

CUBA: THE NEXT RETIREMENT HAVEN?

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A haven is defined, *inter alia*, as a “a place offering favorable opportunities or conditions.”¹ A “retirement haven” is thus a location—city, state, country or other geographic entity—offering favorable living conditions for those wishing to withdraw from business life. Many countries (e.g., the Philippines, Costa Rica and Belize) and domestic political subdivisions (e.g., Florida) seek to be recognized as retirement havens. One incentive for attaining such recognition is the benefit to the local economy from retirees spending their income and, often, their remaining capital in the retirement haven.² Furthermore, retirees are likely to provide a stabilizing influence on society and their presence can confer social benefits, such as their contribution to volunteer projects and other beneficial activities.³

What constitutes a “retirement haven” is somewhat subjective. Whether living conditions in a particular locale are “favorable” depends on a retiree’s values

and perceptions. Nonetheless, The most often cited among them are the availability of affordable and high quality health care, a low cost of living, incentives to immigration, the possibility and ease of acquiring real estate, and the existence of recreational and cultural opportunities.⁴ Benign climate, physical safety and social and political stability are also factors that influence whether a locale may be considered a “retirement haven.”⁵

This paper addresses Cuba’s potential for becoming a retirement haven at some point in the future and attracting retirees from developed countries, particularly the United States. The pursuit of “retirement haven” status should be attractive to Cuba given the deterioration of the country’s economy. As is well known, Cuba has been for over a decade in a serious economic crisis due to the disappearance of the Socialist bloc, which previously provided the main source of trade and economic assistance for the coun-

1. Merriam-Webster Dictionary, *available online at* <http://www.m-w.com/cgi-bin/dictionary>.

2. See, e.g., Retirement Incentives Update, Belize Report Vol. 6 No. 1, available online at <http://www.belize-report.com/info/perpturist2.html>.

3. See, e.g., Frank Jones, *Seniors who Volunteer*, available online at <http://www.statcan.ca/english/indepth/75-001/archive/1999/pear1999011003s3a01.pdf> [hereinafter “Seniors Volunteer”]; and see Gene Ruffenach, *Heed the Call to Volunteer and Discover a New Career*, July 19, 2003, available online at <http://www.peacecorpsonline.org/messages/messages/2629/2015320.html>. Some volunteer opportunities are available through special programs structured by non-profit organizations. For example, the Florida Association for Volunteer Action in the Caribbean and the Americas (FAVACA) sponsors a Seniors in Service Overseas Program. A description of the program is available online at <http://www.favaca.org/> [hereinafter “FAVACA”].

4. *Id.*

5. *Id.*

try.⁶ The stagnant Cuban economy and the decline in production of traditional industrial and agricultural commodities such as cane sugar suggest that Cuba will increasingly need to turn to activities in the services sector, such as tourism, to provide foreign currency revenue to the state and employment for some sectors of the population.⁷

Some have suggested that Cuba may already be an “ideal place to live” for a person considering retirement abroad.⁸ As will be discussed below, that is clearly not the case at the present time. However, Cuba has the potential of becoming an attractive retirement haven, provided the island’s government takes appropriate steps to foster the influx of retirees from other countries. Certain actions by the U.S. government will also be either necessary or highly desirable before Cuba could become a viable and attractive retirement destination for U.S. nationals and permanent residents.

This paper describes actions that a future Cuban government⁹ might implement to make Cuba a desirable retirement haven for foreign nationals. We also identify some actions that the United States may take to assist Cuba in its economic reconstruction by making

retirement in Cuba by U.S. residents and nationals a possible and attractive proposition.¹⁰

FACTORS THAT FAVOR CUBA’S FUTURE DEVELOPMENT AS A RETIREMENT HAVEN

Cuba enjoys several of the advantages that qualify a country for retirement haven status. As noted above, a retirement haven should meet criteria such as easy availability of real estate; ample recreational and cultural opportunities; a low cost of living; a safe and stable society; low cost, high quality health care; favorable climate; special benefits for immigrants; and an adequate infrastructure.¹¹ Obviously, Cuba already meets some of these criteria, such as favorable climate. The balance of the paper addresses the criteria Cuba meets and those that it does not, and suggests steps that Cuba could take to satisfy the latter.

Proximity to United States

Cuba’s geographic location makes it a potentially favored destination for retirees. The territories of both Mexico and the United States are approximately 100 miles from Cuba. In addition, Cuba has infrastructure in place that is necessary to serve international passenger and cargo traffic. There are 21 airports on the island, 9 of which have international terminals.¹² Havana is three hours or less by plane from all major

6. Prior to 1990, Cuba depended on the Socialist bloc (mainly the Soviet Union) for over 80% of exports and imports, and for the financing of the economy through loans and subsidies. The demise of the Socialist bloc had a catastrophic impact on Cuba, which suddenly lost its markets, its sources of supply, and its credit and financing mechanisms. Banco Central de Cuba, *Cuban Economy in the Special Period 1990-2000* (hereinafter “Special Period”) at 7-8. The current deteriorating state of the Cuban economy is described in a number of recent papers. See, e.g., Carmelo Mesa-Lago, *The Cuban Economy in 1999-2001: Evaluation of Performance and Debate on the Future*, in CUBA IN TRANSITION—VOLUME 11 (Aug. 2001) [“hereinafter ASCE-11”]. The series of ASCE proceedings is available online at <http://lanic.utexas.edu/project/asce/publications/proceedings/>

7. See Sergio Díaz-Briquets, *Medicare: A Potential Income-Generating Activity for Cuba in the Future*, ASCE-11 at 185 (hereinafter “MEDICARE”).

8. Christopher Howard, *LIVING AND INVESTING IN THE NEW CUBA* (Costa Rica Books, 2001) at 5 [hereinafter “HOWARD”].

9. The actions described in this paper include political, economic and social changes that the current socialist government is unlikely to be willing to undertake. Therefore, our implicit assumption is that a transition to a free-market, democratic society must be underway before Cuba can position itself as a competitive alternative to established retirement havens.

10. This paper focuses on the individual retiree who intends to live on a pension or on wealth accumulated during his work years. Some retirees may also be investors, that is, have sufficient capital to acquire productive assets in the country. The issues relating to foreign investment in Cuba are addressed elsewhere and will not be discussed here. See, e.g., Matias F. Travieso-Diaz and Charles P. Trumbull IV, *Foreign Investment In Cuba: Prospects and Perils*, in CUBA IN TRANSITION—VOLUME 12 (August 2002) [hereinafter “ASCE-12”]; see also, MATIAS F. TRAVIESO-DIAZ, *THE LAWS AND LEGAL SYSTEM OF A FREE-MARKET CUBA—A PROSPECTUS FOR BUSINESS* (1997), [hereinafter “LAWS AND LEGAL SYSTEM”], Chapter 5.

11. See INTERNATIONAL LIVING, *supra*.

12. Timothy Ashby, *IT in the Land of Salsa, Rum, and Fidel*, WORLD TRADE, July, 2001.

metropolitan areas on the eastern seaboard, as well as from Atlanta, New Orleans, Houston, and Dallas. Retirees of U.S. origin could easily travel back and forth to their former cities of residence. Of course, an air trip to Miami would take only a few minutes from most places in the island.

