AMERICAN PREDATORY LENDING AND THE GLOBAL FINANCIAL CRISIS
ORAL HISTORY PROJECT

Interview with
Brad Miller

Bass Connections
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PREFACE

The following Oral History is the result of a recorded interview with Brad Miller conducted by Jon Rosen on July 14, 2021. This interview is part of the Bass Connections American Predatory Lending and the Global Financial Crisis Project.

Readers are asked to bear in mind that they are reading a transcript of spoken word, rather than written prose. The transcript has been reviewed and approved by the interviewee.

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Interviewee: Brad Miller
Interviewer: Jon Rosen

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Jon Rosen: I'm Jon Rosen, a student at Duke Law school and a member of the Bass Connections American Predatory Lending and Global Financial Crisis team. It is Wednesday, July 14, 2021. I am speaking with Congressman Brad Miller, a former representative of North Carolina's 13th district, for an oral history interview. Congressman Miller joins me via Zoom. Thank you so much for joining me today.

Brad Miller: Glad to be with you.

Jon Rosen: I'd like to start by establishing a little bit about your background. I believe that you received your bachelor's degree from UNC Chapel Hill and your law degree from Columbia. Is that right?

Brad Miller: Yes, it is. I noticed that you didn't pause between the two to allow me [to say Go Heels]- but yes, go ahead.

Jon Rosen: Just to start out, at what point during your career as a public servant, did you realize that you wanted to focus on mortgage and consumer finance related issues?

Brad Miller: It was actually in my first term in Congress. I'm sometimes given credit, just because the role I played in Congress, for enacting North Carolina's Predatory Mortgage Lending Law, which I think was in 1999. But I really played a pretty small role in that. I wasn't slacking off, I was doing other things in the state Senate, but the leader on that issue was Roy Cooper[1], which proved not to be a career killer for Roy. I was kind of aware of the legislation and Governor Cooper called me and a couple of others, ... who he regarded as allies on the issue. [He called] a couple of times to consult [on] where things stood in the legislation and whether to continue to try to negotiate with the banks to see if it could be a consensus, which is how most things were handled in the legislature at the time - compromise, consensus, even something called a stakeholder process.

There was a room in the legislative office building that was almost entirely devoted, a large conference room, to stakeholder processes where everyone who was affected by legislation came together. It was not exactly a peaceable kingdom, but they were expected to have a give and take and identify the issues on which they could compromise and to see if common ground was possible. And that ended up being what happened with that legislation. But North Carolina was one of the first states to enact predatory mortgage lending legislation. I understand that the North Carolina Bankers' Association got a great

[1] Roy Cooper was the Democratic Majority Party Leader for the State Senate from 1997-2001. Subsequently, he was 49th Attorney General of North Carolina from 2001-2017 and the 75th Governor of North Carolina Incumbent from 2017 to the present date.

deal of criticism around the country from others in the industry for having agreed and not having fought … to the last trench.

... In Congress, I was appointed to the Financial Services Committee, which I had no background in. But it was kind of like going to the best school you get into. It was considered the most prestigious and powerful committee that you could get on as a freshman. So, I got on the Financial Services Committee and then the old wisdom of how to be effective in Congress [and] of how to shape your career in Congress was to pick some obscure technical issue, probably driven by your committee assignments for which your party, at least, and maybe Congress as a whole, had no recognized authority, no champion, and learn that issue and become your party's champion. It was really kind of a path to obscurity, but, it was a way to kind of do the work of the institution. The obscure technical issue that I picked was subprime mortgage lending.

I did not know at the time that the entire world's economy would melt down around that issue. I tried to wade in, learn the issue, and introduce legislation. It was largely based on the North Carolina legislation. I was approached about that by the Center for Responsible Lending, which was based in, or at least originated in, Durham. It was sort of an outgrowth of the [Self-Help] Credit Union. The credit union for poor folks in Durham. Martin Eakes started it and Mike Calhoun had been at the credit union and then moved over to the advocacy side, to the Center for Responsible Lending. And they approached me. It seemed like an issue on which I could be a champion within Congress and within my party.

