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## President Trump Announces New Cuba Restrictions

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On June 16, 2017, President Trump announced new sanctions restrictions under the US embargo against Cuba. Although US policy since 2014 has been to normalize US-Cuba relations and liberalize trade with Cuba, President Trump signaled a partial reversal of US policy in a [speech](#) in Miami and the issuance of a [National Security Presidential Memorandum](#), focusing on new restrictions on individual travel to Cuba and on dealings with Cuban military-related entities.

The US embargo of Cuba is codified by statute, but the Obama Administration had made a series of regulatory changes to considerably ease US-Cuba commerce in recent years, including through a series of general licenses authorizing several categories of travel and exports or services in support of private sector activity and entrepreneurship in Cuba. Friday's announcement by President Trump does not fundamentally alter the architecture of this earlier sanctions relief.

The Presidential Memorandum directs that, within 30 days, the Secretary of the Treasury and the Secretary of Commerce "shall initiate a process to adjust current regulations regarding transactions with Cuba." According to a [White House Fact Sheet](#), the process of regulatory amendment "may take several months" and will focus on the following areas:

- The new policy channels economic activities away from the Cuban military monopoly, Grupo de Administración Empresarial (GAESA), including most travel-related transactions, while allowing American individuals and entities to develop economic ties to the private, small-business sector in Cuba. The policy enhances travel restrictions to better enforce the statutory ban on United States tourism to Cuba. Among other changes, travel for non-academic educational purposes will be limited to group travel. The self-directed, individual travel permitted by the Obama Administration will be prohibited.
- The policy reaffirms the US statutory embargo of Cuba and opposes calls in the United Nations and other international forums for its termination. The policy also mandates regular reporting on Cuba's progress—if any—toward greater political and economic freedom.
- The policy clarifies that any further improvements in the United States-Cuba relationship will depend entirely on the Cuban government's willingness to improve the lives of the Cuban people, including through promoting the rule of law, respecting human rights and taking concrete steps to foster political and economic freedoms.

## Key Consequences of Trump Administration Policy on Cuba

Compared to the sweeping changes to US policy toward Cuba initiated by the Obama Administration (described below), the Trump Administration's announced changes are relatively limited. For companies, the principal consequence is that persons subject to US jurisdiction (e.g., US persons and US companies and their foreign subsidiaries) will need to undertake additional diligence to ensure that they do not engage in *new* commercial engagements with GAESA and its affiliates, which will be specifically listed by the State Department in forthcoming guidance. The scope of this restriction will largely depend on how extensive the State Department's list of GAESA affiliates will be. But, going forward, US companies and their subsidiaries must avoid GAESA, which is believed to have “de facto control over nearly every major part of Cuba's economy.”

Furthermore, the Treasury Department's Office of Foreign Assets Control (OFAC) released [FAQs](#) suggesting that *pre-existing* “commercial engagements” with GAESA and its prohibited affiliates that were “in place prior to the issuance of the forthcoming regulations” will be “permitted,” suggesting broad grandfathering of contracts executed since 2014. Such grandfathering by OFAC is relatively rare and will raise a number of compliance challenges in determining (1) the date on which a particular commercial engagement was “in place” and (2) whether an amended or expanded engagement qualifies as a “new” engagement.

Individually directed “educational” travel to Cuba, which was previously authorized as a subset of one of 12 travel categories falling under a general license, will also be prohibited in favor of more structured “group” travel under a “degree program” or “under the auspices of an organization,” according to the FAQs. By contrast, the changes will apparently “not result in changes to the other (non-individual people-to-people) authorizations for travel” in the remaining 11 categories of authorized travel, subject to the prospective GAESA-related restrictions. Persons subject to US jurisdiction will still be able to engage in authorized travel to Cuba by cruise ship or passenger vessel.

While the Presidential Memorandum prioritizes enforcement of travel restrictions (i.e., ensuring that existing travel authorizations are not being abused for tourism or other unauthorized purposes), it is possible that the Treasury and Commerce Departments may increase enforcement of the existing restrictions against companies as well.

