

Megan Horning

**BORDER TOWN BULLIES: THE
BAD AUTO DEAL AND SUBPRIME
LENDING PROBLEM AMONG
NAVAJO NATION CAR BUYERS**

Introduction

Lucille Platero, an elderly Navajo woman, traveled to a border town to purchase a car. She was looking for a small car that fit her budget. Instead, the salespeople had her test drive a large truck. The salespeople forced Ms. Platero to leave her license and social security card at the dealership during the test drive. Their high-pressure sales tactics lasted all day. In the evening, when she was tired, she agreed to purchase the truck. On her way home, the truck broke down. The dealer refused to fix the truck and repossessed the car after some time. Despite Ms. Platero's dispossession, she still received calls for the repossessed vehicle.¹

Because of the Navajo Nation's geographic remoteness, rough roads, lack of water and electricity, and vehicle-dependent livelihood, Navajo Nation² residents *need* vehicles for daily survival, ideally large four-wheel-drive vehicles. Navajo Nation border towns are the closest and most convenient locations for many Navajo individuals to purchase such vehicles. As a result, these border towns have an unusually high number of car dealerships who are eager to meet this demand.³ Navajo car buyers' geographic and cultural circumstances create a "strong demand to buy cars and incentive to sell cars," but also "create a market place ripe for excessive greed" to an even greater extent than is typically present in U.S. auto sales.⁴ Border town auto dealerships frequently exploit Navajo car buyers, especially tribal elders,⁵ through deceptive and aggressive sales tactics. The auto dealerships' zeal for profit also translates into high interest "excessive lending" through subprime lending companies.⁶ Because a car is often the "single largest investment" a

Megan Horning received her J.D. and Indian Law Certificate in 2017. She thanks Professor Nathalie Martin for the encouragement, consumer law information, and helpful writing tips she provided throughout the semester. Thanks to classmates in Professor Martin's Spring 2016 Consumer Law course for their helpful contributions and critiques of my work. Thanks to Matthew VanWormer for connecting me with auto contracts and for working directly with those affected by bad auto deals and subprime lending on the Navajo Nation. Thank you to Allison Parks and Lucas Henry for my introduction to Navajo Nation law. Thank you to Jonah Begay, Patrick Horning, and Adam Oakey for their advice on car sales. Thank you to Phoebe Tollefson and Christy Chapman for thoughtful proofreading.

Navajo family makes,⁷ the unfair auto deals and subprime lending rampant in Navajo Nation border towns are devastating for Navajo individuals, families, communities, and the entire Navajo Nation.

This article argues that due to the circumstances of Navajo Nation residents, Navajo car buyers have a greater need for cars and are therefore disproportionately harmed by unfair border town auto deals and subprime auto loans. Additionally, this article suggests several ways to address these issues while acknowledging the conundrum created if Navajo Nation residents are prevented from buying cars.

Part I of this article describes the current U.S. auto sales and lending process, including the stages of car buying, credit score calculation, and how national auto sales, lending, and investment markets profit from unfair car sales and subprime lending. Part II details the geographic remoteness, unique cultural differences, and living circumstances of the Navajo Nation and the relationship between those circumstances and the desperate need for a vehicle and the resulting vulnerability many Navajo people experience. Part III uses data from the Navajo Nation Human Rights Commission⁸ and sample Navajo purchaser auto contracts to illustrate the extreme tactics Navajo Nation border town auto dealerships and subprime lending companies used to bully Navajo car buyers into bad auto deals and unsustainable subprime loans. Part IV provides solutions to alleviate and eliminate bad auto deals and subprime loans for Navajo car buyers.

I. How salesmen, dealers, lenders, and investors profit from U.S. auto sales

The American auto sales industry works to promote dealers', lenders', and investors' profits. Section A outlines the stages of the auto sales and lending processes as experienced by car buyers. Section B describes the American credit scoring system and how it limits low-credit car buyers' choices. Section C reveals auto salespeople's, dealers', and lenders' incentives to pressure low credit score car buyers into loans they are not likely to be able to repay and details their methods for doing so.

A. The stages of a car purchase and loan

An overview of the basic stages of the car purchase-sale process is a helpful starting point for understanding auto lending in the U.S., which is discussed in the next section.⁹ First, a person interested in buying a car selects a car model and car dealer or vice versa. Next, the prospective buyer negotiates with car salespeople, employees of the dealership, to determine a car's principal price, and the inclusion or exclusion and price of additional features. Unlike other major purchases, taxes, title fees, cost of repairs and

warranties, and the costs of paying off a loan on an existing car are added to the car's list price.¹⁰

This negotiation process, and the added fees, can be confusing and stressful to buyers. One particularly stressful aspect of the negotiation and purchase process is the loan agreement. The auto dealer, lender, and buyer must all agree upon the interest rate and terms of the loan. Usually, after sending out loan applications to several lending companies, the dealer and buyer will select a loan based on the interest rate and terms offered by the lender.¹¹ This process is often known as “getting financing approved.” In determining whether a buyer should be approved for a loan, there should be an independent and objective review of a buyer's credit, which includes examining the buyer's debt-income ratio.¹² Immediately after the contract is signed, the dealer sells the contract to the lending company, which then takes possession of the car title. Consequently, the lender—not the dealership—accepts the buyer's payments until the loan is fully repaid.¹³

B. Subprime auto loans among car buyers with low credit scores

For the vast majority of Americans, cars are a primary means of sustenance and survival, a symbol of pride, freedom, and the ability to “control [] one's own destiny.”¹⁴ Research has found that car ownership is closely tied to the economic success of American families.¹⁵ Cars are frequently one of the largest assets American families own, and can often be the most valuable asset of families who do not own their own homes.¹⁶ As very few Americans are able to pay in cash upfront when purchasing a car, financing and paying installments on a loan is common.¹⁷

The auto lending industry categorizes borrowers based on their credit score.¹⁸ Credit scores below 620 are considered to be subprime and have much higher interest rates than credit scores above 620, which are considered less risky by lenders.¹⁹ Factors that can lower a borrower's credit score include multiple delinquent payments on other loans, charge-offs,²⁰ repossessions, bankruptcies, low household incomes,²¹ dilatory credit card repayments, and dilatory or partial home mortgage repayments.²² Occasionally, periods of “acute financial stress” such as a failed marriage, failed business, or high-cost serious illness can also lower an individual's credit score.²³ Many with low credit scores have low incomes or are young and have not made many purchases on credit.²⁴ These low scores yield higher interest rates during financing. Dividing borrowers into two distinct categories—low-credit risk prime lending and medium to high credit risk subprime lending—results in a disparate impact on lower credit scoring auto loan borrowers.²⁵

Most auto loans are given to borrowers with “prime” credit scores,²⁶ borrowers whose credit report factors include “having a credit history of at least

three years, non-delinquent historic performance on installment debt, and at least two years of employment.”²⁷ Borrowers with prime credit scores can often obtain low interest auto loans directly from their own finance company, bank, or credit union.²⁸ In these loans, the borrower signs a contract with his or her finance company, bank, or credit union to pay the “amount financed” which is the total price determined with the dealership plus a finance charge, which is an interest rate set by the finance company, bank, or credit union.²⁹ The finance company, bank, or credit union will then loan the borrower cash to purchase the vehicle in exchange for a security interest in the car.³⁰ Since the subprime mortgage crisis, banks have tightened lending standards and it is even more difficult for borrowers with medium to low credit scores to obtain low interest loans.³¹

Subprime borrowers can often only obtain auto loans from subprime lending agencies because of the tightened restrictions traditional lending agencies place on subprime borrowers.³² Most subprime auto loans are executed through three forms of dealership financing:³³ (1) the dealer solicits outside lending companies to evaluate the borrower’s credit and offer the borrower a loan;³⁴ (2) the dealer’s own financing arm purchases the loan;³⁵ or (3) a traditional banking or financing institution carries the loan.³⁶ All three forms of subprime auto lenders charge much higher interest rates than the rates charged for prime auto loans.

For example, interest rates above six percent are considered very high for an auto loan.³⁷ Interest rates in subprime auto loans, however, can rise to the double digits, resulting in a loan with eventual costs that are equal to or more than the car’s actual value.³⁸ Nevertheless, many car buyers have no choice but to enter into subprime auto loans despite higher interest rates, because their need for a car outweighs the costs of obtaining one.³⁹

If a buyer enters into a subprime loan with an unreasonable repayment plan, particularly in light of the buyer’s income, it is likely that the car will be repossessed when the buyer inevitably defaults. Upon repossession, the holder of the contract can sell the car at auction to recover some of the costs of the car. However, because the car has likely depreciated in value, the holder is unlikely to recover the contract price. Consequently, the lender may choose to obtain a deficiency judgment against the buyer, where the buyer becomes responsible for the difference between what the lender received at auction and the price of the vehicle under the purchase contract.⁴⁰

C. High profits drive auto salespeople, dealers, lenders, and investors to lend to and invest in low credit car buyers

While high interest rates associated with subprime lending clearly disadvantage borrowers, there are strong incentives for auto dealers and auto

lenders to offer subprime loans. Although it may seem counter-intuitive for dealers and lenders to provide financing to borrowers less likely to repay their loans, dealers and lenders actually benefit from making subprime loans and carrying large quantities of subprime loan debt. These benefits outweigh the corresponding risks of default, which has in turn led to a dramatic growth in subprime auto-lending industries and investment in such industries.

1. Dealer incentives for subprime loans and unscrupulous tactics

Auto-dealers are motivated by numerous incentives and kickbacks that accompany auto sales and auto lending.⁴¹ On the most basic level, because auto salespeople are paid on commission they are motivated to sell as many cars and make the largest loans as possible.⁴² With the general aim of making profits, auto salespeople and dealerships engage in insidious practices to push auto loans on people with low credit scores. While the loans themselves are legal, the sales tactics used appear less so.

In some cases, the aggressive sales tactics used on vulnerable subprime buyers include fraud and deception. First, auto dealers receive dealer reserve kickbacks, which are “a slice of the interest on the loan” given to dealers by lending agencies every time they make a new loan.⁴³ Accordingly, auto salespeople push borrowers towards higher interest rate loans because the kickback percentages are higher for higher interest rate loans. This is true even when a borrower’s credit score could qualify for lower interest rates.⁴⁴ Second, these kickbacks incentivize simple overselling. Salespeople are encouraged to persuade purchasers to choose bigger, more expensive cars. A bigger car requires a bigger loan, which results in a greater kickback to salespeople.⁴⁵

Auto salespeople can also increase the overall size of a loan by “loan packing,” which adds “overpriced and unused or frankly unnecessary” products to the loan, such as guaranteed auto protection (“GAP”) insurance,⁴⁶ rust-proofing,⁴⁷ extended service contracts, or warranties that are already covered by the manufacturer. GAP insurance is optional insurance coverage added to a collision insurance policy and may pay the difference between a car’s loan balance and what the insurance company will pay if the car is considered a covered total loss.⁴⁸ Similarly, by adding hidden fees called “add-ons” to purchase contracts, auto salespeople can increase the size of a loan without borrowers noticing until they leave the lot and the loan is final.⁴⁹

Bait and switch tactics are also used to increase the size of a loan, which involves substituting more expensive cars, with added features, after a buyer has already committed to a basic model.⁵⁰ Finally, as noted above, auto loans are frequently made to cover both the purchase price of a new car and the negative equity on a borrower’s trade-in.⁵¹

In addition to the kickbacks, auto salespeople and dealers employ practices that can increase profits even after a loan is finalized. For instance, when borrowers fail to pay their auto loans, dealers often repossess their cars and sell them for a higher value in a practice called “churning.”⁵² In some instances of churning, “hundreds of cars have been sold multiple times by used car dealers.”⁵³ This practice has also evolved into the often-illegal practices of spot delivery and yo-yo car sales, both described in detail below.

For some dealers and auto salespeople, the profit-motive is so strong that they resort to “illegal business practices, such as forging signatures on sales contracts, falsifying information on credit applications, and wrongfully repossessing vehicles.”⁵⁴ Ultimately, once the contract and title of the car have been sold to the lending agency and the auto dealer receives the purchase price of the car, and receives its cut of the interest, the auto dealer is no longer accountable for the car’s costs. Accordingly, the risk of default has passed to the lending agency.

