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**Re: Amendments to the Cuban Assets Control Regulations – January 28, 2011**

At the request of the Christopher Reynolds Foundation, we provide this preliminary analysis of the Obama Administration's new amendments to the U.S.'s embargo regulations, the Cuban Assets Control Regulations, published in the *Federal Register* on January 28, 2011.

The Obama Administration is working on potentially important Guidelines to the amendments, which it hopes to issue within the next two weeks or so. We will supplement this memorandum after the Guidelines are issued.

The new amendments principally concern:

- Educational activities in Cuba for U.S. college and university students (I, p. 3 below)
- Academic seminars, conferences and workshops in Cuba sponsored or co-sponsored by U.S. colleges and universities (I, p. 7 below)
- "People-to-people" educational exchanges in Cuba (II, p. 8 below);
- Clinics and workshops in Cuba (III, p. 9 below);
- Travel for religious activities in Cuba (IV, p. 10 below);
- Remittances to religious organizations in Cuba (IV, p. 11 below);
- Free-lance journalism projects in Cuba (V, p. 12 below);
- Remittances to Cuban nationals in addition to family relatives (VI, p. 12 below); and
- Cuban nationals permanently resident in third-countries (VII, p. 13 below).

The January 28, 2011 amendments may be found on the website of the U.S. Treasury Department's Office of Foreign Assets Control, which administers the Cuban Assets Control Regulations. Go to <http://www.treas.gov/ofac>.

### **OFAC's Forthcoming "Guidelines"**

The Obama Administration intends to issue Guidelines to the new amendments within the next two weeks or so. The Guidelines are likely to determine in important respects whether the amendments are applied broadly or narrowly. This is particularly so for the amendments concerning "people-to-people" educational exchanges, clinics and workshops, and religious activities. Similarly, and also critically, the Guidelines can establish either a streamlined or a cumbersome application process.

In the following analysis, we flag with underlines some of the more important issues that the Obama Administration may address in formulating the Guidelines. We would expect that those in favor of expanded travel to Cuba, and perhaps those opposed, will attempt to engage the Administration over those issues, among others.

In addition to making substantive policy decisions on the scope of several provisions, the Obama Administration will have to take into account OFAC's severely limited staffing. A bottleneck, severely limiting the efficacy of the new amendments, would be created were the Guidelines to establish an elaborate application process for the issuance of specific licenses, or limit specific licenses in their duration or frequency of use.

The United States Department of Treasury's Office of Foreign Assets Control ("OFAC") administers the Cuban Assets Control Regulations ("CACR"), with guidance from the State Department and, on occasion, from the National Security Council and the White House as well. OFAC will draft and issue the Guidelines.

### **Major Changes**

The January 28 amendments include both new "general licenses" and new provisions authorizing OFAC to issue "specific licenses." "General licenses" are provisions in the CACR that, in and of themselves, authorize the described activity. "Specific licenses," in contrast, are issued by OFAC on application, and authorize the applicant to engage in the activity described in the license.

Among the major changes made by the January 28 amendments are the following:

- Adoption of a general license authorizing U.S. colleges and universities to have their students engage in educational activities in Cuba, with no minimum length of the student's stay in Cuba.

- Previously, U.S. colleges and universities were required to apply for specific licenses, and approval was given only for programs involving a minimum stay in Cuba of ten weeks;
- Addition of a provision authorizing OFAC to grant specific licenses to U.S. colleges and universities to sponsor or co-sponsor academic seminars, conferences and workshops in Cuba, and for their faculty and students to participate in the licensed events;
- Restoration of a provision authorizing OFAC to grant specific licenses to organize and participate in “people-to-people” educational exchanges in Cuba;
- Restoration of a provision authorizing OFAC to grant specific licenses to organize and participate in “clinics” and “workshops” in Cuba;
- Adoption of a general license authorizing “religious organizations” and its members and staff to engage in “religious activities” in Cuba;
- Adoption of a general license authorizing remittances to “religious organizations” in Cuba;
- Adoption of a general license authorizing remittances up to \$500 every three months to any Cuban “national,” and a supplemental provision authorizing OFAC to issue specific licenses to remit additional sums to support the development of private businesses.

