AMERICAN PREDATORY LENDING AND THE GLOBAL FINANCIAL CRISIS

ORAL HISTORY PROJECT

Interview with

Mike Krimminger

Bass Connections

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PREFACE

The following Oral History is the result of a recorded interview with Mike Krimminger conducted by Katie Kaufman on November 13, 2020. 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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Katie Kaufman: My name is Katie Kaufman and we are here with Mike Krimminger again to do our second oral history … [Lets] start [with] some of the things we were talking about in the last oral history interview, specifically how ... the Savings & Loan Crisis informed the response in 2008.

Mike Krimminger: Sure. Well first I would note that the FDIC [Federal Deposit Insurance Corporation] learned an awful lot in the Savings & Loan Crisis about what works and what didn't work. And for a moment I'll be very myopic about the FDIC's perspective. I joined the FDIC in February of 1991. So I was there at the end of the Savings & Loan Crisis and a lot of the statutory changes [had gone] into effect, but what was very clear was that the FDIC had learned lessons both from the FSLIC – Federal Savings & Loan Insurance Corporation – experience and the Resolution Trust Corporation experience about resolving failed savings and loans [and from that] about the best ways to deal with failing banks and failing savings and loans for that matter. Since after FSLIC [was closed in 1989,]and RTC was folded into the FDIC [in 1995], the FDIC became responsible for resolution of all savings and loans and banks that were federally insured.

So some of the lessons the FDIC drew from that [crisis] were really applied very much in the crisis in 2008 to 2010. Importantly the longevity, if you will, and the long tenure of FDIC [and former RTC] staff was an enormous help during the financial crisis...because the people who had dealt with these issues and had these memories semifresh in their minds from the 1980s and 90s were the same people dealing with them in the 2008 through '10 period. And that really allowed [the FDIC to hit the ground running because we did] not even [have] to explain [how or] what we were going to do because everybody knew it so well. I mean, I was one of the rare people when I was in the Chairman's office who could talk about experience I had had when I was in the FDIC legal division, as well as in the FDIC [bank] resolution division.

[From 1999 to 2006, I was in the FDIC Division of Resolutions as policy manager and advisor to the director.] And I was actually acting in a role of a non-lawyer on some bank failures in the early 2000s. There weren't very many of them, but I was on some of them and [able to act] in the role of a business person, if you will. [For example, I] was the asset manager on a bank failure of a small bank in Wisconsin. [More substantially, I] was on the committee that was deciding about funding loans out of a substantial bank failure in Florida[, Including major construction loans]. So I [had] seen it from all different facets. And I think that level of experience, which was not just limited to me, but was experience across the board [of others at the FDIC]. And a lot of people in that area really helped a tremendous amount. The second thing that was really key coming out of that first crisis … and what the FDIC did in the last financial crisis was a determination not to staff up heavily with permanent employees. [After the savings and loan crisis, it] was very difficult as matter of resolution activity declined in the 1990s, of having to get rid of people[1].

And so the FDIC very quickly made the decision to staff up primarily, interestingly enough, with a combination of recent retirees from the FDIC [and additional new employees explicitly as temporary positions for set time periods]. So you had that experienced stall staying with you, as well as new people coming in who had some experience in finance and economics and law, et cetera, who were brought in explicitly as temporary employees. So you never had anyone who was expecting they were going to be there for the long-term. Now, as an aside, the younger generation I'll call it, to use an ageist phrase if you will, but the more junior people who came in, actually, we worked very hard as retirements occurred after this financial crisis when I was General Counsel to try to keep some of them in, to kind of refresh the blood of the company of the FDIC and the legal division with people who had had some experience during the recent financial crisis, but were more junior and therefore would be able to pass their experience along in years to [come]. So there was a good, useful transition as people began to retire more after the crisis. We moved in people who had just recently been with the FDIC, but were more junior, who could pass along the experience they had gained.

And the third thing I would note is that how you [conducted] resolutions was different as well, but it built on the lessons from the RTC and the FDIC in the prior financial crisis. [These lessons were developed] in analysis of the prior [thrift] financial crisis, [as developed by] the FDIC [in] two major reviews of what happened in the Savings & Loan Crisis. [Those reviews] try to draw lessons learned and produced a couple of big, good sized bound volumes that I have that kind of drew from those lessons[2].

One of those lessons was don't try to hold on to assets of failed banks and try to work them yourself. Get them back into the private sector as quickly as possible for two reasons. Number one, going back to the earlier point, if you don't try to work them, if you don't try to collect payments and restructure those assets yourself for a long period of time, you don't require as many staff members. [It] kind of goes back to the point about not needing to build up so much. And number two, getting them back in the private sector we found as an experience

[1] Having a large number of FDIC and RTC staffers in the mid-1990s – and having to conduct "reductions in force" or RIFs – was difficult. So, avoiding that was a key decision.
[2] One volume was called "Lessons from the 80s" and the second was a two-volume study completed in the mid 1990s called "Managing the Crisis". These remain valuable tools, I think. The FDIC similarly completed a study of the 2008-2010 crisis response in "Crisis and Response: An FDIC History 2008-2013" (2017).

from the Savings & Loan Crisis, the market devalues assets kept by the government for an extended period of time, much more than it devalues assets worked by the private sector. You can debate about whether that's good or bad or accurate or not.

It's irrelevant in some ways. It's just a fact. So getting them back in the market, [means] you get more value for the assets. And I'd say the fourth thing that was very key to that was that we worked very hard on doing transactions that were creative in providing assurance to the market or assurance to potential buyers, that their risk would be limited. And therefore they would bid up for those assets. So one of the big things the FDIC did was use extensively loss-share transactions during the late financial crisis. [We] used them some during the Savings & Loan Crisis, but in the recent financial crisis, [we] used loss share very widely and varied the amount of loss the FDIC would cover over time, depending upon the market context and demand for those types of assets. Now what is loss share? Loss share simply means that in a bank failure, let's say there's a large pool of [mortgages, or] commercial real estate loans or commercial and industrial loans [available for sale to an acquiring bank].[3].

