

# Perspectives on Predatory Lending: The Philadelphia Experience

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## Abstract

The article presents a literature review and reports on a study to: (1) determine the scope, extent, and causes of predatory lending for mortgages; and (2) suggest solutions to the problem. Some 322 callers to a consumer credit hotline in Philadelphia were asked about their property, mortgage(s), income, and how they obtained their mortgage. The most startling result was that 43 percent of consumers reported good credit prior to the questionable loan, yet 89 percent indicated having obtained the loan by random action or as a result of outside solicitation. The findings identify the characteristics that may lead to victimization and suggest that consumer mortgage education, especially about the importance of comparison shopping, is needed. The article also provides perspectives from experts in the field.

## Introduction

This article summarizes a study that examined the scope, cause, extent, trends, and potential solutions to the growing number of reported predatory lending practices in connection with mortgages in Philadelphia. Although the City of Philadelphia and its suburbs have experienced rapid and unprecedented growth in homeownership levels over the last several years, the region is plagued by mortgage delinquencies and an upsurge of reports of predatory lending, especially for second mortgages that are used for home improvement or debt consolidation. The reported increase in these practices, which are not restricted to Philadelphia, has led to legislative, regulatory, and other attempts to curb them.

The issue came to my attention from two perspectives: an increase in complaints from clients of Northwest Counseling Service (NWCS), Incorporated, an agency in Philadelphia that I founded and have led for the past twenty years, and as a result of my work as a forensic real estate expert, in which I provide expert opinions and testimony in cases, primarily at the federal level, of alleged real estate fraud.

## What Is Predatory Lending?

Predatory lending practices are characterized as routinely charging exorbitant fees and high interest rates, adding unneeded credit and life in-

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insurance to monthly mortgage payments, promoting loans that negatively amortize, and regularly providing loans with prepayment penalties and balloon payments. Other practices such as loan flipping, contractor fraud, and false appraisals have also come under scrutiny by the U.S. Department of Housing and Urban Development (HUD) in its nationwide campaign against predatory lending. Generally targeted at senior citizens, low-income residents, and high-equity neighborhoods, predatory lending in Philadelphia, as elsewhere, has stripped many homeowners of valuable equity, encouraged delinquency, and triggered mortgage foreclosures.

### **Philadelphia Predatory Lending Task Force**

NWCS created the Philadelphia Predatory Lending Task Force (PPLTF) to respond to the growing number of homeowners who faced foreclosure as a result of predatory lending practices. Supported by a resolution introduced by Philadelphia Councilwoman Marian Tasco in September 2000, the task force is the brainchild of NWCS President and Chief Executive Officer Michelle W. Lewis, who serves as its chair.

PPLTF's mission is to identify predatory practices and those who engage in them; review existing consumer protection laws and recommend heightened enforcement or new legislation where needed; work with private industry to develop and encourage the use of affordable mortgage products; develop consumer education programs in cooperation with government agencies, private industry, and neighborhood groups; provide outreach and deliver consumer education; streamline the processes for referral of suspected abuses to appropriate entities; and serve as a data collection point for research and analysis. Its members include legislators from the Philadelphia area and representatives of public and private agencies.<sup>1</sup>

The project took place at the offices of NWCS, a nonprofit organization created to provide real estate and housing counseling service to Philadelphia-area residents. NWCS provides counseling and services covering purchases and rentals; mortgage default, delinquency, and foreclosure; rental default; reverse mortgage counseling and certification; anti-predatory lending counseling; and consumer education.

NWCS also acts as a clearinghouse for complaints of alleged fraud, misrepresentation, fair housing, and unfair or deceptive practices. According to a recent HUD report, NWCS is the highest-producing single agency in the country.<sup>2</sup> It was designated as a "superagency," the highest level of recognition given to any counseling agency by the Philadelphia Office of Housing & Community Development (OHCD), and served in that capacity between 1995 and 2002. In this role, the agency provided a widely expanded level of service in all existing counseling programs, served as a technical advisor on real estate to OHCD, and otherwise supported OHCD's agenda for housing programs. NWCS also responded to housing emergencies affecting individuals, neighborhoods, other OHCD-funded agencies, or the city as a whole.

NWCS prepares applications for mortgage relief and acts as a closing agent for the Pennsylvania Housing Finance Agency on its Pennsylvania Homeowners Emergency Assistance Program loans. This program provides mortgage relief to homeowners facing foreclosure and those with conventional VA or purchase money mortgages. In addition, the agency has partnered with the Nationalities Service Center<sup>3</sup> to host workshops and to act as the center's intake and referral for immigration and naturalization problems of Philadelphia's ethnically diverse communities.

### **Purpose of the Study**

The study examined consumer reports of predatory lending practices in connection with mortgages in Philadelphia. Its goals were to determine the scope, causes, extent, and solutions to the growing number of reported predatory lending incidents and, specifically, to identify instances of predatory lending practices and examine the demographic characteristics and consumer habits of alleged victims. The research focused on two questions:

- (1) What are the characteristics of mortgage loans that consumers calling the PPLTF consumer hotline reported to be predatory?
- (2) What are the demographic characteristics and consumer habits of callers who claim to be victims of predatory lending practices?

### **Review of the Literature**

Before starting the actual study, the PPLTF reviewed the available literature, anecdotal reports on predatory lending practices, and federal and state legislation. The review focused on defining the problem; identifying its causes, extent, and trends; and examining possible intervention strategies, including the provision of relief to victims.

The literature review failed to find an explicit and uniform definition of the term "predatory lending."

However, several operational definitions were identified. Predatory lending has been variously described as subprime mortgage loans and high-interest loans for people with bad credit that are accompanied by egregiously unethical practices, such as hidden exorbitant fees and taxes, grossly inflated sales prices for property, flipping, and making loans to customers who have no realistic ability to repay.<sup>4</sup> Predatory lending also has been defined as subprime lending to people with bad or nonexistent credit records.<sup>5</sup>

Descriptions of predatory lending practices spelled out in legislation are more specific:

- (1) The Home Ownership and Equity Protection Act of 1994 (HOEPA) defines predatory lending as a class of high-cost mortgages that charge closing fees of eight points or more or that have an annual percentage interest rate of 10 percent above prevailing Treasury rates for loans with comparable maturities.<sup>6</sup>

- (2) North Carolina defines predatory practices as excessive fees; the financing of single-premium insurance; prepayment penalties that lock borrowers into bad loans; and flipping.<sup>7</sup>
- (3) A Philadelphia City Council ordinance defines a high-cost loan as one with an interest rate of more than 6.5 percent above the yield on Treasury securities with comparable maturities and total points and fees financed equal to 4 percent of the loan amount. The same ordinance defines a high-cost lender as one who has made ten high-cost loans or whose loans in this category amount to 5 percent of its annual loan volume.<sup>8</sup>

### Identifying the Causes

The reported causes of predatory lending are as varied as attempts to define the practice. One article describes America as having two systems of financial services: one for the well-off and the middle class, and one for the poor and near poor of all races who are struggling to get by from week to week.<sup>9</sup> Feeling intimidated by or mistrustful of reputable banks and credit card companies, the poor and near poor instead turn to pawnshops, easy-credit used car dealers, "rent-to-own" furniture and appliance dealers, consumer finance companies, and "tin men" who peddle home repairs door-to-door.<sup>10</sup>

According to a recent poll, 35 percent of more than 1,250 people interviewed throughout the United States said that banks deny loans to creditworthy applicants because of their race, religion, ethnicity, or marital status.<sup>11</sup> Sixty-one percent of the blacks interviewed said that they think banks reject loans on the basis of such criteria, compared to 39 percent of the Hispanic and 30 percent of the white respondents.<sup>12</sup> More than 75 percent said that steering minorities and women to loan products that they cannot afford is a "somewhat serious" or "very serious" problem.<sup>13</sup> These concerns are not unfounded; for example, a lender in the Southwest told a Federal Housing Administration (FHA) interviewer: "We have a lot of Mexicans in this area. We don't lend more to them because you never know when a Mexican is going back to Mexico."<sup>14</sup> HUD has reported that subprime loans are five times as common in black neighborhoods as in white ones.<sup>15</sup>

Other reports suggest that predatory lending practices may be increasing simply because unscrupulous lenders find them so easy to perpetrate. Edward M. Gramlich, a governor of the Federal Reserve Board, suggested that "the problem was that certain companies were handing out mortgages that would be very difficult for borrowers to repay."<sup>16</sup> Gramlich further explained that, after obtaining mortgage information for a neighborhood, predatory lenders cruise around looking at homes. When they find the ideal target—a house in need of repairs in which the owner has equity—they knock on the door and offer a loan large enough to cover the necessary repairs. What the owner often discovers is that the loan is loaded with extra costs. According to Gramlich, other reasons for the increase in pred-

atory loans are obvious: the fatal combination of low income and heavy expenses; the need of many borrowers for up-front money without recognizing the long-term cost of “easy credit”; an inadequate understanding about loans; excessive amounts of fine print; and outright fraud and forgery.<sup>17</sup>

