any aggregation of feelings or preferences.¹⁶³ Moreover, if one wants to identify gains and losses of time and lives, baseline choices are necessary. We can wonder whether people are entitled to the average life expectancy of their age group, and whether people are entitled to choose their experiences without civic obligation to complete a census form. In addition, both events can be planned for, in the sense that people anticipating time-consuming obligations or death often can adjust their plans to soften the impact. And both shortening and diverting a person's life affects other people's lives; what a person would otherwise do with her life is relevant to everyone she knows. In addition, time burdens and life losses raise overlapping quantification issues. They can be tallied into one universal number for one large population, or instead individuated into different numbers for subpopulations. Judgments must be made about whether each person's time and life should be valued the same.

But of course there are distinctions, including the fact that many people recognize a special moral, religious, and emotional significance to a person's death.¹⁶⁴ These meanings might be recognized without denying a shared category of loss when a person's use of time is diverted, but, even so, there is a technical sequencing difference: a life loss always happens at the end of a lifespan while a time burden can happen in the middle, such that time burdens may

163. See, e.g., MARTHA C. NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT* 4–6, 71, 78–82 (2000) (listing opportunities for practical reason, affiliation, normal lifespan, adequate health, food, shelter, bodily integrity, senses and thinking, emotion, living with other species, play, and control over political and material environments); AMARTYA SEN, *INEQUALITY REEXAMINED* 31, 39 (1992) (listing opportunities to achieve or have certain functionings including adequate food and shelter, good health, avoidance of premature mortality, happiness, self-respect, and participation in community); see also JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 85–90 (1980) (listing goods with supposed intrinsic value, including life, knowledge, friendship, play, and religion); JAMES GRIFFIN, *VALUE JUDGMENT: IMPROVING OUR ETHICAL BELIEFS* 29–30 (1996) (offering understandings of accomplishment and other goods beyond subjective desires). Sen's and Nussbaum's capabilities approaches for minimally just social systems aim to disregard adaptive preferences grounded in unjust circumstances. See NUSSBAUM, *supra*, at 136–43; SEN, *supra*, at 55.

164. See generally PHILIPPE ARIES, *WESTERN ATTITUDES TOWARD DEATH* 85–87, 103–07 (1974) (claiming a “brutal revolution” by which death became “shameful and forbidden” in twentieth-century Western culture).

shape the person's subsequent life in ways that life losses cannot. It follows that time burdens can be partly made up for after the fact by either an evolving retrospective evaluation of what initially felt like a time loss,¹⁶⁵ or by adjusting future plans to compensate for the perceived loss.¹⁶⁶

At this point, however, one might still stress the similarities and conclude that paperwork is a lot like death, only more complicated. But the most elementary difference is experience, in that what people typically call lost or wasted time actually involves real-world human experiences. Death does not. "Time" in this context is a stand-in for a multitude of experiences—some valuable, some net negative, some perhaps worthless.¹⁶⁷ People allocate the lifetime available to them partly based on how they value different experiences and their opportunity costs—a lesson in economist Gary Becker's work¹⁶⁸—and we might think of unwelcome or unjustified experiences imposed on a person's life as a loss to that person involving the difference between two different sets of experiences. Experience may not be all there is to life or the only value in a human life,¹⁶⁹ but, on this ground alone,

165. See *infra* note 231.

166. See WILBERT E. MOORE, *MAN, TIME AND SOCIETY* 6 (1963) (distinguishing money and stating that "[t]ime lost is never truly regained, although the effects of loss may be compensated by greater intensity of use").

167. Certain injuries might amount to something close to an early death, such as a coma, although these injuries tend to have lasting effects on the person's subsequent life. On the other hand, every detected injury might include a time loss that is worth differentiating from other elements of the injury, and these time losses can be compared to an early death.

168. See Gary S. Becker, *A Theory of the Allocation of Time*, 75 *ECON. J.* 493, 495, 498 (1965) (presenting a microeconomic model of rational choice in which time is an input that is combined with market goods to produce commodities that deliver utility, such as watching a play, sleeping, or having children). One critique of Becker's model of family decisionmaking is noted in F. Thomas Juster & Frank P. Stafford, *The Allocation of Time: Empirical Findings, Behavioral Models, and Problems of Measurement*, 29 *J. ECON. LIT.* 471, 492, 495 (1991) (identifying process benefits, which can be positive or negative, that accompany production of household commodities such as meals and cleaning). There also is a behavioral critique of Becker's rational actor model, applying prospect theory and other decisionmaking patterns to the expenditure of time. See *infra* notes 224–27 & 230–31 and accompanying text. But the ideas that people have a limited amount of time to allocate, that the allocation involves trade-offs, and that time is a resource often combined with other things to produce a sense of well-being, obviously remain useful and influential.

169. See, e.g., RONALD DWORKIN, *LIFE'S DOMINION* 67 (1996) (exploring intrinsic and objective value of life); Michael J. Perry, *Is the Idea of Human Rights Ineliminably Religious?*, 27 *U. RICH. L. REV.* 1023, 1060 (1993) (exploring sacred value in a religious sense); see also Heidi Li Feldman, *Harm and Money: Against the Insurance Theory of Tort Compensation*, 75 *TEX. L. REV.* 1567, 1586–87, 1591–92 (1997) (conceptualizing human flourishing in experiential and nonexperiential senses, with applications in tort law).

one might fairly conclude that life losses and time burdens are deeply different.

The Paperwork Reduction Act might seem like a footling concern at the moment, but the Act's focus on paperwork helps test the experience-based distinction between time and life loss. Completing a tax form or a WIC application is a good candidate for meaningless experience. For many people, no skill, joy, civic pride, or other notable effect arrives with the mundane exercises required to answer these questions. Their lives are given over to a task about which they are basically indifferent, to a point that some might just as well be unconscious. Even those convinced that such duties are perfectly justified in a social sense need not place any independent value on doing the work. This hardly makes paperwork the same as death, but what people consider lost or wasted time gestures toward one aspect of the loss when a life ends. Objections to time burdens often, but not always, claim something better or worse than a simple loss of time. What the government has done under the Act is take the slice of human experience perhaps most like expected lifespan reductions and then value the two consequences in very different ways.

B. Time and Money

More can be done to compare life risks and time burdens, but nothing above indicates a reason for agencies to convert one and not the other into dollar values, let alone for the Department of Agriculture to monetize time and IRS not. Below I will contend that valuing people's time should prompt fewer doubts about monetization than valuing statistical lives. Neither life nor time is money, actually, but saving time and saving life are similar enough that monetized values can be used for both as one part of a thoughtful policy analysis. Although I sympathize with time-monetization efforts, I will go on to suggest that hourly wages are often the wrong basis for monetizing time burdens. Strong objections can be made on both welfarist and egalitarian principles. Opposition to hourly wages and the best alternative depend on contested normative commitments that I will not pretend to adjudicate for the reader, but these issues do require attention to make progress under current law and beyond.

1. *Welfare.* For those who want government decisions to take into account social welfare measured by aggregated individual judgments, dollars have become a convenient common metric for

people's valuation of policy consequences.¹⁷⁰ When existing markets do not already monetize particular costs or benefits, a familiar measure is willingness to pay (WTP) through contingent valuation surveys and labor market data indicating, for instance, how much actual people appear to price reductions in small risks of death.¹⁷¹ These are the technologies on which agencies build their monetized value of a statistical life.¹⁷² Of course many people are convinced that dollars are an inappropriate measure of some human values, such as life or civic duty, or at least that dollars fail to capture fully how people do or should value outcomes.¹⁷³ An economic version of social welfare is not a complete guide to moral judgment, anyway. All of this is old news, and I want to avoid unnecessary repetition of old arguments about welfarism. My point here is that, however powerful the objections to monetization, they apply with no more bite to time burdens, and almost surely less.

a. Willingness-to-pay complaints. Consider several typical complaints about WTP: (1) WTP technologies may be inaccurate because self-reporting does not necessarily show actual preferences;¹⁷⁴

170. See, e.g., MATTHEW D. ADLER & ERIC A. POSNER, *NEW FOUNDATIONS OF COST-BENEFIT ANALYSIS* 16 (2006); Matthew Adler & Eric A. Posner, *Happiness Research and Cost-Benefit Analysis*, 37 J. LEGAL STUD. S253, S265–69 (2008); Robert W. Hahn, *The Economic Analysis of Regulation: A Response to the Critics*, 71 U. CHI. L. REV. 1021, 1049 (2004) (“Guidelines for cost-benefit analysis typically encourage analysts to monetize costs and benefits to the maximum extent reasonable.”). In works like these, social welfare is some function of individual or idealized preferences for different policy outcomes. For a proposal to use a hedonic conception of well-being, see John Bronsteen, Christopher Buccafusco & Jonathan S. Masur, *Well-Being Analysis vs. Cost-Benefit Analysis*, 62 DUKE L.J. 1603, 1611 (2013).

