



From : kb

Re: Bank of America HELOC

1 message

From : kb

Tue, Jun 30, 2015 at 8:46 AM

To: david.k.tinkler@bankofamerica.com

Hello David (Assistant General Counsel, Legal Department-Bank of America) ,

I appreciate the expeditious response. Unfortunately it is severely lacking in most areas as I suspected it would.

=== Before my response....PNC's approach to this...as a baseline ===

Before going into my response I would like to start by informing you in writing, as I've done with other BofA execs, that PNC's first letter to me in a similar situation, a HELOC reset resulting in a high risk non-amortizing situation, included options for me to convert into a 20/25/30 year amortized loan with a mere check mark and a signature. No underwriting...no formal credit check I'm aware of....just based on payment history and a good risk management strategy. Thus, PNC avoided this entire high risk, non-amortized payment term and payment term extension process with a wonderful and reasonable alternative, benefiting them, myself and the economy.

With that said everything below this line could have been avoided with a sensible approach to dealing with a challenging situation similar to that of PNC.

=== My Response ===

1) RE Renewal - While BofA has not exercised it's option to renew for several years, they also were not originating HELOCs for several years. Now that you all are in the business again, the decision not to consider renewals is arbitrary given you all are currently originating helocs, you have an exceptional customer with a 10 year payment history and an OCC comment which states renewals are appropriate if they borrower can qualify for the interest only payments. Furthermore, when inaction on this matter 'pushes' a buyer into a 15 year repayment period, it appears there is something far more 'profitable' driving the decision, which is in fact my belief. In legal action, which I would never pursue personally due to economic futility, this point is debatable and this argument could loose, but in the realm of social media and social analysis, not sure it'd be a winner for you.

2) RE Repayment Extension - David, your response here is lacking in ALL relevant details. THE SAME UNWRITTEN RELEVANT DETAILS WHICH HAVE ESCALATED THIS FROM VPs to LEGAL TO START WITH. So in that sense, we've made no progress. I can imagine it's tough typing something that is incriminating, nonsensical and irrational. No one likes to do that, so I'll do it for you. "Our program guidelines require a borrower to be below a 45% risk ratio for both the 15 year and 25 year payment to qualify for the 25 year repayment term" In other words the buyer must qualify for the situation they are trying to avoid to avoid the situation. Truly an Escher drawing in motion. I can see why you would not want to type that as it wouldn't fly under ANYONEs radar. Your lack of willingness to write those details or acknowledge them is only the 4th or 5th avoidance by BofA, so at this point it is expected.

David, I was told my payment was going to go from 900/mo interest only to 2600/mo Pandl, because I am did not meet seemingly-risk based requirements of 'Program Guidelines' to qualify for a 1900/mo payment. At face value that is as crazy as it reads. When I was verbally informed of the denial, BofA refused to provide the calculated debt value!? Again, BofA REFUSED TO PROVIDE CALCULATION DETAILS RELATED TO THE DENIAL. Once escalated, the calculated debt value was provided and it turned out to be related to the 15 year term I was trying to avoid. When questioned, nonsensical Program Guidelines were provided and I was told these guidelines were out of BofA control, but that turned out to be a false statement. On the third review of my file, it turned out the debt calculation for the 15 year, irrelevant term, used to decline me was actually 'low' (48% vs 55%), because the property tax value had been 'accidentally omitted'. I find it preposterous to believe BofA underwriting is so incompetent as to accidentally leave out a critical piece of a debt component on an initial denial as well as after a subsequent file review

my belief that the tax value was int

make the first presentation of the ratio lower look like 'close but no cigar', because if the real value of 55% had been presented on the first denial, it would have set off major alarm bells to me, the borrower, that something wasn't as should be expected with the risk ratio used to deny the extension.

The formal denial notice I received via us mail stated, 'Current/Proposed debt is high relative to income. My Current Debt includes an interest only payment, and if a ratio was calculated with it, it comes to about a ~26% ratio (a value never calculated by Bofa) and my proposed debt was 44%.....below most normal risk thresholds (and an artificially high value due to lack of appropriate adjustments, see item 3), so can you please elaborate as to how the 55% ratio calculated on an irrelevant 15 year term fits into this denial clause. US Mail used to deliver denial clause that does not match current reality nor program guidelines used to decline me.

