

## New York Department of Financial Services Reminds Auto Finance Companies to Credit Consumers for Ancillary Product Refunds

October 2, 2023 | [Eric D. Mulligan](#)

If you cancel a service before your contract is up and you paid ahead of time, you probably expect a refund. For example, if you paid \$600 for a year's worth of a service and cancelled nine months into the contract, you should get about \$150 back, assuming that the contract provides for pro rata refunds upon early cancellation. What happens if the services you paid for no longer apply to you? You probably still expect a refund, even if you didn't cancel voluntarily. After all, you're not getting what you paid for. A New York regulator has taken a similar position when it comes to ancillary products sold with financed motor vehicles.

On July 18, 2023, the New York Department of Financial Services issued a letter to regulated auto creditors and servicers regarding refunds after cancellation of ancillary products. The DFS advised that failure to apply a credit against a consumer's deficiency after a repossession or a total loss was both unfair and deceptive under New York law. The letter highlighted two different practices by vehicle creditors and servicers that the DFS found during examinations. First, some regulated entities did not seek refunds from providers of ancillary products when consumers were entitled to refunds. Second, some regulated entities did not calculate or apply credits correctly or made initial requests to ancillary product providers but did not follow up on the refunds with unresponsive providers.

The DFS considers the failure to provide a proper refund or credit for an ancillary product to be an unfair practice. According to the DFS, this practice is unfair because it harms consumers by making them liable for larger deficiency balances than what their contracts provide. The DFS claims that consumers cannot avoid this harm because they cannot request refunds directly from providers of ancillary products. Creditors' and servicers' failure to request and credit refunds properly does not provide any benefit to consumers or to competition that outweighs the harm.

The DFS also considers the failure to give credit for unused ancillary products upon early termination to be a deceptive practice. A statement of deficiency balance that does not reflect credits for unused ancillary products misrepresents the amount that the consumer owes, and it is reasonable for the consumer to believe that the statement reflects all relevant adjustments. Because refunds due to a consumer can total hundreds

or even thousands of dollars per transaction, the deception is material.

Note that the DFS letter does not discuss all situations in which a creditor or servicer may owe a consumer a refund or rebate for the unused portion of an ancillary product. The letter focuses on contracts that end due to repossession or total loss of the vehicle. However, a creditor or servicer may also owe a refund if a debtor cancels an ancillary product voluntarily or prepays the debt in full before the end of the ancillary product's term. Note also that the contract and state law will dictate the calculation of any required rebate. The DFS letter indicates that consumers are entitled to prorated rebates, but that may not be exactly right; some contracts or state laws may require or allow other formulas for rebates.

The DFS letter does not specify under which law it considers the cited practices unfair or deceptive. However, the explanations of how the practices are unfair and deceptive suggest that the DFS based its arguments on the standards in the Federal Trade Commission Act, 15 U.S.C. §§ 41 *et seq.*, as the FTC has interpreted those standards, or the Dodd-Frank Act, 12 U.S.C. §§ 5491 *et seq.*, as the Consumer Financial Protection Bureau has interpreted those standards. Additionally, New York's Consumer Protection from Deceptive Acts and Practices Law, N.Y. Gen. Bus. Law §§ 349 *et seq.*, prohibits deceptive acts and practices in business, trade, commerce, and the furnishing of any service in New York.

What can you take away from this DFS letter? The most obvious lesson is that the DFS is on the lookout for companies that claim larger deficiency balances than they should because of missing or miscalculated rebates or credits. When a credit contract ends for any reason, whether on schedule or not, you need to address all remaining items, both what the consumer owes you and what you may owe the consumer. Sometimes, this process is simple. Maybe the consumer paid on time every month and the only remaining item is a lien release fee. Other times, it's more complex. If you repossessed the vehicle, you're adding charges for repossession, storage, and sale and subtracting the amount you got from the sale. Just don't forget to check for refunds or credits that may be due to the consumer. ❏

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