

## Capitalism's Challenges to Financial Ethics: The Subprime Lending Crisis

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**Abstract:** The goal of this paper is to provide sound rationale for increase ethical financial training and overview in the financial services industry by explaining the current ethical status of the financial services industry and cite examples of financial malpractices, unethical financial practices, financial corruption and other practices that reflect poor financial choices by corporations and financial services personnel ranging from banks, mortgage lenders, to financial agents. There are several objectives underpinning this research. These include: (1) describing the state of financial ethics in Corporate America and across the globe, (2) identifying several financial scandals and/or practices as examples that highlight the lack of ethics in the financial services industry, (3) identifying and describing current efforts to ensure financial ethics ranging from private and governmental administrative agency policies and rules to efforts by other institutions including business colleges to teach ethics, (4) communicating the effectiveness of existing measures designed to ensure financial ethics and evaluating these measures on the basis of success and failure, and (5) making recommendations in the forms of programs, practices, or initiatives to increase financial ethics across the board.

**Keywords:** Annual Percentage Rate (APR), Capitalism, Corporate America, Financial Ethics, Financial Services Industry, Global Recession, Money Market Mutual Funds (MMMFs), Non-Performing Assets (NPAs), Social Responsibility, Subpar Lending Crisis.

### INTRODUCTION

The financial services industry encompasses banks, securities firms, insurance companies, mutual fund organizations, investment banks, pension funds, mortgage lenders, and any company doing business in the financial arena [1]. Ethics in finance remains a serious challenge in today's global economy. According to Fraser and Ormond [2], ongoing financial turmoil, major corporate failures, and the staggering collapse of financial markets underscore the need for financial ethics and basic understanding of financial statements and principles by financial analysts, financial advisors, creditors, investors, and individuals managing personal assets.

Unethical financial practices have been a major challenge in the 21<sup>st</sup> century. Several causes of unethical ethical practices have been identified by Federwisch [1], and include: (1) 1) self-interest sometimes morphs into greed and selfishness, (2) some people suffer from stunted moral development, (3) some people equate moral behavior with legal behavior, (3) professional duty can conflict with company demands, and (5) individual responsibility can wither under the demands of the client. All of these seem to be

factors that emerge in financial lending situations where there appears to be unethical practices.

### Unethical Financial Practice as a Problem

The increase in financial ethical problems in Corporate America and across the globe has created a need for more ethical awareness and purview of the financial services industry by both private and governmental administrative agencies. The various corporate financial scandals and corrupt practices that have rocked the financial industry over the past two decades are a clear indication of the need for financial ethics in businesses and industries. As Federwisch [1] notes, ethical issues in the financial services industry affect everyone. The public seems to have the perception that the financial services sector is more unethical than other areas of business [1], and this raises the need for financial ethical awareness and practices by businesses and financial services personnel to change customers' negative perception and angst regarding the financial services industry.

### Market for Subpar Loans

The market for subpar loans will only grow as individuals and households in the American economy and across the globe find it increasingly difficult to

meet their needs and wants with current level of income or earnings, increasing hardship given what appears to be a reversal in American and global fortune however slight or slow, and the uncertain economic future that looms in a more integrated global market and economy. Meeting the needs and wants of everyone in a society where productivity is decreasing, and where scarcity once disguised under the mound of American and global wealth is becoming more and more visible, is not an easy task. Those who have always struggled to survive fully understand this nature of financial operations and consequences and live this fully as they have no other choice but to depend on financial services institutions that cater to the working class and working poor at a cost called high interest rate, something which its patrons too often know they will struggle with as they pay far beyond what “needful” things are worth.