3) RE Grossing up Tax Liability - You should have consulted a finance person prior to this response. You fell into a trap of your own making. The spirit of the debt/income ratio assumes the income value has a tax liability component. My calculated income, as BofA has calculated, does not have a tax component because of depreciation. You've indicated you do not gross up because as the properties become fully depreciated, the tax burden will increase. The only problem with that statement is that that situation you are referencing will ONLY exist 20 years from now, and that is a known, not an unknown reality. Is it appropriate to include risk 20 years from now in my current risk ratio? If you'd like to use the future value stuff...lets look at this properly....the 2600 Pandl payment is NOT amortized..it decreases after the very first payment. 15 years from now, upon my final payment, the payment will only be \$1900....by your logic, \$1900 should be used for the debt payment now....and if we do that, you will be able to state, without a doubt, my depreciation is still masking any tax liability. A ratio with \$1900 will pass with flying colors...if you'd like to go into the future....

The typical job of underwriting is to accurately assess risk. Instead of accurately assessing risk bofa is doing everything in their power to use nonsensical, illogical, non risk based program guidelines that in no way mirror proper risk based assessment to maximize cash inflow in the form of excessive consumer principal payments.

You all have told me my payment will adjust up from 900/mo interest only to 2600/mo principal and interest because i'm too risky to qualify for a \$1900/mo principal and interest payment. While doing this magic, you all have yet to put the program guidelines in writing, nor the debt calculations in writing. It just doesn't get any more non-transparent. Can you imagine going to a doctor and being told you owe them \$700/month for the next 2-4 years and then being told they can not and or will not justify why in writing?

Let me paint this picture for you without all the mumbo jumbo.

-- IN PLAIN ENGLISH --

- My net monthly cash-flow after ALL tax liabilities and after ALL real estate related expenses (including interest and all expenses on subject property) is ~ \$6000/month. This is NOT gross income..this is actual NET CASH FLOW that can be calculated from my tax returns which you all have.
- BofA used a 'mystical' set of Program Guidelines that NO ONE, INCLUDING YOU is willing to put in writing, that indicated I was too high of a risk for the 25 year term, which would have increased my payment by \$1000. \$6000 - \$1000 leaves me \$5000 to live my life after ALL major liabilities. Do you really believe anyone is going to believe the risk assessment done on me was done properly? It is arbitrary and incompetent.
- Furthermore, as a result of my 'high risk', it seems beyond strange that I would get stuck in the default term that requires me to pay you \$1700/mo out of my \$6000/month cash-flow (vs the 1000/month that was too 'high of a risk' for me to take one), and you all are only 'offering me the option to apply for' a mortgage modification. If any of this was risk based, you would/should be begging me to do that and or simply presenting all the information to me with regards to that option to make my decision easy. Banks are supposed to be in risk management, and this behavior is not consistent with risk management.

--- THE OCC unTRUTH ---

Are you aware that i was told an UNTRUTH by a vp? Upon delivering my second verbal denial, in review of the first, she stated the program guidelines were occ guidelines driving the decision were OCC guidelines and out of the control of PNC. With pressure from me for more information on the matter, and an example of my experience with PNC, she recanted the untruth the following day and then indicated that she and other employees familiar with underwriting questioned them due to lack of logic as well and that bofa management told them in an employee meeting they were bofa guidelines but had past muster with occ....Not sure who or how

that got translated into the untruth initially told...but it did. Are you aware of this?

--- In layman's terms ---

David, in layman's terms this is highway robbery....sure I'm only paying down my own equity...but you are forcing me to pay down \$700 in additional equity you are not entitled to given any reasonable, rational risk based underwriting. Another way to write that is..... You all are 'forcing me to loan you \$700/month without any reasonable, rational risk based underwriting '.....and that is being done with an over abundance of non-transparent business processes.

