Authorizing Policy

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Steering Agencies with Reauthorizations

Congress plays a key role in shaping federal agencies and the policies that they implement. Congress creates agencies through the legislative process, funds their operations through the appropriations process, structures the policies Congress will implement, and determines the actors with whom congressional members will work. As David Rosenbloom (2000) has noted, Congress reshaped itself after World War II in order to have better oversight and control over the administrative state. In less than two months in the summer of 1946, Congress passed the Legislative Reorganization Act (LRA) and the Administrative Procedures Act, with the explicit goal of better controlling federal agencies. “Agencies were reconceptualized as extensions of the legislature and, to some extent, its processes” (Rosenbloom 2000, 2).

Given that the goal of the LRA was to create greater watchfulness over agencies, there has often been a sharp focus on hearings in the study of oversight, and for good reason. Hearings are an important tool in a committee’s repertory as they seek out information. Committee members want to have a clear understanding of the relationship between policies and their outcomes (Krehbiel 1991), and hearings are one mechanism they use to gather information. Additionally, hearings reap benefits for the committee’s members beyond the collection of information; they are a focal point for the credit claiming, position taking, and advertising that members use to retain their jobs (Mayhew 1974). Furthermore, hearings allow members to receive recognition in their home states, often by bringing local witnesses to testify.

However, hearings are but one way that Congress is able to shape agency behavior. The reauthorization process is another key mechanism that Congress uses to oversee the federal bureaucracy and the vast networks that are involved in implementing public programs. By revisiting the sta-
tus of a given program at set intervals, Congress is able to steer policy much in the same way that a captain steers a ship. Congress can gather information about a program between reauthorizations and then use this information to determine the direction and speed that the program should go for the next several years. If all is well, Congress may expand the scope of the program so that it can serve a larger client base. If the program is going to hit something—like the interest of an important group or the jurisdiction of another agency—Congress can move the program in another direction. Through reauthorizations, Congress plays a key role in forming the governance structures that shape the policy world (e.g., Lynn, Heinrich, and Hill 2001).

In the study of congressional oversight there is often a sharp focus on hearings, and for good reason. Hearings are an important tool in a committee’s repertory as they seek out information. Committee members want to have a clear understanding of the relationship between policies and their outcomes (Krehbiel 1991), and hearings are one mechanism they use to gather information. Additionally, hearings reap benefits for the committee’s members beyond the collection of information; they are a focal point for the credit claiming, position taking, and advertising that members use to retain their jobs (Mayhew 1974). Furthermore, hearings allow members to receive recognition in their home states, often by bringing local witnesses to testify.

In this chapter, I focus on how the renewal of a program’s authorization facilitates a different type of control by Congress, the *ex ante* control that is exerted when laws are made or modified in a way that regulates the behavior of agencies and other policy players in a detailed, prescriptive manner. Ex ante control requires policy makers to be visionary as they seek to regulate actions in a way that promotes effective outcomes and avoids adverse consequences. This method of control also has implications for the implementation and management of the programs in question. The stability that arises from reauthorizing a given program only at fixed intervals is important for all actors in the process. All policy actors can know that procedures and rules can be put in place that will not be disrupted for a given period.

Three case studies are presented to illustrate how *ex ante* control works in a reauthorization environment. By examining Head Start, mass transit, and the Commodities Futures Trading Commission in detail, it is possible to see how Congress shapes these programs over time and changes their dynamics with each reauthorization. These changes often result in shifts in the structure of the program, how a program is implemented, and how the program is funded. By making these changes at fixed intervals, Congress is able to ensure that a program can continue to function optimally as the environment in which the program operates changes.
The Desire for Policy Control in Congress

When members of Congress create new programs, they typically want to control how the program is implemented. One way Congress achieves this goal is by hardwiring legislation in a way that institutes controls into the design of the agency and its regulatory scheme. This form of control is intended to help overcome the problem of bureaucratic drift by limiting the scope and discretion of agencies. However, while Congress does structure agencies through the legislative process, ex ante controls have generally been viewed as costly. Moe (1990, 228) provides a very nice articulation of the trade-offs encountered in this form of oversight. He notes that Congress can best control agencies by specifying

in excruciating detail, precisely what the agency is to do and how it is to do it, leaving as little as possible to the discretionary judgment of bureaucrats—and thus as little as possible for future authorities to exercise control over, short of passing new legislation. [However,] this is not a formula for creating effective organizations. . . . [A]gencies are burdened with cumbersome, complicated, technically inappropriate structures that undermine their capacity to perform their jobs well (italics added).