## **I. U.S. College and University Educational Activities**

### **1. General License for U.S. College and University Educational Activities - § 515.565(a)**

#### **The six categories of educational activities authorized by general license:**

The amendments add a general license authorizing colleges and universities, and their students and faculty, to carry on the same six categories of educational activities that had been previously authorized by specific licenses. The authorized activities are:

- (1) Structured educational programs in Cuba that are part of a course offered for credit by an accredited U.S. undergraduate and graduate degree-granting academic institution (hereafter “ U.S. college or university”);
- (2) Academic research specifically related to Cuba for the purpose of obtaining a graduate degree at a U.S. university, provided that the research in Cuba will be accepted for credit toward that degree;

- (3) Formal courses of study at a Cuban academic institution, provided that the formal course of study will be accepted for credit towards the student's undergraduate or graduate degree;
- (4) Teaching at a Cuban academic institution, provided the teacher is regularly employed in a teaching capacity at a U.S. college or university and will teach at the Cuban academic institution for a period of no less than 10 weeks;
- (5) A Cuban "scholar" teaching or engaging in other scholarly activity at a U.S. college or university, and payment of a stipend or salary to the scholar. Note that a visa must still be granted by the State Department;
- (6) The organization and preparation of the above five activities by faculty or staff (including adjunct faculty and part-time staff) of the U.S. college or university.

### **Structured Educational Programs in Cuba, and Formal Courses of Study at Cuban Academic Institutions**

- Duration Requirement:

The amendments eliminate the 10-week minimum duration requirement imposed by the Bush Administration on two categories of educational activities: structured educational programs in Cuba that are part of a course offered for credit by a U.S. college or university, and formal courses of study at a Cuban academic institution.

The general license imposes *no* requirements at all as to the length of stay in Cuba for these two categories.

- Credit Requirement:

The general license requires that, with respect to these two categories of educational activities, the student's work in Cuba must be accepted by the U.S. college or university at which the student is enrolled for credit toward his or her undergraduate or graduate degree.

The "credit" requirement may limit the ability of some U.S. academic institutions, on account of their own constraints, to organize short-term programs in Cuba under the general license. However, OFAC has the authority to grant specific licenses authorizing a U.S. college or university's educational program even if credit is not earned. It remains to be seen whether OFAC will exercise that authority, and in what circumstances.

In contrast to the Obama Administration's "credit" requirement, the Clinton-era provision, until later amended, authorized colleges and universities to organize structured educational programs in Cuba for their students without any requirement that the student receive credit; the program in Cuba only had to be part of a "course" offered by the U.S. college or university.

- A student’s participation in another U.S. college or university’s program:

The general license permits a student enrolled at one U.S. college or university to participate in educational activities in Cuba through another U.S. college or university, provided that the student will receive credit at his or her own college or university. The Bush Administration prohibited this practice.

In the case of structured educational programs in Cuba, the general license imposes a double credit requirement when a student at one college or university is participating in a program sponsored by another college or university. As noted, the student must receive credit toward his or her degree at the student’s own institution. In addition, the program must be part of a course offered at the second institution for credit to its own students.

**Graduate research:**

In a highly questionable development, OFAC recently construed specific licenses for graduate research to authorize only research for the student’s masters or doctoral thesis. We see no basis for this limitation in the text of the newly adopted general license, and would consider OFAC’s imposition of such a limitation on the general license to be legally untenable.

**Adjunct faculty and part-time staff:**

The general license allows a U.S. college or university to use adjunct faculty or part-time staff to organize and run structured educational programs in Cuba, and assist students enrolled in formal courses of study at Cuban academic institutions. The Bush Administration required that U.S. colleges and universities utilize only “full-time permanent employees.”

**U.S. faculty teaching at a Cuban academic institution:**

The general license, like the specific licenses previously issued to college and universities under the superseded provision, authorizes faculty to teach at a *Cuban* academic institution, but retains the limitations of the superseded provision: (a) that the teacher be “regularly employed” in a teaching capacity at the sponsoring U.S. college or university; and (b) that the teaching “be no shorter than 10 weeks.”

The general license does not define “regularly employed.” As confirmed by OFAC’s interpretation of that term in comparable context (such as the general license for journalists), “regularly employed” includes persons who are not full-time employees.

**No dollar limitation on payment of fees and other transactions directly incident to the educational activity:**

The general license authorizes not only travel-related transactions (for example, housing and meals) but also “additional transactions that are directly incident” to the licensed activity, such as payment of fees or tuition to the University of Havana. The travel-related transactions

are currently limited to \$179 per day but there is no limit on what can be spent on “additional transactions directly incident” to the licensed activity.