2. Lender incentives to make subprime auto loans

Despite the assumption that lending companies are only successful if borrowers repay their loans, auto lenders also have significant motivations to make subprime auto loans. A common assumption in the lending business is that “the risk of not being paid back on the loan [should] act[] as a constraint on lending behavior and encourage[] lenders to monitor credit worthiness of the borrower out of self-interest.”⁵⁵ If the lender collects enough in interest and fees over time, however, the lender may still make a profit even with a loss of some of the principle.⁵⁶ Thus, there are several ways auto lenders profit from the fees and interest charges on subprime auto loans. In general, lending companies profit from the interest rates they charge borrowers, and occasionally, this interest can generate a profit greater than the value of the car itself.⁵⁷

One way lending companies profit from subprime auto loans is when the dealer and lender agree to permit the dealer to mark up the borrower’s interest rate from the rate originally set by the lending company. This increase is added to the dealer’s profits. This strengthens the relationship between the lender and dealer, ensuring the lending company’s continued business with the dealer.⁵⁸ Lenders can also profit from subprime auto loans by allowing dealers to screen borrowers for them. This saves the lender from paying screening fees.⁵⁹

Moreover, because auto loans cannot be discharged by bankruptcy,⁶⁰ lenders are promised repayment or repossession.⁶¹ This assurance provides an “enormous incentive” for auto lenders to lend to borrowers with low credit who are unlikely to repay and has led to “excessive” subprime auto lending.⁶²

The risk of not profiting when a borrower fails to pay his or her auto loan is mitigated through churning, as discussed above.⁶³ In fact, repossession has become increasingly easy for lenders as automatic systems that locate and shut a car off remotely have replaced the traditional method of sending repo men to find, boot, and tow away cars upon default.⁶⁴ Subprime auto lending is a profitable practice for auto lenders because the risk of losing profit on defaulted subprime loans is mitigated by high interest rates that survive bankruptcy and the ease of selling a repossessed car.

Additionally, loan securitization, bundling, and reselling create a culture that disregards borrower default. Lenders' lack of concern as to whether loans will be repaid stems from the lender cashing out on the loan early and selling any associated risks early on in the loan's life.⁶⁵ In turn, securitizing, bundling, and reselling encourage lenders to find higher numbers of low credit borrowers to increase profits.⁶⁶

3. Investor incentives to invest in subprime auto loans

As noted above, subprime loans are often "bundled" together, and after a series of repurchasing and repackaging, these bundles are sold to an investor in a hedge fund or high yield mutual fund.⁶⁷ Specifically, after a lending company takes the title of a subprime auto loan, it typically bundles it with thousands of similar auto loans into a "collateralized bond instrument."⁶⁸ These collateralized bond instruments can then be "sold off in pieces to the highest bidders"⁶⁹ as if they are "investment grade securities."⁷⁰ These bidders are investors seeking returns on the high double-digit interest rate charges levied on subprime auto loans. Inflated interest rates yield great returns for investments, particularly "in a market where interest rates on whole hover stubbornly close to zero."⁷¹ Additionally, collateralized subprime loans are appealing to investors because they have high returns compared to other auto loan investments and carry substantially lower risks than subprime mortgages.⁷² For example, Wall Street stockbrokers have been successful in selling subprime auto loan bundles to even "the most stalwart institutional investors, including insurance companies and public pension funds."⁷³ These collateralized subprime loans are perceived as a reliable investment because the "sheer necessity of car ownership...precludes the possibility of a huge decline in overall sale."⁷⁴ Through securitization, auto dealers and lenders offering subprime loans pass the risk of default onto investors, which in turn places the risk of loss upon public pensions.⁷⁵

Investors are essentially gambling when they invest in bundled subprime loans. Investors wager that a sufficient number of borrowers within the bundled security will be able to pay enough of their loans to generate a profit, notwithstanding that many will default along the way. And, because

subprime loans have extremely high interest rates, lenders enjoy good odds that they will profit before the borrower goes under and defaults. However, in spite of good odds, such investments always carry an inherent risk that a larger number of buyers will default, resulting in overall losses to the investor.⁷⁶ While it would seem poor judgment to invest in loans that are unlikely to be repaid, the strong motivation for profit encourages auto dealers and lenders to offer subprime auto loans. Likewise, profit is the driving force in investors' "buying fren[zy]" in subprime loan instruments.⁷⁷

4. The subprime auto industry is sparsely regulated

Taking into account Americans' persistent need for cars and the rapid growth of the subprime auto-lending industry, the subprime auto industry is surprisingly unregulated. While the economic downturn after the mortgage crisis spurred new regulations that cracked down on subprime lending for home mortgages and credit cards,⁷⁸ auto sales lobbyists successfully spared the auto-lending industry from similar regulations, including the Dodd-Frank Wall Street Reform Act⁷⁹ and the Consumer Financial Protection Bureau.⁸⁰ Consequently, high interest rate loans, like subprime auto loans, are generally legal under state and federal law and there are few legal regulations for policing the subprime auto loan industry.⁸¹ This lack of enforcement power, paired with the multi-level motivation for profit, perpetuates a "vicious cycle of aggressive [subprime auto] lending."⁸²

5. Many subprime loans are predatory

There exists a "marketplace ripe for excessive greed[.]" because of the continued and widespread demand for cars and the strong incentive for profits at all levels of the auto sales industry.⁸³ Advocates for auto buyers and borrowers struggle to balance the need for regulation with low credit buyers' need for financing.⁸⁴ As subprime lenders serve people with no alternative access to credit, "subprime loans target some of the nation's most desperate and least financially savvy consumers, many of whom have experienced extended periods of dire financial straits" or come from communities that have been systematically denied credit.⁸⁵ While not all subprime car loans are the result of predatory tactics,⁸⁶ many are predatory in nature because auto dealers regularly and unfairly engage in deceptive and fraudulent practices. Thus, most subprime loans in the last decade have been the product of predatory lending practices.⁸⁷

6. Harmful effects of subprime auto loans on borrowers, families, and communities

The growth of the subprime lending industry and related lack of industry regulation has resulted in harmful effects for borrowers, their families, and

the communities in which they live. Subprime auto loans can put individual borrowers into cycles of debt that impact the family and individual's emotional and financial health for generations. These cycles of intergenerational debt, in the aggregate, can hinder an entire community's economy, and even threaten the stability of the national economy as happened in 2008.

Subprime auto loans' harmful effects wreak long-lasting and detrimental financial havoc on borrowers. Typically, subprime borrowers borrow much more than what their car is actually worth and take much longer to pay off loans compared to borrowers with prime auto loans.⁸⁸ For example, in order to keep a low credit borrower's monthly payments low, subprime lenders stretch the borrower's installment payments out for a longer term.⁸⁹ While the average prime auto loan lasts four to five years, it takes close to six years to pay off the average subprime auto loan.⁹⁰ Longer loan periods give subprime borrowers' cars' trade-in value more time to depreciate, ultimately causing many subprime borrowers to transfer the remaining balance left on a worn-out car to a new car purchase.⁹¹ Alternatively, someone who purchases a car with a subprime auto loan may pay for the car for months or years after the car is no longer running and worthless. The harmful effects of subprime loans bring individuals—whose finances are already unstable—into a cycle of “incur[ring] excessive debt.”⁹²

The cycle of debt incurred from subprime auto loans also impacts the families and communities of borrowers. A borrower's debt and associated low credit score affect the upward economic mobility of borrowers' children.⁹³ This occurs in two ways. First, financial stress experienced by parents can inhibit children's learning in school, well-being at home, and later pose a barrier to higher education.⁹⁴ Second, like other forms of intergenerational poverty, parents pass on to their children their low credit scores and correlated high interest rates and debt. For example, parents with a low credit score may not be able to cosign on a child's auto loan, borrow through a bank or credit union, or assist in paying off a vehicle quickly.⁹⁵

On a larger scale, excessive indebtedness also harms communities. For example, borrowers with high interest rates are less able to make purchases or investments that contribute to their local economy, and may even avoid entrepreneurship.⁹⁶ Such collateral consequences contribute to a cycle of poverty where the poorest are forced to incur the highest rates of debt in order to purchase a car.⁹⁷ This adds to the growing national wealth gap⁹⁸ and maintains an economic underclass in our society.⁹⁹ On a national scale, economists warn that the same factors that led to the mortgage crisis and dramatic economic downturn in 2008¹⁰⁰ are also present in the subprime auto lending industry and pose serious risks for our nation's economic future.¹⁰¹

II. Navajo Nation residents are especially vulnerable to bad auto deals and subprime auto loans

The Navajo Nation and the surrounding border towns are one area of Indian Country where unfair car sales and lending practices disproportionately impact low income Native American car buyers. These circumstances result in the Navajo Nation's residents' unique vulnerability to predatory lending schemes in the car industry.

The following section describes some of the realities of Navajo life today with respect to Navajo Nation residents' heightened need to buy cars and their vulnerability in auto deals. Section A shows how Navajo Nation residents' rough roads, spread out homes, and sources of income require car ownership for survival. Issues involving poverty, literacy, and language are the three most influential factors that make some Navajo car buyers especially vulnerable to unfair auto sales and lending. Section A also describes the limited options Navajo Nation residents have to purchase goods, services, and cars in border towns where exploitive sales practices are prevalent. Section B outlines the Navajo Nation's legal response to these unfair auto sales and lending practices. It focuses on how this civil regulatory jurisdiction is limited by the Navajo Nation's borders.

A. Realities of Navajo Nation life

The Navajo Nation, home of the largest Native American tribe in the United States, spans Arizona, Utah, and New Mexico and covers over 27,000 square miles.¹⁰² In 2014, the Navajo Nation population totaled over 300,000 members,¹⁰³ more than half of whom resided on the Navajo Nation reservation.¹⁰⁴ The Navajo Nation is admired by outsiders for its maintenance of Navajo language and culture, traditional lifestyles¹⁰⁵ and high desert landscapes, from red sandstone spires and canyons to mountains and plateaus.

The Navajo Nation extends about 160 miles north to south and just over 300 miles from east to west.¹⁰⁶ There are about 15,000 miles of public roads on the Navajo Nation.¹⁰⁷ However, this estimate does not include the hundreds of miles of personal roads individuals have built from main public roads to reach their rural homes. Within the Navajo Nation, only 23 percent of public roads are paved, while the remaining majority are dirt roads.¹⁰⁸ Public transportation is rare in most parts of the Navajo Nation¹⁰⁹

Due to the geographical breadth of the Navajo Nation and the limited infrastructure, Navajo Nation residents live differently from other Americans. Vehicle ownership is very important to this lifestyle. Most Navajo Nation residents live spread apart in small single-family homes with extended family.¹¹⁰ Many of these homes do not have running water, electricity, and telephone and

internet services.¹¹¹ To address these needs, many Navajo families use their vehicles to haul water in large plastic tanks from nearby towns and wells and haul coal or wood to heat their homes.¹¹²

Vehicle ownership is also essential to Navajo Nation families' income. Working away from family home sites or away from the Navajo Nation is a primary source of income for many Navajo Nation residents. Most of these jobs require long daily commutes to worksites in border towns, schools, hospitals, power plants, or mines. Additionally, numerous Navajo workers generate income by traveling across the United States to do welding, construction, or mining work at temporary job sites. These workers not only use their vehicles to travel to job sites but also live out of their vehicles while on the job. Other Navajo workers derive income through Jeep and truck tours of tourist destinations such as Monument Valley, Canyon de Chelly, and Antelope Canyon. Many Navajo Nation families make or supplement their income and continue traditional ways of life by raising livestock, such as cattle, sheep, goats, and horses.¹¹³ Consequently, having large trucks to haul water, feed, and trailer livestock is critical to this source of income.

In combination with the high need for vehicle ownership explained above, high poverty and illiteracy on the Navajo Nation make many Navajo Nation car buyers vulnerable to unfair auto sales and lending practices.¹¹⁴ In 2010, 38 percent of Navajo Nation residents were classified as severely poor and living below the poverty line.¹¹⁵ That same year, the median household income of Navajo Nation residents was \$27,389.¹¹⁶ About half of the Navajo population speaks the Navajo language at home, while many elders speak only the Navajo language.¹¹⁷ Many middle-aged and elderly Navajos were either subjected to deliberate and abusive assimilation practices in boarding schools, or did not attend school at all. This resulted in many not learning to speak, read, or write English well.¹¹⁸ This problem has carried over to twenty-first century Navajo students because of a lack of school funding and inadequate culturally responsive education.¹¹⁹ They are often not as academically successful as their non-Navajo peers.¹²⁰ These poverty, literacy, and language factors contribute to Navajo car buyers' vulnerability during exploitive sales and lending practices.