171. See RICHARD L. REVESZ & MICHAEL A. LIVERMORE, *RETAKING RATIONALITY* 48–49 (2008); see also Lewis A. Kornhauser, *On Justifying Cost-Benefit Analysis*, 29 J. LEGAL STUD. 1037, 1057 (2000) (“[C]ost-benefit analysis prices policies, not the consequences of those policies [such as death and other irreplaceable commodities].”).

172. See *supra* note 9 and accompanying text.

173. A recent treatment with attention to civic duty is MICHAEL SANDEL, *WHAT MONEY CAN'T BUY: THE MORAL LIMITS OF MARKETS* 8–11, 60–65 (2012) (collecting concerns about markets based on inequality, corruption of value, and backfire in terms of reduced civic virtue); see also ADLER & POSNER, *supra* note 170, at 134 (acknowledging that a project's “morality does not depend on how much people are willing to pay to vindicate their moral views”). For more on civic duty, see *infra* Part III.B.1.c.

174. See, e.g., Marianne Bertrand & Sendhil Mullainathan, *Do People Mean What They Say? Implications for Subjective Survey Data*, 91 AM. ECON. REV. 67, 67–69, 71 (2001) (noting that people may forecast their feelings inaccurately or retroactively reshape their valuations, although surveys still might help explain behavioral differences across subjects); Jerry Hausman, *Contingent Valuation: From Dubious to Hopeless*, 26 J. ECON. PERSP. 43, 44–46 (2012) (asserting an upward-bias in answers to WTP hypotheticals); see also Amartya Sen, *The*

(2) WTP is influenced by limits on information and cognition, including difficulties people have understanding small risks and predicting their well-being in new circumstances,¹⁷⁵ and employee and consumer behavior do not necessarily reflect thoughtful risk valuations;¹⁷⁶ (3) WTP is influenced by ability to pay, which can drive the numbers more than the amount of well-being that the person anticipates or will experience;¹⁷⁷ (4) WTP can be influenced, even zeroed out, by adaptive preferences that embrace unjust conditions;¹⁷⁸ (5) WTP figures sometimes differ from willingness to accept (WTA) figures, raising questions about which measure is better in principle and whether the gap suggests non-rational framing or endowment effects.¹⁷⁹

Discipline of Cost-Benefit Analysis, 29 J. LEGAL STUD. 931, 945–47 (2000) (criticizing standard WTP surveys as applied to public goods that require collective effort).

175. See Hausman, *supra* note 174, at 47–49 (noting odd framing and scope effects); George Loewenstein & David Schkade, *Wouldn't It Be Nice? Predicting Future Feelings*, in WELL-BEING: THE FOUNDATIONS OF HEDONIC PSYCHOLOGY 85, 88–92 (Daniel Kahneman, Ed Diener & Norbert Schwarz eds., 1999) (reviewing studies often indicating poor affective forecasting).

176. See, e.g., Thomas O. McGarity, *A Cost-Benefit State*, 50 ADMIN. L. REV. 7, 64 (1998).

177. See, e.g., ADLER & POSNER, *supra* note 170, at 130 (contending that “dollars . . . do not accurately reflect relative well-being when endowments differ”); Sunstein, *supra* note 157, at 229; cf. Hammitt & Robinson, *supra* note 9, at 7–14 (discussing theory and evidence that small mortality risk reductions are luxury goods). Whether to do anything and what to do about wealth or income effects is a controversial matter. For instance, one might want to see unadjusted WTP for particular policy options but then shift wealth around through other means, or finance the policy such that poor people pay less in fact, or adjust the applicable social-welfare function. In the text, I am raising standard concerns without resolving them. Another concern involves the importance to some people of their relative economic position, and therefore whether they are confident that others will pay, too. See Robert H. Frank & Cass R. Sunstein, *Cost-Benefit Analysis and Relative Position*, 68 U. CHI. L. REV. 323, 326 (2001). It seems no different in kind from the other concerns, for my purposes.

178. See Sunstein, *supra* note 157, at 229 (“People’s preferences might have adapted to deprivation or injustice.”).

179. See, e.g., Hausman, *supra* note 174, at 46–47; John K. Horowitz & Kenneth E. McConnell, *Willingness to Accept, Willingness to Pay and the Income Effect*, 51 J. ECON. BEHAV. & ORG. 537, 537–45 (2003) (distinguishing WTP–WTA gaps found in past studies from hypothesized income-effect explanations). *But cf.* Thomas J. Kniesner, W. Kip Viscusi & James Patrick Ziliak, *Willingness to Accept Equals Willingness to Pay for Labor Market Estimates of the Value of a Statistical Life*, 48 J. RISK & UNCERTAINTY 187, 202–03 (2014) (finding no statistically significant WTP–WTA differential for fatality risks inferred from panel data on a cohort of job switchers).

Other, deep concerns about WTP or WTA as a foundation for CBA involve aggregation: whether such data show each person’s cardinal as opposed to merely ordinal preferences, and whether such data are interpersonally comparable in the sense of being scaled the same across individuals. See, e.g., Kornhauser, *supra* note 171, at 1040–41, 1052 n.32. Some responses are gathered in ADLER & POSNER, *supra* note 170, at 39–52. But again, the problem is

Each of these objections is more or less potent (and overcome) for life and time, on the understanding that the former involves small probabilities of extending lives and the latter involves people getting one life experience instead of another. Self-reporting is a problem either way, while informational and cognitive issues probably are less severe for time-related burdens. A time burden survey would pose valuation questions on commonplace experiences, like filling out a form or waiting in line—not a 1/10,000 risk of suffering the ultimate loss. People are subject to such risks constantly but that does not make familiar either the probabilities or the effort to monetize them. If market behavior is a partial solution to survey problems, then market data is available for time burdens, too. Indeed, there are thriving markets for government paperwork in particular and for time burdens more generally.¹⁸⁰ Barriers remain to accurately measuring time-related WTP, but the challenges are comparable to converting surveys, job decisions, and smoke detector purchases into monetized values for life-risk reductions.¹⁸¹

Other objections persist no matter how accurate the WTP technology, and they persist for time burdens as well. Many people's low ability to pay will drive down their willingness to pay for mortality risk reductions and to avoid time burdens, opting more often for DIY safety precautions, paperwork, queuing, and so on. As a response, WTP for both time and VSL can be weighted according to the diminishing marginal utility of money, with some complications.¹⁸² But whether or not adjustment is a good idea, there is no a priori reason to drive out (adjusted) WTP for time-related burdens alone. As for adaptive preferences, it is entirely possible that certain groups of people have become too accustomed to paperwork and other time

no worse in aggregating WTP–WTA numbers for paperwork or other time-related burdens than it is for life risks.

180. See *infra* note 221 and accompanying text.

181. It has been pointed out that VSL within CBA monetizes risks before death, not life or death per se from an ex post perspective. See Matthew D. Adler, *Risk, Death, and Time: A Comment on Judge Williams' Defense of Cost-Benefit Analysis*, 53 ADMIN. L. REV. 271, 284 (2001) (following John Broome, *Trying to Value a Life*, 9 J. PUB. ECON. 91, 95–96 (1978)). Monetizing the value of people's time actually doing paperwork does not share this limitation.

182. See ADLER & POSNER, *supra* note 170, at 142–46 (noting technical difficulties with choosing the appropriate adjustment, dynamic market responses, problematic incentive effects, and tax-and-transfer alternatives). A recent review of mathematical formulas for distributional weighting, to make CBA a better test for social-welfare gain, is Matthew D. Adler, *Cost-Benefit Analysis and Distributional Weights: An Overview 2* (Aug. 2013) (unpublished manuscript), http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5813&context=faculty_scholarship [<http://perma.cc/RF6Z-RLFK>].

burdens, according to some normative framework, and that other groups have become too accustomed to avoiding the same. A public spirited decisionmaker might then disregard or modify people's subjective WTP in setting policy. But what reason is there to believe that adaptive preferences are more problematic for time burdens than for life risks? Both situations involve the challenges of distinguishing troubling from welcome adaptation, and of properly adjusting policy to account for either.

On the other side of the ledger, converting time burdens into dollar figures using WTP would yield advantages similar to today's VSL practices. The conversion would make time burdens easy to plug into an overall cost-benefit analysis, assuming that other costs and benefits are monetized. There are then the standard claims that monetized CBA promotes transparent and rational administrative decisionmaking over arbitrary or subjective judgments shrouded in assertions of expertise by influential operators.¹⁸³ Anyone with serious doubts about these claims is entitled to keep them when CBA includes monetized time burdens and not just monetized life-saving benefits.

b. Efficiency, distribution, and subsidies. Cost-benefit analysis can be cut down to a decision procedure for correcting market failures and promoting economic efficiency, apart from distributional goals. This conception of CBA takes market allocations as generally good, including wealth distribution, and so use of unadjusted WTP for unpriced goods makes sense.¹⁸⁴ Such a narrow mission captures the classic example of environmental regulation to protect third-party health—with scrubbers in smokestacks, say.¹⁸⁵ As a matter of institutional choice, moreover, agencies regulating particular activities and specializing in market failures are unlikely to have the right

183. See, e.g., REVESZ & LIVERMORE, *supra* note 171, at 13; Christopher C. DeMuth & Douglas H. Ginsburg, *White House Review of Agency Rulemaking*, 99 HARV. L. REV. 1075, 1081–82 (1986); Eric A. Posner, *Controlling Agencies with Cost-Benefit Analysis*, 68 U. CHI. L. REV. 1137, 1140–42 (2001); cf. Michael A. Livermore, *Cost-Benefit Analysis and Agency Independence*, 81 U. CHI. L. REV. 609, 688 (2014) (emphasizing agency influence over CBA but also accountability to experts).