According to Smith [3], subprime is a classification of loans offered at rates greater than the prime rate to individuals who are unable to qualify for prime rate loans. Subprime loans occur when borrowers have poor credit and, as a result, the lender views them as higher risk [3]. Subprime loans are sometimes called second-chance loans and stem from subprime lending where financial institutions offer or provide loans to people who may have difficulty maintaining the repayment schedules because of setbacks such as unemployment, divorce, medical emergencies, and who otherwise would probably not qualify for loans measured against set minimum or required standards. Thus, the “favor” rendered becomes an opportunity for the lending institution to capitalize on offering the highest interest rate possible, which often creates maximum or even excess profits in the short-term for the lending company. Third party lenders, and especially tertiary lending institutions catering to people with less than perfect and bad credits, or insufficient credit and collaterals for loans have created a Subpar Loan Crisis where the major issue is imposing excess interest rates that are both unethical and financially unrealistic standards of repayment for borrowers to meet. This constitutes a problem of financial ethics and one that has been considerably overlooked by government, administrative agencies, financial news agencies, financial and accounting standard boards, and other individuals and organizations.

While much of the literature and preoccupation with subprime lending in the recent decade generally focuses on the mortgage industry and the mortgage crisis, the issue of subpar lending has deep roots in the U.S. and global economies, and has been a problem long ignored by government and administrative agencies, as well as ethics, financial, and accounting scholars. It has been a problem existing long before the Mortgage Crisis of recent years and which still continues as a major financial ethical problem. Between 1996 and 2006, Bianco [4] believes that, the number of subprime loans rose as rising real estate values led to

lenders taking more risks. Some experts believe that Wall Street encouraged this type of behavior by bundling the loans into securities that were sold to pension funds and other institutional investors seeking higher returns (p. 6).

While Wall Street and mortgage lending institutions have been blamed, and do play a tremendous role in the Subpar Lending Crisis, it extends far beyond these institutions to government and other financial services institutions in the United States and across the globe. For example, hundreds of small private lending institutions – some functioning as franchise businesses, provide loans including payday loans, car loans, and cash advances to individuals at ridiculously high rates.

The market for subpar loans seems to be growing exponentially with increased global and national economic hardships and the increased gap between the rich and the poor, the ‘haves’ and the ‘have-nots’. For example, the entry and exit of the Global Recession onto the world market saw a rapid increase in unemployment, consumers overburdened with debts, increased banks’ and traditional financial institutions’ denial of loans and other interest-lending opportunities, and the vacuum created led to a period of rapidly increased predation by tertiary financial institutions including pay-day loan, cash advance, and car-loan businesses. Some of these companies charge consumers excessively for loans even sometimes up to 200% or more of what is borrowed. For example, consumers stuck with subpar auto loans often find themselves paying over 20% on used vehicles, and thus paying three or four times vehicles’ actual market value. Similarly, those borrowing from cash advance venues or payday loan venues find themselves being taken advantage of as desperation drives them to sign contracts (some without even reading the well-hidden fine prints) paying back three or four times what they borrow. This trend continues as Americans and people across the globe struggle to adapt their lives and circumstances to match previous standards enjoyed under better economic and financial times. As Rosengren [5] notes, problems in the subprime market are heavily dependent on economic conditions. The nostalgic need for the American Dream which seems to become harder to reach for more and more Americans keeps fueling the demand for cash and loans, and this seems to somehow guarantee the existence of predatory lenders waiting to assist those with tainted or bad credit or undergoing major financial hardships. On a global level, increasing consumerism and materialism in emerging wealthy nations, and in China and India, have also contributed to the continuance of predatory and unethical financial lending practices as people force themselves to keep up with the Joneses. Is this really Capitalism at its best or is it simply the greed and unethical nature of today’s business owners and

corporations? Isn't this part of the Capitalism built on self-interest anyways?