Relatively Low Cost of Living

Advocates of retirement in Cuba also tout the low cost of living on the island as a significant advantage.¹³ In reality, the current cost of living in Cuba is lower in some respects than comparable costs in the United States, but not in others. For example, the cost of electric power, telephone service and other services subsidized by the government is low; on the other hand, most consumer goods are scarce and available only in “dollar stores” at prices that are often much higher than what the merchandise would cost in the United States.¹⁴ While it is impossible to predict what economic conditions will prevail in Cuba after the country makes its transition to a market economy, it is likely that the overall cost of living to a retiree in Cuba will be lower than in the United States or other developed countries. This is a reasonable expectation because the price of goods and services will tend to reflect the salaries paid to the Cu-

ban workforce, and average Cuban salaries are likely to remain below those in the United States.

Elderly people often list assistance with domestic chores as one of their most important needs.¹⁵ At the current time, due to the low wages being paid to most Cuban workers and the existence of massive unemployment or underemployment, low-cost domestic help is potentially plentiful in Cuba.¹⁶ Although this may not be the case after Cuba’s economy has recovered, domestic service at low cost should be available to foreign retirees during and beyond the country’s transition to a free-market economy.

High Level of Investment in Health Care

The Cuban government has made health care one of its top priorities, and has devoted considerable resources to improving selected aspects of the country’s health care system.¹⁷ The country has one of the highest physician-to-patient ratios in the world (58.2 per thousand persons), and equally high numbers of dentists (8.9 per thousand) and nurses (74.3 per thousand).¹⁸ Physical facilities are also abundant (e.g., 5.2 hospital beds per thousand inhabitants).¹⁹ And, although the quality of health care services delivered to the population has deteriorated significant-

13. See, e.g., HOWARD at 107-09.

14. As one of the measures taken to meet the economic crisis caused by the disintegration of the Soviet Bloc, Cuba allowed in 1993 the free circulation of U.S. dollars in the country. That measure was coupled with the establishment of “stores for the recovery of foreign exchange” (*Tiendas de Recuperación de Divisas*) where otherwise unavailable products are available at government-set prices, payable in dollars. It has been reported that the cost of goods at the dollar stores can be more than 200% over the cost of importing the goods. José Alvarez, *Rationed Products And Something Else: Food Availability And Distribution In 2000 Cuba*, ASCE-11 305, 310. Therefore, the cost of most basic staples to a hypothetical foreign retiree in today’s Cuba would probably be at least as high as the cost of the same products in other countries.

15. See, e.g., <http://www.co.dakota.mn.us/services/FinalGaps.pdf>. “Domestic service is also on nearly every retiree’s budget.” Jenalia Moreno, *Paradise Found*, Houston Chronicle, October 6, 2002. The average cost of domestic help in a region is often cited in articles describing the desirability of potential locales for retirees, for example: Mary Beth Franklin, *Belize It or Not*, Kiplinger’s Personal Finance Magazine, Vol. 56 No. 6, June 1, 2002, at 90 [hereinafter “FRANKLIN”]; Christopher Howard, *Retire to Costa Rica—An Expert Tells You How*, available online at http://www.escapeartist.com/efan/retire_in_costa_rica.htm; and, Cheryl Taylor, *International Living Conference in Dublin, Ireland*, available online at www.escapeartist.com/international/0600_readers.html.

16. The average monthly salary of Cuban workers in 2001 was 245 pesos, equivalent to U.S. \$9 at the then current exchange rate. Oscar Espinosa Chepe, *Cuba: La Crisis Se Profundiza*, in ASCE-12 1, 5 [hereinafter “ESPINOSA”]. The current rate of unemployment and underemployment has been conservatively estimated as 20%. *Id.* The average monthly salary of employees of state-owned and mixed-ownership entities in Cuba according to the National Office of Statistics is 234 pesos, or \$11.70 according to unofficial exchange rates. See *Indicadores Generales*, available online at http://www.cubagob.cu/otras_info/one/indicadores_generales.htm.

17. Felipe Eduardo Sixto, *An Evaluation of Four Decades of Cuban Healthcare*, in ASCE-12, *supra*, 325, 340.

18. *Id.* at 332.

19. *Id.* at 341.

ly in recent years due to the unavailability of medicines, equipment, and medical supplies, the basic resources are still available to provide high quality health care services to foreign retirees.²⁰

Other Factors

Cuba has a low crime rate. Although theft occurs, Cuba is virtually free of violent crime. Havana boasts one of the lowest murder rates per capita and the smallest number of unsolved murders of metropolitan cities in the world. The high degree of personal safety could provide an incentive for potential retirees, particularly in comparison to the situation in other Latin American countries.²¹

Other factors that are often mentioned among Cuba's selling points to potential retirees are the physical beauty of the country, the friendliness of its people, and the richness of the island's cultural and recreational opportunities.²² These and other intangible factors (such as Cuba's mystique to many abroad, particularly in the United States) make Cuba a potentially favored place for many foreigners to call home.

CURRENT IMPEDIMENTS TO CUBA'S ABILITY TO BECOME A RETIREMENT HAVEN

Impediments that Apply to All Potential Retirees

Despite the above mentioned advantages, Cuba today is hardly a choice destination for foreign retirees. The reasons are multiple, but fall into three categories: (1) an inhospitable, repressive, and potentially unstable, political system; (2) a government-controlled economy that has remained in a state of crisis for at least the last twelve years and shows no signs of improvement; and (3) scarcities and other day-to-day difficulties that make residence in Cuba unappealing.²³ Because of these impediments, Cuba remains unattractive as a place to retire, and not even the current Cuban government appears to argue otherwise.

Impediments that Apply Particularly to U.S. Citizens and Permanent Residents

Some of the current impediments to Cuba's ability to become a viable retirement haven are of particular import to U.S. citizens and permanent residents. For instance, U.S. law grants retirees who possess U.S. citizenship the right to receive their social security benefit payments abroad in almost any country in the world.²⁴ However, U.S. Treasury regulations specifically list Cuba as one of a handful of countries to

20. Evidence of the continuing viability of Cuba's health care system is the fact that Cuba actively promotes "medical tourism," that is, the travel to Cuba of foreign visitors who seek medical care and are able to pay for medical services in hard currency. For example, Cuba's state-owned Centro Iberoamericano para la Tercera Edad ("CITED") advertises its ability to serve "turismo de salud" (health tourism), geared particularly to the elderly. Its website identifies Cuba as an ideal "tourist" destination for senior citizens on account of the variety of health services it provides to the elderly. See <http://www.infomed.sld.cu/instituciones/gericuba/cited/tursalud/principal.htm>. Cuba has historically promoted itself as a prime "medical tourism" destination for foreign nationals who seek Western-quality medical services at reduced prices. See Health Care in Cuba: Myth Versus Reality, available online at <http://www.canf.org/Issues/medicalapartheid.htm>. Cuba's success at attracting medical tourists suggests that the country remains capable of providing high quality medical services to those able to pay for them.

21. As further discussed below, there may be political unrest and social instability following a transition to a free-market society, with an attendant increase in crime. A future Cuban government must ensure that foreign retirees are protected to the greatest extent possible from personal safety risks.

22. HOWARD at 1-3.

23. For an insider's view of current conditions in Cuba see ESPINOSA, *supra*. Mr. Espinosa, an independent journalist, was incarcerated and sentenced in April 2003 to 20 years' imprisonment, for violation of articles 7 and 11 of Cuba's Law 88. He was accused of "activities against the integrity and sovereignty of the State" by allegedly receiving money from abroad, collecting press cuttings about meetings between representatives from the USA and dissidents and other activities. See Amnesty International Report No. AMR 25/016/2003, available online at <http://web.amnesty.org/library/Index/ENGAMR250162003?open&of=ENG-CUB>. The plight of Mr. Espinosa and many others exemplifies current political conditions in the island.