184. See David A. Weisbach, *Distributionally-Weighted Cost Benefit Analysis: Welfare Economics Meets Organizational Design* 18 (2014) (unpublished manuscript), <http://ssrn.com/abstract=2450142> [<http://perma.cc/8DRL-QW8T>] (“[I]f the task is only to correct a market failure, CBA should not be adjusted to add distributive weights.”).

185. A search for “scrubber” in Westlaw’s Journals & Law Reviews database on August 29, 2014 yielded 990 hits.

jurisdiction, information, or tools to execute sound redistribution policy.¹⁸⁶ If we care about social welfare in a broad sense, we can leave redistribution to tax-and-transfer agencies and laws. In fact, using unadjusted WTP suggests that all transfer programs flunk standard CBA: one side loses what another gains, plus somebody pays for administrative costs (including paperwork).¹⁸⁷

That said, social welfare beyond economic efficiency remains relevant to any committed welfarist. Wealth-adjusted WTP can be useful on that score.¹⁸⁸ And many of the paperwork examples reviewed above fall into the transfer program category. Think about WIC, student aid applications, and even IRS forms, depending on how one categorizes the tax code. The narrow economic-efficiency version of CBA does not apply to these programs, so welfare maximizers must either adjust for wealth effects or use something other than standard CBA to evaluate such policies. Regardless, welfarists in the subjective-valuation camp need to know something about how actual people actually experience and value time burdens. Wealth-adjusted WTP is one measure of this when prices are elusive. Finally, agencies can perform cost-effectiveness analysis (CEA) for transfer programs even if wealth-adjusted CBA is ruled out,¹⁸⁹ evaluating which of many possible designs will accomplish the same transfers for the least cost or accomplish the most transfers at a given cost.¹⁹⁰ Monetizing time burdens remains useful for CEA, and wealth-

186. See, e.g., Louis Kaplow & Steven Shavell, *Why the Legal System Is Less Efficient than the Income Tax in Redistributing Income*, 23 J. LEGAL STUD. 667, 667–68 (1994) (claiming that redistribution distorts work incentives regardless, but redistribution via legal rules adds inefficiency in the regulated activities); Weisbach, *supra* note 184, at 29–34 (making the institutional competence claim).

187. See Eric A. Posner, *Transfer Regulations and Cost-Effectiveness Analysis*, 53 DUKE L.J. 1067, 1060–69, 1076 (2003). I put aside arguments that redistribution will not otherwise occur, see, e.g., R. Layard & A.A. Walters, *Income Distribution: Allowing for Income Distribution*, in COST-BENEFIT ANALYSIS 179, 196–97 (Richard Layard & Stephen Glaister eds., 2d ed. 1994), and that regulatory agencies are adequately positioned to take up the slack.

188. I am not claiming that other responses to wealth effects, such as adjusting the social-welfare function, are worse. Surely efforts should be made to avoid imposing benefits on poor people who do not value those goods as much as rich people. Money is not one of those “luxury goods,” however.

189. See Exec. Order No. 12,866, 58 Fed. Reg. 51,735, 51,735–36 (Oct. 4, 1993); Sunstein, *supra* note 11, at 1869 (“When OIRA reviews budgetary transfer rules, its role may be limited to . . . avoid[ing] excessive or unjustified expenditures.”).

190. See LESTER B. LAVE, *THE STRATEGY OF SOCIAL REGULATION* 19–21 (1981) (emphasizing that CEA cannot interrogate given goals and budgets); Posner, *supra* note 187, at 1069–70 (similar).

adjusted WTP for individuals should get welfarists closer to understanding welfare effects.

A related and narrower normative issue involves a felt distinction between information disclosures somehow *mandated* by law and information offered to satisfy a *condition* for a regulatory exemption or other optional government benefit. OIRA keeps tabs on these categories of collections, along with voluntary responses.¹⁹¹ Even putting aside conceptual problems with maintaining such penalty/subsidy distinctions,¹⁹² welfarists should want to understand what people experience when they complete paperwork of any kind and for any purpose. Knowing whether completing a form will take five minutes or one hour helps everyone price out the policy options, so to speak. This is true whether the respondent is doing the work to avoid paying a fine, to remain in business, to obtain cash transfers, or to donate information so that officials can make informed decisions. Each of these situations implicate policy trade-offs that can be thoroughly evaluated for likely welfare effects only if we assign values to each of these experiences from the respondent perspective. If one is open to supporting a transfer or exemption program of some dimension to assist the beneficiaries, then it will rarely make sense to drive the hardest possible bargain with them by ignoring their preferences on time-related burdens. The goal, on these assumptions, is not to extract the most time from applicants in exchange for the fewest possible payouts and exemptions.

Of course, one might outright oppose a so-called subsidy apart from the associated time “burdens,” just as one might oppose a so-called mandate backed by a penalty that requires no paperwork. But understanding and quantifying the associated use of time not only enhances our knowledge about how different policy choices play out in the real world, this information also can be used to *restrict* the use of otherwise troubling programs. Both enthusiastic supporters and deep skeptics of a given welfare program or tax deduction should want to know how different versions of those policies affect how and

191. See *supra* note 33 (indicating that the statute requires counting all of these categories as burdens); *supra* note 154 (referencing OIRA reporting).

192. See, e.g., CASS R. SUNSTEIN, *THE PARTIAL CONSTITUTION* 299–300 (1993) (questioning the *entitlement baseline* choices required to distinguish penalties from non-subsidies); Adam B. Cox & Adam M. Samaha, *Unconstitutional Conditions Questions Everywhere: The Implications of Exit and Sorting for Constitutional Law and Theory*, 5 J. LEGAL ANALYSIS 61, 63, 70, 74 & 74 n.18 (2013) (questioning the *transaction framing* choices required to distinguish penalties from non-subsidies).

how often those policies are used. A beneficiary class's WTP to avoid various time burdens that stand in the way of a regulatory exemption or a cash payment is bound to affect the use and quality of the program.¹⁹³ So, disliking subsidy programs is not a good reason for refusing to understand how they work.

c. Civic duty objections. Before moving on, we should circle back to civic duty. There is a perfectly respectable argument that some alleged time burdens should be understood as duties of citizenship or of community members in good standing. The decennial census, certain tax forms, compulsory military service, and jury duty are intuitive candidates, and the idea might include voting even if not required by law. One might link the concept of civic duty to ongoing commensurability and monetization debates surrounding the valuation of "lives saved" by government policy, though the problem has a slightly different spin. Here we are concerned with the use of people's lives for what proponents believe is the public good, and how complaints about the time costs of these duties should be evaluated.

A strong version of the civic duty position is that any burden felt by individuals is no reason to limit the scope or deny the validity of these duties. Bad feelings would be overridden by good citizenship, so to speak. A mere cost-effectiveness analysis might then seem sufficient; hours alone can serve that purpose. A moderate version of the position is that, even if people's preferences count for something in specifying civic duties, the time needed to fulfill a well-justified civic duty should not be monetized. Thinking about these experiences in dollar terms might mischaracterize a moral imperative as a disposable commodity,¹⁹⁴ and taking "shadow prices out of the

193. See *infra* text accompanying notes 212–14 & 228–31 (discussing information-heavy policies that attempt to learn about or teach people, or even screen out potential beneficiaries, compared to less precise policies that are cheaper informationally).

194. Cf. ELIZABETH ANDERSON, VALUE IN ETHICS AND ECONOMICS 190 (1993) ("By regarding [human life and environmental quality] as commodity values, cost-benefit analysis fails to consider the proper roles they occupy in public life."); SANDEL, *supra* note 173, at 10 (raising concerns about the effect of markets and monetary incentives on civic duties, and calling for a case-by-case moral inquiry into the proper way to value goods); Frank Ackerman & Lisa Heinzerling, *Pricing the Priceless: Cost-Benefit Analysis of Environmental Protection*, 150 U. PA. L. REV. 1553, 1553, 1567 (2002) (suggesting that CBA in the environmental protection context is cold and crazy, and alleging that "[c]ost-benefit analysis turns public citizens into selfish consumers and interconnected communities into atomized individuals"); Laurence H. Tribe, *Ways Not to Think About Plastic Trees: New Foundations for Environmental Law*, 83 YALE L.J. 1315, 1329–32 (1974) (offering concerns about policy analysis that reduces valuation questions to human preferences).

shadows” might crowd out feelings of ethical obligation that help social systems run well.¹⁹⁵ Indeed certain tasks have full value only with effort; maybe voting and taxation can be made too easy. These ideas do not fully fit or explain agency practices,¹⁹⁶ but the ideas deserve recognition.

