



# Assessing Abuse of Navajo Customers when Purchasing Vehicles in Border Towns









## LETTER OF TRANSMITTAL

March 7, 2014

Hon. Ben Shelley, *President*  
Hon. Rex Lee Jim, *Vice-President*  
The Navajo Nation  
Window Rock, Navajo Nation (AZ)

Hon. Johnny Naize, *Speaker*  
Hon. *Members*  
The Navajo Nation Council  
Window Rock, Navajo Nation (AZ)

Hon. Herb Yazzie, *Chief Justice*  
The Navajo Nation Supreme Court  
Window Rock, Navajo Nation (AZ)

Nihi naat'áanii,



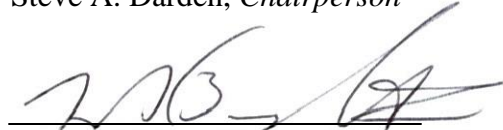
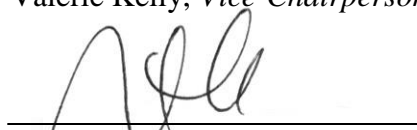

The Navajo Nation Human Rights Commission hereby submits to the Diné bi naat'á, our Navajo government and to the Diné the public hearing report entitled "*Assessing Abuse of Navajo Customers when Purchasing Vehicles in Border Towns.*"

The report is a compilation of three (3) public hearings held in the Navajo communities of Dilkon and Kayenta, Navajo Nation and Crownpoint, Navajo Nation. In addition to the hearings the Commission hosted several meetings with governmental agencies, auto dealers and legal firms to gather information about auto lending and financing, which is one of the most controversial legal arrangement that binds our Diné to years of financial hardship and personal despair. The Commission found the mere act of purchasing a vehicle in today's society is relatively easy but the strings attached to that purchase are often laced with exuberant fees and transaction terms that can easily destroy a person's well-being.

The Commission implores our Diné leaders to raise the standards and insist on fair and responsible business transactions be provided to all of our citizens. The human and civil rights of our people cannot be compromised for the sake of a dishonest financial scam that is earned through unscrupulous means. We must demand to be treated with dignity, respect and equality in all aspects of our business dealings.

With our utmost respect and with the honor of protect and advance Diné human rights, we offer this report.

With great esteem, we have the honor to advocate for the  
Protection and recognition of Diné human rights,

  
Steve A. Darden, *Chairperson*  
Valerie Kelly, *Vice-Chairperson*  
Frank Bradley III, *Commissioner*  
Justin F. Tsosie, *Commissioner*  
Dr. Jennifer Denetdale, *Commissioner*



**Resolution of the  
Navajo Nation Human Rights Commission**

**Approving the Navajo Nation Human Rights Commission Public Hearing Report on  
Predatory Automobile Sales to the Navajo People Entitled “Assessing Abuse of Navajo  
Customers when Purchasing Vehicles in Border Towns”**

**WHEREAS:**

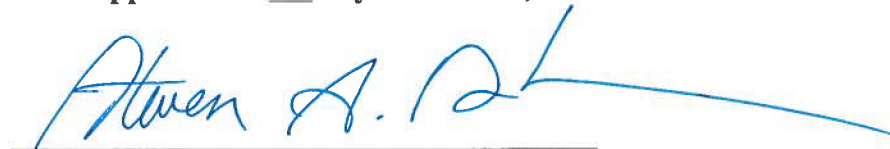
1. Pursuant to 2 N.N.C. § 920, *et seq.*, the Navajo Nation Human Rights Commission (herein referred to as “Commission”) is established in the Legislative Branch as an entity of the Navajo Nation government with the purpose of assessing race relations between Navajos and non-Navajos in the border towns surrounding the Navajo Nation; and
2. Two additional purposes of the Commission is to interface and network with local, state, national and international human rights organizations, and advocate for Navajo human rights while educating Navajo citizens on their human rights; and
3. In 2012, the Commission received complaints from Navajo citizens on purchasing new and used vehicles from automobile dealers in the border towns surrounding the Navajo Nation. These complaints included, for example, a Navajo person signing several sale contracts for the one vehicle purchased over the course of several months; and
4. At the beginning of FY13, the Commission strategically decided to assess the predatory automobile sales to Navajo citizens and conducted three public hearing in December 2012 and January 2013 in Dilcon and Kayenta, Navajo Nation (Arizona) and Crownpoint, Navajo Nation (New Mexico); and
5. The Commission is indebted to all those Navajo citizens that came forward to share their stories regarding their dealings with automobile dealers and financiers in the border towns surrounding and within the Navajo Nation. Navajo citizens’ testimonies indicate that border town auto dealer’s and financier’s business practices are egregious and discriminatory. Furthermore, the Commission expresses its appreciation to DNA-Peoples’ Legal Services, Inc., New Mexico Legal Aid Program, Human Rights Watch, New Mexico Attorney General’s Office, Arizona Attorney General’s Office, and Consumer Financial Protection Bureau for their support and encouragement in helping address the issue; and
6. The Commission reviewed the attached report entitled “Assessing Abuse of Navajo Customers when Purchasing Vehicles in Border Towns” and finds the report accurately reflects the testimony provided during the three public hearings and cases the Office of Navajo Nation Human Rights Commission received and investigated from 2012.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Navajo Nation Human Rights Commission hereby adopts the public hearing report on predatory auto sales entitled "Assessing Abuse of Navajo Customers when Purchasing Vehicles in Border Towns", attached hereto as Exhibit "A".
2. The Navajo Nation Human Rights Commission further hereby directs the Office of Navajo Nation Human Rights Commission to transmit this resolution to the 22nd Navajo Nation Council, Navajo Nation President and Vice-President, and make public to citizens of the Navajo Nation through appropriate means including, but not limited to, posting the report on the Commission's office website [www.nnhrc.navajo-nsn.gov](http://www.nnhrc.navajo-nsn.gov).

**C E R T I F I C A T I O N**

**I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Human Rights Commission at a duly called meeting at St. Michaels, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor and 0 opposed this 4th day of October, 2013.**



**Steven A. Darden, Chairperson**



**Navajo Nation Human Rights Commission**

**ASSESSING ABUSE OF NAVAJO CUSTOMERS WHEN PURCHASING  
VEHICLES IN BORDER TOWNS**

**March 7, 2014**

**Submitted by**

**Commissioner Steven A. Darden, Chairperson  
Commissioner Valerie Kelly, Vice-Chairperson  
Commissioner Jennifer Rose Denetdale, Ph.D.  
Commissioner Frank Bradley III  
Commissioner Justin Tsosie**

The Report Assessing Abuse of Navajo Customers when Purchasing Vehicles in Border Towns is prepared for the purpose of providing information and consideration to the Navajo Nation Government, Federal and State agencies, business entities and Navajo consumers. The findings and recommendations in this report are contributions composed by the Commission, Navajo complainants and individuals providing written and oral testimony during the development of this report.





## ACKNOWLEDGEMENTS

It has been quoted “the success of an organization rests with the people involved.” There is no doubt that the contributions presented toward this study embodied a well coordinated plan consisting of victims, auto dealers, governmental officials, consumer advocates and the staff of the Navajo Nation Human Rights Commission. The Commission is indebted to everyone that contributed to the development of this report. Thank you.

To the Navajo citizens who were victims of the unconscionable auto scams that confront Navajo consumers far too long, thank you for sharing your personal experiences. The information you provided is the impetus for which the Commission is charged to address. We are privileged to have addressed your issues by diagnosing them, bringing dialogue and remedying the problems. Thank you! The Commission further expresses its gratitude to the federal, state and local government agencies for assisting in the investigative efforts that helped define the legal parameters the office incorporated while investigating complaints filed with the office. To the border town automobile businesses that worked with the human rights staff, we extend our appreciation for taking time to address consumer issues that went unnoticed. Thank you for listening to the issues and correcting the issues where necessary.

To all Navajo consumers, the revelation of consumer abuse in border towns surrounding the Navajo Nation deepens our quest to bring more attention to these practices; to call out for the end of such practices, and to demand fairness and equality in all aspects of business practices that involve indigenous peoples, especially our Navajo citizens. We will continue to advocate on your behalf and address the human rights violations imposed upon our people.

Special acknowledgement is made to Ms. Jill Jim of Salt Lake City, Utah. Ms. Jim, soon to be Dr. Jim assisted the office with analyzing the data collected from the survey that was administered through this office. We are grateful for her unbounded assistance and her willingness to see the final analysis completed.



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## Preface

The sales of automobiles on and in border towns surrounding the Navajo Nation unveiled unnoticeable and cunning sale transactions that plagued Navajo consumers for years. Unknown to the Navajo consumers were business behaviors and transactions that robbed consumers of their livelihood, that ruined credit or damaged credit ratings further, which in the end would take years to recover. Dealers engaged in fraudulently, unconscionable, unfair and deceptive acts of salesmanship practices that even in spite of the Commission calling out, they fail to correct these behaviors.

The Commission offered the following short personal accounts of what they witnessed and what they learned during the process of investigating automobile purchasing. These accounts serve as the prelude to the report.

**Commissioner Chairman Steven A. Darden** - Ya'ateeh. As the "Business Sector" representative on the NNHRC - Commission, I am a strong supporter of "free enterprise" and a strong economic system and environment which provides goods, commodities and services at fair and equitable prices for all peoples. I attended two of the public hearings (Dilkon and Crownpoint) as well as the seminar in Window Rock.

The personal testimonies of the Diné elders in particular, who drove many miles, some from across the reservation to these hearings, to vent their anger, frustrations, distress, and anxieties to the Commission, was beyond eye opening, to say the least. Their experiences with various persons at various levels of border-town auto dealerships, showed some of the insidious, deceptive, unethical, and manipulative practices of salespersons, finance managers, maintenance personnel, and finance/lender representatives. The processes by which these auto dealership person's "wear down" the elders to get the deal done is to me, most despicable and unsettling.

I am glad and proud of the Commission staff and my colleagues on the Commission, for having the insight to pursue this matter in behalf of our vulnerable people. I am so very grateful for the remuneration/redress, leveraged for our Diné peoples.

It is also noteworthy that the New Mexico Auto Dealers Association was willing to more closely monitor some dealers reported to them that have these deceptive practices. I also respectfully

acknowledge the Arizona and New Mexico Attorney General's offices for their efforts, and guidance in the cases brought forward to them. Moreover, the various consumer protection services, DNA Executive Director, Mr. LeVon Henry and his staff of attorneys, and many other professionals who work to protect consumers against fraudulent and deceptive practices, is herewith formally and respectfully acknowledged, for the amount of time and resources they dedicated to the Commission's request for assistance with our Diné relatives. Furthermore, herewith I formally and respectfully acknowledge the Honorable Jonathan Nez, NNC Delegate for his participation in the hearings.

It has been both interesting and frustrating, and yet expected, to see and to hear, the "damage control" affected by several of the border-town dealerships, most notably "Tates". Their radio and print media ads campaign, their sponsorship of various Navajo Nation Fair venues, the "free truck give-away", all a public relations ploy to make themselves look and sound responsible, charitable, and ethical friends of the DINÉ peoples. Tate's was mentioned most often by Diné people at the various public hearings as the most troublesome of the border-town auto dealers.

The need for the Navajo Nation government representatives to "police" the Jeeshoo' (buzzardry) practices of these border-town auto dealer representatives, as they go to the Dine Nation, the hospital parking lots, the shopping centers, the flea market areas, even to people's homes at all hours of the day and night, has to be addressed in some manner and expeditiously. The continued abuse of our Diné peoples must not be tolerated, and the Diné Nation has to have the policy and the wherewithal to criminalize the deceptive practices so the Navajo adjudicatory system and processes can punish those entities preying upon our relatives.

That said, we are cognizant that there are still many border-town dealership that are reputable and have earned the trust and patronage of the Diné peoples.

We will strategize for the continued education of the Diné peoples to protect them from the fraudulent and deceptive practices of all border-town businesses. The entrepreneurial spirit of Diné people must be heightened, and the Diné peoples government must create an economic environment, and financial incentives for the Diné peoples to bring free enterprise and industry to the Navajo Nation to create employment and business opportunities to the reservation.

**Commissioner Valerie Kelly** - The deceitful ways the automobile dealers “conned” their way into the lives of our Navajo elders, youth and even the educated was appalling. Take for instance the story of the old grandmother who was approached by a sales representative at a Bashas in Dilcon. She refused numerous times for a new vehicle. The next day a new vehicle was delivered to her home. Grandma didn’t have a driver’s license but yet she was “conned” into signing a sales contract.

- This is just one story that sticks in my mind from our public hearings.
- The deceitful ways these auto dealers sell vehicles to our Navajo population was an eye opener.
- The remedy the Navajo Nation Human Rights Commission implemented, seem to give relief to a few people. I am very proud of our staff who worked diligently in helping our people.
- I think we’ve actually put a “dent” in these unfair practices by border town automobile dealers.

**Commissioner Jennifer R. Denetdale, Ph.D.** - I attended all of the public hearings and the seminar on Sept. 6 at the NN Museum. As I listened to Diné bring their experiences with various auto dealerships and the finance companies they use to garner auto loans for Navajo consumers, I was struck by several themes. Many of the Diné were elderly and spoke Diné bizaad as their primary language. They talked about how they were approached by sales people, including places on the Navajo Nation, and how they ended up with auto loan contracts that were usurious and exploitative. In their testimony, what came across was how they felt humiliated, embarrassed, frustrated, and angry because they had become involved in a financial contract that they could not uphold due to their financial constraints. The NNHRC appeared to be at least one place where they might not only get their grievances heard, but that they might actually see some resolution. Many of the participants stayed the whole day and listened to the testimony of others who had similar complaints. In order to address Navajo consumer complaints, the NNHRC brought many experts, including attorneys and consumer watch groups, who provided advice on how to navigate the complex and exploitative financial contracts and also educated Navajo consumers on what to look for in terms of exploitative and fraudulent practices. However, much of the information that was provided in the form of education and advice was intended for

Navajo consumers who have jobs or some source of financial means. The reality of many Navajo consumers is extreme poverty, so as a Commissioner, I had questions about how to counter practices of predatory auto loan dealers when they are part of a larger structure of businesses that prey on poverty stricken peoples. It is a concern that other populations that deal with poverty in the United States are also facing. Overall, as long as capitalism is the structure of the nations that we live in, we will have to continue to deal with predatory behavior towards the Navajo people.

**Commissioner Frank Bradley III** - As a retired police officer of 24 years in law enforcement with the Navajo Nation, I undertook and proudly kept vigil for the signs and actions of violators of the law. And now as a commissioner of the Navajo Nation Human Rights Commission (NNHRC), participating, observing and listening to testimony of our Navajo citizens on the situations and accounts of how they were swindled into obtaining a vehicle from what I can only name as: “unscrupulous, and deceitful” automobile dealers that surround the Navajo Nation, was disheartening and profoundly sad. The NNHRC undertook this task at the realization of numerous complaints and concerns that this practice be investigated. Through the professional and tireless efforts of the staff at the NNHRC this practice was put into the light of the public realm. Not only was the practice revealed and in most cases resolved to the satisfaction of some of the complainants. The office of the NNHRC was successful in providing an education of not only the methods that some of these automobile dealers use but provided the remedy and steps to arm the Navajo consumers. The panel of consumer experts (put forth during the September seminar) with not only the Navajo Nation but with the United States and surrounding States was expertly conducted. I learned the process of dealing not only with buying a vehicle but a method that can be applied to all goods and services, “everything is negotiable.” My professional life had been to protect the vulnerable, protect the weak, and protect the innocent, to bring back into balance and harmony the situations that we sometimes all find ourselves in. Now that I have retired the methods and tools I had once used to do the job of a police officer, I find that the office of the Navajo Human Rights Commission is providing the very things I once practiced and used and now get to use again as a commissioner of the NNHRC. This endeavor the office has undertaken is but one of many efforts into policing, monitoring, and ensuring our Human Rights as Diné.

**Commissioner Justin Tsosie** - In the past year, I have heard testimonies from our Navajo citizens in various Chapters throughout Navajo land on Predatory Auto Sales. Through oral and written testimonies, we received dirty and deceitful sales tactics used by auto dealers, and lenders that preyed on our people of low income, elders, youths and those with limited knowledge of the English language. In some cases, we were made aware of sales representatives from these shady auto dealers that come onto Navajo land, to the consumer's home, and coerce them into signing contracts that did more harm than good. As I traveled across Navajo land, I have even witnessed some pushy sales tactics throughout the parking lots of businesses and establishments to gather information's by consent or not on our Navajo citizens. Through our office of the Navajo Nations Human Rights Commission (NNHRC), with the help of our staff and their expertise we're successful to settle and ease the minds of some consumers of Navajo. I do commend the staff of the NNHRC on a job well done, but the task is yet complete. With our recent Seminar on Automotive Purchasing for our Navajo Consumer's to be more prepared when purchasing vehicles, and to make a good sound valuable investment was a great educational tool. I am very grateful to be a part of this great Commission of the Navajo Nation and to have helped our people in this inhumane treatment of greed and deception.

"Only a life lived for others is a life worthwhile." Albert Einstein





# Introduction

This report is the first in an attempt to discuss automobile purchasing and financing that occurs in border towns surrounding the Navajo Nation. Navajo consumers when compared to non-indigenous buyers possess similar skills and knowledge toward buying an automobile<sup>1</sup>. They know very little about the make and model of the car they want to buy. They do not research to know enough about the vehicle they are purchasing nor do they know enough about the contract or finance terms they agree to when purchasing a vehicle. Almost all of the Navajo consumers that filed a complaint with the Navajo Nation Human Rights Commission (“Commission”) did not know their personal credit scores. Two glaring factors repeated time and time again throughout this study indicated that a lack of public education and the availability of the technology for Navajo consumers to prepare themselves for making perhaps the biggest investment decision of their lives is absent.

Navajo consumers are confronted with challenges that impede them from exercising their consumer rights to the fullest. The Commission found that used vehicle warranties were especially difficult to get dealers to honor, particularly when consumers purchased additional warranty coverage. In some instances the Commission found Navajo consumers to have paid for repairs even when vehicles purchased on the same day broke down. Some dealers replaced parts with automobile parts purchased at salvage yards while others outright refused to honor a warranty that they encouraged the consumer to purchase when the sales contract was signed. Navajo consumers who pressed for answers were confronted with hostility and anger. Others who were more persistent were told to get out of the dealership before police were called as the sales person was feeling “*threatened*.” One consumer expressed concern with a warranty problem he had on a truck he purchased. The truck required repair on three separate occasions on the same part. He later learned the dealer invalidated his warranty because he exceeded the miles allowable under the warranty terms. He traveled over three hundred miles round trip on each trip to get his truck fixed - which to his disadvantage, exceeded the five hundred miles limited warranty coverage.

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<sup>1</sup> Navajo consumer knowledge toward the purchase of vehicles support similar findings of other non-indigenous consumers, described in the Automobile Fraud, 4<sup>th</sup> Edition 2011, National Consumer Law Center.

Driving distances, limited automobile services, road conditions, and Navajo economics make it difficult for consumers to feel they get a fair shake when purchasing a vehicle. While the Commission realizes consumer responsibilities also need to be configured into the picture of fairness and responsibility, the fact remains that Navajo consumers, especially elders and non-English speaking Navajos are not given an opportunity to seriously contemplate the impact their purchases will have on their livelihoods. If there is a perfect example of how to keep impoverished people in poverty, the sale of automobiles in border towns surrounding the Navajo Nation meets the criteria to perfection. Some have devised marketing tactics and business models that defraud and deliver unconscionable deals that keep the poorest of the poor, in a cycle of poverty. Automobile dealers argue they provide a service to the people that help them engage in daily activities that contribute to their survival. They believe they provide disclosures on every purchase and the final decision rests with the buyer. For the dealers they are only practicing the true essence of “*free enterprise*.”

The old adage that for every finger pointed one way, three fingers point back to the sender. The Commission while pointing a finger one way must also look to the Navajo Nation. While the Navajo Nation recognized predatory sales problem in the past, and addressed it with the passage of the Navajo Nation Consumer Protection Laws of 1999, this law has not curtailed the unscrupulous activities involved in the purchase and repossession of vehicles sold to many Navajo consumers. Moreover, the governmental entity responsible for monitoring the unlawful sales and marketing of automobiles on the Navajo Nation demonstrate laciness in exercising its authority. The issuances of permits and collections of taxes appear to be insignificant to the overall plan to bring economic development to the Navajo Nation. While there is much talk to bring economic development to Navajo communities, the realization that one single important aspect of a consumer’s life is the need for transportation. The sales of automobiles to Navajo consumers by the Navajo Nation government could be a lucrative investment, if proper legal safe guards are put in place.

The paradox that the Navajo Nation is dependent on outside non-indigenous entities to revolutionize the Navajo economy is a challenge to the Commission. Almost four billion dollars is generated annually on the Navajo Nation from various sources of income, taxes and appropriations, to name a few. As a sovereign nation, the Navajo Nation should examine the

possible sale of vehicles to Navajo consumers on the Navajo Nation and capitalize on the peripheral services that come with the maintenance, service contracts and other amenities of owning a vehicle. The mechanism to market, finance, and collect on loans are already in place off the Navajo Nation. There have been efforts to provide these financial services to Navajo citizens but on a smaller scale through the Navajo Nation Credit Services Program. The Commission is frustrated by the lack of development on the Navajo Nation which can provide the marketing, selling of goods and services on a much grander scale. Resounding amounts of funds are generated and expended by the Navajo government including chapters, schools and the private sectors on the nation. These sources of funds create jobs on the Navajo Nation but they often go directly off the Navajo Nation, where economic development follows that dollar.

There is an era in time to reexamine and rethink how we collectively conduct business and simply shift the tides of spending off the Navajo Nation to spending on the Navajo Nation. At the same time, where appropriate, we must collectively demand that our business relations with merchants in the border towns be engaged on a different par. On June 16, 2011 the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights; Implementing the United Nations ‘Protect, Respect and Remedy Framework’ which outlines principles that transnational corporations and businesses need to comply with when dealing with indigenous populations. The principles are grounded in the recognition that States, including transnational corporations and business enterprises, are to enhance standards and practices with regard to business and human rights to achieve tangible mechanisms and results that affect individuals and communities. The recognition that business enterprises must comply with Navajo law and respect Navajo human rights is a significant step toward realizing fair and sustainable standards that benefit everyone involved.

Achieving the new standards is the collective responsibility of all Navajo consumers; laws and regulations can be enacted but without the force of Navajo consumers demanding a different course, well intended laws and regulations often become ineffective. The Navajo Nation has before it a number of international doctrines, covenants and declarations that recognize the right to self-determination based on our indigenous origin and identity. The human rights of the Navajo people are central to determining their political status including the economic, social and cultural development. These human rights have been the cornerstone to the

resiliency of the Navajo people. The Navajo people continue to respect laws provided by the Holy People, today. The Commission's purview is to listen to the people, investigate the inequities, analyze solutions and empower the people to participate in decision-making that affects their rights. And, in the case here, that includes protection from abuses of third parties, including business enterprises that are within the territorial boundaries of the Navajo Nation.

At the conclusion of the public hearings Commission Chair, Steven A. Darden added this closing perspective, *"Any means to get ahead can never be realized for these families if they think buying this car will get them ahead. The contracts that we've seen are laced with add-on's that make no sense, cost too much and keep the family in debt."*



## The Commission's Authorization to Investigate Predatory Auto Sales

Automobile lending is an \$850 billion dollar industry in the world.<sup>2</sup> About 80% of all automobile lending occurs in the United States.<sup>3</sup> The industry has undergone more regulations recently but is protected by lobbyists, attorneys and congressmen who recognize the automobile industry's ability to influence the economy of the United States. To actually bring action against the automobile industry takes time, money and a thorough knowledge base when dealing with corporate conglomerates namely, a handful of big banks that dominate most lending in the automobile industry. The issues are complex and depending on jurisdiction, results are slow to produce. While recognizing the enormous undertaking at hand, the Commission attempted to address Navajo consumer issues that were concerned with the purchase and financing of automobiles in border towns surrounding the Navajo Nation.

Beginning in December 2012, the Commission planned to facilitate three public hearings to gather information from Navajo consumers about their experience with automobile dealers. The first hearing was held in Dilkon, Arizona where over one hundred participants attended the hearing. Two other hearings were scheduled in the northern and eastern locations of the Navajo Nation. On December 28<sup>th</sup>, 2012 the Commission hosted its second scheduled public hearing in Kayenta, Arizona. The following week the Commission scheduled a hearing in Crownpoint, New Mexico. Overall, the Commission heard numerous accounts of unscrupulous and unconscionable auto deals that raised more questions about not only the legitimacy of these deals but about consumer rights and the protections afforded to the Navajo consumer.

