

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
CONSUMER FRAUDS AND PROTECTION BUREAU

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In the Matter of

Assurance No. 20-046

Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of

Caliber Home Loans, Inc.,

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation into Caliber Home Loans, Inc.’s (“Caliber” or “Respondent”) residential mortgage servicing pursuant to N.Y. Executive Law § 63(12) and N.Y. General Business Law § 349. This Assurance of Discontinuance (“Assurance” or “AOD”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondent (collectively, the “Parties”).

**OAG’s FINDINGS**

**Background and Relevant Parties**

1. Caliber is a mortgage loan originator and servicer headquartered in Coppell, Texas.
2. As part of its business, Caliber services home mortgage loans owned by the related entities that collectively constitute and/or are affiliated with the private equity firm known as Lone Star Funds (“LSF”). In addition, Caliber services loans owned, guaranteed, insured, payable to, or administered on behalf of, various federal agencies and authorities, including the Federal National Mortgage Association (“Fannie Mae”), Federal Home Loan Mortgage Corporation (“Freddie Mac”), Government National Mortgage Association, the

Federal Housing Authority, United States Department of Agriculture, United States Department of Veterans Affairs (collectively, “GSE/Government Investor Loans”).

3. Some of the loans that Caliber services on behalf of LSF are Non-Performing Loans (“NPLs”), usually purchased from private financial institutions or the federal government after the borrower has defaulted on monthly mortgage payments, and in which the loan is seriously delinquent.

Caliber’s Proprietary Loan Modifications

4. One of Caliber’s responsibilities, when servicing NPLs, is to determine whether borrowers are eligible for loss mitigation (including loan modifications) as an alternative to foreclosure.

5. When Caliber services NPLs, it follows a loss mitigation “Authority Matrix.” This Authority Matrix lists the various modification programs that the loan owner offers for each loan in its portfolio, and requires Caliber to follow a proprietary sequence of modification options (known as a modification “waterfall”) when setting the terms of loan modifications.

6. Caliber, pursuant to this Authority Matrix, has offered a variety of modifications, including temporary loan modifications whose monthly payments increase after a period of two-to-five years.

7. Certain of Caliber’s temporary loan modifications are hereinafter referred to as “Short-Term Modifications.” The Short-Term Modification decreases the borrower’s interest rate for a temporary period (which was typically two years prior to approximately April 2013 and five years since then). The loan remains fully-amortizing during the temporary modification period (i.e., the borrowers’ monthly payments reduce the principal balance of the loan during that period), but when that term expires, the interest rate generally reverts to the higher pre-

modified rate or, in some instances, immediately reverts to a higher interest rate than the pre-modified rate.

8. Certain of Caliber's temporary loan modifications are hereinafter referred to as "Interest-Only Modifications." The Interest-Only Modification similarly decreases the interest rate for a temporary period of two-to-five years. However, during that period, the borrower only makes interest and escrow payments without paying down the principal balance of the loan. When the interest-only period expires, the loan reverts to its pre-modification rate or, in some instances, a higher interest rate than the pre-modified rate, and a fully-amortizing monthly payment, and the remaining amortized principal balance is recast or otherwise deferred over the remaining term of the loan.

9. Due to the structure of these Interest-Only and Short-Term Modifications, borrowers' monthly payments substantially increase when the period of reduced interest rate and/or interest-only payments is over, which can cause borrowers to re-default.

10. According to Caliber's data, following the expiration of an Interest-Only or Short-Term Modification, the combination of adding principal to make the loan fully amortizing and/or the interest rate reverting to the pre-modified rate or a higher interest rate than the pre-modified rate, causes the post-modification payment to become substantially higher than the pre-modification payment

11. Caliber has limited many loan modification offers to Interest-Only or Short-Term Modifications, even when borrowers have come to Caliber with evidence of long-term financial difficulties, such as a permanent loss of income due to disability, or a fixed income that will not increase when the Interest-Only or Short-Term Modification expires and/or when homeowners sought a long-term solution.