But they're very concerned about not having enough due diligence time. Not having enough time to dig into those loans and see what they are. And concerned about the market valuations on those loans, because they're concerned – the buyer's concerned about their balance sheet too. If I buy a bunch of loans that the market says are worth 10 cents a dollar, they're going to [value] my balance sheet the same way.

Well, what the FDIC did is it said, we will take, we, the FDIC, will take 80% of the losses that you would bear on those loans off the book value of the loans if you take them on your balance sheet[4]. So therefore you can use that 80% loss coverage to strengthen your balance sheet on your finances or accounting statements and reduce your risk. And it sounds like boy, that's a sweetheart deal. And the FDIC got all kinds of criticism from the press and academics, and some others who didn't really know what they were talking about, to be honest with you.

[Critics would] say you're giving a sweetheart deal to these banks who were buying, they're making beaucoups of money. Well, two answers to that. Number one, it wasn't a great sweetheart deal because if you think about it economically, if you know a little bit about finance, if I reduce your risk, you're

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[3] Let's say there's a large pool of a mortgages, or commercial real estate loans or commercial and industrial loans but the bank that wants to bid on the failed bank is uncertain about their value or has not had enough time to conduct due diligence or simply that market values are very depressed at that point in time. The uncertainty about the actual value of those loans means that any bidder will have to substantially decrease their bid to protect themselves. Market participants, in my experience, tend to devalue assets much more for uncertainty than for simple bad facts.

[4] In FDIC transaction, the loans were sold at book value though the bid price was whatever the bidding bank would offer. If that uncertainty persists, the bidding bank will offer a low price. So, the FDIC provided "loss coverage" to reduce the "real" uncertainty to the bidding bank of the value of the loans by the FDIC agreeing to absorb a proportion of the loss below book value.

going to bid higher for something you're going to buy from me. So if I'm taking 80% of the risk off of you, so you're not going to be bearing it, your bid price will go up. [The FDIC's] experience ... with the loss share transaction, is that the increase in the bid prices by different bidders for the failed bank, more than compensated for the 80% loss share coverage the FDIC provided.[5] The second point about that, is that by doing loss share the FDIC was also able to incorporate some provisions into the contracts that were important in this particular crisis.

First and foremost, the FDIC required that a buyer of large volume of … residential mortgage loans had to utilize the FDIC's mortgage modification program, which was based upon a standard industry net present value. In other words, if net present value says, do foreclosure, you do foreclosure. If the net present value says you do a modified loan to keep the borrower in their house, you do a modified loan and keep the borrower in their house. Similarly, it required additional reports back to the FDIC about how the loans were performing since the FDIC would be on the hook for 80% and [some adjusted percentages of losses] over time – and so those were two of the big advantages. There are others as well, I think of loss share, but it was an incredibly effective way of moving assets quickly off the balance sheet of the FDIC.

Katie Kaufman: … So you mentioned the loan modification proposals. Can you speak a little bit about kind of where that came from, how that started, and how it played out?

Mike Krimminger: Well, that was [also] substantial part of what I did for about a year and a half, two years. I was Sheila Bair's point person on mortgage issues and mortgage modifications from early 2007 through 2009, when it became more of a U.S. government issue. And it really came about from an enormous number of [internal and external] meetings and thought that went into looking at what could be done to deal with those loans that were impaired or likely to be impaired. We talked last time about these 2/28s and 3/27s for subprime. And then you had the issues of the Alt-A mortgages that you could barely even call it underwriting. It was very poorly, almost non-existently underwritten in some cases.

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[5] The FDIC made more money net by offering loss share because, in effect, the FDIC could finance the loans over the longer loss-share period than the bidding bank could – and the value of the loans was almost always much higher than the low bids received in the crisis. Those loans paid off at better rates than the market – during the depth of the crisis – was expecting.

Since the FDIC did a series of loss share transactions, the protection offered through loss share encouraged many more bidders to seek to acquire the failed bank and its assets. Simply having more bidders increases market pricing. And, as the market gradually improved, bidding banks began to compete through their bids by accepting lower percentages of loss share coverage and making other adjustments. The FDIC constantly experimented with revised transaction structures to encourage such diversification in bid structures to its benefit.

[Initially, in 2007-2008, the focus was on 2/28 and 3/27 loans.] So if you've got a lot of loans like the 2/28 and 3/27s, where the interest rate's going to reset by 500, 600 basis points, and the borrower was only underwritten to pay the so-called teaser rate, which itself was not that low oftentimes for subprime loans, then keeping that person at the teaser rate, or maybe only raising it one or 200 basis points may allow them to stay in the home.

[The basic point is allowing a true homeowner to continue to pay] keeps the value going to the company that owns the mortgages or to the securitization trust that is holding the mortgages .... So the idea was, let's not just go automatically to foreclosure. And I think we talked about that part of the problem was that in securitization trusts the compensation for servicers and others, was not generous enough because the cost that they could charge for their servicing services had been squeezed so much over competition during the go big days leading up to the crisis that they were only really making profit, the servicers were, if they were simply taking payments and making payments out to the bond holders. And so to do special servicing, which requires a lot more work and manpower, they couldn't really afford to do that. But, they were required to in our view.

[The FdiC developed a loan modification protocol in 2008 based on its experience since 2006 and on models that worked at IndyMac after the FDIC took over.] And so we tried to provide very much of a plug and play type system with a loan modification program that was based around a net present value process. We posted that on the website in the fall of 2008. It was used earlier than that, but by the fall of 2008 it was posted on the FDIC's website, following the failure of IndyMac in July of 2008. And that loan modification protocol, we tried to streamline as much as possible so that it could be quickly implemented on a wide number of loans. And we did quickly implement it on a wide number of loans at IndyMac and some others through the loss share program. I was the person who's responsible [to the Chairman] for ... mortgage issues at the FDIC, although I was helped by a tremendous number of [very talented] people. Some of the brain power and the brain trust on that were people like obviously Sheila Bair, [who was always thinking about what would work and was very creative. Others included] Jim Wigand [in] the resolution group, Jason Cave, who was another senior advisor and then later Deputy [to the] Chairman (as I was) ...the chief economists at the FDIC [Rich Brown] and his staff. Rich Brown … who, unfortunately, sadly just passed away on October 30th at a very young age. [Others in the resolutions group, most specifically George Alexander, and in legal played crucial roles.] But they all worked very hard to come up with new ways of doing this and new ways of restructuring securitizations. George Alexander at the FDIC and his team worked very hard to look at the securitization structure with me and [were] able to point out [options under the documents to address issies and that most documents] did not limit the ability to make modifications if the loan itself was in default or was likely to go into default in the near future.

