

111TH CONGRESS  
1ST SESSION

# H. R. 2666

To require the Federal Trade Commission to conduct a rulemaking proceeding with respect to mortgage foreclosure rescue and loan modification services, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 2, 2009

Ms. MATSUI (for herself and Ms. MOORE of Wisconsin) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To require the Federal Trade Commission to conduct a rulemaking proceeding with respect to mortgage foreclosure rescue and loan modification services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mortgage Foreclosure  
5 Rescue and Loan Modification Services Fraud Prevention  
6 Act of 2009”.

1 **SEC. 2. FTC RULEMAKING AUTHORITY MORTGAGE FORE-**  
2 **CLOSURE RESCUE AND LOAN MODIFICATION**  
3 **SERVICES.**

4 (a) RULEMAKING.—

5 (1) IN GENERAL.—The Federal Trade Commis-  
6 sion shall conduct a rulemaking proceeding, begin-  
7 ning no later than 90 days after the date of the en-  
8 actment of this Act, with respect to mortgage fore-  
9 closure rescue and loan modification services, in ac-  
10 cordance with section 553 of title 5, United States  
11 Code. The rulemaking shall include the requirements  
12 set forth in paragraph (4) below.

13 (2) EXCLUSION.—A rule described in para-  
14 graph (1) shall not apply to an entity that is not  
15 subject to enforcement by the Commission under the  
16 Federal Trade Commission Act.

17 (3) ENFORCEMENT.—

18 (A) VIOLATIONS.—Any violation of a rule  
19 prescribed under this subsection shall be treat-  
20 ed as a violation of a rule under section 18 of  
21 the Federal Trade Commission Act (15 U.S.C.  
22 57a) regarding unfair or deceptive acts or prac-  
23 tices.

24 (B) POWERS AND MANNER OF ENFORCE-  
25 MENT.—The Federal Trade Commission shall  
26 enforce any rule prescribed under this sub-

1 section in the same manner, by the same  
2 means, and with the same jurisdiction, powers,  
3 and duties as though all applicable terms and  
4 provisions of the Federal Trade Commission  
5 Act were incorporated into and made part of  
6 this section.

7 (4) RULE REQUIREMENTS.—The Federal Trade  
8 Commission shall include in the rule prescribed  
9 under this subsection the following:

10 (A) A requirement that any mortgage fore-  
11 closure rescue or loan modification service pro-  
12 vided to a homeowner related to the foreclosure  
13 of residential real property contain a written  
14 contract that contains clear and prominent dis-  
15 closures regarding the nature of the contract,  
16 the services to be provided and results to be  
17 achieved, and the total amount and terms of  
18 compensation.

19 (B) A requirement that any contract re-  
20ferred to in subparagraph (A) contain a clearly  
21 and prominently disclosed right for the home-  
22owner to cancel within a set number of business  
23 days as determined by the Federal Trade Com-  
24mission with no penalty or obligation.

1           (C) A requirement that prohibits or re-  
2           stricts mortgage foreclosure rescue and loan  
3           modification services from requesting or receiv-  
4           ing any funds until any such services have been  
5           fully performed and results have been achieved  
6           and the services and results have been docu-  
7           mented to the consumer.

8           (D) Other prohibitions or restrictions on  
9           mortgage foreclosure rescue and loan modifica-  
10          tion services that are unfair or deceptive acts or  
11          practices.

12          (5) EXEMPTION.—The Commission shall have  
13          the authority to exempt entities from the require-  
14          ments of the rule that it issues to implement this  
15          Act, if it determines that the inclusion of such enti-  
16          ties in the rule is not necessary to prevent or deter  
17          consumer injury.

18          (6) NO PREEMPTION.—No rule prescribed  
19          under this subsection may be construed as pre-  
20          empting any provision of the law of any State.

21          (b) ENFORCEMENT BY STATE ATTORNEYS GEN-  
22          ERAL.—

23                (1) IN GENERAL.—Except as provided in para-  
24                graph (6), in any case in which the attorney general  
25                of a State has reason to believe that an interest of

1 the residents of that State has been or is threatened  
2 or adversely affected by the engagement of any per-  
3 son in a practice that violates a rule prescribed  
4 under subsection (a), the State, as *parens patriae*,  
5 may bring a civil action on behalf of the residents  
6 of the State in an appropriate district court of the  
7 United States or other court of competent jurisdic-  
8 tion to—

9 (A) enjoin that practice;

10 (B) enforce compliance with the rule;

11 (C) obtain damages, restitution, or other  
12 compensation on behalf of residents of the  
13 State;

14 (D) obtain penalties provided for under  
15 subsection (a); and

16 (E) obtain such other relief as the court  
17 may consider to be appropriate.

18 (2) NOTICE.—

19 (A) NOTICE TO COMMISSION.—The State  
20 shall serve written notice to the Commission of  
21 any civil action under paragraph (1) at least 60  
22 days prior to initiating such civil action.

23 (B) COPY OF COMPLAINT.—The notice  
24 served under subparagraph (A) shall include a  
25 copy of the complaint to be filed to initiate such

1 civil action, except that if it is not feasible for  
2 the State to provide such prior notice, the State  
3 shall provide notice immediately upon insti-  
4 tuting such civil action.

5 (3) INTERVENTION BY FTC.—Upon receiving  
6 the notice required by paragraph (2), the Commis-  
7 sion may intervene in such civil action and upon in-  
8 tervening—

9 (A) be heard on all matters arising in such  
10 civil action;

11 (B) remove the action to the appropriate  
12 United States district court; and

13 (C) file petitions for appeal of a decision in  
14 such civil action.

15 (4) SAVINGS CLAUSE.—No provision of this sec-  
16 tion shall be construed as—

17 (A) preventing the attorney general of a  
18 State from exercising the powers conferred on  
19 the attorney general by the laws of such State  
20 to conduct investigations or to administer oaths  
21 or affirmations or to compel the attendance of  
22 witnesses or the production of documentary and  
23 other evidence; or

24 (B) prohibiting the attorney general of a  
25 State, or other authorized State officer, from

1 proceeding in State or Federal court on the  
2 basis of an alleged violation of any civil or  
3 criminal statute of that State.

4 (5) VENUE; SERVICE OF PROCESS; JOINDER.—

5 In a civil action brought under paragraph (1)—

6 (A) the venue shall be a judicial district in  
7 which the defendant or a related party is found,  
8 is an inhabitant, or transacts business, or wher-  
9 ever venue is proper under section 1391 of title  
10 28, United States Code;

11 (B) process may be served without regard  
12 to the territorial limits of the district or of the  
13 State in which the civil action is instituted; and

14 (C) a person who participated with the de-  
15 fendant or a related party in an alleged viola-  
16 tion that is being litigated in the civil action  
17 may be joined in the civil action without regard  
18 to the residence of the person.

19 (6) PREEMPTIVE ACTION BY FTC.—Whenever a  
20 civil action or an administrative action has been in-  
21 stituted by or on behalf of the Commission for viola-  
22 tion of any rule described under paragraph (1), no  
23 State may, during the pendency of such action insti-  
24 tuted by or on behalf of the Commission, institute  
25 a civil action under paragraph (1) against any de-

1        defendant named in the complaint in such action for  
2        violation of any rule as alleged in such complaint.

3                (7) AWARD OF COSTS AND FEES.—If the attor-  
4        ney general of a State prevails in any civil action  
5        under paragraph (1), the State may recover reason-  
6        able costs and attorney fees from the defendant or  
7        a related party.

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