Legislators, regulators, and some community activists blame predatory loans on inadequate laws and regulations. New York State regulators, for example, who are focusing on the packaging and sale of predatory loans to investors, suggest that legal requirements must be strengthened so that all loans meet sound underwriting and appraisal practices and comply with applicable federal and state consumer protection laws.<sup>18</sup> The National Community Reinvestment Coalition identifies the “root causes” of the problem as the lack of regulation, “archaic” Community Reinvestment Act examination procedures, and the shift of banks from neighborhood institutions to large national conglomerates.<sup>19</sup> One outspoken community activist believes that “[e]very city in America should follow Philadelphia’s example and ban what in most of this country remains a legal form of robbery.”<sup>20</sup>

The scope of the problem depends on whom one asks. Most industry professionals agree that there are “only a few bad apples who are ripping people off,” and that they “would like nothing more than to see [such practices] stopped.”<sup>21</sup>

### **Examining Intervention Strategies**

The most frequently found interventions included: (1) litigation by alleged victims; (2) sanctions imposed by federal and state agencies; (3) federal legislation and regulation; (4) state laws; and (5) consumer education.

the lender foreclosed on one of every five loans originated between 1984 and 1995.<sup>25</sup> Across the country, the California Department of Corporations filed a lawsuit against Household International, Inc., alleging that two of its corporate units engaged in a statewide pattern of abusive lending practices.<sup>26</sup> In the course of routine examinations, the state corporations department in 1998 also found a pattern of overcharging by Household Finance Corporation (HFC). Although HFC reportedly refunded the excess fees to borrowers and implemented a more stringent system, the problem resurfaced during another examination two years later. It had migrated from Beneficial California Inc., a consumer finance unit that Household International absorbed when HFC purchased Beneficial California's parent company Beneficial in 1998.<sup>27</sup> It may also extend to credit unions and even to tax refund loans.<sup>28</sup>

the number of loans that fall under the HOEPA.<sup>31</sup> The Treasury Department unveiled the Bush administration's plan to establish "best practices" that would be enforced by the FTC and bank regulators.<sup>32</sup> Under the leadership of HUD Secretary Mel Martinez, HUD continues to devote extensive resources to research, policy development, enforcement, consumer education, and borrower assistance initiatives.<sup>33</sup> The department's enforcement efforts include increasing staffing and funding for the Office of Fair Housing Opportunity and for Real Estate Settlement and Procedures Act (RESPA) investigations, pursuing major civil and criminal cases involving flipping and RESPA violations, promoting the effective use of a credit watch program, and implementing a web-based neighborhood watch tool. HUD has also promulgated a series of proposed policy initiatives covering everything from appraiser qualifications for FHA purchases to implementation of an FHA "scorecard" that includes fraud detection tools.<sup>34</sup> Finally, HUD has undertaken an aggressive consumer education program, including the award of \$2.5 million in special predatory lending counseling grants (2001), a proposal to expand the cost of counseling by \$15 million (2003), co-sponsorship of consumer programs, and cooperative efforts with the mortgage industry to establish a comprehensive website for consumers and alleged victims of predatory lenders.

#### *State Legislation*

At least fourteen jurisdictions have introduced legislation to address the problem.<sup>35</sup> In January 2002, state Senator John H. Bloomer of Vermont introduced a tough new antipredatory lending bill.<sup>36</sup> Other state and local legislative bodies also considered bills and ordinances to curb predatory lending practices, including the Philadelphia City Council;<sup>37</sup> the New York Assembly;<sup>38</sup> DeKalb County, Georgia;<sup>39</sup> Dayton, Ohio;<sup>40</sup> Oakland, California;<sup>41</sup> Maryland;<sup>42</sup> Colorado;<sup>43</sup> Pennsylvania;<sup>44</sup> Cleveland;<sup>45</sup> Connecticut;<sup>46</sup> the District of Columbia;<sup>47</sup> Michigan;<sup>48</sup> and North Carolina.<sup>49</sup>

#### *Consumer Education*

Education of current and future consumers offers the most potential as an intervention. The Mortgage Bankers Association of America recently unveiled a consumer education campaign called "Stop Mortgage Fraud" to teach borrowers about their rights during every stage of the mortgage transaction.<sup>50</sup> The American Association of Retired Persons announced a year-long advocacy campaign aimed at educating borrowers and promoting legislation to rein in unscrupulous mortgage lenders.<sup>51</sup> The association said that it would cooperate with other advocacy groups and law enforcement officials to make informational "borrower's kits" available to people seeking mortgages or a home equity loan. It offers a toll-free hotline and website for borrowers with questions about home equity loans.

In Philadelphia, Rep. Robert Brady (D-Pa.)—in cooperation with HUD, NWCS, and Philadelphia Councilwoman Marian Tasco—started a city-wide fraud prevention series workshop in an effort to teach consumers,

especially senior citizens, how to avoid being victimized by predatory lending practices.

At the other end of the age spectrum, some programs are geared toward future homeowners while they are still in school. The Youth Financial Education Act would authorize the Secretary of Education to allocate educational grants to state funding agencies that would provide personal financial literacy education programs for students from kindergarten through twelfth grade and train teachers and administrators.<sup>52</sup> Operation Hope's "Banking on Our Future" Program has developed a curriculum (in English and Spanish) for junior and senior high schools on such banking subjects as savings, credit, and homeownership.<sup>53</sup> One of Operation Hope's partners, the Federal Deposit Insurance Corporation, recently released literacy materials that are being included in its curriculum.<sup>54</sup>

### Providing Relief to Victims

Several relief measures have been introduced to help victims of predatory lending practices. In Louisiana, the Hibernia National Bank and Fannie Mae reportedly launched a \$2 million program to help victims of predatory lending avoid foreclosure in two parishes (counties).<sup>55</sup> The program works in conjunction with Neighborhood Housing Services to examine each candidate's credit history and determine eligibility for refinancing through Hibernia.

Illinois banking regulators agreed to work with a Chicago-based umbrella organization for community groups throughout the nation, and several banks have agreed to help the organization assist victims in central Illinois.<sup>56</sup> Furthermore, the umbrella organization also helped secure \$5 million to refinance loans in central Illinois as part of a nationwide initiative. The Central Illinois Organizing Project, the umbrella organization's local affiliate, will help identify predatory lending victims in five cities. Bank One and National City Bank have agreed to refinance the loans for the homeowners, and Fannie Mae has agreed to purchase eligible mortgages originated under the program.

Illinois banking regulators are teaming up with community groups to protect low-income homeowners from predatory lenders. The Illinois Office of Banks and Real Estate announced plans to work with three Chicago community groups to educate more than 16,000 homeowners on the city's West Side on how to spot predatory lenders.<sup>57</sup> Each homeowner will receive two letters: one from the agency that lists warning signs of bad loans, followed by a letter from the local organization that provides detailed information, including a complaint form, on how to register complaints with state regulators.

At the federal level, the FTC announced a \$60 million settlement with a California mortgage lender accused of preying on elderly homeowners.<sup>58</sup> Reportedly the government's biggest predatory lending settlement to date, the underlying suit alleged that First Alliance Mortgage Company misrepresented how interest rates on its fees would change over time, and what

fees would be assessed. More than 18,000 borrowers in eighteen states were affected.<sup>59</sup>

## Philadelphia Case Study

### *Methodology*

The PPLTF selected two data-collecting methods to conduct the needs analysis:<sup>60</sup>

- (1) Target population study, in which people who had reported abuses to a twenty-four-hour hotline were interviewed. Respondents selected for the study met three criteria: they were homeowners, residents of Philadelphia, and alleged victims of predatory lending practices. The study ultimately included 322 respondents.<sup>61</sup>
- (2) Analysis of preexisting NWCS client records for purposes of comparison with the target subjects. Researchers used the same three criteria as in the target population study and developed a thirty-eight-item data extraction form to determine the scope and causes of and the solutions to the problem identified by the caller. Of 150 cases pulled from the client database, fifty were reviewed for the study. The findings for the cohort group were consistent with those of the target population survey.

### *Results*

An analysis of the study's 322 subjects showed that the average person in the study was black, female head of household, likely to be a senior citizen, and lived in southwest, northwest, or north central Philadelphia. The home was most likely to be encumbered by one conventional mortgage, which was obtained for the purpose of home repair, debt consolidation, or both. The average interest rate was 12.3 percent for a ten-year period.

Most of the callers complained about their high monthly payments but a surprisingly 67 percent were current with their mortgage payments. However, they were likely to have been delinquent in the past twelve months or anticipated being delinquent during the next three months (58 percent). Some 83 percent of all mortgages reported in the study were conventional; of those, 20 percent were currently delinquent. Nine percent of the reported mortgages were FHA loans, but 26 percent of the FHA mortgage holders were currently behind in their payments.