The strong version of civic duty rejects or cabins standard welfarism, and so the objection should be flagged without repeating old basal debates. For present purposes, we can observe that ignoring people’s selfish complaints on moral grounds will not distinguish time from statistical life valuation, nor endorse agency use of hourly wages to value either good. The moderate version of the civic duty position, in contrast, can be viewed as a friendly warning within welfarism. Those seeking accurate representations of subjective human experience as a basis for social-welfare calculations have no use for misleading language or metrics; crowding out socially beneficial phenomena is no good to welfarists either. These concerns are best supported by evidence, though, not mere guesses about what happens when officials think about time in dollar terms or ask a random sample of people to monetize paperwork burdens. The same evidentiary call applies to concerns that civic pride is lost unless, for instance, people complete their own tax returns or spend time waiting for a chance to vote.

Whatever the precise scope of our civic duties, a useful measure is needed to decide whether the second hour in line or the second round of forms is worth it. Even census forms ask for demographic information beyond a mere enumeration of people. Without ending any debate, I will note that dollars can be an adequate measure of at least part of the burden among the imperfect options—and that a plausible version of civic duty will reach only some of the time

195. SANDEL, *supra* note 173, at 61; *cf. id.* at 64 (asserting that “often [actual] market incentives erode or crowd out nonmarket incentives”); LAWRENCE ZELENAK, LEARNING TO LOVE FORM 1040, at 5 (2013) (defending a mass return-based tax system on its potential to develop civic virtue, but recommending tax simplification and recognizing costs in time, dollars, and “headaches”); Bruno S. Frey, Felix Oberholzer-Gee & Reiner Eichenberger, *The Old Lady Visits Your Backyard: A Tale of Morals and Markets*, 104 J. POL. ECON. 1297, 1306, 1311 (1996) (reporting survey results in which local support for a nuclear waste site dropped when respondents were told that Parliament would compensate residents with annual money payments, and suggesting in-kind compensation); Kathleen D. Vohs, Nicole L. Mead & Miranda R. Goode, *The Psychological Consequences of Money*, 314 SCIENCE 1154, 1154–56 (2006) (reporting experimental results in which participants primed with money images and ideas worked longer without asking for help and were less willing to help or work with others).

196. *See supra* notes 85–89 and accompanying text.

burdens under discussion. We do not have to pretend that money terms are the ideal way to discuss all human values. We may still believe that transparently comparable scores for various consequences contribute to thoughtful, practical policy evaluation.

2. *Hourly wages.* One might now wonder how close current agency practices already are to a WTP approach, at least for the slice of time burdens covered by the Paperwork Reduction Act. Most information collection requests do convert hours into dollars, as we saw in Figure 1, using hourly wage data for different classes of respondents. Those are market prices for the use of people's time. But, with exceptions for burdens on organizations and individuals who contract out, these prices for employment time are not what WTP drives at.

a. *Willingness to pay distinguished.* Willingness to pay for an outcome is a way of estimating the intensity of individuals' subjective valuations, which can be aggregated into a proxy for the social-welfare effect of a given policy. The actual preferences of individuals are the targets, not a market or third-party valuation per se.¹⁹⁷ The goal is finding out how strongly those people value the effects of a policy option, not how markets value those people. "Adoption of WTP as the measure of value implies that individual preferences of the affected population should be a guiding factor in the regulatory analysis," as OMB puts it.¹⁹⁸ In contrast, hourly wages earned by or imputed to the individual respondents of information collections are the market prices for those people to perform their ordinary jobs, not necessarily to do federal paperwork. These hourly wages do not necessarily correspond either to the respondents' *own subjective* valuations or to valuations of the *paperwork experience* at issue. If actual hourly wages were the correct measure, the time of unemployed people would receive zero value (and no concern). That answer cannot be correct.

197. See, e.g., E.J. MISHAN & EUSTON QUAH, COST-BENEFIT ANALYSIS 69 n.1 (5th ed. 2007) ("[W]hatever he chooses to do with this 'leisure,' the economist has to accept the worker's own evaluation of it in calculating his opportunity cost."); Kornhauser, *supra* note 171, at 1039 ("[T]ypically [in CBA], individual well-being is understood as the satisfaction of subjective preferences . . ."). A laundered-preferences version of CBA is defended in ADLER & POSNER, *supra* note 170, at 150–53.

198. CIRCULAR NO. A-4, *supra* note 8, at 19.

Cost-benefit analysis could operate otherwise, of course. Projects could be valued according to how well they further an objective theory of the good,¹⁹⁹ or a collective judgment about what each of us is worth to the rest of us. Officials might determine that a person's market wage indicates the price to society of losing that person's ordinary work time; from this perspective, NFIB had a point when it asserted that "a small business owner's time is more valuable than most other paperwork filers."²⁰⁰ Less controversially, we should want measures of social welfare to capture ripple effects of policies on people indirectly affected, including consumers and beneficiaries who might receive less when organizations do more paperwork. However relevant this factor is to thorough policy evaluation, WTP can be used to add something else: the subject's own judgment. Remember that lost earnings were used to price saved lives early in the history of VSL, and this approach was abandoned for multiple reasons.²⁰¹ Market wages left out how those at risk valued their own safety and nonwork experiences. Hourly wages are no more appropriate, in principle, for valuing people's time in terms of how those people value their time. Something central to social welfare is lost when the burdened person's own experience is omitted from the calculus.

The difference in practice should not be overstated. A person's WTP to avoid spending an hour doing a given type of paperwork might be close to the wage this person would receive for an additional hour at his or her ordinary job.²⁰² But the equivalence would depend

199. See *supra* note 163.

200. National Federation of Independent Business, *supra* note 143, at 2.

201. See LAVE, *supra* note 190, at 40–41 (noting older uses of wage loss and endorsing WTP/WTA); REVESZ & LIVERMORE, *supra* note 171, at 47–48 (citing risk aversion among those facing life risks, as well as their utility from life beyond earnings, as reasons for the shift away from using wage losses); see also Hammitt & Robinson, *supra* note 9, at 15 ("Intuitively, it seems reasonable to assume that an individual's VSL would be at least as great as his or her expected future income, because life is about more than producing income."). Another problem was valuing the lives of people receiving no market wages (zero must be the wrong answer) and the large variance in market valuation of people's labor (at least without resorting to a universal average wage figure).

202. If a person has chosen a mixture of leisure time and work time such that the person is basically indifferent to more work with more pay or more leisure without pay, and if work is valued only as a way to get wages, perhaps the wage that would be paid for another unit of work time approximates the dollar value to that person of a unit of leisure time. If the person now faces an hour of government paperwork, that hour can come out of leisure time, work time, or both, and the dollar value of that time might then be the person's hourly wage. See Becker, *supra* note 168, at 498 ("Households in richer countries . . . forfeit money income in order to obtain additional utility, *i.e.*, they exchange money income for greater amount of psychic income [T]he amount of money income forfeited measures the cost of obtaining additional

on a coincidence of factors, including the character of the respondent's current job, the character of the time burden, and the respondent's feelings about each. People assign different amounts or kinds of well-being to various activities, and not everyone will assign the same value to another hour at their job and another hour doing government paperwork. Probably millions of people receive job satisfaction far beyond what they get from completing a federal tax form, and probably millions experience frustration or outrage when facing the latter.²⁰³ Probably millions of other people are clock-watchers who think that their jobs are mind-numbing dead ends, while some people experience a sense of social contribution when completing a census form. The probability of mismatch only increases as we move to a wider range of time-related burdens, including commuting, waiting around, hearing lectures, giving blood, and more. The timing of a new burden also can affect valuation,²⁰⁴ and there is the empirical question of which endeavors people will forgo when they do paperwork instead. More job time is not always the correct answer.²⁰⁵

We can speculate about people without jobs, as well. If you believe that a person is choosing not to work for wages, then the minimum wage is a strange choice for that person's own valuation of doing federal paperwork. The minimum wage is not enough to draw

utility."'). But none of this seems to fully account for the (hedonic) experience of the person doing paperwork, and those experiences will be different depending on the particular time-related burden and the values of the person undergoing the experience.

203. Or even spiritual threat. *See* *Bowen v. Roy*, 476 U.S. 693, 699–701 (1986) (indicating that government might not be able to require Native American applicants to use Social Security numbers in welfare applications).

