

January 14, 2009

**Addendum to Circular 2006**

FAC No. CU-405468

Representative  
Company Name  
Address One  
City State Zip

Dear Salutation:

The Office of Foreign Assets Control (“OFAC”), in administering § 515.572 of the Cuban Assets Control Regulations, 31 C.F.R. Part 515 (the “Regulations”), hereby updates **Circular 2006** by the publication of this letter of addendum to **Circular 2006** (the “Addendum”). The Addendum reflects administrative changes and interpretive clarifications affecting persons who apply and/or whom OFAC has authorized under § 515.572 of the Regulations as Service Providers (“SPs”): Carrier Service Providers (“CSPs”), Travel Service Providers (“TSPs”), and Remittance Forwarders (“RFs”). These changes and interpretations in the Addendum, which are to be inserted into the Circular when it is further updated, take effect on the day of publication of the Addendum on the OFAC webpage. Both **Circular 2006** and the Addendum will be available on the OFAC webpage at [www.treas.gov/ofac](http://www.treas.gov/ofac).

First, OFAC hereby amends Appendix V (Service Provider Enforcement Guidelines) of **Circular 2006** by removing section V (OFAC Enforcement Guidelines) from that Appendix. OFAC has moved the content of one paragraph elsewhere in Appendix V and added a reference to the ECONOMIC SANCTIONS ENFORCEMENT GUIDELINES, which are available on the OFAC webpage. A copy of Appendix V, as amended, is enclosed.

Additionally, OFAC is making the following four interpretive clarifications affecting **Circular 2006**.

- **Circular 2006** limits the transactions involving Cuba in which an SP may engage. *OFAC hereby clarifies that* no SP may alter a Government of Cuba ("GoC") visa (e.g., by writing in the name of an SP client or by changing dates of validity). A TSP is authorized to assist an OFAC-licensed client in (1) engaging in the necessary transactions to make application for a GoC visa on behalf of that client or (2) receiving from the GoC an executed GoC visa and forwarding it to that client.
- **Circular 2006**, in the SP Application Guidelines (Appendix I), requires each RF applicant to provide information concerning any foreign contracts relating to the provision of regulated services. *OFAC hereby clarifies that* for each international transfer of funds that an RF makes in forwarding a remittance to Cuba, the RF must ensure that the transfer goes only to the entity the SP identified in its SP Application process which will pay out the remittance to the intended payee consistent with the RF's contract.

- **Circular 2006**, in the SP Application Guidelines, requires each RF applicant to describe “the Scope of Your RF Operations.” See Appendix I §IV. (B). *OFAC hereby clarifies that this section relates to RF Operations in the United States.* OFAC is adding this underlined language to clarify the requirement. RFs are not permitted to operate in Cuba.
- **Circular 2006** requires each SP to keep records of the details of each transaction in which the SP engages with a client (e.g., receipt of payment for services). *OFAC hereby clarifies that the SP’s records must show the deposit into the SP’s bank account of any check, money order, draft, banker’s check, or other negotiable instrument that the SP receives in connection with the provision of regulated services.*

Finally, OFAC is adding the following to the SP Application Guidelines, a part of **Circular 2006**:

- An applicant must disclose for any “Nominee,” as defined in the SP Application Guidelines, if the Nominee has engaged in travel-related transactions involving Cuba in the last five years, providing the dates of travel, the category of travel, and the general license provision or specific license number by which the travel-related transactions were authorized.

A copy of the 19 questions that must be completed as part of an SP application, including this new question, is also enclosed. OFAC will insert the entire updated list into the SP Application Guidelines (Appendix I), superseding all such previous application questions.

If you have any questions, feel free to contact the OFAC-Miami office at (786) 845-2828.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Bishop'.

