



DEPARTMENT OF
INSURANCE AND FINANCIAL INSTITUTIONS

REPORT OF MARKET CONDUCT EXAMINATION

OF

PROGRESSIVE ADVANCED INSURANCE COMPANY

NAIC CoCode 11851

AND

PROGRESSIVE PREFERRED INSURANCE COMPANY

NAIC CoCode 37834

AS OF

July 31, 2021

AZ Exam No. 47124

NAIC MATS No. AZ-BORUNDAS-10

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MARKET CONDUCT SECTION

Arizona Department of Insurance and Financial Institutions

100 North 15th Avenue, Suite 261, Phoenix, AZ 85007-2630

Phone: (602) 364-4994 | Web: <https://difi.az.gov> | Email: marketconduct@difi.az.gov

Katie M. Hobbs
Governor

Barbara D. Richardson
Cabinet Executive Officer
Executive Deputy Director

Executive Deputy Director Barbara D. Richardson
Arizona Department of Insurance and Financial Institutions
100 N. 15th Ave, Suite 261
Phoenix, Arizona 85007-2624

Dear Executive Deputy Director Richardson:

Pursuant to your instructions and in conformity with the provisions of the Insurance Laws and Rules of the State of Arizona, an examination has been made of the market conduct affairs of the:

Progressive Advanced Insurance Company, NAIC CoCode 11851
And
Progressive Preferred Insurance Company, NAIC CoCode 37834

Shelly Schuman, ACS, AIE, AMCM, CICSR, CIS, FLMI, HIA, PAHM, Market Conduct Examination Supervisor, conducted the examination with the assistance of Bruce Glaser, CIE, MCM, AIRC, CPCU, CLU, ChFC, FLMI, ARM-Pe, CICSR, CRIS, PAHM, Market Conduct Examiner-in-Charge, Tony Taylor, DM, MCM, Market Conduct Data Management Specialist, and George Kalargyros, MCM, LPCS, Market Conduct Insurance Examiner.

The examination covered January 1, 2015, through July 31, 2021.

As a result of that examination, the following Report of Examination is respectfully submitted.

Sincerely yours,

Maria G. Ailor, AIE, AMCM, Assistant Director
Market Regulation, and Consumer Services Division

AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF JACKSON) ss.

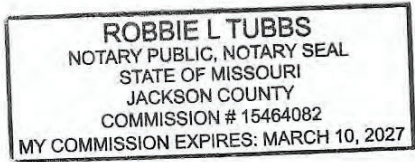
Shelly Schuman, ACS, AIE, AMCM, CICS, CIS, FLMI, HIA, PAHM, being first duly sworn, states that I am a duly appointed Market Conduct Examination Supervisor for the Arizona Department of Insurance and Financial Institutions. Under my direction and with my participation and the participation of Bruce Glaser, CIE, MCM, AIRC, CPCU, CLU, ChFC, FLMI, ARM-Pe, CICS, CRIS, PAHM, Market Conduct Examiner-in-Charge, Tony Taylor, DM, MCM, Market Conduct Data Management Specialist, and George Kalargyros, MCM, LPCS, Market Conduct Insurance Examiner, the Examination of Progressive Advanced Insurance Company, and Progressive Preferred Insurance Company, hereinafter referred to as the "Companies," was performed at the office of the Arizona Department of Insurance and Financial Institutions. The information contained in this Report, which consists of the following pages, is true and correct to the best of my knowledge and belief, and any conclusions and recommendations contained in and made a part of this Report are such as may be reasonably warranted from the facts disclosed in the Examination Report.

Shelly Schuman
Shelly Schuman, ACS, AIE, AMCM, CICS, CIS, FLMI, HIA, PAHM,
Market Conduct Examination Supervisor
INS Regulatory Insurance Services, Inc.

Subscribed and sworn to before me this 14 day of April, 2023.

Robbie L Tubbs
Notary Public

My Commission Expires: March 10, 2027



FOREWORD

This market conduct examination report of Progressive Advanced Insurance Company and Progressive Preferred Insurance Company (herein referred to as the “Companies”) was prepared by employees of the Arizona Department of Insurance and Financial Institutions (“Department” and “DIFI”) as well as independent examiners contracting with the Department. A market conduct examination reviews certain business practices of insurers licensed to conduct insurance business in Arizona. The examiners reviewed the Companies in accordance with Arizona Revised Statutes (A.R.S.) §§ 20-142, 20-156, and 20-157. The findings in this report, including all work product developed in the production of this report, are the sole property of the Department.

