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“In Good Times and Bad: Designing Legislation
That Responds to Fiscal Uncertainty”

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Number 2

SCHEDULE FOR 2015 NYU TAX POLICY COLLOQUIUM

(All sessions meet on Tuesdays from 4-5:50 pm in Vanderbilt 208, NYU Law School)

1. January 20 – Brigitte Madrian, Harvard Kennedy School.
“Does Front-Loading Taxation Increase Savings? Evidence from Roth 401(k) Introductions.”
2. January 27 – David Kamin, NYU Law School.
“In Good Times and Bad: Designing Legislation That Responds to Fiscal Uncertainty.”
3. February 3 – Kimberly Blanchard, Weil, Gotshal & Manges. “The Tax Significance of Legal Personality: A U.S. View.”
4. February 10 – Linda Sugin, Fordham Law School. “Invisible Taxpayers.”
5. February 24 – Eric Toder, Urban Institute. “What the United States Can Learn From Other Countries’ Territorial Tax Systems.”
6. March 3 – Ruth Mason, University of Virginia Law School. “Citizenship Taxation.”
7. March 10 – George Yin, University of Virginia Law School. “Protecting Taxpayers from Congressional Law-breaking.”
8. March 24 – Leigh Osofsky, University of Miami School of Law, “Tax Law Non-Enforcement.”
9. March 31 – Shu-Yi Oei, Tulane Law School. “Human Equity? Regulating the New Income Share Agreements.”
10. April 7 – Lillian Mills, University of Texas Business School. “Topics [to be determined] in Financial Reporting and Corporate Tax Compliance.”
11. April 14 – Lawrence Zelenak, Duke University School of Law. “Up in the Air over the Taxation of Frequent Flyer Benefits: the American, Canadian, and Australian Experiences.”
12. April 21 – David Albouy, University of Illinois Economics Department. “Should we be taxed out of our homes? Leisure and housing as complements and optimal taxation.”
13. April 28 – David Schizer, Columbia Law School. “Tax and Energy Policy.”
14. May 5 – Gregg Polsky, University of North Carolina School of Law, “Private Equity Tax Games and Their Implications for Tax Practitioners, Enforcers, and Reformers.”



IN GOOD TIMES AND BAD: DESIGNING LEGISLATION THAT RESPONDS TO FISCAL UNCERTAINTY

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SUMMARY

Congress often moves slowly to change tax and spending laws when circumstances change, but there are ways to design legislation to anticipate and prevent the tendency towards “policy drift.”

Enactment of major pieces of legislation tends to be followed by periods of legislative stasis, even when economic conditions change. Policies during the Great Recession are an example of this. The Great Recession proved significantly deeper than forecasters had predicted, when the American Recovery And Reinvestment Act was enacted, but as new information became available, Congress did little to alter the fiscal stimulus in response, other than to continue some expiring provisions.

There are ways to design legislation to anticipate and prevent the tendency towards “policy drift.” This paper identifies four mechanisms: delegation of legislative authority to administrative agencies, triggers that either automatically adjust policy for changed circumstances or try to force an issue onto Congress’s agenda, expirations of legislation that sunset laws on a predetermined date, and indexing to adjust policy in discrete increments in response to changes in conditions.

Each has its advantages and disadvantages, but on balance, triggers that automatically adjust policy to new circumstances tend to be most effective in preventing policy drift, particularly for countercyclical policy and Social Security. When economic conditions deteriorate, triggers could be in place that would automatically adjust levels of aid to states and federal infrastructure spending, provide tax cuts, and adjust the length of eligibility for unemployment benefits. In order to maintain the solvency of Social Security, benefits and taxes could be indexed to changes in estimates of the program’s solvency over 75 years. When there is a projected shortfall or surplus, the law could trigger adjustments in benefits and taxes to compensate.

With respect to Medicare, a combination of indexing on the revenue side, and increased delegation on the spending side is recommended. Medicare revenues would be indexed to health cost growth through a combination of payroll taxes and income taxes in order to maintain the current mixed financing system. To keep payments in check, mechanisms like the Independent Payment Advisory Board could be expanded and strengthened.

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INTRODUCTION

The United States might or might not be on an unsustainable long-term fiscal trajectory. If it is on an unsustainable trajectory, that trajectory might—or might not be—dramatically unsustainable. To be sure, reasonable *central estimates*—a best guess at future outcomes—suggest that the trajectory is unsustainable, and those central estimates have garnered substantial attention, including a long-standing debate about the appropriate policy response.¹ However, the massive uncertainty around that central estimate has, by contrast, received considerably less attention in terms of assessing its magnitude, sources, and the appropriate responses to it in fiscal policymaking.

The state of the fiscal debate is representative of a larger blind spot in policymaking. Often, central estimates rule the day. Policies are designed based on these point estimates of what the state of the world will be and the effects of policymaking in that world. Put back in fiscal terms, policymakers and analysts will design policies to decrease the deficit by X amount or increase it by Y amount in order to stoke Z amount of aggregate demand—with all of the relevant figures presented in points and not ranges. Policies are designed based on what is expected to occur,² and the designs will not consider—or certainly consider less—how those policies will perform if circumstances turn out to be different than they are expected to be at the time the policy was designed or if the policies themselves have different effects than expected.

This might not be such a great problem if Congress could respond adroitly to unexpected (if still probable) circumstances with new legislation. However, considerable experience suggests that this is not the case in many circumstances. Congress tends to move in fits and starts. Major policy changes are often followed by periods of legislative stasis. Congress may not respond, even as circumstances change and policies may no longer be appropriate in the new conditions.

This results in Congress not adapting policy to incorporate new information as it is received, instead sticking with the old policy (at least up to a point), even though it is no longer appropriate. I call this the problem of “policy drift.” This paper describes various forces that can contribute to policy drift. This includes Congress’s limited agenda-space—meaning new information is often not processed into policy—and problems reaching negotiated agreements in a system with multiple veto points and increasingly polarized parties.

Thus, because the status quo law is sticky, it becomes important to try to write legislation that will allow that status quo to better adjust to incoming data in order to minimize the degree to which policy drifts off course due to unexpected circumstances. Some of the mechanisms for doing so involve forcing Congress to act to adjust the status quo; others involve adjusting the status quo automatically for new data to the extent possible—the preferable approach in my view.

¹ For a brief discussion of some of these central estimates and the uncertainty around them, see section I.A.

² I use the term “expected” to refer to the central estimate, while “unexpected” refers to circumstances that differ from the central estimate.



This paper discusses four tools for addressing policy drift: (1) delegation of legislative authority to more adroit administrative agencies, (2) triggers to either adapt policy to the new environment or encourage congressional action, (3) expirations of legislation, and (4) indexing to respond to changes in conditions. As explained later, expirations and indexing are in fact particular types of triggers, but they deserve separate consideration.

These mechanisms should seem familiar. All have been employed in legislation to various degrees, and a number of these tools—delegation of legislative authority especially—have spawned much analysis. However, they have not been considered together as ways of addressing policy drift. To be sure, these mechanisms have other purposes as well, such as handing decisions to those with greater expertise in the case of delegation, or trying to constrain congressional decision-making in the case of triggers, but addressing policy drift is a key one.

This paper focuses on “automatic-adjustment triggers,” the most promising mechanisms for addressing policy drift, where they can be effectively employed. These triggers are considered here in the context of countercyclical policy and the fiscal sustainability of Social Security and Medicare. This paper suggests that automatic adjustments could be significantly expanded to counter recessions and maintain Social Security solvency, and describes the challenges of using such mechanisms to adjust to changes in Medicare’s trajectory.

Specifically, I recommend:

Expanded countercyclical triggers. As a matter of permanent policy, or as part of discrete stimulus measures, there could be automatic trigger mechanisms for expanding (and ramping down) some of the most potent forms of countercyclical stimulus—including state fiscal aid, infrastructure spending, and certain tax cuts. Further, existing automatic stabilizers, such as the automatic mechanisms in unemployment insurance, could be made more robust. The goal would be to make a more dynamic fiscal system, which could help stimulate the economy in periods of economic weakness and then withdraw the stimulus as the economy expands. Take this example: higher infrastructure spending could be triggered in states where the unemployment rate—perhaps specifically in the construction industry—increases by a pre-specified amount. The additional funding could come with strings, such as requiring that a large share of the additional funding be obligated within a certain span of time, so that spending is properly targeted to the period of weakness.

Automatic solvency adjustment in Social Security. The Social Security system currently indexes parameters to such metrics as average wages and prices—but there is no automatic adjustment for changes in solvency. One approach is to add a mechanism that would automatically adjust Social Security parameters—both on the benefit side and on the revenue side—for changes in Social Security’s projected balance. The mechanism is meant to be added as part of a comprehensive Social Security deal that separately closes the solvency gap. The mechanism would then maintain long-term solvency by triggering an adjustment that splits the needed savings (or the opposite, in the case of a positive change in balance) between taxes and spending. The result would be to better spread risks of unexpected shocks to the Social Security system across generations so that the risk to any given generation of changes in factors, like productivity or longevity, would be minimized.



Limited new automatic adjustments in Medicare—and using other tools like delegation. Medicare illustrates the limits of such automatic-adjustment triggers. When it comes to Medicare provider payments and benefits, it is difficult, if not impossible, to construct an automatic adjustment that appropriately responds to new information about the course of the program. That is because we lack information to determine the best future policies for constraining wasteful utilization among other problems. In addition, the options are not the kinds of discrete measures that can be subject to a formulaic trigger. There are opportunities for expanding use of automatic adjustments, but this is mostly on the receipt side of the ledger. In this case a solution would be to automatically vary payroll and income taxes depending on the trajectory of future health cost growth. When it comes to provider payments and benefits, the focus should be on other tools, such as delegation and alarm bells. In fact, Congress has already delegated some significant authorities, and improving responsiveness might largely come down to strengthening and implementing these authorities—for example, actually standing up the Medicare Independent Payment Advisory Board (IPAB).

While uncertainty in fiscal policy and responses to it are the focus of this paper, uncertainty is endemic throughout the policy process. The three areas of fiscal policy outlined above are prime examples, but many of the lessons from this paper could be applied to other areas as well.

Section I of this paper defines the problem of policy drift and explains how it can produce suboptimal policy if policy does not adapt when circumstances change. It then gives examples of policy drift in the context of countercyclical policy and Social Security. Section II elaborates on the legislative mechanisms at our disposal for addressing this problem, compares them with each other, and suggests how they could be better employed in fiscal policymaking. Section III concludes by focusing on countercyclical policy, Social Security, and Medicare and discusses the ways legislative mechanisms to combat policy drift have been used in these areas and how they could be expanded.

I. THE PROBLEM OF POLICY DRIFT

The problem of policy drift—where policies remain in place even as evolving conditions justify updating and fine-tuning those policies—arises due to a combination of at least two factors. One factor is uncertainty in policymaking. A second factor is an inability of lawmakers to respond quickly to new information about the likelihood of various outcomes. This section describes these factors, details how they result in policy drift, and provides two possible examples of such policy drift in fiscal policy.

A. UNCERTAINTY AND FISCAL POLICY

Many types of fiscal policies are plagued by uncertainty, including countercyclical policies and tax and spending policies enacted to achieve long-term fiscal sustainability. What this means is that there is a wide range of possible outcomes at the time that fiscal policy is being crafted, and the appropriate policy depends on those outcomes.

In countercyclical policy, uncertainty comes from the swings in the economic cycle that are difficult to predict. For the most part, policymakers do not have much warning about an economic turning point and may not learn about it until after the fact, when reliable data become available. This uncertainty is a key challenge to implementing countercyclical policy.



Not only is it difficult to predict economic performance in the short run, it is challenging to predict the path of the economy and the budget over the long run. The optimal policies to achieve long-run sustainability, including appropriate tax and benefit policies, greatly depend on these outcomes. As Auerbach (2014) has detailed, the long-term fiscal trajectory is highly uncertain. He highlights CBO's substantial range of uncertainty on its 25-year budget projection based on previous variation in key economic factors. That range goes from a very small fiscal gap of 0.1 percent of GDP, to a mid-point fiscal gap of 1.2 percent of GDP, to a high of 2.5 percent of GDP. Auerbach notes that this range would grow larger in time, taking into account uncertainty about the current course of policy.

In fact, looking out over the 75-year horizon and taking into account both economic uncertainty and policy uncertainty, the range of possible outcomes becomes strikingly large. This is evidenced by the very different projections that the official budget offices have offered in recent years. For the coming 75 years, projections from the official budget offices range from showing a very large fiscal gap of nearly 9 percent of GDP in a projection that CBO highlighted just 2 years ago, to a much smaller fiscal gap of 1.8 percent of GDP that CBO emphasized in its latest long-term outlook, to a fiscal surplus of 1.8 percent of GDP in OMB's latest projection.³

Depending on future developments, the appropriate policies may vary substantially. This is true in terms of both economic outcomes and policy ones. For instance, if productivity growth were slower than expected, some combination of higher taxes or lower benefits would be necessary to maintain solvency in Social Security. Or, if Congress does not allow "bracket creep" to slowly increase revenues as a share of the economy (as assumed in a number of these projections), there would have to be larger adjustments in other policy areas to help offset.