Caliber's Communications with Borrowers about Loan Modifications

12. Caliber failed to provide clear and conspicuous disclosures of the risk of payment increases in certain communications to borrowers when offering Interest-Only and Short-Term Modifications.

13. For example, for a period of time prior to October 2018, one of Caliber's modification offer letters to borrowers stated that the modification would "Lower Your Monthly Payment" but did not mention that the lower monthly payment reduction would be temporary. This letter also compared the borrower's "Current principal and interest payment" with the "Proposed principal *and/or* interest payment" (emphasis added) but did not adequately disclose the interest-only nature of many of these offers.

14. Caliber's letters also included language informing the borrower that their payment "may increase" or "adjust." This language failed to disclose clearly and conspicuously that loan payments for many of these borrowers *would* increase dramatically when the loan modification expired.

15. While Caliber trained its customer service representatives to discuss the terms of the modification, including the interest-only period, Caliber did not adequately train customer service representatives to describe that the borrower's monthly payments would increase substantially after an interest-only period and/or temporary interest-rate reduction expired.

16. In addition, for a period of time prior to 2015, Caliber's loan modification communications did not clearly disclose that, in some instances, prior to receiving a permanent loan modification, Caliber required additional information to confirm that a loan remained in first lien position through a title search.

17. Caliber did not maintain special escalation contacts for all New York housing counselors and advocates throughout the time period in question, as previously required by New York State’s Mortgage Servicing Regulations. *See* prior 3 N.Y.C.R.R. § 419.11(g) (effective until October 7, 2019) (“The servicer shall have a process through which borrowers may escalate disagreements to a supervisory level where a separate review of the borrower’s eligibility or qualification for a loss mitigation option can be performed. The servicer shall also designate special escalation contacts for not-for-profit housing counselors, government representatives, legal services organizations and attorneys to utilize when necessary to review or intervene in the handling of a pending loss mitigation matter.”).

18. Based on the facts above, the OAG finds that Caliber has failed to “make reasonable and good faith efforts” to provide appropriate loss mitigation options, and that its loan modification offers have not consistently been structured “to result in payments that are reasonably *affordable and sustainable* for the borrower” (emphasis added), as required by New York State’s mortgage servicing regulations. *See* 3 N.Y.C.R.R. Part 419.

19. The OAG also finds that certain of Caliber’s communications and actions are unfair and deceptive.

20. As such, the OAG finds that Caliber has engaged in conduct in violation of Executive Law § 63(12), and General Business Law Article 22-A, § 349.

21. Respondent neither admits nor denies the OAG’s Findings, paragraphs (1)-(20) above.

22. Respondent has agreed to this Assurance in settlement of the violations described above and to avoid the time, expense, and distraction of litigation.

23. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest.

THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) and General Business Law Article 22-A, § 349 based on the findings described above.

### **PROSPECTIVE RELIEF**

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties, that:

24. Respondent shall not engage, or attempt to engage, in conduct in violation of any applicable laws and regulations, including but not limited to N.Y. Executive Law § 63(12), N.Y. General Business Law § 349, and New York's Mortgage Servicing Regulations, 3 N.Y.C.R.R. § 419.1, *et seq.*

#### **General Relief**

25. Caliber shall fully comply with all mortgage servicing regulations applicable to New York borrowers, including by offering affordable and sustainable loan modifications to avoid foreclosure; providing loss mitigation decisions within required time frames; and complying with any and all other procedural and administrative requirements, including applicable deadlines, required by New York's Mortgage Servicing Regulations, the Real Estate Settlement Procedure Act (RESPA), and Regulation X (12 C.F.R. Part 1024).

