

# No Murky Waters: Dealers Must Comply with OFAC

By Richard Greene  
Editor

CHICAGO – Though separated by hundreds of miles and in different professions, Elena Lovoy and Patrick Brown are on a common educational mission. They're trying to clear the air, clarify the confusion and help more dealers comply with regulations stipulated by the Office of Foreign Assets Control.

To ensure that no business is being done with potential terrorists and to keep terrorists from purchasing motor vehicles, dealers are required by law to regularly check OFAC's "blocked persons" list. This action on the part of dealers should help guarantee that their customers do not appear on OFAC's list.

Meanwhile, on a related note, still in the pipeline are anti-money laundering rules and regulations coming from the U.S. Treasury with which dealers will also need to comply. As a part of the USA Patriot Act passed in 2001, these were due out two Septembers ago but have yet to be put in place. Lovoy still believes they are on the way, but does not know the Treasury's implementation final timetable.

However, those Patriot Act provisions are separate from the OFAC compliance regulations, and both Lovoy and Brown want to make sure that dealers grasp that differentiation and are doing everything possible to comply with OFAC.

An attorney, Lovoy is a partner in the Chicago office of Maryland-based Hudson Cook, LLP. She's a recognized speaker on auto finance legal issues. Brown is senior vice president and chief operating officer of First National Bank and Trust in Louisville, Ga. He's also president of Integra Systems Queensborough, which provides financial software and consulting services.

Both spend quite a bit of time on the road, working with dealers to help them understand their legal responsibility to comply with OFAC regulations.

## OFAC Pre-Dates 9/11

OFAC comes under the U.S. Department of the Treasury and "administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction."

According to the OFAC Web site, "OFAC itself was formally created in December 1950, following the entry of China into the Korean War, when President Truman declared a national emergency under the

Trading With the Enemy Acts of 1917 and blocked all Chinese and North Korean assets subject to U.S. jurisdiction." Over the years, the list has broadened as new categories of names have been added. This was especially true during the Cold War and the fight against Communism.

Following 9/11, President Bush executed Executive Order 13224, which requires OFAC to make available to all industries a list of "blocked persons" known as "Specially Designated Nationals." Under the order, U.S. citizens and businesses are barred from entering into "any transaction or dealing" with individuals or entities who have been linked to terrorism. With each customer, dealers must check to see if his or her name appears on OFAC's list of "bad guys," as it's also been called.

Penalties for non-compliance are severe. Those found guilty can be fined from \$50,000 to \$10 million, and can be imprisoned up to 30 years.

## Clearing Up the Fog

Confusion has arisen, say Lovoy and Brown, because some dealers have tied OFAC compliance with the ongoing tussle between President Bush and Congress to make permanent the provisions of the USA Patriot Act that are set to expire on Dec. 31.

The Patriot Act was passed after 9/11 to give law enforcement more power to pursue terrorists. Today's national debate focuses on whether to extend and expand the law. Some of those provisions are viewed as controversial, one in particular that "allows federal agents to examine people's book-reading habits at public libraries and bookstores as part of terrorism investigations." On June 15, by a margin of 238-186, the House of Representatives voted to remove that specific provision.

As a result, several dealers have the misconception that if some of these Patriot Act provisions are not included, then they no longer need to comply with the OFAC regulations. That's what a growing number have been telling Lovoy and Brown as they've attended various training and educational sessions, including functions sponsored by the state associations affiliated with the National Independent Automobile Dealers Association.

"That's a common misconception, but nothing could be further from the truth," Lovoy stated emphatically. "These are mutually exclusive. OFAC predates the Patriot Act, and was on the books and in place long before even the terrorists dreamed up the concept of Sept. 11. Dealers have an absolute compliance obligation under OFAC."

Brown agrees. “As I’ve spoken to state conventions of the NIADA, and even recently at its national convention, I point out that dealers have to comply with the law,” he noted. “Unfortunately, I’ve met some independent dealers who are not yet complying. And I’ve spoken at a convention of rental agencies, and some rental companies have also not been complying with the OFAC regulations. This is serious. It’s the law, and the penalties of not doing so are designed to put you out of business.”

Lovoy and Brown strongly urge dealers to invest time in studying OFAC’s Web site – [www.treas.gov/offices/enforcement/ofac/](http://www.treas.gov/offices/enforcement/ofac/).

### **Making Compliance Easier**

At the same time, Brown says that his firm can consult directly with dealers to make sure they’re up to speed. Integra Systems Queensborough was formed in 1994 by banking and IT professionals and is one of several companies that provide Internet-based product solutions to enable various individuals and companies, including the auto industry, to comply with the OFAC requirements.

Integra’s particular product is called OFAC IQ. It’s updated frequently, sometimes twice a day, to guarantee accuracy and to ensure immediacy.

“Our original software was written for banks, but about two years ago, an automobile company from Wisconsin approached us to help them with OFAC,” Brown explained. “As a result, they ended up helping us redesign our package for the auto industry.”

OFAC IQ has five unique search features allowing dealers to identify individuals, companies and countries with which they are not to do business. Dealers can print out their search results so they can document their compliance efforts.

Lovoy also made it clear that once a relationship is established with a customer, it’s incumbent upon the dealer to continue checking the OFAC list to discover whether that person is added to the list at a later date.

“This is not just a one point-in-time responsibility,” she said. “It’s a real-time compliance issue. You have an on-going responsibility to make sure you know whether that person’s name has been added to the list, especially if they come back to have their car serviced. Once they drive that car off your lot, their name could be added to the OFAC list next week or at a later date. You’re supposed to know that.”

### **Anti-Money Laundering Around the Corner?**

As for the anti-money laundering rules, Lovoy said she believes they are still coming and dealers will need to adhere to them.

“I don’t have any reason to believe that the U.S. Treasury does not intend to implement the statutory requirements by regulations,” Lovoy said. “But as of today, although the statute says that all financial institutions will have to have a formal anti-money laundering program in place, we don’t have any regulations on the books yet that tell dealers what they need to do.”

So far, Lovoy said, under the Patriot Act, dealers already are required to fill out the currency transaction reporting form. She said its name has been changed but dealers still need to complete and submit it. “Though only the form’s name has changed, this form now has law enforcement value and not just IRS value,” Lovoy explained.

According to Lovoy, a regulation was published three years ago that would have required all financial institutions – and that term was broadly defined – to put into place an anti-money laundering compliance program. Banks already did, she said, but now dealers would now be included. Dealers were given a reprieve, though, in October 2002, when the regulations were to have kicked in.

Included in this program would be the need for formal written procedures and policies, training, an anti-money laundering compliance officer, and audits.

At the same time, Lovoy said, a third provision of the Patriot Act would require an exchange of information between dealers and federal law enforcement.

“Except for the currency transaction reporting requirement, these other Patriot Act provisions that apply to dealers have not been implemented by regulations yet,” she stated.

Lovoy urges dealers to be on the lookout and once these regulations come down the pike, they will need to be just as diligent to comply with these as they are with the OFAC rules.