

Practice Update

President Biden Makes His Mark on U.S.–Cuba Policy

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The Biden Administration announced on May 16, 2022 a series of limited Cuba policy measures that it says are designed to increase support for the Cuban people during what it characterizes as a period of “unprecedented humanitarian crisis” in Cuba.

The measures include:

- The reopening of formal immigration pathways for many Cubans with relatives in the United States through the Cuban Family Reunification Parole (CFRP) Program and a commitment to increase consular services at the U.S. embassy in Havana
- The relaxation of some restrictions on U.S. travel to Cuba (including group-based “people-to-people” travel) and flights beyond Havana to provincial Cuban cities
- Increased support for independent Cuban entrepreneurs and private businesses by authorizing expanded access to U.S. Internet-based technologies and e-commerce platforms
- The removal of Trump-era caps on family remittances to Cuba and other efforts to facilitate remittance flows to the Cuban people and independent Cuban entrepreneurs

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While these moves are quite limited relative to Cuba policy changes enacted following prior administration changeovers, they do mark President Biden's first definitive break with Trump-era sanctions that many economists say exacerbated economic hardship in Cuba during the global pandemic and helped fuel irregular Cuban migration to the U.S. southern border. They also come amidst heightened political tensions surrounding Cuba policy in the United States—and Florida, in particular—in response to the Cuban government's repression of social unrest in July and November 2021 and subsequent jailing of many protestors and activists.

Here are a few practical takeaways compiled by members of the Akerman Cuba Practice:

- ***Expect a staggered rollout of updated federal regulations, rather than a single bundle of changes.*** Now that President Biden has announced these policy changes, the federal agencies that administer the Cuba sanctions (the U.S. Treasury Department Office of Foreign Assets Control ["OFAC"] and Commerce Department Bureau of Industry and Security ["BIS"]) will begin publishing amendments to the Code of Federal Regulations in the Federal Register. Some changes, such as the rules for travel and remittances, are fairly straightforward and should arrive soon. Others, such as those announced for Internet-based technologies and e-commerce platforms may take more time. U.S. persons are not authorized to engage in any of these new activities until the new regulations are published).
- ***Travel to Cuba will be different this time.*** A lot has changed since the last time U.S. travel to Cuba was more widely authorized toward the end of the Obama Administration. For starters, American travelers will likely remain largely barred from staying in Cuban hotels and instead be required to stay in Airbnb-style private homes. Moreover, cruise lines, airlines and many other providers of travel and transportation-related services have been tied up in court for years due to lawsuits

filed under Title III of the Cuban Liberty and Democratic Solidarity Act of 1996 (a.k.a. Helms-Burton). Many U.S. companies will likely think twice before rushing back into the Cuban market—and some may never return. Those that do should consider undertaking additional due diligence to minimize any potential exposure to Helms-Burton-related lawsuits. Either way, don't expect the same U.S. travel boom that occurred in 2015–2016.

- ***It will take time for consular services to ramp up.*** The United States Embassy in Havana, Cuba has been operating on a near skeleton crew for almost five years. During this time, the vast majority of immigrant and non-immigrant visa applicants have been required to travel to third countries (mainly Guyana) for their consular appointments. While news of imminent visa processing in Havana is welcomed by many, it will likely take months before the embassy is sufficiently staffed to begin working through a years-long backlog of visa applications.
- ***Changes for remittance companies and e-commerce platforms will be tricky.*** Contrary to popular belief, the Trump Administration never outlawed remittances to Cuba. However, they did make it illegal for U.S. banks and companies to deal with certain Cuban entities involved in the remittance and payments processing businesses. Given the language of last Monday's announcement, it is difficult to see how U.S. remittance and e-commerce companies will be able to work in Cuba without certain changes to the Cuban financial services sector that have not been forthcoming. Only time will tell, but there are particular challenges for U.S. companies in this sector.

Despite their limited nature, the measures announced by the White House represent an important departure from previous policies. While it is too early to tell whether these changes represent a one-off response to the ongoing economic crisis in

Cuba and subsequent wave of irregular migration, or the beginning of a new Biden-era Cuba policy, U.S. companies with current, former or possible future interest in Cuba should stay tuned for OFAC and BIS rules changes in the weeks ahead. The Akerman Cuba practice will provide future updates and briefings as circumstances evolve.

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