Loan Modification Practices<sup>1</sup>

26. Caliber shall implement the following revised loan modification waterfall provisions<sup>2</sup> for New York State borrowers with properties located in New York, and these programs will be added to the existing Authority Matrix:

a. **For Borrowers who Executed an Interest-Only or Short-Term Modification:**

i. For borrowers who, as of the Effective Date of this Assurance, have an Interest-Only or Short-Term Modification issued by Caliber (regardless of whether they are current on the modification) and whose loans are still serviced by Caliber, Caliber shall offer the borrowers, without requesting any application or information from these borrowers, a fully amortizing modification (the “NY Principal Reduction Modification”) that targets the currently-modified monthly payments including, as applicable, principal (if any), interest, taxes and insurance (“PITI”) (the “Target Payment”) using the following steps:

1. **Fee waiver:** Waive late fees currently due and outstanding, and capitalize the other outstanding amounts due (including interest, deferred balances, foreclosure related fees, and other permissible fees as applicable) to create a new, capitalized principal balance (“Capitalized Principal Balance”).

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<sup>1</sup> The provisions of this section shall apply to NPL loans serviced by Caliber acquired from a third-party.

<sup>2</sup> For the below provisions, Caliber may consider the net present value (NPV) of the modified mortgage loan in evaluating whether a borrower is eligible for a modification. Caliber may deny the modification where the NPV of the modified mortgage loan is less than the anticipated net recovery at disposition.

2. **Principal Forgiveness:** Forgive the new Capitalized Principal Balance to a floor of 100% LTV,<sup>3</sup> to be delayed subject to the borrower making timely payments on the modified loan for nine (9) months, including the completion of three trial period plan payments, which will be required for those borrowers who are not current on their Interest-Only or Short-Term Modification.
  3. **Rate Reduction:** Modify the interest rate to 3.75%, which will remain fixed over the life of the loan.
  4. **Term Extension:** Extend term up to 480 months from date of modification.<sup>4</sup>
  5. **Principal Deferment:** Defer remaining Capitalized Principal Balance to 88% LTV (“Deferred Principal”). This Deferred Principal shall be non-interest bearing.
- ii. If after the completion of steps 1-5 described above, Caliber cannot reach the Target Payment, and the modified payment achieved through steps 1-5 above does not result in a payment increase that is greater than 25% of the borrower’s monthly payment (PITI) under the current Interest-Only Modification or Short-Term Modification, Caliber may offer the borrower the proposed modification and require the borrower to complete three (3) trial plan payments.

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<sup>3</sup> Loan-to-Value or “LTV” means the ratio expressing the relationship between the unpaid balance of a mortgage loan and the value of the property securing that loan.

<sup>4</sup> If an applicable securitization agreement restricts term extension, this step will be modified or eliminated consistent with such restriction.



- iii. If Caliber determines that a borrower does not qualify for a NY Principal Reduction Modification under the above waterfall steps, Caliber shall (i) in the case of borrowers with performing Interest-Only or Short Term Modifications, inform the borrower that the borrower may apply for a new loan modification and (ii) in the case of borrowers with nonperforming Interest-Only or Short Term Modifications, inform the borrower that the borrower may apply for a new loan modification, and if the borrower does not respond to that solicitation within thirty (30) days may offer the borrower any other modification for which the borrower qualifies, including, if available, an Interest-Only Modification with sufficiently clear and conspicuous disclosures.
- iv. Caliber shall provide the NY Principal Reduction Modification offer to eligible borrowers once, no later than ninety (90) days after the Effective Date of this Assurance.<sup>5</sup>
- v. When Caliber offers an NY Principal Reduction Modification pursuant to this section, it shall provide the borrower with forty-five (45) days to respond to the offer (“the Borrower Consideration Period”).
- vi. If Caliber learns that any loan eligible for an NY Principal Reduction Modification pursuant to this section is scheduled to be transferred to a new loan servicer, and Caliber has not already offered the NY Principal Reduction Modification to the borrower pursuant to subclause (a.iv),

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<sup>5</sup> If an eligible borrower has received a COVID-19 related forbearance plan as of the Effective Date of this Assurance, Caliber shall offer the NY Principal Reduction Modification at the end of the initial or any extended forbearance period.

above, then Caliber shall offer the borrower a loan modification pursuant to this section prior to a transfer of servicing rights. If Caliber transfers a loan to a new servicer during the Borrower Consideration Period or while the borrower is making trial payments, then Caliber shall provide documents and information that will enable the transferee servicer to comply with all terms of the NY Principal Reduction Modification.