The problem here is clear: the benefit to Congress of regulating agencies through the legislative process is undermined by the need to change structures and other agency resources as conditions change, and the only way to accomplish this is by more legislating (which is a costly activity). Of course, Congress can and does use short-term authorizations as an internal mechanism within legislation that facilitates the consideration and passage of future legislation. With this mechanism in place, Congress is better positioned to use the legislative process as a mechanism of control. The systematic use of legislation to control agencies is beneficial on several fronts. Perhaps most importantly, it provides Congress with the opportunity to do something with its knowledge on a specific issue. Given that members and committees have incentives to be informational experts on an issue, the renewal of a short-term authorization allows this information to be used in the legislative process. All of the hearings, the General Accounting Office reports, and other information that the committee gets from interest groups and the like can be channeled into legislative change in a reauthorization.

Designing Control Mechanisms

How does Congress use legislation to control an agency? Mathew McCubbins (1985) has identified several types of ex ante controls that
Congress can use to control agency behavior. First, Congress can limit the scope of an agency’s activities, specifying the types of activities an agency can or cannot do as a part of implementing a program. For example, Congress can specify what types of targets are covered under an agency’s regulatory umbrella, or what types of activities a program can fund. Second, Congress can limit the implementation tools that are at the disposal of an agency. For example, Congress may force an agency to directly provide a good or service to clients, or require that a given activity be contracted out. Third, Congress can establish the settings in which regulatory activities can occur. For example, Congress may limit agencies or their regulatory targets from using the courts to achieve their goals.

There are other sources of ex ante control, such as auditing procedures and reporting requirements, that can be built into legislation (Banks 1989; Banks and Weingast 1992; Bendor, Taylor, and Van Gallen 1985, 1987). This is a quite common form of control; an examination of laws that created new programs in the 89th and 103rd Congresses found that between 44 and 63 percent of these laws contained specific reporting requirements (Hall and O’Toole 2000). Congress can also specify the complexity of the relationships involved in the implementation of the program. For example, Congress may require multiple agencies, intergovernmental actors, and business or nonprofit actors to be involved in various aspects of the program implementation, and these complex implementation relationships are quite common (Hall and O’Toole 2000). Congress can also establish procedural requirements and preference aggregation methods that constrain the agency (e.g., McCubbins, Noll, and Weingast 1987).

The process of renewing a short-term authorization provides Congress with an opportunity to thoroughly reconsider the substantive legislation and examine the previously enacted ex ante controls, adjusting them so that the agency functions optimally. Agency discretion can be either constrained or loosened based on information from internal inputs—including auditing procedures, hearings, and reports from sources like the GAO and CBO—and from external inputs such as interest groups, the White House, and the agency itself. Congress can revise the control mechanisms that were incorporated into the original enactment based on information about the performance of the program when the authorization was active. The ability to modify these factors is important because, as McCubbins (1985, 725) notes: “Structural mechanisms seek to solve problems of agency shirking and slippage by constraining the substantive discretion of the administrative entity and by channeling the decision making within the administration to alternatives that are in compliance with congressional intent.”

By examining how Congress changes these structural control mechanisms as they renew a program’s authorizing legislation, it is possible to see
the various ways in which an agency can be controlled or empowered, based on what Congress has learned through experience during the previous authorization and changes in the policy environment. The other analyses of short-term authorizations have focused on the use of multivariate analyses. Here, I examine ex ante changes more qualitatively by using case studies. For each of the three cases, I will focus on how institutional settings, regulatory scope, implementation instruments, procedural requirements, reporting requirements, and resource distributions changed over time.

Changing Head Start

In 1965, Project Head Start was created as an eight-week summer program run by the Office of Economic Opportunity. In the 1969 reauthorization of the program, Congress shifted the Head Start program to the Office of Child Development in the U.S. Department of Health, Education, and Welfare. Tracking the program across its reauthorizations since 1974, it is possible to see how the federal rules governing the program have changed over time. These changes have affected management both at the federal level and at local levels, where Head Start is implemented (often by local governments or not-for-profit organizations).