Charles Bishop  
OFAC Sanctions Coordinator  
Office of Foreign Assets Control

Enclosures

*Circular 2006 Addendum (Revised questions as of January 6, 2009)*  
*Appendix V of Circular 2006 (Revised as of January 6, 2009)*  
*31 CFR Part 501 --Economic Sanctions Enforcement Guidelines*  
*Updated List of Cuba Service Providers (Dated January 16, 2009)*

1. Identify the applicant by its legal name. Indicate if the applicant is not an incorporated entity.
2. Identify the applicant's principal place of business, telephone number at that location, taxpayer identification number, and name of the official responsible for the applicant's services.
3. List all current and former names (including trade names) and addresses (including branch offices) of the applicant.
4. Identify the address of each proposed branch office.
5. Provide copies of the applicant's bylaws/articles of incorporation, partnership agreements, management agreements, or other documents pertaining to the organization, ownership, control, or management.
6. Provide copies of financial statements and/or annual reports, if any, that the applicant has already prepared for the applicant's business.
7. Provide copies of foreign contracts, agreements, licenses, or authorizations entered into or granted for the last five years relating to the provision of travel service, carrier service, or remittance forwarding either domestically or internationally.
8. Provide information concerning anticipated foreign contracts, agreements, licenses, and authorizations related to provision of services covered by your license application. Identify your "Cuban Counterpart."
9. List all bank accounts (including account name, number, and bank's address) maintained for use by the business entities covered by your license application.

**Personal Information. (## 10-16)**

The following information must be provided for each owner, employee, and manager who is directly involved in decisions related to Cuba transactions ("Nominee"):

10. Complete name, including, if any, middle name and patronymic and matronymic name.
11. Place and date of birth.
12. Social Security Number.
13. Complete home address and telephone number.
14. Citizenship and, if not a U.S. citizen, type of resident status in the United States, if any, including the date on which resident status was granted and any identifying number issued by the U.S. Government.
15. If the Nominee has ever been convicted of a violation of Federal, state, or local law, other than minor motor vehicle violations, a description of all details and circumstances concerning the conviction.

16. Ownership percentage share of the Nominee.
17. Explain the intended responsibility that Nominee will undertake and, where appropriate, identify the office where the Nominee will act as manager, such as: “office manager at the Hialeah branch office location.”
18. If the Nominee engaged in travel-related transactions involving Cuba in the last five years, provide the dates of travel, the category of travel, and give either the general license provision by which the travel was authorized or the specific license number that authorized the travel-related transactions.

**Licensing Information**

19. Provide complete information concerning city, county, state or federal licenses and/or registration held in the last five years relevant to the services covered by the license application, including information on denial, suspension, or cancellation of any such license or registration. Provide copies of each.

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# **APPENDIX V OF CIRCULAR 2006**

## **SERVICE PROVIDER ENFORCEMENT GUIDELINES**

**TRAVEL, CARRIER and REMITTANCE FORWARDING  
SERVICE PROVIDER PROGRAM**

**OFFICE OF FOREIGN ASSETS CONTROL**

**JANUARY 6, 2009**

# SERVICE PROVIDER ENFORCEMENT GUIDELINES

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# **Service Provider Enforcement Guidelines**

## **I. Introduction**

The primary mission of the Office of Foreign Assets Control (“OFAC”) is the administration and enforcement of economic sanction programs, including the Cuban Assets Control Regulations, 31 C.F.R. Part 515 (the “Regulations”). The broad restrictions in the Regulations on dealing in property in which Cuba or a Cuban national has an interest are critical components of United States foreign policy towards Cuba. On the one hand the purpose of the Regulations is to limit hard currency earnings by the Cuban Government and deny benefits to the Cuban economy from unauthorized remittances, commercial transactions, and tourism. On the other hand the Regulations support the policy objective of promoting a peaceful transition to democracy and civil society in Cuba. Licensing policy and enforcement actions, including penalties, are essential components in achieving those objectives.

