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# Credit Reports Falsely Tag Consumers as Terrorists, Drug Traffickers

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Imagine being branded as a possible drug trafficker, arms dealer or even terrorist, but nobody bothers to tell you. If you do find out and try to clear your name, you're told you can't.

That's what happened to Sergio Ramirez of Fremont, Calif. When Ramirez went to buy a car in nearby Dublin, he was rejected for a loan after a notation on his TransUnion credit report indicated he may be a drug trafficker.

When Ramirez tried to dispute the false alert, TransUnion told him there was nothing Ramirez or the credit bureau could do to fix the problem.

Even though the alert alleging Ramirez may be a drug trafficker appeared on the car dealership's consumer report, it didn't show up in TransUnion's massive consumer credit database. Apparently, TransUnion was pulling the alert from somewhere else.

Because an OFAC alert didn't appear in Ramirez's traditional credit file, representatives at TransUnion told him there was nothing there for him to dispute.

"It's horribly embarrassing," says Andrew Ogilvie, a consumer lawyer based in San Francisco, who is representing Ramirez in a class-action lawsuit against TransUnion. "Nobody wants to be sitting in somebody's finance office, [having someone tell you] 'I'm sorry, I can't sell you a car because you appear to be a terrorist or a money launderer or a drug trafficker.'"

It's unknown how many people have similar black marks included with their credit reports without realizing it. But consumer advocates say that scores of people are likely to have been mistakenly flagged as potential criminals because of the loose criteria some credit bureaus use to match people to a publicly available government blacklist called the Specially Designated Nationals (SDN) list, which is more commonly known as the OFAC list, after its agency of origin -- the Treasury Department's Office of Foreign Assets Control.

When consumers try to dispute the alerts branding them as potential criminals, they often hit a brick wall, say consumer advocates, thanks to a confusing -- and some say misleading -- argument that credit bureaus make about the legal status of the OFAC alerts.

Some credit reporting agencies don't consider OFAC alerts to be part of a consumer's traditional credit information. So when a consumer tries to get the alert removed from his or her credit history, the consumer is told that the OFAC alert isn't on file, so it can't be disputed.

### **What are OFAC alerts?**

OFAC alerts are notations that appear on lenders' credit reports that state that a potential customer shares a name with someone listed on the Treasury Department's SDN list .

The Treasury Department's Office of Foreign Assets Control regularly updates the SDN list with names of suspected terrorists, drug traffickers, money launderers and arms dealers who are prohibited from doing business in the U.S.

Lenders are supposed to check the list each time they receive a new application for credit and face steep penalties of up to \$10 million if they don't.

The rule went into effect in 2003 as part of the USA Patriot Act's broader efforts to kneecap terrorists' ability to finance a life in the U.S. Around the same time, credit reporting agencies , including the big three credit bureaus, TransUnion, Equifax and Experian, began to sell OFAC alert services that check consumers' names against the list and notify lenders if there's a potential match.

In Sergio Ramirez's case, his name was similar to two suspected drug traffickers on the SDN list. So TransUnion added the flag to his credit report, even though the individuals blacklisted by OFAC had additional surnames that Ramirez didn't share.

The exact algorithm that TransUnion uses to match people, such as Ramirez, to individuals on the list is unknown. However, "it appears that if any two names match up with the consumer's first and last name, it will be returned as a match," says James Francis, a consumer lawyer in Philadelphia who has represented multiple clients who have been mistakenly flagged by the credit bureau.

No other identifying information, such as Social Security number or birth date, is used, he says. As a result, many people are getting mistakenly flagged by the credit reporting agencies simply because they have common names, says San Francisco-based lawyer Andrew Ogilvie.

"You look at the OFAC [SDN] list and there are a huge number of Hispanic names," says Ogilvie. "You've got a number of Middle Eastern names that are confusing and probably shared by large numbers of people who immigrated and have similar last names and they are perfectly law abiding, good citizens."

### **It's the lenders' job to check the list**

TransUnion did not respond to a request for comment on its OFAC alert program. However, Stuart Pratt, president of the Consumer Data Industry Association, a trade group that represents the credit reporting agencies, says that OFAC alerts aren't supposed to be taken at face value.

"A lender is going to look at the OFAC list, regardless of whether they are buying it from a company that is selling a credit report," says Pratt. The purpose of the alerts included with a credit report is simply to give lenders a heads-up early in the process so they don't have to plod through the dense, 549-page list every time they get a credit application, he says.

Lenders also aren't supposed to make a credit decision based solely on the OFAC alert they receive from a credit reporting

agency, Stuart adds. Instead, if a lender receives an OFAC alert from a credit bureau, Pratt says it's the lenders duty to check the list released by the Treasury Department and do more research before extending someone credit.

