

AMENDMENT TO H.R. 1728

OFFERED BY MS. MOORE OF WISCONSIN

At the end of the bill, insert the following new title
(and conform the table of contents accordingly):

1 **TITLE VII—FORECLOSURE**
2 **RESCUE FRAUD**

3 **SEC. 701. SHORT TITLE.**

4 This title may be cited as the “Foreclosure Rescue
5 Fraud Act of 2009”.

6 **SEC. 702. DEFINITIONS.**

7 For purposes of this Act, the following definitions
8 shall apply:

9 (1) **COMMISSION.**—The term “Commission”
10 means the Federal Trade Commission.

11 (2) **FORECLOSURE CONSULTANT.**—The term
12 “foreclosure consultant”—

13 (A) means a person who—

14 (i) makes any solicitation, representa-
15 tion, or offer to a homeowner who has
16 failed to make 2 consecutive periodic pay-
17 ments on a loan secured by residential real
18 property to perform, for gain, or who per-
19 forms, for gain, any service that such per-

1 son represents will prevent, postpone, or
2 reverse the effects of such failure to make
3 payments or any foreclosure resulting from
4 such failure; or

5 (ii) makes any solicitation, representa-
6 tion, or offer to a homeowner who has
7 failed to make any periodic payments on a
8 loan secured by residential real property or
9 to a homeowner who anticipates failing to
10 make such payments on such loan at any
11 time in the future, to obtain, for gain, on
12 behalf of such homeowner a loan modifica-
13 tion, short refinancing, or repayment plan
14 from the loan servicer of such loan; and

15 (B) does not include—

16 (i) a housing counseling agency ap-
17 proved by the Secretary;

18 (ii) a depository institution (as de-
19 fined in section 3 of the Federal Deposit
20 Insurance Act (12 U.S.C. 1813));

21 (iii) a Federal credit union or a State
22 credit union (as defined in section 101 of
23 the Federal Credit Union Act (12 U.S.C.
24 1752));

1 (iv) a company organized under the
2 laws of any State and engaged in the busi-
3 ness of insurance to the extent of such ac-
4 tivities; or

5 (v) a person who is a loan servicer or
6 creditor with respect to a residential mort-
7 gage loan that is in or at risk of fore-
8 closure.

9 (3) HOMEOWNER.—The term “homeowner”,
10 with respect to residential real property for which an
11 action to foreclose on the mortgage or deed of trust
12 on such real property is filed, means the person
13 holding record title to such property as of the date
14 on which such action is filed.

15 (4) LOAN MODIFICATION.—The term “loan
16 modification” means any contractual change in the
17 terms of the residential mortgage loan that results
18 in—

19 (A) a reduction of the interest rate of such
20 loan;

21 (B) forgiveness of the loan principal or in-
22 terest of such loan; and

23 (C) reamortization of such loan in connec-
24 tion with an extension of the final maturity
25 date of such loan.

1 (5) LOAN SERVICER.—The term “loan servicer”
2 has the same meaning as the term “servicer” in sec-
3 tion 6(i)(2) of the Real Estate Settlement Proce-
4 dures Act of 1974 (12 U.S.C. 2605(i)(2)).

5 (6) REPAYMENT PLAN.—The term “repayment
6 plan” means any plan—

7 (A) under which the borrower or mort-
8 gagor resumes regularly scheduled payments
9 and pays additional amounts at scheduled inter-
10 vals to cure a delinquency;

11 (B) under which any late payment charge,
12 penalty interest, or any other fees or charges,
13 or any combination thereof are waived; or

14 (C) which provides for a temporary reduc-
15 tion in, or cessation of, monthly payments fol-
16 lowed by a reamortization of the amounts due
17 under loan, including arrearage, and a new
18 schedule of repayment amounts.”

19 (7) RESIDENTIAL MORTGAGE LOAN.—The term
20 “residential mortgage loan” means any loan pri-
21 marily for personal, family, or household use that is
22 secured by a mortgage, deed of trust, or other equiv-
23 alent consensual security interest on a dwelling (as
24 defined in section 103(v) of the Truth in Lending
25 Act (15 U.S.C. 1602(v)) or residential real estate

1 upon which is constructed or intended to be con-
2 structed a dwelling (as so defined).

3 (8) RESIDENTIAL REAL PROPERTY.—The term
4 “residential real property” has the meaning given
5 the term “dwelling” in section 103 of the Consumer
6 Credit Protection Act (15 U.S.C. 1602).

7 (9) SECRETARY.—The term “Secretary” means
8 the Secretary of Housing and Urban Development.