Border towns, which are situated just across the Navajo Nation borders, serve as hubs of goods and services for Navajo Nation residents and as homes for many Navajo tribal members who work off the reservation. The largest of these border towns are Page, Arizona; Holbrook, Arizona; Winslow, Arizona; Flagstaff, Arizona; Gallup, New Mexico; Grants, New Mexico; Farmington, New Mexico; Albuquerque, New Mexico; and Cortez, Colorado.¹²¹ These border towns often contain the nearest grocery stores, clothing and supply

stores, banks, hospitals, schools, laundromats, and restaurants for many Navajo Nation residents.¹²² For some Navajo Nation residents, the drive to the nearest border town is often over 100 miles.¹²³ Depending on the season, reaching these border towns require Navajo residents to traverse deep sand, mud, snow, and ice.¹²⁴

The Navajo Nation Humans Rights Commission describes Navajo Nation residents' travel to these border towns as a "daily exodus." Each day, approximately 12,470 vehicles travel into Gallup and 7,015 vehicles travel into Farmington.¹²⁵ These counts show just how crucial vehicle ownership is for Navajo families who travel to border towns for goods and services. Furthermore, the Navajo Nation Human Rights Commission, recognized the emotional importance of vehicle ownership to Navajo families, when it stated that "[a]cquiring a new vehicle brings pride to a household and instills a sense of accomplishment and wealth."¹²⁶

As a result of border towns being isolated hubs of commerce, there is a long-standing pattern of commercially exploiting the Navajo residents' heavy reliance on the border towns' goods and services. Border town main streets are often lined with trading posts, pawn shops, payday lenders, auto title lenders, tax anticipation lenders, rent-to-own furniture stores, liquor stores, and bars. And many border towns are infamous for poverty, violence, alcoholism, and alcohol-related deaths.¹²⁷ Yet, as discussed below, one common and often unmentioned venue of border town exploitation is car dealerships. All of the above factors illustrate the unique and heightened "need for transportation" among Navajo Nation residents,¹²⁸ and the ways in which Navajo customers are vulnerable to car dealers' greedy auto sales tactics and high interest rate loans.

B. The Navajo Nation's legal response to residents' need for vehicles

In light of the residents' vulnerability to exploitive commercial practices, the Navajo Nation Council enacted a highly protective consumer protection law in 1999.¹²⁹ The Navajo Nation Consumer Practices Act ("Act") protects consumers from unfair, deceptive, and unconscionable sales practices by sellers of goods and services within the Navajo Nation.¹³⁰ The Act directly addresses car sales, including provisions on motor vehicle warranties, and provides the right to ask for a Navajo language translator and caps on interest rates.¹³¹ Further, the Act precludes repossessing cars from the Navajo Nation without the owner's voluntary written consent or an order from a Navajo Nation court.¹³² While the Act aspires to protect Navajo car buyers, the place of sale determines its application. As a result, many of its provisions are inapplicable to Navajo car buyers who purchase vehicles in border

towns just outside of the Navajo Nation.¹³³ Instead, state law and state courts govern such sales.

III. Unfair border town auto deals and subprime lending to Navajo car buyers

The discriminatory practices of Navajo border town auto dealers and lenders are particularly acute when compared to the national auto sales and lending climate. Furthermore, the magnitude of high interest subprime auto loans sold to Navajo car buyers harms the purchasers, their families, and communities. Part IV below details the drastic discriminatory circumstances Navajo car buyers experience when purchasing and paying off vehicles based upon data from a recent Navajo Nation Human Rights Commission Report (“Report”)¹³⁴ and analysis of sample the auto contracts and finance applications from recent Navajo car buyers.

A. Navajo car buyers are isolated from information and competition

This section draws upon the experiences of Navajo car buyers to illustrate the ways that border town bullies (lenders and dealers) target this population with unfair auto deals and unsustainable auto loans throughout the car buying process. This section presents these abuses in the order of the car buying process: (1) car dealer and car model selection, (2) auto contract negotiation, (3) auto financing, and (4) repossession.

The remote geography, unique Navajo way of life, and prevalent poverty on the Navajo Nation each create barriers to information and a lack of options for Navajo car buyers—a problem uncommon elsewhere the U.S. Larger cities with numerous car dealerships, such as Phoenix, Arizona; Salt Lake City, Utah; and Albuquerque, New Mexico, are difficult for most Navajo car buyers to access because they are hundreds of miles from most Navajo Nation residents’ homes. Thus, most Navajo car buyers are limited to purchasing cars from the dealerships available in the large Navajo Nation border towns: Gallup and Farmington, New Mexico and Holbrook and Flagstaff, Arizona.¹³⁵ Because these border towns are still hours away from many Navajo car buyer’s homes, the distance between home and dealership exacerbates the pressure of making a purchase and diminishes a car buyers opportunity to make informed choices.

Additionally, many Navajo car buyers “lack[] basic information about purchasing a vehicle[,]” which limits their ability to compare dealers and car prices. Missing information includes “[i]nformation on credit profiles, warranties, and blue book values.”¹³⁶ This problem is, in part, because many Navajo homes are without internet access.¹³⁷ Additionally, language and literacy barriers prevent many Navajo individuals, especially elders, from

understanding available consumer information.¹³⁸ Survey results from the Report show that only about 40 percent of Navajo car buyers research the car they intended to buy before entering a dealership.¹³⁹

B. Border town bullies use unscrupulous tactics during contract negotiation ensure high profits

Navajo Nation border town auto salespeople and dealers use various legal and illegal tactics to sell high quantities of vehicles and to increase profits in car sales with Navajo consumers.¹⁴⁰ Navajo car buyers' experiences illustrate how Navajo border town dealers and salespeople take these tactics to the extreme by capitalizing on Navajo car buyers' unique characteristics and vulnerabilities.

For example, many dealers use advertisements to target Navajo car buyers, a common tactic because local advertisements are a leading factor when a Navajo car buyer chooses a dealership.¹⁴¹ Advertisements target Navajo car buyers by using Navajo language, livestock and hay giveaways, and "free" barbecues.¹⁴² Dealership employees use many aggressive marketing tactics, including official-looking mailings that read "You've Won a Car!," providing fake car keys, and false checks claiming to be cashable at local dealerships.¹⁴³ In some instances, the Navajo Nation government shows support for these dealers by allowing the dealers to sponsor Navajo Nation fairs and contribute prizes to Navajo Nation Gaming Association incentives.¹⁴⁴

1. Raising the price and additional features

Navajo border town dealers use high-pressure tactics to sell expensive vehicles with high interest rates to earn big commissions and dealer kickbacks. These profit-boosting tactics are frequently deceptive and forceful. Add-ons are a common profit-boosting tactic among border town dealers. Navajo car buyers' contracts are often "laced with add-ons" that the car buyer does not notice, and that "make no sense, cost too much, and keep the family in debt."¹⁴⁵

For instance, one Navajo elder found that he had a maintenance service agreement in his contract that required him to travel a hundred miles to Gallup every time he needed his vehicle serviced.¹⁴⁶ GAP insurance is a similarly expensive add-on, commonly added onto Navajo car buyers' contracts. Yet, border town bullies rarely honor GAP insurance when Navajo car buyers seek to collect on their GAP insurance policies.¹⁴⁷ One Navajo elder even described how she had to take out a loan to cover repairs when the GAP insurance was not honored.¹⁴⁸

Moreover, border town auto dealers do not limit themselves to the typical auto sales add-ons. They frequently create add-ons specific to the car. These provisions are slipped stealthily into contracts. One Navajo mother

who intended to pay \$20,000 for a car for her college student son was told that her son could sign the contract by himself in the morning. Later, when she reviewed the signed contract, the mother saw that an additional \$10,000 in add-ons, including a \$4,000 service charge and a \$499 tire fee, had been added to the contract overnight, without their knowledge.¹⁴⁹

2. Pressure to buy expensive alternate vehicles

Border town auto dealers also persuade Navajo car buyers to purchase entirely different cars than what the buyer originally intended.¹⁵⁰ In one instance, a dealership sold a Navajo buyer a two-wheel drive truck, worth less than his trade-in, under the impression it was a higher valued four-wheel drive truck.¹⁵¹ Similarly, when salespeople realize that low income or a poor credit score may prevent a buyer from getting a loan for a larger make or model, the salespeople force a sale by pressuring the buyer into a smaller, less expensive model that may not fit the buyer's needs. One Navajo elder was pressured into buying a small truck when he really needed a larger vehicle, and later he had to pawn his valuables to make the \$600 monthly payments on the small truck.¹⁵² Forcing buyers into purchasing cars the buyer did not want, is another predatory tactic used in these border towns.

3. Two cars at once

Among the most egregious trade-in schemes border town dealers use is selling Navajo car buyers two cars at once. Generally, with this scheme, the dealership first sells a buyer a car that quickly turns out to be faulty. When the buyer takes the car back to the dealership, the dealer feigns agreement to take control of the car and then sells the buyer another model. Instead of trading in the old car, as the buyer would expect, the dealer simply sells the buyer another contract, meanwhile, the dealer keeps possession of the old car while the buyer still maintains ownership according to the title. And then, in a month's time, the buyer receives billing statements for both cars, even though the buyer does not possess either the first car or the title. In this way, the dealer profits from the first car by repossessing it and reselling it to another buyer.¹⁵³

4. Closing the deal and issues at signing

Dealers ensure profit by using a variety of nefarious, deceptive, and high-pressure tactics to ensure Navajo car buyers sign auto contracts. "[S]ome automobile dealers literally preyed on Navajo families, purposely misled them and pressured them into signing contracts when the consumer's financial means [were] not there at the beginning of negotiating the contract."¹⁵⁴ Further, the circumstances surrounding these auto contracts "deprived [many Navajos] of the right to freely negotiate a contract under the conditions acceptable

and understood by the consumer.”¹⁵⁵ Many Navajo car buyers complained of lengthy auto contracts “filled with legal jargon” that they could not easily understand.¹⁵⁶ A majority of Navajo car buyers admitted to relying on verbal agreements with dealers and salespeople. For that reason, they did not read their auto contracts closely.¹⁵⁷ Nor were they aware of the contract’s contents, including whether down payments, trade-ins, and add-ons were included.¹⁵⁸

One way border town auto dealers frequently pressure Navajo car buyers into assuming high costs and unfair contracts is by refusing interpreters for Navajo car buyers who do not speak English.¹⁵⁹ This denial occurs in two ways. Some dealers simply do not provide in-house interpreters. Others barred relatives who accompany car buyers specifically to interpret during contract negotiations.¹⁶⁰

As a part of their strategy to compel Navajo car buyers into signing auto contracts, border town auto dealers aim to wear down Navajo car buyers. Many participants reported being delayed for the entire day at dealerships and then rushed into signing a contract before closing.¹⁶¹ This delaying tactic deserves greater attention, since many Navajo car buyers have to make special plans, save money, and travel over a hundred miles to reach a dealership, followed by another hundred miles to drive home the same evening. While prolonging the sale and wearing down the buyer, dealers and salespeople also frequently and illegally detain potential buyers by holding their car keys, driver’s licenses, and/or social security cards until a contract is signed.¹⁶² One Navajo elder who decided not to purchase a car that day had to call the police before the dealer would return his keys and license.¹⁶³

In some cases, border town auto dealers have even threatened purchasers. In one striking instance, a dealer called a middle-aged man at 1:30 in the morning. The purpose of the call was to force the man to sign an incomplete auto contract. The dealer threatened the man that if he did not sign the contract, he would report the car as stolen to the police. All the while, the dealer actually had physical possession of the vehicle.¹⁶⁴

Another way border town auto dealers lure Navajo car buyers into contracts is by manipulating income and demographic information on buyer finance applications. The dealer may do this to improve the chances that the buyer will obtain financing or to increase the interest rate on the loan. Many Navajo car buyers have been pressured into “soft” credit checks at a grocery store, fair, or flea market, in which salespeople collect their demographic information and later use it to solicit auto loans, often without the potential buyer’s knowledge.¹⁶⁵ Some individuals even reported they were made to believe they were entering their demographic information for a contest or raffle and not for a car loan.¹⁶⁶

Salespeople use names and addresses gained in these credit checks to locate people at home where they could pressure them into signing contracts.¹⁶⁷ This is especially common among the elderly who feel vulnerable and pressured at home when they are alone with a stranger.¹⁶⁸ Based on these credit checks, many potential Navajo buyers are told they are eligible for a loan when an accurate analysis of their income would indicate otherwise.¹⁶⁹ Navajo car buyers also complain of being confused about who is financing the loan.¹⁷⁰

Lastly, a common way dealers and salespeople ensure a contract is finalized is by instructing Navajo car buyers to lie about their income and/or down payment amounts.¹⁷¹ In the worst instances, the salespeople forge these amounts themselves.¹⁷²

5. Yo-yo sales and spot deliveries

A yo-yo car sale is one in which a person purchases a car with dealer arranged financing, pays a non-refundable deposit to the dealer, and drives the car off the lot. Within a few days the dealer calls the purchaser saying that the financing has been denied and that he or she must return the car. At that point, the dealer keeps the non-refundable deposit and is able to resell the car at full price.¹⁷³ Yo-yo sales are highly profitable because once the buyer returns the car, the buyer either has to come up with more money for a larger down payment, agree to a higher interest rate, or agree to extend the loan period to keep the car, return the car and forfeit the down payment, or accept a lesser valued vehicle.