To be clear, uncertainty in the budget is not limited to countercyclical policies and policies to achieve long-term sustainability. While those areas are the focus here, the same could be said for many parts of budget policy, not to mention government policy more broadly. To offer one example: Consider the appropriate level of annual funding for federal agencies, which have now been capped for a period of 10 years in nominal dollars. There is uncertainty regarding how appropriate those funding levels are, and even regarding the rate of inflation. So while this discussion focuses on macroeconomic stabilization and long-term fiscal sustainability, there are many other parts of the budget and policy to which the lessons of this paper would apply more broadly.

³ In its 2012 long-term budget outlook, the Congressional Budget Office (CBO, 2012) emphasized an "alternative fiscal scenario" showing a long-term fiscal shortfall of 8.7 percent of GDP, which amounts to a massive shortfall. However, in its most recent reports, CBO (2014a) downplayed this scenario and only provided an updated fiscal gap estimate for these same policy assumptions (of 7.4 percent of GDP) in its backup material (2014b). Instead, CBO now emphasizes its "extended baseline scenario," which shows a much smaller fiscal gap of 1.8 percent of GDP based on different policy assumptions (CBO, 2014a). Finally, in its last two budgets, the Office of Management and Budget (OMB, 2014; 2013) has highlighted a 75-year scenario that shows the long-term budget in *surplus*, with a fiscal surplus of 1.8 percent of GDP in its latest projection (OMB, 2014). The vast differences in these projections reflect differences in technical and economic factors, as well as policy assumptions such as the long-term trajectory of discretionary spending.



B. POLICY DRIFT: LACK OF RESPONSE, EVEN WITH NEW INFORMATION

Congress tends to move in fits and starts. Congress will change policy significantly and follow that moment of major policy change with a period of legislative stasis during which it is relatively insensitive to new information. This pattern is problematic when combined with uncertainty at the time that Congress sets policy. Policies that may seem appropriate at the time of the large policy adjustment may turn out to be less so as events actually turn out, and Congress may not respond.

The pattern of legislative action followed by stasis has been chronicled by a number of political scientists, most prominently in the recent literature by Baumgartner and Jones (2005). They describe a phenomenon of “punctuated equilibrium” in which there is “a pattern of extreme stability and occasional punctuations, rather than either smooth adjustment processes or gridlock forever” (Ibid., p. 5).

As evidence of this pattern, they focus on changes in the federal budget, among other areas. They describe how “[i]ncrementalism and dramatic budget change coexist” (Ibid., p. 112). Much budgetary change is small from year to year, but “a sizable number of changes are abrupt and distinctly non-incremental” (Ibid.). Figure 1 helps to illustrate the phenomenon, showing the distribution of real annual percent change in budget authority by subfunction of the budget.⁴ While much of the change is incremental—with the annual change in funding tending to be slightly positive and small (the distribution is bunched there)—there are also a substantial number of changes that are large, or non-incremental.⁵ In fact, some 40 percent of the real annual percent changes in subfunctions were (positive or negative) changes of over 10 percent.⁶ Importantly, Baumgartner and Jones note that this is not simply a function of the initiation of new programs. As they explain, significant change in budget programs “appear[s] to be a constant part of the process; there is always the chance that a given area of policy will become the object of renewed attention and fundamental re-thinking” (Ibid.).

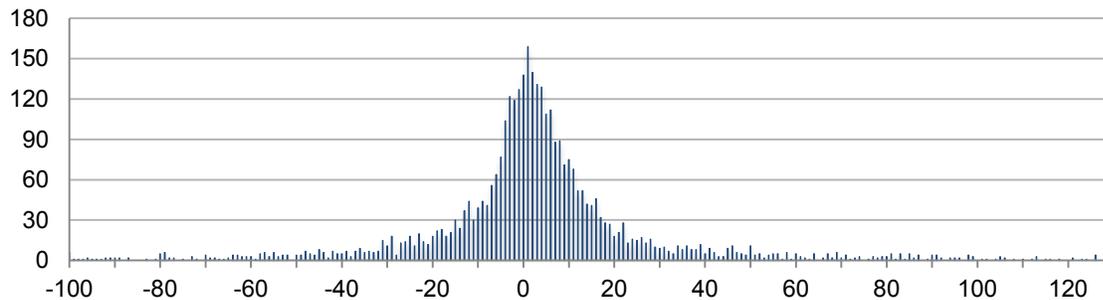
⁴ Following the methodology employed by Baumgartner and Jones, this figure excludes certain subfunctions where changes in funding levels are unlikely to reflect programmatic change. In particular, it excludes change in net interest. It also excludes changes in subfunctions where there are large amounts of offsets to spending that create an erratic record but probably do not reflect programmatic change, like subfunctions for undistributed offsetting receipts, deposit insurance, and mortgage credit.

⁵ In technical parlance, the distribution is “leptokurtic,” with a concentration of policy changes in the “incremental” range and then a small, but significant, number falling outside of that. This is as compared to a “normal” distribution.

⁶ Notably, this same pattern—of mostly incremental changes with small but significant number of larger ones—remains even if the changes are weighted by the size of the budget subfunction. In that case, about one-quarter of annual budgetary change in the subfunctions exceeds 10 percent (either positive or negative).



Figure 1: Annual Real Percent Change in Budget Authority by Subfunction, 1947-2013



Source: This is a version of Figure 4.14 in Jones and Baumgartner (2005). It relies on updated data made available here:

BROOKINGS 

Thus, as an empirical matter, this pattern of periods of stability combined with moments of major policy movement seems relatively well established (Jones, Sulkin, and Larsen, 2003, pp. 151–70; Howlett and Migone, 2011). What causes this pattern is less so. As one scholar observes, “[t]here is probably no single explanation of the discontinuous fashion in which major policy change often occurs” (Nelson, 2008).⁷

One possibility could be that, when charted, the new information available to policymakers is shaped like the distribution of budgetary changes. In that case, the budgetary pattern shown in Figure 1 would not be evidence of Congress failing to react proportionately to new information, but rather that the distribution of new information is shaped in the same way. The problem with this explanation is that as long as errors in previous information are random, the distribution of that information should be more evenly distributed than the budgetary changes shown above.⁸ This is a technical answer that others have elaborated, but our experience of the last several years gives further evidence of this fact. When Congress is gridlocked, as it has been in the last several years, it is not responding to new information as it is received. Further, the specific fiscal episodes described here in section I.C. illustrate how Congress can respond to new information in an irregular pattern—with periods of major legislation followed by stasis, even as new information is received.

But, why would Congress not react proportionately to new information?

⁷ “Natural and social scientists have worked hard to understand dynamic processes that produce punctuated equilibrium behavior. There are many kinds of models that do so...” (Brock, 2006, p. 49).

⁸ In technical parlance, the distribution of new information should be normal (Baumgartner and Jones, 2005, pp. 156–162), rather than leptokurtic. It is quite likely that the errors of particular indicators relevant for budget decision making, such as information on the need for military action or on a natural disaster, would not be normal. These will be characterized by significant punctuations, such as national security emergencies or particular disasters. However, as long as these indicators are not correlated with one another and there are a sufficient number of them, the errors in information relevant to the budget would, on the whole, still be approximately normally distributed. Baumgartner and Jones show this to be the case, even with as few as five noncorrelated informational indices, each of which has errors that are not normally distributed, and then simulating the distribution of errors taking a random draw from each index 10,000 times (Ibid., pp. 132–135).

One theory focuses on Congress's limited agenda. According to this theory, policymakers have limited capacity as individuals and Congress has limited capacity as an institution to process information and then translate this into policy adjustments. The result is that new information is not processed all at once and in proportion to the content of that information. Instead, the information only receives attention in the legislative process—and sometimes is given disproportionate weight—if the issue actually gets on the congressional agenda. There may be a threshold below which informational signals may not break through. But there also may be factors beyond just a pure threshold effect, including the extent of interest-group mobilization and who happens to hold political power at a given point in time (Baumgartner and Jones, 2005, p. 8).

Other models focus more on the multiple veto points in U.S. lawmaking and how this tends to preference the status quo and produce discontinuous policy change (Ibid., pp. 172–174). The system's multiple veto points—in each of the two houses plus at the executive level—along with the super-majority voting rules in the Senate, produce a legislative process that is less sensitive to new information than would be the case with fewer veto points and less restrictive voting rules. This is because the status quo will be maintained if any of the players with veto power prefer the status quo to alternatives. This makes the process of negotiation and legislating more difficult where opinions among policymakers differ. There is also an increased probability of negotiating failure, even where all sides might prefer a common set of outcomes to the status quo. When it comes to budgetary policy, at least one study has found that greater partisan control in Congress—especially control by liberals—in part explains periods of punctuation in budgetary change as compared to periods of relative stasis (Breunig, 2006, pp. 1079–81).

Further, others have described how increased polarization in the American political system can make negotiations even more challenging and decrease the chances of compromise deals—again, giving preference to the status quo. For instance, political scientists have described how political leaders have incentives to engage in “strategic disagreement”—where disagreement is driven not just by differences in policy preferences but also a desire to differentiate from the other party (Barber and McCarty, 2013; Gilmour, 1995). In such an environment, policymakers may only take legislative action when the costs of the status quo differing from their underlying preferences outweigh the political gain from simply appearing to disagree with one another.

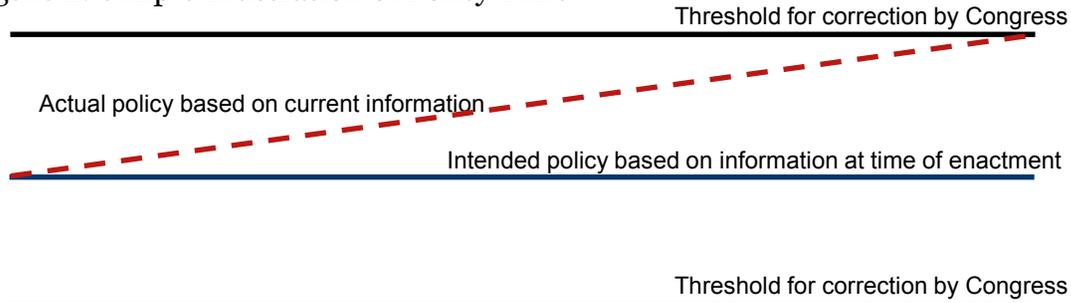
What is key here—irrespective of the exact theory—is that policy can drift away from the desired result as the world turns out to be different than at the time of legislation. And because of the barriers described above, Congress may only react intermittently.⁹

⁹ This concept of policy drift can be contrasted with at least two other ways that policy can essentially drift away from what was initially intended by the enacting legislature. The political science literature also describes a process of “bureaucratic drift” and “legislative drift.” These concepts are fundamentally concerned with the ability of agencies to drift away from the policies that the enacting Congress may have actually wanted them to pursue (bureaucratic drift) and how even a check by later Congresses may not maintain the original political deal due to changes in that body (legislative drift). The fundamental concerns here are ones of democratic accountability and sustaining the deals made by an enacting legislature (Macey, 1991). By contrast, this paper is primarily concerned with the effect of evolving information and how Congress and other bodies may not appropriately adapt to such information.



Figure 2 gives a very simple graphical illustration of policy drift, showing policy drifting away from the intended result, which was based on the course set at time of enactment and information at time of enactment. A small deviation is not sufficient to draw a reaction from Congress; rather, policy must drift sufficiently far away (defined by the “threshold for congressional action”) to prompt a response. In the meantime, the process suffers from policy drift.

Figure 2: Simple Illustration of Policy Drift



To be sure, there may be some good reasons for policy to remain static, even in the face of new information. For instance, there could be fixed costs associated with any change in policy. In that case, the optimal result is not necessarily to adapt policy to all new information, but to wait until the benefits of adapting policy to new information outweigh the costs associated from doing so. This, too, would result in a pattern of punctuated equilibrium, but it would be one that reflects optimal policy change, where policy drift is better than incurring the fixed costs of adaptation. While this is likely true in some areas, it seems unlikely to explain the phenomenon of policy drift as a whole. The two examples of fiscal policy drift in the next section illustrate this nicely. In Social Security and countercyclical fiscal policy, the costs of adapting to new information seem relatively low, while the costs of drift are potentially significant.

Policy drift is certainly not the only malady from which the policy process suffers. So, when Congress acts, it may not necessarily act well; the status quo may sometimes be superior. Still, this paper assumes that, on average, policy would be better if (a) Congress could act more often to incorporate new information or (b) if other mechanisms were in place to adjust policy to that information.

C. THE PROBLEM OF POLICY DRIFT IN FISCAL POLICY: TWO EXAMPLES

The problem of policy drift can be illustrated by two examples of fiscal policy drifting off course as new information became available. The first focuses on stimulus in the Great Recession and the second on Social Security solvency.

i. Fiscal Stimulus and the Great Recession

While the American Recovery and Reinvestment Act (ARRA) has been much debated, the failure of the legislation to adapt to changes in the economic environment has received relatively little attention. The legislation was designed at a time of great economic uncertainty, and the recession turned out to be significantly deeper than most forecasters expected at the time. Some additional stimulus was enacted in the ensuing years, but that additional stimulus did relatively little other than extend certain expiring provisions.