The examination consisted of a review of the Private Passenger Automobile (PPA) business operations related to Underwriting and Rating.

Certain unacceptable or non-complying practices may not have been discovered during this examination. Additionally, findings may not be material to all areas that would serve to assist the Director.

Failure to identify or criticize specific Company practices does not constitute acceptance of those practices by the Department.

SCOPE AND METHODOLOGY

The examination of the Companies was conducted in accordance with the standards and procedures established by the National Association of Insurance Commissioners (NAIC) and the Department. The purpose of the examination was to determine the Companies’ compliance with Arizona’s insurance laws.

The focus of the examination was the Companies’ compliance with A.R.S. § 20-2110(F)(3) and the use of bankruptcies as a rating factor. The Companies were requested to conduct a self-audit of their credit scoring models for all property and casualty products sold in Arizona for the period from January 1, 2015, to July 31, 2021. The purpose of the self-audit was to determine if consumers were rated and paid higher premiums as the result of a bankruptcy aged more than seven (7) years, in violation of A.R.S. § 20-2110(F)(3). If violations were found as part of the self-

audit, the Companies would be required to submit a Corrective Action Plan to remediate those violations.

EXAMINATION REPORT SUMMARY

The examination concluded that the Companies' rating function failed to comply with Arizona statutes and rules regarding A.R.S. § 20-2110(F)(3). Specifically, the Companies failed to demonstrate (i) a process to identify and track at inception the permissible use of adverse credit factors—specifically bankruptcies and liens—in calculating an insurance score, (ii) a process to identify at renewal whether a policy's bankruptcy record aged to more than seven (7) years, and (iii) the ability to disregard that information or re-rate the individual once the bankruptcy surpassed its allowable usage.

In the Department's January 19, 2022 cover letter, the Companies were provided with a Coordinator's Handbook (Handbook) that requested complete and accurate underwriting and rating data. Specifically, the Companies were requested to conduct a self-audit to determine compliance with A.R.S. § 20-2110(F), and to provide the Department with documentation demonstrating that the algorithms or models properly disregarded bankruptcies aged more than seven years. The Companies' response to the Handbook was due on March 9, 2022. On March 4, 2022, the Companies requested an extension until April 8, 2022 in order to gather the requested data and perform the self-audit.

On April 8, 2022, the Companies' responded to the Handbook stating, in part, that they conducted a self-audit and determined "that there are no issues with our rate filings or rating algorithm, specifically that no bankruptcies over 7 years were used for rating purposes." No documentation supporting the audit's conclusion that the Companies' rating algorithm properly excluded bankruptcies in accordance with A.R.S. § 20-2110(F) was included in the response. The Companies provided a partial data set of renewal business policies that identified renewal policies as having been rated for a bankruptcy, and stated that, as of the date of the initial credit report, no bankruptcies were aged to more than 7 years. The contract examiners extrapolated the provided data set and identified a total of 49,930 policies where the policyholder was rated as having one or more bankruptcies. However, there was no supporting documentation specifying the actual age of these bankruptcies.

Additionally, the Companies identified three (3) credit vendors utilized during the examination period that provided the Companies with consumer credit statements and reports. The Companies provided communications from each vendor that largely restated the length of time federal law delineates bankruptcy information can be permissibly included on a consumer credit report. The first vendor's communication dated March 7, 2022 noted that "[i]t is standard practice among the Credit Reporting Agencies to retain Chapter 7 bankruptcies for 10 years and Chapter 13 bankruptcies for 7 years on the credit report." Similarly, the second vendor provided a document titled "[Vendor 2] Purge Rules (updated September 13, 2021)", that stated "[i]t is [a] standard practice among the Credit Reporting Agencies to retain Chapter 7 bankruptcies for 10 years and Chapter 13 bankruptcies for 7 years on the credit report." Notably, the third vendor's March 28, 2022 communication stated that "[Vendor 3's] contracts / legal team didn't see a contractual requirement to limit BK to 7 years in any of our agreements" with the Companies.