9 (10) SHORT REFINANCING.—The term “short
10 refinancing” means acceptance of payment from or
11 on behalf of the borrower or mortgagor of an
12 amount that is less than the full amount alleged to
13 be due and owing under the loan, including prin-
14 cipal, interest, and fees, in full satisfaction of the ob-
15 ligation under the loan and as part of a refinance
16 transaction under which the property that is subject
17 to the lien securing the loan is intended to remain
18 the principal residence of the borrower or mort-
19 gagor.

20 **SEC. 703. MORTGAGE RESCUE FRAUD PROTECTION.**

21 (a) LIMITS ON FORECLOSURE CONSULTANTS.—A
22 foreclosure consultant may not—

23 (1) claim, demand, charge, collect, or receive
24 any compensation from a homeowner for services
25 performed by such foreclosure consultant with re-

1 spect to residential real property until such fore-
2 closure consultant has fully performed any service
3 that such foreclosure consultant contracted to per-
4 form or represented would be performed with respect
5 to such residential real property, and then only to
6 the extent that the service—

7 (A) does not result in any increase in the
8 monthly mortgage payment of the residential
9 mortgage loan of such homeowner; or

10 (B) results in a monthly mortgage pay-
11 ment amount that is the same as any such
12 amount paid by such homeowner prior to enter-
13 ing into a contract with such foreclosure con-
14 sultant;

15 (2) claim, demand, charge, collect, or receive
16 any fee, interest, or any other compensation for any
17 reason which exceeds the greater of —

18 (A) 1 percent of the principal balance out-
19 standing on the homeowner's residential mort-
20 gage loan; or

21 (B) the sum of 2 monthly mortgage pay-
22 ments of principal and interest;

23 (3) hold any power of attorney from any home-
24 owner, except to inspect documents, as provided by
25 applicable law;

1 (4) receive any consideration from a third party
2 in connection with services rendered to a homeowner
3 by such third party with respect to the foreclosure
4 of residential real property, unless such consider-
5 ation is fully disclosed, in a clear and conspicuous
6 manner, to such homeowner in writing before such
7 services are rendered;

8 (5) accept any wage assignment, any lien of any
9 type on real or personal property, or other security
10 to secure the payment of compensation with respect
11 to services provided by such foreclosure consultant
12 in connection with the foreclosure of residential real
13 property; or

14 (6) acquire any interest, directly or indirectly,
15 in the residence of a homeowner with whom the fore-
16 closure consultant has contracted.

17 (b) CONTRACT REQUIREMENTS.—

18 (1) WRITTEN CONTRACT REQUIRED.—Notwith-
19 standing any other provision of law, a foreclosure
20 consultant may not provide to a homeowner a service
21 related to the foreclosure of residential real prop-
22 erty—

23 (A) unless—

1 (i) a written contract for the purchase
2 of such service has been signed and dated
3 by the homeowner; and

4 (ii) such contract complies with the
5 requirements described in paragraph (2);
6 and

7 (B) before the end of the 3-business-day
8 period beginning on the date on which the con-
9 tract is signed.

10 (2) TERMS AND CONDITIONS OF CONTRACT.—

11 The requirements described in this paragraph, with
12 respect to a contract, are as follows:

13 (A) The contract includes, in writing, clear
14 and conspicuous disclosure of the following:

15 (i) A full and detailed description of
16 the exact nature of the contract and the
17 total amount and terms of compensation.

18 (ii) The name, physical address,
19 phone number, e-mail address, and fac-
20 simile number, if any, of the foreclosure
21 consultant to whom a notice of cancellation
22 can be mailed or sent under subsection (c).

23 (iii) A conspicuous statement in at
24 least 12-point boldface type in immediate
25 proximity to the space reserved for the

1 homeowner's signature on the contract
2 that reads as follows: "You may cancel this
3 contract without penalty or obligation at
4 any time before midnight of the 3rd busi-
5 ness day after the date on which you sign
6 the contract. See the attached notice of
7 cancellation form for an explanation of this
8 right."

9 (B) The contract is written in the principal
10 language used to solicit or market the services
11 to the homeowner.

12 (C) The contract is accompanied by the
13 form required by subsection (c)(2).

14 (c) RIGHT TO CANCEL CONTRACT.—

15 (1) IN GENERAL.—With respect to a contract
16 between a homeowner and a foreclosure consultant
17 regarding the foreclosure on the residential real
18 property of such homeowner, such homeowner may
19 cancel such contract without penalty or obligation by
20 mailing a notice of cancellation not later than mid-
21 night of the 3rd business day after the date on
22 which such contract is executed or would become en-
23 forceable against the parties to such contract.