"The cases that are out there where there's been a problem, it's been a problem because the lender or the auto dealer did not take the proper steps that OFAC itself has laid out in its guidance," says Pratt. "If the lenders do it right, then the false positives never occur."

Consumer advocates disagree. Consumers shouldn't have to depend on lenders to investigate whether the information the lenders receive from the credit bureaus is accurate, they say.

Under the Fair Credit Reporting Act , it should be up to the credit reporting agencies to do what they can to ensure the information reported is accurate.

Consumers also shouldn't have to wonder if they're being flagged as potential criminals without their knowledge any time they apply for credit, say consumer advocates.

Consumer lawyers contend that credit bureaus are supposed to let you know when you pull your report that you've been flagged if an OFAC alert appears on a creditor's report. "They are legally obligated to disclose to the consumer anything they have disclosed to a credit grantor," says Francis.

Credit reporting agencies are also supposed to let you formally dispute and get removed any inaccurate information on your report linking you to the list, said the Treasury Department in a consumer guide on OFAC alerts.

However, some credit bureaus argue they don't have to reinvestigate OFAC alerts on a consumer's credit report because the OFAC alerts are sold separately from a credit report and aren't included in the credit bureau's primary credit reporting database.

"Consumers may be confused by the fact that the OFAC report came from a company that they recognize as a credit bureau," says Pratt, from the credit bureaus' trade association. But in many cases, credit bureaus are delivering the OFAC alert as a separate product from a consumer's traditional credit report, he says.

If a credit bureau chooses to merge the OFAC listings with its primary credit reporting database, then that information would appear on your credit report when you requested it and you'd be able to dispute it, says Pratt. But if it's being delivered as a separate product, then the alert isn't generated until a creditor has requested the service after a consumer has applied for credit, says Pratt. So, "it's only at that time that a match occurs and so there's no possible match before that."

### **Legal status of alerts in dispute**

TransUnion made a similar argument in 2009, after being sued by a woman who was mistakenly flagged as a possible drug trafficker from Colombia.

In that case, Sandra Cortez of Colorado was trying to buy a car when her credit report showed an OFAC alert. The car dealership threatened to call the FBI and made her wait for hours before she could take her car home.

Cortez later contacted TransUnion several times trying to get the alert removed. However, the bureau kept telling her the alert didn't exist on her credit report so she couldn't dispute it. During that same period, Cortez saw the alert still appeared on other lenders' credit reports, including one pulled by a potential landlord a year after she visited the car dealership.

The case eventually made its way to the 3rd U.S. Circuit Court of Appeals, which rejected TransUnion's argument that OFAC alerts aren't covered by the Fair Credit Reporting Act.

In the 2010 3rd Circuit case Cortez vs. TransUnion , the court ruled TransUnion violated the Fair Credit Reporting Act by

keeping the OFAC alert secret from Cortez and not letting her dispute it -- and for failing to maintain reasonable procedures that would ensure her report was as accurate as possible.

The case was the first of its kind to be decided by a federal appeals court. Since then, consumer lawyers say the credit reporting agency appears to have done little to change how it treats OFAC alerts. "It's our view that they remain in willful violation of the Fair Credit Reporting Act," says Philadelphia-based lawyer James Francis, who represented Cortez.

Since August 2012, at least two more people, Brian D. Larson of Northern California and Ronald Miller of Pennsylvania, have filed lawsuits against TransUnion for failing to properly disclose OFAC alerts on their reports.

According to media reports covering the cases, both Larson and Miller found OFAC alerts buried at the bottom of their credit reports, under "additional information." The alerts appeared below a subhead that said "end of credit report" and said they were being disclosed to the consumer as a courtesy.

The language disclosing the alerts was confusing, complained the men, and made it appear as if they couldn't get rid of the false alerts from their credit histories if they tried.

"That type of language that they throw in there would lead the consumer to believe that they're not legally required to provide it to the consumer and perhaps the consumer doesn't have a right to dispute it and that's not true," says Francis, whose firm is representing both Larson and Miller.

### **Some alerts appear directly on reports**

TransUnion appears to be the only credit reporting agency that has been taken to court for the OFAC alerts it sells to creditors. However, all three credit reporting agencies sell the alerts to lenders.

It's not clear how the alerts are represented to lenders and consumers since publicly available information about the product is scarce.

However, a review by CreditCards.com found multiple sample credit reports, including a sample TransUnion report copyrighted in 2011, that included the OFAC alert information directly on the credit report itself, near other, more traditional credit information.

Additional documents posted by and for lenders, such as an advertisement for enhanced OFAC alerts, and messages posted in lender forums also refer to the OFAC alerts as part of consumers' credit reports, showing that even if credit bureaus don't consider the OFAC information to be part of consumers' credit reports, many lenders do.

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