24. See Social Security—Your Payments While You Are Outside The United States (based on SSA Publication No. 05-10137, ICN 480085), available online at http://www.ssa.gov/international/your_ss.html (hereinafter "Your Payments Outside the U.S.")

which the U.S. Social Security Administration (“SSA”) is prohibited from mailing social security benefits.²⁵

In addition, U.S. law provides that absent an international social security agreement (“totalization agreement”)²⁶ between the U.S. and the relevant foreign country, retirees who are U.S. permanent residents (as opposed to U.S. citizens) lose their right to have social security benefits mailed to them after being abroad for more than six (6) months.²⁷ So, even if the specific prohibition on sending social security payments into Cuba were repealed, the current absence of a U.S.-Cuba totalization agreement will present an obstacle to U.S. permanent residents desiring to retire in Cuba.

A further hindrance to Cuba’s successful development into a retirement haven for U.S. nationals and permanent residents is the current uncertainty surrounding the tax treatment by Cuba of various sources of retiree income. One important factor in the decision of U.S. nationals on where to retire will be the extent to which their retirement income will be subject to taxation by the host country. A tool regularly used by countries desiring to minimize the problem of dual taxation by overlapping taxing jurisdictions is the bilateral tax treaty.²⁸ Consequently, the absence of a tax treaty for the reduction of dual taxation be-

tween Cuba and the U.S. is a further barrier to Cuba’s ability to evolve as a retirement haven.

Also, to the extent that a U.S. individual’s decision to retire in a particular foreign country is influenced by the presence of home country companies that are able to provide familiar products and services in the host country, Cuba would need to address potential deterrents to foreign investment by U.S. companies in Cuba. The single largest impediment for U.S. based persons wishing to retire in Cuba is the U.S. embargo on trade and economic transactions in and with Cuba. This topic is addressed below.

STEPS THAT CUBA COULD TAKE TO FOSTER THE INFLUX OF FOREIGN RETIREES

Immigration Policies

Facilitating Immigration: In its transition to a free-market system, Cuba will need to develop policies that promote the unimpeded movement of goods, ideas and people across its borders with minimum restriction. Once it becomes apparent that Cuba intends to liberalize its economy and to commit to a more democratic form of government, foreign investors and Cuban expatriates will want to visit Cuba in substantial numbers. During the transition, it is essential that Cuba encourage such visits by developing an open and efficient immigration policy.

25. *Id.* Some other countries to which the mailing of social security benefits is prohibited are Cambodia, North Korea, and Vietnam.

26. The terms “international social security agreement,” “bi-national social security agreement,” and “totalization agreement” are synonymous and are used interchangeably. They refer to a form of agreement entered into between two countries for the purposes of coordinating their respective social security coverage and taxation regimes. Totalization agreements aim to eliminate the problems of dual coverage, dual taxation, and gaps in benefit protection that are likely to arise when an employee divides his/her work between two or more countries. See generally JoAnne Chernov Adlerstein, *Concerns of the Global Employer*, Practising Law Institute, September 2002; see also *Tax Guide for U.S. Citizens and Resident Aliens Abroad*, IRS Publication 54.

27. *Your Payments Outside the U.S., 2003 Edition*; see also, Jonathan Wiseman, *U.S. Social Security May Reach to Mexico*, Washington Post, December 19, 2002, at A01.

28. A tax treaty is an agreement between two countries that contract in order to coordinate the application of their respective—and often conflicting and/or overlapping—tax systems to cross-border transactions and investments. The aim is to ensure that only one country ends up taxing any one item of income. See Daniel M. Berman, *Tax Treaties—Fundamentals*, Practising Law Institute, October-November 2002 (551 PLI/Tax 353). Negotiation of a tax treaty is often a complex, drawn out process.

The visa granting structure and procedures should be open and simple to administer. Cuba should eliminate all visa requirements for short-term pleasure or business trips originating in the United States and other developed countries.²⁹ Eliminating the need for visas avoids Cuba expending scarce resources in the administration of the immigration program, and allows foreign travelers easy access to the island. While Cuba should seek reciprocal arrangements with the United States and other countries, the importance of U.S. travel to Cuba is so significant that Cuba should unilaterally eliminate visa requirements for U.S. citizens and permanent residents, even if reciprocal treatment is not granted by the United States.³⁰

In addition to opening its doors to travel by foreigners, Cuba should institute special measures to attract the potential retiree population from developed countries, particularly the United States. Such measures could include lowered immigration requirements, the ability to import personal property free of tax, and the ability to receive income from sources

outside Cuba without paying local taxes.³¹ A particularly useful immigration provision would be one that granted retirees permanent resident status in Cuba as long as they qualified for treatment as such, typically by maintaining a level of income from abroad.³²

Clarifying the Legal Status of Cuban Expatriates:

It is to be anticipated that a large number of Cuban expatriates who are now citizens or residents of the United States or other countries will wish to return to Cuba to spend their retirement years on the island.³³ However, one potential obstacle to the return of Cuban exiles is their legal status in Cuba. Presently, the Cuban Constitution provides that Cuban citizenship is lost by a person who becomes a citizen of a foreign country; dual citizenship is not allowed.³⁴ Thus, unless the new Constitution or other transition-period statute provides otherwise, those Cuban émigrés who have become naturalized citizens of other countries, including the United States, will have to renounce the other country's citizenship and apply for reinstatement of their Cuban citizenship if they

29. There are several countries in close proximity to Cuba having large impoverished populations. Unskilled migrants from those countries, under favorable conditions, may seek to relocate in Cuba. For that reason, some sort of visa structure must be retained to control the entry of immigrants who may become public charges.

30. See *Opening the Door for Business Travel to a Free-Market Cuba*, 1 FREE MARKET CUBA BUS. J. 8, Shaw, Pittman, Potts & Trowbridge (Spring/Summer 1992).

31. A package of such measures was, for example, enacted into law in 1999 by Belize. Retired Persons (Incentives) Act of 1999, Belize Gen. L. Vol. II, Ch. 62 (1999), available online at <http://www.belizelaw.org/lawadmin/index2.html> (hereinafter "BELIZE ACT").

32. For example, Belize allows a foreign retiree to retain its protected status as long as he or she deposits in a bank or other financial institution in Belize the sum of two thousand U.S. dollars (or its foreign currency equivalent) each month. BELIZE ACT, Section 3-(1)(c).

33. In a survey conducted by a Spanish-language television station in Miami, "one in five Cubans in the metropolitan area said they would return home, although the results are regarded ... more as coming from the heart than the head." Laura Parker, *Radio Marti Director Ousted as Exiles Discuss Returning to Cuba*, WASHINGTON POST, Mar. 13, 1990, at A3. It is possible, but by no means certain, that the passage of time will result in a diminution of interest by Cubans abroad to return permanently to the island.

34. Under Cuba's Constitutions, both pre- and post-revolution, a Cuban citizen who becomes a citizen of another country loses his Cuban citizenship. CONSTITUCION DE LA REPUBLICA DE CUBA (1940) [CONSTITUTION], art. 15 (CUBA), reprinted in 1 CONSTITUTIONS OF NATIONS 610 (Amos J. Peaslee ed. & trans., 2d ed.), also available online at <http://www.rose-hulman.edu/~delacova/constitution-1940.htm> [hereinafter "1940 CONSTITUTION"]; see also, CONSTITUCION DE LA REPUBLICA DE CUBA (1992) art. 32 (Cuba), published in Gaceta Oficial (Aug. 1, 1992), available online at <http://www.georgetown.edu/pdba/Constitutions/Cuba/cuba1992.html> [hereinafter "1992 CONSTITUTION"]. See also *Reglamento de Ciudadanía* ("Citizenship Regulations"), Gaceta Oficial (Mar. 3, 1944), Art. 33 [hereinafter REGLAMENTO].

want to regain the rights of Cuban nationals.³⁵ Retired Cuban expatriates, who may feel more vulnerable on account of age and other factors to discriminatory treatment by the general population, will probably welcome their being placed on equal legal footing with Cuban nationals without losing their benefits as citizens of other countries.

