

OFAC Issues Revised Cuban Regulations

On January 15, 2015, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), released revised [Cuban Assets Control Regulations](#) ("CACR") to implement policy changes announced by President Obama on December 17, 2014.¹ The revised regulations, effective January 16, 2015, make relatively modest changes to the existing U.S. sanctions against Cuba. The new regulations:

- For wire transfers originating and terminating outside the United States by persons **not** subject to U.S. jurisdiction (e.g., U.S. dollar transfers between two non-U.S. entities), authorize depository institutions (which may not include non-insured branches of foreign banks) to:
 - Process funds transfers relating to transactions that would be authorized by the CACR if engaged in by a person subject to U.S. jurisdiction; and
 - Reject—rather than block—funds transfers involving Cuba if neither a Cuban government official nor a member of the Cuban Communist Party has an interest in the transfer;

Note that this authorization applies only to "depository institutions," which is defined to include institutions with insured deposits or chartered by state or federal authorities.² On its face, it is not entirely clear that this definition applies to U.S. branches of non-U.S. financial institutions that do not have U.S. deposit insurance and, therefore, whether the U.S. dollar clearing activities of such branches of foreign banks benefit from the new rules.

- Allow depository institutions to open correspondent accounts at Cuban financial institutions to facilitate processing of authorized transactions (but would not license Cuban financial institutions to open such accounts at U.S. financial institutions); and
- Permit all financial institutions to process transactions involving debit and credit cards, traveler's checks, and similar instruments by U.S. persons permitted to travel to Cuba

¹ 31 C.F.R. Part 515.

² The relevant definition (31 CFR §515.333) reads: "The term depository institution means any of the following: (a) An insured bank as defined in section 3 of the Federal Deposit Insurance Act; (b) An insured institution as defined in section 408(a) of the National Housing Act; (c) An insured credit union as defined in section 101 of the Federal Credit Union Act; or (d) Any other institution that is carrying on banking activities pursuant to a charter from a Federal or state banking authority." The question is whether a branch license is a "charter" for these purposes; while the "charter" of a bank is generally understood as its corporate organizational document, which would exclude banks organized under foreign law, for some purposes under state law a branch license may be treated as a charter. See, e.g., NYBL § 12-a(1)(c).

(and rely upon the customer to comply with the travel restrictions, unless the financial institution knows or has reason to know that a transaction is not authorized);

- Provide a general license to deal with Cuban nationals who have permanently relocated outside of Cuba and who are not Cuban government officials or members of the Cuban Communist Party, if the participants in the transaction have one of the following:
 - Evidence (such as a passport or national identity card) that the Cuban national has established residence in another country;
 - Evidence that the Cuban national has been resident in a single non-Cuban country for at least two years; or
 - A sworn statement by the Cuban national that he or she does not intend to (or would not be welcome to) return to Cuba;
- Permit U.S.-owned or -controlled entities located in third countries to provide goods and services to Cuban nationals in third countries provided that the such entities do not directly or indirectly engage in commercial exportation of such goods and services to or from Cuba;
- Permit banking institutions, including U.S.-registered brokers or dealers in securities and U.S.-registered money transmitters, to provide services connected to the collection or forwarding of authorized remittances;
- Raise the limit on remittances to Cuban nationals to \$2,000 per quarter and the amount of remittance permitted to travelers to \$10,000 per authorized trip;
- Authorize fund transfers through the United States for personal expenditures of certain persons affiliated with third-country missions or certain intergovernmental organizations in Cuba;
- Authorize micro-financing and business training to private businesses and agricultural operations and certain commercial imports from independent Cuban entrepreneurs;
- Facilitate permitted travel to Cuba (but do not generally permit U.S. persons to travel to Cuba without a specific exception) by:
 - Not requiring case-by-case specific licenses for the existing twelve travel categories authorized in the CACR (which do not include tourism);
 - Permitting persons subject to U.S. jurisdiction, including travel agents and airlines, to provide authorized travel services without specific licenses; and
 - Eliminating the per diem limit on spending while traveling in Cuba and permitting authorized travelers to import up to \$400 worth of goods (including up to \$100 in alcohol or tobacco products) from Cuba;

- Authorize additional activities related to enhancing commercial telecommunications and internet communication in Cuba;
- Expand authorizations related to official government business, including adding authorizations that permit transactions with Cuban official mission and their employees in the United States; and
- Allow certain activities related to shipping.

OFAC simultaneously issued new [frequently asked questions](#) (“FAQs”) to provide additional clarification related to the revised Cuban Regulations. In the FAQs, which primarily focus on clarifying travel-related issues, OFAC emphasizes that most transactions between persons subject to U.S. jurisdiction and Cuba remain prohibited.

The loosening of restrictions on dealings with Cuba, together with the planned re-establishment of diplomatic relations, is an important symbolic and political step. However, the commercial impact of the changes announced to date is likely to be modest. Moreover, while the President has substantial discretion to modify regulations and license specific activity, lifting the Cuban sanctions altogether would require statutory authorization, particularly in light of the codification of Cuban sanctions in the Helms-Burton Act.³

If you have any questions, please feel free to contact any of your regular contacts at the Firm, or [Paul Marquardt](#) of our Washington office, listed on our website at <http://www.clearygottlieb.com>.

³ The Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (Helms–Burton Act), Pub. L. 104-114, 110 Stat. 785, 22 U.S.C. §§ 6021–6091.

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