

# **Credit Discrimination: New Ideas for Challenges to Discriminatory Policies**

**Professor Kathleen C. Engel, Suffolk University  
Professor Howell Jackson, Harvard Law School  
Stuart Rossman, National Consumer Law Center**

**Jessica Hiemenz  
National Consumer Law Center**

**April 12, 2011**

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# Moderator – Stuart Rossman

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- Staff attorney at NCLC and has served as its Director of Litigation since 1999.
- Stuart is the co-editor of the 7th Edition of the NCLC Consumer Class Actions manual and coordinates NCLC's Consumer Class Action Symposium.
- After 13 years of private trial practice in Boston, Stuart served as Chief of the Trial Division and Chief of the Business and Labor Protection Bureau at the Massachusetts Attorney General's Office from 1991-1999.
- He has been a member of the adjunct faculty at the Northeastern University School of Law and Suffolk University School of Law.

# Presenter –Professor Kathleen C. Engel

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- Is the Associate Dean for Intellectual Life and Professor of Law at Suffolk University.
- She is a national authority on mortgage finance and regulation, subprime and predatory lending, and housing discrimination.
- Her many publications include a 2011 book published by Oxford University Press, The Subprime Virus: Reckless Lending, Regulatory Failure and Next Steps (with Prof. P. McCoy) and articles in Texas Law Review, Fordham Law Review, Washington University Law Quarterly, Connecticut Law Review, The Journal of Economics and Business, Fordham Urban Law Journal, and Housing Policy Debate.
- Professor Engel presents her research in academic, banking, and policy forums throughout the country and around the world.
- Her analysis of financial services markets and the laws that regulate them regularly catches the attention of the press; The New York Times, Business Week, The Economist, Newsweek, and The Wall Street Journal have all cited her work.
- Professor Engel has taught courses on torts, civil procedure, employment law, employment discrimination, and consumer credit.

# Presenter – Professor Howell E. Jackson

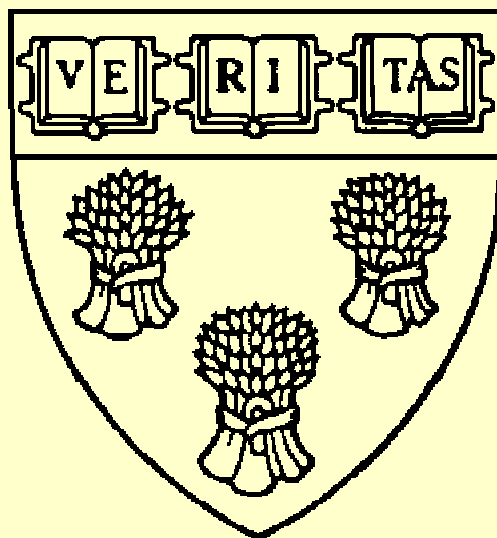
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- Is the James S. Reid, Jr., Professor of Law at Harvard Law School.
- His research interests include financial regulation, international finance, consumer finance, federal budget policy, and entitlement reform.
- Professor Jackson has served as a consultant to the United States Treasury Department, the United Nations Development Program, the World Bank/International Monetary Fund, and various other national and multi-lateral regulatory bodies.
- He is a member of the National Academy on Social Insurance, a trustee of the College Retirement Equities Fund (CREF) and its affiliated TIAA-CREF investment companies, a member of the panel of outside scholars for the NBER Retirement Research Center, and a senior editor for Cambridge University Press Series on International Corporate Law and Financial Regulation.
- Professor Jackson is co-editor of *Fiscal Challenges: An Inter-Disciplinary Approach to Budget Policy* (Cambridge University Press 2008), co-author of *Analytical Methods for Lawyers* (Foundation Press 2003) and *Regulation of Financial Institutions* (West 1999), and author of numerous scholarly articles.
- As of September 1, 2010, Professor Jackson has been serving as a special adviser to Harvard University President Drew G. Faust and Provost Steven G. Hyman.