The Commission engaged representatives from various organizations who dealt with automobile sale problems at all three hearings. Mr. Levon Henry, the Executive Director of DNA People's Legal Services, Inc., ("DNA") and DNA attorneys attended all hearings hosted by the Commission. Mr. Henry provided information about the services DNA offers and urged attendees to speak with DNA representatives who accompanied him to the hearing. The Commission received a presentation from Veronica Fabian at the Dilkon hearing. Ms. Fabian is an attorney in private practice from Flagstaff, Arizona who specializes in Consumer Law. She

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<sup>2</sup> "Auto Lender Lobbyists Last Stand in the Senate" J. Psaki, Deputy Communications Director. May 24, 2010. The White House

<sup>3</sup> (Psaki, 2010)

worked ten years with DNA prior to pursuing private practice. In her presentation she provided a short synopsis of some of the problems Navajo consumers face when purchasing vehicles in Arizona. Ms. Fabian stressed the importance of educating oneself before purchasing a vehicle. The concept of negotiating and how that applies at each step in the process of buying a car cannot be underestimated. She reminded the audience to pay attention to the details in the contract, especially the add-ons that are notorious for dealers to increase costs, which may supplement the sales persons' commission.

The Crownpoint public hearing drew interest from two national organizations that deal with consumer, civil and human right issues. Mr. Arvind Ganesan of the Human Rights Watch (HRW) from Washington D.C. and Ms. Eleanor Blume of the Consumer Financial Protection Bureau (CFPB) from Washington D.C. attended the hearing. Ms. Blume's presentation focused on the financing of vehicles. Her principal mission was to understand the practices of how loan companies finance vehicles and to understand the details of those loans. Mr. Ganesan focused on how automobile title lending affected people who took auto loans out. He was interested in how these types of loans impact families. Mr. Ganesan could later report and advocate for change to this type of loan, if he found prevalent abuse. Mr. Will Conner of the Gallup - New Mexico Legal Aid office also attended this hearing. Mr. Conner did not address the audience but he assisted the DNA attorneys in addressing auto sales complaints. Mr. Levon Henry, Executive Director of DNA also accompanied staff from the Crownpoint DNA office.

The preliminary findings and exchange of information that transpired at the close of the Crownpoint meeting reinforced the premise that Navajo consumers are victims to common sales practices. Predatory, unfair and deceptive sales practices followed by equally unconscionable lending tactics were at the forefront of the concerns expressed by almost everyone attending this meeting. Moreover, the NNHRC office experienced a quick increase in the number of written complaints filed. The complaining parties to these complaints alleged they were victimized and forced to make decisions that they later regretted. Many felt they were placed into situations that threaten their livelihood. With the information that was gathered, the four organizations decided to maximize each organizations legal and outreach capability and combat the predatory sale and unconscionable practices that appeared to be prevalent in the border towns.

At the conclusion of the Crownpoint public hearing, representatives from DNA, the Commission, NNHRC staff and the two representatives of the previously mentioned non-profit consumer agencies met to recap the testimony and to devise a strategy plan that would be used to guide the inquiry into the complaints aired at the hearings. The plan entailed a four-prong approach that included a public education component, followed by an examination of existing laws in the states of New Mexico and Arizona, a legal assessment of consumer complaints filed with the office that involved the sale of vehicles, and finally, the development and analysis of a survey and a written report that will provide an account of all the activities the Commission embarked upon while examining this issue. The report would provide findings and recommendations which will be shared with the Navajo Nation Council and the Navajo people.



## The Plan of Attack

In January 2013 the Commission examined several procedural methodologies used to examine the types of sale tactics practiced on Navajo consumers by automobile dealers. It was obvious that a long term education mechanism was essential and perhaps the most beneficial as its impact would have a consistent, comprehensive and effective approach to Navajo consumers. New legislative and policy development was identified as another mechanism that if designed appropriately could provide legal leverage for Navajo consumers to seek fairness and redress with automobile dealers. In addition to a legal and judicial mechanism, the Commission reviewed nearly eighty complaints and identified specific details in contracts, consumer decisions and reviewed financial actions auto dealers pursued to finalize deals. This process helped define potential legal strategies that could be pursued against an auto dealer. The final step the Commission included was the writing of a report, including the findings and recommendations that hopefully lead to an informed exchange between the Navajo consumer and the border town auto dealer. This four-prong approach was eventually adopted by the Commission on March 1, 2013.

It became apparent early on in the public hearings that Navajo consumers lacked basic information about purchasing a vehicle. Information on credit profiles, warranties and blue book values were foreign to the Navajo consumer that interfaced with the Commission. Access to the Internet and websites that offered reviews on new vehicles or vehicle history reports on used vehicles were not readily available. If they are, many consumers never learned how to access information through the internet. A problem that surfaced time and time again was the lack of qualified interpreters who speak the Navajo language and who in turn could interpret the details of an auto contract. In some instances, Navajo sales personnel served as the first line sales person Navajo consumers met. Once a deal was certain, non-native managers would step in to finalize the deal. Illiterate Navajos were isolated, sometimes left in a room to read a contract, to analyze finance terms and to discuss terms contained in the contract that were not only foreign to them but they had no ability to comprehend what was presented to them. For the most part, an elder Navajo consumer was not allowed the courtesy of a relative or friend to interpret or ask questions on their behalf.

Part of the education mechanism dealt with the coordination, collection and communication of automobile information that was gathered and exchanged from non-governmental and governmental agencies in both Arizona and New Mexico. The information gave Navajo consumer's pointers on preparations for buying a vehicle, the names and addresses of consumer protection agencies, legal advice and recommendations on when and what legal action to pursue should legal action become necessary. It became apparent that a wealth of information was available on the world-wide-web, if you looked for it. Through this process the realization that the Navajo Nation government could be more instrumental with assisting its employees by financing vehicles from reliable auto dealers off the Navajo Nation became intriguing and raised the possibility of selling and financing its used fleet to Navajo consumers.

The Commission believed that because the Navajo consumer was deprived the right to freely negotiate a contract under conditions acceptable and understood by the consumer, the consumer was defrauded and injured. Consequently the terms in the contract were detrimental to the consumer's livelihood. The mere fact that no Navajo interpreter or Navajo relative was allowed to assist in the finalization of a contract, shows the consumer was deprived the right to receive information in the primary language of his or her choice. When NNHRC staff reviewed auto contracts and other documents confirming the purchase of a vehicle, it became apparent that a lot of information had not been understood or had not been disclosed entirely at the time the deal was finalized. In many cases, newly purchased vehicles were repossessed shortly after the first payment was due. Consumers found monthly payment amounts did not fit their budgets and in many cases, Navajo consumers were *strung out* because their sales contracts were never finalized when the consumer drove the vehicle off the lot. Because of the repeated episodes of unfair and deceptive practices, NNHRC decided to reach out to civil rights and government agencies that have jurisdiction over these entities.

The final educational mechanism involved the development of written material authored in the Navajo language. Since many schools on the Navajo Nation offer a Navajo language course, the material developed would be disseminated to schools and to programs that serve the public on the Navajo Nation. The Commission purports that any measured change toward automobile purchases by Navajo consumers could best be judged through a student's ability to comprehend a contract. The instruction delivered in a classroom setting concerning mathematics

is essential for anyone to understand how payments are structured, and the impact those payments have on a family's budget is critical to the livelihood of every family. An informed consumer would make better purchasing decisions and therefore crack that cycle of poverty that plagues the Navajo Nation.





## The Sales and Lending Problem

The history of predatory auto sales and lending remains the leading cause of consumer complaints to state and local consumer protection agencies.<sup>4</sup> The Federal Trade Commission, United States President Barack Obama and members of Congress attempted in 2010 to impede some of the automobile sale abuses by mandating new federal regulations that would monitor and set regulations between the relationship of the automobile dealer and lender.<sup>5</sup> Economic analysts labeled the mortgage lending practices of the late 1990's and early 2000's, as subprime loan markets which were blamed for the 2008 financial crises the United States withstood when stock markets took a down turn. These loans are packaged, securitized and sold on Wall Street to investors that spread risks around the world. Unfortunately, lobbying efforts by the National Automobile Dealers Association and other well financed special interest groups prevail in carving out legislation that prevented any oversight to regulate the lending schemes that abate consumer protections.

Commissioners found predatory auto sales practiced in the border towns surrounding the Navajo Nation. Consumers attested that auto sales personnel confronted them at business sites, homes and worksites on the Navajo Nation. Hospitals, grocery stores, post offices and a person's place of employment were common sites where sales people accosted consumers to get personal information to conduct "*soft*" credit checks. In several cases, new vehicles with pre-written contracts were delivered to the homes of some consumers the following day. Auto sales people literally waited outside homes all day and each hour offered the same deal to the homeowner. This homeowner was usually an elder, spoke only Navajo and grew tired of being hoarded in his own home until he or she gave in and signed the contract toward the end of the day. Once a signature was acquired the salesperson promptly left the premises.<sup>6</sup>

Navajo auto sales personnel are found at local outdoor markets, grocery stores and along highway intersections where food vendors set up. They get personal information to conduct a credit check. On occasion the sales person may use the tactic that the Navajo person is actually

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<sup>4</sup> "Auto Dealers grant special exemption from Dodd-Fran Based lies" article from the Consumers for Auto Reliability and Safety. November 16, 2012

<sup>5</sup> Dodd-Frank Wall Street Reform Act and Consumer Act. (Pub.L. 111-203) Signed into law by President Barack Obama on July 21, 2010.

<sup>6</sup> Oral Testimony received from K. Smiley at the Public Hearing in Dilkon, Arizona on December 7, 2012.

registering for a drawing, but in reality, the information is used to access the person's credit rating. Sales personnel reportedly check the credit worthiness of a potential buyer on the spot and immediately declare them a winner of some amount of money that can be used against the purchase of a vehicle. Whatever the scheme is, this unwilling person is deemed eligible to purchase a vehicle. Navajo consumers report sales personnel are often in brand new vehicle and tell them, "*They're eligible to buy this truck.*" However, when this potential consumer takes them up on the offer - they find out that the information pitched to them along the highway is far from the truth.

Loans that consumers with poor credit ratings or limited credit scores, are often referred to lending institutions where subprime loans are the specialty. Subprime loans<sup>7</sup> are risky and are lucrative for auto dealers because they are designed to attract customers who have weak credit scores, low income and provide finance terms that are high and spread throughout a seven to eight year payment plan. These types of loans are ripe for the significant number of Navajo consumers who have poor credit scores. They provide the consumer with an opportunity to purchase what they want but they also burden the consumer with excessive charges and fees when a consumer defaults on the payment. These loans are known to be onerous. Finance analysts compared subprime loans as having the same potential to create another economic recession that the United States and other global economies sustained in 2008. If 80% of automobile lending occurs in the United States, this could have a much wider and far reaching effect because people would be subject to more financial scrutiny and therefore reluctant to buy anything, thus, impacting the economies all over the world.

Subprime loans are not the only culprit confronting the Navajo consumers. The Commission found deceptive auto sales practices wide spread in border towns. Navajo consumers complained that along with high interest rates and high payments, they often experience other deceive practices that caused them to concede to deals that they did not want. Many expressed a concern that when asked to speak with a Navajo interpreter or have a relative interpret for them, they were told they could not accommodate that request. Others experienced high pressure sale tactics where keys, driver's license and banking information was taken and

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<sup>7</sup> Defined here as loans provided to individuals who do not qualify for a loan at the prime rate due to their credit history. These loans have an interest rate higher than the prime rate which can vary from lender to lender.

kept until a contract was signed. Some complained that vehicles that were to be traded in were not. Consequently, a vehicle left on an auto dealer's lot as a trade-in was never traded in and the consumer did not learn about this until the lending agency called demanding payment on that vehicle. They learned later there was no trade in and in some cases the vehicle remained on the lot at the exact same location it was parked when the other vehicle was taken home. In a couple of cases sales personnel encouraged the buyer to simply call the lender, and tell them to come get the car as they no longer wanted it! The Commission heard of sales personnel telling consumers to lie about incomes and down payments that were not paid by the consumer. Many reported signing several contracts and having to put more money down each time a new contract was signed. Others reported extended service contracts added into contracts when the manufacturer's warranty already provided the same coverage. In several cases, transactions that fit the description of "spot delivery" where a consumer leaves the lot with a vehicle assuming he had purchased the car is called back and told to return the vehicle happened on several occasions. The return of the vehicle was necessary because no lending agency agreed to finance the car. The consumer either comes up with more money as a down payment or he would forfeit his down payment because he decided to withdraw the purchase of the vehicle. In all these cases, default reports were sent to the credit bureau. The Commission found deceptive sales tactics to be numerous and configured through a variety of methods. The bottom line is that each case is different and the practice is widespread.

Another concept familiar among dealers and lenders is called Floor Plan Financing.<sup>8</sup> "Flooring," as it is referenced among auto dealers is when a dealer and finance firm agreed to extend a credit line for the dealerships to buy vehicles. It allows the dealer to go to auctions (or take trades) to accrue an inventory without paying for it right up front. The Flooring finance company will pay the fees associated with the purchase of large fleets. The dealer turns over the titles of the vehicles to the Floor Plan finance company until each vehicle is sold. This is extremely helpful for small dealerships that do not have the cash to purchase a large inventory of vehicles. Most dealerships have some sort of floor plan. A hazard for this type of plan is that when a dealer realizes he has not been able to pay off the loan for the vehicles he bought because the dealer still has a substantial number of unsold vehicles on the lot, the dealer has no other

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<sup>8</sup> eHow.com, Bill Herrfeldt, Contributor, Article 5065836\_floor-plan-financing.html

option but to devise some type of marketing plan to sell the vehicles as quickly as possible. These plans are numerous but they are all designed to meet the payment on the loan extended to the dealer. In most instances the dealer will develop an elaborate sales gimmick to arouse consumers to come in and look at a vehicle. Once they are on the dealer's lot or show room, the sales person does everything he or she can to make a sale. This lending arrangement is quite common in the automobile industry. It allows for a lot of creativity, where many dealers will resort to old practices and deals which in the end help them meet their financial obligation.

The simple task of computing a person's debt to income ratio is the best mechanism to determine a buyer's ability to meet the obligations contained in a contract. However the importance of this variable is clearly not understood by the consumer. The Commission found Navajo consumers disregard computing monthly expenses as a means to measure their ability and reliability to make installment payments on a new or used vehicle. Dealers on the other hand recognize the absences of this knowledge and devise payment plans that may lower payments but extend payments over seventy-two months, or they could coach the buyer to lie about income earned or asked the buyer to lie about the amount of a down payment that was made toward the purchase. The point to be conveyed here is that the relationship between the automobile dealer and the lender is quite precarious. Auto dealers will always look for ways to finance a vehicle even if it means that the lender will eventually be stuck with risks for making a loan to a consumer who does not have the capital or collateral to even buy a vehicle in the first place. It's the lender who will be responsible for collecting on the loan if the consumer fails to make the payments. The real victim here is the buyer who for the most part was only following directions given by the sales person. Consumers have to be educated about this relationship and terminate any deal especially when the consumer is asked to lie about income or when the deal seems too good to be true. Consumers also need to read the contract thoroughly and remind themselves that at the bottom of every auto contract there is the clause that indemnifies the dealer by asking the buyer to acknowledge that the information provided by the buyer/consumer is truthful and therefore, does not subject the dealer to any criminal penalties if the buyer has lied about the information provided.

The Commission found the practices exhibited by these dealers and some lenders to be carefully crafted to avert any adverse action from the either the Federal Trade Commission, the

Consumer Financial Protection Bureau or the Attorney General of the State of New Mexico. One problem that needs further investigation is the aspect of the point of sale. This is critical to the location of where a contract is signed. Some Navajo consumers see the point of sale as a gesture of courtesy offered by the auto dealer. It's convenient for the consumer to have the vehicle brought to them, but unbeknown to them is that where a contract is signed has legal implications that determine what protection a consumer may pursue if something goes wrong with the purchase. Under Navajo Nation Law the fact that these types of sales purchases are initiated on the Navajo Nation could set precedence for litigation in tribal court<sup>9</sup>. However, to the Commission's knowledge cases brought to tribal court on these grounds were all settled. Auto contracts signed on the Navajo Nation that were brought to NNHRC's attention were referred to the Attorney General's office in either the states of Arizona and New Mexico as complaints. The statuses of these complaints are unknown at the time writing of the report.

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<sup>9</sup> J.Zion, Attorney, Correspondence dated November 25, 2012 submitted to the NNHRC Office in response to the Commission's investigation into predatory automobile sales and lending. Letter entitled Predatory Sales Practices by Area Dealers.



## Repercussions and Regrets

The Commission pondered, *Is it unreasonable to expect a dealership to turn a consumer away if the consumer is not financially stable to pay on a loan? A customer is not allowed to leave with groceries if he or she does not have enough money to purchase the product, nor is the person allowed to leave with groceries and return later to make installment payments to the store. Why can't a dealers, say "no," we cannot allow you to purchase a vehicle here, you don't have enough money!*

Auto purchasing is one of the most expensive financial arrangements that a person engages into during their lifetime. Buying a home is the second largest financial decision people also undertake. For a Navajo family buying a car could be the single largest investment ever made in their lifetime. The repercussions Navajo consumers encounter when they realize they were scammed or cheated on a vehicle is embarrassing and devastating. The Commission found it alarming that some automobile dealers literally preyed upon Navajo families, purposely mislead and pressured them into signing sales contracts when the consumer's financial means was not there at the beginning of negotiating a contract. It further disgusted the Commission when evidence revealed that for some families, the first installment payment due could not be made. When this information was conveyed to the auto dealer, Navajo consumers were told - *it's not our problem, but a problem the lender had to deal with now!*

The routine practice of unconscionable deals coupled with deceptive salesmanship has been employed in border town communities far too long. Sadly, the reality is that many Navajo families have no other alternative but to agree to terms that strap them to a meager lifestyle. Modern technology for internet access and cell phone coverage are not found in many Navajo homes which makes it difficult for a consumer to research and prepare for the purchase of almost anything of value. Moreover, consumers don't have the cash capital to make a hefty down payment.

The practice – of buy now and pay later for an automobile dealer is lucrative for the dealer and lender. For a Navajo consumer to reap the benefits of a good sales deal, the customer must have a credit score between 600 and 700, and have demonstrated a commitment to pay bills on time. The ability of have extra cash after bills are paid is essential. Credit bureaus assess a

person's income and debts before extending or approving a line of credit. For many Navajo consumers, establishing a credit profile is not important. Navajo families, especially the elderly are more concerned with meeting each day's need. If it's buying hay to feed the cattle or put gas in the truck to haul water, that will be the priority for the day. Therefore, when a Navajo consumer decides to purchase a vehicle, the odds of this person having a good credit score are not important.

The Navajo Nation has been identified as an economically depressed nation, where families endure living conditions that are characterized as the "poorest of the poor." The unemployment rate on the Navajo Nation is estimated to be around 50.52 %<sup>10</sup>. In 2007, the per capita income for a Navajo family was estimated at \$7,122.<sup>11</sup> It is further estimated that 37% of the population on the Navajo Nation live below the poverty level. With a population that is largely unemployed, performs below national academic standards and is confronted with health issues that exceed the United States Surgeon General's standards for healthy living, any added stress to a depressed community would further subjugate that community to a life of perpetual poverty. Yet, witnessing an economically depressed Nation and the daily exodus into the border towns is astonishing. On the one hand you have an enormous unemployment rate and incomes levels that are stagnated. On the other hand, the daily exodus of vehicles leaving the Navajo Nation to purchase goods and services in border towns is remarkable.

The Commission examined major highway corridors that lead off the Navajo Nation. It is estimated that on average 12,470 vehicles travel into Gallup, New Mexico daily and return to the Navajo Nation along Highway 264.<sup>12</sup> It is also estimated that the volume of traffic on Highway 64 leading into the city of Farmington, New Mexico averages around 7,015 vehicles per day. The return of these vehicles is configured to be 7,015 daily as well. Considering the volume of Navajo drivers that commute into these two border towns within a 30 day period, it is estimated that 795,000 trips are made in and out of these towns in a month's time. More interesting, assume that every vehicle traveling highway 64 was purchased and financed for about thirty thousand dollars each (which is very conservative estimation), dealerships could capitalize on a

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<sup>10</sup> 2009-2010 Comprehensive Economic Development Strategy. Prepared by the Navajo Nation Division of Economic Development. Pg. 23.

<sup>11</sup> Ibid Pg. 134

<sup>12</sup> Testimony from Lawrence Rael on New Mexico hearings regarding redistricting Santa Fe, New Mexico.



\$210,450,000 million dollar market. Keep in mind that the data shows the average number of vehicles coming off the Navajo Nation and then returning the same day on this one main corridor is significant. It would be relatively safe to presume that a sizable portion of these drivers are Navajo consumers who drive the four lane route from Shiprock into Farmington. Although this assessment is not scientific, the mere fact that Navajos possess the capital to turn heads substantiates the seriousness of Navajo purchasing power.

The amount of sales taxes Navajo consumers contributed to border town economies is also substantial. In New Mexico, the cities of Farmington, Gallup and Grants attract the Navajo consumer. In 2011, about \$219,109,163 of sales tax were collected by New Mexico and Arizona from selected border towns located outside of the Navajo Nation.<sup>13</sup> When comparing the sales tax collected from two New Mexico border towns to sales tax collected from the Navajo Nation on a per capita bases, the Navajo Nation's sales tax per capita is \$34 compared to New Mexico's sale tax per capita of \$2,694 (from Gallup and Farmington) in 2011.<sup>14</sup> Another reality is that over half of the Navajo Nation population travels 60 or more miles one way for goods and services. Navajo consumers, when asked what type of product or services they desire on the Navajo Nation, consumers indicated that a variety of food (19%) choices ranked one. Seventeen (17%) percent of those surveyed desired automotive shop services and when combined with the desire to have diesel fuel available the rate increased to 25%.<sup>15</sup> A significant percentage of those surveyed (80%) indicate they shop off the Navajo Nation.

Bringing economic development to the Navajo Nation has been a political platform Navajo leaders' trump during election cycles and while in office. However, attracting businesses and putting in place the infrastructure needed to accommodate development continues to evade the accomplishments of any elected Navajo official. To take advantage of the people's income and their desire to purchase certain goods and services is risky. Financial investors are not comfortable with tribal jurisdiction, land status and federal regulations that make bringing businesses to the Navajo Nation attractive. Moreover any economic adventure could be perceived as being too voracious, as the government would be perceived as taking more income

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<sup>13</sup> Navajo Nation Department of Economic Development. Navajo Economic Data Bulletin 002-0512. Gross Receipts Tax Data reported from New Mexico Department of Revenue(03/2012) and Transaction Privilege Tax of Arizona (04/2012).

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

from the poor, adding to an already depressed economy and contributing to the continuum of “*recycling the poor*.” Even establishing a Navajo owned governmental automotive enterprise to the Navajo Nation would call for the reexamination of federal finance laws that will require federal, state and local review. The ability to establish a business on the Navajo Nation is cumbersome and may not be worth of the risk that the business will survive.

One thing for sure is that the dichotomy of how to bring economic development to the Navajo Nation is highly contentious and debatable. But, to the average Navajo having a tool (vehicle), assessing a fee for the use of that tool and paying that fee are essential to their livelihood. To the Navajo Nation the fees and taxes collected could be central to building the revenue to put in place the infrastructure and the brick and mortar that is badly needed on the Nation. The goods and services Navajo consumers’ desire could then follow after an adequate infrastructure base has been acquired. There is no obvious short term solution, but analyzing the income and purchasing patterns associated with the Navajo capital could be part of a long term solution that jump-starts economic development on the Navajo Nation.

## Understanding Auto Warranties

In assessing the complaints filed at the Navajo Human Rights Office, Navajo consumers complained of verbal promises and guaranties that were made during contract negotiations. The reassurance that a new bumper, extended warranty coverage or GAP insurance coverage would be included in the contract never materialized when attempts were made to secure them at a later date. Verbal promises or agreements are not recognized by State laws, but in Navajo customary law, verbal agreements and promises are recognized and have the same legal merit as a written contract<sup>16</sup>. Historically, a Navajo person's word carries considerable credence. The person is highly respected if this person honors the promises that were stated. Traditionally, words spoken are considered sacred. In this respect, a Navajo person is held to a higher standard if the words spoken flourish and no written or formal agreement bind an individual to do as he said. Navajo elders, who became victims of the automobile sales tactics, interpreted the verbal commitments, promises and agreements made by automobile sales personnel as binding agreements based on Navajo customary law. They found it disheartening that the deal or promise made was not forthcoming. Some elder consumers concluded, *"You just cannot trust a white man; he does not keep his word!"*

In response to the issues raised about warranties, the Commission examined the application of warranties as it applied to the purchase of vehicles. When shopping for a vehicle, the "Buyers Guide" which basically states the warranty terms offered for the vehicle by the dealer is usually attached to the window of a vehicle. The language and application of warranties is difficult to comprehend. Additionally, the when and how a warranty can be applied, also have certain provisions that must be met before warranty coverage can be considered. Under the Magnuson-Moss Warranty Act<sup>17</sup> ("Act"), federal law requires manufacturers and sellers to provide specific warranty information on the products sold to consumers. This Act does not require businesses to provide a written warranty, nor does the Act honor oral warranties. If the manufactory offers a warranty on the product being sold by a business, that business must state what that manufactories' warranty is and offer that written warranty at the time of the sale. In

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<sup>16</sup> Case Opinion in Kesoli vs. Anderson Security Agency, No. SC-CV-01-05, slip op. at 5-6 (Nav. Sup. Ct. October 12, 2005).

