

Oh No! I Just Got OFAC'd

by : *Gil Van Over*

On the TV show, 24, Jack Bauer is a super terrorist defeater extraordinaire. This season, he was released from a Chinese prison after being held captive for two years and immediately returned to prime form in ferreting out and destroying terrorists. While we mere mortal viewers are asked to suspend reality to follow Jack's exploits and the plot (ever notice Jack's cell phone never drops calls or runs out of juice?) the moral of the story remains true to form. American citizens must remain diligent in our fight against terrorism.

In fact, through the Office of Foreign Assets Control, or OFAC, you have been deputized into Jack's posse in the government's fight on the war on terrorism. Welcome to reality, Jack Bauer.

The Office of Foreign Assets Control administers and enforces economic sanctions programs primarily against countries and groups of individuals, such as terrorists, money launderers and narcotics traffickers, called Specially Designated Nationals, or SDNs. OFAC maintains and constantly updates an SDN list.

Been around a long time

OFAC type regulations have been around since prior to the War of 1812 and have morphed into today's OFAC. Prior to the War of 1812, the U.S. Treasury administered sanctions imposed against Great Britain for the harassment of American sailors. Fast forward to the Civil War, Congress approved a law that prohibited transactions with the Confederacy.

In 1940, the Office of Foreign Funds Control was established at the advent of World War II following the German invasion of Norway. A decade later, in December 1950, OFAC formally succeeded the Office of Foreign Funds Control when China entered the Korean War.

Our OFAC obligation

Straight from OFAC's web site: "All U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches. In the cases of certain programs, such as those regarding Cuba and North Korea, all foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S. origin goods to comply."

Governmentese translated

There is legalese, then there is governmentese. Simple translation of the OFAC requirement means that all U.S. citizens, including auto dealers, must check each customer against the OFAC list. You must check the OFAC list on all vehicle sales: credit, cash, lease or wholesale. Also, as part of an auto dealer's safeguards program, you should take this one step further and check all prospective employees against the OFAC list.

OFAC availability

OFAC checks are available to dealerships through a number of providers, including OFAC's web site (www.ustreas.gov/offices/enforcement/ofac/sdn/), outside vendors, menu providers, and the three credit

bureaus.

Credit bureaus, outside vendors and menu providers have adopted new measures to ensure compliance with OFAC regulations. Simply by entering basic demographic data, usually just the first and last name, these providers use special software to determine if a consumer is on the SDN list. This software matches the credit applicant's name and other information to the individuals on the SDN list. If there is a potential match, these providers issue a potential hit or match message. This message is a reminder that you must verify whether your customer is the individual on the SDN list by comparing the customer's information to the OFAC information.

What if I get a hit?

Whether you have checked a name manually or by using software, if you find a potential hit or match, you must do a little more research. Most vendors who provide OFAC search capabilities will provide you with the SDN's last known demographic information, which is included on OFAC's SDN list.

First, compare your customer's name to the name on the SDN list. How much of the SDN's name is matching against your customer's name? Is just one of two or more names matching (i.e., just the last name)?

If yes, you do not have a valid match and can proceed with the vehicle sale.

If you have an exact name match, compare the complete SDN entry with all of the information you have on your customer. An SDN entry often will have, for example, a full name, address, nationality, passport, tax ID, place of birth, date of birth, former names and aliases. If you are missing a lot of this information for the name in your transaction, go back and get more information and then compare your complete information against the SDN entry.

If your information confirms that the person in your dealership is different from the person on the SDN list, go ahead and sell a car.

If the information confirms that the person in your dealership is the same person on the SDN list, you absolutely cannot sell the car. Instead, you must block the transaction and report the person to OFAC at 1-800-540-6322.

How do I protect my dealership?

While the risk is low that a terrorist is going to visit your dealership to buy a car, keep in mind the SDN list also includes the terrorist's support staff, the drug dealers and money launderers that help fund terrorism. Profiling is not an acceptable method to fulfill your obligation under OFAC's requirements.

The penalties for selling a car to someone on the OFAC list can be pretty severe. Depending on the program, criminal penalties can include fines ranging from \$50,000 to \$10,000,000 and imprisonment ranging from 10 to 30 years for willful violations. Depending on the program, civil penalties range from \$11,000 to \$1,000,000 for each violation.

If you have concluded that the transaction in front of you is a false hit, document your conclusion on the

piece of paper that shows you had a potential hit, place that information in the deal jacket and proceed with the sale of the car.

If you have a positive hit, document your phone call to OFAC, including date, time, name of person you spoke with and any instructions provided.

There is one final potential issue with a positive OFAC hit that can create litigation against your dealership. Under both the Fair Credit Reporting Act and the Equal Credit Opportunity Act, it is not a valid reason to deny a customer credit simply because they are on the OFAC list. You are not permitted to tell someone that they can't get approved for credit because they are on OFAC's list. OFAC provides guidance that you should tell the customer that you can't sell a car to that customer because they are on the OFAC list and that the customer should contact OFAC directly.

Good luck Deputy Dealer. Jack needs your help.

***Gil Van Over** is the president and founder of gvo3 & Associates, a compliance consulting firm that specializes in F&I and sales compliance. Visit gvo3's web site at www.gvo3.com.*