In an unanticipated result, 43 percent of consumers reported that they had good credit prior to obtaining their existing loan but 89 percent obtained the loan as the result of outside solicitation or by random action.

The average participant called the hotline as a result of some form of media advertisement or by direct referral. Most called because their loan had one or more predatory features: high interest rates (89 percent), credit insurance added to monthly payment (7 percent), and life insurance escrow add-ons (5 percent).<sup>62</sup> Not enough information was collected to report on the incidence of high fees or balloon payment features.

*Disposition of the calls:* Most of the callers in the study (85 percent) were referred to a counseling agency in their area because of their current payment delinquencies or the need for review of an existing loan, advice about a new loan, or other help. Of those reporting discrimination, 6 percent filed claims with the Pennsylvania Human Relations Commission. Six percent of the callers were referred to a nonprofit legal assistance agency and 2 percent to local police agencies. One case was referred as a federal criminal complaint. Approximately 17 percent of all callers received immediate advice or some form of formal action directly from the hotline counselor before referral elsewhere. These calls generally involved estates, third-party contacts, or other forms of immediate intervention on behalf of the consumer.

#### *Limitations of the Findings*

The sampling strategy and size of the sample are insufficient to allow an extrapolation of the findings to the population of Philadelphia as a whole. Moreover, the sample instruments were not tested for validity and reliability, either in content or design. The findings do not permit a conclusion about whether predatory mortgage lending practices exist in Philadelphia or to what extent. Similarly, they do not analyze the correlation, if any, between the existence of predatory lending practices and mortgage delinquency, default, and foreclosure.

#### **What the Data Show**

The data clearly demonstrate the need for education and information for Philadelphia-area consumers. This is evidenced by the number of consumers who reported that they had good credit (43 percent) yet failed to compare products and received higher-than-market-rate loans as a result (89 percent). The data also suggest that consumers are badly informed about the mortgage lending process.

The findings suggest that many of the callers have or perceive that they have limited access to traditional credit sources. Moreover, the data show that many consumers make mortgage decisions based on random solicitation without regard to their current credit status. The fact that nearly 90 percent of the subjects failed to compare rates and mortgage products suggests that they are likely to bypass traditional credit sources without investigation.

#### **Study Recommendations**

As a result of the study, the PPLTF recommended that:

- (1) a citywide educational campaign be developed and implemented to educate and inform consumers, initially targeting residents of the most vulnerable neighborhoods;
- (2) the campaign include an expanded program of individual counseling that specifically targets existing homeowners who have been unable to access credit, counseling, advice, and legal assistance;

- (3) greater coordination be implemented among all the major players—the lending and banking industry, government, mortgage insurers, and secondary market investors. Coordinated action is critical to identifying existing products or developing new ones that are designed to meet the needs of affected consumers;
- (4) local and state funds be allocated to launch the education campaign, expand the consumer hotline, and provide ongoing research.

Partially as the result of the task force’s efforts, some of the study recommendations have been implemented or are under active consideration.

### **Legislative Efforts in Philadelphia**

On April 9, 2001, the Philadelphia City Council unanimously approved an ordinance that created a new chapter in the municipal code concerning prohibitions against predatory lending practices, based on legislation introduced by Councilwoman Tasco. It took effect on April 19, 2001.<sup>63</sup>

The ordinance identified loans of \$150,000 or more as predatory if they included the following:

- Fraudulent or deceptive acts or practices
- Loan flipping
- Balloon payments
- Negative amortization
- Excessive points and fees
- Increased interest rate upon default
- Advance payments
- Modification or deferral of fees
- Mandatory arbitration
- Prepayment penalties
- Financing of credit insurance
- Lending without home loan counseling
- Lending without due regard to repayment

Under the ordinance, businesses and their affiliates were prohibited from making, issuing, arranging, or assisting others with a high-cost loan within any twelve-month period. Potential penalties included judgment for actual damages, rescission under the TILA, and attorneys’ fees and court costs. Moreover, businesses found guilty of making predatory loans could be barred from doing business with the City of Philadelphia.

The ordinance was made moot, however, by the Pennsylvania General Assembly, which approved legislation in June 2001 that proscribes local governments from regulating lending practices.

### **Pennsylvania Addresses Predatory Loans**

Signed into law on June 25, 2001, S.B. 377 enumerates prohibited conduct, including:

- Issuing a covered loan in violation of the provision limiting covered loan terms,

Lending without due regard to repayment ability,  
Charging points for the refinancing of a covered loan with another covered loan,

Refinancing of certain low-rate loans, payments directly to home repair contractors, and sales of single premium life insurance without complying with notice and marketing restrictions.<sup>64</sup>

The exemptions under S.B. 377 are fairly sweeping and include national banks, federal savings associations, and their operating subsidiaries; also exempt are institutions and their subsidiaries incorporated under the Banking Code of 1965.<sup>65</sup> Moreover, those who are involved in “the purchase, sale, assignment, securitization or servicing of covered loans” are not liable for the actions of people originating such loans.<sup>66</sup> Under the Pennsylvania law, lenders must also report all favorable payment information to credit reporting agencies at least quarterly and verify that brokers have a valid Pennsylvania license.<sup>67</sup>

Although S.B. 377 contains no provision for criminal penalties, lenders who violate the Pennsylvania law may face up to a \$2,000 fine for each offense plus investigative costs. They also may be ordered to stop any violation and to make restitution for actual damages to borrowers. The Pennsylvania Banking Commission may suspend, revoke, or refuse to renew any license issued by the Department of Banking, and may prohibit any violators from working in any capacity for institutions that fall under the department’s purview. A private right of action is available only if a borrower can show that the lender acted purposefully, pursuant to a pattern of practice of material violations of the statute.<sup>68</sup>

### **Other Actions Taken in Philadelphia**

The following section addresses actions against predatory lending by such agencies as the U.S. Attorney’s Office, the Pennsylvania Human Relations Commission, the Pennsylvania Department of Banking, the Community Legal Services Department, and other public-interest law firms. After a brief description of each agency’s involvement, the article presents recommendations for additional action.

#### **U.S. Attorney’s Office**

An assistant U.S. attorney has the sole responsibility of coordinating the prosecution of predatory lending-related cases.<sup>69</sup> In addition, the U.S. Attorney’s Office has designated a special line of funding exclusively for predatory lending, provided in-house staff training, expanded outreach, and developed relationships with other agencies that deal with predatory lending. U.S. Attorney Patrick Meehan has observed that:

Philadelphia has long been identified as a city of neighborhoods. The gray-ing urban area provides a ripe climate for predatory lending practices such as flipping and equity stripping which can destroy the character of these neighborhoods. While there is a market for subprime lending that provides

access to credit to homeowners that may otherwise be denied, predatory practices are unacceptable. Our efforts will be toward education, prosecution, and remediation. The advantage we have is in our ability to conduct parallel (civil and criminal) investigations.<sup>70</sup>

The U.S. Attorney's Office handles cases with a federal relationship, i.e., a federally insured loan, widespread patterns of abuse (especially practices that cross state lines), wire and mail fraud, and fraud that rises to the federal level. Nevertheless, the office has expressed an interest in reviewing all cases of alleged predatory lending practices.<sup>71</sup>

*Strategies and remedies:* The U.S. Attorney's Office prosecutes or litigates allegations of fraudulent practices. Its strategies include looking for patterns of the following practices: abuse; conspiracy; misrepresenting terms, conditions, and borrower stability; aggressive and targeted solicitation; falsifying documents; bait and switch transactions; steering; failure to disclose; and mail and wire fraud. Available remedies include criminal prosecution, fines, remediation, civil action, and restitution.

*Recommendations:* The U.S. Attorney believes that better relationships among major players (prosecutors, the legal community, and those entities that receive complaints about alleged predatory practices) and the establishment of a victim assistance fund would go a long way toward reducing the incidence of predatory lending practices. Advising consumers on mortgage-related matters, enhancing financial literacy, and encouraging consumers to comparison shop will provide the best long-term solution.<sup>72</sup>

### **Pennsylvania Human Relations Commission**

The Pennsylvania Human Relations Commission has handled between fifty and sixty cases, most of which were referred by the PPLTF hotline. Half of its cases have been settled for an aggregate amount of \$300,000; individual settlements range from restructuring to forgiving the loans. According to Charles Nier, assistant chief counsel for the commission:

It was clear that there was a real issue in Philadelphia with predatory lending. But for the hotline, however, we haven't been getting a lot of cases. Many of the identified practices can violate federal and state fair housing laws. Predatory lending is an outgrowth of redlining and creates a credit vacuum. The result is reverse redlining. The problem as I see it, is that predatory lending seems to be viewed as a consumer fraud verses a fair housing issue.<sup>73</sup>

*Strategies and remedies:* Empowered by the Pennsylvania Human Relations Act<sup>74</sup> and the federal Fair Housing Act,<sup>75</sup> the commission looks for indications that a loan or transaction was unfair, that a protected class was targeted, or that the procedures and policies of the company had a disparate impact on a targeted group. Nier provided the following examples: marketing to minorities only, paperwork in English only to a largely Spanish-speaking community, targeted advertising, patterns of charging high fees, and other charges to specific populations only.<sup>76</sup> The commission

also looks for patterns among lenders and other parties in these transactions in marketing and other general practices that, when considered together, result in fair housing violations.