Similarly, spot delivery, a variation of the yo-yo car sale, occurs when salespeople actually deliver the car to the purchaser before financing has been approved and then later require the purchaser to return the car. Again, the purchaser either loses their deposit or is forced to pay a higher interest rate.¹⁷⁴

A radio advertisement enticed one middle-aged Navajo male car buyer to a dealership about 100 miles from his home.¹⁷⁵ He signed a contract to purchase a vehicle and drove the vehicle home. Days later, the dealership called and demanded he return the car because his financing was not approved. The dealer threatened that the vehicle would be reported stolen to the police if not returned. However, the buyer was unable to return the car until his employer approved the time off. When the buyer returned the vehicle the dealership asked him to make a higher down payment to keep the vehicle. Because the buyer declined to put more money down, salespeople took him into a separate room and swore at him. In retaliation and to compensate for the buyer's refusal to make a higher down payment, the dealership forced him to pay a mileage fee exactly equal to the higher down payment before he could leave. After this incident, the buyer continued to receive threats from

the dealer.¹⁷⁶ Border town auto dealers will go to great lengths to secure any type of profit, even where no sale can be made.

6. Faulty vehicles

Border town auto dealers also profit by selling faulty vehicles to Navajo car buyers for full price. Many Navajo car buyers complained that their vehicles broke down on the way home from the dealership or shortly thereafter.¹⁷⁷ After complaining about being sold a faulty vehicle, one buyer reported being lectured by the dealer about leaving the lights on, which was not the cause of the mechanical defect at all.¹⁷⁸ Another buyer reported being forced to leave the dealership on foot when she could not pay for repairs for a mechanical issue she discovered on the way home from the dealership.¹⁷⁹ In an extreme case, one middle-aged buyer was sold a vehicle that had to be repossessed because it had no VIN number, which made the car impossible to register and insure. A representative of the dealer rudely told the faultless man and his wife “they were screwed” in reference to the dealership’s own actions.¹⁸⁰ Navajo buyers who were sold faulty vehicles also often complained of expensive repairs. The repairs on one woman’s newly purchased vehicle were so expensive the woman could not make payments and the vehicle was repossessed.¹⁸¹ Additionally, some buyers complained of conditions in auto contracts that repairs could only be done at the dealership, which was hundreds of miles from the buyers’ homes.¹⁸²

7. Repossessions

Like interest rates, repossessions are yet another way subprime auto lenders profit from Navajo car buyers. While the Navajo Nation Code limits vehicle repossession on the Navajo Nation,¹⁸³ illegal repossessions are still common occurrences. Because of the Navajo Code restricting vehicle repossession, many repo men wait until a family leaves the Navajo Nation boundaries so that they can repossess the vehicle in a border town. An elder woman recounted a repo man who “literally pulled an old lady and man out of their truck” at a laundromat in Gallup.¹⁸⁴ In another instance, Santander Consumer USA, Inc. hired a Tohono O’edham tribal member to repossess vehicles on the Navajo Nation. This repo woman came to a Navajo elder’s home even after the elder had entered into an agreement with Santander to make up her \$200 debt. The repo woman took the vehicle after agreeing to return it in two days, but instead permanently repossessed it.¹⁸⁵

When their cars are repossessed, Navajo car buyers suffer great financial loss and hardship. One elderly couple pulled from their vehicle was only one month behind on their payments and had made payments on the car for years.¹⁸⁶ The car taken by the repo woman had five years of payments, with only a few months remaining to pay it off.¹⁸⁷ In circumstances like these,

lenders profit tremendously because they can resell the car for full value and keep all of the payments the original car buyer made. The Navajo car-buying population represents just a small fraction of the profits lenders and investors make from subprime auto loans. But the deceptive and aggressive sales tactics used on Navajo car buyers in border towns bring concentrated profits to border town auto dealers and their subprime lending partners.

C. Contracts of Navajo car buyers

Below are two sample car sales contracts from recent Navajo car buyers. They are not representative of all Navajo car buyers' contracts, but are not atypical.¹⁸⁸ These contracts illustrate how border town auto dealers use various combinations of the aggressive and illegal sales tactics mentioned above to sell high interest contracts and loans and to maximize profits.

1. Mary's Ford Fiesta

Mary,¹⁸⁹ a 70-year-old Navajo woman, purchased a new 2014 Ford Fiesta at a border town's only dealership. A 2014 Ford Fiesta's sales price with the same amenities should have been around \$14,880.¹⁹⁰ However, on Mary's contract, the car price was \$21,972.28. This was a 48 percent dealer markup.

The dealership also added several deceptive and/or illegal add-ons to the price of the car. First, the dealership charged her \$3,000 for a manufacturer warranty that could have been negotiated down to a much lower price.¹⁹¹ Second, the dealership charged Mary with a \$389.99 "Dealer Documentary Fee." Third, the dealer charged Mary \$282.56 for "Payments...to Public Officials for Official Fees." Fourth, the dealer charged Mary \$900 for unneeded GAP protection. With tax,¹⁹² this totals \$4571.56 in unnecessary add-ons that contributed to a higher interest profit for both the dealer and the lender.

On top of the add-ons, the lender charged Mary an 18.1 percent APR interest rate. In fact, the \$16,595 total in interest charged on her new car exceeded the Fiesta's value. Although Mary's actual income was \$900 a month,¹⁹³ the lender forged her finance application and reported Mary's monthly income at \$5,711. Mary did not have a chance to review the finance application and the lender did not request her to provide any of her own financial information. However, this forgery did not seem to reduce her interest rate,¹⁹⁴ and she still ended up with an 18.10 percent APR interest rate and a loan term of 6 years (72 months) with monthly payments of \$580.55. Payments at this rate were unsustainable and left Mary with only about \$320 dollars to cover all of her other monthly expenses.

2. Susie's Dodge Challenger

Susie, a 54-year old Navajo woman, purchased a used 2013 Dodge Challenger. The sticker price was \$24,577.50, which was reasonable.¹⁹⁵ However,

Susie was charged \$2,300 for a vehicle service contract, \$389 for a “Dealer Documentary Fee,” \$22.50 for payments made to “Public Officials for Official Fees,” and \$900 for GAP insurance. This totaled \$3,611.50 in unnecessary but negotiable add-ons. Altogether, the sticker price with the add-ons, minus \$200 trade-in value and a \$400 down payment, totaled \$27,589. While most of the contract value seems accurate, despite the overpriced service contract and unnecessary GAP insurance, Susie was charged a 22.42 percent interest rate. The result was a \$706.55 monthly payment, and a total in interest of \$23,282.60, an amount almost equal to the worth of her car.¹⁹⁶ This interest plus the principal price made Susie’s final obligation \$51,471.60. The price is unreasonable considering Susie’s income was \$360 a month in General Assistance benefits. Despite that, the dealership forged Susie’s finance application and stated her monthly income was \$5,408. Her finance application also stated falsely that she had been retired for twenty-five years.

D. Impact on Navajo individuals, families, communities, and the Navajo Nation

The “predatory lending practices [in] Corporate America” have a greater effect on communities of color,¹⁹⁷ working class, and under-educated populations.¹⁹⁸ Minority groups—especially African-Americans and Latinos—suffered higher losses in the subprime mortgage crisis, even where their credit scores were comparable to their white counterparts.¹⁹⁹ Similar disparities appear in credit card lending,²⁰⁰ payday, title, tax refund anticipation, and rent-to-own consumer loans²⁰¹—and these institutions are typically “concentrated in minority neighborhoods.”²⁰²

As in other areas of consumer law, auto dealers and subprime auto lenders specifically target people of color, women, and the poor. These communities bear the negative effects of subprime auto loans unduly.²⁰³ A study by Ian Ayers and Peter Seigelman found that women and African-American test buyers were quoted higher car prices by dealers than male and white test buyers, even when the test buyers stated they had their own financing.²⁰⁴ Ayers and Seigelman postulated that this differentiated race and gender treatment was based on “statistical discrimination.” The researchers found that prejudicial inferences were not based on “psychological distaste for associating with blacks and women” but on the additional costs dealers assumed minority and women buyers would have interest in or ability to pay.²⁰⁵ Auto dealers’ racial and gender discriminatory practices appear to carry over into auto lenders’ practices. In 2014, Santander Holding Consumer USA Inc., a large nationwide subprime auto lender, was found by the Consumer Protection Bureau to have “systematically discriminated against 235,000 Black, Hispanic, and Asian-Pacific Islander borrowers” in the prior three years.²⁰⁶

Like other minority communities across the U.S., unfair consumer laws affect Indian Country communities disproportionately. Payday lenders and other consumer loan companies are concentrated within tribal lands and surrounding border towns.²⁰⁷ The Seattle Times recently uncovered an elaborate, predatory scheme by national mobile home manufacturer Clayton Homes.²⁰⁸ In its predatory lending scheme, Clayton Homes falsely represented itself as the only mobile home lender for Navajo Nation residents to steer Navajo Nation residents into its costly subprime mobile home loans and away from low interest federal and tribal lending programs.²⁰⁹ Predatory lending practices have unusually harsh consequences on Native American individuals, families, and communities because of intergenerational poverty, barriers to building credit, and racism towards Native Americans. Subprime loans amount to “exploitation of the poor, the desperate, and /or unsophisticated”—communities most in need of protection.²¹⁰

The deceitful, and sometimes illegal, sales tactics of border town auto dealers have injurious financial and emotional effects on Navajo car buyers. Subprime loans provide Navajo car buyers “with the opportunity to purchase” a needed car “but they also burden the consumer with excessive charges and fees when a consumer defaults on the payment.”²¹¹ Many Navajo car buyers complain that they could not afford monthly car payments.²¹² Further, Navajo car buyers complain of long loan terms.²¹³ As one elder woman put it, “by the time the loan is paid off, the vehicle no longer works.”²¹⁴ Border town dealers “will always look for ways to finance a vehicle even if it means the lender will eventually be stuck with the risks of making a loan to a consumer who does not have the capital or collateral to even buy a vehicle in the first place.”²¹⁵ And “a persistent pattern of predatory sales practices,” including “financing arrangements that harm and hurt the consumer,” are widespread among Navajo Nation car buyers.²¹⁶

The heightened need for cars and economic circumstances among Navajo car buyers combined with the extreme sales tactics employed by border town auto dealers make subprime lending more frequent and more profitable—a bigger problem on the Navajo Nation compared to the rest of the United States.²¹⁷ As Navajo Nation residents’ incomes are generally low, Navajo Nation home value does not equate to homes on fee land.²¹⁸ Many families are already in cycles of debt and it is difficult for Navajo Nation car buyers to build credit.²¹⁹ Thus, Navajo car buyers frequently must resort to purchasing subprime auto loans.²²⁰ Accordingly, border town auto dealers commonly use subprime lending companies to secure high interest, long-term loans for Navajo car buyers.²²¹ This means that Navajo car buyers are more strongly targeted for and impacted by subprime loans and their salespeople, dealers, lenders, and investors are profiting from Navajo car buyers at much higher

rates than they would be selling to car buyers in other demographic groups.

The bad car deals and subprime auto lending described herein is harmful to Navajo individuals and families.²²² Many car buyers feel remorse, embarrassment, and shame that they were “scammed or cheated” into a car purchase.²²³ Some also experience sickness from the stress of unfair auto deals and subprime loans.²²⁴ The debt accrued from these high principal, high interest loans is financially devastating to Navajo families.²²⁵ Many buyers describe auto bills exceeding or nearly exceeding their monthly income, which makes it harder to meet daily survival needs.²²⁶ APRs, loan terms, monthly bills, and total car buying costs near or above the families’ incomes²²⁷ demonstrate why low income Navajo families disproportionately suffer from the effects of unfair car deals and subprime auto loans.

Within the impacted Navajo families, elders and families with young college students are especially vulnerable. Many Navajo elders are targeted by auto salespeople because they are English illiterate and unable to understand the words written into the contracts and, sometimes, even the spoken words in contract negotiations. Navajo elders are more likely to be victims of predatory sales because they live on fixed incomes, have “nebulous understandings of money management” and do not speak or understand English.²²⁸ Border town auto dealers also target elders because of their cultural belief that a person’s verbal promise is of the highest importance.