As table 6.1 shows, the 1974 authorization states the scope of the program, the services that must be provided, the targets to be served, and the formula to be used to distribute funds; it provides due process procedures for those entities who have grant applications that are rejected and for the evaluation of the program. In the 1981 reauthorization, the program formulas changed, the scope of the program was expanded, new targets were added, new standards were created for participation, and parental participation requirements in the management of local programs were expanded. The 1984 reauthorization required the Department of Education to provide training and technical assistance funding for Head Start and to provide that training and assistance in specific manners. Local Head Start providers were required to be physically located in the jurisdiction that they serve and HHS was to designate a Head Start agency in all communities that apply. The scope of the program was also expanded, and the department was banned from various actions that could result in programs being excluded or the number of participants or program services being reduced.

In each reauthorization during the 1990s (1990, 1994, and 1998) the Head Start program was changed, with Congress placing an increased emphasis on expanding the number of children served and on evaluating
<table>
<thead>
<tr>
<th>Year</th>
<th>Institutional Setting</th>
<th>Regulatory Scope</th>
<th>Instruments</th>
<th>Procedural Requirements</th>
<th>Reporting Required</th>
<th>Resource Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975</td>
<td>HEW; local providers</td>
<td>Criteria for agencies/children; service requirements</td>
<td>Grants/contracting rules; technical assistance</td>
<td>Appeals for rejected agencies; parental involvement</td>
<td>Awards report</td>
<td>Formulas defined; technical assistance</td>
</tr>
<tr>
<td>1981</td>
<td>HHS; local providers</td>
<td>Services to Indians, migrants, disabled, children in poverty</td>
<td>New technical assistance</td>
<td>New fiscal, planning, and administrative standards; more parent involvement</td>
<td></td>
<td>Formula revised; new technical assistance</td>
</tr>
<tr>
<td>1984</td>
<td>HHS; local providers</td>
<td>Children can receive two years of service</td>
<td>Application rules; revised grant and funding use rules; training</td>
<td>No performance standards changes; no block grants; agency must be in area served</td>
<td>New formula</td>
<td>New formula and technical assistance revised</td>
</tr>
<tr>
<td>1986</td>
<td>HHS; locals</td>
<td>Specifies funding targets; expansion to unserved areas; regulate teacher quality</td>
<td>New program review tools; program evaluations; training</td>
<td>Facilitate locally developed service delivery models; new parent involve; notice/hearing rule for program change; teacher standards</td>
<td>Program status; service models; special population services; longitudinal study</td>
<td>New formulas and allocation requirements</td>
</tr>
<tr>
<td>1990</td>
<td>HHS; locals; states; K–12 schools</td>
<td>New family service programs; collaborate w/ schools and other service providers; Indian reservations</td>
<td>H.S. fellowship program; mentor teacher program training</td>
<td>Hours of daily service; model staff planning; teacher qualifications; training; expanded parental involvement</td>
<td>Worker benefits; need for all-day, all-year service; service needs of special population; longitudinal study</td>
<td>New formulas and allocation requirements</td>
</tr>
<tr>
<td>1994</td>
<td>HHS; locals; states; K–12 schools</td>
<td>New purpose: school readiness; new collaborations; service to new areas</td>
<td>New evaluation tools; new selection tools; new technical assistance</td>
<td>Teacher certification requirements; education performance standards; new designation rules</td>
<td>Program status; service models; program quality and impact</td>
<td>New formulas and allocation requirements</td>
</tr>
<tr>
<td>1998</td>
<td>HHS; locals; states; K–12 schools</td>
<td>New purpose: school readiness; new collaborations; service to new areas</td>
<td>New evaluation tools; new selection tools; new technical assistance</td>
<td>Teacher certification requirements; education performance standards; new designation rules</td>
<td>Program status; service models; program quality and impact</td>
<td>New formulas and allocation requirements</td>
</tr>
</tbody>
</table>
the effectiveness of local programs more thoroughly. The scope of these evaluations was specified in part by the law, but also required the development of standards for implementation. New staff qualifications were required, new definitions were created, new studies were required, new populations were to be served, and the scope of the program was changed to allow for all-day Head Start programs. By the end of the decade, the priority in Head Start switched from expanding the program to improving the quality of Head Start programs. These legislative changes required federal managers to modify the type and scope of service they provided.

