

Dealer



F&I

How Fighting Terrorism Impacts You

What you need to know about the OFAC initiative

By Gil Van Over

The federal government's new Office of Foreign Assets Control (OFAC) initiative is designed to help fight terrorism. Dealers continue to be confused about their responsibility to confirm that a potential customer is not on OFAC's list of suspected terrorists, drug dealers and money launderers. Sometimes, the best way to clear up a confusing issue is to present the facts.

To help you better understand what OFAC means to you and your business procedures, let's review several OFAC FAQs:

- --Do I have to check OFAC because of the USA Patriot Act?

This is probably the most common misconception about OFAC. Just like Coke and Pepsi are both soda (or pop depending on where you live), a Coke is not a Pepsi and a Pepsi is not a Coke. The OFAC regulations and the USA Patriot Act are both designed to help in America's war against those countries and people that aim to harm America, but they are not one and the same.

- --What is the USA Patriot Act?

The United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act) was signed into law only a few weeks after the September 11 terrorist acts. The purpose of the new law is evident by the title -- to establish a number of new programs designed to deter terrorist activities.

Since terrorists may use financial institutions to launder money they use to bankroll their activities, the USA Patriot Act places requirements on financial institutions to:

- · Establish money laundering programs (Section 352)
- · Share information about suspected money launderers and terrorist activities with federal government law enforcement authorities (Section 314)
- · Continue currency transaction reporting requirements for transaction exceeding \$10,000 in cash

Sellers of motor vehicles, airplanes and boats are now considered 'financial institutions' potentially subject to these requirements.

- --Just what is OFAC?

OFAC is an acronym for Office of Foreign Asset Control. It is the department of the United States Treasury responsible for administering and enforcing economic sanctions against suspected terrorists, drug dealers and money launderers under nine basic statutes:

1. Trading With the Enemy Act
2. International Emergency Economic Powers Act
3. Iraqi Sanctions Act
4. United Nations Participation Act
5. International Security and Development Corporation Act
6. The Cuban Democracy Act
7. The Cuban Liberty and Democratic Solidarity Act
8. The Antiterrorism and Effective Death Penalty Act
9. The Foreign Narcotics Kingpin Designation Act

- --How long has OFAC been a requirement?

Those of you with an interest in genealogy can trace OFAC's family tree back to the War of 1812 (trick question when was the War of 1812?) when the Secretary of the Treasury administered sanctions against England for harassing American sailors. During the United States' next war, the Civil War (or as my history professor father prefers to call it, The War Between The States), Congress passed a "Trading With the Enemy Act" (TWEA) which blocked transactions with the Confederacy and called for the forfeiture of goods involved in those transactions.

This act was modernized in 1917 as a result of World War I. In 1940, while Germany was invading Norway, the Office of Foreign Funds Control (OFFC) was established to administer the TWEA to prevent Nazi use of holdings of occupied countries. OFAC was formally created as a successor to OFFC in December 1950 when China entered the Korean War and President Truman acted to block all Chinese and North Korean assets subject to United States Jurisdiction.

- --What is an SDN?

Specially Designated National, or in non-governmental jargon, an individual or company owned or controlled by countries targeted with sanctions by the United States. An SDN is also an individual, group or entity such as terrorists and drug dealers that may not be controlled by targeted countries. OFAC has blocked their assets and prohibits U.S. persons from dealing with them.

- --How do I find the list?

The list is available for viewing at www.ustreas.gov/offices/eotffc/ofac. The last time I checked, the list is 127 pages long, with three columns using what looks like six-point font.

- --What's the best way for me to check the list?

There are a number of options available. Each of the three credit bureaus offers a search as part of their services. As with other latch-on services like HAWK Alerts, the bureaus charge you for each request. One word of caution you are required to clear OFAC on cash and credit customers.

An attractive option to the three bureaus is a web-based service, www.PatriotDealer.com. This service charges a flat annual fee for unlimited hits and takes about five seconds per request.

The least attractive choice is to print the list from OFAC's web site. Keep in mind that you are responsible to ensure you are checking the most recent list, which has been updated twice in the last week. Checking the list every day to see if an update has occurred, then printing and distributing the 127 pages, can prove to be a cumbersome task.

- --When should I check the OFAC list?

During the sales process, as soon as you get the driver's license. After all, you don't want to spend two hours selling a car to someone you can't sell a car to. And while you may want to send some salespeople on a test drive with a suspected terrorist, I'm not sure the rest of your sales staff would appreciate such a thrill.

You should also include an OFAC clearance requirement for new hires as part of your Safeguards program. After all,

potential money launderers could find identity theft at a car dealership too enticing.

- --What are the penalties?

Criminal penalties can include fines up to \$10 million and up to 30 years in the hootchgow. Additionally, if you sell the van that is loaded with a bomb that strikes a target, the crowd of people at your dealership's doorstep probably won't be there to buy a car from you.

- --Is an OFAC check limited to someone buying a car?

This answer is straight from an e-mail response from Alison Cooper, an OFAC Senior Compliance Officer. "All U.S. persons (including auto dealers) are subject to the regulations administered by the Office of Foreign Assets Control (OFAC). What this means in practical terms is that U.S. persons must not deal (any kind of transactions, including selling automobiles, servicing automobiles and selling automobile parts) with Specially Designated Nationals."

- --What do I do if I find a potential match?

First, do a little more research to verify whether the potential match is a false hit. Is your customer's name an exact name match, or just share the same common surname? Is your customer located in the same general area as the SDN or are they continents apart? If there are many similarities with the demographic information between your customer and the potential match, contact OFAC's hotline at 1-800-540-6322 for verification.

- --Can I tell someone that his credit is denied because he is on OFAC's list?

Ah, one of life's conundrums. Just because someone is on OFAC's list is not a valid reason to deny that person credit! You can't sell a car, but not because you can't secure financing.

- --I know I have to file an annual report on FinCEN 8300s. Do I also have an annual reporting requirement for OFAC?

This is our government at work. Of course, you have to submit a report (available at OFAC's web site) of blocked property by September 30 to: OFAC Compliance, Department of the Treasury, Washington, D.C. 20220.

In today's environment, you can't afford to take the risk that your dealership won't be targeted by someone on OFAC's list. Recent arrests of suspected terrorist in Chicago, Los Angeles, upstate New York, Tampa and Detroit should be proof enough.

If you wish to discuss this article with other dealers, or with the author, please go to the "Discussion Forums" at www.DEALER-magazine.com and enter the "F&I" forum.

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