DEATH AND PAPERWORK REDUCTION

ADAM M. SAMAHAT

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.

TABLE OF CONTENTS

Introduction ........................................................................................................280
I. Paperwork Law ............................................................................................284
   A. Structure ................................................................................................286

Copyright © 2015 Adam M. Samaha.

† Professor, New York University School of Law. For time spent commenting on earlier
drafts, at incalculable cost, I thank Josh Blank, Ryan Bubb, Adam Cox, Liz Emens, Jeanne
Fromer, Mark Geistfeld, James Hammitt, David Kamin, Sally Katzen, Lewis Kornhauser, Daryl
Levinson, Jonathan Masur, Tom Miles, Geoffrey Miller, Jennifer Nou, Eric Posner, Arden
Rowell, Cathy Sharkey, Cass Sunstein, Jonathan Wiener, and participants at NYU faculty
workshops. For helpful research assistance, I thank Rucha Desai, Naveen Jayaraman, and
Michael Roberts. Support for this project was provided by the Filomen D’Agostino and Max E.
Greenberg Research Fund. Mistakes are mine.
B. Standards

II. Paperwork Practices

A. Agencies
B. OIRA
C. Politics

III. Paperwork Principles

A. Life and Time
B. Time and Money
1. Welfare
2. Hourly wages
3. Equality

Conclusion

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.

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, and time spent commuting or waiting around seems to be left out as well. Moreover, quantification methods are not standardized despite White House oversight. Sometimes agencies count hours without converting those time burdens into dollar costs. 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. 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. 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. 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.”).
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, 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. 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’T 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.


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.\(^\text{12}\)

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,\(^\text{13}\) and time burdens faced by organizations are special.\(^\text{14}\) 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”).


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

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).


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. There was the Paperwork Reduction Act of 1980, followed by the Paperwork Reduction Reauthorization Act of 1986, and the Paperwork Reduction Act of 1995. 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, the too-good-to-be-true Government Paperwork Elimination Act of 1998, and the Small Business Paperwork Relief Act of 2002. 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. 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. 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.


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).


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.” An agency might have the will and authority to investigate these other burdens—OMB guidance for cost-benefit analysis is nicely inclusive on this score—but the Act does not explicitly regulate them.

When the Act does cover an agency collection, however, it triggers a formidable-looking screening procedure. The process ordinarily takes months. First, an information collection request typically will be subject to public notice and comment. 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, writes a supporting statement, and assembles supporting documents, and then someone at OIRA reviews the agency’s paperwork. This clearance process is accompanied by a second round of public notice and comment, along with an opportunity for individual challenges directed at OMB.

Moreover, OMB cannot authorize a collection for longer than three years. 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.


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).


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.\textsuperscript{43} There is a different procedure when an information collection is bundled with a proposed regulation, in which OIRA participates in the comment process.\textsuperscript{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,\textsuperscript{45} and OIRA reports annually to Congress on agency progress in reducing the public burden of information collection.\textsuperscript{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 \textit{Federal Register}.\textsuperscript{47} Moreover, agencies may now use a menu-driven website to submit information collection requests to OIRA.\textsuperscript{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.\textsuperscript{49} OMB offers expedited review in emergencies.\textsuperscript{50} Courts are largely absent from the process, so the expected litigation burden is modest.\textsuperscript{51} And OMB may

\begin{footnotesize}
\begin{enumerate}
\item See Lewis v. Comm'r, 523 F.3d 1272, 1276 n.8 (10th Cir. 2008) (discussing IRS Form 1040).
\item 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).
\item See 44 U.S.C. § 3506(c)(1)(B)(iii)(III) (2012); see also id. § 3506(c)(1)(B)(iii)(I) (requiring stated reasons).
\item See id. § 3514(a)(2)(A).
\item See 44 U.S.C. § 3507(c)(3) (2012).
\item See 5 C.F.R. § 1320.13 (2014).
\item 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
\end{enumerate}
\end{footnotesize}
delegate its review authority to trusted officials, such as the Federal Reserve’s Board of Governors and the Federal Communication Commission’s Managing Director.\footnote{52}

Still, every lawful information request comes with a stack of (electronic) paper, and therefore the trade-offs associated with added process.\footnote{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.\footnote{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.\footnote{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.”\footnote{56} As the entity with global oversight authority,\footnote{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.


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.


