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RISK BUREAUCRACIES: A COMPARATIVE CASE STUDY OF CREATING THE TRANSPORTATION SECURITY ADMINISTRATION AND THE CONSUMER FINANCIAL PROTECTION BUREAU

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Shandra L. McDonald

College of Business and Public Management

Department of Public Administration

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DISSERTATION BY

Shandra L. McDonald
Name (please print)

Shandra L. McDonald
Signature

RESEARCH AND EXAMINING COMMITTEE

Marcia L. Godwin, Study Advisor

, Committee Member

, Committee Member

, Outside Reviewer*

DEAN

Date August 20, 2015

*Outside Reviewer's signature is optional

ABSTRACT

Risk Bureaucracies: A Comparative Case Study of Creating the Transportation Security Administration and the Consumer Financial Protection Bureau

By: Shandra L. McDonald, DPA

Purpose. The purpose of this study was to identify what triggered the creation of new risk bureaucracies and to determine the extent to which the Transportation Security Administration (TSA) and the Consumer Financial Protection Bureau (CFPB) have risk bureaucracy designs.

Theoretical framework. A theoretical framework was developed to demonstrate the policy adoption and implementation phases of creating two new federal agencies that operate as risk bureaucracies. The policy adoption phase is explained by Cohen, March, and Olsen's garbage can theory, Kingdon's focusing events theory, and Baumgartner and Jones' punctuated equilibrium theory. The implementation phase is guided by Hood, Rothstein, and Baldwin's use of cybernetic control theory.

Methodology. The research design was a comparative case study of the creation of TSA and CFPB. Relevance sampling of secondary data was used to perform a content analysis. *Congressional Records* and agency websites were used to evaluate the policy adoption and implementation phases of creating each agency. Secondary data for this study were collected and analyzed to (a) explore the activities before, during, and after the creation of each agency and (b) evaluate each agency's design as a risk bureaucracy. The following cybernetic control functions, also known as risk bureaucracy components, were used for the assessment: standard setting (director), information gathering (detector), and behavior modification (effector).

Findings. Problems impacting aviation security and consumer financial markets existed well before 9/11 and the 2008 financial crash. Risk was a contributing factor when each agency was established; however, it was a greater factor when creating TSA. There was an increase in discussions about aviation security when Congress passed legislation to create TSA. Similarly, there was an upward trend in discussions about consumers when Congress passed legislation to create CFPB. Risk bureaucracy components identified during policy adoption shifted during implementation. For TSA, risk bureaucracy components increased, giving the agency a greater capacity to control the aviation security system. For CFPB, the functions decreased leaving the agency with a diminished capacity to control the consumer financial system.

Conclusions and recommendations. Risk bureaucracies must assess their activities and maintain a balanced approach to controlling their respective systems in order to maximize their capacity to prevent the types of catastrophic collapses that triggered their creation. Existing agencies that deal with risk should view their work within the context of a risk bureaucracy and assess the agency's mission and activities based upon cybernetic control.

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What I believed would be a solely academic journey turned out to be a metaphor for life. As this chapter closes, it's time to move forward and live.

DEDICATION

This dissertation is dedicated to my mom, Ruthie L. McDonald, who was the first public servant I knew. It is also dedicated to the civil aviation security professionals who worked tirelessly in the days following the 9/11 terrorist attacks. We shall never forget.

CHAPTER I

INTRODUCTION

The presence of global risks, and the absence of institutions to provide global governance, has created new opportunities to establish risk bureaucracies. Threats, vulnerabilities, and subsequent consequences have always been a condition of human existence (Beck, 2011). In many respects, threats in the Middle Ages were greater than threats faced today. However, modern technological advancements have brought about risks that are side effects of successful civilizations (Beck, 2011). The paradox of technology is that it offers the greatest possibilities and the greatest catastrophes. The complexity seen in modern technology has made risk more challenging to detect and identify. Subsequently, when risks are finally detected, it may be too late to prevent a calamity. According to Beck (2011), *risk* is the anticipation of a catastrophe, while a catastrophe is an actual event. Willis (2007), on the other hand, identified risk as the intersection of threat, vulnerability, and consequence.

Although this is a time that is objectively more secure than in times past, the anticipation of a catastrophe demands preventive measures and risk management. Unfortunately, there is no global governance structure to regulate all matters of risk. Older government institutions may lack the ability to accurately calculate the risks at hand, and therefore may permit complete system failures before the risk is discovered. This forces government to take on new responsibilities since one of the primary roles of government is the security of its citizens (Beck, 2011). This moves security and freedom from risk into the category of a public good. Security becomes a profitable consumer good that can be produced by the public sector or private sector, like water or electricity (Beck, 2011). As risk grows and becomes a part of everyday life, what does this mean for public administration?

Government's contribution in mitigating global risks has been the creation of risk bureaucracies. As an alternative to global governance, risk bureaucracies are government organizations or regulatory agencies "dedicated to forecasting and developing risk-based guidelines to regulate and manage risks" (Heng & McDonagh, 2011, p. 316). The agencies exercise cybernetic control over a system by functioning as director (standard setting), detector (information gathering), and effector (behavior modification). Risk bureaucracies play a significant role in identifying, managing, and allocating resources to regulate global risks (Heng & McDonagh, 2011). Some may ask just how much risk and what type of risk should government be responsible for. Two of four risks identified by Beck (2011) included risks created on purpose (terrorist threats) and risks created by chance (global financial risk). Since the turn of the century, the U.S. Congress has created two new risk bureaucracies. The Transportation Security Administration (TSA) was created after the September 11, 2001, terrorist attacks to address terrorist threats to civil aviation security. This type of risk falls under the category of risks created on purpose. The Consumer Financial Protection Bureau (CFPB) was created after the 2007-2009 financial crisis to handle consumer financial risks that had global implications. This was a risk created by chance.

This dissertation examines the creation (policy adoption and implementation) of TSA and CFPB as risk bureaucracies. Both agencies attempt to manage risks encountered in everyday life. Risk bureaucracies should be evaluated since they have started to occupy more space at the table to combat risk. Heng and McDonagh (2011) asserted that risk bureaucracies provide an opportunity for government to reinvigorate itself and extend its regulatory reach.

Background

The first decade of the 21st century has been labeled the worst decade faced by Americans since the post-World War II era (Serwer & Kerwitt, 2009). Public administrators found themselves involved with three major events: a terrorist attack, a catastrophic hurricane, and a financial crisis. As man-made events, the terrorist attacks and the financial crisis resulted in new federal agencies while the natural disaster did not.

The terrorist attacks on September 11, 2001 (hereafter referred to as 9/11), and the financial crisis from 2007-2009 (highlighted by the financial crash of 2008) received the attention of the media, the public, and policymakers, and subsequently resulted in two new federal agencies. The public outcry that "someone must do something" is not uncommon in the face of major disasters or crises (Birkland, 2009; Thompson, 2014). For each of these events, one of Congress's solutions was to establish a new federal agency. The creation of TSA and CFPB were accompanied by new policies, new regulations, and the employment of a new federal workforce to accomplish each agency's mission. The agencies were established based on pressure to reform; however, they were created before the United States knew what went wrong. Congress passed legislation creating the TSA before the congressional investigation into 9/11 was completed (National Commission on Terrorist Attacks Upon the United States, 2004). Likewise, Congress passed legislation creating the CFPB before the congressional investigation into the financial crisis was completed (Financial Crisis Inquiry Commission, 2011). The environment before 9/11 and before the financial crash may have had more of an impact on each agency's implementation.

The interconnectedness made possible by 21st century technology has changed the magnitude of major disasters and crises such as 9/11 and the 2007-2009 financial crisis. Major events have global impacts due to their ability to transcend geographical boundaries, time boundaries, and functional boundaries (Boin, 2009). The current practice is for countries to develop their own national plans for identifying, managing, and allocating resources to regulate global risks (Heng & McDonagh, 2011), rather than nations developing global governance strategies.

Statement of the Problem

The absence of global governance creates a gap whereby local citizens are directly impacted by transboundary risks. Risk bureaucracies fill the void by managing risks. This study demonstrates that the United States is creating bureaucracies to handle global risks and that risk bureaucracies can be established before the completion of congressionally mandated investigations. Unfortunately, little is known about what triggers their creation or if their design incorporates the three elements of risk bureaucracies.

Although many agree that 9/11 and the financial crash of 2008 led to the creation of TSA and CFPB, exploring the policy adoption phase of each agency can provide further insight into what triggers the creation of a new agency. Additionally, exploring the implementation phase of each agency can identify how each agency contributes to risk mitigation.

The terrorist attacks and the financial crash provide evidence that systems can grow too complex for government to recognize the warning signals and accurately calculate risks of a larger problem. The creation of TSA and CFPB has shown that along with a major event, there must also be a transboundary risk with institutional impacts for a new risk bureaucracy to be created.[1] The agency design of the TSA and CFPB as risk bureaucracies needs to be assessed.

Research Methodology

This research is a comparative case study of TSA and CFPB. The part of this research that focuses on policy adoption (a) explores civil aviation security and consumer financial markets prior to 9/11 and the financial crash, and (b) explores the creation of TSA and CFPB as it relates to Congress. The part of this research that focuses on implementation uses cybernetic control to provide an exploratory assessment of the design of TSA and CFPB as risk bureaucracies.

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[1]*Note*: The term transboundary risk is introduced in this chapter and is used for the purpose of aligning with the literature review and the work of Boin (2009). The literature review highlights the difference between *risk* and *transboundary risk*. After the distinction is made, proceeding chapters will use the terms risk and transboundary risk interchangeably to facilitate ease of reading.

Cybernetic Control Components

Cybernetic control theory (CCT), as applied to the government of risk, can be used to assess the design of TSA and CFPB as risk bureaucracies. According to cybernetics, the following three components are required to maintain control over a system: director (standard setting), detector (information gathering), and effector (behavior modification). The design of TSA and CFPB has to allow each agency to function in the capacity of director, detector, and effector in order to control the respective systems in which they operate (i.e., civil aviation security and consumer financial markets). It was also the intent of this study to determine the extent to which TSA and CFPB are designed to operate as risk bureaucracies by evaluating each agency against the components of cybernetic control.

Component 1: The agency is designed to function in the role of *director*, whereby the agency sets standards for its industry.

Component 2: The agency is designed to function in the role of *detector*, whereby the agency gathers information relevant to the industry.

Component 3: The agency is designed to function in the role of *effector*, whereby the agency modifies the behavior of those in its industry.

Purpose of the Study

The terrorist events of 9/11 resulted in the creation of TSA, and the financial crash of 2008 resulted in the creation of CFPB; however, this author introduces the argument that a transboundary risk that threatens institutions shaped the creation of these agencies. Since transboundary risks that threaten institutions led to creating TSA and

CFPB, these agencies have to be able to control risk. Therefore a theory of control is used to evaluate each agency's design. The study was conducted under the premise that new federal agencies operate as risk bureaucracies. The purpose of this study was twofold: explore the context for creating TSA and CFPB and determine the extent to which TSA and CFPB have a risk bureaucracy design. This was achieved by evaluating each agency against the cybernetic control functions of standard setting (director), information gathering (detector), and behavior modification (effector). Each agency's design was tied to its ability to control its respective system, and therefore prevent another major event.

A framework was developed to illustrate the process from policy adoption to implementation. This framework explains how a major event can lead to the creation of a risk bureaucracy. Secondary data were collected and analyzed to assess TSA and CFPB as risk bureaucracies, draw conclusions, and discuss implications. An examination of this phenomenon (i.e., major events followed by risk bureaucracies) also explained the recent pattern of creating new federal agencies. A research model and framework were used to evaluate TSA and CFPB as risk bureaucracies.

Research Questions

The research questions examined activities before, during, and after the creation of TSA and CFPB. The overall objectives were to determine what triggers the creation of new federal agencies and to determine if TSA and CFPB have risk bureaucracy designs. The research questions are as follows:

1. How did events prior to 9/11 and prior to the financial crash shape TSA and CFPB?

2. What triggered the creation of TSA and CFPB?

3. Did risk play a factor in creating TSA and CFPB?

4. What risk bureaucracy components are present in the agency design of TSA and CFPB?

   a. Are director components present?

   b. Are detector components present?

   c. Are effector components present?

Scope and Delimitations of Study

The scope of this study was narrowed by focusing on two federal agencies that were (a) created after a major event and (b) created after the turn of the century. The intent of this study was to discover what triggered the creation of TSA and CFPB and to assess their design as risk bureaucracies. The researcher used document analysis of secondary data to assess TSA and CFPB as risk bureaucracies. The documents included *Congressional Records* and websites of each agency. An analysis of documents allowed the researcher to determine if the agencies have a design based on what the literature expresses as being a requirement of risk bureaucracies. Although *Congressional Records* provide insightful data, the rehearsed nature of the narratives could be viewed as a limitation to this study. This study treated TSA and CFPB as risk bureaucracies as they strove to implement policies that would mitigate the risk of another major event in civil aviation security and consumer financial markets.

Significance for Public Administration

The traditional means of assessing an agency may not be sufficient when measuring risk bureaucracies. This study offers cybernetics as a new tool for measuring public agencies that address risk.

Globalization has created an environment that allows risk, and subsequently crises and disasters, to transcend borders of geography, functionality, and time. The types of crises and disasters that public administration has customarily prepared for may not result in suitable preparation for future events. Future crises and disasters are likely to be transboundary and will therefore challenge the legitimacy of both public and private organizations (Boin, 2009). Threats of the future may look the same, but their consequences will be much different.

CCT provides three components that can be used to assess an agency's design when the agency under review is a risk bureaucracy. The components are director, detector, and effector.

This was the first study to use cybernetics as a criterion to assess the agency design of TSA and CFPB as risk bureaucracies. This study suggests that a risk bureaucracy begins with the agency's design. This can be valuable when Congress or public administrators develop solutions to address future systemic risks with institutional impacts.

Study Organization

This study consists of six chapters. Chapter I provides an overview of the study. Chapter II serves two purposes: (a) it provides an overview on literature regarding agency reorganization and agency creation and (b) it reviews literature on risk and risk bureaucracies as an extension to the literature on agency reorganization and agency creation. Chapter III links risk bureaucracies to policy change theories and develops CCT as a means to evaluate an agency's design as a risk bureaucracy. Chapter IV describes the methodology and research design. Chapter V reports the findings of this study as they relate to TSA and CFPB. Chapter VI summarizes the study and provides cross-case conclusions and recommendations. References and appendices are at the end of this study.

Definitions of Terms

Civil aviation security, consumer financial markets, and theories pertaining to policy adoption and implementation may be unfamiliar to the readers of this study. This section provides definitions of terms, acronyms, and abbreviations used in this study.

Catastrophe. A profound disaster that requires resources from those beyond local and neighboring governments. Catastrophes gain great attention and are likely to result in policy change (Birkland, 2006).

Congressional commission. "Congressional commissions are formal groups established by Congress to provide independent advice, make recommendations for changes in policy, study or investigate a particular problem or event, or perform a specific duty" (Glassman & Straus, 2013, p. 1).

Consumer Financial Protection Bureau (CFPB). A federal agency established by the passing of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. CFPB's mission is to "make markets for consumer financial products and services work for Americans—whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products" (CFPB, 2015, para. 1, see also Figure 30**).**

Crisis. "A situation where the root cause of an event is, to some extent, self-inflicted through such problems as inept management structures and practices or a failure to adapt to change" (Faulkner, 2001, p. 136). Crises are "induced by the actions or inactions of the organization" (Faulkner, 2001, p. 137).

Cybernetic control theory (CCT). Cybernetics, a term introduced in 1948 by Norbert Weiner, is derived from the Greek word *kuberbetes*, which means governor (Halpern, 2012). CCT is a theory of self-regulation whereby a governing body exercises control of a system. It is a science of control and the sending of signals in which one attempts to shape the future.

Disaster. "Situations where an enterprise (or collection of enterprises . . .) is confronted with sudden unpredictable catastrophic changes over which it has little control" (Faulkner, 2001, p. 136). Disasters are "induced [by] natural phenomena or external human action" (Faulkner, 2001, p. 137).

Enabling statute. A piece of legislation that grants an agency new authority or additional authority to carry out specific actions and government policies.

Financial crisis of 2007-2009. The period of time where the financial industry and the U.S. economy were negatively impacted by the subprime mortgage crisis.

Financial crash of 2008. The 2-month period from September 2008 to October 2008 marked by Lehman Brothers filing for Chapter 11 bankruptcy, the credit rating for

American International Group (AIG) being downgraded, Congress passing the Emergency Economic Stabilization Act of 2008 (also known as the Bailout), and Congress establishing the Troubled Asses Relief Program (TARP).

Focusing events. Major events that simultaneously grab the attention of policymakers and the elite (Birkland, 1995, 2009).

Garbage can theory (GCT). GCT is used to describe the policy process by identifying four streams (i.e., problems, solutions, participants, and choice opportunities) that flow separately until a significant event occurs, causing the streams to collide. Participants couple existing solutions with existing problems to address important issues (Cohen, March, & Olsen, 1972).

Glass-Steagall Act. The provisions of the 1933 Banking Act that separated commercial banking from investment banking.

Globalization. The political, technical, and cultural forces of a worldwide marketplace (Kettl, 2002).

Gramm-Leach-Bliley Act. A congressional act that repealed the Glass-Steagall Act.

New government agency. In this context, new government agency represents a new federal agency that was created in response to a major event.

Policy window. A period of time that opens and allows issues to be placed on the national agenda.

Public Law 73-66. The Banking Act of 1933 was passed on June 16, 1933, and established the Federal Deposit Insurance Corporation (FDIC). The entire act is commonly referred to as the Glass-Steagall Act.

Public Law 106-102. The Gramm-Leach-Bliley Act was passed on November 12, 1999, and repealed the Glass-Steagall Act by allowing banks, securities firms, and insurance companies to be affiliated.

Public Law 107-71. The Aviation Transportation Security Act (ATSA) was passed on November 19, 2001, and established the TSA.

Public Law 107-296. The Homeland Security Act of 2002 was passed November 25, 2002, and established the U.S. Department of Homeland Security as a cabinet level department. Prior to this legislation, the Office of Homeland Security existed only as an office in the White House.

Public Law 107-306. The Intelligence Authorization Act for Fiscal Year 2003 was passed on November 27, 2002. Title VI of this act established the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission).

Public Law 109-295. The Department of Homeland Security Appropriations Act of 2007 was passed October 4, 2006, and included the Post-Katrina Emergency Management Act of 2006. This act established the "New FEMA."

Public Law 111-21. The Fraud Enforcement and Recovery Act of 2009 was passed on May 20, 2009. Section 5 of this act established the Financial Crisis Inquiry Commission.

Public Law 111-203. The Dodd-Frank Wall Street Reform and Consumer Protection Act was passed on July 21, 2010. Title X of this act established the Consumer Financial Protection Bureau (CFPB).

Punctuated equilibrium theory (PET). This theory is about change and describes a period of stasis that is suddenly or violently interrupted and therefore results in revolutionary change, rather than incremental change.

Risk. The location where threat, vulnerability, and consequence intersect. Threat is the probability that a specific target will be attacked; vulnerability is the probability that the target will be damaged, given that an attack occurs; and consequence is the expected magnitude of damage, given that an attack occurs that results in damage (Willis, 2007). According to Beck (2011), "Risk means the anticipation of the catastrophe" and is concerned with "events that may occur that threaten us" (p. 9). Some risks are created on purpose, such as terrorist threats, while other risks are created by chance, such as global financial risks (Beck, 2011).

Risk bureaucracy. A government organization or regulatory agency "dedicated to forecasting and developing risk-based guidelines to regulate and manage risks " (Heng & McDonagh, 2011, p. 316). The agency exercises cybernetic control over a system by fulfilling the roles of director (standard setting), detector (information gathering), and effector (behavior modification).

Risk management. A "systematic process to analyze threats, vulnerabilities, and criticality (or relative importance) of assets to better support key decisions linking resources with prioritized efforts for results" (*Homeland Security: A Risk Management Approach Can Guide Preparedness Efforts,* 2001, p. 1).

Socioeconomic-technological novelty. Also referred to as SET novelty, these are sudden movements in social change, economic change, or technological change. In a study of agencies created from 1933-1972, Grafton determined that new federal agencies were created to address problems triggered by an SET novelty.

System. Understanding something as a whole, rather than through the disassembling of its parts. Differs from analytical thinking, which seeks understanding by taking things apart. Systems thinking focuses on context and wholeness (Capra, 1996).

The 9/11 Commission Report. A report released by the 9/11 Commission on July 22, 2004, to the President, Congress, and the American people. After more than 1,200 individuals were interviewed, more than 2.5 million documents were reviewed, and 10 countries were visited, the 9/11 Commission summarized its work, reported its findings, and made recommendations (National Commission on Terrorist Attacks on the United States, 2004). Although the report covered several areas pertaining to the terrorist attacks, only recommendations for aviation and transportation security are relevant to this research.

The Financial Crisis Inquiry Report. A report by the Financial Crisis Inquiry Commission on January 27, 2011. The investigation consisted of interviews of more than 700 witnesses, a review of millions of pages of documentation, and 19 days of public hearings (Financial Crisis Inquiry Commission, 2011). The Financial Crisis Inquiry

Commission summarized its work and reported its conclusions; however, unlike the 9/11 Commission, it was not asked to make policy recommendations. Instead, the Financial Crisis Inquiry Commission's investigation led to nine conclusions.

Transboundary. The crossing of geographical borders, functional borders, or time borders (Boin, 2009).

Transportation Security Administration (TSA). A federal agency established after 9/11 by the passing of the Aviation and Transportation Security Act. TSA's mission is to "protect the nation's transportation system and to ensure freedom of movement for people and commerce" (TSA, 2013, para. 2).

Summary

As globalization continues to allow risks to transcend boundaries, public administrators will have to face the rising challenges of governing global risks that impact everyday life. Risk bureaucracies such as TSA and CFPB demonstrate how the United States has addressed risks in civil aviation security and consumer financial markets. This study explores the activities prior to 9/11 and the financial crash, the actions of Congress as it passes legislation to address risk, and the implementation of TSA and CFPB as risk bureaucracies. Cybernetic control was used to assess each agency's design as a risk bureaucracy. An analysis of secondary data was used to make the assessment.

CHAPTER II

LITERATURE REVIEW

The overall purpose of this chapter is to discuss the creation of the Transportation Security Administration (TSA) and the Consumer Financial Protection Bureau (CFPB) as new federal agencies. It is widely accepted that TSA was created because of 9/11 and that CFPB was created because of the financial crisis; however, these explanations are too simplistic for complex issues. This chapter discusses other factors that contributed to the creation and design of these two agencies.

This chapter is divided into two sections: (a) an overview of literature regarding agency reorganization and agency creation and (b) an extension to the literature on agency reorganization and agency creation by integrating literature on risk and risk bureaucracies. The three themes that emerge when integrating the literature are management structure, societal and social concerns within U.S. borders, and risk management.

Reorganizing the federal government to solve growing societal problems is not new in American government; however, implementation before the completion of mandated investigations is a new phenomenon. The initial part of this literature review sets the context for understanding government reorganization at the federal level, specifically, the creation of new federal agencies. A review of literature regarding the TSA and the CFPB, two modern examples of reorganization at the federal level (specifically, the agency level), suggest that managing transboundary risks with institutional impacts is now the prevailing force driving reorganization and agency creation.

Section I: Literature on Agency Reorganization and Agency Creation

History of Federal Reorganization

There are three forms of legal authority that allow the creation or reorganization of the federal government: (a) major reform, which requires a formal statute and can involve the creation or elimination of a cabinet-level agency; (b) reorganization that does not involve cabinet-level agencies and is usually accomplished by a Reorganization Plan Authority that the President submits to Congress for acceptance or rejection; and (c) reorganization by way of a presidential executive order, which can be killed by Congress or any subsequent president (Mansfield, 1969; Radin & Chanin, 2009). Table 1 is a timeline highlighting significant reorganization actions.

Management structure context. Federal reorganization occurs within a management context or a political and social context (Radin & Chanin, 2009). The management context dates back to the Brownlow Committee in 1937. The Brownlow Committee (officially titled the President's Committee on Administrative Management) made recommendations to overhaul the Executive Branch of the government.

In 1937, the Brownlow Committee recognized that government needed to be reorganized into manageable pieces. In 1789, there were only four departments (i.e., State, War, Treasury, and the Attorney General) that reported to the President. By the

1930s, over 100 entities (i.e., agencies, departments, administrations, committees, and organizations) were reporting to the president (Brownlow, 1937). The committee determined that the President's current span of control was not effective. Having the correct management structure was critical for a well-functioning Executive Office. The committee made major recommendations, two of which included creating the Executive Office of the President and consolidating the more than 100 existing entities into 12 departments: Department of Agriculture, Department of Commerce, Department of Conservation, Department of Justice, Department of Labor, Department of Navy, Department of Public Works, Department of Social Welfare, Department of State, Department of Treasure, Department of War, and the Post Office Department (Brownlow, 1937). The committee's recommendations were based on the belief that a democratic system and the execution of democratically made decisions could not survive without an efficient administrative branch of the government (Brownlow, 1937). The President submitted the reorganization plans from the Brownlow Committee to Congress but Congress rejected them (Balogh, Grislinger & Zelikow, 2009).

Another significant contribution to reorganization was the Hoover Commission of 1949. The Hoover Commission (officially titled The Committee on the Organization of the Executive Branch of Government) also emphasized the need for grouping the existing agencies according to function. A hierarchical structure was proposed with the belief that it would lead to an effective organization with greater responsibility and accountability. The Hoover Commission also laid a foundation and justification for a strong President (Arnold, 1976).

Successful reorganization was not achieved until the Reorganization Act of 1949 was passed. The act provided six reasons for reorganization: employ better management, decrease expenditures, increase operational efficiency, regroup agencies based on purpose, reduce number of agencies through consolidation, and eliminate duplication (Mansfield, 1969). The President must have at least one of these reasons if he or she proposes plans for reorganization.

With no prescription on how to operationalize the Constitution, efforts to reorganize the Executive Branch tended to focus on disagreements regarding structure, power, process, or doctrine (Garnett, 1987). The literature on federal reorganization showed that the early days of reorganization were in search of *one best way* of operation. Modeling the business practices of the era, government used a scientific management approach to achieve the greatest efficiency. A strong executive with a top-down managerial approach was the goal of reorganization. Span of control and hierarchical structures were critical. Efficiency and effectiveness were the leading values. An important observation from the literature was that reorganization eventually began to reflect concerns about societal and political problems, rather than attempting to have the best structure, power, process, or doctrine for efficiency. One explanation for this transition of focus can be found in Garnett's (1987) rewritten "proverbs of reorganization" that claimed the Brownlow Committee's impact on government organization had been overrated, reorganization failed to save money, government structure did not influence performance, and reorganization was about politics, not business.

Contradictions found in the “management context” literature pertain to the significance of the Brownlow Committee and can be found in work by Fesler (1987) who pointed out that the Brownlow Committee had been given credit for more than what it actually accomplished. He claimed that the committee did not provide a prescription for reorganization and that reorganization was not the true focus of the committee. For example, he stated that only three out of 53 pages covered reorganization. Additionally, he pointed out that references to the President needing to be a “strong executive” were overemphasized. These references were not balanced against the committee’s documentation that the President’s accountability to Congress needed to be preserved. The driving business-like values of the era may explain why early literature on reorganization focused on a Hamiltonian presidency.

Societal and social concerns context. A demonstration of reorganization due to change in societal values or concerns can be seen in literature regarding the creation of the U.S. Department of Education, the Federal Emergency Management Agency (FEMA), the U.S. Department of Housing and Urban Development (HUD), and the U.S. Department of Transportation (DOT). It can be argued that the creation of TSA and CFPB also fall into this category; however, these two agencies identify a new trend in agency creation, which is discussed later.

Miles (1967) stated that cabinet-level departments should be a reflection of American social needs and should address issues that require national attention. He highlighted that further deterioration occurs when there is a lag in creating agencies that address social needs. He also pointed out that the national interest would have been better served if the Departments of Defense (established in 1947), Health, Education, and Welfare (established in 1953), HUD (established in 1965), and DOT (established in 1966) had come into existence earlier (Miles, 1967).

Creating new agencies can also be a political tool (Manns, 2002). President Jimmy Carter used the creation of the U.S. Department of Education as part of his political agenda during his presidential campaign. By doing so, he received the backing of the National Education Association, which was a powerful interest group (Stephens, 1983). Political arguments for creating the Department of Education have also been highlighted in reorganization literature. Political status and access to the President were identified as benefits of having a cabinet-level Department of Education (Radin & Hawley, 1988).

Reorganization based on societal problems may be in the form of elevating a segment of a department to cabinet-level status, as in the case of creating the Department of Education when Education separated from the Department of Health, Education, and Welfare. However, other types of reorganization in response to societal problems have manifested themselves as newly created agencies within preexisting departments. This is the case of the TSA and the CFPB. These are reorganizations at the agency level rather than the cabinet level. However, before discussing TSA and CFPB, a short discussion on FEMA is necessary to explain its unique position among reorganization literature.

FEMA has undergone reorganization and reforms due to tragic events. Yet FEMA is an example of how reorganization that reflects societal values and politics can cripple efficiency and effectiveness. FEMA was established by executive order in 1979 by merging separate disaster-related entities into one department (FEMA, 2008). FEMA has undergone several reorganizations since its creation. FEMA underwent reorganization after dealing with disastrous hurricanes and an earthquake in the 1960s and 1970s (Roberts, 2006). The reorganization led to FEMA being stripped of national security functions. The 1993 reorganization focused on natural disasters and ignored terrorism. However, in 2001, 9/11 forced FEMA to focus on terrorism. This resulted in too much attention on terrorism and too little attention on natural disasters (Roberts, 2006). By 2005, FEMA's terrorism focus left it ill prepared to manage Hurricane Katrina and its aftermath (Pump, 2011). The question that needed to be addressed after 9/11 and again after Hurricane Katrina was who is in charge during an emergency (Wise, 2006). The social and political changes exhibited in FEMA's previous reorganization left management concerns unanswered during times of crisis. A "New FEMA" was created after the Post-Katrina Emergency Management Reform Act of 2006 (FEMA, 2008). Hurricane Katrina resulted in the reorganization of an existing agency (i.e., FEMA) rather than the creation of a new one.

Risk management context.

TSA. Perhaps the most tragedy-driven reorganizations to fulfill a societal problem occurred after the terrorist attack on September 11, 2001. As mentioned earlier, reorganization is used to address issues that require national attention (Miles, 1967). The impact of 9/11 was complex in the context of federal reorganization. Initially, the White House Office of Homeland Security attempted to address the threat of terrorism by coordinating the efforts of various governmental subsystems (May, Sapotichne, &

Workman, 2009b). Nevertheless, the need for a more cohesive approach resulted in sweeping change by creating the Department of Homeland Security (DHS). The DHS is a cabinet-level institution created by the passing of the Homeland Security Act of 2002. However, prior to DHS' creation, a different type of 9/11-based reorganization occurred. The Civil Aviation Security Division of the Federal Aviation Administration (FAA) was essentially elevated to agency status, through the establishment of the TSA. President Bush signed the Aviation Transportation Security Act (ATSA; Public Law 107-71) on November 19, 2001, which was only 2 months and 8 days after 9/11. The TSA found a temporary home within the DOT before it was transferred to DHS. DOT's reorganization used many of the existing employees from FAA's Civil Aviation Security Division to form TSA's regulatory compliance section. DOT's reorganization efforts also included hiring a new workforce to focus on the screening of passengers and their belongings. The events of 9/11 exposed transboundary risks in aviation security that impacted the entire aviation industry, and indirectly impacted the economy.

CFPB. The financial crisis that began in 2007 and the financial crash of 2008 were societal problems that resulted in the creation of a new agency within an existing department. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203), which was signed by President Obama on July 21, 2010, established the CFPB within the Federal Reserve. The legislation was passed approximately 2 years after the financial crash of 2008, but 3 years after the onset of the financial crisis. As a new agency, the CFPB expects to hire approximately 1,500 people within several years, many of whom are expected to come from the Federal Reserve and other banking

Table 1

Chronology of Major Federal Government Reorganizations and Creation of New Agencies

Year	Action
1789	Four departments existed—Departments of State, War, Treasury, and Attorney General.
1903	Antitrust Division created in Department of Justice.
	Department of Commerce and Labor established.
1906	Bureau of Immigration and Naturalization created.
	Department of Agriculture created.
1908	Bureau of Investigation formed—becomes Federal Bureau of Investigation in 1935.
1913	Department of Commerce created.
	Department of Labor created.
1914	Federal Trade Commission created as an independent regulatory commission.
1927	Federal Radio Commission established.
1930s	More than 100 agencies, departments, administrations, committees, and organizations reported to the President.
1930	Veterans Administration created as an independent agency. Elevated to cabinet status in 1989.
1932	Hoover submits 11 reorganization plans, all of which are rejected by Congress.
1934	Federal Communications Commission established—previously Federal Radio Commission.
1935	Federal Bureau of Investigation established—previously Bureau of Investigation.
1937	Brownlow Committee–Made recommendations to overhaul the Executive Branch of government. Consolidated more than 100 existing agencies into the following 12 Departments: Agriculture, Commerce, Conservation, Justice, Labor, Navy, Public Works, Social Welfare, State, Treasury, War, and Post Office.
1945	National Intelligence Authority established—precursor to Central Intelligence Agency.
1946	Atomic Energy Commission created.
1949	Hoover Commission—emphasized grouping agencies according to function. Proposed an hierarchical structure for effectiveness, responsibility, and accountability.
	General Services Administration established.
	Reorganization Act of 1949—successful reorganization was achieved. Act provided six reasons for reorganization: employ better management, decrease expenditures, increase operational efficiency, regroup agencies based upon purpose, reduce number of agencies through consolidation, and eliminate duplication.
1953	Department of Health, Education, and Welfare created.
1965	Department of Housing and Urban Development is established.
1966	Department of Transportation is created—included Federal Highway Administration Federal Railroad Administration, Federal Aviation Administration, National Transportation Safety Board, St. Lawrence Seaway Development Corporation, and United States Coast Guard.