So we did a lot of modifications directly at IndyMac and did a lot of modifications through loss share. And through the month of October 2008, I spent about four days a week in Pasadena, California. October 2008 was a rather busy time. We had September 2008 right before it. And September 2008 was the period when there's like a, I've seen a lot of people refer to it as 15 days that shook the world. You had the failure of Lehman all the way through WAMU [Washington Mutual], et cetera. And at Wells Fargo, [it was] taking over Wachovia. Things like that. And so you had a huge disruption. And so I spent the month [of] October [in California] because we had had a little bit of a lag in getting loan modifications done [all the while that] we were seeing the decline in the value of the mortgages that we were having to hold at IndyMac.[6]

So I spent four days a week for the month of October, basically in charge of servicing at IndyMac, and that was a wild experience … coming and working directly, I actually enjoyed it in a weird way. … It was one of those things where ... we put up on a whiteboard in the office I had out in Pasadena -- this is our target number loan modifications for this week. It'd be on Monday morning, I'd meet with the staff, which was composed of one or two people from the FDIC and about six or seven people from IndyMac, who were the senior people in servicing there. Then we'd go through the numbers. How many do we have in the pipeline? How many do we have that are [delinquent or] in default? How [delinquent or] in default are they? [What are the loan terms, and how can we slot them into our analytical framework?] Are they the kind of the standard subprime ones? And by that point, there weren't as many subprime. It was more the Alt-A issues. How can we help? Can we modify those loans? What kind of restrictions are there on the securitization trust? Well, we can do this, we can't do that. Or we can do all of these things, whatever it might be. And so we did that, did that for the month of October. And the team back at the FDIC was constantly working on these issues.

We were constantly making proposals on loan modifications to other parts of the federal government. Way back in mid 2007, we had been trying to work with [the] Treasury [Department] very much on Treasury taking the initiative because the Secretary of the Treasury has a much bigger bully pulpit than the chairman of the FDIC. And you had Hank Paulson who was [the former Chairman of Goldman Sachs].

And so Sheila [Bair] worked very closely and had lots of conversations with Hank about trying to do something about mortgage modifications. And he was resistant during the summer and … through the fall, really in 2007, because he was being told by a lot of people on Wall Street, this is going to work through the system. We need to make sure that the market works these things through, and he's very market oriented, as frankly am I, as Sheila is for that matter. But we were saying, look, we've got these 2/27s and 3/28s. If we change, if we can just modify them where they stay at the teaser rate for a period of time, if they

[6] We could not sell the bank and its assets at that time, so we had to hold them until the 2008 market stabilized some.

stabilize, we're going to have an ability to put a floor on the decline in mortgage prices and decline in real estate. And he was very resistant, but finally in December of 2007, he called a meeting of all of the major banks.

And he pushed really hard. I mean, Hank Paulson is a great guy in a lot of ways. … And one of the great [things] about Hank Paulson is that when he gets behind something, he knows how to lean on people, not too surprising, given he's a former chairman of Goldman Sachs. So he leaned on them really hard and got them to commit to doing modifications of loans in the way we were talking about in December of 2007. Then they went back to their offices and probably didn't follow through, but they committed in front of Hank Paulson. And so [by] 2008, it kept getting worse. We were getting pushed back to be honest from the Comptroller of the Currency, John Dugan, who was trying to say, "Well, modifications don't work. They don't really stay [continue to perform]." And all this kind of stuff. … He'd say things like 50% of them, or 40% of them, redefault after they've been modified.

And I would turn to John and I would say, "Well, that's good ... we think the percentage is higher [which is was], but look at it this way, John, that means that I had a hundred percent of these loans that were in default; they were going to fail or go into foreclosure before. And now I've only got half of them that are going to default and go into foreclosure. That's a win. If they make any payments, it's a win. And if they continue to perform, it's a really great win. So what are you talking about?" One of the great things about working for Sheila is that she gave me fairly free reign to be fairly direct with other board members, with senior people in the government, which was kind of fun. So that was frustrating.[7]

...[O]ne thing important to note is that we were pushing in the late spring of 2008, before Lehman, before IndyMac failed, before WaMu or anything, for the government to put some money behind dealing with loan modifications.

But we went with a proposal [to] the Treasury to try to convince them to put $10 billion from available funds to modify mortgages and to compensate servicers, give incentives to servicers, to do the work and give incentives to those who think they might've lost money [or floor for pricing] and to do the modifications in a way that would protect – providee a bottom for the financial market, provide funding for the modifications so that homeowners [are] able to stay in their homes.[8] And I remember a meeting that Jason Cave and I had over at Treasury with Neel Kashkari, who's now the President of the Federal Reserve Bank of Minneapolis. Then,d he was a senior advisor to Hank Paulson at Treasury. And we went through this process and explained what we would do, went through the details of how the modifications would work and everything.

[7] Krimminger was always conscious of their roles and respectful, but he was allowed to be pretty direct with them as a representative of the Chairman.
[8] One goal was to give incentives to servicers, to do the work and to do the modifications in a way that would hopefully stabilize housing prices and create a "floor" for the market.

And he'd heard us talk about the modifications before, but we were pushing on the $10 billion amount. And [to paraphrase] he said, “Mike, Jason, I just can't do it. We're not prepared to put money, federal public money into a mortgage modification program at this time because we don't think the severity of the mortgage issues is that bad.” And I … kind of sat back shocked. He said that if things get really bad, we've got … like five or six additional tools that we can use in what we refer to as our break the glass program. And we break the glass like you would, and you'd get the ax out and put out the – help put out the fire, [use] the fire extinguisher to help put out the fire. And he went through the tools and there were a variety of tools there, which were primarily designed to help provide liquidity into the financial markets and really didn't deal with mortgages.