56. Id. § 3506(c)(3)(C); cf. id. § 3506(c)(3)(A), (J) (requiring an agency to certify that a collection submitted for review, \textit{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, and also “minimize the [f]ederal information collection burden, with particular emphasis on those individuals and entities most adversely affected.” The Act directs attention at the benefits of information, too. Agencies are supposed to evaluate the “need” for the information, and OMB shall “maximize the practical utility of and public benefit from information collected.” 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.

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

---

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).
OIRA has reported that, almost without exception, the federal government failed to meet these numerical goals.\textsuperscript{63} 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.”\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{67} Moreover, it would make space for

\textsuperscript{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.


\textsuperscript{66} 5 C.F.R. § 1320.5(d)(1)(i) (2014).

\textsuperscript{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) (“Courts 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, which lacks an executive coordinator for the agency-level struggle against waste, fraud, and abuse. 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.

An alternative reading would understand “or” differently and would require that all three kinds of burden be estimated and minimized. 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).

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.\footnote{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).} 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.\footnote{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).}

OMB might have tried to resolve these issues by regulation,\footnote{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).} but it has not. OMB rules from 1995 define burden in nearly the same language as the statute,\footnote{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).} 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.\footnote{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).} 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
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.\footnote{See U.S. CONST. art I, § 2, cl. 3 (requiring an “actual Enumeration” but in some legally directed “Manner”).} 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.\footnote{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].} The Bureau explained that “[t]here is no cost to respondents, except for the time it takes to respond to the questions.”\footnote{Id. at 26.} (The cost of collection to the federal government was estimated in dollars: about $8.5 billion.)\footnote{See id. at 27.} 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
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, 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. 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. 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.

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,\textsuperscript{85} as it happens, which might sit comfortably alongside census forms and tax returns as civic duties.\textsuperscript{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.\textsuperscript{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),\textsuperscript{88} while mandatory reporting requirements for regulated industries are typically monetized (the Environmental Protection Agency’s Acid Rain Program, for instance).\textsuperscript{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 \textit{Free Application for Federal Student Aid}—which, according to the agency, is free in dollar terms


\textsuperscript{86} For more on civic duty, see \textit{infra} Part III.B.1.c.


\textsuperscript{88} See \textit{infra} Figure 2.

\textsuperscript{89} See \textit{infra} note 98 and accompanying text.
and burdensome only in hours (26 million hours, that is). Similarly, application burdens for people seeking disability benefits from the Social Security Administration are totaled in hours, not dollars. The burden on medical professionals who evaluate applicant disability is likewise left in hours. 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.


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, the agency used the national average per capita income of about $20 per hour to convert respondent time into dollar cost. 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. 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. 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. 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


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


estimated an hour burden for this task and then valued paralegal time at $175 per hour and director time at $500 per hour.\textsuperscript{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.\textsuperscript{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.\textsuperscript{101} But unlike vendors and officials, many applicants may not have an established market value for their time.\textsuperscript{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 hour\textsuperscript{103} to calculate an annual dollar cost of $4.4 million to nine million applicants.\textsuperscript{104} The Supplemental Nutrition Assistance Program...
(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,
income, diet, and blood work. 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.”

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. “One way the poor pay for government aid is with their time,” Kathryn Edin and Luke Shaefer remind us. 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(c)(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.


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).

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

Moreover, agencies vary in their commitment to monetization. Agencies regularly monetize time burdens on organizations, it appears. 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. 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. Also, the fraction of monetized requests is not the same measure as the fraction of monetized hours. Recall that IRS

---


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.

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;\footnote{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*

\footnote{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


scientists seeking government jobs.\textsuperscript{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.\textsuperscript{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*

\begin{center}
\includegraphics[width=0.5\textwidth]{figure3.png}
\end{center}

\textbf{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.”\textsuperscript{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

\begin{footnotesize}
\begin{enumerate}
\item[124.] On the link between loaded wage rates and an employer perspective on paperwork burdens, see infra note 233.
\item[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).
\end{enumerate}
\end{footnotesize}
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.”

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. 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. Also, OIRA’s annual reports nearly always count hourly burdens without attempting to translate hours into dollars, plus the President’s recent initiative to cut federal paperwork burdens called for new burden-reduction ideas in hours, not dollars. Of course, neither OMB nor OIRA are hiding burden information. 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.


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.

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. From the summer of 2013 until the summer of 2014, OIRA’s small staff reviewed nearly 3,900 information collection requests. Unsurprisingly, agency explanations of their collection requests tend not to be elaborate, and OIRA does not offer in-depth public explanations for its conclusions.