At its heart, Head Start is a multifaceted contracting program; there are more than 1,460 grantees that provide services to more than 782,000 children in 711,000 families (GAO/HEHS-98–65). When the program first was being implemented, it was primarily focused on providing grants to local service providers. However, Congress has mandated that federal managers also develop standards for the program, evaluate the program, provide technical support for the program, provide curricular support to grantees, and support coordination between Head Start and other federal programs. They must also evaluate the credentials of grantees (federal law requires that grantees be located within the area where they provide services), ensure that funds are being allocated appropriately—Head Start has a very complex funding formula—and audit to make sure that these funds are being spent on appropriate activities. These responsibilities have evolved over time; currently, the curricular and evaluation aspects of the program are being most strongly promoted, largely because of congressional pressure (GAO–HEHS–09–183).

The changes that have come to Head Start during reauthorizations have also required local managers to provide services to new populations in different ways and at increasing levels of quality. Under Head Start rules, local managers are required to provide a 25 percent match for the federal funding received. In addition to this fund-raising requirement, however, Head Start has also required local managers to manage expanding parental involvement requirements, with planning and advisory groups having a say in how local programs are governed. They have had to develop new service delivery models, document how effectively they work, and hire a better quality staff according to new rules that strictly govern who can serve as a Head Start instructor. More importantly, however, the entire way in which the program is framed at the local level has changed, with the focus now being centered more and more on the educational services that students receive, with somewhat less emphasis given to the overall services—including health and social-welfare services—that these children need.
Changing Transit Policy

Like Head Start, the federal mass transit program is a product of the Johnson administration. With the passage of the Urban Mass Transportation Act of 1964, Congress began the process of providing funding for local mass transit. Also like Head Start, the mass transit program was moved during an early reauthorization; in 1968, the agency was moved from the Department of Housing and Urban Development to the newly created Department of Transportation. An examination of the last four transit reauthorizations illustrates the legislative dynamic for a highly distributive program.

The transit reauthorization process was added to the broader surface transportation authorization process, which historically focused on highways, when the 1978 transit reauthorization was incorporated into the broader surface transportation bill. Title III of the 1978 surface transportation legislation was the Federal Public Transportation Act (FPTA), and almost the entire section focused on how transit money could and could not be spent. The FPTA contained overall spending levels for various transit programs and authorized specific transit new starts, so that certain cities could begin building rail projects. It revised the formulas for the distribution of transit grant funds and specified who has control over spending the money. The FPTA set matching rates for transit programs, specifying how much money states and localities must spend to match federal contributions. It also set up grant programs for special populations such as the elderly, people with disabilities, and rural communities. Table 6.2 details the programs’ reauthorization histories.

The 1982 transit reauthorization looked much like the 1978 law. It contained the same types of spending levels for programs, specified new starts, tweaked the funding formulas, and specified who could and could not spend transit money and the way in which the money could be spent. However, the 1982 act also included something new, a Mass Transit Account in the Highway Trust Fund. The Highway Trust Fund is the account into which all gas tax revenues have historically been deposited. These tax revenues accrue in the account and are, according to members of the authorizing committees, supposed to be spent on highways. Of course, appropriators have a different view; they believe in unified budgeting in which trust fund accounts are all part of the same big pool of resources. There have long been battles between authorizers and appropriators regarding whether surface transportation spending should equal the amount of revenues in the Highway Trust Fund. By putting two cents of the gas tax into a separate transit account, authorizers were allowing
transit interests to make a specific claim on a specific amount of revenues for their programs.

The 1987 reauthorization was not much different from the previous two, but the 1991 bill was a watershed, much like the 1982 legislation. The catalyst for the changes in 1991 was a different reauthorization from the previous year, the passage of amendments to the Clean Air Act. A coalition of environmental groups played a key role in the passage of the Clean Air Act amendments, and these stakeholders used their newfound clout and access to influence transportation policy. Because the cleanliness of the air is directly affected by transportation, these groups saw the 1991 authorization as yet another opportunity to strengthen environmental policy. As a general rule, the environmental coalition does not like highways but thinks highly of mass transit, so they worked to make the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) into a transit bill. Granted, most of the money in the bill continued to be spent on highways; however, these groups also made highway funds highly fungible for use in transit projects, while making transit funds completely non-fungible. For example, metropolitan areas that violated clean air standards could no longer use federal highway funds to build new roads, but they could use these funds for transit. The bill also authorized more new starts, expanded transit funding, and granted greater transit access to disadvantaged individuals.

