

# Client Alert

Government Advocacy & Public Policy Practice Group

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## Easing of Restrictions on Travel to Cuba Brings New Opportunities

New federal regulations promulgated at the end of January will permit greater travel to Cuba by American citizens and entities. The new rules also permit Americans to transmit increased remittances to Cuba. A broad range of entities stand to benefit from these changes, from those involved in the travel industry, including aviation companies, to educational and religious entities. In addition, President Barack Obama has signaled that these changes are one more step toward his goal of dismantling the Cuban embargo. Understanding the restrictions and monitoring future developments will enable companies to be well positioned if and when additional changes occur.

### Background

On January 14, 2011, President Obama issued a statement entitled, "Reaching Out to the Cuban People," directing that certain revisions be made to restrictions on travel and remittances to Cuba. These changes took effect on January 28, 2011, with the promulgation of new regulations by the Treasury Department's Office of Foreign Assets Control (OFAC) and the Department of Homeland Security's US Customs and Border Protection (CBP). Earlier in 2009, the Obama Administration had made changes to the travel restrictions, as well as the remittance regulations. The announcement on January 14 furthers the Administration's goal of increasing engagement with the people of Cuba.

### Authority to Change the Terms of the Embargo

The authority to remove the U.S. embargo against Cuba rests with the Legislative Branch, since lifting the embargo would require legislative action. The Executive Branch, however, possesses the authority to alter the terms of embargo-related restrictions, such as travel.

#### *Executive Branch*

In General. The President has broad authority to adjust the permissible interactions between the United States and Cuba. However, due to the codification of the U.S. embargo in 1996 through the Helms-Burton legislation, this authority is not unlimited. For example, the President may not unilaterally lift the embargo, this would require legislative action. The following outlines the powers that the President may use:

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- Modify travel restrictions
- Modify restrictions on remittances to Cuba
- Modify regulations regarding gift parcels to Cuba
- Modify restrictions on U.S. commercial agricultural exports to Cuba
- Engage Cuba in bilateral talks or negotiate new bilateral agreements with Cuba
- Provide certain types of foreign assistance to Cuba for such purposes as international disaster relief, health, democracy-building, tropical forestry and biodiversity conservation and energy programs (this authority is limited; the President would have to consult with Congress in order to obtain a waiver based on humanitarian reasons or national security interests from rules against providing assistance to those supporting international terrorism)
- Restore diplomatic relations with Cuba
- Remove Cuba from various terrorist lists in U.S. law (this authority is similarly limited; the President would have to submit a report to Congress prior to the removal of Cuba from a terrorist list).

Travel Restrictions. In the area of travel to and from Cuba, the President has authority to ease the current restrictions on travel by U.S. citizens, but only in relation to 12 categories of permissible travel set forth in the Cuban Assets Control Regulations (CACR) and only in relation to the type of license that is required to travel. At present, travel to Cuba may occur under one of two types of licenses—general and specific. Prior permission must be obtained through an application filed with OFAC for travel that requires a *specific* license. Travel that requires a *general* license may be undertaken without prior permission. For example, a general license is required to visit close relatives. A specific license is required for travel that involves educational, religious, humanitarian and other activities. (The main changes made through the January 14 announcement modified the educational and religious categories, see below.) The President may not lift these travel restrictions in their entirety, nor may the President authorize travel for tourist purposes; these changes would require legislative action. However, the President could, for example, make all 12 eligible categories of travel subject to a general license and eliminate the need for prior approval, *i.e.*, a specific license.

Remittances. The President also has the authority to ease restrictions on remittances to Cuba; these restrictions are also set forth in the CACR.

