

# Actuarially Sound Rates for New Business

Christine Ashburn – Chief of Communications,  
Legislative and External Affairs

Brian Donovan – Vice President and Chief Actuary





- In December 2011 Citizens requested an outside legal opinion as to whether it was permissible under Florida law to charge new policyholders the full actuarially indicated rates.
- The outside legal opinion stated that “the applicable statutes and rating principles would permit Citizens...to charge new policyholders the approved actuarially appropriate rate, while applying the statutorily mandated limit on increases only to renewing policyholders.”
- In July 2012 the Board decided not to move forward with asking the Office of Insurance Regulation (OIR) to consider actuarially sound rates for new business.
- In June 2020, Senator Jeff Brandes asked that Citizens again consider recommending to OIR that new customers be charged the fully indicated actuarial rate.
- Following receipt of this formal request from Senator Brandes Citizens again sought outside legal advice and confirmed that the previous opinion had not changed.



# Capped Indication vs Actuarial Indication

## Total In-force as of 5/31/2020

<u>Product Line - Personal</u>	<u>In-Force Premium</u>	<u>Uncapped Indication</u>	<u>Proposed Change</u>	<u>Difference</u>
Homeowners	565,975,301	12.7%	2.2%	10.3%
Renters	1,637,982	-12.3%	-8.9%	-3.8%
Condo Units	40,132,980	22.2%	6.3%	15.1%
Dwelling - DP3	156,981,601	20.0%	7.2%	11.9%
Dwelling - DP1	30,183,120	15.2%	7.3%	7.4%
Mobile Homeowners	44,138,845	11.9%	7.5%	4.0%
<u>Dwelling Mobile Home</u>	<u>15,928,366</u>	<u>0.6%</u>	<u>0.1%</u>	<u>0.5%</u>
Total Personal Lines	854,978,194	14.3%	3.7%	10.2%

<u>Product Line - Personal</u>	<u>Capped Average Premium</u>	<u>Uncapped Average Premium</u>	<u># of Policies</u>	<u>Uncapping Difference</u>
Homeowners	\$2,805	\$3,093	213,282	10.3%
Renters	\$163	\$157	9,330	-3.8%
Condo Units	\$981	\$1,129	44,389	15.1%
Dwelling - DP3	\$1,814	\$2,031	95,597	11.9%
Dwelling - DP1	\$1,643	\$1,766	20,452	7.4%
Mobile Homeowners	\$1,149	\$1,195	42,691	4.0%
<u>Dwelling Mobile Home</u>	<u>\$585</u>	<u>\$588</u>	<u>27,894</u>	<u>0.5%</u>
Total Personal Lines	\$2,019	\$2,224	453,635	10.2%



# Capped Indication vs Actuarial Indication

## Total In-force as of 5/31/2020

<b>Policies with Decreases</b>	Capped	Uncapped	# of	Uncapping	% of Policies
<u>Product Line - Personal</u>	<u>Average Premium</u>	<u>Average Premium</u>	<u>Policies</u>	<u>Difference</u>	<u>With Decrease</u>
Homeowners	\$3,397	\$3,264	90,346	-3.9%	42.4%
Renters	\$115	\$103	4,679	-11.0%	50.2%
Condo Units	\$1,006	\$1,002	17,516	-0.4%	39.5%
Dwelling - DP3	\$1,491	\$1,486	45,776	-0.4%	47.9%
Dwelling - DP1	\$1,134	\$1,109	9,552	-2.2%	46.7%
Mobile Homeowners	\$923	\$920	13,815	-0.3%	32.4%
<u>Dwelling Mobile Home</u>	<u>\$519</u>	<u>\$512</u>	<u>25,612</u>	<u>-1.3%</u>	<u>91.8%</u>
Total Personal Lines	\$2,075	\$2,013	207,296	-3.0%	45.7%

<b>Policies with Increases</b>	Capped	Uncapped	# of	Uncapping	% of Policies
<u>Product Line - Personal</u>	<u>Average Premium</u>	<u>Average Premium</u>	<u>Policies</u>	<u>Difference</u>	<u>With Increases</u>
Homeowners	\$2,371	\$2,968	122,936	25.2%	57.6%
Renters	\$210.65	\$211.01	4,651	0.2%	49.8%
Condo Units	\$965	\$1,212	26,873	25.6%	60.5%
Dwelling - DP3	\$2,111	\$2,532	49,821	20.0%	52.1%
Dwelling - DP1	\$2,089	\$2,341	10,900	12.0%	53.3%
Mobile Homeowners	\$1,257	\$1,326	28,876	5.6%	67.6%
<u>Dwelling Mobile Home</u>	<u>\$1,331</u>	<u>\$1,441</u>	<u>2,282</u>	<u>8.3%</u>	<u>8.2%</u>
Total Personal Lines	\$1,971	\$2,402	246,339	21.8%	54.3%