Table 1 illustrates the problem. At the time that ARRA was crafted, CBO expected that the unemployment rate would average about 3 percentage points above its “natural rate” (sometimes called the “full employment rate”) in 2009 and 2010 without any additional discretionary fiscal stimulus, representing a severe recession (CBO, 2009). However, in the absence of ARRA and other discretionary stimulus, CBO data suggest that the unemployment rate actually would have been 3.9 to 4.3 percentage points above its natural rate in 2009, and 4.3 to 6.1 percentage points above the natural rate in 2010. By these figures, the recession was about 40 to 50 percent worse than expected in 2009, and 35 to 90 percent worse in 2010.¹⁰ This is despite the fact that CBO’s projections were broadly in line with the typical forecasters at the time.¹¹ It quickly became evident that the early estimates from CBO and other forecasters were too optimistic. The actual unemployment rate had hit 9.5 percent by June of 2009, and 10.0 percent by October of that year. By contrast, CBO had expected an average unemployment rate of 8.3 percent in 2009, and 9.0 percent in 2010, even in the absence of stimulus.

	2009	2010
January 2009 Projection	+2.9%	+3.2%
What Transpired (Removing CBO's Estimated Effect of Stimulus)	+3.9% to +4.3%	+4.3% to +6.1%

Note: * This unemployment rate estimate excludes both the effects of ARRA and the additional discretionary stimulus later approved and in effect in 2010.
Source: Author's calculations. See FN 10.

After passing ARRA, Congress largely sat on its hands in 2009 and 2010. ARRA provided about \$265 billion in stimulus in 2009,¹² and Congress added nothing to it that year other than the small Car Allowance Rebate System (known as “cash for clunkers”), even though it was clear throughout the year that the economy was diving into a deeper recession than had been predicted.¹³ More was done in 2010,

¹⁰ These figures are based on the author’s calculations using CBO data. To arrive at the unemployment rate absent discretionary stimulus, calculations started with the actual unemployment rates for 2009 and 2010. Those unemployment rates were then adjusted upwards based on CBO’s calculation of the effects of ARRA in 2009 and 2010 in order to remove the effects (CBO, 2014c). The CBO analysis gives “low” and “high” ranges for its estimates of the effect of ARRA, and these ranges are used here to establish the “low” and “high” unemployment rates in the absence of ARRA. Further, for 2010, this scenario adjusts the unemployment rate for the roughly \$100 billion of additional stimulus that was enacted that year, almost all of which continued or expanded expiring provisions in ARRA. This adjustment assumes the same ratio of dollars of stimulus to decrease in the unemployment rate as CBO used for ARRA as a whole.

¹¹ As of December 2008, the average forecast among the more than 50 firms participating in the Blue Chip economic survey was that the unemployment rate would peak at 8.3 percent in the downturn. That is below CBO’s forecast of 9.0 percent in 2010. From this, CBO appears relatively pessimistic as compared to the average forecast at the time. With that said, the forecasts are not directly comparable. CBO’s forecast does not take into account the effects of any possible discretionary fiscal stimulus; in contrast, the Blue Chip forecasters do take into account whatever fiscal stimulus they expected to occur at the time (BCEI, 2008).

¹² This measures the cost of ARRA to the government in 2009 on a calendar year basis (CEA, 2014, Table 10).

¹³ For a list of additional discretionary stimulus added after ARRA see CEA (Ibid., Table 11).

though the dollar figure overstates the extent of new policymaking. While Congress added over \$100 billion to the \$350 billion in stimulus already slated for that year, almost all of that came in the form of extensions of expiring stimulus provisions, mostly expanded unemployment insurance, that otherwise faced cliff-like ends—one day there in full force and the next day not (Council of Economic Advisers, 2014, Table 11). As explained in section II of this paper, such expirations are in fact one way to overcome the problem of policy drift. Other than for continuing—and sometimes adjusting—expiring provisions, the stimulus law for the most part remained exactly the same in those years.

There is reason to think that the stimulus would have been designed differently if the depth of the recession were known at the time. As Jared Bernstein, one of the administration’s top economic advisers, said in describing its approach to sizing stimulus, “If you’re at the barber and they don’t cut your hair short enough, you can always ask them to go a little further” (quoted in Klein, 2011a). Or, as Lawrence Summers put it more specifically, if somewhat less evocatively, “We believed in the winter of 2009 that if, as seemed likely, more stimulus would ultimately be required, it could be passed through the Congress using the unemployment insurance extension for 2010 as a vehicle. This view proved incorrect,” (quoted in Klein, 2011b). The comments suggest that if these advisors had fully appreciated the severity of the recession, and likelihood Congress would not act again in the same significant way, they may have counseled differently in early 2009, and may have pushed Obama and other political leaders to negotiate for a larger stimulus package.¹⁴ In other words, the comments suggest that there was policy drift in the wake of ARRA’s enactment.

Why Congress did not act promptly in the face of the new information is less clear. Some part of the explanation might relate to Congress’s limited agenda-space, which inhibited their ability to incorporate new information into policy. There were considerable trade-offs in terms of the policymaking agenda in 2009 and 2010. In particular, after passage of ARRA, Washington was focused on three other major policy initiatives: health care reform, financial regulatory reform, and climate change. A major push for additional stimulus could well have come at the expense of agenda-space for these other pieces of legislation (two of which were enacted).

However, another explanation for what occurred is that there was no policy drift at all. Rather, sentiments among both policymakers and the public might have changed. After all, ARRA as a whole was famously unpopular. As a Gallup poll from August 2009 indicated, fewer than half of Americans believed that stimulus was improving the economy, and there was considerable opposition to any additional stimulus, with some 65 percent opposed in one poll (Jones, 2009). This was a decline in support from the date of enactment (Newport, 2009). Still, sentiments about stimulus were more complicated than these headline figures, and in fact may have represented public confusion rather than anything else. In particular, the component pieces of ARRA were much more popular than the bill as a whole, with one poll putting support around 80 percent for major provisions (CNN, 2010). And of course, Congress never repealed

¹⁴ Both Bernstein and Summers question whether more could have been done as of early 2009, given political constraints. This is in some tension with their observation that their recommendations had in part reflected the belief that Congress would go back to the well if needed. Also, as discussed later in this document, a more robust stimulus package could have been written using triggers with a total cost similar to that initially estimated by CBO.

any provisions in ARRA. It simply failed to significantly expand on what had been previously enacted, other than extend some expiring provisions.

Between these two theories, there is reason to think that policy drift explains at least some of what occurred. In part this is supported by the ways Congress *did* take later action with regard to stimulus. Congress did extend—and in some cases expand—provisions that faced cliff-like expirations substantially before their desired end-date. These provisions included expanded unemployment insurance, state fiscal relief, and tax cuts. These extensions added up to nearly \$300 billion in stimulus in fiscal year 2011, and more than \$250 billion in stimulus in 2012. As explained later, expirations tend to push issues onto Congress’s agenda, and they are one way of addressing policy drift. This is in contrast to the treatment of other policies—like infrastructure spending—that simply phased down over time and were not revisited. This points to something other than a dislike of stimulus driving policy results: the power of the status quo, which could be displaced by mechanisms like expirations.

Irrespective of the exact mechanism that led Congress not to enact additional stimulus, an important lesson is that policymakers overestimated how many chances they would have to get major stimulus right. In the end, they had one shot, putting to the side later extensions of expiring provisions. Given the uncertainty of the economic trajectory facing them, policymakers could have done better in designing this “one shot” legislation.

As this paper explains in sections II and III, the legislation could have been designed to adjust to unexpected outcomes. For instance, the size of tax cuts going into 2010 could have been tied to the unemployment rate, and the amount of tax cuts could have gone up and down depending on how the unemployment rate performed relative to expectations.¹⁵ Also, a number of the spending programs—especially ones like infrastructure, where there were not cliff-like ends to force congressional reconsideration—could have been designed to receive additional funding if the unemployment rate exceeded certain levels going forward.¹⁶ In fact, to the extent that total cost of the original legislation represented a binding constraint, the package could have been designed to cost the same amount as

¹⁵ Specifically, the size of the Making Work Pay tax cut—set at a maximum of \$400 per working adult—could have varied depending on the unemployment rate. For instance, the size of the tax credit for 2010 could have varied depending on how much higher or lower the unemployment rate was at the end of 2009 as compared to some benchmark (perhaps CBO’s projection at the time). Each incremental change in the unemployment rate could have increased or decreased the per-person credit by a certain amount. While this would create uncertainty about the size of the tax cut for the upcoming year, it should serve to actually *decrease* uncertainty overall. That is because the credit would vary in a countercyclical fashion, increasing disposable incomes if the economy turns out to be worse than expected, or the opposite if it were better than expected. Still, the uncertainty might still lead some households to spend less than they would if the tax cut were not dependent on the unemployment rate—reducing its immediate effect on aggregate demand—and that could be a detriment of this approach.

¹⁶ If ARRA had included one-sided triggers like this—such as providing additional infrastructure funding if certain unemployment thresholds were exceeded—CBO would likely have scored such provisions on a probabilistic basis. So, the triggers would have been scored as costing some amount upon enactment, but they would have provided more stimulus to the economy than initially estimated given the way the economy then performed.

ARRA did under CBO scoring as of time of passage, but with these kinds of built-in triggers the package could have delivered more stimulus given the way the economy actually performed.¹⁷

The bottom line is that the environment rapidly changed after major new stimulus legislation had been put in place, but Congress's response was slow and not proportionate to the new information. That left the economy in a deeper recession than it otherwise might have experienced if the problem of policy drift had been frontally addressed in ARRA.

ii. Social Security Reform and Changes in Solvency Projections

In the early 1980s, Social Security was faced with a short-term crisis and long-term shortfall. Economic weakness had left the system with insufficient funds in the short-term, which would have led to imminent trust fund insolvency and an immediate cut in benefits absent congressional action. While the system was expected to stabilize over the next several decades, and even return to surpluses once the economy had fully recovered, the system faced another projected point of insolvency as the baby boomers began retiring in the early 2010s (OASDI, 1982, pp. 2–3; Greenspan Commission, 1983).

Famously, this led to a bipartisan compromise that restored short-term solvency and helped address the long-term problem by, among other measures, building up trust fund reserves in the lead up to the baby boomers' retirement and increasing the retirement age for future retirees. After the reform, the system was under most projections expected to be solvent through 2058—the Social Security actuary's traditional projection window of 75 years.¹⁸ While the projections suggested that the reform would not maintain solvency indefinitely, this was a significant overhaul of Social Security benefits and financing, and the outlook represented a substantial improvement in actuarial soundness relative to the projections prior to that.

Since 1983, the projections for Social Security have darkened somewhat, but there have been no significant changes to the system in response. In part, they have darkened because the 75-year projection window includes more years of deficits. This much was expected as of 1983 and passed off to future policymakers to resolve. However, there also has been unexpected deterioration. This appears to be largely due to higher disability rates, worse economic conditions, and different technical factors than those assumed at that time.¹⁹ The Social Security system has two separate trust funds—one for disability

¹⁷ If policymakers had insisted on keeping the size of the package the same there would have been trade-offs in designing triggers based on economic performance. This is especially the case in terms of timing. To the extent the triggers extended tax cuts or funding going forward (beyond the years in which they were scheduled to phase down or end under ARRA), there would have been a trade-off between the amount of possible future stimulus, contingent on poor economic outcomes, and the amount of stimulus being immediately provided to the economy. Still, the trade-off may have been worth making, and, in some circumstances, this timing trade-off may not have been necessary, such as in 2009 and 2010 when most programs were already scheduled to be in effect and the size stimulus could have been contingent on the unemployment rate.

¹⁸ The 1983 Social Security Trustees Report (OASDI, 1983, p. 2) projected that the Social Security trust funds would remain solvent for at least 75 years under three of the four scenarios given. In the most pessimistic scenario, the trust funds were projected to become insolvent in the 2010s.

¹⁹ Diamond and Orszag bridge the difference between the 75-year actuarial balance projected as of 1983 and that projected as of 2003 (Diamond and Orszag, 2004, p. 57). As of 2003, they report that the three largest negative



insurance (DI) and the other for old-age and survivors insurance (OASI). Though in 1983 the DI trust fund was projected to be solvent for the full 75 years under three of the four scenarios given by the trustees, that trust fund nearly became insolvent in the mid-1990s. Even after a reallocation of revenue from OASI to DI, the DI trust fund is now expected to be insolvent by 2016, according to the trustees' central estimate.²⁰ If the DI trust fund were combined with the OASI trust fund (which may occur, but is not provided for in law), the combined trust fund would be solvent through about 2033 under current projections, still well short of the original 2058 goal (OASDI, 2014, p. 3).

It seems likely that if the information we have now had been available in 1983, the Social Security reform package enacted at the time would have been different. Then, one explicit goal of the reform effort was 75-year solvency.²¹ Perhaps with a larger 75-year gap, the reforms would have remained largely the same and would not have closed the full gap. That is a possibility, but another likely outcome is that the information would have changed the deliberations and at least some significant aspects of the package given one of the main goals of the reform effort. In other words, if the information had been known at the time of this major move in legislation, it seems likely it would have been incorporated in some way. But policymakers did not amend Social Security when the information later became available. Why?