# **Reforming the Securitization of Residential Mortgages: Potential Implications for the Enforcement of Anti-Discrimination Laws**

**Professor Howell E. Jackson**

**Harvard Law School**



**Webinar on Credit Discrimination:  
New Ideas for Challenges to Discriminatory Policies**

**April 12, 2011**

**National Consumer Law Center**

# Introductory Comments

## Prior Academic Work

- Howell E. Jackson & Laurie Burlingame, *Kickbacks or Compensation: The Case of Yield Spread Premiums*, 12 *STAN. J. LAW, BUS. & FIN.* 289 (2007).
- Howell E. Jackson, “The Trilateral Dilemma in Financial Regulation,” in *Improving the Effectiveness of Financial Education and Savings Programs* (Anna Maria Lusardi, ed.) (University of Chicago Press 2008) (avail. at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1300419](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1300419)).
- Howell E. Jackson, *Loan-Level Disclosure in Securitization Transactions: A Problem with Three Dimensions*, in *Moving Forward: The Future of Consumer Credit and Mortgage Finance* (Brookings Institution Press 2011) (avail. at <http://ssrn.com/abstract=1649657>).

## Various Expert Reports for Plaintiff Classes in Pending Mortgage Discrimination Cases

- See, e.g., *Ramirez v. Greenpoint Mortgage Funding*, 268 F.R.D. 627 (N.D. Cal. 2010).

# Excerpt from Jackson and Burlingame, Kickbacks and Compensation (2007)

**Table Eight**  
**Multiple Regression with Full Controls**  
**(Dependent Variable = Total MB Compensation in Dollars; Defendants' Sample Excluding MB Comp. <\$250)**

	With YSP and Discount Count Fee Dummy Variables Only		With Dummy Variables and Continuous YSP	
	Coefficient	Standard Error	Coefficient	Standard Error
Constant	452.37	396.27	1463.20	331.44***
<i>Yield Spread Premium Variables</i>				
YSP Dummy	667.22	109.72***	-379.44	99.81***
YSP Amount			0.63	0.02***
MB Discount Fee Dummy	681.72	100.16***	814.41	83.34***
<i>Loan Characteristic Variables</i>				
Loan Size	0.01	0.00***	0.01	0.00***
30-Year Fixed Dummy	166.86	76.56**	-15.16	63.98
Conventional Uninsured Dummy	-191.05	84.94**	-93.73	70.64
Government Loan Dummy	316.44	132.24**	-18.84	110.60
Refinancing Dummy	-12.60	75.84	-144.32	63.19
<i>Credit Quality/MB Effort Variables</i>				
Credit Score	-1.03	0.34***	-0.68	0.28**
Loan-to-Value Ratio	8.55	2.50***	4.36	2.08**
<i>Neighborhood Characteristics</i>				
Per Capita Income	-0.01	0.00	-0.01	0.00***
Percent with Some College Education	-2.52	5.44	-4.65	4.52
<i>Racial Variables</i>				
Hispanic Borrower Dummy	397.94	178.02**	351.03	147.86**
African American Borrower Dummy	733.43	215.94***	482.40	179.60***
<i>Geographic Variables:</i>				
California Dummy	192.87	135.56	-30.98	112.92
Florida Dummy	-31.88	111.07	-203.13	92.48**
Illinois Dummy	-146.09	117.36	-358.54	97.81***
New York Dummy	387.49	140.68***	177.12	117.12
Texas Dummy	-119.24	195.53	88.11	162.58
	N = 1484		N = 1484	
	Adjusted Multiple R Squared = 0.3017		Adjusted Multiple R Squared = 0.5184	
* Indicates statistical significance at the 90 percent level.				
** Indicates statistical significance at the 95 percent level.				
*** Indicates statistical significance at the 99 percent level.				



