

Automotive News

Battle against terrorism catches auto dealers off guard

High price could be paid for failing to check customers' names against federal list

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A federal list designed to combat terrorism has been nothing but a headache to John Porter, sales manager for Bill Wink Chevrolet-Geo in Dearborn, Mich.

A few weeks ago, a bank held up financing for one of the dealership's Arab-American customers for two days. It turned out the customer shared a name with one of the thousands of suspected terrorists on the U.S. Treasury Department's Office of Foreign Assets Control list. Dearborn has a large Arab community, and some of the suspects have common Arab names.

"The customer was a long-standing citizen," Porter says. "Here in Dearborn, names like Mohammad and Saad are as common as John Smith."

Wink Chevrolet, like many other dealerships, is confused and frustrated by the federal assets-control list. The list is only starting to surface on dealers' radar screens as the federal government increases its focus on national security.

Required to check names

Many dealers are unaware that they are required to check customer names against the list in every transaction.

"I thought that was the bank's responsibility," Porter says.

The list includes more than 5,000 of the country's most-wanted international criminals. The list has been around for decades - part of an effort to prevent Americans from doing business with those deemed to be enemies of the country. But the business community has been paying closer attention to the list since the terrorist attacks of Sept. 11, 2001.

Any corporation that does business with listed suspects can face fines of up to \$10 million. Individuals can face fines up to \$5 million and a lengthy prison term.

Legal experts say the list must be taken seriously. If the fines aren't enough to bury a dealership, the bad publicity for selling vehicles to terrorists could.

Mike Charapp, a Washington lawyer who represents dealers, says: "Any governmental penalties applicable to an unintentional deal with a terrorist pale in comparison to the adverse publicity and personal grief that would result from selling a truck to a terrorist that is ultimately used as a truck bomb."

Some auto lenders have warned dealers that failure to check the list would be a violation of their lender agreements. Though many banks have software that allows them to compare customer names easily against listed names, they worry that dealers won't do their part to comply.

"If one transfers a vehicle to someone on the list, the vehicle and the proceeds may be subject to seizure," Charapp says. "The vehicle would be unrecoverable."

Worried about deliveries

Keith Whann, a Dublin, Ohio, lawyer with dealer clients, says banks are concerned about spot deliveries. Under that scenario, the dealer lets the customer drive off with the vehicle while the store works on obtaining financing. The dealer would find out only later that the customer is on the list.

Still, many dealers are not checking the list - because they don't know about it, feel the risk is small or think the procedure is cumbersome.

"We photocopied the list, and it is hundreds of pages," says Tim Galli, executive vice president of the Midwestern Auto Group in Dublin, Ohio. Midwestern sells 14 makes from two locations. "We are doing the best we can with what we've got."

In some cases, dealers have downloaded the list from the Treasury Department's Web site and are trying check every transaction manually.

The finance manager at one Virginia dealership in an area with a large Arab population said he was not aware of the list. He asked not to be identified for fear that the dealership could get sued for not checking the list.

"It sounds like somebody was asleep when that law was pushed through," the finance manager says. "That's beyond reasonable. Would Home Depot be responsible if it sold fertilizer to someone who used it to make a bomb?"

Getting guidance

Paul Metrey, a lawyer for the National Automobile Dealers Association, says there is much confusion about the list. He says NADA is trying to get the Treasury Department to offer dealers some guidance.

"We have been advising dealers about the existence of the OFAC list and the basic prohibition against transacting business with any person or entity identified on the list," Metrey says.

Not all dealers feel the need to consult the list.

"We checked with our attorney on this, and he said he didn't see a need for us to go through the list," says Joe Walker, general manager of Fairlane Ford Sales Inc. in Dearborn, Mich. "Ninety percent of our finance business goes through Ford Credit, and they check every time a credit application is submitted. For that reason we didn't see any need for overlap."

First American CREDCO, a leading provider of credit reports to the automotive industry, says just 5 percent of its 11,000 dealer customers subscribe to an automated service that checks information in credit applications against the list. The cost ranges from 25 cents to 50 cents per transaction.

Some dealers think checking the list is part of the customer identification requirements in the USA Patriot Act that was passed in 2002 and went into effect for banks on Oct. 1. The Treasury Department has not decided whether it will apply similar Patriot Act rules to dealers, a senior official at the department says.

Checking information

The Office of Foreign Assets Control's prohibition on doing business with listed terrorists is a separate requirement, applying not just to dealers but to all businesses and citizens.

Credit bureaus will check information automatically in a credit application against the list for a fee.

Major computer vendors ADP Dealer Services of Hoffman Estates, Ill., and Reynolds and Reynolds Co., of Dayton, Ohio, also offer dealers the option of checking information against the list at the time of credit application. Both are working on an automatic check for cash transactions. Reynolds expects to have that service available in the first quarter of 2004.

The Treasury Department warns that some dealers may fall prey to vendors selling pricey software to search the list. The warning applies only to opportunists, not established vendors that integrate the dealer's system with a link to the government Web site.

The Treasury Department offers free access to the list on its Web site. The list can be searched in seconds, and the site also offers automatic e-mail updates.

Excuses for failure to check the list won't hold up. As one senior Treasury Department official says, the Office of Foreign Assets Control's requirement is like a speed limit: People who fail to see the posted limit and are caught speeding still get a ticket.