Table 1 (*continued*)

Year	Action
1970	Environmental Protection Agency created.
	Occupational Safety and Health Administration created—Department of Labor.
1972	Consumer Product Safety Commission established.
1977	Department of Energy created—includes agencies and/or functions of Energy Research and Development Administration, Nuclear Regulatory Commission, Federal Energy Administration functions absorbed, and Economic Regulatory Administration.
1978	Federal Emergency Management Agency established—combines the Office of Civil Defense with related functions of other agencies.
1979	Department of Education created—absorbed education functions from Department of Health, Education, and Welfare.
	Department of Health and Human Services created—absorbed the noneducation functions from Department of Health, Education, and Welfare.
	Office of Personnel Management formed from Civil Service Commission.
1989	Department of Veterans Affairs becomes cabinet-level department—created from Veterans Administration.
2001	Transportation Security Administration established within the Department of Transportation–created by the Aviation and Transportation Security Act.
2002	Department of Homeland Security—created by the Homeland Security Act of 2002 as a cabinet-level department. Previously was an Office within the White House created post-9/11.
2002	Homeland Security Act of 2002—transferred TSA from DOT to DHS. Also reorganized and realigned 22 different departments and agencies. Currently includes U.S. Customs and Border Protection (CPB), U.S. Citizenship and Immigration Services (USCIS), U.S. Coast Guard (USCG), Federal Emergency Management Agency (FEMA), Federal Law Enforcement Training Center (FLETC), U.S. Immigration and Customs Enforcement (ICE), Office of Inspector General (OIG), Science & Technology Directorate (S&T), U.S. Secret Service (USSS), and Transportation Security Administration (TSA).
2006	"New FEMA" reorganization of the existing FEMA by the Post-Katrina Emergency Management Act of 2006.
2010	Consumer Financial Protection Bureau established within the Department of Treasury—created by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Note. Adapted from "Making Democracy Work: A Brief History of Twentieth Century Executive Reorganization," by B. Balogh, J. Grislinger, and P. Zelikow, in *Federal Government Reorganization: Policy: A Policy Management Perspective*, by B. Radin and J. Chanin (Eds.), 2009, p. 46. Copyright Jones and Bartlett, Sudbury, MA. When available, content before 1975, cross-referenced with "The Creation of Federal Agencies," by C. Grafton, 1975, *Administration & Society, 7*(1), pp. 340-342.

regulatory agencies (Berry, 2011). The financial crash exposed transboundary risks in the consumer financial market, which directly impacted banking institutions and the economy.

Creating New Federal Agencies

Narrowing in on the topic of reorganization of the Executive Office leads to a segment of reorganization that pertains specifically to the creation of new federal agencies. Literature on creating new federal agencies can be found among reform literature and reorganization literature. While Radin and Chanin (2009) stated that creating a new agency is a form of major reorganization, and subsequently make no measurable distinction between creating new agencies and reforming existing ones, Grafton (1975) makes a distinction between the two.

In 1975, Grafton explained his struggle with finding studies that provided a comprehensive or systematic explanation for the creation of federal agencies. Grafton narrowly defined agency creation by excluding studies on reorganization or reform. With the exception of Grafton's work in 1975, it is still challenging to find comprehensive work on creating new agencies when studies on reorganization or reform are excluded. Grafton studied agencies that were created from January 1933 through December 1972 with the intent of explaining their creation in terms of organization and timing. He defined agencies as "the largest division of a department (often called bureaus), parts of the Executive Office of the President, or independent commissions" (Grafton, 1975, p. 331). In order for an agency to be included in his study, it had to be a new entity and not just a reorganization, modification, or name change of an existing organization. What he discovered in his research was that new federal agencies were created as a result of sudden movement in social change, economic change, or technological change. The expression he used to describe this change was socioeconomic-technological (SET) novelty (Grafton, 1975). Some of the examples he gave of SET novelty are labor unions (social change), the Great Depression (economic change), and atomic energy (technological change). The requirement for determining if an event could be defined as a social, economic, or technological novelty was that it had to cause a "drastic transformation in point of view" (Grafton, 1975, p. 336), be driven by people doing things that had never been done before (positively or negatively), and demonstrate a sudden shift in order of magnitude. Additionally, if the novelty was technological, the change must have also affected a complete system, and if the novelty was economic or social, the change must have also affected millions of people (see Table 2). Therefore, Grafton determined in 1975 that new federal agencies were created to address problems triggered by an SET novelty, as described above.

While the creation of TSA and CFPB fit into Grafton's (1975) SET typology (i.e., TSA under social change and CFPB under economic change), there is an exception that leads to the need to update Grafton's work. Terrorism in the homeland represented sudden movement in social change that affected a complete system (i.e., civil aviation security). Similarly, the financial crash represented sudden movement in economic change and subsequently affected the complete system of the consumer financial market. Integrating the literature on risk and globalization suggests that a *focusing event* coupled with a *transboundary risk with an institutional impact* will lead to the creation of a new federal agency. The creation of TSA and CFPB offer opportunities to update Grafton's work. A new typology is represented in Table 3.

Table 2

Socioeconomic-Technological (SET) Novelty Criteria

Criteria	Social change	Economic change	Technological change
Cause a drastic transformation in point of view	X	X	X
Driven by people doing things that had never been done before	X	X	X
Demonstrate a sudden shift in order of magnitude	X	X	X
Affected a complete system			X
Affected millions of people	X	X	

Note. The Socioeconomic-Technological (SET) Novelty Criteria table was created from information extracted from "The Creation of Federal Agencies" by C. Grafton, 1975, *Administration & Society, 7*(3), 328-365.

Risk with an institutional impact can be seen through the creation of TSA and CFPB. Extreme loss that threatens to collapse an institution can lead to the creation of a new agency. Aviation accidents resulting in the loss of life are not new and neither is terrorism in the aviation industry. Similarly, home foreclosures and loan defaults are not new. However, the aggregated impact of the massive loss of life and countless loan defaults and foreclosures threatened to harm America, threatened to harm the aviation industry, and threatened to harm the banking industry.

Table 3

Transboundary Risk and Socioeconomic-Technological (TR-SET) Novelty Criteria

Criteria	Focusing event + transboundary risk w/ institutional impact	Social change	Economic change	Technological change
Cause a drastic transformation in point of view	X	X	X	X
Driven by people doing things that had never been done before	X	X	X	X
Demonstrate a sudden shift in order of magnitude	X	X	X	X
Affected a complete system	X			X
Affected millions of people	X	X	X	

Note. The Transboundary Risk and Socioeconomic-Technological (TR-SET) Novelty Criteria table is an integrated typology created by the author of this dissertation based on the integration of risk and "The Creation of Federal Agencies," by C. Grafton, 1975, *Administration & Society, 7*(3), 328-365.

A review of literature on creating new agencies points to a gap in the literature since Grafton's study in 1975. His work identified that events representing sudden movement in social change or economic change did not translate into changes that affected complete systems. However, the events of the early 21st century, including the 9/11 terrorist attack leading to the creation of TSA and the financial crash leading to the creation of CFPB, show that sudden social or economic changes really can result in extensive system reform (i.e., civil aviation security and consumer financial markets). This leads to an update of Grafton's typology to include a category of transboundary risks that have institutional impacts.

Section II: Literature on Risk and Risk Bureaucracies

Risk

Risk has been identified as the location where threat, vulnerability, and consequence intersect (Masse, O'Neil, & Rollins, 2007; Willis, 2007; see Figure 1). In short, *threat* is the probability that a specific target will be attacked; *vulnerability* is the probability that the target will be damaged given that an attack occurs; and *consequence* is the expected magnitude of damage given that an attack occurs that results in damage (Willis, 2007). Stated differently, risk is a function of threat, times vulnerability, times consequence (see Figure 2).

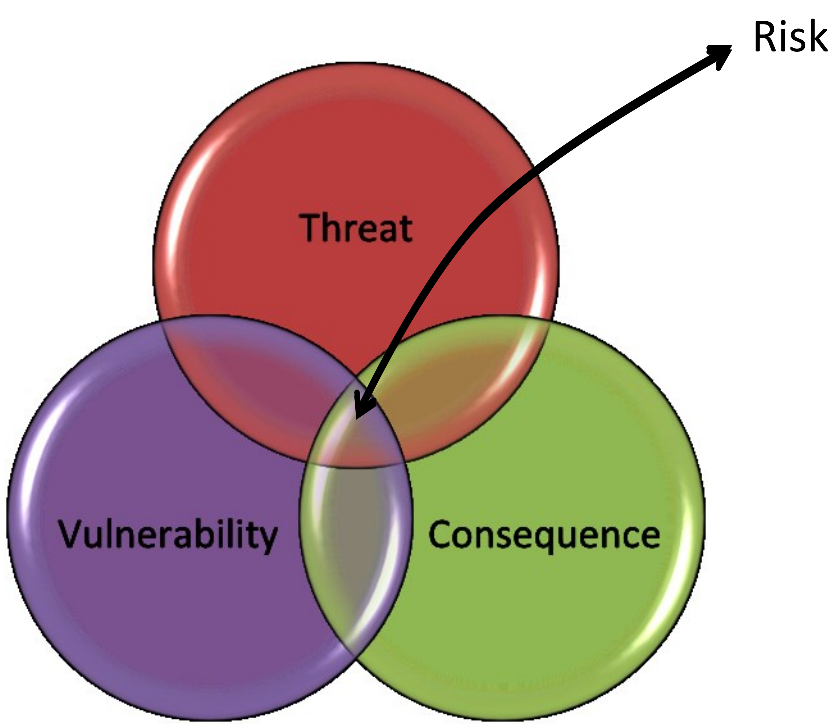

Figure 1. Risk is the intersection of threat, vulnerability, and consequence. Adapted from "Guiding Resource Allocations Based on Terrorism Risk," by H. H. Willis, 2007, *Risk Analysis: An International Journal, 27*(3), p. 599.

Risk = p(attack occurs)

*p(attack results in damage | attack occurs)

*E[damage | attack occurs and results in damage]

= Threat * Vulnerability * Consequence

Figure 2. Risk equation demonstrating that risk is a function of threat, vulnerability, and consequence. Threat is the probability that an attack occurs (Threat = p [attack occurs]). Vulnerability is the probability that an attack results in damage, given that an attack occurs (Vulnerability = p [attack results in damage | attack occurs]). Consequence is the estimated damage given that an attack occurs and results in damage (Consequence = E [damage | attack occurs and results in damage]). Therefore risk is threat, times vulnerability, times consequence (Risk = Threat * Vulnerability * Consequence). Adapted from "Guiding Resource Allocations Based on Terrorism Risk," by H. H. Willis, 2007, *Risk Analysis: An International Journal, 27*(3), p. 599.

On the other hand, van Asselt and Renn (2011) in their work on risk governance pointed out that simple risks can rely on a linear approach involving probability and effect (as demonstrated in Figures 1 and 2), but systemic risks are transboundary and involve uncertainty, complexity, and ambiguity.

Contradictions in risk literature involve how risk is defined. Both definitions are helpful in understanding transboundary risks and have therefore been integrated for this study. An integration of the two concepts is demonstrated in Figure 3.

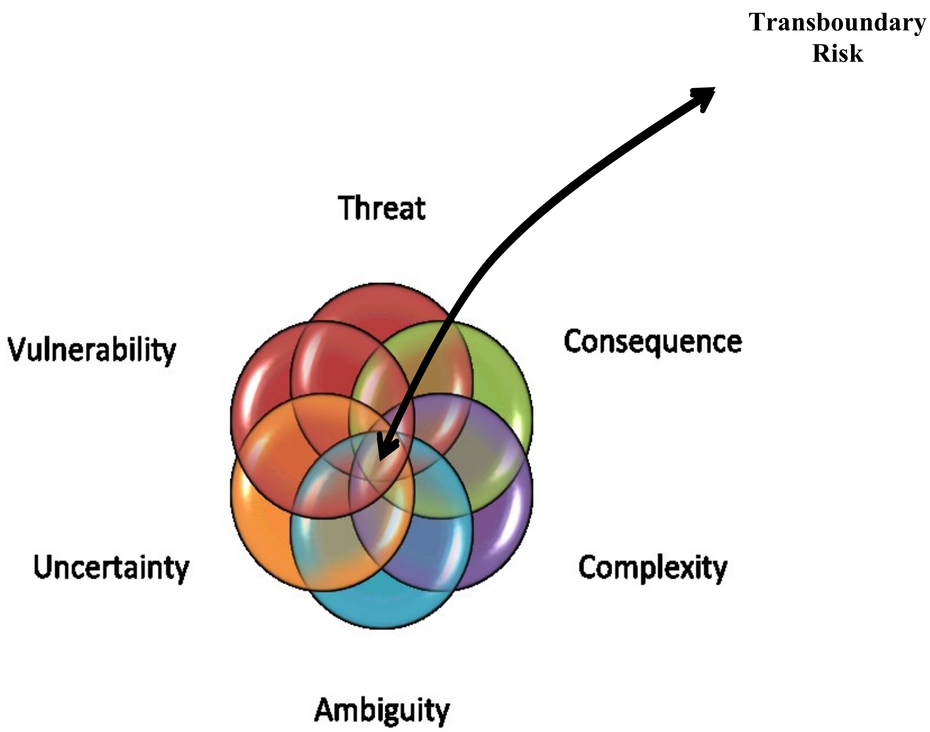

Figure 3. Transboundary risk is the intersection of threat, vulnerability, and consequence and uncertainty, complexity, and ambiguity. An integrated model created by the author of this dissertation based on “Guiding Resource Allocations Based on Terrorism Risk,” by H. H. Willis, 2007, *Risk Analysis: An International Journal, 27*(3), p. 599 and “Risk Governance” by M. B. A. Van Asselt and O. Renn, 2011, *Journal of Risk Research, 14*(4), p. 436.

Risk and globalization. Globalization can be defined as the political, technical, and cultural forces of a worldwide marketplace (Kettl, 2002). Although globalization creates many opportunities, it also comes with risks. Globalization has created an environment that allows risk, and subsequently crises and disasters, to transcend borders of geography, functionality, and time. Boin (2009) in his work on transboundary crises explained that the types of crises and disasters that public administration has customarily prepared for may not result in suitable preparation for future events. Future crises are likely to be transboundary and will therefore challenge the legitimacy of both public and private organizations (Boin, 2009). Threats of the future may look the same, but their consequences will be much different. Transboundary crises are marked by the crossing of geographical borders, functional borders, and time borders (Boin, 2009).

The 9/11 terrorist attacks and the 2007-2009 financial crisis demonstrated how the world's interconnectedness created networked vulnerabilities and risks. The risks brought about by globalization make it challenging for governments to respond (Kettl, 2002). The aircraft hijackings on September 11, 2001, and the financial crash are examples of transboundary risk developing into transboundary crises. According to Goldin and Mariathasan (2014), by 2009, the financial crisis that began in 2007 had triggered $4.1 trillion in losses that affected every world market.

Rickards (2011) and his work on currency and financial markets provided an example of a boundary-crossing crisis when he explained how a disastrous earthquake caused a stock market crash. On March 11, 2011, a 9.0 earthquake in the Pacific Ocean off the coast of Japan led to a 10-meter high tsunami. The tsunami crashed into nuclear reactors, which resulted in a partial meltdown of the uranium and plutonium fuel rods. The fear created from the nuclear event caused a crash in the Tokyo stock market. In this event, functional borders were crossed.

Another example of boundary crossing is how the events of 9/11 transcended geographical borders when the FAA grounded all aircraft within the United States, thus forcing numerous flights to be rerouted to Canada for landing.

The TSA was created in 2001, but the consequences of 9/11 are still being addressed today (14 years later). To that effect, 9/11 was a crisis that also transcended time borders.

Additionally, TSA, in its director function (which is explained later in this chapter), has set standards that affect aviation security globally. The sources of risk (and crises) are human, technological, and natural (Lodge, 2009). Just as technological advancements in modern society have allowed all facets of life to cross geographical, functional, and time borders, technology has also tightly woven modern society together in times of crisis and disaster. It is hopeful that the same web of modern connectivity will have beneficial effects during recovery. The creation of a new government agency as an intervention strategy to address a major event can have a favorable impact on institutions.

The capacity of crises and disasters to cross boundaries, as described by Boin (2009), can also be seen in the work of Wachtendorf (2009) in what is described as a trans-system social rupture (TSSR). Our nation are more vulnerable now to trans-system social ruptures than in times past due to modern day interconnectedness (Wachtendorf, 2009). With this in mind, it is significant to study agency creation (i.e., policy adoption and implementation) under the same modern-day interconnectedness that creates this unique vulnerability. The presence of an interconnected system is an indication of vulnerability to social ruptures that will cross boundaries. For example, international travel allows for the quick spread of disease from country to country. When the rupture crosses boundaries, the solution must be designed to cross boundaries as well. This helps make the case for a federal response. Federal agencies are equipped to address ruptures that cross geographical boundaries, due to their ability to create enforceable regulations (in the director capacity) that affect domestic and foreign activity. TSSRs must be viewed as a social condition (Wachtendorf, 2009). The rupture is significant, but those who occupy the space affected by the rupture (e.g., victims, responders, decision makers) are a critical aspect of such problems, therefore making it a social condition.

The creation of TSA and CFPB is consistent with the larger reorganization literature that identifies societal problems or political issues as one of the bases for reorganization, but these two agencies also fit Grafton's 1975 definition of a new federal agency, which was described earlier. One can identify aspects of SET novelty in the terrorist events of 9/11 and the financial crash of 2008 that stimulated the creation of each federal agency that followed; however, further analysis of these two agencies (discussed in Chapter 5) has identified a different trigger to agency creation, which was not present during Grafton's 1975 research. Today, focusing events coupled with transboundary risks with institutional impacts can trigger agency creation.

Risk bureaucracies. A risk bureaucracy is a government organization or regulatory agency "dedicated to forecasting and developing risk-based guidelines to regulate and manage risks " (Heng & McDonagh, 2011, p. 316). The term *risk bureaucracy* is not one commonly used among practitioners or scholars in the United States but is used among international scholars, particularly those in the United Kingdom. Heng and McDonagh (2011) were the first in recent studies to use the term to describe a U.S. federal agency. In their article "After the 'War on Terror': Regulatory States, Risk

Bureaucracies and the Risk-Based Governance of Terror," they refer to TSA as a risk bureaucracy.

Sharing the world in the 21st century may require the use of risk bureaucracies or risk regulatory regimes. The bureaucratization of risk has been used to describe TSA. Kip Hawley, former administrator for TSA, is noted as saying that TSA cannot offer universal protection, but that risk management would need to be used (Heng & McDonagh, 2011). When looking at the recent studies involving TSA and CFPB, the prominent theme is risk. Threats in the consumer financial market and threats in civil aviation security created risks that have global consequences. TSA now dictates security procedures that individuals from around the world will be subjected to when traveling into and within the United States. The financial crisis impacted the global economy as many countries experienced the domino effect of the U.S. financial meltdown. Globalization has created networked risk. New agencies, in the form of risk bureaucracies, have been established to provide the appropriate response. Globalization creates the need for a response whose impact crosses borders.

Risk Bureaucracy: The
Public Management of Risk

Since transboundary risk with institutional impacts led to the creation of the TSA and the CFPB, these agencies must be able to control risk. A theory of control, known as cybernetics, is used to evaluate each agency's design. The public management of risk requires three functions: standard setting, information gathering, and behavior modification (Hood, Rothstein, & Baldwin, 2001; Lodge, 2009). Heng and McDonagh

(2011) identified these same three functions by different names: director, detector, and effector. To claim control over a system, cybernetic control theory (CCT) requires the presence of all three functions. Likewise, if the systems of civil aviation security and consumer financial markets are going to be controlled by TSA and CFPB as risk bureaucracies, each agency must carry out all three functions. *Standard setting* is the process of establishing rules, guidelines, and goals. A government's exercise in standard setting may be achieved through adopting existing standards from other governments, discussing or negotiating with affected entities, or selecting criteria based on value judgments placed on life. Government operating in the role of standard setting is also known as functioning in the role of director. *Information gathering* involves obtaining the information necessary to evaluate risk. Information can be gathered in an active, reactive, or interactive capacity (Hood et al., 2011). An active capacity exists when government entities survey the environment and seek information. The work of intelligence agents is an example of active information gathering. Reactive information gathering is when the government relies on information to be reported by others. An example would be DHS's "See Something, Say Something" campaign whereby the government relies on citizens to report suspicious activities that would prevent an act of terrorism. Another example is CFPB's "Submit a Complaint" initiative, which provides an online location for consumers to file complaints regarding mortgages, student loans, credit cards, and other financial products and services (CFPB, 2015). Finally, there is interactive information gathering, which is a combination of active and reactive methods and involves government requiring a regulated entity to report information and then the government responding to the information that was reported. When the government is in the mode of information gathering, it is fulfilling the function of detector by applying its capacity to detect risks. Lastly is *behavior modification*, which is accomplished when government uses its compliance and enforcement authority. Simply put, the government requires compliance with the standards it establishes. When the rules are violated, sanctions are imposed. The government initially attempts to gain compliance through establishing regulation, education, persuasion, and various forms of outreach. The government is operating in the effector role when attempting to modify behavior (see Figures 4 and 5 and Table 4). Figures 4 and 5 allow a comparison between open systems with and without the control of a risk bureaucracy.

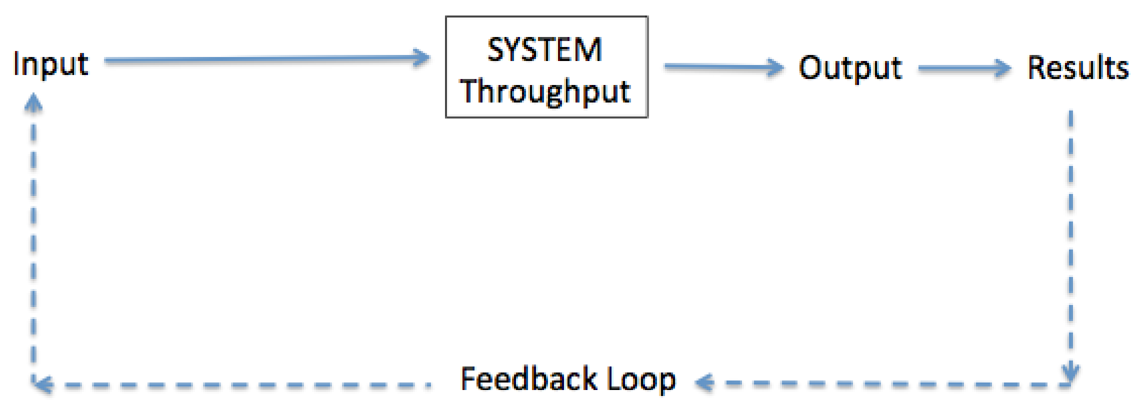

Figure 4. An open system without a risk bureaucracy. Adapted from *A Framework for Political Analysis*, by D. Easton, 1965 (Englewood Cliffs, NJ: Prentice-Hall) and *The Politics of the Administrative Process* (5th. ed.), by D. F. Kettl, 2012 (Washington, DC: CQ Press).

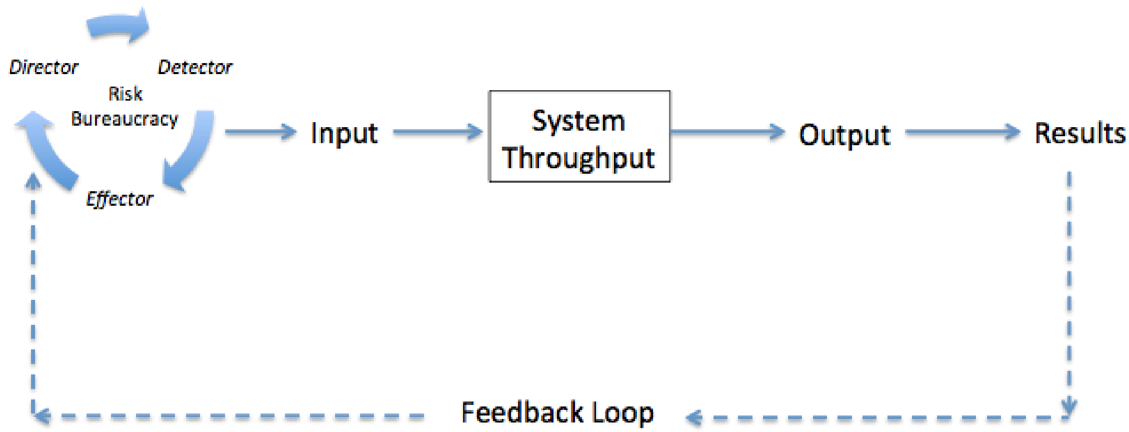

Figure 5. An open system controlled by a risk bureaucracy whereby the system's input is impacted by the director-detector-effector functions of a risk bureaucracy. System input, throughput, output, and a feedback loop are still present; however, the feedback loop filters back through a risk bureaucracy that will influence the next input cycle. Created by the author of this dissertation.

Table 4

Functions Required for the Public Management of Risk: Author Comparison of Terms

Heng and McDonagh (2011)	Hood, Rothstein, and Baldwin (2001)
Director	Standard setting
Detector	Information gathering
Effector	Behavior modification

Note. Director, detector, and effector are taken from "After the War on Terror: Regulatory States, Risk Bureaucracies, and the Risk-Based Governance of Terror," by Y. Heng and K. McDonagh, 2011, *International Relations*, 25(3), pp. 313-329. Standard setting, information gathering, and behavior modification are taken from "The Governance of Risk: Understanding Risk Regulation Regimes," by C. Hood, H. Rothstein, and R. Baldwin (Oxford, England: Oxford University Press).

When public organizations, such as TSA and CFPB, use cybernetic control, it is referred to as the bureaucratization of risk, and the agencies are known as risk bureaucracies (Heng & McDonagh, 2011). When Congress passed legislation that would establish the ATSA and the Dodd-Frank Wall Street Reform and Consumer Protection

Act (Dodd-Frank), it was not necessarily with the explicit intent of establishing agencies that embodied all the characteristics of risk bureaucracies. However, legislation written to establish agencies capable of preventing future catastrophic system failures that may be caused by a major event that has an impact on an institution requires control mechanisms. Therefore, Congress has created organizational structures and responsibilities that promote the development of agencies as risk bureaucracies

Risks and crises are similar in that they share the same sources: human, technological, and natural (Lodge, 2009). To that end, the director, detector, and effector roles of a risk bureaucracy must have the capacity to impact the human, technological, and natural sources of risk. Decker defined risk management as "a systematic process to analyze threats, vulnerabilities, and the criticality (or relative importance) of assets to better support key decisions linking resources with prioritized efforts for results" (*Homeland Security: A Risk Management Approach,* 2001, p. 1), while Boin (2009) identified the key elements of a crisis as threat, urgency, and uncertainty. It is not surprising, therefore, that risk and crises share the same sources since crises tend to routinely track back to a specific risk. Therefore, the process of risk management should reduce or avert crises. In order to have a system of control over risk, the essential components of standard setting (director), information gathering (detector), and behavior modification (effector) must be present (Heng & McDonagh, 2011; Hood et al., 2001; Lodge, 2009) and must be examined individually and collectively (Lodge, 2009). All three components must be present in TSA and CFPB in order for each agency to exercise control.

Errors of Risk-Based Approaches

Risk can be managed, in part, by redundancy. However, redundancy lends itself to asymmetric attacks, whereby those desiring to cause harm can avoid the strengths created by redundancy and target weaker areas for exploitation (Kettl, 2007, 2014). There are two types of errors that can occur when dealing with risks in complex systems: false positives and false negatives. A false positive is when agencies make an investment in preventing a risk (i.e., the risk of terrorism) in an area where no risk actually exists. A false negative is when an agency fails to detect the risk until a catastrophic collapse occurs (Kettl, 2007, 2014). An agency can never completely get rid of both types of error. Kettl (2007, 2014) spoke of three problems in homeland security. The first is the attempt to collect enough information to make correct decisions. According to the principles of control theory, this would impact an agency's role of detector. The second is backsliding. This occurs when policymakers get more comfortable as time passes and replace rigid policies with less restrictive policies, thus creating greater risk. In other words, the effector is a participant in creating risk. Lastly is the problem of calibrating risk. People feel different levels of danger based on their exposure and knowledge of risk. Public officials may underreact or overreact based on perceptions of risk rather than fact. The director's role is to calibrate the risk. These three problems highlighted by Kettl (2007, 2014) align with Hood et al.'s (2001) explanation of director, detector, and effector. The problem of collecting information is an error in the detector function; the risk of backsliding is an error in the effector function; and errors associated with those responsible for calibrating risk are a director function (see Table 5).

Table 5

Functions Required for the Public Management of Risk and their Respective Errors

Component description by Heng and McDonagh (2011)	Component description by Hood, Rothstein, and Baldwin (2001)	Complex systems "False negative errors" Kettl (2014)
Director	Standard setting	Responsibility for calibrating risk
Detector	Information gathering	Problems of collecting information
Effector	Behavior modification	The risk of backsliding

Note. This table is an expansion of Table 3 by adding three types of false negative errors taken from *System Under Stress: The Challenge of 21st Century Governance* (3rd ed.) by D. F. Kettl, 2014 (Washington, DC: CQ Press).

Heng and McDonagh's (2011) research on risk bureaucracies (to include risk regularity regimes and risk governance) reveal that risk is being bureaucratized as demonstrated when the bureaucracy functions as director, detector, and effector. As director, the agencies set targets and goals; as detector, they examine how the existing state of the system is observed; and as effector, they use their power and influence to bring about change.

Risk and the Significance of 9/11 and the Financial Crisis

Civil aviation security and consumer financial markets are complex systems. Complex systems differ from regular systems because they are dynamic and not static (Koliba, Meek, & Zia, 2011). They consist of diverse agents, such as public sector, private sector, nonprofit, citizens, and interest groups. The agents must have the ability to connect with one another (*connectedness*); influence each other (*interdependence*); learn from each other (*adaptation*); possess a quality that allows their collective work to be more significant than the work they accomplish when working independently (*emergent properties*), and lastly, a change in one agent can trigger a change in another agent when the system is at a critical state (*phase transition*; Rickards, 2011; see Table 6).

Table 6

The Dynamics of Complex Systems

Component	Description
Diverse agents	A collection of entities representing various sectors, organizations, citizens, or groups.
Connectedness	The ability to connect with others.
Interdependence	The ability to influence each other.
Adaptation	The ability to learn from each other.
Emergent properties	The quality of collective work being more significant than work accomplished independently.
Phase transition	The change in one agent triggering change in another agent when the system is at a critical state.

Note. The dynamics of a complex system was taken from *Currency Wars: The Making of the Next Global Crisis*, by J. Rickards, 2011 (New York, NY: Penguin Group).

The terrorist attacks of 9/11 and the financial crisis exposed the vulnerabilities in the nation's systems of civil aviation security and consumer financial markets. Complexity theory warns that complex systems are prone to catastrophic collapse if they grow too big (Rickards, 2011). When a complex system reaches a certain scale, it requires more energy than what is available as an input. To avoid complexity theory's catastrophic collapse, complex systems must be able to identify when they have grown too large so they can voluntarily descale (i.e., be made smaller). If not, a phase transition can trigger a breakdown in the entire system, resulting in failure. The complex systems of civil aviation security and consumer financial markets experienced a phase transition (critical state) that triggered a breakdown in the entire system; however, it is not likely that either system would be sufficiently descaled to avoid a repeat collapse. Some may argue that *too big to fail* is perhaps prone to fail. Each system transcends geographical borders, functional borders, and time borders, which causes them to be tightly woven into modern society. In order to manage the risks created by these complex systems, there must be a controlling entity that has the authority and capacity to transcend the same borders as the complex systems. This is best achieved at the federal level, rather than state or local levels. Congressional investigations are not needed to make this assessment. Consequently, waiting for the completion of *The 9/11 Commission Report* (National Commission on Terrorist Attacks, 2004) or *The Financial Crisis Inquiry Report* (Financial Crisis Inquiry Commission, 2011) was not necessary. The findings of such reports could potentially be addressed by the new agencies if the agencies function as risk bureaucracies.

Conclusion

Globalization in the 21st century may have created opportunities for thriving economies; however, systemic failures tell a story of globalized risk with institutional impacts. The notion of risk in aviation security and in finance have led to discussions of complexity, as one system appears to be interconnected with others. The hijacking of four commercial airliners on September 11th and the financial crisis from 2007-2009 demonstrated how complex systems could result in a catastrophic collapse. These two events had a domino effect that transcended geographical boundaries, functional boundaries, and time boundaries. Consequently, the appropriate solution needed to have the capacity to stretch across the same boundaries.

Congress passed legislation and created new federal agencies to prevent major events of this type from happening again. TSA and CFPB served as intervention strategies injected into the systems of civil aviation security and consumer financial markets to gain control over potential systemic failures. To exercise control over a system, each agency had to function as director (standard setting), detector (information gathering), and effector (behavior modification) as each agency established itself as part of the existing system. (Refer back to Figures 4 and 5 for a comparison between open systems with and without risk bureaucracies).

The creation of new federal agencies has shown a trend that continues to expand the reach of governmental control and oversight, as demonstrated by the following concentric circles.

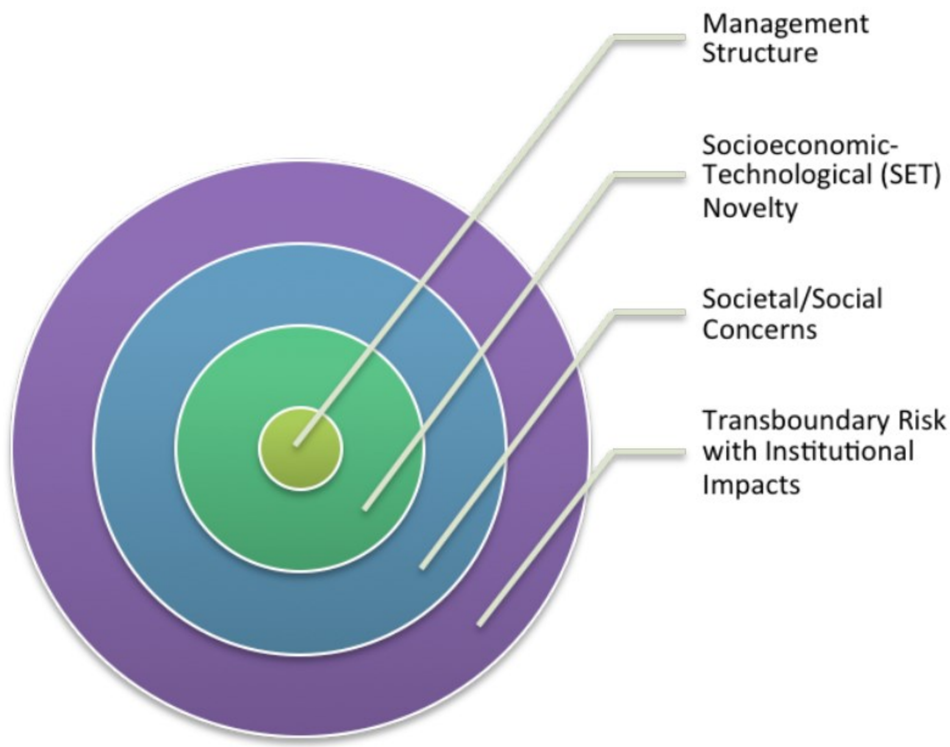

Figure 6. The expansion of governmental control and oversight through agency creation. Created by author of this dissertation based on literature review.

