

July 29, 2004

Chief of Records
ATTN: Request for Comments
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Office of Foreign Assets Control, Treasury; FR Doc. 04-13630

To Whom It May Concern:

I write in strong opposition to the above-referenced rule, which amends the Cuban Assets Control Regulations at 31 CFR Part 515.565 in ways that will substantially curtail legitimate educational exchange with Cuba. This rule translates into regulatory policy certain recommendations of the “Commission for Assistance to a Free Cuba.” The rule will have serious, negative consequences for higher education and for U.S. foreign policy.

NAFSA is the world’s largest professional association of international educators, with some 9,000 members at 3,500 educational institutions throughout the United States and worldwide. Our members share with virtually every U.S. foreign policy leader since World War II a deep conviction that educational exchange enhances U.S. world leadership and serves important national interests.

The amendments do not serve U.S. foreign policy interests.

OFAC, in the supplementary information to the rule, does not even attempt to make a serious case for why these amendments are necessary. Indeed, the case cannot be made. On the one hand, the amendments on their face are detrimental to U.S. policy goals with respect to Cuba. Those goals are to end the dictatorship and to foster a transition to democracy and a market economy. Historically, the United States has employed educational exchange with communist and other nondemocratic societies precisely to further these goals, and has done so with demonstrable success. The amendments constitute a step backward from the U.S. commitment to these goals.

The amendments are unnecessary to end any abuses that may exist.

On the other hand, the amendments are a classic case of throwing the baby out with the bathwater. Because of certain alleged activities that do not constitute legitimate educational exchange—which OFAC and the commission assert, but never demonstrate, take place under the cover of the regulations—the amendments simply terminate entire categories of programs. This overkill is unnecessary, because specific licenses exist precisely to permit OFAC to target such activities. If OFAC finds that a specific

program, which applies for a license, is not a legitimate educational exchange activity, all it needs to do is deny the license. There is no necessity—much less justification—from an enforcement point of view to proscribe every other existing program of the same type.

The amendments make arbitrary distinctions--with no policy, enforcement, or academic justification--among different kinds of exchange programs.

One of the strengths of study abroad in the United States is the wealth of options that are available to students who seek study abroad opportunities. There exists a strong public policy need to enhance these options in order to strengthen global education in the United States. The amendments, on the other hand, will eliminate many such options. No U.S. public policy objective is served by doing so. We associate ourselves with the comment of the Latin American Studies Association, and the similar comments of many leading colleges and universities, which point out the many arbitrary distinctions made by the amendments. We wish to add the following comments.

Under the amendments, licenses will be granted only for programs of “an accredited U.S. undergraduate or graduate degree-granting academic institution.” There are, however, many *bona fide* study abroad programs, recognized by colleges and universities as academically legitimate, which are provided by third parties. Many students choose to use these programs and, indeed, many colleges and universities choose to provide study abroad opportunities for their students through such programs. Under the amendment, students enrolled in a higher education institution that chooses to operate its own program in Cuba will have the opportunity to study in Cuba; those enrolled in an institution that does not have such a program, are precluded from study in Cuba—even through third-party programs that meet every recognized indicator of a legitimate study abroad program. No public interest is served by this distinction. The only possible outcome of making the distinction is to prevent study in Cuba.

Under the amendments, such licenses will authorize study in Cuba only by “students enrolled in an undergraduate or graduate degree program” at the licensed institution. This is entirely inconsistent with the way in which study abroad is actually delivered in the United States. Because not every school can have a study abroad program in every country, it is common and recognized practice for a student from one school to be able to enroll for credit in another school’s study abroad program, with the credit fully transferable to the student’s school. Many schools belong to study abroad consortia, which have the explicit purpose of sharing expertise and reducing costs by permitting students from any consortium member to participate in any member school’s program. Under the amendments, this cannot be done with respect to Cuba. There is again no public policy or enforcement need for this arbitrary distinction. The amendments unreasonably infringe on the traditional freedom of higher education institutions to award academic credit for the successful completion of a program, whether or not the program is provided by that institution. In the United States, there has never been only one acceptable study abroad model. Yet the amendments, for no articulated reason, assume that there should be only one acceptable model with respect to Cuba.

Under the amendments, licenses will be granted for structured educational programs in Cuba only “provided the program includes a full term, and in no instance includes fewer than 10 weeks, of study in Cuba.” This provision is entirely out of touch with the kinds of programs sought by students and offered by educational institutions in today’s world. According to the Institute of International Education, the authoritative source of data on educational exchange, short-term study abroad programs have been the fastest-growing option over the past 10 years. Summer, January-term, and other programs of eight weeks or less now enroll almost half (47.7 percent) of all U.S. students abroad. This trend has a legitimate educational basis: It responds to the necessity of making study abroad more accessible to students whose academic programs or financial or family circumstances do not permit longer absences. Many schools have developed program models that combine on-campus lectures, seminars, and in-depth study prior to and following an intensive period of travel or study abroad. These are not short-term programs; they are long-term programs with a short-term study abroad component. With no justification whatsoever, the amendments now say: Such programs may serve legitimate educational purposes in every other country in the world, but not in Cuba. One is left utterly at a loss to understand the reason for such a distinction.

In summary, the amendments do not pass even the most minimal test of credibility. They bear no demonstrated or demonstrable relationship to any legitimate public or foreign policy interest. They arbitrarily, unfairly, and for no reason differentiate among and discriminate against academic programs whose legitimacy is properly within the purview of academic institutions alone. We ask that these amendments be rescinded.

Thank you for the opportunity to comment on this most unfortunate rule.

Sincerely,

Marlene M. Johnson
Executive Director and CEO