**Letter from sponsoring U.S. college or university:**

To travel under the general license, the U.S. person must carry a letter from the sponsoring U.S. college or university signed by the person designated as the official responsible for overseeing the institution’s Cuba travel program by relevant dean, academic vice-president, provost or president of the institution.

In the instance of a student enrolled at one U.S. college or university participating in an educational activity sponsored by another college or university, it is the latter that provides the required letter. The letter must state that the student will receive credit at his or her own college or university.

**Cuban scholars teaching or engaging in other scholarly activity at U.S. colleges or universities:**

The general license authorizes a Cuban “scholar,” not simply a Cuban academic, to teach or engage in other “scholarly” activity at U.S. colleges and universities, and to be paid stipends and salaries. The CACR does not define “scholar” or “scholarly” activity; both terms may reasonably be construed broadly.

Note that the general license does not obviate the need to obtain a visa issued by the U.S. State Department.

**2. Specific Licenses for Three Categories of Educational Activities -  
§ 515.565(b)(1)**

In addition to the above general license, the new amendments permit OFAC to issue specific licenses authorizing three of the educational activities otherwise authorized by the general license in instances when the general license does not apply for some reason. The three activities are research for a graduate degree; participation in a formal course of study at a Cuban academic institution; and teaching at a Cuban academic institution.

OFAC could use this provision to license, for example: structured educational programs run by a U.S. college or university even though credit toward a degree is not offered; teaching at a Cuban university for less than 10 weeks; or U.S. experts teaching at a Cuban university even though they are not regularly employed by a U.S. college or university.

In our view, there is good reason for the Guidelines to establish clear criteria for its grant of specific licenses under this provision, rather than make *ad hoc* and potentially arbitrary or inconsistent licensing decisions on individual applications.

### **3. Specific Licenses for U.S. Academic Institutions to Sponsor or Co-Sponsor Academic Seminars, Conferences and Workshops Related to Cuba or Global Issues Involving Cuba - § 515.567(b)(3)**

The amendments authorize OFAC to grant specific licenses to U.S. colleges and universities (a) for “sponsorship or co-sponsorship” of “academic seminars, conferences, and workshops” in Cuba “related to Cuba or global issues involving Cuba,” and (b) attendance at the sponsored or co-sponsored event by “faculty, staff, and students” of the licensed U.S. institution. Those attending would be able to pay a fee, directly or indirectly, to the Cuban co-sponsor or host of the event.

Unless OFAC indicates to the contrary in the Guidelines or specific licenses, it may be assumed that “sponsorship or co-sponsorship” includes organizing and running the event, either with or without the participation of a Cuban counterpart.

The Obama Administration’s adoption of a specific license regime for these categories of activities rather a general license is fraught with potential difficulties, including OFAC’s possible intrusion on academic freedom and autonomy. Why would some U.S.-sponsored academic events be licensed and others not, except for OFAC’s approval or disapproval of their academic content or viewpoint? In our view, OFAC would do well to establish objective criteria unrelated to content and viewpoint.

### **4. Banking Transactions by U.S. Academic Institutions**

The new amendments include an explanatory “Note” that accredited U.S. colleges or universities are permitted to open and maintain accounts at Cuban financial institutions, in order to have funds available for the travel-related transactions and other transactions directly incident to the licensed activities. For example, a U.S. college can open an account at a Cuban bank sufficient to cover the anticipated expenses of its students’ studying in Cuba.

In our view, this has always been authorized, but the explanatory “Note” in the amendments is nonetheless helpful. As is often done for other licensed transactions, funds could be transferred to Cuban banks by wire transfer from U.S. banks through third-country banks.

### **5. General License for Remittances to Students in Cuba Pursuant to an Educational License – § 515.570(d)**

The amendments add a general license that authorizes remittances to close relatives who are U.S. college or university students licensed to be in Cuba for educational activities. The student is limited to \$ 179 per day for travel-related expenses (hotel or other accommodations and meals, for example); there is no limitation on other expenditures directly incident to the licensed activity, for example, payment of fees or tuition to the University of Havana.

## II. Specific Licenses for “People-to-People” Educational Exchanges – § 515.565(b)(2)

The new amendments authorize OFAC to issue specific licenses for “educational exchanges” that “take place under the auspices of an organization that sponsors and organizes such programs to promote people-to-people contact.”