# Excerpt from Expert Report in Ramirez v. Greenpoint Mortgage Funding, 268 F.R.D. 627 (N.D. Cal. 2010)

APPENDIX 4: SUMMARY STATISTICS OF VARIABLES IN GREENPOINT'S LOAN DATABASE, 2004-2007

Variable	Obs	Mean	Std. Dev.	Min	Max
APR	372,186	6.7886	1.8038	2.3820	19.0790
Note rate	355,278	5.7241	2.5376	1.0000	18.0000
Total broker compensation (\$)	304,673	\$5,142	\$4,312	-\$885	\$101,574
Total broker compensation (points)	304,673	1.9823	1.1542	-0.1362	15.6818
Race					
American Indian	372,221	0.4%	6.4%	0%	100%
Asian	372,221	8.5%	27.8%	0%	100%
Black	372,221	8.1%	27.3%	0%	100%
Hawaiian	372,221	0.9%	9.2%	0%	100%
Hispanic	372,221	17.4%	37.9%	0%	100%
Missing	372,221	8.3%	27.6%	0%	100%
White	372,221	56.5%	49.6%	0%	100%
Credit score					
Missing credit score	372,221	0.2%	4.6%	0%	100%
Credit score < 600	372,221	0.1%	3.1%	0%	100%
600 ≤ Credit score < 620	372,221	0.1%	3.6%	0%	100%
620 ≤ Credit score < 640	372,221	2.2%	14.6%	0%	100%
640 ≤ Credit score < 660	372,221	6.5%	24.6%	0%	100%
660 ≤ Credit score < 680	372,221	13.0%	33.6%	0%	100%
680 ≤ Credit score < 700	372,221	16.7%	37.3%	0%	100%
700 ≤ Credit score < 720	372,221	17.1%	37.7%	0%	100%
720 ≤ Credit score < 740	372,221	13.8%	34.4%	0%	100%
Credit score ≥ 740	372,221	30.4%	46.0%	0%	100%
Loan amount (\$000)					
Loan amount < \$40K	372,221	5.4%	22.5%	0%	100%
\$40K ≤ Loan amount < \$50K	372,221	1.6%	12.6%	0%	100%
\$50K ≤ Loan amount < \$75K	372,221	4.7%	21.3%	0%	100%
\$75K ≤ Loan amount < \$150K	372,221	18.3%	38.7%	0%	100%
\$150K ≤ Loan amount < \$200K	372,221	12.4%	32.9%	0%	100%
\$200K ≤ Loan amount < \$300K	372,221	21.3%	41.0%	0%	100%
\$300K ≤ Loan amount < \$500K	372,221	24.6%	43.0%	0%	100%
Loan amount ≥ \$500K	372,221	11.7%	32.1%	0%	100%
Lien Status					
First lien	372,221	91.5%	27.8%	0%	100%
Subordinate lien	372,221	8.5%	27.8%	0%	100%





# Excerpt from Expert Report in Ramirez v. Greenpoint Mortgage Funding, 268 F.R.D. 627 (N.D. Cal. 2010)

TABLE 6: EFFECT OF RACE ON APR (BASIS POINTS) USING SEPARATE REGRESSIONS BY YEAR, LIEN STATUS, & BUSINESS CHANNEL

	African American	Hispanic	Observations	Adj. R-sq.
<i>Model (4) Estimated for All Loans</i>	9.44*** (0.44)	7.64*** (0.32)	372,038	0.87330
<i>Model (4) Estimated Separately by Lien Status</i>				
Model (4-L1): First Lien	8.98*** (0.43)	8.66*** (0.31)	340,512	0.81189
Model (4-L2): Subordinate Lien	5.42*** (1.50)	-2.01* (1.15)	31,526	0.77111
<i>Model (4) Estimated Separately by Year of Origination<sup>1</sup></i>				
Model (4-2004)	10.60*** (0.67)	7.21*** (0.49)	112,946	0.88526
Model (4-2005)	7.29*** (0.59)	3.79*** (0.39)	110,582	0.83258
Model (4-2006)	5.63*** (0.64)	1.66*** (0.46)	105,787	0.88072
Model (4-2007)	7.15*** (0.98)	2.07*** (0.72)	42,723	0.87890

*Note:* Standard errors in parentheses.

\*\*\* Statistically significant at 1%, \*\* Statistically significant at 5%, \* Statistically significant at 10%.

Coefficients and standard errors for other explanatory variables are shown in Appendix 6.

<sup>1</sup>The models estimated separately on individual years include additional variables not included in the models estimated over multiple years at once because some variables are only provided in the database for certain years:

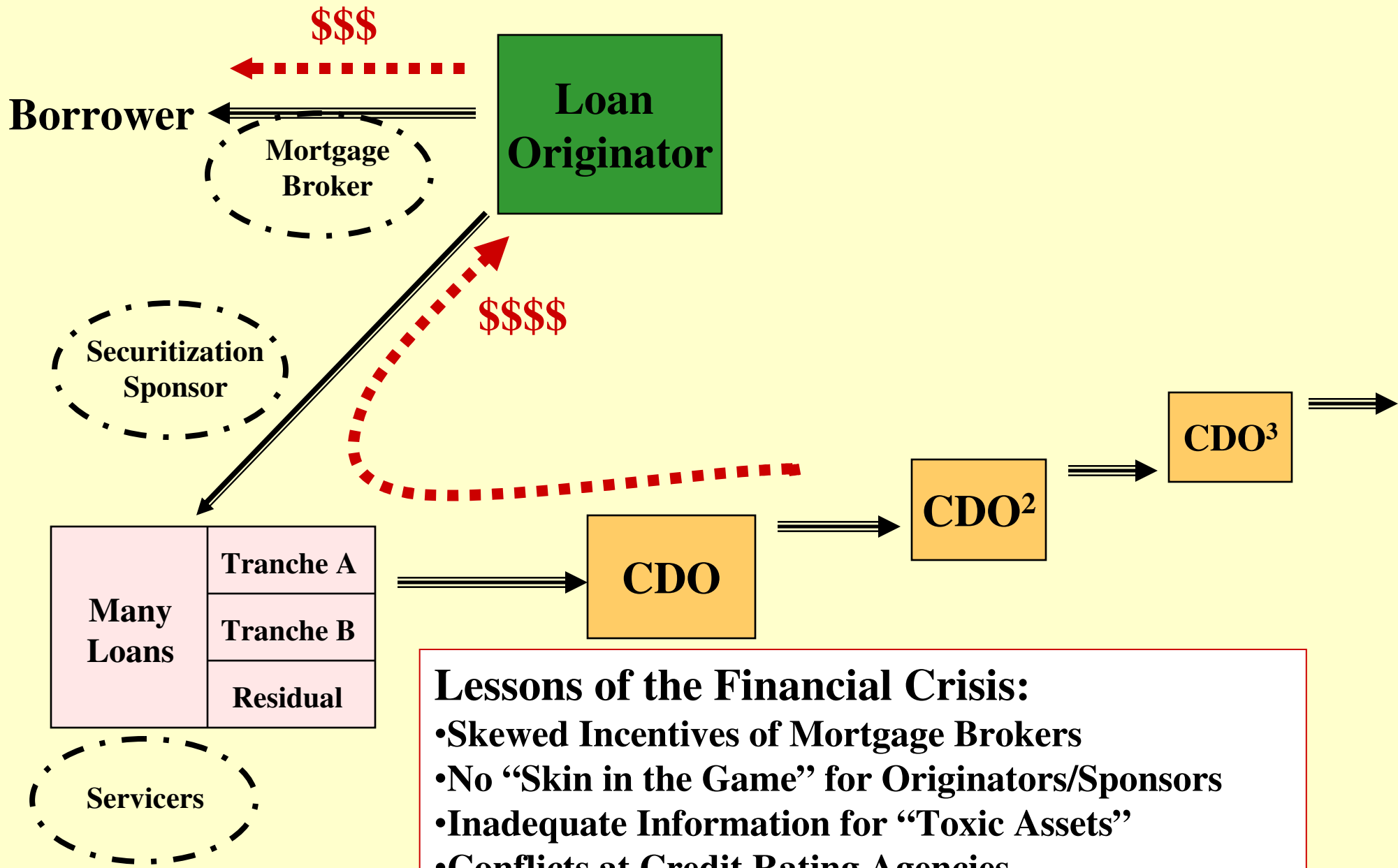
2004: Length of rate lock; presence of a prepayment penalty.

2005: Length of rate lock; type of refinance (cash-out or rate and term); lender-paid mortgage insurance presence; waiver of escrow for taxes and insurance; presence & length of prepayment penalty.

2006: Length of rate lock; type of refinance (cash-out or rate and term); lender-paid mortgage insurance presence; waiver of escrow for taxes and insurance; presence & length of prepayment penalty.

2007: Type of refinance (cash-out or rate and term).

