
“PREDATORY LENDING” – THE IDENTIFY AND THE REALITY IN VIETNAM

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Abstract

By the end of 2013, the storm named "predatory lending" broke out with terrible scans. Continuous debt defaults with hundreds of billions of VND in the areas such as Lang Son, Hanoi, Hai Duong, Dien Bien ... have shocked society. From the situation of "predatory lending" over time, it is necessary to ask many questions about the efficiency and universality of the national financial system. Vietnamese financial institutions have not been able to take on the role of providing effective capital to the needs of the society. This is also demonstrated in the Global Competitiveness Report 2015-2016, one of the areas where Vietnam is underestimated to develop its financial markets, ranking 84/140 economies in the global (Vuong Dinh Hue, 2016). According to the World Bank (WB), the number of adults in Vietnam having accounts and using financial services in Vietnam is still too low, accounting for about 31% in 2013, while the world average is 62%. The proportion of people taking loans at formal credit institutions is lower, only about 18%. Based on the above analyzes, within the scope of the research of the subject, with the desire to study and evaluate the real situation of predatory lending in the world as well as in Vietnam, the research contribute to counter-criticism. Therefore, the study points out the operations of financial institutions, helping policy makers and managers to have a firmer basis in decision-making to manage predatory lending best, in Vietnam and some recommendations were selected for the study.

Key words : predatory lending, financial system, World Bank

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INTRODUCTION

Over time, the activities of crimes lending in the form of "predatory lending" in the area of Hanoi complicated, causing many instabilities in security and order. The trick of the "predatory lending" institutions is to hire people to distribute leaflets in large public places with the content "Unsecured Loans, Instant Cash" with addresses and numbers. contact phone. The "customer" targeted by the target audience is a small part of the student, the money is circulated, individuals gambling ... When the "customer" has borrowed money, who cannot repay will become victims of these unauthorized organizations. In this issue, Colonel Nguyen Duy Ngoc - Deputy Director of Public

Security of Hanoi said: "According to statistics, at present, there are about 600 organizations operating "predatory lending" is not registered. In Hanoi, about 49,000 cases of "predatory lending" have been detected since 2010. Thus, there are an average of 10,000 cases per year, 29 cases per day and 3.6 hours of "predatory lending" per day in Vietnam (released by the General Department of Crime Prevention (Ministry of Public Security) at the workshop "Rescues the poor from the predatory lending trap" organized by the Center for Development Research (RED) in September 2015). Social anger before the form of predatory lending under the "multi-level" Thien Ngoc Minh Uy or Huynh Thi Huyen Nhu case fraud appropriated the amount of nearly 5000 billion only by mobilizing loans and heavy loans interest.

The purpose of business of these "predatory lending" institutions is to create conditions for people in need of fast loans, not even mortgage. At the end of the day, people cannot pay their loans, the subjects of these organizations offer very high interest rates or use tricks to throw dirt into the house, intimidate, beat the victim ... Conflict can push high to killer behavior. There have been many serious criminal offenses committed by some "predatory lending" institutions that have recently been reported to raise awareness.

In order to avoid the pitfalls of borrowing from the "predatory lending" groups, social organizations and banks should have more favorable solutions for students and individual business households wishing to borrow capital for development. economy. In the near future, people need to raise awareness, beware of the borrowing of "predatory lending" institutions in any form.

LITERATURE REVIEW

A. Overview of Predatory lending

Definition

There is no exactly definition about predatory lending. But in the simple way, predatory lending is a form of mobilization and credit lending not through the banking system, neither registered nor licensed and under official control by any state agency.

Predatory lending has high mobilizing and lending rates and procedures are simpler than those of banks. In the context of the economy going into a recession, the banking system lacks confidence in lending money to people with the fear of rising bad debt, even losing capital, together with the strict procedures and conditions lead many people to look to predatory lending instead of looking to the Bank. (www.debt.org)

Reasons for predatory lending

Predatory lending has many causes, but the main causes are:

Firstly, *high interest rate lenders*. In the face of the situation of investment channels in real estate, gold, investment in non-performing goods, idle money was put into predatory lending with interest rates ranging from 3% per month to 15% per month to get high returns from the loan quickly.

Secondly, *predatory lending is very simple in borrowing and lending procedures*, just handwriting, typing borrowing information between the lender and the borrower with the information is sketchy. Mostly based on trust, so usually the first time borrowing money just pay the debt, on time, the next easy to borrow. The information the lender receives from the borrower is negligible.