They did not tell me at the time that they had first approached - the then senior Senator from North Carolina, John Edwards, about taking on the issue. This was in 2002 or 2003 and maybe a little before that, with respect to John Edwards, because he thought it would be career limiting. It would not be seen as a centrist issue for a Democrat, a pro-business issue for a Democrat, which was then the conventional wisdom of how to advance in Democratic politics. The presumed profile of a national Democratic politician was white male, Southern, pro-business moderate. And that's what John Edwards tried to position himself to be in 2004. So they didn't tell me what it was [or] that someone else had already kind of turned it down as career limiting.

Of course, by 2008, John Edwards was doing everything he could, short of singing the International at campaign rallies, to try to move to the left. But that was where we were. It was also defensive, because there was an effort then by the industry to adopt what was supposedly a set of consumer protections for subprime mortgage lending, but the real motive, the real purpose, was that it would have preempted any state or local legislation or regulation and enacted in their place a very easily invaded set of federal regulations. The champion for that was Bob Ney, who later served an active prison sentence for unrelated reasons, or maybe related in a looser sense. Our position was that North Carolina was seen as a fairly strong set of protections without preemption.

So, it was a floor, not a ceiling, to use the terminology at the time. And Bob Ney's bill was a weak set of protections that was a ceiling, but not a floor. So we fell out on those grounds for probably five years. One of the books on the financial crisis, *All the Devils are Here*, was actually a pretty good book. It was by Bethany McLean and Joe Nocera, but there was a sentence in the book that - a whole chapter was devoted to subprime mortgage lending before the crisis and how it just grew and grew, metastasized. And there was a sentence that there were some proposals in Congress for subprime lending [reform], but nothing ever came of it. I thought there it is, in one sentence, five years of my life summarized.

So that was the fairly obscure fight that I was involved in from about 2003 until about 2007, after Democrats took control in 2006. We had a lot of hearings, [where] industry would come in, Countrywide would come in, New Century, which did not survive the burst of the bubble of subprime lending, was frequently a witness -- they would have someone from there [as] a witness - and so forth. But, we never really were able to agree on legislation. In the spring of 2006, Spencer Bachus, who was the lead Republican on the committee. He was an Alabama lawyer from Birmingham. I did try to talk and see if we could do, like in the North Carolina tradition, what Cooper [did] [and] was able to fashion a bill.

That was a consensus bill. We tried to do that, and we kind of had a pattern - a couple of Southern lawyers trying to cut a deal, trying to settle a case. We never did. By the end of 2006, it was pretty apparent that the market for subprime lending was collapsing. The housing bubble was bursting. It was contracting and things were going to be very different and there were just a ton of homeowners who were facing resets on their adjustable-rate mortgages, that would increase their monthly payments by like 40%. That was part of the predation that was intentionally put into the mortgages to require people to refinance and pay a prepayment penalty to get out of the mortgage they were in, and then pay the upfront cost and fees to get into a new mortgage, and just strip the equity that homeowners had in their homes, as home values appreciated seemingly forever, seemingly without end.

But by that point, it was clear that a lot of people were going to face resets that they could not afford. They were already underwater in their homes. They already owed more money on their homes and their mortgages, [than their houses] were worth. I think all of that was provoked one question from you, would you like to be more of a participant in this discussion?

Jon Rosen: ... Just going back a little bit, you mentioned you were in the North Carolina Senate in 1999 when the state passed the anti-predatory lending legislation, which was one of the first in the nation. Can you talk about what that bill did and why it was important?

Brad Miller: To be honest, I have a little trouble remembering right now. I think the bill as we originally introduced it and legislation that [was ultimately enacted] was kind of

originally based on the legislation I'd introduced. I think I actually introduced it in 2004, but it was in the works in like 2003. Everybody kind of knew what was coming and that was going to be the outline of the debate. As I recall, it became part of Dodd-Frank eventually, but it was a fairly different bill by that point. I think the main thing it did [in the 2004 bill] was limit fees. And the cap was stunningly high, it was like 11%. We're going to allow 11%. And the industry was just rending their garments and gnashing their teeth at the idea that they would be living to 11% of upfront points and fees. But I think that was the main thing that it tried to do is it limited the upfront cost points and fees.