Through its enforcement powers, the commission has been able to negotiate remedies such as loan modifications, loan forgiveness, elimination of balloon payments and provisions, refund of fees, interest rate reductions, and loans reduced in instances where contractors failed to provide required repairs.

*Recommendations:* Among the commission's recommendations are greater coordination among local, state, and federal agencies to identify the best approaches to predatory lending issues. Nier also cited a critical need for greater public awareness and education of fair housing-related issues.<sup>77</sup>

### **Pennsylvania Department of Banking**

The Pennsylvania Department of Banking has regulatory and enforcement power over mortgage lenders that originate loans with the state. It is also responsible for enforcing recent amendments to the Bankers and Brokers Consumer Equity Act of 1989 (BBCEA)<sup>78</sup> and also relies on provisions of the Pennsylvania Unfair Trade Practices Act<sup>79</sup> to pursue action against perpetrators of predatory practices.

Department spokesman Mike Wishnow notes that "[p]redatory lending has been difficult to define. The Act, however, has done a good job at singling out specific practices, providing additional consumer disclosures, and has placed limitations on other acts."<sup>80</sup> The number of consumer complaints, approximately 6,000 a year, has remained fairly consistent over the past five years, despite enactment of the BBCEA amendments in August 2002. Wishnow attributes the stable level of complaints to the lack of consumer knowledge that reporting to the department is an option.<sup>81</sup>

*Strategies and remedies:* Remedies include fines of up to \$2,000 per violation, restitution to victims, and disbarment from mortgage lending in Pennsylvania.

*Recommendations:* Wishnow recommends educating consumers, providing disincentives to companies whose practices are not consumer friendly, and working to encourage and stimulate responsible lending from legitimate mortgage lenders.<sup>82</sup>

### **Public-Interest Law Firms**

Community Legal Services (CLS) has been involved in a large number of cases involving predatory lending practices. Strategies to settle these complaints include negotiation, individual litigation, and class action suits on behalf of consumers. CLS's ability to handle the growing number of cases has been a problem.<sup>83</sup> The local bar association has established a predatory lending panel, through which CLS trains lawyers to handle these highly specialized cases.

Many of the abuses are discovered in the course of handling some other consumer complaint such as delinquency, foreclosure, or bankruptcy.<sup>84</sup> According to CLS Managing Attorney Ivr Ackelsberg, “many consumers don’t even know that they have a predatory loan. While patterns of abuse can be found among contractors, appraisers, and title companies, our concentration is on the mortgage lenders.”<sup>85</sup>

CLS has identified a pattern of abuse in the following areas: senseless consolidation or refinancing that results in no negligible benefit to the consumer; refinancing to the same or a higher interest rate or monthly payment; abuse of credit terms, prepayment penalties, high points, or excessive settlement charges; making mortgages to people who cannot afford them by padding or falsifying income on the application form; providing loans on the basis of an overvaluation of the home; contractor fraud; and questionable relationships of parties involved in the transaction.<sup>86</sup>

*Strategies and remedies:* CLS believes that the following strategies are the most effective: filing complaints against lenders for failure to disclose and misrepresentation of credit terms under the Equal Credit Opportunity Act;<sup>87</sup> broker fee violations and servicing abuse under the RESPA;<sup>88</sup> and punitive damages for targeting bad loans to minority neighborhoods under the Fair Housing Act.<sup>89</sup>

### Class Action Litigation

The largest class action suit to date in Pennsylvania has been filed by Wayne Thomas of Kohn, Swift & Graf of Philadelphia and Joseph Jones of Williamson, Friedberg & Jones of Pottsville, on behalf of 22,000 residents of the Commonwealth of Pennsylvania.<sup>90</sup> Filed in 1997, the case alleges a continuous pattern of egregious conduct by the lender, including a mix of common law and statutory violations, namely, fraud, unlawful finance charges, unjust enrichment, common law conspiracy, and breach of warranty, in addition to two RICO<sup>91</sup> violations, one TILA<sup>92</sup> violation, and a violation under the Unfair Trade Practices Act.<sup>93</sup> Some of the questionable practices by the lender included flipping, packing, financing credit/life insurance for more than ten years, fraud based on omissions, failure to disclose daily computation of interest, and misstatement of loan terms.<sup>94</sup>

According to Thomas, “traditional contract principles should not apply to consumer contracts. Those principles assume that all parties have equal bargaining power. This [application of traditional contract principles] represents a fundamental problem that exists in all consumer litigation. One of the biggest problems in these contracts is the arbitration provision.”<sup>95</sup>

This case was brought to Thomas’s attention as the result of a referral. Additional investigation led to the discovery of what was later determined to be a pattern of abuse directed at mortgage consumers. The parties settled after the trial had progressed for three weeks.

*Recommendations:* Thomas says that statutory revisions to existing contract law are needed but that “consumer education and mandatory counseling are the real answers to putting an end to the abuses.”<sup>96</sup>

### Private Practitioners

James N. Gross, an attorney in private practice in Philadelphia, inadvertently stumbled on to a case that involved what he describes as flagrant predatory practices. Upon review of complaints from new homeowners, Gross uncovered a pattern of direct targeting to minorities and unsophisticated buyers who were dissuaded from seeking legal representation or other advice. Other problems were abundant, including the seller's questionable relationship with the lenders and the title company involved, misrepresentations and omissions on the HUD-1 statements, inflated property values, outstanding lender conditions beyond settlement, unrecorded deeds, unpaid real estate transfer and other charges, misrepresentation of borrowers' income and assets, gross misrepresentations of fact, and other questionable practices, all of which suggested a conspiracy. Gross filed the complaint under the federal RICO Act.

The court decided in favor of Gross's action to include Fidelity National, Columbia National, Countrywide Home Loans, First Town Mortgage Corporation, and Commonwealth Land Title Corporation as defendants in the suit. While Gross represents over eighty affected homeowners, the court did not accept his claim as a class action suit due to the varying circumstances of each of the individual cases.

Gross admits that the sheer magnitude of the case is overwhelming:

While I am continuing to persevere with this case, I admit that cases like this are daunting to small firms and sole practitioners. If I had to go back and do things differently, I would be much more aggressive and defiant in challenging the process; I would look at every possible theory and other laws or areas that could help in seeking recovery.<sup>97</sup>

While the RICO case is proceeding, Gross has handled each case individually by the following means: defense before foreclosure actions; obtained reappraisals of the questioned properties; adjustment of mortgages based on reappraisal values; satisfaction and relief from mortgage obligations; loan modifications; and bankruptcy actions on behalf of borrowers.<sup>98</sup>

*Recommendations:* According to Gross, Pennsylvania should require that lawyers represent purchasers in connection with real estate transactions. He also recommends that the real estate process be streamlined and tightened; certification of buyer understanding be adopted; foreclosure actions pass a merit test before they are accepted by the courts; and mortgage companies be more accountable to the sale/assignment process.<sup>99</sup>

### Pennsylvania Housing Finance Agency

The Pennsylvania Housing Finance Agency (PHFA) is responsible for administering the Homeowner's Emergency Mortgage Assistance Program (HEMAP). HEMAP was enacted in 1983 to provide relief in the form of a loan to Pennsylvania homeowners who have fallen behind in their mortgage due to circumstances beyond their control and who have a reasonable expectation of resuming full mortgage payments within two years. The

program offers relief to homeowners who have conventional, VA, or purchase money mortgages.

According to agency staff, “[t]he volume for HEMAP applications is up by eight and a half percent to nine percent for the 2001 year end report; an increase that represents about 8,900 applications, the highest ever in the history of the program.”<sup>100</sup>

PHFA does not track predatory lending practices in its applications for mortgage relief, making it difficult to correlate increases in mortgage delinquency with predatory lending.<sup>101</sup> A one-time grant of between \$2 million and \$6 million is expected to be transferred from the Temporary Assistance for Needy Families program in 2003. Ironically, the program has been denied appropriations due to its success in the recapture of loan repayments from consumers. “Despite tough times and rising delinquencies, our repayment dollars have remained steady; in 2001, our repayments totaled \$13 million.”<sup>102</sup>

*Recommendations:* As did other participants in the fight against predatory lending, PHFA staff emphasized the importance of greater amounts of consumer education, focused specifically on the importance of budgeting and saving money as well as comparison shopping for mortgages.