Thirdly, *lenders do not have the function of accepting a mortgage when making a loan, but usually to keep their trust and credibility*, the borrower still delivers his / her title or other papers to the lender storage. Lenders who do not have the function of trading currencies but are doing business illegally in the form of borrowing one or more people at low interest rates and then re-lending at higher interest rates to enjoy the loan. The difference in interest rates.

When the borrowing relationship occurs, it is not possible to dispose of the collateral that is used as collateral, since borrowing is not contracted, notarized or authenticated.

Firstly, in terms of psychology, *the lender often looks at the borrower's face to decide whether or not to lend*. In some cases, the borrower's appearance is luxurious, wealthy, easy to trust, large loans. The amount of loan and the interest rate charged also depends on the level of knowledge and the value of the collateral. In reality, however, most borrowers do not have an effective business plan but borrow money to make up for the shortfall in principal and interest on other loans.

Secondly, *the economic recession has affected the credit situation of banks*. Banks raise interest rates and limit mortgage lending for housing, so the borrower has no capital to do business and repay old debts leading to insolvency, must look to predatory lending for money pay debts to the Bank.

Thirdly, *due to lack of awareness and lack of legal knowledge of people when participating in predatory lending*. In the context of economic recession, borrowing money with high interest rates, the ability to borrow money to invest in business and earn enough to pay for such high interest rate is very low, more likely Will lose property when participating in predatory lending activities.

Kinds of predatory lending

Pawnshop: Pawn service is a form of money lending requiring borrowers to have pledged assets to secure the performance of their obligations as stated in the pawn contract; Borrowers with pledged assets called pawnshops; The lender of receipt of the pledged property is called the pawnbroker. Pawnbrokers can register for business as an enterprise or as a household or as an

owner of a pawnbroker. This is a type of secured credit that has been operating for a long time in Vietnam and is one of the activities that are considered "predatory lending". Pawn operations are not under the control of the State Bank, are under the control of the State and do not disclose data. As a result, there is little statistical data related to this content in Vietnam.

Financial companies "black": people, households and businesses want to serve business can borrow money through financial companies

Other forms of underground credit: In addition to the above forms, there is another form of credit is relatively spontaneous, relatively difficult to estimate and statistics are they, hui, biao, wards. This is a method of transaction of assets, money between the participants, long arising in folk, according to customs and practices of each locality. Transactions formed on the basis of voluntary agreement of a group of people gathered together. This is a form of lending, mutual assistance.

B. Operations of financial institutions in Vietnam

Commercial Bank

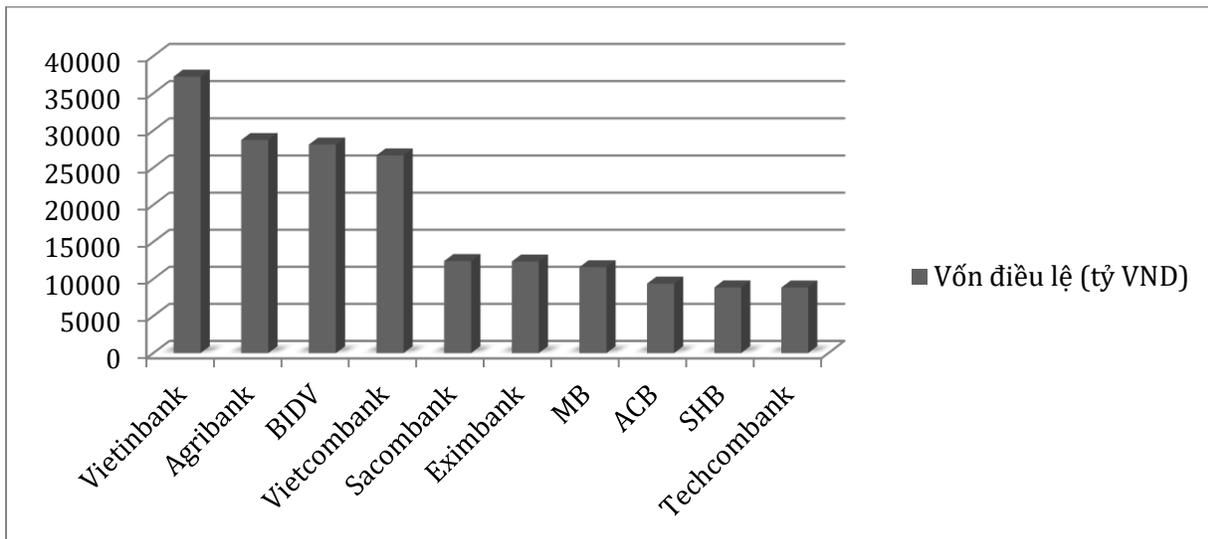


Chart 1. Top 10 banks with the largest charter capital in 2014

Source: Statistics from the annual report of commercial banks in Vietnam

Stock company

Securities companies were born and developed together with the development of the securities market of Vietnam. Since the year 2000, the Ho Chi Minh City Securities Trading Center has been established. There are only six securities brokers operating in the market, including: AGR -