And that was kind of the end of the meeting. And it was very disappointing. And it seemed to us that why don't you deal with the foundational issue that's creating turmoil in the markets, which is the decline in real estate values and the increasing default rates for mortgages, instead of trying to do everything at the top. And that has always tended to be the focus. Not to do something to help the homeowners stay in their homes, but to do something to help the institutions at the top of Wall Street. And that's where I think you [still] get the Wall Street-Main Street dichotomy from, and then to spool that forward. September 2008 happens. That's what? Four months later. And I knew things were really bad in September 2008 when Treasury used – broke the glass and used every one of the tools that Neel had told us about in May, and it didn't make a damn bit of difference.

Katie Kaufman: … [T]here's a couple of things there I would want to follow up on, ... about two different kind of areas. One is this experience at the FDIC, how that informed how you started to look at the crisis, how other people around you started to look at the crisis. And then thinking about this second generation of new attorneys and new policymakers coming in and, and how you were able to ... impart your knowledge and your experience in identifying crises...? And then thinking about the cooperation with other agencies. I think that's a really interesting aspect of this crisis, especially. So I don't know if you want to talk about the first question and maybe, when did you realize that things were really bad? And did you feel like that was before other people at other agencies were identifying a problem or how did that play out from your perspective?

Mike Krimminger: Well, I give a lot of credit to Sheila. I learned a lot from her. By the time I started working for her, I was like 49 years old. So I had been around a while, but I was very – I grew very impressed [with her] over time. She certainly could be prickly at times, but I had a tremendously good relationship with her. In fact, I was just emailing with her this morning. And the reason I think we got along so well was a number of factors ...

Number one. I didn’t – I felt that I had something to offer, and I felt that [since] she was asking me to be part of her senior staff. So she wanted to have, for me to give my advice. And so I told her very early when I started working with her, I think like the first couple weeks I worked with her, I said, "Behind your closed door, when we're talking here, I'm going to give you my unvarnished view about what I think is the best thing to do based upon my experience and what I know. But once we walk out that door and you've made a decision, I'll support your decision a hundred percent." I said, the only reason I wouldn't support your decision would be if it were unethical or somehow inappropriate in a severe way, but I said, I know that's never going to happen and it didn't. And she knew then that, and I proved that that's what I would do because she knew then that she would have a zealous advocate within the agency for anything she wanted to have done because she's coming from the outside as well.[9]

I had already been there by 2006, when she joined, for 15 years. So I was an insider and [, I believe internally well-respected.] Having a zealous advocate within the agency who people I think had some respect for is important to a Chairman like that.

But her knowing that I had her back meant that she was very – incredibly open with me about what she thought about various things, personnel issues and the whole sorts. So that, that was fabulous from my perspective, an excellent relationship.[10]

And I think early on, she identified these subprime mortgages being a real problem. You were asking when we first started to identify these. And so we had issues.[11] We had big issues with the [proposed] Walmart ILC, an industrial loan company, in 2006 and early 2007. But … by early 2007, she was really looking at the numbers on the subprime mortgages and being very concerned.

The FDIC had a series of research analysts across the country, in each regional office scattered across the country, who were looking at the issues on a regional basis and then Rich Brown[, FDIC Chief Economist,] and his team in Washington was looking at them on a national basis. And they[, the FDIC,] were also looking at them[, the mortgage markets,] on a global basis as well, and kind of looking at the way the market was going. And there were market indices in 2007 that were showing you the credit default swap rates on different types of exposures and different types of institutions. So you could look at the credit default swap exposures and rates for New Century, Option One, [and others of]... the non-bank mortgage originators. You could look at it for the banks. You could look at them for securitization trusts. You could look at the changes to the, or at least the risk profiles as disclosed by the rating agencies and our own analysis and taking all [of] that together, … we were clearly seeing an issue by the middle of

[9] That's important in a federal agency, as with any bureaucracy – because, as an outsider, Sheila Bair had to earn the confidence of other agency staff.

[10] Another factor in our relationship was that we tended, not always, but tended to see banking policy issues in a similar way. Government's job was not to dictate results – though we had to sometimes in the crisis – but to set the rules under which the market operated. We both believed in free markets, but subject to regulation to protect the public interest in deposit insurance, resiliency, and consumer protection.

[11] Initially, the first big issue on her plate was the mixing of banking and commerce issue around industrial loan companies. The third rail at the time was the idea of a Walmart bank through an ILC. That was enormously controversial.

2007, and [it was] getting more and more severe. [If] that was being ignored, I thought, by the policy makers in Washington, that she thought as well. And so [Sheila] began to really push on that. And that concern grew, of course, [It] easy to have a concern in September 2008. That concern grew throughout that period.

And to your second point about her relationships with other government agencies, I felt the relationships always were very good, but they were certainly fraught at times. They were particularly [tense] because to be honest with you and I hesitated, I truly did hesitate, for a very long time to come to this conclusion, but I also, I think there was [an] unconscious bias, I'll call it. It's a common word today, [but it] wasn't as common at that time --... she was the head of an agency, and she was a woman to be quite honest with you. And I think there was always a bit of an old boys club among the financial regulators [and on Wall Street].

Not that I think any of them were, might question about a couple, but not that I think that most of them were really sexist quite so dramatically, quite so directly in any way because they had good relationships with women who worked with or for] them and other things.[12] But having somebody who was a peer as a woman seemed to put some people a little bit off. And so I think they had a tendency to disparage what she was telling them in part because she was a woman. In part because the FDIC was always viewed as not the same level of regulator as the Federal Reserve or even the OCC. And certainly [it was] not viewed as being [on par with] the Treasury Department ... but we were showing them analytics. And I think the people pushed back for a long time thinking that the markets would work.

There was this time period just before the crisis, people forget about today, in which people were saying, "Well, yes, things are different now. There is more risk, but the risk is being dispersed throughout the system. So you don't have to worry about it. It's being dispersed through securitization, through CDOs [collateralized debt obligations], through collateralized loan obligations. So, nobody has a huge quantum of risk. [This argument] makes sense from an intuitive sense and logical sense in many ways. But the problem was that dispersal of risk, when things started going very bad in mortgages, it meant that the market didn't know who had the risk because there was opacity about who was holding what, and how much risk they were holding. And you couldn't go drill into a securitization trust and find out who had the bonds and who had how much risk in the bonds.