Jon Rosen: To the extent that you remember, can you just talk about the contours of the debate on both sides? You mentioned Governor Cooper was a champion of it, and then the banks were on the other side. Can you just talk a little bit about that?

Brad Miller: ... In the legislature, there were consumer advocates. There was a group, [the North Carolina Justice Center], [that] was essentially a spinoff of ... Legal Services for lower income folks - and the Gingrich Congress prohibited those [legal services] organizations from lobbying. When people come to see us with a problem, it's not a problem just for them but [rather] a problem for everyone like them. The only way we can give them any relief is to try to change the law. They became pretty effective lobbying for poor folks who don't really have effective lobbies.

But there was a spin-off of Legal Services that advocated for poor folks, for lower income folks. I'm sure they were part of the effort. And then there were civil rights groups, because this was affinity fraud that African-Americans in North Carolina - I think elsewhere somewhat more Latinos. But really everywhere African-Americans were badly targeted. They were targeted by mortgage brokers who looked like them. They had a distrust of conventional banks for very good, historical reasons. So when someone who looked like them came to them and said, "look, you need to borrow money. You can borrow against your house. It's really complicated, but I can help you." So civil rights groups were very much part of the effort too, as I recall. They certainly were when I was in Congress.

I think that was sort of the coalition for it. I don't think labor played a particular role…. I think that was the coalition for it. And the coalition against it was mainly led by the North Carolina Bankers Association. But in national politics, there were so many issues. The national associations are more rigid than state associations and they tend to be dominated by the worst actors in their industry, because why else would you be really involved in your national group if not to protect practices that are otherwise indefensible? So, there was, at the state level, the bankers association. Then there was probably kind of a scuzzier set of actual predatory lenders at the national level. Well, the banks are still involved in the discussion, in the negotiations. There weren't really negotiations, but the fight. Then there were other organizations, such as consumer lenders, which at some point seemed to be a euphemism for predatory lenders.

Jon Rosen: When you got to Congress in 2003, through the lead up of the crisis, you repeatedly introduced anti-predatory lending legislation. Can you talk about what you would have hoped to accomplish with that legislation, why it was necessary?

Brad Miller: I think at this point it's inarguable that it was necessary or we would be vastly better off as a nation if that legislation had passed. But I didn't foresee that the whole world's economy would collapse because of American mortgages. I thought it was really bad for the homeowners and particularly lower income, less sophisticated, less educated homeowners. It was particularly difficult for them to borrow after the bankruptcy laws changed in 2005. The only way they could borrow was to borrow against their home. It was a ready market. Of course the industry said, "well, this is about home ownership. If you restrict this, what you call predatory, this subprime lending, which is this marvel of financial innovation of the wonders that can happen when we leave capitalism unfettered."

Actually, 70% of subprime mortgages were refinances and less than 10% were actually for first home purchases. I mean, there was another 20% that were for people who were selling a home and buying another home. So it really was about refinancing. It was about borrowing for people who were in trouble. Yes, there were people who bought boats. They borrowed against their home to buy a boat or to buy a big screen TV - [there were] always the examples of people who were just living beyond their means. Afterwards, anything to help homeowners who were facing foreclosure, anything they could do to make them appear [un]sympathetic. But the reality was most people were faced with healthcare issues, job loss or divorce - those were the big three of financial trouble [and] why people had to borrow. But the reality is that a huge number of Americans, including people who are considered to be in the middle class, don't have the money for car repairs. So, people were living in precarious circumstances, they needed to be able to borrow. They had a home, the home was appreciating in value and they were getting called by mortgage brokers who look like them.

Jon Rosen: Can you talk about the kinds of practices they were trying to regulate when you were proposing this legislation?

