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Press Center



Written Testimony on OFAC's Cuba Regulatory Changes of John E. Smith

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United States House Foreign Affairs Committee

Good morning, Chairman Royce, Ranking Member Engel, and distinguished members of the committee. Thank you for the invitation to appear before you today to discuss our recent amendments to the Cuban Assets Control Regulations. I will be addressing the key regulatory amendments made by Treasury's Office of Foreign Assets Control (OFAC) to implement the changes to U.S. policy toward Cuba announced by the President, as well as the restrictions that remain in place. These regulatory changes ease Cuba sanctions within the continuing constraints of the embargo while advancing the Administration's policy to further engage and empower the Cuban people in their efforts to build a democratic, prosperous and stable Cuba.

On December 17, the President announced a number of significant policy changes regarding our relationship with Cuba. To implement these policy changes, OFAC amended the Cuban Assets Control Regulations on January 16. These amendments ease sanctions related to Cuba in a number of key areas, including travel, remittances, financial services, and trade. These changes are intended to have a direct and positive impact on the lives of the Cuban people. They are also aimed at enhancing both commerce and communications between the United States and Cuba, and helping the Cuban people to freely determine their own future.

Easing Travel Restrictions

Cuba is the only OFAC sanctions program that restricts travel to a country. The recent changes to the Cuba travel rules build on modifications previously made in 2009 and 2011. Those earlier changes, which were announced by the Administration and implemented by OFAC, eased travel restrictions with respect to Americans' ability to visit family and engage in educational, cultural, journalistic, and religious activities in Cuba.

The recent regulatory amendments ease travel restrictions further by generally licensing certain travel within the 12 existing categories of travel in OFAC's regulations, without the need for a specific license from OFAC. This means that travelers who satisfy the criteria of the general licenses set forth in OFAC's regulations may travel to Cuba and conduct travel-related transactions there without requesting individual authorization from OFAC. The 12 categories of travel are those referenced by Congress in the Trade Sanctions Reform and Export Enhancement Act (TSRA) of 2000. Travel to Cuba for tourist activities, which the TSRA statute defines as any activity outside of these 12 categories, remains prohibited.

These 12 categories of authorized travel are:

1. family visits;
2. official business of the U.S. government, foreign governments, and certain intergovernmental organizations;
3. journalistic activity;
4. professional research and professional meetings;
5. educational activities;
6. religious activities;
7. public performances, 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. exportation, importation, or transmission of information or information materials; and
12. certain authorized export transactions.

While certain previous general licenses authorized some travel within the 12 categories of travel, the additional and expanded general licenses that recently took effect are intended to lessen the burden on authorized travelers, making it easier for Americans to interact with the Cuban people, provide humanitarian assistance, engage in certain educational and cultural activities, and provide business training and resources for private Cuban businesses.

The recent regulatory amendments also authorize airlines to provide air carrier services to, from, and within Cuba, in connection with authorized travel. Air carriers wishing to provide service still will need to secure regulatory approvals from other concerned U.S. Government agencies, including the Departments of Transportation and Homeland Security. Persons subject to U.S. jurisdiction such as travel agents and tour group operators also may now provide travel services in connection with authorized travel. These changes are intended to make authorized travel easier and less expensive by reducing the paperwork burden for, and increasing competition among, those providing travel and air carrier services.

Change That Will Benefit the Cuban People: Remittances

Among the goals of the policy changes announced by the President is that of strengthening Cuban civil society. To facilitate this, OFAC eased certain restrictions on remittances to Cuba, following similar actions we took in 2009 and 2011. In 2009, OFAC authorized Americans to send unlimited amounts of remittances to their close relatives in Cuba, except for certain Cuban government and Communist Party officials. In 2011, OFAC authorized unlimited amounts of remittances for religious organizations in Cuba in support of religious activities. At that same time, OFAC also eased restrictions on certain other remittances to allow individuals in the United States to send up to \$500 per quarter to any Cuban national, except for certain Cuban government and Communist Party officials.

In the recent amendments, OFAC increased that quarterly remittance limitation from \$500 to \$2,000 per person per quarter. OFAC also generally authorized remittances to certain individuals and independent non-governmental organizations in Cuba for humanitarian projects, support for the Cuban people, and the development of private businesses in Cuba, with no limitation on the amount. These changes are intended to facilitate the flow of authorized funds directly to the Cuban people to help promote self-employment and increased private property ownership, which in turn, strengthens an independent civil society.

