

You AUTO KNOW®

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Robert A. Poklar, Esq.
Weston Hurd LLP
The Tower at Erieview
1301 East 9th Street
Suite 1900
Cleveland, Ohio 44114-1862
p: 216.687.3243
f: 216.621.8369

rpoklar@westonhurd.com

www.westonhurd.com



OFAC LIST

Scenario:

Your dealership is dealing with a customer who is not a US citizen and your managers are concerned about the dealership's liability to complete the sale due to the individual being a foreign national. What steps do you need to take?

First and foremost, it is not illegal to sell a vehicle to a non-US citizen, or a foreign national. The question is complying with the new security laws which went into effect after September 11, 2001. As you know, every vehicle transaction you are involved in results in the background check of the individual you are dealing with. Although you may not be performing the background check personally, the finance company you are dealing with will be performing the check to see whether it is permissible to sell the vehicle to the individual.

It must be specifically understood that the OFAC List is not solely focused on foreign nationals, but on US citizens also. In fact, a dealership can run an OFAC search on any individual, providing they have obtained their consent. As stated previously, most dealerships use their credit reporting agencies to run the OFAC research; simply because the individual does not have a Social Security Number does not mean the search cannot be completed. When a customer does not have a Social Security Number, the dealership can and should use a service that utilizes a search using the individual's name, date of birth and data fields populated with the individual's citizenship and country. In fact, most credit reporting agencies offer an OFAC only search that does not involve a credit application. However, you would have to check with your credit reporting service to determine whether it provides this service.

The Treasury Department website regarding the OFAC List specifically states "as part of its enforcement efforts, OFAC publishes a list of individuals and companies owned or controlled by, [for or on behalf of] targeted companies. It also lists individuals, groups, and entities such as terrorists and narcotic traffickers designated under programs that are not country specific. Collectively, such individuals and companies are called 'Specially Designated Nationals' or 'SDNS'. Their assets are blocked and US persons are generally prohibited from dealing with them."

Obviously, if an individual's name is on the OFAC list, then there is a problem and further checking may be required, or in order to be safe, you may refuse to do business with them. Remember, you are responsible for verifying the person's identification with some form of proper ID, assuring the name is not on the OFAC List.

If the address on the identification documentation and the buyer's order do not match, or there are other discrepancies, then you must follow up with additional questions or refrain from doing business with the customer. It is strongly suggested that you keep the OFAC check document in the file and any other documentation indicating the customer was not someone the dealership should have been concerned about. However, if the dealership is concerned, it should refrain from doing business with the customer.



CONTACT INFORMATION

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As always, these are highlights of the law and are not to be construed as containing the entire law. This is not to be construed or relied upon as a legal opinion. If you are presented with this problem, contact your legal counsel for advice.

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Having been a Chevrolet dealer, Robert A. Poklar's business background and experience in the automotive industry aid him in his representation of numerous Ohio automotive dealerships. He also represents after-market service companies, trade organizations, dealers, advertising associations and corporations. Pursuant to certain ethical standards, this may be construed as advertising.