

Cuba Travel Restrictions

**An Overview of Limits on Travel to Cuba Applicable to
U.S. Educational Institutions**

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INTRODUCTION

Following the recent broadening of diplomatic dialogue between the United States and Cuba, the Institute of International Education (IIE) has recently launched a **Cuba Higher Education Initiative**. This initiative would take a multi-pronged approach aimed at expanding academic collaboration between the United States and Cuba and helping U.S. higher education institutions build sustainable partnerships with institutions in Cuba.

To kick-start this new initiative, IIE held an IIE Network National Conference Call on US-Cuba Higher Education Collaboration in February 2015. This call focused on the future of U.S.-Cuban higher education engagement, opportunities for academic collaboration, and how some institutions are addressing challenges that arise. Speakers discussed current modes of collaboration and the potential to advance new academic linkages and exchanges. A [recording of the call](#) is available on IIE's website.

Based on comments and feedback from IIE member institutions, we are now providing this briefing paper that presents an overview of limits on travel to Cuba applicable to U.S. educational institutions. This paper was prepared by Nicholas Townsend at Arnold & Porter LLP.

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CUBA TRAVEL RESTRICTIONS

This briefing paper provides an overview of limits on travel to Cuba applicable to U.S. educational institutions and related transactions under the sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") and the export controls administered by the Department of Commerce's Bureau of Industry and Security ("BIS").

1. Prohibition

Unless authorized by OFAC, the Cuban Assets Control Regulations ("CACR") generally prohibit U.S. persons¹ from engaging in transactions in which any Cuban national has an interest, directly or indirectly, and any transactions by, or on behalf of, or pursuant to the direction of, a national of Cuba.

2. Travel Authorizations

OFAC authorizes 12 types of travel and related transactions involving Cuba through general licenses, which do not require filing paperwork with OFAC beforehand so long as the conditions set out in the CACR are met.² The following four general travel licenses are of greatest relevance:³

- A. **Educational Activities** - Faculty and staff (including adjunct faculty and part-time staff) of the sponsoring U.S. academic institution and any student currently enrolled in any U.S. academic institution⁴ are authorized to engage in educational travel activities under the general license in Section 515.565(a) if the activities fall under one of the following nine categories:

¹ The term U.S. person includes: (a) any individual, wherever located, who is a citizen or resident of the United States; (b) any person within the United States including: (1) any person, wheresoever located, who is a resident of the United States, (2) any person actually within the United States, (3) any corporation, partnership, association, or other organization organized under the laws of the United States or of any state, territory, possession, or district of the United States, and (4) any corporation, partnership, association, or other organization, wherever organized or doing business, which is owned or controlled by any person or persons within the United States; (c) any corporation, partnership, association, or other organization organized under the laws of the United States or of any state, territory, possession, or district of the United States; and (d) any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by such persons. 31 C.F.R. § 515.329.

² By contrast, a specific license requires approval by OFAC of an application submitted by the U.S. traveler.

³ Other general licenses permitting travel to Cuba include: (i) Family visits (*see* § 515.561); (ii) official business of the U.S. government, foreign governments, and certain intergovernmental organizations (*see* § 515.562); (iii) Journalistic activity (*see* § 515.563); (iv) Religious activities (*see* § 515.566); (v) Public performances, clinics, workshops, athletic and other competitions, and exhibitions (*see* § 515.567); (vi) Support for the Cuban people (*see* § 515.574); (vii) Humanitarian projects (*see* § 515.575); (viii) Activities of private foundations or research or educational institutes (*see* § 515.576); (ix) Exportation, importation, or transmission of information or informational materials (*see* § 515.545); and (x) Certain export transactions that may be considered for authorization under existing Department of Commerce regulations and guidelines with respect to Cuba or engaged in by U.S.-owned or -controlled foreign firms (*see* §§ 515.533 and 515.559).

⁴ The academic institution in which such students are enrolled does not need to be the same one that is sponsoring the Cuba-related travel so long as the students' travel is through a sponsoring U.S. academic institution.