So, the market then did what markets do – assume the worst. And the fall of 2008 was [so bad, in part, because the market assumed] that anybody who had

[12] It was not usually overt, but it certainly approached that a number of times. Most of the men in the industry were not directly sexist – though some were.

exposure to mortgages had a huge exposure to mortgages and would be impaired.

So there ... there was fraught stuff about mortgage modifications from the middle of 2007 pretty much through … 2010 because to be honest with you certainly [the] Obama administration and Tim Geithner came in with a dedication to do a lot of things.[13] And I think President Obama and some others would have done more for mortgages … than Tim Geithner did. But the bottom line was that the mortgage modification protocol that was ultimately adopted by the federal government, was weirdly enough, influenced quite heavily by economists and analytics from people who were holdovers from the Paulson Treasury.

And [they were] very concerned about having any losses showing or any exposure of money being put in by Treasury to losses. And therefore, it made the standards very complex and very tight.[14]

[Recently,] I gave [similar] advice to Treasury about the response to the pandemic, and they said they agreed with it. It's still been tough getting uptake in the current Treasury, uptake on some of the programs, particularly the Main Street program, for example. And one of the problems is that I said, if you create a program that prevents the government from having losses, you won't accomplish the goal of putting funding and liquidity into the market, whether that's provided for mortgage modifications or funding over to Main Street businesses, because the more complex you make the bureaucratic process, if fewer people can get through it, the more frustration there will be.

And that was true in the loan modification in 2010, when the HAMP [Home Affordable Modification Program] and the HARP [Home Affordable Refinance Program] programs were put in place by the federal government, by Treasury under Michael Barr, who is at University of Michigan. … Michael and I had lots of intense discussions because I was very much of the view that they were making it far too complex, ... having so many controls on the exposure of loss. And that was in some ways trying to deal with the political reality of the heavy criticism by the Republicans and you had the rise of the Tea Party movement. They had partly been energized by the, in my view, one of the stupidest speeches I've ever seen on television. [It] was Rick Santelli's speech from the floor of the Chicago Board of Trade about people being ripped off by – who were paying

[13] However, in the middle of 2007 there was a lot of push back about trying to modify mortgages and this continued into 2010. Krimminger always thought they should, at least, try to address the cause of the rising delinquencies and defaults that were rolling the markets, but there tended to be a focus on the Wall Street process, and not the Elm Street mortgage default. When President Obama came into office in 2009, there was an interest in relooking at responses to the crisis. I think President Obama and some others would have done more for mortgages, but there was real reluctance by Tim Geithner and others at the Treasury.

[14] At the time, I told them – as did others at FDIC – that you can prevent losses by being rigid, but you cannot affect enough mortgages to make a difference by being rigid. You have to strike a balance and accept there will be some level of redefaults and losses.

their mortgages by providing a sweetheart deal[15] to those who were defaulting on their mortgages, so on and so forth. But this [was] not a moral crusade. This is like a bottom line practical way of trying to keep the market from collapsing and trying to keep the mortgage markets from collapsing. And yes, there are going to be some people who are going to benefit who maybe shouldn't benefit from a moral perspective, but the question is, do you want to have a collapse in markets or not?

And I felt that there was a, they could have done a lot more for homeownership and for mortgages during the crisis, had they not tried to be quite so bureaucratic about the mortgage modification protocols. They simplified [them] some over time [after] 2010, but [the program] was still too complex.... [16]

Katie Kaufman: … So thinking about these conversations that you had with other agencies and those dynamics in the months leading up to the crisis, how did that change once they realized that something was really wrong and that different action needed to be taken? ...

Mike Krimminger: Briefly … in all that came, everybody came to a shocking realization that stuff was hitting the fan in September 2008. You had Lehman Brothers fail on Monday I think the 15th or something of September. You had a series of issues coming out, you had the [some money] market funds "break the bank" and ... Hank Paulson, Ben Bernanke, Tim Geithner, who was the President of the Federal Reserve Bank of New York, and it's always been very much involved in issues related to the financial markets naturally because it's the Federal Reserve Bank of New York, … everyone recognized this was a all hands on deck catastrophe.[17]

And there's no question in my mind that in the September, October period of 2008 -- the [American public] will never recognize this because it's impossible to really convey to people who didn't see the catastrophe – what was done actually avoided a falling into the abyss. The financial markets literally were going completely illiquid. You could not take US Treasuries – and I never thought I would ever see this in my entire life – that you could not get money by lending US Treasuries. It wasn't [that] they thought Treasuries were impaired, just the market functioning was so frozen. You couldn't use anything for lending. So everyone got all hands on deck. We did go, and we had a very intense period of

[15] It was Rick Santelli's speech from the floor of the Chicago Board of Trade about people who were paying their mortgages being ripped off by mortgage modifications in a sweetheart deal.

[16] Krimminger felt that the federal government could have done more early on – in 2006-07 – and later to stem the surge in defaults and the decline in home prices that led to more defaults if they had not tried to be quite so bureaucratic about the mortgage modification protocols.

[17] The Federal Reserve Bank of New York has always been very much involved in issues related to the financial markets. They had obviously been very involved in addressing the Bear Stearns collapse in the spring, and the FDIC had seen some major banks get into trouble too. IndyMac, for example, failed in July. But, in September everyone recognized this was an all hands on deck catastrophe. Sheila Bair was focused on the consequences for insured banks. WaMu and Wachovia failed and other very large banks teetered on the edge, and there were constant discussions among the agencies and with market participants.

a lot of intense discussions while WaMu was going on, Citi was trying to buy this, Wachovia was failing, you had continuing turmoil from Lehman Brothers. You had Freddie Mac and Fannie Mae put into conservatorship [on] September 8th. You had huge things happening in September.