### **Reasons Why People Encounter Subpar Loans**

The Global Recession of 2007-2008 left so many Americans and peoples across the globe with tainted credit history and increased poverty and hardships, and this created numerous opportunities for "underdog lenders" and business dealers such as cash advances, loan sharks, used car dealerships, and other predatory loan and financial services and related companies. People encounter subpar loans for one broad simple reason: They exist! However, it is much more than this simply explanation concerning the existence of subpar loans and their demand and role in modern capitalism. Unfair distribution of income and resources in our society creates a problem where individuals, firms, and households earn or receive different portions of the pie – some, more than others, and it seems, some receive very little to none at all. With our unlimited wants and limited means, financial and economic scarcity forces individuals and households to search for alternative means to meet their needs and wants. In a global capitalist economy where self-interest, profit-orientation, and excess wealth characterizing individual orientation are the norm, making profits at the expense of others is simply seen as part of the parcel and process of free enterprise system or capitalism at work. Thus, there are two processes at work when it comes to subpar loans – those who need it and are willing to obtain it as they have no other means, and those who provide it and are willing to forego ideas of greed, ethics, and excess because their conscience and the system of capitalism allow it.

Hard economic times, unemployment, and the aftermath of the Great Recession have certainly left many Americans and people across the globe in financial crisis and with subpar credit, which means subpar loans. Some seem to argue that an individual not having good credit is responsible for landing himself or herself in that position. Therefore, they argue that lending institutions are reluctant to provide loans for such individuals and based on the high risk of non-repayment, must charge more than ordinary financing rates and hence, high interest rates are to be expected. While this seems logical to a certain degree, the question is, "How high is too high?" That is, when can interest rate on a loan be considered extreme or too high or excessive to the point of being unethical? An example will provide more clarity - Jim Brown had a credit score of 559 from Equifax, 578 from Transunion, and 520 from Experian. Jim works two part-time jobs and earns \$18,000 a year, pays rents and utilities, plus other expenses. Jim wants to buy a car, but can only afford a used car. Based on Jim's poor credit rating, low income, and inability to provide any other collateral for a car loan, Jim's only option is a used car which is several years old, and for which he will be stuck with a very high interest rate of 23.90%. This scenario depicts

the ever-increasing crisis facing many Americans and people across the globe like Jim Brown, and will continue to create and grow the market for subpar loans and ethically questionable lending practices. As Smith [3] notes, individuals with credit scores below 620 or with no assets will likely not qualify for a traditional mortgage and will need to resort to a subprime loan to gain the necessary financing (p.1). This is the type of opportunity that creates a demand for subprime or subpar loans.

As *The Economist* notes in an article of March 19, 2009, titled, "Sub-par but not subprime", "A global credit crisis caused by subprime mortgages is hardly the ideal backdrop for a business making unsecured loans to poor people without a credit history" (p. 1). Thus, other than mortgage and rent, people need loans to meet other economic and financial obligations. As economic hardship increases through unemployment, increased competition for jobs, increased national debt and decreased national productivity, inflation, and other challenges, and the credit scores of Americans and their counterparts wane, more and more will only qualify for subpar loans. While the problem of bad loans or Non-Performing Assets (NPAs) might prevent commercial banks and primary lending institutions from providing loans for low-income individuals and households, there are numerous financial institutions willing to step in and serve these individuals with extremely high interest rate loans or annual percentage rates (APRs). In fact, during the Global Recession, it became quite apparent how detrimental NPAs are to banks [6].

### **Worst of the Subpar Lenders and Businesses**

Many large financial corporations, big microfinance companies, car dealerships, payday loan businesses, cash advance services, and other third-party financial services and alternatives to banks or commercial lending and loan institutions are part of a growing market offering subpar loans to the working class, the poor, and those who find themselves unable to otherwise afford what they need and want. This seems to make good economic sense as value is created when companies and entrepreneurs find creative ways of meeting the needs and wants or fulfilling the demand of consumers. From Capitalism's perspective, it is simply doing business and the reward for entrepreneurs or those who use creativity to combine the factors of production and create value is profit, and there are no specific guidelines demarcating limits on profits or wealth for that matter.

While the mortgage industry and mortgage loan and lending specialists have been legendary for subprime lending and excess, a new area of emerging concern is student loan companies or financial institutions specializing in student loans and student loan repayment. According to Wang [7], there have been parallels between the mortgage market and the student loan industry with both involving big borrowing

and having a history of lax underwriting by lenders. However, Wang [7] remarks that the most obvious similarity between the two is that the servicers, or companies that handle loan payments, sometimes add roadblocks and give struggling borrowers the runaround. For example, "Servicers have misapplied payments, given borrowers bad advice, and reported incorrect information to credit bureaus" (p. 1). This is typical of the unethical practices that take place among many subpar lenders and creates further burdens for already desperate and financially bankrupt customers or clients.