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- I. Participation in a structured educational program in Cuba as part of a course offered for credit by a U.S. graduate or undergraduate degree-granting academic institution that is sponsoring the program;
 - II. Noncommercial academic research in Cuba specifically related to Cuba and for the purpose of obtaining an undergraduate or graduate degree;
 - III. Participation in a formal course of study at a Cuban academic institution, provided the formal course of study in Cuba will be accepted for credit toward the student's graduate or undergraduate degree;
 - IV. Teaching at a Cuban academic institution related to an academic program at the Cuban institution, provided that the individual is regularly employed by a U.S. or other non-Cuban academic institution;
 - V. Sponsorship of a Cuban scholar to teach or engage in other scholarly activity at the sponsoring U.S. academic institution;⁵
 - VI. Educational exchanges sponsored by Cuban or U.S. secondary schools involving secondary school students' participation in a formal course of study or in a structured educational program offered by a secondary school or other academic institution and led by a teacher or other secondary school official;⁶
 - VII. Sponsorship or co-sponsorship of noncommercial academic seminars, conferences, and workshops related to Cuba or global issues involving Cuba and attendance at such events by faculty, staff, and students of a participating U.S. academic institution;
 - VIII. The organization of, and preparation for, activities described in Subsections (i) through (vii) above by members of the faculty and staff of the sponsoring U.S. academic institution or secondary school; or
 - IX. Facilitation by an organization that is a person subject to U.S. jurisdiction, or a member of the staff of such an organization, of licensed educational activities in Cuba on behalf of U.S. academic institutions or secondary schools, provided that:
 - a. The organization is directly affiliated with one or more U.S. academic institutions or secondary schools;
 - b. The organization facilitates educational activities that meet the requirements of one or more of Subsections (i)-(iii) or (vi) above; and

⁵ In addition to those transactions authorized by the general license contained in § 515.571, such sponsorship includes the payment of a stipend or salary, which earnings may be remitted to Cuba as provided in § 515.570 or carried on the person of the Cuban scholar returning to Cuba as provided in § 515.560(d)(3).

⁶ This includes participation by a reasonable number of adult chaperones to accompany the secondary school students to Cuba.

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- c. The educational activities the organization facilitates in Cuba must, by prior agreement, be accepted for credit by the affiliated U.S. academic institution or approved by the affiliated secondary school.
 - B. *People-to-people Educational Exchanges* - Travel for educational exchanges not involving academic study pursuant to a degree program is authorized under Section 515.565(b) if the following five conditions are met:
 - I. The exchanges take place under the auspices of an organization that is a person subject to U.S. jurisdiction and that sponsors such exchanges to promote people-to-people contact;
 - II. All relevant transactions are for the purpose of engaging, while in Cuba, in 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;
 - III. Each traveler has a full-time schedule of educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba (*e.g.*, an organization that sponsors and organizes trips to Cuba in which travelers engage in individually selected and/or self-directed activities would not qualify);
 - IV. An employee, paid consultant, or agent of the sponsoring organization accompanies each group traveling to Cuba to ensure that each traveler has a full-time schedule of educational exchange activities; and
 - V. The predominant portion of the activities engaged in by individual travelers is not with individuals or entities acting for or on behalf of a prohibited official of the Government of Cuba⁷ or a prohibited member of the Cuban Communist Party.⁸

⁷ The term prohibited officials of the Government of Cuba means Ministers and Vice-ministers, members of the Council of State and the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors, and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; and members and employees of the Supreme Court (Tribuno Supremo Nacional). 31 C.F.R. § 515.337.

⁸ The term prohibited members of the Cuban Communist Party means members of the Politburo, the Central Committee, Department Heads of the Central Committee, employees of the Central Committee, and secretaries and first secretaries of the provincial Party central committees. 31 C.F.R. § 515.337.