# Capped Indication vs Actuarial Indication

## Total In-force as of 5/31/2020

<b>HO3/HW2</b>	Capped	Uncapped	# of	Uncapping	
<u>Product Line - Personal</u>	<u>Average Premium</u>	<u>Average Premium</u>	<u>Policies</u>	<u>Difference</u>	
Monroe	\$3,848	\$5,257	8,028	36.6%	
Rest of State	\$1,770	\$2,164	88,002	22.2%	
<u>South East</u>	<u>\$3,511</u>	<u>\$3,643</u>	<u>117,252</u>	<u>3.8%</u>	
Total	\$2,805	\$3,093	213,282	10.3%	
<b>Policies with Decreases</b>	Capped	Uncapped	# of	Uncapping	% of Policies
<u>Product Line - Personal</u>	<u>Average Premium</u>	<u>Average Premium</u>	<u>Policies</u>	<u>Difference</u>	<u>With Decrease</u>
Monroe	\$4,609	\$4,463	988	-3.2%	12.3%
Rest of State	\$2,145	\$2,074	23,408	-3.3%	26.6%
<u>South East</u>	<u>\$3,823</u>	<u>\$3,669</u>	<u>65,950</u>	<u>-4.0%</u>	<u>56.2%</u>
Total	\$3,397	\$3,264	90,346	-3.9%	42.4%
<b>Policies with Increases</b>	Capped	Uncapped	# of	Uncapping	% of Policies
<u>Product Line - Personal</u>	<u>Average Premium</u>	<u>Average Premium</u>	<u>Policies</u>	<u>Difference</u>	<u>With Increases</u>
Monroe	\$3,741	\$5,368	7,040	43.5%	87.7%
Rest of State	\$1,635	\$2,197	64,594	34.4%	73.4%
<u>South East</u>	<u>\$3,109</u>	<u>\$3,610</u>	<u>51,302</u>	<u>16.1%</u>	<u>43.8%</u>
Total	\$2,371	\$2,968	122,936	25.2%	57.6%



## Impact of Uncapping Commercial Lines

	Additional Increase in Rate if Uncapped			
	<u>CRM</u>	<u>CRW</u>	<u>CNRM</u>	<u>CNRW</u>
South East	77%	77%	8%	19%
<u>Rest of State</u>	<u>20%</u>	<u>75%</u>	<u>8%</u>	<u>18%</u>
Statewide	59%	77%	8%	18%

	5/31/2020 Policy Count			
	<u>CRM</u>	<u>CRW</u>	<u>CNRM</u>	<u>CNRW</u>
South East	527	1,475	36	1,379
<u>Rest of State</u>	<u>176</u>	<u>405</u>	<u>131</u>	<u>1,187</u>
Statewide	703	1,880	167	2,566

Unlike Personal Lines, charging actuarially sound rates for new business for commercial lines policies would lead to practically across the board increases for all new policies

The exception to that is that 52 CRM policies would see a small decrease





# Overall Impact - Charging New Business Actuarial Sound Rates

- For Personal lines, charging actuarially sound rates for new business does not lead to across-the-board higher rates for all new business policies.
- In Personal Lines, 45.7% of current policies would see an average decrease of -3.0% if they were charged the actuarially sound rate and 54.3% would have an average increase of 21.8%.
- It is important to note that these changes are averages. For Personal Lines, there are outliers that would have rate increases as high as 200%.
- For Commercial, charging new business actuarially sound rates would lead to mostly across-the-board higher rates for new business. There are a few exceptions for CRM.
- There would be some territories where the CRW rates would be 100% higher than the current rate.
- Ultimately, Citizens recommends rate changes to the OIR, who make the final determination to Citizens' rate level. As in prior years, the rate filings submitted to the OIR will include all information regarding the full indicated rates and the actual premium impact after application of the 10% glide path.



- In areas where new business rates would increase there is potential for:
  - Increased interest from private market carriers potentially decreasing new business being written by Citizens.
  - Increased success of and interest in the Clearinghouse by other carriers.
  - An increase in depopulation of new policies written at higher rates.
  - Potential for a decrease in depopulation of current Citizens policies written at the lower capped rate.
- In areas where new business rates would decrease there is potential for:
  - Citizens becoming more competitive with the private market causing additional growth
  - Reducing overall depopulation activity for policies with reduced rates
- Potential adverse impact to the real estate market in areas where Citizens new business rates are significantly higher than current rates – especially in areas where there is little or no private market competition.





# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR JEFF BRANDES**

24th District

## COMMITTEES:

Appropriations Subcommittee on Criminal and Civil Justice, *Chair*  
Criminal Justice, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Transportation, Tourism, and Economic Development  
Banking and Insurance  
Innovation, Industry, and Technology  
Rules

## JOINT COMMITTEES:

Joint Legislative Auditing Committee, *Alternating Chair*  
Joint Legislative Budget Commission

June 15, 2020

Mr. Barry Gilway  
President, CEO, & Executive Director  
Citizens Property Insurance Corporation  
2101 Maryland Circle  
Tallahassee, FL 32303

Dear Barry,

Given the current market dynamics in Florida, I urge you to strongly consider that Citizens implement actuarially sound rates for new customers, while continuing to apply the 10 percent limitation on rate increases to the renewal of Citizens policies. For over a decade, the statute governing the rates for Citizens Insurance has provided that "rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, F.S., except as otherwise provided...." This coupled with a proper interpretation of the exception in s. 627.062(6)(n)6., F.S., grants Citizen's with the authority to make this critical rate change.