Brad Miller: We did include prepayment penalties and upfront fees. We included what was called... the [yield] spread premium, I think it was called, which is just a kickback to the broker. If someone qualified for a mortgage at one rate and they got talked into entering a mortgage at a higher rate, the lender would split that profit with the broker. It was called a [yield] spread premium, I think it was called.[2] So it included that. Thankfully, I think the legislation finally passed [to] prohibit that, which it should have. Then there were the points and fees, most of which were kind of tacky, but the effect of which was that what was happening then in the mortgage market in predatory lending was that people

[2] The most common usage for this practice was "yield spread premium."

got trapped in a cycle of borrowing and reborrowing. They would get a subprime mortgage with an adjustable rate, which was usually a very quick adjustment.

There were 2-28s and, 3-27s. And the initial rate was only a little better than they would have gotten in a 30-year fixed-rate mortgage. But after three years it would go up by like 40%. Then, in order to get out of the mortgage to refinance, which of course they did, they had to pay like 3% of the outstanding balance as a prepayment penalty. Then they had to pay points and fees to get into a new mortgage. The result was equity stripping that the appreciation in home values ended up in the pockets of the consumer mortgage lending industry, and Wall Street more generally, because they were involved in securitizing those mortgages - and to some extent they were actually involved in the mortgage lending itself. Instead of in the net worth of homeowners, in the life savings of the homeowners.

Jon Rosen: You've discussed it a little bit already, but can you talk about the disparities that you saw between white and African-American and Latino borrowers and how they were treated differently? And what did you try to do to address that?

Brad Miller: We did not really talk about it as a racial justice issue, but it was a racial justice issue. The African-American community, at the grassroots level, knew that, civil rights organizations knew that. I mean, the NAACP [National Association for the Advancement of Colored People] was always part of the coalition supporting it [and] other civil rights organizations as well. That was obviously part of the coalition. But there was a targeting of the black community. And, as I said, it was an affinity fraud. To some extent, [it was] also the Latino community - I don't know that as well, because I didn't really have a Latino community of significance in my district. But actually, La Raza was part of the coalition too. I mean, they were part of a civil rights coalition.

They [lenders] would hire African-American brokers or Latino brokers and then they would approach African-American and Latino homeowners and say, "you need to borrow money. You don't want to have to go to a bank, they'll treat you badly. But, look at me, I look like you. I'll help you. You can trust me. This is complicated. You need somebody on your side, someone who can figure out what the best deal for you is." The result was that the foreclosure crisis was really an extinction event for the African-American middle class. I think something like the median African-American family lost 40% of their net worth in like a five-year period. That was because of the decline in home equity. And of course about 10 million families - it's kind of a guess, there's not solid statistics on it - lost their homes, not just from foreclosure, but from deeds in lieu of foreclosure and the other kind of approved sales, the [short] sales. People lost their home, but it wasn't necessarily through the full [foreclosure] process. So it was a very bad event for the African-American middle-class. For generation after generation, one of the rungs on the ladder to move up from poverty has been home ownership. And millions of African-American families

had their hands stepped on, [they] fell off that ladder, lost their home, and really lost their membership in the middle class when they did.

Jon Rosen: When you were proposing this anti-predatory lending legislation in the early and mid-2000s, what was the dynamic, in terms of support for it? Was it mostly along party lines or was it something else?

Brad Miller: I wish I'd had solid Democratic support, it was a minority. The industry had bipartisan support. The Bob Ney's bill had a co-sponsor of [Paul] Kanjorski, … from Pennsylvania[3] - I think the second or third ranked Democrat on the committee - [and] he would position himself as a business moderate Democrat. ... So it was Ney and Kanjorski and on our side, it was all - I don't think we had any Republican sponsors. It wasn't that I didn't want their support. It wasn't there. Our position was defined as the lefty Democratic position, not the mainstream, pro-business position that John Edwards did not want to get out of sync with - was to support the Ney-Kanjorski bill or reforms that actually made things worse.

Jon Rosen: You were proposing this legislation through the early mid-2000s through the crisis. Was there a point, during that period, when you realized that there may be warning signs and that this problem was much bigger and would lead to the collapse that we saw?