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Table 6.2 Ex Ante Control over Mass Transit through Reauthorizations

<table>
<thead>
<tr>
<th>Institutional Setting</th>
<th>Regulatory Scope</th>
<th>Instruments</th>
<th>Procedural Requirements</th>
<th>Reporting Required</th>
<th>Resource Distribution to Targets</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978 Secretary of Transportation</td>
<td>• Stipulates who receives funds</td>
<td>• Requires long-term planning</td>
<td>• Secretary to list all proposed rule-making activity in federal register</td>
<td>• Report on status of all programs</td>
<td>• Revised apportionment formulas</td>
</tr>
<tr>
<td>1982</td>
<td>• Limits who can receive grants</td>
<td>• Requires long-term planning</td>
<td>• Secretary to list all proposed rule-making activity in federal register</td>
<td>• Biennial report on transit needs</td>
<td>• Sets federal-local match rates</td>
</tr>
<tr>
<td>1987</td>
<td>• Expands activities available for grants</td>
<td>• Requires long-term planning</td>
<td>• Requires Secretary to list all proposed rule-making activity in federal register</td>
<td>• Report on all transit needs</td>
<td>• Formula grants to low-population areas</td>
</tr>
<tr>
<td>1991 Metropolitan Planning</td>
<td>• Requires urban areas to have congestion management plan</td>
<td>• Streamlines local reporting to secretary</td>
<td>• Requires Secretary to withhold funds if safety improvements are not made</td>
<td>• Report on transit safety</td>
<td>• Increases federal match rates</td>
</tr>
<tr>
<td>Organizations to allocate funds in urban areas</td>
<td>• Requires urban areas to have congestion management plan</td>
<td>• Streamlines local reporting to secretary</td>
<td>• Allows Secretary to withhold funds if safety improvements are not made</td>
<td>• Report on how transit funds are spent at state and local levels</td>
<td>• Adjusts allocation formulas</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Allows Secretary to withhold funds if safety improvements are not made</td>
<td>• Requires Secretary to list all proposed rule-making activity in federal register</td>
<td>• Allows reallocation of highway funds to transit</td>
<td>• Lists special projects</td>
</tr>
</tbody>
</table>

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80 Chapter 6
Changing the Commodity Futures Trading Commission

Both the Head Start and mass transit programs are distributive or redistributive in nature. As we turn to examining the Commodity Futures Trading Commission (CFTC), we can see the differences between regulatory and distributive programs. The CFTC was created in 1974 with the passage of H.R. 13113, moving commodity regulation from the U.S. Department of Agriculture into the new agency. As would be expected, the 1974 law structures the new agency—creating a commission—and outlines its regulatory reach. It states what types of commodities are under the jurisdiction of the CFTC, what types of activities are unlawful under the act, and what penalties can be imposed under the law. As McCubbins (1985) notes, Congress is quite interested in ensuring that regulatory policy is implemented in a specific way, and by limiting the regulatory tools available to an agency and the number and type of stakeholders covered by regulations, Congress can ensure that the agency is limited in its authority.

The three reauthorizations that followed the 1974 inaugural bill illustrate how the expiration of short-term authorizations created for Congress an opportunity to adjust the regulatory mechanisms an agency has at its disposal and the number of stakeholders covered by the agency’s jurisdiction. In 1978, the law was modified in several fundamental ways. First, the agency’s structure was changed so that a chairman appointed by the president would govern the CFTC. Second, certain types of commodity traders were excluded from the jurisdiction of the commission. Third, the scope of the financial penalties that could be levied by the commission was expanded, as were its powers to hold hearings and grant immunity to witnesses. Finally, the U.S. district courts were made the court of jurisdiction for the commission’s work. Table 6.3 details the reauthorization history of the Commodities Futures Trading Commission.