Unlike with ARRA, the cause was probably not a crowded agenda and limited ability of Congress to process information. The Social Security Trustees report showing the size of the funding shortfall is released every year and receives at least some attention. Further, there have been a number of high-profile efforts to reform Social Security, including President Bush's push after his reelection in 2004 (though one of the main issues there was private accounts rather than solvency). Those efforts died, but it was not from a lack of attention; at least not in all cases.

The main mechanism seems to lie elsewhere. Strategic disagreement might be a driver, where the disagreement itself is thought by at least one side to yield political benefits, even if both sides might actually prefer a different underlying policy. This might combine with the multiple veto points in the political system to produce a very sticky status quo, and one that cannot easily adapt to new information.

An alternative to this explanation is that underlying policy preferences of the policymakers had changed (for instance, with 75-year solvency no longer being seen as important), in which case this would not be an example of policy drift. Perhaps long-term solvency was a goal in 1983, but not today. But this explanation is unsatisfactory for a number of reasons. First, this would be contrary to the articulated policy goals of both Democratic and Republican leadership (though neither has supported any detailed

factors—other than change in the terminal year of the projection—were changes in actuarial methods, disability assumptions, and economic assumptions.

²⁰ As Ruffing and Van de Water (2014) explain, the 1983 Social Security reforms actually reallocated revenues from the DI trust fund to the OASI trust fund. This was done on the basis of projections that assumed the continuation of record low disability rates. The low disability rates proved to be a transient phenomenon, however, resulting from Reagan-era screening policies that met resistance in states, Congress, and the courts. By the 1990s, it was clear that the 1983 projection had substantially underestimated the long-term disability rates.

²¹ Twelve of the 15 members of the presidentially appointed bipartisan commission charged with reaching a compromise agreed the goal for reform should be a long-range deficit, defined in terms of 75-year solvency, “reduced to approximately zero” (Greenspan Commission, 1983).

policy proposal in this regard). It is obviously contrary to the agreed-upon deal in 1983, when both sides actually sat down to negotiate. Second, and perhaps more important, Congress has not acted to worsen the Social Security shortfall in this period, as might be expected if their preferences really had shifted, and this includes allowing the normal retirement age to continue to rise, as enacted in the 1983 reform. Thus, there appears to be a particular power to the status quo policy; one that cannot easily be explained in terms of the underlying preferences of policymakers or the population.

In sum, circumstances have changed significantly in the three decades since Social Security was touched in any substantial way, and policy has not been updated, even as the system has drifted off of the originally expected course. Congress is likely to act as insolvency dates draw nearer—perhaps because the benefits of strategic disagreement fall relative to compromise and the salience of the problem rises. However, that still leaves many years in which no updates were made despite new information being available. This represents a lost opportunity. Certain tax policies and benefit changes are now impossible given the passage of time. Generations that perhaps should have faced higher burdens now will not, and, as a result, other generations will face larger burdens than they might have otherwise.

Section III.B. suggests ways to avoid such lost opportunities in the wake of future reform—for instance, including an annual automatic mechanism to adjust tax rates and benefit levels to maintain the system’s solvency.

II. MECHANISMS IN LEGISLATION FOR ADDRESSING POLICY

DRIFT

Addressing policy drift requires making policy more responsive to new information as it is ascertained. This part explores four legislative mechanisms for doing so: (1) delegation, (2) triggers, (3) expirations, and (4) indexing (though expirations and indexing are in fact specific forms of triggers, as explained later).

This paper focuses on mechanisms that can be written into legislation, but this is not the only possible approach. Another is to reform the internal workings of Congress to make it more responsive to information, and, by doing so, reduce the degree of stasis. This could include targeted reforms such as fast-track procedures similar to those used in budget reconciliation. However, even if such reforms were agreed to, the fundamental phenomenon of policymakers failing to respond to new information appropriately, and policy changes coming in fits and starts, seems unlikely to disappear. That is in part a function of any political institution’s limited ability to process information and the possibility of negotiating failure among multiple actors. As a result, even if reforms making it easier for Congress to legislate were enacted, the approaches explored here seem likely to remain relevant for policymaking.

A. CRITERIA FOR EVALUATING LEGISLATIVE MECHANISMS TO ADDRESS POLICY DRIFT

The main criterion employed here for evaluating legislative mechanisms is the degree to which each would reduce policy drift. This goes to the core of the problem this paper has described. It is a judgment in probabilities, to be sure. In some circumstances, none of these mechanisms would change policy outcomes. There are times at which Congress will act in light of new information and the default policy



will not matter, either because the information is sufficiently salient or because policymakers in the various branches are ideologically aligned, or due to some other set of factors. In such situations, these mechanisms may have relatively little effect (and policy drift would not be a significant problem to begin with). So these mechanisms are evaluated in terms of likely outcomes, asking which of them (and in what circumstances) will most effectively address policy drift.

This paper also considers three other criteria for evaluating these mechanisms:

The first criterion is the amount of information needed, and decision costs involved, in establishing and using the particular legislative mechanism. Information is limited and sometimes costly to attain, and Congress has a limited capacity to focus on policy and make decisions. So, the more decisions that must be made, the smaller the capacity there is to focus on other issues, and the more difficult it is to resolve any particular policy problem.

The second is predictability. Many private actors plan based in part on government policies, whether businesses planning for investment or individuals planning for how much to save. A lack of predictability can impose costs on risk-averse planners, and more often leads private actors to take positions that are less optimal than alternatives given the government policies that end up being pursued. Being able to predict with greater confidence how policy would develop under different circumstances is therefore of value to private actors whose decisions depend on government policy.

The third criterion is democratic accountability and responsiveness. First, there is a question as to how the mechanisms affect voters' ability to hold elected politicians accountable for the policies they adopt. Second, there is a question as to how the mechanisms affect the sensitivity of policy to the current preferences of voters and representatives, as opposed to the preferences of voters and their representatives in the past. Note that, unlike with the other criteria, it is not clear that more is always better with regard to democratic responsiveness. Important institutions—such as the Federal Reserve—are meant to be shielded from democratic preferences at least in the short term, and this has been justified as allowing such institutions to better optimize policy.

These criteria are not comprehensive. There are other important factors for judging legislative mechanisms, such as how they might affect the power of different interest groups. And in any particular policy arena, there are likely to be idiosyncratic factors. Nonetheless, the analysis here should be suggestive of the broad advantages and disadvantages of each of these mechanisms and where they may be most appropriately deployed.

B. DELEGATION

Delegation of legislative authority from Congress to agencies is “a now-foundational governmental practice” (Barron and Rakoff, 2013, p. 266), though it has been used relatively little when it comes to fiscal policy (see generally Logue and Hines, 2014). In other areas of policy, Congress has delegated substantial powers to administrative agencies. This ranges from the delegation of control of monetary policy to the Federal Reserve to the delegation of environmental policy, where the Environmental Protection Agency has substantial discretion. For example, the EPA (2014) recently announced a new regulatory initiative to cut carbon emissions from existing power plants, which are the single largest source of carbon emissions in the United States. This came in the wake of congressional inaction on the

issue. While that effort will almost certainly face a legal challenge, no one claims that federal agencies have the discretion to substantially change federal fiscal policy, perhaps with the exception of the bodies governing Medicare. The practice that is so important in other policy areas simply does not play much of a role in fiscal policy.

Many justifications have been offered for delegation. One key justification is that agencies may be better able to respond to new information than Congress. As a top official at the Food and Drug Administration once described (Shuren, 2001, p. 292), “agencies are the governmental entities best equipped to respond to changing circumstances. Indeed, the modern basis for regulatory administrative agencies is to provide a more effective mechanism for the federal government to respond to changing conditions.” To put this differently, agencies may be better equipped than Congress to adjust policies in response to the receipt of new information, enabling them to stand as a bulwark against policy drift.

There are a number of different models for delegation of legislative powers. Some involve a broad delegation of authority with Congress laying out only principles. Others involve more constraint on the agency, such as Congress setting out a detailed legal framework that the agency can change or waive under specified circumstance. (This latter form of delegation can combine both delegation and a trigger. The model involves delegated authorities triggering only under specified conditions.)

Despite being widely employed, delegation has seen relatively little use in broader fiscal policy. For the most part, countercyclical policy and policies setting overall spending and tax levels over the long term have been the creatures of congressional legislation, with little agency discretion on these matters. To be sure, agencies do have important regulatory authority when it comes to tax policy and the major social insurance programs, but, for the most part, that authority cannot be used to easily and significantly change total spending and tax levels.

The one major exception is perhaps Medicare, especially with new authorities delegated in health care reform. These new authorities are further described in section III.C. One example of the reforms is the Medicare IPAB. This body becomes empowered if projected cost growth in Medicare exceeds certain thresholds, and the IPAB then is mandated to come up with payment reforms to reduce that growth in the program. Importantly, the reforms have the force of law. However, it is unclear if the IPAB will ever be constituted, and, even in its nascent form, it is the subject of regular criticism from Congress.

The lack of delegation has led two scholars to recently call for delegation to be much more widely employed in fiscal policy and especially in tax policy (Logue and Hines, 2014). For instance, in the context of countercyclical policy, they envision tax rates being delegated to the Federal Reserve or another independent agency. In this conception, the Federal Reserve would have some limited power to raise and lower income tax rates in coordination with monetary policy so as to maximize the effectiveness of its countercyclical efforts.

While they give a number of reasons for employing such delegation, including agencies having more expertise and time, they cite uncertainty as a key reason. In their words, the reason “Congress might want to delegate tax rate authority to the Treasury or an agency such as the Federal Reserve is to afford greater tax policy flexibility in response to changing economic and financial conditions.” (Logue and Hines, 2014, p. 25).



As a tool for combatting fiscal policy drift, delegation has advantages. In particular, it offers flexibility in new circumstances and low decision-costs for Congress. But it also has downsides that limit its potential in fiscal policymaking, such as the possibility of delay.

First, let's look at how delegation can reduce policy drift. A major advantage is discretion, potentially combined with an agency's relatively focused agenda and streamlined process for decision-making. By being given discretion, agencies can adapt policy to unexpected circumstances in a way that formula-based measures—like the kinds of corrective mechanisms in triggers—cannot do (at least not easily). Thus agencies, if empowered, can take into account many different sources of information and then construct new policy, potentially changing any number of variables. Further, even as they are given discretion, there are a number of structural reasons why agencies may react more quickly to new information than Congress can. First, an agency may have a more focused agenda—meaning fewer priorities competing for its attention—and second, its decision-making process may be streamlined, unlike the process of enacting new legislation. The delegation of monetary authority to the Federal Reserve's Open Market Committee (FOMC) is a good example of this. The FOMC's agenda is focused, and it is given largely unchecked authority to change monetary policy. Thus, the FOMC can respond relatively rapidly to change in economic conditions.

Delegation to agencies is not a cure all for policy drift, however. This is especially the case if Congress applies procedural and judicial checks to regulatory action, as it often does. While there may be some good reasons for such checks, they can slow the regulatory process considerably, sometimes to a crawl. Congress and the courts require some agencies to jump through a number of hoops to issue a policy, including the publication of draft rules, receipt of comments, incorporation of feedback, and then close review (and possible reversal) by the courts. There is now a considerable literature describing substantial delays in the regulatory process that arise in part because of these mechanisms (McGarity, 1992; Pierce, 1995). As a result, agencies—especially if subject to such checks—may themselves have trouble adapting policy to new information.

In terms of information and decision costs, there is another significant advantage to delegation: it requires relatively little information and decisional effort from Congress at the time of legislation. To be clear, this simply transfers decisions to an agency, and then requires decision-making by the agency. But the opportunity costs of focusing on a particular policy area may be less for an agency than for Congress. Perhaps more important, Congress does not need much information either about the array of possible outcomes or the appropriate responses to those outcomes in order to delegate discretion to an agency. While the agency will have to go about collecting information, it may be able to do so at a time when the desired information—such as how a program is working—is easier to attain.

In terms of predictability and democratic accountability, delegation has some drawbacks. Agency decision-making may be less predictable than some of the other mechanisms, such as automatic triggers. Further, delegation of legislative authority inherently involves distancing elected leaders from decision-making—potentially reducing both the accountability of those elected leaders for policy decisions and responsiveness of policy to the electorate's preferences. To be sure, elected leaders may be held accountable both for the delegation itself (which could prove controversial) and for later decisions of agencies. And the agencies may have incentives to take into account current preferences, because of checks applied by Congress and, perhaps less constructively, direct lobbying from interest groups. But the

point is that both accountability and responsiveness may be less than if Congress retained its legislative power.

C. TRIGGERS

Triggers adjust the legal framework under specified conditions. Unlike delegation, triggers have been employed with some regularity in fiscal policy. Even more so than delegation alone, triggers can be targeted directly at the problem of policy drift. However, they also involve relatively high informational and decision-making costs at the time of legislation.

i. Trigger Conditions and Trigger Consequences

There are two key design decisions in creating a legislative trigger. The first is the “trigger conditions,” and the second is the “trigger consequences.” Trigger conditions are the set of circumstances under which the trigger is activated. One approach can be called an “automatic-adjustment trigger.” A second approach can be called an “alarm-bell” trigger.

