



CLIENTTOPICS

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The United States Relaxes Certain Aspects of the Cuba Embargo

Economic Sanctions, Law and Regulatory Update: The US Treasury's Office of Foreign Assets Control Amends the Cuban Assets Control Regulations

On September 3, 2009, the US Treasury Department's Office of Foreign Assets Control ("OFAC"), which is the primary US agency in charge of administering the US embargo of Cuba, announced amendments to the regulations governing the embargo. OFAC's regulatory amendments, which are effective immediately, implement the President's initiative of April 13, 2009. *Federal Register* publication of the new regulations is expected to occur on September 8, 2009.

The US Department of Commerce's Bureau of Industry and Security ("BIS"), which regulates US exports and reexports of goods and technology to Cuba, is also expected to implement the President's initiative and to announce new rules relaxing prohibitions on exports such as personal communications devices and telecommunications equipment. BIS's new rules are expected to be formally published on September 8 and to be effective as of September 3, 2009.

OFAC's regulatory amendments relax the Cuba embargo in the areas of family visits, family remittances, telecommunications, certain business travel, and certain Cuban nationals. The amendments also indicate how current policy may apply to authorize certain transactions for which OFAC specific licensing is still required.

Briefly outlined below are the changes that have been made to the embargo by OFAC. These changes authorize previously prohibited transactions and activities.

Family Travel

1. Family travelers (persons subject to the jurisdiction of the United States and persons traveling with them with whom they share a common dwelling as a family) are now allowed to visit their "close relatives" in Cuba (who are nationals of Cuba) as often as they wish. Close relatives of

US government employees can also now visit their “close relatives” assigned to the US interests section in Havana as often as they wish. Previously the number and duration of trips had been restricted. OFAC regulations define “close relative” as any individual related to a person by blood, marriage, or adoption who is no more than 3 generations removed from that person or from a common ancestor with that person. OFAC will consider issuing specific licenses for travel-related transactions to visit “close relatives” who are neither Cuban nationals nor employed by the US government.

2. Authorized travelers are allowed to engage in all transactions ordinarily incident to such travel in Cuba, provided that the amount of money spent in Cuba per day does not exceed the “maximum per diem rate,” established by the US State Department for Havana, Cuba. This current per diem rate is \$179.00. The previous \$50 per day limit on transportation expenses in Cuba and the \$50 per day limit on living expenses in Cuba no longer apply.

Family and Certain Other Remittances to Cuba

1. There is no longer any restriction on the amount and frequency of authorized (family) remittances to Cuba. The previous limit of \$300 per recipient household in any consecutive 3-month period no longer applies. And, the universe of permitted recipients has been expanded from the “immediate family” of the remitter to the larger universe of “close relatives.” Remittances to prohibited Cuban government officials and to prohibited members of the Cuban Communist Party are still prohibited.
2. The total amount of family remittances that an authorized traveler may carry to Cuba has been increased from \$300 to \$3000.
3. The limit on two separate one-time (per payee) emigration-related travel remittances to Cuba has been increased from \$500 to \$1000.
4. Remittances to Cuba from an inherited blocked account in a US banking institution may be made to the account holder, without limitation with respect to amount and frequency, if the intended recipient of the remittance is a “close relative” of the decedent. If remittances from such accounts are for emigration, then the \$1000 limitation applies.
5. Remittances of up to \$300 in any consecutive 3 month period are authorized from blocked accounts owned by a Cuban national in a third country.

US Banks and Depository Institutions

US banks and “depository institutions” are now, subject to certain conditions, generally authorized to act as forwarders for remittances. Banks and depository institutions do not need a specific license for this activity. The set up of testing arrangements and exchange authenticators keys with Cuban financial institutions for the forwarding of authorized remittances are authorized. However, US banks and depository institutions are still prohibited from establishing or using direct correspondent accounts on their own books for Cuban financial institutions.

Telecommunications Services

1. All transactions by US telecommunications service providers, including but not limited to payments, incident to the provision of telecommunications services between the United States

and Cuba; the provision satellite radio or satellite television services to Cuba; and/or the entry into and performance under roaming service agreements with telecommunications service providers in Cuba are now generally authorized. The previous requirement for specific licensing of such activities has been removed.

2. The entry into, and the performance and payments under, contracts with non-Cuban telecommunications services providers, or particular individuals in Cuba, for services provided to particular individuals in Cuba is now, subject to certain conditions, generally authorized, provided that the individual in question is not a prohibited Cuban government official or a prohibited member of the Cuban Communist Party.
3. Transactions incident to the establishment of facilities (e.g., laying of fiber-optic cable, satellite facilities) to provide telecommunications linking the United States and Cuba are now generally authorized. OFAC will consider specifically licensing transactions related to the establishment of facilities linking third countries and Cuba.

Exportations of goods and other items from the United States to Cuba or the reexportation of US-origin goods to Cuba still requires authorization from the US Department of Commerce.

4. Travel-related transactions incident to participation in professional meetings for the commercial marketing of, sales negotiation for, or performance under authorized contracts for the provision of the telecommunications services, or the for the authorized establishment of telecommunications facilities are now, subject to certain eligibility, notice, reporting, and other requirements, generally authorized.
5. Travel-related transactions directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of telecommunications-related items that have been authorized for export or reexport to Cuba by the US Department of Commerce are also now, subject to certain conditions, authorized. Exportations of goods and other items from the United States to Cuba or the reexportation of US-origin goods to Cuba still require authorization from the US Department of Commerce.

Travel-Related Transactions: Agricultural Commodities, Medicine, Medical Devices

Travel-related transactions directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of agricultural commodities, medicine, or medical devices that appear to be consistent with the export or reexport licensing policy of the US Department of Commerce are also now, subject to eligibility, notice and reporting requirements, authorized.

Exports of goods and other tangible items from the United States to Cuba or reexports of US origin goods to Cuba still require separate authorization from the US Department of Commerce.

Cuban Nationals Lawfully in the United States

Most transactions of Cuban nationals lawfully present in the United States in a non-visitor status are now authorized. Previous OFAC authorization in this regard was limited only to those Cuban nationals who were paroled into or granted refugee status in the United States, and the rule unintentionally excluded all Cuban nationals who were lawfully present in the United States (other than those who are in the United States on a temporary basis). The term

non-visitor status does not apply to an individual who is in the United States on a non-immigrant visa valid only for a specified period of time.

Transactions with Cuban Nationals Resident Outside of Cuba and the United States

Pursuant to a long-standing licensing provision in the relevant regulations, OFAC, in response to a specific license application, authorizes Cuban nationals who have established “permanent residency” in third countries to be treated as unblocked nationals of Cuba. Such licenses authorize all transactions with Cuban nationals (individuals) that are otherwise prohibited.

OFAC has now relaxed the evidentiary burden that needs to be met to establish “permanent residency.” OFAC’s statement of licensing policy indicates that the relaxed evidentiary burden will allow increased favorable actions on license applications for the unblocking of Cuban nationals. For example, evidence that the individual who seeks to be treated/authorized as an unblocked national of Cuba has been resident for the past two years without interruption in a single country outside of Cuba, or evidence that the individual does not intend to, or would not be welcome to, return to Cuba will be considered in licensing determinations. Previously, such evidence was either not considered, or it was accorded little weight.

A copy of the regulations amending the US embargo of Cuba, which lay out the precise details of the newly-authorized transactions and activities outlined above can be found at:

http://www.treas.gov/offices/enforcement/ofac/legal/regs/31cfr515_temp.pdf

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