All of that was going on while we were at the same time trying to come up with, what can we do? Everyone recognized liquidity in the market was enormously impaired and the market, by the 1st of October, was literally on the verge of just completely seizing up. And that was for Treasury markets and everything. If you want to see the collapse of the financial system, we were almost there. So as a result everybody focused in on doing something and we, and the government … at large, with all these intense debates, I think did the right thing. It did what it had to do. You might say it's kind of like when President Reagan said that after trading arms for hostages during the Iran Contra, mistakes were made and yes, arms were traded for hostages. Well, there might've been some mistakes made in the Fall of 2008, but we were trying to find a way of liquifying the market.

So the Treasury Department took some of the new TARP [Troubled Asset Relief Program] money, which itself was an intense debate for a period of time and put that into … a program to buy equity into institutions to provide some support [to] the capital side. Equity is one issue, but at that time, what was really needed was liquidity.[18] So the Federal Reserve started putting into place a whole series of programs that were designed to deal with the lack of the liquidity in the marketplace. And there's a whole laundry list of programs we could go through at some point when you have more time. But the TAF [Term Auction Facility] and the TALF [Term Asset-Backed Securities Loan Facility] and all this sort of stuff. The FDIC put in a temporary liquidity guarantee program [TLGP], which provided guarantees by the FDIC of debt issued by banks and bank holding companies, and some other holding companies. These programs were announced October 14th of 2008, after an enormous amount of discussion.

After that point, there were some modifications made to it over time, but almost immediately you had the effect of then allowing some liquidity to get back in the market. And the liquidity improvements by the late October of 2008 were dramatic compared to the first part of October 2008. And so that was something where the US Government was able to take a unified action, even if we were arguing about some of the details of it, but we took a unified action, announced it at a joint press conference on October 14th and it made a huge difference. That's something that Europe and other regions weren't able to do in part because we had a balance sheet from the federal government that had the confidence of the marketplace. And we could take action with a Howitzer where some other governments, including in Europe, [were comparably] like shooting with rifles and trying to control the situation.

[18] Capital is important, but in a crisis liquidity is king.

Katie Kaufman: Yeah. So when … [with] these inter-agency conversations as everything is happening and these reforms need to be enacted pretty quickly, are all these regulators at different agencies kind of on the same page and then it comes down to disagreements about the mechanics of how the reform actually works? Or are there still big policy differences...?

Mike Krimminger: All of the above. First of all, there's big policy disagreements about what should be the type of action that should be taken. I think in the, in the September-October time period, everyone knew we had to do something to deal with liquidity. But there were different, a lot of different ways, different thoughts about how to [provide] that liquidity [into the financial sector... and there were many debates about where the liquidity would com from.]. From the FDIC's perspective, it always seemed that other regulators always wanted to bring the FDIC into the conversation because the FDIC had money. Some other regulators... didn't have the deposit insurance fund to provide funding for them. I remember turning to Sheila one time, we had a conference call on mute and I said, "Why is he talking? He can't bring any money to the table." But you had Treasury, you had the FDIC and you had the Fed who had money.

… What was bizarre to me – I was surprised by this, but if you look at the statutes, yeah, it makes sense – was that without TARP, the funding that came in from TARP, the $500 billion that was authorized by Congress around the 1st of October of 2008, Treasury didn't really have discretionary funds of any [significant] size to make a difference. So Treasury, it was surprising to me, Treasury doesn't just have money sitting around to be able to deal with financial issues. There are very limited authorities by statute for which they can deal with these financial issues. The Fed, of course, had never done programs like they did in 2008 – it's continuing on to a degree now -- as far as interventions. And [the Fed] had to get very flexible about the types of collateral that [it would accept on liquidity programs, which are essentially secured loans.] … The Fed provides interventions, buys liquidity and effectively loans, this is by statute, loans for certain types of collateral. And the types of collateral they would accept was greatly expanded during the crisis. I think this pen would be collateral for some loans at times, but it was necessary.

You had to be creative in the ways you were looking at the law. And the Temporary Liquidity Guarantee programs, the first response from the FDIC Legal Division was we don't have the authority to do that because the statutory provisions for systemic risk said you've got to be able to provide support for a failing bank. And I remember having a call with the Legal Division. I'm calling from the sixth floor, which is the Chairman's floor. My office is like one door down from hers. I say, what if we look at "a bank" as being a whole bunch of "a banks" and they got – it was like silence on the other end of the line.

What are you talking about? Because nobody in the Legal Division ever thought about providing systemic support... other than for an individual bank. [How] could [you] extend [that] to hundreds or thousands of banks. And I said, "Well, we also have the authority. We have the authority to provide this to prevent the failure of a bank. And these other banks are on the verge [of failing or] could be failing if we don't do something. And so eventually people got on board [through a series of discussions and analyses.] You had to be creative in the way you do the analysis. Later it was criticized, [and] some question as to whether our analysis is correct, but [I don't recall anyone saying] it was wrong and that's all you needed at that time. So there were debates about the nature and the form of the support [both at a high level and in the details.] And there were lots of debates about the details of it. And the FDIC moved, Treasury moved, the Fed moved [on their views]. We all changed our positions, but we accommodated the views of others after extensive debate.

Katie Kaufman: … Can you talk a little bit about Dodd-Frank and how that unfolded and your role in Dodd-Frank?

Mike Krimminger: Well, that began to unfold in the spring of 2009. Dodd-Frank was obviously adopted in July of 2010. [In the] spring of 2009 when President Obama came into office and Tim Geithner [became into the Treasury Secretary], we all believed, this is like consensus of everyone, that something had to be done to reform and provide additional authorities because it had been demonstrated in the resolution of Lehman that having a bankruptcy resolution was not the way to go. So there was [generally] a consensus among all the government agencies, I think, that ... there needed to be some changes to improve the ability to deal with a crisis like 2008. And remember, 2009 was almost just as bad as the Fall of 2008. [Banks, markets, and businesses and people across the country were still struggling.]

So [there were] still a lot of struggles going on. But to his great credit, Tim Geithner as the Treasury Secretary, didn't come in saying the new administration knows everything. He came in saying, we want to sit down with all the agencies that are financial regulatory agencies, SEC [Securities and Exchange Commission], CFTC [Commodities Futures Trading Commission], FDIC, OCC [Office of the Comptroller of the Currency], at that time, OTS [Office of Thrift Supervision], Federal Reserve, et cetera, and get the best minds together and get the best thoughts together from all the agencies and see how – what we think needs to be done and what we can do. And we had these [long] roundtable meetings in the big conference room at the Treasury Department down from Tim's office. And he would pop in now and then to engage in the discussions and we had these big rotating discussions. And fortunately, we did benefit a lot also that there were some very good people from Wall Street who had been part of Hank Paulson's administration [at the] Treasury Department who stayed on as advisors, [as well as new people brought in by Tim].