In Spring 2012, the Radey Law Firm provided a legal opinion (attached) to the Citizens Board of Governors stating that, "...the applicable statutes and rating principles would permit Citizens Property Insurance Corporation to charge new policyholders the approved actuarially appropriate rate, while applying the statutorily mandated limit on increases only to renewing policyholders." That legal opinion correctly noted that the exception contained in s. 627.351(6)(n)6., F.S., provides that Citizens must "annually implement a rate increase which...does not exceed 10 percent for any single policy issued by the corporation..." A plain reading of this statute indicates that the 10 percent cap applies to rate increases imposed at the renewal of policies issued by the corporation, and thus does not apply to new Citizens customers.

In addition to the legal opinion, a combination of 25 senators and house members issued the attached press release that said in part, "adding new customers at subsidized rates is no more than a tax on every Floridian who does not have a Citizens policy."

## REPLY TO:

- ☐ 9800 4th Street North, Suite 200, St. Petersburg, Florida 33702 (727) 563-2100
- ☐ 416 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

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Based on Citizens' growth in the first 4 months of 2020 with another 8-10,000 policies added in May/June, it is critical that Citizens do all it can to stem its growth and encourage the sustainability of the private homeowners insurance market. Application of actuarially sound rates for new Citizens customers will bring Citizens into compliance with the statutory directive that its rates be actuarially sound and maintain Citizens as the insurer of last resort. Applying the 10 percent rate cap only to renewed Citizens policies will result in proper compliance with s. 627.351(6)(n)6., F.S., and prevent Citizens customers from experiencing the rate shock of unaffordable insurance upon the renewal of their policies.

Based on these items, I believe that it is within your authority to act in the best interest of all Floridians to implement Citizens statutorily mandated rating provisions. In order to do so, I urge you to add this topic to the agendas for both the next meeting of the Actuarial and Underwriting Committee and the June 24 meeting of the Board of Governors.

Kind regards,

A handwritten signature in black ink, appearing to read 'Jeff Brandes', with a long horizontal flourish extending to the right.

Jeff Brandes

Attachments:

**RADEY | THOMAS | YON | CLARK**  
Attorneys & Counselors at Law

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December 9, 2011

**ATTORNEY-CLIENT COMMUNICATION**

***Via Electronic Mail***

Mark Casteel  
Assistant General Counsel – Corporate  
Citizens Property Insurance Corporation  
2312 Killearn Center Boulevard  
Building A  
Tallahassee, FL 32309

RE:

Dear Mark:

You have requested an opinion from our firm regarding two issues. The questions and responses are set out below.

1. *Can there be a difference in the rate charged for new and renewal business? Specifically, if there is a significant rate increase, can the entire increase be charged to new business with a "phase-in" or "glide path" where renewal business gets to the full increase over time on a path that complies with rate increase limits imposed by the statute?*

**Summary Response**

Depending on the specific facts, we believe such a difference is permissible under Florida law. More specifically, we believe the applicable statutes and rating principles would permit Citizens Property Insurance Corporation to charge new policyholders the approved actuarially appropriate rate, while applying the statutorily mandated limit on increases only to renewing policyholders.

The rating law in Florida, and generally accepted actuarial principles, establish a test with three criteria for determining appropriate rate levels. Rates must not be excessive, inadequate or unfairly discriminatory. Therefore, absent specific statutory authorization or mandates, it would

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not be appropriate to phase in a rate increase, since by definition charging the lower rate during the phase in would require charging an inadequate and unfairly discriminatory rate. There are two statutes that either permit or require rate increases to be phased in in Florida, section 627.0629(5) and section 627.351(6)(n)6. These statutes create a permissible exception to the requirement that rates not be inadequate or unfairly discriminatory. While neither specifically addresses the issue of whether a phase-in may be applied to both new and renewal business, we believe when read in the context of the overall rating law and the enabling statute for Citizens, these statutes permit Citizens to treat new and renewing policyholders differently.

#### Discussion

In general, Florida law (627.062(2), Florida Statutes) prohibits rates from being excessive, inadequate, or unfairly discriminatory. This would mean that rates should reflect the expected loss and expense costs of the risk being insured. As stated in the *Statement of Principles Regarding Property and Casualty Insurance Ratemaking*:

Principle 4: A rate is reasonable and not excessive, inadequate, or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer.

Definitions for excessive, inadequate, and unfairly discriminatory are found in section 627.062(2)(e). Significantly, the statute provides that:

6. A rate shall be deemed unfairly discriminatory if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship in the expected loss and expense experience amount the various risks.

A rate is deemed inadequate if:

5. ...discounts or credits are allowed which exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group of risks.

Finally, Actuarial Standard of Practice No. 12 (Risk Classification) states, in part,

Rates within a classification system would be considered equitable if differences in rates reflect material differences in expected costs for risk characterizations.

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Attorneys & Counselors at Law

Thus, it is clear that to meet the basic statutory test and general actuarial principles for appropriateness, rates for new and renewing policies should reflect their expected costs and losses, and if those are the same for different risks, they should be charged the same.