On May 3, 2022, the contract examiners issued Information Request (IR) 01 which, in relevant part, requested clarification on: (1) why the Companies' data request submission only included renewal policies; (2) how the Companies used the consumer credit information provided by their vendors in scoring models, and how this impacts policy premiums; and (3) how the Companies track and exclude bankruptcies and liens older than seven years from their rating algorithm. The Companies' response was due on May 10, 2022. On May 5, 2022, the Companies requested an extension until June 3, 2022. The contract examiners agreed to the extension.

On June 3, 2022, the Companies responded to IR 01. The Companies noted a technical issue as the reason for the limited data submission for the CHB data request due to the large file size, and provided the additional requested policies for new business. In response to how the Companies utilize the vendor credit data in scoring models and generating policy premiums, the Companies provided all iterations of its rating Rule 20 – Financial Responsibility for the examination timeframe, which lists the criteria and information the Companies use from the vendor-provided credit data. Specifically, the Companies emphasized that bankruptcies are included as delinquencies in the vendor credit data, but "in the rating algorithm of our credit model, we do not consider any delinquency older than seven years.... [as a]ny delinquency older than seven years is excluded."

The first iteration of Rule 22.00.02.00(B) Financial Responsibility Factor (effective May 8, 2015), that the Companies provided for renewal policies, stated: "*The Company will, 36 months*

following the effective date of the most recent calculation or recalculation and evaluation of the insurance score, *proactively reorder credit information, recalculate the insurance score, and evaluate the insurance score to determine if it would place the policy in a different financial responsibility tier* (based on the BI/PD financial responsibility tier factor)” (emphasis added). The Companies revised Rule 20, effective November 6, 2015, (SERFF# PRGS-130307361) and removed this re-scoring interval and provided that credit is not reordered unless requested by the consumer.

The Companies also referenced the most recent iteration of Rule 20, effective November 6, 2015 (SERFF# 201903 PRGS-132236664-VHS), to highlight how consumer credit information is used. Specifically, the Companies noted in their revision filing that this updated rule sought to “call out that we do not use bankruptcy data over seven years old at DIFI’s request.” However, the Companies’ response to IR01 specifically states that they “don’t track bankruptcy dates” and, that the Companies “do not reorder credit unless requested to do so by the consumer.” See Rule P22(B), eff. Nov. 6, 2015 (“[a]t the request of the named insured or his authorized agent, the Company shall re-order credit information, recalculate the insurance score, and evaluate the insurance score...once in any 12-month period.”). The Companies also noted in this IR response that because they do not track bankruptcy dates, no bankruptcy dates were provided for the initial sample population of files.

On June 28, 2022, the contract examiners issued IR 02, which provided a list of 116 “New” or 116 “Renewal” policies that utilized bankruptcy in the rating algorithm for each of the Companies. Specifically, IR 02 requested the Companies expound on how the rating algorithm can exclude bankruptcies that have aged beyond the seven years from the calculation when the Companies stated that they do not track the bankruptcy dates. IR 02 also requested the Companies utilize public records to obtain the bankruptcy dates for the sample new business and renewal policies. The Companies were requested to provide the date of the bankruptcy as obtained through public records. In addition, the Companies needed to explain how the rating algorithm removes bankruptcy from the calculation since the Companies stated that they do not track the bankruptcy date. The Companies’ response to IR 02 was due on July 8, 2022. On July 5, 2022, the Companies requested an extension until August 8, 2022. The contract examiners granted an extension until July 18, 2022.

The Companies' July 18, 2022 response again noted that "we're unable to provide you with the date of the bankruptcy because we don't track bankruptcy dates or receive this information when we obtain a customer's financial responsibility information" from the Companies' vendors. The Companies also emphasized that bankruptcy information "greater than seven years old is not considered or used in rating," and continued stating, "A.R.S. §20-2110(F) does not require Progressive to update credit history or recalculate an insurance score at renewal." The Companies' response also referred back to Rule 22, which requires insureds to request updated credit history up to once per twelve-month period. No other demonstration of how the algorithm disregarded bankruptcy information was included in this IR response. Consequently, the Companies again failed to provide the date of bankruptcy for its policies to show compliance with A.R.S. § 20-2110(F)(3).

The Department sent IR 03 on September 9, 2022, and reiterated that "the purpose of the exam is to determine if the Company utilized bankruptcies older than seven years for the purposes of underwriting or rating consumers in violation of A.R.S. § 20-2110(F)(3)." Based on the Companies' previous responses that they do not receive bankruptcy dates from the vendors, the Department required the Companies to re-run the data sets requested in IR01 on May 3, 2022, and include the bankruptcy dates." The Companies' response to IR 03 was due September 30, 2022.