### **Office of Housing & Community Development**

OHCD currently spends more than \$3.7 million to fund counseling and education services administered through twenty-nine counseling agencies in Philadelphia. Funds targeted specifically to antipredatory lending efforts total \$685,000. OHCD provides training to housing counselors on how to review new and existing loans for the presence of predatory lending practices. The agency also participates in “Don’t Borrow Trouble,” a joint effort between the City of Philadelphia and Freddie Mac, by coordinating the provision of counseling and working with CLS to provide legal assistance to alleged victims. Through the city’s Neighborhood Transformation Initiative, an additional \$750,000 has been allocated toward the development of a two-tiered antipredatory loan product.

*Strategies and remedies:* The city’s approach is two-prong: (1) to promote education and counseling on how to avoid becoming a victim to predatory lending practices, and (2) to provide existing homeowners with access to mortgage products through responsible subprime lending and through the refinancing of bad loans.<sup>103</sup>

Although OHCD, through its network of counseling agencies, has received an increase in the number of complaints about predatory lending practices,<sup>104</sup> most of the allegations do not rise to the level of being considered predatory under current legal standards. Many loans are simply bad consumer choices and highlight the need for counseling and education.<sup>105</sup>

*Recommendations:* OHCD Director Deborah McColloch suggests that a continuing advertising program is necessary to make consumers aware and to inform them of available services.<sup>106</sup> Under the leadership of OHCD Public Affairs Director Emily Marie Romin, the city, in cooperation with

Freddie Mac, currently advertises through paid and public announcements and water and gas bill stuffers. McColloch also says that greater participation by private industry is critical to reducing the number of reports.<sup>107</sup> "What's important is that all of us need to work together to develop and participate in a range of options to help homeowners avoid victimization," she says. "The city has remained firm in doing that."<sup>108</sup>

### **Credit Counseling**

The number of reports of predatory loans has increased for both the PPLTF consumer hotline and the NWCS case files. The PPLTF hotline has received nearly 4,000 complaints since its inception, while NWCS has seen about 700 of these cases within the past several years. Although approximately 6 percent of the complaints involve predatory lending practices, the remainder fail to satisfy current legal standards for such practices. Many of the complaints suggest bad consumer choices. Even more astounding is the fact that many of the alleged victims had excellent credit ratings at the time of the transaction and were eligible for much better terms. In part, this seems to demonstrate the failure of many consumers to understand their credit and financial position and the importance of comparison shopping for mortgage products.

*Strategies and remedies:* Counseling fulfills multiple objectives: reviewing the documents to uncover predatory practices; immediately responding to any delinquency or impending foreclosure; reviewing the consumer's financial position and, where appropriate, negotiating more favorable terms with the existing lender; assisting with refinancing of a more suitable product; filing for mortgage relief; providing credit, budget, and money management counseling; and referring the case for legal or criminal action. Education is provided to groups of consumers on mortgage-related matters, including budgeting, money management, comparison shopping, credit, and how to avoid victimization.

As the result of twenty-three years of overseeing real estate transactions, the author has learned that the victims of consumer fraud tend to fall into three categories: those who know too little (who need education and information), those who know too much (who are afraid to ask questions), and those who expect something for nothing (who are attracted to promises of "buy now, don't pay until 2005"). The goal in educating consumers is to provide enough information to make informed decisions, but also to change habits, patterns, and characteristics that lead to victimization. Education and information alone do not guarantee changes in consumer behavior.

NWCS focuses on common sense strategies and techniques in avoiding victimization. In an attempt to encourage consumers to use common sense, logic, and reasoning, the author developed the FACE IT THEORY, a copyrighted concept that is outlined below:

### FACE IT THEORY '2000

- F Free is too expensive (if it seems too good to be true, it usually is)
- A Act like you know that (don't just repeat the theory, use it; ask yourself why would one lender say yes, when everyone else says no?)
- C When in doubt, CALL somebody (seek outside advice)
- E Educate yourself in matters that relate to the goods you expect to consume
- I Get up to date, relevant information
- T Take Charge (be proactive, educated, and ready)

Interchangeably, the I and T can be replaced with

- I If the person says that the offer can't wait (until you seek available advice) THEN
- T THROW THEM OUT!

### Criminal Prosecutions

As noted in the introduction, the author also has considerable experience in reviewing loans and transactions and identifying fraud or questionable practices. As a general practice, traditional methods of identifying fraud are used in Ms. Lewis's investigations together with specific scientific tests to confirm or deny the presence of fraud or other allegations. These may include compliance and regulatory issues; questionable transactions; standards and practices; valuation; conspiracy among the parties; standards of care; mortgage reasonableness; onerous terms and conditions; hidden participation among parties; and unusualness in practice, among other things.

The most important aspect of this work involves the ability to obtain valid, reliable, and admissible evidence. The work requires extensive research and investigation and is different from that of the lawyer, whose focus is on representing the client.

The case of *United States v. Milton Fisher* provides a vivid example of predatory lending practices that rise to the level of criminal charges and demonstrates how predatory loans can be measured. Fisher pleaded guilty on February 4, 1997, to charges of bribery concerning a program receiving federal funds in violation of 18 U.S.C. § 666 and to income tax evasion. Fisher's bribery conviction stemmed from his dealings with two officials of the Logan Assistance Corp. (LAC), a nonprofit established by the city to help relocate residents of a Philadelphia neighborhood that was afflicted with subsidence. LAC bought the literally sinking houses with federal funds for an average amount of \$30,000 and gave residents another payment, generally \$20,000, to bridge the gap between their Logan house and the cost of a comparable home.

Fisher was an electrician who bought and sold residential properties to supplement his income. During a fifteen-month period beginning in January 1992, he paid two LAC officials \$1,500 each whenever a Logan resident bought one of his properties with LAC funds. In return for a total of

\$57,000 in bribes, the LAC officials subverted the HUD guidelines by promoting Fisher's properties instead of permitting residents to relocate to homes of their choice. They certified as decent, safe, and sanitary homes either that had not been fully inspected or that had defects in their major systems. In some cases, Fisher required a mortgage from the residents, often charging excessive points or interest, because their federal subsidy was insufficient.

To provide the necessary information for the U.S. Attorney's Office, it was necessary to (1) ascertain the type, interest rate, and term of the mortgage and compare them to market rates prevailing at the time of application; (2) obtain the credit history of the applicant in order to determine whether the mortgage rate assigned was "reasonable" under similar circumstance at the time of application; (3) ascertain which recipients, if any, were in a position to obtain permanent financing, where balloon mortgages were in place; (4) ascertain the rates and terms given to borrowers with similar credit profiles who purchased mortgages (non-Fisher loans) on the open market to determine what was *actual* during the period in question and compare them to the rates and terms, which may have been *possible*, given to those residents with Fisher loans to make an analysis of what was *probable* under the circumstances; (5) consider whether points were a part of the transaction and factor in their value with respect to the Fisher loans; and (6) given the above analysis, apply a blanket remedy to residents negatively affected by the Fisher loan transaction.

In this case, the interest rate, terms, conditions, or all three in the test cases were "unreasonable" based on the circumstances of the homeowners at the time of mortgage application; there were also false or excessive costs associated with the transactions.

Fisher was sentenced to pay over \$100,000 in restitution, and the mortgages in question were reduced, forgiven, or rewritten in line with reasonable rates and terms.

### **Current Work of PPLTF**

Current efforts of the task force include a massive outreach and education campaign designed to help educate and inform consumers through a website<sup>109</sup> that features consumer tips, relevant legislation, information on where to go for help (including links to appropriate government and private nonprofit agencies), and a twenty-four-hour consumer hotline. The hotline screens calls and provides advice on where consumers may report abuses, make complaints, and receive referrals for legal, criminal, or housing counseling assistance through a network of approximately fifty referral agencies.

The task force establishes alliances with churches, senior centers, civic and nonprofit groups, and government agencies to present a series of informational seminars. Topics include how to determine creditworthiness, compare loan terms, achieve financial literacy, spot unscrupulous practices, get fair housing advice, avoid becoming a victim, use counseling if nec-

essary, review documents before signing loan agreements, get help, and evaluate alternative responsible lending products.

PPLTF continues to work in partnership with private industry and local, state, and federal government to identify existing products or to help to create responsible product alternatives for consumers who are vulnerable to predatory practices. PPLTF will publish aggregate data obtained through the consumer hotline and other sources. These data become a very valuable source in determining where to concentrate efforts and in informing the public about market and other changes in the Philadelphia industry.

### Analysis

Although legislation, regulation, administrative action, litigation, remediation, counseling, and other intervention strategies are needed to provide immediate remedies to victims of predatory lending practices, educating consumers will provide the long-term solution to reducing the number of occurrences. The study suggests a widespread lack of knowledge about mortgages and related matters in the target population and characteristics, patterns, and behaviors in this group that are likely to lead to victimization.

Philadelphia is ripe with excessive predatory lending practices. The existence of an aging housing stock (75.4 percent are pre-World War II), coupled with an aging population (22.3 percent currently are older than fifty-five and 12 percent will be fifty-five within ten years), sets the stage for victimization.<sup>110</sup> Older women (aged sixty-two and older), reportedly a high-risk group, represent 30.4 percent of Philadelphia's total population. A high percentage of low-income households (47.4 percent earning less than \$35,000), a large minority population (55 percent), and high equity levels (44.3 percent homes not mortgaged, 45 percent occupied homes since 1989) have also been shown to be factors in the proliferation of alleged victimization.

