Professor Howell E. Jackson

James S. Reid, Jr. Professor of Law

Primary Research Areas

Regulation of financial institutions and financial markets, international finance, Social Security reform, federal budget policy.

Biographical Sketch

Howell Jackson is the James S. Reid, Jr., Professor of Law at Harvard Law School. His research interests include financial regulation, international finance, consumer protection, federal budget policy, and entitlement reform. Professor Jackson has served as a consultant to the United States Treasury Department, the United Nations Development Program, and the World Bank/International Monetary Fund. 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 frequently testifies before Congress and consults with government agencies on issues of financial regulation. He 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. Before joining the Harvard Law School faculty in 1989, Professor Jackson was a law clerk for Associate Justice Thurgood Marshall and practiced law in Washington, D.C. Professor Jackson received J.D. and M.B.A. degrees from Harvard University in 1982 and a B.A. from Brown University in 1976.

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CV of Howell Jackson

EMPLOYMENT

1989-present	**HARVARD LAW SCHOOL** Vice Dean for Budget, 2003 to 2006 Associate Dean for Research and Research Programs, 2001-2003 James S. Reid Jr. Professor of Law, 2004 to present Finn. M.W. Caspersen and Household International Professor of La 1999 to 2004. Professor of Law, 1994-1999. Assistant Professor of Law, 1989-1994. Research interests include financial institutions, securities regulation, consumer protection, international finance, pensions and social security, federal budgetary process, government accounting.	
1987-1989	**ARNOLD & PORTER** Associate: Financial Institutions Practice Group.	**WASHINGTON, DC**
1984-1986	**CAPLIN & DRYSDALE, CHARTERED** Associate: Corporate/Banking/Securities Group.	**WASHINGTON, DC**
1983-1984	**UNITED STATES SUPREME COURT** Law Clerk to Associate Justice Thurgood Marshall.	**WASHINGTON, DC**
1982-1983	**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT** Law Clerk to Judge Jon O. Newman.	**HARTFORD, CT**
1976-1978	**NATIONAL COUNCIL FOR US-CHINA TRADE** Escort Officer and Associate Editor *China Business Review*.	**WASHINGTON, DC**

ACADEMIC

1978-1982	**HARVARD UNIVERSITY** MBA & JD, *magna cum laude*.	**CAMBRIDGE, MA**
1972-1976	**BROWN UNIVERSITY** B.A., *magna cum laude*:	**PROVIDENCE, RI**

PROFESSIONAL ACTIVITIES

Trustee, CREF and Affiliated TIAA-CREF Mutual Funds.

Senior Editor, Cambridge University Press Series on Int'l Corporate Law and Financial Regulation

Past Chair, AALS Sections on Securities Regulation and Financial Institutions.

Member, Social Security Academic Advisory Board for NBER Retirement Research Program;

National Academy of Social Insurance; and Bar of the District of Columbia.

Miscellaneous consulting projects for World Bank, International Monetary Fund, U.S. Treasury Department and various other foreign and domestic regulatory agencies.

Deborah Orr

12/31/2008 @ 6:00AM

Should Uncle Sam Seize Mortgage Securities?

Democrats are clear about this much: They believe the banks and the Bush administration have done too little to halt home foreclosures and they intend to do more.

The source of the funds is clear too. House Financial Services Chairman Barney Frank, D-Mass., has warned Treasury Secretary Henry Paulson that Congress won't release the last $350 billion of the $700 billion "Troubled Asset Relief Program" to the Treasury until there's an agreement some of the funds will be used to reduce the estimated 4 to 5 million foreclosures that would otherwise occur over the next two years.

What's less obvious is how the TARP funds can best be used to forestall foreclosures.

One of the more dramatic proposals comes from Howell E. Jackson, a Harvard law professor and expert on both federal budget policy and financial regulation.

He says Congress should authorize TARP to invoke the government's power of eminent domain for the "forced purchase" of distressed mortgage loans and mortgage securities in areas that have seen the largest declines in home prices. Uncle Sam would then own the mortgages and could offer borrowers better terms– say a lower interest rate or stretched out payments–to forestall foreclosures.

One of the problems slowing private sector efforts to work out loans and head off foreclosures is that many troubled mortgages were put in pools, then sliced and diced and sold off as exotic securities known as collateralized debt obligations.

When a bank or a savings and loan owns all of a mortgage, it can, in theory, work with borrowers to modify loan terms. But securitized loans are owned by many different trusts. Getting all those owners to agree to a workout with a single borrower is a legal and logistical quagmire.

Indeed, earlier this month, investors in mortgage-backed securities sued Bank of America over the bank's October agreement with state attorneys generals to work out as many as 400,000 mortgage loans made by Countrywide Financial to settle accusations of past predatory lending practices. (Bank of America acquired Countrywide this past summer.)

The investors' suit, which seeks to be certified as a class action on behalf of the owners of 374 different securities trusts, estimates that the workouts will reduce payments on the mortgages by $8.4 billion, diminishing the value of the mortgage securities by much more. The suit demands that the bank buy out the owners of any loans it modifies, paying securities holders 100% of the mortgage balance plus an unpaid, accrued interest. Bank of America said in a statement at the time the suit was filed that the interests of securities holders were taken into account in its deal with the states and that it is "confident any attempt to stop this program will be legally unsupportable."

process.

That's why Jackson says the government needs to use eminent domain. Treat toxic mortgages like any other property that is in the way of a government project, he says. If a homeowner doesn't agree to sell his house to make way for a highway or some urban renewal project, the government "condemns" the property, takes ownership and pays the owner what it deems to be fair market value.

What's fair market value? Truth is, no one knows what most of these mortgages are worth, which is why the Treasury, in its original plan (since abandoned), suggested a novel (and skeptics said untested) reverse auction mechanism to arrive at a price.

In Jackson's plan, the government could simply seize mortgage securities and pay what it believed to be their fair market value. As in normal eminent domain actions, if the ex-owners thought they'd been paid too little, they could seek judicial review, a process that could drag on for years.

Reaction to Jackson's plan? "Holy cow," says Mark Zandi, chief economist at Moody's Economy.com. "Seizing assets held in trust seems over the top to me." He believes the owners of troubled mortgages would be happy to sell them if they could agree on what their net present value is. "At some point, the government and the markets will do that," he says.

Not surprisingly, Terence Pell, an attorney at the Center for Individual Rights, is similarly skeptical. "This would be telling a judge and a few clerks to figure out what no one else has been able to figure out," he says. "I wonder if the Treasury secretary is willing to spend the rest of his life in court," he adds.