Removing Obstacles to Bringing Property into Cuba: A number of countries, including Ireland, Costa Rica, and Belize allow foreign retirees to import cars and household goods free of taxes or import duties.³⁶ Cuba should do the same. The loss of tax revenues due to the free importation of these articles will likely be outweighed by the positive influence

that such a measure would have on encouraging foreign retirees to settle in Cuba, bringing hard-currency with them.

Allowing the Purchase of Real Property in Cuba: Cuba places severe restrictions on the sale of residential property. Any proposed sale must be subject to the state's prior approval with the state reserving the right of first refusal at a state-set price.³⁷ Restrictions also exist on the ability to swap property, which is one of the favorite loopholes used by the population to get around the restriction on home sales.³⁸ Clearly, these restrictions must be eliminated in order for a housing market for foreign retirees to develop.

35. It has been argued, based on the presumed continued vitality of Cuba's 1940 Constitution (which in Art. 15(a) states that those Cubans who acquire another country's citizenship lose their status as Cubans) that the automatic loss of citizenship provided by Art. 15(a) should not apply to Cuban exiles that have opted to become citizens of their country of residence because to do so would bar the exiles from "participating in the Cuban political process." José D. Acosta, *El Marco Jurídico-Institucional de un Gobierno Provisional de Unidad Nacional en Cuba*, in CUBA IN TRANSITION—PAPERS AND PROCEEDINGS OF THE SECOND ANNUAL MEETING OF THE ASSOCIATION FOR THE STUDY OF THE CUBAN ECONOMY 61, 82 (August 1992). However, the opposite argument can also be made: it is precisely to protect the Cuban political process from undue influence by those who have sworn allegiance to a foreign country that the automatic loss of Cuban citizenship provision for those who opt to become citizens of another country should remain in effect. In this context, it is instructive to recall that the process for regaining Cuban citizenship that was in place before 1959 was anything but automatic. It required a formal re-application for citizenship, followed by one year of continuous residence in Cuba, followed by another formal appearance before a public official, in order for the reinstatement of citizenship to become effective. REGLAMENTO, *supra*, Art. 35. One of the issues that should be considered by a future Cuban Government is whether to follow the lead of certain countries, such as Israel, that allow their nationals to hold dual citizenship. The concern about protecting the Cuban political process against foreign influence could be addressed by means such as establishing relatively lengthy residence requirements before being eligible to vote, imposing limits on campaign contributions, and imposing restrictions on the ability of those holding dual citizenship to hold public office.

36. See Adam Starchild, *Finding Your Retirement Haven*, available online at <http://www.familyhaven.com/retirement/chapt5.html> [hereinafter "RETIREMENT HAVEN"]. Belize allows foreign retirees to bring into the country, free of taxes and duties, "new and approved means of transportation" for his personal use every five years after entry into the country, upon proof that he has properly disposed of the means of transportation he had previously imported into Belize. BELIZE ACT, Section 4.-(1)(c). The definition of "approved means of transportation" includes motor vehicles, boats, and light aircraft. *Id.*, Schedule A.

37. Ley No. 65, 23 de Diciembre de 1988, Ley General de la Vivienda, art. 70 (requiring government approval for the sale of homes, with right of first refusal by the state at a state-set price). Many Cubans have found ways of circumventing the laws restricting the transfer of residential properties. Two (illegal) methods in particular are worthy of note. First, many Cubans engage in unequal *permutas* (swaps), whereby two people exchange houses of unequal value. The party receiving the house of greater value augments her portion of the trade with an agreed amount of cash. A second means of circumventing the law is the creation of "phantom apartments" which then become the subject of a *permuta* for the purposes of transferring title. Eduardo M. Peñalver, *Redistributing Property: Natural Law, International Norms, and the Property Reforms of the Cuban Revolution*, 52 Fla. L. Rev. 107, 128 (2000) [hereinafter "PEÑALVER"].

38. Resolución No. 381, September 25, 1989 (Instituto Nacional de la Vivienda) (requiring parties seeking to exchange houses to apply for permission to a local housing authority, which has the right to refuse permission if it suspects that the exchange is motivated by a desire for profit). Despite these restrictions, swapping of property for property appears to still flourish in Cuba. Douglass S. Norvell, *Cuban Real Estate: The Next Boom?*, Illinois Real Estate Letter (Summer 1999) at 12, available online at <http://www.cba.uiuc.edu/orel/V13-3-4.pdf>. [hereinafter "NORVELL"].

A number of countries prohibit or limit real estate ownership by aliens.³⁹ Cuba should avoid any such limitation, particularly with respect to residential property. In addition, buying real estate is made difficult in a number of countries due to the absence of licensed real estate agents.⁴⁰ While it may not be feasible to establish regulations for the licensing of real estate agents in the short-term, Cuba should seek (perhaps through a revitalized Chamber of Commerce) to create a listing of real estate agencies that can be relied upon by foreigners to assist with the purchase of property on the island.

Taxation Policies

Minimizing Taxation of Retirement Income: Unlike the United States, where the Internal Revenue Code aims to tax a broad range of income-generating

activities,⁴¹ Cuba lacked until relatively recently a system of direct income taxation.⁴² In fact, some have noted that Cuba does not have a tax-paying culture.⁴³ Nevertheless, in 1994, Cuba introduced a system of direct income taxation.⁴⁴ The system was designed primarily to tap into the sources of revenue being generated at the time by newly legalized forms of self-employment.⁴⁵ However, it may also be applied to retirees' income, thus raising a disincentive to retire in Cuba. Cuba may therefore want to implement a tax policy that grants special benefits to foreign retirees. For example, Cuba might offer a combination of income tax exemptions, deductions, and credits to foreign retirees, as well as push aggressively for pro-retiree provisions when negotiating tax treaties with other countries that may assert tax jurisdiction over the retirees.⁴⁶ By taking into account the special

39. For example, Mexico's Constitution prohibits the acquisition of real estate by foreigners in the area within 100 kilometers (62 miles) of Mexico's borders and within 50 kilometers (31 miles) of the coastline. *Constitucion Politica de los Estados Unidos Mexicanos*, Art. 27 (2003), available online at <http://info4.juridicas.unam.mx/ijure/fed/9/28.htm?s>.

40. Many countries that seek to attract foreign retirees have yet to regulate real estate agents through licensing, including but not limited to Belize (FRANKLIN, *supra*, at 90), Mexico (*Buying Property in Mexico*, available online at www.mexonline.com/propmex.htm), and Costa Rica (*Costa Rica Real Estate Buying Tips*, available online at <http://realestateguide.axnmls.com/buyingrealestate.php>).

41. See I.R.C. § 61 defining gross income as "all income from whatever source derived, including (but not limited to) the following items: (1) compensation for services, including fees, commissions, fringe benefits, and similar items; (2) gross income derived from business; (3) gains derived from dealings in property; (4) interest; (5) rents; (6) royalties; (7) dividends; (8) alimony and separate maintenance payments; (9) annuities; (10) income from life insurance and endowment contracts; (11) pensions; (12) income from discharge of indebtedness; (13) distributive share of partnership gross income; (14) income in respect of a decedent; and (15) income from an interest in an estate or trust."