The English and financial illiteracy among many Navajo elders and the high value many elders place on verbal promises benefit auto dealers in two ways: (1) many elders believe the salesperson’s oral promises and (2) auto dealers can change the terms of their promises on paper without elders noticing.²²⁹ In some instances some less than scrupulous immediate family members of Navajo elder car buyers use the vulnerabilities of their relative by getting him or her to purchase cars for the younger relative or cosign on the younger relative’s car loans.²³⁰

Dealers also play into the familial closeness and sense of shared responsibility of many traditional Navajo families by pressuring car buyers’ relatives to trade in vehicles or take over old car loans so a contract can be made for a relative that day.²³¹ Unfair border town auto deals and subprime loans to college students and their families also illustrate barriers to building inter-generational wealth and higher education among Navajo car buyers.²³²

The cumulative effects of the individual and familial hardships created by unfair auto deals and subprime auto loans disproportionately threaten the welfare of larger Navajo communities and the Navajo Nation as a whole. Over half of Navajo car buyers surveyed reported unfair auto deals and high interest long term subprime car loans,²³³ including repossessions, yo-yo

sales, threats, and the loss of employment related to their car purchase.²³⁴ Meanwhile, Navajo Nation car buyers' "serious purchasing power"²³⁵ feeds the border town auto dealers and state treasuries—but not the Navajo people or the Navajo Nation's economy. The exacerbated circumstances of Navajo subprime auto loans threaten the Navajo Nation economy, and ultimately contribute to the deficits in national auto lending.

III. Solutions to the unfair auto deal and subprime lending problem among Navajo car buyers

While unfair auto deals and subprime lending have been a longstanding practice in Navajo Nation border towns, this problem is not without remedies. Because it is so pervasive, activists seeking a solution need to take a multi-faceted approach. However, any solution that creates barriers to car sales and reduces the population that is eligible to purchase a car has the unintended side-effect of ensuring that many Navajo car buyers cannot purchase a car. As car ownership is essential for survival for Navajo people, not owning a working vehicle could be far more problematic than debt. Solutions to the unfair auto deal and subprime lending problem among Navajo car buyers need to account for this problem.

A. Play "the game": A (non)solution

To survive the unfair car deals described above, some Navajo car buyers, have developed a resourceful (non)solution to the unfair auto deal and subprime lending. I characterize it as the "game" and is a synthesis of the Navajo car buyer data presented above. Instead of resisting these often unfair and high interest loans some Navajo car buyers have learned to play lenders at their own game.²³⁶

First, a Navajo car buyer purchases a car from a dealer at a high interest rate, perhaps knowing that it will be an unfair deal. Even so, the buyer considers it the only available option because of a low income and credit score. The buyer leaves the dealership with the car and a very high monthly payment, knowing he or she will not be able to pay them. Meanwhile, the dealer and salespeople benefit immediately by cashing in on the car's full sale price and any kickbacks as soon as they sell the buyer's contract to the lender. Then the buyer and lender begin a game of chicken, to see who gives in first.

If the lender can force the buyer into making enough payments to cover the cost of the vehicle plus profit the lender wins. This happens relatively fast because the payments include the high interest. However, if the buyer stops paying, uses the car, and gets the car repossessed before the lender profits on the sale, the buyer wins. The buyer can then go out and get another car at a similarly high interest rate and repeat the process.

This approach requires the buyer to disregard the impact this game will have on his or her credit. I theorize some Navajo car buyers have accepted being in debt and will pay while they can to keep the car. They may go into car negotiations knowing that their interest rate will be astronomical but will have no other way to acquire a necessary vehicle. They may expect and face repossession, but the immediate life sustaining benefits of having a car outweigh the losses. In this circumstance, the buyer gains the use of a vehicle while the dealer loses out on the buyer's payments for as long as possible. This allows those with low credit scores, perpetuated by poverty and debt, to use a car. This game is especially probable given that many border town dealers are willing to forge financial applications. Further, the Navajo Nation's protective repossession provisions enable buyers who can no longer make payments to use the car for a longer period before repossession than a buyer living outside the Navajo Nation would typically have.²³⁷

However, the risks and losses for a buyer who is successful at this "game" are devastating in the long term. The buyer's losses in this situation are all of the stresses involved with unreasonably high monthly payments, including further credit destruction, vehicle repossession, bill collection calls, and continued barriers to acquiring a vehicle. The biggest problem with this approach is that it continues to trap car buyers in a debt cycle.

The savvy reader will ask "but what about the deficiency cost left for the buyer to pay after the repossession of the vehicle?" The answer to this question brings unfair border town auto dealers and subprime lending full circle by "churning" the car. If a car worth \$15,000 is repossessed after the buyer made \$10,000 in payments, the lending agency auctions the car to a dealer for \$12,000. This would leave the original buyer with a \$3,000 deficiency still owed. However, if the purchasing dealer can resell the car to another Navajo car buyer for \$21,000, it would cover both the \$3,000 deficiency and the \$12,000 price paid for the car, plus make the dealer \$6,000 in profit. With such high profits, the dealer can afford to pay the original buyer's deficiency, leaving the original buyer open to a new unfair car deal. Thus, churning perpetuates unreasonable markups and cycles of debt for other Navajo car buyers.

Although dealers', lenders', and buyers' maneuvers in this game are less than noble, the Navajo car buyer's role is a creative use of personal agency.²³⁸ The experience of living with racism and poverty in almost every aspect of daily life,²³⁹ which includes exploitation in regular transactions, has led to resilience and ingenuity among Navajo car buyers that allow them to work the auto sales system to their short-term advantage. Playing the game does not result in turning the tables because whether Navajo car buyers "lose" or "win" the game, they remain in growing cycles of debt and stress. Thus the game is not financially, emotionally, or economically sustainable.

B. Prospective solutions

Education about the unfair sales tactics and buyer's rights in car sales and lending could be presented through multiple methods. The public needs access to information about predatory lending schemes and aggressive sales tactics. This information needs to be provided in Navajo and English. Outreach efforts should include the radio, local newspapers, and word of mouth. In this outreach, potential car buyers need to be educated specifically with information that border town salesmen, dealers, and lenders are looking to make the highest profit and have no incentive to ensure the car buyer can afford the vehicle.²⁴⁰

Further, Navajo people must be educated on the components of an auto contract and a buyer's rights in contract negotiations.²⁴¹ Again, any education materials need to be provided in Navajo and English. While brochures on this topic exist, they are often useless because many Navajo elders do not fully comprehend written English, especially if it contains difficult auto and financial jargon. Informational sessions conducted in the Navajo language could address these education issues. Such sessions could be presented at Navajo Nation fairs, schools, chapter houses, and senior centers. Another way to get this information out would be a series of video public service announcements with clear explanations in both English and Navajo shown via YouTube, local radio stations, and television.

Finally, formal financial literacy education in schools within the Navajo Nation and in border towns should be mandatory. This would be especially helpful to high school and community college students so that they will not be duped into an unfair auto deal or a subprime loan that would destroy their credit the first time they purchase a car. Ideally, those students would pass information on to their family members. Targeting the younger generation, who have yet to establish their credit history with financial literacy would allow the Navajo Nation to, hopefully, break the cycle of unfair auto deals and low credit.

Second, the Navajo Nation government should deny support to border town auto dealers that use unfair sales tactics and prey on Navajo buyers. The Navajo government should take steps to prevent future predatory practices. One way to deny Navajo Nation support is to prohibit bad border town auto dealers from advertising on Navajo Nation land, local television and radio, fairs, sporting events, and at tribal casinos.

To address predatory practices the Navajo Nation could also develop a code of ethics, applicable to border town auto dealers. The foundation for this ethical code could be the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP").²⁴² The ethical code could require border

town salespeople and dealers to undergo mandatory training sessions with curriculum on unfair auto sales practices. The ethical code could also establish a public rating system, showing prospective Navajo car buyers which dealers engage in ethical transactions. A rating system would also incentivize dealers to compete for high ratings.

However, these two solutions would limit Navajo buyers' access to dealers. To address the limited dealership options, and to empower the Navajo Nation to harness members' purchasing power, the Navajo Nation could create car dealerships within its borders.²⁴³ Creating car dealerships would stimulate the Navajo Nation economy, be convenient for Navajo Nation residents, and create a way for the Navajo Nation legislature and courts to regulate auto sales to Navajo buyers. Further, the hundreds of millions of dollars in Navajo car buyers' spending power could benefit Navajo people by increasing Navajo Nation infrastructure, educational quality, employment, and living conditions.

Third, to address the unfair deals and practices, the Navajo car buyers could pursue litigation. For example, the ACLU or other non-profits could sue for unfair practices.²⁴⁴ However, up to this point, very few state, federal and tribal judges have heard Navajo car buyers' claims because auto dealers settle claims before their unscrupulous practices are made public.²⁴⁵

Fourth, to address unfair car deals and subprime loans, increased state, tribal, or federal regulations on car dealers' activities should be imposed. For example, interest rate caps in Arizona, New Mexico, and Utah would reduce the exorbitantly high APR rates and finance charges that Navajo car buyers are currently being charged. This alone would not result in any sweeping change and alone would also limit many Navajo car buyers' abilities to finance a car; and is therefore an impractical solution.

Fifth, reducing interest rates would combat Navajo car buyers' financial losses and debt cycles. One radical way to eliminate the high interest payments dealers and lenders charge is through the traditional lending circle.²⁴⁶ In lending circles, groups of people needing loans contribute to a common pool and periodically pay one person a loan. For low-income individuals who cannot make large purchases or investments in cash, lending circles are much easier than a savings account because they can contribute a small amount on a regular basis and then receive a large amount when needed. In the border town auto deal situation, a participant in a lending circle could pay the full cash price of a car without having to worry about interest. However, there could be a lot of distrust of informal lending circles and it could be difficult to implement among low-income borrowers.²⁴⁷

Finally, Navajo buyers could join a credit union in an effort to decrease APRs.²⁴⁸ The first "credit unions were built around people who had 'a com-

monality of needs,' because '[p]eople working, or associating, or living together in compact communities knew each other and were usually aware of a colleague's ability or disposition to repay a loan.'"²⁴⁹ Credit unions are different than banks because they do not loan their own revenue, instead they collect "savings funds from members' accounts" and distribute "them in the form of interest-earning loans and other investments."²⁵⁰ Thus, buyers with low credit benefit from the lower interest rates offered by credit unions. Navajo car buyers who want to take advantage of these low interest rates could establish membership with a credit union sometime before their purchase.²⁵¹ In the ideal situation, the Navajo Nation could establish its own credit union tailored to Navajo Nation citizens' needs.

Conclusion

Navajo people are suffering the consequences of high debt and pass these problems down to the next generation because cars are essential to Navajo survival. Meanwhile, through racist, deceptive, and exploitive practices, border town auto dealers and subprime lenders target and exploit a vulnerable minority group. These practices run counter to racial and social justice. Navajo car buyers, advocates, teachers, the Navajo Nation, border town car dealers and sales people, and border town communities must take steps to end the unfair auto deals and subprime lending occurring on and near the Navajo Nation.

Millions of dollars have been stripped from the Navajo economy. These unfair circumstances cause immense stress. While the (non)solution game allows some Navajo car buyers to use a vehicle, it is not sustainable. Replacing unfair border town auto deals, subprime auto loans, and the "game" with a comprehensive and thoughtful combination of the solutions could halt the exploitation occurring with border town auto sales and, instead, empower and Navajo car buyers, families, and communities by making them financially stable.