Section 627.0629(5), Florida Statutes, permits an insurer to implement an approved rate filing for residential property insurance over a period of years "to provide an appropriate transition period." This statute, however, makes no distinction between new or renewal business. However, it does seem to provide an exception to the requirement that rates meet the "not inadequate or unfairly discriminatory test." Thus, it could be read to permit an insurer to provide a transition for renewing policyholders.

Citizens' enabling statute, of course, has a mandatory 10% rate cap, requiring increases above that to be phased in. But again, the statute is silent as to how it is to be applied. Section 627.351(6)(n), Florida Statutes, creates the process for determining and implementing rate changes for Citizens. Subparagraph (n)1. requires Citizens to charge rates which are "actuarially sound and subject to the requirements of s. 627.062, except as otherwise provided in this paragraph." Citizens is directed by this statute to begin this process by filing, at least annually, recommended rates with the Office of Insurance Regulation (Office). The Office is then required to issue a final order establishing the rates for Citizens, presumably based on the recommendations and support provided by Citizens and any additional information the Office may require. While it is not entirely clear, when read in context with subparagraph 6, it appears the goal of this initial process in subparagraph 1. is to establish and approve actuarially sound rates as the first step. Only after establishing actuarially sound rates does the capping provision come into play.

Subparagraph 6 provides:

6. Beginning on or after January 1, 2010, and *notwithstanding* the board's recommended rates *and the office's final order* regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate *increase* which, except for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation, excluding coverage changes and surcharges. (Emphasis added)

This subparagraph clearly suggests that the initial step is to establish actuarially sound rates and then implement limits on the rate increases for policies issued by Citizens. The statute does not provide, nor does the legislative history provide, specific guidance on what is meant by "implement a rate increase which...does not exceed 10 percent for any single policy issued by the corporation...." It is certainly reasonable to read this limitation as capping only policies being renewed by Citizens. First, a plain reading of the statute supports such an interpretation



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because the Legislature tied the 10% cap to a rate increase, not merely the rate charged by Citizens. Only an existing (and renewing) policyholder can be charged a rate increase; a new policyholder is simply charged a rate. Second, there would be no effective way to limit increases for new policies as some will be priced higher and some lower than the Citizens' rate. This interpretation has the additional benefit of increasing the number of policies written by Citizens that are properly priced. This reading mitigates the amount of an increase an existing policyholder would have to pay, i.e. "any single policy issued by the corporation," but would not create a situation where a new policyholder would have an incentive to leave a private insurer to take advantage of an artificially low rate being offered by Citizens.

In our opinion, therefore, Florida law does not preclude Citizens from charging new policyholders the approved actuarially appropriate rate even though increases for existing policyholders are limited by section 627.351(6)(n)6. Assuming the approved actuarially sound rate is more than 10% for any current policyholder, then by definition, the application of the statutory cap causes the rates to immediately be inadequate and discriminatory. While the legislature certainly can mandate such limits, the language of the statute does not clearly instruct how the limit should be applied and therefore is subject to interpretation and the exercise of reasonable judgment. It is reasonable to read the statute to first require the establishment of an actuarially sound rate, without consideration of any capping requirements, and then to apply the limits on rate increases solely to existing Citizens policyholders. The statute is also susceptible to the interpretation that a rate increase which does not exceed 10% must be determined and then that rate applied for all policyholders. However, we do not believe this interpretation promotes the overall statutory goals as well.

Historically, it appears that the Office has established in its initial order a rate that is identical for both new and renewal policies and that assures no existing policyholder is subject to a rate increase in excess of 10%. This interpretation treats new and renewing policyholders the same and prevents discrimination between them. Arguably however, it increases the discrimination between the policyholders whose rates are capped and those who pay actuarially sound rates. While this may be a reasonable reading of the statute we do not believe it is the only such interpretation that could be adopted. We find nothing in Florida law or the actuarial standards we reviewed to preclude charging a different rate for renewal and new business during the phase in period.

An argument certainly exists that Citizens should not treat similar risks differently because one is a renewal policy and one is a new policy and that such discrimination is unfair discrimination that is prohibited by section 627.062. But charging them the same rate does not resolve the issue of inadequate rates and discrimination relative to other policyholders who pay adequate rates. In interpreting how to apply section 627.351(6)(n)b., a dilemma is presented as to whether it is better to avoid discriminating against some policyholders in the same class based



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on whether they are renewing with Citizens or purchasing their policy from Citizens for the first time or to charge as many policyholders as possible the actuarially sound rate. Clearly, those paying the capped rate are paying an inadequate rate and at least compared to those paying the noncapped rate a discriminatory rate. There is precedent in Florida to suggest a rate may be held to be unfairly discriminatory where one class of risk is asked to pay the fully indicated rate while another class of risk is asked to pay an amount that is capped. In *Mutual Insurance Rating Bureau v. Williams*, 189 So.2d 389 (Fla. 1<sup>st</sup> DCA 1966), the court found rates in one territory (Dade) were excessive and unfairly discriminatory compared to other territories because the fully indicated rate was being charged in Dade while a cap of 33.3% was applied to limit increases in other territories. This case suggests that unfair discrimination can be found to exist both within a class and between classes. It is therefore necessary to exercise reasonable judgment to minimize the conflicts in light of the statutory language and goals.