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- C. **Professional Research** - Travel for professional research is authorized under Section 515.564(a) provided that:
- I. The purpose of the research directly relates to the traveler's profession, professional background, or area of expertise, including area of graduate-level full-time study;
 - II. The traveler does not engage in recreational travel, tourist travel, travel in pursuit of a hobby, or research for personal satisfaction only; and
 - III. The traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule of professional research.
- D. **Professional Meetings** - Travel to attend professional meetings or conferences in Cuba is authorized under Section 515.564(b) provided that:
- I. The purpose of the meeting or conference is not the promotion of tourism in Cuba;
 - II. The purpose of the meeting directly relates to the traveler's profession, professional background, or area of expertise, including area of graduate-level full-time study;
 - III. The traveler does not engage in recreational travel, tourist travel, or travel in pursuit of a hobby; and
 - IV. The traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule of attendance at professional meetings or conferences.

3. Travel-Related Transactions

If an individual qualifies for one of the above OFAC general travel licenses, he or she may engage in the following travel-related transactions:

- I. Payments related to transportation to and from Cuba, which travel no longer needs to be arranged through a Travel Service Provider ("TSP") with a specific license from OFAC;
- II. Payment of living expenses while in Cuba and the acquisition in Cuba of goods for personal consumption there (*i.e.*, OFAC eliminated the previous per diem limitation on such expenses);
- III. Import into the U.S. (as accompanied baggage) of up to \$400 worth of goods from Cuba, but only \$100 worth of alcohol or tobacco products can be imported; and

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- IV. Carrying of authorized monetary remittances pursuant to Section 515.570 of the CACR⁹ provided that: (i) the total of all remittances authorized by § 515.570(a) through (d) does not exceed \$10,000; and (ii) no emigration remittances authorized by § 515.570(e) are carried to Cuba unless a U.S. immigration visa has been issued for each payee and the licensed traveler can produce the visa recipients' full names, dates of birth, visa numbers, and visa dates of issuance.

Additional transactions that are “directly incident” to the category of licensed activity in question. (For example, in the case of Section 515.564, it would include activities directly incident to the authorized professional research or professional meeting. Such directly incident transactions would include local transportation related to such professional research/meetings, but such transactions would not be permitted if the transport is a frolic and detour for tourism purposes. Similarly, insurance coverage related to a professional meeting or professional research could be covered as a directly incident transaction. However, a transaction is generally only directly incident if it is in furtherance of an authorized activity so, for example, purchase of services unrelated to the authorized type of activity, such as non-emergency medical services, are prohibited.)

4. Tourism Ban

Tourist or recreational activities in Cuba, including self-directed educational activities that are intended only for personal enrichment, remain prohibited. The traveler’s schedule of activities cannot include free time or recreation in excess of that consistent with a full-time schedule.

5. Method of Payment

Prior to January 16, 2015 authorized Cuba-related travel transactions had to be in cash, but now:

- A. Authorized travelers may pay for the types of authorized transactions outlined above using a credit or debit card;
- B. The CACR provides authority for U.S. depository institutions to open accounts at Cuban banks, which will increase the ability of travelers to access funds while in Cuba; and
- C. U.S. academic institutions or secondary schools engaging in activities authorized pursuant to Section 515.565 of the CACR are permitted to open and maintain accounts at Cuban financial institutions for the purpose of accessing funds in Cuba for authorized transactions.

⁹ Section 515.570 of the CACR authorizes seven categories of remittances including: (a) family remittances, (b) periodic remittances, (c) remittances to religious organizations in Cuba, (d) remittances to students in Cuba pursuant to an educational license, (e) two one-time \$1,000 emigration-related remittances, (f) certain remittances from blocked sources, and (g) remittances to certain individuals and independent non-governmental organizations in Cuba. A special license can also be obtained for other types of remittances under Section 515.570(h) of the CACR.

