

United States Announces New Cuba Policy

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On June 16, 2017, President Trump issued the “National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba” (the “Cuba Memorandum”) describing the Administration’s policy on Cuba and instructing relevant agencies to issue regulations limiting “people-to-people” travel and prohibiting persons subject to US jurisdiction from engaging in “direct financial transactions” with certain designated entities controlled by, or acting for or on behalf of, the Cuban military, intelligence, or security forces.¹ The US Department of the Treasury’s Office of Foreign Assets Control (OFAC) issued Frequently Asked Questions (FAQ) explaining the revised policy in the Cuba Memorandum.²

These restrictions will not come into effect until OFAC and the Department of Commerce issue regulations implementing the new policy. The Cuba Memorandum requires that the process of revising the regulations must be initiated within 30 days. OFAC expects to issue its regulatory changes in the coming months. The new regulations will not affect existing licenses issued by OFAC.

Restrictions on Transactions Involving Entities Under the Control of, or Acting for or on Behalf of, Cuban Military, Intelligence, and Security Forces

The Cuba Memorandum instructs OFAC to prohibit direct financial transactions involving entities which are under the control of, or act for or on behalf of, the Cuban military, intelligence, or security services. These entities will be identified on a list published by the US Department of State (State Department). The Cuba Memorandum states that Grupo de Administración Empresarial (GAESA) will be one of the entities included on the list published by the State Department.

In addition, the Cuba Memorandum directs OFAC to expand the definition of “prohibited officials of the Government of Cuba” to include a broader range of Cuban government officials. Currently, the definition of prohibited members of the Cuban Government includes only members of the Council of Ministers and flag officers of the Revolutionary Armed Forces. The expanded definition would include members and employees

¹ See the full text of the memorandum [here](#).

² See the full text of the FAQs [here](#).

of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors, and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; and members and employees of the Supreme Court (Tribuno Supremo Nacional). Prohibited officials of the Government of Cuba are not eligible for a number of authorizations available under the Cuba sanctions regulations.

OFAC has stated that the announced changes will not take effect until OFAC issues new regulations. US companies already engaged in authorized transactions with entities affiliated with the Cuban military, intelligence, or security services, will be permitted to continue to conduct such transactions provided that the commercial engagements related to those transactions were in place prior to the issuance of the new regulations. OFAC confirmed that the forthcoming regulations will be prospective and thus will not affect existing contracts and licenses.

Upon issuance of the new regulations, however, direct financial transactions with parties identified by the State Department as being controlled by, or acting for or on behalf of, Cuban military, intelligence, or security forces will be prohibited, even under general licenses (unless the transactions relate to the categories of activities set forth below).

The following types of activities, if authorized by the relevant agencies of the US government, will remain permissible under the new regulations, even if they involve dealings with parties identified by the State Department as being controlled by, or acting for or on behalf of, Cuban military, intelligence, or security forces:

- Activities concerning Federal Government operations (e.g., the Naval Station Guantanamo Bay and the US mission in Havana);
- Support for programs to build democracy in Cuba;
- Activities concerning air and sea operations that support permissible travel, cargo, or trade;
- Support for the acquisition of visas for permissible travel;
- Support for the expansion of direct telecommunications and internet access for the Cuban people;
- Support for the authorized sale of agricultural commodities, medicines and medical devices;
- Activities relating to the sending, processing, or receiving of authorized remittances; and
- Activities furthering US national security.

New Restrictions on Travel to Cuba

US sanctions on Cuba only permit persons subject to US jurisdiction³ to travel to Cuba under twelve authorized categories of travel, including "people-to-people" travel.⁴ A general license authorizes "people-to-people" travel⁵ on an individual basis. The Cuba Memorandum directs OFAC to issue regulations that limit this general license to cover instead only group "people-to-people" travel. The group must be accompanied by an employee, consultant, or agent affiliated with the group sponsoring the trip. Other categories of authorized

³ Persons subject to US jurisdiction are defined to include: (1) citizens and residents of the United States, wherever located; (2) any person located within the United States; (3) any entity organized under US law; and (4) any entity owned or controlled by the persons described above.

⁴ The twelve categories of travel are: (1) family visits; (2) official business of the US government, foreign governments, and certain intergovernmental organizations; (3) journalistic activity; (4) professional research and professional meetings; (5) educational activities; (6) religious activities; public performances,(7) clinics, workshops, athletic and other competitions, and exhibitions; (8) support for the Cuban people; (9) humanitarian projects; (10) activities of private foundations or research or educational institutes; (11) in connection with the exportation, importation, or transmission of information or information materials; and (12) in connection with certain authorized export transactions.

⁵ "Individual people-to-people travel is educational travel that: (i) does not involve academic study pursuant to a degree program; and (ii) does not take place under the auspices of an organization that is subject to US jurisdiction that sponsors such exchanges to promote people-to-people contact."

travel will remain in place. Persons subject to US jurisdiction remain permitted to engage in authorized travel to Cuba by air, boat, or other means. The Cuba Memorandum requires regular audits by the Secretary of Treasury aided by the Inspector General of the Department of Treasury of travelers to Cuba to ensure compliance with the laws and regulations.

Once issued, OFAC's new regulations will prohibit travel-related direct financial transactions involving parties identified on the list published by the State Department.

In addition, travelers currently in the process of using the "individual" people-to-people travel authorization may proceed with their travel provided they have completed at least one travel-related transaction (such as the purchase of a flight or reserving a hotel) prior to June 16, 2017. All travel-related transactions for such trips, including transactions with entities related to the Cuban military, intelligence, or security services, will remain authorized provided the transactions would have been authorized as of June 16, 2017.

Companies doing business in or considering doing business in Cuba and persons engaging in or considering engaging in travel to Cuba should monitor closely any measures imposed by the United States to ensure compliance and should monitor the issuance of the new regulations. Penalties for noncompliance can be severe.

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