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.


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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{139}


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


\textsuperscript{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].” 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. 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.

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 individual—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.


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)? 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, 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. 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. 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. 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, and perhaps the intense IRS opponents are largely indifferent to agency monetization. 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. 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. True, agencies are supposed to estimate paperwork burdens for new legislative proposals, 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. 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).
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


of longer life or life expectancy—more time in a life.\textsuperscript{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 lifespan\textsuperscript{160} 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.\textsuperscript{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.\textsuperscript{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.

\textsuperscript{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”).

\textsuperscript{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, 2, tbl.A (2014).

\textsuperscript{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”).

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. 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. 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 85–80 (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, or by adjusting future plans to compensate for the perceived loss.

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. 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 work—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, 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.

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. 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. These are the technologies on which agencies build their monetized value of a statistical life. 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. 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;
(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, and employee and consumer behavior do not necessarily reflect thoughtful risk valuations; (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; (4) WTP can be influenced, even zeroed out, by adaptive preferences that embrace unjust conditions; (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.


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.”).


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. 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.

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. 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 burdens 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.

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. 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. Such a narrow mission captures the classic example of environmental regulation to protect third-party health—with scrubbers in smokestacks, say.

---


jurisdiction, information, or tools to execute sound redistribution policy. 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).

That said, social welfare beyond economic efficiency remains relevant to any committed welfarist. Wealth-adjusted WTP can be useful on that score. 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, evaluating which of many possible designs will accomplish the same transfers for the least cost or accomplish the most transfers at a given cost. 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).


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.”).

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.\textsuperscript{191} Even putting aside conceptual problems with maintaining such penalty/subsidy distinctions,\textsuperscript{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

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

\textsuperscript{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. 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, 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).

shadows” might crowd out feelings of ethical obligation that help social systems run well. 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, 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 Zeelenak, 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.\footnote{See, e.g., E.J. Mishan & Euston Quah, Cost-Benefit Analysis 69 n.1 (5th ed. 2007) (“Whatever 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 (“Typically [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.}
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.\footnote{Circular No. A-4, supra note 8, at 19.} 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.
Cost-benefit analysis could operate otherwise, of course. Projects could be valued according to how well they further an objective theory of the good, 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.” 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. 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. But the equivalence would depend

199. See supra note 163.
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.\textsuperscript{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,\textsuperscript{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.\textsuperscript{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.

\textsuperscript{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).


\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\begin{itemize}
  \item \textsuperscript{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, \textit{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).
  \item \textsuperscript{207} Another option is intensive spot-checks for far fewer proposed information collections.
\end{itemize}
policy options are compared, information-laden options become less alluring if time is counted carefully.\textsuperscript{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,\textsuperscript{210} OMB’s guidance on cost-benefit analysis opens the way to an inclusive accounting of time burdens,\textsuperscript{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;\textsuperscript{212} consider participation in WIC\textsuperscript{213} and 401(k) retirement plans,\textsuperscript{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.\textsuperscript{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

\textsuperscript{209} See supra text accompanying notes 191–93.

\textsuperscript{210} See supra notes 32–34 and accompanying text.

\textsuperscript{211} See supra note 126 and accompanying text.


\textsuperscript{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”).


\textsuperscript{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. Over a decade ago, IRS commissioned a review of time valuation options that included subjective valuation surveys, and scholarship on such instruments continues. 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?”

Additionally, there are many live markets for government paperwork and similar time burdens, where law allows for offloading. 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. 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. 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.
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.
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/LOV8-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, 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.

---


felt pace of time depends on several variables beyond age, such as urbanization and a sense of entitlement. 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.

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. As well, requiring people to fill out forms might focus their attention on important issues that usually are ignored. 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. 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 Crawl 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.


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. 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. 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.


\(^{235}\) 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


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.”\footnote{U.S. DEP’T OF TRANSP., supra note 9.} 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.\footnote{See id.; REVESZ & LIVERMORE, supra note 171, at 83.} 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
whole. 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. 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. 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.

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.\footnote{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,\footnote{248} and those decisions cannot turn on hourly burdens alone. A statutorily mandated collection only moves the normative focus to the legislature.

\footnote{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).}

\footnote{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. Even the census is supposed to be taken in a “[m]anner” directed by law, 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 out—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, 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.

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. 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. 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-
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.