The automatic-adjustment trigger adjusts the legal framework to establish policy that is more appropriate for a certain set of conditions. This requires Congress to decide, at the time of legislation, how policy should adapt under those circumstances. Thus, it automatically produces policy that is expected to be more appropriate for changed circumstances, and without any legislative action required from Congress or an agency as conditions change.

The alarm-bell trigger, by contrast, does not automatically adopt policy more appropriate to the changed circumstances.²² Rather, it sets off an alarm that is meant to push Congress—or an agency—to change policy in light of new conditions. Such an alarm can be relatively soft. For instance, the alarm might simply require an agency to report to Congress on the changed conditions or propose some solution to those conditions. Alternatively, the alarm can be much louder. It might impose a penalty of some sort that most political decision-makers would consider to be an impetus for action, at the least to turn off the alarm. (Some might call this a “shot-in-the-foot” alarm—the point being that the alarm is meant to get attention and a response by imposing a relatively undesirable condition.) The alarm bell is meant as a way to cut through Congress’s informational overload, and (in some cases) opposition to compromise, to bring an issue onto the agenda for resolution.

Fiscal legislation has used both kinds of trigger consequences, and sometimes a mixture of the two. Here are a few examples:

²² The “alarm bell” concept is similar in terminology to the “fire alarm” concept that McCubbins and Schwartz (1984) used to describe a process by which Congress can check federal agencies. However, they are not the same idea. In particular, McCubbins and Schwartz describe how Congress—rather than directly engaging in oversight of agencies—can rely on interest groups to sound the “fire alarm” if an agency is acting in a way that Congress did not intend, with the interest group seeking remedy in the agency itself, courts, or Congress. By contrast, the alarm bell trigger discussed here does not rely on interest groups to set off an alarm, but instead on some automatic procedure in the law that is meant to attract Congress’s attention in the event some specified circumstances come to pass.



In the countercyclical context, a number of spending programs and many provisions in the tax code automatically trigger higher spending and lower taxes when the economy flags—and the opposite in booms. These are automatic-adjustment triggers, as they update benefits and taxes in response to economic conditions.

The Medicare program includes a trigger that causes cutbacks in payments to physicians based on a certain formula. This may have been originally designed as an automatic adjustment device, but it eventually transformed into an alarm-bell trigger that has forced Congress to deal with the broad policy area on a regular basis, while overriding the scheduled cuts.²³

Finally, the now-infamous sequester is an automatic cut to spending triggered by Congress's failure to enact deficit reduction, and it combines aspects of a loud alarm with an automatic adjustment. The result of the sequester is meant to be undesirable in order to prompt action—cutting significantly and indiscriminately (at first) into both Democratic and Republican priorities, especially in the discretionary budget. But it also serves as a form of automatic adjustment since it secures savings to hit an agreed-upon budget target, even if it does so in an undesirable way.

ii. Evaluating Triggers

Broadly speaking, the effects of triggers differ greatly depending on whether the trigger is an automatic-adjustment trigger or an alarm-bell trigger. If effectively designed, the automatic-adjustment trigger has much greater potential for reducing policy drift than the alarm bell; however, designing an automatic-adjustment trigger also requires more information for Congress and decision-making by Congress at the time of legislation.

First, let's focus on policy drift. If designed appropriately, automatic-adjustment triggers allow for minimal time lag between a change in circumstances and an appropriate change in policy. There is no need to wait for decisions whether at agencies or in Congress.

Alarm-bell triggers, by contrast, are less immediately responsive and have the potential to substantially worsen the problem of policy drift in the case of the loud alarm, which imposes an undesirable condition as a way of trying to force action. Even with an alarm rung, Congress or an agency may not act, as the alarm may not overcome the forces that tend to produce stasis. Furthermore, a loud alarm has the potential to create further problems. That is because a loud alarm in itself worsens the state of policy as a way to prompt action. In using such alarms there is a risk that the alarm goes off and keeps ringing with Congress or regulatory agencies unable to address the issue, whether because it does not break through to the agenda, because of failures in negotiation, or because those controlling one of the veto points actually prefers this outcome to the available alternatives. The result can be a situation that is even worse than before, with an undesirable alarm added.

²³ See section III.C. for a further discussion of the automatic cuts in Medicare.



The dangers of the loud alarm are illustrated by the sequester.²⁴ The sequester was enacted first in the 1985 Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Control Act as a way to enforce deficit targets, and then it was adopted again in the 2011 debt limit deal as a backup to Congress's Joint Select Committee on Deficit Reduction—the failure of which set off the alarm.²⁵ The sequester failed to prompt much action from Congress in 2011, and the result is a undesirable alarm going off that Congress has largely been unable to address. While a budget target was achieved (a certain amount of deficit reduction now in place), the sequester did so in a way that worsened policy outcomes in other ways and was, in fact, explicitly designed to be undesirable. However, the status quo has a great deal of power. Here, it is not for a lack of attention but instead because of failures in negotiation and potentially fundamental disagreement among those controlling the various veto points as to the relative desirability of alternatives. In short, the status quo is sticky, and this loud alarm has stuck the country with an outcome that may have been worse than what would have occurred in its absence. It almost certainly would not have been agreed to initially if policymakers had known that it would be implemented.

BOX 1: BUDGETARY CERTAINTY IS NOT A CONSTRUCTIVE GOAL

It is important to emphasize that removing uncertainty from the budget is not a constructive goal and should not be confused with reducing policy drift. Budgetary policy should be constructed to appropriately respond to uncertainty that affects the economy and country broadly. In other words, the goal should be to create policy that is sufficiently flexible and dynamic to adapt to new circumstances.

Thus, proposals like a balanced budget amendment (BBA) to the Constitution, block grants of programs, or inflexible caps on certain categories of spending can actually make the problem of policy drift worse than what currently exists.

Take the example of the BBA. That is meant to assure a balanced budget, unless Congress overrides with a supermajority vote. So, it would provide greater certainty as to the trajectory of annual deficits, assuming the BBA were enforced. But certainty in terms of the annual deficit would come at great cost to the country. The government could not readily respond to new information, like the onset of a recession. If the recession were sufficiently deep and long, it is possible that there would eventually be a supermajority sufficient to adapt the fiscal position to the new economic environment. But in the meantime, the recession would have been much deeper than it otherwise needed to be. In other words, policy drift would be worse, not better.

²⁴ Notably, in the recent budget deal, the sequester was not primarily used as a way of responding to uncertainty. Rather, it was meant to constrain Congress and force policymakers to reach a compromise on deficit reduction that otherwise could not be achieved. Box 2 suggests reasons to be skeptical that trigger mechanisms can be all that effective in such a role, since the mechanisms can always be overridden. The sequester suggests another important downside, even if the mechanism does *not* get overridden. When being explicitly used in this way to force action, policymakers may be unable to agree on a desirable trigger result, since, if they could agree on that, the action-forcing device would probably be unnecessary. Instead, they will almost certainly have to use a loud alarm, meant to get Congress to enact something better as an alternative. And, as explained here (and illustrated by the sequester itself), a loud alarm comes with significant risk that Congress fails to turn it off.

²⁵ These automatic cuts are now in place and are scheduled to span from 2013 to 2021. In their first year, the cuts were applied across-the-board and indiscriminately since they were instituted after the fiscal year was already underway. For the later years they result in a reduction in the discretionary caps (as well as more limited across-the-board reductions in some mandatory programs), and Congress must then figure out how to meet the significantly lowered caps.

Thus, an automatic-adjustment trigger that institutes desirable policies is certainly superior to an alarm bell trigger—especially a loud alarm—for addressing policy drift. But designing such a trigger may be no mean feat for Congress. First, there is need for information. In designing an automatic-adjustment trigger, Congress must explore the various possible outcomes and how to detect the specific nature of the change in the probability of those outcomes. Second, Congress must decide how policy should be appropriately adapted to those changes. By contrast, alarm-bell triggers require less information and fewer decisions. Congress does not need to evaluate how to appropriately respond to various outcomes. Instead, Congress must only set an alarm to which it will react and, when the circumstances change, Congress can decide how to respond to the specific circumstances involved, rather than many different possible ones. With that said, both types of triggers require more information—both at the time of legislation and then on a continuing basis—and decisions from Congress than delegating authority; it is just that automatic-adjustment triggers are more intensive in this regard.

In terms of certainty, the automatic-adjustment triggers are superior to an alarm-bell trigger. They give the public greater confidence in projecting future government policy under circumstances where the trigger goes off. The alarm-bell trigger provides little guidance about what policy might be adopted in a world of changed circumstances.

Finally, when it comes to democratic accountability, the two types of triggers keep decision-making in the hands of Congress (assuming no power is delegated to an agency). However, they differ considerably as time goes on. The alarm-bell trigger encourages policymakers to decide on new policy at the time of the change in circumstances; the automatic-adjustment trigger proceeds without affirmative action from those policymakers. This difference has two important implications. First, relative to the alarm-bell trigger, which forces action by current policymakers, the automatic-adjustment trigger entrenches the policy decisions of previous policymakers, given the stickiness of the status quo. Second, current officials may still be held accountable by voters for the results in either case, but it seems more likely that they would be held to account for policies on which they must take affirmative action—as the results of inaction can more easily be blamed on previous policymakers, especially given the difficulty of passing new legislation. In sum, relative to alarm-bell triggers, automatic-adjustment triggers entrench past decisions and insulate current policymakers, to some degree, from direct accountability.

D. EXPIRATION OF LEGISLATION

Expiration of legislation is a form of trigger, with many of the same considerations applying. However, expirations have a long and storied history and are worth discussing separately. An expiration is a trigger in the following sense: There is an adjustment in the legal framework (expiration) when certain conditions occur—often the passage of a certain amount of time. In the terminology of this paper, it tends to be an alarm-bell trigger since the expiration is often meant to prompt legislative review and further action. Expirations, especially ones conditioned solely on the passage of time, are a blunt instrument for addressing policy drift.

Discussion of expirations as an important legislative mechanism goes back to the founding of the country.²⁶ They recently have received renewed attention because of the expirations written into the 2001 and 2003 tax cuts. Like with delegation, a number of justifications have been offered for using expirations in legislation; addressing uncertainty has long been among the leading ones offered. As Gersen (2007, p. 266) writes in describing one of the key benefits of temporary legislation, “because staged decision procedures facilitate the integration of new information into the policy process, they generally increase the probability that an optimal public policy will be selected by legislators.” Or, in other words, expirations in legislation have the potential to reduce policy drift by encouraging Congress to update policies at a predetermined point.

Expirations are used regularly throughout fiscal policy. Notable examples include temporary measures in stimulus bills; appropriations for agency operations that expire annually (sometimes more often); annual authorizations for many agencies and programs; authorization for federal highway programs that traditionally lasted 6 years (the timeline has grown shorter); and, famously, the complete expiration of the 2001 and 2003 tax cuts, first at the end of 2010 and then, after an extension, at the end of 2012. Of course, there are also many policies that do not employ expirations, including most major entitlement programs.

Expirations are a blunt instrument to address policy drift, in comparison to some of the other tools available. First, with expirations, the trigger condition is simply a date, and so the trigger going off does little to signal the degree to which conditions have changed and policy needs to be updated. An expiration may be more effective if it were instead connected to a specific change in condition that warrants a reevaluation of policy. Second, expiring legislative authority for a spending program or tax provision is generally not meant as an automatic adjustment that is appropriate for new conditions. Rather, it tends to be an alarm-bell trigger with some of the negative consequences of alarm-bell triggers cited above, including the possibility that Congress still does not incorporate new information into policy.

An expiration probably does increase the probability of a reconsideration of policy and incorporation of new information. In an area that Congress could otherwise have entirely ignored, Congress may be forced to legislate. However, the act of legislating is different from the act of incorporating new information into policy. The annual appropriations process is a good example. It involves annual action by Congress, yet tends to move incrementally; only occasionally is that pattern interrupted by major changes that substantially incorporate new information into a policy area.²⁷ So the mere act of legislating does not actually indicate that policy is being updated. Sometimes it is, and sometimes it is not, even when Congress is actually reenacting a policy into law.

²⁶ As Gersen (2007, pp. 250–251) chronicles, there was substantial discussion of the utility of expirations in the context of Article I, Section 8, Clause 12 of the U.S. Constitution. That provision states that the Army can be funded for no more than 2 years. Alexander Hamilton (1787, pp. 171–72) advocated for the provision in *Federalist No. 26*, saying: “The Legislature of the United States will be obliged, by this provision, once at least in every two years, to deliberate upon the propriety of keeping a military force on foot; to come to a new resolution on the point; and to declare their sense of the matter, by a formal vote in the face of their constituents.”

²⁷ See the discussion of patterns in budgetary change in section I.B. That discussion pertains to budgetary change in both mandatory and discretionary subfunctions. However, the same pattern holds true if the analysis is isolated to discretionary funding.

