

TITLE 13 INSURANCE
CHAPTER 18 CREDIT INSURANCE
PART 3 CREDITOR-PLACED INSURANCE

13.18.3.1 ISSUING AGENCY: New Mexico Office of Superintendent of Insurance, P.O. Box 1689, Santa Fe, NM 87504-1689.

[13.18.3.1 NMAC – Rp, 13.18.3.1 NMAC, 7/24/2018]

13.18.3.2 SCOPE:

A. This rule applies to any person transacting creditor-placed insurance on property located in New Mexico.

B. This rule does not apply to:

(1) creditor-placed insurance first issued on property located in another state but subsequently moved to this state;

(2) insurance for which no specific charge is made to the debtor or the debtor's account; or

(3) blanket insurance, whether paid for by the debtor or the creditor.

[13.18.3.2 NMAC – Rp, 13.18.3.2 NMAC, 7/24/2018]

13.18.3.3 STATUTORY AUTHORITY: Sections 59A-2-9, 59A-12-10, 59A-16-14, 59A-16-18, 59A-17-6, 59A-17-16, 59A-17-28 and 59A-18-12 NMSA 1978.

[13.18.3.3 NMAC – Rp, 13.18.3.3 NMAC, 7/24/2018]

13.18.3.4 DURATION: Permanent.

[13.18.3.4 NMAC – Rp, 13.18.3.4 NMAC, 7/24/2018]

13.18.3.5 EFFECTIVE DATE: July 24, 2018, unless a later date is cited at the end of a section or paragraph.

[13.18.3.5 NMAC – Rp, 13.18.3.5 NMAC, 7/24/2018]

13.18.3.6 OBJECTIVE: The purpose of this rule is to establish guidelines within which creditor-placed insurance may be written in this state, to regulate rates, and to prohibit unfair practices in the transaction of creditor-placed insurance.

[13.18.3.6 NMAC – Rp, 13.18.3.6 NMAC, 7/24/2018]

13.18.3.7 DEFINITIONS: As used in this rule:

A. **"Actual cash value"** means the cost of replacing damaged or destroyed property with comparable new property, minus depreciation and obsolescence.

B. **"Assigned risk plan"** means the insurance plan established pursuant to the Motor Vehicle Assigned Risks Law, Sections 59A-32-1 et. seq NMSA 1978;

C. **"Blanket insurance"** means a policy of insurance issued to a creditor that covers direct accidental damage to collateral without listing the specific items of collateral covered;

D. **"Collateral"** means property that is pledged as security for the satisfaction of a debt;

E. **"Credit agreement"** means the written document that sets forth the terms of the credit transaction and includes the security agreement;

F. **"Credit property insurance"** means property insurance written in connection with credit transactions under which the creditor is the primary beneficiary;

G. **"Credit transaction"** means a transaction by the terms of which the repayment of money loaned or credit commitment made, or payment for goods, services, or properties sold or leased, is to be made at a future date;

H. **"Creditor"** means a lender of money or vendor or lessor of goods, services, property, rights or privileges for which payment is arranged through a credit transaction, or any successor to the right, title or interest of a lender, vendor or lessor, and includes affiliates, subsidiaries, agents, employees, and representatives of the creditor;

I. “Creditor-placed insurance” means insurance that is purchased unilaterally by the creditor, who is the named insured, subsequent to the date of the credit transaction, providing coverage against direct loss or damage to collateralized property. It is purchased according to the terms of the credit agreement as a result of the debtor’s failure to provide required physical damage insurance, with the cost of the coverage being charged to the debtor;

J. “Debtor” means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction;

K. “FAIR plan” means the insurance plan established pursuant to the FAIR Plan Act, Sections 59A-29-1 et. seq NMSA 1978;

L. “Insurance tracking” means activities undertaken by a person other than a creditor to monitor evidence of insurance on collateralized credit transactions to determine whether insurance required by the credit agreement has lapsed and to communicate with debtors concerning the status of insurance coverage;

M. “Lapse” means that the insurance coverage required by the credit agreement is not in force;

N. “Limited dual interest insurance” means insurance purchased by the creditor to insure its interest in the collateral that does not contain the three conditions for loss payment required for single interest insurance and extends coverage on the collateral while it is in the possession of the debtor;

O. “Loss ratio” means incurred losses divided by earned premiums;

P. “Motor vehicles” means those vehicles subject to the Mandatory Financial Responsibility Act, Sections 66-5-201 et. seq NMSA 1978;

Q. “Net debt” means the amount necessary to liquidate the remaining debt in a single lump-sum payment, excluding all unearned interest and other unearned charges;

R. “Personal property” means all tangible property other than real property and includes motor vehicles, mobile homes and manufactured housing;

S. “Single interest insurance” means insurance purchased by the creditor to insure its interest in the collateral securing a debtor’s credit transaction which requires that three conditions be met for payment of loss under the policy:

(1) the debtor has defaulted in payment on the credit transaction;

(2) the creditor has legally repossessed the collateral, unless collateral has been stolen from the debtor; and

(3) the creditor has suffered an impairment of interest.