CHAPTER III

THEORETICAL FRAMEWORK

Public administrators may be required to act before all facts are known. Applying a solution before the real problem is clearly defined can be expensive and ineffective. The Transportation Security Administration (TSA) and the Consumer Financial Protection Bureau (CFPB) were provided as solutions before the problems were completely investigated.

Three major events have occurred since the turn of the century: the terrorist events of September 11, 2001 (9/11), Hurricane Katrina and its immediate aftermath, and the financial crisis from 2007-2009 (highlighted by the financial crash of 2008). This chapter looks at major events, the legislation that followed, and the creation of risk bureaucracies. This chapter covers theories that explain policy processes that allow the application of a solution before the problem has been determined. It also looks at how a major event can create the political opportunity for a new agency and comprehensive reform efforts.

There is no single theory that explains the creation of risk bureaucracies in response to major events; however, an examination of the events surrounding the creation of the TSA and the CFPB provides a framework for explaining the phenomenon and exploring each agency's design. Theories and concepts from the fields of public administration (domestically and abroad) and public policy are used to create a theoretical framework for understanding the creation of risk bureaucracies in response to major events. This chapter presents the theoretical framework composed of garbage can theory (GCT), focusing event theory (FET), punctuated equilibrium theory (PET), and cybernetic control theory (CCT) as a way to understand both policy adoption and implementation of risk bureaucracies. TSA and CFPB are the case studies. The term *major event* has been used in this study to refer to events such as 9/11, Hurricane Katrina, and the financial crisis/crash. This term will be replaced with the term *focusing event* for the purpose of this chapter to be consistent with language used in applicable theories.

The theoretical framework for this study has four components: theories, enabling statute, new government agency, and risk bureaucracy (see Figure 7).

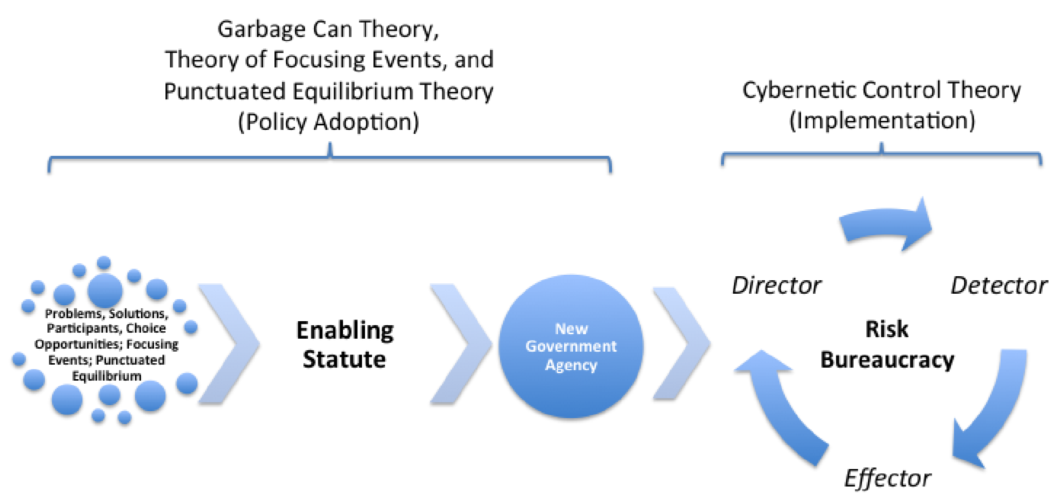

Figure 7. Risk bureaucracy analytical framework: Policy adoption and implementation (theories included). Figure created by author of this dissertation.

The first three components are part of the policy adoption phase, while the last component is part of implementation. What follows is an explanation of the framework in the order of its components.

Policy Adoption and Implementation

The creation of TSA and CFPB had two phases: policy adoption and implementation. Policy adoption included the policy process, which is best understood through the common theoretical elements of GCT, FET, and PET, while implementation (i.e., how the policies are carried out) is explained by CCT. The creation of both agencies can be traced back to focusing events, specifically 9/11 and the financial crash of 2008, but these two events were not the first signs of trouble. Civil aviation security and consumer financial markets both experienced warning signals before the focusing events occurred. However, each focusing event was the moment policymakers, the elite, media, and the public simultaneously focused their attention on the problem.

Timing is a critical piece in understanding this phenomenon; a focusing event signals that the time has come. GCT explains that problems, solutions, participants, and choice opportunities flow as independent and parallel streams until such time that they merge, forcing a decision to be made. All four streams and a focusing event are present before a new agency is created. The framework created for this research identifies a bifurcated process for creating new federal agencies. GCT, FET, and PET provide a theoretical anchor for establishing the agencies, while CCT provides the theoretical foundation for implementation. As demonstrated in Figure 7, *policy adoption* is a process and *implementation* is a system. In Chapter V, the research transitions to the implementation phase of the framework, which includes collecting and analyzing secondary data for assessing TSA and CFPB as risk bureaucracies.

Theories

The following discussion pertains to the analytical framework used for this study. It begins with a discussion of the three theories influencing this study (i.e., GCT, FET, and PET), which is followed by a discussion about enabling statutes and new government agencies. The framework concludes with the formation of a new agency in the form of a risk bureaucracy. The components of CCT are present during implementation of the risk bureaucracy.

GCT: Problems, Solutions, Participants, and Choice Opportunities

GCT is used to describe the policy process stating that there are four streams (i.e., problems, solutions, participants, and choice opportunities) that flow separately until a major event (i.e., a focusing event) occurs, thus causing the streams to collide. The collision opens the policy window and forces policymakers (i.e., participants) to make critical decisions (Cohen et al., 1972). *Problems* are defined as concerns held by people inside and outside of an organization that need attention. *Solutions* are answers to the problems.

GCT suggests that although solutions are answers to problems, the solutions existed before the problems surfaced. GCT recognizes that solutions are often answers looking for problems to solve, rather than problems looking for answers. *Participants* are those working to solve the problems. Participants must focus their attention on multiple problems and are limited in the amount of attention they can provide to any given problem. Consequently, participants vary and do not provide full-time participation in solving problems. Lastly, *choice opportunities* are occasions when participants must make decisions.

A similar theory appropriate to mention is Kingdon's (2003) multiple streams theory (MST). MST is Kingdon's version of applying GCT to the federal government. MST is used to describe agenda setting, stating that there are three process streams (i.e., problems, policies, and politics) that flow separately until a significant event occurs in one of the process streams. The significant event creates a "window of opportunity" for policy entrepreneurs to converge the streams and couple problems and policies within the given political environment (Nowlin, 2011). The converging of streams forces policymakers to make critical decisions (Kingdon, 2003; O'Neal, 2011).

Similar to GCT, *problems* are defined as issues that gain the attention of those working in and around government. *Policies* are those within the policy community who focus on generating proposals to solve problems. *Politics* refers to political influences, public opinion, election results, and administration changes that continually shift the composition of individual actors participating in the process (Kingdon, 2003).

In the case of civil aviation security the problem was the threat of a terrorist act being carried out on an aircraft or at an airport; Congress fulfilled the role of an organization concerned about the problem; the solutions included the structures, technology, people, and tasks (Leavitt, 1965, as cited in Burke, 2008) used to prevent or mitigate the threat; the participants are the policymakers (i.e., members of Congress); and the choice opportunity is when a focusing event shocks the system and allows change to be introduced.

Civil aviation security has a history of being a reactive, event-driven, industry and has been referred to as a tombstone industry. Death has been a significant motivator of policy change. From the introduction of security screening (by use of metal detectors for passengers and x-ray machines for carry-on baggage) as mandated by the Air Transportation Act of 1974 (Engle, 2011), to the deployment of the first Sky Marshals in 1970, these mandates became the original tasks, technology, and people used to mitigate the threat.

The focusing event in civil aviation security that led to creating TSA before an investigation was completed was the terrorist attacks on September 11, 2001. However, the solution of a federalized, government-run, workforce was not new in aviation security. More than 20 years ago, Europe had government-run airport security (Stossel, n.d.).

In the case of consumer financial markets, the problem was the threat of hidden tricks and traps in financial transactions between consumers and those servicing loans or extending credit. Some may have thought that the problem was a matter of consumers getting in over their heads by making poor financial decisions. However, the problem was fueled by financial institutions' charging higher interest rates on loans for the purpose of making an *extra* profit (Warren, 2007). In other words, when consumers qualified for loans at cheaper rates, the cheaper rates were not offered. It became a practice to offer loans that were unfavorable to borrowers. This included loans to those who could not demonstrate the ability to repay.

As stated earlier, solutions come in the form of structures, technology, people, and tasks (Leavitt, 1965, as cited in Burke, 2008). A solution offered prior to the financial crash of 2008 by Harvard Law Professor, Elizabeth Warren (subsequently elected as U.S. senator from Massachusetts) was to create a Financial Product Safety Commission. A Financial Product Safety Commission would serve as a federal agency capable of inspecting financial products to ensure they did not harm consumers. An agency to protect consumers from harmful products was not new. The Consumer Product Safety Commission was established in 1972 (Radin & Chanin, 2009), which was approximately 35 years before Warren's idea of a similar agency for financial products.

As noted in the case of civil aviation security, Congress fulfilled the GCT role of participant in solving the problem in the consumer financial market. The choice opportunity presented itself in 2008 when the U.S. financial market crashed, Lehman Brothers filed for bankruptcy, American International Group's (AIG's) credit rating was downgraded, and policymakers were forced to deal with a consumer financial problem that had been brewing for months. The focusing event in the consumer financial market was the financial crash of 2008.

Table 7

Garbage Can Theory Application

GCT	Theory application
Problems	Terrorism Harmful financial products and services
Solutions	Transportation Security Administration Consumer Financial Protection Bureau
Participants	Congress
Choice opportunities	9/11 terrorist attacks 2008 financial crash

FET

A focusing event is a harmful event, such as a disaster, crisis, or catastrophe that has a scope and impact that simultaneously grabs the attention of policymakers, the elite, media, and the public (Birkland, 1995, 2009). In his dissertation *Towards A Theory of Focusing Events and Agenda Change*, Birkland (1995) explained that focusing events exist on a continuum and the degree to which an event becomes *focal* is what is most important. He then highlights *potential focusing events* to provide examples of the FET spectrum. Potential focusing events can be identified to the extent that they are sudden, unplanned and unpredictable, aggregate harm, harm, and simultaneously inform (Birkland, 1995; see Table 8).

The 9/11 terrorist event, in which al-Qaeda terrorists hijacked four U.S. commercial airplanes and flew two airplanes into the World Trade Center, flew one airplane into the Pentagon, and flew one airplane into an open field near Shanksville, Pennsylvania, is an example of a focusing event. The FET applies to this research because this single terrorist event was able to simultaneously grab the attention of policymakers, the elite, media, and the general public (domestically and abroad). It was unplanned (from a perspective of victims and public administrators) and unpredictable, it aggregated harm, it harmed, and it simultaneously informed. The terrorist attacks immediately began to influence the agenda of government. What is important to remember about focusing events is that they force items onto the policy agenda (Birkland, 1995; Corbin, 2010; Fleming, 2010).

Table 8

Spectrum of Potential Focusing Events

Element	Description
Sudden	With no warning (Birkland, 1995).
Unplanned and unpredictable	Impossible to predict (Birkland, 1995).
Aggregates harm	Affects large numbers of people. "Conditions must deteriorate to crisis proportions before the subject achieves enough visibility to become an active agenda item" (Birkland, 1995, p. 14).
Harms	Current, actual, or potential harms that could be more serious in the future.
Simultaneously informs	The public and interest groups learn of the focusing event at the same time.

Note. This table of potential focusing events was developed by the author based on information from "Toward a Theory of Focusing Events and Agenda Change," by T. A. Birkland, 1995, ProQuest Dissertations and Theses (UMI No. 9616574).

PET

Baumgartner and Jones (1993) described a theory similar to focusing events in their work on PET. PET is used to describe the policy process by stating that there is a period of stasis in policymaking, which is interrupted by a significant event that punctuates the equilibrium and forces its way onto the political agenda (Baumgartner & Jones, 1993).

There is equilibrium in the public policy system until something, such as a focusing event, upsets it. Action must be taken to restore stasis. Congress's introduction of legislation to create TSA and CFPB was an attempt to restore stasis.

Enabling Statute

GCT, MST, FET, and PET share common elements that explain the policy process. The terrorist events and the financial crash successfully grabbed the attention of policymakers and were placed on the political agenda. On November 19, 2001, the Aviation Transportation Security Act (ATSA) was passed and TSA was established. On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) was passed and CFPB was established. Both enabling statutes preceded the completion of the congressional investigations triggered by the events. TSA was created 33 months prior to the completion of *The 9/11 Commission Report* (National Commission on Terrorist Attacks, 2004) and CFPB was established 6 months prior to the completion of *The Financial Crisis Inquiry Report* (Financial Crisis Inquiry Commission, 2011; see Tables 9 and 10 in Chapter V for significant dates pertaining to each agency).

New Government Agency

What is learned from the previous chapter is that (a) government reorganization reflects societal and political problems (Radin & Chanin, 2009), (b) new government agencies are a result of changes in socioeconomic-technology (SET novelty; Grafton, 1975), and (c) risks brought about by globalization make it challenging for governments to respond (Kettl, 2002). These factors assist in explaining the creation of a risk bureaucracy.

Some may applaud the government's ability to work so quickly in passing the ATSA. However, one may question whether policy should be produced so fast. Birkland (2009) described documents produced quickly after an event as "fantasy documents." Focusing events are so powerful that the public demands that something be done to prevent a repeat occurrence. The pressure to "do something" is what drives the speed of the document being produced. However, the amount of time that has transpired from the focusing event, to the produced document, is often too short for these documents to be the product of lessons learned from the event. They are likely to be the product of warning signals.

The effectiveness of quickly produced documents is questionable. In tactical or operational settings, negative events are followed-up by after-action reports. These reports are usually due the day after the event to ensure that *what went wrong* doesn't happen again. The challenge with after-action reports that are due within 24 hours is that they lack information needed to determine what truly went wrong and can therefore lead to insufficient countermeasures to prevent the problem from happening again.

Due to the magnitude of 9/11 and the financial crisis, it can be argued that the speed in which polices were produced to ensure that these events would not happen again, was too quick for one to have a full understanding of what actually went wrong. As such, Birkland (2009) would likely deny that lessons have been learned, but would conclude that lessons have been observed. The *observed* lessons are the basis of the fantasy documents.

In examining the transition from 9/11 being a focusing event, to the quick production of legislation to create a new agency, the work of Birkland would suggest that the legislation was based on lessons observed rather than lessons learned. Birkland's (2009) work would also suggest that ATSA was equivalent to a fantasy document. The primary intent of a fantasy document is not to solve the problem, but rather to show that an authoritative actor has done something about the disaster (Birkland, 2009). In the case of 9/11 and the financial crisis, the authoritative actor (i.e., Congress) has *done something* about the disaster. Congress created new government agencies: TSA and CFPB. On the other hand, the work of Cohen et al. (1972) would likely describe the legislation as a solution looking for a problem. The idea of the government or the airport being responsible for airport screening was an idea that had already been discussed (U.S. General Accountability Office [GAO], 2000).

Agency formation. The TSA was established within the Department of Transportation (DOT) on November 19, 2001, when President Bush signed the ATSA (2001; *Transportation Security: Post-September 11th Initiatives*, 2003). By December 2002, TSA had hired more than 60,000 employees to screen passengers, screen checked baggage, and serve as federal air marshals (*Transportation Security: Post-September 11th Initiatives*, 2003). Additionally, approximately 90% of checked baggage was being screened for explosives (*Transportation Security: Post-September 11th Initiatives*, 2003).

As an organization, TSA would function as a living system. The three criteria for understanding life, and therefore living systems, are pattern, structure, and process (Capra, 1996). Capra (1996) defined *pattern* as the manner in which things are organized. The pattern shows how the relationships in a system are configured. The pattern manifests as a specific form or quality and operates as a closed system. He also stated that *structure* is the physical embodiment of the pattern (Capra, 1996). In other words, the pattern is housed in the structure. The structure interacts with the environment and is an open system. Lastly, he stated that *process* is the activity between the pattern of organization and the structure (Capra, 1996). Process can also be referred to as cognition. He distinguished structure from process by drawing a comparison between the brain and the mind. The brain is the structure but the mind is the process. The mind is what causes the pattern of organization to relate to the structure.

In understanding how Capra's (1996) theory of living systems applies to creating TSA and the CFPB, the structure is the new federal agency, the process refers to the policies and regulations that the agency must implement and enforce, and the pattern of organization is the organizational structure (e.g., hierarchical, flat). TSA and CFPB, as structures, house the employees who have a specific organizational structure. The employees handle the agency's processes by implementing the agency's policies. As new agencies, TSA and CFPB handle the processes set forth in the enabling statutes and initial policies. However, further along in the agency's development, lessons learned from the focusing event (as provided in mandated reports from each respective congressional investigation) offer opportunities to shape both agencies.

Learning and adapting. Learning can be either single loop or double loop. Argyris (2002) explained that learning happens when one detects an error and then takes action to correct it. He defined single-loop learning as focusing on the errors and why they occurred, while double-loop learning is looking at the variables in the corrective action plan and making modification to those variables so that a different set of actions can be developed to address the error.

The Congressional investigations completed after TSA and CFPB were established offer opportunities for double-loop learning. *The 9/11 Commission Report* (National Commission on Terrorist Attacks, 2004) was released July 22, 2004, which was 33 months after the legislation that created the TSA (i.e., ATSA) was enacted. Likewise, on January 27, 2011, *The Financial Crisis Inquiry Report* (Financial Crisis Inquiry Commission, 2011) was released, which was 6 months after the legislation that created the CFPB (i.e., Dodd-Frank) was enacted.

The goal of the 9/11 Commission was to uncover how the attacks happened and how to avoid the tragedy from happening again (National Commission on Terrorist Attacks, 2004). Similarly, the goal of the Financial Crisis Inquiry Commission was to determine the causes of the financial and economic crisis. Their initial calling was to examine the crisis and report what happened, how it happened, and why it happened (Financial Crisis Inquiry Commission, 2011). Congress's initial legislation establishing each agency is the outcome of single-loop learning, while the report from each congressional commission is an opportunity for double-loop learning. Each agency would have to incorporate changes based on the congressional investigations for double-loop learning to happen. When agencies can correct errors, learn, and adjust to new information, they have the opportunity to fortify the organization and be more effective.

CCT

Cybernetics, a term introduced in 1948 by Norbert Weiner, is derived from the Greek word *kuberbetes*, which means governor (Halpern, 2012). CCT is a theory of self-regulation whereby a governing body exercises control of a system. It is a science of control and communication (or signaling) in which it attempts to shape the future by sending messages. Hood et al. (2001) explained that any control system must have a minimum of three cybernetic control components: standard setting, information gathering, and behavior modification. Heng and McDonagh (2011) claimed that risk bureaucracies must have the same three components; however, they referred to these components as director, detector, and effector (see Table 4 in Chapter II).

The creation of the recent risk bureaucracies began with the policy process as described by the common theoretical elements of GCT, FET, and PET. Once Congress passed legislation to create a new agency, the implementation had to be carried out by the hired workforce. Based on CCT, implementation is carried out by setting standards, gathering information, and modifying the behavior of others in a system. The new agencies became part of an existing system with the purpose of exercising control in order to prevent another 9/11 or financial crash. TSA became a part of the civil aviation security system and CFPB became a part of the consumer financial market system. Each agency is a risk bureaucracy, as demonstrated by how they carry out policy in their daily operation. Chapter V provides an analysis of secondary data to support the claim that

TSA and CFPB are risk bureaucracies. Figure 8 illustrates a system with cybernetic control, such as a risk bureaucracy.

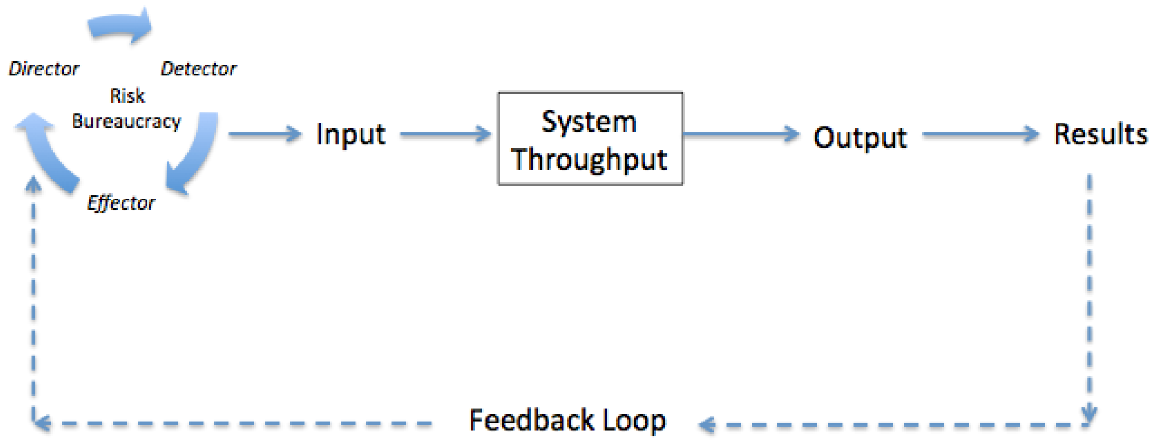

Figure 8. An open system controlled by a risk bureaucracy (A cybernetic control system). Adapted from systems theory, *A Framework for Political Analysis*, by D. Easton, 1965 (Englewood Cliffs, NJ: Prentice-Hall); and *The Politics of the Administrative Process* (5th. ed.), by D. F. Kettl, 2012 (Washington, DC: CQ Press).

Analytical Framework Description

GCT: Problems, solutions, participants, and choice opportunities. A theory that explains the policymaking process as one that involves problems, solutions, participants, and choice opportunities. When a crisis or disaster occurs requiring a decision to be made, participants couple existing solutions with exiting problems to address the issue (Cohen et al., 1972).

Focusing event. A harmful event that has a scope and impact that simultaneously grabs the attention of policymakers and the elite (Birkland, 1995, 2009). Mass media affects the public's attention and has the ability to shape, magnify, and structure an issue (Kingdon, 2003).

Punctuated equilibrium. A period of stasis suddenly or violently interrupted and therefore results in revolutionary change, rather than incremental change.

Enabling statute. A piece of legislation that grants an agency new authority or additional authority to carry out specific actions and government policies.

New government agency. In this context, new government agency represents a new federal agency that was created in response to a focusing event.

Risk bureaucracy. An agency that exercises cybernetic control over a system by fulfilling the roles of director (standard setting), detector (information gathering), and effector (behavior modification; see Figure 9 and Table 9).

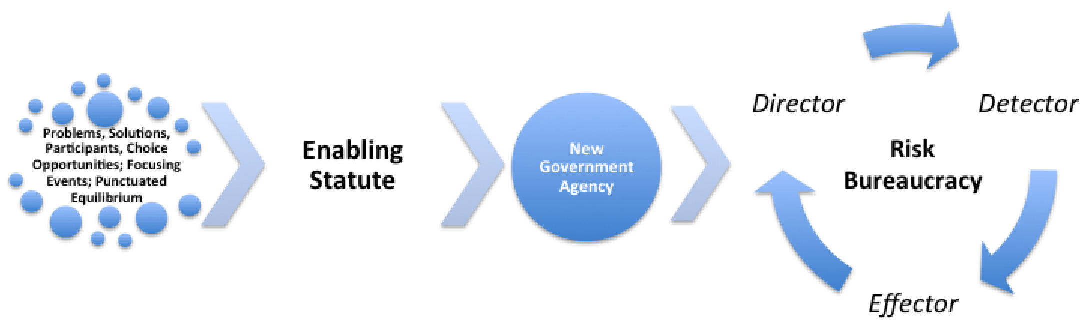

Figure 9. Risk bureaucracy analytical framework. Figure created by author of this dissertation.

Table 9

Component Description: New Agencies Created as Risk Bureaucracies

Component	Description
Garbage can theory	A theory that explains the policy process as one that involves problems, solutions, participants, and choice opportunities. Problems represent the concerns of people internal and external to the organization. Solutions are answers to the problems. Participants are those who enter and exit at different stages of the decision-making process based on their available time and attention. Choice opportunities are occasions when decisions are made (Cohen et al., 1972).
Focusing event	A harmful event that has a scope and impact that simultaneously grabs the attention of policymakers and the elite (Birkland, 1995, 2009).
Punctuated equilibrium	A period of stasis that is suddenly or violently interrupted and therefore results in revolutionary change, rather than incremental change.
Enabling statute	A piece of legislation that grants an agency the authority to carry out specific actions and government policies for the purpose of preventing a reoccurrence of the focusing event.
New government agency	A newly created federal agency established to implement the enabling statute and prevent a repeat occurrence of a specific focusing event.
Risk bureaucracy	A government agency exercising cybernetic control over a system by fulfilling the roles of director (standard setting), detector (information gathering), and effector (behavior modification).

Conclusion

The terrorist events of 9/11 and the financial crash of 2008 were focusing events that punctuated the equilibrium of the policy system and made it unstable. The significance of these two events was that their scope, impact, and the adamant public outcry that "something must be done," caused Congress to take action. The aggregated harms caused by each event elicited a response at the federal level. Congress passed legislation and established new agencies. On November 19, 2001 (2 months and 8 days after 9/11), the ATSA established TSA. On July 21, 2010, Title X of Dodd-Frank established CFPB. The financial crisis began in 2007 and lasted through 2009 (GAO, 2013; Cluchey, 2011). Significant attention was drawn to the problem during the 2008 financial crash. Dodd-Frank was passed 2 years after the crash.

Various theories explain how policy could be produced in such a short time after the focusing event. GCT explains that solutions and problems already exist in the garbage can and a focusing event allows participants to match the appropriate solution to its corresponding problem. The terrorist events of 9/11, the financial crash of 2008, and the policies that followed are examples of events gaining the attention necessary to be placed on the policy agenda, media agenda, and government agenda. In fact, Kettl (2007, 2014) described the terrorist events of 9/11 as being so impactful that it actually kicked the policy window open. What would follow was the creation of risk bureaucracies: TSA and CFPB.

CHAPTER IV

METHODOLOGY

This dissertation, which is a comparative case study of the Transportation Security Administration (TSA) and the Consumer Financial Protection Bureau (CFPB), provides an opportunity to explore the creation of new federal agencies. TSA and CFPB provide an important context for understanding agency creation and the agency design of risk bureaucracies. Exploring the presence of cybernetic control will assist in assessing the agency's design.

This chapter discusses the research method used for this study. What follows is (a) the purpose of this study; (b) the research questions; (c) the research design (i.e., Yin's [2014] model for comparative case studies, Creswell and Plano Clark's [2001] research design procedure, and the analytical framework introduced in the previous chapter); and (d) the protocol for data collection and analysis. This chapter is followed by a findings chapter, which includes the key findings related to the research questions posed for this study.

Purpose of the Study

The terrorist events of 9/11 resulted in the creation of TSA, and the financial crash of 2008 resulted in the creation of CFPB; however, this author introduces the argument that a transboundary risk that threatens institutions shaped the creation of these agencies. Since transboundary risks that threaten institutions led to creating TSA and CFPB, these agencies have to be able to control risk. Therefore a theory of control is used to evaluate each agency's design. The study was conducted under the premise that new federal agencies operate as risk bureaucracies. The purpose of this study was twofold: explore the context for creating TSA and CFPB and determine the extent to which TSA and CFPB have a risk bureaucracy design. This was achieved by evaluating each agency against the cybernetic control functions of standard setting (director), information gathering (detector), and behavior modification (effector). Each agency's design was tied to its ability to control its respective system, and therefore prevent another major event.

A framework illustrating the process from policy adoption to implementation is being tested. This framework explains how a major event can lead to the creation of a risk bureaucracy. Secondary data were collected and analyzed to assess TSA and CFPB as risk bureaucracies, draw conclusions, and discuss implications. An examination of this phenomenon (i.e., major events followed by risk bureaucracies) also explained the recent pattern of creating new federal agencies. A research model and framework were used to evaluate TSA and CFPB.

Research Design and Justification

This research is a comparative case study (also referred to by Yin [2014] as a multiple-case study), which is known for being more compelling and more robust than a single-case study (Herriott & Firestone, as cited in Bryman, 2012; Yin, 2014).

As a comparative case study, a replication design was used, which predicted similar results (see Figures 10 and 11). The replication design demonstrates a theoretical proposition that since the turn of the century (a) new federal agencies are created in response to major events, (b) the major events are a demonstration of risks that cross borders and have institutional impacts, and (c) the new agencies responsible for managing the risk are risk bureaucracies. TSA and CFPB were selected for the comparative case study because they were created within the specified timeframe (i.e., after 2000), they represented agencies responding to major events in two distinct systems (i.e., civil aviation security and consumer financial markets), and they were high profile cases within the specified timeframe. A study of these two agencies enabled an examination of (a) the research questions, (b) the analytical framework, and (c) the notion

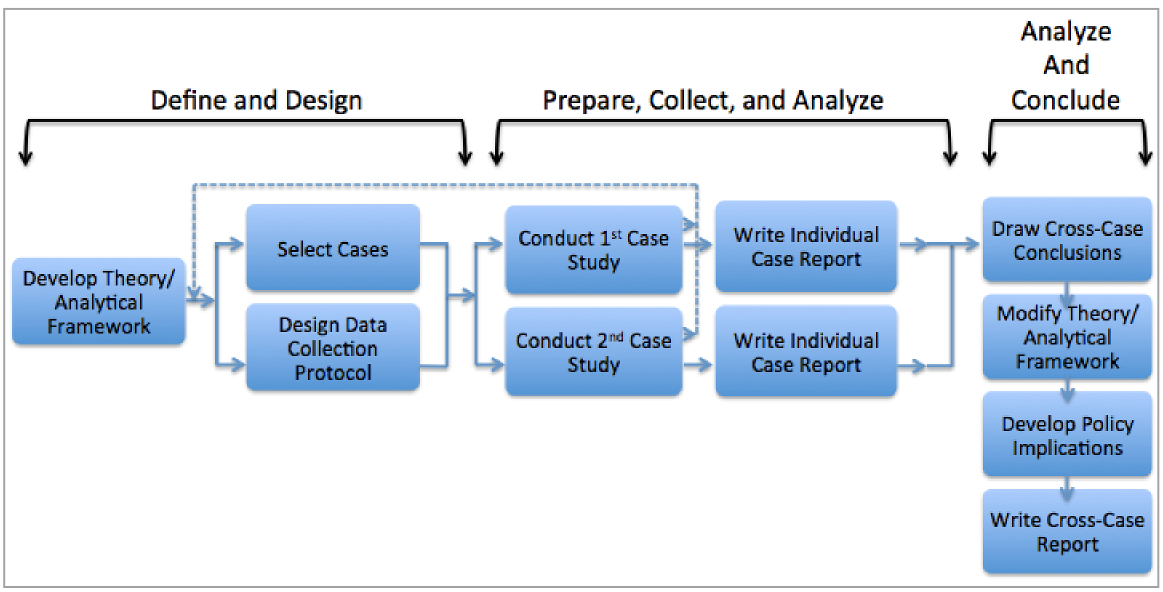

Figure 10. Comparative case study model. Adapted from *Case Study Research: Design and Methods* (5th ed.), by R. Yin, 2014, p. 60 (Thousand Oaks, CA: Sage).

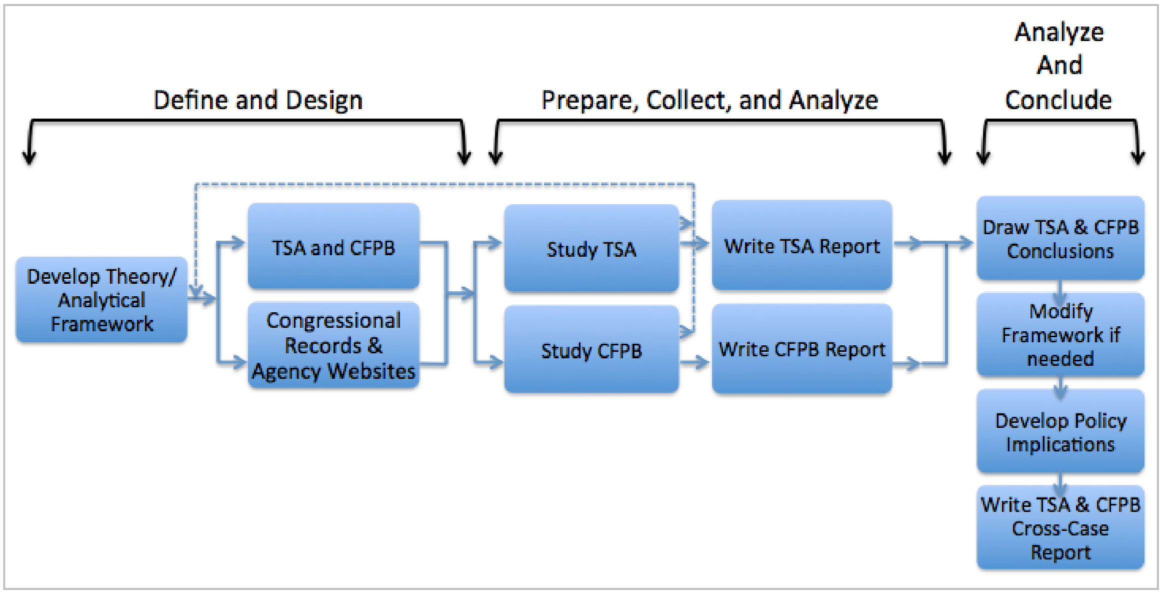

Figure 11. Comparative case study model applied to TSA and CFPB. Adapted from *Case Study Research: Design and Methods* (5th ed.), by R. Yin, 2014, p. 60 (Thousand Oaks, CA: Sage).

of modern-day agencies as risk bureaucracies. TSA and CFPB provide the context and content for examining policy adoption and implementation of new federal agencies and how they operate as risk bureaucracies.