The statute governing Citizens (subparagraph 6) acts to limit Citizens' ability to fully comply with the principle that rates must be actuarially sound by requiring a cap on increases for Citizens' policyholders. However, it does not clearly require that the same limited rate is charged to new policyholders. Thus, to avoid charging new policyholders an inadequate rate, the cap should not be applied to them unless the statute clearly requires it to be done.

2. *Is a policyholder wind mitigation credit (discount) subject to the 10% rate cap provided in 627.351(6)(n) 1. & 6.?*

a. *Or can Citizens file for a reduction in the credits (via performing an independent study which indicates the revised discount amounts) and implement the revised credits (via an OIR filing) BUT not be subject to the rate cap?*

b. *Could you cite any statutes or regulations that would prohibit such a Citizens effort?*

Summary Response: It is our opinion, based on a review of the related statutes and cases, that a change in the mitigation credit would be a rate change and therefore the modified rate would be subject to the 10% rate cap in section 627.351(6)(n)6.

Discussion: Section 627.041(1), Fla. Stat., defines a rate as:

"Rate" means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium.

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The calculation of the wind mitigation credit would seem to fall under this definition as it is part of the "unit charge for which the measure of exposure is multiplied to determine the premium."

Sections 627.0629 and 627.711, Fla. Stat., use language that suggests the mitigation discounts are part of the rate being charged to policyholders. Section 627.0629 requires the discounts to be reflected in a rate filing. The factors must include "actuarially reasonable discounts, credits or other rate differentials..." Section 627.711 uses similar language requiring notice of the list of ranges approved by the Office and providing such discounts, credits and other rate differential. The Fourth District Court of Appeal in *Serchay v. State Farm Florida Insurance Company*, 25 So.3d 652 (Fla. 4th DCA 2010), found that an insured's claim that an insurer failed to properly provide a statutorily mandated premium discount for having a windstorm-mitigating hip roof was not properly brought in a circuit court proceeding, because it was actually a claim that he was aggrieved by the rate charged by an insurer and therefore his remedy was an administrative challenge under section 627.371, Florida Statutes. The court looked in detail at the language in sections 627.0629 and 627.711 and stated:

We understand the distinction which the plaintiff makes between ratemaking and premium discounts. Nevertheless, we hold that a premium discount is inextricably linked to the rate charged and, therefore, section 627.371 applies to the plaintiff's action. An examination of the relevant statutes supports this holding.

As a result of this decision and the language of the relevant statutes, it appears the impact of mitigation credits would be subject to the rate increase limitation.

If you have any questions or wish to discuss this matter further, please let me know.

Sincerely,

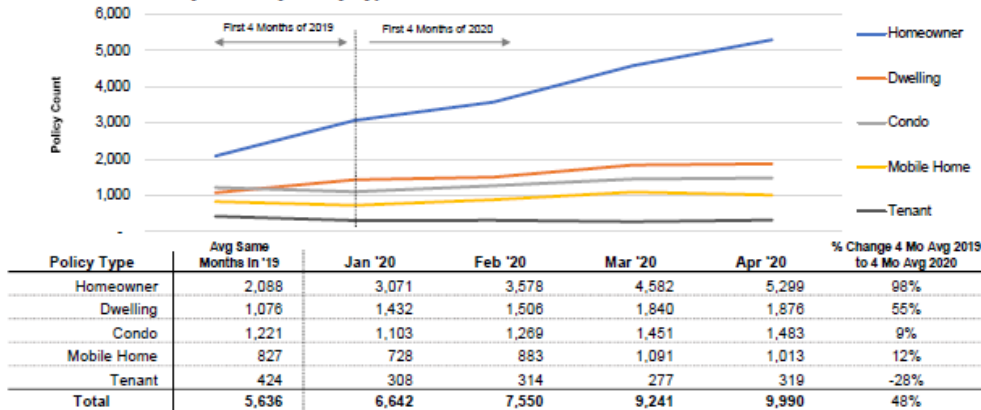


David A. Yon

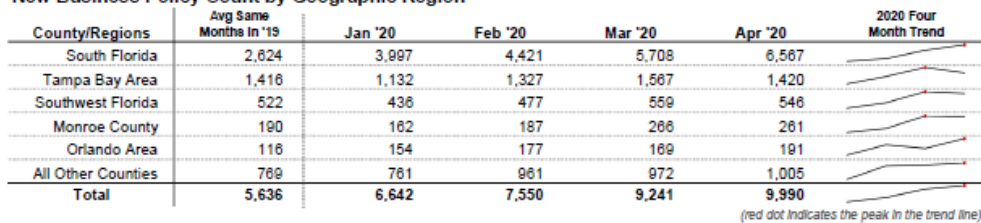
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**Citizens Property Insurance Corporation**  
**New Business Trend January 2019 to April 2020**  
**Personal Residential Policy Types**