NOTES

1. NAVAJO NATION HUMAN RIGHTS COMM'N, ASSESSING ABUSE OF NAVAJO CUSTOMERS WHEN PURCHASING VEHICLES IN BORDER TOWNS 77 (2014), *available at* http://www.nnhrc.navajo-nsn.gov/docs/NewsRptResolution/PublicHearingReports/NNHRC_AutoReport.pdf [hereinafter ASSESSING ABUSE].
2. The term "Navajo Nation" is used throughout this article to refer to the land base of the Navajo tribe held in trust by the U.S. Government. In 1868, after the U.S. Government's forced removal of the Navajo tribe from their homelands, the Treaty Between the United States of America and the Navajo Tribe of Indians permitted the Navajo tribe to return to their homelands as well as established a large portion of that area as the Navajo reservation. *See Treaty with the Navaho, U.S. -Navajo Nation, art. II, ratified July 25, 1868, 15 Stats. 667, available at* <http://digital.library.okstate.edu/kappler/vol2/treaties/nav1015.htm>. Although this area is sometimes referred to as the Navajo Reservation, to emphasize

- the sovereign status of the Navajo tribe, I employ the term “Navajo Nation” to refer to the land within the external boundaries of the Navajo Reservation.
3. ASSESSING ABUSE, *supra* note 1, at 41 (stating there are 115 auto dealers in Gallup and Farmington, New Mexico alone).
 4. Chunlin Leonhard, *Negative Externalities and Subprime Auto Financing: Time to Let the Hanging Paragraph Go*, 45 U. TOL. L. REV. 267, 280 (2014).
 5. The Navajo Nation Elder Protection Act, 29 N.N.C § 1802 (2009) (this Act acknowledges the special respect given to Navajo elders in Navajo culture stating, “It is the policy of the Navajo Nation to continue the traditional respect which members of the Navajo Nation have for Diné elders. Elders are valuable resources to the Nation because they are repositories and custodians of Navajo history, culture, language, and tradition; vested in Diné elders is the hope of the Navajo Nation to retain its tribal history, culture, language and tradition. Navajo elders provide stability by being role models for their children and grandchildren to whom they demonstrate long-standing commitment to family, marriage, employment, profession and other social institutions. Based upon these premises, it is in the Nation’s best interest and welfare to protect its elders from abuse, neglect, mistreatment, exploitation, and other mistreatment.”).
 6. Leonhard, *supra* note 4, at 280. *See also* ASSESSING ABUSE, *supra* note 1, at 14 (stating that subprime loans are “ripe for the significant number of Navajo consumers who have poor credit scores”).
 7. ASSESSING ABUSE, *supra* note 1, at 19. Because Many Navajo Nation residents live on homesite leases rather than own the property in fee, homeownership takes different forms and value than it does on private property elsewhere in the U.S. *Cf.* Navajo Nation Land Dept., HOMESITE, NAVAJO LAND DEPT., <http://www.dinehbikeyah.org/homesite/index> (last visited on Apr. 11, 2017) (explaining five Navajo Nation offices “assist clients in obtaining a one-acre residential lease for 75 years. The Leasee has an option of renewal of lease or assign the lease to another individuals or even terminate the lease. The lease provides an opportunity for the Navajo families to build a home or even mortgage a home with lease hold interest.”).
 8. ASSESSING ABUSE, *supra* note 1.
 9. This is assuming the new or used car is being bought from a dealer, not an individual car owner.
 10. Leonhard, *supra* note 4, at 273.
 11. Interview with Adam Oakey, UNM Law Student, Former Auto Salesmen, in Albuquerque, N.M. (Apr. 11, 2016).
 12. ASSESSING ABUSE, *supra* note 1, at 42 (stating the debt to income rule: a potential buyer should be granted an auto loan if around 40 percent of the buyer’s income is spent on monthly bills including the car payment, and 60 percent of the buyer’s income is spent on groceries, gas, entertainment, and household needs).
 13. Notably, these loans do not usually stay in the hands of the original lender. Instead, they are almost always bundled and resold to other lenders as a single instrument that investors can buy in a hedge fund or high yield mutual fund. The last link in this chain is that individual investors can purchase stock in the bundled funds and trade this stock with other investors for profit.
 14. Leonhard, *supra* note 4, at 272.
 15. *Id.* *See also* Jeff Kirk, *Subprime Auto Loans the Rising Menace of Wall Street’s Latest Darling*, 18 J. CONSUMER & COM. L. 72, 73 (2014) (stating in 2013, 91 percent of Americans used their personal vehicles to reach their workplaces, while only 27 percent of American workplaces were accessible via public transportation).
 16. Leonhard, *supra* note 4, at 273.

17. R. Carter Pate et al., *Subprime Auto Finance: The Year of Bankruptcies*, AM. BANKR. INST. J. 30, 31 (1998).
18. *Credit Scores*, FED. TRADE COMM., <https://www.consumer.ftc.gov/articles/0152-credit-scores> (last visited Apr. 12, 2017) (stating a credit score is a number used by lending companies to decide the terms and interest rate a borrower will pay on a loan). There are several steps involved in the calculation of a borrower's credit score. First, credit reporting agencies continually collect and store information on every American's borrowing habits, including each individual's bill-paying history, account type, number, and age, records of late and on-time bill payments, collection actions, and outstanding debt. Second, these credit reporting agencies use this information to draft a credit report. Third, when a borrower prepares to make a large purchase such as a car, lending companies buy a credit report for the individual borrower from a credit reporting agency. Next, lending companies use statistical programs to compare the information in the individual borrower's credit report to the information of other consumers with similar profiles. Under the Equal Credit Opportunity Act (ECOA), a lending company's statistical scoring system may not use race, sex, marital status, national origin, or religion as factors to predict whether a borrower will repay a loan. Age may be used as a factor, but elderly applicants must be treated equally in the statistical program. The program awards individual borrowers points for each factor that shows he or she is likely to repay a debt. Finally, the statistical program totals the points to create the borrower's credit score. *See also* Danielle Keats Citron & Frank Pasquale, *The Scored Society: Due Process for Automated Predictions*, 89 WASH. L. REV. 1, 9 (2014) (stating that credit scores generally range between 300 and 850).
19. Evan Hendricks, *Credit Reports, Credit Checks, Credit Scores*, 28 GPSOLO 32, 34 (2011), available at http://www.americanbar.org/content/dam/aba/publications/gp_solo_magazine/full_issue_2011_july_august_28_5.authcheckdam.pdf. *See also* Matt Jones, *7 Simple Steps to a Subprime Auto Loan*, EDMUNDS.COM (Mar. 2, 2015), <http://www.edmunds.com/car-buying/7-simple-steps-to-a-subprime-auto-loan.html>.
20. *Charge-Off*, INVESTOPEDIA, <http://www.investopedia.com/terms/c/chargeoff.asp#ixzz46h51tu1j> (last visited Apr. 12, 2017) (defining charge-off as a "debt that is deemed uncollectible by the reporting firm and is subsequently written off").
21. Pate et al., *supra* note 17, at 30 (defining low-household incomes as incomes "of 20,000 to 40,000 annually").
22. Kirk, *supra* note 15, at 72–73.
23. *Id.* at 72.
24. Pate et al., *supra* note 17, at 30.
25. *Id.*
26. *Id.*
27. *Id.*
28. Leonhard, *supra* note 4, at 273–74.
29. *Id.* (stating in addition to the purchase price of a car taxes, titles and other fees are often included in the "amount financed").
30. *Security Interest*, INVESTOPEDIA, <http://www.investopedia.com/terms/s/security-interest.asp> (last visited Apr. 12, 2017) (defining security interest as a "legal claim on collateral that has been pledged, usually to obtain a loan"). In the auto loan context, a security interest means the lender holds the title to the car until the borrower has repaid the full price of the financed amount and the accrued interest to the lender).
31. Leonhard, *supra* note 4, at 273–74.
32. Kirk, *supra* note 15, at 72 (noting that interest rates for subprime auto loans could be as high as 30 percent); *see also* Pate et al., *supra* note 17, at 30 (noting that the typical subprime auto loans in 1998 ranged between \$5,000 and \$14,000 with APR rates usually exceeding 15 percent at an averaged 22 percent).

33. Leonhard, *supra* note 4, at 274.
34. Kirk, *supra* note 15, at 73 (reporting that Santander Consumer USA, Inc., one such lender that specializes in subprime loans, financed almost one quarter of all the subprime auto loans made across the United States in the first half of 2014).
35. *Id.* (listing General Motors Acceptance Corp., Ford Motor Credit, and Toyota Motor Credit as common dealer financing arms). *See also* Leonhard, *supra* note 4, at 274 (stating auto manufacturers operate lending companies that offer “attractive financing terms and relaxed credit standards” in order to sell more cars).
36. Kirk, *supra* note 15, at 73 (stating Wells Fargo “manages a total of \$50 billion in auto loans, and in 2013, 17 percent of its loans were given to consumers with credit scores of 600 or less”).
37. Roger Thorne, *What is Considered High Interest on a Car Loan?*, THE NEST, <http://budgeting.thenest.com/considered-high-interest-car-loan-24414.html> (last visited Apr. 12, 2017).
38. Jessica Silver-Green Berg & Michael Corkey, *In a Subprime Bubble for Used Cars, Borrowers Pay Sky-High Rates*, N.Y. TIMES (July 19, 2014, 12:36 PM), <http://dealbook.nytimes.com/2014/07/19/in-a-subprime-bubble-for-used-cars-unfit-borrowers-pay-sky-high-rates/>.
39. Leonhard, *supra* note 4, at 280.
40. Ellen Barrie Corenswet, *I Can Get It for You Wholesale: The Lingering Problem of Automobile Deficiency Judgments*, 27 STAN. L. REV. 1081, 1081–82 (1975).
41. Leonhard, *supra* note 4, at 275.
42. *Id.* at 272. *See also* Interview with Adam Oakey, *supra* note 11 (stating car salesmen only earn between 25 percent and 35 percent of the profit of a car sale, and this percentage increases by the quantity of cars sold. In some cases, this equates to only about \$100 for 4 or 5 hours of sales work.).
43. Interview with Adam Oakey, *supra* note 11 (explaining that the car lot where he worked made more “points” as salespeople negotiated higher loan interest rates and car salesmen received bonuses based on these points.). *See also* Creola Johnson, *The Magic of Group Identity: How Predatory Lenders Use Minorities to Target Communities of Color*, 17 GEO. J. ON POVERTY L. & POL’Y 165, 183 (2010).
44. Adam Levitin, *Toward a Universal Ability to Repay Requirement*, CREDIT SLIPS, <http://www.creditslips.org/creditslips/2014/08/toward-a-universal-ability-to-repay-requirement.html> (last visited Apr. 12, 2017).
45. *Id.*
46. *What is Guaranteed Auto Protection (GAP) Insurance?* CONSUMER FIN. PROT. BUREAU, <http://www.consumerfinance.gov/askcfpb/797/my-dealer-offered-me-guaranteed-auto-protection-gap-insurance-what-it.html> (last visited Apr. 12, 2017) (defining GAP insurance as covering “the difference between what your insurance pays if your vehicle is totaled and the damage to your vehicle exceeds the actual cash value (ACV), and the amount you still owe the lender at that point”).
47. Levitin, *supra* note 44.
48. ASSESSING ABUSE, *supra* note 1, at 72.
49. *Id.*
50. *Id.*
51. Leonhard, *supra* note 4, at 274–75.
52. *Id.* at 281–82.
53. *Id.* at 282.
54. Pate et al., *supra* note 17, at 30.
55. Leonhard, *supra* note 4, at 272.

56. Levitin, *supra* note 44.
57. Leonhard, *supra* note 4, at 281.
58. CharCretia V. Di Bartolo & John J. Tomaine, *Indirect Lending: It's Not Personal, It's Just Business*, 19 FIDELITY L.J. 53, 61–62 (2013).
59. *Id.* at 61.
60. See Leonhard, *supra* note 4, at 267–68 (stating “The Hanging Paragraph [of 11 U.S.C. § 1325(a)(9)] makes car loans non-dischargeable in a Chapter 13 individual bankruptcy under certain conditions if the loans qualify as purchase-money security interest (‘PMSI’) loans, i.e., when borrowers obtained the loans to buy new cars.”).
61. Leonhard, *supra* note 4, at 280.
62. *Id.*
63. Conrenswet, *supra* note 40, at 1081–82.
64. Kirk, *supra* note 15, at 73 (stating “modern technology has given lenders the ability to disable vehicles via any computer or smartphone with Internet access. So-called ‘driver-interrupt devices’ allow both lenders and ‘repo men’ to disable a car at the click of a mouse button until any outstanding loan balance has been paid, and they are increasingly being installed in vehicles purchased with subprime loans”); see also Interview with Adam Oakey, *supra* note 11 (stating that he is acquainted with a border town car dealer who does in-house financing at the highest interest rate permitted in New Mexico, installs electronic repossession devices, monitors buyer’s locations through GPS, and is enthusiastic about bringing cars back to his lot).
65. Levitin, *supra* note 44.
66. *Id.*
67. Kirk, *supra* note 15, at 73.
68. *Id.* at 72.
69. *Id.*
70. Leonhard, *supra* note 4, at 283.
71. Kirk, *supra* note 15, at 72.
72. Leonhard, *supra* note 4, at 280 (stating this lower risk has to do with the fact that, unlike home mortgagors, auto borrowers remain responsible for deficient payments after bankruptcy).
73. Kirk, *supra* note 15, at 72.
74. *Id.* at 73.
75. Leonhard, *supra* note 4, at 283.
76. Kirk, *supra* note 15, at 73.
77. *Id.* See also Leonhard, *supra* note 4, at 282.
78. Leonhard, *supra* note 4, at 271.
79. ASSESSING ABUSE, *supra* note 1, at 13.
80. Leonhard, *supra* note 4, at 284.
81. Kirk, *supra* note 15, at 73.
82. Leonhard, *supra* note 4, at 283.
83. *Id.* at 280.
84. Kirk, *supra* note 15, at 72.
85. *Id.*
86. *Predatory Lending*, THE FREE DICTIONARY, <http://financial-dictionary.thefreedictionary.com/Predatory+lending> (last visited Apr. 13, 2017) (defining predatory lending as the”

practice in which a loan is made to a borrower in the hope or expectation that the borrower will default”).