Businesses as well as not-for-profits and academic institutions may qualify as an “organization that sponsors and organizes” programs to promote people-to-people contact.

The provision is identical in its wording to the Clinton Administration’s 1999 “people-to-people” provision. We do not know yet whether the Obama Administration intends to utilize this provision in the same expansive way that the Clinton Administration used the 1999 provision; the amendments permit but do not require a comparably robust approach. Much will depend on the Guidelines.

When the identical provision was in effect during the Clinton Administration, OFAC granted numerous specific licenses that permitted a wide-range of businesses and institutions to carry out successful programs in Cuba.

Among the many different types of organizations that operated programs under “people-to-people” specific licenses were:

- For-Profit Businesses
- Alumni Associations
- Museums
- Professional Associations
- Civic Associations
- Cultural Institutions
- Business Associations
- Religious Institutions (for activities not deemed “religious activities”)
- Advocacy Organizations
- Student Associations
- Other Not-for-Profits
- Groups organized on an *ad hoc* basis for purposes of traveling to Cuba

Often, participation in their programs was not limited to members but was offered more broadly.

Although “people-to-people” educational exchanges were robust under the Clinton Administration, the Bush Administration moved to narrow the exchanges through restrictive “Guidelines.” The Bush Administration also moved to limit these exchanges by taking the position that licensees could not organize programs in Cuba led by others, or enter into certain other types of arrangements that OFAC considered improper “lending” of their licenses. After sharply curtailing “people-to-people” educational exchanges in these ways, the Bush Administration finally eliminated this category of travel altogether in March 2003.

It remains to be seen whether the Obama Administration will adopt Guidelines that give “people-to-people” educational exchanges an expansive reach or impose the crippling restrictions of the Bush Administration. A copy of the Bush Administration’s June 2002 Guidelines are attached as a point of reference.



Unless removed by the Obama Administration, OFAC’s limitations on licensed Travel Service Providers (“TSPs”) may constrict “people-to-people” educational exchanges. TSPs are businesses that are licensed by OFAC to provide services related to travel to Cuba. Under OFAC’s current rules, OFAC will not issue “people-to-people” specific licenses to TSPs. Rather, TSPs may only service organizations or individuals that have themselves obtained people-to-people licenses.

The specific licenses issued under this provision will grant authority not only to engage in travel-related transactions (limited to \$179 per day) but also other transactions directly incident to the licensed activity, for example, payment to a Cuban institution or business for helping arrange the educational exchanges.

### **III. Specific Licenses for Public Performances, Clinics, Workshops, Athletic and Other Competitions and Exhibits – § 515.567**

#### **1. Clinics and Workshops**

The amendments restore OFAC’s authority to grant specific licenses authorizing participation in a “clinic” or “workshop” in Cuba, provided that that the clinic or workshop in Cuba is “organized and run, at least in part, by the licensee.”

There was no limitation in the Clinton-era provision that the clinic or workshop be “organized and run,” even in part, by the U.S. licensee. That restriction was added by the Bush Administration.

The event must “be open for attendance, and, in relevant situations, participation, by the Cuban public.”

The provision is devoid of any indication as to what types of “clinics” or “workshops” OFAC will license. It is possible that the Obama Administration will use the Guidelines to provide broad criteria and paradigms, but OFAC’s past Guidelines on “clinics” and “workshops” left much to guesswork and *ad hoc* licensing decisions.

Before the Bush Administration’s repeal of the predecessor provision, OFAC licensed a wide-range of clinics and workshops. Amateurs and enthusiasts, as well as professionals and students in the field, often were able to participate. OFAC used the following example to illustrate at least one aspect of its licensing policy: OFAC would license “a group of ballet dancers wish[ing] to travel to Cuba to hold workshops with the Cuban ballet where they will, using hands-on techniques, exchange lessons on Cuban and American ballet techniques.”

“Clinics” and “workshops” do not necessarily involve an exchange between more or less equals. A “clinic” might involve, for example, Cuban professional dancers instructing U.S. amateurs or enthusiasts on Cuban forms of social dancing.

The specific licenses authorized by the provision will license not only travel-related transactions (up to \$179 per day) but “other transactions directly incident” to the licensed activity. A typical example of the latter would be payment of a fee to the Cuban counterpart of the licensed U.S. entity for helping organize and run the clinic or workshop.