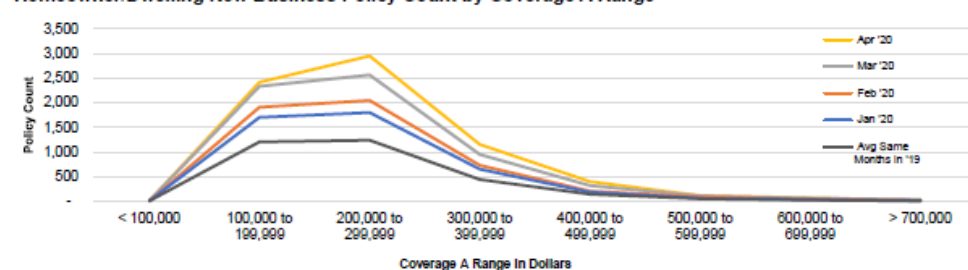
**New Business Policy Count by Policy Type**



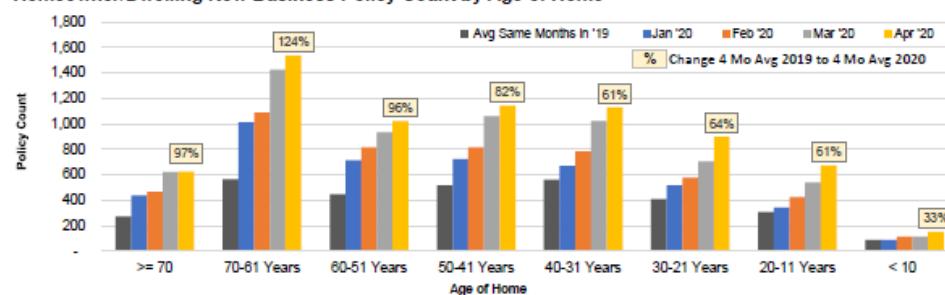
**New Business Policy Count by Geographic Region**



**Homeowner/Dwelling New Business Policy Count by Coverage A Range**



**Homeowner/Dwelling New Business Policy Count by Age of Home**



**Notes:**

1. Policy types are defined as follows:

Homeowner - HO-3, HO-8, HW-2  
 Dwelling - DP-1 D, DP-3 D, DW-2  
 Condo - HO-6, HW-6, DP-1 C, DP-3 C  
 Mobile Home - MHO-3, MDP-1, MW-2, MD-1  
 Tenant - HO-4, HW-4, MHO-4, DP-1 T, DP-3 T

2. Regions are defined by county boundary as follows:

South Florida - Broward, Miami-Dade, Palm Beach  
 Tampa Bay Area - Hernando, Hillsborough, Pasco, Pinellas  
 Orlando Area - Lake, Orange, Osceola, Seminole, Sumter  
 Southwest Florida - Charlotte, Collier, Lee, Manatee, Sarasota  
 Monroe County - Monroe  
 All Other Counties - Remaining 49 Florida counties not otherwise grouped above

**FOR IMMEDIATE RELEASE**

June 4, 2012

Dear Mr. Grady,

We want lower homeowner's insurance rates in Florida. There are so many things we wish were less expensive, including health care and gasoline. But the recent debate about Citizens Insurance rates is not about the cost of the insurance – it's about who is paying for it. That is why we applaud the current Citizens board for recognizing that the current system is unsustainable, and for working for meaningful reform.

The purpose of insurance is to cover risk. Within the private market, where most consumers in Florida purchase their insurance, the customers pay for the actual cost to provide that protection – without any government subsidy paid for by the taxpayers of Florida. Not so with Citizens Insurance.

Adding new customers at subsidized rates is no more than a tax on every Floridian who does not have a Citizens policy – whether they live in central Florida, Miami, or Jacksonville. So the real question here is this: Should a government-created insurer of last resort be offering policies essentially at a loss, while continuing to expand, pushing out private sector insurers, and subsidizing some homeowners at the expense of others?

We don't think that's good public policy. It's not fair. It's not fiscally sound. And it certainly does not reflect the core beliefs of a majority of the state Legislature, who passed a law requiring that Citizens become as financially solvent as possible – thus reducing the need to tax all Floridians for future shortfalls in an emergency.

Citizens Insurance should move toward once again being the insurer of last resort – not the beginning of a government-created single-payer system that supplants the private sector.

We understand and share the desire for lower homeowner's insurance rates. However, Floridians who are currently paying full-price for their insurance in the private market don't deserve to pay a subsidy for those on Citizens. We are greatly encouraged by the board's desire for reform and its willingness to tackle this very complex and difficult issue. To that end, we urge the board to continue working to eliminate the threat of tax increases on Florida's families and to bring fairness to the system for all regions of Florida.

Sincerely,

**Sen. Don Gaetz**

**Sen. Alan Hays**

**Sen. Garrett Richter**

**Rep. Ben Albritton**

**Rep. Dennis Baxley**

**Rep. Jim Boyd**

**Rep. Jason Brodeur**

**Rep. Daniel Davis**

**Rep. Brad Drake**

**Rep. Eric Eisnaugle**

**Rep. Matt Gaetz**

**Rep. Bill Hager**

**Rep. Mike Horner**

**Rep. Charles McBurney**

**Rep. Larry Metz**

**Rep. Bryan Nelson**

**Rep. Kathleen Passidomo**

**Rep. Scott Plakon**

**Rep. Elizabeth Porter**

**Rep. Stephen Precourt**

**Rep. Lake Ray**

**Rep. Kelli Stargel**

**Rep. John Tobia**

**Rep. Mike Weinstein**

**Rep. Ritch Workman**



David Gjon



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November 12, 2020

**Via Electronic Mail**

Daniel Y. Sumner  
General Counsel & Chief Legal Officer  
Citizens Property Insurance Corporation  
2101 Maryland Circle  
Tallahassee, FL 32303

Dear Mr. Sumner:

**Background**

In 2011, your office requested an opinion from our firm (Radey) as to whether it was permissible under Florida law for Citizens Property Insurance Corporation to implement an actuarially approved rate filing by:

- (1) Charging new policyholders the full actuarially indicated rates, regardless of the amount of the premium increase an individual policyholder is charged; and
- (2) Charging policyholders currently in Citizens, at renewal, the actuarially indicated rate except that where such rate results in a premium increase of more than 10%, the premium increase would be limited to 10%.