1 (2) CANCELLATION FORM AND OTHER INFOR-
2 MATION.—Each contract described in paragraph (1)
3 shall be accompanied by a form, in duplicate, that—

4 (A) has the heading “Notice of Cancell-
5 tion” in boldface type; and

6 (B) contains in boldface type the following
7 statement:

8 “You may cancel this contract, without any
9 penalty or obligation, at any time before midnight of
10 the 3rd day after the date on which the contract is
11 signed by you.

12 “To cancel this contract, mail or deliver a
13 signed and dated copy of this cancellation notice or
14 any other equivalent written notice to [insert name
15 of foreclosure consultant] at [insert address of fore-
16 closure consultant] before midnight on [insert date].

17 “I hereby cancel this transaction on [insert
18 date] [insert homeowner signature].”.

19 (d) WAIVER OF RIGHTS AND PROTECTIONS PROHIB-
20 ITED.—

21 (1) IN GENERAL.—A waiver by a homeowner of
22 any protection provided by this section or any right
23 of a homeowner under this section—

24 (A) shall be treated as void; and

1 (B) may not be enforced by any Federal or
2 State court or by any person.

3 (2) ATTEMPT TO OBTAIN A WAIVER.—Any at-
4 tempt by any person to obtain a waiver from any
5 homeowner of any protection provided by this sec-
6 tion or any right of the homeowner under this sec-
7 tion shall be treated as a violation of this section.

8 (3) CONTRACTS NOT IN COMPLIANCE.—Any
9 contract that does not comply with the applicable
10 provisions of this Act shall be void and may not be
11 enforceable by any party.

12 (e) RULE OF CONSTRUCTION.—

13 (1) IN GENERAL.—Subsection (a) shall not be
14 construed as prohibiting an attorney licensed to
15 practice law in the appropriate State from soliciting,
16 arranging for, or accepting an advance fee or re-
17 tainer for legal services in connection with—

18 (A) the preparation and filing of a bank-
19 ruptcy petition; or

20 (B) court proceedings to avoid a fore-
21 closure.

22 (2) EXCEPTION FOR FRIVOLOUS FILINGS OR
23 PROCEEDINGS.—If any court with jurisdiction over
24 any filing or proceeding described in subparagraph
25 (A) or (B) of paragraph (1) determines that such

1 filing or proceeding was frivolous, any attorney de-
2 scribed in such paragraph who made the filing or
3 initiated the proceeding shall be in violation of this
4 title and shall be subject to the civil liability and ad-
5 ministrative enforcement provisions in sections 705
6 and 706.

7 **SEC. 704. WARNINGS TO HOMEOWNERS OF FORECLOSURE**
8 **RESCUE SCAMS.**

9 (a) IN GENERAL.—If a loan servicer finds that a
10 homeowner has failed to make 2 consecutive payments on
11 a residential mortgage loan and such loan is at risk of
12 being foreclosed upon, the loan servicer shall notify such
13 homeowner of the dangers of fraudulent activities associ-
14 ated with foreclosure.

15 (b) NOTICE REQUIREMENTS.—Each notice provided
16 under subsection (a) shall—

17 (1) be in writing;

18 (2) be included with a mailing of account infor-
19 mation;

20 (3) have the heading “Warning Required by
21 Federal Law” in a 14-point boldface type in English
22 and Spanish at the top of such notice; and

23 (4) contain the following statement in English
24 and Spanish: “Mortgage foreclosure is a complex
25 process. Some people may approach you about sav-

1 ing your home. With very limited exceptions, it is a
2 violation of Federal law for any person to collect an
3 upfront fee for foreclosure prevention services. You
4 should be careful about any such promises. There
5 are government and nonprofit agencies you may con-
6 tact for helpful information about the foreclosure
7 process. Contact your lender immediately at
8 [_____], call the Department of Housing and
9 Urban Development Housing Counseling Line at
10 (800) 569-4287 to find a housing counseling agency
11 certified by the Department to assist you in avoiding
12 foreclosure, or visit the Department's Tips for
13 Avoiding Foreclosure website at <http://www.hud.gov/foreclosure>
14 for additional assistance." (the blank
15 space to be filled in by the loan servicer and suc-
16 cessor telephone numbers and Uniform Resource Lo-
17 cators (URLs) for the Department of Housing and
18 Urban Development Housing Counseling Line and
19 Tips for Avoiding Foreclosure website, respectively.).