## **2. Profits**

The prior provision (which authorized the grant of specific licenses for participation in public performances, certain athletic events and exhibitions) required that all “U.S. profits from the event after costs [be] donated to an independent non-governmental organization in Cuba or a U.S.-based charity, with the objective, to the extent possible, of benefiting the Cuban people.” The new provision (which covers clinics and workshops as well) expands the permissible objectives to include “promoting people-to-people contact.”

## **3. Athletic Competitions**

The new provision does not change the existing provision authorizing OFAC to issue specific licenses for participation under the auspices of an international sports federation. The Clinton-era, 1999 regulations provided a general license for those activities.

# **IV. Religious Activities**

## **1. General License to Engage in Religious Activities – § 515.566(a)**

The previous regulations authorized OFAC to issue specific licenses to “religious organizations” to engage in “religious activities” in Cuba. The new amendments replace this specific license provision with a general license.

The general license applies not only to the religious organization but to its “members and staff.” The religious organization must provide a letter confirming that they are traveling to engage in religious activities “under the auspices of the organization.”

The general license authorizes both travel-related transactions (with a limit of \$179 per day) and other transactions that are directly incident to religious activities in Cuba. The latter would include, for example, U.S. persons providing services.

The general license does not cover financial or material donations. However, financial donations may be authorized either by the new general license for remittances to “religious organizations in Cuba,” discussed below, or by specific license. Material donations of U.S.-origin commodities must be authorized by the Commerce Department; and material donations of third-country commodities must be authorized by specific OFAC license.

The general license permitting “religious organizations” to engage in “religious activities” essentially mirrors the previous provision for the grant of specific licenses. OFAC generated substantial controversy by how it defined “religious organizations” and “religious activities” for purposes of that now superseded provision. There is no legal impediment to

OFAC agreeing that “religious organizations” and “religious activities” have a broader scope in the general license.

Under its Guidelines to the now superseded provision, OFAC considered entities to be “religious organizations” only if (a) they had an “established congregation served by an organized ministry,” provided “regular religious services,” provided “religious education of the young,” disseminated a formal religious doctrine, and had a membership not associated with any other denomination; or (b) the IRS had determined that they were “churches, their integrated auxiliaries or conventions or associations of churches.”

Those Guidelines defined the “religious activities” that a “religious organization” might pursue under a specific license as including, but not being limited to, attendance at religious services or activities that contribute to the development of a Cuban counterpart’s religious or institutional development such as: ministerial training, education, or licensing; religious school development; youth outreach; training in or the conducting of marriage seminars; construction of places of worship or other facilities for full-time use by a Cuban counterpart; production and distribution of religious materials; assistance in holding religious services; religious preaching or training; and training or assistance in church administration.

## **2. General License for Remittances to “Religious Organizations” - § 515.570(c)**

The amendments provide a general license for remittances to “religious organizations” in Cuba in support of “religious activities,” without any limitations as to amount or frequency.

The remittance may be made by any U.S. individual, partnership, association, corporation, or other organization.

The same issues as to what will be considered “religious organizations” and “religious activities” arise under this general license as arise under the general license for “religious organizations” to carry out “religious activities” in Cuba.

## **3. Specific License for Religious Activities - § 515.566(b)**

The amendments authorize OFAC to issue specific licenses in its discretion authorizing “religious activities” not authorized by the above two general licenses. For example, OFAC, in its discretion, could license entities that do not qualify as “religious organizations” within the meaning of the general licenses to engage in religious activities in Cuba; or license financial donations to Cuban entities that do not qualify as “religious organizations” to support their “religious activities.”

Unless OFAC establishes broad and objective criteria in the new Guidelines, there will be substantial difficulties, constitutional and otherwise, in OFAC drawing distinctions in its licensing decisions between different forms of “religious organizations” and “religious activities.”

#### **4. Banking Transactions by Religious Organizations**

The new regulations include an explanatory “Note” that religious organizations are permitted to open and maintain accounts at Cuban financial institutions, in order to cover transactions authorized by the general or specific licenses discussed above.

In our view, this was always authorized, but the explanatory “Note” is helpful. As is done for other licensed transactions, funds could be transferred to Cuban banks by wire transfer from U.S. banks through third-country banks.