42. See United States International Trade Commission, *The Economic Impact of U.S. Sanctions With Respect To Cuba*, Investigation 332-413, Publication 3398 (February 2001), Ch. 3 at 3-16, available online at <ftp://ftp.usitc.gov/pub/reports/studies/pub3398.pdf> (visited February 14, 2003) (noting, *inter alia*, that Cuba basically lacked a taxation regime from 1967 to 1994).

43. See generally Archibald R. M. Ritter & J.A. Turvey, *The Tax Regime for Micro-Enterprise in Cuba*, Carleton University's Department of Economics' Carleton Paper Series number 99-04, February 2000, available online at <http://www.carleton.ca/economics/cep/cep99-04.pdf> (visited on February 12, 2003) (hereinafter "TAX REGIME").

44. *Id.* Cuba's basic taxation framework consists of Law 73—The Tax Systems Law, *Gaceta Oficial* (August 1994), and Decree-Law 169 (January 1997). Decree-Law 169 granted primary taxation authority to the Ministry of Finance, and created the National Office of Tax Administration (ONAT).

45. See TAX REGIME, *supra*, at 3. The legalized economic activities were primarily in the areas of transportation, housing services, and family and personal services. Furthermore, Decree-Law 141 limited self-employment to a subset of the population, namely retirees, housewives, and laid-off workers.

46. The United States is one of those countries. Whereas most other countries seek to tax only their residents, the United States imposes worldwide taxation on its citizens and residents, regardless of where they have their home. This might create special problems of dual taxation. In negotiating a bilateral tax treaty with the United States, Cuba might seek to have U.S. retirees taxed only by Cuba on their retirement income, although this may prove difficult to achieve.

Furthermore, when designing tax policy, the Cuban government must remain mindful not only of efficiency and effectiveness concerns, but also of the perceived fairness of the tax laws. The main concern here is that—to the extent that foreign retirees are given different, more favorable tax treatment than domestic retirees—there is a potential for the domestic taxpayers to feel that they are being unfairly discriminated against. Therefore, the government must be able to deploy credible arguments that the benefits afforded to foreign retirees provide, in the final analysis, a net benefit to the well-being of the country as a whole.

needs and concerns of retirees when formulating its revamped tax policies, Cuba could provide a stimulus to the influx of foreign retirees.

Entering into Tax Treaties to Avoid Double Taxation of Retirees' Income: As noted earlier, a U.S. citizen or resident⁴⁷ is subject to U.S. taxation on their worldwide income. At the same time, a U.S. person who retires in Cuba is likely to be treated by Cuba as a resident of Cuba. As such, assuming that Cuba will continue to impose an income tax on its residents and that the United States does not alter its long-standing policy of taxing the worldwide income of its citizens and residents, U.S. persons retiring in Cuba will likely face a risk of double taxation (i.e., both Cuba and the United States will seek to tax their income).⁴⁸

By entering into a tax treaty with the U.S. and other countries from which retirees might hail, Cuba could achieve three objectives. First, it could reduce the incidence of double taxation of retirees' income. Second, Cuba could bring some certainty into retirees' calculations of how much tax liability they would face in Cuba, and thus assist retirees in their planning process. And third, Cuba could use tax treaties that include retiree-friendly provisions as a signaling device to foreign retirees that Cuba welcomes them within its borders.

Social Services Policies

Providing Adequate, Affordable Health Care: Cuba should seek in the future to build upon its accomplishment in the health care area and also strive to remedy the current deficiencies in facilities, equipment, and other infrastructure caused by the economic crisis. It is essential that, as foreign retirees start considering Cuba as a potential destination, the country have the necessary health care services that would make it possible for the retirees to receive the services they require without having to travel outside the country.⁴⁹

Establishing Retirement Communities: The economic crisis has also resulted in a housing crisis of unprecedented proportions. As is widely reported, the absence of adequate housing is perhaps the greatest urban problem that Cuba currently faces.⁵⁰ When a transition to a free-market economy occurs, the housing market could be very tight both due to the absence of housing on the market and the demand for it from returning Cuban émigrés as well as others seeking to establish residence in the country for business reasons. Indeed, some predict that a real estate “boom” will occur in Cuba comparable to those experienced in “Florida, California, the Colorado Highlands, and other 20th Century boom locations.”⁵¹

47. The term “U.S. resident” includes not only permanent residents (i.e., green-card holders), but also any person who meets the “substantial presence test” of I.R.C. § 7701. Both U.S. citizens and residents are considered “U.S. persons”—and thus are subject to worldwide taxation—under I.R.C. § 7701.

48. The problem of double taxation is not limited to U.S. persons. Although the U.S. is one of the few countries in the world that impose tax on the basis of citizenship, most countries impose tax on the basis of residence. Given the multiplicity of tax systems with differing concepts and definitions, it is possible that an individual can be considered simultaneously a resident of more than one country. See Daniel M. Berman, *Tax Treaties—Fundamentals*, Practising Law Institute, October-November 2002 (551 PLI/Tax 353), at 362, (noting that most tax treaties contain “tie-breaker” provisions to deal with the problem of dual residency).

49. Several countries, such as Mexico and Costa Rica, have established low-premium health insurance programs that are available to foreign retirees. See RETIREMENT HAVEN, *supra*; <http://www.internationalliving.com/eletters.cfm?eid=1129>.

50. See, e.g., Ginger Thompson, *Cuban Housing a Tight Squeeze; Many Complain Prime Land Targeted for Tourists*, CHICAGO TRIBUNE, Aug. 16, 1998, available online at <http://www.rose-hulman.edu/~delacova/cuba/housing-98.htm>.

51. See NORVELL, *supra*.

The combination of a limited supply of housing and significant, and probably speculative, demand might place housing out of reach for potential foreign retirees. For that reason, a future Cuban government may well need to develop housing communities, perhaps in partnership with foreign developers, for the use of retirees.⁵² Such communities could integrate living and health care facilities and provide an attractive, yet affordable, environment for retirees, thereby increasing the attractiveness of the island as a potential retirement destination.

Economic and Social Policies

Ensuring Personal Safety of Retirees: One of the challenges of a transition government in Cuba will be to maintain order and assure public safety. The probability of unrest and violence during the transition makes it necessary that adequate numbers of trained internal order forces, particularly police, be available to ensure domestic tranquility. One of the great challenges of the transition government will be to retrain and enlarge the roster of internal order personnel, and ensure that they are capable of maintaining law and order while exercising proper respect for due process and individual rights.⁵³

Additionally, the safety of foreign retirees in Cuba might be at particular risk. Individual criminals or organized criminal groups often target foreign retirees.⁵⁴ If adverse economic conditions worsen in Cuba

during its free-market transition, foreigners may become the victims of common crime, politically motivated acts of terrorism, or other violence.

Instituting Economic Policies that Minimize Inflation: Countries experiencing a transition from a command-style economy to a more liberalized economy often experience inflation.⁵⁵ A prolonged, high level of inflation erodes savings, discourages investment, creates uncertainty, and may cause social unrest. Various researchers have set the threshold for high inflation at levels between 2.5% and 40%.⁵⁶

In some transition economies, there may be an initial inflationary burst as prices rise from their state-set level to their market-determined level. In other cases, there is prolonged high inflation, even hyperinflation. Latin American countries in particular have experienced bouts of chronic inflation.⁵⁷

Evaluating the techniques that Cuba could potentially use to control inflation is beyond the scope of this paper. Whatever mechanisms are utilized, their success will be an important factor in persuading foreign retirees, many of whom will be living on fixed incomes, to settle in the island. While the pensions or other income of foreign retirees would be in foreign currency and thus protected from fluctuations in the value of the local currency, the increase in the cost of

52. For a discussion of the status of current Cuban land development ventures and the regulatory improvements that would be valuable before commencement of further real estate development see W. Paul Rosenau, Paul Fenske, John Gilderbloom, *Flirting with Capitalism*, URBAN LAND 98 (October 2002). In addition to the US retirement village developers, there are developers with similar expertise who have been successful in Australia and the UK, and who are seeking new sites; see Andrew Heathcote, *Retirement Villages are as Good as Gold*, BUSINESS REVIEW WEEKLY, December 5, 2002 (Australia); Graham Norwood, *Cash-Property—A to Z*, THE OBSERVER, March 9, 2003 (UK).