So we had continuity there -- and as a slight message here for the current president, [a smooth] transition is really important when you've got issues to deal with.[19] …[20]

[19] This emphasizes the importance of putting the country ahead of politics during a transition.
[20] The president here refers to President Trump as of November 2020.

This is something that I would just want to emphasize is that I never once felt that the views being expressed by people in the Republican side or the Democratic side who were in government, the administrations and the agencies, were trying to [do anything except what they thought was] the best thing for the American people. [I never felt they] were trying to push a purely partisan agenda. I always felt that they were [acting] in good faith, trying to push what they thought was the best way of accomplishing the goals we were trying to accomplish. Now I might disagree with their perspective, what the best goal was, or the best way of accomplishing that goal was I should say, but I never thought it was done out of a political calculation. I hope we can say that going forward, but I never felt, and there was a lot of back and forth, of course, between Republicans and Democrats in 2007, 2008 and 2009, Lord knows. But I never felt [it was governed by a political agenda] in the government. When people had to do things, they did them, and they did them the best they could do them and worked very closely together. So we had people from the Paulsen Treasury working with us in 2009 about ways of dealing with the ongoing crisis and about ways of dealing with the reform.

So all the agencies put together white papers on reform proposals. The FDIC put together a very extensive one, as well as other agencies did. Those were reviewed at the White House and at Treasury because at early stages of administrations, there's a very fluid relationship usually in my experience, having gone through about three different transitions between the White House and Treasury, because a lot of people that may ultimately be at Treasury are initially just at the White House because there's not really been anybody confirmed by the Senate yet.

So they've got to try to keep things going during this transitional period. So there were some great people, Michael Barr and others, that we worked with who were at the White House part of the time and later became part of Treasury. Some others who [were] always part of the White House and were always involved in these discussions as well. And so we had all these, we had like roundtable meetings all the time on this. [It got to the point that the Treasury guards asked me why I didn’t just get a Treasury ID.]

[After the agencies] put together white papers, [these]white papers coalesced into a white paper that Treasury put out. [While the FDIC agreed with a lot of it,] to be quite honest we had some severe issues with [it] particularly related to resolution authority. The Treasury shockingly wanted the resolution authority to be held by Treasury and the Treasury secretary to have broad authority to do things like bail people out. And Sheila, we at the FDIC, said permanent bailouts are not the way to go.

If you want to screw up a market ... have the government doing bail outs every time somebody gets in trouble [because] then you lose all the disincentives [to risk taking]. You clearly end up with a, like the old saw goes, you socialize the [losses] and you privatize the profits. So we pushed back very heavily on that. The final resolution authority, for example, in Dodd-Frank is very much what the

FDIC wanted to get. There are certainly areas [in] that [statute] that we had to make modifications on with pushback from people, including on the Hill. But that was very much something the FDIC wanted to be involved in.[21]

I was Sheila's point person on the resolution authority and worked with a lot of other people at the FDIC. I'm not trying to glorify myself, but [I was principally responsible for] discussions with the Hill and with Treasury, [and] with the other regulators about what resolution authority should involve.

I was her point person on that from basically [the] beginning of 2009, when we first started talking about it, through enactment in 2010 and then through implementation through [2012] when I was General Counsel. And that was a very long discussion because there was a lot of concern in some corners about the idea that changing, allowing something to be resolved, not under the bankruptcy code when it was otherwise resolved under the bankruptcy code, was problematic. There was a recognition at that time, later it seems that people got amnesia, but there was a recognition on the Republican side of the House and the Senate at that time, that relying purely on the bankruptcy code was probably not the best thing to do given what had happened to Lehman and other situations. Amnesia seemed to set in fairly quickly as I guess political distinctions begin to play out a little bit more when you're on the Hill than they did in the halls of Treasury and other places.

And there are a lot of other aspects. We also had a laundry list of things we wanted to have done to try to reduce the risk related to mortgages, particularly as well, related to the market infrastructure, support for the markets. Making sure that there was less use of bilateral derivatives trading so that you would have things more on indices and indexes and financial markets rather than being purely bilateral because a huge amount at that time of regular swaps, interest rate swaps, and other types of swaps were all done bilaterally. And we felt that it would be better to have those be able to be liquidated on a market rather than simply having bilateral risk on balance sheets all the time. So there's a huge number of initiatives that the FDIC was promoting.

And many of those got adopted in some form, [though] nothing was adopted in the form that we promoted it - that's just the way democracy works - but it was a fascinating period. … The interesting thing is that a resolution authority, which was heavily criticized by the Right for a period of time until frankly [the] Trump administration came in and they took a look at it and they said, well, we actually do need this. The criticisms [from] the Right seemed to die down a little bit at that point. But prior to that, there'd been heavy criticism from the Right, but the interesting thing is that the resolution authority was actually approved in a up or down vote [in 2010] in the Senate by, I think it was like 95 to three, which

[21] There are certainly areas in that statute that the FDIC had to compromise on. One of the FDIC's prime goals in Dodd-Frank was to create a real, viable resolution authority for systemically important bank holding companies, as well as other financial companies that could create systemic risk. It was not initially to have the FDIC be the resolution authority.

obviously included a lot of Republicans because it had had a lot of Republican input from Senator Shelby's staff.

He was Chairman of the Banking Committee at that time, or I should say the Minority Leader of the Banking Committee at that time, and from others. … And I had a couple of wild occasions where I would sit down and do a debate with a bankruptcy advocate across the table from a couple of senators and doing [a] point-counterpoint kind of debate with the advocate of … [only] doing the bankruptcy code and me advocating for doing something like the resolution authority. That was kind of heady stuff too. So it was a fascinating time period.