<sup>17</sup> 15 U.S.C. §2301 et seq. (P.L. 93-637 passed in 1975).

some instances if the business sells the product and makes statements to the reliability of the product, they are responsible to provide a warranty for the product. There are two types of warranties addressed in the Magnuson-Moss Act. They are the implied and the express warranties.

Express warranties<sup>18</sup> are written, like the written sales statements found on newspaper advertisements, mail campaigns and formal certificates. Normally, express warranties are offered during the course of a sales transaction. They are often made orally to a consumer by the sales person. A smart consumer will demand an “express” warranty, in writing prior to finalizing a contract. The Commission found that Navajo complainants had no supporting documentation to hold an auto dealer to its word. Words were exchanged and agreements were made, but without any written information, there is no legal recourse to address the situation.

Implied warranties<sup>19</sup> are unspoken, unwritten promises created by state law. They are based on the principle of “fair value for money spent.” There are two types of implied warranties. They are the *implied warranty of merchantability* and the *implied warranty of fitness for a particular purpose*. The implied warranty of merchantability is a merchant’s basic promise that the goods sold will do what it is suppose to do and that there is nothing wrong with the product<sup>20</sup>. The implied warranty of *fitness for a particular purpose* is a promise that says as a seller the product you are selling can be used for a specific purpose. If for example, an auto sales person recommends a particular type of truck model that can be used for ranch work, and the consumer buys that vehicle model, based on the recommendation extended by the sales person, and the consumer later learns the truck model sold to him is not fit for ranch work, the implied warranty for the fitness for a particular purpose is breached. The laws regarding implied warranties allow auto dealers to disclaim or disclose implied warranties by informing consumers in an obvious manner and in writing that they will not be responsible if the product malfunctions. They could also display warranty information under “*limited conditions or terms*” on documents that are also visible to the buyer.

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<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Federal Trade Commission. BCP Business Center, Businessperson’s Guide to Federal Warranty Law. December 2006.

While Navajo consumers have warranty protection afforded to them - they also need to be aware of many other variables that are contained in the details of warranties. For instance, the terms on *full* verse *limited* warranties, the percentage cost of parts and labor to be covered, systems replaced and the duration or timelines placed on those parts, where and who is responsible for the repair and the replacement of the parts and what to do should an auto dealer choose not to honor a warranty all have specific requirements and processes that the consumer must follow. The consumer needs to study the information contained in their warranty agreement to become an effective negotiator. Without understanding the details behind a given warranty a consumer risks losing out on important information that could save thousands of dollars in repair work.



## Legislative Fix and Review of Existing Laws

Of the 58 billion vehicles sold globally, two-thirds of the sales are used vehicles.<sup>21</sup> Because many of the complaints filed with the office concerned used vehicles, the repair and warranty coverage in the complaints raised serious concern. It was determined that a legislative fix cannot be ignored or dismissed. The Commission conducted a review of existing laws that govern the sales of automobiles and the finance mechanisms in both the states of Arizona and New Mexico. This involved the examination of a variety of legal documents that guide federal, state and tribal organizations on consumer protection issues and laws that governed the sale, lending and maintenance of vehicles. In addition, the Navajo Nation Human Rights staff examined federal consumer protection initiatives at the Federal Trade Commission website, the Consumer Financial Protection Bureau, the National Better Business Bureau site and visited the Navajo Nation Consumer Protection Act of 1999.

While reviewing issues concerning consumer dispute mechanisms, staff found that in all vehicle contracts an arbitration clause existed. The Commission recommended Navajo consumers can exercise their right and waive the arbitration clause in an automobile contract. The automobile dealer may insist that for a contract to be finalized a signature or an initial by the arbitration clause is mandatory. This is false. In fact, the Commission encourages Navajo consumers to void out or “X” out this provision of the contract. By agreeing to the clause, the buyers agrees to allow this to be the only legal remedy to resolve disputes between the lender/dealer and buyer. The dealer may insist this provision remain in the contract, however there is little to no room to negotiate a dispute, if the buyer agreed to this provision at the time the contract was signed. Arbitration<sup>22</sup> is an alternative dispute resolution method for resolving disputes pursuant to an agreement that if in the future the dealer or lender is accused of breaching the contract, a third party person(s), will preside over and adjudicate the dispute between the two parties. It is often one-sided, in that, if the dealer or lender chooses to bring suit for default on payments, the consumer will be hauled into court by the dealer or lender. Most finance firms

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<sup>21</sup> New Mexico Consumer program designed to address new car problems between the dealer and the consumer. More information available at the office of the New Mexico Auto Dealers Association, 3815 Hawkins, NE Albuquerque, NM 87109. Email: nmadarev@swcp.com

<sup>22</sup> Public Citizens News. Vol.32, No.6 Government and Finance Reform; Fighting forced Arbitration in contracts. November/December 2012.

already have a preselected law firm that contracted to handle a case. The law firm already knows what the bottom line for settlement is for the finance firm. The consumer on the other end, almost always has to pay fees or expenses that exceed going to court. The Navajo Nation has an arbitration act which enforces agreements to arbitrate disputes unless such grounds exist at law or in equity for the revocation of the contract. 12 N.N.C. § 1103.

NNHRC also contacted the Arizona and New Mexico state legislatures to amend laws that govern used automobile warranties in the two states. In consultation with Arizona State Senator Jack Jackson, Jr., it was decided that a bill to address warranty issues on used vehicles would be an incremental step toward addressing complaints about automobile warranties. Senator Jackson Jr. introduced Senate Bill 1430; Amending Title 44, Chapter 9, Article 5, Arizona Revised Statutes by Adding Section 44-1268; Relating to Motor Vehicle Warranties<sup>23</sup>. This bill was an extension of warranty protection on the purchase of used vehicles and was identical to the California Assembly Bill No. AB-1447<sup>24</sup> which enhanced consumer rights for addressing problems that developed after the purchase of a used vehicle. The Arizona version of the bill had nine additional co-sponsors. One important aspect of this bill was that automotive dealers would be required to provide consumers with a written warranty that is in the buyers preferred language. Moreover, the warranty period for a used vehicle was to extend from fifteen days to thirty days or five hundred miles to thousand miles after purchase, with an itemized warranty statement that provided coverage to certain parts of the vehicle. Along with these amendments Senate Bill 1430 detailed the dealer's obligations to fix or repair specific components of a vehicle.

The Commission supported the adoption of Senate Bill 1430. The rationale that Navajo consumers purchase a substantial number of used vehicles every year and also travel an enormous number of miles each year would provide the added protection in SB1430. This bill would have also clarified disclosures policies that remain vague and subject to loose interpretation. Unfortunately and as expected, Senate Bill 1430 failed to make it out of any of the three committees it was assigned to. The bill was considered dead upon each committee's

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<sup>23</sup> Proposed S.B. 1430 introduced by Arizona Senator Jack Jackson, Jr. Fifty-First Legislature, First Regular Session 2013. Amending Title 44, Chapter 9, Article 5, Arizona Revised Statutes by Adding Section 44-1268; Relating to Motor Vehicle Warranties.

<sup>24</sup> California Assembly Bill No. 1447 – Amending Section 1795.51 and 2983.37 to the Civil Code, and to add Sections 241 and 241.1 to the Vehicle Code relating to Automobile Sales. Approved by Governor on Sept. 29, 2012.



agenda as the Arizona Independent Automobile Association lobbied heavily against the passage of the bill.

In January of 2013, New Mexico House Representative Patricia A. Lundstrom introduced House Bill 317, entitled; An Act Relating to Used Motor Vehicles; Amending the Motor Vehicle Quality Assurance Act; Extending the Implied Warranty Period; Providing For An Express Warranty For Used Motor Vehicles; Providing Remedies<sup>25</sup>. Representative Lundstrom represents a large Navajo population who rely heavily on the border town of Gallup, New Mexico for all of its goods and services. H.B. 317 required used motor vehicle dealers to provide the buyer with an express written warranty. Moreover, like the Arizona bill the New Mexico bill required the dealer to explain the terms of the warranty coverage in the preferred language of the buyer, which also included an itemized statement of the warranty coverage and the parts covered on the vehicle. If the dealer failed to provide a written warranty, the dealer was still responsible to cover the warranty on the used vehicle. The New Mexico version of the bill also included that any violation of Section M (warranty provisions) of the bill constituted an unfair and deceptive trade practice under the Unfair Practices Act, Sections 57-12-1, et seq. NMSA 1978. The bill was also endorsed by the New Mexico Attorney General's office.

Unlike the Arizona bill, H.B. 317 went before the Health, Government and Indian Affairs Committee but failed to get the support that was needed. Instead, the bill was assigned to the Judiciary Committee where committee members encouraged the Navajo Human Rights Commission and the New Mexico Independent Automobile Dealers Association to meet and discuss other methods to resolve the issues raised by Navajo consumers. In furthering our review of the H.B. 317 and examine existing New Mexico laws, that included the New Mexico Lemon law<sup>26</sup> New Mexico Consumer Protection; Requirements for Spot Delivery of Motor Vehicles<sup>27</sup> and finally, the New Mexico Unfair Practices Act, the working group found that together all of these bills provided substantial protections for all consumers. The only aspect missing was the language component which the Commission intends to advocate for in future legislative sessions.

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<sup>25</sup> Proposed H.B. 317 introduced by New Mexico Representative P. Lundstrom, 02/11/13. Fifty-First Legislature, First Session, 2013. Amendment to Motor Vehicle Quality Assurance Act, Section 57-16A-1 through 9, NMSA 1978.

<sup>26</sup> Motor Vehicle Quality Assurance Act. §§57-16A-1 - through 9 NMSA 1978.

<sup>27</sup> 12.2.13.8 NMAC Spot delivery generally (New Mexico Administrative Code (2013 edition)).

While efforts were made by the Commission to implore legislative fixes, other administrative measures were pursued through state enforcement agencies designed to also address consumer complaints. NNHRC staff met with staff members at the Office of the Arizona Attorney General (“AZAG”) on February 14, 2013 in Phoenix, Arizona. This meeting was not the first time NNHRC staff brought consumer concerns to the AZAG’s office. In 2009, the Commission met with the AZAG’s office to discuss discrimination issues that were revealed during the course of two public hearings in Phoenix and Mesa areas. In the February 2013 meeting, Unit Chief Counsels, Ms. Taren Langford and Senior Litigation Counsel, Ms. Nancy Anger, were compelled that deceptive advertising and possibly other deceptive acts were being employed by certain dealerships. They outlined the process for filing complaints with the office and assured representatives from NNHRC that they would look carefully into complaints filed.

NNHRC staff also met with representatives of the New Mexico Attorney General’s (“NMAG”) office to also alert them of the findings from consumer complaints filed with this office. Staff also took time to seek support on H.B. 317. During the course of one of many meetings, staff was informed that the NMAG issued a new rule that addressed the misrepresentation of the age and condition of a motor vehicle being sold.<sup>28</sup> The rule was added to further enforce the New Mexico Unfair Practices Act and required the auto dealer to obtain a reasonable inspection of the motor vehicle by a qualified person before offering the vehicle for sale. The dealer must maintain a written record of the inspection that includes the name and address of the inspector and the estimated fix rate to repair the vehicle. The dealer must disclose all of this information prior to sale of the vehicle and must maintain a copy of all records and inspections for four (4) years. When assessing the state laws, the New Mexico and Arizona consumer laws are different in the respect that in New Mexico, either consumers or the Attorney General may bring complaints in court to enforce the Unfair Practices Act (“UPA”). By contrast, only the State AG may bring a complaint under the Arizona Deceptive Practices Act (“DPA”). The New Mexico law covers more unfair conduct such as unconscionability whereas this term is not included under the Arizona law, hence the title – “Deceptive Practices Act”.

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<sup>28</sup> 12.2.14 NMAC Age and condition of vehicles (New Mexico Administrative code (2013)).

The practice of spot delivery also raised considerable concern by the Commission. The review of New Mexico's law included Title 12. Trade, Commerce and Banking.<sup>29</sup> The discussion and practice of spot delivery was a principal issue raised at the onset of the public hearings. In Title 12, Chapter 2, Part 13, the requirements for spot delivery are well defined but not easily conveyed to a consumer. The definition of "spot delivery" is when a consumer enters into a contract<sup>30</sup> with a dealership and the dealership gives the consumer possession of the vehicle "*on the spot*," even though financing is not complete. The dealer may tell the purchaser that the deal is final and the financing has been approved, but days or even weeks later the dealer will, contact the purchaser and tell them the financing fell through. The dealer may try and back out of the deal and repossess the vehicle without returning any down payment. Or the dealer may try to re-negotiate the terms of the contract without explaining that the buyer has the option to cancel the deal outright and collect a portion, if not all, of their down payment. Overall "Spot delivery" practices may be deceptive or misleading and can result in increased costs to the purchaser.<sup>31</sup> The Commission warns that should a consumer be asked to return to the auto dealer to sign another contract that should be a queue that the deal to purchase the vehicle was never finalized.

Navajo consumers found in the situation described above, were subject to the sales practice referred to as the "Yo-Yo" sale. The "Yo-Yo" sale occurs where the dealership contacts the consumer several days after the contract was signed and the consumer takes possession of the vehicle "*on the spot*." The salesperson tells the consumer that the finance fell through due to some sort of credit or finance problem. The consumer is informed that they need to do one or more of the following: 1). They either return the vehicle and risk losing the down payment; 2). Agree to a higher interest rate (thus raising the monthly payment and total amount financed); 3). Put a down payment on the vehicle or add more money to their down payment; 4). Agree to stretch out the loan period (thus raising the financing costs); or 5). Accept a lesser valued vehicle.<sup>32</sup> New Mexico's Spot Delivery rule helps put a stop to these abuses.

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<sup>29</sup> 12.2.13 NMAC Part 13, Requirements for Spot Delivery of Motor Vehicles.

<sup>30</sup> In some cases, the Commission learned directly from Navajo consumers that the dealer never provided a copy of the sales contract to the consumer and let the Navajo consumer take the vehicle. In other cases, the dealer would inform the Navajo customer that the "order form" is in actuality the sales contract and is binding.

<sup>31</sup> 12.2.13 NMAC Part 13 Requirements for Spot Delivery of Motor Vehicles.

<sup>32</sup> Ibid.

One very important aspect about the Spot Delivery Rule is the buyer has the right to void-out a vehicle purchase if financing had not been approved within 20 calendar days of signing a contract. The buyer has the right to regain his trade-in and the down payment made on the vehicle if he becomes a victim of the spot delivery and later the yo-yo game. To exercise this right, the buyer must return the vehicle within 48-hours from receipt of notice that the vehicle had not been financed. The vehicle must be returned in the same condition as it was received. The importance of disclosure is often not understood and therefore not exercised to the fullest extent necessary to protect the consumer. In the variations of auto consumer complaints, disclosures from the dealer cannot be emphasized enough. While this study unfolded and complainants presented various scenarios of being victimized through predatory sales practice, it became clear, that current New Mexico laws provide adequate consumer protection. Consumers know the opportunity to return a vehicle is not always welcomed by an automotive dealer. Each dealer should evaluate the circumstances surrounding this section of the law – and how the law applies - to each situation presented to the consumer. Thus, the consumer should also be prepared to ask the right questions.

In addition, the Commission learned during the course of interfacing with Navajo consumers and auto dealers, when a consumer purchases a new vehicle the sales contract will expressly indicate there is no “*cool down*” period. This means when the consumer purchases the new vehicle and signs the sales contract the consumer cannot return the vehicle the following day because he or she realized it was a mistake to purchase such vehicle. However, one particular dealer in Arizona informed the Commission that it allows consumers to return the vehicle within 72 hours after their purchase and this dealer’s staffs are required to issue the written 72 hour cool down period to the customers. Unfortunately, of all the cases that were registered with the Commission, this particular dealer’s 72 hour cooling down period were never shared with their Navajo consumers. Thus, Navajo consumers are encouraged to develop a checklist of issues that require not only attention when making the purchase but also more importantly that all questions are fully and finally addressed. The check list may include: 1) Is finance is fully approved; 2) Was the history of the vehicle is disclosed; 3) Is APR reasonable; 4) Was the financier’s response to financing the vehicle received in writing; 4) if the dealer has a cooling down period did the customer receive it in writing, to mention but a few items.

The Commission speculated from the beginning that any automobile bill enhancing the protection of consumer's rights would meet tough opposition from the state Automobile Dealers Associations. As expected both bills received considerable opposition in each legislature and both failed to pass out of assigned committees. In spite of this shortcoming, the dialogue that developed as a result of both bills being introduced elevated a heightened awareness to not only the lawmakers of both states, but also to the border town dealers who were quick to respond to the issues raised by this office.



## An International Perspective

In order to achieve a more comprehensive review of business practices that affect indigenous peoples, the Commission also inspected two international documents that provide guidelines for appropriate business practices when working with indigenous populations. First the Commission looked to the standards contained in the United Nations Declaration on the Rights of Indigenous Peoples. They then examined the United Nations Human Rights Council's Guiding Principles on Business and Human Rights; Implementing the United Nations 'Protect, Respect and Remedy Framework.' The Principles apply to all States (countries) and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. The principles should be understood as a coherent whole and should be read individually, collectively, and in terms of the objective to enhance standards and practices with regard to business and human rights. This is to achieve tangible results that "affecting" individuals and communities, and thereby, contributing to a socially sustainable globalization. The Guiding Principles are grouped in three distinct subdivisions which are followed by several statements that serve as a guide to achieve sustainability.

The three distinct subdivisions are:

1. States' must examine existing obligations to respect, protect and fulfill human rights and fundamental freedoms;
2. Examine the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
3. Advocate for the need for rights and obligations to be matched to appropriate and effective remedies when breached.<sup>33</sup>

It is important to note that the processes in the UN Guiding Principles focus on the risk to human rights, not risks to the company or State. Section I, of the principles provides ten core principles that States and business companies must consider when interacting with indigenous populations. Central to this Principle is that States must protect, respect and fulfill the human

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<sup>33</sup> Guiding Principles on business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework. HR/PUB/11/04 2011 United Nations Resolution 17/4/of 16 June 2011.

rights of individuals within the territory, especially when third party occupation benefits from the people that it serves. This includes business enterprises where the State supports or is involved with the enterprise. Key to this Principle is that States have a duty to ensure adequate and appropriate measures of law, policy, legislation and regulations are developed and applied equally and fairly in all aspects of business decisions that directly or indirectly impact the indigenous population. Additionally, clear expectations are set forth outlining the respect for human rights. Any abuse of the Guiding Principles could result in the State taking actions against the business enterprise to reverse the impacts employed upon the indigenous population affected.

Another important aspect of the guiding principle is the Corporate Responsibilities which are carefully crafted in the fourteen principles that embody section two of the UN foundational principles. The responsibility to respect human rights is a global standard expected of all business enterprises wherever they operate. Ideally, business enterprises should embrace the respect to human rights without any oversight from any regulatory agency. Moreover, should any adverse impact occur, business enterprises are expected to take adequate measures to remediate, mitigate and prevent any further abuse to the human rights of those impacted.

Section 3 of the Guiding Principles presents seven subprinciples that discuss remedies that business enterprises should undertake to allow administrative or legal relief to those impacted. Effective domestic measures such as legal, judicial, administrative and other means must be incorporated to allow for an efficient and effective remedy to those harmed. Delays or stalling tactics are not conducive to cultivating the environment that is needed for protecting the rights of the people affected. An assessment from a cause, contribution and linkage application is encouraged.

The principles identified in the UN Guiding Principles collectively allow for a case to be made on how human rights are impacted through an analysis of a cause, contribution and a linkage application. The idea of a company directly causing negative impact to human rights is extracted from the Guiding Principles. The principle that a company can contribute an impact harmful to the human rights of the people it serves, through its relations with a supplier, even though the company has neither caused nor contributed to the impact<sup>34</sup> is interesting. This

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<sup>34</sup> Ibid



application to the sale and financing of an automobile could hold those, for instance, an responsible for the indirect impact its business environment radiates upon Navajo consumers ultimately affects their human rights. The inference that an automobile company should foresee human rights abuses and should take appropriate measures to prevent its contribution or recurrence of predatory and unconscionable dealing, when engaging in the trade practices, is a plausible outcome given the circumstances. The adverse impact results from the indirect consequences of a firm's business practices that knowingly perpetuate the cycle of poverty.

The opposition to this new vision of responsibility by outside business is not a welcomed solution. International laws, principles, thought to be aspirations do not apply to citizens of New Mexico, Utah and Arizona. However, the United States, as a world leader in human rights, makes commitments to the world community that it takes these international instruments and applies them in the Fifty United States. The United States initially opposed the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"). But, in December 2010, it reversed its position by publicly announcing that it supports UNDRIP. Thus, when the United States endorses, ratifies, supports, signs onto international instruments, it has the responsibility to implement and oversee the international instruments applied consistently within its boundaries.



## The Findings

After a meticulous review of all information gathered from the public hearings testimony, written complaints and the results of the investigations that followed, meetings the Commission determined that Navajo consumers do experience a persistent pattern of predatory sale practices. The practices are widespread and include financing arrangements that harm and hurt the consumer. To encourage customers to lie about incomes, stop payments on trade-ins, sell previously wrecked vehicles and not disclosed its history, or to use the infamous *bait and switch scam* are a few of the schemes uncovered by the NNHRC staff. In almost all of the complaints filed with the Commission, Navajo consumers experienced a substantial “squeeze” on their financial resources. Many as reported were elder, non-English speaking and on a fixed income.

As mentioned the Commission worked with the Automobile Dealers Associations (“ADA”) of New Mexico. Membership to this association is strictly voluntary and the Association serves to mediate problems arising between auto dealer and buyer. Together the Commission and ADA structured a mechanism to address concerns and issues filed by Navajo consumers. The protocol in place is 1) Navajos file a complaint with the Commission; 2) the Commission assesses/investigates the complaints; 3) a meeting is setup with the owner of the dealer, not the middle management and not the sales persons. When a Navajo consumer filed the complaint with the Commission, the information supplied by the consumer is vetted, and appropriate information is shared with the consumer more often in the Navajo language detail recommendations are provided to the consumer. When the Navajo consumer is fully briefed and made aware of the issues, the Commission requested the meeting with the owner. During the meetings with owners, the Navajo consumer expressed their concerns and submits their requests on their own while the Commission observes the interactions. The New Mexico Automobile Dealers Association was very supportive to the protocols. The counterpart in Arizona would not engage the Commission’s invitation, even after repeated requests. Throughout the protocol meetings, Navajo consumers were able to reach amicable settlements with the owner of the automobile dealer in an effort to restore harmony. Consumers expressed a sense of relief knowing a wrong was corrected and that respect and the protection of a person’s human rights prevailed. Aborting this business transaction would have impaired this person for many years. In the cases handled by the Navajo Human Rights office, financial settlements from this protocol

nearly reached \$200,000. But, to the dismay of the Commission, the terms of the settlement agreements prevented consumers the disclosure of the name of the auto dealer and wrong that was alleged. Settlements often bring closure to a dispute, but it does not prevent the dealer from preying on another customer that is just as vulnerable as the last victim.

This study pinpointed the following findings.

1. Navajo elders are more likely to be victimized and taken advantage of by auto sales personnel. They are more likely to be on fixed incomes, do not speak and/or understand the English language well and have a nebulous understanding of money management.
2. Navajo elders serve as the sole provider in many households. Their income is often used to leverage vehicle deals, even when the elder has no driver's license, never drove a vehicle before or established credit. They are either the principal buyer of the vehicle or the co-signer. The Commission is disappointed to learn immediate family members may victimize their elders with these kinds of auto purchases.
3. Acquiring a new vehicle brings pride to a household and instills a sense of accomplishment and wealth. However, after a few months of experiencing the loss of income, the syndrome of "*buyer's remorse*" sets in.
4. Vehicle contracts are lengthy, filled with legal jargon, and not easily understood by most people.<sup>35</sup> A majority of the consumers fail to take time to read the sale contracts to ensure verbal agreements pertaining to the exact cost of the vehicle is included, down payments, trade-ins and add-ons are included or excluded in the final contract.<sup>36</sup>
5. When negotiating the sale of a vehicle, the consumer is subject to a number of tactics that delay and wear down the consumer. Navajo consumers are given conflicting information with respect to who will finance the vehicle. The art of the waiting game is carefully orchestrated against the consumer. Toward the close of the business day

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<sup>35</sup> One person informed the Commission that he/she, as a lawyer, still has a difficult time understanding the "long paper".

<sup>36</sup> Based on the Commission's experience, many Navajo consumers have elaborate stories about their vehicle purchases – the promises given to them by the sales persons. However, it specifically states in the contract the Navajo consumers signed that if the oral agreement is not written in the contract such oral agreement is null and void.

the consumer is rushed by sales personnel resulting in a careless review of the contract details.

