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# *OFAC Amends Cuba Sanctions, Loosening Restrictions and Fully Implementing Biden Administration's Cuba Policy*

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## *Overview*

On May 28, 2024, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) announced amendments to 31 C.F.R. Part 515, the Cuban Assets Control Regulations (CACR), expanding access to certain financial and Internet-based activities for Cuban nationals and making other changes.<sup>1</sup> These amendments—the most consequential of which are discussed below—represent the latest efforts to ease US economic restrictions that adversely impact the Cuban people and “fully implement[]”<sup>2</sup> the Biden Administration's strategic policy of increasing support for the Cuban people, announced in May 2022.<sup>3</sup>

These changes permit technology and financial companies to expand the services they provide to the Cuban people. Companies should review their policies and internal controls to account for the new changes while ensuring they do not inadvertently provide services to Cuban entities and individuals that remain prohibited.

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<sup>1</sup> See US Department of the Treasury, Treasury Amends Regulations to Increase Support for the Cuban People and Independent Private Sector Entrepreneurs (May 28, 2024), <https://home.treasury.gov/news/press-releases/jy2374>.

<sup>2</sup> See US Department of State, Senior Administration Officials on the Cuba Amended Regulations (May 28, 2024), <https://www.state.gov/senior-administration-officials-on-the-cuba-amended-regulations/>.

<sup>3</sup> See US Department of State, Biden Administration Measures to Support the Cuban People (May 16, 2022), <https://www.state.gov/biden-administration-measures-to-support-the-cuban-people/>.

## *Background*

Enacted in 1963, the CACR implements the US trade embargo against Cuba under the authority of a variety of statutes and executive orders.<sup>4</sup> The regulations generally prohibit US persons from providing goods or services to Cuban nationals and from dealing in any property in which Cuba or certain Cuban nationals have an interest. In recent years, the Biden Administration has made it a strategic priority to revisit the restrictions that impact the Cuban people, emphasizing concerns about human rights and the political and economic well-being of the Cuban people. Many changes—including the May 2024 amendments—have been implemented through the expansion or clarification of existing general licenses but are ultimately constrained by the boundaries set by the statutory framework establishing the embargo.

## *Noteworthy Changes*

### **Internet-Based Services and Software (§ 515.578)**

The authorization for the export, reexport, and import of certain Internet-based services under § 515.578 has been amended to provide additional examples of authorized services, including social media platforms, automated translation, videoconferencing, and cloud-based services to support these services.<sup>5</sup> FAQ 1175 clarifies that “cloud-based services” include not only the “cloud storage” services previously authorized by OFAC but also, e.g., data transport services, virtual machines, and software-as-a-service (SaaS).<sup>6</sup>

OFAC further expanded the authorization to services (including training) to install, repair, or replace certain items related to communications or used to develop software to improve the free flow of information in Cuba.<sup>7</sup> Finally, these amendments authorize the export and reexport of Cuban-origin software and mobile applications (apps) from the United States to third countries.<sup>8</sup>

### **Independent Private Sector Entrepreneurs (§ 515.340)**

OFAC is replacing the terms “self-employed individual” and “independent Cuban entrepreneur” with the more expansive term “independent private sector entrepreneur.”<sup>9</sup> This new language broadens the scope of numerous existing authorizations under the CACR. It encompasses self-employed

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<sup>4</sup> See OFAC, Cuba Sanctions, <https://ofac.treasury.gov/sanctions-programs-and-country-information/cuba-sanctions>.

<sup>5</sup> 31 C.F.R. § 515.578(a)(1).

<sup>6</sup> See OFAC, FAQ 1175, <https://ofac.treasury.gov/faqs/1175>

<sup>7</sup> 31 C.F.R. § 515.78(a)(2).

<sup>8</sup> 31 C.F.R. § 515.578(d)–(e).

<sup>9</sup> 31 C.F.R. § 515.340.

individuals in addition to cooperatives and other private businesses wholly owned by or consisting solely of such individuals up to 100 employees.<sup>10</sup> As a result of these changes, US persons will be permitted to engage in business with a wider swath of Cuban persons, enabling the importation of certain goods and services that previously might have been restricted.

#### **US Bank Accounts (§ 515.584(h))**

The amendments authorize US banks to open and maintain accounts for independent private sector entrepreneurs and authorize such Cuban nationals to access their US bank accounts, including via online payment platforms, *regardless of their location*, to conduct transactions authorized or exempt under § 515.584(h).<sup>11</sup>

#### **U-Turn Transactions (§ 515.584(d))**

OFAC has reinstated its previously revoked authorization for so-called “U-turn” transactions—that is, funds transfers that both originate and settle outside the United States in which a US bank serves as an intermediary<sup>12</sup>—involving Cuba or Cuban nationals.

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<sup>10</sup> *Id.*

<sup>11</sup> 31 C.F.R. § 515.584(h)(2).

<sup>12</sup> See OFAC, FAQ 736, <https://ofac.treasury.gov/faqs/736>.

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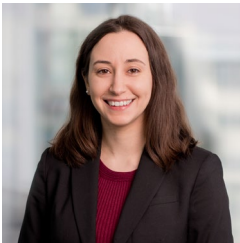
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