

STATE OF ARIZONA

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

In the Matter of:

Progressive Advanced Insurance Company (NAIC # 11851), and Progressive Preferred Insurance Company (NAIC # 37834),

No. 23A- 087-INS

CONSENT ORDER

6300 Wilson Mills Road
Cleveland OH, USA 44143-2182

Respondents.

The Arizona Department of Insurance and Financial Institutions (“Department”) conducted a targeted market conduct examination of Progressive Advanced Insurance Company and Progressive Preferred Insurance Company (collectively “Respondents” or “Companies”) to determine Respondents’ compliance with provisions of, Arizona Revised Statutes (“A.R.S.”) Title 20. In the Report of Market Conduct Examination (“Report”) of Respondents, the Department alleges that Respondents violated A.R.S. § 20-2110(F)(3).

Respondents wish to resolve this matter without the commencement of formal proceedings, and admits the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondents are Ohio domiciled companies. Respondents are authorized to transact property and casualty insurance in Arizona pursuant to the certificates of authority issued by the Director.

2. The Director authorized examiners, consisting of Department employees and independent examiners contracting with the Department, to conduct a target market conduct examination of Respondents. The Department called the examination of Respondents on December 1, 2021, and the

1 examination fieldwork concluded on April 20, 2023. The examination covered the period from January
2 1, 2015, to July 31, 2021. The examination consisted of a review of the Private Passenger Automobile
3 (“PPA”) business operations related to the use of consumers’ bankruptcies in Respondents’ rating
4 practices.

5 3. On or about January 19, 2022, the Department sent to Respondents the Coordinator’s
6 Handbook (“CHB”) which required Respondents to provide the rating data for all PPA policies that
7 indicated a consumer was rated for having one or more bankruptcies. The CHB also required
8 Respondents to conduct a self-audit of their rating algorithm for PPA policies to determine if
9 bankruptcies older than seven years were included as a rating factor in Respondents’ rate filings and/or
10 rating algorithm.

11 4. On or about April 8, 2022, Respondents responded to the Department’s request stating that
12 Respondents’ self-audit determined that the rating algorithm properly excluded bankruptcies older than
13 seven years. Respondents, however, did not provide any documentation in support of the self-audit
14 conclusion. The response also included a partial data set identifying renewal business policies that fell
15 within the scope of the examination period.

16 5. On May 3, 2022, the contract examiners sent a first information request to Respondents which
17 sought clarification on the submission of the partial data set and an explanation on how Respondents
18 track and exclude bankruptcy information from their rating algorithm, in order to validate Respondents’
19 conclusions regarding the self-audit.

20 6. On June 3, 2022, Respondents provided the complete data set, which included 4,475,174 PPA
21 policy terms that fell within the scope of the examination period. Based on this data set, the contract
22 examiners identified 49,930 policies that Respondents rated for having one or more bankruptcies.
23 Respondent did not provide the bankruptcy dates for these policies. Respondents also stated that they
24 did not track bankruptcy dates, and noted that the credit vendors do not provide Respondents with
25 bankruptcy dates. However, in December 2022, Respondents later revised this statement.

1 7. In their June 3, 2022 response, Respondents also included all iterations of their rating rules
2 titled Rule 20 – Financial Responsibility (“Rule 20”) and Rule 22 – Financial Responsibility Tier (“Rule
3 22”) for the examination timeframe, which listed the criteria and information the Companies utilize from
4 the vendor-provided credit data. As of November 6, 2015, and throughout the remainder of the
5 examination period, Rule 22 provided that credit was not reordered unless requested by the consumer.
6 Respondents’ Rule 22 filing indicates Respondents’ practice of using bankruptcies for an indefinite
7 period of time when rating consumers’ premiums.

8 8. On June 28, 2022, the contract examiners sent a second request for records and information
9 to Respondents. Specifically, the examiners requested that Respondents expound on their assertion that
10 their rating algorithm excluded bankruptcies that have aged beyond seven years from the calculation
11 date when Respondents stated that they do not track the bankruptcy dates. The examiners also requested
12 that Respondents obtain and provide the bankruptcy dates for the policyholders rated for one or more
13 bankruptcies during the examination period.

14 9. In their July 18, 2022 response, Respondents again failed to provide the bankruptcy dates
15 for policyholders rated for one or more bankruptcies during the examination period. Instead,
16 Respondents reiterated that they do not track bankruptcy dates, and they do not receive bankruptcy dates
17 from their credit vendors. Respondent offered no evidence to support their assertion that their algorithm
18 disregarded bankruptcy information that aged beyond seven years for renewal policies. Respondent also
19 failed to provide evidence that it attempted to obtain bankruptcy information through public records
20 searches or requests.