# Securitization Process Before 2008



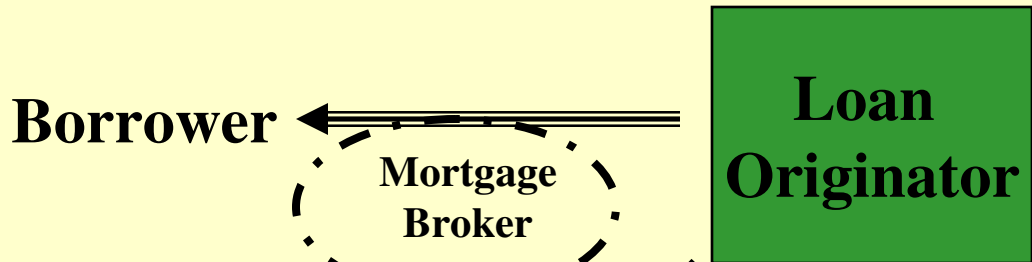
## Lessons of the Financial Crisis:

- Skewed Incentives of Mortgage Brokers
- No “Skin in the Game” for Originators/Sponsors
- Inadequate Information for “Toxic Assets”
- Conflicts at Credit Rating Agencies

# Overview of Reform Efforts

## Loan-Level Disclosure Reforms

- Obama Administration Proposals of June 2009
- ASF Project RESTART (135 standard fields of information)
- FDIC and SEC Initiatives in 2010
- Passage of Dodd-Frank Act in July 2010
- Some SEC Rules Adopted in January 2011



**Relevance to ECOA Enforcement:**

- Standard Dataset of Loan Characteristics
- Could be Aligned with HMDA Data
- Might be Amended to Include Loan Prices
- Enforcement Could Address Modifications/Reps.
- Public versus Private Enforcement



Many Loans	Tranche A
	Tranche B
	Residual



**Offering Disclosure:**  
(1933 Act)

- Loan Characteristics
- Borrower Characteristics
- Transaction Characteristics

**Continuous Disclosure:**  
(1934 Act)

- Loan Characteristics
- Borrower Characteristics
- Transaction Characteristics
- Modification Characteristics
- Info. on Reps. & Warranties



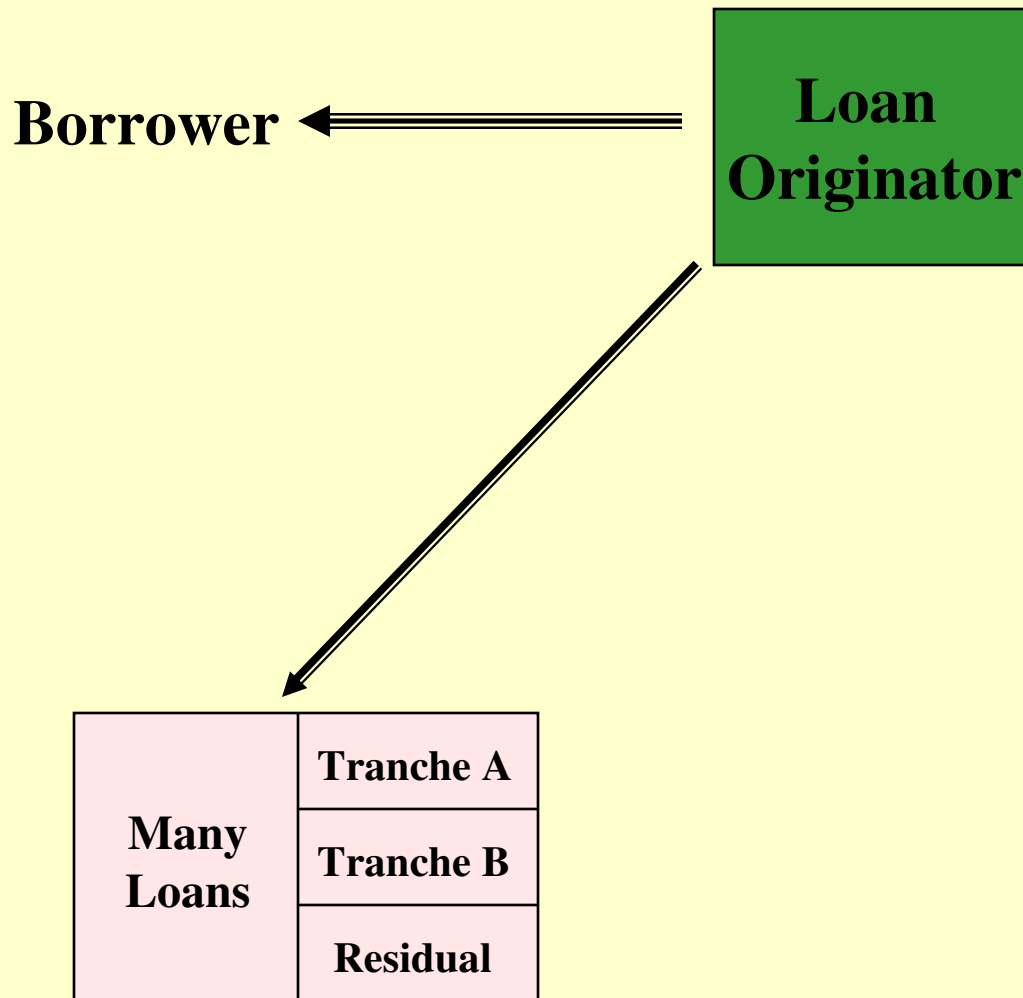
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## Additional Complexities/Extensions