In 2011, it was our opinion that Citizens had the authority to limit the application of the 10% cap on rates to those policyholders insured by Citizens at the time of the rate increase and their own policy renewal. You have asked that we review the letter and advise you whether our opinion has changed.

**Summary**

Having reviewed the specific facts and the relevant statutes, rules and regulations, it remains our opinion that it is permissible for Citizens to impose a cap on premium increases of 10% on policies insured by Citizens while charging any new policyholders the actuarially indicated rate.



### Discussion

Citizens is a very tightly regulated entity beginning with the process for determining proposed rate levels. In section 627.351(6)(n)1., the law requires that: “Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires.”

The rating law in Florida (section 627.062, Florida Statutes) and generally accepted actuarial principles, establish a test with three criteria for determining appropriate rate levels. Rates must not be excessive, inadequate, or unfairly discriminatory. Therefore, absent other specific statutory authorization or mandate, it would not be appropriate to phase-in a rate increase, since by definition charging the lower rate during the phase-in would require charging an inadequate and unfairly discriminatory rate.

There are, however, two statutes that either permit or require rate increases to be phased-in in Florida, section 627.0629(5)<sup>1</sup> and section 627.351(6)(n)6.<sup>2</sup> These statutes create a permissible, temporary, exception to the requirement that rates not be inadequate or unfairly discriminatory. While neither specifically addresses the issue of whether a phase-in may be applied to both new and renewal business, we believe when read in the context of the overall rating law and the enabling statute for Citizens, these statutes permit Citizens to treat new and renewing policyholders differently.

In general, Florida law prohibits rates from being excessive, inadequate, or unfairly discriminatory. (See for example (627.062(1), Florida Statutes.) This would mean that rates should reflect the expected loss and expense costs of the risk being insured. As stated in the *Statement of Principles Regarding Property and Casualty Insurance Ratemaking*:

Principle 4: A rate is reasonable and not excessive, inadequate, or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer.

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<sup>1</sup> Section 627.0629(5), Florida Statutes, has been amended since our initial opinion in 2011. Effective July 7, 2017, the statute was amended to state, “In order to provide an appropriate transition period, an insurer may implement an approved rate filing for residential property insurance over a period of years. Such insurer must provide an informational notice to the office setting out its schedule for implementation of the phased-in rate filing.” § 627.0629(5), Fla. Stat. (2017). Despite the amendment, paragraph (5) still supports the opinion that rates may be phased-in.

<sup>2</sup> Section 627.351, Florida Statutes, has likewise been amended multiple times since 2011; however, the language of subparagraph (6)(n)6. remains the same.





Definitions for excessive, inadequate, and unfairly discriminatory are found in section 627.062(2)(e). Significantly, the statute provides that:

6. A rate shall be deemed unfairly discriminatory as to a risk or group of risks if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship in the expected loss and expense experience among the various risks.

A rate is deemed inadequate if:

5. ...discounts or credits are allowed which exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group of risks.

Finally, Actuarial Standard of Practice No. 12 (Risk Classification) states, in part, rates within a classification system would be considered equitable if differences in rates reflect material differences in expected costs for risk characterizations. If some portion of the class receives an arbitrary benefit from the application of the cap, the rates are not being applied fairly.

Thus, it is clear that to meet the basic statutory test and general actuarial principles for appropriateness, rates for new and renewing policies should reflect their expected costs and losses, and if those are the same for different risks, they should be charged the same.

However, the statute implementing Citizens states:

6. Beginning on or after January 1, 2010, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation, excluding coverage changes and surcharges.

It is clear that an existing Citizens' policyholder's rate increase cannot exceed 10% in a year. But it is not so clear when one tries to apply the cap to a new policy coming into Citizens. There is no "single policy issued by the corporation..." to serve as the base for application of the limit.

Section 627.0629(5), Florida Statutes, permits (but does not require) an insurer to implement an approved rate filing for residential property insurance over a period of years "to provide an appropriate transition period." This statute, however, makes no distinction between new or renewal business. However, it does provide an exception to the requirement that rates meet the "not inadequate nor unfairly discriminatory" test, at least with respect to residential property rates.