204. *See, e.g.*, Lonnie Golden & Barbara Wiens-Tuers, *To Your Happiness? Extra Hours of Labor Supply and Worker Well-Being*, 35 J. SOCIO-ECON. 382, 394 (2006) (finding nuanced relationships across workers between overtime, including mandatory overtime, and various self-reported happiness indicators, including feelings of work–family balance); Paula Span, *Death's Companion: Paperwork*, N.Y. TIMES: THE NEW OLD AGE (Mar. 15, 2012, 2:14 PM), <http://newoldage.blogs.nytimes.com/2012/03/15/deaths-companion-paperwork> [<http://perma.cc/6ZWG-KPZC>] (discussing paperwork burdens on grieving survivors).

205. *See, e.g.*, Peter M. Feather & W. Douglass Shaw, *The Demand for Leisure Time in the Presence of Constrained Work Hours*, 38 ECON. INQUIRY 651, 652, 660 (2000) (developing a labor supply model that incorporates underemployment and overemployment resulting from fixed-hour jobs, which can help observers draw inferences about subjective valuation of leisure time and commuting); Trudy Ann Cameron, *Revealed and Stated Preference Estimation of the Value of Time Spent for Tax Compliance 20* (2000) (unpublished manuscript) (on file with the author) (listing reasons why hourly wages need not reflect a person's subjective valuation of the opportunity cost of their time). Cameron's review of time valuation options was commissioned by IRS. *See* Guyton et al., *supra* note 114, at 676 n.4.

the person into the paid workforce; it would be, at best, a lower bound on the person's monetary value for unemployment. If instead you believe that a person is involuntarily unemployed, then we still need to know how that person values their ability to look for work, care for children, and do whatever else would be crowded out in favor of government paperwork. Market wages for other activities are not the right numbers. Using hourly wages suggests, for instance, that unemployed people applying for disability benefits are roughly ten times less annoyed by the relevant paperwork than the physicians who evaluate the applicants. That is not credible.

Running an institution requires imperfect proxies, of course, and an overly sophisticated paperwork reduction program will itself generate costs. Today, hourly wages for many classes of workers are readily available, while data on WTP to avoid paperwork burdens appears to be nonexistent.²⁰⁶ Plus, many agency collection requests are trivial on per capita and per collection measures. For those matters, we can tolerate mid-level officials reading through proposed forms and making educated guesses about respondent burdens, superior alternatives, and informational benefits.²⁰⁷ Casual treatment of time burdens can be defended when the overall stakes are low and the other effects of a policy are hard to quantify and monetize, anyway.

The hours add up, however. And paperwork costs are the core costs for some policies. Consider the estimated \$250 million in first-year paperwork costs for the Food and Drug Administration's new rule for reporting calories on restaurant menus.²⁰⁸ Furthermore, many information collections are bundled with regulations already subject to a monetized cost-benefit analysis; poorly quantified or nonmonetized burdens undermine that analysis. Likewise, when

206. There are happiness studies covering, for example, commuting. See, e.g., Daniel Kahneman, Alan B. Krueger, David A. Schkade, Norbert Schwarz & Arthur A. Stone, *A Survey Method for Characterizing Daily Life Experience: The Day Reconstruction Method*, 306 SCIENCE 1776, 1777 tbl.1 (2004) (surveying employed women and reporting a positive affect score of nearly 3.5 and a negative affect score of under 0.9 out of 6.0 for commuting, with working at about 3.6/1.0 and relaxing at about 4.4/0.5).

207. Another option is intensive spot-checks for far fewer proposed information collections.

208. *Compare* Food Labeling, 79 Fed. Reg. 71,156, 71,248–49 (Dec. 1, 2014) (estimating about \$250 million in first-year implementation costs for the Paperwork Reduction Act analysis), with FOOD & DRUG ADMIN., NUTRITION LABELING OF STANDARD MENU ITEMS IN RESTAURANTS AND SIMILAR RETAIL FOOD ESTABLISHMENTS 61–62 (2014), <http://www.fda.gov/downloads/Food/IngredientsPackagingLabeling/LabelingNutrition/UCM423985.pdf> [<http://perma.cc/22D7-A99W>] (estimating about \$397 million in mean first-year implementation costs for the overall cost-benefit analysis).

policy options are compared, information-laden options become less alluring if time is counted carefully.²⁰⁹ Trying to learn about regulated parties or to educate benefits applicants takes time, and carefully estimating those burdens in familiar metrics helps us evaluate whether the gains are worth the time. However narrow the Paperwork Reduction Act's concern,²¹⁰ OMB's guidance on cost-benefit analysis opens the way to an inclusive accounting of time burdens,²¹¹ which increases the importance of measuring and monetizing well. Moreover, even relatively short time burdens can have significant behavioral effects. We need not speculate about the participation effects of the initial *Healthcare.gov* crashes;²¹² consider participation in WIC²¹³ and 401(k) retirement plans,²¹⁴ which seem sensitive to less-than-impressive paperwork barriers. That government also *saves* people vast, unquantified amounts of time by enhancing physical security, protecting property, enforcing contracts, and much more is not a strong reason to poorly quantify government-related time burdens.²¹⁵ Thoughtful decisionmakers should use good proxies that aim at the right targets, both benefits and burdens.

From agency experience with statistical life valuation, the obvious replacements for respondent hourly wages are surveys on WTP to avoid time-related burdens (or WTA to take up those burdens) and market behavior with respect to comparable time

209. See *supra* text accompanying notes 191–93.

210. See *supra* notes 32–34 and accompanying text.

211. See *supra* note 126 and accompanying text.

212. See Jonathan Alter, *Failure to Launch: How Obama Fumbled HealthCare.gov*, 93 FOREIGN AFFAIRS 39, 39–40 (2014).

213. For a survey indicating the impact of wait times on the chance that a WIC participant will not pick up a food voucher, see Mary Lou Woelfel et al., *Barriers to the Use of WIC Services*, 104 J. AM. DIETETIC ASS'N 736, 742 (2004). See also Kevin M. Roy, Carolyn Y. Tubbs & Linda M. Burton, *Don't Have No Time: Daily Rhythms and the Organization of Time for Low-Income Families*, 53 FAM. REL. 168, 172 (2004); Debra Thingstad Boe, William Riley & Helen Parsons, *Improving Service Delivery in a County Health Department WIC Clinic*, 99 AM. J. PUB. HEALTH 1619, 1623 (2009) (correlating shorter clinic lobby waiting time with higher client satisfaction, and stating that “clients have difficulty distinguishing between the quality of a service and the quality of the process used to deliver the service”).

214. See Brigitte C. Madrian & Dennis F. Shea, *The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior*, 116 Q. J. ECON. 1149, 1159–61 (2001) (finding significant enrollment differences between a form requiring opt-in and a form requiring opt-out).

215. For a terrific contribution to our understanding of how law in the United States helps structure the use of people's time, with attention to long-term legal trends and a focus on coordination and contrasting uses, see TODD RAKOFF, A TIME FOR EVERY PURPOSE 157 (2002).

burdens.²¹⁶ Over a decade ago, IRS commissioned a review of time valuation options that included subjective valuation surveys,²¹⁷ and scholarship on such instruments continues.²¹⁸ Decisions must be made regarding how to frame questions and how narrowly to target surveys; not every paperwork or line-waiting experience is valued the same and yet government should not finance annual surveys on every experience. But these decisions can be made well enough to beat reliance on hourly wages. IRS has already asked a random sample of taxpayers a related question: “[H]ow comfortable did you feel completing your 2010 federal tax return?”²¹⁹

Additionally, there are many live markets for government paperwork and similar time burdens, where law allows for offloading.²²⁰ A salient example is tax preparation, but many other time burdens are offloaded to data entry clerks, accountants, and lawyers. There even is a market for waiting in line.²²¹ *Linestanding.com*, a service based in Washington, D.C., charges \$36 per hour to have someone wait in line for you, albeit with a two-hour minimum.²²² Of course these prices do not represent the full value to especially pleased customers, and market prices indicate at best an upper bound on the monetary valuation by people who stand in line for themselves. Nonetheless, these indications are superior to unsubstantiated guesses.

216. Or, more creatively, analysis of market data to infer wage premiums for low-paperwork jobs.

217. See Guyton et al., *supra* note 114, at 676 n.4; Cameron, *supra* note 205, at 16–20, 29–35.

218. With impressively specific niches. See, e.g., John Calfee & Clifford Winston, *The Value of Automobile Travel Time: Implications for Congestion Policy*, 69 J. PUB. ECON. 83, 91–93 (1998) (reporting WTP for reduced congested travel time of only 19 percent of hourly wages among those who are already driving, and contrasting choice-of-transit mode studies indicating WTP to reduce commute time of 50–100 percent of hourly wages); Andrew Daly, Flavia Tsang & Charlene Rohr, *The Value of Small Time Savings for Non-Business Travel*, 48 J. TRANSPORT ECON. & POL’Y 205, 215 (2014) (concluding that travel-time surveys show nonlinear valuations and greater sensitivity to time losses than gains, from some reference point).

219. See generally INTERNAL REVENUE SERV., *supra* note 35, at 16 (providing boxes to check off for very comfortable, comfortable, somewhat comfortable, or not comfortable).