Agricultural Bank Securities, BVS - Securities Vietinbank, CTS - Industrial and Commercial Bank Securities, SSI - Saigon Securities, TLS - Thang Long Securities (now MBS) and ACBS - Asian Bank Securities. Over the past 15 years, Vietnamese securities firms have played an important role in helping the Vietnamese securities market operate effectively and contributing to the development of the economy. in general.

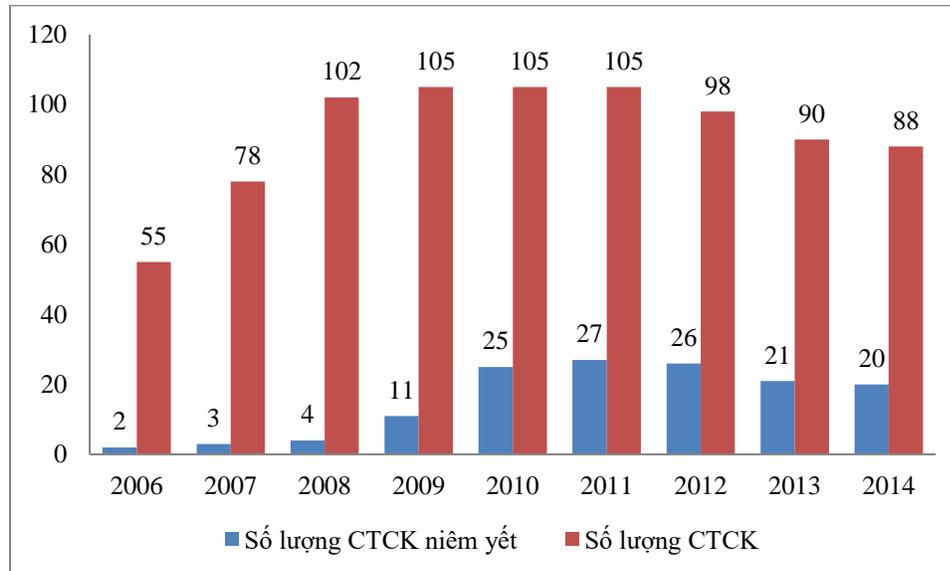


Chart 2. Number of securities companies from 2006 to 2014

Source: authors synthetic

Fund Management Company

Fund management in Vietnam began in July 2003 with the establishment of Vietnam Investment Fund Management Joint Venture Company. In the period before the Law on Securities was issued in 2006, the Fund Management Company was established on the basis of a business registration certificate issued by the Department of Planning and Investment and registered with the State Securities Commission. Licensing activities. The Fund Management Company is permitted to conduct securities business operations in accordance with the law, including portfolio management, securities investment fund management and securities investment consultancy. Not listed in the current license. At the same time, the legal capital of the Fund Management Company is VND5 billion, which has now risen to VND25 billion since 2007.