b. **Delinquent Borrowers – Payment Analysis (Preapproved):**

i. When reviewing New York State borrowers who have not submitted a complete loan modification application, who are not otherwise engaged or responsive, and/or who do not otherwise request an income-based modification (*see c.*, below) for a Preapproved Modification, Caliber shall use the following steps to offer the borrower a payment-reduction modification to target a 25% payment reduction (the “NY Pre-Approved Modification”):

1. **Fee waiver:** Waive late fees currently due and outstanding, and capitalize the other outstanding amounts due (including interest, deferred balances, foreclosure related fees, and other permissible fees as applicable) to create a new, capitalized principal balance (“Capitalized Principal Balance”).
2. **Rate Reduction:** Modify the interest rate to 3.75%, which will remain fixed for the life of the loan.

3. **Term Extension:** Extend term up to 480 months from date of modification.<sup>6</sup>
  4. **Principal Deferment:** Reduce the Capitalized Principal Balance to 88% LTV (“Deferred Principal”). This Deferred Principal shall be non-interest bearing.
- ii. If after the completion of steps described above (in b.i), the borrower still does not qualify for a modification, Caliber may offer the borrower any other modification for which the borrower qualifies, including, if available, and after evaluating the borrower for all available fully-amortizing loan modification options, an Interest-Only Modification with sufficiently clear and conspicuous disclosures.
- c. **Delinquent Borrowers – Income Analysis (Underwritten):**
- i. For New York State borrowers who submit a timely, complete loan modification application, Caliber shall use the following steps to determine whether the borrower is eligible for a modification that reduces the borrower’s monthly PITI mortgage payment up to and including 31% of the borrower’s Front-End debt-to-income ratio (“DTI”)<sup>7</sup> (the “NY Underwritten Modification”):
    1. **Fee waiver:** Waive late fees currently due and outstanding, and capitalize the other outstanding amounts due (including interest, deferred balances, foreclosure related fees, and other permissible

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<sup>6</sup> If an applicable securitization agreement restricts term extension, this step will be modified or eliminated consistent with such restriction.

<sup>7</sup> Front-End DTI is a percentage reflecting the borrower’s total monthly PITI mortgage loan payment divided by the borrower’s gross monthly income.

fees as applicable) to create a new, capitalized principal balance (“Capitalized Principal Balance”).

2. **Rate Reduction:** Modify the interest rate to 3.75%, which will remain fixed for the life of the loan.
  3. **Term Extension:** Extend term up to 480 months from date of modification.<sup>8</sup>
  4. **Principal Deferment:** Reduce the interest-bearing principal to 88% LTV (“Deferred Principal”). This Deferred Principal shall be non-interest bearing.
- ii. If after the completion of steps described above, Caliber has not achieved a 31% Front-End DTI, Caliber shall offer the borrower the modification if Caliber determines that the payment is reasonably affordable (because the payment achieves a Front-End DTI of 40% or less and/or the payment satisfies other criteria used by Caliber to determine that the modification is reasonably affordable). If the borrower still is not eligible, Caliber may offer the borrower any other modification for which the borrower qualifies including, if available, and after evaluating the borrower for all available fully-amortizing loan modification options, an Interest-Only Modification with sufficiently clear and conspicuous disclosures.

27. Within sixty (60) days of the Effective Date of this Assurance, Caliber shall implement an Authority Matrix to incorporate the loss mitigation procedures set forth in this section, and shall share that Authority Matrix with the OAG.

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<sup>8</sup> If an applicable securitization agreement restricts term extension, this step will be modified or eliminated consistent with such restriction.

28. Any changes made to the NY Pre-Approved Modification and NY Underwritten Modification within two (2) years of the execution of this Assurance must be submitted to the OAG for review. The OAG will take reasonable measures to review and respond timely with any objection to any such changes, and shall endeavor to provide any objection no later than sixty days from the date such change is submitted for review. The OAG's failure to object to any changes proposed by Caliber is not a waiver of the OAG's right to raise related objections at a later date.