53. See LAWS AND LEGAL SYSTEM, *supra*, Chapter 3.

54. For example, it has been widely reported that foreign nationals, including retirees, have been targeted for kidnapping and extortion by organized crime cartels in the Philippines. See, e.g., Philippine Weekly Report (January 2002), available online at <http://www.virtual-asia.com/newsletters/samples/020107ph.pdf>. Similar incidents have been reported in other retirement havens, such as Costa Rica. See <http://abcnews.go.com/sections/travel/DailyNews/costarica000609.html>; http://travel.state.gov/costa_rica.html.

55. This has been the case in most Eastern European countries, where immediate price liberalization occurred. See Bryan W. Roberts, *Inflation and the Monetary Regime During the Cuban Economic Transition*, See CUBA IN TRANSITION—VOLUME 4 (1994).

56. Recent research suggests that the threshold is different for industrialized and developing countries, and places the threshold inflation level for developing countries in the range of 7-11%. Mohsin S. Khan and Abdelhak S. Senhadji, *Threshold Effects in the Relationship Between Inflation and Growth* 48 IMF STAFF PAPERS 1, 16 (December 2001).

57. Average inflation in Latin America is projected to be 11% this year, the highest of any region in the world. *Latin Inflation: Another Setback*, LATIN BUSINESS CHRONICLE, April 2003.

local goods and services due to inflation would be detrimental to the retirees' financial security.

Extending to Foreign Retirees the Equal Protection of Cuban Laws: The fair and equitable treatment of foreign nationals should be guaranteed expressly in the Constitution through a declaration that foreign nationals enjoy the full protection of the country's laws and are subject to the same treatment given to domestic individuals.⁵⁸ If there is a need to create any distinctions between foreigners and Cuban nationals (e.g., on health insurance and immigration matters) such distinctions should be justifiable and clearly set forth in the applicable legislation. Indeed, as discussed above, to the extent that disparate treatment of foreign retirees is warranted in some areas, the distinctions should be in the nature of favorable concessions to retirees intended to encourage their settlement in Cuba.

STEPS THE UNITED STATES COULD TAKE TO FACILITATE THE RETIREMENT IN CUBA OF U.S. NATIONALS AND PERMANENT U.S. RESIDENTS

Lifting the Trade Embargo Prohibitions

Clearly, the first and most important step necessary to make it possible for U.S. nationals and permanent residents to retire in Cuba is the lifting of the U.S.

trade embargo prohibitions.⁵⁹ U.S. law currently imposes restrictions on travel to Cuba by persons under the jurisdiction of the United States. The Cuban Assets Control Regulations ("Regulations"), promulgated by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, implement the travel restrictions and other aspects of the U.S. trade embargo against Cuba.⁶⁰ With limited exceptions, U.S. citizens or permanent residents are prohibited under current U.S. law from incurring expenses related to their traveling to Cuba without first obtaining a license from OFAC.⁶¹ Likewise, persons subject to the jurisdiction of the United States are prohibited from engaging in economic transactions in which Cuba or Cuban nationals have an interest.⁶² Clearly, these and other aspects of the trade embargo would need to be removed before migration to Cuba of U.S. based retirees is possible. Lifting the trade embargo would require either a change in current U.S. policy toward Cuba, or dramatic political changes in the island.⁶³

Allowing Payment of Social Security Benefits to U.S. Citizens and Permanent Residents in Cuba

As noted above, current U.S. law prohibits making cross-border payments of social security benefits to any person residing in Cuba. As a result, many U.S. based persons who would otherwise consider retiring

58. Art. 34 of the current Cuban Constitution declares that aliens residing in Cuba "are in parity with Cubans with respect to: the protection of their persons and property; the enjoyment of the rights and the fulfillment of the duties established in this Constitution, subject to the conditions and limitations established by law; in the duty to abide by the Constitution and the laws; in the obligation to finance public expenditures in the manner and amount established by law; and in the consent to the jurisdiction and decisions of the courts and the public officials of the Republic." 1992 CONSTITUTION, *supra*, Art. 34. Missing from this declaration is what was included in the counterpart provision of the pre-Revolution 1940 Constitution, which also contained the following language: "With regard to the enjoyment of civil rights, under the conditions and within the limitations prescribed by law." 1940 CONSTITUTION, *supra*, Art. 19. Indeed, civil right protections, including protection of the foreigners' assets against unlawful taking by the State, must be expressly protected by the Cuban laws in order for foreign nationals to feel that they can retire in Cuba without risk of adverse action against them by the Cuban State.

59. A detailed discussion of the U.S. trade embargo against Cuba is beyond the scope of this paper. For such a discussion see, e.g., LAWS AND LEGAL SYSTEM, *supra*, Chapter 2.

60. 31 C.F.R. Part 515 contains most of the regulations that implement the U.S. trade embargo against Cuba.

61. 31 C.F.R. § 515.560.

62. 31 C.F.R. § 515.201.

63. The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996," Pub. L. No. 104-114, 110 Stat. 785, *codified as 22 U.S.C. Chapter 69A*, also known as the "Helms-Burton Law," codified the trade embargo provisions that were in place as of March 1, 1996 and made the lifting of the embargo and the provision of aid to the Cuban people dependant, *inter alia*, on the establishment of a democratic government in the island. See generally, Jorge Pérez-López and Matías Travieso-Díaz, *The Helms-Burton Law and Its Antidotes: A Classic Standoff*, 7 SW J. L. & Trade Amer. 95 (2000).

in Cuba may decide not to do so for fear of losing their social security pensions. Therefore, once appropriate conditions arise in Cuba, one of the first steps the U.S. should take—should it desire to cooperate with Cuba's effort to transform itself into a retirement haven—is to repeal such restrictions on cross-border social security payments into Cuba.

Entering into a Totalization Agreement with Cuba

A problem related to, but independent of, the current U.S. restrictions on cross-border social security payments into Cuba, is the rule that cuts off the right of U.S. permanent residents to have their social security payments mailed to them outside the country once they have been abroad for a period longer than six months.⁶⁴ However, the six months rule does not apply if the U.S. permanent resident is present in a country with which the United States has a totalization agreement.⁶⁵

It is unlikely, however, that the United States will base its decision to enter into a totalization agreement with Cuba solely out of a desire to allow U.S. permanent residents to continue receiving their social security payments while present in Cuba beyond the six month period.⁶⁶ Instead, the process that might

move the U.S. to consider signing a totalization agreement with Cuba will have to address the many issues that will arise with the increase of commercial ties and cross-border movement of people between the two countries.⁶⁷ Perhaps illustrative of the United States' measured approach to totalization agreements—and despite the vast number of countries with which the U.S. has commercial relations—is the fact that the U.S. to date has signed only twenty totalization agreements.⁶⁸

Entering into Tax Treaty with Cuba

Unlike the rather limited number of totalization agreements to which it is a party, the United States is a signatory to over fifty international treaties for the elimination of double taxation.⁶⁹ As discussed earlier, one of the primary purposes of tax treaties is to coordinate the application of the parties' tax systems in order to avoid needless impediments to cross-border investments and transactions.⁷⁰ Tax treaties accomplish this result by allocating the right to tax between the country where the income arises (the source country) and the country where the income recipient resides (the residence country).⁷¹ Typically, the country giving up the right to tax a given item of income

64. See 42 U.S.C. § 402(t); 20 C.F.R. 404.460.

65. *Id.*

66. After all, that a U.S.-Cuba totalization agreement would ultimately vitiate the impact of the six months rule with respect to U.S. permanent residents retiring in Cuba is only a byproduct of what totalization agreements generally seek to accomplish.