Brad Miller: The bubble really began to slow down in 2006. And I might've seen articles in the press about things that were happening, subprime lending constricting, some subprime lenders going out of business. Some of the people I dealt with had gone out of business. New Century was a significant player, a non-bank lender - I dealt with them frequently. It was apparent that the bubble was beginning to deflate and that there was this bulge of resets coming that was not going to be easy to handle with subprime mortgage less available, with mortgage lending less available, and with the equity in their house, the collateral, really contracting greatly. So I think we knew by late 2006 that we had a foreclosure crisis coming.

We didn't know we had a financial crisis coming, but we knew we had a foreclosure - certainly a large problem - crisis coming in in the new year. Actually in the fall of 2006 was when I first introduced - Dick Durbin in the Senate and me in the House - bankruptcy modification as a response to what we saw as the upcoming foreclosure crisis. So we knew by the fall of 2006 we had a problem on the way, and largely already there, but it was going to get much, much worse. ...

Jon Rosen: Just going back a little bit, you mentioned that while you and [Mel Watt] and Barney Frank were proposing legislation in the mid-2000s, Congressman Ney and [Kanjorski] were proposing counterpart legislation. Can you just talk about the differences between those?

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[3] Paul Kanjorski.

Brad Miller: I can't remember. It's been a while now, so I can't really remember - I mean, this has been 17 years ago. I recall that a great many of - even provisions that sounded pretty good [would] at the bottom of them say, "this provision may be waived in writing by the homeowner." If you have ever been to a home closing, a mortgage closing, it's particularly then [that] you had a stack of documents and there'd be little, yellow tabs sticking out of the side that said, "sign here." And people would walk in and within half an hour or maybe 15 minutes, they'd sign and sign and sign. Then they went home, and they might go home with a check if it was a refinance. But they had no idea what they just signed.

There was a, Federal Trade Commission, maybe -- a federal agency that actually investigated and quizzed people who had just been to their home closing about what was in their mortgage. It was actually an open book test. They were asked when their documents were still in front of them and they could look at their documents. People had no idea what was in their mortgage. Nobody knew that they had a prepayment penalty. Most people didn't know - people who had adjustable mortgages, you would think that would be kind of a big thing to know. That'd be like the first thing people would know. They didn't know that. What they knew was how much they were getting. They didn't know how big a bite of the equity in their home the lenders had just taken.

Jon Rosen: When you were proposing this legislation in the mid-2000s, did you draw on your experience through the North Carolina process or other states that had enacted anti-predatory laws?

Brad Miller: I arrived in Congress thinking that Congress would work the way the [NC] legislature had when I was there, which was [that] there would be a stakeholder process. There would be a push for everybody to give on issues. I was entirely wrong. Washington could not have been less like that. I think the reason for that is the people who really lobbied the legislature, at least at the time, were industries that had a socially useful role for society. They had real competition. There was actually the market mechanisms to control what they did. That made it very possible for them to be candid about what legislation would do and to compromise.

: Congress could not have been more different. And the people who lobbied Congress to a large extent were doing things that were not socially useful. They had no competition. What they were doing was harmful. So those were the people invested in their national trade associations to protect their interests, which were interests that should not have been protected. There was very little room for compromise and it was much more likely to be a scorched earth defense. I expected [them to] actually try to make it happen. I try to pull people together in the same room and talk and do what I had done in North Carolina. Roy Cooper was the one doing it on the predatory mortgage lending legislation. But I was doing it on other issues [and] did it all the time. It just didn't work. It just didn't happen.

Jon Rosen: Can you talk a little bit about federal preemption and how that relates to consumer protection laws and the legislation you proposed?

Brad Miller: The Ney-Kanjorski real motive was to preempt state and local laws. During that period, there was a Supreme Court decision - which you probably have at the tip of your tongue and I don't - that said that federally regulated banks, [those] regulated by the OCC [Office of the Comptroller of the Currency], the big banks, their subsidiaries were not subject to state regulation. State regulation of federally chartered, OCC chartered banks were not subject to regulation. So subprime mortgage lending ended up being taken over by subsidiaries of the large banks. Of course the large banks, they all belong to the country club. They all had gone to the right schools. They all had social polish and their real income was coming from the scuzziest kind of consumer lenders.