220. “Must DIY” laws include jury duty, compulsory education for children, military conscription in the twentieth century, and continuing legal education for practicing lawyers today.

221. See Libby Copeland, *The Line Starts Here: For Some, Waiting Is a Profession that Doesn’t Involve Tables*, WASH. POST, Mar. 2, 2005, at C1.

222. See Josh Spiro, *When Billions Are on the Line, So Are They*, INC.COM (2010), <http://www.inc.com/articles/2010/03/linestanding-on-capital-hill.html> [<http://perma.cc/LQV8-DENV>]. Employees were paid \$12–\$16 per hour in 2010. *Id.*

Furthermore, surveys and markets can reflect major and subtle differences across time-related burdens in a way that a flat measure in hours cannot. Think about all of the activities associated with obtaining WIC benefits, including filling out forms, getting blood drawn, traveling to a service center, waiting in line, and discussing nutrition with a health professional. There is no principled reason to treat all of these experiences as burdensome in exactly the same way. Part of the explanation for DIY line-standing (when contracting out is lawful) is the ability to multitask, which has become easier with portable electronic devices and telecommunications networks,²²³ and which differs from the cognitively loaded experience of filling out forms or the distinct physical experience of getting blood drawn. Agency practices under the Paperwork Reduction Act might sidestep the wide variety of human experiences that can be counted as time-related burdens, but a scaled-up effort at thoughtful policy analysis will not. In this context, time is not money; time is a vast array of experience with more than one price.

To see the need for focused research and unique judgments, consider the building evidence on how people react when their time is at stake. Objective *clock time*, which is what agencies count today, is different from *subjective time*, which can depend on the quality of the experience. Felt time loss might be minimized by pleasant ambience, welcome outcomes, even caffeine—or, perhaps perversely, by making time-related burdens more complex.²²⁴ Studies also indicate that the

223. See Dorien Morin-Van Dam, *20/20 Tasks: Smartphone Productivity While You Wait*, ATLANTIC WEBWORKS (July 9, 2014), <http://www.atlanticwebworks.com/blog/smartphone-productivity-wait> [<http://perma.cc/U3LB-9AAR>]; see generally Pedro Cardoso-Leite, C. Shawn Green & Daphne Bavelier, *On the Impact of New Technologies on Multitasking*, 35 DEVELOPMENTAL REV. (forthcoming 2015) (manuscript at 2, 11), <http://dx.doi.org/10.1016/j.dr.2014.12.005> [<http://perma.cc/L4VU-RNMA>].

224. See Michaëlle Ann Cameron, Julie Baker, Mark Peterson & Karin Braunsberger, *The Effects of Music, Wait-Length Evaluation, and Mood on a Low-Cost Wait Experience*, 56 J. BUS. RES. 421, 428 (2003) (noting evidence of music reducing perceived wait time, but emphasizing the mediating influence of mood); Barbara Fasolo, Floriana A. Carmeci & Raffaella Misuraca, *The Effect of Choice Complexity on Perception of Time Spent Choosing*, 26 J. PSYCHOL. & MARKETING 213, 219–20 (2009) (finding that complexity reduces perceived duration in experiments on the choice of one out of six mobile phones (overestimation) as opposed to one out of twenty-four mobile phones (underestimation)); see also David S. Ackerman & Barbara L. Gross, *So Many Choices, So Little Time*, 30 ADVANCES IN CONSUMER RES. 290, 293 (2003) (indicating that having many choices for discretionary activities can lead to feelings of time pressure, time deprivation, and a perceived shortage of free time).

felt pace of time depends on several variables beyond age,²²⁵ such as urbanization and a sense of entitlement.²²⁶ Studies like these generate insight and hard questions. Hours alone fail to reflect the aforementioned nuances, yet unswerving reliance on subjective valuation seems normatively obtuse. Should government work harder to reduce time burdens for those who suffer more per hour simply because they have a strong sense of entitlement to a hassle-free existence? This question would be especially pointed if society ends up with more self-important types when those people are rewarded with less paperwork and shorter lines.²²⁷

At some point, moreover, CBA proponents should account for beneficial effects of time burdens, such as rationing benefits and screening beneficiaries when reliable information is otherwise scarce. For example, willingness to spend time in line might reveal a level of need and lack of market opportunity that is difficult for outsiders to discover in other ways.²²⁸ As well, requiring people to fill out forms might focus their attention on important issues that usually are ignored.²²⁹ In a similar vein, some empirical studies indicate that people are less likely to chase after sunk costs across time frames when the costs come in time as opposed to money.²³⁰ This may show

225. See Marc Wittmann & Sandra Lehnhoff, *Age Effects in Perception of Time*, 97 PSYCHOL. REPS. 921, 926–27, 931 (2005) (finding a modest effect of age on likelihood of reporting that time passed quickly during the last ten years).

226. See Edward H. O'Brien, Phyllis A. Anastasio & Brad J. Bushman, *Time Crawls When You're Not Having Fun: Feeling Entitled Makes Dull Tasks Drag On*, 37 PERSONALITY & SOC. PSYCH. BULL. 1287, 1287 (2011) (studying sense of entitlement and indicating effects on perceived pace of time from exhaustion, social rejection, alcohol, caffeine, city life, and body temperature). The last four factors on the list seem to speed up subjective time.

227. See James A. Danckert & Ava-Ann A. Allman, *Time Flies When You're Having Fun: Temporal Estimation and the Experience of Boredom*, 59 BRAIN & COGNITION 236, 240–42 (2005); John D. Watt, *Effect of Boredom Proneness on Time Perception*, 69 PSYCHOL. REPS. 323, 324–25 (1991) (involving undergraduates circling a bunch of numbers, and correlating boredom proneness with slower perceived pace of time but not less accurate estimates of clock time). I think of this as a kind of (dis)utility monster problem, see ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA 41 (1974), plus a worry about incentives.

228. Cf. Jonathan S. Masur, *Costly Screens and Patent Examination*, 2 J. LEGAL ANALYSIS 687, 717 (2010) (illustrating how administrative processing costs can help screen out low-value applications where information problems hinder accurate evaluation of each applicant); Ronen Perry & Tal Z. Zarsky, *Queues in Law*, 99 IOWA L. REV. 1595, 1630 (2014) (discussing ticket sales under a first-come, first-served rule with no scalping).

229. See Samaha & Strahilevitz, *supra* note 12, at 962.

230. See Robin L. Soster, Ashwani Monga & William O. Bearden, *Tracking Costs of Time and Money: How Accounting Periods Affect Mental Accounting*, 37 J. CONSUMER RES. 712, 716–17 (Dec. 2010) (recognizing this phenomena with the rate at which free or discounted movie tickets were picked up during a later time frame); cf. Yu-Tse Lin & Lien-Ti Bei, *The*

greater rationality in dealing with time losses, which might recommend time burdens over monetary costs when policymakers have the choice. Furthermore, people might be better able to retrospectively reevaluate the quality of past experiences, including time burdens, compared to monetary losses.²³¹ Adaptation can be a source of strength and averted welfare losses, not only troubling adaptive preferences.

These are benefits worth investigating, all consistent with an inclusive cost-benefit analysis, not a reason to stop thinking hard about quantifying and monetizing time burdens. And the challenges are similar, if not tougher, for monetizing the value of statistical life. Willingness-to-pay instruments are practical tools for gaining insight, never perfect, into how people themselves value experiences, and for adding this one important factor to a thoughtful decision procedure. This is no trivial matter.

b. Organizations and contracting out. Organizations and offloaded paperwork do present special issues, however. Many government paperwork burdens are directly imposed not on individuals but on organizations. These organizations are legal constructs and we might conclude that organizations per se do not “suffer” paperwork burdens.²³² Corporations, charities, state governments, and the like employ people in-house, contract out, or get volunteers to do the paperwork (and everything else). Government paperwork burdens can be evaluated like other regulatory impositions on an organization, such as adding a scrubber

Perceived Value of Time in a Transaction, 35 *ADVANCES IN CONSUMER RES.* 720, 720 (2008) (concluding that prospect theory does apply to wait time, although *expected* wait time is the reference point for loss aversion). For especially nuanced findings, see France Leclerc, Bernd H. Schmitt & Laurette Dubé, *Waiting Time and Decision Making: Is Time Like Money?*, 22 *J. CONSUMER RES.* 110, 111–12, 116–19 (1995) (claiming that, *unlike* the attractiveness of gambles to avoid money losses, people are risk averse or risk neutral toward gambles to avoid wait time; but *like* money, people’s marginal value of a unit of time is higher during shorter overall waits, and higher when waiting to get a high-priced good or service).

231. See Erica Mina Okada & Stephen J. Hoch, *Spending Time Versus Spending Money*, 31 *J. CONSUMER RES.* 313, 321–22 (2004) (arguing time and money are types of currency, but that time’s opportunity cost is ambiguous and easier to reevaluate).