21 10. On or about September 9, 2022, the Department sent a third request for records and
22 information to Respondents. The Department requested justification for Respondents’ assertion that
23 bankruptcies older than seven years were not considered in Respondents’ rating algorithm when
24 Respondents did not receive or track bankruptcy dates. The Department also required Respondents to
25 rerun the data sets requested in the examiners’ first request for records and information.

1 11. In their September 30, 2022 response, Respondents failed to provide the rerun data sets.
2 Instead, Respondents reasserted that their credit vendors do not provide Respondents with bankruptcy
3 dates, and thus Respondents could not fulfill the Department's information request.

4 12. On or about November 1, 2022, the Department sent a follow-up request to Respondents,
5 which required that Respondents provide supporting information to demonstrate how their current
6 practices comply with A.R.S. § 20-2110(F)(3). Specifically, the Department requested that Respondents
7 obtain the bankruptcy dates for policyholders during the examination period from their consumer credit
8 vendors. Alternatively, the Department again requested that Respondents obtain the bankruptcy dates
9 through public records.

10 13. On November 29, 2022, Respondents provided a partial response. The response stated that
11 Respondents discovered that the public records information sent by Respondents' consumer credit
12 vendors did in fact include bankruptcy dates, and Respondents requested an extension until December
13 13, 2022 to provide those dates.

14 14. In their December 13, 2022 response, Respondents provided the bankruptcy dates for a
15 small sample of the policyholders rated for one or more bankruptcies during the examination period.
16 Specifically, Respondents provided a sample of 232 of the 49,930 policyholders identified as having
17 been rated for one or more bankruptcies during the examination period. However, a number of the
18 sample policies listed multiple bankruptcy dates within the same year for the same policyholder in the
19 data set. Due to the inclusion of multiple dates, the data set was largely unusable for analysis.

20 15. On January 25, 2023, the Department met with the Respondents' representatives to discuss
21 the production of the full data set for the 49,930 policyholders identified as being rated for having one
22 or more bankruptcies during the examination period. During this meeting, the Department advised
23 Respondents that an additional information request would be forthcoming.

24 16. On January 31, 2023, the Department sent its fourth request for records and information to
25 Respondents. The Department requested a response on the identified data integrity concerns, an example

1 demonstrating that Respondents' algorithms disregard a bankruptcy once the bankruptcy aged to more
2 than seven years, and a proposed completion date for providing the full data set of the 49,930
3 policyholders.

4 17. On February 7, 2023, Respondents stated that a manual process was necessary to complete
5 the data set for the 49,930 policyholders, and that this process would take many months to complete.

6 18. On February 17, 2023, the Department requested clarification from Respondents on why
7 manual data entry of the bankruptcy dates for the 49,930 policies was required.

8 19. On February 21, 2023, Respondents stated that the bankruptcy data was not in an easily
9 accessible format, and that the process to create a procedure and build a system to extract and validate
10 the bankruptcy dates for the 49,930 policies would take upwards of six months or more.

11 20. Throughout the examination, the Department provided Respondents multiple opportunities
12 to demonstrate their compliance with A.R.S. § 20-2110(F)(3). Respondents' responses ultimately failed
13 to demonstrate their compliance with A.R.S. § 20-2110(F)(3) during this examination.

14 **CONCLUSIONS OF LAW**

15 21. The Director has jurisdiction over this matter.

16 22. The Director has authority to conduct examinations and investigations of insurance matters
17 and to request the accounts, records, documents, files, assets and matters in the person's possession or
18 control. A.R.S. §§ 20-142(C), and 20-157(A).

19 23. Respondents' conduct, as alleged above, constitutes a violation of the prohibition that
20 insurers cannot use bankruptcies older than seven years when calculating an insurance score to determine
21 property or casualty premiums. A.R.S. § 20-2110(F)(3).

22 24. Grounds exist for the Director to impose a civil penalty of not to exceed one thousand dollars
23 for each violation and not to exceed an aggregate of ten thousand dollars within any six-month period
24 with respect to unintentional violations; and not more than five thousand dollars for each act or violation
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1 and not to exceed an aggregate of fifty thousand dollars within any six-month period with respect to
2 intentional violations. A.R.S. § 20-220(B).

3 **ORDER**

4 IT IS ORDERED:

5 1. The total assessed Civil Monetary Penalty (“CMP”) by the Department against Respondents
6 is \$300,000.00 (three hundred thousand dollars).