6. In the border towns of Gallup, Grants and Farmington, New Mexico approximately 115 automobile dealers are present. It is clear to the Commission that a relatively strong market exists in the New Mexico border towns. Thus, an even stronger and coordinated skilled marketing mechanism exists. Navajo consumers lack the public education that is needed. Moreover, access to computer technology is lacking in most areas on the Navajo Nation.
7. Automobile dealers and financial firms need to recognize that as business entities who serve large indigenous populations they are obligated to provide indigent consumers with fair and equal treatment of the services provided. If the consumer's primary language is Navajo, the sales contract and entire the deal, must be thoroughly explained to the Navajo consumer **IN THE NAVAJO LANGUAGE**.
8. The current exploitive business practices automobile dealers implore upon Navajo consumers must stop. The practice of redlining is discriminatory and further suctriny is needed as to whether an investigation should be conducted.<sup>37</sup>
9. Too often, automobile dealership personnel encroach upon Navajo Nation lands and entice elders and non-English speaking Navajo citizens to buy vehicles or to commit to turn over important personal information that enviably opens the door to future pestering.<sup>38</sup> Navajo Laws regarding the initial sales of any goods or services must be enforced and if need be harsh penalties imposed on those organizations that fail to comply with Navajo laws.

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<sup>37</sup> In a recent meeting with a border town city official, the city official stated for affirmation that auto dealers should charge higher interest rates to Navajo consumers, as it is often difficult the Navajo customer after the purchase and that Navajo consumers often do not pay on their installment plan. However, determining the interest rate based on the consumer's place of residence is illegal and is called redlining. All Navajo consumers must be assessed appropriate interest rates based on their creditworthiness, not location of residence.

<sup>38</sup> The Commission met with a Navajo elderly woman that lives in the Window Rock area stating that while she was at the local grocery store several persons confronted her by soliciting the sale of a new vehicle to her. She insisted that she did not need a new vehicle and shoed them away. However, a day or two later, she met the same persons at her house on the Navajo Nation, and they drove a new vehicle to her house and demanded she sign the sales contract. After several attempts by the dealer personnel, the Navajo elder gave into the demands of the sales persons by signing the contact. Grandmother came to the Commission office very upset, admitting she did something wrong. Grandmothers sales contract was unwinded immediately thereafter.

10. It is known that lending and finance agencies establish partnerships with automotive dealers, to provide the opportunity for “in-house” financing. Often times when dealers use in-house financing or partners that “floor” the acquisition of the vehicles there is limited, if any, objectivity and independent review of consumer’s credit. The agreements and the protocols between the two organizations need a more intense review.
11. MSRP and invoice pricing are not common terms that are discussed or negotiated at the time of a sale. MSRP is the Manufactory’s Suggested Retail Price, which should be the same among all dealers throughout the country, with exception of the additional options installed in the vehicle. The invoice price is the price paid by the dealer to get the vehicle on their lot and is often several hundred or thousand dollars less than the MSRP.
12. The rule of thumb to determine if your household can sustain another debt is called debt to income ratio. With the exception of one or two, the Navajo consumers that filed complaints with the Commission are unaware of this rule of thumb. All reputable financiers use this rule of thumb to determine if the consumer can repay on the new debt. Consideration for a new loan takes current income and existing debt into consideration. Forty percent of the income should be dedicated to pay monthly bills and sixty percent to pay for groceries, gas, entertainment, household needs, etc. to be eligible for any new debt.
13. The state of Arizona has the second highest document fee in the United States. Document fees are additional fees added into a vehicle contract that covers cost associated with processing and retrieving information from finance firms, credit agencies, insurance firms and other entities who provide information for the finalization of a vehicle sale. More transparency and clarity is needed and as to why these fees vary from state to state. What exactly the fee entails is not clear.
14. The Commission found automobile dealers engage in aggressive marketing campaigns that border on deceptive advertisement schemes. As an example, Navajo consumers receive in their mail letters that resemble an “official” and “legitimate” communication that requires the consumers’ immediate attention. The letter may say,

**“YOU WON A CAR!”** However, the fine print will state that your prize can be claimed provided that the code inscribed on the letter matches the dealer’s code.

15. Finally, the Commission noted automobile dealer’s partner with the Navajo Nation government entities to sponsor events by including enticing incentives. One consistent example is the, Navajo Gaming Association who provide market automobiles incentives to casino patrons receive discounts toward automobile purchases if they earn enough points while gambling at a specific casino. Moreover, the annual Navajo Nation fair is sponsored by border town auto dealers. While these auto dealers may in fact provide financial contributions to Navajo government events, the perception from Navajo citizens may very well be that since the Navajo government engages these dealers they must be reputable dealers to purchase from. Whether these incentives benefit the consumer is not known.





## Survey Results and Case Review

The Commission found it important that empirical information was necessary to assist with the analysis of predatory sales and lending practices exhibited by border town automobile dealers. A total of 333 surveys were collected between December 7, 2012 and June 14, 2013 at six locations. Surveys were collected at the three public hearings, at one chapter meeting and two meetings where staff conducted a presentation on Navajo Human Rights. The largest disbursement of over four-thousand surveys was provided to Navajo Nation employees.

NNHRC staff carefully crafted a survey that drew information about buyer's experiences with border town automobile dealers. The survey included questions that asked whether they or a family member had trouble purchasing a vehicle with a border town dealer; if they did, what was the name of the dealer and what border town was this dealer located in. The survey further asked what month and year did this problem occur. One question ask the surveyor to identify the types of problem they encountered, the APR on their purchase, the duration of the contract and the name of lending company that financed the vehicle. Other sections of the survey asked whether any other loans were taken out to assist with paying back on the vehicle loan and if loan an additional loan was taken out how much hardship did the family experienced after paying back the second loan. Surveyors were asked to identify actions taken against them or actions they encountered when they failed to make payments on their vehicle. The survey also solicited basic demography information of age, income, education, gender, employment status and tribal affiliation. A copy of the survey is found in the appendix.

More females (69.40%) participated in the survey as compared to males (30.60%) *see figure 1*. Almost all of the individuals that took the survey are Navajo (96%). Seventy-eight percent of them are employed compared to only 21.77% not being employed. A substantial amount of those surveyed had some college course work or obtained a Bachelor's degree (70.96%) (*Figure 4*). Income levels indicated surveyors made between \$15,000 and \$25,000 (22.88%) which represented the largest income levels reported. Following this, income levels between \$25,001 and \$35,000 made up 20.59% of those surveyed. The third highest level of reported income came from surveyors making less than \$5,000 per year (*Figure 5*). The average

household size is 3.6 persons with at least 2 children under the age of 18 residing in the same household.

Of those taking the survey, about 56% reported problems with purchasing a vehicle in a border town since 2007. A slightly lower percent (44.01%) said they had no problems with their purchase. Of those having problems with their purchase, 48.76% indicated they had problems with the purchase of a car, while almost the same percent indicated they had problems with the purchase of a truck. A very smaller percent said they had problems with the purchase of both a car and truck. Surveyors identified Tates Auto Dealer as the most problematic followed by Ed Corleys and Gurley's Motors. Participants identified forty-three different auto dealers that they had problems with. Gallup, New Mexico was the border town that was most frequently tabbed as where problem auto dealers were located. Holbrook, Arizona, listed second with Farmington, New Mexico and Flagstaff Arizona ranked third and fourth among nineteen border towns identified. Survey results showed that the last and first quarters of each year were ranked the highest months that vehicles were purchased. When asked to identify what reasons they cite as a problem when they purchased their vehicle, the category of "other" ranked the most frequent reason as to why the consumer found problems with their purchase (*Figure 12*). Surveyors choose from among the following variables; *False promises; Harassment; Coercion/bullying; Forced unwanted vehicle; Made to wait and Other* as the choices to select from. Consumers found false advertisement, made to wait and forced into another purchase of a vehicle, as the next three consecutive leading causes of the problems cited.

Not surprisingly, almost a third (27.38%) of those taking the survey had (APR) finance rates of 20% or higher. Twenty-four percent had finance rates between 16 to 20%, and twenty percent had APR rates of 6 to 10%. Less than eight percent had vehicles financed at 5% or less. About a third indicated that they had vehicles financed for 72 months (6yrs). Another third indicated they had vehicles financed for five years, and fifteen percent reported vehicles purchased at 49 months. Sixty-seven different finance firms were identified by surveyors where vehicles were financed. Capitol One, Santander and Credit Acceptance lead the finance firms as the most frequent firms used (*Figure 11*). Wells Fargo, Toyota and Ally Finance followed as the next three most frequented lending firms.

The Commission was also interested in wanting to know whether additional loans were taken out to assist families with making car payments or to get by for the month because of monthly expense rates. Interestingly, an astounding 87.33% said they did not have to take out an auto title loan. A similar percent of 86.47% responded when surveyors were asked whether they took out an additional loan to help make their car payments. For the small minority that took out a loan, the Navajo Nation's credit service and Sun loans were the preferred loan services. New Mexico Title Loans was the second preferred loan agency and four other agencies identified as Financial One, Payday Loans, Santander and Wells Fargo all tied. Gallup, New Mexico was identified as the number one border town where most of these loan transactions took place. What also elevated some discussion is that sixty percent of those that took out a loan said they had no problem paying back the loan. About 14% said they had a great deal of difficulty paying back the loan.

The surveyed posed a question about whether their household had any of seven (7) events happen to them because they failed to make payment(s) on their vehicle, since 2007 (*Figure 12*). Those seven events to select from were; Were threaten with criminal charges; A car was repossessed; An eviction from home; A vehicle was returned to the Dealer; Loss of employment; Sold property off and Not applicable. Most surveyors (122) indicated that this question did not have any applicability to their situation. Ninety-four (94) responded that their vehicle was repossessed. Sixty-six (66) had to return their vehicle to the dealer and sixty-three (63) were threaten with criminal charges. Nineteen (19) reported they lost their employment.

When surveyed about how much debt their household had accrued, the leading debt amount respondents reported was between \$5,000 and \$15,000. Debts between \$15,000 and \$25,000 and debts over \$55,000 tied as the second highest debts reported. Debt amounts between \$25,000 and \$35,000 were reported as the third leading debt rates (*Figure 13*).

A significant concern raised at the public hearings was regarding auto dealers visiting Navajo consumers on the Navajo Nation. Our survey results showed that 70% reported they had not been visited on the Navajo Nation. The smaller group of 30% that were visited on the Navajo Nation indicated Tate's auto as the number one auto firm visiting them. Winslow Ford, Hatch Motors and Holbrook Auto were named as the second auto dealer visiting respondents on the Navajo Nation (*Figure 15*). The follow up question as to where they met the auto person,

twenty-seven percent reported their work sites as the number one place where they were contacted. Twenty percent gave their home and Bashas as the location auto dealers visited them next.

Factors that influence the surveyor in making a purchase at a specific dealer were also found to be “other.” Advertisement/Newspaper/Radio announcements were the second reason to purchase a vehicle at a particular dealer. Followed by making a random decision as the third reason why the person made the decision to buy. Dealer location and contacted by a dealer were the other variables reported as factors that influenced their decision to buy a vehicle. The final question about whether any research was conducted before the vehicle was purchased and if so, how much time a consumer spent researching their purchase before they bought the vehicle. Surprisingly 39.27% did research on the vehicle they planned to purchase (*Figure 17*). The remaining sixty percent did not do any research at all. Of those who said they researched, a month’s time was the most time spent researching the vehicle they wanted. Respondents spending one week to a month studying was the second highest amount of time spent researching.

The Navajo Human Rights Office received seventy-four complaints concerning automobile purchases within the last five years. Thirty-four of these complaints concerned the purchase of used vehicles, while thirty-nine addressed new vehicle purchases. The remaining issue concerned an unauthorized credit check. Thirty-six complaints were directed at Tates Auto, followed by six complaints concerning Ed Corley’s, and four complaints concerning Hi Country at the Aztec and Farmington, New Mexico locations. Overall, the highest interest rate paid by a Navajo consumer was 28.99%. The lowest was 0%. However, this person’s trade-in was not paid off and was subsequently charged off to the consumer’s credit report. Case records show the highest number of months a person financed a vehicle for was eighty-two months with the largest monthly payment of \$884.59 being paid. The largest investment that a consumer made toward a vehicle was \$72,890.40.

In the cases where Navajo consumers complained about being behind on payments because payments exceed or nearly exceeded their monthly income, efforts were made to request copies of the documents submitted to a finance firm. In some instances this information was not available but income for some of the consumers remained steady which demonstrated an over

calculation of some income. In other cases, relatives who accompanied a buyer often provided collaborating statements of sales person's encouraging the buyer to exaggerate earned income when there was no other income coming in. We found situations where the buyer sticker price of a vehicle purchased, had increased by five thousand dollars by the time the contract was drawn up and signed. The reasons for such a jump in price ranged from competition from other dealers to a sales commission, and the application of to a simple mistake!! Overall, every case examined and investigated presented a different purchasing scenario that was unique to the buyer yet involved some deception and unconscionable reasoning.

Upon a final examination of all the variables involved in this thematic study, the Commission asserts fraud, deception and unfair conduct exists amongst the automobile businesses that surround the Navajo Nation. The Commission further acknowledges that consumer education and preparedness are the best mechanisms to combat the bad business deals that have plagued Navajo consumers for too long.



## Navajo Nation Human Rights Auto Seminar

In July of 2013, the Commission authorized a public seminar on automobile purchasing and financing that was held on the Friday, of September 6, 2013 during the Navajo Nation Fair. Presenters from federal, state, tribal and non-profit organizations were invited from as far as Washington DC, Albuquerque, New Mexico and Phoenix, Arizona. Ms. Lyn Haralson, Financial Educator Analyst from the Consumer Finance Protection Bureau, presented basic consumer information focusing on what a credit score is and how to build and protect that credit score. Mrs. Delorse Begay, Loan Officer of the Navajo Nation Credit Services, spoke about Navajo credit practices and how perceptions toward financing is understood by Navajo consumers. Mrs. Begay provided a synopsis of how these practices make it difficult for a Navajo consumer to acquire a high credit score and therefore become ineligible for an excellent finance rate. The Attorney General Offices of Arizona and New Mexico presented information specific to each state on what a consumer needs to know while at an auto dealership and what a sales contract entails with an emphasis on add-ons that are sometimes included in a final contract. Two attorneys, Mr. Brian Webb and Mr. William Soland from DNA – Peoples’ Legal Services offered information on what consumers need to know before they go to purchase and what to do if after your purchase, you begin to experience problems.

The Commission took this opportunity to address other policies that concern automobile sales and services off the Navajo Nation. One issue of particular importance is found in the Truth and Lending Act (“TILA”)<sup>39</sup>. The TILA sets minimum standards that creditors must abide when negotiating an installment credit contract. This means that the amount being financed, the amount of the required minimum monthly payment, the total number of monthly payments and the annual percentage rate (ARP) must be provided to the consumer before entering into a final credit contract. A sale person will pay, almost immediately *“how much do you want to pay a month?”* If, this happens buyer beware! By answering this question the sale person is at liberty to create a deal that can be easily inflated in many areas of the ITLA standards. TILA also regulates credit advertisement.

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<sup>39</sup> Truth and Lending Act

The audience learned that in May of 2009 the Credit Card Accountability Responsibility and Disclosure Act<sup>40</sup> was established. This Act is commonly known as the Credit Card Act (“CCA”) amended by the Federal Trade Commission, within the Truth and Lending Act. CCA instituted disclosure requirements that add substantive protection for the consumer. It established a fair and transparent practice for open-end and consumer credit plans. Essentially, the act prevents lenders from opening a line of credit for any consumer under an open end consumer credit plan. It also does not allow lenders/creditors to arbitrarily increase credit limits to open end accounts, unless the lender/creditor considers the ability of the consumer to make the required payments under the terms of the contract. The provisions in the CCA could greatly benefit the Navajo consumer if the Act extended its protection on the Navajo Nation. At this time, the law only applies to the businesses off the Navajo Nation where various lending agencies are available and where federal jurisdiction can be exercised.

It was communicated that under the Holder Ruler<sup>41</sup> a creditor that finances the sale of a vehicle could also be held liable. In this instances if, the creditor knew that the financing of this vehicle involved dealer fraud, the creditor could incur liability because fraud was involved and financing was still provided. The Holder Rule also prevents the financier from collecting or falsely representing to consumers that they must pay on the contract regardless of the dealer’s misconduct. The creditor cannot make negative credit reports on the consumer while knowing the consumer has legitimate reason to withhold payments. These types of acts violate the State deceptive practices statues in many jurisdictions.<sup>42</sup>

At the conclusion of the day-long seminar attendees along with the Commission expressed amazement over the wealth of information that was received. And, accordingly Navajo consumers have adequate consumer laws that protect them. The key is how to empower Navajo consumer to assess resources so they can adequately negotiate and protect their investments.

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<sup>40</sup> Federal Trade Commission (15 U.S.C. §§ 44-et seq.)

<sup>41</sup> Automobile Fraud, Odometer, Salvage and Lemon Laundering Fraud, Title Abuses and Yo-Yo Sales. Fourth Edition National Consumer Law Center. 2011.

<sup>42</sup> Ibid



## Consumer Protection Agencies

Through this study, the Commission found several agencies in position to serve Navajo consumers with complaints concerning business practices on and off the Navajo Nation. Many of these agencies have been established for many years now. Many are knowledgeable of the deceitful practices that lead to unfair and unequal access to credit, purchases and services. Not only are these agencies well versed about the fraudulent and deceptive practices, they are equally knowledgeable about remedies that can be taken to seek relief and correct credit discrepancies. A short synopsis of each bureau is provided below.

The Consumer Financial Protection Bureau<sup>43</sup> (“CFPB”) is the only federal government agency that is dedicated to consumer financial protection. It was established on July 21, 2010 when Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>44</sup> The act is a direct response to the failed financial crises that the United States faced in 2008. The mission of CFPB is to education consumers about fair lending practices and equal access to credit. CFPB also provides enforcement over lending agencies to ensure compliance with federal consumer financial law and gathers and studies new policies and laws that affect the consumer. With the establishment of this Act, most federal consumer financial protection authority is now consolidated under CFPB.

The Navajo Nation Department of Justice and CFPB signed a Memorandum of Understanding<sup>45</sup> (“MOU”) that can assist Navajo consumers. The MOU sets out a framework for the coordination and cooperation between the two agencies. The MOU will further mutual consumer protection goals by providing for the protected exchange of law enforcement-related information. Included in the MOU is how information will be shared between the agencies and third party requests. It confirms the confidentiality and non-disclosure of oral and written information that is shared between the agencies. The Commission anticipates that through the MOU, Navajo consumer complaints can be better addressed through a collective response that will provide timely results and less abusive practice from unscrupulous sales people.

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<sup>43</sup> CFP Act, Publ. L. No. 111-203, title X, 12 U.S.C. § 5481 et seq.).

<sup>44</sup> Dodd-Frank Act of 2002

<sup>45</sup> Memorandum of Understanding Between the Consumer Financial Protection Bureau and Navajo Nation Department of Justice. Signed by CFPD Director Richard Cordary on January 22, 2013 and Navajo Nation Attorney General D. Harrison Tsosie on January 17, 2013.

The Federal Trade Commission<sup>46</sup> (“FTC”) was established in 1914. Its mission is to prevent business practices that are anticompetitive, deceptive or unfair to consumers. Under the Act the FTC is empowered, to prevent unfair methods of competition, and unfair or deceptive acts of practices in or affecting commerce. Although the FTC has raised many issues concerning the sale of used motor vehicles under the Magnuson-Moss Warranty – Federal Trade Commission Improvement Act (that dealt with used car warranties), the FTC has failed to get Congressional support to establish uniform reporting for disclosures on used vehicles. Had the FTC gotten the support it needed, it could have help addressed the issues of disclosures on the sales of used vehicles by ensuring a transparent understanding of the vehicle that is being purchased. Instead, disclosures are not provided unless the consumers ask the right question at the time negotiating the purchase of the vehicle.. The Consumer Rights Bureau, within FTC, provides a venue to file complaints and a serves as a resource for public education. This department published hundreds of pamphlets, brochures, and notices on topics concerning banking scams, auto compliance issues, mechanical and service warranties and many other consumer topics that concern the general public. All of the information is free and shipped free to the organization requesting its public information.

Both the Arizona and New Mexico Attorney General Offices<sup>47</sup> serve its citizens by first providing public education on consumer rights. The consumer protection divisions work with the public in several ways. Aside from taking written complaints, they educate policy makers about new legislation that may conflict with consumer protection practices; they investigate suspicious business practices with a goal to resolve disputes through a process of dialogue and discussion before litigation. The New Mexico AG’s office also provides immigrant consumer protection services, like ensuring goods and services are conveyed in the Spanish language prior to the written final agreement. Civil rights matters are under this organization jurisdiction as well. These offices are established to protect the public. Because laws are different in each state, careful exercise should be taken when filing a complaint. Process, procedures and time lines may be different with each state.

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<sup>46</sup> Federal Trade Commission (15 U.S.C. §§ 44- et seq.)

<sup>47</sup> NNHRC staff met with representatives from the Arizona and New Mexico Attorney General’s Office to gather information on the services provided by each agency, the process for filing complaints and each agency’s mission and authorities established by State statute.

The New Mexico Public Service Regulatory Commission<sup>48</sup> (“PRC”) is comprised of five elected Commissioners who represent five districts within the State of New Mexico. The PRC regulates public utilities, telecommunication companies, motor carriers and the registration of corporations doing business in New Mexico. PRC had the responsibility of also overseeing insurance activities in New Mexico; however in November of 2012, New Mexico voters remove this authority and placed it directly under the auspices of the New Mexico Secretary of State. The registration of corporations doing business in New Mexico is a critical component of the PRC and this includes automobile businesses. Issues concerning the legality of a vehicle sale have sparked interest with the Attorney General’s office when situations occur where dealers from another state do not register their businesses in New Mexico. The Commission found that many towing companies in New Mexico while reposing vehicles fail to adhere to Navajo law by obtaining a court order or written consent from the owner before removing a vehicle. We learned Navajo consumers have this vestige to also file a consumer complaint. The Consumer Relations Division is the point of contact where consumers can raise issues or inquiry about a company doing business in New Mexico, if the need arises.

Autocap<sup>49</sup> of New Mexico is an affiliate resource to the New Mexico Automotive Dealers Association<sup>50</sup> (“NMADA”). The prime purpose of Autocap is to mediate disputes between a customer and an auto dealer. There are recommended steps that should be taken by the customer to resolve a complaint with a dealer before contacting a representative from Autocap. The automobile dealership must be a member of the New Mexico Automotive Dealers Association for a consumer to seek assistance through Autocap. NMADA’s sole purpose is to provide an opportunity for auto dealers to collaborate and discuss legal and public concerns that affect the dealerships as a whole. The association also advocates that members adhere to sound business policies and practices. In addition, members must promote confidence, fellowship and respect amongst themselves. Members also work together to protect and safeguard their interest in the automobile industry. Together, they in good faith cooperate with state, county and

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<sup>48</sup> New Mexico Public Regulatory Commission established in 1999 under N.M. Constitution Article XI Section 1 & 2.

<sup>49</sup> An Independent public service program that helps resolve new and used vehicle disputes with automobile dealers in the state of New Mexico. The program serves only dealers associated with the NMADA.

<sup>50</sup> New Mexico Automotive Dealers Association (NMADA) was established in 1951 to protect the abilities of the auto dealers to grow the retail automotive industry within New Mexico. [www.NMADA.org](http://www.NMADA.org)

municipal authorities on issues that affect them. Autocap also provides training for new dealers and sales people annually.

Navajo Nation Consumer Protection Law<sup>51</sup> was adopted by the Navajo Nation Council on July 21, 1999 to protect Navajo consumer from unfair, deceptive and unconscionable sales practices by sellers of goods and services within the Navajo Nation. The Act contains a series of consumer protection laws that include pawn, rental and purchase agreements, construction, pyramid schemes and chain referral sales. Under Subchapter 3 Motor Vehicle Warranties (§1117- 1124), Navajo consumers are provided a mechanism to enforce warranty rights on new and used vehicles from the manufacturer, its agent or the authorized dealer. The laws unconscionable, unfair and deceptive business practices and set forth regulatory and remediation systems to protect Navajo consumers. One important aspect of the Act is that non-English speaking Navajo citizens can ask for a Navajo translator to fully explain a contract in the Navajo language. Upon buying the car, a certificate must accompany the contract acknowledging the buyer received the information in the Navajo language. This Act also caps the interest rate that Navajo customers would be charged over the duration of a loan. It also incorporates stiff penalties for usury violations.<sup>52</sup> The Navajo Nation Council amended the Finance Charge Rate Limitation Act, by providing a cap on Retail Installment Sales Contracts at no more than “an annualized rate equal to the prime interest rate, at the time the contract is signed, plus fifteen (15) percentage points above the prime rate.” This amendment follows national trends allowed under federal law.

The realization that off-reservation business transactions on consumer matters can be brought before Navajo Nation courts needs to be pursued with more aggression. The rational here is that Navajo consumers sustain and endure injury as a result of a bad or fraudulent business deal. The Navajo consumer is placed in an environment, which is normally at home, where they are robbed of ever living a life in harmony. They are physically, spiritually, and financially ruined. While off-reservation firms complain that Navajo’s hide behind Navajo law, contrary to this assertion, off reservation business are hiding in distant jurisdictions that do not

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<sup>51</sup> Navajo Nation Consumer Protection Law. 5 N.N.C., CJY-71-99, July 21, 1999

<sup>52</sup>First Nations Development Institute (2011). “Building Trust: Consumer Protection in Native American Communities.” Longmont, CO: First Nations Development Institute.

adequately enforce Navajo consumer rights laws.<sup>53</sup> Navajo consumer protection statutes do provide defense and remedies but they do nothing if there is no one to advocate for the defense or counterclaim that protect a Navajo consumer residing on the Navajo Nation. The Commission found that many Navajo consumers cannot find affordable reliable legal representation. In fact, the cost for good legal representation is beyond the current income of many Navajo consumers.