232. This position has become somewhat controversial. Consider the federal government’s opt-out procedure for religious nonprofits that oppose contraception coverage, see 45 C.F.R. § 147.131(b) (2014), and the religious objections thereto, see *Wheaton College v. Burwell*, 134 S. Ct. 2806, 2809 (2014) (per curiam) (Sotomayor, J., dissenting) (explaining that the exemption form asks whether the organization is religiously opposed and requires the organization to send a copy to the relevant health insurer); *Univ. of Notre Dame v. Sebelius*, 743 F.3d 547, 553 (7th Cir. 2014).

to a smokestack: investigate how the organization will comply without measuring the feelings of people hired for the job.

Agencies calculating paperwork burdens for organizations seem to adopt this market-oriented approach.²³³ If organizations will do the paperwork in-house, agencies likely will monetize burden hours using approximate wage rates for the employees; if instead organizations will contract out, agencies likely will use the approximate market rate for the service. Similarly, to the extent that *individual* taxpayers hire tax preparers, IRS counts the out-of-pocket cost without inquiring into the feelings of the taxpayer or preparers.²³⁴

The logic here seems straightforward and distinctive. When individuals or organizations hire people to do government paperwork, the market price is the actual cost of doing the paperwork, and a hypothetical WTP seems beside the point for standard cost-benefit analysis from a welfarist perspective. Those costs are experienced in dollars, not time.²³⁵

This does not eliminate objections to the use of hourly wages instead of or as a proxy for WTP in other situations, though. Many people do their own paperwork and line-waiting—either because DIY is their least-bad alternative or because a “Must DIY” law essentially requires their personal participation. Whether one calls the time burden “voluntary” offers no argument for toggling between hourly wages and WTP. If you want a regulation imposed or an exemption applied or a gratuity delivered, and if you care at all about the actual experiences of those you are trying to regulate or exempt or pay—or even *stop* from being paid—then you need sound measures for those experiences that result from your preferred policy. Sometimes those experiences arrive in the form of time-demanding activities rather than pocketbook-hitting payments. As things stand, the federal government sometimes counts these personally experienced time burdens only in hours (individual tax forms and student aid applications, for instance), and often converts them into

233. A tipoff is when an agency uses a loaded wage rate. *See supra* note 106. Those figures are intended to measure economic costs *to the employer* that needs the paperwork done, not to the people who are paid to do the paperwork.

234. *See* Proposed Collection; Comment Request for Form 1040, 79 Fed. Reg. 24,498, 24,498–99 tbls.1–2 (Apr. 30, 2014).

235. I am ignoring lingering hard feelings or satisfaction with offloading paperwork, or wage-uncompensated joy that hired paper-pushers receive from their work. We might still wonder about the social cost of having an industry devoted to preparing tax forms, including any resulting political influence in favor of paperwork burdens, but that raises separate questions.

dollars using an hourly wage (WIC applications and Medicaid reimbursement forms, for instance). These practices remain in need of, and probably lack, a good defense.

3. *Equality*. Finally, agency use of hourly wages is open to serious criticism quite aside from orthodox principles of social welfarism and cost-benefit analysis. Egalitarian theories should fuel concerns about individuated and disparate values for people's time. The magnitude, not the presence, of these concerns depends on how the egalitarian commitment is elaborated.²³⁶ One might aim to (partially) equalize individual well-being, for example,²³⁷ or opportunities to achieve well-being,²³⁸ or resources that seem objectively good.²³⁹ As well, these theories may apply differently to different time burdens depending on whether one views the given burden as a universal civic duty. But whichever member of the egalitarian family of theories is applied, market wages are troubling metrics for valuing people's time.

a. More problems with market wages. Making paperwork policy sensitive to hourly wages helps achieve economic productivity without clearly advancing any standard version of egalitarianism. We all know that people in the United States are paid vastly different amounts of money in hourly terms for the work that they do, which is understandable in a society that values economically efficient resource allocation. Importing this wage disparity into government's time burden estimates should jar egalitarians, however.

Cashing out time burdens with hourly wages suggests that the time needed to perform similar tasks should receive very different levels of government concern depending on the class of wage earners facing the burden. The imputed minimum wage for WIC mothers seeking nutritional assistance is less than one tenth of the hourly wage estimate for doctors completing reimbursement forms.²⁴⁰ If such

236. See generally SAMUEL FLEISCHACKER, A SHORT HISTORY OF DISTRIBUTIVE JUSTICE 9–10 (2004).

237. See LARRY S. TEMKIN, INEQUALITY 118–53 (1993) (listing options for measuring welfare inequality).

238. See, e.g., RONALD DWORKIN, SOVEREIGN VIRTUE 73 (2000) (distinguishing “brute luck” from “option luck” following a person's deliberate gamble); Anne L. Alstott, *Equal Opportunity and Inheritance Taxation*, 121 HARV. L. REV. 470, 478–84 (2007) (illustrating divisions within resource egalitarian theory).

239. See *supra* note 163 (collecting sources).

240. See *supra* text accompanying notes 121–22.

money values are taken seriously, officials will exert far greater effort to free up high-wage earners' lives compared to low-wage earners' lives. Ten times as much monetized burden suggests ten times as much benefit from relieving the same paperwork obligation. It is difficult to see how agency time valuations based on unadjusted market wages could be anything but unhelpful in achieving greater equality of well-being, opportunity for well-being, or objective goods.

The federal government takes a different position on valuing risks to people's lives, with one feature more friendly to egalitarian commitments. The value of a statistical life is the same for all people within each proposed agency rule, "for policy reasons."²⁴¹ Agencies have resisted suggestions that different VSLs be assigned to different classes of regulatory beneficiaries, to the extent that different classes evince different WTP for risk reductions. Leading agencies' VSLs do not distinguish among racial categories, younger and older people, men and women, or rich and poor people.²⁴² It is true that different agencies may adopt different VSLs and the same agency may change its VSL over time, but the practice has been to find a single dollar value for life-saving risk reductions to be used for all predicted beneficiaries of a given regulation.

Whatever one's tolerance for individuating costs and benefits, there should be serious doubt that life and time can be distinguished. Egalitarian objections can be equally piercing either way. In the case of life, different valuations for different people would mean that the same mortality risk would be worth more government effort to eliminate for select classes of people. A determined egalitarian easily could say that this approach violates commitments to treat people with equal regard, while a simple welfare maximizer could respond that the approach is the proper result of honoring individual's peculiar preferences. The key point is that each side could make the same claims with regard to government decisions that prompt people to use a segment of their lives in one way rather than another.

True, we can wonder whether individuated valuations will add up to a universal average if aggregated and whether, therefore, the stakes of the choice are low for overall regulatory results. The differences might wash out if we evaluate the regulatory state as a

241. U.S. DEP'T OF TRANSP., *supra* note 9.

242. *See id.*; REVESZ & LIVERMORE, *supra* note 171, at 83.

whole.²⁴³ However, significant distributional effects will persist for the minimization of time burdens. In the past, federal law has set goals for paperwork burden reduction in percentage terms; more recently, agencies and OIRA have totaled up paperwork burdens and looked for major paperwork reductions.²⁴⁴ If the time burden is monetized instead of left in hours, agencies can more easily drive down the monetized burden by focusing on high-dollar targets.

Perhaps this disparity would be reduced if agencies shifted to WTP or another proxy for how people value their own time doing paperwork, given the opportunity costs.²⁴⁵ These subjective valuations might not vary as much as wages. But as with valuing statistical lives, easily ascertainable classes of people might differ substantially in how they value different experiences. Some of those differences likely will track lines of age, race, sex, and wealth. Not much hope exists for the convergence of egalitarian commitments and the standard measurement techniques for social welfare. In any event, the results for egalitarians seem at least as bad if government values time with hourly wages.

b. Hours and their complications. All of this might suggest a very different direction for egalitarians on government valuation of time: leaving dollars behind and embracing hours alone. Paperwork burdens quantified in hours might have an attractive, even beautiful quality for egalitarians. Considering only hours treats everyone's time equally in a deep sense. In addition, agencies will face commensurability issues regardless. For many information collections, the benefits will be difficult to monetize or even quantify. Think about the decennial census, which is constitutionally mandated in some form.²⁴⁶ What is the beneficial value of conducting the census, exactly, in dollars? Analogous markets exist for only some of the information and purposes served by the census—not, for instance, apportioning seats in the House of Representatives—and we might wonder whether policymakers should be estimating the monetary

243. Cf. REVESZ & LIVERMORE, *supra* note 171, at 83–84 (arguing that “a cost-benefit analysis using an average value of a statistical life is unmoored from its economic justification,” but raising moral objections and indicating that roughly efficient regulation can result in aggregate).