## Key Obama Administration Sanctions Relief Will Remain in Effect

The policy changes announced by President Trump appear to leave the key architecture of sanctions relief issued during the Obama Administration intact. Although Cuba remains subject to a statutory embargo, President Obama implemented a wide range of sanctions relief through regulatory amendments by OFAC and the Commerce Department's Bureau of Industry and Security (BIS), the reinterpretation of statutory provisions, the adoption of favorable licensing policies by relevant agencies, and the removal of Cuba from the State Sponsors of Terrorism List. These changes broadly focused on the below categories of relief:

### *Travel to Cuba*

The Obama-era changes significantly eased regulatory impediments to Cuba travel:

- Obama-era general licenses will apparently remain substantially in effect for travel falling into 12 categories previously authorized by specific license, including journalistic activity; professional research and professional meetings; educational activities (with the changes noted above); religious activities; activities of private foundations or research or educational institutes; and exportation, importation or transmission of information or information materials.
- The limit on expenditures during travel to Cuba will appear to remain lifted, and authorized travelers will apparently still be able to engage in all transactions incident to travel within Cuba.
- Authorized travelers will presumably still be able to use US credit and debit cards in Cuba.

The Obama-era general licenses did not cover travel to Cuba for tourist activities, and the Trump Administration's policy changes purport to "enhance compliance" with this ban on tourism.

#### *Financial Services*

- Obama-era OFAC regulations permitting US depository institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions will apparently remain in effect, subject to the restrictions noted above.
- US financial institutions will also apparently still be allowed to unblock the accounts of Cuban nationals (except government officials or Communist party members) who have taken up permanent residence outside Cuba and do not intend to return to Cuba.
- Authorization for the provision of services to Cuban nationals in third countries also will apparently remain in effect.

#### *Telecommunications and Consumer Communications*

Obama-era regulations will likely continue to provide opportunities for communications with and within Cuba:

- An OFAC general license will apparently continue to facilitate the establishment of commercial telecommunications facilities (including fiber-optic cable and satellite facilities) linking the United States, third countries and Cuba, as well as within Cuba.
- A BIS license exception will apparently continue to permit the commercial export of certain items that will contribute to the ability of the Cuban people to communicate within Cuba and around the world. This includes the commercial sale of certain consumer communications devices, related software, applications, hardware and services, as well as items for the establishment and update of communications-related systems.
- An OFAC general license will apparently continue to authorize additional services incident to internet-based communications and related to exports of communications items.
- A separate BIS license exception, "Consumer Communications Devices" (CCD), will likely continue to allow for exports to Cuba of certain consumer computers, disk drives, monitors, printers, modems, network access equipment, mobile phones, and certain other

commodities and software.

### *Other Opportunities for US Exports*

The Obama-era BIS license exception “Support for the Cuban People” (SCP) will apparently continue to authorize exports aimed at improving living conditions and supporting independent economic activity, strengthening civil society and improving communications:

- To improve living conditions and support independent economic activity, SCP authorizes exports of building materials, equipment, tools and other supplies for use in certain private sector construction and renovation activities. SCP also authorizes exports of tools, equipment, supplies and instruments for use by private sector entrepreneurs, and exports of tools and equipment for private sector agricultural activity.
- To strengthen civil society, SCP authorizes exports of donated items and temporary export by travelers to Cuba of items for use in scientific, archaeological, cultural, ecological, educational, historic preservation or sporting activities, as well as exports to human rights organizations, individuals or non-governmental organizations that promote independent activity intended to strengthen civil society. Travelers are also able to temporarily export items for use in professional research in the traveler's profession or full-time field of study.
- To improve communications, SCP authorizes exports of items for telecommunications, including internet access, use of internet services, and the creation and upgrading of telecommunication infrastructure.

The implementation of the Trump Administration's new policy on Cuba warrants close monitoring by companies with Cuba-related business in the weeks and months ahead.

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