In this short introduction it is paramount consumers use the resources to their benefit. There is no better way to understand your mistake, but to make it and then correct it. Consumer laws are designed from that template and the more a consumer uses the language lexicon of the automobile dealer, the better prepared you are as a buyer

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<sup>53</sup> Letter submitted by J. Zion dated November 25, 2012. Entitled Predatory Sales Practices by Area Auto Dealers.



# The Public Hearing Testimony

**Dilkon Chapter House  
Dilkon (AZ) Navajo Nation  
December 7, 2012**

This public hearing was the first of three hearings held regarding automobile sale transactions to Navajo consumers. Many of the individuals presented were Navajo speaking elders on fixed incomes. The Dilkon chapter house was filled to capacity with several people standing. Commissioners heard testimony of ruthless and cunning sales transactions that were appalling and scandalous in design. These consumers were left deeper in debt and in many instances, without vehicles after falling behind on payments or after losing vehicles thought to have been traded in but later repossessed. Overall, the testimonies showcased a rampant deceptive manipulation of money and incentives that all added up against the consumer. The sad reality is that the schemes expressed at the hearings are well known documented sale maneuvers used all over America.

Sixteen individuals provided oral accounts of their experiences while purchasing a vehicle. NNHRC Executive Director Leonard Gorman opened the session with information on why the study of automobile sales in border towns had been selected as the Commission's principle study. DNA Executive Director Levon Henry and Flagstaff Attorney Veronica Fabian shared legal advice about auto sale tactics, vehicle contract stipulations and finance information consumers should be aware of when shopping for a vehicle. The audience appeared to connect to the information presented by the two attorneys, as heads nodded in concurrence with the information that was provided. This hearing and the other two hearings that followed were largely conducted in the Navajo language. The following is a summary account of the sixteen speakers that occurred on December 7, 2012.

**Eugene Price** was accompanied by his wife Irene. Both are retirees and reside on the Navajo Nation. Mr. and Mrs. Price were approached by an Oxendale Auto Sales salesman at the Bashas grocery store in Kayenta, Arizona. Oxendale Auto Sales is located in Flagstaff, Arizona. Mr. Price reported the salesperson took his personal information and approved him for a loan

moments after keying information into a device he had with him. Mr. Price did not want to negotiate the trade in of the vehicle he drove because he owed too much on it. But, he had another truck at home that he was willing to trade in. He was told to go home and get the other truck that was to be traded in. The Prices drove home 50 miles in total to pick up the old truck. When they caught up with the sales man back in Kayenta, the salesman declared his internet to be down and therefore could not finalize that sale. Mr. Price questioned him as to why the bank and gas stations were open and they did not seem to have a problem with purchases. Mr. Price then told the salesman to forget about the sales and went home. A week later, a salesman by the name of Craig Chee of Oxendale called encouraging him to come to the dealership. Both Mr. and Mrs. Price had planned to move their daughter back from Northern Arizona University and decided to stop by the dealership while in Flagstaff. Upon arriving at Oxendale, they were met by Mr. Chee who took possession of the old truck to be traded in. The Prices found a 4 wheel truck they liked and immediately began contract negotiations. They were there from noon until closing time. Each time they inquired about where the contract was they were given the excuse that their insurance company had not called back. As it got dark, Mr. Price informed them he wanted his truck back and they were going to leave. Mr. Chee told them the truck had already been torn down. Mr. Chee showed him a worksheet for the contract and Mr. Price was delighted to know his trade in was estimated at \$4,000. He thought that the trade in amount covered the debt owed on the truck. When all was done, Mr. Price found he was to put \$600 cash down. Mr. Chee drove Mr. Price to the bank where he withdrew \$600. Upon leaving Oxendale and reviewing the contract that they both signed, he realized his trade in was only \$1,500 and nowhere was the \$600 reflected on the contract. What was more discouraging was that when they got home and unloaded all of their daughter's things, the truck they just purchased would not start. Mr. Price called Mr. Chee at Oxendale the next morning. Mr. Price was lectured about leaving the headlights on overnight which followed by more accusations of why the vehicle fail to start. When he pressed Mr. Chee for a battery replacement, the phone conversations abruptly ended. Mr. Chee blamed that on a poor cell phone connection was the reason that conversation ended so abruptly. Mr. Price called on his son in law, who is an auto mechanic. He learned from that an ignition switch was put on the vehicle. Moreover, he learned the truck they purchased was not a four-wheel and not worth the same value as the truck they traded in! A few weeks after



purchasing his truck, he learned he still owed on the trade in truck of about \$6,000. The old truck was sold but the selling price did not cover the entire debt owed on that truck.

**Leo Gishie** spoke about experiences he had years ago. He visited Winslow Ford and surrendered his keys and driver's license without thinking about why they wanted these items. He was encouraged to look for a vehicle he liked. Mr. Gishie reported sales personnel insisted he wait until they got back to him. He waited all afternoon before taking personal action to leave. After several attempts to retrieve his car keys, Mr. Gishie called the police. He reported he was held hostage. He spent the entire day at the dealership when he finally called for help. Mr. Gishie said the salesperson threw his keys at him when he told them he had called the police. In another situation, Mr. Gishie reported he spent a day at a Babbitt Ford only to be swindled on a vehicle purchase that was to include free maintenance service. Mr. Gishie reported he was worn down and tired by the time the contract was presented. In his rush to leave, he signed the contract and later saw a vehicle maintenance charge added into the contract. Mr. Gishie reported another incident that involved an auto agreement with Amigos of Gallup. The agreement required all service repairs and maintenance to the vehicle only be conducted by Amigos in Gallup, New Mexico which is well over a one-hundred mile commute one way.

**Harold James** an elder retired railroad worker from Pinon, Arizona learned he had purchased two vehicles from the same dealer in one week! On January 4, 2008 Mr. James visited Tate's Ford of Holbrook, Arizona where he bought a truck. A few days later he was contacted and asked to bring the truck he first purchased back. He was offered a second truck if he put down \$500 more. Mr. James agreed and left in a different truck. Three weeks later he received a call from his insurance company. They wanted to know what vehicle was purchased. He reported the purchased of a four wheel drive 2008 club cab. The insurance person reported the vehicle document they had, did not fit the description of the truck he had nor did the VIN number correlate with the vehicle. This puzzled Mr. James. About a month later, he received a call from Tate's Ford informing him the finance on his second purchase did not go through. He finally got the second vehicle financed on April 8, 2008. Mr. James inquired about where the previous payments were applied that were made since January. Each time he asked questions he was told not to worry about the payments, "*Tate's would work things out*". In August of 2009,

Mr. James received two money orders with a note indicating a vehicle loan was paid off. When his daughter called the dealer to ask for the title, the person responded that Mr. James still owed \$23,000 on another vehicle. Mr. James learned then he had two contracts and two vehicles. He went to DNA for help, as it was obvious he did not have two vehicles but one. Mr. James did not understand the circumstances surrounding the two contracts, the two trucks and the debt that is owed.

**Kee Etsitty, Sr.** is from Rough Rock, Arizona. He is of the Salt clan born for the Bitterwater clan and speaks only Navajo. Mr. Etsitty explained that in 2006 he purchased a vehicle from a dealer established in Snowflake, Arizona. The dealer brought the vehicle and a contract to his house in Rough Rock, Arizona. Mr. Etsitty claimed he told the salesperson at the door that he already had a vehicle and could not afford another vehicle. The sales person was persistent and encouraged Mr. Etsitty to have an adult child assume the payments on the current vehicle. Mr. and Mrs. Etsitty were home alone and felt compelled to sign the contract. So the contract was signed. Mr. Etsitty spoke about a more recent experience of an Aztec auto dealer where he and Mrs. Etsitty visited. A sales person by the name of Carol Charley sold them a truck. She identified two possible 3/4 ton trucks they could choose from. Ms. Charley, completed the contract and informed Mr. Etsitty that he could not finance the truck in his name and therefore put the contract in his wife's name. When they got home, they reviewed the contract and noticed \$13,000 in additional charges. Their trade-in was not listed and they do not know what happened to that trade in. Mr. Etsitty raised concerns about the additional personal information the auto dealers are requesting. He felt the information that is requested is another means of identity theft.

**Lorraine Katenay** of Tuba City, Arizona posed a question about whether state sales taxes were paid by Navajo consumers that purchased vehicles or homes off the Navajo Nation. Mrs. Katenay purchased a used vehicle that cost \$53,000 after the finance charges were added to the contract. The vehicle reportedly broke down five times and was serviced five times before the dealer mentioned the Arizona lemon law, which would have saved the Katenay an enormous amount of repair money had this law been raised earlier. Mrs. Katenay reported she found out the vehicle had been in a previous wreck and was rebuilt. The dealer attempted to modify Mrs.

Katenay's automobile contract by adding an additional thousand dollars. The entire aspect of rewriting a contract made no sense to the Katenays. Mrs. Katenay was encouraged to meet with the DNA attorneys that were present at the meeting.

**Bahe Begay** thanked the Commission for introducing this issue to the public. Mr. Begay reported that around Thanksgiving of 2012, he was interested in purchasing a vehicle. Mr. Begay went to a dealership with a relative who he wanted to interpret for him. He was aware of the misfortunate other Navajos encountered when they bought vehicles. Mr. Begay did not want this to happen to him. But when he got to the dealer and found a vehicle he wanted, his interpreter was not allowed to assist. Mr. Begay had never been to school. He paid \$500 down on a new truck and is happy with having a new truck, but he has no knowledge of what is in his contract. He is although concerned that he gave up his debt card information to the dealership.

**Sarah Blackwater** of the Towering House clan born for the Bitterwater clan traveled from Kayenta, Arizona. Her vehicle issue dealt with a dealership located in Cortez, Colorado. On the same day she bought the used vehicle, it broke down. When they left the dealership, the vehicle made noises not too far out of the city limits. After talking with the sales person, they were asked to bring the vehicle back. At the dealer the vehicle was inspected, test driven and returned to the family with the instruction that, "*there was nothing wrong with the car.*" They reassured Mrs. Blackwater that the vehicle was still under warranty. Mrs. Blackwater and her family again departed Cortez and broke down near the Ute Mountain Casino, in Towaco, Colorado. She immediately contacted the dealer and was informed they would dispatch a tow truck to pick up the vehicle. The dealer also agreed to provide her a loaner vehicle while the truck was under repair. It was late and cold when the tow truck arrived. Her son accompanied the vehicle back to the dealership, while she and her daughter in law waited at the casino. Her son returned driving an old truck. The heater did not work but they made it back to Kayenta. Two days later the dealer called and insisted they bring the lender vehicle back. It is their policy to not lend vehicles to out of state residents. Mrs. Blackwater returned the loaner only to break down again while enroute to Cortez. She got a call two months later from the dealer reporting her vehicle was ready for pickup. Mrs. Blackwater learned she had to pay \$500 for the repairs before they would release the vehicle. She reported personnel at the dealership were upset when she

couldn't pay the \$500. They did not release the vehicle and made her leave the premises on foot. Mrs. Blackwater contacted DNA who has initiated litigation against this dealership.

**Wilfred Yazzie** an elder man from Chinle, Arizona spoke about a recent experience he encountered with Tate's of Holbrook, Arizona. He reported that two Caucasian sales people came to his home with a vehicle that they wanted them to buy. He did not want anything to do with this sale and left his wife to deal with the couple. His wife eventually told the couple that she would think about their offer. A day later his red 2006 Diesel truck stop running. His wife recommended that they contact the salespeople that visited before. When Tate's responded the manager brought another truck along with a contract that identified Mr. Yazzie as the principle financier. Mr. Yazzie asked why his name was on the contract when his wife was the one wanting the vehicle. The explanation provided by the new sales persons was that the two sale people that visited earlier were dishonest and were fired and that's why his name was on the contract. Mr. Yazzie did not understand that answer but proceed to sign the contract anyways.

**Mae Nona Franklin** purchased a 2011 four door Chevy vehicle from Underwood Enterprise in Mesa Arizona. She is a resident of Leupp, Arizona. Mrs. Franklin left the dealership and while on the freeway the car stopped running. She called 911 and police officers dispatched to the freeway helped her get the car off the freeway. Mrs. Franklin called the dealership immediately. The dealership's reply was that they were busy and would get to her later. When the tow truck arrived she learned "*she had a blown engine.*" The driver of the tow company would not allow her to ride with him to the dealership. She was left near Alma School Road when her son picked her up. Mrs. Franklin eventually got the car back three weeks later. A new engine had been put into the vehicle. Not long after this, the car would not start. Mrs. Franklin replaced the battery. Soon after this the entire car stopped running for a third time. She called Underwood Enterprise to report the inoperable vehicle. Their response was that it was her responsibility to fix the car now. She had a mechanic check the vehicle in Winslow, Arizona to get estimation on the cost of repairs. She also wanted to replace the bumper. Mrs. Franklin learned the vehicle was in a wreck and was not properly repaired at the time she bought the car. The estimated cost to fix the car was \$1,759. She called the dealer again and reported her findings. She was informed it was her responsibility to fix the car herself. At the urging of her

children Mrs. Franklin a single parent on a fixed income called DNA. Mrs. Franklin wanted the audience to hear about the problems she encountered with her vehicle purchase.

**Kee Smiley** recalled countless times he heard from friends, relatives and family about vehicles being repossessed, vehicles brought to homes and individuals taking applications for vehicle financing in public areas. He could not ever recall this happening in the past. This abuse was rampant and it happens all over the reservation according to him. He is an elder man and recognized that contracts are complicated to understand. Mr. Smiley thanked the Commission for thinking about the people and raising awareness about predatory sales tactics. He spoke about a recent experience where he put down \$1,000 on a used truck. The sales person insisted he needed a co-signer who had to be physically present before he could take the truck home. He promptly asked for his money back and left the dealer ship. Mr. Smiley had not been so lucky in the past with a truck he purchased in Gallup. That vehicle broke down three times and the dealer refused to meet with him or repair the truck. He was wiser this time around as he reported.

**Jonathan Nez**, a Council Delegate that represents the communities near Shonto, Arizona acknowledged the work the Commission did on race relations in the border communities. Council Delegate Nez spoke about the recent county election results that placed three Native Americans on the County Board of Supervisors. This was an historical event that required a lot of public education. Mr. Nez stress the importance of several things, that included educating Navajo consumers about taxes on and off the Navajo Nation, vehicle contracts and the scams that are associated with purchasing vehicles. He urged the audience to also seek relief from resources from the State of Arizona, like the Better Business Bureau and the Arizona Attorney General's Office. The Council Delegate insisted off reservation businesses have taken advantage of Navajo consumers for too long. He hoped this initiative would lead to economic development on the Navajo Nation. If not, the Commission's work could lead to the certification of Navajo friendly businesses by the Navajo Nation, which could deter the bad services some businesses present.

**Jesse Thompson** also a Navajo County Board of Supervisors official spoke next and thanked the Commission and staff for bringing this issue to the people of the Navajo Nation.

**Lee Cook** purchased a truck from Davis Chevrolet in Tuba city, Arizona. Not too long after this purchase the vehicle broke down and was towed back to the dealer. All of the documents on the vehicle were in the truck. To this date he does not know what happened to the truck. He recalled receiving a letter informing him to pay on the truck. Mr. Cook has no contact from the dealer either.

**Nina Nelson** recorded testimony is not audible.

**Elsie Elthie** was a well educated Navajo elder. She spoke about three past encounters where decisions were unpleasant and resulted in a lower credit rating. The first encounter concerned a member of the Tohono O'odham Nation. A young lady known as Michelle Billy worked for Santander. Santander is major financing firm that hired Ms. Billy to retrieve or repossess vehicles on the Navajo Nation. Ms. Elthie was contacted by Ms. Billy at home because she was behind on her payments. According to Ms. Elthie, she made a previous arrangement with a representative of Santander to bring her payment current. Ms. Billy would not honor the payment arrangement and demanded immediate payment. Ms. Elthie called Santander and inquired as to why the previous arrangement was not being honored. She had only \$200.00 to bring her payment current. The Santander representative on the phone reassured Ms. Elthie that she was going to get her vehicle back. The lady at the door was going to store the vehicle in Flagstaff, Arizona for a couple of days. Ms. Elthie hesitated because she knew that a Navajo Nation tribal court order was needed and Ms. Billy did not have one. Both Ms. Billy and Ms. Elthie talked extensively before she finally agreed to a plan. She reluctantly agreed to Ms. Billy's plan to have her take the vehicle and return the following day with a court order. A week passed and Ms. Billy did not return. Ms. Elthie called Santander and learned her vehicle was repossessed and was not to be returned. Ms. Elthie paid on the vehicle for five years and had a few months left to pay it off. She thought she was working with Santander and their verbal agreements were binding. She learned differently. When this vehicle was purchased Ms. Elthie had a good steady job.

In another incident several years prior to this, Ms. Elthie accompanied her father to the dealer that sold him a truck. The truck needed an oil change. She was pressured by a sales person to consider turning in her 2004 Chevy for an upgraded 2006 truck. Ms. Elthie still owed

on the truck. She was encouraged by the sales people to quit making payments to the 2004 truck and let it be repossessed. Ms. Elthie refused to do this. She was then encouraged to have a relative take over the payments. The relative that she thought could take over the payments could not. Consequently, Ms. Elthie was stuck with two vehicle payments because she took the advice of the sales person and bought another vehicle.

Ms. Elthie reported on still another incident that involved elderly in-laws. The in-laws were in Gallup, New Mexico at a Laundromat when a repo man confronted them. He literally pulled both the old man and lady out of their vehicle and took the truck. When she asked why they did not report the incident to the police the couple replied that they had just come from a ceremony and were honoring the sanctity of the ceremony. They did not want to cause any more interference with the ceremony that day. The elder in-laws purchased the truck several years back. They were one month behind with payment when this incident happened.

**Eulah Betoney** is a resident of Tonalea, Arizona. She is 92 years old. She recanted an incident that occurred in April of 2012 at a Bashes' grocery store. Ms. Betoney and a granddaughter were confronted by a salesman from Hatch Auto of Holbrook, Arizona. He was persistent with getting personal information to do a credit check. When she finally gave in and authorized the credit check, they learned she was eligible for a vehicle. Ms. Betoney questioned why she was eligible because she had a vehicle repossessed and she was still receiving notices to correct the delinquent debt. Moreover, Ms. Betoney stated she does not drive or have a driver license. This salesperson would not accept any of these reasons for aborting this potential sales deal that day. He insisted he would arrange a deal where her name would initially be on the contract then in ten days after financing was final, he would remove her name and put a granddaughter's name on the contract. Ms. Betoney did not like this deal and told him directly she did not like his plan. They left the area. Two days later, two sales persons came to her home with a little white sedan. She was pressured by the salespersons. This entire ordeal made her mentally, emotionally and physically sick. She attempted to get her name off the contract but sales people at Hatch gave her the run around. She reported the incident to another sales person at Hatch. But this person tried to sell her another vehicle! Another salesperson told her what happened to her was wrong and promised to report the incident to officials at the Hatch Snowflake office. Ms. Betoney would like the Commission to help her.

**Kayenta Chapter House  
Kayenta (AZ) Navajo Nation  
December 28, 2012**

The hearing in Kayenta, Arizona began with the Commission and the NNHRC staff attorney facilitating the hearing. Seven presenters spoke about their experiences with vehicle purchases from auto dealerships in Phoenix and Holbrook, Arizona and in Farmington and Aztec New Mexico. Those that testified stated that when they followed up with the dealer about concerns, the dealer became combative and rude. In some instances, the dealer abruptly hung up. Navajo elders complained that no Navajo interpreters were available when the contract was presented, or even when they asked for one. The following is a summation of the seven testimonies received.

**Marilyn Watchman** drove to the hearing from Cedar Ridge, Arizona. Mr. and Mrs. Watchman shopped for a vehicle for a son that attended school in northern Utah. Both were concerned the vehicle driven by the son was not reliable and something more dependable was needed. After visiting four dealerships in the Phoenix area, they found a vehicle that fit their budget. They thought the dealer, Camelback Ford offered a good deal. Mrs. Watchman had eighteen-thousand dollars (\$18,000) to be used toward a vehicle. The dealership offered a \$2,500 rebate and a student discount, which totaled \$4,000 in discounts. Upon leaving the dealership, the couple agreed the total cost on the vehicle contract was \$20,000 and the contract would be in their son's name. Since it was late, the finance person recommended their son pick the vehicle up in the morning and sign the contract himself. The following day their son signed the contract and headed back to school in his new car. Several weeks passed before the son returned home. Mrs. Watchman asked to look at the vehicle contract and found additional charges added into the contract. The extra charges totaled ten thousand (\$10,000) more above the twenty thousand that was agreed upon. The contract included a service charge of \$4,000, a tire service fee of \$499 and other add-ons that were not negotiated into the contract. Mrs. Watchman called the sales person, who declined to speak to her because her name was not on the contract. She gave the phone to her son and the sales man told him he did not like they way his mother spoke to him. The conversation between the salesman and the son got intense and when



the son gave the phone back to his mother, the salesman said *“this conversation is over”* and hung up. Mrs. Watchman wanted help with how they could revisit the terms of the contract.

**Wilson Gray** of Kayenta, Arizona called Car Land dealership in Farmington, New Mexico to report he was going to be late on a payment because he was no longer employed. Later in the day, while in the township of Kayenta the vehicle shut off. He called the dealership convinced them to turn the vehicle on for fifteen minutes to drive the vehicle home. Mr. Gray reported this happened four times before. He strongly felt that turning off anyone’s vehicle was wrong especially in an area that is remote and isolated like the Navajo Nation. Mr. Gray surrendered his vehicle to be stored while he arranged to catch up with his payments. He later learned by the finance company that it was repossessed. The company did not have a tribal court order and he thought he had an arrangement worked out between him and the finance company. He owed two thousand dollars. Mr. Gray no longer communicates with the company. At the close of the meeting, Mr. Gray asked, *“what happens after all the testimony is gathered?”*

**Betty Naljahih** thought she’d help her twenty-one year old grandson establish his first credit profile since he had established stable employment. The grandson purchased a vehicle from High Country in 2009. His paternal grandmother co-signed on that loan. In November of 2011, he received several letters from High Country informing him he was eligible for a new vehicle. He decided to take High Country up on the offer and found a truck that he liked. While they negotiated the cost of the vehicle, they learned a co-signer was needed. A balance of \$3,000 remained on the vehicle he planned to trade in. The salesman learned the co-singer had two vehicles in her possession. One vehicle was paid off while the other had a \$2,000 dollar balance. The salesman asked the co-signer if she could pay off the \$2,000 or purchase a vehicle from them. She was not interested in either of those options. The salesman discussed several options with the High Country manager, and decided to use a \$2,000 rebate as part of the down payment toward the new truck. The grandson had no down payment so it was agreed he would make installment payments toward a \$2,000.00 down payment under a promissory note. Everyone, including Mrs. Naljahih, the paternal grandmother, the grandson, salesperson and the manager agreed to this arrangement. The contract was signed and the grandson drove the truck off the lot on the same day. The grandson called High Country because he was not given the

payment statements and the paperwork needed to register the vehicle. He was told his first payment was not due for another 45 days. Days passed and he called again because the temporary paper plate expired. It had been renewed once before and he could not get the truck registered with the Department of Motor Vehicles. Mrs. Naljahih reported making follow up calls to the auto dealer. Each time they were advised that the process takes time and to be patience. The grandson went to the dealer again to find out why things were taken so long. He learned a finance firm had not been found to finance the truck. He was told to leave the truck on the lot. When Mrs. Naljahih called to follow up with the matter, the salesperson replied “*he had nothing to do with the sale.*” When she pushed for more answers, he abruptly hung up on her. She called again, and this time was informed her name was not on the contract and therefore no information could be released to her. Mrs. Naljahih and her grandson went to the dealer and learned financing fell through because the “*trade-in*” was never brought in! Mrs. Naljahih asked questions, but the manager became irritated and told her to get out of the business or he would call the police. Mrs. Naljahih filed a complaint with the Better Business Bureau after conferring with David John, the chairperson of the Farmington Human Rights Commission. She claimed to have talked with different law firms including DNA Legal Service, Incorporation. At this juncture no one had followed up with her. She learned Santander was listed as the firm financing the truck.

**Ruth Gilmore** traveled to the public hearing from Black Mountain, Arizona. Her testimony was inaudible due to a recording error.