On September 30, 2022 the Companies responded to IR 03, in part that their "credit vendors do not send us bankruptcy dates, so we do not have them to share with you." The Companies further elaborated that "[b]ankruptcies are one cause of a severe derogatory delinquencies that can show on a person's credit history... [and] there is no designated field in the raw credit information that we receive [from the vendors] that tracks the date of bankruptcy." The Companies did not provide the re-run data sets from IR 01 as requested as part of IR 03.

The Department sent a follow-up response to the Companies on November 1, 2022. This response required that the Companies provide supporting information to demonstrate how the Companies' current practices comply with A.R.S. § 20-2110(F), and noted that the use of a "bankruptcy indicator" without any mechanism to identify a bankruptcy's date likely violated A.R.S. § 20-2110(F). Additionally, the Companies' vendors appeared to have the bankruptcy data repeatedly requested by the Department throughout the examination process as each vendor specifically noted the reportable retention period for bankruptcy information. See, e.g., Vendor 1's

March 7, 2022 Response (“It is standard practice among the Credit Reporting Agencies to retain Chapter 7 bankruptcies for 10 years and Chapter 13 bankruptcies for 7 years on the credit report”). The Department concluded its follow up to IR 03 by again requiring the Companies work with their vendors to provide all underlying data used in the calculation of the bankruptcy indicator, including the bankruptcy dates, or alternatively provided that the Companies could explore obtaining the bankruptcy dates through public records. The response expressly stated that the failure to provide the requested data would be considered as non-compliance, and a violation of Arizona law. This response was due on November 15, 2022. On November 15, 2022, the Companies requested an extension until December 13, 2022. The Department granted an extension until November 29, 2022.

On November 29, 2022, the Companies provided a partial response noting that “[a]fter further investigation, we found that the vendors do send us bankruptcy dates in the public records information they send to” the Companies. The Companies requested an extension until December 13, 2022 in order to obtain the requested bankruptcy data, and issue restated responses to IR 01, IR 02, and IR 03. The Department agreed to the extension request.

On December 13, 2022, the Companies again restated that their “vendors do provide us bankruptcy dates in the public records information they send to” the Companies. The Companies provided updated data sets as requested in IR 01; however, for a number of the sample policies, the Companies listed multiple bankruptcy dates within the same year for the same policyholder in the data set. Due to these multiple dates, the data set was largely unusable for analysis.

Because of these data integrity issues, the Department met with the Companies’ representatives on January 25, 2023, to discuss the production of the full data set for the 49,930 policyholders identified as being rated for having one or more bankruptcies. Specifically, the Department was concerned about the overall data integrity, and questioned the instances where some policyholders were listed as having multiple bankruptcies within the same year. Additionally, during this meeting, the Department advised the Companies’ representatives that the Department would issue an additional IR with written follow-up questions for the Companies.

The Department sent IR 04 with follow-up questions on January 31, 2023. IR 04 specifically requested clarification on the Department’s data integrity concerns, an example or demonstration of the Companies’ algorithms that shows the Companies can disregard a

bankruptcy once the bankruptcy ages to more than seven years, and a proposed completion date for providing the full data set of the 49,930 policyholders.

On February 7, 2023, the Company provided additional information not previously provided during the examination. Specifically, in response to the request for a proposed completion date for the data spreadsheets, the Companies stated that “for the 49,930 policies in the spreadsheet ... *the process to gather the [bankruptcy date] information is manual that would take many months to complete as the information is not easily accessible in our system and not set up for this type of mass reporting.*” [Emphasis added.] The Companies also requested an extension until March 8, 2023.

On February 17, 2023, the Department sent follow-up correspondence to the Companies requesting an explanation from the Companies on why manual data entry of the bankruptcy dates for the 49,930 policies is required. The Department also explained that because IR 04 again asked for substantively the same information as IR 01, IR 02, and IR 03, the Department provided an extension request until February 21, 2023.

On February 21, 2023, the Companies stated, in relevant part, that the “current credit algorithm does not utilize bankruptcy dates, so we do not automatically parse out the information provided on the public record segment of the credit report..., so the information is not stored in a format that is easy to access.” The Companies estimated that it would take upwards of six months or more to create a process, and build a system to extract and validate the bankruptcy dates for the 49,930 policies.