Currently, the auto sales industry has been a major user of subprime lenders offering subpar loans that create increased financial problems for both customers and financial institutions. Ng [8] notes that an increasing concern in the auto sales industry today stems from existing high level of missed payments for loans recently made, which also further creates questions about underwriting standards being used. While a pessimistic view could render this concern as too late in the game, the real truth is that the auto sales industry has been using this method for decades and that is why many middle class and working-class Americans and families across the globe have been able to drive flashy and expensive European and Japanese cars over the decades.

Subprime lenders have made it their mission to target low-income workers because it is not only a lucrative endeavor in terms of potential profits, but also an easy population due to vulnerability, desperate economic and financial needs, and the fact that low-income consumers are easier to deceive into accepting loans which they would not otherwise qualify for. According to Fred Moseley, Marxist economist at Mount Holyoke College, seeing that post-recessionary recovery of the rate of profit has not resulted in a substantial increase of business investment, and has not led to the kind of increase in employment that would normally be expected, many financial capitalists went searching for new borrowers. At the same time, low-income workers were strapped with stagnant wages and very eager to borrow money to buy houses, cars, and sometimes meet their basic necessities [9]. According to Moseley [9], financial corporations have increasingly focused on workers as their borrower-customers over the last decade or so. Furthermore, between 1970 and 2006, the percentage of bank lending to households increased from 30 percent to 50 percent. At the same time, the total value of home mortgages tripled between 1998 and 2006, and the ratio of household debt to disposable income increased from 60 percent in 1970 to 100 percent in 2000, and then to 140 percent in 2007 [9]. This picture of the economic and financial situations faced on a national and global level, provides a better understanding of how subprime lending has increased and continues to be a major challenge for individuals and the economy alike. Increasing number

of Americans and people across the globe are falling to the calls of financial capitalists who are willing to provide them with subpar loans characterized by excessively high interest rates and for many, impossible, cruel, and unethical repayment terms.

#### **Ethics and Social Responsibility: Who and What?**

Unethical practices across the financial industry are not new. According to Fraser and Ormond [2], the lack of independence and conflicts of interest between companies and their hired auditors led to a series of accounting scandals that eroded investors' confidence in the capital markets. As a result, the collapse of Enron and WorldCom was a catalyst for some of the most sweeping corporate reforms since the Securities Act of 1934 was passed. Congress was quick to pass the Sarbanes-Oxley Act of 2002 in hopes of ending future accounting scandals and renewing investor confidence in the marketplace [2]. At the same time, while Congress focused on addressing financial-accounting challenges at the level of large corporations, there were many small private lenders escaping these standards through predatory lending. Accounting regulation is simply not enough to address issues in the financial industry since the financing sector tends to escape scrutiny and monitoring at the client-customer level under these broader rules.

Since the collapse of Enron and WorldCom, there have been other financial ethical scandals illustrative of the need for more serious regulation and monitoring. For example, (1) J.P. Morgan Chase engaged in risky trades (derivatives) that grew from \$2 billion to about \$7 billion, (2) Barclays, a London-based bank, was discovered to have manipulated Libor rates to profit on select trades, (3) Standard Chartered Bank, a London based bank, was accused by New York regulators of facilitating illegal transactions for moving an estimated \$250 billion in Iranian money, (4) Knight Capital's computers accidentally purchased stocks on the New York Stock Exchange, artificially inflating some stock prices resulting in a \$440 million loss, (5) ING Direct was accused of moving \$2 billion in transferred Iranian money, (6) HSBC was accused of funneling Mexican drug cartel money and money connected to terrorists in the amount of \$7 billion, (7) Capital One told some of its customers that they could receive credit monitoring services for free but in fact charged for the service and was fined by the Consumer Financial Protection Bureau in the amount of \$210 million, and (8) Peregrine CEO Russell Wasendorf was accused of lying to regulators about fraud which he committed totally millions of dollars [10]. In May 2015, fourteen FIFA officials and marketing executives were arrested as part of an investigation by the FBI and IRS Criminal Investigation division, following suspicion of corruption involving accepting bribes of \$150 million [11]. In July 2015, Toshiba CEO, Hisao Tanaka, resigned after discovery that the company overstated profits by 151.8 billion yen (\$1.2 billion) over a seven

year period [12]. These are some examples of popular financial scandals that have rocked the business world.