**Sally Bitsuie** helped her sister purchase a vehicle from Tate’s. She co-signed on this loan. Soon after the purchase, the vehicle began to have problems. Ms. Bitsuie and her sister decided to take the vehicle back. They were given another vehicle. She also co-signed on this second vehicle. Mrs. Bitsuie began to receive late vehicle payment notices. When she contacted Tate’s she learned that the vehicle that was returned to the dealer, remained in the parking lot and was not traded-in. She later learned that Chase Bank financed the first vehicle and had finally picked up the vehicle. It was auctioned off but a balance of \$12,898.45 remained. Mrs. Bitsui had to pay the remaining balance on that vehicle. Mrs. Bitsuie was overwhelmed by this entire ordeal.

**Albert Page Tinhorn** no recorded remarks.

**Nellie Glasses** is of the Red Bottom People clan, born for the Start of the Red Streak People clan. Mrs. Glasses raised issues about repair cost on used vehicles that are purchased. She found either these types of vehicles to be beyond repair or very costly to repair. According to her testimony, her credit score only allowed her to purchase a used vehicle. She purchased a used 4-wheel truck from Tate's in Holbrook, Arizona. The maintenance and repairs to the truck were extremely expensive. The dealer refused to assist with the repair cost to the truck shortly after buying the vehicle. Tires cost \$1,600 and were also needed. The repair costs caused her to fall behind on the monthly payments. The 4-wheel vehicle was evidently repossessed with a balance of eleven thousand. Mrs. Glasses reported the dealer calls and demands payment. She expressed concerns with how vehicles are sold today. They depreciate quickly and the terms of a loan are extended out. She said, *"by the time the loan is paid off, the vehicle no longer works."* Mrs. Glasses complained about the cost of maintenance and automobile parts. She recalled returning a vehicle to the auto dealer for repairs. When it got fixed, it would break down again. She was unhappy with her auto experience and urged Navajo Nation leaders to talk to the dealers to provide more affordable deals.

**Crownpoint Chapter House  
Crownpoint, (NM) Navajo Nation  
January 4, 2013**

At the Crownpoint hearing, the Commission heard from nine presenters. Twelve additional presenters were not able to give testimony due to a scheduling conflict at the Crownpoint chapter house. Concerns ranged from illegal ignition electronic shut off to the threat of a vehicle being repossessed at one thirty in the morning to GAP insurance premiums not paid by the dealer that had been included in the contract. Others testified about the spiteful treatment from towing companies who contract with lending and automobile companies. The Commission recognized the names of the same auto dealers were mentioned over and over again.

Navajo speaking elders appeared to dominate the attendance at this hearing. Over 100 participants attended this hearing.

At this final hearing representatives from the Human Rights Watch, Mr. Arvind Ganesan, Ms. Eleanor Blume of the Consumers Financial Protection Bureau, Mr. William Conner of the New Mexico Legal Aid and staff from the Diné Legal Aid including the Executive Director Levon Henry were present. Prior to receiving testimony, Commission Chairperson Steven Darden summarized the importance of exercising Navajo consumer rights. Mr. Darden stressed the importance of exercising these rights to counter predatory sales tactics that Navajo consumers face in border towns. The following is a summary of the nine testimonies presented at the Crownpoint hearing.

**Erma Davis** reported she and her mother had problems with Ed Corley Automotive. Mrs. Nellie Lee purchased a vehicle from Ed Corley and included the extra GAP insurance in the contract. In 2009, Mrs. Lee had a car accident and learned she had no GAP coverage. Her insurance paid only a percentage of the repair to the vehicle. The GAP coverage that was to cover the balance on the repairs was never paid by Ed Corley. Mrs. Lee paid \$1,900 from her own pocket and took out another loan to cover the repair cost. Mrs. Davis reported a similar experience when she purchased a vehicle from Ed Corley's in 2009. After two months into her contract, her son had an accident. Her primary auto insurance covered some of the repair cost. When she contacted the GAP coverage company, she learned she had no coverage. No premium was ever paid by the dealer for this coverage. The GAP premium in both contracts was \$600 each. Like others in previous hearings, Mrs. Davis wanted the audience to be aware of this scam.

**Cecelia Begay** of Tohatchi, New Mexico was a victim of electronic repossession or electronic lockout. She also reported problems with an auto dealership that refused to honor the warranty on a second used vehicle she purchased. Ms. Begay received several automobile ads in the mail from High Performance. Mr. and Mrs. Begay decided to inquire about the ads and visited High Performance in Aztec, New Mexico. At High Performance they were told their credit profile was not good and were driven to another dealership. They purchased a used vehicle from this dealership and had no problems with the vehicle. Three months later they

decided to purchase another vehicle at the same dealership. This newer vehicle used a lot of oil. They reported the problem to the dealer because it still had its warranty coverage, but the dealer evaded them. The couple began to have additional problems with the first vehicle they purchased. The vehicle would not start. When this was reported to the dealer, they were informed the ignition on that vehicle was shut off because they fail to pay their auto insurance on time. They were current on the payments to the vehicle but were making late insurance payments which were within the four day grace period allowed by the insurance carrier. The automobile contract did not have any specific instructions or statements that warned the consumer that this measure would be taken. Mrs. Begay reported her complaint to Fabian Law Firm in Flagstaff, Arizona. After several automobile breakdowns and numerous calls to the dealer about her vehicles, Mrs. Begay stood her ground. The dealer agreed to adhere to the warranty on the second vehicle. Moreover, Mrs. Begay wanted the Commission to know that automobile dealers do not disclosed information that the ignition could be shut off if you are not current on the insurance payment. She reported her vehicles to be financed through the firms called Easy Credit and Dairyland of Gallup, New Mexico. Mrs. Begay also asserted that after all the costs expended to get the second vehicle repaired, she finally got the dealer to honor the warranty. She warned the audience that dealers do not want to honor warranties.

**Mr. Raymond Becenti**, an elder man of the Water Flow Together clan born for the Tangle Clan, offered testimony of his automobile purchase from Ed Corley's. In 2007, Mr. Becenti was unemployed when he visited Ed Corley and purchased a new vehicle. After leaving the dealer with his contract in hand, he was called back the following day. Mr. Becenti learned he was not eligible to purchase a new vehicle, but could purchase a used vehicle instead. He purchased a used vehicle and pays on the vehicle today. Mr. Becenti reported the used vehicle was priced at fifteen thousand and when the contracted was completed and finance charges were added, he financed a vehicle for \$26,000. The finance company was from Louisville, Kentucky. Mr. Becenti noticed additional charges on a recent statement from the finance company and inquired about those charges. Unfortunately, he has not heard from the company. Another concern raised by Mr. Becenti was the limited mileage warranty on new vehicles. A thirty-six thousand mile warranty was not enough especially in a vast remote area like the Navajo Nation.

He expressed a concern about the automobile tire jacks that are equipped with each vehicle. For an older person, these jacks are unsafe and not convenient to operate especially in bad weather. Mr. Becenti spoke of an incident that involved an elderly man from Lukachukai, Arizona. He died while trying to change his tire in cold weather. The tire jack was difficult for this man to operate. His wife tried to help. When she exited the running vehicle, the doors locked. Mr. Becenti wanted the information offered today to be made available to the Senior Citizens Centers on the Navajo Nation. He closed his testimony by stating that the new vehicle he first thought he purchased was cheaper than the used vehicle he ended up with!

**Mr. Ross Johnson** of Crownpoint, New Mexico had a major dispute with Tate's Auto of Holbrook, Arizona. Mr. Johnson worked in St. Johns, Arizona in June of 2011. He read an advertisement from a local paper and heard a similar ad on the radio about an auto sale at Tate's Auto Center. Mr. Johnson requested for leave to look at vehicles. He found a truck that he decided to purchase. He paid \$500 in cash and post dated a check for \$1,500. Overall, Mr. Johnson was satisfied with his purchase until he received a call from the finance company a few days later. Citi Financial called to verify information about the co-signer. They specifically asked if the co-signer lived with him. His reply was no. After that statement Citi Financial stated they would get back to him later. A few days later, Tate's called and informed him to return the vehicle immediately. He failed the interview with Citi Financial. Tate's offered to finance his vehicle with another finance company. Mr. Johnson's work schedule did not allow him to leave whenever he wanted. The work protocol required him to provide ample notice for leave. He could not provide an exact date as to when he could be in Holbrook until his leave was officially approved. Mr. Johnson claimed he was in constant contact with finance personnel at Tate's until he began to get threats. He was told the vehicle would be reported stolen and he would be placed in jail if he did not return immediately. When he returned the vehicle, Mr. Johnson was presented with another contract and asked to put down more money, which he declined. Mr. Johnson was removed to another room where several Tate's representatives verbally attacked him and used profanity which offended him. He was informed a mileage fee would be assessed to the vehicle that was returned. The fee added up to the exact total down payment he put down. (Mr. Johnson placed a stop payment on the post dated check when the first vehicle contract was

canceled). The verbal threats from Tate's personnel continued as he walked out of the auto dealer. He is still being threatened by Tate's financial people today. Mr. Johnson sought legal help from two firms but because he returned the vehicle, the law firms could not help him.

**Mr. Jefferson Lee Sr.** testified about a court case that involved non-Indian traders located off the Navajo Nation and Navajo customers that resided on the Navajo Nation. In 1952 the case involved the repossession of sheep from a Navajo citizen for payment owed to the trader which reached the United States Supreme Court after several appeals from the lower courts. The ruling in 1952 recognized Navajo jurisdiction and forbid the repossession of a person's property on Navajo land. Mr. Lee reminded the audience that the foundation of this law remained intact today. He believed the GPS electronic lockout system violates this law especially if the lock out happened on the Navajo Nation.

**Billy Martin** was a discouraged Ford Motor customer. He wanted a large truck which to him is a necessity. However, the Ford salesperson pressured him into purchasing a smaller truck. Mr. Martin, also an elder Navajo speaking man, pays \$600 a month. He requested a lower monthly payment but was told he had to bring his balance down to \$5,000 before they would consider refinancing the vehicle. Mr. Martin pawned his valuables to make his payments.

**Ms. Selma Hale** thanked the Commission for bringing an important issue that needed to be raised to Navajo citizens. Ms. Hale purchased a vehicle in 2004 from Ed Corley's which was financed through HSBC. She retired in 2006 and realized she could not afford the vehicle. Ms. Hale contacted HSBC to arrange to have the vehicle picked up at home. The company that picked up the vehicle damaged the car while in tow. Ms. Hale learned that when the vehicle was sold a balance remained because the car was damaged. HSBC reported this financial loss to the IRS where the Hales are paying a \$900 tax charge off. Ms. Hale reported that the car was in excellent condition when it was picked up. It was rarely driven and had low mileage. Ms. Hale

is disputing the damages to the car. She came to the hearing to let others know that the finance company can report the charge off to the Internal Revenue Service and that was legal.

**Navy James, Sr.** is an elder Navajo medicine man who was approached by a sales person from Tate's Chevrolet. Mr. James was asked to turn in one of his vehicles for a newer model. He thought he traded in a vehicle when he purchased a used truck, but found out later he was delinquent on payments on the trade-in. He now has problems making payments on the vehicles. Mr. James reported the used vehicle purchased from Tate's had transmission problems. He got the vehicle repaired for \$3,400 and not to long after that, the vehicle broke down again. It is inoperable and parked. But he makes his monthly payments. Mr. James wants Navajo Nation leaders to advocate for them, especially in situations that concern bad car deals. He also recommended that the Navajo Nation become a car dealer itself.

**Larry Lynch** purchased a 2000 Grand Cherokee Jeep from Tate's. A down payment of \$2,000 was made. Citi financial financed the contract. The Lynch's took the vehicle home the same day they bought the vehicle. They had to keep in contact with Tate's because the temporary plate expired three times. They had not received the permanent plates. Three months later they were contacted by a representative from Tate's at 1:30 in the morning. The sales lady informed them a new contract had to be signed. When Mr. Lynch looked at the contract it was not fully filled out. He refused to sign a partially completed contract. The female sales person informed them Tate's would pick up the jeep in the morning if no signature was secured that night. Mrs. Lynch was asked to get into the salesperson car and there she signed the contract after talking privately with the salesperson. The couple never received a copy of this contract in spite of several calls made to the dealer. They could not register the jeep because they never received plates. Nor could they secure insurance coverage for the Jeep. Tate's never assisted them and after six months, they learned Jeep payments were to be paid to Acceptance Credit. When they finally heard from Tate's, to get the vehicle registered, Mr. Lynch was instructed to take the vehicle to the New Mexico Motor Vehicle Department and to also have the New Mexico State Police look at the vehicle. They learned the VIN number did not exist. There was no



sticker on the door. After many phone calls and visits to Tate's, they finally spoke to a new manager. Mr. and Mrs. Lynch learned, "*they were screwed*" by the former manager. The vehicle was eventually repossessed. They lost all the payments made on the Jeep. To make matters worse, they were informed they owed \$1,244.13 for insurance payments that Tate's made on the Jeep. Tate's personnel threaten to sue which required the Lynch's to obtain legal representation. Mr. Lynch is a middle aged man who purchased several vehicles in his lifetime. He never encountered an experience like this and was deeply appalled, disgusted and shameful of himself because he was taken advantage of and knew this was not the way to buy a vehicle.

**Lucille Platero** is a retiree. She anticipated purchasing a small vehicle that would fit her budget. While in Albuquerque she came to a dealership that she thought could assist her. Instead the salesperson ignored her request to look at a small vehicle and guided her to a large Ford truck. Ms. Platero felt she was a victim of high pressured sale maneuvers from two sales persons that lasted all day. They got her to test drive the truck. When she came back from the test drive she was presented with a contract. To test drive the truck, she had to leave her license and her social security card with the salesperson. Ms. Platero claimed to have asked questions about the condition of the truck but her questions were not answered. Because it was late in the evening, she agreed to purchase the truck. The sales person also made arrangements for her to purchase insurance from a local firm that worked with this auto dealer. When all was done Ms. Platero left and proceeded home. The truck broke down near Grants, New Mexico. She learned the fuel pump went out. Three weeks later, the spark plugs fell out while visiting a brother. The plugs continued to dislodge. Ms. Platero contacted the auto dealer who refused to fix the truck. She quit making payments until the auto dealer repaired the truck. Ms. Platero reported the truck was eventually picked up and repaired. However, she paid for the repair work herself. She reportedly has no contract as that was removed from the glove compartment when it was repaired. Ms. Platero agreed with earlier presenters that auto dealers cannot be trusted. She concluded with another account of an earlier experience she had with Tate's Auto Center. A car was repossessed from her home on the Navajo Nation without a court order. She had many personal valuables in that car which she never recovered. Ms. Platero reported Citi Financial continued to call her to this very day.



## Recommendations

The findings in this study highlight a pervasive and compelling market of automobile sales scam that begins in a dealership business and radiates into the homes of Navajo consumers on the Navajo Nation. The exploitation of non-English speaking consumers is a forte automobile sales personnel seek out everywhere. The easy manipulation of numbers and terms along with friendly words peppered with enticing verbiage make a single vehicle sales transaction lucrative for the business especially the sales person. The elder Navajo gentleman that purchased a 2010 Ford Focus for \$19,645 financed his new purchase at a whopping 23.99% APR, which also included the deduction of a trade-in at \$1,500 and a \$3,000 manufactory rebate. This consumer ended up with a final charge of \$41,145<sup>54</sup>. The monthly payment for financing the new car extended out 72 months. The commission found these types and other carefully crafted deals of finance arrangements time and time again. Consumers “upside down” in their purchases found monthly vehicle payments strapped them from ever living and enjoying a modest life for the next seven years. Even more discerning is that when monthly payments were skipped or deferred, the payments continued to extend out with additional late fees that in some instances added another year of payments to the already seven year deal!

The concern of how to stop the reckless decision making and unconscionable deals dealt to a consumer deserves a strong response from every entity involved with the construction of a contract. Likewise, individuals indirectly harmed by these decisions also deserve some justice restored to them. The Commission notes that the Navajo consumers, while weighing their responsibilities to the commitments made toward the purchase of a vehicle, need to be held accountable for the often hasty decisions made by them. The idiom “*money is the root to all evil*” seems to apply here very well. For the auto businesses that have access to money, they can devise variations of deals to build their fortunes. For those that can lend and finance deals, they can secure more loans off major international banking institutions that have the protection of the federal security and exchanges securities and therefore can cushion losses from the automobile lending. And, for those that don’t have the cash flow – they often take a chance on a long term deal. And, as we have found, they will take that chance.

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<sup>54</sup> NNHRC-13-38 case record

The examination of all of these variables has led the Commission to render some reasonable solutions to address this vicious cycle of capitalizing on the poor. The Commission offers eleven recommendations.

1. **The Commission recommends the Navajo Nation embark upon a public education campaign to inform and prepare Navajo consumers on issues concerning money management, finance mechanisms, consumer fraud and consumer restitution.** Purchasing a vehicle involves three areas of preparedness: 1) do your research before you buy; ask yourself, can you qualify for a low APR; ask your bank to finance the vehicle; 2) when at the dealer, know that everything is negotiable; negotiate the price of the vehicle down to the closest invoice price first, then talk about trade-in values; 3) know your rights as the new owner of the vehicle, learn about lemon laws, warranties, cool-down periods, etc. Although this study examined automobile sales and financing, the Commission found the sales and finance tactics can be applied in other purchases like furniture, farm equipment, mobile homes and credit card purchases.
2. **Develop a Navajo Consumer Resource Center on the Navajo Nation.** The Commission further advocates for the development of a resource center where Navajo consumers can go to acquire and assess the information that is needed to about credit scores, credit profiles, consumer products and other information that will prepare them to make an informed decision and then a purchase. Navajos are known to be savvy and astute, but need a little help to get prepared for a major purchase.
3. **The Commission recognizes that consumers have a right to make decisions concerning their purchases.** Navajo teaching is t'aawhíajit'eejo. This Navajo teaching is encompassing – do your research, make responsible decisions, avoid pit holes. Good credit means ample purchasing power. The Commission received a number of Navajo consumers believing that they were “joking” when they were asked to purchase a vehicle from a dealer. Purchasing a vehicle is serious business, allowing no room for jokes. If the consumer can afford the payments, the Commission strongly advises the consumer make the payments. The Commission takes a different perspective on sales transactions where there is an

element of fraud, deceit or an unfair transaction that can be proven. The Commission demands these deals be unwind.

4. **The Commission recommends that Navajo Nation leaders take meaningful action against the bad behavior exhibited by some auto dealers.** Navajo elders who are preyed upon and who do not have good command of the English language need to have protection afforded to them by the Navajo Nation. The Nation needs to demand that business in all border towns employ Navajo speaking individuals that can effectively communicate with Navajo consumers. This is paramount especially when Navajo and indigenous population's currency contribute to the payroll of city, county and business officials.
5. **The Commission recommends auto dealerships coming onto the Navajo Nation and soliciting consumers be appropriately regulated.** A mechanism that will track, collect and monitor the processing of permits and fees charged to non-Navajo businesses needs to be managed and enforced effectively. Auto dealers cutting the Navajo sovereign fence to take their picking of Navajo consumers, especially Navajo elders, from Navajo lands and subjecting them to unscrupulous and unconscionable dealings off the Navajo Nation must not be tolerated. Fees need to be assessed based on a company's revenues and not on "*the one size fits all*" application that is now in place. Additionally, hefty penalties should be assessed for those businesses violating the permitting process. Dealers will resort to a variety of tactics to move sales. This includes the person-to-person contacts at post offices, hospitals, homes, worksites and in parking lots at various locations where large congregations of people.
6. **The Commission recommends Navajo Nation schools revisit curriculum and instruction in math courses that are grade appropriate and relevant to consumer purchasing.** During the course of this study, the Commission found young and old persons deficient in math skills to calculate simple interest rates or to even conduct a debt to income assessment. While the Commission believes that it was successful in informing Navajo consumers that filed complaints with this office, it is essential that Navajo school children are taught the tools needed to

make a good purchase: know your debt to income ratio; calculate an interest rate; manage your money and know what a good and bad deal is.

7. **The Commission recommends the Navajo Nation government exercise caution with the solicitation of sponsorships from automobile businesses during Navajo Nation's celebratory events.** The feature for free advertisement amongst potential buyers is expected. To allow businesses with bad sale reputations to exploit and defraud its people is akin to letting in the "*fox protecting the hen house*." Navajo leaders cannot turn their heads away from the potential slaughter that is inevitable. Leaders need to convey a clear and concise statement about their expectations on fairness and equality based on Navajo and State consumer laws. Cheating consumers with deceptive tactics well not be tolerated.
8. **The Commission recommends the relationship between border town automobile businesses and the finance companies be scrutinized or simply authorize Navajo Credit Services to finance vehicles.** The practice of a financier flooring for a dealer then turning around to finance the same vehicles can create a cycle where there is no independence exercised by the financier. The true essence for predatory practice is imbedded in the floor plan agreements because the dealers time line to sell their fleet is about to expire. To avoid unscrupulous practices by financiers that floor the vehicles for dealers and in turn finance for the consumer the same vehicle, the Commission recommends that Navajo Nation authorize the Navajo Credit Services Program ("NCSP") to finance vehicles for Navajo consumers. A reputable and independent financier often plays to role of negotiating down the prices of the add-ons and price of the vehicle; certainly NCSP can play such role on behalf of Navajo consumers when it finances vehicles.
9. **The Commission recommends that the Navajo Nation Department of Economic Development develop a mechanism for approving and certifying Navajo friendly business sites off the Navajo Nation.** Navajo consumers should be encourage to shop where they know they are going to receive fair deals, good customer services and warranties on products that are sold and purchased in

border towns. The Commission cannot underscore enough that significant amount of revenues from Navajo consumers contribute to border town communities. This form of approval and recognition might serve as a deterrent to the bad businesses and business practices that Navajo consumers endure.

10. **The Commission recommends Navajo Nation leaders consider incubating an automobile sale center on the Navajo Nation.** Offering automobile sales incentives to Navajo consumers and Navajo Nation employees could spawn jobs and economic development on the Navajo Nation. Specific terms in contracts can be arranged and agreed upon to guard against consumer default rates. There are a number of failed economic development structures on the Nation that can be used to house these centers. These buildings remain empty and occupancy is vital. The Commission met with three Navajo government programs that seem fit to become the start up point to sale vehicles on the Navajo Nation: NCSP, Navajo Fleet Management and Navajo Property and Supplies. Navajo Property and Supplies would sell directly to Navajo consumers the access Navajo government vehicles coming from Navajo Fleet Management and NCSP finance the purchases.
11. **The Commission recommends the Navajo Nation government - the leaders and the Navajo people educate themselves on the United Nations Declaration on the Rights of Indigenous Peoples.** The articles contained in this important declaration are central to Navajo's existence. They reaffirm how we exercise our human rights on matters pertaining to Navajo governance, economics, health, education, natural resources, tradition, culture and the rights to self-determination, to name a few. Until our Navajo leaders can embrace the significance of this declaration and implement the framework contain in the declaration - which is built on the recognition of human rights – as a nation we can better articulate how we as a people, both individually and collectively will be respected, protected and redressed in the arena of business development and business relations.
12. **The Commission recommends border town automobile dealers adhere to and implement the Navajo Nation Consumer Protection Act.** The laws while very similar to existing State consumer protection laws provide a Navajo consumer the

opportunity to resolve dispute in Navajo courts. The long arm of Navajo law should be recognized and exercised through courts that operate very similar to courts off the Navajo Nation.



## Conclusion

Predatory sales tactics and the unconscionable deals that Navajo consumers contend with in border towns are deceptive, illegal and injure the livelihood of Navajo families that fall victim to these types of financial arrangements. The legal, political and economic implications of these practices should call for more scrutiny from Navajo leaders, city governments and the business organizations themselves. Independently, they have certain moral and legal obligations to the people they serve and do business with. To allow the continued exploitation of Navajo capital and its human resources is a violation to the human and civil rights vested in every living being.

The recognition and respect of Navajo consumer laws from jurisdictions beyond its borders would be a first step toward restoring respect and fulfilling the moral and legal responsibilities that have amiss the automobile sales industry. The rights of indigenous peoples must be defended by States, including businesses where activities are regulated by State and Federal agencies. The venue to restructure the relationship between civil societies is grounded in the principle of self determination which is recognized in international law, such as the United Nations Human Rights Council's Guiding Principles on Business and Human Rights; Implementing the United Nations 'Protect, Respect and Remedy Framework.' The willingness of the leaders from the business and governmental agencies to examine this doctrine is missing. Until a serious and sincere effort is made by Navajo leaders, city officials and business organizations to examine its application to recognizing the human rights of Navajo citizens the means for discontent, suspicion, exploitation and discrimination will continue.



## I. Public Hearing Participant Totals

The hearing totals below demonstrate a strong interest in the topic concerning predatory automobile sales. Many attending did not want to provide testimony at the hearings. However, complaints later filed after the hearings demonstrated a need for the Navajo Nation Human Rights Commission to educate Navajo consumers on purchasing automobiles. In many incidents the testimonies prove invaluable, as they established the underlying problems Navajo consumers are confronted with when purchasing a vehicle. Many at the public hearings complaint about the following; spot delivery purchases, trade-in discrepancies, a lack of effective communication, sales tactics that entailed deceit, predatory lending and sales disclosures that are not adequately presented by the dealer or asked by the buyer. The testimonies provided a snap shot of the problems Navajo consumers content with when purchasing a vehicle.