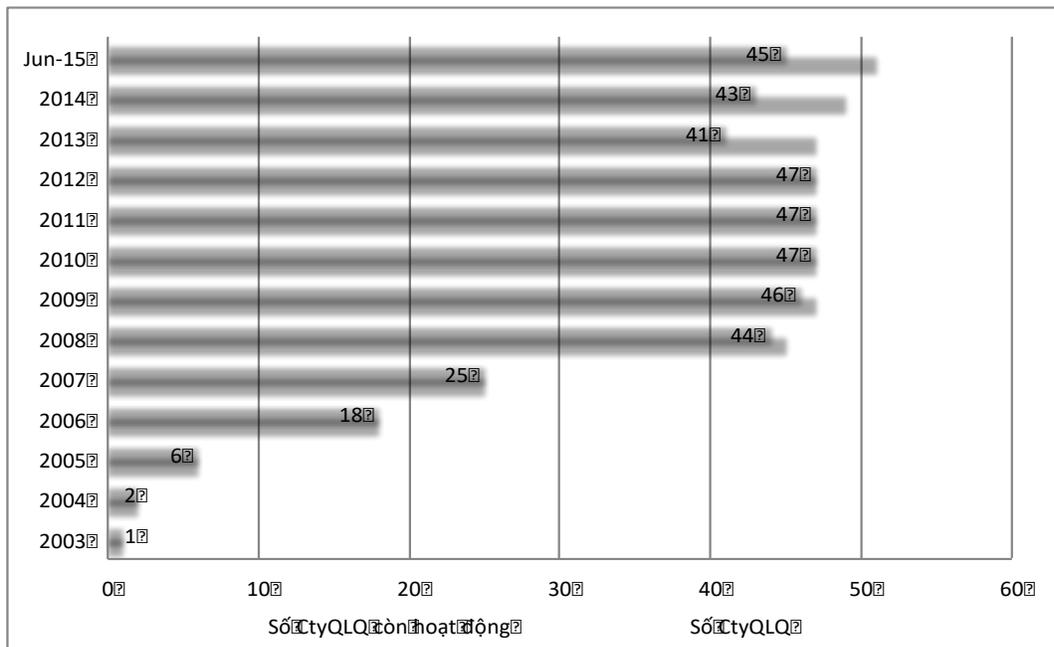


Chart 3. Number of Fund Management Companies in Vietnam

Source: State Stock Committee

Financial leasing companies

By law, financial leasing is a medium-term, long-term credit extension that is based on an agreement between the lessor and the lessee with a commitment to purchase the financial leasing companies' assets at the lessee's request and hold the property. with respect to leased assets. In other words, financial leasing companies will follow the needs of the business to buy assets such as machinery and equipment, then lease the business to use. This is also a form of credit without collateral because it can be seen that the collateral is the property that financial leasing companies bought and still owns financial leasing companies.

THE IMPLICATIONS AND LEGAL CONSEQUENCES OF PREDATORY LENDING

Real predatory lending involves several links with each link as a transaction between the lender and the borrower. The lender of this link is sometimes the borrower of the other lever. When one or more of the levers are broken due to the insolvency of the borrower, the collapse of the chain will have a major impact on the economic well-being of the population and the economy.

Taking advantage of the black-market factor, many have used various tricks to steal borrowed money, such as creating glamor to cheat on lenders after receiving a loan. then escape, take

advantage of the familiar relationship in the family, in society to borrow money then appropriated ...Besides, going with predatory lending is a collection of debt. Creditors who have passed criminal records, criminal records, and black societies for the purpose of this activity lead to the collection of debt by means of the plan, threatening to the life, health and human dignity of the person. borrowing, illegally arresting ... implicitly threatening the formation of criminal offenses, destabilizing the situation of security and order in the area.

When a chain collapse occurs, the borrower will be prosecuted for fraudulent misappropriation of property as provided for in Article 139, Abuse of trust to appropriate property in accordance with the provisions of Article 140 of the Criminal Code of the Socialist Republic of Vietnam. Where the lending interest rate is 10 times higher than the interest rate charged by the State Bank at the time and the lender is of a pecuniary nature, it will be prosecuted for "usury" in accordance with Article 163 of the Ministry criminal law. However, the above problem in the investigation is very difficult to prove. The loan documents between the litigants usually do not specify interest rates payable on a monthly or day basis, but only an oral agreement. When the investigating body enters, the testimonies of the litigants often do not match the loan interest rates.

In all cases, the chances of recovering the victim's property are very small as they only look at the property seized by the Investigative Agency. In cases where there are no criminal signs, the parties shall initiate lawsuits at the People's Courts. Legal consequence is that the petitioner (the lender) wins the case but does not receive the money according to the judgment because the borrower has lost the ability to execute the judgment. Therefore, it is possible to see that predatory lending has always exposed great risks to both borrowers and lenders, potentially threatening the stability of social order and safety in the area.

THE REALITY OF PREDATORY LENDING IN VIETNAM

In recent years, "out-of-the-way" lending activity has been quite active. According to incomplete statistics, from the year 2011 up to now, there have been hundreds of large defaults caused by "predatory lending", losses up to thousands of billion, affecting the lives of many individuals and families.