67. Because the primary purpose of a totalization agreement is to ameliorate the inequities that result when a worker divides his/her working life between two or more countries, the United States will likely not perceive a need for a U.S.-Cuba totalization agreement until the countries have reached some critical mass of workers dividing their working life between the two countries.

68. See *The Social Security's Office of International Programs*, available online at http://www.ssa.gov/international/inter_intro.html#International_Agreements. The countries with which the United States has a totalization agreement are the following: Australia, Austria, Belgium, Canada, Chile, Finland, France, Germany, Greece, Ireland, Italy, South Korea, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Additionally, the U.S. and Mexico are currently negotiating a totalization agreement. See Jonathan Wiseman, *U.S. Social Security May Reach to Mexico*, WASHINGTON POST, December 19, 2002, at A01.

69. Among the countries with which the U.S. has signed international tax treaties are: Australia, Austria, Barbados, Belgium, Canada, The People's Republic of China, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, South Korea, Latvia, Lithuania, Luxembourg, Mexico, Morocco, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Slovak Republic, South Africa, Spain, Sweden, Switzerland, Thailand, Trinidad & Tobago, Tunisia, Turkey, Ukraine, United Kingdom, and Venezuela.

70. See Daniel M. Berman, *Tax Treaties—Fundamentals*, Practising Law Institute, October-November 2002 (551 PLI/Tax 353), 357-362.

71. *Id.*

will do so by granting the taxpayer a tax credit for the foreign taxes paid to the other country.

The decision of a country to forego taxation of revenue originating from abroad does not necessarily mean a net economic loss to that country. Such a decision is premised on the expectation that the tax revenues that are given up will be more than offset by the economic benefits resulting over time from the retiree's moving to the country, despite the immediate loss of revenue. The negotiation of a tax treaty between the United States and Cuba would benefit Cuba and the foreign retiree if either (1) the retiree's obligation to pay U.S. income taxes is waived and Cuba's income tax rate is lower than that of the United States, or (2) if the retiree's obligation to pay U.S. income taxes is retained and Cuba waives application of its own income tax to retirees out of an expectation that doing so will reap greater benefits in terms of a greater flow of retiree income into the country than the loss of revenues that results from waiving the Cuban income tax.

Most tax treaties contain provisions that address a wide range of sources of income, including personal services income, interest income, royalty and rental income, portfolio income, social security income, and more.⁷² Although domestic tax laws provide the basic rules for the treatment of these items of income,

tax treaties supplement the domestic source rules and delineate the allocation of taxing authority over given income items subject to competing jurisdictional claims.

Of the numerous treaty provisions, arguably the most important one for retirees is the one governing the treatment of social security benefit payments. Therefore, it is on this issue that a future Cuban government might want to focus its tax treaty negotiations with the U.S. Present U.S. tax treaty policy calls for exclusive source-based taxation of social security payments.⁷³ Because the Internal Revenue Code classifies social security payments as U.S.-source,⁷⁴ this means that the U.S. government retains the sole right to tax an individual's social security benefit payments even when mailed abroad.⁷⁵ Current U.S. law imposes a tax on 85% of an individual's social security benefit payments.⁷⁶ Thus, assuming that a U.S. person retires in Mexico⁷⁷ and continues receiving monthly U.S. social security benefit payments in the amount of \$1,000, the U.S. will impose a tax on \$850 of his monthly benefits.⁷⁸

Although the vast majority of U.S. tax treaties retain the exclusive source-based taxation rule for cross-border social security payments, the treaties with Canada, Egypt, Germany, Italy, Japan, Britain, and Ireland provide for exclusive residence-based taxation.⁷⁹ This means that the U.S. has given up its right to tax social security payments sent to individuals residing

72. There are three major model treaties that are used as reference points during treaty negotiations. (1) The OECD Model Tax Treaty is relied upon heavily in negotiations between developed countries. (2) In 1996, the United States unveiled the U.S. Model Tax Treaty that is very similar to the OECD treaty but contains some additional provisions. Since 1996, the U.S. has relied heavily on the U.S. Model Treaty in conducting tax treaty negotiations. (3) The UN Model Tax Treaty was developed as a reference point for negotiations between developed and developing countries, and therefore some of its provisions are tilted toward higher levels of taxation by source countries. See Daniel M. Berman, *Tax Treaties—Fundamentals*, Practising Law Institute, October-November 2002 (551 PLI/Tax 353), 379-380.

73. See Cynthia Blum, *Should The Government That Pays Social Security Benefits Across Borders Also Tax Such Benefits?*, 18 Va. Tax Rev. 621, 645-646 (1999) [hereinafter "BLUM"].

74. I.R.C. § 861(a)(8).

75. See BLUM, *supra* at 645-646.

76. *Id.* at 631-636.

77. *Id.* at 639-640.

78. If the person receiving U.S. social security benefits happens to be a non-resident alien, then a 30% withholding tax will be applied to 85% of the social security benefit, for an effective tax rate of 25.5%.

79. See BLUM, *supra*, note 39 at 641-644.

in one of these countries.⁸⁰ This arrangement effectively leaves it up to the residence jurisdiction to decide whether, and if so how much, to tax U.S. social security payments. Furthermore, some tax treaties—such as the U.S.-Israeli and U.S.-Romanian tax treaties—go one step further and bar taxation of social security benefits by either the source or residence country.⁸¹

Despite the United States' general tax treaty policy of retaining the right to tax cross-border social security benefit payments at their source, the treaties mentioned in the paragraph above are examples of foreign countries that succeeded in obtaining concessions from the United States with respect to its tax treatment of cross-border social security benefits paid to their residents and provide potentially useful precedents for Cuba.⁸² Should the United States be interested in assisting Cuba in developing into a retirement haven, it would do well by granting Cuba exclusive, residence-based taxation authority over cross-border U.S. social security benefits mailed to retirees living in Cuba. That way, Cuba can control the level of tax, if any, imposed on such receipts, and thereby signal to retirees the island's favorable treatment of social security benefits.

Extending Medicare Benefits to U.S. Nationals and Permanent Residents who Retire in Cuba

The availability of affordable, high quality health care is a major concern of individuals reaching retirement age, but it is especially of concern to those contemplating retirement abroad.⁸³ Unfortunately, ever since its inception, and unlike the Social Security program, Medicare has linked eligibility for health care benefits to the beneficiary's physical presence in the United States.⁸⁴ Therefore, even though individuals have contributed to the Medicare fund through payroll taxes throughout their working lives, subject to a few very narrow exceptions, the Medicare program is forbidden by law from covering any health care expenses incurred while traveling or living overseas. This Medicare foreign exclusion rule could create an obstacle to Cuba's development into a retirement haven for U.S. persons.⁸⁵

Americans of retirement age view Medicare as a form of entitlement. Even though some might also be covered by HMOs or Medigap policies, the coverage provided by Medicare is real. Many Americans—especially those of relatively limited means—might not be willing or able to forego Medicare coverage for the sake of retiring abroad, unless the host country is capable of meeting the health care needs of its retirees with quality, low cost services.