244. See *supra* notes 26–27, 63 and accompanying text; see also LAVE, *supra* note 190, at 19–20 (regarding CBA).

245. See *supra* Part III.B.1–2.

246. See U.S. CONST. art. I, § 2, cl. 3.

value of constitutional fidelity. Less stark quantification issues accompany many other information collection contexts, including the value of the income tax system and nutrition education for pregnant women. Moreover, hours remain a focus of the administrative state. OIRA's paperwork budget for the United States counts hours, not dollars, and President Obama's recent directive on new paperwork reduction ideas set goals in hours, not dollars. Counting hours is something of a tradition.²⁴⁷

But the tradition does not so easily align with egalitarian goals. An hours-only policy first faces the problem of treating all time burdens alike. Wanting to treat people with equal concern and respect hardly implies treating every minute of every unwelcome experience—from completing census forms to blood draws—as having the same quality. That would flatten human experience unrealistically. Perhaps this problem can be solved by maintaining partitioned subcategories of time burdens judged to be similar. Although the proper egalitarian method for assigning different values to different human experiences is not immediately apparent, we can suppose that differentiation of experiences is achievable with enough thought.

Even so, there remains a lingering problem for an hours-only policy: operating a sensible and structured evaluation of time burdens counted, whether using cost-benefit analysis or another protocol. This problem is old and not at all special to time valuation, which is part of the point. The challenge attaches to the valuation of paperwork, life risks, and other effects of government decisions. Someone should be intelligently evaluating the upsides and downsides of feasible policy options in a manner conducive to thoughtful comparisons. Paperwork is not all bad; it can produce useful information flows. But time burdens can come in infinite forms, always with trade-offs along multiple dimensions. Agencies regularly must decide how and whether information collections will happen,²⁴⁸ and those decisions cannot turn on hourly burdens alone. A statutorily mandated collection only moves the normative focus to the legislature.

247. See *supra* note 72 (referencing President Carter's directive); see also ADLER & POSNER, *supra* note 170, at 178–82 (suggesting ways that agencies may be avoiding the welfare effects of unadjusted WTP numbers, such as by using a single constant VSL or saved life years).

248. See 2014 OIRA REPORT, *supra* note 2, at iii, 2, 4–5 (counting most burden hours as discretionary, but stressing factors outside agency control in explaining apparent increases in paperwork burdens). Even the detailed statutes governing federal income taxes leave some room for agency judgment over tax forms. See Guyton et al., *supra* note 114, at 674.

Congress's work is susceptible to a kind of cost-benefit analysis, too.²⁴⁹ Even the census is supposed to be taken in a “[m]anner” directed by law,²⁵⁰ which implies some choice over how, how much, and what kind of information to gather. These unavoidable choices put the value of information in one register and hourly burdens in another, with no apparent way forward to decision.

Nobody should think that monetizing all such effects under CBA is the simple solution instead of a mere leading candidate for managing a hard problem. Government paperwork burdens do come in units of time—when not contracted out²⁵¹—but nearly every other relevant consequence will not. Government paperwork takes time and money from some people to generate information for various purposes including extending lives, enhancing the quality of life, and redistributing wealth. Policymakers face decisions with multiple projected effects that are most easily counted in dollars, lives, and other units. Yet dollar costs and benefits are prevalent across all government initiatives. Agency efforts to monetize risks to life and life quality are now long-standing, ongoing, and common. In terms of administrative ease, those efforts count for something. Agencies can translate shortened lives into hours if they have a good baseline,²⁵² but translation into hours becomes harder or nonsensical when the consequence to be valued is a risk to life, life quality, or basically anything else. Monetizing a larger fraction of policy effects shrinks the scope of difficult judgment calls, which will not disappear under anyone's favorite decision procedure.²⁵³ For some policy decisions,

249. The Paperwork Reduction Act itself directs OMB to estimate paperwork burdens for proposed legislation. See 44 U.S.C. § 3506(c)(1)(C) (2012). Frustration with Congress as an unheralded source of paperwork burden, and as an institution that escapes thoughtful CBA, is obviously not a strong reason to thwart better practices at OIRA and other agencies. At most, one might think that delegating to agencies will improve policy on time burdens. But this Article is only modest support for that hope.

250. U.S. CONST. art. I, § 2, cl. 3.

251. The correct egalitarian response to these markets is unclear to me. One could direct agencies to ignore the market prices that some people actually pay; or instead favor must-DIY paperwork requirements, making them like jury duty. Cf. SANDEL, *supra* note 173, at 39 (suggesting the “egalitarian appeal” of first-come, first-served queuing without market-based line cutting); Perry & Zarsky, *supra* note 228, at 1598 (collecting justifications for queuing). Strategies such as these can help salvage a policy of valuing everyone's time equally, although those strategies will raise objections to this kind of egalitarianism itself.

252. See *supra* Part II.A.

253. In this spirit are Cass R. Sunstein, *The Limits of Quantification*, 102 CALIF. L. REV. 1369, 1387–91 (2014) (elaborating “breakeven analysis” whereby agencies facing trade-offs and a mix of quantified and unquantified effects isolate the uncertainty and identify conditions on

monetizing time will be the only remaining step to full commensurability.

Finally, egalitarian victories are not foreshadowed by agencies counting only hours. One must know how agency officials actually use dollar estimates in evaluating policy options, compared to situations in which only hourly totals are available—empirical issues about which we know little at the moment. As with monetization concerns generally, we certainly may hypothesize that, at least under certain conditions, dollar figures will have a special weight in official decisions that mere numbers and unquantified values lack.²⁵⁴ Just as certainly, however, we may hypothesize that, under other conditions, poignant expositions of consequences in terms of human dignity, equity, and other nonmonetized values will outweigh the upshot of any mathematical expression.²⁵⁵ Preserving incommensurate factors in policy analysis might enhance agency discretion, but it is no guarantee that officials will pursue egalitarian missions. At the same time, assuring incommensurability is some guarantee that social-welfare effects cannot be assessed sensibly.

In the end, the choice is not really between monetization and equality. Hours can be monetized without forfeiting egalitarian goals. For instance, the exact same dollar value can be assigned to everyone's time, if that is somehow the best specification of egalitarian commitments. An accessible number is the national average hourly wage, although no universal value can be assigned without making controversial normative choices. Other equality-

which benefits would exceed costs), and Arden Rowell, *Partial Valuation in Cost-Benefit Analysis*, 64 ADMIN. L. REV. 723, 724 (2012) (contending that a commensurability problem may leave room for a partial monetary valuation for CBA purposes).

254. Cf. Ackerman & Heinzerling, *supra* note 194, at 1578 (“[T]he specific dollar values kicked out by cost-benefit analysis tend to obscure these underlying issues [about how to value human life] . . .”); *id.* at 1579 (asserting that “[t]he non-quantitative aspects of [EPA’s] analyses are almost invariably ignored in public discussions of its policies”). For intriguing studies on how priming images of money and references to money-related concepts can influence the reported preferences of ordinary people for markets and social inequality, see Eugene M. Caruso, Kathleen D. Vohs, Britanni Baxter & Adam Waytz, *Mere Exposure to Money Increases Endorsement of Free-Market Systems and Social Inequality*, 142 J. EXPERIMENTAL PSYCH. 301, 302–05 (2013). It remains to be seen whether these studies are indicative of how officials behave when they are instructed to use cost-benefit analysis with unquantified or nonmonetized consequences.

255. On the emerging use of values such as human dignity under governing executive order, see Sunstein, *supra* note 253, at 1371, 1380 (discussing, in part, an agency analysis that used nonmonetized values to justify a rearview camera rule for automobiles that would otherwise flunk CBA). The decisionmaker’s preferences might be much more influential than the metrics used to describe consequences.

related goals can fit with monetized time as well. Thus, if egalitarian theory turns out to demand that government value disadvantaged people's time even more than other people's time—instead of or in addition to other forms of redistribution—this, too, can be accomplished in dollar terms. For instance, officials could begin with the national average hourly wage as the starting point for monetization, and then make adjustments for wealthier classes of affected individuals according to some measure of diminishing marginal value for money. In any case, egalitarian concerns with individuated pricing of people's time seem similar to individuated pricing of statistical lives, and the solutions are not obviously different.

CONCLUSION

Sensibly valuing people's time is hard, not easy, and government's valuations are usually implicit or mysterious. No public official is reporting how government valued people's time standing in line at polling places when the election system was designed. No agency is busy counting up what people gain and lose from jury duty. Officials actually trying to achieve a lawful, principled, administrable, transparent, and politically sustainable method of valuation deserve thanks. But today the federal government counts hours for only a slice of time-related burdens, often but not always converts those hours into dollars, and, when it does, uses a large spectrum of hourly wages. No effort has been made to reconcile any of this with the valuation of reduced life risks.

Both welfarists and egalitarians should have foundational objections to current agency practices. A straightforward reform for welfarists is to gather information on people's willingness to pay to avoid important time-related burdens, similar to what agencies already do for life risks. Although the way forward for egalitarians might be less clear, they should consider universal dollar values for various categories of time burdens. There remains ample room for debate over specific reform proposals. What should be clear enough now is that respect-worthy governments respect people's lives and their time—which are in part the same good—and that we can give better answers to the valuation questions embedded in those aspirations.