A multiphase research procedure (see Figure 12) was used to examine specific research questions that evolve and lead to a larger program objective. The exploratory nature of the design allows one to conduct research where there are no measures or instruments available to measure the phenomenon, the variables for the phenomenon are unknown, and there is no preexisting framework or theory to guide the research (Creswell & Plano Clark, 2011). Theories and concepts from public administration and public policy were used to develop the analytical framework.

The multiphase design allows for different parts of a study to address different research questions. The questions are incremental and are structured to provide a larger and overarching research objective (Creswell & Plano Clark, 2011). This research design was appropriate for evaluating events before, during, and after the creation of TSA and CFPB. Knowledge from this comparative case study will provide public officials, policymakers, and public administrators a better understanding of the environmental context in which federal agencies are created and criteria for assessing a risk bureaucracy's design. Furthermore, since this study is exploratory, it highlights the value of further investigating various hypotheses or propositions (Yin, 2014) regarding the creation and role of risk bureaucracies.

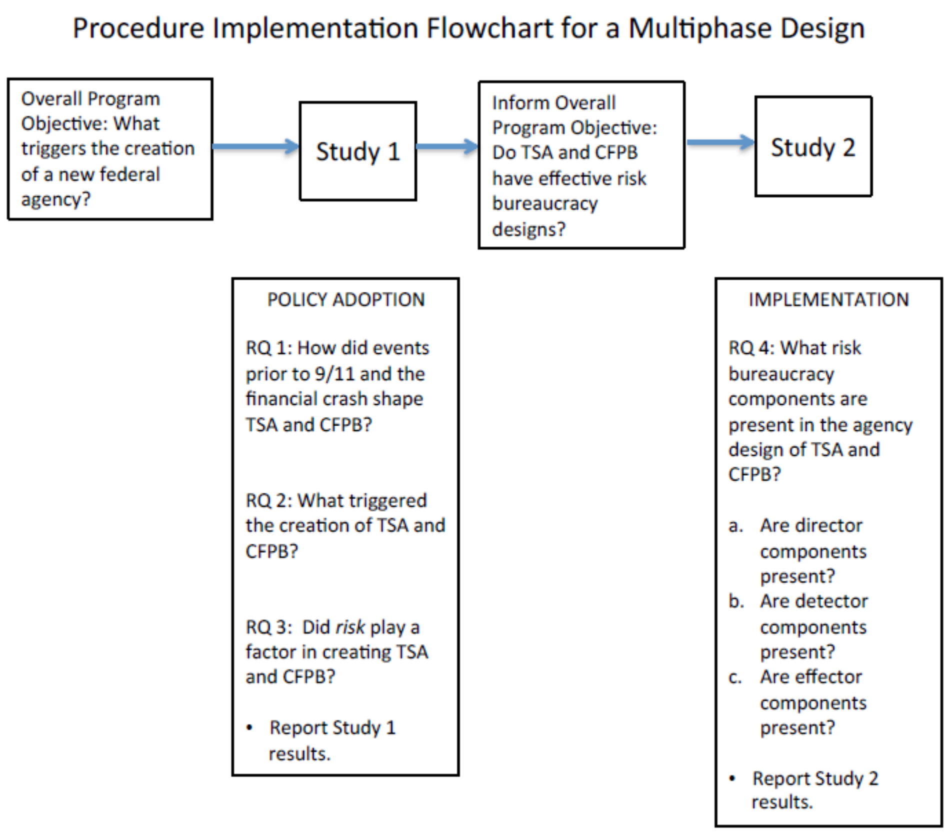

Figure 12. Procedure implementation flowchart for a multiphase design. Adapted from *Designing and Conducting Mixed Methods Research* (2nd ed.), by J. W. Creswell and V. L. Plano Clark, 2011, p. 102 (Thousand Oaks, CA: Sage).

The comparative case study is illustrated in Figure 11. It begins with theory development (in this case an analytical framework was developed) and ends with a written cross-case report, which is the final chapter of this study. Although the theory development/analytical framework development occurs at the beginning of the process, the output from each case study has a feedback loop that modifies the theory/analytical framework if needed (Yin, 2014). The flowchart for a multiphase procedure (see Figure 12) illustrates questions pertinent to TSA and CFPB. The cases are examined concurrently. Study 1 is conducted before progressing to Study 2. Figure 13 is the analytical framework referenced in Figure 11. Figure 14 is an integrated model of the methodology and analytical framework. Figures 15 and 16 illustrate how the theory applies to TSA and CFPB.

This research is based on the premise that when a federal agency is created as an intervention strategy to address a major risk, it will emerge as a risk bureaucracy. Studies on risk bureaucracy (to include risk regularity regimes and risk governance) reveal that risk is being bureaucratized, as demonstrated when an agency functions as director, detector, and effector. As director, the agencies set targets and goals; as detector, the agency examines how the existing state of the system is observed; and as effector, the agency uses its power and influence to bring about change (Heng & McDonagh, 2011). Director, detector, and effector can also be described as standard setting, information gathering, and behavior modification, respectively (Hood et al., 2001).

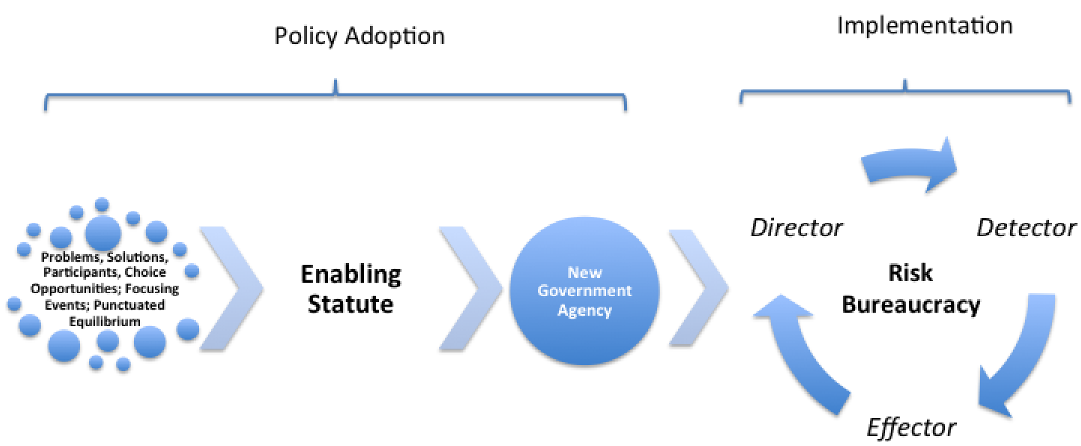

Figure 13. Risk bureaucracy analytical framework (policy adoption and implementation). Figure created by author of this dissertation.

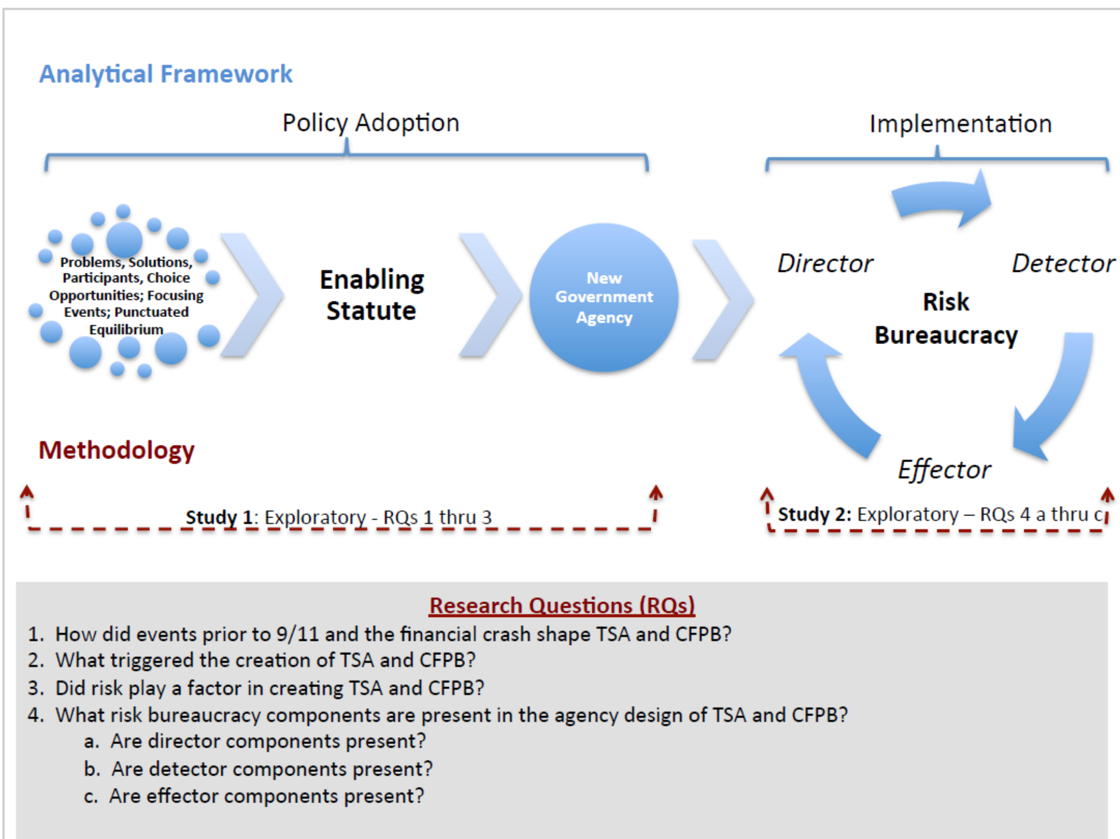

Figure 14. Integrated model of methodology and analytical framework. Figure created by author of this dissertation.

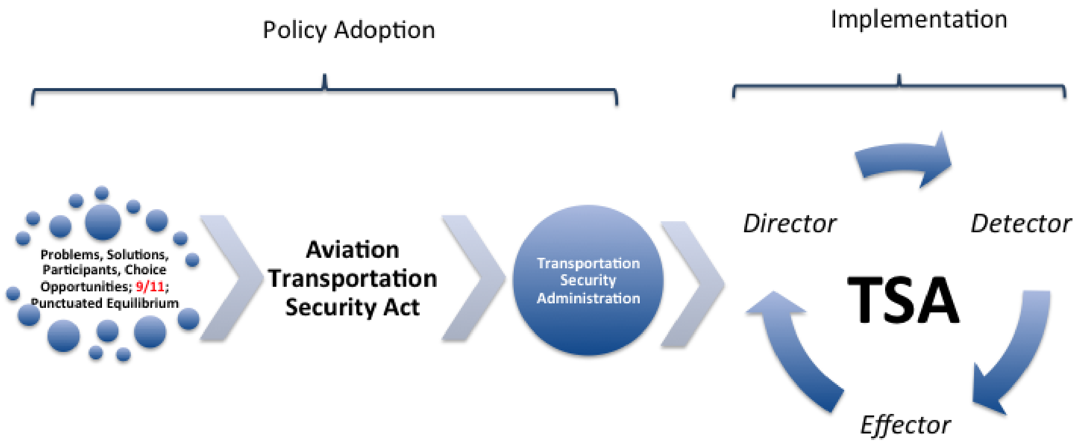

Figure 15. Risk bureaucracy analytical framework applied to TSA. Figure created by author of this dissertation.

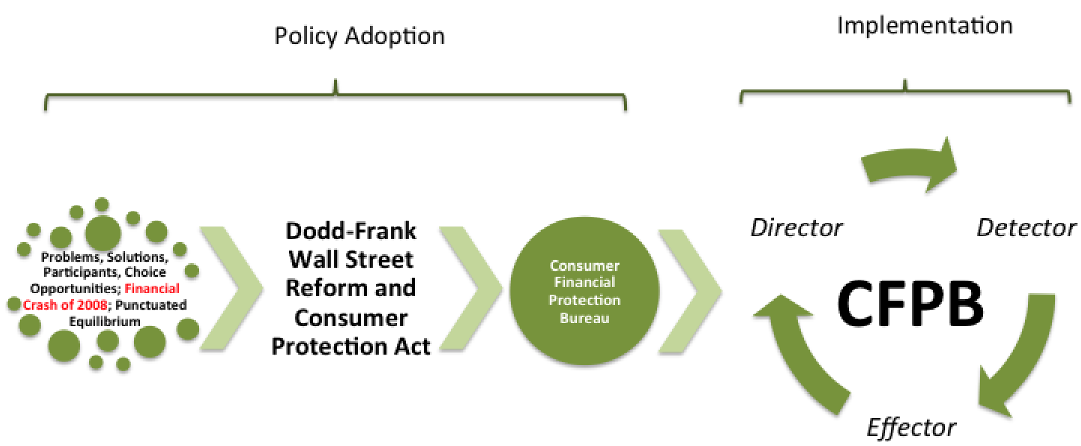

Figure 16. Risk bureaucracy analytical framework applied to CFPB. Figure created by author of this dissertation.

Theory Application to TSA and CFPB

This research examined the *Congressional Record* for the House of Representatives and the Senate in search for context pertaining to civil aviation security, terrorism, customers, financial institutions, and harmful financial products and services.

A contextual review of content pertaining to civil aviation security provides insight on both the impacted institution and the need for creating a new agency to provide aviation security services and prevent another event. Content pertaining to terrorism provides information about risk and its ability to cross boundaries. Content about customers provides information about vulnerabilities, consequences, and the need for creating a new agency to protect customers and prevent another event. Financial institution content provides information about both the impacted institution and the perpetrator of consumer financial risk. Finally, content about harmful financial products and services provides insight about risk and its global impact.

Each page containing content relevant to the risk and the impacted institution was tallied and analyzed. Documents 1 through 4 (specified below) were reviewed and analyzed for content pertaining to aviation security and terrorism, Documents 5 through 12 (specified below) were reviewed and analyzed for content pertaining to financial institutions and customers, and Documents 11 and 12 were analyzed a second time for content about harmful financial products and services. Risk was captured through the analysis of terrorism and harmful financial products and services.

1. House *Congressional Record* dated 09/11/2001 (U.S. Congress, 2001a)
2. Senate *Congressional Record* dated 09/12/2001 (U.S. Congress, 2001b)
3. House *Congressional Record* dated 11/16/2001 (U.S. Congress, 2001c)
4. Senate *Congressional Record* dated 11/16/2001 (U.S. Congress, 2001d)
5. House *Congressional Record* dated 09/16/2008 (U.S. Congress, 2008a)
6. Senate *Congressional Record* dated 09/16/2008 (U.S. Congress, 2008b)

7. House *Congressional Record* dated 10/03/2008 regarding Troubled Asset Relief Program (TARP; U.S. Congress, 2008d)
8. Senate *Congressional Record* dated 10/01/2008 regarding TARP (U.S. Congress, 2008c)
9. House *Congressional Record* dated 05/20/2009 regarding Credit Card Accountability Responsibility Disclosure (CARD) Act of 2009 (U.S. Congress, 2009b)
10. Senate *Congressional Record* dated 05/19/2009 Credit CARD Act of 2009 (U.S. Congress, 2009a)
11. House *Congressional Record* dated 06/30/2010 (U.S. Congress, 2010a)
12. Senate *Congressional Record* dated 07/15/2010 (U.S. Congress, 2010b)

This research also examined TSA and CFPB by using the director-detector-effector control components to determine if each agency has the capacity to function as a risk bureaucracy. The following documents in reference to the implementation phase of TSA and CFPB were reviewed to determine the presence of the three risk bureaucracy functions of director, detector, and effector, as explained by cybernetic control theory (CCT):

1. Official website: Agency mission
2. Official website: Agency activities

Research Questions

Research questions were developed to examine activities before, during, and after the creation of TSA and CFPB. The research questions are as follows:

1. How did events prior to 9/11 and the financial crash shape TSA and CFPB?
2. What triggered the creation of TSA and CFPB?
3. Did risk play a factor in creating TSA and CFPB?
4. What risk bureaucracy components are present in the agency design of TSA and CFPB?
    a. Are director components present?
    b. Are detector components present?
    c. Are effector components present?

Case studies are ideal for research that does not require behavioral observations and research that focuses on contemporary events (Yin, 2014). This dissertation examined how a major event can trigger the creation of a risk bureaucracy. Answers to these questions provide a snapshot of policy adoption and implementation since the turn of the century and therefore allowed the researcher to draw conclusions and discuss implications.

Data Collection and Analysis

The human condition of the 21st century is one of global risk (Heng & McDonagh, 2011). Recent studies suggested that TSA was a new risk bureaucracy (Heng & McDonagh, 2011). With literature about risk claiming that the financial crash of 2008 was like a "9/11" in the consumer financial market (Financial Crisis Inquiry Commission, 2011; Kaiser, 2013), it is fitting to expand the notion of risk bureaucracy to CFPB. Consistent with applying the terrorism theme to the financial crash, the harmful financial products have also been described as financial weapons of mass destruction (U.S. Congress, 2008b, 2008d).

This study used qualitative content analysis (QCA) to analyze data. Use of QCA is ideal when handling rich data that need interpretation, when handling data that is sampled from other sources such as the Internet or documents, when the data's meaning must be understood from a holistic approach, and when data are complex and context dependent (Schreier, 2013). Quantitative content analysis has a different focus that is not useful for this study (see Table 10).

Table 10

Differences Between Quantitative Content Analysis and Qualitative Content Analysis

Quantitative content analysis	Qualitative content analysis
Focus on manifest meaning	Focus on latent meaning
Little context needed	Much context needed
Strict handling of reliability	Variable handling of reliability
Reliability check more important than validity checks	Validity checks just as important as reliability checks
At least partly concept-driven	At least partly data-driven
Fewer inferences to context, author, recipients	More inferences on context, author, recipients
Strict sequence of steps	More variability in carrying out the steps

Note. Adapted from *Qualitative Content Analysis in Practice*, by M. Schreier, 2012, p. 16 (Thousand Oaks, CA; Sage).

Congressional Records and each agency's website was examined for content related to risk, institutional impact, the need for a new agency, and cybernetic control. Data collected from the *Congressional Record* focused on key search terms within a specific context. Search terms within an aviation security context (representing the impacted institution), included *airport security* and *aviation security*. Search terms within a terrorism context (representing the transboundary risk), included *terrorism, terror,* and *terrorist*. Search terms within a financial institution context (representing the impacted institution), included *bank(s)* and *financial institution(s).* Search terms within a harmful financial products and services context (representing the transboundary risk) included *loan, mortgage, credit card, financial product, financial services, financial instrument,* and *harm/harmful*. Search terms associated with the need for creating TSA and CFPB included *airport security* and *aviation security* for TSA and *consumer* for CFPB.

Each page of the *Congressional Record* of the House of Representatives or the Senate that used any of the aforementioned terms in a manner consistent with the context of this study was counted as one page. For example, a page with one paragraph mentioning terrorism was counted as one page with context regarding terrorism and an entire page with a discussion about terrorism also served as one page with context regarding the subject.

Part of this study was an examination of implementation that will determine the extent to which TSA and CFPB have a risk bureaucracy design by evaluating each agency against the cybernetic control functions of standard setting (director), information gathering (detector), and behavior modification (effector). Each agency's design is tied to its ability to control its respective system, and therefore prevent another major event.

This study used purposeful sampling of documents so that only content written, commissioned, and/or authorized by Congress, the TSA, or the CFPB was examined. Krippendorff (2013) referred to this as relevance sampling because its goal was to select textual units that contribute to answering the research questions. Relevance sampling is not probabilistic. The selected units of text do not represent a population of text, but rather a population of relevant texts (Krippendorff, 2013). The following categories of documentation were used:

1. *Congressional Records*
2. TSA and CFPB's official website
    a) "About TSA" link on TSA's website (URL: http://www.tsa.gov/about-tsa)
    b) "About us" link on CFPB's website (URL: http://www.consumerfinance.gov/the-bureau/)
    c) TSA: Layers of Security (a link on the "About TSA" webpage. URL: http://www.tsa.gov/about-tsa/layers-security)
    d) CFPB: Core Functions (also located on the "About Us" webpage. (URL: http://www.consumerfinance.gov/the-bureau/)

Delimitations

The scope of this study was limited to TSA and CFPB and was an examination of risk bureaucracies in two different industries. Both agencies were birthed from focusing events that occurred after the turn of the century; however, TSA was established 9 years before CFPB. The differences in each agency's maturity may affect the results of this study.

This study used secondary data to explain the context for creating TSA and CFPB and to determine if the agencies have a risk bureaucracy design. This study does not include interviews. While examining TSA, the researcher needed to avoid the inclusion of Sensitive Security Information (SSI), which is easier to manage when using open source, publicly available documentation versus conducting interviews. This study does not include SSI because doing so violates Title 49 CFR 1520. This study does not include classified information nor information that is not intended for public dissemination.

CHAPTER V

FINDINGS OF THE STUDY (DATA ANALYSIS)

In this chapter, findings are presented for each agency. The Transportation Security Administration (TSA) is discussed first and is followed by a discussion of the Consumer Financial Protection Bureau (CFPB). A table of significant dates is provided in each section. The discussion of TSA and CFPB is organized by research questions to compare the differences and similarities of the events before, during, and after the creation of a new federal agency. This chapter includes the results of the content analysis, which assisted in answering the research questions.

The *Congressional Records* for the House of Representatives and the Senate were analyzed. The key considerations used to conduct a comparative case study of the TSA and the CFPB are discussed. The analytical framework introduced in Chapter III is tested against the creation of TSA and CFPB. The results of the four research questions are described and content analysis is used to evaluate data.

Transportation Security Administration (TSA)

The mission of the TSA is to "protect the Nation's transportation system to ensure freedom of movement of people and commerce" (TSA, 2013, para. 2). TSA was created in response to the terrorist events of September 11, 2001. TSA was created on November 19, 2001, when President George W. Bush signed the Aviation and Transportation

Security Act (ATSA; also known as Public Law 107-71). This was 3 days after the legislation passed both the House and the Senate and approximately 2 months after the terrorist attacks. ATSA was 51 pages of legislation and the creation of TSA began on the first page of the document. TSA was initially housed within the Department of Transportation, but was later transferred to the newly created Department of Homeland Security when President Bush signed the Homeland Security Act of 2002. The agency was created under a Republican President with a Democratic-controlled Senate and a Republican-controlled House of Representatives. Initial support for TSA was bipartisan (*Implementation of the Aviation and Transportation Security Act,* 2002); however, a shift toward Democratic support would eventually follow.

There was no person who stood out as a single policy entrepreneur championing the legislation to create TSA; however, interest groups were vocal. According to May, Sapotichne, and Workman (2009a), policymakers called upon the best suited interest groups to assist with policy solutions. Some of the interest groups having an influence on Congress included Air Line Pilots Association (ALPA) and the Association of Flight Attendants. For example, ALPA President Captain Duane Woerth in his September 20, 2001, *Airport Security* testimony before the Committee on Commerce, Science, and Transportation, spoke about the need to have one level of security throughout the airline industry. He believed that security vulnerabilities could no longer be based upon the size of the aircraft, the size of the airport, or the destination of the flight (i.e., foreign or domestic); 9/11 proved that any aircraft could be a human-guided weapon. He called for 21 different short-term actions and nine long-term actions. Short-term actions included strengthening cockpit doors, allowing weapons in the cockpit, and increasing the presence of Federal Air Marshals (FAMs) on flights. Long-term actions included creating a new law enforcement agency that would focus on developing countermeasures for new and evolving threats. The new agency would hire motivated screeners, would pay the screeners well, and would ensure that the best screening equipment was used (*Airport Security,* 2001). Additionally, airline industry interest groups and lobbyists successfully convinced Congress that they were in need of a financial bailout due to the aircraft that were grounded for security reasons after 9/11 (Wayne & Moss, 2001.)

After ATSA was passed, creating the TSA, a Congressional investigation was completed and published as *The 9/11 Commission Report* (National Commission on Terrorist Attacks, 2004). A timeline of significant dates regarding the creation of TSA is provided in Table 11.

To gain a better understanding of risk bureaucracies (specifically, policy adoption and implementation), an analysis was conducted on a purposeful sample of *Congressional Records* and TSA's website. *Congressional Records* dated immediately following 9/11 were sampled (i.e., U.S. Congress, 2001a, 2001b) along with the *Congressional Record* for the day the legislation passed each chamber of Congress (i.e., U.S. Congress, 2001c, 2001d).

Two key considerations in creating TSA were risk (i.e., terrorism) and impacted institutions (i.e., aviation security). An analysis of these two topics within the *Congressional Records* of the House of Representatives and the Senate is provided in the following sections.

Table 11

Transportation Security Administration and Significant Dates

Date	Event
September 11, 2001	Terrorist attacks involving hijacked commercial airlines have significant impact on civil aviation security.
November 16, 1001	Both chambers of Congress agree and pass the Aviation Security Act.
November 19, 2001	President signs the Aviation and Transportation Security Act (ATSA), which establishes the Transportation Security Administration (TSA). (Public Law 107-71)
November 25, 2002	President signs the Homeland Security Act of 2002, which transfers TSA from the Department of Transportation (DOT) to the Department of Homeland Security (DHS). (Public Law 107-296)
November 27, 2002	President signs Congressional legislation authorizing the National Commission on Terrorist Attacks Upon the United States, also known as The 9/11 Commission. (Public Law 107-306)
December 31, 2002	As a requirement of ATSA, TSA has to fulfill more than 30 mandates by the end of 2002, to include federalizing more than 400 airports and assuming aviation security responsibilities from the Federal Aviation Administration (FAA).
March 1, 2003	DHS becomes operational with TSA as one of its agencies, as required by the Homeland Security Act of 2002 (see above).
July 22, 2004	The 9/11 Commission Report is completed and released, 33 months after TSA was created.
August 21, 2004	The 9/11 Commission officially closes.

Congressional Record Analysis: 9/11 Terrorist Attacks

At 8:46 a.m. American Airlines Flight 11 crashed into Floors 93-99 of the North Tower of the World Trade Center. The Senate was not in session that day, but the House of Representatives met at 9:00 a.m. According to the *Congressional Record*, it was apparent that knowledge of the event had not yet reached the House members of Congress. The morning hour debates were scheduled to begin and the rules governing the debates were articulated. The debates were scheduled to permit alternate members from each party the opportunity to speak. Each party would be allowed up to 25 minutes to speak; however, the amount of time allocated for each member would not exceed 5 minutes. The debates were not going to extend beyond 9:50 a.m.

The session began with Representative Earl Blumenauer (D-OR) talking about world health and the fight against HIV AIDS. Then Representative Cass Ballenger (R-NC) voiced his concerns about the manner in which the budget surplus was being debated. A debate regarding surpluses continued until the House recessed at 9:20 a.m. Recess was terminated at 9:52 a.m., at which time Speaker Pro Tempore Goss acknowledged the terrorist events of the day. The chaplain prayed and by 9:53 a.m., the House recessed. The legislative day for Tuesday, September 11, 2001, was postponed and was instead held on Wednesday, September 12, 2001.

The Senate and the House were both in session on September 12, 2001, and both chambers of Congress agreed to a joint resolution to condemn the terrorist attacks of September 11, 2001. In the House, all 435 members were afforded the opportunity to speak without time restrictions, which was different from the 5-minute allotment prescribed for debates just one day prior. The House began its session at 10:03 a.m. Wednesday morning and ended on Thursday morning at 1:10 a.m. (approximately 15 hours later). With the exception of approximately three pages of text, the 102-page *Congressional Record* of the House of Representatives demonstrates that the day was spent discussing the terrorist attacks.

House of Representatives—Congressional Records. The September 11, 2001, *Congressional Record* of the House of Representatives (102 pages total) revealed that only 17 (16.7%) pages contained content regarding aviation security, while 97 (95.1%) pages were devoted to terrorism (U.S. Congress, 2001a). The November 16, 2001, *Congressional Record* of the House of Representatives (89 pages total) revealed that 41 (46.1%) pages contained content regarding aviation security, while only 39 (43.8%) pages were devoted to terrorism (U.S. Congress, 2001c). The proportion of the dialogue regarding aviation security increased between September 11, 2001, and November 16, 2001, from 16.7% to 46.1%, representing a difference of 29.4%. However, the dialogue regarding terrorism dropped from 95.1% to 43.8%, representing a difference of 51.3%. When comparing discussions about the two topics, discussions about terrorism (i.e., the risk) were more prevalent on September 11, 2001, while discussions about aviation security (i.e., the institution impacted by terrorism) were more prevalent on November 16, 2001 (see Table 12 and Figure 17).

Table 12

Aviation Security and Terrorism: Congressional Record Content Comparison—House of Representatives

Congressional Record of the House of Representatives	Pages		
	Aviation security	Terrorism	Total
Date nearest focusing event 09/11/2001	17 (16.7%)	97 (95.1%)	102
Date legislation was passed 11/16/2001	41 (46.1%)	39 (43.8%)	89

Note. Percentages may not add up to 100% due to content overlap or content infrequency. Derived from content taken from U.S. Congress, House of Representatives. Proceedings and Debates of the 107th Congress, first session, September 11, 2001, *Congressional Record, 147*(117); and U.S. Congress, House of Representatives. Proceedings and Debates of the 107th Congress, first session, November 16, 2001, *Congressional Record, 147*(159).

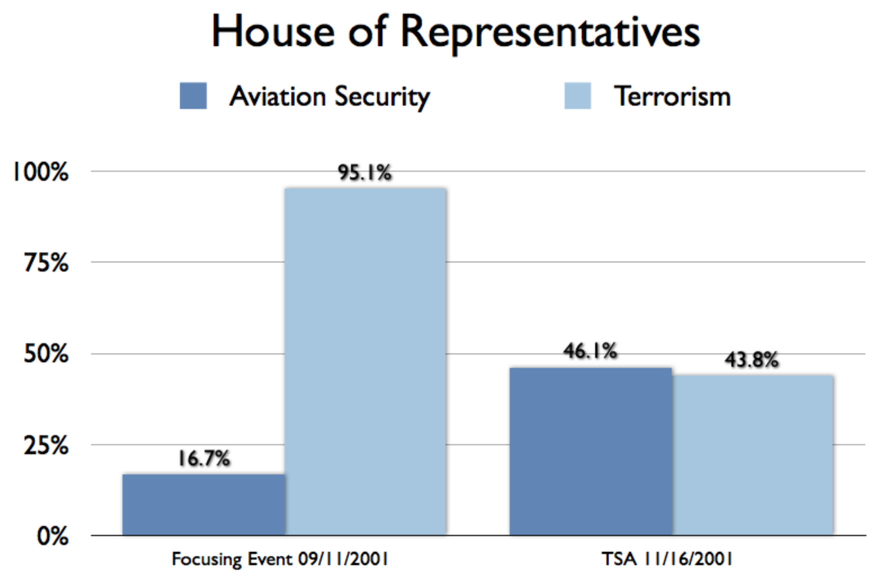

Figure 17. Aviation security and terrorism: *Congressional Record* content comparison—House of Representatives. Percentages may not add up to 100% due to content overlap or content infrequency. "TSA 11/16/2001" represents the date the House passed legislation creating TSA. Derived from content taken from U.S. Congress, House of Representatives. Proceedings and Debates of the 107th Congress, first session, September 11, 2001, *Congressional Record, 147*(117), and U.S. Congress, House of Representatives, Proceedings and Debates of the 107th Congress, first session, November 16, 2001, *Congressional Record, 147*(159).

Senate—Congressional Records. The September 12, 2001, *Congressional Record* of the Senate (60 pages total) revealed that only seven (11.67%) pages contained content regarding aviation security, while 53 (88.3%) pages were devoted to terrorism (U.S. Congress, 2001b). The November 16, 2001, *Congressional Record* of the Senate (44 pages total) revealed that only 14 (31.8%) pages contained content regarding aviation security, while 32 (72.7%) pages were devoted to terrorism (U.S. Senate, 2001d; see Table 13 and Figure 18). The proportion of the dialogue regarding aviation security increased between September 12, 2001, and November 16, 2001, from 11.7% to 31.8%, representing a difference of 20.15%. However, the dialogue regarding terrorism dropped from 88.3% to 72.7%, representing a difference of 15.6%. Discussions about terrorism (i.e., the risk) were more prevalent than discussions about aviation security (i.e., the institution impacted by terrorism) on both September 12, 2001, and November 16, 2001 (see Figure 18).

Table 13

Aviation Security and Terrorism: Congressional Record Content Comparison—Senate

	Congressional Record of the Senate Pages		
	Aviation Security	Terrorism	Total
Date nearest focusing event (09/12/2001)	7 (11.7%)	53 (88.3%)	60
Date legislation was passed (11/16/2001)	14 (31.8%)	32 (72.7%)	44

Note. Percentages may not add up to 100% due to content overlap or content infrequency. Derived from content taken from U.S. Congress, Senate, Proceedings and debates of the 107th Congress, first session, September 12, 2001, *Congressional Record, 147*(118); and U.S. Congress, Senate, Proceedings and debates of the 107th Congress, first session, November 16, 2001, *Congressional Record, 147*(159).

