

PUBLICATION

OFAC Further Amends Cuban Assets Control Regulations – President Obama Authorizes More Travel and U.S. Presence in Cuba

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On March 16, 2016, in what could be the final set of amendments to the Cuban Assets Control Regulations (CACR) under the Obama Administration, the Office of Foreign Assets Control (OFAC) published a final rule that further facilitates travel to Cuba, authorizes additional types of financial transactions and allows companies to have a greater business presence on the island. As expected, these changes represent yet another small step toward normalization that builds upon past rounds of regulatory amendments implemented on January 16, June 15, September 21, 2015, and January 27, 2016.

While the President cannot unilaterally abolish the CACR sanctions regime absent congressional action, over the past 15 months the Administration has sought to normalize economic and political relations between the two countries as much as possible through executive action. In fact, the latest amendments were announced just days before President Obama was due to make a historic trip to Cuba – the first time a sitting U.S. president has visited the island nation in 88 years. Despite the Administration's inability to cement its normalization efforts into law, it has made clear its intentions to push the envelope as much as possible, as evidenced by a statement from the White House indicating that the President's upcoming visit will be aimed at rendering the normalization process "irreversible."

This latest final rule amending the CACR includes the following changes:

- **Travel to Cuba:** The requirement that people-to-people educational travel be conducted under the auspices of an organization that sponsors such exchanges has been removed. This means that an individual can now travel to Cuba without a specific license, provided that the individual engages in a full-time schedule of educational exchange activities geared toward meaningful interactions that will enhance contact with the Cuban people, support civil society, or promote the Cuban people's independence. (Note that the predominant portion of the activities cannot involve certain Cuban government entities or officials, and the traveler must retain records related to the trip that include documentation of their full-time educational schedule).
- **Business Presence in Cuba:** U.S. companies that are providing authorized telecommunications and internet-based services, authorized mail transmission and cargo transportation services, authorized travel and carrier services, or authorized exports to Cuba can now establish and maintain a business presence in Cuba, including through subsidiaries, branches, offices, joint ventures, franchises and agency or other business relationships with any Cuban individual or entity. OFAC also clarified that exporters who are authorized or exempted by the Department of Commerce or OFAC can establish a physical presence wherein they assemble items they have exported to Cuba.
- **U-Turn Payments:** U-turn payments, or payments that originate in a non-U.S. financial institution and pass through the U.S. financial system before being transferred to a bank outside the United States, are authorized, provided the originator and the beneficiary are not subject to U.S. jurisdiction.
- **Bank Accounts:** Banking institutions are authorized to open and maintain accounts solely in the name of a Cuban national located in Cuba only for the purposes of receiving payments in the U.S. for authorized transactions and remitting such payments to Cuba.
- **Cuban Nationals Working in the United States:** U.S. employers are now authorized to sponsor and hire Cuban nationals to work in the United States and are no longer limited in the amount of

compensation they are allowed to provide to non-immigrant Cuban nationals so long as no special payment is made to the Cuban government, and the Cuban government does not levy a special tax on the compensation.

- **U.S. Persons in Third Countries:** Persons under the jurisdiction of the United States may now acquire Cuban-origin goods for personal consumption while in a third country and receive certain travel-related services from Cuba or Cuban nationals while in a third country. (Note this does not mean that such merchandise can be imported into the United States, even if it is in accompanied baggage).
- **Grants and Awards:** Educational grants, scholarships and awards can now be given to Cuban nationals to pursue academic studies for a degree.
- **Cuban-Origin Software:** The importation of Cuban-origin software into the United States is now authorized.

The Specific License Option: In addition to the general licenses and authorizations OFAC has promulgated, keep in mind that applying for a specific license to engage in activities which are not expressly authorized in the regulations has become an increasingly viable option. The Administration's pro-normalization policy and the resulting trend toward increased political and business relations between the U.S. and Cuba means that absent a sudden policy reversal, OFAC, as well as the Commerce Department's Bureau of Industry and Security, will generally look for reasons to approve applications for specific licenses related to trade with Cuba. This means if there is a reasonable argument as to why your company should be allowed to engage in a goods or services transaction involving Cuba, and the transaction is in line with the Administration's pro-normalization policy, this option should be seriously considered.