... We thought at first that might be an opportunity. Because the banks were saying, "look, we're not doing this stuff. This Supreme Court decision doesn't affect us. We're not doing it anyway." And the non-bank lenders were suddenly very afraid that they would be completely pushed out by the banks or by subsidiaries of the banks. It looked like that might change the dynamic of the debate [and] of the negotiations. They might agree to regulation that they might not otherwise agree to, because they didn't want to leave it unregulated, which meant that the banks would have a free ride and they would not. It didn't work out that way at all. It turned out what the banks were telling us was not true. I know that's shocking. And they were very interested in keeping things the way they were in being preempted [and] their subsidiaries being preempted in what they did in mortgage lending.

Jon Rosen: In 2006, Democrats took the House and the Senate and then in 2008, the White House, can you talk about how that affected your ability to advocate for your priorities?

Brad Miller: In 2007, we finally did pass the legislation and Barney told me we would. He told me that, he said, "we're going to pass your bill." That's like at the heart of what it means to be a Democrat is looking after less powerful, less affluent people, to help protect them from predation by those with more power. He said that to [the Democrats on] the full committee, that this is something we've got to do. This is what it means to be a Democrat. It ended up being compromised in a way that by the time it passed the House, I kind of hoped that it would either be changed in the Senate or it would die in the Senate. I thought that the compromises we'd agreed to - which I had not really agreed to personally, but that Barney had agreed to - had created more problems than we had before. Particularly, an important issue was assignee liability.

Subprime lenders were largely not banks. They didn't really have to have a lot of capital because they just had a line of credit from a bank. They would make the mortgage, get paid the line of credit, sell the mortgage, [and then] get paid back. That was how that industry worked - the non-bank lenders. They sold them to investment banks, the big banks, Wall Street banks - [I'm] counting

Bank of America as being a Wall Street bank, [even though] I guess they're a Tryon Street bank [in Charlotte]. When we use the term Wall Street, we're referring to Bank of America as well. It was the Wall Street banks.

They got into the legislation a limitation on assignee liability that actually would've made it worse, because it would have meant that the only remedy for a homeowner who had gotten a bad mortgage was against the lender. And they couldn't even reform the mortgage. They could not rescind the mortgages that had been sold to Wall Street and then packaged into mortgage-backed securities and then sold to investors. They were stuck with the mortgage. They couldn't reform the mortgages. They might get a remedy against the lenders. The lenders had no assets. The lenders were a storefront with rented furniture and a line of credit. That was the assignee liability provision. And some of the stuff I found out later, I didn't know at the time. But apparently, Bear Stearns spent oodles of money on lobbying to kill the assignee liability, which is one of the reasons that Bear Stearns was really the first of the investment banks, the big banks, to get into deep trouble. It was because of their exposure through subprime lending, the mortgages they held and had not yet securitized and sold.

Jon Rosen: You mentioned that in 2007, you and Dick Durbin proposed legislation to allow bankruptcy courts to modify loans on a primary residence. Can you talk about that process?

Brad Miller: That was something that I got from bankruptcy judges and then from the better class of bankruptcy lawyers, the consumer lawyers and others - a prominent bankruptcy professor from Harvard, Elizabeth Warren, supported the legislation. Barney approached me in late 2006, after the election. That's when he said, "we're going to pass your bill, but we've got a problem. A lot of people have these bad mortgages, and we've got a foreclosure crisis coming. You need to go figure out what policy responses we might [need], what we can do about it." So I made calls and at the top of everyone's list of my usual allies, and then also a couple of bankruptcy judges in North Carolina [that] I knew pretty well, [such as] Tom Small and Rich Leonard.

They said "the most important thing you could do is to change the bankruptcy law, because in 1978, when the current bankruptcy legislation was enacted, there was an exception made apparently late at night over drinks on the Senate side for home mortgages for principal residences." It was called "cramdown", which drove Dick Durbin crazy. It just sounds like something bad. But it was the colloquial term used by everyone involved in bankruptcy. The way that collateralized debt was usually handled in bankruptcy was the debt that was secured by the asset was limited to the value of the asset. The rest was then treated as unsecured debt, which it really was. I mean, it took away kind of the extortionate value of the property. So, car lenders would not get paid $600 for a car, to the disadvantage of other people who had other creditors who had unsecured debt, because the debtor needed the car.