#### **V. Specific Licenses for Free-Lance Journalistic Activities - § 515.563**

The CACR provides a general license authorizing travel for journalistic activities by persons “regularly employed” as journalists by news gathering organizations. The CACR also used to authorize OFAC to issue specific licenses for travel to do “research in Cuba for a free-lance article.” The amendments expand the scope of the provision for specific licenses by modifying it to cover “free-lance journalistic projects,” not simply “articles.” The amendment should make it easier, for example, to obtain specific licenses to engage in journalistic activities in media in addition to print media, such as making a documentary film.

#### **VI. Remittances**

##### **1. General License for Remittances to Any Cuban “National” – § 515.570(b)**

The amendments add a new general license that authorizes remittances to Cuban “nationals.” The remitter may send funds to an unlimited number of Cuban “nationals.” The total remittances to any one Cuban “national” cannot exceed \$500 in any consecutive three-month period.

The potential recipients, Cuban “nationals,” are defined by the CACR to mean not only individuals but any partnership, association, corporation or other organization in Cuba. The only exclusions are officials of the Cuban Government and members of the Cuban Communist Party at a certain level.

The remitter sending funds to Cuban “nationals” can be an individual, partnership, association, corporation or other organization. The new amendments authorize remittances by “persons,” which the CACR define to mean an individual and each of these entities.

The general license states that remittances may be made “to support the development of private businesses,” but do not confine remittances to that or any other purpose.

The general license for remittances does not authorize U.S. persons to make investments in or loans to Cuban businesses or to become partners or participants in those businesses, or to enter into agreements with the recipients that they will receive something in return for the remittances at a future date (even on the condition that the return will not be made until permitted by U.S. law).

The new regulations do not make any changes to the general license for family remittances adopted by the Obama Administration in September 2009. That general license authorizes remittances to “close relatives” in Cuba without any limitation as to amount or frequency, and defines “close relatives” extremely broadly to include any individual related by blood, marriage or adoption who is no more than three generations removed from the recipient or from a common ancestor with that person.

## **2. Specific Licenses for Remittances to “Non-Governmental Entities” and Individuals to Support the Development of Private Businesses – § 515.570(g)**

The amendments supplement the general license for remittances up to \$500 every three months to “Cuban nationals” with a provision authorizing OFAC to issue specific licenses permitting remittances to “individuals or independent non-government entities to support the development of private businesses,” including specifically but not limited to “small farms.” The provision does not define “independent non-government entities.”

Under this provision, OFAC can issue specific licenses that set whatever limits as to amount and frequency that OFAC wishes, or without any limits.

## **3. Carrying General License Remittances – § 515.560(c)(4)(i)**

The new amendments authorize persons authorized by general or specific license to travel to Cuba to bring with them remittances authorized by *general* licenses (except for the general license for emigration purposes), but only in an aggregate amount not to exceed \$3,000 on any one trip. The CACR previously provided this authorization for family remittances only.

## **VII. Cuban Nationals Permanently Resident in Third-Countries – § 515.505**

Prior to the amendments, Cuban nationals taking up permanent residence in a third-country would have to apply to OFAC to become unblocked nationals. Until that application was granted, they would remain fully subject to the CACR, with the consequence that persons subject to U.S. jurisdiction could not engage in unlicensed transactions with them, and their property in the U.S. remained blocked.

The amendments retain the requirement of applying for and obtaining status as an unblocked national for the unblocking of blocked property in the U.S. However, the amendments provide a general license authorizing persons subject to U.S. jurisdiction to engage in any other transaction with a Cuban national who is a permanent resident in a third-country. To do so, the U.S. person must obtain copies of at least two documents indicating “permanent residence” issued by the third-country, “such as a passport, voter registration card, permanent resident alien card, or national identity card.”

## **Prohibition on TSPs Maintaining Offices in Cuba**

OFAC prohibits TSPs – that is, businesses licensed by OFAC to provide services related to travel to Cuba – from maintaining their own offices in Cuba, or engaging Cuban businesses to act as agents. This prohibition will necessarily limit the impact of Obama Administration’s amendments, given what is required to service travel of the nature and scope contemplated by the amendments.

## **Correspondent Banking Relations**

The CACR prohibits U.S. and Cuban banks from establishing correspondent banking relations. While the transfer of funds is possible through third-country banks, the absence of correspondent banking relations will drive up the costs and burden of making the necessary transfers for travel and remittances authorized by the new amendments, as it does for family travel and remittances.