**BOX 2: LEGISLATIVE CONSTRAINT AND LEGISLATIVE OVERRIDE**

Some of these mechanisms—perhaps especially the automatic-adjustment triggers—might be employed in an attempt to actually constrain Congress rather than just adapt an intended policy to new information. However, there is reason to be skeptical that the mechanisms outlined here are all that effective in this role.

The comparison is sometimes made to Ulysses lashing himself to the mast, knowing that in the future he will desire something that is bad. Triggers may represent a form of pre-commitment to a certain set of policies and may be intended as a way to force those policies on our future selves.

However, the well-identified problem with such constraints is that as long as the mechanisms are not given special procedural protections they can be turned off using the same process by which they were enacted. The mechanism might still matter, to some degree. Given the multiple veto points and the need for coordination, passing legislation is more difficult than not, so setting the default one way versus another can matter. But the status quo will be changed where an outcome differs too much from the current desires of many policymakers. In other words, the great failure of procedures meant to constrain the legislature is the possibility of legislative override.

In the United States, the override of a number of past budget control mechanisms illustrates the problem. This includes the gaming and eventual override of the Gramm-Rudman-Hollings deficit targets in the late 1980s, or the override of pay-as-you-go and discretionary caps in the early 2000s, or the repeated override of the new statutory pay-as-you-go enacted in 2010.

The same dynamic has been seen internationally. For instance, Germany has struggled to stick to enacted mechanisms meant to adjust its pension system. In the late 1990s, the German political parties battled over a mechanism that would have lowered benefits as life expectancies rose. Such a mechanism was temporarily enacted and then repealed. Later, in 2004, an “automatic stabilizing factor” was introduced, adjusting benefits based on a ratio of beneficiaries to contributors. However, the political battles continued, and in both 2008 and 2009 German lawmakers increased benefits above scheduled levels.*

Legislative mechanisms *can* make a difference in the outcome of legislation. But they are most effective as ways to overcome problems in information-processing and legislative coordination. This is evidenced by relatively widespread agreement among policymakers that the goal of the mechanism is desirable. For instance, this is one way to understand the periods—most prominently, in the mid-1990s—where policymakers abided by the combination of pay-as-you-go and discretionary caps. These restrictions essentially coordinated the various actors in their desire to reach a desired policy outcome.

The same can also be seen in some of the automatic adjustment mechanisms that are currently in use to address the issue of uncertainty, like the inflation-indexing of much of the tax and benefit system. In this case, there is relatively widespread support for the adjustments that the mechanisms provide, and while policy outcomes could very well differ from what would happen in their absence (due to the kinds of information and coordination problems that plague the legislative system), they are generally accepted by policymakers.

In sum, these mechanisms cannot be seen as strong bonds that can save policymakers from a siren song. However, even when many policymakers may agree on a common desired goal, problems of information processing, lack of coordination, and failures in negotiation can produce undesirable outcomes—failures these mechanisms can help to address.

* For a particularly good description of the German experience with its automatic stabilizing factor, see Bosworth and Weaver, 2011.

Expirations do have one major advantage, with a significant caveat. Expirations require relatively little information to set or administer, and relatively little decision-making from Congress. Congress must simply establish a date to reconsider. This too should involve some evaluation on Congress’s part. Policies for which there is less uncertainty may not warrant an expiration—or might warrant a distant expiration—and the opposite is true for policies involving more uncertainty. But that is a less intensive

decision-making process than, for instance, choosing how legislation should automatically adapt in the future. With that said—and here is the major caveat—expirations force Congress to put the policy back on the agenda and consume legislative resources, even where it may not be worth reconsideration.

In terms of the other criteria for evaluation, expirations, like other alarm-bell triggers, tend to generate less certainty than an automatic-adjustment trigger. On the other hand, they keep the current Congress more directly involved with policy by having to renew a statute—an affirmative action for which policymakers may be held accountable.

This is not meant to be a comprehensive analysis of expirations as a tool, but rather a discussion of some of the key criteria for evaluation. By looking at how expirations can be used to address policy drift we can see why there is reason to be skeptical that they can be effective on their own.

E. INDEXING

Indexing is a form of trigger that deserves separate attention, given its relatively widespread use and additional potential. Indexing is a targeted approach to the problem of policy drift that adjusts policy in discrete increments in response to new information. The trigger conditions for indexing are some measurable, numerical change that then translates into an automatic update of policy on a regular basis.

Most prominent examples of indexing involve adjusting policy parameters for changes in either prices or wages. This includes price indexing for most tax parameters, for Social Security benefits after retirement, and for civil service retirement benefits. Social Security also includes wage indexing as part of its initial benefit calculation formula—increasing benefits to reflect the rise in average wages over time—and also wage indexing for the cap above which Social Security taxes do not apply.

Indexing is perhaps the most precise version of an automatic-adjustment trigger, and it comes with the benefits and detriments of such a mechanism. First, it directly addresses the problem of policy drift and has the potential to make policy highly responsive to policy developments. Updates may occur frequently, on an annual or even more frequent basis, depending on what is appropriate to the policy area.

However, indexing is relatively intensive in terms of the information needed—both at the time of legislation and then on a continuing basis to administer—and it is intensive in terms of the decisions Congress must actually make at the time of legislation. Indexing requires that Congress identify an appropriate numerical metric to measure change in the policy environment and then specify an appropriate response to that change that can be converted into a formula written into law. Further, indexing must then be administered, with some agency collecting the relevant information and running the updated information through the indexing formula.

In terms of other criteria, indexing produces greater predictability than mechanisms like delegation and alarm-bell triggers. And, in terms of democratic accountability, it keeps decision-making in the hands of elected officials at the time the legislation is first enacted, but then entrenches the position of past policymakers; this is in contrast to other tools like alarm bells, which encourage affirmative action by current policymakers.



BOX 3: COULD AUTOMATIC-ADJUSTMENT TRIGGERS LIKE INDEXING UNDERMINE CONGRESSIONAL INCENTIVES TO UPDATE LEGISLATION?

Automatic-adjustment triggers like indexing should make law more responsive to new information than it is currently. There could be a trade-off in terms of policy drift, however. Even as the mechanisms make policy more responsive in terms of the specific information measured and the specific response triggered, it could make the political system as a whole less responsive in other ways.

Take the example of an automatic adjustment mechanism in Social Security. This would help preserve solvency—and spread risks across generations—by updating the system for new projections. However, by regularly updating the system, it would avoid the crisis—namely, upcoming insolvency of the trust fund—that in the past has forced action by Congress. Importantly, it is at that crisis point that Congress might focus and update the system along other lines, not just involving solvency. This was true in 1983. The package made headlines for restoring solvency to the system, but it also included a set of other reforms updating the Social Security benefit, including increasing widows' benefits and allowing certain divorced spouses to get benefits who otherwise could not. In the absence of this crisis point, these reforms may have taken much longer to affect.

To put this in terms of Figure 2—the illustration of policy drift—the automatic adjustment mechanism might keep policy *between* the desired outcomes and the outcomes that would prompt congressional reaction, rather than actually restoring the desired outcome. By contrast, without the automatic adjustment mechanism, policy might drift quickly toward the threshold at which Congress would act and enact the actually desired policies.

This is a real concern. The trade-off is imaginable not just in Social Security but across policy areas. Take countercyclical policy. Even with more robust automatic triggers, discretionary action by Congress may still be necessary, but it is imaginable that efforts to enact such discretionary policy could be undermined by the automatic adjustment mechanisms—since those mechanisms might make the enactment of discretionary fiscal policy seem less urgent.

There is no easy answer here. Judging the trade-off requires an evaluation of, among other things: the degree to which policy would drift in the absence of an automatic-adjustment trigger; the degree to which there could be important changes in a policy to which the automatic-adjustment trigger would be unresponsive; and the degree to which the automatic-adjustment trigger will undermine Congress's responsiveness to new information that the mechanism does not incorporate.

The tentative inclination of this paper is that the trade-off in many important policy spaces would be worth it, and that automatic-adjustment triggers would improve the performance of policy overall. It is even imaginable that mechanisms might ease congressional action in other spaces. Take the example of Social Security again. It is possible that the current solvency shortfall stands in the way of addressing other important problems in the system—simply because touching Social Security in any way raises the solvency issue, which Congress is not able to address at this point.

The bottom line is that the net effect on drift is an empirical question. This paper proceeds as if the mechanisms will generally improve policy drift, but that is not necessarily the case in all situations.

F. SUMMING UP

Automatic-adjustment triggers like indexing hold particular promise for reducing policy drift, given their responsiveness to new conditions and independence from discretionary decision-making that can prolong policy drift. Despite some of the costs involved—in particular, forcing Congress to make more decisions at times of major policy change—such triggers should be leading contenders for inclusion in legislation. The next section proposes specific ways to expand such triggers in three areas: countercyclical policy, Social Security, and Medicare.

With that said, the automatic-adjustment triggers are not superior along all dimensions. In the context of Medicare's provider payments and benefits (discussed in the next section), automatic-adjust mechanisms may not be appropriate, and the other mechanisms discussed here have more important roles to play.

Further, mechanisms can also be combined in potentially constructive ways. For instance, the Medicare IPAB. It combines a trigger that goes off if health cost growth exceeds a certain threshold with: (1) delegation of substantial power to this body as the consequence of the trigger and (2) an alarm-bell as Congress is given a fast-track mechanism to enact alternatives to the delegated changes. In other words, these mechanisms should not be seen as firm categories. Aspects can be taken from each to build a legislative mechanism most appropriate to a specific policy area.

III. THREE FISCAL POLICY AREAS: HOW POLICY DRIFT CAN BE REDUCED

This section describes how mechanisms to address policy drift have been applied, and could be better applied, to three key policy areas: (1) countercyclical policy, (2) Social Security, and (3) Medicare. As noted, this paper specifically describes how automatic-adjustment triggers could be expanded or added in the first two areas, since such mechanisms carry the most promise for addressing policy drift. The paper also discusses the use of other tools in each of these areas, especially in Medicare, where it is more challenging to set up appropriate automatic-adjustment triggers, because relevant information is more difficult to attain, and especially hard to translate into appropriate changes in policy.

A. COUNTERCYCLICAL POLICY

The problem of policy drift in countercyclical fiscal policy has long been a focus of policymakers and academics. Congress's lag in responding to new information led many to question whether discretionary, countercyclical fiscal policy has any constructive role to play (Taylor, 2000). This stands in contrast to the much broader support for automatic stabilizers, which automatically adjust the federal budget in response to the economic cycle, and monetary policy, which is adjusted by the Federal Reserve Open Market Committee (Ibid.). In the context of the last recession, discretionary fiscal policy made something of a comeback, both in terms of its academic support and its actual use by policymakers, although this was in part a reflection of the unique depth and length of the recession (Auerbach and Gale, 2009; Auerbach, 2012). Irrespective of this debate, there seems to be agreement that a faster and more predictable response by fiscal policy to new information about the economic cycle would produce better macroeconomic results.

Even as this is the case, the legal tools for improving fiscal policy response have received relatively little attention so far. This paper's framework offers a way to reframe the nature of the problem and explore options for addressing it.

First, let's focus on the nature of the problem. Traditionally, automatic stabilizers and discretionary fiscal policy are seen as two different types of fiscal tools, with one responding automatically and quickly to the economy and the other responding only to Congress. That is too limited a view. All of these policies are enacted by Congress, even if some may be more permanent than others. And most can be made to adjust

automatically to changes in the economic environment. To take the example of ARRA: In light of the depth of the economic crisis, the combination of automatic stabilizers and monetary policy were widely judged as insufficient, and Congress acted in response, but in acting it could have designed its discretionary policy to respond automatically to further changes in the economic environment.

Second, there are a variety of tools that could be applied to improve fiscal responsiveness, both in automatic stabilizers and discretionary fiscal policy. Perhaps most promising are better automatic-adjustment triggers. The automatic stabilizers as they now exist are a form of this, but remain relatively limited. Programs like food assistance are indexed to the numbers eligible, income tax revenues are essentially indexed to reported incomes, and so on. The metrics to which these are indexed happen to align roughly with economic cycles, and perform a countercyclical role. However, the use of other triggers remains underexplored.

In particular, there is an opportunity to expand trigger consequences beyond the countercyclical programs now in place. This includes building triggers that expand spending (including direct government purchases, like infrastructure spending), or provide tax credits (or rate reductions) in periods of economic weakness.

There is also an opportunity to use different trigger conditions; that is, the conditions under which countercyclical triggers go off. For instance, the unemployment rate has not been utilized outside a few programs (like unemployment insurance), despite being a useful indicator of changes in the economic environment. The unemployment rate is reported for a given month only days into the next month—which is much faster than many other broad indicators, like GDP growth. While there is statistical volatility in the unemployment rate, large increases are highly indicative of a struggling economy. Take this threshold: All 11 post-World War II recessions, as designated (well after the fact) by the National Bureau of Economic Research, have been accompanied by an increase in the unemployment rate of at least 0.5 percentage points over a 6-month period.²⁸ Moreover, that threshold is crossed on average just 3.5 months after the start of a recession. Finally, outside of recessions or the periods immediately following recessions, such an increase has occurred only twice in the post-World War II period. In sum, significant increases in the unemployment rate strongly indicate the start of a recession and could potentially be used as a trigger mechanism for fiscal stimulus.