In 1982, the primary focus of the reauthorization was to delimit the jurisdictions of the CFTC and the Securities and Exchange Commission and to expand the rulemaking powers of the CFTC. Specifically, Congress granted the CFTC the authority over foreign futures trading in the United States, allowed it to limit speculative futures, and broadened the scope of activities under the CFTC’s jurisdiction. It also ensured that the SEC retained its historical jurisdiction over securities by barring the CFTC from regulating securities indices. The bill also allowed the CFTC to charge fees for certain services, a provision that would help the CFTC fund certain activities. In the Congressional Quarterly Almanac summary of the 1982 legislation, the listing of provisions almost all focus on how the
authorization shapes the scope of the agency’s jurisdiction, the tools it can apply as a regulator, and the venues for implementing its regulatory powers. The law also required that several studies be conducted by the CFTC.

By 1992, when Congress finally reauthorized the CFTC, the authorization legislation was more technical in nature. The major issue in the authorization was how to handle new financial instruments known as swaps, hybrids, and derivatives. The decision of Congress was to exempt these new financial instruments from regulation until two studies were completed in 1994; Congress scheduled the CFTC authorization to expire in 1995 so that it could take advantage of this information. The law also made a series of technical changes to the regulatory powers of the CFTC, allowing them, for example, to conduct undercover sting operations.

**Facilitating Implementation**

As these cases show, major changes can and do occur as Congress reshapes programs during the reauthorization process. These changes fit nicely into Bardach’s (1977) conception of implementation as a game in which different sets of stakeholders in the process attempt to achieve their goals by manipulating the system in specific ways. Each player deploys a different strategy as she tries to achieve specific goals, such as getting larger budgets, getting pork barrel projects, obstructing the implementation until the pro-

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**Table 6.3 Ex Ante Control over CFTC through Reauthorizations**

<table>
<thead>
<tr>
<th>Year</th>
<th>Institutional Setting</th>
<th>Regulatory Scope</th>
<th>Instruments</th>
<th>Procedural Requirements</th>
<th>Reporting Required</th>
<th>Resource Distribution to Targets</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974</td>
<td>Commission</td>
<td>Targets identified</td>
<td>Fines set; reparations to victims; Trade Association created</td>
<td>Rule promulgation</td>
<td>Reports required</td>
<td></td>
</tr>
<tr>
<td>1978</td>
<td>Federal District Court jurisdiction</td>
<td>Excludes cash dealers</td>
<td>Subpoena witness; increased fines</td>
<td>On-record hearings; enhanced APA Requirements</td>
<td>Reports to FED, SEC, Treasury required</td>
<td></td>
</tr>
<tr>
<td>1982</td>
<td>Judicial Review in Courts of Appeal</td>
<td>Excludes foreign currency; covers foreign futures, precious metals</td>
<td>Requires Trade Associations to enforce CFTC rules; allows registration disqualifications</td>
<td>New rules on when ALJ must hear case</td>
<td>Study of futures trading on economy</td>
<td></td>
</tr>
<tr>
<td>1986</td>
<td></td>
<td>Excludes foreign boards of trade</td>
<td>subpoena foreign witness; Trade Association discipline requirements</td>
<td>New rules on when ALJ must hear case</td>
<td>Study of futures trading on economy</td>
<td></td>
</tr>
<tr>
<td>1991</td>
<td>CFTC can seek monetary damage in Civil Court</td>
<td>Excludes foreign currency</td>
<td>Increased fines; customer restitution; makes certain violations felonies</td>
<td>Must publish dissenting opinions</td>
<td>Compliance report; computerized future trading report</td>
<td></td>
</tr>
</tbody>
</table>
gram dies, gaining turf, or building their personal reputation. These games often get in the way of efficient and effective implementation because different policy players are attempting to achieve their own goals without attempting to achieve the goal intended by the crafters of the legislation.

Legislators do not want the policies that they have crafted to be subverted by other policy players. Bardach (1977, 273–78) recognizes this and argues that there is a critical role to be played by “fixers,” who are often the legislators involved in crafting the legislation that is being implemented. Much like the crooked boxing promoter, the implementation fixer is trying to game the system so that she can get the outcome she wants. She fixes the game by changing the rules, often by changing aspects of the law that allow policy players to play games.