87. Johnson, *supra* note 43, at 176–77.
88. Leonhard, *supra* note 4, at 281.
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.* at 284.
93. *Id.* at 287.
94. Leonhard, *supra* note 4.
95. Andrea Freeman, *Racism in the Credit Card Industry*, 95 N.C. L. REV. ____ (forthcoming 2017) (on file with Professor Nathalie Martin, University of New Mexico School of Law) (reporting “black individuals and households are particularly susceptible to falling into debt because black families face a historical financial disadvantage that began in slavery and therefore, lack the financial safety net of accumulated wealth enjoyed by many whites. This is commonly referred to as a ‘wealth gap.’”).
96. *See* Leonhard, *supra* note 4, at 287.
97. *Id.* at 288.
98. *Id.*
99. *Id.*
100. *Id.* at 285 (recalling that the cause of the mortgage crisis was lenders with strong incentives for immediate profit pushing subprime loans in a quantity over quality manner that eventually caused a “bubble” in which subprime borrowers were no longer able to pay their home mortgages at rates that could keep investors’ collateralized loans afloat).
101. Leonhard, *supra* note 4, at 285.
102. Dan Frosch, *U.S. to Pay Navajo Nation \$554 Million: Payment Settles Long-Standing Claims U.S. Mismanaged Funds, Resources*, WALL ST. J. (Sept. 24, 2014, 2:46 PM), <http://www.wsj.com/articles/u-s-to-pay-navajo-nation-554-million-1411584416>.
103. *Id.*
104. ARIZONA RURAL POLICY INSTITUTE, DEMOGRAPHIC ANALYSIS OF THE NAVAJO NATION USING 2010 CENSUS AND 2010 AMERICAN COMMUNITY SURVEY ESTIMATES 6 (2016), available at <http://www.azcia.gov/Documents/Links/DemoProfiles/Navajo%20Nation.pdf> (reporting 180,462 tribal members lived within the Navajo Nation borders in 2010).
105. RAYMOND FRIDAY LOCKE, BOOK OF THE NAVAJO 26–27 (1992).
106. GOOGLE MAPS, <https://www.google.com/maps/@35.0473125,-106.6405675,12z> (last visited Apr. 22, 2016) (obtaining mileage from Google maps walk setting measuring Page, AZ to Flagstaff AZ (130 miles), Bluff, Utah to St. Johns, Arizona (198 miles), Farmington, New Mexico to Ramah, New Mexico (141 miles), and Cameron, Arizona to Tohajilee, New Mexico (307 miles) and providing rough estimates of median north to south and east to west mileage).
107. LARRY UTE JOE, NAVAJO NATION SCHOOL BUS ROUTES 16, available at <http://www.nmlegis.gov/lcs/handouts/IAC%20093015%20Item%207%20Navajo%20Nation%20School%20Bus%20Routes.pdf> (last visited Apr. 22, 2016) (stating that there are 6,217 miles of Bureau of Indian Affairs roads, 5,010 miles of Navajo Nation roads, 1,642 miles of state roads, and 1,864 miles of county roads within the Navajo Nation).
108. *Id.* (stating that of the public roads within the Navajo Nation, 3,381 miles (23 percent) are paved, 11,352 miles (76 percent) are dirt, and 234 miles are graveled (1 percent)).
109. *Cf.* NAVAJO TRANSIT SYSTEM, <http://www.navajotransit.com> (last visited Apr. 23, 2016) (showing limited Navajo Nation bus routes).

110. Davis v. Means, 7 Navajo Rptr. 100, 102 (Navajo 1994).
111. ASSESSING ABUSE, *supra* note 1, at 19.
112. Interview with Jonah Begay, Navajo Nation Resident in Albuquerque, N.M. (Mar. 26, 2014) (His mother has a 350 gallon and 250 gallon water tank, and she lives 17 miles from a water source. She makes one trip per day in the winter and two trips per day in the summer for water for her household and livestock. The family's home is heated by coal in the winter, which is brought by pick-up truck from 90 miles away.).
113. Estate of Navajo Joe, 4 Navajo Rptr. 99, 99 (Nav. Ct. App. 1983) (stating "[i]n Navajo common law a grazing permit is one of the most important items of property which a Navajo may own. A permit means that an individual may have the means of sustenance of a traditional Navajo sheep, provide income, food, and clothing.").
114. ASSESSING ABUSE, *supra* note 1, at 20 (stating that Navajo students currently perform below national academic standards).
115. ARIZONA POLICY INSTITUTE, *supra* note 104, at 36 (stating that this classification is based on U.S. census bureau poverty thresholds which define "severely poor" as living in a family with income below one half of their poverty threshold as determined by the U.S. census bureau).
116. *Id.* at 29; *see also* ASSESSING ABUSE, *supra* note 1, at 20 (reporting that in 2007 the per capita income of Navajo Nation residents was \$7,122).
117. Felicia Fonseca, *Navajo Top List of Native Language Speakers in the US*, BOSTON.COM (Dec. 14, 2011), http://archive.boston.com/news/nation/articles/2011/12/14/navajo_tops_list_of_native_language_speakers_in_us/ (stating there were about 169,000 Navajo language speakers in 2011 but that the language was dwindling among younger generations).
118. Allison M. Dussias, *Let No Native American Child Be Left Behind: Re-Envisioning Native American Education for the Twenty-First Century*, 3 ARIZ. L. REV. 819, 864–65 (2001).
119. *Id.* at 866–74.
120. *Id.*
121. GOOGLE MAPS, *supra* note 106 (searching "Navajo Nation").
122. ASSESSING ABUSE, *supra* note 1, at 20.
123. GOOGLE MAPS, *supra* note 106 (using driving mode measuring from Chinle, Arizona, commonly thought of and the center of the Navajo Nation, to Gallup, New Mexico, (91 miles, 1 hour, 38 minutes), to Farmington, New Mexico (111 miles 2 hours, 6 minutes), and to Flagstaff, Arizona (170 miles, 2 hours, 51 minutes). *See also* ASSESSING ABUSE, *supra* note 1, at 21 (stating that most Navajo Nation residents have to travel 60 miles or more for basic goods and services); Fort Defiance Housing Corp. v. Lowe, No. SC-CV-32-03, slip op. at 6–7 (Navajo Apr. 5, 2004) (stating "[w]e take judicial notice of the fact that distances within the Navajo Nation are great, and transportation is sometimes difficult").
124. LARRY UTE JOE, *supra* note 07, at 2–3.
125. ASSESSING ABUSE, *supra* note 1, at 20–21.
126. *Id.* at 40.
127. NAVAJO NATION HUMAN RIGHTS COMM'N, ASSESSING RACE RELATIONS BETWEEN NAVAJOS AND NON-NAVAJOS 2008–2009; A VIEW OF BORDER TOWN RACE RELATIONS, (2010).
128. ASSESSING ABUSE, *supra* note 1, at 2.
129. *Id.* *See also* Navajo Nation Consumer Practices Act, 5 N.N.C. §§ 1101–1161 (2009).
130. 5 N.N.C. §§ 1101–1161; *see also* ASSESSING ABUSE, *supra* note 1, at 56.
131. ASSESSING ABUSE, *supra* note 1, at 56.

132. *See* 7 N.N.C. § 621 (2009).
133. ASSESSING ABUSE, *supra* note 1, at 17 (stating the point of sale affects court jurisdiction).
134. ASSESSING ABUSE, *supra* note 1 (explaining how border town auto dealers and lenders prey on Navajo Nation tribal members who purchase vehicles from dealers located in the vicinity of the Navajo Nation). The Report illustrates the range of exploitative practices that many Navajo Nation border town auto salespeople, dealers, and lenders use to profit from Navajo Nation members' heightened need for cars and trucks. The Report contains information collected from a survey of Navajo car buyers, testimony of Navajo car buyers recorded at public hearings, and summaries of car buyer complaints submitted to the Commission.
135. *Id.* at 46.
136. *Id.* at 9.
137. *Id.*
138. *Id.* at 61, 64-65 (recalling how various Navajo elders signed auto contracts they did not understand).
139. *Id.* at 48.
140. *Id.* at 48.
141. ASSESSING ABUSE, *supra* note 1, at 48, 72, 74.
142. Telephone Interview with Stewart Begay, Junior Account Executive, KTNN (Feb. 17, 2017) (confirming that auto dealers sent KTNN, the Navajo Nation radio station, their advertisements, where KTNN translates the advertisements into Navajo while reading them on the air. Mr. Begay also confirmed that the content of these advertisements is often tailored to Navajo car buyers.).
143. ASSESSING ABUSE, *supra* note 1, at 42-43. *See also* Mailer from Brad Francis Chrysler Jeep Dodge Ram (Dec. 13, 2016) (on file with author) (containing a "100 percent credit approval guarantee," a fake car key, a "Scratch, Match, and Win" game, a fake check for \$2,497.00 addressed to "Valued Customer" and more).
144. ASSESSING ABUSE, *supra* note 1, at 42. This government support deceives Navajo Nation consumers into thinking auto dealers are reputable.
145. *Id.* at Letter of Transmittal.
146. *Id.* at 61 (describing how a vehicle maintenance charge was added when it was supposed to be included in an elderly man's auto contract).
147. *Id.* at 72-73.
148. ASSESSING ABUSE, *supra* note 1.
149. *Id.* at 68-69.
150. *Id.* at 77.
151. *Id.* at 60-61.
152. *Id.* at 75.
153. *Id.* at 70 (reporting Sallie Bitsuie was sold a faulty vehicle. After she returned it to the lot and purchased a different vehicle, she found out the first car trade-in was not counted and the returned vehicle had been sold at auction. She was left paying the deficiency on the first car and the monthly payments on the second car.). *See also id.* at 62 (reporting an elderly Navajo man was sold two vehicles from the same dealer in the same week). *Accord*, In my personal experience, in a case where two cars were sold at once showed that the Navajo elder car buyer believed that she could return and exchange a faulty car to a dealer just as other faulty products can be returned to the stores where they are bought.
154. ASSESSING ABUSE, *supra* note 1, at 19.
155. *Id.* at 10.

156. *Id.* at 40.
157. *Id.*
158. *Id.*
159. *Id.* at 31.
160. ASSESSING ABUSE, *supra* note 1. *See also id.* at 10; *id.* at 63 (reporting Bahe Begay who had never been to school and never became literate in English, was not allowed to use his relative as an interpreter and, as a result, did not know what was in his auto contract).
161. *Id.* at 41. *See also id.* at 59–61 (reporting Eugene Price and Leo Gishie were kept waiting all day and felt tired when they were rushed into signing their contracts).
162. *Id.* at 31.
163. *Id.* at 61 (describing how a border town auto dealer held Lee Gishie keys and driver's license hostage for hours, and Mr. Gishie had to call the police before the dealer would return them). *See also id.* at 77.
164. *Id.* at 76.
165. *Id.* at 13–14. *See also id.* at 41 (stating “[t]oo often, automobile dealership personnel encroach on Navajo Nation lands and entice elders and non-English speaking Navajo citizens to buy vehicles or commit to turn over personal info that [inevitably] opens door to future pestering”).
166. Based on my personal experiences working with Navajo consumer law clients.
167. ASSESSING ABUSE, *supra* note 1, at 62.
168. *Id.* at 67 (describing how a 92-year old woman was pressured into a credit check at the grocery store. She was then told she was eligible for a new car despite her protests that she had a vehicle repossessed on which she still owed, that she didn't drive, and that she didn't have a license. The salesman told her that her name would be on the contract for ten days, then her granddaughter's name would be added. Later, the salesmen came to her home where he further pressured her to the point that she felt physically, emotionally, and mentally sick. Adding insult to injury, when she complained about the employee to the dealership, she was made an offer to buy a different vehicle.). *See also id.* at 62 (describing how a salesman brought a truck and contract to elderly couple's home when they were alone, and they “felt compelled to sign”).
169. *Id.* at 14.
170. *Id.* at 41.
171. *Id.* at 31. *See also* Interview with Adam Oakey, *supra* note 11 (stating some auto sales people encouraged buyers to lie about their incomes on finance applications).
172. Katerine J. Wise, *A Matter of Trust: The Elimination of Federally Funded Legal Services on the Navajo Nation*, 21 AM. INDIAN L. REV. 157, 166 n.52 (1997).
173. Levitin, *supra* note 44.
174. Gregory R. Ingalsbe & Raymond G. Ingalsbe, *Spot Delivery: Why It Is Illegal and Why Car Dealers Have Been Getting Away with Theft for So Long*, 38 N. KY. L. REV. 221, 222 (2011) (stating that spot-delivery creates a “Hobson's choice” because the dealer takes “the consumer out of the car-buying market, let[s] him or her fall in love with the car, and call[s] him or her back to the dealership (as if on a yo-yo string) knowing full-well that the consumer will, and often must, agree to the new, more expensive terms-classic bait and switch”).
175. ASSESSING ABUSE, *supra* note 1, at 74–75.
176. *Id.* at 74–75.
177. *Id.* at 60 (reporting that Eugene Price had a truck for one day, and it would not start. He was lectured by the dealership personnel about leaving the lights on when there was actually trouble with an ignition switch the dealer had put on); *id.* at 65 (Kee Smiley was sold

a faulty vehicle in Gallup which had broken down three times, and “[t]he dealer refused to meet with him or repair the truck.”). *See also id.* at 70, 77 (reporting Lucille Platero purchased a vehicle whose pump failed and the spark plugs fell out. Her contract was removed from the glove compartment when she took it to the dealer for repairs.).

