

PUBLICATION

New Opportunities in Cuba for Universities

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The Administration's recent efforts to normalize trade relations with Cuba has resulted in new opportunities for universities. Although the embargo is still in place, the Administration has carved out multiple exceptions. These exceptions have led to new opportunities for (1) travel to Cuba; (2) opening an office in Cuba; (3) admission and hiring of Cuban national students, faculty and staff; and (4) export and import of certain equipment to and from Cuba.

I. Travel to Cuba

Although tourist travel to Cuba is still prohibited, the United States Department of Treasury's Office of Foreign Assets Control (OFAC) has issued general licenses within 12 categories of activities that allow individuals to travel to Cuba without seeking prior approval from OFAC. General licenses allow individuals to engage in the licensed activity subject to the conditions of the license. However, even if individuals do not meet the conditions of a given category, they may still apply for a specific license for travel. Specific licenses are approved by OFAC on a case-by-case basis.

The categories of licenses particularly relevant to universities include:

- Educational Activities
- Professional Research
- Professional Meetings
- Public Performances, Clinics, Workshops, Athletic and Other Competitions, and Exhibitions
- Humanitarian Projects
- Activities of Private Foundations or Research or Educational Institutes (with an established interest in international relations)

Allowable travel-related transactions incurred in relation to these categories of activities include expenses for transportation to and from Cuba and lodging, meals and other costs incidental to travel. Travelers qualifying for licenses under these categories may now legally open and maintain bank accounts in Cuba for authorized transactions, as well as use U.S. credit and debit cards, although there are still some practical difficulties in so doing. Although most travel-related transactions are authorized, travel under most categories also requires travelers and/or their sponsoring institutions to keep records of expenses for a period of five years. None of these general licenses authorize travel that is primarily tourist-oriented.

Educational Activities

The general license category for educational activities applies to a broad range of activities related to universities, including (a) degree programs and courses for credit at U.S.-based universities; (b) academic exchanges and joint non-commercial research; and (c) sponsorship of academic seminars, conferences, symposia and workshops related to Cuba or global issues involving Cuba. This general license covers travel undertaken by faculty, staff and students in relation to any of these activities, in addition to adjunct faculty and part-time staff.

(a) Degree Programs and Courses for Credit at U.S.-Based Universities

Faculty, staff and students may travel to Cuba in order to (1) participate in structured educational programs in Cuba as part of a course offered for credit at a U.S.-based university; (2) conduct academic research specifically related to Cuba for the purpose of attaining a U.S. undergraduate or graduate degree; and (3) participate in a formal course of study at a Cuban academic institution so long as credit for the course will be honored by a U.S. university. Additionally, American teachers may travel to Cuba in order to teach at Cuban institutions provided that they are regularly employed by a U.S. or non-Cuban academic institution.

(b) Academic Exchanges and Joint Non-Commercial Research

University faculty, staff and students may also undertake travel related to the establishment of academic exchanges and joint non-commercial academic research projects with academic institutions in Cuba.

(c) Sponsorship of Academic Seminars, Conferences, Symposia and Workshops Related to Cuba or Global Issues Involving Cuba.

Although there is a separate general license for "professional meetings" (see below), the educational activities license also authorizes travel in order to attend, organize and facilitate a narrower range of meetings related to Cuba or global issues that affect Cuba. Although the topic of the meeting is narrower, unlike the professional meetings general license, this license does not require that the meeting be directly related to an individual's profession, professional background or area of expertise, although it does require that the sponsored event be Cuba-focused.

Professional Research

Universities may utilize the professional research general license in order to enable faculty, staff and students to perform research. However, the research must be directly related to their profession, professional background or area of expertise. It cannot be for personal satisfaction only or in pursuit of a hobby. It is also important to understand that a person does not engage in professional research merely because she or he is a professional or because she or he is associated with a group some of whose members are engaged in professional research.

Professional Meetings

The general license for professional meetings also may be useful to universities. Under this license, individuals may travel to Cuba not only to attend professional meetings and conferences in Cuba, but also to organize them. This license allows meeting organizers and event planners to attend conferences that a university may be sponsoring or engaged in planning. However, the purpose of the meeting must not be the promotion of tourism. Further, the professional meeting must directly relate to the traveler's profession, professional background or area of expertise. Similar to the other general licenses for travel, travelers' schedules must not include free time or recreation inconsistent with a full-time schedule of attendance at the meeting or conference.

Public Performances, Clinics, Workshops, Athletic and Other Competitions, and Exhibitions

The general license for individuals participating in public performances, clinics, workshops and athletic or non-athletic competitions may also be useful for universities, especially for athletes, musicians and artists. This general license is primarily aimed at opening opportunities for people-to-people exchange between American and Cuban nationals. Revealing of the Administration's thinking behind this exception, OFAC requires the

event in which the individual is participating to be open for attendance, and when possible, open for participation by the Cuban public.

