

The New Cuba Travel Restrictions

Disclaimer: This publication was provided to our client, Global Volunteers. It is being circulated now to bring useful and timely information to individual volunteers and potential volunteers. This publication is not and is not intended to be legal advice for the individual volunteers or potential volunteers, and no attorney client relationship exists as to these individuals. If these individuals have legal concerns or issues, they should consult with their own attorneys.

Summary

On June 16, 2017, the President signed the National Security Presidential Memorandum titled “Strengthening the Policy of the United States Toward Cuba” (“NSPM”). New regulations to implement the NSPM were announced on April 17, 2019 (the “Announcement”) and included restrictions on non-family travel to Cuba. In accordance with the Announcement, the Department of Treasury’s Office of Foreign Assets Control (“OFAC”) amended the Cuban Assets Control Regulations (“CACR”) to remove the authorization for group “people-to-people educational travel,” which permitted United States citizens to engage in certain educational exchanges in Cuba. On June 5, 2019, those amendments took effect. OFAC also added a “grandfathering” provision to authorize certain group people-to-people educational travel that was previously permitted under CACR if the traveler completed at least one travel-related transaction (such as purchasing a flight or reserving an accommodation) prior to June 5, 2019.

While Global Volunteers will no longer be able to travel to Cuba under a general license for people-to-people travel, the travel-related general licenses for (1) supporting the Cuban people and (2) humanitarian projects are still applicable to Global Volunteers’ program. To comply with these general licenses, Global Volunteers’ volunteers need to stay at private residences, eat in private restaurants, visit independently owned shops, devote their time to engaging with Cubans through activities such as volunteering in community projects, and keep a full and accurate record of their transactions.

ANALYSIS

A. General License for Supporting the Cuban People

1. Statutory Requirements

The support for the Cuban people general license authorizes, subject to certain conditions, travel-related transactions and other transactions that are intended to provide support for the Cuban people. Specifically, this includes activities of non-governmental organizations designed either to promote a rapid, peaceful transition to democracy or to promote independent activity intended to strengthen civil society in Cuba. 31 C.F.R. § 515.574 (2017). The amendments also require that each traveler engage in a full-time schedule of activities that:

- i. enhance contact with the Cuban people, support civil society in Cuba, *or* promote the Cuban people’s independence from Cuban authorities; *and*
- ii. result in meaningful interaction with individuals in Cuba.

Id. (emphasis added).

A full-time schedule of activities is one that does not “include free time or recreation in excess of that consistent with a full-time schedule in Cuba.” *Id.* In essence, no substantial free time or recreation is allowed. Further, an entire group does not qualify for this general license merely because some members of the group individually qualify. *Id.*

OFAC also prohibits certain direct financial transactions with entities and sub-entities identified on the

State Department’s Cuba Restricted List (the “Restricted List”). *Id.* For purposes of this prohibition, a person engages in a direct financial transaction by engaging in a transfer of funds whose originator or ultimate beneficiary is an entity or sub-entity on the Restricted List, including a transaction by wire transfer, credit card, check, or payment of cash.¹ 31 C.F.R. § 515.209 (2017). Simply put, this prohibits travelers from frequenting state-run businesses and institutions, such as hotels and restaurants. Please visit the following cite to view the most up-to-date Restricted List: <http://www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/index.htm>. Additionally, OFAC requires individuals to keep a full and accurate record of each transaction engaged in and such record shall be available for at least five years after the date of such transaction. 31 C.F.R. § 515.601 (1997).

2. Global Volunteers’ Compliance

Global Volunteers is already substantially complying with the support for the Cuban people general license requirements. The amendment provides examples of travel that qualifies for the general license, such as:

- i. staying in a room rented at a private residence (“casa particulars”);
- ii. eating at privately-owned Cuban restaurants (“paladares”);
- iii. shopping at privately-owned stores run by self-employed Cubans (cuentaproposita);
- iv. having breakfast with one’s host family;
- v. volunteering with a recognized non-governmental organization to build a school for underserved Cuban children with the local community;
- vi. renting bicycles to explore the streets of Havana; and
- vii. visiting an art museum.