If the implementation process is a game, then short-term authorizations can be viewed as an effort to regularize opportunities for these fixers to change the rules of the game to get an outcome that is preferable to them. Consider the case of the CFTC. The CFTC reauthorizations allowed legislators to make small but critical changes in the law governing futures trading. In most cases the types of regulatory mechanisms made available to the agency were expanded so that the CFTC could work more effectively. As each authorization expired, past fixes could be evaluated and new changes made so that the implementation of commodity futures trading regulations was operating as the Congress and president desired.

In addition to fixing the rules of the game, authorization legislation determines how long the game will remain fixed. Defense policy remains fixed for only one year, whereas many domestic policies remain fixed for five or six years. For many policy players, having the game fixed for five or six years is crucial because it can take that long just to initiate the implementation process. The Economic Development Agency’s work in Oakland, which Pressman and Wildavsky (1984) studied, took more than four years just to get off the ground. Other programs, such as education programs, often take several years to become operational as well. Once these programs start functioning, they also benefit from longer authorizations because the policy players can then play for the future knowing that the rules of engagement will remain the same for some period.

Fixing the game is also critical for the states and localities who often have to implement these programs. Authorizations provide states with some certainty about the funding levels they will be receiving, which allows them to plan for the future. One former state transportation official stated:

You can’t just turn a battle ship or our transportation program on a dime. Many states have a five-year work plan so—here is the perfect example—ISTEA passes in 1991. Each year we have to figure out how to plan for the
next year. Two years into ISTEA, we have to figure out what the first post-ISTEA year will be like. The longer the bill the better from a policy perspective and planning perspective because we have to match up the money with the programs and plans.

For implementers and policy makers alike, the reauthorization process allows for key parts of the implementation process to be tweaked. Formal networks can be adjusted. Goals can be made clearer. Policy inconsistencies can be addressed. Resources can be requested. The authority of implementers can be adjusted. The incentives for various implementers can be adjusted to encourage cooperation. Each of these components of the implementation process can be the key to a successful policy outcome (Edwards and Sharkansky 1978; Nakamura and Smallwood 1980). For example, programs that are started as small pilots are often expanded at the next reauthorization. An education lobbyist noted:

The 21st Century Schools program was a small federal grant program that was run by the department here in Washington. After five years, teachers, the Department, and the states all realized that the program would work better if the grant program was administered by the states. You need time to figure out how to implement a program like this, and a five year authorization gives you that time, and the opportunity to make the change.

Policy makers—especially members of the committee with jurisdiction over the policy in question—have strong incentives to make sure that the programs under their jurisdiction are implemented effectively and operate as promised, and that the expiration of an authorization is the time when these changes can be made. One of the benefits that accrue to programs with four- or five-year authorizations is that there is time to assess the effectiveness of the program. As one education policy player observed, “[W]e are talking real dollars here and they require real assessment. Over four or five years, you can give a program the evaluation it deserves. You can ensure that the process of getting the money out the door is effective, and that the program produces a quality outcome.” A person who has served as a congressional staffer reiterated this point: “With election years every two years, you can imagine that House members would want to do this bill more, but if we had authorizations that were shorter than five years, the states and locals would go batty and we would make a lot of bad policy.”
Summary

Even though the Head Start, transit, and CFTC reauthorizations resulted in legislation that is quite different, the purpose and outcomes are quite similar. In each case, parties affected by the legislation battled to achieve an outcome that was most beneficial to them. The transit reauthorization is primarily a battle about who gets what. Because of the limited pool of funds that exists for any particular program, these fights are very contentious, as funding for one state or one city inevitably means that another state or city does not get the funding it wants. The same is true for the regulation of commodities, although in this case, the battle is not over who gets what, but rather who gets regulated and how. Each CFTC reauthorization shapes the way in which commodity trading can be regulated, the types of penalties that can be used to punish those who violate the rules, and the procedures for due process that are available to the punished. The Head Start case illustrates how Congress changes the law governing a program with the intent of shaping how the program is implemented and managed. With each reauthorization, interest groups are able to make claims about how the law should be changed based on experience gained during the previous authorization period. These groups conduct a variety of activities—such as commissioning studies of how the law has been implemented, testifying at hearings, lobbying, and similar behaviors—to explain why the law should be changed to fix implementation problems.