* * *

Throughout the course of this examination, the Companies failed to provide the Department with complete responses. The Department provided the Companies multiple opportunities to demonstrate their compliance with A.R.S. § 20-2110(F) by repeatedly requesting that the Companies provide a demonstration or example of how their algorithm disregarded bankruptcies aged to more than seven years. Alternatively, since the Companies were adamant that they were unable to obtain the bankruptcy dates from their vendors, the Department and its contract examiners suggested the Companies obtain the dates through public records.

Ultimately, after the examination had been ongoing for almost one year with minimal progress, the Companies indicated that they do in fact receive bankruptcy dates from their vendors. However, the Companies had no mechanism in place to identify and track the bankruptcy dates. And of greater concern, the Companies removed the automatic re-ordering of credit reports for policyholders in their November 2015 update to Rule 22, which instead placed the onus on insureds to request periodic credit report updates; absent an insured's request to update their credit score, the Companies appear to use this initial credit score indefinitely. The Department respectfully disagrees with these current practices.

The Department's position is that A.R.S. § 20-2110(F)(3) prohibits the use of bankruptcies that are more than seven years old, and this timeline begins on the date that the bankruptcy is adjudicated. This timeline cannot be extended unilaterally by a company's internal policy to rerun the credit factor at its discretion. This position is supported by the statute's language and its clear intent to place explicit time limits on the use of adverse credit factors, such as bankruptcy, both at policy inception and renewal. Put simply, the Department's position is that A.R.S. § 20-2110(F) prohibits the use of specific bankruptcy information after statutorily prescribed timeframes.

Here, the Companies responses throughout the exam failed to demonstrate that bankruptcy information was properly excluded after the statutorily prescribed timeframe of seven (7) years expired. Taken together, the lack of a policy or mechanism to track bankruptcy dates to identify when the bankruptcy aged beyond seven years, the Rule 22 change removing any automatic re-ordering of credit history, the communications provided by the Companies' vendors indicating that bankruptcies older than seven years were not specifically excluded, and the specific circumstances for this exam wherein the Companies' failure to provide complete responses on multiple occasions during the examination, demonstrate the Companies' noncompliance with A.R.S. § 20-2110(F).

Accordingly, the Department has concluded that the Companies violated A.R.S. § 20-2110(F) during the examination period.

CORRECTIVE ACTION PLAN

This Corrective Action Plan defines the corrective action requirements applicable to the Companies resulting from the market conduct examination conducted by the Department.

Area of Concern: Bankruptcy Factor Rating of Policies

Corrective Actions

- A. As of June 16, 2023, Respondents will cease and desist the use of bankruptcies or lien rating factors in their calculation of credit-based insurance scores (CBIS) for new business.
- i. As soon as possible, but no later than three months after the filing of the Report, Respondents will refile in SERFF a revised model filing containing applicable revisions to the Respondents' credit model and credit algorithm in compliance with A.R.S. § 20-385(A). To document the update to the credit model and credit algorithm, a rate/rule filing that clearly illustrates the change to the model or algorithm is required.
 - ii. The Filing(s) in SERFF must include applicable revisions to Rules P20, P22, and P23, and specifically reference that bankruptcy and lien information will no longer be used as a rating factor. These revisions must reflect all rule provisions that the removal of bankruptcies and liens would affect and must explicitly state that bankruptcies and liens are no longer considered in the calculation of the CBIS. If these changes affect any other rules not listed here, Respondents must file revisions as indicated above as well as cross-reference the SERFF filing numbers, line of business, and model name for all bankruptcy factor impacted models. On or before October 27, 2023, Respondents will file in SERFF any applicable revisions to Rules P22 and P23, as noted above.
 - iii. Respondents' filings must provide the information listed in the "Predictive Model Checklist."
- B. To effectuate A, Respondents must perform the following:
- i. First, Respondents must work with their credit vendors to identify the exact programming logic needed to correctly identify or isolate bankruptcy or lien data from all credit information shared with the Respondents and remove all bankruptcy and lien data impact from their scoring model.