31 C.F.R. § 515.574.

Global Volunteers’ website includes a number of testimonials from previous volunteers and a basic outline of what the Cuba trip’s activities are, including among other things, experiencing the Cuban culture and connecting with the Cuban people, staying in casa particulars and enjoying breakfast with the host families, dining at local restaurants, promoting civil society, teaching English to children, and visiting a number of museums. All of these activities appear to qualify for the supporting the Cuban people general license, provided the travelers are maintaining a full-time schedule and avoiding any establishments on the Restricted List. Nonetheless, Global Volunteers should do the following three things to ensure that the general license covers the trip:

First, Global Volunteers should publish a more detailed itinerary to confirm that the volunteers’ non-work days still involve a full-time schedule of activities that comply with the statutory requirements;

Second, to prevent volunteers from visiting a blacklisted institution, Global Volunteers should alert travelers to any entities or sub-entities on the Restricted List that are in the vicinity of where they will be visiting; and

Third, Global Volunteers must verify that the “tourist class hotel” volunteers stay at in Ciego de Avila is not on the Restricted List or at least was not on the list when the rooms were booked. To eliminate uncertainty, Global Volunteers should consider switching to casa particulars for all of its Cuba volunteers.

If Global Volunteers implements these suggestions and maintains full and accurate records, the trip should comply with the support for the Cuban people general license requirements.

¹ Note that this t apply to transactions related to travel or commercial engagements that were initiated or in place prior to the date that the entity or sub-entity was added to the Restricted List.

B. General License for Humanitarian Projects

1. Statutory Requirements

OFAC has issued a general license that authorizes, subject to certain conditions, “transactions, including travel-related transactions, that are related to humanitarian projects in or related to Cuba that are designed to directly benefit the Cuban people.” 31 C.F.R. § 515.575 (2017). Authorized humanitarian projects include:

- i. medical and health-related projects;
- ii. construction projects intended to benefit legitimately independent civil society groups;
- iii. disaster preparedness, relief, and response;
- iv. historical preservation;
- v. environmental projects;
- vi. projects involving formal or non-formal education training on the following topics: entrepreneurship and business, civil education, journalism, advocacy and organizing, adult literacy, or vocational skills;
- vii. community-based grassroots projects;
- viii. projects suitable to the development of small-scale private enterprise;
- ix. projects that are related to agricultural and rural development that promote independent economic activity;
- x. microfinancing projects, except for loans, extensions of credit, or other financing prohibited by § 515.208; and
- xi. projects to meet basic human needs.

Id.

Individuals traveling pursuant to this general license are subject to the same full-time schedule requirement and record keeping obligation imposed by the general license for supporting the Cuban people. *Id.* Specifically, the traveler must: (1) maintain a schedule of activities that does not include free time or recreation in excess of that consistent with a full-time schedule; and (2) keep a full and accurate record of each transaction engaged in and such record shall be available for at least five years after the date of such transaction. Similarly, an entire group does not qualify for this general license merely because some members of the group individually qualify. *Id.*

2. Global Volunteers’ Compliance

While most of the volunteers’ activities will satisfy the requirements of the general license for supporting the Cuban people, some will also satisfy the requirements of the humanitarian projects general license. For instance, Global Volunteers’ website mentions activities such as community gardening, working with the woman’s craft cooperative, elder support, and light construction as typical of the Cuba trip. These activities likely fall under the authorized categories of humanitarian projects that are: related to agriculture and rural development that promote independent activity; suitable to the development of small-scale private enterprises; meet basic human needs; and construction intended to benefit legitimately independent civil society groups. If Global Volunteers’ volunteers maintain a full-time schedule and keep full and accurate records, the travel will likely qualify for the humanitarian projects general license.

As a caveat, although there is no mention of the Restricted List in 31 C.F.R. § 515.575, Global Volunteers will also be relying on the support for the Cuban people general license, so it is advisable to avoid any entity or sub-entity on the list.

CONCLUSION

Although OFAC's amendments to the CACR eliminate the general license for group people-to-people travel to Cuba, Global Volunteers' trip can still satisfy the requirements of the general licenses for supporting the Cuban people and humanitarian projects. By ensuring that volunteers have a full-time schedule of authorized activities, avoid institutions on the Restricted List, and keep full and accurate records, Global Volunteers' trips to Cuba may continue.