7 A. Respondents shall pay \$150,000.00 (one hundred and fifty thousand dollars) to the
8 Department prior to the filing date of this Consent Order.

9 B. The remaining portion of the CMP identified above (\$150,000.00) will be suspended at
10 the end of the implementation and compliance monitoring period, if the Department
11 determines that Respondents have complied with the provisions of the Corrective Action
12 Plan and this Consent Order.

13 C. If the Department determines that the Respondents have not complied with a provision
14 of this Consent Order or Corrective Action Plan, or that the Respondents have made a
15 misrepresentation or omission during the implementation and compliance monitoring
16 period, the Department shall provide written notice of its findings to the Company.

17 D. The Respondents shall have the opportunity, within 21 (twenty-one) calendar days of
18 receipt of such notice, to present evidence in writing to the Department to address a
19 finding of non-compliance.

20 E. If, after review of the additional evidence, the Department determines that Respondents
21 remain non-compliant with the Corrective Action Plan or this Consent Order, it shall
22 provide notice to Respondents of such determination and Respondents shall be required
23 to pay the remaining \$150,000 within fourteen (14) days of receipt of such Department
24 notice.

25 F. Respondents are jointly and severally liable for payment of the civil money penalty.

1 2. Respondents shall implement the following as listed in the Corrective Action Plan (“CAP”):

2 A. As of June 16, 2023, Respondents will cease and desist the use of bankruptcies or lien
3 rating factors in their calculation of credit-based insurance scores (CBIS) for new
4 business.

5 i. As soon as possible, but no later than three months after the filing of the Report,
6 Respondents will refile in SERFF a revised model filing containing applicable
7 revisions to the Respondents’ credit model and credit algorithm in compliance with
8 A.R.S. § 20-385(A). To document the update to the credit model and credit
9 algorithm, a rate/rule filing that clearly illustrates the change to the model or
10 algorithm is required.

11 ii. The Filing(s) in SERFF must include applicable revisions to Rules P20, P22, and
12 P23, and specifically reference that bankruptcy and lien information will no longer
13 be used as a rating factor. These revisions must reflect all rule provisions that the
14 removal of bankruptcies and liens would affect and must explicitly state that
15 bankruptcies and liens are no longer considered in the calculation of the CBIS. If
16 these changes affect any other rules not listed here, Respondents must file revisions
17 as indicated above as well as cross-reference the SERFF filing numbers, line of
18 business, and model name for all bankruptcy factor impacted models. On or before
19 October 27, 2023, Respondents will file in SERFF any applicable revisions to Rules
20 P22 and P23, as noted above.

21 iii. Respondents’ filings must provide the information listed in the “Predictive Model
22 Checklist” attached here as “Attachment A.”

23 B. To effectuate A, Respondents must perform the following:

24 i. First, Respondents must work with their credit vendors to identify the exact
25 programming logic needed to correctly identify or isolate bankruptcy or lien data from

1 all credit information shared with the Respondents and remove all bankruptcy and lien
2 data impact from their scoring model.

3 ii. Second, Respondents will:

4 a) Build a system to extract the bankruptcy information from the credit vendor-
5 provided data text string, in order to prevent bankruptcy and/or lien information
6 from being inadvertently used in their credit model and/or algorithm.

7 b) Test that the system properly identifies and excludes bankruptcy and/or lien
8 information, and provide the Department with documentation that this system is in
9 place and properly identifies and excludes this information.

10 c) Propose a detailed timeline for how these programming changes will be created,
11 implemented, and continually tested.

12 C. Respondents will review the 49,930 policyholders identified during the examination
13 period as being rated for having one or more bankruptcies and determine the number of
14 policyholders that remain in-force policies as of the filing date of this Consent Order.

15 i. After identifying the total number of the 49,930 policyholders that remain current
16 policyholders, the Respondents will:

17 a) Reorder the credit-based insurance score for these policyholders before their next
18 scheduled renewal to determine the age of the bankruptcy;

19 b) Identify which bankruptcies have reached at least 84 months of age or will reach 84
20 months of age prior to the policyholders next policy renewal; and

21 c) For those policyholders with bankruptcies older than 84 months, issue a flat refund
22 of \$100. The refund must be issued within 30 days of the credit reorder. The
23 refund will be accompanied by a notice, and that notice must be approved
24 by the Department prior to being issued to policyholders.

1 ii. At the completion of item C(i), Respondents will each provide the Department with a
2 data set of the 49,930 policyholders in a format prescribed by the Department, that
3 specifies the in-force policies credited, along with the date the credit reorder occurred,
4 and the issue date of the refund. Respondents must provide the Department with the
5 complete data set no later than 30 days after the completion of E(i).