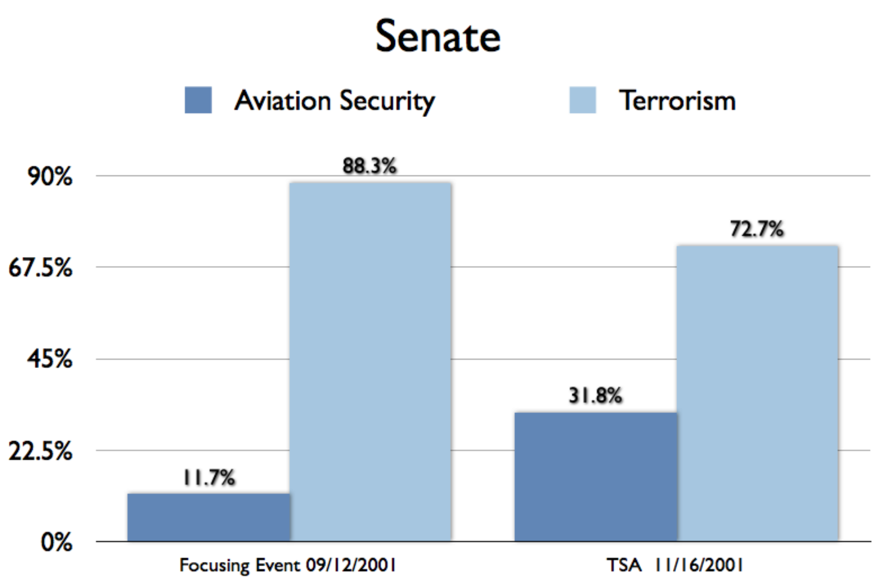

Figure 18. Aviation security and terrorism: *Congressional Record* content comparison—Senate. "Focusing Event 09/12/2001" is the date nearest 9/11 when the Senate was in session. "TSA 11/16/2001" represents the day Senate passed legislation creating TSA. Percentages may not add up to 100% due to content overlap or content infrequency. Derived from content taken from U.S. Congress, Senate, Proceedings and debates of the 107th Congress, first session, September 12, 2001, *Congressional Record, 147*(118); and U.S. Congress, Senate, Proceedings and debates of the 107th Congress, first session, November 16, 2001, *Congressional Record, 147*(159).

House and Senate. In both chambers of Congress, there was an increase in dialogue regarding aviation security between September and November, and a decrease in dialogue regarding terrorism (see Figure 19).

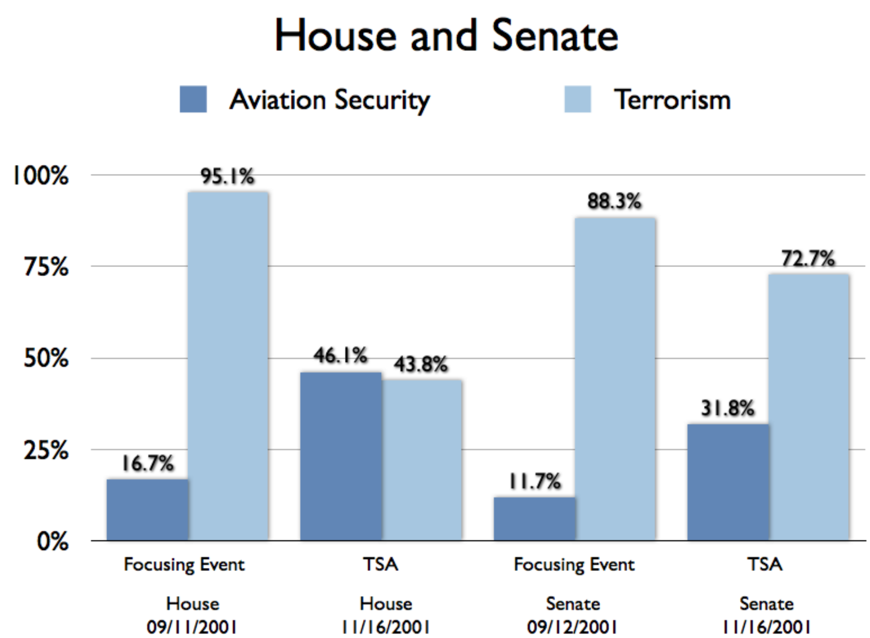

Figure 19. Aviation Security and Terrorism: *Congressional Record* content comparison. House and Senate. Percentages may not add up to 100% due to content overlap or content infrequency. Derived from content taken from U.S. Congress, House of Representatives. Proceedings and Debates of the 107th Congress, first session, September 11, 2001, *Congressional Record, 147*(117); U.S. Congress, House of Representatives, Proceedings and Debates of the 107th Congress, first session, November 16, 2001, *Congressional Record, 147*(159); U.S. Congress, Senate, Proceedings and debates of the 107th Congress, first session, September 12, 2001, *Congressional Record, 147*(118); and U.S. Congress, Senate, Proceedings and debates of the 107th Congress, first session, November 16, 2001, *Congressional Record, 147*(159).

In addition, House records show that the gap between aviation security and terrorism closed between September and November. Similarly, Senate records show that the gap between aviation security and terrorism closed between September and November. Within the House, there was a leveling out of the focus and importance between aviation security and terrorism, while there was still a sharp contrast between the two in the Senate.

The decision to pass legislation that would create a new agency was a bipartisan decision. Yes votes in the House of Representatives included 208 Republicans, 200 Democrats, and two Independents; no votes included nine Republicans, zero Democrats, and zero Independents; and those failing to vote included three Republicans and 11 Democrats (GovTrak.us, 2015). The Senate held a voice vote so no data were recorded (GovTrak.us, 2015).

Research Questions

The research questions examined events before, during, and after the creation of TSA. The overall objectives were to determine what triggered the creation of new federal agencies and to determine if TSA operated as a risk bureaucracy by evaluating the presence of risk bureaucracy components/functions during implementation. Research Question 1 is *before*, Research Questions 2 and 3 are *during*, and Research Question 4 is *after* the creation of TSA.

The analytical framework had a policy adoption phase and an implementation phase. The policy adoption phase addressed Research Questions 1-3 and the implementation phase answered Research Question 4.

Research Question 1. Regarding TSA, this research question asked, "How did events prior to 9/11 shape TSA?" The decision to create TSA was bipartisan. Problems impacting aviation security existed well before 9/11. Congress acknowledged that prior to 9/11 there was a problem with aviation security. In addition to previous terrorist attacks against aviation (see Appendix A), other problems included airline profit losses factored into security decisions, unsecured cockpit doors, checked baggage not required to be screened, poor track records of private security companies such as Globe Security and Argenbright Security, high screener turnover (i.e., up to 100% and 400%), low wages for screeners, poor and insufficient training of screeners, screeners who did not know English, and high checkpoint test failure rates whereby screeners were unable to detect pipe bombs and guns during the screening process (U.S. Congress, 2001a). The response to 9/11 included solutions to address pre-9/11 problems. The ATSA (2001) included provisions to harden cockpit doors, to federalize the screening workforce (to include standardized training, improved wages, and a requirement for screeners to be U.S. citizens), and to require 100% screening of checked baggage.

Congressional testimonies held just days after 9/11 discussed *weaknesses* in aviation security that were *previously reported* in June 2000. Areas of concern included airport access control, screening of passengers and their accessible property, and screening practices (*Aviation Security: Terrorist Acts Demonstrate Urgent Need to Improve Security*, 2001; *Aviation Security: Terrorist Acts Illustrate Severe Weaknesses*, 2001; *Aviation Security: Vulnerabilities*, 2001). In June 2000, it was reported that significant weaknesses existed in preboard screening based on the screeners' inability to detect threat objects on passengers or in their accessible property. In 1987, screeners missed 20% of the threat objects used by the Federal Aviation Administration (FAA) when the agency conducted covert checkpoint tests (*Aviation Security: Terrorist Acts Demonstrate Urgent Need to Improve Security*, 2001; *Aviation Security: Terrorist Acts*

Illustrate Severe Weaknesses, 2001; *Aviation Security: Vulnerabilities*, 2001). Additionally, as tests became more realistic, the failure rate increased. The poor performance was attributed to high screener turnover. In fact, most large airports had a turnover rate greater than 100%. The turnover rate was attributed to low wages, poor benefits, and the monotonous nature of the work (*Aviation Security: Terrorist Acts Demonstrate Urgent Need to Improve Security*, 2001; *Aviation Security: Terrorist Acts Illustrate Severe Weaknesses*, 2001; *Aviation Security: Vulnerabilities*, 2001). The domino effect of high turnover resulted in fewer skilled and experienced employees.

Prior to 9/11, solutions were identified to address aviation security weaknesses. Improved training, certification of screening companies, and adopting screening practices from other countries (i.e., higher qualifications, greater benefits, and shifting screening from air carrier responsibility to either airport or government responsibility) were among the possible solutions (*Aviation Security: Terrorist Acts Demonstrate Urgent Need to Improve Security*, 2001; *Aviation Security: Terrorist Acts Illustrate Severe Weaknesses*, 2001; *Aviation Security: Vulnerabilities*, 2001).

These findings are consistent with garbage can theory (GCT) whereby problems, solutions, participants, and choice opportunities already existed. The Aviation Security Timeline (Appendix A) demonstrated that problems already existed in the aviation industry. The events of 9/11 prompted Congress to apply preexisting solutions to the problem at hand. The terrorist attacks provided the “choice opportunity” to create an agency that under different circumstances, may not have been acceptable to Congress or the American people.

Research Question 2. Regarding TSA, this research question asked, "What triggered the creation of TSA?" Through the content analysis of strategically sampled *Congressional Records*, the determination was made that a focusing event coupled with a transboundary risk with institutional impacts triggered the creation of a new federal agency: TSA. Movement toward creating TSA was bipartisan. The *Congressional Records* supported that Congress was led to develop and enact legislation that focused on airport security because of the events of 9/11 (U.S. Congress, 2001c). Additionally, the *Congressional Records* demonstrated that the aviation industry was critically impacted by the events. After 9/11, people became reluctant to fly. The load factors for air carriers dropped significantly. Air carriers reduced the number of flights in operation but load factors still continued to suffer. Millions of dollars were being lost daily and some air carriers were close to bankruptcy. The literature on transboundary risks identified geography, time, and function, as three distinct boundary types (Boin, 2009). Terrorism was a risk that crossed each of the identified boundaries as a result of 9/11. Evidence of risk that crossed a geographical boundary was demonstrated in the *Congressional Record* of the Senate, September 12, 2001, when Senator Daniel Akaka (D-HI) stated, "We have come brutally to understand that terrorism is an evil beyond our borders that still threatens our home land" (U.S. Congress, 2001, p. S9320). Representative Robert Stump (R-AZ) stated, "Geographic distance from areas of conflict does not guarantee security" (U.S. Congress, 2001a, p. H5522). Congress identified terrorism as a network with an international infrastructure. Congress spoke of the need for there to be a global antiterrorism strategy, which would require international cooperation (U.S. Congress, 2001a). Congress believed they needed to work with allies to destroy the network of terrorism because "terrorism is everyone's enemy" (Representative Nancy Johnson (R-CT), as cited in U.S. Congress, 2001a, p. H5569). Congress's acknowledgment that America was at war with terrorists, and it would be a war without end, demonstrated recognition that terrorism crossed time boundaries (U.S. Congress, 2001a). Lastly, terrorism crossed functional boundaries as demonstrated by Congress's acknowledgment that due to the events of 9/11, aviation security had to be made a matter of national security (U.S. Congress, 2001c, p. H8314).

Research Question 3. Regarding TSA, the research question asked, "Did risk play a factor in creating TSA?" Risk was viewed from the perspective of being a *verb* and a *noun*. As a verb, it represented a situation in which something horrible may occur in the future. As a noun, it represented the purposeful act of terrorism.

A review of *Congressional Records* suggested that risk was a factor in passing the legislation that created TSA. Congress mentioned that the biggest risk to the United States was terrorism (U.S. Congress, 2001a). Congress acknowledged that there was a risk not only to aviation, but a risk to Americans, a risk to civilizations, and a risk to freedom. A few bipartisan quotes worth mentioning follow:

> Freedom, all of us know, has never meant freedom from risk, nor will it ever be. In fact, such risk is a component of that very freedom we cherish. But we must and we will confront those who criminally and viciously put freedom itself at risk. (Representative Steny Hoyer (D-MD), as cited in U.S. Congress, 2001a, p. H5508)

> Unless a global antiterrorist strategy can be worked out, . . . the existence of civilization itself is seriously at risk. (Representative Eni Faleomavaega (D-American Samoa), as cited in U.S. Congress, 2001a, p. H5511)

> This heinous act will undoubtedly gain a new urgency to reduce the risks we face from terrorism. (Representative David Hobson (R-OH), as cited in U.S. Congress, 2001a, p. H5586

A review of the *Congressional Record* identified that terrorist attacks were imminent. There were future risks to countries that believed in freedom, democracy, and opportunity (U.S. Congress, 2001a). One of the emerging themes from the text was the sense of urgency to pass legislation that would protect America and restore the confidence of the American people in the safety of air travel. The events of 9/11 and the subsequent declining flight loads made *now* the choice opportunity, as Congress pushed to get legislation passed before the Thanksgiving travel season (U.S. Congress, 2001c). This event created a choice opportunity consistent with GCT. Congress had to act swiftly to avoid something horrible from happening again.

Additionally, statements about risk (for this study the risk is terrorism) were present when both chambers of Congress passed legislation to create TSA. The *Congressional Record* of the House of Representatives dated November 16, 2001, had statements about terrorism on over 40% of its pages and the *Congressional Record* of the Senate had terrorism content on over 70% of its pages (U.S. Congress, 2001c, 2001d; see Figure 20).

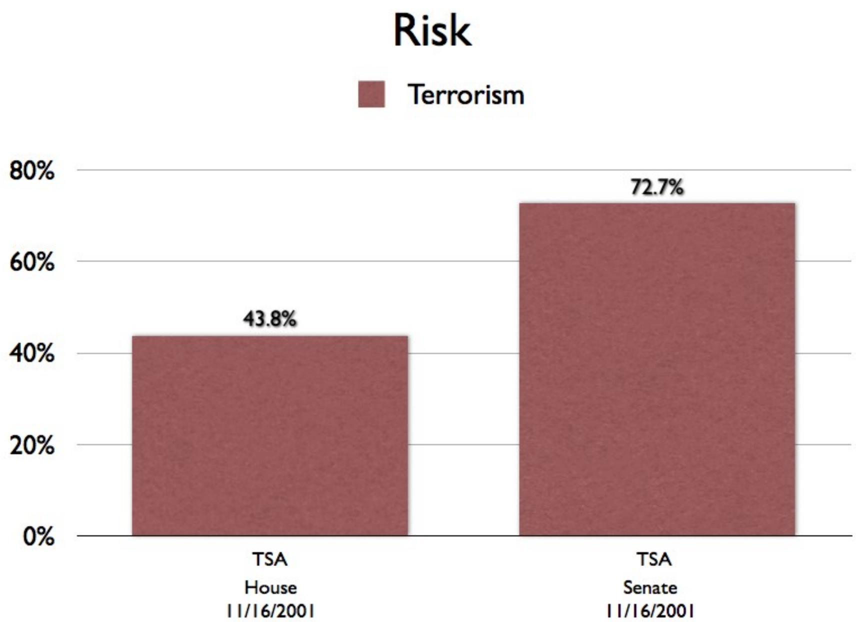

Figure 20. Risk of terrorism: *Congressional Record* of the House of Representatives and the Senate. Derived from content taken from U.S. Congress, House of Representatives, Proceedings and Debates of the 107th Congress, first session, November 16, 2001, *Congressional Record, 147*(159); and U.S. Congress, Senate, Proceedings and debates of the 107th Congress, first session, November 16, 2001, *Congressional Record, 147*(159).

Research Question 4. In regard to TSA, this research question stated, "What risk bureaucracy components are present in the implementation of TSA?" The implementation phase of this research was exploratory. Content was analyzed to determine the extent to which TSA functioned as a risk bureaucracy during implementation. This included looking for the components of director (standard setting), detector (information gathering), and effector (behavior modification) in the *public face* of the organization. *Congressional Records* were used to establish the agency's foundation while TSA's website was used to make the assessment. A GAO report and statements from a speech by Former TSA Administrator John Pistole (2011) provide further insight into TSA's implementation.

***Congressional Record* foundation *(excerpts*).** The *Congressional Record* provided insight that foundationally, TSA was designed to function in the role of director. Bipartisan support is reflected in the following quotes. Representative Zoe Lofgren (D-CA) stated:

> The legislation establishes the Transportation Security Agency whose mission will be to set standards and to oversee the implementation of security standards. For the first time, the United States will have a single agency whose mission is to ensure security for all modes of transportation including water transport, rail highway, commercial aviation, as well as civil aviation. (U.S. Congress, 2001c)

Standard setting is a director function.

> We have a real and important frame work under the Department of Transportation to create the new security administration. We get a uniformed, consistent security system nationwide. We do not have the small airports being treated differently from the big airports. Everybody will be treated the same and have the same sort of security. (Representative Tom DeLay (R-TX), as cited in U.S. Congress, 2001c, p. H8308)

> There are two points that I want to focus on very quickly. One is the fact that we will have a federalized system. All the employees will be trained and there will be standards, and we will be able to say that the long arm, the effective arm, the strong arm, the equal opportunity arm of the government will stand in the place of securing our airports and airlines. (Representative Sheila Jackson-Lee (D-TX), as cited in U.S. Congress, 2001c, p. H8305)

> The major gain of this bill is that we have Federal control over the process, we have the Federal Government *setting the rules* [emphasis added], we have Federal supervision of the employees and the process, and we will have Federal guards at every checkpoint, along with a Federal supervisor. (Representative Vernon Ehlers (R-MI), as cited in U.S. Congress, 2001c, p. H8303)

Although not part of the analysis for this dissertation, it is worth mentioning that director, detector, and effector elements are written in the "FUNCTIONS" section and the

"ADDITIONAL DUTIES AND POWERS" section of the statute and include stating that the Under Secretary of Transportation shall "develop standards for the hiring and retention of security screening personnel [a director function], . . . identify and undertake research and development activities necessary to enhance transportation security [a detector function]," and "enforce security-related regulations and requirements [an effector function]" (ATSA, 2001, p. 598).

TSA website. Figure 24, is a screenshot from TSA's website after selecting the *About TSA* link. It reads as follows:

> TSA was created to strengthen the security of the nation's transportation system and ensure the freedom of movement for people and commerce. TSA uses a risk-based strategy and works closely with transportation, law enforcement, and intelligence communities to set the standard of excellence in transportation security. (TSA, 2014, para. 1)

This demonstrates that TSA relies on *law enforcement* (an effector function) and *intelligence communities* (a detector function) to *set the standard* (a director function) in transportation security. An analysis of TSA's website reveals that the agency was to function in the capacity of director, detector, and effector. All three risk bureaucracy components are equally present in the agency's self-description (Figures 21 and 22). Deconstructing the "About TSA" statement revealed that one element (33.3%) was a director role (i.e., set the standard), one element (33.3%) was a detector role (i.e., intelligence communities), and one element (33.3%) was an effector role (i.e., law enforcement).

Figure 21. About TSA. From *About TSA: Mission, Vision, and Core Values*, 2014, Transportation Security Administration, Retrieved from http://www.tsa.gov/about-tsa/mission-vision-and-core-values

It should be noted that TSA's self-description has changed since the agency's inception and now has a risk theme. The agency's vision used to read, "Continuously set the standard for excellence in transportation security through its people, processes, and technology" (TSA, 2015, para. 3). TSA's vision now reads, "Provide the most effective transportation security in the most efficient way as a high performing counterterrorism organization" (TSA, 2014, para. 3). TSA changed its vision and now claims countering the risk of terrorism as part of its identity. Further substantiating the risk theme, the opening paragraph under the "About Us" heading identifies TSA as using a risk-based strategy.

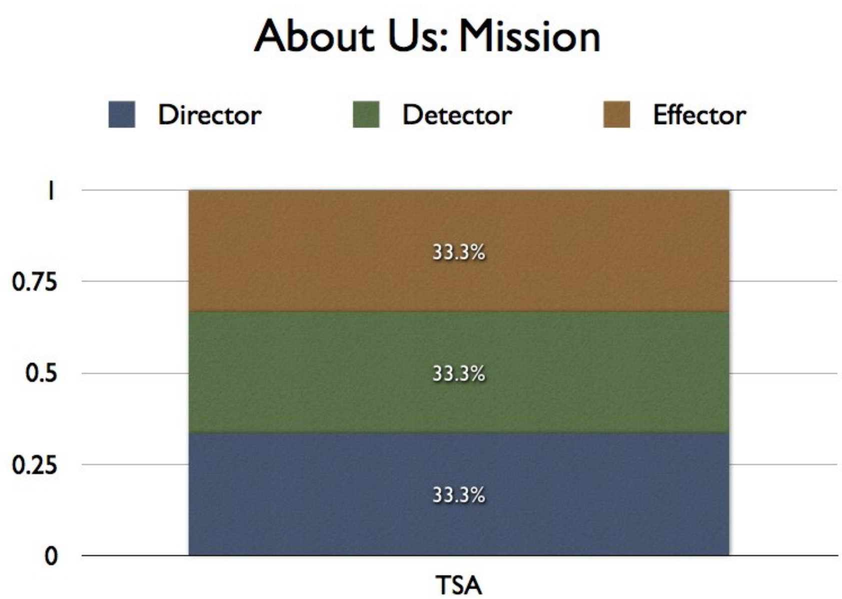

Figure 22. Presence of director, detector, and effector in agency's mission. From *About TSA: Mission, Vision, and Core Values*, 2014, Transportation Security Administration, Retrieved from http://www.tsa.gov/about-tsa/mission-vision-and-core-values

TSA uses a multilayer approach to security for the purpose of deterring, detecting, and disrupting individuals who pose a risk to aviation security (*Transportation Security Administration: Progress and Challenges*, 2012). It is commonly referred to as risk-based intelligence-driven security (*TSA's Efforts to Advance Risk-Based Security*, 2013). TSA's implementation phase included 20 layers of security that served as counterterrorism measures. Figure 23 is a screenshot from TSA's website, which illustrates the layers of U.S. aviation security. Table 14 identifies which risk bureaucracy component is at work when each layer of security is in play. Each layer of security has been categorized based upon the agency's purpose for deploying it.

Figure 23. Layers of U.S. aviation security. From Layers of Aviation Security, 2015, retrieved from https://www.tsa.gov/about-tsa/layers-security

Table 14

Risk Bureaucracy Components in TSA's Layers of U.S. Aviation Security

Layers of U.S. aviation security	Director (standard setting)	Detector (information gathering)	Effector (behavior modification)
Intelligence		X	
Customs and border protection			
Joint Terrorism Task Force (an FBI operation)		X	
No-fly list and passenger pre-screening		X	
Crew vetting		X	
VIPR (visible intermodal prevention and response)			X
Canine	X		
Behavior detection officer		X	
Travel document checker	X		
Checkpoint/transportation security officers	X		
Checked baggage	X		
Transportation security inspector			X
Random employee screening	X		X
Bomb appraisal officer		X	
Federal air marshal service	X		X
Federal flight deck officers	X		X
Trained flight crew			X
Law enforcement officers			X
Hardened cockpit door			X
Passengers			

Note. From Layers of Aviation Security, 2015, retrieved from https://www.tsa.gov/about-tsa/layers-security

TSA's website documented 20 layers of security. The layers were categorized, resulting in 21 scores. Of the 21 scores, seven (33.3%) layers were in the director role, six (28.6%) layers were in the detector role, and eight (38.1%) layers were in the effector role. Three of the layers (i.e., random employee screening, Federal Air Marshal Service, and Federal Flight Deck Officers) operated in dual roles falling into director and effector categories.

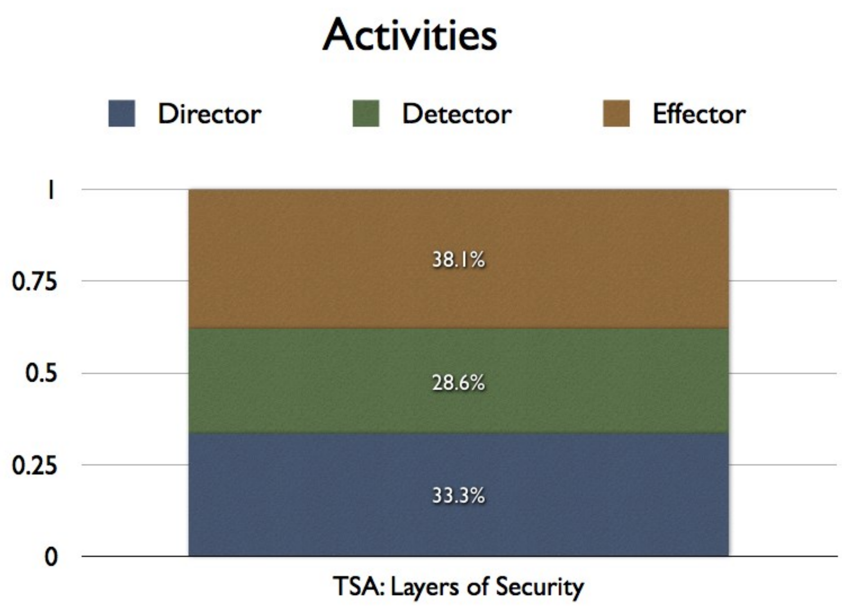

Figure 24. Presence of director, detector, and effector in agency's activities. From Layers of Aviation Security, 2015, retrieved from https://www.tsa.gov/about-tsa/layers-security

During the policy adoption phase, *Congressional Records* revealed that TSA was intended to exercise a heavier director role, versus the other components of a risk bureaucracy. However, the implementation phase, as determined by TSA's website, established more of a balance between director, detector, and effector roles. This confirmed that as a risk bureaucracy, TSA has infused the aviation security system with all three components necessary for control. This has demonstrated a greater capacity to prevent another event (i.e., another 9/11) from happening.

TSA milestones reveal risk bureaucracy components. On November 10, 2011, at the Homeland Security Policy Institute at George Washington University, TSA Administrator John Pistole provided a brief history of how TSA was established through ATSA. He noted that in less than one year, the agency was staffed and operational. He also highlighted key milestones achieved by the agency that aligned with recommendations from the 9/11 Commission. The milestones included the Secure Flight program, cargo screening technology, the use of explosive detection canines, in-flight security strengthening; intelligence, a focus on passengers whom the agency knows the least about, and stakeholder engagement (Pistole, 2011). Director, detector, and effector roles can be seen in the agency's key milestones.

Criticisms of risk-based efforts. Although TSA has shifted toward risk-based security, it has not been without criticism. TSA has received criticism for its Screening of Passengers by Observation Techniques (SPOT) program, which is a behavior-based screening program that relies on Behavior Detection Officers (BDOs), to identify individuals who pose a risk to civil aviation security (*Aviation Security: TSA Has Taken Actions to Improve Security*, 2011). The criticism was received because TSA launched the program without any scientific studies validating this form of screening (GAO, 2012a).

Redden (2013) explained that passengers exercise "emotion management" when in airport settings. Various reasons for travel (e.g., funeral, job interview, vacation, etc.) evoke specific emotions. These emotions may be further impacted by fear of flying, running late, bad weather, or other factors that affect the airport experience. A passenger's attempt to manage his or her emotions may result in behavior that triggers the response from a TSA BDO. However, the behavior may be a false positive response. Additionally, the emotional display of employees at the airport may create an unfavorable emotional response by passengers, thus triggering a false positive. The effectiveness of the SPOT program can continue to be debated, but its conception is yet another demonstration of the agency's attempt to manage risk and deploy a risk-based strategy.

According to another GAO report by Lord (*General Aviation Security: TSA's Process,* 2012), TSA was criticized for not ensuring that foreign flight students did not pose a security risk before they were authorized to receive flight training in the United States. The Alien Flight Student Program (AFSP) was created to ensure that proper vetting of foreign students occurred, by subjecting such students to a security threat assessment before they receive flight instruction. Some of the weaknesses identified in the GAO report included the following: (a) foreign nationals in the FAA's airmen registry were not in TSA's AFSP database; (b) some of the foreign nationals were in FAA and TSA's databases but had not undergone a security threat assessment; and (c) the AFSP did not have the ability to determine if a foreign student entered the country illegally. The security requirements linked to this issue stemmed from 9/11 hijackers (Mohamed Atta and Marwan al-Shehhi) who learned how to fly in the United States. Although the GAO report identified weaknesses in the AFSP, the purpose of the program was to determine if a security risk existed among program participants by collecting and analyzing information (*General Aviation Security: TSA's Process,* 2012). This would give the agency the opportunity to function as detector.

A GAO report (Lord, 2013) revealed that TSA failed to deploy its passenger screening canines (PSC) in accordance with its risk-based approach and that it failed to determine the effectiveness of PSCs before they were deployed to airports. Again, risk was a key factor as the agency moved toward establishing an additional standard in passenger screening.

Consumer Financial Protection Bureau (CFPB)

This mission of the CFPB is to "make markets for consumer financial products and services work for Americans—whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products" (CFPB, 2015, para. 1). CFPB was created in response to the financial crash that occurred in 2008. CFPB was created on July 21, 2010, when President Obama signed the Wall Street Reform and Consumer Protection Act (Dodd-Frank, also known as Public Law 111-203). Dodd-Frank was 848 pages of legislation (Kolhatkar & Weise, 2012) and the creation of CFPB began on the 580th page of the document. CFPB is housed within the Federal Reserve. The agency was created under a Democratic President with a Democratic-controlled House of Representatives and a Democratic-controlled Senate. One of the interest groups having an influence on Congress included Americans for Financial Reform (AFR).

Elizabeth Warren served as the policy entrepreneur fighting for the creation of this new agency. A policy entrepreneur was needed, because unlike after the 9/11 terrorist attacks where interest groups were in favor of a new agency, the financial crash generated interest groups both in favor of and against the creation of a new agency.

Interest groups in support of a new federal agency included Consumer Federation of America, Americans for Financial Reform, and Center for Responsible Lending, while interest groups fighting against financial reform included American Bankers Association, Chamber of Commerce, The National Auto Dealers Association, Mortgage Bankers Association, and American Financial Services Association (Rivlin, 2013). Interest groups not in favor of a new regulatory agency believed the CFPB would harm insured depository institutions (Kaiser, 2013). Additionally, interest groups on both sides of the issue would have to continue to fight for their interest because the battle regarding a new agency did not end once the Dodd-Frank legislation was passed. For example, commercial banks spent approximately $18.6 million attempting stop the Dodd-Frank legislation and spent an additional $50.7 million after the legislation was passed in hopes to destroy it (Rivlin, 2013). In fact, it was the work of lobbyists that blocked Elizabeth Warren's appointment as President Obama's first choice to lead the CFPB (Rivlin, 2013).

The financial crisis that began in 2007 started gaining more traction with the bailout of investment firm Bear Stern in March 2008 (Godwin, 2015). It was escalated by the Lehman Brothers bankruptcy and American Insurance Group (AIG) collapse in September 2008 (Godwin, 2015). The financial crisis was the driving force behind the Dodd-Frank legislation. After Dodd-Frank was passed, creating the CFPB, a Congressional investigation was completed and published as *The Financial Crisis Inquiry Report* (Financial Crisis Inquiry Commission, 2011). A timeline of significant dates regarding the creation of CFPB is provided as Table 15.

Table 15

Consumer Financial Protection Bureau and Significant Dates

Date	Event
2007	The year identified as the beginning of the financial crisis.
2008	The year identified as the great financial crash.
September 15, 2008	Lehman Brothers files for Chapter 11 bankruptcy and the credit rating for American International Group (AIG) is downgraded. Both entities are impacted by the subprime mortgage crisis.
October 1, 2008	Senate passes Troubled Asset Relief Program (TARP) legislation.
October 3, 2008	House passes TARP.
October 3, 2008	President Obama signs the Emergency Economic Stabilization Act of 2008, also referred to as the Bailout, to provide funds to restore the stability and liquidity to the U.S. financial system. This legislation also established TARP to purchased troubled assets from financial institutions (Public Law 110-343).
May 19, 2009	Senate passes the Credit Card Accountability Responsibility and Disclosure (CARD) Act, also known as the Credit Cardholders' Bill of Rights.
May 20, 2009	House passes the CARD Act.
May 20, 2009	Congress establishes the Financial Crisis Inquiry Commission as part of the Fraud Enforcement and Recovery Act (Public Law 111-21).
May 22, 2010	President Obama signs the CARD Act.
June 30, 2010	House passes legislation that will create the Consumer Financial Protection Bureau (CFPB).
July 15, 2010	Senate passes legislation that will created CFPB.
July 21, 2010	President Obama signs the Dodd-Frank Wall Street Reform and Consumer Protection Act. Title X of the act establishes the Consumer Financial Protection Bureau (CFPB) (Public Law 111-203).
January 27, 2011	The Financial Crisis Inquiry Report is completed and released, 6 months after CFPB was created.
February 13, 2011	The Financial Crisis Inquiry Commission officially closes.

Two key considerations in creating CFPB were risk (i.e., harmful financial products and services) and impacted institutions (i.e., financial institutions). An analysis of these two items within the *Congressional Records* of the House of Representatives and the Senate is provided in the following section.

Congressional Record Analysis:
Financial Crash 2008

The story of creating the CFPB unfolds much differently than that of the TSA. While the tragedy of 9/11 occurred on a single day, the financial crisis began in August 2007 and unfolded over a period of 2 years. Many acknowledge that the financial crash occurred in September 2008. During September, Fannie Mae and Freddie Mac were taken over by the government, Lehman Brothers went bankrupt, and AIG nearly collapsed but was rescued by an $85 billion loan from the Fed (Webel, 2013). Additionally, the stock market dropped 500 points. The story of creating CFPB begins with a qualitative review of *Congressional Records* starting the day after the stock market crashed and is told by reviewing legislation that tracks Congress's progression toward creating a new agency. Reviewing a purposeful sample of *Congressional Records* from 2008–2010 shows the progression toward creating the CFPB. September 2008, October 2008, May 2009, and the summer of 2010 highlighted the journey more specifically due to Congress passing legislation affecting financial institutions and consumers during these months.

On September 16, 2008, the House of Representatives and the Senate were both in session. The House met at 9:00 a.m. and the Senate met at 10:00 a.m. The first topic of discussion in both chambers of Congress was the economy. Both chambers had statements about September 15, 2008, being a devastating day for the stock market. Representative Jim McDermott (D-WA) and Senator Harry Reid (D-NV) referenced that the Dow Jones industrial average had dropped over 500 points, which was the largest decline since the market opened after 9/11. Representative McDermott continued by stating that the President's economic and regulatory policies were taking the "free" out of free enterprise by bailing out the financial industry. He stated,

> Bear Stearns fell a few months ago; Fannie Mae, Freddie Mac, a week ago; a distress sale of Merrill Lynch over the weekend; Lehman Brothers is looking for bankruptcy on Monday morning; and the auto industry is looking for another $25 million in bailout; and AIG wants a $40 billion bridge loan from the Federal Reserve. The stock market, as I say, went down 500 points yesterday. No one really thinks we can see the light at the end of the tunnel. (U.S. Congress, 2008a, p. H8131)

Although both chambers opened with statements regarding the American economy, most of the *Congressional Records* of the House of Representatives focused on energy, to include the passing of the Comprehensive American Energy Security and Consumer Protection Act, while the *Congressional Record* of the Senate covered reports on various measures and the introduction of 12 bills and two resolutions.