DATE	LOCATION	ATTENDEES	PRESENTERS	SURVEYS
*December 7, 2012	Dilkon Chapter	106	16	43
*December 28, 2012	Kayenta Chapter	33	7	9
*January 4, 2013	Crownpoint Chapter	78	10	31
Unknown	NNHRC Office	N/A	N/A	4
June 14, 2013	DSW Crownpoint Mtg	N/A	N/A	10
June 14, 2013	Window Rock	N/A	N/A	230
			TOTAL	333

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<sup>1</sup> The totals found on this page and the participant totals on the following pages identified as "Participant Listing" do not match. This is because five signatures were not legible.



## II. Participant Listing

Price, Eugene	Arthur, Don	James, Leta
James, Harold	Smiley, Kee	Bitahay, Maggie
Price, Irene	Henry, Levon	Etsitty, Marie
Shirley, Yonnie	Etsitty, Sr., Kee	Etsitty, Nonabah
Begay, Mary H.	Riggs, Perry A.	Nez, Elsie J.
Todechine, Mary N.	Nez, Darlene	Scott, Lorenzo
Parrish, Patricia	Blackwater, Sarah	Tsosie, Christina
Belone, Charley	Tsinijinnie, Felix	Kelly, Valeria
Yazzie, Wilford	Curtis, Amelia	Begay, Louise
Jackson, Ervin	Yazzie, Beulah	Katenay, Lorraine
Thin, La'la	Thinn, Leo S.	Hohie, K.
Walker, Jr., Thomas	Franklin, Mae N.	Begaye, Tommy
Begay, Mary L.	Begay, Wilbert	Begay, Margie
Yazzie, Renee	Nez, Marlo	Gishie, Leo
Lynch, Matilda	Bedonie, Mary	Browne, Vee F.
Lynch, Peggy	Lynch, Roger	Yazzie, Dorothea
Paddoch, Inez	Paul, Sr., Justin	Betoney, Eulah
Worker, Ruth	Morris, Ned	Joe, George
Begay, Ricky	Lander, Clifford	Cook, Lee
Cook, Ella Rose	James, Harold	James, John
James, Marie K.	Joe, Fermina	Nez, Lorraine
Frank, Nez	Chee, David M.	Chee, Mrs. David M.
Lister, Ida M.	Kaunho, Evangline	Begay, Abraham
Begay, Paula	Kahola, Jimmie	Tahy, Tony

Wilson, Leva C.	Willis, Oscar	Charley, Janet
Begay, Velma	Begay, Henry T.	Hubbard, Peterson
Yazzie, Jr., Woody	Jones, Lillie H.	Sage, Chris
Nez, Nancy	Desidero, Elkin	Niva, Nelson
Betoney, Sr., Billy	Elthie, Elsie S.	Nez, Jonathan
Yonnie, Wakley	Thompson, Jesse	Mannie, Beverly
Marble, Elizabeth	Noble, Beverly	Begay, Jerry T.
Begaye, Darlene	Yazzie, Melvin	Stayne, Charlene
Opchi, Kearney	Yazzie, Lucy M.	Yazzie, Johnny
Lewis, Janice	Yazzie, Martha	Begay, Peggy
White, Lilly	Hudson, Avis M.	Lee, Sr., Lorenzo
Lee, Marilyn H.	Barton, Christina	Kathleen, Begay
Attakai, Nancy	Banta, James	Yazzie, Ronald
Bitsuie, Sally	Naljahih, Betty	Watchman, Marilyn
Gray, Wilson	Gilmore, Ruth	Gamble, Sr., Clyde
Tinhorn, Alberta P.	Watchman, Manuel	Greyeyes, Ray
Greyeyes, Betty M.	Glasses, Nellie	Benallie, Andrew
Whitesheep, Paul	White, Bennie	Chee Salt
Sisco, Daniel	Laughter, Robert	Laughter, James
Singer, Betty	Webb, Brian	Smith, Laura
Kreiner, Ameryn	Yazzie, Betsy	Tachio, Lois T.
Etsitty, Sr., Nathan	Etsitty, Francine	Yazzie, Melissa
Salt, Jeannie	Brown, Nathanie	Luna, Shelton
Bradley, Betty D.	Begay, Elijo	Duran, Ruth
Manson, Lee	Enrico, Herbert	Davis, Erma

Lee, Nellie	O'Connor, William	Bitsoi, Alastair
Hale, Selma	Hols, Sr., Kenneth R.	Bayden, Clarence
Cody, Stephen T.	Castillo, Rita	Wigton, Mahlon
Maestas, Ameryn	Owen, Sofio	Peterson, Flora
Bennett, Marie	Tso, Barbara	Castillo, Marvin
Castillo, Adam	Chee, Gary Lee	Yazzie, Daniel B.
Klade, Evelita	Lee, Shawna	Lee, Jefferson
Hardy, Harold	Harry, Ranie	Apachito, Gracie
Apachito, Juan	Becenti, Ray	Becenti, Bernadette
Hugh, Mildred	Hugh, Wayne	Begay, Emma J.
Begay, Leo	Begay, James	Loddy, Brian
Smith, Jr., Chee	Begay, Cecelia	Martin, Billy
Yazzie, Max	Hoos, Betty	James, Mae
Platero, Lucille	Pioche, Alberta	Perry, Leonard
Nez, Jenny	Tso, Sr., Paul	Tso, Mary
Henio, James	Begay, Allison	Martinez, Peter
Blume, Eleanor	White, Lilly	Morgan, M. L.
Volkert, Vida	Toledo, Nelson	Tolina, Albert
Harrison, Louie	Pablo, Paul D.	Tom, Wade
Jones, Paul	Ahasteen, Melanie	Johnson, Grace
Johnson, Ross	Tom, Robinson	Perry, Angie
Lynch, Lucy	Lynch, Larry	James, Sr., Navy
Lewis, Jr., Cecil	Miller, JoVonna	Tolth, Juanita
Capitan, Rita	Arviso, Etta	Kellywood, Anity
Whitehorse, Jean	Murphy, Helen	Ray, Sherry





# AUTO SURVEY GRAPHS

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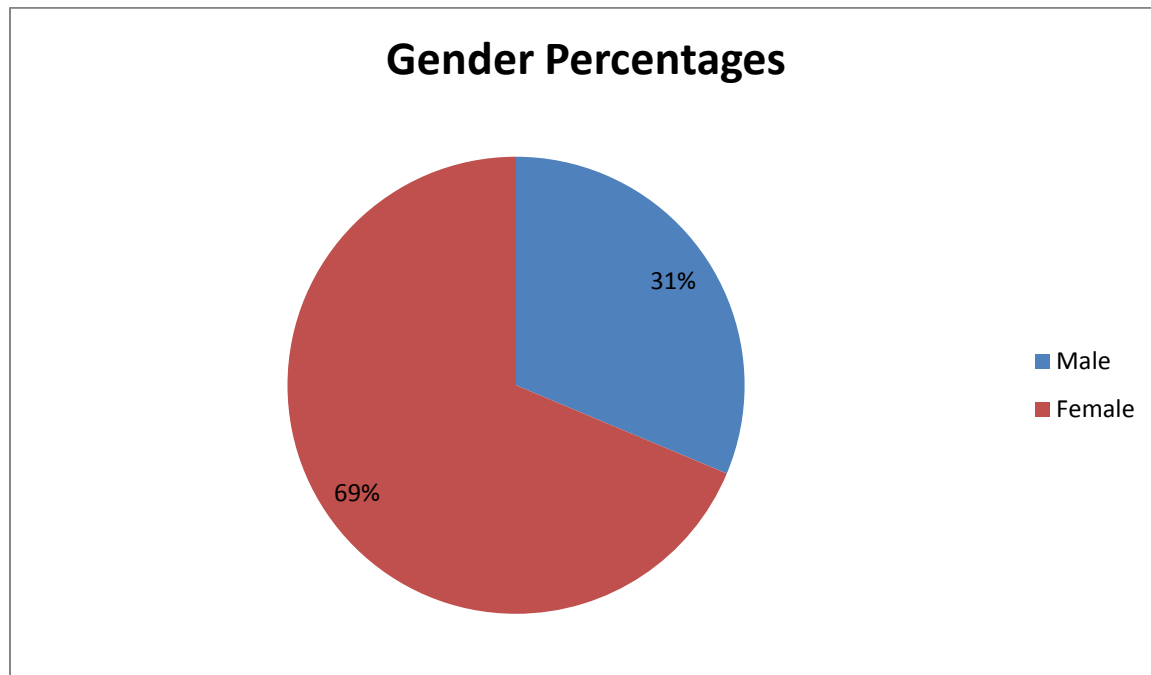