T. “Skip, confiscation and conversion coverage” means coverage protecting the creditor from fraud, theft, larceny, conversion, embezzlement or secretion on the part of the debtor.

[13.18.3.7 NMAC – Rp, 13.18.3.7 NMAC, 7/24/2018]

13.18.3.8 LIMITED AUTHORIZATION TO TRANSACT:

A. An insurer shall not issue creditor-placed insurance to a creditor unless the creditor has an insurable interest in the collateral.

B. No insurer shall transact creditor-placed insurance without first having obtained from the superintendent a license to transact general casualty insurance or vehicle insurance in the case of motor vehicles or property insurance in the case of all other kinds of property.

C. Creditor-placed insurance shall be either single interest insurance or limited dual interest insurance.

D. Creditor-placed insurance shall not be transacted as inland marine insurance.

[13.18.3.8 NMAC – Rp, 13.18.3.8 NMAC, 7/24/2018]

13.18.3.9 POLICY TERM:

A. Effective date: Creditor-placed insurance shall become effective on the latest of the following dates:

(1) the date of the credit transaction;

(2) the date prior coverage, including prior creditor-placed insurance coverage, lapsed;

(3) for personal property, one year before the date on which the charge for creditor-placed insurance is made to the debtor’s account; or

(4) a later date provided for in the agreement between the creditor and insurer.

B. Termination date: Creditor-placed insurance shall terminate on the earliest of the following dates:

- (1) the date other acceptable insurance becomes effective, subject to the debtor providing acceptable evidence of the other insurance to the creditor;
- (2) the date the collateralized property is repossessed, unless the property is returned to the debtor within 10 days of the repossession;
- (3) the date the collateralized property is damaged beyond repair;
- (4) the date the debt is completely extinguished; or
- (5) an earlier date specified in the individual policy or certificate of insurance.

C. Policy term: The term of a creditor-placed insurance certificate shall not exceed 12 months.
[13.18.3.9 NMAC – Rp, 13.18.3.9 NMAC, 7/24/2018]

13.18.3.10 CALCULATION OF PREMIUMS: This section is not intended to limit the amount of coverage.

A. For credit transactions collateralized by property that does not include land, the premium for creditor-placed insurance shall be calculated on the net debt, even though the coverage may limit the insurer's liability to the least of the net debt, actual cash value or cost of repair.

B. When calculating premiums for creditor-placed insurance on credit transactions collateralized by property that includes land, the exposure base shall not include the value of the land. For this purpose, the value of the land shall be its appraised value as determined by a licensed appraiser or the value assigned by the appropriate taxing authority.

C. Other premium calculation methods that more closely reflect the exposure of each insured item may be employed with the approval of the superintendent.

[13.18.3.10 NMAC – Rp, 13.18.3.10 NMAC, 7/24/2018]

13.18.3.11 PROHIBITED COVERAGES: Nothing in this section shall be construed to prohibit the issuance of a separate policy providing the coverages listed below to the creditor. Creditor-placed insurance may not include:

- A.** coverage for the cost of repossession or the cost of storing repossessed collateral;
- B.** skip, confiscation and conversion coverage;
- C.** coverage that pays the credit transaction deficiency or insurance premium deficiency;
- D.** coverage for payment of mechanics' or other liens that do not arise from a covered loss or occurrence;
- E.** coverage that indemnifies creditors for losses caused by their failure to record instruments which provide evidence of collateral security;
- F.** for motor vehicles, coverage other than collision and comprehensive; or
- G.** for mobile homes, coverage that is broader than a basic fire and extended coverage policy such as ISO Form DP001 06 96.

[13.18.3.11 NMAC – Rp, 13.18.3.11 NMAC, 7/24/2018]

13.18.3.12 EVIDENCE OF COVERAGE: Creditor-placed insurance shall be set forth in an individual policy or certificate of insurance. A copy of the individual policy, certificate of insurance coverage, or other evidence of insurance coverage shall be mailed, first class mail, or delivered in person to the last known address of the debtor.

[13.18.3.12 NMAC – Rp, 13.18.3.12 NMAC, 7/24/2018]

13.18.3.13 FILING AND APPROVAL OF FORMS AND RATES:

A. All policy forms and certificates of insurance to be delivered or issued for delivery in this state, and the schedules of premium rates pertaining to them, shall, pursuant to Sections 59A-17-9 and 59A-18-12 NMSA 1978, be filed with and approved by the superintendent prior to use in this state.