OFAC’s licensing process for the provision of travel, carrier, and remittance forwarding services aims at establishing a regulated Service Provider (“SP”) community that assures that travel-related transactions and remittance forwarding are fully consistent with policy objectives and regulatory controls. OFAC predicates the granting of SP authorizations upon an expectation that the SP will continually maintain the standard of service that is consistent with foreign policy goals within the context of an ongoing relationship between OFAC and the SPs. SPs must therefore demonstrate by their record of performance a suitability to operate their business in a manner consistent with the applicable OFAC regulations.

OFAC licensing and enforcement policy is premised on the existence of a cooperative relationship between OFAC and the SPs. Administrative actions, including licensing, provisional authorization, oversight and review, suspension and/or revocation of authorization, monetary penalties, and referral of certain cases to the Department of Justice for criminal prosecution are intended to further foreign policy goals. These SP Enforcement Guidelines (the “SP Enforcement Guidelines”), included as Appendix V to the Circular, set forth mechanisms to evaluate SPs’ conduct, to identify and correct deficiencies and to determine whether an SP is unfit to hold SP authorization, either for a period of time or for the future.

These SP Enforcement Guidelines are intended to provide OFAC with a procedural framework of general applicability to promote consistency in enforcement actions, while allowing for the appropriate exercise of OFAC discretion, consistent with the Regulations. These SP Enforcement Guidelines are also intended to promote the transparency of OFAC’s procedures and better inform the regulated community. OFAC has, through its licensing policies and regulation of SPs, sought to maximize strict compliance with U.S. sanctions. To further its commitment to enhanced compliance on the part of the public consistent with current policy, OFAC has published these SP Enforcement Guidelines as part of this Circular.

## II. OFAC Focus: SP Program Requirements

Each SP must achieve and maintain the SP Program requirements, as set forth in the Circular and in each SP's individual authorization. OFAC will look in part to the SP's compliance with these requirements as relevant to whether an SP should continue to hold SP authorization. OFAC deems any apparent discrepancy between the SP Program requirements and an SP's conduct to be the basis to: 1) require the SP to effectuate changes to better ensure that it satisfy the SP Program requirements, 2) determine whether the SP's authorization should continue after a period of suspension, or 3) determine whether the SP's authorization should be revoked.

OFAC has in place an ongoing program to oversee the operations of the SPs, as described herein. Where OFAC finds that an SP, through its conduct, has fallen short of satisfying the SP Program requirements, OFAC will seek to the extent possible to work with the SP to bring its conduct into conformity with the SP Program requirements.

OFAC's administrative response to apparent discrepancies will depend upon the problem that OFAC ascertains. Relevant factors for OFAC will include not only the conduct giving rise to the problem, but also the extent to which the SP conducts employee training, whether all persons who in fact exercise authority in the operation of the SP have been identified, whether there is proper use of forms and procedures, the SP's prior record of compliance, prior OFAC findings related to the SP, and other relevant information.

These SP Enforcement Guidelines list a series of administrative actions OFAC may take once OFAC has reason to believe, based on relevant information, that the SP Program requirements may not be satisfied. Some of the administrative actions are remedial in nature. Where OFAC believes that the discrepancy is due to intentional and knowing action or a great degree of negligence, more significant enforcement actions may be taken. Repeated instances of violations will result in more serious administrative responses.

OFAC may focus on whether the SP's conduct demonstrates unfitness to operate as an SP. This focus could lead to the suspension or revocation of an authorization depending on the circumstances.<sup>1</sup> Such action may also be coupled with imposition of civil penalties, or, in cases

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<sup>1</sup> Pursuant to § 515.572 of the Regulations, OFAC may suspend or revoke an SP's authorization to engage in transactions for the following reasons:

- a. The party has willfully made or caused to be made in any application for any specific license, or report required pursuant to a general or specific license, any statement that was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact or has omitted to state in any application or report any material fact that was required;
- b. The party has failed to file timely reports or comply with the recordkeeping requirements of a general or specific license;
- c. The party has violated any provision of law or regulations enforced by OFAC;
- d. The party has counseled, commanded, induced, procured, or knowingly aided or abetted the violation by any other person of any provision of any law or regulations referred to above;



involving egregious willful violations, referral to the Department of Justice for criminal prosecution.