An analysis of the data suggests that racism, sexism, and ageism play a large role in creating the climate that encourages victimization by way of predatory lending practices in connection with mortgages in Philadelphia. Attitude prejudice is the "ism" that seems to most closely apply. The data suggest that predators prey on minority communities based on the assumptions that minorities are unsophisticated with respect to financial matters, deserve to remain in depressed communities, and are underrepresented and undervalued by "majority" society. This example of prejudice is shown through the use of strategic marketing tactics that target neighborhoods with large minority populations. It is further evidenced through the application of higher interest rates, questionable terms and conditions, and higher fees in connection with mortgage transactions. These practices are justified by the claims that these neighborhoods present "higher risk" factors in the delivery of products to these communities.

Sexism and ageism have also been shown to have an impact. Women, especially those over the age of fifty-five, have frequently been identified

in preliminary studies as reporting victimization through predatory lending practices at higher levels than any other groups.

### **Why Consumer Education?**

A market correction is possible by shifting the paradigm and creating market change in the industry through the force of consumers who are empowered by training and education. Ms. Lewis assumes that the targeted application of consumer education will create more informed borrowers that will lead to individual financial stability and, overall, greater competition within the mortgage market. More competition would lead to the development and sale of socially responsible mortgage products.

Other tactics at addressing the problem work in theory but fail in practice. Legislation, as a reactive measure, is exhausting to achieve, is frequently bogged down by other political issues, and may lose its value by the time it is passed because those intended to be penalized or subject to such measures are usually ten steps ahead of the legislation. Regulation is of questionable value at best. Predators are constantly studying the loopholes, and any penalties, which often are not high enough to discourage irresponsible practices, are viewed only as a cost of doing business. Development of new mortgage products is expensive and time consuming.

Consumer education can be offered to individuals in groups; can be measured easily, changed, altered, or adapted based on immediate, on-the-spot customer feedback through an open-systems approach; and does not require an exhaustive amount of time on the part of consumers. In addition, creating financial stabilization for residents leads to a healthy tax base for local government.

### **Open-Systems Approach**

An open-systems approach to the delivery of products places the consumer at the center of the process by testing and measuring its effectiveness and relevance on the basis of consumer feedback. It is consumer driven and encourages feedback. In systems thinking, feedback is a broader concept—it means any reciprocal flow of influence. Effective use of external feedback affects the internal culture and structure of the marketplace, thereby always keeping the needs of the consumer at the forefront.

Consumers are a critical factor in maintaining balance and structure as their constantly changing needs influence the provision of goods and services. Educated consumers can influence the marketplace, thereby initiating a shift that can result in cost benefits to all. Government would become an indirect beneficiary, as financial stability, with respect to maintaining homeownership, increases and helps to maintain a healthy tax base. Cost benefits to private industries include more informed consumers making better, more responsible choices and having greater money management skills, which leads to lower delinquency rates. This would produce a healthier consumption of products and services.

Market changes with respect to mortgage interest rates, revenue bonds, and underwriting criteria all have a huge impact on the fluidity of mort-

gage money and access to credit on the part of consumers. Based on an open-systems approach, educating consumers leads to the purchase of products. Educated consumers participate in the drive to put their needs onto the market, which leads to new product development, and the continuum becomes circular and perpetual. See Figure 1.

### **Goal of Delivery of Consumer Education**

The goal with respect to consumers is to raise the level of knowledge of mortgage-related matters and victimization behaviors, patterns, and characteristics in an effort to help consumers make informed decisions in relation to these issues. Specific aims should be targeted at increasing consumer knowledge of mortgage-related matters; helping consumers to identify tactics and practices designed to deceive consumers; and helping consumers to identify and reduce habits, patterns, and behaviors that increase consumer risk of victimization.

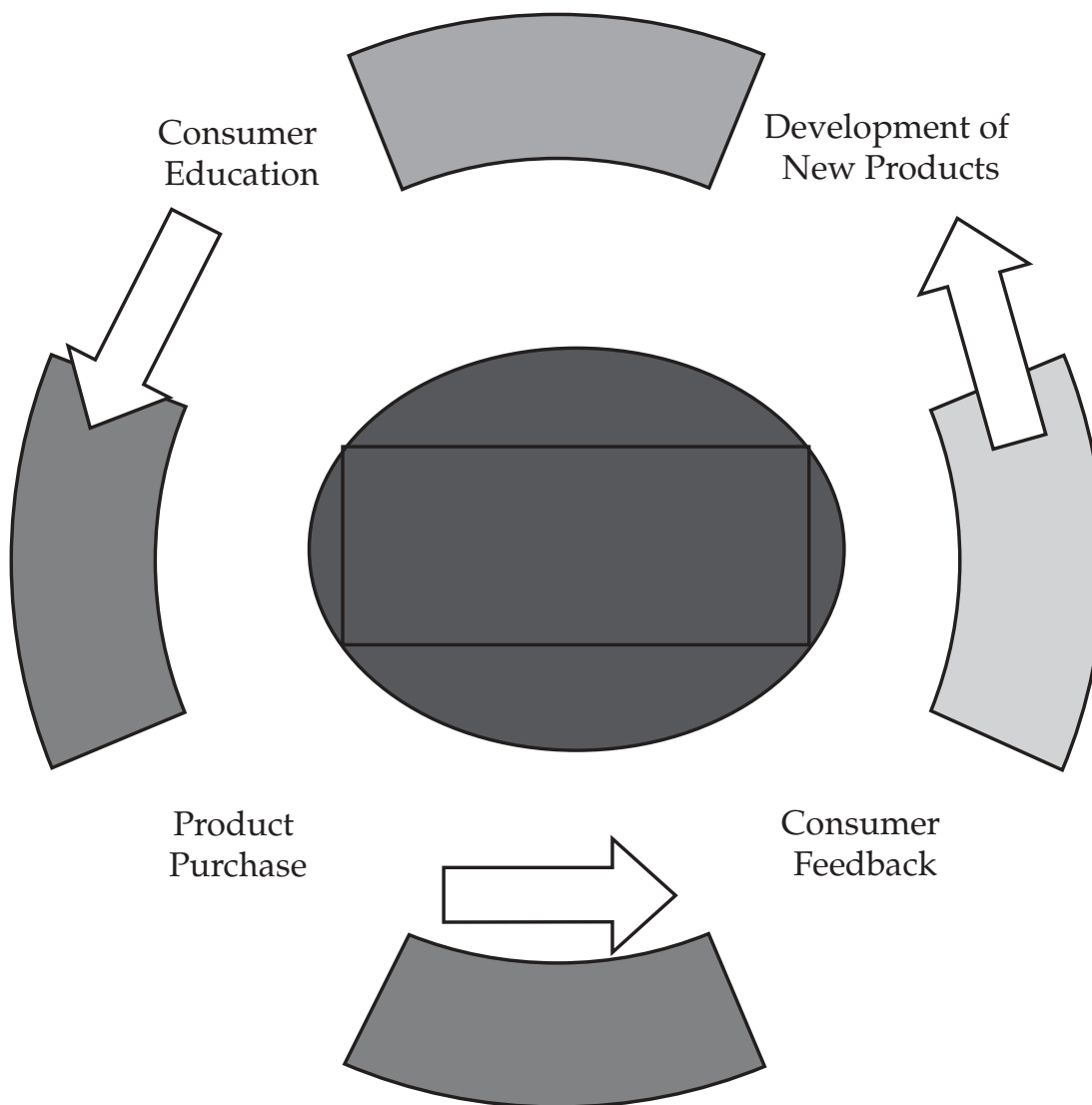
Prior to 1990, the mortgage lending environment in Philadelphia was conservative, especially in terms of the availability of mortgages in the low- and moderate-income community. Some loans seen in the marketplace at that time might be considered predatory by today's standards. By 1992, the mortgage industry changed its marketing mix to attract low- and moderate-income buyers. Lenders scrambled to create products, the secondary market followed by reducing underwriting criteria, and cities created down payment and settlement grant programs to encourage homeownership among this population. Many of those initiatives came with the mandatory provision of housing counseling. Over time, with more informed consumers, competition by the mortgage industry to attract buyers was stiff. This resulted in competitive pricing of mortgage products in the prime market. The proliferation of predatory lending practices in first mortgages appears virtually nonexistent today due to a variety of factors, the most important of which is consumer education.

### **Further Research**

Further research, currently underway, is designed to study the habits, patterns, and pitfalls that create an environment that leads to victimization by way of predatory lending practices, and to identify specific learning-area deficiencies in consumers with respect to real estate, housing, and mortgage matters. The objective is to develop an appropriate learning tool that would provide education designed to increase knowledge of mortgage-related concepts, terms, habits, patterns, and characteristics that lead to victimization of consumers at risk. Additional research should be initiated to determine the correlation, if any, between the rise in reports of predatory lending practices and the high foreclosure rates in Philadelphia.