Michael Krinsky

*The foregoing does not constitute, and should not be construed as, legal advice. Anyone seeking legal advice about the subjects of this memorandum, or about the United States embargo regulations generally, should consult an attorney.*

## **APPENDIX**

# **BUSH ADMINISTRATION'S JUNE 2002 GUIDELINES ON PEOPLE-TO-PEOPLE EDUCATIONAL EXCHANGES**

Bush Administration's June 2002 Guidelines on  
People-to-People Educational Exchanges

**DEPARTMENT OF THE TREASURY  
OFFICE OF FOREIGN ASSETS CONTROL**

**Guidelines for License Applications**

Specific Licenses for Cuba Travel Transactions related to Educational Exchanges not involving Academic Study pursuant to a Degree Program.

The Cuban Assets Control Regulations, 31 C.F.R. Part 515 (the "Regulations"), which are administered by the Office of Foreign Assets Control ("OFAC"), prohibit all persons subject to U.S. jurisdiction from dealing in property in which Cuba or a Cuban national has an interest. This prohibition includes all Cuba travel-related transactions unless such transactions are authorized in accordance with current licensing policy or unless such transactions are otherwise exempt.

Specific licenses may not be granted when the purpose of travel to Cuba is to engage in tourism or in prohibited business transactions. See § 515.560(g) of the Regulations. In order for a person to engage in travel-related transactions with Cuba, he or she must demonstrate eligibility under a licensable category set forth in § 515.560(a) of the Regulations.

Under §§ 515.560(a)(5) and 515.565(b)(2) of the Regulations, OFAC may make available on a case-by-case basis licenses authorizing Cuba travel-related transactions incident to educational exchanges, not involving academic study pursuant to a degree program, that take place under the auspices of an organization that sponsors and organizes such programs to promote people-to-people contact. Section 515.565(b)(2) implements in part current U.S. policy toward Cuba, which promotes two-way exchanges among academics, athletes, scientists, and others. These exchanges are intended to provide for educational opportunities not offered in the context of an accredited degree program while at the same time promote contact with segments of Cuban society not associated with the Cuban government.



### **Factors of Consideration**

OFAC considers several specific factors in its review of applications submitted under this category, including the following:

1. Whether the proposed activities are under the auspices of an organization that sponsors and organizes its own international educational exchanges to promote people-to-people contacts. Licenses issued under this section are not transferable and do not authorize the licensee to organize programs in Cuba led by others.
2. Whether the predominant portion of the proposed activities will be with persons or entities that are not acting, directly or indirectly, for or on behalf of the Government of Cuba or its parastatal industries or enterprises.
3. Whether the predominant portion of the program and the ratio of Cuban nationals to U.S. participants along with the forum for people-to-people contact is reasonably suited to allow for direct and individual dialogue between the parties.
4. Whether the proposed activities with the Cuban people are educational in nature, such as participation along with the Cuban people in joint activities (e.g., seminars, workshops or similar joint activities).

### **Information to Include in your Application**

In order for us to evaluate whether your application meets the above criteria, please provide the following information in letter format:

1. A description of the organization's previous experience or qualifications in planning and administering its own educational exchange programs in other countries with the purpose, at least in part, of promoting people-to-people dialogue. If available, provide sample itineraries from prior programs.
2. A full-time itinerary, broken down by half-day or smaller intervals, describing for each interval what the focus and nature of activities will be under the educational exchange program. Also, please include information concerning the ratio of Cuban nationals to U.S. participants in each event.

3. A description of the selected topic(s) for the educational exchange.

4. A summary of the academic credentials and relevant experience of all program guides or experts leading the educational exchange, by providing, for example, copies of resumes or curriculum vitae. Also, please indicate the nature of background material(s) and/or briefing(s) to be provided to the group by the leader before departure to Cuba.

5. A procedure for informing participants that full-time participation in the program is required and that failure to fully participate in the program can lead to the revocation of the organization's 515.565(b)(2) license and enforcement action against the participant.

Applications shall be mailed to:

Director  
Office of Foreign Assets Control  
U.S. Department of the Treasury  
2<sup>nd</sup> Floor Annex  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

Should you have any further questions about the application process, please contact the Licensing Division at (202) 622-2480.