80. Although most tax treaties contain a savings clause that allow a country to reserve the right to tax all of its citizens and residents equally regardless of whether they happen to be residents of another country as well, the tax treaties with Egypt, Germany, Italy, Japan, Britain, and Ireland contain exceptions to the savings clause. In other words, a U.S. citizen who becomes a resident of one of these countries could effectively avoid U.S. taxation of their social security benefit payments.

81. BLUM, *supra*, at 641-643 (1999).

82. See BLUM, *supra*, at 655-656 and footnote 129 (1999) (noting that the favorable social security provision in the U.S.-Ireland Tax Treaty owed a great deal to the aggressive lobbying of Irish recipients of U.S. social security payments; since the U.S. "is a popular destination for Irish emigrants, but many return to Ireland on retirement and receive social security benefits.")

83. For an example, see the frequently asked questions (FAQ) section of the Association of Americans Resident Overseas' web site, available online at <http://www.aaro.org/faq.html>.

84. For an excellent detailed account of the Medicare foreign exclusion, please see James R. Whitman, *Venturing Out Beyond the Great Wall of Medicare: A Proposal to Provide Medicare Coverage Outside the United States*, 8 Elder L.J. 181 (2000).

85. Since Medicare coverage is based on the principle of territoriality, individuals who retire abroad would have to travel back to the United States to receive medical treatment that would be covered by Medicare. Although it is theoretically possible for retiree's to hop an a plane to Florida (the nearest U.S. state to Cuba) every time they want their medical treatment to be covered by Medicare, this may well prove impractical and outweigh other benefits of retiring in Cuba.

A post-transition Cuba could be particularly well suited to emerge as a high-quality and comparatively low-cost provider of medical services.⁸⁶ Assuming this observation holds true, it is unlikely that Cuba would want to bear single-handedly the added financial burden of providing medical care to foreign retirees despite the existence of sufficient medical infrastructure and trained personnel.⁸⁷

Thus, although it is perhaps safe to assume that health care will remain more affordable in Cuba than in the United States, it is not at all clear that the cost-savings will mean much to foreign retirees if the lack of Medicare coverage for services received in Cuba forces them to incur substantial out-of-pocket expenses for their health care.

Foreign retirees might be able to purchase private health insurance with coverage in Cuba, but the attractiveness of Cuba in this regard as a retirement haven will then hinge on the specific economics of each prospective retiree's medical insurance situation. Thus, absent Medicare coverage, it is unlikely that foreign retirees unable to afford private health insurance would find Cuba an attractive retirement haven when they will have to pay out-of-pocket for medical care. In the alternative, if retirees were to contemplate returning to the United States to receive health care services that would be covered by Medicare, this would result in additional travel costs, also making Cuba economically less attractive. Therefore, a significant number of retirees from the United States who rely on Medicare coverage for their health-care needs—and who would otherwise consider retiring in Cuba—might quickly experience a change of

heart once they discover that Medicare coverage stops at the border.

The most obvious solution to the problem would be to lobby Congress to amend the Medicare statute⁸⁸ by repealing the foreign exclusion vis-à-vis Cuba. However, absent a broader public policy goal, it is unlikely that Congress would repeal the Medicare foreign exclusion solely for Cuba's benefit, particularly since such a measure would elicit an adverse reaction from many other potential foreign retirement locations, such as Mexico and the Central American countries.

There is at least one potential policy argument for why Congress might eventually want to re-evaluate the Medicare foreign exclusion, at least with respect to Cuba.⁸⁹ By the year 2010, when U.S. baby boomers start entering retirement in large numbers, the number of workers per Medicare beneficiary in the U.S. is projected to start to decline from 3.8 in 1997 to 2.2 by 2030.⁹⁰ This projected decrease in payroll contributions, with a concomitant increase in Medicare outlays, is likely to place an enormous strain on the Medicare system. As a result, these events might very well lead Congress to devise alternative or supplemental funding sources or methods to address these problems.

One way to address the looming Medicare problem is to allow Medicare to reimburse health care providers in Cuba for medical services rendered to Medicare recipients on the island. Assuming that quality health-care in Cuba will be provided at a lower cost than in the United States, such a move could argu-

86. As noted earlier, Cuba has been for some time in the business of actively promoting "medical tourism," whereby foreign patients travel to Cuba to receive medical treatment at internationally competitive rates. See n. 22, *supra*; see also MEDICARE, *supra*, ASCE-11 at 186.

87. For an article discussing the tremendous financial burden imposed on Central and South Florida hospitals by uninsured foreign nationals, see Alfonso Chardy, *Foreign Visitors Burden Hospitals*, The Miami Herald, January 8, 2003 (quoting a Florida Hospital Association Survey that found that "among the many challenges facing hospitals, providing healthcare services to uninsured non-US citizens is placing an additional burden on already limited financial resources" . . . and that those hospitals who participated in the study reported spending over \$40 million in treating uninsured foreign nationals).

88. Actually, the Medicare program was created through a series of amendments to the Social Security Act in 1965. See Social Security Amendments of 1965, Pub. L. No. 89-97.

89. See MEDICARE, *supra*.

90. *Id.* at 186.

ably result in reduced Medicare outlays for retirees who choose to retire and seek medical care in Cuba—thereby ameliorating the projected strain on the Medicare program.⁹¹ Apart from potential political and legal challenges from U.S. health care providers and other foreign countries, the main difficulty with this approach is proving to Medicare that the quality of care available in Cuba meets U.S. standards.⁹²

CONCLUSIONS

Cuba's long-term prospects of becoming a retirement haven appear to be high, provided that there is the political will to make the necessary legal changes and financial investments by the country.⁹³ Some of the changes will be relatively easy to implement, such as enacting retirement-friendly legislation. Others will be potentially costly (such as establishing retirement

communities) and require a cost-benefit analysis given the competing claims for limited financial resources that will be available to a Cuban transition government. Still, other changes will require the co-operation of the governments of foreign countries, including but not limited to the United States.

Despite the difficulties, the potential benefits of having many thousands of foreign nationals settle in Cuba and bring their assets and retirement income into the country appear to make considerable economic sense.⁹⁴ In addition, foreign retiree settlement in Cuba may have incidental social stabilization benefits. Therefore, the authors recommend that once Cuba returns to a free-market economic system and political relations with the United States improve, a program be instituted along the lines suggested in this paper.

91. *Id.*

92. *Id.* at 190-93.

93. It can be argued that development of programs to foster foreign retirement in Cuba may be a misallocation of Cuba's scarce financial and human resources, and that encouraging foreigners to retire in the country may create domestic discontent due to the perceived inequality between the standard of living and facilities and services available to foreign retirees (e. g., adequate housing) and the inferior living conditions of the general population. However, any program that is implemented to draw upon foreign resources to promote economic development (such as promoting foreign investment) is likely to be subject to the same criticism, and yet foreign investment is courted by the Cuban Government today and is widely recognized as an indispensable ingredient in the economic reconstruction of the country. See generally, LAWS AND LEGAL SYSTEM, *supra*, Chapter 5.

94. While reported figures vary, as many as 50,000 Americans have retired in Costa Rica. See, http://www.time.com/time/archive/preview/from_redirect/0,10987,1101001211-90593,00.html; <http://www.realtor.org/intlprof.nsf/469d23f47d4701f786256811004ee3cd/a1d22a3c4d6eeba0862568100067d03d>.