== One Last Attempt at a Transparent Response ==

I'd like you to specifically address the following, but I realize as an attorney, you likely will not, but I must try just this one last time to get an understanding of your position and/or work towards a resolution:

- 1) Would you like to claim or refute the Program Guidelines as i quoted them above in item 2 ?
- 2) Would you like to comment on the US Mail delivery of a denial notice that doesn't match current reality nor the guidelines I was judged on?
- 3) Grossing up...so which is it...are we going to stick in the present..where grossing up my income is appropriate...OR...are we going to move 15 years from now when the debt payment is \$700 less and I'm still receiving full tax benes from amortization? I would pass with flying colors if you'd like to properly assess risk in the future. You can't have both present and future. If you are working with relevant present...adjustments are appropriate fro risk. if you are working in the future, 15 years comes before 20...at which point there is a far lower payment and my depreciation benefits are still intact. In either case, I'm not a risk and worth of the longer term, per the nonsensical Program Guidelines.
- 4) In plain english - when looking at this with a human eye..its not hard to see an inappropriate risk analysis was performed 'somehow'. Errors were made 'somehow'. If you all feel anything about the 'in plain english' section was inaccurate, please point it out.
- 5) Would you like to clarify anything regarding the OCC statement that was made and recanted? Blaming Program Guidelines on the government isn't nice. You could claim the employee acted on her own accord if you'd like? Something she made up to make her job easier maybe?

=== My Options ===

David, I'm not dumb nor green when it comes to civil law suits and their economic futility for scenarios such as this. I've put as much energy into this as I could have to get a fair and appropriate result. It pains me to think about my options below, but it also pains me to think that I and up to 1 million BofA HELOC borrowers have been subjected to this non-transparent process with nonsensical Program Guidelines that you all refuse to put in writing, as well as the invasion being made on my cash flow to a tune of \$700/month for an undetermined period of time until I can refi out. If we can not resolve this, I feel I've been backed into a corner and these are the only options I can identify for myself:

- 1) Do nothing and accept my \$2600 principal and interest payment vs the \$1900 PandI I am due (given any reasonable risk based underwriting) with humility and allow all other BofA HELOC borrowers to fight this fight individually, should they be exposed to the same processes and should they have the where-with-all to even figure out there are problems.

OR

- 2) Forward this email dialogue to senators, congressmen, appropriate government agencies and investigative reporters and allow them to follow up with you.

AND/OR

- 3) Post a website on the internet sharing my experience with/without this email dialogue.

If you have a proposal that can resolve **my situation** and **this situation** I'm all ears. If we can't get to a resolution I'll have to decide which option is the right option to resolve this energetically for me. With as much transparency as I can muster, I can say that number 1 is not resonating well at this time. If you all feel that pursuing options 2 or 3 are inappropriate avenues for me from your perspective, for any legal reason, I would

appreciate your stance on this matter.

The stress related to all this has been great for me. At this point, I can not imagine you all are going to change positions without forcing me to select an option, but I'm hoping I'm wrong. If I don't hear back from you all by COB on Wednesday, July 1, I will accept silence as your response, and I will select the option resonating with me at that time.

Thanks

kb

REF: David Tinkler, Assistant General Counsel for BofA - (<https://www.linkedin.com/pub/david-tinkler/5/9a6/3a4>)

On Mon, Jun 29, 2015 at 12:56 PM, Tinkler, David K - Legal <david.k.tinkler@bankofamerica.com> wrote:

Mr. kb

I am writing to provide to you further background on the circumstances regarding the decline of your Home Equity Line of Credit ("HELOC") repayment extension request.

As you noted in discussions with the line of business, your original HELOC agreement gave Bank of America the option to extend or renew your account. As a matter of policy, the Bank has not exercised its option to renew similar HELOCs for many years. Borrowers interested in obtaining a new HELOC may apply under current lending guidelines.

For the repayment extension program that you requested, specific underwriting guidelines have been adopted, but based on the information you provided you do not qualify for the program.

Regarding your questions on your tax liability, we do not consider grossing up the income in this scenario, as the items leading to the lack of taxable income today will not continue indefinitely. As these properties become fully depreciated, the tax burden will increase.

The Bank does offer other modification programs for which you may be eligible. If you would like to be considered for one of these programs, we can refer you to a Customer Relationship Manager to further assist you.

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