20 **SEC. 705. CIVIL LIABILITY.**

21 (a) IN GENERAL.—Any foreclosure consultant who
22 fails to comply with any provision of section 703 or 704
23 with respect to any other person shall be liable to such
24 person in an amount equal to the greater of—

1 (1) the amount of any actual damage sustained
2 by such person as a result of such failure; or

3 (2) any amount paid by the person to the fore-
4 closure consultant.

5 (b) ATTORNEYS' FEES.—In the case of any success-
6 ful action to enforce any liability under subsection (a), the
7 foreclosure consultant shall also be liable to the person in
8 an amount equal to the costs of the action, together with
9 reasonable attorneys' fees.

10 **SEC. 706. ADMINISTRATIVE ENFORCEMENT.**

11 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
12 SION.—

13 (1) UNFAIR OR DECEPTIVE ACT OR PRAC-
14 TICE.—A violation of a prohibition described in sec-
15 tion 703 or a failure to comply with any provision
16 of section 703 or 704 shall be treated as a violation
17 of a rule defining an unfair or deceptive act or prac-
18 tice promulgated under section 18(a)(1)(B) of the
19 Federal Trade Commission Act (15 U.S.C.
20 57a(a)(1)(B)).

21 (2) ACTIONS BY THE FEDERAL TRADE COMMIS-
22 SION.—The Federal Trade Commission shall enforce
23 the provisions of sections 703 and 704 in the same
24 manner, by the same means, and with the same ju-
25 risdiction, powers, and duties as though all applica-

1 ble terms and provisions of the Federal Trade Com-
2 mission Act (15 U.S.C. 41 et seq.) were incor-
3 porated into and made part of this title.

4 (b) STATE ACTION FOR VIOLATIONS.—

5 (1) AUTHORITY OF STATES.—In addition to
6 such other remedies as are provided under State
7 law, whenever the chief law enforcement officer of a
8 State, or an official or agency designated by a State,
9 has reason to believe that any person has violated or
10 is violating the provisions of section 703 or 704, the
11 State—

12 (A) may bring an action to enjoin such vio-
13 lation in any appropriate United States district
14 court or any other court of competent jurisdic-
15 tion;

16 (B) may bring an action on behalf of its
17 residents to recover damages for which the per-
18 son is liable to such residents under section 705
19 as a result of the violation; and

20 (C) in the case of any successful action
21 under subparagraph (A) or (B), shall be award-
22 ed the costs of the action.

23 (2) RIGHTS OF FEDERAL TRADE COMMIS-
24 SION.—

1 (A) NOTICE TO COMMISSION.—The State
2 shall serve prior written notice of any civil ac-
3 tion under paragraph (1) upon the Commission
4 and provide the Commission with a copy of its
5 complaint, except in any case in which such
6 prior notice is not feasible, in which case the
7 State shall serve such notice immediately upon
8 instituting such action.

9 (B) INTERVENTION.—The Commission
10 shall have the right—

11 (i) to intervene in any action referred
12 to in subparagraph (A);

13 (ii) upon so intervening, to be heard
14 on all matters arising in the action;

15 (iii) to remove the action to the appro-
16 priate United States district court; and

17 (iv) to file petitions for appeal in such
18 actions.

19 (3) INVESTIGATORY POWERS.—For purposes of
20 bringing any action under this subsection, nothing in
21 this subsection shall prevent the chief law enforce-
22 ment officer, or an official or agency designated by
23 a State, from exercising the powers conferred on the
24 chief law enforcement officer or such official by the
25 laws of such State to conduct investigations or to

1 administer oaths or affirmations, or to compel the
2 attendance of witnesses or the production of docu-
3 mentary and other evidence.

4 (4) **LIMITATION.**—Whenever the Federal Trade
5 Commission has instituted a civil action for a viola-
6 tion of section 703 or 704, no State may, during the
7 pendency of such action, bring an action under this
8 section against any defendant named in the com-
9 plaint of the Commission for any violation of section
10 703 or 704 that is alleged in that complaint.

11 **SEC. 707. PREEMPTION.**

12 No provision of this title shall be construed as affect-
13 ing any provision of State or local law respecting any fore-
14 closure consultant, residential mortgage loan, or residen-
15 tial real property that provides equal or greater protection
16 to homeowners than what is provided under this title.

17 **SEC. 708. EFFECTIVE DATE.**

18 Notwithstanding any other provision of this Act, the
19 provisions of this title shall take effect at the end of the
20 30-day period beginning on the date of the enactment of
21 this Act.