29. Caliber's offer letters for the NY Principal Reduction Modification, NY Pre-Approved Modification and NY Underwritten Modification shall be agreed upon in advance by the Parties, and shall clearly and conspicuously disclose in easy-to-read language:

- a. The terms of the proposed modification, including the new Capitalized Principal Balance; any new interest rate; and that the principal and interest payments under the proposed modification shall remain fixed for the life of the loan.
- b. If applicable, the terms of the borrower's existing Interest-Only or Short-Term Modification, including a disclosure that the existing modification will increase in payment (along with the date of the increase in payment and the estimated new payment) if the borrower chooses to reject the offered modification.
- c. If applicable, the amount of principal forgiveness provided by the proposed modification, along with an explanation that loan forgiveness may be considered as income under certain circumstances and may have tax implications for the borrower. Offer letters sent for modifications including principal forgiveness will encourage borrowers to seek the advice and counsel of a tax professional to evaluate any potential tax implications

- d. If applicable, the amount of Deferred Principal and that such amount is non-interest bearing.
- e. A statement that borrowers may seek the advice and counsel of free housing counselors and legal services before making a decision about the proposed loan modification, as well as contact information for New York State's Homeowner Protection Program (HOPP) hotline and a list of local housing counseling and legal services providers.

30. To the extent that Caliber still offers Short-Term Modifications and Interest-Only Modifications to New York borrowers after evaluating the borrower for all available fully-amortizing loan modification options, Caliber will offer Short-Term and Interest-Only Modifications that clearly and conspicuously disclose to consumers, in all written and oral communications concerning such Interest-Only Modifications or Short-Term Modifications, the date and estimated amount of any future monthly payment increases.

31. Caliber shall not transfer servicing rights for any loans that, as of the Effective Date of this AOD, are subject to an Interest-Only Modification or Short-Term Modification until such time as Caliber has evaluated and/or offered the borrower a NY Principal Reduction Modification consistent with the provisions of this AOD. Any agreements to transfer servicing rights and obligations from Caliber to another servicer shall require transferee servicers to recognize and implement all such offers.

Escalation Contact

32. Caliber shall maintain an appropriate servicer contact (hereinafter the "Caliber NY Escalation Contact") for use by New York State non-profit housing counseling agencies, government representatives, and other legal services organizations and attorneys, where

appropriate third party authorization is provided, to ensure that borrowers who may be eligible for the modifications included in the Prospective Relief Section of this Assurance are properly reviewed for them.

33. Caliber shall grant permission for non-profit housing counseling agencies, legal services organizations and attorneys to contact the Caliber NY Escalation Contact directly even if the borrower has been sued for foreclosure.

34. Caliber shall identify the Caliber NY Escalation Contact to the OAG and members of the New York State Homeowner Protection Program (“HOPP”) within fifteen (15) days of the Effective Date of this Assurance, and shall promptly provide the OAG and HOPP with any future changes in the Caliber NY Escalation Contact’s name or contact information.

35. Within thirty (30) days of being named by Caliber, the Caliber NY Escalation Contact shall contact the OAG and HOPP to schedule a conference call with members of the HOPP network to explain the process by which borrowers are to be offered and/or reviewed for the modifications included in the Prospective Relief Section of this AOD, and to discuss how housing counselors and attorneys can use the Caliber NY Escalation Contact to ensure that eligible borrowers are offered these modifications.

*Borrower Communications and Transparency*

36. Within sixty (60) days of the Effective Date, Caliber shall make a document that contains a description of all loss mitigation options offered by Caliber (including loan modifications, short sales, deed-in-lieu of foreclosure agreements, and any other alternatives to foreclosure) subject, to OAG approval (the “Loss Mitigation Summary”). Caliber shall provide a copy of the Loss Mitigation Summary to the OAG and to the Center for New York City Neighborhoods (“CNYCN”) and Empire Justice Center (in their roles as HOPP anchor partners)

for distribution to New York State non-profit housing counseling and legal services organizations.

