

Obama to Trump: Before and After on Cuba

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In December 2014, President Obama broke with decades of U.S. policy towards Cuba, pursuing a path of engagement instead of isolation. It became clear that what appeared at the time to be a watershed moment in U.S. foreign policy was at risk of rollback as a result of last November's U.S. presidential elections. Last Friday marked President Trump's first major foray into U.S.-Cuban matters since assuming office. While it was a radical departure in tone from his predecessor, the changes he announced appear to leave the Obama-era sanctions relief largely intact. That said, the changes announced today will eliminate the authorization for individuals to engage in "self-directed" people-to-people travel to Cuba, which will in turn have a significant impact on travel and carrier service providers. In addition, transactions with entities controlled by the Cuban military will be prohibited.

Stroll down memory lane

Before turning to the substance of today's announcement, we remind you of the dramatic changes resulting from President Obama's new direction on Cuba. On the foreign policy front, after the United States rescinded the designation of Cuba as a state sponsor of terrorism, the two countries resumed diplomatic relations and re-opened their respective embassies in Washington, D.C. and Havana for the first time in over 50 years. These developments led to enhanced cooperation on multiple fronts including migration, law enforcement, and public health. It led to a bilateral agreement providing the international legal basis for U.S. carriers to resume commercial flights between the two countries. It also provided the space for the United States and Cuba to take the initial "baby steps" necessary towards a dialogue that could have ultimately resolved the millions of dollars of outstanding claims, which have been a bilateral irritant for decades.

On the regulatory front, the Office of Foreign Assets Control (OFAC) at the U.S. Treasury Department, and the Bureau of Industry and Security (BIS) of the Department of Commerce implemented President Obama's vision through multiple rounds of amendments to the U.S. sanctions and export controls on Cuba. These amendments were designed to support the Cuban people, enhance the free flow of information within, to, and from Cuba, and help stimulate the nascent Cuban private sector. They created openings in travel, financial services, telecommunications, media, agriculture, energy, and the environment to name a few areas. (For specific information on the Obama sanctions relief, see these Hogan Lovells alerts [\[Alert 1\]](#) [\[Alert 2\]](#)).

The one thing that all of these changes had in common is that they were implemented solely through executive authority. Although President Obama implored Congress to remove the statutory embargo against Cuba, this was never a realistic possibility during his tenure. Without the backing

of legislation, it was clear all along that the Obama-era sanctions relief could be reversed, in whole or part, by the new Administration.

A new sheriff in town

Though he did not downgrade or cut off diplomatic relations, President Trump's speech on Friday returned the U.S.-Cuba bilateral relationship to the more adversarial pre-2015 posture. In contrast, it appears that the President's strong rhetoric will lead only to fairly moderate regulatory changes in the near future. Pursuant to the [National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba](#), issued in conjunction with the speech, the President directed the Treasury and Commerce Departments, in coordination with the State and Transportation Departments, to adjust current regulations regarding transactions with Cuba. The most impactful changes will include:

- A prohibition on financial transactions with Cuban entities that will be identified and blacklisted by the State Department for being under the control of or acting for or on behalf of the Cuban military, intelligence or security services or personnel. The Memorandum excludes a range of activities from this prohibition including (1) air and sea operations that support permissible travel, cargo, or trade, and (2) the sale of agricultural commodities, medicines, and medical devices to Cuba consistent with the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) and the Cuban Democracy Act of 2002.
- A return to the requirement that U.S. persons who seek to travel to Cuba to engage in what is known as "people-to-people" (P2P) contact with Cubans do so under the auspices of a sponsoring organization subject to U.S. jurisdiction, as opposed to the "self-directed" P2P, authorized under President Obama, in which U.S. persons sponsoring organization required. Additionally, the new policy emphasizes increased scrutiny to ensure compliance with the travel-related restrictions, including a requirement that the Treasury Department regularly audit travel to Cuba for compliance purposes.

Other than the State Department list, the changes noted above will be accomplished via amendments to OFAC's Cuban Assets Control Regulations (CACR) and the Export Administration Regulations, administered by BIS. The President has directed that the process to make these changes begin within thirty days but there is no "due date." OFAC has already published FAQs on this development that can be found [here](#).

We will continue to monitor developments on this issue and will provide a more fulsome analysis of the effect of the new policy once the regulatory changes are in place.

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