There are other possible triggers for action. In the context of state fiscal relief, one group of economists from the Federal Reserve Bank of Chicago compared a number of trigger conditions for automatic relief (Matoon, 2010) simulating how they would have performed in past recessions. They found that an unemployment rate trigger performed relatively well in quickly turning on relief in periods of recession, but that the trigger tended to turn off a significant period of time after the official end of a recession, as the unemployment rates remained elevated early in the recovery period. That the lag may not be a problem, to the degree the economy continues to need support as an expansion begins. By contrast, they

²⁸ Author's calculations. Using this threshold as an example was inspired by work done in the Obama administration on a debt trigger. As proposed, the trigger would have required debt to fall as a share of the economy and, if the country failed to achieve that path, automatic spending cuts and tax increases would have gone into place. The debt trigger would have been turned off during periods of economic weakness, however, and this unemployment rate threshold was proposed.



found a composite index of contemporary economic measures calculated by the Philadelphia Federal Reserve (the “state coincident index”) turned off more quickly—aligning with the official end of past recessions. The point is that it is possible to target recessions with relative accuracy and turn on countercyclical measures when needed.

To put this in terms of the criteria used here for judging these legislative mechanisms, more robust automatic triggers could significantly reduce policy drift in countercyclical policy. While they would require Congress to make upfront decisions about how these automatic adjustments would work—and thus consume some of Congress’s decisional capacity in this way—much of the information needed to design these triggers is available, and so is information to administer the triggers themselves. Additionally, building such triggers would help reduce uncertainty, both in terms of those directly interacting with government programs and tax policies and throughout the economy more broadly. Finally, these tools keep decision-making firmly in the hands of democratically accountable leaders, to the extent that is valued, and entrenchment of policies seems less of a concern, given that they would be triggered only temporarily.

Other tools are available as well. As noted, scholars have recently called for significant delegation of fiscal powers to the Federal Reserve or another independent agency to improve responsiveness to economic cycles by allowing the agency to cut taxes (Logue and Hines, 2014). Given the availability of automatic-adjustment triggers that could rapidly adjust policy, it is not clear this is a superior option, and, perhaps more important, it seems doubtful that Congress would broadly hand over such authority, given the rarity of its delegation of fiscal policy. One option, which could perhaps be more politically viable, might be to combine delegation with a trigger, so that fiscal powers are delegated only under certain economic conditions, such as a significant rise in unemployment.²⁹

In this context, blunt tools like expirations would not be effective, other than in the context of discrete provisions in discretionary fiscal stimulus. In countercyclical policy, changes need to occur when the economic cycle has shifted, and expirations set well in advance and based solely on the passage of time are unlikely to occur near those inflection points and are unlikely to be of much use. More useful may be targeted cliff-like expirations in discretionary fiscal stimulus, since those expirations are likely to occur during a period of economic weakness and when more information is available about the state of the economy. This was done effectively with some provisions in ARRA. However, cliffs are unlikely to be superior to automatic-adjustment triggers in almost any policy area, assuming those can be negotiated.

B. SOCIAL SECURITY

Social Security presents another context where automatic-adjustment triggers, including various kinds of indexing, have the potential to improve policy outcomes. Congress has not touched Social Security in any

²⁹ This is not the first call for delegation of powers to improve countercyclical policy. The Kennedy administration in fact proposed that Congress delegate both tax and spending authority to the President that could be invoked to counter a recession (Council of Economic Advisers, 1962, pp. 17–20). Specifically, under this proposal, the President would be given the authority to temporarily cut income tax rates in order to maintain full employment, and, if the unemployment rate had risen a certain amount, would also be given authority to initiate additional capital improvements. The authority was never granted.

significant way for 30 years, even as fiscal conditions have changed somewhat for the worse. To be sure, a very quick response to new information would not significantly improve outcomes in Social Security. This is not a context where months normally matter. Still, long delay—as we have had—does constrain policy options and changes who bears the burden (or benefit) of uncertain events. Mechanisms to combat policy drift can improve results.

The Social Security system already includes a number of automatic-adjustment triggers—such as indexing earnings records to average wage growth. However, despite a long-standing commitment to self-financing the Social Security system, there are no automatic adjustments in benefits and taxes to maintain the system’s solvency—other than the possibility of a cliff-like cut in benefits if the trust funds run out of sufficient reserves. The latter is probably best characterized as an alarm-bell trigger; the problem is that the alarm may only attract Congress’s attention after years of changed conditions that should have resulted in earlier policy shifts.

Automatic-adjustment triggers will not help solve the current financing shortfall because a negotiation over a trigger to restore solvency would, at this point, be the same as a negotiation over how to restore solvency in the absence of triggers. Congressional action is needed, and triggers will not change the set of trade-offs facing Congress. By contrast, once the shortfall is closed in a compromise deal, automatic-adjustment triggers could preserve some of the main parameters of that deal, even in the face of new information. It is only after such a deal is struck that a mechanism like this is likely to make a meaningful difference. (Or, to look retrospectively, such a mechanism would have made a difference if it had been included in the 1983 Social Security compromise.)

Automatic-adjustment triggers are attractive in Social Security in part because the information needed to build such triggers is available, and the set of options is constrained and readily subject to formula-based adjustments. Changes in relevant conditions—life expectancies, disability rates, birth and immigration rates, or productivity growth—are measurable, and projections are annually reported by the Social Security Trustees, among others. Further, there is a long-standing and bipartisan commitment to a Social Security system that is self-financing, and, given that commitment, the policy options for Congress to consider are limited. Benefits can be cut or payroll taxes raised (or the opposite in the case of a surplus), and both Social Security benefits and payroll taxes can easily be adjusted by formula. In short, changes in conditions in Social Security can be relatively easily quantified and translated into policy adjustments.

Many public pension systems around the world have automatic-adjustment mechanisms of some kind, including about half of the 34 countries in the Organization for Economic Cooperation and Development (OECD) (D’Addio and Whitehouse, 2012, p. 24, Table 1). And a handful of these countries—Canada, Germany, Japan, Portugal, and Sweden—have explicit automatic adjustment mechanisms meant to keep their systems solvent (Ibid., p. 35).

In Canada and Sweden, for instance, these mechanisms are linked to long-term solvency projections, as in the automatic-adjustment trigger proposed here. In Canada, there is a review every 3 years of the Canada Pension Plan’s 75-year solvency. If the system is found by its actuary not to be solvent over that period, an automatic adjustment is triggered. In particular, the contribution rate is increased and cost of living adjustments are suspended until the next triennial review. In Sweden, there is a multi-pronged approach for maintaining solvency that automatically reduces benefits in the event long-term projections cross a sustainability threshold. Notably, Canada’s automatic adjustment trigger has yet to actually be tested. In



Sweden, the adjustment was triggered during the 2008 recession, which prompted policymakers to enact legislation that offset part of the effect, although the balancing mechanism remained largely intact. A number of publications have detailed the workings of the automatic adjustment mechanisms in these and other countries—some combination of which could provide models for the United States (Bosworth and Weaver, 2011; Turner, 2009).

The fact that adjustments are automatic does not mean they are desirable, and the challenge of constructing optimal adjustments should not be minimized. In the countercyclical context, this point is relatively clear; automatic adjustments are judged by how well they stabilize the macroeconomy, with some doing better than others.

BOX 4: AUTOMATIC-ADJUSTMENT TRIGGERS IN COUNTERCYCLICAL POLICY

As a matter of permanent policy, or as part of discrete stimulus measures, there could be automatic trigger mechanisms for some of the most potent forms of countercyclical stimulus—state fiscal aid, infrastructure spending, and certain tax cuts, while the automatic mechanisms in unemployment insurance could be made more robust. Specifically:

- **Medicaid and state fiscal relief.** As a way to provide relief to states during periods of economic weakness, the federal Medicaid match might automatically adjust depending on the state's unemployment rate or some other contemporary measures of economic activity. There have been a number of concrete proposals of this nature, any of which might improve performance (Miller, 2007).
- **Federal infrastructure spending.** Federal infrastructure funding—and specifically the funding from the federal Highway Trust Fund—could vary with economic performance. For instance, there could be an automatic appropriation of additional funding up to some preset maximum (perhaps as a share of current federal infrastructure spending in a state) based on increases in the unemployment rate in a given state. The funding could even be tied, in part, specifically to unemployment in the construction industry in the state. One of the problems with infrastructure as a countercyclical tool is its potentially slow spend-out, meaning the construction occurs once the economy has largely recovered. To combat this, states accepting the funds might be required to hit certain spend-out targets while maintaining spend-out rates on the existing funding streams with the funds being withdrawn if they are not obligated within that time period. A similar mechanism was used in ARRA to try to accelerate infrastructure spending.
- **Tax cuts.** Tax cuts tend to have lower multiplier effects than state fiscal support or direct government purchases, especially to the degree they are not focused on low-income and middle-class families. However, they can be implemented quickly. A tax cut like the tax rebate of 2008, the Making Work Pay tax credit in place in 2009–2010, or the payroll tax cut in 2011–2012, might be triggered by increases in the national unemployment rate. The size of the rebate could vary with a combination of the increase in the unemployment rate and the estimated size of the economy.
- **Unemployment insurance.** The unemployment insurance system already has certain triggers built into it that automatically trigger the extended benefits (EB) program. This permanent program was in fact added in 1970 as a way to replace the ad hoc temporary programs Congress had been enacting during recessions. However, the EB program, which provides up to 13 additional weeks, has proven insufficient and Congress has enacted further temporary, extended unemployment insurance programs in each of the four last recessions. Such further extensions could be made automatic—dependent on the unemployment rate—reducing lag time and the risk of negotiation failure in approving these benefits.

Notably, the above measures could be designed in a spending and revenue-neutral fashion on an ex-ante basis, if desired. This is true in discretionary fiscal stimulus, where the size of the total stimulus could be kept the same even as these mechanisms were added. In this case, the actual cost of the bill would simply vary with economic performance. This is also true if the measures were adopted on a permanent basis. In order to offset the cost, spending would have to be lower and revenue higher in the boom times than it is under current law.



BOX 5: AUTOMATIC-ADJUSTMENT TRIGGERS IN SOCIAL SECURITY

As indicated in the discussion, the Social Security system is well-suited to automatic-adjustment triggers. The trigger suggested here would index revenues and benefits to metrics important to solvency.

These mechanisms would split any adjustments between revenue and spending. This is done for two reasons: First, a Social Security compromise is likely to involve a combination of both—and so, as a realistic matter, are any automatic adjustment mechanisms that would be included. Second, there is reason to think that splitting adjustments in this way will better spread risk across generations than any of these instruments alone, since taxes tend to most affect current workers, while benefit reductions first affect those in or near retirement.

Indexing to projected solvency. The United States could, like a few of its international counterparts, add an explicit automatic-adjustment trigger—essentially, indexing—to adjust benefits and taxes in the face an insolvency projection.

The adjustment could be done based on the 75-year solvency projections released annually by the Social Security Chief Actuary. Based on this, the Social Security Chief Actuary would be directed to calculate the minimum savings needed to maintain a specified level of trust fund solvency in all years over the 75-year window.

The necessary savings could be split equally between spending and taxes—or, according to some other ratio. The spending reductions could be automatically done through reductions in the benefit amount—potentially only for new beneficiaries, via any newly calculated primary insurance amount, and perhaps only for those with higher lifetime earnings, as a reflection of their greater ability to absorb risk in these benefits. The tax change could automatically result in increased payroll tax rates. And the mechanism could be symmetrical; in the event of a more favorable projection, taxes would fall and benefits would rise.

The adjustment could be done regularly; perhaps on an annual basis. That would keep each individual adjustment relatively small, and, based on the newest available information, would spread the adjustments across generations.

As noted, this mechanism is intended as a way to maintain solvency in the wake of a Social Security reform deal—and in the face of uncertainty—and not as a bridge from the current point of insolvency back to solvency.

Indexing to more discrete metrics on a retrospective basis. As an alternative to indexing benefits to the forward-looking solvency measure, benefits and taxes could be indexed to more specific metrics that should affect solvency like longevity or income inequality—and could be done looking at retrospective changes. Such indexing would not include all metrics relevant to solvency and would not take into account the projected trajectory. Thus, the indexing would be incomplete. On the other hand, these mechanisms are not as subject to manipulation as projections, and could allow policymakers to provide for discrete adjustments targeted at the specific change affecting solvency.

For instance, a rise in income inequality—with a greater share of wages earned above the taxable maximum—would tend to reduce solvency. Policymakers may want to respond to this with an increase in the taxable maximum, rather than across-the-board adjustment in the system. To do so, policymakers might index the taxable maximum to maintain a constant share of total wages subject to the Social Security payroll tax. Or, when it comes to longevity, policymakers may want adjustments that reflect the degree to which some parts of the population are living longer than others, rather than make an across-the-board adjustment. This would help maintain the system's distributional effects. However, these examples show the possible complexity of designing many mechanisms of this kind; a broad rule is easier, if less targeted, in its adjustments.