Figure 1

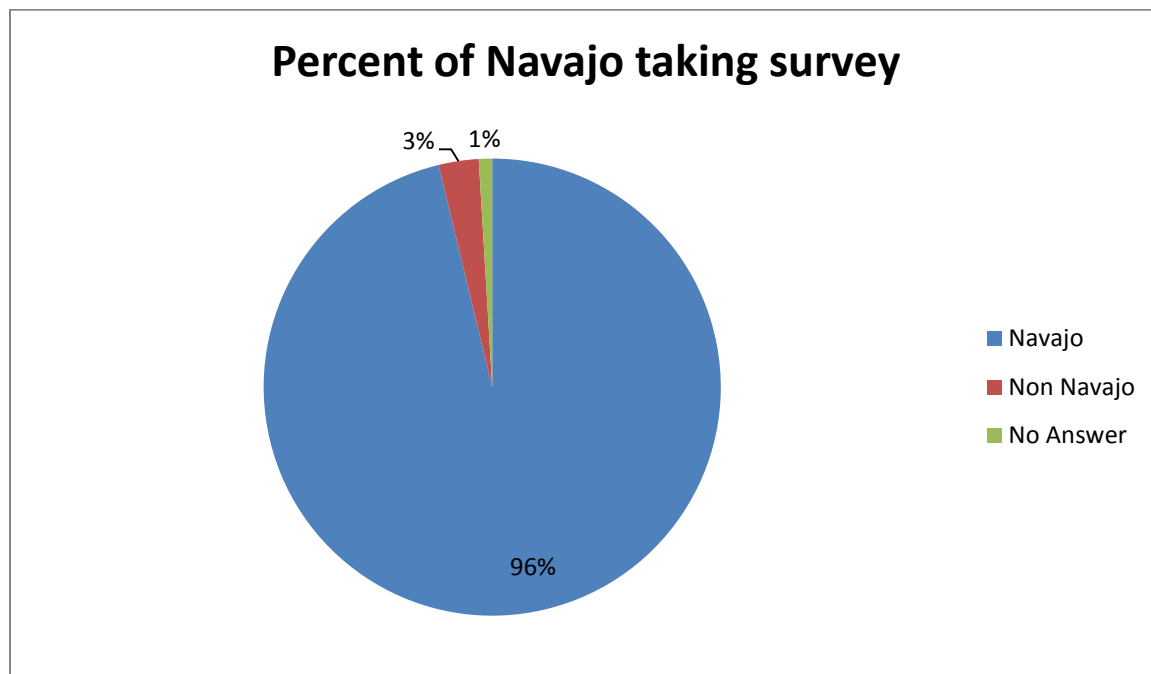


Figure 2

*\*Percentage rounded to the nearest tenth of the percentage.*

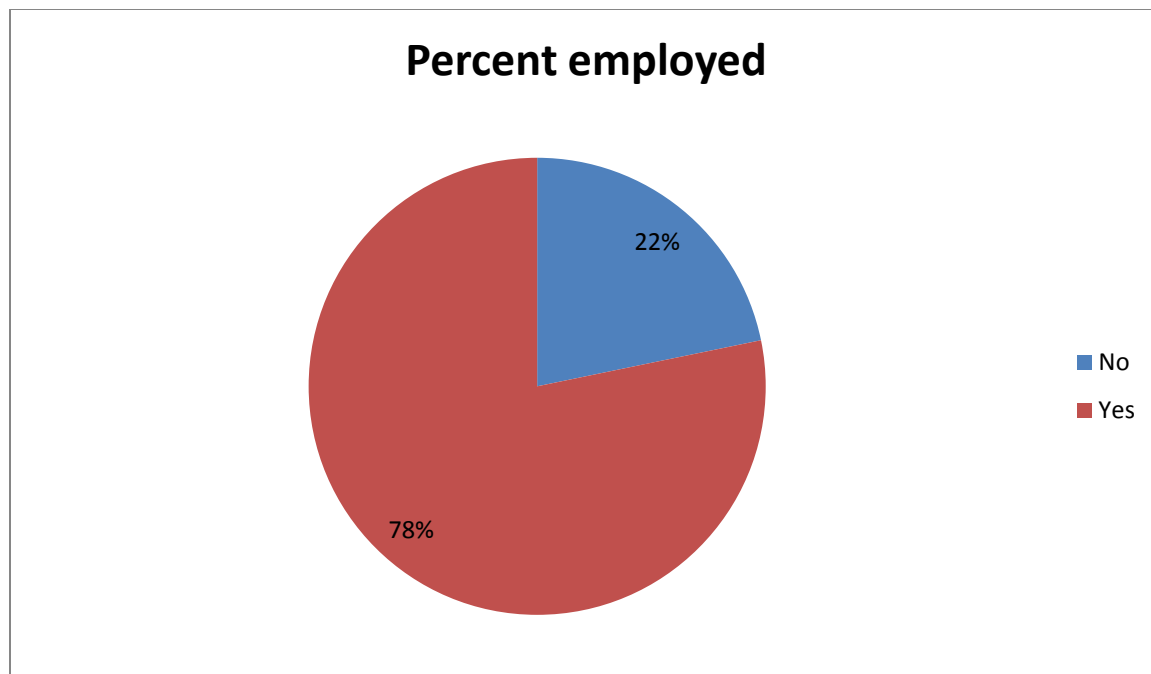


Figure 3

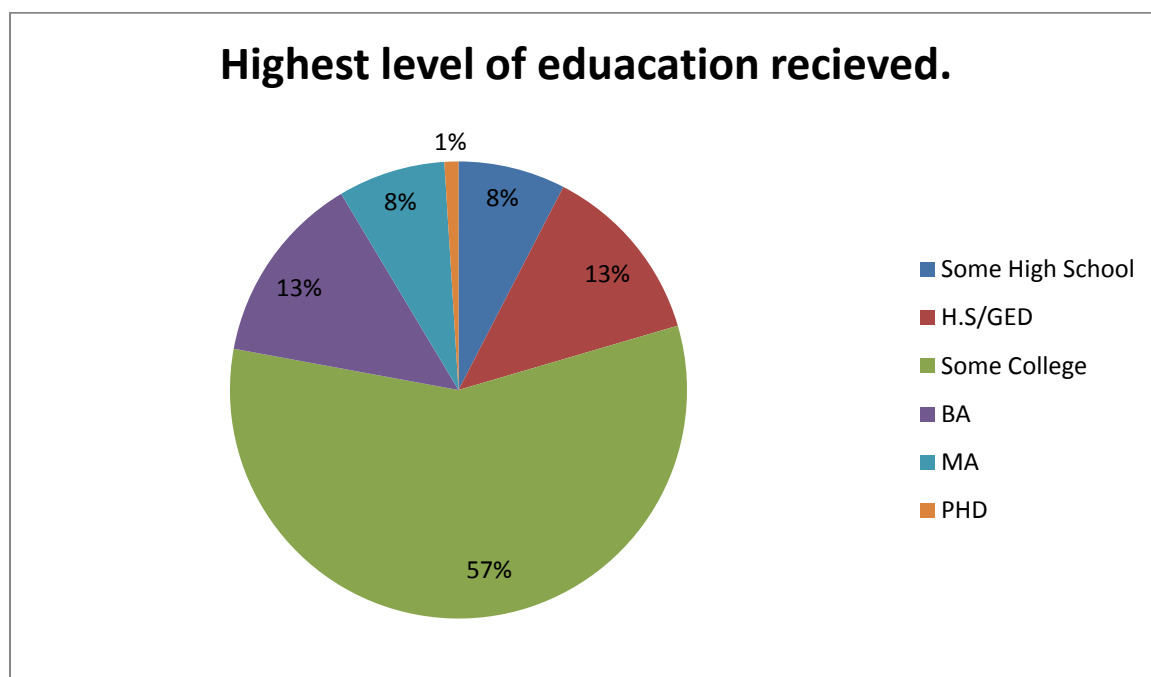


Figure 4

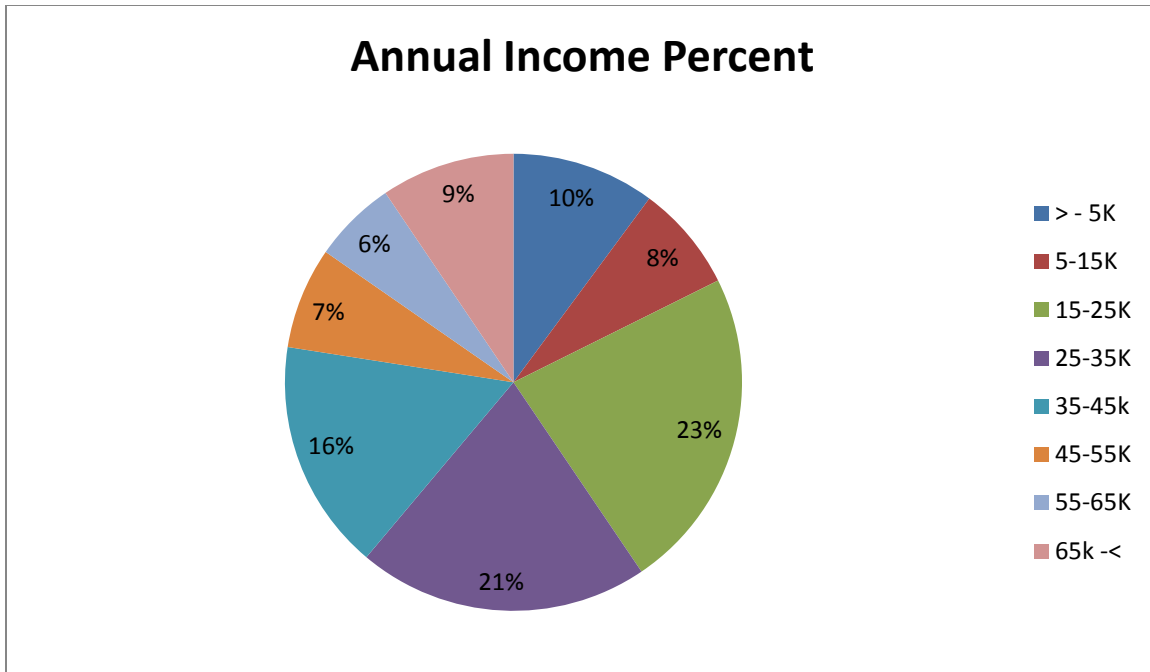


Figure 5

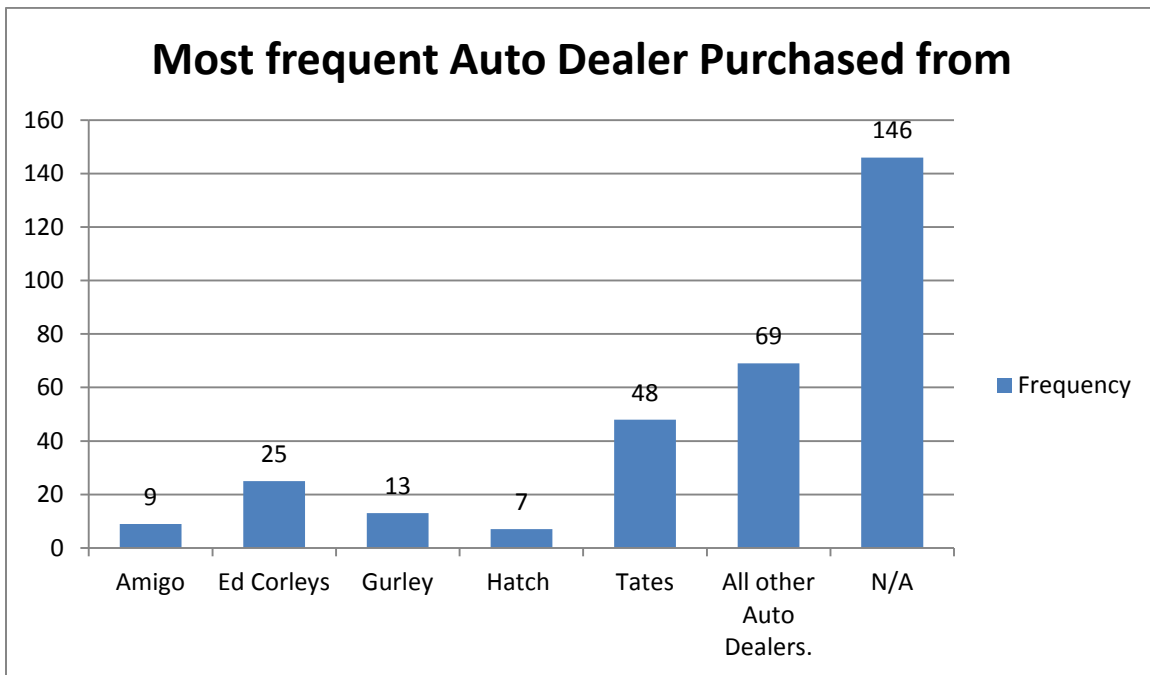


Figure 6

## What border town is the dealer located?

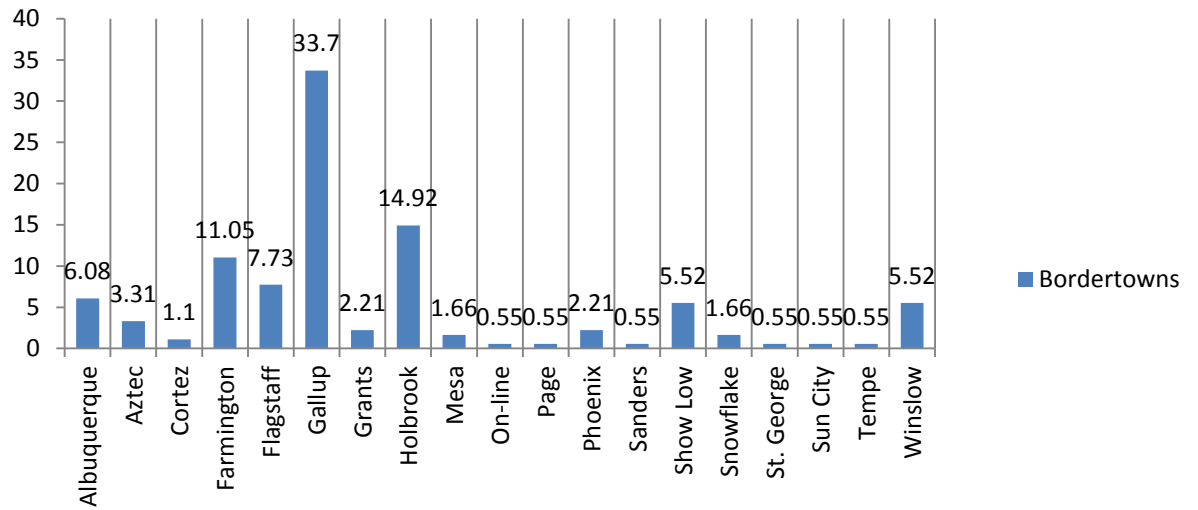


Figure 7

## Survey Responses to Problems Encountered when a

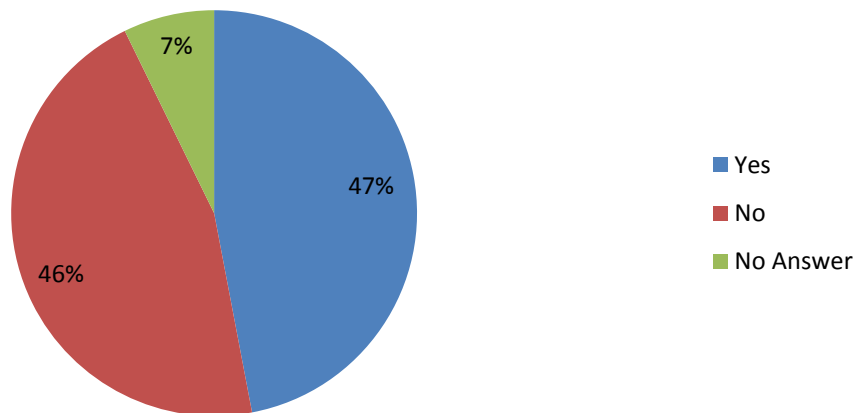


Figure 8

### If answered yes, what problems was Identified

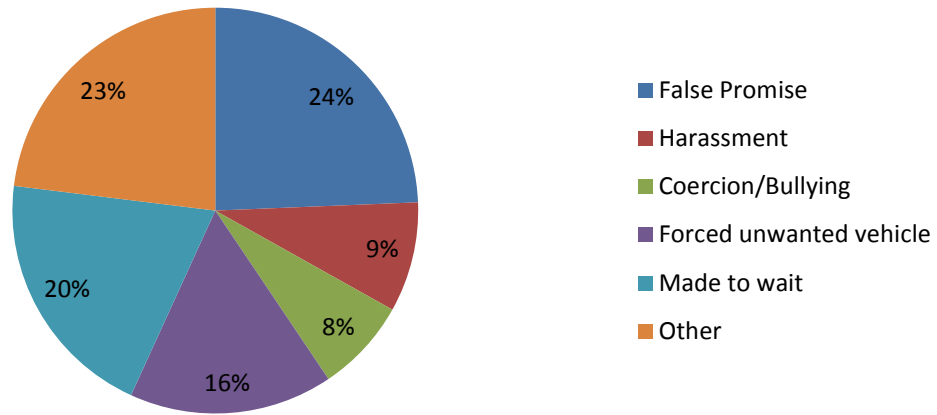


Figure 9

### Number of months vehicle was financed.

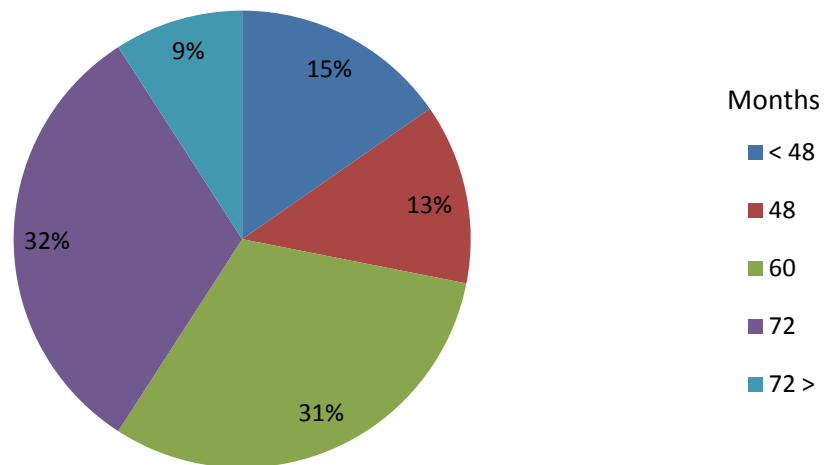


Figure 10

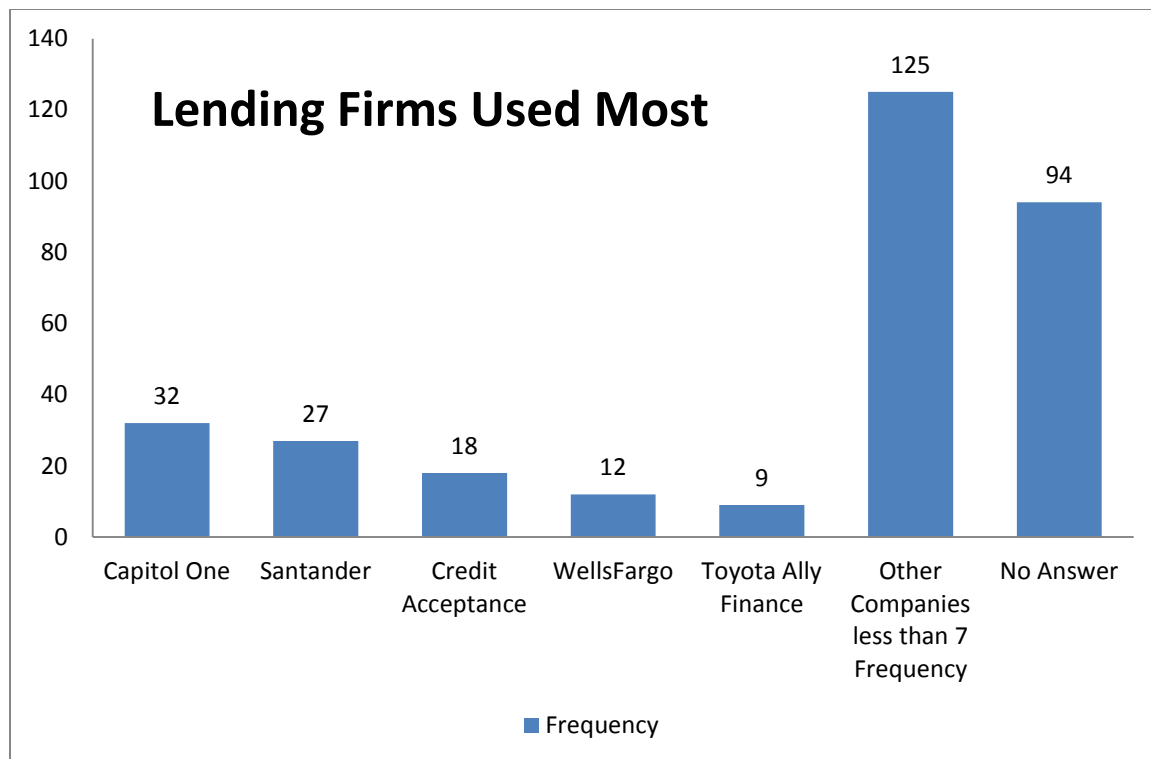


Figure 11

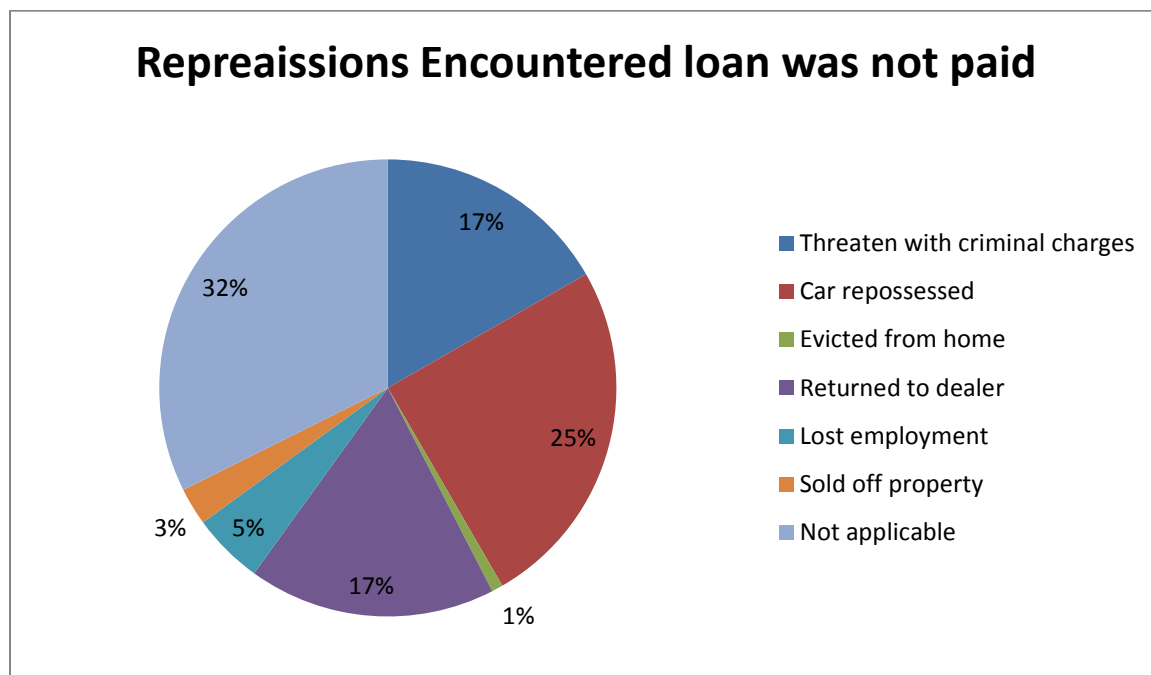


Figure 12

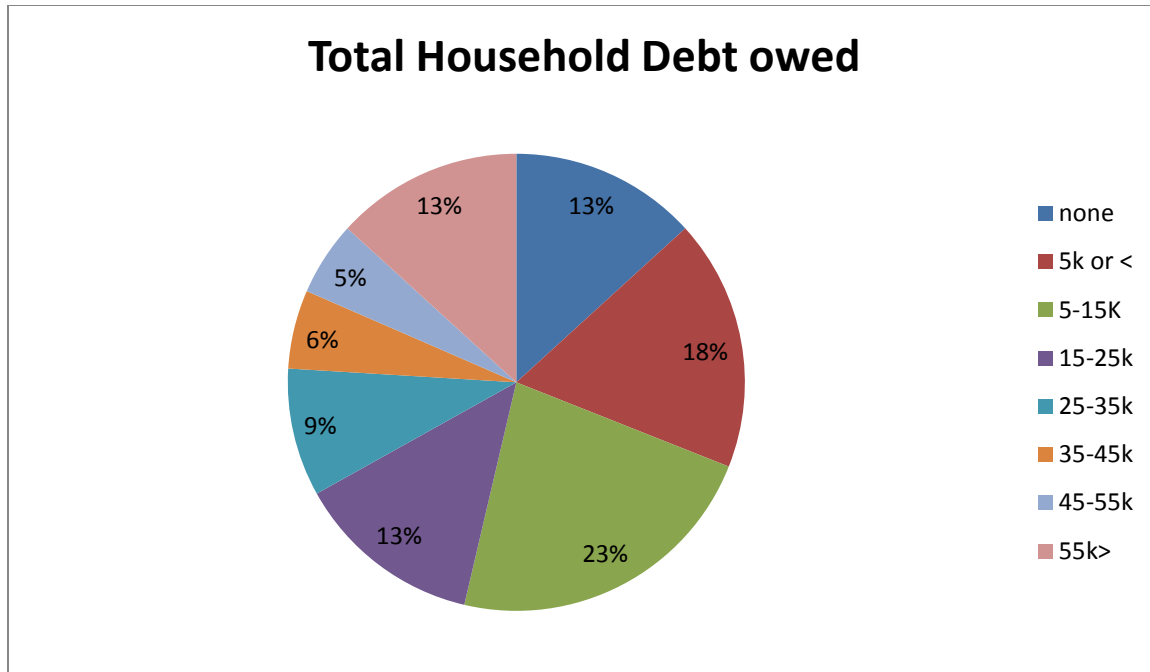


Figure 13

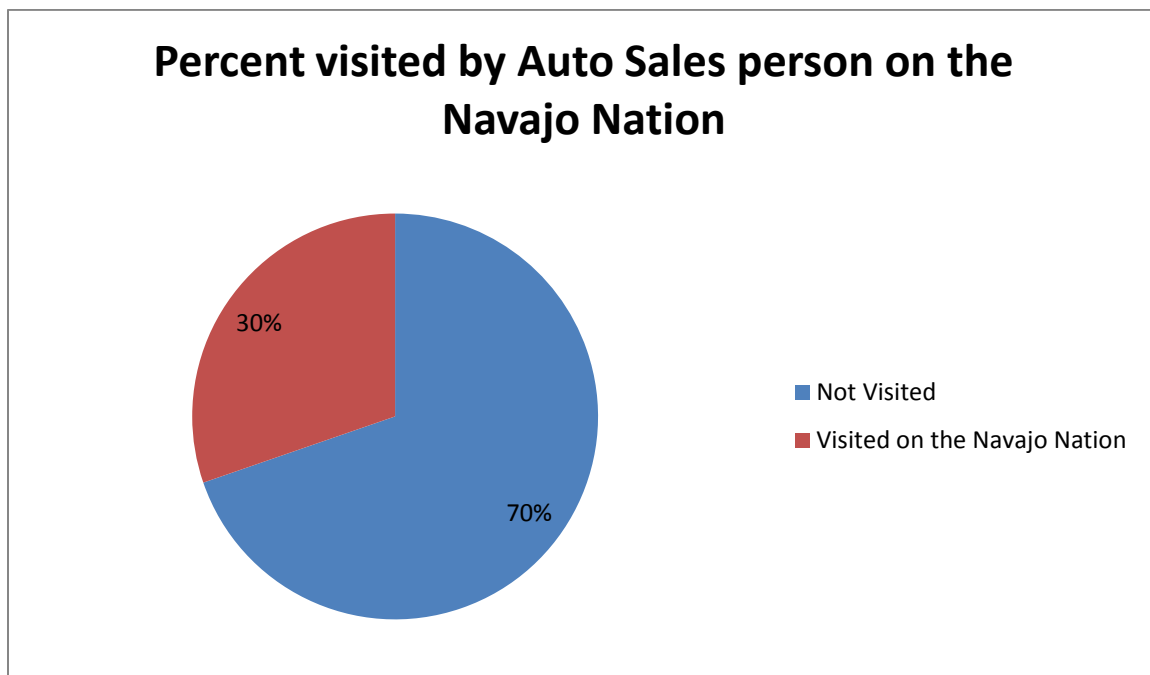


Figure 14

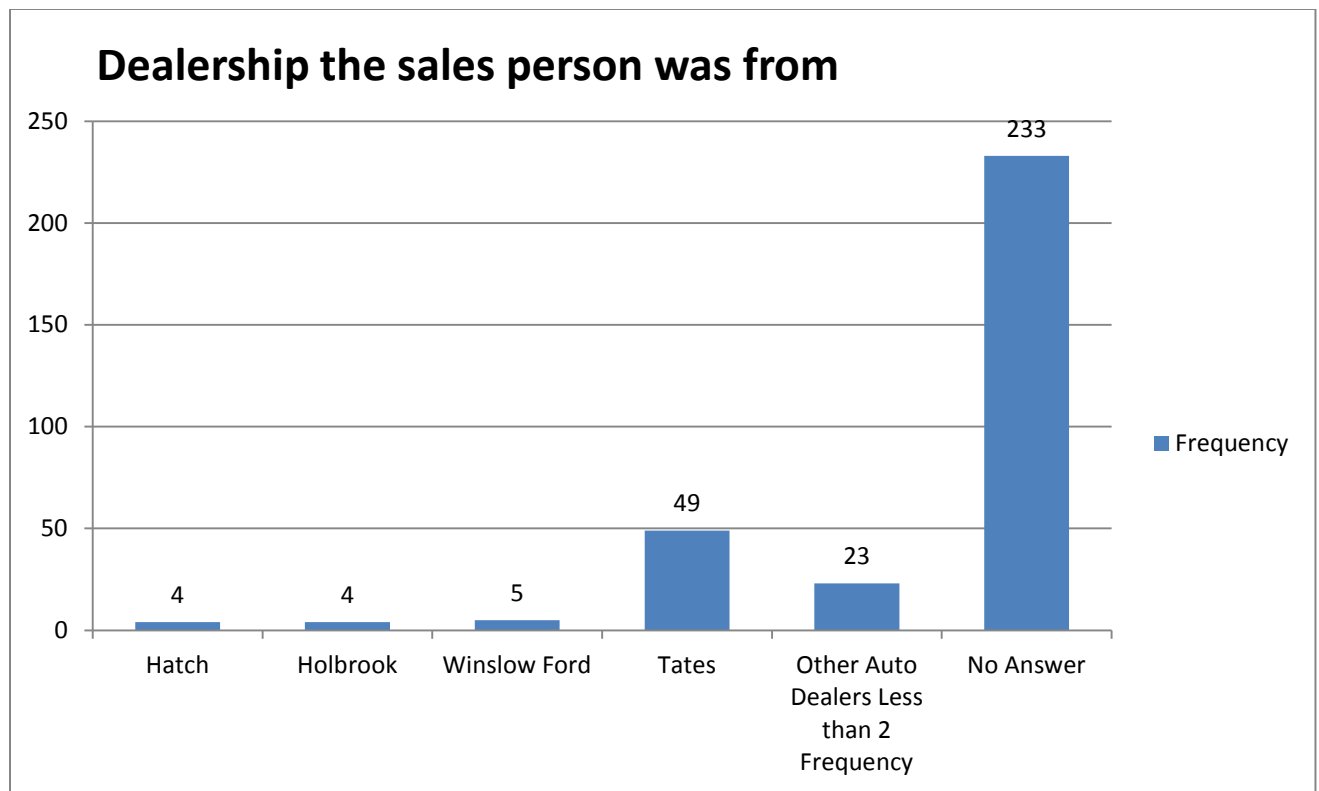


Figure 15

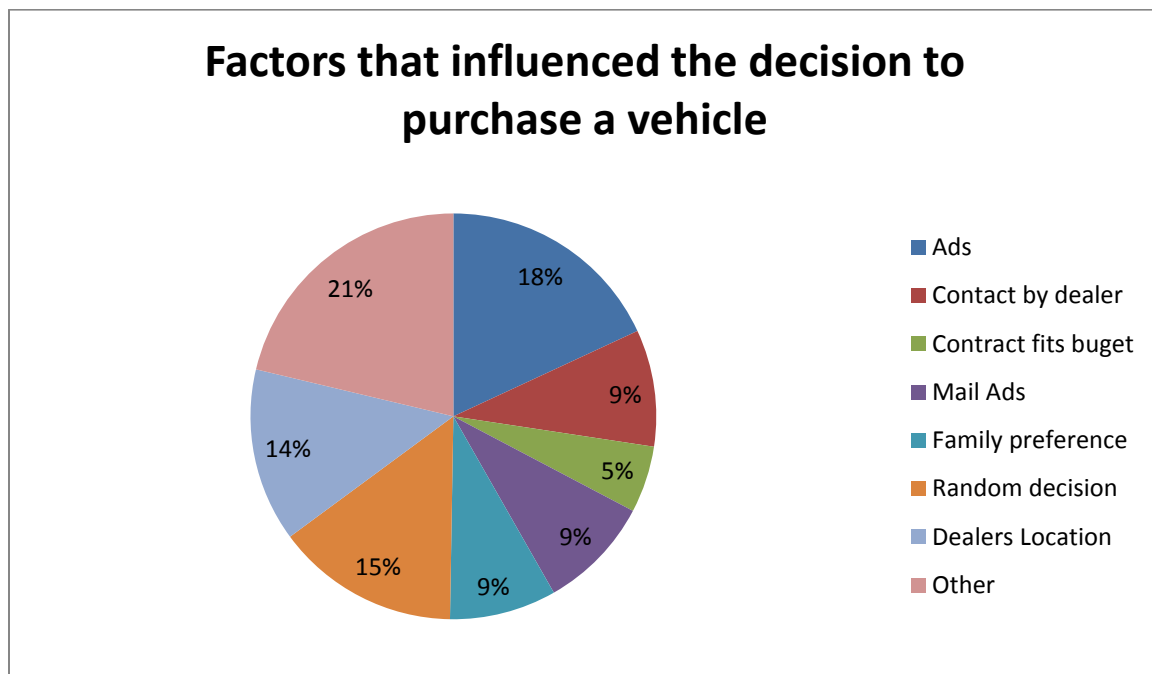


Figure 16



**Percent that researched in advance the  
vehicle prior to purchase**

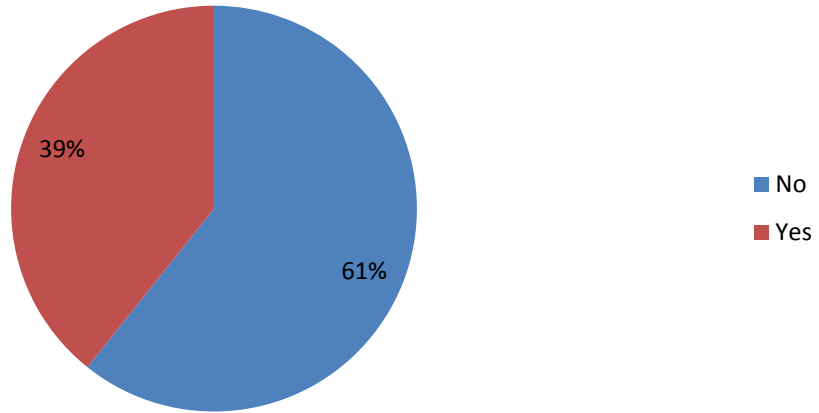


Figure 17



**YOUR ANSWERS WILL BE KEPT COMPLETELY CONFIDENTIAL AND WILL NOT AFFECT THE SERVICES YOU RECEIVE FROM ANY FINANCIAL OBLIGATION YOU HAVE NOW OR INTENT TO PURSUE IN THE FUTURE.**



## **Automobile Purchase Survey**

This survey contains questions about your experience with automobile purchases. Please check or circle the box that best fits your experience. There is no right or wrong answer to any of the questions, just answer to the best of your ability. **DO NOT** put your name on the survey.

1. What is your gender? (Check one)      ☐ Male      ☐ Female
2. Are you Navajo? (Check one)      ☐ Yes      ☐ No
  - a. If so, what Chapter are you enrolled with?  
\_\_\_\_\_
3. Are you employed? (Check one)      ☐ Yes      ☐ No
4. The highest level of education I have obtained is: (Circle one)
  - a. Some High School credits
  - b. High School Diploma/GED
  - c. Some college credits/Vocational Training
  - d. Bachelors Degree
  - e. Masters Degree
  - f. PhD or Higher
5. How old are you? \_\_\_\_\_ years old
6. How many people are currently living in your household? \_\_\_\_\_
  - a. How many children under 18 are currently living in your household? \_\_\_\_\_
7. What is your annual household income from all sources (such as wages, social security, unemployment, and TANF) in 2011? (Circle one)
  - a. Less than \$5,000
  - b. \$5,001-\$15,000
  - c. \$15,001-\$25,000
  - d. \$25,001-\$35,000
  - e. \$35,001-\$45,000
  - f. \$45,001-\$55,000
  - g. \$55,001-\$65,000
  - h. \$65,001-above
8. Since 2007, did you or any member of your household have trouble purchasing an automobile in a **border town** that is **near** the Navajo Nation? (Check one)      ☐ Yes      ☐ No
  - a. If yes, did you purchase a truck or a car? (Circle one)
  - b. What is the name of the auto dealer?  
\_\_\_\_\_
  - c. What border town is the dealer located at?  
\_\_\_\_\_
  - d. What month of the year did you purchase the vehicle?  
\_\_\_\_\_

9. Did you experience any problems when you purchased the vehicle? ☐ Yes ☐ No  
a. If yes, did any of the problems include the following (Check all that apply)  
☐ False promise ☐ Harassment ☐ Coercion/bullying  
☐ Forced unwanted vehicle ☐ Made to wait/delay tactics ☐ Other
10. What was the annual finance charge for the vehicle you most recently purchased? (Check one)  
☐ 0% ☐ 1 - 5% ☐ 6 - 10% ☐ 11 - 15% ☐ 16 - 20% ☐ Above 20%
11. How long is the most recently purchased vehicle financed for? (Check one)  
☐ Less than 48 mths. ☐ 48 mths. ☐ 60 mths. ☐ 72 mths ☐ more than 72 mths.
12. What is the name of the finance company that financed your vehicle?  
\_\_\_\_\_
13. Since 2007, when you purchased your recent vehicle did you have to take out an auto title loan? (Check one)  
☐ Yes ☐ No
14. How many operating cars or trucks do you have in your immediate household now?  
\_\_\_\_\_ Cars \_\_\_\_\_ Trucks \_\_\_\_\_ None
15. Did you or a household member take out another loan, aside of the auto title loan, to make any of the monthly payments on the vehicle? (Check one) ☐ Yes ☐ No  
If yes, what loan company approved the additional loan?  
\_\_\_\_\_  
Where is this loan company located?  
\_\_\_\_\_
16. When you or the household member took out a loan or loans, how much trouble did you have paying it back? (Check one)  
☐ None ☐ A little bit ☐ Some ☐ Quite a bit ☐ A great deal
17. Since 2007 has your household (including yourself) ever had any of the following happen to you because of no payment to the automobile loan? (Check all that apply)  
☐ Threatened with criminal charges ☐ Car repossessed ☐ Evicted from home  
☐ Returned vehicle to Dealer ☐ Lost employment ☐ Sold property to pay off loan  
☐ Not applicable
18. How much **total** debt does your household (including yourself) currently owe? (Check one)  
☐ None ☐ \$5,000 or less ☐ \$5,001-\$15,000 ☐ \$15,001-\$25,000  
☐ \$25,001-\$35,000 ☐ \$35,001- \$45,000 ☐ \$45,001-\$55,000 ☐ \$55,001+
19. Have you ever been visited by an auto sales person while on the Navajo Nation? ☐ Yes ☐ No  
a. If yes, what dealership was the salesperson from?  
\_\_\_\_\_  
b. Where did you meet the salesperson?  
\_\_\_\_\_

20. What factor influenced your decision to purchase the vehicle at this auto dealer? (Check all that apply)

- ☐ Newspaper/Radio/ Advertisement    ☐ Mail advertisement    ☐ Recommended by friend  
☐ Contacted by Dealer    ☐ Family preference    ☐ A random decision  
☐ Contract terms fit budget    ☐ Dealer location    ☐ Other

21. Did you research in advance the vehicle you purchased? (Check one)    ☐ Yes    ☐ No

a. If yes, how much did you spent researching the vehicle before you purchased? (Check one)

- ☐ None    ☐ 1 – 2 hrs.    ☐ 2- 5 hrs.    ☐ 1 – 7 days    ☐ 1 Wk. – 1 mth.    ☐ more than 1 mth.

**THANK YOU FOR YOUR PARTICPATION - The Navajo Nation Human Rights Commission would like to hear of any negative experience you had from auto dealers in border towns. Please call us at 928-871-7436 or visit our website at [www.NNHRC.navajo-nsn.gov](http://www.NNHRC.navajo-nsn.gov).**