… [I]f you want to think about how a bankruptcy system should work - all that should be protected by collateral is the value of the collateral, but that didn't apply to home mortgages. If you owned a house worth $125,000, and you had a mortgage for $250,000 you could not limit the amount that was subject to the collateral to $125,000. It was all subject to the collateral and everybody wanted to keep their home, to the extent possible. As a result, people were kind of stuck in their mortgages when they were getting relief from every other form of debt. Also, they told me that in the 1978 legislation, it was not just homes, but family farms, which were actually also a home - the farmers live on their property, on their farm - were also subject to the same exception.

There was a farm foreclosure crisis in the 1980s. And Congress changed the law to take mortgages on family farms out of that exception. What happened was that the banks started to deal and they would agree to modify the mortgages, the most standard provision - and of course, when people actually went into bankruptcy, the amount secured by the family farm would be limited to the value of the farm. But banks, rather than go through that and rather than the homeowner going through bankruptcy, which is an unpleasant process, would agree to modify the mortgage and - a common term was if the home actually did appreciate in value after that, there'd be shared appreciation that the bank would get part of the additional value of the house, as it had appreciated. That really solved the family farm foreclosure crisis.

Tom Small, the bankruptcy judge, told me that if we did the same thing with home mortgages, it would probably solve the home mortgage foreclosure crisis. There were kind of slightly different bills, Durbin's bill was really the Consumer Bankruptcies Lawyer bill. Mine was the -I'm trying to remember what it's called - National Bankruptcy Council or something [the National Bankruptcy Conference], which included a lot of bankruptcy professors, practitioners, [and bankruptcy judges]. A lot of bankruptcy trustees were members of that. They supported the bill. That was the bill that I developed with Tom Small, Rich Leonard and others.

Jon Rosen: ... So, at the outset of the foreclosure and financial crisis, you, Miller, Watt and Barney Frank introduced the Mortgage Reform and Anti-Predatory Lending Act, can you talk about that bill and what it did?

Brad Miller: I'm sorry, say that again.

Jon Rosen: It's the Mortgage Reform and Anti-Predatory Lending Act. It was bill that you proposed.

Brad Miller: I thought we talked about that earlier. The main thing that bill did, as I introduced it in 2004 - it was initially Miller [and] Watt, and then the next session Barney came in, so it became Miller-Watt-Frank - was it limited the points and the fees that could be charged upfront. But it built into that cap prepayment penalties, and yield spread premium that mortgage brokers got when they talk people into paying more in interest rates than what they

qualified for, it just capped the total amount. And it was a high cap. It was like 11% I think. There was a debate about whether it should be 13% or 11%, but it was what seems to be an unconscionably high count. But that was still reform. That was an improvement on what we had.

Jon Rosen: Can you talk about the kind of mortgage servicing conflict of interest legislation that you introduced and why that was necessary?

Brad Miller: Well, that was part of - I don't remember that actual specific bill, but I assume it refers to yield spread premiums. I sort of thought that mortgage brokers had exactly the same relationship with borrowers that as a lawyer I had with clients. They really had an inequity of information, they presented themselves as the expert who could help the borrowers deal with complicated mortgage provisions, they would act in their best interests. I thought that should have made them a fiduciary, but it didn't. When they talk people into a higher interest rate than what they qualified for, based upon their income, their credit history and the value of their home. If somebody was qualified for - I can't remember what the interest rates were then - 5%, they instead got an 8% loan. The additional 3% would be used to calculate an upfront payment to the broker, called a yield spread premium. That still goes on in car lending, by the way, which is also affinity fraud.

Jon Rosen: Over the last decade, we've seen a number of narratives emerge to explain the financial crisis. How do you understand what caused the crisis?