Victims of mobile phone-related incidents are also diverse, with varying degrees of age, education and job characteristics. On the other hand, due to greed, speech, many people fall into the trap of mobile. From the role of intermediary mobilization, high interest loans have become victims and also participate in the implementation of violations of law. The consequences arising from the move to the law, such as arresting illegal people, destroying property, disturbing public order, the most common is the form of pledge or mortgage of property. As a result, over 6,367 law violations, including 43 murders, 405 intentional injuries, 588 robberies, 1,089 property robberies, 1,707 frauds Island appropriation property

Loans and borrowings other than credit institutions are civil and not prohibited. This activity only violates the law when the loan is determined to have interest rates in excess of the rules and the nature of "exploitation". Through the cases have occurred, with authorities, to learn the interest rate loans in "predatory lending" activities at the time of transaction is very difficult. Lenders are not fooled into writing a loan interest rate index that only deals with the borrower. Predatory lending is available through a variety of formats ranging from broadcasting, leaflet publishing to social networking.

These lenders also usually deduct interest on principal as soon as the money is delivered, so the borrower never holds the full amount of the loan in the "contract". The behavior of money lenders that are "exploitative" is far more difficult to prove ... That is the reason why the loan with exorbitant interest only be discovered when the consequences have become. Violation of other criminal laws. At this time, criminal proceedings against usury will apply to acts such as "illegal arrest," "rape of property," "intentional injury".

Although bank capital has been playing an important role in boosting the development of production and business, helping to alleviate poverty and ensure social security, but still living in land, not only in the region deep, remote, that exists even in cities and urban areas! Although everyone understands that credit is an informal credit, which is a form of private credit, outside the banking system, why are so many people still falling into the whirlpool of "hot" borrowing? Is payment in kind (rice, maize, pepper, coffee ...) paid on a daily, monthly basis or in rural areas? The evolution of the cases related to mobile phones has also proved that.

The state of the automobile has been running for many years and is still "alive" everywhere. In the opinion of economic experts, predatory lending still exists due to inadequacies in lending activities of the banking system, because there are still loopholes in the law, due to legal constraints. strictly in some localities.

SOLUTIONS TO PREVENT “PREDATORY LENDING”

In the past time, the functional forces have focused on the implementation of measures to prevent and fight crimes and law violations related to financial and monetary activities in general and activities. "predatory lending" in particular; To intensify the detection and strictly handle criminal acts and violations in the field of finance and banking, which are related to "predatory lending".

In particular, the Government has instructed ministries and sectors to promulgate mechanisms and laws related to credit activities in general and to implement, regularly and effectively supervise, control and regulate to adjust the mobilizing interest rates, lending interest rates, exchange rates, gold prices, bad debts ... in order to raise the efficiency of the State management and help the credit institution system well perform the function of regulating the monetary market. macro-level; create

confidence and step by step restrict the activities of "predatory lending". However, the provisions of the law on credit activities and the management of credit institutions are still inadequate, the sanctions for violations are unclear and still weak enough not to deter. There is still no legal document regulating the operation of "informal credit" as well as the maximum lending interest rate. The functional force has no legal basis to implement measures to prevent, stop and handle violations.

Not to mention, many regulations on lending capital of banks, credit institutions are still complicated, many procedures, papers, required conditions, long waiting time ...; In addition, the types of loans of credit institutions do not meet the need for legitimate loans of people. Therefore, organizations, enterprises and individuals must come to "predatory lending" to quickly obtain loans to solve the production and business.

In order to contribute to the prevention and fight against the crime of violating the law relating to "predatory lending" activities, the banking and financial experts have issued the following guidelines:

First of all, it is necessary to *expeditiously review and study the improvement of the criminal, administrative and civil law systems on the handling of criminal acts and violations of law related to credit activities*; To complete legal documents on the sanctioning of administrative violations in the field of credit with specific and clear sanctioning penalties, including penalties applicable to groups of executives Violations related to "predatory lending", usury to take legal basis when dealing in practice. In addition, complete regulations on civil transactions, mortgage, pledge ...

Secondly, *ministries, departments and local authorities to strengthen management, specific regulations, tightening lending activities, spontaneous capital mobilization*; At the same time, to promote propaganda and help organizations, enterprises and people raise awareness, awareness and high vigilance of tricks of the objects of "predatory lending" activities.

Thirdly, to perfect the mechanism and policies on attracting idle money among the population, *administrative reform and research on the diversification of forms in order to create favorable conditions* for official credit transactions for enterprises. Individuals can have access to safe, quick and convenient loans, thereby limiting usury, "predatory lending" loans.