Unlike 9/11, the financial crash on September 15, 2008, did not close Congress. But by the following month, Congressional debates on the financial crisis began to gain traction as evidenced by Congress passing the Troubled Asset Relief Program (TARP), which was established by the Emergency Economic Stabilization Act (EESA). The purpose of the EESA was to grant the Secretary of the Treasury authority to purchase up to $700 billion in troubled assets owned by financial institutions (Webel, 2013). There were four categories of TARP programs: bank-supported programs, credit market programs, other programs (specifically dealing with AIG assistance and the automobile industry), and housing programs. TARP drew sharp criticism due to its focus on rescuing financial institutions rather than rescuing consumers. Financial intuitions were directly impacted by their own risky behavior and Congress was using taxpayer funds to rescue them.

Since Congress recognized that TARP did nothing to protect consumers from unfair and abusive practices, additional legislation was needed. With average citizens bitter about Congress's decision to bail out the banks, some members of Congress saw this as the best time to introduce legislation to correct the bad behavior of the credit card industry (Kaiser, 2013). By May 2009 (approximately 7 months after TARP was passed), Congress passed the Credit Card Accountability Responsibility and Disclosure (CARD) Act, which was signed by President Obama on May 22, 2009. Banks could interpret the CARD Act, also referred to as the Credit Cardholders' Bill of Rights, as punishment. According to Kaiser (2013), the new rules would result in lost fees and interest charges that would cost banks hundreds of millions of dollars. The CARD Act introduced fairness and transparency to include bans on unfair rate increases, the prevention of unfair fee traps, the requirement for plain language disclosures to be placed in plain sight, holding credit card companies accountable, and the protection of students and young people (The White House, 2015).

By the summer of 2010, Congress passed Dodd-Frank, which was signed by President Obama on July 21, 2010. The economic crisis opened the policy window, making it easier to pass financial reform legislation. The purpose of Dodd-Frank was twofold: (a) address the need for reform by updating and overhauling financial regulations, and (b) address the immediate crisis through demonstrating that Congress had more concern for average citizens than it had for financial institutions (Godwin, 2015). The CFPB was established under Title X of Dodd-Frank. The concept of the agency originated with Harvard University law professor Elizabeth Warren, who drew a comparison between toasters and consumer financial products (Godwin, 2015). Warren believed that if the Consumer Product Safety Commission could protect consumers from unsafe products, then a similar financial agency should protect consumers from unsafe financial products (Warren, 2007).

House of Representatives—Congressional Records. The October 3, 2008, *Congressional Record* of the House of Representatives (128 pages total) revealed that only 17 (13.2%) pages contained content regarding consumers, while 69 (53.9%) pages were devoted to financial institutions on the day TARP was passed. The May 20, 2009, *Congressional Record* of the House of Representatives (99 pages total) revealed that 33 (33.3%) pages contained content regarding consumers, while only 18 (18.2%) pages were devoted to financial institutions on the day CARD was passed. The June 30, 2010, *Congressional Record* of the House of Representatives (100 pages total) revealed that 44 (44%) pages contained content regarding consumers, while 50 (50%) pages were devoted to financial institutions on the day legislation creating the CFPB was passed. The proportion of the dialogue regarding consumers continued to climb between the three dates analyzed, representing an overall difference of 30.7%. However, the dialogue regarding financial institutions dropped substantially when CARD was passed, and then climbed back up when the CFPB was established. When comparing both topics, discussions about consumers grew from 2008 to 2010, while discussions about financial institutions (i.e., the entity responsible for and impacted by the risk) had a slight decrease (see Table 16 and Figure 25).

Table 16

Consumers and Financial Institutions: Congressional Record Content Comparison—House

	Congressional Record of the House of Representatives Pages		
	Consumers	Financial institutions	Total
Date nearest focusing event 10/03/2008 (TARP)	17 (13.3%)	69 (53.9%)	128
Next significant date 05/20/2009 (CARD)	33 (33.3%)	18 (18.2%)	99
Date legislation was passed 06/30/2010 (CFPB)	44 (44.0%)	50 (50.0%)	100

Note. Percentages may not add up to 100% due to content overlap or content infrequency. From U.S. Congress, House of Representatives, Proceedings and debates of the 110th Congress, second session, October 3, 2008, *Congressional Record, 154*(161); U.S. Congress, House of Representatives, Proceedings and debates of the 111th Congress, first session, May 20, 2009, *Congressional Record, 155*(78); and U.S. Congress, House of Representatives, Proceedings and debates of the 111th Congress, second session, June 30, 2010, *Congressional Record, 156*(100).

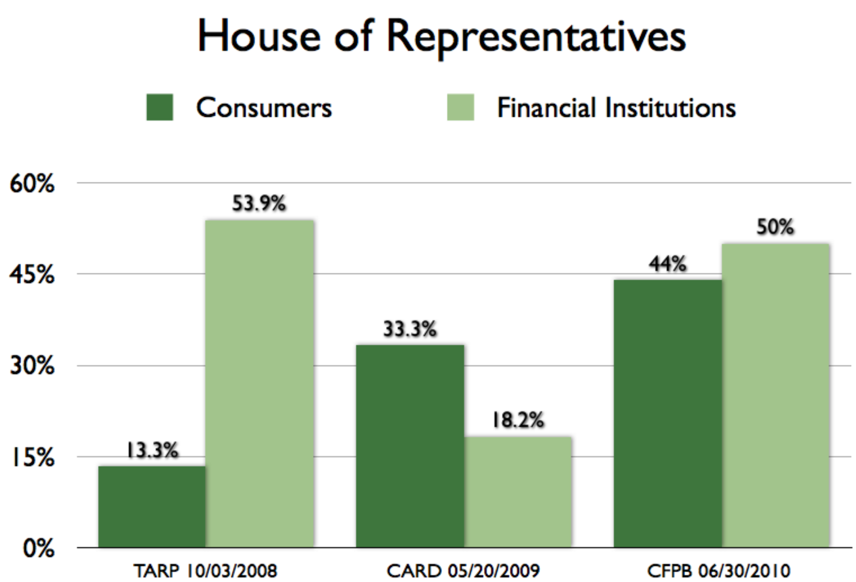

Figure 25. Consumers and financial institutions: *Congressional Record* content comparison—House. Percentages may not add up to 100% due to content overlap or content infrequency. From U.S. Congress, House of Representatives, Proceedings and debates of the 110th Congress, second session, October 3, 2008, *Congressional Record, 154*(161); U.S. Congress, House of Representatives, Proceedings and debates of the 111th Congress, first session, May 20, 2009, *Congressional Record, 155*(78); and U.S. Congress, House of Representatives, Proceedings and debates of the 111th Congress, second session, June 30, 2010, *Congressional Record, 156*(100).

Samples of discussions from House *Congressional Records* on the dates that TARP, CARD, and CFPB were passed are provided in the following sections for context.

House—TARP. The House passed TARP on October 3, 2008, with a vote of 263 to 171. An analysis of the *Congressional Record* for that day demonstrated a greater emphasis on financial institutions rather than consumers (see Table 16 and Figure 25). However, the tone of the debate in reference to bailing out the banks was one of disappointment and anger. Bailing out the banks was pitched as the only option for rescuing the American consumer. If the banks were not bailed out, Americans would suffer.

Representative Peter DeFazio (D-OR) began the debate with concerns about plans to bail out banks. He believed the financial rescue plan was deeply flawed. He compared the current pressure to pass the legislation to bail out the banks with Congress feeling pressure from the President to authorize the force of war in Iraq based upon the threat of weapons of mass destruction. He believed this, too, was pressure from the President to use financial force based upon the threat of financial weapons of mass destruction, and he did not support it (U.S. Congress, 2008d).

Representative Frank Pallone (D-NJ) also expressed the sentiment that Congress's failing to act would cause credit markets to freeze, which would prevent families from getting loans to purchase cars, prevent students from getting loans to attend college, and prevent small businesses from getting loans to meet payroll or purchase new products (U.S. Congress, 2008d). Representative Doris Matsui (D-CA) stated,

> I listened to my constituents' concerns about this rescue plan and throughout this debate it has become clear that Congress must act to restore our credit markets. If

> we don't, we risk further putting jobs and the financial security of hardworking Americans at risk. Small businesses will have a difficult time making payroll to pay their employees. Hardworking Americans will see their savings and retirement funds diminish. Americans will have a difficult time buying a home, sending their children to college or just making ends meet. (U.S. Congress, 2008d, p. H10707)

Statements from Representative Joe Wilson (R-SC) acknowledged that bailing out the banks was not a permanent solution. He pointed out that bad lending practices, the poor handling of financial firms, and the federal government failing to oversee the financial industry still needed to be addressed (U.S. Congress, 2008d). Seven months later, the House moved in the direction of passing legislation that protected consumers.

House—CARD. The House initially passed the CARD Act in April 2009 with a vote of 357-70 (GovTrak.us, 2015). However, it was amended by the Senate and did not officially clear the House until May 20, 2009. As demonstrated in Table 16 and Figure 25, an analysis of the *Congressional Record* for that day demonstrated a greater emphasis on consumers over financial institutions. The tone of the debate is consistent with support for consumers. Contextual samples include the following: Representative Earl Blumenauer (D-OR) stated,

> I strongly support the passage of the Credit Cardholders' Bill of Rights Act. This legislation will help to create a fairer consumer credit market by curbing some of the most egregious and arbitrary credit card lending practices. Current industry practice can trap consumers in a vicious cycle of debt—this legislation will assist in breaking that cycle. (U.S. Congress, 2009b, p. H5814)

Representative Maxine Waters (D-CA) stated,

> It's about time that we reined in the abusive practices of credit card companies. For too long, credit card companies have squeezed consumers through every scheme imaginable, including double-cycle billing and universal default. This bill will finally give consumers the rights they deserve. (U.S. Congress, 2009b, p. H5834)

Representative Albio Sires (D-NJ) stated,

> Now is the time to stand up for American consumers. Too many families and hard-working Americans are struggling through this difficult economic recession. Credit card companies that charge unwarranted and unanticipated fees have been hitting Americans hard during our economic hardship. Despite massive government intervention to encourage lending, many credit card companies are still cutting back on credit, imposing new fees and raising rates—even for those who pay on time and never go over the limit. This is unacceptable.
>
> In passing the Credit Cardholders' Bill of Rights, we will even the playing field by providing critical protections against these unfair, yet all too common, credit card practices. This bill will also provide tough new regulations on credit and companies in order to protect consumers from excessive fees, enormous interest rates, and unfair agreements.
>
> Ending abusive credit card practices that continue to drive America deeper and deeper into debt is a critical element in our economic recovery. (U.S. Congress, 2009b, p. H5806)

The passing of CARD is evidence that discussions in favor of consumers picked up traction in the House before Dodd-Frank was passed.

House—CFPB. On June 30, 2010, the House passed Dodd-Frank, which was the legislation that established the CFPB. The legislation was passed 237-192 (GovTrak.us, 2015). There was a clear partisan split with yes votes from 234 Democrats and three Republicans, and no votes from 19 Democrats and 173 Republicans (GovTrak.us, 2015). The legislation was considered a landmark achievement in its effort to protect consumers. Representative Lloyd Doggett (D-TX) stated,

> This bill arms families with more ways to protect themselves with the information that they need for informed financial decisions. It addresses protections for questionable, often outrageous, financial industry practices, preventing onerous hidden fees that have plagued credit card holders and borrowers, and it creates a new hotline to report misconduct. The Consumer Financial Protection Bureau will offer help against unscrupulous mortgage promoters, foreclosure scam operators, and payday and student lenders. (U.S. Congress, 2010a, p. H5213)

Representative Katherine Castor (D-FL) stated,

> Wall Street reform will provide a new foundation for our economy to go, one that inspires confidence and will spur new jobs. Under the new law, consumers and middle class families will benefit from a new consumer financial protection agency, a new independent watchdog that will be on the side of American families and consumers, because there always seems to be hidden charges and fees when you are applying for a credit card or a mortgage or some transaction. The new consumer agency will root out the deceptive practices. Its mission will be to protect homeowners and small businesses rather than the big banks on Wall Street. (U.S. Congress, 2010a, p. H5214)

Not all agreed with the legislation. Representative Nancy Kaptur (D-OH) voted against the legislation because she believed it was too weak and was filled with loop holes. In her opinion, the legislation was comparable to throwing a cotton ball at an elephant (U.S. Congress, 2010a).

Senate—Congressional Records. The October 1, 2008, *Congressional Record* of the Senate (209 pages total) revealed that only 23 (11%) pages contained content regarding consumers, while 77 (36.8%) pages were devoted to financial institutions on the day TARP was passed. The May 19, 2009, *Congressional Record* of the Senate (83 pages total) revealed that 21 (25.3%) pages contained content regarding consumers, while 17 (20.5%) pages were devoted to financial institutions. The July 15, 2010, *Congressional Record* of the Senate (108 pages total) revealed that 46 (42.6%) pages contained content regarding consumers, while 55 (50.9%) pages were devoted to financial institutions. The proportion of the dialogue regarding consumers showed a continual climb from October 1, 2008 to July 15, 2010, with a difference of 31.6%. When comparing discussions about the two topics, discussions about consumer and financial institutions grew from 2008 to 2010.

Table 17

Consumers and Financial Institutions: Congressional Record Content Comparison—Senate

	Congressional Record of the Senate Pages		
	Consumers	Financial Institutions	Total Pages
Date nearest focusing event 10/01/2008 (TARP)	23 (11.0%)	77 (36.8%)	209
Next significant date 05/19/2009 (CARD)	21 (25.3%)	17 (20.5%)	83
Date legislation was passed 07/15/2010 (CFPB)	46 (42.6%)	55 (50.9%)	108

Note. Percentages may not add up to 100% due to content overlap or content infrequency. From U.S. Congress, House of Representatives, Proceedings and debates of the 110th Congress, second session, October 1, 2008, *Congressional Record, 154*(159); U.S. Congress, House of Representatives, Proceedings and Debates of the 111th Congress, first session, May 19, 2009, *Congressional Record, 155*(77); and U.S. Congress, House of Representatives, Proceedings and Debates of the 111th Congress, second session, July 15, 2010, *Congressional Record, 156*(105).

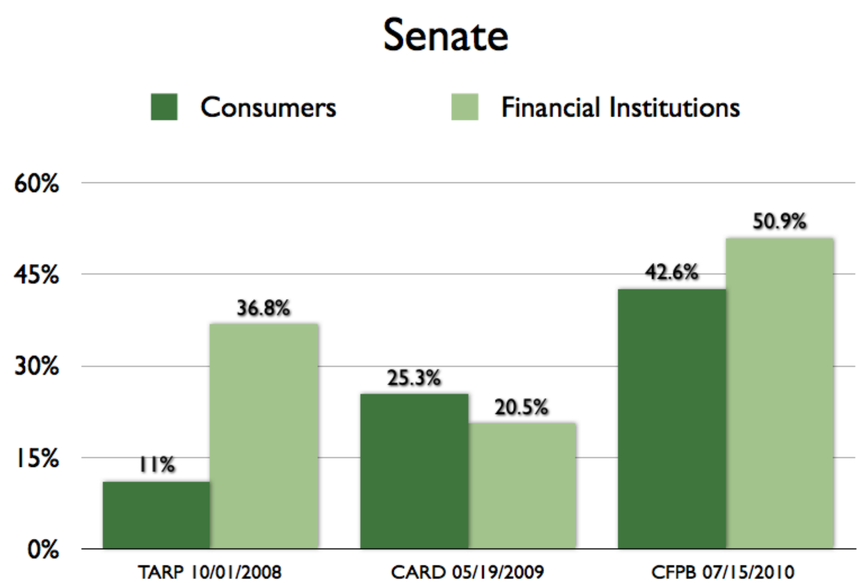

Figure 26. Consumers and financial institutions: *Congressional Record* content comparison—Senate. Percentages may not add up to 100% due to content overlap or content infrequency. Derived from U.S. Congress, House of Representatives, Proceedings and debates of the 110th Congress, second session, October 1, 2008, *Congressional Record, 154*(159); U.S. Congress, House of Representatives, Proceedings and Debates of the 111th Congress, first session, May 19, 2009, *Congressional Record, 155*(77); and U.S. Congress, House of Representatives, Proceedings and Debates of the 111th Congress, second session, July 15, 2010, *Congressional Record, 156*(105).

Senate—TARP. TARP passed the Senate on October 1, 2008, with 74 yeas, 25 nays, and one person who did not vote. An analysis of the *Congressional Record* for that day demonstrated a greater emphasis on financial institutions than consumers (see Table 17 and Figure 26). However, the context reveals that senators were not excited about having to pass legislation to bailout banks. Many expressed that their reason for casting a yes vote was to protect Americans. Senators expressed their preference to allow banks to suffer from their intentionally bad decision; however, not passing the legislation to rescue banks would be more detrimental to Americans. If banks were not bailed out, then credit would dry up. For example, Senator Christopher Dodd (D-CT) stated,

> We are one Nation, one economy, and one body. We can take a cut at Wall Street, but Wall Street will not feel the worst of the pain–not by a long shot. The blood will not come from them. My colleagues know who will feel the pain, who will be bled the most by this crisis; those whose economic world is made up of credit cards and mortgage payments, not hedge funds and credit default swaps. The men and women and families we represent will feel the pain of a "no" vote. (U.S. Congress, 2008c, p. S10222)

Senator Barbara Mikulski (D-MD) expressed that she was being forced to vote for rescuing the banks. She stated that the financial crisis began in 1999 when Senator Gram and House member Bliley advocated deregulation. She stated, "[Deregulation] passed and it got us into this mess. Got rid of the distinction between investment banks and commercial banks, and lowered the bar on regulation" (U.S. Congress, 2008c, p. 10220).

Senator Hilary Clinton (D-NY) also did not want to bailout the banks but believed that not doing so would be detrimental to the economy. She stated,

> Our economy runs on credit. Underlying that credit is trust. Both the credit and the trust is running out. Essentially, what we are doing in an intangible way is restoring trust and confidence, and in a very tangible way helping to restore

> credit. Banks will refuse to lend to businesses and even to one another . . . (U.S. Congress, 2008c, p. S10215)

Senator Harry Reid (D-NV) emphasized security and bipartisanship. He stated,

> Literally, the security and wellbeing of the American people are at risk, and we have to work together to solve this crisis. So last night, Democrats and Republicans gave consent to move to a vote later today on a package of bills that will stabilize our economy, restore confidence among consumers and businesses, and create new jobs and economic growth. (U.S. Congress, 2008c, p. S10190)

TARP was essentially an emergency procedure to rescue the banks that was wrapped in a package about suffering consumers. The ability to tie the needs of the consumer to the bank bailout provided Congress the justification needed to feel good about their decision. However, Congress's decision to bailout the banks left ordinary citizens with the impression that Congress cared more about the banks than the American people (Kaiser, 2013). The latent meaning of statements from Congress highlighted the need for Congress to take direct action to assist and protect consumers.

Senate—CARD. The Senate passed the CARD Act on May 19, 2009, with a vote of 90-5 (Govtrak.us, 2015). Similar to the House analysis of TARP, Table 19 and Figure 26, demonstrate that the *Congressional Record* emphasized consumers over financial institutions. The tone of the debate is consistent with support for consumers. Topics of discussion included credit card reform, usury, and Credit Cardholders' Bill of Rights Act of 2009. The context of the discussion regarding the CARD Act could be summarized by the following quote from Senator Barbara Mikulski (D-MD), who expressed,

> This legislation says no more. No more raising interest rates for no reason and with no notification. No more applying higher interest rates to balances that have already been paid off. No more unfair sky-high fees with no recourse for the consumer. And no more targeting college kids to weigh them down with debt before they even graduate. . . . We need to fight for the middle class. We need to

> fight for the people who play by the rules. And we need a major attitude adjustment. Congress is trying to stand up for the middle class, for our constituents who are asking, "Where is my bailout?" . . . There is no gratitude, no remorse, no promise to sin no more, no "let's make amends." Instead, they pay themselves lavish salaries, bonuses and perks, like lavish spa retreats, and they fight tooth and nail against our efforts to help the very people who are now paying their salaries. Wall Street is bankrupt—both on its balance sheets and in its attitude towards the American consumer. (U.S. Congress, 2009a, p. S5571)

Senate—CFPB. On July 15, 2010, the Senate passed Dodd-Frank (establishing CFPB), by a vote of 60-39 (Govtrak.us, 2015). Similar to the House, it was a partisan vote with 55 "yes" votes from Democrats, three "yes" votes from Republicans, and two "yes" votes from Independents. "No" votes included one from Democrats and 38 from Republicans (Govtrak.us, 2015). Although the goal was to protect consumers, 39% of the Senate disagreed with this course of action.

Senator Jon Kyl (R-AZ) was against the legislation because he believed it would harm credit availability, particularly for business owners, and would therefore harm job creation (U.S. Congress, 2010b). Senator Kay Bailey Hutchison (R-TX) also expressed concern that the agency would end up taking the lead in regulating, rather than current banking regulators taking the lead. Such action would affect community banks, which she concluded were already well regulated. Community banks in Texas had convinced her that the CFPB would result in higher fees for consumer services, fees for checking accounts, and an inability for consumers to negotiate loans (U.S. Congress, 2010b).

House and Senate. In both chambers of Congress, there was an increase in dialogue regarding consumers between 2008 and 2010. However discussions about financial institutions fluctuated (see Figure 27).

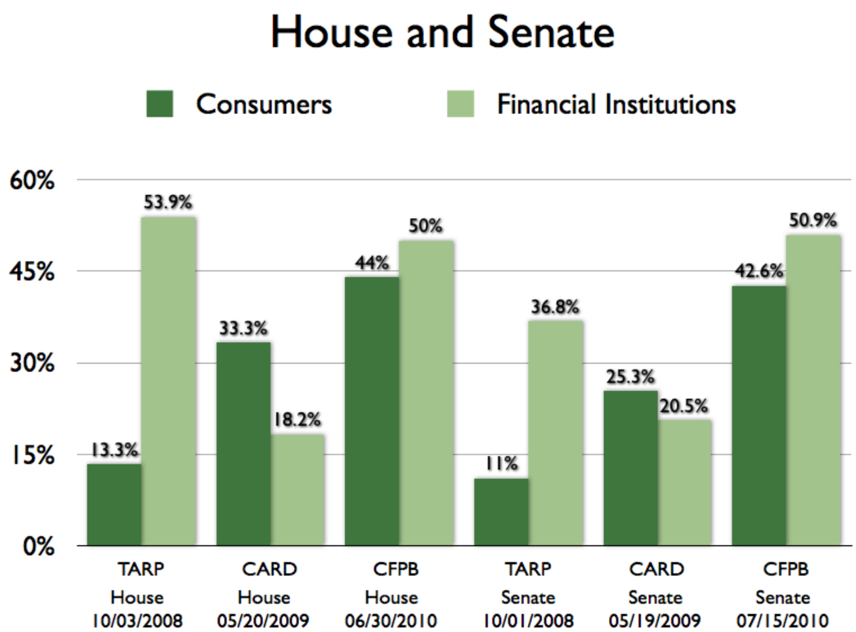

Figure 27. Consumers and financial institutions: *Congressional Record* content comparison—House and Senate. Percentages may not add up to 100% due to content overlap or content infrequency. Derived from content taken from U.S. Congress, House of Representatives, Proceedings and Debates of the 110th Congress, second session, October 3, 2008, *Congressional Record, 154*(161); U.S. Congress, House of Representatives, Proceedings and Debates of the 111th Congress, first session, May 20, 2009, *Congressional Record, 155*(78); U.S. Congress, House of Representatives, Proceedings and Debates of the 111th Congress, second session, June 30, 2010, *Congressional Record, 156*(100); U.S. Congress, Senate, Proceedings and Debates of the 110th Congress, second session, October 1, 2008, *Congressional Record, 154*(159); U.S. Congress, Senate, Proceedings and Debates of the 111th Congress, first session, May 19, 2009, *Congressional Record, 155*(77); U.S. Congress, Senate, Proceedings and Debates of the 111th Congress, second session, July 15, 2010, *Congressional Record, 156*(105).

Research Questions

The research questions examined activities before, during, and after the creation of CFPB. The overall objectives were to determine what triggered the creation of new federal agencies and to determine if CFPB operated as a risk bureaucracy by evaluating the presence of rick bureaucracy components during the agency's implementation.

Research Question 1 is *before*, Research Questions 2 and 3 are *during*, and Research Question 4 is *after* the creation of CFPB.

The analytical framework had a policy adoption phase and an implementation phase. The policy adoption phase addressed Research Questions 1-3 and the implementation phase answered Research Question 4.

Research Question 1. Regarding CFPB, this research question asked "How did events prior to the financial crash shape CFPB?" Those who participate and regulate financial markets have conflicting incentives of growth and stability. Growth involves innovation and risk taking, while stability is gained through regulation. Regulating excessive risk taking is like walking a tightrope that is easy to fall off (Peretz & Schroedel, 2009).

Decisions made long before the 2008 financial crash set the stage for problems in the financial market. The financial crash was preceded by years of deregulation. During the 10 years preceding the crash, the financial industry spent more than $2 billion in political contributions ensuring that their position on deregulation was well known. The environment created by financial deregulation and reckless actions of big banks paved the way to the financial crash of 2008. In fact, some argue that deliberate deregulation, along with dangerous actions on the part of big banks, was the real cause of the financial crash. Policy entrepreneur Elizabeth Warren (2014) led the charge for a new federal agency that would serve as a cop on the beat that would oversee and enforce financial regulations and ensure that a crash would not happen again. Support for this new federal agency was not bipartisan. The following quotes provide a Democratic context for passing new financial regulatory legislation.

Appendix B provides a timeline of key financial deregulation events in the United States (Sherman, 2009), while the *Congressional Record* provides additional insight on Congress's understanding of the role deregulation played on the financial crash. Samples of quotes from the *Congressional Record* regarding deregulation are as follows:

> In 1999, Congress repealed key parts of the Glass-Steagall Act of 1933. The repeal allowed banks to operate any kind of financial businesses they desired, and it set up a situation where the banks had multiple conflicts of interest.
>
> Several economists and analysts have cited the repeal of this act as a major contributor to the 2007 subprime mortgage crisis. . . .
>
> In 2000 we also deregulated a new and volatile financial derivative that is at the heart of today's housing credit crisis—credit default swaps. . . . these "newfangled financial instruments" that posed a risk to the market actually grew into a $62 trillion industry. Warren Buffett has called these credit-swaps "financial weapons of mass destruction." . . . .
>
> What I want to know is whether we have learned our lesson. Are we going to legislate consumer protections in advance, or only after a bubble bursts?
>
> The savings and loan crisis of the 1980s and 1990s when 747 savings and loan associations went under provides a similar lesson.
>
> Like before, much of this mess can be traced back to the deregulation of the savings and loans which gave these associations many of the capabilities of banks, but failed to bring them under the same regulations.
>
> Congress eliminated regulations designed to prevent lending excesses and minimize failures.
>
> Deregulation allowed lending in distant loan markets on the promise of higher returns, and it also allowed associations to participate in speculative construction activities with builders and developers who had little or no financial stake in the projects. . . .
>
> This deregulation has helped spark today's price super-bubble, as George Soros[2] warned at a June 3 Commerce Committee hearing, that is driving our markets to no longer be based on supply-and-demand fundamentals.
>
> In one fell swoop, this deregulation did a number of things that enabled today's perfect storm to brew.
>
> No. 1, we let these newfangled financial instruments called credit default

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[2]Billionaire financier, philanthropist, political donor, and author.

swaps go unregulated, and it made it easy to use bad debt to finance home mortgages. (Senator Maria Cantwell [D-WA], as cited in U.S. Congress, 2008b, pp. S8813-S8814)

I am also reminded that Senator McCain has chaired the Commerce Committee and oversaw a massive deregulation scheme that gutted our oversight of these markets. Where is the accountability? Instead of protecting consumers and preventing abuse, the special interests ruled. And Chairman McCain oversaw that effort. (Senator Debbie Stabenow [D-MI], as cited in U.S. Congress, 2008b, p. S8830)

Mr. President, this week we have learned that Lehman Brothers, one of the oldest financial institutions in our country, an investment bank that has survived two world wars and a Great Depression, has proven that even it could not survive 8 long years of deregulation and lax oversight by the administration of George W. Bush. It is going bankrupt. . . .

What these lobbyists fought for and secured was selling deregulation snake oil, deregulation snake oil backed with millions in campaign contributions. That is what I think is the overlying issue as we look at the financial crisis facing Wall Street and the soaring and volatile prices in terms of oil. (Senator Bernie Sanders [I-VT], as cited in U.S. Congress, 2008b, p. S8831)

So what happens is they not only passed a Financial Modernization Act which repeals Glass-Steagall and the very things we put in place to protect against this sort of thing—the mingling of risky enterprises with banking—they not only do that, but George W. Bush wins the Presidency and he comes to town and he appoints regulators—i.e., Harvey Pitt to run the Securities and Exchange Commission, just as an example. What is the first thing he says when he gets to town? He says: You know something, you should understand that the Securities and Exchange Commission is a business-friendly place now. Right. Well, that is what happened in virtually every area of regulation. People were appointed who didn't have the foggiest interest in regulating. The whole mantra was to deregulate everything: Don't look, don't watch, don't care. As a result, in virtually every single area, we saw this kind of greed and unbelievable activity develop across this country.

So now we went through this period with a housing bubble built up with these subprime mortgages, and then we saw the whole thing go sour and people wonder why. It is not surprising at all that it went sour. What is surprising to me is how so many interests got sucked in by this and how unbelievably damaging it has been to the American economy. (Senator Byron Dorgan [D-ND], as cited in U.S. Congress, 2008b, p. S8834)

The last 8 years of this administration, they did everything they could to eliminate, gut, stymie, and ignore responsibility for regulatory oversight by the

> Federal Government. This administration worshipped at the altar of the free enterprise system and the market. The President wanted the gold, but without a standard.
>
> Republicans did everything they could to let the financial industry do anything it wanted, regardless of consequence. At the same time, the administration made clear in its Federal appointments they wanted Federal regulatory agencies on the sidelines. (Representative James McDermott [D-WA], as cited in U.S. Congress, 2008a, p. H8131)

> The reality is that the economy has become weak, with policies that have deregulated financial institutions leading to the collapse of some of our longest-standing, historically most solid institutions like Lehman Brothers. For 8 years, the Bush-McCain economic policy has had a radical proposition that we can deregulate everything and leave everything to Wall Street, and it will all take care of itself. (Representative Peter Welch [D-VT], as cited in U.S. Congress, 2008a, p. H8141)

It should be noted that the Senate debate took place during Senator McCain's 2008 Presidential Campaign. References to him by a Democratic-controlled Senate and attempts to tie him to the financial crash appeared to be politically motivated.

There were some environmental weaknesses prior to the financial crash that have been identified. This study identified 2007–2009 as the financial crisis, but specifically marks September 2008 as the financial crash. As such, events prior to September 2008 are considered pre-event. Financial institutions' willingness to take advantage of borrowers, which was preceded by years of financial deregulation, produced the financial crash.

During the summer of 2007, Warren (2007) wrote an article titled "Unsafe at Any Rate." In her article, she identified routine financial products as the source of financial tricks and traps. Deregulation of interest rates, innovative credit charges, fine print in financial contracts, and financial contracts with incomprehensible text had resulted in debt for many Americans. In the 1980s, a credit card contract was approximately one page. By the 2000s, the length of an average credit card contract had grown to more than 30 pages. Contracts were written to intentionally take advantage of the consumer while protecting the lender's right to change the terms of the contract as they saw fit. In 2006, 1.2 million families lost their homes to foreclosure and $89 billion was paid in fees, interest, and other charges (Warren, 2007). Additionally, brokers who were motivated by lender kickbacks pushed customers into loans with higher interest rates when they qualified for rates that were lower, and payday lenders were fleecing customers with interest rates that exceeded 485% (Warren, 2007).

Significant financial deregulation (Appendix B) has had an impact on how financial institutions treat customers and on how financial institutions internally operate. Financial deregulation dates back to 1978 in the case of *Marquette v. First of Omaha*, where the Supreme Court ruled that banks could export usury laws from their home state to their branches located nationwide, rather than complying with the laws of each individual state (Sherman, 2009). In 1996, the Federal Reserve reinterpreted the Glass-Steagall Act to allow bank holding companies to generate up to 25% of their revenue from investment banking and by 1999, the Gramm-Leach Bliley Act completely repealed the Glass-Steagall Act (Sherman, 2009). By 2007, the subprime mortgage crisis began and by 2008, major financial institutions began to collapse.

Research Question 2. Regarding CFPB, this research question asked, "What triggered the creation of CFPB?" A focusing event coupled with a transboundary risk with institutional impacts triggered the creation of CFPB. Content analysis of purposefully sampled *Congressional Records* supported that Congress was led to develop and enact legislation that focused on protecting consumers due to risks in the form of harmful financial products and services. The risks eventually led to the financial crash. As 9/11 was the focusing event prior to creating TSA, the financial crash was the focusing event prior to creating the CFPB. The term *transboundary risk* comes from the literature and could not be found among the sampled *Congressional Records*; however, the concept was present. The combination of *too big to fail* and *interconnectedness* conveyed the same concept of risk that crosses boundaries. Below are quotes from *Congressional Records* that illustrated such risks within the financial system:

"We need to put in place reforms to stop Wall Street firms from growing so big and so interconnected that they can threaten our entire economy" (Senator Jeanne Shaheen [D-NH], U.S. Congress, 2010b, p. S5888).

Senator Mark Warner (D-VA) stated the following:

> What often precipitated the greatest risks to our system was not size alone—America has only 4 of the 50 largest banks in the world—but it was the interconnectedness, their leverage, their failure to have appropriate risk management plans in place. (U.S. Congress, 2010b, p. S5882)

Financial institutions were impacted by the risk, although it was a self-inflicted wound. As discussed earlier, Congress passed the TARP to authorize the Secretary of the Treasury to purchase up to $700 billion in troubled assets owned by financial institutions (Webel, 2013). Two of the four types of programs created under TARP targeted banks and credit markets. Financial intuitions were directly impacted by their own risky behavior and Congress was using taxpayer funds to rescue them.