Katie Kaufman: … So as we start to wrap up and think about your perspective and everything we've talked about today, you may only be able to speak directly to your experience or at the FDIC, but do you think agencies and regulators changed the way that they looked at or approached financial crises after this experience?

Mike Krimminger: I don't think there's any question that it did. The problem with humanity, one of the problems with humanity and financial markets particularly, is that going back to that point I made a little bit earlier, we tend to get amnesia after a while and forget lessons that should have been learned. And … that's the history of man, man and womankind, is that we learn lessons then promptly forget them and then make the same mistakes over and over. But I think certainly for an extended period of time after the Financial Crisis, there was always a consciousness, and I think it's still there in a lot of places, always a consciousness of what lessons were learned during the Financial Crisis and why things needed to be done.

And I think to their credit, the Trump Treasury - Mnuchin's Treasury - took a look at the resolution authority, as I mentioned before, and you had advocates from both sides of the aisle, most of the people they were hearing from, from the industry as well as from government were saying, you need to have this as a backstop. Yeah, we need to make sure that the bankruptcy code is the primary way that companies are resolved, financial companies are resolved, but we need to have this as a backstop. And I was very gratified that that was a lesson that people continue to gain from. You still have people out there, typically academics and polemicists from the Right, who were interested in financial affairs issues, who argue that you should never have a resolution authority, it should always be just the bankruptcy code. And my answer to them is that that's kind of like, what's the definition of insanity? [It is to do] the same thing over and over and expecting different results.

It didn't work that great in 2008. Why would it necessarily work better in 2020? But I think … that consciousness I think is still very much in the government. And I think they have learned a lot of lessons, but there's always going to be pushback. And there've been some loosening of some of the capital, liquidity and leverage standards, a little bit of the risk stress testing type standards, I think after Dodd-Frank that I think probably should be put back to where they were prior to the Trump administration in a new administration. But there haven't been dramatic changes in financial regulatory issues under this administration in the way that I feared going into it. And I have to attribute that to the fact that, number one, people do remember the crisis. Number two, a lot of the people that were appointed with a few exceptions, but a lot of the people that were appointed were pretty moderate, fairly middle of the road to middle of the road right side in their views of financial regulation anyway. And number three, the President didn't take any interest in financial regulatory issues to speak of. So he didn't get a chance to meddle, or didn't take the chance to meddle, to be blunt.

Katie Kaufman: … And then thinking about some lessons that state regulators or mortgage originators should learn because you did so much work actually on the ground in California. Do you have any thoughts on that?

Mike Krimminger: First of all, the problem that state regulators will always have is that they are under-funded and under-resourced personnel wise. Most state regulators don't have the resources to actually regulate well what they're responsible for regulating, and that's not a hit against them. … They're not given the money by the legislature. I talked to the, for example, about FinTech issues.

This is just illustrative. I talked to the Commissioner of Banking in a Western state not that long ago when they were talking about doing some FinTech initiatives because I represent a number of FinTech companies. He said, look, you can file an application. We would love to take a look at it. And then I would like to work through it with you, but I only have one lawyer on my staff for the whole state. So they've adopted a bunch of new statutes and he's got to do the regulations and then he can look at your application—[it's] about nine months before he even looks at it. So the resources are [limited]. That's a situation on something that state was putting a priority on. You can only imagine the kind of oversight [in other areas]. They do a lot of drive by examinations in a lot of states for non-banks. [For] banks they do a much more thorough job, but that depends on the state a little bit too, but most bank regulators in the states are pretty good, but in other areas, like say payday lenders and things like that, they don't have the resources.

So one lesson would be … that you need to look at a thing like the mortgage markets as a national market, and you need to make sure that you have national standards because otherwise you're going to do one of two things. You're either going to have standards that really don't work well because they're too strict or standards that may work well in one state, let's say California, because they've got some stricter standards, but they're not applied at other places. And that makes it very difficult in some ways for the people who invest in mortgages back when we had a private label securities securitization market, to understand what the standards are.

The interesting thing about mortgages too, is that now we don't really have a very vibrant -- and a few years ago, I would've said that we don't have one at all, but there's a little bit more going on now, but not much -- a private label securitization for residential mortgages. That's kind of a lesson of the crisis, if you will, you can destroy a market. And the private securitization market for residential mortgages was pretty much destroyed by the mistakes made and the greed of the marketplace and driving down underwriting standards.

So, it's pretty much all concentrated now with Freddie Mac and Fannie Mae standard mortgages, and those have better quality underwriting. And I'm not particularly worried about the quality of their mortgages. So I think in some ways the mortgage market's much more stable than it used to be. And they've created a national standard because you've got to meet their standard if you're going to sell the mortgage to Freddie Mac and Fannie Mae, and they are the only real, and Ginnie Mae, they're the only three [that] are really the only real games in town for secondary mortgage market matters. And so unless you want to hold it on your balance sheet, and very few banks want to do that, unless it's for a particularly wealthy customer, you try to sell it into the secondary mortgage market.

And so you've now effectively created a national market. I would like to see a private label securities securitization market reestablished, but under standards that are as strong as those that the GSEs [Government Sponsored Enterprises] – Freddie Mac, Fannie Mae, and Ginnie Mae – apply and that meet the standards that were put in Dodd-Frank, which were then watered down in subsequent rulemakings. So I think there's a lesson learned there a lot for the states is that – don't try to bite off more than you can actually regulate. And you've got to recognize that some markets are actually national markets.

Katie Kaufman: … How [do] you perceive the health of the mortgage system today, more than 10 years after the crisis but it seems like you covered that…

Mike Krimminger: One thing I would note – I'm sorry to interrupt – ... areas that are not as controlled as the mortgage markets are today. And there always is some risk of people ... trying to get mortgages that are more risky and that could be on the balance sheets of institutions. The bigger issue right now is a commercial real estate because of the pandemic. And there was loosening of underwriting standards of commercial real estate and commercial loans prior to the pandemic. So this only made the risk of those loans greater. That's a huge, I think, a huge issue. And there's the leveraged loan market, I think, has been seeing eroding underwriting standards for the last three or four years, particularly. So there is risk in the banking system, in the lending markets, this bread and butter type of lending markets that banks participate in. It's just not as much the mortgage markets today.

[END OF SESSION 2]