

MARKET BRIEF

June 28, 2010

Brokers, Agents Can't Take Referral Fees for Home Warranties

Timely Topics

Federal regulators will publish an interpretive rule Friday formalizing their position that real estate brokers and agents are prohibited under existing law from receiving fees for referring business to home warranty companies. The new rule follows a request by the National Association of Realtors for clarification on an unofficial staff interpretation issued by the Department of Housing and Urban Development in February, 2008.

In the 2008 letter, Paul Ceja, assistant general counsel for issues related to the Real Estate Settlement Procedure Act (RESPA), said that payments to real estate agents or brokers by home warranty companies that are contingent on a particular consumer's purchases of a home warranty were "likely" violations of RESPA's anti-kickback provisions.

"Characterizing such arrangements as 'marketing' or 'administrative' agreements does not render the underlying conduct legal," Ceja said, citing a previous 1996 opinion by HUD's general counsel at the time, Nelson Diaz.

In an interpretive rule to be published in the Federal Register, HUD said home warranty companies may only compensate real estate agents and brokers for services not related to marketing, such as conducting inspections of items to be covered by a warranty, and recording serial numbers of items to be covered.

Marketing performed by a real estate broker or agent on behalf of a home warranty company to sell a warranty to a particular homebuyer or seller is a "referral" to a settlement service provider, violating RESPA's anti-kickback provisions, HUD said.

Real estate brokers and agents are "in a unique position to refer settlement service business and through marketing can affirmatively influence a homebuyer's or seller's selection" of a home warranty company, HUD said.

Economic Update

Important Markets

DOW Jones Industrial	
Start of week	10450.64
End of week	10143.81
Change	(306.83)
NASDAQ	
Start of week	2309.80
End of week	2223.48
Change	(86.32)
30-Year Bond	
Last week	4.14
This week	4.06
1 Yr T-Bill	0.270%
Prime Rate	3.250%
11 th Dist COF	1.825%
6 Mo. LIBOR	0.753%

Last Week: Sideways trade had stocks heading into the final hour of Friday's trade with a week-to-date loss of more than 3%. That put the stock market on track for its worst weekly performance since the week ended May 21.

What's Ahead: This week brings us the release of several economic reports for the markets to digest, but one is arguably the most influential report we see each month.

May's Personal Income and Outlays data will be posted early Monday morning. They are important because consumer spending makes up two-thirds of the U.S. economy. If consumer income is rising, they have more money to spend each month. Analysts are expecting to see an increase of 0.5% in income and a 0.1% rise in the spending portion of the report. Smaller than expected increases should be good news for the bond market and mortgage rates.

June's Consumer Confidence Index (CCI) is the second report of the week. It will be posted late Tuesday morning. If it shows a sizable increase in confidence from last month, we can expect to see the bond market falter and mortgage rates rise slightly. Current forecasts are calling for a reading of 62.0, down from last month's 63.3 reading.

The Labor Department will post June's unemployment rate, number of new payrolls added or lost and average hourly earnings early Friday morning. These are considered to be very important readings of the employment sector and can have a huge impact on the financial markets. The ideal scenario for the bond market is rising unemployment, a large decline in payrolls and no change in earnings. Weaker than expected readings would likely help boost bond prices and lower mortgage rates Friday. However, stronger than expected readings could be extremely detrimental to mortgage pricing. Analysts are expecting to see the unemployment rate rise 0.1% to 9.8%, with 100,000 jobs lost and a 0.1% rise in earnings.

Friday's Employment report is definitely the most important of the week. Its impact can single-handedly lead to an improvement or increase in mortgage rates for the week. Next Monday is when the Independence Day holiday will be recognized. There is no early close for the bond market Friday ahead of it, but it will probably be a light afternoon in trading as traders head home for the long weekend. This could lead to additional volatility during morning trading, particularly with the Employment report being posted.



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