Increasing Access to Financial Services

The President's policy announcement also focused on the need to advance political and economic freedom in Cuba through enhanced commerce and trade between the United States and Cuba, and empowering the nascent private sector. To improve the speed, efficiency, and oversight of authorized payments between the United States and Cuba, OFAC has authorized U.S. banks to establish correspondent accounts at financial institutions in Cuba and to allow travelers to use their credit and debit cards in Cuba. These changes will support those individuals and businesses engaged in authorized travel and trade with Cuba – for example, in the areas of agriculture, medicine and medical products, and communications – by facilitating authorized financial transactions.

Within the context of trade, OFAC also modified the regulatory interpretation of the term "cash-in-advance," which describes a financing requirement for trade between the United States and Cuba that is imposed by statute. This term dictates when authorized U.S. exporters to Cuba must receive payment for their goods. Previously, OFAC had interpreted that statutory term to mean that the U.S. exporter had to receive payment from the Cuban importer prior to the goods leaving U.S. shores – an interpretation that American exporters have said made their products less competitive than those from other countries. OFAC has now revised its interpretation of the term to mean that payment is required prior to transfer of title and control of goods. This permits the export of American-produced agricultural, medical, and other authorized goods to Cuba so long as payment is received by the U.S. exporter prior to the goods' arrival to a Cuban port. This change should increase authorized U.S. exports to Cuba, which in 2013 totaled more than \$358 million in agricultural products, medical devices, medicine, and humanitarian items.

Telecommunications and the Free Flow of Information

Cuba has an Internet penetration of approximately five percent – one of the lowest in the world. Coupled with the exorbitant costs of telecommunications equipment, this has severely limited the ability of Cubans to communicate with each other and the outside world. In order to better facilitate the free flow of information to, from, and among the Cuban people, in accordance with the President's announcement, OFAC eased restrictions to better provide efficient and adequate telecommunications services between the United States and Cuba and to increase access to telecommunications and Internet-based services for the Cuban people. These steps build upon efforts initiated in 2009 to facilitate the free flow of information, and include the authorization for certain telecommunications and Internet-based services, and for facilities to provide telecommunications services linking the United States or third countries and Cuba, including facilities to provide telecommunications services within Cuba.

In coordination with our colleagues at the Commerce Department, OFAC also has authorized certain services incident to Internet-based communications and those related to exportations and reexportations of certain communications items. This means, for example, that transactions related to fee-based Internet communications services, such as e-mail, social networking, web-hosting, or domain-name registration are now authorized in most circumstances. Services related to many kinds of software (including applications) used on personal computers, cell phones, and other personal communications devices are also authorized. Additionally, services related to certain authorized exports, such as cloud storage, software design, business consulting, and the provision of information technology management and support related to the use of hardware and software exported or reexported to Cuba pursuant to Commerce Department rules are permitted. These changes will facilitate increased communication to, from, and within Cuba and will facilitate multiple avenues for the free flow of information and ideas to ordinary Cubans.

Supporting Diplomacy

The President also announced his decision to begin discussions with Cuba to reestablish diplomatic relations. To facilitate that process, OFAC authorized transactions with Cuban official missions and their employees in the United States. In addition, in an effort to support U.S. government interests, OFAC authorized Cuba-related transactions by employees, grantees, and contractors of the U.S. government and certain intergovernmental organizations in their official capacities.

Conclusion

As I conclude, I should make one point absolutely clear: Even with these changes I've described, most transactions between the United States and Cuba – including most export, import, and other activities – remain prohibited. OFAC will continue to enforce these prohibitions, using all of our available tools. Persons traveling to or engaging in transactions involving Cuba will continue to be required to maintain records for five years, thereby allowing OFAC to access information relevant to possible enforcement actions. In fiscal year 2014, for example, civil penalties and monetary settlements related to OFAC enforcement actions involving Cuba totaled over \$35 million. As OFAC implements these recent changes, we will continue to enforce the Cuba sanctions program vigorously and take actions against violators, as appropriate.

The President's December 17 announcement laid out a new course for our relations with Cuba, driven by a hope for a more positive future for the Cuban people. OFAC's regulatory amendments to the Cuban Assets Control Regulations, in concert with the regulatory revisions my colleague at Commerce will highlight, mark significant changes to our Cuba sanctions that implement the new policy announced by the President. These changes are intended to directly benefit the Cuban people and help them to freely determine their own future.

Thank you. I welcome your questions.