6 D. For all existing in-force Arizona policyholders who had previously been rated using
7 bankruptcy or lien data as of the filing date of this Consent Order, Respondents will
8 reorder these policyholders' credit report prior to their next renewal, exclude any
9 bankruptcies or liens as rating factors, and adjust the renewal rates and premiums
10 accordingly. This total shall include any of the 49,930 policyholders identified during
11 the examination period with in-force policies and any additional existing in-force
12 policyholders who had previously been rated using bankruptcy or lien data after the exam
13 period.

14 i. In the next renewal packet, Respondents must issue a separate, standalone notice
15 approved by the Department, prior to being issued to policyholders, that advises all
16 Arizona policyholders that (1) they have the right to request reorder of their credit
17 report once a year/one during a 12 month period, and (2) that Respondents will not
18 otherwise reorder a credit report, which means any adverse credit items will be used
19 in calculating the premium even if those items would normally drop off of their
20 credit report due to age.

21 E. At the completion of item D(i), each Respondent will provide the Department with the
22 total number of the in-force policyholders identified as having been rated for a
23 bankruptcy prior to the filing date of this Consent Order, in a format specified by the
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Department. This total shall exclude 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.

DATED AND EFFECTIVE this 30th day November, 2023.

Barbara D. Richardson

Barbara D. Richardson
Cabinet Executive Officer
Executive Deputy Director
Arizona Department of Insurance and Financial Institutions

CONSENT TO ORDER

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2 1. Respondents acknowledge that they have been served with a copy of the foregoing
3 Consent Order in the above-referenced matter, have read it, are aware of their right to an administrative
4 hearing in this matter and have knowingly and voluntarily waived that right.

5 2. Respondents accept the personal and subject matter jurisdiction of the Department over
6 them in this matter.

7 3. Respondents acknowledge that no promise of any kind or nature has been made to induce
8 them to sign the Consent to Order and they have done so knowingly and voluntarily.

9 4. Respondents acknowledge and agree that the acceptance of this Consent to Order by the
10 Director is solely to settle this matter and does not preclude the Department from instituting other
11 proceedings as may be appropriate now or in the future. Furthermore, and notwithstanding any language
12 in this Consent Order, this Consent Order does not preclude in any way any other state agency or officer
13 or political subdivision of this state from instituting proceedings, investigating claims, or taking legal
14 action as may be appropriate now or in the future relating to this matter or other matters concerning
15 Respondents, including but not limited to violations of Arizona’s Consumer Fraud Act. Respondents
16 acknowledge that, other than with respect to the Department, this Consent Order makes no
17 representations, implied or otherwise, about the views or intended actions of any other state agency or
18 officer or political subdivision of the state relating to this matter or other matters concerning
19 Respondents.

20 5. Respondents acknowledge and agree that failure to correct the violations set forth above
21 in this Consent Order, or any repeat findings of the above violations in the future, can result in
22 disciplinary action which may include a greater civil money penalty and suspension or revocation of
23 their certificates of authority.

1 **ORIGINAL** of the foregoing filed
this 30th day of November, 2023 in the office of:

2
3 Barbara D. Richardson
4 Cabinet Executive Officer
5 Executive Deputy Director
6 Arizona Department of Insurance and Financial Institutions
7 Attn: Ana Starcevic, Paralegal
8 100 North 15th Avenue, Suite 261
9 Phoenix, Arizona 85007
10 Ana.Starcevic@difi.az.gov

7 **COPY** of the foregoing delivered and/or emailed same date to:

8 Deian Ousounov, Assistant Director
9 Gio Espinosa, Regulatory Legal Affairs Officer
10 Kurt Regner, Deputy Assistant Director
11 Maria Ailor, Assistant Director
12 Erin Klug, Assistant Director
13 Ana Starcevic, Paralegal
14 Arizona Department of Insurance and Financial Institutions
15 100 North 15th Avenue, Suite 261
16 Phoenix, AZ 85007

13 **COPY** of the foregoing transmitted electronically the same date to:

14 Progressive Advanced Insurance Company
15 Progressive Preferred Insurance Company
16 Attn: Stephanie C. Poling, Insurance Operations, Market Conduct Auditor IV
17 6300 Wilson Mills Road, W33
18 Cleveland OH, USA 44143-2182
19 Stephanie_C_Poling@progressive.com
20 Respondents

18 *Ana Starcevic*
19 _____

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