### **Conclusion**

Based on the findings of the study, it appears that the scope of the problem of residents in Philadelphia who report that they are victims of pred-

**Figure 1.** Feedback in an Open-Systems Approach

atory lending practices in connection with mortgages may be pervasive. Although additional research is necessary, the results of this review suggest that there is a rise in the number of reports among those residents fifty-five and over, females, minorities, and low-income homeowners. The literature review and analysis of preexisting data appear to support these findings.

The findings suggest that the causal factors are lack of education, access to credit, and responsible lending products. They also suggest that educating consumers and developing responsible mortgage products are strategies or approaches that may be helpful in reducing the number of residents who report that they are victims.

Notwithstanding the need for strong legislation, regulation, and administrative action, the review suggests that the real cause of the problem of the rise in predatory practices among those reporting lies in the lack of education in mortgage matters and knowledge about characteristics and habits that lead to victimization on the part of consumers. In areas where delivery of education to consumers is high, reports of victims falling prey to predatory lending practices are very low in number. While extremely helpful in regulating the mortgage industry, no amount of legislation, regulation, or administrative action on the part of government will have the same effect as educating consumers. With educated consumers empowered to make informed decisions, the market will have to compete for their business, thus ultimately leading to a market correction.

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1. PPLTF members include U.S. Sen. Arlen Specter, U.S. Rep. Robert A. Brady, State Rep. Dwight Evans, and City Council members Marian Tasco, Jannie Blackwell, and W. Wilson Goode Jr. Public and private agencies include Pennsylvania Office of the Attorney General, Pennsylvania Human Relations Commission, Philadelphia Office of the City Solicitor, Philadelphia Office of Housing and Community Development, Fannie Mae, Radian Guaranty, Association of Real Estate Brokers of Philadelphia, GMAC Mortgage, The Reinvestment Fund, Housing Association of Delaware Valley, Rodriguez & Richards, Community Legal Services, Metropolitan Philadelphia Policy Center, and ACORN.

2. See U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, REPORT OF ACTIONS TO UNDERSTAND AND PREVENT PREDATORY LENDING IN BALTIMORE CITY AND THROUGHOUT THE NATION (June 2002).

3. See generally Nationalities Service Center, available at <http://www.nationalitiesservice.org>.

4. *When the Predators Come Knocking*, 22 MULTINAT'L MONITOR 10, 10-12 (2001).

5. See *Hunting the Loan Sharks*, 364 ECONOMIST 55, 55-57 (2002).

6. 15 U.S.C. § 1639 (2003).

7. N.C. GEN. STAT. § 24-10.2. See Martin Eakes, *North Carolina Anti-Predator Law: A Good Model for Other States*, 116 AM. BANKER, Apr. 6, 2001, at 16.

8. Bill No. 715A, Philadelphia Code Ch. 9-2400, "Prohibition Against Predatory Lending" (effective date Apr. 19, 2001; rescinded by subsequent action of Pennsylvania General Assembly). See Jennifer Gordon and Erick Bergquist, *Philli Anti-Predatory Law Targets Non-Bank Lenders*, 166 AM. BANKER, Apr. 6, 2001, at 5.

9. See Michael Hudson, *The New Loan Sharks*, 212 DOLLARS & SENSE, July-August 1997, at 14-18.

10. See *id.* at 16.

11. See Nicole Duran, *Poll: 35% Think Lenders Discriminate*, 167 AM. BANKER, Mar. 1, 2002, at 3-4.

12. *Id.*

13. *Id.*

14. S. Cochea, *House Flip-Flop Would Change Predatory Lending Mix*, 94 ABA BANKING JOURNAL 7, 7–8 (2002).

15. See *Hunting the Loan Sharks*, *supra* note 5, at 56.

16. See Editorial, *A Warning from The Fed, But for Whom?*, 14 BUS. J. 16, 38 (2002); see also Edward M. Gramlich, *Regulatory Actions Can Slow Predatory Lending*, 14 BUS. J. 26, 27 (2000).

17. See Charles McChesney, *Federal Reserve Member Warns of Predatory Lending*, 14 BUS. J. 16, 16 (2000).

18. See Kevin Guerrero, *N.Y. Working on Guidelines to Cut Predatory Lenders from Securitization Funds*, 135 AM. BANKER, May 16, 2000, at 4.

19. Ben Jackson and Nicole Duran, *Stronger Anti-Predator Tests Urged in CRA Exams*, 166 AM. BANKER, Oct. 30, 2001, at 4; see also [www.ffhsj.com/fairlend/nrcr.htm](http://www.ffhsj.com/fairlend/nrcr.htm).

20. Gordon and Bergquist, *supra* note 8 (quoting Maude Hurd, National President of the Association of Community Organizations for Reform).

21. See *In Brief: Predator Bill Clears MD Panel*, 167 AM. BANKER 67, 12 (Apr. 9, 2002), available at [www.americanbanker.com/search.html](http://www.americanbanker.com/search.html) (quoting Neill Friendly, new president of the National Association of Mortgage Brokers).

22. See Zamgba J. Browne, *Agreement Between Unscrupulous Lender and Banking Department Under Attack*, 90 N.Y. AMSTERDAM NEWS, Sept. 9, 1999, at 11.

23. *Id.*

24. *Id.*

25. See Gordon and Bergquist, *supra* note 8.

26. See *id.*

27. See *id.*

28. See Nicole Duran, *D.C. Speaks: Activists Find New Target—Credit Unions*, 167 AM. BANKER, Mar. 1, 2002, at 1–3; *Tax Refund Loans Called Predatory*, 167 AM. BANKER, Feb. 1, 2002, at 5.

29. 15 U.S.C. § 1639 (2003) (HOEPA); 15 U.S.C. §§ 1601–1666j) (TILA). Most of the following section on HOEPA/Section 32 mortgages is based on information contained in the FTC’s website at [www.ftc.gov/bcp/online/pubs/homes/32mortgs.htm](http://www.ftc.gov/bcp/online/pubs/homes/32mortgs.htm).

30. The \$488 figure is for 2003. This amount is adjusted annually by the Federal Reserve Board, based on changes in the Consumer Price Index. See [www.phil.frb.org/publicaffairs/circulars/5575.html](http://www.phil.frb.org/publicaffairs/circulars/5575.html) (text of Federal Reserve Board circular).

31. See [www.clevelandfed.org/bsr/conditions/v1n2/subprime.htm](http://www.clevelandfed.org/bsr/conditions/v1n2/subprime.htm); Edward Wheeler, *Predatory Lending Ordinances Acted Upon*, 62 MORTGAGE BANKING 3, 11 (2001); [www.federalreserve.gov/boarddocs/speeches/2001/20010405/default.htm](http://www.federalreserve.gov/boarddocs/speeches/2001/20010405/default.htm) (speech by Federal Reserve Governor Gramlich outlining the Board’s rationale for change); Erick Bergquist, *Subprime Lenders Hope Fed Changes Simplify Biz*, 166 AM. BANKER, Dec. 27, 2001, at 11.

32. Rob Blackwell, *Treasury Predator Plan Eyes Uniform Standard*, 166 AM. BANKER 216, 1 (Nov. 9, 2001), available at [www.americanbanker.com/search.html](http://www.americanbanker.com/search.html).

33. See HUD REPORT, *supra* note 2.

34. A partial listing of HUD’s proposed rules includes appraiser qualifications for placement on FHA single-family appraiser roster (FR-4620); prohibition of property flipping in HUD’s single-family mortgage insurance programs (FR-4615); updated RESPA guidance clarifying lender fee disclosure require-

ments, prohibiting the markup of settlement costs and fees not commensurate with services; published mortgagee letter 02-12 (housing counseling notification requirement); and proposals on improving the process of obtaining mortgages, revising the FHA credit watch/termination initiative, prohibiting predatory lending practices, limiting FHA loan fees, developing an appraiser watch initiative, establishing lender accountability for appraisals, developing a mortgagee letter on due diligence in acquiring loans, and implementing an FHA scorecard that features fraud detection.

35. For a current list of state and local actions on predatory lending, see the Mortgage Bankers Association site on state and local initiatives at [www.mbaa.org/state\\_update/states.asp](http://www.mbaa.org/state_update/states.asp).

36. See *In Brief: Vermont Senate Mulling Anti-Predator Bill*, 167 AM. BANKER, Jan. 16, 2002, at 12-13.

37. See Ordinance 715, adding new chapter 24-9000, "Prohibition of Predatory Lending," available at [www.mbaa.org/state\\_update/2001/pa/phila\\_b0715final.pdf](http://www.mbaa.org/state_update/2001/pa/phila_b0715final.pdf) (copy of Philadelphia ordinance).