When it comes to the subpar lending phenomenon, a major question is, “Where do ethics and social responsibility come in, and who should ensure ethics and what should be done?” The ethical challenge to financial institutions has been almost nonexistent in Corporate America and much of the rest of the globe, and this tends to fuel the continued unethical practices we see across the board when it comes to lending, especially among small private lending institutions including payday and cash advance businesses. Financial ethics is important in ensuring that businesses and especially lending institutions are not violating standards and taking advantage of their clients and customers. Unfortunately, the perception is that the financial industry in general lacks ethical and regulatory standards, and as far as is evident from related experiences and complaints of consumers, there is certainly a lack of ethics when it comes to subpar loan practices and also a lack of financial regulatory monitoring.

While many point to private loan companies and the many predators in the financial industry as responsible for high interest rates, excess lending conditions, and ethical corruptions, some point to the lack of government intervention and oversight as the major ethical and economic failure, and a lack of socially responsible action on the part of the governments to ensure regulation and fairness. According to Brook [13] in a *Forbes Magazine Online* article titled “The Government Did It”, “Congress and the (U.S.) administration have been asleep at the wheel when they should have been steering the economy by expanding government control over the housing and financial markets” (p. 1). This position is not an isolated one since many individuals have advocated greater and increased role for government in the financial sector through strict and involved monitoring, regulations, and creation of strong administrative agencies, and stricter standards and penalties for financial corruption and unethical financial practices.

The Center for Responsible Lending [14] points to the strategy of predatory lenders that target borrowers for unfair and unsafe loans and sometimes overload loans with inflated and unauthorized fees in order to make greater profits. This is typical of what mortgage loan provider Countrywide has been accused of for example. In a report in 2007, the Center for Responsible Lending found that Countrywide engaged in five types of specific unethical and unfair loan practices: (1) steering borrowers with good credit into higher-cost “subprime” loans; (2) gouging minority borrowers with discriminatory rates and fees; (3) working in cahoots with mortgage brokers who use bait-and-switch tactics to land borrowers into loans they can’t afford; (4) targeting elderly and non-English-

speaking borrowers for abusive loans; (5) and packing loans with inflated and unauthorized fees (p. 2). These kind of unfair, unethical, and corrupt financial practices or lending practices are typical with many subprime or subpar loan providers and not unique to Countrywide. Across the United States and globally every day, consumers are faced with these and other unethical financial lending practices whether for mortgage or home loans, or for auto loans, loans for education, loans for paying medical bills, or loans to meet other needs and wants.

Financial services companies must be ethical and responsible lenders. This requires fully understanding why they are in business outside of the profit orientation – they need to remember that they are in business to better people and communities, and charging excessive financing fees and interest rates increases economic and financial hardships on individuals and families, and ensures that poverty remains a mainstay of individuals and communities. This reflects a lack of socially responsible business practice. Consumers must be aware of the unethical, unfair, and corrupt financial lending practices taking place and must also seek better opportunities and loans which do not exceed their ability to repay. The government needs to increase financial regulation and monitoring to prevent financial meltdown in the economy.

#### **Ethics in Financing: Efforts by Government and Other Institutions**

Financial regulation is extremely important and highly needed in today’s volatile economy. Financial regulation refers to any regulation or supervision subjecting financial institutions to certain requirements, restrictions and guidelines, and which aims to maintain the integrity of the financial system. Despite the existence of financial regulation in the United States and elsewhere in the financial industry, including the sector for lending and financing (refinancing), overall, there is wide perception of a lack of great efforts to ensure better financial ethical practices across.