178. *Id.* at 60.
179. *Id.* at 63–64.
180. *Id.* at 76–77.
181. ASSESSING ABUSE, *supra* note 1, at 71.
182. *Id.* at 61.
183. 7 N.N.C. § 621.
184. ASSESSING ABUSE, *supra* note 1, at 67. *See also id.* at 72.
185. *Id.* at 66.
186. *Id.* at 67.
187. *Id.* at 66.
188. These contracts were obtained from DNA People’s Legal Services, the primary legal aid provider on the Navajo Nation (on file with author).
189. Signees’ names and descriptive information on these contracts have been changed to protect DNA People’s Legal Services clients’ identities.
190. 2015–2016 Ford Fiesta Prices: MSRP vs Dealer Invoice vs True Dealer Cost w/ Holdback, CARBUYINGSTRATEGIES, <http://www.car-buying-strategies.com/dealer-invoice/ford-fieta-prices.html> (last visited Apr. 13, 2017) (listing a 2016 Ford Fiesta four door hatchback with an MSRP of \$14,880).
191. Interview with Adam Oakey, *supra* note 11 (stating that Mary’s Warranty price was too high and such warranties were negotiable down to \$700 or \$800 dollars).
192. State sales tax is charged when the buyer receives the car outside the Navajo Nation but not when the car is delivered within Navajo Nation.
193. Email from Matthew VanWormer, Mary’s attorney, DNA Peoples Legal Services (March 9, 2016 4:27 PM) (on file with author) (explaining her income source was limited only to what she received from Social Security).
194. Interview with Adam Oakey, *supra* note 11 (stating that some sales people forge income to get the loan approved, but that this forgery does not affect APR calculations involving the buyer’s credit score).
195. 2016 Dodge Challenger, CARS.COM, <http://www.cars.com/dodge/challenger/2016/snap-shot/> (last visited Apr. 13, 2017) (listing a 2016 Dodge Challenger two door coupe with an MSRP of \$26,995).
196. *Cf.* A buyer with nearly a perfect credit score who bought a similar car in the same state received financing with an APR of 2.99 percent and will end up paying only \$3,036.79 in interest.
197. Johnson, *supra* note 43, at 166.
198. Leonhard, *supra* note 4, at 289.
199. Johnson, *supra* note 43, at 177–81; *see also* Leonhard, *supra* note 4, at 289.
200. Freeman, *supra* note 95, at 1–5 (stating in 2016, black families were targeted for high interest credit cards using data mining affinities that served as a proxy for race).
201. Johnson, *supra* note 43, at 166–67 (reporting payday lenders, car title loan shops, tax refund anticipation lenders, rent-to-own stores, and similar business are abundant throughout urban communities of color and use targeted marketing with minority celebrities to target minority consumers. Further, these exploitative businesses obtained minority employees for the purpose of establishing trust with potential minority borrowers.).

202. Johnson, *supra* note 43, at 187.
203. *Id.*
204. Ian Ayers & Peter Siegleman, *Race and Gender Discrimination in Bargaining for a New Car*, 85 AM. ECON. REV. 304, 305 (1995).
205. *Id.* at 315–17.
206. Jeff Sistrunk, *Santander Gets DOJ Subpoena Over Subprime Loan Practices*, LAW360 (Aug. 7, 2014, 9:11 PM), <http://www.law360.com/articles/565420/santander-gets-doj-subpoena-over-subprime-loan-practices>.
207. *Id.*; see also Arvind Ganesan, *Predatory Lending in Indian Country*, THE HILL (Sept. 24, 2013, 6:00 PM), <http://thehill.com/blogs/congress-blog/economy-a-budget/324007-predatory-lending-and-indian-country> (stating “[s]torefront and online lenders exploit the harsh reality that people on reservations and throughout the country are hurting, have basic expenses they can’t meet, and don’t necessarily have access to credit”).
208. Mike Baker & Daniel Wagner, *Minorities Exploited by Warren Buffet’s Mobile Home Empire*, THE SEATTLE TIMES (Dec. 26, 2015, 8:00 AM), <http://www.seattletimes.com/seattle-news/times-watchdog/minorities-exploited-by-warren-buffetts-mobile-home-empire-clayton-homes/>.
209. *Id.*
210. Leonhard, *supra* note 4, at 290.
211. ASSESSING ABUSE, *supra* note 1, at 14.
212. *Id.* at 75–76.
213. *Id.* at 79.
214. *Id.* at 71.
215. *Id.* at 16.
216. *Id.* at 39.
217. Allstate Indemnity Co. v. Black Goat, No. SC-CV-15-01, slip op. at 5–7 (Navajo Jan. 12, 2005) (the Navajo Nation’s highest court acknowledging that “Navajos increasingly use bank accounts, take out loans on vehicles and homes, and deal with interest on money in a variety of other circumstances”).
218. See *supra* note 7 and accompanying text.
219. ASSESSING ABUSE, *supra* note 1, at 14.
220. *Id.*
221. *Id.* at 46.
222. *Id.* at 10.
223. *Id.* at 19. See also *id.* at 77 (reporting a middle-aged man, who had previously purchased several vehicles in his lifetime, bought a vehicle that had no VIN number and that could not be registered or insured. As a result, he “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.”).
224. *Id.* at 19, 47, 67.
225. ASSESSING ABUSE, *supra* note 1, at 40 (emphasizing how “[a]cquiring a new vehicle brings pride to a household and instills a sense of accomplishment and wealth.” However, “the loss of income” from paying unreasonably high auto bills created “buyer’s remorse” and financial suffering). See also *id.* at 47 (reporting that most Navajo families have debt of over \$5,000, and 33 percent have debt above \$25,000. Understanding that far fewer Navajos pay home mortgages due to the land ownership housing laws on the Navajo Nation, it is reasonable to assume much of this debt is auto debt.).

226. *Id.* at 47–49 (reporting some families even mentioned taking out additional high interest pay day loans to compensate for a high car bills).
227. *Id.* at 48 (reporting that, in the most extreme instances reported to the Commission, one car buyer paid an interest rate of 28.99 percent per month for a vehicle, another buyer had contracted to make 6 years and 10 months of payments, yet another buyer had the highest monthly auto bill of \$884.59 per month, and the highest total investment on a vehicle was \$72,890.40).
228. *Id.* at 40.
229. *Id.* at 23.
230. *Id.* at 40.
231. ASSESSING ABUSE, *supra* note 1, at 67, 76.
232. *Id.* at 68–69 (reporting that a Navajo mother agreed to a \$20,000 contract to purchase a car for her college student. However, the dealer suggested her son sign the contract the next morning. Later, the mother discovered \$10,000 in additional charges, including a \$4,000 service charge and a \$499 tire fee, in the contract that had not been there before her son signed. The salesmen then declined to speak to her because her name was not on the contract.).
233. *Id.* at 46 (showing that 56 percent of surveyed Navajo car buyers reported problems with dealers when purchasing a vehicle and just under half of surveyed Navajo car buyers had purchased high interest long term subprime car loans).
234. *Id.* at 47 (reporting that 26 percent of survey respondents had had vehicles repossessed; 18 percent were required to return vehicle to the dealer; 17 percent were threatened by dealers with criminal charges; and 5 percent had lost their employment due to the loss of their car).
235. *Id.* at 20–21 (finding that 12,470 vehicles travel to Gallup, New Mexico and 7,015 travel to Farmington daily from the Navajo Nation as well as extrapolating that if every vehicle traveling was purchased/financed for about \$30,000, the border town auto sales market was likely worth billions of dollars, with state taxes in the millions).
236. *See also* Interview with Adam Oakey, *supra* note 11 (recollecting that car salespeople sometimes work with low income or low credit score car buyers to forge financing applications and describing a dealership that looked forward to buyers’ repossession after selling cars at 26 percent interest rates).
237. *See* 7 N.N.C. § 621.
238. SCOTT APPELROUTH & LAURA DESFOR EDLES, CLASSICAL AND CONTEMPORARY SOCIOLOGICAL THEORY 755 (2008) (providing the sociological definition of agency as “a person’s capability or power to act, to “make a difference,” or to intentionally intervene in her world. Further stating “agency concerns events of which an individual is the perpetrator, in the sense that the individual could, at any phase in a given sequence of conduct acted differently.” (citing ANTHONY GIDDENS, THE CONSTITUTION OF SOCIETY 9 (1984))).
239. RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION (2001) (defining racism as the combination of prejudice towards a racial others and social power and asserting that racism takes on three different forms: (1) individual racism, (2) institutional racism, and (3) cultural racism. Individual racism is defined as assaults directed at a person due to their racial identity. Institutional racism encompasses the ways in which our societal infrastructure (education, division of labor, justice system etc.) has been constructed and maintained to benefit white people, and thus excludes and disadvantages racial minorities. Cultural racism manifests through the symbols Western culture sets as societal norms, such as the English language, individualistic values, and

- Christianity. Individual, institutional, and cultural racism combine in settler societies to form barriers that make access to the privilege and cultural self-determination a complex, painful, and, often, insurmountable project for minority peoples.).
240. ASSESSING ABUSE, *supra* note 1, at 16.
 241. *Id.* at 41.
 242. United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc A/61/L.67 and Add.1 (Sept. 13, 2007), *available at* http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.
 243. ASSESSING ABUSE, *supra* note 1, at 20 (suggesting the Navajo Nation should establish its own car dealership); *cf. Id.* at 22 (stating that a Navajo nation auto dealership may be cumbersome and may not be worth the risk).
 244. *ACLU Challenges Abusive Debt Collection Practices that Target the Poor*, AMERICAN CIVIL LIBERTIES UNION (Jan. 29, 2015), <https://www.aclu.org/news/aclu-challenges-abusive-debt-collection-practices-target-poor> (demonstrating that the ACLU and such advocacy organizations are using legal challenges to dismantle systems that “punish the poorest among us, disproportionately people of color”).
 245. *Id.* at 17.
 246. Patricia Cohen, *In Lending Circles, a Roundabout Way to a Higher Credit Score*, N.Y. TIMES (Oct. 10, 2014), <http://www.nytimes.com/2014/10/11/your-money/raising-a-credit-score-from-zero-to-789-in-26-months.html> (stating “these centuries-old networks are being seen as a promising tool to help low-income Americans build credit records”).
 247. Nathalie Martin, *Giving Credit Where Credit Is Due: What We Can Learn From the Banking and Credit Habits of Undocumented Immigrants*, 2015 MICH. ST. L. REV. 989, 1033–34 (2016).
 248. Jeremy D. Franklin, *Credit Unions: Who Should Be Able to Serve the Underserved?*, 11 N.C. BANKING INST. 237, 238 (2007) (defining credit unions as “member-owned, democratically operated, not-for-profit institutions” with “the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means”).
 249. *Id.* at 239.
 250. Donald Novajovsky, *From National Credit Union Administration v. First National Bank & Trust to the Revised Federal Credit Union Act: The Debate Over Membership Requirements in the Credit Union Industry*, 44 N.Y.L. SCH. L. REV. 221, 224–25 (2000) (stating that, unlike savings and loans, savings banks, and commercial banks, a credit union cannot raise capital by issuing debt or equity securities. The article goes on to discuss that traditionally, credit unions “offered various types of savings accounts, and made simple mortgage, consumer, and personal loans,” and that “today, credit unions are fully competitive with many savings and commercial banking institutions.”).
 251. *First American Credit Union*, ACCESS ARIZONA, <http://www.accessarizona.org/business-item/first-american-credit-union/> (last visited Apr. 13, 2017) (providing an example of one of several credit unions already serving Navajo Nation residents).