Research Question 3. In regard to CFPB, this research question asked, "Did risk play a factor in creating CFPB?" According to a GAO study published in March of

2009, the financial system in the United States was prone to systemic risk because (a) the current regulatory system was not designed to oversee large and interconnected financial institutions, (b) some financial activities and some financial institutions did not fall under the purview of financial regulators, and (c) innovative markets led to complex financial products that were not envisioned when the financial regulatory system was developed (*Systemic Risk: Regulatory Oversight*, 2009).

While the specific form of risk associated with creating TSA was terrorism, harmful financial products and services is the type of risk Congress was concerned about when creating the CFPB.

On the day that each chamber of Congress passed legislation to create the CFPB, discussions about the risk of harmful financial products and services were present. On June 30, 2010, the *Congressional Record* of the House of Representatives had statements about harmful financial products and services on 26 (26%) of its pages (U.S. Congress, 2010a). On July 15, 2010, the *Congressional Record* of the Senate contained content regarding harmful financial products and services on 20 (18.5%) of its pages (U.S. Congress, 2010b; see Figure 28).

As demonstrated above, risk can be identified by a specific name (i.e., harmful financial products and services). However, the notion of risk can also be expressed in terms that either show a need to *protect* (from harm or from dubious intentions) or to *prevent* a harmful action from happening again. Both terms are indicative of the presence of risk.

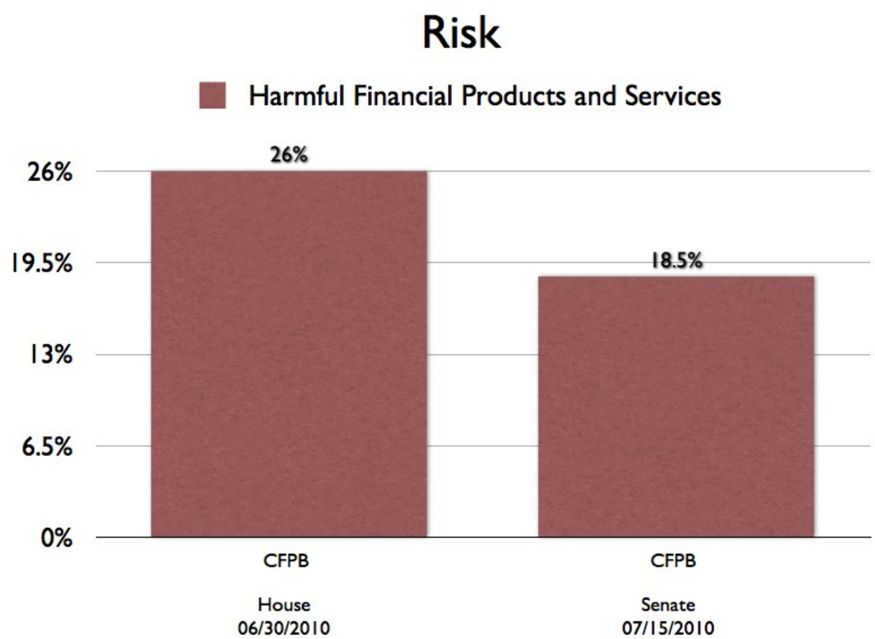


Figure 28. Risk of harmful financial products and services: *Congressional Record* of the House and Senate. From U.S. Congress, House of Representatives, Proceedings and Debates of the 111th Congress, second session, June 30, 2010, *Congressional Record, 156*(100); and U.S. Congress, Senate, Proceedings and Debates of the 111th Congress, second session, July 15, 2010, *Congressional Record, 156*(105).

Risk played a factor in creating the CFPB as demonstrated by the following quotes from the *Congressional Record* regarding protection and prevention. The quotes provide a Democratic context of risk.

Protection. For far too long in the U.S. financial system and its products, any concerns about consumer protection came in a distant second or a third or none at all. Now, anyone who opens a checking or savings account, anyone who takes out a student loan or a mortgage, anyone who opens a credit card or takes out a payday loan will have a federal agency on their side to protect them. For the first time, consumer protection authority will be housed in one place (Representative Carolynn Maloney [D-NY], as cited in U.S. Congress, 2010a, p. H5219)

> We saw in this financial crisis that even responsible consumers suffered at the hands of aggressive lenders with dubious intentions. This legislation will create a consumer bureau that will end those types of practices, that will be on the side of the consumer, that is independent, so the consumer is represented in the financial structure. (Senator Ben Cardin [D-MD], as cited in U.S. Congress, 2010b, p. S5871)

> With this new legislation, we create for the first time a consumer watch-dog—the Consumer Financial Protection Bureau—that will solely focus on protecting consumers from unscrupulous financial activities. The law gives this agency independent rulemaking, examination, and enforcement responsibilities, and clear authority to prohibit unfair, deceptive, and abusive financial activities against middle-class families. And it consolidates the existing responsibilities of many regulators to ensure that there is a less fragmented, more comprehensive, and a fully accountable approach to protecting consumers. (Senator Jack Reed [D-RI], as cited in U.S. Congress, 2010b, p. S5913)

Prevention. Senator Harry Reid (D-NV) stated, “This is not a time for panic, but it is a time to look back on the past 8 years of the Bush-Hoover-McCain economics and figure out what brought us to this point so we don’t repeat the same mistakes” (as cited in U.S. Congress, 2008b, p. S8809)

> Since the 2008 financial crisis that reduced the values of their homes and savings, our constituents have demanded action and answers. What went wrong and what will Congress do to make sure it doesn’t happen again? This bill answers with strong protections for American families. (Representative Aaron Bean [R-FL], as cited in U.S. Congress, 2010b, p. H5219)

> So this is a major undertaking, one that is historic in its proportions, and it is an attempt to set in place a structure that will allow us to minimize problems in the future. I can’t legislate integrity. I can’t legislate wisdom. I can’t legislate passion or competency. What we can do is to create the tools and the architecture that allow good people to do a good job on behalf of the American public. That is what a bill like this is designed to do.
>
> I regret I can’t give jobs back, restore foreclosed homes, or put retirement monies back into accounts. What I can do is to see to it that we never, ever again have to go through what this Nation has been through. That is what this effort has

> been about over the last several years, to try to create that structure, that architecture. It will be incumbent now on the present administration and those who follow to nominate good people to head up these operations, to attract good public servants who will fill the jobs of these various regulatory bodies to see to it that they do the work we all want them to do. (Senator Chris Dodd [D-CT], as cited in U.S. Congress, 2010b, p. S5878)

> This bill gives financial institutions, regulators and consumers the right tools to make good decisions, and it also provides the right tools to prevent another crisis like the one we recently experienced. (Senator Tim Johnson [D-SD], as cited in U.S. Congress, 2010b, p. S5889)

> We need to do everything we can to ensure that a financial crisis, such as the one we experienced in late 2008, never happens again. (Senator Jeanne Shaheen [D-NH], as cited in U.S. Congress, 2010b, p. S5888)

> But we never want to have to see that happen again. We never want to have to go through that type of trauma again as a nation, where our entire financial community is teetering. (Senator Judd Gregg [R-NH], as cited in U.S. Congress, 2010b, p. S5890)

> I rise to speak on the Wall Street Reform and Consumer Protection Act which the Senate will pass today. After 2 years of work, the reckless practices of Wall Street firms that resulted in terrible losses for people in Wisconsin and across the nation will finally be ended.
>
> These events showed us that maintaining the current regulatory system is not an acceptable option. Wall Street needs accountability and transparency to avoid future financial meltdowns. Congress has the duty to ensure that this kind of failure never happens again. The Wall Street Reform and Consumer Protection Act takes vital steps to end "too big to fail," bring un-regulated shadow markets into the light, and make our financial system work better for everyone. (Senator Herbert Kohl [D-WI], as cited in U.S. Congress, 2010b, p. S5926)

Research Question 4. In regard to CFPB, this research question asked, "What risk bureaucracy components are present in the implementation of CFPB?" The implementation phase of this research was exploratory. Content was analyzed to determine the extent to which CFPB functioned as a risk bureaucracy during implementation. This included looking for the components of director (standard setting), detector (information gathering), and effector (behavior modification) in the "public face" of the organization, which was also done within the TSA section of this chapter. *Congressional Records* and the agency's website were used to make this assessment.

The *Congressional Record* provided insight that from its inception, CFPB's role was to function in all three risk bureaucracy roles of director, detector, and effector. Senator Chris Dodd (D-CT) stated,

> Throughout the development of and debate on the Consumer Financial Protection Bureau, CFPB, I have insisted that the legislation meet three requirements—independent rule writing, independent examination and enforcement authority, and independent funding for the CFPB. The CFPB, as established by the conference report, meets each of those requirements. (as cited in U.S. Congress, 2010b, p. S5928)

Independent rule making is a director function, independent examination and enforcement authority are detector and effector functions respectively, and independent funding is the financial support to carry out the agency's functions and is therefore not categorized under a specific risk bureaucracy function.

The agency's detector and effector functions could also be identified in the following statement:

> The Consumer Financial Protection Bureau will have the authority to investigate and enforce rules against all mortgage lenders, servicers, mortgage brokers, and foreclosure scam operators so that hardworking Americans have a strong financial cop on the beat that has the interests of consumers in mind. (Senator Jack Reed [D-RI], as cited in U.S. Congress, 2010b, p. S5916)

The authority to investigate is a detector function and the authority to enforce rules is an effector function. Similar to Senator Dodd's statement above, Senator Jack Reed (D-RI) also stated,

> With this new legislation, we create for the first time a consumer watch-dog—the Consumer Financial Protection Bureau—that will solely focus on protecting consumers from unscrupulous financial activities. The law gives this agency

> independent rulemaking, examination, and enforcement responsibilities, and clear authority to prohibit unfair, deceptive, and abusive financial activities against middle-class families. And it consolidates the existing responsibilities of many regulators to ensure that there is a less fragmented, more comprehensive, and a fully accountable approach to protecting consumers. (as cited in U.S. Congress, 2010b, p. S5913)

Rulemaking, examination, and enforcement represent director, detector, and effector, respectively.

Although not part of the analysis for this dissertation, it is worth mentioning that only, detector and effector elements are written in the "SPECIFIC FUNCTIONAL UNITS" section of the statute. The director function is not present. The units are Research (a detector function), Community Affairs (an effector function), and Collecting and Tracking Complaints (a detector function).

> (1) Research—The Director shall establish a unit whose functions shall include researching, analyzing, and reporting . . .
> (2) Community Affairs—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products and services to traditionally underserved consumers and communities.
> (3) Collecting and Tracking Complaints—In general—The Director shall establish a unit whose functions shall include establishing a single, toll-free telephone number, a website, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services. The Director shall coordinate with the Federal Trade Commission or other Federal Agencies to route complaints to such agencies, where appropriate. (Dodd-Frank [Public Law 111-203], 2010, pp. 1968-1969).

CFPB website. Figures 30 and 31 are screenshots from CFPB's website under the *About Us* link. CFPB stated that its mission was to

> make markets for consumer financial products and services work for Americans—whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products. We work to: Educate (An informed consumer is the first line of defense against abusive

> practices.); Enforce (We supervise banks, credit unions, and other financial companies, and we enforce federal consumer financial laws.); [and] Study (We gather and analyze available information to better understand consumers, financial services providers, and consumer financial markets.). (CFPB, 2015, para. 1; see also Figure 30)

CFPB's implementation phase included three main functions: educate, enforce, and study. The description provided for these three activities allowed them to be categorized under the following risk bureaucracy functions: Educate (*Effector: behavior modification*), Enforce (*Effector: behavior modification*) and Study (*Detector: information gathering*). The emphasis of education is tied to risk because of its ability to reduce vulnerabilities through modifying the behavior of those who are at risk (i.e., consumers). Education reduces vulnerability as demonstrated by CFPB's declaration that the first line of defense against abusive practices is an informed (i.e., educated) consumer (CFPB, 2015). If a financial institution exploits vulnerabilities, it can be regulated by CFPB's ability to take enforcement action and impose sanctions (i.e., behavior modification). Lastly, an analysis of information pertaining to consumers and consumer financial services (i.e., studying or information gathering) gives CFPB a better understanding of the vulnerabilities and their subsequent consequences. The roles of effector and detector are fulfilled by CFPB when it is educating, enforcing, and studying.

According to CFPB's website, the agency does not identify itself as functioning in the director capacity. One third of its mission was to function in the detector capacity, and two thirds of its mission was to function in the effector capacity (see Figures 29-31).

The agency's core functions were also identified on its website. A risk bureaucracy function has been assigned to each agency core function and is presented in Table 18.

CFPB's (2015) website documented six core functions that resulted in eight scores (due to overlap). Of the six core functions, one (12.50%) operated in the director role, four (50%) operated in the detector role, and three (37.5%) operated in the effector role. The first core function (i.e., write rules, supervise companies, and enforce federal consumer financial protection laws) was unique in that it operated in all three roles.

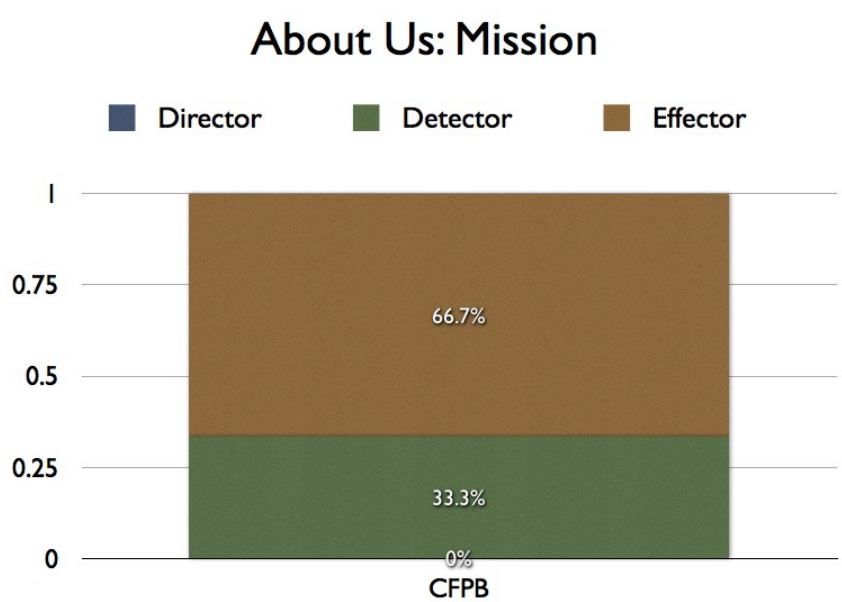
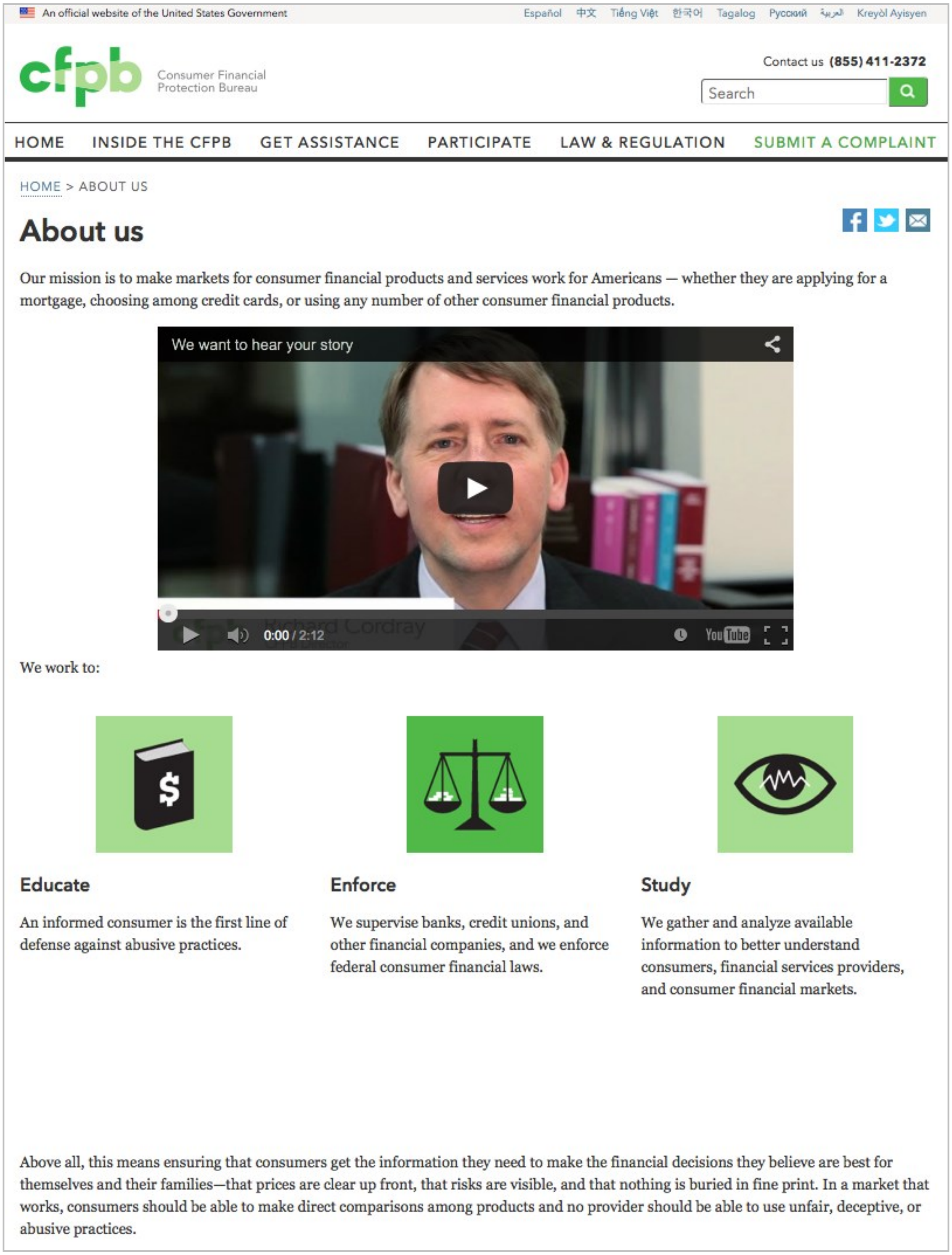


Figure 29. Presence of director, detector, and effector in agency's mission. From Consumer Financial Protection Bureau, 2015, retrieved from http://www.consumerfinance.gov/the-bureau



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About us

Our mission is to make markets for consumer financial products and services work for Americans — whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products.

We want to hear your story

0:00 / 2:12

We work to:

Educate

An informed consumer is the first line of defense against abusive practices.

Enforce

We supervise banks, credit unions, and other financial companies, and we enforce federal consumer financial laws.

Study

We gather and analyze available information to better understand consumers, financial services providers, and consumer financial markets.

Above all, this means ensuring that consumers get the information they need to make the financial decisions they believe are best for themselves and their families—that prices are clear up front, that risks are visible, and that nothing is buried in fine print. In a market that works, consumers should be able to make direct comparisons among products and no provider should be able to use unfair, deceptive, or abusive practices.

Figure 30. About us: CFPB. From Consumer Financial Protection Bureau, 2015, retrieved from http://www.consumerfinance.gov/the-bureau/

CORE FUNCTIONS

We work to give consumers the information they need to understand the terms of their agreements with financial companies. We are working to make regulations and guidance as clear and streamlined as possible so providers of consumer financial products and services can follow the rules on their own.

Congress established the CFPB to protect consumers by carrying out federal consumer financial laws. Among other things, we:

- Write rules, supervise companies, and enforce federal consumer financial protection laws
- Restrict unfair, deceptive, or abusive acts or practices
- Take consumer complaints
- Promote financial education
- Research consumer behavior
- Monitor financial markets for new risks to consumers
- Enforce laws that outlaw discrimination and other unfair treatment in consumer finance

GETTING STARTED

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) established the CFPB. In January of 2012, President Barack Obama appointed Rich Cordray to be the first Director of the CFPB.

Read more about the creation of the CFPB.

Figure 31. About us (continued). From Consumer Finance Protection Bureau, 2015, http://www.consumerfinance.gov/the-bureau/

Table 18

Risk Bureaucracy Components in CFPB's Core Functions

Core functions	Director	Detector	Effector
Write rules, supervise companies, and enforce federal consumer financial protection laws	X	X	X
Restrict unfair, abusive, or deceptive acts or practices			X
Take consumer complaints		X	
Research consumer behavior		X	
Monitor financial markets for new risks to consumers		X	
Enforce laws that outlaw discrimination and other unfair treatment in consumer finance			X

Note. From Consumer Finance Protection Bureau, 2015, http://www.consumerfinance.gov/the-bureau/

According to CFPB's (2015) website, all three risk bureaucracy components were present during implementation; however, minimal focus was given to the director role. Having more dominant roles as detector and effector may allow CFPB to influence the consumer financial market; however its diminished director role weakens the agency's capacity to exercise control over the system (see Figure 32).

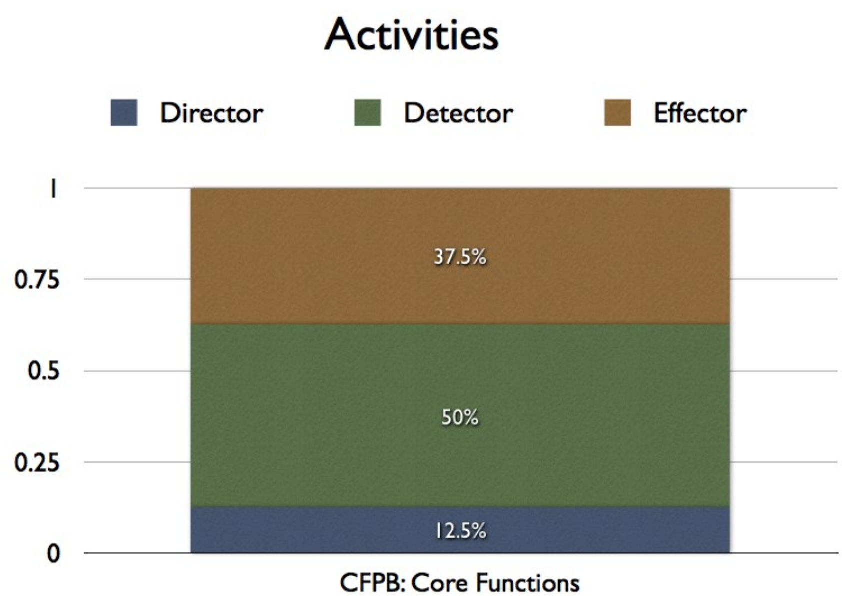

Figure 32. Presence of director detector, and effector in agency's activities. From Consumer Finance Protection Bureau, 2015, http://www.consumerfinance.gov/the-bureau/

CFPB outreach to older Americans reveals risk bureaucracy component. The emphasis of education is tied to risk because of its ability to reduce vulnerabilities through modifying the behavior of those who are at risk (i.e., consumers). CFPB's educational task is evident in its recently created office to engage specifically with those who are 62 years of age or older. CFPB recognized that older Americans had special financial needs and could fall prey to financial abuse. Consequently, they developed an office to educate them about financial literacy (Humphrey, 2012). Education seeks to reduce vulnerabilities and therefore aligns with a component of risk.

Conclusion

There are differences and similarities uncovered in the findings for TSA and CFPB. Similarities include (a) an upward trend in key discussions on the day legislation is passed to create a new agency, (b) a shift in purpose when the concept of each agency transitioned from policy adoption to implementation, and (b) the built-in ability for each agency to be adaptive. Differences include (a) TSA's advantage over CFPB in its director role and (b) TSA's greater capacity to control its system.

Congressional Records of the House of Representatives and the Senate show an upward trend in discussions about aviation security from the day nearest the focusing event to the day legislation was passed in each chamber of Congress establishing TSA. Similarly, there was an upward trend in both chambers of Congress when you track discussions about consumers on the day TARP was passed, to the day the CARD Act was passed, to the day that legislation was passed creating CFPB.

During the transition from policy adoption to implementation, one could observe a shift in purpose. Congress's expressed purpose for TSA emphasized the director function. However, during implementation TSA demonstrated a balance between the three risk bureaucracy functions, which serves as a desirable model. On the other hand, Congress expressed that CFPB would function in director, detector, and effector roles, but during implementation, the agency concentrated mostly on effector and detector roles. This left the CFPB with a weakened director role.

Risk bureaucracies have the ability to be adaptive because of their detector role. Continually gathering information about the system will give TSA and CFPB the capacity to make adjustments to address emerging threats and concerns. This is an important point since both agencies were created before the completion of congressionally mandated investigation. Each agency's built-in capacity to obtain information should have made it receptive to the findings and recommendations from the commission.

One can also conclude that TSA has an advantage over CFPB in its director role because TSA not only sets standards, but it also carries out those standards. For example, TSA sets standards for airport security screening and they also fulfill the position of transportation security officer at most of the nation's commercial airports. CFPB does not have a comparable position whereby banks become federalized and staffed by a CFPB federal loan officers.

Lastly, TSA has a greater capacity to control its system to prevent another focusing event because of a balanced use of the three risk bureaucracy components. Additionally, there is internal consistency between the agency's mission and the agency's activities. In other words, who they are is in line with what they do. This is not the case for CFPB. CFPB's professed mission lacks the director role. Furthermore, there is a disconnection between who they say they are and what they do. CFPB identifies itself as being more focused on effector than detector functions; however, its activities support the reverse (i.e., more detector activities than effector activities).

CHAPTER VI

CONCLUSIONS AND RECOMMENDATIONS

While it may seem obvious that TSA was created as a result of 9/11 and the CFPB was created as a result of the financial crash, this researcher explored the events before, during, and after their creation and identified a more nuanced explanation. The *Congressional Record* identified factors present during the creation of new federal agencies and confirmed that transboundary risks with institutional impacts triggered the creation of TSA and CFPB.

The beginning of this chapter provides a cross-case discussion of the similarities and differences that occurred before, during, and after the creation of TSA and CFPB.

Cross-Case Discussion

Before

Commercial airlines and security screening companies are private industries in business to make a profit. The years leading up to 9/11 are documented as a time when airlines hired the lowest bidding security companies to provide airport security services. The low cost resulted in high turnover and poor service (*Aviation Security: Terrorist Acts Demonstrate Urgent Need to Improve Security*, 2001; *Aviation Security: Terrorist Acts Illustrate Severe Weaknesses*, 2001; *Aviation Security: Vulnerabilities*, 2001). Unfortunately, airport security decisions were based on the bottom line and not security.

Similarly, banks are in business to make a profit. The financial crash of 2008 was preceded by deregulation, which was very profitable for the financial industry (Senators Cantwell, Stabenhow, and Sanders, as cited in U.S. Congress, 2008b; Warren, 2007). Deregulation created an environment that allowed harmful financial products and services to thrive. Both industries were focused on the bottom line and allowed detrimental practices to erode their foundation.

Before TSA was created, the aviation security industry suffered a terrorist attack on September 11, 2001. The attack occurred on a single day and kicked the policy window open (Kettl, 2007, 2014). On the other hand, the financial crisis and subsequent crash set the stage for creating CFPB, but was not a one-day tragic event of carnage.

A significant difference between the events surrounding the TSA and the CFPB include the perpetrator of the acts. The financial crisis was carried out by the financial industry, while terrorists from abroad carried out 9/11. In security terms, one event was an external threat, while the other was an insider threat. Since the banking industry perpetrated an act that created self-inflicted wounds, the actions are analogous to that of a suicide bomber. However, what separates the two types of risk is purpose and chance. According to Beck (2011), terrorism is a risk created on purpose, while financial risks are a risk of chance.

During

Legislation to create TSA was signed by President George W. Bush approximately 2 months after 9/11, while it was almost 2 years after the financial crash before Congress sent legislation to President Obama to sign. Events impacting the speed of passing the legislation include the political climate. There was bipartisan support for passing the Aviation and Transportation Security Act (ATSA) leading to the creation of TSA; while legislation to pass Dodd-Frank and therefore create CFPB was contested. As shown in the analysis of *Congressional Records*, on the day closest to the 9/11 focusing event, 95.1% of the pages from the House contained content about terrorism, while approximately 88.3% was recorded in the analysis of Senate records. None of the other topics analyzed during this study had a page-content count that exceeded these numbers. Additionally, there was no partisan split among Congress. Ninety-five percent of House members voted to pass the legislation that created TSA, while the Senate took a simple voice vote to pass the TSA legislation.

On the other hand, deregulation was a politically charged topic and much of the blame for the financial crisis was being placed there. Regulatory reform was a top priority for the Obama administration, which inherently added challenges to getting support from Republican Congress members who were determined to ensure President Obama was a one-term president (Kaiser, 2013). Naturally, there would be a partisan split regarding attempts to impose new regulations. By 2010 (with a Democratic-controlled House and Senate), Congress passed legislation that would create CFPB. Instead of 95% “yes” votes, as seen in the House when TSA was created (the Senate had a voice vote), only 55% of House members voted yes, and 61% of the Senate voted yes (GovTrak.us, 2015). It is important to note that the 2008 financial crash occurred during the 2008 Presidential Election Campaign, which also contributed to the political nature of the crisis.

Although it is challenging to determine the extent to which partisanship affected content percentages (i.e., Democrat or Republican percentages for aviation security, terrorism, consumers, financial institutions), the data did reveal that the House had a sensitivity toward matters affecting its constituents. For example, percentages for content regarding aviation security, and therefore the creation of a new agency, were higher in the House than the Senate. Likewise, percentages for content regarding consumers were higher in the House than the Senate.

Risk played a factor in creating both agencies; however, risk was a much greater factor in creating TSA than CFPB. The TSA-related page count for risk in the House (11/16/2001) and Senate (11/16/2001) was 43.8% and 72.7%, respectively. On the other hand, House (06/30/2010) and Senate (07/15/2010) page counts for risk with regard to creating CFPB were only 26% and 18.52%, respectively. Although this study was not designed to determine causation, one cannot help but wonder if there was a correlation between the low risk numbers for legislation to create CFPB and the length of time it took to pass the legislation. Perhaps it was a lower priority because the risk was perceived to be less significant or not as pressing by a considerable number of Congress members.

As noted in the previous chapter, the page count for Aviation Security and Consumers climbed between the dates of the focusing events and the dates Congress passed legislation to create TSA and CFPB. This demonstrates a trend that the topic gained traction among Congress. Gaining traction is not synonymous with gaining support, but in this case, sufficient support was present since TSA and CFPB were created.

After

As noted in the previous chapter, TSA and CFPB implement their risk bureaucracy functions differently. While Congress used terms to express TSA as having primarily a director function, the agency's mission and activities during implementation show a balanced approach to managing risk. On the other hand, Congress used terms to express CFPB as being created to function in all three roles. However, during implementation, CFPB focuses mostly on detector and effector functions, leaving the consumer financial market vulnerable in areas that the director function would address. In the end, this means that TSA has a greater capacity to control the aviation security system than CFPB has in controlling consumer financial markets.

Lessons Learned

Green (2012) argued that business need only be concerned with its own profit-seeking interests; however, government must be concerned with the public interest. What can be learned from these events is that civilization can continue to become a victim of its success, that security has become a public good (Beck, 2011), and public administrators will not respond to systemic risks until it is too late.

Technology makes U.S. systems more complex. Complex systems are prone to catastrophic failures (Rickards, 2011). Therefore, continual technological advancements will continue to lead to catastrophic failures. It is incorrect to conclude that the lesson to be learned is that society should avoid technology. That is outside of the control of public administrators. However, if the use of director, detector, and effector functions are requirements for gaining cybernetic control of a system, then perhaps public administrators can deploy such strategies in order to gain control of a system before an event occurs.

Summary of Results

The terrorist events of 9/11 resulted in the creation of TSA, and the financial crash of 2008 resulted in the creation of CFPB; however, this author introduces the argument that a transboundary risk that threatens institutions shaped the creation of these agencies. Since transboundary risks that threaten institutions led to creating TSA and CFPB, these agencies have to be able to control risk. Therefore a theory of control is used to evaluate each agency's design. The purpose of this study was twofold: explore the context for creating TSA and CFPB and determine the extent to which TSA and CFPB have a risk bureaucracy design. This was achieved by evaluating each agency against the cybernetic control functions of standard setting (director), information gathering (detector), and behavior modification (effector). Each agency's design was tied to its ability to control its respective system, and therefore prevent another major event.

A framework was developed to illustrate the process from policy adoption to implementation. This framework explains how a major event can lead to the creation of a risk bureaucracy. Secondary data were collected and analyzed to assess TSA and CFPB as risk bureaucracies, draw conclusions, and discuss implications. An examination of this phenomenon (i.e., major events followed by risk bureaucracies) also explained the recent pattern of creating new federal agencies. A research model and framework were used to evaluate TSA and CFPB as risk bureaucracies.

The results supported that a focusing event coupled with a transboundary risk with institutional impacts triggered the creation of TSA and CFPB. Additionally, the results demonstrated that although both agencies operated as risk bureaucracies, certain risk bureaucracy components were more dominant than others. This research was based on the premise that when a federal agency is created as an intervention strategy to address a focusing event coupled with a transboundary risk with institutional impacts, it would emerge as a risk bureaucracy. This section provides a review of the research questions and a summary of the results.

1. How did events prior to 9/11 and prior to the financial crash shape TSA and CFPB?
2. What triggered the creation of TSA and CFPB?
3. Did risk play a factor in creating TSA and CFPB?
4. What risk bureaucracy components are present in the agency design of TSA and CFPB?
    a. Are director components present?
    b. Are detector components present?
    c. Are effector components present?

Research Question 1

How did events prior to 9/11 and the financial crash shape TSA and CFPB? One of the responses to 9/11 and the financial crash of 2008 included Congress passing legislation to create new federal agencies. TSA would address aviation security problems that were identified before 9/11 and CFPB would tackle issues that existed before the financial crash. Terrorist attacks against aviation, the lack of requirements to screen checked baggage, poor track records of private security companies, high screener turnover, and high checkpoint test failure rates were examples of problems that existed before 9/11. Deregulation of interest rates, innovative credit charges, fine print in financial contracts, and financial contracts with incomprehensible text were examples of concerns that existed prior to the financial crash of 2008. The ATSA (2001) included provisions to address pre-9/11 problems and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank, 2010) had provisions to address prefinancial crash problems. These findings were consistent with garbage can theory (GCT) whereby problems, solutions, participants, and choice opportunities already existed. When the choice opportunity arises, participants use preexisting solutions to solve current problems.