- Current Absence of Significant Securitization Transactions
- Loan Level Disclosure for Portfolio Loans and GSEs
- Interactions with New Risk Retention Requirements (proposed in March 2011)
- Privacy and Loan Level Disclosure



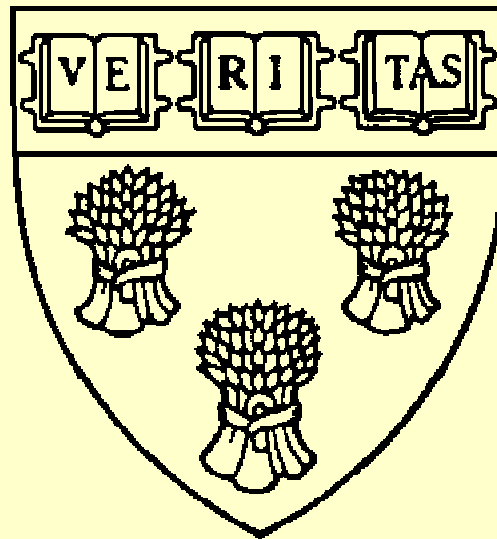
### **Additional Complexities/Extensions**

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# **Loan-Level Disclosure in Securitization**

## **Transactions: A Problem with Three Dimensions**

**Professor Howell E. Jackson**



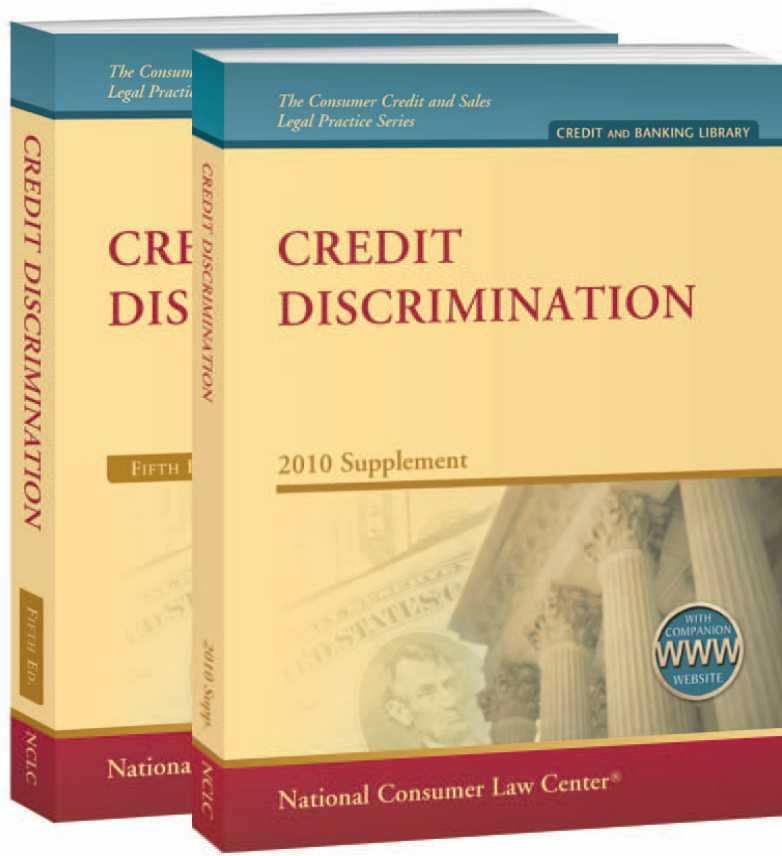
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# For More Information on Legal Issues and Remedies on Credit Discrimination



*5<sup>th</sup> Edition and Supplement  
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