CONCLUSION

To effectively prevent predatory lending, it is necessary to completely eliminate the cause of predatory lending, which is the core of raising people's awareness of predatory lending, legal awareness to prevent themselves. In addition, to thoroughly solve the predatory lending needs to eliminate the root cause of predatory lending is the difficulty of the economy, should create opportunities for people to access formal credit from the system. Commercial banks. Raising

awareness to combine economic improvement of people to step by step remove predatory lending from socio-economic life.

REFERENCES

- [1] Andrew Schmulow (2016), *Curbing Reckless and Predatory Lending: A Statutory Analysis of South Africa's National Credit Act*.
- [2] David G. Wood (2004), *CONSUMER PROTECTION Federal and State Agencies Face Challenges in Combating Predatory Lending*.
- [3] David Reiss, *Regulation of Subprime and Predatory Lending (forthcoming)*.
- [4] Deanna O. Burgess, Todd M. Shank, and Daniel Borgia, *Consumer Lending and Deposit Abuses*.
- [5] Erickson, Luke V (2006), *Defining Predatory Mortgage Lending in Utah: A Professional's Perspective*.
- [6] Francisca G-C. Richter, Ben R. Craig, *Lending patterns in poor neighborhoods*
- [7] GREGORY ELLIEHAUSEN and MICHAEL E. STATEN, *Regulation of Subprime Mortgage Products: An Analysis of North Carolina's Predatory Lending Law*.
- [8] Heather MacDonald, University of Western Sydney, *Financing Low-Income Communities: Models, Obstacles, and Future Directions*.
- [9] Irwan Trinugroho, Ariyanto Adhi Nugroho, Harmadi Harmadi, Joko Suyono and Muh Juan Suam Toro (2017), *Households, Financial Distress, and Predatory Lending: An Experimental Study*.
- [10] Kathleen C. Engel and Patricia A. McCoy (2007), *Turning a Blind Eye: Wall Street Finance of Predatory Lending*.
- [11] Keith D. Harvey and Peter J. Nigro, *How do predatory lending laws influence mortgage lending in Urban areas? A tale of two Cities*.
- [12] Kinda Hachem, *Relationship lending and the transmission of monetary policy*
- [13] Kristen B. Crossney, *Who's at-risk? A case study of the demographic and socioeconomic characteristics of census tracts experiencing predatory and abusive mortgage lending in Philadelphia*.
- [14] Lawrence Hansen, *In Brokers We Trust-Mortgage Licensing Statutes Address Predatory Lending*.

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- [15] LUCY M. DELGADILLO, LUKE V. ERICKSON, AND KATHLEEN W. PIERCY, *Disentangling the Differences between Abusive and Predatory Lending: Professionals' Perspectives.*
- [16] Michelle W. Lewis, *Perspectives on Predatory Lending: The Philadelphia Experience.*
- [17] Morgan J. Rose, *Predatory lending practices and subprime foreclosures: Distinguishing impacts by loan category.*
- [18] Phan Dinh Khoi & Christopher Gan (2013), *Xem xét các yếu tố ảnh hưởng đến khả năng tiếp cận tín dụng của các hộ gia đình tại nông thôn Việt Nam.*
- [19] Philip Bond, David K. Musto and Bilge Yilmaz, *Predatory Lending in a Rational World.*
- [20] Randy Stoecker, *Politics, Social Movements, and The State.*
- [21] Raphael W. Bostic, Kathleen C. Engel, Patricia A. McCoy, Anthony Pennington-Cross, Susan M. Wachter, *State and local anti-predatory lending laws: The effect of legal enforcement mechanisms.*
- [22] Roman Inderst, *'Irresponsible Lending' with a Better Informed Lender.*
- [23] RONALD PAUL HILL AND JOHN C. KOZUP, *Consumer Experiences with Predatory Lending Practices*
- [24] Sue Rutledge, *Improving Protection in Financial Services for Russian Consumers.*
- [25] Sumit Agarwal , Gene Amromin , Itzhak Ben-David, Souphala Chomsisengphet, Douglas D. Evanoff, *Predatory lending and the subprime crisis.*
- [26] Therese G. Franzen and Leslie M. Howell, *State and Local Predatory Lending Issues and Developments.*
- [27] William R. Emmons, Kathy Fogel, Wayne Y. Lee, Liping Ma, Deena Rorie and Timothy J. Yeager (2008), *The Foreclosure Crisis in 2008: Predatory Lending or Household Overreaching?*
- [28] Yuliya Demyanyk, *Income Inequality: Time for Predatory Lending Laws?*