- ii. Second, Respondents will:
 - a. Build a system to extract the bankruptcy information from the credit vendor-provided data text string, in order to prevent bankruptcy and/or lien information from being inadvertently used in their credit model and/or algorithm.
 - b. Test that the system properly identifies and excludes bankruptcy and/or lien information, and provide the Department with documentation that this system is in place and properly identifies and excludes this information.
 - c. Propose a detailed timeline for how these programming changes will be created, implemented, and continually tested.
- C. Respondents will review the 49,930 policyholders identified during the examination period as being rated for having one or more bankruptcies and determine the number of policyholders that remain in-force policies as of the filing date of the Consent Order.
 - i. After identifying the total number of the 49,930 policyholders that remain current policyholders, the Respondents will:
 - a. Reorder the credit-based insurance score for these policyholders before their next scheduled renewal to determine the age of the bankruptcy;
 - b. Identify which bankruptcies have reached at least 84 months of age or will reach 84 months of age prior to the policyholders next policy renewal; and
 - c. For those policyholders with bankruptcies older than 84 months, issue a flat refund of \$100. The refund must be issued within 30 days of the credit reorder. The refund will be accompanied by a notice, and that notice must be approved by the Department prior to being issued to policyholders.
 - ii. At the completion of item C(i), Respondents will each provide the Department with a data set of the 49,930 policyholders in a format prescribed by the Department, that specifies the in-force policies credited, along with the date the credit reorder occurred, and the issue date of the refund. Respondents must provide the Department with the complete data set no later than 30 days after the completion of C(i).
- D. For all existing in-force Arizona policyholders who had previously been rated using bankruptcy or lien data as of the filing date of the Consent Order, Respondents will reorder these policyholders' credit report prior to their next renewal, exclude any bankruptcies or liens as rating factors, and adjust the renewal rates and premiums accordingly. This total shall include any of the 49,930 policyholders identified during the examination period with

in-force policies and any additional existing in-force policyholders who had previously been rated using bankruptcy or lien data after the exam period.

- i. In the next renewal packet, Respondents must issue a separate, standalone notice approved by the Department, prior to being issued to policyholders, that advises all Arizona policyholders that (1) they have the right to request reorder of their credit report once a year/one during a 12 month period, and (2) that Respondents will not otherwise reorder a credit report, which means any adverse credit items will be used in calculating the premium even if those items would normally drop off of their credit report due to age.
- E. At the completion of item D(i), each Respondent will provide the Department with the total number of the in-force policyholders identified as having been rated for a bankruptcy prior to the filing date of the Consent Order, in a format specified by the Department. This total shall include the 49,930 policyholders identified during the examination period.
- F. Beginning ninety (90) days after the filing date of the Report, the Respondents will provide status updates to the Department, at minimum every thirty (30) days or at the Department's request, during the implementation and compliance monitoring period in a format prescribed by the Department.
- G. During the course of the implementation and compliance period, the Department may request additional documentation and/or supporting materials not specifically listed herein that demonstrate Respondents' progress with the CAP requirements above.
- H. Respondents shall provide a timely and complete response to any future inquiries by the Department on the CAP.
- I. Respondents shall provide a timely and complete response to any future inquiries by the Department on the CAP.

The following is a summary of the examiners' finding:

UNDERWRITING AND RATING

Private Passenger Automobile (PPA)

The examiners reviewed the initial data of 4,426,024 PPA new business and renewed policies active during the period under examination. The Companies failed to identify which policies were rated for having one or more bankruptcies at the inception date or subsequent renewal.

The following Underwriting and Rating Standards Failed:

#	Standard	Regulatory Authority
AZ	The insurer shall not use a bankruptcy or a lien satisfaction that is more than seven years old.	A.R.S. § 20-2110(F)(3)

Preliminary Finding #1 – Bankruptcy Rating of Policies

The Companies' responses during the course of the examination demonstrated noncompliance with A.R.S. § 20-2110(F). The Companies assert that A.R.S. § 20-2110(F) does not require Progressive to update credit history or recalculate an insurance score at renewal. Rule P22 – Financial Responsibility Factor discloses that since 2015, the Companies do not reorder credit unless requested to do so by the customer. An insured may request Progressive to reorder their financial responsibility up to once a year, as stated in the current filed rules. Therefore, the Companies acknowledge that they do not track bankruptcy dates and could not identify when the bankruptcy aged beyond the seven-years. The Companies use of bankruptcies over seven (7) years old adversely affects the premium for these policies and fails to comply with A.R.S. § 20-2110(F)(3).

Recommendation #1

The Companies implement the Corrective Action Plan as detailed in the Examination Report Summary.