According to Ely [15], in the United States, and elsewhere in the developed world, financial regulation breaks down into two basic categories: safety-and-soundness regulation and compliance. Ely [15] states that, “The basic goal of safety-and-soundness regulation is to protect “fixed-amount creditors” from losses arising from the insolvency of financial institutions owing those amounts, while ensuring stability within the financial system” (p. 1). When it comes to compliance, compliance regulation generally seeks to protect consumers from “unfair” dealing by financial institutions and in the financial markets and to prevent crimes such as “money laundering [15].

While institutions such as the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) are designed to ensure financial regulations, their reach seems to be limited as far as the subpar lending problem is concerned. In the United States, the Securities and Exchange Commission (SEC) regulates stockbrokers, money market mutual funds (MMMFs), stock and bond mutual funds, stock trading including the stock exchanges and financial disclosures by publicly traded corporations [15]. At the state-level, state regulators set standards and monitor state-chartered banks, savings institutions, and credit unions as well as all insurance companies. Solvency regulations are enforced by financial examiners who assess the value of an institution's assets and determine the scope of its liabilities the institution faces [15]. While a system is apparently in place, the degree to which it is working is highly questionable, and this can be compared to the failing consumer protection bureaus and agencies in the United States over the last two decades. Globally, governmental and private financial administrative agencies need to develop stricter standards and monitoring and regulatory processes since reality and perceptions reflect a lack of success at effective financial regulation thus far.

Educational institutions, especially colleges and schools of business, have been active in the effort to encourage and foster greater levels of financial ethics by teaching courses in financial ethics and encouraging ethics in business. Some universities and colleges are requiring ethics across their business courses and curricula, while others engage their students and members to participate in conferences and workshops on ethics. It is also important for individuals who plan to work in the financial industry, especially in the area of financing, to develop ethical understanding and value through personal practice and personal individual educational efforts.

#### **CONCLUSION AND RECOMMENDATIONS**

The market for subpar loans is not an artificially imposed phenomenon on capitalism and its financial systems, but a market developed out of necessity and in response to demand for services from low-income and other consumers whose qualifications create discrimination in lending and decrease access to financial opportunities to better themselves. Recognizing this, financial institutions have created opportunities at a cost, and that cost is high interest rate and high fees for loans with tough repayment terms. In some cases, these high interest rates, high fees, and unfair repayment terms call into question the ethics of financial or loan institutions, and also point to a lack of ethical standards, regulation, and monitoring by governmental administrative agencies. While capitalism is built on competition and the idea of free market system, ensuring fairness and social responsibility in the use of resources and conduct of trade and transactions is

no doubt a role that government must play in the interest of society and the welfare and well-being of everyone. When the government abandons this role and leaves financial decisions solely to the conscience of financial capitalists and their private institutions, human factors of greed and selfishness create a system in which predatory practices become a mainstay. Furthermore, it is the responsibility of financial specialists and institutions to do business in good faith, and good faith requires conscience and ethics.

It is unconscionable and unethical to offer loans at ridiculously high interest rates and excessively high fees to low-income workers already struggling. This further sinks such individuals into a cycle of long-term poverty and debt, and places an overall strain on society and families. Both the government and financial lenders must become more aware of the negative impact that subpar lending or subprime loans have had and continue to have on individuals and households and the U.S. and global economy as a whole. The government must seek to set a maximum interest rate for lenders and play a greater role in financial ethical oversight, while private lenders must restrain themselves ethically in the lending process and not take full economically and financially "obscene" advantage of the great latitude capitalism has allowed them for making profits and wealth. There needs to be more programs and institutions, agencies, and administrative personnel to ensure regulation and ethical compliance in financing and lending. Borrowers also have a responsibility and should never sign papers for loans they do not understand or have the ability to repay [3]. Financial ethics in terms of the financing market where individuals and households encounter subpar loans is in need of greater regulation and monitoring as well as reform.

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