In the pension context, Auerbach and Lee (2011) have emphasized that an important criterion is how well these mechanisms spread economic risks across generations, allowing generations to insure each other against unexpected shocks. Thus, at least one way to judge the effectiveness of an automatic adjustment mechanism is the degree to which it distributes the effects of economic shocks across generations, rather than concentrating those risks only on some. In one set of modeling, Auerbach and Lee found that mechanisms in Social Security that used a combination of tax increases and spending reductions to sustain fiscal balance were most effective at such risk spreading—relative to spending-only or tax-only

instruments—because they better spread the adjustment across generations (Auerbach and Lee, 2011, p. 21, Table 2). This intuition is reflected in the proposal discussed in Box 4.

Automatic adjustment mechanisms also come with other benefits. Among them is greater certainty about what the future of the Social Security system would hold. In terms of democratic accountability and responsiveness, indexing is done by elected lawmakers, but has the possibility of entrenching the preferences of those lawmakers and their constituents, relative to an alarm-bell trigger that would encourage affirmative action by a new set of policymakers.

Other mechanisms could also be employed in the Social Security context, though none seem likely to be as successful at combatting policy drift as fully automatic adjustments. A broad delegation of legislative authority with regard to Social Security seems unlikely; the delegation could still subject policy changes to significant delay; and it would generate more uncertainty than an automatic-adjustment trigger. Finally, expirations seem likely to generate greater uncertainty (and perhaps even disproportionate fear) among beneficiaries than other tools for incorporating new information into the program structure.

C. MEDICARE

Medicare is the largest federal health care program, and its trajectory—along with all other federal health spending—is a matter of considerable importance and uncertainty. That uncertainty reflects, in part, the substantial changes in health cost growth trends in recent years. Given the degree of uncertainty that exists about future health costs, there is particular value in enacting health care reforms that can respond to changed conditions.

In fact, Medicare already employs a number of the legislative mechanisms discussed here for addressing uncertainty. Some of them were enacted in the Affordable Care Act, but others predate that legislation. As a result, Medicare represents more a model for dealing with policy drift than an area requiring major reforms in this regard. This discussion emphasizes the importance of the existing mechanisms, expresses skepticism about trying to implement a comprehensive automatic-adjustment trigger like that suggested for Social Security, and tentatively suggests ways to expand on some of the existing authorities.

Since 1980, national health costs per capita have grown 1.7 percentage points faster than GDP per capita—a measure known as “excess cost growth.” (Heffler, Caldis, and Smith, 2014, Table 1). This average masks considerable variance across that period. Recent years have seen a drop in growth. Since 2005, annual excess cost growth for health care has been 0.9 percentage points (Heffler, Caldis, and Smith 2014, Table 1), but, in the last 2 years, it has been negative (CBO, 2014b, Tab 5). This trend in broader health costs has also been reflected in the trends in Medicare cost growth. There has been a debate as to the sources of the slowdown in cost growth; they remain uncertain. Thus, the current trajectory in health care (broadly) and Medicare (specifically) is unclear.

What is clear is that Medicare has employed most of the tools discussed in this paper—delegation, alarm-bell triggers, and automatic-adjustment triggers—all of which to some degree have helped address the uncertainty of the health cost trajectory.

Medicare reforms have also relied on substantial delegation to agencies—more so perhaps than in any other area of fiscal policy. For instance, the Patient Protection and Affordable Care Act gives the

Department of Health and Human Services (HHS) the authority to experiment in payment delivery systems. Based on whether the experimentations reduce cost, HHS can decide whether to expand them to the system as a whole. Since Congress does not now know which reforms will work, this helps address the issue of uncertainty.

There is also a significant delegation to the IPAB, which as noted before combines a trigger with a very broad delegation of potential authority and an alarm bell to Congress. The IPAB is envisioned as a 15-member board of experts appointed by the President that is charged with reducing cost growth in Medicare by changing payment systems in the event projected spending growth exceeds certain thresholds. The IPAB potentially has significant power, as its recommendations would have the force of law and can only be overridden by Congress by passing a law, though legislation to enact alternative savings would be given fast-track protections. In part, its authorization was explicitly justified as a way to allow adaptation to new information about how best to control cost growth (Orszag, 2013). Notably, though, the IPAB has yet to actually be constituted, and it is unclear if it will ever be a functioning body.

Alarm-bell triggers have been employed in Medicare to some effect. The most prominent example of this is the previously referenced automatic cutbacks in physician reimbursement: the Sustainable Growth Rate (SGR) formula. That trigger has been widely derided as ineffectual, but may have played a more important role than it is often given credit for.

The SGR was introduced as part of the 1997 budget deal, and created a target path for the sustainable growth of Medicare reimbursements to physicians based on a formula that took into account rates of growth in physicians' costs, Medicare enrollment, and real gross domestic product per person. In the event that the path was exceeded, it automatically triggered a reduction in payments to physicians the next year to bring payments back in line. At the time the SGR was introduced, it was expected to have little effect under CBO's central estimate (Van de Water, 2010). However, as it turned out, the SGR would have produced much deeper cuts than expected because of higher health cost growth relative to GDP growth than had been initially expected (Hahn, 2014a). But the SGR reductions were allowed to go into effect only once—in 2002. In 17 separate pieces of legislation since then, the SGR has since been overridden (Hahn, 2014b).

This leads some to the conclusion that the SGR has failed. That is too narrow a view of what triggers can do. The SGR certainly failed as an automatic-adjustment trigger. That was probably inevitable, given that the triggered cuts were ill equipped to deal with the change in circumstances. In particular, the formula reduces payment rates without in any way restricting the volume or complexity of services (Van de Water, 2010). As a result, the formula is relatively ineffective at reducing incentives to provide higher volume care for those doctors participating in Medicare, even as it has the potential to lead doctors to drop out of the system altogether. Still, the SGR has served as an alarm bell. Congress has had to regularly address the physician payment system. As the Committee for a Responsible Federal Budget (CRFB, 2014) points out, this appears to have led Congress to constrain the rate of increase in physician payments, increasing them at an annual rate of 0.7 percent, as compared to the 1.8 percent annual rise in physician operating costs that would govern in the absence of the SGR adjustment. Furthermore, CRFB also notes that 95 percent of the cost of overriding the SGR has been paid for by Congress, almost

entirely with health savings.³⁰ The wisdom of some of the policies used to finance the SGR fixes could be questioned, but the effect of the SGR on congressional decision-making seems clear. The alarm bell has had an effect, and the SGR did not fail as a trigger.

Finally, Medicare has a significant automatic-adjustment trigger that raises or lowers premiums depending on the trajectory of health costs, thus reducing uncertainty with regard to sources of future financing. In both Medicare Parts B (medical insurance) and D (prescription drug insurance), premiums for most beneficiaries are set so that they cover about 25 percent of the per capita cost of the program, with premiums for the small number of high-income beneficiaries set to hit a higher target. As a result, these premiums provide a significant financing source that automatically rises and falls with program costs. This automatic adjustment existed in both programs at their start, though there have been some significant reforms along the way.³¹

Thus, Medicare already has a number of mechanisms for dealing with uncertainty, and there is room for strengthening and expanding them. Still, it is challenging—and probably unwise—to try to develop a more comprehensive automatic-adjustment trigger like that suggested for Social Security. Box 6 describes the limits of automatic-adjustment triggers in the context of Medicare, while recommending ways such mechanisms might be discretely expanded in the program, especially with regard to receipts to finance health costs.

This Medicare discussion may seem disappointing for those looking for a silver bullet to address the substantial uncertainty in the health care sector. The tools discussed here, many of which are already in use, may seem modest relative to the degree of uncertainty. That much is probably true, but there is perhaps one important reason to worry less about policy drift in the context of Medicare than in the other fiscal policy spaces discussed. In particular, Congress has shown itself able and willing to enact substantial Medicare reforms over the years. Almost all of the major deficit reduction bills over the last 30 years have included significant changes to Medicare. This stands in contrast to Social Security, for instance, which has seen only one major reform in this same period. All of this is to suggest that while uncertainty in Medicare is substantial, and legislative tools to address the likely policy drift are somewhat limited, history gives some reason for hope. Congress actually has a record of updating parts of Medicare on a more regular basis than some other areas in fiscal policy.

³⁰ The share rises to 98 percent if budget gimmicks are included (CRFB, 2014).

³¹ In Medicare Part B the premiums were initially set to equal 50 percent of the per capita cost of the program when it started in 1966. From 1972 to the early 1980s, the premium increases were capped to the same rate as the Social Security COLA. During this period, the ratio fell from 50 percent to around 25 percent. Congress then legislated the premiums on an annual basis, targeting a ratio of 25 percent. Finally, in the 1990s, Congress reestablished the automatic link between program costs and premiums targeting the 25 percent ratio. Since then, premiums in Part B (and Part D) have been further reformed with the introduction of higher premiums for high-income beneficiaries. (Davis, 2014, pp. 27–29).

**BOX 6: CHALLENGE OF DESIGNING AUTOMATIC-ADJUSTMENT TRIGGERS IN MEDICARE**

There is a significant challenge in designing automatic-adjustment triggers in Medicare. In particular, it is very difficult to design such triggers to automatically and effectively adjust payment systems or coverage. This stands in contrast to adjustments on the receipts side in Medicare, where adjustments are relatively easy to administer and for which there is an existing model.

Automatic-adjustment triggers require a significant amount of information at the time of legislation. This informational challenge poses particular problems in Medicare. It is an area that features regular introduction of new technologies and, perhaps more important, we lack information on how best to accomplish key policy goals, such as reducing wasteful health care treatments. The decisional challenge is then substantial, combining a lack of information with many different options for addressing trends like rising health costs—options that are not readily implemented via formula.

To make this more concrete, an automatic-adjustment trigger can be designed to reduce or increase payments to providers, since that option is discrete and readily accomplished via formula. However, it is not easy to design a trigger that improves the efficiency of providing health care, reducing usage of wasteful or less cost-effective treatments. This is an important barrier. The blunt, across-the-board cuts to providers may not be the best response to faster-than-expected rising health costs. Moreover, such cuts may not be sustainable, as they eventually could cause providers to drop out of the system. Much like the SGR, if imposed, such cuts may become an alarm-bell trigger, forcing Congress to act rather than providing any kind of automatic adjustment (and also running the risk of the undesirable alarm bell not being turned off).

Thus, when it comes to payment systems or coverage, the most viable model for trying to increase the speed of adaptation to new information is probably delegation. And, as this paper describes, there is already significant delegation in Medicare, and that delegation would be effectively expanded if the IPAB moves forward.

By contrast, receipts can be relatively easily adjusted, depending on health cost growth. Already, in Medicare Parts B and D, there is a long-standing automatic-adjustment trigger in the form of Medicare premiums. The main challenge for further expanding such mechanisms is reaching an agreement on the proper sources for financing, if health care costs were to rise more (or less) quickly than expected. Unlike Social Security, where there has been a long-standing agreement that the system will remain self-financed via payroll taxes, the same is not true in Medicare, which is financed through a combination of premiums, payroll taxes, and general revenues.

With those significant barriers in mind, there are opportunities for building in triggers in a future deal in Medicare. For instance, more receipts could be indexed to health cost growth. A combination of payroll taxes and income taxes—reflecting the mixed financing for Medicare—could be automatically adjusted. This special “health cost” charge could be set so that certain tax rates would rise or fall depending on whether Medicare spending exceeded or fell below a certain pre-set baseline.

On the payment side, the main opportunity is probably to either further empower the IPAB or an IPAB-like mechanism. The trigger for action by the IPAB could be lowered, as the administration has proposed. (Currently, the IPAB is only triggered if per capita costs in Medicare rise more than one percentage point faster than per capita income, which is certainly faster than is sustainable over the long-term.) This could potentially be done in combination with the revenue trigger described above so that both revenue and spending policies would adjust to some degree if health cost growth exceeded an agreed upon trajectory.

CONCLUSION

When Congress legislates, it should think not only of what would happen if the *expected* occurs, but also the *unexpected*. Simply “kicking the can” with the assumption that future policymakers can adapt to unexpected circumstances can produce harmful policy drift. That is because the political system predictably does not respond proportionately to new information each time it is received. And this means that the adaptability of legislation to unexpected circumstances is key.



The mechanisms described in this paper—delegation, triggers, expirations, and indexing—have the potential to improve legislative performance. Automatic-adjustment triggers, like indexing, are particularly attractive, at least where information is readily available and the policy choices are discrete. While automatic adjustments require more upfront effort to set up than alternative approaches, they have the potential to reduce policy drift through their regular and predictable adjustments to policy.

The benefits of using such mechanisms in legislation are real and significant. To put this most concretely: The mechanisms described here can reduce unemployment in a recession; diversify risk across generations through Social Security; and help cut health care spending if growth exceeds agreed-upon levels, while adjusting receipts for unexpected swings in the health care trajectory. And these are just in the areas discussed in this paper. Each of these goals, if achieved, would be counted as an accomplishment, requiring Congress to think beyond the point estimate and make legislation robust in an uncertain world.

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