



May 7, 2007

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20522

**RE: Docket No. 2007-09  
72 Fed. Reg. 10533 (Mar. 8, 2007)**

Dear Sir or Madam:

New South Federal Savings Bank thanks you for this opportunity to submit comments in response to the Proposed Statement on Subprime Mortgage Lending.

The proposed Statement accurately notes that subprime borrowers are especially susceptible to the ups and downs of the economy as a whole and the real estate market in particular. Over the past decade, historically low interest rates combined with the availability of new products tailored to the subprime market and the appetite of investors for risk-minimizing securitizations of these products to achieve a dramatic and overwhelmingly positive result: the highest levels of home ownership in American history.

Even under the most advantageous circumstances subprime borrowers will consistently experience a higher risk of default than prime borrowers. For the reasons detailed below, we believe that the underwriting criteria and product types available in the subprime market are neither inherently dangerous to the borrowers nor in need of new regulation.

**Voluntary tightening of underwriting standards is preferable to new regulation.**

Prudence and experience with previous downturns in the housing market have prompted the mortgage lending industry to continually review their underwriting standards, particularly with the subprime market. New South's own underwriting standards are reflective of this:

- It has always been our policy that borrowers must have the ability to repay any loan we make or purchase, including "low-doc" loans.
- New South's criteria are to underwrite debt-to-income (DTI) ratios including the exact costs of taxes and insurance included in the payment – even when borrowers decline to escrow.
- Each loan approval is issued with a request and offer to include escrows for taxes and insurance whenever possible. Efforts to educate the borrower and induce the broker are ongoing during the loan approval process. In some cases involving

unsophisticated higher-risk borrowers, inclusion of escrows can figure substantially in the final credit decision.

- The Statement makes reference to 2/28 loans. New South's 2/28 loans have never been very productive, due to our conservative standards of underwriting, our analysis of borrowers' ability to repay, and the fact that such products are not so attractive as to steer customers away from standard fixed-rate products.

### **“Subprime” is not synonymous with “predatory.”**

Loans made to borrowers whose credit histories reflect an increased likelihood of default are deemed “subprime.” Low interest rates during the past decade have played an important role in expanding homeownership and the general availability of credit to the subprime market. However, *low rates are simply not sufficient to provide subprime borrowers with home financing while simultaneously protecting lenders against increased risk of default.* This is particularly true in underserved communities and when lending to unsophisticated borrowers.

Accordingly, the mortgage industry developed an extensive “toolkit” of loan terms to accommodate the subprime market. Now, these loans terms that have helped thousands of Americans to buy a home are the subject of criticism, much of it unfounded.

For example, so-called “teaser” rates (lower monthly payments during the first few months of repayment) have helped new homeowners avoid the “payment shock” that occurs when buying a new home: for example, the shock of finding that one more lease payment is due on their former residence at the same time the first payment is due on the new home; moving expenses; new utility deposits; missing work on moving days; replacing food spoiled during the move; and on and on. Subprime borrowers are more likely to lack either the savings to cover these additional expenses or the financial sophistication to properly anticipate them. Loan terms such as teaser rates help subprime borrowers manage these realities.

Unlike subprime loan features which are specifically tailored to the subprime borrower, all types of loan products are subject to the predatory practices of unscrupulous lenders. Admittedly, practices such as loan flipping or fraud and deception about the true nature of the loan product hit subprime borrowers especially hard. It is equally true that subprime borrowers may be particularly susceptible to such practices. However, the recent tendency of policy makers and media outlets to use the terms “subprime” and “predatory” interchangeably is an example of mistaking correlation with causation. As noted earlier, *even under the most advantageous circumstances subprime borrowers will consistently experience a higher risk of default than prime borrowers.*

### **“Consumer” profiteering.**

When considering subprime mortgages, it is convenient to think of low-income prospective homeowners seeking financing to achieve their dream of homeownership. This stereotype ignores the broad range of borrowers who seek subprime mortgages. The red-hot real estate market and historically low interest rates induced large numbers of small-time investors who used subprime products to finance their dreamed-of real estate empires. Lack of verifiable income and patchy credit history is a hallmark of many individual investors who use subprime products with low teaser rates and stated income loans to leverage their burgeoning (or

failing) businesses until their newly financed properties could be occupied by renters, or “flipped” for handsome profits.

**Providing subprime borrowers with more information.**

Subprime borrowers that are swayed by such offerings as “low doc” loans are likely to recoil from additional, repetitive and duplicative disclosures relating to the material terms, costs and risks of loan products. Press reports trumpeting an anticipated subprime “crisis” frequently reveal borrowers who acknowledge not shopping around, who fail to read disclosures, and who have not availed themselves of existing remedies such as the 3-day right of rescission. More unread printed material will not alleviate this problem.

Sincerely,

A handwritten signature in black ink that reads "Benjamin R. Wall, III". The signature is written in a cursive style with a large, looping initial "B" and a distinct "III" at the end.

Benjamin R. Wall, III  
Vice President  
New South Federal Savings Bank  
Legal Department