37. The Loss Mitigation Summary shall include the following information:
  - a. A list of all loss mitigation options offered by Caliber for all loans that Caliber services (including loan modifications, short sales, deed-in-lieu of foreclosure agreements, and any other alternatives to foreclosure) broken out by owner of the loan;
  - b. Eligibility requirements for each loan modification offered by Caliber;
  - c. The terms of each modification, including the order of waterfall steps where applicable; and
  - d. A list of documents that constitutes a “complete application” as that term is used in 12 C.F.R. §1024.41(b)(1) for each loan modification that requires an application.

38. Caliber shall provide the OAG and HOPP anchor partners an updated Loss Mitigation Summary within fifteen (15) days of any changes to the loss mitigation options offered by Caliber, including but not limited to the addition or deletion of any modification program by any loan owner. The Loss Mitigation Summary shall be accompanied by a cover letter delineating the changes. Within one-hundred twenty (120) days of the Effective Date, Caliber shall update its client-facing website so that borrowers can easily ascertain:

- a. The owner of their mortgage;
- b. A description of the modification programs offered by the investor;
- c. Whether an application is required for each modification program and information on how to complete an application; and



- d. Any other loss mitigation offered by the investor, including stating whether short sales and deed-in-lieu of foreclosure are available loss mitigation options.

39. Within sixty (60) days of the Effective Date, Caliber shall revise its loan modification offer letters, where applicable, to disclose clearly and conspicuously that the borrowers' receipt of a permanent loan modification is conditioned, where applicable, on Caliber determining after a title search that the modified loan will remain in first lien position. Such letters shall also provide borrowers, where applicable, with notice that is sufficient to inform borrowers that any potential title problems must be resolved prior to the end of any applicable trial payment period.

40. Within sixty (60) days of the Effective Date, Caliber shall provide a training to its loss mitigation staff and/or contractors that informs them of Caliber's loss mitigation procedures and reviews all loan modifications eligibility requirements and terms, including the loan modifications provided in the Relief Section of this AOD. Caliber shall inform the OAG of the date and time of this training and provide the OAG with copies of documents used in this training.

Monitoring and Compliance

41. Caliber shall provide the OAG with a written report annually for two (2) years after the Effective Date of this Assurance summarizing its loss mitigation activities for New Yorkers. This report shall include at minimum:

- a. Information on all loan modifications offered pursuant to the terms of this Assurance, including the name and address of the mortgagor; the amount of principal reduction (if any) offered under the modification agreement; all other

terms of the modification agreement; and the current status of the modification agreement.

- b. Information on any new Short-Term or Interest-Only Modifications offered by Caliber to New York homeowners.
- c. Information on any servicing transfers of New York Short-Term or Interest-Only Modifications since the prior report, including the name and address of the mortgagor; the date of sale; identity of the loan's new owner; date of servicing transfer; identity of new servicer; and the status of any loss mitigation activity or loan modification at the time of the servicing transfer.

42. Caliber shall promptly (and no later than thirty (30) days after the Effective Date of this Assurance) provide the OAG with information, as requested by the OAG, regarding all loans containing Interest-Only and Short-Term Modifications that are being transferred to other servicers.

## **MISCELLANEOUS**

### *Subsequent Proceedings*

43. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 50, and agrees and acknowledges that in such event:

- a. Any statute of limitations or other time-related defenses are tolled from and after the Effective Date of this Assurance;
- b. The OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the Effective Date of this Assurance;

- c. Any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue; and
- d. Evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

44. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

*Effects of Assurance*

45. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG, except that Respondent may release servicing rights for mortgage loans subject to this Assurance following the sale of that loan to a new owner, so long as Respondent complies with all applicable provisions of this Assurance

46. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

47. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

48. This Assurance is not intended for use by any third party in any other proceeding as evidence of Respondent's liability, and is not intended, and should not be construed, as an admission of liability by Respondent.

Communications

49. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 20-046, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to: Gregg Smallwood, Caliber Home Loans, Inc., 1525 South Belt Line Rd., Coppell, TX 75019, with a copy to counsel, Michelle Rogers, Buckley LLP, 2001 M Street NW, Suite 500 Washington, DC 20036, or in Mr. Smallwood's absence, to the person holding the title of General Counsel, Caliber Home Loans, Inc., 1525 South Belt Line Rd., Coppell, TX 75019.

