

# United States Senate

WASHINGTON, DC 20510

January 14, 2015

The Honorable Jacob J. Lew  
Secretary of the Treasury  
United States Department of the Treasury

Dear Secretary Lew:

We are deeply concerned that several aspects of the President Obama's new approach to Cuba, especially those related to unilaterally easing U.S. sanctions, violate the letter and spirit of several U.S. laws, and increase the moral and financial risk to the American taxpayer and financial system of doing business through Cuba's government-controlled financial system. We ask that you explain in detail how the Treasury Department plans to implement the President's announcement under current law.

On December 17, the President announced that "U.S. institutions will be permitted to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions."

As you know, Section 7207 of the Trade Sanctions Reform and Export Enhancement Act (TSREEA) explicitly prohibits U.S. assistance and financing to Cuba. Moreover, it contains no Presidential waiver. Also, Section 103 of the LIBERTAD Act prohibits any financing of transactions involving confiscated property belonging to U.S. nationals.

Given these stark differences between the letter of the law and the Administration's announcement, we ask that you provide clear answers to the following questions:

- What legal authority does the Administration have to allow establishment of correspondent accounts in Cuba, and the use of U.S. credit and debit cards by travelers to Cuba?
- How would the opening of correspondent accounts and the use of U.S.-backed credit cards expose U.S. financial institutions and affect legal action from Americans who have outstanding judgments rendered against the Cuban government by U.S. courts?
- How would these regulatory changes impact U.S. obligations to protect U.S. trademark holders, namely those who had their intellectual property confiscated?
- Less than three years ago, Cuba blocked access to the Cuba-based correspondent bank accounts of its European trading partners and confiscated their cash. Can the Administration ensure that this will not happen to U.S. accounts?

The President also announced that "Telecommunications providers will be allowed to establish the necessary mechanisms, including infrastructure, in Cuba to provide commercial telecommunications and internet services."

While Congress has authorized certain transactions to improve telecommunications services between the United States and Cuba, U.S. law prohibits U.S. investments in Cuba's domestic telecom infrastructure.

Specifically, the Cuban Democracy Act of 1992 (22 USC 6004) includes a direct prohibition on "investment in domestic telecommunications services." Moreover, it states that an "investment" in the domestic telecommunications network within Cuba "includes the contribution (including by donation) of funds or anything of value to or for, and the making of loans to or for, such network." The LIBERTAD Act subsequently reinforced this "no investment" in telecom prohibition (22 USC 6032(g)).

- What legal authority does the Administration have to allow U.S. investments in Cuba's telecommunications infrastructure?
- How would such investments affect legal action from Americans who have outstanding judgments rendered against the Cuban government by U.S. courts?

Also, as part of the President's announcement, general licenses will be issued for all 12 categories of authorized travel in the existing categories. However, TSREEA codified the ban on tourist activities, which are defined as any activity not expressly authorized in the 12 categories of travel set forth in the regulations. It further specified, "as such regulations were in effect on June 1, 2000." At the time of codification, non-academic educational travel ("people-to-people") was only permitted via specific license.

- Under what authority will the President license travel beyond the June 1, 2000 levels?

Under the travel codification, trips related to activities that are primarily tourist-oriented -- including self-directed educational activities intended only for personal enrichment -- are illegal.

- How will Treasury enforce violations of travel for self-directed educational activities and by groups that sponsor people-to-people trips, which seek to engage primarily in tourist activities?
- How do certain travel activities, including staying at confiscated properties by U.S. travelers, not violate the ban on trafficking, and "indirect financing," of confiscated property in LIBERTAD?

The fact that the Administration has been unable to answer these and many other questions almost a month after the President's announcement, raises serious concerns about the process which preceded it. We thus would like to know whether the Treasury Department was even consulted regarding these significant policy changes regarding Cuba, and if so, on what date.

We appreciate your prompt answers to these questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Marco Rubio', with a long horizontal stroke at the end.

Marco Rubio  
United States Senator

A handwritten signature in blue ink, appearing to read 'Dan Coats', with a large loop at the beginning.

Daniel Coats  
United States Senator