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Americans Turn to Cuba as OFAC Eases Travel Restrictions

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At the beginning of 2015, the U.S. Department of the Treasury's Office of Foreign Assets Control significantly reduced restrictions on travel to and from Cuba as part of the United States' ongoing efforts to liberalize relations with the Caribbean island. OFAC has authorized Americans to travel to Cuba for a variety of purposes without the need to obtain prior approval from OFAC. Since January of this year, reports indicate that travel to Cuba from the United States is up by approximately 31 percent compared to the same period last year and even more Americans are traveling to Cuba via third countries (although the legality of such travel is not clear). This increase is not particularly surprising. While pure "tourist" travel to Cuba remains prohibited, the permitted categories of travel are relatively broad and give Americans who wish to visit Cuba a variety of options.

Types of Authorized Travel

So, who can now legally travel to Cuba? Before OFAC amended its sanctions regulations in January of this year, travel to Cuba by persons (i.e., persons subject to U.S. jurisdiction, which includes U.S. citizens, permanent residents and any person located in the United States) generally required obtaining approval from OFAC in advance of the proposed travel. However, following President Obama's announcement of several measures to improve relations between the United States and Cuba, OFAC amended its regulations and now permits travel to Cuba for the following purposes:

- **Family visits:** U.S. persons may now visit close relatives who are Cuban nationals, ordinarily resident in Cuba, located in

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Cuba for authorized educational activities for more than 60 days or located in Cuba on official government/intergovernmental organization business. Prior to the recent amendments, U.S. persons were authorized only to visit close relatives who were nationals of Cuba or those who were U.S. government employees assigned to Havana.

- **Official Government Business:** Employees, contractors, and grantees of the U.S. government, foreign governments or intergovernmental organizations in which the United States is a member or holds observer status may now travel to Cuba on official business. So, for example, a person employed as a contractor to the U.S. government may now travel to Cuba on official business without requiring prior approval from OFAC. Such travel was previously authorized only for officials of the U.S. government, a foreign government or intergovernmental organization.
- **Journalistic Activities in Cuba:** In addition to journalists regularly employed by news reporting organizations and supporting broadcast and technical personnel – who have been authorized to travel to Cuba for several years – freelance journalists with previous experience working on freelance journalist projects, as well as supporting broadcast or technical personnel with previous experience, are now authorized to travel to Cuba.
- **Professional Research and Professional Meetings in Cuba:** OFAC now permits travel for professional research and professional meetings, provided that the travel relates to the individual's profession, professional background or area of expertise. "Professional research," which was previously limited to research by full-time professionals, now includes research undertaken as part of full-time graduate-level study. "Professional meetings" are generally limited to those organized by an international professional organization, institution or association that regularly sponsors meetings or conferences and does not extend to business meetings intended to promote commercial opportunities in Cuba. In addition, the effect of the meeting cannot be to "promote" tourism in Cuba.
- **Educational Activities:** Previously authorized travel included travel directly incident to participation in certain structured educational programs, noncommercial academic research, formal courses of study, teaching and sponsorship of Cuban scholars. In addition to these activities, OFAC now permits travel for certain educational exchanges, sponsorship or co-sponsorship of noncommercial academic seminars or conferences and facilitation of licensed educational activities in Cuba (subject to certain conditions).

Notably, for those interested in travel to Cuba who do not otherwise fit within the 12 categories listed here, OFAC's authorization for educational activities now permits "people-to-people" educational exchanges. Such travel must occur through an organization subject to U.S. jurisdiction that sponsors such educational exchanges that do not involve degree-related academic study and that promote people-to-people contact. According to the regulations, travel related to this authorization must involve a "full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba or promote the Cuban people's independence from Cuban authorities." For those interested in learning about Cuban culture and people, albeit in the context of a pre-determined schedule of activities, the "people-to-people" educational exchange could prove particularly attractive.