B. Policy forms applicable to creditor-placed insurance for motor vehicles shall not require deductibles lower than one hundred dollars (\$100).

C. Policy forms applicable to creditor-placed insurance for mobile homes, manufactured housing and real property shall not require deductibles lower than two hundred fifty dollars (\$250).

D. For each type of collateral, insurers shall file a schedule of premium rates that is not unreasonable in relation to the benefits provided by the form to which the schedule applies. Types of collateral include, but are not limited to, real property, motor vehicles, mobile homes, and other personal property. A premium rate or

schedule of premium rates that produces or may reasonably be expected to produce a loss ratio of less than fifty percent shall be presumed to be unreasonable in relation to the benefits provided.

E. Nothing in this section shall prohibit the superintendent from approving other loss ratios that may be found reasonable. An insurer may file a rate that produces or may reasonably be expected to produce a loss ratio of less than fifty percent provided that the provision in the rate for commissions, acquisition costs, insurance tracking, expense reimbursement to creditors, and all similar expenses incurred directly or indirectly does not exceed thirty percent.

[13.18.3.13 NMAC – Rp, 13.18.3.13 NMAC, 7/24/2018]

13.18.3.14 REFUND OF UNEARNED PREMIUMS:

A. Within 60 calendar days after the termination of creditor-placed insurance coverage, an insurer shall refund any unearned premium or other identifiable charges for creditor-placed insurance on a daily pro rata basis, subject to a minimum premium charge filed with and approved by the superintendent.

B. Within 60 calendar days after the termination date of creditor-placed insurance coverage, the insurer shall provide to the debtor a statement of refund disclosing the effective date, the termination date, the amount of premium being refunded and the amount of premium charged for the coverage provided. No statement shall be required in the event that the policy terminates pursuant to Paragraph (4) of Subsection B of 13.18.3.9 NMAC.

C. The entire amount of premiums, minimum premiums, fees or charges of any kind shall be refunded if no coverage was provided.

[13.18.3.14 NMAC – Rp, 13.18.3.14 NMAC, 7/24/2018]

13.18.3.15 CLAIMS:

A. Insurers shall promptly investigate and settle claims in accordance with Section 59A-16-20 NMSA 1978, Unfair Claim Settlement Practices.

B. The settlement value on creditor-placed insurance covering personal property shall be the least of the following, determined as of the date of the loss, less any applicable deductible, retained salvage, or compensation received from a third party:

- (1) the actual cash value of the collateral;
- (2) the cost of repairing or replacing the collateral to its pre-loss condition; or
- (3) the net debt.

C. Whenever a claim is made on a creditor-placed insurance policy, the insurer shall furnish to the debtor and creditor a written statement of the loss explaining the settlement amount and the method of settlement.

D. Insurers shall not deny a claim made on a creditor-placed insurance policy on the grounds that the collateral is ineligible for coverage if the insurer has first accepted a premium on the collateral. This section does not apply in those cases where coverage is denied because of fraud or subrogation or when other insurance was in effect.

[13.18.3.15 NMAC – Rp, 13.18.3.15 NMAC, 7/24/2018]

13.18.3.16 REBATES PROHIBITED: No insurer shall offer, and no creditor shall accept, a rebate or inducement. This section does not prohibit or restrict an insurer that provides creditor-placed insurance for a creditor from doing business with that creditor if the business is conducted in accordance with the same terms and conditions and at the regular and customary interest rates and charges the creditor applies to its other customers.

A. An insurer shall not pay directly or indirectly to a creditor commissions, fees, rent, expense reimbursement, or other compensation greater than thirty percent of earned premium net of terminations.

B. An insurer shall not pay to a creditor a policyholder dividend, retrospective premium adjustment, profit sharing, or similar return of premium.

C. An insurer transacting creditor-placed insurance shall not provide other insurance coverages to a creditor at inadequate rates.

D. An insurer shall not pay a commission to a person who is not a duly licensed and appointed agent of the insurer.

E. An insurer shall not purchase or offer to purchase certificates of deposit from a creditor or maintain or offer to maintain accounts with a creditor in connection with a creditor-placed insurance solicitation.

F. An insurer shall not purchase certificates of deposit from a creditor or maintain accounts with a creditor at less than market interest rates.

G. An insurer shall not pay for damages that occurred outside the period of coverage or for other losses not covered under the policy.

H. An insurer shall not require a creditor to purchase insurance tracking or any other services from a specific person but may require that such services meet minimum quality standards.

I. A creditor shall not knowingly recover for damages that occurred outside the period of coverage or for other losses not covered under the policy.

J. A creditor shall credit a debtor's account for the amount of any refunded premium upon cancellation of creditor-placed insurance if the creditor has debited the debtor's account for the amount of the premium.

