Memorandum: Changes to Legal Travel to Cuba for Americans and the Impact on U.S. Companies and Cuba's Private Sector

On June 5, 2019, a new round of regulations went into effect further restricting travel to Cuba by U.S. nationals. The Trump administration amended federal regulations to eliminate group “people-to-people” educational travel and bar U.S. passenger and recreational vessels (cruises) and private aircraft from entering Cuba.

Elimination of People-to-People Travel

Under the U.S. travel embargo on Cuba, codified in 2000 by the Trade Sanctions Reform and Export Enhancement Act, U.S. nationals are prohibited from traveling to Cuba as tourists and must meet requirements for “purposeful travel” under 12 general license categories, such as family visits, educational activities, or professional research.

Effective June 5, the U.S. Department of Treasury’s Office of Foreign Assets Control (OFAC) removed the authorization for people-to-people educational travel, a subcategory of the educational activities general license. The Trump administration had previously restricted people-to-people travel in 2017 by requiring travelers to be accompanied by a representative of a U.S. organization (e.g. tour company) rather than travel individually.

People-to-people travel to Cuba, first authorized under the Clinton administration, allowed Americans to travel to Cuba to engage in a full-time itinerary of non-academic cultural exchanges fostering “meaningful interaction” with the Cuban people. Traveling to Cuba under the people-to-people license was the most common method for Americans to travel legally to Cuba for non-family visits.

The regulatory changes include a grandfathering provision, which allows previously authorized people-to-people trips to continue uninterrupted if the traveler completed at least one travel-related transaction (e.g. travel or lodging reservations) prior to June 5. However, the grandfathering provision does not apply to cruise travel.
**Closing the Door on Cruises**

The U.S. Department of Commerce amended the Export Administration Regulations (EAR) to strip U.S. passenger vessels, recreational vessels, and private aircraft of an export license exception that had allowed for temporary stays in Cuba without applying for an export license -- effectively barring cruise ships from entering Cuba beginning June 5. The federal agency with jurisdiction over such export licenses, the Commerce Department’s Bureau of Industry and Security (BIS), announced that it will adopt a general policy of denying relevant license applications, closing the door on cruises to Cuba unless further regulatory amendments are made.

**Effects of the New Travel Restrictions**

While travel to Cuba remains legal for Americans (more details below), the most recent regulatory amendments eliminated the easiest and most popular way for them to go. Furthermore, the changes to legal travel to Cuba have sown more confusion and uncertainty with U.S. travelers and companies, making them hesitant to engage.

**Losses for U.S. Cruise and Airline Companies**

More than a quarter of a million Americans traveled to Cuba on non-family visits in the first four months of 2019 -- nearly 150,000 of them arriving aboard cruise ships, a 300% increase over the previous year and about 30,000 more than had arrived via commercial airline. The Cruise Line Industry Association stated that 800,000 cruise bookings made under the people-to-people license were affected by the regulatory change.

The grandfathering provision for people-to-people trips does not countermand the effective ban on cruise ships that came into force June 5, giving U.S. cruise companies less than 24-hours’ notice to remove Cuba from itineraries and divert sailings. The policy change could impact the earnings of major cruise companies such as Norwegian, Carnival, and Royal Caribbean, by millions of dollars.

While U.S. airlines remain permitted to transport Americans to Cuba, companies will likely be affected by a drop in demand resulting from the elimination of the popular people-to-people category and confusion surrounding the new rules.
Stifling Cuba’s Nascent Private Sector

The roughly one-third of Cuba’s work force that makes a living from the private sector will see great losses from the elimination of cruises, the most popular form of travel to Cuba for Americans, as well as smaller and fewer tour groups arriving by plane.

The growth of Cuba’s private sector in recent years has corresponded with the exponential increase of U.S. travelers patronizing the island’s privately owned restaurants and other small businesses since the reestablishment of diplomatic relations and easing of travel restrictions under the Obama administration beginning in 2015. Cuba’s self-employed have already seen as much as a 40% in revenue since travel rules were previously tightened under the Trump administration.

In a recent survey of Cuba’s private sector entrepreneurs, 96% responded that decreased U.S. travel to Cuba would harm their businesses, and 99% said that the U.S. government should increase American travel to Cuba to support Cuba’s private sector.

Americans Can Still Travel to Cuba

Other than the people-to-people subcategory of the general license to engage in educational activities, no other categories of legal travel to Cuba for Americans were amended. Legal travel for students, researchers, Cuban-Americans, journalists, athletes, musicians, and anyone else who qualifies under the 12 general license categories, remains unchanged. The 12 categories are:

- family visits;
- official business of the U.S. government, foreign governments, and certain intergovernmental organizations;
- journalistic activity;
- professional research and professional meetings;
- educational activities (e.g. academic study abroad programs);
- religious activities;
- public performances, clinics, workshops, athletic and other competitions, and exhibitions;
- support for the Cuban people;
- humanitarian projects;
activities of private foundations or research or educational institutes;
exportation, importation, or transmission of information or information materials; and
certain authorized export transactions.

Switching to the “Support for the Cuban People” Category

With the elimination of people-to-people group travel, the “support for the Cuban people” category becomes the easiest for the general travelers -- who don’t have religious, academic, professional, or other such reasons to travel to Cuba -- to comply with.

Like the people-to-people requirements, travelers going to Cuba under this category must engage in a full-time schedule of activities that result in “meaningful interaction” with individuals in Cuba. However, complying with the support for the Cuban people category involves additional requirements.

Travelers must:
- have a full-time schedule of activities that “enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities.” Examples provided in the rules include:
  - renting a room in a private Cuban residence (casa particular);
  - eating at privately owned Cuban restaurants (paladares);
  - shopping at privately owned stores run by self-employed Cubans (cuentapropistas);
  - learning about Cuban culture while sharing a meal with a Cuban;
  - supporting Cuban entrepreneurs launching a private business; or
  - volunteering with a recognized non-governmental organization to build a school for underserved Cuban children with the local community.
- keep individual records, such as itineraries, photos, and business cards, for a period of five years.

Travelers may not:
- rely on staying at a casa particular, eating at paladares, and shopping at privately owned businesses to be enough to make their trip legal. The rules
specify that those activities alone do not constitute a full-time schedule of qualifying activities.

- include excessive free time or recreation in their itinerary that would interfere with a full-time schedule of qualifying activities.
- spend money at any of the businesses on the State Department restricted list, which mostly includes state-run hotels and beach resorts.

Fulfilling the requirements of the support for the Cuban people license category may appear burdensome and complicated. However, the vagueness of the regulations implies some flexibility in compliance. Notably, unlike the people-to-people category, traveling under support for the Cuban people gives Americans the option to choose between traveling with a tour group or going on their own. Several online resources provide guidance on designing support for the Cuban people itineraries for individual travelers, and most U.S. travel companies that previously offered group people-to-people tours plan to continue offering legal trips to Cuba for Americans under the new category.

**Conclusion**

While the latest Trump administration Cuba travel rule changes will hurt Cuban families and American travelers, there are still many ways for Americans to legally travel to and engage with Cuba. U.S. travel to Cuba is one of the most direct and significant ways for Americans to directly support Cuban civil society and private entrepreneurs.