Humanitarian Projects

Universities may also use a general license in order to carry out humanitarian projects. This general license offers another broad range of opportunities to engage with Cuban institutions and the Cuban public. Authorized humanitarian projects include medical and health-related projects; construction projects intended to benefit legitimately independent civil society groups; disaster preparedness, relief and response; historical preservation; environmental projects; and projects involving formal and non-formal educational training. Under this license, universities may also give grants or awards for humanitarian projects in or related to Cuba if the project is designed to directly benefit the Cuban people.

Activities of Private Foundations or Research or Educational Institutes (with an established interest in international relations)

Universities may also be eligible for a general license if they have private foundations or research or educational institutes that have an established interest in international relations. This general license is restricted to the collection of information related to Cuba for noncommercial purposes and may be utilized so long as all employees or consultants of the foundation or institute maintain a full-time schedule related to international relations research.

II. Opening an Office in Cuba

Universities now have the ability to establish an office or other physical facility in Cuba. A university's undertaking of any of the following activities will provide it with an opportunity to open an office: (1) offering courses for credit toward completion of a degree program at a U.S.-based university; (2) engaging in academic exchange programs or joint non-commercial research projects with a Cuban academic institution; or (3) sponsoring academic seminars, conferences, symposia and workshops related to Cuba or global issues involving Cuba. In addition, universities engaged in humanitarian projects or those with international relations institutes or foundations may also open offices. If engaged in any of these activities, universities may, specifically, lease physical premises in Cuba; secure goods or services related to establishment of the office; engage in marketing related to their new office; employ Cuban nationals to work in the office; and employ U.S. persons. Universities may also open bank accounts at Cuban financial institutions in order to make transactions pursuant to establishment of the office.

III. Admission and Hiring of Cuban National Students, Faculty and Staff in the United States

Universities are also now able to more easily admit Cuban national students. Universities may give Cuban national students grants, scholarships and other awards. Additionally, Cuban nationals are now able to participate in standardized testing services (e.g., the SAT or TOEFL) and take online preparation courses. The new regulations also open up opportunities for distance learning with Cuban nationals at an undergraduate level or below.

With regard to faculty and staff, universities may now sponsor Cuban scholars to teach or engage in other scholarly activity at U.S.-based universities. Further, universities can employ Cuban nationals so long as the Cuban national employee is not subject to tax assessments by the Cuban government. They may also sponsor Cuban nationals for non-immigrant visas. The new regulations also remove many obstacles that Cuban nationals employed by universities would otherwise encounter when resident in the United States, including the inability to open and maintain bank accounts.

IV. Export and Import of Certain Equipment to and from Cuba

The new regulations also soften OFAC and the Commerce Department's Export Administration Regulations (EAR) on technology so that universities may now more easily export some goods to Cuba. Although universities should still be very careful when exporting technology to Cuba, there are now exceptions for the exportation of certain technologies, including, among others, Consumer Communications Devices (CCD) (e.g., consumer computers, printers, disk drives, monitors, mobile phones, modems, network access equipment, etc.) and goods that support the needs of the Cuban people. This latter set of goods may be exported under the "Support for the Cuban People" (SCP) license exception, and includes, among others, equipment, tools and other supplies for use in certain private sector construction and renovation activities, entrepreneurship and agriculture; telecommunications items that would improve communications to, from and among the Cuban people; medicines and medical devices; technologies related to environmental protection, including items related to renewables and energy efficiency; technologies that enhance the safety of civic aviation; and donated items and temporary export of items for use in scientific, archeological, cultural, ecological, educational, historic preservation, sporting activities, or in the traveler's professional research and meetings.

Most of the above authorized exports are only authorized so long as the end user is the Cuban private sector, with the Cuban government, if authorized to have any role at all in the export, re-export or transfer, only allowed to act as an intermediary. When exporting to Cuba, which includes simply carrying personal laptops and other technology into the country in one's luggage, universities should be wary of the specific technology entering the country, its end use and the end user, especially if the end user is the Cuban government or a member of the Cuban Communist Party. Although there are some narrowly-defined authorized exports for which the Cuban government is an authorized end user, it is very important for universities to carefully check the regulations to ensure that this is the case. The general policy is still to deny licenses for exports and re-exports of items for use by state-owned enterprises, agencies or other organizations of the Cuban government, although there are case-by-case allowances.

Further, even if an item is not subject to the EAR (i.e., is EAR99, which is the case with many of the CCD goods now authorized for export), universities should still check to be sure that the end user of the technology is not on Commerce Department's Denied Persons List or OFAC's Specially Designated Nationals List. On the deemed export front, universities now have the ability to share EAR99 technology and source code with Cuban nationals within the United States.

In addition to these export control changes, universities also have the opportunity to import Cuban-origin software and Cuban-origin mobile software, along with mobile applications.