[13.18.3.16 NMAC – Rp, 13.18.3.16 NMAC, 7/24/2018]

13.18.3.17 NOTICE OF CREDITOR-PLACED INSURANCE: An insurer shall, within 15 days of the initial placement or renewal of creditor-placed insurance, either directly or through the creditor, using the form prescribed in 13.18.3.20 NMAC or a substantially similar form mail to the debtor by first-class mail a copy of the certificate of insurance or policy. In the case of limited dual-interest insurance, the insurer shall also explain the debtor's rights to file a claim for damages incurred after the effective date of the coverage.

[13.18.3.17 NMAC – Rp, 13.18.3.17 NMAC, 7/24/2018]

13.18.3.18 REPORTING REQUIREMENTS:

A. Required reports. On or before July 1 of each year, every insurer offering creditor-placed insurance policies in New Mexico shall file the following reports covering the prior calendar year:

- (1) Form A, summary experience report, on the form provided on the OSI website;
- (2) Form B, creditor's experience report, on the form provided on the OSI website;
- (3) Form C, other insurance report, on the on the form provided on the OSI website;
- (4) Form D, reconciliation report, on the form provided on the OSI website, explaining the

basis of data compilation, data peculiarities and reconciling any material differences between Form A, Form B, and the annual statement it files.

B. Affidavit: A responsible officer of the insurer shall submit the affidavit prescribed by the superintendent in 13.18.2.20 NMAC when filing the reports required by this section.

C. Electronic filing: Reports shall be submitted both in writing and in EXCEL or other format approved by the superintendent. Instructions for filing are provided with the forms on the OSI website.

[13.18.3.18 NMAC – Rp, 13.18.3.18 NMAC, 7/24/2018]

13.18.3.19 NOTICE OF CREDITOR-PLACED INSURANCE FROM INSURER:
NOTICE OF CREDITOR-PLACED INSURANCE

You are required to maintain insurance on the property that is the collateral for your debt. You have not provided proof of insurance in response to the notices previously sent you. Therefore, *[insert name of creditor]* has placed insurance coverage for you in accordance with the terms of your credit agreement. A copy of that policy/certificate is attached. It states the total cost to you of the insurance and the period of time the insurance will be in force. You may purchase other insurance coverage at any time; as soon as you provide proof of other coverage to *[insert name of creditor]*, we will cancel this creditor-placed coverage and refund to you any unearned premiums that you have paid.

If you have had difficulty obtaining insurance, you may be eligible to purchase:

- New Mexico Assigned Risk Plan coverage for motor vehicles from your local agent or from the New Mexico Assigned Risk Plan at 1-800-227-4659;
- FAIR Plan coverage for real property or mobile homes from your local agent or from the New Mexico Property Insurance Program at 505-878-9563 or 2201 San Pedro NE, Building 20, Albuquerque, New Mexico 87110.

The insurance placed by *[insert name of creditor]* will pay claims for covered physical damage to the property until the debt is paid. The insurance placed by *[insert name of creditor]* will not give you any liability insurance coverage and will not meet the requirements of the New Mexico Mandatory Financial Responsibility Law.

[For limited dual interest policies]

As the debtor, you have the right to file a claim for damage incurred on or after the effective date of coverage stated in the policy/certificate. This insurance will pay no more than the unpaid balance on the loan, which may be less than the value of the property. In order to file a claim, you must:

[insert instructions for filing a claim]

[13.18.3.19 NMAC – Rp, 13.18.3.20 NMAC, 7/24/2018]

13.18.3.20 AFFIDAVIT:

NEW MEXICO CREDITOR-PLACED INSURANCE EXPERIENCE REPORTS FOR THE CALENDAR YEAR
ENDING DECEMBER 31, _____

AFFIDAVIT

STATE OF _____

COUNTY OF _____

I, _____, the (position) _____ of
(name of Company) _____, being duly sworn, deposes and says that on the
31st day of December last, all of the income and expenses of the named company described in Form A, Form B,
Form C, and Form D submitted with this Affidavit, together with any related reports, exhibits, schedules and
explanations contained in this filing, or annexed to or referred to in this filing, are a full and true statement in
accordance with the instructions provided of income and expenses for the year ended on that date, according to the
best of my information, knowledge and belief.

Signature

SUBSCRIBED AND SWORN TO BEFORE ME

this _____ day of _____, _____.

Notary Public

My Commission Expires _____
[13.18.3.20 NMAC – Rp, 13.18.3.25 NMAC, 7/24/2018]

HISTORY OF 13.18.3 NMAC:

13.18.3 NMAC - Creditor-Placed Insurance, filed 1/1/1999, recompiled 11/30/2001 was repealed and replaced by
13.18.3 NMAC - Creditor-Placed Insurance, effective 7/24/2018.