Citizens' enabling statute, of course, has a mandatory 10% rate increase cap, requiring increases above that to be phased-in. But again, the statute is silent as to how it is to be applied to new policies. Section 627.351(6)(n), Florida Statutes, creates the process for determining and implementing rate changes for Citizens. Subparagraph (n)1. requires Citizens to charge rates which are "actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph." Citizens is directed by this statute to begin this process by filing, at least annually, recommended rates with the Office of Insurance Regulation ("Office"). The Office is then required to issue a final order establishing the rates for Citizens, presumably based on the recommendations and support provided by Citizens and any additional information the Office may require. While it is not entirely clear, when read in context with subparagraph 6, it appears the goal of this initial process in subparagraph 1. is to establish and approve actuarially sound rates that all policyholders pay as quickly as possible.

Subparagraph 6 provides:

5. Beginning on or after January 1, 2010, and *notwithstanding* the board's recommended rates *and the office's final order* regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate *increase* which, except for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation, excluding coverage changes and surcharges. (Emphasis added).

This subparagraph clearly suggests that the initial step is to establish actuarially sound rates and then implement limits on the rate increases for policies issued by Citizens. The statute does not provide, nor does the legislative history provide, specific guidance on what is meant by "implement a rate increase which...does not exceed 10 percent for any single policy issued by the corporation..." It is certainly reasonable to read this limitation as capping only policies being renewed by Citizens. First, a plain reading of the statute supports such an interpretation because the Legislature tied the 10% cap to a rate increase, not merely the rate charged by Citizens. Only an existing (and renewing) policyholder can be charged a rate increase; a new policyholder is simply charged a rate. Second, there would be no effective way to limit increases for new policies as some will be priced higher and some lower than the Citizens' rate. This interpretation has the additional benefit of increasing the number of policies written by Citizens that are properly priced. This reading mitigates the amount of an increase an existing policyholder would have to pay, i.e. "any single policy issued by the corporation," but would not create a situation where a new policyholder would have an incentive to leave a private insurer to take advantage of an artificially low rate being offered by Citizens.

In our opinion, therefore, Florida law does not preclude Citizens from charging new policyholders the approved actuarially appropriate rate even though increases for existing policyholders are limited by section 627.351(6)(n)6. Assuming the approved actuarially sound rate is more than 10% for any current policyholder then, by definition, the application of the statutory cap causes the rates to immediately be inadequate and discriminatory. While the legislature certainly can mandate such limits, the language of the statute does not clearly instruct



how the limit should be applied and therefore is subject to interpretation and the exercise of reasonable judgment. It is reasonable to read the statute to first require the establishment of an actuarially sound rate, without consideration of any capping requirements, and then to apply the limits on rate increases solely to existing Citizens policyholders. The statute is also susceptible to the interpretation that a rate increase which does not exceed 10% must be determined and then that rate applied for all policyholders. However, we do not believe this interpretation promotes the overall statutory goals as well.

Historically, the Office has established in its initial order a rate that is identical for both new and renewal policies and that assures no existing policyholder is subject to a rate increase in excess of 10%. This interpretation treats new and renewing policyholders the same and prevents discrimination between them. Arguably, however, it increases the discrimination between the policyholders whose rates are capped and those who pay actuarially sound rates. While this may be a reasonable reading of the statute, we do not believe it is the only interpretation that could be adopted. We find nothing in Florida law or the actuarial standards we reviewed to preclude charging a different rate for renewal and new business during the phase-in period.

An argument certainly exists that Citizens should not treat similar risks differently because one is a renewal policy and one is a new policy, and that such discrimination is unfair discrimination that is prohibited by section 627.062. But charging them the same rate does not resolve the issue of inadequate rates and discrimination relative to other policyholders who pay adequate rates. In interpreting how to apply section 627.351(6)(n), a dilemma is presented as to whether it is better to avoid discriminating against some policyholders in the same class based on whether they are renewing with Citizens or purchasing their policy from Citizens for the first time, or to charge as many policyholders as possible the actuarially sound rate. Clearly, those paying the capped rate are paying an inadequate rate and, at least compared to those paying the noncapped rate, a discriminatory rate. There is precedent in Florida to suggest a rate may be held to be unfairly discriminatory where one class of risk is asked to pay the fully indicated rate while another class of risk is asked to pay an amount that is capped. In *Mutual Insurance Rating Bureau v. Williams*, 189 So. 2d 389 (Fla. 1st DCA 1966), the court found rates in one territory (Dade) were excessive and unfairly discriminatory compared to other territories because the fully indicated rate was being charged in Dade while a cap of 33.3% was applied to limit increases in other territories. This case suggests that unfair discrimination can be found to exist both within a class and between classes. It is therefore necessary to exercise reasonable judgment to minimize the conflicts in light of the statutory language and goals.

The statute governing Citizens (subparagraph 6) acts to limit Citizens' ability to fully comply with the principle that rates must be actuarially sound by requiring a cap on increases for Citizens' policyholders. However, it does not require that the rate cap be applied to new policyholders.<sup>3</sup> Thus, to avoid charging new policyholders an inadequate rate, the cap should not be applied to them unless the statute clearly requires it to be done.

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<sup>3</sup> Regardless, Section 627.0629(5), gives Citizens flexibility to phase residential rate increases in.

ATTORNEY-CLIENT COMMUNICATION

Daniel Y. Sumner

November 12, 2020

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If you have any questions or wish to discuss this matter further, please let me know.

Sincerely,  
*David Yon*  
David A. Yon