Research Question 2

What triggered the creation of TSA and CFPB? Focusing events coupled with a transboundary risk with institutional impacts triggered the creation of TSA and CFPB. The *Congressional Records* supported that Congress was led to develop and enact legislation that (a) focused on airport security because of the events of 9/11 and (b) focused on protecting consumers due to harmful financial products and services that eventually led to the financial crash. The 9/11 terrorist attacks and the 2008 financial crash were the focusing events. Terrorism as well as harmful financial products and services were proven to be risks that crossed geographical boundaries. Lastly, the

Congressional Records demonstrated that the aviation industry and the financial industry were critically impacted by these events. After 9/11, air carriers lost millions of dollars daily and some air carriers were close to bankruptcy. During the financial crash, several prominent financial institutions either fell, were sold, filed for bankruptcy, or needed a government bailout (U.S. Congress 2008a).

Research Question 3

Did risk play a factor in creating TSA and CFPB? A review of *Congressional Records* suggested that risk was a factor in passing the legislation that created TSA. Congress mentioned that the biggest risk to the United States was terrorism (U.S. Congress, 2001a). Congress acknowledged that there was a risk not only to aviation, but a risk to Americans, a risk to civilizations, and a risk to freedom. Several quotes were taken from specific *Congressional Records* of the House of Representatives and the Senate to provide qualitative data supporting the conclusion that risk played a factor.

Risk also played a factor in creating the CFPB. Congress wanted to prevent another financial crash resulting from unfair, abusive financial practices. Quotes from *Congressional Records* of the House of Representatives and the Senate were provided to support the role that risk played in creating the agency.

Statements about the risk of terrorism and the risk of harmful financial products and services were present in *Congressional Records* and a chart was created to illustrate the results (see Figure 20, Risk of terrorism and Figure 28, Risk of harmful financial products and services in Chapter V).

Research Question 4

What risk bureaucracy components are present in the agency design of TSA and CFPB?

a. Are director components present?

b. Are detector components present?

c. Are effector components present?

The implementation phase of this research was exploratory. Content was analyzed to determine the extent to which TSA and CFPB functioned as risk bureaucracies during implementation. This included looking for the components of director (standard setting), detector (information gathering), and effector (behavior modification) in the "public face" of the organization. TSA and CFPB's websites were used to make the assessments.

During the policy adoption phase, *Congressional Records* provided insight that, foundationally, TSA was designed to function in the role of director. On the other hand, CFPB's role was to function in all three risk bureaucracy roles of director, detector, and effector. Quotes were taken from *Congressional Records* and served as data that produced this finding; however, the main focus was analysis of the agencies based upon specific website content.

During the implementation phase, as determined by TSA's (2014, 2015) website (i.e., About Us and Layers of Security), all three components were present and a balance between director, detector, and effector roles was discovered. This confirmed that as a risk bureaucracy, TSA had infused the aviation security system with all three components necessary for control. This has demonstrated that TSA has a greater capacity to prevent another focusing event (i.e., another 9/11) from happening.

According to CFPB's (2015) website (i.e. About Us and Core Functions, see Figure 33), all three risk bureaucracy components were present during implementation; however, minimal focus was given to the director role. Having more dominant roles as detector and effector may allow CFPB to influence the consumer financial market; however, its diminished director role weakens the agency's capacity to exercise control over the system, therefore reducing its capability to prevent another financial crash (see Figure 34).

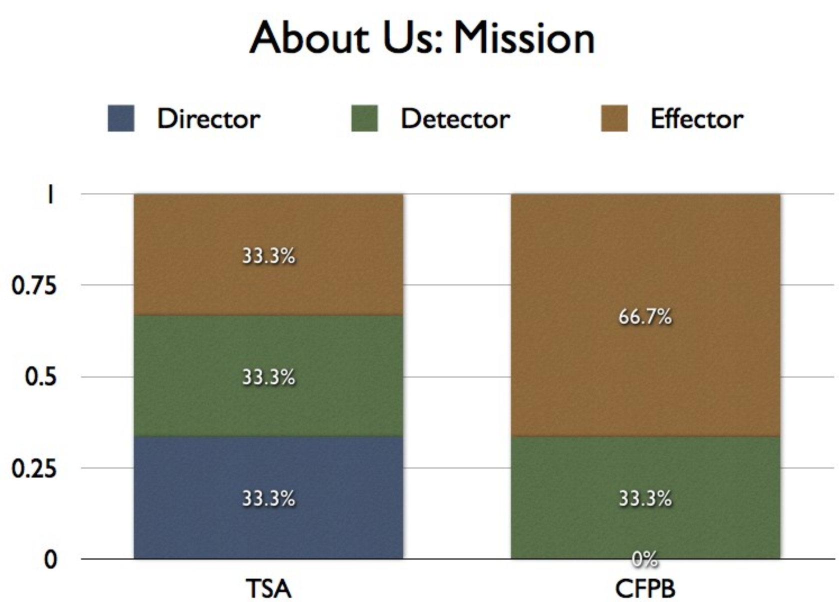

Figure 33. Percentage of agency mission focused on director, detector, and effector roles. From *About TSA: Mission, Vision, and Core Values*, 2014, Transportation Security Administration, Retrieved from http://www.tsa.gov/about-tsa/mission-vision-and-core-values; and About Us, 2015, Consumer Financial Protection Bureau, retrieved from http://www.consumerfinance.gov/the-bureau

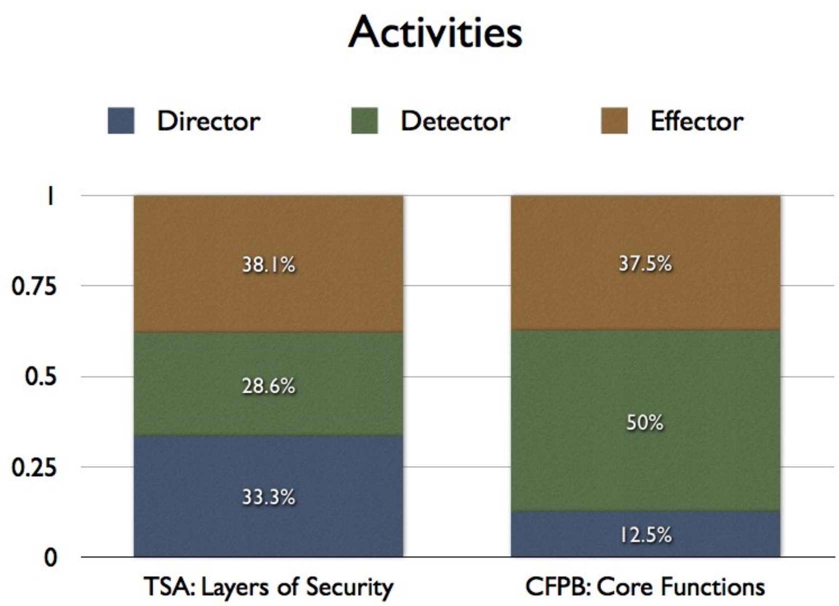

Figure 34. Percentage of activity types focused on director, detector, and effector roles. From Layers of Aviation Security, 2015, retrieved from https://www.tsa.gov/about-tsa/layers-security; and About Us, 2015, Consumer Financial Protection Bureau, retrieved from http://www.consumerfinance.gov/the-bureau.

Conclusion of the Study

A comparative case study between TSA and CFPB revealed that transboundary risks that harm customers (whether they be passengers on an aircraft or consumers of a financial product or service) would eventually harm the institutions. The harmful acts can be perpetrated by a third party (e.g., terrorists) or the institutions themselves (e.g., banks). It also appears that intervention strategies to address threats caused by third-party actors are easier for the American public to accept and for Congress to pass. If the government's solution to the threat involves creating a new federal agency, legislation gets passed quicker when lives are lost, versus the loss of finances and property. From this study we learn the following:

1. Government (i.e., elected officials and administrators) does not identify system failures in advance.
2. Technological advancements will continue to create risks.
3. A major event can grab the attention of Congress.
4. A transboundary risk with institutional impacts can cause Congress to create a new agency.
5. Political support is present after the event, but it may be split among party lines.
6. The agency will address issues that were known prior to the current event.
7. Since the turn of the century, risk is a motivating factor when Congress decides to create a new agency.
8. Government reach has continued to expand.
9. The risk bureaucracy components of director, detector, and effector are present during the implementation phase of new agencies
10. New agencies that implement a balanced approach to operating in the three risk bureaucracy roles of director, detector, and effector, have greater control over their respective systems, which increases their capacity to prevent another focusing event. New agencies should seek a balanced approach to functioning in these roles.
11. Security is a public good but where the line is drawn is debatable. It tends to move as technology advances.

Implications of the Study

The conclusions to this study have implications on agency creation literature and risk literature. Grafton (1975) discovered in his research that new federal agencies were created as a result of sudden movement in social change, economic change, or technological change. The expression he used to describe this change was socioeconomic-technological (SET) novelty (Grafton, 1975). The results of this study identified that risk played a role in creating new agencies. Specifically, a transboundary risk with institutional impact has led to the creation of TSA and CFPB. Grafton's work from 1975 has been updated to reflect this finding (see Table 3, The Transboundary Risk and Socioeconomic-Technological (TR-SET) Novelty Criteria in Chapter II).

Another implication is that a risk has led to an expansion of government control and oversight. In the 1930s, reorganization/agency creation was based upon management structure, as demonstrated by the Brownlow Committee; by 1975, Grafton concluded that SET novelty caused new agencies to be created, which inherently expanded the reach of government; by the 1960s and through the 1980s, societal/social concerns drove the need for new government agencies, again expanding the reach of government; and since the turn of the century, the creation of TSA and CFPB demonstrate the latest shift as government attempts to control transboundary risks with institutional impacts (see Figure 6, The expansion of governmental control and oversight through agency creation, in Chapter II).

The findings of this study also support the concept of TSA and CFPB as risk bureaucracies. However, this study was not conducted to provide evidence of such claims. Heng and McDonagh (2011) defined risk bureaucracies as government organizations or regulatory agencies dedicated to forecasting and developing risk-based guidelines to regulate and manage risk. The three components present in risk bureaucracies are director, detector, and effector. In varying degrees, all three components were present in the implementation phase of TSA and CFPB.

The findings of the study agree with GCT in that problems, solutions, participants, and choice opportunities coexist. The problems were terrorism and harmful financial products and services; the solutions were to create new agencies; the participants were Congress; and the choice opportunities were 9/11 and the 2008 financial crash. When the focusing events presented themselves as the terrorist attacks on 9/11 and the financial crash in 2008, Congress used the solution of creating new agencies (i.e., TSA and CFPB) to address the risks of terrorism and harmful financial products and services. This study's look into the environment that existed prior to 9/11 and prior to the financial crash demonstrated the extent to which problems and solutions existed before the choice opportunities arose. Additionally, the speed at which legislation was passed to create TSA was indicative that the problems in aviation security were already known and solutions had previously been discussed. On the other hand, the slow speed of passing the legislation that created the CFPB highlights the political nature of passing controversial legislation.

Recommendations for Practitioners

Institutions can be impacted by risk at the federal, state, and local levels of government. Recommendations for practitioners working for risk bureaucracies include the following:

1. Assess the activities of the agency against the director, detector, and effector roles to determine if all three are present to address the risk. Address deficiencies or redundancies where needed.
2. Identify which risk bureaucracy roles will be fulfilled whenever developing new programs or strategies to address emerging threats.
3. Strive to maintain a balance between the director, detector, and effector roles to maximize the agency's capacity to prevent crises or catastrophic events caused by the risk.
4. When faced with budget cuts, consider the director, detector, and effector roles of the agency before redistributing resources.

Recommendations for Future Research

Future research could be conducted in the policy adoption phase and the implementation phase.

1. Future research in the policy adoption phase can focus on the magnitude of the focusing event to determine where the tipping point is in relation to creating a new agency. For example, what impact did the death toll have on creating TSA? If fewer lives were lost (either by the incident occurring on a weekend when buildings were not occupied, or by the hijackers missing all of their targets), would TSA have been created? Previous aviation incidents did not result in a new agency, but rather resulted in changes to policy and technology.

2. Future research in the policy adoption phase can include the analysis of committee hearing records, which should be void of rehearsed narratives often found in *Congressional Records*.
3. Future research in the implementation phase could compare the agency's activities with the enabling statute to determine the extent to which the agency is doing what it was created to do.
4. Future research could be conducted to determine the efficacy of Congress creating new agencies before the completion of Congressional investigations. TSA was created in 2001 and *The 9/11 Commission Report* was completed in 2004 (National Commission on Terrorist Attacks, 2004). Similarly, CFPB was created in 2010 and the *Financial Crisis Inquiry Report* was completed in 2011 (Financial Crisis Inquiry Commission, 2011).
5. Future research could be conducted to determine the extent to which creating new agencies is a way of keeping the policy window open. A focusing event can provide a window of opportunity for getting new legislation passed. However, creating a new agency may serve as a conduit for continual policy change within a system, thus allowing the government, through its agency, to adapt to emerging threats.
6. Future research could target more mature government agencies to determine if they are risk bureaucracies and then evaluate their activities based upon the cybernetic control functions used in this study. For example, an existing agency that could further reinforce its mission as a risk bureaucracy is the Centers for Disease Control and Prevention (CDC, 2015). During 2014, the CDC had to address the transboundary

risk of Ebola cases in the United States. The unpreparedness of hospitals to effectively manage and care for Ebola patients (e.g., Texas Health Presbyterian Hospital failing to initially diagnose a patient with Ebola, two nurses at the hospital contracting the disease), demonstrated that medical facilities would be the institution impacted if the risk was not controlled. The director, detector, and effector roles of a risk bureaucracy could be used to evaluate CDC's mission statement and activities listed on their website. CDC's mission is as follows:

> CDC works 24/7 to protect America from health, safety and security threats, both foreign and in the U.S. Whether diseases start at home or abroad, are chronic or acute, curable or preventable, human error or deliberate attack, CDC fights disease and supports communities and citizens to do the same.
>
> CDC increases the health security of our nation. As the nation's health protection agency, CDC saves lives and protects people from health threats. To accomplish our mission, CDC conducts critical science and provides health information that protects our nation against expensive and dangerous health threats, and responds when these arise. (CDC, 2015, para. 1-2)

7. Finally, future research could explore whether federal agencies are becoming more like risk bureaucracies, and if so, how might their placement (e.g., established as a presidential office, established as a cabinet, or established as an agency within The Department of Homeland Security [DHS]) make a difference in implementation.

Contribution to the Field of Public Administration

This study revealed that recent government agencies have been operating as risk bureaucracies and that the design of the agency has incorporated principles of cybernetic control. The director, detector, and effector functions present in these agencies have given them an opportunity to influence their respective systems, which speaks to the strengths of the organization.

Risk bureaucracies must operate in the roles of director, detector, and effector. The high-profile nature of the terrorist attacks and the financial crash provide each agency a sense of legitimacy, which is a pillar in public administration. However, legitimacy alone cannot justify each agency's continual existence. A design that gives the agency the greatest opportunity of preventing a repeat occurrence of the focusing event is essential. Addressing the risk from the position of director, detector, and effector allows for control of the system (see Figure 8, An open system influenced by a risk bureaucracy, which was introduced in Chapter III). Public administrators must ensure that all three components remain present in their agencies.

When Congress passed legislation creating TSA and CFPB, it was the creation of a risk bureaucracy. However, the term risk bureaucracy is not one commonly used among practitioners or scholars in the United States. This study's contribution to the field of public administration also includes using Heng and McDonagh's (2011) definition of risk bureaucracy to evaluate specific types of U.S. government agencies as risk bureaucracies and then classify them as such. Any existing agency that deals with risk should consider viewing its work within the context of a risk bureaucracy and should assess the agency's activities based upon the director, detector, and effector components of cybernetic control.

Summary

As globalization continues to allow risks to transcend boundaries, public administrators will have to face the rising challenges of governing global risks. Globalization in the 21st century may have created opportunities for thriving economies;

however, systemic failures tell a story of complexity and networked risks, as one system is interconnected with others. Researchers have discovered that a complex system could result in a catastrophic collapse.

Deterioration occurs when there is a lag in creating agencies that address social needs (Miles, 1967). The 9/11 terrorist attack and the 2008 financial crash were events that punctuated the equilibrium of the policy system and made it unstable. Congress passed legislation and established new agencies to restore stasis and prevent future events.

GCT explained that solutions and problems already existed in the garbage can and a choice opportunity (i.e., 9/11 and the financial crash) allowed participants (i.e., Congress) to match the appropriate solution (i.e., creating TSA and CFPB) to its corresponding problem (i.e., terrorism and harmful financial products and services).

TSA and CFPB served as intervention strategies injected into the systems of civil aviation security and consumer financial markets to gain control over potential systemic failures. To exercise control over a system, each agency had to function as director (standard setting), detector (information gathering), and effector (behavior modification) as each agency established itself as part of the existing system. These functions are components of cybernetic control and they were used to assess each agency's design.

The scope of this study was limited to TSA and CFPB and was an examination of risk bureaucracies in two different industries. This study used secondary data to explore the context for creating TSA and CFPB and to determine if the agencies had a risk bureaucracy design. The analysis of each agency's activities revealed that both TSA and

CFPB functioned in the risk bureaucracy roles of director, detector, and effector during the implementation phase. The presence of all three roles gives each agency a greater capacity to control their respective systems, therefore increasing TSA's ability to prevent another 9/11 and increasing CFPB's ability to prevent another financial crash. However, the director role was weak within the CFPB, which makes consumer financial markets more vulnerable to another event than civil aviation security.

This leads to the age-old question regarding compartmentalization. When dealing with a transboundary risk, would it be better to have each risk bureaucracy component function separately in different agencies, should all three components be present within the same agency, or does it matter? The importance of having all three components present within an agency is that it allows the agency to independently assess program outcomes while using each risk bureaucracy component as a check and balance. Compartmentalizing each component may make one agency more vulnerable to Congress, budget cuts, or a hostile political climate. An abridged summary of this comparative case study is provided in Table 19.

Table 19

Summary Table

Factors	Policy adoption and implementation summary TSA	CFPB
Major crisis/focusing event	Terrorist events on 09/11/01	Financial crash of 2008
Transboundary type	Geography; function, time	Geography; function
Institutional impact	Aviation	Financial
White House	Republican President	Democratic President
Congress	Democratic controlled Senate and Republican controlled House	Democratic controlled Senate and Democratic controlled House
Interest groups & issue networks	Air Line Pilots Association; Association of Flight Attendants; Air Transport Association	Americans for Financial Reform; Center for Responsible Lending, Consumer Federation of America, American Bankers Association, Chamber of Commerce, National Auto Dealers Association, Mortgage Bankers Association, American Financial Services Association
Parent agency	Federal Aviation Administration (later Department of Homeland Security)	Federal Reserve System
Policy entrepreneur	No single one identified	Elizabeth Warren
Legislation (enabling statute)	Aviation Transportation Security Act (ATSA) 11/19/01	Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) 07/21/10
Number of pages	50 (p. 597-647) TSA starts on p. 597, which is the 1st page of the legislation	848 (pp. 1376-2223) CFPB begins on p. 1955, which is the 580th page of the legislation
Website: Presence of risk bureaucracy Components agency's self-description	"About TSA" Director: 33.3% Detector: 33.3% Effector: 33.3%	"About Us" Director: 0% Detector: 33.3% Effector: 66.7%
Website: Presence of Risk Bureaucracy Components in Agency Activities	Layers of security Director: 33.3% Detector: 28.6% Effector: 38.1%	Core functions Director: 12.5% Detector: 50% Effector: 37.5%
Congressional Investigative Reports	*The 9/11 Commission Report* (Completed after ATSA was passed)	The *Financial Crisis Inquire Report* (Competed after Dodd-Frank was passed)

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APPENDICES

APPENDIX A

AVIATION SECURITY TIMELINE

Aviation Security Timeline

Year	Event
July 25, 1947	Three Romanian terrorists kill an aircrew member on board a Romanian Airlines flight, resulting in the world's first fatal hijacking.
November 1, 1955	First major act of criminal violence against a U.S. airliner In hopes of collecting his mother's life insurance, Jack Graham places a bomb in her luggage and kills all 44 people on board the Denver-bound plane.
January 6, 1960	A mid-air explosion by a suicide bomber kills all 34 people aboard a National Airlines plane, sparking demands for the use of baggage inspection devices.
May 1961	The first American airliner is diverted to Cuba. The U.S. government begins using armed guards on commercial planes when requested by the airlines or the FBI.
September 5, 1961	President John F. Kennedy signs legislation making air piracy punishable by death or imprisonment.
January 1969	The Federal Aviation Administration (FAA) creates the Task Force on the Deterrence of Air Piracy following the hijacking of eight airliners to Cuba earlier in January 1969. The task force develops a "profile" to be used along with metal detectors (magnetometers) in screening passengers.
August 29, 1969	Two Palestinian terrorists carry out the first hijacking of a U.S. aircraft flying outside the Western Hemisphere when they divert an Israel-bound TWA aircraft to Syria.
September 11, 1970	President Richard Nixon announces a comprehensive anti-hijacking program that includes a federal marshal program.
October 1970	An agreement is signed between the departments of the Treasury and Transportation, with the U.S. Customs Service given the responsibility to establish an enforcement program aimed at eliminating the threat of more hijackings.
	The Customs Air Security Officers Program, better known as the "Sky Marshal Program," is created. Armed Customs Air Security Officers are placed on aircrafts dressed as typical passengers in an effort to thwart any hijacking attempts.
March 9, 1972	Moments after a flight bound for Los Angeles takes off from JFK Airport in New York, the airline is notified that there is a bomb on board and the aircraft returns to JFK. A bomb-sniffing dog finds the explosive 12 minutes before it is set to detonate. The FAA Explosives Detection Canine Team Program is created so any aircraft receiving a bomb threat can quickly divert to an airport with a canine team.
December 1972	The March bomb scare and two more violent hijackings in October and November trigger a landmark change in aviation security.
	The FAA issues an emergency rule making inspection of carry-on baggage and scanning of all passengers by airlines mandatory at the start of 1973.

Aviation Security Timeline (*continued*)

Year	Event
August 5, 1974	The anti-hijacking Air Transportation Security Act of 1974 is passed. It sanctions the FAA's universal screening rule that spurs the introduction in U.S. airports of metal detection screening portals for passengers and X-ray inspection systems for carry-on baggage.
August 6, 1974	Two people are killed and 17 injured when a bomb explodes near the Pan Am ticket counter in Los Angeles International Airport.
June 14, 1985	TWA Flight 847 is hijacked en route from Athens to Rome and forced to land in Beirut, Lebanon, where hijackers hold the plane for 17 days. When their demands to release more than 700 Shiite Muslim prisoners are not met, hostage Robert Dean Stethem, a U.S. Navy diver, is shot and his body is dumped onto the airport tarmac.
June 22, 1985	In response to the TWA Flight 847 hostage ordeal, President Ronald Reagan directs the Secretary of Transportation, in cooperation with the Secretary of State and Attorney General, to immediately explore an expansion of the FAA's armed Federal Air Marshal Program (previously the Sky Marshal Program) aboard international flights of U.S. air carriers.
August 8, 1985	Congress enacts Public Law 99-83, the International Security and Development Cooperation Act, which establishes the explicit statutory basis for the Federal Air Marshal Program and makes FAMs a permanent part of the FAA workforce.
April 17, 1986	Jordanian Nizar Hindawi attempts to send his pregnant Irish girlfriend, Ann Murphy, from London's Heathrow Airport to Israel with a bomb hidden in her suitcase. The plan is foiled when El Al (Israel's national airline) security searches her bags and finds the explosive device.
December 21, 1988	A bomb destroys Pan Am Flight 103 over Lockerbie, Scotland, killing all 259 on board as well as 11 people on the ground. The bomb was found to have been concealed in a radio cassette player.
	After the Lockerbie bombing, security measures go into effect for U.S. carriers at European and Middle Eastern airports that require all checked baggage to be X-ray or searched and matched to the passenger.
1989	In wake of the Pan Am crash over Lockerbie in 1988, the Aviation Security Advisory Committee (ASAC) is created to examine areas of civil aviation security with the aim of developing recommendations for the improvement of civil aviation security, methods and procedures. It is composed of federal and private sector organizations.
September 11, 2001	Nineteen terrorists affiliated with al-Qaeda hijack four commercial airliners. Two of the planes are flown into the World Trade Center towers in New York City and one is crashed into the Pentagon. The fourth plane crashes into a field near Shanksville, Pennsylvania, after passengers attempt to retake control of the plane. Thousands are killed in the deadliest terrorist attack on American soil. This is the first time airliners are used as weapons rather than bargaining tools. The attacks change the way hijacking is perceived as a security threat.

Aviation Security Timeline (*continued*)

Year	Event
November 19, 2001	Following the 9/11 tragedy the Aviation and Transportation Security Act (ATSA) is signed into law. This gives the federal government direct responsibility for airport screening. The Transportation Security Administration is created to oversee security in all modes of travel.
November 19, 2001	The position of federal security director (FSD) is created to act as TSA's personal representative against the war on terrorism at airports nationwide. ATSA mandates the FAA to require passenger airplanes flying in the U.S. to have reinforced cockpit doors.
December 22, 2001	Richard Reid uses matches in an attempt to ignite explosive devices hidden in his shoes on a flight from Paris to Miami. He is overpowered by passengers and crew. As a result, a new shoe screening policy is implemented and later, TSA will require all shoes to be removed for X-ray screening in 2006.
December 23, 2001	The Federal Aviation Administration issues a security directive ordering airlines to add random shoe inspections to the random baggage checks already carried out.
April 24, 2002	TSA announces that it will deploy up to 1,100 explosive detection systems and up to 4,700 explosive trace detection machines at the nation's 429 airports to screen all bags for explosives by December 31, 2002.
November 25, 2002	The Department of Homeland Security is established by the Homeland Security Act of 2002.
	The Homeland Security Act creates the Federal Flight Deck Officer (FFDO) program to train and arm volunteer aviators to protect the aircraft cockpit and passengers against acts of criminal violence and air piracy.
August 24, 2004	Two female Chechen suicide bombers are responsible for using hexogen, better known as RDX, to cause simultaneous explosions in separate Russian passenger planes. Ninety people are killed in the attacks.
December 17, 2004	President Bush signs into law the Intelligence Reform and Terrorism Prevention Act of 2004, which, among other measures, requires TSA to add butane lighters to its list of prohibited item.
March 31, 2005	TSA recognizes Congressional intent and adds all common lighters to the prohibited items list.
August 10, 2006	British officials foil a plot to blow up aircraft flying from the U.K. to the U.S. with liquid explosives hidden in carry-on bags. The terror alert is raised to "high," or "orange," in the U.S. and to its highest level of "severe," or "red," for all commercial flights from the United Kingdom. All liquid, gels, and aerosols are banned from carry-ons. TSA institutes mandatory shoe screening to inspect for dangerous items via X-ray after the threat level is raised.

Aviation Security Timeline (*continued*)

Year	Event
September 25, 2006	TSA announces it is adjusting its total ban on liquids, gels and aerosols. Rules are changed to allow passengers to travel through security checkpoints with travel-sized toiletries, of three ounces or less, that fit comfortably in one quart-size, clear plastic zip-top bag. This is called the “3-1-1 Rule.” Passengers can also board with beverages purchased in the secure area.
October 2007	In response to intelligence regarding terrorists using remote controls to detonate explosives, TSA trains officers to conduct additional inspection of remote controls in carry-on baggage without banning these items.
December 25, 2009	Umar Faruk Abdulmutallab attempts to detonate an explosive device concealed in his underwear on board Northwest flight 253. TSA works with DHS, foreign partners, and air carriers to swiftly implement enhanced aviation security measures.
April 2010	TSA puts new enhanced aviation security measures in place for all air carriers with international flights to the U.S., superseding the emergency measures put in place immediately following the attempted terrorist attack on Dec. 25, 2009.
August 2010	TSA achieves key the 9/11 Act requirement of screening 100 percent of air cargo on domestic passenger aircraft.
October 2010	TSA implements immediate security measures for air cargo after suspicious devices comprised of modified printer cartridges are found on board in-bound cargo aircraft.
November 2010	TSA rolls out new pat-down procedures to airports nationwide. Pat-downs are one important tool to help TSA detect hidden and dangerous items such as explosives.
November 2010	TSA achieves 100 percent watch list matching for all passenger flights within or bound for the U.S. using the Secure Flight system. Secure Flight, the Transportation Security Administration's (TSA) behind-the-scenes watch list matching program, fulfills a key recommendation of the 9/11 Commission by assuming responsibility of watch list matching from individual airlines. By establishing a consistent watch list matching system, Secure Flight enhances aviation security and more effectively facilitates air travel for passengers.
December 2010	TSA deploys approximately 500 Advanced Imaging technology units to airports nationwide, fulfilling its goal to implement this highly effective security tool. Advanced imaging technology represents the best available technology to safely screen passengers for metallic and non-metallic threats including weapons, explosives and other objects concealed under layers of clothing without physical contact.

Note. Adapted from “TSA Evolution Timeline,” by TSA, http://www.tsa.gov/video/evolution /TSA_evolution_timeline.pdf

APPENDIX B

TIMELINE OF KEY FINANCIAL DEREGULATION EVENTS
IN THE UNITED STATES

Timeline of Key Financial Deregulation Events in the United States

Year and event	Action
1978, Marquette vs. First of Omaha	Supreme Court allows banks to export the usury laws of their home state nationwide and sets off a competitive wave of deregulation, resulting in the complete elimination of usury rate ceilings in South Dakota and Delaware, among others.
1980, Depository Institutions Deregulation and Monetary Control Act	Legislation increases deposit insurance from $40,000 to $100,000, authorizes new authority to thrift institutions, and calls for the complete phase-out of interest rate ceilings on deposit accounts.
1982, Garn-St. Germain Depository Institutions Act	Bill deregulates thrifts almost entirely, allowing commercial lending and providing for a new account to compete with money market mutual funds. This was a Reagan administration initiative that passed with strong bi-partisan support.
1987, FSLIC Insolvency	GAO declares the deposit insurance fund of the savings and loan industry to be insolvent as a result of mounting institutional failures.
1989, Financial Institutions Reform and Recovery Act	Act abolishes the Federal Home Loan Bank Board and FSLIC, transferring them to OTS and he FDIC, respectively. The plan also creates the Resolution Trust Corporation to resolve failed thrifts.
1994, Riegle-Neal Interstate Banking and Branching Efficiency Act	This bill eliminated previous restrictions on interstate banking and branching. It passed with broad bipartisan support.
1996, Fed Reinterprets Glass-Steagall	Federal Reserve reinterprets the Glass-Steagall Act several times, eventually allowing bank holding companies to earn up to 25 percent of their revenues in investment banking
1998, Citicorp-Travelers Merger	Citigroup, Inc. merges a commercial bank with an insurance company that owns an investment bank to form the world's largest financial services company.
1999, Gramm-Lech-Bliley Act	With support from Fed Chairman Greenspan, Treasury Security Rubin and his successor Lawrence Summers, the bill repeals the Glass-Steagall Act completely.
2000, Commodity Futures Modernization Act	Passed with support from the Clinton Administration, including Treasury Secretary Lawrence Summers, and bi-partisan support in Congress. The bill prevented the Commodity Futures Trading Commission from regulating most over-the-counter derivative contracts, including credit default swaps.

Timeline of Key Financial Deregulation Events in the United States *(continued)*

Year and event	Action
2004, Voluntary Regulation	The SEC proposes a system of voluntary regulation under the Consolidated Supervised Entities program, allowing investment banks to hold less capital in reserve and increase leverage.
2007, Subprime Mortgage Crisis	Defaults on subprime loans send shockwaves throughout the secondary mortgage market and the entire financial system.
December 2007, Term Auction Facility	Special liquidity facility of the Federal Reserve lends to depository institutions. Unlike lending through the discount window, there is no public disclosure on loans made through the facility.
March 2008, Bear Sterns Collapse	The investment bank is sold to JP Morgan Chase with assistance from the Federal Reserve.
March 2008, Primary Dealer Facilities	Special lending facilities open the discount window to investment banks, accepting a broad range of asset-backed securities as collateral.
July 2008, Housing and Economic Recovery Act	Provides guarantees on new mortgages to subprime borrowers and authorizes a new federal agency, the FHFA, which eventually places Fannie Mae and Freddie Mac into conservatorship.
September 2008, Lehman Brothers Collapse	Investment bank files for Chapter 11 bankruptcy.
October 2008, Emergency Economic Stabilization Act	Bill authorizes the Treasury to establish the Troubled Asset Relief Program to purchase distressed mortgage-backed securities and inject capital into the nation's banking system. Also increases deposit insurance from \$100,000 to \$250,000.
Late 2008, Money Market Liquidity Facilities	Federal Reserve facilities created to facilitate the purchase of various money market instruments.
March 2009, Public-Private Investment Program	Treasury Security Timothy Geithner introduces his plan to subsidize the purchase of toxic assets with government guarantees.

Note. Adapted from *A Short History of Financial Deregulation in the United States*, by M. Sherman, 2009, pp. 1-2 (Washington, DC: Center for Economic and Policy Research).

APPENDIX C

INSTITUTIONAL REVIEW BOARD APPROVAL

University of La Verne
Institutional Review Board

TO: Shandra McDonald, Doctor of Public Administration Program

FROM: University of La Verne, Institutional Review Board

RE: 2013-CBPM-14-McDonald, Risk Bureaucracies: Agency Creation in the 21st Century – A Comparative Case Study of the Establishment and Implementation of the Transportation Security Administration (TSA) and the Consumer Financial Protection Bureau (CFPB)

The research project, cited above, was reviewed by the College of Business and Public Management IRB Committee. The application received an Exempt review since it utilizes publicly available secondary data.

A copy of this approval letter is required to be included as an appendix to your completed dissertation.

As an exempt review, there is no expiration date or requirement for filing a notice of completion.

A new application would be required if there are changes to the research design that would require an expedited or standard review.

There are no further conditions placed on this approval.

The IRB wishes to extend to you its best wishes for a successful research endeavor. If you have any questions, please do not hesitate to contact me.

Marcia Godwin	Marcia Godwin, Ph.D.	November 21, 2013
Approval Signature	IRB Director/Chair	Date