

## GAP Benefits and Refunds: Seems Like the Repeat Button Is On

August 17, 2021 | [Eric L. Johnson](#)

I had a roommate in college who was extremely proud of his new stereo system with its three-foot-tall speakers. It was a state-of-the-art system at the time, with crystal clear sound and thumping bass. He'd often play the most annoying music he had in his collection at such blaring levels that the hair on my arms would stand up, and I couldn't hear myself think.

As if the volume wasn't bad enough, he found a particularly disturbing way to torture me with his stereo—playing a song on repeat. It was the same song, on repeat, every time, for what seemed like hours. I still can't listen to that song without having a flashback and wanting to wring his neck.

When I read a recent press release from the Colorado attorney general about guaranteed automobile protection benefits and refunds, I wondered if the repeat button was on.

On May 20, 2021, the Colorado AG issued a press release announcing that his office secured \$121,983 in refunds for 171 Colorado vehicle owners who allegedly did not receive their full GAP benefits. According to the press release, the refunds resulted from an investigation of a Colorado company that acted as the GAP administrator among consumers, dealers, and creditors. The AG claimed that the company did not always pay full coverage owed to consumers under Colorado law.

The press release stated that the company cooperated with the investigation and agreed to promptly and fully issue refunds to consumers whose benefits the AG claimed were improperly withheld. Because of that cooperation and the company's acknowledgment of its alleged past behavior of not paying full GAP benefits owed to consumers, the AG did not request additional payments beyond full consumer refunds, even though Colorado law permitted him to do so.

In the press release, the AG stated that his office conducted a comprehensive GAP investigation that uncovered information suggesting that some creditors are not complying with Colorado law. The administrator of the Uniform Consumer Credit Code, who is part of the AG's office, led this investigation. The investigation found that some creditors are allegedly not providing consumers with their full GAP benefits or are not refunding unused GAP coverage payments if consumers sell their vehicles and no longer need the GAP coverage. The first of these practices deprives consumers of protections they paid for when their cars have just been totaled. The second overcharges consumers and violates Colorado law. We're also hearing that at least 10 GAP administrators were served with subpoenas in connection with this investigation.

You may remember that, back in April, Catharine Andricos wrote an article, "GAP Refunds: Same Old Song and Dance," about the Colorado AG's press release announcing more than \$9.5 million in refunds

obtained for Colorado consumers who were allegedly charged unnecessary GAP fees. Sure sounds like the song is on repeat, doesn't it?

A creditor's GAP refund requirements and obligations are governed by state law and vary from state to state. Therefore, it's vitally important that you understand if you have any obligations to notify your customers of a potential refund and if you have any refund obligations. Besides a review of state law requirements, you should also review your contractual requirements, as you may be contractually obligated to notify your customer of a refund and/or to make a refund to your customer.

Even where state law and your contract are silent about a requirement to notify a customer and make a refund of GAP, federal and state regulators may be able to successfully argue that your failure to notify your customer that a refund may be available or your failure to refund unearned charges is an unfair, deceptive, or abusive act or practice.

You can bet that if the Colorado AG is focused on these GAP issues and conducting investigations of GAP administrators and creditors, then other state AGs, state regulators, and consumer plaintiffs' attorneys are taking note and learning from his actions (and his high-dollar settlements). Don't put a pillow over your ears to try to block out that same old song being played on repeat; be proactive by reviewing your legal and contractual GAP obligations to notify your customers or make refunds.

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