If to the OAG, to: Mark Ladov or Elizabeth Lynch, New York State Office of the Attorney General, Consumer Frauds and Protection Bureau, 28 Liberty Street, New York NY 10005, or in his/her absence, to the person holding the title of Bureau Chief, Consumer Frauds and Protection Bureau.

Representations and Warranties

50. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and their counsel and the OAG's own factual investigation as set forth in Findings, paragraphs (1)-(20) above. The Respondent represents and warrants that neither it nor its counsel has made any material representations to

the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

51. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

52. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that Caliber Home Loans, Inc., by Ann Thorn, as the signatory to this AOD, is a duly authorized officer acting at the direction of the Board of Directors of Caliber.

General Principles

53. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable State or Federal law or regulation or other applicable law.

54. Upon the Parties' execution of this Assurance, the OAG will discontinue its investigation as to and against Caliber and LSF solely with respect to the practices set forth in the findings herein, through the Effective Date of this Assurance. Provided that Respondent complies with the terms of this Assurance, no further action will be taken by the OAG against Respondent and any of its current parents and subsidiaries, and their officers, agents, affiliates, servants, employees and shareholders for that conduct.

55. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its Effective Date.

56. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

57. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

58. Respondent acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

59. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

60. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

61. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the Effective Date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

62. The Effective Date of this Assurance shall be June 18, 2020.

LETITIA JAMES  
Attorney General of the State of New York  
28 Liberty Street  
New York, NY 10005

By: 

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Jane M. Azia, Esq.  
Bureau Chief  
Bureau of Consumer Frauds and Protection

Caliber Home Loans, Inc.

By: \_\_\_\_\_  
Ann Thorn  
EVP, Chief Loan Administration Officer  
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Buckley LLP

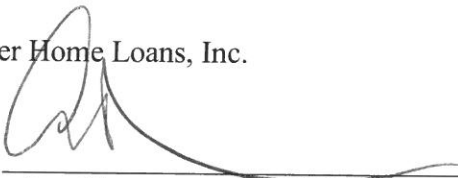
By: \_\_\_\_\_  
Michelle L. Rogers  
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Counsel to Caliber Home Loans, Inc.

LETITIA JAMES  
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By: \_\_\_\_\_  
Jane M. Azia, Esq.  
Bureau Chief  
Bureau of Consumer Frauds and Protection

Caliber Home Loans, Inc.

By:  \_\_\_\_\_  
Ann Thorn  
EVP, Chief Loan Administration Officer  
1525 S. Belt Line Road  
Coppell, TX 75019

Buckley LLP

By: \_\_\_\_\_  
Michelle L. Rogers  
Kristopher Knabe  
2001 M Street, NW  
Suite 500  
Washington, DC 20036  
(202) 349-8000  
  
Counsel to Caliber Home Loans, Inc.

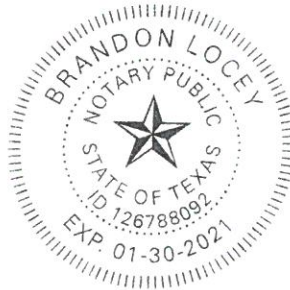


STATE OF Texas )  
COUNTY OF Denton ) ss.:

On the 10<sup>th</sup> day of June in the year 2020 before me personally came Ann Thorn to me known, who, being by me duly sworn, did depose and say that she resides in Double oak TX [if the place of residence is in a city, include the street and street number, if any, thereof]; that she is the EVP, Chief Loan Administration Officer of Caliber Home Loans, Inc., the corporation described in and which executed the above instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that she signed her name thereto by like authority.

Sworn to before me this  
10<sup>th</sup> day of June, 2020

Brandon Locey  
NOTARY PUBLIC




LETITIA JAMES  
Attorney General of the State of New York  
28 Liberty Street  
New York, NY 10005

By: \_\_\_\_\_  
Jane M. Azia, Esq.  
Bureau Chief  
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