Brad Miller: The narratives that I've seen are probably not true. The mortgage lending was not the only thing that contributed, but it was a big thing that contributed. Securitization, the separation of ownership and control, and the fact that it'd been a long, long time since mortgages were portfolio loans that the banks held. They bought the loans to securitize and sell to investors. And I think that was part of the turmoil in the fall of 2008, when it seemed like Armageddon was going to happen tomorrow. [It] was because of subprime lending, one way or another. Also, in the repo market, the short-term overnight lenders were taking mortgage-backed securities as collateral.

Bear Stearns was borrowing $50 billion a night in overnight lending. Lehman brothers was borrowing $200 billion a night in overnight lending. Usually financial crises happen when there's a mismatch of maturities, when you're making long-term loans and people are lending you in the short term. So, bank deposits. In the old days, before deposit insurance, we had bank runs like in the movie, - what's the Jimmy Stewart movie that's on every Christmas because the copyright has expired on it - *It's a Wonderful Life*. That was a mismatch of deposits, which could be taken at will. It could be withdrawn at will in mortgages. Obviously, there's a pretty big mismatch when banks were borrowing in overnight collateralized lending and their collateral was mortgage-backed securities.

They were using that money to - well, if you're borrowing $200 billion a night, you kind of need it for just everything. So that was part of the problem there. Then, the biggest banks - the way it worked is that in the old days you needed a 20% down payment to buy a house or to get a mortgage. And those days are long gone. But if you still needed 80% to get whatever rate, without requiring private mortgage insurance. So what the banks did was they would make an 80% loan, but then they would make a 20% loan for however much more the borrower needed to borrow in order to get the house. The first mortgages they sold to investors, like securitize and sell. The second mortgages they held as portfolio mortgages. And the six biggest banks had like $500 billion.

That is based upon the first stress test done in 2009. They had like $500 billion in second mortgages. Those mortgages were second to first mortgages, many of which were already underwater. So if the actual legislation that Dick Durbin and I had introduced, and many of us supported, had passed - and they didn't tell us this at the time - they would have been screwed. If you had the amount of mortgage indebtedness written down to the actual current buyer of the house and treated the rest as [unsecured] debt, just about that whole $500 billion would have been - I mean, the secured debt would have been unsecured debt. It would have been given the same status as credit card debt. It's pretty hard to imagine that they would not have had pretty severe consequences from that. Then, there were so much bad conduct in the financial sector for which there really has not been all that much accountability. Mortgages were a big part of it. They weren't all of it, but they were a big part of it.

Jon Rosen: Looking back on the crisis now, what do you see as the most important lessons for policy makers?

Brad Miller: I think we do have legislation - which is not perfect - now in subprime lending. There've been efforts to loosen it up, which I hope enough in Congress will resist and that it won't happen. But the reality is we don't know - the nature of financial crises is that you don't necessarily know where they're going to come from. We don't necessarily know what the conduct is. I mean, most people didn't know. I was in a small group meeting with Ben Bernanke after the financial crisis hit. And he said that mortgage lending had gone to hell. I don't think he used that term, but that was basically what he said. [Mortgage lending] had gone to hell, in a very dark part of the market.

The Federal Reserve did not know what was going on. It became asset only lending. It was lending entirely on the basis of the value of the house as collateral. And the assumption was, "well, first of all, it's not my problem because I sold the mortgage to investors anyway." But the assumption was, because home values were appreciating, the collateral would assure that lenders would get paid back. Of course when the housing bubble deflated, that was no longer true. So, I think there should be an assumption that a lot of things could go wrong and if Wall Street tells you that these practices are an innovation and all the sophisticated observers know that this is innovative, this

is good stuff, hold your wallet, put your hand on your wallet, rest your hand gently on your wallet, because what you're being told may not be true.

Jon Rosen: We're nearing the end of the interview. Is there anything that I didn't ask about that you'd like to talk about?

Brad Miller: No, this is fine.

Jon Rosen: Thank you so much, Congressman Miller for taking the time. We really appreciate it.

Brad Miller: Glad to do it. Thank you.

[END OF SESSION]