## ***Legislative Branch***

The following modifications to the embargo would require legislative action:

- Lifting or substantially easing the U.S. economic embargo on Cuba
- Lifting the travel restrictions in their entirety, including permitting tourist travel
- Further lifting restrictions on the sale of agricultural and medical exports to Cuba
- Allowing U.S. foreign subsidiaries to trade with Cuba

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## Description of Changes

As discussed, above, the President may modify the U.S. - Cuba embargo in numerous ways. With the announcement on January 14, 2011, he requested that OFAC and CPB make the following changes:

### *Expand Travel to Cuba*

#### Educational Activities

Accredited U.S. undergraduate and graduate degree-granting academic institutions may now engage in travel to Cuba under a general license; this previously required a specific license. In addition, the specific licenses previously issued were limited to one year in duration and covered only full-time permanent employees of and students enrolled with a particular licensed institution. The new general license permits all members of faculty and staff (including part-time and adjunct staff) and permits students to participate through any sponsoring US academic institution, not only the one they currently attend. Finally, participation in a structured educational program in Cuba or a formal course of study at a Cuban academic institution was required to last at least 10 weeks; the study now must be accepted for credit toward the student's degree rather than last for of a particular period of time.

A new specific license has been created to permit accredited U.S. undergraduate or graduate degree-granting academic institutions to sponsor or co-sponsor academic seminar, conferences and workshops related to Cuba, or global issues involving Cuba. Faculty, staff and students of these institutions may attend the events.

U.S. academic institutions may open accounts at Cuban financial institutions for the purpose of accessing funds associated with educational activities.

A specific license has been added to permit educational exchanges not involving academic study pursuant to a degree program if the exchanges occur in conjunction with an organization that sponsors and organizes such programs to promote people-to-people exchanges.

#### Religious Activities

A new general license has been created permitting religious organizations located in the United States to engage in travel to Cuba; this previously required a specific license. Specific licenses may be granted for travel that does not qualify for the new general license.

Religious organizations may open accounts at Cuban financial institutions for the purpose of accessing funds associated with religious activities.

#### Other Clinics and Workshops

While a general license exists in this category, specific licensing has been expanded for travel associated with participation in a public performances, clinics, workshops, athletic competitions that may not have previously qualified. Any such clinics or workshops must be organized and run, at least in part, by the specific licensee.

# Client Alert

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## Free-lance Journalistic Activities

The journalistic activities category has been expanded to permit specific licensing for a greater scope of free-lance work, not merely for research on a particular article.

### *Expand Remittances to Cuba*

A new general license permits remittances of up to \$500 per quarter to any Cuban national (except prohibited officials of the Cuban government or prohibited members of the Cuban Communist Party) to support the development of private businesses.

A new general license permits unlimited remittances to religious organizations in Cuba in support of religious activities; previously this required a specific license.

A new general license permits unlimited remittances to close relatives who are students in Cuba pursuant to an educational license.

- Note: The total amount of remittances that may be carried to Cuba remains \$3,000, however, this amount previously only pertained to family remittances. With the introduction of the three general licenses for remittances discussed in the bullets, above, this cap on remittances now encompasses not only family-based remittances but those for any Cuban national, religious organizations and close relatives who are students.

A specific license has also been modified to permit remittances to individuals or independent non-governmental entities to support the development of private businesses, including small farms.

### *Other Transactions*

A new general license permits interactions with Cuban nationals who have taken up permanent residence in a third country.

### *Flights to/from Cuba*

Currently, flights to and from Cuba are only authorized through Miami International Airport, John F. Kennedy International Airport in New York and Los Angeles International Airport. Amended CPB regulations will allow additional US airports to request approval to process authorized flights. These airports must:

- Be able to process international flights; and
- Have an OFAC licensed carrier service provider prepared to provide flights between the United States and Cuba.

Tampa International Airport has already indicated an interest in handling flights to and from Cuba and hopes to offer charter flights in the coming months.

# Client Alert

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In addition, aircraft intending to provide service to and from Cuba must be properly authorized to do so. Several federal agencies, including OFAC as well as the Departments of Commerce, State or Transportation, as applicable, administer the necessary authorizations. The owner or person in command of the aircraft must ensure that the aircraft has the necessary authorization to travel.

## **Conclusion**

While these changes became effective on January 28, it will take some time for their full impact to be realized. Easing restrictions on travel and remittances to Cuba in order to bring about increased engagement between the people of the United States and Cuba presents an opportunity not only to engender democracy in and normalized relations with Cuba. Increased engagement also offers new economic opportunities. Understanding the new policies and monitoring expected future developments will enable companies to be prepared for further changes in the U.S. - Cuba relationship.

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