38. See *In Brief: New York Predator Bill Called Unnecessary*, 167 AM. BANKER, Jan. 14, 2002, at 17-18.

39. Erick Bergquist and Robert Julavits, *Novel Demonstration for Georgia Predator Bill*, 167 AM. BANKER, Feb. 14, 2002, at 17.

40. Dayton (Ohio) Ordinance 029990-01 (enacted July 11, 2001).

41. City of Oakland Ordinance No. 12361 C.M.S. (adopted Oct. 2001), upheld by *Am. Fin. Serv. Ass'n v. City of Oakland*, No. 0277388 (Super. Ct. Alameda Cty., June 21, 2002).

42. See *In Brief: Predator Bill Clears MD Panel*, *supra* note 21, at 12.

43. See Damian Paletta, *Anti-Predator Bill Introduced in Colorado*, 167 AM. BANKER, Feb. 1, 2002, at 12.

44. Pennsylvania S.B. 377; see discussion *infra*.

45. Cleveland, Ohio, Ordinance No. 737-02 ("predatory lending" ordinance takes effect after judge for Cuyahoga County Court of Common Pleas denies request for a temporary injunction to block implementation).

46. See Commentary, *Three States Pass Anti-Predatory Lending Legislation*, 59 J. HOUSING & COMMUNITY DEV., Jan/Feb. 2002, at 9.

47. 49 D.C. Reg. 3809, *Predatory Lending*, Apr. 26, 2002.

48. Pub. Act No. 660-2002, *Consumer Mortgage Protection Act* (H.B. 6121) (effective Dec. 23, 2002).

49. See Eakes, *supra* note 7, at 16.

50. See [www.stopmortgagefraud.com](http://www.stopmortgagefraud.com) (Mortgage Bankers Ass'n website on program); Erick Bergquist and Damian Paletta, *HUD, MBA Announce Efforts to Combat Predatory Lending*, 167 AM. BANKER 49, 1 (Mar. 13, 2002), available at [www.americanbanker.com/search.html](http://www.americanbanker.com/search.html).

51. Rob Garver, *AARP Joins Struggle with Loan Predators*, 166 AM. BANKER 74, 5 (Apr. 18, 2001), available at [www.americanbanker.com/search.html](http://www.americanbanker.com/search.html). See AARP website on home loans, available at <http://www.aarp.org/consumerprotect-homeloans>.

52. See Diane M. Casey, *The Dream Business*, 11 COMMUNITY BANKER, Feb. 2002, at 8; see also [www.corzine.senate.gov/press\\_office/record.cfm?id=186559](http://www.corzine.senate.gov/press_office/record.cfm?id=186559) (press release issued by one of the bill's sponsors).

53. *Id.*; see also [www.bankingonourfuture.org](http://www.bankingonourfuture.org) (Operation Hope website).

54. See *supra* note 50.

55. See *Hibernia in \$2 Million LA. Home Refinance Program*, 166 AM. BANKER 229 (Nov. 30, 2001), available at [www.americanbanker.com/search.html](http://www.americanbanker.com/search.html).

56. Ben Jackson, *Help Pledged to Activists in Predator Fight*, 166 AM. BANKER 208, Oct. 30, 2001, at 6.

57. See *id.*

58. J. Smith, *Lending on the Cutting Edge*, 94 ABA BANKING J. 5, 12 (2002).

59. *Id.*

60. F.I. SORIANO, CONDUCTING NEEDS ASSESSMENT: A MULTIDISCIPLINARY APPROACH (1995) (for a general discussion of methodology).

61. The instrument developed for the purpose of the needs assessment was a thirty-two-item questionnaire. The following process was used: (1) A problem statement was developed to identify the issue; (2) A target population survey instrument was designed; (3) A sampling strategy was chosen; (4) Permission was obtained from the source necessary to conduct the interviews; (5) A script was developed as a guide to conduct the telephone interviews; (6) PPLTF prepared a list of callers daily; (7) Subjects were selected from of list of residents who had called the PPLTF hotline; (8) Selective random sampling was used by way of every fourth caller with the first caller selected at random; (9) The completed surveys were gathered; (10) A statistical analysis of the data was conducted through the use of SPSS and Microsoft Excel software; (11) An analysis and ultimate opinion of the findings was rendered; and (12) A report of the findings was prepared. The data were identified by identification number, coded, and analyzed through the use of statistical software.

62. See *id.*

63. See [www.mbaa.org/state\\_update/2001/pa/phila\\_b0715final.pdf](http://www.mbaa.org/state_update/2001/pa/phila_b0715final.pdf) (copy of municipal ordinance).

64. See Pa. S.B. 377, enacted June 25, 2001; see also [www.respro.org/Library/State\\_Bill\\_Chart\\_2001\\_August.doc](http://www.respro.org/Library/State_Bill_Chart_2001_August.doc) (text of act).

65. See *id.*

66. See *id.*

67. See *id.*

68. See *id.*

69. Michael Blume, the attorney assigned to predatory loans, works under the direction of Jim Sheehan, associate U.S. attorney for civil programs. Sheehan has a successful track record in prosecuting white-collar crime.

70. Telephone Interview with Patrick Meehan, U.S. Attorney (Jan. 7, 2003).

71. *Id.*

72. *Id.*

73. Telephone Interview with Charles Nier, Assistant Chief Counsel, Pennsylvania Human Relations Commission (Jan. 6, 2003).

74. See Pennsylvania Human Relations Act, PA. STAT. ANN. tit. 43, § 951 (West 1955).

75. See 42 U.S.C. § 3604(a) (2003) (discrimination in the sale or renting of housing and other prohibited practices).

76. See Telephone Interview with Charles Nier, *supra* note 73.

77. *Id.*

78. See 15 U.S.C. § 687.

79. Unfair Trade Practices Act, PA. STAT. ANN. tit. 73, § 201–9.2 (2002).

80. Telephone Interview with Mike Wishnow, spokesperson, Pennsylvania Department of Banking (Jan. 7, 2003) (referring to 15 U.S.C. § 687).

81. *Id.*
82. *See id.*
83. Telephone Interview with Ivr Ackelsberg, Managing Attorney, Community Legal Services of Philadelphia (Jan. 13, 2003).
84. *Id.*
85. *Id.*
86. *Id.*
87. *See* 15 U.S.C. § 1691.
88. 12 U.S.C. § 2601.
89. *See* 42 U.S.C. §§ 3604(a), 3605.
90. *See* *Stewart v. Assocs. Consumer Disc. Co.*, 183 F.R.D. 189 (E.D. Pa. 1998).
91. *See* Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961–1968 (2003).
92. *See* 15 U.S.C. § 1605.
93. *See* PA. STAT. ANN. tit. 73, § 201–9.3 (West Supp. 2003).
94. *Stewart*, 183 F.R.D. at 189.
95. Telephone Interview with Wayne Thomas (Jan. 14, 2003).
96. *Id.*
97. Telephone Interview with James N. Gross (Jan. 8, 2003).
98. *See* *Smith v. Berg*, 247 F.3d 532 (3d Cir. 2001).
99. *See* Telephone Interview with James N. Gross, *supra* note 97.
100. Telephone Interview with Daryl Rotz, Director of the Homeowner’s Emergency Mortgage Assistance Program, Pennsylvania Housing Finance Agency (Jan. 8, 2003).
101. *Id.*
102. *Id.*
103. Telephone Interview with Deborah McColloch, Director, Office of Housing & Community Development, City of Philadelphia (Jan. 13, 2003).
104. *Id.*
105. *Id.*
106. *Id.*
107. *Id.*
108. *Id.*
109. *See* [www.philatask.com](http://www.philatask.com).
110. *Id.*

## Appendix

**Figure 2.** Content Analysis

Areas of Research	Instrumental Numbers of Questions	Questions Types of Questions	Description of Data to be Obtained
<p><b>Area One:</b> Deals with the scope of the problem. It includes information and other variables that will help you answer the first research question</p>	<p>7, 24, 25</p> <p>18</p> <p>1, 2, 4, 8, 12, 14, 15, 23</p> <p>3, 5, 6, 9, 10, 13, 19, 20, 21, 22</p> <p>11, 16, 17</p>	<p>Check all that apply</p> <p>Likert</p> <p>Open-end</p> <p>Closed-end</p> <p>True/False</p>	<p>Data will indicate respondents' perception of the size, intensity, and importance of the problem; whom the problem affects; frequency and/or prevalence of the problem; and any related demographic information.</p>
<p><b>Area Two:</b> Deals with possible contributing factors or causes of the problem</p>	<p>29, 30</p> <p>27</p> <p>26, 28, 31</p>	<p>Rank Order</p> <p>Open-end</p> <p>Closed-end</p>	<p>Data will indicate the respondents' perception of the causes of the problem; which causal factors are most important, which ones should be addressed, etc.</p>
<p><b>Area Three:</b> Deals with possible or proposed resolutions of the problem</p>	<p>32</p>	<p>Rank Order</p>	<p>Data will identify suggestions for interventions and other strategies to resolve the problem or address one or more causal factors.</p>