- **Religious Activities in Cuba:** OFAC now permits all persons subject to U.S. jurisdiction to travel to Cuba to engage in a full-time schedule of religious activities. Such travel was previously limited to religious organizations in the United States. Financial and material donations to Cuba and Cuban nationals, however, remain prohibited.
- **Public performances, clinics, workshops, athletic and other competitions, and exhibitions:** OFAC now allows travel for certain athletic competitions by amateur or semi-professional athletes or athletic teams. Similarly, travel for participation in public performances, clinics, workshops, certain athletic competitions and exhibits in Cuba are also authorized under certain conditions.
- **Support for the Cuban People:** OFAC now authorizes travel by human rights organizations, independent organizations designed to promote peaceful transitions to democracy and organizations that promote activities to strengthen civil society in Cuba. Such travel was previously subject to prior approval from OFAC.
- **Humanitarian Projects:** OFAC now permits travel related to certain humanitarian projects in or related to Cuba that are intended to directly benefit the Cuban people. The types of projects authorized include, but are not limited to, medical- and health-related projects; environmental projects; projects involving formal and nonformal education training on topics such as entrepreneurship and business, journalism and advocacy; agricultural and rural development; and certain micro-financing projects.
- **Activities of Private Foundations or Research or Educational Institutes:** Persons employed by private foundations or research or educational institutes with established interests in international relations are now permitted to travel to Cuba to collect information for noncommercial purposes.
- **Exportation, Importation or Transmission of Information or Informational Materials:** Travel to/from Cuba that is directly related to the exportation, importation or transmission of information or informational materials is now authorized.
- **Certain Authorized Export Transactions:** OFAC now permits travel that is directly related to the conduct of market research, commercial marketing, sales negotiation, delivery, servicing of items or exports that are consistent with the Department of Commerce's licensing policy. Notably, the Department of Commerce's Bureau of Industry and Security has primary jurisdiction over exports to Cuba and OFAC permits the export of U.S.-origin goods if authorized by BIS. Like OFAC, BIS amended its regulations to ease restrictions on exports to Cuba and BIS' changes are primarily designed to strengthen civil society and help improve living conditions for the people of Cuba.

While OFAC has issued some guidance regarding these various types of travel, a number of questions remain unanswered. For example, what, exactly, constitutes a permitted humanitarian project and how would organizers ensure that a professional meeting in Cuba does not promote Cuban tourism? It is likely that, over time, these questions will be answered as OFAC fills in many of the details of precisely what is and is not now permitted. Nonetheless, it is already clear that these authorizations have made travel to Cuba much easier for

U.S. persons.

Cuba Travel and Carriers

To facilitate the newly authorized travel, OFAC now permits individuals and entities to provide aircraft carrier services (but not private boats or ferries, which require a specific license from OFAC) to, from, or within Cuba consistent with the expanded travel-related regulations. Employees, officials, consultants or agents providing travel or carrier services are also authorized to travel to Cuba for professional meetings, such as those to discuss the arrangements for, and safety and security of, such flights. In addition, OFAC recently released guidance particularly relevant to the companies authorized to provide carrier services via aircraft or commercial passenger vessels. According to the guidance, the following individuals may be transported between the United States and Cuba:

- Persons authorized to travel to and from Cuba, as listed above or who have otherwise obtained a license from OFAC for such travel.
- Cuban nationals seeking to be admitted to the United States, as well as third-country nationals, with a valid visa or travel authorization from the U.S. government.
- Cuban nationals in the United States in a nonimmigrant status.
- Cuban nationals residing in the United States who are licensed as unblocked nationals and are authorized to travel to Cuba pursuant to either a general license (under the 12 delineated categories) or specific license issued by OFAC.
- Persons, including foreign nationals, who are traveling on official business of the U.S. government, a foreign government or an intergovernmental organization of which the United States is a member or holds observer status, as well as close relatives accompanying such persons.

Companies authorized to provide these carrier services are also authorized to transport cargo and baggage accompanying authorized travelers to Cuba, as well as cargo or unaccompanied baggage, provided that the export of such items is authorized by the Department of Commerce's Bureau of Industry and Security.

Accompanying baggage for authorized travelers may include:

- For persons subject to U.S. jurisdiction, such as U.S. citizens and residents, up to \$400 worth of merchandise acquired in Cuba for personal use, provided that no more than \$100 of the merchandise consists of alcohol or tobacco products.
- For foreign nationals, any Cuban-origin goods other than alcohol or tobacco products in noncommercial quantities and that are not imported for resale and up to \$100 worth of alcohol and tobacco products acquired in Cuba for personal use.

- Goods produced by identified Cuban entrepreneurs.
- For persons who traveled from the United States to Cuba and are now returning to the United States, any items temporarily exported to Cuba pursuant to a license from BIS or another U.S. government agency.

Importantly, companies authorized to provide carrier services must obtain and maintain, for a period of five years, certifications from each customer indicating the section of the Cuban sanctions regulations, or the specific license, that authorizes the person's travel to Cuba. Once such certifications are received, the carrier is under no obligation to confirm that the individual does, in fact, meet the general or specific license criteria.

In sum, the changes to OFAC's restrictions on travel to Cuba are significant and are likely to have far-reaching effects. Airlines, hotels and travel agencies are all clamoring to offer services to and from Cuba, as more and more Americans seek to travel to this previously isolated destination. And businesses are cautiously monitoring the situation as they seek to take advantage of potential opportunities in the largely untapped market. Should conditions between the two countries improve, we can expect to see an even greater easing of restrictions, perhaps even a complete lifting of the remaining prohibitions on travel. When that will happen, however, remains to be seen.

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