6. Recordkeeping

- A. OFAC eliminated the previous requirement under § 515.565(a) for individual educational travelers to carry letters on official letterhead signed by a representative of the sponsoring academic institution with them to Cuba.
- B. However, the CACR's record keeping requirements remain in place. Generally, the records that should be maintained include records that show that the travelers qualify for the general license, although the person does not necessarily have to carry such records with them so long as they are maintained nor do they need to be on official letterhead and formally signed. For example, it is advisable to have a syllabus and itinerary to show that the traveler's schedule of activities did not include free time or recreation in excess of that consistent with a full-time schedule.
- C. Moreover, under Section 501.601 of the OFAC regulations, "every person engaging in any transaction subject to the provisions . . . shall keep a full and accurate record of each such transaction engaged in, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 5 years after the date of such transaction."
- D. Reports also must be furnished under oath to OFAC *on demand* under § 501.602.

7. Exports

Subject to the conditions described below, authorized travelers may also bring with them to Cuba items such as laptops, cell phones, and other consumer electronics (*e.g.*, basic Dell and Apple computers, iPads, iPhones, Blackberries, etc.), export of which would not have been permitted under the Export Administration Regulations ("EAR") prior to January 16, 2015. However, more advanced enterprise level equipment that is controlled under the EAR for reasons other than anti-terrorism ("AT"), such as routers or servers that are covered under the Wassenaar Arrangement,¹⁰ would still require a license for export to Cuba.

- A. Under the EAR's exception for Support for the Cuban People ("SCP"), temporary export to Cuba of laptops, cell phones, and other items subject to the EAR by persons departing the United States for their use in "scientific, archeological, cultural, ecological, educational, historic preservation, or sporting activities, or for their use in the traveler's professional research," does not require a BIS license if the following conditions are met:

¹⁰ The Wassenaar Arrangement includes export controls for conventional arms and dual-use goods and technologies. The EAR implements the U.S. government's commitments under the Wassenaar Arrangement and other multilateral export control agreements to which the U.S. is a party, such as the Missile Technology Control Regime, the Australia Group restrictions on use of chemical weapons, and the Nuclear Suppliers Group restrictions related to proliferation of nuclear weapons (the "Multilateral Export Control Regimes").

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- I. The research must be directly related to the traveler's profession, professional background or area of expertise, including area of graduate-level full-time study; and
 - II. The activities or research may not relate to the development, production, use, operation, installation, maintenance, repair, overhaul or refurbishing of more advanced items that are subject to a higher level of control under U.S. export laws, including any item that is: (i) controlled under the International Traffic in Arms Regulations ("ITAR"), or (ii) is on the Commerce Control List ("CCL") (Supplement No. 1 to Part 774 of the EAR) for any reason other than AT reasons (*i.e.*, anti-terrorism must be the only reason for control that applies to the item as set forth in the Export Control Classification Number ("ECCN") or the item must be classified as EAR99 and not on the Commerce Control List to qualify for use of the license exception).
- B. The SCP exception would generally permit authorized travelers to bring their laptops, cell phones, tablets and other consumer devices to Cuba, but all such items must be returned to the United States within two years of the date of export from the United States unless:
- I. The items are consumed in Cuba; or
 - II. The exporter applies for and receives a license from BIS, prior to the expiration of the two year period, authorizing the item to remain in Cuba for longer than two years.

Although President Obama recently announced policy changes designed to chart a new course in U.S. relations with Cuba, Cuba-related transactions that are subject to U.S. jurisdiction remain highly regulated. The application of the relevant sanctions and export controls can be very fact specific so if you have questions please contact John Barker at (202) 942-5328 or John.Barker@aporter.com or Nicholas Townsend at (202) 942-5249 or Nicholas.Townsend@aporter.com. U.S. sanctions laws often change rapidly and new sanctions are generally not broadcast in advance of their imposition, lest the target move its assets or otherwise attempt to avoid the impact of the sanctions. The most recent information about the nature and scope of OFAC sanctions related to Cuba can be found on the [OFAC website](#). This paper does not constitute legal advice. Specific transactions should be reviewed against the applicable regulations to determine licensing requirements.