### **III. Initiating a Fact Finding**

OFAC may as a part of the normal course of business request or require information from an SP.

There arise situations where OFAC has no suspicion of inconsistent conduct but where OFAC seeks information about certain conduct. An OFAC inquiry may arise for purposes of law enforcement or foreign policy. OFAC will give the SP advance notice when possible of OFAC's concerns and intended steps. OFAC will give the SP an opportunity to comment when possible. OFAC's intent is to work cooperatively in carrying out this function, using an informal procedure as much as possible. OFAC may use any/all of these steps: (1) visit an SP's office to observe the SP's operations; (2) use faxes to solicit or to record events that occur in the conduct of OFAC's oversight function; (3) document the substantive content of phone conversations; or (4) to the extent necessary, use OFAC's administrative subpoena power to require the submission of information.

Concerns may come to OFAC that are based on foreign policy considerations that communicate information which, if true, would form the basis to believe that conduct inconsistent with foreign policy may have occurred or be about to occur. Further, allegations may come to OFAC from complaints, allegations, voluntary disclosures, and investigations or inquiries by law enforcement agencies that communicate information that, if true, would form the basis to believe that violative conduct may have occurred or be about to occur. OFAC may undertake all of those steps articulated below and may initiate an audit of the financial records of the SP in response to either such concerns or allegations.

### **IV. Steps During or Resulting From a Fact Finding**

#### **A. SP'S Opportunity to Comment**

Whenever OFAC has a question or undertakes an inquiry or investigation, where possible, OFAC will accord the SP the opportunity to comment in writing or verbally on the facts at issue, on the proper analysis of the situation, and on the appropriate conclusions to draw concerning apparently inconsistent conduct, and OFAC will take those comments into consideration in its evaluation. These SP Enforcement Guidelines do not offer any specific procedural right beyond those ordinarily consistent with due process considerations. OFAC will make its own findings of fact based on all the information available to OFAC.

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- e. The party has committed any other act or omission that demonstrates unfitness to conduct the transactions authorized by the SP license;
  - f. The party, through the conduct of the SP business, has failed to satisfy the SP Program requirements; or
  - g. Following OFAC's efforts to assist the party to demonstrate fitness to conduct the authorized transactions, OFAC has determined that further efforts by OFAC and/or by the party are not likely to bring the party into compliance with the SP Program requirements.

## **B. OFAC Requirements**

As part of or as a result of a fact finding, OFAC may require one or more of the following:

### **1. Requirement to Furnish Information**

OFAC may administratively require a person to answer questions and provide copies of relevant records, pursuant to the Reporting, Procedures and Penalties Regulations, 31 C.F.R. Part 501 (the “RPPR”).

### **2. OFAC Audit**

OFAC may undertake either a performance audit (whether forms and procedures are correct and fairly presented) or financial audit (whether financial information is correct and fairly presented) of the SP. OFAC will develop information from an audit by reviewing documents and practices with the intent of evaluating and drawing conclusions about the conduct and transactions of the SP.

### **3. Requirement to Redefine Forms and Procedures**

If OFAC finds that inconsistent conduct may reflect the absence of, ambiguity in, or questionable implementation of the SP’s forms and procedures, OFAC may require the SP to rewrite the forms and procedures detailing how the SP will engage in its conduct.

### **4. Additional Background Investigation**

OFAC may require that any person acting on behalf of or for the benefit of an SP pass a clean background investigation.

### **5. OFAC Training**

OFAC may require the SP’s owners and/or employees undergo an OFAC training program.

## **C. Failure to Satisfy**

Failure to satisfy timely any requirement listed in this Part IV may form the basis for finding inconsistent conduct with the SP requirements and may result in OFAC taking possible enforcement actions described in the OFAC ECONOMIC SANCTIONS ENFORCEMENT GUIDELINES, available on the OFAC webpage at [www.treas.gov/ofac/](http://www.treas.gov/ofac/).

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